



OLD LAND CLAIMS FINAL SETTLEMENT BILL.

IN THE TWENTIETH YEAR OF THE REIGN OF HER MAJESTY QUEEN VICTORIA.

SESSION 4, No.

ANALYSIS.

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| <p>Title.
Preamble.
Recital of Ordinances of Legislative Council.</p> <p>1. Repeal of part of Ordinance Session 1, No. 2, and of whole of Ordinances Session 3, No. 3, Session 7, No. 22, and Session 10, No. 4.</p> <p>I. ESTABLISHMENT AND CONSTITUTION OF COURT OF COMMISSIONERS.</p> <p>2. Governor to appoint Commissioners.</p> <p>3. Judges of Supreme Court to be ex-officio Commissioners.</p> <p>4. Number of Commissioners.</p> <p>5. Governor may appoint assistant Commissioners.</p> <p>6. To form part of Court of Commissioners.</p> <p>7. Quorum.</p> <p>8. Governor to appoint times and places of meetings.</p> <p>9. Commissioners may adjourn meetings.</p> <p>10. Meetings to be Courts of Record and public Powers of the Court.</p> <p>11. Governor may establish rules of procedure.</p> <p>12. Governor to fix salaries of Commissioners and Assistant Commissioners.</p> <p>13. Fees to be paid by suitors.</p> <p>14. How to be disposed of.</p> <p>II. POWERS OF COMMISSIONERS, SUBJECTS OF ENQUIRY, AND MODE OF INVESTIGATION.</p> <p>15. Commissioners to hear and determine Old Land Claims, Pre-emptive Claims, and</p> | <p>examine and dispose of grants under same.</p> <p>16. May direct Assistant Commissioners to examine into and report as to any grant or claim.</p> <p>17. Upon the locality where to such grant or claim relates.</p> <p>18. Reports to be delivered to and guide Commissioners.</p> <p>19. Objections to be heard.</p> <p>III. CLAIMS NOT TO BE HEARD.</p> <p>20. Classes of claims which shall not be heard by the Commissioners—</p> <p>1. No new claims to be heard.</p> <p>2. Nor any arising from native purchases since January, 1840, except pre-emptive waiver claims.</p> <p>3. Nor claims in right of which grants have been issued.</p> <p>4. Nor claims already disallowed by a Commissioner, except penny-an-acre claims.</p> <p>5. Nor where claim lapsed through default of claimant.</p> <p>IV. PROCEEDINGS WITH RESPECT TO VOIDABLE GRANTS.</p> <p>21. Attorney General to call to voidable grants.</p> <p>22. Commissioners to examine grant.</p> <p>23. Grants not produced, or found void, to be declared so. Commissioner's decision to have same effect as repeal by <i>acte factus</i>.</p> |
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24. Grants declared void to be cancelled.
 25. Valid grants to be returned endorsed.
 26. New grants to be issued to lieu of cancelled ones.
 27. To be subject to the same equities as cancelled grants.
- V. PROCEEDINGS WITH RESPECT TO CLAIMS FOR WHICH NO GRANTS HAVE BEEN ISSUED.
Old Land Claims—
28. In old claims prior to January, 1840, Commissioners to ascertain amount of acres to be granted.
 29. Maximum of 2560 acres not to be exceeded, except in special cases.
 30. Governor not to issue grants in any case for more land than conveyed in any existing grant.
- Pre-emptive Waiver Claims—*
31. Five shillings per acre to be paid for land granted by Commissioners under proclamation of 26th October, 1844.
 32. Grants in such cases not to exceed 500 acres.
 33. Where lands claimant may be declared entitled to, have been alienated by Governor, Commissioners may recommend compensation in other land. Quantity to be given, how to be estimated.
34. Five shillings per acre to be paid for such compensation land, unless not worth it.
- VI. GENERAL PROVISIONS.
35. General power to Commissioners to investigate cases of proved injustice.
 36. No compensation in any case to be given in money, scrip, or indefinite land credits.
 37. No land required by General or Provincial Governments for public purposes to be recommended for grants.
 38. Where Native title not extinguished, Governor may, at cost of claimant, cause it to be extinguished.
 39. Where land awarded previously or granted is not to be obtained, compensation may be given in land.
 40. No lands to be recommended for a grant until marked out on the ground by a surveyor.
 41. Governor to prescribe rules as to shape of blocks.
 42. Suitors to be charged with cost of surveys.
 43. No grants to be issued or proceedings taken till all fees paid.

