

1908.
NEW ZEALAND.

GOLDFIELDS AND MINES COMMITTEE.

(REPORT ON THE PETITION OF ARTHUR D'OYLY BAYFEILD; TOGETHER WITH MINUTES OF EVIDENCE.)

(MR. POLAND, CHAIRMAN.)

Report brought up on the 2nd October, and Minutes of Evidence on the 5th October, 1908, and ordered to be printed.

ORDERS OF REFERENCE.

Extracts from the Journals of the House of Representatives.

FRIDAY, THE 3RD DAY OF JULY, 1908.

Ordered, "That a Goldfields and Mines Committee, consisting of ten members, be appointed, to whom shall be referred all matters relating to mining and all Bills relating to mines, with power to call for persons and papers; three to be a quorum: the Committee to consist of Dr. Chapple, Mr. Colvin, Mr. W. Fraser, Mr. Herries, Mr. R. McKenzie, Mr. Macpherson, Mr. Poland, Mr. Seddon, Hon. Mr. Mills, and the mover."—(Hon. Mr. McGOWAN.)

WEDNESDAY, THE 16TH DAY OF SEPTEMBER, 1908.

Ordered, "That the petition of A. D. Bayfeild be referred to the Goldfields and Mines Committee."—(Mr. COLVIN.)

PETITION.

To the Honourable the Speaker and Members of the House of Representatives in Parliament assembled.

THE humble petition of Arthur D'Oyly Bayfeild, of Westport, for himself and other shareholders of the late Westport-Cardiff Coal Company, sheweth,—

Your petitioner desires to renew his petition of the 22nd October, 1903, praying for consideration for the shareholders of the above-named company (now liquidated), the result of which on being referred to the Goldfields and Mines Committee was a recommendation from that Committee that it be referred to the Government for consideration.

That, under date of the 12th February, 1904, the Hon. the Minister of Mines informed your petitioner that "the Government is of opinion that the shareholders of the late company have no claim against the colony."

That a previous petition, No. 560, was presented, signed by E. R. Hughes and others, to Parliament in session in the year 1900, also praying for relief and consideration, and was referred by order of the House to the Railways Committee, the result of which was a recommendation from that Committee to the following effect: "That, as the company has lost its capital, and also the profits on working invested in the mine, the Committee recommends the prayer of the petitioners to the favourable consideration of the Government"; and on this petition no favourable action was taken by the Government.

That your petitioner begs to repeat the substance of his petition of October, 1903, as follows:—

“To the Hon. the Speaker and members of the House of Representatives in Parliament assembled.

“The humble petition of Arthur D'Oyly Bayfield, of Westport, agent, on behalf of himself and other shareholders of the Westport-Cardiff Coal Company, now in liquidation, sheweth,—

“1. That the Government of New Zealand, in the month of May, 1900, pursuant to the power contained in “The Westport-Ngakawau Railway Extension Act, 1890,” seized and took possession of the whole of the works, plant, and materials of the said Westport-Cardiff Coal Company, of the estimated value of £24,329, to satisfy a debt claimed by the Government to be due by the said Westport-Cardiff Coal Company, amounting to £4,470, of which amount £2,363 was for royalty on coal, and £2,107 for deficiency on the working-expenses on the cost of construction of the extension of the Westport-Ngakawau Railway to Mokihinui.

“2. That your petitioner claims that the sum of £2,107 should not have been charged against the said Westport-Cardiff Coal Company, but should have been extinguished at the time of the passing of ‘The Westport-Ngakawau Railway Extension Act Amendment Act, 1897,’ as such deficiency was created through no fault of the said Westport-Cardiff Coal Company, but by the default of another company in the fulfilment of the conditions under which such other company was liable.

“3. That in a report presented to Parliament in the session of 1901 in connection with the then proposed State colliery, the plant, works, and material so seized by the Government was valued by Messrs. Gordon, McKay, Hayes, and Jamieson at the sum of £7,516 3s. 11d., exclusive of £1,000 set down as the value of prospecting-works.

“4. That in addition thereto the wire of the telephone-line was not included in the Government list of materials and plant by Messrs. Gordon, McKay, Hayes, and Jamieson, but is now in the possession of the State Coal-mines Department, which said wire cost the Westport-Cardiff Coal Company by payment to the Telegraph Department the sum of £278 3s. 9d.

“5. That the whole of the property is now in the possession of and is being used and worked by the Government in and about the State coal-mine at Seddonville, whereby the colony has been saved the cost thereof; but no consideration has been paid to the shareholders of the Westport-Cardiff Coal Company for the value of such plant, &c., in excess of the sum claimed by the Government.

