

1856.

HOUSE OF REPRESENTATIVES.

REPORT OF THE SELECT COMMITTEE
APPOINTED TO CONSIDER AND REPORT AS TO THE NATURE
AND EXTENT OF
OUTSTANDING LAND CLAIMS,
AND THE BEST MODE OF FINALLY DISPOSING OF THE SAME

EXTRACTS FROM THE VOTES AND PROCEEDINGS OF THE HOUSE OF
REPRESENTATIVES.

VOTES, No. 14, FRIDAY, MAY 9, 1856.

9. Land Claims :—The Colonial Secretary, pursuant to (amended) notice, moved, That a Select Committee be appointed to consider and report as to the nature and extent of Outstanding Land Claims, and the best means of finally disposing of the same; such Committee to consist of Mr. Taylor, Mr. Williamson, Mr. Daldy, Mr. Cuff, Mr. Elliott, Mr. Richmond, and Mr. Domett. Report to be brought up this day fortnight.
- Question put and passed.
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VOTES, No. 24, FRIDAY, MAY 23, 1856.

8. Old Land Claims :—Mr. Sewell withdrew that part of the motion standing in his name, on the notice paper of this day, for the discharge of the Committee on Old Land Claims, and on motion of Mr. Sewell, the time for bringing up the report of the Committee was extended to Tuesday, 3rd June.
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VOTES, No. 30, TUESDAY, JUNE 3, 1856.

3. Postponements (3) :—On motion of Mr. Sewell, leave was given to the Committee on Old Land Claims to postpone their report until Friday, 13th inst.
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VOTES, No. 37, SATURDAY, JUNE 14, 1856.

3. Postponements :—On motion of Mr. Domett, the report of the Committee on Old Land Claims was postponed until Tuesday, 24th June.

VOTES, No. 45, TUESDAY, JUNE 24, 1856.

3. Postponement :—On motion of Mr. Domett, leave was given to the Committee on Old Land Claims to postpone their report to this day week.
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VOTES No. 50, TUESDAY, JULY 1, 1856.

5. Postponements :—On motion of Mr. Domett, leave was given to the Committee on Old Land Claims to postpone their report until this day week.
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VOTES, No. 54, TUESDAY, JULY 8, 1856.

5. Postponements :—On motion of Mr. Domett, the report of the Committee on Old Land Claims was postponed until Tuesday, July 15.
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VOTES, No. 59, TUESDAY, JULY 15, 1856.

21. Postponement :—On motion of Mr. Domett, the report of the Committee on Old Land Claims was postponed until to-morrow.
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VOTES, No. 60, WEDNESDAY, JULY 16, 1856.

9. Old Land Claims Committee :—Mr. Domett, Chairman of this Committee, brought up their report, which was read and ordered to be printed.

REPORT.

SYNOPSIS.

PART I.—PAST HISTORY AND PRESENT STATE OF THE LAND CLAIMS.

I.—OLD LAND CLAIMS.

1. Purchases from Natives before establishment of British Government.
Prohibited by Proclamation, 14th Jan., 1840.
Commissioners to investigate, &c., appointed by Ordinance Sess. 1, No. 2.
Ordinance Sess. 2, No. 14, disallowed.
2. Proceedings under above Ordinances.
Awards of Commissioners.
Altered by Governor Fitzroy's Commissioner.
Grants issued by Governor Fitzroy. Their imperfections.
Scrip issued by Governor Fitzroy.
3. Sir George Grey's attempts to settle these claims.
Quieting Titles Ordinance, Sess. 10, No. 4.
Declares old grants valid, under conditions.
Compensation in money or other lands to be made where land granted could not be obtained.
4. Results of the above measure.
Very few grantees adopt its provisions.
Causes which rendered it inoperative.
5. Present state of the claims and lands claimed.
Claims divided into seven classes.
State of lands affected by them.

II.—PREEMPTION WAIVER CLAIMS.

1. Governor Fitzroy waives Crown's right of preemption under certain conditions.
Proclamation 26th March, 1844 (10s. per acre fees).
Proclamation 10th October, 1844 (1d. per acre fees).

- Notice 6th December, 1844, limiting amount of lands to be bought.
Amount of land bought under respective Proclamations.
2. Lord Stanley "reluctantly recognizes" the sales.
 3. Sir G. Grey's attempts to settle the claims.
Notices of 15th June, 1846—
Stopping further purchases.
Calling for plans and surveys within three months, or claims to be quashed.
Ordinance Sess. 7, No. 22, offering compensation in Colonial Debentures, or opportunity of repurchase from Government.
 4. Lord Grey directs Government faith to be kept with claimants, so far as the law strictly demands.
 5. Sir G. Grey's consequent notices of 10th August, 1847, offering three modes of settlement to claimants—
 - i. Compliance with the Proclamations, to be certified by Attorney-General.
 - ii. Acceptance of terms of Ordinance Sess. 7, No. 22.
 - iii. New terms—purchase of lands from Government, at 5s. per acre, &c.
 6. Results of the above measures.
10s. claims, grants issued, &c.
1d. an acre claims.
Number settled by grants,
Or by compensation,
Or disallowed under notices of 15th June, 1846, and 10th August, 1847, respectively.

