

CHAPTER 4

CASE STUDY: THE WILLIAM WEBSTER CLAIMS

William Webster arrived in New Zealand, via Sydney, in March 1835. The Sydney connection is important because it was to be Sydney merchants who would, in the near future, extend to Webster the considerable line of credit which would fund his short-lived but expansive business and property empire. On his arrival in New Zealand, Webster found work on the Coromandel Peninsula at a spar station owned by one of these Sydney merchants, Robert Dacre. But working for someone else was obviously not to Webster's liking, and before he had been in the country two years he had established his own timber and trading post on Whanganui Island at the mouth of the Coromandel Harbour.

Webster's purchase of Whanganui Island from the Maori owners in December 1836 was the first of several alleged property acquisitions by Webster. He would later claim that by the beginning of 1840 he had completed purchase agreements for 14 separate locations.² As shown in table 1, while concentrated around Coromandel Harbour and the Thames region, these purchases also extended to the Waikato, Mahurangi, and various islands of the Hauraki Gulf. In total, Webster claimed to have paid the Maori owners £7163 to extinguish title to an area exceeding 131,000 acres.

With the signing of the Treaty of Waitangi on 6 February 1840, the possibilities of further property acquisitions from Maori by private individuals such as Webster was brought to an abrupt halt by the commencement of a Crown pre-emptive right. Of even greater concern to Webster, however, was the issuance three weeks earlier by the Governor of New South Wales, George Gipps, of the Land Titles Validity Proclamation which declared that the Crown would not recognise any title to land which did not derive from a Crown grant. The proclamation was subsequently read out by Hobson upon his arrival in the Bay of Islands and received the formal

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1. P Adams, 'Webster, William, 1815–97', in DNZB, vol 1, W H Oliver (ed), Wellington, Allen and Unwin, 1990, pp 578–579
 2. The 14 separate locations is based on the number of distinct claims Webster eventually filed with the Land Claims Commission in 1841. It is interesting to note that in the same letter to Willoughby Shortland, Colonial Secretary, in which he put forward these 14 claims, Webster alluded to his having purchased a further 13 parcels of land in New Zealand. He promised to forward details of these purchases once he had found the relevant documentation, which he claimed was currently missing. The documentation was never forwarded and was not referred to again: Webster to Willoughby Shortland, 3 October 1841, reproduced in John Salmond, *The Webster Claims: General*, Wellington, 1912, olc 4/24, p 23, NA Wellington.

Old Land Claims

Claim numbers	Location	Claimed area (acres)	Claimed payment (£)
714	Makariri (CH)	250	343
715	Whanganui Island (CH)	250	284
716	Waihou River	1500	215
717	Taupiri (CH)	800	268
718	Coromandel Harbour	1000	450
719	Great Barrier Island	20,000	1200
720	Motutaupere Island (CH)	?	80
721	Waihou River	3000	90
722	Point Rodney	10,000	421
723	Tairua	2000	450
724	Waiheke Island	3000	608
725	Big Mercury Island	6000	948
726	Piako	80,000	1726
727	Waiheke Island	3500	80
		Σ 131,300	Σ 7163

Key: CH = Coromandel Harbour

Table 1: William Webster's old land claims

approval of the New South Wales Legislative Council with the passage of the curiously-titled, New South Wales Act.³ This Act formed the basis of the 1841 Land Claims Ordinance, the issuance of which by Governor Hobson was necessitated by New Zealand's ceasing to be a dependency of New South Wales. Following the model established by the 1840 Act, the 1841 ordinance provided for the establishment of a Land Claims Commission which would be charged with investigating purchases completed before the assumption of British sovereignty over New Zealand. Crown titles for these earlier purchases would only be issued if the Land Claims Commissioners were satisfied that the purchase had taken place on 'equitable terms'. The 1841 ordinance also established a maximum permissible grant of 2560 acres per individual, regardless of how many distinct purchases any

3. New South Wales Act 1840

individual claimed to have completed. This limit could be extended in special circumstances, but such a recommendation from the commissioners required the approval of the Governor.⁴

Given the extent of his alleged purchases, William Webster was perhaps understandably reluctant to submit those claims to examination by the Land Claims Commission, lest they be significantly reduced. He believed he would be able to avoid such scrutiny by drawing on his being born in Portland, Maine. Basing his argument on his being a citizen of the United States, Webster maintained that Britain:

was bound to recognise interests acquired by nationals of other civilised nations from chiefs whose sovereignty had been explicitly acknowledged by the British Crown before the Treaty of Waitangi, and in that document itself. In short, that [his . . .] titles derived from the same authority and capacity as those of the British Crown and, being created at⁵ an earlier date, were an existing charge on whatever Britain acquired at Waitangi.

This was not an argument that Governor Hobson felt inclined to entertain. This can be seen in his response to a letter in which Webster declared it was his intention to place his land claims before the United States government in order that they might directly negotiate with their counterparts in Britain.⁶ Hobson responded to this by minuting that if Webster persisted in his ‘seeking assistance from a foreign government, [he] must relinquish all the rights of a British subject – such as the ownership of a British vessel, which I understand he now possesses’. While it would be denied by future Solicitor Generals, this amounted to the placing of considerable pressure upon Webster. It was certainly effective; Webster subsequently wrote, ‘I wish my claims to be laid before the Commissioners, and am willing to take my chance with all the others’.⁸

Webster’s claims were individually heard by one or both of the Land Claims Commissioners, Edward Godfrey and Matthew Richmond. In March 1844 they filed a final report with Governor FitzRoy, covering most of Webster’s claims. Before examining their recommendations, there are two developments that should be mentioned.

Firstly, in February 1842, the Land Claims Amendment Ordinance was passed. The most significant feature of this ordinance was that it removed the maximum prescribed acreage, establishing in its place the formula which had been developed for the land claims of the New Zealand Company, that is, one acre for every five shillings expended in purchase money. This 1842 Ordinance was declined the royal assent so that it never had statutory authority. Due to the slow communication between Britain and the colony, however, notice of this refusal did not reach New

4. New Zealand Land Claims Ordinance 1841

5. Webster himself never articulated his position as clearly as this summarising quote which is taken from A Frame, *Salmond: Southern Jurist*, Wellington, Victoria University Press, 1995, pp 136–137

6. Webster to Shortland, 20 July 1841, reproduced in Salmond, *The Webster Claims: General*, p 23

7. *Ibid*, p 23

8. Webster to Shortland, 3 October 1841, reproduced in Salmond, *The Webster Claims: General*, p 24

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Zealand until September 1843, 18 months after its initial proclamation. As most of Webster's claims were heard by the commissioners in the period that the 1842 Ordinance was presumed to be effective, they initially recommended grants in seven of Webster's purchases. These recommendations, summarised in table 2, had a total combined area of 7541 acres.

Claim number	Location	Recommendation (acres)	Maori witnesses
714	Makariri	250	1
715	Whanganui Island	250	1
716	Waihou River	550	2
717	Taupiri	800	2
722	Point Rodney	1944	2
724	Waiheke	1187	2
726	Piako	2560	2
		Σ 7541	

Table 2: Grants recommended by Godfrey and Richmond in Webster's claims

As is also shown in the above table, in order to conclude that a bona fide purchase had in fact taken place, the commissioners did not consider it necessary to hear the supporting testimony of a large number of Maori witnesses. As a general rule, Godfrey and Richmond required that a minimum of two supporting Maori witnesses be produced before the commission if they were to subsequently recommend a grant to be issued. Sometimes, however, as illustrated by the first two Webster claims summarised in the above table, the commissioners were willing to conclude that a transaction had resulted in a bona fide purchase with only a single Maori witness providing supporting testimony.

