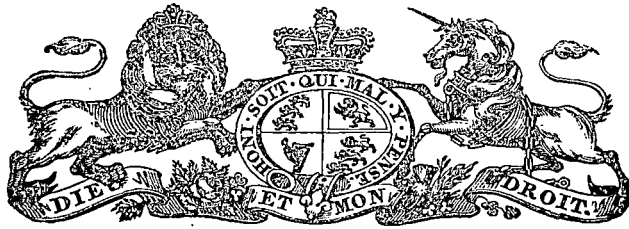


(No. 142.)



1883.

T A S M A N I A.

H O U S E O F A S S E M B L Y.

**MR. J. C. JUDD'S CLAIM FOR
COMPENSATION :**

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

Brought up by Mr. Bird, and ordered by the House to be printed, October 19,
1883.



SELECT COMMITTEE appointed on the 4th October to investigate and report upon the Claim of Mr. Judd for Compensation for alleged loss sustained by him through the delay of the Lands Department to put him in possession of a block of land selected by him, and surveyed by order of the Department.

MEMBERS OF THE COMMITTEE.

MR. BRADDON.
MR. CROWTHER.
MR. PILLINGER.
MR. BELBIN.

MR. W. T. H. BROWN.
MR. BURGESS.
MR. BIRD. (*Mover.*)

DAYS OF MEETING.

Wednesday, 10th October ; Thursday, 11th October ; Friday, 19th October.

WITNESSES EXAMINED.

Mr. T. C. Judd.
Mr. C. Sprent, Deputy Commissioner of Crown Lands.

MINUTES OF MEETINGS.

No. 1.

WEDNESDAY, OCTOBER 10, 1883.

The Committee met at 12 o'clock.

Present.—Mr. Braddon, Mr. Bird, Mr. Pillinger, Mr. Brown.

1. Mr. Bird was voted to the Chair.
2. Mr. Judd was called in and examined.
3. Mr. Sprent, Deputy-Commissioner of Crown Lands, was called in and examined.
4. The Committee adjourned at 1 P.M. till Thursday, 11th instant, at 11 A.M.

No. 2.

THURSDAY, OCTOBER 11, 1883.

The Committee met at 11 A.M.

Present.—Mr. Braddon, Mr. Pillinger, Mr. Brown, Mr. Crowther, Mr. Bird (Chairman.)

1. The Minutes of last Meeting were read and confirmed.
2. Mr. Sprent was re-called and further examined.
3. Mr. Sprent withdrew.
4. Resolved, that the Solicitor-General be written to for his legal advice on the subject under consideration.
5. Resolved, that Mr. G. Innes, Surveyor, Franklin, be written to, asking him the exact date on which he commenced the survey of the land in dispute.
6. The Committee adjourned at 1 P.M. until replies from the Solicitor-General and Mr. Innes were received.

FRIDAY, OCTOBER 19, 1883.

Committee met at 11 A.M.

Present.—Mr. Burgess, Mr. Pillinger, Mr. Bird (Chairman).

Minutes of last Meeting read and confirmed.

1. Replies from the Solicitor-General (Appendix A.) and Mr. Innes (Appendix B.) laid on the Table by the Clerk.
2. Draft Report discussed and adopted.
3. The Committee adjourned *sine die*.

R E P O R T.

YOUR Committee have the honor to report to your Honorable House that they have given careful consideration to the case that was submitted to them. They have procured an opinion from the Law Officer of the Crown, and have also taken such evidence as they deemed necessary to enable them to arrive at an equitable decision.

They find that, in making an application for the land in question, Mr. Judd did not comply with the requirements of the Act, in that he purposely gave no description of the locality of the land he desired to obtain, only undertaking to point out the site to the surveyor; thereby rendering it impossible that the application could be properly charted.

They find also that the Lands Department committed the very grave error of accepting this informal application accompanied by the survey fee, thereby justifying Mr. Judd in the belief that if he pointed out the site to the surveyor before any other person applied formally for the same land, he would be entitled, as prior applicant, to possession.

