

1878.
NEW ZEALAND.

WASTE LANDS COMMITTEE.

(REPORTS ON THE SOUTH DUNEDIN RESERVE BILL; TOGETHER WITH MINUTES OF EVIDENCE.)

Reports brought up and ordered to be printed, 8th and 11th October, 1878.

REPORT.

THE Select Committee on Waste Lands, to whom was referred the Bill intituled "The South Dunedin Reserve Act, 1878," have the honor to report that, in the opinion of this Committee, the land referred to in the South Dunedin Reserve Bill was set aside by the Provincial Government of Otago for the use and benefit of South Dunedin, and that the Harbour Board obtained the Crown grant of same in an improper manner. The Committee therefore recommend that the Bill should pass, so that the land may vest in the municipality for which it was originally intended, as an endowment.

8th October, 1878.

OSWALD CURTIS,
Chairman.

THE Select Committee on Waste Lands, having, in accordance with the order of the House, reconsidered the South Dunedin Reserves Bill and taken further evidence thereon, direct me to report that they confirm the recommendation contained in their former report.

11th October, 1878.

OSWALD CURTIS,
Chairman.

MINUTES OF EVIDENCE.

THURSDAY, 10TH OCTOBER, 1878.

G. McLEAN, Esq., M.H.R., being in attendance, was examined.

1. *The Chairman.*] Mr. McLean, I believe you were a member of the Government at the time this land was dealt with, and that you have some knowledge of the circumstances. Will you be good enough to tell the Committee what you know of it, as far as you are officially concerned?—Yes; I will state to you the circumstances of which I have a knowledge. When the resolution was put, I sent the following telegram to the Secretary of the Harbour Board. [Telegram read.] I see Mr. Macandrew says that the Government issued a Crown grant in defiance of the Solicitor-General's opinion. My explanation of that is this: That the Board applied, if I recollect rightly (of course the quantity of land may turn out not to be exact), for a Crown grant for 140 acres under "The Otago Empowering Act, 1875." I submitted that to the Marine Engineer and Secretary to the Marine Office, and they recommended that we could not do that under the Act. I then referred it to the Solicitor-General, and he agreed with that opinion; and I myself agreed with that opinion, and told them then that they could not have a Crown grant. Afterwards, when I understood the land between Anderson's Bay Road and the Ocean Beach Railway could be considered as reclaimed, after verbally discussing and

with the leave of the Solicitor-General himself, I consented to a Crown grant being made out. It ultimately came to this, that with the leave of the Solicitor-General (I know not whether it is in writing, but when the Solicitor-General is examined I will soon bring it to his memory), that it was with his leave that I recommended to my colleagues to Crown-grant that land between the Ocean Beach Railway and Anderson's Bay Road, including ten acres of land along the Anderson's Bay Road. That explains why the grant apparently was issued against the wish of the Solicitor-General, and that is why I said, if you would examine me first, and then examine him on my evidence, it would leave it to his recollection. The year that the Otago Harbour Board Empowering Act was passed (myself, Mr. Reid, and others were active in getting it passed), we went to Mr. Richardson, who was then Minister for Public Works, as a deputation; and, in speaking to him to-day, I brought this deputation to his recollection by certain circumstances. I had nothing to do with the Government at that time. There was a portion of that land about which there was no doubt about it being under high-water mark, and another piece supposed to be Crown lands; and he afterwards, on behalf of the Government, gave the whole of this land to the Harbour Board, and it was considered then, when that Act was passed, that it belonged to the Harbour Board; and if you call Mr. Richardson, he will state these facts himself, and he will tell you that on behalf of his Government he gave them this land. He now remembers them perfectly well. The 4th August, 1876, was the date upon which the Secretary of the Otago Harbour Board applied for this Crown grant for the quantity of land I have explained to you.

