

Hon. Mr. Hislop.

SPECIAL POWERS AND CONTRACTS ACT 1886 AMENDMENT.

ANALYSIS.

Title.	8. Certificate of title to issue to Board.
Preamble.	9. Lease to be granted to Mrs. Kissling.
1. Short Title.	10. Provision for ascertaining compensation in respect of such land.
2. Interpretation.	11. Who to be claimants and respondent.
3. Revocation of a Proclamation taking certain land at Point Resolution. Contracts in relation thereto void.	12. What to be the basis of proceedings to determine compensation.
4. Certain part of land at Point Resolution to vest in Crown.	13. Parties may act in respect of prospective interests.
5. Repeal of paragraph 13 of First Schedule to "The Special Powers and Contracts Act, 1886."	14. In case land described in Third Schedule mortgaged, provision for dealing with same.
6. Further dealings with land prohibited until proceedings completed under this Act.	15. Powers of Compensation Court.
7. District Land Registrar to call in certificate to be cancelled.	16. Awards and orders to be conclusive. Costs.
	17. Powers of District Land Registrar.
	18. Parties affected to have no claim other than under this Act.
	Schedules.

A BILL INTITULED

AN ACT to amend "The Special Powers and Contracts Act, 1886," and carry into effect the Report of a Committee of the House of Representatives respecting the Purchase and Re-sale by the Crown of certain Land at Point Resolution and otherwise in relation thereto.

WHEREAS, in the present session of Parliament, a Select Committee of the House of Representatives was appointed for the purpose of inquiring into the terms upon which certain land at Point Resolution, in the City of Auckland, was purchased by the Government from George Schwartz Kissling, of Auckland, Gentleman, and from certain other parties, and also into certain other matters connected with such purchase: And whereas the said Committee has reported in the terms set out in the *First* Schedule hereto, and such Report has been adopted by the said House, and it is expedient that effect should be given to the said report in the manner hereinafter provided:

BE IT THEREFORE ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

1. The Short Title of this Act is "The Special Powers and Contracts Act 1886 Amendment Act, 1888."

Interpretation.

2. In this Act, if not inconsistent with the context,—  
 “Board” means the “General Trust Board” of the Church  
 Property Trustees mentioned in the report in the *First*  
 Schedule hereto, by whatever legal name or style the  
 same is incorporated or known :

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“Court” means a Compensation Court, to be held under Part  
 III. of “The Public Works Act, 1882.”

“Parties” mean Her Majesty the Queen, the Board, the  
 said George Schwartz Kissling, and Frances Catherine  
 Kissling, his wife, and any person legally empowered to  
 act on behalf of any of such parties.

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Revocation of a  
 Proclamation taking  
 certain land at  
 Point Resolution.

3. The Proclamation issued under the provisions of “The Public  
 Works Act 1882 Amendment Act, 1885,” on the twenty-eighth day  
 of May, one thousand eight hundred and eighty-six, and gazetted on  
 the third day of June in the same year, taking the four acres one rood  
 and seventeen perches of land therein described at Point Resolution,  
 in the Borough of Parnell, Suburbs of Auckland, shall, so far as  
 the same relates to the said land, be and the same is hereby revoked  
 and cancelled, and shall be deemed never to have been issued.

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Contracts in relation  
 thereto void.

All contracts and agreements made between the parties, or any  
 of them, either antecedent to the issue of such Proclamation or  
 subsequent thereto, in respect of the purchase or acquisition of such  
 land, or any estate or interest therein, are hereby declared to have  
 been and to be void, subject, however, to the provisions hereinafter  
 contained.

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Certain part of land  
 at Point Resolution  
 to vest in Crown.

4. On and from the third day of June, one thousand eight  
 hundred and eighty-six, the parcel of land described in the *Second*  
 Schedule hereto, being part of the land described in the said  
 Proclamation, shall be and be deemed to have vested in the Queen,  
 her heirs and successors, for all such estate and interest as imme-  
 diately prior thereto was held by or vested in any person or body ;  
 and the same shall hereafter be held by the Queen as a public work  
 for the purposes of defence within the meaning of and subject to  
 “The Public Works Act 1882 Amendment Act, 1885.”

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Repeal of paragraph  
 13 of First Schedule  
 to “The Special  
 Powers and Con-  
 tracts Act, 1886.”