“6. That the shareholders of the said Westport-Cardiff Coal Company received no return for the capital expended by them in developing the coal-measures of Mokihinui.

“Your petitioner therefore, on behalf of himself and the other shareholders in the said Westport-Cardiff Coal Company, pray that your honourable House will inquire into the allegations contained in this petition, and grant to them such relief as to your honourable House shall seem meet.”

That your petitioner, who was the original promoter of the company and first lessee of part of the land mined, has never relinquished his feeling and belief that, in view of the circumstances under which the Government took possession of the mine and property, the shareholders were justly entitled at least to consideration for excess in value of plant taken as shown by the valuers of the Government—viz., £7,516 3s. 11d., plus £1,000 as the value of prospecting-works, and also the value of the telephone-line £278 3s. 9d., in all £8,794 7s. 8d.—as against the claim of the Government against the company for £4,470.

That your petitioner trusts that on this occasion his petition is lodged in good time for full consideration, exception having been taken to lateness of presentation on last occasion.

That the prospects of the mine being now much improved encourages your petitioner in the hope that equity may be granted the shareholders of the late Westport-Cardiff Coal Company, and your petitioner therefore, on behalf of the shareholders generally, prays that your honourable House will grant such relief as may seem just and equitable.

Wellington, 7th September, 1908.

A. D. BAYFIELD.

REPORT.

No. 828.—Petition of ARTHUR D'OYLY BAYFEILD, Agent.

PETITIONER, on behalf of himself and other shareholders of the Westport-Cardiff Coal-mining Company, liquidated, represents that in May, 1900, in order to satisfy a debt of £4,470, of which £2,363 was for royalty in coal and £2,107 for deficiency on the working-expenses of the Westport-Ngakawau Railway to Mokihinui, the Government seized the plant, material, and works of the company, valued at £24,329; that the £2,107 ought not to have been charged against the company; that, for the reason that the debt was created through the default of another company, it ought properly to have been extinguished at the time of the passing of "The Westport-Ngakawau Railway Act, 1897." Petitioner further represents that the plants, material, and property seized were valued by the Mining Inspectors of the Government at £7,516; that the whole of the property is now being worked by the Government in connection with the operations in progress at the State coal-mine at Seddonville, and that through the company the colony has been saved the cost thereof. No consideration has been allowed to the shareholders of the liquidated company for the value of the plant and material in excess of the alleged debt. Petitioner therefore prays for inquiry, consideration, and relief.

The Goldfields and Mines Committee have the honour to report on the petition of Arthur D'Oyly Bayfeild that they recommend that it be referred to the Government for favourable consideration.

2nd October, 1908.

H. POLAND,
Chairman.

MINUTES OF EVIDENCE.

FRIDAY, 18TH SEPTEMBER, 1908.

ARTHUR D'OYLY BAYFEILD examined.

1. *The Chairman.*] What is your name?—Arthur D'Oyly Bayfeild.

2. I understand, Mr. Bayfeild, that you wish to make a statement for the information of the Committee containing additional information in regard to your petition?—Yes.

3. You have prepared that statement?—Yes. The statement I wish to make by way of fresh evidence in support of my petition is bearing upon the treatment by the Government of the Mokihinui Company as compared to that of the Westport-Cardiff Company. The Government bought the former company's mine and plant from the liquidator of the company, through his agent, for the sum of £4,500, and, although I can only find that payments of portion of this sum were made, I respectfully submit that, the company being indebted to the Government, the latter were in no way bound to pay the former anything legally, but could have acted in the same way as they have done towards the Cardiff Company—simply seized their property. I do not say, nor do I think, that the Mokihinui Company should not have received consideration: all I ask is that the shareholders of the Westport-Cardiff Company should receive the same consideration as the Mokihinui Company did, and in a more marked manner the Point Elizabeth Company, who received £21,000, and the promoter of the company £1,500, although legally the Government were not bound to pay anything. The action of the Government entirely relieved the Mokihinui Company from liability on account of deficiency under the Westport-Ngakawau Railway Extension Act, whereas had they complied in part only with the conditions of their lease no deficiency would ever have accrued. The Westport-Cardiff Company, as was pointed out by their chairman of directors and secretary in their petition of June, 1896, did much to benefit consumers by way of cheaper coal—as the State is now doing; they more than complied with the conditions of their lease, still they were subjected to extreme treatment, the injustice of which I trust will be removed. My second point, in addition to my evidence under the petition of 1903, is that the Cave area, now being successfully worked, has improved the prospects so much; and in view of the Government expert's report, as presented to Parliament in 1901, showing that this area was expected, as a minimum, to yield a million tons of coal, I feel that the Government can again fairly be approached to redress the grievance felt by the old shareholders of the Westport-Cardiff Company.

