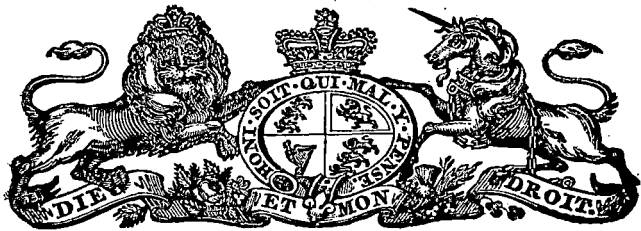


(No. 54.)



1877.

SESSION IV.

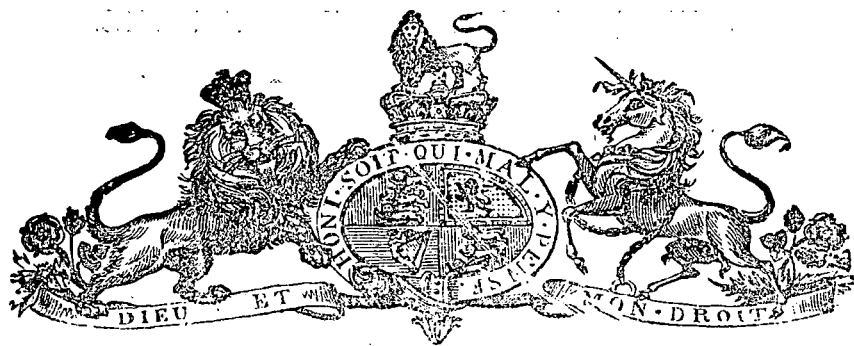
TASMANIA.

HOUSE OF ASSEMBLY.

MR. M'GREGOR'S LAND.

REPORT AND EVIDENCE OF SELECT COMMITTEE.

Brought up by Mr. Henry, and ordered by the House to be printed,
November 27, 1877.



SELECT COMMITTEE appointed on the 25th October, 1877, to report upon the validity and propriety of the proceedings in connection with the Occupation of Land at Battery Point by Mr. M'GREGOR.

MEMBERS OF THE COMMITTEE.

MR. HENRY. (*Mover.*)
MR. LAMB.
MR. LEWIS.
MR. RISBY.

MR. SALIER.
MR. MEREDITH.
MR. BROMBY.

DAYS OF MEETING.

14th, 15th, 16th, 21st, and 22nd November, 1877.

WITNESSES EXAMINED.

Honorable William Moore; H. J. Hull, Esq., Deputy Commissioner of Crown Lands; George Lovett, Esq., R. P. Adams, Esq., Solicitor-General; A. M'Gregor, Esq., Mr. W. H. Cheverton.

R E P O R T.

Your Committee have the honor to report to your Honorable House that, having taken evidence in the matter referred to them, viz., to report upon the propriety and validity of the proceedings in connection with the occupation of land at Battery Point by Mr. M'Gregor;

They are of opinion that the Commissioner of Crown Lands had not legal power to make a valid lease of the land in question to Mr. M'Gregor, and that propriety would have been better observed by so acquainting Mr. M'Gregor; and that, further, the opinion of the Master Gunner should have been obtained before any action was taken on Mr. M'Gregor's application of the 14th of February, 1876.

SAMUEL HENRY, *Chairman.*

Committee Room, 22 November, 1877.

MINUTES OF MEETING OF COMMITTEE.

No. 1.

WEDNESDAY, 14 NOVEMBER, 1877.

Present—Messrs. Henry, Meredith, and Risby.

Mr. Henry took the Chair.

Witnesses to be summoned:—Mr. Moore, Deputy-Commissioner Hull, Solicitor-General, Master-Gunner, Mr. G. F. Lovett, and Mr. M'Gregor. Mr. Moore for to-morrow at 11; Mr. Deputy-Commissioner, to-morrow, at 11:30; Mr. Lovett, to-morrow, at 11:30.

