

(No. 60.)



1870.

T A S M A N I A.

SANDY BAY ENCROACHMENTS.

CORRESPONDENCE.

Laid upon the Table by Mr. Butler, and ordered by the House to be printed,
September 7, 1870.



Hobart Town, 17th February, 1870.

SIR,

ON behalf of a large and influential section of my constituents, who desire to preserve intact the very few suburban resorts available to the citizens of Hobart Town for recreative purposes, I beg to direct your attention to Parliamentary Paper No. 129, laid on the Table of the House of Assembly, at my instance, by the Honorable the Colonial Treasurer on the 19th October last.

From a perusal of this document (which I enclose) you will perceive that the finest sea-side resort in the vicinity of Hobart Town has, during the last few years, been walled in, after having been open to the public for a period of thirty years.

This alleged infringement of the people's rights was brought prominently under the notice of the Government of the day by several gentlemen of influence and position (some of whom were learned in the Law) so far back as the year 1866; when, after the opinions of the Law Officers of the Crown had been taken, warrants were issued by Order of the Governor in Council for the removal of the obstructions, under the 79th Section of the Waste Lands Act of 1863.

As, for some inexplicable reason, these warrants were never executed, I brought the subject under the notice of Parliament during its last Session, when it was unanimously resolved, "That an Address be presented to His Excellency the Governor, praying that he would, without further delay, give effect to the Order in Council of the 26th August, 1866."

These encroachments, however, still exist. May I therefore request that you will do me the honor of informing me why effect has not yet been given to the Order in Council of the 26th August, 1866, and the unanimous Vote of the House of Assembly of the 21st October last?

I would strongly urge upon the Government the importance of settling this matter without further delay, affecting, as it does, the interests of the community at large. If the public are legally entitled, as of old, to the free use of the Long Beach at Sandy Bay, it should be thrown open at once; or if the beach is private property, I trust that no time will be lost in acquainting those who think otherwise, that the opinions taken by the Government in 1866 were a mistake, and that both the Order in Council and the Warrants cannot be carried out.

I have the honor to be,
Sir,

Your most obedient Servant,

JOSIAH C. PRATT.

The Honorable the Minister of Lands and Works.

Hobart Town, 11th May, 1870.

SIR,

I HAVE the honor to acknowledge the receipt of your letter of the 4th instant, in which you urge upon me the necessity of removing, within fourteen days from date, the encroachments which you allege I have made on the Sandy Bay Beach.

In reply, I have to inform you that I deny having made any encroachment whatever on the beach. The land which I occupy at Sandy Bay was located upwards of sixty years ago, and granted by the Crown upwards of forty years ago; and the wall which I erected some time since on that land was erected inside of a fence which was in existence for a period of thirty years before the time when I erected the wall, and during the time Mr. Frederick Lipscombe was proprietor of the property. The only encroachment that I know of has been made by the sea, which has

encroached considerably; and many persons,—old residents of the locality,—and especially Mr. Thomas Fisher (who has resided there for sixty years), can testify to the fact.

As to the fence on my land nearer to Sandy Bay Point,—it is no encroachment. The fence is erected upon the boundary line of the property as granted by the Crown; and although at high tide the water comes close to this fence, yet at low tide the distance between the fence and the water is at the very least from twenty to sixty yards.

Though I dispute the right of the Government to require me to remove what they term encroachments, I am willing, if they should think it for the public benefit that there should be a road for the purpose of enabling persons to pass and repass when the tide is high, to sell any reasonable portion of my property abutting on the beach for that purpose at a fair valuation; or should there be any difference of opinion between you and myself as to the value, I would have no objection to have the matter determined by Arbitration.

I may add, that at one time it was my intention to have formed a road through my land, and at my own expense, for the accommodation of the public, and so as to save them the inconvenience consequent upon not being able to pass along the beach at high tides; but the annoyance to which I have been subjected through the interference of officious persons, who supposed that I had encroached upon the beach, has caused me to relinquish my intention until the matter is settled.

I have the honor to be,
Sir,

Your very obedient Servant,

JOHN MURDOCH.

The Honorable the Minister of Lands and Works.

Stone Buildings, Hobart Town, 28th June, 1870.

SIR,

YOUR letter of the 25th instant, enclosing copy of your letter of the 4th ultimo addressed to Mrs. Sarah Betts, and informing her that the fences partly enclosing the property she occupies at Sandy Bay encroach on the Long Beach, and requesting their removal within 14 days, has been placed in my hands by Mrs. S. Betts, with instructions to reply thereto.

