

But the term of this lease begins about a year after its date, though under a covenant the tenant is assumed to be entitled to possession at once. It is a lease not in possession (see Foa, "Landlord and Tenant," p. 33). If it were held to be in possession, the term is beyond the term that was sanctioned by law. The lease therefore seems to us to be invalid. It was contended before us by the counsel for the present mortgagor and mortgagees of the lease that the lease would be valid, and *Ani Wata v. Grice* (2 N.Z. L.R., C.A., p. 95) and *Te Ruihi v. Grice and Others* (4 N.Z. L.R., C.A., p. 219) were cited. In these cases the leases were executed as escrows; in this case the lease was not executed as an escrow, nor was it held to be an ineffective lease till all had signed. It purported to be an immediate lease, and it would operate on the signature of any of the tenants in common as a lease of the tenant-in-common's share who signed. These cases are therefore inapplicable. Further, all the owners have not yet signed this 1882 lease—seventeen owners have not signed. The lease, therefore, cannot be a lease of Block 1F, but only at most a lease of the interests of the tenants in common that have signed the lease.

It is also to be observed, according to the evidence given by the late Judge Butler, who was a most expert translator and interpreter, that the Maori translation annexed to the deed is inaccurate. He said he noticed in the translation that it was stated that the Natives were to be entitled to 10 per cent. of the proceeds of the coal after deducting expenses, whereas in the Maori translation it said nothing about deducting the expenses. The mistake is no slight or trifling one: the difference between 10 per cent. before or after expenses have been deducted is most important, and no business man requires the difference to be pointed out. The law necessary to the validity of the deed in this respect has not therefore been complied with. If not, however, invalid, the Native lessors could take proceedings to declare the lease forfeited, and for this reason:—

The lease contained the following covenant:—

"The Lessee shall immediately upon the execution of these presents proceed to Mokau and enter upon and reside upon the demised lands and will as soon as conveniently may be provide a competent and sufficient staff of surveyors for surveying and measuring the said land and testing the same for the discovery of minerals and developing the resources of the land. And shall and will as soon as possible after the execution of these presents take the necessary steps for forming a company with a capital of thirty thousand pounds at the least for developing and working the said mines minerals and timber of which said company at least two of the said Lessors shall be appointed directors and shall be elected and chosen by a majority of the said Lessors and from and after the expiration of twelve months from the first day of July one thousand eight hundred and eighty-three shall during each succeeding year expend the sum of at least three thousand pounds in raising winning and making marketable the said minerals and timber and in making roads erecting buildings and making such improvements as may be required in the Mokau and Mohakatino River as may be necessary for more effectually carrying out and conducting the conveyance and shipping of the produce of the said mines and timber. And shall and will at the expiration of each year of the said term as soon as possible after the yearly balance of the said company shall have been struck furnish to the Lessors a copy of the account of such company showing the profit or loss accrued to the company during such year and shall also upon request made by the Lessors or any ten or more of them submit to the inspection of the Public Trustee for the Colony of New Zealand or any person to be appointed by him such yearly statement of account and all books of account papers and documents showing the transactions of the said company and the statement of assets and liabilities of the same. And shall and will pay the rent or royalty accruing each year to the Lessors on account of the said premises to each of the Lessors personally or to some person duly authorised by him. In case the Lessors shall at the expiration of the said term desire and request the Lessee to continue to lease the said land mines minerals and timber for a further period the Lessees shall and will accept a lease of the same for a further term of fifty-six years subject