

REPORT

BY

THE AUDITOR-GENERAL

ON

COMPENSATION CLAIMS AWARDED BY
MR. COMMISSIONER BECKHAM,

WITH

MEMO. BY THE ATTORNEY-GENERAL.

PRESENTED TO BOTH HOUSES OF THE GENERAL ASSEMBLY, BY COMMAND OF
HIS EXCELLENCY.

WELLINGTON.

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REPORT BY THE AUDITOR-GENERAL ON COMPENSATION CLAIMS AWARDED BY MR. COMMISSIONER BECKHAM.

No. 1.

Wellington, 21st February, 1871.

I HAVE the honor to report, in reference to your letter of the 2nd instant, that the claims of settlers for losses by the rebellion, preferred before Mr. Commissioner Beckham in the year 1865, were reported, on an *ex parte* inquiry, to amount to £73,415 15s. 8d.

Early in the year 1866, the Superintendent of the Province of Auckland, to whom the administration of the confiscated lands was temporarily transferred, proposed to accept Mr. Beckham's report as *prima facie* evidence of the validity of each claim, and to pay to the claimant a portion of the amount reported to be due. The claims were to be reinvestigated, and the sums finally awarded to be treated as debts due by the Province of Auckland, bearing 6 per cent. interest, and to be charged upon a Provincial loan of a quarter of a million, then intended to be raised under the authority of the General Government.

One hundred thousand pounds, in debentures, on account of the proposed loan, were issued to the Provincial authorities by the General Government, and out of the proceeds of the debentures, about one-third of the claims was paid in cash, amounting to £23,725 15s. 10d. A reinvestigation of the claims was then made, and the total greatly reduced; and in the month of November, 1866, a certificate, signed by Mr. Beckham, of the amount of the final award, was given in each case to the claimant. The sum that had been previously paid in cash, and the balance due, were indorsed on the certificate by Mr. Boardman.

On the 1st December following, the Superintendent, who was no longer administering the confiscated lands, reported to the Colonial Secretary what he had intended to do in this matter.

On the 11th December the Colonial Secretary replied that his Honor must be aware that the Legislature had always contemplated that admitted claims for compensation for losses in the war were to be defrayed out of the proceeds of the sales of confiscated lands. The Colonial Secretary added that the General Government would pay the award as soon as funds were available from the disposal of the confiscated lands; but that, in respect of his Honor's proposed allowance of interest on the unpaid balance, the Legislature had not authorized interest to be paid, and was not likely to do so, and the General Government had no power or means of paying it.

As funds arising from the disposal of the confiscated lands were trifling in amount, and there was no prospect of the early settlement of the war claims, the Government was induced, rather than postpone the settlement of the claims for an indefinite period, to issue scrip in exchange for certificates to such of the claimants as desired the exchange in preference to await payment in such other shape as might afterwards be adopted. All the claimants would probably have taken scrip, but it occurred to some gentlemen that it might prove a good speculation to buy up certificates, and this was to a great extent done, at prices, it is said, varying from 7s. to 10s. in the £1. Several efforts were made to induce the Government to pay cash in full for the certificates, but, up to this time, without success, and the holders have been obliged, from time to time, to convert certificates into scrip to persons wishing to purchase land. The price of the scrip has risen by degrees to 18s. in the £1, which is about the present quotation. The amount of certificates to settlers unexercised is £1,957 4s. 11d., of which Mr. Aitken represents £1,284 9s.

It appears from Mr. Aitken's statement, that he bought up certificates to the amount of £14,467 19s. 1d., for which payment has been made by the Government in land to the amount of £13,183 11s. 1d., leaving outstanding, as above stated, the sum of £1,284 9s.

In respect of the certificates bought up by Mr. Aitken, he now seeks to establish a claim, not only to the liquidation of the outstanding sum of £1,284 9s., a liability which the Government has not hitherto disputed, but to interest on that sum, at the rate of 10 per cent. per annum, from the month of November, 1866, the date of the awards; also to interest, at the same rate, on the above £13,183 11s. 1d. up to the several dates on which the certificates were exercised in the purchase of land; together with compensation for the difference between the price at which the scrip was sold and the amount of the certificates, a loss which he estimates at 25 per cent. of the principal.

It is to be observed, in reference to this claim for loss of principal in the sale of scrip, that the conversion of certificates into scrip was entirely optional on the part of the holders. The Government throughout carefully guarded itself from urging claimants to use their certificates for the purchase of land. The sale of the certificates by the original holders, and the sale of the representative scrip by the derivative claimants, were both voluntary transactions, and no claim for loss of principal on these accounts can be entertained. The Government has fulfilled its engagement by parting with confiscated lands to the full amount of the awards.

