

NEW ZEALAND COMPANY'S DEBT—AUCKLAND.

COMMITTEE'S REPORT.

The Select Committee of the House of Representatives, appointed on the 29th day of June, 1854, to enquire whether or not, in justice, the Province of Auckland ought to be at once relieved from bearing any portion of the New Zealand Company's Debt (to consist of Messrs. Fitzgerald, Macandrew, Wortley, Mackay, Porter, and Mr. E. G. Wakefield, the mover) have agreed to the following Report :—

Your Committee would observe of the subject which they were appointed to investigate, that it is neither of a comprehensive nor a complicated character, but may be understood by reference to a few simple facts, which are involved in no obscurity, and about which moreover there is really no dispute. Accordingly, your Committee have been satisfied to examine only three witnesses, two of them being the persons at Auckland deemed most competent to lay the case before the Committee, and the other being examined only for the purpose of ascertaining the real facts with regard to an alleged abandonment by the New Zealand Company of highly valuable property in the Province of Auckland.

The essential facts of the case appear to be as follows :—

The New Zealand Company's right or claim to receive compensation for its losses, in land or from land revenue in New Zealand, has rested throughout, and the ultimate charge given to the Company by Parliament rests altogether, on the assumption of certain colonizing operations performed, and intended to be performed by the Company, of certain property and property rights acquired by or assured to them, and on the surrender to the Crown of all their private property, and their property rights. Every relation of the Company to New Zealand, whether of colonizing operations, property, property rights, or surrender to the Crown, was absolutely confined to a certain portion of New Zealand. The abortive attempt on the part of the Home Government to make the Company acquire land and colonize in another portion of New Zealand appears to be one of that description of exceptions which are said to prove the rule. Between the Company and that portion of New Zealand there never were any relations, except a continual jealousy, repugnance, and hostility. The two portions of the Colony were separated by a line about which there can be neither mistake nor doubt. All the Company's relations to New Zealand were on the south side of the line. Excepting as to jealousy, repugnance, and hostility, the Company never had any relations with the land or the people on the north side of the line, any more than if that portion of New Zealand had been a distinct Colony, or a part of New South Wales, with which the Company was at variance. If the Company's colonizing operations, such as acquisitions of land from the natives, sending out of emigrants, making of surveys, employment of labourers, supplying provisions in the early days of settlement, and measures of defence against the Government, conferred any benefit upon any part of the Colony—if any part of the Colony has derived any advantage from the surrender of the Company's property, rights, and relations with New Zealand—that benefit and that advantage have accrued exclusively to the South. The North has had no part in them. No portion of the actual Province of Auckland lies to the south of the line of demarcation which has always been the most northern limit of the Company's operations. And these are the principal facts upon which the Province of Auckland rests its denial that it can be justly held chargeable with any part of the Company's debt.

Although your Committee have not sought to take evidence in the form of mere opinion, because they thought that the facts of the case are the grounds on which their decision ought to be made, yet they have learned incidentally that the injustice of charging the Province of Auckland with a share of the Company's debt has been publicly recognised by many whose opinions deserve weight, and, in particular, by the Speaker of the House of Representatives, the Speaker of the Legislative Council, the absent Governor of the Colony, the Officer now administering the Government, and Her Majesty's present Secretary of State for the Colonies: whilst, on the other hand, your Committee have been unable to learn that such injustice has ever been denied by any one whose opinion would have authoritative weight with the House.

It appears to your Committee that, according to the direction of the House to them by the terms of their appointment, the question referred to them is one of justice only, excluding considerations of legality, of technical right, of convenience, of expediency, and of policy. Your Committee, accordingly, have limited themselves to the single consideration before them.

Viewing the question in the light in which, as aforesaid, it has come to them from the House, your Committee are of opinion that, in justice, the Province of Auckland ought to be at once relieved from bearing any portion of the Company's debt.

E. G. WAKEFIELD, Chairman.

House of Representatives,
Auckland, July 20, 1854.

1854.

NEW ZEALAND.

NEW ZEALAND COMPANY'S DEBT, (AUCKLAND).

MINUTES OF EVIDENCE

TAKEN BEFORE

THE SELECT COMMITTEE

ON THE

NEW ZEALAND COMPANY'S DEBT, (AUCKLAND).

FRIDAY, 8TH JULY, 1854.

MEMBERS PRESENT :—

MR. WORTLEY,
„ PORTER,
„ MACKAY,

MR. KING,
„ CARLETON.

Mr. E. G. WAKEFIELD in the Chair.

The Honourable Francis Dillon Bell, Esq., examined.

1. By the Chairman : You were for a long time in the employment of the New Zealand Company? Yes, I was.
2. For some time as Secretary to the Company? Yes, for some time as Secretary in England, and afterwards their agent for the management of the Nelson Settlement.
3. Do you recollect the circumstances connected with the Company's proceedings at Auckland, as respects the selection of a block of land? Yes.
4. Will you be so good as to state them to the Committee? The Company made an agreement with Lord Stanley, by which they were to select 50,000 acres of land here in lieu of 50,000 acres, part of a block, to which they were entitled in the South, under the agreement, and I was appointed to make the selection. The condition of the agreement was, that the Company should, within a certain time, expend a considerable portion of £50,000 in colonizing operations at Auckland. I believe it was three-fourths. I came to Auckland and made a selection of town land and suburban land to the amount, I believe, of £10,000, part of the £50,000, and I made examination of various parts of the country for the purpose of selecting the remainder, chiefly in rural land. Governor FitzRoy objected to the most valuable selections I had made in the Town of Auckland, which I believed to be a contravention of the agreement of Lord Stanley, and the question was referred to the then principal agent of the Company at Wellington, Col. Wakefield. Some negotiations ensued between Col. Wakefield and the local government on the subject of finally completing the selection of land at Auckland, but as the proceedings of Gov. FitzRoy were believed by the agents of the New Zealand Company to be calculated to destroy the agreement, one condition of which was the selection of land at Auckland, the whole subject was referred to England, among other questions of dispute between the local government and the Company's local agents the result was that the selection of the land was not finally completed as intended at Auckland, and that the Company took no steps for laying out the money to which I have referred. In May, 1847, when the time was expiring with in which the Company would be bound to have expended the money, they came to a fresh agreement with Earl Grey, by which they gave up the land they claimed to have selected at Auckland, and declared that they would take no steps for colonizing at Auckland. This freed the land which I had chosen, and which for some years had been kept out of the market here, to the injury of the settlers, who found some very valuable land locked up from occupation by them without the fulfilment of the condition by which they were to receive any benefit from the Company's operations.

