

the directors always regarded as the most valuable portion of the consideration given to the Natives for their title (whatever it may be) to the wild lands which are already much more valuable than were the whole trusts previously to the formation of the Company's settlements, and to which the operation of the Company and of the colonists are every day adding fresh value. If then the Natives would rather retain possession of their former dwellings and cultivated grounds than remove to occupy the reserves, it will be equitable as well as simple to compensate the settlers (who have derived title through the Company, and who, relying on the goodness of that title, have selected spots in actual occupation or enjoyment of the Natives which the latter are now unwilling to give up) with an equivalent from the Native reserves, in regard to which the aborigines will have given the most unequivocal proof that they regard them no less valuable than that which they prefer to retain. It may be added that throughout the Company's settlements one-eleventh of all the land offered for sale has been allotted to the Natives; and that, wherever, as in the case of the town of Wellington, those parties have insisted upon retaining possession of spots in their 'actual possession or enjoyment' over and above the portions set apart for them as above mentioned, they necessarily enjoy more than one-eleventh, and the Europeans less than ten-elevenths of the whole area which the original scheme proposed to lay out in the proportion in question."

In reference to the above Mr. Under-Secretary Hope replied to Mr. Somes, under date January 10th, 1843, in the following terms, which may be looked on as tantamount to a Declaration of Trust on the part of the Home Government, with regard to the New Zealand Company's "tenths":—

"There remains but one other point to which Lord Stanley deems it necessary to advert, namely, the proposal contained in your letter of the 20th December, that settlers disappointed in obtaining particular lands shall be compensated out of the Native reserves. Such reserves, as Lord Stanley understands them, are proportionate parts of the land sold by the Natives, *which have been conveyed to the Government*, to the benefit of which the Natives are entitled in addition to the continued enjoyment of such lands as belong to them and they have not sold. To compensate out of the former, parties who have expected to have obtained the latter, would be, it seems to Lord Stanley, to make the Natives pay for the disappointment of expectations which they were not answerable for having raised; a course which would at once involve injustice towards them, *and a breach of trust* on the part of the Government. Should it appear in consequence of a diminution of the extent to which a title is established by the Company at Wellington, that more than the proper proportion has been set apart as a reserve, Lord Stanley will of course not object to the reserve being so reduced as to bring it within the proportion which it ought to bear to the whole; but he can permit no diminution to take place in the amount once definitely ascertained to be the proper proportion."

In fulfilment of the intention of the Imperial Government to send out a Commissioner with independent authority to investigate the claims of the New Zealand Company, Mr. William Spain was appointed by a warrant under the Sign Manual, dated 20th January, 1841, and sent expressly from England armed with the full powers of the Crown itself for investigating and determining titles and claims to land in New Zealand. Whereas the Commissioners appointed under the Local Ordinance having no such authority could only make recommendations to the Governor subject to the rules prescribed by the aforesaid Ordinance, which recommendations the Governor was not bound to adopt.

Mr. Spain sailed from England on the 23rd April, 1841, but did not reach the Colony until December of the same year, having been shipwrecked by the way. Shortly after his arrival he was appointed (by Commission under the seal of the Colony dated, 22nd February, 1842) a Commissioner under the Local Ordinance.

The first sitting of the Court of claims was opened at Wellington on the 16th May, 1842, at which date the claims of the New Zealand Company came on for hearing amongst a number of others of a private character, previously advertised in the *New Zealand Gazette* of April, 1842.

Very little progress, however, was made in investigating the Company's claims, in consequence of the defective nature of some of the purchases, the Natives absolutely denying the sale of many places comprised within the boundaries claimed by the Company. Colonel Wakefield writing to Mr. Commissioner Spain, under date 22nd August, 1842, with reference to the adjustment of these claims, says:—"With a view to the final settlement of a question upon which the prosperous settlement of no inconsiderable portion of these islands so much depends, I propose, on the part of the New Zealand Company, to abide by the decision of yourself and the protector of aborigines, Mr. Halswell, as to the amount of compensation to be made by the Company to all Natives in cases of disputed possession or title to land."

Mr. George Clarke, junr., in January, 1843, was substituted for Mr. Halswell, with Colonel Wakefield's consent.

Before much progress had been made in investigating the question, the negotiations were suspended by Colonel Wakefield in March, 1843, in consequence of a remonstrance made by the Directors of the Company to the Secretary of State, at their being made liable for any further expenditure than that from which Mr. Pennington had awarded land to the Company.

In January, 1844, Colonel Wakefield consented on behalf of the Company to resume the arbitration, which, as it appears from Commissioner Spain's report of the 31st May, 1845 (pp. 1846, page 4) resulted in an amicable settlement upon which he made his final award. The terms and conditions of the resumed arbitration were definitely arranged at a conference held at Wellington on the 29th January, 1844, at which the Governor, Colonel Wakefield on behalf of the Company, Commissioner Spain, and others were present.

The terms of compensation were to be left to the arbitration of Mr. G. Clarke, junr., protector of aborigines, and Colonel Wakefield the Company's agent, with leave to refer to Mr. Spain as umpire in the event of any difference of opinion arising between them. The lands so to be estimated for compensation were to be all that had been surveyed or given out for selection in the Port Nicholson district, independently of the paha, cultivations, and Native reserves set apart by the Company.

The sum of £1500 was ultimately agreed on as sufficient to compensate the unsatisfied claimants to land within the limits described in the New Zealand Company's Deed of Conveyance of the Port Nicholson district. Of this amount £950 was paid as follows:—to the Natives of Te Aro, £300;