

CHAPTER 7

JAMES CLENDON AND THE BACK-TRANSLATIONS OF THE TREATY

James Reddy Clendon, who had visited New Zealand in 1830 and purchased land at Ōkiato, before settling there in 1832, had been appointed as United States Consul at the Bay of Islands in 1839. He witnessed the first signing of the Treaty on 6 February and, as soon as practicable, began to obtain copies of the two formal proclamations of Hobson (30 January), together with the printed version of the Treaty (17 February), so that these could be sent to his superiors in the State Department in Washington, writing on 20 February: "I have also forwarded a copy of the Treaty entered into with the Chiefs with a translation attached thereto. Many chiefs have signed this Treaty and it is expected that the whole will do so."¹ At first attempt, for his despatch no 6, Clendon was not successful in obtaining the English text of the Treaty, but he had obtained an unofficial translation, headed 'Translation' and appended to the letter, which he transcribed for this despatch, with the comment:²

Memo: This translation [into English] is from the native document and not a copy of the official document in English from which the native one is made – and although the words may be different from what they are in the original I think the sense is much the same – but on the return of Capt Hobson from the Southward I shall apply officially to him for a copy and translation of the Treaty for the purpose of sending it to the government of the United States.

The story of Clendon's effort to get an official text in English really starts with a request to Willoughby Shortland (written and dated 18 March, but filed as IA 40/61, dated 25 March, presumably the date of the actual reply). The inward letter is now missing (a photographic copy survives), and was registered as "US Consul Mr Clendon for copy of Treaty of Waitangi to forward to American Government":

1 Despatch no 6, 20 February 1840, in United States. Consulate (New Zealand) Despatches ATL Micro-MS-0934-01 pp [1-2]. See also McNab, *Historical records of New Zealand* v 2 p 614. The attested translation in Clendon's despatch no 6 has been illustrated by Doutré in *The Littlewood Treaty* (2005) 78-81, with his signed attesting Memo on page 81. Clendon's transcript of the Busby/'Littlewood' text gives the correct date ("on the sixth day") four lines from the end, on page 80

2 Attachment to Despatch no 6, 20 February 1840, in United States. Consulate (New Zealand) Despatches ATL Micro-MS-0934-01 pp [4-6], followed by the printed text of the Treaty in Māori, and then the two printed proclamations of 30 January.

A document purporting to be a copy of a Treaty made between the Native Chiefs of New Zealand and Her Britannic Majesty's Commissioner, having been placed in my hands, I have the honour to request that I may be furnished by Her Majesty's Government with a copy of any existing Treaty with the said chiefs, that the same may be forwarded to the Government of the United States of America.³

A note on the verso by Freeman and dated 6 April says "Mr Clendon is to have a copy of the Treaty and a Translation", followed by a further "answered. H Kemp Interpreter", in Kemp's script. While no translation of the Treaty into English is now present among them, Clendon's papers at Auckland City Libraries do indeed contain a copy of the Māori text annotated "True copy Ja. Stuart Freeman".⁴ This document, however, is simply a transcript, in the script of Henry Williams, and was probably copied from the printed document of 17 February. The Māori manuscript which was sent to Clendon (now at Auckland in Clendon's papers), was of no use to him, given that he had that text in printed form already.⁵ What he really wanted was a copy of the 'official' text in English. Clendon seems to have approached several people for translations – including Gordon Brown and James Busby – and the version he selected, and which he transcribed into the 20 February despatch no 6, is a transcript of a translation in the handwriting of James Busby, the so-called 'Littlewood document'. Although the Littlewood document is dated 4 February, this date is a transcriptional error; Clendon recognised that the date was really 6 February and that is the date he gave in his despatch.

I THE 'LITTLEWOOD DOCUMENT'

The Littlewood document (Archives New Zealand, NA Series 6544) surfaced in June 1992 when John Littlewood wrote to the Alexander Turnbull Library that the document had been in the hands of his family for many years, and had probably been owned by Henry Littlewood, once of Russell, later of Auckland, his great-grandfather. The Littlewood family offered to donate the document to the nation if its origins could be ascertained; meanwhile it had been 'encapsulated' at the Auckland Museum about 1990. The museum had thought that it was in Hobson's writing.⁶

3 Clendon to Shortland, 18 March 1840, formerly IA 1, 40/61 (now missing). Photographic copy at ATL qMS-1603. The letter from Clendon to Shortland is illustrated by Doutré in *The Littlewood Treaty* (2005) 88.

