

and Native Land Claims Adjustment Act, 1922. What may have been in the minds of the Government negotiators in connection with that settlement we cannot say. We can only infer their intention from the language used in the statute itself, in the document expressing the agreement of the parties, and in the correspondence leading up to that agreement. We cannot, for the purpose of imputing an intention to the parties or either of them, read into the documents words that are not there.

25. There are certainly features in connection with this aspect of the matter which seem very strange. First of all, it is curious that the questions regarding the Rotorua Township were allowed by Ngati Whakaue to lie dormant between 1908, the year of the sitting of the Stout-Ngata Commission, and 1922. It is also strange that they were not expressly raised in 1922 when the claims by the Arawas generally were being discussed with a view to settlement. However that may be, the fact is that there is no record of the claims by Ngati Whakaue, who are a hapu of the Arawas, being specifically raised. Then again, even after 1922, it is strange that nothing is heard of the Ngati Whakaue claims or grievances until the petition to Parliament in 1928. On the other hand, it is exceedingly strange, if the 1922 settlement had been intended to include the settlement of these Ngati Whakaue claims, that this defence was not raised when the petition was presented in 1928. Indeed, it would have been a complete answer, and it would have been the duty of the Government of the day to make that answer. But, in fact, the answer was never made or even suggested. It was not suggested by the official reply or comment of the Native Department which it was called upon to make to the Native Affairs Committee upon the petition, nor apparently was it suggested to that Committee by the Minister. Furthermore, at that time Sir Francis Bell, who had negotiated the 1922 settlement for the Government, was still closely associated with the Government, being Leader of the Legislative Council and Minister without portfolio, and we cannot doubt, if in fact the Ngati Whakaue claims had all been intended to be settled in 1922, and consequently the claims made in the 1928 petition should have been incontinently rejected, that Sir Francis would have seen to it that the Government and Parliament were left in no doubt as to the true position.

26. It is also strange that Chief Judge Jones, although this ground of defence raised by the Crown was brought before him in both 1930 and 1935 and discussed at considerable length, says not a word about it in his report. It would appear necessarily to follow, however, from his making recommendations in favour of the Maoris, that he must have rejected the Crown's contention, but it is extraordinary that he did not refer to it and give his reasons for rejecting it. Had he done so, it well may be that the point would not have been brought up again by the Crown before this Commission.

27. But although we reject the contention that these claims were included and disposed of in the 1922 settlement, the fact that that settlement was made and the facts and circumstances relating to it are not without some relevance now. Mr. Cooney emphasizes that the Maori claims should now be disposed of in the spirit of fairness. That is so; but, when it comes to considerations of fairness, the circumstances and conditions affecting both sides should be kept in view. It must not be assumed, because the Maoris may be thought to have certain just grievances, that they have not in other respects relating to these same transactions been treated with the utmost fairness and liberality. It has been said, and truly said, that the Arawas have always been a loyal tribe, and that they have been exceedingly generous in their gifts to the Crown of the medicinal springs and waters, and other reserves, and also in their gift of land in connection with the construction of the railway. The fact of that liberality is not in itself relevant to the questions that we have to consider; as we have already stated, the only questions that we have to consider are—

- (i) What loss, if any, the Ngati Whakaue may fairly be said to have suffered by reason of the alleged neglect and mismanagement of the leasing administration; and
- (ii) On the point of adequacy of consideration, what was the market value of the land at the time it was purchased in 1889.