2. The 4th August, 1876?—Yes. It was for 140 acres. Mr. Seed stated that that was with my leave, and on my memorandum I presume he wrote this letter. [Read.] On the 21st August Mr. Richardson said he could not give the 140 acres; and on the 7th October Mr. Seed, by my instructions, reiterated objections to the grant. Then the correspondence was going on about this land up to the 14th October, when I was minuted as having recommended that a Crown grant may now be issued for all the land between the Ocean Beach Railway and Anderson's Bay Road, about twenty acres out of the 140, and that the Crown grant was prepared and handed over to them. I see by the Provincial Executive Council minute that it was on the 24th October, 1876, that the Superintendent, who was present, Mr. Green, and Mr. Davie had an Executive Council, which was amongst the last meetings they held, I think. The last resolution on the minute-book was that the Waste Lands Board were recommended to reserve it for South Dunedin. There was no Provincial Council to sanction it afterwards, and my opinion is that the Provincial Council would never have sanctioned it, even if it had not been given to the Harbour Board. This is a private township; it was bought by speculators. It was laid out as a township, and sold by these people; and I am sure that, to increase the value of private people's property, I am very well sure that the Provincial Council would never have given ten acres of this valuable land. These are my reasons why I think the Provincial Council would never have sanctioned it had they been called together. On the 28th September, 1876, I advised that the grant should issue for that portion between the Ocean Beach Railway and the Anderson's Bay Road, and it was approved in Cabinet on the 14th October. The meeting of the Executive did not take place until after that.

3. Had it been intimated to the Provincial Executive that you had done so? You could not say whether the Executive was advised?—I could not say the Executive had any power to do it. Every one was agreed that a Crown grant should not issue for the 140 acres. There is a memorandum which brings the matter to my recollection. Before this was granted, I asked the Chief Surveyor to reserve a piece along the Anderson's Bay Road to make that road a chain and a half wide. [Mr. Reid's opinion read.] I make known that I think a Crown grant should issue for a portion of the land, because I considered that that land was sufficiently reclaimed to come within the opinion of the Solicitor-General here; and, whether Mr. Reid recollects it or not, I may say that he afterwards agreed, on my explanation of how this was situated between the Ocean Beach Railway and Road, the Crown grant might be issued. It is reclaimed already in Mr. Macandrew's opinion. Messrs. Richardson and Reynolds, I believe, will bear out what I say.

4. *The Chairman.*] Do you wish to give any further evidence now?—I may say that, after getting this opinion from Mr. Reid, I explained to him the position of this land between the Anderson's Bay Road and the Peninsula and the Ocean Beach Railway. I explained to him that there were parts of it that did not want reclaiming, and referred to parts of the land which I considered pretty well reclaimed by the Ocean Beach Railway. Afterwards I wrote this memorandum to the Minister of Lands.

5. *Mr. Wood.*] Which referred to the issue of the grant?—The Minister of Lands read and agreed with it, and then it was brought before the Cabinet and agreed to.

6. *Mr. Seaton.*] Who was Minister of Lands at the time?—Major Atkinson.

7. Would you be kind enough to read the memorandum. [Memorandum read.]

8. You were not aware at this time that there had been any promise made to reserve?—There was no promise made at this time. The Provincial Executive, some time after the grant was ordered to be issued, promised it.

9. That was the first time it was ever mooted as a reserve for South Dunedin?—Yes; the first I heard of it. After I had obtained Mr. Reid's opinion, the Crown grant was issued for that portion between the Ocean Beach Railway and the Anderson's Bay Road.

10. Then the Otago Executive must have been in ignorance of the issuing of this Crown grant?—I could not say.

11. *Mr. Seaton.*] If Mr. Macandrew in his evidence should say that they had considered that matter a long time previous to that, what would you say?—Well, of course, I would not like to contradict him; but I should doubt him saying so, there would be some trace in writing if it was so.

12. If you will read Mr. Reid's evidence, you will see he admits it?—I do not see that by the evidence at all.

13. If you will look at the questions you will see it?—I have looked them over. Of course this thing about the reclaimed land. I took it myself always that Mr. Richardson, on behalf of this Government, at the time we were passing the Empowering Act through the House on behalf of the

Government of the colony, gave this land to the Harbour Board, and then this Bill was passed through the House afterwards. That must have been long before any promise could have been given. Before the Municipality of South Dunedin was in existence.

14. What was the value of the land, Mr. McLean, at that time?—I could not say; it was worth a large sum of money.

15. What was its value at that time—in 1875?—I would not like to say. After this road that I ordered to be extended a chain and a half wide is made, of course this land will be more valuable.

16. In its primitive state was there a road made there?—Yes; there was a road in 1875, but not when in its primitive state.

17. How far is it from Dunedin?—Close to.

18. About three miles, is it not?—No; it immediately joins Dunedin.

19. Can you say that the Harbour Board has ever put one yard of material on this land by way of reclamation?—I could not say.