Title.

A BILL to provide for the final settlement of claims arising out of dealings with the Aborigines of New Zealand.

Preamble.

WHEREAS sundry claims to land have arisen within the Colony of New Zealand in respect of dealings with the aboriginal inhabitants thereof prior to the establishment of British sovereignty, and also under certain Proclamations of the Governor of New Zealand dated 10th March, 1844, and 26th October, 1844 respectively, whereby the Crown's right of pre-emption over Native Lands was waived upon conditions therein specified.

And whereas sundry Crown Grants have been issued in respect of the aforesaid claims under the Public Seal of the Colony of New Zealand:

Recital of Ordinances of Legislative Council

And whereas for the settlement of the said claims or the rendering valid the said Grants, the undermentioned Ordinances have been from time to time passed by the Governor and Lieutenant Governor and the Legislative Council of the said Colony:

"Session 1, No. 2.—An Ordinance to repeal within the said Colony of New Zealand a certain Act of the Governor and Legislative Council of New South Wales, made and passed in the 4th year of the reign of her present Majesty, and adopted under an Ordinance of the Governor and Legislative Council of New Zealand, for extending the Laws of New South Wales to the said Colony of New Zealand, and which said Act of the Governor and Council of New South Wales is intituled 'An Act to empower the Governor of New South Wales to appoint Commissioners with certain powers to examine and report on Claims to Grants of Land in New Zealand,' and also to terminate any Commission issued under the same, and to authorise the Governor of the Colony of New Zealand to appoint Commissioners with certain powers to examine and report on claims to Grants of Land therein, and to declare all other titles, except those allowed by the Crown, null and void.

2. "Session 3, No. 3.—An Ordinance to amend Land Claims Ordinance, Sess. 1, No. 2."

3. "Session 7, No. 22.—An Ordinance to authorise Compensation in Colonial Debentures to be made to certain claimants to Land in the Colony of New Zealand.

4. "Session 10, No. 4.—An Ordinance for quieting Titles to Land in the Province of New Ulster."

And whereas it is alleged that many of the said Land Claims are still unsettled, and the validity of the said Grants disputed on various grounds. And it is essential to the peace and well-being of the Colony that all such Land Claims should be finally settled and such doubtful Grants be corrected.

BE IT ENACTED by the General Assembly of New Zealand as follows:—

1. So much of the said Ordinance (Sess. 1, No. 2) as relates to the appointment of Commissioners and the hearing and determining of claims; and Ordinances Sess. 5 No. 5, Sess. 7 No. 22, and Sess. 10 No. 4, are hereby repealed, except in so far as any other Ordinances are repealed thereby.

Repeal of part of Ordinance Session 1, No. 2, and of whole of Ordinances Session 5, No. 5, Session 7, No. 22, and Session 10, No. 4.

1. ESTABLISHMENT AND CONSTITUTION OF COURT OF COMMISSIONERS.

2. It shall be lawful for the Governor of the Colony, by Letters Patent under the Public Seal of the Colony, to appoint Commissioners for carrying this Act into effect, who shall be styled "Old Land Claim Commissioners."

Governor to appoint Commissioners.

3. The Judges of the Supreme Court shall be *ex officio* Commissioners.

Judges of Supreme Court to be *ex-officio* Commissioners.

4. There shall be not less than _____ nor more than _____ Commissioners in addition to the Judges, which additional Commissioners shall be removable from time to time by warrant under the hand of the Governor.

Number of Commissioners.

5. The Governor may from time to time, upon the recommendation of the Commissioners, appoint Assistant Commissioners for carrying this Act into effect.

Governor may appoint Assistant Commissioners.

