

1889.

NEW ZEALAND.

LAND TAKEN FOR DEFENCE PURPOSES AT POINT RESOLUTION, AUCKLAND

(MINUTES OF PROCEEDINGS OF, AND EVIDENCE TAKEN BY, ROYAL COMMISSION TO INQUIRE INTO).

Return to an Order of the House of Representatives, dated 4th July, 1889.

Ordered, "That the evidence taken by the Commission on the Point Resolution inquiry be laid before this House."—(Sir G. GREY.)

MINUTES OF PROCEEDINGS.

FRIDAY, 5TH OCTOBER, 1888.

THE Commission met at 11 o'clock a.m., at the Harbour Board Office, Auckland.

Present : The Commissioners, Dr. Giles and Colonel Roberts.

The Secretary having read the Commission,

Dr. Giles said that, in pursuance of the Commission, the Commissioners had given notice to the particular parties who would appear to be affected by the result, so far as they could gather from the papers put into their hands by the Government. They had given notice to Mr. and Mrs. Kissling, also to the Secretary of the Church Trust Board, and to Mr. Brewer, the officer who conducted the negotiations. Those appeared to be the principal parties concerned in the matter, and the Commissioners would be glad to see them appear, or be represented in some way, at the Commission. They also found, on reference to *Hansard*, that subsequently to the falling-through of the Bill in the Upper House Sir George Grey brought the Point Resolution purchase question up again, and stated that further facts would be brought out. It seemed from the *Hansard* report that the Premier, in reply to a question, expressed some doubt whether a Commission should be appointed or not, but if there was reason to suppose that further facts would come out the Government would appoint one. Sir George Grey said that further facts would be brought out if an inquiry were instituted, whereupon Sir Harry Atkinson said in that case a Commission would be appointed. Of course, the Commissioners would invite Sir George Grey to refer them to any sources of information which might be in his possession, and to any further facts; and they would be happy to hear any suggestions from any parties present, or from any counsel or persons who might represent parties interested. The Commissioners had decided to begin by taking Mr. Mackay's evidence, because he was likely to be called away soon; and they proposed, if no reason to the contrary were shown, to take his evidence presently, and then, perhaps, adjourn till Monday, and to-morrow go to the ground and examine the different parcels and allotments of land. Were there any parties present who were concerned in the inquiry?

Mr. Brewer said he was present, but he was not represented by counsel.

Mr. Mahony (of Hill and Mahony, solicitors) said he appeared to represent Mr. and Mrs. Kissling.

Dr. Giles asked if there was no one present on behalf of the Church Trustees. He understood from Mr. Hesketh that he would appear for them. Perhaps he would before the inquiry was over. (To Mr. Mahony): He supposed Mr. Kissling understood that his evidence would be wanted during the inquiry, though not necessarily on that day.

Mr. Mahony said Mr. Kissling was at the service of the Commissioners, and was ready to give evidence when required. The Commissioners said in their notice that Mrs. Kissling could attend. She had not accepted the invitation, because it was thought her presence was not of any value. If it were necessary, however, she would attend.

Dr. Giles said the Commissioners did not understand that Mrs. Kissling had any evidence to give; but she was the purchaser, and therefore they sent her a notice.

Sir George Grey asked if there would be any objections—as it appeared the Trustees were in no way represented—if counsel represented the destitute children themselves.

Dr. Giles: That is, the persons for whom the trust was granted?

Sir George Grey: Or to represent me, as the original founder?

Dr. Giles: I do not see any objection to it.

Mr. Mahony submitted that only those who were immediately parties to the inquiry ought to be represented, otherwise the number of people represented might practically be limitless.

Dr. Giles said the trust was made up of two parts: there were the Trustees and the parties for whom the trust was constituted.

Mr. Mahony said there was an imaginary *cestui que* trust. It was not an ordinary case of trustee and *cestui que* trust.

Dr. Giles said it seemed to him that the gist of the complaint was that justice had not been done to the trust. Now, if it appeared that the Trustees had not done justice to their trust, of course the parties for whom the trust was given were really the parties aggrieved, although they might be quite indefinite, and although they could not be named. He could not see any objection to any counsel appearing in the way Sir George Grey mentioned. Of course it would have to be confined to one appearance for the whole body of persons who might be supposed to be concerned, and he could not see that Mr. Kissling could be prejudiced by that.

Mr. Mahony did not see how Mr. Kissling would be prejudiced in the matter, but he understood that Sir George Grey requested that he himself should be represented as grantor. He submitted that a grantor had no standing in a Commission of that kind. The creator of the trust could not be represented. A trust was created, and therefore the only parties interested were the trustees and the *cestui que* trust. He submitted that not even if the grantor had been the personal owner of the land could he be represented. Surely the creator of a public trust could not be represented by counsel.

Dr. Giles said the Commissioners recognised Sir George Grey's position as having moved in this matter, and having stated that further facts could be brought forth.

Mr. Mahony: That would be personal.

Dr. Giles: What I understood Sir George Grey to wish was simply that there should be some representative of that interest.

Sir George Grey: That is so. But, if I might state, I think it will be clearly shown that the whole transaction has been unlawful, from ignorance of the law apparently, and that these children for all time have been deprived of that to which they were justly and lawfully entitled. What I pray for is that some person may appear on their behalf to watch.

Dr. Giles: I cannot see any objection to that at all. I think it would be very desirable.

Sir George Grey: If it is allowed by the Commission, I will engage the services of a person. I am sure full justice could not be done otherwise.

Dr. Giles: We think it is a reasonable request, Sir George, and we will permit it if you wish it.

Sir George Grey: Then, the next day you meet I will have counsel engaged.

Dr. Giles: That will not interfere with our meeting now and having Mr. Mackay's evidence. Of course his evidence will be read over again.

Mr. Thomas Mackay, Government land-purchase officer, and Mr. William Stephen Cochrane, Secretary of the Church of England General Trust Board, were examined on oath.

The Commission adjourned at 12.15 p.m. till 11 a.m. on Monday, the 8th instant.

MONDAY, 8TH OCTOBER, 1888.

The Commissioners met pursuant to adjournment.

Mr. Napier, instructed by Sir George Grey, appeared to represent the orphans and others interested in the conservation of the trust. Mr. E. Hesketh appeared for the Trust Board, and Mr. Mahony for Mr. G. S. Kissling.

Thomas Mackay was further examined, William Stephen Cochrane was further examined; Theophilus Kissling, Rev. Robert Burrows, and James Dacre, members of the General Trust Board, were examined on oath.

The Commission adjourned at 4.20 p.m. till 11 a.m. next day.

TUESDAY, 9TH OCTOBER, 1888.

The Commissioners met pursuant to adjournment.

John Henry Upton and George Patrick Pierce, members of the General Trust Board, were examined on oath.

The Commission adjourned at 3.20 p.m. till 11 a.m. next day.

WEDNESDAY, 10TH OCTOBER, 1888.

The Commissioners met pursuant to adjournment.

Herbert Molyneux Brewer was examined on oath.

The Commission adjourned at 1.15 p.m. till 11 o'clock on Friday, the 12th instant.

FRIDAY, 12TH OCTOBER, 1888.

The Commissioners met pursuant to adjournment.

George Schwartz Kissling was examined on oath.

The Commission adjourned at 1 o'clock till 11 a.m. on Monday the 15th instant.

MONDAY, 15TH OCTOBER, 1888.

The Commissioners met pursuant to adjournment.

Mr. Hesketh, Mr. Mahony, Mr. Napier, and Mr. Brewer addressed the Commission. The addresses concluded at 3.50 p.m.

Dr. Giles then stated that that concluded the sittings of the Commission, with the exception of some remaining witnesses attending to sign their depositions.

MINUTES OF EVIDENCE.

FRIDAY, 5TH OCTOBER, 1888.

THOMAS MACKAY sworn and examined.

1. *Dr. Giles.*] Mr. Mackay, what is the position or office you hold?—Government land-purchase officer.
2. Is that the office you held in 1885 at the time you were engaged in connection with this matter?—I have held that office, together with several other Government offices, for fourteen or fifteen years.
3. You recollect in 1885 an action being brought against the Government for trespass upon the property of Mrs. Kissling at Point Resolution?—Yes.
4. Were you employed by the Government in settling that matter or in reference to it?—I was sent up here to see how the matter could be settled.
5. You found that the Government had taken possession of part of the ground?—Yes; without having the power to do so.
6. Do you know whether or not Mr. or Mrs. Kissling had given any permission to the Government?—No; I was not aware of any permission being given.
7. What steps did you take in the matter?—I had several interviews with Mr. Kissling, and also with his solicitors, and while these interviews were going on the Government were at the same time getting an Act through the House to enable them to deal with the matter, and to take the land under an amendment of the Public Works Act, and provide for proper compensation to all the parties concerned. That Act was passed in the early part of August, 1885.
8. The defect was that a military work such as that which they had undertaken was not included under the terms of "The Public Works Act, 1882"?—Yes; under the interpretation of the words "public works" in that Act.
9. And in the Act of 1885 power was given to take land for military works?—Yes; and to provide the necessary machinery for granting compensation for lands taken for such works; and that Act was passed, I think, the day before the case was to be heard in the Supreme Court.
10. It was passed just in time for the Court to be informed of it, so that the action was brought to an end?—So that the action was stayed.
11. What steps did you take in reference to the taking of the land?—I was asked to give an opinion as to what compensation should be given to Mrs. Kissling for the 3 roods and 13 perches which had been taken—the net quantity of land taken for the purposes of the battery out of her leasehold.
12. Did you communicate with Mr. Kissling about that?—We had several conversations. I do not recollect that he named any specific sum, nor did I mention any specific sum to him on the part of the Government; but I wired the Government that I considered that a sum of £1,250 would be a fair compensation to Mrs. Kissling for the land taken out of the leasehold and for the consequential damages to the rest of the property. Being a residential property, and a valuable property, £1,250 would cover the value of her interest in the 3 roods 13 perches taken, and the consequential damages by reason of the battery being placed there in such close proximity to the house.
13. Can you tell us how you arrived at that?—I was taken quite unawares in regard to giving my evidence here. I am up here on a different mission, and until you called on me the other day I was not aware that I would be required to give any evidence: my notes and my own papers in connection with the matter are in Wellington. I have no means here of giving the data on which I made that calculation.
14. Have you any recollection whether it was done by any rule?—I have no recollection at all.
15. Sometimes these things are just a matter of instinct, skill, and judgment?—It is just a sort of instinct one has—at least, I find it so sometimes. I arrive at a sum I think will cover the two things.
16. Do you think it was done in that way?—I am not sure: of course, one must give a good reason for what his opinion is. I must have worked it out in some way, but how I did so I cannot recollect—that is, what were the different items that composed that sum. I was in communication with the head office by telegram, and in telegrams you do not go into the particulars you would otherwise do in a written memorandum or letter.
17. That was made on the supposition that the Government would take only what land they required?—Yes.
18. You made a different recommendation, did you not?—That is, outside of that?
19. I mean to say you recommended a different course?—Yes; I recommended that the Government (after giving that estimate) should take the whole of the land under Mr. Kissling's lease bodily, and settle with Mr. Kissling and with the Diocesan Trust each for their interest, and for the Government to hold the land entirely as their own property, and then lease the house and grounds that were not required for battery purposes either to Mr. Kissling or to any one else who would like to occupy them.
20. You were of opinion that if they did that they could get £100 a year rent?—At least £100 a year rent.
21. Notwithstanding the deterioration occasioned by the proximity of the battery?—Yes.
22. What were your reasons for thinking it was better to take the whole of the land?—There were two reasons: In the first place, there is a loop-line contemplated to be constructed between the present Auckland terminus of the railway and Penrose Junction, and that would necessitate,

amongst other works, a tunnel under the land running between the battery and the house. [Direction indicated on plan.] Of course that would have been a subsequent case of compensation. That was one of the main reasons for my suggesting that the property should be bought out bodily and held by the Government.

23. Is there any other reason?—I had the idea, though not a military engineer—being only a civil one—that there was too little land taken there for defence purposes, and that it was quite possible that further land might be considered necessary to be taken; and it was looking forward to those questions that induced me to advise the Government to purchase out the property and to hold it in their own hands.

24. Did you ever mention that proposal to Mr. Kissling?—No; that proposal was simply a confidential one between myself and the Government.

25. Did you make any estimate or valuation upon that basis—that of the whole value of the property, and what ought to be paid to each of the parties?—I have no recollection of giving an opinion upon that. I may have made calculations, the same as I made with regard to the £1,250, but I have no recollection of having made any specific calculation of what would be the interest of the owners, the Diocesan Trust, and the interest of the leaseholder. The interest of the leaseholder with such a long lease, of course, would be very much the largest.

26. The only specific valuation you made, as far as your recollection goes, was the £1,250?—Just the simple question of what was actually occupied by the battery—that is, of Mr. Kissling's leasehold.

27. Then you have no recollection of any demand he made, or what demand?—No.

28. Had you any reason to think, were you ever told, or any suggestions made during your negotiations, that Mr. Kissling desired to get the freehold of the land?—No.

29. And how did your part in the matter terminate?—My part in the matter terminated when Judge Gillies stayed the action under the new Act that was passed to enable him to do so. Then it simply became a matter of dealing with Mr. Kissling for compensation, and with the Trust Board, which I had nothing to do with.

30. When you ceased your part in the matter, had the Government agreed to this proposal to take the whole of the land?—I am not aware what views they had at the time.

31. You had no intimation?—I had no intimation.

32. You had no communication at all with the Church Trustees?—No, none whatever. They had taken no action whatever in the matter.

33. *Mr. Mahony.* You came up to Auckland, I think, at that time in connection with this particular matter, with Mr. Kissling's claim?—Yes; with the writ of trespass.

34. You spoke of it as Mr. Kissling's claim. It was Mrs. Kissling's claim: Mrs. Kissling was the plaintiff?—Yes, there is no doubt.

35. She was, in fact, lessee by assignment?—Yes.

36. That action, you will remember, was the outcome of fruitless claims by Mrs. Kissling on the Government, whom she claimed to be trespassers?—I believe it was that. I had known nothing of it until I was directed to come up here on the matter.

37. You did not know personally there had been claims and negotiations previous to that?—No; I knew nothing until I was suddenly asked to come up here.

38. Did you know that the Government—I think it was Sir Robert Stout who was a member of the Government then—maintained they had statutory power under “The Public Works Act, 1882”?—No.

39. A writ was issued and served, and the action was just pending in the Supreme Court, being an action for damages for trespass against the representatives of the Government?—Yes.

40. Which action, I think, was adjourned temporarily?—Yes.

41. And you recollect it then transpired that the Government had not statutory power to take land for defence purposes?—No; they had not power.

42. And a hurried Bill was passed through the House in all its stages in, I think, one day—that being the Bill of the 1st August, 1885?—Yes.

43. You recollect this: that the result of that passing of the Bill was that judgment could not be given for the claimants, but that his Honour held that it would have been a matter for compensation, and adjudged that the Government should pay all the costs of the plaintiff—costs on the higher scale?—Yes.

44. The costs amounted to some £60?—I believe so.

45. That was money subsequently paid by the Government to Mrs. Kissling—all her costs of suit?—Yes.

46. So that it was not an ordinary case of staying proceedings. It was a case in which the proceedings were stayed, but in favour of the plaintiffs in as far as all the costs?—Certainly; the Government was in the wrong.

47. So that the position of Mrs. Kissling and her representatives, between them and the Government—the position was hardly a friendly one at that time?—I should hardly say it was.

48. In fact, they were openly hostile?—There is no doubt about it.

49. Do you say you did not subsequently or at any other time know the position Sir Robert Stout took up?—No, I did not know.

50. With regard to that tunnel matter, that was a matter which I think you said was a confidential one between yourself and the Government; so that, so far as you know, Mr. Kissling had no knowledge then of any valuation made on the basis of taking possession of land for that line of railway?—No; he knew nothing about it.

51. And, as far as you know, not by the Government or its representatives?—No.

52. *Dr. Giles.* I find by the papers that at a later period you called the attention of the Government again to the question of the railway?—I suppose there is a letter or memorandum of mine in the papers. [Letter of 17th August, 1886.] Until that date I had no information what-

ever of what had occurred in this matter. I had been engaged in other matters in other parts of the colony, and I did not know until by some accident the papers came before me at what stage the subsequent proceedings in the transactions had arrived; and I discovered that this suggestion of mine with regard to the tunnel had been totally overlooked.

53. You pointed out to them that in settling with Mr. Kissling they should get provision made for that, so as to avoid a second compensation?—Yes.

54. *Mr. Brewer.*] Did Mr. Kissling give you any idea that he would accept that £1,250?—No; we never came to any point with regard to any question of compensation.

55. Did you ever make any subsequent valuation as to what the total cost would most likely be to the Government?—I cannot recollect whether I did or not, not having my papers here.

56. Do you remember writing to me some time after you came to Auckland to the effect that the Point Resolution matter was a very awkward one for the Government, and you did not think it likely they would get out of it for any less than £4,000 or £5,000?—That was a private communication to you, and simply a friendly one. It was written after the Proclamation taking the whole property was gazetted.

57. In that case I am sorry I mentioned it?—It was a confidential communication; it was a friendly one.

58. This £1,250 was simply to satisfy Kissling?—That was with regard to the 3 roods and 13 perches.

WILLIAM STÉPHEN COCHRANE sworn and examined.

59. *Dr. Giles.*] What is your position, Mr. Cochrane?—I am secretary to the Church of England General Trust Board.

60. You recollect certain property, part of the trust, being held by Mrs. Kissling as lessee, near Point Resolution?—Yes.

61. Do you recollect that being taken by the Government, and certain money-compensation being awarded to the Board?—Yes, I do.

62. You have the minute-book with you?—I have.

63. Can you refer us to the minutes when the matter was first brought before the Board?—The matter was introduced to the Board by a letter received from Mr. Kissling, which was read at a meeting held on the 19th November, 1885.

64. Have you that letter?—Yes. The minute was headed, “Mr. G. S. Kissling.” [Read, letter from Mr. Kissling stating that the Government was taking the whole of the property occupied by him at Point Resolution, and asking by what process the Board would prefer to have the present value of the freehold interest ascertained.] The resolution passed by the Board was that “If it is contemplated to take the whole of the property the Board prefers the compensation to be given to be named by the Government.”

65. Does that complete the minute?—Yes.

66. Would you read the letter?—“Auckland, 19th November, 1885.—W. S. Cochrane, Esq., Secretary Church Trust property.—Dear Sir,—The Government are taking, under the Public Works Act, the whole of the property now occupied by me at Point Resolution. It is therefore necessary to ascertain how the compensation is to be divided between us. With this view, I shall feel obliged if you will inform me by what process you would prefer to have the present value of your freehold interest ascertained.—Yours faithfully, G. S. KISSLING.”

67. What is the next?—The next time it came before the Board was at its meeting held on the 3rd December, 1885, when a letter was read from Mr. H. M. Brewer, land-purchase officer, stating that the Government proposed to take the whole of the land at present in the occupation of Mr. Kissling, and offering £632 for the Board's interest in the land. The resolution of the Board was, “That the offer be accepted.” The letter is as follows: “Public Works Office, Auckland, New Zealand, 20th November, 1885.—W. S. Cochrane, Esq., Secretary General Trust Board.—*Re* land required for battery at Point Resolution: I am directed by the Hon. the Defence Minister to state that it is proposed to take the whole of the land at present in the occupation of Mr. G. S. Kissling. The property being let for such a long term to that gentleman at a nominal rental, the principal part of the compensation-money will be awarded him. As, however, the Government wish your Board to be treated with every consideration, I am requested to state that the sum of £632 will be awarded for your interest. Will you please let me know at your earliest convenience if you accept this offer, so that arrangements can be made for paying over the money? If you do not accept, the case will have to go to the Supreme Court.—H. M. BREWER, Land-purchase Officer.”

68. The minutes do not show whether there was any discussion; they merely give the resolution?—Yes.

69. Is there anything after that?—There is nothing further; the matter dropped then until the money was paid. I think it was very nearly a year afterwards before the money was paid.

70. Could you give us the names of the members who were present at those two meetings?—Yes. On the 19th November: present—the Bishop (in the chair), Rev. R. Burrows, Messrs. James Dacre, J. D. Jackson, Theo. Kissling, G. P. Pierce, and J. H. Upton. At the meeting on the 3rd December there were present the Bishop, Rev. R. Burrows, Messrs. Dacre, James Dilworth, Kissling, Pierce, and Upton.

71. Can you recollect whether any discussion took place, or whether any opinions were expressed as to the amount awarded?—I cannot recollect anything definitely. As a matter of course it was not passed without some discussion, but the exact points or what the various opinions were I could not tell you.

72. Can you remember whether any of the Board complained of it, or considered it too small?—No; I think it was worked out by some one or two of them there to see what this sum of money would be worth in forty-eight years' time and they seemed to be satisfied.

73. *Mr. Mahony.*] Did I understand you to say that they all seemed satisfied?—I do not say

that any of them seemed satisfied; none of them expressed any opinion as to satisfaction or otherwise. They considered the Government wanted the land and they offered that sum, and they did not see any reason to oppose the Government.

74. *Dr. Giles.*] You do not recollect any one making any decided opposition to it?—No; I do not recollect any one.

75. You are pretty sure nobody did?—There was, of course, a good deal of discussion about it, but I am not prepared to say which individual trustees made any remark or not.

76. If any one had opposed the resolution or had moved an amendment it would have been recorded?—Certainly. There was no amendment moved.

77. Did you know anything of the negotiations that were going on through Mr. Brewer on behalf of the Government?—Mr. Kissling's letter was the first intimation. I had seen in the newspapers the action that had been taken in the Supreme Court.

78. Had you any knowledge as to an arrangement by which Mr. or Mrs. Kissling was to get the freehold after this settlement?—I did hear that the freehold was to be conveyed back to Mrs. Kissling, but I really do not know at what particular time.

79. Before this money was accepted by the Board did you know anything about it?—Not before this offer was accepted.

80. Do you know if any members of the Board knew anything about it?—I do not know.

81. You do not recollect anything of the sort being mentioned at the meeting?—No; I have heard it spoken of, but I do not think it was at this meeting, because the money was not paid until some time afterwards.

82. You do not think the arrangement by which Kissling was to get the freehold was mentioned at the Board until some time after their resolution was passed to accept the money?—I think not.

83. Did you ever hear of an agreement on the part of Mr. Kissling to pay more than the sum of £632 if it was found that the Board were entitled to it?—No; that was never mentioned in any way to the Board.

84. Did you hear of it afterwards?—Only a few months ago.

85. Do you know what basis was taken for the calculation of the Board's interest?—No, I am not aware on what basis this offer of Brewer's was made of the £632; but I have worked it out myself with a set of tables that I have, and I think I have arrived at some conclusion, in fact, as to the way it would be made up.

86. Yes? Have you arrived at a similar conclusion?—Yes, just about the same amount.

87. You can tell us, then, what data you have taken?—This land was leased at £17 a year, it had forty-eight years to run, and to secure that rental I calculated what sum of money would yield that, taking 6 per cent. as the basis. I made that come to £266. Then, taking the value of the property as a whole at £6,000, which was the estimated value about that time, valuing money at 6 per cent., I estimated it would take a certain sum to yield that in forty-eight years' time according to certain tables; and it would take £366 to yield £6,000 in forty-eight years: so that at the end of forty-eight years, if they invested it at compound interest, it would yield £6,000. The Board would have their £17 from the £266, and they would have the £266 at the end of the time as well.

88. Yes. Then that goes on the supposition that the value of the land at the end of forty-eight years would be £6,000?—Yes; land and buildings.

89. Was any estimate formed of what the present value was of the whole thing, including all the interests?—No; the £6,000 was thought to be a fair sum, because, although the land might improve in value, the buildings certainly would not. They are wooden buildings.

90. Was it considered that the then present value of the whole of the combined interests was equal to the prospective value at the end of forty-eight years—that the whole value would not improve at that time?—I do not know exactly whether that was the opinion of any one or not, but I worked it out on that basis.

91. Yes; that is the basis on which the Government Actuary worked it out: but, of course, he only went on data given to him—that was, £6,000 due in forty-eight years?—It is an impossibility to fix the value of land in forty-eight years' time.

92. Of course it is; but are you aware what basis was taken between the Government and Mrs. Kissling in negotiating as to the whole of the value?—I have no idea at all how that was arrived at.

93. Because the then present value seems to have been estimated at the same sum—£6,000. In your opinion, was it fair to take the then present value as equal to the probable value in forty-eight years' time?—Well, I think it was. We have experience now where land forty years ago in Auckland was more valuable in certain streets than it is now—at least, quite as valuable; and, without expressing an opinion, if that loop-line were to pass the house there [indicating on plan] and that were to become an intake, the value of the land might suffer considerably. Of course, that is only my private opinion. Of course, it is impossible to attempt to fix the value.

94. Can you tell us whether there was any feeling on the part of the members of the Board that anything wrong had been done when they heard that the lessee had got the freehold?—I could not express any opinion.

95. Nothing was said at the Board that you know of about it?—Not at the Board meeting.

96. With reference to this calculation: it was taken at 6 per cent.; do you think 6 per cent. is a likely rate of interest for the next forty-eight years to come? Could that be reckoned on all through that time?—That is a rather difficult question. It is very hard to say whether it would average that or not. In those days you could get 7 and 8 for it easily.

97. Of course, a trust fund would have to be in safe securities?—Yes; freehold mortgage securities principally.

98. If the interest were less, of course the sum payable to the Board would have been greater?—Yes.

99. I find a pencil note on the Government papers: I do not know whether it is Mr. Frankland's writing or Mr. O'Connor's. This note says that 6 per cent. is too high to assume for forty-eight years. The calculations were made on that basis because those were the data supplied; but, in the opinion of the writer of this pencil note, it was too high. You cannot give a positive opinion about that?—No; it may seem a little high, but it is very hard to tell what money is going to be worth any more than land. I think that on good freehold security 6 per cent. will always be obtainable, as far as we can see at present.

100. What is your business, Mr. Cochrane?—I am a partner in the firm of Cochrane and Son, auctioneers and land agents.

101. You have had some experience in these matters?—I have had a good deal to do with land.

102. I asked you as to this £6,000 with reference to the value at the end of forty-eight years, but I did not ask you the question whether you think the sum of £6,000 was a fair value at that time?—I think it was a fair value, taking the land compulsorily from a party who did not want to part with it.

103. You think it would not have fetched so much in the market?—If forced into the market it might not have fetched quite so much; although it was at that time and is at present a very favourable place of residence, and it would have fetched very close on to that, at any rate.

104. *Mr. Brewer.*] The members of the Board, I suppose, were perfectly aware that if my offer was not satisfactory they had the machinery of the Compensation Court at their disposal?—Yes; you told them so in your letter.

105. They knew all about that?—Yes; they were quite aware of that.

MONDAY, 8TH OCTOBER, 1888.

WILLIAM STEPHEN COCHRANE further examined.

106. *Mr. Hesketh.*] I believe it has fallen to your lot to give evidence on compensation cases?—Yes; several cases.

107. Compensation cases under the Public Works Act?—Yes.

108. When you formed the estimate you did as to the value of the land, did you proceed on the same principle that those Courts proceeded on, to your knowledge—that is, deal with the present value and not with the prospective value?—Undoubtedly.

109. Then, that you took as your guide or basis?—Yes.

110. *Mr. Mahony.*] I believe the whole block of which this is a portion is held similarly as a Church of England leasehold property?—Yes.

111. And, in connection with all those leaseholds, I think there are restrictive covenants—first, that the buildings must be private dwellings; and, secondly, that there must not be more than one on each lot?—Yes, that is so.

112. So that, therefore, this place, for, at any rate, from forty to sixty years, cannot be other than a place for a private residence of a superior kind?—Yes.

113. Would you say from your knowledge of things in the past as a valuer, if this projected loop-line should be carried out and that place reclaimed within that forty-eight years—would you say whether that would have a beneficial effect or otherwise on this property and the surrounding ones, having all those restrictions in view?—An embankment or any filling-in of that bay would have anything but a beneficial effect, to my mind.

114. So that, would that not be one of the chief reasons which might at the end of forty-eight years considerably deteriorate the value of this property?—It might, possibly.

115. As to those two particular properties, do you know as a fact that there is a minimum amount of £225 as to one of the lots, and a minimum amount of £100 as to the other, which the lessee must have expended on buildings?—Yes; that is the least sum that must be expended.

116. Is it not a fact that the amount expended has been far in excess of that?—Yes, considerably.

117. So that at the end of forty-eight years it might so happen that, instead of being, as it then was, improved to the extent of thousands, it might only be improved to the extent of £325?—That would be all that would be necessary to comply with the covenant of the lease.

118. Was that £632, the figure mentioned to the Trustees—was that fixed upon and assessed irrespective of any question, as far as they were concerned, as to who was to get the freehold or not?—I think so.

119. Did it affect you who was to get the freehold?—No; they thought if the Government wanted it they considered £632 was fair compensation.

120. Irrespective of any other consideration?—Yes.

121. Do you know of a Proclamation which was issued relative to this property in January, 1886, at the beginning of the year on which the settlement took place? Did you hear of that Proclamation?—We had a copy of it sent to us.

122. Do you remember whether that Proclamation was before the Board about February, 1886?—It was before the Board, but not in connection with this matter.

123. But, at any rate, the Trustees present at the Board meetings knew of that, and had it before them about February, 1886?—I think that was about the date.

124. I understood you in your former evidence to state that the best part of a year elapsed between the Trustees' preliminary consideration of the matter and the final paying-over to them of the money?—Yes.

125. And this particular Proclamation I speak of would have taken place about midway between the first date and the last?—Yes.

126. I think I understood you to say that some time prior to the paying-over of the money you knew of the proposal to hand the freehold of a portion of the land to Mrs. Kissling?—Yes; it was in print prior to that.

127. Would you say therefore, then, that the Trustees had ample knowledge of that fact?—I cannot say.

128. Was it discussed at any meetings of the Board?—I do not think it was discussed.

129. Do you think some of the Trustees knew?—I believe some of them knew.

130. I presume you talk of Board matters, although not formally, at the meetings of the Board?—Yes; members talk over them at all times.

131. *Mr. Napier.*] But I think you are quite clear that, until the Board had passed the resolution accepting the £632, they were not aware that any negotiations were in progress for the transference of the balance of the freehold to Kissling?—I was not, certainly.

132. Why did the members of the Board not take some action for the purpose of recovering the freehold which was not required for defence purposes, seeing that they knew before the money was paid over that the balance of the freehold was to be transferred to Mrs. Kissling?—I am afraid you must ask the Trustees that question. I really could not tell you what reasons they had for not taking any action. I know at the time it was taken they thought the Government wanted it for public purposes, and they thought they ought to let them have it.

133. As a matter of fact, they had made this bargain with the Government, and hence they passed the resolution agreeing to take the money?—Yes.

134. And they could not back out of their bargain?—They did not think it was honourable to attempt to back out of their bargain.

135. Notwithstanding the concealment of material facts from the Trustees, did they consider it dishonourable to withdraw from the bargain?—The answer which I have made is only an opinion of my own, and I would scarcely feel called upon to go any further in the matter. The Trustees are all available, and can answer for themselves. The question was never discussed at the Board.

136. Did you make any formal communication to the Board, or make any minute of what came to your knowledge as to the projected intention of the Government to transfer the freehold to Kissling?—No; for it never came before myself in any way that you would call officially. It was all from the street or the newspapers.

137. There is nothing in the records to show that before the Board accepted the £632 they had any knowledge that the larger portion of the freehold was to be transferred to Mrs. Kissling?—Nothing whatever.

138. Can you state what was the impression made upon the Board or the members you came in contact with by the discovery of this fact?—No, I cannot. There are nine members, and the impression varied on each one, I have no doubt.

139. But was there no general sentiment expressed, either of surprise or satisfaction, at this material fact being concealed?—They did not consider that the Government were called upon to reveal all their secrets or movements to them.

140. They did not consider that the Government ought to have disclosed to them that they were negotiating with Mrs. Kissling to transfer to her the freehold over the heads of the Board?—I do not think they expressed any feeling of that kind.

141. From your conversations with the members, can you say whether they considered it was right or proper, or improper, to conceal the fact of those negotiations from the Trustees?—I do not recollect ever talking over it in that way.

142. At all events, they took no step, having discovered it?—No.

143. You have said there are instances which have come to your knowledge where the value of land forty years ago in Auckland was equal to or greater than it is now?—I said, many years ago—twenty-eight years ago, at any rate.

144. Do you know the prices which obtained for land in the vicinity of this place, also on the foreshore, at the land-sale in 1842?—You are referring to the Government land?

145. Say from the period of 1841 to 1845, at the Government land-sales—do you know the relation the values obtained for land then bear to the value of land at the present time in the vicinity of this land, or as near as land was sold to it: has the value increased or diminished?—The value has increased.

146. Enormously?—Considerably.

147. Has it increased as much as five hundred fold?—I should scarcely think so.

Dr. Giles: Do you mean five hundred fold or five hundred per cent.?

148. *Mr. Napier.*] I mean five hundred times in some instances [To witness:] Can you say what was the value of this land at the time it was granted to the Trustees by Sir George Grey in 1850?—I cannot tell you from memory just now.

149. Do you know about the sale that took place when the land was cut up?—No.

150. By the Trustees after it was granted?—I recollect the leasing of the land.

151. That is the original plan [produced] which the Trustees issued at the original sale?—Yes, I believe it is.

152. You have said that you consider the estimate you made, that £366 at 6 per cent. would amount to £6,000 in forty-eight years—with the rental of £17—making up the £632: do you consider that is a fair way of estimating the permanent interests of the orphans and children in that trust property?—I do not see that there is any other way to calculate it.