A Message to be sent to the Legislative Council asking for Mr. Moore's attendance.

Committee adjourned to 11 to-morrow.

Summonses issued for Mr. Hull and Mr. Lovett, 14 Nov.

Plan of lands granted to the Ordnance Officers.

No. 2.

THURSDAY, 15 NOVEMBER, 1877.

Present—Messrs. Risby, Lamb, Henry, (in Chair), Salier, Meredith, Lewis.

Hon. W. Moore in attendance.

H. J. Hull, Esq. called in and examined.

Witnesses to be summoned:—Mr. Lovett, at 10:30; Solicitor-General, at 12; Mr. Chisholm, at 11; Mr. M'Gregor, at 11:30.

The Committee adjourned until Tuesday, 16th instant, at 10:30.

No. 3.

FRIDAY, 16 NOVEMBER, 1877.

Present—Messrs. Meredith, Henry, Salier, Lamb, Lewis, and Risby.

Mr. Lovett was called in and examined.

Mr. Chisholm was called in and examined.

The Solicitor-General (Mr. Adams), was called in and examined.

The Committee adjourned until Wednesday, the 21st instant, at 11 o'clock.

No. 4.

WEDNESDAY, 21 NOVEMBER, 1877.

Present—Messrs. Henry, Lamb, Risby, Salier, and Meredith.

Mr. M'Gregor was called in and examined.

Mr. Cheverton was called in and examined.

The Committee adjourned until Thursday, the 22nd November, at 3 o'clock.

No. 5.

THURSDAY, 22 NOVEMBER, 1877.

Present—Messrs. Risby, Lewis, Meredith, and Henry.

Letter from Mr. Lamb read.

Consideration of Draft Report.

Report agreed to.

Resolved, That the Chairman do bring up the Report to the House to-day.

The Committee adjourned at 3:55.

EVIDENCE.

THURSDAY, 15 NOVEMBER, 1877.

The Honorable WILLIAM MOORE, M.L.C., attended and was examined.

By the Chairman.—1. You received an application from Mr. M'Gregor in reference to the purchase of land at Battery Point, dated 14th February, 1876? I did.

2. When did you answer that application? On 16th May, 1876, as appears in correspondence.

3. When and where did you arrange the terms of occupation? I had had several interviews with Mr. M'Gregor with reference to the purchase of the land in question. Mr. M'Gregor offered to pay the Government three times its value if it could only be conveyed to him. I declined the offers made for the reason that I believed the Government had no legal power to effect an absolute sale. That the hiatus in the correspondence was caused by the time which elapsed whilst carrying out these negotiations.

4. Were your colleagues acquainted with it? My colleagues saw no objection to an occupation lease, which was submitted to the Governor in Council.

5. What were the terms agreed upon? The terms shown in the correspondence were ultimately agreed upon. At page 4 you will find full particulars of Mr. M'Gregor's holding of the land. The terms were drawn up by the Law Officers, and agreed to by me:

6. Was Mr. M'Gregor's application submitted to Mr. Chisholm, the Master Gunner, for his opinion? No. Mr. Chisholm and Mr. M'Gregor have long been at variance. On more than one occasion I have had to support Mr. Chisholm against Mr. M'Gregor in regard to the Battery Grounds.

7. Did you consult any of your colleagues in Cabinet in reference to Mr. M'Gregor's application; and if so, when? Yes: I should think so. It was the usual course.

8. Was the term of occupation and rent determined upon in Cabinet before submitting the matter for His Excellency's approval? Yes. The Law Officers drew the matter up in legal form.

9. Is it not usual to name the term of years, and other conditions, when submitting a proposal of this sort for the approval of His Excellency? Yes, in some instances. The Government had no legal right to dispose of this property, except by an occupation licence, which might be terminated at any time.