6. The Assistant Commissioners may sit with and form part of the Court of Commissioners.

To form part of Court of Commissioners.

7. Three of such Commissioners and Assistant Commissioners shall be a quorum. Provided that one of the three at least shall be a Commissioner.

Quorum.

8. The Governor shall, by notice in the "Government Gazette" of the Colony, appoint the time and place for the first and every subsequent meeting of the Commissioners.

Governor to appoint times and places of meetings.

9. The Commissioners may from time to time adjourn their meetings.

Commissioners may adjourn meetings.

10. All meetings of the Commissioners shall be deemed to be Courts of Record and shall be open to the public; and the Commissioners and Assistant Commissioners, in all proceedings under this Act, shall have the powers incident to Judges of Courts of Record, and the like power to compel the attendance of witnesses and production of books and papers as Judges of the Supreme Court, and may issue warrants and processes accordingly.

Meetings to be Courts of Record and public powers of the Court.

11. The Governor shall frame and establish Rules for the conduct of business under such Commission, and may from time to time alter the same. Provided that such Rules and all alterations thereof be approved by one at least of the Judges of the Supreme Court; and all such Rules and all alterations thereof shall be published in the "Government Gazette" of the Colony, and when so published, shall have the force of law.

Governor may establish rules of procedure.

Governor to fix salaries of Commissioners and Assistant Commissioners.

Fees to be paid by suitors.

How to be disposed of.

Commissioners to hear and determine Old Land Claims, Pre-emptive Claims, and examine and dispose of grants under same.

May direct Assistant Commissioners to examine into and report as to any grant or claim.

Upon the locality whereof such grant or claim relates.

Reports to be delivered to and guide Commissioners.

Objections to be heard.

Classes of claims which shall not be heard by the Commissioners.

No new claims to be heard.

Nor any arising from Native purchases since January, 1840, except pre-emptive waiver claims.

42. The Governor shall fix the salaries to be paid to the Commissioners and Assistant-Commissioners.

43. There shall be paid by parties whose Claims or Grants shall be examined under the said Commission, the fees and expenses set forth in the table in the Schedule (A) to this Act annexed. And such parties shall be deemed to be suitors; and the said table of Fees shall be published in the "Government Gazette," and suspended in some conspicuous place in the Public Office or Court of the said Commissioners. Provided that the Governor, on the recommendation of the Commissioners, may add to or alter any of the said fees, such new and altered fees to be published and posted as aforesaid with respect to the fees established by this Act.

44. All fees and expenses paid by suitors shall be paid into a common Fund, out of which the salaries and expenses incident to the Commission shall be defrayed, and every deficiency shall be defrayed out of the General Revenue of the Colony.

II. POWERS OF COMMISSIONERS, SUBJECTS OF INQUIRY, AND MODE OF INVESTIGATION.

45. The Commissioners shall have power to hear and determine all claims to Land arising out of dealings with the aboriginal inhabitants of the Colony prior to the establishment of British sovereignty, or under the Proclamations issued by Governor Fitzroy, and dated the 26th of March, 1844, and the 26th of October, 1844, respectively, and to examine and dispose of all Grants issued in respect of the same; subject, however, to the exceptions and provisions hereinafter contained.

46. The Commissioners may direct any Assistant Commissioner to examine into and report as to the circumstances relating to any claim to be investigated under this Act, or as to the practicability of giving possession of any land to be given in right of any Grant to be examined under the same; and every such Assistant Commissioner may examine and report accordingly; and in making such examination and report, the Assistant Commissioners shall proceed according to such directions as shall be laid down in that behalf by the Commissioners in accordance with the provisions of this Act.

47. Every such examination shall be had upon, or as near as may be to, the locality in respect whereof the claim has arisen or the Grant been issued.

48. All reports furnished by the Assistant Commissioners shall be delivered to the Commissioners, and in finally hearing and deciding upon claims, the Commissioners shall proceed upon such reports in like manner as if such examination had taken place before the Commissioners themselves.

