D—No. 10.

# LAND CLAIMS COMMISSION.

# REPORT

OF THE

# LAND CLAIMS COMMISSIONER,

8TH JULY, 1862.

PRESENTED TO BOTH HOUSES OF ASSEMBLY BY HIS EXCELLENCY'S COMMAND.

# REPORT.

It was my intention to have completed, in time for presentation to the General Assembly during the present Session, the Final Report of the Settlement of the Land Claims. I have been prevented from carrying out my intention, partly because I have not had time to put together in a readable shape and within convenient limits the large amount of curious information that I have collected in connexion with these claims, and partly because it seemed premature to present a "Final Report" upon a matter the principal points of which it had been agreed to discuss over again this year.

The object I now have in view, therefore, is not so much to offer the full account of the general subject which I yet hope to give, as to place at the disposal of the Government a Summary of sufficiently complete information on all the points which ought to be considered in any proposed measure this Session. Details are accordingly appended under the following heads:—

I.—The State of Settlement of the Claims, including
1. The Extent of Land Claimed, Surveyed, and Awarded or Granted, and
2. The Amount of Scrip, Money, or Debentures issued instead of Grants.

II.—The Surplus Land reverting to the Crown.

III.—The Special Cases remaining Unsettled, reserved for consideration, or in which I propose action should be taken.

IV.—The General Question as to whether further relief should be extended to all claimants alike.

## I.—STATE OF SETTLEMENT OF THE CLAIMS.

In order to show what has been done in the adjustment of every land claim that has been before the Government, I append a Return giving in detail the following information:—

1. The Total Number of Claims.
2. The Claimants' Names.
3. The Locality and Extent Claimed.
4. The Year in which the Land was bought.
5. The Payments given to the Natives.
6. The Area Surveyed in each case.
7. The Way in which each Claim was disposed of.
8. The Quantity of Land awarded or granted.
9. The Amount of Scrip, Money, or Debentures issued.

At various times Returns of a similar character, but necessarily incomplete, have been prepared for the Government or the Legislature. The most valuable of these were compiled by Mr. Gisborne in 1849, 1854, and 1856; but this is the first time when it has been possible to bring the whole of the claims of all classes into one Return.

# LAND CLAIMS COMMISSION:

## 1.—*The Total Number of Claims.*

It will be seen that the Land Claims of New Zealand under purchases or dealings with natives, were 1376 in number. I have divided them into four classes:—

CLASS I. consists of 1050 cases belonging to the series of Old Land Claims which were sent in to the Governments of New South Wales and New Zealand within the time limited by the Ordinances of 1840 and 1841, received a separate number, and were successively referred to Commissioners Fisher, Godfrey, Richmond, Fitzgerald, and Spain.

CLASS II. consists of claims under Governor FitzRoy's Proclamations of 1844, commonly known as Pre-emptive Land Claims, amounting to 250 cases; these were mostly referred to Commissioner Matson.

CLASS III. consists of claims which were sent in to the Government but not referred to the former Commissioners or included in the series of Old Land Claims, or which properly do not belong either to that series or the Pre-emptive series. These number 58 cases.

CLASS IV consists of Half-caste Claims.

I believe these four classes will be found to contain every claim arising out of purchase or other dealings with the natives for the acquisition of land, which is known to have been sent in to the Government from the foundation of the Colony up to the present time, with the exception of a few which have been settled under the 11th section of the Waste Lands Act, 1858, and of the leases for pastoral occupation which were entered into in the Southern portions of the North Island.

## 2.—*The Claimants.*

It should, perhaps, be observed, that the actual number of different persons claiming was much less than the total number of cases, many of the claimants having several separate claims.

## 3.—*The Locality, and Extent Claimed.*

The total area originally estimated to have been comprised in all the claims cannot be accurately ascertained. In many cases the extent of the claim was not stated. In some the contents were estimated in round numbers, by millions of acres, or by degrees of latitude and longitude, or by the expression "as far as a cannon shot will reach." So far as can be estimated, however, after excluding the last mentioned classes, the particulars as given in the Return show a total of 10,322,453 acres.

## 4.—*The Years in which the Land was Bought.*

It will be seen that the greater number of purchases were made in 1837, 1838, and 1839. Most of the larger speculative purchases were of course made in the last year, when the expectation had become almost a certainty that the Crown would take possession of the Islands and found a Colony.

## 5.—*Payments Given to Natives.*

This is one of the most curious features in the story of the Claims. It appears that payments to the value of upwards of ninety-five thousand pounds were made by Europeans to Natives for the purchase of land. Yet this sum, though it includes all that can be ascertained with tolerable certainty, by no means represents the whole amount which was paid away. In many cases the consideration given to the natives was not stated by the Claimants, and will never be known; payments amounting in the whole to a large sum were wholly rejected by the investigating Commissioners as having been given to the natives after Sir George Gipps' Proclamation of 14th January 1840; and another large sum never appeared at all, being the price given to original claimants by derivative purchasers from them. The amount of payments given in Old Land Claims was £88,373 17s. 10d.; in Pre-emptive Claims £6,841 4s. 2d.; the two sums making together a total of £95,215 2s. Out of this total the sum of £85,447 1s. 6d. has been formally proved before various Commissioners to have been expended.

A considerable proportion of this consisted of ready money or cattle: the residue comprised merchandise of different kinds. It will be remembered by all who are interested in the subject, that the rule of the Original Land Claims Ordinances of 1840 and 1841, repeated in the Act of 1856, was to estimate the value of goods given in barter for land, at three times the selling price of such goods in Sydney. This was by no means an extravagant allowance; on the contrary it barely represented the real value. The first Commissioners' Instructions informed them that this multiplication by 3 was to include commission, freight, risk, presents, passage money, charter of vessels, and every other kind of expense. If the amount of these charges, and especially the risk in those days, be taken into consideration, it will probably be allowed that trade was worth at least three times in New Zealand what it was worth in Sydney: perhaps in the early years of the irregular settlement of Europeans in the North it may have been worth a great deal more. It is an essential point, of course, whether the Commissioners adopted a moderate scale as the standard of estimating Sydney prices; and it may safely be said that the scale they adopted was very fair. In the case of the Pre-emptive Claims, no such multiplication was made: and the payments when given in goods are estimated at the actual value of those goods in the New Zealand market. On the whole, I have myself no doubt whatever that the sum of £95,215 above stated fairly represents the amount of money or money's worth which passed into the hands of the natives in the purchase of land, exclusive of sums which cannot now be ascertained.

In addition to the payments given to the natives, it must be remembered that the Claimants incurred great expenses in proving their claims before the various Commissioners. The amount which the Original Claimants paid to Commissioners Godfrey, Richmond, and Spain, including the fees on the issue of Grants, was £4,832 15s. 1d.; the amount paid by the Pre-emptive Claimants, including the assessment of 5s. an acre under Sir George Grey's "Minute" of August 1847, was £2,520 8s. 5d.; and the amount paid by all classes of Claimants under the operation of the Land Claims Acts of 1856–8, was £5,786 4s. 2d.: together amounting to the sum of £13,179 7s. 8d., to which must be added the value of the surveys effected at their cost, as will be referred to in the next section.

Taking the amount of payments to natives, and the amount of fees and payments to the Commissioners, the total under these two heads reaches no less a sum than £108,394 9s. 8d. Averaging it over the whole area of the claims as surveyed, the rate per acre contrasts favourably with the payments made by the Crown in the acquisition of its territory, and shows that in fact the claimants paid more for extinguishing native title than the Government did.

### 6.—*The Area Surveyed in Each Case.*

The extent of land which has hitherto been surveyed in all the claims, including a few cases still only estimated, is 474,146 acres. Some surveys have yet to come in, but they will not very materially add to these figures. The acreage surveyed in Old Land Claims is 376,719 acres: in Pre-emptive Claims 97,427 acres. 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 not only to produce a large surplus of land which, under the operation of the existing Acts, goes to the Crown; but to connect the claims together, and lay them down on a map. Under the arrangements which I directed to be adopted by the surveyors engaged in the survey of the claims, I was enabled, as the original boundaries of a great number of the Claims were conterminous, to compile a plan of the whole country about the Bay of Islands and Mongonui, showing the Government purchases there as well as the Land Claims; and a connected map now exists of all that part of the Province of Auckland which lies between the Waikato River and the North Cape.

