

1936.  
NEW ZEALAND.

# THE NATIVE PURPOSES ACT, 1934.

REPORT AND RECOMMENDATION ON PETITION No. 55 OF 1928, OF PIRIKA TE MIROI AND OTHERS, AND PETITION No. 146 OF 1934, OF WIREMU KEEPA PATAHURI AND OTHERS, PRAYING FOR RELIEF IN RESPECT OF THE ADMINISTRATION AND ACQUISITION OF THE PUKEROA-ORUAWHATA BLOCK (TOWN OF ROTORUA) BY THE CROWN.

*Presented to Parliament in pursuance of Section 9 of the Native Purposes Act, 1934.*

Chief Judge's Office, Native Land Court,  
Wellington, 23rd May, 1936.

The Right Hon. Native Minister, Wellington.

*CY 55 Petitions Nos. 55 of 1928 and 146 of 1934, Rotorua Township.*

PURSUANT to section 9 of the Native Purposes Act, 1934, I herewith transmit the report of the inquiry by the Native Land Court into the above petitions.

The Court finds that the allegations that certain rents could, with reasonable diligence, have been collected on behalf of the Natives, and that the township was purchased at less than its real value, are, to a certain extent, proved.

The inquiry was held before the Chief Judge and his recommendations are contained in the report. Shortly summed up, they are that the grievances of the petitioners, for which they have no legal redress, might fairly be met and compensated for by a cash payment of £7,155, being £3,155 in respect of the leases and £4,000 in respect of the purchase.

R. N. JONES, Chief Judge.

In the Native Land Court of New Zealand,  
Waiariki District.

In the matter of section 9 of the Native Purposes Act, 1934, and of two petitions (No. 55 of 1928 and No. 146 of 1934), praying for relief with respect to the administration and subsequent purchase by the Crown of the Pukeroa-Oruawhata Block forming the Rotorua Township.

## REPORT OF THE COURT.

The Court begs to submit the following report of the inquiry held by it relative to the above petitions:—

Petition No. 55 of 1928 alleged that the Native owners of the Pukeroa-Oruawhata Block were entitled to the bath fees received by the Crown in respect of the reserves for thermal purposes at Rotorua on the ground that the land had not been paid for; that £17,868 back rent due in respect of the township had not been accounted for; that the consideration of £8,250 mentioned in the deeds of purchase for the Rotorua Township was quite inadequate; and that the relative interests of the owners had never been validly defined. At an inquiry held by the Court in March and April, 1930, it was admitted on behalf of the petitioners that the thermal reserves were a gift by the Natives to the Crown for the public benefit. The petitioners therefore made no further claim to the bath fees.

Petition No. 146 of 1934 alleged that the purchase of the town by the Crown was a breach of trust, and that the sale should be declared null and void and the land revested in the Native owners or, alternatively, that compensating damages should be paid to such owners. The petition incidentally refers to the income received from the baths to show that it totalled more than the sum paid for the acquisition of the township. It also questions the validity of the relative interests.

There seems, therefore, two main heads upon which it is necessary for the Court to report:—

- (1) The administration of leasing the township on behalf of the Natives.
- (2) The Crown's purchase of the township.

*Part I: As to the Leases under the Thermal Springs Act.*

In order to understand the position, knowledge of the circumstances of the formation of the township is necessary.

In the year 1880 difficulties arose owing to the fact that certain persons at Rotorua entered into tenancies with the Native owners of the land despite the fact that its title had never been investigated. Several Europeans were able to negotiate for occupationary tenures without a legal basis. Disputes arose between these tenants and their Native landlords giving rise to criminal prosecution for forcible entry and the like. The Government on its part was extremely anxious that the asset of these natural wonders should be fully exploited in the interest of visitors, and that legal tenures should, if possible, be provided so as to ensure suitable accommodation.

The Government approached Chief Judge Fenton, who had the confidence of the Natives, and requested him to negotiate with the object of securing some fixity of tenure. He was, if possible, to obtain a cession, or a long-term lease to the Crown, of sufficient land to form a township. If, however, the Natives would neither sell nor lease, then he was to endeavour to arrange that a town might be laid out and leased by the Crown for their benefit, also for the use of the thermal springs and waters. The records show that the Government was prepared to agree to almost any terms which would effectively render the lake country more agreeable and attractive to visitors than hitherto.

