

make a profit for himself out of the trust estate, and this applies whether the contract relates to real estate or personalty or mercantile transactions, the disability arising not from the subject-matter but from the fiduciary character of the contracting party.

Further, the agency of the Crown for the granting of such leases was extended by section 351 of the Land Act, 1892, notwithstanding that the Crown since 1889 had been purchasing interests so that while receiving such rents it still remained in a fiduciary position. It is impossible for the Court to tell what amounts were so collected, but on one occasion in 1894 it was stated that a sum of £1,260 of the amount collected was written off—i.e., not payable to the Native sellers, under some arrangement between the Surveyor-General and the Under-Secretary of the Native Department. A fresh account was made from that date showing £109 10s. of the rent already collected as due to the non-sellers. It is quite possible also that some of the £1,260 collected by the Crown may belong to persons who had sold their interests subsequently to the period for which the rent was paid.

It must not be thought that the Natives stood by and permitted the actions of the Crown to pass without complaint. The case referred to of *Eruera te Urumutu v. The Queen* was a petition of right in 1890 alleging negligence in the collection of rents. The action was held by the Supreme Court to be barred by the Crown Suits Act as not having been commenced within twelve months of the occurrence of the grievances alleged. The Crown in those proceedings pleaded that it had used due and proper diligence in endeavouring to recover the rents from all persons who had executed leases, but it was found that in nearly all such cases such persons were wholly unable to pay any such rents and the judgments against them could not be enforced. In the majority of cases the Commissioner re-entered for non-payment of rent. It was further admitted that the annual rentals received had fallen from £2,740 to £159, while other sections had since 7th March, 1882, been let at a rental totalling £461 10s. per annum, but that these rents had also fallen into arrear for the same reason. There were also petitions to Parliament at various times while the grievance was publicly mentioned before the Native Land Commission of 1891 and the Stout-Ngata Commission in 1908, which recommended inquiry should be made into the allegations of the Natives.

As between subject and subject an agent dealing with the leasehold as the Crown did in this case would give the Natives a right to claim damages from the agent for the loss of rent caused by entering into unauthorized arrangements having the effect of bringing the leases to an end irrespective of the financial status of the tenants. In cases where the leases had for some reason not been signed it was optional for the agent to forfeit the deposit, probably the best way out of the difficulty in such cases. There were doubtless other cases in which the pecuniary difficulties of the tenants made it impossible to collect the rents. The list of tenants as published in Parliamentary Papers, Legislative Council No. 7, gives the names and addresses of the tenants, and here will be found professional men, merchants, heads of Government Departments, and even members of Parliament, none of whom would willingly risk bankruptcy for the comparatively small amounts involved.

Some allowance must be made for the difficulties of collecting rent in view of the depression then existent, and there is nothing to show that in many of the cases the Government officials did not do their best to collect the rent. In the case of the leases forfeited by arrangement, of which the annual rent totalled £677, there does not, however, appear to be a single case where the rent might not with due diligence have been collected. It is doubtful, too, whether some of the rent payable to the Natives under leases not forfeited has not been collected by the Crown and utilized for its own purposes. On the other hand, there has to be taken into account the payment of the part of the survey of the town that was not charged to the Natives. These doubtful matters may possibly be fairly set against claims arising out of the non-forfeited leases.

To be on the safe side the Court, taking the £677 as a basis, considers that five years rental could reasonably be expected to have been collectable. In addition, there is the case of a bank paying £81 per annum whose name does not appear in the surrendered leases but which certainly could not have pleaded poverty, making a total of £758 per annum. Five years elapsed between March, 1885, and March, 1890, by which time the main sale of interests took place. The total rent for these five years on the leases mentioned would be £3,790 subject to an allowance of, say, 10 per cent. for bad or doubtful debts and $7\frac{1}{2}$ per cent. for collection on the balance. This leaves a balance of £3,155 rental which the Court thinks might have been collected if the Crown had not without the Natives authority released the tenants from their contract. The Court recommends an *ex gratia* payment of £3,155 to the Natives.

Part II.—Purchase of Township by Crown.

How the proposal to purchase the township arose is explained by the Under-Secretary of the Native Department in a report dated 12th May, 1890.

“At the time the township was laid out and leased there was a sanguine hope that the place had before it an important and prosperous future. It was generally supposed that the Government, who evidently took a great interest in the scheme, would use every effort to make it a complete success. . . . When the leases were offered in Auckland by auction, although the upset prices were high they were exceeded, and a vigorous competition ensued for sections within the township. . . . The Natives moreover imagined that large revenues arising from the land or rents would be assured to them and went into debt accordingly. Strange to say the sales were hardly ended when the purchasers of leases began to repent of their bargains.”

He explained that some lessees never signed at all while others took advantage of an opportunity offered by the Government to relinquish their leases. This left a few tenants still in occupation some of whom paid rent and others did not, and the amount of rent