



NEW ZEALAND
GOVERNMENT GAZETTE.
PROVINCE OF NEW ULSTER.

Published by Authority.

All Public Notifications which appear in this Gazette, with any Official Signature thereunto annexed, are to be considered as Official Communications made to those Persons to whom they may relate.

By His Excellency's Command,

ANDREW SINCLAIR, Colonial Secretary.

VOL. II. AUCKLAND, WEDNESDAY, AUGUST 15, 1849. No 18

JOURNAL OF PROCEEDINGS
IN THE
LEGISLATIVE COUNCIL.

WEDNESDAY, 15th DAY OF AUGUST, 1849.

PRESENT :

His Excellency Sir George Grey, K.C.B., Governor-in-Chief,

His Excellency Major-General Pitt, K.H.,

The Honorable the Colonial Secretary,

The Honorable the Attorney General,

The Honorable the Colonial Treasurer,

The Honorable the Surveyor General,

Frederick Ward Merriman, Esq.,

Robert Clapham Barstow, Esq.,

Lieutenant Colonel Hulme,

Major Matson,

Sampson Kempthorne, Esq.,

The Council met pursuant to summons.

The Rev. John Frederick Churton, Colonial Chaplain, being in attendance was introduced and read prayers.

The oaths of allegiance, supremacy, abjuration, and the oath of office, were administered by command of His Excellency the Governor to Lieutenant Colonel Hulme, Major Matson, and Mr. Kempthorne.

His Excellency the Governor-in-Chief then opened the Council with the following address, which on motion of Mr. Merriman was ordered to be printed.

GENTLEMEN OF THE LEGISLATIVE COUNCIL,—I have assembled you for the purpose of bringing under your consideration, matters of more than ordinary importance, and in reference to which, you may, by a judicious exercise of the powers with which you are

entrusted, be the means of conferring benefits of no ordinary kind upon this Province.

It has appeared to me that the recent decision of the Supreme Court upon several points connected with the validity of Titles to lands in this colony, has been a source of justly increasing anxiety, and has occasioned a comprehensive and complete plan for the removal of the doubts which have been entertained as to the validity of numerous Crown grants; and for the general settlement of the land question; the prevailing uncertainty regarding which has for so many years proved so serious a detriment to the interests of this Province, although probably neither the extent of the evil, nor the difficulties of adjusting it have been either generally known or appreciated.

Since the establishment of the Northern Settlements various laws and regulations for the disposal of land have been in force, and these have been frequently altered. During this period, no less a number than 1670 grants have been made. Partly from the difficulty of ascertaining what the binding rule was, and partly, apparently, from an opinion that an adherence to the rules prescribed on the subject was not essential to the validity of a grant, a large number of the grants issued have not been made in conformity with the laws and regulations. The greater number of these grants have been issued in pursuance of the provisions of the Land Claims Ordinance, yet but very few of them have been made in strict conformity with the general requirements of that Ordinance, the great majority being irregular in a variety of ways, some of which will be illustrated from the returns which will be laid upon the table.

In some cases these grants convey portions of land, described by exactly the same boundaries, to two or more claimants; the great majority of them contain no particular description of the specific parcel of land intended to be granted; some of them recite that a Commissioner had reported that the Grantee was entitled to receive the grant of land conveyed to him; when, in fact—in some of these instances—the Commissioner had recommended that no grant should be made, and in others the claim had not been heard by a Commissioner; some of these Grants purport to convey land in compliance with the recom-

mentation of a Commissioner, although the Commissioner had reported either that the claimant had not shown that the land had been purchased from the natives—or that it had not been purchased from the natives until after the issue of the Proclamation prohibiting such purchases. Some of these Grants are believed to convey quantities of land very largely in excess of that which it is stated in the recital that the Grantee is entitled to receive. Many of them contain such vague descriptions of the land granted that it is difficult to tell what land is intended to be conveyed by them, and in the case of grants of adjoining land to several individuals, or of reservations made of certain portions out of a whole tract said to be granted, the description given is so vague, that it will be almost impossible to determine the respective rights of the various persons interested.

