

SESS. II.—1891.
NEW ZEALAND.

WEBSTER'S LAND-CLAIMS.

[Continuation of A.—4, Session II., 1887.]

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

No. 1.

The AGENT-GENERAL to the PREMIER.

Westminster Chambers, 13, Victoria Street, London, S.W.,
7th November, 1890.

SIR,—

I beg to enclose copies of a letter from the Colonial Office, covering a note from Mr. Lincoln, United States Minister at this Court, to the Foreign Office, with a printed memorandum on Mr. Webster's land-claims, and of my reply.

The memorandum consists of an elaborate argument against Sir Robert Stout's exhaustive memorandum of 1887, and a claim that Mr. Webster may still come in as an American citizen for compensation under Lord Aberdeen's note to Mr. Everest of 10th February, 1844, this compensation being put down at upwards of £265,000, with interest from 1840.

Though it would hardly have been courteous to decline Lord Knutsford's request to me, I have asked that my reply may be taken as being unofficial. It seems to me that the controversy may now be left between the United States Government and the Foreign Office, until Her Majesty's Government decide whether to admit or deny the interpretation put by the United States on Lord Aberdeen's note of 1844.

The Hon. the Premier, Wellington.

I have, &c.,

F. D. BELL.

Enclosure 1.

The COLONIAL OFFICE to the AGENT-GENERAL.

SIR,—

Downing Street, 25th October, 1890.

With reference to the letter from this department of the 2nd December, 1887, and to previous correspondence respecting Mr. W. Webster's claim with regard to certain lands in New Zealand, I am directed by Lord Knutsford to transmit to you a copy of a note received through the Foreign Office from Mr. Lincoln, with its enclosure on the subject.

Lord Knutsford would be glad to be favoured with any observations which you may wish to make on these papers.

The Agent-General for New Zealand.

I have, &c.,

JOHN BRAMSTON.

Sub-enclosure 1.

Mr. LINCOLN to Lord SALISBURY.

MY LORD,—

United States Legation, London, 11th October, 1890.

Referring to your Lordship's note of the 7th December, 1887, to my predecessor, Mr. Phelps, transmitting copies of a memorandum of Sir Robert Stout, [? Premier] the Governor of New Zealand, on the subject of certain American land-claims in that colony, I have the honour to recall to your Lordship that in that memorandum Sir R. Stout reviews the history of the claims, and makes an extended reply to a report of the Committee on Foreign Relations of the Senate of the United States, who have for some time had the subject under consideration. The Committee were furnished with a copy of that reply, and gave it careful consideration. The result of that consideration is that, on the 11th June last, the Chairman of the Committee, by their direction, advised the President of the adoption by the Committee of the following resolution: "*Resolved*, That the papers in the case of William Webster be transmitted to the President, with the statement that the Committee respectfully recommend this matter to his attention, with the accompanying papers, as a claim that is worthy of consideration, and with the request that it be made the subject of further negotiation with the Government of Great Britain."

I am therefore instructed to acquaint your Lordship that my Government has made the matter the subject of careful examination, with a desire to arrive at a just determination, and finds itself unable, for the reasons which are set forth in a memorandum of which I have the honour to enclose

copies in duplicate for the consideration of Her Majesty's Government, to accept the conclusions stated in Sir R. Stout's memorandum.

It is believed by my Government that Her Majesty's Government, upon the perusal of the document enclosed, will find that the above-mentioned conclusions of the Governor [? Premier] of New Zealand, and the arguments and allegations, some of them injurious to the claimant, by which those conclusions are reached, are not justified by the facts as disclosed in the documents furnished by the Governor, and it is hoped that a way may be found, by friendly consultation between the two Governments, to afford Mr. Webster the fair and impartial disposition of his claim to which it is thought he is entitled.

I have, &c.,

The Marquis of Salisbury, K.G., &c.

ROBERT LINCOLN.

Sub-enclosure 2.

CLAIM OF WILLIAM WEBSTER AGAINST GREAT BRITAIN.

Origin of Mr. Webster's Claims.—William Webster, when quite a young man, went to New Zealand, with a capital of \$6,000 invested in general merchandise suited to trade with the Native population. Being of an enterprising disposition, he rapidly extended the scope of his business. He learned the language of the people, cultivated friendly relations and traded with them. He purchased lands and established trading-stations, not only for the sale of merchandise, but also for the sale of timber and other products of the lands which he had purchased. He was one of the pioneers of civilisation in that country. He had no connection with the Government of the United States other than that of citizenship, and nothing to rely upon but his own energy and resources and such assistance as he could privately obtain. From 1835 to 1840 Mr. Webster had, as he states, invested in lands in New Zealand, in the form of cash and of merchandise, about \$78,000, and had acquired by deed from the Native chiefs in all about 500,000 acres of land.

Annexation of New Zealand by Great Britain.—On the 30th January, 1840, William Hobson, a captain in the British navy, issued a Proclamation as Lieutenant-Governor of the British settlement in progress in New Zealand, declaring the extension of the former boundaries of New South Wales so as to comprehend any part of New Zealand that had been or might be acquired in sovereignty by Her Britannic Majesty. On the same day he issued another Proclamation, by which it was declared that Her Majesty did not deem it expedient to recognise as valid any titles to land in New Zealand which were not derived from or confirmed by Her Majesty. But, said the Proclamation, in order to dispel any apprehension that it was intended to dispossess the owners of land "acquired on equitable conditions, and not in extent or otherwise prejudicial to the present or prospective interests of the community," Her Majesty had directed that a Commission should be appointed before which all claims to land would have to be proved.

On the 6th February, 1840, a week after the issuance of these Proclamations, Governor Hobson, on the part of Her Britannic Majesty, concluded with the Native chiefs the Treaty of Waitangi, by which, for the sole consideration of being made subject to the British Crown, they ceded their sovereignty and powers. Nevertheless, the treaty confirmed and guaranteed to the "chiefs and tribes of New Zealand, and to the respective families and individuals thereof, the full, exclusive, and undisturbed possession of their lands and estates, fisheries, and other properties which they may collectively or individually possess, so long as it is their wish and desire to retain the same in their possession." The only qualification of this confirmation and guaranty of title is the cession to Her Majesty of a right of pre-emption of such lands as the Native proprietors might at any time be disposed to alienate. This was only a further recognition of the title of the Native chiefs, from whom Mr. Webster's titles were also derived prior to the date of the treaty. It is therefore unnecessary to argue that the title of Mr. Webster was equal in origin with that of the British Crown, and, being prior in time, was superior in right, and could not be affected either by the Proclamations of Governor Hobson or by the Treaty of Waitangi.

