A.—No. 13.

FURTHER PAPERS

RELATIVE TO

NATIVE AFFAIRS.

PRESENTED TO BOTH HOUSES OF THE GENERAL ASSEMBLY, BY COMMAND OF HIS EXCELLENCY.

WELLINGTON.

1866.

SCHEDULE

Of PAPERS relative to SITTINGS of the COMPENSATION COURT at NEW PLYMOUTH, and the Settlement out of Court of Claims.

PAPERS RELATING TO SITTING OF COMPENSATION COURT AT NEW PLYMOUTH.

No. 1.

STATEMENT of the Proceedings of the Compensation Court at the Sittings held at New Plymouth, from the first day of June, to the twelfth day of July, 1866.

Present:—Francis Dart Fenton, Esq., Senior Judge; John Rogan, Esq., Judge; Henry Alfred Home Monro, Esq., Judge.

Mr. Atkinson appeared for the Crown.

I must premise that when I use the words "owner" or "ownership," or other terms of art as applied to the Maori title to land ("tenure" would be an objectionable word for the same reason) I use them in a non-technical sense, simply because our language supplies no words which fitly express the idea of a Maori holding. From what I have myself seen during a series of Courts now extending over a period of eighteen months, and from what I have gathered of the views of the other Judges, I am impressed with the belief that previously to the arrival of the English among them, the Maoris had no idea (as between each other) of proprietary rights to land. Each individual had a right as against the rest of his tribe to a pretty well defined piece of land, part of the tribal estate, which he could hold and cultivate as against any member of the tribe; but his power extended no further. He could not alienate it out of the tribe, and if he abandoned it another member could take possession. The tribal estate belonged to the tribe, and no man could weaken the tribe by alienating any part of it to another tribe, or person out of the tribe, or to any outsider. Such alienation must be the act of the tribe, or of the more powerful part of it, for force is the true foundation of Maori ownership. This idea will be more easily realized by conceiving each tribe to be a distinct nation, as in truth it was. The laws of civilized States forbidding aliens to hold land, will then assist the imagination, and show that the rule was found on notions of sound polity.

When the English came into the country new ideas were introduced and the idea of ownership began to be asserted, and to be encouraged by the Government, until at length it has received the sanction of written law.

I have merely written these remarks to guard against misconception when I use the words of English law which have a technical signification.

OAKURA BLOCK.

The Court first proceeded with the investigation of the Oakura Block. The titles were found to be extremely simple, and indeed neither in this case nor in the Waitara Block did we meet with any of the extreme complications so great as to leave us often in doubt where the truth lay, which we have met with in our investigations in the Waikato country and elsewhere. The chief difficulties arose from the less of their traditions and genealogies occasioned by the long dispersion and frequent wanderings of the Maori owners of these lands.

The case of the absentee claimants was first taken. Their rights were generally admitted by the residents, but as the contest was not between them and the absentees, but between the absentees and the Crown, we did not attach much weight to their opinion.

The Court finally came to the following decision on these claims:—

JUDGMENT IN THE CASE OF THE NON-RESIDENT CLAIMANTS AT OAKURA.

The Oakura Block is part of the Middle Taranaki District, constituted a district under "The New Zealand Settlements Act, 1863," by a proclamation of 30th January, 1865, and it was set apart as a site for settlement, declared to be subject to the provisions of the Act, and to be reserved and taken for the purposes thereof by Order in Council made on the same day.

The claims for compensation which have been referred to this Court by the Colonial Secretary are very numerous, and come from many distant parts of the Colony, but they may be collected into the following heads:—(1) Chatham Islands; (2) Nelson and the Middle Island; (3) Wellington; (4) Waikanae and Otaki; (5) Auckland, Waikato, &c.; (6) The Resident Claims.

(1.) The claims from the Chatham Islands amount to 158, and the facts of the case are as follows:—

Previously to the great Waikato invasion between 1820 and 1830, these Chatham Islanders formed part of the great tribe called Taranaki, and resided at Hauranga, on this block. They fled South from fear of the Waikato arms, and after various wanderings finally took possession of and settled in the Chatham Islands. There they have continued to dwell up to the present time, one or more of them having returned to visit their relations, but none of them having re-occupied or having attempted to domicile themselves on their old possessions. Many of the original refugees have of course died, but the children of these persons as well as the survivors of the original migration urge claims to their ancestral possessions. The conclusion at which we have arrived after our experience in the Compensation Court, and as members also of the Native Land Court, is, that before the establishment of the British Government in 1840, the great rule which governed Maori rights to land, was force—*i.e.*, that a tribe or association of persons held possession of a certain tract of country until expelled from it by superior power, and that on such expulsion, the invaders settled upon the evacuated territory, it remained theirs until they in their turn had to yield it to others. It is even very doubtful whether the relations of persons to land was as a rule what in the English sense of the term could be styled

ownership. Land with its places of strength, concealment and security seems to have been regarded more as a means of maintaining and securing the men who occupied it, than by the men who occupied it as a means of defending and maintaining possession of the land; so much so that voluntary migrations were not unfrequent, and we have met with cases in which whole tribes abandon their ancestral territory and migrated to other parts of the country where the means of living were more plentiful, or where by an amicable amalgamation with other tribes they might hope for a more secure or comfortable existence. A case of this sort appears to have happened on this very block to which a tribe voluntarily migrated from Kaipara, who merged themselves into the Taranaki tribe of which they now form an integral part, and in which its members can no longer be distinguished. We do not think that it can reasonably be maintained that the British Government came to this Colony to improve Maori titles or to reinstate persons in possessions from which they had been expelled before 1840, or which they had voluntarily abandoned previously to that time. Having found it absolutely necessary to fix some point of time at which the titles as far as this Court is concerned must be regarded as settled, we have decided that that point of time must be the establishment of the British Government in 1840, and all persons who are proved to have been the actual owners or possessors of land at that time must be regarded as the owners or possessors of those lands now, except in cases where changes of ownership or possession have subsequently taken place with the consent, expressed or tacit, of the Government, or without its actual interference to prevent these changes.

Compelled by absolute necessity to lay down a rule for our guidance as to the time and circumstances when the ownership or title of expelled owners could rightly be regarded as having terminated, we can find no other rule to establish than the one now expressed, and we have endeavoured to adhere to it as a fixed rule for our inquiries under the New Zealand Settlements Acts, where the questions at issue are matters purely between the Crown and a portion of its Maori subjects. Of course the rule cannot be so strictly applied in the Native Land Court, where the questions to be tried are rights between the Maoris *inter se*, but even in that Court the rule is adhered to except in rare instances. If greater latitude is allowed and the date of ownership is permitted to be variable the confusion will be such as to render any solution of this great question upon any principle of justice, perfectly hopeless. Thus, we know that there are claims preferred by the Otaki natives to Maungatautari and the whole of the Waikato from which countries they have been long expelled, and from which at an earlier date they themselves drove out other tribes. Again Te Rauparaha's people claim Kawhia on similar grounds and have sent in claims.

We find then that according to the evidence, that branch of the Taranaki tribe who now inhabit the Chatham Islands were expelled from this part of the Colony by the Waikato tribes previously to the year 1830, and that since the establishment of the Government in 1840 none of these persons have returned to re-occupy the lands from which they were driven, and we therefore think that they have no title interest or claim to any land within this block on account of which the Court can order compensation.

2. Nelson and Middle Island Claims.

These claims amount in number to 216, and the persons claiming belong to Ngamahanga tribe. Like the Chatham Islanders, those who survived the Waikato invasion fled South. After sojourning some time at Kapiti and elsewhere they invaded the Middle Island. There they succeeded in establishing themselves and took possession of territories part of which they have alienated to the Crown, and part of which they still retain and occupy. Up to the present time none of them have ever returned to occupy any portion of this block, with the exception of one person, Wi Ruka, and accordingly we disallow all the claims except his; and as it has been proved in evidence that this claimant did return and re-unite himself with that portion of the tribe which has re-occupied the land since 1840 we admit his claim.

3. Wellington Claims.

The claims from persons now residing in Wellington number altogether 61. Like the preceding, these claimants or their parents fled South from the Waikato invasion, united themselves with Rauparaha, and conquered for themselves territory in the neighbourhood of Wellington, on portions of which they still reside, the greater part of it having been alienated by them to the Crown. None of this class of claimants have ever returned to re-occupy any portion of this block, and their claims are therefore disallowed.

4. Waikanae and Otaki.

This class of claimants amount in number to 137. They also abandoned their possessions on this block and fled South from the Waikato tribes, and after sojourning sometime at Kapiti and elsewhere settled down at Waikanae and in its neighbourhood. None ever returned to re-possess themselves of any portion of this block except Rawiri Motutere who came back and cultivated the soil since 1840. We therefore admit his claim. We also admit the claim of Wi Tamihana Te Neke, who on the sale of the Tataraimaka Block to the Crown came back and asserted his right to a portion of the payment. His right was admitted by the tribe, and it has not been proved to the Court that any protest or objection was made by the Agent for the Crown. As the Crown therefore has tacitly admitted his right we do not feel that we can now exclude him on the ground of his never having re-occupied. One letter from Waikanae purporting to be signed by 125 persons, asserting a title to "land from Waitaha to Mokau and from Okurukuru to Nukumaru" and protesting against the land being stolen (keia, translated "confiscated") has been referred to us by the Colonial Secretary, and we reject it as in no way being a claim, nor even purporting to be so.