Chief Judge Fenton accordingly met the Natives in November, 1880, and later he reported that "the Natives pretty well put themselves in my hands with the exception of not permitting cession to the Crown." Save for their steadfast opposition to sale of the freehold either to the Crown or to private individuals he found the Natives tractable and reasonable to deal with. On 25th November, 1880, he entered into an arrangement with the representative Native chiefs which provided for the surveying and laying-out of the Township of Rotorua on its present site; and for the disposal of the sections by way of 99-year leases through the agency of the Crown. The arrangement also provided for ample thermal reserves, a recreation-ground, sites for public offices, and other reserves. These together with all streets required were to become vested in the Crown for the public benefit. Chief Judge Fenton explained that the leading ideas in his mind were:—

1. Fixity of tenure over a long period.
2. Authority over the thermal springs.
3. Control of hotels and boardinghouses.
4. Sole supervision of the layout of the town.
5. Exceptional local government.
6. Devotion of sufficient suburban land for farming purposes.

It was recognized that these matters would eventually require legislative authority.

One of the first decisions arising out of the arrangement was to have the Native title investigated so as to know with what persons the Government had to deal. The land was surveyed and an application for investigation of title lodged. On the 28th June, 1881, the Native Land Court made an order that the Ngatiwhakaue tribe were the owners of the Te Pukeroa Oruawhata No. 1 Block. This was insufficient to create a title, as the law required the names of individuals to be recorded. It was, however, useful in limiting the ownership to that tribe as between the several claimants. The Government sought to obtain confirmation of the arrangement of 1880 from some of the members of the tribe, and on the 20th November, 1881, an agreement with a section of that tribe was entered into. From that date the Government evidently considered it had authority to act. The title was pushed to completion and on the 27th April, 1882, a certificate of title under the Native Land Court Act, 1880, was ordered to be issued in favour of 295 Natives, being members of Ngatiwhakaue tribe with the relative interests undefined.

Meantime the Thermal Springs District Act, 1881, came into operation on the 24th September, 1881. Although that Act does not mention the 1880 arrangement it was doubtless intended to embrace it. The preamble recites that "it would be advantageous to the colony and beneficial to the Maori owners of land in which the natural mineral springs and thermal waters exist that such localities should be opened to colonization and made available for settlement." The Act provides that the Governor may proclaim districts in which the Act shall operate. The fifth section enacts that as soon as any Native land within the district has passed through the Court the Governor may make arrangements with the Native proprietors for rendering the land available for settlement by Europeans, and grants certain powers. Of these, the only ones which concern the present inquiry authorize the Crown to—

- (1) Act as agent for the Native proprietors in dealing with intending lessees.
- (2) Execute all deeds and assurances that might be necessary.

The twelfth section provides that where the arrangements with the Native proprietors are such that the land is to be disposed of for settlement by lease, the Governor might, with the assent of the proprietors (to be ascertained as he might think proper), do certain things—namely, to—

- (1) Manage the letting of the land.
- (2) Authorize the execution of deeds of lease.
- (3) Appoint receivers to give good discharges to tenants for the rent.
- (4) Make regulations for the collection and distribution of rents.

Following up the passing of the 1881 statute the Pukeroa Oruawhata Block was by Proclamation dated 12th October, 1881, defined and declared to be a district under the Act (*Gazette*, 1881, page, 1267). In *Gazette*, 1882, p. 263, the appointment of Daniel Austin Tole to execute leases and receive rents is notified. The appointment, however, does not refer to any particular land, and the Court has been unable to discover any regulations made under section 12 (4) of the Act.

A township was laid out called Rotorua, and on 7th March, 1882, shortly before the final order of the Court, leases for a term of ninety-nine years were submitted to public auction. In order to obtain the best rentals the officers of the Crown left no stone unturned. The auction was extensively advertised in New Zealand and Australia and, in addition to these advertisements, the Government printed by command a 36-page pamphlet with a series of maps. The result was that the auction proved a great success from a pecuniary point of view, and brought rentals much beyond the upsets. A sum of £2,750 10s. annual rental was thus obtained, the half of this (less £34) being paid in as the first half-year's rent. A full list of the tenants appears in 1882 Parliamentary Paper, Legislative Council No. 7. When the second half-year's rent fell due the tenants were not so anxious to pay. The Commissioner reported in November, 1882, that no less than twenty-four lessees had failed to take up their leases, and that only twenty-five out of eighty-four tenants had paid the current half-year's rent, leaving a sum of £1,034 5s. then in arrear.