PART II.—MODE OF DEALING WITH THE CLAIMS RECOMMENDED BY THE COMMITTEE.

1. Appointment of a Court of Commissioners to settle claims recommended.
Why such a measure necessary.
Court should have a general discretionary power, yet its operation be guided by enactment of general rules.
Its decisions to be without appeal.
2. Constitution of Court, &c.
Judges of Supreme Court should be included in it.
Assistant Commissioners or Surveyors to visit every district, and collect evidence, &c., as essential to ascertain wherever natives oppose claims.
Courts to be held at central places.
Lands to be surveyed.
3. Particular rules for guidance of Commissioners.
General power in special cases of proved injustice.
No new claims to be received.
- i. Old Land Claims.
Where grants have been issued—
Old grants to be called in and cancelled, and new issued.
Conditions of the new grants.
Amount of grants, recite grantees entitled to, and not more than one-sixth to be given where lands undisputed.
Where no grants have been issued—
Of remaining classes, which to be heard, and which not.

- In cases not hitherto decided. Commissioners to be bound by scale in Ordinance Sess. 1, No. 2, and by maximum, &c.
- ii. Pre-emption Claims.
10s. claims virtually settled.
1d. an acre claims.
Where grants have been issued considered as settled.
Claims disallowed under notices of 15th June, 1846, and 10th August, 1847, may be reheard.
Terms of third alternative, in notice of 10th August, 1847, to be adhered to in award of lands.
Reasons.
 - iii. Completion of Title.
Governor may complete title of claimants in certain cases.
 - iv. Compensation.
Rules for compensation, where necessary to be given.
No transferable or money scrip to be issued, but specific portions of lands assigned,
Where practicable, out of land originally claimed, or out of land acquired for Governor Fitzroy's scrip.
Amount of compensation in respect of 1d. an acre claims.
When land has been sold by Government, how to be estimated.
All compensation claims to be considered before any awarded.
4. Act should be passed embodying recommendations of Committee.

THE SELECT COMMITTEE of the House of Representatives, appointed May 9, 1856, to consider and report as to the nature and extent of Outstanding Land Claims, and the best means of finally disposing of the same, have agreed to the following Report:—

The subject referred to your Committee, viz., the best mode of dealing with unsettled land claims, is so extensive and complicated, and involves the consideration of such a variety of circumstances, and conflicting and contradictory proceedings on the part of the successive Governments of the Colony since its foundation, that your Committee think it advisable to preface their recommendations with a brief statement of the principal points in the history of the claims in question.

PART I.—PAST HISTORY AND PRESENT STATE OF THE LAND CLAIMS.

These claims may be divided into two great classes—1st, those arising from purchases from the natives made before the regular settlement of the Colony, and prohibited by Sir G. Gipps' proclamation of January, 1840, usually called the Old Land Claims; and 2ndly, the claims arising from purchases made from the natives under Governor Fitzroy's proclamations waiving the Crown's right of pre-emption, called the "Pre-emptive Land Claims." It will be convenient to consider the two classes separately.

I.—OLD LAND CLAIMS.

1. *Purchases from Natives before the Establishment of British Government.*

Many individuals having made purchases of tracts of land from the natives of New Zealand before the proclamation of the Queen's sovereignty over New Zealand, Her Majesty, by Royal Instructions of 14th August, 1839, declared that no titles to land not proceeding from or recognized by Her Majesty should be recognized.

A proclamation was next issued by Sir George Gipps, dated 14th January, 1840, forbidding further purchases. An Act of the New South Wales Legislature was afterwards passed, declaring such titles absolutely null and void. And Commissioners were appointed (30th September, 1840,) under the same Act, by the Governor of New South Wales, to investigate and report on all such claims to land in New Zealand. The Islands, however, being erected into a separate Colony, an ordinance of the New Zealand Legislature (Session 1, No 2,) was passed, repealing that of New South Wales, and appointing Commissioners to whom the said claims should be referred by the Governor. These Commissioners were empowered to investigate and report on the said claims, and to award lands in amount varying according to the purchase money, at a rate per acre decreasing as the length of time since the purchase increased. But they were forbidden to recommend any grant for more than 2560 acres, unless specially authorised thereto by the Governor and Executive Council.

