# A LEGAL APPROACH FOR SITE VALUE COLLECTION?

**In our November issue we published a proposal for legal action to secure site values. This reply is from Frank Brennan of Canberra, author of "Canberra Crisis".**

Every proposal advanced for consideration must be soundly based on law. This one is not. It seems to assume that for centuries the Crown has had a legal right and duty to collect an economic rent from landowners and that the Crown has failed to do so. The call therefore is that " . . . the Georgist movement around the world concentrate its resources on a Constitutional Court Action requiring the Crown to collect the rent of land for revenue . . . it is a constitutional issue and must be mounted as such . . . preferably this should be done in NZ . . . the jurisprudence of British law still applies".

The first question is why should this Action be taken in NZ rather than Peru, Greece or Italy? Is "the jurisprudence of British law" an essential ingredient of this proposed Court Action? If so how could the "Georgist movement around the world" adopt and act on this proposal? Today, probably no more than fifteen per cent of the world has any legal connection with the British Crown. Runneymede, Magna Carta, etc. are therefore completely irrelevant to about 85 per cent of the world, although it is possible that some Professors of History around the world are aware of the significance in English history of those events.

In consequence of the provisions of the Statute of Quia Emptorus (1290) abolishing subinfeudation no new estate in fee can be created except by the Crown. In Australia (and probably NZ) estates in fee simple originate in or may be traced back to a Crown grant.

The incidents of an estate in fee simple in medieval times are of historical interest only. Nearly all of these burdensome incidents were abolished in 1660 by which time any special personal services reserved had been commuted for a money payment either in a lump sum or in the nature of a continuing rent called a quit rent.

Quit rent is the only incident of tenure ever required of a tenant in fee simple in Australia. In Crown grants issued in the early days of the colony of NSW such rents were frequently reserved. But in time quit rents were discontinued. Occasionally even now titles are encountered where a quit rent has not been redeemed – as it can be.

It could not be argued (successfully) in a Court of Law where British jurisprudence applies that an estate in fee simple is "essentially a lease on trust". The estate in fee simple is the greatest estate in land which may be held. In broad terms it is and has long been equivalent to absolute ownership; if in common speech we refer to 'A' as being the owner of a certain block of land we are implying that he enjoys an estate in fee simple. And this estate is larger than a lease. It is essential that a lease shall specify the period during which the lease is to endure, and the beginning and end of the term. (Perpetual leases are more than a misnomer – they are an absurdity.) An estate in fee simple is of unlimited duration.

In English law *"fee"* denotes that the estate is an estate of inheritance; e.g. one that may be inherited or given by Will. *"Simple"* denotes that the estate is not a fee tail (an estate limited to certain lineal descendants only of the grantee). *Simple* means that the estate is capable of descending to the general heirs of the grantee. *Absolute* signifies the grant is not subject to any condition, limitation or restriction but will continue for ever. Neither in England nor Australia and New Zealand is the payment of an economic rent an essential part of an estate in fee simple.

To say that the Crown owns all the land and that therefore the Crown could require the payment of a rent is to forget that feudalism broke down in the Middle Ages. It could not be restored. Parliaments today are supreme, not Kings. Parliament could impose an economic rent on fee simple estates.

Parliament could also repeal such a rent. There is no constitutional issue involved. It is a simple political issue.

It is a legal fiction to say that all land belongs to the Crown – once granted to someone in fee even the Crown can only acquire or resume the land after the payment of just compensation, e.g. market value. The Crown can through Parliament impose restrictions on a fee simple – building regulations, pest control, planning requirements etc., but it is not compelled to do so. Parliaments, particularly in Britain and New Zealand are their own masters.

To summarise: whilst I appreciate the inspiration sincerity and enthusiasm behind the New Zealand proposal – those qualities are not enough. In my view the proposal would be summarily rejected in any Court where "the jurisprudence of British law still applies". If an action to collect economic rent was commenced in say New Zealand you would be asking the Judge to decide that the Barons of the thirteenth century wrongly acquired that rent to themselves via freehold titles. You would be asking the New Zealand Judge to direct the Crown (e.g. N.Z. Government) to collect that rent. You would also be asking the Judge to dismiss three, four or five hundred years of British laws, legal traditions, usages and practices. You would also be asking the Judge to ignore any 19th or 20th century New Zealand Land or Real Property legislation. I do not believe any New Zealand Judge (or British or Australian) would oblige.

The collection of an economic rent is a simple political issue. It is not a question for the Courts.

In Australia the Commonwealth Government in its early years imposed a land tax operable throughout Australia. In 1952 the Commonwealth vacated the field leaving it to the States. Whether or not the Commonwealth should re-enter the land tax field and oust the States or whether the States should increase the amount collected – these are political issues not what I would call constitutional issues.

In conclusion: there is no imperative obligation (constitutional or legal) on the Crown (e.g. Government) to collect economic rent. Moral obligation? Yes! But recourse to the Courts to obtain that objective would be a waste of time and resources.