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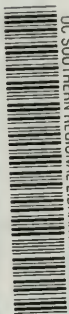
HOUSE

SELECT COMMITTEE ON LAND

TENURE BILL

REPORT

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CAPE OF GOOD HOPE.

REPORT

OF THE

SELECT COMMITTEE

APPOINTED TO CONSIDER AND REPORT ON

LAND TENURE BILL.

Ordered by the House of Assembly to be printed.

MAY, 1876.

CAPE TOWN:

SAUL SOLOMON & CO., STEAM PRINTING OFFICE.

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REPORT

OF THE

SELECT COMMITTEE on LAND TENURE BILL,
appointed by order of the HOUSE OF ASSEMBLY,
dated 29th May, 1876, for consideration and report,
with power to take evidence and call for papers,
consisting of the Honourable the Commissioner of
Crown Lands and Public Works, Messrs. Moodie,
Frost, Gush, Scanlen, Adams, and Paterson.

Your Committee have considered the Bill referred to them and have taken the evidence submitted herewith.

Your Committee, although of opinion that the rights of the Government, conferred by Sir John Cradock's Proclamation, have until a recent period been generally admitted to extend to all quitrent lands, whether riginally loan places or not, consider it inexpedient to proceed with the Bill pending the decision of the Privy Council in the case of *De Villiers vs. the Cape Divisional Council*.

Your Committee is further of opinion that, with reference to any land or material required for railways and main roads, it is desirable that some more equitable mode of arriving at the just value to be paid in respect of compensation should be substituted for that now adopted, and that Government be requested to introduce a Bill to give effect to this recommendation at as early a date as practicable.

THOS. MOODIE, Chairman.

 PROCEEDINGS OF COMMITTEE.

PROCEEDINGS of COMMITTEE on LAND TENURE BILL, appointed by order of the HOUSE OF ASSEMBLY, dated 29th May, 1876, consisting of Messrs. PATERSON, MOODIE, GUSH, FROST, SCANLEN, ADAMS, and COMMISSIONER OF WORKS.

Friday, 2nd June, 1876.

PRESENT :

Mr. Paterson,		Mr. Frost,
„ Moodie,		„ Gush.

Resolved,—That Mr. Moodie be Chairman of this Committee. Clerk read order of the House, dated 29th May, 1876.

Resolved,—That two copies of the Bill proposed by Mr. Paterson to be introduced, entitled “ A Bill to Simplify and Improve the Land Tenure of this Colony,” and which was referred to this Committee, be laid upon the table of the Committee at its next meeting.

Resolved,—That the Surveyor-General be summoned to attend and give evidence on Wednesday next, at 10 o'clock.

Committee adjourned till Wednesday next at 10 a.m.

Wednesday, 7th June, 1876.

PRESENT :

Mr. MOODIE (Chairman),

Commissioner of Works,		Mr. Scanlen,
Mr. Adams,		„ Paterson.

The Commissioner of Works drew attention to the fact that the last meeting of the Committee was held and concluded before the hour for which it was appointed.

The Commissioner of Works moved,—That the resolution passed last meeting to lay copies of a Bill drafted by Mr. Paterson on the table, be rescinded.

Agreed to.

The Surveyor-General examined.

Resolved,—That Mr. Myburgh, M.L.A., be summoned to give evidence at next meeting.

Committee adjourned to Friday, at 10 a.m.

Friday, 9th June, 1876.

PRESENT :

Mr. MOODIE (Chairman),

Commissioner of Works,		Mr. Adams,
Mr. Gush,		„ Frost.

Mr. Myburg, M.L.A., examined.

Resolved,—That Mr. E. C. Wright, M.L.A., be summoned to attend and give evidence at next meeting.

Committee adjourned to Tuesday, at 10 a.m.

Tuesday, 14th June, 1876.

PRESENT :

Mr. MOODIE (Chairman),

Commissioner of Works,		Mr. Gush,
Mr. Adams,		„ Paterson,
„ Frost,		„ Scanlen.

Letter and statement of Mr. W. Nichol, (Spitzkop, Division of Albany), with statement of his case read.

Committee in consultation.

Mr. Wright, M.L.A., examined.

Committee in consultation.

Committee adjourned to Thursday next, at 10 o'clock.

Thursday, 15th June, 1876.

PRESENT :

Mr. MOODIE (Chairman),

Commissioner of Works,		Mr. Gush,
Mr. Adams.		„ Scanlen.
„ Frost.		

Committee in deliberation.

Mr. Scanlen moved, seconded by Mr. Frost, the following resolution :—

Your Committee have considered the Bill referred to them and have taken the evidence submitted herewith.

