

That such of the resident purchasers as received land in exchange under the arrangement of Governor Fitzroy, shall likewise be declared entitled to compensation; but in assessing the amount thereof, regard shall be had to the amount of land already secured to them under that arrangement, and to any other circumstances which may distinguish these cases from those of the other purchasers.

That for the purposes of this arrangement it is understood that the term "resident purchaser" shall apply to all parties holders of land in New Plymouth, derivative as well as original, now actually resident in the Colony of New Zealand.

That this arrangement shall extend to land purchasers original and derivative, formerly resident but now absent from the Colony, whenever such purchasers shall return.

Subsequently the company gave notice that they were ready to surrender their charters to Her Majesty, whereupon by virtue of the before-mentioned Act, all claim and title to lands of the company ceased and determined; and all such lands became vested in Her Majesty as part of the demesne lands of the Crown, subject, nevertheless, to any contracts which were then subsisting in regard to any of the said lands. In 1851 an Ordinance was passed by the New Zealand Legislature called "The New Zealand Company's Land Claimants Ordinance," which recited that in certain cases possession had not been given by the company of lands sold or contracted to be sold by them to the purchasers thereof, and the right of selection purporting to be conferred by such scrip as aforesaid in many cases still remained unexercised; and that it was essential that means should be taken for ascertaining what were the contracts of the company then subsisting in regard to the said lands with a view to their satisfactory adjustment. This Ordinance then made provision for an investigation into and report upon such contracts, and ordained that the value of the land affected by any contract should be ascertained in manner therein provided, and authorized the Governor to issue to any person found to have a rightful claim to any land or right therein scrip for the amount so ascertained, such scrip to be available in the acquisition of land in the manner set forth in the Ordinance. The Constitution Act then followed, empowering the General Assembly to legislate for the Colony of New Zealand. In 1854, in pursuance of the terms of compromise, there was awarded to the claimant by Commissioners appointed under the authority of the Ordinance, resident preferential scrip to the amount of 75 acres for each allotment of which he had been deprived. In 1856 an Act was passed by the General Assembly called "The Land Orders and Scrip Act, 1856," by which provision was made for defining and settling the right of holders of land orders and land scrip. By "The Land Orders and Scrip Act, 1858," this Act was repealed, and it was enacted that within the Province of New Plymouth every unexercised original land order issued by the Plymouth Company of New Zealand or by the New Zealand Company, and conferring or purporting to confer on the owner or holder thereof the right to select according to a fixed and definite order of choice, 50 acres of land within the settlement of New Plymouth, should entitle such owner or holder in priority to general purchasers, and according to the aforesaid order of choice, to select out of any land over which the Native title then was or thereafter should be extinguished, and which should be declared open for purchase (except the Hua village site), one acre of town land or 37½ acres of suburban land or 75 acres of rural land, at the option of such owner or holder, and subject to certain conditions. And the ninth section prescribes the rate at which original land orders issued by the Plymouth Company or by the New Zealand Company, conferring the right to select land within the settlement of New Plymouth according to priority of application, or otherwise than in a fixed and definite order of choice should be considered as equivalent in the purchase of Waste Lands of the Crown; and also the rate at which supplementary land order and compensation or land scrip issued by the New Zealand Company should be taken; and concludes by enacting that all such land orders and land scrip, whether original or supplementary, should not be otherwise available or exercisable for the purchase or selection of Waste Lands of the Crown.

The land orders and scrip in respect of which Mr. Lewthwaite now seeks compensation, have not been exercised to the present time.

Upon these facts the claimant argues that either he is entitled to select land by virtue of his orders out of the blocks of land which have come into possession of the Crown under the operation of the New Zealand Settlements Acts, or that if such right does not exist he is entitled to compensation under the provisions of such Acts for the deprivation thereof.

The agent for the Crown refers to "The Land Orders and Scrip Act, 1858," and argues that whatever the claimant's rights previously were, they have been dealt with and definitely provided for in that Act; and that if he has no rights under that Act which would come under the category of a title, interest, or claim to any land taken under "The New Zealand Settlements Act, 1863," he has no estate in land for the taking of which the Court can grant him compensation.

Mr. Lewthwaite, in reply, quotes an Act of the Imperial Parliament passed in 1865, entitled "An Act to remove Doubts as to Colonial Laws," which provides as follows:—

"Any colonial law which is or shall be in any respect repugnant to the provisions of any Act of Parliament extending to the colony to which such law may relate or repugnant to any order or regulation made under authority of such Act of Parliament or having in the colony the force and effect of such Act shall be read subject to such Act or regulation and shall to the extent of such repugnancy but not otherwise be and remain absolutely void and imperative."

And he argues—(1) that if the Land Orders and Scrip Act, or the New Zealand Settlements Acts interfere with the rights stated to have been secured to him by the before-mentioned Imperial Statute, under the operation of which the land of the company became vested in Her Majesty, subject to the contracts which affected them, these Acts are, *pro tanto*, void of repugnancy; (2) and further, that it is not lawful to deprive compulsorily any man of his land except by an Act against the passing of which he may have an opportunity of being heard by himself, his counsel, agents, and witnesses, *i.e.*, by a Private Act.

(1.) As to the question of "repugnancy," we are of opinion that this Court is not competent to entertain the question of repugnancy. Holding that opinion we must regard "The Land Orders and Scrip Act, 1858," and the New Zealand Settlements Act, as containing the law upon which Mr. Lewthwaite's claim to compensation must be decided.

(2.) As to the question whether "The New Zealand Settlements Act, 1863," was rightly passed as