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COMMONWEALTH OF AUSTRALIA.

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7-4-21.

INTERIM REPORT

FROM THE

JOINT COMMITTEE OF PUBLIC ACCOUNTS

UPON THE

TRANSACTIONS OF THE WAR SERVICE HOMES COMMISSIONER WITH MR. J. T. CALDWELL.

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INTERIM REPORT.

MEMBERS OF THE COMMONWEALTH PARLIAMENTARY JOINT COMMITTEE OF PUBLIC ACCOUNTS.

(Third Committee.)

The Honorable JAMES MACKINNON FOWLER, M.P., Chairman.
JAMES EDWARD FENTON, ESQUIRE, M.P., Vice-Chairman.

Senate.

- * Senator Thomas William Crawford
- * Senator the Honorable John Earle
- † Senator Allan McDougall
- † Senator Lt.-Col. William Kinsey Bolton, C.B.E., V.D.
- † Senator Richard Dzacott
- † Senator John Dunlop Millen.

* Resigned 28th July, 1920.
† Appointed 29th July, 1920.

House of Representatives.

James Garfield Bayley, Esquire, M.P.
William Montgomerie Fleming, Esquire, M.P.
John Henry Prowse, Esquire, M.P.
John Edward West, Esquire, M.P.
§ Matthew Charlton, Esquire, M.P.

‡ Retired 26th June, 1920.
§ Appointed 1st July, 1920.

The difficulty of obtaining sufficient timber for the War Service Homes scheme caused attention to be directed to the possibility of procuring supplies in the Pacific Islands.

In connexion with the proposed acquisition of timber rights over the islands of Vanikoro and Tevai, in the Santa Cruz group of the British Solomon Islands, statements were made in Parliament gravely reflecting on the War Service Homes Commissioner, and it became the duty of the Committee to investigate the matter under the terms of the request from the Government.

Having completed inquiries into this phase of the Commissioner's transactions, the Committee has the honour to present its Report to Parliament.

On 23rd October, 1919, the War Service Homes Commissioner addressed a memorandum to the Department of Home and Territories, requesting that no concessions regarding timber, or land carrying timber suitable for building purposes, be granted in New Guinea or the Solomon Islands until an application had been lodged by him, he being about to despatch a qualified man to locate and report upon suitable forests with a view to their reservation for War Service Homes purposes.

The Department of Home and Territories controls the administration of Papua, but the government of the Solomon Islands is in the hands of the Imperial authorities. The Department forwarded a copy of the communication to the Administrator of Papua, but did not take any action with regard to the Solomon Islands.

When Mr. A. Combes, the officer appointed to investigate the timber resources in the South Seas, was in Sydney, on his way to Papua, he was introduced by Mr. H. C. Sleigh, Shipping Agent, to Mr. J. T. Caldwell, the representative of a private syndicate, who had just returned from an errand similar to that on which Mr. Combes was about to proceed. The interview took place in Mr. Sleigh's office on the 17th December, 1919. On the same day (17th December) Mr. Combes sent a telegram to the Secretary of the War Service Homes Commissioner, as follows:—

"Repeat, urgent, to Commissioner. Negotiating with man, just returned from leaving, on very easy terms, British island South Pacific. States unlimited supply soft woods, mostly kauri, along-side deep water, log samples will reach Brisbane end this month. Subject to satisfactory terms being arranged delivery of logs here could start within six months. Cost likely to be more than one-third below existing rates. Man wants capital, and it looks better than anything likely to be found Papua. My steamer date already altered four times may now go Friday, which I now think had better cancel. When will you reach Sydney."

Mr. Combes was then instructed to cancel his passage.

On the same day, also, at the urgent suggestion of Mr. Combes, Mr. Caldwell sent a wire to Mr. David Lahey, one of his partners in the venture, asking that he or another partner should "come down" to see Mr. Combes, or, if that were not possible, whether he (Mr. Caldwell) should deal with him. On the 29th December Mr. Caldwell received five wires which, on account of some misunderstanding about his address, had been delayed in reaching him. These authorized him to enter into negotiations.

