

THE FIRST NEW ZEALAND LAND COMMISSIONS,
1840-1845

by

Rosemarie V. Tonk

A thesis submitted in partial fulfilment of
the requirements for the degree of
Master of Arts
in the University of Canterbury,
Christchurch, New Zealand

May 1986

TABLE OF CONTENTS

	Page
List of Photographs and Maps	iv
Abstract	viii
Acknowledgments	x
Notes	xi
Abbreviations	xiii
Glossary of Maori terms	xiv
<u>PART ONE</u>	
Chapter 1	2
2	37
3	71
<u>PART TWO</u>	
Chapter 4	121
5	136
6	188
7	215
8	250

	Page
Chapter 9	
The New Zealand Company's Nelson District Claim: Success and Tragic Failure	276
EPILOGUE	300
CONCLUSION	317
APPENDICES	
1	
Colonial Office Administrators, 1830-54	
Governors of New Zealand, 1840-54	325
2	
Governor Gipps's Land Claims Commission Act	327
3.	
New Zealand Company Deed of Purchase at Port Nicholson, 27 September 1839	334
BIBLIOGRAPHY	338

LIST OF PHOTOGRAPHS AND MAPS

	Page
Location map: North Island, New Zealand	xv
Location map: South Island, New Zealand	xvi
Captain William Hobson Oil painting by James Ingram McDonald (1865-1935) Alexander Turnbull Library, Wellington, New Zealand	8
William Charles Wentworth Oil painting, Mitchell Library, State Library of New South Wales, Australia	18
Sir George Gipps Oil painting, Mitchell Library, State Library of New South Wales, Australia	18
Major Mathew Richmond Photograph, Alexander Turnbull Library, Wellington, New Zealand	30
Lieutenant Willoughby Shortland, Colonial Secretary, 1840 Monotone watercolour by James Ingram McDonald (1865- 1935). Alexander Turnbull Library, Wellington, New Zealand	59
Map indicating the main land claim areas	103
William Spain Photograph, Mitchell Library, State Library of New South Wales, Australia	126
William Wakefield Photolithograph in Irma O'Connor, <u>Edward Gibbon Wakefield</u> (London, 1929). Alexander Turnbull Library, Wellington, New Zealand	126

	Page
Wellington's first Courthouse	137
Lithograph by W. Richardson from a sketch by Luke Nattrass (1803?-1875) depicting the city of Wellington, New Zealand, 1841. Centre left of right hand section of panorama. Alexander Turnbull Library, Wellington, New Zealand.	
Courts of Justice, Mulgrave Street, Wellington	137
Hand coloured engraving by Henry Melville after the original by Samuel Charles Brees for Brees's book, <u>Pictorial Illustrations of New Zealand</u> (J. Williams, London, 1847). Alexander Turnbull Library, Wellington, New Zealand.	
Map of the Port Nicholson District	138
Richard Barrett	140
Seated by boat built from the wreckage of his schooner <u>Tahua</u> , driven ashore at Moturoa in 1829. From Fred B. Butler, <u>Early Days, Taranaki</u> (F.B. Butler, New Plymouth, 1942).	
Te Puni, 1877	141
Coloured lithograph in C.D. Barraud, <u>New Zealand Graphic and Descriptive</u> (Sampson Low, London, 1877). Alexander Turnbull Library, Wellington, New Zealand.	
Te Wharepouri	141
Waripori, or Dark Horse, by Charles Heaphy (1820-1881). Lithograph by Day and Hague in E.J. Wakefield, <u>Illustrations to Adventures in New Zealand</u> (London, 1845). Alexander Turnbull Library, Wellington, New Zealand.	
Te Rangihaeata, 1856	145
Watercolour by Charles Decimus Barraud (1822-1897). Alexander Turnbull Library, Wellington, New Zealand.	

	Page
Hiko, the son of Te Pehi, Kupe	145
Charles Heaphy (1820-1881). Lithograph by Day and Hague in E.J. Wakefield, <u>Illustrations to Adventures in New Zealand</u> (London, 1845). Alexander Turnbull Library, Wellington, New Zealand.	
Te Rauparaha	145
John Alexander Gilfillan (1793-1863). In <u>Transactions of the New Zealand Institute</u> , Vol. 39, Plate 15. Alexander Turnbull Library, Wellington, New Zealand.	
Plan of the New Zealand Company's Land Claims.	146
Signed Samuel Charles Brees, Principal Surveyor of the New Zealand Company, 16 May 1842. OLC 911, National Archives, Wellington, New Zealand (layout slightly altered).	
Te Aro pa	152
Pencil drawing of the pa, looking towards the Hutt River [184-], by [John Alexander Gilfillan] (1793-1863). Alexander Turnbull Library, Wellington, New Zealand.	
View of part of the town of Wellington, 1841	151
Watercolour by Charles Heaphy (1820-1821). Alexander Turnbull Library, Wellington, New Zealand.	
Toms's whaling station, Porirua	205
Hand coloured engraving by Henry Melville after an original by Samuel Charles Brees for Brees's book, <u>Pictorial Illustrations of New Zealand</u> (J. Williams, London, 1847). Alexander Turnbull Library, Wellington, New Zealand.	
Captain Robert FitzRoy	225
Lithograph, Alexander Turnbull Library, Wellington, New Zealand.	

Page

- Spain investigating the land claims at New Plymouth,
1844 259
- From the original pencil sketch by Lewis, a New
Zealand Company surveyor. Hocken Library, Dunedin,
New Zealand.
- H.M. Colonial Government brig Victoria 268
- Conté and wash by George Frederick Swainson. Copy
supplied by Alexander Turnbull Library, Wellington,
New Zealand. Original in the British Museum.

ABSTRACT

In early 1840 New Zealand was annexed to the Australian colony of New South Wales and William Hobson became Lieutenant-Governor of the new dependency. One of Hobson's first priorities was to sort out who owned what land in New Zealand. Thus a Commission was set up to investigate the land claims.

The first New Zealand Land Commission was established under the New South Wales Act, 4 Victoria No. 7 (August 1840) and three Commissioners were appointed. They began examining claims early in the following year. Part One of this thesis deals with the origins of the Commission, the legislation which governed its activities and the work of the Commissioners - notably the difficulties which they encountered and what they actually achieved.

A separate Commission was set up in Britain to deal with the claims of the New Zealand Company which held that it had bought some 20,000,000 acres of land centring on the Cook Strait in 1839 and to which it had already sent hundreds of settlers by the end of 1840. William Spain, appointed the Commissioner to investigate the Company's claims, began work early in 1842. The second part of this thesis is concerned with how his work progressed - particularly in the face of determined opposition from the Company's local officials -

and how the Company gained a title to much of the land it claimed under an agreement made with the British Government in November 1840, in spite of Spain's finding that the Company's 1839 purchases were hardly purchases at all.

The epilogue summarises the Commissions' achievements and outlines what was done in the following years to finally settle the Land Question.

ACKNOWLEDGMENTS

I offer my most heartfelt thanks to my supervisor, Dr Ann Parsonson of History Department, University of Canterbury. Her enthusiastic teaching of a course on Maori Society in the Nineteenth Century has proved to be the genesis of this thesis, and her criticism, advice and technical assistance with the final drafts have been invaluable. I am grateful also to Professor W. David McIntyre for his help as acting-supervisor for the first year when Dr Parsonson was on leave. Many, many thanks to my husband, Gray, who has lived with this thesis for 2½ years - all of our married life. I acknowledge his help with assembling the maps and photographs. Thanks also to the staff of the National Archives, Wellington, where I spent many an hour poring over what is, in fact, but one small part of their wonderful collection. I would also like to acknowledge the support and encouragement of my parents - this has been no less important to my well-being and progress for all that it has been given through the media of letters and telephone calls. Finally, many thanks to my typist, Margaret Robinson, who has done a tremendous job of making my thesis legible and presentable.

NOTES

All original capitalisations, spellings and punctuation in quotations have been retained unaltered.

Contemporary units of measurement and money are retained without conversion, e.g. acre (0.405 hectare), mile (1.609 kilometre), pound sterling (NZ\$2 in 1967), shilling (10 cents).

Until 1855 the Colonial Office and the War Office were under the same head, the Secretary of State for War and Colonies. As the Secretaries of State referred to herein are always acting in the latter capacity, the title used will be Secretary of State for the Colonies.

George Clarke junior is always referred to in the text as George Clarke.

It is unclear when the term 'Wellington' began to be applied to the region, rather than just the settlement. Therefore, unless otherwise stated, Wellington refers to the township and Port Nicholson is used for the district.

Following the convention adopted by the 'Oxford History of New Zealand' (1981, p. xi), Maori words are not underlined, but are followed by a translation on first mention. See also

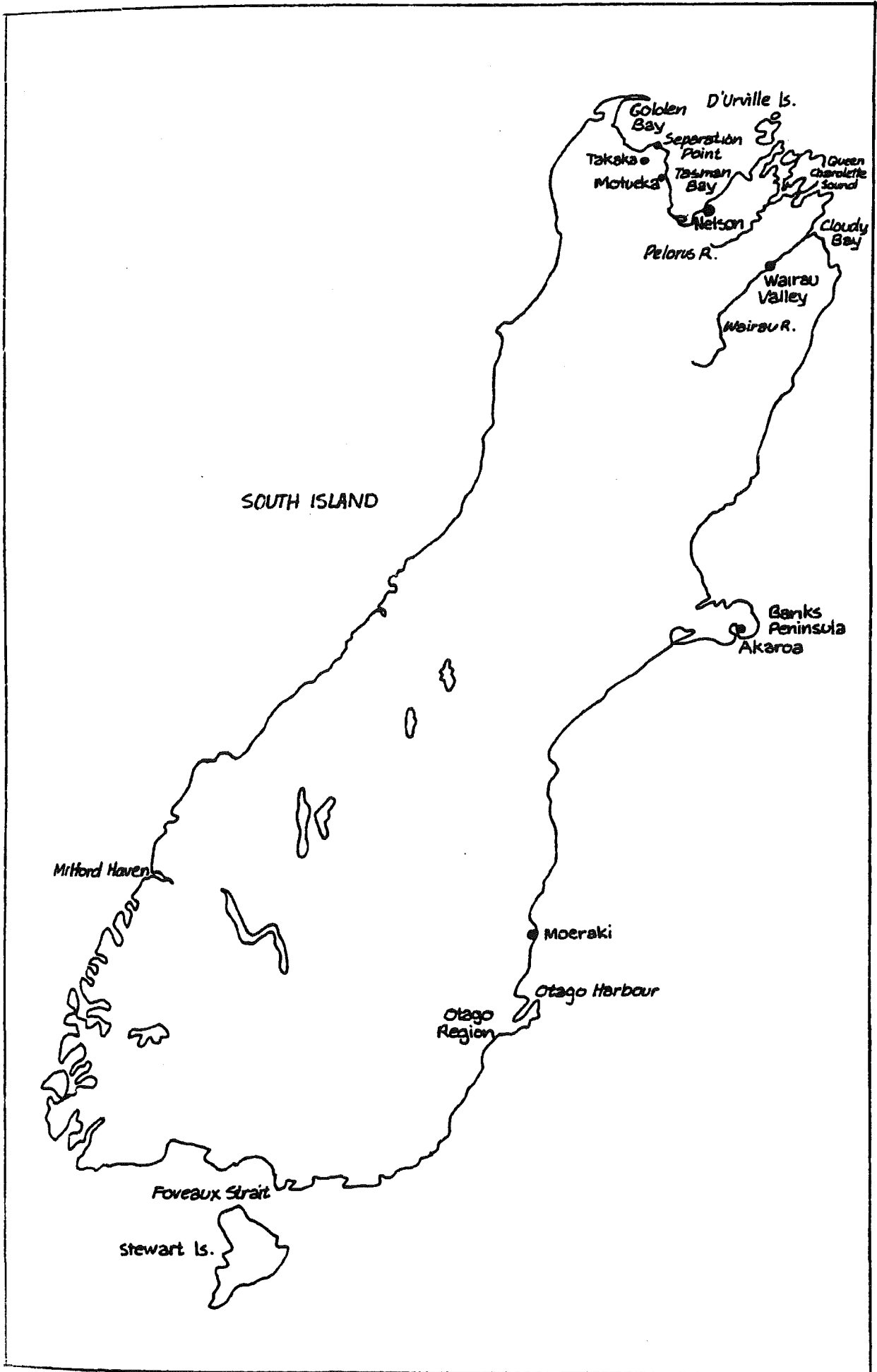
the glossary herein on page xiv. The Maori plural (which does not add the letter 's') has been used, except in the case of the words 'Maoris' and 'Pakeha's, for which the English plural has become common. The names of Maori tribes generally include the equivalent of the English definite article, which is therefore usually omitted.

ABBREVIATIONS

AJHR	Appendices to the Journals, House of Representatives
ATL	Alexander Turnbull Library
CMS	Church Missionary Society
CO	Colonial Office
Col. Sec.	Colonial Secretary
G	Governor series
IA	Internal Affairs series
<u>IUP</u> .../ <u>BPP</u> ...	Irish University Press series of British Parliamentary Papers
LS-N	Lands and Survey, Nelson, series
MA	Maori Affairs series
MS	Manuscript
NA	National Archives
NSW	New South Wales
NZ	New Zealand
NZC	New Zealand Company series
NZC Sec.	New Zealand Company Secretary
OLC	Old Land Claims series
S.S. Cols	Secretary of State for the Colonies
Under-S.S. Cols	Under=Secretary of State for the Colonies

GLOSSARY OF MAORI TERMS

aukati	line which no-one may pass
haka	chants of defiance, accompanied by a stylised dance
hapu	clan, sub-tribe
korero	conversation, discussion
mana	spiritual power, authority, prestige
pa	fortified village
Pakeha	person of non-Maori descent, usually European
rahui	temporary ban on the use of resources
tangata whenua	local people
tapu	religious restriction



PART ONE

CHAPTER ONE

ORIGINS OF THE COMMISSIONS

Although New Zealand was claimed as British territory by Captain Cook in 1769, it was not until the 1830s that the British Government developed any significant interest or involvement in the country. This failure to secure Cook's claim by subsequent occupation or activity and the Government's unwillingness to acquire yet another piece of remote territory were reflected in the reluctance with which the steps towards the annexation of New Zealand were taken. It was largely as a result of developments within New Zealand itself and the activities of two antagonistic pressure groups in Britain that New Zealand was declared a Crown colony of the British Empire in 1840.¹

There were two main aspects of the New Zealand situation which influenced Colonial Office attitudes. One was the rapid growth of a permanent, ungoverned, predominantly British settlement in New Zealand during the 1830s. Up until then the number of Europeans in New Zealand, including missionaries, had been small. About 200-250 lived in the North Island and no more than eighty in the South Island. These people lived at scattered points along the coast and were largely employed as general traders, flax collectors, sealers and shore-based whalers, and timber traders. New Zealand was also a haven for a substantial number of social misfits

such as ship deserters and ex-convicts. Only a small amount of land was bought and was primarily used as commercial premises. The expansion of this small European population was initially due to a short-lived flax trade boom (c. 1829-early 1830). The growth was extended through the 1830s by the expansion of shore-based whaling, trading and missionary work.² Then, towards the end of the decade, interest in New Zealand land speculation developed in both Australia and New Zealand after it became known there that the question of British protection over New Zealand had been favourably discussed in the House of Lords in 1837. As the likelihood of New Zealand's colonisation by either the New Zealand Company or the British Government increased, the activities of the speculators grew markedly. The speculators, derogatorily known as land sharks or land jobbers, were based in both Australia and New Zealand. A wide variety of people ranging from substantial merchants, capitalists and traders to people of very modest means, invested in land.³ By the end of the 1830s, about 2,000 Europeans lived in New Zealand. As before most were located in the northern North Island where settlements had become more complex and extensive. Land was now being acquired for farms and homes as well as for commercial property and speculation. Many more non-residents, notably New South Welshmen, had vested interests in New Zealand through their commercial involvement and landed property there.⁴

The second factor affecting Colonial Office attitudes was the clearly detrimental effects which the expansion of the

European population was having on the indigenous people, the Maori. Western diseases, for instance, were contributing significantly to a marked Maori population decline in all areas of Maori-European contact. The severe impact of such diseases as influenza and consumption was partly due to the Maoris' lack of bodily resistance to previously unencountered illnesses. The effects were aggravated by such aspects of Maori lifestyle as communal living habits, and changes in that lifestyle resulting from contact with Europeans. For example, the desire for European trade and trade goods often led to the abandonment of hill-top pa (fortified villages) for the unhealthier flax swamps and riparian timber lands.⁵

The situation in New Zealand was unacceptable to the Colonial Office officials for both legal and humanitarian reasons. Legally, the Government had a duty to control and protect British subjects even when they were in foreign territory. This duty had first been acknowledged with regard to British nationals in New Zealand in a series of Acts passed in 1817, 1823 and 1828.⁶ The Acts provided for the trial and punishment in New South Wales and Van Diemen's Land (Tasmania) of any British subject committing serious crimes in New Zealand.⁷ These and later measures failed largely because Great Britain had no real authority in foreign territory. The Resident appointed in 1833, for example, was not provided with any troops or extra-territorial jurisdiction. Instead

he was expected to rely primarily on personal influence. In the meantime, the need for effective regulation became more acute as the European population in New Zealand increased.⁸

A number of interrelated humanitarian ideas were also important in affecting Colonial Office attitudes. It was, for instance, a widely accepted view that the territory of a politically-organised indigenous people could not be treated as uninhabited land. Even when the indigenous people themselves had no concept of sovereignty, their sovereignty had to be recognised. Another influential idea was that of trusteeship. That is, those in dominant positions had a responsibility to respect and protect the rights of their inferiors. At this time many believed that the best way to protect indigenous societies was by controlling the effect of European contact by, for example, restricting settlement. This view was incorporated into the recommendations of the House of Commons Committee Report on Aborigines (1836) - a report often seen as the purest expression of nineteenth century humanitarian idealism towards indigenous peoples. Inherent in the humanitarian ideas of the day was an understanding of Mankind as a continuum along which the races progressed from barbarism to civilisation. Such aspects of their society as an apparent social hierarchy, settled villages, agricultural skills, and well-developed material culture, meant that the Maoris were seen as being well on the way to civilisation and having great potential for cultural development.⁹

At this time, however, it was the activities of the Church Missionary Society (CMS) and, in particular, the New Zealand Association in Great Britain, which led the British Government to accept a more definite involvement in New Zealand. The CMS was supported by the Wesleyan Missionary Society and by those in Parliament who produced the Aborigine Committee Report (1836). Both Missionary Societies had established missions in New Zealand. They were opposed to the principle of colonisation and favoured the Residency policy even after it had been abandoned by the Government.¹⁰ The other group was the New Zealand Association which was established in mid-1837. The Association was strongly in favour of colonisation of New Zealand according to the model advocated by Edward Gibbon Wakefield.¹¹ By December 1837 it had won Colonial Office acceptance for its policy and the Secretary of State for the Colonies, Lord Glenelg, offered the Association a charter to settle at least part of New Zealand. The reasons for this change in policy include: the support of the Association by the Secretary at War, Lord Howick (Earl Grey, the third, from 17 July 1845) and his interference in Colonial Office affairs at this time; the political importance to the British Government of retaining the support of Lord Durham, the Association's Director; the timely arrival of a report by the New Zealand Resident, James Busby, which emphasized the increasingly urgent need to do something to control the local situation, and suggested a charter of government to the Europeans in New Zealand; and recognition that any reliance on missionary control of

the situation, as advocated by the Aborigine Committee Report, was unrealistic and futile in this case. Disagreement between the New Zealand Association and the Government over the terms of the charter led to the withdrawal of the offer in early 1838, but the Colonial Office was now committed to a greater degree of intervention than had so far been accepted. ¹²

Even as the charter negotiations failed the key to a solution midway between the Residency policy and annexation with colonisation appeared. The new proposal was made in a report by Captain William Hobson. Hobson had visited New Zealand in May and June 1837 to assess the reportedly anarchic situation there and draw up proposals for the Governor of New South Wales, Richard Bourke, on how best to restore order and secure the common interests of Maori and European. Drawing on his experience of India, Hobson suggested that trading factories be established. The land would be acquired by cession from the Maoris in exchange for presents and guarantees of protection from Europeans. The head of each factory would have magisterial authority and the chief factor would be accredited as a consul to the Maori people. Although this idea was well received in the Colonial Office, nothing more was done until after the New Zealand Association's Bill seeking parliamentary support for colonisation of New Zealand had failed in June 1838. It was then decided that the Resident had, at least, to be replaced. No one suitable was found immediately and it was December before



William Hobson

the Colonial Office decided to offer the position to Hobson. In February of the following year he accepted. ¹³

By this time Hobson was in favour of an extended factory system or total cession rather than the restricted form of occupation described in his report. Hobson argued that his report's suggestions represented the minimum intervention necessary and had serious limitations. For instance, it did not allow for any active settlement of New Zealand and settlement was very desirable as a source of revenue. There were other problems, too, such as the difficulty of controlling crime if most of New Zealand remained foreign territory. ¹⁴ Although Dandeson Coates, Lay Secretary of the CMS, did not accept that the missionaries could not rectify the problems in New Zealand, on 2 May 1839 he advised Glenelg, the former Secretary of State for the Colonies, that complete cession was preferable to partial cession. The Reverend John Beecham, Secretary of the Wesleyan Missionary Society, agreed with Coates's views. This was because the New Zealand Land Company was going ahead with its systematic settlement plan even without Government support. Coates felt that complete cession would, at least, enable the Government to control settlement and since the Government had withdrawn its support for the Company, he and Beecham believed that Maori interests would not be sacrificed to those of the systematic colonisers. Hobson's final instructions were to confirm the validity of this view. ¹⁵

At the time of Hobson's acceptance, however, the Colonial Office had much more limited aims in view. Until February 1839 Lord Glenelg was still Secretary of State for the Colonies and his sympathies lay with the Aborigine Committee Report. He believed that colonisation had unacceptable detrimental effects on indigenous societies. Having made the earlier offer to the New Zealand Association largely because of force of circumstances, he refused to reconsider chartering a company to control land sales. And although Glenelg's successor, Lord Normanby, approved of the New Zealand Association's long-term aims and the investment of British capital in New Zealand, he considered that some sort of arrangement between the Government and the Maoris about sovereignty should be made before settlement and investment in New Zealand proceeded.¹⁶ Thus in February 1839 the Colonial Office intended to do no more than send Hobson as a consul, provide him with the support of a warship, make future purchases of New Zealand land by British subjects illegal unless confirmed by the Crown, and recognise as part of the Crown colony any land Hobson could persuade the Maoris to cede. Anything more than acquisition of the few areas where shipping and settlement were concentrated was seen as unnecessary and impractical.¹⁷

This and the certainty from March 1839 that the Government intended to pre-empt land in New Zealand, led the New Zealand

Colonisation Association * to take matters into its own hands. Acting on the principle 'possess yourselves of the Soil and you are secure', the Company sent off a preliminary expedition aboard the Tory on 12 May 1839 to buy land in New Zealand before the Government acted.¹⁸ The Company's plans at this stage were to establish one settlement comprising 1,100 sections of one town acre and 100 country acres, and including 110 Native Reserve sections. Port Nicholson in the Cook Strait of New Zealand was considered a promising site for the settlement.

During the months immediately following the Tory's departure, the Company launched a vigorous campaign to sell its shares and land orders. Agents were appointed in most of Great Britain's large towns and in a few Irish cities, and extensive publicity was achieved through advertising the Company's aims and activities in London's periodical and daily press, the provincial papers, the use of large posters, and public functions and meetings. The campaign was a great success. By mid-July 1839 all the available sections in the first settlement were sold. This led the Company to offer for sale a further 50,000 country acres at £100 per 100 acre section. The Company's first four vessels, with about 400

* On 29 August 1838 the New Zealand Association reconstituted as the New Zealand Land and Colonisation Association. This body was most commonly referred to as the New Zealand Colonisation Association. On 2 May 1839 it became the New Zealand Land Company - after which date it was known both as the New Zealand Company and as the New Zealand Association.

immigrants aboard, including the Cuba which carried the survey team, left Gravesend in September 1839 without waiting for news of the preliminary expedition's success or failure.¹⁹ Although the Parliamentary Under-Secretary for the Colonies, Henry Labouchere, had warned that titles to land bought from the Maoris might not be accepted by the Government, the Association was informed, at a meeting with Normanby in early June, that bona fide titles would be recognised.²⁰ It would not be clear until the end of the following year, however, that the risk taken in defying the Government had paid off.²¹

In the meantime, the Company's actions increased the urgency of the matter and added a strong case in favour of extended or complete acquisition of New Zealand. This was reflected in the instructions which Hobson received on 20 August 1839. Normanby directed Hobson to²²

'treat with the Aborigines of New Zealand for the recognition of Her Majesty's sovereign authority over the whole or any parts of those islands which they may be willing to place under Her Majesty's dominion'

whichever was most appropriate for the circumstances he found on his arrival there. This ceded land would become a dependency of New South Wales and Hobson would assume the position of Lieutenant-Governor. Significantly, however, Normanby also advised Hobson of his belief that the development of

the frontier had so eroded Maori independence as to make it 'precarious and little more than nominal'. Nor did the instructions mention a consular role for Hobson or discuss establishment of extraterritorial jurisdiction over Europeans should only parts of New Zealand be ceded. Bearing in mind, too, Hobson's own preference for complete acquisition, the decision about how much of New Zealand would become British territory was effectively made before Hobson arrived in New Zealand. This is confirmed by Gipps and Hobson's actions prior to the signing of the Treaty of Waitangi by which Maori chiefs ceded New Zealand to Great Britain. ²³

Four days after receiving his instructions Hobson set sail for Australasia, arriving in Sydney on 24 December 1839. ²⁴ On 19 January 1840, the day after Hobson left for New Zealand, Gipps issued the Land Titles Validity Proclamation as a public warning against further speculation in New Zealand lands. Just over 2 weeks later, Hobson, after reading aloud Her Majesty's commission appointing himself as Lieutenant-Governor of New Zealand territory acquired for the British Crown, read the same Proclamation to the British residents assembled at the small mission church in Kororaraka, Bay of Islands. ²⁵ The Proclamation stated that the Queen would only acknowledge land titles derived from Crown grants and that, in future, it was illegal for Europeans to buy land from the Maoris. It further declared that a Commission would look into all purchases made prior to 14 January 1840, the date on which the Proclamation was signed. ²⁶ Subsequently,

the pre-emptive ruling was embodied in the second clause of the Treaty of Waitangi.²⁷ These announcements were in accordance with the instructions given to Hobson by the Secretary of State for the Colonies.

Lord Normanby saw it as vital for the colony's future development that the land situation in New Zealand be regularised and controlled by the Crown. Speculation in New Zealand's land had become rife in 1839 when the British acquisition of the country had become a relative certainty. The assertion of Crown pre-emption would provide the new Government with a substantial income through the resale and use of cheaply acquired demesne lands. This revenue would be partly directed towards financing the introduction of more emigrants. Pre-emption combined with a small land tax on uncleared land would prevent the monopoly of large tracts of land by a few individuals and so provide opportunity for the arriving settlers. Financial self-sufficiency for the colony was the unspoken hope.²⁸ At the same time, good race relations would be facilitated by the introduction of the more responsible and regular nature of Government land buying, and its restriction of land acquisition to such 'waste lands' as the Maoris could sell 'without distress or inconvenience to themselves'. Recognising that a great deal of land had already passed into European hands, Lord Normanby informed Hobson in his instructions of August 1839 that the Governor of New South Wales would be instructed to appoint a Commission

to investigate the land claims. The Commissioners would then report to the Governor as to which lands British subjects had obtained, the payment made, and how fair and legal the sales were. On receiving the Commissioners' reports, the Governor would decide which claims would be confirmed by the issue of a Crown grant. The extent and conditions of each grant would also be decided by the Governor. Once it was established which lands remained in Maori hands and which did not, the organisation of alienated lands, private and public, could be commenced. While the bulk of Hobson's instructions related to the establishment of government, quite detailed instructions were also provided for the organisation of public lands. These covered the division of the lands into units from districts down to parishes, the setting aside of public reserves, and the sale of 'waste' lands. ²⁹

Prior to the issue of the Land Titles Validity Proclamation, an official statement to the same effect had been made on 6 January 1840 at a public auction in Sydney of 2,000 acres situated at the Bay of Islands, New Zealand. The anticipatory notice was made to ensure that buyers could not use the New South Wales Government's silence at the time of the sale as an admission of titles. The auction, which had been advertised as the first public sale of New Zealand lands, was, in fact, abandoned. Four days later a meeting was held at which the apprehensions felt by claimants of New Zealand land had their initial airing. ³⁰ Hobson, who was still in Sydney at

the time, was faced with a deputation from the meeting. While Hobson reassured his visitors that it was not the Government's aim to dispossess individuals of fairly-bought, reasonable claims, he could not give details as to how the situation would be dealt with since arrangements were, as yet, incomplete. At this interview the basis on which both sides would later argue their case during the passage of the Land Claims Commission Bill was indicated. The deputation held that the New Zealanders, or Maoris, were a free and independent people and, as such, could alienate their lands. Hobson acknowledged the Maori people's independence, but held that the Maoris were incapable of selling lands to Europeans because they had no similar process of permanent land alienation in their own society. So, most Maoris 'selling' land up to this time had not understood the consequences of their own actions. ³¹

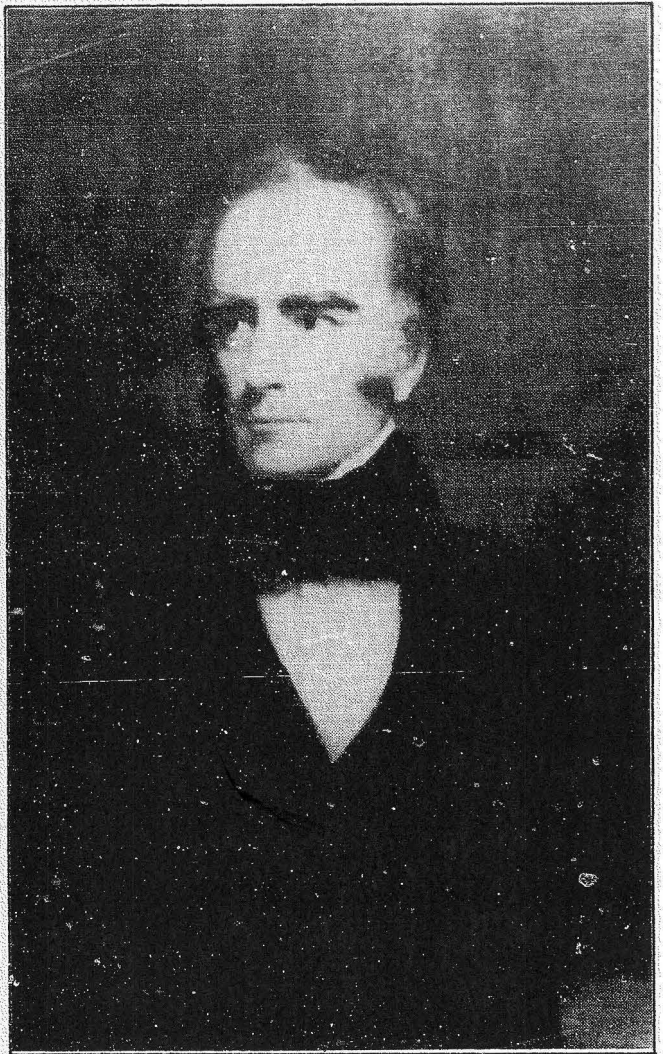
It was not until February, however, that the validity of Gipps's Proclamation was openly and deliberately challenged. On the 14th day of that month, Gipps had invited five North Island and two South Island chiefs to sign a treaty giving the Queen full sovereignty over 'the said Native chiefs, their tribes, and country.' ³² Land already sold by Maoris to Europeans would have to be confirmed by the Crown. The treaty was to be ratified in the presence of the chiefs' tribes and of Hobson. The seven chiefs and three other South Island chiefs had been brought to Sydney by the merchant John Jones - who had already bought several thousands of acres

of land in New Zealand - and his associates. Gipps had taken the step of offering the chiefs a treaty to try and preclude the possibility of any further land jobbing, or speculation, before the Proclamation was embodied in legislation. The treaty, though, was never signed as the chiefs were dissuaded from doing so by Jones on the advice of the Governor's main antagonist on this issue, William Charles Wentworth. The chiefs may indeed have already been disinclined to sign since at least one of them understood Gipps's words and gift of ten sovereigns each as just another offer to buy land, and not a generous one at that.

Wentworth had warned against signing any treaty which provided no security for all previous purchasers of land from the Maoris because he disagreed with the principle of the Land Titles Validity Proclamation. Then, on 15 February 1840, Wentworth and four partners bought all unsold parts of the South Island from nine or ten South Island chiefs for 200 plus a life annuity of £100 for the signatories. The deed was sent to New Zealand where it was signed by three more Maori chiefs. The extent of the purchase was estimated by Wentworth to be about 10,000,000 acres - just under one-half of the South Island. This practical demonstration of his opposition to the Proclamation was later to reinforce Wentworth's words when he, with other petitioners, spoke against the Land Claims Bill before the New South Wales Legislative Council. 33



William Charles Wentworth



George Gipps

Opposition to the Proclamation by New Zealand land claimants in Sydney had become organised by early April. The New Zealand Association was formed, and Wentworth and three of his partners in the South Island purchase made up the Association's four-man committee. The Association questioned the validity and authority of the Proclamation. It sought the advice of the leading Sydney lawyers, William a'Beckett and John Bayley Darvall, who gave the opinion that bona fide purchases made in a foreign land before the Proclamation could not be invalidated. These two men were also permitted to address the Legislative Council against the Bill. ³⁴

By May the Bill for setting up the Land Claims Commission was ready and on the 28th day of the month it was brought before the Legislative Council by the Governor. ³⁵ The Bill, which was to be essentially unchanged by its passage, was entitled 'An Act to empower the Governor of New South Wales to appoint Commissioners with certain powers, to examine and report on Claims to Grants of Land in New Zealand.' ³⁶ The debate was to focus on the Bill's preamble. This stated that unless the Crown admitted the validity of any Maori-European land transaction, then the title would be null and void since no European could acquire a legal title or permanent interest in Maori lands by any other means. It did not matter what form the land transaction took or whether the title was acquired directly from the Maoris or was a derivative title. ³⁷

In the succeeding clauses, the appointment, operation and powers of the Commission were outlined. The Governor was given the authority to appoint one or more Commissioners to investigate and report on land claims. Although the Commissioners would receive a salary from the New Zealand Government, it was intended that all the costs of the Commission would be covered by hearing and report fees to be paid by the claimants. The claims the Commissioners examined would be referred to them by the Governor. Anyone not making their written application to Governor Gipps within 6 months would have their claim declared absolutely null and void. Exceptions to this rule would be made if, for example, a claimant was not in the colony during this time and so was unable to prefer a claim by the set date. The hearings were to be held when and where the Governor directed and would be advertised in the New South Wales Government Gazette and/or in local New Zealand papers. The claimants would be required to appear with witnesses and evidence at the time and place stated in the notice. All those testifying were to do so on oath, and their evidence was to be recorded in writing. Only Maoris incompetent to take the oath were exempt in which case the testimony would be accepted insofar as it could be corroborated by other evidence. Anyone failing or refusing to testify without reasonable grounds could be arrested and examined on pain of imprisonment for up to 3 weeks or a fine of up to £100. 38

The reports were required to contain all information relevant to the original purchase including the circumstances of acquisition, the payment, and the claim's extent and location. In making their recommendations, the Commissioners were to be guided by the 'real justice and good conscience' of the case rather than adhering to legal forms and ceremonies. For instance, the kind of evidence taken into consideration did not necessarily have to be that which would normally be required in a law case. The Commissioners' advice was to include their opinion of how much land the claimant was entitled to. This would be worked out according to Schedule D attached to the Bill, which listed a scale of acreage values ranging from 6d. to 8s., depending on the date of purchase, 1815-1839. The land prices were increased by 50 percent if a claimant did not live in New Zealand or was not represented there by a resident agent. The value of imported goods paid in exchange for land was to be set at three times their Sydney price in order to cover the additional worth given to such items by freightage and other charges. Notwithstanding the payment made to the Maoris, no grant was to be recommended for more than 2,560 acres (4 square miles) unless the Governor, with the Executive Council's advice, specially authorised it.³⁹

The restriction reflected Gipps's wish to avoid a repetition of the Australian experience of over-speculation in land leading to a collapse in the market and depression.⁴⁰

The specific figure of 2,560 acres was adopted because it was the maximum-sized grant which the New South Wales

Government had been able to make prior to the overturning of the Crown grant system in January 1831. (After that date, public sales were the only way of acquiring colonial lands. ⁴¹) Moreover, the Bill reserved to the Crown any land which might be of present or future public use. This included headlands, bays, islands, possible town and defensive sites, and all coastal land within 100 feet of the high-water mark. When an individual lost all or part of his claim as a result of this rule, he was entitled to compensation in 'land of fair average value' at a rate of 5-30 acres per reserved acre. Finally, on the basis of the Commissioners' reports the Governor would issue the claimant with a Crown grant. ⁴²

In response to petitions, pleading against the Bill was heard between the first and second readings. The five people who appeared before the Legislative Council included three lawyers representing the petitioners' interests generally, and two men who spoke on their own account, James Busby and William Wentworth. ⁴³ Of this group, it was Wentworth who made the most important attack on the Bill's basic principles. He wanted to have this 'Bill of Confiscation and Spoliation' changed so that it did not retrospectively affect land claims. ⁴⁴ So, in addressing the Council on 30 June and 1 July, Wentworth sought to establish the Maoris' right and ability to sell their lands and the Europeans' right to buy. Repeating the opinions of two other petitioners, a'Beckett and Darvall, the legal advisers to the New Zealand Association, Wentworth argued that prior to 1840 the Maori

tribes had belonged to an independent, sovereign State. British recognition of this was shown by her actions regarding New Zealand, culminating in the British consul to New Zealand, Hobson, treating for the cession of Maori lands and sovereignty. In referring to Hobson as a consul, Wentworth was pointing out that even though Gipps and Hobson's Proclamations of 19 January and 30 January 1840 presumed cession of all of New Zealand, Hobson could not have been a Lieutenant-Governor until New Zealand was actually ceded on 6 February. And if Hobson was a consul, then the Maori people were a sovereign nation. Gipps, therefore, was illegally trying to legislate for a foreign country.

Wentworth continued on to draw a comparison between the Maoris' situation and that of the 'less civilised' North American Indians whose continent was acquired by conquest, not cession. The Indians' rights to the soil, he held, were recognised by public and private purchase before early seventeenth century municipal legislation first introduced pre-emption. Thereafter, the Indian title to the land continued to be acknowledged by subsequent Crown purchases and the fact that sales made before the passage of pre-emptive laws were unaffected by them. Since the Maoris were more capable of moral and mental improvement than the Indians, the Maoris' transactions were at least as valid as those of the Indians and thus should be left untouched. Moreover, the Bill itself implied that the sales were valid, otherwise it could not confirm any titles and, in any case, if Maoris were only

able to convey land between themselves, they could not sell to the Crown either. Regarding the ability of Europeans to buy Maori land, Wentworth drew on English law and on Vattel's widely quoted work on international legal practice, The Law of Nations, to show that although British subjects could not form a colony anywhere without royal assent, they could buy land outside British territory. Also, an individual could hold a double allegiance and so was not barred from owning foreign land on that count. Assuming, then, that New Zealand had been a foreign, independent State and that British subjects could legally hold property in it, Wentworth declared that the acquisition of such property was regulated by Maori practice and until the Bill under discussion was passed, sales could continue and would be inviolable. ⁴⁵

Wentworth's censure was not confined to the Bill's basic principles. Admitting that New Zealand was now part of British territory, Wentworth criticised the appointment of a Royal Commission to investigate the claims since the Crown itself stood to gain most from declaring them prejudicial to Maori or public interest. Citing Magna Carta, which he held was now applicable to New Zealand, Wentworth argued that the Commission should at least work in conjunction with a jury since British subjects could not be deprived of their lands except by trial by their peers. He also opposed, as spoliation, the reservation of coastal and riparian lands since this was where most people had acquired their property.

Another aspect of the Bill singled out as unjust was the imposition of a maximum size on grants. Wentworth considered the extent of the claim to be irrelevant as long as it had been fairly gained. He suggested, however, that no one would object if holdings larger than the limitation were decreased by a set amount, with the excess being devoted to immigration purposes. In short, what Wentworth felt was required was a new Bill. ⁴⁶

On 9 July some members of the Legislative Council voiced their agreement with the doubts and objections expressed earlier by the petitioners. For example, both the Lord Bishop of Australia, and Hannibal Macarthur, a pastoralist and prominent Sydney citizen, considered that the Bill was interfering with the rights of a foreign country whose people had been capable of selling, and entitled to sell, their property. The Lord Bishop went so far as to warn the Council that other nations might regard this as a casus belli. Even if the Maori right to alienate land was denied, Macarthur felt that the Crown could not just annul the fair claims of the many people who had lived in New Zealand for years and had spent time, labour and money on improving their lands. After all, they had been there on, at least, Crown sufferance. The Lord Bishop also felt that there should be no acreage limit on holdings. ⁴⁷

At the second reading of the Bill, Gipps spoke in its defence. He noted that the preamble was based on the House of Commons

report on Aborigines in British Settlements (1836) which had stated that purchases from natives of lands within and contiguous to British territory should be declared illegal and void. ⁴⁸ Gipps drew examples from English and American law and practice, and quoted extensively the opinions of eminent legal authorities of both nations, to support his contention that the Bill was in accordance with international law and that its principles had been adhered to by England in the establishment of the American colonies. Citing the Chancellor of the State of New York (1814-1823), Gipps said that the Crown had been regarded as the only true source of title to land since feudal times when the monarch was upheld as the original owner of all the land in the kingdom. Chancellor Kent, Gipps noted, had elaborated the point as follows: ⁴⁹

'The European nations, which respectively established colonies in America, assumed the ultimate dominion to be in themselves, and claimed the exclusive right to grant a title to the soil, subject to the Indian right of occupancy. The natives were admitted to be the rightful occupants of the soil, with a legal as well as a just claim to retain possession of it, and to use it according to their own discretion though not to dispose of the soil at their own will, except to the government claiming the right of pre-emption ...'

And by way of further explanation, Gipps went on to quote from the joint opinion of three noted contemporary British legal men ⁵⁰ on the purchase by settlers of land from the Aborigines of Port Phillip: ⁵¹

'The restriction imposed on their [aborigines] power of alienation consisted in the right of pre-emption of these lands by that state [Great Britain], and in not permitting its own subjects or foreigners to acquire a title by purchase from them without its consent. Therein consists the sovereignty of a dominion or right to the soil asserted, and exercised by the European government against the aborigines, even while it continued in their possession.'

The justification for asserting these overriding rights of possession in favour of civilised nations was the same as that on which the Bill was based. That is, that indigenes had only a qualified dominion over the soil as compared with the more advanced nations. In particular, they lacked a system of government and of individual property titles, and had not cultivated the land in any way that could be regarded as significant.⁵² Gipps went on to deny that the Maoris had any right to dispose of land on the basis of being an independent people. The nature of an indigenous people's freedom and integrity was, he argued, of a different kind from that of the advanced peoples. In reality, a nation's civilised existence was the source of its independence. Gipps held that the question had been rendered moot anyway by the recent cession of New Zealand to Great Britain.⁵³

Gipps turned finally to discuss the legality of an attempt by any group to form a settlement without the Crown's consent; could they be ejected by the Crown? He referred again at this point to the 1835 attempt by Van Diemen's Land settlers to establish a colony at Port Phillip and to the opinion of

the Port Phillip Association's legal advisers: Thomas Pemberton, William Webb Follett and a Mr Burge. The land, which was bought directly from the Aborigines, was beyond the limits of the colonies of New South Wales and South Australia. It was after Governor Bourke had declared the purchases invalid that the Association had sought Pemberton, Follett and Burge's opinion, and also that of another eminent lawyer, Stephen Lushington.⁵⁴ All four, however, confirmed that the ultimate dominion and authority of the continent belonged to the British Crown by right of discovery, even though the Aborigines continued to occupy land within it. So the Association could be expelled. Lushington went as far as to state that any settlement could be opposed by the Crown on the grounds of national interest, whether or not the territory was vested in it. Moreover, in such an area, grants from natives were still invalid unless they had the Crown's consent.⁵⁵

Although Wentworth made a critical reply to this speech, it was to no practical purpose and in spite of the significant opposition to the Bill both within the Legislative Council and outside it, Gipps was able to carry the support of the majority. Members of the Council voiced the opinion later expressed by the Secretary of State for the Colonies, Lord John Russell, and his Under-Secretary, James Stephen, when they severally remarked that Gipps's speech was an exhaustive statement of the legal and general grounds on which the accepted principles relating to colonisation were

founded. Gipps's contention that his arguments were widely-held, self-evident legal and political truths, was borne out. On 4 August 1840 the Bill passed the Legislative Council of New South Wales.⁵⁶

In late September Governor Gipps, by authority of the new Act, 4 Victoria No. 7, appointed the Commissioners. They were Francis Fisher, Captain Mathew Richmond and Colonel Edward Godfrey. Fisher, a lawyer, was made legal adviser to the Commission. Gipps considered this necessary because of the lack of any law officers or inexpensive but capable lawyers in New Zealand. Fisher was described by Hobson as 'a man of high integrity and a good lawyer'.⁵⁷ Captain Richmond was chosen on the basis of excellent testimonials and the unqualified praises of his administration of Paxo, in the Ionian Islands, where he was British Resident (1829-[1838?]). As a soldier he had travelled widely and, before his regiment transferred to New South Wales in 1840, Richmond spent 2 years as a Deputy Judge Advocate at St John's, New Brunswick. Hobson regarded Richmond as mild, just, efficient, of 'moral habits and clear judgment'.⁵⁸ Like Richmond, Godfrey had a military background. He had reached, in 1828, the position of Captain in the 73rd Foot after 19 years of service. Although he retired on half pay in 1830, 3 years later he went to the Continent and served in the Portuguese and Spanish Civil Wars. In 1839 he arrived in New South Wales with the intention of



Mathew Richmond

settling in the colony. There Godfrey met Maurice O'Connell with whom he had served for many years. Lieutenant-General Sir Maurice O'Connell was now the Officer Commanding the Forces in the Australian Colonies and a member of Gipps's Legislative Council. It was on his recommendation of Godfrey as a man of high, honourable principles and clear judgment that Godfrey was appointed to the Commission.⁵⁹ On 4 October 1840 Commissioners Godfrey and Richmond left for New Zealand. Fisher was to follow at the end of the month.⁶⁰

The task facing the Commissioners was of immense social, economic and administrative importance to the new colony, and its Maori and European inhabitants. Many others, too, were interested in New Zealand as a property investment, a place to trade, a prospective home, or as a colony of the British Crown. It was also to be an extremely difficult task, involving, as it did, the intersection of two distinct cultures' practices and ideas of land ownership. Conflicts of interest and values would be frequent and occurred both when claims were contended by Maori and European, and when Europeans alone were involved. As often as not, it would be the Commissioners who bore the brunt of claimants' dissatisfaction with the Land Claims Commission Act or the outcome of a particular case. Not to be dismissed either was the sheer physical hardship which the Commissioners would endure through having to constantly travel in a largely unexplored country, living and working under canvas. That the Commissioners were to carry out this vital, hard, often

unrewarding work as conscientiously and steadfastly as they did remains to their credit, and was greatly to the benefit of the young colony.

NOTES

1. Peter Adams, Fatal Necessity: British intervention in New Zealand, 1830-1847 (Auckland University Press/Oxford University Press, Auckland, 1977), pp. 13, 51-52.
2. *ibid.*, pp. 13, 19-21, 23-25, 28, 30, 33.
3. *ibid.*, p. 175; Roderick Carrick (comp., ed.), Historical Records of New Zealand south, prior to 1840 (Otago Daily Times and Witness Newspapers, Dunedin, 1903), p. 90.
4. Adams, Fatal Necessity, pp. 28, 33.
5. *ibid.*, pp. 13, 36-37, 43-45.
6. The Acts were: 57 Geo. III cap. 53 (1817), 4 Geo. IV cap. 96 Sec. 36 (1823), 9 Geo. IV cap. 83 Sec. 4 (1828), *ibid.*, pp. 52-53.
7. *ibid.*, pp. 13, 52-55.
8. *ibid.*, pp. 13, 64-66, 70-71, 73.
9. *ibid.*, pp. 13, 56-58, 92-93; K.R. Howe, Race Relations, Australia and New Zealand: a comparative survey 1770s-1970s (Longman Paul, Auckland, 1977), pp. 4-12, 17-20.
10. Adams, Fatal Necessity, pp. 13-14, 94-95, 102, 112-113.
11. In brief, Wakefield believed England's socio-economic problems could be solved by exporting its 'surplus' population to colonies. To establish thriving, socially-balanced colonies, land would be sold at a 'sufficient' price. This would restrain the colonies' geographical spread, concentrate labour where it was needed, and prevent labourers from immediately becoming land-owners. These effects, in turn, would attract those with capital to develop the land as absentee or resident land-owners. Sale of land would contribute to colonial Government revenue and would help finance the passage of more labourers. Immigrants would be selected with a view to balancing the sexes and the very lowest social strata would be unacceptable. Such colonies would also provide England with valuable export markets and sources of investment. Keith Sinclair, A History of New Zealand (2nd ed. rev., Penguin Books, Harmondsworth, Middlesex, 1980), pp. 58-61; for notes on E.G. Wakefield's ideas about Maori reserves, see below, p. 124
12. Adams, Fatal Necessity, pp. 13-14, 95-111, 113; Until 1855 the Colonial Office and the War Office were under the same head, the Secretary of State for War and the Colonies. As the Secretaries of State referred to herein are always acting in the latter capacity, the title used will be Secretary of State for the Colonies. James Williamson, The British Empire and Commonwealth (3rd ed., Macmillan, London, 1960), p. 193; The position of Secretary at War, held by Howick from 1835 to 1839, was concerned with the administration of the finances of the War Office. As Secretary at War, Howick was a member of the Cabinet, but because he had previously been an Under-Secretary of State for the Colonies, he was often consulted or gave his opinion on colonial affairs as well.

13. Adams, Fatal Necessity, pp. 14, 86, 119, 123-126.
14. *ibid.*, p. 126.
15. *ibid.*, pp. 141-142, 145; A.H. McLintock, Crown Colony Government in New Zealand (Government Printer, Wellington, 1958), p. 53.
16. Adams, Fatal Necessity, pp. 131-133, 135, 138, 142.
17. *ibid.*, pp. 128-129.
18. E.B. Hopper, 'Diary' (1832, 1837-38), notebook 'New Zealand' [20-3-1839], MS. Alexander Turnbull Library, Wellington (hereafter: ATL).
19. J.S. Marais, The Colonisation of New Zealand (Oxford University Press, London, 1927), pp. 46-49, 53, 55, 69.
20. Adams, Fatal Necessity, pp. 139-142; Hopper, Diary, notebook 'New Zealand' [20-3-1839].
21. See below, pp. 121-123
22. Normanby/Hobson, 14-8-1839, Irish University Press Series of British Parliamentary Papers. Colonies: New Zealand (Shannon, 1969), Vol. 3, 'Correspondence and other papers relating to New Zealand, 1835-42', 'The affairs of New Zealand: correspondence with Secretary of State for the Colonies', p. 86 [1840(238)33], p. 38.
23. Adams, Fatal Necessity, pp. 14, 148, 154-156; T. Lindsay Buick, The Treaty of Waitangi: or how New Zealand became a British colony (S. and W. MacKay, Wellington, 1914), pp. 61-69; McLintock, Crown Colony, App. C, 'Treaty of Waitangi', pp. 415-416.
24. Adams, Fatal Necessity, pp. 153, 158.
25. Hobson/Gipps, 4-2-1840, G36/1; Buick, Treaty of Waitangi, pp. 87-88; McLintock, Crown Colony, pp. 49, 54-55.
26. Gipps's Proclamation, 14-1-1840, OLC 5/6.
27. McLintock, Crown Colony, App. C, 'Treaty of Waitangi', pp. 415-416.
28. Trevor Williams, 'James Stephen and British intervention in New Zealand, 1838-1840', Journal of Modern History, Vol. 13, No. 1 (1941), p. 32; J.C. Beaglehole, Captain Hobson and the New Zealand Company: a study in colonial administration (Smith College Studies in History, Vol. 10, Nos. 1-3, Northampton, Massachusetts, 1927-1928), pp. 29-30.
29. Normanby/Hobson, 14-8-1839, IUP, Vol. 3, pp. 86-87/BPP [1840(238)33], pp. 38-39; McLintock, Crown Colony, pp. 122-123.
30. McLintock, Crown Colony, p. 54; Edward Sweetman, The Unsigned New Zealand Treaty (Arrow Printery, Melbourne, 1939), pp. 55-56.

31. Hobson/Gipps, 16-1-1840, G36/1.
32. Sweetman, Unsigned Treaty, p. 64.
33. McLintock, Crown Colony, pp. 55-56; Sweetman, Unsigned Treaty, pp. 60-63, 65-68, 77, 105, 175; Charles Terry, New Zealand, its Advantages and Prospects, as a British Colony (T. and W. Boone, London, 1842), pp. 88-89.
34. McLintock, Crown Colony, pp. 55-56; Sweetman, Unsigned Treaty, pp. 59-60.
35. Gipps/Hobson, 1-5-1840, 'Despatches, Governor of N.S.W./Lieutenant-Governor of N.Z., 15-1-1840 to 15-11-1841', Micro-Z 2710 NSW; Sweetman, Unsigned Treaty, p. 68.
36. For the full text of Gipps's Act (4 Vic. No. 7) see App. 2; Supplement to the New South Wales Government Gazette, 22-8-1840, encl. in Col. Sec.'s Office, N.S.W./F.D. Bell, Land Claims Commissioner, 28-7-1862, IA 15/5.
37. *ibid.*
38. *ibid.*
39. *ibid.*
40. W. Epps, Land Systems of Australasia (Swann Sonnenschein, London, 1894), pp. 17-18; Nancy M. Taylor (ed.), Journal of Ensign Best, 1837-1843 (Government Printer, Wellington, 1966), p. 48.
41. Stephen Roberts, History of Australian Land Settlement, 1788-1920 (Frank Cass, London, 1969), pp. 36-40, 102-103; E. Wilson Wilson, Land Problems of the New Zealand Settlers of the 'Forties (A.H. and A.W. Reed, Dunedin [1936]), p. 70.
42. Supplement to the New South Wales Government Gazette, 22-8-1840, encl. in Col. Sec.'s Office, N.S.W./F.D. Bell, Land Claims Commissioner, 28-7-1862, IA 15/5.
43. Terry, New Zealand, pp. 78, 87.
44. Sweetman, Unsigned Treaty, p. 102.
45. Adams, Fatal Necessity, pp. 210-211; Emmerich de Vattel (1714-1767) was a jurist who, in The Law of Nations (1758), applied a theory of natural law to international relations. The work was especially influential in the United States because Vattel's principles of equality and liberty coincided with the ideals expressed in the Declaration of Independence. Vattel's treatise was a popularisation of a book by a German philosopher, Christian Wolff, which was also called The Law of Nations (1749), Encyclopaedia Britannica, micropaedia, Vol. 10 (15th ed., William Benton, London, 1981), p. 369; Sweetman, Unsigned Treaty, pp. 77-102.
46. Sweetman, Unsigned Treaty, pp. 77-102.

47. *ibid.*, pp. 72-73.
48. *ibid.*, p. 128.
49. *ibid.*, pp. 110, 113-114.
50. Biographical information on the Port Phillip Association's advisers:
 (1) Mr Burge - Gipps said Burge was Attorney-General of Jamaica for a long time and had a high degree of knowledge about colonial law. Further information has not come to light. (2) Thomas Pemberton (afterwards Pemberton-Leigh) (1793-1867) was a barrister who, as Gipps noted, had achieved great success in equity. Later created a baron (1838) and strengthened the appellate tribunal of the British House of Lords. (3) Sir William Webb Follett (1798-1845), Solicitor-General under Peel (1834-5, 1841), Attorney-General (1844). Dictionary of National Biography - the Concise Dictionary: Part One, from the beginnings up to 1901 (Smith, Elder, London, 1903; 2nd ed., reprint, Oxford University Press, London, 1953), pp. 449, 1023; Sweetman, Unsigned Treaty, pp. 116-118.
51. Sweetman, Unsigned Treaty, p. 118.
52. Howe, Race Relations, pp. 11-12; Sweetman, Unsigned Treaty, p. 118; Ian Wards, The Shadow of the Land; a study of British policy and racial conflict in New Zealand, 1832-1852 (Government Printer, Wellington, 1968), p. 215.
53. Sweetman, Unsigned Treaty, pp. 127-128.
54. Biographical note: Stephen Lushington (1782-1873), barrister, Judge of the Consistory Court of London (1828), Judge of the High Court of the Admiralty (1838-1867), Privy Councillor (1838), Dictionary of National Biography, p. 801.
55. Sweetman, Unsigned Treaty, pp. 116-118, 120-122.
56. *ibid.*, pp. 75, 107, 133-134; Terry, New Zealand, p. 82.
57. Russell/Hobson, 29-5-1841, encl. in Gipps/Russell, 5-11-1840, G1/3; Hobson/S.S. Cols, 30-7-1841, G25/1.
58. *ibid.*; P. Mennell (ed.), Dictionary of Australasian Biography (Hutchinson, London, 1892), pp. 389-390; G.H. Scholefield (ed.), A Dictionary of New Zealand Biography, 2 vols. (Government Printer, Wellington, 1940), Vol. 1, pp. 242, 302.
59. Hobson/S.S. Cols., 30-7-1841, G25/1; [Col. Sec., NSW]/Hobson, 3-10-1840, No. 40/9823, 'Estrays on New Zealand affairs: NSW/Hobson, 1840-1846 and Hobson/NSW, 1840-42', Micro-Z 2717 NSW; Scholefield, New Zealand Biography, p. 302; Sweetman, Unsigned Treaty, p. 77; Wards, Shadow of the Land, p. 44.
60. J.D. Raeside, Sovereign Chief, a biography of Baron de Thierry (Caxton Press, Christchurch, 1977), p. 230.

CHAPTER TWO

INSTRUCTIONS, BILLS AND ACTS

On 21 October 1840, Commissioners Godfrey and Richmond arrived at the Bay of Islands, New Zealand, aboard the Earl of Lonsdale. Their colleague, Fisher, arrived a few weeks later.¹ The Commissioners carried with them additional instructions from Governor Gipps which had been issued on 2 October 1840 to expand on the directions given in the New South Wales Act, 4 Victoria No. 7. Later, when New Zealand became a Crown colony in its own right on 2 May 1841, these instructions - and the Act - were retained largely unaltered by Hobson. The instructions were reissued on 11 July 1841.

The most important aspect of these instructions was the limitations they imposed on the Commissioners' jurisdiction over and above the directive that they could only investigate cases referred to them by the New South Wales Governor. Firstly, the Commissioners were not to admit for hearing any derivative claim - that is, the cases of individuals who had bought land from other Europeans rather than directly from the Maoris.² Non-British nationals who claimed land in New Zealand were also excluded. Foreigners were to be treated as special cases unless they declared their willingness to have their claim brought before the Commissioners in the ordinary way.³ Gipps gave this instruction because he wanted the inquiry into foreign claims

to be postponed until the British claims had been settled, as he was unsure about the degree to which foreign interests in New Zealand were affected by annexation. ⁴

Secondly, the claims of the New Zealand Company and its settlers were to be exempt from investigation. This arrangement was the result of a meeting Gipps had with a deputation from Britannia, Port Nicholson. Established in early 1840 in the vicinity of present-day Wellington, Britannia was the New Zealand Company's first settlement. (The town was renamed Wellington in late 1840.) By the end of 1840 there were about 1,200 settlers living there - almost one-half of the European population of New Zealand. ⁵ When news had arrived in Port Nicholson in August 1840 of the enactment of the Land Claims Commission Bill, a public meeting was called to discuss it. The deputation which arrived in Sydney in September 1840 was the outcome of the meeting. It had come to Sydney to voice the settlers' strong opposition to the Land Claims Commission Bill. ⁶ The Bill, denounced in the Port Nicholson paper as 'repugnant to reason and to justice', was seen as a direct attack on the settlement by the British Government under whose instructions Gipps and Hobson acted. ⁷ The Bill's requirements that only payments for land made directly to the Maoris be taken into account and that no grants be recommended for coastal land or those bordering on navigable rivers were the basis for their fears. These stipulations would deprive the settlement of its most valuable lands, including the town site which had been established on the shore of the harbour. The settlers also

felt that uncertainty of title would delay outlay for land and development in the settlement, leading in turn to a general suspension of business.⁸ The possibility of re-emigration to Chile was seriously talked of by a number of settlers, so certain did the imminent failure of the settlement appear to them.⁹

However, such a step did not prove necessary. On considering the deputation's claim to special consideration for the settlement and as he believed that the value of goods paid to Cook Strait chiefs for the Port Nicholson lands was fair, Gipps decided that the settlers would be allowed 110,000-acres in a continuous block at Wellington. This block would incorporate the lands they had already taken possession of.¹⁰ The site of Maori reserves, which were to make up one-tenth of the block,¹¹ and of public lands was subject to the Governor's approval. Gipps also stated his intention of requesting that Wellington be declared a municipal incorporation so that it could raise the funds for public buildings, since the Government would gain nothing in the area from the usual source of finance for their construction, land sales. Finally, Gipps reserved the right of the Government to override his arrangements with the settlers if any Maoris disputed all or part of the sale to the Company and if any European claimed to have bought Port Nicholson lands from the Maoris prior to the Company. In both situations the claims would be investigated by the Land Claims Commissioners. Bona fide private claimants would be compensated in money or

land by the New Zealand Company or the Port Nicholson settlers.¹² Such was the settlers' faith in the indisputability of the Company's Port Nicholson purchase that the agreement was received favourably in Port Nicholson and Gipps was lauded in the local newspaper as a friend whose influence was such that the claims were now as safe as if actually confirmed by the Government.¹³

The Commissioners were also supplied with directions on dealing with CMS claims. They were to be guided by a letter from the Bishop of Australia to the Colonial Secretary of New South Wales, as well as by the Law.¹⁴ The letter referred particularly to the lands which CMS missionaries in New Zealand had bought with funds provided by a grant system established in the mid-1830s by the London CMS committee.¹⁵ Under the scheme each 15-year-old child of a missionary received a set sum for the purchase of land - £50 for a boy and £40 for a girl. The parent committee estimated that £50 represented about 200 acres of New Zealand land and £40 about 160 acres. Any claim the child had on the Society was discharged by the provision of this competence.¹⁶ By 1839 the longest-serving, or 'Old Missionaries', had made about ninety separate purchases involving almost 120,000 acres for themselves and their 117 children. The land, which was usually located in the vicinity of the mission stations, was farmed intensively and extensively by the missionary families.¹⁷

Although the missionaries were supposed to have sought approval for the purchases made under this scheme, they had not done so except for two blocks of land known as 'Children's Land'. And thus, 1837 when John Flatt, formerly a CMS catechist in New Zealand (1834-May 1837) had accused the missionaries of excessive land buying - a complaint eagerly publicised by the New Zealand Company with which Flatt apparently hoped for employment - the London committee was shocked at the extent and number of the purchases. However, the matter had neither caused a serious public upset in New Zealand or Great Britain, nor resulted in investigations by the London committee until similar charges were published in 1839 by J.D. Lang, a Presbyterian minister working in New South Wales.

It was then that the London committee decided to ascertain whether the lands it had financed were greatly in excess of the average amount of land which it had decided was an adequate provision for the missionaries' families, and whether the nature and extent of each purchase had been referred to the committee for sanction. ¹⁸ By a resolution passed on 7 January 1840, the London committee asserted its right to look into all missionary land claims. The Lord Bishop of Australia personally urged a liberal interpretation of the substantial privately funded claims of the missionaries and their families, but he and the CMS committee in London felt that the only justifiable claims were for lands bought with Society funds - not those paid for out of a missionary's own pocket. He asked that the Commissioners delay their decisions on the

claims until the London committee had expressed its opinion on them and had taken any action it considered necessary.¹⁹

Finally, lands held in trust by the missionaries for the Maoris were also the subject of special separate instructions from Gipps to the Commissioners. The missionaries, notably Henry and William Williams, had begun acquiring land by deed of trust from 1835 as a protectionist measure.²⁰ It was feared that the Maoris would 'sell' all their land before they understood the full implications of a sale, and reduce themselves to beggary.²¹ William Williams estimated that £4-5,000 spent on buying land at every harbour likely to attract colonists, including all of the Coromandel Peninsula from Cape Colville to Tauranga, would ensure that the Maoris would not be deprived of all their good lands by settlers or speculators. The CMS committee in Sydney encouraged the New Zealand missionaries to promote anti-selling combinations among the Maoris, but it was opposed to the idea of missionary trusteeship.²² In spite of this, missionaries not only tried to organise opposition to land sales, as at Kaikohe (by 1839) but they also acquired several hundred square miles of land by deeds of trust, 1835-1838. The property was situated in various parts of the northern region, particularly in the Bay of Islands, Hokianga and Kaitaia areas. Tracts farther south also claimed as trust lands were in the Wairarapa (1839), Wanganui (1839), Taranaki, and a block on the Waihou river at Thames.²³ At the end of 1840, seventeen deeds of trust were given by the missionaries to the New Zealand Government.²⁴

Hobson then sent them to New South Wales to be referred to the Commissioners. Gipps directed that the lands involved should not be alienated, partly or completely, to any ordinary claimant unless the counter-claim was definitely proven to be a better title. ²⁵

As well as defining the Commissioners' jurisdiction, Gipps's instructions provided detailed directions on matters of procedure. In all their activities the Commissioners were to consult with the Lieutenant-Governor. However, with some exceptions - such as receiving his directions as to which specific lands were to be reserved for public use - the Commissioners were not under Hobson's control. All investigations - particularly during cross-examination of witnesses - were to be open to the public, though the court could be closed to keep order during its deliberations. The Commissioners could make any rules for the running of their courts as long as these did not contravene the Act or the instructions. ²⁶ When an individual first appeared in court he had to state all the claims on the land claim being investigated, including both original and derivative ones, and the sum total of all of his own claims. ²⁷ If a claimant had land in several areas then each case was to be dealt with separately. Any one person could not receive more than 2,560 acres, and a claim made by a partnership was to be treated as the claim of one person. Where land awarded in the various cases of a claimant combined to make more than

the maximum, then the Commissioners had to deduct the excess either from one piece or proportionately from several blocks. While this was to be done at the Commissioners' discretion, the wishes of the claimant were to be followed as far as possible.²⁸

On the question of compensation to claimants for validly bought lands taken from them by the Government for public use, Hobson's additional instructions of 11 July 1841 set out in detail how the compensation was to be awarded. The compensation was to be based on the value the land would have had for the claimant, rather than the increased worth which it would acquire in Government hands or as a result of Government proceedings. Conversely, the proximity of public lands was to be taken into account when estimating the value of lands awarded to the claimant. Where the land to be taken by the Government had been improved, the increased value effected by the improvements was to be recognised.²⁹ In any one case, the Commissioners could not recommend a grant for more than one site - the land had to be a single continuous block. Both awarded and unawarded alienated lands were to be described in the Commissioners' report.³⁰ Where the latter were extensive, Gipps told Hobson to make reserves for the Maoris of such pieces as the Maoris required or which could be advantageously set aside for their benefit.³¹

While the minimum number of acres a claimant was entitled to was generally determined by his expenditure and the date of

purchase, and the maximum was 2,560 acres, the Commissioners could recommend either an increase or decrease of the entitlement. Less than the minimum could, for example, be given where the land was very valuable because of its site or quality. The grant could also be reduced where the original goods paid or post-sale contact with Europeans was deemed detrimental to the Maori land-sellers' interests. The goods most likely to be classed as unacceptable were firearms, ammunition and alcohol. Conversely, more than the maximum could, for instance, be granted where the claimant had helped the Maoris. Also, compensating lands were allowed to increase the award size above the limit. Any such increases or decreases were to be 'moderate' and, overall, there were to be no marked differences in award extent. ³²

In carrying out the Act and Gipps's instructions, the Commissioners were to be assisted by the Protector of Aborigines, an interpreter and a surveyor. The Protector's role in the Commission was to represent and guard the interests and rights of the Maoris concerned with a case. He was expected to collect all the necessary information from the Maoris and ensure the attendance of witnesses, Maori and Pakeha (person of non-Maori descent, usually European), who would support the former's interests. ³³ Neither the Protector nor the Maoris would pay fees. ³⁴ Although the Commissioners could issue a summons in order to secure the presence of a Maori witness, they considered it better if the Protector persuaded the Maoris to attend. ³⁵ In each case, where the Protector

was satisfied that the Maori rights to the land had been extinguished, he would make a special report to that effect.³⁶ Initially the Protector had to walk along the boundaries before making the report, but pressure of work and delays due to Maoris' unwillingness to volunteer information without a 'present' led to discontinuance of this requirement.³⁷ The duties of the Protector could be undertaken by any suitably qualified person whom the Governor chose to appoint.³⁸

In his instructions to the Land Commissioners Gipps had to balance the interests of land claimants, Maoris and the Government. From his directions about the trust lands, his penalising of claimants who had not acted in the Maoris' interests, and his concern that a Protector attend the Commission's sessions, it is clear that Gipps accepted and supported the humanitarian spirit and shared the fears for the Maoris' welfare which were embodied in the Colonial Office's instructions to Hobson. It is also evident that he had a high opinion of the missionaries and their work. However, by accepting the CMS's authority over its representatives in New Zealand, he was indicating his belief that mission lands, rather than the missionaries' privately-bought lands, should receive preferential treatment. Above all, Gipps had put the interests of the colony first, overriding all Maori and European claims, including those of the Port Nicholson settlers. He had taken steps to ensure that the Government would have all the land it needed both within and beyond settled areas and to ensure that control was maintained

over the colony's development. In this way problems - such as dispersed settlement, which had been previously encountered in Australian and other colonies - would be avoided and the colony as a whole would prosper.

