

to the Native owners to appoint an arbitrator, and that, in default of their so doing, he should apply to the Government to appoint one. It does not appear that the matter was ever brought before the Public Trust Board.

The Natives never appointed an arbitrator, and, so far as appears from the case, did nothing. Thereupon, the Governor appointed one some ten months after, and the arbitrators shortly afterwards appointed an umpire, and made their award on the 1st of March, 1889.

Having arrived at the conclusion that the whole of these proceedings were unwarranted by law, it is perhaps unnecessary to comment upon the contents of the award itself; otherwise there would, in my opinion, be sufficient on the face of it to cause this Court to set it aside. (1.) It orders a surrender of the lease. This had already been treated by the Public Trustee as surrendered by the notice of the 20th of February, 1888; but, for some unexplained reason, the arbitrators do not fix either that date or the date of the award for the commencement of the new lease, but fix the 12th of February, 1889. (2.) The term is made thirty years and some months, in contravention of the Crown grant, which makes the land inalienable for more than twenty-one years. (3.) It directs that the lessee shall be entitled to compensation for his improvements unless he gets a renewal of the lease. (4.) It gives the lessee the option of a further renewal for thirty years on the same conditions, at a rent to be fixed by arbitration, thus practically giving the lessee a right of occupation for sixty years, still further contrary to the Crown grant. (5.) It does not contain a valuation of the land, or give the basis on which the rent is fixed at £72 19s. 10d. per annum, thus not complying with No. 13 of the regulations under which it is supposed to be made.

The result of this award would be an immediate loss to the Native owners of £68 per annum for three years, and of £27, their share of the costs of the award. It is clear, from the immediate application of the lessee for a surrender of his existing lease, and the grant of a new one at a rent to be fixed by arbitration, that he expected such a proceeding to be much to his advantage. It should, therefore, have been equally obvious to the Public Trustee that it would be to the disadvantage of the Native owners, whose interests he was, in my opinion, bound to protect.

I am of opinion that an injunction should be granted as prayed.

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*Te Moauroa and Others v. The Public Trustee and Another.*

JUDGMENT OF WILLIAMS, J.

THE main question for decision in this case appears to be whether, under section 7 of "The West Coast Settlement Reserves Acts Amendment Act, 1887," the Public Trustee has a discretion to accept or refuse to accept a surrender of a confirmed lease, or whether the section gives to the lessee an absolute right to surrender and to obtain a new lease. If the Public Trustee has a discretion, it is quite clear that in the present case he did not exercise it, but that all the proceedings were taken on the assumption that the right of the lessee was absolute, and that there was a duty imposed upon the Public Trustee at the request of the lessee to submit to arbitration, and to grant a new lease in pursuance of the award. If, then, it be established that there was no such duty, but that the Public Trustee, before agreeing to accept a surrender, was bound to exercise a discretion as to whether it was advisable to accept it or not, there is a defect which cuts at the root of all the subsequent proceedings, and renders them entirely inoperative. Section 7 of the Act of 1887 is an amendment upon section 13 of "The West Coast Settlement Reserves Act 1881 Amendment Act, 1884." Under the 13th section of this latter Act, apart from the subsequent amendment, it is abundantly clear that the acceptance of a surrender by the Public Trustee was entirely optional. Section 5 of the Act of 1884 directs that the powers of leasing conferred upon him are to be exercised "in such manner as he shall think fit with a view to the benefit of the Natives to whom such reserves belong, and to the promotion of settlement." The 7th section of the Act of 1884, though it in terms refers only to the West Coast Settlement Reserves Trustee in carrying out the routine business, mentioned in the unrepealed part of section 8 of "The West Coast Settlement Reserves Act, 1881," seems to indicate a general intention that the Natives interested are themselves to be consulted, and their wishes, if possible, given effect to. The terms upon which the new lease is to be granted are, by section 13, to be the subject of agreement. The surrender of the old lease would, of course, be conditional on the terms of the new lease having been agreed upon. In order to give effect to the section, the course of proceeding would be for the Trustee to con-