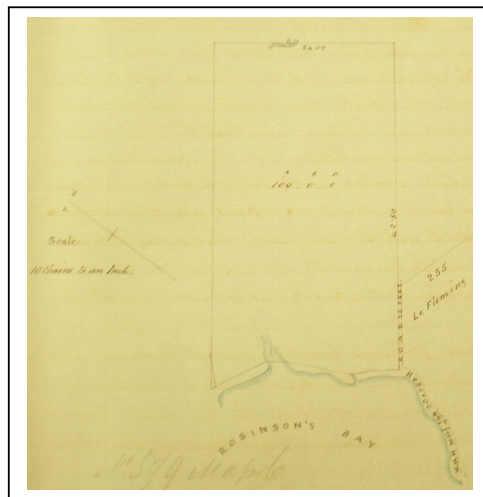


## Pre-emptive Rights and Wrongs

Helen M. Leach  
Brent R. George

When the four eldest Pavitt brothers purchased Charles Barrington Robinson's 100-acre block in Robinson's Bay in the mid-1850s (Map 1), they were buying one of the oldest sections on Banks Peninsula, dating back to 1842. Robinson had been the British Police Magistrate in Akaroa from 1840 to 1845 (Ogilvie 2007:31), earning the respect of both Governors Hobson and FitzRoy. While in Akaroa, he purchased three sections of land from the Nanto-Bordelaise Company, organizers of the 1840 French settlement in Akaroa. Two of the sections (one of five-acre extent and another described as having an area of 43,875 square feet, i.e. one acre) were in Akaroa (bought on March 30 and August 27, 1842). The 100-acre block, co-owned by Robinson and William Watkins Wood (a trader from Manila), was situated just behind the foreshore in the bay named after Robinson himself. Its purchase is dated to June 3, 1842 (Hight and Straubel 1957: Appendix III).



**Map 1:** RS 579 – diagram of conveyance Robinson to Pavitt Bros (Deeds Index 3D/133 Record 824). Note that the number 579 was added to the diagram in pencil after the original was prepared in ink. This was probably because the original document predated the allocation of the number.

Charles Robinson resigned as magistrate in 1845 and travelled back to England. With his business partner Henry Smith, he organized his own settlement scheme and in 1850 chartered the ship *Monarch*, which was to call in at Akaroa before delivering its immigrants to Auckland. However, damage to the vessel on the voyage induced 37 of them, including the Pavitt family, to remain in Akaroa. That Robinson already owned land there may have played a role in their decision. It is even possible that Robinson interested the Pavitts in the potential of his well-timbered country block while still on board ship.

The failure of the Nanto-Bordelaise Company's plans left the 1840 settlers uncertain of their title until 1846, when the British Government agreed to

grant the Company a block of 30,000 acres [12,150 hectares] on Banks Peninsula, including the 1840s purchases. It occupied the northern half of Akaroa Harbour, encompassing the township, French Farm, and the Head of the Bay, and extended to the ridges above. However the exact boundaries of the block remained unsurveyed for several years and there were still Maori objections to be resolved.

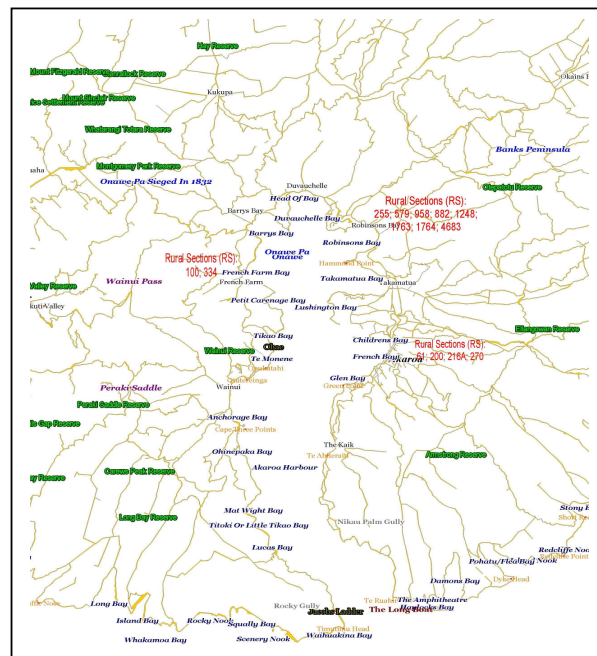
By 1848 another major contender for land in Canterbury was emerging in Britain—the Canterbury Association formed by John Robert Godley and Edward Gibbon Wakefield, and committed to a Church of England settlement. It acquired land from the New Zealand Company and planned to sell its rural sections at the high price of £3 per acre, in order to attract the best sort of farmer-settler. The minimum rural section size was to be 50 acres. Overall some 2.5 million acres were reserved for the Canterbury Association.

