

that the gold discoveries had caused a large influx of population and the space in Dunedin available for business purposes had become limited and was not commensurate with the necessities of trade and the wants of the inhabitants. Mr. Cutten said :—

“The land referred to by the petitioners was in the original survey of the Town of Dunedin laid off in sections, and ran some distance into the water below high-water mark. But as it was deemed advisable by the New Zealand Company that there should be no exclusive privilege to the water frontage, but that it should be made a public quay, the sections were withdrawn from the map and marked as reserved. Subsequently, Mr. Mantell . . . selected a portion of the reserve and recommended that it should be appropriated to the use of the Natives on their visits to Dunedin, an arrangement which I believe was sanctioned by His Excellency Sir George Grey. The Natives, however, never made use of the place, it being not suited to the purpose, but continued to land their produce at a small bay where the water is deeper, and upon which latter spot a stone house for their use has been erected by the General Government. A portion of the frontage reserve has been used by the Provincial Government for the erection of immigration barracks, and for police barracks and offices. In all probability the whole of the reserve will be required by the Government for public purposes, as but few reserves have been made in Dunedin.”

The Commissioner went on to make the recommendation that the reserves should be let in sections not exceeding an eighth of an acre, and for a period not exceeding one year.

The upshot was that the reserve was let in accordance with Mr. Cutten's recommendation. Reporting on what had been done, Mr. Cutten, in a memorandum dated the 24th January, 1863, stated that he was decidedly of the opinion that the reserve ought to form a part of the trust for the improvement of the harbour. He was not certain that this disposition of the land could not be enforced by application to the Supreme Court were there any corporate body in the Province which could legally maintain the claim.

From this time onward the reserve bulked more largely in Dunedin affairs, and eventually, on the 13th April, 1865, the Superintendent of the Otago Province set forth his views to the Postmaster-General. The Superintendent stated that he was not prepared to say whether His Excellency the Governor did or did not have the legal right to grant the reserve to the Maoris, but there were strong grounds for believing that, were equity consulted, no such act would be effected. The grounds for his opinion were :

- (a) On the original survey plans of the Town of Dunedin, signed by the Chief Surveyor in 1846, the reserve was shown as divided into sections :
- (b) That, through instructions from the Chief Agent of the New Zealand Company, the sections forming the reserve, together with other sections possessing frontages to the harbour, were reserved from sale :
- (c) That some of the early settlers, who had intended to make choice of some of the sections so reserved, felt aggrieved that their rights of selection had thus been restricted :
- (d) That the reserve was said to have been provisionally reserved by Mr. Mantell for the Natives' use during the time he held the office of Commissioner of Crown Lands, and that His Excellency had confirmed the Commissioner's act :
- (e) That the reservation, if made, was made without the knowledge or sanction of the local authorities :
- (f) That a similar misappropriation of a public reserve (the octagonal reserve) in the Town of Dunedin was attempted in the year 1853, but the attempt having come to the knowledge of the members of the Provincial Council before the Governor's sanction could be obtained, the evil was averted :
- (g) That had the Government or Provincial Council of the day believed that the grant would ever have been likely to take practical effect, such an alienation of public property would have been strenuously opposed :
- (h) That the withdrawal of the reserve from sale, making it a public reserve, and afterwards withdrawing that reserve and granting it, without the knowledge and consent of the local authorities, to private persons, whether Natives or Europeans, would have been an act, if carried into effect, liable to be stigmatized as unjust to the original land purchasers in Otago, and to the general public also.

In the same year—*i.e.*, 1865—a Select Committee of the Provincial Council was constituted to go into the pros and cons. This Committee reported that it had examined all the existing documents bearing on the topic and had heard the evidence of several of the longest residents in the province. Its conclusions, which were set forth at length, substantially confirmed the views which had been expressed by the Superintendent. The Committee's report ended with a recommendation that the facts, as found by it, be communicated to the Government under the full assurance that not only would the Crown grant for the reserve forthwith be issued in terms of the original destination, but also that the money which had been derived from it would be restored to the province as its rightful owner.

The matter was laid before Mr. Sewell, the Attorney-General. Mr. Sewell, in a memorandum dated the 29th June, 1865, confirmed an opinion which he had formerly given—*viz.*, that the area was duly reserved as a Native Reserve, and was under the operation of the Native Reserves Act, 1856. He did not see any ground upon which either the Provincial Government, or any municipal body constituted in Dunedin, or any private individual could impugn such an appropriation of the land. Mr. Sewell, however, recommended that nothing should be done to preclude the Provincial Government from submitting any case it might have to the judgment of the General Assembly. I interpolate to say that an opinion contrary to that of Mr. Sewell was given by Mr. Prendergast, Attorney-General, in August, 1866.

A Select Committee of the House of Representatives made inquiry. In its report dated the 25th August, 1865, the Committee set forth certain instructions which had been issued by the Principal Secretary of the New Zealand Company in London to Colonel Wakefield, the company's agent in New Zealand, and which indicate pretty clearly that, in the settlement schemes, water frontages were to be reserved to the public use. The Committee's conclusion was that, the land forming the Dunedin reserve having been reserved from sale for a specific public purpose, it was wrongfully set aside for the use of the Natives. It recommended that a Crown grant be issued in favour of the Municipality of Dunedin, as trustees and representatives of the local public, as was evidently the intention of the company conveyed in the instructions to Colonel Wakefield.