Position of Mr. Webster after Annexation.—The position in which Mr. Webster found himself after the Proclamations of Governor Hobson is very simply but not the less forcibly stated in a letter to J. H. Williams, Esq., United States Consul at Sydney, New South Wales, dated the 4th November, 1840. In this letter Mr. Webster said,—

No doubt you are aware that the British Government have taken possession of some parts of these Islands, and have issued Proclamations and other notifications that all titles to land acquired from the Native chiefs are to be sent to the Colonial Secretary's Office at Sydney to be examined. I suppose they intend to allow whatever portion of land they may think proper. I beg to call your attention to know what all Americans in this Island are to do with the large quantity of land they have purchased.

No doubt you are aware that a great part of the oil taken by American ships is caught on this coast, and I can safely say that there are ten American ships come into these ports to recruit to one ship of any other nation. I beg to acquaint you of the valuable lands I have purchased from independent chiefs of this place, and beg you will make it known to the American Government as early as possible. The land purchased by me, and the amount paid for it, is as follows: Paid for Barrier Island, in March, 1837, and the title-deeds, signed by thirty-six independent chiefs, giving up all right and title to the same, cash and merchandise, £1,200; paid for part of the island of Waiheke, in 1836, £558; paid for land at Coromandel Harbour, in 1836, £1,000; paid for Mercury Island, in 1838, £944; paid for land at Point Rodney, in 1838, £490; paid for land on banks of River Thames, 1836, £250; paid for land on banks of River Waitemata, 1837, £280; paid for Bay of Plenty, 1839, £450; paid for River Piako, 1839, £1,375; amount expended in building and other improvements, from 1835 to 1840, £9,060: total, £15,607—equal to about \$78,145.

You will see by the copy of the title-deeds that I have expended equal to \$78,145, for which I have bought about 500,000 acres of land, and, to the best of my knowledge, there has been about 1,000,000 acres purchased in these Islands by citizens of the United States, and for which they have expended about £50,000 sterling, besides several years' labour, and running great risks where the Natives were not civilised. They (the British Government) have already put me to a loss of £6,000 sterling by their acts. They have not taken any of my land as yet, but I expect they will take all from me and every other American, unless our Government will take it in hand to stop it. I trust you will make this known to the United States Government as early as possible, so that all Americans may know how to act in this case.

British Ordinances.—Prior to the date of this letter an Act was passed in New South Wales

for the purpose of creating a Commission "to examine and report on claims to grants of land in New Zealand," and it was doubtless the passage of this Act that gave rise to the reports to which Mr. Webster adverted in his letter. Subsequently this Act became inoperative by reason of the severance of New Zealand from New South Wales, and on the 9th June, 1841, an ordinance, which was virtually a transcript of the New South Wales Act, was passed in New Zealand by the Governor and his Council. This ordinance and the prior Act, both of which were drawn in conformity with instructions of the Home Government, declared, "All titles to land in the said colony of New Zealand which are held or claimed by virtue of purchases or pretended purchases, gifts or pretended gifts, conveyances or pretended conveyances, leases or pretended leases, agreements, or other titles, either mediately or immediately from the chiefs or other individuals or individual of the aboriginal tribes inhabiting the said colony, and which are not or may not hereafter be allowed by Her Majesty, her heirs and successors, are, and the same shall be, absolutely null and void."

It was further provided that no grant of land should be recommended by the Commissioners under the ordinance which should exceed in extent 2,560 acres, unless they were specially authorised thereto by the Governor, with the advice of the Executive Council, or which should comprehend any headland, promontory, bay, or island that might be required for the purpose of defence, or for the site of any town or village, reserve, or for any other purpose of public utility, nor of any land situate on the sea-shore within 100ft. of high-water mark. And it was further provided that nothing in the ordinance should oblige the Governor to make and deliver any grant unless His Excellency should deem it proper to do so. There was also a provision that the Commissioners should not recommend any grant whatever of any land which, in the opinion of the majority of them, might be required for the site of any town or village, &c.

Orders respecting Foreigners.—By an order of the Lieutenant-Governor of New Zealand dated the 9th February, 1841, it was directed that all persons not the subjects of Her Majesty who had purchased land from the aborigines previous to the 30th January, 1840, should forward a copy of their claims to the Colonial Secretary's office at Auckland on or before the 1st June, 1841.

In the *New Zealand Gazette* of the 20th October, 1841, there was published another order of the Governor, in which it was stated, "for the information of foreigners claiming land in New Zealand by purchase from the Natives prior to the Proclamation issued by His Excellency Sir George Gipps, bearing date the 14th day of January, 1840, that by a despatch from the Right Hon. Her Majesty's Principal Secretary of State for the Colonies it is ordered that all claims, whether British or foreign, be investigated and disposed of by the Commissioners appointed for that purpose." The order continued as follows: "Such foreigners, therefore, as have not already forwarded the particulars of their claim to this Government are required to send them to this office without delay. These particulars should set forth the precise situation of the land claimed, its extent and boundaries, the names of the Native sellers, and the consideration paid to them, and, in case of the claims being derivative, the names of the intermediate possessors of the land and of the original purchaser, and the consideration given by him to the Natives."

Submission of Mr. Webster's Claims.—On the 20th July, 1841, being thus expressly required to do so, Mr. Webster sent seven copies of titles to land and seven statements of purchases to the Colonial Secretary of New Zealand, with a request that they be laid before the Commissioners for examination only. At the same time he said,—

I have sent all my claims to land in this country before the United States Government, by the advice of the American Consul of Sydney, and I trust His Excellency Governor Hobson will not suffer any of my lands to be interfered with until the question is settled. I have been a resident in New Zealand for seven years, and have expended a large sum of money, and undergone a great deal of trouble and hardships.

I am willing to come forward and prove all my purchases; but I trust that I shall be allowed time to do it, for I am very busy now with ships, and am under heavy penalties for the fulfilment of my agreements, and I find it will take a long time to get all the Natives and witnesses to my purchases of land together, and the expense will be very great. I find myself already at a great loss, and it appears to me that I am to be put to much more, and I do not know who to look to for it. I trust, when my claims for purchases to land (in this country) are examined, that they will prove to be all well understood by them that hear them; and it was all bought before that any Government was formed here; and I further consider that all I have has been dearly earned, and I trust that before I am dispossessed of any of it it will be proved who has the best right to it.

Hoping that I have not made any unjust remarks,

I have, &c.,

WILLIAM WEBSTER.

In reply to this letter Mr. Webster received a communication from the Colonial Secretary dated the 7th August, 1841, which is as follows:—

SIR,—

Colonial Secretary's Office, Auckland, 7th August, 1841.

I have had the honour to receive and lay before His Excellency the Governor your letter of the 20th ultimo, transmitting copies of titles of claim to land in New Zealand, and am instructed to acquaint you that you must distinctly state whether you claim the land as a British or American subject. If the former, your case will take the course the law prescribes; if the latter, your claims must depend upon the decision which may be arrived at by the joint consent of both Governments. The Governor further directs me to inform you that in seeking assistance from a foreign Government you must relinquish all the rights of a British subject, such as the ownership of a British vessel, which you are now understood to possess; but, if the claims be lodged as a British subject, His Excellency will consent to their being laid before the Commissioners in the usual way.