By the time the first four ships left England, land orders for a total of 13,150 acres of rural land and 132 acres of town land had been sold to 143 purchasers. These people were referred to as the ‘First Body’ of colonists. In recognition of their commitment they would be allowed to obtain cheap pasturage licences at 16s 8d per annum, up to five acres of pasturage for every acre purchased (Webb 1957: 168–169). Pasturage rights allowed grazing of the edible plants alone, and did not extend to timber or soil—in theory you couldn’t plow such land and grow a crop of wheat on it, unless to feed your animals. These licences came with an additional privilege for those in the ‘First Body’: a pre-emptive right of purchase of the land itself. If someone other than the pasturage licence holder applied to buy part or the whole of the land covered by the pasturage licence, the land had first to be offered to sale at the original price to the licence holder who had a month to freehold that land for him or herself (and yes, women could own land). Canterbury Association land was available under a pasturage licence to other people at 20s per acre per annum, but initially their licences carried no pre-emptive rights. Ironically neither Charles Robinson nor the Pavitts were members of the elite ‘First Body’ despite having arrived earlier.

The Act empowering the Canterbury Association to dispose of its rural lands under the above conditions was passed by the British Parliament on August 14, 1850. Its schedule defined the boundaries of the block which would be administered by the Canterbury Association, excluding

“certain buildings, and the land marked out as appurtenant thereto, situate on Banks’ Peninsula, and purchased by the said New Zealand Company from the Nanto Bordelaise Company, and with the exception also of certain property acquired by purchase and exchange with M. De Belligny, such lands so excepted being reserved to Her Majesty, her heirs and successors.” (Mackay 1872 II:377)

We can interpret this wording first as an indication that land already sold or granted to the French and other settlers of the 1840s could not be resold by the Canterbury Association; and secondly that land within the Nanto-



1853–1856 saw a marked decline in land transactions. Although Campbell had been removed from office as Commissioner of Crown Lands by late 1853, he held up the issue of deeds in his new post as Registrar of Deeds, from which he was dismissed in December 1854 (Hensley 1971:39). From March 1854 it was expected that the price of rural sections would be lowered from £3 to £2 per acre, though the necessary regulations were delayed until February 1856; however land outside the Canterbury Association block was already available at 10/- per acre. With the winding down of the Canterbury Association after December 1852 the new Provincial Government found itself with two sets of land regulations to administer. In the higher-priced Canterbury Association block, land sales plummeted, and there was widespread uncertainty about the conditions applying to pasturage licences and pre-emptive rights.

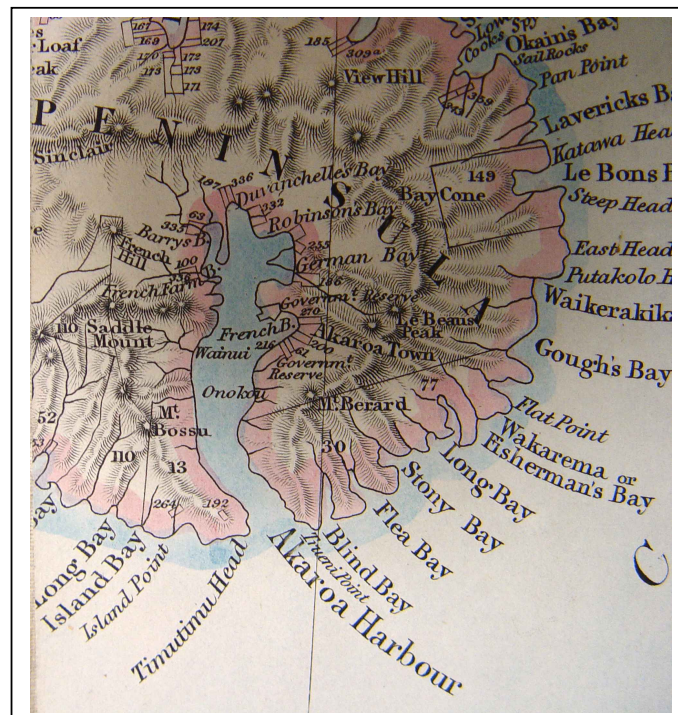
From March 1852, three classes of pasturage licence existed within the original Canterbury Association block: Class I licences were issued to purchasers of rural land, five acres of pasturage for every acre purchased, with a right of pre-emption—they were renewable from year to year; Class II licences were also renewable yearly, they covered pasturage blocks of a minimum size of 250 acres, but carried no pre-emptive rights; Class III licences applied to blocks from 5,000 to 20,000 acres and were for a seven year period, with a complicated schedule of payments and stocking requirements. Outside the Canterbury Association block, Governor Grey's Land Regulations of March 1853 were in force, despite being declared invalid by the court. For run-holders these provided a pre-emptive right over their homestead blocks. As the power of the stock-owners and squatters increased, this type of pre-emptive right was granted to protect the improvements made to runs under Class III licences (Hensley 1971:49).