The first alteration to the legal basis of the Commission was made less than a year after Gipps's Land Claims Commission Act had been passed. On 3 May 1841, when the Commissioners had been at work in the Bay of Islands for only just over 3 months, New Zealand became a colony separate from that of New South Wales.³⁹ The authority for the separation of the two colonies had been given in Britain in mid-November 1840 after the receipt of Hobson's despatches advising of the annexation of New Zealand. And thus Governor Gipps's Land Claims Commission Act had been disallowed when it arrived there. Lord John Russell, the Secretary of State for the Colonies, gave three specific reasons why a new law was necessary.⁴⁰ First, New Zealand's new status made any Acts requiring the interposition of the New South Wales Governor obsolete. Second, arrangements made with the New Zealand Company in November 1840⁴¹ meant that the Act would have to be altered if it was to be applied to the Company's lands. Finally, Russell intended to replace Gipps's three-man Commission with a single individual who would be appointed in Great Britain. In writing to Gipps and Hobson, Russell made it clear that the New South Wales Act had been strictly in accordance with Colonial Office instructions, and that no censure of Gipps was intended. The Act to replace it,

therefore, should vary in form only to allow for the above changes and should not deviate from the spirit and intent of the original law. In order to avoid any misunderstanding by the public or the British Government of Gipps's Act, Russell told the New South Wales Governor that he did not have to announce its disallowance until it was actually superseded by a New Zealand law. Until then the New South Wales Act, 4 Victoria No. 7, was to remain in force. ⁴²

In the event, Governor Hobson had already re-enacted the New South Wales law before Russell's instructions arrived. ⁴³ The New Zealand Ordinance, 4 Victoria No. 2, was passed by the Legislative Council on 9 June 1841. The new law was a duplicate of the New South Wales Act with some alterations which were made largely to take into account New Zealand's new independence from New South Wales. For example, the Commission under which Godfrey, Richmond and Fisher had been appointed was terminated and the authority to appoint Commissioners was transferred to the New Zealand Governor. Also, all claims previously referred to the Commissioners through the New South Wales Colonial Secretary were now to be sent through the New Zealand Colonial Secretary. Since the time limit for making a claim under Gipps's Act had expired, the new law allowed an additional 12 months for those who had 'sufficient reason' not to have sent in their claim earlier. As before, however, any cases not referred within the set period were to be declared null and void and the land then accrued to the Crown. ⁴⁴

Several more significant alterations were made as well. For instance, Hobson took Gipps's preference for land purchasers who had acted in Maori interests further, by allowing such individuals to claim land on the basis of service to a tribe even where no payment in goods or money was given. ⁴⁵

A larger, new category of claimants recognised by the law was that of derivative claimants. Whereas the Commissioners had previously only been concerned with the original purchase from the Maoris, they were now directed to ascertain the validity of any subsequent transferrals of the land as well. So derivative buyers had to prove their title to land in order to acquire a Crown grant. ⁴⁶ All those whose claims derived from the same original purchase, including the original buyer if he still had an interest in the land, had to appear together before the Commissioners. Alternatively, they could be jointly represented by an agent. Where there was only one derivative claimant, he could appear instead of the original buyer unless the latter had an interest in other lands. If the original purchaser did have other claims which had been resold, these had to be brought forward at the same time as any unsold claims were submitted. Individuals who had owned the land between the original purchaser and the present owner usually did not have to appear, but proof of conveyance between the successive owners was required. When, however, the land was bought from an intermediate derivative claimant who had been awarded the maximum amount for other lands, then the present derivative owner's claim would fail

because the earlier owner could not be allowed more land. In general, the collective interests of all those claiming under the same original purchase were to be treated as a single case when the award was made, and only the circumstances of the original purchase from the Maoris were to be considered. Derivative claimants could not receive more than the original buyer would have been entitled to. In the award the Commissioners could note only the acreage due to the group as a whole, and how much each claimant was entitled to. The division of the award between the different parties had then to be settled in a court of law. Whether a claimant held derivative or non-derivative titles, in partnership or not, the total number of acres he could receive was still 2,560. ⁴⁷

Another very important, but less obvious, alteration in the Act reflected the New Zealand Government's wish to clarify the situation regarding the extent of the Crown demesne. In the New South Wales Act nothing was specifically said about the Crown's pre-emptive rights over unalienated lands. All the Act said was that 'any Titles to Land in New Zealand which do not proceed from, or are not, or shall not be allowed by Her Majesty' would be declared null and void. By the time New Zealand and New South Wales separated, the question about the existence and extent of a Crown demesne in New Zealand had been settled as far as the Colonial Office was concerned - the instructions to Hobson on his becoming Governor of an independent colony assumed that the demesne (the 'waste lands') consisted of all New Zealand except the lands awarded

to Europeans by the Land Claims Commission and except the land unsold by the Maoris. ⁴⁸ Accordingly, in the New Zealand law, this decision was clearly stated as follows: ⁴⁹

... That all unappropriated lands within the said Colony of New Zealand, subject however to the rightful and necessary occupation and use thereof by the aboriginal inhabitants of the said Colony, are to remain Crown or Domain Lands of Her Majesty, her heirs and successors, and that the sole and absolute right of pre-emption from the said aboriginal inhabitants vests in and can only be exercised by Her said Majesty, her heirs and successors, and that all titles to land ... [which are held or claimed] ... either mediately or immediately from the chiefs or other individual of the aboriginal tribes inhabiting the said Colony, and which are not or may not hereafter be allowed by Her Majesty, her heirs and successors, are and the same shall be absolutely null and void.

In practical terms, this change was especially important as a statement of the Crown's claim to all alienated lands which a claimant was not allowed to keep. The Crown claimed an equal right to the land whether it was forfeited because the purchase was incomplete by the date of Gipps's Proclamation, or because the payment entitled the person to more than the maximum award. ⁵⁰

Clause Fourteen, dealing with foreign claims, remained unchanged in form, but instructions sent by the Colonial Office in reply to Gipps's queries on the subject enabled the suspended inquiry of these cases to go ahead. While the Colonial Office would have preferred to apply the regulations to all claimants, it was felt that the law must be relaxed in favour

of any foreigners whose claims were undisputed. Where, however, a doubt existed as to the bona fide nature of the land purchase, then the case had to be examined in the usual way. It was also considered desirable to facilitate naturalisation of such claimants but naturalisation was not made a prerequisite of receiving a Crown grant.⁵¹ The alternative course was a retrospective confiscation of foreign-owned property under the law preventing aliens from acquiring land within British territory; the Colonial Office rejected this option as unjust.⁵² So, in October 1841, a Government notice appeared in the Gazette instructing all foreigners claiming land bought before 14 January 1840 to forward their claims to the Government if they had not done so already. The number of claims made by non-British nationals, mainly French and Americans, was comparatively few, simply because not many foreigners had bought land in New Zealand anyway.⁵³ Those who did not want their claims adjudicated upon by the Commissioners would have had to wait for a joint decision by the New Zealand Government and the government of the claimant's country of origin.⁵⁴

On 25 June 1841 Hobson reappointed Godfrey and Richmond to the Land Claims Commission.⁵⁵ Fisher, who had been provisionally appointed Attorney-General, had resigned several weeks earlier and his commission, therefore, ended on 25 June 1841. In part, Hobson's acceptance of Fisher's resignation was due to the intention of Russell, the Secretary of State for the Colonies, to send out a Commissioner from Britain. It was

also because the Governor felt that Fisher was not physically up to the rigours of the Commission's work.⁵⁶ However, the Governor retained two of Gipps's Commissioners in spite of Russell's instructions that the British appointee would deal with all cases as he believed Russell to be unaware that claims had to be heard on the spot and ignorant of the massive amount of work this involved. As Hobson remarked plainly in a despatch to Russell explaining the reappointments,⁵⁷

... if one man only were charged with the investigation of claims in all parts of the Colony, they could not be settled in the term of one natural life.

Later, Russell's successor, Lord Stanley, approved the reappointment of Godfrey and Richmond as he agreed that the land claims should be settled as soon as possible.⁵⁸

At this time Hobson envisaged the British Commissioner working with Godfrey and Richmond. Since two Commissioners formed a quorum for the examination of claims, however, the Governor directed the Commissioners to begin their work immediately. The only cases whose investigation was to be suspended were those on which Godfrey and Richmond differed in opinion. In such cases, the decision would have to be delayed until the third Commissioner could give his views.⁵⁹

In early 1842 Hobson introduced two Bills on the subject of land claims. The first Land Claims Bill was introduced in

January 1842 and was replaced by the second Land Claims Bill in February 1842. Both Bills were influenced by the section of the British Government's November 1840 Agreement with the New Zealand Company which gave the Company four times as many acres as pounds sterling expended on its settlement venture.⁶⁰ Hobson applied this principle in the January Bill by replacing both the maximum land grant size (2,560 acres) and the schedule of graduated prices for lands, with an across-the-board award of 1 acre per 5s. purchase money.⁶¹ Commenting on the proposed application of the 1 acre per 5s. ratio in the case of all claimants, and not just the Company, Godfrey and Richmond held it would greatly simplify matters since it could, they felt, be applied without harm to both original and derivative purchases.⁶² The first Bill also sought to counteract the dispersive effects on settlement of the land speculation of the late 1830s and to deprive the speculators of their uncondoned gains by concentrating settlement in a closer, more orderly way. This was to be achieved by declaring that all property which had not been cultivated or built on was to be taken up either in the Auckland region or at the Bay of Islands. Whaling station and sawmill lands were exempted - these were to be granted a lease from the Crown.⁶³ Hobson believed that this new law would facilitate the final arrangement of the land claims problem.⁶⁴

Public opposition to the Bill, however, was strong and focussed on its attempt to concentrate settlement. Three petitions against the Bill's general principle and specific

contents were submitted. Two of these were accepted as valid statements of discontent and read to the Legislative Council members. On 7 February 1842 the Bill was withdrawn as unworkable and unfair to bona fide settlers when Hobson found all the non-Government members of the Council would oppose the Bill unless it was radically altered. ⁶⁵

As with the first Bill, the second Land Claims Bill the Governor introduced abandoned the maximum land grant size in favour of the 1 acre per 5s. rule. Now, however, the claimants were to be allowed to take up their lands wherever they wanted as long as the blocks of land were shaped as nearly rectangular as possible. Also, the Bill invested the powers of two Land Commissioners in each Commissioner. All cases which had been partly heard by both Commissioners were to be completed by two, but all new ones were to be examined and reported on by a single Commissioner. This may have been in an effort to speed things up. On 25 February 1842 this second Bill was passed and became the Land Claims Ordinance, 5 Victoria No. 14. ⁶⁶

In spite of the amendments at the bill stage, many people were still unhappy with the new law. The missionary Henry Williams, for example, felt that Gipps's Bill should have been re-enacted but with the acreage restriction removed. ⁶² Very strong opposition to the Ordinance was voiced by the Bay of Islands Observer for several months after its passage. Many of the arguments advanced in the Observer's editorial columns ⁶⁸ and

at meetings held in Auckland and the Bay of Islands ⁶⁹ were echoes of those used earlier in the campaign against Gipps's Land Claims Act. Both the Observer and the meetings opposed the Crown's assertion of an overriding right to all the lands validly purchased by Europeans from the Maoris. As the Observer's editorial column repeatedly pointed out, the best land titles were those acquired directly from the 'Native Sovereigns'. Those derived from the Crown were second-rate since Parliament, from which the Crown obtained its power and authority, had recognised New Zealand's independence. Therefore it was legally sound for chiefs to alienate their own lands, while the Bills which would validate land titles acquired from the Crown only were unconstitutional and illegal.

A number of specific aspects of the Bill were also criticised. For example, the abolition of the graduated acreage price/date of purchase scale, and the lack of choice in form of compensation for lands taken for public use. ⁷⁰ That derivative claimants' cases were dependent on the validity of the original purchase was also seen as unfair, especially where evidence was lacking because the original buyer had either left the colony or died. ⁷¹

During these months dissatisfaction with the law was expressed in occasional, serious but unjustified attacks on the personal character of the Land Commissioners. For example, in October 1842 the editor of the Bay of Islands Observer described as 'excellent' a pamphlet in which it was asserted that Gipps had

used New Zealand as a dumping ground for useless, sometimes obnoxious people, from within his own Government - including Land Claims Commissioners. Only a month earlier the editor of the same paper had noted that Godfrey and Richmond were 'very impartial and gentlemanly.'⁷² Even though it meant contradicting himself, the editor clearly felt no compunction about maligning the Commissioners' good character when it suited his argument. The author of the pamphlet, S.M.D. Martin, felt particularly strongly about the injustice of the law to bona fide settlers, and had also written to Stanley accusing Richmond of, among other things, not paying £6-7,000 of Commission fees into the Colonial Treasury as required by the Land Claims Act.⁷³ Richmond's appointment was also criticised in a letter from a Mr Abercrombie, a settler, to Governor Hobson, and in an 'original settlers' petition on land claims to the House of Commons. Abercrombie held that the Commissioner was a land speculator, bank director, suppressor of the public press in his capacity as trustee of a printing company, and a 'fomenter of quarrels'.⁷⁴

Denunciation of Hobson's Government was another outlet for the critics. Time had given them the opportunity to attribute the colony's deteriorating economic situation without qualification to the still unsettled state of the land claims. They argued, for example, that a previously flourishing and extensive domestic and inter-colonial general trade carried on by the Old Settlers had been almost completely destroyed by the undermining of their credit base, their land titles. The

delays in settlement of the matter were blamed on mismanagement by the Government, or on what was seen as Hobson's disregard of instructions, as exemplified in his appointment of two Commissioners instead of one. ⁷⁵

As it turned out, the British Government also took exception to the Ordinance and disallowed it. At the end of August 1843, Willoughby Shortland, who had become Acting-Governor when Hobson died on 10 September 1842, ⁷⁶ received a despatch from Lord Stanley which advised him of the disallowance of 5 Victoria No. 14 (February 1842) and the consequent revival of the earlier Ordinance, 4 Victoria No. 2 (June 1840).

Stanley disallowed the law for several reasons. First, Hobson had misinterpreted instructions. When framing the Bills, Hobson had mistakenly treated a letter for the general information of the New Zealand Company as a direct instruction to himself from the Secretary of State for the Colonies. In that letter Russell had noted that it had been proposed that all British subjects' land entitlements should be worked out in the same way as the Company's. Hobson, then, had overlooked the reasons why the New Zealand Company was granted an exemption from the acreage limit, notably the large sums it had expended and its substantial investment in emigration. The British Government, Stanley stated, had always intended to leave the investigation of all ordinary land claims to the local authorities, and the method of settling claims which had been established by Gipps's law had been clearly upheld as suitable. Hobson was accused of disregarding earlier despatches, in



Willoughby Shortland

particular the instructions telling him to re-enact Gipps's Act as it had been disallowed on points of form only. Stanley was also critical of the law because it lacked the essential size limit on grants. This was generally bad for a colony, he said, as it allowed accumulation of lands by those without the capital or means to introduce the labour to work it. Considering that 900 claims had been made in New Zealand for a total of more than 20,000,000 acres, dropping the 2,560 acre limit was unwise. Finally, the new law was unfair to the earlier settlers since it abandoned the graduated acreage value/date of purchase scale and they were right to petition against it on those grounds.⁻⁷⁷

Although Stanley did not allow Hobson to extend the provisions of the November 1840 Agreement to ordinary claimants, he did make an exception in favour of two other emigration companies, the Manukau and Waitemata Company and the Nantobordelaise Company. The Manukau and Waitemata Company, which was Scottish-based, was established in 1839. It had bought land on the Auckland isthmus from the widow of Thomas Mitchell who had acquired his title from the Maoris in the mid-1830s. Of the land described in the deed, less than one-third was admitted by the Maoris to have been sold, but the Company still had an undisputed title to 30-40,000 acres. When the Company's first twenty-seven emigrants arrived in New Zealand in October 1841, Hobson allowed them to settle temporarily on land on the Manukau river, and wrote to Stanley for instructions. Hobson considered that granting the Company special

dispensation to settle on the Manukau would be of great benefit to the region, as a port there would provide a more direct trade route with adjacent colonies.⁷⁸ Stanley evidently agreed since he replied in December 1842 that the New Zealand Company provisions would be applied to the Manukau and Waitemata Company. The Company's expenditure on emigration had been ascertained by James Pennington, the accountant employed by the British Government to establish the New Zealand Company's land entitlement. Pennington had decided that the Company was due at least 19,924 acres and this was to be assigned to them out of the lands to which they could prove a valid title.⁷⁹

The other company which received the same treatment was the Nanto-Bordelaise Company. This company was established in France in 1840 with the intention of progressively buying blocks of land along the east coast of the South Island and using these enclaves as a base from which to develop the coastal fishery. The Company, which received support from the French Government in its operations in exchange for a title to one-quarter of its lands, had acquired the rights to Banks Peninsula from a French whaler, Captain Langlois. The Captain had 'bought' the land from several local Maori chiefs for an initial advance payment of £6 worth of goods (2 August 1838) and a second, final payment of merchandise valued at £234 (14 August 1840). After the first thirty settlers were sent out, arriving at Akaroa on 16 August 1840, the announcement in England of the British proclamation of sovereignty over

New Zealand deterred the Company from despatching any more ships.⁸⁰ As the Company's claims were disputed by the local Maoris, Hobson proposed that they should be proved before the Commissioners. On the basis of their decision and subject to the New Zealand Company's privileges, the Company would receive a Crown grant. As Hobson did not want a settlement established in such an isolated area, he decided the Company would have to take up its land in the North Island. He therefore offered, subject to British approval, 50,000 acres at a reasonable distance from a northern seaport.⁸¹ The British Government agreed that the case should be investigated and an award made in accordance with the November 1840 Agreement.⁸² The case was heard by Commissioner Godfrey at Akaroa from 22 August to September 1843, but it was not until later, in England, that the Commissioner made a final assessment of the Company's claim to 30,000 acres at Banks Peninsula. Although he left the decision about the award entirely up to the Government, Godfrey advised Stanley that the original purchase was deficient, of unclear extent, and incomplete at the time of Gipps's Proclamation. With this report to hand and on the basis of an expenditure of £11,685 established by Monsieur Mallières, a representative sent to England from France by the Company in early 1844, Lord Stanley decided that the Company was entitled to more than it had applied for during the New Zealand hearing. In July 1845, instructions were, therefore, sent to New Zealand that the Company be granted the full 30,000 acres which it had claimed. As with the New Zealand Company and the Port Nicholson Maoris, com-

pensation was to be paid to Maoris whose interests had not been satisfied, and Crown pre-emption waived so that the full amount could be taken up. ⁸³

The Secretary of State for the Colonies had to deal with one other application to have the provisions of the November 1840 Agreement extended to non-New Zealand Company claims. This was made on behalf of the CMS by the New Zealand Bishop in June 1843. On the basis of its expenditure on emigration, it was held that the CMS members in New Zealand were entitled to four times as many acres as pounds spent. Stanley, however, saw the cases as too different in terms of principle and circumstances, and the claim was rejected. ⁸⁴

By the time the despatch disallowing the second Land Claims Act arrived in New Zealand, Hobson had been dead for some 12 months. The disallowance was announced instead by the Officer Administering the Government, Willoughby Shortland, on 6 September 1843. The first New Zealand Land Claims Act was accordingly revived. ⁸⁵

Governor FitzRoy, the last Governor under whom the Commission operated, made only one alteration to the legal basis of the Commission. Under the Act 7 Victoria No. 3 (13 January 1844) FitzRoy re-invested each Commissioner with the authority previously shared by two and made all acts previously done by one Commissioner as valid as if done by two. The alteration was largely administrative since it was due to the scaling

down of the Commission as its activities drew to a close. ⁸⁶
Nor did FitzRoy amend the Commissioners' general instructions.

For the duration of their work, then, the first New Zealand Land Claims Commissioners were almost continuously guided by the same law - 4 Victoria No. 2 - which was essentially Gipps's Act, 4 Victoria No. 7. Their instructions, too, were little more than an elaborated version of Gipps's original instructions. So, in spite of all, Russell's directive that any alterations to the law should preserve the original Act's spirit and intent had been honoured.

NOTES

1. Coates, for Col. Sec., N.Z./Govr, 22-10-1840, IA 4/1.
2. Col. Sec., NSW/John Busby, 8-10-1840, 'Letters to officials and individuals about land in New Zealand from Col. Sec., NSW, 15-6-1840 to 28-10-1841', Section 6, Micro-Z 2711 NSW.
3. Gipps's instructions to Land Commissioners, 2-10-1840, encl. in Gipps/Russell, 9-10-1840, H.H. Turton (comp. ed.), An Epitome of Official Documents relative to Native Affairs and Land Purchases in the North Island of New Zealand (Government Printer, Wellington, 1883), Part B, No. 1, encl. 2, p. 2.
4. J. Stephen/J. Backhouse, Foreign Office, 8-12-1840, encl. in Russell/Hobson, 17-3-1841, 'Despatches, S.S. Cols and Under-S.S. Cols/Govr, NSW, 1826-1846', Micro-Z 2710 NSW.
5. A.S. Thomson, The Story of New Zealand, 2 Vols (John Murray, London, 1859), Vol. 2, p. 329; For further information on the purchase and settlement of the New Zealand Company's Port Nicholson lands see also below, pp. 136 and following pages.
6. Gipps/Russell, 6-10-1840, encl. in Russell/Hobson, 14-4-1841, G1/2; Edward Jerningham Wakefield, Adventure in New Zealand, from 1839 to 1844, with some account of the beginning of the British colonisation of the islands, Robert Stout (ed.), (Whitcombe and Tombs, Christchurch, 1908), pp. 258-260.
7. New Zealand Gazette and Britannia Spectator, 8-8-1840, 15-8-1840.
8. *ibid.*
9. Wakefield, Adventure in New Zealand, pp. 298-299.
10. Gipps/Russell, 6-10-1840, encl. in Russell/Hobson, 14-4-1841, G1/2.
11. The exact proportion of Company lands to Maori reserves was later to become an issue. For further details see below, pp.301- 302.
12. Col. Sec./Dr Evans, Hanson, Moreing (deputation from Port Nicholson), [26]-10-1840, Section 6, Micro-Z 2711 NSW; Wakefield, Adventures in New Zealand, pp. 298-299.
13. New Zealand Gazette and Britannia Spectator, 14-11-1840.
14. Col. Sec./Commissioners, 20-11-1840, 'Letters to Commissioners of Land Claims, New Zealand land, from NSW Col. Sec., 15-6-1840 to 28-10-1841', Section 5, Micro-Z 2711 NSW.
15. [Lord Bishop of Australia]/Col. Sec., NSW, 23-9-1840, and marginal note, OCL 658-659; This scheme was originally initiated on 27-7-1830 when the parent committee agreed to NZ CMS requests for help with providing land for the missionaries' children (previously the Society had only provided £10 per annum for the maintenance of each child,

- plus rations from the store). The committee then resolved to allow the purchase of a moderate amount of land for those children under the age of fifteen. Given the eventual extent of the NZ CMS's private land holdings, it is interesting that they had asked in 1833 for a limitation of 200 acres per child. Thomas Kenyon, 'Land purchases by missionaries of the Church Missionary Society before 1840', MA Thesis, Massey University (1970), pp. 3-4.
16. Kenyon notes that two sums (£50, and £40) would have actually bought more land than the London committee supposed - a fact which the NZ missionaries did not enlighten the committee about. Kenyon, 'Land purchases by missionaries', pp. 7-8.
 17. See also below, pp. 97-99, on extent of missionary land purchases.
 18. The missionaries, though, avoided sending back forms for several years. Henry Williams, for example, did not return his until mid-March 1843. By then, of course, the Commissioners had already established the validity of the CMS missionaries' purchases and this made it more difficult for the London committee to act. Kenyon, 'Land purchases by missionaries', p. 44.
 19. *ibid.*, pp. 34-35; [Lord Bishop of Australia]/Col. Sec., NSW, 23-9-1840, OLC 658-659.
 20. Adams, Fatal Necessity, pp. 33-34.
 21. Thomson, Story of New Zealand, Vol. 1, p. 268.
 22. Adams, Fatal Necessity, p. 34; William Williams, The Turanga Journals, 1840-1850, Frances Porter (ed.) (Victoria University Press, Wellington, 1974), pp. 85-86.
 23. George Clarke, Chief Protector/Col. Sec., NZ, 16-11-1840, IA 1; Godfrey and Richmond/Clarke, sen., 8-9-1842, OLC 8/1; Adams, Fatal Necessity, p. 34; In response to speculators' activities in Hawke's Bay, William Williams had also acquired trust deeds in February 1840 for East Coast lands, including Poverty Bay and the Bay of Plenty. Although some Maoris were inclined to favour selling to the speculators rather than the missionaries, Williams found them quite concerned about the arrival of land buyers in the region. They accepted the missionary's warnings and sold their land to Williams to be held in trust for them. It seems, however, that Williams never made any formal claim for these lands since the purchases were made after the imposition of Gipps's ban on land buying and since Williams was in any case doubtful of the validity of, at least, the Poverty Bay deed. Williams, Turanga Journal, pp. 81-82, 149-150, 152.
 24. Hobson/Gipps, 10-12-1840, G36/1.
 25. *ibid.*; Col. Sec., NSW/Commissioners, 2-1-1841; when Commissioner Spain arrived in New Zealand copies of the trust land deeds relating to New Zealand Company lands were forwarded to him (Col. Sec./Spain, 26-5-1842, IA 4/253). But Kenyon states that no action was taken by Clarke, sen., about the deeds whose legal value was nil; the Treaty of Waitangi made such protection for the Maoris unnecessary, the Crown itself serving as trustee for Maori land. Kenyon, 'Land purchases by missionaries', p. 52.

26. Gipps's instructions to Land Commissioners, 2-10-1840, encl. in Gipps/Russell, 9-10-1840, Turton, Land Purchases in the North Island, Part B, No. 1, encl. 2, p. 1.
27. Col. Sec./Commissioners, 13-3-1841, Section 5, Micro-Z 2711 NSW.
28. Gipps's instructions to Land Commissioners, 2-10-1840, encl. in Gipps/Russell, 9-10-1840, Turton, Land Purchases in the North Island, Part B, No. 1, encl. 2, p. 2.
29. Hobson's instructions to Land Commissioners, 11-7-1841, OLC 5/4.
30. Gipps's instructions to Land Commissioners, 2-10-1840, encl. in Gipps/Russell, 9-10-1840, Turton, Land Purchases in the North Island, Part B, No. 1, encl. 2, p. 2.
31. Gipps/Hobson, 2-10-1840, 'S.S. Cols, Under-S.S. Cols/Govr, NSW', Micro-Z 2710 NSW.
32. Gipps's instructions to Land Commissioners, 2-10-1840, encl. in Gipps/Russell, 9-10-1840, Turton, Land Purchases in the North Island, Part B, No. 1, encl. 2, pp. 1-2.
33. *ibid.*, p. 1; Hobson's instructions to Land Commissioners, 11-7-1841, OLC 5/4.
34. Hobson's additional instructions to Land Commissioners [latter part of 1841], OLC 5/4.
35. Godfrey and Richmond/Col. Sec., 6-5-1842, IA 1.
36. Col. Sec./Clarke, sen., 21-4-1843, and encl., Turton, Land Purchases in the North Island, Part B, No. 16, p. 8.
37. H.T. Kemp/George Clarke, sen., 19-11-1843, encl. in Clarke, sen./Col. Sec., 15-12-1843, and marginal note [W.S.?], OLC 537.
38. Gipps's instructions to Land Commissioners, 2-10-1840, encl. in Gipps/Russell, 9-10-1840, Turton, Land Purchases in the North Island, Part B, No. 1, encl. 2, p. 1; Gipps/Hobson, 2-10-1840, 'Govr, NSW/Lt.-Govr, NZ', Micro-Z 2710 NSW.
39. Adams, Fatal Necessity, p. 162.
40. Sweetman, Unsigned Treaty, pp. 73-74.
41. See below, pp. 121-122, for further details of this Agreement.
42. Russell/Hobson, 16-4-1841, G1/2; Russell/Gipps, 16-4-1841, 'S.S. Cols, Under-S.S. Cols/Govr, NSW', Micro-Z 2710 NSW.
43. 'Minutes of Legislative Council', 31-1-1842, New Zealand Government Gazette, Supplement, 9-3-1842.

44. Stanley/Hobson, 18-2-1842, G1/4; Alfred Domett (comp.), The Ordinances of the Legislative Council of New Zealand and of the Legislative Council of the Province of New Munster (Government Printer, Wellington, 1871) pp. 4-11.
45. Hobson's instructions to Land Commissioners, 11-7-1841, and additional instructions [latter part of 1841], OLC 5/4.
46. Domett, Ordinances, pp. 5-6.
47. No name/Col. Sec., NZ, 5-7-1841, OLC 8/1; Hobson's additional instructions to Land Commissioners [latter part of 1841], OLC 5/4.
48. '4 Victoria No. 2', New South Wales Government Gazette, Supplement, 22-8-1840, incl. in Col. Sec.'s office, NSW/F.D. Bell, Land Claims Commissioner, NZ, 28-7-1862; Russell/Hobson, 9-12-1840, Irish University Press series of British Parliamentary Papers. Colonies: New Zealand (Shannon, 1969), Vol. 3, 'Correspondence and other papers relating to New Zealand, 1835-1842', p. 152; 'The affairs of New Zealand: correspondence relating to New Zealand' [1841(311) 17], p. 30; Terry, New Zealand, pp. 91, 115; The debate about the existence and extent of 'waste lands' in New Zealand was to be argued for some years yet. For further details about the debate, see Adams, Fatal Necessity, pp. 176-90, 192-193, 206-207; and J. Rutherford, Sir George Grey: a study in colonial government (Cassell, London, 1961), pp. 167-172, for information on the final drama in the Waste Lands Act.
49. Domett, Ordinances, pp. 5-6.
50. Bay of Islands Observer, 28-7-1842; Terry, New Zealand, pp. 91, 115-116.
51. Hobson's instructions to Land Commissioners, 11-7-1841, OLC 5/4; J. Backhouse, Foreign Office/J. Stephen, 6-1-1841, 'S.S. Cols, Under-S.S. Cols/Govr, NSW', Micro-Z 2710 NSW; Russell/Hobson, 17-3-1841, *ibid.*
52. J. Backhouse, Foreign Office/J. Stephen, 6-1-1841, *ibid.*; M.F. Lindley, The Acquisition and Government of Backward Territory in International Law (Longmans Green, London, 1926), p. 316.
53. Notice, New Zealand Government Gazette, 20-10-1841.
54. The only land claimant to apply for an inter-governmental decision seems to have been William Webster, an American. Sweetman, Unsigned Treaty, pp. 51-53.
55. Notice, 25-6-1841, New Zealand Government Gazette, 7-7-1841.
56. Notice, 3-5-1841, *ibid.*, Supplement, 7-7-1841; Hobson/S.S. Cols, 30-7-1841, G25/1; [Hobson]/S.S. Cols, 7-8-[1841], *ibid.*
57. Hobson/S.S. Cols, 26-3-1842, *ibid.*
58. Stanley/Hobson, 14-10-1842, G1/6.

59. Hobson/S.S. Cols, 30-7-1841, G25/1.
60. Minutes of Legislative Council meeting, 21-1-1842, New Zealand Government Gazette, Supplement, 9-2-1842; Stanley/Hobson, 19-12-1842, G1/6.
61. Taylor, Ensign Best, App. 12, pp. 417-421.
62. Godfrey and Richmond/Col. Sec., 13-12-1841, OLC 8/1.
63. Minutes of Legislative Council meeting, 31-1-1842, New Zealand Government Gazette, Supplement, 9-3-1842; Taylor, Ensign Best, App. 12, pp. 417-421; Wilson, Land Problems, p. 79.
64. Minutes of Legislative Council meeting, 31-1-1842, New Zealand Government Gazette, Supplement, 9-3-1842.
65. Minutes of Legislative Council meetings, 21-1-1842, 25-1-1842, *ibid.*, Supplement, 9-2-1842; Minutes of Legislative Council meeting, 7-2-1842, *ibid.*, Supplement, 13-4-1842; Wilson, Land Problems, pp. 79-80.
66. Col. Sec./Commissioners, 19-3-1842, IA 4/253; Domett, Ordinances, pp. 112-114.
67. Henry Williams/no name, 4-2-1842, G13/1.
68. Bay of Islands Observer, March, October and September 1842; Petition to Hobson, *ibid.*, 3-3-1842; Petition to the Queen, *ibid.*, 12-5-1842.
69. Bay of Islands Observer, 17-3-1842, 21-4-1842.
70. *ibid.*, 5-5-1842.
71. *ibid.*, 17-3-1842.
72. *ibid.*, 15-9-1842, 13-10-1842.
73. Dr Martin/Hobson, 7-11-1840, 'Extracts on New Zealand affairs', Micro-Z 2717; Stanley/Hobson, 14-2-1843, G1/7; Stanley/FitzRoy, 22-3-1844, G1/11.
74. Hobson/S.S. Cols, 10-5-1842, G25/1; Petition to House of Commons, Bay of Islands Observer, 12-5-1842.
75. Bay of Islands Observer, 10-3-1842, 21-4-1842, 14-7-1842, 15-9-1842; Petition to Hobson, *ibid.*, 3-3-1842; Petition to the Queen, *ibid.*, 12-5-1842; The trade carried on at the Bay of Islands was largely general commerce and ship maintenance - in 1839 well over 150 whaling and trading vessels called in there. New Zealand goods in demand in Sydney in May 1839 included: whale oil and bone, pork, lard, maize, flax and timber. Also, British cordage and Stockholm tar, which were apparently bought from ships from these places and resold in Sydney. Though less important, kauri gum was popular with American vessels. Imports came from as far afield as China: enamelled copper,

- tea, preserved fruit, lacquer work and so on. Jack Lee, I have named it the Bay of Islands (Hodder and Stoughton, Auckland, 1983), pp. 162, 193-194, 211.
76. Soon after his arrival in New Zealand Hobson suffered the first of a series of paralytic strokes which progressively weakened him and eventually led to his early death. McLintock, Crown Colony, p. 140.
 77. Stanley/Hobson, 19-12-1842, G1/6.
 78. Irish University Press series of British Parliamentary Papers. Colonies: New Zealand (Shannon, 1968), Vol. 2, 'Report from the Select Committee on New Zealand together with the minutes of evidence, appendix and index' [1844(556)13] (hereafter '1844 Report of Select Committee'), Minutes of evidence, questions 2193, 3965-3966, 3969-3970, pp. 217-218; Hobson/S.S. Cols, 13-11-1841, *ibid.*, Vol. 3, 'Correspondence and other papers relating to New Zealand, 1835-42', p. 526, 'Correspondence and papers relating to New Zealand', [1842(569)28], p. 176; Scholefield, New Zealand Biography, Vol. 2, p. 356.
 79. Stanley/Hobson, 29-12-1842, '1844 Report of Select Committee', App. 19, pp. 455-456; for further details on the November 1840 Agreement, see below, pp. 121-122.
 80. Captain Stanley/Hobson, 30-9-1840, 'Estrays on New Zealand affairs', Micro-Z 2717; T. Lindsay Buick, The French at Akaroa: an adventure in colonisation (New Zealand Book Depot, Wellington, 1928), pp. 303-304, 324; Marais, Colonisation of New Zealand, pp. 95-96.
 81. Stanley/Hobson, 20-9-1842, and encl., T.F. Elliott and E.E. Villiers, Colonial Land and Emigration Office/J. Stephen, 24-6-1842, G1/6.
 82. J. Stephen/H.U. Addington, 14-7-1842, IUP, Vol. 3, p. 517/BPP [1842(569)38] p. 167.
 83. Stanley/Grey, 7-7-1845, G1/13; Buick, French at Akaroa, pp. 300-317; see below, pp. 171-174, for the establishment details of the scheme under which the New Zealand Company paid compensation to those Maoris whose claims were not satisfied in the original 1839 purchases.
 34. Stanley/Fitzroy, 26-11-1847, G1/10.
 35. New Zealand Government Gazette, Supplement, 6-9-1843; W. Connell, for Col. Sec./Godfrey and Richmond, 18-9-1843, G13/1.
 86. Domett, Ordinances, pp. 123-124.

CHAPTER THREE

THE COMMISSIONERS AT WORK

Soon after Commissioner Fisher arrived at Russell, in the Bay of Islands, in November 1840, he and Richmond went to Auckland to set up the Commission's central office. Godfrey remained at Russell. By early December 1840 the first list of cases, containing twenty-seven claims, arrived from Sydney and the starting date for hearings, beginning at the Bay of Islands, was set at 25 January 1841. In the interval the Commissioners began acquiring information and evidence on the nature of Maori land tenure and other relevant matters in preparation for the work ahead. ¹

Initially there was some uncertainty as to whether the projected starting date for investigations would be kept to. This was because of difficulties in getting claim and hearing details published in New Zealand according to instructions. All claims referred to the Commissioners were first published in the New South Wales Gazette and each claimant was notified by letter. ² In cases of 'doubt or great importance' copies of these notices appeared in both the New South Wales and Van Diemen's Land Government Gazettes. The same notices had to appear in at least one New Zealand newspaper 14 days before the sittings. The details which had to be published included: the name of the claimant, alleged sellers and any opponents;

the type of conveyance and payment; the amount paid; the site, boundaries and estimated extent of the land claimed; and the time and place of hearing. ³

The reason why the Commissioners had trouble complying with this instruction was that the local paper, the New Zealand Advertiser and Bay of Islands Gazette which had also contained the Government Gazette, had ended publication a few weeks after the Commissioners' arrival. As an interim measure, hand-written notices were posted up on the doors of the church at Kororareka and the town house at Russell. ⁴ At the Lieutenant-Governor's request, the CMS committee in the Bay of Islands allowed the missionary printer to run off the required notices, which were then published in a Government Gazette Extraordinary on 31 December 1840. As the missionaries were adamant that this was not to set a precedent, Godfrey wrote to the New South Wales Colonial Secretary suggesting that, in future, claim details would have to be printed in Sydney and sent out to New Zealand. The only alternative source of publication was the Port Nicholson newspaper, but this would probably lead to significant delays since communication between the southern and northern parts of the North Island was uncertain and infrequent. The other solution Godfrey considered was alteration of the instructions to allow notices to appear only in the Sydney papers. ⁵ Though Godfrey's hope that the local New Zealand newspaper would recommence publication was not fulfilled, such steps as he had suggested to the Colonial Secretary were unnecessary as

In spite of initial difficulties, the Commission did start its investigations on 25 January 1841 at Russell.¹⁰ Each session began at 10 a.m.¹¹ Under Gipps's Land Claims Act and Hobson's first Land Claims Act, both Commissioners had to attend. During the period before Hobson's second Land Claims Act was disallowed and from February 1844 until the Commission's work ended, some 8 months later, one Commissioner attended.¹² Although cases were heard in the order in which they were advertised, most cases were heard over a number of days.¹³ This meant that there was often more than one case under investigation on any given day. Procedure seems to have been relatively informal if we can judge from one claimant's description of what would typically occur:¹⁴

If I came into the room, with one commissioner sitting, and brought my deed, I should deliver it to him; he would look at it, and having put me on my oath, he would ask me when I bought the land, what were the goods which I gave for it, and so on; I would answer his questions and that would be all which would pass; the native chief would then be called up; he would be told by the interpreter what I had said, and if he acknowledged that he had sold the land to me, that would be considered satisfactory.

The Commissioners generally gave the Maori testimony 'the most entire credibility' and placed almost implicit faith in the ability of the Maoris to accurately recall the exact sum of money or quantity of goods given for each piece of land, as well as being capable of pointing out the extent of the land involved. The reliability of such testimony must have been very valuable to the Commissioners since many early land

transactions had not involved a formal written record and/or contained inadequate information about the transaction. ¹⁵

The Maori witnesses were able to remember these facts precisely because traditionally they had proved the right of tenure, in the absence of written records, by performing acts of ownership on the land and being able to recite a history of such acts by themselves, their relatives and ancestors. Although the minutes of evidence taken before Godfrey and Richmond survive largely only in a standardised, abbreviated form, the full minutes of Commissioner Spain's * hearings still exist, and from these it can be seen that some Maoris appearing in court did, for example, recite genealogies to prove rights to land. Therefore it seems likely that Maoris giving evidence before the other Commissioners would have given traditional accounts of association with the land, even though they were faced with the unusual question and answer situation of the courts. ¹⁶

The Commissioners made good progress with their work during 1840-44, in spite of the difficult, sometimes unpopular nature of their task. They did not move in any very clear-cut way from one region to the next since they were generally unable to hear together and report on all the claims of each area at

* Commissioner Spain was appointed as a Land Claims Commissioner by the Secretary of State for the Colonies, Lord John Russell, in January 1841. Spain investigated the New Zealand Company's claims and private individuals' claims to 'Company lands'. See Part Two (below).

one time. There were several reasons for this. Most importantly, the claims were not submitted to the Governor according to the area and to have waited until the 12 months claim referral period was over before beginning hearings would have involved a long delay. Also, a number of cases were not completed during the first visit to an area. Sometimes this was because the Commissioners, finding the evidence to be inadequate, delayed making their recommendations until the claimant had the opportunity to complete his case.¹⁷ If, for example, witnesses lived somewhere other than the area in which the land claimed was located, it was often more convenient for claimants to have their case partly heard in several different areas. Alternatively, many of these people had their cases heard or completed at the Commissioners' central office in Auckland. Something of a chronological outline of the Commissioners' activities can, nevertheless, be given.¹⁸

Up until March 1842, 229 claims were looked into. Of these, 209 were in the Bay of Islands area and the rest were in the Auckland and Kaipara regions.¹⁹ It seems that the claims to land north of the Mokau river in north Taranaki, and south of Whaingaroa Harbour (Raglan Harbour) and including the Waikato claims, were also investigated at this time. There were just over twenty claims to this area, most of which were for land at Kawhia and on the Waipa River.²⁰ Initially the Commissioners did not forward any reports since they had to wait until the 12 month claim referral period had ended in case further evidence or opposition appeared.²¹ By May 1843 the

Commissioners had reported on 554 cases.²² These included claims from Hokianga heard in December 1842 and January 1843 by Richmond, and from Whangaroa, Mangonui and Kaitaia which Godfrey had visited in December 1842 and January and February 1843 respectively, as well as those heard at the final sessions in the Bay of Islands in late 1842.²³ Between April and July 1843, the Commissioners, having returned to Auckland, completed hearings for claims to the Auckland and Kawhia-Waipā regions, and a few Bay of Islands claims.²⁴ From 8 June to 8 July, Richmond heard claims to the Hauraki region, including Coromandel claims. For at least part of this time his court was held at the residence of the CMS missionary, James Preece.²⁵ Although William Spain, the Commissioner investigating the New Zealand Company claims, was advised in May 1843 that Richmond would soon be helping him, this never occurred. Instead, on 12 July 1843, soon after the Wairau clash, Shortland appointed Richmond as Chief Police Magistrate of the Southern District - a position which he took up immediately.²⁶ Later in the year, Godfrey travelled south aboard the Government brig and began the investigation of the South Island and Stewart Island claims. The Banks Peninsula claims were heard between 7 August and 9 September 1843, and those of Otago between 25 September and 14 October in the same year. The cases before Godfrey's court at Otago harbour included all claims to land as far north as Moeraki on the east coast, as far south as Stewart Island, and up to Milford Haven on the west coast. The extensive claims for the entire South Island, or for large parts of it, such as the western

seaboard, were also advertised for hearing at this time. But most of these claims were unheard as they had been abandoned in the face of serious investigation by the Government. ²⁷

In December 1843, Godfrey forwarded all his reports on South Island claims. Having briefly visited the Bay of Islands and Hokianga in March 1844, Godfrey returned south to spend most of April hearing Kaipara and the few Whaingaroa claims. From 27 May to 15 June 1844 Godfrey heard claims at Coromandel concerning land in the Hauraki Gulf as far north as Mahurangi, Manukau Harbour and Mercury Bay, as well as the Firth of Thames region. Included in these cases were claims to several islands, notably Great Barrier Island and Mercury Island. During July, Godfrey held court at Tauranga, investigating claims to east coast lands as far south as Poverty Bay. ²⁸ The last reports having been made, Godfrey's Commission ended on 31 October 1844. ²⁹

In the course of its hearings, the Commission faced many difficulties. From the outset, persistent problems were associated with the staff attached to the Commission - namely, the surveyor and the Protector. The surveyor's task was to define the site, measurements and boundaries of claims for the Commissioners so that awarded lands could later be accurately described in the deeds of grant. ³⁰ From April 1843 the surveyor was also required to write out a special report stating whether or not Maoris had interrupted the survey on grounds of ownership or had told him of any claim by themselves or other Maoris. ³¹ This, like the Protector's report, was to

ensure that Maori interests in land had been completely extinguished before the Commissioners' reports could be acted on. Unfortunately, D. Kemp, the surveyor sent out from New South Wales to assist the Commissioners, drowned a few weeks after his arrival in New Zealand in March 1841.³² Godfrey's urgent request for a new surveyor and four assistant surveyors was not complied with. The initial delay was apparently caused by the constitutional separation of New Zealand and New South Wales and the surveyor was not subsequently replaced.

In his instructions of July 1841, Governor Hobson advised the Commissioners that their reports could be made without a survey being done as long as an accurately defined boundary was pointed out by the claimant.³³ The Commissioners, therefore, had to continue basing the description of each claim on such testimony as the often-vague definitions contained in deeds. This was one reason why the Commissioners repeatedly asked that adjacent claims be surveyed together. Another important reason was that the Maoris had frequently 'sold' the same piece of land more than once. Probably the most common cause of a multiple 'sale' was the non-occupation of the land after the 'sale'. Contemporary accounts indicate that it was the payment for and taking possession of the land, preferably immediately, which was significant to the Maoris - not the signing of the document which was the most important part of the transaction to the Europeans. This was less true in the long-settled north where the Maoris had come to understand that a sale meant transferral of land rather than the giving

of rights for usage for as long as the buyer exercised them. Consequently, purely speculative and large-scale purchases were particularly vulnerable to partial or complete resale'. Also, if adjacent claims were not surveyed together the individual who had his claim measured first would get all of his claim or at least more than the person who had his survey done last and got only what land remained. This applied especially to lands at Kororareka in the Bay of Islands, and other places where claims were concentrated, such as at Hokianga, Whangarei and Whangaroa. For these reasons, the Commissioners tried to forward for approval as many reports from each district as could be decided on together.³⁴ These descriptions were the only basis for the survey which was still a prerequisite to the issue of a grant.³⁵

At first this work was done only by the Government Survey Department. Into FitzRoy's term as Governor (December 1843-November 1845), however, the Government still had no more than six licensed surveyors³⁶ and thus delays due to pressure of work led to a relaxation of this rule by September 1842. Land claimants could now employ a contract surveyor. Occasional visits by Government surveyors were made to ensure that the contract surveyors did their work correctly.³⁷ In an attempt to counteract the problem noted by the Commissioners of first come, first served, the Surveyor-General, Charles Ligar, undertook to ensure that as far as possible only one contract surveyor worked in each area. Control was difficult, however, since by mid-1844 (possibly from September 1842), even the

requirement of a survey before issue of a deed of grant was abandoned to avoid further delays. Grants were sent out with the description of the land as found in the Commissioners' reports. The Governor only requested that the land owners have a survey done as soon as possible.³⁸

More long-term difficulties were associated with fulfilling the Land Claims Act's requirement that the Commissioners be assisted by a Protector of Aborigines and an interpreter. At first Hobson expected the Chief Protector, George Clarke senior, to act in this capacity in addition to his other duties. This involved a serious drain on the time available for Clarke senior's usual work while he travelled between Auckland and the hearing location, prepared his case, and attended the actual hearing.³⁹ It immediately proved just as unsatisfactory for the Commissioners as they were forced to begin their hearings at the Bay of Islands in January 1841 without a Protector present, because Clarke senior's vessel was delayed for several days by 'adverse winds'. So the permanent attachment of a Protector to the Commission was sought.⁴⁰ The problem was never fully dealt with. Assistant-Protector Henry Kemp, a man who had lived almost all his life in New Zealand, was appointed to the Commission.⁴¹ However, Kemp regarded the £150 per annum salary as too low and demanded an increase of £100 per annum. On the recommendation of Godfrey and Richmond, the budget-conscious Governor agreed to pay the extra £100 salary with the proviso that Kemp was only employed for periods during which sittings were actually in progress.⁴² Yet even

after this arrangement was established, problems continued to occur. For example, in August 1841 Kemp resigned because the Governor refused his application on health grounds to attend the Commission only in areas north of Auckland. Kemp was immediately re-employed on the same terms as before - though he never did attend investigations in the south - and proved to be the Commissioners' more or less permanent Protector.⁴³ Nevertheless, on several occasions the Commissioners had to delay their proceedings and apply to the Chief Protector for the attendance of someone to act in this capacity. Usually little could be done as the Protectorate Department did not have people to spare for the Commission. All the Colonial Secretary could do then was direct the Commissioners to employ anyone capable of filling the position satisfactorily or, failing that, apply to the missionaries for help. By mid-1842 this advice had actually become part of the Commission's standing instructions.⁴⁴ Considering the Commissioners' problems in getting a qualified person to act as Protector, it is not surprising that they had just as much difficulty in finding a competent interpreter. So, even though combining the roles of Protector and interpreter was open to criticism, in July 1842 Hobson authorised the use of the Protector as an interpreter-Protector.⁴⁵ People other than Kemp who filled the role of interpreter-Protector for either or both of the Commissioners from time to time included the Reverend William Williams, James Davis, George Clarke junior, *⁴⁶ and

* Hereafter referred to in the text as George Clarke.

Willoughby Shortland's brother, Edward, who accompanied Godfrey to the South Island in 1844. ⁴⁷

Several problems arose in relation to the Maori witnesses. It soon became obvious that unless the Commissioners held their hearings in a variety of locations in each district, Maoris would often not attend to give evidence. As Commissioner Godfrey explained to Governor Hobson, ⁴⁸

Although we have rarely found an indisposition on the part of the Aborigines to come before our Court, it has been absolutely necessary to hold our sittings as near as possible to the residence of those natives we required to examine owing to the following causes - The hostility that has for ages subsisted between divers Tribes, has left, still remaining, an excessive fear of visiting each other. Next their natural indolence, and, finally, a dread of going any distance from their cultivation grounds. We have, consequently, been obliged to remove our Court from one place to another, even in the Bay of Islands district, the one, where, as we believe, there exists the least animosity between the Tribes, and the most confidence in, and amity with the Settlers.

Where possible the court was held in whatever Government premises were available. While on other occasions houses were rented, the Commissioners often lived and worked under canvas. ⁴⁹ There were some disadvantages in having to move around so much, notably increased travelling time delayed work, and even when the hearing was held nearby, bad weather could deter the Maori witnesses from attending an open air hearing. ⁵⁰

Even though the Commissioners went to such lengths to facilitate Maori attendance at the hearings, it was still found that usually the claimants had to give Maori witnesses a 'present' before they would come and testify.⁵¹ Some Europeans attributed this practice to the Commissioners' readiness to doubt until proven valid any claim which Maoris disputed. The bias may or may not have existed; Commissioner Richmond, at least, was observed by the strongly pro-Maori George Clarke to be determined to see that the Maoris were fairly dealt with.⁵² In very rare cases and only 'when the morality of the buyers appeared quite as questionable as that of the Sellers' did the 'present' become a bribe to, for instance, support the claim of one party over another.⁵³ The inducement of 'presents', however, was not always necessary to procure attendance. For example, at least one chief, Kahutoki of Tauranga, recognised that by having descriptions of hapu (clan, sub-tribe) lands recorded by the Commissioners, unjust claims could not be made on the land.⁵⁴

Nor was persuasion needed where the question of who had the right to sell was in dispute. In such a situation, the Commission's hearings brought about the airing of often long-standing quarrels. This could cause real problems for the Commissioners. In the Mangonui area of Doubtless Bay, for instance, the land was claimed by two tribes - the Ngapuhi and the Rarawa. From the early 1830s, Europeans had 'bought' timber lands there from the Ngapuhi people, who had held the area by right of conquest for almost 40 years. By the 1840s, the

vanquished Rarawa tribe had become strong enough to reassert its claims to the area and disputed the Ngapuhi 'sales' of Mangonui lands to the Pakehas. With the intention of averting an open conflict between the tribes, the Acting-Governor, Willoughby Shortland, paid the Rarawa £100 for their claims to some of the 'sold' lands, and paid the Ngapuhi £100 for the lands which had not yet been sold. The chief of the Rarawa, Nopera (also known as 'Nopera Panakareao' and 'Panakeard'), resented the Ngapuhi being paid the same amount for a few unsold acres as he had received for his claim. These matters rested until January 1843, when Commissioner Godfrey went to Mangonui to investigate the local claims. On his arrival, Godfrey found Nopera waiting for him with 250 of his people. Nopera claimed a priority of title and declared his intention to dispute and resist all claims to land in Doubtless Bay which were not derived from himself - that is, most of the forty or so claims. Two days later, the Ngapuhi chief, Pororua (also known as Whare Kauri), arrived - supported not only by his own people, but also by Whangaroa Maoris under the chief Ururoa. The opposing parties numbered about 400 men, all of whom attended the court fully armed. After the parties failed to reach a compromise arrangement, despite Godfrey's mediation, a haka (chant of defiance accompanied by a stylized dance) was performed and at one stage the Commissioner thought that a battle would break out in front of him. Though this did not happen, Godfrey believed that there was little hope of settlement and left the district.⁵⁵ Eight weeks after his departure fighting did occur and lasted several days. A

number of chiefs, largely from Nopera's leading ranks, were among the thirty or so dead and Pororua, who had led a larger force into battle, emerged the victor. The settlers had fled to Whangaroa and most abandoned the district entirely when Shortland offered them lands in exchange elsewhere. Even though Shortland felt that Nopera's dissent made the validity of the European titles doubtful, he wanted to prevent further trouble in the area. He hoped that depriving the Maoris of the benefits of a European presence would ensure that, in future, similar disputes were settled more amicably. His successor, Governor FitzRoy, upheld this decision and by May 1844 only two or three Europeans still lived at Mangonui.⁵⁶

The Commissioners also had to face Maori dissatisfaction with and resentment of the Commission's purpose and activities. For example, especially where very small claims were concerned, the Maoris saw the Commission's fees as payments to the Government for lands they had previously parted with - that is, they thought the Government was selling the land again and at a very high price.⁵⁷ Maoris also resented Hobson's decision about who was to get lands the Commissioners regarded as fairly sold but for which they did not recommend a grant. By virtue of the Crown's ultimate dominion in New Zealand, the Governor saw such unawarded lands as belonging to the Crown; but many Maoris felt that the land should be returned to the original owners.⁵⁸ This opinion was encouraged by some Europeans, particularly those who opposed the acreage limit and other

aspects of the Acts which produced the difference between claimed and awarded lands. ⁵⁹ The amount of land claimed by the Government in this way was quite substantial. For example, 102 awards were confirmed by Hobson under 4 Victoria No. 2. While almost 200,000 acres were claimed in these cases, only 42,000 acres were awarded - the remainder became Crown demesne. ⁶⁰

Although the Government did not return the lands to the Maoris, it initially made no attempt to sell them either. The question came to a crisis in May 1843 regarding the property of a CMS catechist, William Fairburn. Fairburn claimed 70,000 acres in the Tamaki area - one-third each for himself, the CMS and the local Maoris. The land was originally bought on 22 January 1836 in order to end the dissension between the Ngapuhi and Waikato tribes, both of whom claimed it. In early 1842 the Commissioners awarded Fairburn 2,560 acres and the rest accrued to the Crown. Then, in May 1843, the Government leased some of the excess land to a Mr Terry who wanted to set up a flax milling operation there. ⁶¹ The Maoris, however, would not let Terry onto the land, declaring that they would only do so if the owner, Fairburn, allowed it. Furthermore, the Maoris said that if the Government declined Fairburn's claim, then the land must revert to them. The Government immediately sent a Protector of Aborigines to defuse the situation and he was able to moderate the Maoris' opposition by paying them compensation money. ⁶²

Unlike Governor Hobson, FitzRoy agreed with the CMS that un-awarded lands should be returned to the Maoris. Both felt that this should be done if the claims had been disallowed because the Maori owner had not known that he was selling his land.⁶³ In FitzRoy's opinion, the Government had not tried to sell such lands because it was known that this would provoke Maori opposition and irreparably damage the Government's prestige. Instructions from England upheld Hobson's view, but informed FitzRoy that he could make exceptions where Maoris used such unawarded lands or wanted them returned for a particular reason.⁶⁴ In the Fairburn case, however, FitzRoy chose to extend the grant to 5,500 acres rather than return some of the unawarded lands to the Maoris. This may have been because the Maoris had already had one-third of the land returned to them by Fairburn in July 1837. Nevertheless, until the title was settled at the end of the decade during Governor Grey's administration, the Maoris continued to uphold the claims of Fairburn to whom they had originally sold the land.⁶⁵

A further source of Maori dissatisfaction was the tactics adopted by some claimants, notably claimants' attempts to assert their right to extravagant and/or illegal claims before the Commissioners. Illegal practices which had occurred during pre-1840 land transactions included inserting the boundaries after the signatures or incorrectly describing the extent of land sold.⁶⁶ Sometimes land purchasers had taken advantage of the fact that the Maoris did not understand

European terms of measurement since they themselves had no fixed unit of measurement. The only way that a Maori could comprehend long distances was by comparing them with the distance of a visible object.⁶⁷ Therefore, sales conducted on board ship and/or for very large areas were particularly vulnerable to misunderstanding. Even with smaller purchases, though, those who wanted to be sure that the Maori sellers understood the extent involved followed the practice of walking along the boundaries or, at least, going to the land and having the limits pointed out.

Some land buyers had also taken advantage of Maori incomprehension of European land alienation practices.⁶⁸ Until the late 1830s there was no concept of permanent land alienation in Maori society. Occupancy rights could be given to allies, impoverished kinsmen or Pakehas, but the act of bestowing such rights itself strengthened the right of the donor(s) to the land. Often, too, some kind of levy would be exacted from the 'tenants'. This could be an annual payment of food or, in the case of a European trader, a monopoly of his trade. Land could also be taken and kept by a stronger tribe, but the conquest had to be total otherwise the defeated people would not relinquish their claim even if generations passed before they were in a position to reinstate themselves. Individuals or families within a hapu could have a specific association with a piece of land or, more accurately, particular resources on a piece of land which gave them, for example, an inheritable priority right to the natural products. This

interest was, however, subsumed under a collective hapu or tribal right. All major decisions respecting any natural resource were made by the group, not the individual. Moreover, Maori society was largely non-literate during most of the pre-Proclamation period. Important information such as family history and proof of land rights was committed to memory and transmitted orally.⁶⁹ Hence, the whole idea of being able to permanently transfer land from one person to another using a deed was completely alien to the Maoris; as far as they were concerned, the deed was not important to the transaction. Generally, they seem to have thought they were giving occupancy rights in exchange for the payment and were, therefore, improving their title, not losing it. The small number of Europeans in New Zealand until the late 1830s gave the Maoris no reason to fear that the occupancy of the land would last more than a lifetime or be transferred to others. This is why they would often 'resell' land which was not occupied after the 'sale'.

By the late 1830s, however, the Maoris in some regions at least were beginning to understand the permanence of a land sale to a Pakeha. This was particularly true of areas with well-established, growing European settlements, such as at the Bay of Islands. The spread of literacy and other changes in Maori society such as increasing familiarity with European material values, and the repeated references and importance attached to the deed's contents in the Land Claims Courts, contributed significantly to the Maoris' understanding of a sale in the European sense of the word. As Godfrey and

Richmond put it, ⁷⁰

At the present time they [the Maoris] are more enlightened upon the matter and we find them frequently disputing both the extent of, and the entire alienation of such Land as the Claimants presumed or alleged they had acquired.

Although the Maoris had learned to challenge claims - probably with the encouragement of, and/or advice from, the Commissioners and interpreter-Protectors - the Commissioners never assumed that the Maoris could be safely left to completely look after their own interests. They, as well as the interpreter-Protector, remained protectively vigilant for any attempts to thwart the law's provisions in this respect.

It was also as a result of Maori complaints that the Commissioners discovered another method by which claimants tried to circumvent the law. It was not uncommon for claimants to make a false promise of future payment to Maoris to ensure that they would not oppose a claim or would give favourable evidence. The practice came to the Commissioners' notice when Maoris began complaining of non-fulfilment of these agreements. Maoris in the Coromandel district, for example, told Godfrey in June 1844 that they would not give up land which had been included in the boundaries of awards made in the previous year because they had not been fully paid as promised at that time. ⁷¹ Such a situation was seen by the Commissioners as serious especially as the grants were often based on vague descriptions: ⁷²

I fear that much confusion and opposition will arise hereafter - for we must expect that grants will be sub-divided and disposed of to fresh settlers; and if there are any such flaws in the original purchase - arising from unfulfilled promises or otherwise - payment will be instantly demanded from the newcomers, and should they refuse it, they will be turned off the disputed ground, quite as unceremoniously in the North as they have unfortunately been in the South. The class I speak of - the new derivative purchasers - being perfectly innocent of any error in the contract, and likely to consider a title springing from a Crown grant as an ample ground of pertinacious holding - either mischief will ensue to the settlers if the natives be strong - or if they be weaker or isolated, the natives will suffer injustice.

Existing rather than potential derivative claimants were also felt to be at risk of being cheated if the amount recommended on their claims was not gazetted along with the decision on the original buyer's claim. The Commissioners therefore urged the Colonial Secretary to prevent the possibility of such an abuse developing by ensuring that those details were published. ⁷³

Initially the Commissioners also suggested that in cases where derivative claimants were concerned, their claims should take precedence over those of the original purchasers. The original buyer would get a title to whatever was left over - which in many cases was little or nothing. However, within a year the Commissioners changed their minds on observing that generally the original purchaser lived on or cultivated his claim, whereas the derivative claimants were absentee proprietors interested primarily in speculation. They therefore recommended that the original claimant was entitled to the first

award out of his proved claims up to the 2,560 acre limit, and the derivative claimants would get, in chronological order of purchase, titles to any residue of the award to the original claimant. 75

The Commission had to deal with Pakeha dissatisfaction as well - notably with the fees which claimants had to pay for having their case heard and reported on. Some complaints, though seriously made, can only be taken with a grain of salt.

Frederick Maning, for example, describes the reasons for his dissatisfaction as follows: 76

I made a very unwilling appearance at the court, and explained and defended my title to the land in an oration of four hours and a half's duration; which, though I was much out of practice, I flatter myself was a good specimen of English rhetoric, and which, for its own merits as well as for another reason which I was not aware of at the time, was listened to by the court with the greatest patience. When I had concluded, and having been asked 'if I had any more to say?' I saw the Commissioner beginning to count my words, which had been all written, I suppose, in shorthand; and having ascertained how many thousand I had spoken, he handed me a bill, in which I was charged by the word, for every word I had spoken, at the rate of one farthing and one twentieth per word ... Oh, Pitt, Fox, Burke, Sheridan! ... what would have become of you, if such a stopper had been clapt on your jawing-tackle? ... For my part, I have never recovered the shock. I have since that time become taciturn, and have adopted a Spartan brevity when forced to speak, and I fear I shall never again have the full swing of my mother tongue ... 'Justice shall not be sold', saith Magna Charta; and if it's not selling justice to make a loyal pakeha Maori pay for every word he speaks when defending his rights in a court of justice, I don't know what is.

For three groups of claimants, however, the fees really were too high. The first group comprised those who claimed more than one piece of land on their own behalf or in partnership. Initially the Commissioners charged £5 for each deed submitted and since a claimant presented all his cases on his first appearance, the total to be paid even before hearings began could be quite large.⁷⁷ One of the first claimants to be heard, James Busby, immediately appealed against this method of levying as his costs on the first day had been £80- 100 just for filing his memorial. Busby held that the Commissioners were in error and that the charge should have been 5 for the lot.⁷⁸ Late in May 1841 Fisher informed Busby of Gipps's agreement that fees of £5 were not to be paid for each case. This decision was upheld by the New Zealand administration with the additional proviso that another £5 fee would be charged if an individual, having filed a memorial on his own behalf, then did the same for a different piece of land in partnership with someone else.⁷⁹

For a number of people the fees were a severe hardship because they were poor and some individuals were forced to go to great lengths to raise the necessary funds. For example,⁸⁰

In the case of James Johnson, he paid to us the fee of Five Pounds for filing his memorial, and as we had no reason to suppose that he could not also pay for the examination of his witnesses we investigated his Claim, which proved a very correct one, but, when the case was concluded the Claimant declared that he had not another farthing in the world, having sold his small stock of Poultry to raise the preliminary Fee.

