

1895.

NEW ZEALAND.

WEBSTER'S LAND-CLAIMS.

[In continuation of A.-4, 1894.]

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

THE SECRETARY of STATE for the COLONIES to His Excellency the GOVERNOR.

(New Zealand, No. 32.)

MY LORD,—

Downing Street, 5th July, 1894.

I duly received your Lordship's despatch No. 7, of the 28th of April, 1893, forwarding a memorandum drawn up by Sir Robert Stout, in connection with the claim of Mr. William Webster, a citizen of the United States, to compensation for land-purchases and other interests in New Zealand; and I have the honour to transmit to you, for communication to your Ministers, a copy of a note which has been addressed by the Secretary of State for Foreign Affairs to Mr. Bayard on the subject.

The Earl of Kimberley has been informed that this note would be at once transmitted for the careful consideration of the United States Government.

A copy of a previous note from Mr. Bayard, dated April 19th, 1894, is also enclosed.

I have, &c.,

RIPON

Governor the Right Hon. the Earl of Glasgow, G.C.M.G., &c.

(Enclosure No. 1.)

MY LORD,—

Embassy of the United States, London, 19th April, 1894.

Under instructions from my Government, I have the honour to draw the attention of Her Majesty's Government to the claim of William Webster, a native citizen of the United States, which has been heretofore the subject of much correspondence, and concerning which your predecessor in office, the Earl of Rosebery, wrote to Mr. Lincoln (my official predecessor), under date of the 25th February, 1893, from which I make the following extract: "I have to state, in reply, that a fresh communication on the subject was made to the Government of New Zealand in August last, that their attention will be again called to it, and that, on receipt of their reply, I will consider the matter, in consultation with the Secretary of State for the Colonies."

A reply from the Government of New Zealand has no doubt been received, and I trust it has been of a character that will lead to a satisfactory adjustment of the claimant's case; and awaiting your Lordship's communication,

I have, &c.,

F. BAYARD.

The Earl of Kimberley, &c.

(Enclosure No. 2.)

YOUR EXCELLENCY,—

Foreign Office, 15th June, 1894.

In the note you did me the honour to address to me on the 19th ultimo, your Excellency drew the attention of Her Majesty's Government to the claim of Mr. William Webster, a native citizen of the United States, in respect of compensation for land-purchases and other interests in New Zealand.

This claim had, your Excellency pointed out, formed the subject of correspondence between Mr. Lincoln and my predecessor in office, and you reminded me that a further communication on the part of Her Majesty's Government had been promised on receipt of the further report from the Government of New Zealand, to whom the case had been referred.

I now have the honour to transmit to your Excellency, for the information of the United States Government, copy of a letter from the Department of the Secretary of State for the Colonies, enclosing an exhaustive memorandum, drawn up by the Government of New Zealand, on the claims in question.

Your Excellency will perceive that the Colonial Office letter deals very fully with the whole matter, and that all the points raised in Mr. Lincoln's note of the 11th October, 1890, have been carefully and thoroughly investigated.

As the papers which I have now the honour to communicate to your Excellency give full details of the case, it appears unnecessary for me to enter into them at any length.

1—A. 4.

Her Majesty's Government feel assured that the Government of the United States will recognise that Mr. Webster's claims have received the fullest consideration both from the New Zealand Land Commission in 1843 and subsequently from the Government of that colony; and it will be seen that he was treated in respect of them with quite exceptional liberality.

The results of these inquiries, which are annexed, shown in a tabular form, to Sir Robert Stout's memorandum, further prove that in every case except those claims which were withdrawn or disallowed the whole or part of the land claimed was allowed to Mr. Webster, or to those who had bought it from him.

In view of the facts disclosed in the accompanying papers, Her Majesty's Government are confident that the Government of the United States will concur with them in the opinion that so much of Mr. Webster's claim as was genuine was allowed to him half a century ago.

His Excellency the Hon. T. F. Bayard, &c.

I am, &c.,

KIMBERLEY.

Sub-enclosure.

COLONIAL OFFICE to FOREIGN OFFICE.

SIR,—

Downing Street, 19th July, 1893.

With reference to previous correspondence on the subject of Webster's land-claims, I am directed by the Marquis of Ripon to transmit to you, to be laid before the Earl of Rosebery, copy of a despatch from the Governor of New Zealand, transmitting a memorandum from his Ministers, with an opinion by Sir Robert Stout on the report of the Committee of the Senate of the United States, which formed an enclosure to your letter of the 25th February last.

I am at the same time to submit the following observations upon points not touched by Sir Robert Stout, which will, it is believed, satisfy Lord Rosebery that the Senate and Government of the United States have been grievously deceived, and that Webster is not deserving of the slightest consideration. The numerals indicate the pages of the Committee's report, from which materials for this letter are derived.

2. William Webster is an American citizen, who more than fifty years ago failed in business in New Zealand. He is claiming from Her Majesty's Government—(p. 1) "reparation for the seizure and sale . . . of large tracts of land in New Zealand to which he had acquired the title, and of which he was in possession before the acquisition of that colony by such (the British) Government in 1840, and for other wrongs." The land is said (p. 2) to have been "about 500,000 acres in all." He is said to have expended in cash, merchandise, and substantial improvements thereon, £15,672, somewhat more than 78,000 dollars. These figures are his own. See his letter to the American Consul, at Sydney (p. 122), where he states that the amount expended in buildings and other improvements from 1835 to 1840 was £9,060, thus leaving £6,612 for the land, which gives an average of about 3½d. per acre on 500,000 acres. As a matter of fact he did not spend a third part of £6,612,* or buy the twelfth part of 500,000 acres; and two-fifths of what he did buy were bought for two men named Abercrombie and Nagle, who were his partners in one venture, Barrier Island.

