

passer his improvements, and would not have been justified in allowing a year to year tenancy to continue longer than the property could not clearly be let to better advantage by tender, or to another year to year tenant who would give more rent. The Judge's charge to the jury teems with assumptions against the Public Trustee, who was proceeding strictly within his rights, and with assumption especially with respect to his conclusions that no attempt was made to come to terms with McCullum. Assumption should always be in favour of the party who is acknowledged to be proceeding within his rights. His statement that Rennell personally told McCullum that he would not interfere because the rent was satisfactory to Mr. Rennell and the Natives is without foundation. The Judge's decision not to allow costs was arbitrary beyond all precedent, where, in a case like this, the plaintiff obtained more than nominal damages, and was proceeding, even as the Judge himself repeatedly declared, strictly within his rights. The Judge would have been wrong, even if the Public Trustee had refused to grant a yearly tenancy, to allow the consideration of such a contingency to influence the charge to the jury, or to be made a ground for the refusal to grant costs. The Judge appears throughout the proceedings to have regarded the property as belonging to and administered by the Government, instead of as property belonging to and administered by a trustee for private persons, who happen to be Natives; and the result of such a charge to the jury, and the refusal to allow costs, must be to place a trustee, in dealing with a trespasser on the property of his trust, in a position in which the trustee cannot eject the trespasser without loss to himself, or allow the trespasser to remain and destroy the property without subjecting himself to a charge of breach of trust. The result of such conduct in a Judge must occasion a general fear that to place a property in trust is to expose it to destruction, and to frighten trustees generally that they can do no right. All the time the Government were disposed to do something in the direction of giving these trespassers their improvements, and this case was laid before the Attorney-General. The following is his memorandum on the subject: [Appendix E]. Now, although notice was given to McCullum, with other trespassers, he had not been disturbed. He, himself, first took the step which compelled me to take proceedings. I did not intend to remove this man until I felt I was required to do so in the interests of the trust for the purpose of leasing the land under the Act of 1892. He took the law into his own hands. He set about removing these buildings, and he actually had removed them before I became aware that he had done so. The Native owner of the land telegraphed to me that McCullum was doing so, and requested me to take proceedings to prevent him. I should not have been justified in doing nothing, or, rather, in not taking proceedings. It may be my duty in this case to myself petition, in the interests of the Natives, for compensation for the loss which they have suffered through an appeal by their trustee to the Courts for the protection of their property in the improvements which the Judge himself admitted to belong of right to the Natives. If the property had not belonged to Natives, the case would have produced a great outcry through the whole colony. There were articles in the newspapers here and in other parts of the colony which are almost too strong to quote. I will quote a few words from one: "It appears that a number of men have been squatting on Maori reserves for years without any legal right to do so, and, after being allowed the option of taking up a legal lease under the Act of 1892, which was declined, it naturally followed that the Public Trustee had to take legal steps to protect the interests of the Native owners. Had he done otherwise he would have been unfit for the responsible position he holds. We admit that it is hard for a man to spend money and labour in improving some one else's property without compensation, but that is the law, and until it is made legal for every man to take possession of whatever he fancies it is idle to abuse a public officer for carrying out the law." I will conclude with the remark that in this case the Supreme Court seems to me to have been, accidentally or otherwise, an instrument of wrong to the Natives. I think that the very extremity of the wrong may prevent any such wrong in the future. I would not make any improper reflection on the Courts, but Courts in the past have been sometimes instruments of wrong. Macauley speaks of "the guilt of making the institutions to which it is desirable that the public should look with respect and confidence instruments of frightful wrong, and objects of general distrust. The pain of an ordinary assassination"—I forget the rest.

149. *The Chairman.*] Are we then to gather from what you say that the decision of the Court was against your administration?—It was that I was in this case of McCullum injuring the settler. The Judge said that I should have arranged the subdivision of the reserves to provide for these trespassers; but in Wellington, at the Court of Appeal, his judgment was, as I quoted, to the effect that the Trustee should have exercised his discretion in the interest of the Native owners.

150. The Appeal Court upheld the Judge's decision?—I had no means of coming to appeal. The Native lost his property. Of course, when I speak in this way, I do so from a feeling that the Supreme Court has accidentally, or through mistaken notions, been the agent of a great wrong to the Native owners. As to the conduct, however, of Mr. Justice Connolly, I only want the world to know the facts, so that every one may judge for himself.

151. *Mr. Hall.*] Are there any trespassers on this land now?—I think there are a few. I know that there is one.

152. What position is he in?—He is in illegal occupation; and, as soon as I find I can, in the interests of the Natives, lease the land he occupies, I will give him notice to remove; and if he does not remove I will have to eject him.

153. You say the Government were disposed to bring in legislation whereby these trespassers should obtain some relief, and I understood you to say that, even if they did so, you would not consider that legislation to be binding on you?—I should obey the law. I said I could not give away the property of the Natives. The Government would have to pay me the value which they desired to allow. It was the property solely of the Natives, and I could not give it to the trespassers. Retrospective legislation would have been necessary to give the property belonging to the Natives to the private persons, who were trespassers; and, unless I had got the money, I would not have been justified in parting with the property.