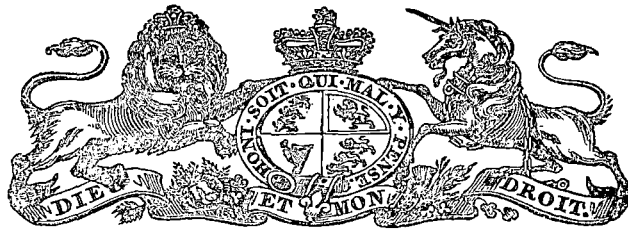


(No. 147.)



1887.

PARLIAMENT OF TASMANIA.

THE PRESBYTERIAN GLEBE, FORMBY :

REPORT FROM THE SELECT COMMITTEE, WITH MINUTES
OF PROCEEDINGS, EVIDENCE, AND APPENDICES.

Brought up by Mr. Dooley, and ordered by the House of Assembly to be printed,
November 25, 1887.



SELECT COMMITTEE appointed, on the 17th September, 1887, to enquire into and report upon the Claim of the Church of Scotland, now called the Presbyterian Church of Tasmania, to a Grant of Land in Formby of 5 acres 2 roods 16 perches, as recorded in Paper No. 83, House of Assembly, 1868.

MEMBERS OF THE COMMITTEE.

MR. LEWIS.
MR. GRAY.
MR. BURGESS.
MR. DUMARESQ.

MR. HARTNOLL.
MR. ATTORNEY-GENERAL.
MR. DOOLEY. (*Mover.*)

DAYS OF MEETING.

Friday, 7th October. Tuesday, 11th October. Thursday, 27th October. Thursday, 3rd November. Friday, 11th November. Tuesday, 15th November. Wednesday, 16th November. Thursday, 17th November. Friday, 18th November. Thursday, 24th November.

WITNESSES EXAMINED.

Rev. James Scott, Mr. W. H. Smith, Mr. A. Spurling, Mr. J. E. Packer, Mr. Albert Reid, Mr. H. J. Hull.

R E P O R T.

1. Your Committee have the honor to report that they have given their most earnest consideration to the question submitted to them, and have obtained and carefully weighed all available evidence, documentary and oral, relating thereto.

2. Your Committee find in the Parliamentary Journals of the House of Assembly, 1866 and 1868, Papers Nos. 46 and 83, records of all Glebe Reserves for Church purposes, and in each Paper there is an allotment of 5 acres 2 roods 16 perches in the Town of Formby specially reserved for Church of Scotland purposes; and Mr. Henry Smith, now Chief Clerk of the Chief Secretary's Office, who, under Mr. Calder, then Surveyor-General, compiled these Returns for the Parliament, states "that the greatest care was exercised in their preparation." Mr. H. J. Hull, late Deputy Surveyor-General, who was familiar with the method of Mr. Calder's compilations, states "that Mr. Calder would not have put his name to any Return without being assured of its correctness, and that had there been any doubt as to the correctness of any one item he would have added a footnote to that effect." Again, Mr. J. H. McCall, of Torquay, makes the following statement:—"Re the claim for 5 acres 2 roods 16 perches of land as a Glebe for the Presbyterian Church, I remember the late Rev. Mr. Garrett on one of his trips when he stayed with me, mentioning it as a fact that an allotment of land had been secured for Church purposes, and pointing out the locality."

3. Whilst regretting the inability of the Church of Scotland authorities to produce more complete evidence of their claim, your Committee are of opinion that the Church of Scotland, having been led from Parliamentary Papers to believe that they were entitled to a reservation

of 5 acres 2 roods 16 perches of land in Formby for Church purposes, which claim the Authorities of the said Church have allowed to lie in abeyance until the proof of such claim has become difficult to produce, and thinking that it would be a matter for regret should the Presbyterian Church suffer through the negligence of their Church officials long since passed away, respectfully recommend that the present Authorities of the said Church be empowered to select a block of land not exceeding in area 5 acres 2 roods 16 perches from any Crown Lands on the North-West Coast open either for sale or selection; and in the event of the said land being sold or disposed of for other than Church purposes, then the proceeds thereof shall be deemed to belong to the Church of Scotland in Formby; the said land to be selected on or before the 31st December, 1888; and this arrangement to be a final settlement of the claim.

