

PAPERS

RELATIVE TO CLAIMS OF CERTAIN WAIKATO MILITIAMEN FOR ADDITIONAL PAY.

No. 1.

Copy of a Letter from Mr. T. B. GILLIES to the Hon. E. W. STAFFORD.

SIR,—

Auckland, 22nd February, 1866.

I am instructed by Messrs. W. A. Gray, of the Second Waikato Regiment, John Brown, of the Third Waikato Regiment, and John Carlisle, of the Fourth Waikato Regiment, on behalf of themselves and their comrades, to take the necessary steps for enforcing their claims against the Colony for pay and allowances due to them under their terms of enrolment as Military Settlers, until relieved from actual service by the Proclamation of 5th December last.

Before doing so, however, I consider it to be due to the Government to lay definitely before you the grounds on which these claims are made, as I feel sure that your Government would not knowingly repudiate engagements entered into by the Government of the Colony with these men, and that the refusal of their claims hitherto must have arisen from these grounds not having been distinctly laid before you.

These claims are founded on a distinct printed agreement, signed by the men on their acceptance by the Government Agent, one copy of which I have before me. It states :—" I do hereby declare that I fully understand the conditions hereunto annexed, and I do engage and agree to be bound thereby, and punctually on my part to fulfil all the terms thereof." The agreement and conditions are virtually the same as those published in the Government *Gazette*, signed by "George Dean Pitt," and dated "Auckland, August 4, 1863." One of these conditions is :—"Every settler under these conditions who, upon being relieved from actual service, receives a certificate of good conduct, will be entitled to one town allotment and one farm section." From this it appears that relief from actual service is a condition precedent to any settler becoming "entitled" to his land. Another condition is :—"He will be enrolled and required to serve in the Militia in the Province of Auckland, and will be entitled to pay, rations, and allowances accordingly," until he is authorized by the Government "to take possession of his land, when he will be relieved from actual service." At first sight this condition might appear to imply that the settler would receive possession of his land first, and then immediately after be relieved from actual service. That this is not the true interpretation is evident from the comparing it with the previous condition, and from the consideration that the land was not "his" until he became entitled thereto by relief from actual service, and by receipt of a certificate of good conduct. The sequence of events contemplated by these conditions appears to be: 1st., relief from actual service; 2nd., certificate of good conduct; 3rd., becomes entitled to land; 4th., authorized to take possession of the land to which he has become entitled. Until happening of the latter event, which cannot occur until the three former have occurred, he is entitled to pay, rations, and allowances.

This interpretation further appears to be the correct one, from the consideration that until the men were relieved from actual service they could not possibly take possession of their farm land, lying, in many cases, over twenty miles distant from the scene of their duties, the camp from which they dare not absent themselves. The Proclamation of 5th December, 1865, taken in conjunction with General Order No. 5, of 4th March, 1865, which states that the "officers and men will still remain upon actual service, subject to the provisions of the Militia Act and Articles of War, and will be liable at any moment to be called out for consecutive duty," is conclusive of the fact that until 5th December, 1865, the men were not relieved from actual service.

It is urged, however, as I understand, that because in March last the lands were balloted for and selected by these settlers, and many of them then took possession of the town acres selected by them, they then ceased to have right to pay, rations, &c., on the ground that they were then "authorized by the Government to take possession of their land." In reply to this, I would observe, first, that it was not their land until they became entitled to it by relief from actual service; misconduct, prior to relief from actual service, would have forfeited all their claim; whereas, misconduct after such relief would not affect their title to the land, which had then already vested. Next, I would remark, that although they in March selected their lands, and in some instances had since occupied the town lands so selected, they were never "authorized by the Government" to take possession; no certificates of occupation were issued; no proclamation published; no public announcement made authorizing them to take possession. No possession was taken of their farm lands. Their taking possession of the town lands was simply permitted by the Government, and in some instances that permission was withdrawn and men removed from the lots on which they had settled, which could not have occurred had they once been lawfully authorized to take possession and become entitled to the land. That the selection and occupation, in March, was not an authorization by the Government, appears almost to be recognized by the Proclamation of 5th December, which recites that various officers, &c., "have now been authorized to take possession of their land."

No doubt others of the conditions speak of the rights and duties of these settlers, "after taking possession," but that possession must mean legal possession under the authorization of the Government consequent on their becoming "entitled" to land upon relief from actual service.

The Honorable Minister for Colonial Defence, in his letter to Colonel Harington, of 30th December last, relative to this matter, seems to take up the position that these settlers were only entitled to such pay, and on the same conditions, as other Auckland Militia, and that because the Auckland Militia, "while on actual service but not doing any duty, were not receiving pay,"