On 26th February, 1883, nearly twelve months after the leases were auctioned, Mr. Henry Tacy Clarke on behalf of the Government entered into a further agreement with the Natives which purported to modify the arrangement of 25th November, 1880, in some respects, and also to appoint receivers of the rent for payment to the Native proprietors. It is difficult to see where the power to appoint receivers came from, but the owners appeared to have raised no objection to its adoption.

The first payment of rent to the Natives took place in May, 1883. A sum of £1,400 (out of £2,014 15s. collected at that date) was paid to the Native receivers appointed by the agreement. The fact of only £2,014 15s. being collected shows that the rent of the March 1883 quarter must have again fallen behind as the rent for nearly three half-years would be over £4,000. This left nearly £2,000 in arrear.

On the 28th March, 1883 (*Gazette*, page 375) a Board of Management for the township was appointed, and on 2nd April, 1883 (*Gazette*, page 481), the Pukeroa Hill was proclaimed as a park under the administration of that Board, and apparently some £200 per annum rent that had hitherto been paid by tenants to the Natives became thereunder payable to that Board and not to the Natives.

On the 19th April, 1883, the Commissioner reported to the Attorney-General, who was then resident in Auckland, that he had been instructed to take steps to recover outstanding rents. The position as placed before the Attorney-General was that : Eighty-four lessees had paid up the first instalment of rent, sixty-one had duly signed their leases, twenty-three had not taken up their leases, and only forty-three had paid the second instalment of rent. Apparently there was a general desire by the lessees to escape from responsibility for their leases as, according to *Hansard*, Vol. 46, pages 100 and 510, the European tenants had formed themselves into a Rotorua Leaseholders Defence Association and had on 27th July, 1883, obtained a legal opinion that the whole transaction was void, and that the lessees could not be compelled to pay rent.

In August, 1883, the Thermal Springs District Amendment Act, 1883, was introduced into the Upper House, and finally passed into law on 8th September, 1883. Meanwhile by memorandum of 18th August, 1883, the Auditor and Controller-General had directed the responsible Minister's attention to what seemed to be a complete failure in the punctual collection of these rents. The Auditor-General expressed the opinion that there could be no doubt that in equity the Government was responsible to the Native owners for the rentals and that they ought for that reason to be recovered with more than usual punctuality. "The arrears," said he, "considering the short term the account had been opened were enormous, and indicated a system which if continued would be ruinous."

This memorandum was returned to the Auditor-General with the following minute by the Attorney-General:—

"There were several legal difficulties in reference to the Rotorua lands but as these have been removed by an Act of last session I see no reason why there should not be more punctuality in future. 21/9/83."

On 4th October, 1883, the Commissioner was instructed to take proceedings at once for the recovery of all arrears. The Controller and Auditor-General again complained on 18th December, 1883, pointing out what the Hon. Mr. Whitaker had said about more punctuality in the future, and continued, "arrears still amounted to the sum of £3,236 of which a good deal will never be recovered at all."

On the Commissioner being telegraphed to as to the position he replied that the solicitor attending to the matter had certain doubts, and proposed to confer with Mr. Whitaker on his return from Australia. Apparently legal steps were eventually taken against one tenant, as on 31st January, 1884, the Commissioner reported that the District Court Judge had given judgment for the defendant upon technical grounds. The judgment was followed by an appeal to the Supreme Court which was successful. A rehearing by the District Court followed and finally, on 24th December, 1884, the Commissioner reported that judgment had been given in favour of the Natives. It is hardly necessary to say that during the currency of these legal proceedings, which were in the nature of a test case, the rent fell still further into arrear. In addition, some £80 costs were incurred. It is interesting to note that in the

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

should be made." This correspondence was submitted to the Minister of Lands with the minute: "It is not now possible to retract from the position which has been taken up in the matter." Why this should be so is difficult to understand. The time limit must have expired in each case. Up to that time only £183 had been collected since the 25th March, 1883, out of a total of £2,336 6s. 2d. due by those who had signed leases. It will be seen as the report proceeds that the offer to take part and release was actually renewed four months afterwards. With regard to the Native protest the Minister directed a reply to be sent—"That the action taken was in the interests of the Natives; that to insist on the letter of the bond in a vast number of cases would drive lessees into the Bankruptcy Court, the Natives losing all." This was amplified in transmission to the Commissioner by the addition of the following: "And the Natives would lose all the arrears of rent, whereas if the arrears are paid up with a view to accepting surrenders in cases where lessees are unable to keep up the payments required by the leases, the lessors might get better tenants." This shows that the re-entry was treated as equivalent to a surrender.

