

REPORT

OF THE

SELECT COMMITTEE

ON THE

CLAIMS OF CAPTAIN MORSHEAD AND DR. SAMUEL

TO

THE TARANAKI IRON SAND.

REPORT BROUGHT UP 4TH SEPTEMBER, AND ORDERED TO BE PRINTED.

WELLINGTON.

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1866.

REPORT

OF

THE TARANAKI IRON SAND COMMITTEE.

THE Select Committee appointed to inquire into and report upon the claims of Dr. Samuel and Captain Morshead, with respect to the leasing of the Iron Sand in the Province of Taranaki, have the honor to report :—

That they have examined the file of records in the Colonial Secretary's Office on this subject, and have obtained from Dr. Samuel and Captain Morshead written statements in regard to their claims, and further examined both claimants on such points as were deemed necessary. The Superintendent of Taranaki, also at the request of the Committee, furnished a written statement on the matter, and laid before them numerous documents bearing on the subject.

CAPTAIN MORSHEAD'S CLAIM.

With regard to Captain Morshead's claim the Committee are of opinion that he forfeited his lease through non-fulfilment of its conditions, and that the Government were perfectly justified in determining it.

The Committee have given their attention to a promise made by the General Government in December, 1860, to the effect that—"If the present lease be surrendered at the termination of the existing war in Taranaki, a new lease from that date will be granted on the same terms as those of the present lease;" but do not consider that the promise then given can be interpreted in such a manner as to excuse the total inaction of the lessee in the Province of Taranaki for a period of nearly four years from the date of that promise.

It is further evident to your Committee that the lessee has failed to comply with the condition which the Government laid down as essential to granting him a new lease, viz. :—The surrender of the original one. The fact being, that the lease was many years ago deposited in a Bank in London, and your Committee believe had passed out of the power of the lessee at the time it was cancelled.

The Government, however, did allow the lease to run from the 25th July, 1859, to the 1st September, 1864, when, no doubt, observing that no practical steps were being taken to develop the Iron Sand, gave the necessary authority to the Superintendent to determine the lease.

Your Committee therefore, after full consideration of Captain Morshead's case, have arrived at the opinion that he has no claims upon the Government with respect to the leasing of Iron Sand in the Province of Taranaki.

DR. SAMUEL'S CLAIM.

In regard to Dr. Samuel's claim, your Committee have directed their inquiries to the two following questions :—

1. Should the new lease be granted to Dr. Samuel, or should his interests, and those of "third parties," be protected by the insertion of a saving clause in their favour in any new lease that might be granted to others?
2. Should Dr. Samuel be compensated for the alleged expenditure he incurred in connection with the Iron Sand?

With regard to the first subject of inquiry, your Committee are of opinion that Dr. Samuel's claim to a lease, or to the insertion of a clause protecting the interests of "third parties" in any future lease, cannot be established. If Dr. Samuel, or "third parties," chose to advance money to Captain Morshead on the security of the lease, they ought to have made themselves acquainted with its terms, from which they would have found that any failure on the part of the lessee in fulfilling the conditions of the lease rendered it liable to forfeiture, and consequently such parties to the loss of their security. It seems most unreasonable to expect that a Government who were compelled to determine the lease in consequence of breach of its provisions on the part of the lessee, should recognize those who held derivative claims under him.

Your Committee also desire to call attention to the fact that one document submitted to them, called "Articles of Agreement" between Captain Morshead and Dr. Samuel (the genuineness of which, though denied by Captain Morshead, your Committee see no reason to doubt), contains provisions which, if made public, would, in the opinion of your Committee, have prevented the formation of any *bona fide* Company for working the Iron Sand.

The Committee are, however, aware that from time to time proposals have been made sometimes by the General Government to the Legislature of the Province of Taranaki, sometimes by one or other branch of that Legislature, to recognize the claim of Dr. Samuel on any future lease, but it does not appear to your Committee that the concurrence of the three bodies was ever at one and the same time obtained.

This concurrence both the General Government and Dr. Samuel appear to have deemed essential to the establishment of this claim, as is shown in their letters of the 27th and 28th January, 1864 (copies of which are appended.) By direction of the Colonial Secretary (Mr. Fox) certain proposals are made to Dr. Samuel, and it is added:—"It must be distinctly understood that the Government will not adopt either of these courses without the recommendation of the Superintendent and Provincial Council of Taranaki." Dr. Samuel at once acquiesces in this reference to the Provincial Legislature, but their concurrence not having been obtained, the offer of the Government fell to the ground.

