1873.

NEW ZEALAND.

MEMORANDUM BY MR. A. MACKAY ON ORIGIN OF NEW ZEALAND COMPANY'S "TENTHS" NATIVE RESERVES.

Presented to both Houses of the General Assembly by command of His Excellency.

SIR,— Native Reserves' Office, Nelson, 28th July, 1873.

The decision in the Court of Appeal in Regina *v.* Fitzherbert having cast a doubt on the legal status of a great deal of valuable property both in Wellington and Nelson, and understanding that the Government are desirous of obtaining all possible information affecting the New Zealand Company's "tenths" with a view to have the status of these lands satisfactorily settled, I have the honor to forward herewith for the information of the Hon. Native Minister, a history of these lands from the commencement, which will be found to contain abundant and clear evidence of the intention of these reserves, as also the construction put upon them by the Imperial Government at a time when the affair was fresh in men's minds.

I am aware that a Bill has been prepared to give a legal status to all the company's reserves that have not been allocated to other purposes, but it seemed desirable to place their history on record while it was possible to obtain the information, and should the compilation prove of less importance than may reasonably be anticipated it will be a matter of little moment, as the work has been done outside the hours alloted to official business.

I have, &c.,
ALEXANDER MACKAY,
Commissioner.

The Under Secretary Native Department, Wellington.

Enclosure.

MEMORANDUM on the origination of the Native Reserves set apart by the NEW ZEALAND COMPANY in accordance with their scheme of colonizing New Zealand.

It is necessary for the clear understanding of the history of these reserves to go back to the period at which the first attempt was made to colonize New Zealand. The earliest scheme of the kind was suggested by the celebrated Benjamin Franklin, who in 1771 published proposals for forming an association to fit out a vessel by subscription to proceed to New Zealand, the main object of the expedition being to promote the improvement of the New Zealanders by opening for them a means of intercourse with the civilized world.

In 1825 a commercial company was formed in London under the auspices of the late Earl of Durham, which despatched two vessels to New Zealand, and acquired land at Herd's Point in the Hokianga river, and also at the mouth of the River Thames. The Company, however, was prevented by circumstances from pursuing its intentions of forming a settlement, and the land in course of time became the property of the New Zealand Land Company of 1839.

In the year 1837 the New Zealand Association was formed in London for the purpose of inducing the British Government to establish a sufficient authority in New Zealand, and to colonize it according to a plan deliberately prepared with a view of rendering colonization beneficial to the Native inhabitants as well as to the settlers. The Imperial Government were at first inclined to favour the association, but after some time a legal difficulty caused the Ministry to oppose it. The association, the Secretary of State said, was not a company trading for profit, but on the condition of it becoming such, a charter would be offered it.

This the association declined to accept on the ground that its members had invariably and publicly disclaimed all views of pecuniary speculation or interest, and were thereby, as well as by a continued disinclination to acquire any private concern in the national work which they sought to promote, entirely precluded from assenting to the proposed condition of raising a Joint Stock Capital.

The association then changed its plan, and attempted to form a Colony by another method. In June, 1838, Mr. Francis Baring, the chairman of the association, introduced a Bill into Parliament which embodied the views of the association as modified by the suggestions they had received from Lord Melbourne and Lord Howick. The Bill, however, was opposed by Her Majesty's Ministers for many reasons, and the House of Commons concurring in their opinion the Bill was thrown out by a large majority.

On the rejection of the Bill the New Zealand Association dissolved itself, but it shortly reappeared under a somewhat altered form and denomination as a Joint Stock Association, which was at first designated the New Zealand Colonization Company, afterwards the New Zealand Land Company, and eventually the New Zealand Company on the issue of a charter in 1840.

It was soon ascertained that Her Majesty's Ministers were as much opposed to the New Zealand Land Company as to the association, and the directors knowing from past experience that it was impossible to move the Colonial Office, determined to consider New Zealand a foreign country and to establish settlements in it without the Crown's permission. With this view they resolved to send an expedition to New Zealand under the direction of an agent for the purpose of acquiring land from the Natives. This charge was confided to Colonel William Wakefield, with instructions to select the spot which he should deem most eligible as the site of a considerable Colony, and to make preparations for the arrival and settlement of the emigrants.

On the 2nd May, 1839, the Company issued a prospectus: Capital, £400,000 in 4,000 shares of £100 each; deposit £10 per share. This was subsequently reduced to £100,000 in 4,000 shares of £25 each. Governor, the Earl of Durham; Deputy Governor, Mr. Joseph Somes; and a directory consisting of Lord Petre, Sir George Sinclair, M.P., and Sir Henry Webb, baronets, Colonel Torrens, Aldermen Thompson, M.P., and Pirie; Messrs John Abel Smith, W. Hutt, M.P., G. Palmer, M.P., George F. Young, Russell Ellice, Stewart Marjoribanks, and several other gentlemen of high standing.

On the 12th May, 1839, before the Directors had divulged their scheme to the public the ship "Tory," 400 tons burden, sailed for New Zealand, having on board Colonel Wakefield, the company's chief agent, and other gentlemen, as a preliminary expedition to make preparations for the colonization of the country. Two days after the ship was clear of England's shores, the directors announced that the company was formed to purchase land in New Zealand, promote emigration, lay out settlements, re-sell such lands according to the value bestowed on them by emigration, and with the surplus money give free passages to skilled tradesmen and agricultural labourers.

The Colonial Office was completely surprised at this step; an explanation and an account of the whole affair were immediately demanded by the Secretary of State, and Lord John Russell informed the directors that the instructions sent out for the government of the emigrants and the entire expedition was illegal, because no body of Englishmen could form a Colony in any country without the consent of the Crown.

After a considerable display of wordy resistance, the directors admitted their mistake, asked for a favorable construction of their motives, and put themselves under the protection of Her Majesty's Ministers.

In the same year (1839) that the New Zealand Company commenced their operations, the Imperial Government, in consequence of a large body of Her Majesty's subjects having taken up their abode in New Zealand, and from other persons residing in the United Kingdom having formed themselves into a society, having for its object the acquisition of lands and the removal of emigrants to those Islands, considered it advisable for the protection of the inhabitants, whether European or aboriginal, to establish a form of civil Government amongst them as the only means of averting the evils which an unauthorized settlement of the Islands appear to threaten. Accordingly in June, 1839, letters patent were issued authorizing the Governor of New South Wales "to include within the limits of that Colony any territory which is or may be acquired in Sovereignty by Her Majesty, her heirs and successors, within the group of Islands commonly called New Zealand lying betwen 34° 30′ and 47° 10′ S. lat." In the following month Captain Hobson, of H.M.S. Rattlesnake, who had formerly visited and reported on New Zealand,

July 30, 1839. received the appointment of British consul.

Captain Hobson called at Sydney on his way out from England, and after taking the necessary

January 14th, 1840. *oath of office* and receiving his commission, he sailed for New Zealand, accompanied by the officials who had been appointed to assist him in the administration of affairs. He arrived at the Bay of Islands on the 29th January, 1840. On the following day the commission extending the limits of New South Wales so as to comprehend New Zealand, and appointing Captain Hobson Lieutenant Governor over such parts of the Islands as had been or should hereafter be ceded in Sovereignty to the British Crown, and the proclamation framed by Sir George Gipps, announcing the assertion of Her Majesty's rights over New Zealand and the illegality of any title to land not confirmed by the Crown, were formally read to the settlers assembled at or near the site of the present town of Russell.

On the 1st June, 1839, the company issued proposals for the sale of nine tenths of a township of 110,000 acres, in lots of 101 acres for £100 per lot, each lot comprising 100 acres of country land and one town section. One tenth of the land offered for sale was to be reserved for the benefit of the Natives; priority of choice for the whole of the sections was to be decided by lottery. According to the terms of the prospectus, an officer of the company was to draw in the same manner for the 110 sections reserved and intended for the Native chiefs, and the choice of these reserved sections was to be made by an officer of the company in the settlement according to the priority so determined.

In consequence of the rapid disposal of the land contained in the preliminary sales, the directors issued another prospectus on the 30th July, 1839, announcing their readiness to receive applications for country lands to the extent of 50,000 acres in sections of 100 acres, at the price of £100 a section, or £1 an acre; the whole amount to be paid in full in exchange for a land order. The holders or their agents to be entitled to select land either at the company's principal settlements, or at Hokianga, Kaipara, Manakau, or any other part of the present or future territories of the company, so soon as the requisite surveys thereof shall have been completed. No mention, however, of Native reserves is made in these proposals.

Colonel Wakefield with the preliminary expedition arrived in New Zealand on the 17th of August, 1839, and in compliance with his instructions selected Cook's Strait as the centre of the company's operations. Shortly after his arrival he entered into a treaty with the Natives for the purchase of lands, and in the course of three months concluded three purchases extending from the 38° to the 43° of south latitude on the West Coast, and from the 41° to the 43° on the east coast; the deeds of purchase being dated respectively the 27th September, 1839, 25th October, 1839, and the 8th November, 1839. To the first of these, in obedience to Colonel Wakefield's instructions from the Company, which required him to make a similar stipulation in every deed, is appended a condition that a portion of the land ceded by the Native chiefs equal to one-tenth of the whole, would be reserved and held in trust by the New Zealand Company for the future benefit of the said chiefs, their heirs and families for ever. The second and third deeds likewise contain a promise of Native reserves, but the quantity is not specified. They merely recite that a portion of the land ceded by the Natives suitable and sufficient for the residence and proper maintenance of the said chiefs, their tribes and families will be reserved by the New Zealand Company, and held in trust by them for the future benefit of the said chiefs, their families and successors for ever. The quantity in so far as the Nelson settlement was concerned, was ultimately fixed by the terms of the prospectus issued by the Company in London on the 15th February, 1841, in terms of which the Company engaged, subject to an arrangement with Her Majesty's Government, to add to the 201,000 acres offered for sale a quantity equal to one-tenth thereof as Native reserves, so that the quantity of land to be appropriated would in fact consist of 221,100 acres and the town of 1,100 acres.

According to the original plan of the New Plymouth settlement the town was to consist of 550 acres, to be divided into 2,200 town sections of a quarter of an acre, which were to be sold at £10 each; and 200 sections were to be reserved for gratuitous distribution among the Native families dwelling near the settlement. A belt of land round the town containing 10,450 acres, exclusive of roads, was to be divided into 209 surburban sections of fifty acres each, nineteen of which were likewise to be reserved for the Natives.

The Native reserves made by the company within their purchases were confirmed by the Crown in the agreement made by Lord John Russell with the Company in 1840 prior to the issue of their Charter.

The quantity of land claimed to be purchased by Colonel Wakefield under the terms of the aforesaid deeds amounted to 20,000,000 acres. The consideration paid consisted entirely of articles of barter, the value of which it is difficult to determine.

Formal possession was taken of Port Nicholson or Wellington district, on the 30th September, 1839. The site of the first town named Brittania, was chosen at the entrance of the valley of the Hutt, but the choice proving unsuitable it was decided at a public meeting held in March, 1840, to remove the town to the opposite side of the bay.

The site of the new town was called Wellington, and according to the plan on which the settlement was founded it was laid out in 1,100 sections of one acre each besides reserves for public purposes; 1,100 rural sections of 100 acres each were also laid out in various parts of the neighbouring country. Each purchaser in London of one right of selection became entitled to an order of choice determined by lot as soon as all had been purchased, to select one town and one country section. 110 sections were reserved for the Natives, and treated precisely in the same way as to order of choice as though each of the sections had been purchased by a private individual.

