

1882.
NEW ZEALAND.

WASTE LANDS COMMITTEE.

(REPORTS ON PETITION OF NEW PLYMOUTH HARBOUR BOARD, TOGETHER
WITH MINUTES OF EVIDENCE.)

Reports brought up on 6th and 8th September, 1882, and ordered to be printed.

REPORTS.

No. 484.—Petition of the NEW PLYMOUTH HARBOUR BOARD.

THE petitioners state that certain lands on the foreshore at New Plymouth and the Mount Eliot Reserve were granted in trust as an endowment for harbour purposes, and a loan was obtained for harbour construction for which these endowments formed part security. They complain that the Government, requiring the land for railway purposes, arbitrarily resumed possession of it, ignoring the public creditor whose security it had become; and that this action not only frustrated the plans of the Board in respect to its dealings with its endowments, but was, in principle, subversive of the constitutional rights of British subjects. They therefore pray that the Legislature will not lend its sanction to a principle so dangerous, and they ask for inquiry and relief.

I am directed to report: That the Committee finds that the issue of the grant has been deferred pending the Public Works Department fixing the limits of the land required by it, and recommends that the attention of the Government be directed to the matter, with a view to that part of the reserve which is not required for railway purposes being conveyed to the Board. The Committee are of opinion that the Board has no claim for compensation against the Government, nor does it see how, under the provisions of "The Harbours Act, 1878," such claim could arise.

6th September, 1882.

No. 484.—Petition of the NEW PLYMOUTH HARBOUR BOARD (referred back to the Committee).

THE petitioners state that certain lands on the foreshore at New Plymouth and the Mount Eliot Reserve were granted in trust as an endowment for harbour purposes, and a loan was obtained for harbour construction for which these endowments form part security. They complain that the Government, requiring the land for railway purposes, arbitrarily resumed possession of it, ignoring the public creditor whose security it had become; and that this action not only frustrated the plans of the Board in respect to its dealings with its endowments, but was, in principle, subversive of the constitutional rights of British subjects. They therefore pray that the Legislature will not lend its sanction to a principle so dangerous, and they ask for inquiry and relief.

I am directed to report: The previous report having been referred back to the Committee, the evidence of Mr. Kelly, M.H.R., has been taken, and that of Mr. Elliott repeated. This evidence, which will be laid on the table, fully confirms the Committee in the conclusions previously arrived at. The Committee find that the issue of the grant has been postponed pending the Public Works Department fixing the limits of the land required by it; and recommends that the attention of the Government be directed to the matter, with a view to that part of the reserve which is not required for railway purposes being conveyed to the Board. The Committee are of opinion that the Board has no claim for compensation against the Government, nor do they see how, under the provisions of "The Harbours Act, 1878," such claim could arise.

8th September, 1882.

MINUTES OF EVIDENCE.

THURSDAY, 7TH SEPTEMBER, 1882.—(Mr. J. FULTON, Chairman.)

Mr. T. KELLY, M.H.R., examined.

1. *The Chairman.*] I understand, Mr. Kelly, that you wish to make a statement in reference to this petition?—Yes. I wish to say that the first land granted to the Superintendent for harbour purposes was the foreshore. That was in 1869. In 1875 the Mount Eliot land was granted to the Superintendent in trust for harbour purposes. In that year the Harbour Board was constituted by an Act

