FURTHER REPORT on the PETITION of STEPHEN READ and OTHERS.

YOUR Committee have the honor to report as follows:—

From documentary and other evidence adduced, it appears that in 1864 the petitioners applied for and obtained from the Warden of the district a license or certificate authorizing them to divert and use water for gold-mining purposes from Thompson's Creek, on a run occupied by Mr. Glassford, in the Manuherikia Valley, and above the station; and in January, 1872, the same parties also obtained a certificate for a tail-race, terminating in Thompson's Creek. Upon the construction of these races the petitioners claim to have expended between £2,000 and £3,000.

The petitioners remained in the undisturbed use and possession of the rights which they had thus legally acquired under the Gold Fields Regulations until 1874, when the runholder commenced legal proceedings against them for the purpose of restraining them from running tailings into Thompson's Creek, the course of which leads through a pre-emptive section held under an agricultural lease granted to Mr. Glassford in September, 1873—twenty-one months after the issue of the tail-race certificate. About the same time a similar difficulty occurred at Maerewhenua, where Messrs. Borton and McMasters had issued an injunction to restrain Howe and party from running tailings into a stream abutting on land partly freehold and partly leasehold.

Under these circumstances, Howe and party, and Read and party, petitioned the Provincial Council for protection in the use and enjoyment of their several rights. On 8th June, 1874, a Committee of the Provincial Council reported on the Maerewhenua case as follows:—

> "1. That the Executive should, as indicated by the Provincial Secretary in Council, get a case stated for the consideration of the Appeal Court, with a view to save the expenses attendant upon protracted litigation.
> "2. That, failing in their being successful in so doing, the Executive should take steps to defend the action, on behalf of Howe and party."

On the following day, 9th June, the Committee also reported on the petition of Stephen Read and others, as follows:—

> "Your Committee, having considered this petition, have to report similarly to that on the Maerewhenua case (Howe and party) reported yesterday, in the event of the runholder, Mr. Glassford, obtaining an injunction from the Supreme Court to prevent Stephen Read working his claim."

The recommendation of the Committee was carried out in the case of Howe and party by the Provincial Government; but in the case of Read and party, similar assistance was refused, and Mr. Glassford thereupon—namely, in July, 1874—issued an injunction against the petitioners, thereby forcing them into a Court of law in defence of rights acquired by virtue of regulations issued under the authority of "The Gold Fields Act, 1866. Mr. Justice Johnston, before whom the case was tried, expressed his dissatisfaction with the judgment which had been given in the case of Borton *v.* Howe, and when charging the jury he said,—

> "There was no doubt that this case was one of considerable importance, both as regarded the parties themselves, and certain classes of interests very important to the community; and reminded the jury that, in discharging their duties, they should give no regard to ulterior circumstances. Damages were claimed on three grounds. Firstly, the pollution of water; secondly, damage done to the land; thirdly, continuation of trespasses, whereby the property was endangered. On the second ground he pointed out to them that there was a conflict of testimony as to whether the deposition of shingle, which caused the alleged damage, was from the defendant's workings or not. He might rule it to the jury, without any great confidence of his being right in law, because *it had never been tested yet*—he should rule it to them that, by the existing law of New Zealand, a person making an honest use of a tail-race which had been constructed by authority, and under a license given under the regulations made in pursuance of the Gold Fields Act—a person honestly and fairly and not abusively working such tail-race—was not responsible for the results. He should lay that down at present, without any absolute conviction as to its being good law, and he must decide the law one way or another, in order to have the opinion of the Superior Court of several Judges in solemn argument on the subject. *The law had not yet been decided*, and in the meantime it was the duty of the jury to accept the law from the Judge. He then went over the pleas, and gave the jury his ruling. He directed them in law to find various allegations to be true, with the exception of this: that it was for them to find if damage was done by the defendants, and, if done by them, whether it was unavoidably done, and reasonably done in the exercise of their rights."

The jury returned a verdict for plaintiff of 1s. damages for polluting the stream, and £50 for damages to the land; and they found that the defendants did not pollute the stream wrongfully; and the petitioners were further ordered to pay the taxed costs of plaintiff, £222 16s. 8d., in addition to their own costs, amounting, as they allege, to £336, making a total of £608 16s. 8d.

Your Committee reported to your honorable House recommending that a sum of £500 should be placed on the Estimates for repayment of petitioner's costs; but, upon the motion of the Hon. George McLean, M.H.R., the report was referred back to your Committee for the production of further evidence.

Your Committee have now to report that an opportunity was given to the Hon. George McLean to produce any evidence he thought fit, but that gentleman declined to do so, contenting himself with expressing a desire that questions should be put to Mr. Macassey and Mr. Haggitt, as counsel for plaintiff. The Hon. Mr. McLean, however, would not undertake to frame any questions for this purpose; and your Committee considered that the evidence required was not as between plaintiff and defendant, but as to the case itself being the same or different to the case of Borton *v.* Howe. On this point they were satisfied by the remarks of Mr. Justice Johnston, as already quoted, and by the evidence tendered before the Committee by Mr. Robert Stout, M.H.R.