

following August a proposition was made on behalf of the defendant in that case to pay £20 if he received a full release—otherwise bankruptcy was threatened. The Commissioner reported that the rent due by this tenant to 7th September, 1885, was £240, and he thought it useless to proceed. On 8th September, 1885, the Minister authorized the acceptance of £20 in full settlement. Thus, in this case the Natives lost £300, including the £80 costs which was deducted from their other rents.

On 28th January, 1885, a deputation of the lessees had waited upon the Minister of Lands, who was also Native Minister, at Auckland. The latter pointed out to the deputation that the land involved was not Crown land but that they (the Government) were simply in the position of trustees. The Natives had handed over to the Government a certain quantity of land and the Natives expected to receive the rent. The Government were in the position where they were compelled either to take some action to maintain what they had done or they were placing themselves in the position of having deceived the Natives. In conclusion he said the Government had absolutely no power to break the contract. Another tenant saw him on 6th February, 1885, to whom a similar reply was given.

Evidently it was suggested that to surrender the leases would be one way out of the difficulty. The Minister of Lands asked for the opinion of the Solicitor-General as to whether the leases could be surrendered before the end of the 99-years term and whether it would be necessary to obtain the consent of the Native proprietors to each such surrender. The opinion given was that the leases could be surrendered but not without the consent of the lessors, they being the persons in whom the reversion remained vested. On the very day that this opinion was received, the Commissioner telegraphed from Auckland that the rents were coming in very slowly and nothing short of legal proceedings would be successful in enforcing payment.

This shows the difficulties the Commissioner, who was in control of the leases, had to contend with. He had no regulations to guide him nor any Land Board to solve his problems. Every proposed step had to be reported to Head Office and from there would be referred to the Minister of Lands. Whilst no doubt each thought he was deciding for the best in the interest of the Natives it was difficult to exercise that due diligence and care in the management of the trust estate which was essential and which men of ordinary prudence and vigilance would use in the management of their own private affairs. The Commissioner might, and often did, have very definite opinions as to what should be done, but being subject to the rulings of the Head Office he apparently considered it necessary to refer every step to that office and follow the directions given implicitly. Out of this an extraordinary position arose. Surrenders being ruled out as impracticable, Head Office suggested as alternative that re-entry might be made for non-payment of rent. The Minister concurred, and said there should be no delay as the township was being injured by the non-paying, non-improving lessees.

The Commissioner was thereupon instructed to take legal opinion as to whether re-entry could be legally made for non-payment; and, if so, to inform the tenants that *if they would pay up arrears to within two months the Commissioner would be prepared to re-enter for non-payment of rent*. The Commissioner thereupon submitted a circular letter in the following form:—

“ Crown Lands Office, Auckland, March, 1885.

“ SIR,—I beg to give you notice that if within        days from the date hereof you will pay up the arrears of rent (£    ), due by you to 7th January, 1885, upon your Rotorua leases as noted in the schedule below, I shall be prepared to re-enter for default in payment and thus relieve you from further liability.

“ In the event, however, of your not taking advantage of this offer payment will be enforced.

“ Commissioner of Crown Lands.

“ Schedule.”

The Commissioner was advised on 21st March, 1885, that the Minister approved of the proposed circular, and to take immediate steps. The notice was thereupon sent out to forty-one tenants, many of whom were in a position to pay but were also desirous of being released from their contract.

In the Court's opinion, he had no power as a Government official to enter into a compact of this kind which had the effect of terminating the lease any more than he could accept a surrender. It also actually undertook to relieve the defaulting tenant from two months' rent, the bulk of which would probably have been forthcoming as a condition of a surrender, as well as from all future rent due under the lease.

So far from the Natives having assented to the course taken, Taupua te Whanoa, the Chairman of the Ngatiwhakaue Native Committee wrote to the Commissioner on 7th May, 1885, saying that the Natives had heard about the notice to the tenants—“ From what we have heard about the proposals we consider that we shall be thrown into great trouble on account of the actions of the Government. Now this is to ask you to inform us what will be the result of this manner of conducting affairs by the Government at the present time—so that we may clearly understand.”

The Native's letter was forwarded through the Government's agent at Rotorua who in a covering memorandum remarked “ This is a matter of importance . . . the Natives are getting very much dissatisfied with the continued delay. They consider that the lessees occupying substantial positions should not be allowed to determine, but should be compelled to pay. If lessees have gone away and cannot be reached then they think that re-entry