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LEGISLATIVE COUNCIL.

Tuesday, February 4, 1842.

LAND CLAIMS' BILL,

All the Members of Council were present this morning; and, the Minutes of the last meeting having been read, and confirmed without alteration,—

The Colonial Secretary moved the order of the day for the consideration in Committee of "the Land Claims' Bill."

Mr. Porter said that, at the meeting of Council on Wednesday, February 2, the further consideration of the bill was deferred until this day, in order to give time to members to prepare amendments, in addition to those of which notice had been then given by the hon. the Attorney General:—I will, therefore, give notice of amendments as follows, and which I shall move when the bill is considered in committee:—

In preamble, in line 28, strike out the words "the granting to each of the," and insert "it is desirable to grant to persons."

And in line 30, strike out the words after "Ordinance" down to "and whereas" in line 34, and insert "such portions of land as they shall be entitled to without delay."

In 1st clause strike out the words after "determined" in the 60th line, to the words "is hereby," in the 62nd line. Strike out from the 7th clause down to the word "provided" in the 91st line, and substitute "Persons shall be allowed to select such land as they shall be entitled to, either from that which they have purchased, or in the districts

laid out by Government for selection, and which shall be granted to them with the least possible delay."

In clause 8, amend line 120 thus, "In each district appointed for selection, there shall be laid out a Town."

"In clause 10, line 127, after the word "suburban," insert, "said Town."

Amend clause 11 thus: "As soon as the selection of such Suburban and Town Allotments shall be completed, the remaining alternate Town and Suburban Allotments shall be offered for sale by auction."

In 13th clause, line 139, after the word "shall," insert "at his option," after the word "Suburban," in the same line insert "or Town," and after the word "Suburban" in the 145th line, insert "or Town."

"After 19th clause, insert "As soon as the Claims are ascertained, a certificate shall be given of the quantity of land allowed, promising a grant when the district is surveyed."

"Fill up blank in clause proposed by the Attorney General, in lieu of clause 20, "such lease to continue in force until the district is open for selection."

Mr. Earp said I also have to give notice of several amendments, which I shall bring under the notice of the Council at the proper time:—

At the end of clause 5, insert, "That such subject of any foreign state shall take the oath of allegiance to her Majesty, before he shall receive any title to land."

Instead of clause 7 insert "That as soon as

such lands shall have been adjudged by the Commissioner to be granted to the persons entitled thereto, each claimant shall, at his option, select his lands out of the lands originally purchased by him from the natives, upon the conditions following, viz.—1st. That he shall be permitted to cause a survey to be made of the said lands at his own expense, and shall receive a grant thereof from the Crown, such grant to be a full satisfaction to the grantee of all claims arising out of the purchase of the lands therein comprised. 2nd. That if the grantee shall, at any time, be found by the Surveyor-General to have taken more than the quantity of land to which he is entitled, he shall be compelled to pay to the government, on the Surveyor-General's certificate of the same, double the selling price at the time of the date of such certificate. 3rd. That at any time after the selection of lands, in the places where they were originally purchased from the natives by the grantee as aforesaid, he shall have the right of pre-emption of any lands, thereto adjoining, at the minimum price of crown lands per acre, Provided always, that if any other person shall be found willing to purchase the said lands, three months' notice shall be given of the same to the grantee, as aforesaid, and if he do not complete his purchase within the time above specified, he shall be deemed to have foregone the right of pre-emption as aforesaid, and the said lands shall be sold accordingly."

After second division in clause 8, insert, "That all persons who shall be entitled to grants of land, in respect of alleged purchasers of lands within the Middle Island of New Zealand, commonly called 'New Munster,' shall make such selection in a district within the said Island, to be hereafter set apart for that purpose by his Excellency the Governor of New Zealand."

In clause 17, lines 156 and 159, instead "of a solid Parallelogram of which no one side shall be more than twice the length of any other side," insert the words, "a superficial parallelogram, or in case that cannot be found practical, a trapezoid of which no one side shall be more than twice the length of any other side."