Of the seven Webster claims in which the commissioners did not recommend any grant be issued, four were withdrawn by Webster before hearings began (718, 719, 720, 721). A fifth, Webster's claim to Waiheke (727), was disallowed on the grounds that the payment was not completed before the assumption of British sovereignty.¹⁰ Also disallowed was Webster's claim to Tairua (723), this time

9. Robert Stout, 'Webster's Land Claims', 15 August 1887, AJHR, 1887, a-4, p 15. The recommendations of this report are summarised in a manuscript table produced by the Land Office, dated 22 April 1844, which can be found in olc 4/25, NA Wellington.

10. Salmond, *305M: Waiheke Island*, Wellington, 1912, olc 4/24, NA Wellington

because the purchase money had not been received by the rightful owners of the land.¹¹ This same defect afflicted Webster's claim to Big Mercury Island (725) when, after hearing the testimony of thirteen Maori witnesses, three supporting and ten opposing the sale, Commissioner Godfrey concluded that the Maori vendors who signed the deed could claim ownership over only two small portions of the island.¹² Godfrey did not, however, recommend any grant for these two areas. This was because news of the disallowance of the 1842 ordinance had finally reached the Colony. As a result of that news, Godfrey and Richmond filed an amended final report in which they disregarded all of their earlier recommendations contained in table 2, and recommended instead, that the combined acreage of any grants to Webster should not exceed 2560 acres, the maximum prescribed by the 1841 Ordinance.¹³

This dramatic about-face by Godfrey and Richmond might not have been significant but for a second development which accompanied their hearings of Webster's claims. This was the fact that Webster, on the strength of the initial recommendations made by the two commissioners, had promptly sold a significant part of his interest in his claims to third parties, the so-called derivative claimants. With the news of the disallowance of the 1842 Ordinance, and the commissioners' subsequent amendment of their earlier recommendations, the derivative claimants suddenly found themselves in the rather unenviable¹⁴ position of being 'left without anything for their money, and without redress'.

By mid-1844, therefore, the combination of the two developments outlined above had produced the following results. Despite having found Webster to have completed bona fide purchases to some or all of the area of eight of his fourteen claims, the commissioners felt restrained under the terms of the 1841 Ordinance to limit themselves to recommending a maximum grant of 2560 acres. The apparent injustice of this was further compounded by the June 1844 report of Commissioner Godfrey on claim 36. This was a joint claim by Webster, William Abercrombie, and Jeremiah Nagle to the whole of Great Barrier Island. Having found the claimants to have completed a bona fide purchase of the northern half of the island, Godfrey none the less felt compelled to report that: 'The claimant already having received a maximum grant of 2560 acres, no grant is recommended'.¹⁵ As if this was not enough, there was also the financial hardship of the derivative claimants to be considered. These claimants had bought part of Webster's interest in good faith that the 1842 Ordinance provided him with a valid title that he could transfer to them. The subsequent disallowance of that Ordinance had left them significantly out-of-pocket with nothing to show for their investment.

Of course, as was alluded to in the previous case study and in the main text of this report, William Webster was not the only old land claimant perceived to have been

11. Salmond, 305H: *Tairua*, Wellington, 1912, olc 4/24, NA Wellington

12. Salmond, 305J: *Big Mercury Island*, Wellington, 1912, olc 4/24, NA Wellington

13. Stout, p 15

14. *Ibid*, p 15

15. Edward Godfrey, 10 June 1844, reproduced in Stout, p 14

‘hard done by’ as a result of the 2560 acre maximum imposed by the 1841 Ordinance. There were also a considerable number of missionary land claimants whose contribution to colonisation, and in particular, the ‘civilisation’ of Maori, was perceived by Hobson’s successor, Robert FitzRoy, to merit an exception to the upper limit set by the 1841 Ordinance. It was with the intention of giving recognition to these exceptions that FitzRoy appointed a brand new Land Claims Commissioner, Robert A Fitzgerald.¹⁶ Unfortunately, very little biographical information exists about Fitzgerald prior to his appointment as a Land Claims Commissioner. Most of what we do know is provided by G H Scholefield: ‘[Fitzgerald was] a planter in the West Indies . . . [before he] came to New Zealand in 1840 and was appointed registrar of the Supreme Court and manager of intestate estates’.¹⁷ Further insight into Fitzgerald’s character is provided by the fact that he was eventually dismissed from his position as commissioner after giving expression, from February 1845, to doubts he harboured concerning FitzRoy’s land policy, and in particular, his own role in it. The essence of these doubts was that ‘Fitzgerald was concerned at the legality of FitzRoy’s extensions to awards, and at having to revise the recommended awards already made by Commissioners Richmond and Godfrey’.¹⁸

It is clear, however, that Fitzgerald’s reservations about his role in the old land claims process took a while to develop. This can be seen in the case of William Webster’s claims which were referred to Fitzgerald by the Executive Council, in April 1844, with the instruction that ‘the Commissioner . . . should be authorised to recommend an extension of the grant’.¹⁹ Commissioner Fitzgerald did not hesitate to act upon his recently conferred authority. A mere twelve days after the Governor had proposed to the Executive Council a reconsideration of the Webster claims, Fitzgerald responded with a memorandum which recommended grants to Webster and his derivatives totalling 17,655 acres. This was more than double the area recommended by Godfrey and Richmond when they believed themselves to be operating under the authority of the 1842 Ordinance. And this figure is not including the further 8080 acres which Fitzgerald also recommended should be granted to Webster on Great Barrier Island when claim 36 was referred to him in June 1844. What was the reason for this increase? While Fitzgerald recognised the interests of derivative claimants in his recommendations, he also maintained the total acreage recommended in each claim by the earlier commissioners in all cases except one; for example, where in the case of Makariri Godfrey and Richmond had recommended a grant of 250 acres, Fitzgerald recommended two grants of 125 acres, one to Webster and the other to Henry Downing who had purchased a half-share from Webster.²⁰ The single instance where Fitzgerald deviated from the total

16. Fitzgerald was appointed under the authority of an 1844 amendment to the original 1841 Ordinance, the Land Claims Ordinance 1844.

17. G H Scholefield, *A Dictionary of New Zealand Biography*, vol 1, Wellington, Department of Internal Affairs, 1940, p 259

18. Dean Cowie, “‘To Do All the Good I Can’”: Robert FitzRoy – Governor of New Zealand, 1843–1845’, MA thesis, University of Auckland, 1994, p 90

19. Extract from the minutes of the Executive Council, 10 April 1844, reproduced in Stout, p 16

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acreage recommended by the earlier commissioners was in regard to Piako, claim 726. The deviation, however, as summarised in table 3 below, was a highly significant one. Whereas the earlier commissioners had initially recommended a single grant of 2560 acres to Webster, Fitzgerald recommended a reduction in Webster's grant to 1219 acres on the one hand, while on the other he argued for the issuing of grants for a further 11455 acres to the derivative claimants who had bought an interest in Webster's Piako claim.

Name of derivative	Recommendation (acres)
Abercrombie, P	5000
Johnson	1280
Mathew	2560
Downing	320
Wanostracht	250
Nagle and Wren	150
Russell	640
Devlin	1255
	Sub-total 11,455
Webster	1219
	Total 12,674

Table 3: Commissioner Fitzgerald's recommendations for claim 726, Piako. Source: Fitzgerald to FitzRoy, 22 April 1844, reproduced in Stout, p 16.

Given that all of the grants recommended by Fitzgerald in relation to Webster's claims were subsequently issued by Governor FitzRoy, it becomes particularly important to examine the three main reasons put forward by Fitzgerald to justify his recommending such a ²²considerable enlargement of the recommendations of the earlier commissioners.

