

cions which have attached to this transaction. Mr. Theophilus Kissling knew that his brother wished to get the freehold, but he seems to have refrained from forwarding this object in any way. Whether he ought to have gone further, and to have told his colleagues that it would be right for them to consider whether the object which his brother had in view was likely to involve any injury to the trust, is a question which is probably easier to answer now by the light of subsequent events than it was at the time when it might be supposed to have presented itself to Mr. Kissling. We think it is to be regretted that he did not say something of the sort, but at the same time it is to be remembered that it is not certain that he knew much, if anything, more than some of his colleagues, and that there is not the slightest reason to suppose that he more than any one else knew the proposal to be illegal or considered it improper.

We have thus brought the matter to this inevitable conclusion: that for the wrong that was done in this matter—and unquestionably wrong was done—the Government was solely and wholly responsible—at all events, up to the time when the Legislature deemed it right to validate the wrong done by Act of Parliament. We have already expressed our belief that Mr. Brewer acted in good faith; but, at all events, he acted in ignorance or forgetfulness of the provisions of the law, with which, as a land-purchasing officer of the Government, he should have been fully conversant. But Mr. Brewer seems never to have looked beyond the object of making a good bargain for the Government, and to have assumed as a matter of course that the Government would be sure to find some means of bringing about whatever might be necessary to this end. If these were Mr. Brewer's views he certainly was justified by the event, for they were shared and adopted by the Government to the fullest extent. We have already related how, in respect of the taking of an excess of land, the reply of the Solicitor-General to one question was made to do duty in answer to another, and how the bargain with Mr. Kissling was instantly approved without taking any legal opinion at all. If Mr. Brewer did not know the law, the Government, or, at all events, the Defence Department, was in the same plight, and it does not even seem to have occurred to any one that this was a matter worth considering at all. It is, however, only fair to say that this was not the case with the Public Works Department. It is true that they also were prepared to take more land than was required, but assuredly for better reasons than had been suggested by Mr. Brewer, and, at all events, without the slightest design of carrying out an illegal compact with a private person. The intended action of this department is explained by Mr. C. Y. O'Connor in a memorandum, already quoted, of the 16th December, 1885, in which he plainly points out that the agreement to reconvey to Mrs. Kissling is against the provisions of the law. It seems rather surprising that when this illegality was pointed out the Government did not reconsider the matter; but, just as Mr. Brewer had rightly presumed that the Government would adopt his recommendation, whether legal or not, so the Defence Department presumed, with equal accuracy, that the Legislature would sanction the arrangements which it had thought fit to make.

The prime cause of all this mischievous action seems to have been the failure of the Government to look further than the immediate question of money compensation, and to think that any course is sufficiently recommended when it is shown that it will have the effect of abating or reducing a troublesome compensation claim. But, if private lands may be taken under the pretence of public works when they are not wanted for that purpose, and if a right of pre-emption expressly given by law may be taken away by a sidewind, then it is difficult to say to what extent private rights may not be trampled upon.

It is not for us to criticize the acts of the Legislature, but we cannot help thinking it a matter of much regret that Parliament should, in "The Special Powers and Contracts Act, 1886," have authorised the conveyance of this land to Mrs. Kissling. It is a remarkable fact that no discussion of this clause seems to have taken place, although other clauses were criticized, and a powerful and telling attack upon the principle of the Bill was made by Sir Frederick Whitaker. It was enough for him to deal with principles, but it might have been expected that this clause, in passing through the Waste Lands Committee and both Houses, would have excited some curiosity, and that some member would have asked why the Government could not convey to Mrs. Kissling, if it was "desirable" to do so, or why it should be thought "desirable" if it was not lawful. If these questions had been asked it might perhaps have been found that it was not only unlawful but highly undesirable to do anything of the kind, unless the thing could be done in conformity with the provisions of the 14th section of "The Public Works Act, 1882."

Our opinion upon the whole question is in substance as follows: We attribute no wrongdoing to any party but the Government and its agents; and we think the Government acted wrongly in two respects: first, in taking by Proclamation, under pretext of requiring it for public works, land which was never intended to be used for such a purpose, but had been already bargained to a private person, in order to save a few hundred pounds on a compensation claim; secondly, in making a private bargain, and applying to the Legislature for special authority to defeat the right of pre-emption which the law had expressly given to the previous owner of land taken by the Government and not required for public purposes; and, further, in refraining from sending to the Church Trustees formal notice of what was intended, or a copy of the Bill introduced into Parliament. It must be added that these wrongs were expressly ratified and confirmed by the Legislature.

The question what action, if any, is now desirable in order that substantial justice may be done to all parties concerned is no easy one to answer. We have already said that we do not think that the Church Trust has sustained a wrong by reason of inadequate compensation, because nothing could be more deliberate than the acceptance by the trustees of the sum offered, which they still assert was fair and adequate. Then, if it be argued that the original taking was itself illegal and therefore a wrong, this may be granted; but it is obvious that this wrong would have been effectually remedied if the Government had simply followed the provisions of the law in disposing of the surplus land, as was intended until the matter was taken out of the hands of Mr. O'Connor.

The wrong, therefore, that remains to be remedied, if remedy be required, is simply this: that the trustees have been deprived of their pre-emptive right. Now, it is quite uncertain whether