

that these small vessels could always find shelter at Featherston Corner, and that therefore it is not necessary to preserve the Te Aro anchorage for their use. Looking at the proposed work as the first instalment of further reclamation at a future time, I am decidedly of opinion that the approved line should run out no farther than in 10 feet of water, finishing off at the point marked in Mr. Blackett's proposal.

The objection to going deeper or farther out in any part of the harbour is that wharves run out from the reclamation towards the Ts of the Queen's Wharf would cramp the space included between, so as to make it difficult to move ships about; besides, the cost of constructing such wharves would be so great that, if the interest on their cost has to be provided for out of dues on shipping, the charges, I think, would necessarily be excessive.

I would also remark that running out wharves from already deep water must necessarily shorten the lengths of the wharves, and therefore lessen the accommodation and trade in that particular part of the harbour which is most sheltered and near the centre of the town.

Marine Department, Wellington, 15th April, 1882.

R. JOHNSON.

No. 28.

[Extract from the *New Zealand Times*, of 5th June, 1882.]

COURT OF APPEAL.

[Before their Honors the Chief Justice, Mr. Justice Richmond, and Mr. Justice Williams.]

The Attorney-General v. the Corporation of Wellington.

HIS Honor the Chief Justice, in delivering the decision of the Court in this case, said that the question which had been submitted to the Court was, "Whether the defendants are entitled, without having previously obtained the approval of the Governor in Council, in the manner provided by sections 156 and 164 of 'The Harbours Act, 1878,' or either of them, to proceed to fill up the said land, and to erect the necessary retaining wall, under the provisions of 'The Te Aro Reclamation Act, 1879.'" It was provided by section 11 of the Te Aro Reclamation Act that the Corporation of Wellington (the defendants) shall, during the execution of any work authorized by the Act, conform with and be subject to the provisions of section 156 of the Harbours Act, which apply absolutely to the Act, and they shall also conform to all other provisions of that Act, so far as they do not conflict with the provisions of the Te Aro Reclamation Act itself. It was not easy to discover any antecedent to which the word "other" could relate, and it might appear that it had crept in by mistake; but a more careful examination led to the opinion that the word had a distinct significance, and had been inserted for a special purpose. Section 3 of the Te Aro Reclamation Act gave the Council power to fill up the land specified in the Crown grant. "Other works" were, in the opinion of the Court, such undefined works as were not authorized by section 3, in addition to the particular work of reclaiming the land. It was contended on the part of the Crown that, looking to section 156 of the Harbours Act, and reading it with section 11 of the Te Aro Reclamation Act, the first mentioned must be taken to apply not only to additional works in connection with the reclamation, but to the work itself. Section 156 provides that plans of the proposed work shall be deposited with the Marine Department, and that the work shall not be proceeded with without the approval of the Governor in Council. The term "harbour works," as defined in the interpretation clause, includes the reclamation of land. But the subject of reclamation was dealt with by sections 147 to 151 of the Te Aro Reclamation Act, and it was difficult to suppose that section 156 of the Harbours Act could extend to a reclamation which had been specially authorized by Act of Parliament. In the opinion of the Court the words "by virtue of this or any other Act," in section 156, referred merely to cases in which more general powers for erecting harbour works had been given. It would be absurd to suppose that when Parliament had specially authorized the construction of particular works, that authorization could be rendered completely nugatory by another body. If the contention on the part of the Crown were correct, the Governor in Council would have absolute power in the present case to prohibit the work being carried out at all. All ancillary works were very properly made by section 11 of the Reclamation Act expressly subject to section 156 of the Harbours Act. Those works were undefined, and the object in giving the Governor in Council prohibitory powers was to prevent mischief being done. The circumstance that other works were made specially subject to section 156 of the Harbours Act indicated that it was not the intention of the Legislature to make subject to that section the reclamation defined and authorized by section 3 of the Reclamation Act. The same reasoning applied with greater force to the contention on the part of the Crown that the consent of the Governor in Council was necessary under section 164 of the Harbours Act. For those reasons the Court was of opinion that the answer to the question proposed should be in the affirmative.

By Authority: GEORGE DIDSBURY, Government Printer, Wellington.—1882.