

1878.

NEW ZEALAND.

PETITION OF JAMES MACKINTOSH AND SON

(PAPERS RELATING TO THE ACTION TAKEN ON THE).

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

No. 1.

PETITION of JAMES MACKINTOSH and SON.

To the House of Representatives of New Zealand in Parliament assembled.

The humble petition of the undersigned sheweth,—

That three years ago your petitioner and his son selected each 200 acres under the deferred-payment system in the Southland District. The land was unsurveyed, and nearly two years elapsed before survey was completed, and license issued. In the meantime we had to pay the half-yearly instalments regularly, notwithstanding we were kept out of possession of the land. Having made arrangements to reside constantly on the land, by building a comfortable house and putting up fencing, we had determined to cultivate and put under crop about two-thirds of the allotment this season, September.

That the Board having revoked the license on the ground alleged, that the conditions of residence were not fully complied with, your petitioners crave your honorable House to inquire into the harsh treatment they have received at the hands of the Board, and to give such redress as may be thought proper.

And your petitioners will ever pray, &c.

JAMES MACKINTOSH,
(for Self and Son.)

No. 2.

PUBLIC PETITIONS COMMITTEE REPORT on the PETITION of JAMES MACKINTOSH and SON.

THE petitioners complain of the action of the Southland Waste Lands Board in cancelling their license to occupy land on deferred payments, on the ground of not having complied with the conditions.

They pray for inquiry and redress. The Committee have examined James Mackintosh, one of the petitioners, and also two members of the Waste Lands Board, and it appears that the license in question was cancelled because the Board considered that the petitioners were evading the condition of personal residence. The petitioners ask for independent inquiry, and state that they would pay the costs if the result of such inquiry was adverse to their interest.

I am directed to report that the Committee recommend that a Commission of impartial persons be appointed to inquire into petitioners' case, with power to take evidence on oath, whose decision shall be final; and, in the event of the petitioners failing to prove to the satisfaction of the Commissioners that they complied with the conditions of personal occupation within the meaning of subsection 4 of section 54 of "The Otago Waste Lands Act, 1872," the cost of such inquiry be paid by petitioners.

THOMAS KELLY,
Chairman.

26th October, 1877.

No. 3.

ROYAL COMMISSION to Charles Dudley Robert Ward, Esq., and a District Judge, and to James Stewart Shanks, Esq., to inquire into the Petition of James Mackintosh and Son.

To all to whom these presents shall come, and to Charles Dudley Robert Ward, Esq. and a District Court Judge, and James Stewart Shanks, Esq., Chairman of the Southland County Council, greeting.

WHEREAS one James Mackintosh, of Invercargill, in the Provincial District of Otago, on behalf of himself and his son, has presented a petition to the House of Representatives, setting forth, amongst other things, that three years ago petitioner and his son selected each 200 acres of land, under the deferred-payment system, in the Southland District; and that the Southland waste lands Board have revoked the license or licenses issued to the said petitioners on the alleged ground that the conditions of residence were not fully complied with, and the petitioners craved the honorable House to inquire into the harsh treatment they had received at the hands of the Board, and to give such redress as might be thought proper:

And whereas the said petition was referred to the Public Petitions Committee of the said House of Representatives, who passed a resolution, "That the Committee recommend that a Commission of impartial persons be appointed to inquire into petitioners' case, with power to take evidence on oath, whose decision shall be final; and, in the event of the petitioners failing to prove to the satisfaction of the Commissioners that they complied with the conditions of personal occupation within the meaning of subsection 4 of section 54 of 'The Otago Waste Lands Act, 1872,' the cost of such inquiry to be paid by petitioners:"

And whereas it is expedient that a Commission should be issued to inquire into the allegations of the said petitioners in the said petition mentioned, and to give effect to the recommendation of the said Public Petitions Committee hereinbefore mentioned:

