

P E T I T I O N

OF

AUGUSTUS BROWN ABRAHAM

RELATIVE TO

A CLAIM TO LAND AT WAITARA.

(Ordered to be printed June 20th, 1861.)

TO THE HONORABLE THE HOUSE OF REPRESENTATIVES OF NEW ZEALAND,
IN PARLIAMENT ASSEMBLED.

The humble Petition of AUGUSTUS BROWN ABRAHAM, *of Auckland, Barrister at Law :*

SH EWETH,—

1. That your Petitioner is entitled by purchase from the New Plymouth Land Company, afterwards merged into the New Zealand Company, to six (6) Fifty acre Sections of Rural Land duly selected on the north bank of the Waitara River at Taranaki, as follows:—

No. of Land Order.	No. of Section on Plan.
118	347
119	344
120	351
121	353
122	354
123	355

as shewn by following the Plan, and thereon colored Pink.

2. That such selections were made in the name of R. Watkins by Agents (Messrs. Halse) appointed for the purpose with the assistance of a Surveyor (Mr. Rogan), and the order of choice being early, No. 8, the lands so selected are of a very valuable character, having water frontage and one of them commanding the deep water frontage at the mouth of the River.

3. That your Memorialist has never surrendered his Rural Sections and still holds the six Certificates signed by the Agent of the New Zealand Company as conclusive evidence of such selection.

4. That such selections form part of the land referred to in the award of Mr. Spain, Her Majesty's Commissioner, and are thereby decided to have been duly purchased from the Natives by the New Zealand Company, but in consequence of the subsequent proceedings of Governor FitzRoy such award was not carried out and the Company became unable to put your Petitioner in possession of such land.

5. That Governor FitzRoy himself reported to the Home Government that although some delay might take place in the re-acquisition of the land by the Government no injury could accrue to claimants as the claims of those who had bought land near New Plymouth would be as good years afterwards as they then were. Blue Book, 1845, p. 102.

6. That Lord Stanley when holding the office of Secretary of State for the Colonies expressed his opinion and stated that he wished it to be understood that the award of Mr. Commissioner Spain had the effect of a *judicial decision* and ought to have been carried out, and that the Crown was bound to obtain and give possession of the lands to the New Zealand Company to enable it to complete its contracts, and that his successor, Mr. Gladstone, also expressed similar opinions.

7. That in fact when the British Government ultimately compensated the New Zealand Company for their outlay and took a surrender of their Estates subject to their contracts it was admitted that the Company had purchased 60,000 acres, including Petitioner's land, at New Plymouth, and the Company were repaid their outlay accordingly.

8. That His Excellency Governor Grey also commissioned Mr. McLean to resume possession of the lands in question, making such payments as might be necessary, and in his Despatch 5th April, 1847, Blue Book, 1847, pp. 2 to 5, 12 to 13, urges strongly upon Earl Grey that the British Government ought to bear the expense of such re-purchase thus occasioned by the proceedings of Governor Fitzroy at New Plymouth.

9. That the New Zealand Company having issued to Petitioner and other land claimants certain scrip as compensation for all their then past losses and disappointments arising from delay in obtaining possession of their lands, although such non-possession had arisen from circumstances beyond the control of the Company and conceded to them as a privilege "the permission if they so elected to surrender the land originally attached to each order and to select an equal quantity of other land in lieu," your Petitioner lost no time in at once proceeding to New Zealand with his family (8 persons) and arrived in Auckland *en route* for New Plymouth on the 17th December, 1850.

10. That his said original sections not being acquired and no provision having been made to satisfy the compensation orders, your Petitioner left his family in Auckland whilst he proceeded to New Plymouth, and Petitioner then gave a written notice of his claims to His Excellency Sir George Grey by a written notice and letter dated respectively Taranaki, 17th February, 1851, and claimed the performance of his several contracts, to which documents he now refers.

No. 3, Blue Book, 1846,
p. 49.

Memorandum 2, 1847.

Blue Book, December
1847, p. 2.

7th August, 1845, vol. 5,
p. 8, 45.
No. 661, p. 3, at end of
volume.

