

1905.

NEW ZEALAND.

## JUDGMENT OF THE PRIVY COUNCIL

ON CERTAIN APPEALS FROM THE COURT OF APPEAL IN NEW ZEALAND.

*Presented to both Houses of the General Assembly by Command of His Excellency.*

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL ON (1) THE CONSOLIDATED APPEALS OF THE ASSETS COMPANY (LIMITED) *v.* MERE ROIHI AND OTHERS, AND THE ASSETS COMPANY (LIMITED) *v.* WIREMU PERE AND ANOTHER; (2) THE CONSOLIDATED APPEALS OF THE ASSETS COMPANY (LIMITED) *v.* PANAPA WAIHOPI AND OTHERS, AND THE ASSETS COMPANY (LIMITED) *v.* WI PERE AND OTHERS; AND (3) THE CONSOLIDATED APPEALS OF THE ASSETS COMPANY (LIMITED) *v.* TEIRA RANGINUI AND OTHERS, AND THE ASSETS COMPANY (LIMITED) *v.* HENI TIPUNA AND OTHERS, FROM THE COURT OF APPEAL OF NEW ZEALAND; DELIVERED 1ST MARCH, 1905.

Present at the Hearing: Lord Macnaghten, Lord Davey, Lord Robertson, Lord Lindley, Sir Arthur Wilson. [Delivered by Lord Lindley.]

THE substantial question raised in each of these three appeals is whether the Assets Company (Limited) has acquired a good title, as against the plaintiffs, who are Natives, to certain lands in New Zealand. The Natives have long been out of possession. The Assets Company is and has been for many years not only in possession but also registered in the land registers of the colony as owner of the lands in dispute. The appeals arise out of actions brought in the Supreme Court by a few Natives to recover portions of land which formerly belonged to them and many others. In form the actions are not for recovery of possession, but for the rectification of the register and for mesne profits. But whether the substance or the form of the actions is regarded, it is obvious that it is for the plaintiffs to establish their claim, and not for the Assets Company to prove their title as if they were themselves plaintiffs out of possession.

The lands in question in the first appeal are known as Waingaromia No. 3; those in question in the second appeal as Waingaromia No. 2; and those in question in the third appeal as Rangatira No. 2.

The title of the Assets Company is derived historically through one Cooper, who many years ago bought the lands in question from the Natives. The sales to him were carried out in the Native Land Court. Orders and other documents necessary to enable the Assets Company to be registered as owner under the Land Transfer Acts were obtained, and the Assets Company was registered accordingly as its titles were completed. The company's title as registered owner is impeached by the plaintiffs in all three cases on two grounds—viz., first, that the registration of the company as owner was procured by fraud, and secondly, that such registration was invalid by reason of the invalidity of the orders of the Native Land Court on which warrants of the Governor, having the effect of Crown grants, were issued, on which warrants the registration was founded.

Before dealing with the facts relied upon for the purpose of establishing these contentions it will be convenient to examine the statutes relating to the land registry, and to ascertain the legal effect of registration, for if this effect is what the Assets Company contends there is an end of the Natives' claim. The Assets Company contends that, in the absence of fraud by the company or its agents, registration is conclusive, and confers a good title on the company; and that defects in the proceedings in the Native Land Court, even if proved, cannot affect the title of the company, although such defects may possibly entitle the Natives to compensation for any injury caused to them by improper registration. The question thus raised is one of the greatest importance in the colony, and, unfortunately, there is a difference of opinion upon it amongst the members of the Supreme Court.