

DOCUMENTS LAID BEFORE THE HOUSE OF ASSEMBLY.

(Copy—No. 85.)

Downing Street, 3d October, 1843.

Sir;  
I herewith transmit to you the copy of a Memorial which has been addressed to me by Mr. Samuel Cunard, of Halifax, praying, for the reasons therein stated, that the Act recently passed by the Legislature of Prince Edward Island (Numbered 611, in the records of this Office), intituled "An Act to authorise the issue, *de novo*, of certain Writs under the Road Compensation Acts, in certain cases," may be disallowed.

I have to request that you will report to me your opinion on this Memorial, and, in the meantime, Her Majesty's decision on the Act will be suspended.

I have, &c.

(Signed) STANLEY.

Lieutenant Governor  
Sir H. V. Huntley,  
Prince Edward Island.

To the Right Honorable Lord Stanley, Her Majesty's Principal Secretary of State for the Colonies, &c. &c. &c.

The Humble Memorial of Samuel Cunard, of Halifax, Nova Scotia, respectfully sheweth—

FIRST:

That in the year 1829, your Memorialist became the Purchaser of Townships—Numbers 3, 4, 5 and 6, in Prince Edward Island. That previously to his purchasing the same, certain proceedings had been taken for the purpose of assessing certain parts of the said Townships, for an intended Road laid off by order of the Governor and Council of the said Island, under the Act of 10 Geo. 4, Cap. 10. That the Road for which the alleged Assessment was imposed was completed in the year 1842.

SECOND:

That at the time your Memorialist purchased the said Townships, he had no notice of any such Assessment having been made. That in the Winter of 1842, your Memorialist was called upon for payment of the said Assessment, amounting in the whole, to about the sum of One thousand Pounds.

THIRD:

That your Memorialist, feeling himself aggrieved, and being advised that the Inquisitions and proceedings under which the said Money was claimed were wholly void, from defects and insufficiencies appearing on their face, caused a letter to be written by his Solicitor to the Colonial Secretary, making an offer of a compromise; which your Memorialist did, not because he conceived he ought to pay anything, but with the desire of shewing that he had no wish to take captious objections, or go into a Law-suit with the Government of the Colony. That the Government declined to accept the offer of your Memorialist, and caused proceedings to be instituted in the Supreme Court of the Island, for the purpose of quashing the said proceedings, which were defended by the Attorney General, on behalf of the Government of the said Colony; and after a hearing of the causes, the said Inquisitions, and all proceedings thereon, were ordered to be quashed.

FOURTH:

Your Memorialist further shews to your Lordship, that at the past Session of the Legislature, an Act has been passed (but not to take effect until Her Majesty's pleasure be known), authorizing new Writs to be issued, for the purpose of assessing the said property of your Memorialist again for the said Road, which cannot be done by any Law of the Colony now in existence.

Your Memorialist submits it would be improper to make an *ex post facto* Law, for the mere purpose of charging the property of an individual, and more expressly as, in the present case, the Government, after an offer of compromise, have chosen to place their right on the event of a Trial in a Court of Law. If, after a decision there against it, a Statute could be passed, in effect reversing the decision of the Court, it is manifest that, though the Law might be open to an individual, it would be useless to attempt to avail himself of it, for protecting his property against such claims. Your Memorialist most humbly submits that the right of the Government of Prince Edward Island to the Money claimed in the present instance should stand or fall by the Law in existence at the time the suits were tried, and should not be aided by the effect of a subsequent Statute.

Your Memorialist further shews, that even if, in case such an Act could be made, your Memorialist having purchased without notice of the claim, it would be most unjust, after he has got rid of the claim by resorting to a Court of Justice, to pass a Statute imposing it upon him again, because, had the Inquisitions been valid, and the claim made by the Government under them, therefore, well-founded, your Memorialist might have recourse to his Vendor or his Covenant, that the "Estate was free from incumbrances;" whereas, if the present Act shall receive Her Majesty's assent, your Memorialist will be without remedy, inasmuch as it would be a good plea for the Vendor to say, that the charge upon the property rose—not by virtue of any law existing at the time, but by a law subsequently enacted, and therefore that when he sold, it was free from incumbrance.

Your Memorialist has also incurred considerable costs in the trial of the matter in the Supreme Court, all of which, though the decision of the Court has shewn that he was correct in contesting the matter, he will lose by the arbitrary *ex post facto* operation of the proposed Act.

FIFTH:

Your Memorialist, therefore, humbly prays, that the Act of the Legislature of Prince Edward Island, intituled

"An Act to authorize the issue, *de novo*, of certain Writs under the Road Compensation Acts, in certain cases," may be disallowed: And your Memorialist, as in duty bound, will ever pray, &c.

