

CORRESPONDENCE

BETWEEN

THE GOVERNMENT

AND

JUDGES OF THE NATIVE LANDS COURT,

ON THE SUBJECT OF

THE SITTING OF THE COURT AT TURANGANUI.

PRESENTED TO BOTH HOUSES OF THE GENERAL ASSEMBLY, BY COMMAND OF
HIS EXCELLENCY.

WELLINGTON.

—
1867.

CORRESPONDENCE BETWEEN THE GOVERNMENT AND JUDGES OF THE NATIVE LANDS COURT.

No. 1.

Copy of a Letter from Mr. FENTON to the Honourable J. C. RICHMOND.

(No. 498.)

Native Lands Court Office,

SIR,—

Auckland, 11th June, 1867.

Referring to the interpretation (2nd clause) of "The East Coast Land Titles Investigation Act, 1866," the following words appear: "Such Natives or other persons as shall not have been engaged in the rebellion shall include all persons appearing to be entitled to land within the said district who shall come within the descriptions contained in the fifth clause of "The New Zealand Settlements Act, 1863." I have the honor to inform you that, looking at the clear intention of the Act, I conjecture that the word "not" must have been introduced through error. As the clause now stands it will greatly embarrass the Judges of this Court, and may frustrate the great object of the Act. I think it therefore right to bring the matter under the notice of the Government.

I have, &c.,

The Hon. J. C. Richmond.

F. D. FENTON, Chief Judge.

No. 2.

Copy of a Letter from Mr. ROLLESTON to Mr. FENTON.

(No. 315-1.)

SIR,—

Native Office, Wellington, 22nd June, 1867.

I have the honor, by direction of Mr. Stafford, to acknowledge the receipt of your letter No. 498, of 11th June, in which you point out what appears to be an error in the wording of the second section of "The East Coast Lands Titles Investigation Act, 1866," which would greatly embarrass the Judges of the Court, and possibly frustrate the principal object of the Act. The Government is advised that the error has arisen from the substitution of the word "include" for "exclude" in the clause referred to, and this misprint is of so serious a character, that having regard to the obvious intention of the Legislature in the passing of the Act it is bound to withdraw the claims of the Crown for investigation of title under the Act, and to request that you will postpone the sitting of the Court. Should, however, the fact of other applications for investigation having been put forward render it necessary in your opinion to open a Court, the Colonial Secretary, on behalf of the Crown, presses for an adjournment of the Court *sine die* until such action has been taken as will obviate the difficulty which has arisen.

I have, &c.,

F. D. Fenton, Esq.

W. ROLLESTON,

Under Secretary.

No. 3.

Copy of a Letter from Mr. ROLLESTON to Mr. FENTON.

(No. 316-1.)

SIR,—

Native Office, Wellington, 22nd June, 1867.

In further reference to the subject of my letter of this date, I am directed by Mr. Stafford to inform you that Captain Biggs, the gentleman appointed to act as Crown Agent at the sitting of the Court at Turanganui, is at present in Wellington, and that he will proceed to Poverty Bay by the steamer leaving Wellington on the 1st of July, which will probably drop him at Turanga on the 3rd, the day appointed for the sitting of the Court at that place. In the event of your considering it imperative to open a Court, it will be advisable that Captain Biggs, as representing the Crown, should be present.

I am therefore to request that you will be good enough to inform the presiding Judge that Captain Biggs will be present that day, or very shortly afterwards, and request him to adjourn the opening of the Court until Captain Biggs' arrival, unless Mr. Stafford's letter No. 315-1, of this date, is considered by the Court sufficient to warrant the Court not being opened at all, or if opened, being at once adjourned.

I have, &c.,

F. D. Fenton, Esq., Auckland.

W. ROLLESTON,

Under Secretary.

No. 4.

Copy of a Letter from Mr. FENTON to the Hon. J. C. RICHMOND.

SIR,—

Native Lands Court Office, 28th June, 1867.