I have, &c.,

WILLOUGHBY SHORTLAND.

Mr. William Webster, Coromandel Harbour.

On the 3rd October, 1841, Mr. Webster sent the following answer:—

SIR,—

Coromandel Harbour, 3rd October, 1841.

In reply to yours concerning my claims to land, I wish my claims to be laid before the Commissioners, and am willing to take my chance with all others. But I trust that they may be left until the last, for it will put me to a serious inconvenience to attend to them now.

I have, &c.,

WILLIAM WEBSTER.

It is stated in the memorandum of Sir Robert Stout that upon the cases submitted by Mr. Webster there were made the following entries:—

Memorandum for the Governor.—The information furnished regarding these claims is sufficiently full to enable them to be referred for investigation. It appears from Mr. Webster's letter of July that these are only a part of

his claim : he mentions twenty-seven as the total number, but states that the documents referring to the other claims are mislaid.—WILLOUGHBY SHORTLAND.—30th October.

Minute by Governor.—Let Mr. Webster's claims be submitted in the usual way.—W. HOBSON.—2nd November, 1841.

On the strength of these communications the memorandum of Sir Robert Stout contains the following assertions :—

From the foregoing correspondence, no other inference can be drawn but that Mr. Webster intended to have his claims heard as those of a British subject ; and

Firstly, that the Governor so interpreted his intention is apparent from the minute of the 2nd November, 1841, where, in directing Mr. Webster's claims to be submitted in the usual way, he adopts the course, and uses the identical language, which the Colonial Secretary, in his letter of the 7th August, informs Mr. Webster would be adopted if he advanced his claims as a British subject.

Secondly, Mr. Webster, in his reply of the 3rd October, where he expresses his wish that his claims should be laid before the Commissioners, requests that very course to be adopted which the Colonial Secretary informed him would be adopted if he advanced his claims as a British subject.

Thirdly, Mr. Webster appeared before the Commissioners' Court, and gave his evidence on oath in respect of each claim, without protest, after his claims had been notified in the usual way, and never asserted any exceptional claim as an American citizen ; and, also, he accepted the awards in each claim and the Crown grants issued in virtue of the said awards.

Fourthly, Mr. Webster did not relinquish the rights of a British subject, such as the ownership of a British vessel, which he possessed, and which in the aforesaid letter of the Colonial Secretary he was informed he would be required to do if he advanced his claims as a foreigner.

It is to be specially noted here that, although Mr. Webster's letter of the 20th July, 1841, to the Colonial Secretary, wherein he advances his claims as an American citizen, has been submitted to the Senate of the United States, and is referred to in the report of the Committee of the Senate (post, page 41), yet no evidence appears of Mr. Webster having submitted to the Senate either the Colonial Secretary's letter of the 7th August or his own reply thereto of the 3rd October, 1841. From this surprising omission I cannot but conclude that it was an act of wilful disingenuousness on Mr. Webster's part, done for the purpose of suppressing all evidence which might be adduced to prove that he advanced his claims before the Land Claims Commissioners as a British subject, and not as an American citizen.

It is not thought to be necessary now to consider so much of the above-quoted passage as makes against Mr. Webster a charge of "wilful disingenuousness" and suppression of evidence. On his part Mr. Webster vehemently denies that some of the documents which accompany Sir Robert Stout's memorandum, apparently as contemporaneous records of the investigation of the land-claims, possess that character. Mr. Webster asserts that he left Coromandel Harbour on the 23rd June, 1843, when the examination of his cases was concluded, and never afterwards saw any Commission then or afterwards appointed ; and that all proceedings subsequent to that date in respect to his titles were *ex parte*, and without notice to him and without his knowledge.

In respect to some of the proceedings that appear to have taken place in and after June, 1843, before Commissioner Godfrey, Mr. Webster points, in confirmation of his statement, to the following passage in Sir Robert Stout's memorandum : "The first Commission concluded its labours by reporting on all the claims referred to it. Major Richmond, on the 8th March, 1844, was appointed Superintendent of the Southern Division of New Zealand, and Colonel Godfrey returned to England." Just after this the following statement is also noted : "In the year 1844 an ordinance in amendment of the above-recited ordinance was passed, giving to a single person the powers granted to two Commissioners under the ordinance of 1841. This was called 'The Land-claims Ordinance, 1844, Session III., No. 3 ;' and, Mr. Robert Appleyard FitzGerald being appointed on the 25th March, 1844, sole Commissioner thereunder, he formed what is herein called the second Commission."

In the memorandum of Sir Robert Stout there are found seventeen or eighteen pieces of evidence which purport to have been "taken in Court" before Commissioner Godfrey from May to August, 1844. It is found that the amended and last report of Commissioners Richmond and Godfrey bears date the 18th December, 1843. Their recommendations were referred to the second Commission, consisting of Mr. FitzGerald, on the 10th April, 1844, and the report of Commissioner FitzGerald, which is said to have been adopted, bears date 22nd April, 1844.

The charge of suppression of evidence made against Mr. Webster in respect to the submission of his claims to the Land Commission adds force to the impression that the answer to his claims made in the memorandum of Sir Robert Stout is chiefly based upon the ground that Mr. Webster sought to be, and was, treated as a British subject. In the passage above quoted from the memorandum four reasons are set forth to sustain that pretension. In respect to these it is to be observed,—

1. That the notice issued to claimants required foreigners, as well as British subjects, to present their claims to the Commission.

2. That the Commissioners did not possess power to make grants, but only to investigate claims and make reports and recommendations to the Governor.

3. That the letter of Mr. Webster of the 20th July, 1841, in which he submitted seven titles for examination, clearly and unmistakably asserted his American citizenship.

4. That the reply of the Colonial Secretary of the 7th August, 1841, intimating that Mr. Webster's claims would not be considered so long as he should seek the protection of his Government, was inconsistent with the notice previously issued to claimants, and not warranted by the scope and functions of the Commission.

5. That Mr. Webster's statement in his letter of the 3rd October, 1841, that he was "willing to take his [my] chances with all others," was not a renunciation of his American citizenship nor an assumption of British citizenship.

6. That there is no evidence whatever to show that Mr. Webster was ever supposed to be a British subject, nor is it asserted that he ever performed any act by which he could be held to have assumed that character.

7. That the statement in the Colonial Secretary's letter of the 7th August, 1841, that Mr. Webster was "understood to possess" a British vessel, is not an allegation that he did own such a vessel, and that no evidence whatever is adduced to show that the statement had any other foundation than rumour of the vaguest character. No authority is given for the statement—neither

name nor description of the vessel is afforded. Mr. Webster denies that he owned such a vessel, and there is no apparent reason to question his denial.