On the 30th December Mr. Caldwell called on Mr. Combes in Sydney, and was informed by him that the Commissioner was more in favour of a royalty scheme "than of the purchase of our rights in Vanikoro," as Mr. Caldwell put it to the Committee. Mr. Caldwell then wired Mr. Sleigh to meet Mr. Combes, in order to discuss the business. On the 5th January, 1920, Mr. Caldwell received a letter from Mr. Sleigh, stating that they could "sell Vanikoro at a royalty of 2s. per 100 super. feet, on an output of 10,000,000 super. feet per annum, for ten years, and £1,500 in cash." After consultation with Mr. David Lahey, in Brisbane, the offer of the Commissioner was not accepted, and Mr. Caldwell wired, suggesting "a personal conference between principals." Mr. Caldwell arrived in Melbourne on the 23rd January, and on the following morning he, Mr. Sleigh, Mr. Combes, the Commissioner, and Colonel Mailer, met at the War Service Homes office to discuss the proposition. Mr. Caldwell agreed to a royalty of 2s. per 100 super. feet, but stipulated that it should apply to all timber, as he was not satisfied that there was enough kauri pine on Vanikoro to supply 10,000,000 super. feet a year. To this Colonel Walker assented. The Commissioner also asked for an option for four months, which was extended by Mr. Caldwell to six months. A few days later Mr. Combes informed Mr. Caldwell that the Commissioner wanted

to know whether an outright sale could be made. As the result of further discussion between Colonel Walker and Mr. Sleigh, it was agreed to make a contract on a royalty basis, but with an alternative of buying for £50,000 cash. Mr. Sleigh drafted the contract, which was formally drawn up by Mr. Duigan, then acting as Solicitor for the War Service Homes Commissioner. It was signed on 7th February, 1920, by Mr. Caldwell, but has remained unsigned by the Commissioner. The following is the full text of the proposed contract:—

AGREEMENT made the 7th day of February One thousand nine hundred and twenty BETWEEN John Thomas CALDWELL of Sydney in the State of New South Wales Journalist (hereinafter called the "Lessor") of the one part AND the WAR SERVICE HOMES COMMISSIONER a body corporate under the War Service Homes Act 1918-1919 (hereinafter called the "Commissioner") of the other part WHEREBY IT IS MUTUALLY AGREED AS FOLLOWS:—

1 In consideration of Five pounds paid to him by the Commissioner the Lessor hereby grants to the Commissioner an option of purchase of the timber rights of the Lessor under a Lease granted to him by the High Commissioner of the Western Pacific granting the Lessor the sole right to cut and remove timber from the Islands of Vanikoro and Tevai in the Santa Cruz Group in the Pacific Ocean (excepting thereout the right of the Lessor to cut and remove timber under the said Lease which shall be under 16 (fifteen) inches in diameter for a period of ten years from the date of the exercise of such option by the Commissioner.

2. THE Lessor agrees that upon receipt by him of notification from the Commissioner at any time during the term of the said Lease of his intention to exercise his rights under the option, the Lessor will sell to the Commissioner all his right, title and interest under and in the said Lease for a period of ten years from the date of the exercise of the Commissioner of such option upon payment by the Commissioner to the Lessor of the sum of One thousand five hundred pounds in cash and upon the Commissioner undertaking that he will after the exercise of such option pay to the Lessor a royalty of two shillings per one hundred feet super inch board measurement of all timber cut and removed by him or by any person or persons on his behalf during the continuance of the term of ten years hereinafter referred to such measurement to be computed as follows:—On logs either round or square, diameter at middle squared multiplied by length multiplied by $\frac{70}{100}$.

3 AS an alternative to clause 2 the Lessor will sell his whole right title and interests in the said Lease to the Commissioner upon payment by the Commissioner to the Lessor of the sum of Fifty thousand pounds.

4. THE Lessor will proceed with the Commissioner or with such persons as he may authorize in that behalf to the Islands of Vanikoro and Tevai for the purpose of assisting the Commissioner or such persons as he may authorize to inspect the said Islands and their resources and all timber thereon provided that all expenses which shall be shown by the Lessor to have been incurred by him in assisting the Commissioner or such authorized persons in making such inspection shall be paid by the Commissioner.