5. The thirteenth paragraph of the First Schedule to “The  
 Special Powers and Contracts Act, 1886,” is hereby repealed, and the  
 certificate of title issued to the said Frances Catherine Kissling  
 thereunder shall be deemed to have issued in error in respect of the  
 land therein described, and which said land is also described in  
 the *Third* Schedule hereto.

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Further dealings  
 with land prohibited  
 until proceedings  
 completed under  
 this Act.

6. After the passing of this Act no further dealing with or dis-  
 posal of the land comprised in such certificate shall take place, and  
 no instrument shall be signed, executed, or registered in respect  
 thereof, nor shall any order, judgment, or execution be enforced or  
 made available in respect of the said land, except as authorised by  
 this Act and until the proceedings herein provided for have been  
 taken and completed.

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District Land  
 Registrar to call in  
 certificate to be  
 cancelled.

7. The District Land Registrar at Auckland is hereby required  
 and directed as soon as conveniently may be after the passing of this  
 Act to call upon the said Frances Catherine Kissling to deliver up  
 to him the said certificate, in order that the same may be cancelled,  
 and that such other proceedings may be taken in respect of, or in  
 relation thereto, as by this Act provided.

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8. Upon receipt of such certificate the said District Land Registrar shall cancel the same as having been issued in error, shall thereupon make out and issue to the Board a new certificate of title in respect of the land included in the certificate so issued to Frances Catherine Kissling; and the said Board shall thereafter hold the said land upon the same trusts and for the same objects and purposes as it originally held the same before it was taken by the Government under the circumstances mentioned in the said report.

Certificate of title to issue to Board.

9. Subject to any award or direction of the Court under this Act, the Board shall within one month after the issue of such certificate to it, grant to the said Frances Catherine Kissling, or as she may direct, a lease of the land comprised therein for a term of years not exceeding the residue of the original term of sixty years granted by the Board to one Theophilus Heale on the twenty-fifth day of April, one thousand eight hundred and seventy-three, at a rent proportionate to the rental originally payable for the whole land at the time of such purchase, or such other rent as may be agreed between the Board and the said Frances Catherine Kissling, and upon, under, and subject to such terms, covenants, and conditions, *mutatis mutandis*, as were contained in the original lease thereof purchased by the said George Schwartz Kissling, as mentioned in the said report.

Lease to be granted to Mrs. Kissling.

10. For the purpose of giving effect to this Act and readjusting the compensation to be paid and apportioned to and between the parties, a Court shall be held under the provisions of Part III. of "The Public Works Act, 1882," for the purpose of determining the compensation to be payable—

Provision for ascertaining compensation in respect of such land.

(1.) In respect of the freehold interest of the Board in the land described in the said *Second* Schedule to be acquired by this Act; and

(2.) In respect of the leasehold interest of the said Frances Catherine Kissling in the said land to be acquired as aforesaid.

11. The claimants for compensation shall be the Board and the said Frances Catherine Kissling in respect of their several interests as aforesaid, and the respondent shall be the Minister for Public Works on behalf of the Queen; and subject to this Act all the provisions of the said Part III. shall extend and be applicable to all proceedings to be taken for the purpose of readjusting and settling such compensation and giving effect to this Act.

Who to be claimants and respondent.

12. In determining the amount of such compensation the Court shall take as the basis thereof that the value of the whole land originally taken by Proclamation as aforesaid was six thousand pounds, and shall also take into consideration the relative values of the estates then held therein by the Board and the said George Schwartz Kissling as agreed between them and the agent of the Queen; and shall also take into consideration the amounts already paid to the Board and the said Frances Catherine Kissling respectively, and shall have power to direct, after hearing the evidence of the parties or any of them, that if these amounts are more or less than the amounts of compensation properly payable in order to give effect to this Act, repayment, or a further payment as the case may require, shall be made by such one of the parties to the other of them as the Court

What to be the basis of proceedings to determine compensation.

thinks equitable, and such payment shall be made at such time and in such manner as the Court may award and determine.

Parties may act in respect of prospective interests.

13. Any proceedings to be taken by the parties may be taken hereunder in respect of their prospective interests to be acquired under this Act and before the actual issue or execution of instruments of title in respect thereof, and the matters to be heard and determined in conjunction or separately, as the Court thinks fit, either on its own motion or on the application of any of the parties. 5

In case land described in Third Schedule mortgaged, provision for dealing with same.

