

Otago Waste Lands Act, 1872," for residence and improvements has to be computed is that of the issue of the license. But the Board were placed in an awkward position by the Proclamation of unsurveyed land as land to be selected on deferred payments; the applicant tendering his payments in respect thereof as accruing from the date of his application, and the Board finding it impossible, with all the adjoining land applied for, to issue licenses to occupy without survey. It was however contended on the part of the Board that, under subsection 4 of clause 54 of "The Otago Waste Lands Act, 1872," the licensee was bound to occupy the allotment applied for, personally, within six months of the issue of the license; and it seems clear that this contention is correct. The two licenses were issued on 26th March, 1876. James Mackintosh, sen., slept on his land only twice—viz., on 4th and 16th April, 1877, and James Mackintosh, jun., only once—viz., in December, 1877. There can be no question, therefore, that the condition of personal occupation was not fulfilled, and that a forfeiture was thereby incurred. Certain improvements, valued at £67, were made on the land of each petitioner; and, in addition, a house valued at £25 was erected on each section. James Mackintosh, sen., gave no excuse for his non-residence. James Mackintosh, jun., stated that under medical advice he left Southland for Melbourne in June, 1876, and returned at the end of the ensuing November, as soon as his health was restored; and that he had intended to reside on the land as soon as he had drained it, it being very wet. This statement was not made by him to the Board at the time the forfeiture was decreed.

The counsel for the petitioners raised a point on their behalf which may deserve some consideration. It was proved that, on 21st December, 1876, the officer appointed by the Board to inspect lands held on deferred payments reported, with respect to the lands held by the petitioners, "No one in the houses;" thereby giving the Board notice of their non-residence. On the 3rd January, 1877, rent was paid for the said lands; and counsel contended that the acceptance of such rent operated as a waiver of the forfeiture (if any) incurred by previous non-residence. The point was not raised before the Board at the time when forfeiture was decreed. The Commission of your Excellency does not, in our opinion, entitle us to decide this point.

We have further to observe that no evidence whatever of harshness or partiality on the part of the Board has been brought before us. All imputations of this class were disclaimed and withdrawn by the counsel for the petitioners.

Excluding, therefore, the question of waiver, we have to report that a forfeiture was incurred in the case of each petitioner; and that, in enforcing such forfeitures, the Waste Lands Board simply acted in accordance with their duty, and without either harshness or partiality. But we are of opinion that in the case of the younger petitioner there existed a valid excuse for non-residence, unknown to the Board. Both petitioners appear to be genuine settlers; both have made considerable improvements on their land; and both appear to have been misled as to the meaning of the words "personal occupation" in subsection 4 of clause 54 of "The Otago Waste Lands Act, 1872," inasmuch as they believed that they had fully complied with that condition.

In compliance with the preamble of the Commission, we have directed that the costs of the inquiry shall be paid by the petitioners.

Given under our hands this 22nd January, 1877.

C. D. WARD.
J. S. SHANKS.

Enclosure 2 in No. 4.

ORDER for PAYMENT of COSTS.

In the matter of the Commission under the hand of His Excellency the Governor of the Colony of New Zealand, and the Seal of the said Colony, dated the seventeenth day of November, one thousand eight hundred and seventy-seven, appointing Charles Dudley, Robert Ward, Esquire, a District Court Judge, and James Stewart Shanks, Esquire, Chairman of the Southland County Council, to inquire into and report upon the allegations contained in a certain petition presented by one James Mackintosh and his Son to the House of Representatives.

WE, the undersigned Commissioners, having inquired into the allegations contained in the said petition and having heard the said petitioners, and the Chief Commissioner of the Waste Lands Board for the District of Southland, in pursuance of the powers granted to us by the said Commission, do hereby order that the costs incurred by the said Waste Lands Board in connection with the said inquiry be paid by the said petitioners.

Dated at Invercargill, in the colony aforesaid, this twenty-second day of January, one thousand eight hundred and seventy-eight.

C. D. R. WARD.
J. S. SHANKS.

No. 5.

The Hon. W. J. M. LARNACH to the Hon. J. MACANDREW.

(Telegram.)

29th January, 1878.

I FOUND many complaints on good grounds for many instances of evasion of Land Act on deferred payments, Otautau, Riverton District. Settlers on Otago side of Mataura have selections in Riverton District, and appear to get hint when Ranger likely to inspect, and take care to arrive at latter, night before. The Ranger is not doing his duty, and should be dismissed or removed.

W. J. M. LARNACH.