10. Does not this document distinctly make over this land for an indefinite period to Mr. M'Gregor? It may be so. I do not assume to be competent to give a legal opinion on the matter: the proper officers to do so would be the Law Officers. My only construction of the deed is that Mr. M'Gregor occupies the place until the Government is in possession of the fee simple, when he will be called upon to fulfil the conditions mentioned in the Minute.

11. What is the consideration given by Mr. M'Gregor? None except that mentioned in the Agreement.

12. Do you consider this Agreement binding on the Government? I consider the Agreement morally binding upon any Government.

13. Is it a fact that this Agreement gives Mr. M'Gregor the option either to purchase the land privately or have the price fixed by arbitration? I should think the option remains with the Government as to which alternative should be adopted.

14. Would the Government be compelled to complete the sale to Mr. M'Gregor in accordance with this Agreement? My previous answer replies to this. I think the Government morally bound.

15. Will you name the Clause and Act under which this Agreement has been made? I am not aware of any Act under which it has been made. With regard to the memo. of Mr. Lovett, I don't think it is usual to engross leases on parchment: grant deeds are; but leases are written on paper.

16. Mr. Moore, being shown the Act 2 Vict. No. 9, "Ordnance Officers Act," said, I knew there was such an Act as this. There are several pieces of land in Tasmania which the Government are not able to deal with, as being vested in the Ordnance Officers. Sooner or later legislation must be established to complete the titles of the Government to them.

By Mr. Meredith.—17. I did not reply to Mr. M'Gregor's letter because I had a doubt of our right to deal with the legal part. Mr. M'Gregor had placed himself in communication with other Members of the Government; and his communications were verbal. The Colonial Secretary then was Mr. Chapman. Mr. Lovett, the Ministerial Clerk in Lands and Works Department, will tell you more than I can. The interviews I had with Mr. M'Gregor were held sometimes in the Lands and Works Office and sometimes elsewhere. I think Mr. Giblin, who was then Attorney-General, was consulted before I concurred in the matter.

18. When was the difficulty between Mr. Chisholm and Mr. M'Gregor? Long before this. It was as to leasing the adjoining property. Several times Mr. M'Gregor had trespassed; and the Master Gunner was supported by me in the matter.

19. When you submitted to the Governor the Minute, were you aware of the Master Gunner's opinion as to the building destroying the defence of Sullivan's Cove if the building were erected on the lower part? I was not aware of his opinion. I think it an extraordinary idea of protecting the Town

by turning the guns upon it. Mr. M'Gregor gave the Government distinctly to understand that the building would be on the upper land. I doubt whether I should have agreed to it if the Master Gunner's opinion had been before me,—certainly not without proper enquiry.

20. Does Mr. M'Gregor give any consideration for certain advantages? None except that mentioned in the correspondence. The property is not Crown land; and it is not under the Waste Lands Acts. All Crown lands are dealt with under statute. I had no legal right to deal with it. Mr. Chapman had all the correspondence, as the Batteries, &c. were all under his Department; and I was, perhaps, more the instrument in carrying this matter out than anything else.

21. Between 10th April and 16th May, did you consult with Colonial Secretary Gilmore on the subject? I do not remember. The matter was decided in Council before Mr. Chapman left office. The Colonial Secretary, I think, knew the contents of the Council's Minute.

22. Was Mr. Kennerley, before the 23rd May, 1876, when signing the letter of that date, aware of your intention to advise the Government in this matter? I think so. I did not submit the Minute without the sanction of the Colonial Secretary. All the Members of the Cabinet concurred in the matter. I don't know the date of Mr. Gilmore's accession to office as Colonial Secretary: my memory does not carry me so far back. Mr. Kennerley was cognizant of it, as far as I know. Mr. Kennerley was Premier when he signed the letter of 23rd May, 1876. He was present in the Cabinet when the question was decided. I never knew any difference of opinion in the Cabinet on the subject. I never communicated with the Premier; but I have no doubt he was aware. The Master Gunner's opinion was given subsequent to the passing of the Minute. I should have known of any objection on the part of the Premier.