14. If the land comprised in the said *Third* Schedule is subject to a mortgage or charge on land within the meaning of "The Land Transfer Act, 1885," the Court shall have and exercise the following powers:— 10

(1.) Inquire into the value of the security held by the mortgagee immediately prior to the passing of this Act, and, after hearing all persons interested therein, shall award and declare that the mortgagee shall accept the leasehold interest to be acquired by the said Frances Catherine Kissling under this Act as security for the amount of such mortgage and the interest due or to become due thereon. 15 20

(2.) Order that a new mortgage of such interest shall be executed by the said Frances Catherine Kissling, and that the same shall, *mutatis mutandis*, contain the like provisions, covenants, and conditions as are contained or implied in the original mortgage for the purpose of securing payment of the principal and interest then due thereunder, and otherwise in relation to such security; and such mortgage shall be accepted by the mortgagee, and every person claiming through or under him, in lieu of any now existing mortgage, and all claim or demand thereon or thereunder by such mortgagee shall cease in respect of the now existing mortgage, subject, however, to this Act. 25 30

(3.) It may also order and direct that if the said mortgage authorised to be made under this Act is not paid off at the time payment may be required in accordance therewith, or if on any sale of the security comprised therein the same does not realise the amount then due and payable thereon, together with all interest and other moneys secured thereby or that may be payable thereunder, then that the Queen shall pay any deficiency which shall arise between the amount secured by or under the mortgage and the amount realised by any such sale as aforesaid: Provided that every sale of such security shall be by public auction, and be held in such manner and time and at such place as the Governor shall first approve. 35 40 45

Powers of Compensation Court.

15. The powers by this Act conferred on the Court shall be in addition to the powers contained in Part III. of "The Public Works Act, 1882," and the Court shall have all such jurisdiction, power, and authority as may be necessary to give effect to this Act and any award or order made by it. 50

Awards and orders to be conclusive.

16. Every award and order made by the Court shall be binding and conclusive on all parties and interests affected thereby, and it may also order and direct to and by whom the costs of any proceedings

Costs.

taken under this Act shall be paid, and any such award or order shall have the effect of a judgment of the Supreme Court, and may be enforced accordingly.

17. The District Land Registrar at Auckland shall have all the powers and authorities contained in sections sixty-nine and seventy of "The Land Transfer Act, 1885," and all other the provisions of that Act so far as applicable shall extend and apply to any act or proceeding which it may be necessary for such Registrar to do in order to comply with this Act.

Powers of District Land Registrar.

10 And, for the purposes of this Act, he may accordingly make such entries in any register, and execute and issue such instruments under "The Land Transfer Act, 1885," or under that Act and this Act as shall be required to give effect to this Act and any award or order of the Court made hereunder.

15 18. No person or body affected by the operation of this Act shall have any action, claim, or demand under any law or statute by reason of the deprivation of any estate or interest created by or under the said certificate of title issued to the said Frances Catherine Kissling as aforesaid, or by reason of the cancellation thereof under this Act or otherwise in relation thereto, or by or from the exercise of any of the powers by this Act given to the Court or the operation of this Act otherwise than is herein expressly provided.

Parties affected to have no claim other than under this Act.

## SCHEDULES.

Schedules.

### FIRST SCHEDULE.

#### REPORT OF THE POINT RESOLUTION LAND-PURCHASE COMMITTEE.

I AM directed by the Point Resolution Land-Purchase Committee, to which was referred the following questions:—

- (1.) What were the terms upon which certain property at Point Resolution, Auckland, was purchased by the Government from Mr. G. S. Kissling and others?
- (2.) Whether such terms were reasonable, and were given effect to with fairness to each of the vendors; and
- (3.) Whether, if such terms were unreasonable or unfair, what steps, if any, can be taken to remedy the same?

—to report that the evidence before the Committee goes to show,—

That certain land at Point Resolution was granted to the Bishop of New Zealand in 1850 for charitable purposes:

That the land was vested in a body called "The General Trust Board:"

That, on the 25th April, 1873, 4 acres 1 rood 17 perches of the land was leased to Mr. T. Heale by the General Trust Board for a term of sixty years, at a rental of £17 per annum:

That Mr. G. S. Kissling purchased the lease of the 4 acres 1 rood 17 perches from Mr. T. Heale in June, 1883, for the sum of £2,000:

That in April, 1885, steps were taken by the Government to erect a battery at Point Resolution:

That 3 roods 13 perches of the 4 acres 1 rood 17 perches leased by Mr. Kissling was required for the purpose:

That much difficulty was experienced by the Government in arranging with the lessee the terms upon which the land should be taken:

That, on the 20th November, 1885, the following terms were agreed upon between the lessee and Mr. H. M. Brewer, Government Land Purchase Officer:—

- (1.) The Government to take the whole of the land, paying £6,000 for the freehold and leasehold interests;

- (2.) The lessee to receive £5,368 and the trustees £632;
- (3.) The Government to hand back to the lessee as a freehold, for £4,250, the 3 acres 2 roods not actually required for the battery; and
- (4.) The lessee to reimburse the Government in case more than £632 had to be paid to satisfy the trustees' claim.

