

APPENDIX.

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

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

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

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

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

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

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

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

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

The original petition is herewith returned.

General Crown Lands Office,

Wellington, 24th July, 1882.

H. J. ELLIOTT,

Under-Secretary.

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

SIR,—

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

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

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

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

I have, &c.,

C. A. WRAY,

Commissioner of Crown Lands.

W. Courtney, Esq., New Plymouth.

3.—STATUTORY DECLARATION OF J. MAYSMOR.

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

And

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

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

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

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

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

J. MAYSMOR.

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

J. M. ROBERTS, J.P.,

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