

who had made those surveys under the authority of the Government. Among these (for there were others at particular points) was the general reservation I have mentioned, of one chain from the top of the bank along the river Niagara.

The Letters Patent afterwards issued by the Provincial Government to the several grantees specified this reservation or exception. It was a matter perfectly notorious and well understood, and no doubt or difficulty that I have heard of ever arose upon the subject for nearly forty years, and until Mr. Forsyth, in the year 1826 or 1827, took upon himself to inclose with a high post and rail fence the allowance or reservation of one chain along the bank of the river in front of his own lands; and the effect of making this inclosure in the place and manner in which it was made, was to exclude the public from access to the great natural curiosity, the Falls of Niagara, except such persons as he might permit to go through his house or premises to the bank of the river. Mr. Forsyth kept the principal inn at that time at the Falls, and owned the adjoining lands for a long distance along the river, including those points to which all strangers resort to view the Cataract.

The public were annoyed at this act of Mr. Forsyth's, and applied by Petition to the Lieutenant-governor for redress. This Petition I have seen, it was signed by the most respectable inhabitants of the country, and I think the Lieutenant-governor was repeatedly applied to, and the necessity urged upon him of having this unauthorized obstruction removed. I have now in my possession the statements made on oath and preferred to the Lieutenant-governor by the keeper of an hotel in the vicinity, complaining of the oppressive consequences to him of this vexatious usurpation by Mr. Forsyth.

The reservation of a chain along the river had, it seems, been commonly regarded as made for military purposes rather than for civil, and looking upon it in that light, as I suppose Sir Peregrine Maitland, who then resided in the district of Niagara, and within a few miles of the reserve in question, and who was then Major-general commanding, referred to the engineer officer in charge in that district, and instructed him to see that the space was kept open, as it had been and as it ought to be. This officer, Captain Phillpotts, after Mr. Forsyth had been requested in vain to remove his fence, thought himself bound by his instructions to see that it was removed, and taking a small party of soldiers in their fatigue dresses, he did, in the presence of Mr. Forsyth, cut or pull down the fence, and throw open the land again to the public; and he also pulled down and removed a small blacksmith's shop, made of boards, which had been placed on the reserve. No force was necessary for overcoming any personal resistance, for none was made. To prevent the possibility of encroaching upon Mr. Forsyth's property, Captain Phillpotts procured the attendance of a Mr. Jones, the very same sworn surveyor who had made the original official survey of the ground nearly forty years before, and it was of the land marked out by him as the public reservation that possession was taken. It appears also that to prevent a misstatement of his proceedings, Captain Phillpotts had requested the sheriff of the district, who lives near the premises, to be present and observe what was done. The sheriff did attend, but took no part. The soldiers, in obedience to their orders, pulled down the fence, and Mr. Forsyth, who was present, remonstrated and declared that he would prosecute for this trespass, as he called it, upon his property. The pickets and other materials not having been removed from the ground, Mr. Forsyth soon afterwards set up the fence again, and excluded the public as before; and Captain Phillpotts again took it down, with no additional circumstances of force, and no more direct resistance on the part of Mr. Forsyth.

For these two acts, Mr. Forsyth brought civil actions, one against the sheriff and Captain Phillpotts jointly, for the first removal of the fence and building, and the other against Captain Phillpotts alone for the second removal of the fence. Captain Phillpotts reported to Sir Peregrine Maitland, that he had been thus prosecuted for acts done in obedience to the orders he had received, and I, being the attorney-general at that time, was instructed to defend those suits, and to take the necessary measures for vindicating the right of the Crown.

My first knowledge of the circumstances I have detailed above, was acquired after I had been so instructed, and I relate the facts from my recollection of the evidence given afterwards upon the trial.

I pleaded specially to the actions, in such a manner as to bring in issue the right of the Crown to the space of land in question. Mr. Forsyth took issue on that right, not relying upon or asserting in his pleadings that any unwarrantable or excessive violence had been used, or any wrong committed in case the land was the property of the Crown, but simply denying that fact, and asserting the property to be his. To set that point at rest in the most formal manner, I filed an information of intrusion against him on the part of the Crown, for his act in taking possession after the removal of his fence, and to this information he pleaded not guilty. Thus in three several actions or cases, the opportunity was afforded of trying the question by juries of the country. It was fully investigated; and upon the clearest testimony decided against Mr. Forsyth's pretensions. He failed in his action against Captain Phillpotts and the sheriff, and a verdict was rendered against him on the information of intrusion. Upon this verdict, judgment was entered, and a writ of *Amoveas manus* sued out and executed. Upon the trials he maintained his pretensions to the ground inclosed, by giving a peculiar construction to the words, "top of the bank," and endeavouring to apply them to the top of a *lower bank*, confining the river at an inaccessible point, and to which lower bank no person could pass from what is actually the "top of the bank," and more especially after he had inclosed the space in question.

This construction, repugnant to reason, was clearly repelled by various proofs, and especially by the evidence of the very surveyor, still living, who laid out the ground in the year