Your Committee, although of opinion that the rights of the Government, conferred by Sir John Cradock's Proclamation, have until a recent period been generally admitted to extend to all quitrent lands, whether original loan places or not, consider it inexpedient to proceed with the Bill pending the decision of the Privy Council in the case of De Villiers and the Cape Divisional Council.

Your Committee is further of opinion that with reference to any land or material required for railways or main roads it is desirable that some more equitable mode of arriving at the just value to be paid in respect of compensation should be substituted for that now adopted, and that Government be requested to introduce a Bill to give effect to this recommendation at as early a date as practicable.

Agreed to.

Resolved,—That the Chairman bring up the Report.

MINUTES OF EVIDENCE.

SELECT COMMITTEE ON LAND TENURE BILL.

Wednesday, 7th June, 1876.

PRESENT :

Mr. MOODIE (Chairman),

Mr. Paterson,
Com. of Works,

Mr. Scanlen,
,, Adams.

Surveyor-General examined.

1. *Chairman.*] You are Surveyor General of the Colony?—Yes. *Surveyor-Gen.*
June 7, 1876.

2. Have you read the Bill now before the Committee?—Yes, I read it in the *Gazette*.

3. Are you acquainted with the provisions of the proclamation of 1813?—Yes.

4. What lands do they refer to?—That is now a question in dispute ; whether they refer to lands granted on perpetual quit-rent in the first instance, or only to lands converted from loan places to perpetual quitrent tenure. When a case recently came before the Supreme Court, the three Judges were unanimously of opinion that they apply to perpetual quit-rents that have been converted from loan tenure, but a majority of the Court decided against the application of the provisions of the proclamation to farms originally granted on perpetual quit-rent.

5. Were there quitrent grants before the proclamation?—There were grants called 15 years quitrents, convertible after 15 years ; but within less than a year before the proclamation was issued there were two or three grants made on quitrent in the first instance, on the

Surveyor-Gen. same conditions and in the same form as those issued
 June 7, 1876. subsequently to the proclamation. That was in the
 time of Sir John Cradock.

6. Then there would be only a very limited number of perpetual quit-rent farms issued before the proclamation?—Only two. It seems to have been by anticipation that they were issued, for all the provisions of the proclamation were complied with in them.

7. Then as a rule, prior to the proclamation, the farms were generally given out as loan places?—Before the proclamation they were given out on three different kinds of tenure. First there was the loan tenure. Under this the land was lent to the applicant, who had to give what was called a “recognition” amounting to a small sum of six rix dollars; this was afterwards raised to twenty-four rix dollars; and this “recognition” was mostly paid in kind.

8. Were these places let for any specified time?—For one year, with no obligation on the part of the Government to renew the lease.

9. Were they surveyed?—No. The leases were merely registered.

10. Then there were no specified boundaries?—Not at first. The boundaries were defined and limited afterwards.

11. So that in fact the Government, under loan tenure gave up no rights at all?—None. The Government remained masters of everything, but the Lessee had a tacit right to sell the building or opstal on payment to the Government of transfer dues. The land was resumable.

12. You mentioned that there were three kinds of tenure, will you proceed?—There was the property tenure.

13. Yes. What rights were reserved under that?—The titles purported to be freehold, but the exactions were very great.

14. What were they?—The holders were obliged to pay one-tenth of their grain.

15. Mr. *Gush.* Does that hold good still?—There has been no enactment to repeal it. These very conditions are expressed in the titles.

16. *Commissioner of Works.*] Were there planting conditions in the titles?—Yes, every man was obliged to plant, and to allow thoroughfare; they were not permitted to cut down a single tree without planting another in its place.

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17. *Chairman.*] You said every man must allow thoroughfare, what does that mean?—It is expressed in the titles, “for the public good.” Three roods or thirty-six feet were reserved upon all freehold tenures, through any part of the land where it might be required for “the public good.”

18. Without compensation?—Without compensation.

19. For only one rood or as many roods as they liked?—It says, “thoroughfare of not less than three roods.” Then there was a general clause which rendered freeholders liable to such impositions, servitudes or duties as the Government might see fit to impose for the public good.

20. And what was the nature of the third kind of tenure?—The third kind of tenure was what I have referred to as the fifteen years quit-rent lease. It was held on quit-rent for fifteen years, the land resumable by Government after that term, on payment by the Government for the buildings and improvements. Under this tenure the land reverted to Government after fifteen years on payment for improvements, and Government was not bound to a renewal of the lease.

