

1878.
NEW ZEALAND.

GOLD FIELDS COMMITTEE

(REPORTS OF).

Presented to the House of Representatives, Session 1878, and ordered to be printed.

(MR. C. A. DE LAUTOUR, CHAIRMAN.)

No. 13.—PETITION of RESIDENTS in ST. BATHAN'S DISTRICT, Otago.

THE Committee, having considered this petition, have instructed me to report that, being informed that the prayer of the petition has been favourably entertained by the Otago Waste Lands Board, after inspection of the ground by two of its Commissioners, and that as the Board's action has been cordially approved by the Government, consider it unnecessary to make any special recommendation thereon.

The Committee agree that the free-est facilities should be afforded to the miners of the colony to become permanent settlers upon the Crown lands, provided that the areas of ground containing undeveloped auriferous deposits should, in all cases, be carefully reserved.

21st August, 1878.

THE REGULATION OF MINES BILL.

THE Gold Fields Committee have the honor to report that they have gone through the Regulation of Mines Bill, referred to them by order of reference dated 22nd August, 1878, and have instructed me to report the same, with amendments, to the House.

27th August, 1878.

No. 25.—PETITION of Messrs. CHARLES and FREDERICK RING.

THE Gold Fields Committee, having considered the claims of the petitioners, and taken the evidence of Mr. Swanson, and considered the documentary evidence submitted by him thereon, have directed me to report that the Committee see no reason to alter the decision arrived at last year in the consideration of the same claim, then submitted by order of the House for their consideration, and reported to the House on the 26th September, 1877.

12th September, 1878.

No. 26.—PETITION of HENRY KEESING, the Younger, Auckland.

THE Gold Fields Committee have carefully considered the claim made by Mr. Keesing that he was equitably entitled to receive a reward for the alleged discovery of gold in the Kuranui Creek on 9th August, 1867, £5,000 having been offered by the Provincial Government of Auckland on the 24th April, 1867, for the discovery of a payable gold field.

The Committee most carefully considered the same claim in 1877, and reported thereon 21st September of that year.

The Committee have this year personally examined the petitioner, his evidence being attached to this report, but they are unable to see any reason to alter their decision of last year.

Your Committee, in justice to Mr. Keesing, wish to state that he has probably been misled by the action of the House last year in paying a reward to W. H. Taipari. The Gold Fields Commission, which sat in Auckland in 1870, recommended W. H. Taipari £300, which he received. A Committee

of the Provincial Council, on the 12th January, 1871, recommended Mr. Keesing £200. The Council, however, refused to indorse the recommendation of the Committee, probably on the ground that the Commission of 1870 made no recommendation in Mr. Keesing's claim.

The Native Affairs Committee, in 1877, recommended W. H. Taipari's claim to the favourable consideration of the Government, on the ground that the Auckland Commission of 1870 had recommended £300. The House saw fit to pass a vote in accordance with the recommendation so made by the Native Affairs Committee.

The Gold Fields Committee consider that, while it is to be regretted that different decisions should be given on petitions arising out of almost identical facts, by reason of the petitions being considered by different Committees of the House, yet that, unless they are shown that their previous decisions are unjust, by additional facts submitted to them, their wish to agree with the Native Affairs Committee should not induce them to recommend additional burdens upon the Public Treasury, which in their opinion are not justified by the circumstances.

13th September, 1878.

No. 118.—PETITION of D. WALMSLEY and other Agricultural Lessees, Ohinemuri Gold Fields District.

I HAVE the honor to report that the Gold Fields Committee recommend that this petition be submitted for the favourable consideration of the Government.

17th September, 1878.

CORRESPONDENCE relative to proposed Tunnel from Karaka Creek to Tararu Creek, Thames Gold Field.

HAVING considered the order of reference of the 29th August last, made on motion by Mr. Rowe. "That the correspondence between several parties on the Thames Gold Field and the Government, having reference to a tunnel from Karaka Creek to Tararu Creek, be referred to the Gold Fields Committee," the Committee see no reason why a Bill should not be introduced to give effect to the proposals made, hedged round by the careful suggestions of the gold field officers, maintaining existing rights and public interests. Such Bill will come again, in ordinary course, to your Committee.

17th September, 1878.

No. 27.—PETITION of DUNCAN CORBETT and other Goldminers, Grey Valley.

THE Committee, having had under their consideration this petition, together with order of reference dated 29th August, 1878, and memoranda dated 4th September, 1878, from the Secretary for Gold Fields to the Honorable the Minister for Lands, have directed me to report that section 1, Appendix D, should be amended, so that it shall be quite clear that the method there prescribed for obtaining a license from the Warden is a distinct alternative process, applicable only to rights of temporary value, not entailing the necessity of publication, as provided by clause 31 of the Act in the case of an application for a license for a term of years.

That any attempt to fuse into one the regulations for applications for licenses for terms of years and for annual certificates for temporary rights will be unsatisfactory, and cause additional confusion.