In the instructions from the Colonial Office in 1839 (Lord Normanby to Captain Hobson, 14th August, 1839), regarding land in New Zealand, Captain Hobson was directed to induce the chiefs, if possible, to enter into a contract with Her Majesty that thenceforward no land should be disposed of either gratuitously or otherwise except to the Crown of Great Britain, and that immediately on his arrival he was to announce by proclamation addressed to all the Queen's subjects in New Zealand that Her Majesty would not acknowledge as valid any title to land which either had been or should thereafter be acquired, without it was either derived from or confirmed by a grant to be made in Her Majesty's name and on her behalf. In conformity with these instructions Captain Hobson shortly after his arrival in New Zealand met assemblies of the Natives at Waitangi in the Bay of Islands, and Hokianga and induced them to agree to the treaty which has been named after the former place.

By the second article of this instrument which was officially promulgated and laid before Parliament:—

"Her Majesty the Queen of England confers and guarantees to the chiefs and tribes of New Zealand and to the respective families and individuals thereof the full exclusive and individual possession of their lands, estates, forests, fisheries, and other properties which they collectively or individually possess so long as it is their wish to retain the same in their possession, but the chiefs of the united tribes, and the individual chiefs yield to Her Majesty the exclusive right of pre-emption of such lands as the proprietors thereof may be disposed to alienate, at such prices as may be agreed upon between the respective proprietors and persons appointed by Her Majesty to treat with them in this behalf."

The right of pre-emption being vested in Her Majesty by the aforesaid treaty, no persons could legally purchase lands from the Natives after 1840 without permisssion or license from the Crown, or according to the rules prescribed by Colonial laws. The acquirement of Native land had also been interdicted prior to the promulgation of the Treaty of Waitangi by a proclamation issued by Sir George Gipps, the Governor of New South Wales, in January, 1840, within whose jurisdiction New Zealand had been placed. This proclamation was promulgated by Governor Hobson on the 30th January, 1840, and in August in the same year, the Governor and Council of New South Wales passed an Act (Land Claimants' Ordinance) under which Commissioners were appointed to enquire strictly into all the circumstances under which land was said to have been purchased by British subjects from the New Zealanders. By a provision of this Act, 2,560 acres were fixed upon as the largest quantiy that any individual could retain in virtue of cession from the Natives, and a legal title could only be issued by the Representative of the Crown, to obtain which it was necessary to prove that a reasonable consideration had been given to the Native proprietors. A commission was issued to Major Richmond, Colonel Godfrey, and Mr. Fisher, appointing them Joint Commissioners under the Act.

On the 21st May, 1840, the Governor proclaimed the Sovereignty of Her Majesty over the North Island by virtue of the Treaty of Waitangi, and over the Southern Islands on the ground of discovery.

On the 16th November, 1840, a Charter was signed by Her Majesty erecting New Zealand into a separate Colony, and which provided that thenceforth the three principal Islands were to be known as New Ulster, New Munster, and New Leinster; Captain Hobson was appointed Governor and Commander-in-Chief of the new Colony, and instructions were issued under the Royal Sign Manual, dated the 5th December, 1840, prescribing his powers and duties, and those of the Legislative and Executive Councils. These instruments were officially proclaimed in the Colony on the 3rd May, 1841.

The Charter empowered the Governor to grant "waste lands" either to private persons or to corporate bodies, but the following paragraph states:—

"Provided always, that nothing in these our letters patent contained shall affect or be construed to affect the rights of any aboriginal Natives of the said Colony of New Zealand to the actual occupation or enjoyment in their own persons, or in the persons of their descendents of any lands in the said Colony now actually occupied or enjoyed by such Natives."

Finally, the Governor was enjoined to use every effort to "promote religion and education among the Native inhabitants, to protect them in their persons, and in the free enjoyment of their possesions; by all lawful means to prevent and restrain all violence and injustice which may be attempted against them, and to take such measures as appear necessary for their conversion to the Christian faith, and for their advancement in civilization."

With reference to the Land Claimants' Ordinance of 1840 passed by the Governor and Council of New South Wales, to empower the Governor to appoint Commissioners with certain powers to examine and report on claims to grants of land in New Zealand, Lord John Russell in a despatch to Governor Hobson dated April 16th, 1841, informs him that although Her Majesty had been pleased to approve the general provisions of the Act, that circumstances to which it was impossible the legislation of New South Wales should have adverted, would probably render the execution of it difficult, if not impossible.

The separation of New Zealand from New South Wales would also render obsolete and impracticable those enactments which require the interposition of the Governor of the older Colony. The arrangements with the New Zealand Company forbade the application of the Act in its existing form to the case of lands to be granted to them, while some revision also was necessary of the rules respecting the number of Commisioners.

Lord John Russell further states that in reference to the Company's claims, they are to be committed to the investigation of the single Commissioner appointed by Her Majesty for that purpose, and not to the three Joint Commissioners as the Act had provided. The Governor was therefore instructed to prepare a similar law to be passed in New Zealand to meet the exigencies pointed out.

In the meanwhile the local Government of New Zealand had already thought it desirable to enact a law on land claims by their own authority. The new Act passed on the 9th June, 1841, by the Governor and Legislative Council at Auckland to repeal the Act of 1840, was almost a literal transcription of that measure. Under its provisions the Governor was empowered to appoint Commissioners to hear, examine, and report on claims to grants of land in virtue of titles acquired from the Natives, such claims to be made at latest within twelve months from the date of the Ordinance. This was the principal alteration, the first act limited the time for the presentation of claims to six months. A scale of fees to be paid by land claimants was scheduled with the Ordinance, and Major Richmond and Colonel Godfrey, who had been previously selected by Sir George Gipps, were re-appointed Land Commissioners by Governor Hobson. All awards recommended by the Commissioners on being approved by the Governor, were to be notified in the Government *Gazette*.

Lord Stanley to Governor Hobson, dated 19th December, 1842,

In the meantime it had been necessary to provide in England for the peculiar circumstances of the New Zealand Company. This case stood by itself. Not only had the Company embarked in an amount of expenditure with which the outlay all other claimants could enter into, had no kind of comparison; but what perhaps more particularly distinguished their case, instead of having merely paid for their lands they had incurred heavy expenses for sending out emigrants from the United Kingdom, and purchasing goods and stores for their use.

Under these circumstances an agreement was concluded in November, 1840, by which they were to have credit for the latter as well as for the former branch of expenditure; and the price to which land was to be assigned to them for the whole was fixed at 5s. an acre.

In consideration of receiving a Charter the company was to waive all claims to lands in New Zealand on the ground of purchases from the aborigines, and to receive from the Crown a free grant of four times as many acres as it could prove it had expended pounds sterling for the purposes of colonization. This offer was accepted, and a Charter issued to them on the 12th February, 1841; the Company's capital fixed at £300,000, whereof two-thirds were to be paid up within the year; and an accountant (Mr. Pennington) was named to investigate the expenditure.

With reference to the reserves made by the company within their purchases for the Natives, the 13th Clause of the Agreement transmitted to the company by Lord John Russell makes the following provision:—

"It being also understood that the company have entered into engagements for the reservation of certain lands for the benefit of the Natives, it is agreed that in respect of all lands to be granted to the company as aforesaid, reservations of such lands shall be made for the benefit of the Natives by Her Majesty's Government in fulfilment of and according to the letter of such stipulations, the Government reserving to themselves in respect of all other lands to make such arrangements as to them shall seem just and expedient for the benefit of the Natives."

In evidence given by Mr. Edward Gibbon Wakefield before a Select Committee, appointed by the House of Commons, to take evidence on New Zealand, in 1840, in reply to a question put by the chairman (Lord Eliot) as to the terms upon which the 20,000,000 acres purchased by Colonel Wakefield for the Company had been acquired from the Natives he said:—"That the terms were a payment in the first instance of various goods such as the Natives require, but which the company regard as a mere nominal price; they had paid for their waste lands a much higher price than had commonly been paid by other purchasers in the first instance; but the consideration which they offered to the Natives, and which they regarded as the true purchase money of the land was the reserved eleventh, which eleventh by means of

the expenditure of the Company, would acquire in a very short time a higher value than all the land possessed before, as for example the Company have purchased all our lands, let me say in New Zealand for £10,000, the price of goods paid to the Natives in the first instance, but the land which we have reserved for the Natives has become by means of an expenditure in sending out a Colony so valuable, that we could sell that reserve here in London if it were desirable for the good of the Natives, for £30,000 now; and if the Colony goes on, it is clear that within a few years from this time the land may be worth £100,000. Supposing the whole of the Company's territory to be 20,000,000 of acres, the quantity reserved for the Natives will be nearly 2,000,000. I feel myself quite satisfied that if the measure were to proceed in the best way, every acre of land reserved would be worth at least 30s., so that there would be an endowment of 3,000,000 sterling in the course of time as a Native provision."

In reply to a question from Mr. E. Buller, as to what security there is that the Natives will have the benefit of it? Mr Wakefield, said :—"That there is no security at present, because the Government has hitherto refused to let law be established in New Zealand, so that it is impossible to execute a trust. The Company are very desirous of placing this land in trust for the benefit of the Natives."

"They have considered the subject a good deal, but they have found great difficulty in defining, till they have b etter inrmation, what the trusts ought to be. Their object in reserving those lands has been to preserve the Native race. That the Native race in New Zealand will undergo the same fate which has attended other people in their situation there is little doubt, unless their chief families can be preserved in a state of civilization in the same relative superiority of position as they before enjoyed in savage life; and with this view the Company is desirous of investing them with property."

"But if it placed the property at once at their disposal, they would sell it for a trifle. It became therefore necessary to create a permanent trust. That the Company would do as soon as they possibly can, and in the meantime they have appointed a Commissioner, whom they have sent out for the purpose of preserving, letting, and taking care of these lands."

Mr. Wakefield in further evidence stated :—"That the Company had instructed their agent to pay but little consideration to the subject of the first consideration money for the land, because they regarded all the payments that had been made in New Zealand by missionaries and others, only as little more than nominal; and they laid down a plan of reserves of land for the Natives, which they hoped would become in the long run a very valuable consideration indeed. They determined to reserve a portion equal to one-tenth of all the land which they should acquire for the Native families."

"The reserved rights for the Natives were acquired as all other rights of choice by lot. The land orders were reserved for the benefit of the principal chiefs and their families. The reserves at that time had not been placed in trust, because the information before the Company as to the state of the Natives was so meagre that they were unable to define the trusts, but they have the territory in which the tenths were situated, and as soon as better information had been obtained, steps would be taken to devise some proper trusts of these lands for the benefit of the Natives, for if they were appropriated to the Natives at once as their private property, they would be parted with in grog shops and other places in a very short time."

The witness being asked to define the form of land order issued by the Company to purchasers, stated :—

"That it was an order by the Company upon its Surveyor-General, or its principal officer in the Colony, to award to the holders of that land order so many acres of land, signed by three directors and the secretary. The priority of choice was determined by lot, and the Natives' sections were drawn for like others; and as they were not present an officer of the Company drew for them. The first number drawn for the Natives was No. 7, consequently the officer of the Company in the Colony would have the seventh choice as respects both the town and country lands for the Natives."