20. Do you know if they have?—I do not.

21. Do you think they have?—I do not think they have.

22. I mean, in all these twenty-three acres, have they ever reclaimed a yard of it?—Yes; I believe they have. I did not understand you to refer to the whole twenty odd acres. I do not think they have done anything on the ten acres.

Hon. W. H. REYNOLDS, M.L.C., being in attendance, was examined.

23. *The Chairman.*] Would you please state what you have to say, Mr. Reynolds?—I am not aware of what has been given in evidence, so that if I state anything that you have already before you you will please state so. I will commence with South Dunedin. The land now occupied as South Dunedin belonged to a private individual. It was cut up into small sections and disposed of as a private township. As far as I am aware no reserves were made by the owner of this land for any public purposes. I am not aware of any having been made, and such being the case I was a member of the Provincial Council, and feel thoroughly satisfied that had the Provincial Council been in existence it would not have recognized any claim on the part of South Dunedin to this or any other reserve. The land in question now claimed by South Dunedin was included in "The Harbour Board Endowment Act, 1875." I was in the Government at the time, and these ten acres were included in the map showing the Harbour Board endowment. This was before the Municipality of South Dunedin existed. The Municipality of South Dunedin did not then exist, and I do not think it was gazetted for some eight or nine months afterwards. I cannot be quite certain as to the exact number of months, but it was some time afterwards before it existed as a Municipality. I simply make this statement so as to show that any promise made by the Superintendent or Provincial Executive must have been made after the land had been already declared to belong to the Otago Harbour Board. A private railway company had started to carry a railway between Dunedin, the Ocean Beach, and the Peninsula, and the Superintendent had granted permission for them to carry the railway over this land, which then virtually belonged to the Harbour Board. The Colonial Government, through the then Minister for Public Works—the Hon. Mr. Richardson—took up the question, but upon that I would prefer the Committee to take evidence from him, because I can only give it second-hand. Mr. Richardson can explain what took place between the Provincial and Colonial Governments with regard to that railway, and showing that only then the order was given to the Chief Surveyor to survey this land, so as, in my opinion, to make it appear that it was waste land of the Crown, and not the property of the Harbour Board.

24. *Mr. Seaton.*] Was the order not given by Mr. Richardson?—I cannot say whether it was Mr. Richardson who gave the order, but I understood it was the Superintendent. I know that a survey was made, and I was under the impression that it was by the orders of the Superintendent.

25. *Mr. Wood.*] And for what purpose was the survey made, Mr. Reynolds?—In connection with the Railway Company's application.

26. But I thought I understood you to say it was for the purpose of showing it was Crown land?—For the purpose of ascertaining the real position as to whether the Superintendent had any power to offer certain facilities to the Peninsula and Ocean Beach Railway Company. I think I stated that the whole negotiations between the Municipality of South Dunedin and the Superintendent, for this land being vested in the Municipality, took place after the passing of "The Harbour Board Act, 1875," and after the signing of the map showing exactly what the endowments were which the Harbour Board were entitled to. Now, there is a question I heard since I have been attending the Committee—I have heard the question put as to whether the Crown grant was legally issued or not. On that subject I do not intend to offer any opinion but this which I can say: It does not affect the question at all as to the ownership of the land, supposing the Crown grant was illegally issued. I can only say that, as far as the Harbour Board is concerned, it does not affect their position at all as regards their claim under their Act. I may state that I was a member of the Colonial Government, and not Chairman of the Harbour Board at the time that these negotiations took place, and I regret very much that I destroyed some private records and correspondence I had at the time with various parties. It was private correspondence, and, never thinking the question would crop up, I destroyed it. I was stating that, whether the Crown grant was legally issued or not, I do not think it would make any difference, seeing the Harbour Board were the only parties who could legally claim this land. Supposing the Crown grant had been illegally issued, the land would have been the nominal property of the Board until such time as they reclaimed it, and after they reclaimed it they would be entitled to the Crown grant. The land in question was below high-water mark. If you examine the Crown grants of the lands adjoining the road indicated on this map, you will find the description to be, "bounded on the South-west by high-water mark." I do not know whether the whole of them are alike, but I know some of them are bounded by high-water mark on the one side. Now, there are some of them that cross over the Anderson's Bay Road to high-water mark. It is now considerably over twenty years ago since this Anderson's Bay Road was first formed. I was a member of the Provincial Executive at the time, and I had to make arrangements with some of the parties whose land was

adjacent to what is now known as South Dunedin. Messrs. Stout and Robson owned part of this property, and I had to arrange with them to carry the road through a part of it. Their property crossed over where a part of the road was then formed, and came down a little way beyond the Anderson's Bay Road, and to the extreme of high-water mark.