The agreement of May, 1847, was the agreement by which at the same time that the Company gave up the Auckland land, the Company's Debt was to be charged on the whole colony. Such are the facts briefly stated so far as I now remember them.

5. You have no doubt of their accuracy, and I wont ask you to say that you have a very good memory. I believe they are correctly stated.

6. Are you aware of any other right of selection under the agreement of 1847? There was no right of selection under the agreement of 1847 except that the Company gave up any right to take up any land at Auckland. The Demesne lands of the Crown in the whole of the Southern Provinces were to be invested in the Company, including 1,300,000 acres, to which the Company's right was recognised by Lord Stanley in 1845, but then the agreement of May, 1847, provided for the repurchase of the estate of the Company by the imposition of a charge on the whole land of the Colony.

7. So that the Crown purchased an estate which only existed in the Southern Settlements by means of a charge on the whole colony, including of course the Northern Settlements? Yes, that is my view of the subject.

8. Will you be so good as to define what you mean by North and South? I should define North and South by the country to the Northward of Mokau, which was generally supposed to be the Northern boundary of the Southern Settlements.

9. By Mr. Porter: Was there in 1847, still time for sending out the emigrants according to the agreement of Lord Stanley? It was in time, because the Government had construed the three years to be from the time of selection under agreement, and the prohibition by Governor FitzRoy in March 1844 of the most valuable selections I had made in the town was the chief cause of the selection not being completed; and if the Government in England had considered the period lapsed, there would have been no necessity for the surrender of the Company in 1847.

10. The selections that were made, took place in 1844? In January, 1844, I believe.

11. Which were kept possession of by the Company till the time expired within which they ought to have sent out the emigrants according to agreement? Yes, I have already said to the injury of the Auckland settlers.

12. By Mr. King: In your opinion did the settlers of Auckland derive any benefit through the abandonment by the Company of its claims to land in Auckland? I should say to a certain extent they did, because the Company never heartily meant to colonize Auckland, and the surrender of its lands was to some extent a reparation of the injury which the lands being locked by the Company had caused to the settlers.

13. By Mr. Carleton—You said that a certain advantage was derived to Auckland by the abandonment of this right; might not this advantage have been of a negative character, the mere cessation of a disadvantage under which Auckland had been placed by the Company? Yes, and I also think that if the Company had retained the lands, they would very probably have sold a large proportion of it to absentees as they did in the other settlements which would have been a great injury to Auckland.

14. By Mr. Porter: Whether the colonising operations of the Company would not have counterbalanced to a certain extent the evils of sales to absentees? I don't think so, because I don't think they wished to colonise Auckland well. The whole thing was forced upon them by Government and they undertook it with reluctance.

15. By Mr. Mackay: Do you think that the land now to be acquired from the natives in the Northern Province ought to bear its proportion of the Debt now placed against the Colony by the Home Government, the funds for which purpose being derivable from the general revenue of the Colony?

Discussion ensued as to the propriety of this question, when

Mr. Mackay moved that the question be put to Mr. Bell.

Mr. Wortley moved as an amendment that the question referred to be not put, as being one requiring the expression of opinion upon the subject of enquiry before the Committee and therefore not suitable to be put to one of His Excellency's advisers.

Committee divided

Question put that Mr. Wortley's amendment be agreed to.

Ayes.
Messrs. Wortley,
King,
Porter,
Carleton.

Noes.
Mr. Mackay.

Mr. Bell's examination was then continued by Mr. Wortley,—

16. Did the Government ever take any steps towards the acquisition of the 50,000 acres in the South out of the Company's estate which they were to have in exchange for the concession of land to the Company at Auckland? No, it was not necessary, for the 50,000 acres were only part of a larger amount they would have to give the Company.

17. Did the Company ever make any arrangements for fulfilling their agreement of colonizing in the North? Never, so far as I know.

18. Can you state what prevented their doing so? I believe the disputes arising out of Governor FitzRoy's proceedings in the first place and the native disturbance in the second, besides their disinclination to do the thing at all.

19. By the Chairman: Was not that disinclination so general as to indispose the Company to have anything to do with the North for good, bad, or indifferent? I have no doubt of it.

20. By Mr. Wortley,—You state distinctly that the Company relinquished its claims at Auckland on condition of the imposition of the debt on the whole Colony? No, what I said was that the same agreement contained the two conditions.

21. Is it your opinion that the Company considered the imposition of the debt on the whole colony including Auckland as a main consideration for its relinquishment of its land claims in the Auckland district, which you came here to carry out? I should say it was an inducement, but at the same time I have not a doubt that the Company were glad to get rid of the obligation to colonize at Auckland.

22. By the Chairman: In fact the Company never set any store by its claim to select land at Auckland? I should answer to that it would if Governor FitzRoy had not prevented the land from being chosen, of which I had given a favourable report. But in point of fact, as I have said before, they never liked the agreement, always abused Auckland whenever they could, and were very glad to escape from connection with it.