5 THE Lessor will during the period of this option take all necessary steps to comply in every way with the terms and conditions of the said Lease and will pay all necessary fees to keep in full force and effect all licences, permissions and rights of whatever kind thereby conferred upon him and will not do or permit anything to be done which will prevent the carrying out of this Agreement AND in the event of the Commissioner purchasing under clause 2 hereof the right, title and interest of the Lessor under and in the said lease for the said period of ten years the Lessor will furnish the full rights, powers and privileges of the Lessor under the said Lease in regard to the timber specified in clause 1 hereof.

6. THE Commissioner will in the event of exercising his option hereunder provide all necessary labour, plant and organization for the rapid cutting and removal of timber and to carry out continuous operations during the term of 10 years aforesaid and will pay to the Lessor royalty at the rate hereinbefore mentioned on at least ten million (10,000,000) super feet of such timber per annum provided that he is not prevented from carrying out the conditions of this clause by reason of physical disabilities existing on or adjacent to the said Islands in which case the conditions of this clause shall not apply and the questions of the provision of labour, plant and organization and of the payment of royalty shall then be determined as may be mutually agreed upon by the parties hereto.

7 IN the event of the exercise by the Commissioner of the option hereunder the Lessor will permit the Commissioner or any person authorized by him or his workmen to use any water or water-courses in or upon the said Islands of Vanikoro or Tevai for the purpose of obtaining water-power during the unexpired portion of the term of the said Lease.

8. ANY dispute arising between the Lessor and the Commissioner upon any matter arising hereunder shall be forthwith referred to two arbitrators (one to be appointed by the Lessor and the other by the Commissioner) or to an umpire to be chosen by the Arbitrators before entering on the consideration of the matters referred to them.

IN WITNESS whereof the parties hereto have executed these presents the day and year first before written.

In the meantime, however, the Commissioner had expressly stated to Mr. Bradshaw, the Director of Supplies, that "there was something which needed looking into." Mr. Bradshaw asked Mr. Duigan "where the copies of the lease were." Mr. Duigan was unable to satisfy him, and, after another conversation with the Commissioner, Mr. Bradshaw was instructed by him to make every effort to ascertain whether or not a lease had been granted, and to take whatever action might be necessary in this regard. Mr. Bradshaw then called on the Secretary of the Prime Minister's Department, with the file of papers, and discussed the position with him, and a few days later (2nd February) followed the matter up by a memorandum in these words:—

I am directed by the Commissioner to ask if you will kindly ascertain from the High Commissioner, Western Pacific, Fiji, if he will grant a lease of the Islands of Vanikoro and Tevai to the War Service Homes Commissioner (Commonwealth of Australia) for the purpose of obtaining timber supplies for soldiers' homes in the Commonwealth.

The Commissioner understands an option has been granted already to a Mr. Caldwell, who has made representations to the War Service Homes Commission, and is asking £50,000 for same.

As this is a matter of national importance in view of the impending shortage of overseas supplies of timber it is urgently suggested that the Commonwealth should be granted this lease, and any existing option cancelled.

In the event of the High Commissioner granting the lease an inspection will at once be arranged and the necessary guarantees entered into.

It is estimated that 10,000,000 super feet per annum can be drawn from this source.

On 7th February, 1920, the following cablegram was despatched through the usual official channels to the High Commissioner for the Western Pacific:—

Glad to learn if you will grant lease of Islands of Vanikoro and Tevai to Commonwealth War Service Homes Commissioner for purpose of obtaining timber supplies for soldiers' homes in Australia. Understood option granted Caldwell, who has made representations War Service Homes Commission, asking £50,000 for same. In view national importance building suitable homes returned soldiers esteem it favour if lease granted. In event concurrence, inspection will at once be arranged and necessary guarantees entered into.

Replies to this cable were received, dated 13th February and 2nd March respectively, as follows:—

(i) With reference to your telegram 7th February, matter is receiving immediate attention, but I await information from Resident Commissioner, for which I have telegraphed before replying further. So far as I am aware Government is in no way committed to Caldwell.

(ii) With reference to your telegram 7th February, am prepared to consider proposals from Commonwealth Government for lease of Islands in question for purposes named. I suggest arrangements should be made for inspection of islands on behalf of War Service Homes Commission; and that definite proposals should be made to me after inspection. There are certain claims by French New Hebrides Company, extent and validity of which it would be necessary to determine before any final agreement is entered into.