27. *Mr. Seaton.*] Not on to the Forbury?—Their property was bounded by high-water mark, at the end towards the bay.

28. That was at high-water mark you mean?—Across the road. The original selection map shows their property as bounded by high-water mark, taking up part of what is now the Anderson's Bay Road. Part of the Anderson's Bay Road at that time was at the extreme high-water mark. I remember perfectly well when I first settled in Otago, twenty-eight years ago, that the road at this point, being partly under water, was impassable. You could not have gone over it with dry feet; it was nothing but soft slush, and the water came right up to and over it. But now it is not so much under water, and part of it seems pretty well filled up with vegetable matter. There is a sea-growth on parts of these ten acres, as also on the balance of the reserve.

29. How was this caused?—I suppose the stuff washed by floods from the adjoining lands would fill it up by degrees. I may say that the Harbour Board lately, since the issue of the Crown grant, has let the land on, I believe, twenty-one years' leases, and the lessees have to fill it up and reclaim it. I do not know that I have any further evidence.

30. *Mr. Turnbull.*] You referred to a map of the Harbour Board, Sir. Is that still in existence?—I do not know anything more of it, except that it was signed by the two Speakers, and, I understand, deposited with the Clerk of Parliament.

31. Is it still in existence?—It ought to be; it is one of the records of Parliament.

32. It would not belong to the Harbour Board?—Oh, no.

33. What would be the value of the land referred to at that time, in 1875?—It would be impossible for me to put any value upon it. It would be impossible to judge its value. If any one had offered it to me at the time, unreclaimed, I do not believe I would have given £10 an acre for it.

34. In 1875?—Yes, in 1875. I do not believe I would have given £10 an acre for it.

35. When it was granted to the municipality what would you have valued it at then?—It never has been granted to the municipality.

36. Reserved?—That was said to have taken place after the abolition of the province, and the Abolition of Provinces Act was passed in 1875. But the supposed reservation did not take place until, I think, the 1st November, 1876. The whole correspondence about it commenced after the abolition of provinces.

37. What would it be worth then?—Well, I could not give an opinion.

38. *Mr. Seaton.*] Would you have taken £10 an acre for it?—I might have taken it, but I do not know that I would have given it even then.

39. Would you have taken £1,000?—I could not say what I would have taken. Then there is this evidence, which shows that the negotiation did not take place until after it had been actually granted to the Harbour Board, and instructions had been given in Dunedin to prepare the Crown grant. It was only after these instructions that I heard of South Dunedin applying for it. I was not aware before this that South Dunedin had ever applied to the Superintendent for it, or that the Superintendent had made any promise. A question for the Committee to consider is, whether the Superintendent could legally have granted it, and even then he could not have granted it without the sanction of the Provincial Council.

40. *Sir Robert Douglas.*] Part of this land I understand to be between high- and low-water mark?—I know it was all below high-water mark when I arrived in the colony—that is, twenty-eight years ago. It was all below high-water mark when I came here. The tide used to cover it.

41. To whom was the land absolutely granted?—To the Harbour Board in 1875.

42. And the Dunedin Corporation wish to have it?—No, not the Dunedin Corporation, the South Dunedin Municipality.

43. The South Dunedin Municipality wish to have it?—Yes. After it was granted to the Harbour Board they entered into negotiations with the Superintendent, in order to get it as a reserve.

44. That was to get this reserve?—Yes.

45. What effect would that have on the Harbour Board?—It would deprive the Harbour Board of the revenue derived from it.

46. How much money—of what value?—I can ascertain that by telegraphing to Dunedin. I cannot say from memory.

47. Do you consider the granting of it to the Municipality would injure the Harbour Board?—Certainly, as it would take away a part of their revenue.

48. Do you think all their revenue is required to improve their harbour?—Undoubtedly.

49. *Mr. Seaton.*] You state that these ten acres were included in the grant under the Act of 1875?—No; I say it was included as the Board's endowment in a certified map, which was the basis of the Act of 1875.

50. Will you say where it refers to one single yard of land above high-water mark here? You must prove that you had any authority to make the map claiming it?—There was a map I say. It was not drawn with any view to a dispute hereafter with South Dunedin, because I knew nothing about South Dunedin applying for this reserve. The map I refer to was drawn at the instance of myself, as Commissioner of Customs and in charge of the Marine Department, and of the Hon. Mr. Richardson the then Minister for Public Works.

