

The two claims under consideration have their origin in the same portion of the same contract, where the obligations which gave rise to them are intertwined in the closest manner. The claim of the Government does not arise from any fresh transaction freely entered into by it after notice of assignment by the company. It was utterly powerless to prevent the company from inflicting injury on it by breaking the contract. It would be a lamentable thing if it were found to be the law that a party to a contract may assign a portion of it, perhaps a beneficial portion, so that the assignee shall take the benefit, wholly discharged, of any counter-claim by the other party in respect of the rest of the contract, which may be burdensome. There is no universal rule that claims arising out of the same contract may be set against one another in all circumstances. But their Lordships have no hesitation in saying that in this contract the claims for subsidy and for non-construction ought to be set against one another.

It is hardly necessary to cite authorities for a conclusion resting on such well-known principles. Their Lordships will only refer to *Smith v. Parkers* (1), not so much on account of the decision as for the sake of quoting a concise statement by Lord Romilly of the principle which governed it. He says, "All the debts sought to be set off against the defendant Parkes are debts either actually due from him at the time of the execution of the deed" (this was the deed by which the third party who resisted the set-off was brought in) "or flowing out of and inseparably connected with his previous dealings and transactions with the firm." That was a case of equitable set-off, and was decided in 1852, when unliquidated damages could not by law be the subject of set-off. That law was not found conducive to justice, and has been altered. Unliquidated damages may now be set off as between the original parties, and also against an assignee if flowing out of and inseparably connected with the dealings and transactions which also give rise to the subject of the assignment.

Their Lordships think that the proper course will be to discharge so much of the decree below as directs payment of the subsidy, and instead thereof to direct an inquiry whether the Government is entitled to make any and what claim against the company in respect of any of the matters mentioned in the answer of the Attorney-General.

That brings me to a question upon which I shall have to trouble the Committee with evidence at length. Of course any one can see that the damage which the colony has sustained is very large indeed, and when the question was first approached the difficulty was to estimate it so that something in the way of figures might be before the Committee. We have endeavoured to approach it from different points of view, from some of which I think the Committee will be satisfied that we are able to produce figures which can be established beyond question. It must, of course, be a question of estimate, and probably on one or two heads it is difficult to arrive at anything exact, but in other instances we are able to produce positive evidence. I will take what I call the blue mark on the map, and that represents nearly six millions of acres of land. You will see what the company has selected, and you have it that for more than fifteen years that blue mark has been upon the map, and not a single settler could be put upon that land with any but temporary tenure. I do not want to go further than my brief, and may say that some tenants have been placed there, under section 216 of the Land Act, but that tenancy does not give the tenant a right to improvements, and cannot exceed three years. No one would suppose that any considerable number would take up land under such circumstances. It has been taken up in some cases probably with the idea that when the reservation was removed a paternal Government would be generous. But there is that mark, and it is right to assume that that land has been made worthless to the colony for fifteen years. There have been 900 applications in Nelson, and 700 in Westland for portions of this land, and there would have been more if the company had carried out its contract and constructed the railway. We have also the acreage on the Canterbury Plains, which is shut up in the same way. Let me put in as the first part of my evidence the evidence given by Mr. Wilson before the Committee in 1893. At that time the company wanted to surrender its land-grants in lieu of Government debentures. One reason why they wanted to give up the land is that they would not get it until they had completed the railway. Mr. Wilson's evidence will be found in Appendix I.—6, 1893, and is to this effect:—

*Mr. Wright.*] Does the red represent the portion you have sold?—The portion we have selected. The estimated waste-land value of the reserves, as set out on this map, is estimated at £3,127,999, in addition to which there are certain township sections, not included in the area, which amount in value to £17,434. This value, of course, is on the assumption that it is waste land, and before it has received any value by the construction of the railway, or any other increase. I may point out also that this is a valuation made ten years ago, and I think I am right in saying the value of land in New Zealand is higher—considerably higher—than it was when that valuation was made. One of the important inducements offered to the company was that all the increase of this waste-land value should be part of the company's profit—that although coming to the company at a nominal value of 10s., or its assessed value as granted, that any increase in that price should be the property of and part of the profit of the company. A good deal of the land affected by the construction of the railway has actually no value to-day, but its timber and minerals will, of course, be developed by the railway when constructed. And I will show later on that in the sales the company have made they have received a very considerable increase on that value. Now, this land area reserved is partly in the Provincial District of Canterbury, Westland, Amuri, and Nelson. Approximately in Westland, 663,400 acres, of a waste-land value of £415,075; in Canterbury, 1,302,300 acres, of a waste-land value of £668,100; in the Amuri, 964,100 acres, at a waste-land value of £482,050; in the Nelson District, 2,983,400 acres, of a waste-land value of £1,562,774. The company have, so far, selected the following lands: In Westland, 20,500 acres, of a B1 value of £20,500; in Canterbury they have selected 132,898 acres, of a B1 value of £126,403; in the Amuri, 71,096 acres, of a B1 value of £35,548; in Nelson they have selected 1,914 acres, of a B1 value of £957. Or a total, out of the whole area of 5,000,000 odd acres, the company have selected 276,408 acres, of a total B1 value of £183,408. Therefore there remains the corresponding balances available for selection in these different provinces.

*Hon. Mr. Seddon.*] What is the difference between the B1 value and the amount received?—I will give you that later. Do you mean what is available for selection now, or what the company have sold?

What it sold for? The difference between the B1 value and the amount got for it?—It comes out exactly as an increase of 35 per cent. over the B1 value. We have sold land at a B1 value of £134,638, for which we received £182,442.

*Hon. J. Hall.*] The difference between the two being?—An increase of 35 per cent.

*Mr. Wright.*] What are we to understand by B1 value?—What the Government value it at; the initial value—the contract value.

*Mr. Tanner.*] That is, 35 per cent. over the 10s. per acre?—No; it is not all priced at 10s. per acre.

*Mr. Wright.*] I will now touch on the value of the Westland land. Last session you had evidence before you on the mining reserves. Many of the witnesses, I dare say you will remember, stated that a lot of that land was worth for timber £1, and for land another £1, after the timber was taken off. These were not witnesses for the company: they were somewhat against the company. Now we have at present an offer from sawmillers for an area of from 300 to 600 acres. The offer is to give us £2 an acre for the timber royalty, and 30s. for the land after the timber is cut off. That is a firm offer. We have another for over 1,500 acres of timber land, at 50s. for the timber and the land. Some people say the land is not worth anything, and that the timber is worth nothing; but that is an utter mistake. When that