

1882.  
NEW ZEALAND.

## WASTE LANDS COMMITTEE.

(REPORT ON PETITION OF WILLIAM COURTNEY, A DEFERRED-PAYMENT SETTLER,  
TOGETHER WITH MINUTES OF EVIDENCE AND APPENDICES.)

*Brought up on 8th August, 1882, and ordered to be printed.*

### REPORT.

No. 285. On Petition of WILLIAM COURTNEY.

THE case of the petitioner is that, in 1876, he took up on the deferred-payment system, three allotments in the Taranaki Land District, and expended thereon £220; but owing to the depression caused by the unsettled state of native affairs, he became unable to continue the payment of his instalments, and so forfeited his selection.

Subsequently, he became the transferee of a section at Opunake, taken up on deferred payments by one Walton Pell, who, from ill-health, had failed to comply with the conditions of his license.

The Commissioner of Crown Lands at Patea declined to transfer this section to the petitioner, upon the grounds that petitioner having already held and forfeited one section, was ineligible as the holder of another; and, further, that the transferrer, Walton Pell, being himself a defaulter, was not in a position to transfer his interest.

I am directed to report that, the Committee is unable to recommend compliance with the petition, inasmuch as it would thereby be establishing a precedent which would virtually set aside the provisions laid down by the Legislature for the disposal of land on deferred payments.

8th August, 1882.

JAMES FULTON,  
Chairman.

### MINUTES OF EVIDENCE.

SATURDAY, 5TH AUGUST, 1882.

Mr. WILLIAM COURTNEY, examined.

*The Chairman.*] You are the petitioner in this case, and you live at Hawera?—Yes.

Do you wish to make a statement in reference to your petition?—Yes. I wish to say that in regard to the section of land referred to in my petition a Government officer, Mr. Whitcombe, was telegraphed to to call for tenders for felling bush on this deferred-payment land. He did so, and a tender was accepted, but the person who accepted it did not complete the contract; and, as Mr. Whitcombe had become responsible for the due carrying out of the contract, he was called upon to do the work. In order to relieve him, I took over the land from him, and I held it until the Native difficulty arose, when I lost it. With regard to Pell's selection, I have a sworn declaration as to his inability to pay, and I paid the money that was due by him. The Act says that a selector must make no profit out of his selection. I have also a declaration from the person who was to get the land cleared, to the effect that he was not in a position to clear it. It has always been understood that the Government will accept another man, instead of the original selector, when the latter showed good grounds for his not being able to comply with the conditions. When I took over the land, the country was in a disturbed state owing to the trouble which was being given by the natives. I was determined to stop there, however, and settle on the land; and consequently I ordered a quantity of timber from Manawatu for building purposes, and that timber is ready near for erection on the land now.

Have you, Mr. Courtney, brought your case before the Courts?—No; the solicitor who advised me was also solicitor for the Crown, and he said it would make no difference if I let the case go.

*Mr. Whyte.*] It was through no fault of your own that you forfeited the first section, but through the native difficulty?—Yes.

I. 4B.—1

*The Chairman.*] You have put in some declarations?—Yes.

The Clerk then read a declaration by Mr. Patrick Galvin, to the following effect:—

In the matter of "The Land Act, 1877,"  
and  
in the matter of Suburban Allotment No. 8, Opunake.

I, Patrick Galvin, of Opunake, in the County of Taranaki, do solemnly and sincerely declare—

1. That, I believe Mr. Walton Pell took up a suburban section at Opunake, with the intention of residing upon it.
  2. That, I heard Mr. Walton Pell, on more than one occasion, speak in a favorable manner of the Port of Opunake, and as to the future prospects of the township.
  3. That, on one occasion Mr. Pell told me he could build a breakwater at Opunake for the sum of twenty-five or thirty thousand pounds sterling.
  4. That, I believe Mr. Pell left this colony in consequence of the state of ill-health that he had got into.
- And, I make this solemn declaration conscientiously, believing the same to be true, and, by virtue of an Act of the General Assembly of New Zealand, intituled "The Justices of the Peace Act, 1866."

PATRICK GALVIN.

Declared at Opunake, in the County of Taranaki, this thirtieth day of June, 1882, before me—

J. M. ROBERTS, J.P.,

A Justice of the Peace in and for the Colony of New Zealand.

