

## No. 4.

## UNFINISHED REPORT of the late Mr. THOS. MACKAY.

MAY IT PLEASE YOUR EXCELLENCY,—

While I concur with a great deal of the Report that the Chairman of the Commission has drawn up, yet I also quite as completely dissent from much that is contained in it. To this expression of dissent I am chiefly impelled by the conviction that there are matters in the report of my colleagues which are altogether foreign to the specific questions referred to the Commission by your Excellency. To these questions I consider the report should be strictly confined. No excursion should be made beyond those limits. The parts of the report to which I object are so blent and intermingled with those portions which I unreservedly indorse that any attempt to detach the one from the other might only obscure our points of difference. I have, therefore, concluded that my own views could be more concisely and perspicuously placed before your Excellency in an independent report, strictly confined to the actual subjects of reference to the Commission. To these I have drawn up categorical answers, which I respectfully submit to your Excellency :—

## FIRST REFERENCE.

*The operation of the existing laws relating to the alienation and disposition of interests in Native lands within the Colony.*

To comprehend the various circumstances which lead up to the subject of this reference an epitome of the history of dealings in Native lands and a survey of the course of Native land legislation are necessary. They are as follows :—

In 1814 the scenes of barbarism enacted in New Zealand between the Europeans and Maoris had attracted general attention. The lawlessness which prevailed, combined with the remarkable aptitude evinced by the Maoris in the acquisition of knowledge, and their disposition to embrace the doctrines of Christianity, suggested to the Rev. Samuel Marsden, Colonial Chaplain of New South Wales, the desirability of establishing a mission-station at the Bay of Islands. In 1814–15 this benevolent scheme was carried into effect by Mr. Marsden himself, under the sanction of the Governor of New South Wales; and, through the mission thus set on foot by the Church Missionary Society, a regular intercourse was opened up between England and New Zealand. It is doubtful whether, previous to the arrival of Europeans, the Natives had any notion of such a thing as the absolute alienation of territory. A contract for the transfer of an individual right in land had evidently been unknown in New Zealand until Mr. Marsden purchased 200 acres from the chiefs at Rangihoua (lat. 35° 10' 28" S., long. 174° 5' 21" E.) for the first missionary establishment at the Bay of Islands. This land he obtained in accordance with European law on a technical deed of feoffment prepared by lawyers in Sydney. The instrument itself became the model of a vast number of contracts for the sale of land to Europeans between 1814 and the establishment of the colony in 1840.

Long prior to Great Britain assuming the sovereignty of New Zealand numerous parties of Europeans claimed to have purchased large tracts of land from the Native chiefs. Other purchases were made in a hurried manner after it became known that New Zealand was to be formed into a British colony.

During the period referred to, the "land fever" in its different stages of "sharking," "jobbing," and *bond fide* speculation raged in New Zealand. Almost every ship-captain arriving in Sydney from New Zealand exhibited a piece of paper with a tattooed Native head rudely drawn on it, which he declared to be the title-deed of an estate bought for a few muskets, hatchets, or blankets. Some of these shipmasters were liberally supplied in Sydney with blank "deeds of feoffment" to be used in purchases of this kind; and as the New South Wales Government had fixed a price of 5s., and afterwards 12s., per acre on land in Australia, adventurers crowded to New Zealand, hoping there to pursue their schemes with impunity. So numerous indeed were these pretended purchases that it is on record that seven companies in New South Wales laid claim to 36,614,000 acres, purporting to be in the South Island.

In January, 1840, Sir George Gipps, the Governor of New South Wales, within whose jurisdiction New Zealand had been placed, in order to stop these illegal proceedings, issued a Proclamation prohibiting all future purchases of lands from the Natives, and at the same time intimated that a Commission would be appointed to investigate all purchases already made.

This Proclamation was promulgated by Governor Hobson on his arrival in New Zealand in January, 1840; and in the same year the Governor and Council of New South Wales