153. Supposing we take the whole of the leases and the trust properties now in the hands of the Board, and the Board had the statutory power to sell, would you consider that the interests of the trust would be properly conserved by taking a sum which would in forty-eight years yield the present value of the land?—I think so.

154. *Dr. Giles.*] In addition to another sum representing the rent capitalised?—Yes.

155. *Mr. Napier.*] Have you ever heard of the term “unearned increment”?—Yes.

156. Do you think that such a thing has existed and is likely to exist in the future?—It has existed, and will exist again I have no doubt.

157. With the exception of intermittent fluctuations, has there not been a progressive, an absolute increase of land-values since the foundation of the colony, and especially at and around the City of Auckland?—Not all through. There are places where you will find exceptions.

158. But they are rare, are they not?—They are not plentiful.

159. You have said that the reclamation of that land, with the progress of the city, and the construction of the loop-line necessitated by increased railway-traffic, would deteriorate the value of that land?—I believe it would.

160. Or simply would deteriorate its qualifications for a private residence—which?—It would deteriorate its value as a residential site.

161. But would it deteriorate its value as a commodity in the market?—Yes; because I think its value is for that purpose only. I cannot foresee that its value would be for anything else but residence-sites.

162. Do you not think that the city is likely to grow?—Certainly.

163. Does the proximity of railways usually increase or decrease the value of land?—It does both.

164. Are you not aware that, if this line is to be constructed at all, there is to be a Parnell Station in the vicinity of this place?—I am not aware of any of the particulars of that.

165. Do you not know that from general knowledge?—It is very likely there would be.

166. There ought to be?—There ought to be.

167. Do you not know there was an agitation to get a station?—There was at Parnell.

168. Has the reclamation along the foreshore between old Fort Britomart and Freeman's Bay deteriorated the value of the adjacent lands?—No; but the reclamation between here and Mechanics' Bay has.

169. But that reclamation is not complete. The completed reclamation has not deteriorated the value: it has added to the value very considerably, has it not? Take the value of land along Customs and Fort Streets and in this neighbourhood: as a matter of fact, does not the Harbour Board derive an immense revenue from those endowments?—Yes.

170. Presuming the city extended in that direction, the land would be very considerably enhanced in value?—Yes; it ought to be. For business-sites it ought to be worth more than for residence-sites.

171. You say you think it is likely that 6 per cent. will be permanently obtained in Auckland—at all events, for forty-eight years: are you not aware that during the last two years interest has fallen?—Certainly.

172. From 2 to 3 per cent?—Two per cent.

173. And do you not know that a simultaneous fall, and to a greater degree, has taken place in the Australasian Colonies?—Money is always fluctuating.

174. Fallen, I am speaking of?—I do not know to what extent it has fallen there—scarcely so much, I think.

175. Do you not know that there are many investments where money is lent at 5 per cent. in consideration of getting real first-class security—freehold?—I think there are very few. I do not know of any.

176. I think it has been the practice, for the purpose of getting high interest, in Auckland, to lend considerably more than half the value of the land—in some instances two-thirds?—Between half and two-thirds.

177. Has that been a safe rule for investors—that in order to get high interest they should advance to that extent?—I do not think it is in order to get a high interest they advance to that extent, because there are many loans at one-half to two-thirds the value at the lowest rate, and they have proved very good securities.

178. But has it as a general rule proved a safe guide?—I think so.

179. Do you not know that during the last three or four years many properties have not realised the money advanced on them?—Yes; I know of a number of cases.

180. Do you not know that it has been the rule, where mortgagees have been forced to sell under their powers of sale, they have purchased in the properties themselves rather than let them go at the price offered?—Those cases are few in comparison to the number of mortgagees in question.

181. In comparison with the foreclosures?—During the last twelve months there has been no confidence whatever in land, and mortgagees have had to buy in; but that does not prove the land is not worth the money.

182. I presume trustees investing in freehold securities run some risk in investing that money that they will not realise their own money again?—They run the risk.

183. I think there are cases in which your Trustees have lost their money, or have had to buy in the land. I think we have knowledge of two cases very lately, where it was found impossible to get the amount which the Trustees had lent on the securities?—They did not realise the amount, although very nearly.

184. Do you consider that money is just as good a security as land—that is to say, that the interests of a person or institution are just as well safe-guarded by a grant of land as by a grant of money of equal value?—I think that money is the best income-producing grant, and if carefully managed would be the more profitable of the two.

185. If carefully managed, yes; but it is subject to more vicissitudes, is it not?—I scarcely think so. Land changes almost with the weather.

186. Do you not know that it has been the practice in the older countries of the world to endow institutions with land?—I know that by report, and I also know by report that many of

these institutions are languishing for want of funds. Farms, &c., have been thrown on their hands.

187. Could you give us any instances?—I have only in my mind a private case.

188. Take England for instance. Could you give an instance of an institution, a school, or company, or family, which have been endowed with lands either by the Sovereign or some other person, and where those lands have proved insufficient for the purpose of maintaining the prosperity of the institution or people?—I could mention the cases of two private families which came to my knowledge within the last few months, but I know of no public institution.

189. It has been the practice, I think, since the foundation of this colony for the Government to endow schools with land rather than with money-grants—schools and charities of all kinds.

Dr. Giles: I suppose that is because they had got the land and had not got the money.

190. *Mr. Napier*.] Such a thing as the unearned increment of money is not known—that is to say, money can only earn its interest?—That is all.

191. The influx of population does not tend to increase the value of money, but rather to diminish it?—I am not prepared to say.

192. There is no power given to Mr. Kissling or to the other Trustees to subdivide this land?—No.

193. Therefore Kissling's interest in the land would be greater if he had power to subdivide even at the present time for residential sites?—I suppose it would give him a little more value for his interest.

194. Would it not greatly enhance the value?—As a freehold, undoubtedly it would, but as a leasehold it would be very difficult indeed for him to sublet it and get tenants to build on it.

195. But as a freehold it would be of very much more value?—That is different.

196. Did the Trustees desire to sell this property before the Government entered upon that portion of it for the purpose of erecting these defence works?—No; they had no desire to sell.

197. Had they a desire to sell any of their trust properties?—Not that I am aware of.

198. Did they express any idea, either to Brewer or any other person, that they entertained such a desire?—I think not. I never heard of it.

199. This is a letter written by Mr. Brewer to the Under-Secretary for Public Works, Wellington: "November 21st, 1885.—C. Y. O'Connor, Under-Secretary for Public Works.—In answer to your telegram of the 19th instant, *re* land in the occupation of Mr. Kissling, Point Resolution.—Sir, —When the Hon. the Defence Minister was in Auckland Mr. Kissling went to him, taking a plan of his property, and explained everything. The claim made for Mr. Kissling was £2,500 for the piece to be taken, but this was understood to include the Church Trustees' interests as well. The property belongs to the latter, but is let on a long lease—forty years of which have yet to run—at a nominal rental. The Minister sent for me, and instructed me to settle for the property for less than the sum claimed, if possible, but to give more sooner than take the case to Court. I had several interviews with Mr. Kissling, but he would not take less. I discovered, however, that he was very anxious to get the freehold of the property. Now, the 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 demand 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 Mr. Kissling that he will give the Government £4,250 for the portion not required. The property is a very choice one; in fact, one of the prettiest spots in Auckland. There are many wealthy men here who would not consider the price if they could get such a place. If we took the case to Court we should certainly lose; so if I settle the matter on the proposed basis we shall be well out of an awkward claim. There is another small piece belonging to Dr. Philson. This is not settled for yet.—H. M. BREWER, Land-purchase Officer." You see there he alleges that the Trustees would like to sell. As far as you know, had Brewer any foundation for that allegation?—I think not. I never heard any wish expressed.

200. Do you remember sending by telegram a copy of the correspondence you had with Brewer to the Committee of the House of Representatives at Wellington?—Yes.

201. You also remember receiving a letter from Brewer, dated the 20th November, 1885—that is, one day before this letter was written to the Under-Secretary for Public Works?—Yes; I produced that letter last Friday.

202. This is the letter, I think. [Letter from Brewer to Trustees, dated the 20th November, 1885, read.] That was written on the 20th to you. Had you written any answer to that letter before he wrote the letter to Mr. O'Connor?—No.

203. You laid this before the Board?—Yes.

204. You see in that letter he heads it "*Re* land required for battery at Point Resolution," and he also alleges that the Government are going to take the whole of the property for that purpose?—Yes.

205. Did that letter convey the impression to the minds of the Board that the Government were going to take the whole of the property for defence purposes?—Yes; and that they wanted it.

206. You omitted from that telegram that material heading of Mr. Brewer's letter, "*Re* land required for battery at Point Resolution"?—That was omitted by accident. I gave the papers to the clerk to copy.

207. You stated that, in assessing the amount at £632, you proceeded on the same basis in making your calculations as you usually do in making calculations for compensation cases under "The Public Works Act, 1882"?—Yes.

208. Do you think, then, that it is a fair way of treating a permanent trust—assessing its future interests at the present value?—The only reason I did it was because, in one of the first cases there were, we appeared before the Supreme Court in a compensation case. We tried to prove that

land in a very short time would be very much more valuable than it was before; but the valuers were told that they were to state what the present market-value of that land was, allowing for any contingent damages done by the public work.

209. *Dr. Giles.*] Was that a lease?—No; a freehold.

210. *Mr. Napier.*] Of course you are aware that the present value must be taken into consideration when the Government are taking land under "The Public Works Act, 1882." Do you think that, proceeding on the same basis, in the case of a permanent security to a trust, is just to the trust in the case of a leasehold such as this was?—I think so, if you allow a liberal market-value, because forty-eight years is such a long time to look ahead to that it would be very hard to say what the value would be then.

211. It is estimated that the sum received will yield £6,000 at the end of forty-eight years?—Yes.

212. Do you think it is a likely thing that there would be no diminution of that income—that the whole of that £366 would accumulate to that extent? Do you think, in practice, that would be the result?—I think so, if a body of trustees received the money for that purpose.

213. Is not interest on money frequently lost for weeks, and the money waiting security perhaps?—Yes; but when you invest it you may get 7, $7\frac{1}{2}$, or 8 per cent. interest perhaps.

214. Do you think that is likely to be the future rate of interest?—I think it will vary from 6 per cent. to 8 per cent. I do not anticipate its being lower than 6 per cent.

215. Would you be surprised to hear that many skilled land-agents are prepared to state that, in their opinion, the interest on money is never likely to be again what it was—that there will be a permanent decrease—with the greater facilities of communication between England and New Zealand, and the greater solidarity of the Empire, there is likely to be a general fall in the value of money?—I have no doubt it will never reach the large figures of 8, 9, and 10 per cent. that could be got some years ago; but I do not see why it should not average 6 per cent.

216. You would be surprised to hear that some of the principal valuers in the city are of opinion that 6 per cent. will be the maximum interest which can be obtained in future?—I would not be surprised to hear that opinion.

217. You say that that was and is a favourite place of residence: have you noticed the expression in Mr. Brewer's letter to the effect that many men of wealth here would not consider the price at all if they could only get such a place? Do you think that is accurate?—I think those men have disappeared.

218. Do you think it was a fact, then, in 1885?—Prices were much better then than they are now.

219. As a matter of fact, would it not have elicited very keen competition at that time supposing it had been put up to auction?—It would; but it would never have reached the price which was given for it.

220. Were you aware of the provisions of the law with regard to the taking of land for public works in 1885, both before and after the Amendment Act of 1885 was passed?—In a general sort of way.

221. Did you know, for instance, this point: that, supposing the Government took a greater area of land than they ultimately found they required, the law said they were first to offer it back to the person from whom they took it?—I was not aware of that.

222. At a valuation to be made by an independent valuer?—I have never heard of that.

223. I suppose you did not know that the consequence of his refusal was that the land was to be put up to public auction?—No; I did not know that.

224. Supposing the Trustees had had the statutory power to sell at the end of 1885, say, or the beginning of 1886, and exercised that power, do not you think the land would have brought a greater sum than the Government paid for it, supposing the Trustees had had the power which the Government professed to have under "The Special Powers and Contracts Act, 1886"?—It was impossible to cut it up without removing the house and buildings and all the improvements. It could only be sold as a whole.

225. It is a wooden house, I think?—Yes.

226. I suppose in forty-eight years the house is not likely to be of very great value?—Very little, I think.

227. Under ordinary circumstances the timber would not last that time without rotting?—The chances are the timber would not last that time; but a house of less value would be erected, I think.

228. The fact that Mr. Heale erected a wooden house of greater value than was stipulated, seeing that it was a wooden house, it would not at the end of forty-eight years very much more benefit the Trust than if he had only carried out his covenant?—No.

229. As far as you know, would your Board have been prepared in 1885, at the time of this occurrence, to take for all their trust properties the then market-value of the land?—That question has never arisen, and I have never had an expression of opinion to be able to answer the question.

230. Speaking as a valuer and not as Secretary of the Board, would you consider that a just way of dealing with your trust?—I do not see any necessity for it. Circumstances might arise where it would be desirable. At that particular time there was no such talk, that I ever heard of.

231. Mr. Kissling, in a telegram to the Chairman of the Point Resolution Committee of the House of Representatives, alleges that you did know about the intention of the Government to transfer the freehold to his wife. Mr. Kissling, in a telegram of the 13th July, says: "The Trustees from the first declined to deal with Mrs. Kissling, and would only do so with Government. Whether Mr. Brewer acquainted them with the facts of my letter of the 20th November I do not know. I believe that they did know that proposal was that balance of the freehold was to be conveyed to Mrs. Kissling: it was no secret. Whether, however, they knew of offer to reimburse if they had to pay more than £632 for Trustees' interest I do not know." Do you say that is a fair statement of the facts? you have already told us that the Trustees and you did not know?—No; not at that time.

232. Kissling says you did know, and that it was no secret; but you still say that, until the resolution was passed accepting the £632, you were quite in ignorance?—All the Board had before it was two letters—the one from Mr. Kissling and the other from Mr. Brewer.

233. Do you state, as a matter of fact, that, as far as your knowledge goes, the Board did not know before they passed that resolution to accept the £632 that it was the intention of the Government to transfer the balance of the freehold to Mrs. Kissling?—As a matter of fact, I believe they did not know.

234. And you did not?—No.

235. If they had known that the Government did not, in fact, require the whole of the land they professed to take for defence purposes, would they have taken steps to get the balance of the land back for the Trust?—That I cannot tell you.

236. *Mr. Hesketh.*] Are we right in understanding that the great value of this property was its value as a marine site?—Undoubtedly.

237. I do not mean overlooking the water; it gives direct access to the water?—Yes; and over-looks the water as well.

238. At that time, was there any apprehension of the access to the water being taken away by this railway, or otherwise?—The question had been agitated in the papers for a loop-line, and opinions were conflicting as to whether it would go by Freeman's Bay or that way. I do not think there was anything decided.

239. Was the £632 accepted on the belief that the land would be taken once and for all from the Board?—Undoubtedly.

240. Was there, as far as you can tell us, any idea in the minds of the members of the Board that by accepting this £632 Mr. Kissling, or some particular person, would be benefited by it?—I think not.

241. You say you did not know of the existence of section 14 of "The Public Works Act, 1882," requiring the Government, if they had too much land, to offer it to the person from whom it was taken?—I was not aware of that.

242. After the passing of the Act of 1885, did the Board believe they were powerless to resist the Government?—Yes; that was quite the opinion of the Board.

243. As far as you can tell us, if any other portion of the Board's land had been taken in the same way and for the same purpose, would you have proceeded on the same basis in testing the amount of any offer that was made, irrespective of the parties for which it was taken or the persons affected by its being taken—would you have proceeded on the same basis?—I believe the Board would have proceeded on the same basis.

244. You were asked what would the Board have done if they had known of the existence of section 14 of the Act: do I understand that the idea never occurred to you because you were never aware of the provisions of the Act?—It never occurred in any way; I never thought of it.

245. Was such a subject ever discussed at any of the Board meetings to your knowledge as to whether you had the power to insist on the land being given back to you?—No; the question was never raised.

246. *Mr. Mahony.*] Supposing the land were sold, subject to Kissling's lease for forty-eight years, do you think it would not have brought any more than £632?—No; I do not think it would have brought as much as that in the open market.

247. So that it would not have brought as much as you got?—Yes.

248. If you had anticipated that a considerable portion of the land was to come back to you, would you have expected as much as £632?—Certainly not. We went on the assumption that the Government took it once and for all.

249. You spoke of the reclamation at Mechanics' Bay: do you not know, as a fact, that the reclamation towards Mechanics' Bay has been a decided deterioration of what were properties with riparian rights?—Undoubtedly.

250. Properties which twenty-five years ago were valuable for private residences are now seriously reduced in value?—Yes.

Mr. COCHRANE recalled.

251. *Dr. Giles.*] Were you asked at an earlier stage anything about an objection from the Board about the estate of the Board?—No.

252. There was an objection made?—Yes; but I think it was later.

253. It was referred by the Government to Mr. Seth Smith, Resident Magistrate?—That was later.

254. Do you remember when that was?—That was after the 18th February.

255. After all this matter was settled?—Yes; it related to another piece of land which was not leased, also the property of the Board.

256. That objection was founded on injury done to the whole of the Board's lessees—cutting off their approach to the water?—Yes.

257. What "taking" did that refer to?—That referred to the extreme point.

258. And the Proclamation took the land all in one?—Yes.

259. Was that objection made before the Proclamation was issued?—No; it was made on receipt of a copy of the Proclamation which was forwarded to the Board.

260. And why was that objection withdrawn: it was withdrawn, was it not?—Yes; because it was understood that compensation would be paid, and it was referred to the Assessment Court afterwards; at least, the case was started.

261. It has no immediate connection with this question?—None whatever.

262. I thought possibly the Trustees might like it to be mentioned, as showing they are not apathetic in looking after their trusts generally. I do not know that it is necessary to pursue that point. You say the objection was withdrawn because it was understood compensation would be

paid; that refers to some other compensation?—Yes; to another piece of land immediately alongside of this, and also to the deprivation of access.

Dr. Giles: That objection was in April, 1886.

THOMAS MACKAY further examined.

263. *Mr. Napier*.] You say, Mr. Mackay, that you consider the sum of £1,250 was sufficient for compensation for the land and for the consequential damages by reason of the battery being placed so near the house?—Yes.

264. You were under the impression at that time that a claim for consequential damages by reason of the proximity of the battery could be made?—Yes; so far as the injury to the ground. If you look at the Act of 1885 you will find there are certain damages excluded—that is, supposed to be damages—from firing or anything of that sort. My estimate was for what I considered would be consequential damages to the property as a residence.

265. By reason of the use of the battery?—Yes; by the curtailment of the place and the objectionable features of a battery.

266. The value of the land actually taken—that is one thing?—Yes.

267. You couple with that consequential damages by reason of the battery being placed so near the house, and the two things come to, by your estimate, £1,250?—Yes. I should explain with regard to this estimate of £1,250, it was made before the Act had passed in August, 1885, which defined what damages were to be considered in lands taken for defence purposes. So I had nothing to guide me except my experience of the working of the Public Works Act of 1882.

268. Then, you were not aware that under “The Public Works Act, 1885,” no such consequential damages could be claimed by reason of the proximity of the battery?—My estimate was made before that Act was passed.

269. Supposing that had been brought under your notice, would the amount which you then would have estimated as the value of that land have been less?—Yes; it would have been modified.

270. Very materially, I suppose?—I could not say. I was taken quite unawares with regard to this Commission being held here. I have no papers here. All I can speak of is from recollection. I have no papers here to guide me as to what were my calculations.

271. But, still, the firing of the artillery of a port would be a serious detriment to a residence?—Yes, certainly.

272. And you did take that element into consideration in fixing this £1,250?—Yes; my estimate was made a good many days before I knew anything about the Act.

273. Had you seen the Bill which was then before the House before it became an Act?—No.

274. Had you any knowledge of the contents of that Bill which was being passed through the House?—None whatever until it reached here, on the day of the sitting of the Court, and it was then telegraphed.

275. Seeing that the element of the proximity of the battery was such a large thing, could you give us any idea as to the proportion of the £1,250 that element constituted?—No.

276. But it would be a large proportion, I suppose?—It would be a reasonable proportion.

277. You say you had numerous conversations with Mr. Kissling and his solicitors?—Yes.

278. During any of those conversations did either Mr. Kissling or his solicitors mention anything to you as to Mr. or Mrs. Kissling being desirous to acquire the freehold of that land?—It never was broached.

279. When did you first hear of that desire of Mr. Kissling's?—I never knew that they expressed such a desire. I am not aware what led up to their getting the freehold.

280. Then, did you have no part whatever in the arrangements which were finally settled by the Special Powers and Contracts Act?—No part whatever.

281. *Dr. Giles*.] I should like to ask you, as a land-purchase officer, what would you think of the probable increase in value in forty-eight years of any of that land—that is to say, supposing £6,000 was fixed as the then value of the complete interest of the whole of that land? Would you consider that it ought to increase considerably in the course of forty-eight years, or not? Would you reckon on an increase in making an estimate?—That is, above the £6,000?

282. Yes?—Well, I am not of so sanguine a nature as a great many people here about the increased value of land in the future. I doubt whether it could be so very much more valuable than what it is—than £6,000—because there are a great many other places in competition with it; and I consider the battery, if it is left there—and I suppose it is a fixture for all time—I think it will always militate against the value of that place.

283. Is your opinion on that point modified by the state of things which has occurred since in Auckland?—Land values have depreciated very much since then.

284. At that time, do you think it would have been fair to estimate the then value as the same as the prospective value at the end of forty-eight years—that is, looking at things in the same light as they were then presented in 1885?—At the time I was pretty sceptical as regards the values of all the properties about here, and I think £6,000 was a very outside value.

285. For the then present value?—For that property, including both the interest of the trust as well as the leasehold interest.

286. And at that time you would not have thought it too small an estimate for the probable value of the land at the end of forty-eight years?—I certainly would never have recommended £6,000 at that time.

287. As the then present value?—As the then value of the two interests.

288. Supposing that was too much for that time, was it too much or too little to take as an estimate of the probable value at the end of forty-eight years?—I should say that £6,000 was a very fair, a liberal, estimate.

289. For the value at the end of the lease?—Yes.

290. Did you ever hear of the sum of £20,000 being estimated for it?—No; I should think that was an exaggerated idea.

Dr. Giles: That is a sum that has been mentioned in the papers before us—in the Public Works Office.

Rev. ROBERT BURROWS sworn and examined.

291. *Dr. Giles.*] You are a clergyman residing in Auckland, Mr. Burrows?—Yes.

292. You are a member of the General Trust Board?—Yes.

293. And were so in the year 1885, at the time this transaction took place?—Yes.

294. Do you remember what occurred at any meetings of the Board in connection with the taking of this land at Point Resolution, and the compensation to be given for it?—I do not remember any particulars, but we had a general discussion on the question at two meetings, I fancy. The first occasion was on receipt of Mr. Kissling's letter informing the Board what the Government were about to do—to take the whole of that block.

295. Do you recollect any particulars of the discussion that took place on that occasion?—There was nothing very particular then, because it was only information from an outsider—at least, so far as the Board was concerned.

296. Was it known or supposed at that time that the Government did not require the whole of the land—that they did not intend to keep the whole of it after they had got it?—Not that I am aware of. I have no knowledge of it.

297. And at a subsequent meeting the letter of Mr. Brewer was discussed, was it not?—Yes.

298. Naming the sum of £632?—Yes.

299. Can you say what turn the discussion took then?—It was just discussed, and, as Mr. Kissling has already said, the question of the Government having in the first instance given the land was considered, and it was thought it would not be desirable, even if we had any disposition ourselves, to be hard with them; but more especially we were of the opinion that the sum offered by the Government was a very fair one.

300. Did you go into the calculation yourself?—I did to some extent. I took the figures to the Board and put them on the table, but Mr. Upton had come very much better prepared than I was on the subject, and mine, I presume, were put aside.

301. Then I suppose the contents of Mr. Brewer's letter were known to the members of the Board before the meeting took place? Some of them came prepared with an opinion on the point?—Yes.

302. And you do not remember that any particular objection was made or opposition raised to the accepting of the terms offered?—I am not aware of any. I think we were unanimous, so far as my knowledge goes.

303. Can you say whether you had any knowledge of what was going on, outside the letter that the Board had received from Kissling and Brewer?—None whatever.

304. Nothing of any negotiations?—Nothing.

305. Nothing about the return of a portion of the land as a freehold to Kissling?—No.

306. *Mr. Hesketh.*] Were you present when the offer of £632 was accepted?—Yes.

307. At the time it was accepted, did you believe that the Government wanted the whole of the land for defence purposes?—We had already the letter in hand to say they wanted the whole.

308. Did you, individually, believe that the Government wanted all the land for defence purposes?—I thought they wanted it for public purposes, and that we were powerless in the matter.

309. Did you believe another thing at the same time, and that was, if they did not want it for defence purposes they could do what they liked with it?—I did.

310. Can you tell us whether your fellow-trustees thought so at the time the sum was accepted?—I think so.

311. Have you any reason to think they were under a different impression?—The only individual I remember who made some remarks was Mr. Pierce, but I do not think it was in direct opposition to the acceptance.

312. Had you any idea that the Board could stop the Government from taking any more of the land than they actually required?—No.

313. Had you any idea of this sort: that, if they did take more than they wanted, they were bound to offer the surplus back to the Trustees?—No; I had not.

314. *Mr. Mahony.*] That sum of £632 satisfied you and your co-trustees as a payment for parting with the land once and for ever?—I believe so.

315. Supposing you had been told that this land was to be conveyed in fee-simple to A, B, or C, or to Kissling, would it have affected your calculation in regard to the £632?—I think not. For this reason: I thought the Government could do what they liked.

316. In other words, that they could convey it to Mrs. Kissling or to anybody else?—That did not come into my mind. Inasmuch as they gave us the information that they wanted the whole they had to take the whole.

317. You said the sum of £632 was a satisfactory one for the whole of your interest?—I think so.

318. Supposing you had been told that, in time, the balance of that land not used for defence purposes would be conveyed to Mrs. Kissling at a price agreed upon between her and the Government, would that have affected you in demanding more than £632?—No, I think not.

319. *Dr. Giles.*] If you had known that Kissling, before he wrote to the Board on the subject, had made an arrangement with Brewer for the conveyance of the balance of the freehold to Mrs. Kissling, would that have made any difference in your acceptance of the terms offered?—I think it is very probable it would, if I had known; but, still, what was uppermost in my mind was that the

Government could do as they liked. They had given us notice of their intention to take the whole, and I thought then, as far as the Board was concerned, they had done with it.

320. *Mr. Napier.*] You said the fact was taken into consideration that the Government had given the land in the first instance—that that was taken into consideration by the Trustees in disposing them not to drive a hard bargain with the Government?—Not to allow it to go to arbitration.

321. Not to have any dispute or law proceedings?—Yes.

322. But if the Board had known that they were not, in fact, dealing with the Government, but that the compensation had to be paid by a private individual, would that element have been taken into consideration by them?—I think the Board does not know to the present time but what they dealt with the Government. They were dealing all along with the Government, and not with a private individual.

323. You do not yet know that Kissling entered into an arrangement with the Government whereby he was to pay the Trustees the compensation for their interest over and above £632?—I do not know it at the present moment.

324. That an arrangement was entered into, in fact, between Kissling and Brewer that if the Trustees did not accept £632—

Dr. Giles: The words in Mr. Kissling's letter are, "Should it be found in settling with the Trustees that the Government have to pay a larger sum than £632 for their freehold interest I undertake to reimburse them the excess."

325. *Mr. Napier.*] That was a letter from Kissling to Brewer?—I knew nothing about it. It was brought, I think, before the Board as a question as to whether we did know it or not; and the answer was that we knew nothing about it.

326. Did you not, as one of the Trustees, consider it at that time, and do you not still consider it, as part of your duty to preserve any landed endowments for the interests of those for whose benefit you are acting, without changing an imperishable thing like land into money?—It is my desire to preserve them all.

327. You consider that land is better security for an institution of that kind than money?—I do not say that; but, the Government having required the land for public purposes, I considered that the Trust had no alternative.

328. You, as a trustee, would not sell any portion of the lands which are held in trust, or part with them to a private individual, except for a public purpose, as you have mentioned?—I am not sure of that; it would depend upon circumstances.

329. If you had been aware that the Government did not require the land, and that Kissling was to get back 3 acres 2 roods, would you have parted with the land?—If the question had come before us I think I should have said, "Give it back to us."

330. It was because you thought you could not help yourselves, and because it was originally given by the Government, that you so readily accepted the £632?—I do not say that was the case. We felt that we had no power to sell: we have not sold; the land has been taken from us.

331. But, supposing you were aware that it could not have been taken from you—that the 3 acres 2 roods could not have been taken from you—and that it was to be given to Kissling, would you have willingly parted with it?—It having gone from us altogether—

332. It had not, at that time, and not for six months afterwards, until the Proclamation was issued. At the first meeting of the Board you were present?—Yes.

333. What would you have done at that meeting if you had known that the 3 acres 2 roods was not required for public purposes, and was going to Kissling, and that it could not be taken from you? Would you, as one of the Trustees, have taken any steps to retain that land?—I really do not know what we would have done.

334. Assuming you had then the information you have now, what would you have done?—I do not know.

335. Supposing the matter was now being decided, and that this was the first meeting of the Trustees, would you so willingly accept that sum on behalf of the children?—I should want to have all the circumstances before me before I could say.

336. I think you have those circumstances before you, have you not—some of them?—I have been in the habit now for many years of considering every subject which comes before me in all its bearings. Until I have done that I do not think I should be called upon to give an answer any further than this: that I do not know.

337. What I want to get at is, what the Trustees would have done if it had been known that this land was not required for public purposes. You have said you were under the impression that the whole of the land was required for public purposes. Supposing you knew that it was not, in fact, required for public purposes, would you have so readily accepted the £632?—I should have had to go, as I said before, into all the circumstances; and until I had done that then, and until I have done it now, I could not give an answer.

338. Have you not fully considered it?—No; for this reason: I think we had very little to do with it. The land was gone, and we had got the £632, and I thought, as far as we were concerned as trustees, we had done with it.

339. The land was not taken from you till May next year?—I considered the land was gone from us as soon as we accepted the £632.

340. You told us that what induced you to accept that £632 was that the land was required for public purposes, and that the land was originally given by the Government. Supposing you knew that the greater portion of the land was required for Mr. Kissling, would you then so readily have accepted the £632 as you did?—The probability is that the Trustees would not have accepted it at all.

341. They would have further considered the matter?—That is, if it had come before them as a thing they had any power over.

342. If they had known their powers, and had known all the facts, they would not have so hastily decided to accept Brewer's offer?—They might have reconsidered it.

343. You have told us that the Board had taken into consideration the fact that the land had come from the Government in the first instance: did they not also take into consideration that it was desirable to assist the Government in expediting the construction of this fortress? There was some talk of war at the time?—I do not think that was discussed at all.

344. Was it not taken into consideration?—Some individual members may have taken it into consideration.

345. Mr. Upton appears to have done so?—My impression was simply this: that the Government had the power to take it; they did take it.

346. When did you first ascertain that the Government did not require the whole of the land for defence purposes?—I saw it in the newspapers first, I think.

347. Was that before the money was paid over?—I think the money was not paid, but the negotiations had ceased.

348. The money was not paid?—The money was not paid for some nine months after, I think.

349. You knew before the money was paid that the Government did not require the whole of the land?—I think it is very likely I did. But the bargain was made, and the simple act was to receive the money. Our secretary was appointed to receive it.

350. Have you ever expressed at any meetings of the Board a desire to sell any portion of the estates of the Trust?—It has never entered into my mind, because we cannot sell.

351. Supposing you could, have you ever expressed any desire to do so? would you if you could?—Never.

352. Did you express any wish or desire to sell this particular piece of land, if you could, before this transaction?—No.

353. In a letter written by Brewer to the Under-Secretary for Public Works at Wellington in reference to this land he says, "Now, the Trustees cannot sell, although they would like to." Is that a fact?—Not as far as I am concerned.

354. As far as your knowledge goes, had any communication been made to Brewer by the Trustees or any of them that there was a desire to sell?—I am not aware of any such communication.

355. Mr. Kissling sent a telegram to Mr. Reeves, Chairman of the Committee of the House of Representatives appointed to inquire into this matter, and in that telegram Kissling says, "I believe that they (meaning the Board) did know that the proposal was that the balance of the freehold was to be conveyed to Mrs. Kissling. It was no secret." As far as you are concerned was that a fact?—I did not know it until I saw it in print.

356. *Mr. Hesketh.* Do we understand you rightly to say that you felt that the Government had the power to take this land, and that you must either submit or go to the Supreme Court?—Yes.

357. And the latter course you were not prepared to adopt?—No.

358. Was the idea of selling any of these lands ever entertained at the Board meeting?—Certainly never discussed.

359. If the Board had known that it could have resisted the Government in taking this land, do you think they would have resisted them?—I believe they would.

360. *Dr. Giles.* And if you had known at the time this arrangement was made between Brewer and Kissling I understand you to say that, although you cannot say what you would have done in that case, still you would have felt that the data on which you had to decide were altogether different?—That is what I mean.

THEOPHILUS KISSLING sworn and examined.

361. *Dr. Giles.* What are you, Mr. Kissling?—District Land Registrar.

362. You are brother of Mr. Schwartz Kissling, the lessee of this land?—I am.

363. You are also a member of the Trust Board?—I am.

364. Were you a member at the time this transaction took place—at the time the land was taken by the Government and paid for?—I was.

365. Were you present at the meeting where this subject was brought up and determined?—I was at two of the early meetings.

366. Can you state what took place at each of those meetings?—I may state, first, as regards myself, that I took no part whatever in them. That matter came up for discussion, but at this distance of time it is almost impossible for me to recollect what transpired.

