

the trustees would have exercised this right if the opportunity had been offered them, and therefore it is possible that the wrong done may be only of that class in which a legal right has been invaded without substantial damage (*injuriā sine damno*) and for which Courts of justice award nominal compensation. Now, although it is always desirable, if possible, to remedy a wrong, however slight, it is necessary to be very careful that no greater wrong is perpetrated in the process, and therefore we think it best to mention briefly the several modes of dealing with this matter which occur to us, with such remarks upon each as most obviously suggest themselves.

(a.) The plan recommended by the Select Committee of the House of Representatives, and embodied in a Bill to amend "The Special Powers and Contracts Act, 1886," which Bill fell through in the Legislative Council. This measure provided for the cancelling of the Proclamation by which the land was taken, vesting in Her Majesty the part required for defence purposes, and making the remainder revert to its original position of a trust estate with a term of years carved out of it. All financial adjustments were to be made by a tribunal appointed for the purpose. This is a very drastic remedy. Our objections to it are—(1.) That it seems to be quite inapplicable in case the land should have been alienated before the Act could come into force. It is quite possible that the land may pass through half a dozen hands before anything can be done, and we certainly think that to take away by statute the unimpeachable title of a *bona fide* purchaser for value would be a greater wrong than any that has yet been committed. (2.) The adjustment of payments, especially if there were a mortgage upon the property, would be intricate and difficult. (3.) The remedy is in excess of what is required, being made obligatory on all parties without any reference to the opinion of the party wronged—namely, the trustees. If any remedy of this kind is to be adopted we would suggest the following as an alternative:—

(b.) The trustees to be authorised, if they wish, within a given time to give notice, in some way to be determined, that they wish to buy back the reversionary interest in the land. Such interest to be determined by valuation and the amount paid to Mrs. Kissling or to any mortgagee, Mrs. Kissling to retain the leasehold for the remainder of the term free from rent, because the trustees have already been paid in full for the rent. This would leave it to the trustees to move or not as they might choose. It would be simpler than (a), and would render matters of account easier to deal with. (See note at end.) But it is open to the same objection as (a) in respect of the possible alienation of the land.

(c.) The Government to make such an offer to Mrs. Kissling for the reversionary interest at the end of any term of years that might be fixed upon as would induce her to sell it, and the Government then to sell this to the trustees at a valuation if they wished to buy it. This scheme involves no compulsion, and could only be carried out if the owner were willing. The price to be paid would probably be in excess of what would be fixed by valuation; but in the present condition of the land-market in Auckland owners are mostly open to a fair offer, and if the thing could be done in this way it would be eminently satisfactory—the Government paying something more than the market-price to remedy the wrong they have done, and no one being left with any grievance.

(d.) Compensation to be made to the trustees for any wrong they may have sustained, by giving them land elsewhere. The objection to this is the difficulty of determining what is the amount of damages to which the Trust might be entitled; but the Government might ascertain the views of the trustees upon this point, and this method if agreed upon would be simple and effectual.

We think that the importance of the questions which have been referred to us lies rather in the principles which are involved in what has been done, and in the danger of further violation of private rights by Government action, than in the actual magnitude of any injury done in the present case. Nevertheless, the Trust Board has been deprived of a legal right which it ought to have had the opportunity of exercising. If this wrong can now be redressed without doing more harm than good by upsetting a title solemnly given by an Act of the Legislature, we think it desirable to do it, and with that view we submit for consideration the four schemes above set forth. Our own opinion is in favour of (c), and next to that of (d); but if it is determined to interfere with the present title in spite of the difficulties arising from possible alienation, we think that (b) would be a simpler and better method of doing this than (a).

We have, &c.,

(L.S.)	JOSEPH GILES,	} Commissioners.
(L.S.)	JOHN ROBERTS,	

NOTES ON SCHEME (b).

In the purchase of the reversion, if the whole of the purchase-money is paid to a mortgagee, he has a better security in the term of years for the balance of his money than he had before in the whole estate for the entire sum. For,—

Let V be the value of the whole estate, of which l represents the value of the leasehold and r of the reversion. Then $l + r = V$.

Let M be any sum, less than V , secured by mortgage on the estate, and let l' be that part of M which may be considered as secured by l , and r' by r respectively. Then $l' + r' = M$.

$$\text{Then } \frac{M}{V} = \frac{l'}{l} = \frac{r'}{r}.$$

If the mortgagee receives r' he receives all that part of his money which was secured by the reversion, and is therefore not injured; consequently, if he receives r , which is greater than r' , the sum represented by $r - r'$ goes in diminution of the sum l' which is secured by the leasehold, and therefore he is in as much better a position as l is a better security for $l' - (r - r')$ than it is for l' .

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