

Report on Claims of Certain Pensioners lately serving in the New Zealand Fencibles

Presented to the House of Representatives by command of His Excellency
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Land Claims of New Zealand Fencibles

Auckland, 29th June, 1861. – To the Honorable the Colonial Secretary
Sir, I transmit to you herewith a Report on the claims of certain Pensioners, lately serving in the New Zealand Fencibles, to pre-emption in the purchase of land under Lord Grey's Instructions of 1847. I have, &c., F. D. Bell, Land Claims Commissioner.

Report of the Land Claims Commissioner on the Claims of certain Pensioners to Pre-emption Land by F. Dillon Bell

On the 8th March, 1847, Lord Grey conveyed the orders of Her Majesty's Government to Sir George Grey, on the subject of pre-emption land for Pensioners, in the following terms:-

"I propose that adjacent to each of these villages a certain portion of land should be reserved, over which a right of pre-emption should, for three years, be granted to the Military Settlers, in the proportion of five acres to each Private, ten acres to each Non-Commissioned Officer, and fifty acres to each Officer, at a price not less than two guineas per acre. The exact price to be set on the land must, however, to a certain extent, depend on the cost at which the Government can secure it; and I accordingly leave that point to be finally determined by yourself."

In order to carry out the above proposal, Sir George Grey, on the 1st March, 1849, established Regulations to the following effect:

1. Land when surveyed to be offered to the Pensioners.
2. Commanding Officers then to send in Pensioners applications.
3. Deposit money to be paid with the application.
4. Balance to be paid within the specified time, or the deposit forfeited.

It appears that the Government, from time to time, offered pre-emption land to Pensioners even after the lapse of the three years originally proposed by Lord Grey. In May and September 1854, after various selections had been made, Captain Haultain sent in lists of applicants for pre-emption, and the Deputy Surveyor-General reported that part of certain specified land would be available for them. Upon Captain Symonds also stating that the Onehunga Company had lately made repeated applications to have some pre-emption land laid out for them, the Deputy Surveyor-General reported that there was no land available at Onehunga, and that the nearest was at Papakura. The acting Governor thereupon directed that some land should be selected and set apart by the Surveyor-General for the Pensioners. Captain Haultain then requested (25th September, 1854,) that a block of seventy-four acres at Mangarei might be so set apart for those Pensioners who had not yet been able to avail themselves of the privilege of selection. Governor Wynyard, however, found that as the block in question had been ordered to be put up to auction, it was not available for the Pensioners.

In November 1854, a number of the Pensioners petitioned the Auckland Provincial Council for relief; and again, in April 1855, about sixty Pensioners petitioned Acting Governor Wynyard to "consider their case," meaning evidently that land should be surveyed for their selection. The petition was referred to Major Kenny, Commanding the Corps, who, on the 23rd May, stated: That previous to the departure of Sir George Grey he had solicited on behalf of No. 2 (Onehunga) and No. 3 (Panmure) Divisions, that they might have the

privilege of pre-emption granted to them in like manner as it had been to the other six Divisions: That Sir George Grey granted the request, and had land laid out for the purpose: That the supply being inadequate, repeated applications had been made by the Staff Officers to the Colonial Government, and specially Captain Haultain's, respecting the block at Mangarei, without success: And that the only way to set the question at rest was for the Government to lay out a sufficient quantity of eligible land for the Pensioners' selection. The Surveyor-General was then ordered to set apart a sufficient quantity of pre-emption land for the Pensioners who had been promised it. Upon the application of Pensioner Walsh to purchase a particular allotment, the question arose whether a man who had completed his period of service without exercising his right of pre-emption, had forfeited his right. Major Kenny being asked for his opinion, referred the Government to their original Regulations, but if does not appear that the point in question was decided at that time: and in July, Major Kenny urged on the consideration of Government that there were other Pensioners in the same position as Walsh, and that it would be proper therefore to determine his case on the general principle involved. Acting Governor Wynyard postponed a decision.

Immediately afterwards, Captain Hickson, on behalf of two Pensioners of the 4th Division (Walsh and another), sent in applications in the prescribed form for certain allotments then unsold. Acting Governor Wynyard declined to accede to them.

In June and July 1855, Captain Symonds renewed his applications on behalf of the Onehunga men. The Surveyor-General then pointed out certain land as available for Pensioners' pre-emption, and required an estimate of the number of men likely to exercise the right. With reference to a particular question as to whether the right of pre-emption was to be extended to the Pensioners of the 3rd Division, the Surveyor-General stated that there were no specific instructions, but that he was under the impression that Sir George Grey intended to grant it to the men of that Division: and he further stated that *sufficient land had been set apart to meet the requirements of all the Pensioners, and that the same was then open to selection.*

On the 14th August, 1855, the House of Representatives called for certain Returns on the subject of the Pensioners pre-emption. One of the Returns, which related to the forfeiture of Pensioners cottages, Major Kenny referred to the Secretary of War. With respect to the others, he referred to the repeated applications which had been made by the various Staff Officers during two years past, and showed that the Returns required by the House could be supplied by the Colonial Government.

