

## MEMORANDUM.

This memorandum is written at the request of his Excellency the Governor-General, with a view to explain what is the effect of the recent judgment of the Supreme Court in Prince Edward Island on the proceedings of the Land Commission of which I was lately chairman.

I have no official papers to refer to, except a copy of the Act and of the judgment, but I will state what has happened as accurately as I can.

We decided in September last ten cases, eight unanimously, two by a majority of the Commission. Of the eight unanimous awards six have been accepted, one has been referred back for reconsideration on a point of minor detail (not argued before the Commission) and one (Mr. Ponsonby Fane's), although appealed from, has (I hear from the Provincial Secretary) been now accepted on condition of immediate payment. Of the two awards, as to which the Commissioners were not unanimous, one (Mr. Stewart's) has been accepted in substance; but Mr. Stewart has raised two points of law, namely, whether certain lands recently conveyed to his sons should be included in the sale, and whether the payment should be in gold or Dominion notes. On the first point the Court decided against him, and as to the second I learn from the Provincial Secretary that arrangements have been made for payment in gold.

There remains therefore only one case, Miss Sullivan's, affected by the judgment of the Supreme Court, and in this case our award has been set aside. In order to explain the exact purport of the judgment I must refer to the Act and to our proceedings under it. The object of the Act was to re-vest in the Crown the township lands belonging to proprietors who owned beyond a certain amount, and ultimately to convert the leasehold tenure into freehold estate. The amount of money to be paid to each proprietor was to be ascertained by commissioners, who were empowered to take evidence on oath, and to compel the attendance of witnesses and the production of papers; and the 26th section of the Act provided that "after hearing the evidence adduced before them, the Commissioners shall award the sum due to the proprietor as the price to which he shall be entitled by reason of his being divested of his lands, and all interest therein and thereto." By the 30th section the Government were required to pay the sum so awarded into the Treasury, and a special office of Public Trustee was created whose duty was to execute in due time the conveyance of the estate to the Commissioner of Public Lands. By the 30th and 36th sections the Supreme Court were to decide who might be the party or parties entitled to receive the sums awarded or portions of them; and by the 45th section no award could be held to be invalid or void for any reason, defect, or informality whatever; but the Supreme Court was given power to remit to the Commissioners any award in order to correct any informality or omissions. Every other appeal was taken away. By the 28th section the Commissioners in estimating the amount to be paid to any proprietor were to take into their consideration certain special facts and circumstances. These were:—

- (a.) The price paid by Government for other lands.
- (b.) The particulars of the lease, the amount of arrears, and the probability of their being recovered.
- (c.) The particulars of the unleased land.
- (d.) The actual gross receipts, charges, and net receipts.
- (e.) The acreage claimed to be held adversely, and the probabilities of the proprietor enforcing his claim. The conditions of the original grants, and their performance, the effects of non-performance, and how far any forfeitures had been waived. The quit rents reserved, and how far their payment had been remitted.

The Commissioners fully complied with all these requirements. They inquired into all the circumstances to which their attention had been directed by the Act, hearing counsel and examining witnesses on each point; and after the cases were closed they awarded the sums due to each proprietor in the following form:—

"In the matter of the application of *A. B.*, the Commissioner of Public Lands for the purchase of the estate of *C. D.*, and the Land Purchase Act, 1875, the sum awarded under section 26 of the said Act is \_\_\_\_\_ dollars."

The Supreme Court of Prince Edward Island (nominally in two, practically in one, Miss Sullivan's case,) have not remitted the awards to the Commissioners for reconsideration, but have gone so far as to set them aside altogether. This they have done on the following grounds as to each:—

The award does not express that judgment was given pursuant to the Act.

It should have shown that the Commissioners decided the several preliminary matters, a, b, c, d, &c., they had to consider.