The Commissioners favoured a remission of the fees in such cases. On grounds of poverty alone, however, the Government would not allow fees to be decreased as they were required by the law and any reduction would have to be made at the Governor's personal expense. ⁸¹

However, many of the 'poorer classes' also belonged to the group of people who wanted a reduction of fees because their land claim was very small and of no particularly valuable quality or location. ⁸² The Commissioners recommended reducing the fees, in this case, for claims to under 50 acres, according to the circumstances of the case and claimant. Town lands were not to be included. ⁸³ Hobson permitted a reduction of the fees for claims to less than 20 acres, excluding town property, and required a special report to be made where this was done. ⁸⁴ Though the problem seems to have been only partially alleviated by this decision, no further relaxation of the law was made, and fees for small claims continued to be a source of complaint. The Government's resistance to any substantial reduction in the fees, however, was probably more a reflection of the Commission's marked deficit in expenditure over revenue of at least several hundred pounds each year, rather than any indifference to the plight of those for whom the fees were a burden. ⁸⁵

As their work progressed the Commissioners were able to draw a number of general conclusions about the claimants and their claims. They found that the claimants fell into four basic

categories: speculators, Church missionaries, settlers and derivative purchasers.⁸⁶ Many people had speculated in New Zealand land prior to annexation.⁸⁷ While most speculation was done by or on behalf of an individual, a number of partnerships and two land investment companies were formed to provide the funds for speculative activities. One of the companies, the Polynesian Company, claimed land in the Foveaux and Cook Strait regions. The Company's claim to land at Porirua was investigated by Commissioner Spain largely in September-October 1842 and April-June 1843.⁸⁸ The Pelorus River claim was never investigated, but Commissioner Godfrey dealt with the Company's other South Island claims. As no one representing the Company appeared to give evidence, Godfrey gave a 'no grant' decision on the claims. The other company was the Kororareka Land Company which was formed in March 1839, and in which thirty-five Kororareka settlers held shares. Apart from one piece of land at the Waikare river, Bay of Islands, all of the Company's eleven purchases were at Kororareka township. Both Companies held derivative titles as well as having bought directly from the Maoris.⁸⁹

Many of the speculators, particularly the Australians, never visited the land they had invested in. While some land, including large tracts, was bought from Maoris visiting Australia, speculators usually relied on agents in New Zealand to buy land from Maoris or Europeans for them. The size of

speculative purchases varied, but Australian-based speculators were largely responsible for the 1,000,000 acre plus claims. Several of this group already had business interests in New Zealand, notably in whaling, before investing in land.

Towards the end of 1839 many purchases for which a small deposit had previously been made were confirmed and completed by agents after news had arrived in Sydney of the New Zealand Company's land buying activities.⁹⁰ Formal deeds of conveyance, drawn up in New South Wales or Great Britain, with blanks left for boundaries and signatures, were used in these transactions. One enterprising Sydney lawyer's clerk prepared a cargo of such deeds and sold them for £5 each in New Zealand.⁹¹ While some speculators bought land at random, others were especially interested in buying land in the vicinity of possible town or settlement sites since such lands could become very valuable. When, for instance, the New Zealand Company's vessel, the Tory, was in the Cook Strait purchasing land, the local whalers at Te Awaiti and the agents of the Sydney merchants, Cooper and Levi, were very interested in finding out what lands had been bought by Colonel Wakefield so that they could buy up adjacent property.⁹²

While not rivalling the extent of some speculators' claims, the claims of the CMS were also extensive. The first twelve CMS cases alone before the Commissioners amounted to almost 120,000 acres. Church mission land-buying had begun in 1815 when the Reverend Samuel Marsden bought land for the first CMS station at Rangihoua in the Bay of Islands. By 1839 the

missionaries had established ten stations throughout the upper North Island. The land bought for each station provided the missionaries with the means of self-sufficiency as well as sites for building churches and schools. As the CMS missionaries were stationed in New Zealand for life, a great deal of land was also bought by them to provide their many children with a competency. The Home Society had sanctioned and provided funds for this purpose, but not to the extent claimed by or awarded to their clergy.⁹³ For example, Archdeacon Henry Williams applied for 11,000 acres as trustee of his eleven children. The Commissioners awarded him 7,010 acres and in July 1844 this was increased by Governor FitzRoy to 9,000 acres.⁹⁴ The Commissioners found that in spite of the extent of their claim the missionaries had⁹⁵

in general, taken such pains to have every boundary so distinctly described and their right of perfect and continued possession to themselves and Children so correctly written in the Maori language in every deed of Sale; that the Natives they have brought before us for examination, have very rarely objected to their titles.

The growth of the missionaries' influence, and their experience of Maori customs, also contributed to ensuring that their titles were more secure than those of many of their secular contemporaries.⁹⁶

The same was true of the Wesleyan Missionary Society's claims. Like the Church missionaries, the Wesleyans also began their land-buying at an early date (1822) and had established eleven

stations by 1840. Although spread throughout the North Island, the Wesleyan Missionary Society land claims were much less extensive than those of the CMS, and only two Wesleyan missionaries had bought land on their own account by 1840. This was in part because the Wesleyan missionaries were not expected to buy land other than for the establishment of mission stations - the instructions given to the leader of the mission, the Reverend Samuel Leigh, did not even mention the possibility of private land purchases. Most significantly, though, the eldest child of the Wesleyan missionaries was only 11 years old in 1840 and thus the need to provide for their children was not urgent. Nevertheless, William White, one of the Wesleyan missionaries who did buy privately, acquired extensive holdings - 1,653 acres, largely at Hokianga. After his dismissal from the mission in 1836 for various reasons, including public criticism of his personal land purchases, White lived on this property for some time. ⁹⁷

As the French Marist Mission (Roman Catholic) was not established in New Zealand until the later 1830s, the extent and geographical diversity of its claims was much less than that of either its Anglican or Wesleyan counterparts. The head of the mission, Bishop Pompallier, claimed just over 200 acres at Hokianga and Kororareka. ⁹⁸

The other original purchasers, the 'Old Settlers', were ⁹⁹

the men who colonized the country in the first instance; of these a great many have expended large sums of money there in the lapse of years, and have cultivated land and built houses.

Although the deeds of transfer presented by these claimants to the court were often very defective, where a fair purchase had been made the Maoris usually admitted the claim, even though sometimes disputing its absolute extent. A number of large, valid claims were made by the 'Old Settlers', notably between the Bay of Islands and the Waitemata. Claims made by bona fide settlers and speculators could be distinguished by the dates of the purchase, occupation and/or improvement of the land. ¹⁰⁰

A very small but interesting group of 'Old Settler' claimants comprised those European men who claimed land by virtue of having a Maori wife and children. In these case the lands involved were either pieces given by the wife's family to the European as a marriage dowry or given to the half-Maori children. Several Pakehas who could probably have claimed on these grounds either did not do so or put in claims only for land they had bought themselves. This may have been because the Commissioners were apparently directed to, or decided to, acknowledge individual titles to lands received as a gift only where lands were actually cultivated or used by the claimant. The title to any other lands was to be regarded as constituting a joint propriety right with the tribe. The decision to deal

with cases in this way reflects recognition that the lands involved were still seen as the property of the tribe and thus any attempt to fully alienate them and make them transferable to other Europeans would be opposed. Moreover, since having a Maori wife often facilitated a Pakeha's land-buying activities, it would have been unnecessary for some claimants to make a claim on behalf of a Maori wife and children as a personal claim to other lands could be as easily established. ¹⁰¹

The final group of claimants was made up of people who had bought land to settle on, or for speculation, from an original purchaser or another derivative purchaser. Many of the original land buyers, who often claimed large acreages for themselves, had resold up to twice as much again to other Europeans. Much of this land had been transferred from one purchaser to the next several times by the time that the original purchase was investigated by the Commissioners. ¹⁰²

The Commissioners estimated that about 20,500,000 acres were claimed in the cases referred to them by March 1842. More than an estimate could not be made because many claims did not state the amount claimed, while others were given in round numbers, millions of acres, or degrees of latitude, and vague expressions - such as the distance of a cannon shot - were also used to indicate distance. Excluding claims with statements of this kind, Land Commissioner F.D. Bell later estimated that almost 10,500,000 acres were claimed. ¹⁰³ There were approximately twenty-five areas for which more than ten land

claims were made (see map overleaf). Reflecting patterns of European population distribution, most were located on the west coast and in the upper North Island, and at either end of the South Island. By far the greatest concentration of land claims was at the Bay of Islands and Hokianga, where over 250 and 100 cases respectively were referred. The next most important area for claims was the region south of the Kaipara Harbour, and including the Firth of Thames and Mercury Bay. In this area about 150 claims for land were made. ¹⁰⁴

In the North Island most land purchases were made during 1836-39, with more being made in 1839 than in any of the three preceding years (about $3\frac{1}{2}$ times as many). During these 3 years, 1836-38, the number of purchases seems to have been fairly stable, averaging just over seventy per year. However, this still represented a marked increase on the number of purchases made in 1835 and earlier. In the South Island most purchases were made during 1838 and 1839, with only a few being made before that time. ¹⁰⁵

The size of land purchases made by individuals ranged from small pieces of less than an acre to the several tracts of over 1,000,000 acres each. The very large blocks of land containing more than 1,000 acres were bought primarily in 1839. These extensive claims were located predominantly in the main claim areas (see map overleaf). Most claims for less than 1,000 acres were for under 500 acres. ¹⁰⁶

The majority of claimants appearing before the Commissioners claimed only one piece of land. Of those who did have several claims, the majority had acquired their property in more than one year and referred at least one claim to land bought before the land speculation boom of the late 1830s. Multiple claims were not usually located in more than two areas. ¹⁰⁷

The end of the 1830s, then, saw a marked increase and geographical spread in investment in New Zealand land. Although large scale purchases were uncommon before then, a significant amount of land had, nevertheless, already been alienated and many speculators had long-standing commercial, if not residential, interests in New Zealand.

Bell reported that at least £90,000 was paid by Europeans to Maoris in goods and cash for the lands claimed before the Commissioners. This figure does not include the amount paid by those who did not state the payment in their memoranda to the Commissioners, nor the amount paid after the Proclamation. A significant amount of this was ready money, the rest being merchandise and stock. Up until the 1840s, though, trade goods remained the main item of exchange even in areas such as the Bay of Islands where Maori-Pakeha contact was extensive and long-standing. Goods which were given in payment included a tremendous variety of things, from articles of clothing and tools to various guns and accessories. The demand for particular goods varied according to such factors as availability of the item and extent of Maori-Pakeha contact. In the Bay of

Islands, for instance, blankets became popular in the early 1830s and by 1834 had effectively superseded traditional Maori cloaks. By the end of the decade, however, blankets were abandoned in favour of European clothing. ¹⁰⁸

As well as the payments to the Maoris, the cost of having the claim heard was substantial. Original claimants before Godfrey, Richmond and Spain paid almost £5,000 in fees on the issue of their grants. If one also takes into account the cost of surveys, and the fees paid in subsequent assessments and surveys of claims up until 1858, the total outlay was £131,000. And averaged over the whole area of the claims as later surveyed, the amount paid by private claimants per acre to extinguish the Maori title was 5s. 6d., which was more than the Government paid in the acquisition of its lands after 1840. Indeed, Governor Grey, who bought nearly 30,000,000 acres in the South Island and about 3,000,000 acres in the North Island during his first governorship (November 1845-December 1853), regarded 1s. 6d. per acre as the maximum that should be paid for Maori land. ¹⁰⁹

What were the results of the Commissioners' investigations? About 300 claims were disallowed by the Commissioners. Disallowances were concentrated in the 1838-40 purchases and most involved claims for more than 1,000 acres. In part this reflected the preponderance and nature of land buying in these years. The main reason for disallowance was failure of the claimant to appear before the Commissioners. Other reasons

in descending order of frequency included: non-payment of fees, failure or refusal to produce Maori evidence, the sale was made after 14 January 1840, and inadequate evidence of sale. A number of cases were also withdrawn before investigation. As with disallowances, most withdrawn claims were for land acquired between 1838-40 and involved large pieces of land. ¹¹⁰

All of the reports confirmed by Hobson - about 200 in total - were approved during the period in which 5 Victoria No. 14 had been in operation. After the earlier act, 4 Victoria No. 2, was revived on 6 September 1843, these reports were revised at Auckland by William Spain, the British-appointed Land Claims Commissioner, and William Connell, the Registrar of Records. The alterations largely involved adjustment of the land values and the number of acres awarded. Godfrey and Richmond personally amended fifty-eight other reports, most of which had recommended more than the maximum acreage. As the grants over 2,560 acres had only been confirmed in the Government Gazette rather than legally issued, the change was relatively simple. ¹¹¹ The issue of Crown grants for these revised cases was postponed until the new Governor, FitzRoy, arrived. The only other step regarding land claims which Shortland had taken was to permit those whose claims had been proved valid to exchange land for grants in unoccupied parts of the Auckland town district. Allowances were to be made for differences in location values and no one applying after 31 March 1843 would be granted the indulgence. The Land

Orders were to be used within 2 years. ¹¹²

In March 1844 Governor FitzRoy appointed Robert FitzGerald as a Special Commissioner of Land Claims to assist him in reviewing the evidence taken by Godfrey and Richmond prior to confirming the reports. ¹¹³ No rehearings were held before the Governor made the final decision even where the awards were changed. With the support of the Executive Council, FitzRoy granted extensions beyond the 2,560 acre limit to twenty-four claimants. This resulted in an extra 86,280 acres being awarded. Without extending them beyond the acreage limit, FitzRoy also issued grants increasing the amount awarded by the Commissioners in eleven other cases. These extensions totalled 5,753 additional acres, with the claims affected being increased in size, on average, 2½ times. In three cases the Governor granted more than was originally claimed. In two of these cases the land buyers had paid more than was required under the Act for their claims. Where surveys showed that the claim sizes had been underestimated, FitzRoy increased the grants to correspond to the amounts originally paid. Finally, FitzRoy also set aside the Commissioners' decisions on several cases regarding which it had been advised that no grant at all be made. Although some of these had been dismissed on technicalities only and, therefore, were recommended for favourable consideration, others had been rejected for reasons such as payment of a trifling deposit before the Proclamation date and failure to produce Maori witnesses. ¹¹⁴

While not questioning the Governor's right to have the final say about grants, the Commissioners were not entirely happy about the changes which FitzRoy made to some of the awards. In a lengthy letter, Godfrey pointed out to the Governor that inadequate or incorrect evidence meant that many awards were probably already precarious. The Commissioner also specifically cautioned FitzRoy against enlarging any of the awards ¹¹⁵

for, in addition to the payment and other matters proved by Evidence, I have frequently deemed it necessary to regulate the amount of the Grant recommended by the quantity of Land which - making fair allowance for the claims of opposing Native rights, it appeared probable to me that the Sellers had the free disposal of.

Nevertheless, this consideration appears to have been subordinated to other factors, notably the amount to which the purchase money entitled the claimant. In spite of Stanley's instructions to the contrary, the value of improvements to the land was also a common reason for alteration of an award. ¹¹⁶

In the face of Godfrey's warning of Maori opposition, the Governor stated that the extensions were provisional: ¹¹⁷

The Governor issues Crown Grants which are cautiously worded and which do not bind the Government to maintain the correctness of the boundaries or extent of the Land granted. For those who have made valid purchases and have fairly satisfied all Native Claimants such Grants will be sufficient. For those who have not done so, it is neither intended nor desired that they should be sufficient.

Many of the changes made by FitzRoy were illegal in that they did not strictly conform to the provisions and intent of the Land Claims Act. Some of the alterations were made in the face of opposition from FitzGerald as well as Godfrey, and in February 1845 FitzGerald and FitzRoy seriously disagreed about reversing one particular award. The Commissioner accused the Governor of violating the spirit and the letter of the Land Claims Act and of deliberately allowing inaccuracies on grants to stand as unqualified fact. FitzGerald was immediately threatened with suspension for impugning the Governor's character and at the end of March lost his position as a Land Claims Commissioner. Six months later FitzGerald reiterated his charges in relation to another case, and tried to blackmail the Governor by threatening to reveal other 'heinous' misconduct which affected the colony's interests. Although FitzGerald was immediately dismissed from public office, the Governor never carried out his declared intention of publishing the blackmail letter. Colonial Office officials regarded FitzRoy's failure to do so as a 'singular course of proceeding', but FitzGerald's charges against the Governor were never investigated - in Earl Grey's view the Commissioner's conduct made the case unworthy of consideration. 118

Although the first confirmed reports were published in the Gazette in August 1842, it was not until 1844 that any Crown grants were issued. Hobson's death had prevented the issue of grants for those Commissioners' awards which he had confirmed. The Acting-Governor, Shortland, had reviewed the

Commissioners' findings on about one-half of the cases but the final decision on them was left to the new Governor, FitzRoy. After the reports were again examined in 1844, 400 grants were prepared by the Surveyor-General's office. Most were imperfect and probably invalid. Only forty-two were not. These conveyed islands or lands which had been surveyed before the grants were prepared. The major fault with the other deeds was the inclusion of imprecise descriptions of the land conveyed - an inevitable result of the shortage of surveyors in the new colony. The grants were issued without a survey of the land being required beforehand as FitzRoy felt that further delay would ruin those with interests in the land. This may have been true considering the colony's bad financial situation at this time, but it ensured the continued existence of important faults in the deeds of grant. Other defects included statements that the land conveyed had been awarded by the Commissioners when, in fact, they had only recommended one-half or one-third of the amount, or had not even heard the case. ¹¹⁹ Some contemporaries alleged that the Governor did this to avoid having his extensions questioned. It seems likely, however, that it was simply easier and preferable for administrative purposes to omit such information, since the actual grants were a standard form with blanks only for the grantee's name and the description of the land awarded. Information other than this was in the reports which were kept on file. ¹²⁰

Due to Maori opposition and other causes such as overlapping or doubling up of claims, a number of claimants did not get possession of the lands the grants conveyed. From September 1843, FitzRoy gave compensation in land credits or scrip to the value of £97,840 to these people. The scrip was in exchange for awards by the Commissioners. This was done under an arrangement sanctioned by Stanley for giving claimants credit at the Treasury equal to the award so they could buy land near the capital. Much of it was spent on land within the Auckland city limits. Unfortunately for the Government, a lot of the land for which scrip was given was never recovered. At Hokianga, for instance, about £32,000 worth of scrip was issued but by the late 1850s the Crown had a clear title to only about 15,500 acres of the lands involved. Commissioner Bell singled out the over-estimation of the size of land claims in the absence of surveys as an important cause of this. 121

Although the issue of the Crown grant completed the award, it was almost always the award itself which represented the final settlement of the claim. In the years after the Commission had ended, faults in the grants, not the awards, were challenged. Overall, therefore, the first Commissioners had settled the matter of who owned what land in the new colony. To contemporaries, the Commission's work had taken an age. For those of us looking back, however, that the Commissioners finished their difficult, complicated task in four short years is impressive.

NOTES

1. Coates, for Col. Sec., NZ/Governor. 22-10-1840, IA 4/1; Godfrey, Richmond, Fisher/Col. Sec., NSW, 9-12-1840, OLC 8/1.
2. Gipps's instructions to Land Commissioners, 2-10-1840, encl. in Gipps/Russell, 9-10-1840, Turton, Land Purchases in the North Island, Part B, No. 1, encl. 2, p. 1.
3. Col. Sec., NSW/Commissioners, 19-11-1840, Section 5, Micro-Z 2711 NSW; Col. Sec., NSW/Commissioners, 13-3-1841, *ibid.*; In practice not all of this information was supplied to the NSW government when initial notification of claims was made by the claimants. Most claims, for instance, were unsurveyed and thus their contents could only be estimated. Consequently many notices were vague about, or lacked, one or other of the required details. Also, the phrase 'any opponents', this presumably meant Pakeha counter-claimants, as it is unlikely that notification of Maori opposition to a claim would have been expected at this early stage.
4. Godfrey/Col. Sec., NSW, 16-12-1840, OLC 8/1.
5. Godfrey/Col. Sec., 27-12-1840, *ibid.*
6. McLintock, Crown Colony, p. 443.
7. Clarke, sen./Col. Sec., 16-7-1841, Turton, Land Purchases in the North Island, Part B, No. 4, p. 3; E. Shortland, for Clarke, sen./C.B. Robinson, Police Magistrate, Akaroa, 20-5-1843, MA 4/1.
8. Circular, encl. in Clarke, sen./Col. Sec., 16-7-1841, Turton, Land Purchases in the North Island, Part B, No. 4, encl., p. 4.
9. No name/Busby, 22-4-1842, OLC 8/1; Memorandum, R.A. FitzGerald, Special Land Claims Commissioner, 22-4-1844, IA 15/5.
10. Godfrey and Richmond/Col. Sec., 13-12-1841, IA 1.
11. For example, see the notice, 3-7-1841, New Zealand Government Gazette, 7-7-1841.
12. See above, pp. 55, 63.
13. Notice, 3-7-1841, New Zealand Government Gazette, 7-7-1841.
14. '1844 Report of Select Committee', Minutes of evidence, questions 951-960, p. 50.
15. Godfrey and Richmond, General Report/Col. Sec., 12-3-1842, IA 1; Godfrey and Richmond/Col. Sec., 4-5-1843, OLC 8/1.
16. OLC 465, 466, 906; Alan Ward, A Show of Justice: racial 'amalgamation' in nineteenth century New Zealand (Auckland University Press/Oxford University Press, Auckland, 1973), pp. 49-50; see also below, p. 119, note 120, on the contents of extant OLC files.

17. Hcbson/S.S. Cols, 26-3-1842, G25/1; Godfrey/Col. Sec., 27-10-1842, OLC 8/1; Godfrey and Richmond/Col. Sec., 26-11-1842, IA 1.
18. Godfrey and Richmond, General Report/Col. Sec., 12-3-1842, IA 1.
19. 'Statement by Godfrey and Richmond of list of claims in districts, heard, unheard, referred', 14-3-1842, IA 1.
20. The size and date of purchase of a good number of claims to the Kawhia-Waipā district indicates they were purely speculative - a supposition which is borne out by the fact that many were abandoned after the initial claim submissions were made. Others, notably the Wesleyan Missionary Society, did press their claims and gained awards under subsequent Commissioners. Sixteen claims to land at Kawhia, Waipā, Waikato and Taranaki were part of the purchases made by William Wentworth, Gipps's main antagonist during the passage of the Land Claims Bill in 1840. 'Appendix to the report of the Land Claims Commissioner' (hereafter 'Appendix to Commissioner Bell's report'), Appendices to the Journals, House of Representatives, 1863, D-No. 14, pp. 19, 38; see above, pp. 22-25, for details of Wentworth's campaign against Gipps's Bill; New Zealand Government Gazette, Supplement, 12-4-1843.
21. Godfrey and Richmond, Confidential/Shortland, 17-10-1841, IA 1.
22. Godfrey and Richmond, 'Progress report', 30-5-1843, encl. in Shortland/Stanley, 15-6-1843, '1844 Report of Select Committee', App. 2, p. 86.
23. Godfrey and Richmond/Col. Sec., 1-8-1842, OLC 8/1; Notice, Bay of Islands Observer, 11-8-1842; 'Notice of hearing', New Zealand Government Gazette, Supplement, 17-8-1842.
24. *ibid.*, Supplement, 22-3-1843, 12-4-1843; Shortland/Stanley, 13-4-1843, '1844 Report of Select Committee', App. 2, p. 77.
25. 'Notice of hearing', New Zealand Government Gazette, Supplement, 5-4-1843; Godfrey/Col. Sec., 8-6-1844, OLC 8/1.
26. 'Civil establishment', 1843 Bluebook, IA 12/5; Col. Sec./Spain, 20-5-1843, IA 4/253; Godfrey/Richmond, 15-8-1841, OLC 8/1; Ruth M. Allan, Nelson: a history of early settlement (A.H. & A.W. Reed, Wellington, 1965), p. 273.
27. 'Notice of hearing', New Zealand Government Gazette, Supplement, 29-3-1843, 21-6-1843; Edward Shortland, The Southern Districts of New Zealand (Longman, Brown, Green and Longmans, London, 1851), pp. 83-84, 105.
28. 'Notice of hearing', New Zealand Government Gazette, Supplement, 20-1-1844, 27-1-1844, 1841-1844; 'Appendix to Commissioner Bell's report', AJHR, 1863, D-No. 14.
29. 'Civil establishment', 1844 Bluebook, IA 12/6.

30. Gipps's instructions to Land Commissioners, 2-3-1840, encl. in Gipps/Russell, 9-10-1840, Turton, Land Purchases in the North Island, Part B, No. 1, encl. 2, p. 2.
31. Col. Sec./Clarke, sen., 21-4-1843; Turton, Land Purchases in the North Island, Part B, No. 16, p. 18; No information has come to light on why this new requirement was introduced. The most likely reason is that the surveyors found that Maoris sometimes, perhaps even frequently, told them things bearing on land claims which did not come up in the courts.
32. 'Civil establishment', 1841 Bluebook, IA 12/2.
33. Godfrey/Col. Sec., NSW, 17-3-1841, OLC 8/1; Hobson's instructions to Land Commissioners, 11-7-1841, OLC 5/4.
34. Godfrey and Richmond/Col. Sec., 9-3-1841, OLC 8/1; Godfrey and Richmond/Col. Sec., 2-5-1842, IA 1; Godfrey and Richmond, March 1843, OLC 8/1; Godfrey and Richmond/Col. Sec., 10-7-1843, *ibid.*
35. Notice, 27-9-1842, New Zealand Government Gazette, 28-9-1842.
36. Wilson, Land Problems, p. 86.
37. Stanley/FitzRoy, 21-8-1843, G 1/10.
38. Ligar/Col. Sec., 1-5-1843, IA 1; Notice, 9-5-1844, New Zealand Government Gazette, 8-6-1844.
39. Marginal note, G.C. [Clarke, sen.], 24-6-1842, on Godfrey and Richmond/Col. Sec., 23-6-1842, IA 1.
40. Fisher, Godfrey, Richmond/Col. Sec., 25-1-1841; Marginal note, (W.H.) [Hobson], 3 Feb., *ibid.*; Fisher, Godfrey and Richmond/Lt.-Govr, 25-1-1841, *ibid.*
41. Scholefield, New Zealand Biography, Vol. 1, p. 456.
42. Godfrey and Richmond/Col. Sec., NZ, [13-10]-1841, IA 1; Godfrey and Richmond/Kemp, 1-11-1841, OLC 8/1; 'Civil establishment', 1842 Bluebook, IA 12/3.
43. Clarke, sen./Kemp, 27-7-1841, MA 4/1, p. 12; Col. Sec./Commissioners, 17-8-1841, IA 4/253; 'Civil establishment', 1843 Bluebook, IA 12/5.
44. Godfrey and Richmond/Col. Sec., NZ, 3-8-1841, IA 1; Clarke, sen./Commissioners, 13-8-1842, MA 4/1, p. 30; Col. Sec./Godfrey and Richmond, 24-8-1842, IA 4/253; Col. Sec./Commissioners, 1-10-1841, *ibid.*
45. Gipps's instructions to Land Commissioners, 2-8-1840, encl. in Gipps/Russell, 9-10-1840, Turton, Land Purchases in the North Island, Part B, No. 1, encl. 2, p. 1; Hobson's instructions to Land Commissioners, 11-7-1841, OLC 5/4.

46. Fisher and Richmond/Col. Sec., 15-3-1841, IA 1; Marginal note, W.H. [Hobson], 24-8-[1841], on Clarke/Col. Sec., 2-8-1841, IA 1; Richmond/Col. Sec., 19-10-1842, *ibid.*; Col. Sec./Godfrey and Richmond, 2-11-1842, IA 4/253; 'Civil establishment', 1842 Bluebook, IA 12/3; Godfrey/Col. Sec., 16-1-1843, OLC 8/1.
47. Shortland, Southern Districts, p. 1.
48. Godfrey and Richmond, General Report/Col. Sec., 12-3-1842, OLC 8/1.
49. Col. Sec./Commissioners, 25-2-1841, Section 5, Micro-Z 2711 NSW; Godfrey and Richmond, General Report/Col. Sec., 12-3-1842, OLC 8/1; Col. Sec./Commissioners, 25-2-1842, IA 4/253.
50. Hobson/S.S. Cols, 30-7-1841, G 25/1.
51. Godfrey and Richmond/Col. Sec., 4-5-1843, OLC 8/1.
52. Clarke/Clarke, sen., private letter, 22-9-1843, 'George Clarke Letters to his Father', Vol. 62/B (1843-1859), item 70, MS, Hocken Library, Dunedin; '1844 Report of Select Committee', Minutes of evidence, questions 892 and 895, p. 46.
53. Godfrey and Richmond/Col. Sec., 4-5-1843, OLC 8/1.
54. Ward, Show of Justice, pp. 49-50.
55. Godfrey, Col. Sec., 15-1-1843, IA 1; Godfrey/Col. Sec., 16-2-1843, *ibid.*; Wakefield, Adventure in New Zealand, pp. 630-631; Wilson, Land Problems, pp. 73-75, 106-108.
56. Thomas Florance/[Col. Sec.], 23-3-1843, IA 1; Godfrey/Col. Sec., 12-5-1844, *ibid.*; Wilson, Land Problems, pp. 106-108.
57. Godfrey and Richmond/Col. Sec., NZ, 26-11-1841, IA 1.
58. '1844 Report of Select Committee', Minutes of evidence, questions 809-811, p. 41; McLintock, Crown Colony, p. 66 and note 2.
59. Clarke, sen./Col. Sec., 3-3-1846, 'Clarke letters', Vol. 62/A (1840-1843), item 26.
60. Minutes of Executive Council, 19-9-1842, encl. B, Shortland/S.S. Cols, 24-9-1842, '1844 Report of Select Committee', App. 19, pp. 477-478.
61. 'Appendix to Commissioner Bell's report', AJHR, 1863, D-No. 14, p. 45; The Charles Terry mentioned here may have been the Charles Terry who wrote New Zealand, its Advantages and Prospects as a British Colony (1842) in which it was argued that 'excess' land belonged to the Maoris. Wilson, Land Problems, p. 199, note 4.
62. 'Notice of hearing', New Zealand Government Gazette, 8-9-1841; 'List of claims on which grants to land have been recommended to be made', *ibid.*, Supplement, 28-4-1842; The division of the claim allegedly occurred first on 12-7-1837 when Fairburn returned one-third to the Maoris to

- set up a Native reserve, and then another one-third was transferred to the CMS on 5-4-1840. Kenyon, 'Land purchases by missionaries', p. 42; Wilson, Land Problems, pp. 84, 198-200.
63. FitzRoy/Stamley, 16-5-1843, '1844 Report of Select Committee', App. 13, pp. 387-389; FitzRoy/Stamley, 15-10-1844, Turton, Land Purchases in the North Island, Part A, No. 24, p. 34; Adams, Fatal Necessity, p. 192.
 64. Stamley/FitzRoy, 26-6-1843, '1844 Report of Select Committee', App. 4, p. 188.
 65. Kenyon, 'Land purchases by missionaries', p. 42; Wilson, Land Problems, p. 201.
 66. Thomson, Story of New Zealand, Vol. 2, pp. 32-33.
 67. Shortland, Southern Districts, pp. 81-82.
 68. Godfrey and Richmond, General report/Col. Sec., 12-3-1842, IA 1; Shortland, Southern Districts, pp. 81-82; Ward, Show of Justice, p. 29.
 69. I.H. Kawharu, Maori Land Tenure: studies of a changing institution (Oxford University Press, Oxford, 1977), pp. 55-62; Edward Shortland, Traditions and Superstitions of the New Zealanders (Longman, Brown, Green, Longmans and Roberts, London, 1856; 2nd ed. reprint, Capper Press, Christchurch, 1980), pp. 279-281, 284; Shortland/Chief Protector, 15-8-1843, *ibid.*, App. 4, encl. B, p. 307.
 70. Godfrey and Richmond, General Report/Col. Sec., 12-3-1842, IA 1.
 71. Col. Sec./Godfrey, 2-2-1844, IA 4/253; Godfrey/Col. Sec., 8-6-1844, G 13/1; Shortland/Chief Protector, 10-6-1844, Shortland, The New Zealanders, App. 4, encl. C, pp. 308-309; Clarke, sen./Col. Sec., 30-3-1846; 'Clarke letters', Vol. 62/A, item 26.
 72. Godfrey/Col. Sec., 8-6-1844, G 13/1.
 73. Godfrey and Richmond/Col. Sec., 23-3-1843, IA 1.
 74. Godfrey and Richmond/Col. Sec., 26-11-1842, IA 1.
 75. It is unclear when the changed view of derivative claimants' titles began to be applied. (The explanation of the new approach was probably for FitzRoy's benefit as he became Governor about one month after the note was written.) Once the decision was made, it is likely that the Commissioners amended previously-made award recommendations accordingly; Godfrey and Richmond/Col. Sec., 10-11-1843, OLC 8/1.
 76. F.E. Maning, Old New Zealand (Smith, Elder, London, 1863; reprint 1973 ed., Golden Press, Auckland, 1980), pp. 84-86.
 77. '1844 Report of Select Committee', Minutes of evidence, questions 624-626, p. 32.

78. Busby/Commissioners, 2-2-1841, OLC 8/1; Col. Sec./Commissioners, 13-3-1841, Section 5, Micro-Z 2711 NSW; '1844 Report of Select Committee', Minutes of evidence, question 624, p. 32.
79. Fisher/Busby, 25-5-1841, OLC 8/1; Godfrey/Col. Sec., 26-9-1842, IA 1.
80. Godfrey and Richmond/Col. Sec., 8-7-1841, IA 1.
81. Richmond/Col. Sec., 16-1-1843, IA 1; Col. Sec./Godfrey, 15-4-1843, IA 4/253; Godfrey and Richmond/Col. Sec., 8-7-1843, IA 1.
82. Godfrey/Col. Sec., 8-4-1843, OLC 8/1; Polack, petition/FitzRoy, 9-1-1844, IA 1; '1844 Report of Select Committee', minutes of evidence, questions 1120-1122, p. 58.
83. Godfrey and Richmond/Col. Sec., NZ, 26-11-1841, IA 1.
84. Marginal note, W.H. [Hobson], 30 November, *ibid.*; Col. Sec./Commissioners, 10-12-1841, IA 4/253.
85. 'Return of fees and other payments made by land claimants under various regulations, 1840 to 7-7-1862', OLC 5/30; 'Abstracts of revenue and expenditure: Land Claims Commission', Bluebook (1841) IA 12/2, (1842) IA 12/3, (1843) IA 12/5, (1844) IA 12/6).
86. Godfrey and Richmond, General Report/Col. Sec., 12-3-1842, IA 1.
87. See also above, pp. 3, 88-90.
88. See also below, pp. 206-208.
89. Evidence of C. Hector, solicitor for the Kororarereka Land Company, OLC 819; Kororarereka Land Company files, OLC 819-828; 'Appendix to Commissioner Bell's report', AJHR, 1863, D-No. 14, pp. 17-18, 28-29, 32, 41.
90. Godfrey and Richmond, General report/Col. Sec., 12-3-1842, IA 1; Sweetman, Unsigned Treaty, pp. 49, notes 12-13, 58; Terry, New Zealand, p. 107; Wakefield, Adventure in New Zealand, p. 94.
91. Thomson, Story of New Zealand, Vol. 2, p. 32.
92. *ibid.*, pp. 30-31; Wakefield, Adventure in New Zealand, pp. 48, 94, 102.
93. Godfrey and Richmond, General report/Col. Sec., 12-3-1842, IA 1; Adams, Fatal Necessity, pp. 30-33; Kenyon, 'Land purchases by missionaries', pp. 5, 17, 20, 25-26; Sweetman, Unsigned Treaty, pp. 25-28; Wakefield, Adventure in New Zealand, pp. 657-659; See also above, pp. 40-42.
94. New Zealand Government Gazette, 28-9-1842; OLC 521.
95. Godfrey and Richmond, General report/Col. Sec., 12-3-1842, IA 1.

96. Wakefield, Adventure in New Zealand, p. 663 and note.
97. Adams, Fatal Necessity, p. 30; Kenyon, 'Land purchases by missionaries', pp. ii, 9-10; George I. Laurenson, Te Hahi Weteriana: three half centuries of the Methodist Maori mission, 1822-1972 (Wesley Historical Society, Auckland, 1972), pp. 30, 43; J.M.R. Owens, Prophets in the Wilderness: the Wesleyan mission to New Zealand, 1815-27 (Auckland University Press, Auckland, 1974), pp. 14-15; Thomson, Story of New Zealand, Vol. 2, p. 156.
98. 'Appendix to Commissioner Bell's report', AJHR, 1863, D-No. 14, pp. 69-70; Thomson, Story of New Zealand, Vol. 2, pp. 154, 156-158.
99. '1844 Report of Select Committee', Minutes of evidence, questions 2493-2497, pp. 136-137.
100. Godfrey and Richmond, General report/Col. Sec., 12-3-1842, IA 1; Terry, New Zealand, p. 108.
101. 'Curnin's register', OLC 2/7; OLC 126-127, 314, 539, 558-566, 1026; Memorandum and marginal note, no name, no date, OLC 777; Terry, New Zealand, pp. 117-118.
102. Godfrey and Richmond, General report/Col. Sec., 12-3-1842, IA 1.
103. *ibid.*; Land Claims Commission. Report of the Land Claims Commissioner, 8-7-1862 (hereafter 'Commissioner Bell's Report'), Appendices to the Journals, House of Representatives, 1862, D-No. 10, p. 4; for further details of Bell's Commission, see below, pp. 312-313.
104. 'Appendix to Commissioner Bell's Report', AJHR, 1863, D-No. 14; Terry, New Zealand, pp. 93-84; Wilson, Land Problems, p. 76.
105. 'Appendix to Commissioner Bell's Report', AJHR, 1863, D-No. 14; Thomson, Story of New Zealand, Vol. 2, p. 31.
106. 'Appendix to Commissioner Bell's Report', AJHR, 1863, D-No. 14.
107. *ibid.*
108. 'Commissioner Bell's Report', AJHR, 1862, D-No. 10, pp. 4-5; Kathleen Shawcross, 'Maoris of the Bay of Islands, 1769-1840: a study of changing Maori responses to European contact', MA thesis, Auckland (1967), pp. 339-341.
109. 'Commissioner Bell's Report', AJHR, 1862, D-No. 10, pp. 5, 20; Rutherford, George Grey, pp. 163, 165.
110. 'Appendix to Commissioner Bell's Report', AJHR, 1863, D-No. 14.
111. William Connell, for Col. Sec./Godfrey and Richmond, 18-9-1843, G 13/1; Wilson, Land Problems, p. 81.
112. New Zealand Government Gazette, 28-9-1842; 'Government notice', *ibid.*, 6-9-1843, encl. 2 in Shortland/Stamley, 6-11-1843, '1844 Report of Select Committee', App.9, p.366; Wilson, Land Problems, pp. 82-83.

113. 1844 Bluebook, IA 12/6.
114. OLC 26, 118, 289, 397, 455, 626, 707, 809, 824, 866, 945, 1027; 'List of grants issued contrary to Commissioners' recommendations' (No. 3), 'Returns (1849) printed for Legislative Council' OLC 5/8; 'List of grants issued where land conveyed is more than awarded by Commissioners' (No. 4), *ibid.*; 'List of grants issued which give more than originally claimed' (No. 5), *ibid.*; Wilson, Land Problems, pp. 82-86.
115. Godfrey/Col. Sec., 8-6-1844, OLC 8/1.
116. Robert FitzGerald/S.S. Cols, 14-1-1846, IA 1; Stanley/FitzRoy, 26-6-1843, '1844 Report of Select Committee', App.4, p.188; Wilson, Land Problems, pp. 82-86.
117. Col. Sec./Godfrey, 18-6-1844, IA 4/253.
118. Minutes of Legislative and Executive Councils, 12-2-1845, 31-3-1845, 22-9-1845, 24-9-1845, 9-10-1845, CO 211/1-2 (1) P.R. Office, Great Britain, NZ sessional papers, Micro-Z 32; Notes by FitzGerald on claim No. 182 (OLC 355), encl. in FitzGerald/Gladstone, 24-10-1846. IA 1; Memorandum [G. Gairdner] in 'Correspondence - S.S. Cols, despatches, November to December 1846', CO 209/46, Micro-Z 425. This memorandum outlines the origins, development and results of the affair.
119. 'List of grants to land claimants which have no particular description of the specific portions of land intended to be conveyed' (No. 8), 'Returns (1849) printed for Legislative Council', OLC 5/8; '1844 Report of Select Committee', Minutes of evidence, questions 604-607, p. 31; Report of the Select Committee appointed to consider and report on the nature and extent of outstanding land claims and the best mode of finally disposing of the same, Votes and Proceedings, House of Representatives, Session 4, 1856, Vol. 2, D-No. 21, p. 4.
120. Although some of these land claim files have been lost, the majority are extant and held at the National Archives, Wellington. In general, each file contains: the report of the original Commissioners which includes a summary of the claim and the Commissioners' recommendations; minutes of the hearing held by the original Commissioners - verbatim minutes for Spain's investigations, summarized notes for Godfrey and Richmond; supporting documents submitted by the claimants, such as originals/copies of deeds; and usually some correspondence with the claimant. Papers from subsequent investigations by later Commissioners are also included, and any other documentary evidence in support of the claim, such as transfer deeds and original Crown grants called in and cancelled. In some cases the correspondence and investigations continued for many years.
121. Instructions to Hobson under the Royal Sign Manual, encl. in Russell/Hobson, 9-12-1840, IUP, Vol. 3, p. 163/BPP [1841(311)17], p. 41; New Zealand Government Gazette, 26-4-1844; 'Government notice - exchange of land', *ibid.*, 6-9-1843; 'Exchange of land', *ibid.*, 27-9-1843; 'Commissioner Bell's Report', AJHR, 1862, D-No. 10, pp. 4, 7.

PART TWO

CHAPTER FOUR

COMMISSIONER SPAIN

When news arrived in England in late September 1840 of the establishment of British sovereignty over New Zealand a year had already passed since the first of several shiploads of New Zealand Company immigrants had left. In spite of presenting the British Government with this fait accompli, the Company had not yet been given the Government support it desired and needed. It was now vital to the Company that its title be made secure and thus the Governor of the New Zealand Company, Joseph Somes, asked the British Government how it regarded the Company's New Zealand land rights, and under what terms it would grant the Company a Charter of Incorporation.¹

In reply Russell sent a draft agreement which was accepted by the Company's Court of Directors on 19 November 1840. The first head of the Agreement dealt with the retrospective adjustment of the Company's land claims. On the basis of the Company's expenditure on their colonisation project, both in New Zealand and Great Britain, a Crown grant for four times as many acres as pounds spent was to be issued. The estimate of the Company's expenditure would be made by James Pennington, an accountant nominated by the Government. The areas for which the Company could receive the grant were those to which it had established a claim before Governor Hobson's arrival in New Zealand: in particular, 110,000 acres in the Port Nicholson area and 50,000 acres at New Plymouth. Any claims to other

land had to be abandoned. This meant that the Company agreed to give up its interests in most of the 20,000,000 acres which it had acquired a claim to during the Tory's land-buying voyage in exchange for a smaller, but more secure, title. Furthermore, if the local Government had already taken 'Company lands' allocated to a settler and granted them to a non-Company person, the Governor was not required to reverse his decision or compensate the Company settler. Finally, the Company would not be exempt from the local Government's regulations concerning the reservation of lands for public use. ²

The November 1840 Agreement assumed that the Company's original land purchases were valid - an assumption that was accepted by the Company's representatives in Great Britain and New Zealand. On 3 December 1840 the British Government informed Somes that a Commission would investigate all New Zealand land titles not derived from the Crown. Bona fide purchases would be confirmed by a Crown grant. This requirement would apply to the Company's purchases as well as those of private individuals. Two days later Somes unhesitatingly acknowledged the Government's unilateral decision. ³

The New Zealand Company's Principal Agent in New Zealand, Colonel William Wakefield, a younger brother of Edward Gibbon Wakefield, was just as sure that the Company's title was sound. When details of the Agreement reached New Zealand, Wakefield immediately decided that the Company would probably be entitled to at least 600,000 acres under the Agreement's provisions. So certain was he of this that on 24 August 1841 he

asked Governor Hobson to avoid delay in waiting for the outcome of the Commission's investigations by guaranteeing to the Company the lands which had been or would be surveyed. The Company, he said, would compensate any Maoris or Europeans whose title to those lands was subsequently shown to be unextinguished by the Company's purchase. (The Company's Directors in England subsequently approved of this offer and sanctioned the use of Company funds for this purpose.) Colonel Wakefield also declared that there would be no interference with pa, sacred places and unsold areas until the Commissioner's decision had been made. ⁴

Hobson must have regarded Colonel Wakefield's request as reasonable since he quickly agreed (5 September 1841) to waive Crown pre-emption in favour of the Company within certain limits and guarantee a title to all Company settlers as against other Europeans for those lands properly bought from the Maoris. The schedule of lands for which the Company would acquire a Crown grant included 110,000 acres in the Port Nicholson and Porirua districts, and 50,000 acres each at Wanganui and New Plymouth. Any non-Company individuals whose purchases were made prior to those of the Company would have to give up their land. They were to be compensated according to a scale to be fixed by a local ordinance. ⁵

By the time the September Agreement was made, however, Maori opposition to the Company's Port Nicholson title had surfaced and during an interview with Hobson at which the terms of the Agreement were discussed, Colonel Wakefield argued that the

Maori title was fairly and completely extinguished by virtue of the Company's system of Maori reserves. The reserves were to make up one-tenth of the Company's lands and were to be allotted on the same random basis as the settlers' lands. In this way the two races would be in frequent contact, which would have the particular advantage for the Maoris of introducing civilisation amongst them. ⁶ Although the Governor had 'positively refused' to accept Wakefield's viewpoint, he did allow Wakefield to attempt to persuade the Maoris to give up their claims to the scheduled areas as long as force was not used. ⁷ Wakefield attributed Hobson's attitude to the Treaty of Waitangi rather than to the November 1840 Agreement. This was because Wakefield believed that the investigation of the Company's claims would be no more than a formality. ⁸ But Hobson was bound by both the Treaty and the Agreement. The Treaty, with its recognition of Maori ownership of unalienated lands and its promise of justice to the Maoris as British subjects, reflected the Governor's deeply-held desire to reconcile Pakeha and Maori interests. He regarded land speculation as taking advantage of the Maoris and detrimental to the interests of all concerned. Hobson saw no reason why he should not regard the Company as a land speculator, and was inclined to treat its professed philanthropism with considerable scepticism. ⁹ Given these views, Hobson was incapable of treating the investigation requirement as a mere formality.

Meanwhile the Secretary of State for the Colonies had wasted no time in finding a suitable candidate for the position of

Land Claims Commissioner. The man he chose was an attorney, William Spain. An active supporter of the Liberal Party, Spain had been a central secretary for Hampshire, was active during the passage of the 1832 Reform Act, served 2 years on a New Zealand Committee, and was for some time a private secretary to Lord Palmerston.¹⁰ Although Spain had a somewhat pedantic and solid, tenacious nature, and was inclined to stand on his position, he had many qualities which recommended him to those under whom he worked. Spain was an honest, straightforward man, methodical and efficient in his work, and sincere in his convictions.¹¹ Spain received his commission on 20 January 1841.¹²

It was Russell's intention that Spain would be the only Land Claims Commissioner in New Zealand, as he believed that a British rather than a local Government appointee would be seen as more impartial.¹³ For the sake of impartiality, too, the Secretary of State for the Colonies was unwilling to provide Spain with detailed instructions. The Commissioner, however, was told to act in accordance with the current New Zealand law on land claims from which his authority would be derived.¹⁴ Russell also told Spain to act with a view to prevention of future wrongs against the Maoris, rather than with the expectation of satisfactorily redressing past injustices.¹⁵

The Treasury granted Spain a fixed salary of £2,000 for 2 years from the date of his departure from England, after which



William Spain



William Wakefield

he was to be paid by the colony. This was a very generous allowance as it made Spain, along with the Chief Justice, the second-highest paid official in New Zealand. Only the Governor was paid more - the difference being £200. Spain's salary was about twice as much as that of the other Commissioners.¹⁶ Although Russell knew before Spain's departure that Gipps had already appointed three Commissioners,¹⁷ he did not know that Hobson would insist on retaining two of them in spite of instructions to the contrary. If this had been known, the Treasury probably would not have paid Spain as much.

Although Russell set the end of February 1841 as Spain's departure date, it was not until mid-April that the Commissioner and thirteen members of his family set out from Gravesend for New Zealand on board the emigrant ship, the Prince Rupert. Among their fellow passengers were the colony's new Surveyor-General, Charles Ligar, and five assistant surveyors.¹⁸ In early September, having put in for fresh supplies, the Prince Rupert hit rocks in the night and was wrecked without loss of life near Robben Island, Table Bay. Spain and Ligar were keen to reach New Zealand as soon as possible but few ships bound there touched at the Cape of Good Hope and those that did generally could not take on more passengers. So the Governor of the Cape, Sir George Napier, chartered the brig Antilla to carry the Commissioner and surveyors on to New Zealand. The Antilla left the Cape of Good Hope about a month after the wreck had occurred and arrived at Wellington on 8 December 1841. Five days later it sailed on to Auckland,

arriving on 24 December 1841.¹⁹ Spain's appointment was advertised in the Government Gazette on the 29th day of the month and his Commission, under the seal of the colony, was transmitted several weeks later.²⁰

During Spain's meetings with Governor Hobson in the weeks following his arrival, it soon became apparent that the Colonial Office officials in Britain had misconceptions of the work which the Land Commissioner was to do. Not only did they believe that one man could deal with all the land claims and that the New Zealand Company claims would take only a few months to settle, but they also believed that this could be done without the Commissioner leaving Auckland. It was assumed that Spain would simply follow the usual process of summoning claimants and witnesses from all parts of the colony. Hobson soon disabused Spain - and also Russell - of these ideas. There were just too many claims for one man to deal with in a reasonable time, communications were irregular and precarious, and the Maori land-sellers would only attend an investigation if it came to them.²¹

Spain, however, was still anxious to remain in Auckland - partly because he had bought a 110-acre block of land in Auckland on which to build a house for his family. When he found that the Governor did not intend dismissing Godfrey and Richmond, as expected by Russell and himself, Spain claimed superiority over them since the Secretary of State for the Colonies had appointed him as the single Land Claims Commiss-

ioner. Spain went on to argue that he should not have to do any travelling: Richmond and Godfrey should be sent to other areas while he dealt with the Auckland district claims. Alternatively, Spain suggested, he should validate the other Commissioners' decisions by presiding over a review of the cases heard so far. Then he and another Commissioner would go to Wellington to jointly hear the New Zealand Company claims, after which he would return to the capital while Godfrey and Richmond covered the South Island and northern district cases. Finally all three would meet again to decide on the cases investigated. Spain believed that in this way Russell's instructions would still be complied with. ²²

Hobson, however, insisted that Spain had no more authority to make the final decision on awards than Godfrey or Richmond and that each Commissioner had the same power as any of the others. Of necessity, Spain too would have to make on-the-spot enquiries into claims referred to him. Even if Spain did remain in Auckland, the work which he could do there would soon be finished. Although the Governor would do no more than give an assurance that Auckland would be made the centre of Spain's work whenever possible, the Commissioner decided to leave his family there. Spain did not accept the situation with a good grace, and he was still trying to get his way months later. ²³

Hobson provided Spain with more comprehensive instructions about his work than had been issued by Russell. Spain was

directed to begin investigation of the Company's claims and those of claimants against the Company as soon as possible. In total 116 cases were referred to Spain by Hobson. In dealing with these he was to give effect to both the November 1840 and September 1841 Agreements. The provisions of these Agreements overrode some clauses of the Land Commission Act, notably those dealing with the amount of land to be granted.²⁴ Although the Company had been guaranteed a title to land alienated by the Maoris at Port Nicholson, Wanganui and New Plymouth, Hobson held - and Spain agreed - that the guarantee was conditional upon the Company first proving that it had fairly extinguished the Maori title. Spain reasoned that if this had not been the British Government's intention, the validity of the Company's titles would have been immediately admitted and the New Zealand Governor would have been directed to give the Company a Crown grant without any prior investigation. Spain believed, too, that such an approach would ensure that the Treaty of Waitangi was honoured.²⁵ Spain and Hobson's interpretation was later upheld by the British Government.²⁶ Spain, therefore, first had to establish the title of the sellers to the property which had been sold - a difficult task since the Maoris often disputed among themselves as to their respective rights - and then find out whether the sale itself was legitimate. In the day to day running of his court Spain, like Godfrey and Richmond, was to be guided by the current Land Commission Act, 5 Victoria No. 14 (February 1842). Once the New Zealand Company's claims had been reported on, Spain was to return to Auckland to investigate any out-

standing or urgent cases in the Auckland and northern districts. ²⁷

Spain was to be accompanied to Port Nicholson by an interpreter-Protector and a survey party. Hobson appointed George Clarke as the Commission's interpreter and sub-Protector of Aborigines. Clarke's duty was to look after Maori interests during the investigation of the New Zealand Company claims. ²⁸ He was a son of the former missionary (1824-May 1841), George Clarke senior, who had been appointed Chief Protector in May 1841. ²⁹ Although Clarke was not yet 20 years old when appointed to the Commission, he was well recommended to Spain by the Governor, the Chief Justice and the Attorney-General. Particularly at the outset, Spain was quite dependant on Clarke's knowledge of Maori language, law and customs - a knowledge which had been acquired in the years he lived at Waimate and Poverty Bay, during journeys with the missionary William Williams in the East Cape area, and while employed as an interpreter in the Native Department. ³⁰ The head of the survey party attached to the Commission was a Mr Campbell. The surveyors were to measure and describe the lands which Hobson directed to be set aside for public reserves, as well as the lands the Company was awarded. ³¹

Although under the New South Wales Act, 4 Victoria No. 7, Godfrey and Richmond were supposed to have had a secretary, the appointment was never made, and the relevant clause was omitted when the law was re-enacted by Hobson in June 1841.

With their Protector of Aborigines, Kemp, acting also as a clerk, the Commissioners had no significant difficulties in doing without a secretary. Spain, however, considered that the two activities of Protector and clerk were incompatible. He could not, for example, discuss matters confidentially with a clerk who was also the representative of one party. Spain felt, too, that valuable time would be lost if a clerk was not appointed. He therefore nominated Robert Yates for the position. The Governor was reluctant to agree to this since Godfrey and Richmond were managing satisfactorily, but he did not press the point. Yates was engaged as Spain's private secretary. ³²

Spain finally set out for Wellington in April 1842 aboard the Government brig Victoria, leaving his family in Auckland. Clarke, the survey party, and his new secretary Yates went with him. Port Nicholson was reached on the 22nd day of the month. ³³

NOTES

1. '1844 Report of Select Committee', App. 3, p. 103; J. Rutherford, The Treaty of Waitangi and the Acquisition of British Sovereignty in New Zealand, 1840 (Bulletin No. 36, History Series No. 3, Auckland University College, Auckland, 1949), p. 28.
2. Russell/Hobson, 10-3-1841, IUP, Vol. 3, pp. 207-210/BPP [1842(569)38], pp. 85-88.
3. '1844 Report of Select Committee', App. 3, pp. 103-104; Wakefield/Hobson, 24-8-1841, *ibid.*, App. 26, p. 544; Later the Company was to claim that the British Government had guaranteed its title whether the original purchase was valid or not. For details of this development, see below, pp. 154-155, 160-162.
4. Wakefield/Hobson, 24-8-1841; '1844 Report of Select Committee', App. 26, p. 544; John Ward, NZC Sec/W. Wakefield, 30-4-1842, *ibid.*, App. 26, p. 570; Although cultivations may have been included under 'unsold areas', Wakefield did not specifically mention them here as one of the areas which would not be interfered with.
5. W. Wakefield/NZC Sec., 11-9-1841, '1844 Report of Select Committee', App. 26, pp. 543-544; Wilson, Land Problems, App. 6, 'Schedule attached to Governor Hobson's Agreement with Colonel Wakefield', pp. 239-240; Beaglehole, Captain Hobson, pp. 101-102; The Waitara district was omitted from the schedule of Company lands in the September 1841 Agreement. In [November] 1841, Colonel Wakefield therefore asked for an extension of almost 31,000 acres so that the Waitara was included in the New Plymouth block. Hobson gave his assent either late in 1841 or early 1842. B. Wells, The History of Taranaki (Edmondson and Avery, New Plymouth, 1878; reprint, Capper Press, Christchurch, 1976), pp. 79-80.
6. W. Wakefield/NZC Sec., 11-9-1841, '1844 Report of Select Committee', App. 26, pp. 543-544; John Miller, Early Victorian New Zealand: a study of racial tension and social attitudes, 1839-1852 (Oxford University Press, London, 1958), pp. 8-10.
7. W. Wakefield/NZC Sec., 11-9-1841, '1844 Report of Select Committee', App. 26, pp. 543-544; Beaglehole, Captain Hobson, pp. 101-102; for details of the development of Maori opposition to the Company's Port Nicholson 'purchase', see below, pp. 142-143, 148-153.
8. W. Wakefield/NZC Sec., 11-9-1841, '1844 Report of Select Committee', App. 26, pp. 543-544; W. Wakefield/NZC Sec., 30-5-1842, encl. in Somes/Stanley, 24-10-1842, *ibid.*, App. 2, pp. 9-10.
9. Adams, Fatal Necessity, p. 179; Beaglehole, Captain Hobson, p. 45.
10. Scholefield, New Zealand Biography, Vol. 2, pp. 316-317.
11. George Clarke, Notes on Early Life in New Zealand (J. Walch and Sons, Hobart, 1903), p. 47.

12. 'Civil establishment', 1841 Bluebook, IA 12/2.
13. Russell/Gipps, 21-11-1840, Turton, Land Purchases in the North Island, Part A3, No. 10, p. 163.
14. As Spain was not to arrive in New Zealand until the very end of 1841, the law under which he actually began work was Hobson's second Land Claims Ordinance, 5 Vic. No. 14, which replaced 4 Vic. No. 2 in February 1842.
15. Vernon Smith/W. Martin, 24-3-1841, encl. in Russell/Hobson, 25-5-1841, G 1/2; Marais, Colonisation of New Zealand, p. 126.
16. Russell/Spain, 2-2-1841, IA 1; Col. Sec., NSW/Col. Sec., NZ, 30-10-1841, IA 1; 'Civil establishment', 1841 Bluebook, IA 12/2; 1842 Bluebook, IA 12/3. The Secretary of State obviously thought the position very important: for example, in his instructions to Hobson, 9-12-1840 (section 5 on waste lands) he said, until it is shown which lands are private and which are public, 'there can be no reasonable prospect of the colony making any effectual advance in agriculture, wealth or sound internal polity'. IUP, Vol. 3, p. 152/ BPP (1841[233]33), p. 30.
17. Spain/Col. Sec., 22-3-1842, IA 1.
18. Russell/Spain, 2-2-1841, IA 1; Editorial, New Zealand Gazette and Wellington Spectator, 11-12-1841; 'Shipping intelligence' notice, ibid.; the New Zealand Gazette and Wellington Spectator, as it was known from 21 November 1840, had previously been first called the New Zealand Gazette, and then the New Zealand Gazette and Britannia Spectator.
19. Editorial, New Zealand Gazette and Wellington Spectator, 11-12-1841; 'Shipping intelligence' notice, ibid.; Hobson/S.S. Cols, 15-1-1842, G 25/1; Stanley/Hobson, 2-2-1840, and encl., Napier/Russell, 20-9-1841, G 1/4.
20. Notice, 28-12-1841, New Zealand Government Gazette, 29-12-1841; Col. Sec./Spain, 15-3-1842, IA 4/253.
21. Col. Sec./Spain, 19-3-1842, ibid.; Spain/Col. Sec., 22-3-1842, IA 1; Hobson/S.S. Cols, 26-3-1842, G 25/1.
22. New Zealand Government Gazette, 9-3-1842; Spain/Col. Sec., 22-3-1842, IA 1; Col. Sec./Spain, 16-3-1842, IA 4/253; Col. Sec./Spain, 10-9-1845, ibid.
23. Spain/Col. Sec., 12-3-1842, IA 1; Col. Sec./Spain, 19-3-1842, IA 4/253; Spain/Col. Sec., 22-3-1842 and marginal note by Governor, IA 1; Col. Sec./Spain, 30-3-1842, IA 4/253; Spain/Col. Sec., 3-4-1843, IA 1.
24. Col. Sec./Spain, 19-3-1842, IA 4/253; 'Governor's instructions to Spain', Col. Sec./Spain, 26-3-1842, ibid.; W. Wakefield/NZC Sec., 30-5-1842, '1844 Report of Select Committee', App. 26, pp. 558-559; Col. Sec./Spain, 9-8-1845, IA 4/253.

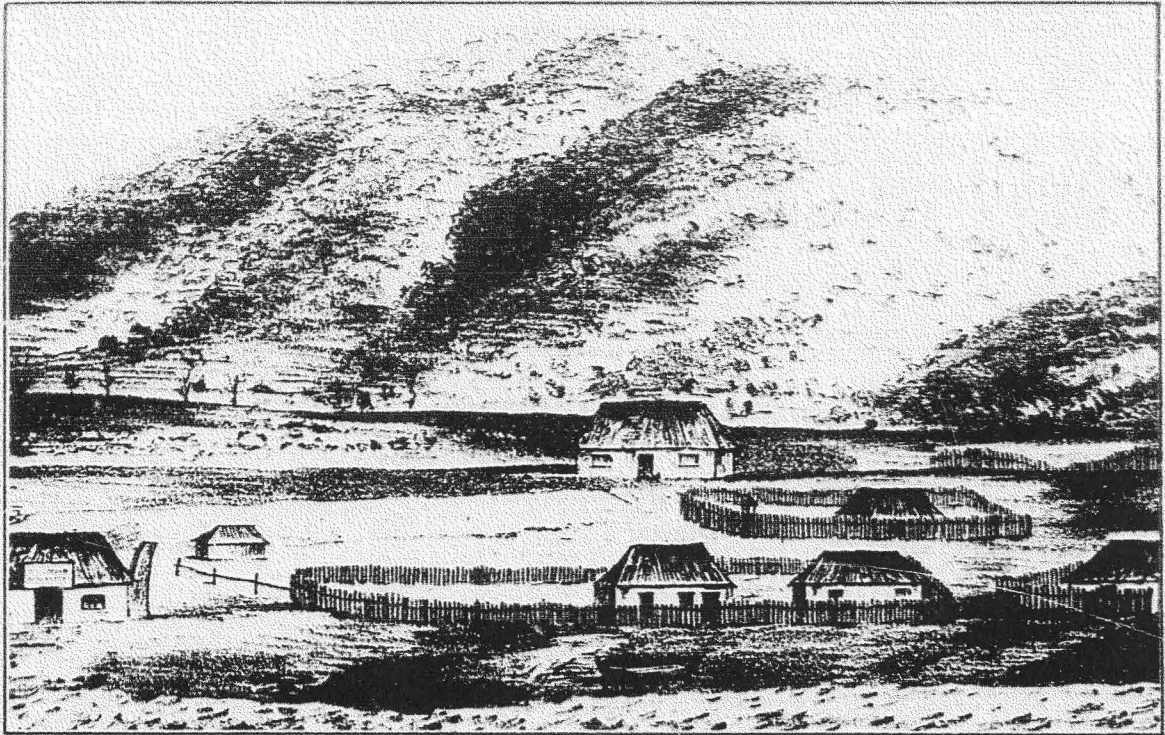
25. W. Wakefield/NZC Sec., 11-9-1841, '1844 Report of Select Committee', App. 26, pp. 543-544; Spain, 'General report'/Col. Sec., 12-9-1843, IA 1; Spain, memorandum/Shortland, 19-11-1843 (dated 30-9-1843), '1844 Report of Select Committee', App. 9, pp. 280-283.
26. See below, pp. 161-162.
27. Col. Sec./Spain, 19-3-1842, IA 4/253; 'Governor's instructions to Spain', Col. Sec., 26-3-1842, *ibid.*; '1844 Report of Select Committee', Report, p. 7.
28. Spain, memorandum/Shortland, [30]-9-1843, encl. in Shortland/Stanley, 21-11-1843, '1844 Report of Select Committee', App. 7, pp. 255-256.
29. McLintock, Crown Colony, pp. 177-181; Scholefield, New Zealand Biography, Vol. 1, p. 158.
30. *ibid.*, pp. 158-159; Wilson, Land Problems, pp. 169, 120.
31. Col. Sec./Spain, 26-3-1842, IA 4/253; Spain/Col. Sec., 5-7-1842, IA 1.
32. Spain/Col. Sec., 12-3-1842, IA 1; Col. Sec./Spain, 19-3-1842, IA 4/253; Col. Sec./Spain, 26-3-1842, *ibid.*; 1844 Bluebook, IA 12/6.
33. New Zealand Gazette and Wellington Spectator, 23-4-1842.