In pursuing the inquiry into these claims, it seems to have been taken for granted that they have been provided for by the Legislature; but, in fact, there is no law under which compensation for loss of chattels by rebellion in the Province of Auckland can be claimed. Under the 19th clause of "The New Zealand Settlement Act, 1863," money arising from the sale of confiscated lands is set aside as a fund, out of which, among other things, payment may be made of any compensation awarded by law to individuals for losses by rebellion; but this clause was wholly repealed in the year 1865; and, moreover, the awards of Mr. Beckham were made under no existing law, and are only so far binding on the

General Government as may arise out of the fact that the Ministry of the day, in its generosity, agreed to recognize the war claims of individuals to the amount determined by Mr. Beckham's inquiries. The obligation thus voluntarily assumed, the General Government undertook to discharge as soon as the proceeds of the sale of confiscated lands at their disposal would enable them to do it. But this undertaking is not, as yet, binding on the Colony at large. There is no legislative enactment under which these claims could be paid at the Colonial Treasury, or scrip received in payment for land; and certainly no moral obligation on the General Government to do more than it promised to do. Its engagement was to pay the principal in cash or in land, and no more.

In respect of the claim for interest, it is clear that the General Government has never admitted it, or in any way held out prospects that interest would be granted by the Legislature; and it is unlikely that the gentlemen who were speculating in these awards were ignorant of the refusal of the General Government to entertain the proposal of his Honor the Superintendent of the Province of Auckland, that the certificates should carry interest. The fact that they sold at prices varying from 7s. to 10s. in the pound is sufficient proof that those who sold were under no misapprehension on this point. Securities of the General Government known to bear interest at 6 per cent. would sell nearly at par. I offer no opinion as to the hardship or otherwise of the refusal to allow interest; but if injustice has been inflicted, it is the original holders of the awards who are the sufferers, and not the speculators who bought up the certificates at low rates. The latter are entitled to land scrip, or to full payment of the awards, however low the price at which they succeeded in purchasing them, but they are entitled to no more.

I forward herewith a memorandum by Mr. Boardman (marked C), showing that the total awards by Mr. Commissioner Beckham amount to £58,688 3s. 7d., of which there has been paid in scrip, £31,065 17s. 3d., and in cash, £23,723 15s. 10d., leaving outstanding, £3,893 10s. 6d. Of this last sum £1,957 4s. 11d. consist of awards to Europeans (see return marked B) and £1,485 8s. 7d. of awards to Natives, besides £451 2s. of awards on the investigation of new claims.

Besides the above compensation claims, there are awards determined before Judges of the Native Land Court, for which scrip amounting to £2,152 was issued by the Colonial Secretary. Among these may also be placed the scrip issued to Mr. Samuel Clarke, under an award in satisfaction of his interest in land at Te Papa, Tauranga, amounting to £6,484 3s. 4d., and a small miscellaneous lot, amounting to £431 11s., particulars of which, and of the Native awards, are given in the return marked A. Nearly all the scrip has been exercised in the purchase of land.

I forward, also, a map of the Waikato District, in which the unsettled portions of the confiscated lands are coloured red.

I have, &c.,

CHARLES KNIGHT,
Auditor-General.

Enclosure 1 in No. 1.

AMOUNT of Compensation Awards originally held by Mr. Aitken.

	£	s.	d.
Amount of claims purchased	14,467	19	1
Amount unexpended	1,284	9	0
	£13,183	11	1

Mr. Aitken now claims payment of £1,284 9s., and interest to the date of payment at the rate of 10 per cent. per annum; also, interest at 10 per cent. per annum on £18,283 11s. 1d., and 25 per cent. on loss of principal. All awards exercised in purchase of land.

The awards are dated November, 1866.

Enclosure A in No. 1.

AWARDS of SCRIP Issued by Native Compensation Court (N.L. Court Judges).

	£	s.	d.
Riria and three others	800	0	0
Heta te Tihi	130	0	0
Hinia te Nawe	200	0	0
Hawiri Maki	800	0	0
W. Kingi	75	0	0
H. Heahea	12	0	0
H. te Kumeti	15	0	0
A. Karaka	15	0	0
M. Korona	10	0	0
M. Oheu	10	0	0
Maria	10	0	0
R. Karehi	10	0	0
Moanui	65	0	0
	£2,152	0	0

ON COMPENSATION CLAIMS.

5 G.—No. 42.

AFTER CLAIMS Awarded by Mr. BECKHAM.

	£	s.	d.
Wm. St. C. Tisdall and Scherff	150	0	0
Sherard	62	10	0
M. Levy	219	1	0
	£431	11	0
S. L. Clarke (Tauranga case)	£6,484	3	4

Enclosure B in No. 1.

COMPENSATION CLAIMS.

