

1904.

NEW ZEALAND.

# MAKEA DANIELA

(DECISIONS OF THE HIGH COURT OF THE COOK ISLANDS IN CERTAIN ACTIONS AGAINST).

*Laid on the Table of the House of Representatives by Leave.*

SIR,—

Aitutaki, Cook Islands, 1st September, 1903.

With reference to the speech made in the New Zealand Parliament by Mr. E. G. B. Moss M.H.R., on my refusal to furnish him with a copy of my notes of evidence taken during certain charges made against one Makea Daniela before me as Chief Judge of the High Court of the Cook Islands, I have now the honour to inform you that I based my refusal on the following grounds:—

Firstly, that when the charges were brought against the said Makea Daniela, he was not a British subject, nor was he under the protection of New Zealand, and, therefore, the Parliament of New Zealand can have no jurisdiction in the matter. The charges were made by the Government of the Cook Islands before the Court instituted for such purpose by the Governor of New Zealand and the Parliament of the Cook Islands. It must not be forgotten that the Cook Islands was an independent principality at that time, governed by its own laws, and altogether independent of the control of New Zealand.

Secondly: If the High Court Act be faulty I can only say that it was drafted in New Zealand, and that I had nothing to do with the provisions thereof, and the same may be said of the Parliament and Government of the Cook Islands; they were not consulted in the matter, but passed it at my request. It was at this period that the Parliament and Arikis invited me to accept the position of Chief Judge (without pay). I was by no means anxious to increase my responsibilities by accepting so thankless an office, but I left the matter in the hands of His Excellency, Lord Ranfurly, to decide whether I should or should not accept.

Thirdly: Lord Ranfurly did not approve the request of both Arikis and Parliament without careful consideration—in fact, he visited the Group and inquired carefully into the position before he appointed me to the office of Chief Judge. By this time I had learned the character of those who formed the Law and Order League, and say most decidedly that had there been a right of appeal I would not have accepted the position. After Lord Ranfurly left for New Zealand I wrote to him asking him to accept my resignation on the ground that the Chief-Judgeship would in many ways clash with the office of British Resident. Lord Ranfurly replied that I must submit to necessity since the Islands could not afford to pay a Judge, and there was no one on the Islands capable of taking the position.

Fourthly: I have the honour to inform you that Makea Daniela was not charged with fraud and misappropriation without reason. During the year 1897, the Chairman of the Rarotonga Island Council had called upon Mr. F. J. Moss to inquire into charges brought against that officer, and later on in a letter to the local paper had charged Mr. Moss with aiding and abetting the Paymaster in his misdeeds.

When Mr. Moss and his party had been removed from office, Makea Daniela was charged with five cases of fraud, but I advised that most of the cases should be brought as civil actions for the recovery of money, and in every instance most glaring cases of fraud were brought to light. The result was that he was forced to disgorge. I should be sorry that there should be a genuine inquiry into this matter, for in such case it would be found beyond all doubt that there was actual connivance in this wrongdoing; but an inquiry held in New Zealand by a Supreme Court Judge where no one but Makea Daniela would attend would of course suit Mr. Moss, M.H.R.

The notes of evidence taken on these occasions will at any time be open to the inspection of His Excellency, or a member of the New Zealand Government, but as to others I take up this position: That a Judge's notes are distinctly his own property; that I was forced to assume an office that I detested, and that I have performed the duties thereof to the best of my ability, and gratuitously, for the benefit of the people of these Islands.

As for the reference by Mr. Moss, M.H.R., to previous complaints against me, it was the Moss party who made them, and I should be only too glad of an inquiry into that petition; a more impudent case was never brought before a Court than that on which the petition was based.

I have, &amp;c.,

W. E. GUDGEON,

Resident Commissioner.

The Hon. C. H. Mills, Minister for the Islands, Wellington.