In September, 1855, Captain Symonds repeated his application to have pre-emption land laid out for a number of Pensioners, whose names he sent in; and in October he, and also Captain Hickson, Captain Haultain, and Captain Macdonald, sent in nominal lists of the Pensioners entitled to the privilege. Major Kenny at the same time represented that the land laid out by the Surveyor-General was inadequate to meet the demands of the Pensioners, and repeated his suggestion to have a sufficient amount set apart. The Governor (Colonel Gore Browne) ordered that Major Kenny's suggestion should be acted on, and desired to know whether the Surveyor-General would be able to lay out pre-emption land to all the Pensioners entitled to it. The Surveyor-General replied, that he was engaged in laying out some land at Papakura, and that there would be no difficulty in providing for the pre-emptive rights at that place, or beyond Slippery Creek, where land was open for the purpose.

In December, 1855, the Surveyor-General sent in a plan of the land he had laid out at Papakura; and soon afterwards stated that all the Pensioners whose names had been proposed by Captain Haultain were in possession.

In March, 1856, certain additional Pensioners applied for their pre-emption land. On their letters being referred to Major Kenny, he pointed out that he had already suggested the necessity of deciding the point, whether Pensioners who had completed their term of service, but had not applied for or been provided with pre-emption land during that period, were to be still regarded as entitled to it. Assuming the decision to have been in favour of such persons, these would be divided into two classes, viz., Pensioners still in the Force, and men whose term of service had expired; and if, therefore, the Colonial Government had laid out a sufficient quantity of land, it could satisfy the claims of all without delay. The matter being then referred to the Surveyor-General, that Officer reported that a precedent existed for granting pre-emption land to a Pensioner whose service had expired, and that there was no objection to granting all the Pensioners the right of pre-emption without reference to their having availed themselves of it during their period of service; that to concede this would be only just, and would certainly carry out the engagements of the Government with the men, in the spirit in which the promises to them were framed.

The Governor had already minuted that if there was a precedent it should be followed. Further applications coming in, and being referred to Major Kenny, that Officer repeated the statement already made by him, that if the Government had decided in favour of both classes they could themselves satisfy the claim.

Upon a Petition from James Lynch to be allowed his land, in June, 1856, the Attorney-General was desired to give his opinion whether the recent changes in the Land Laws affected the Government in issuing Grants to Pensioners of pre-emption land. The Attorney-General replied that those changes did not prevent the fulfillment of engagements previously entered into in conformity with the Royal Instructions, and that there was no objection to the issue of Grants. In accordance with this, the Government allowed selections to be made by certain Pensioners.

In February, 1857, some of the Pensioners stated that there were sixty men who had not yet obtained their pre-emption land. Upon this the General Government proposed to the Superintendent to allow any Pensioners *who were still enrolled* to exercise the right of pre-emption, and the Provincial Government concurred.

In May, 1857, a number of Pensioners petitioned that a sufficient amount of land in the immediate vicinity of the Villages might be laid open for selection. The Government replied that arrangements had been made whereby Pensioners who were still enrolled would be able to get their land. Upon a Petition from the widow of Pensioner Murdoch, who had died before obtaining his land, Captain Symonds reported that the land provided at Papakura was wholly inadequate to the wants of the Pensioners, that it had been divided between Captain Haultain and Captain Symonds' Division, and that the Pensioners had even had to draw for lots to obtain land. The Attorney-General then pointed out that, some time previously, the Government had come to a decision as to who were and who were not entitled to pre-emption land, and desired a fresh nominal list of the men presently entitled, to be sent in: which was accordingly done, the Government being prayed to put the men in speedy possession accordingly. This list was then sent in to the Provincial Authorities by the General Government, and the Superintendent directed the Waste Land Board to put the men in possession of the land to which they were respectively entitled.

Upon a fresh Petition in July 1857, by a number of Pensioners whose term of service had expired, the question was more distinctly raised whether the Government had intended to refuse the privilege to such men: the Provincial Government said they had no objection to grant it if the General Government had none, and the General Government said they would not interfere with the Provincial Government.

In November the question was again raised on a fresh application. Major Kenny reminded the Government that the land which had from time to time been set apart was inadequate, and recommended that the claims of Pensioners whose term of service had expired should still be granted. The Attorney-General hereupon advised that the question could only be determined by the Legislature, and in order to have all the facts at hand for a decision, another nominal list was called for, of Pensioners who had obtained their cottages but no pre-emption land.