One ground on which it was decided to grant so liberal an allowance for surveys probably was, that the then Surveyor-General, in his evidence before the Land Claims Committee in 1856, had said he should require for a Government survey of the Claims a staff of eighteen Surveyors at a cost of £8,000 a-year. I think that this was too high an estimate; but it is

certain that if the Government had attempted the Survey itself, it would have cost more than £10,000. I had the Hokianga Scrip Claims surveyed, which cost on the average a shilling per acre: and I think that rate may be taken as a fair estimate of the value of the surveys executed by the Claimants themselves. Assuming this estimate, it follows that the Claimants should be credited with a sum of about £23,000 as the cost of surveying the 474,146 acres above mentioned, to be added to the sums paid to the natives and the Government; and thus a total is reached of about £131,000, under all these heads of expenditure together.

It will be convenient, before proceeding to the details of the disposal of the Claims, to see what relation these sums bear to each other. The total amount of money or money's worth which their purchases cost the Claimants was in round numbers £131,000; the total area their claims were found to contain was 474,000 acres. Looking therefore at the transaction in the gross, it may be said that the land cost the claimants at the rate of 5s. 6d. per acre, up to the point when the Government should either make them grants or purchase their interest. I have often heard it said that it would have been far better for the Claimants to have thrown up all their land at once, and bought what they wanted from the Crown; and I think the facts I have just mentioned go far to justify that saying.

### 7.—*How the Claims have been Disposed of.*

The Return shows in a short form the actual settlement of each case, at whatever period or under whatever regulations it was settled. These settlements were of the most various character, and often took place without authority of law. One Commissioner who had not investigated a claim reversed the decision of another Commissioner who had; one Governor made his own awards without regard to the decisions of any Commissioner; another Governor laid down rules of his own for the settlement of claims; the Government at its pleasure granted Scrip or Money in exchange for the claimant's interest or in compensation for his outlay; the Secretary of State often interfered, and gave decisions in England; the Supreme Court was in several cases applied to, and even the Privy Council was appealed to for final judgment. In this way a mass of decisions came to be made upon varying and often conflicting principles, or rather under circumstances which precluded the application of any principle at all; and it is not to be wondered at, as it certainly cannot be denied, that some injustice was the result.

It was the policy of the Legislature in 1856 to exclude all lapsed or settled cases from being reopened, and thereby to validate for practical purposes all the decisions made by former Governments: but this did not prevent numbers of the claimants interested in those decisions from bringing cases before me, and urging that they were not in reality excluded by the Act. The consequence has been that I have not had only to enquire into those cases which were allowed to be investigated by the Act, but I have had to make myself master of every one of the claims in order to see whether each was excluded or not; for I admitted everybody whose claim had lapsed, to show cause why it should not be treated as having lapsed by his own default.

The object I have for my own part chiefly aimed at has been a reasonable uniformity of principle in giving decisions. Taking as a rule for my guidance the desire constantly expressed in both Houses during the discussions of 1856 that a liberal interpretation should be given to the Act, I have in every case awarded as much as I felt empowered to do, and have sincerely endeavoured to satisfy the claimants while I guarded the public interest. I am bound to add that in almost every case I have been met by the claimants in a spirit which reflected the highest credit upon their fairness and moderation, and without which on their part it would have been impossible for me to carry out the law with any success.

### 8.—*The Quantity of Land Awarded or Granted.*

In the Return will be found the acreage awarded or granted in each case. This, including the survey allowances granted under the Act, amounts in the whole to 292,475 acres, and will probably reach the total quantity of about 315,000 acres if no alteration be made in the principles of the existing Acts.

The amount granted or awarded in the settlement of old Land Claims is 267,175 acres; in the Pre-emptive claims 25,300 acres. I have thought it best to include land which has been directed to be granted as well as land for which grants have been actually executed, because under the operation of the Acts the award (except in a very few cases) really represents the final settlement of the claim, and the issue of the grant is merely the completion of the award. In this way it will be seen by any one who examines the Return, that here and there orders are

stated to have been made for the issue of grants, upon selections and so forth, though the grant is not yet actually executed.

### 9.—*The Amount of Scrip, Money, or Debentures Issued.*

The totals under these heads amount in the aggregate to the large sum of £109,289 14s. 11d. Of this amount, scrip to the amount of £91,510 15s. 0d. was granted by Governor FitzRoy; scrip, debentures, and money, to the amount of £8,467 0s. 6d. by Governor Sir George Grey; and scrip to the amount of £8,932 5s. 0d., by me. £101,152 5s. 4d. was issued in old land claims; in pre-emptive claims, £8,137 9s. 7d.

The scrip issued by Governor FitzRoy was in exchange for awards of the Commissioners, under an arrangement sanctioned by Lord Stanley for giving claimants a credit at the Treasury equivalent to the award, to enable them to buy land in the vicinity of the capital. In order to show what the public got out of this transaction, it is only necessary to mention two facts:—

1. A large portion of the scrip was expended in the purchase of allotments within the City of Auckland, which allotments must now be worth at least ten times what they cost at auction in 1844.
2. In Hokianga claims alone the scrip issued was upwards of £32,000, while all the land which I could recover there for the Crown fifteen years afterwards, including not merely the lands exchanged by the claimants but a considerable extent which had never been before a Commissioner at all, was 15,446 acres.

An instance of the great misconception that often existed as to the area of the claims, may be given in the case of those situate in the Orira Valley at Hokianga, one of which (that of William and Francis White) has at various times been the subject of much public notice. In the Orira claims Governor FitzRoy granted £6,099 scrip to William White, £250 to J. Marmon, £1,825 to A. Thomson, and £1,000 to J. Anderson. I had the valley surveyed, taking in the land up to the top of the hills and every acre comprised in the original boundaries, and the contents of the whole were only 3,871 acres; of which 1,280 had to be granted to Francis White (or rather to his assigns), leaving 2,591 acres for the public, to represent £9,174 of scrip given 15 years before. And inasmuch as all the other grants of scrip for Orira Valley claims were made at dates anterior to the issue of scrip in the claim of W. and F. White, it follows that if the valley had been surveyed at the time and the Government had taken 3,075 acres first to repay themselves for the scrip issued in the other claims, there would have remained only 796 acres to meet the liability of 1,280 acres to Francis White, and there would have been nothing at all to represent the £6,099 scrip issued to William White.

The greater part of the debentures and money issued by Governor Sir George Grey was granted as compensation for the interest of claimants coming under the class known as the Pre-emption claims.

The scrip which I have issued is principally for lands which were taken possession of by the Government and sold out of the Pre-emption claims in the neighbourhood of Auckland. That in the great majority of these cases the native title had been fairly extinguished, and that the Government took possession of and sold the land on the strength of the purchases made by the claimants, there can now be no doubt. The fact has been established by the records in my office and in the Land Purchase department and Survey department, and by the Returns which have from time to time been laid before the Assembly and printed in the Sessional papers. I believe it will be found that the Government sold many thousand acres of land under the Regulations of 1853 at 10s. an acre, out of lands comprised in land claims, before the House of Representatives interfered (in 1854) and requested further sales to be suspended till the contemplated settlement of the Land Claims question should have been made. In many cases the seizure and sale pressed very hard upon the claimants. In one instance in the Province of Auckland the Government received £1,685 by the sale of lots within the claim; in another they obtained upwards of £1,400; in a third, upwards of £1,500. The total amount of money received by the Government for the sale of land situate within confiscated land claims in that Province will be found, when all the sales can be traced and the accounts are made up, to amount to many thousands of pounds; and as the greater part of the money was received after the Constitution Act, it reached the Provincial Treasury free from contribution to the New Zealand Company's debt.

It is not difficult to conceive that a good deal of dissatisfaction and distrust should have resulted from all this, as between the public and the land claimants, in the Province where the mass of the claims were situate. On the one hand the settlers found that very valuable portions of the city and suburban lands in Auckland had been given away in 1844 for scrip which represented nothing tangible at the time, and for which very little, as it turns out, will ever be got; on the other hand those claimants whose land was taken were indignant at finding what they believed to be their own property seized and sold for the benefit of the Public Treasury. The public seemed to think that the claimants were only a set of land-sharks; the claimants believed themselves to be victims of tyrannical oppression. The truth, as usual, lay with neither side; there were cases where extravagant awards were made for which the public had to pay; there were cases where harsh treatment was administered and the public got the benefit: but at any rate it cannot fairly be said of the Government or the Legislature after the Acts of 1856 and 1858, that there has been any general injustice done.

If all the amounts paid by the Government between the time of Governor FitzRoy and the passing of the Land Claims Act in 1856, for the purchase of the interest of claimants, be added to the amount of scrip issued by me in cases where the land had been seized and sold without compensation, the total does not, I believe, equal the sum realised by the Provincial Treasury of Auckland in the sale of land included in the claims bought or confiscated. It must not be supposed, therefore, that (excluding the scrip claims of 1844) that Province has lost money by compensating the claimants; on the contrary, there is a certain balance of money-profit in the transaction besides the surplus land gained; so that if it be said that the claimants ought to be satisfied with the provisions of the Land Claims Acts, it may equally be said that the Province ought for its part to be satisfied also. Of course, if the Scrip issued in 1844 be taken into consideration, the balance will be altogether the other way.