SCRIP has not been issued to the following persons. They are entitled to the amount (in Scrip) set opposite to their names:—

	£	s.	d.
Anderson, M. A.	30	16	0
Bischoff, Charles	33	9	8
Boney, John	36	0	0
Bogman, James	14	1	2
Crispe, Jos.	145	13	4
Chandler, Jno.	54	10	0
Finlay, Jas.	38	6	8
Ferguson, Jno.	6	13	4
Galvin, Richard	1	6	8
Green, W. S.	87	13	4
Holland, W.	31	5	4
Henderson, Jas.	393	0	0
Kerr, W.	40	4	3
MacDonald, Jas.	79	13	4
Matthews, Jas.	30	19	4
Mellsop, J. T.	126	0	0
Masters, Wm.	104	0	0
Preece, Jas.	71	6	8
Robinson, Joshua	119	18	4
Shaw, Jno.	26	6	8
Salmon, Jno.	76	5	8
Savage, Charles	46	18	4
Stewart, Thos. L.	44	17	4
Trust, Ambrose	55	18	8
Turner and Oldham	30	6	8
Williams, Henry	23	6	8
Wallis, Wm. Henry	199	17	6
Warne, G. S.	8	10	0
(£1,284 9s. of this in hands of Mr. Aitken.)			
	£1,957	4	11

Enclosure C in No. 1.

COMPENSATION CLAIMS.

	£	s.	d.	£	s.	d.	£	s.	d.
First awards to Europeans	71,002	16	2						
Revised awards to Europeans	55,256	12	1						
Award to Wallis, jun. (addition)	500	0	0						
Total awards				55,756	12	1			
Paid cash on account	22,795	19	11						
Paid scrip issued	31,003	7	3						
				53,799	7	2			
Balance of scrip not issued							1,957	4	11
Awards to Natives—first investigation	2,412	19	7						
Awards paid on account, cash	927	15	11						
Balance, scrip to be issued							1,485	3	7
Second investigation, new claims—									
Awards to Europeans	135	0	0						
Awards to Natives	378	12	0						
	513	12	0						
Scrip issued	62	10	0						
Balance	451	2	0						
Note.—No cash has been paid on account of these claims.							3,442	8	6

SYNOPSIS.

				£	s.	d.	£	s.	d.	£	s.	d.
Total awards	...	...	...	55,756	12	1						
				2,412	19	6						
				513	12	0						
Paid in cash	...	...	...	22,795	15	10				58,683	3	7
Paid in scrip	...	...	...	927	15	11						
Paid in scrip	...	...	...	31,003	7	3	23,723	15	10			
Paid in scrip	...	...	...	62	10	0						
Scrip not issued	...	...	...				31,065	17	3			
Balance of last Awards	...	...	...				3,442	8	6			
							451	2	0			
							58,683	3	7	58,683	3	7

No. 2.

MEMORANDUM by the ATTORNEY-GENERAL on the AUDITOR-GENERAL's Report on the Compensation Claims awarded by Mr. Commissioner Beckham.

21st April, 1871.

"THE New Zealand Settlements Act Amendment Act, 1866," enabled the Governor to make regulations for disposal of confiscated lands for any consideration he thought fit. This power, it was considered, authorized a regulation for disposal of land in exchange for scrip issued on settlement of awards made in respect of losses of persons injured in the rebellion. It is true that the Commission to Mr. Beckham was not issued under any express enactment. However, as the Governor was authorized to make a regulation for disposal of land for any consideration, then, as the giving of a settlement of a claim on the Government, though the claim was not one enforceable in a court of law, was perhaps a sufficient consideration, the regulation made by Order in Council dated 3rd day of April, 1867, was, I am inclined to think, valid. However, no question has ever been raised as to its validity. If the regulation was valid, then the mode of arriving at the amount of the claim, namely, by award of a Commissioner appointed by the Governor for the purpose, seems unobjectionable.

As to Mr. Aitken's claim, it seems to me there is no foundation for it. In the first place, the persons whose property was damaged had no legal or equitable claim;—they could only appeal for compensation out of the public funds as a matter of grace. As a matter of grace it was conceded that such sums as should be awarded by a Commissioner appointed by the Governor should be paid out of proceeds of confiscated lands. This never was expressly provided by the Legislature, but it appears to have been well understood that that course would be taken. The proceeds from such sales never enabled this to be done. As a further act of grace, provision was made for allowing the amounts awarded to be received in payment for confiscated lands. This Mr. Aitken could have done, and his assignors could also have done;—having refused or neglected to do so, they have not a shadow of a ground of complaint; the delay has been Mr. Aitken's. Moreover, as Dr. Knight points out, he at any rate has no ground of complaint, even if his assignors had. Theirs has been the loss, or rather they have not got so large a donation out of the public funds as they would have had if the confiscated lands had sold more readily.

J. PRENDERGAST.

The Hon. the Colonial Secretary.