367. Do you remember how it first came under the notice of the Board?—By a letter which was received from my brother, requesting them to name a price, or the mode by which they would arrive at the value of their land, as the Government contemplated taking the whole block.

368. That is the letter which has been read?—Yes.

369. You were present when that letter came?—I was.

370. Can you say what was the nature of the discussion that took place upon it?—A discussion arose as to the necessity for taking the land, and it was after that discussion that the resolution was worded in the form that it is—viz., "If it is intended to take the whole of the land," then they prefer that the Government should name the price.

371. And on the next occasion do you recollect in what form it came before the Board?—In the form of a letter, I think, from Mr. Brewer, Government Land Agent.

372. Fixing the amount of compensation that would be awarded by the Government?—Naming an amount, I think.

373. And upon that letter was there any special discussion?—The discussion took the turn that it was better for them to accept the money, inasmuch as it had been checked by one or two members of the Board, rather than go to the Supreme Court, as suggested by Brewer.

374. There was no division or voting upon that?—I do not think there was.

375. Can you say whether the general opinion was in favour of it, or whether there was any difference of opinion?—The Trustees, I think, after it had been checked, were satisfied with the amount; but they considered themselves powerless in the matter.

376. Not powerless as to the amount they were to receive?—As to the power of the Government.

377. As to the taking of the land?—Yes.

378. Can you say what members of the Board went into the calculation?—Mr. Upton, for one; and I think, likewise, Mr. Burrows.

379. Do you know whether it was mentioned at the Board that the lessee was to acquire the freehold? Was anything said about that?—I was under the impression that reference had been made to it, but, as the other members of the Board say it was not, I must have been mistaken in the matter. I was under the impression when the matter was raised a month or two back; but going over it at this distance of time it is quite impossible for me to say that such took place.

380. Is your own impression now that the Board were aware of that?—I thought that it was mentioned at the time, but they were unanimous against me that it was not. There were five of them. I must have been mistaken.

381. Did you know it?—I did know it to this extent: My brother had mentioned to me that the Government were going to take the whole of the land, but he was desirous of getting a portion of the freehold back. He was desirous of getting the value of the lessee's interest ascertained. I informed him that I could not or would not take any part in it, and referred him to the Trust Board; upon which he went to Mr. Upton, so he informed me.

382. Is that before he wrote the letter to the Board?—That I cannot tell you; at all events, if it was not before the first letter, it was before the second.

383. That is, before Mr. Brewer's letter to the Board?—Yes.

384. You believe that he called on Mr. Upton before Mr. Brewer's letter was written to the Board naming the sum?—I believe he did.

385. Did you go into the calculation at all?—I did not.

386. Are you aware of any expression of opinion on the part of the Board, or of any members of the Board, that the ultimate arrangement was not a fair one, or that the Trust had not been done justice to, or anything of that sort?—Not until the question was raised—last year, I think.

387. That is, raised in Parliament?—Yes, in Parliament, by Sir George Grey. Several members of the Board expressed their dissatisfaction at the land having been given back; not at the Board, but in conversation.

388. But they had known it long before that, had not they?—Yes, I think so. I should certainly say so.

389. I think you wrote to the Government on behalf of your brother, urging on the settlement of the matter, did you not?—Yes. That was after the Act had passed.

390. How was it you wrote for him?—He came and asked me why the grant had not issued, and I happened to know Mr. O'Connor, and I wrote to him; that was all.

391. Was there any reason for your writing rather than his writing himself?—No; he asked me if I would write.

392. Had it any connection with your position as District Land Registrar?—Yes; he wished to register a dealing.

393. That was after everything was settled excepting the payment of the money, was it not?—Yes.

394. *Mr. Napier.*] Then, I understand you to say that you did know at the first meeting of the Diocesan Trust Board that your brother wished to acquire the freehold of this land?—Yes; he mentioned to me that he wished to do so.

395. Did you also know that the Government land-purchase agent had been negotiating with him on that understanding?—No, I did not.

396. Did you know at the first meeting that the Government did not require the whole piece for defence purposes?—I knew at the first meeting that they were not in occupation of it.

397. That they did not, in fact, require it for defence purposes?—Yes.

398. The 19th November, 1885, was the date of the first time the subject was mentioned to the Board. You knew then that the Government did not require the whole of the land for defence purposes, and you knew your brother was desirous of getting the freehold of the major portion of the land?—My brother informed me that the Government contemplated taking the whole of the land, and he also informed me that he wished to obtain back a portion of the freehold. I then strongly urged him to take the compensation.

399. Did you not know that during the whole of that week prior to the 19th November, and one or two days subsequently, Brewer and he were having interviews on the basis of your brother getting the 3 acres 2 roods of the land?—I cannot say I recollect it.

400. Were you present at the meeting at which the letter was read from Mr. Brewer offering the £632?—Yes.

401. Did you hear that letter read?—I believe I did.

402. That letter was headed, "*Re* land required for battery at Point Resolution," and it then goes on to say that the Government required the whole of the land for defence purposes. Did what you heard from that letter lead you to change your opinion that the information from your brother was not accurate?—I understood that the Government were going to take the whole of it.

403. But you knew that they were not going to take the whole of it for defence purposes?—I understood that they had power to take the whole of it.

404. You are a barrister and solicitor, I think?—Yes.

405. You knew, I think, the provisions of the Public Works Act?—No, I did not.

406. The general powers of the Government under "The Public Works Act, 1882"?—I knew the power, of course, to take land.

407. And that land could only be taken for public works?—Yes; by Proclamation.

408. You knew that the Government were going to take the whole of this land, not, as Brewer says in his letter of the 20th November, for the battery at Point Resolution, but for the purpose of giving back to your brother 3 acres. 2 roods?—I understood they were going to take the whole of the land as the cheapest mode of settling the claims.

409. And of transferring a part of the land?—No; I knew nothing at the time beyond the wish of my brother.

410. Did you mention at the meeting that you thought Brewer was mistaken; that you had heard something different from the contents of this letter; that you understood the whole of the land was not required—only three-quarters of an acre? Did you convey to your co-trustees any idea that there was any inaccuracy in this letter of Brewer's?—No; I took no part in the meeting whatever.

411. I suppose you thought it your duty as one of the Trustees to safe-guard the interests of the Trust?—At the time I was of opinion that the Government had ample power to take the land under the Public Works Act.

412. You naturally considered it was your duty as a member of this Trust Board to protect the interests of the Trust, and that at that meeting it was your primary duty when that business was brought forward?—I took no part whatever in this business.

413. Supposing the person who was desirous of getting the balance of the freehold had not been your brother, would you not have considered it your duty to tell the Board that the Government did not require the whole of this land?—No; I do not know that I should.

414. Mr. Brewer was making an assertion to the Board which was not founded on fact—that the Government required the whole of this land for defence purposes; you had received some information that the Government did not require the whole of the land for defence purposes. Supposing the negotiations had been going on with a stranger, would you not have felt it your duty to mention at the Board meeting that the Government did not, in fact, require this land, and you could not understand the letter of Mr. Brewer stating that they did?—I might have done; I do not know that I should have done.

415. Do I understand you to mean that you took no part in the proceedings because Mr. Kissling was your brother?—Exactly.

416. If it had been a stranger you would have taken some part?—Yes.

417. Then, would you not have given this information to the Board if it had been a stranger?—It might possibly have come out; yes.

418. Do you think, if the Board had known at that time, as a matter of fact, of the compact which had been made between your brother and Mr. Brewer, that your brother should get back a portion of this land, would they so readily have accepted the £632 without further inquiry or consideration?—At the time, I think the Board were of opinion that the Government were all-powerful, and could have taken the land irrespective of who it went to.

419. Supposing the Board had known the land was not required to be taken at all for defence purposes—that the Government, in fact, only wanted three-quarters of an acre;—if the Board had known that at the time they received this letter from Brewer, would they have so readily passed the resolution to accept £632?—I think it was known by the members of the Board that only the part occupied by defence works was referred to.

420. And required?—I cannot tell you.

421. It is immaterial what is occupied. The whole of the three-quarters of an acre is not occupied now. If the Board had known that the amount of land required was only three-quarters of an acre, would they have so readily accepted £632?—I think they would.

422. If they had known all the facts as they know them now—that the Act of 1885 only authorised the Government to take what land was necessary for defence purposes?—I think it is quite possible they would act otherwise.

423. But you knew the Act of 1882 was just as limited in its terms?—I was not aware of it.

424. Did not you know that the Government could only take what land they required for such a work?—No.

425. Did you think "The Public Works Act, 1882," gave power to the Government to take land from a corporate body or an individual, and hand it over to another body or individual?—No; I thought they could take what land they required.

426. Did you know of the provision in the Act of 1882 that, if the Government by inadvertence or otherwise took more land than they actually required, they were bound to offer it to the person from whom the land was taken, who could repurchase it at a valuation, before they dealt with it in any other way?—No; at that time I was not aware of that.

427. The members of the Board, I suppose, were not aware they possessed that right?—No; they were not aware.

428. I think you heard me reading a letter from Mr. Brewer to Mr. C. Y. O'Connor, Under-Secretary for Public Works, in which Mr. Brewer makes this statement: "Now the Trustees cannot sell, although they would like to": was that a fact?—No.

429. To your knowledge, had any communication of any kind, written or verbal, been made to Mr. Brewer to justify him in making that statement?—Not that I am aware of.

430. I think about this time there was what is known as a war scare on?—Yes.

431. Military preparations were being made throughout the colony; Volunteer companies were being formed?—Yes.

432. I will just read you what Mr. Upton's opinion was at the date of the meeting when the resolution was passed to accept the £632. Mr. Upton will probably be called, but I think this

pretty fairly expresses his opinion. This was published in the newspapers: "In coming to this decision—that is, to accept the £632—the Board acts upon this principle: We are the custodians of a piece of property given by the Government in times past for a public purpose. We hear that a great public emergency has arisen which renders it desirable that the Government should resume this land; therefore it would not be proper for men in our position to place any impediment in the way of an undertaking designed for the welfare and safety of the people at large." Was that pretty generally the opinion that was entertained by the members of the Board at that meeting?—I think it was.

433. Mr. Upton goes on to say: "I think that the Government have committed a wrong in depriving the Trust Board of its endowment, and then selling the greater part of it afterwards to the Trustees' own tenant. In a time of great public excitement they used the machinery of the law for the purpose of obtaining possession of a valuable endowment, and then they get an Act of Parliament passed to enable them to sell to the tenant the land which he had formerly rented. That is where the wrong was. The duty of the Government was, when they found that they did not require all this land for defence purposes, either to have offered it back to the Trustees at the same price they paid for it or to have sold a lease of it by public auction." Was that the opinion of the Trustees also?—I do not know. It has never been discussed.

434. In the light of that information, do you say that if the Trust Board had known that this 3½ acres was not required for defence purposes, and was about to be transferred back immediately afterwards to your brother, they would have consented, without further consideration, to take that £632?—I do not know that they would.

435. I mean there was some element of public spirit in the matter, or patriotism, if we may call it so, in not driving too hard a bargain against the Government?—There was certainly a desire not to drive a hard bargain.

436. You state that the Trustees considered themselves powerless and the Government all powerful in the matter. Then, the Trustees at the time they accepted the £632 did not know of the provisions of the Act—first, of getting offered back that portion of the land which the Government did not require; and secondly, the further provision that the land was to be put up to public auction?—No.

437. Did you know, as a matter of fact, at that meeting that any compact or arrangement had been made between Mr. Brewer and your brother?—I did not.

438. *Dr. Giles.*] Can you say when you first did know that?—No; I cannot.

439. *Mr. Napier.*] Did you know at the second meeting?—No; I did not—that is, to the best of my recollection.

440. *Dr. Giles.*] You wrote to Mr. O'Connor, asking him to facilitate the matter, on the 10th December (just a week after the Board passed their resolution), to this effect: "Dear Mr. O'Connor,—The Government has, under the Public Works Act, taken the whole of my brother's property at Point Resolution, but as only a portion is required for defence purposes it has been arranged that the part not required by the Government shall be granted in fee simple to him. As the matter has been pending for some time, my brother is naturally anxious to have it settled, and I would feel obliged if you would kindly expedite the final settlement"?—Well, I must have known of it then.

441. *Mr. Napier.*] So that you did know within a few days of the first meeting that Brewer had an arrangement with your brother?—Yes.

Dr. Giles: The first meeting was held on the 19th November.

442. *Mr. Napier.*] Did you know the day after the first meeting of the arrangement?—I cannot call to recollection at all. I do not think I knew it until long afterwards. I think it was after the second meeting I must have heard of it.

443. Did you not know of the condition that if the Trustees would not accept £632 that your brother bound himself to pay them the excess over and above the £632, and not the Government?—I did not.

444. When did you ascertain that?—It was comparatively recently.

445. Did you not know the whole of the terms of the compact before the 7th December?—No; I did not.

446. You only knew the portion you mentioned: but that is an important term in the arrangement?—I had nothing whatever to do with the arrangement.

447. Your brother did not mention that element?—No.

448. If the Trustees had known that, in not accepting the £632, and trying to make a better bargain, they were not dealing with the Government, representing the public, and taking the land for a public purpose, but with your brother, would they have so readily accepted the £632?—No; I think they would only have accepted the £632 from the Government under the circumstances.

449. Thinking it was the Government they were dealing with, in fact?—Yes.

450. Mr. G. S. Kissling sent a telegram to Mr. Reeves, Chairman of the Land-purchase Committee, at Wellington, on the 13th July of this year, in which he says: "Trustees from the first declined to deal with Mrs. Kissling, and would only do so with Government. Whether Mr. Brewer acquainted them with the facts of my letter of 20th November I do not know. I believe that they did know that proposal was that balance of the freehold was to be conveyed to Mrs. Kissling; it was no secret." Was that a fact?—The Trustees have since declared that they did not know at that meeting.

451. *Mr. Hesketh.*] About this impression you were under that the Government were all powerful: are we to understand that you—speaking for yourself first—that you thought the Government could take the land and do what they liked with it?—Yes.

452. That they were not under any obligation to return it in case there was an excess?—And they were taking it to avoid the excessive claims for severance.

453. Can you tell us how long you remained under that impression?—For some months. For this reason: I never looked into it.
454. Nothing occurred to your mind to suggest looking into the law?—No.
455. You thought the matter was clear—that the Government could take the land and do with it what they pleased?—Yes.
456. Can you tell us what is your belief as to the knowledge of your brother-trustees on that point?—They knew less than I did.
457. They were quite under the same impression?—Yes.
458. It was owing to the relationship between your brother and yourself: that was the reason why you studiously avoided taking any part in the meeting?—Yes.
459. Mr. Napier has asked you why you did not feel it your duty to communicate to your co-trustees that your brother was going to get a part of the land back: you did not conceive it to be wrong for the Government to give a portion back?—I did not, at that time.
460. Once the Government took the land and paid the compensation they were masters of the situation?—Yes; I was under the impression at that time.
461. Am I right in concluding that, if you did not take any part in the discussion, you did not take any part in suggesting the offer of £632?—I did not.
462. *Mr. Mahony.*] You have been a member of the Board for some time?—Yes.
463. You have been a regular attendant at the meetings?—I have.
464. So that it was nothing extraordinary for you to be present at that meeting?—No.
465. Were you sitting there as a Trustee satisfied with the impression your co-trustees had come to—that that £632 amply repaid the trust?—It certainly was the impression on my mind.
466. Being satisfied of that, did it concern you to whom the balance of the land went?—No, it did not.
467. I suppose in your position there as a Trustee that day you were taking just as lively an interest as usual in conserving the trust?—In other matters. I took no part in this.
468. The fact of anything your brother had said to you did not affect you, otherwise than to make you a passive member of the Board?—No.
469. And I presume you did that so that nothing could be urged against you by outside persons?—Yes.
470. You took special care for that purpose?—Yes.
471. It was a good many months after when you and your co-trustees signed a receipt for the money?—Yes.
472. There was ample opportunity for the Trustees to have inquired into the matter?—Yes; nearly twelve months, I think.
473. Was the reason of that that they were satisfied with the arrangement made with the Government?—There was no expression of dissatisfaction at the meeting.
474. *Dr. Giles.*] Are we to understand that you have not formed any opinion or estimate of the value of this reversion to the Trustees?—None whatever.

JAMES DACRE sworn and examined.

475. *Dr. Giles.*] You reside in Auckland, Mr. Dacre?—I do.
476. And you are a member of the General Trust Board?—Yes.
477. You remember the transaction in 1885 connected with land taken by the Government from Mrs. Kissling's lease?—I do.
478. You have heard the evidence given already: can you state shortly what you recollect of what was done at the Board—what discussions took place and what knowledge the Board had?—The first official intimation we had was a letter from Kissling, and after discussing the matter we decided that it would be better for us to deal with the Government. Then the offer of £6,000 was made.
479. What do you mean by the offer of £6,000?—The £6,000 compensation was fixed as a basis.
480. How did that come before the Board?—The offer of £632 was made on the basis of £6,000, and after it was checked we agreed to take it.
481. Brewer's letter stating that that sum was fixed by the Government did not state anything about £6,000, did it?—We knew what the offer was.
482. Did you go into the calculation?—I calculated it.
483. And you made that sum right—£632?—Taking the £6,000 as a starting-point we could get no other conclusion, unless we altered the rate of interest.
484. You were satisfied with the estimate of £6,000?—Yes; I think it was a good price.
485. Do you mean then or at the end of forty-eight years?—At that time.
486. But in calculating your £662, or, at all events, that portion of it which represented the reversion, £6,000 was taken as the value at the end of the term?—But we were bound to the then value, not the prospective value.
487. Why?—The place being worth £6,000 at that time. It was hard to say what it would be worth forty-eight years after. It might be blown up.
488. How do you mean that you were bound to the present value? Your interest was the reversion at the end of forty-eight years?—We were supposed to take the place at what it was worth then.
489. Why?—It has been settled in the Supreme Court, I believe.
490. In the case of freeholds, but not in the case of terms of years expiring at a definite time, has it?—We started at the basis of £6,000, and we agreed that £632 was the sum.
491. Then, you appear to have thought that you were precluded from considering at what the total value of the freeholds might be at the end of the term?—I thought so.
492. If you had considered yourself free to take that into account, can you say at all what

estimate you would have made?—It is very hard to say what it would be worth in forty-eight years. It might fall into the sea.

493. Then, you ignored that part of the consideration altogether?—Yes.

494. Do you think 6 per cent. a fair basis to go on?—I think 6 per cent. will work out all right.

495. You think the money would produce that during the next forty-eight years?—Yes.

496. Had you any knowledge at that time of any arrangement outside the letters which had been put before you about the reconveyance of the freehold?—I never heard of it.

497. When did you first hear of it?—Some time afterwards. I heard it in the street. I could not say when. It was after the thing was settled.

498. It was never mentioned at the Board?—No.

499. Had you known that at the Board meeting it would have altered your view of the case?—I might have objected to the arrangement perhaps. It would not have altered the actual value, because it was purely a matter of figures.

500. Do you consider the Board wronged by not having the offer of the land back if the Government did not want it?—I certainly think they might have had the offer.

501. From whom did you hear about the £6,000—that that was the basis of the calculations?—I really could not tell you.

502. Some of the members of the Board made the calculation, and came to the meeting of the Board prepared with it, did they not?—I think so.

503. The contents of Brewer's letter must have been known to some members of the Board before the meeting?—I think I knew of it.

504. His letter does not mention £6,000: do you know how that came to your knowledge?—I could not say.

505. It must have been outside, somehow, I suppose?—I really forget now how I heard it.

506. *Mr. Hesketh.*] You say that you understood at the time you were calculating the value that you were precluded from considering the prospective value?—I did.

507. What was your reason?—I thought it was the law laid down in cases of compensation that you took the then actual value.

508. You understood that to be a standard that had been laid down?—Yes.

509. You mean, you understood that evidence of prospective value of property would not be allowed?—I did.

510. Suppose that you had been under the impression that prospective value would be allowed, are we to understand that you would have put an increased price on?—I do not know that I would. It would be very hard to fix it in any way.

511. You mean, to have looked into the future forty-eight years?—In the ordinary course of events it would have been very much enhanced in value.

512. You were here when the Rev. Mr. Burrows and Mr. Kissling were examined?—Yes.

513. Do you agree with them that, as far as you know, the Board were not aware that the Government could not be resisted in taking this land?—That was the feeling at the meeting—that the Government gave us the land and could take it away again.

514. Did you believe the Government could not be resisted in taking the land?—I did.

515. Did you know at that time that the Government were bound to return the excess to the Board?—No.

516. *Dr. Giles.*] You did not know they had taken more than they wanted?—No; it was a matter of surprise to me that they should have taken so much land.

517. Speaking of the feeling of the Board generally, can you tell us if the Board had known that they could have resisted the Government in the taking, do you think they would have done it?—The Board objected to the land being taken. They were not willing that the land should be taken. It was taken against their wish; but, still, we considered the compensation to be fair.

518. But considering the compensation was fair, and believing the Government had the power to do what they had expressed their intention to do, the Board consented. If the Board had known that, they could have resisted the Government?—I believe they would.

519. *Mr. Mahony.*] You said you proceeded on the basis of £6,000. Some of the members of the Board seem to have come with this fixed in their minds: can you account for that—how it was there seemed to be an accord between them on the subject?—I said I did.

520. You cannot say whether any of the others did?—No.

521. Are you one of those to whom Mr. Cochrane referred when he said that some of the Trustees made the calculation then?—I made a calculation. I got a book on purpose to do it.

522. Do you remember whether Mr. Upton did, or any of the others?—Mr. Upton did.

523. Can you say whether he considered the same figures in his calculation?—I do not know.

524. You say the £632 was satisfactory to you as full compensation for the Trustees' interest in the whole of the land being taken?—I think the compensation was fair.

525. Did it concern you to whom the land went once you were paid the full compensation?—There was no other idea in my mind at the time except that the Government wanted the whole of it.

526. Looking at past and present experience, and considering the restrictions placed on the land, do you not consider that £6,000 is likely to be the fair value of that land when the reversion would have fallen in?—I could not say.

527. Do you not think £6,000 would be a fair sum? you know it is all Church property?—But there are no restrictions, as far as I can see.

528. There are restrictions as to private residences: there must be a minimum amount spent on them: there must be only one building on each lot, and so on?—All that might be changed in forty-eight years.

529. It comes to this: You could not speak as to what might be the value then?—Yes.

530. *Mr. Napier.*] I think there are no restrictions except the inability to sell, by the grant?—We have no power to sell, and we did not sell.

531. *Mr. Mahony.*] The whole of that is leasehold property, and it is and has been the practice to restrict the number of buildings, and so on, assuming that these restrictions would be continued as they have existed in the past?—I do not think I should be called upon to give an opinion upon that.

532. *Mr. Napier.*] You said that in the ordinary course of events the land ought to be very much enhanced in value forty-eight years hence?—I hope so.

533. As a land valuator, that is your opinion—that is, eliminating the slipping into the sea, or the occurrence of a volcano?—If things go on prosperously it ought to be much enhanced in value.

534. It has increased in the last forty years?—Yes.

535. The £266 which has been mentioned was the rental, and the other proportion, £366, represents the present value of £6,000 payable forty-eight years hence?—Yes.

536. Assuming that the land was worth £6,000 in 1885, taking your last answer into consideration, that forty-eight years hence the land would be very much enhanced in value, do you think the present value of £6,000 was a fair reimbursement to the Trust for the land of which it was deprived?—I think £632 was a fair valuation.

537. You say that a present payment of £366 would be the present value of £6,000 due forty-eight years hence: if the land will be worth, say, £12,000 forty-eight years hence, do you consider that a present payment of £366 an adequate payment for the freehold reversion?—I thought it was fair at the time, and I think so now.

538. Eliminating all improbable occurrences, and assuming that you could take into consideration the value of this land forty-eight years hence: supposing you could have done that, would you then have considered that £366 was an adequate payment for the land?—If we had had to take into consideration what the value of the land was forty-eight years hence the matter would not have been settled to this day, because nobody could say that.

539. I want to know whether you consider that the interests of those children on whose behalf that land was granted would be just as well preserved by taking £366 for the freehold of that land, which may be worth £12,000 or £15,000 forty-eight years hence: do you think their interests are just as well preserved by the present money-payment?—I do, taking all things into consideration.

540. You have said that in the ordinary course of events the land ought to be very much enhanced in value in forty-eight years' time: assuming that it doubles itself, and will be worth £12,000 in forty-eight years, do you consider that an extravagant estimate—taking the past history of this district and this city, do you consider that an extravagant estimate, if the city grows?—It ought to be worth £12,000 if things go on.

541. Taking the answer which you have just given as being correct, and assuming that the Trustees had the power to sell forty-eight years hence, they could put that property into the market and get £12,000 for it?—No.

542. That follows legitimately from your answer?—I do not believe you would.

543. You think the land ought to be, and probably will be, worth £12,000 forty-eight years hence?—It ought to be.

544. Assuming that your answer is correct, and that it will be worth that, does it not necessarily follow that they will be able to get £12,000 for it forty-eight years hence—that is, assuming they have the power to sell?—I considered the land to be worth £6,000 at the time it was taken, and I always understood we could not put any prospective value on it, but that we were to take the then value.

545. I am aware of that; but you say it would probably be worth £12,000 in the ordinary course of events forty-eight years hence?—I have nothing at all to do with that. I simply say, I thought—

546. I want your opinion as an expert. You are a land valuer. You have already given us the opinion. I only want you to draw the necessary inference from your own answer. You have already told us that the land will most probably be worth £12,000 forty-eight years from 1885: you adhere to that statement, do you not?—In all probability it ought to be worth that.

547. Very well. We are only taking probabilities. That means that the Board of Trustees, then, existing forty-eight years hence could get £12,000 for it?—Yes.

548. Therefore, the Trustees existing forty-eight years hence would have £12,000 in money, assuming they had the power to sell, and exercised that power?—That is so; but you are assuming that we sold the land. We did not.

549. From those answers, I want to know whether this is not a legitimate inference: you have assessed the value of the interest of the orphans in this land—the present value—as £366, that being the value of £6,000, payable forty-eight years hence?—Yes.

550. Now, according to the probabilities of the case which you have just stated, the Board, instead of having £6,000, probably would have £12,000 forty-eight years hence?—Yes.

551. Put those two things together: do you think the trust has been benefited by this transaction in which they take £366 for £6,000, payable forty-eight years hence, whereas, as a matter of almost certainty, the amount payable forty-eight years hence will be £12,000?—That is all very well; but you seem to forget the fact that the land was taken from us. We never consented to sell at all.

552. *Dr. Giles.*] That has nothing to do with the question of value?—No.

553. *Mr. Napier.*] You say, in all human probability—eliminating those extraordinary occurrences which have been mentioned—the Trustees existing forty-eight years hence would be enabled to devote to the purposes of their trust a capital sum of £12,000 because of the enhanced value of this land. And you say, further, you calculated the interests of the Trustees was £366, assuming that only £6,000 was to be paid forty-eight years hence; but from the probabilities of the case the

Trustees would not have £6,000 to deal with forty-eight years hence, but £12,000. Do you, therefore, consider that the permanent interests of this trust have been conserved and benefited by the transaction?—They have not been conserved and benefited by the transaction, but the Trustees had nothing at all to do with it.

554. I am not imputing blame against the Trustees?—That is what you are trying to get at.

555. I think the blame rests on other shoulders, as probably the inquiry later on will disclose. Did you ever express any desire at any meetings or to any person that you or any member of the Board desired to sell this property?—It never was mentioned at any meeting I was at.

556. Or outside?—We have no desire to sell.

557. Did you express a desire to sell if you had the power?—Never.

558. Mr. Brewer wrote a letter, under date the 20th November, 1885, to the Under-Secretary for Public Works, Wellington, in reference to this matter, stating his negotiations with Kissling and with the Board, and he makes this statement for the purpose, apparently, of inducing the Government to consent to the compact he had made with Kissling. In that letter he says: "Now the Trustees cannot sell, although they would like to." Is that true?—Mr. Brewer must have been under some misapprehension, because the Board never were anxious to sell.

559. To your knowledge, was any communication made from the Board, or on behalf of the Board, to Brewer which would be a justification for that statement?—Not to my knowledge.

560. You said, in answer to Mr. Hesketh, that the land was taken against the wish of the Board?—Certainly it was.

561. Now, supposing the Board had known that this land was not required for defence purposes at all, but that the greater portion of it was taken for the purpose of being immediately conveyed to Mrs. Kissling, would the Board have accepted that £632 so readily, and without endeavouring to retain the land which was not required by the Government?—Speaking for myself, I should certainly have thought the Government ought to have given us the offer of it first.

562. Speaking for yourself, would you have proposed any steps, or would you have endeavoured to resist the Government, if you knew that you could?—We could not prevent the Government taking the land from us.

563. Supposing you knew that the Government were not taking it for a fort, but were taking it unlawfully, and for the purpose of giving it to a private person, would you have endeavoured to retain the land rather than take the money consideration for it?—I think so.

564. Were you present at a meeting of the Board at which the following letter was read from Mr. Brewer: "20th November, 1886.—*Re* land required for battery at Point Resolution: I am directed by the Hon. the Defence Minister to state that it is proposed to take the whole of the land at present in the occupation of Mr. G. S. Kissling. The land being let for such a long term to that gentleman at a nominal rental the principal part of the compensation will be awarded him. As, however, the Government wish your Board to be treated with every consideration, I am requested to state that the sum of £632 will be awarded for your interest. Will you please let me know at your earliest convenience if you accept this offer, so that arrangements can be made for paying over the money. If you do not accept it the case will have to go to the Supreme Court." Were you present when that letter was read?—I believe I was. I remember the letter.

565. Were you led to believe by that letter that the whole of the land was to be taken by the Government for defence purposes?—Yes.

566. Was the whole Board under that impression after that letter was read?—Speaking from memory, I think they were. I know I was.

567. You say it was a matter of surprise to you to hear that the Government did not require the whole of the land: when did you first hear that they did not require the whole of the land for defence purposes?—I could not say; I heard it in the street some time afterwards. It was after the second meeting. It was before the money was paid over, but after the agreement was entered into.

568. You say it was a matter of surprise?—I was surprised.

569. Were you not indignant also that this material fact was concealed from the Board?—I do not remember now.

570. Did you think it was wrong that a person representing the Government should make a secret compact to hand over the freehold of the property to a private person without making the Board acquainted with it?—I did not know it was a secret compact.

571. Did you or any member of the Board know?—As far as the Board was concerned, they did not hear of it, but that does not say it was secret.

572. It was secret as far as they were concerned. Did you not think it wrong that that fact was not disclosed to the Board?—I thought that the offer should have been made to the Board first.

573. Was there any comment made at any of the meetings, or was it proposed to take any steps to retain the land which the Government did not require, and which it was proposed to hand over to Mrs. Kissling?—There were no steps taken.

574. Did the members of the Board express a desire to take any steps to recover the land?—It might have been mentioned, just in the way of conversation. Of course, they think differently now, after all the fuss has been made about it, than they did then. The thing was done. The land was taken.

575. Do you think the Board was treated in a frank, fair, and candid way about the negotiations Brewer had entered into with Kissling—the arrangement, in fact, he had made at that time with Kissling—do you think it was improper to have concealed that from the Board?—As far as I can see, it was not concealed by Brewer. Mr. Mackay seems to have proposed that the whole of it should be taken.

Dr. Giles: But not with the view of reconveying.

576. *Mr. Napier.*] Do you think the Board were treated fairly in having the information I have referred to withheld from them?—The only unfairness I see is that the Board were not allowed the option of having the land back again that was not wanted.

577. What I mean is this: Supposing Brewer's letter had stated the whole of the facts, instead of having written those very philanthropic phrases about the Government's intention of treating the Board with very great consideration—supposing that he had disclosed the whole of the facts, and had told you that the land was not required for a battery at all, that only three-quarters of an acre was so required, and that the Government were going to give $3\frac{1}{2}$ acres to Mrs. Kissling and £1,150, and that they had arranged all that, would the Board have treated the matter in the same way as they did, seeing that all those facts were withheld from them?—I do not see that the Board could have acted any differently, because the land had been taken by compulsion.

578. The land was not taken for some months after that?—They were in possession though.

579. On the 20th November, 1885, the letter was sent to the Board which I have read to you, and on the 21st—that is, the day after—Mr. Brewer wrote to the Government telling them that the Trustees desired to sell, but they could not, which was, of course, incorrect, and on that day, the 20th, a letter was written to the Board, and it was considered at the first meeting after the letter was sent. Supposing that the whole of the facts which the Board now know were then within the knowledge of the Board, would you, as an individual member of the Board, have consented to the matter being arranged in the way it was?—I do not think I would.

TUESDAY, 9TH OCTOBER, 1888.

JOHN HENRY UPTON sworn and examined.

580. *Dr. Giles.*] You are a member of the Church of England General Trust Board, Mr. Upton?—Yes.

581. Were you so in the year 1885?—Yes.

582. And since, up to the present time?—Yes.

583. You recollect the taking of land at Point Resolution, then in the occupation of Mr. Kissling?—Yes.

584. And certain compensation being awarded and paid by the Government to the Board for it?—Yes.

585. I think the best way is to be kind enough to give us a short statement of the history of the matter as far as you know—how it first came before the Board, and what was done upon it?—The first letter was from Kissling, in which he stated the fact, and asked the Board in what way they would like to have the compensation ascertained.

