

J. B. Braithwaite on one side, John Bennett on another, and the Tutaekuri River on the other side; and that there are no deeds or instruments of title affecting such land in my possession or under my control, other than those enumerated in the schedule hereto or at the foot hereof. And I make, &c. Declared the 15th January, 1874, before Hanson Turton, D.L.R.—J. M. BATHAM, District Land Registrar. 6th September, 1881.

The CHIEF JUDGE, Native Land Court, to the CHAIRMAN, Native Affairs Committee.

SIR,—I have the honor to inform you that I have telegraphed to the Registrar to send at once telegraph copy of proceedings of Court in the matter of Oamaru Block.—I have, &c., F. D. FENTON, Chief Judge.—Wellington, 19th September. The Chairman, Native Affairs Committee, H. R.

The REGISTRAR, Auckland, to the CHIEF JUDGE, Native Land Court.

F. D. FENTON, Esq., Chief Judge Native Land Court, Native Office, Wellington.—*Re* Oamaru, am attending to matter. Oamaru, containing 3,573 acres, was adjudicated on by Judge Smith in 1866. Plan shows two pieces. One order made for whole by Ministers. No application appears to have been made for a division. Division line was cut at time of original survey, and is not minuted by the Judge on map. Monro heard Oamaru No. 2, 225 acres, in August, 1868. No restrictions on either block I have referred to. Monro will let you know. His reply will also refer to F. H. Smith.—A. J. DICKEY, Registrar. Auckland, 19th September, 1881.

The REGISTRAR, Auckland, to the CHIEF JUDGE, Native Land Court.

F. D. FENTON, Esq., Chief Judge Native Land Court, Native Office, Wellington.—*Re* Oamaru, minute books sent to Monro to report on same. Do you mean me to telegraph a copy of all the minutes? They are rather voluminous. Please reply.—A. J. DICKEY, Registrar. Auckland, 19th September, 1881.

Mr. H. D. BELL to Mr. SHEEHAN.

DEAR SHEEHAN,—I have only this printed case on which to lay my hands at present. I have somewhere a printed report of the evidence at the trial, which I could send another day. The case in C.A. was reported on. I have not the report.—Yours, &c., H. D. B.

*Enclosure.*

In the Court of Appeal.—Between PAORA TOROTORO and REWI HAOKORE, Appellants, and FREDERICK SUTTON, Respondent.

THIS is an appeal from the judgment of His Honor the Chief Justice, delivered on the 28th day of September, 1875, wherein, on the application of counsel for the plaintiff Rewi Haokore, the Chief Justice gave leave to appeal. The plaintiff Rewi Haokore only appeals. The writ in the action was dated on the 8th day of August, 1874.

The pleadings were as follows:—

IN THE SUPREME COURT OF NEW ZEALAND, WELLINGTON DISTRICT.

DECLARATION.

The plaintiffs, by Charles Beard Izard, their solicitor, sue the defendant, and say,—

1. That by deed of grant from the Crown, dated the 14th day of July, 1866, under the hand of Sir George Grey, the Governor of the Colony of New Zealand, and under the seal of the said colony, but which deed of grant is not in the possession or under the custody or control of the plaintiffs, and they cannot set it out in the words and figures thereof, all that parcel of land in the Province of Hawke's Bay, containing 3,573 acres, more or less, and situated at Oamaru, in the District of Napier, and known by the name of Oamaru, bounded towards the North and North-east by the Tutaekuri River; towards the South-east by lines 1900 links, 50 links, 1000 links, 370 links, 200 links, 850 links, 2100 links, 110 links, 2480 links, 6500 links, 710 links, 2045 links, and 1158 links; towards the South by the Repoki te Rotorua Stream, and by a line 1308 links; and towards the West by a line 20350 links to the Tutaekura River at Te Pani, and numbered three N (3N), was granted to the plaintiffs, aboriginal natives of the Colony of New Zealand, their heirs and assigns, for ever.

