

38. In their written claims the purchasers were required to state, and, if it were not stated in the claim, they seem to have been called upon by the Commissioners to state in evidence, the supposed area of the land which they were purchasing. The Commissioners (if they considered that the purchase was made in good faith and that the consideration was fair) would then recommend, as might be appropriate in the circumstances, either a grant of the whole of the land or else a grant of the supposed area, or a lesser area if the application of the "yardstick" so required, out of the lands described in the deed of sale. These grants would in law have been voidable on the ground of uncertainty and perhaps on other grounds, but in the circumstances it was the best and, indeed, the only thing that the Commissioners could do. Legislative steps were subsequently taken to remove the uncertainty and other legal objections to the grants. They will be mentioned later, but they do not affect the point that I am dealing with at the moment. It is the fact, however, that in a large number of cases, when the land came later on to be surveyed, it was found that the area as surveyed turned out to be greater (in some cases very much greater) than the supposed area—that is to say, the area which the purchaser thought he was buying. However, the claims were all heard by Commissioners Godfrey and Richmond, grants were issued in accordance with the recommendations made, and there the matter rested for the time being.

39. It may be stated at this stage that some of the grants were issued for larger areas than the Commissioners had recommended, but, of course, it must be remembered that the Commissioners were bound by the "yardstick," which they could not exceed. In some cases where, even by the yardstick, a purchaser would have been entitled to more than 2,560 acres, the recommendation was necessarily, by reason of the provisions of the Ordinance, limited to that area, and Governor Fitzroy, on his own initiative, or at least by his own volition, where he thought that there should be a grant for more than the area recommended, whether the recommendation was 2,560 acres or less, took steps whereby the area was increased. In many cases he referred the recommendation for reconsideration to a new Commissioner (Mr. Fitzgerald). It has been said that he should have referred the reports back to the Commissioners who made the original reports, but he was unable to do that because what I am now speaking of all took place after the retirement from the office of Commissioner of Messrs. Godfrey and Richmond in 1844, Mr. Fitzgerald being appointed under an amending Ordinance of that year.

40. That some of Governor Fitzroy's actions were irregular and *ultra vires* on his part is shown by the case of *The Queen v. Clarke*, which went to the Privy Council on appeal from the judgment of the Supreme Court of New Zealand and is reported in *New Zealand Privy Council cases* at page 516. But I can pass over all this without further discussion because whatever awards of lands were made by Governor Fitzroy were made out of lands which were the property of the Crown and did not in any way prejudicially affect the Natives. It must always be remembered that, after all, in the case of each and every purchase the Crown could, had it chosen to do so, have granted the whole of the land to the purchaser, or none of it, and in neither case could the Natives have had any ground of complaint. *The Queen v. Clarke* was apparently heard by the Privy Council in July, 1849, but judgment was not given till May, 1851. In the meantime the *Quieting Titles Ordinance, 1849* (of which more anon), was passed which had the effect in a general way of validating doubtful titles; that is another reason why Governor Fitzroy's acts in increasing the areas of grants have no significance in this inquiry.

41. It has been objected that Governor Fitzroy acted wrongly in making the extended grants as the claims were heard in open Court before the original Commissioners, and the rehearing therefore should likewise have been open to the Natives, or at least an agent should have been appointed to watch the proceedings on their behalf. There is no validity in this objection, because, as is correctly pointed out by Mrs. Wilson in *Land Problems of the Forties* (p. 88), a work to which I understand the other members of the