23. By Mr. Carleton: When the Company by agreement with the Secretary of State became conditional owners of a considerable portion of the best land in the town, suburbs, and country, did they not at the same time take upon themselves an obligation in honor (these being the *ipsissima verba*) to carry out to the best of their ability the colonising views which they expressed when the agreement was made? Yes, but I would beg to remark that the "*obligation in honour*" on the Company's part presupposed an honorable fulfilment by the Government, of the conditions of the obligation, and this was not done.

24. By the Chairman: I conclude that no member of this Committee has held private communication with you on this subject previous to your coming here? None whatever since the Committee was appointed.

This concluded Mr. Bell's examination.

SATURDAY, 8TH JULY.

PRESENT :—

MR. KING,
,, PORTER,
,, CARLETON,

MR. WORTLEY,
,, MACANDREW.

MR. E. G. WAKEFIELD, Chairman.

The Honourable the Attorney-General present to be examined.

1. By the Chairman: I presume that you are aware of the nature of the subject which this Committee has to enquire into? Yes.

2. Would you be so good as to throw any light on that subject which your knowledge of facts connected with it will enable you to do? When I was first asked to attend the Committee I thought that I had no information which would be of value to them; but it afterwards occurred to me that it might be desirable to bring under the notice of the Committee a point which for some years had been before my own mind, having some bearing upon the subject of the enquiry. Mr. Attorney-General read a paper upon the subject of the Committee's enquiry.

3. You infer that there has been a clerical error, or an error through inadvertence, and you draw your inference from the context of the rest of the Act? Yes, it occurs to me that the use of the words "New Zealand" in the 20th Section of the Act to promote colonisation in New Zealand, 10 and 11 Victoria, is illogical, but any one reading the nineteen preceding sections of that Act would naturally expect to find the words "the Province of New Munster" in the 20th section instead of the words "New Zealand."

4. Are you aware of any protest from this part of the colony against bearing a proportion of the Company's debt? I recollect that some time ago, when New Zealand was divided into two provinces of New Ulster and New Munster, and when I myself was a member of the Executive Council of the province of New Ulster, that the Executive Council of that Province agreed to a strong expression of opinion against the justice or expediency of imposing any portion of the New Zealand Company's Debt upon the Northern district of New Zealand; that that protest of expression of opinion was concurred in by the then

Lieutenant-Governor of that Province, Colonel Wynyard; that it was forwarded by him to Governor Sir George Grey, and by him forwarded to Her Majesty's Secretary of State, accompanied by an expression of his own concurrence therein. I believe that a copy of that resolution and of the correspondence connected therewith has been laid upon the table of the Legislative Council.

5. Supposing you to have read the Clerk's report of Mr. Bell's evidence, will you be so good as to answer the following question which was put to him,—“Will you be so good as to define what you mean by North and South?” If I used the words North and South I should understand the North to include so much of the North portion of the North Island as lies to the North of the Mokau. By that answer I mean to convey my impression that the scene of the New Zealand Company's operations has been confined to the South of that line.

6. By Mr. Porter: Do you agree generally with the views of Mr. Bell? My answer to that must be in these words, That it was my opinion at the time, and I believe the general opinion, that the North of New Zealand in no way benefited by the arrangement by which the Company were to have the right of selecting land to the value of £50,000. It was also my opinion at the time that it was mainly the fault of the New Zealand Company that that arrangement was finally not fulfilled and completed.

7. It appears by the last answer that you have given that you differ in opinion from Mr. Bell when he states the principal cause of the non-fulfilment of the agreement between the New Zealand Company and the Government? I believe the principal cause rested with the New Zealand Company. I believe it was the general opinion in this part of New Zealand that the North district suffered serious detriment from the fact of so much land having been so long kept out of the market in consequence of the existence of the arrangement in question. (At the request of Mr. Carleton the chairman read portions of Mr. Bell's evidence.)

8. Referring to Mr. Bell's answer as follows—“Yes, but I would beg to remark that the ‘obligation in honor’ on the Company's part presupposed an honorable fulfilment by the government of the conditions of the obligation, and this was not done,”—do you agree with him? To the best of my knowledge, belief, and recollection, there was no breach of the arrangement in question on the part of the local government.

9. The New Plymouth settlement formed a part of the Province of New Ulster? It did.

10. On the supposition of a clerical error in the Act, viz. the substitution of “New Zealand” for “New Munster” would not the New Plymouth settlement have been released from any share in the debt? Yes.

11. By Mr. King: Had the protest of the Executive Council to which you have referred been received by the Imperial Government prior to the passing of the Constitution Act? I don't recollect the exact date, it will be seen by the papers.

12. By Mr. Macandrew: In the event of the Company having accepted the right to select 1,300,000 acres, would they have been entitled to select the whole or any portion of it in the Province of Auckland? Practically I believe not, my recollection of the transaction was as follows—The New Zealand Company alleged that they had made extensive purchases of land in New Zealand, that in the making of these purchases and in otherwise promoting colonization, that they had expended large sums of money; that it was ultimately arranged between that Company and the British Government, that they were to have granted to them in New Zealand as many acres of land as would be equal to four times the number of pounds sterling so spent; that this arrangement was entered into by the Government in the belief and on the understanding that the Company had purchased from the native owners of land in New Zealand as much as would enable the Government to carry out that arrangement, and I believe that at that time the purchases and the outlay of the Company were entirely confined to the country south of the Mokau, with the exception of a purchase of some old claims in England which were not pursued by the Company.

13. Are you aware that at the time this arrangement was completed, the Company had purchased 1,300,000 acres in the Southern settlements? I believe that at that time the Company had not made *valid* purchases to that extent.

