

SESS. II.—1891.

NEW ZEALAND.

JUDGMENTS OF THE COURT OF APPEAL

IN THE CASE OF TE MOAUROA AND OTHERS V. THE PUBLIC TRUSTEE AND ANOTHER.

*Laid on the Table by the Hon. W. P. Reeves, with the leave of the House.**In the Court of Appeal of New Zealand, between Te Moauroa and Others, Plaintiffs, and the Public Trustee and Henry Thomas Turner, Defendants.*

JUDGMENT OF CONOLLY, J.

By a deed made the 17th of January, 1876, certain Natives leased to one Matilda Rhatigan part of the Native reserve called Otoia, in the Patea district, containing 700 acres more or less. The term of the lease was sixteen years from the 1st of January, 1876, and the rent for the first ten years was £105 per annum, and for the last six years £140 per annum.

At the date of the execution of this lease the ownership of the land comprised therein had not been determined. It was within that which was described as “confiscated territory” by the Acts of 1879 and 1880, with respect to which inquiry had been made by Commissioners. By “The West Coast Settlement (North Island) Act, 1880,” the Governor was empowered to issue Crown grants in fulfilment of awards of the Commissioners. By “The West Coast Settlement Reserves Act, 1881,” section 4, provision was made for the insertion of conditions in Crown grants issued or to be issued under the Act of 1880.

In pursuance of these Acts a Crown grant was issued on the 27th of July, 1882, to certain Natives of land in the Patea district, containing 1,200 acres more or less. It must be assumed that this includes the 700 acres demised by the lease to Mrs. Rhatigan.

The grantees were not all of them the same as those who in 1876 purported to be lessors; but any possible difficulty to arise under such circumstances was provided for by section 9 of the Act of 1881, whereby the Public Trustee was to be the receiver of all rents payable under any lease of any reserve, and to pay over the same to the Native owners in such shares and proportions as he should ascertain to be due to such owners respectively. It may be, however, that this provision did not extend to leases already irregularly made until they were confirmed by subsequent legislation, but this is not material.

It is important to consider the terms of the Crown grant. It was to be absolutely inalienable by sale, gift, or mortgage, except by way of exchange for land of equal value, and was not to be alienable by lease for any term exceeding twenty-one years, and then only by the written consent of the Governor in Council.

In February, 1883, regulations were made by the Governor in Council under the Act of 1881, as authorised by section 5 of that Act, and these regulations contain a form of lease and provide that leases shall be prepared by the lessor, and shall, as nearly as may be, be in that form, and contain the powers, reservations, provisions, conditions, covenants, and agreements set forth therein. This, however, would only refer to leases to be thereafter granted, and in the view which I take of the matter now before the Court becomes immaterial.

In the following year “The West Coast Settlement Reserves Act 1881 Amendment Act, 1884,” was passed, which by section 10 empowered the Governor, upon being satisfied as to certain preliminaries, to confirm leases which had been irregularly granted by Natives prior to 1880. By virtue of this provision the lease of the 17th of January, 1876, was confirmed