23. Had you any communication with Mr. Colonial Secretary Gilmore after Mr. Chapman resigned on this matter; that is, between 10 April and 15 May? I don't recollect; I cannot say.

By Chairman.—24. I had nothing to do with engrossing the deed on parchment; it was done without my knowledge.

25. In reference to the fencing, what is meant by "both allotments?" The piece of land leased and the piece for grazing purposes. I think there was a verbal agreement of that kind. The agreement speaks for itself; the land is only held on an occupation lease.

26. Is there any restriction to Mr. M'Gregor's building on any portion of the land? I decline to give any opinion on a question of law. I see nothing to prevent him; but must refrain from offering any opinion of my own. Not having a legal training, I respectfully decline to answer that question in any other way. I cannot give any reason why the matter was in abeyance from 10 April to 16 May, except as before stated. I think I was away from Hobart Town part of the time. There was a hiatus in the Colonial Secretary's office, and an unsettled state of things there at that time.

FRIDAY, 16 NOVEMBER, 1877.

G. F. LOVETT, *Esq.*, *Ministerial Clerk, Lands and Works Office, called in and examined.*

By Chairman.—27. You were Ministerial Clerk in May, 1876? Yes.

By Mr. Meredith.—28. Can you state why Mr. M'Gregor's letter was not answered from 14 February to 16 May? To the best of my recollection, the Minister had doubts as to his power to comply with the request. He consulted his colleagues, and the letter remained on the table, and no action was taken on it. He asked me in what position the land stood, and I explained to him the position that the land had never been conveyed by the Imperial Government to the Colony. In 1872 the Minister transmitted to the Colonial Secretary the deeds so that they might be sent Home for the necessary conveyance.

29. With whom does the disposal of this land rest? As a Battery site it is under the Colonial Secretary; but seeing that Port Arthur and the Military Barracks, Batteries, and other properties had been taken over by the Colony, it was to a certain extent under the Minister of Lands. See, for instance, the Military Barracks, which are let by tender, and the Industrial School, which is occupied under authority of the Governor in Council. None of these properties have been conveyed to the Colony; they are vested in the Ordnance Officers by 2 Vict. No. 9. The deeds were sent Home in January, 1872, with the object of having them conveyed to the Colonial Government; but it would be necessary that the Act should be repealed before doing so.

30. Is there any official record of Mr. M'Gregor's letter being referred to the Colonial Secretary? No. I do not know officially what action the Colonial Secretary took in the matter. Between the 14th February and 16th May Mr. M'Gregor waited on the Minister of Lands, but I don't know what took place at the interview. The Solicitor-General drafted the agreement of the 19th May.

31. Are you aware of any Statute giving power to the Minister of Lands to alienate land in possession of the Ordnance Officers? No.

32. Can you explain why the Minute of 16 May is signed by the Minister of Lands, and the Memorandum of Agreement by the Commissioner of Lands? The Solicitor-General's draft filled in the words "Commissioner of Crown Lands."

33. Why was it ordered to be engrossed on parchment? I considered parchment to be more lasting. There are many cases where leases are engrossed on parchment.

34. Give an instance of a lease which is engrossed on parchment? I am not prepared at once to answer this question. This lease is on paper, not on parchment; I produce the lease to show that it is on paper.

35. Did Mr. M'Gregor sign the agreement on 19 May? Yes, both signed on same day.

36. Who was Colonial Secretary on 15 May, 1876? I believe Mr. Gilmore.

37. Was the Colonial Secretary aware of the proposed alienation? I don't know.

38. In whose handwriting is the Memorandum of 25 May, 1876? In mine, and is signed by Mr. Moore.

39. Was any reference made to the Master-Gunner in the matter? None, as I am aware of.

40. Who wrote the Minute of the 15th May to the Executive Council? I did, under instructions from the Minister of Lands.

41. And who wrote the Memorandum of 23rd May for Mr. Kennerley? The Assistant Colonial Secretary. The matter was before the Cabinet on the 15th May, when my Memorandum of that date was sent in to Mr. Moore, who endorsed his reply. I do not know who composed the Cabinet on that day.

