

tion of an agreement for sale, it followed that if the latter were an alienation, so, too, must be the former; moreover, it is clear from such cases as *Milroy v. Lord*, 4 DeG. F. & F. 273. and *Richards v. Delbridge*, L.R. 18 Eq. 14, and other cases defining the conditions necessary to the validity of a voluntary conveyance that a declaration of trust is a form of alienation legally recognized.

It follows logically from the argument that upon an alienation of such reserves without the requisite assent, the school trustees would have a cause of action against the government for breach of trust, of course by petition of right.

Counsel for the railway company contended that there could be no declaration of trust or breach of trust, inasmuch as the sovereign power in a state is uncontrollable and may, therefore, violate its engagements with impunity; but this was to misconceive the argument of the other side. The sovereign power may refuse to perform its contracts or to pay compensation for its torts; but in fact it does not do so, and although its liabilities are not, strictly speaking, legal liabilities, it is none the less correct to speak of the sovereign power having contracted or having become answerable for a tort. So likewise may it be said to have created a trust, and, until by an act of overriding power it repudiates its obligations, it may be said to be bound by the trust so created.

The learned judge who tried the case accepted the proposition advanced by the Attorney-General, and held that the act of the Executive, reserving, under statutory powers, a piece of land, was equivalent to a declaration by the Legislature of a trust of the particular piece of land for the purposes of the reservation.

Thus what at first sight appears a very anomalous method of dealing with land has been brought within the ordinary legal classifications of dispositions of property, and its essential similarity to a declaration of trust by a private individual affirmed.

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