

As regards the former ground of complaint, it was at once admitted by Mr. Russell's solicitor that the omission to except the timber was a mistake; and a verbal undertaking was given that the error should be promptly rectified, or that compensation should be made.

The history of the case begins with the purchase by Mr. Russell from Government, on behalf of Mr. Aikman, of some sections in the Papakura block. Waitanoa, which is a small piece containing ninety-three acres, adjoins these sections; and it appeared to Mr. Russell a desirable addition to the property. Accordingly, he applied to Tareha in the first instance for a lease. The negotiation was through a Mr. M'Kenzie, who was not examined by us. Mr. Russell stated that M'Kenzie brought him an agreement, signed by Tareha; he is not sure in what language written, but thinks it was in Maori. It was an agreement for a lease for twenty-one years, at £120 per annum. Mr. Russell declares that this agreement has been lost. The transaction appears to have taken place in 1866. About July or August of that year, Mr. Russell went up to Wellington to the session of the General Assembly. In his absence, Tareha let the land to Miller and Lindsay, for twenty-one years at £120 per annum, reserving the timber and firewood, and giving Miller and Lindsay a right of pre-emption; without, however, any agreement as to the mode of fixing the amount of the purchase moneys. Tareha, who was examined, admitted that, before he treated with Miller and Lindsay, he had agreed to let to Mr. Russell for £120 per annum, and had received £20 on account. He did not recollect signing any document. On Mr. Russell's return from Wellington he paid Messrs. Miller and Lindsay a premium of £200, and took an assignment of their lease. He also bought out a sub-tenant of Miller and Lindsay, paying him, Mr. Russell believes, £50 besides some expenses. Mr. Russell then applied to Tareha to compensate him for breach of the agreement between them. Tareha replied, that Russell was to go to Miller and Lindsay, it was their fault not his. Thereupon Mr. Russell instructed Mr. Wilson to bring an action against Tareha. An action for damages was accordingly brought in the Supreme Court. The damages were laid at £400. We were unable to obtain from either party any further information as to the character of the action. The original declaration, which must have been handed to Tareha's solicitor in the action, was not forthcoming, that person having left Napier; and as the action was compromised before the parties were at issue there exists no record of it in Court.

It appeared, that some time previously to the commencement of the action Mr. F. Edwards Hamlin had been endeavouring, under instructions from Mr. Russell, to treat with Tareha for the purchase of the land. But the demands of the natives were such as to cause the negotiation to be broken off.

Shortly after the commencement of the action, some of Tareha's people came into the store of Mr. Sutton, in Napier, and began to talk about Mr. Russell's action against Tareha, saying that it was oppressing several of his old people very much. These men asked Mr. Sutton if he would be inclined to buy the land, and help Tareha out of his difficulty with Mr. Russell. At that time Mr. Sutton had not been instructed by Mr. Russell to buy for him. Mr. Sutton informed Mr. F. E. Hamlin of what the natives said. Next day Mr. Russell called upon Sutton, and empowered him to give £250 for the land, and to agree that the action should be stayed. Tareha's costs in the action, also, were to be paid by Mr. Russell.

Ultimately, the sale was effected upon these terms during Mr. Russell's absence at Wellington. Sutton does not appear to have been authorized by Mr. Russell himself to agree to any exception of the timber and firewood. But as Tareha insisted on this reservation, Mr. Sutton, with the assent of Mr. Russell's solicitor, assured Tareha, that the timber would not be considered as included in the deed—and on this understanding the chief executed the conveyance. This agreement, though at first repudiated by Mr. Russell as having been made without authority, is now, as we have stated, admitted to have been binding.

The unfair pressure complained of, consists in the institution of the action at law which has been referred to.

It was argued, in the first place, that the action was oppressive, inasmuch as there was no legal ground for it. This did not appear to be clearly made out. In any case we did not think that Tareha could complain of a proceeding which, whether technically groundless or not, was founded upon a clear breach of faith on his part.

Next, it was said, that the action was not brought *bona fide* for the purpose of recovering damages, but was intended as a mere instrument for driving the native owners to sell to Mr. Russell. The proof relied upon to establish this charge was, that Mr. Russell had been previously attempting to negotiate through Mr. Hamlin for the purchase of the land; and that the action had actually brought about the sale. It did not, however, appear that Mr. Russell had contemplated such a result. He made no proposal to the natives in relation to the action until he had been informed by Mr. Sutton, a person then wholly unconnected with him, that the natives had become desirous of selling. Sufficient motives to the course taken appear to have existed, without the supposition of any such ulterior design as is imputed to Mr. Russell.

We have felt some difficulty in regard to that part of the charge, which represents the consideration paid for the freehold as grossly inadequate.

The freehold of land let on a well-secured rental of £120 per annum must, if the lease is unincumbered with conditions adverse to the lessor, be clearly worth more than £250. We saw reason to think, however, that the land was not really worth anything like such a rent. Supposing the natives to have agreed to reduce it by one-half, the true letting value would probably have been more nearly reached. Mr. Russell could scarcely have been blamed for asking for, and accepting, such a reduction had it been gratuitously made by the natives; and we cannot say that the purchase was an unconscientious bargain because it was not made upon the basis of an excessive rental.

Considering that the timber was excepted, with liberty to the natives to enter and take it as they might require, we doubt much whether the fair value of the land could have exceeded, at the time of the purchase, £5 or £6 an acre. That would give from £450 to £550 as the proper value. Mr. Russell has actually paid as much, and more, for the land. He contends that he is entitled to consider the sums paid to Miller and Lindsay, and their tenant, as part of his purchase-money. These sums, he argues, but for Tareha's breach of contract would have been paid to the natives themselves. This view has at least a sufficient semblance of reason to relieve the Case of the aspect of an unconscientious bargain.