51. Where is that map?—I do not know.

52. Who drew out the certified map?—I believe Mr. Simpson drew it out. I know it passed through Mr. Blakett's hands, and was approved of by him before being agreed to by Government.

53. *Mr. Seaton.*] You heard the Solicitor-General give it as his opinion that they could only claim land below high-water mark: what have you to say regarding that?—You could not issue a Crown grant until such time as the land was reclaimed—that was with regard to the 140 acres.

54. I asked him and he said it only referred to land below high-water mark?—I do not know. I heard him refer to section 4 of the Bill.

55. Did you not hear him ask me a question regarding the general tenor of the Act?—No.

56. Will you still persist in saying that the land I claim under this Act was far below high-water mark?—I say it is.

57. If I get the Surveyor-General's map here?—I go upon Mr. Kettle's original selection map. I could not give an opinion upon the map you refer to.

58. *Mr. Wood.*] Have you seen a plan that was prepared for another purpose, and which, it is stated, shows that some thirty or forty acres are above high-water mark?—If you tell me what it was prepared for I may be able to answer your question.

59. It was prepared in connection with the railway?—I think I saw all the railway maps along the Anderson's Bay Road, and, knowing the whole circumstances of the case in connection with the try-on of the Ocean Beach Railway Company, I went over the papers with Mr. Richardson and must have seen, I think, any plans submitted. The land adjoining the bay is more or less covered at high water.

60. *Mr. Seaton.*] Will you believe that Mr. McKerrow had a tracing which showed the very opposite of that. He said it was bounded by waste lands?—That may be, some of it—that portion of private property across the road. All I can say is that the whole reserve belongs to the Harbour Board. The exact boundaries of all its property are shown on the map which I have referred to in connection with the Act of 1875. It was signed by the two Speakers, and was a document belonging to Parliament. Instructions were given at the time that the map should be carefully preserved. I do not know that any one is interested in making it disappear.

Mr. REID, Solicitor-General, being in attendance, was examined.

61. *The Chairman.*] Mr. Reid, the Committee are inquiring into the circumstances under which a block of ten acres of land was granted, together with other lands, to the Dunedin Harbour Board. I believe that you gave an opinion upon the subject as to how far the granting of that land was in accordance with the provisions of "The Otago Harbour Board Regulations Act, 1875." Will you be good enough to state what was the nature of the opinion that you gave?—I really could not undertake to say, Sir. I would like to have the opinion which is on record before me. I received no notice at all, on my summons, of what evidence I was expected to give. I am merely summoned to give evidence *re* the South Dunedin Reserves Bill. There is another thing, my opinion may involve matters which are confidential to Government, and I think I should be justified in declining to give such evidence. If the Government themselves say, "You are at liberty to give or disclose any information," of course I have no objection to do so. If you have the papers and show me my opinion, I should be very glad to give you any further opinion now; but without referring to them I do not see how I can give what you desire. If you ask me my opinion regarding the meaning of any section of the Act, or anything of that kind, I could give it to you; but with regard to an opinion I have previously given, I could not undertake to say what it was without having the papers before me.

[Evidence having been given by Mr. McLean, and Mr. Reid's opinion read, the examination of Mr. Reid was proceeded with.]

62. *The Chairman.*] You have in your hand an opinion which you gave as to the legality of granting a hundred and forty acres of land to the Otago Harbour Board?—It specifies no quantity, but says "certain land" under the 5th section of the Otago Harbour Board Empowering Act.

63. Do you remember having subsequently assented to the issue, so far as you were concerned, as a law officer to the Government?—I do not. Of course I refer to what Mr. McLean has stated. I cannot, at the present moment, recall to mind all the circumstances which may have taken place, but looking at my former opinion I think the second could only have been given on the information that the land was reclaimed.

64. *Mr. Wood.*] You think that, if you gave an opinion in favour of it, it must have been after you had been informed that those ten acres had been reclaimed?—Quite so.

65. *Mr. Seaton.*] Mr. McLean says that the Government submitted a question to you asking if they were justified in giving a Crown grant for this land, and your opinion was that they could not unless it was reclaimed; and he said that, after certain alterations had been made, you agreed that the Crown grant should be issued: The question I want to put to you is this: That a reclamation would have to be effected?—Certainly.