3. The amount of reparation, as officially demanded by the United States Government in the enclosure to Mr. Lincoln's note of the 11th October, 1890, is thus made up (pp. 39, 40) exclusive of Barrier Island:—

Cases 305, 305A to D, F, G, I to M:—		£
140,760 acres of land, at £1	...	140,760
200,000 acres (not specified) at 10s.	...	100,000
3,000 acres of land, case 305H, Tairua, Bay of Plenty, and value of spars taken from the land	...	25,645
		<hr/> 266,405
With interest from 30th January, 1840, fifty-three years at 4 per cent. simple interest	...	568,160
		<hr/> 834,565
Adding for case 305E, Barrier Island, 100,000 acres (p. 10), at, say, £1 = £100,000, interest fifty-three years, £212,000	...	312,000
		<hr/> £1,146,565

If the rate of interest demanded is higher than 4 per cent., this amount will be proportionately increased.

4. The figures 305 to 305M are the numbers attached to Webster's claims in the list of land-claims sent in to the Commissioners appointed to investigate such claims under the New Zealand Act of 1841, 4 Vict., No. 2. The fourteen claims 305 to 305M were dealt with in 1843 and 1844, and were allowed to the extent of 41,924 acres. No claim was presented in respect of the 200,000 acres (pp. 54-73).

5. In addition to the £1,146,565, Webster also claims (p. 40), without interest, damages for the destruction of his credit and business. No sum is mentioned, nor is any reason given why Her Majesty's Government should compensate him for his insolvency, nor is any tangible complaint

* Page 73.—Cash	..	..	..	..	..	..	..	..	..	£	s.	d.
Goods	..	..	..	..	..	..	..	..	..	140	10	0
Page 68.—Cash	..	..	..	..	..	..	..	..	..	1,476	14	0
Goods	..	..	..	..	..	..	..	..	..	10	0	0
										570	15	0
Total	..	..	..	..	..	..	..	..	..	£2,197	19	0

made of specific acts of the Government such as can be met and answered. In November, 1840, he wrote (p. 122) that he had not been dispossessed of anything. There is nothing subsequently to show by what methods, forcible or otherwise, he was dispossessed of his lands, or the dates at which the expulsion took place; there is no trace of his having at the time either protested to the Governor or invoked the protection of the law Courts. He says himself that he did not, until 1858, seek the intervention of his Government.

6. Such acquiescence in so cruel a wrong would have been remarkable; but the truth is (as pointed out by Sir Robert Stout) that the wrong was never committed; the Government was not a party to the land cases. The claimants claim to have bought from Natives, and, wherever they failed to prove a claim, the land in question remained the property of its Native owners, it was not seized or sold by the Government. Again, comparing Webster's alleged expenditure of £6,112 with the amount per acre of reparation demanded, it would seem that, in his own opinion, the immediate result of British annexation was to raise the value of his land from under 4d. an acre to over 17s. an acre. It is difficult to understand how such an operation can at the same time have ruined his credit.

7. He began business (p. 1) in 1835 with (p. 27) a capital of £1,200 (6,000 dollars); and at the end of 1840 his creditors (p. 139) lodged him in the debtor's prison at Sydney for £12,000. His arrest was connected with his land transactions in New Zealand (p. 139), a connection which will be explained later. He paid the Natives for land, not £6,612, but in cash £140 10s., and goods £1,476 14s. (p. 73) = £1,617 4s., though the goods counted for £4,430 2s. in the Land Court. His trade debts would therefore appear to have exceeded £10,000, even after giving him credit for £193 11s. 8d., one-third of the expenditure on Barrier Island (p. 68), £580 15s. (see margin above.) The magnitude of his operations (p. 9), ship-building, several whaling-stations, water-mills, Native produce (p. 140) collected over 300 miles of coast, shows that he traded on borrowed money to an extent far in excess of what his original capital would justify. His failure was obviously due to natural causes, such as high interest, commission, discounts, agency charges, and so forth (see p. 73), and not to any action of the Government; whose advent in New Zealand, bringing the machinery of settled administration, would naturally strengthen, rather than weaken, the credit of all legitimate traders.

8. Besides this supposed destruction of his business, the only "other wrong" (p. 1) alleged against Her Majesty's Government is the conversion of spars (p. 40) on a block of 3,000 acres at Tairua, Bay of Plenty (p. 60). Her Majesty's ship "Tortoise" (p. 61) did obtain certain spars from the Natives; but as Webster was not owner of the land, not having bought from the rightful owners (p. 60), he could have no right to the timber on it as against the Natives who supplied the spars to the Commander of the "Tortoise." All claim in respect to "other wrongs" may, therefore, be dismissed, merely observing that in 1844 (p. 74) he appears to have valued the spars at £2,000, and had (p. 73) given £169 3s. for the land (to the wrong people). Land and spars now figure at £25,645, with interest thereon for fifty-three years—say, £53,378: total, £79,023.

9. Returning to his land transactions it will be seen (p. 15), from a document laid before the American Senate in 1859, that his statement of claim (78,145 dollars = £15,672) is said to have been pressed upon the British Government in 1842 and 1843, but was not presented to the Commission acting under the Convention of the 8th February, 1853. Mr. Blaine, however, on the 21st June, 1881 (p. 145), informed Webster that no claim for compensation was directly presented on his behalf until September, 1858. This latter claim appears (p. 15) as amounting to 6,573,750 dollars = £1,314,750, and is stated to be for "loss and damage and indemnity for lands purchased from chiefs of New Zealand from 1835 to 1840 . . . which claimant alleges were sequestered and taken from him by the British authorities after the assertion of the sovereignty of Great Britain over New Zealand in January, 1840."