That, on the 20th November, 1885, the Government Land Purchase Officer wrote to the secretary of the General Trust Board, stating that it was proposed by the Government to take the whole of the 4 acres 1 rood 17 perches, and that the sum of £632 would be awarded to the trustees for their interest; and notifying that if the award was not accepted "the case would have to go to the Supreme Court:"

That, on the 3rd December, 1885, the General Trust Board passed a resolution accepting the sum of £632 in satisfaction of their claims:

That, on the 4th December, 1885, the acceptance of the award by the General Trust Board was formally notified to the Government Land Purchase Officer:

That the General Trust Board now state, in reply to a telegraphic inquiry from this Committee, that they were not aware, at the time they accepted the Government award of £632 for their interest, "that any arrangement had been made between the Government and Mr. G. S. Kissling as to the transfer of the fee-simple, nor of any arrangement as to Mr. G. S. Kissling agreeing to reimburse the trustees in case the Government valuator's offers were not sufficient to satisfy them:"

That a Proclamation taking the 4 acres 1 rood 17 perches for the construction of a public work within the meaning of "The Public Works Act 1882 Amendment Act, 1885," was issued on the 28th May, 1886, and gazetted on the 3rd June, 1886:

That it was found necessary to obtain legislative authority to enable the Government to transfer the fee-simple of the 3 acres 2 roods to the lessee as agreed upon:

That a clause was inserted in "The Special Powers and Contracts Act, 1886," to meet the case:

That the amounts agreed upon were paid to Mrs. Kissling and the trustees respectively on the 19th November, 1886, the trustees being paid first, so as to make sure that they concurred in the arrangements, and all the trustees joining in the receipt:

That 3 acres 2 roods of the land was thus handed over in fee-simple to Mrs. Kissling without being first offered back to the trustees as original owners, or to an adjoining proprietor, as required by the Public Works Act:

This Committee is of opinion that the course adopted by the Government Land Purchase Officer, though apparently taken in good faith and with the intention of making as good a bargain for the Government as possible, was not justifiable:

That the trust ought not to have been deprived of the fee-simple of the land not actually required for defence purposes.

Your Committee therefore recommends that, with respect to the 3 acres 2 roods not required for defence purposes, but conveyed to the lessee in fee-simple, legislative action should at once be taken to replace the trust and the lessee in the positions they respectively occupied before any proceedings for purchase were initiated; and that a readjustment should be made between the parties of the amounts of compensation which they respectively received.

W. P. REEVES,

Chairman, Point Resolution Land Purchase Committee.

20th July, 1888.

#### SECOND SCHEDULE.

ALL that area in the Borough of Parnell, in the Provincial District of Auckland, being portion of Section 2 of Suburbs of Auckland, and containing by admeasurement 3 roods 17 perches, more or less, commencing at a point on the north side of Avenue Road produced 489·3 links distant north-easterly from the intersection of that road with Judge's Road. Bounded towards the south-west by a line bearing N. 38° 26' W., 426·5 links; towards the north by Judge's Bay, about 400 links; towards the north-east by a line bearing S. 26° E., 97 links, to a point 307·7 links distant, and bearing N. 28° 34' E. from the starting-point; and towards the south-east by a right line, 307·7 links, to the starting-point.

THIRD SCHEDULE.

ALL that area in the Borough of Parnell, in the Provincial District of Auckland, being Subdivision 17 and portion of Subdivision 18 of Allotment 23 of Section 2 of Suburbs of Auckland, containing by admeasurement 3 acres 2 roods, more or less, commencing at the intersection of Judge's Road with Avenue Road. Bounded towards the south-west by Judge's Road 595·7 links; towards the north-west by a line bearing about N. 6° E., 251 links; again towards the north-west by Judge's Bay, about 540 links; and towards the north-east by a line bearing S. 38° 26' E, 426·5 links, to a point on the north side of Avenue Road produced 489·3 links distant north-easterly from the intersection of that road with Judge's Road; and towards the south-east by a right line to and by Avenue Road to the place of commencement.