4 This is on a sheet watermarked 'Harris and Tremlett 1838'. As has been noted above there is one other transcript of the Treaty in Māori, in Archives New Zealand (G 30/1, 25-27, part of Hobson's despatch to Gipps, no 40/13 dated 17 February). This Māori language transcript, which is also in the writing of Henry Williams, is illustrated by Doutré in *The Littlewood Treaty* (2005) 137-139.

5 J R Clendon, Papers 1837-76. ATL-Micro-MS-054 (microfilm) originals at AP Clendon Papers "pack 3".

6 The Alexander Turnbull Library pointed out that such an important constitutional document was more appropriately placed in the (then) National Archives than in the Library, but applauded the Littlewood family's offer to donate the document to National Archives (since renamed as Archives New Zealand). The full text of the Littlewood document is illustrated by Martin Doutré in *The Littlewood Treaty* (2005) 6-7, and (in colour) [49-50].

At about the same time Claudia Orange was also approached about the document and she wrote to National Archives on 14 July, to say that she had examined the document, agreeing that it was a National Archives concern, rather than a Turnbull one. She pointed out that the Littlewood provenance was problematic (Henry Littlewood was thought to have arrived in the late 1840s) and that pending proper identification of the document, any publicity about it would be unwise, as the textual variations from the signed treaty of 6 February would be politically sensitive. The Littlewood document contained no mention of the contentious phrase "lands and estates, forests, fisheries and other properties" but instead used the expression "lands, dwellings and all their property". Shortly thereafter, on 23 July, the Littlewood family visited National Archives with the document, which they left on loan, for restoration and scholarly examination. In September the story of the 'draft' was made public by the *New Zealand Herald*.⁷ The Secretary of Internal Affairs was informed on 10 September, and was told that the script was not Hobson's but that the scribe of the document had not been identified, nor had the date of writing been confirmed, nor was National Archives confident of the provenance.

After the newspapers published their stories, on 11 September, the then Minister of Internal Affairs (Graeme Lee) was photographed with the document, for a story in the *Dominion* of the following day.⁸ On 12 September Hank Driessen, of Archives New Zealand, pointed out that the Littlewood document was very similar to the 'translation from the printed document' in Māori which had been sent by Clendon in his despatch no 6 of 20 February 1840. Claudia Orange was informed of the relationship of the Clendon and Littlewood texts on 16 September. Consultation between the experts was reported to the National Archivist (who was then overseas) on the following day. The similarity of the Clendon text and the unidentified Littlewood text was kept quiet, pending the resolution of the problem of the handwriting. In the face of further media enquiries, an article 'Author of treaty draft a mystery', appeared in the *New Zealand Herald* on 23 September, when it was reported that the minister had been briefed on the document but that no solution to the problem was in sight. The Chief Archivist, on 24 September, said much the same thing.⁹

7 'Draft puzzles experts' *New Zealand Herald* 11 September and articles appeared in other newspapers: 'Experts study rediscovered Treaty of Waitangi copy' *The Dominion* 11 September and "'Missing" treaty may have been found' *Evening Post* 11 September, with a further story 'Treaty copy may have been used for trial' *Evening Post* 2nd ed 11 September which in which of Claudia Orange suggested that Henry Littlewood might have acquired his copy when he had been the defence counsel for Makutu at his murder trial in 1842. Orange pointed out, however that the document was dated 4 February rather than 6 February, and she did not think that it was the missing draft in English translated by Henry Williams.

8 It was here described as having 'fallen from her [the late Mrs Littlewood's] linen cupboard' other accounts trace it to a sideboard. *Dominion* 12 September 1992, 'Experts puzzle over "treaty"' *New Zealand Herald* 12 September, when Ian Wards supported the importance of the document.

9 'Author of treaty draft a mystery' *New Zealand Herald* 23 September, 'Tracing treaty author proving difficult task' *Evening Post* 24 September 1992.