5. Auckland, Waikato, etc.

The claimants from the North are persons who where taken prisoners in war by the Waikato and Ngapuhi tribes and are five in number. Great numbers of prisoners of war have returned to Taranaki since the establishment of the Government. With the tacit if not with the expressed approval of the Government they have rejoined their tribes, and taken possession of their ancestral lands. These persons now appear in the ranks of the Resident Claimants, and their rights have been admitted by the

Government so completely that the Land Purchase Commissioners have purchased lands from them and required their signatures to deeds of conveyance. Their claims are therefore admitted, but those prisoners of war who did not return to occupy are on the rule above laid down excluded.

The case of the resident owners of course involved, firstly, an inquiry as to what parts of the block each hapu owned; and secondly, which of the members had joined the rebellion, or done some act which brought them within the fifth clause of the Act of 1863. For brevity's sake I hereafter call this class of persons "rebels."

The evidence clearly divided the block into four great estates, coloured on the map and marked thus, A., B., C., and D. The Tataraimaka Block, forming part of C., was sold some years ago to the Crown.

We found that the loyal and rebel owners were as follows:—

	Loyal.	Rebel.	Total.
A.	31	38	69
B.	24	35	59
C.	13	39	52
D.	47	76	123

I should add that there were not altogether this number of individuals, the same person appearing sometimes in two or more of the estates into which we divide the block. Non-adults whose parents, or one of them through whom they claim are alive, are not included. The whole block belonged to the tribe Ngamahanga, and contained 27,500 acres, thus divided:—A., 10,500 acres; B., 4,500 acres; C., 3,000 acres; D., 9,500 acres.

Finding it (as we have always done) impossible to appraise (as it were) the value of the chiefs on the loyal side, or on the rebel side, we took each man on each side to be of the same value, or to have an equal estate in the land. We have thus arrived at the result, by simple rule of three, that—

In A., 4,717 acres are represented by loyal owners.
In B., 1,830 „ „ „
In C., 750 „ „ „
In D., 3,630 „ „ „

Thus the tribal estate being 27,500 acres, the owners remaining loyal represented 10,927 acres of it.

The land was valued by the surveyors at prices, according to the situation, of £5 per acre, £4, 30s., 10s., and 5s. The price of 5s. was placed upon that part of the map striped black, which is a range of mountains stated by the scientific witnesses to be unfit for cultivation, and one of them added that it had not been cut up for military settlements, because the Government thought it not fair to place them on such land.

Deducting this worthless land, containing about 8,000 acres, we have a residue of good land amounting to 19,500 acres. Taking the proportion of loyal and rebel owners as above stated, we found that the loyal claimants were entitled to 7,400 acres of available land. Subsequently in this paper I have excluded the 8,000 acres of mountain from the calculations on both sides.

The Crown Agent, in his address to the Court at the end of the proceedings, differed very little from the conclusion at which we had arrived between ourselves, and estimated the land to be provided at about 10,000 acres. This estimate includes the unavailable land. See his speech very fairly reported in the *Taranaki Herald* of the time.

My notes of his address and of the subsequent proceedings are as follows:—

Extract from Mr. Fenton's Notes.—Friday, 15th June.

"Mr. Atkinson addressed the Court on the case generally.

"The Act of 1863.

"*Gazette* of 30th January, 1865.

"The Order confiscating Oakura.

"The whole has been used as a settlement except 2,500 acres, and contains between 25,000 and 26,000 acres.

"With reference to numbers, I take it that rebel and loyal must be assumed to be of equal weight as to ownership. We cannot individualize or calculate the value of the individual.

"I elect to give land in lieu of money.

"I take the rebels and loyals as according to the list made out by the Court, which is correct.

"My calculation for C. is 644 acres for the loyals; D., exclusive of the reserve, 2,984 acres; A. 3,920 acres; B. 184 acres. Total 9,732 acres. These reserves are the only lands available for the Court within this block, all the rest is taken by the order of January for settlement. A great part of the land the Natives have never exercised ownership over; they only used 1,000 acres according to Carrington.

"The x section the word 'extent' means 'absolute superficies,' and might extend to the shape.

"After he had concluded, I asked Mr. Atkinson to enlarge on the question of authority to occupy, and allot these lands in the manner it had been done. I told him that he seemed by his address only to rely on the words of the order taken for settlement, and I asked him what he would say to the 17th clause of the Amendment Act.

"The land might be occupied by Military Settlers either under this clause or the Order in Council.

"Ropata Ngarongamate in reply said—As to the extent of our cultivations, I call the attention of the Court to our pigs, horses, and cows, (meaning the run.) I demand that our compensation shall be within the block; the blood of my relatives is on my hand. You must remember my services during the war. My cattle, my sheep, my pigs, and all my property went in the war; my wheat, my cultivations, and I never received anything for them, though the pakehas have all been compensated. What I did was without remuneration, I was never paid, and now let the Government fulfil its promises.

"Parikapa was invited to speak, but was not present.

"Decided—That the decision should be adjourned for consideration. Parties informed that the decision would be communicated to them as soon as arrived at."

I must here observe that no evidence whatever was placed before the Court as to the lawful settlement of this block by Military Settlers, or of its disposal for the purposes of sale. Mr. Atkinson at my request promised to furnish some information on the subject, and at (or about) the conclusion of the case, placed before us copies of the notices of 6th July, 1863, and 3rd August, 1865, containing the terms on which the Government offered to grant land to Military Settlers, and stated that he was unable to give us perfect information. No contracts were proved, nor indeed did the evidence make us acquainted even with what Mr. Atkinson stated in his speech, that all the block was occupied except 2,500 acres. But I take that to be so for the purposes of this statement.

The Court was then in this position. We had in fulfiling our duties to order about 7,400 acres of good land to Natives who had remained loyal, and the Government or other authority (for we do not know what the authority was) had left only 2,500 acres to satisfy these orders. There were then two alternatives; either to oust a sufficient number of these Military Settlers, or order land somewhere else out of the block. And the question is, was either of these courses lawful, and, if lawful, practicable; and if practicable, which was most just, and most in accordance with the intentions of the Legislature. The members of the Court then proceeded to consider the matter amongst ourselves, our great difficulty being that under clause 9 of the Act of 1865, the Crown had elected that land should be given in compensation, whilst in fact there was within the block under adjudication only one-third of the quantity required to satisfy the demands of justice, all the rest having been absorbed by Government or being worthless for agriculture. In piece A. indeed only 700 acres of cultivable land had been left, and of this the Crown Agent with the consent of the Native claimants abandoned 350 acres, or one-half in favor of the children of Mr. Carrington, who had married one of the tribe. The Maoris did this in fulfilment of an old promise, but this honorable discharge of their promises left the tribe with 350 acres of available land. In piece B. and piece C. there was no available land whatever left to satisfy loyal owners. In piece D. about 1,800 acres had been left.

And here I must repeat the difficulty we found ourselves in from the absence of evidence as to what the exact state of the case was, what those allotments on the map meant, *i. e.* whether the place was devoted to military settlement, or partly so, and partly for sale and disposal, and as to who did all this, and under what authority. But we finally determined that we must base our deliberations on this fact, that all the land except 2,500 acres (not noticing the worthless land) was taken either for Military Settlers, or for sale, and we proceeded to consider the legal status of each class of land.

1. Land set apart for Sale.

We presume that some at least of the numerous townships surveyed on the block were intended for this purpose, perhaps also other portions. Then comes the legal question, where was the authority to do this.

The Act of 1863, Session 17 and 18, enacts as follows:

XVII. "After setting apart sufficient land for all the persons who shall be entitled thereto under the said contracts (Military Settlers) it shall be lawful for the Governor in Council to cause towns to be surveyed and laid out and also suburban and rural allotments.

XVIII. "All such town suburban and rural land 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 shall from time to time prescribe for the purpose."

Under the authority of this last clause regulations were made on the 16th May, 1865, which may be seen in the *Gazette*. The Act of 1865 repealed the two clauses above quoted and made a new provision in lieu thereof by clause 16, which is as follows:—

"The 17th and 18th sections of the said Act of 1863 are hereby repealed and in lieu thereof it is enacted 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 consideration and in such allotments whether town suburban or rural or otherwise as he shall think fit and subject to such regulations as he shall with the advice of his Executive Council from time to time prescribe in that behalf Provided that no land shall be sold except for cash nor at a less rate than ten shillings per acre."

Mr. Atkinson informed us that no regulations had as he was aware been made under the clause of the Act of 1865. The question therefore arose—were the Regulations of 1865 still in force, or did they fall with the authority on which they were based, for if they had fallen, the power given by the Act of 1865 being unexercised, the allotments and townships for sale had no legal existence.