Now, therefore, I, George Augustus Constantine, Marquis of Normanby, the Governor of the Colony of New Zealand, by and with the advice and consent of the Executive Council of the said Colony, and having full confidence in your impartiality, ability, and integrity, do hereby appoint you, the said Charles Dudley Robert Ward, and James Stewart Shanks, to be Commissioners jointly, by all lawful ways and means, and subject to the terms of these presents, to examine and inquire into the allegations set forth in the hereinbefore in part recited petition, and particularly as to the compliance by the said petitioner or his said son with the conditions of personal occupation of the lands so selected by them, as aforesaid, within the meaning of subsection 4 of section 54 of "The Otago Waste Lands Act, 1872," and generally in the premises and subject as aforesaid to examine and inquire into every matter and thing touching and concerning the allegations in the said petition set forth, 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 from time to time and from place to place, but so as no such adjournment shall be held beyond the Land District of Southland: And I do hereby authorize and empower you to have before you, and examine on oath or otherwise as may be lawful, all and every such person or persons as you may judge capable of affording you any information touching or concerning the premises, and with or without any books, letters, papers, writings, or documents, that may be produced or producible in the matter of the said inquiry: And I do further require you, within ninety days from the date hereof, or as much sooner as the same can conveniently be done, using all diligence, to certify to me under your hands your several proceedings, and your opinion touching or concerning the premises: And I do hereby also direct that, in case the said petitioner fails to prove to your satisfaction that he or his said son has or have complied with the conditions of personal occupation of the land held under the said licenses, or either of them, as aforesaid, you shall make such order as to payment of costs as you in your discretion shall think just, having regard to the hereinbefore in part recited resolution of the Public Petitions Committee, and as you may be authorized by law: And, lastly, I declare that this Commission is and is intended to be issued under and subject to the provisions of "The Commissioners' Powers Act, 1867," and "The Commissioners' Powers Act Amendment Act, 1872."

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 Grand Cross 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 Wellington, this seventeenth day of November, in the year of our Lord one thousand eight hundred and seventy-seven.

No. 4.

His Honor Judge WARD to the Hon. the MINISTER for CROWN LANDS.

SIR,—

Invercargill, 22nd January, 1878.

Herewith I have the honor to forward Commission in *re* Mackintosh and report returned therein, with order for payment of costs.

I have, &c.,

The Hon. the Minister for Crown Lands.

C. D. R. WARD, D.J.

Enclosure 1 in No. 4.

REPORT of COMMISSIONERS.

To His Excellency the Most Honorable the Marquis of Normanby, Governor of New Zealand.

MAY IT PLEASE YOUR EXCELLENCY,—

We, Charles Dudley Robert Ward and James Stewart Shanks, Commissioners appointed under and by virtue of a Commission issued on 17th November, 1877, do hereby report as follows on the matters thereby referred to us:—

On 31st August, 1874, James Mackintosh, sen., and James Mackintosh, jun., applied for Sections 80 and 81, Oreti, respectively, such lands being then open to application for purchase on deferred payments, but unsurveyed. On 21st March, 1876, a "license to occupy" was granted to each, and fees in respect of issue of licenses paid, together with rent. These licenses contained in clause 4 provisions that related back to 31st August, 1874, referring, *inter alia*, to forfeiture of the land in case of the non-occupation thereof within five months from that date. (*Vide* license hereunto annexed.) These provisions were simply absurd, inasmuch as the date from which the time required by "The

Otago Waste Lands Act, 1872," for residence and improvements has to be computed is that of the issue of the license. But the Board were placed in an awkward position by the Proclamation of unsurveyed land as land to be selected on deferred payments; the applicant tendering his payments in respect thereof as accruing from the date of his application, and the Board finding it impossible, with all the adjoining land applied for, to issue licenses to occupy without survey. It was however contended on the part of the Board that, under subsection 4 of clause 54 of "The Otago Waste Lands Act, 1872," the licensee was bound to occupy the allotment applied for, personally, within six months of the issue of the license; and it seems clear that this contention is correct. The two licenses were issued on 26th March, 1876. James Mackintosh, sen., slept on his land only twice—viz., on 4th and 16th April, 1877, and James Mackintosh, jun., only once—viz., in December, 1877. There can be no question, therefore, that the condition of personal occupation was not fulfilled, and that a forfeiture was thereby incurred. Certain improvements, valued at £67, were made on the land of each petitioner; and, in addition, a house valued at £25 was erected on each section. James Mackintosh, sen., gave no excuse for his non-residence. James Mackintosh, jun., stated that under medical advice he left Southland for Melbourne in June, 1876, and returned at the end of the ensuing November, as soon as his health was restored; and that he had intended to reside on the land as soon as he had drained it, it being very wet. This statement was not made by him to the Board at the time the forfeiture was decreed.