21. Were these holdings subject to payment of annual quit-rent for fifteen years?—Yes.

22. I presume that the proclamation of Sir John Cradock was made chiefly for the purpose of converting the loan places into perpetual quit-rents?—Yes. But in practice the conversion of these fifteen years quitrents into perpetual quit-rents took place under this proclamation.

23. Then these fifteen years quitrents were treated in the same manner as loan places, although they were not specified in the proclamation?—Yes. Previously loan plans could only be converted into freehold to a limited extent, namely, 60 morgen; that is to say, if a holder of a loan place applied for its conversion into freehold, he could only get it for a limited extent, seldom more than 60 morgen.

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24. What rights were reserved by Government when they converted these loan places into quitrents?—The rights reserved are contained in the 4th section of the proclamation.

25. The question seems to be whether the provisions of that proclamation refer only to the loan places, at that time converted into quitrents, or also to original quitrents?—There is no doubt that the proclamation applies to converted loan places, because upon that point the three Judges agreed.

26. Do you consider it refers to them?—I am not qualified to give a legal opinion, but my impression always has been, and still is, that all quitrent grants are subject to this law.

27. Since that time have all lands been sold under quitrent?—No, they have been sold in freehold also. Immediately after the proclamation loan lands began to be converted into quit-rents, but they were very few; the loan holders seemed to be content with their precarious tenure because they would only have to pay 24 rix-dollars, whereas in quitrent they would be liable to pay £18 15s. which was the maximum fixed by law.

28. *Mr. Adams.*] When did freehold sales first take place?—When Mr. Montague became Colonial Secretary, in 1843, sales took place for the first time on freehold tenure. A large extent of land was then parted with for a merely nominal sum of 2s. per acre.

29. What were the conditions?—They were special conditions. In some places an outspan was reserved, and in some a road, and so on. In the titles there was a general clause “subject to all the conditions that are established or may be established under this tenure.” This clause has given rise to a great deal of discussion and is dealt with in the judgments in the case I have referred to of *De Villiers vs. the Divisional Council of the Cape*.

30. *Chairman.*] Was there no right reserved?—The proclamation did not apply to this tenure, special reservations, where necessary, were made in the titles.

31. *Mr. Adams.*] Are you of opinion that the proclamation applies to land sold under perpetual quitrent?—No. After that the Land Act of 1860 was passed; in

which there is a special provision made for these cases. Lands were then sold on quitrent only, and freehold was abolished except in the case of small plots in towns and villages.

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32. In the sales of land that have taken place under Act 5, of 1870, is there any stipulation respecting land being taken over for making roads?—Yes. The compensation to be given must be fixed by arbitrators.

33. Do you consider that under the 4th section of the proclamation, Government was entitled to take material from one farm to make a road in another farm?—I think not. I have been advised that the rights of Government do not extend so far.

34. Not even by giving compensation?—If a railway is taken across a farm there must be compensation given in any case where improved or cultivated land is expropriated.

35. *Chairman.*] Supposing a farm in course of time gets cut up into a number of small pieces?—The tenure is not affected by sub-division.

36. *Mr. Paterson.*] But supposing the land is cut up into small sections and there is but one quarry, which is situated in the section belonging to, say A, would it be lawful to carry the gravel out of the sub-section of A, into that belonging to B?—In that case the original title remains the same. The right would apply to the whole farm, and the whole of the sub-sections are liable to the conditions of Tenure.

37. What I mean is this, suppose that A sub-division is one with a gravel pit in it, and there are two sub-divisions, can the gravel be taken beyond the sub-division A, to the rest of the sub-divisions?—Certainly.

38. Do you think that a convenient tenure to be maintained in the altered circumstances of the country?—It may be hard in some cases; but I think it is convenient.

39. Then I will put the case in another way. Do you think it is a fair, is it a just, provision of the law in the altered circumstances of the country; or is it in the spirit of the original proclamation?—I think it is perfectly fair. The value of property depends upon the nature of its tenure and when property changes hands

Surveyor-Gen. the Auctioneers generally state on the day of sale what the conditions of tenure are.
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40. *Commissioner of Works.*] Would considerable inconvenience arise if these rights were abrogated?—Yes, certainly; for instance, the expense of railways for compensation would be so great that they could hardly be constructed.

41. *Mr. Paterson.*] Have you gone into any calculation as to what expense would be saved to the Government by reserving these rights?—No.

42. By your reading of the law it is not competent for Government to take gravel from any other farm, beyond that so sub-divided?—I believe it is not competent to do so.

43. Then is the saving to the Government likely to be anything considerable?—I hardly understand what your drift is.

44. *Mr. Gush.*] Can any proprietor over whose farm a railway or a road crosses appeal to arbitration?—Yes, if he refuses the compensation offered, but not if the terms of his titles or of the land laws preclude an offer from being made.

