SESS. II.—1891.
NEW ZEALAND.

JOINT WEST COAST SETTLEMENT RESERVES COMMITTEE

(REPORT OF THE), ON THE WEST COAST "CONFIRMED LEASES".

Report brought up 14th August, 1891, and ordered to be printed.

ORDER OF REFERENCE.

Extract from the Journals of the House of Representatives.

Ordered, "That a Select Committee be appointed to inquire into and report upon the subject of the "confirmed leases" on the west coast of the North Island, and the remedies proper to be devised in the circumstances; with power to sit with any similar Committee which may be appointed by the Legislative Council, and to agree to a joint or separate report; the Committee to have power to call for persons and papers, and to be at liberty to use the evidence taken before a Joint Committee in the session of last year; three to be a quorum. The Committee to consist of Hon. Sir J. Hall, Mr. Parata, Hon. Mr. Rolleston, Hon. Mr. Seddon, Mr. J. G. Wilson, and the mover. To report in three weeks."—(Hon. Mr. CADMAN.)

REPORT.

THE Joint West Coast Settlement Reserves Committee who were directed to inquire into and report upon the subject of the "confirmed leases" on the west coast of the North Island, and the remedies proposed to be devised in the circumstances, have the honour to report that they have arrived at the following resolution:—

That the Committee find that since the report of the Joint Committee in the year 1890 no fresh legislation has taken place affecting the position of the "confirmed lessees." The effect of no legislation having taken place, and no continuance of the Suspension Act of 1889 having been passed, has been that it was left open to the contending parties to carry on the litigation on the subject of the leases which had been arrested by the Suspension Act.

A test case was accordingly submitted to the Court of Appeal in the case of Te Moauroa and Others *v.* the Public Trustee and Another, with the following result:—

The issue of the leases proposed to be substituted for confirmed leases has been declared to be illegal. The judgment of the Court proceeded on the ground that

(1.) These leases would be to the disadvantage of the Natives concerned, and would be issued under regulations which were *ultra vires*;

(2.) That the Public Trustee would not be justified in admitting of surrenders of the old leases unless he were satisfied that such action would be to the advantage of the Natives, and that he was bound to exercise a discretion in their behalf.

In the words of Mr. Justice Conolly, "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." Again he says, "In the present case the Public Trustee has, in my opinion, acted upon the regulations and contrary to the Act. On the 28th 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 only given 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." He further points out that, in the particular case, "the result of the award would be an immediate loss to the Native owners of £68 per annum for three years, and of £27, their share of the cost of the award."

Mr. Justice Williams says: "I think that it would be the duty of the Trustee before agreeing to accept a surrender and grant a new lease upon terms to be decided by arbitration under section 7, to consider whether there was a reasonable probability that the result of the arbitration would be beneficial to the *cestui que trust*, and if he thought there was no such probability that he should decline to enter into any agreement, and that he is not compelled to enter into it but was bound to exercise his discretion before doing so."

Mr. Justice Denniston's judgment is equally decided in the same direction.

The present position, therefore, is that under "The West Coast Settlements Reserves Act, 1887," an Act which in the opinion of the joint Committee of 1889 did not sufficiently guard the interests of the Natives, action has been taken which, in the judgment of the Court, so far as the petitioners are concerned is nugatory.

The Court has at the same time laid down the principles which should guide the Public Trustee in any of his dealings with the reserves in question, and the suggestions made last year by the joint Committee are clearly superseded by the injunction of the Court and the directions so given which are applicable to future transactions.

The lessees now pray the Legislature to afford them relief in one of several forms specified in their petition, and they ground their prayer very largely upon the representations and promises which they allege were made to them by Mr. Thomas Mackay at a meeting, an account of which was laid on the table of the House of Representatives in 1887.—(Parliamentary Papers, G.–7.)

With regard to this statement it is right to point out that, according to the report as quoted by the petitioners, Mr. Mackay informed them that "the option lies with the Public Trustee whether a lease can be surrendered or not." And, in his evidence before the Committee in 1890 (see page 98, Q. 2999 and Q. 2929), Mr. Mackay denies having promised an extension of the leases to thirty years, and also (though there appears to be some confusion on this point) makes a statement that contravenes the understanding which the lessees apparently entertain as to the purport of his remarks at Patea on the subject of valuations for improvements. Whatever view may be taken of this somewhat conflicting evidence, it is clear that if any statement were made at the meeting at Patea in December, 1884, that new leases could be made at a rental to be computed otherwise than "on the improved value of the land," such statement would be entirely contrary to the law which had been passed less than two months previously by the Parliament. No provision depriving the Natives of the value of their improvements was made till the Act of 1887 was passed.

In view of all the circumstances the Committee is of opinion,—

(1.) That no action would be justifiable which promoted arrangements other than those indicated in the judgments of the Court, or which in any way consulted the interests of the lessees at the expense of the Trust;

(2.) And it does not consider that any one of the specific forms of relief asked for in the petition of the confirmed lessees can be rightly given.

14th August, 1891. E. C. J. Stevens, Chairman.

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