of the Provincial Council, and immediately put in possession of the land. From that time all rents received from the lands have been received by the Harbour Board. Previous to 1875 some land was taken by the Government for railway purposes, and an application was made on behalf of the Provincial Government, which was then in existence, for compensation, because some of this land had been reclaimed by the Provincial Government, at a cost of some thousands of pounds. This reclamation was done for harbour purposes. At that time there was an understanding between both the General and the Provincial Governments that when the Provincial Government surrendered this land to the railway authorities without compensation the whole of Mount Eliot was to be given up for harbour purposes to the Superintendent. When this was done all claims for compensation were abandoned. The General Government had a building on Mount Eliot, which the Provincial Government paid for. I think about £50 was paid under this head. The Provincial Government then handed the land over to the Harbour Board, and from that time the Board received all rents accruing from it. Power was given to the Superintendent to convey this land to the Harbour Board by a clause in "The New Plymouth Harbour Board Ordinance, 1875." Under this clause instructions were given to the Provincial Solicitor by myself as Provincial Secretary to make a conveyance of this land to the Harbour Board, and the deed was drawn up, but, as the solicitor was a man of dilatory habits, the document was only got ready one day after the Abolition of Provinces Act came into operation. The consequence was that the Superintendent, being politically dead, could not sign the deed, and the land became vested in the Governor, who represented the Superintendent. When the Harbours Act of 1878 was passed a clause was put in for the purpose of enabling the Governor to do what the Superintendent had been empowered to do, but, owing to the fact that in Wellington it was very difficult to get provincial matters dealt with, the thing was never done. When this land was handed over to the Harbour Board by the Provincial Government they got authority to borrow money to the extent of £350,000, but we were advised that it would be well to reduce the amount to £200,000, as we could get that amount on better terms. The money was borrowed, and this land was recited in the London market as one of the securities on which the loan was raised. The Board then proceeded to cut up this block and to make streets, when the whole of the frontage, as shown on the plan, was gazetted off and taken for railway purposes. Since then we have been able to do nothing with the reserve, as it is nearly worthless with this Proclamation hanging over it. I believe that if the deed had been signed we could now contest the case in a Court of law. I will now quote a clause of "The Public Reserves Exchange Ordinance, 1875," which is to the following effect: "It shall be lawful for the Superintendent to dispose of the several portions of land described in the Schedules 1, 2, and 3 hereto, and convey the same to Her Majesty by way of exchange for the remaining portion of Mount Eliot Reserves not granted for any public purpose." The Governor did not assent to the conveyance of the land to the Harbour Board, but the Superintendent would have done so if he could. The Board has heavy liabilities to meet, and if this matter is not put right I do not know what it will do unless the Government take over these liabilities as well as the land. This is not the first time that a question of this kind has arisen. There have been two similar cases before the Public Petitions Committee, of which I am Chairman. One of them referred to the endowments of the Harbour Board at Wanganui, which was brought under the notice of the House in 1881. But that was not nearly so bad a case as this one, because the land there was taken for railway purposes, which to some extent benefited the reserve, and moreover the Government built a wharf there and handed it over to the Board free of cost. In our case, however, the Government give us nothing. In the Wanganui case the Public Petitions Committee made the following report: "That the equitable claims of the petitioners to the value of the foreshore taken for railway purposes be referred to arbitration, the arbitrators to take into consideration the benefit received by the Harbour Board by the construction of the wharf, the profits of which are received by the Board.—16th September, 1881." That report was referred by the House to the Government for their consideration, but I am not aware of the action the Government have taken. The second case is that of the Patea Harbour Board. A reserve was granted to this Board, on the security of which they borrowed money, and they were about to lease the land when the railway authorities found that it was necessary to take a line of railway through the land, and under the power they got by law they gazetted the land for railway purposes, and the Public Petitions Committee reported as follows: "The Committee are of opinion that lands given to local bodies, on the security of which money has been borrowed, should not be taken for railway purposes without fair compensation, and recommended the Government to submit the claims of the petitioners to arbitration in the usual way, in order to ascertain the value of the land taken, deductions being made for any increased value the land may have acquired by the construction of the railway.—6th September, 1882." That compensation was also given in a case at Dunedin where land was taken for railway purposes. In this case the land was reclaimed, but I believe that over and above the cost of reclamation compensation was given. The next case is that of the Lyttelton Harbour Board, which I think has been exceptionally well treated in the matter of reserves. The Government are now paying £2,000 per annum for a shed which they rent from the Lyttelton Harbour Board, and not only are they doing that, but they have also spent between £7,000 and £8,000 in order to give the Board a proper means of access to it. The total rent therefore cannot be much less than £2,600 per year. If the land which the Government have taken from the New Plymouth Harbour Board were available, I believe these frontages could be let for a considerable sum. I would mention, in connection with reserves, that whenever land which has been reserved for an Education Board has been taken, compensation has always been given, and I have no doubt that if this had been an education endowment compensation would have been given readily. I may mention also that if the Board do get compensation for this land they intend to use the money in making a street, which would cost about £2,500, and which would do away with the difficulties which now exist in connection with the means of access.

2. *Mr. Macandrew.* You say that an agreement was made between the General and Provincial Governments for an exchange of land?—Yes.

3. Is there any record of that?—Yes. The record is the ordinance itself.

4. Did you take any steps to get the Governor to sign the deed that had been prepared?—Yes. I have tried every session, and have been promised that the thing should be done, but it never has been done.

5. *Mr. J. Buchanan.*] The bondholders in London were notified that the money was being raised on the security of this land?—Yes.

6. *Mr. Hurst.*] How much did it cost the Provincial Government to reclaim the land?—About £3,500.