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## II. THE SURPLUS LAND REVERTING TO THE CROWN.

On this subject I might perhaps say little beyond referring the reader to the Return hereto appended. It will be seen that the total number of acres reverting to the Crown upon the settlement of the Land Claims is 204,243, of which the greater portion is situated in the vicinity of the Bay of Islands.

I should remark that these figures either represent known quantities, or where not surveyed then estimated quantities which can pretty accurately be calculated and which I believe will be found to be within the real extent when laid off. The Return takes no account of any claims which lapsed or were not referred to any Commissioner, with the exception of those cases where the land was given up to myself by the natives. There are many cases where (so far as I can form a judgment) *bona fide* purchases were made, the claims for which have either lapsed altogether or been excluded by the Act; and 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 Taranaki war, however, this became impossible in certain districts; the Waikato and Kawhia natives, for instance, would certainly at present repudiate every sale to private persons, as they are said to have repudiated some of the transactions entered into with Government. Besides, the experiment at Hokianga discouraged me in making the attempt. I found, as I have above remarked, that I could only get 15,000 acres for £32,000 of scrip, incurring an additional cost of more than £700 in the survey: and as the balance of scrip which had been issued (£60,000) represented scattered claims in the North, I determined to give up for the present the attempt at getting the land anywhere except at Ngunguru and Tutukaaka. About nine months ago I sent an officer there to lay off the land which had reverted to the Crown and the land comprised in Mr. Busby's purchase; the exigencies of the public service compelled the Government to recal him and send him on other duty; but he has lately gone up again, and it will not be long before I can exchange the estimate of 4000 acres in the return for a specific acreage.

I wish to observe that the quantity in the Return is exclusive of the land actually sold by the Government as mentioned in the preceding section. When the House of Representatives interfered in 1854 to prevent the further alienation of land comprised in any Claim, a stop was put to sales; and so rigidly have the Provincial authorities since adhered to the decision then taken, that it was only the other day the Deputy Waste Lands Commissioner of Auckland thought it necessary to apply to me even before laying out a public road through one of the claims.

The settlement of the Scrip claims at Ngunguru and Tutukaaka will, no doubt, enable the Government to extinguish the Native title over a good deal of adjacent land, as was the case in the settlement of the Land Claims in other districts. I append a statement showing the amount of land situate in the Northern Districts of Auckland, over which the Native title has been extinguished but which has not yet been proclaimed and handed over to the Province. The extent amounts to within a few acres of 50,000, of which rather more than 30,000 acres are interspersed with the Land Claims.

If it should now be determined to hand over the surplus lands and these unproclaimed lands to the Provincial Authorities, the total immediately available will exceed 254,000 acres. As a large portion of this, however, lies within the boundaries reserved by the Governor under the Bay of Islands Settlement Act 1858, it appears to me that before it can be handed over that Act will have to be repealed. The Governor in Council certainly has the power under the Act to determine the manner in which the land reserved shall be sold, and to make regulations as to price and so forth: he might therefore make a simple Order that the land should be sold in manner provided by the Auckland Waste Land Regulations of 1859, in force as to other lands in the Province: but the application of the money accruing from sales is limited by the Act, and it would not be competent to the Provincial Legislature to appropriate it at their pleasure, as is the case with the Ordinary Territorial Revenue under the provisions of the Land Revenue Appropriation Act 1858.

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## III.—THE SPECIAL CASES REMAINING UNSETTLED.

I now come to the third part of the subject—that is to say the unsettled cases in which I shall propose that some further provision be made—before proceeding to consider the question of a general measure.

Strictly speaking, there are only 12 unsettled claims arising out of purchases made by Europeans from the Natives. This statement, however, requires some explanation. I exclude in the first place from the class of unsettled claims, those cases in which persons holding grants which have been duly called in by the Attorney-General have either failed to produce their grants for examination, or have not made any claim, or have not made any survey of their claims as the Act requires. I also exclude cases in which all that is wanted before the issue of the grant is the completion of surveys now in progress, or in which certain specified conditions have yet to be and will be fulfilled. I also exclude the Poverty Bay claims, which are unsettled not by reason of the default of either the claimants or myself, but which it is simply impossible to settle yet, owing to the natives' repudiation of their contracts under circumstances detailed in my report to the Governor dated 24th February 1860, printed at page 5 of this year's Sessional Papers, E. No. 1, section 1, (Dispatches). And, of course I exclude claims which were excluded by the Legislature and could not be investigated at all. Yet it is in this last class that the cases are to be found where I believe justice most requires some relief to be given. They are and will be to the end of time "unsettled claims" unless this be done; no Act which excludes them will ever lay their ghosts.

It would prolong this Report to an unnecessary length, if I were to state every case in which I think special provision should be made, or in which Committees of the Legislature have suggested relief. I propose, therefore, to take for illustration a few cases out of the three classes of Old Land Claims, Pre-emptive Claims, and Claims not belonging to those series. And if (as I suppose will be done) it should be determined to refer the question generally to Committees of the Assembly, I shall be able to offer whatever further information in detail may be required.

### 1.—*Old Land Claims.*

The first instance I propose to take is the Ngunguru claim of Mr. Busby; because a Committee of the House of Representatives, which investigated it last Session, reported that "the case being one of hardship, should be considered among the cases which the Government have agreed to consider during the recess with a view to legislation thereon in the next Session of the General Assembly." As the Committee did not state the grounds of their opinion that the case was one of hardship, I refrain from any observation except on one point.

So far as I can understand the complaint of injustice which Mr. Busby makes against me in connexion with this claim, the chief objection to the course I had taken which he appeared to have was, that I had refused to allow the amount of payment given by him to the natives to be multiplied by three, as the basis of computation for an award. Now, apart from the point of law decided by the Chief Justice, I adopted a far less stringent rule than the former Commissioners. Upon the principles which guided them, the whole claim would have been absolutely rejected. Under the instructions they had received from the Governors of New South Wales and New Zealand, it was their practice to reject altogether payments made after the 14th January 1840. I take one case, which is to the point:—

> "It appears on the showing of the memorialist," said Commissioners Godfrey and Richmond in their Report of 27th July 1842, that there was only a promise made in the year 1839, of certain goods for a tract of land, which goods were not brought to New Zealand until a year and a half after Sir George Gipps' proclamation forbidding all purchases of land from the natives. * * We find it necessary to be very rigid in the rejection of all claims in which the larger part of the consideration for the land has been given to the natives after the proclamation, although an earnest may have been paid a long time previously: it having been apparent to us that contracts of such a nature have been made only with the intention of fulfilling them in the event of the Islands being taken possession of by the Crown."
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> Whereupon the Governor decided as follows:—"Let this answer, which I hold to be conclusive, be communicated to the claimant." And the claim was disallowed accordingly.

Now the rule may or may not have been a fair rule to lay down; but, at any rate, it is not easy to see on what grounds a claimant should not only have a different rule laid down for him, but obtain, under a less stringent practice, better terms than were granted to others.

I should mention that in deference to the opinion expressed by the Committee of last year that the case was one which should be reserved for legislation this Session, I have, as a matter of course, refrained from making any decision of my own since that time. The fact is, that when the Chief Justice confirmed my interpretation of the law, Mr. Busby appealed to the Governor. When the Governor refused to interfere, he appealed to the Secretary of State. When the Secretary of State refused to interfere, he appealed to the House of Representatives. And lastly he appealed to the Executive Government again, to make him a grant under Section 11 of the Waste Lands Act, 1858. I hope that some tribunal will be found whose decision will be satisfactory to him at last.

However, on a question of "fair play," or of "hard measure," there may exist two opinions: and what I propose in this case, therefore, is—either that the Assembly should settle it themselves, or that they should authorise it to be referred to a Judge of the Supreme Court, or that they should authorise certain issues to be made up for the decision of a Jury. Under the existing Acts the Judges can only interfere either to decide appeals or to settle points of law; but a slight alteration (the points of law having already been stated and decided) would enable Mr. Busby to have the points of "equity and good conscience" in difference between us settled by the Chief Justice, or would authorise specific issues to be determined by an impartial jury impanelled for that purpose.

The second case which I take out of the Old Land Claims is also one of Mr. Busby's, excluded by the present law.