10. The date at which Webster first urged his Government to apply for compensation is, however, not now material, for it is abundantly clear that the transactions out of which his claim arises occurred before 1847, when (p. 13) he left New Zealand. The Senate Committee in 1887 fixed (p. 114) the final sequestration and sale as having occurred in 1845 or later; but any possible doubt as to their date is removed by the fact that interest is claimed from the 30th January, 1840. The whole claim is therefore barred by the Convention of the 8th February, 1853. By Article V. of that instrument the British and American Governments "engage to consider the result of the proceedings of this Commission as a full, perfect, and final settlement of every claim upon either Government arising out of any transaction of a date prior to the exchange of the ratifications of the present Convention; and further engage that every such claim, whether or not the same may have been presented to the notice of, made, preferred, or laid before the said Commission, shall, from and after the conclusion of the proceedings of the said Commission, be considered and treated as finally settled, barred, and thenceforth inadmissible." The Commission concluded their proceedings in 1854, no claim on behalf of Webster having been presented.

11. In 1858, and again in 1869, the American Government refused to take up Webster's case. Reports to this effect are extant, one dated the 15th September, 1858, the other in Mr. Fish's (Secretary of State) handwriting, dated the 11th May, 1869 (pp. 129-134). The contents of these reports are not known to Her Majesty's Government, for the Senate Committee has not thought it necessary to print either of them, though one at least (p. 129) was appended to a document which is printed; but from a passage at p. 132 it may be inferred that in the report by Mr. Fish, if not in both, the ground of refusal was the Convention of 1853.

12. The Senate Committee has been persuaded that Webster's claim (p. 18) did not arise till after the adjournment of the Commission; that the controversy as to the lands was never within the purview or operation of the Treaty of 1853; that Webster's grievance for taking the lands did not arise until they were finally taken from him, and until it was definitely settled that they would not be returned to him, and they add, "It has been seen that, as late as 1858, the question was under advisement by the Colonial authorities, and the validity of one of the grants was recognised."

This statement, and indeed the whole argument, rests upon the fact that in 1856 an Act was passed in New Zealand "for the final settlement of claims arising out of dealings with the aborigines." The report of Mr. F. Dillon Bell (pp. 82-87), the Commissioner under this Act, shows that Webster had no longer an interest in the questions that came before him; these questions, so far as related to Webster's land, being entirely as to the respective rights of various persons who had purchased from him.

13. Commissioners had been appointed under previous laws for dealing with, and had, in fact, dealt with many claims, including those put forward by Webster; but the land-grants issued for carrying out the decisions of the Commissioners were in some cases informal, and in others were disputed; other claims were still unsettled, and further proceedings were requisite in order finally to wind up the troublesome and complicated questions arising out of the land-purchases made before 1840, and the subsequent dealings with these lands by the original purchasers. Such proceedings were authorised by the Act of 1856, and the Committee's Report purports (p. 13) to give a summary of its provisions.*

14. This summary, omits, however, to refer to the provisions of the Act, which prohibited the consideration of any case "in which the claim shall not have been made and notified to the Government of the colony before the passing of this Act"; "in which the claims shall have been heard and allowed, wholly or in part, and in respect of which the claimant shall have accepted, in satisfaction of such claim, compensation in money or debentures, or a grant of land;" "in which the claimant shall not, before the 1st day of July, 1858, have notified his intention to have his claim heard under the provisions of this Act." Webster made no fresh claim, gave no notices, and never, in fact, did anything to bring himself within the Act (p. 73). He had originally made fourteen claims, Nos. 305 to 305M. These fourteen were excluded from the Act, for they had all been heard in 1843 and 1844, some allowed wholly or in part, some disallowed, some withdrawn, and in every case but one the decision was accepted, and Webster sold every acre allotted to him, some before, and the rest after the investigation (see pp. 73, 82-87). The dealings by Webster with the Natives were not re-examined, though the rights of his sub-purchasers had to be adjusted by Mr. Bell.

15. The one exception was Mercury Island, 305J. Webster claimed the whole island, estimated at 6,000 acres. On survey (p. 74), it was found to contain only 4,090 acres, and he failed to prove anything more than (pp. 63-74) the purchase of two small pieces of land, the area of which was not ascertained, and no grant was recommended. He left the colony in 1847, and from that date to 1858 had made no complaint, nor did he bring the matter before the International Commission. It is impossible to admit that any claim by Webster on account of these small portions of land has been kept alive, notwithstanding the plain language of the Convention.

16. Her Majesty's Government have hitherto refrained from taking their stand on the Convention, and have more than once invited the Colonial Government to examine and report upon Webster's case, in fear of the possibility that some mistake might be discovered in the early records of the colony, or that some other fact might come to light which, on the ground of a failure of natural justice, might entitle Webster to consideration, but in each case his contentions were refuted. The Government have taken the same course on this occasion, but again, as will be seen from the enclosure to this letter, without any results favourable to Webster.

17. Seeing that the case is on this occasion specially pressed by the American Government, and is supported by a printed document embodying numerous records of the American official departments, Her Majesty's Government, while communicating with the colony, have also examined these documents for themselves, feeling sure that the Government of a friendly Power would not again bring forward a claim of this nature after it had been already more than once refused, unless they were relying upon documents which Her Majesty's Government had not previously seen, or, by inadvertence, had overlooked on former occasions. Three important papers—viz., the full text of Webster's letter to the American Consul, 4th November, 1840 (pp. 121-122), Mr. Dacre's affidavit (p. 138), and Webster's petition to Congress of the 23rd February, 1854 (p. 117)—had not been previously communicated to Her Majesty's Government; and at p. 10 of the print the following statement occurs: "The official *Gazette* of the New Zealand Government for May, 1842, contained the following: 'Schedule of titles proved before Commission.'"

The schedule contains the fourteen claims, 305 to 305M, and the report continues: "These were Mr. Webster's claims. So that it was at one time officially announced that the 'titles proved before Commission' of Mr. Webster covered an aggregate of 241,450 acres."