It seems desirable that officer appointed to inspect should proceed first to Tulagi consultation with Resident Commissioner, and on learning name and probable date of arrival will instruct Workman accordingly.

On 8th March, 1920, the following cablegram was despatched to the High Commissioner for the Western Pacific, by direction of the War Service Homes Commissioner:—

Please grant six months' option to War Service Homes Commissioner to lease Islands Vanikoro and Tevai to justify expenditure by Commissioner in providing survey and inspection party. Taking immediate steps to arrange latter.

On the same day Mr. Caldwell was informed by the Commissioner of the action taken in the following terms:—

In view of information received from the High Commissioner for the Western Pacific, I wish to inform you that the position, as represented by you, does not exist in regard to the lease.

The Agreement signed by you and submitted to me for signature states:—

In consideration of Five pounds paid to him by the Commissioner the Lessor hereby grants to the Commissioner an option of purchase of the timber rights of the Lessor under a lease granted to him by the High Commissioner of the Western Pacific granting the Lessor the sole right to cut and remove timber from the Islands of Vanikoro and Tevai in the Pacific Ocean.

To prevent misunderstanding, I wish to inform you that I am now in direct communication with the High Commissioner over the matter, and that I am not prepared to further discuss the matter as submitted by you.

In reply, Mr. Caldwell submitted copy of a letter from Mr. Charles Workman, Resident Commissioner of the British Solomon Islands, dated Tulagi, 28th November, 1919, stating that he was forwarding Mr. Caldwell's application for plantation and timber rights over the whole of the islands of Vanikoro and Tevai "to His Excellency the High Commissioner, with a strong recommendation that an occupation licence be granted." Mr. Caldwell strongly protested against the action taken by the War Service Homes Commissioner, and at an interview between the Minister for Repatriation, the War Service Homes Commissioner, and Messrs. Caldwell and Sleigh, the Minister stated that he would refer the matter to the Cabinet. The decision of the Cabinet was that all negotiations, either with Mr. Caldwell or the High Commissioner in this connexion, should be terminated pending the result of Mr. Caldwell's application for a lease. Mr. Caldwell was advised to this effect. On 19th April, 1920, a cable was despatched to the High Commissioner intimating that the Government preferred to withdraw its application pending the decision upon Mr. Caldwell's, and asking that the nature of the decision arrived at be communicated to the Commonwealth Government.

In response to cabled inquiries by the Government on 13th May and 5th July, 1920, as to whether the High Commissioner was in a position to favour the Commonwealth with any advice on the subject, the following reply was received, dated 12th July:—

With reference to your telegram 5th July, regret delay which has occurred because Caldwell wrote stating his desire for an interview with me in B.P. Caldwell has not arrived, and no later communication has been received. Greene, Secretary to High Commissioner for the Western Pacific, will be in Sydney for a few days, arriving 20th July, care Burns, Philp. I have instructed him to make inquiry about Caldwell's intentions, and if you so desire, will instruct him to discuss the matter with any representative of your Government the Minister for Repatriation may select.

A meeting was then arranged between the Minister for Repatriation, the War Service Homes Commissioner, and Mr. Greene. The result was embodied in a minute, dated 6th August, 1920, and initiated by the Minister and the Commissioner, as follows:—

Following the recent cables announcing the presence in Australia of Mr. R. Greene, Secretary to the High Commissioner for the Western Pacific, an interview was arranged on the 29th July between that gentleman, Colonel Walker, and myself.

From the conversation which ensued, I learnt that the High Commissioner was not in any way committed to Mr. Caldwell that indeed the proposition the latter had submitted were of too nebulous a character to be correctly described as offers to lease and that no definite proposition had been submitted, even though some months have elapsed since the date of Caldwell's inspection, and that although Caldwell has stated his intention to again visit Tulagi with a view of finalizing the negotiations, he had not done so. That being so, the High Commissioner was free to receive applications from this Government.

The Housing Commissioner agrees with me in the above.

There being no apparent obstacle in the way negotiations may be re-opened.

No action, however, has been taken with regard to re-opening negotiations.

