

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 choose 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