Happening to read, as they were going through the press last year, the Land Purchase Commissioners' Reports (printed in the Appendix to the Journals of last Session, C No. 1), I was struck by a remark in one of Mr. Johnson's Reports respecting the claims of Mr. Busby to land at Whangarei. These claims were partially heard by Commissioners Godfrey and Richmond in 1841: but on their calling upon Mr. Busby to produce native witnesses, he refused on the ground that "he would not, by producing them, give even an indirect sanction to the principle advanced by the Governor and Legislative Council that lands sold by the natives to private persons were vested in the Queen." The Government thereupon informed Mr. Busby that the claims had been withdrawn from the Commissioners, and would not again be submitted for adjudication; and the matter being referred to the Secretary of State on a memorial from Mr. Busby, Lord Stanley decided on the 21st April 1843 that as Mr. Busby had taken his own course he must abide the consequences.

In the Land Claims Act of 1858, a clause was introduced enabling me, where possession had been taken for the Crown of land bought before 14th January 1840 by a claimant excluded under the Act of 1856, to estimate the claimant's outlay and direct a grant at the rate of one acre for every five shillings of expenditure. This clause was not applicable to Mr. Busby's Waipu claims; but it appeared to me that if the Crown had gained any substantial advantage in the purchase of the Ruakaka and Waipu blocks from the payments originally made by Mr. Busby, so that it might fairly appear that part of those blocks had come into our possession through a partial transfer to him of the native title, he might properly obtain the reimbursement of his outlay. I therefore communicated, in August 1861, with Mr. Johnson (formerly District Land Purchase Commissioner at Wangarei), who informed me in reply that in a political point of view the transactions between Mr. Busby and the natives had been of considerable advantage to the Government, and in a pecuniary point of view they had saved a sum of £400 to the public; that although Mr. Johnson had suffered much trouble and anxiety from the opposition of Mr. Busby and the Land League, the original purchase made by Mr. Busby was a fact which could not be evaded; and that though no specific portion of land could be pointed out as having been obtained through the purchase, Mr. Johnson and the natives had agreed that as some of the latter had sold the Waipu to Mr. Busby, the outstanding native claims should be acquired, leaving the Government to settle matters with Mr. Busby afterwards.

Under these circumstances it appears to me that Section XII of the Act of 1858 should be altered so as to allow compensation to be made: and Commissioners Godfrey and Richmond having found that the actual value of money and goods (multiplied by three) given to the natives by Mr. Busby was £831 9s. 3d., that sum would at the rate of compensation fixed by Section XII. give him 3325 acres. If this quantity were added to the quantity to which Mr. Busby is entitled at the Bay of Islands under the old grants which he has refused to surrender, and double survey allowance (to the extent of about 1000 acres under section 42 of the Act of 1856 were also added for the land which is of a worthless character, I should be enabled to make him a grant of the whole of his land at the Bay in one block.

The third case I shall take from the series of Old Land Claims is that of Mr. John Jones of Otago. The circumstances of the case may be briefly stated. The Investigating Commissioners found that the value of his payments to the natives amounted to the sum of £3957 15s., which according to the Schedule of the Land Claims Ordinance would have computed to 13,192 acres. They however recommended the maximum grant of 2560 acres. In February 1844, Mr. Jones appealed to the Governor for redress. On the 24th December 1844 the Governor in Council referred the case to Commissioner Fitzgerald with authority to recommend an extension of the award; and Mr. Fitzgerald recommended grants to be issued to the amount of 10,000 acres. The Governor immediately afterwards awarded 8560 acres, and ordered a grant to be issued for that quantity, to be selected by the Claimant. In October 1845 the Claimant sent up a plan of his selections accordingly, which were approved by Governor FitzRoy, and a grant ordered to be prepared for the 8560 acres as shown on the plan; the grant was after a long delay prepared by the Surveyor-General, signed by him, and sent in for Governor Grey's signature on the 12th September 1846. But on the 19th December 1846 the claimant was informed that the grant for 8560 acres could not be issued, as the Governor did not feel justified in making a grant to any extent beyond the original maximum award of 2560 acres. A grant to that extent was accordingly issued to Mr. Jones. The Claimant's plan reached Auckland on the 28th October 1845; and if the grant had been made out at once according to Governor FitzRoy's order, it would have been signed by him and have become one of those validated by the Quieting Titles Ordinance. The accident which enabled Governor FitzRoy's promise to be reversed thus cost the claimant 6000 acres.

When I went to Otago in 1858 the Claimant represented to me that his acceptance of the grant of 2560 acres had been given in consequence of a promise by Sir George Grey, that in the event of the other Land Claimants who had obtained extended awards from Governor FitzRoy being confirmed in their grants, His Excellency would place Mr. Jones in the same position by the issue of grants for the residue of his 8560 acres. I accordingly addressed Sir George Grey, then Governor of the Cape of Good Hope, asking him to be pleased to inform me what his recollection of the circumstance was; and I received a letter in reply, stating that though His Excellency could not after so long an interval of time precisely state what had passed at the interviews between himself and Mr. Jones, he knew that his intention was to convey to Mr. Jones, that while all he felt himself legally empowered to do was to issue a grant for 2560 acres, the Claimant's acceptance of that grant would in no respect injure any rights he might have if, upon a different system, larger grants were subsequently made to the Land Claimants. Sir George Grey added that Mr. Jones had a peculiar call on His Excel-

lency to make this statement, as he had always preferred his claims with moderation, and shown a willingness to acquiesce in the decisions of the Government which ought not to prejudice any rights he might have. It may be mentioned that in the case of Mr. Fairburn, where a maximum grant of 2560 acres was recommended by the Commissioners, Sir George Grey issued grants to the extent of 8055 acres in 1849.

Upon Mr. Jones memorialising the Executive Government, he received a promise on the 30th September 1861 that his case would be included in one of the classes of claims to be submitted for the consideration of the Assembly this session. It appears to me manifest that in cases like this relief should be granted. The question of amount would of course depend upon various circumstances: here, for instance, Mr. Mantell, whom I requested to afford any information in his power as the former Commissioner of Crown Lands for Otago, states (in his minute of 6th September 1861) that "Mr. Jones' selections were by consent of the New Zealand Company's Agent allowed to be taken in such shapes as to give him the command of the land not granted to him."

### 2.—*Pre-emption Claims.*

The cases which I shall take for illustration out of the Pre-emptive Series, are those of the late Mr. Forbes and Mr. Ormsby: though I should not have thought it right to recal attention to them after the decision of the Legislature in 1858, if it had not been understood last Session that I was to bring forward again any instances in which I might myself consider relief ought to be granted.

These cases have been so often before the Assembly and the public that it seems unnecessary to refer to them in much detail. The principal points are as follows:—

Both claims were situated at Onehunga, within the site that was afterwards reserved for the Township there. During the Session held in the year 1847, Sir George Grey addressed a Minute to the Legislative Council containing a proposal for the settlement of the Pre-emptive Claims generally. Part of this Minute was as follows:—"In those cases in which lands claimed under my predecessor's Proclamations are retained by Government for sites of Towns and Villages, any expenses which the claimants may have been justly put to shall be returned to them, and some compensation in the form of land in the Village or Town shall be made to them." Appended to the Minute was a "List of claims reported on by the Commissioner, the title deeds for which are now in course of preparation": and the two claims in question were in the list.

Commissioner Matson had reported on them in May 1847, recommending a grant of 30 acres to Forbes and of 7a. 3r. 30p. to Forbes. In the following October the Government took possession of Onehunga as a location for the Pensioners, and it was then found that "the greater portion of the land recommended to be granted by the Commissioner had been required for the Pensioner Village"; so the Reports (with others in the same list) were referred back to the Commissioner, to state the amount to be awarded as compensation for the land taken, and the quantity of land remaining which should be granted to the claimants. Eventually a grant was issued to Ormsby for 5 acres (25th October 1848) and to Forbes for 1a. 1r. 5p. (26th May 1849): and compensation offered to Forbes of £12 19s. 4d., and to Ormsby of £35 7s. 3d. An enquiry into all the Onehunga claims afterwards took place under the following circumstances. The Governor, finding that the "cases had been dealt with by the Surveyor General each upon its individual merits and not upon any general principle, thought it possible that unintentionally some inequality might have crept into the compensation awarded to the different claimants"; and in October 1849 he directed a Board, consisting of Members of the Executive Council, to enquire into the subject and report (among other things) "what additional compensation should be awarded in any case where the amount of compensation already given might appear either insufficient or not fairly proportioned to what had been allowed to other claimants." The Board made their Report, proposing a scheme of settlement which was approved by the Governor and ordered to be carried into effect: but it did not alter what had been done in the two claims under notice.

Mrs. Forbes (her husband being then dead) accepted the compensation offered, after fruitless endeavours to get her case reconsidered; and she was therefore excluded by the Act of 1856. Mr. Ormsby steadily refused the compensation, and brought his claim before me.