14. By Mr. Wakefield: But the Company claimed to have made valid purchases to a much larger amount? Yes, that was so.

15. By Mr. Wortley: Referring to the 20th clause of the 10th and 11th Victoria, ch. 112, would not the appropriation by that clause of the sums necessary for surveys and for the purposes of emigration with reference to the Province of New Ulster have actually left no balance to pay the charges of the Company? Yes.

16. By Mr. Mackay: With reference to the previous part of your evidence do you not think that if a clerical error occurred in the Act to promote colonization in New Zealand 10 and 11 Victoria, by improperly introducing the words “New Zealand” in the 20th section of that Act, instead of the words “New Munster,” such clerical error would have been rectified by the Imperial Parliament when passing the New Constitution Act?

I think that if the Imperial Parliament had believed, or known, or had the slightest reason to suspect that such clerical error had been made, that it would have been corrected.

17. Will you state whether or not this supposed clerical error was ever brought before the notice of the inhabitants of the Province of Auckland previous to the meeting of this Committee? I believe not, I have mentioned the subject to two or three persons but beyond that I believe not. There are two views of the case, one that it might be a clerical error; another that the bill might have been drawn by or on behalf of the New Zealand Company in which the words "New Zealand," might have been knowingly and deliberately made use of, and that the Bill might have been passed in the hurry of the closing session, and that Parliament had not in fact given its deliberate sanction and assent to so illogical a conclusion.

18. Then if the Bill was drawn by or with the consent of the New Zealand Company, do you not think that the Government would have referred such bill to the law officers of the Crown with its own instructions for them to report upon? Yes.

19. Do you not therefore suppose that such draft with the instructions would be made to correspond? Yes, but I must add that I think the law officers of the Crown had probably not much acquaintance of the actual state of the colonization of New Zealand or with the field of the Company's operations.

20. With the known and frequent disputes between the Government and the New Zealand Company at the time of passing the said Bill, are you still of opinion that the law officers of the Crown would be ignorant of the names and terms used in the settlements of New Zealand? I think it probable they would be acquainted with the names and terms referred to in the questions.

21. Do you know the time of the Session the Act No. 10 and 11 passed? From the fact of its being No. 112 I should presume that it was towards the close of the session.

22. Have you any objection to answer the following question,—do you think that the land now to be acquired from the Natives in the Northern Province ought to bear its proportion of the Debt now placed against the Colony by the Home Government the funds for which purpose being derivable from the general revenue of the Colony? I have no objection to answer the question, my answer being that I am decidedly of opinion that it ought not.

23. By the Chairman: I wish to make you aware that some members of the Committee imagine an inconsistency between your view of the probable substitution of "New Zealand" for "New Munster" by inadvertence or otherwise and the fact that New Plymouth, one of the Company's settlements where they had purchased land and laid out money was in New Ulster, will you be so good as explain this? I am not quite clear in my own mind as to whether New Plymouth should or should not, with reference to the subject before the Committee, be deemed to come within the meaning of the words I have before made use of, viz., the "scene of the New Zealand Company's operations."

21. Then on what ground do you draw the boundary line between North and South at the river Mokau? Because I am quite clear that their colonising operations did not extend Northward beyond that line.

WEDNESDAY, 12TH JULY.

PRESENT—

MR. MACANDREW,

„ MACKAY,

„ CARLETON,

MR. WORTLEY,

„ PORTER.

MR. E. G. WAKEFIELD, Chairman.

The Honourable Mr. Whitaker examined.

1. By the Chairman: You are aware of the nature of the enquiry before this Committee? I am.

2. Will you be so good as to throw any light upon the subject which your acquaintance with it will enable you to furnish? In my own opinion Auckland ought to be exempt from the payment of any portion of the New Zealand Company's debt. I ground it on two principles; first, that the Province of Auckland as now constituted was not founded by the New Zealand Company never had any beneficial connection with it, and the New Zealand Company, at the time their existence ceased, had no claim whatever to any lands within the Province; the second reason would be; by the Act of Parliament 10 and 11 Victoria, chap. 112, the New Zealand Company's operations were specially confined to the Province of New Munster no part of which is now included within the Province of Auckland.

3. You appear to divide the subject into two distinct parts, that which relates to the question of mere equity or justice in the moral sense and that which relates to the technical position of the question as to the liability of Auckland;—on the first point will you be so