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20. The extant evidence gives no indication in most cases of what consideration was paid by the derivatives nor, in the early transactions, of when they occurred.
 21. This is excluding claim 36, Great Barrier, which was only heard by Commissioner Godfrey in June 1844. This was after Fitzgerald had made his first series of recommendations and, more importantly, after Godfrey had become aware of the disallowance of the 1842 Ordinance.
 22. These reasons are contained in Fitzgerald to FitzRoy, 22 April 1844, reproduced in Stout, p 16

Fitzgerald argued that Webster had expended £7787 on his land claims which, under the terms of the valuation-schedule of the 1841 Ordinance, meant he could be considered to have paid for 50,904 acres.²³ This was considerably higher than the 31,148 acres Webster might have expected to have been awarded under the 5s per acre formula contained in the disallowed 1842 Ordinance. Whichever figure is preferred, there are a number of problems with this argument.

Firstly, Fitzgerald's figure of £7787 is actually a composite of two amounts – the amount of £3257 which Webster paid directly to Maori vendors in those transactions he eventually received grants for, and the extra £4530 which Webster subsequently expended on 'improving' those properties.²⁴ Manifestly, any expenditure by Webster upon a property subsequent to its purchase should not have been allowed to enter into any judgement upon the 'equity' of the original transaction. After all, such expenditure in no way benefited the original Maori vendors while Webster himself would have been compensated for such expenditure in the purchase money paid by his derivative claimants. FitzRoy would certainly have been aware of this argument. He would have read the December 1842 despatch from the Colonial Office informing the New Zealand authorities of the disallowance of the 1842 Land Claims Ordinance. In explaining the disallowance, Lord Stanley, Secretary of State for the Colonies, had stated that the total expenditure calculation used for the New Zealand Company was not applicable to individual claimants. The New Zealand Company was a special case where the party involved had:

invested large sums of money in the colonization of New Zealand, and principally in sending emigrants thither from this kingdom. But there is no ground for inferring that it was ever proposed to apply the same rule to the settlers and occupiers of the land in the colony, whose circumstances and the mode in which they acquired land, Her Majesty's Government had every²⁵ reason to suppose were not the same as in the case of the New Zealand Company.

This prohibition against any consideration of payments which were not part of a direct transaction between purchaser and vendor was stated even more strongly six months later when Lord Stanley explicitly instructed FitzRoy that: 'For the purpose of determining the extent of a settlers claims no estimate is to be made of the

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23. This valuation scale was a device which was meant to ensure equity between old land claimants. It worked on a graduated basis where the earlier a purchase, the more acres would be considered to have been paid for, if the same amount was tendered in any two purchases. It was not intended to be a measure of whether the transaction between claimant and Maori vendor was an 'equitable one', but rather, it was a means of rewarding those 'true settlers' who had settled earlier in relation to those pure 'land speculators' who purchased closer to the assumption of British sovereignty. For more detail see 'The Land Claims Commission: Practice and Procedure, 1840–1845', submission of David Armstrong (Wai 45 rod, doc i4), pp 24–25.
 24. Fitzgerald bases his calculations of Webster's expenditure on purchasing and improvements on the manuscript synopsis of Webster grants prepared by the Land office on 22 April 1844. Because of the illegibility of some of the writing, it is difficult to be sure of how he came to the exact figure of £7787: olc 4/25, NA Wellington.
 25. Stanley to Hobson, 19 December 1842, co 209/14, NA Wellington

Capital laid out by him in Building, or of the time employed by him in improving his land'.²⁶

A second major problem with this first reason put forward by Fitzgerald to justify his enlarged recommendations is that he made no attempt to verify these figures in any way. Take, for example, the figure of £3257 which Webster claimed to have paid directly to Maori vendors in those transactions he eventually received grants for. The cash component of this figure was very small. It was predominantly made up of goods whose original value had, in accordance with the standard practice of Godfrey and Richmond, been multiplied by three to reflect the increased value of the goods as a result of their having being transported from Sydney to New Zealand. The original value of the goods was typically provided by Webster himself, either on the purchase deed itself, or on a separate receipt signed by the vendors in acknowledgement of their having received payment.²⁷ There is nothing on the extant record to indicate that the commissioners ever attempted to independently verify the accuracy of the values assigned, by Webster, to the payment goods. Even more serious than this, however, is the fact that Fitzgerald, to quote a later Land Claims Commissioner, Robert Stout, 'takes for granted the gross amount stated by Mr Webster as having been paid by him to the Natives . . . without enquiry whether or not they had been really spent';²⁸ that is, Fitzgerald failed to investigate whether Webster actually completed the payment of all the goods identified in his various purchase deeds and receipts. Such an inquiry would certainly not have been misplaced. Several of the investigations conducted by Godfrey and Richmond had revealed a tendency, on the part of Webster, to exaggerate or manipulate the evidence supporting his purchases.

In his claim to Great Barrier Island, for example, Webster testified before Commissioner Godfrey that he had:

paid them [the Maori owners] £20 sterling in cash, and goods to the value of nearly £1000. For some of the articles specified in the deed of sale as payment, but not yet delivered, the Natives hold my promissory notes . . . I deliver a correct list of the articles given to the Natives and admitted to have been received by them, as there are errors in that written on the back of the deed.²⁹

After hearing extensive Maori testimony, Godfrey concluded that the vendors had received only £580 from Webster, well short of the £1000 Webster claimed. But this was not the only exaggeration contained in the purchase deed. The deed laid claim to the whole of Great Barrier Island, though Webster was forced to admit in the face of considerable Maori testimony that 'some other Natives have laid claim

26. Stanley to FitzRoy, 26 June 1843, g 1/9, NA Wellington

27. Of the seven Webster claims which resulted in grants, two did not have the value of the goods assigned by Webster in the purchase deed or associated receipts. These were his Waihou River (716) and Piako (726) claims.

28. Stout, p 16

29. All the quotes and information in this paragraph are taken from Robert Stout's reproduction of extracts taken from the original Commissioner Godfrey file: Stout, p 14.

to the south-eastern part'. Godfrey concluded that this 'part' in fact amounted to the southern half of the island.

This exaggeration on the part of Webster was by no means an isolated example. The pattern was repeated in his claims to Big Mercury Island and Tairua.³⁰ While all three of these examples were revealed in the testimony before the early commissioners, it does not seem unreasonable to question whether it might not have been even more widespread than they were able to discover. Such questioning certainly does not seem out of place when the case of one of Webster's Waiheke claims, 724, is considered. Having heard the testimony of two Maori witnesses to the signing of the deed, Ruinga and Ngakete, Godfrey and Richmond were satisfied that a bona fide purchase had been completed and recommended a grant of 1187 acres. An 1854 memorandum from Land Commissioner Donald McLean allows a new perspective on the events recorded in the Godfrey–Richmond report. It is worth quoting this memorandum at length:

I have the honour to report to you [the Colonial Secretary . . .] that I find there are certain lands for which Crown grants have been issued and to which the Native title has not as yet been extinguished.

For instance, there is a block of land . . . at the north of the Waiheke Island, for which a certain amount of goods and money were paid by Mr William Webster, of Coromandel, and for which the Commissioners for investigating and reporting on claims to lands purchased from the Natives have recommended a Crown grant. It appears from the statements of the Natives that a vessel had been promised them by Mr Webster conditionally that they would admit the justice of his claims before the Commissioner's Court; this vessel they nominally had possession of, but it was taken by Mr Webster to Coromandel to undergo, as he alleged, some repairs, and was never³¹ afterwards returned to them; the Natives, in consequence, will not give up the land.

The issue of the quality of the investigations by the early commissioners is one which will be discussed in more detail further on in this case study. For now, it is enough to state that manifestly Commissioner Fitzgerald should have treated the figures provided by Webster with a healthy dose of caution, and not just accepted them at face value.

The second reason put forward by Fitzgerald to justify his considerably enlarged recommendations was the relationship between Webster and his derivatives:

Considerable sales of land having been made by him on the faith of all his valid purchases being recognised by the Crown . . . 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.