The 32nd Section of the Act of 1856 limited the estimate of compensation to be given in cases where the land had been taken by the Government, to an amount equal to £1 an acre; but

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."

The claimants thereupon concluded the arrangement with the natives, gave them the vessel, had the land surveyed, sent in the survey to the Government, and claimed their grant. The plan was referred to the Surveyor General on the 2nd March 1846, with directions, if he was satisfied with its correctness, to prepare a grant in compliance with Governor Fitzroy's Minute. The Surveyor General required certain things to be done, lines cut, and so forth; this was obeyed and the plan sent in again, the contents as finally shown being 17,784 acres. The Surveyor General pronounced the survey a very good one; and as to the extinguishment of the native title, it has never been disputed to this day.

But the grant, nevertheless, was not issued. In 1853 the claimants—apparently getting tired of waiting—asked that the claim might be settled by repaying them their mere outlay. The Government agreed to have the outlay ascertained, but in the meanwhile took possession of the land and proceeded to sell nearly 7000 acres of it at 10s. an acre; the claimants having themselves to buy upwards of 5000 acres to secure large property they had placed on the land. Some months afterwards the Surveyor General sent in his estimate of their outlay, amounting to £970: but the money was never paid.

When the claim came before me I tried various ways to settle it, but I gave it up at last. The claimants were always willing to accede to anything I might decide, and to submit to an award whatever it might be. But I could not satisfy myself that the Act would enable a fair award to be made. Although it did not in strictness belong to the "Pre-emptive Claims" (no actual certificate of waiver having been issued under Governor Fitzroy's Proclamations of 1844), and might therefore have been heard under Section 33 without coming within the letter of the restrictive words above mentioned; in reality such a course would have been a mere evasion of the restriction, the claim being virtually one arising out of the waiver of the Crown's right of pre-emption, though under a special agreement with the Governor instead of under his Proclamations. The Governor in fact enters into a specific agreement with private persons 18 years ago, that if they extinguish the native title to a certain piece of land and survey the boundaries, they shall have a grant for half of it. The conditions are fulfilled by one party, but instead of the Government fulfilling its part it seizes the land and sells all the best of it. It appears to me clear that this transaction cannot be fairly settled by the provisions now in force relating to either Old Claims or Pre-emptive Claims.

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I have thus given illustrations of the cases in which further provision may properly be made, and it remains only to say how I would make it.

If the Government intend to introduce a Bill at all this Session, I propose—

1st. That this Report be referred to a Select Committee.

2nd. That with the assistance of the personal knowledge of the claims possessed by many members, of the information afforded in detail by the annexed Returns, and of evidence to be given by me, such Committee make a list of the cases which appear to deserve special consideration.

3rd. That any claimant in the list should then have the option of three courses; either to have his case decided by the Commissioner, or to have a jury of six impanelled from the Special Jury Lists to assess the amount of land or compensation in Scrip that ought to be granted to him, or to have any differences as to the fair interpretation of the law, where no jury is demanded, decided by the opinion of a Judge of the Supreme Court upon a Case stated not (as at present) by the Commissioner, but if he pleased by the claimant himself—in which he might draw all the inferences while the Commissioner should only take care of the facts.

4th. That either the surplus land be kept for satisfying any special awards, or (if the Provincial Authorities prefer the surplus being immediately handed over) such awards run over Waste lands.

5th. That any claimant coming in under the New Act should sign a Declaration that he accepted it as a conclusive settlement.

6th. And above all, that if it be by any means possible, some understanding should be come to that at length an end will have been made of legislation on the subject.

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## IV. THE GENERAL QUESTION OF WHETHER FURTHER RELIEF SHOULD BE GRANTED TO ALL THE CLAIMANTS.

It will be very convenient, in considering this part of the subject, to reduce the questions involved to as narrow a compass and as precise terms as possible.

The demand for further general legislation in favour of the land claimants can only proceed from the belief that some injustice has been done which the Colonists of the present day are morally bound to repair. It is not sufficient to say that former Governments committed injustice; it must be shown that it is that kind of general injustice by the General Assembly itself, for which it ought now to provide redress by repealing the main principles of its own legislation in preceding Sessions.

I assume that there are very few, pretending to any acquaintance with the subject, who will hold that the Acts of 1856 and 1858 were oppressive against the Land claimants as a body. The accusation has indeed been made, but wherever I have known it to be made it has rested upon no sufficient ground. I feel called upon to declare as an unquestionable truth, that those Acts have operated as a great relief, and have substantially fulfilled the liberal wishes and expectations of the Assembly in passing them. Grants which 18 years ago pretended to give a title to property but which were utterly void for any purpose whatever, have been exchanged for Title deeds containing a true definition of the estate granted. Claims which had been disallowed by what Mr. Domett called an "exterminating process," have been admitted, and compensation made for the delay in their settlement. Claimants whose cases had lapsed have been permitted to relieve themselves from the exclusion enforced in real cases of default, and have received awards. Boundary disputes between claimants have been determined, and partitions made where the claims were held by tenants in common. Family arrangements have been validated, and grants issued direct to the children or heirs of the original claimants. Land which had been abandoned by the original purchasers has been surveyed and secured to the public use. A country which six years ago was almost unknown except to the few people residing there, has been mapped and made available for settlement. Compensation has been granted where land was taken possession of for the Crown upon the strength of the extinction of native title before 1840.

I deserve no credit, and I sincerely desire to take none, for these results. They have flowed naturally from the spirit which animated the Assembly, and are the product of their legislation. But if there be any persons who still decry the Acts of 1856 and 1858 as illegal and oppressive, I may point to the facts now mentioned with a just confidence that their value will be attested by the great body of the claimants themselves. I dismiss, for my part, as unworthy of serious consideration by the Government, all question of the necessity of further legislation upon the ground of general injustice; and thus the subject becomes narrowed by one great step.

If injustice, then, has been committed, it is against certain persons and not against a class. Let us begin accordingly by taking out all those against whom it cannot reasonably be alleged that any has been committed at all.

1° In the first place, we must take out all those who have received grants for the piece of land they actually bought. If a man has got all he bought from the natives, he could only have a further claim upon the country under some amiable scheme of universal compensation.

2° Secondly, we must take out all those who suffered their claims to lapse by their own default, and who did not avail themselves of the opportunity given to everybody of coming before me and showing that their claims had not so lapsed.

3° Thirdly, we must take out all those who voluntarily entered into an agreement with the Government (not being under duress) for the surrender of their claims in exchange for scrip, money, or debentures.

4° Fourthly, we must take out any who deny the power of the Assembly to make laws on the subject. It cannot reasonably be alleged by any one who denies the legality of an Act, that the Assembly is bound to provide such law as he will admit to be valid. And it would be the most flagrant injustice to those who have obeyed the law, if any one who resists it were to get better terms than they got; it would open the door to an undeniable claim on their part for compensation.

Now when we have got to the end of the exclusions, (and unless the Assembly means to stultify itself I do not see any that could have been spared), the cases that can come before it with any reasonable demand for further general legislation, after allowing for the special cases whereof I have already given a few instances, appear to be absolutely limited to the following two classes:

1. Where by reason of the extent of the claim a certain amount of land has reverted to the Crown.
2. Where the Claimant was obliged under great pressure to surrender his claim to the Government for less than it was worth, or to accept less land than he had a right to.

It will readily be seen, that these two classes naturally divide themselvss into Old Land Claims and Pre-emptive claims; I will therefore take them separately.

First, with respect to the Old Land Claims. The demand that was practically made last Session, and which I presume will be renewed this, was that the Claimants being themselves entitled to their surplus land, the Crown had no real right to keep it. I am not going into the "colossal argument" as to whether or no the Queen's subjects who settled here before the establishment of Her Majesty's authority had a right to buy land from the natives, had a right to all they bought, had a right to require confirmatory grants of it from the Crown, and failing that confirmation had a right to the recognition of their titles by the Supreme Court. Still less shall I waste time in discussing the question whether the Ordinances of 1840 and 1841 were violations of Magna Charta and the Bill of Rights, or repugnant to the law of England. I do not suppose that the Government or the Assembly feel any interest in these fanciful controversies, in the year of grace 1862. But I feel called upon to observe on one or two points, in order that my opinion, as the person to whom the Legislature has confided so much power and discretion, should not be misunderstood.

Whether the Queen's subjects had or had not the right for which some of the land Claimants contend, of buying land from the New Zealanders and keeping all they bought, we know at any rate for a fact that the Queen's Government denied it from the first. In May 1839, when the New Zealand Company sent out their first expedition, the Government made the following declaration:—

> "Lord Normanby wishes it to be further understood that no pledge can be given for the future recognition by Her Majesty of any proprietary titles to land within New Zealand which the Company or any other persons may obtain by grant or by purchase from the natives."