*Mr. Whyte.*] Have you ever occupied the first allotment?—No, I never did occupy it; but I complied with the conditions as to clearing.

*Mr. Macandrew.*] What are the conditions that you did not comply with?—I was not able to pay up the balance of the instalments, and owing to the native difficulty, I had to take the benefit of the Bankruptcy Court for it. Afterwards, I had the privilege of taking up the land, but I could not do it. That was owing to the general depression which prevailed.

You have said something about the Waste Lands Board not enforcing the conditions of the deferred-payment sections of the Act. Do I understand that that is the rule in the Taranaki Waste Lands Board?—If this matter had come before the Waste Lands Board, which has always furthered settlement, by accepting *bonâ fide* settlers, the result would have been different.

*Mr. J. Green.*] Have you never applied to the Waste Lands Board?—No; but Mr. Wray, who is the Commissioner, is virtually the Board.

*Mr. Pearson.*] There is no Land Board for the district in which the land was actually taken up?—No.

*The Chairman.*] Has this matter been before the Court?—Yes; they had to take it into the Court in order to get possession.

COLONEL TRIMBLE, M.H.R., said: I am cognizant of all that took place, in consequence of statements made to me by Mr. Whitcombe, and I believe that all that Mr. Courtney has stated is true. Mr. Whitcombe had instructions to get bush felled in accordance with the conditions of the Act. Tenders were called for, and one was accepted. The man who ought to have done the work disappeared, and never turned up in Taranaki again. Consequently, Mr. Whitcombe was left to pay the money, which he could not do. Then, Mr. Courtney took up the land, in order to relieve Mr. Whitcombe of the difficulty he had got into. I know that at the time the Maori difficulty came on shortly after. Subsequently, Mr. Courtney, who is a dealer in land, ran short of money, and could not pay the instalments, and the land was forfeited. The deferred-payment settler was not required to reside on the land, but only to make certain improvements.

Mr. T. KELLY, M.H.R., who was present, said: In order to make this case clear, I may state at once that the whole of this district was called the Taranaki Land District, and was under the Waste Lands Board of Taranaki. In 1880, a portion of that district was taken out of the Taranaki District, and put in the West Coast District, under the control of a Commissioner who had all the powers of a Waste Lands Board, except that he had to receive instructions from time to time from the Government. Consequently, he had not the discretionary power that the Waste Lands Board had. If that district had not been taken out of the Taranaki Land District, this case would never have come before the Committee, because the Board would itself have dealt with it under the discretion given it by law. The Waste Lands Acts are contradictory in many respects, and the Boards have to take a practical view of the cases, and deal with them according to their judgment. The first point is with regard to selecting. The Board in Taranaki has looked upon it that a person is entitled to select 320 acres according to law, and that if he has made one selection of a smaller quantity, he is entitled to make another, in order to bring him up to the 320 acres, if he is no longer the holder of the former selection. With regard to the transfer, the Board would allow that to be made only after the improvements had been made. The Board required to be satisfied that the improvements were made.

*Mr. Whyte.*] Is the law relating to the taking up of the 320 acres different in Taranaki from what it is in other parts of the colony?

*Mr. Kelly.*] No; the law is not different, but the Board has discretionary power, which it exercises, and there is no appeal against its decision, except from the person aggrieved. It would have been foolish on the part of Mr. Courtney to have gone to law, after the Resident Magistrate's Court had decided on the matter.

*Mr. Macandrew.*] Do you mean to say that the Board can override the Act?

*Mr. Kelly.*] No; we would delay the transfer until the improvements had been made.

*Mr. Stevens.*] Would you allow a man to select twice?

*Mr. Kelly.*] Yes, if he were no longer possessed of the first land he had selected. We held that a man was entitled to select up to 320 acres.

*Mr. Macandrew.*] Do I understand you to say that the Board acts on its own responsibility in the interests of the country?

*Mr. Kelly.*] Yes.

*Mr. Macandrew.*] If the case of the petitioner had gone before the Waste Lands Board, you think that the prayer of his petition would have been granted?

*Mr. Kelly.*] It would never have arrived at this stage. It would have been dealt with by the Board.

*Mr. Stevens.*] What was Mr. Courtney's business when he took up these 200 acres of land in 1876?—He was an auctioneer.

Have you any idea of the amount of land which was held by Mr. Courtney in 1876?