2. That by deed dated the 28th day of July, 1856, and made between the plaintiffs of the one part and James Butcher Braithwaite of the other part, but which deed is not in the possession or under the custody or control of the plaintiffs, and they cannot set it out in the words and figures thereof, all that parcel of land, being part of the land comprised in the said deed of grant, and being the land within the following boundaries, namely, commencing at Hikauera, running on from thence to Hopuaroa, Waiuhakaata, Te Mungi, Pakahoreroa, Taungatara, Pukioku, Te Puni, and on to Paira Kaihata's fence, where it turns, and, following that fence, runs in the direction of that fence and in a direct line into the channel of the swamp, where it turns and runs to Haumakawe, and follows on to Te Tumu, Tamangakoau, Te Totara, Te Koka; here it again turns, and takes over the hills in a direct line to Motakumara, and on to the starting boundary to Hikawera, was leased by the plaintiffs to the said James Butcher Braithwaite, for the term of twenty-one years from the 1st day of November, 1865, at a yearly rental of £300, under and subject to the covenants and agreements in the said deed expressed and implied.

3. That the land comprised in the said deed of lease consisted of 3,410 acres, or thereabouts.

4. That the land comprised in the said deed of grant contained, in addition to the land included in the said deed of lease, 163 acres or thereabouts, on which the dwelling-houses of the plaintiffs were standing, and whereon they were living, their wives, families, and kinsmen, and which land they were, at the date of the said lease, and of the mortgage and conveyance hereinafter mentioned, cultivating and using for their crops and cultivations.

5. That by deed dated the 5th day of October, 1868, and made between the plaintiffs of the one part and the defendant on the other part, but which deed is not in the possession or under the custody or control of the plaintiffs, and they cannot set out the same in the words and figures thereof, all and singular the lands comprised in the said deed of grant were purported to be conveyed and assured by way of mortgage to the defendant, to secure the payment by the plaintiffs to the defendant, on the 1st day of November, 1873, of the sum of £500, then lent by the defendant to the plaintiffs, and of all moneys then due or thereafter to become due by the plaintiffs to the defendant upon account current, or for future advances, or in any other way whatsoever, together with interest on all sums thereby secured, at the rate of ten pounds (£10) per centum per annum, payable on the 1st day of November in each and every year during the continuance of the said security. The first of such payments to be made on the 1st day of November, 1869.

6. That by deed dated the 16th day of March, 1869, and made between the plaintiffs of the one part and the defendant on the other part, but which deed is not in the possession or under the custody or control of the plaintiffs, and they cannot set it out in the words and figures thereof, all and singular the lands comprised in the said deed of grant, and in the said deed of lease, in consideration of the sum of £1,200 then due by the plaintiffs to the defendant, and of the further sum of £1,300 then paid by the defendant to the plaintiffs, were purported to be granted, conveyed, and assured unto the defendant, his heirs and assigns.

7. That at the time of the treaty for the mortgage by the plaintiffs to the defendant of their land at Oamaru, it was, by word of mouth, mutually agreed and understood between the plaintiffs and the defendant that the mortgage deed should comprise only that portion of the land comprised in the said grant which had been previously leased to the said James Butcher Braithwaite by the said deed of the 28th day of July, 1866.

8. That the said deed of mortgage was prepared under the instructions of the defendant alone, and the plaintiffs had no independent professional advice or assistance in reference to the said mortgage before or at the time of the execution thereof, and the plaintiffs did not know, nor did either of them know, that the said deed of mortgage comprised the whole of the land contained in the said grant from the Crown, and the plaintiffs executed the said deed of mortgage under the mistake that only the land comprised in the said deed of lease to the said James Butcher Braithwaite was affected thereby.

9. That the execution of the said deed of mortgage by the plaintiffs was fraudulently obtained by the defendant, in this: that he well knew at the time of the execution thereof that the plaintiffs did not then intend to include in the said deed of