

The claimants thereupon concluded the arrangement with the natives, gave them the vessel, had the land surveyed, sent in the survey to the Government, and claimed their grant. The plan was referred to the Surveyor General on the 2nd March 1846, with directions, if he was satisfied with its correctness, to prepare a grant in compliance with Governor Fitzroy's Minute. The Surveyor General required certain things to be done, lines cut, and so forth; this was obeyed and the plan sent in again, the contents as finally shown being 17,784 acres. The Surveyor General pronounced the survey a very good one; and as to the extinguishment of the native title, it has never been disputed to this day.

But the grant, nevertheless, was not issued. In 1853 the claimants—apparently getting tired of waiting—asked that the claim might be settled by repaying them their mere outlay. The Government agreed to have the outlay ascertained, but in the meanwhile took possession of the land and proceeded to sell nearly 7000 acres of it at 10s. an acre; the claimants having themselves to buy upwards of 5000 acres to secure large property they had placed on the land. Some months afterwards the Surveyor General sent in his estimate of their outlay, amounting to £970: but the money was never paid.

When the claim came before me I tried various ways to settle it, but I gave it up at last. The claimants were always willing to accede to anything I might decide, and to submit to an award whatever it might be. But I could not satisfy myself that the Act would enable a fair award to be made. Although it did not in strictness belong to the "Pre-emptive Claims" (no actual certificate of waiver having been issued under Governor Fitzroy's Proclamations of 1844), and might therefore have been heard under Section 33 without coming within the letter of the restrictive words above mentioned; in reality such a course would have been a mere evasion of the restriction, the claim being virtually one arising out of the waiver of the Crown's right of pre-emption, though under a special agreement with the Governor instead of under his Proclamations. The Governor in fact enters into a specific agreement with private persons 18 years ago, that if they extinguish the native title to a certain piece of land and survey the boundaries, they shall have a grant for half of it. The conditions are fulfilled by one party, but instead of the Government fulfilling its part it seizes the land and sells all the best of it. It appears to me clear that this transaction cannot be fairly settled by the provisions now in force relating to either Old Claims or Pre-emptive Claims.

I have thus given illustrations of the cases in which further provision may properly be made, and it remains only to say how I would make it.

If the Government intend to introduce a Bill at all this Session, I propose—

- 1st. That this Report be referred to a Select Committee.
 - 2nd. That with the assistance of the personal knowledge of the claims possessed by many members, of the information afforded in detail by the annexed Returns, and of evidence to be given by me, such Committee make a list of the cases which appear to deserve special consideration.
 - 3rd. That any claimant in the list should then have the option of three courses; either to have his case decided by the Commissioner, or to have a jury of six impanelled from the Special Jury Lists to assess the amount of land or compensation in Scrip that ought to be granted to him, or to have any differences as to the fair interpretation of the law, where no jury is demanded, decided by the opinion of a Judge of the Supreme Court upon a Case stated not (as at present) by the Commissioner, but if he pleased by the claimant himself—in which he might draw all the inferences while the Commissioner should only take care of the facts.
 - 4th. That either the surplus land be kept for satisfying any special awards, or (if the Provincial Authorities prefer the surplus being immediately handed over) such awards run over Waste lands.
 - 5th. That any claimant coming in under the New Act should sign a Declaration that he accepted it as a conclusive settlement.
 - 6th. And above all, that if it be by any means possible, some understanding should be come to that at length an end will have been made of legislation on the subject.
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