Afterwards, when the Crown had decided on founding a Colony here, one of the earliest instructions issued to Governor Hobson by Lord Normanby in 1839 was this:—

> "You will immediately on your arrival announce by a Proclamation addressed to all the Queen's subjects in New Zealand, that Her Majesty will not acknowledge any title to land which either has been or shall hereafter be acquired in that country, which is not either derived from or confirmed by a grant to be made in Her Majesty's name."—[Dispatch, 14th August, 1839.]

At the same time Lord Normanby conveyed Her Majesty's gracious promise that under certain conditions the title so acquired would be recognised and confirmed by the Queen:—

> "You will, however, at the same time take care to dispel any apprehension which may be created in the minds of the settlers, that it is intended to dispossess the owners of any property which has been acquired on equitable conditions, and which is not upon a scale prejudicial to the latent interests of the community."

This was a year before the Ordinance introduced by Sir George Gipps into the Legislative Council of New South Wales, and two years before the New Zealand Council's Ordinance of 1841. Now it is upon this promise of Lord Normanby's that a few of the Land Claimants have based a belief in their possession of certain rights. They interpreted it to mean an absolute engagement to confirm them in whatever they had actually bought. But in order to find the true interpretation of that promise, we must seek it in the solemn acts of the Imperial Government itself. When Her Majesty was advised to give the Royal assent to an Ordinance which commenced with the formal declaration that "all titles to land in New Zealand which were held or claimed by virtue of purchases or pretended purchases, gifts or pretended gifts,

conveyances or pretended conveyances, leases or pretended leases, agreements, or other titles, either mediately or immediately from the chiefs or other individuals of the aboriginal tribes, *were absolutely null and void:*" when in the same Ordinance certain conditions were laid down upon which alone confirmatory grants would be made: it is there we must look for the express interpretation of the Royal promise of 1839. To argue that the Land Claims Ordinance did not carry out the real intention of the Queen's Government, at a time when Governors were ruled from Downing-street and Official Legislatures obeyed Governors, would be mere folly even if there were no other evidence than the Royal Assent to show that the Ordinance did carry out that intention. There is, however, plenty of proof that Sir George Gipps' Proclamation and Ordinance of 1840, and Governor Hobson's Ordinance of 1841, really represented the mind of the Imperial Government at the time, and were considered to extend a reasonable liberality to the land claimants. The only wonder is that any student of the Blue Books should for a moment advance the contrary assertion.

But if it were otherwise; if it were possible for the Queen to have broken a solemn promise voluntarily made to Her subjects in New Zealand; if the land claimants thought they had been tricked and deceived; they should have refrained from bringing their titles under the Ordinance at all. When Mr. Wentworth for instance, after endeavouring without success to obtain better terms from Sir George Gipps, sent in schedules of all his claims, and requested that they might be referred to the Commissioners appointed under the Ordinance, he knew the conditions under which they would be referred, and he admitted the validity of the law. He knew that the Ordinance declared his titles to be null and void, and that his reservation that they must be referred to the Commission "without prejudice to his right to all he had bought" was of no use or effect whatever. I have never supposed that the claimants deliberately purposed such an act of bad faith as to accept the Ordinance for what good it gave them, with a private mental reservation to repudiate it for anything else. I have never supposed that they took advantage of the opportunity to get a favourable investigation and report upon their claims, only to deny afterwards the very foundation of the authority to which they pretended to submit; or that when the law required them to do a certain thing they would announce that the law was illegal and void, while when they required a certain thing to be done they would plead the same law as their protection and right. No one who has read the records of the Land Claims Commission can doubt for a moment that when the Government came down here in 1840 the great body of the claimants accepted the Ordinance in perfect good faith, and that they were content to abide by its limitations, in consideration of the exchange it gave them of an English title for a precarious occupation under the law of the strong arm.

The claimants knew very well when they sent in their claims that they could only obtain in ordinary cases a *maximum* award of 2,560 acres; but they knew also that the law provided that in special cases the Governor in Council might authorise the extension of that award, and that there was no limit to the exercise of such authority. Many of them accordingly availed themselves of this when Governor FitzRoy came to the country, and got their awards extended. Now wherever this was done, I hold that in all fairness the claimants were bound by the limit of the Governor's award as to quantity. If they meant that he should grant them the whole of the land they had bought, whatever its quantity might turn out, they should have said so. They should have told Governor FitzRoy when he was awarding 5,000 acres that they meant to keep 10,000, and so forth. They should resolutely have rejected all grants which said that specific quantities were granted within certain boundaries described as being those of the "entire quantity claimed." A few of them fell, in fact, into the common but fatal snare of wishing to eat their cake and have it. They wished to get all the security which a Crown Grant gave, and to be subject to none of the limitations which the Ordinance imposed. The Judgment of the Privy Council, however, repealing the grant issued to Mr. G. Clarke for 4,000 acres, finally disposed of any doubts there might be on the subject; and had the Quieting Titles Ordinance not passed, every other grant of the same kind would infallibly have been repealed in the same way. Even then, it is not quite clear what the Ordinance did. Take this particular grant as an instance. The grant itself was declared void by the Privy Council. If it afterwards had any force at all, it certainly had none beyond the four corners of the Quieting Titles Ordinance; and the question is, what was the effect of that Ordinance upon it? In reference to this a curious incident may be mentioned. An hon. member, who desired that whatever advantage or security was given by the Quieting Titles Ordinance should remain with the claimants when their grants were examined under the Land Claims Settlement Act, obtained the insertion of a few words declaring that the Commissioners should in deciding upon the validity of a grant "give effect" to the Ordinance. The result was just the reverse of what was expected. Instead of operating so

as give the claimants all land within the exterior boundaries of their claim, it carefully made fast the proviso in Section 1 of the Ordinance which limited the grantee to one-sixth more than the quantity named in a grant where the "metes and bounds" were undefined, and would have limited the grantee in certain cases to the actual quantity named in the grant, but for repugnance to the Act. But the Quieting Titles Ordinance could not do impossibilities; it could not make that valid which was utterly void in itself; it could not, for instance, by any amount of declaration, create a valid grant out of a document which contained on the very face of it the announcement that the estate conveyed had "No Boundaries" whatsoever.

In referring to Mr. Clarke's grant I should say that it is an instance of two things; on the one hand of there being no *right* in the claimant to the surplus: and on the other of the claimant's payment to the natives being such as would have made it quite *fair* to give him the whole acreage included in his purchases. I have heard it used as an argument, that the surplus ought to be granted in all the cases because excessive quantities were granted in some; as for instance Webster's, where Governor FitzRoy issued grants for 41,374 acres to that speculator and his partners. But though I may consider it a great injustice to the other claimants to have granted 41,000 acres in Webster's claims, I do not see that it follows, either that it would be right to take that land away now, or that we are therefore obliged to make similar grants to other people. There never was any doubt that the Imperial Government considered the Crown was entitled to the surplus land; and Lord Stanley expressly declared in May 1843, in answer to a question by Captain FitzRoy before he assumed the Government, that the excess in a claim over the quantity granted would revert to the Crown. (See Parliamentary Papers, 1844, vol. iv. p. 387, Col. Sec. copy). Lord Stanley, contemplating the extinction of the native title over all the land comprised in the exterior boundaries of a claim, said with respect to the excess—"the hypothesis being that it neither belongs to the aboriginal owners nor to the purchasers, it must be considered as Demesne of the Crown." This must be conclusive against Governor FitzRoy's contrary opinion.

Still, if the Assembly is disposed to be generous, there is no great difficulty in the way. In the northern claims there will be little further enquiry wanted, and no new surveys; the annexed Return shows exactly what has been taken as surplus out of the respective Claims, and if the Legislature resolves to grant the land it can be done without much delay or expense. But in that case I beg leave, on my own account, to make one observation. If the surplus land is to be given, let it be done on the only principle which is fair. Make a new declaration that every man shall be entitled to a grant for what he *bona fide* bought, irrespective of the original restrictions in the Ordinance of 1840. Let it be announced that the old landmarks are removed, and give to those who abandoned their claims when they found they could merely get the maximum award, a fair chance to come in now and prove them. Remove, with the maximum, the schedule that fixed a scale at the rate of 8s. an acre for worthless hills bought from the natives in 1839, while in 1862 you may buy finely grassed land from the Crown for 5s. an acre. Give a chance to Mr. Weller, for instance, who surveyed 63,000 acres in Otago more than 20 years ago and took his survey up to Sydney; let Mr. Green try for his exact quantity of 1,023,000 acres of snowy mountain on the West Coast, and Mr. Jones prove for his principality at Molyneux; risk Akaroa for Mr. Hempelman, and the Pelorus for Mr. Guard, the Aorere gold-field for Mr. Crawford, and the Napier Plains for Mr. Rhodes; and compensate Mr. Graham for not being able to give him his Waipa land handed over to King Matutaera. What right have we (if the question of the maximum be now re-opened) to create a new kind of restriction, and say we will give away the surplus in the North as the claims are small, but refuse it in the South because they are large? No; however glad I should personally be to see the Northern claimants get the whole of their land as residents and old settlers, I cannot see how it is to be done except on the open reversal of limitations consistently maintained for 20 years, and the inevitable consequent re-opening of the largest claims in the country. It is easy to lay down a new and apparently just principle, but people must have waded through all the land claims history to know where its application will reach.