I have the honor to acknowledge the receipt of Mr. Stafford's two letters of the 22nd June, informing me that, in consequence of an error in the East Coast Land Titles Investigation Act, the Government have withdrawn their claims, and expressing a desire that the Court, if it sat at all, should immediately adjourn. I beg to state that, in my judgment, the Court must sit, and it will, of course,

CORRESPONDENCE BETWEEN THE GOVERNMENT

be for the Court to determine its own future proceedings. I should think it most probable that under the circumstances the Court would refrain from giving any decisions except in the case of private claims (if any) which the Crown may not oppose.

I have, &c.,
F. D. FENTON,
Chief Judge.

The Hon. the Native Minister.

No. 5.

Copy of a Letter from Mr. FENTON to the Hon. J. C. RICHMOND.

(No. 584.) Native Lands Court Office,
Auckland, 11th July, 1867.

SIR,— I have the honor to inform you that I learn by a letter which I have received from Mr. Monro, the Judge who is sitting at Turanganui, that he arrived at that place early in the morning of the 1st instant, that an accident happened to the screw just as she dropped anchor, and that she lies (or did lie) unable to move in a dangerous roadstead.

The Court was opened on the 3rd, and adjourned until the 4th, Captain Biggs not having appeared. Mr. Monro further states that as far as he can learn at present the boundaries described in the Act are uncertain. He says there is no such place as Lottery Point, and Haurangi and Purorangi appear to be unknown. Mokena expressed a determination that no Hau Hau land should be taken. About 500 Natives had assembled, who presented a scene of drunken riot. The above information is contained in a private letter to me.

I have, &c.,
F. D. FENTON,
Chief Judge.

The Hon. the Native Minister.

No. 6.

Copy of a Letter from Mr. FENTON to the Hon. J. C. RICHMOND.

(No. 653.) Native Lands Court Office,
Auckland, 2nd August, 1867.

SIR,— I have the honor to transmit herewith copy of a letter addressed to me by Mr. Judge Monro, dated the 25th ultimo, reporting on the recent sitting of this Court held by him at Turanganui, on the 3rd last month.

I have, &c.,
F. D. FENTON,
Chief Judge.

The Hon. the Native Minister, Wellington.

Enclosure to No. 6.

Copy of a Letter from Mr. MONRO to Mr. FENTON.

SIR,— Auckland, 25th July, 1867.

I have the honor to report, for your information, that I proceeded to Poverty Bay on the 28th ultimo, per s.s. Taranaki, accompanied by the Native Assessors, Wiremu Te Wheoro, and Tamihana Tunui, to hold the Court at Turanganui, advertised for the 3rd instant, under "The East Coast Land Titles Investigation Act, 1866." We reached Turanga on the 1st; the Natives began to arrive on the 2nd, and before noon of the following day between five and six hundred had assembled from all parts of the coast between the East Cape and the Wairoa; also a number of Europeans, old land claimants and others, more or less interested in the proceedings.

The Court opened on the 3rd, and after reading over the claims, &c., adjourned until the following day, in consequence of the absence of Captain Biggs, the gentleman appointed to act as Crown Agent. The Court sat again on the 4th, when Captain Biggs, who had arrived that morning by the "Lord Ashley," from Wellington, applied for an adjournment, on the ground that there appeared to be a clerical error in the second section of the Act, the word "include" having been substituted for the word "exclude." He also stated that he required further time to get up evidence, as the Natives had combined to keep back information, and that the Government could not have justice done unless he could get evidence from the Chatham Islands, which he had not time to procure.

Mr. Preece appeared before the Court as agent for the Itanga-a-Mahaki tribe. He said that they had been brought three times from great distances to attend the Court, at considerable inconvenience, he considered that the Government had plenty of time to collect evidence; that the flaw in the Act was not the fault of his clients, and that if an adjournment was granted he should apply for costs on their behalf.

The Court was of opinion that the Government had had ample time to get up their case, but decided to grant the adjournment, on the ground of the error in the Act. Mr. Preece then, as agent for the Itanga a Mahaki, and Mr. Rice, as agent for a section of the Itanga-a-Hauiti tribes, applied for costs on behalf of their clients, which the Court decided to allow, being of opinion that they were fairly entitled to them. The amount was arranged between the Crown Agent and the parties.