66. Then, according to what Mr. McLean says, it would amount to that?—In those terms it would.

67. I would ask if it was further to be brought about in that way. Regarding the ground between the Anderson's Bay Road and that railway, was it not said that the railway works had reclaimed that land, and you agreed to issue the Crown grant?—I do not recollect the circumstances, but, if I did give such an opinion, it may have been on the ground that the land was reclaimed by the railway.

68. If I told you that the Harbour Board had never put a barrowfull of soil upon it, would you consider that there had been any reclamation?—Clearly there must have been some active steps taken to reclaim it.

69. If I assure you there has never been a cartload of material put upon it, would you consider it reclaimed land?—No; I certainly should not.

70. Then, if the Railway Company have run a ditch upon each side, would it reclaim twenty acres on each side?—No, I should think not.

71. *Mr. Wood.*] The reason that you declined to recommend the issue of a Crown grant was because the land was not reclaimed?—Yes; quite so.

72. *Mr. Seaton.*] Would you consider this the foreshore [referring to map]?—I should not attach any great importance to that either one way or the other, because the preparation of this description is

simply a matter for the surveyor. It may be erroneous, as he may call it anything, "the ocean," for instance; but it would not make any difference. You say it is called the waste lands of the Crown.

73. Would you consider it as such?—Your question is whether, if I saw this land described as waste lands of the Crown I would consider it to be the foreshore. I would probably not consider it to be the foreshore. I would not, however, attach any importance to that description.

74. But still it would be a sort of collateral evidence?—Yes; that might be about its value.

75. *Mr. Wood* (having read the fourth clause of the Act). Do you understand by that that it means lands being a foreshore and no other lands?—I should understand that it referred to foreshore land.

76. *Mr. Seaton.*] If the Surveyor-General were to tell you that there were only forty acres of Crown lands there? This was surveyed for the expressed purpose of defining what were waste lands and foreshore, with the object of granting power for the Ocean Beach railway to be constructed. If you were told forty-three acres were considered Crown lands there, would you know this Act would apply there?—I do not quite understand the question. The foreshore is Crown land to some extent.

77. *Mr. Wood.*] You had communication with Mr. McLean, it appears, about this portion that has been Crown-granted. What reason did Mr. McLean or any one urge for the issue of this grant over any particular part of it?—I have already said that I do not remember having an interview with Mr. McLean. The questions put to law officers are usually placed upon record. If anything of the sort occurred it must have been in casual conversation between Mr. McLean and myself. I do not remember the circumstance. I have many of such matters every day. It is not an uncommon thing, of course, for Ministers to come and ask verbal questions. I do not mean to dispute what Mr. McLean has stated, but I do not remember the particular circumstances.

78. *Mr. Seaton.*] You would not have said that they could override the law?—I do not suppose that they would have asked me to do so.

FRIDAY, 11TH OCTOBER, 1878.

The Hon. JAMES MACANDREW, Minister for Public Works, being in attendance, was examined.

79. *The Chairman.*] You gave evidence upon the question of the South Dunedin Reserve Bill last year; probably you will recollect generally the purport of the evidence you gave upon that occasion. Of course the Committee do not want to put you to the trouble of reading that, but wish to know if there is anything further you would like to state?—I have not had occasion to refer to it. [Having read the evidence, witness continued]: I see that record states all that I knew and stated here in connection with that case. There is nothing there that I have reason to secede from. On the contrary, the more I reflect over it, the more groundless, in my opinion, is the Harbour Board's claim.

80. The Provincial Government seem to have recommended the Waste Lands Board to reserve this piece of land as an endowment of the South Dunedin Municipality?—It was recommended by the Superintendent, on the advice of the Executive Council.

81. Did the Board reserve it?—The Board reserved it accordingly.

82. Was that act ever cancelled?—I have been told the Board rescinded the resolution some time subsequently; but I do not know. I have heard it stated.

83. *Mr. Wood.*] Do you know for what reason it was rescinded?—That I do not know.

84. Can you not tell the reason why it was rescinded?—No; I do not know.

85. There seems to be some doubt about this. There is a statement, probably a fact, that there was no South Dunedin Municipality at the time this was agreed to be made over by the General Government to the Otago Harbour Board?—Yes; the South Dunedin Municipality was in existence long before the time referred to here. It was in existence before I made a reserve; in fact, it was at the instance of the newly-elected Corporation of this Municipality, a deputation from them having called upon me upon several matters, and it was on the occasion of that interview I agreed to reserve it.