Secondly, with respect to the Pre-emptive Claims:—

I must make one remark at the outset; and that is, that I do not think it ever can be said for certain what the rights of claimants under Governor FitzRoy's proclamations really were. Lord Stanley took one view of the obligation of the Crown, Lord Grey took another; the Supreme Court declared the proclamations were contrary to law; Governor FitzRoy said the waiver of pre-emption meant one thing, Governor Grey said it meant another. This last point is worth illustrating. Governor FitzRoy said, "The applicant's name being at the head of the Pre-emptive Certificate does not specify that the Crown's right is waived in

his favour only, but that he is the applicant. It is very necessary that there should be a check upon the party first applying. If he does not offer fair terms, is it right that he should have the sole right of pre-emption? I think not. The Crown's right of pre-emption has been waived in respect of a certain tract on the application of ——, who has not bought the whole of that tract. Any other person may buy the remainder; and by sending in copies of his deeds and surveys, and a reference to the letter to —— to show that the Crown's right had been waived in respect of that land, he will in due course obtain a Grant." (Fulton, No. 132, 14th February 1845). That was Governor FitzRoy's interpretation of his own Penny-an-acre Proclamation; Sir George Grey's interpretation was very different: "The Governor for the time being, upon the application of one individual, waives the Crown's right of pre-emption over these islands, and he does not so waive this right in favour of all the Queen's subjects, but of one individual. (Polack, No. 178, 19th May 1849.)

Then again the terms of the proclamations themselves, and the regulations in the *Gazette*, were such as to make it in my opinion nearly impossible in most cases to comply with them. Governor FitzRoy published a notice condemning those who had made purchases prior to obtaining the waiver, and threatened to reject all applications where this had been done; but granted the waiver notwithstanding, in numerous cases after purchase. He said that only "a few hundred acres" were meant, and then granted applications for 1000, 1500, 2000, and 3000 acres. One thing however seems clear; no Pre-emptive claimant could justly claim under any circumstances more land than his certificate entitled him to buy. If he had a certificate for 1000 acres and bought 5000 with it, he might have a just right to 1000 acres, but under no interpretation could he have a just right to the excess. In this respect the pre-emptive claimant differs from the claimant under purchases made prior to the Queen's sovereignty; but if in the latter class the principle be admitted that they should have all they bought, in the Pre-emptive claims it should be admitted so far as that they should have all they bought up to the amount of their certificate; and I hope nothing will be done which shall give any more land to one class and refuse it to the other.

The difficulty is so insuperable of deciding what were the rights really conferred on the Pre-emptive claimants by the Penny-an-acre Proclamation and Regulations, and how far, a literal compliance with their terms being impossible, those terms could be deviated from in one case without doing great injustice in another, that I neither wonder at the resolution of Sir George Grey to close the claims by laying down a scheme of his own, nor at the determination of the Committee of 1856 to adhere to the leading features of that scheme in their own proposals. I need only add, that if the right of pre-emptive claimants be now admitted to a grant of the whole of the land they bought, the Province of Auckland would have to refund a large sum of money received from the sale of pre-emptive land, or to pay its equivalent in other land.

It will have been seen from the preceding observations on the subject of Old Land Claims, that I think no general measure with respect to the Surplus land in those claims should be passed without the simultaneous total abolition of the *maximum* originally fixed in 1840. In like manner, while I have admitted that in the pre-emption claims there were many cases of duress by the imposition of a different kind of maximum, I think no general measure should be passed that did not also abolish that maximum, and of course re-open all the settled claims. It is for His Excellency's Government to decide whether that course should be proposed: I do not propose it, because if on the ground of redressing injustice the General Assembly is ready to repeal the principles of its own legislation as well as of legislation under previous forms of Government, it must not stop at the Land Claims; there are other things where equity would demand a more thorough reversal of past policy than any that could be claimed in the history of purchases of land from the natives.

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## CONCLUSION.

In conclusion, it may be as well to recapitulate the preceding information:

1. The total number of Claims of all classes was 1376.
2. There were 1050 Old Land Claims.
3. There were 250 Pre-emptive Claims.

4. There were 58 Claims not belonging to the other two series.
5. There were 18 Half-caste Claims.
6. The whole extent claimed by all classes was 10,322,453 acres.
7. The greater part of the land was bought from 1837 to 1839.
8. The value of the payments to natives amounted to £95,215.
9. The total amount of Fees, &c., paid to the Government was £13,179.
10. The Payments and Fees together amounted to £108,394.
11. The extent of acreage Surveyed was 474,146 acres.
12. The value of these surveys was in round numbers £23,000.
13. The Fees, Payments to Natives, and Surveys, were together £131,000.
14. The land therefore (in the gross) averaged a cost of 5s. 6d. per acre.
15. The total quantity of land awarded or granted is 292,475 acres.
16. The quantity in Old Land Claims is 267,175 acres.
17. The quantity in Pre-emptive Claims is 25,300 acres.
18. The total sum paid in Scrip, Money, or Debentures, is £109,289.
19. The Scrip issued by Governor FitzRoy amounted to £91,510.
20. The Money and Debentures granted by Governor Grey amounted to £8,467.
21. The Scrip issued by me has amounted to £8,932.
22. The Surplus land reverting to the Crown amounts to 204,000 acres.
23. The unproclaimed lands in the North amount to 50,000 acres.
24. The whole quantity available therefore now, is 254, 000 acres.

I trust that this information will be sufficiently complete to enable the Government to decide as to the measure that should be proposed to the Assembly: and if the views I have here ventured to state are approved, I could easily submit a Bill to give them effect.

It only remains for me to acknowledge the assistance and support I have received from the General Government throughout the execution of a task which has turned out to be incomparably more difficult and responsible than I thought, and which I may say I should certainly not have undertaken if I had known what it was. To the Provincial Government of Auckland I have been also greatly indebted for ready co-operation, and the adoption of any step which I suggested as just to the claimants and at the same time fair to the Province. Nor ought I to omit a notice of the obligation which the country owes to the late Commissioner Godfrey and to Commissioner Richmond, who went through all the labour of the first investigations into the various titles in a manner that reflects the highest credit on their diligence and impartiality. And I must also call the attention of the Government to the services of Mr. McIntosh, my chief Clerk and Surveyor, whose intimate acquaintance with the claims as Secretary to the former Land Claims Commission was invaluable to me, and who for an ordinary clerk's salary has given professional skill to the work which has saved a large sum that must otherwise have been spent in the examination and compilation of the plans, and the preparation of the grants.

But most of all I may be permitted to renew the record of the sense I shall ever entertain of the public spirit, fairness, and good sense of the great body of the land claimants, and of their courtesy and kindness to myself. If any success has attended the experiment which we commenced in the dark by the Act of 1856, it has been due to them, and to their fair dealing with a measure which they must have looked upon at first with traditional suspicion and dislike. If these feelings were afterwards dispelled, it was owing to their confidence in the guarantee afforded by the spirit in which the Land Claims Committee of 1856 framed

their Report, and in its concluding recommendation that the Commissioner should "act with a vigilant eye towards the preservation of the public interest on the one hand, and the obligation to administer strict justice to the claimants on the other; and should manifest a desire that no wrong done to any one (however humble or powerless to enforce his rights) should be left without redress, yet that the property of the whole community should not be carelessly tampered with, or lightly squandered and frittered away."

F. DILLON BELL.

Auckland, 8th July, 1862.

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# RETURNS APPENDED.

1. STATEMENT OF SURPLUS LAND reverting to the Crown on the Settlement of Land Claims.
2. STATEMENT OF UNPROCLAIMED LANDS over which the Native Title has been extinguished.
3. RETURN OF ALL LAND CLAIMS, showing in detail the Claimants' names, the locality and extent claimed, the year in which the land was bought, the payments given to the Natives, the area surveyed, the way in which each claim was disposed of, the quantity of land awarded or granted, and the amount of Scrip, Money, or Debentures issued.