586. The fact you mentioned was, I think, that the Government were going to take the whole instead of part?—No; that is another thing I will tell you presently. The letter of Kissling was that the Government were taking the land, and he asked the Trust Board in what way they would like the compensation ascertained. A general discussion took place in the meeting of the Trust Board on this question, and the result of that general discussion was that a resolution was passed by them in which they stated to Kissling that if the Government proposed to take this land the members of the Board preferred that the value of it should be ascertained by the Government Valuator; and I think that is really all that took place on the subject of that letter. Subsequently to that a letter came to the Trust Board—I think, a fortnight later, it may have been more or less—from Mr. Brewer, the Government Valuator, in which he assessed the value of the Trust Board's interest at £632. This the Board believed to be a reasonable sum, and they accepted it. That really is all that the Board had to do in the matter. I saw a letter containing a valuation—either Kissling showed it to me or it was at the Board meeting—by Mr. Waymouth. I think Waymouth, in that letter to Kissling—a letter which had nothing whatever to do with the members of the Board—had made for Kissling, or for some one else, probably Kissling, a valuation, in which he set out that, in his opinion, the value was so-and-so—what it was—and in that letter, I think, he suggested to Kissling that he should settle the claim of the Trust Board, and that the Government should deal alone with him. That is really, I think, all I know about it.

587. Did you understand that letter from Waymouth to have been written before Kissling wrote to the Board?—I could not say. I had forgotten the existence of the letter until the other day, when Mr. Theophilus Kissling showed it to me. I should imagine from the letter that Mr. Kissling, when the Government proceeded to take his land, had decided what he thought was a fair value for it, and had then gone to a competent accountant to ascertain in what way the different interests should be ascertained, and how allocated.

588. Was it between the two meetings of the Board you heard that about the matter?—I am not sure. The first valuation I heard of was from Cochrane. Of course, I am not speaking now of what took place at the Trust Board. Cochrane came to me and told me that the Government had entered on Kissling's land, and proposed to take it, and then told me what value had been fixed for it, and also the basis of the allocation of the interests, which amount much astonished me at the time.

589. Can you tell us something about that?—About the basis that was taken? I could if I knew what it was you wanted to know.

590. Can you tell us what basis was taken for the estimate of £632?—Yes; the total value of the land was held to be £6,000. Who estimated it at that value I do not know.

591. You do not know whether that was Waymouth's?—I do not see why it should be. Probably it was Kissling's, the owner of the lease. He would say, "I will go out of this if you give me £6,000."

592. You spoke of Waymouth giving an estimate?—It was simply an allocation. The valuation of an interest is a different thing from the valuation of a piece of land.

593. Did not Waymouth go into that?—Not that I am aware of.

594. Did not Waymouth's letter contain the estimate of £632?—Yes; but not of £6,000.

595. You know the way that £632 was arrived at from the basis of £6,000?—Yes; I am about to say that the valuation of the freehold as it stood was made at £6,000.

596. Do you know where that valuation first came from?—The £6,000? I do not know, but I should presume from the person who occupied the land.

597. At all events, it was assumed by Waymouth as the basis?—In a certain sense. [Mr. Mahony handed witness Mr. Waymouth's letter.] Yes, this is it. This letter is as follows: "17, Sheriff's Buildings, 23rd September, 1885.—G. S. Kissling, Esq.—Dear Sir,—*Re* adjustment of value of lease of land at Parnell recently taken by the Government, the value of money being at 6 per centum per annum: The view I take of the matter is, that you purchase the land of the Trustees for £6,000, and that the Government have to pay you (exclusive of difference of value by reason of its position) for their one-fourth thereof—namely, £1,500. Then you pay the Trustees the present value of £17 per annum for forty-eight [*sic*] = £266, and the present value of the purchase-money (£6,000) at the date of the expiry of your lease—namely, forty-eight years = $\frac{£366}{632}$. This is

the simplest method of settlement.—Yours truly, J. WAYMOUTH." That is the allocation of the interests. He proposes that the tenant should extinguish the interest of the freeholder, and then himself deal with the Government. I entirely differed from that view, and do so now. I think the proper course would have been for the Government to deal with the freehold and allow him to extinguish the tenant's interest—an exactly opposite course. I recollect saying that when I saw the letter. As for the question you asked me about these two interests, that is a very simple matter indeed. The question really is, Is Waymouth's valuation a true basis for a valuation of this kind? I think it is. I think it is not impugnable. I do not think you could possibly attack it. It is perfectly sound in principle, and after the principle is settled it is a mere matter of tables to ascertain whether the amount is right.

598. That is supposing £6,000 is the right sum to begin with and 6 per cent. the right rate of interest?—Yes.

599. Can you tell us now whether that proposal or the substance of it came before the Board in any way—that is to say, whether it was known to the Board that it was proposed that Kissling should deal with the Government only?—I am inclined to think that letter was before the Board.

600. The Board answered Kissling that they preferred that the Government should make an estimate?—The Board really did not think it necessary that the Government should take the whole of that land, but they did not think—at least, this is my impression—it to be the duty of the Board to indicate to the Government what they should do, or to resist them in what they wished to do. It was for a public purpose the land was being taken, and they therefore, in their resolution, implied really what they meant. They said, if the Government proposed to take the whole of the land they would rather the Government fixed the value, and if it were a fair value they would take it, and if it were not a fair value, of course, it would be subject to revision.

601. Then, if the substance of this was before the Board they must have known the proposal was that Kissling would acquire the freehold if there was any handed back by the Government?—I do not think that is so at all. That is a very different question. That is not in that letter. That is a recommendation of an accountant as to the way to proceed to settle an account. We repudiated the sentiment altogether. That is a very different question.

602. You think the Board considered the whole estimate a fair one?—I think so.

603. They did not quarrel with the basis of it?—Certainly not.

604. They did not think £6,000 was too small a sum to fix as the probable value at the end of the term?—They did not consider the question of the value at the end of the term; the question they considered was the value on that day. I think they thought it was rather above than below the mark.

605. At that time?—I think so. I do not think it was ever worth £6,000.

606. But the calculation made was: what sum then paid down at compound interest would amount to £6,000 at the end of forty-eight years?—That was so far as their interest in the freehold was concerned.

607. That was reckoning the probable value at the end of forty-eight years at £6,000?—No; I think it means the opposite. The Trustees were entitled to two things—they were entitled to £17 a year rent, and they were entitled to £6,000 in capital for the value of the estate—but they were not entitled to the estate for forty-eight years. The question is what sum of money in forty-eight years, at a given rate of interest, will yield £6,000.

608. That is reckoning that their interest would be likely to be worth £6,000 at the end of forty-eight years?—No; the basis of the whole thing is the value on such-and-such a day in 1885 was £6,000; but you are not entitled to receive it for forty-eight years. It is a delayed payment.

609. That, surely, is reckoning the value at the end of forty-eight years at £6,000?—No, I do not think so. Supposing it was worth £6,000 on a certain day in 1885, and instead of delaying the payment it was made at once, how is Kissling's interest going to be ascertained as leaseholder? Why, the Trustees would have an increase of £400 a year instead of £17.

610. It seems that what was not known to the Board in any way was the proposal to reconvey any part of the land?—That undoubtedly was not known to me, and certainly was never mentioned at the Board in my hearing.

611. Do you know when you first knew anything about that?—I could not say at all. It became a subject of conversation in the town after some time, but I could not say when I first heard of it.

612. When you did hear of it, did you think there was anything wrong about it?—I certainly did not think it was a proper transaction on the part of the Government. I thought it a very wrong thing indeed.

613. If it had been known to them at the time Brewer's letter was received that it was proposed to reconvey the freehold of a portion of the land to Kissling, would it have made any difference in the resolutions arrived at by the Board?—I do not think the Trustees would have consented to such a thing under any circumstances whatever. Certainly, I would not.

614. *Mr. Hesketh.*] As to this letter of Waymouth's: do you think this document was before the Board?—I am inclined to think it was.

615. If the document was not before the Board, are you quite sure that the recommendation was made known to the Board?—There are two recommendations in that: do you mean all of it?

616. The two interests?—The values Waymouth assigns to the interest of the leaseholder and the interest of the Trustees was undoubtedly considered by the Board.

617. Did you approve of the amount of £632?—Yes.

618. Did you go into a calculation?—Yes.

619. When you went into that calculation, did it proceed on the basis of £6,000 being the value at that time, or £6,000 being the value forty-eight years hence?—At that time, of course.

620. I see in this document which has been produced this morning that Waymouth says, "Present value of the purchase-money (£6,000) at the date of the expiry of your lease—namely, forty-eight years"?—The words "present value" is a technical expression. It means what you would pay down for a sum of money due at a certain future time.

621. How did you understand this statement of Waymouth's—"£6,000 at the date of the expiry of your lease—namely, forty-eight years"? Did you understand this to be the value on the 23rd September?—Yes; on deferred payment.

622. At the time the Board decided to leave the question of compensation to the Government, did you know of any arrangement whereby Kissling was to get back the freehold?—No.

623. Did you at that time know of any arrangement by which Kissling was to pay more than the £632 compensation if the Board demanded it?—Certainly not.

Dr. Giles: Not merely if the Board demanded it, but if the Government had to pay it.

624. *Mr. Hesketh.*] If the Government had to pay it, or the Board were not satisfied to receive £632?—In any form whatever, nothing was ever before the Board about those two things.

625. Would it have made any difference if you had known that Kissling had undertaken to pay any sum over £632?—Undoubtedly it would.

626. Can you tell us, please, what was the precise reason for leaving the amount of compensation to the Government?—I can only tell you what influenced my mind. I feel this: that the present legal owners—the Trustees—of that land hold a public estate, and that it is an educational endowment: that is one reason. And I believe that some day or another the Government will enter upon the land of these educational trusts and use them for the purposes of education in a broad way. I believe that that weighed with me somewhat. And, further, this consideration weighed with me: we held this particular piece of land; it was given by the Government itself for a particular public purpose; and they come and say, "We want this land for another public purpose." It was not for us as reasonable men to stand in their way on the one hand, or to make them pay an excessive price on the other hand. That was my belief. I raised those views at the Board—I cannot say whether they had any weight or not—when we arrived at the resolution that was passed.

627. Was it speaking from a sense of security that the Government would do justly?—Undoubtedly. I think, as a matter of honour, we were bound to leave it to the Government. I should like to say that I should not deal in that way with the whole of that estate. Those portions of the estate given, for instance, by Sir William Martin or Bishop Selwyn, I should resist the Government in taking them for any purpose to the very utmost, unless they replaced them with an equal amount of land somewhere else. I disapprove of selling part of the endowment under any circumstances whatever.

628. *Dr. Giles.*] You mean, you make a difference between land given by private donors and the Government?—Undoubtedly. I think they are sacred trusts, and they should be kept as land.

629. *Mr. Hesketh.*] Did you know of any expression of a wish by the Board to dispose of or to sell the land?—No; I was very much astonished at that. I have never had any knowledge of that.

630. Had such an idea ever been entertained, to your knowledge, at any of the Board meetings?—It was certainly not entertained at any of the Board meetings since I have been a member.

631. Did you know you had any power to resist the Government in taking the land?—No; I certainly did not. I do not think any member of the Board had that knowledge. I should have felt, and I believe the other members of the Board would have felt, that resisting the Government was merely taking steps to extort from them whatever you could get.

632. You knew that Kissling had instituted legal proceedings, and that those proceedings were put an end to by the passing of a statute?—I had heard that in a general way, without understanding the details of it.

633. Supposing the Board had known that they could have resisted the Government, and had also known the other fact, that the law required the Government to offer any surplus land to the Trust Board, do you think that would have altered the action of the Board?—So far as the first question is concerned, for my part I should not, except perhaps going the length of saying, "I do not think you want five acres of land for a fort." I think we might have made that representation to them.

634. If the Board had known that under the statute of 1882 the Government were bound to offer any surplus land back to the person from whom they took it—if they had known that—would it have altered the action of the Board?—I do not see how it could have altered it.

635. Would you have remained passive when you became aware afterwards that the Government were going to give the land to Kissling?—In that case we should have felt all the more secure.

If I, for instance, had known that the Government were bound, in case they took too much land, to hand it back to the Trustees I should have felt perfectly satisfied, as I felt satisfied as it was; but I should have felt still more so, as being an additional security.

636. *Mr. Mahony.* You stated that you are inclined to think that Kissling's letter itself was before the Board?—I think it was in some one's hands. I know perfectly well I have seen the letter.

637. The letter was written at the end of September: is it not a fact that at the end of September Kissling showed you the letter; that you took it home, returned it, and expressed satisfaction with it?—I certainly never took it home. I never had it in my possession [for any length of time]. [Witness, on perusing this evidence when transcribed, said he meant to add these words.]

638. Are you quite sure you never had it from one day to another?—I have no doubt about it in any way whatever.

639. That you had or had not?—I have no doubt that I had not the letter for any length of time. It may have been left at my place.

640. Was it not left with you, and did not Kissling subsequently call and take it away, and did he not have a conversation with you?—Quite possibly.

641. Are you prepared to say you did or did not express satisfaction with the letter and with the terms set forth in it in giving it to him again?—I am prepared to say that when I saw the letter the first feeling in my mind was one of great astonishment at the allocation of the interests, and until I had seen Cochrane—and it was from him I first ascertained what the basis of the calculation really was—I maintained that feeling of surprise, and should not have agreed.

642. So that when you attended the meeting at which the calculation was made some time afterwards you had had ample time to consider the basis upon which you were going to calculate, and upon which you did calculate?—Undoubtedly.

643. You did not do so without that?—Certainly not.

644. Waymouth's letter says, "You purchase the land of the Trustees for £6,000, and that the Government have to pay you (exclusive of difference of value by reason of its position) for their one-fourth thereof—namely, £1,500." Is not the deduction from the reading of that letter that three-fourths of the land was to be Kissling's?—It may or may not be. I repudiate the whole thing as an unreasonable proposition.

645. You now repudiate?—And I did then.

646. You selected some portion of the letter?—A certain portion of the letter is indisputable.

647. When you were assessing that portion which pleased you—namely, the £632—did you, as a Trustee, make it clear to the Board that you repudiated all the other portions of this valuation out of which this £632 arose, or did you subsequently do so?—So far as the Trustees were concerned, they refused to have anything to do with Kissling in the matter, and that was perfectly clear to every member of the Board as it is clear to me.

648. When they did that, was it not clear to you and to your co-trustees that there was an intention between Kissling and the Government, or somebody, that Kissling should acquire three-fourths of the land, the Government only acquiring a fourth? Had you not sufficient evidence in this letter?—I do not think so. They are two very different things.

649. Does it not say here that all save a fourth is to be Kissling's?—Any one may say anything; but I do not consider Waymouth's views are to be the views followed unless I think they are right.

650. You knew he got this as the assessment of an actuary, and that he was basing his case on this?—I knew the very opposite. I knew when Kissling wrote the letter to the Board he said nothing of the kind.

651. Can you account for the fact how you all took this sum of £6,000, which is the very sum mentioned in Waymouth's letter? How did you arrive at the very figures which are in this letter?—You might as well ask how two and two make four.

652. The question was asked you how it was the various Trustees all proceeded on the same value of £6,000—whether it was the present or future value: where did they get those sums from; and how can you account for the capital sum which all calculated? Can you account for the fact that they were unanimous as to the same figures?—I should think a sufficient explanation of that is the scandalously high price for the property.

653. Had the Trustees any previous conversations as to what they would agree upon as the capital price? Was anything decided at those meetings?—The first direct offer was in the letter which Brewer wrote, in which he offered £632. I knew from that letter the basis on which Waymouth's calculation was made up, and I believe the other Trustees knew that also—that the basis was £6,000. The allocation of that £6,000 is a very simple matter when once the basis is settled.

654. Did you all get that value of £6,000 from that letter which you say you repudiate?—No; I do not repudiate that. I think it is too high. If I was a seller I should not repudiate a high price; I should repudiate a low price.

655. You say it is a high price?—I think so.

656. Do you not think it would be a satisfactory price at the end of forty-eight years?—I hope to be buried before then. I should be very sorry to answer many questions about forty-eight years hence.

657. Could you give us any idea as to what would likely be the value of this land in forty-eight years?—No; I could not, really.

658. Would you not say the only reliable basis to go upon is its present value?—Exactly.

659. You gave certain reasons as to why you were prepared to deal with the Government. You said that the land being an educational trust you thought it was possible the Government might subsequently absorb this and other trusts: therefore, do you not now consider it better, as a business man, that you should have £632 in cash rather than have this educational trust which the Government might absorb? Do you not consider that that money in your hands is better than the land as

far as that particular property is concerned?—As a matter of income, it is better to have money than unproductive land; but for the future, I say land. Keep your land.

660. Therefore, you do not consider, as a Trustee, you have done a satisfactory business-stroke in accepting that which is doubtful for that which is more certain?—I do not think that at all. I object to selling land, and I do not think it is a good thing for an endowment to be robbed of its land, no matter what the price is. But, as a matter of income, I have no doubt the Trustees are better off than they were before this transaction took place. At the present moment they are.

661. Did you not know that you could go to the Compensation Court?—Yes; Brewer said we could go to the Supreme Court.

662. But I presume the reason you did not elect to take that course was that you considered £632 a fair value, and you and the others, by checking, were satisfied with it?—For one thing.

663. Several months elapsed, did they not, after the time the Board agreed to that £632, and before the money was paid?—Yes, I believe so. I was not aware of it till quite recently. I am sure I did—and I think the other Trustees did also—look upon the matter as settled when the decision was arrived at. It was quite an astonishment to me to learn that the money was not paid.

664. But there were subsequent steps. Was it not February, 1886, when the Proclamation was issued of the intention to take the land?—I have no recollection of that.

665. Were you present at all the meetings of the Board about that time?—I think I was generally present.

666. You are quite aware that there was ample opportunity to go into the matter afresh if you were dissatisfied?—That was not my impression certainly.

667. You could have refused to join in that receipt for the moneys?—If you say so I have no doubt it is so, but I was not aware of that.

668. You were one of those who signed the receipt?—Was I? I am not aware of that.

669. *Mr. Napier.*] At any meeting, or otherwise, had the Trustees expressed any wish to sell the land?—Certainly not.

670. The land-purchase agent who was negotiating this matter wrote a letter to the Under-Secretary for Public Works telling him what he was doing, and for the purpose, apparently, of inducing the Government to approve of the arrangement he had made with Kissling he makes this statement: "Now the Trustees cannot sell, although they would like to." Can you say was there any foundation for that statement?—I should say, certainly not. Certainly not in my mind.

671. Were you present at the meeting of the Board at the end of November or beginning of December when a letter was read from Brewer, in which he said, "*Re* land required for battery at Point Resolution: I am directed by the Hon. the Defence Minister to state that it is proposed to take the whole of the land at present in the occupation of Mr. G. S. Kissling. The land being let for such a long term to that gentleman at a nominal rental, the principal part of the compensation will be awarded him. As, however, the Government wish your Board to be treated with every consideration, I am requested to state that the sum of £632 will be awarded for your interest. Will you please let me know at your earliest convenience if you accept this offer, so that arrangements can be made for paying over the money. If you do not accept it the case will have to go to the Supreme Court"?—Yes.

672. Did you understand from that letter that the Government were taking the whole of the land for defence purposes?—Yes, certainly.

673. It is headed "*Re* land required for battery at Point Resolution"?—Yes.

674. At that time, and at that meeting, had you any reason to suppose that the Government did not, in fact, intend to take the whole of the land for defence purposes?—We had no reason for supposing anything whatever except what was in the letter.

675. And the letter conveyed the impression to your mind that the Government were taking the whole of the land for the purposes of the fort?—Yes, undoubtedly.

676. Kissling, in July of the present year, sent a telegram to Mr. Reeves, Chairman of the Point Resolution Committee of the House of Representatives, and in that letter he says this: "I believe that they [meaning the Trustees] did know that the proposal was that the balance of the freehold was to be conveyed to Mrs. Kissling: it was no secret." Is that a fact?—It was not a fact as far as I was concerned.

677. When did you first hear that the Government intended to reconvey 3 acres 2 roods to Mrs. Kissling?—I could not tell you.

678. Was it before the money was actually paid over?—Yes; although at the time I heard it I did not know that the money was not paid over. The Board arrived at its resolution, and they looked to the money being received by the secretary.

679. You said you were astonished at the allocation of £6,000: were you astonished at the smallness of the Trustees' interest?—Yes; at first sight.

680. In your calculation, what you calculated as the Trustees' interest was the present value of £6,000 paid forty-eight years hence?—Yes.

681. In his letter, Waymouth speaks of the £6,000 as being not the present value, but the value forty-eight years hence: did you so understand it?—No; and he does not mean that either.

682. Assuming that £6,000 was a little too high for the 1885 value, in the ordinary course of events that land would be worth very much more than £6,000 at the end of forty-eight years?—But supposing the population did not increase and the city did not grow.

683. Taking into consideration your past experience of Auckland, and eliminating anything in the nature of a catastrophe?—You mean, if the city is twice the size in forty-eight years the land would be worth very much more.

684. Do you think the colony has come to a state of stagnation?—I have no opinion on the subject. When the Bank of New Zealand writes off £800,000, then it is time to reflect.

685. Then, you have no opinion as to whether land is likely to increase or diminish in value?—No.

686. Do you not think for a public institution land is a very much more valuable commodity for the purpose of carrying out a trust than money?—It may or may not be. It is impossible to say that. It depends what the land would produce.

687. You have no opinion on that point?—It is impossible to have, unless you say what land you mean.

688. I mean land in general—whether the permanent interests of a trust can be better benefited by a land-endowment than by a grant of money?—It all depends what the land is. If you get land at Epsom it would be very different from land, say, at Wainauku.

689. Why?—Because one is fertile and the other is sterile.

690. If a town were built on it?—That is a different thing.

691. Is not land in general a better thing to hold for the purposes of a trust than money?—It all depends upon circumstances.

692. What are the grounds of your strong determination as a Trustee against the selling of land under any circumstances?—Because I think when land is given by a person who has control of his actions it should be reserved for that purpose and no other, whether it is good or bad. I do not think it is a safe principle to interfere with trusts.

693. I mean, is not land a safer thing for the ultimate benefit of the trust: is not that the foundation of your opinion?—No; the foundation of my opinion is I respect the wishes of the founder: whether it is valuable or valueless, I care not.

694. It is not because you think land is more likely to be of greater ultimate benefit to the trust?—I say it is a matter of right and wrong. A man gives a piece of land for a particular purpose. Use it, or give it back to him or his heirs. Do not cheat him.

695. You have lived here for some years?—I have.

696. Land has very much increased in value since the early days of the colony?—In some cases it has.

697. Has it not in all cases?—I think not for a long time.

698. There have been fluctuations; but if we go back before the first fluctuation—which I think was 1863—from 1850, has there not been a steady increase in church properties?—Many years ago Bishop Selwyn, whose name we all mention with respect in connection with these land purchases, bought a quantity of land at Kohimarama, and he gave for it a higher price than it is worth now.

699. That is before the site of the city was fixed?—Not so far back as that.

700. You assume, then, that £6,000 was the value of the land in 1885, though, perhaps, somewhat high?—Yes; I think it was a very high price.

701. And you calculated that the present value of £6,000 was payable forty-eight years hence?—That is so.

702. But the £6,000 was not paid forty-eight years hence, but was actually payable and paid in 1885?—It was payable to the freeholder. I may be wrong, but I think what the Trustees had done was to part with their interest for a period of sixty years, and forty-eight years was to run from that date.

703. The value of the land, all the interests being merged, was £6,000?—Yes.

704. That meant, in fact, that the £6,000 was then payable?—To somebody, undoubtedly.

705. But you calculated that the £6,000 was only payable forty-eight years hence?—No, I did not; I calculated that it was only payable to the Trustees forty-eight years hence.

706. The value of the land forty-eight years hence may be £20,000?—It is not the future value, it is the present value.

707. But the money was payable, and was actually paid in 1885?—To some one.

708. Assuming that the Trustees had parted with their interest, and that Kissling had parted with his interest absolutely, and the Government had the land, the question now is, how is that money to be divided? Why, then, should you say our share is such a sum as will produce so much forty-eight years hence?—Because you are only entitled to the land. I say £6,000 represents the freehold. All that the landlord is entitled to who has leased his property for a long time is the annual rent. He is entitled to the freehold at the end of the lease.

709. At the end of the lease you would have had your £17 a year rent and the land too?—Yes.

710. So that the £6,000 you calculated was really what you estimated the land would fetch at the end of the lease?—I suppose you really know you have left out a very important element.

711. What is it?—That the Government took the land from us.

712. That is not a very important matter?—I think it is, to that calculation.

713. Supposing this transaction had never occurred the Trustees would have received their £17 a year for forty-eight years, and then they would have had their land, and, assuming they had the power to sell, they would then get what that land would fetch in the market?—Yes.

714. So that the interests of the trust would have been benefited to this extent: they would have received forty-eight years' rental of £17 a year, and then they would have the then marketable value of the land in money?—Yes; if they had sold it.

715. For the purpose of estimating your interest you calculated an amount which would realise £17 a year for forty-eight years, and you found that came to £266?—Yes.

716. Then you went on and you said £366 in addition will produce what we shall get for the land at the expiration of the lease?—No, I did not.

717. Do you not think you ought to have done that?—No, I do not.

718. On a pure arithmetical basis, have not the permanent interests of the trust suffered because you did not do that?—What do you mean by an arithmetical basis?

719. Has not the trust forty-five years hence been deprived, at all events, of a considerable portion of the trust property?—They have been deprived of the whole of it. I think they have been deprived of land they ought not to have been deprived of.

720. Mr. Dacre is of opinion that in the ordinary course of events that land will be worth £12,000 forty-eight years hence: assuming that he is right, and assuming that this transaction has never taken place, the Trustees would till that time receive £17 a year?—Yes.

721. And at the end of the time they would get £12,000 for the land?—Yes; if they sold it they would, if that was its value.

722. According to your calculation, the Trustees have now only received such a sum as would produce £6,000 at the end of the lease?—Yes; because they sold it at the beginning instead of at the end of forty-eight years. When you sell a thing to-day you do not get the value of a hundred years hence.

723. Supposing Dacre's calculation is correct, ought they not to have received the value not of £6,000, but of £12,000?—Certainly not. I do not at all agree with that view.

724. Was there any representation made to the Government or to Brewer by the Trustees that, in the opinion of the Trustees, the Government did not require so much land?—Not that I am aware of.

725. Was it mentioned in any way?—It was certainly mentioned at the Board in a general way that we thought it was a large amount of land to take, and therefore the words of the resolution read, "If the Government propose to take the whole of the land."

726. That being so, when it was ascertained that the Government did not require the whole of the land for defence purposes, and seeing that the resolution the Board passed was a conditional one, why were not some steps taken to have that 3 acres 2 roods transferred back again to the Board?—Simply, I suppose, for this reason: that the Trustees had met, had received a proposal from the Government, had accepted it, and looked upon the matter as closed. I do not think it entered into the mind of the Trustees—certainly, not into my mind—any further consideration of it. The thing was over.

727. You state that you would have strongly resisted if you had known the Government had intended to transfer the 3½ acres to Mrs. Kissling. Seeing that that important fact was concealed from the Board, did the Board not think that that in any way relieved them from the terms they made of £632?—I believe the Trustees looked on it as a binding matter when they passed the resolution to accept the Government's offer. I do not suppose a single member of the Board knew but that the money was paid, and the matter done with.

728. Did you then think that the money had been paid over and the thing was finished?—I did. I heard of the payment of the money with great astonishment.

729. Had you known that these material matters were concealed from the Board, would you have taken, as an individual member, or at the meeting of the Board, any steps?—I do not think so. The matter was considered by the Board. They dealt with the Government, and the thing to me, at least, was a settled matter, and was done; and I could not have taken any further steps; any further responsibility rested with the Government, after all.

730. Did you not know that the Government were compelled to restore the land to you if they did not require it?—No.

731. Did you not know, if the Board did not accept it, it should have been put up to public auction?—No; I was not aware of that.

732. You said, I think, that an endowment of land is undoubtedly better than money?—No. I said I thoroughly disapproved of alienating any land given as an endowment. I do not say it is better or worse. I say I would not sell it.

733. Do you not think the permanent interests of the institution would have been better conserved by the land?—I was sorry when the land went away. I am sorry it is gone. That is all.

734. You are deriving a greater income now under the present arrangement; but the Trustees existing forty-eight years hence, will they derive a greater income under the altered arrangements?—I would rather have the land than any money.

735. Surely, you do not mean to convey the impression that if you thought the permanent interests of an institution of which you were a trustee would be better benefited by selling land than by retaining it, you would retain it?—I will give you an illustration: A few years ago there was a proposal made to purchase the whole of the estate of St. John's College for £30,000. I believe I took a part in preventing that sale. I used every influence I could, and I would do so again. The land is not worth half or quarter that sum at the present moment, and was not then.

736. Still, there was an inflation in the price of land then?—Yes; but I do not approve of selling land given for a particular purpose. I do not mind whether it is good or bad land.

737. But land in the vicinity of a town is likely to increase much more than money?—It all depends.

738. There are fewer chances of loss with land than with money?—Yes.

739. That is one of the reasons that you give for the strong opinion that you apparently hold, that under no circumstances should a land-endowment be parted with?—The reason is simply this: When a man gives land for a specific purpose it should be used for that purpose and no other, and when it is not required for that purpose you should give it back to him or to his representatives.

740. Supposing you found that the land was of no use whatever in carrying out the intentions of the donor, but that if you could sell it and get a certain sum of money you could carry out his intentions, would you sell it?—No, I would not; and that is quite a matter of opinion as to whether you could carry out his intentions or not.

741. Do I understand you to say that it is entirely a matter of sentiment with you?—With me a trust property is a matter of sentiment, and if a departure is made at all from that sentiment I think it should be done with the greatest caution. Parliament might do it, if you can trust it, and

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

contained certain clauses. That Bill excited very great attention. A large number of members knew all about it far better than I did. It is simple nonsense to say they did not know.

753. Did you ever see it stated in either House that the land was never, in fact, taken for public purposes, and that it was perfectly well known it would not be required?—No; they are supposed to know what they are doing. They take the land and deal with it. They have got the power.

754. Were you not further induced to accept the proposal of £632 by reason of the fact that there was a war scare at the time, and you believed the Government required the whole of the land for defence works?—Undoubtedly we believed the Government required the land for defence works. There was great excitement at that time.

755. I understand you generally to say that you do not think this transaction was a proper one?—I do not.

756. *Mr. Hesketh.*] You were asked some questions as to whether you looked upon that letter as a proposal that the Board of Trustees should sell the land to Kissling?—Undoubtedly not. I look upon this letter as a letter written by Waymouth at Kissling's request on the subject of this valuation, and Waymouth suggests a certain view.

757. Did you, as a member of the Board, ever look upon it as a sale, or ever countenance the thing as a sale by the Board to Kissling?—Certainly not.

758. As far as you know, did the Board ever discuss such a thing as a sale of freehold interest for £6,000?—They certainly never discussed it.

759. *Mr. Mahony.*] You say you knew of the projected sale to Mrs. Kissling before the matter was finally completed. That was during the course of the year following the meeting. You then presumed that everything had been settled. Had you known it was not settled, would that have altered your action in the matter? You considered what was first done was finally done?—Undoubtedly.

760. Did you at any time take it upon yourself as a Trustee to inquire whether the matter was finally settled, and whether there had been any confirmation of what you had agreed upon at your meeting?—No; not during that year. On one occasion I did take certain steps, when the gravity of the thing was really understood. I suggested to the Trustees that they should meet and take into consideration whether or not it was not advisable to make representations to the Government of the wrong that had been done. The Trustees met in a formal way; but they did not consider that it was their duty. They considered that the Government had taken action in this matter from the beginning, and they were responsible in every way to put the thing right, for the wrong had been done. We had been the victims.

761. No steps were taken by the Board?—That meeting was quite recently—within the last twelve months—after the Bill was passed, and the whole thing was over.

762. No steps were taken by you or your colleagues between the time you agreed and when the money was paid?—Certainly not.

763. *Dr. Giles.*] With reference to this letter of Waymouth's, I understand what you mean is this: that this part of it in which he suggests that Kissling should purchase the land of the Trustees for £6,000, and the Government were to pay for their one-quarter thereof, £1,500—that you and the Trustees regarded that simply as a suggestion of Waymouth's, with which you would have nothing to do?—If it was before them formally it was regarded as a suggestion not worthy of consideration.

764. You and the others had seen the letter, and knew what was in it?—Yes; probably had it in our hands at the time.

765. That was the view you took of it—regarding it merely as a suggestion, and quite without any idea that the officer employed by the Government had anything to do with that or anything to say to it?—Quite so.

766. And that part of the letter which you acquiesced in—that is, supposing the Government approved of it—was the taking the basis of £6,000, and the calculations based upon that?—Yes.

767. And that you did not acquiesce in until you got it from the Government?—Of course.

768. And I understand that now what you say is this: that you do not complain that the Board has not received an adequate payment of money for its interest, but what you complain of is that it has been deprived of the option of holding the land instead of money?—Yes; I complain that the Government took more land than they need have taken.

GEORGE PATRICK PIERCE sworn and examined.

769. *Dr. Giles.*] What is your business?—I am general manager of the New Zealand Insurance Company.

770. You are a member of the Trust Board, I believe?—Yes; and also honorary secretary of the Parnell Orphan Home.

771. You heard Mr. Upton's evidence this morning, did you not?—I did.

772. And you are aware, then, of its general range and the ground it covers. I think the best way will be to ask you to state your own recollection, as a member of the Trust Board, of the negotiations which took place with that body for the acquisition of the land required at Point Resolution for defence purposes?—I should prefer that the Court asked me specific questions.

773. Very well. You recollect a transaction relating to the taking of land in Mr. Kissling's occupation at Point Resolution for defence purposes?—Yes; I was rather emphatic, also, when I heard that the whole of the property was required for that purpose, because I thought, in the first place, that a fort there was quite unnecessary, and that if an enemy ever did come to Auckland, and got at all near to this point, it would be a very bad look-out for the place. That made me emphatic in the opinion I held respecting the Government taking so much land for the purpose of constructing a fortification.

