

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.”

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.