

No. 18.

Despatch from  
Mr. Sec. S. Rice,  
to Lord Aylmer,  
29 October 1834.

declaration of my clear opinion, that Mr. Felton's request on behalf of his children in 1828 was altogether immoderate. Indeed, when I refer to the very few words in which the subject was mentioned in his application to Lord Bathurst—words thrown out carelessly at the end of his letter, and repeated by his Lordship with an absence of any attempt at definition, which shows how little importance was attached to them—I am at a loss to conceive how Mr. Felton could suppose it possible, that by such a passage he had become entitled to 10,800 acres of land. It is no doubt true, that the value of His Majesty's lands in the Colonies was not formerly estimated by the Government at so high a rate as now; but there never was a time when the Secretary of State would have alienated, in such a manner, a tract of country that could not be worth less than some thousands of pounds. As soon as Sir George Murray received the question referred to him by Sir James Kempt, he replied by directing that 200 instead of 1,200 acres should be assigned to each of Mr. Felton's children. This decision was duly communicated to Mr. Felton. He states, that he expostulated with Sir James Kempt on what he considered its hardship and injustice; but he does not allege that Sir James signified any change of view, in consequence of this remonstrance. Sir James, shortly after left the colony, without any further communication with Mr. Felton on the subject. Nevertheless, a few months afterwards a patent was issued, conveying to each of Mr. Felton's children the 1,200 acres originally solicited for them; upon which Mr. Felton, without one inquiry respecting the cause of so extraordinary a deviation from decisions distinctly and repeatedly signified by the Governor, and by the Secretary of State, silently acquiesced in the unexpected advantage; and his children have remained in possession of the lands up to the present moment, when an accidental discovery in a miscellaneous return has brought the subject to light.

Mr. Felton states, that "when he ascertained, a short time before the departure of Sir James Kempt, that the extent of the grant corresponded with his pretensions, he was convinced that Sir James had been satisfied with the justice of his claims; and that, in acceding to the prayer of the petition, his Excellency had given a proof of the good feeling he condescended to entertain towards him personally, as well as for his character and public services." Upon this statement I am compelled to remark, that Mr. Felton must have known very well that Sir James Kempt was the first person to object to the extensive grants he sought for his children; and in the absence of any express declaration of a change of opinion, he could have no justification in tacitly assuming an alteration of view so favourable to his own interests. He does not say that Sir James Kempt gave signs of any such change of sentiment when he heard Mr. Felton's arguments on the subject, a short while before his departure; and even had Sir James relinquished the opinions originally formed by himself, and afterwards persisted in by him notwithstanding such objections as Mr. Felton could urge, it would not have been in his power to have reversed the Secretary of State's positive instructions, without applying to this department for a revision of the case. Neither is it to be supposed that he would have abandoned all his previous resolutions, without any other indication of the change than the mere contents of a formal instrument under the Great Seal. A colonial officer of ability and high rank, such as Mr. Felton, can hardly have been ignorant that this is not the manner in which the decisions of the Government are accustomed to be dealt with. Considering, therefore, Mr. Felton's position, both as a legislative councillor and as Commissioner of Crown lands, which latter situation ought to have rendered him jealous of the interests of that branch of the public property, and especially scrupulous in respect to all advantages to himself out of it; he appears to me to have omitted an imperative duty, when he neglected to call the attention of the local government to the unlooked-for benefits conveyed to him by the letters patent, touching his children's lands. He was bound to bring the subject distinctly under notice; and his silence was the less excusable, since he appears to have become aware of the contents of the letters patent before Sir James Kempt left the colony; so that he could have no difficulty in immediately ascertaining, from the best authority, whether or not there had been a real change of intention in his favour.

I think the foregoing statement is quite enough to show the course which must be adopted. Your Lordship will call upon Mr. Felton for a surrender of all the lands which have been assigned to his children above the authorized quantity of 200 acres to each; or should that be impossible by reason of their nonage, you

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