45. But supposing no offer is made?—No offer is made, when the proclamation of 1813 is applied to the land, or if there be conditions in the title deeds giving the Government the power. In these cases no compensation is claimable.

46. *Commissioner of Works.*] Is it within your knowledge that the late road Board acted under this proclamation?—Certainly, without the least opposition. The case of De Villiers is the first instance of a right so long exercised being disputed.

47. *Mr. Gush.*] Is there notice given when a new road or railway is to cross a farm?—Yes, notice must be given under the Act of 1858.

48. But there must be some time given to lodge objections?—According to my reading of the law, no objections are allowed to interfere with the construction of railways. Simple notice is all that is necessary.

49. *Commissioner of Works.*] In your opinion would the owners, if unchecked, be rather disposed to make extortionate demands?—Yes. I know one case of a quit-

rent farm over which the Government had the right to construct a road ; where the owner was anxious to have this road ; yet he claimed £500 as compensation ; but the Act says you must deduct from the damage the benefit to be derived by the owner, and in the case cited the benefit out-weighed the loss.

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50. *Chairman.*] Was that demand paid?—No, it was refused.

51. *Mr. Paterson.*] Have the titles in Queen's Town been considerably altered?—Yes. They were relieved of servitudes by Act of Parliament, as were the farms throughout the frontier.

52. Do you not think the time has arrived to relieve the loan places?—No.

53. *Mr. Gush.*] Do you not think the time has arrived to make more explicit the rights the Government are entitled to?—Yes ; I think the time has arrived to declare that the intention of the proclamation is what it has hitherto been held to be.

54. Do you think that proclamation is applicable to the present day, taking into consideration the large amount of traffic and roads, with railways and roads to be made?—I think so. The landed proprietors are entitled to protection ; but the general public are entitled to consideration also. My experience is that if we were to pay for compensation what is demanded it would be so costly that railways would not be made. I witnessed a case the other day where a man demanded £2,000 compensation for taking a few stones ; so few, that, when I went to inspect the place, I had a difficulty in finding where the stones had been quarried.

55. *Mr. Paterson.*] Supposing this man's property had been freehold?—He would have been entitled to some compensation if the benefit to be derived was smaller in amount than the damage sustained. The Act of 1858 requires benefit to be taken into account.

56. Are you aware that municipalities have no power to take land except by arbitration?—I am not aware what powers municipalities have in this respect.

57. *Mr. Frost.*] You say it would not be possible to make railways if we had to purchase the land. Will you tell me how much land it would take for one mile

Surveyor-Gen. of railway fifty feet wide?—It would be about six
 June 7, 1876. acres.

58. If the extra charge on the railway would be only six acres of waste land per mile, why do you think it would be so expensive as to prevent the construction of railways?—On account of the extravagant notions land owners have of the compensation Government should pay. The claims are generally without reference to area taken.

59. But for waste land the charge could not be so high? There should be a difference,—in point of fact, the claimants do not charge according to any fixed or ascertained value.

60. But could we not by a Bill fix the rates of compensation?—That would strike at the root of arbitration. You might fix a maximum derived from average value as ascertained from purchase amounts, valuations, and so forth.

61. *Chairman.*] In the case of a railway crossing a piece of cultivated land, is compensation given by Government?—Yes; under any circumstances where the land is cultivated compensation is given.

62. Whether there is any reservation in the title deeds or not?—In every case. Section 12 of Act 9 of 1858, provides for this.

63. How is Government in the habit of getting at the true value in these cases?—Government considers what the claim is; then there is a plan furnished by the railway department, showing the quantity of land appropriated. With the plan there is a specification showing the nature of the ground, whether it be bush, cultivated, or capable of cultivation. Then an inspection takes place. At present I perform this duty, and take with me a Government Appraiser, who gives his opinion of the value. The deeds are then examined to ascertain what rights the Government has, and find out what the purchase amount was. Then an offer is made to the claimant based upon the appraisement and other facts, which offer he is free to accept or refuse. If he refuses, arbitration is resorted to, as set forth in the Act 9 of 1858.

64. Does that Act apply to all cases of this kind where

cultivated land is crossed?—Yes; under any circumstances. Whatever the tenure may be, cultivated or improved land is entitled to compensation; that is made quite clear in Act 9 of 1858.

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65. Have there been cases in which parties have gone to arbitration?—Yes; there have been several cases.

66. Has arbitration been satisfactory or not?—Very much so to the owners of the land, but not to the Government.

67. Mr. *Frost*.] Do you think it advisable now we are altering the land tenure to arrive at some fixed rate of compensation?—I think a maximum should be fixed, beyond which arbitration should not go, so as to guard against excessive awards. It might be advisable to appeal to the Supreme Court in some cases, to decide what the amount of compensation should be.