Before the Court rose I endeavoured to explain what had occurred, to the Natives, but found it difficult to make them understand why a clerical error should necessitate the adjournment of the Court. They behaved very well under the circumstances, but were of course very much disappointed, as they were exceedingly anxious to have their titles investigated, and the question as to the quantity of land to be taken on account of the rebellion definitely settled.

On this, as on the two previous occasions alluded to by Mr. Preece in his address to the Court,

the Natives had assembled from all parts of the coast to be present at the proceedings. This involved not only loss of time but a considerable outlay of money, the resident Natives especially considering themselves bound on such occasions, by the laws of Maori hospitality, to provide food *ad libitum* for all visitors. It was but natural therefore that they should feel annoyed at the repeated delays that have taken place, and could have been excused had they expressed themselves more strongly than they did. I was afraid that their confidence in the Court would be destroyed, or that they would consider it a fiction altogether, but was glad to find that such was not the case. They exonerated the Court from all blame in the matter, and told me that they should still look forward to having their claims investigated by it; but hoped that there would be no unnecessary delay, as loss of time was loss of money to them, as a number of Europeans were prepared to negotiate with them for the lease of their surplus lands as soon as their titles are complete.

After the adjournment of the Court the Natives held a meeting among themselves for the purpose of getting up a petition on the subject; and before I left, Te Mokena, the principal chief of Waiapu, had taken his departure for Wellington, as I was informed with the intention of laying his case before the House.

I have, &c.,

HENRY MONRO,
Judge Native Lands Court.

The Chief Judge, Native Lands Court, Auckland.

No. 7.

Copy of a Letter from Mr. ROLLESTON to Mr. MONRO.

(No. 415-1.)

Native Secretary's Office,
Wellington, 8th August, 1867.

SIR,—

I have the honor, by direction of Mr. Richmond, to enclose for your perusal a statement which appeared in the *Southern Cross* newspaper, of 23rd July, purporting to be an account of what passed at the recent sitting of the Native Lands Court at Turanganui. You are requested to state whether this account correctly represents what was said by the Court and by the Crown Agent on that occasion, and if not, to give a statement of what was said, or such a correction of the enclosed account as will convey a fair representation of what passed.

I have, &c.,

W. ROLLESTON,
Under Secretary.

H. Monro, Esq.

No. 8.

Copy of a Letter from Mr. FENTON to the Hon. J. C. RICHMOND.

(No. 675.)

Native Lands Court Office,
Auckland, 12th August, 1867.

SIR,—

I have the honor to transmit to you the enclosed orders for costs, given by Mr. Judge Monro, at the sittings of this Court recently held at Turanganui.

I have, &c.,

F. D. FENTON,
Chief Judge.

The Hon. the Native Minister, Wellington.

Enclosure in No. 8.

Copy of Order for Costs given by Mr. MONRO.

District of Poverty
Bay, Province of
Auckland.

"Native Lands Act, 1865;"
"Native Lands Act, 1866;" and
"East Coast Land Titles Investigation Act, 1866."

At a sitting of the Native Land Court of New Zealand, held at Turanganui, in the said district, on the 4th day of July, 1867, before Henry A. H. Monro, Esq., Judge, and Wiremu Te Whero and Tamihana Tunui, assessors; in the matter of "The East Coast Land Titles Investigation Act, 1866," "The Native Lands Act, 1865," and "The Native Lands Act, 1866." *Ex parte* Pita Te Huhu and a section of the Itanga-a-Mahaki tribe.

It is ordered that £20 16s. 9d. costs be paid by the Crown to the said Pita Te Huhu, on behalf of a section of the tribe called the Itanga-a-Mahaki, and that such costs shall be paid at the Resident Magistrate's Court at Turanganui on or before the 4th day of October, 1867.

Witness the hand of Henry A. H. Monro, Esq., Judge, and the Seal of the Court, the 4th day of July, 1867.

(L.S.)