49. Any persons objecting to any claims or Grants to be investigated or examined under this Act, may appear and have such objections heard by the Commissioners and Assistant Commissioners.

III. CLAIMS NOT TO BE HEARD.

20. It shall not be lawful for the Commissioners to entertain or investigate any claims in any of the following cases:—

1. In which the claim shall not have been made and notified in writing to the Colonial Government prior to the 1st of July, 1856.
2. In which the claim arises out of dealings or purchases made or pretended to be made with the aboriginal inhabitants, since the 14th January, 1840, excepting under the aforesaid Proclamations of the 26th of March, 1844, and the 18th of October, 1844.

3. In which the claims shall have been heard and allowed wholly or in part, and in respect of which the claimant shall have accepted a Grant of land in satisfaction of such claim, or compensation in money or debentures, whether such Grant has been accepted in respect of claims prior to 14th January, 1840, or under the terms offered by Government in the "Gazette" notices of the 10th of August, 1847. Provided always, that in respect of claims for which Grants have been issued, nothing in this clause shall prevent the Commissioners from directing all such investigations as may be necessary to ascertain the practicability of possession being given of any land to be comprised in any Grant to be issued under the provisions of this Act.
4. In which the claim shall have been heard by a former Commissioner and disallowed, except as hereinafter provided with respect to claims arising under the Proclamation of the 10th of October, 1844.
5. In which the right of claimant to have his claim heard and decided under a former Law, shall have lapsed through default of the claimant.

Nor claims in right of which grants have been issued.

Nor claims already disallowed by a Commissioner, except penny-an-acre claims.

Nor where claim lapsed through default of claimant.

IV.—PROCEEDINGS WITH RESPECT TO VOIDABLE GRANTS.

21. The Attorney-General shall, on behalf of Her Majesty, by notice in the form or to the effect prescribed in the Schedule (A) to this Act annexed, to be published in the "Government Gazette," call on and require the person or persons interested in holding or claiming title under any Crown grant heretofore issued in respect of any of the aforesaid claims and made without due authority of law, or not in conformity with Royal Instructions or Regulations then in force, or of Lands over which the Native title has not been extinguished or in which there is an erroneous and uncertain description of the Land granted, or which is grounded in a misrecital of facts, or is otherwise void or voidable in Law, to produce such Crown Grants, &c., to the said Commissioners at some Court, and on some day to be specified in the notice aforesaid; and also by the same or any other such notice to specify some day for hearing and determining the validity of such Grant; provided that no such proceeding shall be initiated after the 1st July, 1858.

Attorney General to call in voidable grants.

22. The Commissioners, on the day specified in such notice shall after due proof thereof proceed to examine the Grant, and shall proceed according to the rules to be established as aforesaid in that behalf.

Commissioners to examine grant.

23. If at the time and place appointed such Grant be not produced, or if on production thereof the same shall appear to the Commissioners to be void or voidable in law, then after hearing the case, the Commissioners may adjudge and determine such Grant to be null and void. And such adjudication shall have the same force and effect in annulling and making void the same as if the same were repealed by process of *scire facias*.

Grants not produced or found void to be declared so. Commissioners decision to have same effect as repeal by *scire facias*.

24. Every Grant so adjudged to be null and void shall be forthwith delivered up and cancelled.

Grants declared to be cancelled.

25. If after such hearing the Grant shall appear to the Commissioners sufficient and valid in law, the same shall forthwith be delivered to the person or persons by whom the same shall have been produced. But the Commissioners in every such case shall endorse upon the Grant a certificate of the validity of such Grant.

Valid Grants to be returned endorsed.

26. When in pursuance of the provisions of this Act, any such Grant shall be adjudged by the Commissioners to be null and void, and the same shall in pursuance of such adjudication be delivered up and cancelled, it shall be lawful for the Commissioners at the time of such adjudication or at some subsequent day to be fixed by the Commissioners, and upon application of the person or

New Grants to be issued in lieu of cancelled ones.

persons who shall have produced such Grant, to direct that a new Grant shall be issued under the Public Seal of the Colony. And such new Grant the Governor is hereby empowered to issue accordingly, to the person or persons, whom the Commissioners report to be entitled to the same; Provided however that in no such Grant, shall the land to be granted exceed the area in acres, roods and perches, to which the grantee is in the preamble of the cancelled Grant declared to be entitled to by more than one sixth part of such area, except in cases when compensation may be given as hereinafter provided.

