

No. 184.—Petition of P DUNGAN and 906 Others.

THE Gold Fields Committee, to whom was referred the petition of P Dungan and others, praying for additional water-supply to the Kumara Gold Fields, have taken valuable and exhaustive evidence on the several allegations contained in the petition, and, after careful consideration of the subject, have the honor to report that they are of opinion: (1.) That the colony has, in the Waimea and Kumara Water-Race, a valuable property and one which, if it were judiciously and economically managed, would give a large direct revenue and pay a fair interest on the outlay, to say nothing of the collateral advantages which it confers on the district. (2.) That the several branch races require extension, and that the carrying capacity of these branch races and also of the main race should be increased. This is rendered necessary by the increasing demand for water, caused in a great measure by the Government having constructed a sludge-channel, thereby opening up a very large area of auriferous and highly-payable sluicing-ground. (3.) That the heavy expenditure of £16,000 on the construction of this work will be altogether thrown away unless an additional supply of water is procured.

That in constructing the sludge-channel, and at the time when arrangements were being made as to the amount to be paid by the miners for its use, an implied guarantee was given that the water-supply would be increased, inasmuch as the officer in charge, under instructions from the Government, stated that sufficient water would be provided to work the channel, and as the Government at the same time called for but did not accept tenders for the construction of a second reservoir on the Kapitea Creek.

The Committee therefore recommend that the carrying capacity of the main and branch races be increased, and that the latter be extended; also that the second reservoir on the Kapitea Creek be constructed, and that the Government make provision in the estimates for the carrying out of these works. The Committee further recommend that, when the various works in connection with the scheme are completed, the whole should be handed over to a local body, to be under its control and management; provided that guarantees be given that the colony be relieved from any further expenditure in connection therewith, and that the present charges for water be not increased.

16th August, 1881.

No. 212.—Petition of HAUHAU TRAMWAY COMPANY.

THE petitioners pray that compensation be awarded them for loss sustained by the injury to the traffic on their tramway caused by the construction of a road, while their conditions of contract with the County Council entitled them to compensation in the event of a competing road being constructed.

I am directed to report that the Committee recommend that the Government take the necessary steps to have a fresh inquiry held with a view of having the matter finally dealt with.

17th August, 1881.

Nos. 219, 218, and 220.—Petitions of C. F ROBERTS and 61 Others. Subject: Declaration of the Maerewhenua River as a water-course for the discharge of mining *débris*.—C. F ROBERTS and 62 Others. Subject: Additional water-supply for the Maerewhenua Gold Fields.—C. F ROBERTS and 62 Others. Subject: Obstruction to mining on the west side of the Maerewhenua River caused by freehold sections, being Sections 13 and 19, Block X., containing about 297 acres.

Your Committee have the honor to report:—

In or about the year 1873 Messrs. Borton and McMaster issued an injunction to restrain Howe and party from running tailings into the Maerewhenua, which river flowed past freehold and leasehold land occupied by them. In order to arrive at a solution of the question, then a new one, the Provincial Executive of Otago agreed to state a case before the Court of Appeal. The case Borton and others *v.* Howe and others was heard at Wellington in the month of December, 1874, the cost being defrayed by the Provincial Government. Judgment was given on the 18th May, 1875, by his Honor Mr. Justice Johnston. The case was argued by the Attorney-General, now his Honor Chief Justice Prendergast, and Mr. James Smith, for the plaintiffs, and by the late Mr. James Macassey and Mr. Robert Stout for the defendants. It was held by the Court, *inter alia*, that the common law respecting the rights of riparian proprietors is applicable to the colony. The common-law rights of such proprietors are so far abridged by the provisions of "The Gold Fields Act, 1866," section 6, as to give the holders of miners' rights the power to take, divert, and use the water of streams on private lands, subject to regulations made under the Act; but the miners are not entitled to return the water into the stream in a polluted state.

The Appeal Court seems to have based its decision upon the legal maxim that every man is required to use his right, howsoever acquired, so as not to injure his neighbour. This decision, although not held by the Court with any great confidence, as against the licensed miner, as is evident from the remarks made by his Honor Mr. Justice Johnston, in the trial of *Glassford v. Read* and another, in 1874—a case very similar in its nature to that of *Borton v. Howe*—must be considered to be the highest interpretation now extant of the law of riparian rights upon New Zealand gold fields. Your Committee are not aware that it has been in any way modified by any legislation enacted since 1866.

The runholders, who were represented by Messrs. Borton and McMaster, subsequently petitioned the House, complaining that they were not able to enforce their legal rights, and were deprived of pure water for pastoral and domestic purposes. Their petition was exhaustively reported on by your Committee on the 18th October, 1878. In their report the whole position will be found discussed, and the following recommendations were made: "(1.) That the Government should communicate with the County Council of Waitaki, asking what responsibility that Council is prepared to take in providing a water-supply for the settlers on the lower reaches of the Maerewhenua. (2.) That the Government should communicate with the Miners' Association at Livingstone, asking what aid in