

1873.

## NEW ZEALAND.

# REPORT OF THE PUBLIC PETITIONS COMMITTEE

## ON PETITION OF JOHN KELLY, OF AUCKLAND.

*Report brought up 6th August, 1873, and ordered to be printed.*

THE petitioner's case has already been dealt with by the Public Petitions Committee of 1871.

On investigating the case, the Committee found that petitioner was deprived of certain land granted to him by the Crown, by a verdict of the Supreme Court, which decided that the land in dispute belonged to a Mr. O'Neill, on the ground that the land granted to petitioner was included in a grant previously made to O'Neill.

The Committee reported that the petitioner was entitled to his law costs in defending his title in the Supreme Court, and also to compensation for the loss of his land; the amount to be ascertained by some impartial person to be appointed by the General Government, and made a charge against the Land Fund of the Province of Auckland.

The House concurred in this report, and a resolution was passed to that effect, which the Government acted upon by appointing Mr. Beckham to inquire into the case, and report on it to the Government.

During the Session of 1872, the report of Mr. Beckham was, by order of the House, referred to the Public Petitions Committee, and the Committee reported that the award made by Mr. Beckham, viz. £10,658 18s. 6d. for loss of property, improvements, and severance, was excessive, and recommended that the sum of £936 be paid to the petitioner for his law costs and loss of land.

This report was forwarded to the Provincial Government of Auckland by the Colonial Secretary, who expressed a hope that the Provincial Government would be able to come to some amicable arrangement with Mr. Kelly.

It appears from the evidence before the Committee that an effort was made by the Provincial Government to do so, the Superintendent having written both to the petitioner and his solicitor, wishing to know whether he was prepared to come to a reasonable settlement. To these letters no reply was received.

The Committee have the honor to report that they see no reason to depart from the recommendation made to the House on the petitioner's case during the last Session of Parliament.

6th August, 1873.

### MINUTES OF EVIDENCE.

STATEMENT of His Honor the SUPERINTENDENT of AUCKLAND before PUBLIC PETITIONS COMMITTEE, 24th July, 1873.

ON 4th November last, the Colonial Secretary forwarded to the Provincial Government copy of the report of this Committee, and on 20th November forwarded a letter from Mr. Brissenden, requesting to be heard before any compensation was made to Mr. Kelly.

The Colonial Secretary having suggested that the Provincial Government should endeavour to come to some amicable arrangement with Mr. Kelly, he was written to on 31st December, inquiring whether he was prepared to make a reasonable settlement; and on 30th January, 1873, Mr. Whitaker, his solicitor, was written to, stating that the Provincial Government was desirous of amicably settling the claim, and were referred to him by Mr. Kelly, and that the Provincial Government would be glad to know upon what terms Mr. Kelly would settle this claim.

To these letters, as far as I know, no answer has been received.

*Mr. Swanson.*] Was the Provincial Government willing to come to an amicable arrangement with Mr. Kelly?—Yes.

THOS. B. GILLIES.

Mr. WILLIAMSON appeared in support of the petitioner's claim, and suggested to the Committee that the matter be referred *de novo* to a new tribunal to be appointed by the General Government.

*Mr. Swanson.*] Do you not think that if the General Government appointed an arbitrator, it would not also be fair that the Province, who will be called on to pay, should appoint one also?—I think the tribunal should be entirely independent of both Governments, inasmuch as the judgment by which Mr. Kelly was deprived of his land was one of the Supreme Court. The Commissioner, whoever he might be, when appointed, would have it in his power to take evidence, and he might call Mr. Beckham before him to show cause why he made his award, and also any officer of the Provincial Government, to take care of the interests of the Province.

J. WILLIAMSON.

24th July, 1873.

Mr. J. WILLIAMSON to the CHAIRMAN, Public Petitions Committee.

SIR,—

Wellington, 1st August, 1873.

With reference to statements made before your Committee, that two letters had been written by the Auckland Provincial Government—one to Mr. Kelly, and one to his solicitor, Mr. Whitaker—offering to come to some terms of arrangement, but to which no reply has been received, and also that the Provincial Government were willing to make a settlement, I beg to inform you that I telegraphed immediately to Mr. Whitaker, to know the reason why reply was not made to the letters from the Government, referred to. I now have to submit to you Mr. Whitaker's replies to my telegram, and beg to request that you will have the goodness to place the same before the Committee for consideration, prior to their decision upon the petition now before them. ;

I have, &c.,

J. WILLIAMSON.

Mr. F. WHITAKER to Mr. J. WILLIAMSON.

(Telegram.)

Auckland.

IN reply to Lusk's letter, Kelly saw him, and in reply to mine I saw Lusk twice. Particulars posted to-day.

FREDK. WHITAKER.

Mr. F. WHITAKER to Mr. J. WILLIAMSON.

(Telegram.)

Auckland, 29th July, 1873.

SINCE my letter I have seen Lusk. He recollects interviews with Kelly and me. Says he does not recollect stating to Kelly "We have no money," but may have, as none appropriated. I read my account of what transpired between him and me, and he says it is correct.

FREDK. WHITAKER.

SIR,—

Superintendent's Office, Auckland, 31st December, 1872.