11. That the New Zealand Company having on the 5th July, 1850, surrendered their Charter, "and all claim and title to the lands granted or awarded to them in the Colony" to the Crown, subject to the contracts then subsisting in regard to the same. Her Majesty was pleased on the 12th August, 1850, to issue additional instructions to the Governor of New Zealand, declaring that the said contracts should be in force as regards the lands comprised in or affected by them, and the instructions in effect declared that any amendments or modifications of such contracts could only be made by mutual arrangement between the Crown and the parties interested. See 10 & 11 Vict., cap 102, ss. and recitals,

12. That in April, 1851, His Excellency Sir George Grey proposed to legislate on the subject of the New Zealand Company's said contracts, including New Plymouth, and was pleased to submit the proposed Bill for Petitioner's comments, which he forwarded on the 25th April, 1851, and therein again urged upon His Excellency the indefeasible character of the contracts of the said claimants and their right to retain their sections if so disposed. (See letter of 25th April, 1851.)

13. That when such Ordinance eventually passed, Session XL, No. 15, such right of retention was respected and an option was given to the claimants to avail themselves of the provisions therein contained and that in and by such Ordinance all cases where the Government could not give possession of the land to the persons entitled to the same by virtue of a contract with the New Zealand Company were acknowledged to be and dealt with as contracts of the New Zealand Company which the Crown was bound to perform by virtue of the 10 and 11 Vict., c. 12, on such surrender as aforesaid.

14. That such last mentioned Ordinance was not, as Petitioner believes, actually brought into operation in the Province of Taranaki, and all proceedings thereunder were stopped by the passing of the Imperial Act 14 & 15 Vict., c. 84, whereby the Governor was authorised among other things "to close and determine the affairs of each settlement," and it is therein expressly recited that even the terms of purchase within the settlements respectively were in force as contracts of the New Zealand Company at the date of the surrender of the charter, and such Act in effect merely authorises Her Majesty partially to amend such terms, Her Majesty's Government considering they could not be got rid of further "without the assent of the other parties to the contract," namely the land purchasers. See Despatch, 8th Aug. 1851.

15. That such terms of purchase necessarily affected all lands subsequently acquired from the Natives within the settlements as well as those acquired at the date of the surrender.

16. That Petitioner continued to press the performance of his contracts on the attention of the Governor, and afterwards requested permission to occupy the said six sections at the Waitara if he could do so with the consent of the Natives which he had obtained in part and had good reason to believe he could obtain from all parties interested, and that such permission was granted to him by His Excellency Sir George Grey by the following letter:—

Civil Secretary's Office,
Wellington, 29th April, 1852.

SIR,—

No. 52-71.

In reply to your letter of the 8th of March last, requesting to be informed what steps are being taken for defining the New Plymouth settlement including your land north of the Waitara, and for extinguishing Native claims thereto, and also whether the Governor in-Chief will object to a proposal you make to acquire the land yourself in conjunction with the Crown Commissioner, I am instructed by His Excellency to state that your several claims to land enclosed in your letter of the 15th December, 1851, have been forwarded to Mr. Halse, the Commissioner of Crown Lands at New Plymouth, with instructions to him in accordance with the terms of 19th Clause of the Act 10 & 11 Vict., Cap. 112, in case any of the lands which have reverted to the Crown from the New Zealand Company should be subject to any contract subsisting between the Company and yourself, immediately to fulfil such contract.

You will observe from the Act of Parliament above quoted that this is the only liability which it authorises or empowers the Government to recognize or fulfil.

With respect to the question whether Government will grant you a license to occupy your sections at the Waitara if you can effect an arrangement with William King and the rest of the Natives for that purpose, and whether Government will undertake to pay any sum approved by the Crown Commissioner which you may agree to give for any outstanding Native claims, I am to reply that if you think proper to do this at your own risk, His Excellency will offer no objection to your occupying with the consent of the true Native owners, any sections of land which Mr. Halse may state to be those which you would have been entitled to a grant of, had they been the property of the Crown. But His Excellency regrets that it is not in his power to provide the funds necessary to enable you to liquidate any funds* whatever have been placed at his disposal which he could appropriate in such a manner. * sic in orig.

