

plans lodged with the Public Works Department, marked "P.W.D. 35187." The Harbour Board considers, and submits through its counsel, that the authority given by the Port Ahuriri—West Shore Road and Railway Act, 1914, was a sufficient authority, and relieved it of the necessity of depositing plans and seeking approval of the Governor-General in Council under section 171 of the Harbours Act, 1908. With this contention we agree. We think it is a reasonable view to have taken, and, seeing that the Port Ahuriri—West Shore Road and Railway Act, 1914, is not a special Act under the Harbours Act, but a special legislative authority to build a certain work under special circumstances, we think also that that view is correct in law. We think the special authority of the Port Ahuriri—West Shore Railway Act lifts the building of this embankment out of the category of general harbour-works which are governed by the provisions of the Harbours Act.

As to the dredging-work authorized by Order in Council following on the deposit in May, 1923, by the Harbour Board of its plan M.D. 5652, we consider that it is proved that this was a piece of experimental dredging of the channel between the moles of the entrance to the Inner Harbour. We are satisfied that it was undertaken as experimental dredging, and that on that basis it was approved as a separate and complete piece of "harbour-work." It therefore does not tend to strengthen the submission (otherwise sufficiently proved) that it has been the Department's practice in the past to sanction piecemeal plans of harbour-construction.

We now approach the question of quay-construction. The Act (No. 14, Local) of 1914 authorizes this work under two distinct sections—*i.e.*, under section 7 as construction of the Inner Harbour, and under section 8 as repairs and renewals of the then-existing quays. The Board has since then embarked on and completed works that fall clearly within section 8 as renewals of quays and structures. It has also embarked on the construction of quays in concrete, on the lines of the West Quay, that are equally clearly an instalment of the construction of the Inner Harbour according to Cullen and Keele's report and plans. Inextricably mixed with work under this latter heading is some work that might in fairness be described as renewals of quays existing in 1914. We cannot say precisely just where the line between these two classes of work is to be drawn, but we can and do say that that line has indisputably been crossed, and that work has been undertaken that constitutes a fairly substantial instalment of quays constructed in part realization of Cullen and Keele's plans. No plan of the whole work of which this is a part has ever been *submitted*. This, in our opinion, constitutes a breach of section 171 of the Harbours Act as interpreted by us above. We are aware of the fact, which we find to be proved as a fact, that in the past the Department seems to have accepted and approved plans of portions of works without necessarily requiring plans of the whole work; but, in our opinion, that has no bearing on the question before us. That question is the interpretation of section 171 of the Harbours Act, and, where a statutory provision is as clear as we hold that section to be, departmental practice cannot be invoked to assist in its interpretation. At the same time, we think it is reasonable that in considering our attitude, and the Department's attitude to the position of the Harbour Board in this matter of this breach of its statutory duties, the past practice of the Department should be taken into account. It must be assumed that in the past the Department's officers at least acquiesced in the view which the Napier Harbour Board now puts forward, and in those circumstances we think that the Board must be excused for its lapses in this connection. The important point is that such a position should not be allowed to arise again.

There now remains the proposed purchase of the dredge "Kaione." The evidence adduced at the hearing made it quite clear to us that the Board sought to acquire this dredge for the purpose of using her in the prosecution of Cullen and Keele's scheme of Inner Harbour construction. The letter of the Chairman (Mr. A. E. Jull) of the Board to the Minister for Marine, under date 4th June, 1927, leaves no room for doubt on that point. We are therefore of opinion that the expenditure of £35,000 to £40,000 on that proposed purchase would be an expenditure on the work of construction of the Inner Harbour, and is incidental to the dredging-work. In nearly all the engineers' estimates of cost of dredging for harbour-construction submitted to us the cost of the necessary equipment, including dredges, is included in the unit cost of dredging. The proposed purchase of this dredge is therefore, we hold, an initial step in the work of dredging, and therefore a part of the harbour constructional work, and should not be the subject of a piecemeal approval, but should be considered in relation to the whole work. It should not, *a fortiori*, be permitted without authority, and the question raised by the Chairman of the possibility of the Board purchasing it out of revenue is, in our opinion, wholly beside the present point. Section 171 makes no distinction between harbour-works constructed out of loan-moneys and those constructed out of revenue.

PART 21.—A PROPOSED REFUND BY STATE TO HARBOUR BOARD OF PART COST OF RAILWAY AND ROAD EMBANKMENT.

It was suggested by Mr. A. E. Jull, Chairman of the Harbour Board, in the course of his evidence that if as a result of this Commission the Inner Harbour is not to be completed, the Harbour Board should be recouped for its expenditure on the embankment which now carries the East Coast Railway and road. The basis of this claim is that the embankment is of much heavier construction than it would have been had the Harbour Board built it for its own purposes merely as a harbour boundary, and that if now the harbour is not to be proceeded with the embankment is of no use to the Harbour Board.

We are not prepared to make any such recommendation, as we cannot see any just basis for it. Mr. R. W. Holmes, who was at that time Engineer-in-Chief of the Public Works Department, made it clear in his evidence that the embankment was pushed further back than it would otherwise have been, so as to enclose a larger area for harbour purposes, and this made it more costly to the Public Works Department.

It may be very unfortunate from the point of view of the Harbour Board that this money is sunk and gone, but we can see no principle at all on which it can be suggested that their loss should be shared by the State. We have, therefore, no recommendation to make.