That, therefore, section 1, Appendix D, and the schedule hereunder, should be amended forthwith, and such amended regulation and schedule be laid on the table for fourteen days before the expiration of the present session, in compliance with clauses 52 and 53 of the Act, in order that the amendments recommended may be put in force with as little delay as possible.

That, serious defects and omissions in "The Mines Act, 1877," having been pointed out, and several inconsistencies of great importance to the satisfactory working of the said Act, having become apparent between the Act itself and the regulations made thereunder, the Committee recommend that the Government should cause a careful inquiry to be made by competent persons into the working of the Act and regulations during the recess.

20th September, 1878.

No. 229.—PETITION of MINERS, Residents, and others, Coromandel.

I AM directed to report that the Committee, having considered the Petition of the Miners, Residents, and others, Coromandel Gold Field, have no recommendation to make.

24th September, 1878.

No. 225.—PETITION of WILLIAM COSTELLO and two others, Kumara Gold Fields.

I AM directed to report that the Committee, having considered the petition of William Costello and two others, do recommend that the sum of one hundred pounds (£100) be paid to the petitioners.

24th September, 1878.

No. 185.—PETITION of JAMES ARMSTRONG and four others, Miners, Kumara, Westland.

I AM directed to recommend that the Government refer the petition to the Warden and two other residents in the locality, desiring them to report upon the case forthwith, and assess the damage, if any, sustained by the petitioners, by reason of the construction or usage of the Waimea Race, with the object of recommending an appropriation of the sum so assessed.

25th September, 1878.

No. 45.—PETITION of BURGESSES of Kumara and Miners on Kumara Gold Fields.

I AM directed to report that the Committee recommend that the Government should inquire into the grievances alleged in this petition; and if, in its opinion, the statements of the petitioners are borne out in fact, should forthwith take such steps as may be necessary to cancel the reserve upon equitable terms.

25th September, 1878.

No. 193.—PETITION of GEORGE KEVEN, Auckland.

I AM directed to report that the Gold Fields Committee have no recommendation to make on the subject of the petition from George Keven, Auckland.

25th September, 1878.

THE MINING COMPANIES ACT 1872 AMENDMENT BILL.

THE Committee direct me to report its recommendations thereon, viz. :—

1. That the Bill intituled, "The Mining Companies Act 1872 Amendment Act, 1878," referred to them by order of reference from the House, dated 18th September, 1878, do not pass.

2. That the suggestions therein made be referred to the Law Officers of the Crown for careful consideration during the recess.

3. That no amendment of the existing law should be proposed without great care being taken that sudden remedy, however desirable, may not cause greater embarrassment to companies already incorporated than now exists from defects in the law which are clearly known and can to some extent be guarded against.

4. That legislation of the kind proposed should emanate from the Government.

25th September, 1878.

No. 219.—PETITION of HAUHAU TRAMWAY COMPANY, Hokitika.

THE Committee, having examined Mr. Paterson, the Chairman of the Hauhau Tramway Company, and Mr. G. S. Cooper, Under Secretary, Colonial Government, who was a member of a Royal Commission appointed in 1876 to inquire into the same and analogous claims; and having also had under consideration the evidence of Mr. Hoos, late County Chairman, Westland, and that of Mr. Button, then Member for Hokitika, tendered before the Public Petitions Committee in 1877, have agreed to the following resolutions, which I am directed to report to the House. The evidence taken will be attached to the Report.

"That the Provincial Council of Westland, in its last session, having had under consideration the whole circumstances of the claim of the Hauhau Tramway Company, and having recognized that claim to the extent of recommending 1,000 acres, in addition to the £500 received by that Company, this Committee is of opinion that the action of the Provincial Council of Westland constitutes a provincial liability which existed at the time of the abolition of the provinces, and which should, in good faith, be carried out by the colony.

"That 1,000 acres of land in the Provincial District of Westland be granted to the petitioners, said land to be selected in not more than four blocks—the petitioners, in the opinion of your Committee, having established a claim in equity."

2nd October, 1878.

No. 46.—PETITION of MINERS of NELSON CREEK, Grey Valley.

I AM directed to report that, as the subject-matter of the said petition, for which redress is sought, is under the consideration of the Government, the Committee have no recommendation to make.

8th October, 1878.

No. 119.—PETITION of WILLIAM SOWERBY GREENVILLE, of Thames Gold Field.

THE Committee having considered the petition of William Sowerby Greenville, miner, &c., of the Thames Gold Fields, Provincial District of Auckland, and having ascertained that the subject-matter of the petition is to be considered by Bill now before the House to amend "The Gold-Mining Districts Act, 1873,"—to be referred to them in usual course—have now no recommendation to make; and direct me to report the same to the House.

10th October, 1878.

THE GOLD-MINING DISTRICTS ACT 1873 AMENDMENT BILL.