Mr. Ward, the secretary of the Company, in reply to a question from the Committee, said :—

"That it was not proposed that the Natives should take possession of the tenth reserved for them on the land being surveyed, but that trustees would be appointed to hold it for the inalienable use of the Natives, the proceeds to be applied for the benefit of those Natives who had surrendered the lands."

"The Company had already appointed a gentleman (Mr. Halswell) to go out and take upon himself the management and control of those lands; to secure the land, and to do what may be necessary for clearing and looking after it, and managing it for the benefit of the Natives."

The following extract from the New Zealand Company's instructions to their principal agent contains the points alluded to by Mr. E. G. Wakefield, in his evidence before the Select Committee :—

"But in one respect you will not fail to establish a very important difference between the purchases of the Company and those which had hitherto been made by every class of buyers. Wilderness land, it is true, is worth nothing to its Native owners, or nothing more than the trifle they can obtain for it. We are not, therefore, to make much account of the utter inadequacy of the purchase money according to English notions of the value of land."

"The land is really of no value, and can become valuable only by means of a great outlay of capital on emigration and settlement. But at the same time it may be doubted whether the Native owners have ever been entirely aware of the consequences that would result from such cessions as have already been made to a great extent of the whole of the lands of a tribe."

"Justice demands not merely that these consequences should be as far as possible explained to them, but that the superior intelligence of the buyers should also be exerted to guard them against the evils which they may not be capable of anticipating. The danger to which they are exposed, and which they cannot well foresee, is that of finding themselves entirely without landed property, and therefore without consideration in the midst of the society where through immigration and settlement land has become a valuable property. Absolutely, they would suffer little or nothing from having parted with land which they do not use and cannot exchange, but relatively—they would suffer a great deal, inasmuch as their social position would be very inferior to that of the race who had settled amongst them, and given value to their now worthless territory. If the advantage of the Natives alone were consulted it would be better, perhaps, that they should remain for ever the savages that they are. This consideration appears never to have occurred to any of those who have hitherto purchased lands from the Natives of New

Zealand. It was first suggested by the New Zealand Association of 1837, and it has great weight with the present Company. In accordance with a plan by which the Association of 1837 was desirous that a Legislative enactment should extend to every purchaser of land from the Natives, as well past as future, you will take care to mention in every *pukapuka* or contract for land that a proportion of the territory ceded, equal to *one-tenth* of the whole, will be reserved by the Company, and held in trust by them for the future benefit of the chief families of the tribe. With the assistance of Ngati, who is perfectly aware of the value of land in England, and of such of the more intelligent Natives as have visited the neighbouring Colonies, you will readily explain that after English emigration and settlement, a tenth of the land will be far more valuable than the whole was before, and you must endeavour to point out, as is the fact, that the intention of the Company is not to make reserves for the Native owners in large blocks, as has been the common practice as to Indian reserves in North America, whereby settlement is impeded, and the savages are encouraged to continue savage, living apart from the civilized community, but in the same way, in the same allotments, and to the same effect as if the reserved lands had been purchased from the Company on behalf of the Natives."

"The Company intend to sell in England to persons intending to settle in New Zealand and others, a certain number of orders for equal quantities of land—say 100 acres each—which orders will entitle each holder thereof, or his agent, to select according to a priority of choice to be determined by lot from the whole territory laid open for settlement, the quantity of land named in the order including a certain portion of the site of the first town, and one-tenth of these land orders will be reserved for the chief families of the tribe by whom the land was originally sold, in the same way precisely as if the lots had been purchased on behalf of the Natives. The priority of choice for the Native allotments being determined by lot as in the case of actual purchasers, the selection will be made by an officer of the Company expressly charged with that duty, and made publicly responsible for its performance."

"The intended reserves of land are regarded as far more important to the Natives than anything which they will have to receive in the shape of purchase-money at the same time we are desirous that the purchase money should not be less inadequate according to the English notion of the value of land than has been generally the case in the purchase of territory from the New Zealanders."

As a further proof of the regard displayed by the New Zealand Company towards the Natives, Mr. Somes also points out in a letter to Lord Stanley, dated January 25th, 1843, appendix 12th report, p. 162c, the measures adopted by the Company to provide for their future wants, and that "although the Company by way of a recompence for the moment and to comply with the exigencies of opinion, had paid down what according to received notions was a sufficient price, the real worth of the land they thought they gave only when they reserved as a perpetual possession for the Native a portion equal to one-tenth of the lands which they had purchased from him. This was a price which he could not squander away at the moment, but of which, as time passed on, the inalienable value must continually and immensely increase for his benefit and that of his children. Heir of a patrimony so large, the Native chief instead of contemplating European neighbours with jealous apprehension as a race destined to degrade and oust him, would learn to view with delight the presence, the industry, and the prosperity of those who in in labouring for themselves, could not but create an estate to be enjoyed by him without toil or risk."

"Nor was this design confined to barren speculation. In every settlement which we have formed, a portion, equal to one-tenth, of town as well as rural allotments, has always been reserved for the Natives; in the lottery by which the right of selection was determined, the Natives had their fair chance, and obtained their proportion of the best numbers; and in the plans of Wellington, Nelson, and New Plymouth, your Lordship may see the due number of sections, including some of the very best in each, marked out as Native reserves. Nor is this, even now, a valueless or contingent estate. At the most moderate average, according to the present rate of prices, the hundred acres of Native reserves in the town of Wellington alone would fetch no less than £20,000. And we beg to remind your Lordship that, in order to render the property available for the use of the Natives, the New Zealand Company offered more than a year ago, to advance the sum of £5,000 on the security of the Wellington reserves, to be applied under the sanction of the Government, for the benefit of the Natives."

Again, Mr. Somes, in a letter to Mr. Vernon Smith, dated March 19, 1841, concerning a petition addressed to the Queen from the Rev. W. Williams, a member of the Church Missionary Society, in New Zealand, praying the interposition of Her Majesty to protect the rights and interests of the Natives in their lands under process of colonization in the Northern Island, after refuting the charge as far as the Company was concerned goes on to say:—"The Company has never pretended that any sum paid by it to the Natives on the execution of an agreement for the purchase of land, was an adequate consideration for the property ceded. Such payments the Company has always deemed as unfit to be called by the name of purchase money."

"The real consideration which in every case the Company held out to the Natives in its acquisition of territory from them was a precise engagement to reserve for the benefit of the Native proprietors such a proportion of the lands ceded as would become far more valuable than the whole, whenever the remainder should be regularly colonized by an outlay of the Company's capital, and the settlement of emigrants from this country."

"Hitherto this principle of purchase has been carried into full effect with respect to only 110,000 acres of land; but the Native reserves, consisting of one-eleventh of the whole, divided into town, suburban, and country sections, which have been allotted to the Natives in the same manner as if they had been purchased from the Company at the rate of 20s. per acre, are estimated to be of the present market value of £40,000, a sum very far exceeding the whole consideration which has been given by other parties to the Natives of New Zealand during the last twenty years."

With reference to certain lands in the occupation of the Natives in the Port Nicholson district in excess of the quantity they were entitled to, Mr. Somes in writing to Lord Stanley on the subject, under date December 21st, 1842 (Appendix, 12th Report of N. Z. Co., p. 130c) remarks that "the Native reserves of which the *Government is trustee* for the aborigines afford abundant means for removing all existing embarrassments, and that too without alienating any considerable portion of that property which

the directors always regarded as the most valuable portion of the consideration given to the Natives for their title (whatever it may be) to the wild lands which are already much more valuable than were the whole trusts previously to the formation of the Company's settlements, and to which the operation of the Company and of the colonists are every day adding fresh value. If then the Natives would rather retain possession of their former dwellings and cultivated grounds than remove to occupy the reserves, it will be equitable as well as simple to compensate the settlers (who have derived title through the Company, and who, relying on the goodness of that title, have selected spots in actual occupation or enjoyment of the Natives which the latter are now unwilling to give up) with an equivalent from the Native reserves, in regard to which the aborigines will have given the most unequivocal proof that they regard them no less valuable than that which they prefer to retain. It may be added that throughout the Company's settlements one-eleventh of all the land offered for sale has been allotted to the Natives; and that, wherever, as in the case of the town of Wellington, those parties have insisted upon retaining possession of spots in their 'actual possession or enjoyment' over and above the portions set apart for them as above mentioned, they necessarily enjoy more than one-eleventh, and the Europeans less than ten-elevenths of the whole area which the original scheme proposed to lay out in the proportion in question."

In reference to the above Mr. Under-Secretary Hope replied to Mr. Somes, under date January 10th, 1843, in the following terms, which may be looked on as tantamount to a Declaration of Trust on the part of the Home Government, with regard to the New Zealand Company's "tenths":—

"There remains but one other point to which Lord Stanley deems it necessary to advert, namely, the proposal contained in your letter of the 20th December, that settlers disappointed in obtaining particular lands shall be compensated out of the Native reserves. Such reserves, as Lord Stanley understands them, are proportionate parts of the land sold by the Natives, *which have been conveyed to the Government*, to the benefit of which the Natives are entitled in addition to the continued enjoyment of such lands as belong to them and they have not sold. To compensate out of the former, parties who have expected to have obtained the latter, would be, it seems to Lord Stanley, to make the Natives pay for the disappointment of expectations which they were not answerable for having raised; a course which would at once involve injustice towards them, *and a breach of trust* on the part of the Government. Should it appear in consequence of a diminution of the extent to which a title is established by the Company at Wellington, that more than the proper proportion has been set apart as a reserve, Lord Stanley will of course not object to the reserve being so reduced as to bring it within the proportion which it ought to bear to the whole; but he can permit no diminution to take place in the amount once definitely ascertained to be the proper proportion."

In fulfilment of the intention of the Imperial Government to send out a Commissioner with independent authority to investigate the claims of the New Zealand Company, Mr. William Spain was appointed by a warrant under the Sign Manual, dated 20th January, 1841, and sent expressly from England armed with the full powers of the Crown itself for investigating and determining titles and claims to land in New Zealand. Whereas the Commissioners appointed under the Local Ordinance having no such authority could only make recommendations to the Governor subject to the rules prescribed by the aforesaid Ordinance, which recommendations the Governor was not bound to adopt.

Mr. Spain sailed from England on the 23rd April, 1841, but did not reach the Colony until December of the same year, having been shipwrecked by the way. Shortly after his arrival he was appointed (by Commission under the seal of the Colony dated, 22nd February, 1842) a Commissioner under the Local Ordinance.

The first sitting of the Court of claims was opened at Wellington on the 16th May, 1842, at which date the claims of the New Zealand Company came on for hearing amongst a number of others of a private character, previously advertised in the New Zealand *Gazette* of April, 1842.

Very little progress, however, was made in investigating the Company's claims, in consequence of the defective nature of some of the purchases, the Natives absolutely denying the sale of many places comprised within the boundaries claimed by the Company. Colonel Wakefield writing to Mr. Commissioner Spain, under date 22nd August, 1842, with reference to the adjustment of these claims, says:—"With a view to the final settlement of a question upon which the prosperous settlement of no inconsiderable portion of these islands so much depends, I propose, on the part of the New Zealand Company, to abide by the decision of yourself and the protector of aborigines, Mr. Halswell, as to the amount of compensation to be made by the Company to all Natives in cases of disputed possession or title to land."