The records show that on 1st April, 1885, arrears amounted in all to £4,920 9s. 6d.; £2,336 6s. 2d. in the cases where lessees had signed leases and £2,584 3s. 4d. where the leases were not so signed. On 10th April, 1885, the Commissioner was asked how many of the tenants had responded to the circular notice, and replied that out of the forty-one persons circularized only five had responded, paying £37 13s. 4d. back rent. The Commissioner asked for approval of proceedings being taken against the other thirty-six. This was approved, but on the following day Head Office sent a telegram, "Do not proceed against any Rotorua lessees who have paid unless they want you to re-enter and are two months in arrear. The re-entry is to relieve lessees of future payments."

On 27th May, 1885, the Commissioner reported that no further legal proceedings had been taken, partly through the absence of the solicitor dealing with the matters and partly because of the realization by the tenants of the determination of the Government to sue for outstanding rents.

On 11th July, 1885, the Commissioner reported that no further action had been taken, and he was instructed to let proceedings take their course as the tenants had had every consideration shown to them.

On 3rd September, 1885, the Commissioner reported that he had issued further notices to tenants, offering to take part of rent and release the tenants. Some of those against whom he had issued summonses wished now to revert to the former terms offered and be permitted to forfeit their leases. This it will be observed was subsequently to the May protest from the Natives.

The effect of the various forfeitures on the collection of rent will be seen in the following table of rents collected:—

|                                                                    | £             | s.       | d.       |
|--------------------------------------------------------------------|---------------|----------|----------|
| March, 1882 (first half-year's rent) .. .. .                       | 1,353         | 5        | 0        |
| 1st April, 1882, to 31st March, 1882 .. .. .                       | 661           | 10       | 0        |
| 1st April, 1883, to 31st March, 1884 .. .. .                       | 273           | 0        | 6        |
| 1st April, 1884, to 31st March, 1885 .. .. .                       | 577           | 0        | 0        |
| 1st April, 1885, to 31st March, 1886 (year of forfeitures) .. .. . | 1,045         | 7        | 9        |
| 1st April, 1886, to 31st March, 1887 .. .. .                       | 266           | 5        | 3        |
| 1st April, 1887, to 31st March, 1888 .. .. .                       | 175           | 11       | 2        |
| 1st April, 1888, to 31st March, 1889 .. .. .                       | 21            | 1        | 5        |
| 1st April, 1889, to 31st March, 1890 .. .. .                       | 52            | 4        | 3        |
|                                                                    | <u>£4,425</u> | <u>5</u> | <u>4</u> |

Of the amount collected about £3,600 is supposed to have reached the Natives, the balance being exhausted in surveys, legal costs, advertising, and other expenses.

On 3rd July, 1888, a return was compiled showing the persons who had "surrendered" their leases. This shows that the tenants affected by the forfeiture should have been paying at least a total rental of £677 per annum.

The rental payable by this section up to 7th March, 1885, appears to be about £2,171, and as they are credited with having paid £1,962 6s. up to that date the rent for this section of tenants must have been fairly well paid up.

After 1886 there would be new leases substituted for the forfeited ones and also new leases for additional sections, and it is difficult to understand the position as to the arrears with regard to unforfeited leases. It may be that some of the arrears for that period are included in the sum of £1,249 arrears shown to be due in 1893, because the Commissioner says (8/3/93) that the lessees ceased to pay in 1888. It is also apparent in another case that the lease seems to have run on as arrears amounting to £240 were remitted for a payment of £56, and it is stated that the lessee had paid his first half-year's rent in 1882 and nothing since. This reduction to £56 was caused by the arrears being recalculated on a new upset rental, a principle adopted in many cases.

It may be contended that the Crown, in its subsequent purchase of deeds, having taken an assignment of the rents which had accrued due under the deeds of lease, would not have to account for any further collections of the back rents, but the Supreme Court held in *Eruera te Urumutu v. The Queen*, that a fiduciary relationship had been created by statute between the Crown and the Natives. There was not only the duty of letting and receiving the rents, but there was the duty of distributing them according to the terms of the instruments. There is a principle governing such cases which forbids the agent to

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

accruing to the Natives was therefore very small. Pressure had been brought on the Government through the member for the district to purchase the freehold and also through Mr. Taiwhanga, Maori Member of the House of Representatives, and Mr. Howarth (solicitor) who, on behalf of the Natives, approached the Government to purchase the township block.

