

to retain 500 acres of rent paying land be in accordance with that policy?—I cannot see that it would. Would it be in accordance with it to allow a proprietor invidiously to single out and keep back from the benefits expected to be derived from the conversion of their leaseholds into freeholds, some five or six particular farms or tenants? I fail to see that it would. On the contrary, to allow of such a reservation would be to recognise *pro tanto* a defeat of the objects of the statute, and as it is to be supposed that the Commissioners allowed compensation for the whole, there can be no just, as well as no legal grounds, it appears to me, for putting the construction contended for on this branch of the Act. The declaration that the Act was not to extend to persons receiving the rents of Township lands not exceeding 500 acres in the aggregate, was, as I view, inserted merely to guard the Government from being involved in innumerable proceedings against small holders, and incurring inadequate expense and loss of time in so doing, but by no means to give a right to large proprietors invidiously to select out and retain a few tenants from participating in the objects of the Act. It seems, however, that Mr. Stewart has lands not exceeding 1,000 acres (constituting his homestead at Strathgartney) *in his actual use and occupation, and untenanted* (except by himself), and this, I think, it would be quite consistent with the policy of the Act to allow him to retain. The present Land Purchase Act, 1875, grasps within its objects cultivated leased lands, and also, unoccupied or untenanted and wilderness land, although it has no precise declaration of policy with respect to the latter contained in it. But the Land Purchase Act, 1853, declares that it would conduce to the prosperity of the Island if wilderness and unoccupied lands were rendered more easily attainable for settlers, than at present is the case. That object and policy, it appears to me, would be well answered by holding that the proprietor himself, in actual personal occupation, being a settler in the fullest sense of the word, is entitled to retain for his own use this his farm and homestead. It would, it seems to me, be harsh to put any other construction upon this point, or to hold that the Legislature, without declaring it in express terms, intended to oust a man from his homestead and family residence. Therefore, I think (and the Government appear to concede the point) that Mr. Stewart is entitled to retain his estate at Strathgartney to the extent of 1,000 acres, if it amounts to that, in his own occupation, untenanted; but I hold as invalid all and every disposition or conveyance of any other part of his estate, made or attempted to be made by him, since the notice of the Government's intention to purchase the estate was served upon him. The 2nd objection—that the money paid into the Treasury by the Government, under the 30th section of the Act, ought to have been, but was not so paid in in legal tender money, has already been alluded to by the Chief Justice. It was conceded on the argument, that the sum so paid in was not in legal tender money. At the first hearing of the case I was strongly inclined to the opinion that this question had been raised prematurely, and that if the Government had placed in the Treasurer's hands the amount in such a shape as to enable him, in his opinion, safely to certify that he had the necessary funds to the credit of the estate, that the matter should remain so until the final day of payment to the proprietor arrived. For, until the proprietor had proved himself entitled to the satisfaction of the Supreme Court, to receive the sum awarded, and receive its certificate, he was not in a position to demand payment from the Treasurer; *non constat*; but that some other party as a mortgagor or incumbrancer might be entitled to receive the payment; and should the question respecting the money as a legal tender be allowed to be raised by one whose right to payment had not been tested and might never arrive? There can be no doubt, however, that any party who ultimately obtains the certificate of the Court will, if he elect, be entitled to demand payment in legal tender money, and therefore, as to some extent this point may only after all involve a matter of time, as to when legal money will have to be found, I shall not refuse to concur in making the order in this branch of the case, that before further proceedings for conveyance be taken by the Public Trustee, it shall be certified by the Treasurer that he has the sum awarded, in his hands, to the credit of this estate, in legal tender money of this Province.

Mr. Justice Hensley delivered an unwritten judgment in the cases of Miss Sullivan and Ponsonby Fane, concurring with the Chief Justice and Mr. Justice Peters.