HENRY A. H. MONRO, Judge.

Similar orders given to—

	£	s.	d.
Hemi Mahuki (Itanga-a-Mahaki) for	10	12	9
Wiremu Kirini (Itanga-a-Mahaki) for	13	12	9
Apiata Parehuia (Itanga-a-Mahaki) for	10	0	9
Karauria (Itanga-a-Haiuti) for	9	6	0
Keita Waere (Itanga-a-Mahaki) for	13	0	9

No. 9.

Copy of a Letter from Mr. MONRO to the Hon. J. C. RICHMOND.

SIR,—

Native Lands Court Office, Auckland, 15th August, 1867.

I have the honor to acknowledge the receipt of Mr. Under Secretary Rolleston's letter, of the 8th instant (No. 415-1), enclosing an account from the *Southern Cross* newspaper, 23rd July, of the proceedings at the recent sitting of the Native Lands Court at Turanganui, and requesting me to report as to its correctness.

I reply I beg to return the Enclosure above alluded to, which, as amended, fairly represents what passed on that occasion.

I have, &c.,

The Hon. J. C. Richmond, Wellington.

H. MONRO,
Judge Native Land Court.

Enclosure in No. 9.

Report of Sitzings of the NATIVE LANDS COURT.

ON Wednesday, the 3rd July, the Court opened for the transaction of business.

H. Monro, Esq., Judge, presided. The two assessors were Wiremu Te Wheoro and Tamihana Tunui. On the Natives having assembled, Mr. Monro said that the Court was now open and ready to go on with the cases which had been advertised for hearing, but that Captain Biggs, who was Agent for the Crown, not having arrived from Wellington, they would have to adjourn until to-morrow, when it was expected he would return. He must say that gentleman ought to have been there, inasmuch as there had been abundance of time for him to have gone to Wellington and be back in time for the sitting, as the notices had been published for two months. The Court was then adjourned until the next day.

Thursday, July 4.

Captain Biggs, the Government Agent, having arrived this morning, the Court opened for business again at 11 a.m. There was, as on the last day, a large concourse of people, all in great expectation of at last having, at all events, those claims investigated, the surveys of which had been completed, although rumours had been afloat that the Crown Agent would apply for an adjournment of the investigation of the title to the whole district.

The Court having opened,

Captain Biggs, who appeared as Agent for the Crown, addressing the Judges, said that he should have to make an application for an adjournment of all the cases, on several grounds:—1st, that the Government had only lately discovered a clerical error in the second clause of the East Coast Land Titles Investigation Act, which was that the word "include" was inserted instead of the word "exclude," thus altering the meaning and effect of the Act; 2nd, that the Government had not had sufficient time to enable them to get evidence as to what lands belonged to the rebels; and 3rd, because there was a combination among the Natives in the district to withhold all information, which he had not been aware of until a short time before he had departed for Wellington, and that he should have to go to the Chatham Islands in order to procure the required information. On those grounds he would apply for an adjournment until after the Assembly should legislate on the subject, by which time he would be enabled to have all the evidence ready that would be required.

Mr. J. W. Preece said that he appeared as agent for some of the friendly Natives of the Aitanga-a Mahaki tribe. He would object to an adjournment, unless the Government were prepared to pay the costs. The Natives had been put to a very great deal of expense and disappointment by meeting here to attend the sitting of the Court, not only on this occasion, but on two others, and they were led to believe that this time, at all events, they would not be doomed to disappointment. Doubtless, the error that had been discovered in the Act would altogether defeat the object of the Government, and would be a good ground for them to ask for an adjournment; but that the Government had not had time to enable them to bring forth the necessary evidence, as stated by Captain Biggs, he could not coincide with. The Court was probably aware that eight months had elapsed since that gentleman had been appointed as Crown Agent; surely there had been ample time during that period for the Government to obtain all the evidence they required, particularly as it appeared by one of the proclamations that the Hon. J. C. Richmond himself made an application to the Court to hold a sitting over two months ago.