8. That, if it had been true that Mr. Webster owned a British vessel, no law of Great Britain is known by which such ownership would have been tantamount to an act of naturalisation.

9. That, no evidence being adduced to show that Mr. Webster owned a British vessel, the inference sought to be drawn from the assertion that he "did not relinquish the right of a British subject, such as the ownership of a British vessel which he possessed," must be treated as wholly without justification.

10. That the letter of the Colonial Secretary of the 7th August, 1841, may be regarded as conclusive evidence that Mr. Webster had not been naturalised as a British subject.

11. That that letter was inconsistent with the instructions given to the colonial authorities, as disclosed by the note of Lord Aberdeen to Mr. Everett of the 10th February, 1844, which says, "Having now received an answer from the Colonial Department, the undersigned has the honour to inform Mr. Everett, with reference to the first head of complaint, that, in consequence of certain questions raised by the American Consul at Sydney as to the rights and obligations of aliens in New Zealand, instructions were forwarded to the Governor of that island in the month of March, 1841, upon which occasion that officer was directed to bear in mind the principle that where aliens had acquired land from the chiefs prior to the proclamation of the Queen's sovereignty there, and that fact was undisputed, the claims should be acknowledged, but that where a doubt arose whether the alien made a *bona fide* purchase of the land the settler should be treated as any British subject, and his claim disposed of accordingly."

12. That the argument that Mr. Webster elected to be a British subject, and to renounce his rights as an American citizen, is not sustained by the facts, and is unwarranted by the law.

The anxiety exhibited on this subject, and the ingenuity in argument in regard to it, in the memorandum of Sir Robert Stout, are amply justified by a review of the treatment of Mr. Webster's claims.

Taking the proceedings of the first Commission, as set forth in the memorandum, we have the following in respect to Mr. Webster's claims:—

Case No. 305.—Two hundred and fifty acres; conveyance by Natives; consideration, merchandise to value of £208. Report: *Bona fide*; consideration (goods), £114 12s.; Sydney prices, £343 16s.

305A.—Six hundred acres; deed; consideration (merchandise and cash), £260. Report: *Bona fide*; 250 acres; consideration (goods), £94 14s. 6d.; Sydney prices, £284 3s. 6d.

305B.—Fifteen hundred acres; deed; merchandise, £90. Report: *Bona fide*; goods, £71 18s. 6d.; Sydney prices, £215 5s. 6d.

305C.—Twenty-five hundred acres; deed; merchandise, £203. Report: *Bona fide*; 800 acres; goods, £89 10s.; Sydney prices, £268 10s.

305D, 305E, 305F, 305L.—These are alleged to have been withdrawn, and no report appears on them. They comprise 4,000 acres of land and two islands whose area is not stated; and consideration, in cash and merchandise, for the whole is claimed to have been paid to the amount of £1,820.

305G.—Boundaries stated, but not contents; deed; merchandise, £490. Report: *Bona fide*; 10,000 acres; goods, £140 8s.; Sydney prices, £421 4s.

305H.—Three thousand acres; deed; merchandise, £450. Report: Not purchased from rightful owners.

305I.—Three thousand acres; deed; merchandise, £490. Report: *Bona fide*; 3,000 acres; cash, £15; goods, £62 12s.; Sydney prices, £202 16s.

305J.—Six thousand acres; deed; merchandise, £944. Report: *Bona fide*; acreage not known; cash and goods, £278; Sydney prices, £834.

305K.—Eighty thousand acres; deed; cash and merchandise, £1,195. Report: *Bona fide*; 80,000 acres; cash, £35; goods, £563 16s.; Sydney prices, £1,691 1s.; total, £1,726 8s.

305M.—Two thousand acres; deed; merchandise, £108. Report: *Bona fide*; 3,500 acres; cash and goods, £80.

32.—Twenty thousand acres; deed; merchandise, £1,140. Report: *Bona fide*; cash and goods, £580 15s.; boundaries, but not contents, stated.

The report of the first Commission covers fourteen claims. In respect to eight of these (305, 305A, 305B, 305C, 305G, 305I, 305K, 305M), the Commission found that Mr. Webster had purchased in good faith 108,300 acres. In respect to these same tracts his claim amounted to 119,850 acres. The Commission also found that he had paid for them in cash and goods £1,167 10s. 2d., or, in Sydney prices, about £3,427 6s.

Four cases (305D, 305E, 305F, and 305L) Mr. Webster is alleged to have withdrawn—as he asserts, erroneously. These four comprise 4,000 acres, and two islands whose area is not stated. The consideration alleged to have been paid is £1,820. In Case 305H, containing a claim for 3,000 acres (consideration, £450), the Commission reported that the claimant had not purchased from the rightful owners.

By their amended report of the 18th December, 1843, the Commissioners recommended the following allowances: In Case 305, 240 acres; 305B, 550 acres; 305C, 800 acres; 305G, 1,944 acres; 305I, 1,187 acres; 305K, 2,560 acres: total, 7,281 acres, "to be reduced in the aggregate to the maximum grant of 2,560 acres," in accordance with the Land Ordinance, which forbade a grant of greater extent. But no grants were made upon these recommendations.

In 1844, as above shown, an amendatory ordinance was passed constituting a Commission of one person. In April, 1844, the Governor brought before the Council the awards recommended by Commissioners Godfrey and Richmond in Cases 305, 305B, 305C, 305G, 305I, and 305K, amounting to 7,541 acres; and, upon the advice of the Council that the Commissioners should be authorised to recommend an extension of the grant, all the awards were referred to the second Commission, with instructions to extend the grant.

The second Commission, consisting of Mr. FitzGerald, reported as follows:—

I do most conscientiously recommend for His Excellency's approval that grants be issued to the undermentioned parties, upon a letter of authority to that effect from Mr. Webster: Claim No. 305, William Webster, 125 acres; Claim No. 305A, William Webster, 125 acres; Claim No. 305c, William Webster, 400 acres; Claim No. 305g, William Webster, 1,944 acres; Claim No. 305i, William Webster, 1,187 acres; Claim No. 305k, William Webster, 1,219 acres; Claim No. 305b, David E. Munro, 550 acres; Claim No. 305, Henry Downing, 125 acres; Claim No. 305c, Henry Downing, 400 acres; Claim No. 305k, Henry Downing, 320 acres; Claim No. 305A, Peter Abercrombie, 125 acres; Claim No. 305k, Peter Abercrombie (one-eighth of his purchase from Webster), 5,000 acres; Claim No. 305k, Felton Mathew (one-quarter of his purchase from Webster), 2,560 acres; Claim No. 305k, John Johnson (one-quarter of his purchase from Webster), 1,280 acres; Claim No. 305k, Vincent Wanothrocht (one-quarter of his purchase from Webster), 250 acres; Claim No. 305k, John Wrenn and Jeremiah Nagle (one-quarter of their purchase from Webster), 150 acres; Claim No. 305k, Arthur Devlin (one-quarter of his purchase from Webster), 1,255 acres; Claim No. 305k, George Russell, 640 acres: amounting in the aggregate to 17,655 acres.

