

were found to be ultimately entitled to, without obliging them to prove the extinction of the Native title, would be a direct contravention of, and in utter opposition to, the spirit of the Treaty of Waitangi.⁽¹⁾ The Governor of the Company complained to the Colonial Office that the proceedings were founded on an entire misconception on the part of the Commissioner of the position in which the agreement with Her Majesty's Government of November, 1840, followed up by the Pennington awards, had placed the Company in relation to the lands which that agreement entitled them to select within certain specified limits.

Very little progress was made by the Commission, and the investigation dragged on for three years, during which time the uncertainty as to the validity of the land-titles exasperated the settlers. Complaints appeared in the press,⁽²⁾ the progress of the Company's settlements was retarded, and, more serious still, the Natives adopted a changed attitude, which in time became one of aggression. Spain, unfamiliar with the Maori language and customs, commenced his proceedings with a minute investigation into the Native system of land-tenure. He endeavoured to decide upon the claims according to the inapplicable principles of English law, and not according to Native equity and the peculiar circumstances of an uncivilized country. He spent months and months in the examination of Native witnesses, when, according to the Hon. W. P. Reeves, "speed was the first thing needful, also the second, also the third."⁽³⁾ His investigations certainly showed that Colonel Wakefield had given but little attention to the carefully drafted instructions handed to him by the Company on the eve of his departure from England. In an interim report to Acting-Governor Shortland, dated 12th September, 1843, Spain stated—

"That, as far as the evidence has gone, the Company's purchases were made in a very loose and careless manner; that descriptions were put on deeds without taking the trouble to inquire whether the thousands of aboriginal inhabitants occupying the surface of those vast tracts of territory alleged to have been purchased had been consenting parties; that a greater portion of the land claimed by the Company in the Port Nicholson district had not been alienated by the Natives to the Company, and that other portions had only been partially alienated⁽⁴⁾; that the Natives did not consent to alienate their pas, cultivations, and burying-ground; that the explanation by the interpreter of the system of reserves was perfectly unintelligible to the Natives."⁽⁵⁾

While the Commissioner's exhaustive inquiries revealed many glaring errors both of omission and commission the consequent delay gave the Maoris opportunities which they were quick to grasp. There had been a few cases of repudiation before Spain arrived, but now scores of families and individuals came forward claiming that they had been overlooked, and requiring compensation. The more enlightened ones demanded gold; others guns, or horses, or similar valuable goods; and finally it was discovered that Natives from other districts had moved to places in the vicinity of the European settlements, attracted by the prospects of compensation. An amicable settlement as far as Wellington was concerned was ultimately effected by the payment of £1,500⁽⁶⁾ to the unsatisfied claimants to land within the limits described in the first deed of conveyance of the Port Nicholson district, and on the 31st March, 1845, Commissioner Spain made his final awards, which still left the land question far from settled. The following is the text of the Wellington award:—

"I, William Spain, Her Majesty's Commissioner for investigating and determining titles and claims to land in New Zealand, do hereby determine and award that the directors of the New Zealand Company in London and their successors are entitled to a Crown grant of 71,900 acres of land, situate, lying, and being in the district or settlement of Port Nicholson, or Wanganui-Atera, in the southern division of New Zealand. The country land comprising 708 sections of 100 acres each, making together 70,800 acres, and the town land comprising 1,100 acres, which said land and the several districts in which it is situated are more particularly set forth and described in the schedule contained in Enclosure No. 3 of this report, which said schedule was agreed and determined upon on the 8th day of February, 1844, between Colonel William Wakefield, the Principal Agent of the New Zealand Company, for and on behalf of that body, on the one part, and George Clarke the younger, Protector of Aborigines, for and on their behalf, on the other part, and are delineated and set forth upon the accompanying plan to this report annexed marked Enclosure No. 12. Saving and always excepting as follows: All the pas and burial-places and grounds actually in cultivation by the Natives, situated within any of the said lands hereby awarded to the New Zealand Company as aforesaid, the limits of the pas to be the ground fenced in around the

(1) Great Britain—Papers relating to New Zealand, 1844.

(2) The *New Zealand Gazette* complained that "the dubious state of the Company's title destroys the security of every title in Cook Strait; because of the ten thousand British inhabitants of those settlements, every occupier derives his title from the Company."

(3) "The Long White Cloud," by W. P. Reeves.

(4) House of Commons Report on New Zealand, 1844.

(5) Surgeon-Major A. S. Thomson, of the 58th Regiment, in his "Story of New Zealand: Past and Present," Vol. 2, dealing with the protests by the Natives against settlers appropriating land around Wellington, says: "It was found that Colonel Wakefield had bought 20,000,000 of acres from fifty-eight persons, upon which land 10,000 souls were living of different tribes from those who sold the land, each of whom, according to Native custom, had a vested right in some part of it, and according to Native usage a voice in its disposal; that missionaries and whalers, previously to Colonel Wakefield's bargain, had bought portions of the same lands from the Natives; and that the New-Zealanders denominated the Company's land-purchases 'thievish bargains.'"

(6) £950 of this amount was paid as follows: To the Natives of—Te Aro, £300; Kumutoto, £200; Pipitea, £200; Tiakiwai, £30; Pakua, £10; Kaiwarawara, £40; Waiwetu, £100; Waiariki, £20; Oterango, £20; Ohau, £20; Tikimaru, £10: total, £950. The following sums were offered and refused: The Hutt, £300; Ohariu, £190; Pito-one, £30; Ngahauranga, £30. Of the unpaid balance, £400 was subsequently paid, by direction of Captain FitzRoy, to Rauparaha and Rangihaeata, who by deed dated the 12th November, 1844, consented to surrender Heretaunga to the Governor of New Zealand on behalf of the New Zealand Company in consideration of this sum. (Spain's awards; and Maori Deeds of Land-purchases, North Island, Vol. 2, deed No. 3.)