*Mr. Kelly.*] I could not tell without referring to the books in Taranaki.

*Mr. Stevens.*] I presume these sections were taken up for the purpose of *bonâ fide* settlement?

*Mr. Kelly.*] The Board has nothing to do with that. It has only to see that the selector fulfils the conditions of his contract. The Board assumes that the selector takes up the land for settlement.

*Mr. Green.*] If the applicant had applied to the Board of the district, it would have been granted?

*Mr. Kelly.*] Yes.

*Mr. Macandrew.*] Are you of opinion that this application can be granted under the terms of the Act?

*Mr. Kelly.*] I think it can by a Waste Lands Board; but not, perhaps, by an officer who has not the powers of the Waste Lands Board. This officer, however, could have done it with the sanction of the Government.

*The Chairman.*] Can he decide if he thinks proper?

*Mr. Kelly.*] He could recommend, but he did not.

*Mr. Pearson.*] The fact of a man's owning land in other parts of the country does not, in your opinion, disable him from taking up land in another part under the deferred-payment system?

*Mr. Kelly.*] No man must own more than 600 acres altogether who selects under the deferred-payment system.

*Mr. Green.*] Are you of opinion that a man can take up a second selection?

*Mr. Kelly.*] I hold that a man may take up 320 acres in Taranaki. That, I believe to have been the intention of the Legislature, though the Board has decided that the second selection must join.

*Mr. Pearson.*] Supposing a man who owned 50 acres in Southland, and went up to Taranaki, would you give him the remainder of his 320 acres there?

*Mr. Kelly.*] Yes; after he had made a declaration that he was no longer in possession of the land. It was decided by the Act of 1879 that that could be done. We had a Provincial Act, which was passed in 1874, and which was much more liberal than this. The land was cut up into small allotments of 50 acres and upwards, and a person could select up to 200 acres, in separate lots, at any time.

*Mr. Stevens.*] Was it not a part of the conditions that the selector should erect a house of a certain value on the land?

*Mr. Kelly.*] No; there is no condition of such a nature in our district. The selector had simply to make certain improvements on the land within a given time.

*Mr. Courtney.*] Mr. Wray said he was very sorry he had to take the course he was taking; but he had to abide by the law. He said he thought mine was a very hard case. He said, also, that he thought I was acting rightly in applying to the House for compensation. I am certain that Mr. Wray would recommend my application.

*Mr. Macandrew.*] What amount of money is involved in this question?

*Mr. Courtney.*] My expenses amount to £33. It is hard to say what the value of the land is, because it has been run up to a fictitious price. If put up to auction now, the land would fetch £30 an acre, the improvements that we have made being so many. There are only 11 acres of land altogether; but it is the only piece of ground that can be got there which is not swamp.

*Mr. Macandrew.*] What is the amount that has to be paid to the Government on account of it?

*Mr. Courtney.*] £13 has been paid, and £50 has yet to be paid. I have done more than any other two men in the district to further settlement; and I have been there for seven or eight years.

*The Chairman.*] When you were the holder of the original selection, were you the holder of any other deferred-payment land?—No.

*Mr. Pearson.*] Were you the holder of any freehold land?—Yes; I owned a large quantity. When I made the second application, I may say that I was only the owner of about 100 acres.

*Mr. Macandrew.*] It is your intention to occupy this land if you get it?—Yes; and I will give a bond to show that I will carry out all the conditions.

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COLONEL TRIMBLE: There is not a more *bonâ fide* settler in the district than Mr. Courtney, and I, myself, would have no hesitation in guaranteeing that he would carry out all the conditions of his contract. This piece of land is of particular value to him. He is a large dealer in land, but he is not a land speculator in the ordinary acceptance of the term. Land speculating in Taranaki is very different to what it is in other parts of the colony. It is on a very small scale indeed, and is confined to buying and selling the small farms which are there the rule.

## APPENDIX.

1.—REPORT ON THE PETITION OF WILLIAM COURTNEY to the WASTE LANDS COMMITTEE, No. 285.  
Session 1882.

THE statements contained in the petition as to the application for the transfer of deferred-payment section No. 8, suburbs of Opunake, from Walton Pell to William Courtney, agree with the records in the General Crown Lands Department.

