

PART 20.—ALLEGED NON-SUBMISSION OF PLANS OF PROPOSED WORK.

HAS THE HARBOURS ACT, 1923, SECTIONS 168 TO 171, BEEN COMPLIED WITH ?

In the recitals introducing our order of reference there appears, "And whereas by the Napier Harbour Board Empowering and Loan Act, 1914, the Board was, subject to the provisions of the Harbours Act, 1908, and of the said Act of 1914, duly authorized to construct such harbour-works as should, by the Board, be considered necessary . . . in and about the construction, completion, and development . . . of the Inner Harbour portion of the said harbour, but has not, as required by the Harbours Act, 1908, submitted plans of the proposed works for the approval of the Governor-General in Council, except in so far as relates to the reconstruction of certain existing works."

Amongst the questions submitted to us is the following, viz.: "Generally to inquire into and report upon the premises and any matter arising thereout which may come under your notice in the course of your inquiries, and which you consider should be investigated in connection therewith."

It is premised by the recital quoted above that the Board has, in breach of the Harbours Act, failed to submit to the Governor-General in Council plans of works which it has undertaken in the direction of constructing and developing the Inner Harbour. This allegation was, at the hearing before us, denied by the Chairman of the Harbour Board, and, according to the documentary evidence, is questioned by the Harbour Board. It seems to us, therefore, to be a matter into which we should inquire and on which we should make a finding.

The relevant provisions of the Harbours Act (now Act No. 40 of 1923) are in sections 5 and 168 to 171, inclusive. In section 5 appears a definition of "harbour-works." Firstly, there is a definition in general terms, in the words "any works for the improvement, protection, management, or utilization of a harbour"; and, secondly, there is an enumeration of the various works and structures that usually form part of a harbour and its equipment.

There is no general inherent power in Harbour Boards to construct harbour-works, but by sections 168, 169, and (in special cases) section 179 Harbour Boards may, in the manner therein prescribed, obtain authority to construct harbour-works. Section 168 prescribes that, in the case of four major harbour-works—viz., (1) reclamation of land from sea or harbour waters, (2) graving-docks, (3) docks, and (4) breakwaters—no construction shall be entered on except under the authority of a special Act of Parliament. There is a proviso to this subsection which has no application to the present case. The applicant for such special Act must deposit at the office of the Marine Department a plan . . . prepared by a licensed surveyor, showing all tidal waters coloured blue, and the extent of the land sought to be obtained for the purpose of the said Act.

Section 169 provides that with respect to harbour-works other than those referred to in section 168 (*i.e.*, other than the four major harbour-works enumerated above) no Board shall commence or . . . construct such works without the sanction of the Governor-General in Council first obtained in the manner cited in a succeeding section.

These two sections between them cover all possible harbour-works that any Harbour Board might wish to construct, and they prescribe the source of the authority that must be obtained before the work is undertaken. In the case of the four works described above as major works the authority must be an enactment of the Legislature; in all other cases it must be the sanction of the Governor-General in Council.

Section 171 then prescribes the procedure that must precede the actual commencement of the making or construction of the harbour-work. It enacts that the constructing authority shall deposit at the office of the Marine Department a plan in duplicate of the whole work, showing all the details of the proposed work and the mode in which it is proposed the same shall be carried out. It provides further that if it appears to the Governor-General in Council that the proposed work will not be or tend to the injury of navigation he may approve the deposited plan.

It is, we think, clear that the restriction placed on the actual commencement of works by section 171 applies to all or any harbour works or work, whether it is the construction of, for instance, a breakwater under the authority of a special Act of Parliament obtained under the provisions of section 168, or, say, the building of a jetty under the authority of the Governor-General in Council obtained under the provisions of section 169. No matter which source of authority the constructing Board relies on, it must, before commencing the actual construction, lodge a plan showing details of the proposed work and the mode in which it is to be carried out, and procure the approval of that plan by the Executive Council. It may be noted that in the case of a breakwater, for instance, the approval of the detailed plans and specifications would be the approval by the Executive of detailed plans of a work already authorized in general terms by the Legislature; whilst in the case of a jetty the minute of the Executive's approval of the detailed plans would be, at the same time and by the same act, the granting of the sanction which by section 169 is the basis of the authority to undertake the work. This distinction, however, does not affect, in our opinion, the universal application of section 171 to all classes of harbour-works.

In the present case the Napier Harbour Board, being desirous of embarking on the construction of its Inner Harbour according to the plans (more or less modified) described in and accompanying Messrs. Cullen and Keele's 1912 report, sought legislative authority by a Bill, and obtained it when that Bill became the Napier Harbour Board Empowering and Loan Act (No. 14, Local) of 1914. That Act provides that it shall be lawful for the Board (subject to the provisions of the Harbours Act, 1908) to construct such works as are defined by the words "harbour works" in that Act as shall be considered necessary for the requirements of the Harbour of Napier in and about the construction, completion, development, and improvement of the Inner Harbour portion of the said harbour. The Act then bestowed on the Board power to borrow, subject to the provisions of the Harbours Act, up