Land Office, Auckland, 22nd April, 1844.

ROBERT J. FITZGERALD, Commissioner.

Upon this report the memorandum of Sir Robert Stout contains the following comment: "It must ever remain a mystery how Mr. Commissioner FitzGerald could have made such recommendation."

It is thought that this mystery is completely solved by the Commissioner himself in the memorandum which he made of the reasons for his action, and which is found in the report of Sir Robert Stout, as follows:—

Memorandum by Mr. Commissioner FitzGerald.—Reasons for extending a grant of land to Mr. William Webster: (1.) By the accompanying synopsis of the land-claims of Mr. Webster it appears that his outlay amounts to £7,787 13s., which, according to the valuation-scale in the Land-claims Ordinance, he may be considered as having paid for 50,904 acres; and, even limiting his outlay to the mere payments to the Natives, he would be fairly entitled to 17,950 acres. (2.) Considerable sales of land having been made by him on the faith of all his valid purchases being recognised by the Crown. (3.) Should he not be enabled, by great liberality on the part of His Excellency, to meet his engagements, even partially, he is likely to be overwhelmed with lawsuits and subjected to great losses. (4.) Mr. Webster is one of the most enterprising settlers in this colony, having established a shipbuilding-yard, several whaling-stations, water-mills, and other improvements. For these reasons I do most conscientiously recommend for His Excellency's approval that grants be issued to the under-mentioned parties, upon a letter of authority to that effect from Mr. Webster.

In view of these reasons, which the memorandum of Sir Robert Stout criticizes but does not in any respect invalidate, it is not perceived why "mystery" should have been attributed to the recommendation of Mr. Commissioner FitzGerald. If the reasons stated by that official for his recommendation were not so obviously just and true, it is thought that the adoption, as stated in Sir Robert Stout's memorandum, of that recommendation by the authorities at that time would sufficiently divest it of mystery and demonstrate its propriety. Still more completely does the "mystery" vanish when it is recollected, as hereinbefore pointed out, that it appears by the documents contained in Sir Robert Stout's memorandum that the reference of the awards of the first Commission in the cases of Mr. Webster to the second Commission, consisting of Mr. Commissioner FitzGerald, was "with an instruction to recommend an extension of the grants."

In the memorandum of Sir Robert Stout it is stated that Governor Fitzroy adopted the recommendations of Commissioner FitzGerald, and on the 1st May, 1844, issued grants in accordance with them. It is not asserted that Mr. Webster ever gave the "letter of authority" which the recommendation of Commissioner FitzGerald assumed to be necessary. But the memorandum of Sir Robert Stout contains the following statement: "Webster received his grants for £5,000 acres, and within less than four months had transferred the whole of these lands to his creditors, besides the 12,655 acres granted directly to them, leaving himself without an acre of all his purchases and still a debtor to the Sydney merchants." And this statement is made the text of animadversions upon the speculative character of Mr. Webster's dealings.

This may be regarded as somewhat remarkable, when both the first and the second Commissions found that Mr. Webster had made *bona fide* purchases for value, before the annexation of the Islands by Great Britain, of more than 105,000 acres of land, exclusive of various large tracts upon which they did not report; when it is also considered that Mr. Webster was, by universal testimony, an industrious and meritorious settler; and when it is further observed that his conduct throughout shows that he was making every effort to deal honourably with his creditors at a time when the annexation of the Islands and the ensuing land ordinances were threatening him with the commercial disaster in which they had then partially, as they afterwards completely, involved him.

In 1845, the year after the grants above alleged, it is asserted that certain correspondence took place between Mr. Webster and the New Zealand authorities, which was as follows:—

MR. WEBSTER to MR. COMMISSIONER FITZGERALD.

SIR,—

Auckland, 8th March, 1845.

I take the liberty of writing to you to know what has been the decision on my two land-claims. I believe they are No. 305H. One is the Big Mercury Island, and the other is a piece of land near the River Tairua, in the Bay of Plenty. Both of those claims was examined before Commissioner Godfrey at Coromandel Harbour, and I have not yet heard any more of them. The Mercury Island was purchased in 1838. I paid upwards of £300 for it, and have had possession of it ever since, and have expended a deal of money on it; but the whole of the payment agreed on was not given to the Natives, and when the claims was examined they agreed to give me a part of it for what they had received. The piece of land near Tairua was also purchased in 1838, and I paid about £400 for it; and since that I have expended about £400, for which I have never received any return for whatever. I have never heard of any dispute of the title, which, I suppose, the evidence taken by the Commissioner will prove.

Your answer to this will oblige your most obedient servant,
Commissioner FitzGerald, &c.

WM. WEBSTER.

Minute thereon by the Governor.

Very large grants having been made to Mr. Webster, no further grant can be made until the opinion of the Secretary of State as to the former grants is made known.—R. F.—10th March, 1845.

Mr. FitzGerald: Direct Mr. Chipchase to communicate this reply to Mr. Webster, who is now in Auckland, but about to leave immediately.—R. F.—10th March, 1845.

The PRIVATE SECRETARY to Mr. WEBSTER.

SIR,—

I am desired by the Governor to acquaint you that His Excellency has examined and taken advice respecting your land-claims marked 305H and 305J, and is sorry to find himself precluded from authorising any further grant to be made to you at present, on account of the largeness of those grants already made in your name.

J. W. HAMILTON, Private Secretary.

P.S.—The Governor directs me to say that the land which you now hold in undisputed possession will probably be granted to you eventually.

As the recommendation of Commissioner FitzGerald is, in the memorandum of Sir Robert Stout, declared to be a "mystery," the reply of the Governor, made through the Private Secretary, is pronounced in the same memorandum to be "unfortunate in its expression." As the reply only evinced an intention to treat the acquisitions of Mr. Webster in a spirit of justice, on the clear principle of allowing him what he held "in undisputed possession," the unfortunateness of its expression is not perceived. In the memorandum of Sir Robert Stout the fact appears to have been wholly neglected that the reports of the Commissioners, so far as they recommended grants, were only advisory. This fallacy is disclosed in the argument that, because the Commissioners reported that no grants could be made in certain cases on account of the largeness of the grants made in other cases, the Governor could not have referred to the claims mentioned by Mr. Webster, in which no grants were recommended. It is to be remembered that in those very cases, or, at least, in some of them, the Commissioners had reported valid titles, and in no instance discovered any evidence of bad faith. Nothing unfortunate is perceived in the language of the Governor, nor is there any reason to suppose that it was intended to have any other effect than to declare the principle that the undisputed possession of land was to be treated as constituting a valid basis for a grant. It is not denied that Mr. Webster had made use of a portion of his lands; nor, notwithstanding the effort to throw discredit on Commissioner FitzGerald's recommendation, is any attempt made to impugn his statements that Mr. Webster had made large outlays on his land in addition to the purchase-money, and that he was "one of the most enterprising settlers" in the colony, "having established a shipbuilding-yard, several whaling-stations, water-mills, and other improvements." It is not strange, therefore, that the Governor should have expressed the belief that the land which Mr. Webster held in undisputed possession would ultimately be granted to him.