On 21 September, however, the Crown Law Senior Historian, Don Loveridge, reported to the Crown Law Office on his examination of the Littlewood document. He pointed out the similarity between the text in Clendon's despatch no 6 and the Littlewood text ("virtually identical in all respects") apart from the dates (6 February and 4 February respectively) and dismissed the Littlewood document as a misdated copy of an extract of Clendon's despatch: "If someone was trying to create a document which would pass for the lost Williams draft of February 4th (or any other English draft predating the Waitangi signing), they did a singularly inept job of it."¹⁰ Claudia Orange considered that Loveridge was 'probably' correct but observed that no solution had been found to the problem of who had 'translated the treaty' for Clendon or when; no solution had been provided to the Littlewood provenance and no solution had been provided to the problem of the discrepancy of the date.¹¹ In fact Loveridge's examination of the document had added nothing to the resolution of the central problem – who was the scribe?

Finally, the Chief Archivist informed the Littlewood family that a search for further information, in the papers of James Clendon at the Auckland Public Library, had also come up with nothing new: "Given the inability of historians to recognise the handwriting it may be that the writer of the document will never be known. It is clearly not by Henry Littlewood."¹² A press release put out by the Minister of Internal Affairs, on 15 October, quoting the opinions of Loveridge, Orange and the Chief Archivist, concluded that the Littlewood document was not the missing 'lost draft' which Hobson had given to Henry Williams but that it was probably a copy of Clendon's text from the despatch, made by someone yet unknown. That the unknown writing might be James Busby's was not considered, although John Littlewood had suggested this identification at the outset.

However, on examining the Littlewood document myself, in 2000, I immediately recognised the handwriting as Busby's. The document is, as shown above, a back-translation from Māori into English, from the printed text in Māori. It is of historical interest but is of no constitutional significance. It is not a draft of the Treaty nor is it a 'copy' of it. It is simply a translation of the Treaty, and, as Loveridge might well have observed, not a very good translation, although to call it "singularly inept" is perhaps too strong. The paper on which the Littlewood document is written has a watermark (W TUCKER | 1833) which is also found on other documents prepared by Clendon – including despatch number 6, first page – and it is possible, and even probable, that Busby wrote the

10 D Loveridge to J Lake, 21 September 1992 in Archives New Zealand, file 4/1/18. The Crown Law Office reported this to the Minister on 29 September.

11 C Orange to Minister of Internal Affairs 5 October 1992, in Archives New Zealand, file 4/1/18. Orange found Loveridge's report unsatisfactory: "Dr Loveridge's comment that it was 'in all probability due to a simple copying error' does not entirely satisfy me as an historian. Although it *could* prove in the long run to be correct."

12 K Patterson to J Littlewood, 12 October 1992 in Archives New Zealand, file 4/1/18.

translation during a visit to Clendon in the period 17-20 February (i.e. between Colenso's printing and the date of the despatch) using Clendon's paper stock.

The next developments over the translation came early in April 1840, when Commodore Charles Wilkes, from the United States Exploring Expedition, discussed the recent developments with Clendon. In a letter of 3 April 1840, written at the "Consulate of the US of America at the Bay of Islands, N Zealand" Clendon advised Wilkes (in response to a query of the previous day) of the arrival of Hobson on the 29th January, the publication of the two proclamations of 30 January, (copies of which he enclosed, along with the printed Treaty in Māori), and of the visits of Hobson to Hokianga and the Thames (ie Hauraki Gulf), adding that "hitherto these are the only proceedings which have taken place relative to the cession of any rights by the chiefs of New Zealand to the British Crown". Enclosed with this letter were transcripts of both the Littlewood document and also the alternative translation, prepared for Clendon by Gordon Brown.¹³

The story of Clendon's efforts to get an "official copy of the Treaty" does not end here, however. On 20 June 1840, James Freeman (Acting Colonial Secretary, in the absence of Shortland) responded to Clendon with a further letter; "Sir, with reference to your letter of 24 March [sic] last requesting a copy of the treaty of Waitangi for transmission to the United States Government, I now do myself the honour, by the direction of His Excellency the Lieutenant Governor to enclose to you herewith copies of that Treaty in Native Language and English."¹⁴ Clendon copied that latter document to send with his next despatch.