The Government however are endeavouring and will continue to endeavour to purchase from the Natives, tracks of land in the Taranaki district for the purpose of procuring for the settlers, the lands they require, and if those to which you are entitled can be obtained by Government within the blocks they may be able to purchase, grants for them shall be immediately issued to you.

I have, &c ,

ALFRED DOMITT,
Civil Secretary.

17. That certain of Petitioner's sections were owned by the Chief William King alluded to in the last mentioned letter, but three of them, Nos. 353, 354 and 355 belonged to another Chief, Ihaia Kerikumera, who was anxious to complete Petitioner's title to the same as the lawful purchaser thereof,

and to give him immediate possession, which he claimed the right of doing without the consent of W. King, but the Government always declared itself unable effectually to extinguish the Native title and to give Petitioner a Crown Grant until the consent of William King and his people had been obtained, and direct efforts were in fact made by Messrs. McLean and Parris (not then a Government officer) and also by Ihaia to obtain such consent, your Petitioner on one occasion having been personally introduced by Mr. McLean to William King as about to take possession, and his consent asked.

18. That after obtaining such authority your Petitioner proceeded to New Plymouth in the hope of being able at once to act thereon and to obtain the consent of William King, the said Mr. McLean having already gone there for the express purpose of acquiring lands from the Natives, and on arriving at Taranaki, Petitioner was informed by the authorities that negotiations were pending for a purchase of lands near Waitara, which would result in the Government being able to perform all their contracts, and Petitioner was requested not to act on his said authority, whereupon he wrote and sent a letter to Mr. Halse, the Commissioner of Crown Lands, and also to the Commissioner of Native Purchases, of which the following is a copy:—

“Ship” Hotel, Taranaki,
12th August, 1852.

SIR,—

Having authority from His Excellency the Governor-in-Chief to negotiate with the Natives for the possession of my lands at the Waitara (North Bank), I beg to inform you that I have arrived here for the purpose of ascertaining the exact position of Government proceedings with respect to the outstanding claims. Finding that yourself and the other authorities are actively engaged in treaty with the Chiefs of the different Tribes, for the purchase of lands in the district of the Waitara, I beg to assure you that I shall abstain from all communication with the Natives likely to interfere with the success of your negotiations, on the distinct assurance that nothing will be done to prejudice my present position, and that equal endeavour will be in due course made for obtaining possession of my sections. Awaiting your reply I beg to subscribe myself

Your obedient servant,
AUGUSTUS B. ABRAHAM.

Donald McLean, Esq., J.P.,
Commissioner, &c., &c.
W. Halse, Esq., J.P.,
Commissioner of Crown Lands.

19. That Petitioner received the following letter from Mr. McLean in reply to such communication:—

Taranaki, 17th August, 1852.

SIR,—

I have the honor to acknowledge the receipt of your letter of the 12th instant, informing me that you had the authority of His Excellency the Governor-in-Chief for negotiating with the Natives for your lands at the Waitara, but since Government is treating for the purchases there and elsewhere you would not do so on the understanding that your present position was not thereby affected. This assurance I can readily give, and at the same time I have to thank you for the motives which occasion you to withhold communication with the Natives whilst active measures are being taken by the Government for the same end.

I have, &c.,
DONALD McLEAN,
Land Commissioner.

A. B. Abraham, Esq.,
&c., &c., &c.

No. 52-234. 20. That Petitioner also made a similar communication to His Excellency Sir George Grey, and that in reply thereto he received a letter from the Civil Secretary, of which the following is a copy:—

Civil Secretary's Office,
Wellington, 6th September, 1852.

SIR,—

I have the honor, by direction of the Governor-in-Chief, to acknowledge the receipt of your letter of the 12th ultimo, having reference to certain orders which you hold for land in the settlement of New Plymouth which has been forwarded to Mr. Halse, the Commissioner of Crown Lands for report. I am to take this opportunity of expressing to you His Excellency's thanks for your desire, which is evinced by your letter, to act in concert with Mr. McLean so as to promote the purchases of land which the Government is now attempting to make in New Plymouth.

I have, &c.,
ALFRED DOMETT,
Civil Secretary.

Augustus B. Abraham,
“Ship” Hotel, New Plymouth.