Acting upon instructions the Under-Secretary had met the Natives and explained that the Government had been urged both by Europeans and Natives to buy out the interests of the Rotorua owners, it being felt that the then position of the township was unsatisfactory to all concerned and extremely unprofitable to the Natives. "I pointed out," he says, "that although the Government had spent large sums of public money in the development of the township, indeed many thousands on the erection of the Sanatorium buildings, laying out the grounds, the construction of public buildings in the new township, bringing a magnificent supply of water into the place and in other directions, yet as a township it was a failure and the rents accruing from the leases under the present arrangement when divided among the owners amounted to merely a nominal sum. It therefore appeared to be a question for the owners to consider whether it would be to their advantage to accept a lump sum for all their interest in the township, including the leases and rents, rather than allow matters to remain in their present position. The question of back rents which they considered due to them was fully gone into and indeed every conceivable phase of the subject was argued out and met."

It is quite evident that the Under-Secretary could not have fully explained the position as to the rents that should have been collected as that was a matter within the scope of another Department, and there is intrinsic evidence in the report that he was not fully conversant with the facts. He knew, however, that the Natives had made claims regarding alleged improper administration, and hence an assignment of rents was included in the conveyance.

The Natives appointed a committee of some fifteen or sixteen chiefs to go into the matter, who met day after day. The Under-Secretary states that they evidently considered that they were dealing with a matter of the greatest importance. After one or two meetings it is stated they seemed unanimous in their desire to sell, but wished to obtain very much more in payment than the Government was prepared to give.

He eventually arranged with the Natives to buy out the whole of their interests at £7 10s. per share, according to Mr. Clarke's apportionment. These shares were fixed at 1,100 and the total consideration mentioned in the deed was £8,250, while the area of land was stated to be 3,020 acres. There is no explanation why shares were taken as a basis for the purchase-price instead of the area of the land. In his report, the Under-Secretary says, "I might perhaps mention that a large number of the Natives expressed great dissatisfaction at Mr. Clarke's allotment of shares, but I pointed out that it would be impossible to re-open or in any way to reconsider the decision at which he had arrived, and eventually this statement was accepted."

The question of these shares is one of the present grievances of the Natives. The conveyance recites that on the 29th day of February, 1888, Henry Tacy Clarke, Judge of the Native Land Court, had determined the relative interests of the persons certified to be owners. But no such determination by the Court can be found nor is there any order drawn up to that effect. Judge Clarke did attempt to determine the relative interests of the parties. According to the records he was appointed a Judge for that purpose. Being without experience in that direction he first attempted to arrive at the matter by a series of subdivisions of the land into small parcels and purported to make orders accordingly. On 22nd April, 1884, the Court delivered judgment indicating that the six hapus mentioned in the judgment were not equally entitled. The approximate area of the block was 2,766 acres, and for the sake of convenience the Court divided the block into 250 shares awarding to the respective hapus thirty shares or 332 acres, and so on, till the whole 250 shares and 2,766 acres were absorbed. Later the Court passed the lists of names of the persons belonging to the respective hapus, but nothing further was done.

The list of relative interests was enclosed in a letter written to the Under-Secretary, and is referred to as a report in that letter and in subsequent official correspondence. There is intrinsic evidence that the list or report was prepared at Mr. Clarke's home at Waimate, and the Registrar at Rotorua states that Judge Clarke held no sitting in the Rotorua district in the year 1888. Instead of being based on 250 shares mentioned in the decision of the Court, the list is based on 1,100 shares. It is evident that it was intended for use in the allocation of rents rather than as defining the landed interests of the Natives. Even if it were an actual determination of the Court there is little blame in expressing dissatisfaction with the shares as found. However, the parties bought and sold on that list of shares, and it cannot now be altered, but it shows that the Natives were not, as should have been done, told the full facts and put upon their guard, but were led to believe the finding as to the shares was unassailable.

Coming now to the price paid by the Crown, the only evidence that the Court can find of an attempt to ascertain the selling value of the land was that made by the Surveyor-General on 3rd November, 1888, a year before the purchase was undertaken when he stated that "the quality of the land is very inferior and intrinsically is of very little value for pastoral or agricultural purposes. In naming a value for purchase, regard must be had to the hot springs and other attractions in the vicinity which give a prospective value to the block in expectation that it will become of great resort in the future and so create a possible value as the ground is required for residential purposes. On these considerations I should say it would be worth while the Government giving from 30s. to 40s. per acre."

If this is correct it becomes difficult to understand why such high upset rentals were placed on 1,230 acres of it put up for lease in 1882, six years previously.

