

No. 4.

Lord Glenelg to the
Earl of Durham,
13 March 1838.

whom the Sovereign is represented, may fall. This is a very ancient maxim of the law of England, which, as it is founded on sound considerations of national policy, cannot be regarded as obsolete.

For these reasons, I am disposed to attach to the admitted irregularities of the transaction in question, much greater weight than the memorialists are willing to give them.

On the other hand, it is asserted by the memorialists that some of those irregularities had, in fact, been sanctioned by the local government, inasmuch as the Government had acquiesced in them habitually, with full knowledge of their existence. This is instanced especially in the practice of proceeding to sales without advertisements in the public newspaper, and the practice of accepting bills of exchange as cash in payment of the deposits. If this be truly stated, the Government is, I think, bound by its own conduct. I do not think it of any real importance that the bills were delivered three days after the sale, or even that they were drawn by one of the purchasers upon another of them, and then protested. The paper was actually received in payment, and the amount was ultimately tendered in cash before the maturity of the bill.

But there is another informality, to which much more weight is due. The late Mr. Felton had, as Commissioner of Crown lands, authority to sell 46,000 acres of land, in certain specified quantities, in six different townships. In point of fact, he put up to sale 96,000 acres, all of which appear to have been situate in two of those townships, namely, Cox and Hamilton. Mr. Felton thus took upon himself to sell, not only a quantity exceeding by nearly one-half what he was authorized to dispose of, but a quantity exceeding by nearly two-thirds the amount of which he was authorized to dispose in the townships of Cox and Hamilton. This was not a mere irregularity: it was the unlawful assumption of a power which the Crown land Commissioner did not possess; and the Government could no more be bound by such an assumption on his part, than any private man would be bound by the unauthorized act of his agent. It is not proved, nor even alleged by the memorialists, that the Government had sanctioned, or had any notice or knowledge of this extension of the sale of Crown lands.

It appears to me, therefore, that, on this ground, the Earl of Gosford was right in refusing to recognize or complete the transaction. It is said, indeed, by the memorialists, that they are, in any event, entitled to be received as purchasers to the extent of the authority actually vested in Mr. Felton, and, therefore, they claim 46,000 acres. But it is to be observed, first, that the utmost extent of authorized sales in the townships of Cox and Hamilton was not 46,000, but 35,000 acres; and, secondly, that by throwing into the market, at the same moment, twice as much land in the district as the Government, at that time, proposed to sell, the value of the whole and of each acre was depreciated.

For these reasons the claim of right appears to me to be inadmissible. But, as the memorialists urge that the transaction is beneficial to the public, and that the public interest would be promoted by the confirmation of it, I have thought it advisable to refer the decision of the question to your Lordship.

Your Lordship will not be able to form any final judgment until you shall have had an opportunity of inquiring into the facts on the spot; but I have thought it right to place you at once in possession of the case, as Mr. Bruce, one of the parties interested, is at present in this country, and has offered to wait on your Lordship to give any explanations in his power, should you desire to receive them previously to your arrival in Lower Canada.

I have, &c.

(signed) *Glenelg.*

(No. 7.)

— No. 5.—

COPY of a DESPATCH from Lord *Glenelg* to the Earl of *Durham*, G. C. B.

No. 5.

Colonial Office,
19 February.

Treasury, 8 March.

My Lord,

Downing-street, 25 March 1838.

I TRANSMIT herewith, for your Lordship's information, the copies of a correspondence which has passed between this department and the Treasury on the subject of an application from Mr. Reid, Chief Justice of the Court of Queen's Bench for the district of Montreal, to be permitted to retire from that situation

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