J. M. DOOLEY, *Chairman*.

Committee Room, 25th November, 1887.

MINUTES OF PROCEEDINGS.

FRIDAY, OCTOBER 7, 1887.

The Committee met at 12-30 P.M.

Present.—Mr. Lewis, Mr. Dooley, Hon. W. H. Burgess.

Mr. Dooley was voted to the Chair.

Resolved, that the Chairman do move the House for permission to send for persons and papers.

Ordered that, contingent on such permission being given, the Rev. James Scott be summoned to attend and give evidence on Tuesday next at 11 A.M., and Mr. W. H. Smith at 12 noon on Tuesday, the 11th instant.

The Committee adjourned until Tuesday, the 11th instant, at 11 A.M.

TUESDAY, OCTOBER 11, 1887.

The Committee met at 11 A.M.

Present.—Messrs. Dooley (Chairman), Lewis, Gray, Hon. W. H. Burgess.

Minutes of previous meeting read and confirmed.

Rev. J. Scott was called and examined.

Mr. Scott withdrew.

Mr. W. H. Smith was called and examined.

M. Smith withdrew.

Mr. A. Spurling was called and examined. He tabled diagrams of Church reserves at Formby, and official correspondence on the subject of the enquiry.

Mr. Spurling withdrew.

The Committee adjourned at 12-50 P.M.

THURSDAY, OCTOBER 27, 1887.

The Committee met at 11 A.M.

Present.—Messrs. Dooley (Chairman), Hartnoll, and Dumaresq.

Minutes of previous meeting read and confirmed.

Mr. J. E. Packer was called and examined.

Mr. Packer withdrew.

It was decided to summon Messrs. B. T. Solly, H. J. Hull, Albert Reid, and Rev. J. Scott to give further evidence.

At 12-35 P.M. the Committee adjourned till 11 A.M. on Thursday, November 3.

THURSDAY, NOVEMBER 3, 1887.

The Committee met at 11-30 A.M.

Present.—Messrs. Dooley (Chairman), Dumaresq, and Lewis.

Rev. J. Scott was re-called and examined.

Mr. Scott withdrew.

Mr. Albert Reid was called and examined.

Mr. Reid withdrew.

A Memo. was read from Mr. H. J. Hull in regard to the compilation of Parliamentary Papers No. 46, 1866, and No. 83, 1838.—Appendix.

At 1 P.M. the Committee adjourned till 11-30 on Thursday, 10th inst.

FRIDAY, 11 NOVEMBER, 1887.

The Committee met at 11.30 A.M.

Present.—Mr. Gray, Mr. Dumaresq, Mr. Hartnoll, Mr. Dooley (Chairman).

The Minutes of the last meeting were read and confirmed.

A letter was read from Mr. J. H. M'Call, of Torquay.—(Appendix A.)

The Committee deliberated.

The written evidence of Mr. H. J. Hull, late Deputy Surveyor-General, was tabled.—*Vide* Appendix B.

The Committee adjourned till Tuesday next at 11.30 A.M.

TUESDAY, 15 NOVEMBER, 1887.

The Committee met at 3.30 P.M.

Present.—Hon. W. H. Burgess, Messrs. Lewis and Dooley (Chairman).

The Minutes of the last meeting were read and confirmed.

The draft report was submitted and considered.

The Committee adjourned until Wednesday, the 16th inst., at 3 P.M.

WEDNESDAY, 16 NOVEMBER, 1887.

The Committee met at 3.30 P.M.

Present.—Hon. B. S. Bird, Hon. W. H. Burgess, Messrs. Lewis and Dooley (Chairman).

The Minutes of the last meeting were read and confirmed.

The Committee deliberated.

The Committee adjourned till Thursday, the 17th inst., at 3.30 P.M.

THURSDAY, NOVEMBER 17, 1887.

The Committee met at 3.30 P.M.

Present.—Hon. B. S. Bird, Messrs. Gray, Lewis, Dooley (Chairman).

