It appears to me that those Ngatiawa who, having left [Taranaki] after the fight, sought for and obtained another location, where they lived and cultivated the soil, and from fear of their enemies did not return, cannot now show any equitable claim according to Native customs or otherwise to the land they thus abandoned. Had they returned before the sale, and with the consent of the resident Natives again cultivated the soil without interruption, I should have held that they were necessary parties to the sale.

During my residence in this country in the execution of my commission—for a period of between three and four years—I have taken every opportunity of ascertaining by every means in my power all Native customs respecting the tenure of land; and in my decisions I have endeavoured in every instance to respect them where certain, and where doubtful or not clearly ascertained I have allowed justice, equity, a common-sense view, and the good conscience of each case to supply their place.

Bearing all these points in mind, I am of opinion that the adoption of a contrary doctrine to that which I have just laid down would lead to very serious consequences, not only as regards titles to land between the aborigines themselves, but also as between them and the Europeans. . . .

The question, then, which your Excellency has raised turns upon whether slaves taken in war and Natives driven away and prevented by fear of their conquerors from returning forfeit their claims to land owned by them previously to such conquest. And I most unhesitatingly affirm that all the information that I have been able to collect as to Native customs throughout the length and breadth of this land has led me to believe and declare the forfeiture of such right by aborigines so situated. In fact, I have always understood that this was a Native custom fully established and recognised, and I never recollect to have heard it questioned until your Excellency was pleased in the present instance to put forward a contrary doctrine. Since that time I have made every further inquiry in my power amongst competent and disinterested persons, whose testimony has fully confirmed my original opinion.

I am fully of opinion that 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, not even excepting some of the purchases made by the Crown; would constantly expose every title to be questioned by any returned slave who might assert a former right to the land, let the period be ever so remote; and would prove a source of endless litigation and disagreement between the two races—a result which must soon stop the progress of civilisation amongst the Natives, so essential to their amelioration.—[*Reports to Governor Fitzroy: in Parl. Paper, 8th April, 1846.*]

Mr. George Clarke, formerly Chief Protector of Aborigines.

If, as is the general impression of all who have given their attention to this subject, the Natives emigrated at different periods we have at once a clue to the origin of titles. Each migration landed, subdued, and laid claim to a certain district now claimed by their posterity. Each party would most probably acknowledge a leader, either nominated or assuming such character by virtue of superior prowess, who would actually be considered as the first chief of the *iwi* or tribe. His children, with a portion of the *iwi* or tribe who might attach themselves to each particular child, may be considered as giving rise to the different *hapu* or lesser tribes. His children and those who attached themselves to them formed separate *hapus*, who, although a part of the original family, would form a separate and distinct community, uniting, however, in times of war to repel the common enemy, but claiming and exercising independent interests in the soil in times of peace. . . .

Bravery in war, and consequent power and rank as a chief, will not determine the individual to be a great landowner. A man may be a great general and a small landowner; hence numberless mistakes have arisen among Europeans who thought themselves especially safe in purchasing land from a powerful chief. . . .

The chiefs of every tribe or *hapu*, as well as the head of every family belonging to the tribe or *hapu*, have distinct claims and titles to lands within their respective districts. At the same time it must be remembered that they have a joint interest in many of the lands. The particular claims of the chiefs, *hapu*, or families are to lands either subdued or brought into cultivation, or upon which they have exercised some acts of ownership: as lands where they have been accustomed to procure flax, or erect weirs for eels, or where they have built a substantial house. In such cases they claim a particular property: none but the person so claiming can give a title to the land, nor can he be dispossessed thereof. He may forfeit his right by killing, adultery, or migration to a different tribe and district. . . . In this way families hold and cultivate their ground, enlarging their individual cultivations from time to time, thus establishing an indisputable title to such lands as their special and particular property. In other respects their title is more general, the *hapu* and families claiming in common with the principal chiefs what may be termed their waste lands. But even here they must be able to substantiate some sort of title, such as having been the first discoverers, kindled ovens, built canoes, or exercised some other act of ownership which gives them the preference over such lands. The families have in common with the chiefs the right of keeping pigs, gathering flax, snaring pigeons, catching rats, ducks, digging fern-root, &c. Every individual of the tribe having these privileges in common, but still acknowledging the right of some particular family or individual member of a family to dispose of such property—that is, as president, head of the family, or chief of the tribe or *hapu* to make the first proposal of alienation—yet they could not consider the purchase valid without the consent of the majority of the principal men of the tribe.

Lands that are thus possessed in common, involving the interests of so many claimants, are exceedingly difficult to purchase, and may be reckoned as among the most fruitful sources of their