4. *Mr. Colvin.*] I see by your statement of 1903 that, of the £4,470 owing by the company, £2,363 was for royalty: do you know who is entitled to that royalty—is it the Government?—No, not the Government. The royalty would go to the Westport Harbour Board.

5. Do you know whether the Government has paid the Harbour Board that amount for royalty?—I applied to the Secretary to the Board for information on that point, and his answer is to this effect: that, so far as he knows, they have not received the money. From the accounts furnished it is impossible for them to say. The Railway Department, which really controls the endowments, keeps the accounts and simply pay over lump sums without details.

6. But you are not aware of it having been paid?—No, I am not aware of it. There is nothing to show that it has been paid.

7. Then, at the time the Government took over the property you only owed them this sum set down as deficiency, £2,107?—Yes; but still we are bound to admit our liability to somebody for the royalty. Of course, though the Government took over the property, it is only fair that the Board should have the benefit of the royalty.

8. Was it by arbitration that this value of £4,516 was put on the property?—No. That sum was arrived at on the report of Messrs. Gordon, McKay, Hayes, and Jamieson. I can produce the report of those officers if the Committee desires.

9. Then, the Government officers made the valuation?—Yes; that is shown in the report presented to Parliament in 1901.

10. That would leave you over £3,000 to your credit?—It left us more than that. The petition sets out the balance as £4,324 7s. 8d.

11. And you consider that the Government owes the company that amount?—We feel that we are still entitled, at the very least, to that difference.

12. *Dr. Chapple.*] There seems a slight discrepancy, Mr. Bayfeild, between the evidence given by you in 1903 and your present petition. In your evidence then you stated, "The petition also sets out that the Government claims against the company are, for rent and royalty up to the 30th June, 1900, £2,363 17s. 6d.; for deficiency under the Ngakawau Extension Act to the 31st March, 1900, £4,632 18s. 2d.," a total of £6,995; but your present petition sets the amount of the claim for royalty at £2,107?—I think that is the total deficiency, and would include the amount due by the Mokihinui Company. I am informed the amount for deficiency due by the Westport-Cardiff Company is £2,107.

13. It seems to me that there should be some explanation forthcoming as to why the Westport-Cardiff Company allowed to be seized, for a debt of £6,995, a property valued at £7,000. That is incomprehensible to me?—In my principal evidence I said it was done under pressure. The correspondence between the solicitor for the Government and the liquidator shows this.

14. In the ordinary money-market a man could raise at least £4,000 on a 7,000-pound property, and I understand there was an expenditure of something like £24,000 on the property?—More than that—about £40,000.

15. It was valued by the Government at £7,000?—We were in treaty with the Government to get a reduction in the haulage-rate. We discovered that we could not carry on successfully, and would have to raise more money. It was the heavy haulage-rates charged by the Government which practically killed the company. The same thing applies even now to the Seddonville State Coal-mine—it is the excessively high haulage-rate which tells against the mine. The directors decided that unless that rate was reduced we could not continue operations.

16. Then, do you allege that the Government took advantage of their position as the owners of the railway?—I hardly like to do that, but they did make it impossible for us to succeed by charging that excessive haulage-rate.

17. *Mr. Colvin.*] Do the profits of the railway go to the Harbour Board?—Yes.

18. The Harbour Board is responsible to the Government for the interest on the debentures, and the Board has objected to the Government reducing the charges on the railway?—Yes, when we endeavoured to get a reduction made. I remember on one occasion, when interviewing the late Hon. Mr. Cadman, he said, "If you can get the Harbour Board to agree to a reduction in the rates I will go into the question"; but we could not move the Harbour Board in the matter.

19. When the railway was made the companies had to give a guarantee that it would pay 5 per cent.?—Yes.

20. There was another company, the Mokihinui Company, which failed?—Yes, they were our neighbours.

21. Then the whole amount of the guarantee came on to the Cardiff Company?—Yes, we were the only people that were ever asked to pay up.

22. *Dr. Chapple.*] You do not admit that these figures are correct—that the company owed the Government £6,995. It seems to me that if they are correct it was a fair bargain?—That is not the total claim against us. As a matter of fact, there was an Act passed, I think in 1897, terminating the liability at a given date.