The Minutes of the last meeting were read and confirmed.

Mr. A. Spurling was called in and examined.

Mr. Spurling withdrew.

The Committee adjourned till Friday, the 18th inst., at 3 P.M.

FRIDAY, NOVEMBER 18, 1887.

The Committee met at 3 P.M.

Present.—Messrs. Bird (Chairman), Lewis, and Gray.

The Minutes of previous meeting were read and confirmed.

A draft report was submitted and considered.

The Committee deliberated, and adjourned at 3.45 till 3 P.M. on Thursday, 24th inst.

THURSDAY, NOVEMBER 24, 1887.

The Committee met at 3 P.M.

Present.—Mr. Lucas, Mr. Gray, Mr. Dooley (Chairman).

The Minutes of the last meeting were read and confirmed.

The consideration of the Draft Report was proceeded with.

Draft Report agreed to.

The Committee adjourned *sine die*.

EVIDENCE.

TUESDAY, OCTOBER 11, 1887.

REV. JAMES SCOTT, *called and examined.*

1. *By the Chairman.*—What position do you occupy? Minister of St. Andrew's (Hobart) Presbyterian Church.

2. Can you give any information on the subject of the present enquiry? The information I can give is somewhat limited. I was appointed by the Presbyterian Synod to look after our church lands, to have the information obtainable brought under the notice of the Synod, and have steps taken to see that they were properly secured. My attention was called in due course to the Formby reservation, North West Coast, in connection with our church. On going to the Lands' Office I discovered that it was not, as is usual, on the chart. There was a great deal of difficulty in tracing it at all. All the other reservations are right, and duly surveyed for the purposes originally intended. Although the Synod was legally constituted, and therefore entitled to the possession of all our church documents, the early documents thereof are largely missing, including documents affecting this matter. Rev. James Garrett, who was stationed at Sidmouth, was our first representative on the North West Coast, having oversight of all that part. His papers, I found, were all astray, and we had great difficulty in getting other papers. He lived to an old age, and evidently had no one to care for his affairs. That was aggravated by the fact of the Clerk of the Presbytery, Rev. John Mackersey, of Kirklands, being also of extremely old age, and in his latter years being quite unable mentally to attend to his affairs. We had similar difficulty with all his papers. His successor, Rev. John Storie, withdrew from the colony, and kept from us all our documents, being, as every one knows, at variance with our church. Paper No. 83, 1868 (produced) shows that the land in question was granted. Having these documents, and finding that all other similar lands were accurately set forth, we were not easily induced to believe there could have been a mistake in the matter. Our people in that neighbourhood approached Mr. Braddon, one of the representatives of that district, and he, I believe, brought the matter under the notice of Parliament during last Session, and the answer he got from the then Minister of Lands was not very satisfactory, for Mr. Brown could find no trace of the land. Since then I have been in communication with old residents of the neighbourhood of Formby and Torquay, but could get nothing satisfactory from them, although they remember Mr. Garrett being there and getting the land; nothing definite or satisfactory, however, could be obtained. Mr. J. H. McCall, who was in the neighbourhood at the time, told me he remembered Mr. Garrett going there to seek the land in Formby or Torquay. I wrote him on the subject, and he replied, "I think the facts of the case are simply these:—Mr. Garrett applied to Mr. Calder, who promised to attend to the application, and that he moved in it there can be little doubt; but there being no one on the coast to take the matter up, and the health of the Rev. gentleman failing, his connection with church affairs on the coast was severed, and the whole matter—not the getting of the land, but the organising of a church—lapsed." We have very ample assurances that our claim is not a myth. The land was granted, and that is the only thing definitely stated. We have secured a very small share of the land granted for church purposes, and it seems hard that this grant should slip from us.

3. Have you any previous record relating to the same allotment in the Journals of the House? A similar Paper, No. 46, 1866, has been shown me, where the same grant is shown in the town of Formby.

4. *By Mr. Lewis.*—When was your attention first called to this matter? It was consequent on the passing of the Act of 1878 with reference to the regulation of our affairs, placing them on a proper footing, and consequent to the establishment of our Synod, when I was officially appointed Convener of the Committee to look after these matters.

