" *exonerated of and from all former and other grants, &c., rents, rentcharges, arrears of* " *rent, statutes, &c., charges and incumbrances* whatsoever. The plaintiff assigns for " breach, that the tenements aforesaid were charged and chargeable with one annual " rent, *viz.*: a rent of 11*s.* 6*d.*, to be paid to the Lord of the Manor of W. in the said " County, of whom the said tenements then and before were and are held under the " said rent and other services. The defendant, by his rejoinder, says that the rent of " 11*s.* 6*d.* aforesaid, was payable to the Lord of that Manor as a quit rent, incident to " the tenure of those lands, and that the plaintiff was not molested, &c., for any arrears " of that rent payable before the making of the indentures aforesaid. The plaintiff " maintained his replication, and the defendant his rejoinder; and upon this there was a " demurrer; and the question was, if the covenant was broken? And it was resolved " by the whole Court without any difficulty, that it was. For the defendant had " expressly covenanted with the plaintiff upon his purchase that he should have the " lands discharged of all rents; and, therefore, they ought to be discharged of this rent " as well as of all others; for a quit rent is a rent." In 3 Cruse. Dig. 514, sec. 52, it is said, " it has been stated in sec. 44 that quit rents and other customary and prescriptive " rights are comprised within the Statute of 32 Henry 8th. But Lord Coke lays it " down that this Act does not extend to a rent created by deed, nor to a rent reserved " upon any particular estate; for in the one case the deed is the title, and in the other " the reservation." I may observe that the Statute of 32 Henry 8th only requires that arowries conusances for rent, suit or service due by *custom or prescription* must be made within 50 years. In *Eldridge* v. *Knott*, Comp. R. 214, it was held that more length of time, short of the period fixed by the Statute of Limitations, and unaccompanied with any circumstances, was not in itself a sufficient ground to presume a release or extinguishment of a quit rent. The quit rents in the present case is due to the Crown, under a *reservation* in the grants.

It will be observed that in the other facts or circumstances, contained in sub-section (*e*), which I have already considered, a positive refusal—if such appeared—of the Commissioners to consider any of these questions, would have the same effect as a finding in all of them in favour of the propretor, that is, would leave the Commissioners to act as simple valuers and could not injuriously affect the proprietor's interest, as the amount awarded would then be what they considered the intrinsic value of the land, unreduced by any depreciatory effect, which might have resulted from any of those facts or circumstances being found against him. But the neglect or refusal to consider whether the quit "rents had been waived or remitted by the Crown," might result in depriving him of protection against a claim, he had a right (whether they had been waived or not) to be protected against, by their decision, which would then—the Government being party to the proceedings and owners of the " quit rents "—be a good plea in Barr to an action of covenant by a tenant or purchaser, alleging liability to these " quit rents " as a breach. This distinction might be found material in considering whether the Court should set aside the awards, or leave the proprietors to insist on their invalidity in an ordinary suit. Now, if I am correct in my view of this question, it is plain that the Commissioners have been passive as to a jurisdiction when they should have exercised it actively. Then comes the question: does the passiveness of an inferior tribunal, when it should have been active, render the proceedings void in the same way as action on a subject matter, *ultra vires*, would have done? *Thorpe* v. *Cooper*, 1 Bing, 127, is a direct authority that it does. That was the case of an award by Inclosure Commissioners, where the Commissioners had *omitted* to make an allotment or compensation in respect of tithes, in Waddington (a township in the parish to which the Inclosure Act applied). The Court say " the Commissioners, not having made any compensation for the tithes of Waddington, " must either have *rejected a claim* which they were directed to compensate, or from " inadvertence, have *omitted* to make compensation for it. In the first case they have *ex-* " *ceeded* their authority, in the second they have omitted to do what they were expressly " required to do. In *either view of the case* their award is *void, as to all such interests* " *as are affected,* by their *exceeding* their jurisdiction or by their *omission.*" In that case there was a clause in the statute which saved the rights of all persons except those to whom compensation was awarded, but Ch. J. says, if there had been no saving clause, the decree would, on principle, have been the same, and in *Bunbury* v. *Fuller*, 9 Exch. 136, where this case is relied on by the Court on a similar point. The facts in *Cooper* v. *Thorpe* are said to be distinguishable in this, that the plaintiff in *Bunbury* v. *Fuller* could *not rely* on the operation of the saving clause, which was so narrowly worded that it would not embrace his case, but still the decision was notwithstanding the same. In *Cooper* v. *Thorpe*, the commuted tithes in respect of other places were enjoyed by the plaintiff, and the award was only held *protanto* void. But in the present case the