23. *Mr. Fraser.*] On page 9 of the printed report on the petition of 1903 it says that "The Crown Solicitor advised that, as the Crown had, in pursuance of the powers in that behalf in the lease, re-entered and determined the lease, the land with all its fixtures was vested in the Crown": now, your company's share of the deficiency was £2,107?—The Government was making us responsible for the total deficiency; that is what we complained of. Of course, we submit that we should never have been called upon to make good the Mokihinui Company's portion of the deficiency. That is a very material point. The present petition is quoting the figures incorrectly from the petition of 1903. Still, there is the fact that the total amount claimed by the Government is £4,470—that includes royalty and deficiency.

24. *The Chairman.*] It is stated in the 1903 report that the deficiency is £4,672, while your petition says it is £2,107?—I explained that just now. By an Act of Parliament a certain amount was wiped off. The Act terminated the liabilities at March, 1900.

25. *Dr. Chapple.*] I think that Mr. Bayfeild's explanation is all right, but I have been searching for some explanation why the company allowed the Government to seize its property in view of its being valued at £7,000?—It was mainly due to the haulage question.

26. There is another question I would like to ask: In this mining inspector's valuation of £7,516, do you know if anything was put down for the value of the lease?—No; it was for the plant only.

27. Are you sure that the lease was not included in this estimate?—Yes. There is a detailed list of the items, which consist of plant only.

28. *Hon. Mr. Mills.*] I notice that the 1903 report was referred to the Government for consideration: what has been done by you since that date? Have any further petitions been presented?—No.

29. And what action did you take after knowing the report of the Committee?—I applied to the Government; and the late Prime Minister, whose letter I have, referred me to the Hon. Mr. McGowan, Minister of Mines. Then Mr. McGowan's reply came, to the effect that the Government were of opinion that we had no claim. But we have always felt that if things improved we should get some measure of consideration, and that time has arrived—things have improved.

30. With that property?—Yes, its present position is very much better than it has been for years. The State is now working the Cave area, which is turning out very well. Their output is about 1,000 tons a week, and the quality of the coal has vastly improved.

31. Did you not take any action after the receipt of the Minister's reply?—I simply conferred with the shareholders generally, and it was decided to wait.

32. You have not made any application since?—No; we thought we had better wait. As a matter of fact, a former member speaking to myself expressed the opinion that if things improved we should receive favourable consideration.

33. *Mr. Seddon.*] In the petition you say that the Government pressed the seizing of the property: did you resist the action of the Government?—Yes, the liquidator did for a time, but eventually had to give in.

34. *Mr. Fraser.*] If you will turn, Mr. Bayfeild, to page 9 of the printed report of 1903 you will see, in the letter of the Crown Solicitor at Christchurch, the following: "There are, however, in the list of chattels, articles of the estimated value of £2,803 which I considered to be fixtures that has passed with the freehold on the re-entry by the Crown, and which Mr. Hargreaves and Mr. Fisher, after my discussing the matter with them in several interviews, now admit should be so classified"—Yes.

35. Do you admit that to be the case—that the £2,803 out of the £7,114 was for effects which passed with the freehold on the re-entry by the Crown?—I cannot dispute that.

36. If that statement is correct, and the chattels valued at £2,803 passed to the Crown, how can the company claim for them?—That is £2,803 out of £7,516. The items are shown, but what items are regarded as chattels I cannot say.

37. Now, I wish to come to another aspect of the case: I suppose you do not dispute the fact that the Government, in what they have done, have acted legally?—No, I do not dispute that.

38. You consider your claim is a moral and equitable one?—Yes. We wish to be treated exactly on the same lines as other companies have been treated—the Point Elizabeth and Moki-hinui Companies. As a matter of fact, the Government need not have paid the Point Elizabeth Company a cent, but the company received £21,000 and the promoter £1,500. As the promoter of the Westport-Cardiff Company I have not asked for a penny so far.

39. You claim, then, that the Government is treating your company differently from other companies, seeing that it made concessions to those companies?—Yes.

40. That is what you base your claim on?—Yes.

41. Do you found your claim on the fact that the Government took possession of this property, used the plant erected by your company, and have since made it a profitable business: do you claim on that?—That is involved in the general claim—they have the benefit of all our exertions.

42. Do you know, of your own knowledge, of the position of the Harbour Board in regard to this claim for revenue from the railway, or is it merely hearsay?—Oh, no! it is the law.

43. Has the Harbour Board pledged the receipts from that railway?—Yes, in a general way, they have pledged their revenue, undoubtedly.

44. Has the Harbour Board the power to reduce the rates charged on the railway without a breach of faith to those who have lent the money?—I believe they have not the power, but they have the power of recommendation to the Government, and if a reduction were made there would not necessarily be a breach of faith. I may say that this railway is the best-paying railway in the whole Dominion.