good as to explain more fully to the Committee than by the mere proposition which you have laid before the Committee the grounds on which you think that Auckland ought to be exempted? I think that it should be exempted on the grounds, as I have before stated, of the New Zealand Company having had no beneficial connection with Auckland. To shew how entirely foreign from the settlements of the New Zealand Company has been that founded by the Government at Auckland, I would call attention to the following circumstances:—When Auckland was first founded by Governor Hobson, he was at a loss for workmen to erect a public building: he obtained a few workmen from the New Zealand Company's settlement of Wellington; complaints were immediately made, first by the colonists at Wellington, a public meeting being held for the purpose of remonstrating, and secondly strong representations were preferred to the Secretary of State by the New Zealand Company and an application was made that the commissioners of colonial land and emigration might be directed to send out to Wellington at the public expense a number of workmen, corresponding in calling and number to those carried off by Governor Hobson, an arrangement which was acceded to by the Secretary of State to be carried out at the expense of a fund arising from the sale of land at Auckland. Another point is, in the year 1843 the Company obtained, by agreement with the Secretary of State the right to a large quantity of land in the town and district of Auckland, and in the exercise of that right they became conditional owners of a considerable portion of the best land in the town, suburbs, and country, at the same time taking upon themselves an *obligation in honour* to carry out to the best of their ability the colonising views which they expressed when the agreement was made. The Company always evaded this debt of honour, and never took one step toward carrying out at Auckland their colonising views, but held the best lands of the district in utter barrenness for several years, to the great and manifest injury of the settlement, and it was firmly believed that the directors, from the commencement never intended any other course, but acted throughout with a determination to throw obstacles in the way of the progress of the government settlements, in order to enhance the comparative importance of their own, a conclusion fully justified by their conduct in the transaction, and confirmed by their published documents. A third circumstance is, when the territory of New Zealand was divided by the Governor-in-Chief into two Provinces, the Company's small settlement of New Plymouth was included in the Northern Province with the government settlements, an arrangement strongly objected to by the Directors as "seriously prejudicial to the Company, and likely to entail considerable inconvenience on their settlers" and the Secretary of State for the Colonies, Earl Grey yielded to the request of the Directors, and gave his consent to such an alteration of the boundary line that even this slight connection should no longer exist between the Company's settlements and those founded by the Government. The fourth reason will stand thus,—in March 1851, the Directors of the New Zealand Company stated to Earl Grey "That the bulk of the expenditure incurred in this country (England) on behalf of New Zealand, had been the direct and unavoidable consequence of the impolicy which fixed the seat of local government on a *desert spot*, remote alike from the European population and from the commerce of the island." A statement in every particular the very opposite of the truth, one of a series of hostile, disparaging and calumnious attacks made by the Directors of the New Zealand Company on the settlement of Auckland, commencing with its foundation and continued even after the Company itself had terminated its existence. The next reason is this, the New Zealand Company's principal agent Mr. Fox, speaks of "The Company's debt as one with which the Northern colonists have nothing to do" and the settlers of the Southern colonies admit the right of the Government Settlements to exemption from this charge. These reasons appear to me to be conclusive that the New Zealand Company never had or professed to have any claim upon what now constitutes the Province of Auckland, and that they always endeavoured to keep their settlements as clear as possible from any connexion whatever with it.

52. You spoke just now of some admission by the settlers in the South that Auckland was not rightly liable for any portion of the Company's claim on the colony. Will you give the Committee some evidence of that fact? The admission was made at a Public Meeting held at Wellington, I think in the year 1848, but I am not sure as to the date.

4. Are you able to furnish some documentary evidence of the fact? I will endeavour to do so; that I think will be sufficient to shew that the New Zealand Company could have no moral claim on the ground of benefit conferred. Then with respect to the other branch of the question, that is that Auckland should be compelled to pay its quota for land, or the right of sale then surrendered by the Company that land or right of selection did not comprise any portion of the present Province of Auckland. The Colonisation Act 10 and 11 Victoria, specially confined the New Zealand Company's operations to the Province of New Munster, no part of which now constitutes any part of the Province of Auckland. The land or right of selection to land given up by the Company comprised land the proceeds from the

sale of which could be in no way beneficial to any portion of the Province of Auckland. The absolute want of connection between the New Zealand Company's settlements and the Province of Auckland was pointedly alluded to by Lord Grey when Secretary of State, in a letter from the under Secretary to Mr. Draine and others of the 22nd July 1850, in which in answer to a complaint made to him by the New Zealand Company, to the effect that he had remitted purchase money to naval and military officers in the government settlements he said "that it certainly did not occur to his lordship that the continuing this privilege in the Northern Province, at a distance from all the Company's settlements could be deemed an infringement of the agreement which he Lord Grey with respect to not lowering the value of land in the Company's settlements by permitting a lower price in other parts of the colony," I would also direct the attention of the Committee to the fact, that the Royal instructions of 1846 prescribe that separate accounts shall be kept by the Treasurer of each of the Provinces of New Zealand of the gross proceeds of the land sales, and, after deducting certain charges therein mentioned that the net balance shall be held in trust for defraying the cost of introducing into the said respective Provinces emigrants from the United Kingdom.

5. A good deal has been said about the difficulty of drawing a line for distinguishing between lands properly liable and not liable to the Debt. Can you throw any light upon that point? I do not think that any difficulty would arise in drawing an exact line, but for the present purpose it is sufficient to state, that, at the time when the Company's functions expired by the surrender of its charter, they neither had, nor had a right to select a single acre of land within what now comprises the Province of Auckland.

6. By Mr. Mackay: Please to state your notion of an exact line? My notion of an exact line if put on the ground simply of equity and justice, would be a line drawn co-extensive with a boundary line between the Provinces of New Ulster and New Munster, exclusive of any special claim the Company might have on account of lands situated at New Plymouth. Strictly speaking with reference to Act of Parliament 10 and 11 Victoria, I think the line would be exactly co-extensive with the line between New Ulster and New Munster. In consequence of Sir George Grey fixing the boundary line of New Ulster so as exactly or very nearly to include the Province of New Plymouth, if New Plymouth became excluded by Act of Parliament 10 and 11 Victoria, from the New Zealand Company's operations. The Company as I have already stated remonstrated against this, and Earl Grey at the request of the Directors gave his consent to an alteration of the boundary line, so as to comprise New Plymouth within New Munster and make it technically subject to the Company's operations which indeed had been carried on there, in fact from the beginning of the settlement. This was giving to the Company all they ever professed to claim, they asked for no more. This I think sufficiently explains what I have stated that New Plymouth may equitably be included within the Company's claim although legally excluded by the act of Parliament as acted on by Sir George Grey in his division of the Colony.

7. By the Chairman: The alteration never did take place? The alteration did not take place that I am aware of, nor can I give any reason why it was not done. It could not be that Sir George had any misgivings as to the fair liability of Auckland to the payment of any portion of the New Zealand Company's claim, as his despatches on that subject give his reasons in full why Auckland is entitled to be exempt.

8. And he is known to have had a personal predilection for including New Plymouth in the Province of New Ulster? Yes I believe so; but at the same time it should be remarked that the cessation of the Company's functions coming so soon after the receipt of the instructions the time for carrying them into execution with effect may have passed away without being regarded.