5. Have you prosecuted any other enquiries beyond those made through Mr. Braddon? No, except by trying to get information from individuals; but I found great difficulty in this, as the chief actors in the matter were aged men, and they had no successors for some years owing to the disorganised state of affairs, and it is only gradually that documents are being gathered. I have been in communication with Mr. Dooley, one of the members for the district, and who has elicited some information that will be adduced.

6. Is there any block of land at Formby corresponding with that you claim? There is a block that answers precisely in every respect, and which joins other church reserves. We naturally conclude it is our allotment, but it has been sold, and we are credibly informed that the same was done with the adjoining allotment belonging to the Church of Rome; but they got another allotment in lieu thereof.

7. *By Mr. Burgess.*—Referring to Paper No. 83, 1868, in which the grants to various churches are set forth, have you established your claim to all other grants mentioned therein except this one? We are in process of doing so. We are in actual possession of all the other reserves mentioned in Paper No. 83, 1868. For many of them we have obtained special titles at considerable expense. We were arrested in the task by the Chief Justice, Sir Francis Smith, who said we were incurring needless expense in getting titles under Torrens' Act, and he could not apprehend why we were going to this additional expense when

we had already an indefeasible title. The land regarding which this opinion was given was the same as the other grants, and he said we could not get a better title than we had obtained already through the action of the Legislature. It was the land on which St. Andrew's (Hobart) Church stands.

8. *By Mr. Lewis.*—Have you a grant from the Crown for the properties? We have obtained titles under Torrens' Act for the land at Hobart, Launceston, and Bothwell; but since the Chief Justice gave the opinion mentioned, we have stayed our hand to some extent. Not a single grant had been issued for church properties, as set forth in the paper produced, except a few got by the Church of England and ourselves. The Church of Rome hold theirs on the strength of the notice issued by the Government. They have not even trustees.

9. When did Mr. Garrett die? About ten years ago.

10. Who succeeded him? The immediate successor was Rev. E. C. Tennent; but there was a lengthened vacancy. He being a State-paid minister, and living to a great age, the church fell away, but has since been worked up.

11. *By the Chairman.*—Do you know anything of the titles of the glebe at Hobart? They have been very recently issued, and the Roman Catholics are now seeking a title for their glebe there. It is, I believe, the first title they have sought.

MR. H. E. SMITH *called and examined.*

12. *By the Chairman.*—What position do you occupy? Chief Clerk in the Chief Secretary's Office. In the years 1866-8 I was senior first-class clerk in Survey Department, when the returns in the Papers Nos. 83, 1868, and 46, 1866, were prepared by me. Very great care was taken to prevent the possibility of mistakes as to locality and area of grants for church reserves. The records of the Department, as contained in the registers, were carefully gone through, the returns were then made out in manuscript, after which the plans were gone through and compared to see if the locality and area in the manuscript returns corresponded with the plans, because on the plans the reserves are charted. Every possible care and precaution were taken to secure correct returns. Cases of doubt were submitted to the Surveyor-General, Mr. Calder, for his decision.

13. These returns were based on documents, letters, &c.? Yes; and particulars were minutely given of the areas of grants for churches, ministers' dwellings, and school purposes. I am of opinion that some documents bearing on the subject will probably be found amongst the Treasury papers, for in 1857 the Ministerial head of the Survey Department was the Treasurer.

14. Have you seen a letter from Mr. Calder in reference to the care adopted in preparing these returns? Yes; it will be produced.

15. *By Mr. Lewis.*—In the return of 1868 there is a reserve of four acres in Formby granted to the Church of Rome which does not appear in the return of 1866: can you account for this? Yes. There is a letter dated 15th September, 1857, from Bishop Willson, asking for a piece of land in Formby, and there is a Memo. on that letter dated 27th October of the same year, approving of the grant. That reserve, however, appears to have been sold, for, on 14th May, 1866, there is a letter from the Assistant Colonial Secretary to the Rev. Dr. Hall stating that in consequence of the four acres originally granted having been sold, another four acres were granted to the Church of Rome for church purposes.

