

1889.
NEW ZEALAND.

LAND TAKEN FOR DEFENCE PURPOSES AT POINT RESOLUTION, AUCKLAND

(REPORT OF ROYAL COMMISSION APPOINTED TO INQUIRE INTO THE MATTER).

Presented to both Houses of the General Assembly by Command of His Excellency.

To His Excellency Sir William Francis Drummond Jervois, K.C.M.G., Governor and Commander-in-Chief in and over Her Majesty's Colony of New Zealand, and Vice-Admiral of the same.

MAY IT PLEASE YOUR EXCELLENCY,—

Auckland, 20th October, 1888.

We have the honour now to report upon the matters referred to us by your Excellency's Commission bearing date the 27th September, 1888, in connection with the taking by the Government for purposes of defence of certain land at Point Resolution, and with the subsequent conveyance in fee of a portion of the land so taken to the previous lessee of the property.

The circumstances of this transaction have been frequently stated for the purpose of revision and inquiry, but, briefly summarised, the acts complained of are the following: That the Government knowingly and deliberately took by Proclamation, under the pretence of requiring it for public purposes, an area of land largely in excess of what was so required, and that this was done in pursuance of a private agreement made with the lessee of the property that the part not so required should be conveyed to her in fee; that this agreement was in direct contravention of the law relating to such transactions, which plainly requires that any land so taken in excess shall be first offered to the original owner, and then to adjacent owners at a valuation, and if declined by them shall be then sold at auction; finally, that the Government, being unable to convey the land in pursuance of this illegal agreement, persuaded the Legislature to empower it to effect this object by a special authority contained in an Act of Parliament. The uneasy feeling produced in the public mind by the belief of these facts was doubtless aggravated by the circumstance that the freeholder who had thus been deprived of the right of pre-emption was a Board of Trustees holding the trust for the purposes of a public charity, and that one of the members of this Board was a near relative of the lessee who had thus acquired the right which by law belonged to the Board.

It certainly is no matter for surprise if the suspicions of the public, often easily excited without much reason, were strongly aroused on this occasion, or if rumour, always so easily set in motion, in this case appeared to have some substantial grounds for its activity. It is indeed difficult to see how, upon such a statement of facts, it was possible that some suspicion of jobbery and corruption could be avoided. No other view could at the time readily present itself, for it would not be obvious to many that persons representing the Government of the country had displayed that extreme degree of ineptitude which consists in going out of the way to do wrong without any adequate motive. But we think that the evidence which we have taken, together with the official papers, showing the successive steps of the transaction, which have been put into our hands, will leave little doubt as to the nature and motives of all that was done, however surprising the adoption of such a course may appear.

We may begin our review with the state of things existing in the month of July, 1885, at which time an action for trespass had been entered in the Supreme Court at the suit of Mrs. Kissling, the lessee of the land, against the men, or some of them, belonging to the military forces who were the actual trespassers. The Government, finding that it had no legal defence to this action, because the Public Works Act of 1882 gave no power to enter upon private lands and take them for the construction of forts and batteries, prepared an Amendment Act ("The Public Works Act 1882 Amendment Act, 1885") to give the necessary power and to defeat the action then pending. In the meantime Mr. Thomas Mackay was sent to Auckland for the purpose of arriving at some agreement with the plaintiff, or, if that were not possible, then to endeavour by negotiation to protract the business until the new Act could be put in as a bar to further proceedings. At this time Mrs. Kissling was occupying under lease an area of 4 acres 1 rood 17 perches, of which only 3 roods 17 perches had been marked off, at the instance of the Defence Department, as required for the purposes of a battery. Mr. Mackay, however, very soon formed the opinion that it would be better to take the whole of the land occupied by Mrs. Kissling. He gives this advice, together with his reasons, in a telegram to Mr. C. Y. O'Connor, Under-Secretary for Public Works, on the 21st July,