

(b.) *Covenants between the Superintendent and the Runholders outside Gold Fields.*

But the next complaint is, that the Provincial Government have not only deprived the occupants of Hundreds of existing commonage by the sales just spoken of, but have deprived themselves of the power of providing more by declaring new or extending old Hundreds. This they are alleged to have done by having entered into a certain covenant with the runholders outside the gold fields, by which the Government is precluded from declaring such Hundreds on their runs. This covenant, and another to be presently considered, with the runholders *within* the gold fields, have been the subject of endless discussion, and the cause of the strongest and widest diversity of opinion, and much bitterness and animosity, throughout the Province. The consideration of these covenants occupied much of the Commissioners' time and attention.

Had Superintendent power to enter into such covenants?

A preliminary question arose whether the Superintendent could legally enter into such covenants at all. Against his power may be urged, that the law having determined the conditions on which lands should be leased for runs, to make new or additional conditions was to make new land laws: a thing obviously beyond that officer's power. On the other hand, there are the facts, that the Waste Lands Act gives the Superintendent power to refuse leases at discretion; and, in prohibiting sales of land on runs *without the lessee's consent*, of course empowers the latter to give that consent. Could one party, then, make the non-exercise of his power of refusal conditional on the other's exercise of his power of consent? Provided that the transaction had for its object to carry out the law in its spirit and according to its intention, the answer, it appears to the Commissioners, must be in the affirmative. But if the object were, or the effect would be, to defeat the law—or injuriously cramp its operation—the answer would be as clearly in the negative. If, then, proper provision was intended to be made by the covenants to secure the object the law had in view—that of finding sufficient land, or as nearly so as the law allowed for agricultural settlement—they may be considered legal; if not—illegal. Of course the time for which land was to be provided for settlement must be limited, or no leases at all could have been given, and an industrial pursuit which produced £400,000 worth of annual export would have been ruined—a *reductio ad absurdum*. The limit, then, should have been the duration of the leases. And if the consideration of the question in hand should result in a conviction that the Superintendent reserved land that might have been expected to be sufficient, the covenants would appear to be legal. The mere *quantity* reserved appears to have been more than sufficient. For the blocks, the right to select which was reserved, amount to 305,500 acres; the land remaining in Hundreds to 415,651 acres, and that over which leases have been cancelled or not given to at least 240,000 acres, altogether 961,151 acres; all open then for future settlement. And the covenant could not be repudiated for any error in judgment on the part of the Government as to the choice of the blocks.

Of course, the Superintendent could not legally enter into a contract that the Governor's power of making Hundreds shall not be exercised. But it does not follow, notwithstanding the illegalities, that the covenants are not equally binding in honor and conscience—if entered into by the runholders in good faith on their own part, and reliance on the good faith of the Provincial Government.

The first covenant made between the Superintendent and the several runholders whose runs are outside the gold fields recites, among other things, that the Superintendent was "empowered to instruct the Waste Lands Board to refuse a lease" in exchange for a license (an exchange provided for by the Waste Lands Act of 1866), and also, that by the Act, if the lessee performed the conditions of the lease, and no Hundred was proclaimed including the leased lands, such lands could not be sold without the consent of the holder of the lease; and that the Superintendent had deemed it expedient that a lease should be granted to the runholder. The covenant then declares that the runholder agrees to give the Waste Land Board power to sell certain parts of the leased land, not exceeding in the whole a certain specified number of acres; that he shall not demand, or be entitled to receive any compensation or consideration for the land so taken; that