7. *Mr. Macandrew.*] When did the Board first raise money under the authority of this Act?—Early in 1878, and I think before “The Harbours Act, 1878,” came into operation.

8. Does not the Harbours Act provide for the payment of compensation when land is taken?—Yes.

9. To what extent did you borrow?—£200,000.

10. *The Chairman.*] Was the land supposed to be given up, not only for the present railway purposes, but for prospective ones also?—I cannot say that.

11. Was any Crown grant issued for the Mount Eliot Reserve?—Yes.

12. Why has not the Governor acted in the manner the Superintendent would have done in regard to this matter?—I do not know; the Board have urged the Government to get the deeds signed, but they have failed.

13. Do you think the Harbour Board is worse off than it would have been had not this occurred?—I think they are undoubtedly in a worse position.

H. J. H. ELIOTT, Under-Secretary for Crown Lands, examined.

14. *The Chairman.*] You have heard Mr. Kelly's evidence on this petition. Have you anything to say in regard to it?—The grant was signed by the Governor in Council on the 9th June, 1875; and it was made to the Superintendent of Taranaki “in trust for the construction and maintenance of such docks, piers, or other works as may be deemed advisable by the said Superintendent, his successors in office, or assigns, for facilitating the trade and commerce of the Town and Port of New Plymouth.” When the question of granting the land was first considered, it would appear from the papers that the future requirements of the railway were kept in view. The opinion of Sir James Prendergast, with regard to the manner in which the grant could be made, was taken; his opinion is as follows: “If the land proposed to be conveyed to the Superintendent has been reserved for military purposes or other General Government purposes, and is no longer wanted for such purpose, it may be granted to the Superintendent as a reserve under section 13 of ‘The Public Reserves Act, 1854;’ and if the land granted to the Superintendent as a harbour reserve is to be used for railway purposes by the General Government, and is now vested in the Superintendent as a harbour reserve, it may be surrendered to the Crown under ‘The Public Buildings Reserves Act, 1867.’ I think therefore the grant may be made in exchange for the surrender.” On that opinion Major Atkinson, on the 18th March, 1875, made the following minute: “Prepare Crown grant as requested by Superintendent in accordance with opinion of Attorney-General. Do this at once.” On the 21st June, 1877, Dr. Giles made a minute to this effect: “A Crown grant for Mount Eliot Reserve was executed in June, 1875, but has been detained ever since because the Superintendent had not conveyed certain other lands for railway purposes, and because the grant had been made to include a site for a Native hostelry. Abolition has complicated the matter, both as to the question of Mount Eliot Reserve and the other lands which the Superintendent should have conveyed. I think the case is one for the Law Officers.” The grant was then detained in the office until 1879. As a matter of fact, it never left the Crown Land Office until the 13th November, 1879. On the 14th June, 1875, Mr. Oliver Wakefield, who was then Record Clerk, made this minute: “The Crown grant to which Mr. Parris refers, of part of Mount Eliot Reserve, Town of New Plymouth, including the site of the Native hostelry, was prepared under an arrangement with the Superintendent (Mr. Carrington) to surrender adjoining land for railway purposes in exchange for this Crown grant for harbour purposes. The grant was signed in the Executive Council on the 9th instant, and it is now in this office. The deed of surrender has not yet been received.”

15. *Mr. J. Buchanan.*] We understand that the grant was not fully executed until 1879?—It was executed, but the Government kept possession of it. The Harbour Board pressed for their conveyance, and on the 13th November, 1879, I wrote this memorandum to Mr. Rolleston: “The Hon. Major Atkinson has spoken to me about the immediate issue of grants to the Taranaki Harbour Board for the reserves which the Governor is empowered to convey to the Board under the 135th section of ‘The Harbours Act, 1878.’ There is no legal difficulty about the issue of the grants or conveyances as requested, but if you want any further information the Hon. Major Atkinson can supply it. The best course will be to request the Commissioner of Crown Lands to supply the solicitor of the Harbour Board with the necessary information to enable conveyances to be prepared, the draft being submitted through the Commissioner for the approval of the Crown Law Officers in Wellington. The Solicitor-General agrees with this suggestion. With regard to the portion of Mount Eliot Reserve required by the Public Works Department, it can be taken without compensation under the provisions of ‘The Harbours Act, 1878.’” The papers were then sent to the Commissioner of Crown Lands, at New Plymouth, and draft conveyances were prepared. These conveyances are still with the papers in the General Crown Lands Office.