CHAPTER FIVE

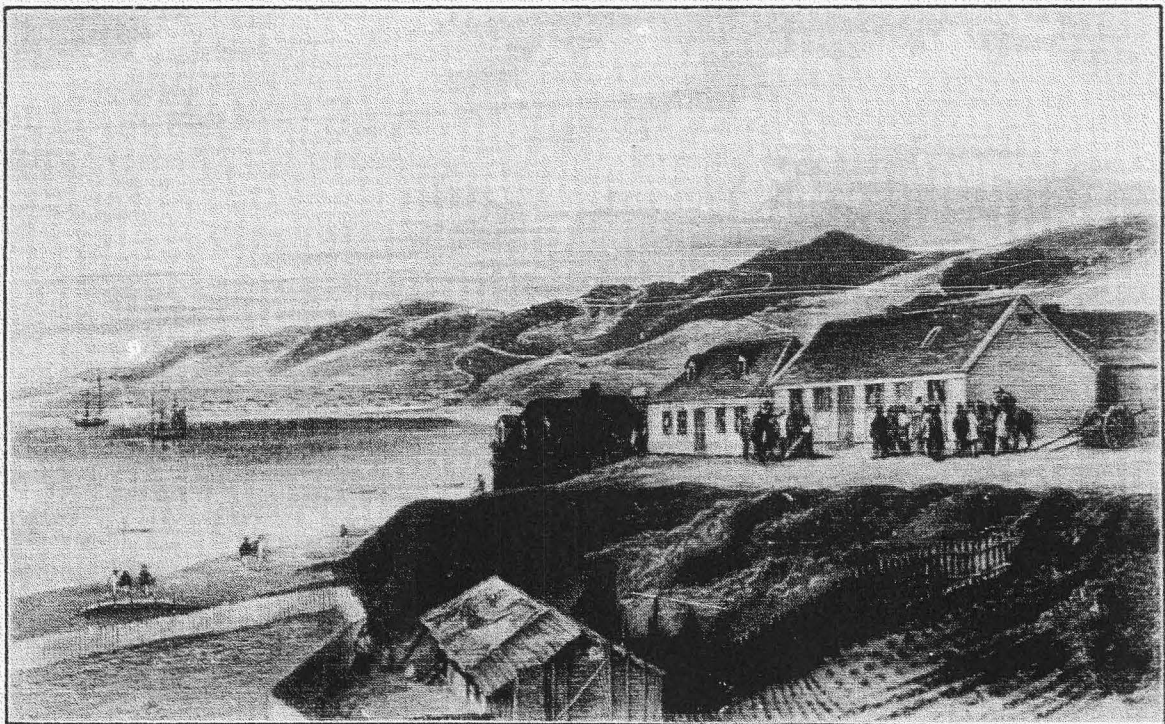
A 'DIFFICULT AND COMPLICATED QUESTION':
THE NEW ZEALAND COMPANY'S PORT NICHOLSON CLAIM

In Wellington, Spain wasted no time before setting to work. He opened his office at Manners Street, Te Aro Flat, and placed a notice in the Government Gazette stating that his investigations would open at 11 a.m. on 15 May 1842 at the court-house, Lambton Quay.¹ This building, disrespectfully but aptly known to some as the 'Barn of all work', also served as a post office, police station and a church until it burnt down in early July 1842.² The notice also advised interested parties to attend on the day specified with witnesses and original deeds and their translations, copies of which were to be left at the office. Before the sittings began Spain visited the New Zealand Company's agent, Colonel William Wakefield, to arrange the hearings of the Company's cases and offered to help, if necessary, secure Maori witnesses to support the Company's claims.³ On 15 May Dr George Evans, counsel for the New Zealand Company, and Colonel Wakefield submitted the six purchase deeds on which all of the Company's land claims were to be based.⁴ As well, several non-Company individuals and a missionary body made private claims for small pieces of Wellington land on the basis of prior purchase.

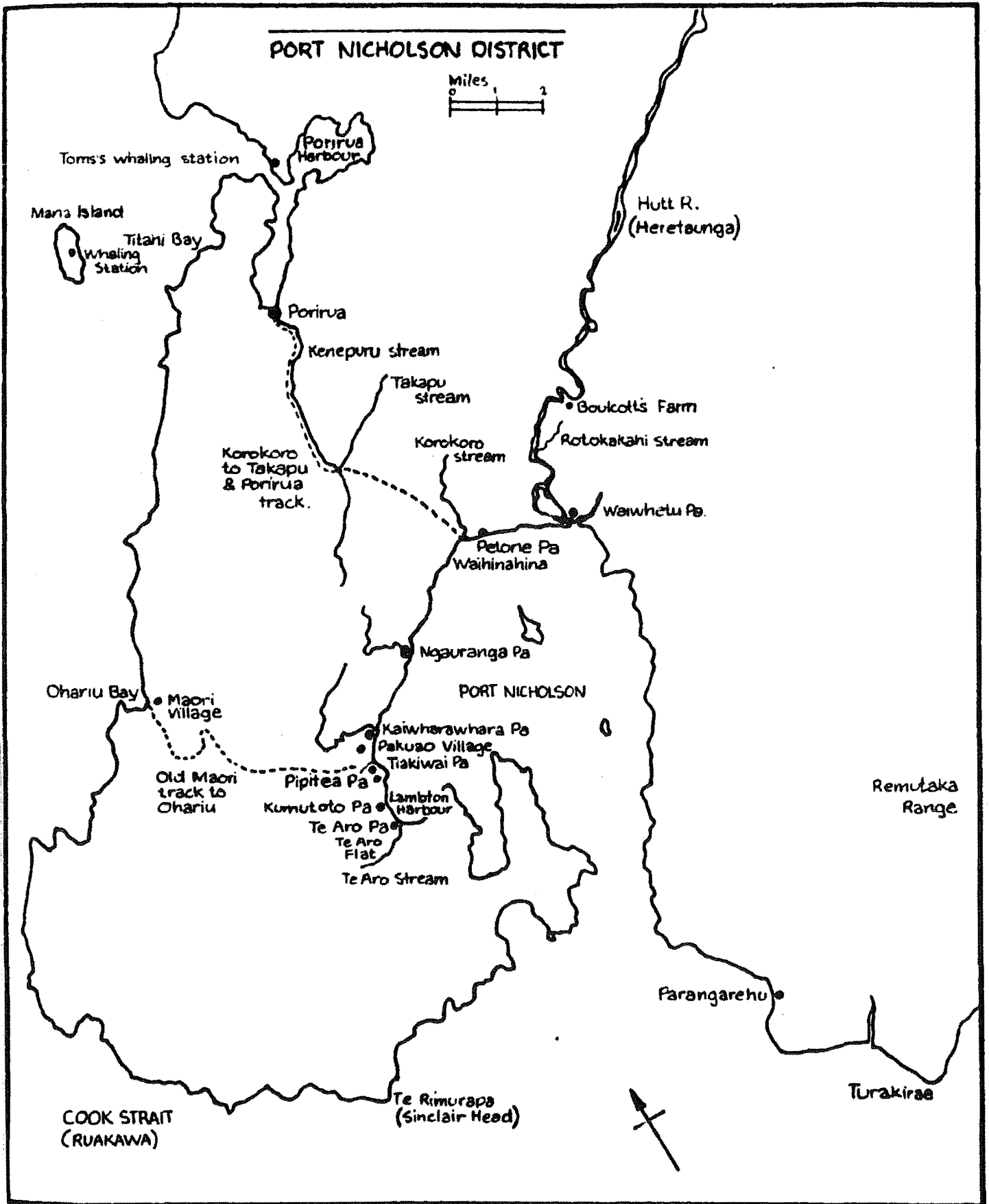
The Company's claim to the Port Nicholson area derived from three of the six deeds presented to the Commission by Dr Evans and Colonel Wakefield. The first of these had been 'signed'



Wellington's first Courthouse (centre)



Courts of Justice, Mulgrave Street, Wellington



by Port Nicholson Maoris on 27 September 1839.⁵ The Tory had gone to the Cook Strait at the suggestion of the Company's Directors who had decided that Port Nicholson seemed to be the best place to establish the Company's first settlement.⁶ Soon after arriving in the Strait, Colonel Wakefield met Richard Barrett. Barrett was a whaler, based at the time at Queen Charlotte Sound, whose Maori wife had close relatives living in Port Nicholson. He encouraged Wakefield to go to the port and accompanied the Tory across the Strait to act as pilot and interpreter. When they arrived in the harbour on 20 September 1839 the ship was met by canoes carrying Te Puni and Te Wharepouri, the Ati Awa chiefs of Petone and Ngauranga pa.⁷ These chiefs became the principle protagonists of the 'sale' of land to the Company and the two main meetings to discuss the 'sale' during the week prior to the execution of the deed were held at their villages.⁸

The deed was 'signed' the day after the display and division of the payment goods on board the Tory into six lots for the main Port Nicholson pa. The deed and the land reserve system - whereby the Maoris were to be given one-tenth of the land sold - were explained to the Maoris by Barrett and Ngati, a Maori who had returned to New Zealand from England aboard the Tory. About one-half of those who 'signed' were chiefs of Te Puni's pa, Petone.⁹ Some participants, such as Puakawa of Waiwhetu pa, were unwilling to part with their land but 'signed' anyway because they wanted a share of the goods. Others did not 'sign' but accepted goods when given them, and several important chiefs, notably those of Te Aro, Pipitea and



Richard Barrett



Te Puni



Te Wharepouri

Kumutoto pa took little or no part in the proceedings.¹⁰ The deed conveyed to the Company all the land from Sinclair Head to Cape Turakirae and inland to the Tararua Range, including the islands in Port Nicholson harbour, and part of the inland Porirua district.¹¹

Those in favour of 'selling' the land gave two main reasons for their stance. First, European arms and settlement would give them protection against their enemies, notably the Ngati Raukawa of Otaki who were expected to attack at any time.¹² Second, they were well aware of the wealth that a European settlement - their Pakeha - would bring them through, for example, trade and employment. This wealth had previously been monopolised by Ngati Toa, notably through their control of the best whaling station sites.¹³

These reasons were tied in with other unspoken political motives which Colonel Wakefield could have had little inkling of at the time. In brief, the Ati Awa had only recently migrated to Port Nicholson from Taranaki in the wake of the great Ngati Toa migration south of the 1820s. They had uneasy relations with Ngati Toa whose main settlements were in the Kapiti Island-Porirua area, and with the third body of recent migrants, Ngati Raukawa, who lived at Otaki, Ohau and Horowhenua.¹⁴

The Port Nicholson Ati Awa chiefs wanted to free themselves of Ngati Toa's dominance of the Cook Strait region and assert their own claim to Port Nicholson. Te Wharepouri and Te Puni also wanted to strengthen their position within the harbour

itself. This had, for instance, been quite recently challenged by the Taranaki people of Te Aro pa who, in 'selling' a piece of Te Aro land to the Wesleyan Mission in mid-1839, had denied that their rights of occupation were derived from the Ati Awa. Te Puni and his immediate family were especially concerned to put the Taranaki people in their place as they had seriously insulted him a few years earlier.¹⁵ The Ati Awa achieved their ends first, by independently offering the land to Wakefield as if it was incontestably theirs alone. Second, Te Wharepouri and Te Puni presided over the division of the payment - a division which included shares for Port Nicholson pa only, and which gave the smallest portion to the Te Aro pa. When the Taranaki people accepted the goods, the Ati Awa considered that their superiority had been acknowledged, and Te Puni felt his honour satisfied.¹⁶

Soon after completion of the 'sale' the Tory left Port Nicholson harbour for Cloudy Bay. John Smith, a Maori-speaking Jack-of-all-trades picked up at Te Awaiti, Queen Charlotte Sound, was left behind at Port Nicholson to advertise and protect the Company's interests in the area.¹⁷ When Colonel Wakefield arrived at Cloudy Bay, the local Ngati Toa people soon told him that he had bought the harbour from the wrong people as Te Rauparaha and the Ngati Toa people owned the entire Cook Strait region. John Guard, a whaler at Cloudy Bay, confirmed their story.¹⁸ So Colonel Wakefield sailed for Kapiti where he hoped to complete and extend the Company's title by purchasing the rights of the Ngati Toa to the lands on both sides of the Strait.¹⁹

Wakefield and the Ngati Toa chiefs, notably Te Rauparaha and Te Hiko, had several interviews at which the proposed sale was discussed. The first took place on board the Tory off Kapiti on 18 October 1839. During the later meetings the sale was discussed further, the payment displayed and the amount offered was increased on demand. The deed conveyed to the Company all the land between 43° South latitude in the South Island and an imaginary line between Mokau on the west coast of the North Island and Cape 'Tehukakore' at about 41° South on the east coast. It did not include Kapiti and Mana Islands as Colonel Wakefield knew that other Europeans already had claims to these. ²⁰ After the deed was explained, and a plan of the area involved looked at, Te Rauparaha dictated to Colonel Wakefield's nephew, E. Jerningham Wakefield, the names of many places from the Mokau River down the west coast of the North Island to Port Nicholson and in the northern half of the South Island. The deed was executed 6 days after the first talks - a quarrel between Te Hiko and Te Rauparaha about the latter's greed for the goods having delayed matters for a few days. The following day the other chiefs added their marks, with Te Rauparaha and Hohepa Tamahengia 'signing' on behalf of their relatives in Cloudy Bay, and Te Whetu 'signing' for his son Mark, an important chief at D'Urville Island. Te Rangihaeata was not at Kapiti during this time, so goods were set aside for him. When he arrived a few days later, he, too, added his mark to the deed. ²¹



Te Rangihaeata



Hiko



Te Rauparaha

The Kapiti deed was supported by a second deed executed by Ati Awa Maoris in Queen Charlotte Sound on 8 November 1839. Both deeds conveyed the land between the same extreme boundaries. Colonel Wakefield had arrived in Queen Charlotte Sound on 31 October accompanied by Te Patu and other At Awa chiefs from Waikanae. He found these negotiations more difficult as the most influential chiefs were absent and the lesser chiefs became involved in petty arguments. An agreement and a payment similar to that made at Kapiti was, nevertheless, made. ²²

In his dealings with the Ngati Toa Wakefield believed that he had made it clear what the purchase meant to him. That is, that in exchange for the goods and the provision of Maori reserves and by the signing of the deed, the land now belonged completely to the New Zealand Company. Again we cannot be absolutely certain about what the Maoris thought was happening, but it is likely that their motives were more complex than Wakefield suspected. Certainly the Ngati Toa's experience of Pakehas in their area - limited as it was primarily to whalers, sealers and traders - gave them no reason to believe that Wakefield would bring more than a fraction of the people he said he would or to fear that they would occupy a great deal of land. And since the Ngati Toa were a 'wealthy' tribe, it is probable that their great interest in acquiring the payment was not primarily due to the contents of the payment, large as it was. Rather, they desired the recognition of their claims to dominance of the Cook Strait region - a recognition that was inherent in the Pakehas' act of treating with them and

giving them a payment, and which would strengthen their title, not weaken it. Although Te Rauparaha had reacted quickly to the Port Nicholson Ati Awa 'sale' by allowing, or encouraging, the Ngati Raukawa attack on Ati Awa hapu at Te Kuititanga (mid-October 1839), it was not enough to nullify the Ati Awa's challenge. Soon after the Tory arrived, therefore, Te Rauparaha began asserting his own authority over the Europeans on board, and he lost no time in telling Wakefield that the Port Nicholson Ati Awa were living within his territory and on his say-so. And so, too, Te Rauparaha listed the names of many places in the Cook Strait and on the Kapiti Coast which he claimed by inheritance or conquest - places which Wakefield thought the chief was agreeing to sell, though Te Rauparaha himself was using the opportunity to have the extent of his claims recorded in the Pakeha deed. If it turned out later that Wakefield was serious about his settlement plans, some small pieces of land could be given to him in return for his payment. ²³

Given these differences in interpretation of Wakefield's activities, it is hardly surprising that Maori opposition to the 'purchase' soon surfaced. This opposition took different forms. Soon after the Tory had left for Cloudy Bay, for instance, chief Te Ropiha Moturoa of Pipitea pa 'sold' a small amount of land near the pa to Robert Tod in assertion of his right to do so. Te Ropiha Moturoa had refused to take part in or accept the 'sale' to the Company because he denied Te Wharepouri and Te Puni's claims to authority over the entire harbour. Instead the Pipitea chief held that he himself had superior

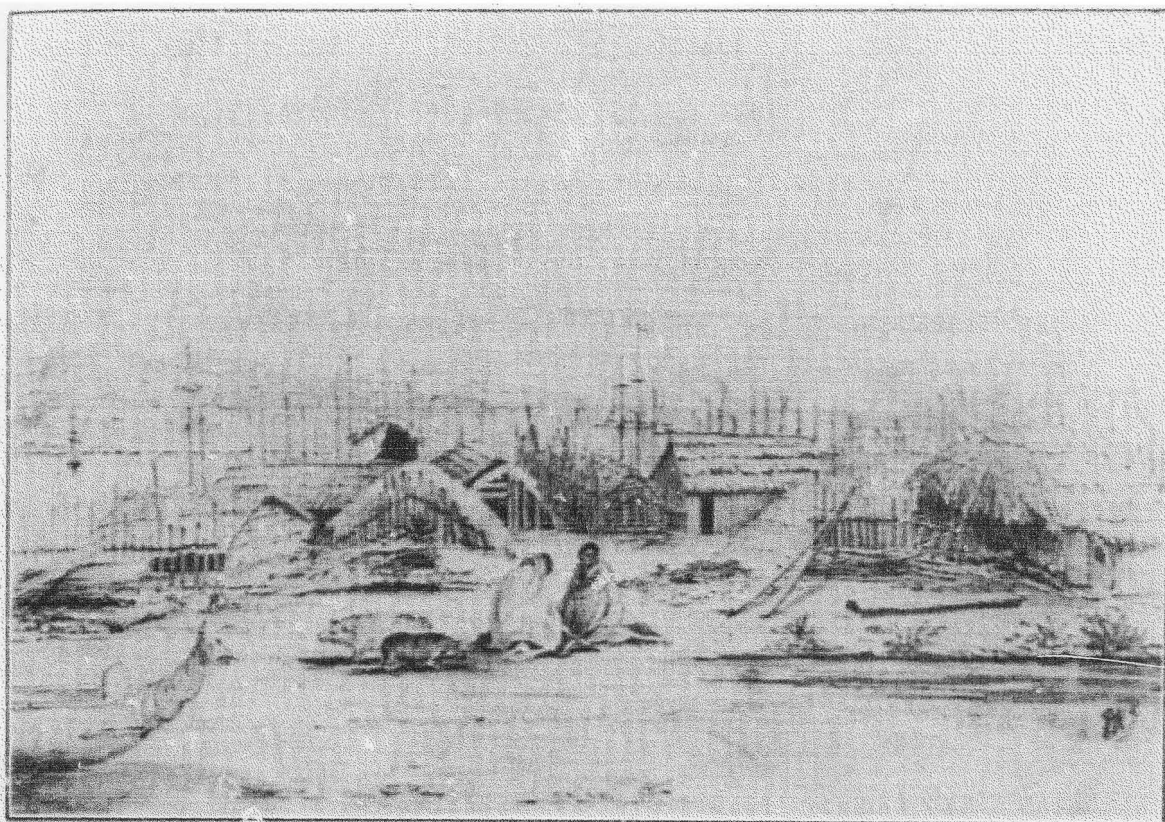
rights to the Pipitea and Te Aro lands since his brother-in-law, the Ngati Mutunga chief Patukawenga, had given them to him 6 months before Te Wharepouri had even arrived at Port Nicholson. The Ngati Mutunga people, from whom Te Rophia Moturoa was claiming his rights, had been the first of Te Rauparaha's allies to occupy Port Nicholson but had emigrated to the Chatham Islands late in 1835. ²⁴

But the real trouble began when the Company settlers tried to occupy the land Wakefield had 'bought'. In early January 1840 the Cuba arrived at Port Nicholson with the survey party, and was followed soon after by the Aurora, the first of several immigrant ships which were to bring almost 1,500 Europeans to Port Nicholson by June. ²⁵ Even Te Wharepouri, who had been to Port Jackson (Sydney), was shocked at the numbers who were arriving. As Jerningham Wakefield relates, ²⁶

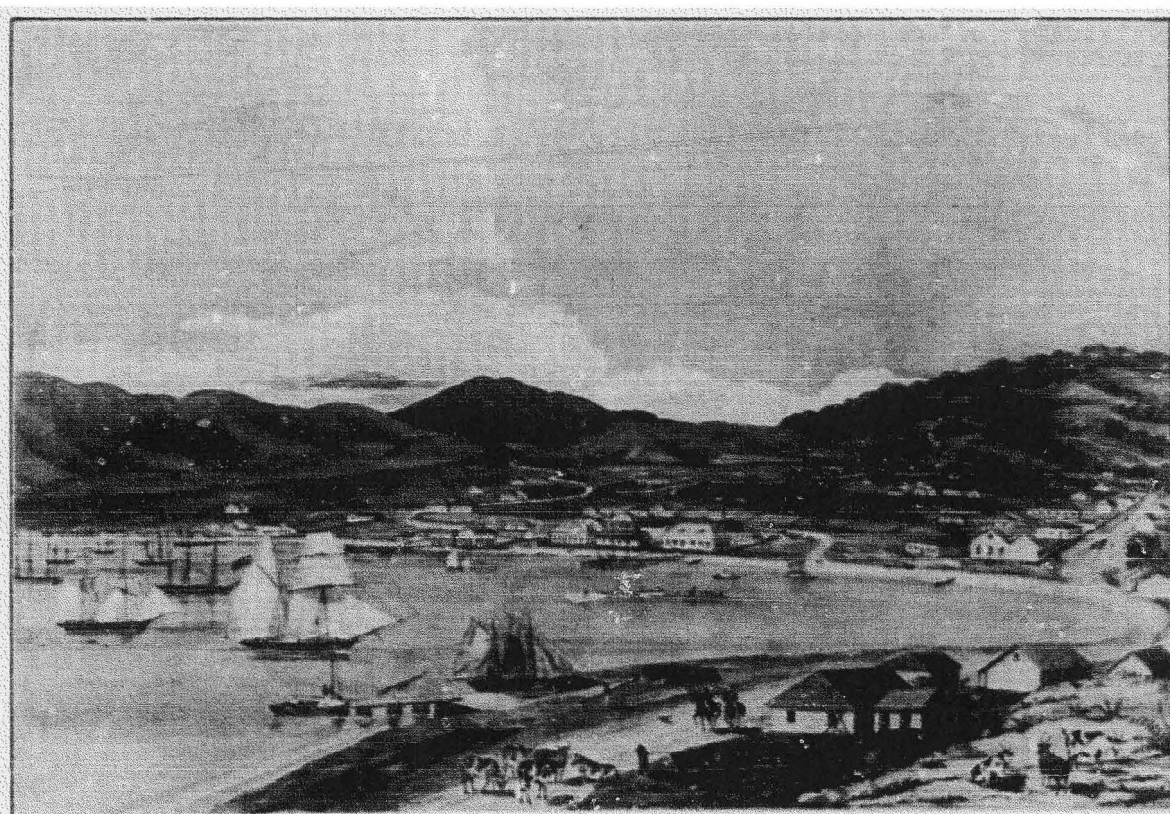
soon after the emigrants from the two first ships had landed to look about them, Wharepouri came to Colonel Wakefield's hut one morning, and showed him the war-canoes hauled down to the water's edge ready for launching, in front of Pito-one [Petone]. Upon being asked his meaning, he said he was come to bid farewell. 'We are going,' said he, 'to our old habitation at Taranaki. I know that we sold you the land, and that no more white people have come to take it than you told me. But I thought you were telling lies, and that you had not so many followers. I thought you would have nine or ten, or perhaps as many as there are at Te-awa-iti [Te Awaiti]. I thought that I should get one placed at each pa, as a white man to barter with the people and keep us well supplied with arms and clothing; and that I should be able to keep these white men under my hand and regulate their trade myself. But I see that each ship holds two hundred, and I believe, now, that you have more coming. They are all well armed; and they are strong of heart ... They will be too strong for us.

Te Wharepouri was dissuaded from leaving, and in spite of their initial reaction, he and Te Puni welcomed the settlers.

The original location of the town site near Te Puni's pa at Lower Hutt was, however, floodprone and exposed. In mid-March 1840, therefore, it was decided to re-establish the settlement on the other side of the harbour even though this meant shifting out of 'friendly' territory into 'unfriendly' territory. The surveyors began work on the new location before the end of the month. Relations with the Maoris living in the vicinity deteriorated immediately and confrontations took place. The inhabitants of the local pa, Te Aro, Pipitea, Kumutoto and Tiakiwai, opposed them by pulling up survey stakes and obliterating markings. They held that the land had neither been sold by themselves, the owners, nor paid for and that the Pakehas should return to the land they had bought at Petone and Ngauranga. After a show of force by the surveyors and others, the survey continued.²⁷ At a meeting with Colonel Wakefield, the Maoris told him that the goods which the pa had been sent at the time of the 'purchase' in September 1839 had not been fairly divided. Some, at least, held that they had seen the payment as a gift by Te Wharepouri to his sister who had married into the pa. Although Colonel Wakefield sent twenty more blankets to settle the claims, no clear explanation of his intention was given at the time, and thus, as they later explained, the blankets were seen by the Maoris only as a payment for them to stop pulling up the survey pegs. Others saw the blankets as just a present.²⁸ Several settlers, there-



Te Aro pa



View of part of the town of Wellington

fore, had to make additional payments before they could move on to their lands. ²⁹

In August 1840 when Captain Edward Daniell tried to build a house on his town acre which was Te Aro land, the Taranaki people of Te Aro pa again interfered and in the ensuing disturbance a group of armed settlers rushed to the scene believing that a European had been tomahawked. ³⁰ As it happened, the Colonial Secretary, Willoughby Shortland, was visiting Wellington. He immediately issued a notice prohibiting such actions and at the suggestion of the Maoris made an agreement on 29 August whereby the Taranaki Maoris ceded the disputed Te Aro land to the Crown. Their pa and its cultivations were not included. In exchange Shortland agreed that the dispute would be submitted to the Governor and if it was decided that the land had not been bought by the Company, the inhabitants of the pa were to receive compensation. Until the question of title was decided by a Land Commissioner or the Governor, no one was to occupy the land without first getting Shortland's permission to do so. ³¹

Incidents, however, continued to occur until Hobson's arrival at Wellington in August 1841. As a result of Maori representations to him and investigations at Te Aro and Pipitea pa by the Chief Protector, George Clarke senior, the Governor reiterated Shortland's promise that the Maoris would not be dispossessed before an investigation of their claims was made. ³² In September 1841 the following letter was sent to

the Pipitea chief, Wairarapa, and subsequently published: ³³

Friend Wairarapa, - You ask for a letter from the Governor, that the white man may not drive you from your pas, or seize your cultivations.

Listen to the word of the Governor: he says, that it is not according to our laws that you should be driven, if you do not agree to go.

This letter is from the Governor.

Although Hobson persuaded the Te Aro Maoris to move to some Company reserves, they soon after returned to their lands and resisted all subsequent efforts to get them to leave. ³⁴

Race relations in the area remained unsettled and were easily strained. ³⁵

The hearings of the Company's Port Nicholson claim began on 16 May 1842. Soon afterwards, Colonel Wakefield took over from Dr Evans and began personally presenting the case. ³⁶

He also lodged a protest against the fees which the Company would have to pay when Spain made his final report. At 10s. per 100 acres granted in excess of 500 acres, he argued that it would cost the Company £5,000 for a grant of 1,000,000 acres and incidental costs were likely to increase the total due to £6,000. Spain accepted the protest, believing that these costs were probably not anticipated in Great Britain. ³⁷

Three days after the hearing began Colonel Wakefield told the Commissioner that he was prepared to rest his case. The evidence taken in that time had been given by the Colonel himself,

his nephew, Jerningham, the Company's surgeon who had been present at the 'sale', Dr John Dorset, and the Petone pa chief, Te Puni, who had taken a leading part in the 'sale'. But Spain considered the case far from proven, and recommended that Colonel Wakefield should bring more witnesses forward. The other chief who was prominent in the 'sale', Te Wharepouri of Ngauranga pa, was absent so the chief of Kumutoto pa, Wi Tako, was called. When his evidence went against the Company, Colonel Wakefield declared that Wi Tako had been 'tampered with'. On 23 May the Colonel gave the presentation of the case back to Dr Evans. Since the Company now refused to produce further evidence, Spain directed that more witnesses be called on their behalf. ³⁸

Although he had received the news of Spain's appointment as 'unsatisfactory information', Colonel Wakefield did not actively oppose the enquiry until the Commissioner insisted on more evidence being produced. He had believed that the investigation would be largely a matter of form. ³⁹ On realising that Spain intended to examine the case thoroughly, Wakefield began a veritable campaign against the Commission. Inside the courtroom he urged on Spain the 'mischievous consequences of a protracted examination of the natives.' ⁴⁰ He suggested to Spain that it would be better to call the Maoris together and have a korero (conversation, discussion) on the basis of which a report could be written without having to go through the process of examining witnesses. And he tried to curtail the proceedings as much as possible by, for

example, dilatoriness in bringing witnesses forward to testify. The Company's representatives themselves would also keep the court waiting, often for hours after it had opened, and as time went on it became increasingly difficult to get Colonel Wakefield to turn up at all. Only the threat that the hearings would continue anyway made him continue to attend.⁴¹ So almost every day Spain found himself asking the Company to produce more evidence and witnesses in favour of the sale. Often Clarke had to get important witnesses, notably local Maoris who had been parties to the 'sale', to attend because no one from the Company made any attempt to do this.⁴² In short, as Spain complained,⁴³

The whole conduct of the parties engaged in the Company's cases towards the proceedings of the court, went to show their utter disregard of all forms observed in courts of inquiry; and the evidently wanted to make it appear that the executive of the Commission was a mere useless form, to which they were obliged to submit, but that the result was immaterial to them, as they could call upon the Government, under the [November 1840] agreement, to give them a Crown grant, whether my report were favourable or not to the validity of the purchase.

Outside the courtroom Colonel Wakefield exerted his influence to encourage public opposition to the Commission and the local newspaper, the New Zealand Gazette and Wellington Spectator, took up the Colonel's cause and followed a 'system of agitation' during the next few months.⁴⁴ The editor alleged, for example, that Spain's 'minute examination' would not have been undertaken unless the Company's title was to be altered and noted that several settlers who wanted to develop

their sections had delayed doing so until the Commissioner's decision was made. ⁴⁵ In early June sarcastic surprise was expressed at the fact that Spain had already taken all of 3 weeks over the matter, noting that ⁴⁶

we have taken root too strongly in this soil to be dispossessed, especially when we know it to be guaranteed to those from whom we hold it.

In the same article the editor held that the Commission's activities had had a bad effect on the local Maoris -

some confidently assert that they are to be paid over again in money gold; others tauntingly say that 'the white people [George Clarke?], who write so much at Te Aro, have been sent by the Queen to tie up Wide-a-wake [Colonel Wakefield] and Dicky Barrett for buying the land with Jew's harps'; and almost all of them believe that the white people are not to be allowed to settle on any more land. One or two instances have occurred since the arrival of the Commissioner and the special Sub-Protector, in which Natives have forcibly expelled settlers from spots close to the harbour, of the peaceable cession of which there formerly existed no doubt. The aggression has, in these cases, been carried so far, as to pull down the houses erected by the settlers.

The paper was also very critical of the appointment of Clarke, 'a lad, just from school', instead of a local person. This was seen as further evidence of the Government's disregard of the Company settlers' needs even at a time when there were outbreaks of trouble with the Maoris. The Governor was also accused of bias in having appointed both Clarkes, father and son, to public office, having previously given important public positions to the Shortland brothers. The paper went so far as

to impugn Clarke's integrity by asserting that the combination of interpreter and protector roles had led Clarke to be, at the least, negligent in his interpretative work.⁴⁷

The public reaction to the efforts of the Company officials and their supporters to stir up anti-Commission opinion was mixed and changeable in spite of the feelings of anxiety and vulnerability which the actual difficulties of establishing Wellington, a frontier settlement, had generated. For example, on 7 June 1842 a public meeting was held at the Exchange, Te Aro, to discuss the Land Claims Commission. There was general agreement that the Commission would injure the settlement by its slowness and it was felt that Spain had lost his independence by allowing himself to be associated with Hobson's Government. It was, however, agreed that nothing more could be said until the report was issued.⁴⁸ Similarly, a rumour that Spain was delaying matters in order to ensure financial support for his large family did circulate but, in the way of all gossip, was probably only repeated further by those who were already antagonistic towards the Commission.⁴⁹ Another illustration of the uneven impact of the Company's efforts is found in the editorial columns of the New Zealand Gazette and Wellington Spectator which, under the pro-Company editor Samuel Revans, was initially strongly opposed to the Commission. In the latter months of 1842 the Spectator also adopted a wait-and-see attitude and few references to the court were made by the editor. By mid-February 1843 the Spectator had changed hands, and comments by a rival paper, the New Zealand

Colonist and Port Nicholson Advertiser, provoked it to express a different view of the matter. It now argued that the settlers should have established the validity of the original purchase themselves and that Russell and Gipps had never done more than offer to give the Company a Crown grant once the purchase from the Maoris was made good. ⁵⁰

General Maori interest in the court hearings was also considerable. At least initially they attended in substantial numbers and were keen to hear and see all that occurred there. During the sessions Maoris seem to have made representations to Spain about their problems, such as Pakeha encroachment on potato grounds, in the good faith that he would decide impartially. ⁵¹ Maoris who gave evidence before Spain used traditional forms to some extent. For example, sometimes-extensive references to genealogies were made and the history of acts upon the land given. Details such as the names of canoes travelled in at significant times and the exact number of baskets of potatoes exchanged as gifts were also mentioned in support of statements. All the evidence, questions and answers were taken down verbatim, with Maori evidence being translated for the court and also recorded in English. The court occasionally adjourned to the land being discussed and the Maori witnesses would then point out and/or mark with stakes the boundaries of what they held they had sold. ⁵²

Like the Europeans, the Maoris' attitude to the court depended on how their personal welfare was affected by its existence

and actions. A clear indication that the Maoris themselves identified the Commission with the interests of the Maori opponents to the 'sale' was given when Te Puni presented several tons of potatoes to Colonel Wakefield. The people of Kumutoto, Pipitea and Te Aro pa promptly responded by giving a similar gift to their champions in the matter, Spain and Clarke. Recognising the present for what it was, Spain adroitly deflected any suggestion of partiality on his own part by accepting the gift as a courtesy gesture to a visitor and paying the people for it. ⁵³

In the face of such attempts by the Company's officials and settler-supporters to pressurise the Commission, Spain and Clarke dug their heels in. Clarke, for example, privately told his father that he would not let the Company's Protector of Aborigines, Edmund Halswell - appointed by the Company to manage the Native Reserves and generally look after Maori interests - or any other Company representative domineer over him. In any case, Clarke offered them as little opportunity as possible to do so by giving them a wide berth except in court. Clarke was appointed the Protector of the new Southern District Protectorate in mid-October 1842 - a position which gave him helpful seniority over Halswell. ⁵⁴ As for Spain, in later years Clarke described the Commissioner as a man who might have been softened by flattery and noted that ⁵⁵

the agents of the Company would have got more out of such a man if they had not begun by shaking their fists in his face, grimacing to their utmost power of contortion and defying his authority.

This campaign against the Commission was not restricted to the environs of Wellington. Writing home to England, Colonel Wakefield asserted his view that Spain's proceedings were unauthorised and misjudged, as the November 1840 Agreement precluded any necessity on the part of the Company to prove its original titles valid.⁵⁶ Anyway, if the 'real and good conscience' of the case rather than legal forms were considered the Company's titles were 'unimpeachable' because the bargains made with the Maoris⁵⁷

were conducted in a spirit of Justice and openness unexampled in transactions of the same nature in this country ... [and] ... they were perfectly intelligible and satisfactory to the vendors.

The reserve system was considered by Wakefield as ample compensation for the land. Colonel Wakefield also told the Company secretary that the land claims court was a 'burlesque' and practically empty after the first week due to lack of European and Maori interest.⁵⁸

Some settlers also complained of the Court in their private letters. In March 1843, for example, one settler wrote home:⁵⁹

You are aware that Mr. Spain, the Land Commissioner, is here. I believe he is just, and well-disposed; but who would not nurse a commission of 1,000 l.[pounds] a-year? And the method of writing down the examinations in two languages, and hearing all the stuff that all the natives in the island may have to say, after they have been crammed by missionaries, protectors, land-sharks, etc., is so prolix, that it may last longer than the Trojan War, and cost more than the impeachment of Warren Hastings ... The

Commissioner holds that every individual native that ever cultivated a potato-garden, or was not a slave, should have concurred in the sale, and signed a deed, not merely for the conveyance of his own bit of ground, in which I agree with him, but of all those vast tracts of forest which no human foot ever penetrated ... Of course, we have not such a title; for when Colonel Wakefield bought [the land], the authority of the chieftains was unimpaired ... But now the authority of the chief is destroyed.

After the arrival of Colonel Wakefield's letters in England in October 1842 the Company secretary, Joseph Somes, wrote to the Colonial Office stating that Spain had misunderstood the terms of the Agreement, that he was acting as if it had never been made, and that this was having a seriously detrimental effect on the progress of the Wellington settlement. He argued that under the November 1840 Agreement the Company had abandoned its claim to the 20,000,000 acres bought from the Maoris by Colonel Wakefield in favour of a smaller but guaranteed grant. The Crown, therefore, had to give the Company a good title whatever opposing claims might exist and any compensation to the Maoris had to be made by the Crown, not the Company. In brief, the consideration of the Company's claims was beyond Spain's jurisdiction. The only investigation the Company could be subject to was that by James Pennington, who had been appointed by Russell to determine the exact acreage to be granted.

In reply the Colonial Office stated that no documents existed to support Somes's reasoning and even if it was a valid interpretation, Maori land rights could not be affected as they had

been recognised as indisputable by the Crown and were guaranteed by the Treaty of Waitangi. The quantity of land to be held by the Company was not disputed by the Colonial Office but land could only be taken up where a complete title by purchase had been acquired. So began a long exchange of correspondence between the two parties at the end of which the British Government still adhered to its interpretation⁶⁰ - that is, that of Hobson and Spain.⁶¹

In the meantime, Spain's hearings proceeded in spite of the impediments thrown in the Commission's way and other delays arising from, for example, the scattered location of witnesses.⁶² As well as the Company case, hearings of three private claims to Wellington lands were started in these months. These were the cases of Robert Tod, David Scott and Thomas Barker.

Spain's investigation of Tod's claim began in May 1842 and continued through to September. Tod, a merchant from South Australia, had arrived at Port Nicholson early in December 1839. On 4 January 1840 he 'bought' two small pieces of land in the vicinity of Pipitea pa. Although he had been warned by the Company's representative, John Smith, that the New Zealand Company claimed the land, Tod had gone ahead with the purchase because neither of the two 'selling' chiefs had 'signed' the Company deed or taken any significant part in the 'sale'. He saw Smith's claims, therefore, as a ruse to deter others from buying land in the area. The first 'purchase' contained

just over 1 acre of partly fenced land with 251½ feet of beach frontage which was bought for the site of a store. It was 'sold' by the Pipitea chief Te Ropiha Moturoa for £12. The other piece of land which contained about 2½ acres was situated on the flat behind Pipitea pa. While it was 'sold' by Te Ropiha Moturoa and Mangatuku, some of the payment also went to Richard Davis. Davis, a Christian Maori, had been cultivating part of the land for some time, having been allowed to do so by the two chiefs. Davis acted as interpreter during these transactions. On both occasions the payment was made and the boundaries walked along on the same day as the deed was executed. 63

After the 'sale' the Pipitea Maoris consistently upheld it. However, the Company officials and supporters, including the Petone and Ngauranga chiefs, persistently and actively opposed Tod's ownership of the land. Soon after Colonel Wakefield had returned to Port Nicholson from his land-buying expedition, Tod visited him to state his claim. However, Colonel Wakefield regarded Tod as a 'restless character' who had forced the sale on the Maoris and warned Tod not to attempt to use his land. Between the time of this interview in mid-January 1840 and the beginning of Spain's investigations the Company offered bribes to the Pipitea chiefs to withdraw their acknowledgment of the 'sale', tried to prevent Tod from building on the land - but were forestalled by Maori opposition - and encouraged settlers to encroach on Tod's property as much as possible. Tod countered these actions by carefully marking the land with initialled stakes, having his claim surveyed, protesting

vigorously by letter and in person against the trespassing, and employing the Maori 'sellers' to keep an eye on the land for him. ⁶⁴

The Commissioner found in favour of Tod and awarded him both pieces of land. Spain's decision was based on the Company's failure to prove its title to the Pipitea lands, the consistent acknowledgment of the 'sale' to Tod by the Pipitea people, and Tod's equally consistent assertion of ownership of the land since the first days of settlement in Lambton Harbour. Although this award was not embodied in a final report until 31 March 1845, Tod sold the land in September 1844 to Alexander McDonald, a Nelson banker. The Crown grant, therefore, was made out to McDonald, not Tod. ⁶⁵

The second private claim to land within the limits of Wellington township was made by a flax trader, David Scott, who had arrived in Port Nicholson in March 1831 to establish a flax depot on behalf of a Sydney company. The land, about 1½ acres in extent, was adjacent to Kumutoto pa and was bounded on two sides by Kumutoto stream and the sea. Several buildings were erected on it, including a house and a flax store, and the land was fenced soon after its 'purchase' by deed on 21 March 1831. It was 'sold' by the Ngati Mutunga chief Pomare (also known as Amuri) for a 100 pound cask of gunpowder and four muskets. Although fully intending to return, Scott did not work in the area between 1834 and May 1840, having originally left when the outbreak of war between Ngati Raukawa and Ati Awa

made the area unsafe for flax collecting. In the interim Pomare and his people had abandoned Port Nicholson in favour of the Chatham Islands, and the harbour was taken over by other hapu, primarily of the Ati Awa. Nevertheless, Scott's ownership of the land was acknowledged by Wi Tako, the chief of Kumutoto pa, when Scott returned. Wi Tako agreed to build a house for Scott to replace the one which had almost completely burned down some time earlier and re-erect the fence, part of which had fallen down. The chief also agreed to act as a caretaker for the property, for which he received one-half of a cask of tobacco, a mare and a foal. Here again no Maori opposition to the claim was made but Colonel Wakefield had two houses built for Scott by Wi Tako pulled down and threatened the local Maoris with imprisonment if they interfered. In the selection of town lands which began on 28 July 1840, Tod's claim was allotted to Company shareholders and a piece with 40 feet of beach frontage was one of the 110 sections or 'tenths' reserved for the Maoris. ⁶⁶

Scott's claim was investigated by Spain in May and June 1842 and June 1843. Wi Tako and Pomare, who was visiting Wellington at the time, were examined and both freely admitted the 'sale', though Wi Tako was careful to emphasize that the land 'sold' was only a small part of Kumutoto. Since the Kumutoto people raised no opposition either, Spain awarded Scott the 1½ acres claimed. ⁶⁷ The validity of Spain's award was later tested in the case Scott v. Grace, September 1846, on the grounds that Spain had contravened Clause Seven of the Land Claims

Act, 4 Victoria No. 2. (That clause directed that where a Commissioner found in favour of a claimant for lands required for a potential or existing town site or for other public purpose, then he was not to make an award of that land. Instead the Commissioner was to recommend a quantity of land to be taken up elsewhere in compensation.) No ruling against Scott was made, however, as cancelling the grant just on the grounds that Spain's award had contravened Clause Seven would have cast doubt on all other grants. In spite of this judgment it was not until the Provincial Government of New Munster decided to buy the land from Scott that the ownership dispute between Scott and the Company ended. 68

The case of Thomas Barker who, like Tod, claimed lands in the vicinity of Pipitea pa, was heard from mid-August 1842 into September. The land involved was a 2 acre block fronting onto the beach which was previously 'owned' by Richard Davis and his children. It had been transferred to Davis by the son of Patukawenga, Ngake, who was a relative of Davis's wife. Ngake was paid some goods and ten blankets. The blankets were later exchanged for £10. A deed - dated 3 June 1839 - was executed by Ngake and four other chiefs but was regarded by Davis as superfluous to the 'sale'. Davis said he had written it only because he had seen the Pakehas in the northern North Island do the same. Barker, a master mariner, had met Davis at Cloudy Bay in October 1839 and it was agreed then that Barker should come and 'buy' some of the property held by Davis at Pipitea. Barker went to Port Nicholson and 'bought' the land in mid-November 1839 at which time a deposit of £10

and a keg of tobacco was made. The total sum agreed upon was £70. ⁶⁹

Again, Barker's claim was actively opposed by the New Zealand Company. For example, Company officials removed signs advertising Barker's ownership of the land. In July 1840 the New Zealand Gazette and Wellington Spectator, which had a pro-Company editor at the time, refused to publish a notice advising the Company of his claim and Barker had to resort to posting a bill in a prominent place on the land. Tod had had a similar experience. ⁷⁰ But no Pipitea Maoris had opposed the 'sale' after it was made and in court they all stressed that the land had been 'sold' by Ngake - who was, of course, son of the chief from whom the Pipitea people defiantly held they derived their rights to Pipitea and Te Aro. ⁷¹ The case failed, however, because Davis had testified that the payment was still incomplete, and that the deed, though dated 12 November 1839, had not actually been signed until April 1840. This attempt to get around Hobson's Proclamation and to claim land which was known to be part of the Company's claim, was regarded by Spain as fraudulent, and no grant was recommended. ⁷²

The Wesleyan Missionary Society also had a claim to a few acres of land at Wellington. This land had been acquired for the Mission in June 1839 by the Reverend John Bumby and the Reverend John Hobbs as a site for a new mission station. The site adjoined the Te Aro stream and was 'sold' by the Te Aro pa chief Te Awarahi and the Kumutoto pa chief Ngatata. ⁷³ As well

as the prospect of increased prestige and wealth, the chiefs saw in the 'sale' an opportunity to score a political point against the claim of the Petone Ati Awa to dominance in the area. Thus, when the missionaries gave about £2 worth of gifts as a deposit, the 'sellers' presented these to the visiting Ngati Mutunga chief, Pomare, before the items were distributed among themselves, instead of to any Ati Awa chief. ⁷⁴

After the missionaries left a chapel was built on the land and until the arrival of the Reverend John Aldred in December 1840, Christianity was taught by two Maoris, Minarapa and Matahau, who had come south with Bumby and Hobbs. When Colonel Wakefield was in Port Nicholson 'buying' the harbour he heard of the Wesleyan purchase but Te Wharepouri, intent on scoring a political point of his own, persuaded Wakefield that the Te Aro people were taurekareka (slaves) who had no right to sell any land without Ati Awa agreement. As the Company settlement developed, the Te Aro people opposed occupation of this land by the settlers. Wi Tako and Ngatata, the Ati Awa chiefs of Kumutoto pa, however, now adopted an alternative method of denying Te Wharepouri and Te Puni's 'sale' - they allowed settlers on to the land after a new deed of sale was drawn up and a payment made to themselves in mid-March 1840. ⁷⁵

The claim to this land in court was made by the Reverend John Whiteley. In June 1842 he told the Commissioner that the Mission was prepared to withdraw its claim if 1 acre would be confirmed to the Society. Spain advised the Governor of this proposal and his approval of it. He also suggested that the

Wesleyan Missionary Society be granted an equally good site elsewhere as the Te Aro location was set aside for a marketplace on the Company plan. This was sanctioned by the Governor.⁷⁶ A few months later Whiteley, reacting to unfavourable public opinion which developed after the claim was advertised, decided that the case should be fought in court as a point of honour and credibility. Spain, however, felt that the original course should be adhered to and apparently it was.⁷⁷

By September 1842 it had become clear that any report made by the Commissioner on the Company's Port Nicholson claims would be unfavourable to the Company and would leave it with a complete claim to only a very small part of the district. Although several chiefs and other individuals belonging to the dissident pa had attended the original 'sale', Spain accepted the Maori witnesses' assertion that, according to Maori custom, all members of the tribe had land rights which could not be alienated without their agreement. Indeed, Spain was to treat occupation of the land as the only criterion for a Maori claim in all his subsequent investigations - a principle which was supported by his reading of Vattel's Law of Nations which upheld the rights of residents as against non-residents.⁷⁸ Also, important chiefs excepted, some of those who had made their marks on the deed and accepted payment still did not agree to the 'sale'. Spain had already written to Hobson in June giving the opinion that the Maoris of Te Aro, Kumutoto, Pipitea and Kaiwharawhara pa had had no intention of selling their pa, cultivations and burial grounds at the time of the

'sale' and would now strenuously oppose any attempt to shift them. Moreover, the reserves allotted to the Maoris by the Company were unsuitable as many were too far from the pa and too hilly for good potato grounds. ⁷⁹

During 1842 Maori opposition to the settlement of the Hutt Valley increased. It was initiated at least as early as October 1841 by a chief of the Ngati Rangatahi, a people who had been associated with the land from the time that they helped Ngati Toa drive Ngati Kahungungu out of the valley. Ngati Rangatahi had been granted usufructuary rights by Ngati Toa, in exchange for which they gave Ngati Toa gifts of food. At the time when the Pakeha settlement of Port Nicholson began, however, the valley was under rahui - a temporary ban on its use which may have been imposed by a Ngati Toa chief, possibly Te Rangihaeata, who had felt slighted at how the food offerings were shared out. The rahui was lifted towards the end of 1849 when Kaparatehu made large gifts to Ngati Toa, and Ngati Rangatahi returned to the valley. This event may have occurred in response to the arrival of settlers in Port Nicholson. Certainly Te Rauparaha must have recognised that Maori re-occupation of the valley added weight to Ngati Toa claims, and he at least acquiesced in it. Kaparatehau and his thirty or so followers were subsequently joined by Ngati Tama of Kaiwharawhara pa. The Ngati Tama were led by Te Kaeaea (also known as Taringakuri) who was closely related to Ngati Rangatahi. Te Kaeaea claimed he was acting on the orders of Te Rauparaha and Te Rangihaeata. ⁸⁰ The first opposition initially

took the form of establishing new settlements on both allocated and unoccupied Company lands along the banks of the Hutt river, gradually moving down the valley towards the coast. By mid-1842 the Maoris were settling on land, burning off timber near farmhouses and planting potatoes, and driving off labourers. Their activities were confined to the valley above the Rotokakahi Stream (in central Lower Hutt) - the sale of the lower part they held, had always been admitted by themselves and the payment considered adequate.⁸¹ In response to pleas for help from settlers such as William Swainson, several attempts were made by parties of local officials including Colonel Wakefield, Spain and Clarke, to reach an amicable agreement with Te Kaeaea who had become the focus of negotiations. The Maoris, however, continued to assert their ownership of the upper valley region as before.⁸²

The collapse of the Company's case in the land court, then, was not offset by a decrease in Maori opposition to its 'purchases'. On the contrary, the resistance to European occupation of town lands persisted and in the Hutt Valley was actually increasing. This gave Wakefield little hope of drawing on Government support in acknowledging and maintaining the Company's claims as against the Maoris and forced him into making his first major concession to the Government and the Maoris. On 22 August 1842 he wrote to Spain and, referring to Hobson's private letter of 5 September 1840, offered to compensate those Maoris who had missed out on the general payments in 1839 and who might not want to leave their pa and

lands without further payment. Colonel Wakefield attributed the opposition to Maoris of 'inferior station' who had, for example, used up the goods acquired in the original sale or had not been specifically consulted then. He also blamed the Wesleyan missionaries for advising Maoris not to leave the intended site of the Custom House at Te Aro. Colonel Wakefield suggested that the decision as to how much compensation was to be paid should be made by Spain and the Company's Protector of Aborigines, Halswell. Unwilling to concede more than was absolutely necessary, the Colonel also proposed that the outlay on further payments should be taken into consideration when estimating how much land the Company was entitled to on the basis of expenditure. Wakefield felt that the payments could be made at the same time as future investigation of claims since there were only a few cases for which compensation would be required. In this way the delay involved in waiting for Spain's final report could be avoided. The payments would be made out of the surplus stores of the Tory and the Cuba.⁸³

Spain was still prepared to report on the Company's cases if the Governor decided against the compensation plan, but he believed that Colonel Wakefield's proposal would facilitate the settlement of this 'difficult and complicated question' quietly and equitably.⁸⁴ He was encouraged in this opinion⁸⁵

by finding that the natives who denied the sale seemed to be more anxious to obtain payment for their land than to dispossess the settlers then in occupation of it, and that they pressed for a final settlement of the question.

Moreover, the longer the delay in paying compensation the more difficult it would be to bring even compensation negotiations to a conclusion satisfactory to all parties, since ⁸⁶

every day increased the difficulty of making them understand that it was the capital and labour brought by the white man from Europe which had made their land of the then value, and that as they had not of themselves contributed to raise the price of it, they were not entitled to a remuneration equal to its then market value.

The alternative - giving the town and other adjacent lands back to the Maoris - was regarded by Spain as impracticable for a number of reasons. First, the settlement was almost 3 years old and had a European population of about 3,000 compared with 5-600 Maoris. ⁸⁷ If the report showed the purchase as a whole was not good, then Spain feared that the Maoris would never consent to sell their land at its pre-settlement value. The consequent ruin of the settlement would detrimentally affect Maoris as well as Europeans since land values would fall, colonists would leave, and the Maoris would be deprived of the advantages of living in or near a European community. Regaining the land, Spain felt, would be a 'poor equivalent' for all the benefits which had been inadvertently lost. Second, the case was too complex for a simple ruling of purchase or no purchase. And to separate unsold from sold lands would be extremely difficult since it would involve sorting out the boundaries and quantities of land belonging to hapu, families and individuals. Either way further complications would develop. ⁸⁸ Even Clarke now saw it as a question of compensation - not of land return.

In mid-October 1842 Wakefield and Spain left for Auckland aboard the brig Elizabeth to submit the Colonel's proposals to Acting-Governor Willoughby Shortland. Wakefield returned to Wellington on 6 December.⁸⁹ Commissioner Spain did not arrive back in Wellington until 11 January 1843 having had to travel via Tauranga to settle a dispute between the Tauranga and Maketu Maoris.⁹⁰

On 16 January 1843 Acting-Governor Shortland, who had travelled south from Auckland with the Commissioner, advised Wakefield and Spain of his approval of the compensation scheme since he believed it would expedite a final settlement. The compensation was to be paid at the same time as the claims were investigated but where Maoris still refused compensation for pa and cultivations within Company territorial limits, these cases were to be left for later adjudication. Shortland directed that the amount of compensation to be paid was to be decided on by a Company nominee and Clarke, instead of Halswell and Spain as Wakefield had suggested. The Commissioner was to act as arbitrator. It was decided that Wakefield would represent the Company in the compensation negotiations for the Port Nicholson district.⁹¹ In the meantime Wakefield had received a reply to his letter (September 1841) advising the Company Directors of his Agreement with Hobson and the Governor's willingness to have the Maoris moved by persuasion. The Directors had responded by authorising Wakefield to spend £500 of Company funds and allocate 1,000 acres of Company lands for the settlement of land disputes.⁹²

Spain's court, meanwhile, was still proceeding with its hearings. Not long after Shortland's approval was received a key witness, Richard Barrett, who had acted as interpreter in the Port Nicholson purchase, appeared before Spain. His evidence confirmed the opinion formed by the Commissioner and Clarke that the Company's title was weak. It became clear that Barrett had had difficulty understanding the deed's contents, let alone translating them. Barrett could, therefore, have conveyed little idea of what the sale really meant.⁹³ In his evidence Barrett also admitted that he had told the Maoris they could keep 'a certain portion' of their lands, not one-tenth, and that he had not told them they would lose their pa, burial grounds and cultivations. It also became apparent that Barrett, allied as he was to Te Puni through marriage and past associations, had not explained to Wakefield the political undercurrents of the sale. Instead he had encouraged Wakefield to ignore the opposition of those Maoris who were unwilling to 'sell'. There could now no longer be any doubt that unless further payments were made, the Commissioner would only be able to recommend confirming the Company's title to a very small part of the district.

Soon after Shortland's approval for the compensation scheme was received a meeting was held at Te Aro pa to discuss how much the Maori claimants were to receive. The meeting was attended by Te Puni, Wi Tako and Te Kaeaea. However, nothing was achieved as the only chief who would speak was Wi Tako and he demanded what was regarded as an exorbitant

amount. Subsequent meetings held at the pa to discuss the compensation offer were equally unsatisfactory.⁹⁴ It now fell to Clarke to make a claim for compensation on the Maoris' behalf - presumably because their inflated views of the value of their lands meant they would never agree to sell it at a 'fair and reasonable price'. At the end of February 1843 Clarke claimed £1,050 on behalf of the inhabitants of Te Aro, Pipitea and Kumutoto pa for lands which the Company had already sold to other Europeans. This sum, which was yet to be approved by the Maoris concerned, was not to be a payment for any pa, burial grounds or gardens. These were to be kept by the Maoris as long as they wanted - except where it would interfere with 'public convenience'. In such a situation the land would be exchanged for another suitable spot. Colonel Wakefield was amazed at the claim and refused to pay it, believing that if the Company agreed to pay it would eventually end up handing over more than £100,000 in compensation.⁹⁵

Wakefield's reaction was predictable, especially as only a few days before he had received similarly unwelcome information on the matter of court fees. The Acting-Governor had decided that the Company, like any other claimant, had to pay the court fees as these had been designed to cover the court's operating costs. The only occasion for a remission of fees was when the fees paid exceeded the court's expenses.

Shortland considered that the Company was already in a privileged position. In particular he noted that, unlike elsewhere, the Government would get no New Zealand Company lands from, for example, forfeitures under the law. And because Commiss-

ioner Spain had to act as arbitrator, the Company's costs were actually higher than those of other claimants, not lower. This decision was later upheld by the Secretary of State for the Colonies. ⁹⁶

At this time the actual lands to be taken up by the New Zealand Company had not yet been finally decided on, though it was known that Pennington had established that the Company was entitled to about 984,500 acres on the basis of its expenditure on the New Zealand emigration venture. ⁹⁷ Towards the end of January 1843 Colonel Wakefield asked for permission to select the Company lands out of those to which the claim of the Company was or probably would be admitted. He also asked for an extension of the period in which the Company had to select its land entitlement and a relaxation of the requirement under the November 1840 Agreement that the land be taken up in solid parallelogram-shaped blocks. And he noted that he did not regard Pennington's award to the Company as including the Company's Maori reserve lands. ⁹⁸ Spain, believing that it would facilitate and expedite the settlement of the Company's claims, advised the Acting-Governor to agree to Colonel Wakefield's first proposals. But he was not in favour of any change to the block shape, with the possible exception of the Port Nicholson and New Plymouth areas, even though the Company would acquire some useless land as a result. Nor did Spain accept that the acreage awarded excluded the Maori reserves. ⁹⁹

Acting in accordance with Spain's advice, Shortland decided that the deadline could be allowed to lapse as long as the selections were made before Spain's investigations were complete. The Acting-Governor also agreed with Spain that the Company's land entitlement included the reserve lands. As the New Zealand Company in Great Britain had already been refused permission by Lord Stanley to change the shape of the blocks of land, Shortland turned down Colonel Wakefield's request on this point.¹⁰⁰ But he suggested to the Secretary of State for the Colonies that it did not really matter what shape the block was, provided that the acreage stipulation was fulfilled, since this would still ensure the selection of mixed quality land. The Secretary of State, however, confirmed his earlier decision. The size and shape of the Company's land blocks, he replied, were set out in the November 1840 Agreement - any relaxation of its terms would make matters too indefinite and in any case, the provisions were already generous enough.¹⁰¹

When Spain had arrived in Port Nicholson in April 1842 he had expected to remain there only a few months at most. But he soon discovered that the New Zealand Company cases were far more complex than he had suspected, whereupon he set to work carefully and thoroughly coming to grips with them. Three months later much had already been done and as early as this it was clear that the Company's claim to Port Nicholson was weak. Spain felt, however, that completion of the case under the Commission's original terms would take a great deal longer, would involve further complications, and would have unintended

and undesirable results for those most immediately concerned with the outcome of the investigations. For these reasons he gave his support to Wakefield's compensation scheme - a scheme which was to radically change the focus of the Commission's work. The investigations continued, but they were now aimed at deciding where compensation was due, not which land was Company land and which was Maori. Whether or not the original purchase was valid, Spain would recommend a Crown grant in favour of the Company on condition that it made financial retribution for its negligence. Even where the sellers were in a minority Spain would try to persuade all the Maoris concerned to accept compensation - only if he failed to do so would the land be exempted from the Crown grant to the Company.¹⁰² But, with the exception of pa, cultivations and burial grounds, it would now all almost-automatically belong to the Company. Moreover, this scheme would guide Spain's actions when investigating the Company's claims elsewhere. However justifiable this decision may have been with regard to Port Nicholson, circumstances were different in every area claimed by the Company and the case should have been treated, at least initially, according to the Commission's original guiding principles. To do otherwise was to prejudge the cases in an extremely biased manner - a fact which was not to be lost on the Maoris - and such a procedure clearly reflected the limitations of the humanitarian views held by Spain and many of his contemporaries.

NOTES

1. 'Government notice', encl. in Wakefield/NZC Sec., 28-4-1842, '1844 Report of Select Committee', App. 26, p. 552.
2. After the fire the law courts, police station and church were transferred to a building on Lower Mulgrave Street. Louis E. Ward (comp.), Early Wellington (Whitcombe and Tombs, Auckland, 1929; reprint, Capper Press, Christchurch 1975), pp. 106, 386.
3. Spain, General report/Col. Sec., 12-9-1843, IA 1 (this report is published in '1844 Report of Select Committee', App. 9, pp. 291-331).
4. *ibid.*; '1844 Report of Select Committee', App. 3, p. 105.
5. 'Government notice', encl. in Wakefield/NZC Sec., 28-4-1842, '1844 Report of Select Committee', App. 26, pp. 555-556; Spain, Report on NZC claim to Nelson, 31-3-1845, encl. in FitzRoy/Stamley, 13-9-1845 (hereafter 'Spain, Nelson report'), Irish University Press series of British Parliamentary Papers. Colonies: New Zealand (Shannon, 1969), Vol. 5, 'Correspondence and papers relating to the native population, the distribution of land, and other affairs in New Zealand, 1846-47', p. 43, 'The New Zealand Company: Despatches referring to the titles to land of the Company', [1846(203)30], p. 35.
6. Marais, Colonisation of New Zealand, pp. 53, 108.
7. Petone was correctly spelt 'Pito-one' at the time; Petone is a corruption of the name.
8. William Wakefield, 'Diary', 1839-1842, No. 2 journal, Typescript MS, ATL, 20-9-1843, p. 43; Wakefield, Adventure in New Zealand, pp. 26-28, 51-52, 57, 59.
9. Wakefield, 'Diary', No. 2 journal, 27-9-1839, pp. 53-54; Evidence of W. Wakefield, 18-5-1842, 19-5-1842, OLC 906; Evidence of Te Kaeaea, 27-6-1842, *ibid.*; Evidence of Henare Ware (Te Ware), 6-7-1842, *ibid.*; Wakefield, Adventure in New Zealand, pp. 64-66; Ngati was known to the Pakehas as Nayti. He was a relative of Te Rauparaha. Patricia Burns, Te Rauparaha: a new perspective (A.H. & A.W. Reed, Wellington, 1980), pp. 188, 199; for full text of the Company's Port Nicholson deed, see below, Appendix Three.
10. Evidence of Barrett, 8-2-1843, 14-2-1843, OLC 906; Evidence of Te Puni, 7-7-1842, 8-7-1842, *ibid.*; Evidence of Wi Tako, 20-5-1842, *ibid.*; Evidence of Wairarapa, 11-7-1842, *ibid.*; Wakefield, 'Diary', No. 2 journal, 23-9-1839, 26-9-1839, 27-9-1839, pp. 48, 52-53.
11. 'Government notice', encl. in Wakefield/NZC Sec., 28-4-1842, '1844 Report of Select Committee', App. 26, p. 552; Evidence of W. Wakefield, 19-5-1842, 23-5-1842, OLC 906.
12. Evidence of Barrett, 8-2-1843, *ibid.*; Wakefield, 'Diary', No. 2 journal, 29-9-1839, pp. 55-56; Wakefield, Adventures in New Zealand, pp. 53, 56.

13. *ibid.*, pp. 52, 77-78; Ann Parsonson, 'He whenua te utu (the payment will be land)', PhD Thesis, Canterbury (1978), pp. 173, 189-190.
14. Evidence of Ngapuha, 29-4-1843, OLC 906; W. Carkeek, The Kapiti Coast: Maori history and place names (A.H. & A.W. Reed, Wellington, 1966; reprint, Capper Press, Christchurch, 1978), pp. 11-12, 22, 33-35, 42.
15. Evidence of Mahau, 8-9-1842, 9-9-1842, OLC 906; Parsonson, 'He whenua te utu', p. 188; for further details of the Wesleyan purchase, see above, pp. 167-169.
16. Parsonson, 'He whenua te utu', pp. 190-191.
17. Wakefield, 'Diary', No. 2 journal, 1-10-1839, 4-10-1839, pp. 60-61, 63; Wakefield, Adventure in New Zealand, pp. 49-50, 77.
18. Taylor, Ensign Best, p. 37; Wakefield, Adventure in New Zealand, pp. 77-78.
19. Spain, Report on NZC claim to Porirua, 31-3-1845, encl. in FitzRoy/Stanley, 13-9-1845 (hereafter 'Spain, Porirua Report'), IUP, Vol. 5, p. 103/BPP [1846(203)30], p. 95; Wakefield, Adventure in New Zealand, p. 93.
20. Evidence of W. Wakefield, 9-6-1842, OLC 907; Evidence and statement by W. Wakefield, 10-6-1842, OLC 908; 'Spain, Porirua report', IUP, Vol. 5, pp. 101-102/BPP [1846(203)30], pp. 93-94; 'Spain, Nelson report', IUP, Vol. 5, pp. 43-44/BPP [1846(203)30], pp. 35-36; Ann Parsonson points out that the multiplicity of claims to Mana and Kapiti Islands was one of the circumstances which should have warned Wakefield that the Maoris' view of a 'sale' was probably rather different from his own. Parsonson, 'He whenua te utu', pp. 195-196.
21. 'Spain, Porirua report', IUP, Vol. 5, pp. 101-103/BPP [1846(203)30], pp. 93-95; Parsonson, 'He whenua te utu', p. 193; Wakefield, Adventure in New Zealand, pp. 93, 95-97.
22. Statement of W. Wakefield, 10-6-1842, OLC 908; 'Spain, Nelson report', IUP, Vol. 5, pp. 43-44/BPP [1846(203)30], pp. 35-36; The Waikanae Ati Awa had also offered to sell their land to Wakefield in exchange for arms to defend themselves against Ngati Raukawa, but no transaction was effected. This may have been because Wakefield could not provide the number of guns demanded and because he could not persuade them to accept other goods. Parsonson, 'He whenua te utu', p. 195.
23. *ibid.*, pp. 191-195, 209-210, 215; see also below, pp. 276-278.
24. Evidence of Te Ropiha Moturoa, 30-5-1842, OLC 466; Evidence of Robert Tod, 26-5-1842, *ibid.*; Parsonson, 'He whenua te utu', p. 199; A. Shand, 'The occupation of the Chatham Islands by the Maoris in 1835', Journal of the Polynesian Society, Vol. 1, pp. 154-157.
25. Wakefield, 'Diary', No. 2 journal, 29-9-1839, p. 56; Wakefield, Adventure in New Zealand, pp. 140, 145, 217.