The claims of the Pensioners came before the Provincial Council in 1858, and that body addressed the Superintendent, requesting him to set apart a sufficient quantity of country land, for the purpose of granting to such of the Pensioners as had not yet obtained pre-emption land, from fifty to one hundred acres, to be paid for by three annual instalments, at the price of ten shillings per acre. The Superintendent, however, had clearly no legal power to comply with the Address.

Nothing therefore was done till July 1860, when sixty-four of the Pensioners again petitioned the Governor, asking that he would "award them compensation by placing them on a footing with other Military Settlers," and urging that they should be "classed as Military Settlers under the Naval and Military Settlers Clauses in the Auckland Regulations." The specific prayer of the Petition, however, was, that His Excellency "would direct such measures to be taken as would "procure for the Petitioners the long sought-for boon of their pre-emption land." This Petition was referred to the Attorney-General, who advised that the Petitioners had no legal claim, nor had ever had such a claim as any tribunal could enforce; but that possibly they, or at least some of them, had a moral claim on the Government, which should be investigated and finally set at rest.

The Government thereupon decided, that any claim, equitable or otherwise, which the men might have, should be favourably considered without further delay, so that what would have to be done at last should be done at once: and with this object the whole of the papers in the case were referred to me for report, and a statement to that effect made to the House of Representatives last Session.

Shortly after the prorogation of the Assembly I had a first meeting with some of the Pensioners concerned in the Petition: and I immediately ascertained that the specific prayer with which it concluded, by no means represented the real desire of the men. The request they had made, was that "*steps should be taken to secure them their pre-emption land:*" but upon my pointing out to them that while this could be done at once, any land laid off would of course be at a distance from the villages, and that I could not see what particular advantage it would be to them to get three years' credit at ten shillings an acre, for five acres (which was the limit of Lord Grey's offer), they said they meant nothing of the sort, but required compensation for having been kept out of the land to which they considered themselves entitled. So I informed the Pensioners, in the course of two or three interviews I had with men deputed by them, that such a demand was beyond the reference to me; and I advised them to state, in a distinct form, precisely what was their present claim, in order that it might come before the Assembly.

Accordingly, in a Memorial which they addressed to me on the 11th May last, they informed me that "their expectation had been that they should receive the same remuneration as the Buffalo seamen;" that is to say, compensation equivalent to the sum of fifty pounds each, which was the amount recommended by the Private Grievances Committee of last Session in reference to the six seamen of the Buffalo, and voted by the House.

It may be admitted that the Pensioners have no strict claim under the Despatch of the 8th March, 1847. The time limited by Lord Grey for the exercise of the pre-emptive right was three years; and no Pensioner who did not within three years after his arrival in the Colony claim his privilege could thereafter demand the land. But on the other hand it is equally clear that Lord Grey's orders were never fully carried out, by the reservation of a sufficient quantity of land round each village. Every Pensioner was originally entitled to have had five acres reserved for him, adjacent to the village of his division, in order that he might during the prescribed period have the opportunity of exercising his pre-emptive right: and there would be a manifest injustice in deeming that right to be absolutely forfeited by the Pensioners, so long as the Government failed to provide sufficient means for its exercise.

It was probably this consideration which induced Sir George Grey to extend indefinitely the period of claiming pre-emption land; and if the Government had afterwards made fair provision for selection, and then limited the time when selections should be made, I should have held the present Petitioners to have forfeited whatever claim they originally had. But there can be no doubt that the repeated representations of Major Kenny and the other Staff Officers as to the inadequacy of the land set apart, were disregarded; that some of the Pensioners even had to draw for lots among themselves to obtain a selection; and that the Government came to conflicting decisions as to the conditions on which land should be provided at all.

Under these circumstances, I am of opinion that the Petitioners, or some of them, have a moral claim on the consideration of the Government. Their case, however, stands on so entirely different a footing from that of the Buffalo Seamen, that I cannot recommend a similar arrangement being extended to them as was granted to these seamen; in addition to which, it would be placing them in a far better position than many who have from time to time availed themselves of Lord Grey's scheme.

I think it would be fair, on the whole, to adopt the view of the Auckland Provincial Council on this case in 1858, and to grant to such men as have not yet received their pre-emption land, a right of purchasing a quantity of land, not exceeding 100 acres each, at the price of ten shillings per acre, payable in three equal annual instalments.

I propose, therefore, that a Bill should be introduced, empowering the Superintendent of Auckland, on an Address from the Provincial Council, to give effect to such an arrangement, and to make proper Regulations; 1st, for limiting a time to send in claims; and 2nd, for enquiring into the merits of each case, so as to determine whether in any instance there were circumstances which ought in fairness to exclude the claimant from the arrangement.

The time required for obtaining the Royal Assent to such a Bill, would enable these enquiries to be made without prejudicing the Petitioners by unnecessary delay.