9. By Mr. Carleton: Are you aware of a despatch in which Governor Grey recommends that the Company's debt should be charged upon the colony? I am aware that there is a despatch which is said to bear that interpretation. The despatch to which I allude is the one in which Governor Grey asks for instructions how the debt should be divided among the respective Provinces.

SATURDAY, 15TH JULY, 1854.

PRESENT—

Messrs. PORTER, KING, CARLETON, MACANDREW, and MACKAY.
Mr. E. G. WAKEFIELD in the Chair.

The Honourable the Attorney-General examined.

1. By the Chairman: During your former examination the question was raised as to how the words "New Zealand" could have been substituted for "New Munster" in the 10 and 11 Victoria, whether by inadvertence or design. Consistently with the fact that New Ply-

mouth, one of the Company's settlements, when the company had both acquired land and laid out money, was made a part of New Ulster, upon that subject your evidence has been given to the Committee, which I believe you have seen. If so, will you be so good as to state your present impressions as to the means whereby New Plymouth became, by becoming part of New Ulster, technically excluded from the territory to which the Company's operations and claims were always confined, though morally forming a part of such territory?—I concur in the evidence on this subject given by a former witness, Mr. Whitaker, which I will now read to the Committee.

2. You think this a more satisfactory explanation of the circumstances than the supposition (which no doubt other circumstances as to the connection between the New Zealand and New Plymouth Companies might suggest, though erroneously) that in fact New Plymouth was not one of the New Zealand Company's settlements? Unquestionably.

The Honourable Mr. Whitaker examined.

1. By the Chairman: Have you been able to satisfy yourself as to why New Plymouth was not transferred from New Ulster to New Munster by the Governor in compliance with Lord Grey's despatch of 28th February, 1848. I find in a despatch dated 6th February, 1849, from Governor Grey to Lord Grey, the Secretary of State, the following paragraph, "Provided the introduction of representative institutions into these islands is likely to be for some time longer delayed, I can see no objection to the adoption of the boundary line between the Provinces of New Munster and New Ulster, which is proposed in your lordship's despatch of the 28th February, 1848."

2. What is your view of the bearing of that extract on the question? My view is, that the reason for the non-transfer had no relation whatever to the Company's debt; but as there was at that time some idea of introducing representative institutions into New Munster and not into New Ulster, the Governor objected to transfer a considerable native population to the former from the latter province, which would have been the case if New Plymouth had been transferred from New Ulster to New Munster.

3. Was not Governor Grey deeply impressed with the belief that the colonists would injure the natives whenever they should obtain the power to do so? Judging from some of his despatches, I should infer that he had some such apprehension.

4. Did he not recommend the suspension of the Constitution of 1846 on that ground principally? Yes.

5. Can you give the Committee any specific information as to the Company's own views of the line which was the proper northern boundary of their operations and interests? I can; it is stated in Lord Grey's despatch of 28th February, 1848, in the following words—"a line commencing at a point upon the west coast of the northern island lying to the north of the river Mokau, and continuing along the north side of the valley of that river in such a manner so as to include the whole of its basin to the summit of the mountain Rangitoto, continuing from the summit of Rangitoto to the summit of Tongariro, along the crest of the intermediate hills dividing the waters, and then continuing from the summit of Tongariro to a point on the east coast lying to the north of the river Ahuriri, in such manner so as to include the whole valley and basin of that river.

6. Does anything else seem to you as being likely to be useful to the Committee? I merely wish to verify a statement which I made to the Committee in my former examination in reference to the views taken of Auckland's liability to the Company's debt by some of the southern settlers. I find it reported to have been said, at a meeting of the Settlers' Constitutional Association at Wellington, held on the 7th January, 1852, to take into consideration the draft of a petition to Parliament protesting against the New Zealand Company's Debt, by Mr. Clifford, that the settlers had had no hand in contracting the debt, and therefore could not be justly called upon to liquidate it out of the general taxation of New Zealand; and if this were true in reference to the Southern Province, it was even more clearly evident that Auckland and the Northern Province had no right to be called on to pay a debt which, if it was proved had been fairly caused by the colonizing operations of the Company, had never been under the influence of such operations.

7. Does there appear to have been at the meeting any expression of dissent from that opinion? There was not. Mr. Clifford was the gentleman who, as is reported, in the unavoidable absence of Dr. Featherstone, proposed the first and principal resolution, which, as well as all the others, appears from the report to have been carried unanimously.

8. Have you seen a copy of a despatch from the Duke of Newcastle to Sir George Grey concerning the retention by His Excellency of certain monies accruing to the New Zealand Company from Auckland land sales, and if you have, be so good as to state to the Com-

mittee your impression of the bearing of that despatch upon the question before them, viz. the question of mere justice as respects the liability which has been imposed upon Auckland? I think the best answer to that question will be to read a short extract from the despatch itself. His Grace says "I regret as much as you or the members of the late Provincial Council of New Ulster, whose address on the subject you have transmitted to me, can do, the nature of the burden which the arrangement of 1847 imposed on the land fund of the Northern Province, which had been at no time the scene of the operations of the New Zealand Company."

9. This description appears to have been written in answer to a despatch from Governor Grey dated 9th May, 1853, in which the Governor strongly expresses his opinion of the injustice of the Company's being entitled to receive any portion of the proceeds of the land sales of Auckland? The despatch is in fact an elaborate remonstrance against any portion of the Company's debt being charged on the Province of Auckland, and on the grounds of injustice alluded to in the Duke of Newcastle's answer.

10. By Mr. Mackay: In several parts of your evidence you have used the phrase "the Province of Auckland *as now constituted*," be so good as to explain what you mean by using this expression? I mean the Province of Auckland as constituted by the Governor's proclamation dividing New Zealand into six Provinces; the proclamation is dated the 28th February, 1853.