With regard to Dr. Samuel's right to receive compensation for expenses incurred in connexion with the Iron Sand, your Committee find the following passage in a letter from the Colonial Secretary's Office, under date 17th August, 1864, viz.:—"I have to state that while the Government can recognize no legal claims on your part, they will be prepared, in making terms with new lessees, to take any fair expenditure you have made into consideration with a view to obtaining for you reasonable compensation."

Without expressing an opinion upon the propriety of the Government making such an offer, your Committee think that the Government have performed their part by remitting the consideration of the case to Captain Beckham, who was appointed the Commissioner to investigate the case, and that it is solely due to Dr. Samuel himself that his right to some compensation for his alleged expenditure has not been established.

Your Committee have moreover not thought it a part of their duty to go into the question of the amount of compensation to which Dr. Samuel might have been entitled under the Colonial Secretary's letter of the 17th August, 1864, because they find from Dr. Samuel's letter of the 28th May, 1866, to the Government that he repudiates the claim against the Government for any money whatever, though in a memorandum submitted by him to your Committee he does appear to make such a claim. But your Committee think it right to draw the attention of the House to the great discrepancy between the claim submitted to the Government, at the invitation of the Colonial Secretary, by Dr. Samuel, on the 22nd August, 1864, and which amounted, up to June, 1864, to £5850, and that which he endeavoured to set up at the final hearing of the case by Captain Beckham, when it amounted, up to December, 1864, to £12,534 10s., as is stated in Captain Beckham's report.

From a consideration, then, of all the circumstances of the case the Committee have arrived at the opinion that Dr. Samuel has no claim upon the Government with respect to the leasing of Iron Sand in the Province of Taranaki.

Your Committee cannot close this Report without drawing attention to the statements made by Captain Morshead in his letter to the Colonial Secretary of the 29th May ultimo, viz.:—"I never gave to Dr. Samuel any lien on the Iron Sand Leases; I never gave him any power over the sand out of the Province." And in his letter to the Speaker of the Provincial Council of Taranaki, under date 26th November, 1864, viz.:—"I never gave him a mortgage on the leases; and so far from giving him a power of attorney to act for me in the settlement, I did not even notice his application when he wrote to me for that power some months after my return to Europe;" and to his admission before the Committee of the genuineness of the power of attorney and deed of covenant or allocation held by Dr. Samuel, under the latter of which the lessee (Captain Morshead) covenants to allocate to Dr. Samuel one hundred free shares and stock to the amount of £750 in any company that he might form.

G. MAURICE O'ROKKE,

Chairman.

Committee Room, 31st August, 1866.

(119)
SIR,—

Colonial Secretary's Office,
Auckland, 27th January, 1864.

I have the honor, by the direction of Mr. Fox, to acknowledge the receipt of your letter of the 9th instant, transmitting certain papers relative to the matter of the Iron Sand Leases at Taranaki, and requesting the consideration by the Government of the whole subject.

After a careful consideration of the circumstances of these leases, the Government have arrived at the following conclusions, which I am to communicate to you as their final decision.

1. The original lease to Mr. Morshead of the land below high water mark is forfeited.
2. The Government, under the circumstances, is prepared to waive the forfeiture, leaving the lease subsisting, and subject to any dispositions made by Mr. Morshead.
3. Or the Government is prepared to enforce the forfeiture, and if the Provincial Government and Provincial Council of Taranaki consent, will lease again a portion of the Taranaki Beach to Mr. Morshead, saving all rights and equities vested in any person or persons under the old lease.
4. It must be distinctly understood that the Government will not adopt either of these courses without the recommendation of the Superintendent and Provincial Council of Taranaki.

I am to request you to inform Mr. Fox which of these courses you, as representative of Mr. Morshead, by virtue of your mortgage, may prefer.

I return to you the original letter, noted in the margin, enclosed in your letter now under reply.

I have, &c.,

W. GISBORNE,

Under-Secretary.

Dr. Jacob Samuel, Royal Hotel.

Auckland, 28th January, 1864.

SIR,—

In expressing my obligations for your letter of yesterday's date, I have the honor to request that you will inform the Honourable Mr. Fox, that before deciding on any of the propositions made to me in your letter, I shall have to communicate with the Superintendent and Provincial Council of Taranaki, which will occupy some time.

I have, &c.,

JACOB SAMUEL.

W. Gisborne, Esq., Under Secretary.