Mr. George Clarke, junr., in January, 1843, was substituted for Mr. Halswell, with Colonel Wakefield's consent.

Before much progress had been made in investigating the question, the negotiations were suspended by Colonel Wakefield in March, 1843, in consequence of a remonstrance made by the Directors of the Company to the Secretary of State, at their being made liable for any further expenditure than that from which Mr. Pennington had awarded land to the Company.

In January, 1844, Colonel Wakefield consented on behalf of the Company to resume the arbitration, which, as it appears from Commissioner Spain's report of the 31st May, 1845 (pp. 1846, page 4) resulted in an amicable settlement upon which he made his final award. The terms and conditions of the resumed arbitration were definitely arranged at a conference held at Wellington on the 29th January, 1844, at which the Governor, Colonel Wakefield on behalf of the Company, Commissioner Spain, and others were present.

The terms of compensation were to be left to the arbitration of Mr. G. Clarke, junr., protector of aborigines, and Colonel Wakefield the Company's agent, with leave to refer to Mr. Spain as umpire in the event of any difference of opinion arising between them. The lands so to be estimated for compensation were to be all that had been surveyed or given out for selection in the Port Nicholson district, independently of the pahs, cultivations, and Native reserves set apart by the Company.

The sum of £1500 was ultimately agreed on as sufficient to compensate the unsatisfied claimants to land within the limits described in the New Zealand Company's Deed of Conveyance of the Port Nicholson district. Of this amount £950 was paid as follows:—to the Natives of Te Aro, £300;

Kumutoto, £200; Pipitea, £200; Tiakiwai, £30; Pakuao, £10; Kaiwarawara, £40; Waiweta, £100; Waiariki, £20; Oterango, £20; Ohau, £20; Tikimaru, £10; and the following sums were offered and refused—the Hutt, £300; Ohariu, £190; Pitoni, £30; and Ngauranga, £30. Of the unpaid balance, £400 was subsequently paid by direction of Governor Fitzroy in November, 1844, to Rauparaha and Rangihaeta for the claims of the Hutt district.

Out of the fifteen tribes or families claiming compensation eleven received payment, and executed the necessary release of all their claims. The same form as that signed by the people of Te Aro, of which the following is a copy, was adopted in all the other cases, viz.—"We have received on the 26th of the days of February, in the year 1844, from the Directors of the company at London, the payment being made by William Wakefield, the agent of the Company, £300 of money, a full payment, a full satisfaction, an absolute surrender of all our title to all our claims in all our land, which are written in the document affixed to this, viz. all the places at Port Nicholson and in the neighbourhood of Port Nicholson, in New Zealand, and on the other hand the pahs, the cultivations, the sacred places, and the places reserved will remain alone for us, and we consent ourselves to write in a land conveying document hereafter, if asked to write them, to the Directors of the said Company, of all our claims within the said lands, the only places left for us are those above mentioned."

Governor Fitzroy was present during the two first days the Court of Land Claims sat at Wellington after the arbitration was resumed in February, 1844, and, after addressing the Natives assembled through Mr. Forsaith, caused the foregoing documents to be read by Mr. George Clarke to the Natives of Te Aro.

His Excellency also explained to the Natives through the same medium that the payment about to be made in compensation for land purchased some time before, was made by Colonel Wakefield as the agent of the New Zealand Company, on behalf of whom he purchased it, and that Mr. Commissioner Spain was appointed by the Queen to inquire into and decide finally on all these questions.

In March, 1845, Mr. Spain made his final award in the following terms:—

"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 pahs 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 pahs to be the ground fenced in around the Native houses, including the ground in cultivation or occupation around the adjoining houses without the fence, and the cultivations are those tracts of country which are now used by the Natives for vegetable productions, or which have been used by the aboriginal Natives of New Zealand since the establishment of the Colony; and also except the 39 Native reserves of 100 acres each, and the 110 town acres, which said Native reserves are also set forth in the said schedule, and delineated upon the said plan except the two Native reserves of 100 acres each marked upon the said schedule as Native reserves reserved."

In August, 1844, Mr. Spain held a court at Nelson to investigate the Company's claims to that district, and subsequently awarded to the Company the whole of the land claimed with the exception of the Wairau, subject to the same reservations as regards pahs, &c., as are contained in the award made of the Port Nicholson district, with the exception only that the Native reserves as defined, to be one-tenth of the 151,000 acres granted.

It was found on examination that, besides the articles alluded to in the deeds as forming the consideration paid by the Company for these lands to the signing parties, Captain Wakefield immediately on his arrival with the preliminary expedition, assembled the resident Natives of the several districts in the vicinity of Nelson, and made them presents of merchandize to the value of £980 15s. 0d. A further payment of £800 was also made to the Natives by the Company during the investigation, and sanctioned by Mr. Spain.

This sum was looked on as an act of grace and good will on the part of the Company towards the Natives as the price of future peace.

In May, 1844, Commissioner Spain held a court at New Plymouth to investigate the claims of the New Zealand Company to that district, and eventually awarded them a block of 60,000 acres upon payment of £200 to be applied for the benefit of the resident Natives, subject to the same reservations with regard to pahs and cultivations similar to those in the other awards, and also excepting all the Native reserves equal to one-tenth of the 60,000 acres awarded to the Company.

In the Whanganui award the Company upon payment of £1,000 to the Natives of that district were declared entitled to a grant of 40,000 acres, subject to exceptions and reserves in favor of the Natives similar to those in the Port Nicholson award, to one-tenth of the 40,000 acres and to some rights of fishery in certain pieces of water specified in the award.

It appears that by subsequent arrangements that most of the Company's reserves at Whanganui were either amalgamated or thrown up in lieu of other lands taken for the purpose, at the final completion of the Whanganui purchase in May, 1848, see Mr. M'Lean's report of September, 1848, in land purchase report 11 r. 1861, c. No. 1.

The claims of the Company to Porirua were disallowed. In the Manawatu award the Company were declared entitled to 100 acres, and in consideration of the payment made by Captain Smith on the part of the Company amounting to £1000 they were declared to be entitled to the block of land at Manawatu described in the memorandum of sale.

On the 29th July, 1845, Crown Grants were issued by Governor Fitzroy to the Company in precise

accordance with Mr. Spain's awards for the Wellington and Nelson claims. The Company's agent declined, however, to take up the deeds until the matter could be referred to the Court of Directors in England.

The award of 60,000 acres made by Mr. Spain to the New Zealand Company, at New Plymouth, in 1844, was set aside by Governor Fitzroy, who declared his intention of so doing in August of the same year, and in the month of November following restricted the settlers to a block of 3,500 acres immediately around the town, giving up the rest to the Natives. In consequence of this arrangement the original scheme of the settlement was entirely upset.

In January a Crown Grant of the restricted quantity was offered to the principal agent of the New Zealand Company and refused.

The question was subsequently arranged by Governor Grey by the purchase of an additional block of land from the Natives sufficient to satisfy all the requirements of the settlement at the time.

The New Zealand Company on learning the terms of the Port Nicholson and Nelson deeds, took exception to them, and the matter was afterwards represented to the Secretary of State for the Colonies, who instructed Governor Grey to inquire into the subject of complaint and take such measures for the relief of the Company, if he found such representations correct, as was in his power to adopt.

The chief grounds of complaint made by the Company against these deeds were that the Wellington deed reserved "all the pahs, burial places, and grounds actually in cultivation by the Natives. Also the Native reserves comprising forty-one country sections of one hundred acres each, and one hundred and ten town sections,—together with four portions of land granted to private claimants, the extent of which is not stated, except in one instance,—an acre and a half,—and all land set apart as Government reserves for public purposes."

The Company contended that the reservation of the spots in the town of Wellington claimed by private purchasers was directly at variance with the public pledge contained in the letter addressed to Colonel Wakefield by Governor Hobson on the 6th September, 1841. Although of comparatively small extent these reservations comprise some of the most valuable portions of the shore of Port Nicholson. The quantity of land comprised within the Native cultivations as defined in these instruments cannot be stated with accuracy, but are estimated to include at least one-sixth, and not improbably one-fourth of the whole of that part of the town of Wellington on which buildings have been erected.

In the Nelson deed the reservations for the Natives are of precisely the same character, and worded in the same manner, with the exception only that the Native reserves are defined to be one-tenth of the 151,000 acres granted, and that in lieu of specific grants to particular individuals, a clause is inserted "excepting any portions of land within any of the lands hereinbefore described to which private claimants, or any private claimants, hereafter prove that they, or he, or any of them had a valid claim prior to the purchase of the New Zealand Company."

"With regard to the pahs and burial places, the amount of which is not known, the only remarks which the directors desire to offer, are that the extent of the Native reserves was fixed by the Company in the belief that the whole of the remainder was the Company's property, and that in excepting from the Nelson deed on account of such, one-tenth of the land granted, Governor Fitzroy appeared to have overlooked the fact that in the published prospectus for the settlement (dated 15th February, 1841), it was stated that the Native Reserves would be equal to one-tenth of the lands offered for sale, that is to one-eleventh of the quantity comprised in the entire scheme. The reservation also in the Nelson deed of all private claims which have been or may be hereafter proved without limitation of time, rendered the land altogether unavailable, and the deed therefore in the apprehension of the directors altogether of no effect."

On these grounds the directors earnestly hoped that the aforesaid deeds would not obtain the sanction of the Imperial Parliament, but that instructions would be given to Governor Grey for remedying the injury so far as a remedy is yet practicable, by the execution of new grants freed from the objectionable clauses complained of.

In pursuance with the instructions received Governor Grey took steps to relieve the Company from the difficulties arising from the loose exceptions made in the grants respecting Native pahs and cultivations, &c., and a warrant was issued to the Attorney-General directing that proper means should be taken for applying to the local courts to annul the Grants.

In 1848, a fresh grant was issued to the Company for the Port Nicholson and Nelson districts.

The Port Nicholson deed is dated the 27th January, 1848, and conveys to the Company 209,247 acres, "excepting and always reserving out of the aforesaid grant the reserves and exceptions, all of which reserves and exceptions with their boundaries and abuttals are particularly delineated and described in the said plan, and in the plan of the town of Wellington, and in the schedules of the said plans attached thereto."

A grant was also issued to the Company on the same date for 68,896 acres at Porirua, for which a sum of £2000 had been previously paid in satisfaction of the Native claims, subject to certain reservations described in the schedule to the deed. The fresh grant to the Company of the Nelson district is dated 1st August, 1848, and includes besides the land comprised within the limits of the award made by Mr. Spain, all the Wairau district with the adjacent country purchased from the Ngatitoa tribe in 1847. Besides the Native reserves in the town of Nelson and in Motueka set apart in accordance with the New Zealand Company's scheme, and a large block of land in the Wairau, the deed also excepted certain reserves for the Natives in Massacre Bay, which had been previously surveyed in 1847, by the direction of the Government, and which came under the category of pahs and cultivations.

Prior to the issue of the fresh grant the Government, on behalf of the Native trust, had consented to relinquish 47 of the town reserves to the Company, under the arrangement entered into between that body and the original land owners, with regard to the terms of a re-selection agreed on by a Committee appointed by the latter. This arrangement reduced the Native reserve sections in the town of Nelson from 100, the original number, to 53, or to one-tenth of the land within the town then actually sold.