On the 1st October, 1920, the War Service Homes Commissioner addressed the following letter to Mr. Caldwell:—

In view of the misrepresentation by you of your rights regarding the leasing of the Pacific Islands of Vanikoro and Tenui, I hereby demand the return of the sum of £5 which was paid to you by me on behalf of this Commission for an option to purchase your alleged interests in the said islands, which interests have since been proved to be bogus. Further you are advised that should you fail to repay the said sum of £5 to me on or before the 21st instant, such legal action as the circumstances warrant, will be lodged against you without further warning.

It subsequently transpired that the payment to Mr. Caldwell of the sum of £5 had not been made. The peremptory threat to institute legal proceedings against him appears to have been an ill-chosen and belated attempt to vindicate the Commission.

The Committee examined Mr. Caldwell at some length, and also took evidence from Mr. Sleight, Mr. Combes, the War Service Homes Commissioner (Colonel James Walker), Director of Supplies (Mr. E. R. Bradshaw), Mr. H. McL. Duigan (late Legal Officer to the War Service Homes Commissioner), and others who had been connected with the negotiations. Mr. Charles Workman, Resident Commissioner of the British Solomon Islands, who happened to be passing through Melbourne on furlough, was also invited to attend before the Committee. At his request his evidence was heard in private, though as it turned out there was nothing he told the Committee of a secret or momentous nature.

Evidence was also given by Mr. F. Fairley, a director of the San Cristoval Estates Ltd. He stated that in October, 1913, a firm trading under the name of Fairley, Rigby and Co. Ltd., which had plantations in the Solomon Islands, lodged an application with the Resident Commissioner for a licence to cut, fell, and remove kauri timber from the Island of Vanikoro. The interests of that firm have meanwhile been acquired by a Company registered in Queensland as the San Cristoval Estates Ltd. Since the application was lodged, the Company has pressed at intervals for a decision regarding its application, but has been informed that nothing could be done pending the removal of the difficulties which stood in the way of granting a lease.

Mr. Fairley read a number of letters which he had received with regard to his application, including the following:—

From Mr. J. J. Battick, Acting Resident Commissioner at Tulagi, dated 19th February, 1917.

Referring to my letter No. 291, of 8th October last, and your application for the right to fell and remove kauri timber from Vanikoro Island, I have the honour to inform you that the Right Hon. the Secretary of State has decided that your application cannot be finally dealt with until the Government is in possession of a plan showing the boundaries of the land claimed by the French New Hebrides Company on that island.

From Mr. Charles Workman, Resident Commissioner at Tulagi, dated 15th December, 1919.

With reference to your letter of the 1st of August last regarding an application for timber leases on Vanikoro formerly made in 1914, I have the honour to inform you that no decision has been arrived at in this matter, and I am without knowledge as to any new and possible territorial arrangements.

The last advice received by Mr. Fairley is a note dated 18th November, 1920, written by Mr. Workman on board the P. and O. s.s. *Mahua* at Port Melbourne, to the effect that the position was still unchanged, but he added that the Government had not committed itself to any applicant. Mr. Fairley stated in evidence that his company has no intention of withdrawing its application. It did not press the matter during the war, but it now proposes to urge that the question be settled at an early date.

The main question the Committee had to consider in this reference was whether, as complained, Mr. Caldwell has been unfairly treated by the War Service Homes Commissioner with regard to these Islands.

Mr. Caldwell maintains that the strong recommendation made by the Resident Commissioner to grant his application was equivalent to the actual granting of a lease, and that he was perfectly justified in dealing with the Commissioner as if the lease had been issued. He instances the practice in mining ventures in some countries where it is usual to proceed with the development of a lease on a recommendation only. Assuming this to be correct, the Committee is unable to draw the conclusion which Mr. Caldwell seeks to establish. Mr. Caldwell had applied for a 99 years' lease of the entire area of the two islands, together with exclusive fishing and trailing rights. The application he made was an unusual one, and was regarded as such by the Resident Commissioner, who intimated to the applicant that there were difficulties in the way of granting it.