68. *Chairman*.] In most cases of arbitration the decisions have been unsatisfactory to the Government?—That is my experience generally.

69. Would it not be advisable to have some Board to decide these cases, instead of arbitration?—I believe in the case of the Wynberg Railway twelve jurors sat to determine disputes; but it was found to be very expensive and cumbersome plan. I think that in spite of disadvantages, arbitration would be the usual mode and the best, if appeal could be had to the Courts of Law.

70. Is it not the case that when cases of this kind are brought before the Court, the Court resorts to arbitration to find out the value?—I am not aware that such cases come before the Court except to have awards made a rule of Court; though I know cases have arisen where the judges have expressed their opinion that certain cases had better have been settled by arbitration.

71. What means have the judges of finding the value of land?—They may not have the means that practical agriculturalists would have; but they would be judicial and certainly fairer and more impartial.

72. You would limit the amount that could be awarded?—Yes.

73. Supposing a railway were to run through a man's house?—That would be a special case, and would receive

Surveyor-Gen. special treatment. Such a case has not yet arisen ; but
 June 7, 1876. the principle of settlement remains the same.

74. Then you would allow any exceptional cases to be settled in some other way?—I would give the Supreme Court the ultimate power to decide on appeal from the award of arbitrators.

75. Suppose a Board were appointed to settle all these questions that might arise on one line, like that from Wellington to Beaufort, and you were to take men beyond the district—say Cape Town men?—They would lack the necessary experience, and be very expensive.

76. Would the cost not be less than the Government has to pay under the arbitration system, or in reference to the Law Courts?—I presume the principle is to do justice to both parties ; to the Government and the individual. A Cape Town Board might not be able to do justice to the landed proprietors ; they might be over-anxious to get the railway, and to get it cheaply done ; and although they might not be disinterested, they would be the least likely to possess the necessary knowledge.

77. Then I will say a Board of practical men were selected from some other part of the country, so as to be unbiassed?—You should give the land owners the chance of selecting one or more members. A Board would not, in my opinion, work well. Then it would be expensive like the jurors. If such a Board could be fairly constituted and inexpensively worked it might be desirable ; but my experience does not enable me to view Boards very favourably for such an object as the present one.

78. Mr. *Scanlen*.] Is there any difference in the form of quitrent leases of land that was held in loan, and land that was not held in loan?—Yes. In titles of land held on loan a distinction is drawn.

79. Are there any lands ungranted that were previously held on loan?—Yes. There are many cases in the Colony. There are also some fifteen-year quitrents still unconverted.

Friday, 9th June, 1876.

PRESENT :

Mr. MOODIE (*Chairman*),

Mr. Gush,
„ Adams,

| Mr. Frost,
| Commissioner of Works.

Mr. *Myburgh* examined.

80. *Chairman.*] You are member of the House of Assembly for the Division of Stellenbosch?—Yes.

Mr. *Myburgh*,
M.L.A.

81. You are acquainted with the object of this Committee?—Yes.

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82. Do you know the Conditions under which land is held in the Colony generally ; what rights are reserved by Government under the different tenures?—I believe Government has the right to make roads over quitrent farms. That is stated in the title deeds.

83. Do you know of any complaints that the Government has used this right?—I have heard some.

84. Have they reference to the formation of railways or ordinary roads?—The complaints I have heard have reference to railways.

85. *Commissioner of Works.*] What are the particular grievances?—The Government took a line of railway over my farm, cutting it into two pieces, leaving a small strip of land on the other side of about 100 yards wide by 800 yards long. It would be difficult for me to graze my stock on that strip, because it is so small that they would get over the boundary into my neighbour's land.

86. *Mr. Adams.*] Has Government offered you any compensation?—No.

87. *Commissioner of Works.*] Have you applied for any?—Yes.

88. Did Government refuse?—Yes.

89. Is not your case now being re-opened?—No ; that is another case in which they have taken gravel from my property to a distance of twelve miles beyond it, for ballasting the railway.

90. Is your farm a converted loan place?—I don't know. I have not looked at the title.

Mr. *Myburgh*,
 M.L.A.
 June 9, 1876.

91. Mr. *Gush.*] Why did not Government entertain your application for compensation?—They say they have a right to make roads over quitrent land.

92. To what extent do you consider yourself damaged?—Before they took out the gravel I sent in a claim for £1,000 which they refused to pay.