This is a question of law upon which we reasoned in this fashion:—

The rule as to the effect of the repeal of a Statute upon acts done thereunder is thus laid down—"When one Statute is repealed by another Statute, acts done in the meantime, while it was in force, shall endure and stand and be good and effectual" (Dwanis on Stat. 544). Again: "It has been long established that when an Act of Parliament is repealed, it must be considered (except as to transactions past and closed) as if it had never existed" (per. Lord Tenderden, in Surtees and Ellison, 7B. and C.752). In an old Colonial case, the learning on this subject was summed by Mr. Justice Chapman. The effect of repealing a Statute is thus broadly laid down by Tindal, C. J., in Kaye *v.* Goodwin 6 Bing. 583—"I take the effect of repealing a Statute to be to obliterate it as completely from the Records of Parliament as if it had never passed, and it must be considered as a law that never existed except for the purposes of those actions commenced prosecuted and concluded whilst it was an existing law." The language of Lord Tenterden, in Surtees *v.* Ellison, as well as that of Parke, B., in Steavenson *v.* Olliver, is to the same effect. This rule has been applied by the Courts to a vast number of dissimilar cases. In Miller's case (1 W. Bl. 451), it was held that a proceeding commenced under an Insolvent Act, but not completed at the time of its repeal, could not be continued after such repeal. So in the case of the Bankrupt Act (6 Geo. IV., cap. 16), which repealed all former Acts and contained no continuing clause, it was held that an Act of Bankruptcy committed under the former Acts would not support a commission under the new Statute, and that no proceeding under the old

Acts could be continued or acted upon after their repeal; and in one case, even enrolment of completed proceedings, merely so as to make them evidence, was refused (Surtees *v.* Ellison, 2B. and c.750; Phillips *v.* Hopwood, 10B. and c.39; Maggs *v.* Hunt, 4 Bing. 212; Kaye *v.* Goodwin, 6 Bing. 576; Worth *v.* Budd, 2B. and c.172). The rule has been applied to a felony at common law made liable to an aggravated punishment by an Act of Parliament, which last punishment it was held by all the Judges could not be inflicted after the repeal of the Act, though the offence was committed while it was in force (R. *v.* Mackenzie, R. and R.'s C. C. 429). The Court of Exchequer also refused an application for costs upon certain proceedings under a Statute repealed after the proceedings were heard, but before the application (Charrington *v.* Matheringham, 2M. and w.228, and Warne *v.* Beresford, 2M. and w.848). Most of the cases where the rule has been applied are reviewed by the Court of Queen's Bench in "The Queen *v.* Inhabitants of Mawgan, 8 Ad and Ell. 476," in which case the Court arrested judgment in certain proceedings against the defendant for the non-repair of a highway under an Act of Parliament, the Act having been repealed pending the proceedings (see R. *v.* Taylor, Sup. Court, N. Z.). The sum therefore of the preceding judicial dicta is that Acts repealed are (except as to rights acquired) things done and completed, and suits commenced and concluded under them, as completely obliterated by the repeal as if they had never existed (unless the repealing Statute contains a continuing clause).

Can then the powers conferred upon the Governor in Council by "The New Zealand Settlements Act of 1863," and exercised by His Excellency by the Order in Council of May, 1865, take rank in the above category, and assert a claim to existing validity, either as:—1. A right acquired; 2. A thing done and completed; 3. A suit commenced and concluded?

It needs no argument to show that the third head can have no application to this question, or that the regulations for the disposal of lands taken under the Act of 1863 can in no sense be called a right. If persons have acquired rights thereunder such rights will come under the second head, viz.:—

(2.) Things done and completed. It may be asserted that the Order in Council was immediately that it had passed the Executive Council of the Colony a "thing done and completed." Here, however, is an evident confusion of terms. The words "Order in Council" have two significations, the abstract and the concrete, that is to say, the spirit of the thing signified, and the outward visible sign of the thing; or, in other words, the instrument which evidenced the ideas, and the ideas themselves. Doubtless the "Order," speaking of it as a thing composed out of matter destructible, tangible and composed of atoms that may be separated, was and is perfect and complete in itself, but the Order in its significative sense, as a power to certain persons to dispose of and grant land is a thing incomplete, continuing, and in all respects incapable of becoming a "past transaction" until it is either extinguished, or all the land over which it can possibly work is disposed of under its operation. On the confusion which may be caused in the mind by nomenclatures, and the necessity of nicely discriminating between the outward sign and the inward idea. (See *Whately on Logic.)*

The simple fact that these regulations are still upheld as in process of active administration, and the towns and village sites which encumber this block are maintained as legally constituted thereunder is sufficient to show that the power conferred is still executing and not executed, and no final and undeterminable interest can vest while this condition exists, for every executing power is liable to be defeated. (See *Sugden on Powers*, p. 66.)

Again, where a term is created by a settlement to raise portions with a general power of revocation of the settlement, although the portions become actually due, yet, while the power subsists, it suspends and prevents the portions from being payable, because the donee of the power may revoke at any time before the portions are raised and paid although the right to the portions is become vested under the terms of the settlement. (See *Sugden*, 131.)

Every estate which is executed necessarily possesses a vested interest; on the other hand no interest can be allowed to be vested while it gives an interest which is executory. The notion of an executory interest is irreconcilable with the idea of a vested interest.

It follows that the terms "executed" and "executory" contrasted with each other have one sense at least peculiar to themselves, and not common to the contrasted terms "vested" and "contingent." (See *Preston on Estates*, Vol. 2.)

If then the Order in Council constituting these regulations is still to retain any validity the powers contained in it (*i.e.* its essence) are still subsisting and in process of execution, and therefore cannot be said to be a "transaction done and completed." But if this delegated legislation with all its attributes is not a "transaction done and completed" it fell with the destruction of the Act which authorized it, *i.e.* the 18th clause of the Act of 1863. And this is a logical dilemma.

The words "things done and completed" will have a direct application to grants signed and sealed before the repeal of the empowering clause, if any such have been made, though the equitable estate acquired under incomplete contracts (if any) must be treated as of no validity, and requiring the interposition of the Legislature to be again set up.

It appears then that the Regulations for the disposal of lands under the 18th clause of the Act of 1863 fell with the repeal of the clause by the Act of 1865, and all the townships and allotments surveyed and laid out thereunder have now no legal existence, and all contracts for the sale of any parts of them are void, and this block of land can only be encumbered, as to the operations of the Court, by the contracts made with Military Settlers.

2. Contracts with Military Settlers.

As before stated, there was a great deficiency of evidence on this matter. The only real evidence before us consists in the terms put in by the Crown Agent, offered by the Government.

The first of these documents, dated 6th July, 1863, was issued many months before "The New Zealand Settlements Act, 1863," was passed, and in the absence of any evidence on the subject, the Court was entirely unable to discover on what authority land "between Omata and Tataraimaka" (the parts called A. and B. in this block), were offered to be granted to settlers.

One of the papers put in purported to be signed by an individual who accepted the terms, but his signature was dated before the Order in Council confiscating the lands.

These terms are as follows (so far as they affect this inquiry.)

Extract from the *New Zealand Gazette* of the 6th July, 1863.

"Colonial Secretary's Office, Auckland, 6th July, 1863.

"His Excellency the Governor has been pleased to direct the publication, for general information, of the following conditions upon which land situated between Omata and Tataraimaka, in the Province of Taranaki, will be granted to settlers.

"ALFRED DOMETT.

"*New Zealand.*

"Conditions upon which land situate between Omata and Tataraimaka, in the Province of Taranaki, will be granted to settlers:—

1. "Settlements will be surveyed and marked out at the expense of the Government.

7. "Priority of choice will be determined by lot.

9. "Each accepted applicant will be provided, at the expense of the Government, with a steerage passage to New Plymouth. Before embarkation he will be required to sign a declaration and agreement to the effect that he understands and will be bound by and fulfil these conditions.

10. "On arrival at New Plymouth he will be enrolled, and required to serve in the Taranaki Militia. He will be entitled to pay and rations accordingly, until he is authorized by the Government to take possession of his land, when he will be relieved of 'actual service.'

14. "On the expiration of three years from the day of his arrival at New Plymouth, each settler having fulfilled the conditions, but not otherwise, will be entitled to a Crown Grant of the town allotment and farm section allotted to him, and will thenceforth be subject only to the same Militia services as other colonists.

"*Form of Declaration and Agreement.*

"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 other document handed in is dated 3rd August, 1863, also antecedent to the Act of 1863, and resembles the previous one, except that it has application to land generally in the Northern Island of New Zealand.

The parts essential to our present purpose are as follows:—

Extract from the *New Zealand Gazette* of the 12th September, 1863.

"*Settlers generally.*

"Colonial Secretary's Office, Auckland, 3rd August, 1863.

"His Excellency the Governor has been pleased to direct the publication for general information of the following conditions upon which land situated in the Northern Island of New Zealand will be granted to settlers willing to perform the after-mentioned military services.

"ALFRED DOMETT.

"*New Zealand.*

"Conditions upon which land in the Northern Island of New Zealand will be granted to settlers willing to perform the after-mentioned military services:—

4. "Each man according to his rank will be entitled to pay, rations, and allowances, until he is authorized by the Government to take possession of his land, when he will be relieved from 'actual service.'

5. "Settlements will be surveyed and marked out at the expense of the Government, in such localities in the Northern Island as the Government may select for that purpose.

10. "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.

11. "Priority of choice for each rank will be determined by lot.

15. "On the expiration of three years from his enrolment, each settler, having fulfilled the conditions, but not otherwise, will be entitled to a Crown Grant of the town allotment and farm section allotted to him; and will thenceforth be subject only to the same militia services as other colonists.

"*Form of Declaration and Agreement.*

"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."

Now it must be observed that the Act of 1863, in section 16, authorizes the Governor to lay out of lands taken under that Act a sufficient number of towns and farms "to give full effect to the provisions of the several contracts theretofore or thereafter to be entered into by the Government with persons for the granting of land to them in return for military services, subject to the conditions of the 'several contracts.'" These contracts, therefore (supposing them to have been made, which as stated before was not proved to the Court), would all be set up by the retrospective operation of this clause. And taking them to have been validly made we must inquire into the terms of them. It needs not in dealing with the present question to notice the contingencies of good service, &c., which are required to entitle a settler to his land. But each settler has three distinct steps to take or to submit to:—Firstly he has to chose his land: secondly he has to take possession of his land when authorized by the Government: and thirdly, after three years he is to obtain his grant. The third head does not much concern the present case, for the first two steps would establish an equitable title in a settler to a specific piece of land, and perhaps the first would do so alone, combined of course with the making of the contract and the performance of his part thereof. But it was not shown to the Court that even this first step had been taken,—and whether it had been taken or not I am at present in entire ignorance. If it had not been taken it is evident that no Military Settler had a claim to any specific piece of land, but each settler's right much resembled that of Mr. Lewthwaite's right, under the Land Order and Scrip Act, which run over the whole Province.

