

HOUSE OF ASSEMBLY.

House met yesterday at 1.30 p. m. Present—Dr. Helmcken, Speaker; and Messrs DeCosmos, Powell, McClure, Trimble, Tolmie, Dickson, Duncan, Cochrane, Carswell, Dennes.

THE GOVERNOR'S SPEECH.
The Speaker read *pro forma* the speech just delivered by the representative of the Crown at the opening of the Legislature.

NEW MEMBER.
Dr. Ash, member elect for Esquimalt and Metchosis Districts, was introduced to the House by Dr. Dickson, and took the oath and his seat as junior member for the said districts.

HOMESTEAD ACT.
Mr. DeCosmos moved the first reading of a bill, which he said was similar to the one introduced at the last session, known as the Homestead Bill. If the House considered it necessary the details of the bill might be discussed at the second reading.
The bill passed the first reading.

BARRISTER'S AND ATTORNEY'S BILL.
Mr. Duncan gave notice that he would, at the next sitting, ask leave to introduce a bill for amalgamating the professions of barristers and attorneys in this colony.

PROBATE AND BANKRUPTCY COURTS.
Mr. Duncan gave notice of motion for certain returns herein.

REPLY TO THE SPEECH.
Mr. DeCosmos suggested the appointment of a committee to draft a reply to the Governor's speech; but the matter was left over until the next sitting, and the House adjourned until three o'clock to-day.

Wednesday, Nov. 29, 1865.

House met at 3.15 p. m. Members present—The Speaker, Messrs DeCosmos, Dickson, Powell, McClure, Tolmie, Duncan, Dennes, Carswell, Cochrane, and Ash.

CROWN LANDS AND HUDSON BAY COMPANY.
The following communication, sent in by His Excellency the Governor, embodying dispatches from the Right Honorable E. Cardwell, Secretary of State for the Colonies, was read by the Speaker:

Copy of a Despatch from the Right Hon. Edward Cardwell to Governor Kennedy.
Downing Street, 14th August, 1865.

Sir—I have had under my consideration your despatch, No. 23, of the 25th of April last, in which you transmit the minutes of proceedings of a select committee of the House of Assembly appointed to enquire into the present condition of the Crown Lands, a Report of that committee, and a series of resolutions transmitted to you by the Speaker of the Assembly on the 29th June, 1864. I have also had under my consideration your despatch, No. 10, of the 2d February, 1865, respecting Mr. Lowenburg's case, which had already formed the subject of a letter to the Duke of Newcastle from the Hudson's Bay Company, dated 16th July, 1864, and of Governor Douglas's despatch of 24th October of the same year.
The resolutions of the Assembly have reference to a proposal made by the Duke of Newcastle, that the Crown Lands should be placed under the control of the Legislature in return for a Civil List.
On this proposal they express no opinion, but they recommend, first, that an Indenture made on the 3d February, 1862, between the Hudson's Bay Company and the Emigration Commissioners, on the part of the Crown, should be annulled, and steps taken to recover from the Hudson's Bay Company large sums of money which that Indenture would entitle them to keep.
2ndly, That Mr. Lowenburg should not be confirmed in the possession of a piece of land called lot Z, which was sold to him by the Hudson's Bay Company, and to which your despatch of February 2nd refers, and
3dly, That the Government should take steps to prevent the Church Reserve in Victoria from being ever let out in lots or covered with buildings, in order that it may be preserved as a public square.
The first of these recommendations is by far the most important.

I enclose an extract of a Report from the Chairman of the Board of Emigration, exhibiting the grounds upon which my predecessors thought it advisable to sanction a compromise embodied in the Indenture of 1862. You will observe generally that the Hudson's Bay Company had previously to the grant of 13th January, 1849, claimed as their private property certain lands in Vancouver Island, and that a correspondence had passed between the Company, on one side, and successive Secretaries of State (Earl Grey and Sir J. Pakington) on the other, in the course of which the Home Government explicitly recognised the principle of their claim and accepted, without any expression of dissent, their specific description of the lands which they considered entitled to hold as their private property.
It was considered that the Crown could not either honorably or with any fair prospect of success attempt to dispute the Company's right to the lands to which their title had been thus acknowledged—that it was a matter of paramount importance to obtain for the Government immediate and unqualified possession of the Crown Lands; and unfortunately still in the legal possession of the Company, and that it was most desirable for the colony to close up a source of controversy which threatened to obstruct the management of the Crown property and to multiply animosities, litigation and embarrasment. It was therefore most inexpedient to protract discussion, with the Company without a clear prospect of great ultimate advantage which did not exist.

