

on the 27th of October, 1885. It had just previously been assigned by the original lessee to Henry Frederick Turner, and was shortly after, namely on the 5th of January, 1886, assigned by him to the defendant, Henry Thomas Turner.

By section 13 of the Act of 1884 the Public Trustee may accept from the lessees surrender of any lease which has been confirmed by the Governor, and in lieu of such may grant a new lease of the land comprised in the surrender lease at a rental to be computed on the improved value of such land, on such terms, subject to the Acts of 1881 and 1884, and to all regulations made thereunder, as may be agreed upon between the Public Trustee the Native owners of the land and the lessees.

I am quite clear that the acceptance of a surrender under this Act is discretionary on the part of the Public Trustee; and also that the terms to be agreed upon must be in accordance with the terms of the Crown grant. It may be that the written consent of the Governor to the alienation of the land by way of lease was no longer required after the passing of this Act, or even after the passing of the Act of 1881; but nothing in either of these Acts would authorise the granting of a lease for more than twenty-one years. In 1887 "The West Coast Settlements Reserves Acts Amendment Act, 1887," was passed. This amends the Acts of 1881 and 1884.

Section 7 provides a different plan for settling the terms of new leases, when leases have been surrendered under the Act of 1884. It was contended by the counsel for the defendants that this section 7 operates as an implied repeal of section 13 of the Act of 1884. I cannot agree to this. It may have been intended to deprive the Native owners of some of their safeguards by repealing that section; but if so the intention was not carried out, for section 7 expressly refers to surrenders of leases under section 13 of the former Act, refers so it again later on in the section, and merely provides that the terms shall be settled by arbitrators instead of by the parties themselves. It is probable that it had been found almost impossible to settle the terms of new leases where a large number of Natives had to agree.

Under this Act certain regulations were made in February, 1888. The Court is asked to declare these rules *ultra vires* and void; and, in my opinion, some of them undoubtedly are so if their intention was that which the words of them convey to my mind.

I have already stated my opinion that the acceptance of the surrender of a lease by the Trustee, under section 13 of the Act of 1884, is discretionary. I see nothing in section 7 of the Act of 1887 to alter this position. And I say, further, that the Public Trustee is in no way less liable to his *cestui que trust* than any other trustee would be, and that he must not accept the surrender of a lease unless it is certainly to their advantage that he should do so. The power to be exercised was not coupled with any duty to the parties who called upon him to exercise it; his duty was to those for whom he was trustee.

Now, the regulations of 1888 convey to my mind—and, I think, would do so to any ordinary mind—an intention that the acceptance of the surrender of a lease should be compulsory upon the Public Trustee; since, upon the lessee of a confirmed lease desiring to surrender the same and to obtain the grant of a new lease, he is to notify his desire to the Public Trustee and appoint an arbitrator; and the Public Trustee is to notify the lessor, who is then within a month to appoint an arbitrator, or in default have one appointed for him; and then the arbitrators are to decide, not whether a new lease shall be granted, but what the terms of it shall be.

I fail to find in any of the Acts any authority for such proceedings. Indeed, I may go further, and say that there is no authority for them unless we are to assume that the Public Trustee has a merely ministerial act to perform in receiving notices of a wish to surrender a lease and in informing the lessor of the fact.

In the present case, the Public Trustee has, in my opinion, acted upon the regulations and contrary to the Act. On the 20th of February, 1888, the lessee gives him notice, "I intend to surrender the lease." That lease had then four years to run. He does not even say that he desires to surrender it, but that he intends to do it. And it is worthy of remark that this notice was given only ten days after the publication of the regulations. We are told that there are a large number of similar cases. With that we have nothing to do, but it certainly looks as if there had been a preconceived plan to defeat the plain meaning of the Acts to the great disadvantage of the Native owners. At least the lessee in this case had received early intimation that the regulations had been passed.

Upon the receipt of this notice, the Public Trustee appears to have taken as a matter of course that he had no discretion in the matter, and that all he had to do was to give notice