

1885. The principal reason given for this recommendation was that a railway-line would probably have to be taken across the land in question, and this would involve a second claim for compensation. This consideration, together with the general complications of the case, determined Mr. Mackay's mind to the opinion that it would be better and simpler to take the whole of the land, and lease that portion which was not required, by which means Mr. Mackay thought the Government might obtain a rent of £100 a year. In his evidence Mr. Mackay says that a further reason which influenced his opinion was that he doubted whether the area originally proposed to be taken would prove sufficient for defence purposes. The reason why he did not mention this in his telegram may have been that that part of the question was outside his proper business. Mr. Mackay's idea seems to have been that the land might be taken as for railway purposes, which might be done at once without the necessity for further legislation. This plan was disapproved by reason of the probability of claims to compensation by adjoining owners. It was, perhaps, with a view to this contingency that it was thought necessary to insert the special provision in the proposed Bill which will be found in section 6 of the Amendment Act of 1885. Nevertheless, Mr. Mackay's suggestion that the whole instead of a part of the land should be taken was approved, and a Proclamation was prepared and was ready to be issued in the month of October, when its publication was delayed by other arrangements.

It seems very desirable to consider for a moment how far the Government could rightly and legitimately adopt this recommendation of Mr. Mackay's, judicious as it undoubtedly seems, if it be once granted that the only business of the Government was to make the best bargain it could. No doubt it was a perfectly proper thing to take into account the probability of the railway-line being required, but we cannot think that the general complications of the case or the difficulty of the negotiations could justify the Government in taking as for public works land which was known not to be required for that purpose. Mr. Mackay points out, in one of his communications to the Government, that the fear of having the whole of the land taken, and of thus losing a desirable residence, would prove a potent means of causing Mr. Kissling (whose name is constantly used throughout the transactions instead of his wife's) to moderate his demands. It may have been strictly within Mr. Mackay's duty to present the matter in this light to the Government, but we scarcely think that it was a recommendation fit for the Government to adopt. It certainly was not the intention of the Legislature that land should be taken from private owners ostensibly for public works, but really to constrain the owners into conceding more favourable terms to the Government for the land really required, or that the Government might obtain a good rent by leasing the land. There does not appear on the papers any other reason for approving Mr. Mackay's suggestion to take the whole of the land than those given by him, and we therefore suppose that these (except the proposal to lease the surplus land, which was rejected) were the true reasons, in which case, and in view of the remarkable measures which were afterwards adopted, we have thought it right to endeavour to put our finger upon the point where the first deviation from sound principle appears to have been made. At the same time, if the arrangement thus proposed by Mr. Mackay, and approved by the Public Works Department, had been carried out, it is probable that no complaint would ever have been heard of, especially as it appears that the Public Works Office had determined to sell the surplus land by auction (failing, we presume, the acceptance of it by the original owners at a valuation), instead of leasing it, as suggested by Mr. Mackay. This part of the business, however, although involving, as we think, a question of principle, falls into a very subordinate position when compared with the subsequent transactions which we have now to consider.

The publication of the Proclamation taking the land was delayed in consequence of a telegram received by Mr. C. Y. O'Connor from Mr. H. M. Brewer, dated the 19th November, 1885, and sent from Auckland. Mr. Brewer at this time was engaged in settling a number of land-claims in the Auckland District, and it appears that he had once or oftener had a personal interview with the Hon. Mr. Ballance, then Defence Minister, at which the Point Resolution business was discussed. But the first specific evidence of what took place is found in a telegram from Mr. Brewer to the Defence Minister, dated 17th November, 1885, in which he stated that some £500 would be saved to the Government if all the land occupied by Mr. Kissling could be taken, and asking whether there was power to do this under the Act lately passed, and, if so, whether the Minister would authorise him (Mr. Brewer) to act in the manner he might think most conducive to the interests of the Government. It will be observed that there is not a hint in this telegram of what was to be done with the surplus land. The question submitted was simply whether the surplus land could be taken under the new Act. The telegram was immediately referred by Mr. Ballance to Sir George Whitmore to "ascertain at once if this can be done." Thereupon the question is referred by Sir George Whitmore to the Solicitor-General to pronounce "as to legality," and Sir George Whitmore proceeds to express his own opinion that the legality is "unquestionable," it being "clearly the intention of the Act to enable Government to secure the fire all round a work, and if necessary to take this land, as it is within very close range." It will thus be seen that the question submitted to the Solicitor-General was not whether it was lawful for the purpose of saving £500 to the Government to take, under the pretence of defence purposes, land which was not required for such purposes, but whether it was lawful to take for defence purposes land which was so required. The answer of the Solicitor-General is, of course, in substance, that it is lawful to take for defence purposes land really required, either directly or indirectly, for such purposes. Sir George Whitmore thereupon telegraphs to Mr. Brewer that the Law Officers advise "that we have full power under the Act," and that Mr. Brewer is authorised to act in the manner suggested by him. Now, Sir George Whitmore, when he referred the question to the Solicitor-General, either believed or he did not believe that the land was really required for defence purposes. If he did not believe this, the reasons he placed before the Solicitor-General were nothing more than a pretext, under cover of which the Government was to do what it wanted for the purpose of saving money on a compensation claim. But if he did believe that the additional area was necessary in order "to secure the fire all round," then it certainly seems