We were then left in entire ignorance of the transaction which had taken place between these Military Settlers and the Government, and of course could not decide whether they were entitled to

all the rights under the existing laws, which they might have been entitled to if everything had been done in their favor which the law allowed.

I may now add, that in all our consultations we agreed that we ourselves would call for further evidence on these points before delivering any judgment, evidence which we would call and take ourselves, and regard as not produced by either side. We then proceeded to consider the case between the Crown and the loyal Natives, as if these Military Settlers were as well placed as they could possibly have been, supposing that everything had been done rightly, and according to the view of the case taken by the Crown Agent.

RIGHTS OF MILITARY SETTLERS AS AGAINST LOYAL OWNERS OF LAND ON WHICH THEY ARE LOCATED.

It then becomes our duty to try to discover whether it was the intention of the Legislature that the Government should oust Native owners who had remained loyal from their portion of the tribal estate, and place Military Settlers thereon.

It appeared to us that this point was since the passing of the Act of 1865, involved in the greatest obscurity and doubt.

Under the Act of 1863 the mind of Parliament was clearly shown. A tract of country was taken for settlement (*i.e.* for the purposes of the Act, not necessarily for military settlement, as agreed by Mr. Atkinson), and thereupon all titles of every sort became extinguished, and the only rights that loyal owners had was the right of obtaining compensation in money for the loss of their lands. The Court had no power to order land in compensation. The Act was clear and stringent. After the Act came into operation and land was taken thereunder, and the Compensation Court had held some sittings, the Government began to discover (at least this is our view of the matter) that the Act was unnecessarily and injuriously stringent not only as respects the Native claimants, but also as affecting the interests of the Crown; accordingly we find that in the Regulations made, of the 16th of May, 1865, for the disposal of the Confiscated Lands, an attempt was made to modify the stringency of the Act. Possibly the Government was moved to make this attempt either by the large money orders which had issued from the Compensation Court on account of the Pukekohe and other blocks, or possibly by the discovery that they were prevented by the strict letter of the Act from keeping the promises which they had entered into with the loyal Natives, and which had been expressed in the most solemn manner known to our form of administration, viz., by Proclamations under the Great Seal of the Colony. We accept the latter reason as the more fitting for Courts of Justice to believe in on the strength of Lord Coke's great maxim: "The honor of the Crown is to be preferred to its profit." The attempt was made in the last clause of the Regulations in the following words: "Any agent of the Government duly authorized may agree with any person who may be entitled to compensation under the provisions of 'The New Zealand Settlements Act, 1863,' that such person shall receive such portion of the said suburban and rural land in lieu of money compensation as may be agreed upon between such person and agent." The great defect here is of course the absence of any judicial authority to intervene and decide between the Crown and the claimants, and we are not aware of any case in which this clause was acted upon.

Our view of the Act of 1863, and the regulations of May 1865 then is, that the rights belonging to or to be acquired by the undermentioned classes were to rank in the following order:—

1. The Crown, *i.e.* roads and public purposes; 2. Military Settlers; 3. Ordinary purchasers of superfluous lands. 4. Loyal owners who might take land in lieu of money.

A few months after this Order in Council of May, 1865, was made, still we find the change in the mind of the Government more marked. Several Orders in Council confiscating large blocks of land were made in the September following in which a new clause was introduced, by which the rights of the loyal Natives were absolutely protected as far as public safety would allow.

I will copy this new provision here, for it is very remarkable, and is of great assistance in the endeavour to make the Act of 1865 work with that of 1863, which can only be done by obtaining a broad and clear view of the intention of Parliament in the changes made by the former. "And (His Excellency the Governor) doth hereby further declare with the advice and consent aforesaid that no land of any loyal inhabitant within the said district (the district proclaimed in the previous part of the order) whether held by Native custom or under Crown Grant will be taken, except so much as may be absolutely necessary for the security of the country, compensation being given for all land so taken."

I must here pause for one moment to remark that the expression "land of any loyal inhabitant" cannot be held to mean land to which any loyal Maori may have a sole proprietary title, for all the Judges of the Court and also of the Native Land Court, after our experience, are firmly convinced that such a thing does not exist and that the idea of such a thing is contrary to the truth of Maori ownership.

A sole proprietary right could only exist when a tribe had become reduced to one man. The only meaning therefore that the above quoted words can be made to bear is the portion of the tribal estate which belongs to any individual of the tribe, that is to say, his share, dividing the number of acres of the tribal estate by the number of persons constituting the tribe.

Again "so much as may be absolutely necessary for the security of the country" cannot mean land for military settlements otherwise the limitation is reduced to nothing. A change was intended from the previous system of taking and using lands, and if these words are extended as above supposed, no change is effected and the limiting clause fails altogether.

But the rule of interpretation applied to Statutes (and an Order in Council is the exercise of a delegated power of legislation to which the same rules are applicable) is that effect must be given to a provision if possible, *let res magis valeat quam pereat.*

We must find then some new meaning in the words "absolutely necessary for the security of the country" so as to produce an effect which had not been produced in the previous orders, and this meaning we take to be land that may be required for roads, sites for fortresses, barracks, and other works of that character, absolutely necessary for the security of the country. As before stated if this idea is not contained in this limiting clause, no change is really effected, for the Government could at once as before take the whole block for military settlement.

This new form of confiscation then was first used in September, 1865, and simultaneously we find an

amending Bill before Parliament which was then sitting, and which was passed in the month following under the title of "The New Zealand Settlements Act Amendment and Continuance Act, 1865." The pressure upon the Government of the necessity of giving pecuniary compensation to loyal Natives is here fully perceived, and a means of escaping from it is provided in the sixth clause, which authorizes the Colonial Secretary at any time before the judgment (*i.e.* after his agent or counsel has heard the evidence and is in a position to form an estimate of the value of the claims and encumbrances over the block) to abandon land that has been confiscated. Section 9 also authorizes him to agree out of Court with any claimant to give him money or land or both to withdraw his claim, and clause 10 which is the clause with which we have to deal, provides that "In every case of claim for compensation the Colonial Secretary may at any time before judgment or award elect to give the claimant land in lieu of money out of any land within the Province subject to the provisions of the said Acts and in every such case the Compensation Court or the arbitrators or umpire as the case may be shall determine the extent of land so to be given as compensation and land may in such case be granted accordingly."

It would appear then that under this clause the Crown might still insist upon money compensation being given, so that if it was absolutely necessary for the security of the country that the whole block should be retained by the Crown, the Colonial Secretary has still power to retain it, but in that case he must so elect and must submit to make compensation in money. In this case the compensation in money would have been between £7,000 and £10,000.

But after the election has once been made to give land in lieu of money out of any land within the Province subject to the provisions of the Act, it remains with the Court to specify the land to be given. The word "extent" used in this clause, is not synonymous with "content" or "area," but means the actual size, shape, and boundaries, and is so used in section 5. The meaning of this word is important. In a great case, Rex. *v.* Hall, (1 B. and C. 123), Abbott, C.J., said,—the meaning of particular words in Acts of Parliament, as well as other instruments, is to be found not so much in a strict etymological propriety of language, nor even in popular use, as in the subject or occasion on which they are used, and the object that is intended to be obtained.

And we observe that by section 12 it is provided that an order of the Court ordering land is to be accompanied with a plan, and by sections 10 and 12 the land therein specified is to be granted.

It is obvious that the Secretary for Crown Lands could not make out a grant for a specific piece of land upon an order of the Court which only stated a certain number of acres without fixing the precise locality, boundaries, contents, and other particulars.

In our view therefore when the Crown has elected to give land, it becomes the duty of the Court to decide all those particulars. A point indeed might have been raised by the Crown Agent as to whether the words "the Colonial Secretary may elect to give the claimant land in lieu of money out of any land within the Province subject to the provisions of the Act," do not empower him to specify the locality, and then to call upon the Court to fix the gratuity and precise shape. But this suggestion was not made by him, and he did not fix any locality, and, under the circumstances of the surrounding blocks subject to the provisions of the Act, such a suggestion could not possibly have been accepted and acted upon by the Court. But apart from the obstacles which encumbered the surrounding blocks (which will be noticed hereafter), we do not think that the words are to be held to imply more than they express, and in our view the Colonial Secretary is only impowered to call upon the Court to give land out of any land subject to the provisions of the Act, leaving it to the Court to decide all the particulars including locality.

It appeared to us that the Legislature intended by this clause to enable the Government to redeem its solemnly and often repeated pledges to protect and save harmless those Natives who should remain loyal, in the possession and enjoyment of their lands, although included in confiscated blocks, what these lands were, being left for the Compensation Court to discover and decide. It will not be amiss for a moment to refer to these pledges and promises of the Crown, to fulfil which the Government had no statutory authority previously to the passing of the Act of 1865, as respects any land that had been once included in a confiscated block.

The first public notification that I can find is dated 11th July, 1863, about the commencement of the Waikato campaign, and is addressed to the chiefs of Waikato.

Extract from the *New Zealand Gazette*, of the 15th July, 1863.

"Colonial Secretary's Office, Auckland, 15th July, 1863.

His Excellency the Governor has been pleased to direct the following notification to the chiefs of the Waikato, to be published for general information.

"Alfred Domett.