21. That Petitioner after the receipt of such letters as aforesaid, according to his engagement remained perfectly passive and towards the end of 1853 Petitioner proceeded to Melbourne, leaving his family resident in New Zealand, trusting to be able to return there when the Government should be in a position to fulfil their contracts with him.

22. That in January, 1855, Petitioner returned to New Zealand, and for the third time proceeded with his family to New Plymouth, but in consequence of Native disturbances found no arrangement could be made and he further found that the Provincial Government, acting under the advice of Mr. C. W. Richmond, then the Provincial Attorney, had framed and published certain Land Regulations (see *New Zealand Government Gazette*, 16th December, 1854,) whereby they sought to render the land orders of your Petitioner and other claimants "unavailable and extinguished" unless exchanged for Government Scrip within a limited period, but such particular Regulations were disallowed by the Government in consequence of a memorial from Petitioner and other claimants.

23. That under such circumstances and not wishing to embarrass the Government with the Natives by unduly urging his claim, he again returned to Melbourne, leaving his family in Auckland, and in January, 1857, he again revisited New Zealand when he found that an Act had been passed by the General Assembly during his absence and without any notice, intituled "The Land Orders and Scrip Act, 1856," containing certain clauses which originated with the said Mr. C. W. Richmond then one of the Members for New Plymouth (see Votes and Proceedings, July 23rd, 1856, p. 204) whereby the right of Petitioner and other land claimants to claim their land at Waitara where the Native title might thereafter be extinguished, was taken away and in fact handed over to the Province, each claimant being thereby obliged to accept in lieu of each 50 acre section, one acre of Town land, 12 acres of Suburban, or 50 acres of Rural.

24. That Petitioner remonstrated with the individual Members of the Government on the injustice and illegality of such Act, who excused the same solely on the plea of public expediency, but promised to review the measure on the next meeting of the General Assembly; if the Act was left to its operation by Her Majesty, then represented to be uncertain, and Petitioner then again returned to Melbourne.

25. That in January, 1859, Petitioner returned for the third time to Auckland from Melbourne, when he found that a further Act had been passed during his absence, and without any notice by the General Assembly (21, and 22, Vict. No. 77.) by which the said objectionable clauses of the former Act were re-enacted, but increased compensation given as hereinafter explained.

26. That His Excellency the Governor did not assent to such Bill, but reserved the same for the signification of Her Majesty's pleasure, because as he informed Petitioner he considered its provisions as a confiscation of the rights of the land claimants, and Petitioner then memorialized His Excellency on the subject, who referred such memorial to which Petitioner refers, to His Responsible Ministers, but the Royal assent was ultimately given and proclaimed, on the 22nd July, 1859.

27. That, whilst the said Act was in progress through the Legislative Council, Mr. Fred. A. Carrington, who in his own behalf, and as agent for Messrs. Tunno, Dunne, and others, claimed to be entitled to the greater portion of the block now known as Teira's Block, remonstrated with the Hon. C. W. Richmond thereon, and threatened to memorialize the Colonial Government and the Imperial Parliament if the same were persisted in, when the Hon. C. W. Richmond represented to him that the Waitara land would not be acquired by the authorities, in order to be handed over to the land claimants on account of the great expense necessary for the purpose, and he urged the injury that would thus accrue to the settlement founded by the said Mr. Carrington and its settlers if he persisted in his opposition, and the said F. A. Carrington, entirely influenced by such representations, was induced to accept the increased terms of compensation then expressly agreed on between them, namely 37½ acres Suburban land instead of 12 acres, and 75 Rural acres instead of 50 acres, and the said C. W. Richmond then represented, that efforts should be made to acquire the Waitara land, and that a Town should be laid out thereat, where the one acre of Town land to be given as compensation at the option of the claimants might be selected.

28. That the said Mr. Richmond obtained from the said Mr. Carrington an official letter, whereby he recorded his consent to such arrangement, which he still has in his possession or power, and under such circumstances the Act was proceeded with and passed, but although the necessity for written consent on the part of land claimants was then recognised, no communication whatever was held with Petitioner on the subject although known to be in Melbourne, and he has only recently been informed of such arrangement with the said Mr. Carrington.

29. That since the passing of such Act, the Government of the Colony has proceeded to acquire land at the Waitara for the benefit of the Province.

