

the authority of a miner's right, and it should be placed under the jurisdiction of the Warden in the same manner as if it were conducted on Crown Lands. We agree with Sir William Manning that it would not be just to allow a rush of diggers on private ground, who would utterly destroy it without the consent of the owner; but we can see no reason why mining on a larger scale, where the damage to the surface would be much less considerable, should not be allowed on paying the owner of the property fair and reasonable compensation. We also hope that improved Mining Laws will encourage the miner to enter on operations on the large scale which, while doing the least injury to the land, is by far the most profitable, both to the minor and to the Country.

Opinion of
dissentient
minority,—the
President and
Mr. Combes

[We agree with the majority of the Members of the Commission in the opinion that it is highly desirable that the Legislature should without delay put an end to the uncertainty at present obtaining with regard to the real practical ownership of the auriferous deposits within land unconditionally alienated in fee. It is undoubted law, that unless the Crown has by express words granted away its interest in the royal metals, those metals remain *in theory* the property of the Crown, even though in land unconditionally alienated. But while this theoretical right remains in the Crown,—a right the practical exercise of which is by no means free from difficulty,—the Crown systematically refrains from attempting actively to assert that right, and thus the private proprietor is led to believe that the right is at all events tacitly renounced. We think that when the practice is thus uniformly one way, the theory at variance with it should be abolished, and that by legislative action the theory and practice should be reconciled.

We have in a former part of our Report (*see paragraphs 142-3*) expressed our opinion that all known payable auriferous Crown Lands should at once be proclaimed as a Gold Field within a certain defined area, and, as such, should not be eligible for sale as are other Crown Lands. And we take this opportunity of expressing our opinion that prompt and energetic means (either by official geological explorations, or by great and substantial inducements to private prospectors, or by both) should be taken in order to the discovery without delay of the auriferous lands of the Colony; so that by these means the State may retain the ownership, not only of the gold, but of the gold-bearing land, and set apart those lands specially, or at all events chiefly, for the mining community.

But with regard to lands already or hereafter to be unconditionally alienated in fee, we cannot assent to the proposition which would, if adopted, have the effect of *compelling* the proprietor of such land to permit persons to mine upon it, notwithstanding any objections, however reasonable, he might entertain to such a proceeding. The insertion of even the thin end of the wedge of a policy of confiscation can never be viewed with favour by those who have the permanent well-being of a community at heart; and while recognizing to the full that fundamental principle of public policy, *salus populi suprema lex*, we cannot see, in support of the suggestion to throw open to the public for mining purposes all private land,—no matter upon what terms, under what conditions, or with what fancied safeguards,—that urgent necessity, that high degree of need amounting to a paramount obligation, which alone can justify interference with private vested rights, on the ground that the public weal demands such interference. We take it as a settled proposition that the wisest policy of a Parliament legislating for a Colony of such a vast territorial extent as this, is to encourage the acquisition of land by an industrious and enterprising class of settlers; and we think that, by shaking the confidence of the community in the safety of landed proprietorship—after all the surest basis of national prosperity—so severe a blow would be dealt to the best interests of the Country that the evils consequent thereupon would far outweigh any advantages that could possibly accrue by the extraction of the comparatively small quantity of gold contained in private land.

Nor is it as though it were proposed that this gold, when extracted from private land, should be lodged in the State coffers to be expended for the general good; *the proposition is, simply, that it should find its way into the pockets of private individuals other than the landowner.*

The dread of the requisition by individuals of wealth to such an extent as to endanger the safety of Governments is now admitted to be merely chimerical; and the spirit of private enterprise, as well as the obvious self-interest of the private proprietor of auriferous land, will sooner or later effectually prevent the locking up of wealth in the earth when that wealth can beneficially be extracted. To that same spirit of enterprise, and to that same principle of self-interest, may safely be left the gradual diffusion of that wealth; and we are of opinion that if, by an express renunciation of the nominal rights of the Crown, the way were cleared to the making of unquestionably legal arrangements between the private proprietor and the miner, satisfactory and equitable arrangements would speedily be made, with mutual advantage to both parties. But on the other hand, we feel assured that if Parliament were to legalise the arbitrary taking of the so-called royal metals in private land by the licensee of the Crown, a very crushing check would be given to the spirit of enterprise in every industry throughout the Colony; we say every industry throughout the Colony, for assuredly the apprehension of possible interference with vested rights would not be confined to landed proprietors.

In the interests, however, not merely of the few large landed proprietors, nor of the many thousands of poorer settlers who have free selected smaller plots of land and have already converted many hundreds of miles of wilderness into smiling corn-fields and gardens,—in the interests, in fine, not merely of owners of private land, whether in large or in small blocks, but in the interests, of the entire community,—we object to the proposed interference with private rights, on the broad principle that there is not shown to be any adequate paramount public good to be thereby attained. And we close this minute of our expression of dissent from our colleagues with a statement of our conviction that the views entertained by us will be shared by the great majority of that large section of the mining community themselves who wish to make the Colony their home, and who look forward, either for their own or for their children's sakes, to becoming land-holders.—J.G.L.I., E.C.]

CONCLUSION.

161. Your Commissioners feel that their thanks are due not only to the miners, for the kindly greeting everywhere accorded by them, but also to the officials of the various districts visited, for their ready offers of assistance in the prosecution of the work of the Commission. To Mr. Henry Osborne Rich our thanks are especially due, for his courtesy in placing at our disposal his private complete copies of successive Gold Fields Acts and Regulations of New South Wales, as well as some of those of the other Colonies: and we desire to record our sense of the service rendered to us by Mr. Brough Smyth, Secretary for Mines in Victoria, not only by his admirable work on the Gold Fields of that Colony, but also by most courteously forwarding to us copies of various Parliamentary Papers and draft Bills upon the subject of Mining Legislation now under discussion in the Victoria Parliament.