Eventually the Provincial Council hammered out Waste Lands Regulations that were applied to the whole province from April 1, 1856. However, there were a few problems with the sections dealing with pre-emptive rights—some argued that there would be few small farmers interested in land still covered by the old Class I pasturage licences with pre-emptive rights, since they would have to pay the old price of £3 per acre, in 50-acre lots, instead of £2 per acre for 20 acres. This would advantage the licence holders. But there were now many areas where demand had led to much higher prices, up to £20 per acre. Pre-emptive right holders could purchase it themselves for £3 per acre and on-sell it for a profit. Other opponents declared on good legal grounds that the old pre-emptive rights had disappeared with the demise of the Canterbury Association. It seems that too many influential people still held Class I licences with pre-emptive rights for the Provincial Council to accept this view. The compromise was to encourage pasturage licence holders to convert their old pre-emptive rights to the newer type that protected improvements.

These amendments were framed with the Canterbury Plains in mind, rather than Banks Peninsula. On the Peninsula the old-style pre-emptive rights, many issued early in 1851 to 'First Body' colonists, were of much greater interest to farmers, land agents and speculators. In Akaroa Harbour, the 'Waste Lands'

were subject to Canterbury Association regulations from 1851 until 1856, despite Colonel Campbell's campaign. Thus in 1851 when J. Dicken purchased his prime 100-acre section beside the harbour at French Farm (RS 100), he became eligible for a pasturage licence of 500 acres. We do not know whether he applied for that quantity of land; however in 1866 a return of lands held under "Pasturage Licenses with Pre-emptive Right, not included in large Runs" (Anon 1866: Sess. I C-03) shows that Pasturage Licence No. 100, covering 225 acres, was held by representatives of the late J. Dicken. The licence PL 100 was still tied to the section of land known as RS 100. Dicken and many other 'First Body' colonists used their pasturage licences to create viable farms without too much initial expenditure. Their attached pre-emptive rights served the purpose originally intended by the Canterbury Association, to prevent speculators from restricting the desirable consolidation of land sections into economic units.

Because they owned a Nanto-Bordelaise section, Charles Robinson and William Wood could not use it to obtain a pasturage licence with a pre-emptive right. After March 1852 Robinson could have purchased additional rural land under a Canterbury Association number, and applied for a pasturage licence with a pre-emptive right, but given his support for Colonel Campbell this would have been unlikely. Judging by the map of Canterbury published by Edward Stanford in 1856 (Map 3), there were only fourteen freehold rural sections around the Akaroa harbour edge, and for the whole of Canterbury only 419 rural sections had been sold at the time the information was collated—possibly in late 1855.



**Map 3:** Enlargement of Akaroa Harbour, showing limited extent of the Canterbury Association Rural Section numbers c. 1855, from Edward Stanford map (1856).

On Stanford's map the Robinson-Pavitt block is shown without an RS number, and there is no evidence that it became RS 579 until after 1856. By the time that it did, other people had acquired pasturage licences with pre-emptive rights around the Pavitt's land. How did that happen? These were not the new type of pre-emptive right introduced to protect run-holders' homesteads, outbuildings and fences, but old pre-emptive rights associated with the sale of rural sections and the acquisition of Class I pasturage licences. Those affecting the Pavitts were PR 27 and PR 334, and their numbers link them to Pasturage Licences 27 and 334, and in turn to Rural Sections 27 and 334. Each has a complex history, and each was used to secure small sections that impeded the enlargement of the Pavitt's Robinson's Bay holding.

