

a Public Act, we also think that this Court is not competent to give any opinion. Public Bills and Private Bills when passed into Acts by the Legislature are of equal validity, and the force of none of them can be questioned in or by this Court. The Court is moreover aware that Acts conferring upon the Government powers to take lands compulsorily for purposes of great public importance are constantly passed by the Imperial Parliament as Public Acts, though the same privilege is not allowed to private individuals or corporations. The Battersea Park Act and numerous Ordnance Fortification Acts might be cited as instances, if means of reference existed in this place.

The case will then divide itself into three heads:—

1. What is the exact character of Mr. Lewthwaite's rights under "The Land Orders and Scrip Act, 1858"?

2. Are these rights destroyed or injured by the New Zealand Settlements Acts?

3. Can compensation be ordered to him by this Court for such destruction or injury?

(1.) It appears to the Court that the consideration of Mr. Lewthwaite's claim may fitly commence with the terms of compromise entered into with him and numerous other persons similarly situated, by the New Zealand Company, on the 4th May, 1849.

Mr. Lewthwaite did not avail himself of the means of settlement afforded by this arrangement, and his orders remained still unexercised when the General Assembly passed "The Land Orders and Scrip Act, 1858." It is not clear that this Act does not very much enlarge Mr. Lewthwaite's power of selection as based upon the Imperial Statutes and his previous rights, for it might be argued that his power of selection as previously existing was confined to the lands which became demense lands of the Crown, when the property of the company passed to Her Majesty, although the terms of compromise did extend his power to "districts that might thereafter be purchased"—from whom not being expressed.

The Act of 1858 clearly deals with this class of claims, on the supposition that lands in the several Provinces would from time to time be acquired by the Crown from the Natives, free of all liabilities and incumbrances, which would be open for purchase in the manner provided by the ordinary land laws.

Mr. Lewthwaite is the holder of documents which confer upon him an interest over all the lands at the time of the passing of the Act in the hands of the Natives, contingent upon the Native title therein being extinguished, and their being thrown open for sale in the usual manner. His documents do not invest him with any right absolute or contingent over any specific portion of land. His interest therefore is simply a power of selecting land under certain conditions from time to time as he shall think fit, and extends over the class of land described in the Act throughout the whole Province; but is not an interest in any particular piece of land and cannot become such an interest until he has exercised his power, which he cannot do until the contingencies above noticed have happened: and although one contingency has happened in a manner not contemplated, viz., the extinction of the Native title, the other contingency has not happened, viz., the lands being declared open for purchase.

2. Are these rights destroyed or injured by the New Zealand Settlements Acts?

"The New Zealand Settlements Act, 1863," provides 'that after the Governor in Council shall have constituted any portion of the Colony a district under the Act and shall have reserved and taken any land within such district for the purposes of settlement and shall have declared that such land is required for the purposes of the Act and is subject to the provisions thereof such land shall be deemed to be Crown Land freed and discharged from all title interest or claim of any person whomsoever.'

The rights therefore which this claimant previously held under "The Land Orders and Scrip Act, 1858," were perfectly and absolutely extinguished by this provision, so far as concerns the land included in the several Orders in Council, and whatever rights, if any, he now holds over such lands must be derived afresh from "The New Zealand Settlements Act, 1863," or the Act of 1855 continuing and amending it. Do any such rights exist, or can they be conferred under either of these Acts?

It will be necessary to ascertain what directions the Acts give for the appropriation of the lands taken. After the taken lands shall have been cleared from all incumbrances created by the rights which loyal owners may have under sections 9 and 10 of "The Amendment Act of 1865," the sixteenth section of the Act of 1863, and the seventeenth section of the Act of 1865, empower and direct the Governor to set apart towns, farms, and land for persons subject to certain conditions of military or police service, and after the performance of such conditions to make grants of their several allotments to the persons settled thereupon. The seventeenth section empowers the Governor in Council, after setting apart land for the above-mentioned military or police services, to cause towns to be surveyed and laid out, and also suburban and rural allotments; and the eighteenth section then provides that such town, suburban and rural lands, shall be let, sold, occupied, and disposed of for such prices, in such manner, and for such purposes, upon such terms, and subject to such regulations as the Governor in Council should from time to time prescribe for that purpose; and the nineteenth section provides that the money to arise from such sales and disposals should be disposed of as the General Assembly might direct, in or towards the repayment of the expenses of suppressing the insurrection, and the formation and colonization of settlements, including the payment of any compensation which might be payable under the Act.

It appears therefore, that it was the intention of the Legislature at the time of the passing of "The New Zealand Settlements Act, 1863," that part of the money to arise from the sale or disposal of Confiscated Lands (using the term "confiscated" in its vulgar sense) should be devoted to the liquidation of the orders of this Court made in favor of persons entitled to compensation in money, and possibly it might have been competent for the Governor in Council, in exercise of the power conferred by the eighteenth section, to have made regulations which would have enabled Mr. Lewthwaite to have exercised his land orders upon terms which would have been prescribed in the Regulations. However this may be, the Regulations which were made in 1865 in exercise of this power, contained no provision rendering these land orders available.

"The New Zealand Settlements Amendment Act, 1865," repealed the above quoted seventeenth, eighteenth, and nineteenth clauses of the Act of 1863, and the provision made in lieu of the seventeenth and eighteenth sections is contained in the sixteenth clause of the Amendment Act, and is as follows:—

"The order and manner in which land shall be laid out for sale and sold under the provisions of the said Act shall be in the discretion of the Governor who shall have power to cause such land or any part thereof to be laid out for sale and sold from time to time in such manner for such