The application for transfer could not be entertained for the following reasons :—

First,—William Courtney had previously held a section on the deferred-payment system, and he had failed to comply with the law with respect to holdings under that system. The following is the legal opinion upon which the department has acted, with respect to persons who have forfeited their holdings being again eligible to take up a section on deferred payments.

OPINION.—The words “no selector having assigned his interest hereunder,” used in the 60th section of the Act, refer to an assignment made by virtue of the provisions contained in the 65th section of the Act. They can have no reference to the case put, viz., an unconditional surrender made, with the consent and approval of the Board, as the Board has no power to accept a surrender; and such a surrender, although executed by the selector, and accepted by the Board, would be of no effect. But perhaps the term unconditional surrender may have been inadvertently used to describe the Act of giving up possession of the land, on being required in writing to do so, by virtue of the provision in section 69 of the Act. I think that a selector who has given up possession under such circumstances is in no better position than a selector against whom proceedings have been taken before a Resident Magistrate under section 69 and the following sections, and I am of opinion that such a selector is debarred by section 60 from at any time making a new selection under the Act. The word “fraudulent,” as used in the 60th section, is meaningless. None of the conditions are of such a character that the word “fraudulent” could properly be applied to a breach of them under whatever circumstances such breach was committed. I am of opinion, therefore, that the section must be read as if the word “fraudulent” was not there.

Secondly,—The application could not be entertained, because Mr. Pell had not made the improvements required by law, and, consequently, section 13 of “The Land Act 1877 Amendment Act 1879,” was a bar to the application for transfer being granted.

I may state for the information of the Waste Lands Committee, that orders for the recovery of possession of the section in question by the Government, have been issued by the Resident Magistrate’s Courts at Hawera and New Plymouth.

The first order was issued by the Court at Hawera; but on its being subsequently ascertained that the land was situate within the district of the Resident Magistrate at New Plymouth, in order to remove any doubt as to the legality of the proceedings in the Court at Hawera, proceedings were commenced afresh in the Court at New Plymouth.

Mr. Courtney was represented by counsel at the hearing of the case before the Resident Magistrate at New Plymouth.

The original petition is herewith returned.

General Crown Lands Office,

Wellington, 24th July, 1882.

H. J. ELLIOTT,

Under-Secretary.

## 2.—THE COMMISSIONER OF CROWN LANDS to Mr. COURTNEY.

SIR,—

Crown Lands Office, Patea, 19th September, 1881.

Referring to your application for a transfer of section No. 8, suburbs of Opunake, from W. Pell to yourself, I have the honor to inform you that, as you have already held and forfeited a section in the Taranaki Land District, I am advised that you cannot again become a selector under the deferred-payment system.

There is also the objection that Mr. Pell has himself failed to comply with the conditions of his license, and is, therefore, not in a position to transfer his interest.

I regret that, under the circumstances, I must decline to accede to your request.

I have, &c.,

C. A. WRAY,

Commissioner of Crown Lands.

W. Courtney, Esq., New Plymouth.

## 3.—STATUTORY DECLARATION of J. MAYSMOR.

In the matter of “The Land Act, 1877,”

And

In the matter of Suburban Allotment No. 8, Opunake.

I, JOHN MAYSMOR, of Opunake, in the County of Taranaki, do solemnly and sincerely declare—

1. That, Mr. Walton Pell, contractor, of Hawera, instructed me on or about the 1st day of June, 1881, to get his suburban section No. 8, Opunake, fenced. I endeavoured in my capacity of Commission Agent, to get the same done; but the price asked for the work was so exorbitant, and the material available, viz., white pine, being so unfit for the purpose, that I wrote to him advising him not to erect a fence of white pine, as it would not last more than a year or two.

Mr. Pell also instructed me to have a two- or three-roomed house built on the said section; but at that time no sawn timber was procurable in Opunake or the district. This I advised him of, and he replied that he would do his best to get some; but he was soon afterwards taken ill, and was laid up for some time.

And, I make this solemn declaration conscientiously, believing the same to be true, and, by virtue of an Act of the General Assembly of New Zealand, intituled “The Justices of the Peace Act, 1866.”

J. MAYSMOR.

Declared at Opunake, in the County of Taranaki, this 30th day of June, 1882, before me—

J. M. ROBERTS, J.P.,

A Justice of the Peace in and for the Colony of New Zealand.

