

MEMORANDUM

BY THE

CHIEF COMMISSIONER OF LAND CLAIMS

ON THE

“LAND CLAIMS SETTLEMENT EXTENSION BILL.”

ALSO,

MEMORIAL FROM MR. W. F. PORTER.

Presented to the House by command of His Excellency 18th May, 1858, and ordered to be printed.

AUCKLAND:

1858.

MEMORANDUM RELATIVE TO THE "LAND CLAIMS SETTLEMENT EXTENSION BILL."

Court of Claims,
15th May, 1858.

In compliance with the desire of his Excellency's Government, I submit the following summary of the progress made under the Land Claims Act of last Session, and explanation of the clauses in the new Bill.

The Commission has now been in operation for eighteen months. I became satisfied at a very early period of the work that the law could only be successfully carried out with the co-operation of the claimants themselves, and it is only due to them to take the first opportunity of recording the public spirit in which (with only one exception) they came forward to help in the final settlement of a question which had for so many years been in dispute between themselves and former Governments. It was an advantage that the Commissioner had not been mixed up in these differences, as it was less difficult than otherwise might have been for the claimants to see that the real object of the General Assembly was not to disturb but to validate their titles, and that as the Commission would be worked in no hostile spirit to them, the law really offered them substantial advantages. It would be unjust to them not to add, that whatever success has attended it, is owing to the confidence with which they treated the Commission from the first, and their sacrifice in many instances of long cherished opinions of their rights, in deference to the decision of the Legislature.

I am glad also to be able to assure the Government that the predictions of disturbances being certain to occur with the Natives in carrying out the Act, have proved quite groundless. So far from having the least intention of opposing the law, the Chiefs have throughout expressed great satisfaction at its existence, and have everywhere met me in the most admirable spirit. There have been a number of very complicated cases, which afforded ample opportunity for the display of a bad disposition if any had existed; there have even been many spurious claims advanced by the younger men, because they knew it was their last chance; and it is an honour to the Natives that (with two or three unimportant exceptions) they have in every instance peaceably and patiently stated their claims before me, and cheerfully submitted to any adverse decision. They have done more than yield a passive acquiescence in the law; many of the Chiefs and Assessors have given me active and intelligent help, taking pains to make themselves acquainted with the principles and even details of the Act, and corresponding with me from distant places as to the settlement of boundaries and other matters. I may specially refer to their conduct with respect to the land exchanged for scrip in 1844, which they have in most cases faithfully preserved for the Government to this day, and also with respect to land formerly sold by them but not enquired into by previous Commissions, which they might easily have deceived the Government about, if they had wished. It was predicted they would resist the reversion of surplus land in claims, to the Crown. So far from this, (and I have always carefully explained the effect of the law in such cases, and the grounds on which I required a survey of the whole exterior boundary of a claim as originally sold), they have always admitted that where their title had been extinguished, any right of theirs to the land was at an end, and that they had nothing to do with the apportionment of it by law between the Crown and its subjects; and their position in this matter is now so well understood, that whenever they wish to have back any part of the surplus land they apply for it to the Government as a matter of course.

The principal objects of the Act of 1856 were—1. To hear and determine unsettled cases in which no grants had been issued.

2. To substitute effectual grants for those of doubtful validity issued in 1844 and 1845.

3. To ascertain by proper surveys the extent and position of the lands comprised within all the old claims.

With regard to the two first points, I may briefly state that 37 previously undetermined claims have been heard, and that 194 grants comprising an area of 82,597 acres have been called in for examination. In the greater part of these cases the necessary investigations have been completed; some have been finally closed, by the issue of new grants to the amount of 25,681 acres; and many more are practically closed, only requiring the quantities awarded to be finally laid off in order that grants may be issued to the amount of 83,000 acres additional.

With regard to the third point, Surveys of Claims now exist to the extent of 212,392 acres; there are about 36,000 acres more surveyed, the plans of which will come in before long; and preliminary arrangements have been made for the survey of a portion of the scrip claims, which will probably amount to 30,000 acres in addition. Of this total of 278,000 acres I estimate that taking the surplus in private claims, and adding the above amount of Government scrip claims, with other land recovered by the Commission, the quantity already known to have reverted to the Crown exceeds 131,000 acres, after satisfying the very liberal allowances for surveys, &c., granted by the Act.

It was fortunate that the General Assembly determined to make the survey allowance large, for although a great quantity of land has been thereby absorbed, it produced the advantage of early surveys and encouraged their extension so as to comprise the whole of the land originally bought from the Natives.

