

compromise which Mr. Izard could recommend to his clients and to Mr. Mantell, and which Sir Julius could recommend for acceptance to the Superintendent of Otago, and others concerned, on behalf of the Province. It was agreed between them to recommend the following compromise: out of moneys paid to the Provincial Government, the Superintendent was to pay to the Hon. Mr. Mantell and the Hon. Mr. McLean, or some other person (as trustees for the Natives), the sum of £4,650, and the sum of £500 to the General Government to refund an advance lately made to Mr. Mantell. No refund to be made by Natives in respect of advances made to them for the purposes of the suit. In consideration of the Superintendent making these payments, all proceedings on behalf of the Natives were to be stopped and the action discontinued; each side to pay its own costs; Mr. Izard to telegraph to England to stop the appeal on payment of the sums mentioned.

Acting upon the advice of their counsel (Mr. Izard), the leaders of the Natives agreed to the compromise, or purported so to do. In accordance with the arrangements, the sum of £4,650, with interest thereon, and, later, the unexpended balance of the £500 paid over to Mr. Mantell for legal costs—in all a sum of £5,044 19s. 3d.—was paid to the trustees for distribution to the people and was disbursed. Another sum of £500 was paid by the Government into the Native Reserves Account.

This, however, did not put an end to the matter, for in 1874 claims were preferred by the Natives to the back rents from the reserve. The claims culminated in a petition which was heard by the Native Affairs Committee in 1877 (see I-3B, 1877). The Chairman of the Committee reported that there appeared to have been a misapprehension as to the full extent of the compromise effected by the payment of £5,000 to the Natives, and the two parties understood the agreement differently. That, under all the circumstances, it was highly desirable to remove grounds of complaint, and that the Committee was of opinion that a further payment should be made to the Natives of the rents which had accrued prior to the issue of the Crown grant, or a reserve should be made of land to that value for the benefit of the Natives interested.

From this report Sir William Fox and Mr. MacAndrew dissented. Sir William stated that, having been personally and intimately acquainted with all the circumstances of the case from the date of the Otago purchase to that time, including those particulars in connection with Mr. Mantell's mission to Otago when he advised the reserve of the land in question, and having heard and read all the evidence taken before the Committee, he begged respectfully to enter his protest against the decision of the majority of the Committee, believing that the payment of £5,000 was intended by Sir Julius Vogel and Mr. MacAndrew to be final; and that if the agents for the Natives did not intend it so to be, they should not have concealed that fact, as was stated in Mr. Izard's evidence that they did; and that their clients were estopped by their action from any further claim beyond that which the Government understood to have been settled by the payment. Mr. MacAndrew concurred in Sir William's view.

What transpired after this is shown in the Journals of the Legislative Council, 1885, No. 23, p. 257. It discloses that an appropriation of £5,000 was made in 1877 "in final settlement of Native claims to Princes Street Reserve." The amount voted was remitted to the Resident Magistrate, Kaiapoi, for immediate distribution to the Natives. Taiaroa refused to sign the receipt required of him before the payment of the amount, because it expressed that the amount of £5,000 was to be in final settlement, whereas Taiaroa claimed £6,000 in round figures. The money remained for nearly two years in the bank, during which time Taiaroa persisted in his refusal. After this long resistance, the receipt was signed under threat from the Native Minister, Mr. Bryce, that the money would be recalled by the Government, and the moneys were distributed. Interest had accrued on part of the money—£1,000 having been distributed in 1878—and the Government claimed this.

In respect of the accrued interest—an amount of about £406—Taiaroa petitioned Parliament in 1880. The Native Affairs Committee, in reporting on the petition, stated that, according to his own evidence, the delay in the payment of the £4,000 arose entirely from the refusal of the petitioner to get from the Natives interested a receipt in full settlement of the claim as agreed upon, and that, as acknowledged by him, this delay was with the view to forcing the Government to pay another £1,000. The Committee could not therefore recommend that the prayer of the petition be granted. Petitions on the same topic came forward for a number of years thereafter, but without result.

Such are the main features of the history of the reserve. A recital of them appears to the Court to make unnecessary any detailed consideration of the submissions ably put forward by counsel for the Maoris. In refinement, those submissions amount to this: that the Maoris were not adequately compensated for the land which was agreed to be set apart as a reserve for them.

The Solicitor-General, on behalf of the Crown, on the other hand, in his submissions, advanced the view, in effect, that the compromise entered into in 1872 was for the purpose of quieting once and for all whatever claims the Maoris concerned might have had to the reserve or to a portion of the land embraced by the reserve. If the payment made to them was not for that purpose, then for what purpose was it made? Certainly not for the abandonment of any rights of action they might have had. To have paid to them the sum of £5,000 for abandoning the appeal before the Privy Council, leaving it open to them thereafter to come forward and claim to be entitled to compensation for the reserve, would have been the height of absurdity.

But the people at the time concerned to extract all they could secure from the authorities responsible for any failure to set apart the reserve for them had accepted as full and final settlement of any claim therefor the payments referred to in this report as having been made to them for that purpose, and the file shows that they acted upon the independent advice of eminent counsel. Their acceptance of the payment seems to me to estop the petitioners from claiming that the Maoris were not paid that to which they were entitled. But the sum of £5,000 was not all that was paid—they were given another sum as for the back rents deriving from the reserve.

It is difficult to escape the conclusion that the view urged by Sir William Fox on the claim for the back rents was absolutely right, and even were I disposed to think that there had been an omission to treat the Maoris fairly in the compromise, I should be driven to conclude that that omission was rectified when the payment of the second amount was made. In the result, therefore, I have no recommendation to make.

For the Court,

[L.S.]

G. P. SHEPHERD, Chief Judge.

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