

he will have to pay royalty unless he has obtained under preceding paragraphs, the "other title from the Crown" therein provided. But he is not warned that the Government may at any time decline to accept any lump sum whatever per acre in lieu of royalty, and enforce a ruinous royalty on mining of all kinds.

Now the question is, whether there is not an implied promise, on the part of the Crown, involved in these provisions on the faith of which, purchasers of lands have acted. Is it not an inducement to the purchaser of agricultural land that if he should find it to contain valuable mines he can buy the mineral right for an additional sum per acre? Or is it not an inducement to the purchaser of iron or copper-bearing lands that he may if phosphate or gold or silver should be discovered in them, buy the right to these for an additional sum per acre? Granted that the Government has reserved the right to increase at any time this sum as to any lands upon which the purchasers' option has not been exercised; granted also, that, under the terms of the law, the Crown remains in possession of the mineral right; yet is it not true that although that right has not been alienated, an option to buy it has been offered as a bonus to the purchaser of other rights?

It must be remembered that the substitution of a royalty, even of a reasonable amount, is not a mere modification of the procedure of a sale, for the purchaser of mineral rights has thereafter the free choice to work the mines or let them lie idle, as he may deem most to his interest. But under the system of royalty contemplated under the new law as universal, the previous purchaser of land is subject to the intrusion of licensed prospectors, and is forced, upon discovery of mineral alleged to be valuable, to work the mines or else let others work them.

I am not now inquiring whether this system would be wise as applied to the administration of Crown lands henceforward; but whether it does not involve a violation of good faith and obligation when applied to the purchasers of lands heretofore. In any such controversy between private parties, the courts would inquire whether the purchaser had performed, in pursuance of the alleged agreement, any acts which he would not have performed in the absence of the inducements offered. The answer to that question in the present case is, I take it, perfectly clear; and the proof will be speedily forthcoming if the new law goes into operation. Capitalists will certainly not wish to buy even agricultural lands to which they cannot somehow obtain a complete title, excluding all private trespass and official interference. Nor will they invest in mining rights held under royalty and subject to forfeiture. Mortgages upon such property will have no value as security; and what will be is only what would have been if the old law had been like the new one in these respects. But the old law held out inducements on the faith of which capital was invested or loaned. Hence, it seems to me, the new law violates an implied contract as to all purchasers of land under the old,