11. Is that the same boundary as that between New Ulster and New Munster? It is not.

12. Do you happen to know if Governors Hobson and FitzRoy got labourers away from Nelson for the purpose of settling at Auckland? I never heard so.

13. What did you consider to be the boundaries of the settlement of Auckland at the time when the memorial was presented to Governor Grey? It was soon after the present division of New Zealand into Provinces, and the Province of Auckland was then constituted the same as now.

14. What was considered to have been the boundary and probable extent of the settlement of Auckland when Governor Hobson took possession of the district? The settlement of Auckland was then considered as the capital of New Zealand, and to embrace all New Zealand except the limits of the Company's settlements, which were defined by Sir George Gipps to comprise 100,000 acres. In answer to a despatch by Governor Hobson announcing the foundation of the settlement of Auckland as the Capital of New Zealand, the Secretary of State announced Her Majesty's approval which was published in the *Government Gazette* in Auckland.

15. By the Chairman: But you soon discovered that that was a mistake in fact, and that the settlements of Auckland and the Company's settlements were divided from each other by a line which gave the greater portion of New Zealand to the Company as the scene of its operations? My answer is that we found in the end that the New Zealand Company had sufficient influence to have a line drawn where they liked between their own settlements and government's, and that that line is the one which I have before given as an extract from Lord Grey's despatch of 28th February, 1848.

16. By Mr. Mackay: On the supposition that the impression amongst the first settlers at Auckland was that their settlement comprised all New Zealand except 100,000 acres awarded to the Company by Sir George Gipps, do you not think that this affords good and cogent reason for charging the *whole colony* with the Company's present debt? It does not appear to me that a mistake made by a few settlers at Auckland at its foundation could have any bearing as to the question of the liability to the present claim of the Company.

17. Was not the country known as the Valley of the Thames, and at which the Government wished the Company's settlement of Nelson to be founded, intended thereby to be set apart for the scene of the New Zealand Company's operations? The country described in the question was refused for such a purpose by the Company, as I believe because it would be of importance and confer a benefit on the Government settlements at Auckland at the expense of their settlement at Wellington.

18. If it had been accepted would not then the boundaries of Auckland been adjoining to the Company's settlement of Nelson, thereby fixing the Southern limit of the Settlement at Auckland? If that country had been accepted the settlement of Nelson would have been at this day within the limits of the present settlement of Auckland.

19. By the Chairman: Was not this the fact, that the Government wished to obtain for the Northern part of the colony the benefit of the Company's colonizing capital and activity at hemo, but that the Company, except on the occasion described by Mr. Bell, constantly resisted the endeavours of the Government towards that end, and even on that occasion, escaped from the

obligation to which it had assented? Yes, that appears to me to be a true description of the fact.

20. Mr. Mackay: Neither the Government nor the New Zealand Company having expended any funds in the purchasing of the land or towards the colonization of the large extent of country yet to be acquired from the natives in the Southern portion of Auckland and the Northern portion of Wellington, do you not think that in fairness to the rest of the Provinces of the colony which have yet to acquire land from the natives, that this interior region should not also pay its quota of the Company's debt? I think that all that portion of land described which is comprised within the boundary of the Company's settlements as defined by themselves should be subject to their share of the Company's debt, but not the land, which they never had or had a right to select from. It appears to me that the Company's debt should be paid by those who have received the land for which that debt is the purchase money, and as no portion of the proceeds of that land is to be devoted to any object within the limits of the Province of Auckland, to charge the Province of Auckland with any portion of the debt would compel that Province to pay the part of the purchase money of an estate from which they can derive no benefit whatever. In this answer I beg to express no opinion as to the general question of the justness of the Company's claim.

21. You gave an extract from a despatch respecting the boundary line between New Ulster and New Munster, and afterwards stated that the boundary in question was fixed with a view that the former Province of the North Island which is densely inhabited by the natives, should not participate in getting representative institutions. Do you not think that the boundary line in question was with the intention of making a boundary in which a particular line of policy was necessary to be adopted with reference to the aborigines, and not in any way with reference to the future division of the Province into various new settlements when required? No line of policy that I am aware of was ever drawn, but Sir George Grey when authorised to add New Plymouth to the Province of New Munster suggested that if representative institutions were to be soon granted to New Munster, that it might be convenient to exclude New Plymouth as containing a large native population.

22. By Mr. Macandrew: Putting the claim of the New Zealand Company and its interests entirely out of view, and looking at the debt as a condition imposed upon Auckland by the Imperial Parliament in consideration of its handing over to that Province the control of its waste lands, do you consider, taking that view of the case, that Auckland should be exempted? The debt was not a condition imposed by Parliament as the price of handing over the waste lands of the Crown to the Colony. The debt is the purchase money agreed by the Government to be paid for land situate in the southern provinces of New Zealand, and I should conceive that those to whom the estate was conveyed should alone pay the price of it.

23. By Mr. Porter: In Sir George Grey's despatch to Sir John Pakington of the 9th May, 1853, there is the following passage—"Is the native population also formal promises have been made by the representatives of the Crown, that the land fund should be expended on certain objects for their benefit and for that of the settlement; and when the chiefs have objected to part with large tracts of their land required by the Crown, for the inconsiderable sums offered to them, they have been induced to do so by being assured that these sums were not the real payment for the land, but that the true payment would be the future expenditure of the land fund to be realized from the sale of those lands upon objects specified to them, which would promote alike their own benefit and that of the European population. If therefore one-fourth of the land fund of this settlement is diverted from the promised objects and paid to an absentee land company, which body the natives have for many years regarded as being hostile to their interests, there can be no doubt that serious discontent will be created amongst them." Does not this appear to be an important feature in the case? It is an important feature in the case, I am aware that such representations have constantly been made to the natives in purchasing their lands, and that it would now be a breach of faith with them to disregard the assurances which have been given to them. I should like to add that the desultory nature of my evidence may be attributed to the fact that I was not aware that it was intended to examine me as a witness till an hour and a-half before I was called on to give my evidence, and that no list of questions has been furnished me, as I believe is usual, nor have I had any intimation of the nature of the questions before they were put.