Moreover the Commissioner who had heard the claims to land, previously to the issue of the Crown Grants alluded to, wrote to the government stating that he had frequently regulated the extent of land he had recommended to be granted to the claimants by the quantity of land which, after making a fair allowance for the claims of opposing native rights, it appeared probable to him that the native sellers had been clearly free to dispose of—and he at the same time stated that he believed that the native title to some of the tracts of land about to be granted had never been fully extinguished—that the Commissioner could in very few instances obtain an accurate description of the boundaries claimed, and that if the Crown Grants should be issued in the manner which has been adopted, either mischief would ensue to the settlers if the natives were strong, or if they were weak and isolated, then the Natives would suffer injustice.

Hitherto, in the great majority of cases, the lands so granted have been either left unoccupied, or only small portions of them have been occupied; and no person yet knows accurately the extent or position of the lands which have been granted by the Crown, but instances have already occurred in which when these lands have been attempted to be taken possession of, the representations made by the Commissioner who issued the grants, which I have alluded to, have been fully borne out by the circumstances of the case.

Under circumstances such as I have above detailed, doubts were naturally entertained as to the validity of these grants. By lawyers many of them were deemed to be certainly invalid, and this opinion was coincided in by the Home authorities.

However strong was the opinion entertained as to the illegality of many of these grants, it would, nevertheless, have been difficult, in the absence of any judicial decision, to have removed these doubts by declaring them, by means of a local Ordinance, to be invalid and illegal. More than once within the last two years, the expediency of sending home some person with a competent knowledge of the matter, specially commissioned to press upon the Home Government the necessity of dealing conclusively with the subject by Act of Parliament, has been considered by the local Government. But in the absence of any judicial opinion, and especially after the instructions to try the question at law in the colony, it would probably have been said that the proper course was to refer, in the first instance, to the courts of the country as a necessary preliminary for the guidance of Parliament. It thus appearing that, without trying the validity of these grants, no hope existed of a general settlement of the question, recourse was had to proceedings at law in the Supreme Court with a view to this object, and two cases, which, from their irregularity, and for other reasons, appeared suitable for the purpose, were selected. From the infrequency of communication between the Northern and Southern Provinces, and the importance of the questions involved, these proceedings have occupied a considerable time, but, on the part of the Government, they were prosecuted with all possible despatch.

At last the judgment of the Court—given in both cases at great length—has been obtained, and it has now become necessary to determine upon the course the Government should pursue.

It appears that three courses of proceeding are open for the adoption of the Government.

1stly. As the judgments which declare the validity of the grants in question are contrary to the general opinion, the Government could appeal against such judgment with a view to obtain the opinion of the highest tribunal, previously to moving further in the matter.

2ndly. The Government could accept the decision of the Supreme Court, but move no further in the matter; or,

3rdly. At once adopting the judgment of the Supreme Court, it may attempt a general and final settlement of the whole question by a Legislative enactment.

If the Government were to adopt the first of the above-mentioned courses, two more years of doubt and uncertainty would probably elapse before the final decision of the Judicial Committee of the Privy Council could be obtained. It is quite possible that the judgments of our Courts might then be reversed, but in that case, at the distance of two years from the present time, the question would be as far from a settlement as ever, with a greatly diminished probability of any general measure being assented to which would render these grants valid.

The adoption of the second line of proceeding to which I have above alluded, viz., merely to accept the recent decisions of the Supreme Court, without moving further in the matter, would not, in any degree, advance the general settlement of the question; because these decisions, in fact, only practically decide the two cases which were submitted to the Court, and leave those grants entirely unprovided for which, in accordance with the recent judgments, are probably void from uncertainty, and which are at least practically valueless for want of a description of the land intended to be conveyed by them. Many doubts would also still hang over a great number of grants, the points on which their validity appears doubtful being very various; and a change in the Judges to others holding different views on points which are admittedly very obscure and doubtful ones, might at any time reopen the question and perpetuate the evil.

