

1876.

NEW ZEALAND.

CLAIMS TO COMPENSATION BY OWNERS OF TRAMWAYS,

(REPORT OF ROYAL COMMISSION ON).

Presented to both Houses of the General Assembly by Command of His Excellency.

[L.S.]

NORMANBY, Governor.

To all whom these Presents shall come, and to RICHARD JAMES STRACHAN HARMAN, Esquire, of Christchurch, in the Province of Canterbury, and GEORGE SISSON COOPER, Esquire, of Wellington, in the Province of Wellington, Under Secretary—GREETING :

WHEREAS it is alleged that the owners of certain tramways mentioned in the Schedule hereto constructed certain tramway lines upon the faith of certain Resolutions passed by the County Council of the County of Westland, which Resolutions, amongst other things, provided that in the event of a Government road being opened which should compete with any tramway to its detriment, such compensation as the Council might deem fit should be given to the owners of the tramway so injured: And whereas a certain Government road or roads has or have been made, which it is alleged has or have caused a diminution in the receipts arising from the tramways mentioned in the Schedule hereto: And whereas the Provincial Council of the Province of Westland passed certain Resolutions, by which certain lands were awarded as compensation to the owners of the said tramways, and the Superintendent was requested to give effect to such Resolutions as soon as the necessary powers should be obtained from the General Government :

And whereas it is expedient that a Commission should be appointed to make inquiry as to what compensation (if any) is rightly and equitably due to the owners of such tramways or some of them by reason of the alleged diminution in their receipts caused as aforesaid, and to make inquiry into the several matters and things herein set forth in the manner hereinafter provided :

Now, therefore, know ye that I, George Augustus Constantine, Marquis of Normanby, the Governor of the Colony of New Zealand, having full trust in your impartiality, ability, and integrity, in pursuance and exercise of all powers and authorities enabling me in this behalf, and by and with the advice and consent of the Executive Council of the said colony, do hereby appoint you the said

RICHARD JAMES STRACHAN HARMAN, and
GEORGE SISSON COOPER,

to be Commissioners by all lawful ways and means, and subject to the terms of these presents, to examine, inquire, and report on the several matters and things hereinafter set forth, that is to say,—

First, To inquire and report whether any Government road or roads within the meaning of the above-recited Resolution of the County Council of the County of Westland has or have been constructed which have caused a diminution in the receipts arising from any of the tramways mentioned in the Schedule hereto.

Secondly, If it be found that the construction of such road or roads as aforesaid has or have caused a diminution in the receipts arising from all or any one or more of the tramways, then to inquire and report what sum (if any) is, in your opinion, justly and equitably due to the owners of such tramways in respect of which there has been such a diminution: And generally in the premises, and by all lawful ways and means, and subject as aforesaid, to examine and inquire into every matter and thing touching and concerning the premises, in such manner and at such time or times and at such place or places, as you shall deem expedient: Provided that any such inquiry may be adjourned by you from time to time or from place to place: And I do hereby authorize and empower you to have before you and examine all books, papers, maps, plans, documents, and writings whatsoever, which you shall judge necessary or expedient, relating to the subject-matter of this inquiry or any part thereof: And also to have before you and examine on oath or otherwise, as may be allowed by law, all witnesses or persons (whether claimants or otherwise) whom you shall judge capable of affording you any information touching or concerning the premises: And I do further require you within two months from the date of these presents, or as much sooner as the same can be conveniently done (using all diligence), to certify to me, under your hands and seals, your several proceedings, and your opinion touching the premises. And I do hereby declare that this Commission shall continue in full force and virtue, and that, subject to these presents, you, the said Commissioners, shall and may from time to time proceed in the execution thereof at such place or places, and at such time or times as aforesaid, as you shall judge convenient.

And lastly, I do hereby declare that this Commission is and is intended to be issued subject to the provisions of "The Commissioners Powers Act, 1867," and "The Commissioners Powers Act Amendment Act, 1872."

SCHEDULE.

Hokitika and Greymouth Tramway.
 Marsden and Paroa Tramway.
 Greymouth and Paroa Tramway.
 Hokitika and Kanieri Tramway.
 Hokitika and Hauhau Tramway.

Given under the hand of His Excellency the Most Honorable GEORGE AUGUSTUS CONSTANTINE, Marquis of Normanby, Earl of Mulgrave, Viscount Normanby, and Baron Mulgrave of Mulgrave, all in the County of York, in the Peerage of the United Kingdom; and Baron Mulgrave of New Ross, in the County of Wexford, in the Peerage of Ireland; a Member of Her Majesty's Most Honorable Privy Council; Knight Commander of the Most Distinguished Order of Saint Michael and Saint George; Governor and Commander-in-Chief in and over Her Majesty's Colony of New Zealand and its Dependencies, and Vice-Admiral of the same; and issued under the Seal of the said Colony, at the Government House, at Auckland, this fifteenth day of May, in the year of our Lord one thousand eight hundred and seventy-six.