93. Mr. *Adams.*] Do you know of any other farm in that locality, over which a railway has been made, and for which the Government has granted compensation?—On the Wellington line I believe there were cases, but not in my neighbourhood.

94. *Chairman.*] Is your complaint chiefly about their taking away gravel from your property for ballasting distant parts of the line?—No. It is about their having made a loop line over my property cutting off a piece of my farm.

95. *Commissioner of Works.*] What was the thousand pounds claimed for?—For the inconvenience I was put to by their taking my ground.

96. What is the length of the line through your property?—I don't know.

97. What is the size of your entire farm?—Nearly 1,000 morgen.

98. Does the railway cut off a fourth of your farm?—No; it is a small piece.

99. How many morgen?—I can't say.

100. Does it cut off 50 morgen?—No.

101. Twenty?—I can't say.

102. Do you think it cuts away 20 morgen?—I can't say whether it is 20 or whether it is 10. It is the inconvenience it puts me to.

103. Do you think it is as much as 20?—I can't say. It is about 800 yards in length and 100 yards in width.

104. That would be about 8 morgen?—Yes.

105. And you claim £1,000 for that?—It is for the inconvenience that I claim compensation. In that ground there is a large dam where my cattle drink in the summer months, and if that ground should be abandoned, I should be a great loser. This piece is attached to some ground I lease from Government.

106. Does the line run on a level through your farm?—There is an embankment.

107. But is there a level place where the cattle could be driven over?—Yes. Mr. Myburgh,
M.L.A.

108. Mr. *Gush.*] You say it cuts you off from the ground you lease?—Yes. June 9, 1876.

109. Can your stock get to this dam without crossing the railway?—No.

110. Upon what do you base your claim of £1,000?—Upon the loss of ground and the inconvenience I suffer.

111. Mr. *Frost.*] What do you consider the value of your whole farm? What is it worth per morgen?—That is a difficult question to answer. I got it from my father.

112. What is the Divisional Council's valuation?—£4,000.

113. Mr. *Gush.*] What right do you think Government ought to hold on property generally?—They ought not to hold any rights. It is a farm that was bought and paid for.

114. Mr. *Adams.*] What is your opinion with reference to the desirability of Government holding the right to make a road over your farm, providing it goes over uncultivated ground?—They should have that right but they should give the owner compensation.

115. But you don't think that any conditions binding upon the farm should be observed when this compensation is given?—No, certainly not.

116. *Commissioner of Works.*] Suppose I sell you a piece of land upon certain conditions, do not you buy with your eyes open?—Yes. But at the time this land was sold railways were not contemplated, they were not in existence even in Europe. If the right to make roads was reserved, the roads meant were very different to railroads.

117. Mr. *Frost.*] But do not you think your property is improved by having a railway run through it?—No; my property is not.

118. Mr. *Adams.*] Do you consider that, in cases for arbitration, it would be advisable to have one of the judges of the Supreme Court appointed as umpire for cases where the amount is over £1,000, and the magistrate in cases not exceeding £100?—I should question

Mr. *Myburgh*,
M.L.A. whether judges are so well acquainted with land as farmers.

June 9 1876. 119. When arbitration is resorted to, the Government appoints one arbitrator, and the claimant the other;—what I mean is, would it not be advisable in cases where these two arbitrators fail to agree, to appoint the judge or the magistrate as umpire?—I have no objection to that if they are acquainted with the matter.

120. *Chairman.*] You are aware that compensation was given to some parties when the Wellington Railway was made?—Yes. Large compensation. One farmer was paid £1,250.

121. Then you think that in some cases compensation at too high a rate was granted?—No; I don't think so. At that time the owners of the farms offered the Company a place where the line could be taken over; but the Company would not go there.

122. Was the compensation paid for merely crossing the land?—Yes.

123. Was it cultivated land?—Both cultivated land and grazing land.

124. Were there any disputes between the Government and the farmers?—I believe John Beyers and Myburgh had disputes.

125. How were these disputes settled?—By arbitration.

126.—Do you know whether the arbitrators granted the full compensation demanded?—I am not sure; but in one case the award was £1,250.

127. In these cases they went through the middle of the vineyards, did they not?—In some cases.

128. The Wellington line was fenced in; do you consider carrying an unfenced railway through a farm is more detrimental than a fenced one?—Yes. There is more risk to the stock.

129. Mr. *Gush*. When a line is fenced in do the farmers make use of the fences to form paddocks?—Beyers made a camp for ostriches adjoining the railway.

130. Mr. *Adams.*] Then you think Government should have no right to make any road across, or take any material from any farm without compensating the owner?—The Government should not have the right

where it injures the farm. I do not object to Government taking material from waste land to repair a road within the boundaries of the farm itself. I think they should have that right by paying a fair compensation.

