

because either a substantial reduction in rent would have to be made to secure a purchaser, or, if no purchaser could be found for the renewal lease, the lessee would remain in possession for an indefinite period at the rental reserved under the expiring lease.

49. It should also be stated—but this does not appear to have been placed before Mr. Justice Blair—that as far back as 1894 the Legislature enacted by section 2 of the Trustees Acts Amendment Act of that year (see now section 97 of the Trustee Act, 1908), that it should “be lawful for a trustee . . . to invest any trust funds in his hands in advance by way of mortgage on the security of . . . any Native land held on perpetual lease under the West Coast Settlement Reserves Act, 1892,” subject to certain conditions, one of which was that “no such advance shall be made unless the lessee is entitled under his lease to compensation for all improvements made by him on the land comprised in his lease.” In other words, the Legislature made those leases an authorized trustees’ security. It might, of course, be suggested that, even if Mr. Justice Blair’s decision is right, the lease does provide (by virtue of the clauses in the Schedule to the Act of 1892) for compensation in the event of the lessee refusing to take a renewal lease and some other person purchasing the renewal. But the suggestion would be a cynical one because the improvements would go to the lessor on the expiration of the term and the lessee would not receive any payment for them except from a purchaser of the renewal lease in the unlikely event of one being found: so that the trustee who made the advance under the authority of an Act of Parliament would find that his security was in effect a sham. Any interpretation that would lead to such a result would be rejected by any Court unless no other more reasonable interpretation were possible.

50. If the judgment of the Supreme Court was right—that is to say, if Mr. Justice Blair’s interpretation of the provisions of the Schedule to the Act is correct—then there was a valuable right given to the beneficial owners by the Act of 1892 of which they have been deprived by section 19 of the Act of 1935, but the result would have been a grave hardship to the lessees amounting to a moral injustice, inasmuch as it connoted, to all intents and purposes, a confiscation of their improvements; and it is no exaggeration to say that it would have involved many of them in financial ruin. If, on the other hand, the judgment is wrong, it would follow that the Act of 1935 (however much it may be condemned otherwise) did not deprive the Maori owners of any right given to them by the Act of 1892, but that result would have been a very serious hardship to the beneficial owners amounting to a moral injustice. It would be unreasonable to think, whatever be the meaning that the words of the clauses in the Schedule may be held to bear, that Parliament in 1892 “designed” or “intended” either the one injustice or the other.

51. While, therefore, it might be invidious to express a definitive opinion as to the correctness or otherwise of Mr. Justice Blair’s decision, that aspect of the matter had necessarily to be considered, and what has been said shows that at best the matter is not free from difficulty and doubt; it is intended to present a true perspective of the situation as it existed in 1935; and it shows the reasons which made it necessary that something should be done to clarify and ameliorate a very difficult position.

52. In all this doubt and uncertainty Mr. King very wisely took the view that some settlement, just to both the lessees and the beneficial owners, should if possible be arrived at without further litigation, and amended legislation was the only way in which the difficulties could be properly met. Ordinarily, Parliament does not legislate in matters of this kind until the parties have exhausted their legal remedies, and, as events have turned out, it might have been better if that principle had been adopted in this case; but still it cannot be said that a departure from the principle was not justified because further proceedings by way of exhausting the legal remedies of the parties would have resulted in great expense and great delay, and, in the long run, would have been fruitless.