

- (iii) It would seem incredible that Governor Fitzroy should have made immediately on landing a statement which was not only unauthorized but in actual violation of express written instructions given to him in England immediately before leaving for New Zealand. It may, of course, be said that he subsequently acted in an unauthorized manner in connection with the waiver of the Crown's right of pre-emption, but that was not till some three months and ten months respectively after his arrival. Moreover, there was some justification for his action, and he did make a report of it to the Home authorities, even if the report was somewhat belated; but neither in any of his dispatches nor in any contemporaneous document is there any record or mention of any statement relating to surplus lands such as Dr. Martin suggests.
- (iv) Nor is there any evidence of any reference by the Maoris at any time to such a statement having been made by Governor Fitzroy. It seems incredible, if the statement were made, that the Maoris should at no time have referred to it. Had it been made, surely they would have said so, and relied upon it, in their discussions with Mr. Commissioner Bell in 1858/1862, instead of which the attitude they adopted was to admit that where their title had been extinguished—i.e., by sale to Europeans—any right of theirs to the land was at an end, and that they had nothing to do with the apportionment of it between the Crown and its subjects.
- (v) The statement is alleged to have been made on the 26th December, 1843. Dr. Martin's letter was not written till the 6th April, 1844. In giving his recollection of what had been said three months earlier he may well have made an honest mistake; he may even mistakenly but honestly have been attributing to Governor Fitzroy an expression of the idea of himself or some of his friends in their discussions of these land questions.

85. Even if Governor Fitzroy did make the statement, at best it was unauthorized, and in any case I do not see how it could raise an equity in the Maoris to the return of the surplus lands, and the same observation applies to any difficulty (if it existed) that the Maori may have had in understanding by what right the Crown acquired the "surplus." If the land had been bought in good faith and for a fair consideration, what equity could the Maori have to the return of any portion of the land?

86. The only reference that I have heard of to the statement imputed by Dr. Martin to Governor Fitzroy is contained in Mrs. Wilson's thesis, "Land Problems of the Forties," at pages 125 and 126, where Dr. Martin's statement is substantially reproduced, merely, of course, as a statement by Dr. Martin. But, as I have said, I cannot accept Dr. Martin or his book as authoritative, nor can I find that he has been so accepted by any historian.

87. As to the extract from pages 306 and 307 of Dr. Martin's book, the mind of the author was clearly confused, and the material part of the statement is self-contradictory. That material part consists in the sentence: "The injustice of the Government was also manifested in the declaration that the surplus lands which Europeans might have *fairly* purchased from the Natives, *but for which they had not given a sufficient consideration*, would revert to the Government, and not to the Native *who was presumed to have been cheated or overreached*." The portions of the statement that I have italicized are self-contradictory, and that makes the whole of it incorrect and worthless. If the land was *fairly* purchased, that necessarily connotes that a sufficient consideration was given; and, if the purchase was fair, how could it be *presumed* that the Native had been cheated or overreached? What the Government had said was that when land had *not* been bought on equitable terms (which includes a fair consideration) the land would revert to the Natives, the presumption being that in that case the Native had been cheated or overreached; it was only where the land *had* been purchased on equitable