The Judge said that it appeared to the Court there was no other course open but to adjourn; still the Court felt that the Natives had been subjected to a great deal of inconvenience. The action taken by the Government in regard to the sitting of the Court in the East Coast would tend very much to destroy the confidence of the Natives in the Court. The Natives had sent in applications to have their titles investigated in the usual way before the passing of the East Coast Land Titles Investigation Act, and a Court was advertised; but obstacles were thrown in the way, and the Court did not sit. They had assembled and been disappointed on two occasions. Then this Act was passed, and they were led to believe that their titles would be investigated by the Native Lands Court, and that those who had not been in rebellion would have their land awarded to them. He believed that they were perfectly satisfied to abide by the decision of the Court, but before any sitting was advertised they saw land which they claimed surveyed for the purposes of Military settlement, without reference to those who may prove to be the owners of it, while they on the other hand had been prevented from surveying land which they wished to bring before the Court. Now a flaw was alleged to be discovered in the Act, and they were to be told that they, for a third time, had assembled to no purpose. There appeared to be an error in the Act, and one of so serious a nature as to render it unworkable. It was a matter that a European would readily understand, but very difficult to explain to the satisfaction of a Native. The Court could not entertain the question of the Government not having had sufficient time to get up their case, for there had been ample time for them to have all the evidence ready, and the sittings were at the direct request of the Government. He would address a few words to the Natives, and then

adjourn the Court. Then, addressing the Natives, he said he felt almost ashamed to have to tell them that they had assembled on this occasion only to be told that they may go home again. He had been aware that they had on two other occasions assembled and been disappointed; and he should not feel surprised at their expressing their feelings strongly on having again to be disappointed. The delay was not the doing of the Court. They had published the notice fully intending to hold the sitting. As it was, however, there was no other course that could be adopted now than to adjourn. He wished to mention one thing: he had heard, when in Auckland, that the Natives here had been told that the Kooti Tango Whenua (Land-taking Court) was to come down here. He would take this opportunity of telling them that this was not the Land-taking Compensation Court. This Court was established under the Native Lands Act; but there was another element in it, for in this district it was different from the North, where the Court dealt with nothing but the simple Native title to land; but in this district, where there had been war, the Legislature had decided to deprive those Natives who had joined in the rebellion of their right to the land which should be proved to have belonged to them, but that those Natives who had not engaged in the rebellion would be preserved from the loss of any land, and titles would be given them in proportion to the amount of land they were entitled to, where it should be found that they held jointly with those who had been rebels. So they might rest assured that the duties of the Court were not as they had been described to them, namely, to take their land away from them, but to determine to whom the land belonged, and act accordingly. He was very much pleased with the orderly manner in which they had conducted themselves, and the attention they paid to what was going on. He felt great regret in having to do what he was now bound to do, but there was one thing they could depend on, namely, that the next time the Court was advertised to sit in this place, there would be no further adjournment.

Mr. H. E. Rice, who appeared as agent for some of the Aitanga-a-Hauiti tribe, then applied for costs for those claimants, which was granted.

Paora Matuakore, addressing the Court, said that they had fully expected to have their claims heard this time. They had assembled twice before, and thought that this time, at all events, they would have their claims heard. They were all very anxious to have their claims heard now, and felt very much disappointed at the postponement, for they had collected together from all parts in full expectation of having the matter finally settled; but they would rather have them postponed than that they should be opened and not finished. However, they were in the hands of the Court, and were still anxious to have their titles investigated by the law.

Wi Pere also addressed the Court to the same effect.

The Court then adjourned *sine die*.

No. 10.

Copy of a Letter from Mr. ROLLESTON to Mr. FENTON.

(No. 454-1.)

SIR,—

Native Secretary's Office,

Wellington, 22nd August, 1867.

