

I do not think you can. This is an illustration. The Supreme Court is the best guide, but certainly not individual opinions.

742. Seeing that sentiment was so strong with you, why did not you do something for the purpose of endeavouring to get this $3\frac{1}{2}$ acres restored?—The person who gave this land was the Government for a public purpose, and the person who took it away for a public purpose was the Government.

743. But you discovered they did not take it away for a public purpose, but surreptitiously for a private purpose?—That was after the event.

744. Supposing you had known that Kissling had made an arrangement with Brewer to pay to the Trust Board any excess of £632?—I should not have approved of that.

745. Supposing the Government had taken this land in good faith for defence purposes and found that they did not require it, do you not think the duty of the Government was to hand back a portion to the Trustees?—I think it was their duty to offer it to them.

746. You knew that was the law?—I did not.

747. You think still more so when the Government took the land ostensibly for defence purposes, their representatives knowing that they did not require it?—I think the Government have done very wrong throughout in the matter.

748. In taking this land nominally for defence purposes, but knowing at the time they were taking the greater portion of it for Mrs. Kissling?—Yes; I think that was very wrong, and I think, further, that if the Government, when they promoted a certain Bill in the House, had taken the precaution to send a copy of that Bill to the Trustees, then we should have been aware of our real position; but they did not do so; they did it behind our backs—that is, the Special Powers and Contracts Act, that authorised the sale to Mrs. Kissling, was never communicated to the Trustees.

749. The Special Powers and Contracts Act was passed in 1886, and the preamble to that Act reads as follows: "Whereas it is expedient and necessary to give the Governor power to issue the Crown grants, and to do, execute, and perform the several acts and things set forth in the second column of the First Schedule hereto, in fulfilment of the promises and for the several reasons and purposes set forth in the first column of such Schedule: Be it therefore enacted," &c. And the portion referring to Mrs. Kissling and the Trustees' matter says this: "The land described in the second column having, *inter alia*, been taken by the Government for defence works at Point Resolution, Auckland, by Proclamation published in the *New Zealand Gazette* No. 32, of 1886, and being in excess of the area now required for defence purposes, it is desirable to sell it to Frances Catherine Kissling, wife of George Schwartz Kissling, of Auckland. The amount to be received for this portion of the land, which was taken by Proclamation, to go in reduction of the amount which would otherwise be payable to Mrs. Kissling." You see there is an allegation that the land was originally taken for defence purposes, and they now discovered that they only required a certain portion for defence purposes?—Yes.

750. Considering that in the light of this letter which Brewer sent to the Under-Secretary for Public Works, I want to ask your opinion. Brewer wrote on the 21st November, 1885, to the Under-Secretary for Public Works as follows: "I discovered, however, that he was very anxious to get the freehold of the property. Now the Church Trustees cannot sell, although they would like to. I suggested that the Government might be asked to take it, and hand back the portion not required, but that he would have to reduce his demands very much. He agreed to this, and I think I shall settle the whole matter for £1,750. I am only awaiting a reply from the Trustees. This will be a saving of £750. The cost of the whole property will be £6,000, and I have a written undertaking from Kissling that he will give the Government £4,250 for the portion not required." So that on the 21st November, 1885, Brewer knew that all the land was not required. Taking into consideration that letter, where the Government agent knew perfectly well that the Government only required a small portion for defence purposes, they tell the Legislature that they originally took it for defence purposes, and in the Act of 1886 they say they did not require it. What is your opinion of that transaction?—I think it is scandalous.

751. In point of fact, you think the Legislature was deceived by that statement, and induced to pass the Act because of that false representation?—I have no opinion on that subject. I do not know how they came to the conclusion.

752. An arrangement having been made, *sub rosa*, between Kissling and Brewer to give Mrs. Kissling $3\frac{1}{2}$ acres of this land, and it being well known to Brewer that three-quarters of an acre was required for defence purposes, the Governor is induced to issue this Proclamation, dated 28th May, 1886: "Whereas the land mentioned and described in schedule hereto is required to be taken under 'The Public Works Act 1882 Amendment Act, 1885,' for the construction of a public work within the meaning of the said Act: And whereas all notices and Acts required by law to be given and done have been duly given and performed, and the Minister for Public Works has laid before the Governor a memorial containing a list of the lands proposed to be taken as aforesaid, together with a map showing accurately the position and extent thereof as required by 'The Public Works Act, 1882,' and the Acts amending the same: Now, therefore, I, William Francis Drummond Jervois, the Governor of the Colony of New Zealand, in exercise and pursuance of the powers and authorities in me vested by 'The Public Works Act 1882 Amendment Act, 1885,' and of every other power and authority in any wise enabling me in that behalf, do hereby proclaim and declare that the land mentioned and described in the schedule hereto is hereby taken for the construction of a public work within the meaning of 'The Public Works Act 1882 Amendment Act, 1885'—namely, construction of works for the purpose of defence at Point Resolution, in the Borough of Parnell, Suburbs of Auckland—and it is hereby declared that the Proclamation shall take effect on the day of the date on which it shall be published in the *New Zealand Gazette*." In the light of that Proclamation and that correspondence, do you not think the Legislature and the Governor were deceived?—I should think it very likely indeed the Governor, but I do not see how the Legislature could be deceived. It was not a quiet thing. I know that Sir Frederick Whitaker made a tremendous speech against that Bill, and denounced it from top to bottom as a bad thing because it