

as to whether or no the Queen's subjects who settled here before the establishment of Her Majesty's authority had a right to buy land from the Natives, had a right to all they bought, had a right to require confirmatory grants of it from the Crown, and, failing that confirmation, had a right to the recognition of their titles by the Supreme Court. Still less shall I waste time in discussing the question whether the Ordinances of 1840 and 1841 were violations of Magna Charta and the Bill of Rights, or repugnant to the law of England. I do not suppose that the Government or the Assembly feel any interest in these fanciful controversies in the year of grace 1862. But I feel called upon to observe on one or two points, in order that my opinion, as the person to whom the Legislature has confided so much power and discretion, should not be misunderstood. Whether the Queen's subjects had or had not the right for which some of the land claimants contend, of buying land from the New Zealanders and keeping all they bought, we know at any rate for a fact that the Queen's Government denied it from the first

Now it is upon this promise of Lord Normanby's that a few of the land claimants have based a belief in their possession of certain rights. They interpreted it to mean an absolute engagement to confirm them in whatever they had actually bought. But in order to find the true interpretation of that promise, we must seek it in the solemn acts of the Imperial Government itself. When Her Majesty was advised to give the Royal assent to an Ordinance which commenced with the formal declaration that "all titles to land in New Zealand which were held or claimed by virtue of purchases or pretended purchases, gifts or pretended gifts, conveyances or pretended conveyances, leases or pretended leases, agreements, or other titles, either mediately or immediately from the chiefs or other individuals of the aboriginal tribes, *were absolutely null and void*": when in the same Ordinance certain conditions were laid down upon which alone confirmatory grants would be made; it is there we must look for the express interpretation of the Royal promise of 1839. To argue that the Land Claims Ordinance did not carry out the real intention of the Queen's Government at a time when Governors were ruled from Downing Street and Official Legislatures obeyed Governors, would be mere folly even if there were no other evidence than the Royal Assent to show that the Ordinance did carry out that intention. There is, however, plenty of proof that, Sir George Gipps' Proclamation and Ordinance of 1840, and Governor Hobson's Ordinance of 1841, really represented the mind of the Imperial Government at the time, and were considered to extend a reasonable liberality to the land claimants. The only wonder is that any student of the Blue Books should for a moment advance the contrary assertion

No one who has read the records of the Land Claims Commission can doubt for a moment that when the Government came down here in 1840 the great body of the claimants accepted the Ordinance in perfect good faith, and that they were content to abide by its limitations, in consideration of the exchange it gave them of an English title for a precarious occupation under the law of the strong arm.

78. Mr. Commissioner Bell was certainly under no misapprehension as to the position either at law or in equity and good conscience. This is shown throughout his memorandum and report. I might perhaps refer particularly to the case of Mr. Clarke, which it will be remembered was the subject of the appeal to the Privy Council referred to in paragraphs 40, 46, and 50. Mr. Commissioner Bell said this:—

In referring to Mr. Clarke's grant, I should say that it is an instance of two things—on the one hand of there being no *right* in the claimant to the surplus; and on the other of the claimant's payment to the Natives being such as would have made it quite *fair* to give him the whole acreage included in his purchases.

That passage shows a clear conception and recognition by Mr. Commissioner Bell of the difference between a right at law and a right or claim in equity and good conscience. Nevertheless, he was, of course, bound to take as the basis of his investigation so far as Mr. Clarke's case was concerned the area which had been eventually granted to Mr. Clarke, and which was itself based primarily on the yardstick. Mr. Commissioner Bell adds:—

There never was any doubt that the Imperial Government considered the Crown was entitled to the surplus land; and Lord Stanley expressly declared in May, 1843, in answer to a question by Captain Fitzroy before he assumed the Government, that the excess in a claim over the quantity granted would revert to the Crown.

79. Mr. Commissioner Bell's view undoubtedly was the same as my own as expressed in this memorandum—namely, that, if the Crown was not to have the surplus land, the person entitled to it (*i.e.*, entitled to it in justice and equity) was the purchaser, for he says in his report:—

Still, if the Assembly is disposed to be generous, there is no great difficulty in the way. In the northern claims there will be little further inquiry wanted, and no new surveys; the annexed return shows exactly what has been taken as surplus out of the respective claims, and if the Legislature