

J U D G M E N T

In this matter the trustees of the Port Moresby Library Institute seek the approval of this Court, pursuant to section 49 of the Trustees and Executors Ordinance 1912 (Papua) of a five-year lease of portion of the trust property to one Stanley Thomas Lawrance.

In response to advertisements inserted by order of the Court calling for objections to such a course, three persons have lodged objections and are represented here by Mr. Kirke of counsel.

It may be convenient to deal with these objectors first. It appears that none of them are members of the Institute and their objections are not against the granting of a lease but as to its terms. The objectors contend that the trustees are not getting as much as they should in rental for the lease. In support of this they instance the rental asked for sections of the building by the proposed lessee. This seems quite inconclusive to me for it is apparent the figure asked is far in excess of the figure only one of the objectors would care to give. One of the objectors has now demonstrated that he would be prepared to offer for the five-year lease an amount in excess of that proposed in the lease under review (namely £720). I would in these circumstances ordinarily have ordered that the matter be referred back to the trustees who of course have a duty to get the best terms available; but the conditions in relation to this property are unusual and I do not propose to do so. In my view the objectors have failed to establish any valid objection and their objections seem to be much coloured by self-interest rather than any tenderness for the trust.

As regards the lease it is regrettable that it involves a departure from the terms of the trust and that the trustees have not seen fit to call tenders for the lease of the property which would be the normal manner of producing the best market value of the proposed lease.

The material produced before me however shows that the proposed tenant has at his own expense made additions and alterations to the trust property adding very considerably to its value. It has been admitted that there can be no question of any claim upon the trustees for the value of this work and on this footing the trustees through their counsel Mr. White put it that in estimating the question of the lease rental value the work done by the proposed tenant at his own expense should be taken into consideration though it gives rise to no legal claim. This seems to me not unreasonable and accordingly I approve of the lease but I must add that I do so very reluctantly because not only does it depart from the terms of the trust, but it is apparent that since 1945 the property has not been used for the purposes of the trust and by reason of the lease cannot be so used for the next five years, though the proceeds will be used for the required repairs on the other trust building.

It seems to me that the trustees may have to face up to the possible conclusion that the altered conditions of the town of Port Moresby have made the Library Institute no longer required by the public and legislation may have to be sought to relieve the trustees of their obligations and for the disposal of the trust property.

The lease approved. Mr. White will have incorporated the provision enabling residence in connection with the business to be carried on in the building.