30. In his Big Mercury Island claim, 725, Webster claimed to have purchased the whole island for a consideration of £948. Commissioner Godfrey concluded from Maori testimony that he had in fact purchased only two very small sections, for the much smaller sum of £278. In the case of Tairua, claim 723, the commissioners settled on a payment figure of £169, well short of the £450 claimed by Webster: extracts reproduced in Stout, pp 10–12.

31. Donald McLean to Colonial Secretary, 10 July 1854, reproduced in John Salmond, *305: Waiheke A*, Wellington, 1912, olc 4/24, NA Wellington

Certainly, the extent of Webster's 'on-selling' of his claims was 'considerable'. By the time his claims came before the commissioners,³³ Webster had already sold 67,610 acres of the total 107,300 acres claimed.³³ Manifestly, the derivative claimants were engaged in speculation, purchasing an interest in anticipation of the original transaction by Webster being validated by the commissioners. This should have eliminated them as a factor for consideration by Fitzgerald. What seems to have made Fitzgerald believe that the derivative claimants should be considered, was the fact that they had engaged in this speculation believing the 1842 Ordinance to be in effect.³⁴ When that Ordinance was subsequently disallowed, the resumption of the 1841 Ordinance's 2560 acre maximum effectively left them with nothing to show for their expenditure. But even if we accept that the Colonial Government's failure to secure royal assent for the 1842 Ordinance created an injustice that needed to be corrected, it is not at all clear how Fitzgerald could justify the sheer extent of his grants to the derivative claimants in Webster's Piako claim. For even under the terms of the subsequently disallowed 1842 Ordinance, Webster, having expended £1726 to purchase an area he claimed to be 80,000 acres, was only entitled to a grant of 6904 acres.³⁵ Commissioner Fitzgerald, however, recommended Piako grants to Webster and his derivatives totalling 12,674 acres, just under double what they³⁶ could have reasonably expected to have been granted under the 1842 Ordinance. This was in direct contravention of the guidelines regarding the treatment of derivative claimants which had been sent to Godfrey and Richmond by George Gipps, Governor of New South Wales. Gipps wrote that in their investigations, the commissioners should give consideration:

only to the circumstances under which the original purchase was made from the natives or the valuable consideration given to the natives without reference to what may have been paid to the original purchaser by any subsequent one[. Furthermore . . .] no individual . . . shall in the whole obtain more than which under the Act the

32. Fitzgerald to FitzRoy, 22 April 1844, reproduced in Stout, p 16

33. This total of 107,300 acres does not include the claimed acreage of Webster's claims 718, 719, 720, and 721, which were withdrawn by Webster before the commissioners could hear them.

34. As noted earlier, the extant information gives no indication in most cases of what consideration was paid by the derivatives, nor of when the actual transactions occurred. Thus we are forced to assume that the subsequent on-selling occurred after the passage of the 1842 Ordinance. This seems a reasonable assumption given that the maximum set by the 1841 Ordinance would have actively discouraged speculation. It is worth noting, however, that Salmond states Webster conveyed his entire 1500 acre Waihou River claim, 716, to Monro in 1840. Unfortunately, Salmond does not provide a reference for this particular piece of information, although presumably he obtained it from the original Godfrey and Richmond file. Salmond, *305B: Waihou River*, Wellington, 1912, olc 4/24, p 1, NA Wellington.

35. Calculation based on the 1842 Ordinance formula of one acre for every five shillings expended. According to the schedule of the 1841 Ordinance, and forgetting for the moment the maximum limit of 2560 acres, he would have been entitled to a total grant of 4315 acres. John Salmond, *Claim 305k: Piako*, olc 4/24, p 1, NA Wellington

36. This lack of concern to be restrained by even the more liberal 1842 formula is also evident in Fitzgerald's recommendations for the joint Webster, Nagel, and Abercrombie claim to Great Barrier Island, claim 36. Whereas under the 1842 ordinance the three claimants might reasonably have expected to be granted 2323 acres in total, Fitzgerald recommended individual grants to the respective claimants of 8080, 8070, and 8119 acres. Totalling 24,769 acres, this was ten times more than they would have been entitled to under the formula established in the 1842 Ordinance.

Commissioners are authorised to award . . . The derivative claimant . . . can never receive more than the original purchaser would have been entitled to receive[.]³⁷

Thus, while Fitzgerald may have believed a case existed for the correction of the hardship imposed upon the derivative claimants by the disallowance of the 1842 Ordinance, he was guilty of considerable overcorrection in the case of Webster's Piako claim.

The third and final reason put forward by Commissioner Fitzgerald to justify his enlarged recommendations was that 'Mr Webster is one of the most enterprising settlers in this colony, having established a ship-building yard, several whaling stations, water-mills, and other improvements'.³⁸ In arguing thus, Fitzgerald was applying to an individual old land claimant the rationale underpinning the settlement of the extensive land claims of the New Zealand Company. As was shown earlier in this case study, in disallowing the 1842 Ordinance, the Colonial Office had strongly rejected such an approach, arguing that the expenditure of individual claimants could not be seen to have advanced the process of colonisation in the same manner as that of the New Zealand Company. But even had such an approach been acceptable to the Colonial Office, Fitzgerald's assessment of William Webster was a rather uncritical one. While it must be admitted that in his 'early years Webster proved himself a businessman of ability', this was a short-lived phenomenon. In late 1840 Webster was arrested in Sydney and was imprisoned for seven weeks for debts of £12,000.³⁹ Clearly, while Webster may have initiated several business ventures they were not paying their way. A much more accurate character reference was that recorded by Land Commissioner Stout during his 1887 review of Fitzgerald's recommendations.

Webster received his grants for 5000 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 [as derivatives], leaving himself without an acre of all his purchases, and still a debtor to the Sydney merchants:

There is not anything surprising in this, for it must be sufficiently apparent . . . that Mr Webster had no means of his own; that he speculated for land in New Zealand with goods obtained on credit, and, in the absence of goods, that he gave natives promissory notes for cash or goods which at times he was unable to redeem.⁴⁰

Thus, none of the three reasons set out by Commissioner Fitzgerald as justifying a significant extension of the original Godfrey and Richmond recommendations stand up to close scrutiny. But in conducting this examination, doubts have also surfaced in regard to those original recommendations, specifically, the manner in which the early commissioners came to conclude that a purchase was bona fide.

37. New South Colonial Secretary to Land Claims Commissioners, 13 March 1841, cited in Armstrong, pp 21-22

38. Fitzgerald to FitzRoy, 22 April 1844, reproduced in Stout, p 16

39. Adams, p 578

40. Stout, p 17

These doubts are supported by examination of the subsequent history of the largest of Webster's claims, that to Piako. The location of the claim is shown in figure 6. Webster claimed to have purchased 80,000 acres on the western side of the Piako River as a result of his having paid £1726 to Maori vendors on 31 December 1839. Godfrey and Richmond examined two Maori witnesses, Koanaki and Ware Ponga, and concluded that a bona fide purchase had taken place 'excepting the land belonging to the chief Takapu'.⁴¹ Even before they reached this conclusion, however, Webster had already on-sold four-fifths of his interest in the claim. As has already been shown, in combination with the disallowance of the 1842 Ordinance, this created a situation in which Commissioner Fitzgerald would feel compelled to recommend a considerable enlargement of the initial Godfrey–Richmond recommendations. As was the case with virtually all the Old Land Claims heard before the early commissioners, no survey was carried out in conjunction with any of these recommendations. Had there been such a survey, or even just a walking of the boundaries, it would have become immediately clear that there were serious problems with the extent and nature of the transaction conducted by Webster at Piako.

