

The first question that presents itself is, what was the understanding upon which the lease was signed by the Natives. Three versions of this have been put before the Commission: first, the terms of the deed itself, as drawn up by Mr. Standish, and explained to the Natives by Messrs. Grace and Dalton; second, the terms as stated by Captain Messenger to have been explained to the Natives by him; third, the statements of the Natives themselves, or such of them as have appeared before the Commission.

Of the above alternatives we reject the last, not only on account of its inherent improbability, but also on account of the unreliable character of the evidence given by the Native witnesses, to which we shall hereafter refer. With regard to the second alternative, it was not Captain Messenger's duty, as we understand it, to expound the deed to the Natives, and it was merely a special circumstance, and one which the law did not require, that, through his knowledge of the Maori language, he was able to converse personally with them. The lease is clear in its terms in both languages, with the exception of the slight discrepancy referred to in the evidence of Mr. Butler, and there is no ground for attributing fraud or unskilfulness on the part of the licensed interpreters (Messrs. Grace and Dalton). We think, therefore, that for the purpose of this inquiry we must accept the first alternative, and assume that the lease was understood by the Natives according to its actual purport and effect—viz., as an absolute lease for fifty-six years. Of course we do not commit ourselves to this as a correct legal view of the question.

Without going into a minute analysis of the evidence of the Native witnesses, we may say that we regard their statements generally as unreliable. For instance, the evidence of Wetere te Rerenga and Pumipi Kauparera is directly opposed to that given by them before Judge Wilson on the 24th February, 1887 (Appendix No. 27). The evidence of the other Natives is also unsatisfactory. That of Te Huia, in particular, is contradicted by both W. H. Grace, J. Jones, and Wetere te Rerenga, and is for other reasons incredible.

Of the eighty-five Natives (more or less) who signed the lease in the presence of Captain Messenger, it would be impossible to estimate the precise degree in which the effect of the deed was understood by each individual. Many, no doubt, signed because the leading men did, and would be equally ready to affirm or repudiate the transaction according to the policy of the hour.

The statements made by some of the Natives as to the drinking which is alleged to have taken place at the Native settlement during the negotiations for the lease are, in our opinion, for the most part untrue, or, at all events, greatly exaggerated. Apart from the evidence of Messrs. Jones, Grace, and Macarthy, we consider that the presence of Captain Messenger as an attesting witness is a sufficient guarantee that the deed was not signed by any Native who was in an unfit condition to do so.

We now come to the question of the survey. There appears to be no doubt that, in the ordinary course, after the land had passed the Native Land Court it would have rested with the persons interested to get the survey made without the interference of the Government. Had this course been followed in the present instance, and had Mr. Tole been allowed to proceed with the survey in 1882, there is reason to believe that all that was required would have been effected without difficulty or delay. Judging from the evidence, the temper of the Natives at that time was favourable to the survey. (See telegram of Rewi Maniapoto, and agreements by Natives—Nos. 6, 39, 39A—also evidence of Mr. Humphries.) The fact also of the Court being held at that time with the consent of the principal Natives seems to imply an understanding on the part of the Court that the surveys would be permitted to proceed.

In September, 1885, it happened that the Survey Department for its own purposes required that the dividing-line between the Mokau-Mohakatino No. 1 Block and the "Rohe-potae," or "King Country" Block, should be defined, and instructions were given for the survey to proceed as a Government survey. By this time the clause in "The Special Powers and Contracts Act, 1885," in favour of Mr. Jones had been passed. The proceedings of the Survey Department from this date, commencing with the expedition of Mr. Skeet to Mokau in December, 1885, are detailed in the evidence of Messrs. Humphries, Skeet, and Dalziel.

Starting from this point, and taking it as apart from the original stoppage of the survey by order of the Native Minister, the evidence given by Mr. Jones involves a distinct charge against the Survey Department. In effect, he alleges that, through the action of the officers of the department at New Plymouth in fixing the starting-point of the landward boundary at the mineral spring to the westward, instead of that to the eastward of Totoro (which action was all along protested against by him), the boundary-line was brought into apparent conflict with the terms of the order of Court by which the boundaries of the block were originally defined; that, in consequence of this, and of attempts made by officers of the Survey Department to find another boundary-line, the question was unnecessarily opened, and the minds of the Natives unsettled; that, after a long delay, the department finally conceded his contention, and made a survey accordingly, which survey is the basis of the plan now lodged for exhibition in the Native Land Court.

It is undoubtedly the fact that, after long dispute, the eastern boundary has now been surveyed in accordance with the line so persistently contended for by Mr. Jones. It is difficult, however, to estimate the degree in which this particular misunderstanding contributed to the sum-total of the difficulty. Mr. Humphries alleges that no survey could have been made at that time on account of the opposition of the Natives. (See his reports to the Surveyor-General—Appendix Nos. 14, 15, 16.) Mr. Jones, on the other hand, alleges that the opposition, so far as it really existed, was occasioned by the action of the Survey Department, and complains of unfairness and bias in Mr. Humphries' reports of his conferences with the Natives, at which conferences he (Jones) was not represented. It must be remembered also that these conferences had relation to a new boundary-line much further to the eastward, and involved an entire departure from the terms of the original order of Court of June, 1882, which order, it may be presumed, was at the time understood by the leading Natives and should not lightly have been disturbed. Mr. Humphries explains that his