

to the payment of the same rents and royalties as are hereby reserved and made payable and to the performance and observance of like covenants liberties powers and restrictions as are herein set forth. The Lessees shall in case any of the land hereby demised shall be clear of the indigenous growth during the said term forthwith and at all times thereafter cultivate use and manage such cleared land in a good husbandlike manner and at the expiration of the said term shall and will quit and deliver up the said land to the Lessors in good heart and condition and sown in good mixed English pasture grasses and all fences erected thereon in good substantial condition."

Now, this covenant has never been fulfilled, and it is a continuing covenant. It has been said, however, that the Natives waived the performance of the covenant by a signed written agreement cancelling the covenant and receiving in lieu thereof an increased rent. No doubt ordinary lessors might have entered into such an agreement, but this agreement is an attempted variance of a lease that to be valid has to be executed according to statutory requirements. It is, in fact, the making of a new lease, and to be valid it would have had to be executed as a lease and to have received the certificate of a Trust Commissioner. It has no such certificate, and it is therefore, in our opinion, invalid and ineffective. The covenant stands, and the lessors can proceed, after the proper and necessary legal steps are taken for the ejection of the present tenant. So much for the 1882 lease of Block 1F.

As to the other leases, it may be said that all the signatures except one to these leases were obtained before the 16th September, 1889; that is the day upon which "The Native Lands Frauds Prevention Amendment Act, 1889," was passed and came into force. They were also all obtained after the passing of "The Native Lands Frauds Prevention Act Amendment Act, 1888," sections 5 and 7 whereof are as follows:—

Section 5. "It shall not be lawful for any person to negotiate, either on his own behalf or as agent or trustee for any other person, for the purchase, conveyance, transfer, lease, exchange, or occupation of any Native land, or of any land or any estate, right, title, or interest therein, or for any agency or authority to deal therewith or in relation thereto, unless such land is now owned under Crown grant, memorial of ownership, or certificate of title issued under either a Native Land Court Act or a Land Transfer Act to not more than twenty owners, or unless such land shall hereafter become and shall have been so owned for forty days."

Section 7. "Any person who on his own behalf or as agent or trustee for any other person shall take or accept any conveyance, lease, transfer, gift, or other assurance from any Native, whether to himself solely or to himself and others, of any Native land, or of any land not heretofore owned as aforesaid, or which, becoming hereafter so owned, shall not have been owned for forty days as aforesaid, or who shall be a party to any negotiation, agreement, contract, or promise for the making to him, or to him and others, or to any other person, of any such conveyance, lease, transfer, gift, or other assurance, or for the accepting or giving of any such agency or authority, shall forfeit and pay a penalty not exceeding five hundred pounds, to be recoverable in a summary way."

"Every such conveyance, lease, transfer, gift, and other assurance, agreement, contract, promise, agency, and authority, shall, except as hereinafter provided, be illegal and void."

1G, containing 2,969 acres, was, by partition order dated the 24th March, 1889, held by eighteen owners, eleven of whom have signed the lease; 1H, containing 19,567 acres, by one of the same partition orders was held by thirty-one owners, all of whom have signed the lease; and 1J, containing 4,169 acres, by one of the same partition orders was held by thirty-six owners, twenty of whom have signed the lease. Therefore, when the leases for 1J and 1H (each containing more than twenty owners) were signed, they were not only illegal—the Amendment Act, 1889, not then being in force—but the lessee was also liable to a penalty of five hundred pounds for procuring the same.

Subsequent to the lessee obtaining leases for 1H and 1J—which were, *inter alia*, invalid as containing more than twenty owners—"The Native Lands