Taking PR 334 first, the original section with that number was RS 334, described as a selection made by the Lord Lyttelton Trust in French Farm Bay. It consisted of 50 acres and was one of the sections that Henry Sewell went to inspect on Lord Lyttelton's behalf in February 1855. After commenting on the success of what could only have been the Pavitt's sawmill, he wrote in his journal

"If I ever came to settle it would be here, and in this line. I am persuaded that in the long run it would be as good as sheep or cattle. Lord Lyttelton's Timber Sections are as good as any there, and I have decided upon not parting with any land there under £10 an Acre, which is more than we shall get at present. In truth I do not want to sell. One of these days it will be a valuable property." (McIntyre 1980 II: 132)

However a Pasturage Licence was a transferable commodity, and ownership of RS 334 came with the potential for PL 334 covering 250 acres—and in turn PL 334 came with PR 334. Whether or not RS 334 changed hands at the same time, we know from a ledger entitled "Canterbury Association Land Office Transfer Book of Pasturage Licences with Preemptive Right and Others 1851–1856", that on March 25, 1856 "Lord Lyttelton and others (original purchaser or licensee)" transferred Pasturage Licences 334 and 336, each of 250 acres, along with their Preemptive Rights to John Jenkins Peacock of Sydney. There is a description of the location of PR 334 that accompanied the renewal of the licence by Peacock on May 1, 1857:

"Description - Between Robinsons Bay and Devauchelle's Bay Akaroa fronting the coast line and back between sections 332 and 579 to the extent of 250 Acres" (Description of Pre-emptive Class 1 1857-nd)

RS 579 was the Pavitt's 100-acre block while RS 332 was another of Lord Lyttelton's timber sections. Thus the pasturage licence originally attached to a timber section in French Farm was sold and moved to a more strategic location. Since the quoted description refers to RS 579, the change in the land covered by the pasturage licence and pre-emptive right must have taken place after Peacock acquired it in 1856.

In late 1857, Thomas Pavitt applied to buy a section adjoining his brothers' block and oriented at right angles to it. This was RS 958, a 20-acre strip, which if Thomas didn't already know, he soon discovered was subject to two pre-emptive rights owned by John Jenkins Peacock, PR 334 and PR 27. On this occasion Peacock chose not to purchase the land himself and the sale proceeded. Thomas owned it until 1862 when he sold it to Peacock. We suspect that he made little profit, since it would have had little value to anyone else, being adjacent to land still subject to pre-emptive rights. At the same time as Thomas Pavitt was securing RS 958, Peacock purchased land on the southern side of the Pavitt Brothers' block. This was RS 882, which adjoined Le Fleming's early section RS 255. Peacock bought this 20-acre section on October 1, 1857, probably because he held the pre-emptive right over that portion of Robinson's Bay, referred to as PR 27.

The story behind PR 27 also involved Henry Sewell. Henry's brother-in-law, the Reverend Edward Kittoe, joined the Canterbury Association and bought a land order along with the 'First Body', though he never became a settler. The 100-acre block selected for him in February 1851 was RS 27, which lay in the Christchurch district near the Heathcote Estuary with a frontage along the Lyttelton-Christchurch road. It came with a pasturage licence of 500 acres and a pre-emptive right. Obviously the Rev. Kittoe was in no position to stock it himself; it was simply an investment, as was his 50-acre section RS 4 on Ferry Road and the pre-emptive right associated with it.