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## I.—STATEMENT OF LANDS IN LAND CLAIMS, REVERTING TO THE CROWN ON THE SETTLEMENT OF THE VARIOUS CASES.

| CLAIMANTS' NAME. | LOCALITY. | NO. OF ACRES. |
|---|---|---|
| George Clarke ... ... ... ... | Waimate ... ... .. ... | 2,426 |
| "Children's Land" ... ... ... | Pateretere and Keri Keri ... ... | 1,385 |
| John King .. ... ... ... | Bay of Islands ... .. ... | 8,757 |
| Joseph Matthews ... ... ... | Doubtless Bay ... ... ... | 5,229 |
| William Maxwell ... .. ... | Kaitaia ... ... ... ... | 8,586 |
| W. G. Puckey ... ... ... ... | Kaitaia ... ... ... ... | 450 |
| Henry Williams ... ... ... | Bay of Islands (estimated) ... | 600 |
| James Hamlin ... ... ... ... | Manukau ... ... ... ... | 547 |
| Wright and Grahame ... ... ... | Kaipara ... ... ... ... | 5,056 |
| James Davis ... ... ... ... | Waimate .. ... ... ... | 362 |
| Benjamin Nesbit ... ... ... | Waimate ... ... ... ... | 125 |
| James Clendon ... ... ... ... | Manawaora ... ... ... | 657 |
| William Baker ... ... ... ... | Wangaroa ... ... .. ... | 2,889 |
| James Davis ... ... ... ... | Mangatete, Kaitaia .. ... | 4,414 |
| Thomas Joyce ... ... ... ... | Wangaroa ... ... ... ... | 992 |
| W. Powditch ... ... ... ... | Wangaroa ... ... ... ... | 95 |
| Taylor and Spark, and T. Graham ... | Waiheke ... ... ... ... | 260 |
| James Shepherd ... ... ... | Wangaroa } ... ... | 9,259 |
| James Shepherd ... ... ... | Keri Keri } 17,935 ... ... | 1,949 |
| J. M. Orsmond ... ... ... | Waimate } ... ... | 6,727 |
| Church Missionary Society ... ... | Kawa Kawa and Kaitaia (estimated) | 1,750 |
| John Ryder ... ... ... ... | Ororu River ... ... ... | 200 |
| James Busby ... ... ... ... | Bay of Islands (estimated) ... | 4,800 |
| Wilson, Stack, and Brown ... ... | Opotiki ... ... ... ... | 7,638 |
| | Carrried forward | |

STATEMENT OF LAND IN LAND CLAIMS, REVERTING TO THE CROWN ON THE SETTLEMENT OF THE VARIOUS CASES.—(*Continued*).

| NAME. | LOCALITY. | NO. OF ACRES. |
|---|---|---|
| | Brought forward ... ... | |
| G. Beeson ... ... ... ... | Coromandel ... ... .. | 48 |
| Richard Matthews ... ... ... | Kaitaia ... ... ... ... | 685 |
| S. H. Ford ... ... ... .. | Awanui River ... ... ... | 5,653 |
| James Kemp ... ... ... ... | Wangaroa ... ... ... ... | 1,742 |
| James Kemp ... ... ... ... | Extra quantity at the Bay ... | 4,000 |
| Henry Jellico ... ... ... ... | Hokianga ... ... ... ... | 100 |
| J. Edmonds ... ... ... ... | Keri Keri ... ... ... ... | 3,962 |
| W. C. Hingston ... ... ... | Keri Keri ... ... ... ... | 319 |
| Henry Day ... ... ... ... | Keri Keri ... ... ... ... | 275 |
| James Kemp ... ... ... ... | Keri Keri ... ... ... ... | 68 |
| J. Edmonds ... ... ... ... | Keri Keri .. ... ... ... | 117 |
| F. Fairburn ... ... .. .. | Keri Keri ... ... ... ... | 390 |
| C. W. Hingston ... ... ... | Keri Keri ... ... ... ... | 208 |
| Hughes and Somerville ... ... | Waitemata ... ... ... ... | 46 |
| R. S. Thompson ... ... ... | Whau (estimated) ... .. | 400 |
| Whitaker and Dumoulin ... ... | Great Barrier Island ... ... | 15,382 |
| Makepeace and Powell... ... ... | Kaipara ... ... ... ... | 852 |
| F. Peppercorn ... ... ... ... | Coromandel Harbour & Cape Colville | 715 |
| George Stephenson ... ... ... | Hohora, Muriwenua ... ... | 1,482 |
| John Salmon ... ... ... ... | Keri Keri ... ... ... ... | 103 |
| T. Bateman ... ... ... ... | Keri Keri ... ... ... ... | 670 |
| W. Atherton ... ... ... ... | Bay of Islands ... ... ... | 268 |
| Walton and Elmslie ... ... ... | Kiapara (estimated) .. ... | 9,500 |
| P. Greenhill ... ... ... ... | Wangarei ... ... ... ... | 1,053 |
| J. Jones ... ... ... ... | Otago ... ... ... ... | 6,000 |
| A. Marshall ... ... .. ... | Bay of Islands ... ... ... | 160 |
| Taylor and Spark ... ... .. | Tiri Tiri Matangi (estimated) ... | 500 |
| D. Brind ... ... ... ... | Kororarika ... ... ... | 108 |
| W. Brodie ... .. ... ... | Knuckle Point ... ... ... | 381 |
| T. S. Forsaith ... ... ... ... | Kaipara ... ... ... ... | 678 |
| W. B. Murphy ... ... ... ... | Monganui ... ... ... ... | 303 |
| W. Potter ... ... ... ... | Doubtless Bay ... ... ... | 225 |
| E. Bolger ... ... ... ... | Te Puna ... ... ... ... | 76 |
| T. Flavell ... ... ... ... | Wangaroa ... ... .. ... | 400 |
| T. MacDonnell... ... ... ... | Hokianga ... ... ... ... | 626 |
| G. Mair ... ... ... ... | Manaia (estimated) ... ... | 8,357 |
| Ngunguru and Tutukaka Claims ... | Ngunguru and Tutukaka (estimated) | 4,000 |
| Henderson and Macfarlane ... ... | Whau ... ... .. ... | 11,223 |
| J. Brigham ... ... ... ... | Waitemata ... ... ... ... | 256 |
| J. A. Polack, Smithson, Langford and Gardner, Fair, and Moore ... | Upper Waitemata (estimated) .. | 5,700 |
| Smithson, Chisholm, Langford, Hill, Partridge and Polack, Harper, Kelly, Russell .. .. | Upper Waitemata (estimated) ... | 6,120 |
| Kelly, Stuart, Clucas, Blake, MacDonald, Wood, Waite ... | Upper Waitemata (estimated) ... | 6,620 |
| Harris and Hatfield, Wilson and White, and Fulton and Elliott | Rangitopuni (estimated) ... ... | 2,970 |
| R. F. Porter, W. F. Porter, and others ... ... ... | Whau (estimated)... ... ... | 2,150 |
| Thomas and Phillips, Berghan, Smith, Ryan and Partridge... ... | Mongonui (estimated) ... ... | 11,000 |
| Scrip claims and land given up by the Natives to the Government (after deducting Grants issued | Hokianga ... ... .. ... | 13,199 |
| | TOTAL ... ... | 204,243 |

## II.—RETURN OF ALL UNPROCLAIMED LANDS IN THE BAY OF ISLANDS AND MANGONUI DISTRICTS, OVER WHICH THE NATIVE TITLE HAS BEEN EXTINGUISHED.

| NAME OF BLOCK. | SITUATION. | AREA. |
|---|---|---|
| | | acres. |
| Kaipatiki .. .. ... ... | Bay of Islands ... ... | 2,650 |
| Whiroa ... ... ... ... | Keri-keri, ... ... | 1,950 |
| Hikuwai ... ... ... ... | do., ... .. | 875 |
| Taraire (addition) ... ... ... | do., .. ... | 883 |
| Omawhake .. ... ... .. | Waimate, ... ... | 7,090 |
| Okokako ... ... ... ... | do., ... ... | 200 |
| Mokau ... ... ... ... | do., ... .. | 7,224 |
| Okaihau ... ... ... ... | Omapere, ... ... | 4,554 |
| Hikurangi ... ... ... .. | Mangonui ... .. | 4,705 |
| Ahipara (addition) ... ... ... | do., ... ... | 207 |
| Maungataniwha, East ... ... ... | do., ... ... | 8,469 |
| Mangatete ... ... ... ... | do., ... ... | 11,175 |
| | | 49,982 |

## III.—RETURN OF ALL LAND CLAIMS.

[ NOTE.—*This Return is in Manuscript.* F. D. B. ]