After clause 21 insert, "That all lands validly purchased from the Natives by the Missionaries of every denomination within this Colony, for and on behalf of the Missions, whose servants they respectfully are, shall be retained by the said Missionaries for the time being, as Trustees for the several Missionary Societies to which they belong, and the said Missionary Societies shall hold the same so long as they continue to send out Missionaries to this Colony, failing in which, such lands shall revert to the Crown."

"Provided always, that this provision shall not extend to the lands of any Missionary who may have purchased lands from the Natives on his own account, nor to any lands granted by the Natives to any Missionary upon his own account, for services rendered or to be rendered; provided also, that nothing herein contained shall extend to the lands of any town, at present existing or to be formed hereafter within this Colony, nor to any rights of Her Majesty, Her Heirs, and Successors."

Mr. Clendon—I, also, have a notice of motion, which is:—

That clause 7 be amended as follows;—after the word "been," in the 17th line, erase to the word "erected," in the 89th line, and insert "equitably purchased."

The Colonial Secretary then moved that the Council do resolve itself into Committee on "the Land Claims' Bill."

The Colonial Treasurer seconded the motion, which was put from the Chair, when the numbers were:—

Ayes—His Excellency,
The Colonial Secretary,
The Attorney General,
The Colonial Treasurer.

Noes—Mr. Earp,
Mr. Porter,
Mr. Clendon.

The Clerk of Council having read the title to the Bill.—

The Colonial Treasurer moved that the further consideration of the Bill in Committee be adjourned to Monday, the seventh of February, in order to give time for the amendments, of which notice had now been given by hon. Members, to be printed.

The motion was seconded by Mr. Porter, and unanimously agreed to.

On the motion of Mr. Clendon, the order of the day, for the consideration of the Licensing Bill in Committee, was postponed to Tuesday the 8th instant.

The Council then adjourned to Monday, the 7th of February.

Monday, February 7, 1842.

This being the day appointed for the consideration of the Land Claims' Bill in Committee, the Council Room was crowded. There were present all the Members.

The Minutes of the last Council having been read, were, with the exception of a mere verbal alteration, confirmed.

The Governor begged to ask Mr. Earp if he was in possession of any instructions, or despatches, from the Home Government, on the important question of the Claims to Land, in addition to those which had been recently laid on the table for the information of Members generally, in accordance with requests made by the honorable member himself and Mr. Clendon.

Mr. Earp said, he had two despatches in his possession, in addition to those alluded to by His Excellency.

LAND CLAIMS' BILL.

The Governor then said previous to the bill being considered in Committee, I think it right to state the course which Government intend to pursue. The notices of amendment given by non-official Members at the last meeting of Council are so important, that they would, if adopted, not merely effect important alterations in the details of the measure, but change its vital principle. Government, I need not say, feels the deepest anxiety as to its success; but when we find that non-official

Members of Council, who may be supposed to represent the sentiments of the community, are hostile to it, it behoves us to act with caution. If then those amendments are adopted, and especially the one which is intended to effect a change in the preamble, on which the Bill rests, I shall at once withdraw the measure, and bring in another, founded on the Bill of Sir George Gipps. The Bill now before the Council has, however, been framed after much labour and deliberation, with an anxious desire to promote the interests of the Colonists, and if it cannot be carried, I do not say with the concurrent feeling, but with a considerable proportion of the community in its favor, then there appears no alternative, but that we must fall back upon the Act of New South Wales. Even with the assent of the Colonists to a measure proposed by Government, I should not feel satisfied, unless strongly convinced that it was for their own interests. The desire of Government is, to promote the welfare of the Colonists; and, impressed with a belief that the measure now under consideration is calculated to effect that object; we have steadily pursued its course up to the stage at which it has now arrived. Contrary to my expectations, however, a contrary feeling has been exhibited out of doors: public meetings have been held, strong speeches made, and hostile resolutions adopted, by parties whom I could have little supposed would have countenanced such proceedings. Having the interests of the Colony at heart, I feel it would be injudicious and impolitic for the Government to press forward a Bill, to which the Colonists use so much aversion, for they ought to be the best judges of their own interests. I will only repeat that the amendments of non-official Members are so diametrically opposed to the principle of the measure, that it would be quite useless to go further, should Mr. Porter's amendment to the preamble be carried. It is not the wish of Government to force the measure on the Colonists.