774. You thought that they were taking too much?—Yes; more than was necessary.

775. Can you say when that question was first discussed by the Board?—I am not at all clear as to dates; but you have evidence as to that in Mr. Cochrane's minute-book, the dates stated in which will be correct. It was at some meeting at which Mr. Kissling's letter was read.

776. Do you remember his letter?—Yes; that was the first official communication we had on the matter. But there was outside talk, even before that time, as to the land having been taken a short time previously.

777. Did you, at that meeting of the Board, express your opinion of which you have told us?—Yes: when I heard that a larger portion was to be taken for defence purposes than was at first stated to us, I made rather a fuss about it. Some members of the Board thought me rather warm, for I talked something about the Supreme Court.

778. You mean you were inclined to resist, if it could be done?—Yes.

779. And at the time Mr. Kissling's letter was brought before the Board had you any knowledge from outside sources as to what was going on, or what Mr. Kissling's intentions were about the land?—I had no idea that any portion of the land was to revert to him at all, or that any negotiations were going on between himself and the Government, that any portion was to go to him.

780. Do you remember any letter from Mr. Waymouth to Mr. Kissling being produced?—I think that no such letter was ever produced to the Board.

781. Did you ever see or hear of such a letter outside the Board?—Yes; I think I heard it mentioned at the Board that such a letter had been received with regard to the valuation.

782. You had not seen it yourself?—Well, I cannot say positively that I had not seen it.

783. Did you see it this morning?—In the distance, but it was not in my hand. [Mr. Waymouth's letter to Mr. Kissling was then handed to the witness.]

784. Can you say now if you have seen it before?—Well, I cannot say positively whether I have or not. The impression on my mind is that I have not seen it before, but that I heard from Mr. Cochrane the basis on which the valuation had been made; but whether made by Mr. Waymouth or not I cannot say. And the offer made by the Government is specified here—viz., the value of the rental for forty-eight years, and the present value of the purchase-money, which is taken at £6,000. I considered that a fair valuation.

785. Is there anything in that letter which you think was not known to the members of the Board at the time they discussed the matter?—Well, I did not put the interpretation on it that perhaps some people might. I imagine that when Mr. Waymouth gave this valuation to Mr. Kissling he did not know the position of the Trustees—that they could not sell the land. We are debarred by the terms of our trust from selling it without most cumbrous proceedings to obtain the necessary authority for the purpose. First of all the Diocesan Synod has to give its permission, and then that permission has to be ratified by the General Synod, which meets at intervals of three years, before it can be acted on. Therefore I imagine that is an answer to the question put by Mr. Kissling to Mr. Waymouth, as to what he thought was the value of the land; for the valuation he gave was based on the supposition that we could deal with the land and sell it.

786. Would you understand it to mean simply that Mr. Waymouth considered, if Mr. Kissling could buy that land from the Trustees without in any way infringing the provisions of the trust, that that would be a fair price and a fair offer to make for it?—Yes.

787. And do you recollect what the Board did after that discussion on Mr. Kissling's letter?—There was a letter received subsequently to that, I think, or some time or other.

788. But the Board took some action on Mr. Kissling's letter, did they not? We have got it in evidence that they passed a resolution, and also communicated to Mr. Kissling their wish that the Government should make an estimate of the value of the property?—Then, subsequently to that Mr. Brewer's offer came, and, as Mr. Upton stated this morning, there was a feeling—at all events, that was my feeling—generally in the Board that it was not a time to haggle about a price—that, in fact, the circumstances of the country required this fortification, and that therefore it would be out of place for us to make a hard-and-fast bargain about the price to be paid. We considered the price offered a fair one, and that it was no use debating the matter one way or the other for a few pounds. We were also under the impression clearly and distinctly that the Government could, under the Public Works Act, take the land.

789. You had no idea it was intended to reconvey to Mr. Kissling?—None whatever; not the slightest idea.

790. Do you think any members of the Board had any such idea?—I do not think so. I think if they had had it would have been mentioned at the Board and discussed, and I think it would most decidedly have been rejected.

791. And you were unaware at that time that if the Government took an excess of land the law required them to hand back the surplus to the landowners?—I was not aware of that.

792. Had the Board any knowledge that a special Bill was being put through Parliament to empower this conveyance to Mrs. Kissling?—I was perfectly astonished when, after the close of the session, I found it at the end of the volume of parliamentary statutes which I received.

793. *Mr. Hesketh.*] That is, until you saw it in the Special Powers and Contracts Act in the bound volume of the statutes?—Yes.

794. Had you not learnt of it from the newspaper reports or from *Hansard*?—I had heard of it just before, but it was almost simultaneously with my receiving the parliamentary statutes.

795. Then, I understand you to say that the Board had no notice of it?—None whatever.

796. Do you agree with Mr. Upton generally about the adequacy of the money-compensation?—I do; I do not agree with Mr. Dacre, however.

797. As to the probable value?—As to the probable value. I may as well explain why. I remember a similar case in Brisbane two years ago. I went to a gentleman's house there which was situated almost exactly like Mr. Kissling's—that is, on a point bounded by the river: but underneath him at the present moment there are a quantity of coal-trucks, a large engine-shed, and a

wharf running out where vessels are constantly discharging coal; and the noise proceeding from all this, working by night as well as by day, to say nothing of steam-cranes, was so annoying that the owner had to sell the property and go into the country. And I imagine—at least, it is just possible—that in forty years' time, when we shall doubtless have large reclamations in Judge's and Hobson's Bays, with large manufactories built thereon, throwing up clouds of smoke, this property may not be nearly so beautiful as it is now, but may have very much depreciated. That is just as likely to be the result as that it may be worth double the amount that Mr. Dacre has put upon it. And if Auckland goes ahead these bays will certainly be reclaimed, and we may have railway-trains running round the edge of the water; so that this land, instead of being regarded as sites for choice residences, may be tabooed. If the Russian guns are ever brought to bear upon it I believe the fort will disappear.

798. You think that if the Board had known of the Government's intention to reconvey to Mrs. Kissling they would have opposed it?—They would have resisted it.

799. Were you familiar, at the time all this occurred, with the law that bound you with regard to your holding of that property?—I suppose I ought to have been, but I was not.

800. But could the Board have sold that property without legislation?—No, they could not sell—that is, not without Church legislation.

801. According to the laws under which you held the property at that time, it could not be disposed of without the consent of all the bodies interested, or without the authority of an Act of Parliament?—I suppose so.

802. As far as you know, was the subject ever spoken of at any Board meetings—that is, about selling the freehold?—No.

803. Did you ever understand from that letter of Mr. Waymouth's that it was proposed that you should sell the freehold to Mr. Kissling?—As I said just now, I do not believe that letter was ever before the Board.

804. Had you at any of your meetings any such proposition as this from Mr. Kissling: that you should sell the land to him?—No; because it would immediately have been met by our saying, "We can't sell it."

805. Did you, speaking individually, throughout the transaction, act in a manner that you believed to be right and proper for the trust?—Yes. Anything that the Trust Board did in this matter I should have done myself if the property had belonged to me as a private individual.

806. With the knowledge you then had?—Yes.

807. Without referring in detail to the other elements of knowledge that have come before this tribunal, if you had had the knowledge that the Government could have been restrained from taking more land than they absolutely required, and obliged to hand back the surplus, would you have acted differently?—I should have resisted most positively what was done. I did resist, in a measure, when the taking of the land was originally spoken about.

808. That was before Mr. Kissling's offer?—Before any official communication was made to us. The first intimation we had of the Government's intention was the report that a lot of soldiers and militia were on the point, digging away in Mr. Kissling's garden.

809. Then, when you say it was spoken of previously, do you mean that it was talked of in town?—Yes: before any communication had been received by us rumours were abroad of military operations going on in Mr. Kissling's garden—that soldiers were in his garden.

810. But you understood that they had taken a portion only of the land?—Yes.

811. Were you surprised when you found that they were taking the whole of it?—Very much surprised indeed, and I spoke out pretty plainly about it.

812. There is one point—I was going to say the most offensive one in the scope of the investigation—upon which I wish to ask a question. Had you, as a member of the Board, any knowledge that an understanding had been arrived at between Mr. Brewer and Mr. Kissling that if the Board required more than £632 Mr. Kissling was to find it?—No; I was not aware of that. I think if I had been aware of it my business sympathies would naturally have led me to stick out for a higher price.

813. Did you say anything as to the value of the land at this time—anything as to this £6,000 that has been spoken of?—That was laid before the Board.

814. Did you go into a calculation to arrive at it?—No; several members stated that it was so. Mr. Cochrane went into it, and we were satisfied with the basis. I did not go into the figures, but took them as correct.

815. *Mr. Mahony.*] You say that you were inclined to resist when you found that the Government were taking more land than you thought they required to take: is that so?—With my feeble voice I did.

816. You did hear at the Board of Mr. Waymouth's valuation, only you are not quite sure whether or not it was there that you saw his letter?—I am certain it was not there, and I am not quite sure it was Mr. Waymouth's valuation. I did hear that a valuation had been made by some competent accountant.

817. That, no doubt, explained to you how the sum of £6,000 had been arrived at?—Yes.

818. You say you heard that some members of the Board had gone into the question: that was prior to the meeting of which you have been speaking, was it not?—I could not say that.

819. Can you recollect whether that £6,000 was something which appeared to be known to the Board at that meeting as being the gross value of Mr. Kissling's land?—I do not think so. The matter was discussed at one or two Board meetings. It was not finished off at the first meeting at which it came up, but I cannot say at which meeting. The matter was not hurried.

820. A considerable space intervened between the time of your agreeing with the Government and the time of you and your co-trustees receiving the money and signing the receipt for it?—Oh, yes!

821. Do you remember whether you knew in the meantime that three-fourths of the land was to be, if it had not been already, conveyed back to Mrs. Kissling?—Not till it was done.

822. But that was before you received the £632?—As to that I will not be certain.

823. Now, I want to ask you a question upon a point which has not been touched upon in this inquiry—with regard to the trust itself. Who were the real *cestui que* trust in the matter?—Do you mean the terms of the trust deed?

824. Is it a fact that any orphans are benefited under this trust? You speak as an authority in this matter?—I was about to ask the Commissioners, after this examination was over, whether I might be allowed to make a statement on that subject; but perhaps it may as well be brought out in this way.

825. Is it a trust for an orphanage?—It is for poor and destitute children.

826. But it is not a question as to whether their parents are living or not?—No.

827. I think its scope extends further than this Island?—Yes, it comprehends also the children of inhabitants of islands in the South Pacific Ocean.

Mr. Napier: It is a trust for the benefit of poor and destitute children of both races in New Zealand, and also of the children of poor and destitute persons of the islands of the Pacific.

828. *Mr. Mahony*.] I see nothing mentioned in the trust deed about orphans?—No.

829. You are aware that this particular inquiry has been asked for in order to protect the interests of poor orphan children?—Yes.

830. Is it a fact that the Trustees are depriving orphan children of anything?—No. There was a time when the Parnell Orphan Home received a portion of the rentals from this estate, but for the last four or five years it has not received any portion.

831. As a matter of fact, at the time the property was diverted the orphanage had no income from it, and no connection with it?—It had an intimate connection with it, because it was fulfilling most directly the terms of the trust, and as it had been for twenty years on the land I think it would be a difficult thing to dislodge it therefrom.

832. But the inmates of the orphanage are not the persons beneficially interested under the original grant?—There is a great deal to be said on that subject. More may be heard of it in Parliament if Sir George Grey carries out the philanthropic spirit by which he has been actuated in obtaining this inquiry. A greater wrong has been done than that which this inquiry is dealing with.

833. How do you mean?—The Orphan Home was induced to erect expensive buildings there by the Bishop of New Zealand. In the year 1864 the Orphan Home was started by Archdeacon Lloyd in connection with the work carried on in his parish. It gradually got larger and larger, and in the year 1865, I think, the inmates of that Home found themselves in St. Stephen's Native Institution, there being no Natives there at all, or scarcely any—only one or two girls. They applied to the Bishop of New Zealand for a piece of land on which to erect an orphan home, and asked especially for a piece in Symonds Street, which subsequently became the site of St. Sepulchre's Church. The Bishop said, "No, that is too valuable; but I will give you a piece of the land belonging to the Native School Trust;" and he accordingly pointed out a site thereon. Not only that, but he had the site excavated at his own expense, and out of his own pocket he paid the cost of transferring from St. John's College the large building which is now used as the dining-room of the Orphan Home. He also gave us permission, at all events, to use five acres of the land, and he told us that this would be transferred to us in the name of trustees. Archdeacon Lloyd, Mr. King, and myself were nominated as trustees, but up to this day we have never got a lease of the piece of land. In the year 1868-69 there was a parliamentary Commission—a Royal Commission—similar to this one appointed to inquire into the state of the different religious institutions around Auckland, and they duly held their sittings, and came to the conclusion (Mr. Domett, I think, was Chairman of the Commission) that, having inquired into the condition of the trust estates, &c., "the sole fulfilment of the trust at St. Stephen's at present consists in allowing a private benevolent institution called the 'Orphan Home' to occupy five out of the sixty-seven acres of land at a nominal rental, and it is remarkable that that institution, which is unendowed, appears effectually to achieve its object." In the same year a Commission of the Auckland Provincial Council reported that none of the institutions—St. Mary's, North Shore; St. Stephen's, Parnell; and the Three Kings School—"at present fulfil all the conditions of the trust," but reported in favourable terms of the Parnell Orphan Home. The Parnell Orphan Home was managed by a committee, which told Bishop Selwyn that they would not come under synodical rule, but preferred independent action, though they were quite willing to go on carrying out the terms of the trust as to the religious education of the children. They also applied to the General Synod, as the governing body of the Church in New Zealand, and as having the custody of the land, for a portion of the income derivable from it, or, rather, to authorise the trustees of this same piece we are now debating about to pay over to the Orphan Home Committee a sum of money derivable from the rentals of the St. Stephen's trust property; and for three or four years they were accordingly paid the sum of £386.

834. *Dr. Giles*.] A year?—No, in all. For the last three or four years they have been paid nothing, though the general Synod authorised its Trustees to pay to the Orphan Home Committee. This is the resolution: "The Synod authorises the Trustees of the Native School Trust in every year to pay to the managers of the Orphan Home, Parnell, out of the net annual income of the St. Stephen's trust property, a sum of money not exceeding one-half of such net income, consideration being had to the amount of the funds of the Trustees available for the other objects of the trust, and particularly the requirements of the St. Stephen's Native School." Well, the requirements of St. Stephen's School for the last three or four years have been so urgent that no money has found its way from its Trustees into the treasury of the Orphan Home. And as the Home has been located there for twenty-six years, and the Trustees have expended a large amount of money in the erection of buildings, and they have had ten acres of land handed over to them for the purposes of the Home, I think it reasonable to conclude that we have been carrying out the objects of the trust,

which is the education of poor and destitute children, not only of the European inhabitants of this island, but also of Maoris, as well as children from the South Sea Islands. In fact, we contend that we have been carrying out the terms of the trust more truly than the Native School Institution has been doing. I believe, if inquiry is made, it will be found that, instead of all the inmates of St. Stephen's School being "poor and destitute children," the parents of many of them are Maoris in affluent circumstances, and therefore well able to provide for their children.

835. This land, which was given by Governor Grey in 1850, was not given specially to St. Stephen's Native Trust?—It was given to the Bishop of New Zealand, and he handed it over to St. Stephen's.

836. To this particular General Trust Board?—Yes. It is so called because, besides this, it embraces a Cathedral Trust, and several others.

Mr. Napier: I would refer you to a petition which was presented by Sir George Grey to the House of Representatives. The first and third paragraphs of it set out the object of the donor. The first paragraph says, "That your petitioner, on the 23rd September, 1850, granted as an endowment certain lands in trust to the Bishop of New Zealand and his successors in office for the support of a school and the maintenance of orphan and destitute children of all races, in which school they were to receive instruction in the English language, religious education, and industrial training."

Mr. Mahony: You will see that the word "orphan" is introduced there, but it is not in the title.

837. *Dr. Giles*.] What I wanted to know is whether it was a departure from the trust deed to give the benefit of it to that Orphan Home?—We have always worked together in the most friendly way: the two bodies, in fact, have sent children from one institution to the other. The Native school admitted us as a body, and we occupied their building for a year and a half, clearly showing that they understood we were fulfilling the terms of the trust. They allowed us to remain until our own building, where we have been ever since, was erected. Of course, it becomes a very serious question now, when we have become the recipients of upwards of £12,000 from the Costley estate, whether we shall expend money in building upon ground where we have no title at all, or whether we shall buy ground and build elsewhere. Our contention is established from what Mr. Napier has just read, showing that, as we have been carrying out the intention of the donor, we are entitled to a fair moiety of that St. Stephen's estate.

838. Does the whole of the land which the Board has to do with come under the St. Stephen's Trust solely?—Yes.

839. The whole of the land granted by the Governor was assigned to that particular Trust?—Yes; and the Bishop of New Zealand, who was sole Trustee, said, "You can have five acres of it for the Orphan Home."

840. *Mr. Mahony*.] That was done privately as Bishop, independently of his position as Trustee?—Yes.

841. Then, it was only as a matter of convenience that the orphans came to get any benefit from that trust?—We have derived no benefit from it for the last three or four years. All that we got prior to that was £386; and when we asked for more they said, "No; but we will give you more land if you like."

842. And you do not benefit from this £632?—No; it was more convenient for them to give us land than money.

843. Whom do you mean by "they"?—The General Trust Board.

844. Did it not occur to you that they would not do it because this is a trust only for orphans?—No, I do not think so. I was always under the impression, myself, that, as orphans, they come under the designation of "poor and destitute children."

845. As to the £632, you were quite satisfied as a Trustee that you were fully and fairly paid out of the price paid for the property, and that that amount, according to the data given, represented everything to which you were entitled?—Yes.

846. The fact that the freehold of part of this land reverted to Mrs. Kissling did not affect your trust?—No; but I agree with the general principle stated by Mr. Upton that no trust property should be sold except under very peculiar circumstances.

847. This particular Trust has an immense quantity of land, I believe. They are owners of a great portion of the other side of Parnell?—No; we have not a great deal more than this sixty-seven acres, I think.

848. Then this was only a small portion as compared with the whole of the trust property?—Yes.

849. Do you agree with Mr. Upton, who told us he thought £632 in cash was better than holding to that particular piece of land?—I think so. I think if I had had such an offer I should have accepted it. I think it was a very fair offer.

850. *Mr. Napier*.] But, still, though apparently arithmetically fair, would you have been willing, had you known that the whole of the land was not required for defence purposes, to have parted with it as a member of the Trust Board?—As I said before, I objected to any portion being taken; but, of course, a small portion having been taken compulsorily, I did not think it very much mattered about three or four more acres being taken. They have spoilt the Point by putting the battery there.

851. Were you aware that under "The Public Works Act Amendment Act, 1885," there could be no claim for compensation by reason of the proximity of a fortification?—I was not aware.

852. Supposing you had known, as a matter of fact, that only three-quarters of an acre was required for defence works, and that the remaining portion was to be taken in this circuitous manner for the avowed purpose of being conveyed to Mrs. Kissling, would you have demurred?—I would have demurred to its going to Mr. or Mrs. Kissling or to anybody else.

853. Would you have preferred to retain it?—Yes.

854. Do you consider that the interests of a trust are rather to be subserved by retaining lands than by selling them?—We must confine ourselves to this particular trust. I would rather not speak generally.

855. Well, I mean this trust?—As I said just now, I object on principle to selling any of the land at all.

856. You have reasons for that principle, no doubt?—I do not know. It may be that I object as a matter of sentiment. There are associations in connection with the land, especially for those who have been, like myself, connected with it for a long time. I feel a great interest in this land from the fact of Bishop Selwyn's connection with it. I believe, if Bishop Selwyn were alive now he would resist to the death any tampering with it.

857. You have told us that it was first stated to the Board that the portion which was actually required by the Government, and which they have since retained, was all they intended to take: when did the Board receive intimation that the Government proposed to take the larger area?—I believe it was when that letter of Mr. Kissling's was received. Prior to that I think it was mere talk—mere rumour.

858. Was it rumoured then among the members of the Board that the Government were going to take the greater area for defence works, or that the Government were going to take the whole block for the purpose of conveying a portion of it to another individual?—Nothing was said of that; no one dreamt of it.

859. The impression on your mind then was that they were going to take the whole area for the purposes of the fortification?—That was then the general impression. At all events, that was my impression. When I heard of it I said, "Oh, nonsense! They don't want it."

860. Was it in any way mentioned amongst the Trustees, or did they convey, either publicly or privately, to any person that any of the Trustees wished to sell either this or any other portion of their estate?—I never heard of it. And, knowing as we did the objections of the General Synod to parting with land under any consideration, it is hardly likely at all that such an idea ever entered into the mind of any member of the Board.

861. You regarded these lands, and especially those given by the Government and Bishop Selwyn and others, as being, in a certain sense, sacred—you objected to their being taken?—Except under very peculiar circumstances.

862. One was the needs of the country?—That was one.

863. When Mr. Brewer had made the arrangement with Mr. G. S. Kissling for the transfer to Mrs. Kissling of the 3 acres 2 roods he wrote to the Under-Secretary for Public Works advising him of the arrangement, and apparently desirous that he should approve of it. In that letter he makes this statement: "Now, the Trustees cannot sell, although they would like to." Can you say whether that statement was a fact?—No, it was not.

864. That letter, I may mention, was under date 21st November, 1885, and your Board had a meeting to consider a letter which Mr. Brewer had written to you on the day before that date. I would call your attention to that letter. It is as follows: "*Re* land required for battery at Point Resolution.—Sir,—I am directed by the Hon. the Defence Minister to state that it is proposed to take the whole of the land at present in the occupation of Mr. G. S. Kissling. The property being let for such a long time to that gentleman at a nominal rental, the principal part of the compensation-money will be awarded him. As, however, the Government wish your Board to be treated with every consideration, I am requested to state that the sum of £632 will be awarded for your interest. Will you please let me know at your earliest convenience if you accept this offer, so that arrangements can be made for paying over the money? If you do not accept, the case will have to go to the Supreme Court." Were you present at the meeting of the Board at which that letter was considered?—I think so.

865. Did it convey to your mind the impression that the Government were going to take the whole of the land for defence works?—That was always my impression.

866. Formed from that letter?—Yes; that is my impression. We should never have dreamt that the Government had any intention of handing over a portion of the land to Mr. Kissling.

867. Did you know that the 3 acres 2 roods were to be transferred to Mrs. Kissling before the £632 was paid over?—From what I have heard to-day, the payment of the purchase-money seems to have been delayed, and no doubt it was not paid over when I knew that the Special Powers and Contracts Act dealing with the case had been passed. That was the first intimation I had of the transaction, that Mrs. Kissling's name had been mixed up with it at all.

868. The Act came into operation about August, 1886. Do you say that until you saw that statute as an Act of the New Zealand Parliament you were not aware that Mrs. Kissling was going to get the 3 acres 2 roods?—I was not.

869. It was not merely a Bill at the time; it was an Act?—I did not see it until it came up as part of the bound volume of statutes. I do not say that it was even the day I received it or perhaps a month afterwards, but, still, it was about that time.

870. There could be no mistake? It was not a Bill you saw, but the Act when actually bound up in the volume of statutes?—No.

871. *Dr. Cass.* Was no copy of the Bill sent to the Trustees?—None that I saw, and I think Mr. Cochrane, the secretary, would have informed us if he had received any such communication, as in the usual course it would have had to come before us.

872. *Mr. Nairn.* Had you seen "The Public Works Act Amendment Act, 1885," before the arrangement was made to accept the £632?—No. I suppose as a Justice of the Peace I ought to, but I had not.

873. You were also a Justice of the Peace in 1885?—Yes; but my literary pursuits did not lead me into delving into these books.

874. When this letter to which I have just referred was received from Mr. Brewer, in which he states that the Government are going to take the whole of the land, were you of opinion, as a

member of the Trust Board entertaining the view you did, that the Government did in fact require the whole—that you could not successfully resist the Government even though they did not require the whole area?—I did not know any way of resisting the Government. If there had been any way open I certainly should have been for taking it.

875. In answer to Mr. Hesketh, you said that you were rather warm upon the subject, and that your co-trustees thought you rather warm, and that you talked of the Supreme Court. If you had been aware of what I have mentioned you would probably have suggested some action?—I think so. Not, mark you, so much to prevent Mr. Kissling from getting the land as to prevent the Government from getting it for what I considered an unnecessary purpose. I do not pretend to be an artilleryman or an engineer; but I believe, and hundreds of other people also believe, that such a fortification is unnecessary, because if an enemy ever gets so close as that, then good-bye to your town.

876. But I am now particularly referring to the portion which was really found to be unnecessary—to the $3\frac{1}{2}$ acres that was reconveyed?—Oh, yes!

877. I understand you to say that, if you had known that under the Public Works Act of 1882 the Government could not take that which they did not require, you would have proposed some measures of resistance?—I should.

878. I presume you were aware of the arrangement entered into between Mr. Brewer and Mr. Kissling generally?—I cannot say that I was.

879. I will read it to you. This was the arrangement entered into on the 20th November, 1885, between Mr. Brewer and Mr. Kissling—that was the day before the letter was sent by Mr. Brewer to the Trust Board, telling them that the Government were going to take the whole of the land for defence purposes: "Auckland, 20th November, 1885.—H. M. Brewer, Esq.—Dear Sir,—Referring to our conversation this morning, I would beg to state what I understand to be the position of our negotiations with regard to Point Resolution. The Government have taken the whole of my property, for which they are to pay £6,000—for freehold and leasehold interest. If this sum I am to receive £5,368; the Trustees receive £632. The Government undertake to had me back, as a freehold, the portion of my property not required by them, about $3\frac{1}{2}$ acres, for which I pay them £4,250. The total cost of compensation to the Government will therefore be £1,70. Should it be found in settling with the Trustees that the Government have to pay a larger sum than £632 for their freehold interest, I undertake to reimburse them the excess. It is understood that the boundary between my property and the fort is the fence erected by the Government.—Yours faithfully, G. S. Kissling." Do you say that when that letter was received from Mr. Brewer, and until the Special Powers and Contracts Act was passed, you knew nothing of that arrangement?—No: it is not referred to in Mr. Brewer's letter. As a business man I should probably have said in such a letter, "I beg herewith to enclose a proposal from Mr. Kissling for the purchase of the property in excess of our requirements, and request to know whether the terms are agreeable to you." The paragraph which says that, if the Trustees are not satisfied with the offer, Mr. Kissling shall make up the difference, perhaps explains easily why it was considered best not to send the letter to the Trustees.

880. That does not explain why Mr. Brewer did not send it to the Trustees, because the Government were not to pay any more. What is your opinion about that concealment?—I cannot look into Mr. Brewer's mind.

881. Do you think that it was a proper transaction, or a proper way of treating the land?—I dare say that Mr. Brewer is a very excellent Government servant, and that he did not want the Government to have to pay any more than they had agreed to offer.

882. But do you not see it did not affect the Government? Mr. Kissling had to pay an excess. Yet Mr. Brewer writes to the Trustees telling them that the Government were going to take the whole of the land—not for the purpose of giving a portion back to Mrs. Kissling, it for the purposes of the battery. That letter was written simultaneously with the making of the arrangement with Mr. Kissling. Do you think that proper?—I think it hardly fair and aboveboard.

883. I want to read to you—no doubt you have read it before, because you say you were astonished when you saw the statute—a statement made in the Special Powers and Contracts Act with respect to this. It says, "The land described in the second column, having, *inter alia*, been taken by 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 Mr. Kissling." Taken in the light of the information now before you, is that a true statement?—No, certainly not. Who signs that?

Mr. Napier: It is in an Act of the Legislature, signed by the Governor.

884. Dr. Giles.] I should like to know which portion you say is not true? The statement that the portion of land referred to is not now required for defence purposes. As matter of fact, it never was required.

885. There is one other question I would like to ask you. There was a proposal made before Mr. Brewer had anything to do with the matter. The Government had been recommended by a preceding agent, Mr. Mackay, to take the whole of this land, not with any view of reconveying a portion to Mr. Kissling or to anybody else, but in order to avoid some complications or difficulties which Mr. Mackay thought he saw in the way; and his suggestion was, that they might take the whole of the land, and any portion they did not require for defence purposes they might lease. What would you have said to such an arrangement as that if it had been put before you?—That the Government might lease any portion they did not require?

886. That they should take the whole, and if they did not want the whole they should lease any surplus?—That would have been an illegal act, I learn now. If all the land which is taken is not required, the surplus has to be offered back to the parties from whom it has been taken.

887. But what would you have thought of such a proposal at the time, as compared with what the Government have done?—Well, I think it would be preferable to selling the freehold right, because the land at some time or other would revert to the trust.

888. A lease of that kind would have been consistent with your rights, as at some future time the land might have come back into the trust?—Yes. I think that the great grievance the Trustees have to complain of is being deprived of the freehold.

889. That being the case—such a recommendation having been made to the Government and approved by them before Mr. Brewer's arrangement was thought of—your view of the matter would be modified?—Yes; it would be a preferable plan.

890. In point of fact, it would appear from what we now know that the object of taking the whole of the land was not purely and solely to reconvey a portion of it, because the taking of all of it had been contemplated before?—I never heard Mr. Mackay's name mixed up with the matter at all until this investigation began.

Mr. Napier: You may remember, Mr. Chairman, that in Mr. Brewer's letter to Mr. C. Y. O'Connor he says—the suggestion was his own—that he had ascertained from a conversation with Mr. Kissling that the latter had a strong desire to acquire the balance of the land.

Dr. Giles: I know he does. Any one reading the letter would think it was a new proposal to take the whole of the land; but Mr. Mackay says he had recommended it previously.

Mr. Napier: But there is nothing to show that Mr. Brewer was aware that Mr. Mackay had made that suggestion.

Dr. Giles: I do not know that there is.

Mr. Pierce: There is one suggestion that perhaps I may be allowed to make. I think it would perhaps be very useful for the purposes of this inquiry that Bishop Cowie should be examined before it closes. He is now absent from the colony, but he will be here in December.

Dr. Giles: Our inquiry will be closed long before that. We are limited to the 22nd of this month.

Mr. Pierce: The Bishop's evidence would be very useful. He has presided calmly and impartially over the meetings of the Trust Board.

Mr. Napier: I have a letter from the Bishop showing his opinion on the matter.

Mr. Pierce: He was interviewed by a reporter, and gave a very decided opinion on the matter.

Mr. Napier: Perhaps I had better read the letter. Here it is.

Dr. Giles: What is its date?

Mr. Napier: It is not dated. I think it must be taken from parliamentary papers.

Mr. Hesketh: To whom is it addressed?

Mr. Napier: That is not even stated.

Mr. Hesketh: Perhaps it can be taken now, and vouched for later on.

Mr. Napier: I will ask Sir George Grey for the required information, and supply it later on. I will now read the copy of the letter: "Sir,—As there seems to be still some misunderstanding of the action of the Government and of the Trustees in relation to loss of land sustained by the St. Stephen's estate in connection with Point Resolution, I shall be obliged by your publishing the following facts: The late Captain Heale leased 4½ acres of the St. Stephen's School estate at the said Point, near to the St. Stephen's Cemetery, for which he paid the Trustees £17 a year. The date of the lease was August, 1873, and the term was sixty years. When he left New Zealand Captain Heale sold the remainder of his lease, forty-eight years, to Mr. G. S. Kissling. By an Act of Parliament passed in 1885 the Government was empowered to take for defensive purposes as much land at Point Resolution as was necessary. They accordingly took the land formerly leased to Captain Heale by the St. Stephen's Trustees, in spite of Mr. Kissling's protest, which he made in the form of an action in the Supreme Court. The Government valued the land taken by them at £6,000, of which sum the Trustees received £632, and Mr. Kissling, I believe, £5,368. The Government then sold what they did not require of the taken land to Mr. Kissling for £4,250, I believe. As the rent paid by Mr. Kissling to the Trustees was only £17, and the lease had forty-five years to run, it was thought by the arbitrators that £632 was sufficient compensation to pay to the St. Stephen's estate. In reference to the whole transaction it would seem that if injury has been done to the St. Stephen's estate the Government alone are to blame, for the Trustees had no choice in the matter, and Mr. Kissling's action was a business transaction. It is, however, an important consideration (1) whether the Government had the right to take from the St. Stephen's estate more land than they needed for defensive purposes, and (2) whether they had the right to sell any portion of the land so taken.—Yours obediently, W. G. AUCKLAND, Bishop, Chairman of the Board of Trustees."

WEDNESDAY, 10TH OCTOBER, 1888.

HERBERT MOLYNEUX BREWER sworn and examined.

891. *Dr. Giles*.] In the year 1885 you were in the employ of the Government, Mr. Brewer?—I was, as a land-purchase officer, and I had been in that position for upwards of fifteen years.

892. Up to what time did you remain in the service of the Government?—I think it was 1885 or 1886, I am not quite sure which, that I resigned.

893. In the latter part of 1885 you were in Auckland engaged on behalf of the Government in settling a question with Mr. Kissling of land taken from him at Point Resolution?—Yes.

894. By whom were you instructed?—By the Government.

895. But what department?—The Public Works Department. I was more especially instructed in this particular matter by the Defence Minister, but I came up from the Public Works Department.

896. To what department did your office belong?—The Public Works Department.

897. Can you tell us what was the first communication or instruction of any kind you got with

reference to this matter?—It was said in the Public Works Office in Wellington that I would have to settle the claim when I came to Auckland. The first direct instruction I received was from Mr. Ballance, Defence Minister.

