

of the deed, that the moneys actually collected from these leases did not pass to the Crown by the assignment contained in the deed.

On the 6th January, 1890, Taekata Tokoihi, one of the owners of Tapuae, wrote to the Native Minister asking that the rents of the Palace Hotel (Kelly's) should be paid to him. On the 2nd May, 1890, Mr. Lewis wrote a memorandum to the Hon. the Native Minister. Mr. Lewis says in this memorandum, "Taekata is one of the principal owners in Rotorua, and he asserted that he owned the whole or a large portion of the site of the Palace Hotel, and was in point of fact Mr. Kelly's landlord before Mr. Fenton's agreement was entered into. During my negotiations he wished to claim certain accumulated back rents of the hotel. I told him that was a matter with which *I had nothing to do, and could not mix it up with my purchase*. If he accepted payment and signed by deed he would relinquish all his claims to back rents within the block. He signed, so that under his agreement with me he has no claim. If there is any special arrangement or understanding in the Crown Lands Department which gives him any equitable claim outside the deed I have no knowledge of it. This question of rents is entirely within the Crown Lands Department." We do not quite understand what Mr. Lewis meant to convey by this memorandum. But it is plain from Mr. Lewis's previous memo. that it was not part of the agreement and was not intended that the Native owners should lose any rents that had actually been collected. Taekata's assertion that he was in point of fact Mr. Kelly's landlord is borne out by Judge Clarke's report already referred to, and by the same Judge's partition orders of 1885.

In the same year (1890) Taekata Tokoihi, and also some of the owners of Te Haka No. 7, petitioned Parliament praying for redress. So far as Taekata's petition is concerned, the Native Affairs Committee reported that in their opinion the petition should be referred to the Government for inquiry, and that the Board (Rotorua Town Board) be instructed not to spend any of the rents of the two hotels until the inquiry takes place. The inquiry did take place, but the tribunal directed to hold it was the Rotorua Town Board, the very body that had persistently been attempting to obtain, and had at this period actually obtained, the rents in question, and expended them upon Town Board purposes. From such an inquiry, under the circumstances, the Natives would be extremely unlikely to obtain any redress. We do not propose to refer at any length to the report sent in by the Rotorua Town Board, because under the circumstances we attach no value to it. But we may point out that the view of the Board was, as set out in its report, that by the deed of purchase all arrears of rent within the block were relinquished by the Natives. In our opinion these moneys were not arrears of rent. They were moneys actually collected by the Rotorua Town Board as agents for the owners. They could and should have been distributed long before the Crown purchased the land. We are of opinion, then, that the rents actually collected and held by the Rotorua Town Board from these two hotels up to the time of the purchase by the Crown were in natural justice and in law the property of the Natives; that it was not intended that they should pass to the Crown by virtue of the deed of purchase, and even if the deed can be construed so as to pass those rents, that technicality ought not to be taken advantage of.

We think that too much importance should not be attached to the fact that the actual language of the deed covers only leases granted under the Thermal Springs Districts Act, and therefore we are of opinion that no part of the £40 paid in respect of Kelly's lease after the sale should go to the Natives. But we do consider that the two sums of £125 14s. 6d. in respect of Te Haka No. 7, and £87 14s. 6d. in respect of Te Tapuae, should be paid to the Natives entitled thereto, plus such reasonable interest as would seem equitable. As to the Natives entitled, we are of opinion, having regard to the whole of the circumstances of the case, that the proper persons to receive the moneys are the persons respectively declared to be owners of these pieces of land by Judge Clarke's partition orders of 1885; but, seeing that the general body of the owners of Pukeroa-Oruawhata Block have not been heard except indirectly through the Crown Solicitor, it would be as well, if our recommendation as to payment of these moneys be adopted, to refer the question of the individuals to whom payments should be made to the Native Land Court for a final order.

We would like to express our appreciation of the very complete and impartial manner in which the whole of the facts of this complicated matter were laid before us by counsel for the Crown.

We have, &c.,

CHARLES E. MACCORMICK, Judge.

T. H. WILSON, Judge.

The Chief Judge, Native Land Court, Wellington.

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