The large block of land in the Wairau district excepted from sale by the Natives in 1847, was

supposed to represent the extent of land they were entitled to within the Nelson settlement under the rural selections, consequently no other provision was made under that head. Unfortunately for the interests of the trust this land was included in the subsequent sale of the adjacent country by the Natives in 1853.

Although the block alluded to contained a larger proportion of land than the Natives were entitled to, the want of proper precautions at the time caused a diminution in the estate of 1,500 acres, the original quantity set aside under the Nelson scheme as Native reserves being 20,100 acres, viz:—100 town sections of one acre each, 100 suburban sections of 50 acres each, and, 100 rural sections of 150 acres each, out of which only 5,057 acres have been retained.

In further reference to this subject:—

Mr. Commissioner Spain in a letter to the Colonial Secretary, dated January 29th, 1843, commenting on a letter received from the Company's principal agent, covering a statement of the land proposed to be chosen under Mr. Pennington's award, which after deducting the lands already chosen and the Native reserves, left a balance of 745,919 acres to be selected in other localities, states:—

"That he was of opinion that Colonel Wakefield had committed an error in making his calculations exclusive of the Native reserves instead of inclusive, as it would seem from a letter written by Governor Hobson to Colonel Wakefield, dated 25th September, 1841, that the quantity guaranteed to the Company by him amounted to 160,000 acres to be chosen in the neighbourhood of Port Nicholson and New Plymouth. At the time that letter was written the reserves for the Natives had been actually made and chosen upon the Company's plans of those districts, and that had Captain Hobson intended to guarantee to the Company the 160,000 acres of land exclusive of the Native reserves it would have been so specified in his letter." And the conclusion put by Mr Spain upon the 13th clause of the agreement of 1840, was that "the New Zealand Company having agreed out of the lands purchased to make certain reserves, the Government had determined that such reserves shall now be made out of the lands about to be granted to the Company, and to take the management of such reserves into its own hands, instead of leaving it to the New Zealand Company."

Mr. Shortland, the acting Governor, in reply, dated 12th April, 1843, directed Mr. Spain "to accede to Colonel Wakefield's request regarding the selection of the land in satisfaction of Mr. Pennington's award, together with the 160,000 acres purchased by them from the Government, in any block or blocks within the Company's territory, provided they conform in figure and extent to the regulations laid down in clause 6 head 1, of the agreement of 1840."

"But this point as well as the one regarding Native reserves the acting Governor decided to submit for the decision of the Secretary of State. In the meantime Mr. Spain was to inform the Company's agent that an allowance in land will be made equal in amount to the Native reserves, and also to the lands selected in blocks as at present prescribed under the regulations, in the event of these questions being decided in favour of the Company."

With reference to the 13th clause of the agreement of 1840, the Company's view of the matter was this:—

"The engagements and stipulations alluded to are contained in the deeds of purchase between the Natives and Colonel Wakefield. The intention of the clause was a covenant on the part of the Colonial Office that the Government to whom was surrendered all the lands except the portion to be granted to the Company, should fulfil their engagements by reserving a specific proportion, not out of, but 'in respect of' the lands to be granted to the Company, and make such other arrangements as might be fully deemed an equivalent for that proportion 'in respect of all the lands.'"

The interpretation put by the Colonial Office upon that covenant is contained in the following instructions from Lord Stanley to Governor Fitzroy, dated April 18th, 1844, having reference to the various points submitted by the acting Governor (Mr. Shortland) in a letter dated April 17th, 1843, says:—

"Turning now to the subject of Native reserves there can be, I think, no question that they should be taken out of the Company's lands. The Company had, in former instructions to their agent, provided for reserving one-tenth of all the lands which they might acquire from the Natives for their benefit. By the 13th clause of the agreement of 1840, the Government was in respect of all lands to be granted them (the New Zealand Company) to make reservations of such lands for the benefit of the Natives in pursuance of the Company's engagements to that effect. It seems quite plain therefore that the Government is to reserve for this purpose one-tenth of the Company's lands. The fact is almost proved by the very language of Colonel Wakefied's accounts themselves; for on assuming that the Government was to allow for Native reserves over and above the quantity assigned for the Company, he is obliged to designate these lands as the eleventh of the total grant, a proportion which was never heard of until the present statement arrived."

"The reserves in question must therefore be taken from some part of the Company's lands."

With reference to this question a Committee of the House of Commons appointed in 1844, to enquire into the state of New Zealand, and to enquire into the proceedings of the New Zealand Company, resolved *inter alia*:—

"That reserves ought to be made for the Natives interspersed with the lands assigned to settlers with suitable provision for regulating their alienation, and preserving the use of them for the Natives as long as may be necessary, and that those reserves ought not to be included in calculating the amount of land due to the Company."

Lord Stanley in a despatch to Governor Fitzroy, under date August 13th, 1844, in commenting on the report made by the Committee, says in allusion to the resolutions passed by them relative to Native reserves:—

"The Committee (see p. 11 of their report) lay great, and as it seems to me very just, stress upon the adoption of a good system of Native reserves. I agree with them in opinion that the Natives should be encouraged as far as possible to settle upon land reserved for them interspersed with the lands of European settlers, rather than large and detached blocks wholly isolated; but this is an object which can be only gradually accomplished, and which you must induce the Natives to adopt of their own accord, and to

which you cannot drive them by force. I understand, indeed, that the local Government has already acted upon this plan, and also anticipated the suggestion of the Committee to lease to Europeans, if they can be induced to take them, portions of the land reserved for the benefit of the aborigines, which they may not require for their immediate occupation. With regard to the reserves within the Company's territory the Committee express an opinion by their 10th resolution 'that these reserves ought not to be included in calculating the amount of land due to the Company'; but I do not find this subject adverted to in the report, nor any reason assigned for the conclusion at which the Committee appear to have arrived."

In October, 1840, Mr. Edmund Halswell, a member of the English bar, was appointed by the New Zealand Company to the office of Commissioner for the management of the lands reserved for the Natives in their settlements, and general directions were given him for the administration of the property. Mr. Halswell was a member of the "New Zealand Association" formed in 1837, and after the irregular acts of the New Zealand Company had been sanctioned by the Government in the arrangement made by Lord John Russell, he resolved to visit the Colony. The Company accordingly, as he had always taken a lively interest in the welfare of the aborigines, asked him to undertake the management of their plan of reserves for the Natives, of which, as a member of the Association of 1837, he was one of the authors.

The Company directed Mr. Halswell in managing the reserves to take into consideration the existing wants of the Native race, and to point out those objects to which in his judgment the revenues of the reserves may be most fitly appropriated to the end of promoting the moral and physical well being of the Native chiefs, their families and followers, to the utmost extent that these means would admit, and as the appropriation of land to purchasers proceeded, he was directed to select an eleventh or a quantity equal to one-tenth of the lands from time to time as Native reserves, the land so chosen to be the most valuable then open to appropriation. A list of the number of choice of the 110 sections reserved for the Natives at the preliminary sales of lands in the first settlement, was enclosed in the letter of instructions to him, dated 10th October, 1840.

List of the orders of choice determined by ballot in London at the preliminary sales of land, for the selection of the Native reserve tenths in the town of Wellington, viz:—

Nos. 7, 15, 20, 22, 28, 51, 54, 68, 73, 100, 106, 109, 123, 131, 138, 150, 151, 167, 173, 175, 185, 192, 193, 196, 197, 202, 214, 220, 223, 230, 237, 248, 254, 271, 272, 275, 281, 306, 319, 323, 337, 358, 375, 376, 415, 423, 459, 472, 475, 482, 484, 488, 493, 496, 516, 535, 540, 541, 552, 561, 564, 566, 571, 575, 580, 585, 587, 589, 590, 620, 622, 632, 638, 645, 646, 652, 675, 680, 688, 702, 704, 708, 721, 722, 728, 730, 733, 796, 787, 789, 805, 821, 854, 894, 899, 903, 929, 974, 1010, 1012, 1013, 1016, 1020 1030, 1031, 1036, 1042, 1066, 1070, 1086. Total 110.

Under these orders of choice and land orders Captain Smith, the New Zealand Company's principal surveyor, selected the following sections on behalf of the Natives, viz:—

Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, 24, 25, 26, 27, 28, 37, 39, 40, 41, 42, 43, 44, 45, 46, 49, 89, 90, 109, 111, 113, 270, 271, 272, 278, 279, 287, 514, 539, 542, 543, 545, 574, 580, 584, 591, 592, 593, 594, 601, 602, 603, 604, 605, 606, 607, 608, 633, 634, 635, 636, 637, 659, 660, 864, 893, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 995, 996, 997, 998, 999, 1000, 1001, 1002, 1003, 1004, 1005, 1081, 1082, 1098, 1099, 1100. Total 110.

Mr. Halswell landed at Wellington in 1841, and proceeded at once to Auckland. The Government at that time had just been made independent of New South Wales, and being in need of legal assistance to prepare the various Legislative Ordinances called for by the new position of the Colony, Governor Hobson asked Mr. Halswell to become a member of the Legislative Council and to assist in the preparation of these enactments.

Subsequently he was appointed a Commissioner of Quarter Sessions and Court of Requests at Wellington, with a salary of £300 a year, as well as Protector of Aborigines for the southern district, and Commissioner of Native reserves, but without salary for the two latter offices. The two courts were afterwards amalgamated under a separate Ordinance and called the County Court, of which Mr. Halswell was appointed Judge by letters patent [commission under the seal of the Colony dated, 12th March, 1842].

Mr. Halswell was gazetted as Commissioner of Native reserves in May, 1841, and general directions were given him by the chief protector of aborigines under date of 28th September, 1841, regarding the management of the Native reserves for the southern district of the North Island, and the appropriation of the rents and profits thereof, to which additional instructions were added by Governor Hobson (Colonial Secretary to Mr. Halswell, 24th December, 1842), in the following terms:—

"The document alluded to has already instructed you that certain of the lands reserved by the New Zealand Company for the benefit of the aborigines at Wellington, shall be let on lease for periods not exceeding seven years, in the following manner:—

"You will forward an advertisement of all lands to be let, to this office, for insertion in the Government *Gazette*, at least one full month prior to the day fixed for leasing them, stating that tenders for renting the proportions of land therein described will be received by you on a certain day. This advertisement you will also cause to be inserted in the local papers. Your advertisement will further state the terms on which the leases will be granted, namely,—quarterly payments of rent, and an advance on the first year's rent in the shape of a fine equal to 10 per cent. thereon. The tenders are to be opened in the presence of Committee already appointed for the purpose, formed of Mr. Murphy, the Police Magistrate; Mr. Hanson, the Crown Prosecutor; and yourself; and having decided on those tenders to which in the opinion of the Committee preference is to be given, you will cause a schedule of the whole to be made, and forward them with your remarks and reasons for accepting or declining them, to this office, together with a notice for insertion in the *Gazette*." * * * * * * * * *

* * * * * * * * * * * * * * * * * *

"You will pay into the hands of the Colonial Treasurer, every quarter, without deduction or delay, all sums received by you on account of the reserves." * * * * * * * * *

Mr. Halswell retained the office of Commissioner of Native Reserves up to June, 1842, when he was

informed by the Colonial Secretary, Mr Shortland, that by a recent arrangement, the trusteeship of all Native reserves in New Zealand vested in the Bishop of New Zealand and the Chief Justice, and a copy of a letter dated 26th July, 1842, addressed by Mr. Shortland to the Chief Justice and his co-trustees on the subject of this appointment, was forwarded direct to the former trustees by Governor Hobson, of which the subjoined is a copy :—

"SIR,—In the formation of their settlements at Port Nicholson, Nelson, and New Plymouth, the New Zealand Company reserved one-eleventh of their town, suburban, and country allotments for the benefit of the Natives, chiefly with a view to their preservation, civilization, and social advancement.