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131. Mr. *Gush*.] What do you mean by waste land?—That which is not fit for cultivation nor for grazing cattle.

132. Mr. *Frost*.] Don't you think a fair way of arriving at the value of land in such cases, would be to take the Divisional Council valuation, with an addition of 50 per cent.?—Yes; if it runs through cultivated land or cuts up the farm.

133. Don't you think it would be fair for the Government to take over any small peice of land they cut off in the same way as they take over that used for the railway?—Yes; or go to arbitration.

134. *Chairman*.] Do you know when loan places were converted into perpetual quitrents in 1813 Government reserved the right of making roads across them?—I was not aware of it till the Surveyor-General told me so.

135. Do you know that it has been a matter of dispute whether Government has these rights on quitrent farms granted since 1813?—Yes; I know a case was disputed in the Supreme Court.

136. Do you think it fair in all cases where Government use material for the purpose of making public roads or railways, compensation should be granted?—Yes; I think so.

137. Also for land used for roads?—Yes; in all cases.

Tuesday, June 13th, 1876.

PRESENT :

Mr. MOODIE (Chairman),

Commissioner of Works,		Mr. Scanlen,
Mr. Paterson,		„ Gush,
„ Adams,		„ Frost.

Mr. *Wright*, M.L.A., examined.

138. *Chairman*.] You are one of the members of the House of Assembly for the Division of Albany?—I am.

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- Mr. *Wright*,
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139. You know what is the object of this Committee?
—Yes.
140. Have you any knowledge of the rights which the Government hold over lands for the purposes of road making in the Colony?—Very generally.
141. Do you know the difference between the rights they hold over converted loan places, and those which they hold over lands?—Yes. There are leasehold, freehold, and quitrent lands.
142. Have you any of the old converted loan places in your part of the country?—I don't know of any.
143. Do you know the rights which Government hold over those lands?—In our neighbourhood the lands are freehold and quit-rent lands.
144. But do you know of any old loan places that have been converted into quitrents?—I can't speak positively, but I think our quitrents were all quitrents originally.
145. Can you state the rights that the Government claim over those places?—They claim the right of removing material for the making of roads on the premises. That is the principal right.
146. The material should be used on the farm itself?—I think the Act expressly says that it is to be used on the farm itself. It says distinctly that the gravel is to be used on the premises.
147. Do you think that is a fair right?—I think so. Few proprietors would object to that.
148. But supposing the farm to be divided into half a dozen different properties, and the part from which the material is taken to be left only on one of those properties, do you think it fair to take the gravel away, and cut up that particular property without regard to the other portions of the original farm?—Well, without some arrangement, I should not think so; but the Government do not confine themselves to the removal of gravel from one particular part of a farm.
149. Mr. *Paterson*.] But are you not aware that the gravel used is probably not found on more than one part of a farm, so that if a farm were divided into seven farms, would you consider it within the spirit of the law that the material used should be taken away

from more than one of those divided portions of the original farm?—I think not, decidedly.

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150. You think that was not contemplated?—I think not.

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151. *Chairman.*] You have stated that this right belongs to the Government to remove gravel for the making of roads; do you think that the Act contemplated railways, and that the Government have the right to remove materials for the making of railways as well as roads?—I think not.

152. *Mr. Paterson.*] You think that the power given by the Act to the Government is to raise material to be used on the farm only, do you then think it is worth our while to contest that right, or do you think it would be better to pay every farthing of value taken?—I don't quite understand you.

153. The Government say that the gravel raised under Sir J. Cradock's proclamation is to be used on the farm itself; and if it be so, do you think it is worth while for the Government to take it so, or to pay for the gravel, because they would have to pay for gravel going beyond that farm?—I think they should pay for everything—because, certainly, Sir J. Cradock's Proclamation could not have contemplated railways.

154. Are you aware that the Railway Act takes over the Road Act, with all the powers given by the Central Road Act?—I was under the impression that it took over more than that.

155. It just takes over the powers of the Central Road Act. Do you think our legislation should be in that direction, or would you amend it?—I would amend it, decidedly.

156. And in your opinion everything taken from the place should be paid for?—Yes, they should pay a fair price for everything if the proprietor demanded payment.

157. *Mr. Gush.*] What is your opinion, or rather, what is your experience of the effect of the supposed right which the Government have over private property, with regard to the destruction of land in that way? Do you think that it acts arbitrarily or otherwise?—Well, as a rule I think the proprietors have been very careless about it. I believe that many proprietors are under the impression

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that the Government have a right to go to various parts of a farm for gravel, and to cut it up in that way. My own place is much cut up.