C. C. BOWEN.

Approved in Council,

FORSTER GORING,

Clerk of the Executive Council.

REPORT OF COMMISSION.

To His Excellency the Most Hon. the Marquis of NORMANBY, Governor of
New Zealand, &c., &c.

MY LORD,—

We have the honor to report that, in pursuance of the Commission addressed to us, and issued under your Excellency's hand and the public Seal of the Colony on the fifteenth day of May last, we proceeded to inquire into and take evidence upon the claims to compensation put forward by the owners of the lines of tramway mentioned in the schedule to the Commission.

At the outset of our inquiry we were met by the question of how far the promoters of any private undertaking could substantiate a claim to compensation for any loss of profits they might sustain from the construction of roads or other works which the exigencies of the Public Service required to be constructed for public purposes; and, under ordinary circumstances, we should have been led to the conclusion that the owners of these tramways could not reasonably expect to be compensated for a loss of profits arising from a diversion of traffic from their lines occasioned by the construction of public roads between the same termini.

But a careful examination of the papers placed at our disposal, and of the oral evidence adduced before us, has proved that the circumstances of the county, and the position of the local Government at the time when these works were undertaken, were of such a nature to entitle the promoters of the tramways to extraordinary consideration.

The county was being occupied rapidly by a large population of miners who were penetrating in every direction into the interior of a densely wooded and broken country in their search for gold, and the Government were not in a position to open up communication with sufficient rapidity to keep the diggers supplied with the necessary means of subsistence. The offers of persons who proposed to construct tramways to tap the most populous districts were, therefore, gladly entertained, and promises of protection, under the 13th section of "The Gold Fields Act, 1866," were made to them. In 1869, a set of regulations, based upon resolutions of the County Council, were issued by the County Chairman, having for their object the better to define the mode in which protection should be applied for by, and granted to, the owners of tramways; and the 7th of these regulations provides that, "in the event of a Government road being opened which shall compete with any tramway to its detriment, such compensation as the Council may deem fit shall be given to the owners of the tramway so injured."

Having arrived at the opinion that the owners of tramways brought under the regulations of 1869 had been promised compensation for any loss of traffic that might be entailed upon them by the competition of public roads, it remained for us to ascertain in each case how far the falling off in traffic that was proved to have occurred was due to that cause, or how much of it might be attributable to the changing circumstances of a mining community.

With this view we obtained a return, carefully prepared from official sources, of the population of the various mining districts, from the date at which the construction of tramways was first undertaken to the year 1875 inclusive. This return clearly establishes the point that the decrease in the population of the various mining centres was not of such an extent as to have caused the closing of the tramways, excepting in the case of the Hokitika and Houhou Tramway, to which more particular allusion is hereafter made.

There appearing to us to be no other causes which could operate to diminish the traffic on the tramway lines than those above-mentioned, we proceeded to consider on what principle compensation could be justly awarded to the owners of the lines; and after having taken evidence in respect of them all, and carefully weighed and considered every circumstance attending their construction and subsequent maintenance, the question appeared to us to be of a nature so entirely arbitrary and novel, that we came to the conclusion that a fair and just solution of it could only be arrived at by ascertaining, from the best skilled evidence that was obtainable, and keeping in view the nature of the country traversed, the capital value of each line at the date of cessation of its operations, and by awarding to its proprietors a sum equal to half that value as compensation for the detriment to their enterprise; thus, in fact, dividing the loss between the proprietors of the line and the public.

Having explained the principle on which our inquiry was conducted, and our conclusions arrived at, we proceed to lay before your Excellency the results of our deliberations in each case.

[1.] *Hokitika and Greymouth Tramway.*

From Hokitika to Stafford; distance, eight [8] miles. We find the diminution of traffic on this tramway to be due to the construction of the Hokitika to Arahura and Arahura to Stafford Roads; and the sum which, in our opinion, is justly and equitably due to the owners of this tramway is one thousand eight hundred and eighty-five pounds [£1,885].

[2.] *Marsden and Paroa Tramway.*

Length, five and a quarter [$5\frac{1}{4}$] miles. We find the diminution of traffic on this tramway to be due to the construction of the Greymouth to Marsden Road; and the sum which, in our opinion, is justly and equitably due to the owner of this tramway, is one thousand six hundred and twenty-seven pounds [£1,627].

In this case we think it necessary to explain that though the owners applied, in 1869, to be brought under the County Regulations, this does not appear to have been done, but protection to the line was granted, and was renewed from year to year under "The Gold Fields Act, 1866." We are in doubt how far this particular circumstance may have removed this tramway from the scope of our inquiry; but we proceeded to examine into and report upon the general equities of the claim upon the principles which had guided us in other cases, leaving it to His Excellency to decide, under the circumstances, whether or not it should be admitted.

