

1789, who was examined as a witness at the trial, and whose explanations were confirmed by a survey recently made by another most respectable surveyor. It was proved that the lines of the lots, as originally marked out, were never produced further than within one chain of the High Bank, or commencement of the Table Land; and, moreover, the actual contents of the lots themselves furnished internal evidence of this fact. I have also in my possession the evidence on affidavit of a man still living, who was chain-bearer on the original survey, and of another highly respectable inhabitant of the province, who was residing in Stamford at the time. This additional testimony I became accidentally aware of since the trials, and they are conclusive, as it seems to me, upon the point in issue.

It was while his action against Captain Phillpotts and the sheriff was pending, and a few months before it was to be tried, that Mr. Forsyth made these statements to the Assembly, the natural effect of which would be to elicit a discussion calculated to inflame the public mind, by exciting a jealousy of military interference; and from this excitement he probably expected an advantage in his contest with the Government upon the question of right. His Petition was entertained and referred to a Select Committee, who received such evidence as they chose, and made the Report upon it, which appears on their journals. It will be seen that this Report was brought in at the very close of the session; no question, upon its reception, was ever moved in that body, nor were the opinions expressed in it made the subject of discussion or vote. It has therefore no other sanction than the opinion of the Committee upon an *ex parte* hearing; and if I am entitled to assume that truth must be regarded in a legislative body, I may venture to assert that such a Report could not have been approved if it had been made the subject of open discussion. In the face of whatever attempts were made by the petitioner to excite prejudice, the jury came to the conclusion I have stated. The notes taken of the evidence by the Judge who presided at the trial have most probably been preserved by him, and a copy might be procured, if for any purpose it should be desired.

I will add further, that no exception to the verdict of the jury was attempted to be raised by Mr. Forsyth—no new trial was moved for. In the four years that have elapsed since, I do not recollect that in the Legislature or elsewhere the subject has excited any interest. Mr. Forsyth does not now own any part of the property in question, having sold it to persons who, I am convinced, will never pretend that they have a right to inclose the public reservation to which he asserted a claim.

With respect to the reasonableness of the complaint as to military interference, I think it would be difficult to find in His Majesty's service an officer less open to the imputation of arbitrary conduct, and a disregard of civil rights, than Sir Peregrine Maitland. When he took the step complained of, he was doubtless sufficiently aware how easy it is in a certain temper of men's minds, to make a trifling matter the cause of an unjust excitement; and had he thought of nothing but his own ease, he would probably have declined giving any direction to the engineer officer to remove the nuisance complained of, and he might have told those who petitioned for his interference, that they must submit to Mr. Forsyth's encroachments upon the public right, and await the result of an information for intrusion. An individual whose property had been thus trespassed upon would have had a clear right by law to abate the nuisance, and it seemed no unreasonable expectation that the Government should protect its rights as firmly and promptly as individuals may. It was the natural impatience of the public under the vexatious act of Mr. Forsyth that led the Government, for their sake, to the measure which occasioned, for a time, no little trouble.

Whether it would have been more judicious in Sir Peregrine Maitland to have taken any other course, I need not presume to offer an opinion; having known nothing of the act complained of until after it had taken place, no responsibility rested with me as Crown officer; and so far as respects any legal question, I need assume no responsibility now; but without pretending to decide the matter in its strictly legal point of view, I must say I have not much doubt that if, in any part of England or in the United States of America, an intruder were to insist upon encumbering a barrack square with his waggon, or were to plant posts and rails in a parade ground, the nuisance would be removed under the direction of an officer on the spot.

The House of Commons has also called for information respecting "the proceedings of the Assembly of this province, in the case of Colonels Givins and Coffin, heads of departments, who were sent to gaol for refusing to give testimony in the matter of Captain Phillpotts, they severally alleging to the House, that the Major-general then commanding would not permit them to attend; together with the proceedings, if any, which have been had thereon by His Majesty's Government or by the local Authorities."

I was attorney-general at that time, and have a general recollection of the matter here referred to. In that session of the Legislature (1828), as will be seen by inspection of the journals, there were a number of Select Committees conducting inquiries into various public matters. It had been the constant usage of the Assembly, in past years, when any of their Committees desired that an officer of the Government should attend them as a witness, to send an address to the Lieutenant-governor, communicating their wish and specifying the subject on which the evidence of the witness was required. The order then proceeded, as a matter of course, from the Lieutenant-governor to the officer, to attend the Committee. Whether this was the proper course, having a due respect to the privileges of the different branches of the Government, or whether it was a wholly unnecessary courtesy, I do not pretend to determine, but it had been usually, if not invariably, followed. One of the Select Committees in this session required the evidence of Colonel Coffin, the Adjutant-general of Militia, and of Colonel Givins, the Chief Superintendent of Indian Affairs,