30. That Petitioner respectfully submits, that the provisions of such Act are not only unjust but contrary to law, for the following reasons.

1. That the award of Her Majesty's Commissioner ascertained and fixed with the force of a judicial decision, the liability of the Crown to extinguish the Native title to such lands, and so to enable the New Zealand Company and its assigns to perform its contracts, and that such was the character of the said award, has been recently admitted by the Responsible Ministry of New Zealand, who have expressly insisted thereon, in and by their memorandum on the Taranaki question, dated 28th December, 1860, p. 4, signed C. W. Richmond.
2. That such liability has been recognised as before stated, not only by successive Colonial Secretaries but also in the particular instance of Petitioner's claims, always treated as a promise or engagement made on behalf of Her Majesty, which the Governor of New Zealand, Sir George Grey, had power and was bound to fulfil.

3. That such contracts were ultimately adopted by the British Government, and are expressly recognised and affirmed by various Acts of the Imperial Parliament before mentioned, and also by the direct instructions of Her Majesty, and that Sir George Grey in fact proceeded to fulfil the same accordingly.
4. That the 72nd section of the Constitution Act, under which alone the Legislature of New Zealand can deal with the lands of the Colony, carefully distinguished the lands or claims to land lately belonging to the New Zealand Company from other lands already acquired by the Crown, and those thereafter to be acquired and merely authorises the Assembly to deal with them as taken by the Crown under the 10 and 11 Vic., c. 112, viz., subject to the contracts of the Company with third parties, and Petitioner respectfully submits that if the Assembly assumed to pass the Land Order and Scrip Act, 1858, by virtue of such section, such legislation "would seem to be illegal on the face of it" as it virtually destroys the contracts or charges so imposed or sanctioned by the Imperial Act.
5. That if the Assembly dealt with the rights of Petitioner and others, as existing contracts merely of a personal or mixed character, such legislation would be equally opposed to the Imperial Acts recognizing and affirming such contracts and also as being repugnant to the law of England within the meaning of the 53rd section of the Constitution Act, inasmuch as no rights of British subjects can be taken away or dealt with on the footing of compensation, without full investigation on notice to the parties interested, and except on proof of the existence of some public exigency necessitating such direct personal legislation.
6. That upon no plea of expediency, political, financial or otherwise, could any public exigency justifying the measure be suggested to exist, until the Native title to the lands in question had been fully extinguished and that if the object were to relieve the locality of New Plymouth from a supposed liability to the burthen of extinguishing such Native title, the measure is in every sense a mere private Bill requiring judicial investigation and considering the very few claimants, ought to have been dealt with accordingly.
7. That the contracts of the New Zealand Company with those interested in the other Southern Settlements have been respected and duly carried out, and that the arbitrary character of the measure in question is still further evidenced by the unjust distinction made by the Act itself between the claimants of land at Manawatu in the Province of Wellington, and those in the Province of Taranaki, the former being declared entitled to retain the particular sections selected whenever the Native title shall be extinguished whilst the latter are deprived of that right.
8. That this distinction is the more unjust and illegal, inasmuch as the purchase of the land at Manawatu by the Company was disallowed by Her Majesty's Commissioner, whilst that of Taranaki was judicially affirmed.
9. That if the case were one calling for legislation on the footing of compensation, which Petitioner denies, the compensation awarded by the said Act is in fact wholly inadequate.

Your Petitioner therefore prays that this Honourable House will review its legislation on the subject, and that if necessary a Committee may be appointed to enquire into the matters herein alleged and that the sections of the said "Land Order and Scrip Act, 1858," which deprive Petitioner of his right to claim his said sections of land when the Native Title is hereafter extinguished may be repealed, and that in case this Honourable House shall deem it necessary to pass any measure providing for the settlement of such land claims at the option of claimants, a proper tribunal may be constituted for ascertaining the amount and nature of the compensation to be awarded to those who may elect to avail themselves of its provisions according to the circumstances of each particular case; or that your Honourable House will be pleased to adopt such other measures as shall seem to you advisable for the purpose of protecting the just rights of Petitioner.

And your Petitioner will ever pray, &c.

AUGUSTUS B. ABRAHAM.

Auckland, 28th February, 1861.