The counsel for the petitioners raised a point on their behalf which may deserve some consideration. It was proved that, on 21st December, 1876, the officer appointed by the Board to inspect lands held on deferred payments reported, with respect to the lands held by the petitioners, "No one in the houses;" thereby giving the Board notice of their non-residence. On the 3rd January, 1877, rent was paid for the said lands; and counsel contended that the acceptance of such rent operated as a waiver of the forfeiture (if any) incurred by previous non-residence. The point was not raised before the Board at the time when forfeiture was decreed. The Commission of your Excellency does not, in our opinion, entitle us to decide this point.

We have further to observe that no evidence whatever of harshness or partiality on the part of the Board has been brought before us. All imputations of this class were disclaimed and withdrawn by the counsel for the petitioners.

Excluding, therefore, the question of waiver, we have to report that a forfeiture was incurred in the case of each petitioner; and that, in enforcing such forfeitures, the Waste Lands Board simply acted in accordance with their duty, and without either harshness or partiality. But we are of opinion that in the case of the younger petitioner there existed a valid excuse for non-residence, unknown to the Board. Both petitioners appear to be genuine settlers; both have made considerable improvements on their land; and both appear to have been misled as to the meaning of the words "personal occupation" in subsection 4 of clause 54 of "The Otago Waste Lands Act, 1872," inasmuch as they believed that they had fully complied with that condition.

In compliance with the preamble of the Commission, we have directed that the costs of the inquiry shall be paid by the petitioners.

Given under our hands this 22nd January, 1877.

C. D. WARD.
J. S. SHANKS.

Enclosure 2 in No. 4.

ORDER for PAYMENT of COSTS.

In the matter of the Commission under the hand of His Excellency the Governor of the Colony of New Zealand, and the Seal of the said Colony, dated the seventeenth day of November, one thousand eight hundred and seventy-seven, appointing Charles Dudley, Robert Ward, Esquire, a District Court Judge, and James Stewart Shanks, Esquire, Chairman of the Southland County Council, to inquire into and report upon the allegations contained in a certain petition presented by one James Mackintosh and his Son to the House of Representatives.

WE, the undersigned Commissioners, having inquired into the allegations contained in the said petition and having heard the said petitioners, and the Chief Commissioner of the Waste Lands Board for the District of Southland, in pursuance of the powers granted to us by the said Commission, do hereby order that the costs incurred by the said Waste Lands Board in connection with the said inquiry be paid by the said petitioners.

Dated at Invercargill, in the colony aforesaid, this twenty-second day of January, one thousand eight hundred and seventy-eight.

C. D. R. WARD.
J. S. SHANKS.

No. 5.

The Hon. W. J. M. LARNACH to the Hon. J. MACANDREW.

(Telegram.)

29th January, 1878.

I FOUND many complaints on good grounds for many instances of evasion of Land Act on deferred payments, Otautau, Riverton District. Settlers on Otago side of Mataura have selections in Riverton District, and appear to get hint when Ranger likely to inspect, and take care to arrive at latter, night before. The Ranger is not doing his duty, and should be dismissed or removed.

W. J. M. LARNACH.

No. 6.

The Hon. the MINISTER for CROWN LANDS, Wellington, to the COMMISSIONER of CROWN LANDS, Invercargill.

SIR,— General Crown Lands Office, Wellington, 18th February, 1878.

I have the honor to transmit copy of report of Commissioners appointed on the recommendation of the Public Petitions Committee of the House of Representatives upon petition of James Mackintosh and Son, complaining of the action of your Board in reference to their deferred-payment application.