The difficulty in which the Government has hitherto been placed may be said to have been, that whilst strong feelings were, on the one hand, entertained of the absolute necessity which existed for a final settlement of the land question at the earliest possible period, yet there appeared, upon the other hand, almost insuperable difficulties to be overcome, such as taking land from one class of the Queen's subjects to give it to another; interfering arbitrarily with private rights; acting upon an uncertain and unascertained rule, which let in some and excluded others; throwing upon the public revenues a charge, and again mortgaging the land revenue to secure private interests.

It may even now be said that the Government is placed in a position which compels it to incur the responsibility of either having the question still unsettled for an indefinite period of time, or of incurring the responsibility of proposing to the Legislature a measure which must be open to some of the objections above stated. I feel, however, so strongly the vast importance of a speedy, general, and conclusive removal of those doubts which hang over nearly all the titles to land in this province, that, without expressing otherwise my opinion upon the recent judgments, which—on account of the important questions they involve, and for future guidance—it may still be necessary to appeal against, I have determined to adopt them, and to propose for your consideration an ordinance declaring valid and effectual all grants to land which have been made by Her Majesty's Representative under the public Seal of the Colony.

I have farther felt that, in thus adopting, as a rule for guidance, the recent decisions of the Supreme Court, a useful precedent will probably be established, as it is not unlikely that hereafter very important differences may from time to time arise between the Government and large sections of the community, which may involve opposing interests of different classes of

the Queen's subjects, which differences may be of such a nature that the decision of the Supreme Court may be obtained regarding them, and I cannot but think that the interests of the community at large will, in such cases, be generally best served by both parties adopting as their rule of guidance that interpretation of the law which may be placed upon it by its proper expositors.

I have purposely refrained from introducing into the measure I am about to submit for your consideration, some details, which it will probably be found essential to adopt into it, to secure its beneficial working in practice; because I thought it better, in these points, to rely upon the wisdom of the Council, for such improvements in the measure as their practical knowledge of the country may enable them to suggest. Such as the means by which, in the case of conflicting claims between grantees as to particular tracts of land, or as to specific boundaries, their several rights are to be adjudicated on and adjusted, and by what standard priority of choice is to be determined. As also under what regulations main lines of road and lands, otherwise essential for public purposes, are to be reserved in cases where large contiguous tracts of country are granted away, and such like questions which will naturally suggest themselves as the measure passes through the Council.

It will be observed, however, that the Government have in the measure to which I have alluded apparently aimed at something more extensive than a mere plan for affirming the validity of the grants connected with the old land claims. I should therefore explicitly state to the Council that doubts, different from those I have already stated, hang over the validity of nearly all the grants which were issued in the early days of the Colony, and that, after bestowing the most careful consideration upon the subject, I think that there are such serious doubts regarding the validity of the great majority of these grants, that the Legislature will act wisely in putting this most important question finally and conclusively at rest, by passing an Ordinance which will effectually quiet such doubts.

The foregoing are the causes which have led me to propose for your adoption an Ordinance which, whilst it relates to a subject beset with difficulties, I still regard as a measure of the very first necessity for the future prosperity of this country, and from which, if it is wisely matured by your experience, I believe that the most lasting benefits will be secured to this Province. In the hope of attaining such an end, I have resorted to you for your assistance and advice, in the full certainty that these will, upon so important a subject, be afforded to me in the same spirit of confidence and readiness with which I have sought them at your hands.

Another measure connected with the administration of the Waste Lands of the Crown in the Province of New Ulster has been by my directions prepared for the purpose of being laid before you. The object proposed to be attained by this measure is to give the force of law to certain rules which in conformity with the powers vested in me by the Charter and Royal Instructions I have issued for the regulation of pasturage upon Waste Lands belonging to the Crown.

