

As to the rights of the lessors in 1F, I think that they can only safely rely upon the breach of covenant to expend moneys in improvement and to reside on the land, but I think they are entitled to claim that the lease has been forfeited by reason of the breach of that covenant. But a right to insist on the forfeiture can only be enforced after notice has been served on the lessee specifying the particular breach complained of, and, if the breach is capable of remedy, requiring the lessee to remedy the breach, and in any case requiring the lessee to make compensation in money. No action can be commenced by the lessors until they have given such notice and a reasonable time has been allowed to the lessee to remedy the breach. There are difficulties in respect of such notice, because it would have to be signed by each lessor who desires to terminate the lease, but that difficulty cannot be avoided (see the Property Law Act, 1908, section 94). Then, again, there is much force in the contention that the lessors have waived the past breaches of the covenant by accepting rent. It may be that some have refused to accept rent, but I am not informed on this point.

If, therefore, the lessors of 1F desire to put an end to the lease, they must, firstly, abstain from accepting any more rent, and, secondly, all agree to sign the required notice to the lessee. If some of the lessors desire to accept rent and not to sign the notice, I think the right of the other lessors who do desire to terminate the lease would not be affected, for each is tenant in common of his own share and entitled to terminate his lease of that share by the proper procedure.

I now turn to the eastern half of Block 1, and again take my facts from the Commission's report. As to these blocks, I do not think that the Act of 1888 can be said to validate the leases, and, on the grounds stated by the Commission, I am of opinion that the leases would, but for the force of the Land Transfer Act, be held to be invalid. In these leases there are also non-lessors, and those non-lessors can maintain their right, until partitioned, to prevent cutting of timber or other interference with their rights as owners of every part of the block. They can also maintain their right to partition. As to the lessors, unless there has been some breach of covenant by the lessee they have only the legal technicalities to rely on, and it is a serious question whether they are not barred by the Land Transfer Act. The leases have been registered on the Provisional Register, and mortgages and assignments under which the present holder of the leases claimed have also been registered, and I see no reason whatever to doubt that the present holder could prove that he acquired the title without fraud. If the lease had been registered on the Complete Register and the assignments had also been registered, then I think it could scarcely have been doubted that the lessee could rely upon the Land Transfer Act in support of his title. Whether the Provisional Register has the same effect has not yet been finally decided. In *Mere Roihi v. Assets Company* (21 N.Z. L.R. 691) the majority of the Court of Appeal thought that a purchaser for value upon the Provisional Register acquired no better title than the first person registered, and that the title of such first person could be attacked so long as the Register was provisional. Williams, J., dissented from this view, and held that the protection afforded to a purchaser for value on the Complete Register applied equally to the case of such a purchaser on the Provisional Register. The Privy Council, in the same case on appeal (1905 A.C. 176), adopted generally the judgment of Williams, J., but did not express an opinion on this particular point. In the *Assets* cases the company subsequently became registered on the Complete Register, and the attack was made upon it long after the issue of the Complete Register, and the judgment of the Privy Council turned upon the point that (as they held) the first proprietor so registered is fully protected. Therefore, as I have said, it has not yet been finally decided that a purchaser for value registered on the Provisional Register is completely protected from attack upon the title of his assignor if the action be brought attacking the title before any complete register is made out. I think that if the Natives desire to test the leases of the blocks in the eastern half they should take proceedings in one of those blocks only to determine whether they are barred by the provisions of the Land Transfer Act from attacking the title of the assignee of the leases.

To sum up my opinion: As to the western half, 1F: If any timber is being cut or has been cut recently on 1F, I think the non-lessors (the seventeen) should bring an action against the present assignee of the lease to restrain him from interfering with the timber in the future, and claiming an account of the profits of the past. If no timber is being cut or other similar operations being conducted, the best remedy of the non-lessors is to insist upon partition in the Native Land Court. As to the lessors, I advise them to decide whether they will proceed to declare the lease of 1882 forfeited for non-performance of the covenant to expend moneys in improvement. If they so decide, then they must agree to take no more rent, and they must have a formal legal notice to the lessee, as required by section 94 of the Property Law Act, prepared by solicitors, and must then sign such notice or authorize some person to sign for them. After a reasonable time from the service of such notice, but not before, the lessors may bring their action. And as to the eastern half of Block 1, I advise the non-lessors in each of the blocks to take the same proceedings as I have advised in the case of the non-lessors in 1F. As to the lessors in the several leases of the eastern half, I advise them to choose one of the blocks as the subject-matter of an action, and to have one action to test the validity of the leases.

I understand that the Natives desire that my firm should act for them in the matter of these blocks. If so, I am bound to add that they must remember that litigation in such matters cannot be otherwise than expensive, and they must subscribe a very substantial sum and deposit it so that the solicitors and counsel can be paid from time to time. The cases would be vigorously defended, the attack will be upon titles to large areas of land, and the expense must be heavy. I think the actions will succeed, but I wish the Natives to understand that they can only succeed if the documents are properly collected and the evidence carefully prepared, and the cases in Court properly conducted.

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