18. This statement and schedule were entirely new to Her Majesty's Government, and obviously required investigation in order to reconcile them with the assertion that Webster had afterwards only been allowed 2,560 acres, which is the view of the case specially emphasized by Mr. Lincoln in his note of the 9th February, 1893. The first step was naturally to refer to the *Gazette* of the date cited, and it is to be regretted that it did not occur to the Senate or to the Government

* The following extract from a speech made by Captain Rous in the House of Commons, 18th June, 1845, shows the extravagant nature of New Zealand land-claims:—

"The two principal islands were computed at about 56,000,000 acres, of which, at this period—

	Acres.
Mr. Busby claimed	50,000
Mr. Wentworth	20,100,000
Weller and Company	3,557,000
Catlin and Company	7,000,000
Jones and Company	1,930,000
Peacock and Company	1,450,000
Green and Company	1,377,000
Guatel and Company	1,200,000
And the New Zealand Company	20,000,000

"So that in the whole 56,654,000 acres were claimed by only nine purchasers, leaving the Natives 654,000 acres less than nothing."

of the United States to verify the citation for themselves, as might have been done by the Consul at Wellington or the Legation in London. For examination of the New Zealand Government *Gazette* shows that this supposed schedule is not there, either under date of May, 1842, or any other date. On the other hand, examination of the documents appended to the Report of the Senate Committee shows that this "Schedule of Titles proved" was fabricated by Webster in 1884. Its origin and development will be seen later.

19. Further, it is the fact that the rule limiting a claimant to a maximum grant of 2,560 acres was not enforced against Webster; he, and the people who bought from him, obtained (pp. 81-79) just ten times that amount—25,735 acres—besides 16,189 acres allotted to Abercrombie and Nagle, partners with Webster in the Barrier Island purchase: total, 41,924 acres.

20. But, even if the claim were not so barred, Webster is by his own act estopped from raising it. A notice was issued in February, 1841 (p. 29) by the Governor of New Zealand, directing that all foreigners should forward a copy of their land-claims to the Colonial Secretary's Office, Auckland, on or before the 1st June, 1841. Accordingly, Webster wrote on the 20th July, 1841, sending in seven copies of titles and seven statements of purchases, to be laid before the Commissioners for examination only, adding that he had sent all his claims to land before the United States' Government, by the advice of the American Consul of Sydney. In reply, he was told, on the 7th August, 1841, that he must distinctly state whether he claimed the land as a British subject or American citizen. If the former, his claims would be dealt with as the law allowed; if the latter, his claims must depend upon the decision arrived at by the two Governments. He was also informed that, in seeking assistance from a foreign Government, he must relinquish all the rights of a British subject, such as the ownership of a British ship, which he was understood to possess; but if the claims were lodged as a British subject, the Governor would consent to their being laid before the Commissioners in the usual way. On the 3rd October, 1841, Webster answered as follows: "Sir, in reply to yours concerning my claims to land, I wish my claims to be laid before the Commissioners, and I will take my chance with all others. But I trust they may be left until the last, for it will put me to a serious inconvenience to attend to them now." The full correspondence is at pp. 53, 54.

21. He thus made his election, not indeed as to the nationality which he desired to claim, but as to the mode in which he wished his claims to be dealt with. Time was given him; and on the 1st July, 1843, and at subsequent dates up to August, 1844, every claim brought forward by Webster, fourteen in all, was dealt with by the Commissioners (pp. 55-73), with the result that his purchases were allowed to the amount of 41,924 acres, of which 16,189 were allotted to his partners in the purchase, 305B, of part of Barrier Island, and the remainder to Webster himself, or to persons to whom he had already sold. The whole of these 41,924 acres are included in the present claim, except 5,000 acres sold to Mr. Dacre (p. 39).

22. The Senate Committee's Report argues at length (pp. 19-23) that Webster, notwithstanding this correspondence, remained an American citizen, and retained all his rights, especially under a correspondence which passed between Mr. Everett and Lord Aberdeen in 1844, more than two years after he had chosen to take his chance before the Commission rather than wait for the delays of diplomatic correspondence. It is not suggested that his nationality was affected; but having, in 1841, made his election between the two modes of procedure offered to him, and having had the benefit of practically everything to which he could prove his title, he must abide by the choice which he then made.

23. Assuming, however, that the claim was not barred by the Convention, and assuming that Webster had not precluded himself from raising it, the claim must still be rejected on its merits. It is grossly exaggerated, it is tainted with fraud, and so much of it as was genuine was allowed to Webster and his assigns half a century ago. He claims for 500,000 acres (p. 2): as regards 255,890 acres, there is no proof that he ever bought one single acre; the remaining 244,110 acres form the "Schedule of Titles proved." The figures 241,540 at p. 10 is inaccurate; the Schedule totals 241,110, and adding 3,000 acres (p. 60) for 305B, which, though "proved," could not be traced, the result is 244,110 acres.

24. No document of title has ever been produced in respect of any part of the 255,890 acres, nor any statement of the localities where the land was situated. It is true that (pp. 121, 122) Webster informed the American Consul on the 4th November, 1840, that he had paid for land on the banks of the River Waitemata £280, and the Senate Committee (p. 8) state that Webster had, in all, twenty-seven claims. This statement is based (p. 94) upon a note attached by Webster to his letter of the 20th July, 1841, asserting twenty-seven purchases, of which the title-deeds of thirteen were missing, but would be produced when found—they never have been produced. Webster's attorneys, Kimber and Ellis, in 1873 stated (p. 140) that he had sent to the Commissioners notice of his *principal* claims, of which they append a schedule (p. 142), obviously intending that the existence of other claims should be inferred. But no proof in support of these statements, or of this inference, has ever been forthcoming. Indeed, Kimber and Ellis themselves say (p. 140) that Webster states that "he duly proved *all his claims* to the satisfaction of the Commissioners." He made no claim before them in respect of any part of the 255,890 acres.

25. The Committee (p. 2) state, after speaking of 500,000 acres, that "all the tracts are situated on the north and north-east coast of the North Island," and that "their location is indicated on the annexed map by red boundaries and letters." A map is given opposite to p. 114, but if this is the map referred to by the Committee it contains only twenty tracts indicated by red lines, not twenty-seven, and only eleven are marked with letters, viz., 305, 305B to K. It is possible to identify 305A, L, M, but no authority or evidence is forthcoming to explain why the other six are marked in one place rather than another, or, indeed, why they are there at all.