26. *ibid.*, pp. 148-149.
27. Evidence of Tod, 26-5-1842, OLC 465; Evidence of Te Ropiha Moturoa, 31-5-1842, *ibid.*; Evidence of Barrett, 8-2-1843, OLC 906; evidence of John Brook, 30-5-1842, *ibid.*; Evidence of 'Reihana Rewite' (Richard Davis), 17-2-1842, *ibid.*; Evidence of Moses Ngaponga, 3-6-1842, *ibid.*; Clarke/Clarke, sen., 13-12-1842, '1844 Report of Select Committee', App. 4, p. 123; '1844 Report of Select Committee', Minutes of evidence, questions 4169-4179, 4199-4203, pp. 228-229; Miller, Early Victorian New Zealand, pp. 44-48; Wakefield, Adventure in New Zealand, pp. 149, 382-383.
28. Evidence of Barrett, 8-2-1843, OLC 906; Evidence of George S. Evans, 23-5-1842, *ibid.*; Evidence of Brook, 30-5-1842, *ibid.*
29. Evidence of Barrett, 8-2-1843, OLC 906.
30. Wakefield, Adventure in New Zealand, pp. 261-262.
31. Notice issued by Shortland, 29-8-1840, Turton, Land Purchases in the North Island, Part A3, No. 7, 8, p. 162; Spain, Report on NZC Claim to Port Nicholson, 31-3-1845, encl. in FitzRoy/Stanley, 13-9-1845 (hereafter 'Spain, Port Nicholson report'), IUP, Vol. 5, pp. 14-15/BPP [1846(203)30], pp. 6-7; Shortland's 'Agreement with the Natives of Pah Taranake', *ibid.*, IUP, Vol. 5, pp. 28-29/BPP [1846(203)30], pp. 20-21; Evidence of Moturoa, 1-6-1842, OLC 465; Evidence of Barrett, 14-2-1843, *ibid.*
32. Wakefield, Adventure in New Zealand, p. 381; Wilson, Land Problems, p. 165.
33. Wakefield, Adventure in New Zealand, p. 390.
34. *ibid.*, p. 385.
35. Evidence of Tod, 26-5-1842, OLC 465; Clarke/Clarke, sen., 13-12-1842, '1844 Report of Select Committee', App. 4, p. 123; Thomson, Story of New Zealand, Vol. 1, pp. 43-44.
36. 'Abstract of Correspondence between Colonial Office and NZC', '1844 Report of Select Committee', App. 3, p. 105.
37. 'Journal of proceedings at Commissioner's court', W. Wakefield, May 1842, *ibid.*, App. 26, p. 561; W. Wakefield/NZC Sec., 30-5-1842, *ibid.*, pp. 558-559.
38. 'Journal of proceedings at Commissioner's court', W. Wakefield, May 1842, *ibid.*, pp. 560-562; Evidence of John Dorset, 19-5-1842, OLC 906.
39. Spain, General Report/Col. Sec., 12-9-1843, IA 1.
40. W. Wakefield/NZC Sec., 30-5-1842, '1844 Report of Select Committee', App. 26, p. 558.
41. Spain, General report/Col. Sec., 12-9-1843, IA 1; Clarke, Notes, p. 54.

42. Spain, General report/Col. Sec., 12-9-1843, IA 1; Spain, memorandum/Shortland, 19-11-1843 (dated 30-9-1843), '1844 Report of Select Committee', App. 9, pp. 280-283.
43. Spain, General report/Col. Sec., 12-9-1843, IA 1.
44. *ibid.*
45. New Zealand Gazette and Wellington Spectator, 8-6-1842.
46. *ibid.*
47. *ibid.*, 11-5-1842, 4-6-1842, 11-6-1852, 8-6-1842; Wakefield, Adventure in New Zealand, pp. 483-484.
48. New Zealand Gazette and Wellington Spectator, 8-6-1842, 11-6-1842; Wakefield, Adventure in New Zealand, p. 496.
49. Miller, Early Victorian New Zealand, p. 68.
50. New Zealand Gazette and Wellington Spectator, 15-2-1843, 18-2-1843; McIntock, Crown Colony, pp. 271-272, 272 note 1.
51. Spain, General report/Col. Sec., 12-9-1843, IA 1; '1844 Report of Select Committee', Minutes of evidence, questions 4624-4631, pp. 247-248; Ward, Show of Justice, p. 49.
52. New Zealand Gazette and Wellington Spectator, 4-6-1842; Evidence of Moturoa and interpreters notes, 30-5-1842, 1-9-1842, OLC 465; Evidence of Mangatuku, 22-7-1842, OLC 466; Evidence of Wairarapa, 23-7-1842, *ibid.*; Evidence of Wairarapa, 11-7-1842, 13-7-1842, OLC 906.
53. Wakefield, Adventure in New Zealand, p. 520.
54. Notice, 13-10-1842, New Zealand Government Gazette, 19-10-1842; Clarke/Clarke, sen., 15-8-1842, 'Clarke letters', Vol. 62/A, item 50; Wakefield, Adventure in New Zealand, p. 580.
55. Clarke, Notes, p. 47.
56. W. Wakefield/NZC Sec., 30-5-1842, '1844 Report of Select Committee', App. 26, pp. 558-559; Spain, memorandum/Shortland, 19-11-1843 (dated 30-9-1843), *ibid.*, App. 9, pp. 280-283.
57. W. Wakefield/NZC Sec., 30-5-1842, encl. in Stanley/Hobson, 15-2-1843, G 1/8.
58. W. Wakefield/NZC Sec., 22-7-1842, '1844 Report of Select Committee', App. 26, p. 562.
59. Extract from private letter, no name, 9-3-1843, *ibid.*, App. 26, p. 713.
60. '1844 Report of Select Committee', App. 3, pp. 100-106; G.W. Hope/J. Somes, 7-11-1842, 10-1-1843, 1-2-1843; *ibid.*, App. 2, pp. 14, 21, 36; Somes/Stamley, 24-10-1842, encl. in Stanley/Hobson, 15-2-1843, G 1/8.

61. Spain, General report/Col. Sec., 12-9-1843, IA 1; see also above, pp. 123-124, 129-130.
62. Spain/Col. Sec., 16-9-1842, IA 1.
63. Evidence of Moturoa, 30-5-1842, OLC 465; Evidence of Tod, 26-5-1842, 27-5-1842, *ibid.*; Tod/W. Wakefield, 30-1-1840, *ibid.*; Report, 31-3-1845, *ibid.*; Evidence of Davis, 15-8-1842, OLC 466; Evidence of Mangatuku, 18-7-1842, *ibid.*; Evidence of Moturoa, 20-6-1842, *ibid.*; Evidence of Tod, 7-6-1842, *ibid.*; 'Spain, Port Nicholson report', *IUP*, Vol. 5, p. 26/BPP [1846(203)30], p. 18; Wakefield, Adventure in New Zealand, p. 140.
64. Wakefield, 'Diary, No. 2 journal, 22-1-1840, p. 141; Evidence of Moturoa, 30-5-1842, OLC 465; Evidence of Tod, 26-5-1842, 27-5-1842, *ibid.*; Tod/Wakefield, 30-1-1840, *ibid.*; Smith/Tod, 28-4-1840, 16-5-1840, *ibid.*; Tod/Council of New Zealand Land Company's Colonists, 21-5-1840, *ibid.*; Evidence of Davis, 15-8-1842, OLC 466; Evidence of Tod, 7-6-1842, *ibid.*
65. Report, 31-3-1845, OLC 465; 'Spain, Port Nicholson report', *IUP*, Vol. 5, p. 26/BPP [1846(203)30], p. 18.
66. OLC 1022; 'Claim notice', New Zealand Government Gazette, 22-6-1842; Carkeek, Kapiti Coast, p. 34; 'The 'tenth' reserved for the Maoris at Kumutoto was section number 487 (Ward's Early Wellington has a plan of Wellington's sections in 1841). Roland L. Jellicoe, The New Zealand Company's Native Reserves, compiled from Parliamentary Papers, departmental documents and other authentic sources of information (Government Printer, Wellington, 1930), p. 22; Shand, 'Occupation of the Chatham Islands', p. 158; Wakefield, Adventure in New Zealand, p. 493.
67. Evidence of Wi Tako, 20-5-1842, 6-6-1842, OLC 1022; Evidence of Pomare, 6-6-1842, *ibid.*; 'Spain, Port Nicholson report', *IUP*, Vol. 5, p. 25/BPP [1845(203)30], p. 17.
68. Copy of judgment, *Scott v. Grace*, 4-9-1846, OLC 1022; Director-General/Registrar-General of Lands, 27-9-1857, *ibid.*
69. OLC 635; copy of memorandum by R. Davis, 11-11-1839, *ibid.*; 'Claim notice', New Zealand Government Gazette, 13-10-1841.
70. OLC 635; Stenhouse Cardy, for Barker/Col. Sec., 23-12-1840, *ibid.*
71. See above, pp. 148-149.
72. OLC 635; evidence of R. Davis, [3]-9-1842, *ibid.*; Tod/Lt. Smith [28-8-1840], OLC 465.
73. Whiteley/Spain, 27-4-1842, IA 1; J.H. Bunby, 'Diary', 1839, MS, ATL, 13-6-1839, 14-6-1839, 6-7-1839.
74. Whiteley/Spain, 27-4-1842, IA 1; Carkeek, Kapiti Coast, p. 55; Parsonson, 'He whenua te utu', pp. 187-188.

5. Statement of J. Hobbs, 22-6-1842, copied by Whiteley, encl. in Whiteley/Spain, 27-4-1842, IA 1; Parsonson, 'He whenua te utu', pp. 184-186, 198-199; It is unclear who the new deed was in favour of. It may have been the Company, though Wakefield could not have signed such a deed without contradicting the Company's claim to have purchased the whole district.
6. Whiteley/Spain, 27-4-1842, IA 1; Spain/Whiteley, 12-9-1842, encl. in Spain/Col. Sec., 14-9-1842, OLC 950; New Zealand Government Gazette, 1-3-1843.
7. Spain/Col. Sec., 14-9-1842, and encls., OLC 950.
8. Spain/Col. Sec., 16-9-1842, encl. in Shortland/Stanley, 17-4-1843, '1844 Report of Select Committee', App. 2, p. 59; Spain, General report /Col. Sec., 12-9-1843, IA 1; Spain, memorandum/Shortland, 19-11-1843 (dated 30-9-1843), '1844 Report of Select Committee', App. 9, pp. 280-283; 'Spain, Port Nicholson report', IUP, Vol. 5, p. 15/BPP [1846(203)30], p. 7.
79. Halswell/W. Wakefield, 28-8-1842, *ibid.*, App. 26, pp. 690-691; Swainson/Halswell, 15-2-1842, New Zealand Gazette and Wellington Spectator, 17-12-1842; Miller, Early Victorian New Zealand, pp. 57-58; Parsonson, 'He whenua te utu', p. 204; Wards, Shadow of the Land, p. 223.
80. Halswell/W. Wakefield, 28-8-1842, and encl. Swainson/Halswell [late July to mid-August 1842], '1844 Report of Select Committee', App. 26, pp. 690-692; Spain, General report /FitzRoy, 13-4-1844, IA 1; Halswell, the Company's Protector of Aborigines, estimated that there were about 200 Maoris in the valley in August 1842 and more continued to arrive. Kaparatehu apparently had only about thirty followers. Te Kaeaea brought about sixty people with him from his Port Nicholson pa. There were also a few hapu from the Wanganui area who went to the valley in the post-Wairau clash period. And these Maoris brought several hundred acres under cultivation. 'Census of Maori population in Port Nicholson area up to 1-7-1842', Halswell/W. Wakefield, 4-7-1842, '1844 Report of Select Committee', App. 26, pp. 679-680; Halswell/Wakefield, 28-8-1842, *ibid.*, App. 26, pp. 690-691; Wards, Shadow of the Land, p. 224.
81. Halswell/Col. Sec., 29-11-1841, encl. in Halswell/NZC Sec., 10-2-1842, '1844 Report of Select Committee', App. 26, p. 674; Swainson, sworn deposition, 14-12-1842, *ibid.*, App. 2, p. 66; Halswell/Wakefield, 28-8-1842, *ibid.*, App. 26, pp. 691-692; '1844 Report of Select Committee', Minutes of evidence, questions 3410-3411, 3416, 3418, 3512-3513, pp. 182-183; Spain, General report /FitzRoy, 13-4-1844, IA 1.
82. Halswell/Col. Sec., 29-11-1841, encl. in Halswell/NZC Sec., 10-2-1842, '1844 Report of Select Committee', App. 26, p. 674; Swainson, sworn deposition, 14-12-1842, *ibid.*, App. 2, p. 66; Halswell/Wakefield, 28-8-1842, *ibid.*, App. 26, pp. 691-692; Spain, General report /FitzRoy, 13-4-1844, IA 1.
83. W. Wakefield/Spain, 22-8-1842, '1844 Report of Select Committee', App. 26, p. 563; W. Wakefield/NZC Sec., 27-8-1842, *ibid.*; Wakefield, Adventure in New Zealand, p. 528.

84. Spain, General report/Col. Sec., 12-9-1843, IA 1.
85. *ibid.*
86. *ibid.*
87. A census gave 541 as the total Port Nicholson Maori population up to 1-7-1842, Halswell/W. Wakefield, 4-7-1842, '1844 Report of Select Committee', App. 26, pp. 679-680; Edward Meurant, Spain's interpreter, estimated that there were 680 Maoris living in the district, Memorandum, 22-2-1843, 'Diary and letters of Edward Meurant, 1842-1843', MS, transcribed at Auckland Public Library (1941), ATL copy; Miller, Early Victorian New Zealand, p. 67.
88. Spain, General report/Col. Sec., 12-8-1843, IA 1.
89. New Zealand Gazette and Wellington Spectator, 15-10-1842, 7-12-1842; Wakefield, Adventure in New Zealand, p. 536.
90. *ibid.*, pp. 568, 575.
91. *ibid.*, p. 575; Freeman, for Col. Sec./W. Wakefield, 16-1-1843, '1844 Report of Select Committee', App. 26, p. 566; W. Wakefield/Shortland, 19-1-1843, *ibid.*
92. NZC Sec./W. Wakefield, 30-4-1842, *ibid.*, p. 570.
93. See below, App. 3, for Barrett's translation of the Port Nicholson deed as recalled for Spain; Evidence of Barrett, 8-2-1843, OLC 906; Evidence of Te Puni, 8-7-1842, *ibid.*; Spain, General report/Col. Sec. 12-9-1843 IA 1; 'Spain, Port Nicholson report', IUP, Vol. 5, p. 16/BPP, [1846(203)30], p. 8; Wells, Taranaki, p. 53.
94. Clarke/Spain, 5-12-1843, encl. in Spain, General report/Col. Sec., 12-9-1843, IA 1; Clarke/Spain, 17-2-1843, *ibid.*; Wakefield, Adventure in New Zealand, pp. 580-581.
95. W. Wakefield, private letter/no name, 1-4-1843, '1844 Report of Select Committee', App. 26, p. 567; Spain, General report/Col. Sec., 12-9-1843, IA 1.
96. W. Wakefield/Spain, 21-1-1843, encl. in Spain/Col. Sec., 7-2-1843, IA 1; Marginal note on Spain/Col. Sec., 7-2-1843, *ibid.*; Shortland/S.S. Cols, 11-4-1843, G 25/1; Stanley/FitzRoy, 10-10-1843, '1844 Report of Select Committee', App. 19, p. 481.
97. It is unclear where Wakefield got his figure (984,547 acres) from. Pennington's initial award to the Company was for 531,929 acres. When writing to advise Hobson of this, Russell noted that the Company might be entitled to another 4-500,000 acres. Wakefield seems to have accepted this figure as fact and added it to Pennington's award. (In November 1842 Pennington was to actually increase his award by only 180,664 acres). Pennington/Stanley, 19-5-1842, '1844 Report of Select Committee', App. 22, p. 494, Russell/Hobson, 20-5-1841, *ibid.*, App. 2, p. 42; Pennington/Ward, 16-11-1842, *ibid.*, App. 26, pp. 535-536; Hope/Somes, 11-1-1843, *ibid.*, App. 2, p. 52; Spain/Col. Sec., 29-1-1843, *ibid.*, pp. 70-73.

98. Shortland/Stanley, 17-4-1843, *ibid.*, pp. 69-70.
99. Spain/Col. Sec., 29-1-1843, *ibid.*, pp. 70-73.
100. Shortland/Stanley, 17-4-1843, *ibid.*, pp. 69-70.
101. Stanley/FitzRoy, 18-4-1844, *ibid.*, pp. 76-77.
102. Spain, General report/Col. Sec., 12-9-1843, IA 1.

CHAPTER SIX

THE COMMISSIONER TRAVELS NORTH

By March 1843, only 2 months after Acting-Governor Shortland had approved a compensation scheme designed to speed up the settlement of the New Zealand Company's claims, matters had come to a standstill. Wakefield had refused to pay the amount which Protector Clarke claimed on behalf of several Port Nicholson pa. As the investigation of the Company's claims and the payment of compensation were expected under the scheme to proceed together, the land claims court was closed. In the meantime, the Commissioner decided to begin investigation of claims by the Company, and also by non-Company individuals, to land on the west coast of the North Island. A 'host' of letters to Spain from Maoris and Europeans living along the west coast had also encouraged him to undertake this trip as soon as it was expedient. ¹ The Commissioner was to be accompanied by Wakefield and Clarke so that compensation payments could be settled and paid immediately where investigation indicated they were needed. ²

Setting out on 24 February 1843, Spain travelled northwestwards overland towards Porirua. ³ He was accompanied by Edward Meurant, the Commission's new interpreter, who had been appointed to take over that duty from Clarke when the compensation scheme went into operation. ⁴ Clarke and Wakefield were to follow soon after. On reaching Porirua, Spain held a meeting

at which the evidence of several Europeans and Maoris was taken on the Company's Port Nicholson, Porirua and Manawatu land titles, as well as on some private claims to west coast lands. After a few days the court was closed and Colonel Wakefield left for Taranaki while Spain, Clarke and Meurant visited Waikanae, Otaki and Manawatu en route to Wanganui. Preliminary meetings and investigations were held at each of these places with the intention of completing any unheard or unfinished claims to local lands on the return journey south. Spain expected Colonel Wakefield, with whom he was to meet up again at Wanganui, to make any necessary compensation payments to the Maoris during these final hearings. Spain's party reached Wanganui towards the end of March 1843. ⁵

The Company's claim to Wanganui originated in a transaction between Colonel Wakefield and several Wanganui chiefs, notably Kurukanga and Te Kiri Karamu, both of whom belonged to the main Ngati Hau hapu, Ngati Patutokotoko. These chiefs, who had witnessed the conclusion of the Kapiti sale, came aboard the Tory while it was anchored off Waikanae in November 1839. A deed was prepared and a description of the lands was incorporated as given by Te Tui. ⁶ The boundaries of the Company's Wanganui claim were as follows: ⁷

reaching along the sea shore on the North of the said Cook Straits from Manewatu [sic] to Patea and inland from either of the said points to the Volcano or Mountain of Tonga Ridi [Tongariro].

Each signatory to the deed was given a fowling piece to confirm the contract. Although the Tory went to Wanganui soon after, bad weather prevented her from anchoring there.⁸ So it was not until late May 1840 that the sale was completed by Colonel Wakefield's nephew, Jerningham Wakefield. In spite of opposition by the missionaries Henry Williams and Octavius Hadfield, twenty-seven more chiefs added their marks to the deed after a series of meetings at several Wanganui villages. Five to six hundred Maoris attended the ceremony of the final payment, most of whom were from upriver - the home territory of Kurukanga and Te Kiri Karamu. Two attempts were made to distribute the payment in an orderly manner but both deteriorated into scrambles during which those both for and against the sale tried to grab the goods. Then, after doing a little private trading on his own account, Jerningham Wakefield left the area.⁹

Colonel Wakefield decided in early December 1840 to open up Wanganui for selection since the New Zealand Company did not have enough good quality land available at Port Nicholson.¹⁰ On 6 January 1841, however, Hobson placed a ban on land sales at both Wanganui and Taranaki until the ownership of the land was established. The Governor was reacting to news of a recent massacre of Ngati Tuwharetoa by south Taranaki warriors - a situation in which the Wanganui tribes were automatically involved because of their genealogical ties with Taranaki. The Government's resources, Hobson felt, would not be able to cope with the expansion of settlement into a highly unstable area.

In spite of the ban, Wakefield continued with his intention in the hope that it would all work out to the Company's advantage.¹¹ A survey party was sent into the region and in September 1841 about one-half of the selections of the surveyed land were made. By this time Company settlers had been in the area for several months and more continued to arrive.¹² The existence of about 200 settlers in the Wanganui area forced Governor Hobson to permit the extension of the September 1841 Agreement to include 50,000 acres of Wanganui land in the schedule. Most of this land was on the west bank of the Wanganui river.¹³ However, by October 1841 Maoris were protesting that land on the east bank was being surveyed. A meeting held by Colonel Wakefield to try and reach a settlement with the Maoris living on the east bank failed and in May 1842 the Maoris of Putikiwharanui pa wrote to Spain protesting against the occupation of their side of the river which they held had never been sold and never would be.¹⁴

The local New Zealand Company officials believed that such assertions were made mainly by Christian Maoris stirred up by the Reverend John Mason, a CMS missionary, and a few other Europeans, including Police Magistrate and Company sub-Protector of Aborigines, G.F. Dawson. Certainly it may have been true, as Jerningham Wakefield alleged, that the Maoris were discontented because of Mason's assertion that they would be driven inland by the Pakehas and that their land was worth far more than the payment they had received.¹⁵ But that cannot have been the main cause, since Dawson had only been able to persuade

the dissenting Maoris to allow a survey of their land by assuring them that the land was still theirs, that it was only being measured, and that they would not be forced to give up land they had not sold. Dawson had already strongly advised Colonel Wakefield against occupation of disputed land, but his fears of violent resistance were ignored and for his caution he was included among those blamed for the Maoris' dissatisfaction.¹⁶ Also, it was not just one or two chiefs who were opposed to settlement, but the chiefs of Putikiwharanui in general - and not all of them would have been influenced by Government officials, missionaries, or other Company scapegoats.¹⁷

By the time of Spain's arrival in 1843 the east bank Maoris had been obstructing settlement on their side of the river for almost 2 years. Since mid-1841 they had prevented surveyors from working, warned settlers off the land, harassed any who persisted and, in several cases, destroyed buildings that were erected.¹⁸ In spite of this Colonel Wakefield felt that the settlement would succeed because of the desire of Maoris living upriver for trade with the settlers. He was also highly optimistic that the Company's influence with the Colonial Office was increasing and would eventually leave the New Zealand Government with no alternative but to bow to the Company's will.¹⁹ In fact, though Maori-European antagonism existed, the situation was stable when the Commissioner arrived. The Maoris' opposition to settlement of the area was counteracted by the siting of the township on undisputed land, the missionaries' directing their efforts towards a compromise and, as

Colonel Wakefield had recognised, the Maoris' appreciation of the value of European trade. ²⁰

Since the Maoris had so consistently denied the sale of a significant part of the Wanganui lands claimed by the Company and had opposed settlement of it, Spain felt it was very important that Colonel Wakefield attended the hearings at Wanganui. He believed that the Colonel would probably want to take advantage of the compensation system and Clarke's presence at Wanganui to reach an agreement with the Maoris. ²¹ However, although Colonel Wakefield had visited Wanganui en route to Taranaki and told the settlers there that Spain would sort out the land question and that he himself would make payments accordingly, Wakefield never returned to the region. From Wellington he wrote on 8 April to say that he had to wait there for the arrival of more despatches from England since he had received general instructions that no more payments were to be made to the Maoris unless they would also give up their pa, cultivations and burial grounds. In the meantime he would send his nephew, Jerningham Wakefield, to Wanganui as Company representative. ²² Jerningham would have authority to negotiate a compensation sum with Clarke but the result would not be binding on the Company unless approved by Colonel Wakefield. ²³ Spain seems to have believed that this was Wakefield carrying non-cooperation with the Commission a step further - in his general report of 12 September 1843, Spain dismissed the reasons for Colonel Wakefield's absence as 'absurd' since the instructions referred to by the Colonel had been written in Great

Britain months before the compensation system had been set up. ²⁴

After waiting just over 2 weeks for the Company's Principal Agent to turn up as he had originally promised and been urgently requested to do, the court opened on 13 April 1843 without any Company representative present. ²⁵ Any further delay would have resulted in the Maoris carrying out their threat to leave without testifying. ²⁶ In the absence of a Company agent, Spain called the names of those on the deed and examined those Maoris who would come forward. Trying to keep the investigation as balanced as possible, the Commissioner asked questions of the witnesses that he thought the Company's counsel would have put. ²⁷ Seven 'signatories' and two other Maoris who claimed rights in the land but got no payment were examined. Included among the testifying 'signatories' were the paramount chief of Putikiwharanui pa, Te Anaua of the Ngati Hau hapu, Ngati Ruaka, and his brother-in-law, Te Peehi Turoa, the principal chief of the Ngati Patutokotoko hapu. Kurukanga, one of those most involved in the sale, did not appear - apparently deliberately. ²⁸ The Maori evidence indicated that at the time of Jerningham Wakefield's visit to make the final payment, different Maoris had different ideas of what was happening and nearly as many had opposed the sale as were in favour of it. In court many said, for example, that they thought that the goods were in exchange for the pigs and potatoes which Jerningham Wakefield had acquired in private trading shortly after the land sale was completed. ²⁹ The testimony of

Barrett and Brook, the Company's interpreters, confirmed that there had been misunderstanding - Barrett testified that he had explained the reserve system to Kurukanga and Te Kiri Karamu on the Tory as 'one part for the white people and one for them [the Maoris]: I [Barrett] did not state the proportion.' And Brook testified that he had told the Maoris at Wanganui 'one side of the land shall be reserved for you.' ³⁰

At the end of 3 weeks Spain told the local Maori people that they were entitled to compensation for land on both sides of the river as the Company had established a claim only to the side of the river on which the town site was laid out, and even this claim was deficient. ³¹ Nevertheless, Spain decided that none of the land was to be returned - compensation would be paid instead. He made this decision because a large payment had been given by the Company and had been accepted by Maoris - presumably a majority - from both sides of the river, in particular the important chiefs Te Anaua and Te Peehi Turoa from the eastern riverbank. Spain held that these considerations were not outweighed by the fact that the deed had been inadequately explained and several Putikiwharanui pa chiefs were absent when the sale was completed. ³² Colonel Wakefield's continued absence, however, meant that a final settlement could not be made immediately. Spain nevertheless persuaded the Maoris to decide on a sum. Initial demands were considered by Spain to be too high but it was only with difficulty that he was able to get the Maoris to lower them. As usual the compensation payment was not to cover pa, cultivations and burial grounds. The court was then closed. ³³

Two days later Jerningham Wakefield arrived in Wanganui. Spain gave him permission to read the evidence which had been taken and reopened his court for 3 days. In that time Jerningham Wakefield did not look at the hearing records, and he produced a single witness in support of the Company's claim, Rangitauwira of the Ngati Patutokotoko hapu. Though he held that some more witnesses would soon arrive from upriver, the Commissioner was not willing to be further delayed. He closed the court again and told Wakefield that when the expected witnesses did turn up, they should be brought south to be examined. ³⁴ Later Jerningham Wakefield claimed that Spain had under-investigated the Company's Wanganui case as compared with the Port Nicholson case since the size of the district and payment, and the number of signatories involved, were at least as large as those of the Port Nicholson case. He went so far as to attribute this to the absence in Wanganui of the home comforts that Spain was used to, notably good meals and society. ³⁵ Before leaving Wanganui Spain assured the Maoris, who were indignant at Wakefield's procrastination, that he would return with the compensation money as soon as he had been to see the Governor in Auckland. ³⁶ It would, however, be a year before he returned - and by then the chiefs' mood had changed.

Returning south, Spain began investigation of the Company's title to the Manawatu area at Manawatu and Otaki in April 1843. ³⁷ The Company claimed the land between lines taken due east from the mouths of the Rangitikei and Horowhenua rivers

to the Tararua ranges. ³⁸ This claim did not derive from any of the purchases made during the Tory's land-buying voyage in late 1839. Instead it was based solely on a purchase made in late 1841-early 1842 at the request of a Maori deputation from Manawatu and Horowhenua that the Company should buy the entire Manawatu district from them in exchange for a payment. The scheme had been initiated by the Ngati Raukawa chief, Te Whatanui. The offer seems to have been at least partly motivated by a desire for a share of the Pakehas' trade. At the sale meeting in December 1841, for example, Te Whatanui was to ask ³⁹

what was the use of their [Ngati Raukawa] standing on their hills watching the vessels sailing past them from Port Nicholson to Wanganui and Taranaki, whilst they had as good a river at Manawatu as the Wanganui and plenty of pigs and potatoes to sell.

There is also the fact that Ngati Raukawa regarded themselves as a more senior tribe than Ngati Toa, and were resentful that Te Rauparaha's mana had surpassed that of their living or recent leaders. Certainly Te Whatanui had long harboured a desire to avenge the deaths of some Ngati Raukawa relatives killed by Ngati Toa at Putikiwharanui (Wanganui) some 20 years before. Moreover, the sale was to be made in spite of strong opposition by the Ngati Toa chief, Te Rangihaeata. It is, therefore, probable that Ngati Raukawa were challenging Ngati Toa's claim of supremacy in the region and asserting their own independence. ⁴⁰ Te Whatanui held two korero - one at the head of the Manawatu river and the other at Otaki - before leading a deputation of six chiefs to Wellington.

Both korero were attended by Amos Burr, a fluent Maori speaker and a man with a lot of influence with the local people. He also accompanied the deputation to Wellington.⁴¹ In a letter of 5 September 1841, Hobson had privately told Colonel Wakefield that he could make any fair arrangement with the Maoris in order to move them off lands within certain defined limits.⁴² Colonel Wakefield considered that this gave him the authority to make the Manawatu purchase.⁴³ The land was formally offered to the Company at a large meeting at Otaki in December 1841. It was attended by Colonel Wakefield, Halswell, the Company's Surveyor-General, Captain William Mein Smith, and several Wellington settlers, with Richard Davis acting as interpreter. The deed was explained to the Maoris by Amos Burr. The payment offered, however, was considered inadequate and so completion of the transaction was deferred until the other goods demanded by the Maoris could be brought up from Wellington. This took place at a meeting held on 2 February 1842 at a pa on the Manawatu river, possibly at the river mouth. About 300 Maoris from both sides of the Manawatu river had gathered at the pa to receive the payment of about £1,000 worth of goods from Captain Smith. As not all of those who had agreed to the sale were present, some of the goods were set aside. Not long afterwards, the storehouse in which they were placed was sacked by a large mob of Maoris and only the goods reserved for the Otaki Maoris were saved. These were later given to a chief there for distribution.⁴⁵

The sale was subsequently opposed by the chief Taikoporua, also of Ngati Raukawa, who lived in the upper reaches of the Manawatu river. Taikoporua had been visited by a Company interpreter, Richard Davis, at about the time of the sale. But he had refused to part with any land unless he was given 'a heap of goods as high as Tararua'.⁴⁵ Taikoporua had neither attended the sale, nor received any part of the payment. He had been ostensibly represented at the sale by the chief Upa who also owned land in the area independent of that belonging to Taikoporua.⁴⁶

Spain's investigations at Manawatu were hindered by the continued absence of Colonel Wakefield and, indeed, any Company representative, since this meant that the Commissioner himself had again to find and bring forward all the witnesses.⁴⁷

The investigation at Otaki was also difficult for Spain because the witnesses were being examined there in the presence of Te Rauparaha and Te Rangihaeata. The opposition of Te Rangihaeata, at least, had been overridden by the important Ngati Raukawa chief Te Ahu Karamu when the sale was made. The result was a lack of straightforward testimony. Spain noted, for example, that the evidence given by Te Whatanui when at home in Horowhenua differed greatly from the evidence the chief gave with the two Ngati Toa chiefs present - it seems that he had become diplomatically less plain-spoken.⁴⁸

Nevertheless, Spain found that the Maoris associated with the leading figures in the sale - Te Whatanui, his close ally Te

Ahu Karamu (also of Ngati Raukawa), and the chief Taratoa - agreed that, though it was much less than the Company claimed, some land had been sold. ⁴⁹ Evidence aside, Spain considered that Hobson's dispensation did not include the making of new purchases of large pieces of territory. Therefore, even if the purchase was valid, the Proclamation of 30 January 1840 declaring all purchases after that date void, would nullify the sale. ⁵⁰ However, the compensation arrangement sanctioned by Shortland allowed the case to be dealt with, though Colonel Wakefield's absence from the hearings meant that the negotiations could not be started immediately. ⁵¹ Also, the evidence of Europeans involved in the case and of Taikoporua was still pending. Captain Smith and Colonel Wakefield were examined at Wellington the following month, and Taikoporua at Manawatu in 1844. ⁵² And it was not until then that Spain was in a position to announce his decision on the Manawatu lands.

While at Otaki and subsequently during a fortnight at Porirua, Spain also investigated the Company's claim to other lands, notably Nelson and Porirua, under the two deeds acquired by Colonel Wakefield at Kapiti and Queen Charlotte Sound. ⁵³ These were held by Colonel Wakefield to be overriding deeds as they transferred to the New Zealand Company the rights of the sovereign chiefs of the Cook Strait region. However, in the enquiry about the Porirua lands, Commissioner Spain treated the Kapiti deed as if it was specifically concerned with the Porirua district, since the Company's claim to Porirua was based almost entirely on it alone. This is also

why Spain kept the investigation of the Port Nicholson and Porirua claims quite separate. ⁵⁴ The Commissioner had already heard Company testimony in support of the claims made under these deeds while at Wellington. He now examined Te Rauparaha, Te Rangihaeata, Te Hiko, Tutahanga and other Ngati Toa Maoris who had put their marks on these documents. ⁵⁵

During the hearings Spain found that the receipt of a lot of payment was not denied, but Te Rauparaha and Te Rangihaeata would only admit that they had sold Taitapu (Golden Bay) and Whakatu (Tasman Bay) respectively. The two chiefs held that at the sale they had only listed their conquests and residences rather than the places they wished to sell. ⁵⁶ Accordingly, Te Rauparaha and Te Rangihaeata, who lived in the Porirua area, denied that they had sold it to Colonel Wakefield. This testimony was supported by the evidence of Te Hiko, Tutahanga and other Ngati Toa Maoris who were party to the transaction and by the history of the chiefs' opposition to the Company's claims to the area. ⁵⁷

The first instance of Te Rauparaha denying the sale had occurred only a month after the Kapiti deed was 'signed'. Te Rauparaha told those on board the Tory that he had only sold Taitapu and Rangitoto (D'Urville Island). ⁵⁸ Since that time Company attempts to settle the Porirua district had been resisted. The Maoris, for example, destroyed bridges on the Kaiwharawhara-Porirua bridle-road, and felled trees across it in mid-1841 soon after it was completed. When Koraria, a

chief, drowned near Rangitikei, a tapu (religious restriction) was placed on the bridle-road by Te Rangihaeata which prohibited its use by settlers and their stock.⁵⁹ The Maoris also interrupted surveys of the district and only 3 weeks after the first four settlers had moved into the area in mid-March 1842, Te Rangihaeata and thirty armed followers destroyed the houses which had been built. The property of the settlers, who had fled in the meantime, was not damaged or taken. In spite of public pressure to have Te Rangihaeata arrested, this was not attempted because Police Magistrate Murphy refused to sanction action against the Maoris until the Commissioner settled the land question. Although settlement continued, the Company would not guarantee titles to Porirua lands and colonists were bullied and their buildings destroyed on several occasions.⁶⁰

Taking into consideration the consistent Maori opposition to the sale of Porirua and resistance to Pakeha occupation of the area, the inability of Brook, the interpreter, to explain the sale, and the fact that the deal was not made on shore, Spain decided that the chiefs had neither meant to sell nor sold Porirua. The New Zealand Company was, therefore, not entitled to a Crown grant for the Porirua lands.⁶¹

The number of private claims advertised for hearing by Spain during this trip to Wanganui and back was small, numbering no more than about thirty. Several submitted claims were not followed through after the initial notification was made to New South Wales and other claimants did not appear in court

for the investigation. Most of the cases which the Commissioner looked into were for land on Kapiti Island and in the vicinity of Porirua Harbour. The New Zealand Company did not claim Mana and Kapiti Islands as, at the time of buying the Cook Strait lands, Colonel Wakefield knew that several Europeans already held titles to the islands. No claims seem to have been set up against the Company for land at Manawatu and Wanganui. Some evidence on these private cases, mostly from Europeans involved in the claims, had already been taken earlier at Wellington. ⁶²

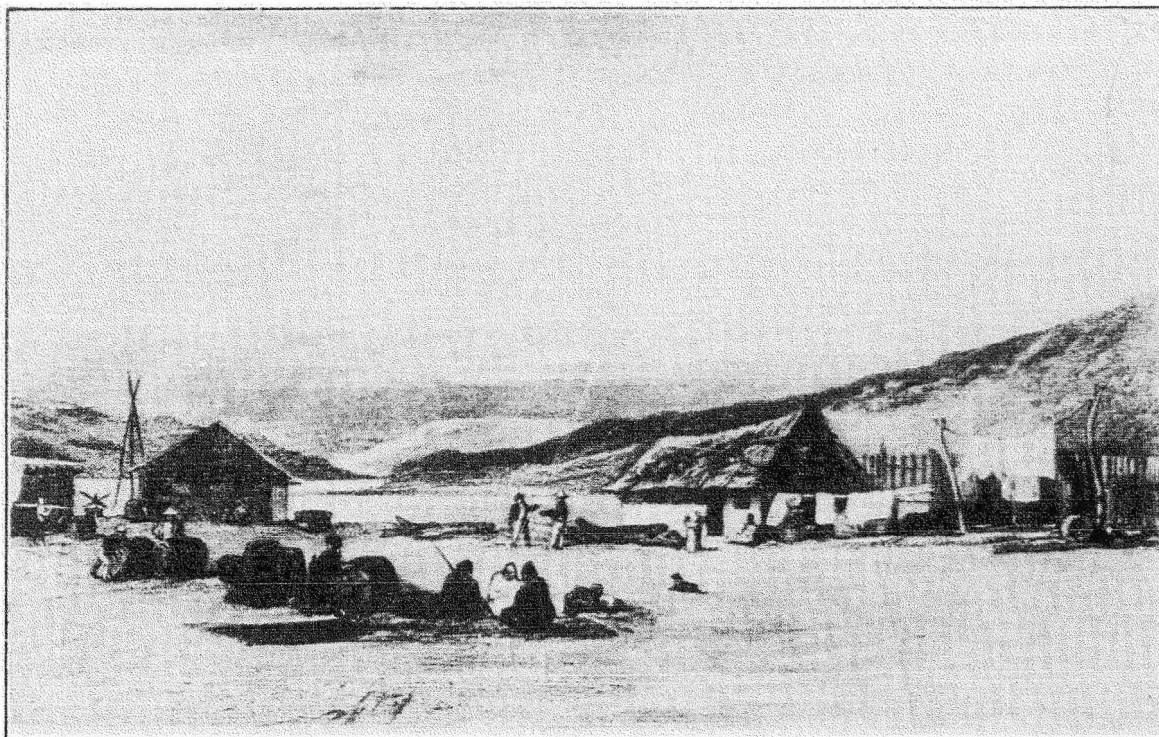
Of the private claims which were dealt with during these months several are especially interesting for the kind of awards made and other aspects of their history. For instance, in the case of John Bradshaw, Spain awarded Bradshaw only a life interest in the three or so acres he claimed at Te Karaka Point, Porirua Harbour. Spain had found that although a deed of sale had been executed by Bradshaw and the 'sellers', Meri Meri and 'Paioiki', on 26 December 1839, and £17 worth of goods had been paid, the two Maoris had not intended to convey more than a life interest to Bradshaw. ⁶³

Spain made a similar award in the case of Joseph Toms, ⁶⁴ a well-known local whaler, who claimed 40 acres at 'Tete' or 'Titai' (Titahi Bay) opposite Mana Island. This was one of several pieces claimed by Toms - including land on Kapiti Island and at Queen Charlotte Sound - which had been sold to him by his father-in-law, the Ngati Toa chief Nohorua (other-

wise known as Thomas Street), in September 1838 and October 1839. The sale of the various blocks, except for that at Titahi Bay, was admitted. In the case of the Titahi Bay claim the evidence showed that Nohorua had only conveyed a life interest in this land by virtue of Toms's Maori wife and that the land could not be resold to others as Nohorua intended it to go to Toms's children when their father died. In Spain's award, dated 15 March 1845, the Trustees of Native Reserves⁶⁵ were granted about 247 acres at Titahi Bay which Toms could use while he was alive and later would belong to his children.⁶⁶

Commissioner Spain also recommended an unusual award respecting another of Toms's claims, 'Paramatta' (Paremata). This plot of land, measuring almost 5 acres in extent, was situated at the entrance to Porirua Harbour and had been sold to Toms as a whaling station site by 'A Kie' on 1 May 1839 for £163 worth of goods. Toms's ownership of the property was not denied by the local Maoris. In making his award in favour of a grant to Toms, Spain recommended that the usual exception of land 100 feet above the high-water mark be disregarded as it was the water frontage which gave this particular piece of land its value.⁶⁷

In the case of Joseph Toms's claims, the right of Nohorua to sell the land was acknowledged and acquiesced in by his half-brother, Te Rauparaha, and by Te Rangihaeata.⁶⁸ The significance of this becomes apparent when the claims are compared



Toms's whaling station, Porirua

with another which the two Ngati Toa chiefs opposed. Couper, Holt and Rhodes, Sydney merchants, claimed Kapiti Island, its whaling station and the rights to whaling in the adjacent waters, with one-tenth of the land set aside for the Maoris. The payment of just over £85 worth of goods and cash for this title in October 1839 was admitted by Te Rauparaha and Te Rangihaeata, but the alienation of the land was denied. The Europeans' testimony was corroborated by that of Oriwia Hurumutu (Olivia), daughter of the late high-ranking chief Tungia, who had been one of the sellers. Oriwia Hurumutu alleged that Te Hiko and Te Rauparaha were denying the sale because they were afraid of losing the land. Largely on the basis of her evidence, Spain decided that the sale was bona fide. He recognised, however, that the opposition of the leading Ngati Toa chiefs meant there was little chance of the claimants gaining occupation of the land even if they had a grant. He therefore awarded them 688½ acres on the mainland, which was to be added to the 727 acres already awarded them in respect of their claim to all the land between the mouths of the Waikanae and Otaki rivers, and extending 40 miles into the interior. ⁶⁴ Incidentally, the Waikanae Maoris refused to allow the Kapiti award to be taken up in their region, and the matter was apparently not yet settled a decade later. ⁷⁰

The claims of the Polynesian Company are also of particular interest - in part because it was one of the very few companies formed to invest in New Zealand land, ⁷¹ and in part because of the nature of Spain's award. The Company's share-

holders were six Sydney men, five of whom were merchants, who had invested in land at Foveaux and Cook Straits. The Cook Strait land claimed by the Company had been originally bought on 9 October 1839 by William Hay, who was not a member of the Company. Hay claimed to have bought the land from Te Hiko, 'Rangi Horo' (Te Rangi Hiroa), Te Rauparaha, Te Rangihaeata and other Ngati Toa chiefs for a wide variety of goods worth almost £200. Later Hay built a house on the property. A deed was involved in the transaction but it contained no description of what land was being alienated. Before the claim was sold to the Polynesian Company on 25 January 1840, a few more Maoris were persuaded to 'sign' the deed, and a description of the property's location was added. The land which the deed ostensibly conveyed to Hay was a large block called 'Porirua', adjoining 'Teeti' (Titahi Bay) and with a north-east-by-north boundary which was 30 miles long. Rolla O'Ferral, representing the Company, visited the land in March 1840 to look over the purchase and depasture some cattle on it. He soon found that the Maori 'sellers', notably Te Rauparaha, were dissatisfied with the situation, having had no idea at the time of which land was 'sold'. In October 1840, therefore, O'Ferral returned and made a second payment to the Ngati Toa, slightly larger than the first, to take care of the matter. Unfortunately for the Polynesian Company, although it was understood that the 'sale' did not include the pa, gardens and burial grounds, O'Ferral did not get the Maoris to specifically acknowledge at this time the location of the land first 'sold' to Hay. ⁷² So when Spain investigated the case he found that

the receipt of two large payments and the 'sale' of some Porirua land were admitted, but almost all the Maori evidence differed from the European as to what specific area had been parted with. Because of this and because Spain considered that the Polynesian Company had acted commendably in trying to rectify matters through a second payment, the Commissioner disregarded the irregularities relating to the deed and recommended a land scrip award to each Polynesian Company member according to the value of their shareholdings. ⁷³

Although Colonel Wakefield knew Spain was holding investigations at Porirua, he did not travel the eighteen or so miles to attend the court during the fortnight in May 1843 that Spain was there - Wakefield still expected the imminent arrival of further instructions from England on the question of additional payments to the Maoris and held he could do nothing until he had received them. ⁷⁴ Te Rauparaha and Te Rangihaeata, no doubt sarcastically, asked Spain why he did not compel Colonel Wakefield to attend just as they themselves were obliged to. ⁷⁵

When Spain had set out from Wellington in mid-February he had envisaged himself investigating the Company's claims, as well as those of private claimants, deciding where compensation was due, presiding over the additional payments and, on his return to Wellington, closing the west coast cases by submitting reports in favour of Crown grants to the Company. But when Colonel Wakefield did not attend the Commission's hearings

along the coast, Spain found himself acting as Company's counsel and negotiator, as well as presiding judge, and unable to conclude any of the Company's cases. Spain regarded this situation as highly unsatisfactory - in part because it would become more difficult and expensive to finalise the cases, but primarily because it was seriously undermining the Maoris' confidence in the Commission itself.⁷⁶ And, as Spain was well aware, without that trust and cooperation nothing could be achieved.

NOTES

1. Spain/Col. Sec., 16-9-1842, IA 1; Notice, 6-2-1843, New Zealand Government Gazette, 1-3-1843; Spain, General report/Col. Sec., 12-9-1843, IA 1.
2. *ibid.*
3. *ibid.*; Spain/Clarke, 14-3-1843, *ibid.*; Wakefield/Clarke, 6-3-1843, *ibid.*; Notice, New Zealand Government Gazette, 1-3-1843.
4. Spain, memorandum/Shortland, [30]-9-1843, encl. in Shortland/Stanley, 21-11-1843, '1844 Report of Select Committee', App. 7, pp. 255-256.
5. Spain, General report/Col. Sec., 12-9-1843, IA 1; Spain/Wakefield, 3-4-1843, encl. in Spain, Report on NZC claim to Petre (Wanganui), 31-3-1845, encl. in FitzRoy/Stanley, 13-9-1845 (hereafter 'Spain, Wanganui report'), IUP, Vol. 5, p. 92/BPP, [1846(203)30], p. 84; Spain, Report on NZC claim to Manawatu, 31-3-1845, encl. in FitzRoy/Stanley, 13-9-1845 (hereafter 'Spain, Manawatu report'), IUP, Vol. 5, pp. 108-109/BPP, [1846(203)30], pp. 100-101.
6. 'Spain, Wanganui report', IUP, Vol. 5, pp. 80-81/BPP, [1846(203)30], pp. 72-73; Carkeek, Kapiti Coast, p. 18; Wakefield, Adventure in New Zealand, p. 104.
7. NZC deed for the Wanganui district, OLC 909.
8. Wakefield, Adventure in New Zealand, p. 104.
9. 'Spain, Wanganui report', IUP, Vol. 5, pp. 83-84/BPP, [1846(203)30], pp. 75-76; Wakefield, Adventure in New Zealand, pp. 204-206, 208-211.
10. W. Wakefield/NZC Sec., 5-12-1840, NZC 3/1, pp. 421, 425-426; Wards, Shadow of the Land, p. 304.
11. W. Wakefield/NZC Sec., 14-2-1841, NZC 3/1; Wards, Shadow of the Land, pp. 303-305.
12. Wakefield, Adventure in New Zealand, p. 304; Wards, Shadow of the Land, pp. 304-305.
13. *ibid.*, p. 305.
14. Wakefield, Adventure in New Zealand, pp. 437, 509.
15. *ibid.*, pp. 352-353, 405, 437, 509; Wards, Shadow of the Land, p. 306.
16. *ibid.*
17. *ibid.*, pp. 306-307.
18. Wakefield, Adventure in New Zealand, pp. 436-437, 441; Thomson, Story of New Zealand, Vol. 2, pp. 45-46; Wards, Shadow of the Land, p. 307.
19. *ibid.*
20. *ibid.*, p. 308.

21. Spain/W. Wakefield, 3-4-1843, encl. in 'Spain, Wanganui report', IUP, Vol. 5, p. 92/BPP, [1846(203)30], p. 84.
22. Spain, General report/Col. Sec., 12-9-1843, IA 1; W. Wakefield/Spain, 8-4-1843, *ibid.*, IUP, Vol. 5, pp. 92-93/BPP, [1846(203)30], pp. 84-85.
23. W. Wakefield/Spain, 8-4-1843, encl. in 'Spain, Wanganui report', IUP, Vol. 5, pp. 92-93/BPP, [1846(203)30], pp. 84-85.
24. Spain, General report/Col. Sec., 12-9-1843, IA 1.
25. Minutes of meeting at Wanganui, 15-4-1843, encl. in 'Spain, Wanganui report', IUP, Vol. 5, p. 91/BPP, [1846(203)30], p. 83; Spain/E.J. Wakefield, 17-4-1843, *ibid.*, IUP, Vol. 5, pp. 93-94/BPP, [1846(203)30], pp. 85-86.
26. Spain, General report/Col. Sec., 12-9-1843, IA 1.
27. 'Spain, Wanganui report', IUP, Vol. 5, p. 86/BPP, [1846(203)30], p. 78.
28. *ibid.*, IUP, Vol. 5, pp. 84, 86/BPP, [1846(203)30], pp. 76, 78; Carkeek, Kapiti Coast, p. 18; Wards, Shadow of the Land, p. 302.
29. 'Spain, Wanganui report', IUP, Vol. 5, p. 85/BPP, [1846(203)30], p. 77; Wards, Shadow of the Land, pp. 303-304.
30. Evidence of Barrett, OLC 909; 'Spain, Wanganui report', IUP, Vol. 5, pp. 82-84/BPP, [1846(203)30], pp. 74-76.
31. *ibid.*, IUP, Vol. 5, p. 86/BPP, [1846(203)30], p. 78; Spain, General report/Col. Sec., 12-9-1843, IA 1.
32. *ibid.*; 'Spain, Wanganui report', IUP, Vol. 5, pp. 84, 86/BPP, [1846(203)30], pp. 76, 78; Clarke/Clarke, sen., 27-6-1844, 'Clarke letters', Vol. 62/B, item 79; Wards, Shadow of the Land, p. 304.
33. Spain, General report/Col. Sec., 12-9-1843, IA 1; 'Spain, Wanganui report', IUP, Vol. 5, pp. 86, 88/BPP, [1846(203)30], pp. 78, 80; No information has come to light on how much the Maoris demanded as compensation. But Spain later wrote that he believed the claims to the coast, including Taranaki, could have been settled for £5,000 if Wakefield had been there to make immediate payments. The Wanganui people were later paid £1,000 in compensation. Spain, General report/Col. Sec., 12-9-1843, IA 1; 'Spain, Wanganui report', IUP, Vol. 5, p. 90/BPP, [1846(203)30], p. 82.
34. Spain, General report/Col. Sec., 12-9-1843, IA 1; 'Spain, Wanganui report', IUP, Vol. 5, pp. 86-87/BPP, [1846(203)30], pp. 78-79; Wakefield, Adventure in New Zealand, pp. 588-590.
35. *ibid.*, pp. 589-590.
36. Minutes of meeting at Wanganui, 15-4-1843, encl. in 'Spain, Wanganui report', IUP, Vol. 5, p. 91/BPP, [1846(203)30], p. 83.

37. 'Spain, Manawatu report', IUP, Vol. 5, pp. 108-109/BPP, [1846(203)30], pp. 100-101; 'Spain, Nelson report', IUP, Vol. 5, p. 44/BPP [1846(203)30], p. 36.
38. 'Spain, Manawatu report', IUP, Vol. 5, p. 108/BPP, [1846(203)30], p. 100; The Company claimed no exact acreage, but Buick suggests that Wakefield bought only 25,000 acres situated between Horowhenua and Kereru, in the north - though he gives no source. T. Lindsay Buick, Old Manawatu, or the wild days of the west (Buick and Young, Palmerston North, 1903), p. 128.
39. W. Wakefield/NZC Sec., 8-2-1842, NZC 3/2, p. 29.
40. A few chiefs also took the opportunity of Spain's hearings to deny Te Rauparaha's jurisdiction over their lands, OLC 907-908; Burns, Te Rauparaha, p. 126; Parsonson, 'He whenua te utu', p. 173; Wakefield, Adventure in New Zealand, p. 605.
41. 'Spain, Manawatu report', IUP, Vol. 5, p. 107/BPP, [1846(203)30], p. 99.
42. See above, p. 123-124.
43. 'Spain, Manawatu report', IUP, Vol. 5, p. 106/BPP, [1846(203)30], p. 98.
44. Report, OLC 908; 'Spain, Manawatu report', IUP, Vol. 5, pp. 106-107, 109/BPP, [1846(203)30], pp. 98-99, 101; Buick, Old Manawatu, pp. 127-128; Wakefield, Adventure in New Zealand, p. 448.
45. Report, OLC 908.
46. 'Spain, Manawatu report', IUP, Vol. 5, pp. 107-108/BPP, [1846(203)30], pp. 99-100.
47. *ibid.*, IUP, Vol. 5, pp. 109-110/BPP, [1846(203)30], pp. 101-102; Spain, General report/Col. Sec., 12-9-1843, IA 1.
48. 'Spain, Manawatu report', IUP, Vol. 5, pp. 108-109/BPP, [1846(203)30], pp. 100-101; Wakefield, Adventure in New Zealand, pp. 448, 505-506.
49. 'Spain, Manawatu report', IUP, Vol. 5, pp. 108-109/BPP, [1846(203)30], pp. 100-101; Ngati Raukawa told Spain that Wakefield did not want the land which the deputation first offered to him and that he bought land at 'Rewarewa' from an upriver chief, 'Kakaroa', instead. Then at the meeting with Smith, 'Parekauwau' was also sold, but Wakefield was again dissatisfied with this. Ngati Raukawa told Spain that it was therefore decided that those who had received goods would give Wakefield upriver land, each according to their share of the payment. Te Whata-nui gave Heretaunga (adjoining Parekauwau), Rahu gave 'Paihakanui', Taratoa gave a piece at Kerikeri on both sides of the river, and 'Horahau' acknowledged the sale of 'Raumatangi', 'Minutes of Commissioner's proceedings, 21-3-1843, at 'Warangi' pa, Manawatu', OLC 906-907, Miscellaneous papers; S. Percy Smith, History and Traditions of the Maoris of the West Coast (Thomas Avery for Polynesian Society, New Plymouth, 1910), p. 412.

50. 'Spain, Manawatu report', IUP, Vol. 5, pp. 109-110/BPP, [1846(203)30], pp. 101-102.
51. ibid., IUP, Vol. 5, p. 110/BPP, [1846(203)30], p. 102.
52. ibid., IUP, Vol. 5, pp. 108-109/BPP, [1846(203)30], pp. 100-101.
53. 'Spain, Nelson report', IUP, Vol. 5, p. 43/BPP, [1846(203)30], p. 35.
54. ibid., IUP, Vol. 5, pp. 43-44/BPP [1846(203)30]; pp. 35-36; 'Spain, Porirua report', IUP, Vol. 5, p. 103/BPP, [1846(203)30], p. 95.
55. 'Spain, Nelson report', IUP, Vol. 5, p. 44/BPP, [1846(203)30], p. 36.
56. See above, p. 148 and below, pp. 276-278 for details of why these two places were selected.
57. 'Spain, Nelson report', IUP, Vol. 5, p. 44/BPP, [1846(203)30], p. 36; Spain, General report/Col. Sec., 12-9-1843, IA 1.
58. Wakefield, Adventure in New Zealand, p. 105.
59. Evidence of W. Wakefield, 9-6-1842, OLC 906; Arthur H. Carman, Tawa Flat and the Old Porirua Road, 1840-1955. (A.H. Carman, Wellington, 1956), pp. 9, 14-15, 45; Wakefield, Adventure in New Zealand, p. 363.
60. Evidence of W. Wakefield, 9-6-1842, OLC 906; Carman, Porirua Road, p. 17; Miller, Early Victorian New Zealand, p. 52; Ward, Early Wellington, pp. 89-90; Wards, Shadow of the Land, p. 261; Wilson, Land Problems, p. 158.
61. 'Spain, Porirua report', IUP, Vol. 5, pp. 104-105/BPP, [1846(203)30], pp. 96-97; It is unclear whether or not Spain announced his decision at this time. He may well have done since he did so at Wanganui and, later, at Taranaki. He would, of course, have emphasized that the decision had yet to be ratified by the Governor.
62. Spain, General report/Col. Sec., 12-9-1843, IA 1; 'Spain, Nelson report', IUP, Vol. 5, p. 44/BPP, [1846(203)30], p. 36; New Zealand Government Gazette, Supplement, 13-1-1843, 5-4-1843; 'Appendix to Commissioner Bell's report', AJHR, 1863, D-No. 14; Wakefield, Adventure in New Zealand, p. 102.
63. OLC 962.
64. Joseph Toms was also known as George Tom, Jordy Thoms and as Geordie Bolts - the last name was a nickname acquired because he lost his nerve after being crippled by a whale. Burns, Te Rauparaha, p. 182, note; Wakefield, Adventure in New Zealand, p. 33.
65. The Trustees of Native Reserves were established in mid-1842 under an arrangement between the British Government and the New Zealand Company. The control of the Native reserves passed to the Governor, the Bishop of New Zealand (Bishop G.A. Selwyn), and the Chief Justice (William

- Martin). Hobson soon after opted out. He intended to submit a bill to the Legislative Council vesting his trusteeship in the Chief Protector, but Hobson died before this could be done. With the revenue derived from the management of the reserves and from part of the Government land sales fund, the Trustees were to have set up schools for Maori children and implemented other similar philanthropic measures. The latter source of revenue lapsed during FitzRoy's administration. Martin resigned because he felt that his official position was incompatible with his trusteeship. Selwyn also resigned (27-2-1844). Edmund Halswell became the Wellington agent for the two remaining Trustees, H.A. Thompson was the Nelson agent, and Henry St Hill the New Plymouth agent. Jellicoe, Native Reserves, pp. 30-31; for further details see also pp. 46-47, *ibid.*
66. Report, OLC 988, with LS-N 46/1 (a & b), Papers on Toms's Queen Charlotte Sound claim.
 67. OLC 987.
 68. Evidence of Te Rauparaha, 11-5-1843, OLC 987; Evidence of Te Rangihaeata, *ibid.*; Evidence of Te Rauparaha, 12-5-1843, OLC 988, with LS-N 45/1 (a & b); Report, *ibid.*
 69. OLC 129, 130.
 70. Alfred Domett/Commissioner of Crown Lands, 14-7-1852, OLC 129.
 71. It is not known exactly when the Polynesian Company was formed - probably in late 1839 or early 1840.
 72. OLC 237, 239, 362, 368, 420, 538 (Polynesian Company, Porirua claims. Held at NA in a single file); The deed was signed by 'Rangi Ako' (Te Hiko), 'Rangi Horo' (Te Rangi Hiroa), 'Rangi Heitei' (Te Rangihaeata), 'Rupurra' (Te Rauparaha), 'Eoni', 'Arangi', 'Erow', 'Aki' and 'Eapokie'. It is unclear which of these added their marks to the deed after the original 'sale', but probably not the major chiefs identified; see also above, p. 96 for further information on the Polynesian Company's claims.
 73. It is uncertain whether the Maoris themselves agreed as to which land had been sold. The extant minutes of evidence contain the testimony of Te Kai and Te Rauparaha only. Te Kai stated, 'Hay said it was property for Porirua and to build a House', but he 'made no agreement for the quantity of land that was to be sold'. Te Rauparaha acknowledged receipt of the goods, but held that nothing was said about a sale. OLC 237, 239, 362, 368, 420, 538.
 74. Spain, General report/Col. Sec., 12-9-1843, IA 1; Wakefield/Spain, 24-5-1843, *ibid.*
 75. Spain, General report/Col. Sec., 12-9-1843, IA 1.
 76. *ibid.*

CHAPTER SEVEN

THE DEADLOCK IS BROKEN: WAKEFIELD PAYS COMPENSATION FOR
PORT NICHOLSON AND THE KAPITI COAST

If the investigations on the west coast had proved frustrating and awkward for Spain, the immediate outlook for his work in Port Nicholson was just as unpromising - on his return Spain found that the negotiations between Wakefield and Clarke had still not progressed and here, too, the Maoris were becoming critical of the Commission. During the next months, however, the deadlock was to be broken and some measure of agreement on compensation was to be reached.

On 23 May 1843, soon after his return to Wellington, Spain reopened his court for the final Port Nicholson sessions.¹ For the next month he took more evidence on the New Zealand Company's Port Nicholson case. He also investigated the half-dozen non-Company claims to land at Port Nicholson which were made on the basis of prior purchase.²

Meanwhile Colonel Wakefield and Protector Clarke were exchanging letters about the question of compensation for the Port Nicholson Maoris. On 1 March 1843 the Colonel had asked Clarke how much compensation was due to all the Maoris living at Port Nicholson, rather than just those at Te Aro, Kumutoto and Pipitea pa. Clarke replied on 23 May that a total of £1,500 would be needed to settle all the claims of the Port Nicholson Maoris.³ This letter was received by Wakefield on 24 May.

Clearly this would not have gone down at all well with Wakefield since he had already written to Spain earlier the same day largely repeating his letter of 8 April 1843 to the Commissioner at Wanganui. He had no choice but to wait for further instructions, he said - both because of the unexpectedly large size of Clarke's compensation demand (£1,050) and because of a general instruction issued by the Company's Directors prohibiting any more payments to the Maoris. All depended on the result of negotiations between the New Zealand Company and the British Government about the Company's reluctance to spend more than allowed for in Pennington's award. Permission for further payments would only be given once the outcome of these discussions was known. In any case, Colonel Wakefield had added, it could not be decided where compensation was necessary until the lands to be taken up in accordance with Pennington's award were selected. ⁴

Clarke saw the worst in the delay - he feared that the news Colonel Wakefield was really waiting for was that the Company had broken up in England and thus the Colonel was stalling for time while he wound up the Company's affairs in New Zealand. ⁵ But Spain does not seem to have shared Clarke's apprehensions. He believed that whatever his reasoning, Colonel Wakefield was legally and morally obliged to continue with the negotiations even without authorisation from Great Britain. The general instructions cited by Wakefield as grounds for suspending proceedings were held by Spain to be irrelevant; they were written well before the arbitration agreement was made and at a time

when developments such as the progress of Spain's hearings were unknown in Britain. ⁶ The Colonel, however, would not be hurried and so Spain found himself, as a public official, in a ⁷

situation of peculiar difficulty and embarrassment; and ... had the greatest difficulty in convincing the natives that the Government had been no party to deceiving them as to the long-promised settlement of the question.

The continued non-payment of compensation was in fact seriously undermining the Maoris' earlier confidence in British government and justice. Clarke, for example, wrote to his father, the Chief Protector, on 17 July 1843, telling him that the Maoris felt he had deceived them, that they could have no confidence in the Government either, and that they hated the New Zealand Company. ⁸ Spain believed that his involvement as umpire in the compensation negotiations had identified the Government with the arbitration. As a result, the Maoris felt the colony's administration should pay them in either land or money if the Company would not do so. Any refusal on the part of the Government to honour the compensation agreement would be seen as a breach of faith by both the Commissioner and the Government. ⁹ The growing Maori dissatisfaction was clearly expressed on 16 August 1843 when Spain was faced with a deputation of Maoris headed by Moturoa and Wairarapa of Pipitea pa, Mohi (Moses Ngaponga) of Te Aro pa and others. The group wanted to know when they would be paid for their land and stated their intention to go to Auckland and put their case before the Governor. They saw this as the only way to get things settled as the Commissioner and the Company's Agent were apparently in

collusion and would avoid settling the land question until 'we are all dead so as you may have our land without interruption.' ¹⁰ Spain had had no reply at the time to an offer to Colonel Wakefield to reopen arbitration and so he could have done little more than deny the charge and inform the Maoris of how the situation stood. The accusations of complicity seem to have been due largely to the heat of the moment. What the Maoris really seem to have wanted was compensation and if they did not get it, then they would keep their lands. This comes through clearly in a letter sent by Wairarapa to the Governor in mid-September when the chief was at Auckland: ¹¹

Friend the Governor

Colonel Wakefield is the author of this quarrel; he suppresses the proceedings of Mr. Spain and Mr. Clarke ... Friend Governor, Mr. Spain and Mr. Clarke have given notice that this court is closed; ... we have come, that our lands may be paid for by you in money and horses. If you will not pay us for our lands we shall keep them. However, write us a letter to take to Mr. Clarke, authorising him to tell Colonel Wakefield to go back to the places he has bought, which are Kaiwarawara, Waihinahina, Te Korokoro, Pitone and Huitainga: but if you do not consent to this, we shall return to Port Nicholson with an evil impression. We will not consent to give our lands to Colonel Wakefield; we will retain them as long as we live ...

Meanwhile, in early July Acting-Governor Shortland had written to Spain telling him to get a definite yes or no on whether the Company would pay compensation to the Maoris. If the Company refused, Shortland directed Spain to close his court in Wellington. Spain was then to make his reports, beginning with the Port Nicholson area cases, stating how much land the Government

could obtain by making further payments to the Maoris. If this course was not followed Shortland believed that only a few of the settlers who had bought land from the Company would ever get possession of it. ¹²

On 5 August 1843, then, Spain wrote to Colonel Wakefield offering to reopen arbitration. ¹³ Wakefield finally responded on 24 August, advising Spain of his unconditional acceptance of the offer. On the same day Wakefield also wrote to Clarke informing him that he was prepared to continue with the negotiations. His stated reasons were that conclusive instructions from England were still not forthcoming and that Clarke had waived his objections to alienation of Maori pas, gardens and burial grounds in a letter of 23 May 1843. ¹⁴ Probably the most important reason for Wakefield's offer is the one he left unstated. In June 1843 there had been a bloody clash in the Wairau Valley between Te Rauparaha's people and Nelson settlers, as both parties sought to defend their claims to the land before Spain's hearings began. Twenty-two Europeans, including Colonel Wakefield's brother, Captain Arthur Wakefield, and four Maoris had died in the conflict. ¹⁵ This incident had been a real shock to the New Zealand Company colonists and had made Wakefield realise that he had to do something about settling the land claims problems.