I have the honor, by direction of Mr. Richmond, to acknowledge the receipt of your letter No. 675, of the 12th of August, transmitting orders for costs given by Mr. Judge Monro, at the sittings of the Native Lands Court, recently held at Turanganui, and in reply to inform you that the Government is advised that the Court has no power to order costs to be paid by the Crown. The Crown could not receive costs in such a matter, neither therefore can it be ordered to pay costs. "The Crown Costs Act, 1858," does not apply to this case, and as there is nothing to show that the general rule was not to apply, the order cannot be sustained. At the same time I am to state that the Government withholds any comment on the discretion and propriety of Mr. Monro's conduct in this matter until it receives his account of the proceedings of the Court at Turanganui.

I have, &c.,

W. ROLLESTON,

Under Secretary.

No. 11.

Copy of a Letter from the Hon. J. C. RICHMOND to Mr. MONRO.

SIR,—

Native Secretary's Office, Wellington, 24th August, 1867.

I have the honor to acknowledge your letter of the 15th instant, covering an amended report of the proceedings in the recent sitting of the Native Land Court, at Turanga. The Government regret extremely that you should have indulged yourself in the remarks therein reported. They had a right to expect discretion and reserve from an officer in your honourable position, more especially having regard to your long experience and high character in the public service; your familiarity with Maori temper and modes of thought, but most of all, to the difficulties in pacifying the country to which you have been a witness.

The Native Lands Court is not a proper place for indicating or promoting political opinions of any sort. The whole tone of your address is highly objectionable, as attempting to draw deep the distinction between the Court and the Government, with a view to extol the former at the expense of the latter. Such partisanship is highly indecent in a gentleman in your position. The Government do not discuss opinions as to their general conduct with respect to the East Coast Titles, and to their industry or otherwise in bringing them before the Court, opinions which you, as Judge, seem to have expressed without a particle of evidence on the subject. I must however request you to inform them on what authority you allege as a fact that Natives have "been prevented from surveying land which they wished to bring before the Court." I must also point out the gross impropriety of the implied statement that there is any Court properly called "The Land-taking Court." If any Court could be properly so called it would be precisely the Native Land Court, sitting under the East Coast Lands

Titles Investigation Act, in which you were presiding. But you ought to have been aware, and if it were necessary to advert to the subject in Court, you should have explained that the taking of land has been a Legislative act, a political punishment for the offence of rebellion; whilst the Courts—Native Lands and Compensation—are alike established by the Legislature to watch over the interests of the innocent.

I regret that you should have thought fit to state absolutely beforehand, without cause shown or hearing evidence, that in future no adjournment will take place whatever may happen. The Government are advised that in ordering costs against the Crown you exceeded your powers: accordingly they will not act upon these orders. Your anxiety to sustain the credit of your office should induce greater care; and I suggest that the false position in which your want of circumspection has placed the Court will be best escaped from by your liquidating the amounts yourself.

The Government are sorry to have to animadvert thus on your proceedings. It is necessary, however, to remind you, that though they have official duties as a suitor in the Court, they have functions as guardians of peace and order which your disloyal tone may seriously impede. Their confidence in your discretion and impartiality will not be easily restored.

H. Monro, Esq.,
Judge, Native Lands Court.

I have, &c.,
J. C. RICHMOND.

No. 12.

Copy of a Letter from Mr. FENTON to the Hon. J. C. RICHMOND.

(No. 747.)

Native Lands Court Office,
Auckland, 28th August, 1867.

SIR,—

I have the honor to acknowledge the receipt of Mr. Under Secretary Rolleston's letter of the 22nd instant, No. 544-1, on the subject of the orders for costs given by Mr. Judge Monro, at the sittings recently held at Turanganui.

In reply I beg to say that I hope the Government on some future occasion in which the Crown appears in the Court will instruct their agent to argue that the Court has no power to order costs against the Crown. I have not given the point hitherto any consideration, for I have always taken it for granted that clause sixty-four of the Act of 1865, and the fourth clause of "The Crown Costs Act, 1858," gave the power, and neither Mr. Gillies nor any of the counsel who have ever appeared for the Crown have ever raised the objection. Possibly in the case referred to in your letter the question arises because the matter did not go to "Judgment," the event contemplated in the Act of 1858.

The Hon. J. C. Richmond.

I have, &c.,
F. D. FENTON,
Chief Judge.