

year between the petitioners and the Government indicating that the Colonial Secretary's Department, while hesitating to decide, appears to regard the claim made direct to the Government as a fair provincial liability, and the Committee, recognizing the fact that the Provincial Council of Nelson had not been able to meet since this claim was referred to them, they have now agreed to recommend that the sum of two hundred and fifty pounds be placed on the supplementary estimates in the favour of the petitioners, as a provincial liability.

17th October, 1878.

No. 29.—PETITION of MINERS, Maerewhenua Gold Field, Oamaru.

THE petitioners allege that they are mining on Crown lands hitherto not offered for sale, as being payably auriferous. That the ground held as claims by them, the petitioners, and a large area of auriferous ground at present unoccupied for mining purposes, by reason of the difficulty of free outlet therefrom, are cut off from the Maerewhenua River by a strip of ground held as private property by the Hon. R. Campbell. That at present they are liable to be stopped in their operations at any time, and have to pay a rent to the freeholder for their trespass.

The Committee have examined the Hon. R. Campbell, and ascertained that that gentleman is willing to give up the land in question upon receipt of an equivalent in value of other land, apart from the gold field; the Committee therefore recommend that the Government should instruct the Warden of the district to report upon the extent of auriferous ground, the outlets from which are interfered with by the freehold in question, the amount of such freehold that would require to be redeemed, its value, and the locality and area of land to be given in exchange that would be satisfactory to the freeholder.

Plan of the ground and evidence on the subject are attached to this report.

18th October, 1878.

No. 159.—PETITION of The Hon. R. CAMPBELL, ALEXANDER McMASTER, JOHN BORTON, and WILLIAM GARDINER, Maerewhenua.

THE Committee, having had the petition of the Hon. Mr. Campbell and three others under consideration, and having taken evidence thereon, direct me to report:—

That the petition raises the whole question of disputed water-rights upon gold fields, and at the same time asks for specific relief on behalf of freeholders and settlers on the lower reaches of the Maerewhenua River.

During previous sessions the Gold Fields Committee have had the same question referred to them on representations made by the goldminers at Maerewhenua, who have consistently claimed full protection from the Legislature in the use of rights, unlimited by Statute, which have been granted to them under provisions of the Gold Fields Acts from time to time in force, and under the assumed protection of which they have alleged that they have undertaken and completed works of great magnitude, permanence, and value. The owners and occupiers of the lands in the colony have hitherto been content to assert their claims to superiority of water-rights as against other rights claimed by miners under license and by manufacturers under usage in the colonial Courts, their priority of right having been so far established by the decision of the Court of Appeal in *Borton v. Howe* and others. They come, in the petition under consideration, for the first time before the Legislature to ask for relief. The Committee are, however, quite willing to recognize that the reluctance manifested by the petitioners to obtain the benefits of the judicial decision in their favour has been largely founded upon consideration of what is advantageous in the public interest.

It is asserted in the petition that the decision of the Appeal Court in the land-occupiers' favour is valueless. In this view the Committee do not concur. Practical justice is presumed to follow the verdict of the superior Court; the Committee see no ground for reasoning away the presumptive conclusion. They do not, therefore, consider that the petitioners have exhausted their legal remedy.

In 1877 the Gold Fields Committee reported upon the petition of Joseph Neale and others, miners, of Maerewhenua. In the report then submitted to the House, and referred to the Government, after pointing out the unsatisfactory delay which had occurred after argument, and other circumstances surrounding the judgment in *Borton v. Howe*, the report concluded with three recommendations:—

1. "The Committee would urge upon the Government the necessity, in alienations of land upon gold fields, of reserving to the Crown all riparian rights, so that no settler may have any ground in law for action against his neighbour, except for actual damage to the holding.

2. "The Committee are of opinion that water-rights granted in proclaimed gold fields, upon payment to miners, without actual reservations of any kind, which rights have been duly acquired under the Gold Fields Acts from time to time in force, ought to be respected by the Legislature.

3. "The Committee have therefore to recommend that the Government do take the whole subject into consideration, and initiate such legislation as may appear necessary to render of practical and certain value the rights hitherto and hereafter to be granted to all classes."

In the legislation of 1877 the first of these recommendations was to a great extent given effect to. Clause 154 of the Land Act of that year, after giving the Governor power to set aside Crown lands in any mining district, and enabling land so set aside to be opened for settlement, contains the following proviso:—

"Before any such Crown land is offered for sale or selection the Board shall determine whether any watercourse running through or bounding the same will, in their opinion, be thereafter probably required for the purpose of discharging therein tailings, mining *debris*, or waste water; and, if in the opinion of the said Board such watercourse will be so required, the same shall be duly notified accordingly, and a right shall be reserved to the Governor in the Crown grant to issue to holders of miners' rights or mining leases licenses to use such watercourse for any such purpose, without liability to pay compensation therefor."