The result was the compromise embodied in the Indenture of February, 1862. Whether under all the circumstances this compromise was wise or imprudent is a matter on which the Assembly are, no doubt, entitled to form their own judgment. But it is certain that the instrument which embodies it has been executed on the part of the Crown, and no ground has been established for concluding that the Crown has been so misled on the conditions of the agreement

so violated by the Company as to afford any sufficient reason, either in law or in good faith, for endeavoring to set aside an engagement thus solemnly undertaken. Indeed the committee of enquiry (par. 20) quote without any expression of dissent, a statement that without evidence of fraud the Deed must stand, and do not allege any reason for supposing that such evidence is procurable, or that such fraud exists.

Accordingly the Law Officers of the Crown, in a report to which I shall presently refer, have expressed their opinion that after all that has occurred the Crown cannot now dispute the right of the Hudson's Bay Company to regard the land of which they came in possession before 1849 as absolutely their own.

What may be the meaning and effect of the indenture is of course open to question, though I hope that no material difference of opinion will be found to exist. I expect to transmit to you shortly the draft of a deed, retransferring the land to the Crown, which will give precision and certainty to some of the provisions which at present are necessarily indefinite. In considering the terms of this Deed I shall require your careful assistance and I shall give my best attention to any recommendations which you may make in the interests of the colony. But in making these recommendations I wish you clearly to understand that I regard the instrument itself as binding on the Crown and conclusive. I conceive that any attempt to deal with it otherwise will only have the effect of protracting controversy on matters where controversy is unavailing, and delaying the consideration of questions which are really pressing and practical.

The question of the Church Reserve is disposed of by considerations of the same kind. It appeared in the course of a correspondence, which took place in the year 1861, that certain land forming part of the land claimed as private property by the Hudson's Bay Company had been promised by them to the authorities of the Church of England. The Bishop claimed performance of that promise; the Company admitted the claim, and the result was that after communication with the Governor a deed had been executed by the Hudson's Bay Company with the sanction of the Crown; by which the land was conveyed to trustees for Church purposes.
I am not aware of any means by which that deed can be set aside.

The case of Mr. Lowenburg is one of a more complicated kind. I caused that case to be referred to the Law Officers of the Crown, and I received from them the report of which I enclose a copy, and to which I have already alluded. I also enclose a copy of Sir E. Head's letter, to which the Law Officers in their opinion refer.
You will collect from their report the nature of the case which was laid before them, which was accompanied by copies of your despatch, and its enclosures. Those papers appear to contain all that is to be said on the case, and I do not doubt they were carefully and impartially considered by the Attorney and Solicitor General. But you will observe that the conclusion at which they arrived is that the grant to Mr. Lowenburg cannot be successfully impeached. Much, therefore, as I regret the inconvenience to which the Government may be exposed, I am unable to authorise you to treat it as invalid, or to take any steps for setting it aside.

Whether the suggestion of purchasing the ground for the use of the Government should be adopted, will be, I apprehend, mainly for the consideration of the Legislature, as it does not appear that the necessary funds could be at present supplied from the Crown revenue.

I have the honor to be, Sir,
Your most obedient humble servant,
(Signed) EDWARD CARDWELL.

LINCOLN'S INN, July 26, 1865.

Sir—We are honored with your commands signified in Mr. Elliott's letter of the 21st day of June, ultimo, stating that he was directed by you to bring under our consideration the following question, which has arisen in Vancouver Island respecting the sale, by the Hudson's Bay Company, of a lot of land—hereafter called lot Z—which is claimed by the Government as a Government reserve.