Mr. Bush, Resident Magistrate, in his reports in 1888 says that he thought the Natives would take £6,400, evidently based on the Surveyor-General's figures. The Natives themselves made an offer on 20th September, 1889, through Mr. Howarth, a solicitor, to sell the Rotorua portion, 3,200 acres, for £15,000. This excluded the question of the leasing administration by the Crown, the allegations as to which it was suggested should be submitted to arbitration. Under ordinary circumstances the agent would welcome his principal having independent advice, but it appears to have been resented in this case. The writer was informed that the Government intended to deal direct with the Natives. It would have been wiser to have permitted the Natives to have independent advice as to the value. Even as it was, that of the Surveyor-General's was considered insufficient, as a greater price was given. Evidence of value was given before this Court, but it seemed to be based on what has happened since, much of which could not be known at the time the purchase was made. There was a depression on, the people were just recovering from the effects of the 1886 eruption at Tarawera; the railway was still in the air, and many of the leases that were re-offered could not be disposed of even at a reduced rental. On the other hand, even if the Court takes the value of the Surveyor-General as some basis to guide it, it must be remembered that the town was already surveyed and laid out as such, that the Natives without compensation had donated the thermal springs, the reserve of the sanatorium grounds, and also the Pukeroa Hill on which they previously received £200 a year in rental, which rental had been taken and expended on the streets of the town. The gift of the reserves is not referred to as a reason for increasing the value, but the Government, being the owner of those reserves, might reasonably be expected to utilize and improve them within the near future and thus add to the value of the township adjoining the reserves. The records show that between 1881 and 1890 a sum of £27,182 had been spent out of the Consolidated Fund upon the sanatorium and a sum of £11,749 out of the Public Works Fund, while £724 approximately had been spent upon the public buildings within the township. Possibly some of the first-named amount may have been expended in salaries, but even so the expenditure was an earnest of the Government's intention to utilize the reserves for health-giving purposes.

Possibly the solicitor who offered to take £15,000 for the township on behalf of the Natives ascertained in some way a value as the basis for such offer, and it was not likely to be less than its worth. The area in this offer was stated at 3,020 acres. The sanatorium grounds and Pukeroa Hill were possibly included for assurance of title, but if we exclude these and other reserves, including road lines, it brings us pretty close to the area stated in the judgment of the Court in 1884—namely, 2,766 acres. The Court thinks that if the purchase-price had been fixed at say £5 per acre it would not have been an unreasonable price to give, and would have been fair to both parties. But some 11 acres have to be deducted in respect of the interests referred to in section 11 of the Thermal Springs Act, 1910, the value of which interests was ascertained as at 1910 and paid for. The total cost of the township to the Crown is said to have been £10,834. This would no doubt include the expenses of purchase which should not fall on the seller. The amount of purchase-money mentioned in the deeds is said to be £9,138 7s. 2d. In addition to this it is known that a sum of £451 3s. 6d. was paid out to certain Natives in connection with the sale. There are some reserves given to the Native sellers—about 20 acres in area. If, then, we take 2,755 acres at £5, equalling £13,775 and deduct say £9,775 from it, we get a balance of £4,000 and the Court recommends an *ex gratia* payment of that sum to be made to the Natives.

If any amount is decided to be paid to the Natives it should not be distributed upon the basis of 1,100 shares, but should be distributed to the persons and upon the relative interests as found by the Court in respect of the 20 acre reserve granted to Ngatiwhakaue, or it might be paid to the Waiariki District Maori Land Board on their behalf.

Some question has been raised as to the legality of the sale to the Crown. Seeing that the transactions have been validated it seems useless to come to a formal finding on that subject. It ought to be said, nevertheless, that the Department prior to purchasing took care to obtain legal advice, and was advised that under the peculiar wording of the Act of 1881 the Crown was legally justified in undertaking the purchase from the Natives. There has been no objection to the actual sale. It is the inadequacy of the consideration for the purchase that is really in dispute as well as the smallness of the rental collected by the Crown for the Natives.

In conclusion the Court wishes to place on record that it received ready assistance from the Lands and Survey and the Native Departments by having all the records obtainable placed before it. Seeing that the transactions complained of date back over fifty years, it was impossible to trace all records, but the best has been done under the circumstances. A word of appreciation is also due to counsel, conductors, and officers in placing material before the Court.

Dated the 21st May, 1936.

For the Court—

R. N. JONES, Chief Judge.

*Approximate Cost of Paper.*—Preparation, not given; printing (435 copies), £7 10s.

By Authority: G. H. LONEY, Government Printer, Wellington.—1936.

Price 6d.]