16. In making out the returns were the plans of the Survey Department invariably used for guidance? In every case.

17. Do you remember if there was a plan then in existence on which the Scotch glebe now in question was charted? I do not.

18. If it had been found out that there were no records of this glebe, would not something have been done to rectify the record? Yes, the assumption is that the 5a. 2r. 16p. in dispute were correctly included in the 1868 Return.

MR. A. SPURLING *called and examined.*

19. *By the Chairman.*—What position do you occupy? Record Clerk of the Lands Branch. I produce a diagram of the Formby Township, dated 1856, being the first record we have of Formby. The original grant to the Church of Rome is shown, but the position their grant now occupies is further south. The reason is that the first reserve was sold about 1860, and a second reserve was granted, as shown by the following letter. (*Vide Appendix A.*)

20. Have you any records that will throw further light on this subject? No; except that all the correspondence shows that great care was exercised in preparing the returns, but there was always a doubt in Mr. Calder's mind as to their correctness.

THURSDAY, OCTOBER 27, 1887.

MR. JOHN E. PACKER *called and examined.*

21. *By the Chairman.*—What position do you occupy? Under Treasurer.

22. Have you been able to obtain in the Treasurer's Department any records relative to the subject of this enquiry? No; I have made diligent search, but failed to discover any records bearing on the subject. I am inclined to think that if application was at any time made for the ground and dealt with, the papers would most probably be found in the Survey Department.

THURSDAY, NOVEMBER 3, 1887.

REV. J. SCOTT *re-examined.*

23. *By the Chairman.*—Have you obtained any further records in connection with this claim? No; I could find no trace of the records kept by the Rev. James Garrett, nor have I the slightest clue to where they could be found. We got our title to the Bothwell Reserve about a fortnight ago. It was among the grants set forth in the Parliamentary returns, that being our only title to it. The Hobart Glebe is also in the same paper, together with the Formby grant, both being alike, except that the Hobart Glebe was never alienated.

24. On what do you base your claim to the Formby grant? Chiefly on the Parliamentary papers I believe no other record could be obtained. Of course we had possession in the case of Hobart. We found that the State had taken no steps to hand over the grant. We were aware that the Formby Glebe had passed into the hands of others.

25. Have you any idea what form of compensation you should receive? No; but if the land belongs to us we should get its present value. I was informed by Mr. Moore that there are 3 acres adjoining the Glebe in the possession of the Crown; we would be very glad to accept those 3 acres in lieu of the 5 acres lost, or any other reasonable compensation that suggests itself to the Committee. We would be perfectly satisfied to select other land to the present value of the grant at Formby.

26. *By Mr. Lewis.*—If your claim were established, would you accept the amount of your grant elsewhere? No, that would not be fair; we should receive something equivalent to the present value of the land.

27. In your opinion, who is mainly to blame that possession was not taken of your grant? It is partly due to the officials of the Church of Scotland at that time, but largely and mainly due to the neglect of the Lands Office in not preserving the records of the reserve.

28. *By the Chairman.*—Are you aware that the records of the Roman Catholic grant at Formby are also missing in the Department? I believe that is the case.

29. Can you say in what locality you would be prepared to accept land in lieu of this selection? On any available part of the North West Coast.

MR. ALBERT REID *called and examined.*

30. *By the Chairman.*—What position do you occupy? Chief Draftsman in the Crown Lands Office.

31. Have you any knowledge of the manner in which the records of grants in Papers No. 46, 1866, and No. 83, 1868, were prepared? They were compiled in the clerical branch by Mr. Calder, with the assistance of a clerk, Mr. H. E. Smith.

32. Are you aware that a grant to the Church of Scotland at Formby finds a place in both those papers? Yes.

33. Do you think it possible for an inaccuracy to have got into both those returns? I think it quite possible. The first return is in parallel columns, and the grant in question may have got into the wrong column, and then it would be copied from there into the second return. I have searched every plan and document of the survey of Formby, and never saw the slightest reference to a grant for the Church of Scotland there, either in pencil or ink.