26. On the other hand, the Committee (p. 2) say he purchased "about 500,000 acres in all. He expended for these lands in cash and merchandise, and in substantial improvements thereon, £15,672 (somewhat more than 78,000 dollars)." A reference to Webster's letter to the Consul of

the 4th November, 1840 (p. 122), shows that these are the exact sums which he claimed to have expended in certain specified amounts as the price of certain specific lands there enumerated, which he estimates at about 500,000 acres. Forty-four years later, on the 23rd February, 1884, he opens his petition to Congress with the same statement he had given about 78,145 dollars for about 500,000 acres of land (p. 117).

27. The whole of the lands enumerated in his letter are, however, included in his fourteen claims, 305 to 305m, with the single addition of lands on the Waitemata River, £280. But it has been recently ascertained from the colony that he made no claim before the Commission for any land on the Waitemata, and the irresistible conclusion is that that the fourteen claims, 305 to 305m, are all that he ever really possessed. The letter to the Consul hints at no others; in it he encloses copy of his title-deeds, and in his letter to the Colonial Secretary (20th July, 1841), he says, "I have sent *all* my claims to land before the United States' Government." The statement that he had purchased other thirteen portions and had lost the title-deeds would seem to have been an afterthought, and the claim may be at once reduced by 255,890 acres, as being to that extent wholly fictitious.

28. The claim is shown to be grossly exaggerated, and this extravagant claim was by no means a solitary instance. Nine claimants, as stated by Captain Rous in the House of Commons, professed to have bought more than the whole of New Zealand (omitting the small Southern Island), leaving less than nothing for Webster, less than nothing for the other Americans, who, he says, had bought 1,000,000 acres (p. 122), less than nothing for other foreign claimants, less than nothing for numerous other British claimants, and less than nothing for the entire Native population of the country. Thus, the Government at the outset of the colony was confronted by a problem of great difficulty, magnitude, and complexity. It was clear that the Natives had not understood the alleged transactions, or that the effect of the deeds was to leave the entire Native population homeless and landless; it was also clear that in most cases there could have been no real agreement and no contract. The Government had two courses before it: either summarily to reject all claims on the ground of the wholesale imposition practised upon the Natives, or to devise some scheme which, while protecting the Natives from spoliation, would give to the purchaser good value for any payments actually made.

29. This second alternative was adopted; any person who could prove that he had *bonâ fide* bought something was to be taken to have paid a rate per acre varying according to the year of the purchase, the rate rising, as the time of annexation approached, up to a maximum of 8s. an acre (the scale is at p. 50); the purchaser was to be allowed as many acres as the purchase-money divided by the above rate would give; for instance, if the rate were 4s. an acre, he would receive 5 acres for every sovereign expended. When the price had been given in goods, the goods were to be calculated at three times their cost in Sydney; thus £10 laid out in Sydney would count for £30, and, at 4s. an acre, would be taken as having bought 150 acres, a scale which was certainly not illiberal to the purchaser. The Natives were to be protected by limiting to 2,560 acres the amount of any one grant, unless specially authorised by the Governor in Council, and Commissioners were to be appointed for examining claims and reporting upon them in accordance with the above principles.

30. In 1840, New Zealand formed part of the Colony of New South Wales, and an Act was passed by the Legislature of that colony embodying and giving effect to the above scheme for dealing with New Zealand land-claims. In 1841, New Zealand became a separate colony, with its own Legislature, and on the 3rd June, 1841, an Act was passed there (4 Vict., No. 2), taking the place of the New South Wales Act, but containing the same provisions. It was under this Act (printed p. 47) that Webster's claims were dealt with by the Commissioners in 1843 and 1844; the Commissioners were bound by law to enforce the limitation to 2,560 acres, they had no power to relax it, and when Webster elected to "take his chance with all others," he could only do so upon that condition. The condition was the law of the land, and Mr. Lincoln was under a misapprehension when, in his note of the 9th of February, 1893, he speaks of it as "an arbitrary rule" and "an administrative act." The Commissioners (p. 73) accordingly applied this condition in Webster's case, and were precluded from recommending a grant in several of his claims.

31. Eventually, however, the condition was not enforced against him, for (p. 71) the Governor in Council directed that the whole of the awards in his claims should be referred to the Commission with an instruction to recommend an extension of the grants. And it will be seen (pp. 71, 72) that Commissioner FitzGerald, who dealt with the matter, recommended an award of 17,655 acres to Webster and to various persons who had bought from him, to which must be added 24,259 acres allowed to Webster and his partners Abercrombie and Nagle (pp. 69, 70) in respect of Barrier Island, thus making up the 41,924 acres above mentioned, being everything to which he was able to show title.

32. Before analysing the 244,110 acres in the "Schedule of Titles proved," it may be well briefly to review Webster's proceedings leading up to the manufacture of that schedule. Having in 1835 begun business with a small capital of £1,200 (p. 27), he, five years later (p. 139) owed £12,000, or ten times his original capital, and it is not too much to conclude that his land purchases formed his only substantial asset. At any rate, it appears that, finding himself in these difficulties (*post hoc si non propter hoc*), he formed the design of leaving his business to its fate and getting away to America with his land-claims and as much property as he could take with him. He said nothing to the New Zealand Government as to his land (see p. 52); but on the 4th November, 1840, he wrote from New Zealand to the American Consul (p. 122) at Sydney, claiming to have bought about 500,000 acres, of which he gives a schedule, for 78,145 dollars = £15,672, and professing that the British Government would take it all unless the United States Government would take the matter in hand and stop it. He at the same time sought to propitiate his Government by offering to make over Barrier Island to it for a very small sum.