45. You say that the Harbour Board, with the consent of the Government, could reduce the rates on the line?—Yes.

46. *Hon. Mr. McGowan.*] You presented this petition, on whose behalf?—On behalf of the shareholders.

47. What position do you occupy now?—I am simply one of their number.

48. What authority have you for petitioning?—The authority of meetings of the shareholders held at Christchurch and Westport.

49. When were those meetings held?—In 1903.

50. Have there been any meetings since?—No.

51. Then, you are here on the authority granted in 1903?—No; with the general consent of the shareholders.

52. Do you know who the shareholders are?—Yes, I have a list of them.

53. But you can hardly bring up this same petition again on the strength of a meeting of shareholders held in 1903?—I respectfully submit that I have consulted two of the directors, and that I am here with the full knowledge of all the Westport shareholders.

54. Has not this petition been presented with the idea that, under favourable circumstances, you might get some relief?—Yes, we feel that we ought to get relief. Now, I want to put in evidence another portion of Mr. Stringer's letter appearing on page 9 of the statement. It says, "I have suggested to the liquidator that the Crown should be allowed to take over the chattels in settlement of the rent and deficiency owing; but he informs me that, while he has no wish to hamper the Government in any way, he considers that some effect should be given to the recommendation of the Railways Committee that the prayer of the company's petition to the House of Representatives should receive the favourable consideration of the Government, and he wishes me to say that if the Government forego their claim to the sum of £2,108 19s. 6d. due for deficiency, and send him a cheque for that amount, he will surrender to the Crown any interest the company may have in any of the plant, materials, and chattels. Mr. Hargreaves is evidently under the impression that, if he consented to the setting-off of the chattels against the rent and deficiency, the company's position with reference to the petition might in some way be prejudiced. I accordingly offered to obtain for him an assurance that this would not be the case; but he preferred to have his proposal as above placed before you in the first instance. I, of course, told him that I could not recommend the adoption of his suggestion. If the Government decline to waive their claim to the deficiency, but are willing to take the chattels in satisfaction of their claim against the company, kindly wire me to that effect, and I will again communicate with Mr. Hargreaves, and, if possible, persuade him to settle at once on that basis." And, again, another paragraph in the same letter says, "The result is that, according to the liquidator's own list, there is a difference of only £10 in favour of the company between the amount due to the Crown for rent and deficiency and the value of the chattels. According to the list supplied by Mr. Tennent, there is a considerable balance in favour of the Crown."

55. You say that one reason why you think the Government should favourably consider the prayer of your petition is because the Cave area is doing better?—Yes.

56. How long is it since you became aware of that?—Within the last six months.

57. Have you no later information than six months?—Some of my information is as recent as five weeks ago.

58. If you considered that you had a fair claim in equity and justice for £12,215 for which you petitioned before, why is it now reduced to £2,107?—It is not now reduced to that. The liquidator took up the position outlined in the previous petition.

59. What was the connection between the old Moki-hinui Company and the Westport-Cardiff Company?—There was no connection.

60. And how does it come in here—it is referred to in the evidence?—I bring it in as showing the treatment meted out to the Mokihinui Company and the Westport-Cardiff Company.

61. You were manager for that company?—No.

62. Did you manage it as a co-operative affair?—Simply as salesman. I conducted the sales for a time, and, as one of the party, lost £140 in cash over it.

63. Were you aware of the work these people were carrying on?—Yes.

64. And of the fact that they were hiring out rails lent to them by the Government, to a saw-mill?—No.

65. Now we come to your suggestion that the Government is not treating all these companies the same: Where was the difference between the treatment of the Point Elizabeth Company and the Westport-Cardiff Company?—Well, you could simply have taken the Point Elizabeth company's property for nothing.

66. Did you know that the Point Elizabeth Company spent a very large sum of money on the railway?—Yes; but we also spent large sums in other directions.

67. Did you spend anything on the railway?—No; but, notwithstanding the Point Elizabeth Company's railway, the Government, I am informed, was in a position to confiscate the whole property if it liked.

68. *Mr. Colvin.*] You admit the legal right of the Government to take possession of the mine?—Yes.

69. Do you admit the moral right?—No. We appeal to the Government, and particularly to the Minister of Mines, who is also the Minister of Justice, and I hope that our appeal will not be in vain.

Approximate Cost of Paper: Preparation, not given; printing (1,500 copies), £3 7s.

By Authority: JOHN MACKAY, Government Printer, Wellington.—1908.

Price 6d.]