Another Ordinance, (Session 2, No 14,) was afterwards passed, removing the limitation to the maximum of 2560 acres, and allowing land to be awarded at the rate of one acre for every 5s. of purchase money; a scale adopted in consequence of the New Zealand Company's arrangement with the Crown, in which they were allowed land after the same rate. This Ordinance, through afterwards disallowed, was in force from 25th February, 1842, to 6th September, 1843.

A third Ordinance, (the Land Claims Amendment Ordinance, Session 3, No 3,) next gave to one Commissioner the powers conferred by Ordinance Session 1, No. 2, on two Commissioners.

2. *Proceedings under above Ordinances by Governor Fitzroy, &c.*

There were about 500 claims, most of which were investigated and reported on by the Commissioners, Messrs Richmond, Godfrey, and Spair. These Commissioners, in most cases where the grants were recommended, awarded amounts of land in conformity with the provisions of the disallowed ordinance above mentioned. They subsequently amended their awards, in conformity with the first ordinance (Session 1, No. 2.)

Governor Fitzroy, however, having appointed a new Commissioner, many of the cases already heard and reported upon were reopened, and much larger amounts of land awarded. This purported to be done under the power given by the first ordinance to the Governor and Executive Council, to recommend the grant of larger amounts than the maximum. But little regularity or system seems to have been observed in these proceedings. New awards were made in a great number of cases without a rehearing, the old awards being reversed; much larger amounts of land being given in most cases; in some an amount much greater than had ever been claimed, or than could have been awarded under the liberal rates of purchase established by the first ordinance. The Governor nevertheless proceeded to issue grants for these lands, unsurveyed, and imperfectly described even as they were. In the notice published in the *Gazette* of May 23rd, 1844, announcing his intention, the reason adduced for the issue is the impossibility of getting the land surveyed without causing such delay as would be ruinous to the parties interested. These grants are full of defects; such as recitals entirely the reverse of the facts, stating for instance that the quantities of land conveyed were those awarded by a Commissioner, while in fact the grants conveyed double or treble the quantities; or that recommendations had been made, while in fact the claims had never been heard by a Commissioner; some of these purported to convey more land than had been originally claimed, and most of them contained no particular description of the specific portions of land intended to be conveyed.

Schedules of the whole of the cases heard by the Commissioners, with the original and amended and subsequently altered awards, and the proceedings of Government thereupon, were published by Government in 1849, and appended to the *Government Gazette* of that year.

There were 400 grants prepared, and about 350 issued, of which as only 42 convey islands or lands surveyed before the grants were prepared, the rest may be said to be imperfect and probably invalid.

It may be here mentioned, that where the lands claimed could not be obtained from the natives, or for other reasons, not be granted to the claimants, Governor Fitzroy gave compensation in land credits or scrip, amounting in all to £97,840, of which about £7000 remains unsatisfied.

3. *Sir George Grey's Attempts to Settle the Claims.*

Desiring to attempt some remedy for the evils arising from the uncertainty of title and ownership produced by the defective state of the grants above alluded to, Sir George Grey first caused the validity of one of them, the defects of which were such as affected the greater number, to be tried in the Supreme Court. But the Court having ruled that the grant was valid (though a similar decision in another case was subsequently reversed by the Privy Council,) Sir George Grey, on the 25th August, 1849, passed the Crown Titles Ordinance, Session 10, No 4, commonly called the "Quieting Titles Ordinance," the object of which was to declare the grants valid, subject to the following conditions:

As most of the grants declared grantees to be entitled to a certain amount of land, and then either gave no definite boundary or the boundaries of the land originally claimed (generally speaking, a much larger extent,) the Ordinance provided that no grant should convey more than one-sixth of the land more than the grantee was declared entitled to.

Where the Native Title had not been extinguished, compensation was to be given out of the Treasury, and charged on the land, to be repaid in three years. Where the land to be granted was not sufficiently particularized, selection might be made out of the whole block described in the grant.

Where the same piece had been given to two claimants, the Government was to grant such piece to each as the Commissioner reported just.

Where natives obstructed occupation, other lands of equivalent value (not town land) were to be selected by claimant before 1st July, 1851. In case of failure to do so, Commissioner to select, but not more than the quantity to which the grantee was recited to be entitled.

4. *Results of the above Measure.*

This attempt to settle these claims does not appear to have been successful. From evidence before your Committee, it appears that a very few of the old grantees (less than 20 in all) have obtained new grants for their original ones; and one or two have made selections according to its provisions.

The causes which have rendered the ordinance inoperative appear to be various. Ignorance of its provisions by the distant and widely scattered individuals affected by them; the expense of survey; the limited time for selection, and the trouble and cost of it,—these motives have had their weight; but chiefly the determination of the claimants to believe that their grants were good, and would ultimately be recognized; a determination induced by the unwillingness to resign a claim, however vague and ill grounded, to a large extent of land, in exchange for a valid and indefeasible right to a smaller portion.