Third Commission.—But Mr. Webster's claims were not in reality disposed of until 1862, long after he had left the country, and without notice, by a third Commission, consisting of Mr. F. D. Bell. This Commission was constituted under "The Land-claims Settlement Act, 1856," which made provision for the setting-aside of all grants made under previous ordinances. It required all claimants to have the exterior boundaries of their claims surveyed, and plans sent in to the Commission, together with their grants and all documents and deeds relating to the alienation of any claims by an original claimant; but it prohibited the reconsideration of any case disallowed by any previous Commission, or that had been withdrawn by the claimant.

Under this prohibition the third Commission did not examine, and made no grant in, Cases 305D, 305E, 305F, 305L, 305J, and 305M, comprising claims to extensive tracts of land for which valuable consideration was given. The grants set forth in the report of Mr. Bell accompanying the memorandum of Sir Robert Stout are the only ones finally made in respect to the claims of Mr. Webster. It is stated in that memorandum that "all the grants issued under the ordinances were surrendered to him [Mr. Bell], together with all documents relating to the land described in such grants."

Referring to the report of Mr. Bell, we find, in respect to the claims of Mr. Webster, the following result:—

In Case No. 305, in which the Commissioners reported in 1843 that Mr. Webster had purchased in good faith and paid for 250 acres, this third Commission in 1861 granted to R. Daker 57·5 acres, and to H. Downing 57·5 acres—in all, 115 acres.

In Case No. 305A, in which the Commissioners reported in 1843 that Mr. Webster had purchased and paid for 250 acres, this third Commission in 1860 granted to G. Beeson 335 acres.

In Case No. 305B, in which the Commissioner reported in 1843 that Mr. Webster had purchased in good faith and paid for 1,500 acres, this third Commission ordered a grant to be issued to J. Solomon; but no grant was, in fact, issued.

In Case No. 305C, in which the Commissioners reported in 1843 that Mr. Webster had purchased in good faith and paid for 800 acres, this third Commission, on the 20th November, 1847, granted to R. Daker 284 acres, and on the 3rd May, 1860, to the same person, 384 acres, and on the 25th January, 1861, to T. Keran, 59 acres—in all, 727 acres.

In Case No. 305G, in which the Commissioners reported in 1843 that Mr. Webster had purchased in good faith and paid for 10,000 acres, this third Commission, at a time not known, granted to R. Daker 1,944 acres, which is said to have been commuted for scrip.

In Case No. 305L, in which the Commissioners reported in 1843 that Mr. Webster had purchased in good faith and paid for 3,000 acres, this third Commission, on the 3rd July, 1860, granted to J. Solomon 885 acres.

In Case No. 305J, in which the Commissioners reported in 1843 a *bonâ fide* purchase of a tract which Mr. Webster alleged to contain 6,000 acres, this third Commission made no grant, and no grant was ever made.

In Case No. 305K, in which the Commissioners reported in 1843 that Mr. Webster had purchased 80,000 acres, this third Commission, on the 27th November, 1878, granted to the heirs of Sir S. Donald 1,464 acres; to F. Whitaker 12,855 acres and 2,141 acres, and for 294 acres 30th September, 1878: total, 16,754 acres.

In Case No. 305M, in which the Commissioners in 1843 reported that Mr. Webster had purchased in good faith, but only partly paid for, 3,500 acres, no grant was ever made.

Every one of these grants, it may be observed, was made to some person or persons alleged to be derivative owners from Mr. Webster.

Conclusions.—From the foregoing it appears—

1. That the good faith of Mr. Webster in his land-purchases is unquestionable.
2. That the validity of nearly all his important conveyances from the Natives was recognised and admitted, and valuable consideration established.
3. That, in consequence of the annexation of New Zealand by Great Britain, and of the land ordinances adopted and enforced, Mr. Webster was prohibited from selling or conveying or completing title to any of the lands which he had purchased, and of which he was in quiet and undisputed possession at the time of the annexation.
4. That in certain of Mr. Webster's cases (305, 305A, 305C, 305G, 305I) the Land Commissioners found that 94,300 acres had been purchased by Mr. Webster in good faith, but recommended grants to him and his assigns of only 17,655 acres.
5. That in certain other cases (305B, 305J, and 305M) it was shown that 11,000 acres had been purchased by Mr. Webster in good faith, but that no grant whatever was made.
6. That in certain other cases (305D, 305F, and 305L) no awards were made, on the ground that the claims had been withdrawn, which Mr. Webster denies. And in this relation it is to be observed that the withdrawal of these claims is alleged to have been made before Commissioner Godfrey in May and June, 1844, after he had ceased to be a Commissioner, and had returned to England, and after the second Commission, consisting of Mr. FitzGerald, had entered upon its duties.
7. That these proceedings, which were consummated in 1862 under the Act of 1856, were in derogation of the principle conceded by Lord Aberdeen to Mr. Everett in 1844.
8. That they were in derogation of the same principle as announced by the Governor to Mr. Webster a year later, in 1845.

In view of the facts above set forth, it is not perceived what basis there is for the assertion in the memorandum of Sir Robert Stout that "awards were made in his (Mr. Webster's) favour, or in favour of his acknowledged assigns, of every single acre of land which the Native owners admitted he had justly bought from them."

These words are found in the concluding paragraph of Sir Robert Stout's memorandum. Above them, on the same page, are the following observations: "I have to remark that in the year 1874 the Secretary of State, in a despatch to Governor Sir James Fergusson, required a report on Mr. Webster's claims, in order to reply to a complaint made by Mr. L. C. Duncan, on behalf of Mr. Webster, that he had been treated with injustice in their adjudication. Mr. O'Rorke, the then Commissioner, and at present Sir G. M. O'Rorke, Speaker of the House of Representatives, furnished to the Governor, for transmission to the Secretary of State, a full report on the claims, together with an opinion from Mr. Whitaker as to the accuracy of such report (who had been personally acquainted with all the details of Mr. Webster's land-transactions at the Piako), and a further report from Dr. Pollen, then Colonial Secretary, who had been personally acquainted with Mr. Webster in New Zealand."

