

the Government. No further communication took place between Mr. Kissling and the trustees, and this therefore seems to be the place to consider Mr. Kissling's position and conduct in the matter. If Mr. Kissling, knowing that the bargain he had made with Mr. Brewer was illegal, had tried to keep the trustees in the dark as to what was proposed to be done, with the view of getting what he wanted without their knowledge, he would, of course, have been perpetrating a palpable fraud, but a fraud of which the iniquity, as it seems to us, would have been almost obscured by its fatuity, for on this supposition Mr. Kissling must have reckoned not only on getting the connivance of a Government officer, but on being able to make his scheme run the gauntlet of various Government offices and a host of officials, to obtain the approval of a Cabinet Minister, and finally to be ratified by an Act of the Legislature. It is quite safe, therefore, to dismiss the assumption that Mr. Kissling knew that the proposed arrangement was contrary to law. There can be no doubt that he supposed that the Government, having approved of the terms, would be able to carry them into effect, and on this supposition the question is only whether Mr. Kissling tried to keep the trustees in the dark until the land should have been conveyed in fee to his wife. The opinion that he did so seems to us to be disproved by the evidence. In the first place it is certain that Mr. Kissling showed Mr. Waymouth's letter, before referred to, to Mr. Upton, a leading member of the Church Board, and the one who has since the most strongly expressed his disapproval of what has been done. Mr. Kissling discussed this letter with Mr. Upton, and the latter had full opportunity to make himself acquainted with its contents. The evidence is doubtful on the question whether this letter was before the Board at the meeting which dealt with Mr. Kissling's letter of the 19th November. It may have been in the hands of some one of the members, but, whether it was so or not, there is no reason to doubt that it was generally known that such a letter had been written, and that its contents had been talked about outside the Board-room. Now, the trustees generally deny to the best of their recollection that they had at that time any knowledge of the intention to convey in fee to Mrs. Kissling, and Mr. Upton makes this denial perhaps more strongly than any one else. Mr. Kissling, on the other hand, maintains that no one who had read Mr. Waymouth's letter could plead ignorance of what was intended, since that letter expressly refers to the price which the Government was to pay for their one-fourth of the land. To this Mr. Upton replies that the letter only contained a suggestion of Mr. Waymouth's; that this suggestion was founded on a mistaken assumption—viz., that the trustees had the power to sell to Mr. Kissling—and that he therefore dismissed from his mind, as a matter with which the trustees had nothing to do, all that part of the letter, and confined his attention to the valuation made by Mr. Waymouth, which he satisfied himself was sound and fair. In discussing this letter with Mr. Upton it was mentioned by Mr. Kissling as a thing of course known to both of them that the trustees could not sell as Mr. Waymouth had supposed, and Mr. Kissling told Mr. Upton that it would be necessary for the Government to take the land, but he did not go into particulars about the intended conveyance of the freehold, supposing, as he says, that this point was sufficiently understood. We do not see much difficulty in reconciling Mr. Upton's evidence with Mr. Kissling's. It is quite possible that the part of Mr. Waymouth's letter referring to the intention that the Government should only have one-fourth of the land to pay for did not make much impression on Mr. Upton's mind; but we think the reason of this was that at the time it had never occurred to him that the Board had any further concern with the land after it had been bought and paid for. On the other hand, if Mr. Kissling wished to suppress the fact that the freehold was to be conveyed to his wife, it is quite inconceivable that he should have placed Mr. Waymouth's letter in the hands of Mr. Upton, for from the terms of that letter it was an unmistakable inference that Mr. Kissling did not expect the Government to keep more than one-fourth of the land. Again, although Mr. Kissling's letter to the Board of the 19th November disclosed nothing of the contemplated arrangement, yet at that time Mr. Kissling could not have thought otherwise than that the contents of Mr. Waymouth's letter were well known to the Board; and the very fact that he was busying himself at all in ascertaining the Board's interest was enough to show that he had some concern in the matter more than that of an outgoing tenant who had nothing to do but to make his own claim for compensation. And after the Board's intimation to him that they preferred to deal with the Government it was not necessary for him to have any further communication with them. We cannot see, therefore, that any blame is fairly attributable to Mr. Kissling. He did not deceive or mislead the Board, and if he is now enjoying something which ought never to have come into private hands, the wrong was not done by him but by the Government, who, instead of telling him that his proposal could not legally be accepted, assured him, on the contrary, that it could be carried out, and that they quite approved of its adoption.

The conduct of the trustees in this business has already been in great part described. If it has ever entered any one's mind to suspect that the trustees were disposed to sacrifice the interests of their trust for the purpose of conferring a benefit on Mr. Kissling, such a notion may be dismissed as unworthy and unsupported by a particle of evidence. The view taken by the trustees was that, if the Government desired to resume a portion of the land which had been given as an endowment, it was not for them to offer any opposition; and, further, that it became them to trust the Government entirely to do them justice in the matter of compensation. We think, as we have before said, that some surmise of the intended destination of the land must have existed in the case of, at all events, some of the trustees, but they had no idea that what was intended was illegal, or that the Government would wish to do anything it had no right to do, still less that it was intended by Act of Parliament to take from them the right to the first offer of any land not required by the Government. It is not to be wondered at that some of them felt indignant when they found that this had actually been done, and we see no essential inconsistency between this feeling on their part and their previous tacit acquiescence—supposing this to be proved—when they never suspected that the Government was contemplating anything illegal. There is one more point which we must mention before dismissing the part taken by the trustees in the matter. It has been mentioned in an earlier part of this report that Mr. Kissling had a relative who was a member of the Board. This was his brother, Mr. Theophilus Kissling, and this relationship has doubtless tended to intensify the suspi-