I learn that the property as now fenced has been occupied for 61 years, and that it has been granted by the Crown for 34 years, and that consequently any right that the Crown might have, supposing there has been any encroachment, has long since been barred.

Under these circumstances I cannot advise Mrs. S. Betts to remove the fence. If removed at all, it must be done at the Government expense, on a proper and fair remuneration being made to my Client.

I have the honor to be,
Sir,

Your humble Servant,

CHAS. ELLISTON.

To HENRY BUTLER, Esq., Minister of Lands and Works.

Old Wharf, Hobart Town, 7th July, 1870.

SIR,

I NOW enclose proofs from Messrs. E. Lipscombe, F. Lipscombe, A. Maning, and Thomas Fisher that I have not encroached on the beach; in fact, the fence ought to be nearer the sea than it is at the present time.

The parties above named are prepared to substantiate on oath the statements contained in their letters.

I have the honor to be,
Sir,

Your most obedient Servant,

JOHN MURDOCH.

To the Hon. Minister of Lands and Works.

Sandy Bay, 6th July, 1870.

SIR, WILL you be so good as to answer the following questions to the best of your ability?

1. How long have you resided at Sandy Bay?—Thirty-seven years.
2. Has the sea encroached upon the land at Sandy Bay Beach within your recollection; and if so, to what extent?—Yes; in some parts upwards of sixty feet, in other parts the land has joined on the water.
3. Was the boundary of your property originally built at high water mark?—It was originally fenced by me above high water mark, where it was measured to me by the Surveyor, and the boundary tree marked.
4. Would not the sea have encroached upon your late property had it not been protected by a boundary wall?—Certainly it had done so.

Please to add any other remarks that you may think of.—There are now rocks of freestone on the beach where formerly it was sand.

F. LIPSCOMBE.

Hobart Town, 6th July, 1870.

SIR, HAVING been requested to state my knowledge of the encroachments of the sea on the land at Sandy Bay, after a residence of upwards of twenty-eight years, I unhesitatingly say that the sea has made large encroachments, in some places to the extent of twenty feet or more.

I have the honor to be,

Sir,

Your obedient Servant,

EDWARD ESPIE.

The Hon. H. BUTLER.

Battery Point, Hobart Town, 7th July, 1870.

SIR, HAVING been requested to state my opinion of the encroachments on the land at Sandy Bay occupied by Mr. John Murdoch, I beg to state that I have resided at Sandy Bay for sixty years, and during that time the sea has encroached considerably,—upwards of sixty feet or more.

I have the honor to be,

Sir,

Your obedient Servant,

THOS. FISHER.

The Hon. HENRY BUTLER, Minister of Lands and Works.

Sandy Bay, 8th July, 1870.

SIR, IN reply to your enquiry respecting my knowledge of the sea beach at Sandy Bay Point, I beg to say I have known the locality since the year 1825, but have observed it more particularly between 1832 and 1837, and from 1842 to the present time. A considerable encroachment by the sea on the north side of Sandy Bay Point has taken place since I have known the locality; in some places, I believe, to the extent of 40 to 50 feet. The encroachment on the point still continues whenever an unusually strong northerly gale occurs at the time of Spring tide; a perceptible encroachment takes place at such time. Some years ago I recollect as much as 10 to 12 feet of the north side of the point having been washed away by one tide. The sand displaced at such times is drifted by the receding tide into Little Sandy Bay, and is gradually filling up that bay. I believe Mr. Murdoch's fence now stands many feet inside the line where I recollect a belt of large Honeysuckle trees having formerly stood, which were washed away some years ago by the encroachment of the tide.

I have the honor to be,

Sir,

Your most obedient Servant,

A. H. MANING.

The Hon. HENRY BUTLER, Commissioner of Lands and Works.

Sandy Bay, 10th July, 1870.

SIR, I HAVE been requested by Mr. John Murdoch to give my opinion on the encroachments on the Sandy Bay Beach, being a resident of Sandy Bay for 30 years.

I give my candid opinion that the sea has encroached, and not Mr. Murdoch, as I have seen trees growing out from 2 to 3 feet out further than Mr. Murdoch's fence.

EDW. LIPSCOMBE.

To the Honorable the Minister of Lands and Works.

Hobart Town, 7th July, 1870.

SIR, I HAVE the honor to report the result of my examination of certain alleged encroachments upon the Sandy Bay Beach.