An examination of the report of Mr. O'Rorke does not render necessary any change or modification in the statements herein made in regard to Mr. Webster's claims. The "further report," however, of Dr. Pollen merits examination. It is expressly referred to and put forward in the memorandum of Sir Robert Stout as the statement of a contemporaneous witness, and as possessing the peculiar value of a declaration made by an individual "personally acquainted with Mr. Webster in New Zealand." The value of this piece of evidence, which was formulated on the 29th July 1874, is readily tested. Dr. Pollen's statement is as follows:—

I knew Mr. Webster during the period of his residence in New Zealand, from January, 1840. He was what was then called a "trader" on the coast, and was known to represent or to be supported by Sydney merchants.

Towards the close of the year 1839, when it became certain that a sovereignty of New Zealand was about to be acquired by Great Britain, Mr. Webster, as did many others, dealt largely with Natives for land, or, rather, for land-claims. There was then no way of ascertaining the right to land of the Natives who took "trade" for their signatures. There was no survey, and the estimate of area within the boundaries, when any boundaries were defined in the deeds of conveyance, was almost always excessive—in many cases ridiculously so. Hence the exaggerated character of some of the claims.

The early land-purchases, which were made with deliberation and care, and in accordance with Native usage, were rarely questioned; but those which were made in haste immediately before January, 1840, and, as it were, more for the purpose of getting up a "claim" than of acquiring title, were commonly repudiated by the Native owners of the land. Some of Mr. Webster's claims are in this category.

Mr. Whitaker, of Auckland, who has a derivative title through Mr. Webster to a large block of land in the Piako district, has not to this day been able to get possession from the Natives. It will be necessary, in order to keep the faith of the Crown (as the land in question was awarded to Mr. Webster by the Land Claims Commissioner), and to preserve the peace of the country, either to extinguish the Native title to this land by purchase or to find for Mr. Whitaker an equivalent elsewhere. A proposal with a view to settlement of this claim is now before this Government.

Mr. Webster's failure was, as I recollect, of the usual commercial character. He was already in difficulties, as shown by his arrest in Sydney in 1840, and his insolvency was completed in the financial crisis of 1842–43 in New South Wales, by which his principals there were affected. His misfortune was never, as far as I know, until now attributed to the action of the Colonial Government or of the Imperial Government. If any such complaint had been made in the early days of settlement, I think that I must have heard it. I do not think that it would have been made in the presence of any person familiar with the facts. It may at present be regarded as a lawyer's plea merely, on his client's behalf.

DANIEL POLLEN.

29th July, 1874.

The first observation to be made upon this statement is that Dr. Pollen does not assert acquaintance with Mr. Webster prior to January, 1840, before which time every title claimed by Mr. Webster was acquired. The next thing to be noticed is the declaration that "towards the close of the year 1839, when it became certain that the sovereignty of New Zealand was about to be acquired by Great Britain, Mr. Webster, as did many others, dealt largely with the Natives for land, or, rather, land-claims."

In answer to this, it is to be observed, in the first place, that the Commissioners found and reported good faith and valuable consideration in all Mr. Webster's purchases which they examined. In every case but one they found that the purchases had been made from the rightful

Native owners, and in that case valuable consideration for the purchase was reported. But the conclusive refutation of the impugment of Dr. Pollen is found in a review of the claims examined and reported upon by the Commissioners, as follows: 305, purchased 4th June, 1837; 305A, purchased 8th December, 1836; 305B, purchased 23rd November, 1839; 305C, purchased 30th January, 1837; 305D, purchased 1836; 305E, purchased 1838; 305F, purchased 1836; 305L, purchased 24th November, 1839; 305G, purchased January, 1839; 305H, purchased 23rd November, 1839; 305I, purchased 1836 and 1838; 305J, purchased 20th May, 1839; 305K, purchased 31st December, 1839; 305M, purchased 1838.

It thus appears that out of fourteen cases or claims only four (305B, 305L, 305H, and 305K) arose in the latter part of 1839, so as to fall under Dr. Pollen's general charge that Mr. Webster was speculating on the probable annexation of the island by Great Britain. In view of these facts, no comment is necessary upon the value of the opinions and recollections stated in the last paragraph of Dr. Pollen's memorandum. What is meant by the declaration that "Mr. Webster's failure was, as I [Dr. Pollen] recollect it, of the usual commercial character"? "He" (Mr. Webster), says Dr. Pollen, "was already in difficulties, as shown by his arrest in Sydney in 1840." This was after the Proclamations of Lieutenant-Governor Hobson invalidating the land-titles. Dr. Pollen further says, "His misfortune was never, so far as I know, until now attributed to the action of the Colonial Government or of the Imperial Government. If any such complaint had been made in the early days of settlement, I think that I must have heard it. I do not think that it would have been made in the presence of any person familiar with the facts. It may at present be regarded as a lawyer's plea merely, on his client's behalf."

The value of this evidence, either upon the score of information, of recollection, or of competency, is easily tested. The very allegation that Dr. Pollen says would not have been made by Mr. Webster "in the presence of any person familiar with the facts" was made in the letter of Mr. Webster to the Colonial Secretary of the 20th July, 1841, heretofore quoted, and was never questioned. But this is not all. The fact appears equally and unmistakably in the recommendation of Mr. Commissioner FitzGerald, which bears conclusive evidence of the good faith of Mr. Webster's purchases, of his large outlays upon and development of his lands, and of his enterprising and useful character as a settler.

It may be thought somewhat significant that the attack made in 1874, and now sanctioned and renewed by Sir Robert Stout, upon the conduct of Mr. Webster is conclusively answered by British official records, which, being nearly contemporaneous with the transactions of Mr. Webster, and containing the testimony of persons having actual knowledge of the facts, uniformly attest his good faith and the meritorious character of his claims. In 1843 his claims were found to be *bonâ fide*, but were disallowed on the ground that the ordinances did not permit him to hold what he had purchased and paid for in good faith. The disallowance was modified, completed, and made final under the Act of 1856. In 1874, when he presses for the recognition of the claims so disallowed, another and wholly inconsistent ground is assumed, against all the evidence, and it is alleged that he is not entitled to further consideration because he was a dealer in "land-claims" in anticipation of the annexation of New Zealand by Great Britain.

These two positions cannot both be maintained. Nor, if the latter position be true, can it be understood why, as the memorandum of Sir Robert Stout constantly reiterates, Mr. Webster was treated with exceptional liberality. Such treatment can be explained only on one or both of the suppositions that the good faith of Mr. Webster's transactions was admitted, or that a partial recognition was made of his rights as an American citizen.

In regard to the Piako tract, which he purchased in 1838, and for which a deed was executed in 1839, Mr. Webster states that, before the case came before the Commissioners in 1845, he sent a surveyor, with a party of chiefs and others from whom he had made his purchase, and measured the front boundary, which extended about twenty-one miles along the river-bank, and then marked each corner of the tract, which extended about eight miles back from the river. In regard to the fact and notoriety of this purchase, Mr. Webster refers to a report of George Clarke, "Protector of Aborigines," to the Colonial Secretary of New Zealand, which was transmitted to the British Government, in which there is the following: "Upon the western side of the river (Piako) is the extensive purchase of Mr. Webster, who claims upwards of forty miles of frontage, two-thirds of which is unavailable, being swamp; the upper part is good. The depth of the river for about thirty miles is less than 8ft." The Commissioners found that he had made *bonâ fide* purchases from the chiefs, as he alleges.

