

strange that the Defence Office should, the moment it was proposed, have acquiesced in the relinquishment of this land, and in handing it over to a private person as a freehold. For, on the 7th December, 1885, Mr. Brewer telegraphs to the Defence Office to say that he has settled the matter on the following terms: "Government to buy the whole of the property for £6,000. £1,750 will be accepted by Kissling and Church Trustees in full of all damages. Kissling will retain balance of property, paying Government £4,250 for it. As Kissling's first claim was £2,500, Government will save £750 by this arrangement. Trust this will be satisfactory." Upon this telegram, Mr. Ballance promptly notes that "this is satisfactory," and Major Gudgeon informs Mr. Brewer by telegram that Mr. Ballance "strongly approves" his action. We must now briefly consider what that action was, and who were the parties to the settlement made by Mr. Brewer.

Mr. Brewer appears to have considered the case from the first as a rather "awkward" one for the Government, regarded as a compensation claim; but he was not long in ascertaining that if any means could be found by which Mrs. Kissling could obtain the freehold of the area not required for defence purposes the claim for compensation would be so modified as to be easily dealt with. This was the object of the bargain ultimately made, and we may at once say that we see no reason for imputing to Mr. Brewer any corrupt or improper motive, or for supposing that he acted otherwise than with a *bonâ fide* desire to make the best terms he could for the Government. This is the opinion of the Select Committee of the House of Representatives, with whom we quite agree in this, as well as in the further opinion that the course adopted "was not justifiable." But it is necessary also to consider the attitude taken by the Church Trustees during these negotiations, as well as the question whether, and to what extent, they were kept in the dark or misled by Mr. Brewer and Mr. Kissling. This matter involves two questions—(1) Whether the trustees received adequate compensation for their interest; and (2) whether they were wrongfully deprived of their right of pre-emption in case of the land not being all retained by the Government. The trust land in question was at this time under a lease to Mrs. Kissling with forty-eight years of the term yet unexpired, and the annual rent received by the trustees was £17. The interest of the trustees therefore comprised the two items of the present value of the reversion and the present value of the rent for the rest of the term. The data assumed were that the value of the freehold was £6,000, payable at the end of forty-eight years, money being at 6 per cent. Upon this basis the present value of the reversion was estimated at £366, and of the rent at £266, making a sum of £632, which was offered to and accepted by the trustees. With respect to the adequacy of this compensation, there is no doubt that the trustees accepted it without any demur at all. They knew the basis of the computation, and some of them made the calculation for themselves. It is perfectly clear that they thought at the time that they were getting a fair price for their interest; that they knew that the whole of that interest was being alienated, and believed that the whole of their right and title in that land was being entirely extinguished. It may, however, be questioned whether the trustees got as good a price for their interest as would have been awarded to a private owner. The sum of £6,000 having been estimated as the then present value of the whole estate in the land in question, it may fairly be asked whether a larger sum ought not to have been taken as the probable value at the end of forty-eight years. This is a difficult question to determine; but we think a private owner would probably have maintained that view. Again, it becomes a question whether 6 per cent. was not too high a rate of interest to reckon for forty-eight years to come, and, considering the necessity of seeking perfectly safe investments for trust-money, it would seem reasonable that a somewhat lower rate should have been fixed upon. These questions are very much matters of opinion and conjecture; but they seem to have presented themselves rather forcibly to the mind of Mr. C. Y. O'Connor when the subject was brought under the notice of the Public Works Department. He says, "It was at once seen that the bargain was not a good one for the trustees," and he refers to a memorandum of his own on the subject, dated the 16th December, 1885. In this memorandum—which displays much scepticism as to the merits and advantages of the arrangement made by Mr. Brewer—Mr. O'Connor says that the trustees "have not made much of a bargain for themselves;" and elsewhere he says that "Mr. Kissling has got completely the better of the Church Property Trustees," and he estimates their interest at the sum of £1,350. This appears to have been based on the computation that the estate would be worth £20,000 at the end of the term. The interest also was reckoned at 4 per cent. We have, however, had no evidence before us which even suggests that such a valuation as £20,000 could have been sustained, and we feel obliged to set it aside as very much too high. The fact is that the whole question of prospective value is too uncertain a matter to allow us to say anything definite, and in the face of the unreserved approval by the trustees of the terms offered, and of their reiterated assertion in evidence that the terms were fair, it is impossible to assert that an adequate payment was not made, and futile to put forward such a suggestion as a reason for revising what has been done. The question whether the trustees were wrongfully deprived of their pre-emptive right of the surplus land is one that can be much more easily answered, and it must be answered distinctly and emphatically in the affirmative. This conclusion could only be avoided if it were shown that after their attention had been drawn to the right of pre-emption which the law gave them they had expressly and formally waived it. But nothing of this sort ever occurred. What was really done seems to have been as follows: As early as the 23rd September, 1885, we find the proposal matured in Mr. Kissling's mind that the trustees should be bought out altogether, and the land not required by the Government conveyed to him in freehold, for on that date a letter was written to him by Mr. J. Waymouth giving him an estimate, on the basis of £6,000 total value, of the present worth of the trustees' interest, including rent and reversion. The letter sets out with the assumption that Mr. Kissling was to buy the trustees out at £6,000, the Government paying him £1,500 for "their one-fourth thereof." On the 19th November Mr. Kissling wrote to the trustees informing them that the Government was taking the whole of the land, and asking them in what manner they would wish their interest to be valued. To this the trustees replied that they would prefer that the compensation to be awarded them should be named by