To be subject to the same equities as cancelled Grants.

27. Every new Grant shall be subject in equity to the same claims, rights, and interests as the cancelled Grant, in lieu whereof such new Grant shall have been issued.

V.—PROCEEDINGS WITH RESPECT TO CLAIMS FOR WHICH NO GRANTS HAVE BEEN ISSUED.

Old Land Claims.

In old claims prior to January, 1840, Commissioners to ascertain amount of acres to be granted.

28. In respect of claims arising under purchases made from the Natives before the 14th of January 1840, which under the provisions of this Act the Commissioners are empowered to investigate, the Commissioners shall in every case inquire into and set forth, so far as it shall be possible to ascertain the same, the price or valuable consideration with the sterling value thereof, paid to aboriginal owners of the land; the time, manner, and circumstances of the payment, and the number of acres such payment would have been equivalent to, according to the rates fixed in the Schedule D, appended to this Act. And the Commissioners shall recommend the issue of a Grant to the person they in their judgment may deem entitled thereto, for the amount of acres so to be ascertained as above-mentioned: Provided always that no Grant shall be recommended, of land exceeding in extent the land originally claimed.

Maximum of 2560 acres not to be exceeded, except in special cases.

29. Provided also that no Grant shall be issued which shall convey more than the maximum of 2,560 acres to any one claimant, but under special circumstances the Commissioners may recommend the Governor to extend the amount to be granted beyond the maximum aforesaid, accompanying such recommendation with a report of the special circumstances.

Governor not to issue Grants in any case for more land than comprised in any existing Grant.

30. In such special case it shall be lawful for the Governor to issue a Grant of the quantity of land recommended by the Commissioners; provided however, that no Grant shall be issued of land exceeding the maximum comprised in any Grant heretofore issued.

Pro-emptive Waiver Claims.

Five shillings per acre to be paid for land granted by Commissioners under proclamation of 26 October, 1844.

31. For all lands to be granted under recommendations of the Commissioners in satisfaction of claims arising under the Proclamation of the 26th of October 1844, and in respect of which claims no Grants or Compensation shall have been received by the claimant, there shall be paid by the claimant for every acre of land so to be granted, the sum of five shillings; provided that when, in the opinion of the Commissioners, the land to be granted is not worth five shillings per acre, they may reduce the sum to be paid by claimant to any sum not less than per acre.

Grants in such cases not to exceed 500 acres.

32. No Grant shall be recommended in respect of any such last mentioned claim for more than five hundred acres of land.

When lands claimed may be declared entitled to, have been alienated by Governor; Commissions may recommend compensation in other lands. Quantity to be given how to be estimated.

33. When the particular lands which would otherwise have been recommended to be granted in such last mentioned claims may have been alienated by Government, the Commissioners may recommend a Grant to be made of other lands being part of the demesne Lands of the Crown by way of compensation for the original claim. In estimating the quantity of compensation land to be given as last aforesaid, the Commissioners shall measure the same by the amount realized upon such alienation of the land comprized in the original claim: but such original claim shall in no case be estimated as having been

valid for a greater amount than five hundred acres, nor shall the original land so estimated in any case as having realized more than 1*l.* per acre.

34. In every case of compensation in land in respect of claims under the Proclamation of 28th October 1844, the claimants shall pay after the rate of five shillings per acre for all land to be granted to them as such compensation; provided that when the land so to be given in compensation, is in the opinion of the Commissioners not worth five shillings per acre, it shall be lawful for the Commissioners to reduce the price per acre to be paid by the claimant to any sum not lower than per acre.

Five shillings per acre to be paid for such compensation land, unless not worth it.

VI.—GENERAL PROVISIONS.