34. Are you aware that there are other plans, in addition to those you have prepared by the Sappers and Miners? The document we have was prepared by the Sappers.

35. What is your opinion of the accuracy or otherwise of those Parliamentary Returns? It is perfectly possible for a clerical error to be made.

36. *By Mr. Dumaresq.*—How could this grant get into the returns unless it was charted? There was a grant on the day this was made. It was granted to the Church of Rome, and in the first return the grant to the Church of Rome does not appear, but a grant is put in the return for the Church of Scotland, the date being that on which the grant to the Church of Rome was made. The Church of Rome grant was sold, and they got a second grant in lieu thereof. It is probable that, by a clerical error, the grant in the first return was entered to the Scotch Church instead of to the Church of Rome.

37. *By the Chairman.*—Can you furnish the date of the sale of that reserve and that of the two adjoining allotments? Yes. Sold on 14th February, 1860.

38. Have you any doubt as to the possibility of the original documents being placed in any other department? In those days there was no Minister of Lands, the Survey Department being under the control of the Treasurer.

39. Might not the original manuscript be in that department? The return would be furnished to Parliament in manuscript, and then ordered to be printed. It is possible that the documents might be in the Chief Secretary's Office, as all such applications were made to that Department, but the ultimate destination of such documents would be the Lands Office. The records are indexed in the register in every case; but no record has been made of a grant at Formby to the Scotch Church.

40. If it were customary now to grant such reserves, and a return were called for, and the name of the leader of the Salvation Army was found amongst them for a grant, is it at all probable that it would find a place in them without some authority? Not at all.

41. *By Mr. Lewis.*—If any record or plan showing this grant had ever been in the Department, is it to be supposed that such plan or record could have been lost? No, decidedly not.

42. *By the Chairman.*—Might it not be in some other Department? Yes; but even then it would be recorded in our letter book, which this grant is not.

THURSDAY, NOVEMBER 17, 1887.

MR. A. SPURLING *recalled and further examined.*

43. *By Mr. Dooley.*—Have you, as requested, made a careful search for the manuscript of this paper (H.A. Paper 46, 1866)? I have, and am unable to find any trace of it. We have books in the office in which copies of all papers issued are recorded. I can find records of similar claims to that now under consideration. I have found the office copies of ten returns similar to that you are now discussing (H.A. Paper 46, 1866), in none of which is there any mention of a reservation for either the Scotch or Catholic Churches at Formby.

44. *By Mr. Bird.*—Where are the documents, letters, &c. from which this Return was prepared? I am unable to find them.

45. Could you not find the manuscript for the Return of Glebe lands printed in 1868? I could not; I hunted up all records from the year 1857 to 1878 without discovering any trace of it.

APPENDIX A.

Torquay, 28th October, 1887.

DEAR SIR,

Yours of yesterday's date duly to hand.

Re the claim for 5a. 2r. 16p. land as a glebe for Presbyterian Church, I remember the late Rev. Mr. Garrett on one of his trips, when he stayed with me, mentioning it as a fact that an allotment had been secured for church purposes, and pointing out the locality. Of course I supposed at the time, and indeed afterwards, that he had seen to its being duly registered or marked on the map, and never troubled further about it.

It would appear this was not done, which is to be regretted.

I cannot fix the date, but as it was some years before his death a proximate guess might be given.

Hoping the efforts of the Presbytery will be successful and regretting that I cannot furnish more explicit information, I remain, with many thanks for your assistance,

Faithfully yours,

J. H. M'CALL.

JAS. M. DOOLEY, *Esq., M.H.A., Hobart.*

APPENDIX B.

THE Returns No. 83, 1868, and 46, 1865-6, were prepared by Mr. Calder, and Mr. Smith now Chief Clerk, Chief Secretary's Department, without any other assistance, and from my knowledge of Mr. Calder I feel quite convinced that he would not have put his signature to them without being fully satisfied they were correct. I have no knowledge of the Reserve being made. If Mr. Calder had had any doubt as to the correctness of the Returns he would have said so in a foot-note in the Returns.