(Signed) S. CUNARD.

Halifax, Nova Scotia,  
May 2d, 1843.

(Copy—No. 110.)

Government House, Prince Edward Island,  
October 24, 1843.

My Lord:

I have the honor to acknowledge the receipt of your Lordship's Despatch, No. 85, of the 3d instant, commanding me to report my opinion upon the Memorial addressed to your Lordship by Mr. Samuel Cunard, praying that an Act passed by the Legislature of this Island in the last Session, and entitled "An Act to authorize the issue, *de novo*, of certain Writs under the Road Compensation Acts, in certain cases," may be disallowed.

Having given the Memorial of Mr. Cunard my best attention, I have the honor to lay before your Lordship the following observations. I do not suppose that it is intended to attach an argumentative value to the representation set forth in the first-paragraph of the Memorial, because when Mr. Cunard meditated the purchase of the property, it became a duty to himself to ascertain what liabilities might be connected with it. If he or his legal adviser failed in this, surely the Colonial Government should not be held responsible.

Upon the second paragraph, no observation appears necessary, as the objection therein falls under the foregoing remarks upon the first.

With regard to the Third paragraph, it is perfectly true that a certain sum was offered by the Solicitor employed by Mr. Cunard, in lieu of all further compensation. It was considerably less than the amount claimed under the Assessment. This offer the Government of the Colony refused, however, solely upon the ground that an acceptance of it would have rendered nugatory the award of the Jury appointed under the Act to assess the property, and this when that award seemed originally to have been so just, that no appeal was entered against it.

The argument in the Fourth paragraph, and indeed throughout the Memorial, is founded upon the illegality, not of the principle, but of the method under which the property was assessed; and when the case was argued before the Supreme Court, Mr. Cunard obtained a decision upon an irregularity in the process—it being shewn that the period allowed for assessing the property was forty days from the date of the Writ. At the expiration of that period, the Writ was returnable. It was also shewn by Mr. Cunard that the property was assessed after, and not during the forty days allowed for the operation of the Writ, consequently no authority for assessing the property actually existed at the time the assessment took place. In other respects the law upon the subject appears to have been faithfully followed out.

It is hardly possible that any one could purchase property, repeatedly visit it, make himself intimately acquainted with it, and yet be ignorant of the important fact, that Roads and Bridges were being constructed upon it, for the payment of which that very property would be assessed. Nevertheless it cannot be urged that the law already brought under your Lordship's notice.

The whole case, I beg, my Lord, to submit, resolves itself into a question of equity. The assessment was made, and in accordance with the law, excepting that the assessment took place after, instead of during the forty days mentioned before. No injury whatever was inflicted by this error upon the owners of the property; but it had been rendered very much more valuable by the construction of Roads and Bridges about it. These facts are not combated in the Memorial. Indeed, they are not named; and the latter appears to be virtually proved by the sale of the same property in 1842, for £25,000 sterling, whereas in 1839, before the completion of the Roads and Bridges, it was sold to Mr. Cunard for £9600 sterling.

I do not think it equitable to consider the Act before your Lordship in the character of an *ex post facto* law; because in reality it only seeks to rectify an error, and if allowed to go into operation, the assessment would proceed exactly as it did before, only that it would be made during the existence of the Writ, and not, as before, after it had expired.

Therefore, my Lord, as no injury has been inflicted upon the parties assessed by the commission of the error, as the property of those parties has been greatly improved by the Colonial Government, in laying out so much money upon it, as the assessment could not be legally demanded before the Roads and Bridges were finished; and as the claim to exemption from payment of the assessment can be founded upon no other case than a mere technical error, I think that the allowance of the Act in question is called for in equity.

(Signed) H. V. HUNTLEY.

Lieut. Governor.

P. S.—I have also enclosed a Copy of the reasons given by the Attorney General for passing the Act in question, in order to supply your Lordship with an immediate reference to them.

THE ATTORNEY GENERAL'S REASONS FOR PASSING ACT No. 23.

No. XXX.—"An Act to authorise the issue, *de novo*, of certain Writs, under the Road Compensation Acts, in certain cases."

This Act authorises the issue of Writs, *de novo*, under the Road Compensation Act, in certain cases, where Writs and proceedings under them, after a great lapse of time, and after a large outlay of the public money under them, have been quashed for irregularity, and declares that all proceedings under the Writs to be issued, *de novo*, shall be in accordance with the provisions of said Acts, and reserves to the Proprietors the same right of appeal against them as they had under the former Writs.

This Act has a clause suspending its operation until Her Majesty's assent be given to it.