They find that, although the locality of the selection was indicated to the surveyor on the 10th March, 1881, the survey was not proceeded with until the 12th May following, and that up to this last date Mr. Judd's application was still not charted.

They find further that, on the day on which the survey was commenced, another application, in due form, was made in the name of Annie Hay for the same piece of land; that this application was accepted and charted, and the survey ordered; thereby causing a dispute as to whether Judd or Hay was the prior applicant.

They find that from May, 1881, until March, 1882, the dispute was still undecided; and that during this interval of 10 months the land was being denuded of its valuable timber, for which alone it appears that both parties were wishful to procure it. Consequently, when Mr. Judd was informed after this long delay that he might have the land, he claimed compensation for his outlay in constructing a tramroad for the purpose of procuring the timber which, during the long delay, had been removed.

Your Committee are of opinion that the delay of the Department to decide who was entitled, as prior applicant, to possession was very unnecessarily and improperly prolonged, since it is clear to your Committee that, in point of law, Annie Hay was the prior applicant, although, in point of fact, Mr. Judd was first.

But while your Committee feel called upon to condemn this needless delay, they cannot discover that such delay entitled Mr. Judd to the compensation he claims. For although the Department was in fault in accepting his informal application, and in subsequently delaying the decision of the dispute, yet clearly in the first instance he himself was the cause of the dispute through his own intentional failure to comply with the terms of the Act. And if further reason were needed for refusing the compensation claimed, it will be found in the evidence before your Committee that the representatives of the late Annie Hay are still prepared to take up the land in question if Mr. Judd declines to do so; and as it is understood to be for the sake of the timber alone that the land is desired, they thereby indicate their belief that the land is not so denuded of timber as to render it valueless for their purposes.

Your Committee therefore conclude that, for the reasons given, Mr. Judd is neither legally nor equitably entitled to the compensation he asks.

STAFFORD BIRD, *Chairman*.

Committee Room, 19th October, 1883.

EVIDENCE.

WEDNESDAY, OCTOBER 10, 1883.