In order to test the question, I very carefully re-measured the boundary lines marked respectively A.B.C. and D.E. upon the tracing enclosed (No. 1), with the following results:—

A. to B.	3078 links (measured)	3090 (by Grant.)
B. to C.	3638 " "	3650 "
	<u> </u>		<u> </u>
A. to C.	6716 " "	6740 "
	<u> </u>		<u> </u>

The line A.B.C., therefore, measuring 24 links *short* of the length indicated by the Grant deed.

D. to E. 3376 links (measured) 3370 (by Grant.)

Being in this case 6 links in *excess* of the length indicated by the Grant deed.

The points respectively marked E. and C. are identical on tracings No. 1 and No. 2; and I may state my opinion professionally that here no case of encroachment can be made out; the encroachment being apparently upon the opposite side,—viz., of the river upon the land granted.

I also examined that part marked F.G. upon tracing No. 2,—being the site of the chief obstruction to the public use of the beach.

At these points it seems probable that some encroachment has been made; but, owing to the non-existence of any detailed survey of the coast line as it appeared at the time the grant was issued, no professional test can be applied, and the case would rest entirely upon the evidence (probably very contradictory) of those long acquainted with the locality.

I have the honor to be,
Sir,

Your very obedient Servant,

GEORGE INNES, *District Surveyor.*

The Hon. the Minister of Lands and Works.

Old Wharf, Hobart Town, 14th July, 1870.

DEAR SIR,

In my last letter I omitted to say, that should you be convinced that there is no encroachment on Sandy Bay Beach, and wish to make a road for public convenience, you may use my road for that purpose.

I am, Sir,
Yours truly,

JOHN MURDOCH.

The Hon. H. BUTLER, Minister of Lands and Works.

*Office of Lands and Works, Hobart Town,
23rd July, 1870.*

MEMORANDUM.

BEFORE taking any further action in the matter referred to in the accompanying papers,—viz., certain alleged encroachments on the Sandy Bay Beach,—I beg to submit them for the perusal and advice of the Law Officers of the Crown.

The lands in front of which the alleged encroachments have been made form part of a location of 90 acres made in the year 1813 to B. Walford, and which is described as bounded on the north by the River Derwent.

The supposed encroachments were brought under the notice of the Government in the year 1865, and in the following year the Governor in Council authorised the issue of Warrants to the Sheriff for their removal. The Warrants were issued accordingly, but remained unacted upon, in consequence, I believe, of certain representations made to the Honorable the Colonial Treasurer by the parties who were believed to have made the encroachments.

The matter has recently been revived, and certain surveys effected, from which it would appear, by the report of the Surveyor, that (in one part of the beach) "no case of encroachment can be made out; the encroachment being apparently on the opposite side,—viz., of the river upon the land granted." Mr. Murdoch, one of the alleged encroachers, has furnished letters from several old residents at Sandy Bay, who state that to their knowledge the sea has encroached on the land in that locality; and as it is impossible to arrive at the correct boundary of the original grant in all places along the beach, it appears to me very doubtful, under the circumstances of the case, whether the Government would be justified in interfering with the existing fences, &c.

HENRY BUTLER.

The Hon. the Attorney-General.

Will the Solicitor-General be good enough to look into this matter, and advise thereon.

W. R. GIBLIN,
28 July, 1870.

MEMO.

AFTER having perused the very voluminous papers accompanying the Memorandum of 23 July from the Minister of Lands and Works, and having carefully considered Mr. Geo. Innes' letter of 7 July, I cannot recommend that legal process should be resorted to for the summary removal of the alleged encroachments on the Sandy Bay Beach. The Queen is, by her prerogative, the *prima facie* owner of the land lying between high and low water mark, in ordinary tides, of the seas and navigable rivers within her dominions; but if it can be shown, and it is asserted, that the River Derwent has encroached on the land as originally granted, then the obstructions now complained of would appear to have been lawfully created by the private owners of the land: and the question here is particularly one of fact, and not of law.

As it seems very desirable that the interests of the Public in the Sandy Bay Beach should be secured, I venture to recommend that a Resolution of Parliament should be obtained, authorising the Minister of Lands and Works to refer the matter of dispute, in each case, to the arbitration of three persons, who should decide whether there is any and what encroachment, and if so, what should be done by the landowner; and if there is no encroachment, then to determine how much land is required for the use of the public, and what compensation is to be paid by Government; and the land should be surrendered to the Crown on payment of compensation by the Minister of Lands and Works. Without some such authority, I think there is no power to settle this long-disputed question.

ROBERT P. ADAMS,
Solicitor-General's Office, 1 September, 1870.

The Honorable the Attorney-General.