In reference to your claim for compensation, I have the honor to request you to inform the Provincial Government upon what terms you are prepared to effect an amicable settlement. Provincial Government are willing to meet you fairly, provided the amount claimed is reasonable.

I shall be glad to have an interview with you on the subject.

I have, &c.,

HUGH H. LUSK,  
Provincial Secretary.

SIR,—

Auckland, 27th July, 1873.

I am much obliged to you for the telegram in Kelly's case.

The facts are these:—On the 31st December last, Mr. Lusk wrote the letter of which the enclosed No. 1 is a copy. As therein requested, Mr. Kelly had an interview with him. Some discussion, I am informed by Kelly, took place on the subject, and Mr. Kelly asked, if an arrangement was come to would the money be paid? Mr. Lusk replied, "No; we have no money." Mr. Kelly then requested Mr. Lusk to see me on the subject. On the 30th January I received a letter (copy No. 2). In answer I saw Mr. Lusk twice, and made certain propositions. I first said, There has been an inquiry by the Government by one of its own officers, who has reported that the loss sustained amounts to a given sum. If you object to the amount, will you state what you will pay? If you object to this, or if we cannot agree on an amount, I am willing, on Mr. Kelly's part, to submit the matter to a regular arbitration, by which both parties shall be bound, or I am ready to have the matter determined by the Supreme Court, for which purpose I will bring an action in the usual form, if you will consent to fight the matter on its merits and waive technical objections. Let the matter be settled as though a question had arisen between one private individual and another. Mr. Lusk promised to have the matter considered, and let me know the result. I have not yet received any further communication from him on the subject.

It appears to me that the views as to the amount of compensation are so very different that it is useless to expect an agreement on that point. Mr. Kelly is willing for the matter to be determined by arbitration, or by a judge and jury in the Supreme Court; and it does appear to me that no reasonable objection can be made to this mode of settlement.

The claim must be settled by compensation sooner or later, and the longer it is delayed the more will be expected, and probably obtained. The best course would be to authorize, by a short Act, either arbitration or a Supreme Court suit. I say an Act, because both parties may be bound in that way, and cannot back out if they do not like the issue of the proceedings.

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

cost per acre, very largely in excess of the highest price I have known given for the heaviest forest land, I would point out to the Committee what appears to me the absurdity of allowing land to be valued upon the principle that a man should receive all the money he has laid out upon it, whether judiciously or not. I am aware the land was heavily timbered; it is a question worth inquiry as to what has become of the timber, for which no allowance is made in the alleged cost for clearing. The case, putting it in its strongest light for the petitioner, discloses no imputation of breach of faith or improper treatment by the Government in reference to the purchase of the land. If the land had been taken by the Government for public uses, the petitioner would only have been entitled to receive a fair and reasonable value determined by arbitration or verdict of a jury. Referring again to the report, I observe another item of £4,000 for loss of Mr. Brissenden's outlay. I desire to state, in reference to the item of loss of Mr. Brissenden, that it was not for the reasons disclosed here that that speculation came to grief: as a speculation, it burst up in consequence of the fall in the price of flax, which it is well known took place about that time. As a matter of fact, the speculation was abandoned by Mr. Brissenden because it did not pay, and I know of my own personal knowledge, having been employed to negotiate the matter professionally, that the difficulty in the title, so far as Mr. Brissenden was concerned, would have been removed by Mr. O'Neill, he having expressed his willingness to do so to me for a sum of, I think, £30 per annum. The costs of defending the action are set down, I see, at £351; clearing three miles of road, £120; in respect of which no vouchers were produced in evidence, so far as appears by the papers; and we have this extraordinary statement made by the Commissioner, "That I have perused the evidence very carefully, and I direct attention particularly to Mr. Kelly's evidence (marked B)."

Supposing that the liability of the Provincial Government was ascertained, against them an absolutely fair value could not exceed £5 per acre for the most favourably situated land in the district. I state so, having been concerned in the purchase of land in this district.

#### STATEMENT of Mr. SWANSON, M.H.R.

I am a member of the Auckland Provincial Council, and was at the time Kelly petitioned. It was an arrangement between the Council and Executive that any money to be given to Mr. Kelly was to be a final closing of his claim—not only for the costs, assuming the Province was liable at all; and the Executive were to make that inquiry before parting with the money. I owned land up in that neighbourhood. I know the place very well, and I would not give £5 an acre for any land in that neighbourhood with the timber off it. With regard to the award made by Commissioner Beckham, I consider it simply outrageous.

1. *Mr. Gillies.*] You have heard the evidence given by Mr. Sheehan read?—I have. I fully concur in all that he has said in reference to this matter.

2. Did you, as Superintendent of the Province, receive notice of the inquiry to be made?—No notice whatever, directly or indirectly.

3. Then the Provincial Government were not represented by Counsel at the investigation?—No.

4. Have you any remarks to make to Committee with respect to the compensation awarded by the Commissioner?—It is simply altogether absurd. The fact of O'Neill offering to give up the land awarded to him for £10 per acre is sufficient to show the absurdity of the award, although I consider that offer a very high one.

5. Would the Provincial Government be inclined to give a fair compensation?—We did offer before to settle it, if he would make a fair claim; but I cannot say what the Provincial Government would do now.