5. *Present State of the Claims and Lands Claimed.*

The present state of the question, then, may thus be described. All the old claims may be ranged under the following heads:—

1. Claims sent in, but never referred to a Commissioner.
2. Claims referred to a Commissioner, but lapsed by default of claimants.
3. Claims referred to a Commissioner, but never adjudicated upon.
4. Claims adjudicated upon and disallowed.
5. Claims adjudicated upon and allowed, but for which no grants have been issued.
6. Claims adjudicated upon and allowed, and upon which imperfect grants have been issued.
7. Claims adjudicated upon and allowed, and upon which valid grants have been issued.

The whole amount the grants declare grantees entitled to may amount to 200,000 acres; but the grantees, considering themselves entitled to the whole amount described by the boundaries in the grants, claim at least 300,000.

The grants are often bought and sold, the repurchasers still preferring their claims. Some of the

grantees are in possession of the lands granted ; but a great part of those claimed are unoccupied by anyone. Some portions have been resumed by the natives ; and some, where the native title had been extinguished, and no grants made, have been considered Crown lands, and taken by the Government as such ; although in reality it has generally had to make the natives some additional payment. Still, in a great number of cases no possession has been obtained by any one ; the natives disputing the ownership of the land in the absence of the claimants, or the insecurity of the titles they hold preventing the latter from attempting to enforce their supposed rights.

Some of the claimants, whose claims have been disallowed by the Commissioners, are still urging them ; the limit of 2560 acres is a ground of dissatisfaction with others ; some have taken grants for what they could get, but under protest ; and some, about fifty, have not yet taken out the grants prepared for them, which are still lying in the office after a lapse of 10 or 12 years.

II.—PREEMPTION WAIVER CLAIMS.

1. *Governor Fitzroy Waives Crown's Right of Preemption, under certain Conditions.*

Governor Fitzroy, in 1844, resolved upon the experiment of abandoning the Crown's right of pre-emption over native lands, and allowing the natives to sell directly to the public. He accordingly, on the 26th March, 1844, issued a proclamation, waiving the Crown's right of pre-emption over certain limited portions of land in New Zealand, and allowing purchases direct from the natives, on conditions therein stated. Certain fees were to be paid, amounting to ten shillings per acre bought ; the lands were to be surveyed ; paha, burying grounds, and some other lands excepted ; one-tenth of all lands bought to be conveyed to the Queen as reserves, for the use principally of the natives ; all risks from incomplete purchases to be borne by the buyers ; lands bought to be surveyed ; and no grants issued to any purchasers contravening any of the aforesaid regulations. By proclamation, 10th October, 1844, the fee was further reduced to one penny per acre.

By notice, 6th December, 1844, Governor Fitzroy prescribed the form of application, described the effect of the waiver of the Crown's exclusive right, as not conferring that right on the particular individual, unless so specified distinctly ; and declaring that the term "limited portions of land" meant a "few hundred acres."

The last notice was partly caused by the large amounts of land that were being bought, almost all in the immediate vicinity of Auckland. Yet though Governor Fitzroy thus expressly declared that a few hundred acres were all the pre-emptive right would be waived over, he altered, in his own hand, several applications for a larger amount to 900 acres, and in one at least to 999 acres.

1795 acres were bought under the ten shillings proclamation, and 90,000 acres under the penny one ; but no grants appear to have been issued by Governor Fitzroy for any of these lands.

2. *Lord Stanley Recognises the Sales.*

Lord Stanley, in a despatch dated 30th November, 1844, gave a "distinct but reluctant consent" to the first of the above proclamations, which, he says, he had understood to be confined to a particular district, and on 27th June, 1845, ordered Sir G. Grey to recognise any sales Governor Fitzroy might have made under the second proclamation ; but he strongly prohibited any such sales in future.

3. *Sir George Grey's Attempts to Settle these Claims.*

Sir George Grey accordingly, on the 15th June, 1846, issued notices declaring that no further certificates of waiver of pre-emption would be issued ; requiring all claimants under the proclamations to send in deeds, maps, and surveys, connected with these alleged claims, to Commissioners appointed to examine them, on or before the 15th September then ensuing, after which no claims were to be received or entertained. It was further declared, that as evasions of the regulations and conditions under which the certificates of waiver were issued had in many cases taken place, the Home Government would be consulted before any final decision was come to respecting such cases.

