

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 empowered 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.