"I now call on all well disposed Natives to aid the Lieutenant-General to establish and maintain those posts, and to preserve peace and order.

"Those who remain peaceably at their own villages in Waikato, or move into such districts as may be pointed out by the Government, will be protected in their persons, property, and land.

"Those who wage war against Her Majesty, or remain in arms threatening the lives of Her peaceable subjects, must take the consequences of their acts, and they must understand that they will forfeit the right to the possession of their lands guaranteed to them by the Treaty of Waitanga, which lands will be occupied by a population capable of protecting for the future the quiet and unoffending from the violence with which they are now so constantly threatened.

"Auckland, 11th July, 1863."

I find a proclamation under the Seal of the Colony was issued on the 17th day of December, 1864, of which an extract follows. It applies to all New Zealand:—

Extract from the *New Zealand Gazette*, of the 17th December, 1864.

"A Proclamation,

By His Excellency Sir George Grey, Knight Commander of the Most Honorable Order of the Bath, &c., &c., &c., dated the seventeenth day of December, one thousand eight hundred and sixty-four.

"THE land of those Natives who have adhered to the Queen shall be secured to them; and to those who have rebelled, but who shall at once submit to the Queen's authority, portions of the land taken will be given back for themselves and their families.

"The Governor will make no further attack on those who remain quiet.

"To all those who have remained and shall continue in peace and friendship, the Governor assures the full benefit and enjoyment of their lands."

These promises appeared to us very clear and very solemn, and remembering another maxim of Lord Coke's,—*Rex non potest fallere*, we found in these proclamations some guide to the intentions of the Legislature in framing the tenth clause of the Amendment Act, *i.e.*, an intention of giving full power to Government to carry out and perform these pledges. And we notice that the words are very distinct. Those Native subjects who should remain in peace and friendship were assured the full benefit and enjoyment of their lands, not lands of equal value somewhere else, but their own ancestral territory.

I must guard myself here against being supposed to say that it was the business of the Compensation Court to take charge of the honor of the Crown and fulfil its pledges. If the Act of 1865 had been perfectly clear, and the several rights of the Crown, and of the claimants thereunder had been unmistakably set forth, we should have interpreted the law even if in our judgment honor and equity had failed. But when the intention of Parliament is not clear, surrounding circumstances must be admitted as a guide thereto and even contemporaneous exposition. Thus Grose J. in Rex *v.* Miller, (6 T. R. 280) "I admit that where there is any doubt in a Statute or Charter it may be explained by usage."

The doctrine of interpretation was greatly enlarged in the celebrated case of the "Alexandra" where a full bench of Judges permitted even the speeches of honorable members who spoke on the passing of the Foreign Enlistment Act to be quoted as a guide to the intention of Parliament in making that law, and I myself have used the same means of interpretation in an argument in the Supreme Court before Chief Justice Arney (Attorney-General *v.* Gilbert).

Our view then of the Act of 1865 is that a great change is effected in the priority of rights of the several classes of persons before enumerated as soon as the agent for the Crown shall have elected to give land in lieu of money, and this we apprehend that a due regard to the promises of the Crown and the intentions of the Legislature if we have rightly ascertained them, should, except in cases of great necessity, none of which in our judgment have yet come before us, always induce him to do.

We place these rights now in the following order:—

1. Loyal owners; 2. Military Settlers and works of defence; 3. Ordinary purchasers of superfluous land.

N.B.—The legal authority to make these sales is extinguished as before observed.

The question will now arise why land could not be ordered for these loyal owners by the Court out of other lands in the Province subject to the provisions of the Acts. The objections are two.

Firstly: We think that if the Natives demand their own land or so much of their tribal estate as will represent their proportion of the tribe, they are entitled on the reasoning before given, to have it.

The question of locality is as before stated in our judgment a mere question for the decision of the Court. If the previous reasoning is correct, the discretion as to locality rests with the Court, and we should certainly choose that locality and in all respects take such other measures as *(cæteris paribus)* would most fulfil the promises of the Crown and preserve its honor, that is to say, wherever we think that a discretion is left to the Court by the Legislature.

But the second reason is of greater force because it rests on undoubted facts and a state of things which presents the insuperable obstacles to which I have previously alluded. The other lands in the Province subject to the provisions of the Acts are the Ngatiruanui Coast Block, and the Ngatiawa Coast Block and the Orders in Council taking these blocks under the Act both contain the clause before referred to ordering that the lands of no loyal Natives shall be taken except as aforesaid. Neither of these blocks have yet been investigated by the Compensation Court, and we are in entire ignorance of what parts of these blocks will be free from loyal claims. If then we were to place the loyal claimants to the Oakaura Block on any part of these other blocks we should be doing precisely the same thing for ourselves that the Government or some other authority has already done for us in the case of the Oakura Block, *i.e.*, appropriating the land in other blocks before we knew what was appropriatable, and at some future sitting of the Compensation Court these very persons would have to be ousted on behalf of persons who had superior rights, if the Court would then have power to oust them. Thus the difficulty would only be defined in time and shifted in place.

It therefore appeared to us that the compensation in land to be ordered to the Oakura claimants must come out of the Oakura Block.

I must observe in passing that it is possible that the Military Settlers on Oakura had been located there and their selections made and possession given before the passing of the Act of 1835. If this is so, for as before stated we had no evidence on the subject, the rights of the Military Settlers would rest on a stronger basis in equity, though they would still fail in law, as the Act of 1865 contained no continuing clause nor any expression saving existing rights. And wherever the Act of 1865 conflicts with or alters the Act of 1863, it must of course have the precedence, and supersede the antagonistic portions of the prior Act. But in the Compensation Court we cannot, as decided in Mr. Lewthwaite's case, support equitable rights, where the legal rights of others come into conflict with them. The remedy rests with the Legislature.

Having thus arrived at the (to us) unavoidable conclusion that the claimants before us were entitled to 7,400 acres of good land in this block, and having accepted Mr. Atkinson assertions that the whole of the available land except 2,500 acres had been appropriated to Military Settlers, the question then arose: "What are we to do?"

We thought that possibly the Government were not aware of the large majority of owners of this land who had remained loyal, and reflecting on the great public calamity which would be caused, and the serious embarrassment which would occur to the Government if we issued orders of the Court extending, as they would have done, over the lands of considerable numbers of these Military Settlers, we determined to despatch one of our number to Wellington to place the state of affairs before the

Government, and give them an opportunity of availing themselves of the power given to the Colonial Secretary by the ninth clause of the Act of 1865.

We accordingly postponed our decision, and Mr. Rogan went to Wellington; whilst Mr. Monro and I proceeded with the case of Waitara South.

Mr. Rogan returned with the Hon. Colonel Russell, the Minister for Native Affairs, who effected an arrangement with the claimants, and ultimately all the claimants except one, that of Rawiri Motutere, were withdrawn to our satisfaction.

What the terms of Colonel Russell's arrangement were, the Court did not think it their duty to inquire.

In consequence of this agreement having been come to, no adjudication was made by the Court, as our jurisdiction was gone.

In the case of Rawiri Motuere, who had returned home to Waihanae, the Court accepted the undertaking of the resident owners to admit him as one of themselves.

WAITARA BLOCK.

A large amount of evidence was taken on behalf of the claimants.

Mr. Lewthwaite preferred a claim to compensation on account of the defeat of "The Land Orders and Script Act, 1858," under which he held valuable rights, and the Court gave the following judgment.

I beg to remark that in a case of this importance and intricacy, it would have been a great relief to the Court if the Crown had afforded to the Court the assistance of counsel in arguing the Crown side; a matter involving such large interests, and of so intricate character, in our opinion justified the Court in expecting this assistance.

After our decision numerous other claims of a like character were not persisted in.

The claim of this gentleman is as follows:—

1. "That early in the year 1841 I purchased several sections of land from the Plymouth Company of New Zealand, and amongst them were four sections of land in the Waitara District, numbered respectively on the surveyor's plan 431, 432, 451, and 360, each containing 50 acres, together with two sections situated in the Mangoraka District, also containing 50 acres each.

2. "That in March of the same year I left England for the purpose of selecting and occupying the said sections of land.

3. "That early in 1842 I selected the said sections, and held quiet possession of the same until Captain Fitzroy, as Governor, paid a visit to New Plymouth, ignored the award of Mr. Commissioner Spain, and gave notice to all who held lands in the aforesaid districts that they were trespassers upon the said lands.

4. "That not being able to make use of these lands, I left the Colony for England in 1845.

5. "That in 1847 the New Zealand Company awarded compensation to the resident and absentee land owners who had been unable to possess their lands to that date.

6. "That on my return to the Colony in 1854 the committee appointed to settle this compensation awarded me resident or preferential scrip to the amount of 75 acres for each allotment.

7. "That I still hold this scrip, never having had an opportunity of exercising it upon available land such as it purported to secure.

8. "That 'The Land Order or Scrip Act, 1858,' purporting to deal equitably with these claims, omits to recognize this preferential scrip, and also to provide for claimants repossessing their original sections where no interference is made with any general scheme of land settlement.

9. "That in addition to the several sections to which I am entitled, I beg also to claim 1000 acres as compensation for non-possession of my original sections to the present time, as the market value of each Waitara section being in 1842, £300, would now amount to £3000, and that if each Mangoraka section being then value, £200, would now amount to £2000; or altogether £16,000.

10. "That having waited nearly twenty-five years for these lands, in the expectation of settling my family upon them permanently, I have the confidence to hope that I shall be awarded the full amount of my claim. "JNO. LEWTHWAITE."