This exterminating process was accompanied by proposals to induce the voluntary abandonment or compromise of the claims, contained in an Ordinance (Land Claims Ordinance, Sess. 7, No. 22), passed the 18th November, 1846, offering compensation in Colonial Debentures to land purchaser's under the proclamation of 10th October, 1844, for their outlay in purchase of lands, in deeds, surveys, and improvements. A Commissioner was to be appointed to decide and report on amounts due. Claimants having actual occupation, by building, or improving, to be allowed to purchase the land from Government at £1 per acre,—the amount spent in purchase from the natives, in improvements, &c., to be deducted. And the tenths reserved under proclamation of 26th March, 1844, might be bought from Government at £1 per acre in cash.

4. *Lord Grey's Instructions respecting these Claims.*

Meantime, the decision of the Home Government having been applied for, Lord Grey, on the

10th of February, 1847, reinforcing the instructions given by Lord Stanley, conveyed his approval of the steps Governor Grey had taken, including the issue of the notice to send in claims within a prescribed period, on pain of the exclusion of them; declared Governor Fitzroy's proclamation to have been "plainly in excess of his authority;" that "the arrangement was most impolitic; but that the faith of the crown must be kept with purchasers so far as it was pledged;" that the claimants' title "resting only on strict and positive right," and "having no support from justice, equity, or public policy," Crown grants were to be given to "those only who could prove, in the strictest manner, that they had completely and literally satisfied the requisition of the proclamations in every particular they contain." He further directs that claimants must be called upon to prove to the satisfaction of the Attorney General that the "native claimants were sole and true owners of the land they undertook to sell," the Attorney-General to certify the same: and lastly, that the grant must, if issued, expressly declare that "it barred only Her Majesty's own right, and only transferred any right previously existing in her."

5. *Sir George Grey's Consequent Proceedings.*

After receipt of this despatch, Sir George Grey published notices, dated 10th August, 1847, laying down three modes of procedure as open to claimants; viz.—

1. To abide by terms of Lord Grey's despatch.
2. To take compensation under Ordinance 7, No. 22.
3. To avail themselves of new conditions then published, viz.—

Claimants under ten shillings proclamation to have absolute grants on payment of remaining fees,

Under the penny proclamation, to have grants for land up to 500 acres, on payment of 5s. per acre. If above 500, same power of purchase to that amount; surplus to vest in the Crown; This only within 20 miles of Auckland. Lands undisputed by natives alone to be affected by this arrangement.

6. *Results of the above measures.*

The effect of these arrangements may be thus briefly stated:—

Ten Shilling Claims.—The greatest part of claims under the first proclamation may be considered as disposed of. For out of 61 original claims,—

49 have been settled by issue of grants by Sir George Grey under the above terms.

9 were disallowed for non-payment of fees on certificate of waiver of pre-emption, which therefore could never have been issued; the land affected is about 280 acres in the aggregate.

2, of patches, not an acre together, were disallowed, on account of plans not having been sent in.

The only dispute existing about these claims is as to the right of reserving lines of road through the lands.

Penny an Acre Claims.—The preserving and exterminating processes had the following effects respectively on these claims:

There were 189 original claims, affecting about 90,000 acres.

53 have been settled by issue of grants by Sir George Grey, under the 5s. per acre payment.

21 have been resigned, on receipt of compensation, or debentures, or money.

80 were disallowed, for non-compliance with the requisitions of 15th June, 1846, for sending in plans and surveys.

28 were disallowed, because certificates that the Fitzroy proclamation had been complied with were refused by the Attorney-General. The particulars of non-compliance are not given in any case in the Attorney-General's reports of the fact.

7 were disallowed or abandoned. Reasons not given.

It will thus be seen that the cause of the disallowance of the greater part of these claims was the failure to send in plans of the lands claimed by the 15th September, 1846. Numbers were sent in on the last day; those offered afterwards were invariably refused. Some of the lands comprised in disallowed claims have been resumed and resold by Government, and some are included in the reserves for the Pensioner Settlements.

PART II.—MODE OF DEALING WITH THE CLAIMS RECOMMENDED BY THE COMMITTEE.

1. *Appointment of a Court of Commissioners to Settle Claims.*

Having thus briefly adverted to the most prominent points of the history and present condition of these land claims, your Committee now proceed to suggest the mode in which it appears to them they ought to be dealt with.

And, first, the Committee have unanimously agreed that it is necessary to establish some court or tribunal, with ample powers to investigate, hear, and determine, and finally adjust and settle, every doubtful or undecided particular connected with the whole subject. For it seems clear that, wherever decisions of former Governments have given dissatisfaction to claimants affected by them, the latter will not desist from endeavours to obtain from some Government responsible to the people, or from your Honorable House, a reconsideration of their claims, and a reversal of the previous unsatisfactory decisions. Nothing less than a verdict, backed by all the authority and weight of a body representing the opinions of the whole community, will convince such claimants that finality or conclusiveness has been arrived at, and that all hope of further successful agitation of the matter would be idle. And this perhaps formed one of the greatest difficulties encountered by Sir George Grey in his attempts to settle the claims, that no enactments of his, especially with popular institutions looming in the immediate future, could absolutely fix the point where decision would be actually final, and appeal or reversal really unattainable.