By the Chairman.—42. Between the date of Mr. M'Gregor's application and the 16th May he waited on the Minister, you say? Yes; I don't know the date. I think there were two interviews. I am certain of one.

By Mr. Meredith.—43. Did you draft the letter of 16th May? Yes.

By the Chairman.—44. What authority have you for saying that the interviews took place on the subject of the land? I have not said so. I was not present at the interviews, and I did not know the subject of them.

45. Did you point out to Mr. O'Reilly that Mr. M'Gregor had undertaken to do work that the Government would do for him? This is not in my branch of the Department. It is in the Public Works branch as regards the fencing. If with regard to the rent, it was mentioned to Mr. O'Reilly that the rent due was fifteen guineas in arrears. Mr. M'Gregor put up the fence on the 30 feet strip at his own expense. The other fence of the grazing paddock was agreed verbally with Mr. Moore to be put up by Mr. M'Gregor as a set-off against the back rent; the fence being for the mutual benefit of Mr. M'Gregor and the Government for grazing purposes: this arrangement was not carried out. Mr. M'Gregor paid the back rent into the Treasury and the Government erected the fence.

46. On page 1 the instruction given to the Solicitor-General,—was this the only document sent to him or any others? Simply the correspondence and the Executive Council Minute up to that date.

47. Were any papers sent to the Solicitor-General subsequently? Not that I am aware of.

48. Would the correspondence forwarded to the Solicitor-General put him in possession of the exact position of the land? He was aware of the position, because he had previously prepared the necessary documents to go Home for the conveyance.

H. J. HULL, *Esq.*, *Deputy Commissioner of Crown Lands, examined.*

By the Chairman.—49. You are Deputy Commissioner of Crown Lands, and were so in 1876? Yes.

50. State the authority by which the land has been occupied by Mr. M'Gregor? I may state that I know nothing of this matter, it is purely a Ministerial affair, with which I had nothing to do. It never came before me as Deputy Commissioner of Crown Lands. The Minister of Lands and Mr. Lovett, the Ministerial Clerk, settled the matter between them.

51. Do any of the Waste Lands Acts of the Colony authorise the issue of the Licence or Lease to Mr. M'Gregor of the land in question for the purposes named in this document? They do not.

52. What is the utmost time under Lease or Occupation Licence that land can be granted for, in conformity with the law? 99 years is the utmost limit under "The Waste Lands Act."

53. Does any Act in force empower the Governor in Council to lease land for any purpose for an indefinite period? I do not think so.

54. Do any of the Acts authorise the sale of Town Reserves within Hobart Town or Launceston by private contract? No.

55. Does any law authorise the price to be determined by arbitration? No; the price is fixed by the Commissioner of Crown Lands on the best evidence he can get as to its value, and then submitted to the Governor in Council.

MR. JAMES CHISHOLM *called in and examined.*

By the Chairman.—56. You are Master Gunner? Yes: in charge of Warlike Stores and the Batteries.

57. You are aware that Mr. M'Gregor has fenced in a paddock? Yes.

58. When did you first know of Mr. M'Gregor having use of this land? The beginning of the correspondence is shown in my letter. I have not the correspondence in my possession. It has not been returned to me. My advice was asked by Mr. Moore, in conversation; and I said I saw no objection, if the defence of the Cove was not obstructed. It was not in writing.

59. Are you still of opinion that you were consulted as to the alienation of the land? I did not think Mr. M'Gregor would build on it, but only required it for grazing purposes. I was not consulted.

60. If Mr. M'Gregor's application had been submitted to you, would you have advised the Government for or against the application? I would have advised his having it for grazing purposes, but not for building, because I know it is vested in Imperial Authorities. I did not think the Government would do other than what was right in the matter.

