

equities of redemption (if any) then vested in the various mortgagors by virtue of the preceding mortgages: And further witnesses that, for the same considerations, Campbell and Smith assign to Falconer the personal estate of William Abercrombie and John Mackay; and also the principals and interest of the mortgage debts: And appoint Falconer attorney, to sue, &c. With mutual usual covenants. (Registered at Sydney, 17th June, 1858.)

4. 15th November, 1854. *The Bank of Australasia to Frederick Whitaker and Theophilus Heale* (Conveyance).—Annexed to last-preceding deed of 1st April, 1851: After reciting that a sum of money greatly exceeding the consideration in the present deed stated still remained due on the security of the annexed deed, but that the Bank of Australasia had applied, in part extinguishment of such debt, a portion of the lands and chattels mortgaged, and that Whitaker and Heale had contracted for the purchase of their interest in the residue for £6,000: Witnesses that, in consideration of such £6,000, the Bank of Australasia and Falconer convey, release, and assure to Whitaker and Heale all the lands (except so far as applied or disposed of) which by the annexed deed of 1st April, 1851, were conveyed to Falconer, subject to the equities of redemption (if any) then subsisting; and transfer the mortgages and mortgage debts, &c.: And appoint Whitaker and Heale attorneys to sue, &c. With mutual covenants. Receipt for £6,000 by the Bank of Australasia appended. (Registered at Sydney, 17th June, 1858.)

[NOTE.—By a conveyance annexed to the preceding, and of even date, Whitaker and Heale convey the three parcels at the Great Barrier to W. S. Grahame: in respect whereof Grahame applied (see papers in Claim 32, of Webster and Abercrombie) for a new grant in substitution for the old ones, and received (29th December, 1854) a grant for 24,269 acres.]

From the preceding documents it will be seen that the various grants which were issued in Claim 305K now stand thus:—

	Acres.	
Grant to V. Wanostrocht ...	250	} cancelled; no claimant.
Nagle and Wrenn ...	150	
A. Devlin ...	1,255	} conveyed to S. A. Donaldson for £3,000.
H. Downing ...	320	
J. Johnson ...	1,280	} conveyed in fee to Whitaker and Heale for a total consideration of £2,389.
G. Russell ...	640	
F. Mathew ...	2,560	
W. Webster ...	1,219	
P. Abercrombie ...	5,000	} mortgaged to Whitaker and Heale, the con- sideration being part of £6,000.
Total ...	12,674	

Some time after the grants were called in—namely, on the 27th of September, 1859—I received notice from Mr. Robert Graham, on behalf of William Abercrombie, that the latter claimed (*inter alia*) the 5,000 acres comprised in Peter Abercrombie's grant. I thereupon fixed the 20th December, 1859, to hear the parties, but no proof of title was tendered on the part of Abercrombie. On the 31st January, 1860, I informed Mr. Graham that I would wait till the mail due in Auckland in February arrived, in order to give the opportunity of certain papers coming, which he expected to receive from the Abercrombie's in support of the claim; but that, if they did not arrive then, I should proceed with the adjudication. Nothing whatever has since been adduced, nor, indeed, do I see how any can well be, to alter the position of the parties under the mortgages I have recited above. Neither is it material, because my recognition of Whitaker and Heale as the vessees of the legal estate does not effect any subsisting equities. The 24th section of "The Land Claims Act, 1856," provides that every new grant shall be subject in equity to the same claims, rights, and interests as the cancelled grants in lieu whereof such new grants shall be issued. So Peter and William Abercrombie may still (if any equities subsist) come in and redeem; and, if the recital in the transfer of mortgages to the Bank of Australasia be true—namely, that the amount due in 1851 upon the securities was £35,000—I should think Whitaker and Heale would be very glad to take the money.

Having thus shown the present ownership under the old grants, it appears to be necessary, before proceeding to the particular awards to be made to the respective claimants, to notice the position of the Government in the matter, and the way in which the public interest is in reality involved in the settlement of this claim. It is not within my province to express any opinion as to the original issue by Governor Fitzroy of grants to the extent of 12,674 acres in this claim, and of 24,269 acres in Claim 32 of Webster and his partners Abercrombie and Nagle, making 36,943 acres granted in the two cases. But it is certain that, as regards the Piako claim, notwithstanding the evidence before Commissioner Godfrey in 1842, the Natives would never have agreed to give up possession to the extent which Webster claimed to have purchased. When Johnson tried to go on the land comprised in his grant he found "serious obstructions and difficulties;" and as to the residue, the papers recorded in the case show that quiet possession was, ten years ago, certainly not to be had. The causes of the Native opposition appear clearly in the reports of (see *ante*, p. 29) the District Land Purchase Commissioner.

A more careful examination of the area which the Natives admitted was Webster's showed that, out of the 18,000 acres included in the survey,\* there were about 7,500 acres so admitted to have been formerly sold, instead of 6,000 as estimated by Mr. Hay at first.

Auckland, 26th September, 1861.

F. D. BELL,  
Land Claims Commissioner.

\* Made by the Government when negotiating with the Natives for the purchase of the Piako block of land, with a view to a settlement of the disputes about the land claimed therein.