THE Gold Fields Committee, to whom was referred "The Gold-Mining Districts Act 1873 Amendment Act, 1878," by order of reference dated 16th instant, have directed me to report that they have carefully considered the Bill, and recommend that it be passed as amended in the copy of the Bill attached to this report.

17th October, 1878.

No. 310.—PETITION of GEORGE ZANETTI and ANTONIO ZALA, of Lyell.

I AM directed to report that, the claim of the petitioners George Zanetti and Antonio Zala, of Lyell, having been recognized by two previous Gold Fields Committees of the House—the first instance in 1874, there then being a direct recommendation that a sum of two hundred and fifty pounds should be granted; the second instance in 1875, the claim being recognized, but referred to the Provincial Council of Nelson as a provincial responsibility—and the correspondence in the early part of this

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."

If care is taken that this clause is enforced in all cases where lands are about to be withdrawn from gold fields for purposes of settlement or granted for settlement without such withdrawal, the conflict between water-rights which may hereafter merge with the land in the purchaser or lessee of the freehold and rights over the same waters which have been or may be granted by Statute to others will in a great measure be prevented. "The Mines Act, 1877," also appears to be intended, to a great extent, to protect the miners in the orderly occupation and use of claims or water-races granted under its provisions as against any superior claim made by the holder of any Crown grant or conveyance. The law may safely be assumed in accordance with the evident intention of the Legislature to protect rights granted to goldminers since the coming into operation of the Statutes of 1877, until the Courts of the colony decide to the contrary.

The problem, then, which, as it appears to the Committee, has to be solved, is the satisfactory adjustment of relations between the water-rights now claimed by those with a greater or lesser interest in the soil and the statutory rights to the occupation and use of water-races granted under Statute prior to 1877.

In seeking a solution to the problem the following considerations suggest themselves: Is it necessary for the Legislature to interfere to give value to the rights held by either the land occupiers or the miners—that is to say, to arbitrarily divest the holder of title in land of a certain right in the waters running through or bounding his property which the common law otherwise must be assumed to give him, or to recommend the Government to cancel the rights held by the miners in favour of "bonâ fide settlers" or "some public use or purpose," under the provisions of clauses 34 and 35 of "The Mines Act, 1877."

Replying to the considerations that have suggested themselves, the Committee are of opinion that at the present time no legislative enactment, restriction, or recommendation is necessary or expedient. The question in dispute as between the miners and the land occupiers has usually settled itself by mutual forbearance and mutual compromise; where the special circumstances are so strong as to prevent such local adjustment a special remedy can generally be applied.

The conflict of interest at Maerewhenua affords an example of a special case where a special remedy is obvious and easy of application. In this case the water is desired for domestic and sheep-washing purposes. At a point in the Maerewhenua River, near Livingstone, as much clear water can be taken as would be sufficient for the purposes of the sheep-farmers and other settlers below. The ground from thence to Duntroon offers peculiarly-advantageous facilities for race-construction of the simplest and most inexpensive kind, and of other works—one fluming only would be needed.

The cost of such a work has been roughly estimated at about £1,000, which, considering the value of the properties at stake, cannot be considered an expensive solution to a very vexed question.

From the evidence of the Hon. R. Campbell, one of the petitioners, the Committee have reason to believe that the question of riparian right on the Maerewhenua River would be waived were a clear and sufficient water supply assured to the settlers below the gold field. The Committee therefore recommend, in the special case before them,—

1. That the Government should communicate with the County Council of Waitaki, asking what responsibility that Council is prepared to take in providing a water supply for the settlers on the lower reaches of the Maerewhenua.

2. That the Government should communicate with the Miners Association, at Livingstone, asking what aid in labour the miners would be prepared to find in the construction of a water-race.

3. That, if the replies to these communications should evince a local desire to meet the Government in the solution of the question, a grant in aid should be given by the Government.

4. That in any case, wherever practicable, the Government should immediately open several blocks of Crown lands near Livingstone, not less than 500 acres and not more than 1,000 acres in any one block, to be set apart for applications on deferred payments or agricultural leases, in sections of from 100 to 320 acres, taking care that such blocks shall not include natural outlets from auriferous ground, or ground known to be payably auriferous.

The Committee attach value to this last recommendation as being likely to convert the miner into a settler conservative of the rights attachable to the possession of land. The evidence taken on the subject is attached to this report.

18th October, 1878.

No. 328.—PETITION of WILLIAM BRISLANE.

THE Committee, having considered the petition of William Brislane, Mining Prospector, have directed me to report—

That the petitioner could obtain the aid he seeks for by applying to the Government for recognition under the regulations affecting aids to prospecting for gold or other precious minerals of the 14th January, 1878.

The Committee recommend the proposed work as a fair one for recognition as being likely to open a large field of auriferous leads not hitherto discovered, and recommend the Government to lay down conditions, as to proof of labour and time of operations, as may be considered necessary in the case of the petitioner under the aforesaid regulations.

18th October, 1878.