The circumstances of this case, admitted for the purpose of deciding the legal questions, are as follows:—

In 1841 the claimant purchased from the Plymouth Company of New Zealand, orders for or contracts for the purchase of sections of land in the Settlement of New Plymouth. In 1842 he made his selections at Waitara and Mangoraka, and held quiet possession of his lots until he was ejected by Governor Fitzroy. Subsequently to this ejectment, the Plymouth Company of New Zealand became amalgamated with the New Zealand Company. In 1847 an Act was passed by the Imperial Parliament (X. and XI. Vict. cap. 112), by which the company was authorized upon the terms and in manner therein mentioned, to relinquish their undertaking, and surrender to Her Majesty all their claims and title to lands in the Colony; and on notice being given by the company of their intention to exercise the power thus conferred—all such lands were to become demesne lands of the Crown, subject nevertheless to any contract which should be then subsisting in regard to any such lands. On the 4th of May, 1849, an agreement was entered into between the company through Mr. Fox, their principal agent, and the holders of land orders, which contained the following terms, hereafter called the terms of compromise:—

To enable resident purchasers to select the land to be given for the compensation hereinafter mentioned, the company will, after providing for the existing claims of purchasers, offer for the purpose the land already at its disposal in this district, as well as such districts as may hereafter be purchased by the Government on its account in the settlement of New Plymouth, or in immediate connexion therewith.

That resident purchasers shall be declared entitled to receive, as the maximum of compensation, 75 acres of land for every 50 acres of land purchased; the amount of such compensation in each case to be determined on its individual merits with reference to any circumstances which may distinguish it from any other purchases.

That such of the resident purchasers as received land in exchange under the arrangement of Governor Fitzroy, shall likewise be declared entitled to compensation; but in assessing the amount thereof, regard shall be had to the amount of land already secured to them under that arrangement, and to any other circumstances which may distinguish these cases from those of the other purchasers.

That for the purposes of this arrangement it is understood that the term "resident purchaser" shall apply to all parties holders of land in New Plymouth, derivate as well as original, now actually resident in the Colony of New Zealand.

That this arrangement shall extend to land purchasers original and derivative, formerly resident but now absent from the Colony, whenever such purchasers shall return.

Subsequently the company gave notice that they were ready to surrender their charters to Her Majesty, whereupon by virtue of the before-mentioned Act, all claim and title to lands of the company ceased and determined; and all such lands became vested in Her Majesty as part of the demesne lands of the Crown, subject, nevertheless, to any contracts which were then subsisting in regard to any of the said lands. In 1851 an Ordinance was passed by the New Zealand Legislature called "The New Zealand Company's Land Claimants Ordinance," which recited that in certain cases possession had not been given by the company of lands sold or contracted to be sold by them to the purchasers thereof, and the right of selection purporting to be conferred by such scrip as aforesaid in many cases still remained unexercised; and that it was essential that means should be taken for ascertaining what were the contracts of the company then subsisting in regard to the said lands with a view to their satisfactory adjustment. This Ordinance then made provision for an investigation into and report upon such contracts, and ordained that the value of the land affected by any contract should be ascertained in manner therein provided, and authorized the Governor to issue to any person found to have a rightful claim to any land or right therein scrip for the amount so ascertained, such scrip to be available in the acquisition of land in the manner set forth in the Ordinance. The Constitution Act then followed, empowering the General Assembly to legislate for the Colony of New Zealand. In 1854, in pursuance of the terms of compromise, there was awarded to the claimant by Commissioners appointed under the authority of the Ordinance, resident preferential scrip to the amount of 75 acres for each allotment of which he had been deprived. In 1856 an Act was passed by the General Assembly called "The Land Orders and Scrip Act, 1856," by which provision was made for defining and settling the right of holders of land orders and land scrip. By "The Land Orders and Scrip Act, 1858," this Act was repealed, and it was enacted that within the Province of New Plymouth every unexercised original land order issued by the Plymouth Company of New Zealand or by the New Zealand Company, and conferring or purporting to confer on the owner or holder thereof the right to select according to a fixed and definite order of choice, 50 acres of land within the settlement of New Plymouth, should entitle such owner or holder in priority to general purchasers, and according to the aforesaid order of choice, to select out of any land over which the Native title then was or thereafter should be extinguished, and which should be declared open for purchase (except the Hua village site), one acre of town land or 37½ acres of suburban land or 75 acres of rural land, at the option of such owner or holder, and subject to certain conditions. And the ninth section prescribes the rate at which original land orders issued by the Plymouth Company or by the New Zealand Company, conferring the right to select land within the settlement of New Plymouth according to priority of application, or otherwise than in a fixed and definite order of choice should be considered as equivalent in the purchase of Waste Lands of the Crown; and also the rate at which supplementary land order and compensation or land scrip issued by the New Zealand Company should be taken; and concludes by enacting that all such land orders and land scrip, whether original or supplementary, should not be otherwise available or exercisable for the purchase or selection of Waste Lands of the Crown.

The land orders and scrip in respect of which Mr. Lewthwaite now seeks compensation, have not been exercised to the present time.

Upon these facts the claimant argues that either he is entitled to select land by virtue of his orders out of the blocks of land which have come into possession of the Crown under the operation of the New Zealand Settlements Acts, or that if such right does not exist he is entitled to compensation under the provisions of such Acts for the deprivation thereof.

The agent for the Crown refers to "The Land Orders and Scrip Act, 1858," and argues that whatever the claimant's rights previously were, they have been dealt with and definitely provided for in that Act; and that if he has no rights under that Act which would come under the category of a title, interest, or claim to any land taken under "The New Zealand Settlements Act, 1863," he has no estate in land for the taking of which the Court can grant him compensation.

Mr. Lewthwaite, in reply, quotes an Act of the Imperial Parliament passed in 1865, entitled "An Act to remove Doubts as to Colonial Laws," which provides as follows:—

"Any colonial law which is or shall be in any respect repugnant to the provisions of any Act of Parliament extending to the colony to which such law may relate or repugnant to any order or regulation made under authority of such Act of Parliament or having in the colony the force and effect of such Act shall be read subject to such Act order or regulation and shall to the extent of such repugnacy but not otherwise be and remain absolutely void and imperative."

And he argues—(1) that if the Land Orders and Scrip Act, or the New Zealand Settlements Acts interfere with the rights stated to have been secured to him by the before-mentioned Imperial Statute, under the operation of which the land of the company became vested in Her Majesty, subject to the contracts which affected them, these Acts are, *pro tanto*, void of repugnancy; (2) and further, that it is not lawful to deprive compulsorily any man of his land except by an Act against the passing of which he may have an opportunity of being heard by himself, his counsel, agents, and witnesses, *i.e.*, by a Private Act.

(1.) As to the question of "repugnancy," we are of opinion that this Court is not competent to entertain the question of repugnancy. Holding that opinion we must regard "The Land Orders and Scrip Act, 1858," and the New Zealand Settlements Act, as containing the law upon which Mr. Lewthwaite's claim to compensation must be decided.

(2.) As to the question whether "The New Zealand Settlements Act, 1863," was rightly passed as

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 severa 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 ninteenth 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

consideration and in such rural allotments whether town suburban or rural or otherwise as he shall think fit and subject to such regulations as he shall with the advice of His Executive Council from time to time prescribe in that behalf Provided that no land shall be sold except for cash nor at a less rate than ten shillings per acre."

We apprehend that the proviso to this clause would now prevent the Governor from making any regulations with reference to the disposal of surplus lands acquired under the Act of 1863, which would let in the exercise of these land orders; but whether such regulations could be made or not is a question of no moment, as it has not been made to appear to the Court that regulations of any sort have been made under this Act. It is therefore, in the judgment of the Court, quite clear that there exists no provision which Mr. Lewthwaite can avail himself of for the exercise of his orders over any land within the confiscated blocks, and that therefore his rights—which were established by "The Land Orders and Scrip Act, 1858,"—are entirely extinguished, and that the fair intention of that Act is completely defeated by the Acts of 1863 and 1865, so far as these blocks are concerned.

3. We come now to the question—"Can compensation be ordered by this Court for such destruction of his rights?"

The Act of 1863, section 5, enacts that compensation shall be granted to all persons who have any title, interest, or claim, to any land taken under the Act; and section 7 provides that such compensation shall be granted according to the nature of the title, interest, or claim of the person requiring compensation, and according to the value thereof. The Amendment Act of 1865 is more particular, and enacts that every claim for compensation under the Act of 1863 shall specify the name of the claimant, the interest in respect whereof the claim is made, and as nearly as may be the extent and particulars of land affected thereby, and the amount claimed as compensation; and further provides, in section 12, that every order of the Court shall be made in writing, and shall specify and be accompanied with such plans and particulars as shall be prescribed by regulations to be made by the Governor in Council. There can therefore be no doubt whatever that the Legislature contemplated only the compensation of persons having titles, estates, or claims in land, capable of specification and description, and of which plans might be made. Now, as we have already determined that Mr. Lewthwaite's claim does not refer to and cannot be made to refer to any specific piece of land, but is simply a power extending over a certain class of land in the whole Province, exercisable on the happening of certain contingencies, we are forced to the conclusion that he does not come within that class of persons to whom the Court is empowered to order compensation. If the whole of the land in the Province of Taranaki, held under the Native title, had been taken by the Governor, in exercise of the powers conferred upon him by the Settlements Acts, it is very possible that, as all the land over which the claimant's unexercised power extends, would then have been devoted by the Government to purposes which absolutely and for ever excluded the possibility of exercising his land orders, we should have considered ourselves authorized to recognize him as a person legitimately entitled to compensation. But this has not been done. It is true that all the choice lands of the Province over which his power ran have been taken, and the rights which remain to him are of little value, extending for the most part over lands which have not yet been trodden by the foot of man; but the legal difficulty still remains, and the Court is reluctantly compelled to the conclusion that although Mr. Lewthwaite has strong equitable claims, he has no legal right, title, or interest to any land which can be recognized by the Court, and that it has no power to afford him any relief. That Mr. Lewthwaite has suffered a wrong, and has been suffering a wrong for nearly a quarter of a century, seems unquestionable; but he must resort to the justice of the Legislature for a remedy.