MR. J. C. JUDD *called in and examined.*

1. *By the Chairman.*—Your name is? John Cane Judd.
2. Your occupation? Saw-mill proprietor.
3. You applied for a block of land from the Lands Department in July or August, 1880? Yes, in July or August; I am unable to say which precisely.
4. Was your application entertained? It was, and the survey fee was paid on the 30th August.
5. In making application did you describe the locality of the block of land applied for? Not minutely; I stated I would point out the selection when the surveyor came on the spot.
6. Did the Department object to receive the application without description? No, to me they did not; but they told Mr. Pulfer, master of one of my crafts, who paid the survey fee, that if anyone else applied for the same selection I should lose it, through not having described it minutely.
7. Will you give your reason for making the application without describing the exact locality? Yes; my reason for doing so was to protect myself against splitters and others who frequently have deprived saw-mill proprietors of timber on land they have applied for by rushing on to it and working the timber off before the survey is effected.
8. When was the land surveyed? In May, 1881.
9. Do you know whether the survey of the land was delayed at all through your request? It was delayed from the 9th April to the 10th or 11th May following, in consequence of my then being on the point of leaving for Melbourne.
10. Did anything occur to interfere with the completion of the survey after it was commenced? After it was commenced some word came to the surveyor from Hastings that he should not go on with it and he ceased work from Friday to the following Monday.
11. Do you know whether Mr. Innes, the surveyor, communicated with the Lands Department about the interference with the survey by the message from Hastings? I think not, because they went on with the work on Monday morning.
12. Did you learn what was the cause of the temporary stoppage of the survey? I did afterwards; it was an application to transfer a selection, which had been made in the name of Annie Hay, from a locality seven miles distant to the site of my selection.
13. Was any splitter or any employé of the Hastings firm working on your selection when the surveyor began the survey? Not that I am aware of.
14. Did you ask to be placed in possession of the land soon after survey? Yes; I called on Mr. Hull on the 20th May, having heard there was a dispute, inquiring if there had been a prior application made for the land, and received no satisfactory answer; no hint was given me that another application had been made for the land prior to the surveyors working on the ground for me.
15. Did you make any further application for possession? Not for some considerable time afterwards. I only then sent a verbal message to the office by Mr. Cane that some men were splitting on the ground. After this message was sent the men ceased splitting for a time, I believe in consequence of the Crown Bailiff having ordered them to do so. These men had been paying licence fees for splitting on the ground.
16. On what ground do you think you have claim for compensation?—for the delay in getting possession of the ground? On the construction of about a mile of tram that was laid down in the expectation of getting the timber on that block of land.
17. If you had known other parties would have been allowed to work the timber on that land, would you have proceeded with the construction of the tramway? Certainly not.
18. Did the Department offer to put you in possession of the land at any time? Not until March, 1882. I had written to Mr. Hull on the 14th or 15th March informing him that the men were destroying the timber, and expressing surprise that I had not been put in possession sooner. To this letter I received no reply until calling personally on the Minister of Lands. I was informed I could have possession, Captain Fisher having withdrawn his application. I objected to take possession then until I had seen the condition the land was in, and, subsequently, in a letter to the Minister of Lands, I objected to take possession until I received compensation for money I had expended.
19. What compensation do you claim? Three hundred pounds, although I have been put to a much greater loss than that amount represents, having lost the tramage of certainly not less than 200,000 palings, at £1 per 1000, and an indirect profit in the freight of those palings to town in my crafts.
20. Have you got any benefit from the land in question? No.
21. Are you likely to get any? No; and the tram is, consequently, entirely useless, and a dead loss.
22. What would be the value of the material in the event of your taking up and relaying the tram? Fifty pounds is the extreme price I should care to give for the material in that mile of tram.
23. *By Mr. Braddon.*—Would the tramway be of use to anyone else? None whatever.
24. Is this mile of tramway the extension of another tramway belonging to you? It is.

25. And all the material used in the construction of this tramway was carried to it on your line? It was.

26. *By Mr. Pillinger.*—How did the Government prevent your taking possession after the survey was made? By not entering into any contract with me, or taking the first instalment.

MR. C. SPRENT, *Deputy Commissioner of Crown Lands, called in and examined.*

27. *By the Chairman.*—Your name? Charles Sprent.

28. Your occupation? I am Deputy Commissioner of Crown Lands.

29. Are you familiar with the dispute between Mr. Judd and your Department? I am.

30. Do you know the grounds on which Mr. Judd claims compensation from the Government? It appears from the records that it is because possession was delayed to him.

31. Do you know why possession was delayed? The Department considered that the land had been applied for by another person.

32. Did the Department consider the other application was prior to that of Mr. Judd? Not exactly, but they considered that Mr. Judd's application was too indefinite to fix the selection.

33. Was the other application made before the survey was commenced? I do not know when it was commenced,—I only know the date of the receipt of the survey from papers; on looking at the documents before me I see the surveyor states it was commenced in May, 1881. In September, 1880, Annie Hay applied for 320 acres west and adjoining 320 acres applied for by M. J. Fisher in May, 1881; she withdrew this application and substituted another for the ground now in dispute. Judd's application was in August, 1880, and he did not apply for any ground in particular, stating he would point out the selection to a surveyor.

34. Was there any communication between the surveyor and the Department relative to the selection? Yes, I lay it before the Committee:—

Franklin, June 8th, 1881.