These problems remained hidden below the surface as long as those who held Crown grants derived from Webster's Piako claim considered them merely as investments, a piece of paper to be on-sold for a profit, and did not attempt to take actual possession of the land that the grants purported to give title to. While this would seem to have been true for most of Webster's Piako derivatives, it was not true of all of them.⁴² John Johnson, an original beneficiary of Fitzgerald's enlarged recommendations, was of a mind to take actual possession of the land contained in his Crown grant. When Johnson attempted to survey the land, however, he encountered considerable resistance from local Maori. Unfortunately, the extant record does not shed much light on the nature of this resistance, beyond noting that Johnson's efforts to give effect to his Crown grant 'encountered serious difficulties and obstruction'.⁴³

Knowledge that local Maori were refusing to recognise the validity of the Crown grants derived from Webster's Piako claim did not prevent Frederick Whitaker and Theophilus Heale from purchasing Peter Abercrombie's 5000 acre Webster-derived grant in November 1854. Whitaker was a man of considerable political experience and influence in the colony. By the time he and Heale acquired Abercrombie's Piako interest, he had already spent several years as a member of the Legislative Council and would, in the next couple of years, periodically hold the office of

41. Godfrey and Richmond Report, 18 December 1843, extracts reproduced in Stout, p 13

42. For an indication of the numerous hands which many of Webster's Piako grants passed through, see the summary in Stout, pp 26–28.

43. Land Claims Commissioner Bell to Superintendent of Auckland, 26 September 1861, reproduced in John Salmond, *305K: Piako*, Wellington, 1912, p 24. Bell made these comments after examining Johnson's file. Because this file can no longer be located it is difficult to know exactly when the events referred to occurred or even, whether the John Johnson referred to by Bell was the original derivative claimant, or his son, John Grant Johnson, who inherited the Crown grant in 1848.

Figure 6: Webster's Piako claims

Attorney-General. Significantly, Whitaker used his access to the centres of political decision-making to:

represent . . . the viewpoint of the ‘war party’ in Auckland: that in the name of civilisation and progress, settlers must have easier access to Maori lands; that war against Maori ‘rebels’ must be ruthlessly prosecuted; and that, after unconditional surrender, there must be large confiscations of land, and military settlements to enforce the peace of the Pakeha.⁴⁴

The ‘land hunger’ which underpinned this viewpoint is also evident in Whitaker’s subsequent involvement, from the mid-1870s, as a partner in a syndicate headed by Thomas Russell which purchased from the Government the 80,000 acre Piako swamp. Situated between Hamilton and the head waters of the Piako River, the favourable terms of the purchase created such a public outrage that the matter was investigated by a parliamentary committee.⁴⁵ While the purchase survived the investigation, the heavy costs associated with the drainage and development of the swamp forced the syndicate to float a public company, the Waikato Land Association, to re-finance the venture. The reprieve this offered was short-lived, however, and the uneconomical basis of the venture was publicly exposed when the Company crashed spectacularly in the depression of the mid-1880s. Manifestly, Whitaker, to quote Russell Stone, ‘was an unabashed speculator’.⁴⁶ As such, his joint-purchase of Abercrombie’s Piako grant in 1854 should be seen as the beginning of three decades of speculation in Piako lands. At the same time, Whitaker’s purchase of the grant, while knowing of the difficulties already encountered by Johnson, indicates that, unlike the later case of the Piako swamp, he may not have intended to take actual possession of the land the Crown grant purported to convey. Instead, he was more likely to have considered it merely as an investment, a piece of paper to be on-sold for a profit.

Such a perspective, however, would have become untenable as a result of the passage of the 1856 Land Claims Settlement Act. The 1856 Act sought to settle any disputes remaining in connection with old land claims by withdrawing all Crown grants which had been issued on the recommendation of the early commissioners. New grants would only be issued if the former holders of the invalidated grants conducted a survey of the area those grants had purported to convey. An indirect consequence of this requirement was that it forced speculators to confront the physical manifestation of their investments if they wished to retain them. But as has been shown in the main text of this report, the principal rationale underpinning the requirement of the 1856 Act that grant holders employ surveyors themselves, was that it was believed that this would be much less likely to cause opposition from local Maori. Presumably, it was on the basis that this rationale was not applicable to Webster’s Piako claim, local Maori having already indicated that they objected to the Crown grants, that the Colonial Government despatched Drummond Hay,

44. R C J Stone, ‘Whitaker, Frederick, 1812–1891’, in DNZB, vol 1, p 586

45. ‘Report, Minutes of Proceedings, and Evidence of Piako Swamp Sale Committee’, AJHR, 1875, i-6

46. Stone, p 587

District Land Purchase Commissioner, to survey the claim. While such a task would have been very familiar to Hay, who, in common with many of those holding a similar position within the Colonial Government, had originally started his career as a surveyor, it was a highly unusual course of action for the government.⁴⁷ Only two other regions, the Hokianga and parts of Kaipara, had their old land claims surveyed by Government-funded surveyors working to fulfill the requirements of the 1856 Act.

In conducting his survey of the area which Godfrey and Richmond had concluded, fourteen years earlier, to have been the subject of a bona fide purchase by Webster, District Commissioner Hay also encountered resistance. His reports, moreover, cast considerable doubt on whether such a finding was ever justified. William Webster had estimated the total area of his Piako purchase to be 80,000 acres. In fact, the actual area of the land he claimed to have purchased was later found to contain 51,000 acres.⁴⁸ This 'shrinkage' was a product of the 'frontage to the river having been supposed to be twice its actual length'.⁴⁹ This in itself was not unusual, a clear majority of old land claimants over-estimated the actual size of their purchases by ratios greater than this. What was particularly damaging to the legitimacy of the original Godfrey and Richmond finding was the fact that, of the 22,150 acres Hay was eventually permitted to survey within the boundaries outlined by Webster, the Maori vendors maintained they had sold barely a third of that area to Webster in December 1839, that is, a total of 7500 acres.⁵⁰ As the district commissioner himself noted, the cause of this huge discrepancy was that while:

in almost all the receipts for installments on land on the Piako the River Piako is named as the eastern boundary, . . . they [the Maori vendors] one and all denied and ridiculed the idea of their ever having sold the land right down to the river[.]⁵¹

How are we to interpret this significant divergence of opinion between what Webster maintained he had purchased and what the Maori vendors were willing to admit in 1857, twenty years after the event, that they had sold? There are two clear possibilities. Firstly, it is possible that the Maori vendors did knowingly and willingly sell to Webster the area outlined in his Piako deed. But that since then, they had witnessed a substantial increase in the economic value of the land, as measured by the price paid in surrounding Crown purchases and subsequent private sales, and saw District Commissioner Hay's survey as an opportunity to renegotiate the original purchase price by means of extracting further payment or decreasing the total area of the purchase to increase the relative price per acre.⁵² It would

47. Two examples of this particular career path are John Rogan and William Searanke.

48. Salmond, *305κ: Piako*, p 1

49. District Commissioner Hay to Chief Commissioner, 21 October 1857, extracts reproduced in Salmond, *305κ: Piako*, p 17

50. District Commissioner Hay estimated the area that the Maori admitted to have sold to Webster at 6000 acres. In a report dated 26 September 1861, Land Claims Commissioner Bell informs us that the area was actually closer to 7500 acres in size. Reproduced in Stout, p 28.