33. It is impossible to regard this offer as anything but a fraud. It will be seen from the pro-

ceedings in this case (pp. 68, 69) that he had only bought part of the island, and that two other men, Abercrombie and Nagle, had joined with him in the purchase of that part. The deed comprised the whole island, and, whether the offer was or was not a fraud upon the owners of the unsold portion, it was clearly a fraud upon his partners; and to offer the whole island to his Government when he owned at most a third, and actually only a sixth, was in itself a fraud upon that Government.

34. Having thus started the scheme, Webster immediately followed up his letter of November by sailing to Sydney, where he was, as Mr. Dacre, in his useful affidavit (p. 138), says, in the latter part of the year, engaged in chartering "a bark called the 'Planter' to convey a cargo of spars and other New Zealand produce he had collected there to England for sale. He intended proceeding in the barque to England, whence, I believe, he intended to go to the United States to ask protection from the Government of the United States in regard to title to land he had purchased in New Zealand from Native chiefs."

35. His creditors, however, not unnaturally, took a different view of his proceedings, and (see Mr. Dacre's affidavit, p. 139) "on the eve of the 'Planter's' sailing, Webster was arrested at the suit of Messrs. Abercrombie and Co., merchants, of Sydney, and lodged in the debtors' prison there . . . where he remained about seven weeks, until I procured bail to the amount of about £12,000 for his appearance at Court, and so released him." As Mr. William Abercrombie was partner in the Barrier Island purchase, and as this was probably the firm which had advanced him cash and goods to make his land purchases, and as it is equally probable that the firm was looking to this land to save them from eventual loss on Webster's account, it may be concluded that, as he told Mr. Dacre, the cause of his arrest arose in connection with New Zealand land titles. If he had managed to reach America the firm's chance of being repaid would doubtless have vanished; they arrested him in self-defence, and no doubt thereby saved part of their £12,000. He appears (p. 73) to have never entirely cleared himself.

36. The arrest was effected under the provisions of the New South Wales Act passed in October, 1839, 3 Vict., No. 15 (commonly known as the Absconding Debtors Act), by which, if a Judge of the Supreme Court is satisfied that the defendant in an action is about to remove, or is making preparations to remove, out of the jurisdiction of the Court—and that the action will be defeated unless he is forthwith apprehended—such Judge may by special order direct that he be held to bail for such sum as the Judge shall think fit, not exceeding the amount of the debt or damages. It will therefore be seen that Mr. Dacre (p. 139), by naming the bail as about £12,000, supplies the exact measure of the Abercrombies' claim against Webster, and shows that this amount was an actual claim, not a penal sum fixed, as is common in security bonds, at twice the amount of the claim.

37. Webster arrived in Sydney at the end of 1840—it would have taken some little time to charter and fit out the "Planter"; he was arrested on the eve of her sailing, and lay in prison seven weeks, so that he must have obtained his release towards the end of February, 1841. He then, or before, but evidently under pressure (p. 52), came to some arrangement with the Abercrombies, for on the 9th March, 1841 (see p. 9 of Sir R. Stout's minute inclosed herein), the New South Wales Government *Gazette* contained notices that certain claims, numbered 28, 29, 29A, 29B, 29D, 30, 31, 32, had been referred to the Commissioners under the Act 4 Vict., No. 7, and the *Gazette* of the 23rd March contained similar notices in regard to claims 80, 83, 93. Peter Abercrombie claimed under 29, 29A, 29B, 29D, to have bought lands from Webster, which are the same as the latter's claims 305A (in part), 305D, 305F. Under 32 claim is made by the three partners to Barrier Island, 305E; the other notices related to a sale to Peter Abercrombie of 40,000 acres, part of 305K, and sub-purchases from him.

38. These notices are material only as showing that even at that early date Webster had parted with large portions of the land for which he is now seeking to be compensated. Immediately on these notices appearing (March, 1841) he entered a caveat (p. 52) against the whole of these claims, which caveat he renewed on reaching New Zealand in May, 1841, but withdrew when he came before the Commission on the 1st July, 1843. The purchasers established their title, and they or their assigns eventually obtained allotments (see p. 72).

39. The arrest put an end to Webster's voyage to America, and by the 1st May, 1841, he was (p. 52) again in New Zealand. In October, 1841, he (p. 53) elected to go before the Commission. The *Gazette* of the 5th April, 1843, contains a notice that the Commissioners would investigate the claims 28–32, 80, 83, 93, 305–305L. These claims, with 305M, were all subsequently dealt with in 1843 and 1844. On the 8th March, 1845 (p. 35), he wrote to Commissioner FitzGerald inquiring as to the decision on "my two land-claims," 305N (which had been disallowed) and 305J, Mercury Island (which has shrunk from 6,000 acres to two small pieces of land). This letter refers to two claims only, and it disposes of Webster's assertion (p. 31) that after the 23rd June, 1843, he never 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; for Mr. FitzGerald was not appointed till the 15th January, 1844 (see *New Zealand Government Gazette* of the 20th January, 1844).

40. On the 21st April, 1844 (p. 72), Mr. FitzGerald awarded 12,655 acres to Webster's assigns, and 5,000 acres to Webster himself. Of these, by deed (p. 84) dated the 15th August, 1844, Webster conveyed four parcels to John Campbell in consideration of £4,000. These parcels were conveyed on the 28th April, 1854, by Campbell to Ranulph Dacre in consideration of £350. They contained 4,750 acres, and were the lands allotted to Webster in respect of 305C, G, I, K (p. 72). (Compare Dacre's affidavit, p. 139.)

41. In reply to this letter, the Private Secretary, 10th March, 1845, tells him that the Governor cannot authorise any further grant at present; and in a postscript he adds (p. 35), "The Governor directs me to say that the land which you now hold in undisturbed possession will probably be granted to you eventually." It has been seen that on the 22nd April, 1844, Commissioner

FitzGerald had recommended grants of 17,655 acres, and as the correspondence related only to 305H and 305J, the postscript can only have referred to the two small pieces of Mercury Island; yet it is made the basis of an argument (p. 110) that Webster was in undisturbed possession of large tracts of which he has been deprived. In 1847, Webster finally left New Zealand without protest or further communication with the Government of the colony.