## 4.—STATUTORY DECLARATION of G. P. RICHARDS, M.D.

In the matter of "The Land Act, 1877,"

And

In the matter of Suburban Allotment No. 8, Opunake.

I, G. P. RICHARDS, M.D., of Hawera, in the County of Hawera, do solemnly and sincerely declare—

1. That, I attended upon Walton Pell, contractor, of Hawera, during June and July, 1881. He was suffering at that time from chronic, and followed by acute, lumbago and rheumatism. I recommended him to remove to a warmer climate for the benefit of his health, as this climate was not suitable for him. I hold that it was necessary for him to leave this district.

And, I make this solemn declaration conscientiously, believing the same to be true, and, by virtue of an Act of the General Assembly of New Zealand, intituled "The Justices of the Peace Act, 1866."

G. PICKERING RICHARDS.

Declared at Hawera, in the County of Hawera, of Hawera, this 7th day of July, 1882, before me—

J. C. YORKE, J.P.,

A Justice of the Peace in and for the Colony of New Zealand.

## 5.—STATUTORY DECLARATION of WILLIAM COURTNEY.

In the matter of "The Land Act, 1877,"

And

In the matter of Suburban Allotment No. 8, Opunake.

I, WILLIAM COURTNEY, of New Plymouth, in the County of Taranaki, in the Colony of New Zealand, auctioneer, do solemnly and sincerely declare—

That, on or about the twenty-fourth day of December, one thousand eight hundred and eighty-one, Walton Pell, of Hawera, in the County of Patea, contractor, became the purchaser under the deferred-payment system, of the allotment No. 8 on the map of the suburban lands, at Opunake.

That, the first two instalments, on account of the purchase of the said allotment, were duly paid to the Receiver of Land Revenue, the second payment being made on the thirtieth day of July, one thousand eight hundred and eighty-one.

That, on or about the second day of August, one thousand eight hundred and eighty-one, the said Walton Pell being desirous, on account of ill-health, to sell and transfer his license to occupy the said allotment, agreed with me this declarant to take over the same from him; and I agreed to do so, and paid to him the sum of thirteen pounds four shillings, being the amount of the instalments paid by him on account of the purchase of the said land.

That, on or about the eighteenth day of August, one thousand eight hundred and eighty-one, I applied to the Commissioner of Crown Lands, at Hawera, for a transfer of the said allotment, from the said Walton Pell, to me, which application was refused by the said Crown Lands Commissioner, on the grounds that—

1. I, having already held and forfeited a section, I could not again become a selector under the deferred-payment system.

2. That, Mr. Pell had himself failed to comply with the conditions of his license, and was, therefore, not in a position to transfer his interest.

That, on or about the eighth day of July, one thousand eight hundred and seventy-six, I took up on the deferred-payment system, allotments numbered 187, 188, and 189 in the Moa Block, containing two hundred acres (more or less), on which allotments I expended in payment of instalments and for improvements, the sum of two hundred and twenty pounds; but native affairs at that time having a depressing influence on trade, and land in this district being unsaleable, I was unable to continue the payments and improvements, and the said allotment of land was forfeited, and all the moneys I had expended thereon were wholly lost.

That, Walton Pell, the original purchaser of the said suburban allotment numbered 8, purchased the same, with the *bona fide* intention of settling upon and cultivating the same, but was prevented from doing so by ill health, on account of which he disposed of his interest in the land, and left this colony for Sydney.

That, immediately after purchasing the right and interest of the said Walton Pell in the said land, I purchased and had delivered on the premises, materials for the erection of stock- and sale-yards, with the intention of at once occupying and improving the property, which material is now ready for erection on the land.

That, in the event of the transfer of Walton Pell's interest to me being agreed to and ratified, I will at once cause to be erected on the said land convenient stock- and sale-yards, and will, within three calendar months from the time of being put in possession, enclose the whole section with a substantial fence, and erect on the said land a dwelling-house or cottage of the value of one hundred and fifty pounds.

And, I make this solemn declaration conscientiously, believing the same to be true, and, by virtue of an Act of the General Assembly of New Zealand, intituled "The Justices of the Peace Act, 1866."

WM. COURTNEY.

Declared at New Plymouth, in the County of Taranaki, this twelfth day of July, one thousand eight hundred and eighty-two, before me—

H. WESTON,

A Justice of the Peace in and for the Colony of New Zealand.