DEAR SIR,

THERE having been some dispute with reference to the selection of Mr. J. C. Judd's, it may be as well for me to explain that Mr. Judd (whose application was received at office in August last year) spoke to me with reference to making this survey on 10th March last (day of Esperance Regatta), wishing me to remain then and effect same. To suit my own convenience I asked him to wait until I had completed the two lots applied for (each 320 acres) near Lune River, Southport, promising him at same time that his application being of so long standing I would measure his selection *before any other lot in vicinity*. I saw Mr. Judd again about middle of April, being then ready to make the survey; at this time, however, he was just about proceeding to Melbourne, and wished me defer the survey until his return, at the same time pointing out to me on the map, as nearly as he could (Dalco's 50 acres not being charted), the exact position in which he required the lot. I may further mention that as Mr. Judd has for some months past been constructing a tramway towards this land—which is now within a few chains of its northern boundary—and having no other land in the vicinity, it is only fair to infer that the lot I have surveyed is that to which his application was intended to refer, although the description in said application was not so definite as to locality as it should have been.

At the time I received your first telegram with reference to shifting of selection by Annie Hay, the lot for Judd was half completed,—before arrival of the second one it was finished.

I am, dear Sir,

Yours faithfully,

G. INNES, *District Surveyor.*

H. J. HULL, *Esq.*

[TELEGRAM.]

THE land charted to Judd is nearly three miles from where Annie Hay applies. He cannot be allowed a roving commission.

G. INNES, *Esq.*,
Care of John Hay, Esq., Hastings.

H. J. HULL, *Lands and Works,*
16 May, 1881.

THURSDAY, OCTOBER 11, 1883.

MR. C. SPRENT, *Deputy Commissioner of Crown Lands, called in and further examined.*

35. *By the Chairman.*—Is it customary for the Department to entertain applications for selection without description of the lot applied for? It is not.

36. Do you consider Mr. Judd could have taken possession of the land immediately after the survey, or was he prevented by the hesitation of the Department? Mr. Judd could have taken possession as soon as the Department notified they were prepared to enter into a contract with him.

37. Do you know the date at which the Department offered to enter into a contract with Mr. Judd? I do not. I believe Mr. Judd called on the Minister of Lands and was told the Department were prepared to enter into a contract with him: this was after Annie Hay's application was withdrawn.

38. Do you know the date at which Annie Hay's application was withdrawn? It never has been formally withdrawn, and her representatives are now prepared to take the land up if Mr. Judd does not go on with his application.

39. Do you consider that the Department is liable for loss sustained by an applicant for an agricultural selection, when, through delay to give him possession, the timber has been removed from the land? Yes, if the Department were shown to have been guilty of unreasonable and culpable delay, there being no difficulty about the application.

40. Are you satisfied there has been no unnecessary delay in offering Mr. Judd possession of the land? I am, quite.

41. It appears that between the completion of the survey and the offer to give Mr. Judd possession, 10 months elapsed; do you think the dispute could not have been settled more speedily? I am unable to say, not knowing the arguments the contending parties had to offer. The position that the Department evidently took up was that Mr. Judd's application would cover the whole parish, and the surveyor was informed by telegraph that Mr. Judd could not be allowed a roving commission, and that Annie Hay's application, being in a specified locality, should not be put on one side in favour of an indefinite application.

42. But when Mr. Judd had indicated to the surveyor the site, and the site was actually being surveyed, before Annie Hay's application was put in, was it not clear that in point of fact Mr. Judd had both applied for and described the site prior to Annie Hay? He had not described the locality to the Department; he may have done so to the surveyor, but that does not enable the Department to chart the selection.

43. Then, do you think, under all circumstances, Mr. Judd has no just or equitable claim on the Department for compensation? I think he has not.

44. It appears that the Department accepted Mr. Judd's application on the condition that he would point out the site to the surveyor, and it appears that Mr. Judd pointed out to the surveyor on the chart the site as soon as the surveyor was ready to survey it—why, then, should the application of Annie Hay have been entertained for a day after it was known to the Department that Mr. Judd's selection was surveyed at his direction? Mr. Judd's selection was not known to the Department, who could assign no reason to Annie Hay for refusing her application, having no information before them on the subject.