But Colonel Wakefield's letter exasperated Spain for two reasons. First, as Spain had not yet formally allowed the negotiations to resume, he felt that Wakefield should not have communicated

with Clarke on any related matter. Even setting aside this objection, the quotation from Clarke's letter was taken out of context. Colonel Wakefield was inferring that the payment of £1500 would be for all the Maori lands, including pa and cultivations. But Clarke had only been offering, at Colonel Wakefield's request, to include all the claims of the Port Nicholson Maoris in one offer, rather than limiting it to Te Aro, Pipitea and Kumutoto claims. This was another attempt by Wakefield to alter the terms of the negotiations.¹⁶ Spain now wrote to Colonel Wakefield giving him the opportunity of proceeding on the original terms. And he also assured him (in reply to Wakefield's query of 24 August) that he had always intended proposing to the Government that extra land proportionate to compensation outlay be awarded to the New Zealand Company at the rate set down in the November 1840 Agreement.¹⁷

Colonel Wakefield replied on the same day, 24 August, that he could not be satisfied with anything less than a 'final and conclusive' settlement.¹⁸ At this time Wakefield believed that the Company's difficulties in getting on to the land were due to a mistaken sense of humanity, a 'spurious' sensibility to Maori rights, and encouragement of systematic opposition to Company proceedings, on the part of others.¹⁹ But the Commissioner regarded Wakefield's insistence on a 'final and conclusive' settlement as yet another attempt to include pa, cultivations and burial grounds in the lands for which the compensation was to be paid. As Wakefield, therefore, clearly did not accept the offered terms of negotiation, Spain closed the

correspondence and left immediately for Auckland. The Commissioner advised Shortland against reopening the negotiations unless success and payment were certain since it might otherwise lead to another violent confrontation between settlers and Maoris. The Acting-Governor agreed that until the Maoris no longer believed the Government would force them to sell at a fixed price, reopening the court would do little good. And this is how matters stood pending the arrival of the new Governor, Robert FitzRoy. ²⁰

In the interval Spain prepared a general report for FitzRoy so he could decide what to do now that the compensation negotiations had collapsed. It was largely a detailed outline of the Commissioner's role with a summary of how Spain's work had progressed in the previous 16 months. ²¹

The report also included a request to the Chief Protector, for an experienced Protector of Aborigines to help Clarke. As well as Land Commission work, Clarke's duties involved mediating between settlers and Maoris, and presenting Maori cases in the law court. This was too much for one person to deal with easily and was contributing to delays in settling the land question. A coadjutor was not appointed but the interpreter, Thomas Forsaith, who joined the Commission staff in April 1844 was a Protector, having recently been promoted from the position of sub-Protector after a year's service in the Protectorate Department. ²²

Spain's request for a Protector was not just prompted by Clarke's need for professional assistance. Since the Wairau clash there had been increased public ill-feeling towards the Commission due to non-settlement of the land claims. Public meetings held in June and August made personal attacks on the Commissioner and held the Commission responsible for all race relations problems.²³ Clarke was jeered at and insulted in the streets, and a petition was got up to FitzRoy to have him removed from office.²⁴ Overworked as he was, Clarke was both angry at and vulnerable to these attacks, so that even though he knew that he had acted as competently as anyone the Government could send, he became a victim of self-doubt and exaggerated fears. For example, he believed that race relations had deteriorated so far that 1843 would end or 1844 begin in a 'fearful effusion of blood' in comparison with which the Wairau incident would be 'trifling'.²⁵

In the final section of the report Spain made comments and suggestions on how the land claims could be settled. Spain had found that most of the land claimed by the Company in the places he had visited to date had either not been alienated to the Company at all or had been only partially so. The same applied to areas which he had not yet visited, according to the evidence he had collected. This was because the Company's purchases of these vast tracts, in comparison with purchases by private individuals, were made in 'a very loose and careless' manner. When carrying out its intention of buying huge pieces of land, the Company agents took descriptions of the land from maps

rather than from the Maori land-owners, and among those who took payments were individuals with little or no right to do so. No questions were asked as to whether other Maoris living on these extensive areas had consented to the 'sales'. Moreover, the interpreters employed by the Company were unequal to the task of properly explaining the amount of land being alienated and their translations regarding the reserve system were 'perfectly unintelligible to the Maoris'.²⁶

Whatever else they may have sold, in Spain's view the Maoris had definitely not parted with their pa, cultivations and burial grounds. Although the Company had, nevertheless, sold some of these to settlers, cut roads through them and otherwise acted as if they had been alienated, the Maoris' ownership of these areas had to be upheld. Any attempt to force their sale would lead to the Maoris refusing compensation for other lands. This was an undesirable situation to be avoided at all costs. And Spain saw other advantages in ensuring that the Maoris kept their pa, cultivations and burial grounds. He believed that continued Maori and European interaction must be ensured if the former were to be 'civilised'. Then by the time the unsold areas were required, the Maori owners would see it as in their own interests to act for the general good. In any case, those who opposed now might be succeeded by children who, having grown up within 'the pale of civilisation', would probably be more amenable. If the opposite course was taken, however, it would lead to the suppression and eventual extinction of the Maori race.²⁷

The Commissioner then outlined his reasons for favouring compensation and concluded by recommending that since the Company had failed to pay compensation as decided on, the Government should do so instead. A final report dealing with each case separately could then be made. The Company would get a Crown grant for the land only on repayment to the Government of the amount paid to the Maoris. As to the sum involved, Spain felt that it would have been no more than £5,000 if Colonel Wakefield had accompanied him on the trip from Port Nicholson to Wanganui to offer on-the-spot compensation as had been originally intended. This would have paid for Taranaki as well; though possibly not for Porirua because of Te Rauparaha and Te Rangihaeata's strong opposition to its alienation. Now, however, the Government would probably have to pay up to £6,000. Neither figure included South Island lands. Spain saw any further delays as leading to more difficulties and increasing demands by the Maoris. He advised FitzRoy, as he had Shortland, that no further arbitration should be entered into if there was any risk of a second disappointment to the Maoris, the results of which Spain would not be held responsible for. Any lands which the Company was entitled to but had not yet selected would not be covered by this arrangement. From past experience Spain believed that settling the title of these lands would not be easy or clear-cut. 28

The new Governor arrived in New Zealand in December 1843 and the following month he travelled south from Auckland to Port Nicholson. While in the south FitzRoy was to deal with the



Robert FitzRoy

land problem and make a decision on what was to be done about the Wairau incident. On his arrival in Wellington FitzRoy attended a formal reception at which he received a rousing welcome from the settlers.²⁹ They regarded him as the answer to all their problems, the first and foremost of which was the land question. These problems were outlined in a memorial presented to FitzRoy at the assembly. The settlers argued that it would be best to settle the land question by making provision for the Maoris without consulting them, and that if Maoris were not made fully amenable to British law, further serious clashes would occur. They urged the Governor to station a military force at Wellington big enough to ensure the Maoris' conformity. The settlers' final point on the matter of land and Maoris related to the Protector of Aborigines. They believed the Protectorate Department was founded on 'erroneous principles', that the Protectors had 'misunderstood their functions', and that Clarke was far too young and inexperienced to hold such a responsible position as Protector of Aborigines.³⁰

Governor FitzRoy, however, immediately made it clear that he was not the kind of Governor the colonists wanted. In his inaugural address to them,³¹

he deprecated, in the strongest terms, the feelings displayed by the Settlers of Wellington against the native population, especially as conveyed through the medium of their newspapers. He stated that he considered the opposition to the natives to have emanated from young indiscreet men; but he trusted that as they had years before them, they would yet learn experience ... The natives should be protected. Justice should be done ... but 'my friends,' contin-

ued the Governor, 'mistake me not; not an acre, not an inch of land belonging to the natives shall be touched without their consent, and none of their paha, cultivated grounds, or sacred burial places shall be taken from them ...

The settlers were shocked into silence and no cheers followed FitzRoy as he left the reception venue.³² And if anyone at the gathering still had doubts about the strength of FitzRoy's views on Maoris and their land, the Governor's formal reply, on 29 January 1844, to the memorial would have dispelled them completely. FitzRoy bluntly laid the blame for the Wairau clash on the settlers' aggressiveness and injustice, and stated that British law would only gradually be applied to the Maoris since it would be 'unjust, oppressive, and unchristian' to expect rigorous obedience to unknown laws. He also expressed himself 'perfectly satisfied' with the principles on which the Protectorate department was based, and dismissed the colonists' complaints about Clarke.³³ Although the Governor was, as Colonel Wakefield believed, 'more indiscreet than intentionally insulting to the community',³⁴ in his first brief meeting with the Port Nicholson settlers, he had alienated them totally.

Soon after his arrival at Wellington FitzRoy presided over a meeting at the residence of the former Land Commissioner, now Police Magistrate of the Southern Division, Major Mathew Richmond. At this meeting, FitzRoy reopened the compensation negotiations with Wakefield on the understanding that he regarded payment of compensation as a prerequisite of the Company being given Crown grants. The alienation of paha, cultivations

and burial grounds, the encroachment of Maori cultivations on settlers' lands, and the terms of compensation were discussed. With the Wairau clash still fresh in everyone's minds, not least his own, Wakefield now agreed that the Maoris' pa, cultivations and burial grounds would not be included in lands for which compensation was given. Wakefield asserted that although he had foreseen their eventual alienation, he had never had any intention of forcing compensation on the Maoris for these places. But how should 'pa' and 'cultivations' be defined? The consensus of opinion at the meeting was that a pa should be defined as the fenced-in area around Maori houses, including ground in cultivation or use around unfenced adjoining houses. Gardens were defined as places being used by Maoris for growing vegetables or which had been used for that purpose since New Zealand became a British colony. It was also agreed that any settlers who found they could not take up their selections as a result of this decision could claim against the New Zealand Company. Finally, Colonel Wakefield agreed to make further payments as soon as possible after the sums were fixed. The terms of the renewed negotiations were to be settled by Clarke and Colonel Wakefield, with Spain again acting as umpire. They decided that the system would resume on the same basis as before. ³⁵

On 7 February 1844, Clarke restated his claim for £1,500 as compensation for the Port Nicholson area Maoris. This figure did not include lands termed pa, cultivations or burial grounds. Since the eastern and western boundaries of the Port Nicholson deed were uncertain any boundary lands claimed by Porirua Maoris

were also excluded. Spain did not agree with Clarke's division of the £1,500. In particular, he considered that Wi Tako of Kumutoto pa was not entitled to £200 and that if this amount was paid to the chief it would make the other Port Nicholson Maoris jealous. But the Commissioner's opposition was overruled by the Governor who told him not to interfere and to restrict himself to simply witnessing the payments as they were made.³⁶ Although Colonel Wakefield immediately agreed to the demand this was not the end of the payment issue.³⁷

The figure of £1,500 had been arrived at independently by Clarke and the Maoris now had to be persuaded to accept their shares. On 23 and 24 February, with the Governor in attendance, meetings were held at Spain's courtrooms with the people of Te Aro, Kumutoto, Tiakiwai and Pipitea pa. The main concern seems to have been to get the largest of these pa, Te Aro - whose lands were vital to the development of the settlement - to accept compensation. Both FitzRoy and Clarke spoke to the Maoris at length, stressing that a final decision was now to be made and that the Maoris were only parting with their rights to lands which were not essential to them.³⁸ But the Te Aro people were far from satisfied with the payment offered and said so - all the Maoris who put forward their views dismissed the sum as paltry, some suggested that they should leave the area altogether, and several spoke along the following lines:³⁹

We must have our land, or an adequate payment for it. Land is the source from which we derive our nourishment and support; and if you take that, Christianity

will not supply its place. Therefore, I say, if you take the land, let your payment be equal to it in value.

The following day they still refused the payment. One of the Te Aro chiefs, Moses Ngaponga, spoke on behalf of the pa. He affirmed all that they had said the day before - 40

we know that the sum is nothing as compared with that which Colonel Wakefield has received from the Europeans ... we think the Colonel should pay us the same as he received. Another cause of our dissatisfaction is, that the present sum is by no means equivalent to the number of the natives, when it is divided there will be nothing for us.

And he went on to say that it was the Maori people, not the Pakehas, who could set the price since his own followers had not taken part in the original sale by going on board the Tory. The £3 per man of the Te Aro population was inadequate, he argued, and if it was not increased the Maoris would leave the land as well as the money - to do otherwise would expose the Te Aro people to the ridicule of Maoris and Pakehas alike. 41

The strength of the Maoris' apparently unequivocal rejection of the offer was an unexpected - and unacceptable - turn of events for the negotiators and they reacted in equally adamant terms. Clarke reminded the Maoris that, 42

You said, "If we could only say that we had sold and received a payment for our lands we should be satisfied, even if every man should but receive a broken pipe ... and what if I should say that your payment is to be only one shilling for each. That is quite sufficient, because you have acknowledged the justice of my decision."

And, although he expressed sadness that the Maoris might leave, the Governor gave full support to Clarke's view. He did not change his offer and the second meeting broke up without achieving anything.⁴³ The Governor believed this apparent about-face was due to Europeans' attempts to sabotage the efforts being made to settle the land problem and thus precipitate another collision between Maori and settler - one in which, of course, it was intended that the Maoris would be defeated, not the settlers. The Maoris had said, for example, that they had been told that before long 1 acre would sell for £300 - the sum offered to Te Aro pa as compensation. In an attempt to find out who was disrupting the progress of the negotiations, FitzRoy issued a notice to be distributed among the Maoris offering a reward for the names of those involved in the 'wicked conspiracy'. No one, however, came forward to offer names.⁴⁴

The Maoris were still unwilling to accept payment on 26 February 1844 but the Governor, Clarke and Spain would not give an inch and when the Governor threatened to leave Wellington several of the Te Aro leaders, including Moses Ngaponga, felt they had no choice but to accept the payment. Then the people of Kumutoto, Pipitea and Tiakiwai pa accepted too.⁴⁵ The Governor, who had decided to refer the matter of private pre-New Zealand Company land claimants to the Government's legal advisers, believed the land question would now soon be settled. The deeds which completed the sale of the land were signed at a meeting at Te Aro pa. Except for the Te Aro deed which was signed by

several chiefs of the pa, the deeds were all signed by Clarke on behalf of the Maoris concerned. Te Aro pa received £300, Pipitea and Kumutoto pa £200 each, and Tiakiwai £30. All were paid in English shillings. ⁴⁶

Spain and Clarke now turned their attention to the Hutt Valley claims. Early in March they went to Porirua to try to reach a final settlement with Te Rauparaha and Te Rangihaeata about their rights to the Hutt Valley. Te Rauparaha, and others, had made statements in Spain's court in April 1843 to the effect that he claimed the Hutt and had not sold it to the Company. The list of place names given to Wakefield aboard the Tory in 1839 were not places sold, it was said, but places conquered. The Hutt Valley (Heretaunga) was part of the territory encompassed by this list. As with the Wairau Valley, Te Rauparaha did nothing further until circumstances seriously threatened his claim. In this case it was the payment of compensation to the Port Nicholson Maoris before compensation was offered to Te Rauparaha and Ngati Toa which triggered Te Rauparaha's demand in early 1844 for recognition of the Hutt claim. ⁴⁷

There were other factors involved in the sudden demand for payment, notably the significant boost which Te Rauparaha's influence had received after his victory at the Wairau. ⁴⁸ He was also apparently influenced by the advice of some Pakehas who had told the Ngati Toa chiefs that the sum of money awarded to them by Spain would not buy an ordinary house in Wellington, that whaling stations each made ten times the amount in one

season, and that the Ngati Toa claims were worth £10,000 or even £100,000. Again, the Pakehas may have been speculators or settlers who hoped to provoke the Maoris into an armed conflict, defeat them soundly, and at the same time settle the land question. ⁴⁹

Neither Spain nor Clarke had a good understanding of the Maori title to the Hutt Valley. Spain thought that Te Kaeaea, the Ngati Tama chief leading the opposition against settlement of the upper valley, did not have a valid claim to the valley and had simply decided that the Hutt would be a replacement for his people's Port Nicholson harbour lands. Spain believed, in fact, that Te Kaeaea had enlisted the help of Te Rauparaha and Te Rangihaeata to prevent the loss of the upper Hutt Valley by persuading them that it should not be alienated since its easy access to Porirua made it an ideal place for the Ngati Toa chiefs' followers and slaves to live. Spain and Clarke both thought that once Te Rauparaha and Te Rangihaeata's interests in the valley were bought off, Te Kaeaea would have to abandon his activities there, as he did not have the rank and authority to hold the land on his own. ⁵⁰ Spain and Clarke thus recognised that the Ngati Toa claimed the Hutt by virtue of conquest; but they denied the claim on the grounds that it was unsupported by subsequent occupation. They must have been only partially familiar with the history of Ngati Rangatahi and Ngati Tama use of the Hutt Valley and their subservience to Te Rauparaha and Te Rangihaeata. If they did know of the background of Maori claims to the valley then they had dismissed the lifting of the

Ngati Toa's rahui as a pretext for a timely, opportunistic occupation of the land. 51

Clarke had, nevertheless, decided that the Ngati Toa chiefs should be offered £300 to give up their interests in the Hutt Valley, on Spain's suggestion, and an extra £100 for the crops planted there if Te Kaeaea withdrew immediately. Clarke's decision had been opposed by Spain not only because he believed Ngati Toa had not carried out acts of ownership in the valley after the initial conquest of the area, but also because their claim had not been mentioned during any meetings or hearings until the demand for payment was made 2 years after the settlers arrived. But Spain had not even visited Porirua before April 1843 and it was on this occasion - the first opportunity he had had - that Te Rauparaha had told the Commissioner about which of his claimed lands he had sold to Wakefield. In any case Spain's objections had again been overruled by FitzRoy and it was to make the offer that Clarke and Spain went to Porirua in March 1844. When the offer was made, however, neither chief agreed to the proposed terms. Te Rangihaeata, whose ties to the valley were stronger than Te Rauparaha's, seemed angry with Te Rauparaha for not consulting him before telling FitzRoy - at their post-Wairau meeting at Waikanae on 12 February 1844 - that the Hutt would be given up. At least partly out of resentment he would not agree to accept compensation unless provisions were made for the people of the land, Ngati Rangatahi, and declared that he would give his life in defending their rights if necessary. 52

For his part Te Rauparaha stated that if Te Rangihaeata could be persuaded to accept the compensation, then he too would cooperate. However, Te Rauparaha also said that he could not agree to the arrangement unless the Pakehas changed their definition of the area for which the compensation was to be paid. He declared himself willing to be paid only for the lands seaward of the Rotokakahi stream in the Hutt Valley.⁵³ That is, he hoped to persuade the Government to make a new purchase of the entire Port Nicholson area. This would recognise his superiority over the Port Nicholson Ati Awa chiefs who had made the original 'sale' to the Company in defiance of Te Rauparaha's claims to supremacy over the whole Cook Strait region, and who had been paid compensation first. In brief, Te Rauparaha's concern was that his claims to primacy be recognised - both to the Hutt Valley and to Port Nicholson. But his boundary definition was not accepted.⁵⁴ Under these circumstances the compensation offer could only be unacceptable. The discussions at Porirua ended with the two chiefs apparently quarrelling about the amount offered. Although Te Rauparaha was to continue pressing the Commissioner and Clarke for redress, their understanding of the situation was too limited for any success.⁵⁵

Indeed, Clarke and Spain were not especially dismayed by the chiefs' refusal of the money. Both believed they could be persuaded to accept it eventually. Spain thought that when he returned from Taranaki they would have decided to take what was

offered. In any case, a refusal could no longer be accepted. Since the chiefs had participated in all the negotiations until this time and the Government had dealt with them fairly, the Government now had to insist on total cession of the Port Nicholson lands. If all else failed, the compensation money could be deposited in a bank on behalf of Ngati Toa and used later for their benefit. ⁵⁶

Having returned to Wellington to continue settling claims there, Spain, Clarke and Colonel Wakefield offered £30 each to the Petone and Ngauranga pa. This was to have been a goodwill gesture rather than a compensation payment since the people of these pa had always admitted the sale and receipt of payment. Te Puni, the leading chief of the pa, however, refused to take it, saying ⁵⁷

I shall not accept your payment, I do not want it; I never asked for a second payment for the land; I have already sold it and received payment ... As you have determined to make a second payment for the land, why do you make it so unequal; you gave the natives of Pipitea [sic] and Kumutoto 200[£] each; why did you give so large a payment to the Pipitea claimants? I have equal right with them; if you had decided to give a very small sum, I should have been perfectly satisfied, provided we all received the same, but I will never consent to receive a sum so disproportionate to that paid to others.

To the Maoris, then, there was still no distinction between a payment, compensation and a gift. Either the original sale, which he had made on behalf of the Port Nicholson pa, was valid or it was not. If it was valid, then no further payments were

necessary. If it was not, then this was a second sale and Te Puni could not accept less than any of the other chiefs - to have done so would have seriously undermined the pre-eminence which he had claimed by his initiative in the 1839 sale to Wakefield.⁵⁸ Although the £30 was refused, it was put in a bank for the future benefit of Te Puni's people.⁵⁹

For quite a different reason the inhabitants of Waiwhetu pa had also rejected the sum offered. They held that as Colonel Wakefield had paid them nothing in the first place, they were now entitled to more than those who had already received something from the Company. On these grounds some of the Waiwhetu Maoris claimed the money refused by Petone and Ngauranga pa as well. Spain then told them that if they did not accept the money, the land would be taken by Europeans anyway and the compensation would be spent by the Government on their behalf. Having thus been given no option as to the disposal of their lands, the Waiwhetu people agreed to take the payment if certain lands were reserved. These included property which had already been selected by Europeans. They were told, however, that reserves would be set aside but their location was yet to be decided. Unhappy as the Maoris must have been with this situation, on 15 March 1844 they accepted the £30 and the assurances about the reserved lands.⁶⁰

Soon after this agreement was reached news was received that Te Kaeaea was cutting an aukati (a line which no one may pass) - in this case a line across the Hutt Valley from the Roto-

kakahi Stream above which there was to be no settlement by Europeans. When Spain arrived at the Rotokakahi Stream on 21 March 1844 he found that the 30-40 yards wide break already extended about 1 mile inland from the north-eastern bank of the Hutt River. Spain believed Te Kaeaea was acting under Te Rauparaha's orders and with the help of large numbers of Te Rauparaha's and Te Rangihaeata's slaves. Indeed, Te Kaeaea asserted that the line was being made at Te Rauparaha's orders and that it would be held until Te Rauparaha's Port Nicholson boundary had been agreed to. Spain tried to persuade Te Kaeaea to stop work, but the chief stated that he meant to extend the line on the opposite bank of the river as well. So Spain returned to town having achieved nothing. 61

Spain believed that the Hutt could only be emptied on Te Rauparaha's orders and on 21 March 1844, the day after his stand-off with Te Kaeaea, he wrote to the chief to impress on him how wrong the aukati was. To ensure that his letter would have the desired effect, Spain went to Waikanae to seek the Reverend Octavius Hadfield's advice on its contents and translation. The letter, which Hadfield approved of, indicates the way in which the land rights of non-Europeans were regarded at the time by Europeans. 62

Citing the latest edition of De Vattel's Law of Nations (1834) Spain argued that a civilised nation had the right to occupy a country or continent occupied by 'erratic' people, as such inhabitants could not be seen as having true, legal possession.

Moreover, the Earth belonged to all Mankind and was designed to feed them. If nations could keep vast lands to themselves without gainfully occupying them, then the world could not support one-tenth of the population it did now. Europe was overcrowded and Europeans were, therefore, entitled to move onto and use lands which non-Europeans used only occasionally. Great Britain was thus clearly acting very generously in its colonising methods since the Maoris had been made British subjects, had been paid for their lands and had, for example, been provided with reserves to ensure they could not be deprived of lands essential to existence - rather than just having the land taken. Had any other Europeans come the land would have been taken away by force and if the British left now, the same would occur. Te Rauparaha was, therefore, asked to tell Te Kaeaea to leave the Hutt Valley. ⁶³

On 26 March 1844 Spain visited Kaiwharawhara pa. The compensation to be paid to its inhabitants had been set at £40 with the acquiescence of Te Kaeaea, one of the main chiefs of the pa. At the meeting, however, Te Kaeaea declared that the £40 was not enough and the reserves were inadequate and of poor quality. In spite of this resistance, Te Kaeaea and two chiefs deputed by him signed the deed of final alienation on the following day. The claims of a small nearby settlement Pakuao, were also dealt with at this time. The twelve inhabitants signed without making any objections and were paid £10. ⁶⁴

By April 1844 most of the Maori titles in the Port Nicholson district were settled and the vital town site and most of the country area were secured for European occupation. Petone and Ngauranga pa had finally accepted the money offered as a goodwill gesture. Since the Maoris of Ohariu pa had been away at Rangitikei during this period Clarke had no opportunity to negotiate with them about compensation. As the main chief of the pa was Te Kaeaea, it was suspected that their absence was deliberate. However, it was not seen as a major obstacle to settlement because the site of the Ohariu lands was not central. So only the Hutt Valley with its valuable flat land remained a problem. And for the moment, Clarke and Spain were still hopeful of reaching an agreement. 65

By this time, too, a survey of this area was progressing well. Spain had suggested to Colonel Wakefield that a survey would enable a map of New Zealand Company lands to be annexed to the Crown grant and would help a lot in preventing further Maori-European disputes, and the survey was started in early 1844. The survey team was composed equally of New Zealand Company and Government employees. When the external boundary line was finished, the Government surveyor attached to the Commission, Thomas FitzGerald, was to mark out the Company sections and the lands set aside for the Maoris. 66

As Colonel Wakefield was now willing to pay compensation to the Maoris, a second trip up the west coast was undertaken by Spain and Clarke towards the end of April. Accompanied by

Wakefield, they were to visit Manawatu, Wanganui and also Taranaki. It was intended that the compensation arrangements with the Maoris would now be finalised and for this reason Colonel Wakefield carried with him £3,000 of Company funds with which to make immediate payments to the Maoris as found necessary.⁶⁷ But Wakefield's change of attitude had come too late. Before the Maoris might have accepted the money, now the unequivocally refused it. At Otaki they met several Manawatu chiefs who declared that neither they nor those at Manawatu would accept more payment or sell more land. Spain believed the chiefs' decision to stay away from the court at Manawatu was due to Te Rauparaha's influence. When they reached Manawatu, Te Whatanui and Te Ahu Karamu - who had been instrumental in bringing about the original sale - were very keen to have the sale ratified and settlers move into the area. Taratoa and several others, however, were not as willing and Taikoporua was still completely opposed to the sale. As the majority of the Maoris did not want a payment (a situation which Spain again attributed to Te Rauparaha's influence), and since the Commissioner could not recommend a grant under any Company deed or, as Wakefield claimed, under Hobson's letter of 5 September 1841, the Company's Manawatu claim had failed.⁶⁸ The only piece of land in the area which the Company acquired a clear right to was a block of about 100 acres called 'Te Taniwa' at Horowhenua. This was transferred to the New Zealand Company at Manawatu by Te Whatanui and Te Huri, who was acting on behalf of the other owners, on 25 April 1844.⁶⁹

Unsatisfactory as this result was for the Company, the party could only move on to Wanganui. Spain had earlier received two letters from Wanganui Maoris asking him to bring the payment and while visiting Wellington the resident Wanganui missionary, the Reverend Richard Taylor, had also told the Commissioner that the chiefs wanted the promised compensation. Taylor had given Spain a list of which chiefs were entitled to the payment and how large a share each should get. The chiefs had told Taylor they would accept 1,300 as compensation. So, when the party arrived at Wanganui on 3 May 1844, they anticipated no problems. ⁷⁰

But at his first meeting with the local Maoris, held at Putikiwharanui pa on 9 May 1844, it soon became apparent to Spain that they were now determined to refuse payment. Those of Putikiwharanui pa who had not originally been paid and who had always been reluctant to set a compensation price on the land were particularly opposed to accepting payment. Taylor held that 'some Europeans had been tampering with the natives'. After giving the Maoris a few days to reconsider, Spain sent out a circular asking the Wanganui Maoris to attend a meeting on 16 May at 'my house' - that is, neutral ground - for settlement of the land question. The notice was taken up-river by Forsaith, the interpreter. This second meeting also took place at Putikiwharanui pa. Once again, when it was found that the Maoris still refused to accept compensation, their opposition was overridden. They were told that Clarke and Wakefield had decided that they were entitled to 1,000. Lands which would not be covered by this sum included four pieces the Maoris had

wanted exempted in Taylor's memorandum (even though these had already been selected by settlers), Lake St Mary, eel-cuts, fishing rights to several lakes and a lagoon, and one lot in ten throughout the Company's 40,000 acre block. ⁷¹

Spain's reasons for overriding the Maoris' rejection of compensation were essentially the same as his reasons for favouring compensation for them after his investigations at Wanganui in April 1843. The only additional explanation he gave was that all the chiefs, whatever their previous involvement, had made the proposition to Taylor to accept compensation. The Wanganui Maoris, however, were adamant in their refusal to accept the 1,000 and so the money was returned to Colonel Wakefield who was to keep it ready should the Government require it for the Maoris. ⁷²

Although it had taken the shock of the Wairau clash to push Wakefield into cooperating in the compensation negotiations, the Company's land claims were being settled very much to its advantage. Indeed, with the exception of the Manawatu and Porirua districts, Spain awarded the Company its entire claims - compensation was the cure-all for otherwise faulty titles. And, in spite of the Commissioner's desire to ensure the interaction of Maoris and Europeans through the integration of lands, Spain did not suggest that the Maoris be given the chance to keep some property other than the pa, cultivations, burial grounds and Company reserves. Putting aside the difficulties he felt would be involved in allowing such an opportunity, the Commissioner

must have believed these lands to be sufficient for the Maoris' needs. Moreover, Spain had taken the Maoris' desire to part with their lands at contemporary, rather than pre-settlement values, as grounds for dismissing altogether those compensation demands the Maoris did make. Instead the amount of compensation was decided for them and in almost every instance Spain ruled that the Maoris would give up their lands to the Company in exchange for immediate compensation - usually less than the Maoris asked for (where they did ask) - even if it meant holding the money for those who would not accept. In all of this Spain had the support of the Governor and, with the exception of Spain's Wanganui award, of Protector Clarke. In this situation the humanitarian motives from which the Commission had arisen were lost to the Maoris - they could only have seen the Court and the Government as being identified with the settlers' interests, not their own.

Although a final settlement of the land claims in the Hutt Valley, Manawatu and Wanganui districts was not to be achieved until Governor Grey's administration,⁷³ the bulk of Spain's work was now done and only the Company's Taranaki and Nelson claims remained to be investigated and reported on. Both of these cases were to be much more quickly settled than those Spain had dealt with previously. The Commissioner's decision on the Taranaki claim, however, was to prove the most contentious of all as it was to provoke opposition not only from the local Maoris but also from a number of influential settlers, missionaries, the Chief Protector and the Governor himself. Only the settlers would be happy with it.

NOTES

1. Spain/Clarke, 22-5-1843, encl. in Spain, General report/Col. Sec., 12-9-1843, IA 1; Report, *ibid*.
2. OLC 1041, 1042.
3. Clarke/W. Wakefield, 23-5-1843, '1844 Report of Select Committee', App. 9, pp. 325-326.
4. Wakefield/Spain, 24-5-1843, encl. in Spain, General report/Col. Sec., 12-9-1843, IA 1; Wakefield, Adventure in New Zealand, pp. 598-599, for details of Pennington's award, see above, p. 186, note 97.
5. Clarke/Clarke, sen., 11-3-1843, 'Clarke letters', Vol. 62/A, item 58.
6. W. Wakefield, NZC Sec., 16-6-1843, '1844 Report of Select Committee', App. 26, p. 568; Spain, General report/Col. Sec., 12-9-1843, IA 1.
7. *ibid*.
8. Clarke/Clarke, sen., 17-7-1843, IA 1.
9. Spain, General report/Col. Sec., 12-9-1843, *ibid*.
10. Chief Wairarapa/Governor and Clarke, sen., 18-9-1843, '1844 Report of Select Committee', App. 9, p. 334; 'Diary and letters of Edward Meurant', 16-8-1843.
11. Chief Wairarapa/Governor and Clarke, sen., 18-9-1843, '1844 Report of Select Committee', App. 9, p. 334. This letter would have been received by Acting-Governor Shortland.
12. Shortland/S.S. Cols, 13-7-1843, G 25/1.
13. Spain, General report/Col. Sec., 12-9-1843, IA 1.
14. W. Wakefield/Clarke, 24-8-1843, 'Clarke letters', Vol. 62/A, item 10; W. Wakefield/NZC Sec., 12-9-1843, '1844 Report of Select Committee', App. 26, pp. 568-569; Spain, General report/Col. Sec./ 12-9-1843, IA 1.
15. Allan, Nelson, p. 373.
16. Spain, General report/Col. Sec., 12-9-1843, IA 1.
17. Spain/W. Wakefield, 24-8-1843, encl., *ibid*.
18. W. Wakefield/Clarke, 24-8-1843, 'Clarke letters', Vol. 62/A, item 10.
19. Allan, Nelson, p. 373.
20. Clarke/Clarke, sen., 17-7-1843, IA 1; Shortland/Stanley, 21-10-1843, '1844 Report of Select Committee', App. 9, pp. 290-291; Spain, General report/Col. Sec., 12-9-1843, IA 1; Wakefield, Adventure in New Zealand, pp. 645-646.

21. Spain, General report/Col. Sec., 12-9-1843, IA 1.
22. *ibid.*; 'List of Protectors of Aborigines appointed *ab suitio*', in 'Curnin's Register', OLC 2/7; Clarke/Clarke, sen., 8-3-1843, 'Clarke letters', Vol. 62/A, item 58; Thomas Forsaith/Clarke, sen., 10-7-1844, IA 1; It is not clear whether or not Forsaith had been promoted to Protector in response to Spain's request. It seems very likely that he was - the promotion came immediately before Forsaith joined the Commission (10-4-1843) and it would have been more straightforward and less expensive to send a sub-Protector. Indeed, Clarke was a sub-Protector when he was appointed to the Commission.
23. New Zealand Gazette and Wellington Spectator, 26-7-1843; Spain/Col. Sec., 7-9-1843, and enclosed meeting resolution, IA 1.
24. Clarke, private letter/Clarke, sen., 22-9-1843, 'Clarke letters', Vol. 62/B, item 70; Clarke/Clarke, sen., 30-11-1843, *ibid.*, item 72.
25. Clarke/Clarke, sen., 27-9-1843, *ibid.*, item 71; Clarke/Clarke, sen., 30-11-1843, *ibid.*, item 72; Clarke/Clarke, sen., 16-12-1843, *ibid.*, item 72.
26. Spain, General report/Col. Sec., 12-9-1843, IA 1.
27. *ibid.*
28. *ibid.*; see also above, pp. 221.
29. W. Wakefield/NZC Sec., 27-1-1844, 'The fourteenth report of the Directors of the New Zealand Company, presented to an ajourned Special Court of Proprietors on the 31st July 1844', App. 5, p. 67, New Zealand Company Reports, Vol. 3 (Reports 13-18, June 1844-June 1845), (Printed by Stewart and Murray, London, 1844- 1845) (hereafter 'New Zealand Company Report, No. 14').
30. 'Memorial' to Fitzroy, *ibid.*, App. 6, pp. 73-76; W. Wakefield/NZC Sec., 29-1-1844, *ibid.*, p. 71.
31. W. Wakefield/NZC Sec., 27-1-1844, *ibid.*, App. 5, pp. 66-67.
32. *ibid.*, p. 68.
33. *ibid.*, p. 69.
34. 'Governor FitzRoy's reply', 29-1-1844, *ibid.*, App. 8, pp. 83-84.
35. 'Minutes of Conference at Major Richmond's', 29-1-1844, 'Spain, Port Nicholson report', IUP, Vol. 5, pp. 26-28/BPP, [1846(203)30], pp. 18-20; W. Wakefield/NZC Sec., 19-2-1844, '1844 Report of Select Committee', App. 17, p. 417; Wakefield, Adventure in New Zealand, pp. 703, 720.
36. Clarke/W. Wakefield, 7-2-1844, '1844 Report of Select Committee', App. 17, p. 419; Spain/FitzRoy, 13-4-1844, encl. in FitzRoy/Stanley, 22-2-1845, IUP, Vol. 5, p. 136/BPP, [1846(203)30], p. 128.

37. W. Wakefield/Clarke, 8-2-1844, '1844 Report of Select Committee', App. 17, pp. 419-420.
38. Report of meeting, 23-2-1844, New Zealand Gazette and Wellington Spectator, 6-3-1844.
39. *ibid.*
40. Report of meeting, 24-2-1844, *ibid.*
41. *ibid.*
42. Report of meeting, 23-2-1844, *ibid.*
43. Reports of meetings, 23-2-1844, 24-2-1844, *ibid.*
44. Notice, 24-2-1844, IA 1; Forsaith/Chief Protector, 26-2-1844, *ibid.*; Clarke/Clarke, sen., 30-11-1843, 'Clarke letters', Vol. 62/B, item 72.
45. Forsaith/Chief Protector, 26-2-1844, *ibid.*; New Zealand Gazette and Wellington Spectator, 28-2-1844.
46. *ibid.*, 28-2-1844, 6-3-1844.
47. Te Rauparaha and Te Rangihaeata/Spain, 3-2-1844, 'Spain, Port Nicholson report', IUP, Vol. 5, p. 28/BPP, [1846(203)30], p. 36; Te Rauparaha/Spain, 27-3-1844, *ibid.*, IUP, Vol. 5, pp. 42-43/BPP, [1846(203)30], pp. 34-35; Clarke/Clarke, sen., 1-4-1844, 'Clarke letters', Vol. 62/B, item 76; Parsonson, 'He whenua te utu', p. 203.
48. Spain believed it was at the Wairau, 'where the aboriginees [sic] first learned to mistrust our justice and to doubt our bravery', 'Spain, Port Nicholson report', IUP, Vol. 5, p. 21/BPP, [1846(203)30], p. 13.
49. Clarke/Clarke, sen., 1-4-1844, 'Clarke letters', Vol. 62/B, item 76; Spain/FitzRoy, 13-4-1844, encl. in FitzRoy/Stanley, 22-2-1845, IUP, Vol. 5, p. 136/BPP, [1846(203)30], p. 128; 'Spain, Port Nicholson report', Vol. 5, p. 21/BPP, [1846(203)30], p. 13.
50. Minutes of Commissioner's proceedings, 8-3-1844, *ibid.*, IUP, Vol. 5, pp. 37-39/BPP, [1846(203)30], pp. 29-31; Te Rauparaha/Spain, 27-3-1844, *ibid.*, IUP, Vol. 5, pp. 34-35/BPP, [1846(203)30], pp. 42-43; Spain/FitzRoy, 13-4-1844, encl. in FitzRoy/Stanley, 22-2-1845, IUP, Vol. 5, p. 128/BPP, [1846(203)30], p. 136; Burns, Te Rauparaha, p. 250; Parsonson, 'He whenua te utu', p. 204.
51. For details of the Maori claims to the Hutt see above, pp. 170-171.
52. Spain/FitzRoy, 13-4-1844, encl. in FitzRoy/Stanley, 22-2-1845, IUP, Vol. 5, p. 136/BPP, [1846(203)30], p. 128; Minutes of Commissioner's proceedings, 8-3-1844, 'Spain, Port Nicholson report', IUP, Vol. 5, pp. 37-39/BPP, [1846(203)30], pp. 29-31; Te Rauparaha/Spain, 27-3-1844, *ibid.*, IUP, Vol. 5, pp. 34-35/BPP, [1846(203)30], pp. 42-43; Parsonson, 'He whenua te utu', p. 203.

53. Clarke/Clarke, sen., 1-4-1844, 'Clarke letters', Vol. 62/B, item 76; Te Rauparaha/Spain, 27-3-1844, encl. in 'Spain, Port Nicholson report', IUP, Vol. 5, pp. 34-35/BPP, [1846(203)30], pp. 42-43.
54. Clarke/Clarke, sen., 1-4-1844, 'Clarke letters', Vol. 62/B, item 76; Spain/FitzRoy, 13-4-1844, encl. in FitzRoy/Stanley, 22-2-1845, IUP, Vol. 5, pp. 136-137/BPP, [1846(203)30], pp. 128-129; 'Minutes of proceedings at Porirua', 'Spain, Port Nicholson report', IUP, Vol. 5, pp. 37-39/BPP, [1846(203)30], pp. 29-31.
55. Clarke/Clarke, sen., 1-4-1844, 'Clarke letters', Vol. 62/B, item 76.
56. *ibid.*; Spain/FitzRoy, 13-4-1844, encl. in FitzRoy/Stanley, 22-2-1845, IUP, Vol. 5, p. 137/BPP, [1846(203)30], p. 129.
57. 'Minutes of proceedings in Commissioner's Court, Port Nicholson' (15-3-1844), Forsaith, encl. in 'Spain, Port Nicholson report', IUP, Vol. 5, p. 34/BPP, [1846(203)30], p. 26.
58. Parsonson, 'He whenua te utu', p. 202.
59. 'Minutes of proceedings in Commissioner's Court, Port Nicholson' (15-3-1844), Forsaith, encl. in 'Spain, Port Nicholson report', IUP, Vol. 5, pp. 34-35/BPP, [1846(203)30], pp. 26-27.
60. *ibid.*, IUP, Vol. 5, p. 35/BPP, [1846(203)30], p. 27.
61. 'Narrative of proceedings of Spain at a meeting with Maoris in the Upper Hutt', 21-3-1844, Forsaith, *ibid.*, IUP, Vol. 5, pp. 31-33/BPP, [1846(203)30], pp. 39-41; Te Rauparaha/Spain, 27-3-1844, *ibid.*, IUP, Vol. 5, pp. 34-35/BPP, [1846(203)30], pp. 42-43; Forsaith/Chief Protector, 8-4-1844, with 1844/1696, IA 1; 'Spain, Port Nicholson report', IUP, Vol. 5, pp. 20-21, 23/BPP, [1846(203)30], pp. 12-13, 15; G. Leslie Adkin, The Great Harbour of Tara (Whitcombe and Tombs, Christchurch, 1959), p. 105; Thomson, Story of New Zealand, Vol. 2, pp. 92-94.
62. Spain/Te Rauparaha, [20-3-1844], 'Spain, Port Nicholson report', IUP, Vol. 5, pp. 41-42/BPP, [1846(203)30], pp. 33-34.
63. *ibid.*
64. Forsaith/Chief Protector, 8-4-1844, with 1844/1696, IA 1.
65. Spain/FitzRoy, 13-4-1844, encl. in FitzRoy/Stanley, 22-2-1845, IUP, Vol. 5, p. 133/BPP, [1846(203)30], p. 125; Schedule of compensation paid, encl. *ibid.*, IUP, Vol. 5, p. 138/BPP, [1846(203)30], p. 130; Spain/Clarke, 17-3-1844, 'Spain, Port Nicholson report', IUP, Vol. 5, p. 32/BPP, [1846(203)30], p. 24.
66. Spain/FitzRoy, 13-4-1844, encl. in FitzRoy/Stanley, 22-2-1845, IUP, Vol. 5, pp. 132-133/BPP, [1846(203)30], pp. 124-125; 'Spain, Port Nicholson report', IUP, Vol. 5, p. 18/BPP, [1846(203)30], p. 10.

67. 'Spain, Manawatu report', IUP, Vol. 5, p. 110/BPP, [1846(203)30], p. 102; Wells, Taranaki, p. 105.
68. 'Spain, Manawatu report', IUP, Vol. 5, pp. 110-112/BPP, [1846(203)30], pp. 102-104.
69. 'Deed of conveyance from Watanui to New Zealand Company', encl. *ibid.*, IUP, Vol. 5, pp. 116-117/BPP, [1846(203)30], pp. 108-109.
70. 'Spain, Wanganui report', IUP, Vol. 5, pp. 88-89/BPP, [1846(203)30], pp. 80-81.
71. *ibid.*, IUP, Vol. 5, p. 88/BPP, [1846(203)30], p. 80; 'Minutes of proceedings of Commissioner at Wanganui', 9-5-1844, encl. *ibid.*, IUP, Vol. 5, pp. 96-97/BPP, [1846(203)30], pp. 88-89; Circular sent to the Wanganui Maoris from Spain, 13-5-1844, *ibid.*, IUP, Vol. 5, p. 97/BPP, [1846(203)30], p. 89; 'Commissioners proceedings at Wanganui', 16-5-1844, *ibid.*, IUP, Vol. 5, pp. 97-99/BPP, [1846(203)30], pp. 89-91.
72. 'Spain, Wanganui report', IUP, Vol. 5, p. 90/BPP, [1846(203)30], p. 82; Spain/Wakefield, 6-9-1844, *ibid.*, IUP, Vol. 5, p. 100/BPP, [1846(203)30], p. 92.
73. See below, pp. 309-310.

CHAPTER EIGHT

THE TARANAKI CASE

The day after Spain announced his decision on the Wanganui lands title, he set out for Taranaki to investigate the Company's claims there. Accompanied by Clarke and Wakefield, he reached New Plymouth on 29 May 1844.¹ Spain was to find an extremely tricky situation awaiting him there. This was due in part to the absence of most of the region's inhabitants when the Company purchased the Taranaki lands in 1840, and in part to the sporadic, but continuing, return of the Ati Awa exiles at a time when the Company's settlers were beginning to occupy the lands. Spain was later to describe the Port Nicholson investigations as his most difficult, but this case was at least as complicated and was, indeed, to prove the decisive test of the Commission's authority.

The original purchase of Taranaki by the New Zealand Company was made in mid-February 1840. Colonel Wakefield had gone to Taranaki in November 1839 at the suggestion of Te Wharepouri, Te Puni and other Port Nicholson Ati Awa. Although these Maoris had already 'sold' their rights to Taranaki lands to the Company, they hoped that Pakeha settlement of their homelands would enable them to return from their southern exile by protecting them from the attacks of their enemies, the Waikato and Ngati Maniapoto tribes.² When the Tory arrived off Taranaki in late November 1839, only about fifty Ati Awa people were still living

in the area. These were a mixture of Ngati Te Whiti, Ngati Rahiri and Puketapu hapu who lived largely in the vicinity of Nga Motu (the Sugar Loaf Islands), the largest of which was a traditional refuge, or further south.³ For several reasons the remnant Ati Awa population welcomed the New Zealand Company's offer: they lived in fear of Waikato and Ngati Maniapoto attacks and were eager to have Pakehas bring their weapons and wealth among them, their acceptance of the payment would proclaim their right to the land, and they did not fully understand the implications which the sale and a Company settlement would have for them.⁴

While Richard Barrett and Tuarau, a Ngati Rahiri exile from Port Nicholson, were to arrange for an assembly of chiefs in a month's time to complete the sale, Colonel Wakefield sailed north to visit other Company property at Hokianga and Kaipara. The Company had acquired a derivative title to this land before the preliminary expedition left Great Britain.⁵ But the Tory's return to Taranaki was delayed when she had to be repaired after running aground on a sandbar at the entrance to the Kaipara Harbour. In the meantime, Colonel Wakefield had to return to Cook Strait to meet the first emigrant ships at Port Hardy, D'Urville Island, on 1 January 1840 - the rendezvous had been arranged because these vessels had set out in August 1839 before the site of the Company's initial settlement was known even to those on board the Tory. From Port Hardy, Wakefield wrote (c. 11 January 1840) to the Company's surgeon, Dr John Dorset, at Kaipara, instructing him to take the payment

goods to Taranaki and complete the purchase. Dorset finally arrived off New Plymouth on 1 February aboard the brig Guide.⁶ On 15 February 1840, seventy-two adults and children put their marks on the deed. The children, their parents said, were involved to make the act binding on posterity. The goods were paid with the exception of one case of double-barrelled guns.⁷ (The guns were to have been delivered to the Maoris later but the vessel carrying the case of guns was wrecked in a gale on 21 April 1841).⁸ Goodwill presents were also sent to the Waikato. On the same day a party from further south arrived and 'sold' a piece of land adjoining that 'sold' by the Ati Awa people. This second 'sale' was made completely aboard the Guide.⁹ Under the first deed the Company claimed 60,000 acres between the mouth of the 'Wakatino' (Mohakatino), along the coast to 'Auronga' (Hauranga), which was just south of Oakura, inland via 'Te Kiri Powahai' (Kiri Stream, Pouakai Peak) to the summit of Mount Taranaki, across to the Wanganui River via Whangamomona, across to 'Rowai' (Wangatorowai) on the 'Wakatino' and down to the river's mouth. The Sugar Loaf Islands were included in the sale. Under the second deed the Company claimed all the land enclosed by a line drawn from 'Auronga' along the seashore to the mouth of the 'Wangatawa' River, inland to the river's source, across to Mount Taranaki's peak and along the southern boundary lands described in the first deed, thus returning again to 'Auronga'.¹⁰

In mid-1840 the New Zealand Company sold a total of 60,000 acres, of indeterminate location, to its recently established

auxiliary body, the Plymouth Company of New Zealand. The Plymouth Company then set out a survey party to choose where this land would be taken up and in January 1841 the Company's surveyor, Frederick Carrington, selected Taranaki. The land was, however, soon regained by the New Zealand Company since the Plymouth Company's financial difficulties - due to the failure of their bankers - led to a merger of the companies on 10 May 1841.¹¹ Survey work began; the first settlers arrived in early 1841 and by 1844 there were over 1,000 settlers in the area. Already 250 acres were under cultivation.¹²

The sale was subsequently opposed by Ngati Maniapoto and Waikato chiefs, their Ati Awa war captives - released to return home - and the Ati Awa exiles in the south. The Ngati Maniapoto and Waikato opposition derived largely from their claim to the Taranaki area by virtue of conquest. They regarded the Ati Awa as an enslaved tribe who had no right to sell the land without their consent. Ngati Maniapoto and Waikato also opposed the sale on the basis of occupation; the Waikato claim relating to some Ngati Mutunga land north of the Waitara river.¹³ The Waikato repudiation of the sale was led by the renowned chief Te Wherowhero who threatened the lives of the settlers and the Ati Awa if his demands for recognition of his claims to the area were not met. There was also talk of occupying the Waitara.¹⁴ But no payment in recognition of these claims had been made by the Company and in November 1841 a large party of Waikato Maoris moved into the Waitara area and began planting potatoes. They told the settlers that this was in preparation

for the arrival of many more of their people and that they would take over all the land from the Waiongana Stream to some distance to the north of the Waitara River. They seemed to have been persuaded to stop their potato planting by the Company's agent at New Plymouth, Captain Liardet, and the local Wesleyan Missionary Society missionary, the Reverend Charles Creed. Liardet immediately had a boundary line cut to ensure there would be no further mistakes about what land was part of the New Plymouth settlement. He also wrote to Hobson asking him to stop the Waikato Maoris from coming to the area. Soon after this, in December 1841, a party of armed Ngati Maniapoto Maoris led by Te Kaka visited New Plymouth to state their claim. Although the settlers were very alarmed, the Maoris left after being feasted by the Ati Awa, and being given gifts by the settlers.¹⁵ Two months later, Hobson went to the Waikato and, with the Chief Protector's consent, paid Te Wherowhero and his younger brother, Te Kati, 100 red blankets, £150 cash and two horses with tack in settlement of Waikato claims to the region - including all the land between Tongaporutu in the north and Waitotara to the south of Cape Egmont. The Waikato people were to be allowed to settle along the northern border of the Company's land, which was about 4 miles to the northward of the Waitara River. This provision was due to the Waikatos' desire for a share in the trade with the colonists. Hobson had made this settlement on behalf of the New Zealand Company and in doing so he had overridden Colonel Wakefield's protestation that only the resident Ati Awa had any right to recognition.¹⁶ And, in spite of Wakefield's objection, the Company did subse-

quently repay to the Government the value of the payment, £250.

Opposition to settlement of the region by Ati Awa who had not been living at Taranaki when the land was 'sold' was initially spearheaded by the manumitted war captives of the Waikato and Ngati Maniapoto Maoris. By mid-1842 these were returning home in increasing numbers as they were freed by captors newly converted to Christianity.¹⁷ The rest of the non-resident dissenters were various groups of the Ati Awa who had migrated southward between the mid-1820s and the early 1830s. Some of these exiles had returned from time to time to exercise acts of ownership on their homelands while they were living in exile.¹⁸ Although opportunism must have played a role in this, it was also the ex-slaves' chance to counteract the loss of mana (spiritual power, authority, prestige) which resulted from having been captured by their enemy, and for the exiles, European settlement enabled them to come home. Also, trade, particularly in food, was one important 'selfish' motive for returning to Taranaki - one which probably benefited the new settlement greatly - and probably encouraged denser resettlement of areas near the township. By December 1841 the Ati Awa population in Taranaki had increased to 150. Three years later the return of the Waikato and Ngati Maniapoto tribes' former slaves and of southern exiles had increased the resident population six-fold. Their settlements spread out along the coastal strip between Paritutu and Waitara, with about 250 living at Waitara by the second half of 1844.¹⁹

These Ati Awa were prepared to recognise the alienation of lands belonging to those present at the original sale but refused to give up any other land unless it was paid for.²⁰ John Wicksteed, who had succeeded Liardet as the Company's New Plymouth agent in May 1842, refused to make any further payments - a decision which was approved by the Principal Agent, Colonel Wakefield. Since their claims were not recognised, the Ati Awa pursued an active campaign against Pakeha occupation of disputed property from the time surveying and settlement began right up to the time of Spain's arrival. The Ngati Maniapoto, whose claims had not been satisfied by Hobson when he bought off the Waikato in early 1842, also took part in this campaign. The form of opposition ranged from a sit-down by about 190 Ngati Maniapoto on a road being built at the Waitara, to planting potatoes or felling and burning trees on settlers' selections, to driving settlers off their country sections. The Maori reserves marked out by the Company were not occupied. Most of the activity was concentrated on the outlying areas north of New Plymouth, notably between the Waiwhakaiho and Mangaoraka rivers, and the Waitara area, and occurred as soon after selection as attempts were made to settle the areas.²¹ Opposition closer to and in town also occurred. For example, in December 1842 some Ati Awa began fencing in a few town sections and a road for a potato ground. They replaced the fence when it was torn down on Wicksteed's orders. When one Maori threatened the agent with a tomahawk as the fence was again destroyed, Wicksteed had him imprisoned and it was only then that the Maoris agreed to move onto land nearby which

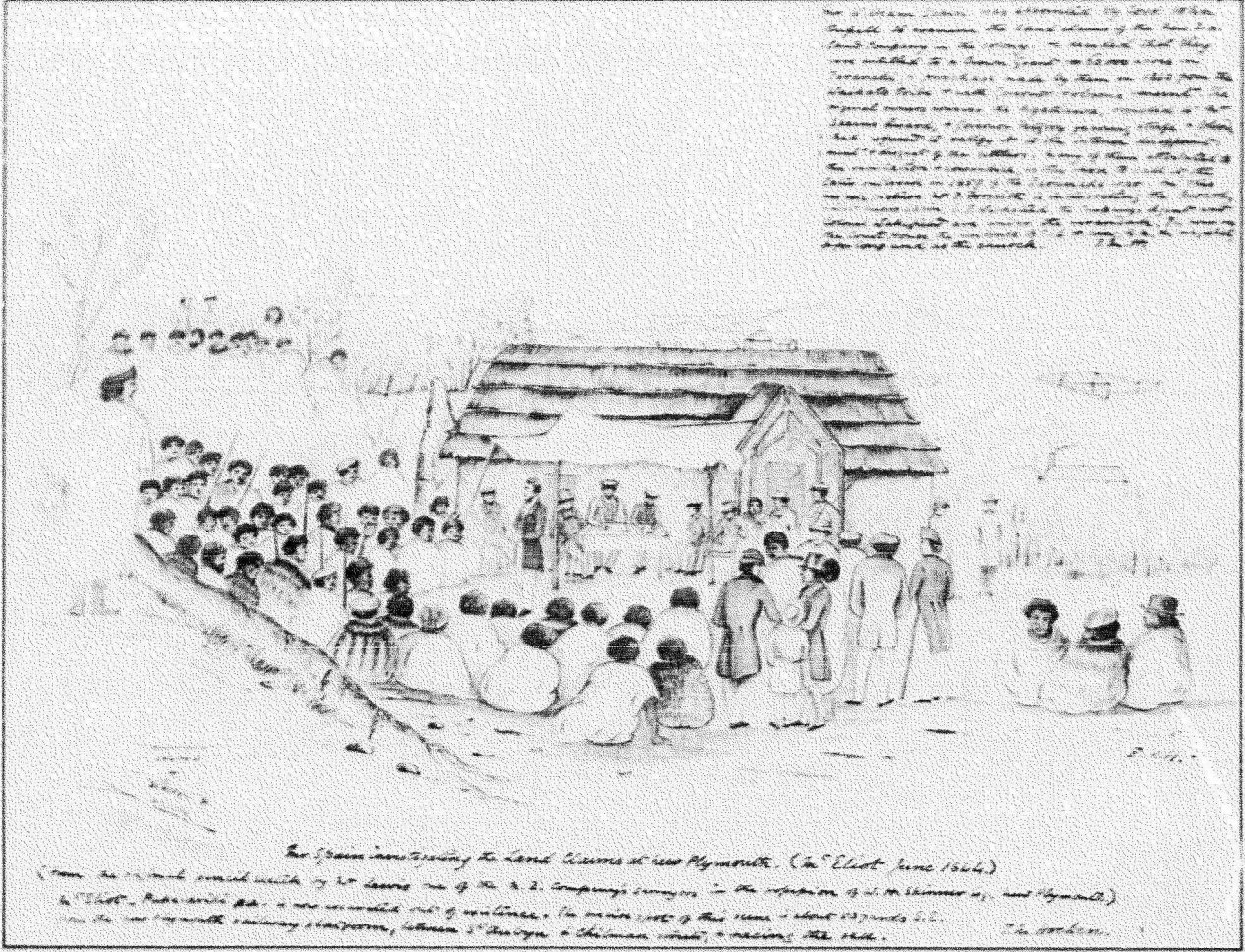
had been set aside for their use. ²²

In general, serious clashes such as that at the Wairau Valley were avoided and hostilities, in their varying degrees, seem to have been restricted to those areas to which both settlers and Maoris laid claim. In all else race relations seemed amicable enough. For example, Maoris were hired as labourers by the settlers - including those whose property was interfered with - and the Europeans helped to rebuild a pa in mid-1843 when it was rumoured that some Waikato Maoris were going to attack the Ati Awa. ²³ For their part, the settlers needed help while they were establishing themselves and after 1843 were anxious to avoid another Wairau. And, as well as their eagerness to enjoy the benefits of trade, the Maoris were aware of the importance of settler support against their enemies, the Waikato and Ngati Maniapoto peoples. But, in fact, race relations were quite precariously poised. The settlers, for instance, were suspicious of Ati Awa motives for coming back; many of them believed that the return and increasing demands of the Ati Awa had been stimulated by Te Wherowhero's success and by Acting-Governor Shortland's post-Wairau ban on settlers claiming lands in any physical way. ²⁴ But above all, the two sides got along because both were waiting for Spain and each expected his decision to go in their favour - the settlers because they believed that the Company's original purchase and the payment to Te Wherowhero made their title unimpeachable, and the Ati Awa primarily because they had never abandoned their claims to their ancestral lands. Clearly this was a difficult situation for Spain to walk into.

Spain opened his hearings at New Plymouth on 31 May 1844 with an examination of Richard Barrett. The following day Barrett's evidence was to have been interpreted to the Maoris who had assembled but, at their request, the court was adjourned to give other Maoris more time to arrive. The convening of the court had been well publicised by Clarke and Forsaith, who had visited the Maori settlements as far north as the Waitara on 30 May, and when the hearings reopened on 3 June about 300 Maoris, as well as many of the settlers, were present - such a gathering, in fact, that the court had to be held out of doors in order to accommodate everyone.²⁵ Colonel Wakefield submitted his claims under the deeds executed by the Ati Awa of Queen Charlotte Sound and Nga Motu only. He did not make a claim to the lands south of Nga Motu which had been bought from the Taranaki people under the second deed of 15 February 1840.²⁶

The Commissioner found the Maori witnesses extremely reluctant to give evidence.²⁷ Although many eventually admitted receiving part of the payment, Spain wrongly asserted in his final report that the testimony showed they had understood the deed and goods to mean loss of their lands. Instead, the evidence indicated the incidental role which the deed had had at the 'sale' - it was the payment and the promise of settlers which were important to the participating Ati Awa since it was those and not the deed which gave recognition of the Ati Awa title and, it was thought, assured that tribe's future in the area. The Maori witnesses also repeatedly referred to the absence of

The Spanish... the land claims of the New Plymouth Company... the land claims of the New Plymouth Company... the land claims of the New Plymouth Company...



The Spaniards investigating the land claims at New Plymouth. (See Elliot June 1864)
From the sketch made by Mr. Elliot in the office of the U.S. Army, in the office of Mr. Sherman at New Plymouth.
The sketch is a very good one of the scene. The scene is of the New Plymouth Company's land claims at New Plymouth.
The sketch is a very good one of the scene. The scene is of the New Plymouth Company's land claims at New Plymouth.

Spain investigating the land claims at New Plymouth

others of the tribe - either slaves or exiles - at the time of the 'sale'.²⁸ One might have expected the resident population to be slow to admit the claims of absentees, particularly of those who had been captured in war. On this occasion, however, there was an important reason for emphasizing the absentees' claims. The sellers were reluctant to admit their part in a sale the full significance of which they had only come to understand as European settlement progressed. Reference to the absentees' claims was expedient and was repeatedly made.

Spain, however, refused to accept the claims of non-residents. Indeed, this was a fundamental principle of all his decisions.²⁹ Reporting later on the New Plymouth case he wrote on the claims of returning slaves:³⁰

The admission of the right of slaves, who had been absent for a long period of years, to return at any time and claim their right to land that had belonged to them previously to their being taken prisoners of war, and which before their return, and when they were in slavery, had been sold by the conquerors and resident natives to third parties, would establish a most dangerous doctrine, calculated to throw doubts upon almost every European title to land in this country ... and would prove a source of endless litigation and disagreement between the two races.

And concerning the claims of repatriated exiles, Spain noted that while some would have returned to Taranaki for genuine emotional reasons, others were trying to get paid for land in both Port Nicholson and Taranaki. This had to be discouraged - in his final report Spain wrote:³¹

I cannot ... admit their title, a recognition of which would oblige me to admit that of all others similarly situated, who might at any time think proper to return and claim payment.

Moreover, Spain felt the exiles had had ample warning of the Company's intention to buy Taranaki and should have returned then. And it was at the time of sale - a period of 2-3 months - that Spain felt opposition should have been voiced.³² In refusing to allow even the claims of those Ati Awa who had returned by June 1844, however, Spain was ignoring the unusual circumstances of this case - notably, the unprecedented return of large numbers of slaves, and the fact that European settlement of the area was a prerequisite of the exiles' return since without it the area would have been unsafe. In brief, these circumstances demanded a flexibility of approach and a responsiveness which Spain did not have.

Spain's attitude may have been influenced by events at Mangonui early in the preceding year. The Government had bought land at Mangonui from Maoris who claimed the land by inheritance. The claims of the area's resident-conquerors were not recognised and later, when Commissioner Godfrey arrived in the area to investigate the local land claims, a battle took place between the two parties of Maori claimants. The resident-conquerors won and the land had to be repurchased.³³ The Commissioner feared a similar scenario developing in Taranaki in which the Waikato and returned Ati Awa peoples fought to defend their respective claims.

Clarke, Forsaith and the Reverend Hadfield all disagreed with Spain's view of Maori custom respecting the rights of absentees. Clarke tried to challenge the Commissioner's opinion that the rights of absentees could be extinguished by the claims of residents, by calling to the witness stand a returned slave, Jacob Wahao. Jacob Wahao asserted that he did not lose his right to land at the Waitara when he was enslaved by the Waikato and that he had returned to Taranaki before the settlers came. Spain, however, dismissed his evidence as 'totally unworthy of belief' as he felt it had been given in an evasive, contradictory manner and did not coincide with the testimony already taken.³⁴ The court closed on 6 June 1844 after the Maoris stated that they had no more to say. Clarke had already explained that no more witnesses would be called and this was the their final opportunity to make a statement.³⁵

Two days later, on 8 June 1844, Spain announced his decision before a large crowd of Maoris and Europeans. He had two reasons for taking the unusual step of making the award public before a report was made to the Governor. His main reason was that he feared that further delay would lead to a deterioration in local race relations. And secondly, the case went against the Maoris and the reserve system would therefore have to be particularly carefully explained.³⁶ The Company was entitled to the 60,000 acres it claimed with certain exceptions. These were the Maori pa, burial grounds and cultivations - including those established after the sale - and 6,000 acres of reserves. Although the rural sections had already been opened up, none

had been chosen for the Maoris because there had been no agent present to do so. Spain, therefore, directed that when a representative for the Maoris was appointed he could immediately select as many sections as were necessary to re-establish the section/reserve ratio and, if it was in the Maoris' best interests, he could choose land taken up by settlers. As the original block claimed had been decreased by 2 miles in length and width, the Maoris also retained this land which Spain considered to be valuable, of good quality and excellently situated as it adjoined Company territory.³⁷ The Maoris were also entitled to £200 for the case of double-barrelled guns which was never delivered. Spain recommended that the New Zealand Company should pay this to the Governor before being given the Crown grant. The money could then be used for the benefit of the local Maoris.

Amongst the other exemptions from the Company's award were two blocks totalling 180 acres to be held in trust by the Trustees of Native Reserves for Richard Barrett, his Maori wife and children.³⁸ Barrett had lived in the area for several years prior to the migrations southward of the Ati Awa. He had worked as a whaler-cum-trader at the station established at Moturoa in 1828 or early 1829. In the latter 1830s he had married the daughter of a local chief, and their children were born at Taranaki.³⁹

The Wesleyan Missionary Society also received an award: 100 acres at Moturoa.⁴⁰ This land had been sold by members of the Ngati Te Whiti hapu to the Wesleyan Missionary Society on

13 January 1840 to show their contempt for a land purchase offer made by an ex-missionary, William White. White had come to Taranaki in January 1840 in search of local signatures to add to a deed 'selling' Taranaki land to him. The deed had already been 'signed' by some Ati Awa enslaved by the Waikato but then living at Hokianga. Spurned by the resident Ati Awa, White went to Kawhia where Waikato and Ngati Maniapoto chiefs were willing to 'sign'. For them it was a lucrative, easy and honourable way of dissociating themselves from an area which was of no practical benefit to them now that Christianity had made large-scale war-parties unacceptable. Some concessions - notably allowing the Wesleyans to have as much Taranaki land as they could buy - were made by White to gain the local missionaries' approval. The deed was 'signed' on 28 January 1840 and White paid the chiefs a £30 deposit of a promised £1,000 for the Waikato and Ngati Maniapoto claims to the lands between the Mokau and Wanganui rivers.⁴¹ Although Spain believed that only residents' claims should be recognised and White had never paid more than the £30, the Commissioner awarded White a valuable piece of Taranaki land to give up his wider claims.⁴²

All claims, including the New Zealand Company purchase, were subject to the rights of prior purchasers. The number of private claims, excluding those already mentioned, was very small, possibly no more than three. Of these, two seem to have been purely speculative, and all seem to have been forfeited when the claimants failed to press their case.⁴³

Although the Commissioner emphasized that the award was, as always, subject to the Governor's approval, he clearly believed, as he wrote in his final report on New Plymouth to FitzRoy - the new Governor - that he had ⁴⁴

not seen any land claimed by the Company that can be spared from the aborigines so little interfering with or likely to injure their interests as the block in question

and that FitzRoy would ratify his decision. This opinion reflected not only his attitude towards the claims of non-resident and resident Maoris, but also his mistaken belief that the repatriated Ati Awa had actually previously lived to the south of the Sugar Loaf Islands and towards Waimate on the other side of Cape Egmont. ⁴⁵ Furthermore, he considered that this was the only New Zealand Company purchase in which the deed had been explained properly and an adequate payment made. ⁴⁶

Spain does not explain in his report why he considered Barrett's work as interpreter at Taranaki adequate when he had dismissed his translations of the Company's other purchase deeds as conveying only slightly the meaning of the deed's contents.

The Commissioner's announcement of his decision virtually caused the rapid deterioration in race relations which he had set out to avoid. The settlers were quite happy with the award but, as the local New Zealand Company Agent, Wicksteed, had foreseen almost a year earlier, the Ati Awa refused to accept any judgment by Spain which went against them and strongly objected to the rejection of their claims. ⁴⁷ It was only Clarke's assur-

ances that the Governor would listen to their appeals that prevented the immediate destruction of outlying settlers' property. ⁴⁸ Instead Wiremu Kingi Whiti, who had signed the Queen Charlotte Sound deed, and other Ati Awa chiefs immediately composed a petition to the Governor saying that their ⁴⁹

hearts were dark by reason of Mr Spain's words and that the Europeans were wrong to try to take lands, particularly the Waitara, which they had never sold.