The Colonial Secretary then moved the order of the day, for the consideration of the Land Claims' Bill in Committee.

The Governor said, before the Bill goes into Committee, it may be important for me to inform honorable Members that the effect of one of the Attorney General's amendments will be, to extend the period for which leases are to be granted to sixty years, and this concession, I hope, will have the effect, at least in some degree, of allaying dissatisfaction and disarming opposition.

The Bill then went into Committee, and the Clerk of Council having read the preamble,—

Mr. Porter said there is, no doubt, a disposition in the mind of the Governor, and of the Members of Government, to alter those parts of this important Bill, of which the public generally disapprove. Of this feeling the observation just made by His Excellency affords additional proof; but I am sorry the intimation regarding leases, just given, is not satisfactory to myself, nor will it be to those numerous and influential parties, many of them land-claimants, whose interests I represent. I feel it, therefore, notwithstanding what has fallen from your Excellency,

an imperative duty to press the amendment to the preamble, of which I gave notice on a previous day, to a division. In performing this duty, I am sorry to have to remark that something like a threat has been held out, that, unless the concession proposed be acceded to, Government has resolved to fall back upon the Bill of Sir George Gipps; for that measure has retarded the prosperity, and blighted the prospects of the Colonists. By pursuing the course of Sir George Gipps, unless your Excellency is prepared to take the responsibility upon yourself, this part of the Colony will be entirely ruined. The Government has already incurred a heavy responsibility, by not having passed a Bill to settle and set at rest the Land Claims immediately, and that responsibility will certainly be increased by every fresh delay. My reasons for pressing my amendment are, first, that it is desirable to give to each claimant at least a portion of the land of which he was the purchaser, or, by any arrangement with the purchaser, the actual occupier. Secondly, that it is unjust to take from an individual land which, it is admitted, he had equitably purchased, and force him to take lands elsewhere, in substitution of his own. And, thirdly, I object to the measure, because it must be partial in its operation; because in defining the districts from which parties are compelled to make choice, much discrepancy must arise as to the actual value of allotments. Any line the Government might draw must naturally lead to exclude some, whilst it gives to others, perhaps less entitled to the benefit. One person, in drawing the line, would say, "go further, and take me in here;" by which means another party might be left out, to the advantage of his next neighbour. The Bill is, further, directly at variance with the instructions from the Home Government, which expressly provides that parties shall not be disturbed in their possessions, much less compelled to exchange, eventually, their lands now in cultivation, for others, in localities less adapted to their particular views or avocations. I further object that one portion of the preamble of the bill is at variance with another, inasmuch as that, having stated the rule for the settlement of property claimed by the New Zealand Company, and to which there are special exceptions, it applies the same rule to all other claimants, without reference to those concessions made in favour of the Company by her Majesty's Government. If it is left to the Government to decide where each claimant shall select his land from districts thrown open for selection, it will be placing an undue power in their hands, and will, in the execution of the plan, operate as an annoyance to themselves, because it will create dissatisfaction in the minds of many of the claimants. In conclusion, my wish is to give the claimants the lands they are fairly entitled to; and I therefore move, according to notice, that the preamble be amended as follows:—

"In preamble, in line 28, strike out the words, "the granting to each of the," and insert, "it is desirable to grant to persons," and in line 30, strike out the words after "Ordinances," down to "and whereas," in line 34, and insert "such

portions of land as they shall be entitled to without delay."

Mr. Earp rose to second the motion of amendment.—He said, I must regret that, in one point, I do not coincide with my hon. friend, viz. : that his Excellency has threatened to withdraw the bill, in consequence of the amendments of the non-official members being directly opposed to the principle of the bill. On the contrary, I congratulate your Excellency, and the colonists also, upon the probable rejection of the Bill. I have taken a solemn oath before this Council, to advise his Excellency conscientiously, and to the best of my judgment, and now advise him, if he has any regard to the welfare of this important colony, or for his own reputation, without hesitation, to withdraw this Bill and substitute for it another more in accordance with the feelings and interests of the colonists. It is generally understood by the land claimants that a threat is held out by government, that they will return to Sir George Gipps' Bill, and with those modifications of this Bill which her Majesty's government has recommended to his Excellency's notice, I see no objection to Sir George Gipps' Bill. But with regard to the threat of having only one Commissioner, as contemplated by the New South Wales Act, it is impossible to fall back upon that, as Sir George Gipps' Bill is not at this moment law, having been disallowed by her Majesty's government for the purpose of enabling his Excellency to introduce a measure of his own.