Judgment was also delivered in the case of the absentee claimants in the following words, except that the names are here omitted.

WAITARA SOUTH.

Judgment in the case of the Absentee Claims.

In the argument of the Crown Agent, three points were mainly relied upon. With reference to the first objection—that Mr. McLean's appointment has not been proved, nor has it been shown that his proceedings were authorized by the Government,—the Court is of opinion that that officer's appointment must be held to be valid, and his acts duly authorized, as no evidence has been shown to the contrary. The maxim of law is "All acts are presumed to have been rightly and regularly done. It is a maxim of the law to give effect to everything which appears to have been established for a considerable time, and to presume that what has been done has been done of right and not of wrong." Per Pollock, C.B. Where acts are of an official nature, or require the concurrence of official persons, a presumption arises in favor of their due execution. In these cases, the ordinary rule is: "*Omnia præsumuntur rite et solenniter esse acta donec probitur in contrarium.*" Thus, a man acting in a public capacity will be presumed to have been properly appointed, and to be duly authorized; and, as the Agent of the Crown, Mr. McLean's acts must be held to have been acts of the Crown.

Nor do we see any force in the objection raised by the Crown Agent, that what Mr. McLean did should form no precedent for the Court, inasmuch as he may have recognized this class of owners, not because they were legally and equitably entitled, but because the state of the country was such that he could not have effected a purchase if he had not recognized them. If our doctrine is correct—that the true foundation of all Maori title is force, we see in this conduct of Mr. McLean simply an application of that principle. It was his duty to purchase from the Natives land to be thereafter used for settlement and colonization. It was necessary therefore that the Government should be enabled to give and guarantee peaceable possession, and give enjoyment of the lands so purchased and sold to settlers, and to enable this to be done Mr. McLean found it necessary to satisfy the claims of these absentee proprietors. And there is no doubt that if the war had not taken place, and the relations of parties had not changed, and Mr. McLean were now purchasing the blocks of land under investigation, he would feel himself compelled to extinguish the titles of those absentees, as he had done in previous cases. In fact, it appears that this recognition actually occurred in the case of Ropoama Te One.

The other objection raised by the Crown Agent, that the Government is not bound by the acts of its predecessors, appears to the Court to be fallacious. The Court is not the Government, and in no way represents the Government, and is in fact constituted to decide questions between the Crown and

a portion of its subjects. The previous acts of the Crown may now very fairly be used as evidence by adverse claimants. Moreover, we doubt very much whether the doctrine expressed is a good doctrine even in politics; certainly, in courts of law, in matters of right affecting the Crown, it must be held to be a bad doctrine.

The Court therefore sees no reason for departing from the rule which was acted upon in the case of the Oakura Block. We exclude from compensation all persons who, having been expelled by force from this block of land previously to the year 1840, have never re-occupied, excepting such of them as have been recognized as owners by the Government or its officers.

We find the block called Waitara South divided into two distinct portions, the Puketapu and the Waitara. The Puketapu portion of this block is part of a larger estate, comprising originally in addition the Bell Block and all the land as far as the Waiwakaiho River, owned by a clearly defined set of people called the Puketapu. When the Bell Block and the other portion of this estate were sold, certain of the absentee claimants were recognized by the Government as owners, and received portions of the purchase money. We feel ourselves bound, then, to recognize the rights of these persons over the remaining portion of this estate now taken under the Settlements Acts. The persons, then, admitted are as follows. [Then follow the names of forty-two claimants.] Rawiri Whatino will also be admitted, he having produced an undertaking signed by Mr. McLean that his claims at Waiongana should be recognized whenever that land was purchased; also, Riwai Te Ahu, for the reason stated below.

The only absentee whom we find to have been distinctly recognized by Government in the Waitara portion is Ropoama te One. But, in addition, we sanction the claims of Riwai te Ahu and Piri Kawau over this block; although they have never actually repossessed themselves of any portion of their land since the expulsion of the tribe by the Waikato. We think this exception may justly be made, because their absence from Maori kiangas has been caused by their adoption of civilized employments, one in the Church, and one in the Government, which absolutely prevented their returning to their tribes and re-occupying their land in Maori fashion.

A considerable number of claimants now absentee have also maintained their rights by having returned and cultivated the soil between 1840 and the present time. These persons will be admitted as resident owners, and will appear amongst that class.

The claims disallowed for non-appearance, and other similar claims, amount to 149.

The claims disallowed for non-possession, or occupation for a time insufficient to warrant the belief in a domiciliary intention, are 238.

We were proceeding with the evidence on the side of the claimants when the Crown Agent announced that negotiations were being undertaken, and the Court adjourned to give the parties time and opportunity to agree.

Ultimately an arrangement was made, and the claims were all withdrawn to our satisfaction.

The Court did not think it its duty to inquire what were the terms of the agreement, but it appeared on the document withdrawing the claim that the rights of the Maoris *(inter se)* were to be settled by the Native Land Court at some future time.

As the case for the Crown had not commenced I am unwilling to enter upon the question of merits. Indeed I am unable to do so. We have no judicial knowledge of any Military Settler having been placed on this block.

I wish to add that the conduct of the Natives during the sitting of the Court was decorous in the extreme. The number attending I estimate at 400.

I beg, in conclusion, that it may be remembered, that in order to save the mail I have been compelled to write this statement in great haste, and have been unable to revise it. Some expressions may therefore require explanation, which I shall be happy to render when called upon.

1st August, 1866. F. D. Fenton.

P.S.—I adjoin an extract from Burns' admirable chapter on the maxim "Salus populi," &c. The whole chapter should be read in connection with this question.

Extract from *Burns' Legal Maxims:* "Salus populi suprema lex."

"In the familiar instance likewise of an Act of Parliament for promoting some specific object or undertaking of public utility, as a turnpike, navigation, canal, railway, or paving Act, the Legislature will not scruple to interfere with private property, and will even compel the owner of land to alienate his possessions on receiving a reasonable price and compensation for so doing. But such an arbitrary exercise of power is indulged with caution: the true principle applicable to all such cases being that the private interest of the individual is never to be sacrificed to a greater extent than is necessary to secure a public object of adequate importance.

"The Courts therefore will not so construe an Act of Parliament as to deprive persons of their estates, and transfer them to other parties without compensation, in the absence of any manifest or obvious reason of policy for thus doing, unless they are so fettered by the express words of the Statute as to be unable to extricate themselves, for they will not suppose that the Legislature had such an intention; and as was observed in a recent case, where large powers are entrusted to a company to carry their works through a great extent of country without the consent of the owners and occupiers of land through which they are to pass, it is reasonable and just that any injury to property which can be shown to arise from the prosecution of these works, should be fairly compensated to the party sustaining it, and likewise it is required that the authority given should be strictly pursued and executed."

No. 2.

Copy of a Letter from Mr. W. S. Atkinson to the Hon. Native Minister, New Plymouth.

Sir,— New Plymouth, 29th June, 1866.

I have the honor to enclose for your information the answer of Mr. Parris, Native Agent, to my letter of this date, offering certain terms to the Native claimants in the Oakura Block, and also forward my reply to same. I have, &c.,

The Honorable the Native Minister, New Plymouth. W. S. Atkinson, Crown Agent.

Enclosure 1 in No. 2.

Copy of a Letter from Mr. W. S. ATKINSON to the NATIVE AGENT, New Plymouth.

SIR,— New Plymouth, 29th June, 1866.

In enclosing for your information a list of claimants in the Oakaru Block, allowed by the Compensation Court, I have the honor to inform you that I applied for and obtained a suspension of judgment for two days, in the hope that the matter might be arranged out of Court, by offering the Native claimants the whole of the remaining land in the Oakura Block, in full compensation for their claims. Should this proposition meet with your approval, the details can be arranged between us on a future occasion. In the meantime I have to request you to be good enough to give the subject your earliest attention, as a further suspension of judgment might not be conceded by the Court.

I have, &c.,
W. S. ATKINSON,
Crown Agent.

Robert Parris, Esq., J.P., Native Agent,
New Plymouth.

Sub-Enclosure 1 to Enclosure 1 in No. 2.

Copy of a Letter from Mr. W. S. ATKINSON to the Hon. NATIVE MINISTER, New Plymouth.

SIR,— New Plymouth, 29th June, 1866.

I have the honor to enclose for your information, copy of a letter forwarded to Mr. Parris this day, containing a proposal to the claimants in the Oakura Block for the satisfaction of their claims there.

I have, &c.,
W. S. ATKINSON,
Crown Agent.

The Honorable the Native Minister,
New Plymouth.

Sub-Enclosure 2 to Enclosure 1 in No. 2.

Copy of a Letter from the CIVIL COMMISSIONER to the CROWN AGENT, New Plymouth.

SIR,— New Plymouth, 29th June, 1866.

I have the honor to acknowledge the receipt of your letter of this date, enclosing a list of claimants in the Oakura Block, as allowed by the Compensation Court, and offering the Native claimants the whole of the remaining land in the Oakura Block, in full compensation for their claims.

