

I hope things are going pleasantly this Session, and that the united efforts of the Auckland members will secure us what we are entitled to. I assume from present appearances that there is no chance of a change of Ministry this Session.

Believe me to remain, &c.,
FREDK. WHITAKER.

22ND OCTOBER, 1872.

STATEMENT OF MR. SHEEHAN, M.H.R.

The case referred to in the report arose out of the action in the Supreme Court, in which Allan O'Neill was plaintiff and Mr. John Kelly defendant. The action had been pending for a long while, and the precise legal bearing of the matter in dispute between them the Committee will be able to obtain from Mr. Gillies.

It was a dispute as to the boundaries of two adjoining blocks of land, the amount of land in difference being 148 acres. The land is situated at Waitakerei, about seventeen miles from the City of Auckland, in a very mountainous district, difficult of access, the consequence of which is that the land, though of a fair quality, is of very little value. A verdict was given by the Court in favour of O'Neill, and 148 acres of what was supposed to be Kelly's land awarded to O'Neill. At the next Session of the Council a petition was presented by Kelly, praying that the sum of £344, the costs of the action, should be made good to him by the Provincial Government.

That petition did not come up for discussion until very late in the Session. The Chairman of the Committee, in presenting it, stated that while, for the purpose of avoiding anything like delay in dealing with the petitioner's claim, they had recommended the amount should be paid, they had done so on two conditions, the observance of which they imposed upon the Government as a condition precedent to any action being taken upon the report. One of these conditions was, that the legal liability of the Province to pay the money should be inquired into. The second was, that whatever sum was paid should be not a mere payment of the costs of the action, but a final settlement of any claim that Mr. Kelly might have. Immediately after the rising of the Council, the Government took that along with other matters in hand. I was appointed by the Executive to investigate the matter. I saw Mr. Kelly. In reply to question from him as to whether the Government were prepared to consider his claim, I informed him that the Government was prepared to do so, subject to the conditions imposed by the Council. That the Council had insisted that whatever payment was made should be in final settlement; but that even if that had not been imposed by the Council, the Government would not have seen their way to paying the costs in the action, which, if the claim were a good one, would be only a small part of the amount due to him, as they would thereby be simply furnishing him with funds to bring an action against themselves; but if Mr. Kelly would send in the particulars of the whole amount of his claim, both on account of costs and loss occasioned by the taking of the land, the Provincial Government, after satisfying themselves as to the liability of the Province, would be prepared to settle with him.

I also gave Mr. Kelly to understand that if the claim were reasonably made, the Province would not be inclined to rest absolutely upon any legal defence that it might have in the matter, but would be disposed to meet him in a fair and equitable spirit.

Mr. Kelly made no reply to this proposition of mine, but turned on his heel and walked away, and from that time to the present never made any application to the Provincial Government, either by himself or by his solicitor. The next time the Provincial Government heard of the matter was by a petition by Mr. Kelly to the House of Representatives. The report of the Committee led, I believe, to a resolution of the House for an inquiry. The correspondence in the office discloses no promise on behalf of the Provincial Government to pay the costs of the action, as alleged by Kelly in his petition to the House last Session.

The gentleman who was Provincial Solicitor at the time the action was begun informed me that no such promise was made. The recommendation of the Committee of this House was, that some impartial person should be appointed to ascertain the amount of damage sustained by the petitioner, and that it should be made a charge against the Land Fund of the Province of Auckland. I heard, before coming here that a Commissioner had been appointed, but under such extraordinary circumstances that I have hardly yet recognized the full force of what has taken place. No intimation was ever given, either in writing or verbally, of the fact, either by the General Government, by the Commissioner, or by Kelly, to the Provincial Government, that such a Commissioner was appointed, that he was holding any inquiry, or that he had come to any determination in respect of the matters inquired into by him. The first intimation that the Province obtained was contained in a letter from the Colonial Secretary to the Superintendent, and delivered to him about ten days after the opening of the Session, about two days before the papers were laid on the table of the House. I wish to be distinctly understood, that up to that time no intimation even of a semi-official character had reached the Provincial Government.

I have ascertained the investigation in Auckland was practically held with closed doors, no persons being present but the Commissioner, Mr. Kelly, his counsel Mr. Whitaker, and his witnesses; no person representing the General Government; and no witnesses were examined except those called in support of the claim. The result of such extraordinary proceedings was a finding by the Commissioner that Mr. Kelly had sustained damage to the extent of nearly £11,000. Since the publication of Mr. Commissioner Beckham's award, Mr. O'Neill, the plaintiff in the matter, has offered the land in question, in respect of which these damages have been given, for a sum of £1,480, that amount being about four times the proper value of the land. The amount awarded by Mr. Commissioner Beckham would amply suffice to purchase the whole country side in which the block is situated, including the farms and buildings of a number of settlers. I say this from personal knowledge of the country, with which I am very well acquainted. The claim itself, as it appears by the evidence, has been built up in the most remarkable manner. It claims that Mr. Kelly built a house and stockyard upon the ground, and laid 100 acres down in grass, at a cost of £30 an acre. Without animadverting on the enormous alleged