Even the gain to the Crown of the surplus land thereby secured, is nothing in comparison with that of facilitating the termination of the long suspense and doubt in which the claimants were involved. And I have been assured by not a few of them that the result will be the renewal of energy and hope, and the speedy cultivation of much land that has hitherto lain waste.

The progress made in the surveys has enabled a plan to be compiled of the country on the western shore of the Bay of Islands as far up as Whangaroa; this will shortly be connected to the Northward with the Mongonui surveys, and extended to the West Coast by the survey of the Hokianga scrip claims: placing the Government for the first time in possession of a general map of that part of the Province of Auckland, showing the position of the old claims, and of the blocks purchased for the Crown.

I have now to make a few observations on the clauses of the Bill now proposed.

The Act of 1856 has on the whole worked well, and I believe I may venture to say that the Claimants as a body are contented with its main features, with the exception of course of the limitations as to quantity. At the same time it could hardly be expected to meet all that was required where so many intricate and exceptional cases had to be determined, and this measure is mainly intended to supplement and extend its provisions where experience in its working has shown further powers to be necessary.

The first and second clauses of the Bill need no remark.

The third proposes to apply the same principle of valuation for land reserved in the past for sites of Towns, as the succeeding clauses provide for the future.

Clauses four to eight empower the Government to reserve any land whatever upon giving compensation for it according to its value at the time, the claimant receiving scrip for the amount enabling him to buy land anywhere else in the Province. The principle is simply this, that when the Government cannot or will not grant the particular land to which a claimant is entitled, it ought to give him instead an absolute and marketable right of selection out of all waste lands open for sale; and although any issue of scrip is prohibited by the Act of last Session, I am satisfied it is the fairest means, failing money, of doing justice to a landowner when his land is reserved.

Clause 9 enables the land in a claim to be exchanged. The following are cases in point:—

1. The former Commissioners make a favourable award, the title being really extinguished as far as the principal Chiefs are concerned, but other Natives refuse to give possession, and Government for political reasons will not interfere; clearly the claimant ought to get land somewhere for his award. 2. The Government take possession of a claim and sell part of the land, perhaps the best of it; clearly the claimant ought not to be absolutely obliged to take what is left. 3. A claimant establishes a claim in some part of the country far from his homestead; he is willing to take inferior or even less land near it instead; it may be extremely desirable for reasons connected with Native interests, to allow the exchange.

Clause 10 enables a claimant voluntarily to surrender the estate in a grant by a short form of endorsement. This needs no special remark, as the power though a necessary one is merely permissive.

Clause 11 enables new grants to be issued where the old grant is inaccurate though not voidable. The following are cases in point:—1. A grant describes the boundaries of a claim by Native names, but the plan does not appear to have any connexion with them, though it is really correct in itself; the object is to give a grant in which the description and plan agree. 2. A grant is "endorsed" under the "Quieting Titles Ordinance"; but the endorsement, or the plan, or both, being incorrect, the grant is actually made worse than it was before. 3. A grant still held by a claimant, and which will have to be called in, is supposed to be overridden by a second grant in the same claim purporting to be made under the "Quieting Titles Ordinance"; the second grant has never been taken out, and though it bears a proper description and plan, it is very doubtful if it be not just as invalid as the first.

Clause 12 is intended to supply a deficiency in the Act of 1856, which only provided for the issue of new grants (where the old grant had been repealed) upon the application of the parties. It is, however, necessary that power should exist to make a grant whether the party applies for it or not, because while no one ever wished to take away an acre from the quantity expressed in the old grant, if there be land enough to give it, a case cannot be permitted to remain open at the pleasure of a claimant who may choose to disobey the law, and withhold the original grant which has been adjudged void.

Clause 13 requires no explanation, it being merely intended to avoid repetition of notices by the Attorney-General.

Clause 14 removes a doubt whether the thirty-ninth clause of the Act of 1856 enabled a Native reserve within a claim to be acquired and granted to the claimant.

Clause 15 is altogether a new proposition; but I think it my duty to submit it. The Government gain a considerable surplus out of the claims without cost; and it appears to me that the person who extinguished the Native title has the best right to buy that surplus at a fair price. From what I know of the character of the lands, I think an advantage would accrue to the public by giving the pre-emptive right proposed, and it is very much required in a few small claims to settle them fairly.

Clause 16 is an appropriation of any purchase monies under the Bill, and of monies paid in pre-emption cases under the Act of 1856.

