

Commission attach some importance, in the Commissioners' Court *evidence had been heard as to whether the lands claimed by the whites had been fairly bought from the Maoris, and, once this was established, the Natives had nothing further to do with the subsequent allotment of the whole or only part of the land to the white claimants.* [The italics are mine.] Though, of course, the author is not an authority on the legal aspects of these problems, she does in the passage from which I have quoted, though perhaps implicitly rather than explicitly, state both the legal and the equitable position quite correctly in that the Crown was the owner of the land at law and the Native vendor could have no equity in any surplus lands where the lands had been held to have been fairly bought. But in any case the doubt, if there ever was one (which in my view there clearly was not) was resolved by the Quieting Titles Ordinance.

42. The next legislation dealing with land claims—omitting the Land Claims Ordinance, 1842, mentioned previously in paragraph 27, which was disallowed by the Queen—was the Land Claims Ordinance Amendment, 1844 (Sess. III, No. 3). All that that did was to provide that the powers of hearing, examining, and reporting on claims under the original Ordinance, given thereby to two Commissioners, might be exercised as fully and effectually by any single Commissioner, and to validate all acts previously done by a single Commissioner which might have been lawfully done by any two Commissioners under the authority of the original Ordinance. As stated already, Mr. Fitzgerald was appointed a Commissioner under this amendment, the original two Commissioners, Messrs. Godfrey and Richmond, having retired from office, one of them to accept another position in the South.

43. There was another Ordinance of the same year (1844, No. XX), which enacted that, in all cases where any claim to land had been or might be confirmed by a grant from the Crown under the provisions of the original Ordinance of 1841, the legal estate in the land comprised in such grant was deemed to have been in the grantee thereof from the date of the purchase by him of such land.

44. Notwithstanding the provision contained in the last-mentioned Ordinance, the position still remained very unsatisfactory, because of the fact that the lands had not been surveyed and the description in the grants of the land actually granted to each grantee was necessarily vague and uncertain. This vagueness and uncertainty, however, was a matter which concerned only the grantee and the Crown, inasmuch as the Crown was at law the owner of any surplus that there might have been over and above the actual acreage intended to be granted to the purchaser; the Maori vendors were not concerned, because they had sold the land to the purchasers and their title had thereby been extinguished. That position is implicit in a "Notice to Land Claimants" issued as early as 27th September, 1842, and published in the *New Zealand Gazette* of the following day, the material paragraph being as follows:—

The Crown Grants will convey the number of acres to which the Claimant shall have been found entitled. Should the boundaries marked out by the Contract Surveyor at any time be found to contain a greater quantity of land than shall be contained in the Deed of Grant, the excess will be resumed. The particular portion of the land to be resumed, will be selected at the discretion of the Surveyor-General.

The word "excess" of course means the "surplus land," and the words "will be resumed" connote resumption by the Crown.

45. Next in historical sequence come the two Proclamations by Governor Fitzroy purporting to waive the Crown's right of pre-emption in respect of certain lands—the first dated the 26th March, 1844, and referred to as the "Ten-shilling-per-acre Proclamation," and the second dated the 10th October, 1844, referred to as the "Penny-per-acre Proclamation." But, as I indicated earlier in passing, these two Proclamations raise problems of their own and should be considered separately from the "old land claims." I shall deal with this particular subject-matter after I have concluded my