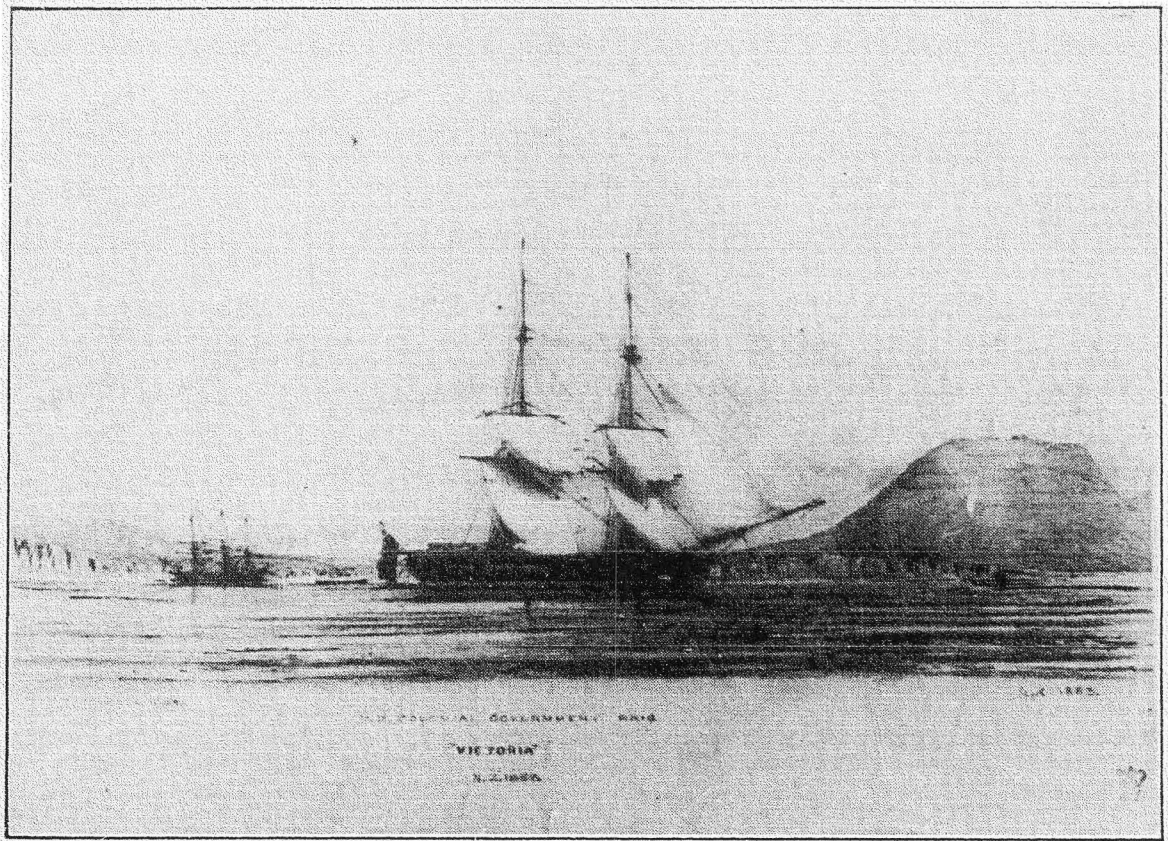
The situation was regarded as sufficiently serious for messages from the settlers and Clarke to be sent to Auckland to inform FitzRoy of what had happened. The settlers also appealed for military protection, and Clarke urgently requested help from the Governor and the Chief Protector. ⁵⁰ Clarke had considered it unwise and improper to openly oppose Spain during the investigation but now that the case was over he advised the Governor and Chief Protector that he felt the Ati Awa claims should have been recognised by the Commissioner. ⁵¹ Although Colonel Wakefield had offered to make further payments to the Ati Awa, Clarke had declined these as ⁵²

they [the Ati Awa] would neither accept of it nor if they would could we satisfy the numerous claimants - and under any circumstances if we had paid the natives a farthing the Waikatos would have come down with a large force and embroil both natives and Europeans in a general war.

With this point, at least, Spain was in agreement as he, too, recognised that the Waikato people still looked on the Ati Awa

as slaves and often threatened to re-enslave them. In any case, Spain would not have condoned any more payments as he knew they would also have been seen as an admission that the land had not been sold in the first place and would have resulted in a proliferation of claims by both southern and manumitted Ati Awa.⁵³ The Commissioner's interpreter, Forsaith, who had also disagreed with the award, had acted with less restraint than Clarke, and Spain had had to call Forsaith to order several times for letting his opinion be publicly known before and during proceedings. In his final report one of the reasons Spain gave for not being surprised at the Maoris' reaction to his decision was the opposition of Clarke and Forsaith. After all, he reasoned, if his own staff who were in constant contact with the Maoris were unhappy with the award, how could the Maoris be satisfied with it?⁵⁴

Four days after the public meeting Spain wrote to the Governor explaining the decision and on 21 June 1844, he, Clarke and Colonel Wakefield boarded the Victoria which immediately set sail southwards.⁵⁵ Forsaith stayed in New Plymouth for four more days and then travelled overland to inform the Governor of the situation at Taranaki. He reached Auckland on 8 July 1844. The Governor immediately sent Protector Donald McLean to the area to pacify the Maoris. Accompanied by the Reverend John Whiteley of the Wesleyan station at Kawhia, McLean arrived at New Plymouth towards the end of July. Bishop Selwyn also hurried to the area and on 2 August 1844 the Governor arrived on board HMS Hazard. The following day a meeting



H.M. Colonial Government brig Victoria

attended by about 300 people, mostly Maoris, was held by the Governor. ⁵⁶ FitzRoy addressed the assembled crowd at length emphasizing his desire for peace and declaring that, although the settlers must now be allowed to remain in the area, he did not agree with Spain's dismissal of the absentees' claims ⁵⁷ -

it is not just if a man carried off by a war party as a slave, when he returns from slavery, finds his place gone, or his house, or anything else. No, if we were at war with any other nation, and I was taken as a slave, and afterwards liberated; if, when I returned to my own place, I should find that my place had been sold, what would my thoughts be; would I consent? not at all.

The case, therefore, required further investigation of the claims of those who had been absent from the region at the time of the sale. The lands of those who it was decided had a right to payment would be bought at a reasonable price if they wished to sell. If they still did not want to part with the land, said FitzRoy, he would then locate the settlers elsewhere. On the Reverend Whiteley's advice, McLean was instructed to compile lists of those Ati Awa who had not received payment, those who had not witnessed the sale, and those still absent from their ancestral lands. Once this was done a final arrangement would be made. ⁵⁸

At New Plymouth in early October 1844 FitzRoy confirmed his decision to overturn Spain's judgment. The Governor declared that all the awarded land would have to be repurchased from the Maori owners. If this were not done, the Government would not

guarantee any settler a title to and protection of his land. Then on 23 November 1844 the Governor paid £350 to Ngati Te Whiti for 3,500 acres, which included the New Plymouth township.⁵⁹ Thus only a fraction of the former award of 60,000 acres was now officially available for settlement. Although the Maoris were satisfied with FitzRoy's decision, the settlers and Company officials were angry and dismayed. They believed that Spain's award was just, and that the loss of such a lot of choice land would result in severe hardship for many families, if it did not ruin the settlement outright. Indeed, some settlers established in outlying districts, such as Mangaoraka, preferred to risk Maori demands for payment, rather than bear the cost and trouble of moving to within the Home Block. And at the time of FitzRoy's purchase the Maoris did not bother the settlers much and seemed, to Wicksteed, to be quite keen to sell more land to the Governor - though this was a state of affairs which lasted only a few months.⁶⁰

Spain and Colonel Wakefield first heard of the suspension of the Taranaki award at Nelson, probably not long after they arrived there on 16 August 1844. FitzRoy had written to Colonel Wakefield stating that he intended to reverse Spain's judgment, and to Spain asking him to be at Taranaki on 1 October 1844 with the evidence taken on the case.⁶¹ Both Wakefield and Spain were very angry about FitzRoy's decision. Wakefield categorically refused to accept FitzRoy's assertion that the Company's title was defective.⁶² The Commissioner regarded FitzRoy's decision as inexplicable and unprecedented. He considered that

the way in which it was made without first consulting either himself or Clarke, or the minutes of the evidence taken, robbed the Commission of its authority and stability.⁶³ Spain therefore wrote to FitzRoy recapitulating and confirming his decision, emphasizing that the award had certainly not deprived the Maoris of land and resources, and asking that the report and despatch explaining it be sent to the Secretary of State for the Colonies.⁶⁴ And although Spain had been told to be present when the Governor announced his decision, he and FitzRoy did not meet until later in October, at Wellington. Spain still refused to acquiesce in the reversal of his award.⁶⁵

Although the situation at New Plymouth was difficult - not least because the settlers and the Maoris believed throughout that their own claim was the better - if FitzRoy and Spain had adopted a more conciliatory role from the outset some sort of workable compromise might have been achieved. As it was, however, each man believed that his decision was the correct one, and could cite expert opinion to support his view. Each felt strongly that his authority should be upheld; each was used to having it obeyed, and was indignant when the other refused to accept his own judgment. And, most importantly, FitzRoy gave his unequivocal and unbending support to the Maoris while Spain gave his backing to the settlers - in doing so they had already tipped the balance against the negotiation of a peaceful solution to the situation.

NOTES

1. William H.J. Seffern, Chronicles of the Garden of New Zealand, known as Taranaki (William Seffern, New Plymouth, 1896), p. 113; Wells, Taranaki, p. 105.
2. Spain, report on NZC claim to New Plymouth, 31-3-1845, encl. in FitzRoy/Stanley, 13-9-1845 (hereafter 'Spain, New Plymouth report'), IUP, Vol. 5, p. 60/BPP, [1846(203)30], p. 52; Parsonson, 'He whenua te utu', p. 230; Wakefield, Adventure in New Zealand, pp. 108-109; Wells, Taranaki, p. 20.
3. Parsonson, 'He whenua te utu', p. 230; Wells, Taranaki, pp. 21, 26.
4. 'Spain, New Plymouth report', IUP, Vol. 5, pp. 60, 63/BPP, [1846(203)30], pp. 52, 55; Wakefield, Adventure in New Zealand, p. 132.
5. Marais, Colonisation of New Zealand, pp. 50-51; Parsonson, 'He whenua te utu', p. 231; Wakefield, Adventure in New Zealand, pp. 109-110, 113-115, 118; Wells, Taranaki, pp. 21-23.
6. Wakefield, Adventure in New Zealand, pp. 114-115, 120-121, 123.
7. 'Spain, New Plymouth report', IUP, Vol. 5, p. 51/BPP, [1846(203)30], p. 59; Parsonson, 'He whenua te utu', p. 234; Wakefield, Adventure in New Zealand, p. 132.
8. Wakefield, Adventure in New Zealand, p. 340; Wells, Taranaki, p. 62.
9. Evidence of Barrett, OLC 910-911; Dieffenbach does not elaborate on his statement that goodwill presents were sent to the Waikato Maoris. Nor does this act seem to be mentioned in other contemporary sources, though there is no reason to doubt his statement. Ernest Dieffenbach, Travels in New Zealand; with contributions to the geography, geology, botany, and natural history of that country, 2 Vols (John Murray, London, 1843), Vol. 1, p. 171; Wakefield, Adventure in New Zealand, p. 132.
10. NZC Taranaki district deeds, encl. in 'Spain, New Plymouth report', IUP, Vol. 5, pp. 72-75/BPP, [1846(203)30], pp. 64-67; According to a map of the Province of Taranaki from Waitara to Oeo (signed by Octavius Carrington, Provincial Surveyor, 10-7-1862) there was a pa at 'Hauranga' on the coast between the 'Wemmariki' stream and the 'Otuputu' stream; Wells, Taranaki, pp. 41-42.
11. J. Ward/W. Wakefield, 2-7-1840, NZC 102/2, pp. 24-30; J. Ward/W. Wakefield, 10-2-1841, *ibid.*, p. 344; Thomson, Story of New Zealand, Vol. 2, p. 38; Wells, Taranaki, pp. 48, 53-57, 59.
12. Parsonson, 'He whenua te utu', p. 236; Thomson, Story of New Zealand, Vol. 2, p. 38; Wells, Taranaki, p. 59.
13. *ibid.*, pp. 97, 112; Wilson, Land Problems, p. 179.
14. Wards, Shadow of the Land, p. 60; Wilson, Land Problems, pp. 108-110.

15. Given the proximity of the two events, and the fact that the term 'Waikato' Maoris was often used by contemporaries in a general way to refer to any Maoris living north of Taranaki and south of Auckland, these two events probably involved the same party of Ngati Maniapoto Maoris; F. Liardet/W. Wakefield, 20-11-1841, NZC 3/1, pp. 20-26; F. Liardet/W. Wakefield, 28-11-1841, *ibid.*, pp. 27-34; Seffern gives the leader of the Maori party who visited New Plymouth as Te Pakaru, not Te Kaka (no source). Te Pakaru was the chief Haupokia, the most important Ngati Maniapoto chief of Kawhia. Seffern, Chronicles, p. 86; Wells, Taranaki, pp. 76-77.
16. See note 15 above. One wonders whether Hobson realized that a payment to Te Wherowhero would not satisfy the claims of the other 'Waikato' Maoris, the Ngati Maniapoto. He obviously thought that the payment to Te Wherowhero settled the question of non-Ati Awa claims to the New Plymouth region. If he was aware of the rival claims of both Waikato and Ngati Maniapoto to the district, perhaps he dealt only with the Waikato claims because the Waikato chiefs had threatened the lives of the settlers and the Ati Awa, while Ngati Maniapoto had not; Wards, Shadow of the Land, p. 60; Wells, Taranaki, pp. 77, 80.
17. Parsonson, 'He whenua te utu', p. 236; Wakefield, Adventure in New Zealand, pp. 526-527.
18. Shand, 'Occupation of the Chatham Islands', pp. 87-89; Smith, Maoris of the West Coast, p. 497; Wakefield, Adventure in New Zealand, pp. 597-598.
19. Parsonson, 'He whenua te utu', p. 236.
20. It is unclear how much land was admitted as sold. But it cannot have been much, given that the sellers (about forty Maoris) constituted a small minority of the Maori population in Taranaki by 1844. The sale of the Waitara district, in particular, was disputed; Parsonson, 'He whenua te utu', pp. 237-238; Wells, Taranaki, p. 85.
21. W. Wakefield/Wicksteed, 17-2-1843, NZC 115/1, pp. 34-36; Parsonson, 'He whenua te utu', pp. 237, 238-240; Wells, Taranaki, pp. 62, 85-87, 97, 102-103.
22. Wicksteed/W. Wakefield, 31-12-1842, NZC 105/1, pp. 160-169; Parsonson, 'He whenua te utu', p. 238; Seffern, Chronicles, p. 86.
23. Parsonson, 'He whenua te utu', p. 240; Wells, Taranaki, pp. 96-97.
24. *ibid.*, pp. 98-99; see below, p. 289 for notes on Shortland's ban.
25. 'Spain, New Plymouth report', IUP, Vol. 5, pp. 59-67/BPP, [1846(203) 30], pp. 51-59; 'Minutes of the proceedings of the Court of Land Claims holden at New Plymouth before Mr Commissioner Spain', encl. *ibid.*, IUP, Vol. 5, pp. 75-78/BPP, [1846(203) 30], pp. 67-70; Forsaith/Clarke, *sen.*, 10-7-1844, IA 1; Wells, Taranaki, p. 20.
26. Wakefield offered no explanation of why he did not claim land under the second deed - perhaps because the land was not really needed for the settlement; 'Minutes of the proceedings of the court of Land Claims holden at New Plymouth before Mr Commissioner Spain', encl. in

- 'Spain, New Plymouth report', IUP, Vol. 5, p. 76/BPP, [1846(203)30], p. 68.
27. 'Spain, New Plymouth report', IUP, Vol. 5, pp. 62, 76/BPP, [1846(203)30], pp. 54, 68.
28. *ibid.*, IUP, Vol. 5, pp. 62-63/BPP, [1846(203)30], pp. 54-55.
29. *ibid.*, IUP, Vol. 5, pp. 58-60/BPP, [1846(203)30], pp. 50-52.
30. *ibid.*, IUP, Vol. 5, p. 71/BPP, [1846(203)30], p. 63.
31. *ibid.*, IUP, Vol. 5, p. 60/BPP, [1846(203)30], p. 52.
32. *ibid.*, IUP, Vol. 5, pp. 59-60/BPP, [1846(203)30], pp. 51-52.
33. See above, pp. 84-86, for details of the Mangonui incident; Thomson, Story of New Zealand, Vol. 2, pp. 91-92.
34. Clarke, private letter/Clarke, sen., 27-6-1844, 'Clarke letters', Vol. 62/B, item 79; 'Spain, New Plymouth report', IUP, Vol. 5, pp. 62-63, 65-66/BPP, [1846(203)30], pp. 54-55, 57-58; Clarke, Notes, pp. 58-59.
35. 'Minutes of the proceedings of the court of Land Claims holden at New Plymouth before Mr Commissioner Spain', encl. in 'Spain, New Plymouth report', IUP, Vol. 5, p. 76/BPP, [1846(203)30], p. 68.
36. *ibid.*, IUP, Vol. 5, pp. 76-78/BPP, [1846(203)30], pp. 68-70.
37. 'Spain, New Plymouth report', IUP, Vol. 5, pp. 67, 71-72/BPP, [1846(203)30], pp. 59, 63-64; Spain/Wicksteed, 13-6-1844, *ibid.*, IUP, Vol. 5, p. 80/BPP, [1846(203)30], p. 72.
38. 'Spain, New Plymouth report', IUP, Vol. 5, p. 72/BPP, [1846(203)30], p. 64.
39. Robert McNab, The Old Whaling Days: a history of southern New Zealand from 1830 to 1840 (Whitcombe and Tombs, Christchurch, 1913), pp. 40-41.
40. 'Spain, New Plymouth report', IUP, Vol. 5, p. 72/BPP, [1846(203)30], p. 64.
41. Parsonson, 'He whenua te utu', pp. 231-232; Wakefield, Adventure in New Zealand, p. 124.
42. Parsonson, 'He whenua te utu', p. 237, note 17.
43. 'Spain, New Plymouth report', IUP, Vol. 5, pp. 71-72/BPP, [1846(203)30], pp. 63-64; 'Appendix to Commissioner Bell's report', AJHR, 1863, D-No. 14.
44. 'Spain, New Plymouth report', IUP, Vol. 5, pp. 67 (quotation), 68/BPP, [1846(203)30], pp. 59, 60.

45. *ibid.*, IUP, Vol. 5, pp. 58-59/BPP, [1846(203)30], pp. 50-51.
46. *ibid.*, IUP, Vol. 5, p. 59/BPP, [1846(203)30], p. 51.
47. Wells, Taranaki, pp. 98-99, 107.
48. Parsonson, 'He whenua te utu', p. 242; Wilson, Land Problems, p. 182.
49. Seffern, Chronicles, p. 114.
50. Wells, Taranaki, p. 107; Wilson, Land Problems, 182.
51. Clarke, private letter/Ciarke, sen., 27-6-1844, 'Clarke letters', Vol. 62/B, item 79.
52. *ibid.*; 'Spain, New Plymouth report', IUP, Vol. 5, p. 67/BPP, [1846(203)30], p. 59.
53. *ibid.*, IUP, Vol. 5, pp. 67-68/BPP, [1846(203)30], pp. 59-60.
54. *ibid.*, IUP, Vol. 5, p. 70/BPP, [1846(203)30], p. 62.
55. Seffern, Chronicles, p. 114.
56. *ibid.*, pp. 114-116.
57. *ibid.*, p. 117.
58. *ibid.*, pp. 117-119; Wilson, Land Problems, p. 182; Wells, Taranaki, p. 119.
59. Seffern, Chronicles, pp. 126-127.
60. Wicksteed/W. Wakefield, 23-11-1844; Wells, Taranaki, pp. 116-118.
61. FitzRoy/W. Wakefield, August 1844, IA 1/62; 'Shipping intelligence', Nelson Examiner and New Zealand Chronicle, 13-7-1844.
62. Wells, Taranaki, p. 120.
63. 'Spain, New Plymouth report', IUP, Vol. 5, pp. 68-69/BPP, [1846(203)30], pp. 60-61.
64. *ibid.*, IUP, Vol. 5, p. 58/BPP, [1846(203)30], p. 50.
65. 'Shipping intelligence', Nelson Examiner and New Zealand Chronicle, 5-10-1844; Spain/Lt. Governor Grey, 28-1-1846, IA 1/62.

CHAPTER NINE

THE NEW ZEALAND COMPANY'S NELSON DISTRICT CLAIM:
SUCCESS AND TRAGIC FAILURE

The final New Zealand Company case which Commissioner Spain investigated concerned the Company's claim to the Nelson area - including the Wairau Valley. At the Company's Nelson settlement tragedy had already occurred, as the settlers, desperate for rural land, had tried to stake their claim to the Wairau Valley before Spain's hearings were due to begin in late June 1843. With the settlement's leader dead, killed in a confrontation with the Maoris who opposed the Company's claim to the valley, the settlers were very bitter; and the Company, having decided it would have no hope of being awarded the Wairau by Spain, was to exclude the valley from the Nelson district lands it claimed in Spain's court.

The legal basis of the Company's claim to the Nelson area was the deed executed at Kapiti by Te Rauparaha, Te Rangihaeata, Te Hiko and other Ngati Toa chiefs on 25 October 1839, and the deed executed by Ati Awa at Queen Charlotte Sound in 8 November 1839.¹ Of the two deeds, the former was more significant for the case. On 17 December Te Rauparaha had again come on board the Tory and spoken of the 'sale'. This time, however, he unequivocally stated that the list of place-names in the deed was not a statement of places sold - rather, Wakefield's payment was only for two mentioned districts, Taitapu (Golden Bay)

and Rangitoto (D'Urville Island). Moreover, Te Rauparaha said he would 'sell' some of the land already named in Wakefield's deed to two Sydney merchants who were in the area.² This action seems to have been in the nature of insurance in the event of Wakefield actually demanding some land in exchange for his payment. But, whatever the chief's motive, his rejection of Wakefield's view of the deed was clear. And later, at Porirua in May 1843, Te Rauparaha told Spain that he had sold Taitapu only. Similarly, Te Rangihaeata held that only Te Whakatu (Tasman Bay) had been sold.³

Of all the localities listed in the deed these were the most dispensable, economically and politically, for Te Rauparaha and Te Rangihaeata. This was partly because, being unfrequented by Europeans and off normal Ngati Toa travel routes, they did not provide Te Rauparaha with the economic benefits which other parts of his territory did. Te Whakatu, moreover, had been made tapu after Te Rauparaha's son, Tamihana, had an accident there and so the area was economically useless.⁴ Politically the sale of an area in which Te Rauparaha had not personally fought would remind the residents, none of whom were Ngati Toa, of Te Rauparaha's overlordship. With respect to D'Urville Island, Te Rauparaha may have been particularly motivated by a desire to put his Ngati Koata relatives living there in their place. In spite of Te Rauparaha's claims, Ngati Koata had dared to claim D'Urville Island and Tasman Bay by virtue of a gift from Tutepourangi, a renowned chief of the tangata whenua (local people), Ngati Kuia, rather than from the con-

querors, Ngati Toa. In any case, the Ngati Toa chiefs agreed to sell the bay where the New Zealand Company's second settlement would later be established. And, when the preliminary expedition for Nelson had visited Kapiti in October 1841 to make sure that the Company could have the site, Te Rauparaha and Te Hiko had again readily admitted the sale of Taitapu and urged the Pakehas to go there. Nor did Ngati Toa subsequently interfere with settlement at either Tasman or Golden Bays. ⁵

The Company's claim, based on the Kapiti and Queen Charlotte Sound deeds, was supported by payments made by Captain Arthur Wakefield to the Maori residents of the two bays as settlement of the land occurred. In Golden Bay these were mostly Ati Awa, and in Tasman Bay primarily Ngati Rarua, close allies and relatives of Ngati Toa. Captain Wakefield, elder brother of Colonel Wakefield and the leader of the Nelson settlement, had recognised that for practical purposes the claims of the local Maoris - who had not participated in the 1839 'sales' - would have to be met. However, these payments were termed 'gifts' both at the time they were made and, later, in the Land Commissioner's court. To have done otherwise would have implied that Colonel Wakefield had bought the land from the wrong people, and would also have contravened Hobson's January 1841 Proclamation which banned further purchases after that date. In any case, as Spain later remarked and as was probably recognised by Captain Wakefield, the local Maoris would not have made the distinction between gift and payment.

The first of five payments totalling £980 worth of goods was agreed upon at a korero at Kaiteriteri called by the Motueka chiefs in late October 1841, soon after the settlers arrived in the area. It was attended by Maoris from the Whakapuaka, Waimea and Motueka areas. The chiefs denied Te Rauparaha's right to sell the land but agreed to part with the area for the value of goods which, Captain Wakefield said, Te Rauparaha should have given them as their share when he made the sale. The main items comprising the gifts given to each chief were basically the same: ten blankets, two axes, usually one hundredweight (50.80 kilograms) of tobacco, three hundred pipes, one keg of powder, one double-barrelled gun, and one hundredweight of biscuit or a bag of flour and one hundredweight of sugar. The only condition of sale was that it did not include the Big Wood at Motueka which was under cultivation, and the potato grounds elsewhere. Gifts worth £400 were distributed to the Maoris in Tasman Bay over the next few weeks, and at the end of December the survey of urban Nelson began. In September 1842 the survey of Nelson's rural sections in Golden Bay was to start. As in Tasman Bay, Captain Wakefield gave gifts to the local Maoris before the survey began. Meetings were held at Takaka, Tata, Motupipi and Separation Point to find out who were the leading chiefs of each area. Since the Maoris wanted the goods offered and the benefits of having a settlement established nearby, payments were made to these people in September and October 1842. ⁶

These precautions notwithstanding, settlement of the Nelson district did not proceed unopposed. The first interference occurred in May 1842 at Motueka, the area most densely populated by Ngati Rarua. Soon after a survey station was established a short way up the Motueka River a group of Maoris, led by Te Puaha, stopped the work. However, after being reassured that the Motueka area, particularly the rich extensively-cultivated land near the Big Wood, would be reserved for them, the Maoris let the surveyors carry on with their work. The strong Maori opposition to any Pakeha occupation of the potato grounds - located mostly between Lower Moutere and the Motueka River - resulted in most of the 50 acre Maori reserves being set up in this area. This concession, combined with the comparatively small number of settlers who moved into the area after selection in January 1843, ensured that the settlement was generally disturbed only by minor disputes which were often due to simple misunderstandings. On at least three occasions, though - all in 1843 - more serious disagreements occurred. The worst instance resulted in a group of labourers being driven off their jointly-owned section. ⁷

Opposition to settlement also occurred at Motupipi in Golden Bay. In October 1842 the Massacre Bay Coal Association was formed by a group of Nelson working men to extract coal at Motupipi. Soon after the first shipment was sent to Nelson, however, the local Maoris asked the Association to buy the coal that they dug. When this was refused the Maoris sabotaged the miners' work by, for instance, pulling down landing stages and

destroying lime casks. The CMS missionary, the Reverend C.L. Reay, failed to persuade the Maoris to stop; and in a foreshadowing of the Wairau confrontation in June of the following year, the local magistrate-cum-Native Protector, Henry Thompson, decided to teach the Maoris a lesson. Thompson went to Motupipi accompanied by Captain Wakefield and twenty-five special constables. On 17 October 1842 a 'court' was set up at the landing place, about 2½ miles up the Takaka River, with seats being arranged to give the venue a properly formal appearance. The chief Puakawa, leader of the local Maoris, was charged with wilfully destroying the lime-kiln and casks and physically forced to attend on pain of being handcuffed. Puakawa pleaded that he had acted in anger. He was then fined £1 for costs and for not keeping his temper under control. The chief's request to pay the fine in pigs and potatoes was refused - his wife eventually handing over the sum demanded, whereupon Puakawa was released. Thompson, changing to his role of Protector of Aborigines, then explained the proceedings and spoke on the impartiality of British justice to those Maoris who had gathered at the 'court'.⁸ Although the miners were not molested during the following 6 months or so that the mining venture lasted, the resentment caused by the degradation of Puakawa was considerable. It might have led to violence but for two circumstances: the discovery of the Wairau Valley delayed the selection and distribution of Golden Bay land scheduled for early January 1843, and Puakawa drowned in the same year.⁹

No other significant opposition to the Nelson settlement occurred until March 1843 when the survey of the Wairau Valley was opposed. The Wairau Valley, explored at the end of 1842 by the Company's surveyor, John Cotterrell, was held as providing the Nelson settlement with much-needed rural, pastoral land. Tenders for contract surveying of the area were called for in March 1843. But, unlike Golden Bay and Tasman Bay, Te Rauparaha had not admitted the sale of the Wairau Valley area. Economically it was an important part of his territory, especially as there were whaling stations at Cloudy Bay. Politically Te Rauparaha's claim to paramountcy in the area was being tested by the resident Maoris - Ngati Toa with Ati Awa connections - including Te Rauparaha's half-brother Nohorua and nephew Rawiri Kingi Puaha. Te Rauparaha reacted immediately to news of the Company's activities in the Wairau. He visited Nelson in March 1843 with Te Rangihaeata and Te Hiko, and declared that the survey must be stopped. Although Te Rauparaha seemed initially tempted to accept presents for the valley, Captain Wakefield countered the chief's demands with the threat of supporting the survey with 300 constables, rather than the persuasion of a new substantial payment. For his part, Te Rangihaeata was adamant that the land should never be parted with. Soon after Te Rauparaha and Te Rangihaeata returned to Kapiti, Rawiri Kingi Puaha arrived in Nelson with two of his brothers and claimed that his people were the rightful owners of the land. Again, he too demanded that the survey be stopped, and refused substantial presents for the land. To have accepted them would have meant acquiescence in Te

Rauparaha's original 'sale' and their subordination to Te Rauparaha's will. In any case, the resident Maoris did not want to alienate the land. ¹⁰

The survey, nevertheless, went ahead and about a week after the surveyors arrived, late in April 1843, the resident Maoris began to obstruct the survey work. During May they pulled up ranging rods and destroyed huts and a sawpit. At this time Te Rauparaha was unable to physically maintain his claim to the valley because he was defending his claim to Porirua in Spain's court. He and Te Rangihaeata did, however, tell Spain that they had never sold the Wairau to the New Zealand Company, and urged the Commissioner to go to Cloudy Bay as they wanted the surveyors withdrawn. After some consideration Spain had replied that he would meet them at Port Underwood at the end of June when his advertised hearings at Wellington were completed. Although anxious and impatient for Spain to go to the Wairau, Te Rauparaha and Te Rangihaeata had said they would wait for the Commissioner at Queen Charlotte Sound, as requested, and would not enter the Wairau Valley before the Commissioner arrived. ¹¹

Given these circumstances, and Spain's emphasis on the rights of residents, the Ngati Toa chiefs were being extremely restrained - a restraint which indicates that at this time they had a lot of confidence in Spain's judgment and impartiality. But why did Spain ask the two chiefs to stay out of the valley, if not out of a fear that violence could occur? And if he had

believed a clash to be even remotely possible, would it not have been only prudent to deny all claimants access to the land until the title was investigated? Had Spain put a stop to the survey, the chiefs would probably have waited for the Commissioner as agreed; but Te Rauparaha could not wait for Spain for very long when each day that passed weakened his own claim to the valley and strengthened the claims of the Company and Nohorua's people. Thus, on 1 June 1843, Te Rauparaha and Te Rangihaeata went to the valley with their people, including women and children, to maintain Te Rauparaha's claims against both the Company and his relatives. They interfered with the survey work and established cultivations in the valley. In this way Te Rauparaha meant to improve his position in Spain's court by proving that his Ngati Toa habitually resided in the area and had opposed Pakeha development of it. No violence was intended. ¹²

However, in the middle of June the Nelson Magistrate, Thompson, Captain Wakefield and a party of settlers sworn in as special constables - some carrying weapons - arrived in the valley to teach the Maoris a lesson in English law. Te Rauparaha and Te Rangihaeata were to be arrested on a charge of arson for burning down a surveyor's hut. Te Rauparaha told Thompson that the matter would soon be settled by Spain and refused to submit when threatened with handcuffing. Fighting broke out leaving twenty-six Europeans and Maoris dead, including Captain Wakefield, and thirteen wounded. ¹³

News of the clash between Te Rauparaha and Te Rangihaeata's people and the Nelson settlers reached Wellington 2 days before Spain was to close before his hearings there. A meeting of magistrates was immediately convened. Spain attended in his capacity as a Justice of the Peace at the request of Wellington's Police Magistrate, Arthur McDonogh.¹⁴ After the magistrates had taken the deposition of the Company's Chief Surveyor at Nelson, Frederick Tuckett, who had brought the news of the tragedy, they decided to rescue those settlers who were said to have surrendered to the Maoris. The expedition was made up of several magistrates and fifty special constables, accompanied by Spain and Clarke who were seen as having some influence over the Maoris. Spain offered to act as a hostage if necessary. But a gale prevented their vessel, the Government brig, from leaving Port Nicholson harbour and it was decided that the Maoris would now have had time to calm down. The prisoners, if not dead already, would be in no danger. The expeditionary force was accordingly reduced but still included the Commissioner and Clarke. An on-the-spot enquiry was to be made so that the facts of the incident could be reported to the Governor straight away. Spain made it a prerequisite of his attendance that the survey would now be discontinued and Colonel Wakefield agreed to this. They reached the Wairau on 23 June 1843, but there were no Maoris in the area; Ngati Toa and the Ati Awa had all disappeared - they had, in fact, crossed the Strait to the Kapiti Coast. Two wounded and six unharmed settlers were found. The Wellington party also met the Wesleyan minister, Samuel Ironside, who had buried those

killed in the fight. Until 26 June depositions were taken from the survivors and Ironside on board the brig at anchor in Cloudy Bay. Spain chaired the enquiry while other magistrates conducted the examinations. ¹⁵

Writing to Acting-Governor Shortland on 28 June to advise him of these proceedings, Spain gave no official opinion on who was to blame for the clash as he feared that his close involvement with the event and visit to the Wairau Valley might have affected the impartiality of his report on the tragedy. He did, however, say that he believed the settlers had attempted to defy British law. Spain seems to have reached this conclusion because the ownership of the land had not yet been decided, and the Maoris saw nothing wrong with interfering - in this case, burning a hut - with the activities of the new settlers who were challenging the Maori claim to the valley. In short, the settlers had acted as if the land was already theirs. If the settlers had waited, Spain felt the Maoris would have respected the decision of the Commission on who owned the land. Spain considered that the Maoris had been very restrained and told Shortland that he believed that it was the Europeans who had over-reacted and had made the first aggressive moves. Spain concluded, therefore, that the Maoris could not be punished for carrying their revenge beyond 'acceptable' limits and killing several captive settlers after the fight. This decision was not altogether a surprising one, given Spain's familiarity with Maori methods of defending land claims, and given his intolerance of any attempt to undermine the Commis-

sion's authority or influence its judgments. In any case, Spain added, even if the Government did decide that Te Rauparaha and Te Rangihaeata should be punished, it did not have the military resources to capture the two chiefs, and any attempt to do so would almost certainly serve to escalate the crisis. And so, whichever way one looked at it, the only course was to try and keep on friendly terms with Te Rauparaha and Te Rangihaeata. (Clarke also agreed that any attempt to arrest Te Rauparaha would be rash since it would unite all the Cook Strait tribes against the settlers.) Spain had, in fact, already told the Port Nicholson Maoris that they would not be attacked as Europeans did not punish the innocent for the crimes of the guilty. At the same time, Spain told Shortland that the Port Nicholson settlers were panicking and, unless troops were sent from Auckland and New South Wales to restore public confidence, the district would soon be deserted. ¹⁶

As a first step towards defusing the situation, the Wellington magistrates decided on 28 June to ask Spain to go up the coast and visit the Cook Strait tribes. Spain was to reassure the Maoris by telling them that the matter was being referred to the Governor, rather than being dealt with by local people or officials. The following day Spain set out for Otaki, where Te Rauparaha and Te Rangihaeata had retreated after the Wairau confrontation - it was there that they intended making a stand if the settlers or the Government came to avenge the Wairau dead. Spain was accompanied by his interpreter and the Reverend Octavius Hadfield. Although he hoped to restore the

confidence of the Maoris in the Europeans he saw the trip as a 'difficult and unpleasant duty' which involved a real possibility of being taken hostage. Somehow he had to overcome Maori apprehensions and antagonism without compromising the Government, in case it was decided to take action against the parties involved. Spain felt the best way to deal with this dilemma was to emphasize that under British law a Maori could not be held responsible for the fighting unless actually involved in it.

Spain and Hadfield's first stop was at Waikanae where they found Te Rauparaha trying to persuade the Maoris to join in an attack on Wellington. The Ati Awa, many of whom had been converted to Christianity by Hadfield, were resisting Te Rauparaha's efforts, but were still unsettled. Spain managed to alleviate their anxieties. And after intensively questioning Spain about the Government's and the settlers' reaction to the clash and what the Government's intentions were, Te Rauparaha calmed down too. From Waikanae Spain went on to Otaki - followed by Te Rauparaha. The Commissioner found the Maoris at Otaki in a similar state of uncertainty to those at Waikanae. However, the Otaki people, Te Rauparaha's close relatives Ngati Raukawa, were more ready to fight and told Spain that if the Pakehas attacked they were determined to defend Te Rauparaha as the Pakehas had acted unjustly at Wairau. After two meetings Spain was again able to reassure the Maoris and the next day a number of them set off to Port Nicholson to trade in pigs and other items as usual. 17

Shortland backed up Spain's actions by issuing a proclamation on 12 July 1843 which declared - albeit somewhat belatedly - that no one was to exercise acts of ownership on disputed land until the Commissioner made a decision on the land involved. While Shortland hoped that this would help maintain good race relations and assure the Maoris that their land rights would be upheld, the settlers felt it was an invitation to the Maoris to claim any lands they fancied. Shortland reserved judgment on the Wairau clash for the new Governor, Robert FitzRoy.¹⁸

And the need to give a decision about the Wairau disaster was one of the main reasons why FitzRoy went to Port Nicholson only a month after his arrival in New Zealand in December 1843. The settlers there presented FitzRoy with a memorial in which they blamed the disaster on the Government's Maori affairs policy and criticised the way in which Government officials had handled the matter so far. To the settlers, at least, the Maoris involved should have been brought to trial or made the subjects of a judicial inquiry.¹⁹ But FitzRoy had already taken the opposite view. He had decided²⁰

that our countrymen were there the aggressors;
that the principal magistrate was acting illegally;
that at least thirteen of our countrymen fell during
the heat of a conflict brought on by the misconduct
of those in authority; and that the other nine,
though mercilessly slaughtered after they had surren-
dered, fell victims to those whose ferocious passions
they had roused to the utmost, and who were still
wild with savage fury!

The British Government does, and will hold sacred
the blood of Her Majesty's subjects, if shed in a
just cause: but to suppose that injustice will be
countenanced, and misconduct defended by a British
Sovereign ... is a great and dangerous error.

This opinion was no less plainly announced by FitzRoy at his next port of call, Nelson, and the settlers there were just as outraged as those at Wellington. All four of the magistrates who signed the warrant for Te Rauparaha and Te Rangihaeata's arrest either resigned or were dismissed.²¹ Finally, at Otaki on 12 February 1844, FitzRoy listened to Te Rauparaha's explanation of the clash; the dispute which culminated in the fight originated in the Wakefields' determination to take possession of the Wairau Valley in spite of Te Rauparaha's insistence that it had not been sold. There were about 500 Maoris and a few settlers present at this meeting. The Governor then gave his formal judgment:²²

The white men were in the wrong. They had no right to survey the land which you said you had not sold, until Mr Spain had finished his inquiry; they had no right to built the houses they did on that land. As they were, then, first in the wrong, I will not avenge their deaths.

FitzRoy went on to call for peace between the two races and he asked the Maoris not to disturb the settlers who were occupying disputed land as he was going to arrange immediately for the equitable adjustment of the land titles.²³

The Wairau clash and FitzRoy's decision on it had two important effects on the Company's claims. The first and most significant for the Company was that Colonel Wakefield finally agreed - after a delay of several months - to go ahead with the negotiations for compensating Maoris who maintained that their land rights had not been purchased in 1839 and early 1840.²⁴

The second result was that Wakefield withdrew the Company's claim to the Wairau Valley. Wakefield had not given the Commissioner any prior indication that he would take this step and no explanation seems to have been given in court when the withdrawal was made. But, then, it would probably have seemed like stating the obvious: both Te Rauparaha's people and the permanently resident Ngati Toa strongly opposed settlement of the valley, and Governor FitzRoy had supported their actions in defence of their claims.

For Te Rauparaha, of course, the most important immediate result of the clash was that he had assured his authority and his title to the valley by winning the fight for its possession. And afterwards it was Te Rauparaha whom Spain and then FitzRoy placated when it was decided that the Nelson settlers had acted wrongly. Moreover no one, not even Puaha, was given the opportunity to challenge Te Rauparaha as the Company chose not to contest Maori ownership of the Wairau Valley in the land court. ²⁵

Although Spain had been on the point of beginning the Nelson - including Wairau - claims in June 1843, the investigation of the Company's claim to the region did not actually start until 19 August 1844. ²⁶ The initial cause of the delay was the collision at Wairau and the need to wait for FitzRoy's judgment on it. Then Colonel Wakefield agreed to pay compensation to the Maoris in the regions where Spain had already decided it was necessary - Port Nicholson, Manawatu and Wanganui - and

during the first half of 1844 Spain was largely occupied in concluding his work in these areas. While in the vicinity, he also took the opportunity of dealing with the urgent Taranaki case. In early July, soon after their return to Wellington from Taranaki, Spain accompanied Wakefield on a voyage along the east coast of the South Island aboard the brigantine Deborah. They visited Akaroa, and then Otago, where the Government's purchase of land for the New Edinburgh settlement was being concluded. The vessel did not reach Nelson until 16 August. ²⁷

While Spain was away on this trip, his interpreter, Edward Meurant, was in Nelson preparing the local Maoris for the coming investigations, interviewing them about their titles and that of the New Zealand Company. The situation at Nelson looked promising when the Commissioner arrived. Meurant reported to Spain that the Nelson, Motueka and Golden Bay peoples readily admitted receiving Captain Wakefield's payments and, although probably expecting a further payment, would accept Spain's award. ²⁸ The hearings began with the investigations of the Tasman Bay claims. The first 2 days were spent in questioning New Zealand Company witnesses, mostly European, with the intention of proving Captain Wakefield's payments of substantial presents to the local Maoris. Te Iti, a chief who held that the Waimea area had not been sold, was also examined. As his testimony in court did not coincide with his statements to Clarke before the hearing, the session was interrupted while Clarke spoke to the Maoris about the need to tell the truth when answering questions in court. ²⁹

On 22 August 1844 the Colonel applied for a suspension of the case as he did not want any further delay. He offered £800 compensation money to the local Maoris who now expected a payment since they had received none of the original payment made to Te Rauparaha and Te Rangihaeata in 1839. This was permitted by Spain as a welcome but unnecessary move on Wakefield's part - unnecessary because Spain considered that the owners of the land had already been paid. Te Rauparaha and the Ngati Toa who had a claim by virtue of conquest and partial occupation had been paid, and the residents had received a tacit payment in the form of gifts. Spain held also that the resident Maoris had certainly known that Captain Wakefield's 'gifts' meant permanent alienation of the land since they - the Motueka chiefs, in particular - had stipulated which property they wanted reserved. 30

Clarke met with the main Nelson and Motueka chiefs at the court-house to establish the boundaries of the Maoris' land in the different districts, and arrange what reserves were to be made, and which Company reserves in Motueka would be exchanged for suburban lands in actual occupation by Maoris. A final court session was held on 24 August to witness the payment of the compensation. Echoing Captain Wakefield's explanations of his pre-settlement payments, Spain told the local Maoris that they were receiving a goodwill gift, not a payment as of right. (Though Spain for one knew it would be seen as the latter anyway.) The money was divided as follows: Ati Awa, £100; Whakapuaka Maoris and Motueka Maoris £200 each; and £290

was reserved for the Golden Bay Maoris. A deed of conveyance was signed by the main chiefs of each district and the alienation of Tasman Bay was complete. ³¹

Clarke and Meurant then went to Golden Bay to arrange a final settlement with the Maori residents, who had not attended the court. Although the Commissioner had not heard any testimony by Golden Bay Maoris he did not accompany Clarke and Meurant on their visit. The Protector had told him that the Company's claim would not be opposed as the statements of Golden Bay Maoris interviewed prior to the hearings in Nelson tallied with the European testimony given in court. As it turned out, however, Clarke was wrong. The Maoris at Motupipi pa refused to accept the payment offered to them. Instead they demanded a much higher sum because of the value of the coal in the area. Clarke responded by asserting that the money was a gift only as the area had already been fairly sold. This had no effect and so, on Clarke's advice, all Golden Bay payments were withheld pending acceptance of the compensation by the Motupipi Maoris. In the meantime the £290 was put in the bank. The Governor was to decide how the money would be used for the Maoris' benefit if they continued to refuse to take it. ³²

The Motupipi people did not accept the compensation until 1846, over 2 years after Spain had awarded the land to the Company. And then they did so only because the Crown grant conveying the land to the Company had already been executed, and Anglican and Wesleyan churchmen, the Company's local agent, William Fox, and the agent of the Native Reserves' Trust, Donald

Sinclair, were all putting pressure on them to accept the money. ³³

In Spain's final award the Company was declared entitled to 151,000 acres in the Tasman and Golden Bay area - comprising 11,000 acres at Whakatu, 38,000 acres at Waimea, 15,000 acres at Moutere, 42,000 acres at Motueka and 45,000 acres at Golden Bay. Excluded were pa, cultivations and burial grounds within the above lands and reserves as agreed on by Clarke and the chiefs on 24 August 1844. ³⁴ The Wairau Valley was also excluded from the grant. Colonel Wakefield had made no claim for it nor offered any evidence on it, and the valley had been specifically excluded from the areas for which Colonel Wakefield offered the £800. Spain considered that the Company was not entitled to a grant for the Wairau anyway - partly because of the Kapiti chiefs' opposition to its settlement and also because Captain Wakefield had made no additional payments to the resident Maoris prior to beginning the survey of the valley. ³⁵ Finally, Spain's award was subject to the claims of private individuals if they proved prior purchase. Few claims to the region were in fact preferred. Most of the claims that were made for land in the southern Cook Strait region were not for Tasman or Golden Bay lands but rather for whaling station sites, notably in the Marlborough Sounds and Cloudy Bay. Several of the private claims were disallowed when claimants failed to appear before Spain, and almost all of the rest lapsed without even being advertised for hearing. ³⁶

The investigation of the Nelson claim, then, had been the briefest of all the New Zealand Company cases which Spain examined. This was primarily because no actual investigation took place at Nelson of the claims to those areas which were disputed, the Wairau Valley and Motupipi - the Wairau because the Company gave up its claim to the land, and Motupipi because Clarke mistakenly believed the local Maoris were willing to accept compensation. Spain was quite relieved that the Company had abandoned its Wairau Valley claim - probably because he was aware of the animosity and bitterness that any discussion of it would stir up.³⁷ In short, the brevity of the investigation of the Nelson district claim belies the nature of the claim itself - in reality, the case involved the same kinds of historical and contemporary complications and difficulties as all of the other Company claims.

With the closing of the Nelson case, all that remained for Spain to do was to prepare his final reports on the Company's land claims. The work of the Commission would then be at an end. These last months were not, however, to be easy ones for Spain. Rather Spain's obstinate refusal to accept FitzRoy's suspension and then reversal of his Taranaki award was to sour both his personal and professional relationship with the Governor. Ironically, it was the same determination to adhere to his chosen course of action that enabled Spain to work on through these trying months and to finish his task.

NOTES

1. 'Spain, Nelson report', IUP, Vol. 5, pp. 43-44/BPP, [1846(203)30], pp. 35-36; Allan, Nelson, pp. 41-42; Parsonson, 'He whenua te utu', p. 215.
2. Allan, Nelson, pp. 43-44; Parsonson, 'He whenua te utu', pp. 209-210, 215; Wakefield, Adventure in New Zealand, pp. 104-105.
3. 'Spain, Nelson report', IUP, Vol. 5, pp. 49-51/BPP, [1846(203)30], pp. 41-43; Allan, Nelson, pp. 43-44, 67; Parsonson, 'He whenua te utu', pp. 209-210.
4. Parsonson, 'He whenua te utu', pp. 210-211.
5. ibid., pp. 210-215, 217-218.
6. 'Spain, Nelson report', IUP, Vol. 5, p. 46/BPP, [1846(203)30], p. 38; 'A Statement of all presents made to sundry Native Chiefs on account of the Nelson Settlement by Captain Arthur Wakefield, on behalf of the New Zealand Company', encl. ibid., IUP, Vol. 5, pp. 54-56/BPP [1846(203)30], pp. 46-48; Allan, Nelson, pp. 25, 73-75, 79, 222-225; Parsonson, 'He whenua te utu', pp. 215-216.
7. Nelson Examiner and New Zealand Chronicle, 29-7-1843, 28-10-1843; Allan, Nelson, pp. 200, 215-216, 218, 233-234; The Nelson settlement suffered seriously from very high absentee landownership - in 1843, for example, there were only 50-60 resident landowners. This resulted in dispersed settlement and development of the land. By late 1847 Motueka had about 100 Pakeha inhabitants (including non-landowners) compared with about 150 Maoris. Allan, Nelson, pp. 200, 215-216, 218, 233-234. The total British civil population of Nelson: (1842) 2,500, (1843) 2,942, (1844) 3,015. Of this only about one-fifth to one-quarter were involved in agriculture-related pursuits in 1843. Statistics of New Zealand for the Crown Colony period: 1840-1852 (Department of Economics, Auckland University College, Auckland, [1954]), pp. 8, 27.
8. Nelson Examiner and New Zealand Chronicle, 26-11-1842; Allan, Nelson, pp. 225-227. Massacre Bay was the name given to Golden Bay by Abel Tasman in 1642.
9. The mining venture collapsed by about mid-1843 for three main reasons: insufficient capital to develop the deeper, better quality leads; shortage of money in the colony adversely affected sales; and the Association lacked an adequate corporate structure. Allan, Nelson, pp. 227-228.
10. 'Copy of Mr Tuckett's Account of certain circumstances preceding the Wairau Affray', encl. in FitzRoy/Stanley, 15-4-1844, Irish University Press series of British Parliamentary Papers. Colonies: New Zealand (Shannon, 1969), Vol. 4, 'Correspondence and other papers relating to New Zealand, 1843-1845', pp. 187-188, 'The affairs of New Zealand: Papers relative to the Affairs of New Zealand', [1845(131)33], pp. 33-34; 'Spain, Nelson report', IUP, Vol. 5, p. 51/BPP, [1846(203)30], p. 43; Allan, Nelson, pp. 238-239; Parsonson, 'He whenua te utu', pp. 218-219.

11. Deposition of Meurant, 26-6-1843, '1844 Report of Select Committee', App. 4, pp. 151-152; Wakefield, Adventure in New Zealand, pp. 616-617.
12. Nelson Examiner and New Zealand Chronicle, 6-5-1843, 20-5-1843; Tuckett/Editor, 28-7-1843, *ibid.*, 5-8-1843; Parsonson, 'He whenua te utu', pp. 221-222.
13. Nelson Examiner and New Zealand Chronicle, 17-6-1843; Accounts vary as to the number of Maoris killed in the clash - either four or six. Four has been used in the text. Allan, Nelson, p. 258.
14. McDonogh succeeded Murphy as Wellington's Police Magistrate in March 1843. Allan, Nelson, p. 245.
15. 'Deposition of Tuckett at a special meeting of magistrates at Barrett's Hotel', 18-6-1843, '1844 Report of Select Committee', App. 4, pp. 130-131; Depositions of Wynen (22-6-1843), the Reverend Samuel Ironside (24-6-1843), Barnicoat (25-6-1843), Bampton (26-6-1843), taken aboard the Government brig, *ibid.*, pp. 145-148, 153-157; Spain, private letter/Shortland, 28-6-1843, *encl.* in Shortland/Stanley, 13-7-1843, *ibid.*, pp. 168-171; Minutes of magistrates' meeting, 29-6-1843, *ibid.*, p. 140.
16. Spain, private letter/Shortland, 28-6-1843, *encl.* in Shortland/Stanley, 13-7-1843, *ibid.*, pp. 168-171.
17. Spain/Shortland, 2-8-1843, *encl.* in Shortland/Stanley, 25-8-1843, *ibid.*, pp. 174-176.
18. Proclamation by Shortland, extract from New Zealand Government Gazette, *ibid.*, pp. 140-141.
19. 'Memorial' to FitzRoy, 'New Zealand Company Report No. 14', App. 7, pp. 72-82.
20. 'Governor FitzRoy's reply', 29-1-1844, *ibid.*, App. 8, p. 84.
21. 'His Excellency Governor FitzRoy's visit to Nelson', February 1844, *encl.* in Wakefield/NZC Sec., 19-2-1844, *ibid.*, App. 9, pp. 85-86; George Duppa, Constantine Dillon and John Tytler resigned immediately when Governor FitzRoy advised them that their names would not be included in the new Commission of the Peace. David Monroe refused to resign, preferring to be dismissed so that he could lodge a formal complaint with the Secretary of State for the Colonies. Another Justice of the Peace, Alexander McDonald, also resigned to demonstrate his sympathy with the others. Allan, Nelson, p. 288.
22. 'Notes of the meeting between His Excellency Governor FitzRoy, and the Chiefs Rauperaha and Rangihieata at Waikanai, on Monday 12th Feb. 1844', *encl.* in Wakefield/NZC Sec., 19-2-1844, 'New Zealand Company Report No. 14', App. 9, p. 99.
23. *ibid.*, pp. 94-101.
24. For a discussion of the origins of this scheme and its progress prior to the Wairau clash, see above, pp. 171-176, 193, 215-216.

25. Parsonson, 'He whenua te utu', pp. 217, 222-224.
26. Minutes of Spain's hearings at Nelson, encl. in 'Spain, Nelson report', IUP, Vol. 5, p. 52/BPP, [1846(203)30], p. 44.
27. 'Shipping intelligence', Nelson Examiner and New Zealand Chronicle, 13-7-1844.
28. 'Spain, Nelson report', IUP, Vol. 5, p. 45/BPP, [1846(203)30], p. 37; Meurant seems to have been acquired by Spain after Clarke was appointed by Shortland to act as a referee for the Maoris in the compensation negotiations. Though it was Forsaith, not Meurant, who went with Spain on the trip up the west coast of the North Island when the final compensation payments were made (see Chapter Seven), and when the Taranaki investigations took place (see Chapter Eight). Spain, memorandum/Shortland, [30]-9-1843, encl. in Shortland/Stanley, 21-11-1843, '1844 Report of Select Committee', App. 7, pp. 255-256.
29. 'Spain, Nelson report', IUP, Vol. 5, p. 45/BPP, [1846(203)30], p. 37; Minutes of Spain's hearings at Nelson, encl. ibid., IUP, Vol. 5, pp. 44-45/BPP, [1846(203)30], pp. 52-53; Allan, Nelson, p. 295.
30. 'Spain, Nelson report', IUP, Vol. 5, pp. 37-39/BPP, [1846(203)30], pp. 45-47; Minutes of Spain's hearings at Nelson, encl. ibid., IUP, Vol. 5, pp. 44-45/BPP, [1846(203)30], pp. 52-53; Allan, Nelson, pp. 295-296.
31. 'Spain, Nelson report', IUP, Vol. 5, p. 47/BPP, [1846(203)30], p. 39; Minutes of Spain's hearings at Nelson, encl. ibid., IUP, Vol. 5, pp. 52-53/BPP, [1846(203)30], pp. 44-45; Allan, Nelson, p. 296; The eight Native reserve sections (Nos. 7, 8, 10, 11, 16, 28, 252, 256) were exchanged for suburban sections (Nos. 162-164, 182, 188, 212, 219, 220). Jellicoe, Native Reserves, pp. 45-46.
32. 'Spain, Nelson report', IUP, Vol. 5, pp. 47-48/BPP, [1846(203)30], pp. 39-40; Nelson Examiner and New Zealand Chronicle, 14-9-1844; Allan, Nelson, pp. 296-297.
33. ibid., p. 297. It is not clear from Allan's account whether or not the Golden Bay people did, in fact, have to wait until 1846 to get their compensation too.
34. 'Spain, Nelson report', IUP, Vol. 5, p. 52/BPP, [1846(203)30], p. 44; Allan, Nelson, p. 296.
35. 'Spain, Nelson report', IUP, Vol. 5, p. 49/BPP, [1846(203)30], p. 41.
36. ibid., IUP, Vol. 5, p. 52/BPP, [1846(203)30], p. 44; 'Appendix to Commissioner Bell's Report', AJHR, 1863, D-No. 14.
37. 'Spain, Nelson report', IUP, Vol. 5, pp. 49, 51/BPP, [1846(203)30], pp. 41, 43.

EPILOGUE

Godfrey and Richmond's Commission concluded in 1844 and Spain's in 1845. The business of sorting out the Land Question did not, however, end there. Indeed, final settlement of land titles was to drag on for another 17 years. In what state, then, did the Commissioners leave the land claims?

When Godfrey and Richmond finished their work they had dealt with almost all of the several hundred European claims to non-New Zealand Company lands. Their recommendations were generally followed by FitzRoy when he issued the Crown grants in 1844. However, very few of these grants were indefeasible. This was primarily because the lands conveyed in most of them were still unsurveyed in 1844 and thus the grants contained imprecise descriptions of the lands awarded. Although the grants for these claims were clearly in an unsatisfactory state, they were to be much more straightforward to deal with than the cases handled by the other Commissioner, Spain.

During his investigations Spain had decided that the Company had made valid purchases in only two of the areas it claimed - Manawatu and New Plymouth - and he had therefore awarded the Maoris compensation for their lands. However, in every instance the compensation was accepted reluctantly or refused. Only two Crown grants were issued by FitzRoy to the Company on the basis of Spain's awards; these were for Port Nicholson and Nelson and were signed by the Governor in late July 1845. ¹ As FitzRoy

advised Lord Stanley: ²

Excepting the small block of 3,600 acres at New Plymouth, for which I made arrangements in November 1844, all the other claims of the New Zealand Company reported on by Mr Commissioner Spain are disputed by the natives, and cannot be fully occupied by settlers, under the existing circumstances of the colony, until very large additional payments have been made with great care, much time, and an amount of difficulty that few will encounter.

Moreover, the question of the extent and location of lands to be set aside for Maori reserves remained unresolved. One of the main reasons for this was the uncertainty about which lands within the granted area were Company lands and which belonged to the Maoris. Certainly the terms pa, cultivation and burial ground had been defined by FitzRoy, Spain, Colonel Wakefield, Clarke and others in January 1844, but the lands involved had not been surveyed at the time and thus their size, boundaries and location remained unclear. In addition, the surveys which carved the Port Nicholson and Nelson settlements up into sections were often inaccurate, with the result that even some of the Native Reserves marked out on Company plans did not appear on or agree with those on the plans attached to the Crown grant, and the size of the reserves varied. ³ The situation was further complicated by the fact that some reserves had been leased to settlers on a long-term basis by the Trustees of Native Reserves. ⁴ because they were not being used by the Maoris. The most serious problem was that the Maoris continued to cultivate and live on unoccupied lands - usually absentees' property. Indeed, in Port Nicholson 528 of the 639 acres under cultivation

by the Maoris were on absentees' land.⁵ There was also the matter of whether the Maoris were guaranteed one-tenth or one-eleventh of the Company's lands. The Company had asserted that the Maoris' lands should be one part of Company lands for every ten parts offered for sale - that is, one-eleventh - not one-tenth of lands offered for sale. The British Government had throughout taken the other view.⁶

Finally, there were still seventy-five unheard cases respecting land in the vicinity of the New Zealand Company claims - cases which had been referred to Spain but which FitzRoy refused to let him deal with after the last New Zealand Company reports had been submitted in September 1845. FitzRoy's decision to hear these cases personally was largely due to the serious deterioration in his relationship with Spain after the reversal of the Taranaki award in late 1844 - it had led to mutual accusations, essentially charges of dereliction of duty, being laid before the Secretary of State for the Colonies.⁷

The first attempts to finally resolve the question of European land titles deriving from pre-Annexation purchases were made by FitzRoy's successor, George Grey (November 1845-December 1853). In dealing with the non-New Zealand Company titles Grey initially tackled FitzRoy's award extensions with the intention of making them conform to the Commissioners' recommendations. It seems Grey mistakenly believed that FitzRoy had reopened the cases and changed awards approved by his predecessors in order to award the extensions and that the Governor was not

allowed, in any case, to grant over the 2,560 acre limit. But no grants had been officially decided prior to FitzRoy's arrival and the Governor was allowed to award more than the maximum which the Commissioners could recommend. By early 1848 Grey had decided to test the validity of the extended awards in the Supreme Court. A grant to George Clarke, senior, was chosen for the test case which was heard in June 1848. The Court decided, however, that Clarke's title was unimpeachable because it was derived from the Crown - the sole source of legal title to land within the British Empire - and had been issued under the Public Seal and the Governor's signature. Even if the Governor had contravened the Land Claims Act in making the extensions, as long as there was no attempt by the claimant to defraud the Government, FitzRoy's use of the royal prerogative of granting lands could not be invalidated.⁸

As it was thus useless to attempt to overturn any of FitzRoy's grants on the grounds of irregularity, Grey changed tack and in August 1849 he passed an Ordinance for Quieting Titles to Land in this Province of New Ulster. Otherwise known as the Quieting Titles Ordinance, the law was intended to remove any doubts about the validity of grants by declaring all the grants conditionally valid. The qualification on their validity was that no grant should convey more than one-sixth of the land awarded no matter what the description allowed.⁹ However, where the block was not described exactly, selection could be made anywhere within it. Where the same land was granted to more than one person, a piece would be awarded to each. Also,

the Treasury would pay compensation to Maoris whose title had not been completely extinguished. The claimant on whose behalf this was done was to repay the sum within 3 years. If Maoris opposed occupation, then land of equal value, not including town lands, was to be taken up elsewhere. Finally, the Act required a description of any land - such as sacred land - which was excluded from the Crown grant for Maori use - to be endorsed on the grant. The law was unsuccessful as fewer than twenty of FitzRoy's grants were exchanged for new ones. This was largely because the claimants believed the original grants to be good and that they would eventually be recognised. They were, therefore, determined to retain their larger grant, no matter how vague and defective, rather than exchange it for a valid, indefeasible, but smaller grant. Grey made no further attempts to deal with the titles based on Godfrey and Richmond's awards. ¹⁰

Grey took different - and generally more successful - measures in his efforts to finalise the New Zealand Company's claims and titles. First he cancelled FitzRoy's grants to the Company for Port Nicholson and Nelson as he considered them altogether too vague. Colonel Wakefield had, in fact, refused to accept the grants mainly for that reason: the Native reserves were imprecisely defined in the grants in terms of both size and location. And by annulling them, Grey actually anticipated the arrival of a despatch from Lord Stanley referring the Company's similar complaints about the grants to Grey for investigation. ¹¹

The bulk of the work of organising the Maori lands in Port Nicholson was given by Governor Grey to Lieutenant Colonel W.A. McCleverty. McCleverty had been appointed in December 1845 by the Secretary of State for the Colonies to direct the survey and selection of the lands which were due to the Company under Pennington's awards. This was part of moves by the Colonial Office to help the New Zealand Company which was, at the time, in serious financial difficulty. McCleverty calculated that it would require an exchange of at least 1,200 acres to move the Maoris off the absentees' lands - property which the Government did not have access to in the Company's territory. In his final report of November 1847 McCleverty awarded 44 urban sections containing 1 acre each and 2,868 rural acres to individual hapu out of the Company's 'tenths'. During 1847, McCleverty made a series of exchanges, confirmed by deeds, with the Maoris of the Port Nicholson district. As a result they gave up their cultivations on Europeans' lands for property which comprised a mix of original Native Reserves, parts of the Town Belt, Hutt Valley lands and, it seems, some unsurveyed Company lands. At least one of these transactions - involving Te Aro pa - included other compensation in the form of two horses and carts and two steel mills. The distribution of the Maori reserves which resulted from McCleverty's decisions entirely scotched the Company's original plan of scattering the reserves through the settlers' sections so as to aid race relations and hasten assimilation. The reserves were now in blocks either on the outskirts of Wellington or in rural areas - the result of giving priority to the Maoris' needs for cultivable lands and to keep control over other food resources. ¹²

Although initially successful, Nelson's Native reserve system had become neglected and debt-ridden by the time of Grey's administration. The problem of Maori occupation of European lands was, however, not as serious in the Nelson district as in Port Nicholson. The first significant change occurred in January 1848, when the original layout of the Nelson settlement was scaled down and reorganised. This was done so that the plan reflected the physical reality of the site and so that the dispersal of settlement resulting from a high proportion of absentee-owned and unsold lands could be counteracted. In order that the correct proportion of reserves to settlers' land was maintained, therefore, Grey authorised the surrender of forty-seven Native reserves. Donald Sinclair, who had taken over the management of the reserves in 1845, was instructed to sort out the rest of the Maori lands. Basically this involved some exchanges of Native reserves for Maori-occupied lands in the Motueka area and the selection of the Golden Bay reserves. Grey had told Sinclair that these were to include all the land under cultivation by the Golden Bay Maoris plus enough land for their future needs. Sinclair decided on a total of 5,000 acres of Native reserves in Motueka and Golden Bay - a sum which involved a decrease in the number of acres reserved at Motueka. Although the Nelson district Maoris now had somewhat less than one-eleventh of the Company lands, the question of what land was theirs had finally been settled and new Crown grants for both Nelson and Port Nicholson were issued by Grey in 1848. ¹³

At the same time Grey adopted a policy of land purchase to put the Company in possession of the land for which FitzRoy had not issued grants. Grey's first step in this direction was to waive Crown pre-emption in favour of the Company in its districts. This was sanctioned by Stanley in June 1845 as part of the British Government's concessions aimed at helping the Company out of its difficulties. But Colonel Wakefield refused to cooperate. He - and the Company officials in Britian - still held that the Company should not have to make further payments. They failed to gain acceptance of their view on both fronts: the Colonial Office asserted that it would do all it could to help the Company, but the costs thus incurred would not be borne by the Government; and Grey decided that as the Company would not negotiate with the Maoris, the Government would act on its behalf, and make repayment of this expenditure a condition of the Company receiving its Crown grants. ¹⁴

In the Cook Strait region Grey was quite successful in securing more land for the settlers. For £2,000 he bought £25,000 acres at Porirua from the Ngati Toa, and in mid-March 1847, for a further £3,000 he bought the Ngati Toa's claims to the Wairau Valley and adjacent lands - a total of about 3,000,000 acres. Although the Government set aside as a Native reserve over 15,000 acres of the latter purchase, the transaction was more of a confiscation for the 'massacre' of 1843 and the rebellion of 1846 ¹⁵ than a purchase since Grey refused to free Te Rauparaha - held captive by the Government since 23 July 1846 - unless the sale took place. Later, in March 1850, Grey and

F.D. Bell (the Company's Resident Agent at Nelson, mid-1848 to 1851) also bought land at Waitohi to provide the Wairau settlers with access to the sea. In exchange the resident Maoris obtained a settlement at Waikawa, a nearby bay, which the Company was to help them establish, as well as a lump sum of £100. And further north, in early 1849, Donald McLean negotiated the purchase of land near the Wanganui settlement - for £2,500 he bought all the land between the Turakina and Rangitikei rivers. Of this block, all that which lay between the Wangaehu and the Turakina rivers was set aside as a Native reserve for the sellers, the Ngatiapa. Although Te Rauparaha gave his assent to the sale of the land he had formerly conquered, Te Rangihaeata and Ngati Toa were very much opposed to the transaction. ¹⁶

Grey also bought land at Taranaki as he had been instructed by the Secretary of State for the Colonies, Gladstone, to put the Company in possession of Spain's 60,000 acre award unless he believed that FitzRoy's award should be upheld. The Governor decided that FitzRoy had been wrong to set aside the Commissioner's recommendation. Although the Maori claimants told him that they would stand by FitzRoy's award and would not sell any more land, Grey ignored their warning - the 60,000 acres was Crown land, he said, it would be surveyed, and compensation of no more than 1s. 6d. per acre would be paid to the Maoris. In the face of Ati Awa opposition, however, Grey had to back down, and resort to repurchase. The Government managed to buy over 27,000 acres at New Plymouth between 1847 and 1848.