In framing the regulations which are embodied in the Ordinance to which I am alluding, I attempted to give the inhabitants of this Province some share in the administration of the waste lands of the Crown, and that in relation to points which most nearly concern the welfare and prosperity of the middling and humbler classes of society. I hoped that the result of this would be that they would soon perceive how dependent their own future interests and those of their children are upon the prudent administration by the Government of the public lands, and that they would be brought to understand that the government simply administer these lands as a trustee for the public benefit, and that its only desire is to maintain the rights of the public in relation to them.

The management of the Waste Lands of a Hundred, and of the funds raised from those who depasture stock upon them, are also subjects in which nearly every colonist must be interested, and I cannot but think that

the entrusting the settlers with the necessary powers for these purposes, will have the effect of creating much public spirit in the colony, and of gradually inducing people to take a far greater degree of interest in the affairs of the neighbourhood in which they reside, than they do at present.

Upon the whole I think, that although this measure may not be so striking in its features as that which I have submitted to your consideration for the purpose of quieting titles to land in New Ulster, yet that it will hereafter be regarded as a measure of great importance, which will secure very valuable privileges to the inhabitants of this country.

It is only necessary for me to call your attention to one other subject.

No immediate necessity having hitherto arisen for legislating on matters of interest peculiar to New Ulster, and which were within the jurisdiction of a Provincial Council, no such Council has yet been constituted for this Province. It was my intention, however, about this time to have constituted such a Council, to have assembled it for the appropriation of the revenue for the ensuing year, for the despatch of business. The preliminary arrangements for this purpose had been already completed. When, from the circumstances I have before explained, a necessity arose which appeared to call for the immediate enactment of some measure to provide for the quieting of titles to land. This, whilst it was a subject of the greatest importance, was not within the jurisdiction of a Provincial Council, and yet it was a matter of only provincial interest.

Under these circumstances, I felt justified in deferring for the present, the assembling of a Provincial Council, and determined to summon a General Council, composed altogether of gentlemen of this Province, no other persons having yet been called to this Council. I did not think it necessary to summon for this special purpose gentlemen from distant portions of New Zealand, the matters to be submitted to you relating wholly to New Ulster, and being only of provincial interest.

I feel it necessary to enter into these explanations upon this point, as I should be sorry to do any thing which might be drawn into a dangerous precedent, and in order to prevent the possibility of such an evil arising, I shall only submit for your consideration two other measures in addition to those I have already named. One, for the appropriation of the Revenue for the ensuing year, as it is necessary that an Ordinance for that purpose should be transmitted to England, without delay, to enable the home Government to make the requisite financial arrangements—and another measure to provide some relief for those persons employed under the Civil Government who were severely wounded during the northern rebellion.

G. GREY.

Council Chambers,

August 1st, 1849.

The Governor laid on the table the following Bills.

- 1st. "A Bill for quieting Titles to Land in the Province of New Ulster."
- 2nd. "A Bill to regulate the occupation of Waste Lands of the Crown in the Province of New Ulster."

Mr. Merriman gave notice that he would move for the Returns alluded to in the Governor's address connected with the Land Claims, but on being informed by His Excellency that the Returns were already prepared and were ready for the inspection of members, he withdrew his notice.

The Attorney General gave notice that at the next meeting of Council he would move the first reading of the Crown Titles Bill.

Council then adjourned until one o'clock on Thursday, the 2nd instant.

THURSDAY, AUGUST 2, 1849.

PRESENT :

The Governor and nine Members.

ABSENT :

His Excellency Major-General Pitt.

The Council met pursuant to adjournment.

The Minutes of the last meeting were read and confirmed.

The Attorney-General according to notice moved the first reading of the "Crown Titles' Bill."

Bill read a first time.

Mr. Merriman moved that all returns laid on the table be printed, but subsequently withdrew his motion on the Attorney General moving that a Committee consisting of

The Surveyor General

Mr. Merriman

Mr. Barstow

be appointed with power to print so much of the documents as they may deem expedient.

Mr. Barstow moved that the following Return be laid on the table, viz. :

"A Return of Waste Lands of the Crown stating the amount in each district, and distinguishing the quantity which from being forest or other causes is not suitable for depasturing."