45. *By Mr. Braddon.*—Would the Department have been justified in ordering that particular selection to be surveyed in the name of Annie Hay after they became aware that it had been surveyed for Mr. Judd? No, two surveys would not be necessary; the Department would have to decide between the two contending applicants.

46. What period elapsed between the Department becoming aware of the dispute, and their decision on that dispute? I am not aware; the matter was settled verbally by the Minister of Lands.

47. Was it not the duty of the Department to at once decide the dispute between the contending parties? Yes, the Minister of Lands should have settled the dispute as soon as he had obtained all the particulars of the case.

APPENDIX A.

Committee Room, House of Assembly, 11th May, 1883.

SIR,

I HAVE the honor, by direction of the Chairman of the Select Committee appointed to inquire into and report upon Mr. J. C. Judd's claim for compensation, to request that you will be good enough to give the following questions your consideration, and that you will favour the Committee with replies to them at your earliest possible convenience:—

A. applies for 320 acres agricultural land under 24 Section Waste Lands Act. Applicant gives no description, but engages to point out the selection on the spot. Application accepted, but not charted; survey fee paid and survey made. While survey proceeding, B. makes application for the same block of land. This application accepted and charted. Surveyor, upon being instructed to survey this for B., informs the Department that he is already doing this for A.

The disputed claim, as between A. and B., hung up for 10 months, at the expiration of which the Department decided in A.'s favour. But meanwhile the land denuded of all the valuable timber (Government receiving license fee from B. who removed it), and a tramway constructed by A. for the purpose of removing the timber from this block for his own use.

Question 1.—Is A. entitled to compensation from the Department for loss of timber in this selection?

Question 2.—Is A. entitled to compensation for loss upon construction of a tramway now useless?

I have the honor to be,

Sir,

Your obedient Servant,

HENRY T. MANING, *Committee Clerk.*

The Solicitor-General, Hobart.

THE land in question is said to have been selected by A. as "agricultural land," under the provisions of Section 24 of the Waste Lands Act (34 Vict. No. 10); but it is difficult to understand how he can be said to have made a selection of any particular land without describing or indicating the land in such a manner as would enable the Lands and Works Department to chart it. However, A. paid the survey fee, and afterwards the survey was made. But it seems that while the survey for A. was progressing the surveyor

was told to survey for B. that which afterwards proved to be the same land applied for by A.; and B.'s application having been accepted, the land applied for by him was charted. It appears to me that the difficulty was brought about by A. not having given such a description as would have enabled the Department to chart the land, and so have prevented them from accepting B.'s application.

B. proceeded to cut the timber on the land of which he supposed he would become the owner, and A. constructed a tramroad for the purpose of removing the timber for his own use. Subsequently, after ten months' delay, the Minister recognised A.'s right to purchase, and, I presume, that a contract for sale and purchase was entered into, as provided by Section 24. Now, according to my construction of the Act, A. could not acquire a right to purchase the land until after survey and after the Commissioner had deemed the land "suitable for cultivation," (Section 20.) It was quite within A.'s power to refuse to enter into a contract for purchase of the land (Section 25); and if he elected to enter into it he did so at his own risk and, presumably, with the full knowledge that the timber he required was removed before the contract was entered into.

I therefore am of opinion—

- (1.) That A. is not legally entitled to compensation from the Lands and Works Department for loss of timber.
- (2.) That he is not legally entitled to compensation for loss upon construction of tramway.

HENRY T. MANING, *Esq.*, *Committee Clerk, House of Assembly.*

ROBT. P. ADAMS.
12 Oct., 1883.

APPENDIX B.

[TELEGRAM.]

Franklin, 12th October, 1883.

12 May, '81 (Twelve May, eighty-one) Survey commenced. Mr. Judd defined position of lot to me March tenth, eighty-one (10-81), but survey delayed, with his consent, to suit my convenience.

G. INNES, *District Surveyor.*

H. T. MANING, *Esq.*, *House of Assembly.*