"Her Majesty's Government has also directed, that as often as any sale shall be effected in the Colony of lands acquired by purchase from the aborigines, there must be carried to the credit of the department of the protector of aborigines a sum amounting to not more than twenty per cent, nor less than fifteen, on the purchase money, to constitute a fund for defraying the expenses of that department and any other charges that may be recommended by the protector and approved of by the Executive Government, for promoting the health, civilization, education, and spiritual care of the aborigines. With a view to the most efficient administration of this property for the benefit of the Native race, it appears desirable that all the reserves so made, or to be made, by the New Zealand Company, and any moneys which may prove from time to time to be disposable out of funds, so to be set apart, after paying the expenses of the protector's department, should be vested in one set of trustees, possessing the confidence of the Government and the New Zealand Company.

"I am therefore commanded by the Governor to acquaint you that His Excellency proposes when the reserves made by the Company shall have become legally vested in the Crown, to submit to the Legislative Council a Bill for vesting them, and the surplus fund from time to time to arise from land sales in three trustees, namely,—the Bishop, Chief Justice, and chief protector of the aborigines for the time being, to be applied by them in the establishment of schools for the education of youth among the aborigines, and in furtherance of such other measures as may be most conducive to the spiritual care of the Native race and to their advancement in the scale of social and political existence.

" It is intended to provide that the funds arising from the Company's reserves shall be expended in the promotion of these objects in the settlement or district from which they may respectively arise, such an application of these funds, under a board of management so consisted, will, His Excellency has reason to believe, meet with general approval.

" Until these objects can be carried into effect under the authority of a Legislative enactment, the Governor requests that you will avail yourself of the opportunity afforded by your periodical visits to the Company's settlements, to direct from time to time the disposal of any funds that may have arisen from the reserves, and to collect any information respecting them that may be desirable with reference to the proposed enactments.

"The gentlemen who have hitherto had the management of the reserves at Port Nicholson will be directed to give up the trusts into your hands, and they will, His Excellency feels assured, give you all the aid and information in their power with a view to its efficient execution.

" I have, &c.,
(Signed) WILLOUGHBY SHORTLAND."

" His Honor the Chief Justice."

Before however anything could be done towards effectuating the intention alluded to in the foregoing letter, Governor Hobson died at Auckland, in September, 1842. The temporary administration of the Government devolved on the Colonial Secretary, Mr. Shortland, who was superseded after a short rule by the appointment of Captain Fitzroy, R.N., as successor to the late Governor.

Shortly after the opening of the third session of the Legislative Council at Auckland, Governor Fitzroy introduced a Bill for constituting the Governor, the Bishop, the Attorney-General, the principal Land Commissioner, and the chief protector of aborigines for the time being, a Board of Trustees for the management of property to be set apart for the education and benfit of the Native race. This Bill passed the Council on the 29th June, 1844, and Governor Fitzroy in forwarding the Act for Her Majesty's approval in a dispatch to Lord Stanley, dated 22nd October, 1844, says :—

"This Ordinance for a totally new object has been framed with extreme solicitude and the signification of Her Majesty's pleasure is anxiously awaited, and that until legal authority is given to those who are ready to act as trustees, no step can be taken in respect of land reserved for the future benefit of the aboriginal race, and no fund can be raised or managed by such trustees for education or for the care of the sick."

The preamble to the Act, after pointing out " the aptitude of the Native people of New Zealand to acquire the arts and habits of civilized life," and that Her Majesty's Government in undertaking the colonization of New Zealand, had recognised the duty of endeavouring by all practicable means to avert the disaster that had hitherto befallen uncivilized nations from the Natives of Europe, recites, " that whereas provision hath been made for the appropriation of certain lands and moneys for the purpose aforesaid, it is expedient for the better administration of the said lands and moneys that trustees should be appointed in whom they shall be vested with certain powers and restrictions as expressed in the Act."

Clause 9 forbids alienation of the property except by lease, and declares all mortgages or incumbrances on the estate to be void.

Clause 28 provides that the Act shall not come into operation until it shall have received the Royal confirmation, and until such confirmation shall have been notified accordingly in the New Zealand Government *Gazette* by direction of the Governor.

The Act received the Royal confirmation in 1845, but did not come into operation in consequence of the terms of this clause not being fully complied with.

Lord Stanley in a despatch to Lieutenant Governor Grey, dated 13th August, 1845, notifying Her Majesty's confirmation of the aforesaid Act, says :—

" Among the Acts passed by the Legislature of New Zealand, in the year 1844, there are three to which it seems to me necessary to direct your particular attention," one of which was the act in question to which the following allusion is made :—" The Native Trust Ordinance dated 29th June, 1844, contains

a clause No. 14 enabling the trustees to appoint school teachers, and to prescribe the system of instruction to be pursued in the schools, and to make rules for the regulation and government of them."

"I find that this enactment has given occasion to a protest signed by three members of the Legislative Council, who condemn it as of a sectarian character, and as tending to confine the education of the Natives to teachers in communion with the Church of England, to the exclusion of the teachers of any other bodies of Christians by whom any of the Natives may have been brought into the Christian Church."

"Now, in the first place, the Bishop of New Zealand is the only one of five trustees who must of necessity be a member of the English Church, so that in point of fact the sectarian principle of which complaint is made, is not adopted in this law; and in the next place, I cannot hesitate to record my conviction, that in our attempts to impart the blessings of education to a race of men in so defective a state of civilization, we ought not to be deterred by the charge of narrow or sectarian views from keeping as far as possible out of sight those ecclesiastical controversies which so habitually agitate more advanced societies."

"If any case can be imagined in which minor distinctions should disappear to make way for the advance of the great truths, doctrinal and practical of our common faith, it is the case of the aborigines of New Zealand. If any case can be suggested in which controversy on subtle questions of belief would be fatal to the great end to which all such discussions ought to be subservient, it is the case of these inquisitive and comparatively ignorant people. In their proper place and in their due season such disputes may be innocuous; but in the Native schools of New Zealand they would at present be most inopportune and disastrous; and I must acknowledge that I shall not regret (but the contrary) to hear that the trustees appointed under this Act are all of one mind as to the mode in which the scholars should be taught, as to the books they should read, as to the rites and ceremonies with which their social worship should be conducted."

"Her Majesty is pleased to confirm and allow this Ordinance."

In the absence however of documentary evidence it is difficult to form an opinion as to why the Act was not brought into operation, without it was a dread on the part of the local Government that sectarian controversies might eventually take place in working out its provisions.

In October, 1844, after arrangements had been made to create New Zealand an independent Diocese, the New Zealand Company offered the Imperial Government to advance a sum of £5,000 on mortgage of the Native reserves in the Company's settlements, for the immediate benefit of the Natives, conditionally that by some sufficient Act of the Government the property in the reserves should be placed under efficient protection and management. The Government also to undertake the responsibility of determining in what manner, for what purpose, and under whose control the fund derived from the Native reserves should be expended.

The Company applied to the Secretary of State to obtain Her Majesty's sanction to the proposal, but owing to the terms of the proposition being insufficient, the Company having omitted to state to whom the money was to be paid, or who was to be responsible for repayment, Lord Stanley asked for further information on the subject.

The Company stated that the proposal in connection with the stipulation made in the first communication, was made on the application and in compliance with the suggestions of Bishop Selwyn who had undertaken to make known to Lord Stanley the views of the Company in regard to the formation of a local board of management composed of such high official personages in New Zealand as might from motives of benevolence be willing to undertake such a trust. In reply to this Mr. Under-Secretary Hope, under date 29th April, 1842, states that he is directed by Lord Stanley to acquaint the Directors that he will be happy to communicate with the local Government of New Zealand on the subject, and for that purpose his Lordship desired to be informed of the rate of interest which it is proposed to charge, and also the mode in which it is proposed that the payment either of principal or interest shall be secured, if at all otherwise than by the power of foreclosure. Mr. Somes in answer to Lord Stanley's call for further information respecting the offer of the Company to advance a sum not exceeding £5,000 on mortgage of the Native reserves in the Company's settlements, stated that the Directors would be satisfied with the lowest rate of interest obtaining in those settlements at the time that such advance may be made upon loans on the most eligible security of landed property the principal and interest to be secured them by power of sale added to the ordinary power of foreclosure. The Directors also pointed out that it was essential to the important objects in regard to the Native population which alone induced them to offer the advance that the principal expenditure and control both of the reserves and the funds necessary for their immediate improvement should be placed in such hands as would secure them at least from all hazard of wilful mismanagement or neglect. They also deemed it right to add with all deference that they were not satisfied with the measures adopted by Governor Hobson for the protection and management of the Native reserves at Wellington, and that without better security for the efficient superintendence was held out they would not be warranted in making any advance of the Company's funds for the purposes stated.

The question was ultimately referred by Lord Stanley to the Governor of New Zealand. In the meantime Bishop Selwyn had proceeded there, and shortly after his arrival in the Colony he was associated with the Governor and the Chief Justice as Trustee of the Native Reserves in terms of an arrangement made between the Home Government and the New Zealand Company that the property should be placed in the hands of these functionaries. The Governor soon after declined to act, and the Chief Justice resigned the office as he found the duties incompatible with his official position, for in the event of the trustees being engaged in any law suit he would be both Judge and party in the suit at the same time. Mr. Halswell was subsequently appointed by the Bishop to the sole charge of the reserves in the Wellington district, and Mr. Henry St. Hill received a similar appointment as agent of the lands reserved for the Natives in the district of Taranaki, Wanganui, Manawatu, and Porirua, and such other districts as may be opened for choice. Ultimately, the lands in the Wellington district were also placed under Mr. St. Hill's management.

Mr. H. A. Thompson, the police magistrate at Nelson, was appointed Agent of the Native Reserves in that settlement in the latter end of 1841, and acted in that capacity till June, 1843, when he perished

in the massacre at Wairau. After the death of Mr. Thompson, the Bishop appointed Mr. McDonald, of the Union Bank of Australia, his agent.

On the arrival in the Colony of Lord Stanley's despatch of the 7th June, 1842, transmitting copies of the correspondence between his Lordship's department and the New Zealand Company to advance a sum of £5,000 on the mortgage of the Native reserves, the duty of administering the affairs of the Colony had devolved on the Colonial Secretary, Mr. Shortland, in consequence of the death of Governor Hobson.

The acting Governor referred the correspondence on the foregoing subject to the Bishop, who was one of the trustees at the time, and asked him to report as to the advisability of accepting the offer made by the Company. In reply, his Lordship pointed out that the great objection to the proposed plan arose from the condition required that the payment of the principal and interest should be secured by power of sale added to the right of foreclosure. The right of foreclosure had been abolished by the Colonial Ordinance for regulating mortgages, and that a power of sale could not be granted over lands which are by their very nature inalienable, under the circumstances his Lordship could not concur in the proposition. The acting Governor concurred with the Bishop's view of the case, and informed the Secretary of State to that effect (29th September, 1842).