It is somewhat remarkable, and the Committee cannot regard it as a mere coincidence that besides Mr. Caldwell, the principal, both Mr. Combes and Mr. Sleight, in dealing with the Commissioner regarding this proposition, invariably referred to it as a lease when, as they admit, no lease had been granted. The explanation of all these gentlemen is that they considered the strong recommendation of the Resident Commissioner to the High Commissioner to grant a lease to Mr. Caldwell as equivalent to the issue of the lease.

The Committee does not consider this view to have been justified, but if it were a reasonable deduction, then it is all the more remarkable that it was not put to the Commissioner during the negotiations in support of a statement of the actual facts instead of being expressed only when the Committee asked why the term "lease" had invariably been used.

Mr. Caldwell specifically and bitterly complained that the War Service Homes Commissioner had gone behind his back to influence the Imperial authorities to refuse him a lease in order to step in themselves. It is a recognised canon of all reputable business that good faith shall be observed throughout all stages of commercial negotiations by the parties concerned. Mr. Caldwell's application for a lease was seriously imperilled by Mr. Bradshaw's request that it should be ignored in favour of a grant for national and patriotic purposes direct to the War Service Homes Commissioner. Under ordinary circumstances the action taken by the War Service Homes authorities in endeavouring to supplant Mr. Caldwell would be sharp practice of a very reprehensible character. But in this instance it may reasonably be held that the complainant, himself, cancelled all obligations towards him by professing to sell interests which were non-existent, and if Mr. Caldwell bases any grievance upon his priority of application, then it has to be remembered that there was a prior application to his made by Fairley, Rigby and Co. Ltd. in 1913.

J. T. CALDWELL AND LAHEYS LTD.

As allegations had been made in Parliament with reference to the acquisition of certain properties from Laheys Limited by the War Service Homes Commissioner, the Committee examined the directors of that Company with regard to their transactions with Mr. Caldwell.

Mr. Caldwell claimed to have initiated the negotiations with Laheys Limited, and complained that a telegram sent by the War Service Homes Commissioner to the Company while he was proceeding to Brisbane by rail took the matter out of his hands. Under examination, however, he admitted that the negotiations which he was authorized to carry on with that Company had reference only to obtaining supplies of timber, and had nothing to do with the acquisition of the properties.

When Mr. Caldwell became aware that Laheys' properties were about to be acquired by the Government, he wrote to the firm suggesting that as he had heard that a large commission was being paid he should be considered. Payment of such a sum was emphatically denied by Laheys Limited, who informed Mr. Caldwell that "there has not been one penny commission or reward promised or paid to any person in connexion with the whole business, nor can we see you have any claim whatever for any such commission—moral or otherwise."

It appears that when the preliminary negotiations were in progress the directors arranged for an agent Mr. C. S. Ross, of Sydney to carry the business through, and so relieve them of difficulty. As, however, the War Service Homes Commissioner would deal with the principals only, the agent agreed to withdraw, and the negotiations were carried out entirely and directly by Laheys Limited.

COMMITTEE'S FINDINGS.

The Committee finds—

- (1) That no lease of the Islands of Vanikoro and Tevai was granted to Mr. Caldwell, nor did Mr. Caldwell have sufficient reasons for assuming that the lease would be granted to him.
- (2) That though Mr. Caldwell has nowhere definitely stated that he had a lease, he was at fault in attaching his name to a document intended as a contract between himself and the Commissioner in which he is referred to as "the lessor under a lease granted to him by the High Commissioner of the Western Pacific".
- (3) That Mr. H. C. Sleight made a draft for a contract in which the term "lease" was used, although he knew that Mr. Caldwell had not then obtained a lease.
- (4) That Mr. A. Combes in telegraphing to the Commissioner a report of his negotiations with Mr. Caldwell misrepresented the position, and thereby misled the Commissioner into assuming that a lease had been granted when such was not actually the case. He also showed undue haste in urging the Commissioner to secure these Islands from Mr. Caldwell without any definite information as to the quantity, quality, or accessibility of the timber.
- (5) That the solicitor to the Commissioner was at fault in submitting for signature an agreement for an option over a lease without having satisfied himself that the vendor was in possession of such lease.
- (6) That the War Service Homes authorities showed a lack of business acumen in proceeding with negotiations for the acquisition of a lease before such had been produced, and without any independent information regarding the value of the proposition.


Chairman.

Melbourne, 5th April, 1921.