However, attempts to make more purchases in the area were abandoned by 1849 because they had soon led to inter-tribal disputes, and the Ati Awa exiles who had resettled on the Waitara river's south bank in late 1848 became increasingly opposed to Government land-buying activities in their vicinity. No further Government land purchases took place in the area during Grey's administration. ¹⁷

In two of the areas awarded by Spain to the Company, Governor Grey resorted to military force to ensure settlement of the area was undisturbed. These areas were the Hutt Valley and the Wanganui district. The Hutt Valley was still occupied by Kaparatehau and Te Kaeaea ¹⁸ in February 1846 when Grey arrived at Wellington with 500 regular troops and a detachment of artillery. In the face of Grey's clear determination the Maoris began leaving the valley, but when settlers immediately moved on to the disputed land and destruction of Maori property took place, the entire situation deteriorated. In mid-May 1846 a large party of Wanganui warriors under the chief Te Mamuka became involved when they attacked an army camp at Boulcott's farm, several miles out of Petone. The situation remained very unsettled in both areas for some months, with a number of skirmishes between Maoris and the army occurring in the Hutt Valley. Grey suspected Te Rauparaha to be behind or supportive of those refusing to vacate the valley and had the chief captured in a surprise raid on 23 July 1846. Te Rauparaha was to remain a prisoner for the next 18 months. In the meantime, Te Rangihaeata was forced to retreat until he was pinned down at

Poroutawhao, an impregnable swamp retreat at Manawatu. Grey left him there and he eventually made peace. Thus the Hutt Valley was cleared for the use of the settlers in accordance with Spain's award by September 1846. Meanwhile, by late September, Te Mamuka had returned to Wanganui and became involved in outbreaks of trouble in this district. These were brought to an end largely through the mediation of Major Wyatt in late 1847. And on 25 May 1848 the Wanganui chiefs accepted the £1,000 cash awarded to them by Spain - a step which they had been about to take in 1846, but which was interrupted by news of the attack by Te Mamuka on Boulcott's farm. ¹⁹

The final major step in organising the ownership of Company lands - the issue of Crown titles to individual settlers - was taken by Governor Grey in late 1851 following the dissolution of the New Zealand Company and the surrender of its Charter on 4 July 1850. The Company had already issued scrip in Port Nicholson, New Plymouth and Nelson, giving the settlers a right to a generous exchange of other property within their settlement for useless land. Absentees were given a slightly less favourable exchange rate for the remaining lands. This step largely satisfied the claims of settlers who had not done well under the lottery system, but absentees remained unprovided for by July 1850. Again, Grey found that problems resulting from inaccurate and/or incomplete early surveys presented the greatest difficulty in dealing with the situation. ²⁰

Grey tackled the matter by allowing all purchasers under the Company to re-select by issuing scrip at a nominal value of £1 per acre which could be used at Government land sales to buy land anywhere in the country, except in the immediate vicinity of Auckland and New Plymouth. The issue of scrip to Company settlers was done under the authority of the New Zealand Company's Land Claims Ordinance, 1851. This Ordinance was, however, suspended soon after when the Government learned that an Imperial Act had been passed which declared that the Company's terms of purchase and pasture should remain in force in all of its settlements. That is, Company settlers had to keep the lands which they had acquired under the Company's lottery-based system of allocating lands regardless of whether or not the land was useless. As a result, claims to 98,000 acres of the Company's lands remained unsatisfied until 1856. In that year an Act of the General Assembly of New Zealand adopted, in general, the provisions laid down by Grey, thus enabling a conclusive settlement of ownership of these lands to be made. ²¹

The final disposition of the non-New Zealand Company claims was also undertaken in the same year. During the 12 years that had passed since the grants were issued by FitzRoy, many of the lands they conveyed had changed hands at least once and each new owner continued to urge the validity of the grants on the Government. Some lands had been reoccupied by Maoris. Other pieces which were surplus to European grants and were deemed to be no longer owned by the Maoris had been taken up by the Government as Crown lands. Usually an additional pay-

ment to the Maoris was made when this was done. Most of the lands, however, were unoccupied by either Maori, Europeans, or the Crown as Maoris disputed ownership in the absence of Europeans who were prevented by the insecurity of titles from asserting their claims. A number of claimants continued to urge their cases in spite of disallowance by the first Commissioners. Others who had accepted, under protest, grants for less than they claimed, also persisted in pressing for more. About fifty of FitzRoy's grants were still at the Colonial Secretary's Office in 1856. ²²

To remedy this situation the Land Claims Settlement Act, 1856, was passed. Under this Act FitzRoy's grants for purchases made either prior to the 14 January 1840 Proclamation or during FitzRoy's waiver of Crown pre-emption (26 March 1844-[27 June 1845]) ²³ were to be called in and endorsed if valid, or cancelled and replaced by new grants if not. This work was to be done by one or more Land Claims Commissioners. Lapsed cases were not to be reopened, though if proof could be presented that they had lapsed through no personal fault then they were heard. No new or disallowed claims, or cases for which grants had already been issued, were to be investigated. Claims for which no grants had been issued were examined and awarded under the same general terms as had governed the first Commissioners' investigations. The Act required that lands awarded by the Commissioners were to be properly surveyed before the grants were issued. The grantee was to bear the cost of the survey, but a survey allowance of 1 acre for every ten shillings paid

in survey charges was made - this added about 15 percent to the area surveyed. In his report, the Commissioner appointed under the Act, F.D. Bell, noted that the aim of this provision was not only to get the awarded lands surveyed but also to ensure that the claimants had their entire original claim surveyed rather than just the property actually granted. Compensation in land was also to be paid in respect of fees charged by the Commission. ²⁴

When Bell's work was finished, there were only a dozen unsettled cases arising out of purchases made by Europeans from the Maoris. These were claims which were excluded from investigation by the terms of the 1856 Act but which Commissioner Bell believed should be specially dealt with for the sake of justice to the claimants. ²⁵ The total amount awarded to private claimants by all the Commissioners was almost 300,000 acres. This figure includes the survey allowance. A further 254,000 acres reverted to the Crown. Overall the matter of who owned what land was now settled and the work begun by Fisher, Richmond and Godfrey was complete. ²⁶

A final settlement of New Zealand land titles was not, therefore, achieved until many years after the first Land Commissions had ended. For all that, it was the Commissioners' work which provided the basis on which later decisions about land grants were made. And although the difficulties associated with the land titles overshadows their work, their contribution to the young colony's progress was nonetheless substantial and of great value.

NOTES

FitzRoy/Stanley, 1-8-1845, G 30/7; Crown grant, OLC 906.

FitzRoy/Stanley, 13-9-1845, IUP, Vol. 5, p. 11/BPP, [1846(203)30], p. 3.

Further information on why these lands were not surveyed has not come to light. It may have been related to the row over defining the proportion of Maori reserves to settlers' sections (see above, pp. 125, 302). It may also have been due to a shortage of surveyors, or money to pay them with. Marais remarks that the surveys were delayed and disrupted by the unsuitability of the original plan for the physical geography of Port Nicholson. He also notes that the Company was heading into financial difficulties by 1845-1846. Marais, Colonisation of New Zealand, pp. 109-111, 121; for further details of the January 1844 meeting, see above, pp. 227-228.

For details about the Trustees of Native Reserves, see above, p. 214, note 65.

Jellicoe, Native Reserves, pp. viii, 52.

Harrington/Gladstone, 28-2-1846, encl. in W. Wakefield/Grey, 10-9-1846, IA 1.

Spain/Lieutenant Governor, 28-1-1846, IA 1/62. The bulk of the material detailing the deterioration of FitzRoy and Spain's relationship is in the above letter and also in the National Archives file IA 4/253 and Earl Grey/Grey, 10-2-1847, G 1/18. Marais also briefly deals with the matter - see Marais, Colonisation of New Zealand, pp. 235-236.

'Report of the Select Committee on outstanding land claims', Votes and Proceedings, House of Representatives, Session 4, 1856, Vol. 2, D-No. 21, pp. 5-6; Rutherford, Grey, pp. 121, 130-131, 138-140, 139 note 92. Grey appealed to the Judicial Committee of the Privy Council who reversed the decision (Rutherford, by the way, shows the grounds for reversal to have been faulty). In any case, the success of the appeal had no practical effect because Grey had already passed the Quieting Titles Ordinance.

It is unclear why Grey settled for one-sixth here. It may have been a purely arbitrary decision. The Select Committee on Outstanding Claims (1856), however, retained the one-sixth limit on the grants and stated in its report that this was given in order to enable natural boundaries to be taken, where possible, instead of survey lines. 'Report of the Select Committee on outstanding land claims', Votes and Proceedings, House of Representatives, Session 4, 1856, Vol. 2, D-No. 21, p. 9.

Rutherford, Grey, pp. 139-140.

Earl Grey/Grey, 5-2-1847, G 1/18; Grey/Earl Grey, 14-9-1846, G 30/10.

12. Stanley/Grey, 18-12-1845, G 1/15; Jellicoe, Native Reserves, pp. 50-56; Copies of the McCleverty deeds may be found in Turton, Maori Deeds, Vol. 2, pp. 98-109.
13. Allan, Nelson, pp. 301-304; Jellicoe, Native Reserves, pp. 56-59.
14. Rutherford, Grey, p. 164.
15. See below, pp. 309-310, for details of the rebellion and Te Rauparaha's abduction.
16. Allan, Nelson, pp. 375-376, 382; Rutherford, Grey, pp. 165-166, 173, 181-182, 187.
17. *ibid.*, pp. 176-182; Sinclair, History of New Zealand, pp. 83-84.
18. See above, pp. 170-171 for a brief background to the Maori occupation of the Hutt Valley.
19. Burns, Te Rauparaha, pp. 268-277; Wards, Shadow of the Land, pp. 346-349.
20. 'Report of the Select Committee on Land Scrip', Votes and Proceedings, House of Representatives, Session 4, 1856, Vol. 2, Section D, p. 2; Marais, Colonisation of New Zealand, pp. 148-150, 207.
21. 'Report of the Select Committee on Land Scrip', Votes and Proceedings House of Representatives, Session 4, 1856, Vol. 2, Section D, pp. 2-3.
22. 'Report of the Select Committee on outstanding land claims', *ibid.*, D-No. 21, pp. 5-6.
23. FitzRoy waived pre-emption because the financially-straitened Government could not afford to buy much land for resale to settlers and because the Maoris were dissatisfied with the Government's inability to buy their land and the low prices it paid. Pre-emption was waived under two proclamations made on 26 March 1844 and 10 October 1844. The former allowed purchase direct from the Maoris for a fee of 10s. per acre which was paid to the Government. The latter reduced the fee to 1d. and it was under this proclamation that a lot of land was bought from the Maoris (about 100,000 acres). In spite of the failure of regulations to guard against abuse of the privilege, such as gross speculation, the Colonial Office - albeit reluctantly - gave its assent to the waiver proclamations. Grey, on Colonial Office instructions, repealed the 1d. per acre proclamation. *ibid.*, p. 6; Sinclair, History of New Zealand, p. 76.
24. The Statutes of the General Assembly of New Zealand passed during the first and second Parliaments: from 16 Victoriae to 18 Victoriae inclusive, 1854-1860 (Government Printer, Wellington, 1871), pp. 91-100; Scholefield, New Zealand Biography, Vol. 1, p. 59.
25. Some of these twelve cases derived from land purchases made during FitzRoy's waiver of Crown pre-emption. There were also six claims for land in Poverty Bay which should have been settled by Bell. But

these and a few other claims for lands bought after 1840 without Government sanction remained undecided because the local Maoris, having repudiated the post-1840 sales, would not allow investigation of the six pre-1840 claims unless the post-1840 claims were also looked at. Bell was not authorised to investigate illegal post-1840 claims, so none of the Poverty Bay claims were heard. The total amount of land involved was not more than 2,200 acres. 'Report of Commissioner Bell', AJHR, 1862, D-No. 10, p. 9; Memorandum by Bell, 24-2-1860, encl. in Browne/Duke of Newcastle, 22-2-1860, *ibid.*, E-No. 1, pp. 5-6.

26. 'Commissioner Bell's report', *ibid.*, D-No. 10, pp. 19-20.

CONCLUSION

Pre-annexation nineteenth century New Zealand was a country so different from the New Zealand of today that it is only with difficulty that we envisage what it must have been like. And yet the developments within New Zealand and beyond it that would start the metamorphosis are to be found in those years: a growing body of Europeans living and working in New Zealand, British interest in New Zealand as a new site for colonisation and the wide acceptance in British Government and colonising circles of humanitarian principles. Each of these elements significantly affected the nature of Britain's intervention in New Zealand. Thus, the Colonial Office officials' increasing recognition that New Zealand would become another colony coincided with the strong belief that the Government should try to mitigate the effects on the indigenous people of the European occupation of their country. One of the most important results of this was the decision that the Maoris' civil and property rights - as they were understood in Britain - had to be upheld when the organisation of land ownership in the new colony took place. This was done by instituting an impartial inquiry - a Land Commission - into all claims to New Zealand land.

The idea that such an inquiry would be held at all was quite advanced for the times, and its originators had clearly discarded earlier widely-accepted racist views for more humanitarian ones which had been first expounded in the early six-

teenth century, but which had not come to dominate the thinking of legal theorists until the 1800s. Nevertheless, it must be remembered that however advanced these views were, the motivations remained primarily ethnocentric - and far from disinterested. Indeed, this duality of interests had existed throughout Britain's growing involvement in New Zealand in the first decades of the nineteenth century - protection of British subjects and commerce had become by the latter 1830s the sine qua non of safeguarding the Maoris. That concern about the latter seems to have dominated Colonial Office thinking is due to the strength and influence of humanitarian views and a belief in the vulnerability of indigenous societies. Thus, the Maoris would be given a hearing in the Court of Land Claims mainly because they were seen as eminently capable of 'Britishisation'. And it was at least as important to sort out the land titles and maintain peace so that the colony would thrive, as to avoid robbery of those unfamiliar with European land alienation practices.

After all, once the British Government had decided, in 1839, to establish a colony in New Zealand and not leave the business of land purchase and settlement to the New Zealand Company, it had become essential to clarify the land title situation and to ensure that the Crown had ample land for its own purposes. The Government achieved this aim through the Land Commissions most obviously by confiscating all validly-bought lands in excess of 2,560 acres. But the return of land to the Maoris also worked out to the Government's advantage and satisfied

both its humanitarian concerns and self-interest. The more land that was retained by the Maoris, the more land available for Government purchase later since successive Secretaries of State for the Colonies and Colonial Office staff considered anything other than pa, sacred places and gardens as 'waste' lands which were not vital to the Maoris' physical and spiritual well-being. Given these attitudes, it must have been realised that by protecting Maori land rights they were, in effect, consolidating the Government's own resources for the future.

How successful, then, were Commissioners Godfrey, Richmond and Fisher in giving effect to the Colonial Office's dual aims of defending Maori land rights and establishing the Crown demesne as well as private settler titles? In brief, they did the job extremely well. When the Commission ended in 1844, very few claims were undecided - nor were many of their decisions significantly altered later. That the benefits of their work were seriously undermined by the local Government's inability to provide for the simultaneous survey of the land does not affect the importance of their achievement. Moreover, neither race seems to have felt significantly disadvantaged in the investigations. Certainly the Commissioners were as quick to defend the interests of one race as of the other in the course of their work. Perhaps the best indication of how well they handled a potentially divisive issue is that their decisions did not provoke any evident deterioration of race relations in any of the areas where they investigated claims.

In sending out a separate Commissioner to investigate the New Zealand Company's claims, the British Government wanted to achieve basically the same results as with the investigation of the non-Company claims, but with the additional unstated aim of ensuring that the New Zealand Company did not profit unduly by its defiance of the British Government. And, insofar as Spain exposed the weaknesses of the Company's claims, he fulfilled the Colonial Office's expectations and acted to the good of all concerned. But when it came to acting on his findings, Spain's options were seriously limited by two things: first, his instructions required him to reconcile the Treaty of Waitangi, and the November 1840 and September 1841 Agreements between the New Zealand Company and the British and New Zealand Governments; and second, hundreds of colonists had already established themselves on land they had bought in good faith from the Company. Moreover, Spain was bound by his ethnocentric views - he really believed in the principles expounded in the Law of Nations - and he was certainly no lateral thinker. Wholesale land return to the Maoris could not, therefore, have been seen by him as a possibility, just as blatant confiscation was unacceptable. Spain's inflexibility and determination - traits which were in the Maoris' favour during the Company's campaign against the hearings - now started to work against the Maoris' interests. Spain began forcing the Maoris to accept compensation for lands they claimed had not been sold whether or not they wanted it. Nor were the Maoris given a say as to the amount of compensation they received, and although the payments may have been acceptable in 1839,

they appeared shamefully small and insignificant to the Maoris in 1844. Few British contemporaries condemned this act except where they saw it as endangering the settlements: the colonists, in particular, had repeatedly urged haste since they saw the delay in settling the Company's claims as the main cause of the settlements' problems, rather than just one of several factors contributing to them. But, looking back, one wonders whether more land might not have been given back to the Maoris in each of the settlements. In Nelson, for instance, where less than one-tenth of the sections had been sold to actual settlers, there must have been scope for shifting some settlers, thereby freeing more land to be returned to the Port Nicholson Maoris, and for giving the Golden Bay Maoris a more liberal deal respecting their lands.

The way in which the settlers - New Zealand Company and non-New Zealand Company - viewed the Commissions was quite simply determined by self-interest. In general, those who felt most vulnerable or disadvantaged by the Land Claims Act were the ones who regarded the Commissions with the most disfavour and who spoke out loudest against them. At the same time the Commissions, along with the Governors' policies, became a favourite scapegoat for many of the young colony's teething troubles. The length of time it took to hear the claims was the aspect most often criticised when the colonists' fortunes did not prosper. The New Zealand Company settlers, believing that the Company's purchases were valid, were initially angry at there being an investigation of the Company's claims at all.

But when the purchases proved to be defective, Colonel Wakefield was subject to a good deal of criticism in his turn. Nevertheless, it is doubtful whether the settlers would have given up the land they occupied unless they received financial or other help to do so and, in the event, they did not have to. Finally, whether or not the settlers were opposed to the investigation being held, once an award was made in their favour, they regarded it as indefeasible.

The Maoris' view of the Commissions was quite different to that which the British settlers had. This was in part due to the additional role which the Land Courts had for the Maoris: by focussing on the written deeds during the investigations, the Courts contributed to Maori understanding of European land transfer practices. This effect varied in impact according to the nature of previous Maori-European contact in the different regions. In areas such as the Bay of Islands, where the Maoris had become quite familiar with European views of land tenure by 1840, the Courts must have had much less impact in this respect than elsewhere. Although word-of-mouth seems to have ensured that the European procedure of land purchase and something of its implications were known even in remote areas, the Court's focus on the written deed as well as the payment and the activities of land occupiers would have resulted in a better Maori understanding. Even in the New Zealand Company's territories, where in the wake of Company settlement the Maoris had quickly developed an appreciation of the commercial value of land and the settler concept of permanent land alienation,

it is not clear that they fully understood the importance of the deed until after Spain's investigations. After all, the deeds had figured only insignificantly in the original sales of 1839-1840 as far as the Maoris were concerned, and thereafter the payment continued in their eyes to be the central issue. By the time the Commissioner ended his work, however, the Maoris here, as everywhere else in New Zealand, had a fairly clear idea as to the nature of Pakeha land values and the significance of the deed in their land transactions. Though Maori sales continued to have socio-political motivations and implications, from now on the Maoris were to make them deliberately.

Considering the Maoris' views of the Land Commission more generally, in non-Company areas - particularly outside of the well-settled Bay of Islands/Hokianga region - its activities impinged comparatively little on the Maoris' lives. Indeed, often the Maori witnesses would only attend the Court if they were offered presents, and even then the hearings had to be held near where they lived. And although Maori-Pakeha relations were not noticeably affected by the Commission, its activities did leave some Maoris angry and disillusioned with the Government. This related primarily to the lands which the Government acquired by applying the 2,560 acre limit.

In New Zealand Company districts the Maoris initially showed a great deal of interest in the Court's activities, and accepted the Commissioner as an impartial arbiter and mediator.

This confidence in the Court was severely shaken by the compensation 'negotiations'. That Spain sincerely believed in the rightness and fairness of what he was doing was immaterial. What affected the Maoris' attitude towards the Commission was that, in unilaterally making his compensation awards, Spain was clearly acting in the Pakehas' favour. And this detrimentally affected race relations in all of the Company's districts. Indeed, serious disaffection occurred in several areas: notably in Wellington where some Maoris considered abandoning the place altogether, and the Hutt Valley, where Maoris wanted to establish a barrier - an aukati - between themselves and the settlers, and in Taranaki where Spain's award all but provoked an immediate attack on the settlement. Moreover, apart from Protectorate of Aborigines officials - who were, in any case, often seen in connection with the Commission - the Land Commission was the only branch of the New Zealand Government with which the Maoris in these areas had substantial contact. Notwithstanding the impartiality of the actual hearings and FitzRoy's decision about the Wairau clash, the Commissioner's failure to treat both Maoris and settlers equally throughout must have made the Maoris extremely suspicious and doubtful of the Government's alleged fairness and benevolent intentions, particularly in relation to land matters. The significance of this for the future of race relations in New Zealand may be fully appreciated if one bears in mind the paramount importance of land in Maori life and culture.

APPENDIX ONE

COLONIAL OFFICE ADMINISTRATORS, 1830-1854

Prime Minister	Earl Grey	November 1830
Secretary for War and Colonies	Viscount Goderich (Ripon)	
	E.G. Stanley	March 1833
	T. Spring-Rice	June 1834
Parliamentary Under-Secretary	Viscount Howick (Earl Grey III)	
	Sir J.G. Shaw-Lefevre	November 1833

Prime Minister	Viscount Melbourne	July 1834
Secretary for War and Colonies	T. Spring Rice (Lord Monteagle)	
Parliamentary Under-Secretary	Sir George Grey, Bart.	

Prime Minister	Sir Robert Peel	December 1834
Secretary for War and Colonies	Earl of Aberdeen	
Parliamentary Under-Secretary	W.E. Gladstone	January 1835

Prime Minister	Viscount Melbourne	April 1835
Secretary for War and Colonies	C. Grant (cr. Lord Glenelg, May 1835)	
	Lord Normanby	February 1839
	Lord John Russell	September 1839
Parliamentary Under-Secretary	Henry Labouchere (Lord Taunton)	
	R.V. Smith (Lord Lyveden)	September 1839

Prime Minister	Sir Robert Peel	September 1841
Secretary for War and Colonies	Viscount Stanley (Derby)	
	W.E. Gladstone	December 1845
Parliamentary Under-Secretary	G.W. Hope	
	Lord Lyttleton	January 1846

Prime Minister	Lord John Russell	July 1846
Secretary for War and Colonies	Earl Grey	
Parliamentary Under-Secretary	Benjamin Hawes Frederick Peel	February 1851

Permanent Under-Secretaries of State	R.W. Hay	1825-1836
	James Stephen	1836-1847

GOVERNORS OF NEW ZEALAND, 1840-1854

Governor	Sir George Gipps, R.E.	6 February 1840 -3 May 1841
Lieutenant-Governor	Captain W. Hobson, R.N.	6 February 1840 -3 May 1841
Governor	Captain W. Hobson, R.N.	3 May 1841- 10 September 1842
	Captain R. FitzRoy, R.N.	26 December 1843 -17 November 1845
	Captain (Sir) George Grey	18 November 1845- 31 December 1853
Administrators	Lieutenant W. Shortland, R.N.	10 September 1842 -26 December 1843
	Lt.-Colonel R.H. Wynyard, C.B.	3 January 1854- 6 September 1855

Source: A.H. McLintock, Crown Colony Government in New Zealand, Appendix A and B, pp. 411-413.

APPENDIX TWO

GOVERNOR GIPPS'S LAND CLAIMS COMMISSION ACT

ANNO QUARTO

VICTORIÆ REGINÆ

NO. 7

By His Excellency Sir George Gipps, Knight, Captain-General and Governor-in-Chief of the Territory of New South Wales and its Dependencies, and Vice-Admiral of the same, with advice of the Legislative Council.

An Act to empower the Governor of New South Wales to appoint Commissioners with certain powers, to examine and report on Claims to Grants of Land in New Zealand.

WHEREAS in various parts of the Islands of New Zealand comprehended within Preamble, the limits of the Territory and Government of New South Wales, Tracts or Portions of Land are claimed to be held by various individuals, by virtue of purchases or pretended purchases, gifts or pretended gifts, conveyances or pretended conveyances, or other titles, either mediately or immediately from the Chiefs or other individuals of the Aboriginal Tribes inhabiting the same; and whereas no such individual or individuals can acquire a Legal Title to or permanent interest in any such Tracts or Portions of Land, by virtue of any gift, purchase or conveyance by or from the Chiefs or other individuals of such Aboriginal Tribes as aforesaid; and whereas Her Majesty hath, by instructions under the hand of one of Her Majesty's Principal Secretaries of State, dated the fourteenth day of August, One thousand eight hundred and ninety-nine, declared Her Royal will and pleasure not to recognise any Titles to Land in New Zealand which do not proceed from, or are not, or shall not be allowed, by Her Majesty and whereas it is expedient and proper to put beyond doubt the invalidity of all Titles to Land within the said Islands of New Zealand, founded upon such purchases or pretended purchases, gifts or pretended gifts, conveyances or pretended conveyances, or other titles from the said Uncivilized Tribes, or Aboriginal Inhabitants of New Zealand; Be it therefore declared and enacted by His Excellency the Governor of New South Wales, with the advice of the Legislative Council of the said Colony, That all Titles to Land in New Zealand which are not, or may not hereafter be, allowed by Her Majesty are, and shall be absolutely null and void.

[Governor may appoint Commissioners to examine and report on Claims to Grants of Land in New Zealand.]

II. And whereas Her Majesty hath, in the said Instructions, been pleased to declare Her Majesty's gracious intention to recognise claims to Land which may have been obtained on equitable terms from the said Chiefs or Aboriginal Inhabitants of the said Islands of New Zealand, and which may not be prejudicial to the present or prospective interests of such of Her Majesty's subjects as may resort to, or settle in the said Islands; and

whereas it is expedient and necessary that, in all cases wherein Lands are claimed to be held by virtue of any purchase, or conveyance, or any other title whatsoever from the said Chiefs, or Tribes, or any Aboriginal inhabitant whomsoever of the said Islands, a strict inquiry be instituted into the mode in which such Lands have been acquired, and also into the extent and situation of the same, and also to ascertain all the circumstances upon which such claims may be founded; Be it therefore enacted, That it shall and may be lawful for the said Governor of New South Wales to issue one or more Commission or Commissions, and thereby to appoint Commissioners who shall have full power and authority to hear, examine and report on, all Claims to grants of Land in New Zealand; and each of such Commissioners shall, before proceeding to act as such, take and subscribe before one of the Judges of the Supreme Court of New South Wales, or before such person resident in New Zealand as the Chief Justice for the time being of the said Court, shall under his hand and seal nominate and appoint for that purpose, the oath set forth in the Schedule to this Act annexed, marked A; and the Colonial Secretary of New South Wales shall cause the said Oaths, and also the Oath to be taken by the Secretary to the said Commissioners, as hereinafter provided, to be respectively recorded in his Office.

[Governor may appoint Secretary to Commissioners.]

III. And be it enacted, That some fit and proper person or persons may from time to time be appointed by the said Governor to perform the duties of Secretary or Secretaries to the said Commissioner, should the said Governor deem the appointment of such Secretary or Secretaries to be necessary; and the said Secretary or Secretaries shall, before exercising any of the duties of his or their office, take and subscribe before one of the Judges of the said Supreme Court, or before such person resident in New Zealand as the Chief Justice for the time being of the said Court shall under his hand and seal nominate and appoint for that purpose, the oath set forth in the Schedule to this Act annexed, marked B.

[Governor as often as he shall think fit may refer all Claims to Grants of Land to Commissioners.]

IV. And be it enacted, That it shall be lawful for the Governor of the said Colony, as often as to His Excellency shall seem fit, to refer the claims of all persons making application to have Grants of Land within the said Islands of New Zealand executed to them in due form of law, in fulfilment of Her Majesty's gracious intention, to the said Commissioners, to the end, that all such claims may be duly examined and reported upon for the information and guidance of the said Governor: and the said Commissioners, or any two of them, shall proceed to hear, examine, and report on such claims, in manner hereinafter mentioned: Provided always, that nothing herein contained shall authorise the said Commissioners to receive or report upon any claims but such as shall be referred to them by the Governor as aforesaid; and Provided further, that all claims which shall not be preferred in writing to the Colonial Secretary of New South Wales, within six months after the passing of this Act, shall be absolutely null and void, unless it shall be made to appear to the satisfaction of the said Governor, that any claimant or claimants shall not, by reason of absence from the Colony, or other sufficient cause, have been able to prefer his or their claims within the said term of six months, in which case it shall be lawful for the said Governor at any time within a further term of six months, to refer such claim or claims to the said Commissioners, who shall have power and authority to receive and report upon the same, as in other cases.

[Commissioners to be guided by the real justice and good conscience of the case.]

V. And be it enacted, That in bearing and examining all claims to Grants as aforesaid, and reporting on the same, the said Commissioner shall be guided by the real justice and good conscience of the case, without regard to legal forms and solemnities, and shall direct themselves by the best evidence they can procure, or that is laid before them, whether the same be such evidence as the law would require in other cases or not; and that the said Commissioners shall in every case inquire into, and set forth, so far as it shall be possible to ascertain the same, the price or valuable consideration, with the sterling value thereof, paid for the lands claimed, to any of the said chiefs or Tribes, or any Aboriginal inhabitant of New Zealand, as well as the time and manner of the payment, and the circumstances under which such payment was made, without taking into consideration the price or valuable consideration which may have been given for the said Lands by any subsequent purchaser, or to any other person or persons, save such Chiefs or Tribes or Aboriginal inhabitants as aforesaid; and shall also inquire into and set forth the number of acres which such payment would have been equivalent to, according to the rates fixed in a schedule marked D, annexed to this Act; and if the said Commissioners, or any two of them, shall be satisfied that the person or persons claiming such Lands or any part thereof, is or are entitled according to the declaration of Her Gracious Majesty as aforesaid, to hold the said Lands, or any part thereof, and to have a Grant thereof made and delivered to such person or persons, under the Great Seal of the said Colony, they, the said Commissioners, shall report the same, and the grounds thereof, to the said Governor accordingly; and shall set forth the situation, measurement, and boundaries by which the said Lands, or portions of Land, shall and may be described in every such Grant, so far as it shall be possible to ascertain the same: Provided, however, that no Grant of Land shall be recommended by the said Commissioners, which shall exceed in extent two thousand five hundred and sixty acres, unless specially authorised thereto by the Governor, with the advice of the Executive Council, or which shall comprehend any Head Land, Promontory, Bay, or Island, that may hereafter be required for any purpose of defence, or for the site of any Town, or for any other purpose of public utility, nor of any Land situate on the Sea shore within one hundred feet of high water mark: Provided also, that nothing herein contained shall be held to oblige the said Governor to make and deliver any such Grant as aforesaid, unless His Excellency shall deem it proper so to do.

[Certain Lands not to be recommended by Commissioners for Grants.]

VI. Provided, nevertheless, and be it enacted, That the said Commissioners shall not propose to grant to any claimant whatsoever any Land which may, in the opinion of the majority of the said Commissioners, or of the majority of the Commissioners appointed to investigate the demand of such claimant, be required for the site of any town or village, or for the purposes of defence, or for any other purpose of public utility; nor shall they propose to grant to any individual, any land of a similar character which they may be directed to reserve, either by the Governor of New South Wales, or the Lieutenant-Governor of New Zealand, but that in every case in which land of such description would otherwise form a portion of the Land which the Commissioners would propose to grant to the claimant, they shall in lieu of such Land, propose to grant to him or her, a compensation in other Land

of fair average value, at the rate of not less than five, nor more than thirty acres of Land for every acre required to be reserved, either for the site of a village or township, or for the purpose of defence, or for any other purpose of public utility as aforesaid.

[Meetings of the Commissioners.]

VII. And be it enacted, That the meetings of the said Commissioners shall be holden in such manner as the said Governor shall from time to time appoint, and the said Commissioners shall proceed with all due dispatch to investigate and report upon the claims referred to them.

[Power of Commissioners to summon Witnesses.]

VIII. And be it enacted, That it shall and may be lawful for the said Commissioners, upon receiving any such claim as aforesaid, to appoint a day, by notice in the *New South Wales Government Gazette*, or in any Gazette or Newspaper published in New Zealand, for inquiring into such claim, and to issue summonses requiring all such persons as shall therein be named to appear before the said Commissioners at the day and time therein appointed, to give evidence as to all matters and things known to any such person respecting such claim, and to produce in evidence all Deeds, Instruments, or Writings, in the possession or control of any such persons, which they might by law be required and compelled to give evidence of, or to produce in evidence in any cause respecting the like matters depending in the Supreme Court of New South Wales, in so far as the evidence of such persons, and the production of such Deeds, Instruments, and Writings, shall be necessary for the due investigation of such Claim depending before the said Commissioners; and that all such evidence shall be taken down in writing, in presence of the witnesses respectively giving the same, and shall at the time be signed by them, or in case of their refusing or being unable to sign, by the Secretary to the said Commissioners; and that all such evidence shall be given on oath, which oath it shall and may be lawful for the said Commissioners to administer to every person appearing before them to give evidence; and that any person taking a false oath in any case wherein an oath is required to be taken by this Act, shall be deemed guilty of wilful and corrupt perjury, and being thereof duly convicted, shall be liable to such pains and penalties as by any Law now in force any persons convicted of wilful and corrupt perjury is subject and liable to: Provided always, that in all cases in which it may be necessary to take the evidence of any Aboriginal Native who shall not be competent to take an Oath, it shall be lawful for the said Commissioners to receive in evidence the statement of such Aboriginal Native, subject to such credit as it may be entitled to, from corroborating or other circumstances.

[Witnesses not appearing, or refusing to give evidence.]

IX. And be it enacted, That whenever any person, who being duly summoned to give evidence before the said Commissioners as aforesaid, his or her reasonable expenses having been paid or tendered, and not having any lawful impediment, allowed by the said Commissioners, shall fail to appear at the time and place specified in such summons, or after appearing, shall refuse to be sworn, or to answer any lawful question, or to produce any Deed, Instrument, or Writing, which he or she may lawfully be required to produce, or without leave obtained from the said Commissioners, shall wilfully with-

draw from further examination without a satisfactory excuse being given to the said Commissioners for such default, or appearing, shall refuse or decline to be examined or give evidence according to law, touching the matter in question, it shall and may be lawful for the said Commissioners, and they are hereby authorised and empowered to issue their warrant for the apprehension of such person, in order that he may be brought before them to give evidence touching such matter as shall be in question, for which he shall have been summoned as aforesaid; and it shall be further lawful for the said Commissioners, if such person shall not shew sufficient cause to the satisfaction of such Commissioners for such default, to commit such person to prison, there to remain without mail or mainprize for any time not exceeding twenty-one days, or in lieu of such imprisonment, to pay such fine, not exceeding one hundred pounds, as the said Commissioners shall impose, which fine shall go towards the expenses incurred in carrying the provisions of this Act into effect.

[Salaries to be paid to the Commissioners and Secretary.]

X. And be it enacted, That the said Commissioners and their Secretary, shall and may receive for their own use, such salaries as the Governor of New South Wales for the time being shall direct and appoint; which Salaries respectively, it shall and may be lawful for the said Governor to order and direct, by Warrant under his Hand, to be paid from and out of the Revenues of New Zealand; and the same shall be the whole of the remuneration of the said Commissioners and Secretary, and every of them respectively, for and in respect of their said Offices.

[Fees to be taken by Secretary to Commissioners.]

XI. And be it enacted, That there shall be paid to the said Commissioners or their Secretary by every person making a Claim to a Grant of Land which shall be referred by the Governor to the said Commissioners for examination as herein-before is provided, the several Fees specified in the Schedule to this Act annexed, marked C; and the said Commissioners or their Secretary shall duly account for all Fees so paid to them or him as aforesaid, and shall pay the same into the hands of the Colonial Treasurer of New South Wales, or the Treasurer of New Zealand, on the last day of every month, or as soon thereafter as practicable, to be appropriated to the public uses of the said Colony, and in support of the Government thereof.

[Saving the Right and Prerogative of Her Majesty.]

XII. Providing always, and be it declared and enacted, that nothing in this Act contained, shall be deemed in any way to affect any right or prerogative of Her Majesty, Her Heirs or Successors.

GEORGE GIPPS,
Governor,

*Passed the Legislative Council,)
the fourth day of August,)
one thousand eight hundred and)
forty.)*

Wm. MACPHERSON,
Clerk of Councils.

SCHEDULES REFERRED TO.

A

COMMISSIONER'S OATH

I, _____ do solemnly swear, that faithfully, diligently, and impartially, to the best of my ability, I will execute the duties of a Commissioner, appointed under and by virtue of a certain Act of the Governor of New South Wales, with the advice of the Legislative Council of the said Colony, made and passed in the fourth Year of the Reign of Her Majesty Queen Victoria, intituled, "*An Act to empower the Governor of New South Wales to appoint Commissioners, with certain powers, to examine and report on Claims to Grants of Land in New Zealand*" and that I will not myself, directly or indirectly, take or receive, or knowingly permit any other person to take or receive any fee or reward for anything done or performed under and by virtue of any of the Provisions of the said Act, other than and except such as is authorised by the said Act.

So help me God.

Sworn before me this _____)
 day of _____ 184) A.B.

Judge of the Supreme Court of New South Wales.

B

SECRETARY'S OATH

I, _____ do solemnly swear, that faithfully, diligently, and impartially, to the best of my ability, I will execute the duties of Secretary to the Commissioners appointed under and by virtue of a certain Act of the Governor of New South Wales, with the advice of the Legislative Council of the said Colony, made and passed in the Fourth year of the Reign of Her Majesty Queen Victoria, intituled, "*An Act to empower the Governor of New South Wales to appoint Commissioners, with certain Powers to examine and report on Claims to Grants of Land in New Zealand,*" and that I will not myself, directly, or indirectly, take or receive or knowingly permit any other person to take or receive any fee or reward for any thing done or performed under and by virtue of any of the Provisions of the said Act; and that I will duly account for and pay over to the Colonial Treasurer of New South Wales, or the Treasurer of New Zealand, on the last day of every month, or as soon thereafter as may be practicable, all fees previously received by me, as in the said Act directed.

So help me God.

Sworn before me this _____)
 day of _____ 184) C.D.

C

FEES TO BE RECEIVED BY THE SECRETARY

	£	s.	d.
For filing any Memorial with the Colonial Secretary, or ... opposition thereto	5	0	0
For every Summons for Witnesses each Summons containing two names, by the Party requiring the same	0	5	0
For every Witness examined, or Document or Voucher produced in Evidence, by the Party on whose behalf examined or pro- duced	0	5	0
For taking down the examination of any Witness	0	5	0
For every one hundred Words after the first hundred, addit- ional	0	2	6
For every Certificate granted by Commissioners, of Default, refusal to answer, or wilful withdrawing of any Witness ..	1	0	0
For any Final Report, to be paid by the Party or Parties in whose favour made, when the extent of the Land recommended be not exceeding five hundred Acres	5	0	0
For every additional one hundred Acres	0	10	0

D

Time when the purchases were made		Per Acre	
From	To	s.	d.
1st Jan., 1815	31st Dec., 1824	0	6
" 1825	" 1829	0	6
" 1830	" 1834	0	8
" 1835	" 1836	1	0
" 1837	" 1838	2	0
" 1839	" 1839	4	0

And fifty per Cent. above these rates, for persons not personally resident in New Zealand, or not having a resident Agent on the spot.

Goods when given to the Natives in Barter for Land, to be estimated at three times their selling price in Sydney at the time.

Source: Supplement to the New South Wales Government Gazette, 22.8.1840, encl. in Colonial Secretary's Office, N.S.W./F.D. Bell, Land Claims Commissioner, N.Z., 28.7.1862, IA 15/5.

APPENDIX THREE

NEW ZEALAND COMPANY DEED OF PURCHASE AT PORT NICHOLSON,

27 SEPTEMBER 1839

KNOW ALL MEN by these Presents that we the undersigned Chiefs of the Harbour and District of Wanga Nui Atera, commonly called Port Nicholson, in Cook's Straits in New Zealand do say and declare that We are the sole and only proprietors or owners of the Lands tenements Woods, Bays, Harbours, Rivers, Streams and Creeks within certain boundaries as shall be truly detailed in this Deed or Instrument. Be it therefore known unto all men that We the Chiefs whose names are signed to this Deed or Instrument, have this day sold and parted with all Right Title and Interest in all the said Lands Tenements, Woods, Bays, Harbours, Rivers, Streams and Creeks as shall be hereafter described unto William Wakefield Esquire in trust for the Governors, Directors and Shareholders of the New Zealand Land Company of London, their Heirs, Administrators and Assigns for ever, in Consideration of having received as a full and just payment for the same One hundred red blankets, one hundred and twenty muskets, two tierces of tobacco, forty eight iron pots, two cases of soap, fifteen fowling pieces, twenty one kegs of gunpowder, one cask of ball cartridges, one keg of lead slabs, one hundred cartouche boxes, one hundred tomahawks, forty pipe-tomahawks, one case of pipes, two dozen spades, fifty steel axes, twelve hundred fish hooks, twelve bullet moulds, twelve dozen shirts, twenty jackets, twenty pairs of trowsers, sixty red night caps, three hundred yards of cotton duck, two hundred yards of calico, one hundred yards of check, twenty dozen pocket handkerchiefs, two dozen slates and two hundred pencils, ten dozen looking glasses, ten dozen pocket knives, ten dozen pairs of scissors, one dozen pairs of shoes, one dozen umbrellas, one dozen hats, two pounds of beads, one hundred yards of ribbon, one gross of Jews' harps, one dozen razors, ten dozen dressing combs, six dozen hoes, two suits of superfine clothes, one dozen shaving boxes and brushes, twenty muskets, two dozen adzes and one dozen sticks of sealing wax, which we the aforesaid chiefs do hereby acknowledge to have been received by us from the aforesaid William Wakefield. And in order to prevent any dispute or misunderstanding and to guarantee more strongly unto the said William Wakefield, his executors and administrators in trust for the said Governors Directors, and Shareholders of the New Zealand Land Company of London, their Heirs, Administrators and Assigns for ever, true and undisputed possession of the said Lands, Tenements, Woods, Bays, Harbours, Rivers, Streams and Creeks, We the undersigned Chiefs for ourselves, our Heirs, Administrators and Assigns for ever, do hereby agree and bind ourselves individually and collectively to the Description following which constitutes the Boundaries of the said Lands, Tenements, Woods, Bays, Harbours, Rivers Streams and Creeks now sold by us the Undersigned Chiefs to the said William Wakefield in trust for the said Governors Directors and Shareholders of the New Zealand Land Company of London, this twenty seventh day of September in the Year of our Lord One thousand eight hundred and thirty nine, that is to say:-

The whole of the Bay, Harbour, and District of Wanga Nui Atera, commonly called Port Nicholson situate on the North Eastern side of Cook's Straits in New Zealand. The summit of the range of mountains known by the name of Turakirai from the point where the said range strikes the sea in Cook's Straits, outside the Eastern headland of the said Bay and Harbour of Wanga

Nui Atera or Port Nicholson, along the summit of the said range called Turakirai at the distance of about twelve English miles, more or less, from the low water mark on the Eastern shore of the said Bay or Harbour of Wanga Nui Atera or Port Nicholson until the foot of the high range of mountains called Tararua, situate about forty English miles, more or less from the sandy beach at the North Eastern extremity of the said Bay or Harbour of Wanga Nui Atera or Port Nicholson, is the Eastern boundary of the said Lands, Tenements, Woods, Bays, Harbours, Rivers, Streams and Creeks. From the point where the Eastern boundary strikes the foot of the aforesaid Tararua range of mountains along the foot of the said Tararua range until the point where the range of mountains called Rimarap strikes the foot of the said Tararua range, is the North Eastern boundary of the said Lands, Tenements, Woods, Bays, Bays, Harbours, Rivers, Streams and Creeks. From the said point where the Rimarap range of mountains strikes the foot of the Tararua Range, along the summit of the said Rimarap range of mountains, at a distance of about twelve English miles, more or less, from the low water mark on the Western shore of the said Bay or Harbour of Wanga Nui Atera or Port Nicholson until the point where the Rimatap range strikes the sea in Cook's Straits outside the Western headland of the said Bay of Wanga Nui Atera or Port Nicholson is the Western boundary of the said Lands Tenements, Woods, Bays, Harbours, Rivers, Streams and Creeks. From the said point where the Rimarap range of mountains strikes the sea in Cook's Straits in a direct line to the aforesaid point where the Turakirai range strikes the sea in the said Cook's Straits is the Southern boundary of the said Lands, Tenements, Woods, Bays, Harbours, Rivers, Streams and Creeks; Be it also known that the said Bay, Harbour and District of Wanga Nui Atera or Port Nicholson as well as all other Lands, Tenements, Woods, Bays, Harbours Rivers, Streams and Creeks situate within the aforesaid boundaries, and now sold by us the aforesaid Chiefs to the said William Wakefield in trust for the said Governors, Directors and Shareholders of the New Zealand Land Company of London, their Heirs, Administrators and Assigns for ever. And we do hereby acknowledge for ourselves, our Heirs, Administrators and Assigns for ever, to have this day received from the said William Wakefield full and just payment for the said Lands, Tenements, Woods Bays, Harbours, Rivers, Streams and Creeks situate within the aforesaid Boundaries of the said Bay, Harbour and District of Wanga Nui Atera or Port Nicholson in Cook's Straits in New Zealand. And he the said William Wakefield is to have and to hold the Lands, Tenements, Woods, Bays, Harbours, Rivers, Streams and Creeks as aforesaid and all the above bargained premises, unto the said William Wakefield, his executors and administrators in trust for the said Governors, Directors and Shareholders of the New Zealand Land Company of London, their Heirs, Administrators and Assigns, to and for their own proper use and uses and as and for their own proper Goods and Chattels, from henceforth and for ever. And we the said Chiefs as undersigned hereby for ourselves our Heirs, Administrators and Assigns for ever, do covenant, promise and agree to and with the said William Wakefield his executors and administrators in manner following, that is to say, That the said hereby bargained premises and every part thereof are and so for ever shall be, remain, and continue unto the said Governors, Directors and Shareholders of the New Zealand Land Company of London, their Heirs, Administrators and Assigns, free and clear, and freely and clearly acquitted, discharged and exonerated of from and against all former and other gifts, Claims, Grants, Bargains, Sales and Incumbrances whatsoever, and We the undersigned Chiefs do further promise and bind ourselves, our Families, Tribes, and Successors individually and collectively to assist defend and protect the said Governors, Directors, and Shareholders of the

New Zealand Land Company of London, their Heirs, Administrators and Assigns for ever, in maintaining the quiet and undisputed possession of the aforesaid Lands, Tenements, Woods, Bays, Harbours, Rivers, Streams and Creeks sold by us to the said William Wakefield, in trust for the Governors Directors and Shareholders of the New Zealand Land Company of London their Heirs Administrators and assigns for ever as aforesaid. And the said William Wakefield on behalf of the said Governors, Directors and Shareholders of the New Zealand Land Company of London, their Heirs, Administrators and Assigns for ever does hereby covenant, promise, and agree to and with the said Chiefs that a portion of the land ceded by them equal to a tenth part of the whole, will be reserved by the said Governors, Directors and Shareholders of the New Zealand Land Company of London their Heirs, Administrators and Assigns, and held in trust by them for the future benefit of the said Chiefs, their families and heirs for ever.

In Witness whereof the said Chiefs on the one part and the said William Wakefield on the other part, have hereunto put their hands and seals this twenty seventh day of September in the year of our Lord One thousand eight hundred and thirty nine.

Matangi X his mark. L.S.	Etueko X his mark. L.S.
Epuni X his mark. L.S.	Tingatoro X his mark. L.S.
Bouacawa X his mark. L.S.	Tuati X his mark. L.S.
Rongatua X his mark. L.S.	Wakaradi X his mark. L.S.
Kariwa X his mark. L.S.	Emau X his mark. L.S.
Kaihaia X his mark. L.S.	Atuawera X his mark. L.S.
Hawia X his mark. L.S.	Ewareh X his mark. L.S.
Tuarau X his mark. L.S.	Warepori X his mark. L.S.

W. WAKEFIELD.

Witnesses -

Rich. Barrett.
Tho. Lowry Chief Mate.
Nayti.

Source: H.H. Turton, Maori Deeds of Land Purchases in the North Island of New Zealand, 2 Vols. (Government Printer, Wellington, 1878), Vol. 2, pp. 95-96.

RICHARD BARRETT'S TRANSLATION OF THE PORT NICHOLSON DEED
AS RECALLED FOR COMMISSIONER SPAIN

'Listen, natives, all the People of Port Nicholson this is a Paper respecting the purchasing of Land of yours, this Paper has the names of the Places of Port Nicholson, understand this is a good Book, listen the whole of you Natives -, to write your names in this Book and the names of the places - are Tararua continuing on to the other side of Port Nicholson to the name of Parangarahau [Parangarehu]; it is a Book of the names of the Channels and the woods, the whole of them to write in this Book People of children the Land to Wairaweki [Wakefield], when the people arrive from England they will show you your part - the whole of you.'

Source: Evidence of Richard Barrett, 8-2-1843, OLC 906.

BIBLIOGRAPHY

The lists are arranged as follows:

A. Unpublished primary sources

1. New Zealand National Archives material
 - a. Archives of the Governor(-General) of New Zealand
 - b. Archives of the Colonial Secretary
 - c. Archives of the New Zealand Company
 - d. Archives of the Old Land Claims
2. Other New Zealand National Archives material
 - a. Archives of the Department of Lands and Survey and the Land Department, Nelson
 - b. Archives of the Maori Affairs Department
 - c. Archives on Microfilm
 - d. New South Wales Archival Estrays on New Zealand Affairs
3. Diaries and Letters

B. Published primary sources

1. Documents
2. Newspapers
3. Contemporary writings

C. Secondary sources: Books, articles and theses

A. UNPUBLISHED PRIMARY SOURCES1. New Zealand National Archives Materiala. Archives of the Governor(-General) of New Zealand

- Series G 1 Ordinary inwards despatches from the Secretary of State, December 1840-November 1886
- G 4/1 Inwards circular despatches from the Secretary of State, January 1846-June 1852
- G 13/1 Miscellaneous inwards letters and copies of outwards letters, January 1841-1939
- G 25/1 Ordinary outwards despatches to the Secretary of State, February 1840-December 1843
- G 30 Duplicate outwards despatches to the Secretary of State, February 1840-December 1855, 1859-1861
- G 36/1 Miscellaneous outwards correspondence, Part One: Despatches from Hobson to Gipps, December 1839-May 1840; Part Two: Private correspondence referring to official matters, July 1840-April 1842; Part Three: Miscellaneous letters, February 1841-August 1841

b. Archives of the Colonial Secretary (filed with the Archives of the Department of Internal Affairs)

- Series IA 1 Inwards letters, 1840-1865
- IA 4/1 Entry books of outwards letters, February 1840-July 1843

IA 4/2 Entry books of outwards letters, July 1843-
July 1846

IA 4/253 Outwards letterbook, Commissioner of Land
Claims, July 1841-January 1853

IA 12 Bluebooks of Statistics, 1840-1855

IA 15/5 Busby Papers, 1840-1846

IA 15/6 Kawau Island Land Claim

c. Archives of the New Zealand Company

Series NZC 3 Inwards despatches from the Principal Agent,
Wellington, August 1839-1850

NZC 102 Secretary to Principal Agent, August 1839-
December 1850

NZC 105/1 Despatches from the Resident Agent, New Plymouth,
May 1842-1849

NZC 115/1 Despatches to the Resident Agent, New Plymouth,
June 1842-

d. Archives of the Old Land Claims

Series OLC 1/1-1050 Case files

OLC 2/7 'Curnin's Register'

OLC 4 Papers about particular claims, or claims
in particular parts of the country

OLC 5 Office papers

OLC 8/1 Letterbook. 1840-1844

2. Other New Zealand National Archives material

a. Archives of the Department of Lands and Survey and the Land Department, Nelson

Series LS/N 45/1(a & b) Old land claim: Joseph Toms, Queen Charlotte Sound claim, 1841-53; evidence, supporting documents; Commissioner's report, plans; other relevant items.

b. Archives of the Maori Affairs Department

Series MA 4/1 Outwards letterbooks (General English letterbooks), December 1840-March 1855. Includes letters to Colonial Secretary, 1848-1855

c. Archives on Microfilm

Micro-Z 32 C.O. 211/1-2⁽¹⁾ Public Records Office, Great Britain, New Zealand Sessional Papers. Minutes of Executive and Legislative Councils of New Zealand, 1841-1846

Micro-Z 425 Correspondence: Despatches, Secretary of State for the Colonies, November-December 1846

d. New South Wales Archival estrays on New Zealand affairs
(Originals held at the Dixson Library, New South Wales)

Micro-Z 2710 NSW Despatches, Governor of New South Wales to Lieutenant-Governor of New Zealand, 15-1-1840 to 15-11-1841
Despatches, Secretary of State and Under-Secretary of State for the Colonies to Governor, New South Wales, 1826-1846

- Micro-Z 2711 NSW Letters to Commissioners of Land Claims,
New Zealand land, from New South Wales
Colonial Secretary, 15-6-1840 to 28-10-1841
Letters to officials and individuals about
land in New Zealand, from Colonial Secre-
tary, 15-6-1840 to 28-10-1841
- Micro-Z 2717 NSW New South Wales to Colonial Secretary:
Letters received, 1840-1848
New South Wales to Colonial Secretary:
Despatches received from Captain Hobson,
Lieutenant-Governor, then Governor of New
Zealand, 1840-1841
Miscellaneous, 1830-1833

3. Diaries and Letters

- Bumby, J.H. Diary, 1839, MS, in Alexander Turnbull Library.
- Clarke, George. Letters to his Father, MS. Vol. 62/A (1840-43), Vol. 62/B (1843-59), in Hocken Library.
- Hopper, E.B. Diary, 1832, 1837-38, MS, in Alexander Turnbull Library.
- Meurant, Edward. Diary and letters, 1842-1843, MS, transcript (1941) in Auckland Public Library. Alexander Turnbull Library copy.
- Wakefield, William. Diary, 1839-1842, MS, typescript in Alexander Turnbull Library.

B. PUBLISHED PRIMARY SOURCES

1. Documents

Appendices to the Journals, House of Representatives,
1862, 1863.

Bell, K.N. and Morrell, W.P., Select Documents on British Colonial Policy, 1830-1860, Oxford University Press, London, 1928.

Carrick, Roderick (comp. ed.), Historical Records of New Zealand South, prior to 1840, Otago Daily Times and Witness Newspapers, Dunedin, 1903.

Domett, Alfred (comp.), The Ordinances of the Legislative Council of New Zealand and of the Legislative Council of the Province of New Munster, 1841-1853, Government Printer, Wellington, 1871.

Irish University Press Series of British Parliamentary Papers. Colonies: New Zealand (Shannon, 1969), Vol. 2, Report from the [1844] Select Committee on New Zealand, together with the Minutes of Evidence, Appendix and Index; Vol. 3, Correspondence and other Papers relating to New Zealand, 1835-1842; Vol. 5, Correspondence and Papers relating to the Native Population, the Distribution of Land and other affairs in New Zealand, 1846-1847.

New Zealand Company Reports, Vol. 3 (Reports 13-18, June 1844-June 1845), Printed by Stewart and Murray, London, 1844-45.

The Statutes of the General Assembly of New Zealand passed during the First and Second Parliaments: from 16 Victoriae to 18 Victoriae inclusive, 1854-1860, Government Printer, Wellington, 1871.

Turton, H.H. (comp. ed.), An Epitome of Official Documents relative to native affairs and land purchases in the North Island of New Zealand, Government Printer, Wellington, 1883.

Turton, H.H. (comp.), Maori Deeds of Land Purchases in the North Island of New Zealand (copied from the originals), 2 Vols, Government Printer, Wellington, 1878.

Votes and Proceedings, House of Representatives, Session 4, 1856, Vol. 2.

2. Newspapers

Bay of Islands Observer, February 1842-October 1842.

Nelson Examiner and New Zealand Chronicle, March 1842-January 1845.

New Zealand Gazette and Britannia Spectator, August 1839-November 1840. Then became the New Zealand Gazette and Wellington Spectator, November 1840-September 1844.

New Zealand Government Gazette, June 1840-1845.

3. Contemporary Writings

Clarke, George, Notes on Early Life in New Zealand, J. Walch and Sons, Hobart, 1903.

Dieffenbach, Earnest, Travels in New Zealand; with contributions to the geography, geology, botany and natural history of that country, 2 Vols, John Murray, London, 1843.

Maning, F.E., Old New Zealand, Smith, Elder, London, 1863;
reprint 1973 ed., Golden Press, Auckland, 1980.

Shortland, Edward, The Southern Districts of New Zealand, Longman,
Brown, Green and Longmans, London, 1851.

Shortland, Edward, Traditions and Superstitions of the New
Zealanders, Longman, Brown, Green, Longmans and Roberts,
London, 1856; 2nd ed. reprint, Capper Press, Christchurch,
1980.

Taylor, Nancy M. (ed.), Journal of Ensign Best, 1837-1843,
Government Printer, Wellington, 1966.

Terry, Charles, New Zealand, its advantages and prospects, as
a British Colony, T. and W. Boone, London, 1842.

Thomson, A.S., The Story of New Zealand, 2 Vols, John Murray,
London, 1859.

Wakefield, Edward Jerningham, Adventure in New Zealand, from
1839 to 1844, with some account of the beginning of the
British Colonization of the islands, Robert Stout (ed.),
Whitcombe and Tombs, Christchurch, 1908.

Williams, William, The Turanga Journals, 1840-1850, Frances
Porter (ed.), Victoria University Press, Wellington, 1974.

C. SECONDARY SOURCES: BOOKS, ARTICLES AND THESES

Adams, Peter, Fatal Necessity: British intervention in New
Zealand, 1830-1847, Auckland University Press/Oxford
University Press, Auckland, 1977.

Adkin, G. Leslie, The Great Harbour of Tara, Whitcombe and
Tombs, Christchurch, 1959.

- Adkin, G. Leslie, Horowhenua, its Maori place names and their topographic and historical background, Department of Internal Affairs, Wellington, 1948.
- Allan, Ruth M., Nelson, a history of early settlement, A.H. & A.W. Reed, Wellington, 1965.
- Beaglehole, J.C., Captain Hobson and the New Zealand Company: a study in colonial administration, 'Smith College Studies in History', Vol. 10, Nos 1-3, Northampton, Massachusetts, 1927-1928.
- Buick, T.L., The French at Akaroa: an adventure in colonisation, New Zealand Book Depot, Wellington, 1928.
- Buick, T.L., Old Manawatu, or the wild days of the west, Buick and Young, Palmerston North, 1903.
- Buick, T.L., The Treaty of Waitangi: or how New Zealand became a British colony, S. and W. MacKay, Wellington, 1914.
- Burns, Patricia, Te Rauparaha: a new perspective, A.H. & A.W. Reed, Wellington, 1980.
- Butler, Fred B., Early Days, Taranaki, Fred B. Butler, New Plymouth, 1942.
- Carkeek, W., The Kapiti Coast: Maori history and place names, A.H. & A.W. Reed, Wellington, 1966; reprint, Capper Press, Christchurch, 1978.
- Carman, Arthur H., Tawa Flat and the Old Porirua Road, 1840-1955, A.H. Carman, Wellington, 1956.
- Davidson, J.W., 'New Zealand, 1820-1870: an essay in re-interpretation', Historical Studies, Australia and New Zealand, Vol. 5, No. 20, May 1953, pp. 349-360.

- Dictionary of National Biography - the Concise Dictionary, Part One: from the beginnings to 1901, Smith, Elder, London, 1903; 2nd ed., reprint, Oxford University Press, London, 1953.
- Howe, K.R., Race Relations, Australia and New Zealand: a comparative survey, 1770s-1970s, Longman Paul, Auckland, 1977.
- Jellicoe, Roland L., The New Zealand Company's Native Reserves, compiled from Parliamentary Papers, departmental documents and other authentic sources of information, Government Printer, Wellington, 1930.
- Kawharu, I.H., Maori Land Tenure: studies of a changing institution, Oxford University Press, Oxford, 1977.
- Kenyon, Thomas, 'Land purchases by missionaries of the Church Missionary Society before 1840', MA Thesis, Massey University, 1970.
- Knorr, K.E., British Colonial Theories, 1570-1850, University of Toronto Press, Toronto, 1944.
- Laurenson, George I., Te Hahi Weteriana: three half centuries of the Methodist Maori Mission, 1822-1972, Wesley Historical Society, Auckland, 1972.
- Lee, Jack, I have named it the Bay of Islands ..., Hodder and Stoughton, Auckland, 1983.
- Lindley, M.F., The Acquisition and Government of Backward Territory in International Law, Longmans, Green, London, 1926.
- McLintock, A.H., Crown Colony Government in New Zealand, Government Printer, Wellington, 1958.

- McNab, Robert, The Old Whaling Days: a history of southern New Zealand from 1830 to 1840, Whitcombe and Tombs, Christchurch, 1913.
- Marais, J.S., The Colonisation of New Zealand, Oxford University Press, London, 1927.
- Mennell, P. (ed.), Dictionary of Australasian Biography, Hutchinson, London, 1892.
- Miller, John, Early Victorian New Zealand: a study of racial tension and social attitudes, 1839-1852, Oxford University Press, London, 1958.
- Morrell, W.P., British Colonial Policy in the age of Peel and Russell, Oxford, at the Clarendon Press, 1930.
- Owens, J.M.R., Prophets in the Wilderness: the Wesleyan Mission to New Zealand, 1819-27, Auckland University Press, Auckland, 1974.
- Parsonson, Ann, 'He whenua te utu (the payment will be land)', PhD Thesis, Canterbury University, 1978.
- Parsonson, Ann, 'The pursuit of mana', The Oxford History of New Zealand, W.H. Oliver (ed.), The Clarendon Press, Oxford/Oxford University Press, Wellington, 1981, pp. 140-167.
- Peart, J.D., Old Tasman Bay: a story of the early Maori of the Nelson District, and its association with Europeans prior to 1842, supplemented with a list of Native place names, R. Lucas and Son, Nelson, 1937.
- Raeside, J.D., Sovereign Chief: a biography of Baron de Thierry, Caxton Press, Christchurch, 1977.

Roberts, Stephen, History of Australian Land Settlement, 1788-1920, Frank Cass, London, 1969.

Rutherford, J., The Treaty of Waitangi and the Acquisition of British Sovereignty in New Zealand, 1840, Bulletin No. 36, History Series No. 5, Auckland University College, Auckland, 1949.

Rutherford, J., Sir George Grey, a study in colonial government, Cassell, London, 1961.

Scholefield, G.H. (ed.), A Dictionary of New Zealand Biography, 2 vols, Government Printer, Wellington, 1940.

Seffern, William H.J., Chronicles of the Garden of New Zealand, known as Taranaki, William Seffern, New Plymouth, 1896.

Shand, A., 'The occupation of the Chatham Islands by the Maoris in 1835', Journal of the Polynesian Society, Vol. 1, pp. 83-94, 154-163.

Shawcross, Kathleen, 'Maoris of the Bay of Islands, 1769-1840: a study of changing Maori responses to European contact', MA Thesis, University of Auckland, 1967.

Sinclair, Keith, A History of New Zealand, 2nd ed. rev., Penguin Books, Harmondsworth, Middlesex, 1980.

Smith, S. Percy, History and Traditions of the Maoris of the West Coast, Thomas Avery for the Polynesian Society, New Plymouth, 1910.

Statistics of New Zealand for the Crown Colony period; 1840-52, Department of Economics, Auckland University College, Auckland [1954].

- Sweetman, Edward, The Unsigned New Zealand Treaty, Arrow Printery, Melbourne, 1939.
- Tapp, E.J., Early New Zealand, a dependency of New South Wales, 1788-1841, Melbourne University Press, Melbourne, 1958.
- Turnbull, M., The New Zealand Bubble: the Wakefield theory in practice, Price, Milburn, Wellington, 1959.
- Ward, Alan, A Show of Justice: racial 'amalgamation' in nineteenth century New Zealand, Auckland University Press/Oxford University Press, Auckland, 1973.
- Ward, Louis E. (comp.), Early Wellington, Whitcombe and Tombs, Auckland, 1929; reprint, Capper Press, Christchurch, 1975.
- Wards, Ian, The Shadow of the Land: a study of British policy and racial conflict in New Zealand, 1832-1852, Government Printer, Wellington, 1968.
- Wells, B., The History of Taranaki, Edmondson and Avery, New Plymouth, 1878; reprint, Capper Press, Christchurch, 1976.
- Williams, Trevor, 'James Stephen and British intervention in New Zealand, 1838-1840', Journal of Modern History, Vol. 13, No. 1, 1941.
- Williamson, James, The British Empire and Commonwealth, 3rd ed., Macmillan, London, 1960.
- Wilson, E. Wilson, Land Problems of the New Zealand Settlers of the 'Forties, A.H. & A.W. Reed, Dunedin, [1936].