

its provisions was one giving them the ordinary power to sell through the Registrar and to buy. It was a private Act, and I remember the occasion upon which the Act was passed. I do not think attention was drawn to these particular powers, but it was referred to a Committee in the usual way, and under the provisions of the Act not only did they have the power to purchase in future but it legalized purchases made in the past. Clearly, of course, people affected by that provision ought to have got notice that the Act made an alteration in their rights, but in the usual rush of business the thing was overlooked. The mere statement of the fact that this property was within a very few years developed without the addition of very much more capital to such an extent as to give the Estates Board a profit of over £100,000 shows the injustice of the transaction. It does not seem to me right that a man should be jockeyed out of not only the amount which he put into the concern, but all his years' labour and ingenuity, for the purpose of giving a loan company not only the amount of the loan it had originally lent, and compound interest at a very high rate, but this immense profit. It was put up, and they bought the land for £5,000.

1. Who was responsible for the debt, then?—Captain Hamilton.

2. And responsible still?—Unless it is barred by the Statute of Limitations.

3. They could have come upon him for the remaining £62,000?—Yes.

4. *Mr Hall.*] Do you remember if there was anything in the Bank of New Zealand Act that affected a matter of this kind—that legalized the transaction?—It legalized all purchases by the bank through Registrar sales. Of course, if a sale a great deal under the value had not been legal in the colony, that ratification would not have affected it; but the Chief Justice stated that in the course of his experience in New Zealand—and the other Judges ratified—purchases were made by mortgagees at sales made through the Registrar at a nominal figure. Sales under somewhat similar circumstances at Home have always been considered fraudulent if they are not at something like a fair market value.

5. The ostensible reason for the bank foreclosing was their want of money?—Yes, that is what I understand.

6. Suppose they had legally foreclosed, would it then have been improper for them to have sold afterwards?—They purported to sell under a power which they did not possess, and the position was this: that if it had not been for that power given to the bank in 1889 the same thing might have occurred in Mr Hamilton's case as occurred in the south in the case Clark and Chalmers. Clark took possession and was in possession for eight or nine years or more, and these people came and said, "You have got to account to us," and finally got about thirty or forty thousand pounds.

7. It is your opinion that if they had wanted to get money it was obviously their duty to proceed and get that money afterwards?—Yes, in the ordinary way.

8. Supposing they had proceeded at once to authorize another £8,000 to be spent upon it?—Then I should say they did not want money.

9. Is it your opinion that it was possible for Mr Hamilton at that time to find £67,000?—I do not think it was possible in New Zealand. He might have got it at Home if a sufficient time had been given him. Money was got at that time by persons in the Home-country.

10. That would have required time?—Yes.

11. *Mr Stallworthy*] Do you think Mr Hamilton's case is an exceptional one, or do you know of any of a similar nature?—I do not know of any exactly analogous.

12. *Mr Hall.*] I think there is evidence of 12 per cent. being earned?—Yes, the estate was earning 12 per cent. on the value as assessed by Mr. McCaw, who valued for the bank at £80,000, which was £13,000 more than the debt. Mr White valued it at £139,000.

13. *The Chairman.*] Do you think the bank exceeded its power in causing the sale to be made as it did?—It was not necessary for me to go carefully into the question whether it had the power or not. It seems to me the bank had not the power. It applied for the power in 1889, and the Chief Justice indicates the view that until then it had not the power.

14. Are you aware of any other properties being treated in the same manner by the bank?—No.

15. And there is no reflection on Mr Hamilton as to how he managed the property?—No.

16. In your opinion, were the terms of cash in one month likely to attract purchasers?—It was an indication that the bank did not want the property sold.

17. Do you think Mr Hamilton's grievance, from what you know of it, extends beyond the bank?—No complaint with regard to the estate itself. I do not know anything about that.

G. D. HAMILTON examined. (No. 2)

*The Chairman:* Will you give us your evidence, Captain Hamilton?

*Witness* I would like first to hand in an extract from the judgment by Mr Justice Edwards: "The defendant bank appears not to have been indisposed to deal with the plaintiff for a resale of the property after the sale through the Registrar, and he seems to have made some tentative proposals to that end. These came to nothing. The plaintiff says himself, 'The real difficulty was the nature of the leasehold. I knew that Maata was contesting the validity of the lease, and was refusing to accept rent, and has not since accepted rent. Maata was one of the principal persons interested in the land. I do not know that it was well known in Napier the conditions under which I held the lease. If I had been asked by any probable purchaser I would have told him. I have no doubt that Hoadley's application for a guarantee of title was due to rumoured defects in the lease. I say that a man would not have been found to buy the property, including the stock, for £60,000. It was a large sum, and it was difficult to find that sum at once. Very few people had the cash to put down for such a purpose.' The plaintiff's debt to the defendant bank was over £68,000. According to his own evidence, therefore, upon the best realization that could have been hoped, here was a deficiency of from £8,000 to £10,000. The defendant bank was clearly entitled to realize its security at once. This scarcely needs authority, but there is the authority of several cases. In *Farrars v Farrars (Limited)* (40 Ch. Div., 411) Lord Justice Lindley said, 'But every mortgage confers upon the mortgagee the right to realize his security