[3.] *Greymouth and Paroa Tramway.*

Length, five [5] miles. We find the diminution of traffic on this tramway to be due to the construction of the Greymouth and Marsden Road; and the sum which, in our opinion, is justly and equitably due to the owners of this tramway is one thousand three hundred and forty pounds [£1,340].

[4.] *Hokitika and Kanieri Tramway.*

Length, two and three quarter [$2\frac{3}{4}$] miles. We find the diminution of traffic on this tramway to be due to the construction of the Hokitika and Kanieri Road; and the sum which, in our opinion, is justly and equitably due to the owners of this tramway is eight hundred and eighty pounds [£880].

[5.] *Hokitika and Houhou Tramway.*

Length, two and three quarter [$2\frac{3}{4}$] miles. We find that the diminution of traffic on this line was not caused by the construction of any Government road; and we do not consider the proprietors of the line to be justly and equitably entitled to any payment by way of compensation. The Hokitika and Houhou Road was constructed by Government on the line of tramway, for which a sum of five hundred pounds [£500] was paid to the proprietors in 1873.

On examining the results arrived at, and on comparing them with the compensation awarded by the Provincial Council in 1875, it will be seen that the payment we have recommended to be made to the Hokitika and Kanieri Tramway is proportionately larger than in any other case. This, we submit, is justified by the consideration that this Company alone has continued its operations up to the present time, keeping carriages running at stated hours for the convenience of the public, and thus affording some of those increased facilities for communication which were contemplated when the idea of compensation was first proposed.

Before concluding, we think it necessary to remark that the owners of several of the above-mentioned tramways appear to have considered themselves entitled to prefer a claim under clause 5 of the Regulations of 1869, which provides that a guarantee of 8 per cent. interest may be given to any company coming under those regulations. We are, however, of opinion that in no case has a right been established to compensation under the clause quoted, as we conceive that such a guarantee as is therein mentioned could only have been accorded by the deliberate action of the County Council, and could not be inferred from any pro-

ceeding on the part of the owners of the tramways, or of the County Chairman acting in his administrative capacity.

All which we respectfully supply for your Excellency's consideration.

And we have the honor herewith to return to your Excellency the Commission addressed to us, and issued under your Excellency's hand and the public Seal of the Colony.

Given under our hands and seals, at Wellington, this 20th day of June, 1876.

R. J. S. HARMAN. [L.S.]
G. S. COOPER. [L.S.]

Year.	NAME OF TRAMWAY AND POPULATION SUPPLIED BY SAME.			
	Kanieri.	Houhou.	Stafford.	Greymouth and Marsden.
	Population. Comprising Kanieri Forks, Kanieri Town, Woodstock, Brighton Lead, Arthur's Town, Tucker Flat, Right Hand Branch, Kokotahi, &c., Eight Mile, Shenandoah Flat—	Population. Comprising Ho-Ho, Big and Little Paddocks, Larke's Terrace, Blue Spur, McIntyre's Creek, Brennan's Creek, &c.—	Population. Comprising Stafford Town, Goldsborough, Liverpool, Bill's Creek, Ballarat Hill, Pretty Woman's Creek, Scandinavian Hill, Right Hand Branch, German Gully, Callaghan's, Kelly's Terrace, Piper's Flat, Sailor's Gully—	Population. (¹) Marsden to Paroa Division comprises Marsden, Kemona, Cacao, Nedjacks, Cockeye Creek, Cocabulla, Limestone, Watchman's Terrace, Yankee Creek, Left Hand Branch, New River, Eight Mile, Irishman's, Mosquito Creek, Maori Creek, German Terrace. (²) Greymouth to Paroa Division comprises Paroa, Roslyn, Rutherglen, Beach and Terraces, Saltwater to Teremakau, Stony Lead, Nelson Creek, New River.
1867	... 1,040	... 980	... 3,500	... (1) 860 } 1,260 ... (2) 400 }
1868	... 920	... 740	... 3,340	... (1) 668 } 1,000 ... (2) 332 }
1869	... 800	... 620	... 3,200	... (1) 980 } 1,450 ... (2) 470 }
1870	... 680	... 550	... 3,050	... (1) 900 } 1,500 ... (2) 600 }
1871	... 600	... 400	... 2,395	... (1) 800 } 1,300 ... (2) 500 }
1872	... 580	... 370	... 2,200	... (1) 730 } 1,030 ... (2) 300 }
1873	... 825	... 500	... 1,948	... (1) 900 } 1,300 ... (2) 400 }
1874	... 1,170	... 550	... 1,900	... (1) 860 } 1,280 ... (2) 420 }
1875	... 1,200	... 500	... 1,976	... (1) 500 } 975 ... (2) 475 }

Compiled from half-yearly returns furnished by Police Sergeants of the Districts named to the Gold Fields Wardens and to the Commissioner of Police.

By Authority: GEORGE DIDSBUXY, Government Printer, Wellington.—1876.

Price 6d.]