The correspondence on the subject was afterwards referred to Governor Fitzroy (31st July, 1843), who reported that it did not appear advisable to sanction any mode of raising money upon the security of the Native reserves which might by any contingency cause the alienation of those lands from the beneficial use of the aborigines.

On the 27th February, 1844, the Bishop renounced all connection with the trust in consequence of Governor Fitzroy telling his Lordship that "he did not recognize any trustees of the Native reserves." The Ordinance appointing the trustees was not to come into operation till its confirmation by the Queen had been notified in the Government *Gazette*. The Act received the Queen's assent, but no notification in the *Gazette* was ever given.

Mr. St. Hill continued as agent to receive rents, and Commissioner on both town and country lands till June, 1848, at which date a Board of Management was appointed by the Government, consisting of Colonel M'Cleverty, Mr. D. Wakefield, and Mr. St. Hill, Messrs. Poynter, Carkeek, and Tinline, were also appointed, at the same time a Board of Management of the Native reserves for the district of Nelson. These appointments were duly notified in the Government *Gazette*. The Nelson Board retained the management of the property till the middle of the year 1853, when the sole management devolved upon Major Richmond, the Crown Land Commissioner, and who was ultimately succeeded in the year 1857, by Messrs. Domett, Poynter, and Brunner, by appointment, dated 1st December, 1856, as Commissioners under the Native Reserves Act of 1856. The Wellington board also retained management of the property there until the appointment of Commissioner under the Act of 1856.

The Board at Wellington acted under the supervision of the Lieutenant-Governor to whom all questions were to be referred for approval. The proceeds accruing from the leases of the reserves to be kept in a separate account in the bank, to be denominated the "Native Reserve Fund," to be drawn upon from time to time and appropriated by the Lieutenant-Governor, with the advice of the Executive Council, to objects having in view the welfare and advancement of the Native race.

The Board appointed for the Nelson settlement was placed under the superintendence of Major Richmond with similar instructions with regard to the disposition of the funds.

With reference to the occupation and appropriation of certain of the Company's "tenths" in the town of Wellington, the following memorandum by Lieutenant-Governor Eyre, dated 23rd June, 1848, on the subject, explains the motive for using these lands for purposes foreign to the original intention, and while admitting the right of the Natives to the lands in question, justifies the conduct of the Government in appropriating any portion that may be required for public purposes, on the ground that the Government were placed in an anomalous position without an acre of land at their disposal:—

"Certain lands having been set apart in all the New Zealand Company's settlements as reserves to be managed for the advantage and benefit of the Natives, it was originally intended to have placed them under the management of trustees who, without the power of alienation might make such arrangements for letting or leasing them as would secure the largest pecuniary return, and this return was to be devoted entirely to objects connected with the general welfare, advancement, and improvement of the Native race."

"The trustees who were nominated, however, having found many obstacles to the due execution of their trust gradually ceased to act at all, and at last formally resigned; in the meanwhile many partial arrangements had been entered into with setttlers for the occupation by them of various reserves and portions of reserves, but as these arrangements were not legally binding the agreements were either kept or not, as best suited the interests of the occupants, and very few rents were paid."

"This state of things proving most unsatisfactorily, and having for various causes, continued for a considerable length of time, it seems absolutely necessary that the Government should at once take the matter in hand, and endeavour to turn the reserves to some profitable account."

"The best way of doing this, appears to be by appointing Local Boards of Management, under whose enquiries and recommendations the Government can carry out the necessary details. It is essential that the Government should retain in their hands all control over the reserves, because circumstances have made it desirable that in some instances total alienation of the lands should be sanctioned as for ordnance purposes, or to provide sites for hospitals, for churches, for public offices, or for other similar indispensable objects of general and public utility, the Government having no land left them in the province of New Munster available for such important and necessary purposes."

"Nor will any injustice be done to the Natives by this arrangement, for already, in order to meet their wishes or requirements, or to adjust disputes relative to land, the Government have given up to them 100 acres reserved as a domain, have purchased also additional sections of land in eligible localities, and have paid considerable sums to parties occupying Native reserves to quit them in order that such reserves might be given over to the use and possession of the Natives themselves; in addition also to which the Government have expended considerable sums in promoting objects or institutions calculated to advance the welfare and interests of the Native race generally, such as building hospitals, &c."

"It may fairly be assumed, therefore, that it would only be reasonable and just that the Government, having done so much for the Natives, and being left *without any lands whatever to appropriate to public objects*, should reimburse themselves from the lands originally set apart as reserves to be formed for the benefit of the Natives; already many instances have inavoidably occurred in which the original intention of the reserves has necessarily been departed from, some have been given up to the Natives themselves, some have been exchanged for other lands, which were required by them, or to compensate Europeans for allowing them to remain on sections belonging to settlers, and some have been appropriated in other ways equally inavoidable from the circumstances of the Colony, and the anomalous position of a Government in a new Colony, without an acre of land at its disposal, for the most important public purposes."

"It must be remembered too that since the original plan of Native reserves was first brought into operation, many and large blocks of land, not then contemplated, have been given over to the Natives."

"It is proposed therefore, in all cases where the Government find it necessary, for purposes of public utility or to promote the general advantage, to appropriate any of the reserves, that such portion of them should be taken as may be required for the object in view, and that the *Native Reserves Fund should be compensated by the Government*, allowing a fair and reasonable rate of purchase money for the land taken. The assessing the amount of this compensation would in such cases, constitute one of the duties of the boards of management; other duties attached to them will be the enquiring and examining into the present state of the reserves, and all arrangements which have been partially entered into with respect to them; the hearing and considering all applications for abatement or remission of rents, and all requests for leases or renewals of leases; the proposing terms upon which land should be let, and in fact the investigating and considering all questions connected with the management of the reserves, so as to enable the Board to recommend such arrangements for adoption by the Government as may be best calculated to promote the establishment and growth of a fund arising from the reserves, which can be devoted to objects having in view the welfare and civilization of the Natives."

In the despatch dated 15th August, 1845, addressed to Lieutenant-Governor Grey by Lord Stanley, his Lordship intimates the intention of the Imperial Government to despatch a qualified officer to New Zealand, to assist the New Zealand Company in the selection of land, to aid in surveying the exterior boundaries of such selections, and to judge of the reasonableness of the terms of any purchase which the Company may make from the Natives, with reference to the Company's right to reimbursement for land in respect of moneys paid for such purpose. And by a despatch of the 18th December, 1845, the Governor was informed that Major McCleverty, of the 48th Regiment, had been appointed to that office.

On Colonel McCleverty's arrival in the Colony he proceeded under the Governor's instructions to adjust the difficulties arising from the loose exceptions made in the Grants to the New Zealand Company of all Native pahs and cultivations, &c., and after investigating the question he ascertained that the Natives were occupying under Captain Fitzroy's arrangement (29th January, 1844,) about 639 acres, of which 528 acres were on sections belonging to European settlers, it was therefore recommended as a means of inducing them to relinquish these lands to give them an equivalent in land elsewhere. The chief difficulty in the way of carrying out this proposition was that the Government did not then own any land at Port Nicholson applicable to the purpose, and consequently it was almost impossible to put the Natives in possession of the land requisite to effect an equitable exchange without purchasing it from the Europeans. It was afterwards proposed as a means of adjusting the matter that a portion of the town belt to the extent of 800 acres should be given in part compensation, and that other lands should be purchased in eligible situations to make up the remainder of the quantity required. The matter was finally arranged by awarding land to the Natives on condition of their relinquishing all claims to former cultivations made on lands purchased from the Company by European settlers. The award consisted partly of unselected land, the property of the New Zealand Company, and partly of some of the lands set apart as "tenths." These lands are secured to the Natives by deeds executed by Colonel McCleverty with the sanction of the Governor and the Natives. As further proof that Native reserves were recognized by the Government in the early days of the Colony, "The Municipal Corporation Act" passed by the Governor and Legislative Council of New Zealand (No. 6, of 1842) enacts clause 7, that all lands within the limits of a borough, being a radius of 7 miles from its market place are vested in the Corporation and become its property with the exception of Crown reserves, Native reserves, and allotments sold, or intended to be sold to private persons, and marked accordingly.

Lord Stanley declined to submit the Ordinance for Royal assent partly in consequence of the objection contained in the above recited clause, which if the Act became law, might be the means of vesting large and valuable tracts in the Corporation, and by the sixth clause the Corporation are authorized to erect beacons and lighthouses; a power which properly belongs to the Crown. The chief objection to the Act was that it was repugnant to the Australian Land Sales Act (5 and 6 Victoria c. 36.)

The above named Ordinance was in operation for a short time in the Colony, and was extended by a Proclamation, dated 27th May, 1842, to Wellington, and a Council elected under it. But it was subsequently disallowed for the reasons above stated, and the disallowance notified in the Government *Gazette*, 6th September, 1843.

In the despatch to Governor Grey, accompanying the Charter of 1846, Earl Grey advocates the principles laid down by the late Dr. Arnold, that all waste and unoccupied lands are the property of the Crown, and that the Crown has the sole right to administer them for the benefit of Her Majesty's subjects whether aborigines or colonists, and that if the colonization of New Zealand was only then about to begin these were the principles upon which it would have been his duty to have instructed the Governor to act.

The Royal instructions accompanying the Charter direct (chapter 13), with reference to the "Waste Lands of the Crown," that charts of the New Zealand Islands should be prepared, and especially charts of all those parts of the said islands over which either the aboriginal Natives or the settlers of European birth and origin had established any valid title, whether of property or occupancy, and Natives either as tribes or individuals claiming a property, or possessing title, were to send in claims and have them registered through the protector of aborigines, and all lands not so claimed or registered should be considered as vested in Her Majesty, and constituting demesne lands of the Crown within the

New Zealand islands, and finally, all doubts as to what were the rights of the Natives is removed by the provision contained in clause 9 of the aforesaid chapter, which prescribes as follows :—

"No claim shall be admitted in the said Land Courts within the said islands unless it be established to the satisfaction of such Court that either by some Act of the Executive Government of New Zealand as hitherto constituted, or by the adjudication of some Court of competent jurisdiction within New Zealand the right of such aboriginal inhabitants to such land has been acknowledged and ascertained, or that the claimants, or their progenitors, or those from whom they claim title have actually had the occupation of the lands so claimed, and have been accustomed and enjoy the same, either as a place of abode, or for tillage, or for the growth of crops, or for depasturing cattle, or otherwise for the convenience and sustenance of life by means of labor expended thereon. And for ensuring the observance of the several regulations respecting the preparation of the charts, and the keeping of the registers, &c., and otherwise for carrying into full effect the instructions respecting the several matters aforesaid, the Governor in chief shall by Proclamation to be by him for that purpose issued, make and establish all necessary rules."

The view taken by the Imperial Government of the respective rights of the Crown and of the Natives in the territory of the Colony, was never carried in practice for reasons hereafter stated.

By the 10 and 11 Victoria c. 122, the several provisions relating to the settlement of the waste lands of the Crown, contained in the 13th chapter of the aforesaid instructions, except such as related to the registration of titles to land, the means of ascertaining the demesne lands of the Crown, the claims of the aboriginal inhabitants to land, and the restrictions on the conveyance of lands belonging to Natives unless to Her Majesty were suspended in New Munster.