86. Did it take long from the time it was contemplated to make a municipality there? As you know, it sometimes takes a long time?—The Municipality was in existence and fully fledged before any action was taken to reserve this land.

87. Or before it was handed over by law to the Harbour Board?—Yes.

88. At all events, it has been stated it was handed over to the Harbour Board before there was any such Municipality?—That is not the case.

89. *Mr. Seaton.*] Well, while upon that particular subject, I am going to call your attention to a letter, written by Mr. Gillies, Secretary to the Dunedin Harbour Board, wherein he states that the South Dunedin Municipality has only existed since December, 1875. [Letter quoted.] I have no doubt whatever, from remarks I have heard many members of the Committee make, that they are under the impression that it was during 1875 that the whole of these transactions took place, whereas it was in 1876?—Yes.

90. Well, the South Dunedin Municipality was proclaimed in the *Gazette* of the 15th December, 1875. I think you will agree with me that this was at least twelve months previous to any application being made by the Harbour Board for that land?—I was Chairman of the Harbour Board at the time I made this reserve, and I never heard of the Harbour Board setting out any claim for it.

91. Mr. Gillies has another paragraph in his letter referring to the rights on foreshore, as possessed by the provincial authorities, and the inability of the Board to interfere in that matter?—The provincial authorities had no power below high-water mark; but this was above. We had an accurate survey made with a view of ascertaining how the land was situated, and on the strength of that survey I recommended that reserve to be made.

92. Well, that survey came up the other day, and it was mentioned that Mr. McLean had recommended the provincial authorities to adopt it?—It was with reference to the railway.

93. Was it not made at the instance of Mr. Richardson, Minister for Public Works?—It arose

out of correspondence with him. I may say that there was a good deal of disputation between the Colonial and Provincial Governments with regard to the right of conferring the power to make the railway along the foreshore, and it was with a view of ascertaining where the power of the one Government began and the other ended that we instituted this survey.

94. Then what I want to ascertain is this: did Mr. Richardson or whoever was Minister of Public Works satisfy you that this was not Crown lands?—That I cannot tell you.

95. Did he raise any further opposition to your 'granting it'?—I have no recollection of his explaining a map; he may have done so.

96. There is no evidence of Mr. McKerrow on the subject. I want to know if you recollect the circumstances?—No.

97. *Mr. Wood.*] Has the accuracy of the map ever been disputed?—No, not that I am aware of.

98. It was also on evidence yesterday by Mr. Reynolds that the Executive and Superintendent had never dealt with this question previous to the granting of land to the Harbour Board?—It was a year previous, at all events. All these transactions took place in 1875.

99. *Mr. Seaton.*] Perhaps you will permit me to refresh your memory. I think it was on the very day the Convention met in Dunedin that Mr. Gillies got this resolution of the Waste Lands Board?—I do not know.

100. And it was at the [time every one interested in this particular matter was engaged otherwise?—That may be.

101. *Mr. Turnbull.*] It was in August, 1876, that the first correspondence appears to have taken place in reference to the Harbour Board; and in October it was granted to the Harbour Board—on the 31st October. I asked Mr. McLean that question, whether he had communicated with you, and he said "No," he had not communicated; you were not aware of it. If this took place on the 31st October, to become law should there not have been another meeting of Council before it would have been made valid?—The Superintendent, under the Waste Lands Act of Otago, had power to make reserves temporarily for special purposes, and the reserves remain until dealt with by the Provincial Council. Of course it could not be alienated permanently without legislation by either the General Assembly or the Provincial Council, and the reason why in this case the Ordinance was not passed was that the Provincial Council never met again. I will call your attention to this fact, that the endowments which the Assembly granted were four hundred acres, which had been Crown-granted to the Superintendent, and these ten acres were not included in those four hundred acres. The four hundred acres was land under water, and I think the Act goes on to say that they do not get the four hundred acres until they are reclaimed from the sea.

102. *Mr. Turnbull.*] I want to know whether, looking at the position as it stands, and the granting of this land to South Dunedin Corporation on the 31st October, you consider it an equitable transaction?—There is no doubt whatever that the transaction was not legally complete, but they have got an equitable claim.

103. Would the Proclamation of the Minister of Public Works, in the middle of October, supersede the power of the Superintendent of the 31st October?—I should imagine that the Government, if cognizant of the position of affairs, would not have done that which it had no legal power to do. It had no power to grant the 10 acres in question, the same not having been included in the Statute which authorizes the Superintendent to convey the land granted to him.

