

of the following year, 1850, by which time numerous complaints and claims for damages were transmitted to the government by the owners of the submerged lands, chiefly in the Seignior and the adjacent townships. Amongst the number were the Seigniors of Beauharnois, as such Seigniors and proprietors of the adjoining township of Godmanchester. This claim, made up by Mr. Brown, the seigniorial agent, was transmitted to the Commissioners of Public Works in September, 1850, and was filed in their office. It was accompanied by a request for a voluntary agreement to be entered into between the Seigniors and the Commissioners for its amicable adjustment, or if that were not allowed, for the submission of the claim as required by law to the decision of the Provincial Arbitrators appointed for such purpose under the Public Works Act. The required reference was postponed by the Commissioners from time to time, and finally was only submitted by them to the arbitrators in 1858. In the interval, however, the pressure upon the Government for compensation for the submerged lands by the numerous parties interested, became so great that the Government appointed special commissioners to examine into the ground of the claims, and to effect their final settlement, which was accomplished to a considerable extent by payment of the various sums established by the official Commissioners as compensation for the losses caused by the submersions. In 1855, the Commissioners of Public Works undertook the construction of a dyke or embankment upon the lands of the claimant, intended to be a protection to the lands liable to be submerged. This work was undertaken without the consent of claimant; and after a prolonged correspondence, the Commissioners notified the Seignior's agent that no decision would be given on his claim for damages till the completion of the dyke. Finally, in November, 1858, eight years after the filing of the claim, and three years after the construction of the dyke, the case was submitted by the Commissioners to the Provincial Arbitrators. The claim made consisted of seven items; 1st, 7,400 arpents submerged in Catherinestown, Seignior of Beauharnois, at 30s. per arpent, £11,100. 2nd, 1,500 arpents submer-

ged in township of Godmanchester, at 20s. per arpent, £1,500. 3rd, Land for village, 26 arpents, at £50, £1,300. 4th, Land taken for Public Works in Grande Isle, 14½ at £10, £145 17s 6d. 5th, Land deteriorated from desiccation, 1,383, at 10s. (deterioration in value), £691 10s. 0d. 6th, Diminution of power at saw mill, &c., £500. 7th, Estimated loss of *lods et ventes* £1,000; forming a total of £16,237 7s. 6d. By the award of the Provincial arbitrators, the whole claim was thrown out, it being considered that any loss which might have been suffered by the Seignior of Beauharnois was covered by the increased value of his property. From this award Ellice appealed, and the Superior Court confirmed the award as regards items 1, 2, 3, and 6, allowing the appellant the sum of £8,575 instead of £14,400 claimed for these items, and totally disallowing the claim for items 4, 5 and 7. Each party appealed from this judgment. The main points submitted on behalf of the Queen were: 1st, that neither the claimant nor his *auteurs* were proprietors of the Seignior at the time the damages were said to have been suffered, or at any time prior thereto. 2nd. That no damages were suffered either in the lands in Catherinestown, nor in those in Godmanchester, nor at St. Timothée Mill; but that on the contrary, the lands in Catherinestown were largely benefited by the construction of the dyke.

AYLWIN, J., dissenting, adverted at length to the form of the proceedings, and stated his opinion to be that the whole proceedings were an absolute nullity, for the following among other reasons: The Crown had been foreclosed from answering the petition of claimant in the Superior Court, and there could be no foreclosure against the Queen; the proceedings were not instituted in the name of Her Majesty's Attorney General. On the part of the Crown there was not one syllable in writing where so much was necessary to be stated. Upon the merits of the appeal, his honour also thought that judgment should be reversed. He was of opinion that the arbitrators should have been ordered to amend their report. There was nothing stated in the judgment as to a certain right of passage; and nothing to secure the property to the Crown in the event