898. You were not sent to Auckland for the purpose?—No; I was changed from the Wanganui and Wellington District to Auckland when Mr. Macfarlane died.

899. When did you come to Auckland?—I think it was in 1885, but I cannot remember what time of the year. I think it was about September, 1885. I dare say I could tell if I had the books to refer to, but having left the letter-book in the department I cannot state the exact date.

900. Did you come from Wanganui or from Wellington?—From Wellington, although Wanganui was my place of abode; but I was at the Head Office for some time going into different matters.

901. At the time of your leaving Wellington for Auckland you had not received any instructions in relation to this matter?—No direct instructions. I was simply informed it was one of the cases I should have to go into.

902. Who informed you of that?—The Under-Secretary and others connected with the department. We were going into a number of claims in the Auckland District, and this was mentioned as one of them.

903. After your arrival in Auckland did you do anything in connection with this matter—spontaneously or not—until you received some definite instructions?—Not until I received some definite instructions from Mr. Ballance, because I was very busy when I came up here.

904. Can you say in what form those instructions were received?—They were verbal instructions given to me at the “Star” hotel, as far as I can remember.

905. Mr. Ballance was in Auckland?—Yes.

906. Did you see Mr. Mackay at all about this matter?—No, not that I remember. I may have had a conversation with him about it after he came to Auckland.

907. Was he not in Auckland when you came?—No. I may have had some conversations with him in Wellington. Very likely I had. We used to talk together about claims.

908. He had left Auckland when you came?—He returned to Wellington after coming up to attend that injunction case. In fact, I may say the Government wished me to come up on that occasion instead of Mr. Mackay, but I was too busy with compensation cases in other places, and could not go.

909. At the time of your leaving Wellington, or at any time before you began to personally intervene in this matter, had you been informed of what Mr. Mackay had done, or had any papers been put into your hands showing what he had done or recommended?—I was simply informed that he had gone to Auckland to be present at the Supreme Court, and that a Bill had to be passed through the House, and that he had just arrived at the Supreme Court on the morning the Bill passed. I do not know whether he had any conversation or interviews with Kissling.

910. You were unaware of any specific recommendations he might have made with regard to this matter?—Quite unaware, as far as I know. I heard a little talk in the office that it was rather an awkward case to settle, but it was in general conversation.

911. No file of papers in the Public Works Office relating to the matter was put in your hands for your information before you left?—I am not quite certain about that. It is possible a file might have been, because I was requested to look into all matters requiring settlement in the Auckland District. It is possible the Point Resolution papers may have been amongst those files. I could not say for certain. There were a great many cases—some three or four hundred—in the Auckland District at that time unsettled.

912. But you do not remember among such papers if you did see any particular communication from Mackay to the Under-Secretary for Public Works?—No; all that I remember about the case is—if I did read any of those papers—that there had been a good deal of trouble with Kissling on account of his having obtained an injunction of the Supreme Court, and that Mackay had been sent up to try and settle the difficulty in some way.

913. Had you heard of any recommendation made by Mackay that the whole of the land should be taken by Proclamation?—I do not think so; I do not remember it. I may have had, but I do not remember.

914. After your interview with Mr. Ballance what did you do?—I went up to see Kissling, and to inspect the property.

915. Was Mr. Kissling present?—Yes; he showed me over the property.

916. What was the result of your interviews and your inspection of the property?—We had a general talk over the thing, and I said I would go into the matter and see what we could do in it, and see if we could come to some terms of agreement. That was all, I think, that transpired on that particular day.

917. What course did you next take after that?—I reported to Mr. Ballance that I had seen the property, and that I thought it was rather an awkward case, and that the Government would most likely have to pay a considerable amount in compensation. I told him that I would do my best to settle matters, and I also told him what steps I would take. I asked him if there were any particular steps he would wish taken, and he said simply to take what steps I thought necessary for the interests of the Government.

918. You suggested to him by telegram that you should be allowed to do the best you could for the Government?—Yes.

919. And he approved of that?—Yes.

920. Thereupon what did you do?—The Minister was going away next day, and I went to see him before he left. I was busily employed at the Waikato and elsewhere, and I think it was some time before I saw Kissling again. I had a great many interviews with Kissling. Many official and other letters passed between us, and it was a long time before we could come to any settlement.

921. Those interviews resulted in the agreement between Kissling and you?—Yes—that the Government should purchase the whole of the land from the Trust Board, and then transfer the piece not actually required for battery purposes to Mrs. Kissling.

922. *Mr. Napier.*] Purchase?—I mean take, of course. The whole of the land was proclaimed. I mean that we should take it under the Public Works Act. I have prepared a statement here which, if you will allow me to read it, will state what actually took place. [Witness proceeded to read, but it was decided to resume and continue the examination in the ordinary way.]

923. *Dr. Giles.*] Who first made the proposal that Kissling should get a reconveyance of the freehold?—I think Kissling expressed a wish to me to get a portion of the freehold, and I think, as far as I remember, I said I fancied it could be done under the Public Works Act. I telegraphed to Wellington to ask if it could be done. The reply was from Sir George Whitmore, as follows: "To H. M. Brewer, Esq., Land Purchase Commissioner.—The Defence Minister, having referred your telegram of yesterday to the Law Officers, ascertained that we have full power under the Act, and you are therefore authorised, as you request, to act in the manner most conducive, in your opinion, to the interests of the Government."

924. Here is a telegram from you from Auckland: "17th November, 1885.—Defence Minister, Wellington.—*Re* battery at Point Resolution: This land belongs to the General Church Trust; and part of it is occupied by Mr. Kissling, who holds it on long lease. The area actually taken from him by Proclamation is 3 roods 13 perches, but the total area of the property occupied by him is about four acres. It would save the Government some £500 if the whole of the four acres could be taken. Have we power to do this under the Act lately passed, and, if so, will you authorise me to act in the manner I think most conducive to the interests of the Government?" This is the reply to it: "The Defence Minister, having referred your telegram of yesterday to the Law Officers, ascertains that we have full power under the Act, and you are therefore authorised, as you request, to act in the manner most conducive, in your opinion, to the interests of the Government." That, of course, only referred to the taking?—Yes.

925. The subsequent negotiations followed upon that, and you say you think Kissling expressed a desire to get the freehold?—As far as I remember, that was the way it commenced. We could not come to any terms for a long time.

926. At that time did you know what the state of the law was about the taking of land, compensation for it, and what was to be done with surplus land?—I did.

927. Then you knew this arrangement was illegal?—I did not know that arrangement was illegal. I overlooked that clause of the Act which said that it had to be offered to the original owner. The Public Works Act is a long one, and you cannot always carry all these clauses in your head. I did not think at the time I was acting illegally. I thought if there was anything illegal in it the Trustees would at once refuse and the matter would be at an end.

928. Was the question ever discussed between you and Kissling whether that arrangement had any illegal defects in it?—No. I think Kissling was under the impression it could be taken under the Public Works Act. Evidently Kissling was under that impression, because in a letter addressed to me on the 6th November he says, "If the above plan is adopted the land will, of course, have to be taken under the Public Works Act, and the balance conveyed to me."

[*Dr. Giles* read letter dated 6th November, 1885, as follows: "H. M. Brewer, Esq.—My Dear Sir,—Referring to your letter of this date, and to our subsequent interview on the subject of compensation to me for the portion of my property taken for a fort at Resolution Point, I beg to submit the following: The amount of compensation—£1,950—offered me for my interest in the lease of the portion taken I consider inadequate; but I am prepared to accept £1,750 and a freehold of the balance not taken, I having to settle the claim with the Trustees for the value of their freehold interest. By this means the Government will save £200 if I were to accept your present offer, which I am not disposed to do.—Yours faithfully, G. S. KISSLING. If the above plan is adopted the land will, of course, have to be taken under the Public Works Act, and the balance conveyed to me.—G. S. K."]

929. Then it did not occur to you at all during these negotiations that the Trustees ought to be offered the land back if any was offered back?—Well, it did not. I am quite prepared to say it was a mistake my not offering it back to them, but at the time it really did not occur to me. I was under the impression the Trust were sellers, not buyers, and that even if the land had been offered back to them they would not have taken it. The land is surrounded on all sides by a road, except a small piece. It did not strike me for a moment that they would require it, or wished it.

930. Did you limit your efforts in the matter to making as good a bargain as you could for the Government?—That was my sole idea. I saw a £5,000 or £6,000 claim, and the sole idea I had in the action I took was to make as good a bargain as I could, to get out of an awkward claim. In fact, I did not know how to settle the matter. When that mode of settlement was proposed I thought it was a very good way of getting out of a bad case for the Government.

931. You had nothing to do with the matter after this agreement was approved by the Government?—Nothing at all, except I received their commendation. I should like to read a telegram I received: "H. M. Brewer, Land-purchase Officer, Auckland.—Mr. Ballance approves your action—namely, purchase of Point Resolution on terms stated.—W. H. GUDGEON, Major."

932. Yes, we have that amongst the papers?—And I think you will also find a memorandum there approving of my action. [Telegram read as follows: "The Assistant Under-Secretary, Defence Office.—*Re* Point Resolution battery: With respect to conversation I had with Hon. Defence Minister at Auckland, will you inform him I have settled on the following terms: The Government to buy the whole of the property for £6,000. £1,750 will be accepted by Kissling and Church Trustees in full 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.—H. M. BREWER, Land-purchase Officer."]

Dr. Giles : That is indorsed as satisfactory by Mr. Ballance.

933. *Mr. Mahony*.] With regard to a statement contained in one of your letters as to which questions have been asked. In a letter to the Under-Secretary for Public Works these words occur : " Now, the Trustees cannot sell, although they would like to." Did you mean by that to convey to Mr. O'Connor that the Trustees were desirous of selling and that they had no power?—I think, what I remember of it was, even if the Trustees wished to sell they could not do so. I was certainly under the impression that they were not averse to selling ; that it would require legislation to enable them to sell.

934. Even though desirous, they could not sell except they got legislative power?—Yes.

935. You did not mean to convey to anybody that you had been told by the Trustees that they were desirous to sell that property?—I do not remember being told by anybody. I may have been told in conversation in the streets ; but I was never told, as far as I remember, by any of the Trustees.

936. Am I to understand from your answer to the Commissioner that all these arrangements were made by you purely and simply as an officer of the Government, and making the best arrangements you could for your employers?—Certainly.

937. Did you consider Kissling's interests?—No, nobody's interests except my employers.

938. When you made the offer of £632 to the Trustees, was that not made on your own judgment?—Not the actual amount.

939. That was assessed?—Yes.

940. I believe, as a matter of fact, it had been agreed that an amount should be assessed by a competent person?—By a public accountant in Auckland.

941. And you approved of the amount in the interests of the Government?—Yes.

942. And therefore you approved of the amount if accepted by the Trustees?—Of course I offered it to the Trustees.

943. After you had agreed with the Trustees, you considered by the light of Kissling's previous claim and from your own knowledge as a valuer and as a compensation officer—you considered that you had, as a matter of fact, saved the Government this sum of £750 which you mention in that letter?—I consider I saved the Government a large amount of money, because I thought the matter would go to a Compensation Court if not settled. I considered I saved the Government a large amount of money without doing any injury to the Trust.

944. You also knew, I believe, that the Trustees knew that, provided they did not agree to the offer, they had the Compensation Court open to them?—I put that specially in my letter, so that they might see they had that course open to them.

945. Was it for that purpose?—Certainly. I would have been glad for the case to have gone to a Compensation Court, because the Compensation Court relieves me of all responsibility.

946. In making that offer of £632, it having been agreed upon and assessed, and in making the final arrangements, did you not use purely your own judgment in the exercise of the full authority which appears to have been given to you by Mr. Ballance?—Certainly. I went on my own judgment only.

947. Were you swayed in that judgment by Kissling's interests?—Certainly not.

948. As a matter of fact, there was a letter of the 20th November put in, in which Kissling states the terms upon which he understands you and he had agreed as a provisional agreement?—Yes.

949. As a matter of fact, those terms were not finally settled until your acceptance of them on behalf of the Government, which was in January?—Of course not.

950. You wrote this : " I beg to inform you that, on behalf of the Government, I accept the conditions of settlement proposed by you in that letter. The Proclamation taking the land is now out, and I trust the matter will soon be finally completed " ?—I believe I wrote that letter on receipt of one from the Under-Secretary stating that the Proclamation was being prepared.

951. I believe, as a matter of fact, it did not occur to the authorities till many months after that legislative sanction was necessary in the matter?—I am not quite sure that it did not.

952. It was months after, you know, before it was known that legislative sanction was necessary?—Yes, as far as I remember.

953. In that letter, or your communications to the Trustees, did you deliberately withhold anything from the Trustees—anything you thought they ought to know?—Certainly not. I simply wrote a business letter, offering certain terms for a certain property, which terms I considered they had a right to refuse or accept. I pointed out their mode of action if they did refuse.

954. In making and finally completing these arrangements, I presume you were guided by the terms of the telegram to which I have previously referred, and which quoted the opinion of the Law Officers at Wellington that the Government had full power to take the whole of the land?—I consider that telegram, to a certain extent, misled me. It gave me the impression that we had a perfect right to take the land and reconvey it to Kissling.

955. *Mr. Napier*.] It does not say so?—It gave me that impression.

956. *Mr. Mahony*.] Do I understand you to say that misled you?—Yes ; it did to a certain extent.

957. You understood the Government could take it and use it as their own property?—Yes ; I certainly had that impression. It may have been a hasty impression.

958. It was also a fact, of course, that the preliminary taking and the opposition to that taking were somewhat unique. Have you had any parallel case in which the Government were placed in a similar position?—Not exactly a similar position.

959. *Mr. Hesketh*.] Did you ever see the Trustees on this matter?—No.

960. Did your communications with the Trustees begin with the letter to the Secretary?—Yes.

961. The letter of the 20th November?—Yes, I think so.

962. Are we to understand that the opinion of the Law Officers satisfied you there was power to take the land?—Yes, certainly. I did not look up the Act.

963. But you did not know at that time the Government were bound to offer any excess of land back to the Trustees?—No, I certainly did not. I admit I made a mistake in not doing so.

964. As a fact, you did not know it?—That particular clause in the Act did not strike me. I do not often read the Act, and it did not strike me at the time that the land would have to be offered back again.

965. You are not aware that section 14 required it to be offered back?—I am aware now, but did not recollect it then. I may say at once it was an oversight my not offering it back.

966. Section 14 of the Act says: “(2.) The Minister or local authority, as the case may be, shall cause the land proposed to be sold to be valued by one or more competent valuers, and shall offer such land at the price fixed by such valuation, first to the person then entitled to the land from which such land was originally severed.” If you had known of the existence of this obligation, the matter being left to you to make such terms as you thought fit, would you have felt bound to offer it back to the Trustees?—I should have offered it to the Trustees, certainly.

967. In making that arrangement with Kissling, are we to understand that you made it throughout in ignorance of this fact?—I cannot say “throughout.” I say it was an oversight of mine, not offering the land back to the Trustees. I admit that. I do not say it was exactly through ignorance.

968. You knew of the power?—Yes, I knew of the power, but I overlooked it at the time. I read the Act years past.

969. Can you make it clear? when you did read this section afterwards you remembered there was such a provision in the Act?—I do not think I ever read the section until these proceedings commenced, and it was pointed out by the Select Committee.

970. I want to know whether you knew of the existence of this section before you negotiated with Kissling, and forgot it, or did you not know of it until after the negotiations?—I knew of the existence of that clause, but I overlooked it at the time of making this arrangement.

971. In other words, if you had remembered the existence of this section, would you have made such an arrangement?—I should have pointed it out to the Government, and asked what was the best thing to do in the matter, and most likely have made an offer to the Trustees. I do not know exactly what I should have done—the ordinary thing under the circumstances.

972. With regard to the statement in that letter from Kissling, you say that throughout this transaction you acted only in the interests of your employers?—My employers only.

973. Did you think it your duty to inform the Trustees of the fact that Kissling was to pay more money if more was required?—I did not think so. I should not at all have objected to the Trustees knowing.

974. You did not feel it your duty, and you did not tell them?—No, I did not tell them. I do not think I met any of them at any time.

975. Did you feel it your duty to inform the Trustees that Kissling was to get back the excess of freehold?—I did not think it was my duty. In fact, I was under the impression that the Trustees knew all about it. The thing was talked about for weeks and months, and I had no idea of the thing being a secret. I knew Kissling had friends and connections on the Board, and it must have been known about. I never attempted to keep it a secret.

976. *Mr. Napier.*] How long have you acted in the capacity of a land-purchase officer?—From memory, I should say upwards of fifteen years.

977. Then you know pretty well the procedure which a land-purchase officer should adopt in negotiating for the interests of the Government?—I suppose I am pretty conversant with it.

978. And were pretty well acquainted with your duties, and with the provisions of the law on compensation cases?—I suppose I was fairly well acquainted with my duties.

979. It was part of your duty to make yourself acquainted with the provisions of the Public Works Act with regard to compensation for taking land?—Yes.

980. Would you have considered yourself a competent land-purchase officer if you had not known the provisions of the law with regard to the taking of land?—I certainly think, as a land-purchase officer, I ought to have known the provisions.

981. You stated that not only you did not consider it part of your duty to tell the Trustees when you wrote to them on the 20th November that Kissling would have to pay them for any excess that might be awarded to them over £632, but you also did not consider it part of your duty to tell them the arrangements you had made with Kissling?—Yes.

982. You said you believed the Trustees knew of the arrangement with Kissling; that it was no secret?—I had the impression that the thing was no secret.

983. Was that the reason which induced you to suppress the information from that letter?—No; I had no intention of concealment or suppression of any kind. I simply wrote it as a business letter.

984. You knew they were two conflicting interests—those of the Trustees and Kissling?—Yes.

985. Why did not you consider it your duty to tell both parties the facts?—I cannot tell now. I considered I was giving a fair price for the thing, and was doing a fair thing, and I did not think it was necessary to tell the Trustees.

986. Did any member of the Board or any person in connection with them have any intimation conveyed to him of this arrangement?—No; but there was general talk about the streets and clubs and other places. I simply had the impression on my mind that it was generally known. There was no secret between myself and Kissling.

987. Is that the manner in which Government servants carry out their duties—because they

hear in the streets that certain things are known, therefore they do not convey information to the parties concerned?—I was simply acting for my employers.

988. Supposing you had known that no part of this arrangement was known to the Trustees, and that they did not know that Kissling was negotiating for the transfer back to his wife, would you have mentioned it to the Trustees?—Very possibly I should. I cannot say whether I would or not. I should have had to have considered whether it was advisable to mention it or not. I would have had to have taken that into consideration.

989. You had arranged with Kissling that he was to settle with the Trustees for their freehold interests?—I arranged with him that if the Trustees did not accept £632, to take the case to the Compensation Court, and whatever amount had to be paid over that would have to be paid by him. It was simply an arrangement to protect the Government in case Kissling went to Court.

990. The Government would not have been prejudiced in any way financially by mentioning that to the Trustees?—Certainly not.

991. Supposing the very improbable thing that the maximum claim had been allowed by the Compensation Court, the Government would not have suffered under the arrangement?—No.

992. Therefore there was no reason for not informing the Trustees of the fact?—No reason for not informing them, and no reason for informing them. I considered I had offered them a fair price.

993. Have you ever had any case in which you have had to purchase the combined interests of the leaseholder and freeholder under the Public Works Act?—Yes, I think so. I have had a great many cases. I think I must have had some of those cases.

994. Have you in all those cases kept concealed from one party what you were doing with the other?—I kept concealed what I thought was conducive to the interests of the Government.

995. Did you conceal the fact that you were intending to convey $3\frac{1}{2}$ acres back to Mrs. Kissling because you thought it was in the interests of the Government?—I did not conceal the fact. I did not mention the fact.

996. You have said that in all former cases you concealed what you thought was conducive to the interests of the Government?—A land-purchase officer has to conceal a great deal.

997. You considered, as a land-purchase officer, it was your duty to conceal facts which would militate against the price paid by the Government?—Take, for instance, a piece of land on which a railway-station or large workshops are to be erected. In purchasing it it is not necessary to mention that fact, because the owner would ask an enhanced price for it. That is what I mean when I say I conceal things.

998. You said this was an awkward claim?—I said I was told it was an awkward claim.

999. You said you told Mr. Ballance?—Yes; I was told in Wellington.

1000. Did you believe it was an awkward claim?—Yes.

1001. Why?—I thought it was an awkward claim to fight in a Compensation Court, and I thought the Government would have to pay a pretty high price for putting the battery there and destroying the view; and various other things were connected with it.

1002. You thought it was an awkward case to fight in a Compensation Court?—I thought so. The Government would have to pay a pretty big sum.

1003. Did you know the provisions of "The Public Works Amendment Act, 1885"?—I cannot remember whether I did or not. I cannot say that I did. I think that my knowledge of the Act was previous to that.

1004. Did you make yourself acquainted with the provisions of that Act when it passed?—I do not think I ever saw it.

1005. Did you not, when you saw Mr. Ballance, know that an Act had been passed to enable the Government to take land for military purposes?—Do you mean the Act that was passed when the case was being heard in the Supreme Court?

1006. Any Act?—That was the only Act I knew.

1007. Did you know at that time, or do you now know, the basis on which compensation is fixed for land taken for military purposes?—I cannot say that I have looked into the Act of 1885. My knowledge is of the old Act.

1008. And you settled this claim in entire ignorance of the Act of 1885 regarding the basis on which claims for compensation are settled?—This is the Act (1882) I have always gone upon.

1009. Did you then settle this claim between Kissling and the Trustees in entire ignorance of the Act of 1885?—As far as I remember, I did. I simply went upon my knowledge of that Act (1882).

1010. Did you know the Act of 1885 had been passed for the special purpose of increasing the powers the Government had in the Act of 1882?—I heard that the Public Works Act was not sufficient, and that this Act was passed to enable the Government to take land for military purposes.

1011. And you knew this land was being taken for military purposes?—Yes. I also knew that it was likely to be taken for public works purposes as well.

1012. Did you not consider it desirable to make yourself acquainted with the provisions of that Act?—No; I did not think it would affect my negotiations.

1013. Do you now know that it would have materially affected your negotiations?—I have not even seen the Act to this day, to my knowledge.

1014. You say some of the reasons why you considered the claim was an awkward one were that the battery was in close proximity to the house and grounds, and Kissling's residence would be materially injured thereby?—General depreciation of the property.

1015. In consequence of proximity to the battery?—Principally.

1016. Did you not know at that time that no claim for compensation could be made by reason of the proximity of the battery?—No.

1017. Do you now know?—No.

1018. Section 6 of the Act of 1885 says: "Compensation for the land taken or required to be kept free from obstruction shall be settled by a Compensation Court in the manner provided by Part III. of the said Act; but no person shall have any claim to compensation by reason of the firing of artillery from any fortification, or the use or working thereof, or otherwise, under this Act, except for land actually taken or required to be kept free from obstruction under the powers of this Act; but nothing in this section shall be deemed to prevent any person suffering any damage to the materials of any house or building from pursuing any other remedy he may have at law"?—That is the first time I have ever heard that clause read.

1019. You see that the proximity of the battery was no ground for compensation?—I do not know that I ever heard that clause read, or ever saw it.

1020. If you had known that, would you have agreed to this arrangement with Kissling?—I might have thought it would have given me greater power to resist a claim in the Compensation Court, and get the land on more favourable terms for the Government.

1021. Your telegram to the Defence Office of the 17th November, 1885, says you have settled on a certain basis?—I believe it does.

1022. You say in that telegram, "I have settled:" is that a fact?—If I sent that telegram, it must have been a fact.

1023. How do you reconcile that with the answer you gave to Mr. Mahony that it was not till January, 1886, you sent the letter to Kissling that the matter was settled?—I cannot remember the dates; I can only speak from memory. I considered the matter was settled when I got the Trustees' reply.

1024. That was about the 20th November, 1885?—Yes. I considered the matter was settled when the Trustees accepted my offer.

1025. In that telegram you say, "Balance to be retained by Kissling"?—Yes.

1026. What do you mean by that? You knew that Kissling had only the lease of the land?—I mean that the Government should buy the land from the Trustees and hand over the balance to Kissling, to prevent the Government having to pay a large amount of compensation—which, I consider, the Government had a perfect right to do in equity.

1027. Why did you use the word "property" there instead of "freehold"?—I cannot say why I did not use a certain word. You write sometimes very rapidly, or you may be busy, and easily make a mistake.

1028. £6,000 was the maximum claim ever made? Who made the claim at £6,000?—There was no actual claim, so far as I can remember, in writing. I do not know how the particular amount of £6,000 came about, but in the Wellington Office I was told it would most likely cost from £5,000 to £6,000.

1029. Did you assess the value of the land at £6,000?—I did not.

1030. What valuation of the land did you make?—I might practically say I made no valuation of the land. I do not think I made any valuation at all. It was a kind of arrangement between Kissling and myself. He said the claim was so much, and I said it was too much; and we kept at it for weeks and weeks, until we got to £1,750: when we got to that, I agreed to accept.

1031. Did you consider that the land was worth £2,500 an acre?—I cannot say.

1032. Have you any recollection as to the estimate you placed on that land?—I have no recollection at all. I have no papers here to show what I did in the matter.

1033. Did you make any inquiries as to what was the market-value of that land?—I think I did ask several what they considered was the value of the land.

1034. Who?—I cannot say for certain now, but I think I spoke to Mr. Cheeseman, sen.

1035. Did you form any idea yourself as to the value of the land?—I practically can say I did not at the time. I set myself steadily at this £1,750. I said, if we can get it at £1,750 I will do so.

1036. Did you consider £1,750 a fair price for three-quarters of an acre?—I did not only look at it in that light; I looked at the depreciation of the whole property.

1037. Did you consider £1,750 a fair price because you were under the impression that there was a claim for consequential damages by reason of the proximity of the battery?—Certainly. I considered the consequential damages amounted to almost more than the value of the land.

1038. So that, if you had known that there was no possible ground for a claim for consequential damages, the sum you would have considered a fair price would probably have been half?—Probably half. I should have gone into the question again, most likely.

1039. Do you now see that by being in ignorance of the Act of 1885 you have caused a loss to the Government of a considerable sum of money?—I do not think so. I think, if the case had gone to the Court, it would have cost the Government more than £1,750.

1040. Do you seriously think, in the light of the provisions of the Act of 1885, that if the Government had gone into the Compensation Court they would have had to pay more than £1,750?—I think it is very likely they would have had to pay a good deal. I cannot say what. As a rule, the leaning of a Compensation Court is to the plaintiff, and not to the Government. I do not like Compensation Courts myself. I like to keep all compensation cases out of the Court where I can.

1041. Entertaining that idea, you might consider it your duty to pay a greater sum than the actual market-value of the land?—Certainly not; but I would advance a little in preference to going to a Compensation Court. Of course, these are secrets of the Government which, perhaps, I ought not to state in public.

1042. I think in Compensation Courts a Judge of the Supreme Court usually presides to hear cases over £500?—Yes; and two assessors.

1043. Do you mean to say that a Judge of the Supreme Court would lean against the Government?—I think, as a rule, all Compensation Courts lean in favour of the plaintiff, and not in favour of the Government.

1044. Was the suggestion of reconveying the freehold to Mrs. Kissling your suggestion?—I believe it was not. I believe it was suggested by Mr. Kissling, as far as I remember.

1045. Did you agree to it as soon as he suggested it?—I thought it was a very good thing if it caused the claim for compensation to be reduced. I considered the Government had a perfect right to do it if they wished. I considered it so for this reason: The Government originally gave the land, and I thought they had a perfect right to take back a small portion, if they wished to save paying a large amount of compensation, provided they gave adequate remuneration to the grantees for the land taken.

1046. You had no knowledge whatever of a suggestion to proclaim the whole of the land, prior to Kissling's negotiations with you about it?—I do not remember.

1047. *Dr. Giles.*] You are not aware that a Proclamation was actually drafted to take the whole of the land?—I cannot remember.

1048. *Mr. Napier.*] Why did you suggest that Mr. Ballance should give you *carte blanche* in the matter?—Because I think it is always better.

1049. Do you not think, in a claim of £6,000 the Government should have been consulted before the final arrangement was made?—There was no claim, to my knowledge, when I saw Mr. Ballance. I believe Kissling saw Mr. Ballance, and said the land had been taken for months and had never been compensated for, and requested that some officer of the Government should inquire into it.

1050. As a matter of fact, the claim of £6,000—was not that the amount assessed as being the value of the combined interests?—When I went to see Mr. Ballance, all I knew of the probable amount of the claim was what I heard at the Public Works Office at Wellington.

1051. Where did you get the basis of £6,000 from?—I am not prepared to say.

1052. When did you first officially, and not confidentially, receive the assessment of £6,000 as the value of the combined interests?—I cannot exactly say.

1053. From whom?—I have no papers before me to show. I only knew £6,000 seemed to be the sum generally fixed upon by everybody.

1054. Can you tell us one person?—I fancy Mr. Cheeseman was one. I cannot think now who were the others; but I am quite sure £6,000 was the basis.

1055. You agreed to accept Waymouth's estimate of £632 as the amount the Trustees were going to receive?—Yes.

1056. Did you take any step to ascertain if £6,000 was a fair amount for the combined interests?—I cannot remember what steps I took. I looked at the property, and formed a pretty good idea in my own mind.

1057. Did you personally form an estimate that £6,000 would be a fair price for the combined interests?—I thought from £5,000 to £6,000 was the value of the property. I am only speaking from memory.

1058. Do you know what was the property-tax valuation?—I do not.

1059. Did you endeavour to ascertain what was the property-tax valuation?—No. I should not have acted upon it if I had obtained it.

1060. Previous experience told you it was not a safe way?—Yes: I had acted upon it before, and much to my sorrow.

1061. In a letter to C. Y. O'Connor on the 21st November, 1885, you say the cost of the whole of the property will be £6,000?—Yes.

1062. Upon what grounds did you make that statement?—I think I made that statement upon a letter written by Waymouth when he fixed £6,000 as the basis on which he fixed the amount of compensation to be given to the Trustees.

1063. You knew Waymouth was only an accountant?—Yes.

1064. Therefore, Waymouth was not a valuator at all. Here you say the cost of the whole property would be £6,000. Had Kissling made any claim of £6,000?—I presume I meant the cost to the Government would be £6,000 if it went to Court.

1065. You do not say, "about £6,000;" you say, "£6,000;" a specific sum is fixed. You also say, "The Trustees cannot sell, although they would like to." Where did you get that information?—I meant to say, if the Trustees wished to sell they could not do so without legislation.

1066. You just transposed it in the letter?—My intention was what I have stated. I might have heard, perhaps, that the Trustees wished to sell. I cannot tell why I made the assertion. But that was what I evidently intended, that if they wished to sell they could not without legislation.

1067. You have heard the Trustees deny that there was any foundation whatever for that statement. Are you now prepared to say there was no adequate foundation for that statement?—I certainly never heard it from any of the Trustees.

1068. Were you employed at a salary by the Government?—Yes.

1069. Did you not consider that the arrangement you made with Kissling was an exceedingly good one for him?—I did not consider Kissling at all. I considered the arrangement was a very good one for the Government.

1070. And you still say that, after the additional knowledge you have of the Act of 1885?—I still think the Government made a good bargain, and the Government seemed to think so too in the correspondence with me.

1071. Were you acting solely in the interests of the Government?—Yes.

1072. Did you not think you could do a friendly act to Kissling by facilitating this transfer?—I never thought of Kissling. We were perfect strangers. I was acting for the Government—purely and simple in the Government's interest.

1073. Apart from your salary, did you receive from any person any consideration whatever for effecting this arrangement?—Not the slightest, in any way.

1074. *Dr. Giles.*] Neither directly nor indirectly?—No; never dreamed of such a thing.

1075. *Mr. Napier.*] Did you know when you were making that arrangement with Kissling that you were breaking the law?—I did not. They did not seem to know it in Wellington even.

1076. Did you not know the provision of "The Public Works Act, 1882," that, supposing the adjoining proprietor refuses to accept the surplus land taken, then it ought to be put up to public auction?—I certainly had some conversation once with a gentleman on this subject.

1077. Did you not think the interests of the Government would be better protected by putting the land up to public competition?—It did not strike me at the time. The fact was I was so pleased with making what I considered a good bargain that many of these things did not enter my head.

1078. Did you consult any experienced local valuer as to whether you had made a good bargain or not?—Certainly not. I believe I told a gentleman in St. Stephen's Avenue the terms on which I was arranging with Kissling.

1079. I mean any experienced local valuator? Did you take any steps to ascertain the local values of land?—Certainly not. I should not have done that unless the case had been going into Court.

1080. Do I understand you only inquire what the land in a particular district is worth when the case is going to Court?—When I cannot come to terms with the person.

1081. But you take no steps to place yourself *en rapport* with the local valuers of land during the negotiations?—Yes; I get all the information I can.

1082. What is the usual way?—General inquiries, looking at the land, and asking people.

1083. Did you do that in this case?—Yes, I have no doubt. I had a score of conversations with people about it.

1084. With experienced people?—I had a friend living in St. Stephen's Avenue, and I called on him.

1085. Do you think asking the opinion of a neighbour would be a good way of ascertaining the value?—I mean a person living on property and paying rent for his house. A landowner would be biassed.

1086. Do I understand you then generally to say that you negotiated this matter and completed it in entire ignorance of the Act of 1885, and almost in entire ignorance of local valuers of land?—No. In entire ignorance of the Act of 1885. As far as I remember, I never read that Act. Local valuers of land I knew very little about—I had only just arrived—but I got all the information I could. Had the case gone to a Compensation Court I would have made inquiries from many others, land agents and commission agents.