51. District Commissioner Hay to Chief Commissioner, 21 October 1857, extracts reproduced in Salmond, *305κ: Piako*, p 17

certainly be understandable if this was the case. Given that Webster claimed to have paid £1726, if the Maori vendors had indeed alienated the entire 51,000 acres contained within the boundaries claimed by Webster, and if they had received the full £1726, this amounted to an average price of less than one shilling per acre. This figure improves slightly if the area alienated is restricted to the 12,674 acres recommended by Commissioner Fitzgerald (which it would not have been because the government would have claimed the difference between the alienated and granted areas as surplus). Even under this unrealistic scenario, however, the price per acre is still less than three shillings per acre. This compares rather poorly with the price subsequently obtained by Webster himself, without any improvements or even occupation, of ‘an average sum of twenty shillings per acre’.⁵³

Alternatively, it is possible that the Maori vendors never knowingly alienated the whole of the area claimed by William Webster. The area of river frontage which was disputed by the Maori vendors in 1857 had always been an important mahinga kai, the swamps adjoining that portion of the river being rich in eels.⁵⁴ Given the previously mentioned examples of the grossly inaccurate descriptions in Webster’s deeds for Tairua and the islands Big Mercury and Great Barrier, and the rather dubious payment practices of Webster, it is not difficult to see how such a discrepancy may have come about. Also of interest is the fact that an 1860 survey plan of the area shows considerable Maori cultivations approximately mid-way along the eastern, or river-bound, boundary of Webster’s claim.⁵⁵ Unfortunately, there is nothing on the 1860 plan to indicate how long the settlements might have been there. Thus, at this stage it is not possible to determine whether the settlements were primarily a response to Drummond Hay’s attempted survey of the entire purchase in 1857, or whether they had existed prior to that survey and thus might be taken to indicate the vendors’ original understanding of the purchase boundaries. Whichever might be the case, the settlements were subsequently incorporated within the Maukiro Native Reserve, the location of which is shown on figure 7.⁵⁶ The 1857 Piako block Crown purchase deed explicitly provided for a reserve to be

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52. David Armstrong has advanced such an argument before the Muriwhenua Tribunal in attempting to explain Maori opposition which was recorded in many of the Godfrey and Richmond hearings. Armstrong, pp 143–144
 53. Stout, p 15. This figure is based on the re-sale value of all Webster’s claims, thus the true average resale price for Piako may be slightly lower. Nonetheless, it gives an indication of the huge discrepancy between the price paid to Maori vendors and the price obtainable on the open market.
 54. Land Claims Commissioner Bell to Superintendent of Auckland, 26 September 1861, reproduced in Salmond, *305k: Piako*, p 29
 55. olc plan 162, located in the South Auckland plan series, held by Land Information New Zealand (LINZ), Heaphy House, Wellington.
 56. The 1860 plan is marked with the words ‘Native Reserve’ just north of the Maori settlements. In the absence of any boundaries marking out the extent of the reserve, it is not immediately clear from the plan that the reserve does in fact encompass the settlements. But by comparing the location of the settlements as marked on the olc plan, with the location of the reserve as marked on Salmond’s sketch of the various Crown purchases, it seems reasonably certain the two overlap. Salmond, *Piako: 305k*, p ii. It is important to note that the copy of this document stored at National Archives does not contain this sketch map. This is also true of several other of the sketch maps which accompanied Salmond’s summaries. The sketch maps are, however, recorded on the Microfiche copy (Micro-499) of Salmond’s summaries held at the ATL, Wellington.

Figure 7: Boundaries of Webster's Piako claim and subsequent Crown purchases until 1910

established: ‘with the exception of the burial place at Paeroa and Waiparera where the line crosses the Waikaka Creek, these two last named places are reserved for the Maoris, this is the only exception’.⁵⁷ The absence of any of the above-mentioned place names from the 1860 plan means, however, that it is difficult to be sure whether the reserve subsequently established was in fulfilment of the provisions of the 1857 deed, or a response to the existing Maori settlements. Possibly, it satisfied both these functions.

Of the two interpretations outlined earlier of the likely cause of the divergence of opinion between what Webster maintained he had purchased and what the Maori vendors were willing to admit they had sold, it is clear that it was the latter interpretation which was believed to be the more accurate one by District Commissioner Hay. On 11 November 1857 he reported:

With regard to this purchase, they [the Maori vendors] have been consistent in asserting that, though their names were signed together in token of assent, and their evidence before the Commissioner’s Court went to prove that the purchase was a bona fide one, still they were induced to act thus from the promises and representations of Webster, and that at the time they hardly knew the importance of the steps they were taking. I may observe that the [purchase] sum promised by Webster was five times the amount paid by him. It is needless to state that the promise was not kept.⁵⁸

Five weeks later he had this to add:

I had one continued discussion with the Natives with regard to Webster’s claims, but they were always most consistent in ignoring entirely the boundaries as laid down in any documents to which I had access. From all that I have seen, I am inclined to think that the Natives are in the right – at any rate, far more so than the European – in this instance.⁵⁹

District Commissioner Hay was by no means alone in his questioning of Godfrey and Richmond’s finding that Webster had completed a bona fide purchase of the entire area, with the single exception of Takapu’s land, which he claimed at Piako.

In 1856, Francis Dillon Bell was appointed a Land Claims Commissioner under the Land Claims Settlement Act passed that same year. It has already been stated that the Act sought to settle any disputes remaining in connection with old land claims by withdrawing all Crown grants which had been issued on the recommendation of the early commissioners. New grants would only be issued if the holders of the withdrawn grants conducted a survey of the area conveyed in the old grant. A second major feature of the 1856 Act was that it contained an incentive which it was hoped would encourage claimants to survey the entire area of the old land claim, not just the acreage which they had been granted within that claim.⁶⁰

57. Deed 399, H H Turton, *Maori deeds of land purchases in the North Island of New Zealand . . . 1871*, vol 1, Wellington, 1882, p 556

58. District Commissioner Hay to Chief Commissioner, 21 October 1857, extracts reproduced in Salmond, *305κ: Piako*, p 17

59. Ibid

This incentive was contained in section 44 of the Act, which allowed for claimants to be awarded ‘an additional quantity of land’ in ‘compensation’ for the costs associated with having the claim surveyed. This compensation was calculated at a fixed rate, so the more land surveyed, the greater the amount of compensatory land which could be awarded. Significantly, under section 23 of the Act, the compensatory land was not to be taken into consideration by the commissioner when awarding the maximum granted acreage of 2560 acres prescribed elsewhere in the Act. This effectively allowed the prescribed maximum to be exceeded, the only limitation being that the amount of compensatory land awarded was not permitted to exceed one-sixth of the total area surveyed.⁶¹ Bell, the sole commissioner appointed under the 1856 Act, subsequently reported to Parliament that this incentive-based scheme had enabled the Crown to ‘recover’ a significant amount of ‘surplus’ land. This surplus was composed of the balance between the area Godfrey and Richmond concluded to have been fairly alienated from the Maori vendors, and the typically smaller area eventually granted to the claimants:

There is no doubt that the grant of liberal survey allowance had a very beneficial effect. If the Government had attempted to survey the claims themselves, the claimants would have had no interest in the whole exterior boundaries being got, and would only have felt called upon to point out as much as was actually to be granted to them. The residue would, practically, have reverted to the natives, and must at some time or other have been purchased again by the Government: and a large extent of territory must have remained, as it was before the passing of the Land Claims Acts, a *terra incognita*. But when the claimants were told they would receive an allowance in acreage to the extent of 15 per cent. on the area surveyed, it became their interest to exert all their influence with the native sellers to give up the whole boundaries originally sold. The result has been . . . to produce a large surplus of land which, under the operation of the existing Acts, goes to the Crown[.]⁶²

The importance attached by Bell, in his 1862 report, to the recovery of surplus lands resulting from his promotion of the ‘liberal survey allowance’ of the 1856 Act, make his following comments all the more significant. Made after he had thoroughly reviewed the Webster claims, from which, in the case of Piako, the government stood to gain a considerable surplus, he wrote the following to the Superintendent of Auckland:

It is not within my province to express any opinion as to the original issue by Governor Fitzroy of grants to the extent of 12,674 acres in this [Piako] claim . . . But

