

The substantial legal questions raised as to the validity of Mr. Jones's leases, as understood by the Government at this time, were, shortly, that the lease of the main subdivision, though originally valid, had become liable to forfeiture owing to the non-performance of the covenants as to the formation of a company and the expenditure of £3,000 per annum, and that the other leases had been illegally granted to Mr. Jones, and should never have been registered by the District Land Registrar. The lessee's answer to these suggestions was, as to the main subdivision, that the Natives had received the additional rental of £100 per annum for a period of over twenty years, and had waived any forfeiture that had been incurred, and even if this were not so, the Supreme Court had power to, and would in the circumstances, relieve from forfeiture, leaving the lessee to perform the covenants for the future; and as to the other subdivisions, he contended that, even assuming the leases to have been illegally granted and registered, his title to them was made good by the terms of the Land Transfer Act, he having purchased from the registered proprietor without notice of any defect.

The Government was informed that Mr. Skerrett had advised the Natives that the leases other than the lease of the main subdivision were invalidly granted, and that if they had been made good by the provisions of the Land Transfer Act the Native owners of these blocks were entitled to claim damages from the Assurance Fund of the Land Transfer Office, and that accordingly formal notice had, on the 19th April, 1910, been given to the Registrar-General of Lands on behalf of the Natives claiming £80,000 damages.

As the result of many months of negotiations, the Government came to the conclusion that the best way out of the difficulties was to purchase the interests of the Natives and the lessees in the block, which they believed could have then been acquired for £1 an acre. The Government valuation of the blocks comprised in the leases was at this time £31,273, but Cabinet decided to have a special valuation made by the Lands Department. Mr. Kensington, Under-Secretary for Lands, accordingly instructed the Commissioner at New Plymouth to have a valuation made. The Commissioner employed two Crown Lands Rangers, who made an exhaustive inspection of the property, and on receipt of these officers' reports the Commissioner reported to Mr. Kensington that the Government could not safely pay more than £26,000 for the land. Mr. Kensington then reported fully to the Government, suggesting that it might be advisable, in order to have the area settled, to pay from £30,000 to £35,000 for the whole estate, but that there would be considerable risk of loss if more than £30,000 were paid. It also appeared that the District Surveyor who inspected the land in 1905 reported then that in his opinion the block was not suitable for small settlement.

The Government decided that, in the face of this report, it could not purchase at the price demanded. It next went into the question of taking the block compulsorily. The law did not permit the compulsory taking of the Natives' interest. Their representatives, however, stated that they were willing to sell their interest to the Government for the sum of £22,500. It only remained, therefore, to exercise the power conferred upon the Crown of determining the interest of the lessee in the lands. The Government found itself faced with these difficulties,—

- (a.) It was advised that it should not pay more than £35,000 for the whole estate in the land.
- (b.) Assuming the leases to be good, the respective actuarial values of the interests of the lessors and lessee were £14,300 and £20,700.
- (c.) It could not purchase the Natives' interest for less than £22,500—that is, £8,200 more than its value, assuming the leases to be good.
- (d.) If it purchased the Natives' interest for £22,500, it had then to determine the lessee's interest in the land, and having done so it must either have admitted the leases as good (in which case it had paid the Natives £8,200 too much), or entered upon litigation of an extraordinarily difficult nature; and, more important still, it would have had to face a claim by the lessee not only for the loss of the occupation-rights, but also for the loss of the right to work the coal on the property for a period of nearly thirty years, for which a very large sum would probably be claimed, and as to which it was impossible to accurately estimate what compensation might be allowed.

The Government was forced to the conclusion, therefore, that it could not acquire the property.

At this stage the position was as follows: Expensive and prolonged litigation appeared necessary to determine the relative rights of the Natives and the lessee in the land. Claims for large sums against the Land Transfer Assurance Fund were threatened both by the Natives and the lessee, and an area of 53,000 acres of land which had never been developed, and had blocked the settlement of lands behind it, would continue to be locked up for an indefinite time until these disputes could be settled.

On the 20th September, Mr. Skerrett, on behalf of the Natives, wrote to the Native Minister as follows:—

"I have the honour to apply on behalf of the Native owners of the above blocks, being Subdivisions 1f, 1g, 1h, and 1j, containing about 53,185 acres, that His Excellency the Governor may be recommended to issue an Order in Council, pursuant to section 203 of the Native Land Act, 1909, authorizing the acquisition by, and the alienation thereof to, Mr. Herrman Lewis, notwithstanding the provisions of such last-mentioned Act, upon the ground that it is expedient in the public interest that such Order in Council should issue. I propose to narrate quite briefly the facts connected with the blocks, the terms of the proposed alienation, and the circumstances which I venture to submit render it desirable that the alienation should be authorized.

"As you are aware, the Natives are the owners of the above blocks, subject to various leases, all registered under the Land Transfer Act, to Mr. Joshua Jones, for the term of fifty-six years from the month of July, 1882, at various rents, and subject to various covenants. Mr. Joshua