1087. The land taken was paid for at the rate of £2,333: would you consider that a high price for suburban land?—I never went into the calculation at all. I looked at the thing as a whole. I looked for £1,750 to satisfy all claims against us. That is, taking the severance and battery into account. I think the battery being there was a very great injury to the property.

1088. Then the major portion of the money was paid in consideration of the battery being so injurious to the property?—I certainly considered that.

1089. Do you say £2,333 per acre is a low or a high price?—It is a very high price.

1090. Have you taken any steps to inquire what land can be purchased at and around this property?—No. I believe Mr. Philson had some property adjoining, for which he got a certain price from the Government. That might be a guide.

1091. Why did you consider it your duty in this instance only to see the leaseholder of the land when you were about to take the land for public purposes?—Simply because the leaseholder came to see me.

1092. Did not you consider it at all necessary to interview any of the freeholders of the land?—Certainly not. It was in answer to Mr. Kissling's claim I was instructed to go up by the Minister.

1093. Did not you consider it necessary for the purposes of compensation for taking that land to see the freeholders?—No; I always find it is advisable in these matters to do things by correspondence.

1094. Until you had assessed this £632 had you any communication with them?—No.

1095. You had, you said, numberless interviews with Kissling, and wrote a great many letters?—Yes.

1096. Why did you take all these steps with Kissling and not write a simple letter to the Trustees?—I looked upon it that, being such a long lease, it was a freehold—in fact, that his interest was far greater than the Trustees'.

1097. You did not consider it necessary to have any communication with the Trustees until you had made this arrangement with Kissling?—No—until I was prepared to make them a definite offer.

1098. Was any notice given to the Trustees of the intention of the Government to take the land?—Certainly. My letter says the Government proposed to take the whole of the land.

1099. Is it not one of the first things you do when you are negotiating for the purpose of acquiring a property for the Government to find out who are the owners and persons interested?—Yes.

1100. You wrote to the Trustees under date the 20th November, 1885, and you head that letter, "*Re* land required for battery at Point Resolution"?—Yes.

1101. At that time the arrangement with Kissling had been completed?—How do you mean—completed?

1102. You had made the arrangement?—Nothing had been signed.

1103. It was arranged?—As far as between ourselves was concerned.

1104. You knew at the time you wrote that letter that the whole of the land was not required for battery purposes?—Part of it was required, and I considered the other was required for public purposes.

1105. But you headed the letter, "*Re* land required for battery at Point Resolution"?—One reason for that is, that all letters referring to particular negotiations are headed the same in the Government departments. It is simply a matter of form.

1106. Do you still say you did not consider it necessary to acquaint the Trustees with any part of the negotiations made by you?—I do not think so.

1107. Do you not consider that letter misleading?—No; I do not see how it can be.

1108. Do you not think the plain meaning of that letter is that the Government are going to take the whole of the land for defence purposes?—Possibly you might interpret it in that way.

1109. Kissling wrote as follows on the 19th November, 1885: “W. S. Cochrane, Esq., Secretary, Church Trust Property.—Dear Sir,—The Government are taking, under the Public Works Act, the whole of the property now occupied by me at Point Resolution. It is therefore necessary to ascertain how the compensation is to be divided between us. With this view I shall feel obliged if you will inform me by what process you would prefer to have the present value of your freehold interest ascertained.—Yours faithfully, G. S. KISSLING.” At the time that letter was written had not you and Kissling completed the arrangement and agreed on the apportionment of the money?—I cannot remember. I fancy from that letter that we had settled the basis in our own minds on which the thing should be completed.

1110. Was that letter written on your suggestion?—No.

1111. You did not go into the matter?—No.

1112. Why?—Because I considered I was paying a fair price.

1113. You did not consider the Trustees’ interest?—No; I looked on it that the Trust Board consisted of nine members and a secretary, and were quite capable of protecting themselves.

1114. And you thought you would not protect them in any way?—I did not think it necessary.

1115. You telegraphed as follows: “Auckland, 17th November, 1885.—The Hon. the Defence Minister, Wellington.—*Re* battery at Point Resolution: This land belongs to a general Church Trust. Part of it is occupied by Mr. Kissling, who holds it on long lease. The area actually taken from him by Proclamation is 3 roods and 13 perches, but the total area of the property occupied by him is about 4 acres. It would save the Government some £500 if the whole of the 4 acres could be taken. Have we power to do this under the Act lately passed? and, if so, will you authorise me to act in the manner I think most conducive to the interests of the Government?—H. M. BREWER, Land-purchase Officer.” You see in that telegram you show you have a knowledge of the Act recently passed?—It simply shows that I knew an Act was passed.

1116. That was the Act of 1885, which diminished the rights of persons from whom land was taken under the Public Works Act?—I do not remember what Act I referred to.

1117. You say, “It would save the Government some £500 if the whole of the 4 acres could be taken. Have we power to do this under the Act lately passed?”—I must have referred to the Act of 1885.

1118. Why did not you say in that telegram, or convey to the Government the information, that you had arranged with Kissling that he or his wife was to get back the greater portion of the land?—It says so in another one.

1119. The answer you received to that is the only answer which authorised you, in your opinion, to carry out this transaction?—I have other telegrams.

1120. Any telegram which showed that anybody connected with the Government thought this arrangement was a legal one?

Dr. Giles: Mr. Ballance indorsed the telegram “Satisfactory.” The telegram of the 7th December, stating that it is settled on the following terms—that is indorsed by Mr. Ballance, “This is satisfactory.”

Mr. Napier: But the opinion was never asked of the Law Officers of the Crown as to whether it was legal to take the land nominally for defence works with the intention of reconveying it to Mrs. Kissling.

Dr. Giles: Somewhere early in 1886 somebody notes on one of the file of papers that if this question comes under the Act of 1882 a question will arise whether they would have the power to reconvey the land to Mrs. Kissling.

1121. *Mr. Napier*.] You have settled, you have said, hundreds of cases under “The Public Works Act, 1882”?—A great many cases.

1122. In fact, you carry a copy of the Act about with you?—Yes: I have it here.

1123. Did you not know that, under the Act of 1882 even, the Government could only take land which they required for a public work?—I understood, if they took more land than was required it must be offered to the adjoining owner.

1124. Had that completely gone out of your memory at the time of this transaction?—It did; but I did not think the Trustees were likely to take it.

1125. Did you not know that if they did not take it the land had to be offered at public auction?—I overlooked that. You cannot carry the whole Act in your head.

1126. There are only two or three clauses referring to that matter?—I admit I overlooked that point.

1127. You were a land-purchase officer for fifteen years: did you think that under the Act of 1882 the Government could take as much land as they liked nominally for a public work, and knowing at the time that only a small portion of it was required for a public work, and with the intention of reconveying the greater portion of the land to a private individual?—I must have thought it. I must have thought they had the power, by sending that telegram.

1128. And you thought their power was unlimited as to area?—Well, practically.

Dr. Giles: If Mr. Brewer submitted the question for the Government to consider he could hardly be expected to go into that part of the question any further, I think. It was for them to say whether they considered it within their power.

Witness: I say here, “Supposing, however, I made a mistake, I made it in good company, for the Government overlooked it too.”

Mr. Napier: Mr. Brewer only half states the facts. He asks for advice as to the power to take, without saying that they only required three-quarters of an acre, and that they were taking for the purpose of conveying back the greater portion to a private person.

Dr. Giles: I think his telegram amounts to this: Can you take more than you actually want for the purpose? and they reply that they think they can.

Witness: You must recollect that I wrote to the Government explaining the way it was to be reconveyed to Kissling in lieu of compensation.

1129. *Mr. Napier*.] You thought it was justifiable to evade the Act of 1882 for the purpose of saving money to the Government?—I never thought of evading the law. I only thought of making the best bargain. So long as the Trustees were adequately remunerated I thought I had a perfect right to take any steps.

1130. Do you still say that, if you had known at the time you completed this matter of the provisions of the Act of 1885—that Kissling could not have claimed the consequential damages referred to—that you would have done as you have stated?—If I had read that Act, and known that no contingent damages would have been allowed, I would very likely have modified my estimate.

1131. Do you not think he has been paid an excessive price?—Possibly.

1132. You say he would only have received half?—I should not be able to say that without going into the figures.

1133. Have you any idea of the value of land per acre at that point?—I should say about £1,000 an acre.

1134. So that the Government, instead of having to pay £1,750, if you had known what the law was, would only have had to pay £750?—No; I do not think so, because £750 would not have been accepted.

1135. You say the value of land there was about £1,000 an acre?—Somewhere about St. Stephen's Road, about that price. I certainly admit that if no contingent damages were allowed the compensation would have been nothing to what it would be if contingent damages were allowed.

1136. You can see now that no claim for contingent damages was allowed at that time?—I have not read the Act.

1137. I read it to you just now?—You read a certain clause. [“The Public Works Amendment Act, 1885,” was then handed to witness.] This clause is a little bit misleading. It says, “No person shall have any claim to compensation by reason of the firing of artillery from any fortification, or the use or working thereof, or otherwise under this Act, except for land actually taken or required to be kept free from obstruction under the powers of this Act; but nothing in this section shall be deemed to prevent any person suffering any damage to the materials of any house or building from pursuing any other remedy he may have at law.” I think that is rather vague. It does not actually say that, a fortification being there, they should have no claim for contingent damages. I think it might be read in a little bit different way. I think there is room for a loophole in that clause.

1138. If you had known of the existence of that clause would you have settled on the basis you did?—Possibly I should not.

1139. You were at the time you made the arrangement in entire ignorance of that very important provision?—I must admit that I was in ignorance that no contingent damages would be allowed.

1140. *Mr. Mahony*.] Do I understand you to say that you would consider, in assessing the damages under that clause as a compensation officer—you would have considered the presence of a fortification as an important factor in assessing such compensation, exclusive of calculating the damages from the firing of guns?—That is a point I say is in doubt. It does not make it clear whether a fortification would not carry consequential damages. I consider that fortification there almost ruins the property by obstructing the view. Besides, it brings about the place a lot of men, and some of them might perhaps be of an objectionable character. I may say, in reference to that clause, I based what I said to Mr. Napier just now on the interpretation he put on it. I should want the clause to be argued by professional men.

1141. You know the Gladstone Road?—Yes.

1142. In one part of that road there is no sea-frontage or view. [Position of land indicated.] Would you be surprised to know that, at that very date, from September, 1885, till some months afterwards, the selling-price and the sale-price of those subdivisions in some cases was £2,000 per acre?—I did not know that. I only knew that very high prices were being asked up there.

1143. As to the heading of your letter, I understand that is the usual heading, indicating the subject of the letter?—Yes.

1144. Was that heading put on for the purpose of misleading?—Certainly not.

FRIDAY, 12TH OCTOBER, 1888.

GEORGE SCHWARTZ KISSLING sworn and examined.

1145. *Dr. Giles*.] You are the present holder of the land at Point Resolution which is the subject of this inquiry?—My wife is, and I think it would save trouble if I at once stated that throughout this transaction I have acted on her behalf.

1146. Perhaps the best way is to ask you to make your own statement and give a short history of the matter?—It was in the beginning of 1885 that the Government commenced operations at Point Resolution. I had no previous intimation.

1147. At that time was it you or your wife who was the lessee?—She was the lessee. The property was originally leased by me, you understand, and was transferred to her. I had no intimation whatever from the Government of their intention, simply having noticed what I saw in the newspapers, that they were intending to commence operations there. On the evening before

they commenced operations Mr. Bell, the engineer, called upon me and told me, simply as a matter of courtesy, that they were going to commence operations there, but that he knew nothing about the terms. I heard nothing from the Government subsequently to that for some time, as to what arrangement they proposed to make for taking the property, and I am under the impression that I wrote to them, asking them; but I cannot remember that. I have not a copy of that letter asking what their intentions were. However, I thought it necessary to consult my solicitors on the matter, and they advised me that it would not do to let the thing rest; that I must make a formal claim upon the Government. That formal claim resulted in the action which was brought for trespass.

1148. At the suit of Mrs. Kissling?—Yes; against the Government.

1149. And it was stayed by the Act of Parliament being passed—the amendment of the Public Works Act?—I believe that was the Act. Mr. Mackay came up about that transaction, and I had several interviews with him, but I do not think we went into the question of compensation at all. It was simply a question with regard to the action at the time. Subsequently to that I met Brewer on the subject of this compensation. He informed me that he had been appointed by the Government to try and come to a settlement or to adjust the matter; and after several interviews with Mr. Brewer I claimed compensation to the extent of £2,500. I may say that I had been told previously, and knew from information that I had received, so far as I could rely, of course, upon that information, that was given by Government officers, that the Government had the idea of taking the whole of the property; and I asked Mr. Brewer if the thing could be arranged in this way: that I should have a portion of the property. I understood that the Government had a right to take the whole of the property, and do as they liked with what they did not require, and they would then be in a position to hand me the freehold. That was the basis of our agreement come to subsequently. In September, 1885, before coming to any such arrangement in order to ascertain what the Trustees' interest in the property would be, we arranged that a valuation should be made by Mr. Waymouth.

1150. Who do you mean by "we"?—Mr. Brewer and myself, in order to see whether the thing could be entertained—whether it would be worth my while going into the thing. That valuation was made by Waymouth, I think, on the 23rd September, 1885. On receiving that valuation I showed it to Mr. Upton, who is one of the Trustees, and told him that this was the basis on which I was arranging with the Government, and asked him to look through the paper and give me his opinion as to what he thought of it. He said he was quite surprised at the smallness of the amount of £632. I left that paper with him.

1151. Is that Waymouth's letter?—Yes. I told him that he had better work it out and calculate it for himself. On that occasion, I may say, I stated to Mr. Upton that Mr. Waymouth had, of course, incorrectly stated the position of the thing, as the Trustees had no power to sell, and if this arrangement was to be carried out it would have to be done in the other direction—by the Government taking the land. I called, I think, on the following day, and I got back that valuation from Mr. Upton, and he told me that he had satisfied himself that the valuation was a correct one—that he had worked it out, and there was no getting away from the figures. Those were his expressions. Subsequently I saw Mr. Brewer, and we arranged, in fact, what is set forth in my letter of the 20th November to Mr. Brewer. In making that arrangement, Brewer said to me that the Government must understand what fixed sum they would be liable for. He thought, as there was a question of the Trustees' interest unsettled, that might be taken to a Compensation Court, and he did not know what a Compensation Court would award in any case, either to them or to me, and that therefore the Government must understand, if they agreed to this transaction—to the giving of £1,750—that that was the total amount of their liability. I told Brewer that I was satisfied that £632 was all that they could possibly recover—at least, that they were likely to recover—and that if any Compensation Court allowed the Trustees a further amount I would pay that. I think it was on the 19th of November that I wrote to Mr. Cochrane, telling him that the Government were going to take the whole of the property, and asking him by what process they would like to have the value of their freehold interest ascertained. I think it was on the 21st, or a day or two after, I received from Cochrane a letter, stating that if this property was going to be taken—I think that was the purport of the letter—they preferred to deal with the Government. I handed that letter over to Brewer, and he subsequently, I believe—so I hear now—wrote to the Trustees making them this offer. Of course, I knew at the time he had written to them making the offer, but I did not know the terms of it. When I say "terms," I mean the form in which it was placed. In the beginning of December—I think the 3rd or 4th—the Trustees, I believe, decided to accept the Government offer, and then the further steps were taken afterwards to carry out that arrangement. That completes the transaction so far as I am concerned.

1152. Did you at the beginning, or at any time, make a claim of £5,000?—I cannot remember that.

1153. It is stated in one of the Government papers—though I do not find anything from you to that effect—it is mentioned in some official *précis* or report that your claim was £5,000?—I cannot remember making any such claim. I do not think it is at all likely I ever did. If there was such a claim, it might have been based upon the surrender of the whole of my lease.

1154. This is a *précis* made of the matter, and it says: "On the 8th July, 1885, Mrs. Kissling entered an action of ejectment against the Government. Mr. Mackay, the Government land-purchase officer, was then sent to Auckland to endeavour to settle the amount of compensation payable for the land. On the 23rd July, 1885, after some negotiation, Mr. Kissling demanded £5,000 for the land actually taken (about 3 roods 13 perches) and for damage done to the remainder of the property. The sum asked by Mr. Kissling was considered to be exorbitant, and, as there was no chance of an amicable settlement with him, it was considered to be advisable to obtain legislative authority to take and hold the land and to validate the entry thereon, and 'The Public Works Act 1882 Amendment Act, 1885 (No. 1)' which gave, *inter alia*, the new powers, was therefore passed on

the 1st August, 1885." This was pending the action?—I have no recollection of it. I do not think it is at all probable I ever did such a thing.

1155. You say you understood that the Government thought of taking all the land: can you say from whom you understood that first?—No, I cannot say from whom. I had repeated conversations with Government officers. They were constantly about the place, and this matter was frequently discussed.

1156. Did you gather that before Mackay went away and Brewer came?—Yes; I thought that from the very first was the proposition that was talked of. I can remember the conversations distinctly, and I think there were one or two gentlemen there, but I cannot recall who told me that. It was pretty early in the proceedings.

1157. As a matter of fact, Mackay recommended it, and Brewer afterwards recommended it on independent grounds?—I was not aware Mackay had recommended it to the Government. I did not know until I heard at this inquiry that he had written to the Government. I only knew from the Government officers that that mode of settlement was thought of.

1158. When you gave Upton Waymouth's letter he expressed surprise at the smallness of the amount?—Yes, when I first mentioned it to him.

1159. Either then or when he returned you the letter did he say anything about the sum of £6,000 being taken as the basis?—I cannot remember that; but he seemed to be quite satisfied with the valuation.

1160. Made no objection to the basis?—No.

1161. Of course, the calculation might have been right, but it might have gone on a wrong basis?—He made no objection to the basis.

1162. Do you know if Upton or any other member of the Board knew that it was probable that you were to get the rest of the land reconveyed to Mrs. Kissling?—I concluded that the letter I handed to them clearly conveyed that meaning—Waymouth's letter—and I cannot see how else it can be construed.

1163. But otherwise than that you cannot speak specifically?—No, because I think that was the only interview I had with Upton on the matter.

1164. *Mr. Mahony.*] You said Upton had Waymouth's letter for a couple of days?—From one day to another.

1165. And you got it back from him personally?—Yes.

1166. You have heard what he said in this evidence. When I asked him as to that part of £6,000, and the Government acquiring only a fourth, he said he repudiated that. Did he ever, or any of the Trustees, tell you they repudiated such part of the valuation, or say anything to lead you to believe he repudiated it?—Certainly not. I never understood from Upton at the time that he raised any objection to that. I understand what he says is now that he read it in a different light, and that he did not look at it in that light. Of course, if that was the case, he would not raise the objection.

1167. You have heard read, I think, the telegram to Mr. Reeves on which the Trustees have been questioned, in which you indicated to the Committee that it was well known, the taking, and the fact that you or Mrs. Kissling were to retain three-fourths of the land. In making that statement did you rely upon the knowledge which you knew they had gained through this letter?—I did, and before sending that telegram I may state that I went to Upton and told him that I did rely upon that statement. I asked him if I was right in my impression that he took that letter home, and returned it to me on the following day, and he said "Yes." I said, "In that case I cannot understand how you can say you knew nothing of my intention to acquire the freehold. Why, the letter is clearly based on that."

1168. So that you were strongly guided in what you knew he had had before him, and which he says he believes was before the Trustees—that is to say, that the whole should be taken and only a quarter kept by the Government. Was it known outside—I mean in a general way—that there was to be a taking of the whole—I mean early in the proceedings?—In my reply to Mr. Reeves I think I said it was no secret; and it was no secret. The question of my desire to acquire that freehold in the settlement was no secret whatever.

1169. You have heard the word "concealment" used. Did you do anything with any intention that there should be any concealment of the ultimate arrangement?—Certainly not.

1170. In your arrangement with Brewer, what position did it occur to you he took up in the matter? Did he seem to be as, acting for the Government, lax in conduct, or anything of that kind?—It appeared to me he was driving as hard a bargain as he could for the Government.

1171. And when you handed this paper to Upton you told him to look through it, as it was the basis on which the claims were to be made?—I told him it was an arrangement I had been making with the Government, excepting this: that of course I pointed out to him that it could not be done in this way, as the Trustees had no power to sell, and that the Government would have to take the whole.

1172. You drew his attention to that?—Yes.

1173. In using those words you considered he would understand there was to be a selling of the whole?—I told him that it would have to be done the other way, and, of course, he read the letter himself for the other information.

1174. You told him it would have to be a matter between the Government and them—that was the outcome of your communications with them?—That was after Cochrane's letter. Yes; the Trustees decided that.

1175. So, after that, I presume, you considered that you had nothing to do between Brewer and them as to what they were told and what they did?—Certainly. I thought, at the time when I received that letter from the Trustees to say they would prefer to deal with the Government, they were in possession of the fact that I was desirous of acquiring the freehold, and they decided to deal

with the Government and have nothing to do with me; and I had no more communication with them at all.

1176. I think the first intimation you had from the Government that they required legislative sanction for what they were doing was a communication from Mr. Thomson on the 6th June?—I think so.

1177. This letter says, “Mrs. Kissling is the lessee of 4 acres 1 rood 17 perches taken for battery purposes, the freehold of which is vested in the Diocesan Trust Board. The compensation agreed upon for same is £6,000, of which the sum of £632 is to be paid to the Trust Board, and the balance (£5,368) is to be paid nominally to Mrs. Kissling. It has been arranged, however, that out of the 4 acres 1 rood 17 perches an area of $3\frac{1}{2}$ acres is to be resold by Government to Mrs. Kissling for the sum of £4,250. The net amount payable to Mrs. Kissling is therefore £1,118. The Proclamation vesting the land in the Crown will be published in to-morrow’s *Gazette*, but before the resale of land to Mrs. Kissling can be effected legislative sanction must be obtained by means of a clause in the Special Powers and Contracts Bill. This is being duly attended to.” So that really that was the first communication to you that legislative sanction should come in to enable the Government to do what they were doing?—Yes.

1178. In your dealings with Brewer, who was sent to represent the Government, did it occur to you at all that you should inquire what the powers of the Government were?—Certainly not.

1179. You relied on the fact that they had sent an experienced officer to treat for the Government?—I did.

1180. You have heard some questions asked about the excessive value: can you speak, yourself, as to whether that value was excessive? You have heard it alleged that £2,000 an acre, or thereabouts, was a very high value?—I do not think it was excessive at all at the time. £2,000 would be, but the claim was not £2,000 an acre. The claim, as far as I can remember, was £1,250 an acre—that would be £5,000, I think, and £1,000 for improvements. That, I think, was the basis on which the value of £6,000 was arrived at.

1181. With regard to improvements, that was very fair value indeed?—I think it was.

1182. So that £1,250 would be a fair value, considering what land-values were at that time?—I do not think it would be an excessive value.

1183. *Mr. Napier.*] You said that after you had had several conversations with Brewer you claimed £2,500 compensation?—Yes.

1184. For what?—For the land taken and the damage done to the property.

1185. When did you make that claim for £2,500 compensation?—I cannot remember now; but I think it must have been some time about August.

1186. Before, at any rate, the first meeting of the Trustees?—Yes.

1187. Did you make that claim in writing?—I cannot remember.

1188. To whom did you make the claim?—To Brewer.

1189. Did you give him any formal claim of £2,500?—No. Of course I may have written it in a note to him.

1190. But did you do so?—I cannot remember doing so.

1191. Did you tell him verbally what you were claiming £2,500 for?—I told him I was claiming for the property taken and damage done to the property.

1192. At that time you will remember that no property at all was taken. The men had simply trespassed on a portion of that land?—I looked upon it that the property was taken.

1193. Had any intimation been conveyed to you as to the area that was required to be taken for defence purposes?—Yes; I knew it was about an acre.

1194. From whom did you get that knowledge?—I think Major Cautley marked off the ground there, if I remember aright.

1195. The ground was marked off which has now been finally taken—that is, three-quarters of an acre, or a little more?—About that.

1196. Then you knew the area of land actually required for defence purposes, because Major Cautley had marked it off?—Yes.

1197. And that was two or three months before the Trustees met, and before the arrangement was made with Brewer?—Yes; it must have been almost.

1198. Then, you were perfectly clear at that time that the Government did not want for the purposes of a fortification the whole of this property?—Well, I did not imagine they did, I think.

1199. From the time you saw Major Cautley marking off that ground, did you have any reason whatever to suppose that the Government would require the whole of that land for the purpose of a fortification?—It was stated that they had an idea—I cannot remember who told me so, but I was told they had an idea of taking the whole place, and giving the house for the officers’ quarters.

1200. What I mean is, from the time Major Cautley marked off the ground—that was in August, 1885—did you, at any rate, have any reason to suppose that the Government intended to take the whole of the land for defence works?—That I cannot tell you, because I cannot fix the date of these conversations about taking the property and devoting the balance for an officers’ residence. Those conversations might have taken place subsequent to that.

1201. You knew how much land was taken?—Yes.

1202. At the time you made the claim of £2,500, you knew that the Government did not then, in fact, contemplate taking the whole of the land for defence works?—I only made my claim for what they had taken.

1203. You knew that they did not contemplate—at all events, immediately—taking any more?—I cannot say that, because, as I say, the conversations about taking the land and handing it over for officers’ quarters might have taken place subsequent to that.

1204. Did you make any claim on that understanding?—No. If they had taken the whole of the property my claim should have been on entirely a different basis. I should have claimed for the whole value of my leasehold.

1205. Your claim would have been considerably more?—Of course it would.

1206. At the time you made the informal claim verbally to Brewer for £2,500 you knew that all the Government contemplated taking was the area marked off by Major Cautley?—That was all I made the claim for.

1207. Did Brewer, or any other person, ever intimate to you after you assessed your interest at £2,500 that the Government contemplated taking any more of the land, either for officers' quarters or for any other purpose?—I cannot fix the date when I was told that.

1208. When did you express the wish to Brewer to acquire the freehold of the portion of the land that was not required for defence works?—I presume it must have been some time in the beginning of September, or prior to the beginning of September, that we talked the subject over.

1209. When you talked over with Brewer your desire to get back the portion of the freehold that was not required, did you not then know that there would be a portion not required for defence purposes, and that the Government did not want the whole of the land?—Of course, my suggestion to him was that they should hand back to me what they did not want.

1210. When you knew they did not require the whole of the land for defence works?—My assumption went on that: what you do not require you hand back to me.

1211. Have you any reason to think they did require the whole of the land at that time?—No, because I would not have asked them to hand back the balance to me if I had thought so.

1212. Was it you who suggested to Brewer, or Brewer who suggested to you, that the Government should take the whole of this land under the Public Works Act, and then reconvey the 3 acres 2 roods to Mrs. Kissling?—I cannot tell you exactly as to who the suggestion came from. We discussed the possibility of such an arrangement, and the legality of such an arrangement. I knew nothing of the law on the matter at the time. I had only been told that the Government had the power to do that.

1213. But you and Brewer discussed the legality of the arrangement?—I asked him as to whether the Government had the power to do the thing. I suppose I must have discussed the power, because I understood from him—whether we had any discussion about it or not—that the Government had full power to do it.

1214. Brewer told you they had full power to do it when you were discussing the matter over the Act?—No.

1215. Did he make any reference at all to the Act?—Not in my presence.

1216. Did you read over any law on the matter at all?—No; I did not go into the law at all.

1217. You say you discussed the legality of the matter?—Simply as to whether the Government could do it.

1218. Did Brewer well know at the time you discussed this matter—the legality and the propriety of getting the freehold—

Mr. Mahony: I am not aware that Kissling made such a statement as that they discussed the legality.

Dr. Giles: I understood him to mean that the subject was mentioned whether that could be done, not that they went into a discussion of the law on the matter.

1219. *Mr. Napier*.] He said "discussed," and I apprehend Kissling knew the meaning of his own term. Did Brewer know, as far as you could gather from the conversations you had with him—did he know at the time the matter was discussed that the Government did not require the whole of the land for the battery?—Of course he must have known, when the arrangement was that it should be handed back to me.

1220. Did Brewer not tell you that the Government would have to take this land under the Public Works Act for the purpose of a battery?—No.

1221. Did you not know that the Government, if they wanted to take this land at all, could only take it for the purpose of a public work?—No.

1222. Did you not know that they could only take it nominally for the purposes of a public work?—The impression I was under was that the Government could take as much land as they liked.

1223. For any purpose?—Yes; and deal with the balance as they liked.

1224. Did you seriously think that the Government could, for any purpose, take what land they chose and deal with it in the manner they thought fit?—If they thought it necessary in carrying out the arrangements they were carrying on.

1225. The defence arrangements?—Yes. If they thought they were doing good for the country or themselves by taking four acres instead of one, they had a perfect right to do it and deal with the balance, I thought.

1226. For defence works?—They were taking the property, of course, in connection with defence works.

1227. And did you think it was quite immaterial what the area was—that they could take as much land as they required for the purpose of giving it back to a private person?—I understood that if there was an allotment of land, and if the Government wanted a portion of it—that, if it suited them to do so, they had a right to take the whole and do what they liked with the balance.

1228. No matter what the area was?—Yes.

1229. You say you thought it necessary, in the initial stages, to consult your solicitor?—Yes.

1230. Did you consult your solicitor as to whether your opinion on that point was correct?—No.

1231. Did you consult your solicitor as to the legality of the arrangement you were making with Brewer?—Brewer was not on the scene then. The sole question at issue was whether the Government had the right, under the Public Works Act, to enter on my property—whether they

were trespassers or not. An action was brought against them for trespass on the ground that the Public Works Act, 1882, did not give them the power to take that property for defence purposes. That was the only question I consulted my solicitors about.

1232. Then you did not consider it desirable to consult them about the legality of the arrangement with Brewer?—No; I was dealing with the Government, and I never dreamt for a moment the Government would make any arrangement that was not legal.

1233. Did it ever strike you that there was anything morally wrong in the arrangement with Brewer?—Certainly not.

1234. You say you did not know that in order to get this land there would have to be made a false statement, both in the Proclamation and otherwise?—No, I did not know anything about that. The first I ever heard of it was when you drew attention to it.

1235. Did you not know the provision of the clause of the Act under which the Government took the land?—No, I did not.

1236. Did Brewer never mention to you in the course of your interviews, when you were discussing the possibility of carrying out this arrangement, that if the Government were to take the whole of this land and only required a portion of it they would be obliged by law to offer the portion back to the Trustees?—No.

1237. Was that ever mentioned?—I do not think so; I do not remember it. Of course I have learned that since.

1238. Did he ever mention to you that if the Trustees did not accept it it had to be put up to public auction?—No.

1239. Was it not contemplated at that time that a special Act was to be passed to enable this arrangement to be carried out?—Certainly not. It was not until a considerable time after that I knew that was necessary.

1240. You and Brewer agreed that a valuation was to be made by Waymouth?—Yes.

1241. Was that before the matter was submitted to Waymouth?—Yes.

1242. Then it is not correct that you handed Waymouth's calculation to Brewer, simply asking his assent to it, or as to whether he considered it fair?—No; I think it was in discussing what the Trustees' interest was that we arranged that we should employ an accountant to ascertain what that interest was. That was the first question we had to establish, before we could go any further with our negotiations.

1243. When was the amount first assessed of the combined interests in the land, and by whom?—The amount of £6,000?

1244. Yes?—I made that out, I imagine; at least, that was my calculation of it.

1245. There is no calculation of it?—I reckoned that it was worth £6,000, and I have stated the reason on which I came to that conclusion—that the land was worth £1,250 an acre, and £1,000 for improvements.

1246. £1,000 spread over the whole piece?—Two houses had been erected.

1247. The thousand pounds includes the houses?—Yes.

1248. Did you submit that assessment or valuation of £6,000 to Brewer as being a fair amount for the combined interests?—I must have told him that I thought it was a fair valuation.

1249. There was a lot of correspondence between you and Brewer: he seemed to assume that it was worth £6,000?—I think so.

1250. Have you the whole of the letters Brewer wrote to you?—No.

1251. Have you any of them—I mean, in reference to these negotiations? Could you produce them?

Mr. Mahony: I do not think we have any letters from Brewer.

Witness: There was nothing with regard to the valuation of the property.

Mr. Brewer: I presume they are in the Public Works Office.

Mr. Napier: Brewer stated in his evidence that he had numberless interviews with Kissling, and that there were many letters written.

Mr. Mahony: The only other letter I have got, besides those already referred to during the inquiry, is one in which Brewer states that he has a bad leg, and apologizes that he cannot come.

Dr. Giles: Brewer, in forwarding any letters to Wellington, would not be likely to forward any except those setting forth the final terms to which he agreed. He would not be likely to send all the preliminary notes that might have passed between them.

Mr. Napier: He said he deposited them in the Public Works Office.

Dr. Giles: They are not in these files. I have not seen any.

1252. *Mr. Napier*.] Was it a written or verbal communication to Brewer, the estimate of £6,000?—I think it was verbal. In fact, I am pretty sure it was verbal. I have no recollection of ever having written a letter. He used to come to me, and we talked the matter over on several occasions.

1253. Did he accept the £6,000 without demur or question?—I do not think he raised any question. I cannot remember now.

1254. Immediately you mentioned it he assented to it?—I cannot say that. We might have had a talk over it.

1255. Did he express any surprise at the amount?—I cannot remember that he expressed any surprise.

1256. Did he say it was excessive or cheap?—I cannot tell you. I cannot remember that he did express any surprise.

1257. Did he agree to £6,000 ultimately, at all events?—We took that as the basis of our negotiations.

1258. Did you employ any valuer to value all the interests in the land?—Yes, I did.

1259. Who?—Mr. Vaile, of Vaile and Douglas.

1260. What was the valuation he made?—I have no written valuation, but he told me that he reckoned the fair value of the property was £1,250 an acre.