But again, it has been made to appear to your Committee that injustice in some cases, and considerable harshness at least in many more, may have been done by former Governments in their attempts to settle or stifle these claims. This will be alluded to more particularly hereafter.

The fact that many hundreds of illegal or imperfect grants are in the hands of the public, which must be called in and cancelled or remodelled, would alone be sufficient to necessitate the institution of some special body to deal with them.

For these reasons chiefly, your Committee recommend the establishment of a Court of Land Claims, empowered fully to treat, investigate, and determine them in every particular. But, keenly alive to the danger and impolicy of provoking the revival or reassertion of claims that may or would soon have been suffered by the claimants to lapse through indifference, carelessness, consciousness of the weakness of the grounds upon which they rested, or from any other cause; and most anxious in no degree, beyond what strict justice requires, to open the door to the admission into the Province of Auckland (which is most affected by these claims) of all those evils which a system of general compensation has inflicted upon other provinces, and which to a certain extent must be involved in any resettlement of these claims, your Committee is desirous of laying down certain general principles for the guidance of the Commissioners to be appointed, which will restrict their action within proper limits, and save, if possible, a great measure of relief, and one demanded by justice of the Legislature, from that abuse to which from its very nature it must be peculiarly liable. And although a great discretion must be left to the Commissioners to redress every possible case of proved injustice, it is thought most useful to lay down such general restrictive principles as will relieve the Commissioners of much of the disagreeable responsibility of rejecting the exaggerated demands and urgent importunities of claimants, who themselves would be less dissatisfied with a decision based upon positive enactment than when it rested solely on the judgment of Commissioners, or might, in the exercise of an entirely unfettered discretion, have been more favourably or partially entertained by them.

It is proposed of course, as a most essential condition of the scheme, that there shall be no appeal whatever from this Court, but that the Act which constitutes it and defines its powers shall in the most express terms declare its decisions final and altogether irrevocable.

2. *Constitution of Court, &c.*

The next point is the constitution of the Court, and the principles that should be laid down for its guidance.

Your Committee recommend that the Court should be composed of not more than six Commissioners, including the two Judges of the Supreme Court, who should sit *ex officio*. As hundreds of grants may, under the proposed scheme, have to be corrected by the Commissioners, it is highly desirable that this should be done with the direct cognizance and under the authority of the Judges; as well as that the decisions of the Commissioners generally should receive the weight of their approval. For nothing would tend more effectually to repress dissatisfaction or cavilling at their awards, nothing give the public and all concerned a fuller assurance of justice and equity having been observed throughout, than the knowledge that the sanction of the Judges of the Supreme Court had accompanied all their proceedings.

In the appointment of the Commissioners the Provinces wherein the claims to be heard are situated should, as far as possible, be represented.

Further, as it is essential to the effectual settlement of any claim, that the land claimed, or to be granted or re-granted, should be actually visited by a surveyor, or if necessary, in disputed cases, by some higher authority; and as the majority of the Commissioners composing the Court above proposed would be Judges or probably officers acting *ex officio*, and prevented by many causes from visiting the disputed lands in person, your Committee recommend that the Government shall have the power of appointing Assistant Commissioners, who shall be sent to the several districts to take evidence in open Court, and report upon the circumstances relating to any claim referred to them. Further, that these Assistant Commissioners, attended by surveyors, should, under proper precautions, cause the boundaries of all lands claimed, to be marked out in an unmistakeable manner; because it is absolutely essential that in every case it be decisively ascertained whether any obstruction to the occupation of the land would be raised by native owners or claimants; and no mode can be devised of ascertaining this fact so effectual as the positive attempt to define, on the ground itself, the block of land claimed.

It is further recommended, that the Commissioners should from time to time hold Courts—any three, including a Judge of the Supreme Court, forming a quorum—at some central place or places in the Northern and Middle Island as might be found most convenient, to consider the reports and evidence furnished them by the Assistant Commissioners, and finally decide upon the claims connected therewith. It is proposed that the Assistant Commissioners should be entitled to a seat at the Board of Commissioners, and have a right to deliberate and vote upon the claims preferred.

Where many blocks of land claimed lie in immediate contiguity, or nearly adjacent, it will perhaps be advisable to cause a regular survey of the district in which they lie to be undertaken. But it is proposed that the cost of such survey should be repaid in the aggregate by the claimants to whom the surveyed lands are to be granted.