Clause 17 may be illustrated by the following cases:—1. A derivative claim is proved for a certain piece of land, which is accordingly awarded. Subsequently the Commissioners reverse and reduce the award because they had already awarded the maximum to the claimant from whom this case derived. This was obviously a mistake, as the reduction should have been made from the quantity awarded to the seller, not his transferee. 2. A claim is proved for a particular piece of land estimated to contain so many acres; it turns out to exceed the estimated amount though within the quantity grantable under the Schedule of 1841: the particular piece of land should be granted.

Clause 18 is also a new proposal, but I believe it necessary as well as fair. It proposes to repay the outlay in extinguishing the Native title, where the claim cannot now be heard under the Act of 1856. There are several cases in which the Natives have offered, and even paid, money to get back the old Deeds in order to sell the land again to Government. Now the only pretence on which the Government can take possession of land (where the claimant is excluded) is that he has extinguished the Native title; I have recovered several pieces of land upon that being admitted; but I submit that if the Government takes advantage of the extinction of title they should repay the outlay. This was a bitter cause of quarrel long ago with the pre-emptive claimants; and it seems to me moderate to give land at the rate of an acre for ten shillings spent in extinguishing the title.

Clause 19 gives the Governor power to issue grants in Half-Caste cases. The Act of 1856 enjoined an enquiry into them, which has been done in several instances. It is certain the Crown will never get the land which has been set apart for Half-Castes, and as the Act of 1856 did not give power to issue grants to them it seems desirable to take it now.

Clause 20 authorising the remission of fees by the Governor may be illustrated as follows:—

1. A person occupies a piece of land containing only a few acres, and the fees would come to more than it would cost to buy; but as he cannot buy the land and does not file his claim it remains in abeyance, in constant uncertainty, and Government getting no benefit and still unable to turn him off even if they desired it. 2. A grant is called in on account of the record copy showing no plan; when the grant is produced a plan appears in proper form upon it; it would be very unjust to make a man pay the fee for a certificate of validity.

Clause 21 gives the Commission power to deal with exceptional cases in an exceptional way, but in general accordance with the Act of 1856. The following are cases in point:—1. a claimant excluded because he cannot show that written notice of his claim was given to the Government, can show by other evidence that his purchase was made with the sanction of Government and is admitted by the Natives; he ought of course to be heard. 2. A claim is disallowed for want of a witness to a transfer, who afterwards turns up; in the meanwhile the claimant has kept the land; surely he should be able to obtain a grant. 3. A person has been for a great many years in occupation of a piece of land, and nobody has interrupted him; the Natives make no difficulty; but he was never before a Commissioner. It would be cruel to dispossess him even if it could be done, and seems absurd to let him remain as a mere squatter. 4. A claim is disallowed because the occupant is too poor to pay fees; then disallowed again on a second hearing because the claimant cannot bring the only surviving Native seller to Auckland; then renewed again on a pre-emption certificate, and of course disallowed again as such. Now the claimant happens to have lived there for 27 years, without question from anybody; he had other claims which have been settled, but this one where he has actually been in undisturbed possession as long almost as any one in the country, he cannot get settled anyhow, except by paying fees as a pre-emptive claimant, which he never had any wish whatever to be.

Clause 22 merely makes grants under the new Bill as valid as grants under the Act of 1856.

F. D. BELL.

The Honorable
the Colonial Secretary.

MEMORIAL of Mr. W. F. Porter in reference to his LAND CLAIM.

To His Excellency Colonel Thomas Gore Browne, C.B., Governor, &c., &c., &c.

The Memorial of the undersigned humbly sheweth,—

That your Memorialist, by the direction and with the sanction and advice of Governor Fitz-Roy, bought from the Natives certain portions of land, under the penny an acre waiver of the pre-emption, which land was taken from him by Sir George Grey, for not complying with the terms of a Proclamation issued after the land had been bought as before stated, and with which Proclamation it was impossible for your Memorialist to comply.

Your Memorialist further sheweth, that Sir George Grey refused him permission to hold the land under the Native Title (one of the terms on which he allowed land to be held) although it would have been strictly in accordance with Governor Fitz-Roy's Proclamation to have done so; and passed the Native Land Purchase Ordinance, which effectually prevented any use being made of the land by Europeans.

Your Memorialist, considering his case to be one of very great hardship and injustice, and hearing that the Government are about to propose an amendment to the Land Claims Settlement Act, prays your Excellency to take his case into your favourable consideration.

(Signed)

W. F. PORTER.

Auckland, 18th May, 1858.