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60. This incentive was first contained in the 1849 Quieting Titles Ordinance, the passage of which was designed to pre-empt the questions *Queen v Clark* would raise about the validity of old land claim-derived grants. Unlike the 1856 Land Claims Settlement Act, the 1849 Ordinance lacked an element of compulsion, without which, the incentive was not sufficient enough to encourage claimants to survey their own claims. See ‘Surplus Lands; Policy and Practice: 1840–1950’, submission of David Armstrong and Bruce Stirling (Wai 45 rod, doc j2), p 44
61. Land Claims Settlement Act 1856
62. Land Claims Commission, ‘Report of the Land Claims Commissioner’, 8 July 1862, AJHR, 1862, d-10, p 5

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it is certain that, as regards the Piako claim, notwithstanding the evidence taken before Commissioner Godfrey in 1842, the Natives would never have agreed to give up possession to the extent which Webster claimed to have purchased.⁶³

And yet, despite this serious questioning of Godfrey and Richmond's conclusions in respect to Webster's Piako claim, the fact remained that on the strength of those conclusions Commissioner Fitzgerald had successfully recommended the issuing of Piako grants totalling 12,674 acres. Given that the Maori vendors in 1857 were only willing to admit the alienation of 7500 acres, the Crown found itself in an awkward position. It was unable to enforce Maori acceptance of Godfrey and Richmond's findings. This effectively left it with two options. It could offer Piako grantees an equivalent amount of Crown land elsewhere, or it could negotiate a purchase of further Piako lands from the Maori residents. This second option was the one pursued by District Commissioner Hay in 1857. He eventually managed to negotiate the alienation of 22,150 acres in four separate Crown purchases, the total area of which is shown in figure 7. These four purchases were the first in a series of eighteen separate Crown purchases. Even then, however, as illustrated in figure 7, the 18 purchases did not extinguish the Native title over the entire area that Godfrey and Richmond had concluded in 1843 to have been the subject of a bona fide purchase by Webster.⁶⁴ It is worthwhile repeating the comments of John Salmond, who, as Solicitor General in 1910, would have cause to once again re-examine the Crown purchases covering the Webster claim to Piako:

Owing to the defective nature of Webster's title as against the Natives, the Crown has found it necessary, in order to make good the Crown grants issued to Webster and his assigns, and in order to acquire the surplus not included in those grants, to purchase from time to time large areas within the boundaries of Webster's claims . . . Webster, or his assignees, obtained Crown grants of 12,674 acres at the price of 2s. 8d. per acre . . . His purchase was not only at a gross undervalue, but was invalid against the Native owners of large portions of the area. Even as to the 12,764 acres, it was subsequently validated only by the expenditure of large sums of money by the Crown in purchases from the Natives.⁶⁵

It is highly unfortunate that the extant record gives very little indication of the nature of the negotiations which preceded the Crown purchases at Piako in 1857. The papers of District Commissioner Hay contain only the slightest reference to the negotiations when, at a very early point, he notes that the Maori vendors had refused an offered price of £50 'because they maintain that some payment ought to be made by the Government on account of Webster's purchase'.⁶⁶ Despite its

63. Bell to Superintendent of Auckland, 26 September 1861, reproduced in Salmond, *305k: Piako*, p 29

64. Salmond, *305k: Piako*, p 3. Salmond states the number of Crown purchases within the Webster claim boundaries to have been nineteen. The very first of these was in 1854 and covered Chief Takapu's lands, explicitly identified by Godfrey and Richmond as having being excluded from the original purchase, and thus not included in my figure.

65. Salmond, *305k: Piako*, pp 3–4

brevity, this reference does cut straight to the heart of the issue surrounding the subsequent Crown purchases, that is, exactly what leverage did the Crown seek to obtain from the increasingly dubious conclusion of its earlier agents that the Webster purchase had been a bona fide one? This is of critical importance because it relates to whether or not the Maori vendors were provided with the opportunity to say ‘no’ to the various purchases proposed by District Commissioner Hay in 1857. If, for example, Hay’s stance was one in which the enforcement of the issued Webster grants was portrayed as inevitable, despite his own personal doubts about the finding on which those grants were based, then the Maori vendors may have felt compelled to gain some financial benefit from the ‘inevitable’ alienation of land *which they had never intended to sell*. On the other hand, the fact that Piako Maori were able to force the Crown into making several more purchases might be taken as evidence of their successfully resisting any pressure which the Crown may have been attempting to assert. Such an argument is strengthened by Piako’s proximity to the Waikato, heartland of the emerging Kingitanga. As Bell acknowledged in his 1862 report, there were certain areas where ‘if the state of the country had permitted I should have taken measures to recover as much as the natives would agree to give up of this land for the Crown. After the Taranāki war [broke out in 1860], however, this became impossible in certain districts’.⁶⁷ It does not seem unreasonable to assume that even before the period being referred to by Bell, the Colonial Government would have been anxious to avoid any incident which may have contributed to a wider allegiance to the emerging movement.

Details of the eighteen purchases conducted by the Crown to extinguish title to the area Godfrey and Richmond concluded to have been the subject of a bona fide purchase are contained in table 4 below. This excludes the very first Crown purchase conducted within the boundaries of Webster’s Piako claim. The 1854 purchase covered Chief Takapu’s lands, explicitly excepted by Godfrey and Richmond when concluding a bona fide purchase had been concluded. The purchase price for the 1000 acre block was £50 and ten percent of any proceeds of sale. I have not been able to check whether this last condition was ever followed through.⁶⁸

To make a definitive statement about how fair a return the consideration conveyed in these purchases was, would require a level of comparative research into similar Crown purchases which has not been possible within the confines of this case study.⁶⁹ If such research did, in the future, reveal the average price per acre to be comparatively low, then this might be taken to provide evidence that the Crown attempted to use the previous payments made by Webster as leverage to lower the price it would have to pay itself. Given that its own agents harboured

66. District Commissioner Hay to Chief Commissioner, 21 October 1857, extracts reproduced in Salmond, *305k: Piako*, p 17

67. Land Claims Commission, p 8

68. Salmond, *305k: Piako*, p 3

69. This shortcoming in current research will be partially met by the Crown purchase database, listing a similar range of details as contained in table 4, but on a national scale. It is anticipated that the database will be attached as an appendix to an upcoming report on Crown purchases by Helen Walter.

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Date	Name of Block	Area (Acres)	Price (£)	Price Per Acre (Shillings)
November 1857	Otamatoi	950	?	?
16 November 1857	Piako	19,500	1590	1.6
23 November 1857	Te Nge	1200	110	1.8
14 December 1857	Te Hina	500	?	?
23 April 1860	Mohonui	2580	?	?
29 November 1872	Piako (residuary claims)	?	235	?
6 May 1889	Patatai	2500	?	?
8 July 1896	Hoeotainui South 2	1390	347	5
13 March 1897	Hoeotainui South 3a	183	55	5
23 April 1897	Hoeotainui South 3b	1420	426	6
4 November 1897	Hoeotainui South 3c	1500	450	6.3
31 March 1898	Waikaka a	698	209	6
31 March 1898	Waikaka b	1546	463	6
31 March 1898	Opokeka	1016	296	5.8
9 February 1899	Mangawhero 1, 3	3990	1197	6
23 February 1899	Mangawhero 2, 4, 5, 6	2789	841	6
28 August 1902	Hoeotainui North 3a	1250	241	3.9
30 July 1907	Hoeotainui South 4b2	1575	453	5.8

Table 4: Crown purchases within Webster's Piako claim, 1857–1907

serious doubts about the original finding of Godfrey and Richmond that a bona fide purchase had been completed, the equity of any such action by the Crown would be highly questionable.