Trading in pasturage licences was evident in the pages of the *Lyttelton Times* within a few months of the initial land selections. Lyttelton solicitor Richard Wormald advertised for a pasturage licence over 100 to 400 acres in the Christchurch or Lyttelton district with pre-emptive right of purchase (*Lyttelton Times* July 19, 1851). Longden and Le Cren's advertisement stated simply "Wanted to Purchase, a number of Pre-emptive Rights" (*Lyttelton Times* March 3, 1852). The potential to move a pasturage licence with pre-emptive right from its original location is apparent in this next advertisement from Wormald, who was obviously successful in his earlier attempt to buy pasturage licences:

"To Be Sold, by Private Treaty, a Pasturage License, with pre-emptions over 2,500 acres of any part of the unsold land of the Canterbury Settlement." (*Lyttelton Times* March 13, 1852)

In 1854 the following advertisement was placed by land agent Henry Cridland:

"To Be Let 50 acres of Section No. 27 on the Sumner Road. And with right of purchase No. 4, near the Heathcote Ferry." (*Lyttelton Times* March 11, 1854)

The mention of both RS 27 and RS 4 suggests that Kittoe still owned his two sections but was contemplating sale. It seems very likely that his pasturage licences were also producing a return. By May 1, 1857 John Jenkins Peacock held Pasturage Licence 27, consisting of 500 acres with pre-emptive right. This land was nowhere near Kittoe's 100-acre block at Heathcote. It was now serving Peacock's purposes in Robinson's Bay. It was described as



“At Akaroa Bank’s Peninsula at the back of Robinson’s Bay the Northwestern[?] boundary line being parallel to the back boundary line of Section 579 and about 1 mile from the Sea Coast.”  
(Description of Pre-emptive Class 1 1857-)

The writing is faded at the critical word ‘Northwestern’, which may also be read as ‘Northeastern’. But whether the rectangle covered by this licence bordered RS 579 and ran another half mile further up the valley, or started a mile from the shore and extended inland, Peacock’s pre-emptive right prevented the Pavitts expanding their land holdings further up the valley. This pasturage licence and pre-emptive right, defined as it is in relation to RS 579, cannot pre-date the issue of that section number in late 1856 or early 1857.

John Jenkins Peacock acquired pasturage licences 4, 27, 330, 334, and 336, a total of 1500 acres, all within Akaroa Harbour (Minute Book 1858–9). He used the associated pre-emptive rights to purchase, doubtless at low prices, rural sections 882 (20 acres), 1759 (20 acres), 1892 (20 acres), 1974 (25 acres), 1986 (20 acres), 2050 (20 acres), 2114 (20 acres), 2734 (28 acres), and RS 4450 (84 acres) (Neill c.1991). Two of these sections were listed as being in Robinson’s Bay, two at the Head of Bay, two in Duvauchelles Bay, and three on the Okain’s Bay Road. They were probably timbered at the time he purchased them, and he was clearly not using them, along with the 1500 acre of pasturage land he controlled under pasturage licences, to build himself a cattle run. Instead he was ‘spotting’, a practice designed to obstruct small purchasers, and competitors (Scotter 1971:296), or to make them pay inflated prices for land that he was buying at a mere £2 per acre. John Jenkins Peacock was primarily a trader, and in the mid-1850s he was captain of the floating warehouse, the *Mountain Maid*, sailing a circuit between various New Zealand ports and Sydney. Peacock was well known for his ability to make a profit where little competition existed. For example the *Lyttelton Times* reported on June 7, 1856 that wheat bought at Port Cooper [Lyttelton] for 6s 6d per bushel was transported to Akaroa by Peacock’s vessel and sold at 8s per bushel.

John Jenkins Peacock’s son, John Thomas Peacock, set up business as a wharfinger in Lyttelton. He became a prominent and wealthy citizen of Christchurch and acted as a mortgagee to Thomas Jackson Hughes in the early 1860s. Given this connection, it is not surprising that his father, John Jenkins Peacock, transferred PL 27 with its pre-emptive right, to Hughes about May 1, 1860. A year before, Thomas Jackson Hughes’ son Richard Jackson Hughes was allocated two sections of land, covered by Peacock’s PR 27, in payment for some road works he had personally funded. This compensation scheme was introduced in the 1856 Waste Lands Regulations. Richard Jackson Hughes’ land grant was for RS 1763 (adjoining the Pavitt Brothers’ block), and RS 1764. Between these lay RS 1248, a 20-acre section described initially as located 4 chains inland from the Pavitt’s. As its number indicates it was created before Richard Jackson Hughes’ two sections—William Aylmer of Akaroa applied for it on behalf of Joseph Humphrey Smith on April 22, 1858,



also in compensation for public works. Smith was granted this land subject to PR 27. By 1862 this section was in the hands of Thomas Jackson Hughes, and there is a possibility that Smith was a 'dummy' purchaser used in the Peacocks' land schemes.

