improvements would go to the Natives. This may have been thought a hardship, and to have retarded settlement. It is at all events clear that the alteration is for the lessee's benefit. There can be cases perhaps imagined in which such arrangement could benefit lessor and lessee. I cannot easily conceive them. But such cases could have been provided for (if necessary) by simply omitting the provision in section 10 of the Act of 1884, fixing rents on the improved value. As it stands, the provision in the vast majority of cases would amount to the virtual confiscation, for the benefit of the lessee, of the lessee's rights to the improvements. Of course, if the Trustee had a discretion, such a proviso would determine, in all cases where improvements had been made, a decision against the new lease. But this would in effect render nugatory the entire section in respect of the whole, or practically the whole, of the largest class—those who had improved—for whose benefit it was enacted, and for which alone the proviso as to the basis of rental was inserted. For it must always be remembered that if the Trustee has no discretion the lessee only is given the right to insist on a surrender.

I find, then, an interference of the Legislature with the freedom of contract between certain parties—one of them a quasi-public officer. The restriction is beneficial only to one of the parties, and meaningless and unnecessary as to the other. What is the effect of this on the enacting words in the section, "a new lease may be granted"? Does it not bring the case within the principle stated by Lord Cairns in "Julius *v.* Bishop of Oxford" (5 Appeal Cases, 214, at page 222): "But there may be something in the nature of the thing empowered to be done, something in the object for which it is to be done, something in the conditions under which it is to be done, something in the title of the person or persons for whose benefit the power is to be exercised, which may couple the power with a duty and make it the duty of the person in whom the power is reposed to exercise that power when called upon to do so." Giving full force to the consideration that the words being in themselves permissive, it lies upon those who contend that an obligation exists to show circumstances which will create the obligation. I think in this case they have done so. I think, badly as the section is worded, that section 7 is intended to take the place of section 13. It is clear that all that comes after the opening words of that section, "the Public Trustee may accept from the lessees surrender of any lease confirmed by the Governor in Council under the said Act or this Act," is inconsistent with the provisions of section 7. I cannot think it was intended to preserve the two conflicting sets of provisions merely because one of the provisions in section 13 was to require consent. I think the preferable view is to take the reference in section 7 to section 13 as referring only to so much of section 13 as refers to surrender—that is, the words I have quoted, and to substitute for the rest the new provisions of section 7. That the Legislature has continued to treat the Public Trustee as having a position and duties somewhat different from those of a private trustee is shown, I think, by the section which enacts that he may exchange or lease reserves in such manner as he shall think fit with a view to the benefit of the Natives to whom such reserves belong and the promotion of settlement. This assumes that the promotion of settlement may be adverse to the interests of the Natives—otherwise the words would be unnecessary. Assuming the right of the lessee to insist on a new lease on terms to be decided by arbitration, has the award in this case been properly made? The most important objection is to the extent of the term awarded—thirty years. The grant to the lessors contains a restraint on alienation for any term exceeding twenty-one years. This was obviously in contravention of section 4 of the Act of 1880, which provided that any restraint on alienation was to be made by Act of the General Assembly. By section 4 of the Act of 1881, all grants issued for any reserve within confiscated territory made by the Governor in Council containing therein any conditions, restrictions, or alienations are validated in respect of such conditions. The latter part of the section leaves it open to the argument that such validation was intended to apply only to grants under section 3 of the Act of 1880, that is as to lands granted in fulfilment of any award, promise, or engagement made by the Government of this Colony. I think, however, that the general words at the beginning of the section and the reference to the reserves as made by the Governor in Council, make the section applicable to grants under section 4. The powers of leasing given to the Public Trustee under section 8 of the Act of 1881, and by section 5 of the Act of 1884, are made subject to any conditions, restrictions, or limitations attached to any reserves which shall have come or been placed or shall come and be placed under his jurisdiction. I think the terms of section 5 limit the general language of section 8 of the Act of 1884, and that the term of thirty years mentioned in the award is bad, as inconsistent with the grant. If so, it is clear the lessee cannot claim to take the shorter term, as it is impossible to say that the length of the term has not affected the other terms of the award. It has been practically admitted that the provision for compensation for improve-