35. Provided always and notwithstanding anything in this Act contained, in any case in which under special circumstances in the judgment of the Commissioners, manifest injustice shall have been done to the claimant, they may recommend to the Governor that such case be considered; and the Governor if he shall think fit may order the Commissioners to hear such claim, and the Commissioners shall hear it accordingly and decide according to equity and good conscience in the same, and as far as may be in strict accordance with the principles in this Act laid down for their guidance in other cases.

General power to Commissioners to investigate cases of proved injustice.

36. No compensation shall in any case be given in money-scrip, or land credits exercisable over unspecified or undefined lands.

No compensation in any case to be given in money-scrip or indefinite land-credits.

37. No lands shall be included in any Grant under the provisions of this Act, which shall be required for any purposes of public utility or convenience, and before any Grant shall be recommended it shall be the duty of the Commissioners to ascertain from the General Government and from the Government of the Province wherein such lands are situated, whether the lands proposed to be granted, or any part thereof, are required for any such purpose.

No land required by General or Provincial Governments for public purposes to be recommended for grants

38. In any case of claim or Grant heard by the Commissioners under the provisions of this Act, in which the Native title shall not be proved to have been extinguished on the lands comprised in such claim or Grant, or any part thereof, it shall be lawful for the Governor on behalf of her Majesty, on payment by the claimant of the estimated cost of extinguishing the Native title to such lands, or any part thereof, and all expenses incident thereto, to extinguish such title and obtain a cession of such lands to her Majesty, and thereupon to make a grant of the same in accordance with the provisions of this Act, and in like manner as if the Native title had been proved to have been extinguished.

Where Native title not extinguished, Governor may at cost of claimant cause it to be extinguished.

39. In any case where by the award of a Commissioner, acting under any previous law or authority, or by the terms of any Grant, a claimant or grantee shall have been declared entitled to a certain specified extent of land and possession of such quantity of land cannot be delivered by reason of opposing native claims, it shall be lawful for the Commissioners under this Act to award compensation in land to such grantee or claimant, not exceeding the number of acres specified in such award or grant, or such number as may in the judgment of the Commissioners be equivalent thereto.

Where lands awarded previously or granted are not to be obtained compensation may be given in land.

40. The Commissioners shall not recommend any lands to be granted unless and until such lands shall have been effectually marked out upon the ground, and a certificate to that effect, signed by some competent surveyor approved by the Commissioners, shall have been delivered to the Commissioners; and no Grant shall be issued for any such land until a survey thereof shall have been made, and a proper plan of the same deposited with the Commissioners.

No lands to be recommended for a Grant until marked out on the ground by a surveyor.

41. The Governor may from time to time prescribe such rules as regards the shape and frontage of all lands to be granted under the provisions of this Act, as to him may seem fit, and the Commissioners in their recommendation shall observe all such rules.

Governor to prescribe rules as to shape of blocks.

Suitors to be charged
with costs of surveys.

42. In all cases of surveys required under this Act, the Governor is hereby empowered to cause such surveys to be made and to charge the suitors with the cost of the same according to the Schedule () appended to this Act.

No grants to be issued or proceedings taken till all fees paid.

43. No Grants shall be issued, nor any proceedings taken under the provisions of this Act until payment has been made of the respective fees prescribed in the Schedule of Fees, appended to this Act.

SCHEDULE REFERRED TO.
F E E S P A Y A B L E.

	£	s.	d.
Upon the filing of any claim under the provisions of this Act ...	5	0	0
For every acre of land claimed ...	0	0	1
For the hearing of every objection or opponent to a claim ...	1	0	0
For every summons for witnesses, each summons containing two names, by the party requiring the same ...	0	5	0
For every witness examined, or document or voucher produced in evidence by the party in whose behalf examined or produced ...	0	5	0
For taking down the examination of every witness ...	0	5	0
For every one hundred words after the first one hundred ...	0	2	6
For every final award or recommendation of the Commissioners ...	5	0	0
For every Grant issued under the authority of this Act ...	1	0	0
And for every acre of land included in such Grant ...	0	1	0
For every acre of land surveyed under this Act ...	0	1	6