NEW ZEALAND COMPANY'S DEBT (AUCKLAND) COMMITTEE.

P A P E R

Laid before the Committee by the Attorney-General at his examination, on the 8th July, 1854.

THE question has frequently been asked, but never satisfactorily answered, how it was, or why it was, that provision was made in an Act of Parliament, enacting that in case the New Zealand Company should fail in their colonizing operations in the Southern portion of New Zealand the debt which might then be found to be due to that body should be charged upon the Demesne Lands of the Crown throughout New Zealand, including the Northern District then being colonised by the Crown, on terms and conditions prescribed by the Crown, and guaranteeing to purchasers of land that the money paid by them for the purchase of land, should be expended in promoting Emigration and on Public Works.

With reference to the subject of the present inquiry, I would suggest, for the consideration of the Committee, a point which I believe has not before been raised, and from which it may not unreasonably be inferred that the present legal liability of the Northern Districts of New Zealand for the payment of the debt due to the New Zealand Company has arisen from the interpolation, or the inadvertent use, of a single word in the Act in question.

The sum of £268,000 has been charged upon the Waste Lands of the Crown by the New Zealand Constitution Act, on the ground that Parliament had previously, by the "Act to Promote Colonization in New Zealand," 10 and 11 Victoria, c. 112, guaranteed the payment of the sum to the New Zealand Company out of the proceeds of all future sales of the Demesne Lands of the Crown in New Zealand.

With reference to the question as to the claim of the Province of Auckland to be exempted from liability to the payment of that sum, I would draw the attention of the Committee to the provisions of the 10 and 11 Victoria, c. 112.

It cannot be disputed that the Constitution Act, 15 and 16 Vic., charges the sum of £268,000 upon the sale of the Waste Lands of the Crown in New Zealand at large, or that a similar charge was made upon the Demesne Lands of the Crown in New Zealand by the Act of Parliament 10 and 11 Vic., c. 112; but an attentive consideration of the "Act to promote Colonization in New Zealand," 10 and 11 Vic., will, I think, lead the Committee to the conclusion, that the words "New Zealand" in the 20th sec. of that Act were improperly inserted instead of the words "New Munster."

It will be observed by the Committee that the Act in question, 10 and 11 Vic., recites that the Company had acquired large tracts of land in the Colony, and that many of Her Majesty's subjects, at the instance of the Company, had expended their capital in forming Settlements on lands belonging to the Company.

Although the word Colony is used, it was well known that the actual operations of the Company had been confined to the Southern Districts of New

Zealand. The Act then recites that it might tend to restore the prosperity of the Colony, and promote the establishment of new Settlements, and that certain Royal Instructions, &c., were suspended within the Province of New Munster," and enacts that such Instructions shall be sus-

pended within the "Province of New Munster." Thus it will be seen that the objects of the Act are limited expressly to the "Province of New Munster."

In furtherance of these objects, the 2nd clause of the Act vests "all the Demesne Lands of the Crown in the Province of New Munster" in the New Zealand Company, in trust for the purposes and subject to the provisions thereafter contained. Thus expressly again limiting the operation of the Act to the "Province of New Munster."

Again, by the following clauses, the Act gives to the Company the power of disposing of the Demesne Lands of the Crown in the Province of New Munster, on certain terms and conditions prescribed by the Act; and the provisions of the Act in the following clauses, are confined to Lands within the "Province of New Munster."

The 16th clause of the Act then provides that certain loans to the Company shall be secured upon the Lands, &c., then belonging to the Company. All the Lands of the Company being, as the Committee are aware, within the Province of New Munster.

After reciting that it is expedient to provide for the contingency of the Company finding themselves unable to continue their proceedings "with profit to themselves and benefit to the said Company," the 19th section provides that all the Lands of the Company shall revert to and become vested in Her Majesty as part of the Demesne Lands of the Crown, subject to subsisting contracts and upon the condition of satisfying any liabilities of which the Company might then be liable under existing engagements with respect to the Settlement of Nelson, or any liabilities which the Company should have contracted with the consent of the Special Commissioners. The Lands in question, thus to revert to the Crown, being, it is to be observed, lands situated in the Southern Settlements. And now for the first time the words "New Zealand" occur instead of the words the "Province of New Munster." And the 20th section provides that upon the reversion to Her Majesty of the lands belonging to the Company all claims upon the Company in respect of the loans which may have been advanced to the Company shall be remitted to them; and that there shall be paid to the Company out of the proceeds of all future sales of the Demesne Lands of the Crown in "New Zealand" the sum of £268,370 15s.

The charge of any part of this sum upon the Province of Auckland virtually rests upon the use of the words "New Zealand" in the 20th section of the "Act to Promote Colonization in New Zealand," 10 and 11 Vic., c. 112. Looking to the scope and object of the whole of the preceding provisions of the Act, it must, I think, be obvious that the words "Province of New Munster" ought to have been used in the 23 section instead of the words "New Zealand;" that there is strong ground to believe that the words "New Zealand" have been inserted inadvertently or otherwise, and that it is more probable either that the enactment as it stands was passed in the hurry of Legislation, or that Parliament was deceived, rather than that the Legislature gave its *deliberate assent* to a conclusion palpably illogical, and practically unjust.