3. *Particular Rules for Guidance of the Commissioners.*

And now for the particular rules to be laid down for the guidance of the Commissioners in respect of the classes and character of the claims they are to be empowered to hear and decide upon.

As it is impossible for any Committee, without really doing great part of the work of the proposed Commissioners themselves, to provide for every possible combination of circumstances on which the strength or weakness of every claim may depend, it is proposed, as has been stated, to give a special power to the Commissioners, notwithstanding anything to the contrary elsewhere enacted, to hear and decide upon any case where special injustice may satisfactorily be proved to have been inflicted. Keeping this ultimate safeguard against any injustice in view, your Committee propose to limit the action of the Commissioners in the following particulars:—

The Committee recommend that no new claims whatever, of which the Government has not received written notice before 1st July, 1856, should on any account be received or entertained.

With respect to claims already received, the same order as in the former part of this report may be observed. The “Old Land Claims” to be first considered, then the Pre-emption Land Claims.

I.—OLD LAND CLAIMS.

Of the seven classes of Old Land Claims enumerated in the former part of the report, it is recommended that—

1st. Holders of imperfect grants should be called upon to send in their grants to Government before a certain day, say the 1st July, 1858; all grants not sent in before the time fixed to be declared invalid by the Act.

After investigation by the Commissioners, the imperfect grants to be cancelled, and new ones issued in lieu thereof, subject to the same equitable rights and interests as the old cancelled ones.

These new grants should not convey in any case more than one-sixth more land than the amount the old grant declares the grantee to be entitled to. This sixth is given in order to enable natural boundaries, where practicable, to be taken instead of survey lines. The Committee think it expedient to allow a re-grant of all the land the old grants declare grantee entitled to; for although it is possible that the awards, or other grounds on which Governor Fitzroy determined the amounts so granted, may in many cases not have been strictly legal, yet as, on similar grounds, amounts of scrip were awarded and given in a great number of cases, it would be inconsistent with impartiality, were the amount of land so granted now to be reduced unless the scrip given on the same principles could be recovered to a corresponding extent, which is impossible. They think it better therefore to allow new grants to be issued for the amount mentioned in the preamble of the grants, it being understood that if the description of boundaries comprise a larger amount, in no case will that larger amount (except the one-sixth above mentioned) be given in right of the old grant.

All lands so to be regranted are of course to be previously surveyed.

2ndly. Of claims in respect of which no grants have been issued.

Those never referred to a Commissioner may of course be heard by the new Commissioners.

Those referred but lapsed by default of claimants, either through claimant not appearing or appearing but refusing to pay fees, or to give evidence, are not to be reopened or heard. But it has been stated to your Committee that in some cases poor claimants who were settled on the land were actually unable to pay the fees; in such cases the general discretionary power to the Commissioners would enable them to do whatever justice required.

Those claims referred to a Commissioner but never heard by him, owing to other causes than the default of the claimant, may be heard and decided.

Those heard and disallowed by a Commissioner, your Committee are of decided opinion should not be reopened.

Those claims which have been recommended by Commissioners, but for which no grants have been issued, will be subject to all the Regulations relating to the old grants to be cancelled and the new ones to be issued.

Your Committee recommend, that in awarding land in cases never adjudicated on by a Commissioner, the new Commissioners should be bound by the scale appended to the Old Land Claims Ordinance Session 1, No 2. Further, that they should be limited to the old maximum amount of 2560 acres, except in special cases, with respect to which they may recommend to the Executive Government to grant an excess over that amount; such excess, however, in no case to be greater than the largest amount comprised in any existing old grant.

II.—PREEMPTIVE CLAIMS.

Of these claims, those under the 10s. an acre proclamation (March, 1844) may be considered as already disposed of. Any cases of possible injustice may be left to the discretionary power given to the Commissioners.

The claims under the proclamation of the 26th October, 1844, require more attention. Of these, the 53 claims which have been settled by issue of grants by Sir George Grey, and the 21 which have been resigned on receipt of compensation in debentures or money, may be considered as settled.

With respect to the 108 claims disallowed because plans and surveys of the lands were not sent in within the 3 months as required by the notice of the 15th June, 1846, or because the Attorney General refused certificate that the claimants had complied strictly with the terms of Governor Fitzroy's proclamation, your Committee offer the following remarks :—

The notices alluded were issued with the avowed design of extinguishing these claims summarily and arbitrarily. It appears clear to your Committee that it must have been absolutely impossible in very many cases to have procured complete surveys of all lands comprised in them within 3 months; considering the few surveyors there were in the country, and the amount of lands to be surveyed. Some of the claimants brought in the plans soon after the last day allowed for their receipt; and all such were steadily refused. And though it is true that two years had elapsed since the purchases were made, yet it does not appear that Government during that period had evinced any determination to enforce summary compliance with the terms of the proclamations in that particular. And in the doubtful state of the titles caused by the Secretary of State's disapproval of the proclamations, claimants were naturally unwilling to undertake the expense of surveying their purchased lands.