1261. Was it on that basis of valuation that you claim your valuation?—It was that, and, if I remember aright, I asked Mr. W. Aitken too if he considered that was a fair valuation.

1262. Did he assent to that?—I think so.

1263. Did Brewer say that he would get any independent valuation, or consult with anybody to see whether £6,000 was a fair claim?—I do not remember his doing so.

1264. Do you know whether he took any steps to satisfy himself that £6,000 was a fair claim?—I do not know.

1265. You said that you agreed that a valuation should be made by Waymouth. Do you mean merely the apportionment of the respective interests?—Yes; the valuation of the Trustees' interest.

1266. But Waymouth did not value the land?—No; he had nothing to do with the valuation of the land.

1267. The £6,000 Waymouth mentions in the letter—that was the sum communicated to him as the basis on which he was to reckon the value of the respective interests?—Yes.

1268. This is headed "Adjustment of the Value of the Land recently taken by the Government:" so that it is obviously merely an adjustment?—Yes, clearly so.

1269. Did you submit it to Mr. Upton as merely an adjustment of interests?—No; I submitted it to him as the basis on which the thing was being taken.

1270. This letter says, "You purchase the land from the Trustees for £6,000:" did you not know that the Trustees had no power to sell?—I have already said that I told Upton that Waymouth had made a mistake in saying that: that he had put it the wrong way on; that the Trustees had no power to sell.

1271. You knew that the Trustees had no power to sell?—Yes.

1272. And you knew Upton knew it?—Yes.

1273. How can you say that, because you showed Upton the letter, that he understood you were to get a reconveyance of the freehold?—Because the letter says so distinctly. It says here, "I am to purchase the property."

1274. That is a mistake?—I told him that was a mistake. I told him the Government would have to take the property and hand it back.

1275. Did you say that?—Yes; I told him that the Government would have to take the property and hand it back.

1276. You state distinctly that you told Upton that the Government would have to take the whole of the property and hand you back a portion?—I told him that it was done the wrong way; that the Government would have to take the whole of the property.

1277. But did you add anything for the purpose of giving him to understand that the Government would hand the rest to you?—I did not add anything, but this letter clearly states it.

1278. You said you told him this letter put it the wrong way about: that they would have to take the whole of it and hand the balance back. Did you say that?—I said to him distinctly that Waymouth was wrong; and if this arrangement was to be carried out the Government would have to take the property, and that it would have to be done in that way.

1279. The arrangement here is merely the respective interests in a sum of £6,000?—The arrangement, I understand, in that letter is clearly this: that three-fourths of that property is to come back into my hands.

1280. It does not say so?—I think it is as clear as can be.

1281. There is a sum of £1,500 mentioned here as being the value of one-fourth of the land?—Yes.

1282. One-fourth of the land would be an acre and a quarter nearly?—I did not give the exact area of the land. I thought it was about a fourth.

1283. And the value of the fourth is assessed here at £1,500?—Yes.

1284. Then, did you at that time reckon that the value of a fourth of the land; freehold and leasehold, was £1,500?—No; but that that portion was which was taken away. The damage done to the remainder of the property by taking that portion was a great deal more than £1,500.

1285. Then you assessed a sum for the damage done to the remaining property by the taking of that piece?—The piece runs right in front of the house, and takes the frontage to the water, and therefore damages the rest of the property more than any other piece that could be taken from it.

1286. And the whole frontage?—It takes the frontage to the sea in front of the house.

1287. The house is a wooden one?—Yes.

1288. And could be removed, I suppose?—I do not know.

1289. I mean, shifted ten or twenty feet?—ten or twenty feet would not make much difference in improving the view. Besides, the ground is broken there.

1290. Do you wish us to believe, then, that you substantially made Upton aware of the fact that you were going to get back $3\frac{1}{2}$ acres of the land?—I had no doubt in my own mind that Upton should understand that from that letter.

1291. Did you not tell Upton fully the facts, that what you wished done was that the Government should take the whole of the land, and that Mrs. Kissling should get back $3\frac{1}{2}$ acres?—I do not think we had any long discussion over the matter further than what I have stated.

1292. Seeing that the letter was wrong in a most important feature, did you not then verbally convey to Upton what was the arrangement made?—There was no arrangement made then.

1293. Or contemplated?—I handed him that letter, and told him that was the arrangement contemplated. I told him what was wrong with regard to the mode of proceeding.

1294. You see the scheme proposed by Waymouth was wrong—that you were to purchase the land from the Trustees, which you knew they had no power to allow: seeing that that was wrong, and that you wished him to gather the truth from the letter, and called his attention to what was

wrong, why did you not tell him what was right, and what was the arrangement contemplated?—I did not think it was necessary.

1295. You told him one part of the letter. Did you tell him the other part, about the reconveyance?—The letter, I assumed, made that clear. I supposed there was no necessity for pointing out any other portion of the letter. If the other portion had been wrong I should have told him so.

1296. Do you now say that it is clear enough from this letter that Mrs. Kissling is to get back $3\frac{1}{2}$ acres of the land?—I think so.

1297. When did you first see Waymouth on the matter, and submit £6,000 as the basis, and ask him for his assessment of the respective interests?—It would be a short time, I suppose, before that letter—probably a day or two.

1298. It is dated the 23rd September?—It would not take him long to make out a calculation of that sort. I cannot remember the exact date I saw him.

1299. It was before the 23rd September?—Yes; of course it must have been.

1300. How long was it after you received this letter from Waymouth that you communicated to Brewer its contents?—I should imagine it would be very shortly after. I do not know.

1301. A day or two perhaps?—I cannot say.

1302. Within a month?—I should imagine that it would be within a month. I cannot say. Brewer may have been absent from Auckland during that month.

1303. Was it within two months?—It must have been within two months.

1304. Why?—Because it was on the 20th November that I wrote to the Trustees.

1305. As a matter of fact, were you not extremely anxious to get this matter settled?—Yes.

1306. And did you not ask your brother to write a letter to Mr. C. Y. O'Connor to urge on a speedy settlement of the matter?—That was after the arrangement was made.

1307. You had communicated to your brother your desire to get the freehold?—I had told him.

1308. Do you mean to say you kept this letter for two months without communicating its contents to your brother?—I do not suppose I did.

1309. The reasonable supposition is that you communicated as soon as possible the contents of this letter?—Yes.

1310. Did Brewer have this letter for any length of time, or did you merely state to him its contents at a conference or interview?—Brewer may have a copy of the letter.

Mr. Brewer: I have a copy.

1311. *Mr. Napier.*] Can you say how long it was after you submitted the contents of the letter before he agreed to the proposal as to the apportionment of the two interests?—It was some time in November, I imagine, because I find that on the 20th he asks me to put in black and white the terms of our arrangement, we having previously agreed to the terms.

1312. How long before that letter?—I do not know. I should assume it would be probably a week or a few days.

1313. About a week or a few days before the 20th November you and Brewer had come to the arrangement mentioned in the letter?—I should imagine so. I cannot swear as to the positive date.

1314. After coming to that arrangement with Brewer, and before you put it in writing, did you communicate the arrangement to the Trustees, or any of them?—No, I did not.

1315. Not even to your brother?—No.

1316. I think you know personally all the Trustees, or nearly all of them?—I think I know them all.

1317. Did you never talk over this matter with any of them during the whole of that time?—No, with the exception of Mr. Upton and my brother. I had intimated to my brother my desire to get the freehold.

1318. Why did you withhold from the Trustees that you had made that arrangement with Brewer, or the nature of the arrangement?—I made that arrangement with Brewer in the middle of November. I wrote to the Trustees on the 19th November, asking them by what process they wished to have their interest in the freehold ascertained, and they replied that they wished to deal with the Government. I clearly understood from that that they did not wish to have anything more to do with me in the matter. When I wrote that letter to the Trustees I was fully cognisant of showing that letter to Upton, and that he knew of my wish to acquire the freehold.

1319. Why did you not state in your letter to the Trustees asking them on what basis they wished their interest ascertained: Brewer and I have agreed that this is the assessment which shall be made of the respective interests?—At that stage I did not think it necessary. Had the Trustees stated any process by which they wished the value of their interest ascertained the whole of the particulars would have been put before them immediately.

1320. Do you not think it would have been better to have stated what the arrangements were?—I thought it would be better to simply write to them and ask them to elect the mode by which they wished their interest ascertained.

1321. You knew at that time that Brewer was agreeable, and had arranged with you, in fact, as to the assessment?—Of course.

1322. In that same letter you state half the facts—you state that the Government are going to take the whole of the land: why did you not also state what they were going to do with it?—I do not suppose I thought it necessary to go into details.

1323. Did you think that was an unimportant detail?—The reply I expected to that letter was the way they wished the property valued; and then the whole of the details could have been placed before them.

1324. You wrote a letter to Mr. Cochrane on the 19th November telling him that the Government were going to take the whole of the land: why did you not add that they were going to reconvey to Mrs. Kissling $3\frac{1}{2}$ acres?—I did not think that was necessary, because I thought it would all come out subsequently, when they had elected the mode by which they wished their

interest ascertained. If they had said, by a Compensation Court, or by arbitration, or by any other mode, then all the details would have been laid before them.

1325. Did you not wish to convey to the Trustees the impression that the Government were going to take the whole of the land for the purposes of a fortification?—Certainly not; because I had previously shown Upton this letter, which, I contend, shows that three-fourths was to come back to me.

1326. You knew Mr. Cochrane was secretary to the Board: did you ever give him any inkling as to the arrangement you were making with Brewer?—I cannot say that I did.

1327. Or the Bishop?—I very seldom see him.

1328. And none of the members?—None of the members.

1329. Did you not show the letter to Upton, and ask him whether he did not think the apportionment of the sums was fair?—Certainly not.

1330. Does it not strike you as strange that you did not communicate the important feature I have referred to to Upton, or to the members of the Board?—He saw it before him in that letter. I relied upon that letter. I never had the slightest doubt in my own mind but that he understood the thing from that letter.

1331. Did any one ever tell you that the Government were going to take the whole of this land for the purposes of a fortification, until you suggested it to Brewer?—Yes; I had heard that suggested by a Government officer as one mode of settling the thing. It was said that it was desirable to get the whole of it for officers' quarters.

1332. Could you say who said so?—I cannot say.

1333. Was it Mr. Bell?—I cannot say. Major Cautley, Sir George Whitmore, Mr. Brewer, Major Boddam, and others were there from time to time.

1334. Those were military experts, entirely unconnected with the department, were they not?—Some of them were. I suppose Mr. Brewer was the only one connected with the department.

1335. But Mr. Bell had the superintendence of the works?—He had at first.

1336. Did Mr. Bell ever tell you that the Government intended to take more than the area marked off?—I cannot say that he did. I cannot recall who told me so.

1337. You have said that, when you got the letter from the Trustees stating that they preferred to deal with the Government, you thought they knew it was your intention to acquire the freehold. Was the only ground of that statement the fact that you had left this letter of Waymouth's in Mr. Upton's possession for a day?—And, further than that, I knew it was talked about. It was no secret in the place that that was my desire.

1338. Talked about by whom?—In Auckland at the time. It was talked about at the Club. Only yesterday a gentleman told me he knew perfectly well.

1339. But it is strange to say the Trustees say they never heard?—Yes, strange to say.

1340. Do you not believe what they say?—Of course.

1341. This is the letter you sent on the 19th November to the Trust Board: "The Government are taking, under the Public Works Act, the whole of the property now occupied by me at Point Resolution. It is therefore necessary to ascertain how the compensation is to be divided between us. With this view, I shall feel obliged if you will inform me by what process you would prefer to have the present value of your freehold interest ascertained.—Yours faithfully, G. S. KRISLING." Do you not think that conveyed the impression to the Trustees that the Government were taking the whole of the land for the purposes of a battery, and that they required it?—I do not see that it says anything about defence works.

1342. And it does not convey that impression?—No, I do not think so.

1343. Could it convey the impression that the Government were only taking it under the Public Works Act as a blind, so to speak, for the purpose of giving back part of it to your wife?—When I wrote that letter what was in my mind was what I have already stated—that the Government had the power to take a whole block of land when carrying on certain works, and that they were exercising that power in this case.

1344. Did you tell Brewer that the Trustees would like to sell this land if they could?—No.

1345. Did you know that the Trustees would not like to sell the land, and were very averse to selling either that or any other portion of their trust property?—Mr. Upton told me, on the occasion of the interview I had with him on the 20th November, what he stated in his evidence before the Commission, that he thought, with regard to these lands, that the time would come when the Government would re-enter upon them and take them for a general education endowment. I may state that since that, and after all this was completed, I had a conversation with the Rev. Mr. Burrows, and he pointed out to me the great advantages, sometimes, of the power to sell land, and he instanced that at Tauranga—what a good thing it would have been for the Church Missionary Society to have been able to sell their land. He was of opinion that it would be much better in many cases for a trust if the land could be sold—that the investment would be better.

1346. Did you not know that so strongly did the Church Trustees feel on this point that they had Church legislation on the matter?—I know that Church legislation is required to sell any Church property.

1347. Did you not know at the time you made this arrangement with Brewer that you were deliberately breaking the law?—Certainly not.

1348. Were you in ignorance of the law?—I was in utter ignorance of the law.

1349. You say Brewer appeared to be driving as hard a bargain as he could for the Government: in the light of what you have stated, that he made no demur to the valuation of £6,000, how can you make that statement?—Because he used to represent to me that my claim was too high.

1350. And yet, though he represented that, he always gave way, and he agreed to your maximum claim?—No; my maximum claim was £2,500.

1351. £6,000 was the maximum value of the whole piece?—I suppose he was satisfied that was a fair value.

1352. Though he questioned the amount, and said you were asking too high a price, yet he ultimately agreed to it?—I suppose he had reasons for agreeing to the valuation of £6,000.

1353. He did, in fact, agree?—Yes; we took that as the basis.

1354. £6,000 was the first amount asked, and that was the basis ultimately agreed upon?—Yes.

1355. And that you call driving a hard bargain on the part of the Government?—I spoke of up to the time we arrived at that basis.

1356. Did you ever reckon a greater sum than £6,000 to Mr. Brewer as the value of the property?—No; I do not think I ever stated a larger sum than that to him.

1357. Did you employ any agent, or do the matter wholly yourself?—I did it entirely myself.

1358. Did you employ Brewer as your agent in the purchase of this land?—Most certainly not.

1359. And he did not act in that capacity?—Certainly not.

1360. Did you pay him anything at all for the part he took in the transaction?—I did not in any way.

1361. Or make him any gift?—No; not of any kind whatever.

1362. Do you reckon the whole of the land at £1,250 an acre, and place £1,000 for improvements?—Yes.

1363. The Government only took three-quarters of an acre?—Yes.

1364. That would be a little over £900 for the actual land taken. What was the proportion for improvements upon the piece which the Government took?—I think what they have taken is nearer an acre than three-quarters of an acre. I do not know the measurement exactly.

1365. It would come to a little over £900 for the value of the land. There were no houses on the portion the Government took, nor buildings of any kind?—No.

1366. Were there any improvements on that portion?—There was a flagstaff and a garden there.

1367. But no buildings?—No.

1368. Did you see the Proclamation which took this land?—I do not think so.

1369. Do you know it says the land was taken for the purposes of a battery? You know it was not taken for the battery?—Yes.

1370. It was taken for the purpose of giving back $3\frac{1}{2}$ acres, and effecting the arrangement you made with Brewer?—Yes.

1371. Did you see the Special Powers and Contracts Bill before it went through the House?—No.

1372. Did you have any communication with any member of the Government, or any member of either branch of the Legislature, for the purpose of getting their support to that portion of the Act which validates the arrangement I have referred to?—No; I have no recollection of speaking to or communicating with any member about it.

1373. Did you receive a copy of the Bill before it passed?—I do not think so.

1374. You knew before the Act passed that the land was to be given to you, and that special legislation was necessary?—Yes, when I received that letter—that is, seven months after the arrangement was made with Brewer.

1375. In the telegram you sent to the Chairman of the parliamentary Committee you state that you believe the Trustees knew the balance of the freehold was to be reconveyed to Mrs. Kissling, and it was no secret: was the only foundation for that statement the fact you previously told us, that you left this letter for a day with Mr. Upton?—And, as I have already stated, the fact that it was generally known that I wished to acquire the freehold.

1376. *Mr. Hesketh.*] About this letter of Waymouth's: where did this item of £6,000 come from?—That was the valuation we agreed upon—Brewer and myself—after discussing the thing. The valuation, as I have stated, I got, for my part, from a valuation I had made.

1377. Evidently, Waymouth got hold of the £6,000 item in some way?—I gave him that.

1378. And asked him to give you the interests, proceeding on that basis?—And asked him to work out what the interest of the Trustees would be, and what the interest of the leaseholder would be. I asked him for no suggestion whatever as to the mode of settlement. It was simply to value the different interests.

1379. Taking £6,000 as the value of the whole thing?—Yes: and that £632 was worked out on the calculation of 6 per cent. interest.

1380. You furnished Waymouth with the sum of £6,000, and it was he who furnished you with the item of £632?—Yes.

1381. Then you, in turn, obtained the item of £6,000 from some valuator?—Yes.

1382. *Mr. Mahony.*] You say you drew Upton's attention to the fact that Waymouth had put it the wrong way: you meant to convey by that to him that the Government, and not you, should acquire the land?—Yes.

1383. So that actually, as a matter of fact, you and he went into the wording of this very part of the letter?—Yes; I drew his attention to it.

1384. Did he ask you anything as to what was to become of the three-quarters?—No.

1385. Thereby you took it that he understood what was the intention?—Yes.

1386. Was there anything to lead you to think that Upton was in doubt, or would be misled, or had been misled by anything?—No, there was not.

1387. *Dr. Giles.*] During the last session of Parliament you are aware that a Bill was recommended by a Select Committee and promoted in the House for the purpose of undoing this arrangement. Upon hearing of that you made a representation to the Premier, pointing out that if

that was to be done it would be right to take into consideration improvements. Would it mean subsequently?—Yes.

1388. Perhaps you would like to state what the improvements made subsequently are?—I have not got the exact amount. I have laid out about £700 on the house.

1389. Since this transaction was completed?—Yes; and I have also made alterations in the grounds.

1390. I do not know that it is material to us to know something about it, but the fact is you have made substantial improvements?—Yes, I have. Of course, if it was necessary, I could produce to you the receipts from the builder for such improvements.

1391. You showed us on the grounds the part of the house that has been added since?—Yes; and that verandah has been put on since. In fact, the house is more than twice the size that it was before.

1392. It is enough if I have it in evidence that you have very materially enlarged the house, and spent some hundreds of pounds in improvements?—Yes; I have spent at least £700 or £800. There is one matter I should like to bring before you. I have had a valuation made of what a property in Queen Street realised when sold in 1883 on similar terms as this. Mr. Waymouth made the valuation. Certain property in Costley's estate was purchased in by Fisher and Co. They paid £3,800 in October, 1883, for the freehold of that property, having it at the time on lease for thirty-eight years. The rental at the time was—for the first eighteen years £156, and for the next twenty years £208. I have a statement from Mr. R. C. Carr, of Tonks and Co., to that effect. I asked Waymouth to calculate, on the same principle that this £632 was arrived at—that is, 6 per cent.—what that property ought to have fetched if it was worth at the end of thirty-eight years what was given for it by the New Zealand Loan and Mercantile Agency Company in April, 1884—that is, six months after this sale of Costley's took place. He reports to me: "109, Queen Street, Auckland, 12th October, 1888.—Mahony, Esq.—Dear Sir,—By direction of Mr. Kissling I send you the results of some calculations I have made for him. The present value of a rental of £156 per annum for eighteen years, and then for a further term of twenty years at £208 per annum (interest at 6 per cent. per annum), is £2,555.* If 55ft. 8in. frontage sold for £31,657 10s., then 27ft. 6in. produced £15,639. The present value of £15,639, payable at the expiration of thirty-eight years (interest at 6 per cent. per annum), is £1,708.—I have, &c., J. WAYMOUTH." This was reckoned on the same basis on which the calculation applying to Point Resolution was worked out. And it was sold by public auction for £3,800.

1393. Where is that property situated?—In Queen Street, next to the Bank of New Zealand. That is, if worked out—the value of that property at the end of thirty-eight years—on the same principle as this has been worked, it ought to have fetched £4,263, instead of which it only fetched £3,800. It bears out this fact: that the £632 valuation was indorsed with what took place in public opinion in 1883–84.

1394. *Mr. Brewer.*] You say you had several conversations with the Government officers, and that they informed you that the whole of the land was to be taken?—Yes.

1395. Were these not surveyors and engineers for military purposes?—It is very likely they were.

1396. All these officers had left Point Resolution before I came to Auckland?—The impression upon my mind was it was before you arrived.

1397. Did you ever calculate what the amount of £632 invested at 6 per cent. at compound interest for forty-eight years would amount to?—About £10,500 or £10,600.

APPENDIX.

Hon. Sir Frederick Whitaker.

BELOW are the valuations of the Trustees' interest in the land at Point Resolution, on the assumption that the ultimate value is £6,000:—

PRESENT VALUE of—(a) £6,000, due Forty-eight Years hence, at 6, 7, and 8 per Cent.; (b) £17 per Annum for Forty-eight Years, at 6, 7, and 8 per Cent.

						£	s.	d.
At 6 per cent.	...	...	...	...	...	(a)=366	0	0
						(b)=266	0	0
	Trustees' interest	...	...	...	...	£632	0	0
						£	s.	d.
At 7 per cent.	...	...	...	...	...	(a)=233	4	5
						(b)=233	8	4
	Trustees' interest	...	...	...	...	£466	12	9
						£	s.	d.
At 8 per cent.	...	...	...	...	...	(a)=149	4	5
						(b)=207	4	4
	Trustees' interest	...	...	...	...	£356	8	9

Office of the Government Actuary and Statist,
Wellington, 21st June, 1886.

F. W. FRANKLAND.

* £2,555 at interest at 6 per cent. per annum would amount at the end of thirty-eight years to £23,399.—J.W."

DEAR SIR,—

Auckland, 3rd October, 1888.

Colonel Roberts and myself, being engaged upon a Commission of inquiry into the Point Resolution purchase, have had under our notice a valuation made by you showing the sum of £632 to be the right amount payable to the Church Trust Board for their reversionary interest in the land in question, the lease having then forty-eight years to run, and the value of the property at the end of the term being estimated at £6,000. For convenience, I send you a copy of your memorandum. Upon reference to the land-purchase tables of the Railway Department, I find, by taking Table No. 2, for calculation of lessee's interest, and multiplying by seventeen—representing £17 rent—the numbers given in the line for forty-eight years at 6, 7, and 8 per cent., I get the same results as you give for the present value to the owner of the rental for that period (item b). So far the matter is intelligible. But we find no attempt to determine accurately the lessee's interest at that time—a question not submitted to you. I do not understand the directions given under this head in the notes to the table referred to, but I gather from them that the data must be very conjectural. But the data supplied to you must also be to some extent conjectural—viz., the sum of £6,000 as the value of the property at the end of the term; and, in fact, in dealing with the lessee the same sum—£6,000—was assumed as the then present value.

We should be glad to know whether, upon the data supplied to you—viz., £6,000 at the end of forty-eight years, and rent £17—you are able to arrive at any approximate estimate of the lessee's interest as compared with the owner's.

I hope I have made my meaning clear, and that you will kindly reply without loss of time, as any information on this subject will be of much assistance to us.

If you can say anything in the compass of a moderate telegram, we shall be glad to get it in anticipation of your letter.

I remain, &c.,

F. W. Frankland, Esq., Principal Actuary, Wellington.

J. GILES.

(Telegram.)

Auckland, 4th October, 1888.

YOUR memorandum to Minister dated 16th December, 1885, states your computation from tables makes interest of Church Trustees £3,040, whereas Mr. Frankland gives £632. Of course, the data must have been different. Could you send us by first mail your computation showing data, method, and result?

J. GILES, R.M.

C. Y. O'Connor, Esq., Public Works Office, Wellington.

MEMORANDUM for Dr. GILES *re* POINT RESOLUTION BATTERY.

IN reply to your telegram of this date, it is difficult for me to answer your question in the absence of the records and calculations, all of which are with you.

From what I remember of the case, however, I believe Mr. Frankland's result of £632 was based on an estimated value for property of £6,000 at end of term of lease, while my calculation—accepting £6,000 as the present value—was based on the assumption that the property would have increased very much by the end of the term (which is, I believe, close upon fifty years); and I think that I assumed, on the basis of the increase in value of land in the past, and in other colonies at present, that the value of these four acres of land fifty years hence would be £20,000.

Assuming this to be so, the calculation required is merely the very simple one of ascertaining the value at the present time of £20,000 payable fifty years hence: but in making this calculation I did not adopt 6 per cent., as Mr. Frankland did, as the tendency is, apparently, for interest on money to decrease; and, looking to the length of the period, I assumed, I believe, that 4 per cent. would be a fair average to take for the probable market-rate of interest on freehold security. The calculation was made by means of the printed tables accompanying my report to the Minister for Public Works, attached to the Defence Department file of papers, which you have got. The present value of a pound sterling payable, say, fifty years hence will be the difference between the value of a pound per annum for fifty years and a pound per annum for forty-nine years, as shown on those tables. Thus, for instance, the value of a pound payable fifty years hence, if market-rate of interest be 4 per cent., paid annually, would be £0.1406, and if the value of the property at the end of fifty years be assumed at £20,000, the present value of a reversionary interest, to accrue fifty years hence, would be £0.1406 × £20,000 = £2,812. The actual figures by which I arrived at the amount you mention (£3,040) are, however, I think, contained in one of the Public Works files of papers which you have got—the one which contains Mr. Mackay's valuation of the property, near the bottom of the file. If Mr. Mackay is still in Auckland he may be able to assist you in finding it.

C. Y. O'CONNOR,

Under-Secretary for Public Works.

Public Works Department, Wellington, 5th October, 1888.

(Telegram.)

Wellington, 6th October, 1888.

My calculation was made on assumption that property would be worth £6,000 at end of term. If you think value will be more, and will give me new estimate of final value, I will make a fresh calculation. Meanwhile I take it lessee's interest is £6,000, minus owner's interest.

Dr. J. Giles, Resident Magistrate's Court, Auckland.

F. W. FRANKLAND.

EXTRACT FROM DEED OF GRANT OF TRUST PROPERTY.

WHEREAS a school hath been established by the Government at Taurarua, in the suburbs of Auckland, under the superintendence of the Bishop of New Zealand, for the education of children of our subjects of both races, and of children of other poor and destitute persons, being inhabitants of the islands in the Pacific Ocean. . . . In trust, nevertheless, and for the use or towards the support and maintenance of the said school so long as religious education, industrial training, and instruction in the English language shall be given to youths educated therein or maintained thereat.

In testimony whereof we have caused this our grant to be sealed with the seal of our Province of New Ulster. Witness our trusty and well-beloved Sir George Grey, K.C.B., Governor and Commander-in-Chief of our said province and its dependencies, at Government House, Auckland, in the fourteenth year of our reign, and in the year of our Lord one thousand eight hundred and fifty.

G. GREY.

COPY of MINUTE made by Late UNDER-SECRETARY for PUBLIC WORKS, and laid before Minister.
(Put in by Mr. Brewer as a testimonial.)

This is the usual arrangement made with Mr. Brewer for land-purchasing on the sections of the line from Wanganui northwards. He is a very successful negotiator, and has had to resist some exorbitant claims, in which the result has been very favourable to the Government. He is considered a valuable officer by the department. I recommend approval.

DEAR SIR,—

17, Scherff's Buildings, 23rd September, 1885.*

Re adjustment of value of lease of and of land at Parnell recently taken by the Government, the value of money being at 6 per cent. per annum: The view I take of the matter is that you purchase the land of the Trustees for £6,000, and that the Government have to pay you (exclusive of difference of value by reason of its position) for their one-fourth thereof—namely, £1,500. Then you pay the Trustees the present value of £17 per annum for forty-eight [*sic*] = £266; and the present value of the purchase-money (£6,000) at the date of the expiry of your lease—namely, forty-eight years, = £366 = £632. This is the simplest method of settlement.

Yours, &c.,

J. WAYMOUTH.

G. S. Kissling, Esq.

My fee, 10s. 6d.

MY DEAR SIR,—

Bank of New Zealand, Auckland, 6th November, 1885.

Referring to your letter of this date and to our subsequent interview on the subject of compensation to me for the portion of my property taken for a fort at Resolution Point, I beg to submit the following: The amount of compensation (£1,950) offered me for my interest in the lease of the portion taken I consider inadequate, but I am prepared to accept £1,750 and a freehold of the balance not taken, I having to settle the claim with the Trustees for the value of their freehold interest. By this means the Government will save £200 if I were to accept your present offer, which I am not disposed to do.

Yours, &c.,

G. S. KISSLING.

H. M. Brewer, Esq.

If the above plan is adopted the land will, of course, have to be taken under the Public Works Act, and the balance conveyed to me.—G. S. K.

MEMORANDUM for G. S. KISSLING, Esq., Bank of New Zealand, Auckland.

IN answer to yours of the 20th November, 1885, I beg to inform you that, on behalf of the Government, I accept the conditions of settlement proposed by you in that letter. The Proclamation taking the land is now out, and I trust the matter will soon be finally completed.

H. M. BREWER,

Public Works Office, Auckland, 14th January, 1886.

Land-purchase Officer.

DEAR SIR,—

Auckland, 19th November, 1885.

The Government are taking, under the Public Works Act, the whole of the property now occupied by me at Point Resolution. It is therefore necessary to ascertain how the compensation is to be divided between us. With this view I shall feel obliged if you will inform me by what process you would prefer to have the present value of your freehold interest ascertained.

Yours, &c.,

G. S. KISSLING.

W. S. Cochrane, Esq., Secretary, Church Trust Property.

W. S. Cochrane, Esq., Secretary, General Trust Board.

Re land required for battery at Point Resolution: I am directed by the Hon. the Defence Minister to state that it is proposed to take the whole of the land at present in the occupation of Mr. G. S. Kissling. The land being let for such a long term to that gentleman at a nominal rental, the principal part of the compensation will be awarded him. As, however, the Government wish your Board to be treated with every consideration, I am requested to state that the sum of £632 will be awarded for your interest. Will you please let me know at your earliest convenience if you accept this offer, so that arrangements can be made for paying over the money. If you do not accept it the case will have to go to the Supreme Court.

H. M. BREWER,

Land-purchase Officer.

20th November, 1885.

DEAR SIR,—

Auckland, 20th November, 1885.

Referring to our conversation this morning, I now beg to state what I understand to be the position of our negotiations with regard to Point Resolution.

The Government have taken the whole of my property, for which they are to pay £6,000 for freehold and leasehold interest. Of this sum I am to receive £5,368, and the Trustees £632 = £6,000. The Government undertake to hand me back as a freehold the portion of my property not required by them—say, about three acres—for which I pay them £4,250. The total cost of compensation to the Government will therefore be £1,750. Should it be found in settling with the Trustees that the

Government have to pay a larger sum than £632 for their freehold interest, I undertake to reimburse them the excess. It is understood that the boundary between my property and the fort is the fence erected by the Government.

H. M. Brewer, Esq.

Yours, &c.,

G. S. KISSLING.

(Telegram.)

Wellington, 6th October, 1888.

Re Point Resolution. Posted memorandum yesterday in reply to your telegram, showing how value of reversionary interest was arrived at—namely, on the assumption that the average market-rate of interest would be 4 per cent., and that the land would be worth £20,000 at termination of present lease. This made reversionary interest £2,812; but I omitted to add capitalised value of rental, which for fifty years, again taking 4 per cent. as the market-rate of interest, would come to £365: total, £3,177. This is not quite the same as amount you mention; but term of lease to expire is probably not quite fifty years. The actual calculations by which I arrived at figures you mention are, I think, contained in one of the Public Works files of papers which you have got, near bottom of file.

Dr. Giles, Resident Magistrate, Auckland.

C. Y. O'CONNOR.

(Telegram.)

9th October, 1888.

CAN you tell me how you arrive at £20,000 as estimated value of property at expiration of lease?

C. Y. O'Connor.

J. GILES, R.M.

(Telegram.)

Auckland, 8th October, 1888.

POINT RESOLUTION COMMISSION.—When you approved Mr. Brewer's action in bargaining to give Kissling freehold of land not required by Government, did you believe that Church Trustees were privy to that arrangement, or did you not consider the point, or do you think you were in any way misled? Your answer to this question will oblige us.

J. GILES, R.M.,

Hon. J. Ballance, Wanganui.

Commissioner.

(Telegram.)

Wanganui, 9th October, 1888.

HAD no reason to suppose that arrangement was not known to all the parties. Believed Brewer doing best in interests of colony, and that the other parties would guard their own interests. Have no reason at present to suppose I was misled.

J. Giles, Esq., Royal Commissioner, Auckland.

J. BALLANCE.

From B. Tonks and Co., illustrating Price of Land. (Put in by Mr. G. S. Kissling.)

G. S. Kissling, Esq.

Auckland, 10th October, 1888.

I CERTIFY that at the sale of the late Edward Costley's properties held at our mart on the 10th October, 1883, we sold the premises then in the occupation of Fisher and Co., and being Lot 1, subdivision of Allotment 1, Section 17, Queen Street, 26ft. 4in. by a depth of 92ft. 10in., subject to a lease for forty years from 22nd August, 1881, at a rental for the first twenty years of £156 per annum, and for the second twenty years at a rental of £208 per annum, lessee to leave at expiration of lease buildings of at least the value of £2,000.

Sold for the sum of £3,800. Purchaser, Mr. Wm. Aitken, as agent for the New Zealand Freezing and Storage Company.

ROBT. C. CARR, Auctioneer.

[Approximate Cost of Paper.—Preparation, nil; printing (1,200 copies), £36 18s. 6d.]

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