42. He remained silent for eleven years, till in 1858 he put forward (p. 15) his claim for 6,573,750 dollars. As already stated, the United States Government twice refused (p. 129), in 1858 and 1869, to take up his case. In 1873 he was in England, and through his lawyers, Kimber and Ellis (p. 139), preferred his claims direct to the British Government. These gentlemen state (p. 140): "The principal claims preferred will be found shortly stated in the official *Gazette* of the New Zealand Government of the 26th May, 1842, and we have appended a schedule of them to this letter." As a matter of fact, the *Gazette* of that date only mentions two of Webster's claims, 305I and M. The schedule (p. 142) is as follows:—

No. of Claim.	Acreage.	Situation.
305	350	Coromandel Harbour.
305A	600	"
305B	1,500	On the River Thames.
305C	2,500	Coromandel Harbour, Taupiri.
305D	1,000	" Waiau.
305E	About 100,000	Great Barrier Island.
305F	300	Motutaupiri.
305G	40,960	Point Rodney.
305H	...	We have not been able to trace this claim.
305I	3,000	On the Nickiaranga Creek.
305J	6,000	Big Mercury Island.
305K	80,000	Left bank of the River Brako.
305L	3,000	Wanaki, on the River Waihow.
305M	2,000	South-east side of the River Weahako.

43. Kimber and Ellis's letter was referred to the colony for report, and was fully answered (p. 90). While it was under consideration, Webster employed another agent, Mr. L. C. Duncan, to press his case upon the Colonial Office (pp. 89-97), and that correspondence closes with a letter from Mr. Duncan (p. 97), in which, on the 19th November, 1874, he states that he has "been thoroughly convinced that Mr. Webster is a person in whom no confidence whatever is to be placed." He adds his regret "that, deceived by his specious manner and plausible story—as no doubt many others have been—I should have caused the Colonial Office of Her Majesty's Government the trouble of investigating his claims anew."

44. Having failed in London, Webster returned to the United States, and (p. 119) in 1876 and 1880 applied to Congress. The application of 1876 had no result (p. 127); that of 1880 led to a favourable report (p. 132) from the Committee on Foreign Affairs, with a joint resolution requesting the President to take steps for the final adjustment and settlement of the claim. The President appears to have taken no action, and from the tone of Mr. Blaine's letter to Webster (p. 145) of the 21st June, 1881, it may be inferred that the Convention of 1853 was the obstacle.

45. Webster and his advisers must have felt that his case required strengthening if anything was to be made of it, for, on the 23rd February, 1884, he presented to Congress a further petition for assistance. In that petition (p. 119) is the following sentence:—

"Your petitioner here files an extract from the official *Gazette* of the New Zealand Government of May, 1842, which is also on file in the Colonial Office in London, by which the Land Commission of that Government conceded that he had proved title to about 240,000 acres of land, but for causes unknown to him failed to confirm the same. This extract is marked as enclosure No. 16."

This so-called extract is printed at p. 138, and is as follows:—

SCHEDULE of Titles proved before Commission.

No. of Claim.	Acreage.	Situation.
305	250	Coromandel Harbour.
305A	600	"
305B	1,500	On the River Thames.
305C	2,500	Coromandel Harbour, Taupiri.
305D	1,000	" Waiau.
305E	About 100,000	Great Barrier Island.
305F	300	Motutaupiri.
305G	40,960	Point Rodney.
305H	...	We have not been able to trace this claim.
305I	3,000	On the Nickiaranga Creek.
305J	6,000	Big Mercury Island.
305K	80,000	Left bank of the River Brako.
305L	3,000	Wanaki, on the River Waihow.
305M	2,000	South-east side of the River Weahako.

46. This schedule, as a list of titles proved, is on the face of it suspicious. The uncertainty as to the area of 305 E, F, the uncertainty as to the existence of 305H, seem to invite caution; while the fact that Webster had not previously called attention to the schedule, although his case had been before the United States' Government for more than twenty-five years, ought to have put everybody on his guard. The United States' Senate and Government appear, however, to have accepted the schedule without question, and they have been most completely taken in; for, as already stated, the schedule is not in the *Gazette* from which it purports to be an extract either in May, 1842, or any other date. It is, in fact, simply the schedule compiled by Kimber and Ellis in 1873 (pp. 140-142), with a new head-line transforming their list of "Claims preferred" into a "Schedule of Titles proved before Commission," while, to give it a fictitious appearance of credibility, Webster pretends that it is an extract from an official *Gazette* which is accessible to everybody.

47. This is, however, not the only enclosure to his petition which has been manipulated. Mention has been made above of the Private Secretary's letter (p. 13), which in its postscript held out hopes to Webster that the land in his undisputed possession would eventually be granted; and it has been pointed out that this could only refer to the two small pieces of Mercury Island. The letter is printed at p. 35 from American sources, at p. 75 from New Zealand sources, and in both places the postscript appears as a postscript. It also (pp. 1181, 27) forms enclosure 10 to Webster's petition, and is part of enclosure 14 (p. 130), and of enclosure 15 (p. 135); in all three places the postscript has been carried into the body of the letter, a form of language naturally adopted by the Committee (pp. 101, 110) when reporting on the petition. The foot-note at p. 101 shows that the error was observed when compiling the appendices to the present report, so there can be little doubt that the petition and its enclosures are now printed in the form in which Webster presented them to Congress.

48. The postscript, of course, gained force when read as a substantive part of the letter; but this by itself is not enough to account for the interpolation. The reason seems to be deducible from p. 135, when the "Schedule of Titles proved" (dated 1884) is ingeniously dovetailed into the Committee's report of 1880. It comes after a sentence referring to the Private Secretary's letter, and before the amended version of that letter, as though it were in the same paper, and as though the mention of undisputed possession had specific reference to the whole of this preposterous schedule.