While such a conclusion awaits the results of further research, there can be no doubt that the Crown was very keen to 'open up' the lands at Piako. This can be

seen in the following extract from a Commissioner Bell memorandum on the opportunity presented by the ‘settlement’ of Webster’s Piako claim:

The impression which had always been on my mind that it would be extremely desirable for the interests of the Province [of Auckland] that this land should be retained in the hands of Government was very much strengthened . . . Now, the land in question is just in the position which it seemed to me to be most desirable to reserve for the site of a settlement . . . Besides its important relation to the Matamata and Upper Thames District, it is the commanding-point of the east-west water-communication between Waikato and Auckland, and presents advantages . . . [which] should, if possible be secured for the province, especially when it might be expected that the establishment of settlers there would be the first step towards opening a country which has hitherto been shut up against colonisation, and the foundation of more extended purchases from the natives.⁷⁰

While this memorandum was not written in direct response to the Crown purchases of 1857, but rather, to encourage the holders of Piako grants to exchange them for land elsewhere, it is nonetheless revealing as to the way in which many Crown agents must have perceived the relationship between the ‘settlement’ of Webster’s claims and the subsequent colonisation of the Piako area.⁷¹

That Webster’s claim at Piako was perceived by Bell to be amenable to settlement was a product of the fact that by January 1860, Frederick Whitaker and Theophilus Heale had come into ownership of grants⁷² covering 11,019 acres of the 12,764 acres recommended by Fitzgerald at Piako. This meant that there was an opportunity for the Auckland Province to acquire, in a single transaction, most of the land granted in Webster’s Piako claim. The opportunity lapsed, however, when the parties failed to come to a common agreement with regard to the value of the grants. Whitaker and Heale eventually received a single Crown grant which absorbed in their entirety the Te Hina, Te Nge, and Takapu Crown purchases, as well as more than half the area of the Piako Crown purchase.⁷³ Of the remaining 1655 acres recommended by Fitzgerald but not acquired by Whitaker and Heale, 1255 acres was exchanged for £549 scrip in 1880, while the want of a claimant before Commissioner⁷⁴ Bell in 1860 meant the remaining 400 acres ‘lapsed’, that is, were not re-issued. While the Crown would normally have maintained, on the basis of the bona fide purchase finding of the early commissioners, that these ‘lapsed’ acres reverted to its ownership, as has already been shown, in the case of

70. Bell to Superintendent of Auckland, 5 March 1861, reproduced in Salmond, *305k: Piako*, pp 21–22

71. The exchange of land in this manner was known as a scrip exchange, a category covered in detail in the case study on Hokianga old land claims. By January 1860, Frederick Whitaker and Theophilus Heale had come into ownership of grants covering 11,019 acres of the original 12,764 acres recommended by Fitzgerald at Piako, thereby presenting the opportunity for the Auckland Province to acquire in a single transaction most of the land granted in Webster’s Piako claim.

72. Salmond, *305k: Piako*, pp 2–4

73. See sketch of Piako Crown purchases, *ibid*, p ii. The acreage of this single grant was actually 12,855 acres. This was composed of 11,019 acres for the various derivative grants Whitaker and Heale had accumulated, and 1836 acres awarded as survey allowance under the 1857 Land Claims Settlement Act. *Ibid*, p 2.

74. *Ibid*, pp 2–4

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Piako, the doubts surrounding the commissioners' finding had necessitated several Crown purchases in order to give true effect to the 1843 ruling of Godfrey and Richmond with regards to the extinguishment of Native title at Piako.

The supreme irony is, that even after completing eighteen distinct Crown purchases the Crown was to find itself once again being challenged about the Godfrey and Richmond ruling. This time, the challenge came not from the Maori vendors, but from William Webster himself. Webster had left New Zealand in 1847. In 1858 he presented a petition to the United States Congress alleging that he had not received just treatment from the British Colonial authorities in New Zealand. This, despite grants⁷⁵ eventually being issued to himself, or his creditors, for a total of 25,735 acres. His petition, and two other similar attempts, met no favourable response. Finally, in 1880, the Senate Committee on Foreign Affairs managed to persuade the President to submit Webster's case for international arbitration. The case was initially scheduled to appear before an international tribunal composed of one representative each from Britain, the United States, and France, in 1914. World War One intervened, however, and the case was not eventually heard until 1924. Counsel for the British government based their defence on the questionable nature of many of the transactions by which Webster claimed to have purchased more than 130,000 acres. In deciding to reject Webster's case, the tribunal took a different approach. They ruled that as a result of his original transactions, 'Webster [had] acquired no more than a native customary title, the content and scope of which was very uncertain and can not said to have extended to a full property [right] or *dominium*'⁷⁶. It was their belief that before the assumption of British sovereignty:

The native law was customary and in a low stage of development. The land was possessed and occupied by the tribe, and separate cultivation seems to have given no more than what might be called a usufructuary interest. Alienation, in the sense in which it⁷⁷ was understood by the white purchasers, was something quite new to the natives.

As such, the tribunal concluded, Webster could have no perceivable complaint against the subsequent conversion of his customary title into the more certain and defined, and therefore marketable, property right that a Crown grant represented. While those Crown grants conveyed a smaller area than he claimed to have purchased before the Land Claims Commissioners, the tribunal did not consider this to be unjust because he 'had exchanged his customary title to the surplus for a better title to what was granted him'. Nor, in an argument which must have been influenced by the evidence provided by the British counsel and reproduced in this case study, did they consider that it would have been 'equitable to award him full title by British law to the fullest possible extent of the indefinite boundaries which his conveyances from the native chiefs called for. He could not have been in

75. Being made up of 4981 acres (715 to 727 excepting Piako, 726), 12,674 acres (Piako, 726), and 8080 acres (his third of claim 36: Great Barrier).

76. Fred K Nielson, *American and British Claims Arbitration*, Washington DC, 1926, p 543

77. *Ibid*, p 542

possession of all these tracts, nor were the limits of such possession as he had by any means clear⁷⁸.

Indefinite or exaggerated boundaries are but one of several grounds upon which the pre-Treaty transactions of William Webster might be challenged. Other significant faults include incomplete or exaggerated payments and failure to pay the rightful owners. While many of these defects were uncovered during the hearings of Godfrey and Richmond, the case of Piako illustrates that this was not always the case. It is worth pointing out that Piako was not the only Webster claim which, after being validated by one or both of the earliest commissioners, subsequently provoked significant resistance from local Maori necessitating several Crown purchases to eventually give effect to the Crown grants already issued. Webster's claim 722, encompassing 10,000 acres at Point Rodney, north of Auckland, is another case in point.

The example of Piako raises two important questions. Firstly, how many other Godfrey and Richmond findings were similarly flawed? This question can be only be answered by in-depth research into each individual old land claim, something which in all probability will only occur as each region approaches the stage of having its claims heard by the Waitangi Tribunal. Even then, as will be suggested in the case study of the McCaskill old land claims at Hikutaia, some defective judgements may not be immediately noticeable because resistance by Maori was not always recorded by agents of the Crown. Thus, in some ways, the nature of the extant historical record prevents a full reckoning of this important question. A second question raised by the example of Piako is: to what the extent can the subsequent Crown purchases be seen to have compensated local Maori for the original flawed decision of Godfrey and Richmond? Two aspects must be addressed when attempting to answer this question. Firstly, did the several purchase prices represent a fair return upon the value of the land? A definitive answer to this question will require more in-depth research into surrounding Crown purchases and the price at which the land was subsequently resold by the Crown. The presence of any compulsion on the part of the Crown would also effect any consideration of this question. A fair consideration for the land would be a great deal less equitable if local Maori were not given the option of refusing the sale in the first place. Once again, however, the historical record, in this instance, the brevity of notes surrounding the Crown purchase negotiations, makes any definitive answer difficult. A much wider search of existing records will be necessary here too.

In short, this case study, in solving one set of questions, has raised another set, equally important and arguably more elusive. While there can no doubt that the original Godfrey and Richmond findings were sometimes seriously flawed, the frequency and resultant injustice of this has yet to be fully determined.

78. Ibid, p 545