

interference exclude the miner, and arbitrarily fix his own terms as to permitting mining, the result would be that the sale of land would have to be altogether stopped, or the utmost disorder and ill-feeling be created amongst the mining population.

I think that the Superintendent must not conclude that the Crown has not the right to enter upon purchased land for the purpose of opening mines for gold. The better opinion seems to be, that the Crown has the right to enter upon land for that purpose.

I have read the papers, and referred to "The Nelson Waste Lands Act, 1863," and am unable to understand how the Waste Lands Board, after it was informed, as it was by the very first applicant, that the land was auriferous, could venture to sell the land as rural land in the face of the Waste Lands Act, which expressly provides that auriferous land shall not be leased till offered for sale by auction at a price not less than £10 per acre, thus clearly showing that auriferous land shall not be sold at less than £10 per acre, and shall always be sold by auction. Moreover, I should have thought that if the Board had thought fit, there could be no doubt as to their power to withdraw the land after the application had been made.

I observe that the Commissioner says the sales only amounted to 130 acres; this does not seem to agree with the statement in the telegram, in which the applications were for a much greater extent of country.

I remember that in Dunedin, a Provincial Government officer, not connected with the Waste Lands or Gold Fields Departments, while travelling about on service, received information of the auriferous nature of certain land then open for sale, and because he did not at once apprise the Government of this fact, but on the contrary put in an application as a purchaser, he was considered to have been guilty of neglect of his duty as a public officer; and the Government called upon him either to resign his office or throw up his right to the land. He determined to hold to the land, and it turned out anything but auriferous.

12th November, 1869.

J. PRENDERGAST.

No. 7.

Copy of a Letter from the SUPERINTENDENT, Nelson, to the Hon. the COLONIAL SECRETARY.

SIR,—

Wellington, 18th November, 1869.

I have the honor to acknowledge the receipt of your letter of the 17th instant, enclosing a memorandum by the Attorney-General, in reference to my letter to you of the 3rd instant, and to the general question of the late purchases of land in the Wangapeka District.

The only way, I believe, in which the Crown has hitherto exercised its prerogative in England, where it undoubtedly exists, is by claiming a royalty upon the metals raised, and never by prohibiting the freeholder from raising them from his own land. The Government of this Colony already exercises the prerogative of the Crown by imposing a royalty upon the value of the gold raised, whether upon private land or upon land belonging to the Crown, in the form of an export duty of half a crown an ounce.

The Attorney-General admits that the Crown cannot give general authority, by miners' rights or otherwise, to enter upon private land for the purpose of mining for gold, although he thinks the Crown might do so itself, or by its immediate agents. As the latter course is not likely to be pursued, I see nothing in the Memorandum to shake the opinion I expressed, that the effect of the course the Government announces its intention to take, would be to lock up auriferous freehold lands altogether, to the manifest injury of the Colony.

I am neither competent nor desirous to enter into the difficult and complicated question raised by the Attorney-General as to the relations between the Crown and the Natives in respect to their lands, nor do I see that it has any legitimate bearing upon the subject.

The Attorney-General expresses surprise that the Waste Lands Board should venture to sell land as rural after it had been "informed" that that land was auriferous.

The Attorney-General must surely be aware that the unconfirmed assertion of a single person, wholly unknown to the Board, does not make land auriferous in fact, and still less in law. Until the land had been formally classed as mineral land by the Board, or until it was formally withdrawn from sale by notice in the *Gazette*, it was legally open for sale, by free selection, at £2 per acre. The land was withdrawn from sale as soon as a meeting of the Board could be called, and a *Gazette* printed and issued—namely, on the following morning, at half-past 11 o'clock.

The Attorney-General thinks there can be no doubt as to the power of the Board to withdraw the land after the application had been made,—by which I understand him to mean that the application to purchase might have been refused. Such a course, would, in my opinion, have been not only extremely unjust to the individual, and highly impolitic as regards the public, whose interest it is to encourage, and not to defeat and deter, efforts of exploration and enterprise, but it would also, I think, have been clearly illegal. At all events, a similar proceeding was pronounced to be so by the Supreme Court some twelve years ago. I refer to a case which occurred at the outbreak of the Collingwood Gold Fields, when Mr. Domett, the then Commissioner of Crown Lands in Nelson, refused an application to purchase a large block of land on the ground of the discovery of gold, but was subsequently required by the Supreme Court to allow the purchase to be completed.

The Attorney-General refers to a clause in "The Waste Lands Act, 1863," which empowers the Board to lease auriferous land after it has been offered at auction at an upset price of £10 per acre. This clause, it seems clear to me, refers to land which the Board has decided to be auriferous, and not to land which is open to free selection at £2 per acre.

The only bearing it appears to me to have upon this case is, that the Act authorizes the sale of land declared by the Waste Lands Board to be auriferous, and that in this respect the policy of the clause is at least doubtful. The question of price is not of much importance, except so far as it affects the Provincial funds; but the question of the sale, under any circumstances, of land declared by the Waste Lands Board to be auriferous is one of very grave importance, and I shall bring the matter