In the year 1838 a Writ was issued by the Supreme Court, under an Order of the Lieutenant Governor in Council, under the Road Compensation Act, and Acts in amendment thereof, tested the Ninth of October of that year, returnable within Forty days, from the teste, directed to the Sheriff of Prince County, commanding him to summon a Jury, to ascertain and appraise the benefit or damage the Proprietors would receive or sustain by a new Road being made to run over Lots or Townships Numbers 5, 4, 3, 2, and part of Lot or

Township, Number 1, to commence on the north side of Mill River, on Township Number 5, and to terminate at a road leading to the Portage, from Tignish to Neil Pond, and another Writ was also issued at the same time, and by the same authority, and under precisely similar circumstances, directed to the same Sheriff, commanding him to summon a Jury, to appraise the benefit or damage which the Proprietors would receive or sustain, by a new Road being made to run over Townships Numbers 7, 8, and 6, commencing at the division lines there lately established between Townships Numbers 7 and 8, and terminating at the Main Western Road, leading to Cascumpeque.

The Sheriff returned the Writs with Inquisitions and Verdicts, finding that each of the said Roads would be of advantage to the respective Proprietors over whose lands they would run, and assessed the sum to be paid by the Proprietors, under the first mentioned Writ, at £1,143 5s. 0d. Currency, and the sum to be paid by the Proprietors, under the last mentioned Writ, at the sum of £523 9s. 6d. Currency.

The Road Compensation Act of the 10 Geo. 4, cap. 10, (under which, and other Acts in amendment thereof, the Writs issued,) by the 3d section, gives to the Proprietors or Tenants of the soil, who may "think themselves aggrieved by such verdict," a right to appeal against the same at the Term of the Supreme Court, next after the finding; and if after hearing the Appeal, it shall appear to the Court, that justice has not been done, the Court is authorised to direct an alias Writ to be issued, and a new Jury summoned, whose verdict is to be final and conclusive.

The Proprietors interested in the lands mentioned in the said two Writs did not appeal from the finding of the Jury, and in fact took no notice whatever of the proceeding, and the local Government proceeded to make the Roads and Bridges, on the contemplated lines of Road, which are completed solely at the expense of the Government, at the cost of £1664 14s. 6d. currency, being the total amount assessed against the Proprietors; and here it is necessary to remark, that by the Act of the 4th Will. 4th, cap. 16, the Government is required to make the Roads and Bridges, on the lines of roads laid off under the Compensation Act, before the Proprietors can be called upon for the amount assessed against them, or before their lands can be taken to answer the sum assessed, if they make default in the payment thereof.

In the autumn of 1842, the Government demanded payment from the Proprietors of the sum assessed by the Jury, under the said two Writs, and notified them that in the event of non-payment, measures would be taken to sell a proportion of the lands, to liquidate the amount, in accordance with the provisions of the Act, and they then, for the first time, started objections to the proceedings, and made an application to the Supreme Court, by their agent, to quash the Writs, and all proceedings under them, for irregularity, and after argument the Court quashed the proceedings on the ground of irregularity in the notice given by the Sheriff, without any formal decision on several other points taken, as to the form of the Writs, and wording of the Inquisitions, and returns thereunder.

Under these circumstances the Legislature has deemed it only fair and equitable that the Proprietors in question, whose waste lands have been rendered infinitely more valuable, from the expenditure of the public money in the completion of these Roads and Bridges, should contribute according to the true purview and meaning of the Road Compensation Acts, towards the expense of their formation and erection, conceiving that it would be unjust to the Government, if they, after lying by for upwards of four years, not appealing, as they might have done, against the finding of the Juries, or coming in with their application to have them quashed before the Government proceeded to expend the sum of £1666 14s. 6d. on their lands, and by that expenditure rendering that valuable which previously was next to valueless, should now be permitted to escape in consequence of error in mere technicalities from a contribution which the laws declare just, and which the peculiar local circumstances of this Colony loudly proclaim as politic and proper.