On this subject I desire to say that the Government fully recognize the absolute necessity of a strict enforcement of the letter as well as the spirit of the law in respect of the due fulfilment of the conditions under which land on deferred payment can be acquired. At the same time, as the case in question appears to be the first that has been dealt with so strictly, it is submitted that the Board might well reconsider its decision, and deal with the matter under the powers conferred by the 63rd section of "The Land Act, 1877."

I am the more disposed to suggest this course, inasmuch as it has been brought under the notice of the Government, from what appears to be reliable sources, that the Ranger on whose report the applications in question have been dealt with, has not been acting altogether impartially, and that, in fact, there were and are other deferred-payment sections in respect of which the non-fulfilment of the conditions have been winked at.

I need scarcely say that the Government is perfectly satisfied that your Board had no suspicion of such being the case. As it is, I am of opinion that it would be well to have a stranger to the district placed in the position of Ranger, and to remove the present Ranger to some other district.

I have, &c.,

The Commissioner of Crown Lands, Invercargill.

J. MACANDREW.

No. 7.

The COMMISSIONER of CROWN LANDS, Invercargill to the UNDER SECRETARY for CROWN LANDS, Wellington.

SIR,— Crown Lands Office, Invercargill, 30th March, 1878.

I have the honor to forward extract from minutes of Waste Lands Board, Invercargill, of date 29th instant, in reference to the appointment of a stranger to the district as Crown Lands Ranger, and shall feel obliged if you will be good enough to take into favourable consideration the latter part of the resolution.

I have, &c.,

C. HOWARD,

Pro Commissioner of Crown Lands.

The Under Secretary for Crown Lands,
Wellington.

Enclosure in No. 7.

EXTRACT from Minutes of Meeting of Waste Lands Board, Invercargill, of date 29th March, 1878. IN reply to the Hon. the Minister of Lands' letter of 18th ultimo, L.78/270, covering the Commissioner's report *re* Mackintosh and Son, it was resolved,—

Having in view the desirableness of the Board's being duly and regularly informed as to the manner in which the conditions of occupation of lands sold on deferred payments are being complied with by the several selectors, and of such information being entirely free from bias, arising from local or personal feelings, this Board concurs with the Hon. the Minister of Lands in the opinion that it were better that the officer appointed to inspect such settlements should be a stranger to the district. At the same time the Board must express its belief that the officer employed in this district has aimed at giving fair and impartial reports in as far as he has been able to acquaint himself with the facts touching the compliance or non-compliance of the individual settlers with the requirements of the law, for the Board cannot forget that the means at that officer's command, in the shape of salary and travelling allowance, have hitherto been totally inadequate to enable him to fulfil his duties by more frequent visits to the several settlements. In consideration of the zeal displayed by the present Ranger, the Board expresses the hope that employment may be found for him by the Government in some other quarter.

C. H. (for C. C. L.)

No. 8.

The COMMISSIONER of CROWN LANDS, Invercargill, to the UNDER SECRETARY for CROWN LANDS, Wellington.

SIR,— Crown Lands Office, Invercargill, 16th March, 1878.

I have the honor to forward extract from minutes of meeting of Waste Lands Board, Invercargill, of date 14th instant, in reference to the Forest Bailiff, Mr. Duncan Campbell, lately appointed Crown Lands Ranger; and shall feel obliged if you will be good enough to take into favourable consideration the request of the Board, the pecuniary position of the Ranger being very unsatisfactory.

I have, &c.,

W. H. PEARSON,

Commissioner of Crown Lands.

The Under Secretary for Crown Lands,
Wellington.

Enclosure in No. 8.

EXTRACT from Minutes of Meeting of Waste Lands Board, Invercargill, of date 14th March, 1878.

MOVED by Mr. Lumsden, seconded by Sir John Richardson,—

That the Hon. the Minister for Lands be requested to take such steps as will secure the payment to the Forest Bailiff, Duncan Campbell (who is also Ranger of Crown Lands), of the salary and travelling expenses, as shown in the Appropriation Act.—Carried.