On the publication of the correspondence, covering the Charter and instructions in the Colony, the Bishop of New Zealand as the head of the Church Missionaries, protested strongly against the doctrine advanced by Earl Grey. The Wesleyan Missionaries also addressed a protest to the Government similar in substance.

The principal objections raised were as follows :—"That the treaty of Waitangi, which guarantees to the Natives the full and exclusive enjoyment of their landed rights, could never be repudiated. That the instructions to Governor Grey were at variance with the terms thereof, and that every acre of land in the country, whether occupied or not, was claimed by the aborigines."

In reply to these remonstrances Earl Grey disclaimed any intention of infringing the rights of the Natives, and in a separate despatch to Governor Grey on the subject (November 30th, 1847), his Lordship pointed out that in point of fact the Government were not in a position to act upon that principle, and that the rights of the Crown could not then be asserted to large tracts of waste lands which particular tribes had been taught to call their own. The Governor was directed in the strongest language to maintain the rights of the tribes already recognized, and that the rights of the Crown where no engagements to the contrary had been made, should be carefully attended to in the disposal of land wherever no property has yet been recognized.

Earl Grey also pointed out that by the instructions accompanying the Charter, the protector of aborigines is there directed to inform the Registrar respecting all lands within his district, to which the Natives "either as tribes or individuals," claim either proprietary or possessory title; and that wherever it shall be shown either that such lands have been actually occupied by the Natives, or that the ownership to such land, although unoccupied, has been recognized by the executive or judicial authorities to be vested in the Natives, such claim shall be finally and conclusively admitted.

With reference to the subject Governor Grey informed Earl Grey May, 15th, 1848, that the Natives although willing to recognize the Crown rights of pre-emption would, to the best of their ability, resist the enforcement of the broad principles maintained by Dr. Arnold. With regard to the regulation issued for the registration of the lands of the Natives the Governor stated "I have thought it more expedient to make the matter of registration of the lands of the various tribes a work of much time rather than to hurry it on too rapidly, and that without the boundaries of the claims of the different tribes being in some way marked upon the ground and mapped, the mere registration of the claims would afford little information, and would be productive of slight utility. The plan adopted under the circumstances was to reserve an adequate portion for the future wants of the Natives out of the purchase made by the Crown, and to register such reserves as the only admitted claim of the Natives in that district. The Natives being furnished with plans of such reserves."

The plan adopted by the Governor was ultimately approved by Earl Grey (January 27th, 1849) in the following terms :—"With regard to the earlier portion of your despatch, in which you mention the course which you have adopted as to the registration of Native claims, I have not on consideration thought any alteration of the instructions necessary, because it appears to me that as they now stand they fully warrant the practice which you at present pursue of registering the portion reserved for the Natives when land purchases are made from them, and which you have my sanction for pursuing."

The New Zealand Company's "tenths" and other reserves excepted in the Grants of the Wellington and Nelson districts executed by Governor Fitzroy in favor of the Company were duly registered with the aforesaid Grant on the 30th July, 1845, r. No. 56, fol. 94. In 1856, an Act for the effective management of Lands set apart for Native reserves, was passed by the General Assembly, the preamble to which is as follows :—"Whereas in various parts of New Zealand lands have been and may hereafter be reserved and set apart for the benefit of the aboriginal inhabitants thereof, and it is expedient that the same should be placed under an effective system of management, &c."

The Act empowered the Governor to appoint Commissioners for the management of these lands, and all lands so vested in them to be considered for all judicial purposes the property of such Commissioners.

The framers of the Act evidently had in view the invalidity of past transactions with regard to these lands, and have expressly avoided validating previous appropriations of Native reserves.

The concluding provisoes of section 16 are as follows :—"Provided always that nothing in this Act contained shall have the effect of removing any invalidity or curing any defect in any Grant or other conveyance made or issued before the passing of this Act, under which any lands may have been granted

or issued to any persons for religious, charitable, or educational purposes, for the benefit of the aboriginal inhabitants :"

"Provided also that nothing in this Act contained shall extend or be implied to extend, to give validity to any appropriation or setting apart, of any lands for such purposes as aforesaid, which have been therefore so appropriated or set apart in contravention of any terms of purchase or contracts affecting such land."

"The Native Reserves Amendment Act, 1862," divested the Commissioners of the powers and estates and transferred them to the Governor with power to delegate.

According to the decision of the Court of Appeal in Regina *v.* Fitzherbert it would seem that the New Zealand Company's "tenths" are lands of the Crown unencumbered with any trust, and as this cast a doubt on the legal status of a great deal of valuable property in Wellington and Nelson, it was deemed advisable to collect the foregoing information on the subject, with a view to clear up, as far as possible, the obscurity that may exist regarding the intention of these lands, and to show the construction put upon them by the Imperial Government, at a time when the affair was fresh in men's minds.

The chief points urged are: That no Charter or Royal instructions have ever given a Governor power to make Native reserves, and that Her Majesty never executed any trust in writing constituting these land reserves for the exclusive benefit of the Native owners.

It is, however, submitted with all deference that these reserves were well and sufficiently made by the Company under their terms of purchase, and that the dedication was confirmed by the Imperial Government in the agreement with the Company of November, 1840.

The 13th clause of the aforesaid agreement provides for the fulfilment of the Company's engagements for the reservation of certain lands for the benefit of the Natives, according to the stipulations contained in the deeds of purchase between the Natives and Colonel Wakefield.

The Crown in all its subsequent dealings with these lands recognized the dedication, and even when the allocation complained of was made the rights of the Natives to the land in question were admitted, the Government justifying the appropriation on the ground that it was placed in an anamolous position without an acre of land at its disposal, but at the same time it was proposed in all cases when the Government found it necessary for purposes of public utility, or to promote the general advantage, to appropriate any of the reserves, that such portion of them should be taken as may be required for the object in view, and that the *Native Reserve Fund* should be compensated by the Government, allowing a fair and reasonable rate of purchase money for the land taken.

It will be seen, therefore, that the Government of the day while appropriating portions of these lands to purposes foreign to the original intention, acknowledged that prior and paramount equities existed which it would be necessary to compensate.

In dealing with the case before the Court several important matters appear to have been lost sight of. No mention is made of Lord John Russell's agreement of November, 1840; Governor Fitzroy's arrangement of January, 1844, relative to Native reserves; Commissioner Spain's award of March, 1845; and the Grant executed in favor of the Company, by Governor Fitzroy in July, 1845, in all of which the reserves are fully recognized.

It would seem then that there is sufficient evidence that the Crown, through its officers, did effectually set apart these lands as Native reserves.

The action of Commissioner Spain alone would be sufficient to dedicate these lands to the purpose to which they were intended, as he was sent expressly from England in accordance with the intention of the Home Government, as expressed in Lord John Russell's letter to Governor Hobson, of the 21st November, 1840, armed with the full powers of the Crown itself for investigating and determining the Company's titles and claims to land in New Zealand, and to decide upon the sufficiency of the purchase money paid to the Natives. And as the real consideration held out by the Company to the Natives on its acquisition of territory from them was a precise engagement to reserve for the benefit of the Native proprietors a portion equal to one tenth of the quantity ceded, it became the duty of the Commissioner to see that the proportion agreed on was fairly and finally set apart.

After the agreement of November, 1840, the Company considered that the Native reserves were vested in the Crown, and this view of the matter is admitted by Lord Stanley in a letter to Mr. Somes, under date 10th January, 1843, in the following terms:—"Such reserves, as Lord Stanley understands them, are proportionate parts of the land sold by the Natives, which have been conveyed by the Government to the benefit of which the Natives are entitled, in addition to the continued enjoyment of such lands as belong to them, and they have not sold. To compensate out of the former, parties who have expected to have obtained the latter would be to make the Natives pay for the disappointment of expectations which they were not answerable for having raised, a course which would at once involve injustice towards them, and a *breach* of trust on the part of the Government."

The proposal made by the New Zealand Company in 1841, to advance £5,000 for Native purposes on mortgage of the Native reserves in the Company's settlements was objected to, it being considered unadvisable to sanction any mode of raising money upon the security of the Native reserves, which might by any contingency cause the alienation of those lands from the beneficial use of the aborigines.

Although it appears that no power is expressly given to any Governor by Charter or Royal instructions to set apart land as Native reserves, nevertheless it is undeniable that the Crown had this power, and the various Governors have always been authorized to exercise it would probably be maintainable from the general terms of their Commissions, or of the Charters and instructions in force during their respective governments.

Thus, the Royal instructions of 1840, section 61, "declares it to be our further will and pleasure that you do to the utmost of your power promote religion and education among the Native inhabitants of our said Colony, or of the lands and islands thereto adjoining, and that you do especially take care to protect them in their persons, and in the free enjoyment of their possessions, and that you do by all lawful means prevent and restrain all violence which may in manner be practised or attempted against them, and that you take such measures as may appear to you to be necessary for their conversion to the Christain faith, and for their advancement in civilization." Now the reservation of portions of their lands in such a

manner as to prevent their future alienation by themselves, might reasonably appear to any Governor "such a measure" as their advancement in civilization might require.

It was with a view to promote the civilization of the Natives that the New Zealand Company devised the plan of Native reserves, as it was confidently anticipated that by a judicious intermixture of lands, and proximity of dwellings, that the Natives would naturally adopt the habits and customs of the settlers.

By the tenor of a letter from Lord John Russell to Governor Hobson, dated 28th January, 1841, the setting apart of Native reserves is evidently contemplated as the Governor is directed, "that tracts of land permanently retained for the use and occupation of the aborigines shall be defined by natural and indelible land marks, and should be inalienable even in favor of the local Government."

On Governor Hobson's first visit to Wellington (19th August, 1841), he recognized both the public and Native reserves, selected by Captain Smith, the New Zealand Company's chief surveyor, and gave Mr. Halswell, who he had previously appointed a Commissioner of Native Reserves, general instructions concerning the management of the latter, to which additional instructions were added, (24th December, 1842).

Subsequently, Mr. Halswell was superseded in the management of the trust estate, and the trusteeship of the Native reserves in the Colony was vested by Governor Hobson in the Bishop, the Chief Justice, and the chief protector of aborigines.

An Act was passed in 1844, for the more effective management of these lands, and legally vesting them in trustees. Had the Act been in operation the after appropriations for general purposes could not have been made, as its provisions expressly forbade alienation, except by lease, and declared all charges or encumbrances on the trust estate to be void.

This Act received the Queen's assent, but did not come into operation in the Colony owing to the terms of the last clause not having been complied with.

In course of time Boards of Management were appointed to administer the property, and subsequently it was vested in Commissioners under the Act of 1856. In all these dealings with the property the absolute rights of the Natives to the exclusive benefit of these lands was admitted, and no action at variance with these rights was done until the appropriation of the hospital site in the town of Wellington, in 1847. And that was appropriated solely on the ground of expediency, the Government of the day admitting their liability to compensate the Native trust for such appropriations.

The above mentioned facts constitute a very strong case, enough probably for the general denial, that a right existed to allocate lands set apart solely for the Natives under express agreement with the Imperial Government, under the terms of the prospectus of three of the Company's settlements, as the chief consideration for the cession of Native territory.

ALEXANDER MACKAY,
Commissioner of Native Reserves.

Nelson, 29th July, 1873.

By Authority: GEORGE DIDSBURY, Government Printer, Wellington.—1873.

[*Price 1s.*]