61. What are your objections to the alienation of the land referred to? None at all, provided he did not build on the lower part.

62. When was your letter of 22nd May answered? About the 29th May, when I got it from the Colonial Secretary. Between the 29th May and August Mr. M'Gregor began putting up the fence. My letter of the 14th August was written when I got the plans from the Lands and Works Office.

63. If Mr. M'Gregor exercised the powers he possesses to build, would it impair the usefulness of the Battery? It would.

64. What difference would it make if he built on his own land? It would be better if it was not built on.

R. P. ADAMS, *Esq.*, *Solicitor-General*, *examined.*

By the Chairman.—65. You are Crown Solicitor? I am.

66. You prepared the authority for occupation of certain land at Battery Point by Mr. M'Gregor? I did.

67. You received written instructions to prepare the authority in question? Not having had an opportunity for looking at the papers for a long time, I must be guided in my answer by the printed document before me. By this document I see that written instructions were given me to prepare Mr. M'Gregor's authority for occupation of land at Battery Point on the 16th May.

68. Under what Acts has the Government power to alienate the Crown lands of the Colony? Under "The Waste Lands Act," 34 Vict. No. 10, amongst others; but they would not apply to the land in question.

69. Under what Act was this land alienated? Under no Act at all, as far as I remember.

70. Do any of the Acts referred to by you authorise the Governor in Council to alienate land in the way named in the lease prepared by you? Not that I am aware of. It could not be so.

71. Is it not usual to name the area as well as the boundaries set forth in all leases and documents of this nature? It depends whether the parties concerned are satisfied with the description previously prepared.

72. Has not Mr. M'Gregor the option under this document either to purchase the land privately at the upset price agreed upon between him and the Minister of Lands, after it has been advertised for sale by auction, or to have the value determined by arbitration? He would have the right to purchase the land at the upset price after it had been put up for sale by the Government and withdrawn. I think this would be the case whether it was purchased by arbitration or by private contract. It does not follow that the Government will ever possess the land at all. Mr. M'Gregor can purchase the land when it is in the market. The Government have a nominal control over the ground, but any building Mr. M'Gregor does is at his own risk.

73. You mean to say that Mr. M'Gregor would not have the right to purchase at the upset price prior to the land being put up for sale? I do.

74. Can this land be resumed by the Government? I think it could when conveyed to the Government of this Colony, but not at present, not being the Government property. I think Mr. M'Gregor could not legally refuse possession of the land if demanded by the Government as representing the Ordnance Department.

75. Is this Occupation Licence, with the right of purchase, &c., a legal document, and in accordance with the Law; I mean is it binding upon the Government? I can scarcely answer that. I regard it as a mere licence to occupy. I should treat it as a breach of faith on the part of the Government if they did not permit Mr. M'Gregor to occupy. It is possible Mr. M'Gregor might have a claim upon the Government under "The Crown Redress Act" on this document.

76. What clause of either of the Waste Lands Acts in force in the Colony will authorise the Governor in Council to dispose of land in the way set forth in the document? There is no Waste Lands Act that touches it at all.

By Mr. Meredith.—77. Has the Commissioner of Crown Lands any legal power to deal with that portion of the lands held by the Ordnance? He has not.

78. I draw your attention to Mr. Chisholm's letter referring to the protection of Sullivan's Cove, and the Memo. from the Minister of Lands giving Mr. M'Gregor permission to build on the land as he sees fit. Suppose that Mr. M'Gregor built on this land and spoil the protection of Sullivan's Cove, what would the position of the Government be? I think under those circumstances the Government, as representing the Ordnance Department, would have power to resume the ground.

By Mr. Lamb.—79. Could Mr. M'Gregor claim compensation if the land was so resumed? If he has any remedy at all it would be under "The Crown Redress Act;" but I consider his right very doubtful.