I presume by the term "the whole of the remaining land," it is intended to include all the Government reserves, and the whole of the land not allotted to the Military Settlers.

With this understanding, I agree on behalf of the Native claimants to accept the offer submitted for my approval, in full compensation for their claims within the said block.

I have, &c.,
R. PARRIS,
Civil Commissioner and Agent for the Natives.

W. S. Atkinson, Esq., Crown Agent,
New Plymouth.

Sub-Enclosure 3 to Enclosure 1 in No. 2.

Copy of a Letter from Mr. W. S. ATKINSON to NATIVE AGENT, New Plymouth.

SIR,— New Plymouth, 29th June, 1866.

I have the honor to acknowledge receipt of your letter of this day, accepting my offer (on behalf of the Natives) of the whole remaining portion of the Oakura Block not occupied by Military Settlers, as compensation in full of all their claims over the said block, and to thank you for your promptness in the matter.

It will be necessary that some of the principal Native claimants should appear, with yourself, before the Court to-morrow, at ten o'clock a.m., in order to complete the arrangement.

I have, &c.,
W. S. ATKINSON,
Crown Agent.

Robert Parris, Esq., J.P., Native Agent,
New Plymouth.

Sub-Enclosure 4 to Enclosure 1 in No. 2.

Copy of a Letter from the CIVIL COMMISSIONER to the CROWN AGENT, New Plymouth.

SIR,— New Plymouth, 10th July, 1866.

In reply to your letter of this date, conveying certain proposals for the settlement of all claims of friendly and absentee Natives and half-castes for compensation, in the block of land known as Waitara South, I have the honor to inform you that I agree on behalf of the Natives to accept in full compensation of their claims over the said block, the block of land seaward of the Military Settlers' line, said to contain 8,000 acres, together with all the reserves within the Military Settlers' Settlement.

In the Waitara Township I accept, on behalf of the claimants, your offer of 125 Town Sections, together with 500 acres of the Town Belt, and that portion of the Town Belt at Matataiore returned by authority of the Honorable the Native Minister to Mahau and his people; and also the land included in the Hurirapa Village, excepting the streets.

I have, &c.,
R. PARRIS,
Civil Commissioner and Agent for the Natives.

No. 3.

Copy of a Letter from Mr. W. S. ATKINSON to the NATIVE AGENT, New Plymouth.

SIR,— New Plymouth, 18th July, 1866.

I have the honor to inform you that I have completed (with the exception of a few signatures which will be obtained shortly) an arrangement out of Court with the Native claimants over the Waitara South Block, through Mr. Commissioner Parris, their agent, and enclose copies of correspondence on the subject.

I am at present engaged obtaining information respecting the blocks north of the Waitara, and south of the Hangatahua River, preparatory to the next sitting of the Compensation Court here.

I have, &c.,
W. S. Atkinson.
Crown Agent.

The Hon. the Native Minister.

Enclosure 1 in No. 3.

Copy of a Letter from Mr. W. S. Atkinson to the Native Agent, New Plymouth.

Sir,— New Plymouth, 10th July, 1866.

I have the honor to submit for your consideration the following proposals of settlement in satisfaction of all claims of friendly resident and absentee Natives and half-castes for compensation, on the block of land known as Waitara South.

1. To give to the above-mentioned claimants the whole of the block to seaward of the Military Settlements in the Waitara South Block with the exception of the Waitara Township.
2. The whole of the reserves contained in the above-mentioned Military Settlements with the exception of the Town Belts.
3. A fourth part of the land which is comprised in the Township of Waitara, outside of that which is intended for the town present and future, comprising about 500 acres.
4. Also the Matitaiora bush supposed to contain about fifty acres.
5. One hundred and twenty-five sections in the Waitara Township to be chosen in the following order, viz.: The Natives to choose one, and the Government nine sections alternately. Also sections on the site of the Hurirapa Pa.

I have, &c.,
W. S. Atkinson,
Crown Agent.

R. Parris, Esq., Native Agent,
New Plymouth.

Enclosure 2 in No. 3.

Copy of a Letter from the Native Agent to Mr. W. S. Atkinson, Crown Agent, New Plymouth.

Sir,— New Plymouth, 12th July, 1866.

In reply to your letter of the 10th instant, conveying certain proposals for the settlement of all claims of friendly and absentee Natives and half-castes for compensation, in the block of land known as Waitara South; I have the honor to inform you that I agree on behalf of the Natives to accept in full compensation of their claims over the said block, the block of land seaward of the Military Settlers', line, said to contain 8,000 acres altogether, with all the reserves in the Military Settlers' Settlement.

In the Waitara Township, I accept on behalf of the claimants, your offer of 125 Town Sections, together with 500 acres of the Town Belt, and that portion of the Town Belt at Mataiore returned by authority of the Hon. the Native Minister to Mahau and his people.

I have, &c.,
R. Parris,
Civil Commissioner and Agent for the Natives.

W. S. Atkinson, Esq., Crown Agent,
New Plymouth.

Enclosure 3 in No. 3.

Copy of a Letter from the Native Agent to the Crown Agent, New Plymouth.

Sir,— New Plymouth, 17th July, 1866.

In further reference to my letter of the 12th instant, you are of course aware that the Hon. the Native Minister awarded to the Waitara Natives in addition to the 125 Town Sections and 500 acres of the Town Belt, the land comprised in the Huripapa Village extending to the Mangaiti Stream, except the streets as laid out on the map of the township.

I have, &c.,
R. Parris,
Civil Commissioner and Agent for the Natives.

The Crown Agent, New Plymouth.

Enclosure 4 in No. 3.

Copy of a Letter from the Crown Agent to Native Agent, New Plymouth.

Sir,— New Plymouth, 19th July, 1866.

In reply to your letter of 17th instant, I beg to state that in the offer I made to you on behalf of the Crown, I included the site of the Huripapa Pa, excepting of course the streets as laid out on the map of the Waitara Township.

I have, &c.,
W. S. Atkinson,
Crown Agent.

R. Parris, Esq., Civil Commissioner and Native Agent,
New Plymouth.

No. 4.

Copy of a Letter from the Civil Commissioner to the Hon. the Native Minister.

Sir,— Wellington, 7th August, 1866.

I have the honor to acknowledge the Under Secretary's letter of the 21st ultimo enclosing copy of an Order of the Legislative Council requiring certain information relative to the settlement out of Court of claims of friendly Natives to land at Taranaki and Waitara. In reply I have the honor to enclose herewith a statement containing the information asked for.

Maps of the district were received this morning from New Plymouth, which I have handed into your office.

I have, &c.,
R. PARRIS,
Civil Commissioner.

The Hon. the Native Minister, Wellington.

Enclosure to No. 4.

STATEMENT relative to the measures adopted for the settlement out of Court of Claims of Friendly Natives to land at Taranaki and Waitara.

THE claims to the Oakura had been investigated by the Compensation Court and seventy-six claimants admitted, and at this stage of the proceedings it was deemed necessary to communicate with the Government before taking further action.

The Honorable the Native Minister went to New Plymouth, and, after consulting with the Judges of the Compensation Court, it was recommended that if possible the matter should be settled out of Court.

The proportion the seventy-six claimants admitted by the Court bore to the claimants who have been in rebellion was found to be about two-fifths, and the estimated area of the block of land was about 27,000 acres; out of this quantity 18,930 acres had been taken for Military Settlers' Settlements and Government Reserves, and in consequence of only very inadequate provision having been made for the friendly Natives, the whole of the remaining portion of the block of land not allotted to Military Settlers including the Government Reserves (excepting 46 acres in different parts, set apart as sites for places of worship, schools, and other public purposes) was offered to the friendly Natives as full compensation for all their claims within the said block of Oakura, which offer was accepted by them, agreeing, at the same time, to leave the sub-division and apportionment of the land returned to them, which is over 10,000 acres, to myself, which sub-division and apportionment they were not to be charged with the expense of, only the expense of the Crown Grants which they expressed a wish to have.

The investigation by the Compensation Court of the claims to the Waitara South had not proceeded so far as in the Oakura when it was recommended that the claims of the friendly Natives to that block should also, if possible, be settled out of Court, which was effected in the following terms:

Seaward of the Military Settlers' Settlements, Huirangi and Mataitawa, there was a valuable block of land (exclusive of that part of the Waitara Township south of the Waitara River), estimated at 8000 acres. About 6000 acres of this was awarded to the Puketapu tribe, reserving the right to about 1000 acres thereof for the location of returning rebels, between the Mangoraka and Mangaranoa. The remaining 2000 acres was awarded to the Pukerangiora and Ngatirahiri claimants, subject to a claim preferred by some Otarara Natives, which it was agreed to refer to the Land Court for settlement.

In the Waitara Township (south of the river), which is about 2000 acres, the Waitara Natives were awarded 125 town sections. The site of the Hurirapa Village, extending to the Mangaiti Stream, said to contain about three acres (the streets through the same to be opened), and 500 acres of the Town Belt and reserves was awarded to the Waitara Natives.

There was also about 100 acres of the belt on the south-west side of the township awarded to the Puketapu Natives. In addition there is about 1000 acres of reserves within the lines of the Military Settlers' Settlements to be awarded to the different sections of the claimants.

The estimated area of the Waitara South Block is about 25,000 acres, over 14,000 acres of this is included in the Military Settlers' Settlements. The proportion of friendly claimants to this block is larger than in the Oakura Block, but the difference of the value of the land awarded to them and the land taken for Military Settlers' Settlements, is very considerable.

R. PARRIS,
Civil Commissioner.

Wellington, 8th August, 1866.