

as some of Ormsby's land had sold for £50 an acre, I applied to Governor Browne for authority to hear the case under Section 33, known as the "Special Clause." This Section had been originally drawn in accordance with the following recommendation of the Select Committee of the House of Representatives:—

"It is proposed, as has been stated, to give a special power to the Commissioners, notwithstanding anything to the contrary elsewhere enacted, to hear and decide upon any case where special injustice may be proved to have been inflicted."

The grounds upon which I proposed to hear the case specially were reported, as the Act required, to the Governor. The principal ground was that "while the Government must be held always justified in making reserves for public objects (of which the Onehunga settlement was a legitimate instance), they had no right to impose *ex post facto* regulations on those claimants whose cases had been heard and determined before the Governor's Minute of 1847, nor to attach conditions that were not known when the claims were heard; and that the claimants whose names appeared in the list above-mentioned had an equitable right either to the land they were reported for, or to equivalent compensation for it if reserved."

The Governor authorised the special hearing of Ormsby's case; but when I was about to apply the 33rd Section of the Act in an award, I was stopped by certain words in the Section the significance whereof had at first escaped me.

In the Land Claims' Bill as originally introduced, the clause ran thus:—"Provided always and notwithstanding anything in this Act contained, in any case in which under special circumstances in the judgment of the Commissioners manifest injustice shall have been done to the claimants, they may recommend &c." In the Act as finally passed, the Section ran thus: "Provided always and notwithstanding anything in this Act contained, *in any case not hereinbefore provided for*, in which under special circumstances &c." The words I have marked in italics destroyed, as will readily be seen, all the effect of the Section as originally introduced, and practically made it a dead letter. The several classes of claims had been carefully provided for in the ordinary Sections and exact limits to my authority prescribed. There really was no "case not hereinbefore provided for," except a few which could easily be dealt with under the general power given to me by Section 50; of course I could not apply that general power in evasion of the restriction in Section 33; and thus when I found I was precluded from using Section 33 in the cases where the ordinary Sections were in my opinion insufficient to do justice, I refrained from using it at all.

In proposing the Amending Bill of 1858, I introduced the following provision:—

"In any case falling under the provisions of the 32nd Section of the Act of 1856, where the land alienated by the Government may have formed part of any reserve for a town, the Commissioners may estimate the compensation to be given by the actual value of the land at the time of the reserve, as nearly as they may be able to ascertain the same."

This provision was however rejected by the Legislature, and the excluding clause of 1856 with respect to persons who had accepted compensation renewed in stringent terms.

Mr. Ormsby has died since then, and his case remains unsettled. There are of course many other cases in which the excluding or restricting clauses are held by the claimants interested to be a great injustice; but as these depend on the consideration of a general principle, they will be referred to presently, in the next section of this Report.

3.—*Land Claims not belonging to the Old Series, or Pre-emption Series.*

The only case I shall take in this class is that of Messrs. Henderson and Macfarlane, to which I referred particularly in addressing the House on Mr. Carleton's Bill of last Session. The circumstances were these:—

The claimants had a schooner, which the natives wanted and for which they offered a block of land at the Whau (one of the estuaries of Waitemata harbour). Governor Fitzroy made the following Minute sanctioning the transaction:—

"In consideration of the various circumstances connected with Mr. Henderson's exchange of his schooner for land, I will consider his a special case and give him a Crown title to one half the quantity claimed, upon his furnishing a sufficient description of the boundaries.—R. F., October 8, 1844."