WEDNESDAY, 21 NOVEMBER, 1877.

ALEXANDER M'GREGOR, *Esq.*, examined.

By the Chairman.—80. On the 14th February, 1876, you made an application in writing to have an opportunity of purchasing at public competition a piece of land adjoining your property near Battery Point? I did.

81. What communication, verbal or otherwise, had you with the Minister of Lands between the 14th February, 1876, (the date of your letter) and the 16th May (the date of his letter to you) in reference to your application? I do not remember exactly, but I had several verbal communications with the Colonial Secretary and the Attorney-General on the subject. Mr. Chapman was Colonial Secretary at that time.

82. Had you any communication on this subject with any other Member of the Ministry before the terms of occupation were agreed upon? Yes, I had; with the Colonial Secretary, the Attorney-General, and lastly with the Minister of Lands. The Colonial Secretary and Attorney-General both said they saw no objection to my leasing the land. The Minister of Lands was spoken to on the matter last. When I first applied for the land I applied for it on any terms.

83. When were the terms of occupation agreed on? I cannot say.

84. Where, or with which Minister, did you agree to lease the land at a peppercorn rent? I did not agree with any Minister on any terms at all. The deed was drawn out by the Solicitor-General. I knew the Government gave me no title to the land; they told me so.

85. Were you cognisant that the Battery Reserve was Imperial property when you made your application of the 14th February? I was given to understand that it was, and was not, Imperial property: that the ground had been made over to the Colony by the Imperial Government, but no title had been given for it. I knew this before I sent in my written application. Mr. Chapman and the Attorney-General said they could see no objection to my leasing the land, but that they were unable to sell it. They also told me that the lease must come through the Minister of Lands' Office. On my speaking to the Minister of Lands he informed me that if the Colonial Secretary and Attorney-General could show him how he could lease me the land, he would not stand in the way of the lease being effected.

By Mr. Risby.—86. How long have you occupied the land in question on a grazing lease? About 20 years. I at one time occupied half of the hill at an annual rental of £5. The land in question is only a strip of that originally rented from Colonel Broughton.

By the Chairman.—87. What buildings have you erected upon the land in question? One small building, a kitchen.

88. What do you estimate is the value of your building on the land? About £120, for the building; but, in addition to this, I have spent a large sum of money in improving the ground, and in forming a garden thereon.

89. What is your estimate of the value of the ground at the time you made your application? It was not worth much. Opinions differ as to the value of land. I would prefer that you consulted some one else as to the value of the land at that time.

90. If you had not been assured of the continued occupation of the ground, would you have made these improvements on it? I would not. I understood the Government could give me continued occupation although they held no actual title to the ground themselves.

91. Did you agree to erect boundary fences at your own cost upon the land in question, and the adjoining land which you held under grazing licence? I did on the allotment, not on the land held under grazing licence. I was holding it from year to year. Mr. Moore told me that if I would fence it he would allow the cost of the fence as a set-off against the rent. I objected to this unless I had a lease of the ground, as I might have spent £15 or £20 on a fence, and then been ejected from the ground the following year. I offered to pay the rent as it became due, but it was allowed to grow to this amount before it was accepted. I did not agree to fence both allotments; only the one I am in possession of. I agreed to fence the grazing allotment if the Government would give me a lease of it.

By Mr. Meredith.—92. You refer to your interview with the Colonial Secretary, who was Colonial Secretary at that time? Mr. Chapman.

MR. W. H. CHEVERTON *examined.*

By the Chairman.—93. Will you give me your professional opinion as to the value of a strip of ground at Battery Point, alienated by the Government to Mr. M'Gregor? The ground at the time Mr. M'Gregor took it was scarcely worth having. The nature of the ground was so rocky that I consider its extreme value would not exceed £120. Mr. M'Gregor has greatly improved the land. I cannot give any opinion as to the value of the building on the land without first inspecting it.