13 Originals at Kansas State Historical Society, Topeka, Kansas, Charles Wilkes Papers, 1837-1847 ("Wilkes 542" in MS, microfilmed as Collection MS 53). These include Wilkes's letters received and sent including holograph transcripts marked 'Appendix' of the Littlewood 'affectionate remembrance' translation (pp 142-143) followed by 'Translation of the Treaty' with the Brown 'gracious consideration' text (pp 143-145) then Clendon to Wilkes, 3 April 1840 pp 145-6. The papers continue with business relating to squadron matters, but at pp 163-168 is a despatch (no 64 written on the vessel *Vincennes* on 5 April commenting on these documents, with particular emphasis on potential affects on American interests in the Southern Pacific Whale Fishery. Wilkes reports that he arrived at the Bay of Islands on 29 March and hastened to "inquire into the actual state of these islands". He received the documents from Clendon at this point (p 164). "I likewise obtained a copy of the treaty (a translation) also annexed and marked B & C in which the Govt have all the information that has yet been made public." I am indebted to Martin Doutré, a private researcher, for drawing these Wilkes papers to my attention. Wilkes observes that "The number of chiefs who have signed are being but a small part of those who hold not their freedom; indeed those who have signed are not aware of the act they have done, but speak of it as merely a transient thing. I cannot but view this Act of the British Govt as giving a most fatal stab to the interest of our whole fishery" but Wilkes speaks of Clendon as the most influential settler. Prominent deletions in the text, as concern American interests, suggest that the letter book quoted here was edited. Several pages of the Wilkes documents have been illustrated by Doutré in *The Littlewood Treaty* (2005) 93-93.

14 Archives New Zealand, IA 4/1 p 31, in the script of S E Grimstone. This letter had two enclosures, one being the Henry Williams holograph still in Clendon's papers; the other was a text of the Treaty in English, but unfortunately this latter has not been located. See also notes 4 and 5, this chapter.

The transcript in Clendon's next despatch (no 7, of 3 July 1840) advised: "Sir, I have the honour to enclose returns of American Vessels [. . .] Also an official copy of the translation of the treaty with the Native Chiefs referred to in my letter No 6 date 20th February 1840. The British Government have formed several settlements on this (Northern) Island and are preparing to put their laws in force. At present they have only a Police Magistrate and a small detachment of troops at each settlement." It is Clendon's hand, and clearly marked "copy".¹⁵ The text supplied, however, was not a copy of the "official" English text, but, rather one of the "Her most gracious Majesty" type, with its usual and appropriate date, 5 February rather than 6 February. By a mistake – presumably on Freeman's or Grimstone's part – the WRONG DOCUMENT had been copied, and Clendon provided a copy of Freeman's second draft, rather than the "official English text" (which Clendon had sought).¹⁶ Nobody seems to have noticed the error, including Robert McNab, who printed the texts of both of Clendon's dispatches – without the enclosures, however – in his *Historical records of New Zealand*.¹⁷

Other documents of around this time are also misdated by the Colonial Secretary's office, perhaps owing to the several changes of personnel there. In the proclamations of sovereignty over the Northern Island, issued on 21 May, the date of the signing of the Treaty at Waitangi is also given (incorrectly) as 5 February. This may be a simple case of carelessness or confusion, but, in either event, it indicates poor record-keeping in the Colonial Secretary's office at this time. Paradoxically, this poor record-keeping turns to the historian's advantage, by enabling us to retrieve the scribal history of New Zealand's founding documents. Despite official incompetence and a century of neglect, these documents are "preserved in the archives of the colony", after all.

15 B Easton in "The Genesis of the Tiriti" (in *Archifacts* April 1997 pp 38-49) overlooks the Clendon autograph "Copy" in Washington. For the Clendon despatch see Archives New Zealand, Micro 2607, RG 59.

16 This was probably another transcript by Grimstone, resembling that in Archives New Zealand G 30 / 1 pp. 75-77.

17 R McNab, *Historical records of New Zealand* v 2 pp. 613-615. McNab notes that the text of the translation of the Treaty (ie the Busby/Littlewood translation) was to "appear in another place" but it was never printed, and, unfortunately the text sent in despatch no 7 was not printed either.