It is contended by the Proprietors that they are entitled to consideration, because they say (although no proof has been given of the fact), they were absent, and not represented in the Colony at the period when the Writs were issued and executed. If this be true, it is certain, nevertheless, that they were represented within the Colony long before the expenditure of the public money on the Roads in question; it is, however, conceived that their absence and non-representation furnish no good ground for any objection to this Act; the paramount evil complained of in this Island, from its earliest settlement as a British Colony, until the present day, is the improvident Grants of tracts of land, of 20,000 acres each, to absentee Proprietors, and if such Proprietors, up to this late period, can, by continued absence, and such utter neglect as not even to authorize an Agent of any description to represent them in the Colony, take advantage of their own carelessness and neglect of the public duty, which the ownership of such immense tracts of waste lands imposes upon them, and thereby reap positive benefit by the increased value of their lands, from the expenditure of the public Revenue of the Colony, to the extent above mentioned, and rendering, in fact, that valuable which was previously (as shewn by their neglect of it), not worth looking after, as in the present instance, the evil complained of will be infinitely aggravated. As a proof of the increased value of a portion of these lands, viz: Townships Numbers 4, 5, and 6, it is a matter of fact, that in the year 1839, before the expenditure of the public money upon the Roads and Bridges, they were purchased for the sum of £9600 sterling, and subsequently, in the year 1842, after the Roads and Bridges were made, agreed to be resold for the sum of £25,000 sterling, affording a profit of the sum of £15,400 sterling; this gain no doubt arising in a very great degree from the expenditure of the public money in making the Roads and Bridges in question.

It is apprehended that this cannot be treated as a matter between private individuals: it now becomes a question, whether the interests of the Government, and the people of this Colony in particular, ought not to be considered before those of individuals who have so shamefully neglected the duties cast upon them as the grantees, or representatives of the grantees of such immense tracts of waste land, have done, and who now hope to reap this immense premium at the expense of the Government, for such their own neglect.

The whole policy of the Imperial Government in assenting to the Road Compensation Acts, and of the local Legislature and Government, in passing them, and the peculiar local circumstances of this Colony, it is humbly conceived, should be duly weighed before Her Majesty's Government dissent to this Act.

This Act gives the Proprietors the same right of appeal against the finding of the Jury, as they had under the first Writs issued, and under this right reserved, no injustice can be worked.

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PATRONIZED BY THE GREATEST NOBLES IN THE LAND.



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Copy of a Letter from His Grace the Duke of Portland to Mrs. Ann Mellish, (one of his Tenants,) whom His Grace was pleased to send as a Patient to the Proprietor of this extraordinary Medicine.

Madam,  
If Mr. Holloway will undertake to Cure you perfectly, when the Cure is complete, I will undertake to pay him £2 10s. You may shew him this Letter.  
(Signed) SCOTT PORTLAND.  
Welbeck Abbey, May 31, 1842.

Copy of a Letter from the Most Hon. the Marquis of Westminster, K. G. Lord Westminster has just received Mr. Holloway's Medicine, for which he returns him his best thanks.  
Eaton Hall, Cheshire, Feb. 12, 1842.

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Of the Thousands Cured by its agency, many who were on the verge of the grave for a considerable period, (by persevering in its use) have been restored to health and strength, after every other means failed.

All Diseases, (and whatever may be their symptoms, however they may declare themselves, yet one cause is common to them all, viz. a want of purity in the blood and fluids), are cured by this Wonderful Medicine, which cleanses the stomach and bowels, while its balsamic qualities clear the blood, give tone and energy to the nerves and muscles, invigorate the system, and impart strength to bone and sinew.

The Afflicted need not give himself up to despair, as one without hope; but let him make a proper Trial of the Mighty Powers of this astonishing Medicine, and he will soon be restored to the blessings of Health.

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N. B.—Directions for the Guidance of Patients in every Disorder are affixed to each Box.

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PURGATIVE AND STOMACHIC VEGETABLE PILLS.

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IN ALL DISEASES they will be found to allay Irritation—reduce Fever and Inflammation—cleanse the Stomach and Bowels—improve Digestion—purify the Blood—restore tone to the principal functions—and impart renewed energy to the whole Constitution.

In the following Diseases they have proved of the greatest utility: Fevers of every character; Inflammations; Costiveness; Bilious and Liver Complaints; Consumption; Asthma; Dyspepsia; Vomiting; Determination of Blood to the Head; Cutaneous Eruptions; Piles; Diseased Joints; Nervous Disorders; Hysterics; Female Complaints of every kind; Impure state of the Blood; Worms; Diarrhoea; all Derangements of the Stomach and Bowels; and General Debility of the whole Constitution.

Indeed, there is scarcely a Disease to which mankind is subject, which they will not either greatly benefit or perfectly cure.

The Purgative Pills operate in the most gentle manner in cleansing the Stomach and Bowels, and removing obstructions.

In severe Chronic Diseases they are an invaluable Alternative, and when combined with the Stomachic Pills, quickly improve the secretions of the whole system—the stomach is strengthened—a healthy flow of bile is produced—the bowels become regular—and disease, whether Local or Constitutional, gives place to health and vigour of mind and body.

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J. B. COOPER.

Charlottetown, March 7, 1844.

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HENRY PALMER.

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PETER EMERY.

December 10th, 1840.

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Richmond Street, 31st Jan., 1844.

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