With reference to the claims disallowed for want of the Attorney-General's certificate, your Committee have no means of learning on what particulars of non-compliance with the terms of the proclamation the refusal of the certificate was grounded. But as it appears that the application of the principle may in some cases have been somewhat stringent, your Committee recommend that these classes of claims should be heard, and any proved injustice be remedied by the Commissioners. Yet as these purchases were only permitted on a most erroneous principle, and one clearly detrimental to the general interests; as the Home Government has given its imperial fiat to Sir George Grey's proceedings; as, moreover, any grants that, by the Proclamation, the claimants would legally have been entitled to, were only grants barring the right of the Crown, and not excluding or extinguishing the claims of any European or any native whatever; and as the payment of five shillings per acre relieved the claimants from the obligation of proving their strict compliance with the Proclamations, your Committee think it only right to recommend that the terms of the third alternative in Sir George Grey's offer, contained in his notice of the 10th August, 1847, should still be applied in all cases of lands now to be granted under these classes of claims. Five shillings per acre would then have to be paid for such lands; the limitation of 500 acres as a maximum to be adhered to; and the title of the natives proved, to the satisfaction of the Commissioners (as in all other cases) to have been extinguished.

But as in many of these penny an acre cases, including most of those affecting the most valuable lands, the lands, as your Committee is informed, have been resumed and re-sold by the Government, wherever such claims are found to be good, it will be necessary to compensate the claimants.

III.—COMPLETION OF TITLE.

Your Committee are of opinion, that where the lands which the Commissioners shall adjudge a claimant entitled to, or a grant declare grantee entitled to, are withheld by the natives, the Government should be empowered to complete the claimant's or grantee's title, on the Commissioners' recommendation; but of course that all the expenses of so doing should be borne by the claimants or grantees concerned. This power it is hoped, if cautiously and carefully exercised, might satisfy some just claims, and benefit several claimants, without any detriment to the public interests.

Where, however, the land to which any claimant or grantee is found to be justly entitled, cannot be obtained in this way, the Commissioners should be allowed to give compensation for the same.

IV.—COMPENSATION.

The general rules respecting compensation your Committee desire to see enacted are the following:—

No transferable land order or money scrip should be given in any case whatever, but the compensation should be in specified portions of land; to be taken if possible within the block originally claimed, and if not obtainable there, then as near to it as possible; or out of land acquired by Government in right of claims it has satisfied with scrip money, or other lands. By evidence before your Committee, it appears that there are about 97,000 acres of land so acquired, of which very little has yet been sold. This it is hoped will afford an ample supply for any compensations to be awarded by the proposed Commissioners.

Where compensation is awarded in respect of claims under the proclamation of the 26th October, 1844, by the Commissioners for land retained and sold by Government, the amount of land to be given should be measured by the price realized by Government for the original land; such original land not to be considered as having exceeded 500 acres, and such last price not to exceed £1 per acre. From this is to be deducted the amount of 5s. per acre, which otherwise would have had to be paid for the land.

In special cases, where the foregoing rule would be manifestly unjust, if any such exist, the Commissioners to award the amount at their discretion.

It is highly desirable that every case requiring compensation should be heard before the amount to be given in any one is finally determined upon, in order that strict consistency in this respect may be preserved throughout.

4.—*Act to be Passed, Embodying Recommendations.*

Lastly, your Committee advise that a Bill be at once prepared, embodying all the foregoing recommendations, so that it may be passed into law during the present session of the Legislature.

And they conclude with the expression of a hope that, if the measure recommended should become law, as the benefits to be derived from it will depend so much upon the character of the Commissioners to be appointed, the Government will endeavour to select for the office men of judgment, firmness, and discretion, who will combine energy with the utmost caution; who will act with a vigilant eye towards the preservation of the public interests on the one hand, and the obligation to administer strict justice to the claimants on the other; and manifest the same anxious desire that no wrong by any possibility done to any one, however humble or powerless to enforce his rights, should be left without redress; yet that the property of the whole community should not be carelessly tampered with, or lightly squandered or frittered away, which has animated your Committee throughout their deliberations on this intricate, vexed, and complicated question.

POSTSCRIPT.

Petitions of certain claimants, under different classes of claims, having been referred by your Honorable House to this Committee, your Committee are of opinion that the claims of all such petitioners should be heard and decided on by the Commissioners now recommended in accordance with the provisions of the Act proposed to be passed on the general subject.

ALFRED DOMETT, *Chairman.*

*Committee Room, House of Representatives,
July 16, 1856.*