The Attorney General gave notice that at the next sitting of the Council he should move that the Crown Titles' Bill be read a second time.

The Colonial Secretary gave notice that at the next sitting of Council he would move that the "Crown Lands Bill" be read a second time.

The Colonial Treasurer gave notice that he would move that the following resolution be adopted—

"That, it is extremely desirable and proper that on each day of the Council assembling, Prayers be offered up, previous to its proceeding to public business, for the Divine blessing and guidance on its deliberations.

The Governor laid on the table a Despatch from the Secretary of State relative to the compensation to be awarded to Mr. J. S. Polack for his alleged losses at the destruction of Kororareka.

Council adjourned until two o'clock on Saturday the 4th inst.

SATURDAY, 4th AUGUST, 1849.

PRESENT :

The Governor-in-Chief and nine members.

ABSENT :

His Excellency Major-General Pitt, K. H.

The Council met pursuant to adjournment.

The Minutes of the last meeting were read and confirmed.

The Attorney-General according to notice moved the order of the day for the second reading of the Crown Titles' Bill, a debate thereon ensued. On motion of Mr. Merriman seconded by Major Matson, debate adjourned to Thursday the 9th inst.

The Surveyor General brought up the report from the committee appointed to examine the returns relating to the Land Claims. Report read.

The Colonial Secretary according to notice moved the second reading of the Crown Lands' Bill.

Bill read a second time accordingly.

The Colonial Treasurer according to notice moved the following resolution of which he had given notice on 2nd inst—"That it is extremely desirable and proper that on each day of this Council assembling, Prayers be offered up previous to its proceeding to public business for the Divine blessing and guidance on its deliberations. Resolution seconded by Mr. Kempthorne, and agreed to.

The Colonial Treasurer moved and Lieut.-Colonel Hulme seconded the following resolutions which were agreed to.

1st. "That the Colonial Chaplain should be warned by the Clerk of Council at what time and on what days it will be requisite for him to attend, for the purpose of reading prayers."

2nd. "That if the Colonial Chaplain or his Deputy be not present within 15 minutes after the appointed hour of meeting the Council shall proceed to business without prayers being read."

Ordered that the days of meeting of Council for despatch of business be on Tuesdays, Thursdays and Saturdays, at two o'clock.

The Governor laid on the table the Return of Waste Land of the Crown, moved by Mr. Barstow at the last sitting of the Council.

On motion of Mr. Barstow ordered that said Return be printed.

The Colonial Secretary gave notice that on Tuesday next he would move that Council do appoint a committee on the Crown Lands Bill.

The Governor informed the Council that on Tuesday next he would lay the Estimates on the table.

Council adjourned until two o'clock on Tuesday, the 7th instant.

TUESDAY, 7th AUGUST, 1849.

PRESENT :

His Excellency the Governor-in-Chief and nine Members.

ABSENT :

His Excellency Major-General Pitt, K. H.

The Council met pursuant to adjournment.

The Colonial Chaplain was in attendance, and read prayers.

Major Matson presented a petition from a number of the inhabitants of Auckland and the surrounding district, praying for the establishment of a public market. Petition read and received, and consideration thereof postponed until estimates are before Council.

Major Matson also presented a petition from certain stockholders, relative to the appointment of "Inspectors of Slaughter-Houses," but subsequently withdrew it, with a view of bringing it, under the notice of Council when estimates under consideration.

The Colonial Secretary moved the order of the day for Council going into committee on "Crown Lands Bill." Bill committed. Title, preamble, clauses 1, 2, read and agreed to. Consideration of clause 3 postponed. Clause 4 to 8 read and agreed to. Clause 9 amended

by striking out the words "respecting the limits of any rum," in 29th and 30th lines, and inserting in the 31st line, after the word "fee," the words "not exceeding the sum of." Clause, as amended, agreed to.

Clause 10 amended by inserting in the 34th line, after the word "fees," the words "and sums of money;" and also inserting in the same line after the word "commissioner," the words "under the provisions of this ordinance." Clause, as amended, agreed to.

