

Moved by Mr. J. C. Brown, That Mr. Sheehan and Mr. T. L. Shepherd be instructed to draw up a report embodying the resolutions. Carried.

The Committee then adjourned *sine die*.

APPENDIX A.

CASE for the Opinion of the Attorney-General submitted by a Select Committee of the House of Representatives.

Counsel's attention is drawn to "The Otago Waste Lands Act, 1866," especially clause 123 of same. Also to "The Gold Fields Act, 1866," (clause 49), and the Agricultural Leasing Regulations (Otago) made thereunder. Counsel is asked for his opinion on the following points:—

Opinion.

1. Does "The Waste Lands Act, 1866," by the pastoral lessees consenting to the suspension of their leases, give power to the Waste Lands Board to sell blocks of land of unlimited dimensions to them, included in the leases so suspended?

1. There is no limit to the quantity of land that may be sold in one block in a hundred; and consequently, as land over which a pastoral lease exists may be sold, with consent of lessee, as if included in a hundred, there is no limit to the quantity of land that may be sold outside a hundred, if lessee consents. (See section 83 of "Otago Waste Lands Act, 1866.") The land may be sold either to lessee or another person.

2. Admitting that the Waste Lands Board had such power, would it be necessary to withdraw lands intended to be sold, by Proclamation, from the gold fields before the same could be withdrawn from the operation of the Gold Fields Act and the Regulations made thereunder, and dealt with under the Waste Lands Act?

2. It would not be necessary to withdraw such land by Proclamation: See section 48 of "Gold Fields Act, 1866," and section 123 of "Otago Waste Lands Act, 1866." By the first section above referred to, it is provided that land within a gold field cannot be dealt with under Waste Lands law, except so far as the Waste Lands law specially authorizes such sale. The other section referred to—namely section 123 of Otago Waste Lands Law—does specially authorize it, if a pastoral lease does not exist, or has been cancelled or suspended.

3. Does the Gold Fields Act and the Regulations made thereunder (attention is particularly called to the 49th clause) prevent the Waste Lands Board from disposing of land under the provisions of "The Otago Waste Lands Act, 1866," and of dealing with such land, unless under the said "Gold Fields Act, 1866," and Regulations?

3. The answer to (2) answers also this. The land, though in a gold field, can be dealt with under the Waste Lands Act, without reference to the provisions of the Gold Fields Acts or Regulations.

4. Counsel's attention is drawn to the fact that the Gold Fields Act was passed after the Otago Waste Lands Act, although both were passed on the same day; and his opinion is asked as to whether, in the event of a conflict taking place between them, the Gold Fields Act, being the most recent, will override the Waste Lands Act?

4. As the 49th section of "The Gold Fields Act, 1866," distinctly authorizes the dealing with lands under the Waste Lands Acts, even without withdrawal by Proclamation, the question raised is immaterial. Were this not so, I think that the land could only have been sold under the Gold Fields clauses, unless the land was withdrawn by Proclamation from the Gold Fields.

5. Counsel is asked whether he thinks the spirit and intention of the Bills have been violated by the Waste Lands Board, in selling to two persons blocks of land in excess of 200 acres—namely, 50,000 acres and 20,000 acres?

5. I cannot say that there is anything expressed in "The Otago Waste Lands Act, 1866," that shows an intention that the public should be informed of what land is open for sale, except in the case of surveyed land: See section 24. Nevertheless, it seems to me that the provisions of the Act, requiring that land shall be put up to auction if more than one person apply on the same day for the same land, suppose that the public at large shall have the opportunity of knowing whether land is open for sale. If by arrangement between the pastoral tenant and the Waste Lands Board the lease is suspended and no notice to the public given, this practice is equivalent to a right of pre-emption over the whole of the land leased, and the provision as to putting up land to auction if two applicants apply on the same day is illusory. But there is a safeguard provided by the Act, namely, that the Waste Lands Board are not obliged to sell the land applied for; they have a power to refuse to grant the application if the public good requires it.

J. PRENDERGAST.

3rd August, 1872.