W. H. PEARSON,
Commissioner of Crown Lands.

No. 9.

The UNDER SECRETARY for CROWN LANDS, Wellington, to the COMMISSIONER of CROWN LANDS, Invercargill.

SIR,—

27th March, 1878.

I have the honor, by direction of the Hon. the Minister for Lands, to acknowledge the receipt of your letter of the 16th instant, and in reply to inform you that salary and travelling expenses will be paid to Duncan Campbell, the Forest Bailiff and Crown Lands Ranger, as voted on the last estimates, at the rate of £175 per annum for salary and £75 travelling allowance up to the end of this month, after which date his services will no longer be required, as his duties can be performed by Mr. Mussen.

I have, &c.,

H. J. H. ELIOTT,
Under Secretary.

The Commissioner of Crown Lands, Invercargill.

No. 10.

The COMMISSIONER of CROWN LANDS, Invercargill, to the HON. the MINISTER for LANDS, Wellington.

SIR,—

Crown Lands Office, Invercargill, 28th March, 1878

I have the honor to forward, in terms of "The Land Act, 1877," the resignation of the Hon. Sir John Richardson of his seat as a member of the Southland Waste Lands Board.

I have, &c.,

W. H. PEARSON,
Commissioner of Crown Lands.

The Hon. the Minister for Lands, Wellington.

Enclosure in No. 10.

The Hon. Sir JOHN RICHARDSON, M.L.C., to the CHIEF COMMISSIONER, Southland Waste Lands Board, Invercargill.

SIR,—

Invercargill, 28th March, 1878.

I have the honor to tender the resignation of my appointment as a member of the Southland Waste Lands Board.

I have, &c.,

J. RICHARDSON.

The Chief Commissioner of the Southland Waste Lands Board, Invercargill.

No. 11.

The Hon. J. MACANDREW to the Hon. Sir JOHN RICHARDSON, M.L.C.

(Telegram.)

6th April, 1878.

GOVERNMENT regret that you have resigned your seat at Waste Lands Board, in consequence, it is said, of Ranger Campbell's discharge from service. You may rest satisfied that this step was not taken hurriedly, or without good and sufficient grounds. It is proposed, on further consideration, to remove him to another district, where he will be less mixed up among the persons with whom his important duties may bring him into contact. Under the circumstances Government would be glad if you will reconsider your resignation, which will not in the meantime be acted on.

J. MACANDREW.

No. 12.

The Hon. Sir JOHN RICHARDSON, M.L.C., to the Hon. J. MACANDREW.

(Telegram.)

8th April, 1878.

I TRUST the Government feel assured that my resignation was only on account of the necessity, in my opinion, of the Board having effective control over its servants, and more especially in a case where the success or failure of the deferred-payment system is concerned. I am glad to learn that decision of Government in *re* Campbell is merely a transfer of office. Might I venture, while asking permission in accordance with your request to withdraw my resignation, respectfully and earnestly to urge that in all future cases any charges against any servant of the Board be remitted for the Board's investigation and decision, so essential to the conduct of the important duties intrusted to the Board.

J. RICHARDSON.

No. 13.

The Hon. J. MACANDREW to the Hon. Sir J. RICHARDSON, M.L.C.

(Telegram.)

9th April, 1878.

GOVERNMENT is glad that you will continue to act as member of Waste Lands Board. No doubt it would have been proper, before removing Ranger, to have conferred with Board. That this was not done must be attributed to inadvertency, not to any intention to cast slight on Board. Our desire is to see that the deferred-payment conditions are rigidly enforced, and the law administered impartially without favour or affection—a desire which we feel sure animates yourself and the other members of the Board as much as it does the Government.

J. MACANDREW.

No. 14.

The Hon. Sir J. RICHARDSON, M.L.C., to the Hon. J. MACANDREW.

(Telegram.)

10th April, 1878.

I AM obliged to the Government for their courteous consideration of my communication, and have officially requested the Board to return my letter resigning my seat.

J. RICHARDSON.

By Authority: GEORGE DIDSBURX, Government Printer, Wellington.—1878.