Clause 11 amended by striking out the words "the said," in 6th line of 4th page, and inserting "a." Clause, as amended, agreed to.

Clause 12 amended by striking out the words "to the Colonial Treasurer," and inserting "into the Colonial Treasury;" also by striking out the words in the 23rd line, "commencing on the 1st January then next ensuing." Clause, as amended, agreed to.

Clause 13 amended by striking out the first word in the clause, and inserting in lieu thereof the words "every such." Clause, as amended, agreed to.

Clause 14 amended by inserting the words "or before" in the 35th line, after the first word in clause. Clause, as amended, agreed to.

Clause 15 amended by striking out the words "upon the day appointed by such notice" in the 43rd line, and inserting in lieu thereof "within the time prescribed by this Ordinance;" and also by striking out the figures "£10" in the 3rd line of 5th page, and inserting the words "£8." Clause, as amended, agreed to.

~~Clause 16 amended by adding, at the end of clause, the words "such revocation to take effect from such time as the Governor shall in that behalf provide, in a notice to be published in the Government Gazette."~~

On the motion of Colonial Secretary, further consideration of Bill postponed to Thursday the 9th instant.

Lieutenant-Colonel Hulme gave notice that he should on Thursday next move that the Legislative Council do resolve itself into a committee to petition His Excellency to introduce an Ordinance to facilitate squatting in the Northern District, and to extend to the Natives, under such rules and regulations as to His Excellency may seem meet, the right to lease their waste land, so that large tracts of country shall be opened up for depasturing cattle.

Lieut.-Colonel Hulme also gave notice that he would move on a future day that the Council do resolve itself into a committee to invite His Excellency to take into consideration the conditions on which the Crown Lands are disposed of at Public Sale, and which he views as injurious to the prosperity of the Northern Province.

Mr. Merriman gave notice that on Tuesday, 14th instant, he should bring under the consideration of the Council the proposed introduction of Exiles into this Colony.

The Governor laid on the table the Estimates for the year 1849-50, and stated that he would read his financial minute on Thursday, the 9th.

Council adjourned to two o'clock on Thursday, the 9th instant.

Colonial Secretary's Office,
Auckland, 1st August, 1849.

HIS Excellency the Governor in Chief has been pleased to appoint

His Excellency Major General PITT, K. H., to be a member of the General Legislative Council of New Zealand.

By his Excellency's command,
ANDREW SINCLAIR,
Colonial Secretary.

Colonial Secretary's Office,
Auckland, 13th August, 1849.

TENDERS in duplicate will be received at this Office until noon on WEDNESDAY, the 29th instant, for the ERECTION OF A NATIVE HOSTELRY in Mechanics' Bay.

Plans and specifications may be seen and further particulars obtained at the Office of the Superintendent of Works.

By His Excellency's command,
ANDREW SINCLAIR,
Colonial Secretary.

SUPREME COURT.

NOTICE is hereby given that a Sitting of the Supreme Court for the despatch of Criminal Business will be holden at the Court House, Auckland, on SATURDAY, the First day of September next, at Ten o'clock in the forenoon; and that a sitting for the despatch of Civil Business will be holden at the Court House, on FRIDAY the Seventh day of September next, at Ten o'clock in the forenoon, at which times and place all persons under recognizance to appear as Prosecutors, Defendants, or Witnesses, are required to give their attendance.

THOMAS OUTHWAITE,
Registrar.

Supreme Court Office,
Auckland, 2nd August 1849.

TRANSFER OF LICENSES.

NOTICE is hereby given that a Special Meeting of the Justices of the Peace for the district of Auckland will be holden at the Resident Magistrate's Court, in Auckland, on TUESDAY, the Fourth day of September next, at Eleven o'clock in the forenoon, for the purpose of receiving applications for the Transfer of Publicans' Licenses.

EDWARD BARRY,
Clerk to the Magistrates.

Resident Magistrate's Court,
Auckland, August 10, 1849.