The Governor said, that by his instructions from her Majesty's Secretary of State for the colonies, he could allow the New South Wales Act to remain law if he chose.

Mr. Earp resumed.—Whether Sir George Gipps' bill is law or not, we have no reason why falling back upon that measure should be the only alternative, when the wisdom and foresight of the Home Government, has in a dispatch to his Excellency, provided a better than either; a measure which, as far as my observations have gone, and I have shown it to many gentlemen of intelligence and experience—is of that nature, that the colonists, to use a common phrase, would "jump at it." I allude to the measure recommended to his Excellency by Lord John Russell, stating that it was absolutely necessary, 1st that a commission should ascertain, and that the law should determine what lands were private, and what were public property, and 2ndly that all lands held by private persons, and not actually in cultivation, should be subjected to an annual tax, the non-payment of which should be followed by the confiscation or seizure of the land; which measure his Lordship follows up by observing,—"That until this be done, there can be no reasonable prospect of the colony making any advance in agriculture, wealth and sound internal policy." It is impossible to conceive a stronger recommendation of a wise and just measure. At home it is clearly understood that purchases from the natives are valid purchases, to the extent that the commissioner may adjudge. I have perused the dispatches carefully, and I perceive one inculcation in all of them, viz., to consider the lands purchased from the natives fairly and equitably, as valid purchases,

and not to take away those lands and give others in lieu of them; but in all cases to confirm the titles of those already acquired.

The Governor.—I perfectly agree with the honourable member; it is the object of the government to confirm the titles to land.

Mr. Earp resumed.—That is what we contend for; but the unjust bill now before us, is framed for the purpose of taking away the lands at present held by claimants, and substituting others for them, a measure which, as I have before said, the Home Government never contemplated, nor would sanction. I once more congratulate the colony upon the chance of being liberated from this obnoxious and inconsiderate measure, and I sincerely hope and trust that the government will introduce such another measure, as will set at rest the fears of the settlers, and do away with that distrust of government bills, which, I am sorry to say, this bill has made but too prevalent.

The Governor said, he merely offered the colonists land instead of what they now held, in order to settle the question.

Mr. Earp continued.—Your Excellency must see that the whole of the colonists are against the principle of the bill before the Council; I therefore wish that such a bill be introduced instead of this, as will not only satisfy the justice of the case here, but also be approved by the British Government hereafter. Any other bill, founded upon any other principle, will only be followed up by petition after petition from all parts of the colony to the Home Government, which cannot fail to be a constant source of annoyance to this government. I am willing to admit, that, although the government measure is opposed, there is not a doubt, in the mind of any gentleman with whom I have communicated or conversed, that government, however mistaken in their mode of effecting a settlement of this great question, has framed the measure now before the Council with the most sincere intention of satisfying, as far as possible, all parties interested. The fact, however, is, that the measure, so far from giving satisfaction, has created the greatest alarm. The bill will neither meet the urgencies, or the expectations of the land claimants. On the contrary, it will, if carried, create heart-burnings and bickerings, giving rise to feelings of discontent and dissatisfaction. With these impressions I most cordially second my friends' motion for altering the preamble.

The Governor said, that the Council having heard the preamble read, in accordance with a motion for proceeding with the order of the day, and having heard Mr. Porter's amendment to the preamble, the question now before the Council was, "whether such amendment do now stand part of the bill."

On a division the members were:—

Ayes—Mr. Earp,
Mr. Porter,
Mr. Clendon,

Noes—His Excellency the Governor,
The Colonial Secretary,
The Attorney-General,
The Colonial Treasurer.