The claim which Mr. Webster now sets forth is as follows: (1.) For the value of 11,000 acres of land (included in Cases 305B, 305J, 305M), found to have been purchased in good faith, but which were never granted to him or his assigns, and which he was prohibited by the land ordinances and officers from selling or conveying, estimated at £1 per acre, £11,000. (2.) For the value of 84,300 acres of land (included in Cases 305, 305A, 305C, 305I, 305K), found to have been purchased by Mr. Webster in good faith, less 5,000 acres assigned to R. Dacre, leaving 79,800 acres, estimated at £1 per acre, £79,000. (3.) For the value of 40,960 acres of land, comprised in Case 305G, and proved to have been purchased in good faith, estimated at £1 per acre, £40,960. (4.) For the value of 3,000 acres, Case 305H, proved to have been purchased in good faith, and for the value of spars taken from the land for the use of the British navy, £25,645. (5.) For the value of 9,000 acres (Cases 305D, 305F, 305L), purchased in good faith, and erroneously alleged to have been withdrawn from the Commission, estimated at £1 per acre, £9,000. Mr. Webster also asserts claims to other tracts of land, comprising about 200,000 acres, which he estimates at 10s. per acre, and claims damages for the destruction of his credit and business in New Zealand, and contends that interest should be allowed on all the items except the last from the 30th January, 1840. Mr. Webster does not include in the above statement Barrier Island (Case No. 305M), which he reserves for further consideration.

Enclosure 2.

SIR,—

13, Victoria Street, S.W., 6th November, 1890.

I have to acknowledge the receipt of your letter of the 25th October, covering copy of a note from Mr. Lincoln to the Marquis of Salisbury, with a printed memorandum on the subject of Mr. Webster's land-claims.

I presume from Mr. Lincoln's note that the memorandum is adopted by the Government of the United States, and forms the ground of their renewed representation to Her Majesty's Government.

Not having any function as Agent-General to intervene in the controversy, I must ask that the few observations I now make in response to Lord Knutsford's request may be taken as made unofficially, as the former Commissioner under the (New Zealand) Land-claims Act of 1856.

It would be an easy task to answer the argument contained in the memorandum, consisting chiefly as it does of a criticism of Sir Robert Stout's exhaustive report on the case in 1887; but there would be no object in making any answer of the kind, so long as it is not known whether Her Majesty's Government do or do not admit the main contention now apparently advanced by the United States Government, that the decisions of successive Commissions under Acts and Ordinances of New Zealand from 1841 to 1856 were "in derogation of the principle conceded by Lord Aberdeen to Mr. Everest in 1844," and that Mr. Webster may still come in and claim as an American citizen under that note.

If Her Majesty's Government admit this contention, then Mr. Webster's case will enter upon a new phase, in which the New Zealand Government could not be expected to take any part. If, on the contrary, Her Majesty's Government hold that Mr. Webster, having submitted his claims under the ordinance of 1841, debarred himself from making a separate claim afterwards as an American citizen, then it follows that he could not take anything under Lord Aberdeen's note in 1844, and can take nothing under it now.

The memorandum sent in by Mr. Lincoln controverts Sir Robert Stout's view that "no other inference can be drawn from Mr. Webster's voluntary submission of his claims than that he intended to have them heard as a British subject." Personally, I conceive this view to be unanswerable; but as Commissioner under the Act of 1856 I held it to be quite immaterial whether Mr. Webster did or did not make any mental reservation when he submitted his claims. The only thing to consider was what the Governor was induced to do by his submitting them. The Governor had expressly imposed the condition that if the claims were heard they should only be heard as those of a British subject, and Mr. Webster knew very well that if he rejected that condition his claims would not be heard at all. He had the choice between staying outside the ordinance of 1841 in his character of American citizen, or of submitting his claims under the condition imposed by the Governor. He made his election, and submitted them. What he could not do was to submit them, appear before the Commission in 1841, petition the Governor in 1844 for a rehearing, obtain that rehearing, receive a number of Crown-grants, resign the grants to his creditors, and then come in afresh as an American citizen under Lord Aberdeen's note to Mr. Everest. He could not take the colonial law for what it gave and reject it for what it denied. And what he could not do for himself then the United States Government cannot do for him now.

I have, &c.,

The Under-Secretary of State for the Colonies, Downing Street.

F. D. BELL.

No. 2.

The AGENT-GENERAL to the PREMIER.

Westminster Chambers, 13, Victoria Street, London, S.W.,

29th January, 1891.

SIR,—

In continuation of my letter of the 7th November, No. 1607, I beg to enclose copy of a letter from the Colonial Office, covering a note addressed from the Foreign Office to the United States chargé d'affaires on the subject of Mr. Webster's land-claims.

I have, &c.,

The Hon. the Premier, Wellington.

F. D. BELL.

Enclosure.

The COLONIAL OFFICE to the AGENT-GENERAL.

SIR,—

Downing Street, 26th January, 1891.

With reference to your letter of the 6th November last, and to previous correspondence, respecting Mr. Webster's claim in regard to certain lands in New Zealand, I am directed by Lord Knutsford to transmit to you, for your information, a copy of a note which has been addressed from the Foreign Office to the United States chargé d'affaires.

A further copy of this note will be sent to the Governor of the colony for communication to his Government.

I have, &c.,

Sir F. D. Bell, K.C.M.G., &c.

ROBERT G. M. HERBERT.

Sub-enclosure.

Lord SALISBURY to Mr. WHITE.

SIR,—

Foreign Office, 16th January, 1891.

In his note of the 11th October last Mr. Lincoln forwarded for the consideration of Her Majesty's Government a memorandum in regard to the claim of Mr. William Webster for further

compensation on account of certain lands purchased by him from Native chiefs in New Zealand, before the annexation of that country by Great Britain.

I have now the honour to state that, in pursuance of the assurance given in my reply of the 21st of the same month, this memorandum, and all the previous papers and circumstances of the case, have been most carefully examined in consultation with the Law Officers of the Crown.

The result of that examination has, however, been unfavourable to the claim, as it is clearly shown that Mr. Webster, in the first instance, when bringing his case before the Commissioners under the Colonial Land-claims Act of 1856, waived his right to be treated as an alien, and so debarred himself from the right to claim anything beyond what was awarded to him by those Commissioners.

Under these circumstances Her Majesty's Government regret that they are unable to reopen the case, or to entertain Mr. Webster's claim for further compensation.

SALISBURY.

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