49. It will hardly be denied that the claim is tainted with fraud. It has already been shown to be grossly exaggerated; it remains to show that Webster half a century ago had the benefit of whatever in it was genuine. The schedule (including 3,000 acres for 305H) contains 244,110 acres. Comparing this with the areas given in the deeds, and with the areas estimated by Webster when under oath before the Commission (pp. 55-70), the following deductions are necessary:—

	Acres.	Acres.
		244,110
305A	350	
305c	1,700	
305E	80,000	
305F	300	
305G	30,960	
		<hr/> 113,310
		130,800
Add 305M (see Evidence p. 60)		<hr/> 1,500
		<hr/> 132,300

From this quantity, which shows the total acreage actually claimed before the Commissioners, the following deductions are necessary:—

	Acres.	Acres.
		132,300
305D withdrawn by Webster	1,000	
305E	20,000	
305L	3,000	
305F		
But no area stated before Commission, p. 59.		<hr/> 24,000
		108,300
Also 305H disallowed	3,000	
„ 305M	3,500	
		<hr/> 6,500
		<hr/> 101,800

being the total acreage which the Commissioners had to deal with on Webster's sole claim, being just about one-fifth of the 500,000 acres for which he now asks to be compensated.

50. As Webster (p. 9) appears to assert that he did not withdraw any claims before the Commission, it is advisable to refer to his signed statement (p. 59) in these words: "I withdraw the above claims," being 305D, E, F, L. Of these, 305E was a claim in his own name for the whole of Barrier Island, and was identical with No. 32, which was a claim put in by his partners in the name of the three, at first in Sydney, and afterwards in New Zealand (see Appendices to enclosure of this letter), and was one of those against which Webster entered a caveat (p. 52). The

proceedings in No. 32 at pp. 68, 70, are in themselves confirmatory of the withdrawal of 305E, and they show that the claimants eventually were allowed 24,259 acres, which was divided equally among them. Webster and his partners subsequently, 1st January, 1845 (p. 85), mortgaged their respective shares to Robert Campbell and Andrew Blowers Smith, and (p. 86) the whole eventually came to one W. S. Graham. This land had apparently (p. 68) cost the three adventurers £10 in cash, and in goods £57 15s., or £190 5s. if these were counted as in other cases at three times Sydney prices. The fact is not, however, expressly stated.

51. Of the 101,800 acres above mentioned, one claim, Piako, 305K, stands for 80,000 acres. This claim has been found on examination to represent a genuine purchase of only 7,500 acres (p. 82). Another claim, Point Rodney, 305G, stands for 10,000 acres. The Commissioners allowed 1,944 acres, but the Natives, whose evidence was not taken, denied the purchases afterwards, and Mr. Dacre never obtained possession (p. 73). A third claim, Mercury Island, 305J, stands for 6,000 acres, but Webster could only prove (p. 63) purchases of two small pieces of the island. Some 80,000 acres in respect of these three must therefore be written off the 101,800 acres.

52. The remaining five claims for 5,500 acres were allowed to the extent of 3,037 acres, three early ones, 305, 305A, 305C in full; two later ones, 305B, 305I, to the amount of about one-third of the quantity claimed. The appendices to the enclosure to this letter give the results of the whole inquiry conveniently in a tabulated form.

53. It is evident that, with the approach of annexation, land speculation became more reckless, and the documents presented to the Natives for signature became more and more inconsistent with the actual transactions. Of the purchases above mentioned, the Commissioners' allowances were as follows:—

305B.	November, 1839.	Of 1,500 acres claimed, only	550 acres were allowed.
305G.	May, 1839.	Of 10,000	" 1,944 "
305J.	May, 1839.	Of 6,000	" two small pieces were allowed.
305K.	December, 1839.	Of 80,000	" 12,674 acres were allowed.

54. This last, Piako, is the most remarkable case of all; it is dated the 31st December, 1839: the map (p. 114) alleges a purchase of 120,000 acres; the quantity actually claimed was 80,000; the whole block was found on survey to contain 18,000 acres, the Commissioners were only able to allow 12,674 acres. The Natives would never admit that Webster had purchased more than 7,500 acres, and the Government had to make good the difference to the grantee, by purchasing the requisite land (pp. 82, 94, 95, 96, and p. 20 of appendices to the enclosure in this letter). Similarly the 1,944 acres allowed in 305G were claimed by the Natives (p. 93), and Mr Dacre had to be compensated with land-scrip at 15s. an acre. Again, in 305I, the Government had to complete the transaction by a payment of £300 (p. 79); in this case (p. 78) Webster promised the Natives a schooner in consideration of their admitting his claims before the Court; but, having subsequently regained possession of the vessel under pretence of repairing her, it was never afterwards returned to them.

55. In view of the careful investigation of his claims by the Commissioners, and of their review by the Governor in Council and by Commissioner FitzGerald, and the increase of the original awards (p. 71, 72) to 41,924 acres, it is curious to find it stated in the Senate Report of 1887 that (p. 109) he has had no day in Court, and (p. 110) that he never got an acre of land in New Zealand.

56. As the rule limiting grants to 2,560 acres was enforced against British subjects, but was relaxed in favour of Webster and his assigns, and one or two others (see paragraph 10 of Sir R. Stout's opinion enclosed in this letter), the fact that he was treated with exceptional liberality will no doubt now be admitted.

57. But it is unnecessary to go further into details; the tabulated results of the inquiry show that in every claim, except those which were withdrawn or disallowed, the whole or part of the land was allowed to Webster and those who had bought from him, and these with the foregoing observations should suffice to satisfy any reasonable person that so much of his claim as was genuine was given in his favour half a century ago.

I am, &c.

JOHN BRAMSTON.

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