Like John Jenkins Peacock before him, Thomas Jackson Hughes held Pasturage Licence 27 not for agricultural purposes, but for its accompanying pre-emptive right. Even though it had been reduced from 500 acres to 356, he used PR 27 to thwart C. Smith's attempt to buy RS 4683 on October 2, 1862. This section of 20 acres was situated beside Le Fleming's RS 255, and as the pre-emptive right holder, Hughes obtained it for £2 per acre.

Between them, John Jenkins Peacock and Thomas Jackson Hughes effectively blocked any prospect of the Pavitts extending their farming or milling operations in Robinson's Bay. The first advertisement to sell RS 579 appeared in December 1860 (Figure 1) only six months after Hughes acquired PR 27 from Peacock and moved his milling machinery to Akaroa Harbour.

<p style="text-align: center;"><b>TO CAPITALISTS, MERCHANTS, AND OTHERS.</b></p> <p style="text-align: center;"><b>FOR POSITIVE SALE.</b></p> <p style="text-align: center;">In consequence of a contemplated <b>DISSOLUTION OF PARTNERSHIP.</b></p> <p style="text-align: center;">ALL THAT VALUABLE <b>FREEHOLD PROPERTY,</b> situated in Akaroa, and known as <b>WOODLANDS,</b> consisting of <b>ONE HUNDRED AND EIGHTEEN ACRES FREEHOLD LAND, SAW MILL, THREE DWELLING HOUSES, GARDENS, ORCHARDS, SAWYERS' HUTS, &amp;c.,</b> the property of <b>MESSRS. PAVITT, BROTHERS.</b></p> <p><b>MR. W. D. BARNARD</b> has been favoured with instructions from Messrs. Pavitt, Bros. to Sell by Private Contract, the above Valuable Freehold Estate.</p> <p>This splendid land was one of the first selection made from the New Zealand Company, is of the richest quality, and admirably adapted for business</p>	<p>purposes, having a large frontage to the beach where vessels can load and discharge in any weather</p> <p>There are sixty acres cleared, substantially fenced and subdivided into convenient paddocks, twenty five acres of which are well laid down in English grasses; the remainder of the land is heavily timbered.</p> <p style="text-align: center;"><b>THE SAW MILL</b></p> <p>is nearly new, in good working order, and capable of cutting ten thousand feet of timber per week having been erected regardless of expense. There is a large and constant supply of water.</p> <p style="text-align: center;"><b>THE PRINCIPAL DWELLING HOUSE</b></p> <p>is substantially built and very commodious being 45 feet by 35 feet. It contains drawing room, dining, and two sitting rooms, kitchen, dairy, wash-house, and four large bed rooms. It is pleas- antly situated on rising ground, and commands one of the finest views on the Peninsula.</p> <p style="text-align: center;"><b>THE GARDENS AND ORCHARDS</b></p> <p>are well stocked with the choicest fruit trees, &amp;c.</p> <p style="text-align: center;"><b>THIS SPLENDID MARINE RESIDENCE</b></p> <p>has only to be seen to be admired and appreciated, contrasting strongly in its natural beauties with the unvaried monotony of the plains.</p> <p>For further particulars apply to Messrs. Pavitt, Brothers, Akaroa, or at the offices of</p> <p style="text-align: center;"><b>MR. W. D. BARNARD,</b> Cashel Street, Christchurch.</p> <p style="text-align: center;">Title—Crown Grant.      Terms liberal.</p>
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**Figure 1:** This advertisement for the sale of Woodlands appeared in the *Lyttelton Times* between December 1, 1860 and January 16, 1861. No sale eventuated at that time. (Accessed from Papers Past)

But in this alliance against the Pavitts, Hughes was very much the weaker partner. A month before he moved his family to Robinson's Bay at the end of March 1861, Hughes was forced to assign his assets to his mortgagees, one of whom was John Thomas Peacock. These included Pasturage Licence 27 that could be sold if his debts were not settled within six months. Compared to the Peacocks, Thomas Jackson Hughes played a more obvious role in forcing the

Pavitts to relocate their business interests elsewhere, but the Peacocks were the real winners in financial terms. For a man who spent much of his life at sea, Captain Peacock cleverly used pasturage licences and pre-emptive rights in a way that could be classified as 'jobbing', a practice despised by the idealists of the Canterbury Association (Wakefield 1849:20).

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