104. What, at that time, was the value of this land; have you any idea? At the time it was granted in 1875?—At the time I reserved it I did not consider it of very much value.

105. What do you think, per acre?—Of course it would be impossible to say. Lands adjacent were originally sold at ten shillings per acre.

106. Mr. Reynolds suggested that if it was offered to him at £10 an acre he would not have given it?—I would not have asked him for £10 an acre. I could have got it at one time at ten shillings an acre, but land about there has gone up to an enormous value since. Land adjoining has been sold for £200 an acre, and £50 for a quarter acre section. I think I bought some, as Superintendent, for the purposes of a railway, at £100 an acre.

107. *Mr. Brown.*] What was this reserve made for?—As an endowment for this Municipality. I believe they wanted it partly for some reservoir in connection with the flood water.

108. But what was the purpose stated in the Proclamation?—As an endowment.

109. For public purposes?—Yes.

110. And what position does it stand in now? Is it Crown-granted to the Harbour Board?—I understand so, Sir.

111. Was not this included in a Bill we had in the House once?—Well, I hold it is not included in the Bill. That is the curious position of it; I do not think it is included in the Bill, because the Bill refers to four hundred acres Crown-granted to the Superintendent in land below high-water mark. Now the land, not being below high-water mark, could not have been included in the Bill.

112. *Sir Robert Douglas.*] I ask you, Mr. Macandrew, I believe this is simply a dispute between two portions of the public?—Yes.

113. The public—a Municipality in Dunedin, and the Harbour Board of Dunedin?—A Municipality in the suburbs of Dunedin.

114. Simply a dispute between two portions of the public?—Yes.

115. In private interests?—No.

116. Then, under any circumstances, the public are the only persons who derive any gain, or suffer. One portion may gain and the other may suffer?—No. If the Municipality of South Dunedin gets this ten acres, of course the Harbour Board will suffer to that extent.

117. Which is the greater portion of the public? Which will do the most good to the general public within the Provincial District of Otago?—That is a matter about which there are very grave differences of opinion.

118. I mean to say this: The South Dunedin Municipality will gain a certain revenue from it, or the Dunedin Harbour Board will gain a certain revenue from it. Which requires the revenue the most,

and which will give the greatest benefit to the public?—I should say the Harbour Board can better afford to relinquish this than the other can. I do not think the Harbour Board will miss it.

119. The revenue of the Dunedin Harbour Board will not be so much affected by giving this to the South Dunedin Municipality?—No; not at all.

120. *Mr. Wood.*] Would not the Harbour Board have exactly the same acreage, whether they get this particular ten acres or not?—They will have the four hundred acres, but they will have to reclaim it.

121. But if they reclaimed this?—That does not require to be reclaimed.

122. The Crown grant has been issued—if it has been issued, in the teeth of the law? The 4th section of “The Otago Harbour Board Empowering Act, 1875,” sets forth the whole thing.

123. *The Chairman.*] A witness yesterday stated that, in his opinion, the action of the Provincial Government in recommending the Waste Lands Board to reserve this piece of land as an endowment for the South Dunedin Municipality, if it had been submitted to the Provincial Council, in his opinion, the Provincial Council would not have confirmed it. Now, I ask you whether, in your opinion, the Provincial Council would or would not have confirmed it?—I have not the slightest doubt the Provincial Council would have passed the Ordinance confirming the reserve; not the slightest doubt. I am clearly of that opinion. I may state, as Chairman of the Harbour Board, I was perfectly unaware of any intention to apply for this reserve. I should have been against any claim or any such application in anticipation of that reserve ever falling into the hands of the Harbour Board.

124. You were Chairman of the Harbour Board at the time that you, as Superintendent, made the reserves?—Yes.

125. And at that time, as far as you knew in your official capacity as Chairman of the Harbour Board, there was no intention to apply for, or any idea in the mind of the Harbour Board that they were entitled to, this piece of land?—There was no intention, as far as I knew, to get the grant for more than four hundred acres.

126. *Mr. Seaton.*] Was it under instructions of the Harbour Board that Mr. Gillies, Secretary to the Harbour Board, got the resolution of this Land Board rescinded?—That I cannot tell you. I never heard of any resolution.

127. You, being Chairman, must have known if another resolution passed?—It was not passed to my knowledge.