158. And you are of opinion that the system of land tenure, as laid down by Sir J. Cradock's proclamation, should be altered?—Yes, I do think so.

159. Mr. Adams.] Can you give us any idea as to the direction in which it should be altered?—My own experience is that many places are very much injured by the way in which metal has been taken out of the land.

160. And they have also taken land?—Yes, they have also taken land. In many instances I know that roadways have been made, over 200 yards wide, over valuable property, owing partly to the width of the road not being properly laid down by law, and partly to the carelessness and poverty, as I may say, of the Divisional Council in opening the road.

161. Don't you think that that is the exception rather than the rule?—Well, it has been so largely experienced in our part of the country that it is a matter of general complaint.

162. You will admit that in a great many instances the opening up of a road across a farm may enhance the value of the property?—In some cases it may do so; but I know a case in which a farm has nine different roadways through it, and that has very much depreciated its value.

163. Chairman.] Is not the widening of the roadways of which you have spoken owing to the diverging of the carriers for the purpose of picking out the softest part of the road?—That is one cause of it, undoubtedly, for the carriers choose the soft, soddy part of the road; and another cause is that when stock are driven over they prefer the even soddy parts to the soft or broken ground, and the road gets widened in that way.

164. And as a rule you think that the proprietors think they cannot stop them?—Generally I think it is so.

165. Mr. Adams.] Has the practice not obtained, generally or always, that when a new roadway is made the proprietor gets the old one instead?—Well, I don't say that it is not so in practice, though I never knew an

old road given up. I will state a case in point. Recently, in the division of Bathurst a new line of road was made to get nearer to Port Alfred, perhaps about five miles from the Port. The old line was left, and there was an attempt on the part of the proprietor of the land to stop the old line of road, as the new line had been well metalled and was a really good road; the public disputed it, and Mr. Justice Dwyer, being stopped by the toll-man, and asked to take the new line of road, stated that he had a perfect right to use the old line, and he travelled over it.

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166. *Chairman.*] You say you think the proprietors should be paid in all cases for the gravel and materials taken out of their land for the purposes of roads and railways?—I think on the whole it would be advisable if there were even a nominal price paid for what was taken for road purposes.

167. You are doubtless aware that many cases of dispute would arise as to what the payment should be?—Yes, no doubt it would lead to that, such disputes would occur.

168. And would you preclude the Government from taking the material except upon a valuation?—I would not on any account preclude the Government from taking it for any public purpose, but it should certainly be paid for.

169. How would you decide as to the system to be adopted to settle such disputes?—I think nothing could be better than arbitration, but that is a matter to which I have not given much thought.

170. You have probably heard that the Government have had to pay extraordinarily high prices as the results of arbitration, especially in the case of the Wellington railway?—I have.

171. What do you think of the proposal that, as a system of arbitration, one arbitrator should be appointed by the Government, and one by the proprietor; and that in cases under the amount of £100 the resident magistrate of the district should be umpire, while the higher courts of law should be resorted to when the amount was above £100?—I think that would be a very fair mode of settlement.

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172. Mr. *Gush.*] Do you think that it would be a fair mode of payment for gravel taken by divisional councils, as proposed by Mr. Paterson, or something like it, that is, that the land should be paid for at per morgen?—For divisional councils do you mean?

173. Yes, for divisional councils?—For divisional councils I think that would do.

174. And would you give them authority to take only from one part of a farm within a certain given distance of the road?—Yes, and if they went beyond that given distance they should do it only with the consent of the proprietors.

175. You are aware that at present the divisional councils go and dig gravel where they please without any reference to the proprietors?—I am.

176. *Chairman.*] You are aware that a very serious amount of damage may be done by having a railway driven across a farm, independently of the land actually taken and occupied by the railway itself, as well as of the material taken for the railway; it might take away the water or cut off a dam from a farm?—Yes, and I have put a case before the Committee to-day on the letter and statement of Mr. Nicol, which were read.

177. And in such cases especially do you think arbitration would be the best system to adopt to settle a dispute?—Well, no better form of proceeding suggests itself to me at present.

178. Then a general law for arriving at a valuation of the property would not suit those cases, you think?—There might be some difficulty in making a law applicable to all cases. I think it impossible to lay down a general principle on that point; the value of a farm might be so very seriously affected in particular cases.

179. Suppose a railway were fenced in in my immediate neighbourhood, the Government, having the right to take the metal from there, might break through the fence and take it; could arbitration, in your opinion, settle disputes of that kind?—Yes, I think so; but I have stated before, that for roads the divisional council should be confined to certain parts or private properties, except by special consent of the proprietors.

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