Mr. Elliott was pleased to state that in 1849 the Hudson's Bay Company applied to the Secretary of State for confirmation of their title to certain lands, then of little value, which they had occupied in Vancouver Island in connection with a certain license of exclusive trade, granted on the 13th May, 1838. [Parliamentary paper, House of Lords, 12th February, 1849, No. 1.]
That after a short correspondence, Lord Grey admitted the principle of their demand [Parliamentary paper 12th February, 1849, No. 4], and directed the Company to frame, for his consideration, a Draft Conveyance of the lands which they desired to obtain.
But that this narrow question was almost immediately merged and lost sight of in a larger proposal which was made at the same time, and ended in a grant of all Vancouver Island to the Hudson's Bay Company, for purposes of settlement [13th January, 1849].
That this grant [Parliamentary paper, House of Commons, 7th March, 1849, pages 13 to 16] was made in trust *inter alia*, to sell the land, "except so much thereof as might be required for public purposes," and to apply nine-tenths of the proceeds to the colonisation and improvement of the island, reserving the remaining one-tenth as profit to the Company. That it also reserved to the Crown the right of repurchasing the Island on certain terms, upon the expiration of the exclusive license to trade, viz. 13th May, 1859.

That the lands originally obtained by the Hudson's Bay Company were not excepted from the grant in trust. That the Company, however, on the strength of Lord Grey's admission, and in spite of the grant, continued to treat them as their private property. That they had, then marked out, on their own authority, apparently in 1851, to the extent of 3084 acres; in 1853 they directed them to be registered as belonging to themselves, and reported them to the Colonial Office as their own property. [Parliamentary paper, No. 83, of 1852, page 2, Colonial Pamphlet pp. 10, 12, with Governor's despatch 10, of 2d February, 1865.]

That in 1854 about ten acres of this land were dedicated to an Indian Reserve by the officers of the Company in the Island. That this Act was reported to the Company, by whom that reserve is in principle acknow-

ledged. [Despatch 10 of 2nd February, 1865, and enclosure, and memorandum by Company's solicitor.]

That in 1858 Mr. Douglas, who had been appointed Governor by the Crown [Parliamentary paper 7th March, 1849, page 18], and was also the Company's agent, with full authority in matters affecting the disposal of land, and Mr. Pemberton, who was acting for the Company as Surveyor General, framed and published an official plan of the proposed town of Victoria, of which a copy was annexed, printed subsequently in 1861. That in this plan the lands about the reserve were divided into building lots; the reserve itself was marked as occupied by Government buildings, which were shortly afterwards built, and its southern and western boundaries were altered.

That the Company allege that the original boundary was what the Colonial Government describe as an open drain, but the Company as an old fence, separating that reserve from a farm called Bexley or Duntell's farm, which is marked in the printed plan by a dotted line in ink.

That the substituted southern boundary is that which is given in the official plan, and forms, as will be seen, one side of a proposed street.
That the strip of land lying between the two lines, and now marked on the plan as lot Z, was thus, according to the Company, added to the reserve. That it contains nearly three acres.

That the fact of an addition is admitted by the Government, but there is a question as to the exact position of the original boundary, and consequently as to the extent of the addition. [See tracing B, with despatch 10 of 2d February, 1865.]

That in January, 1858, the Home Government gave notice of their intention to repurchase the Island under the powers reserved in the deed of grant; and in the course of the year the Governor, Mr. Douglas, ceased to be an agent of the Company. That he was succeeded in the latter capacity by Mr. Dallas.

That Mr. Dallas made fresh plans more or less at variance with those of 1858, under which he proceeded to sell for the exclusive benefit of the company what he considered as their private property.
That among other things he sold lot Z notwithstanding its reservation for public purposes in 1853, by Mr. Douglas and Mr. Pemberton, of which he declares himself to have been ignorant.

That this was an evident injury to the Government buildings as it deprived them of one of their street frontages and more than one-fourth of the ground attached to them. That it is also alleged to be an injury to those who had bought building lots on the opposite side of the street, believing on the faith of the plans of 1858 that they would have opposite them a Government reserve.

That meantime the notice of repurchase given in 1859 had raised a further and larger question which in 1860 it was determined to refer to the Judicial Committee of Privy Council, viz., the question whether the Company were really entitled to treat as private property the 3084 acres above mentioned, which comprise the site of a great part of Victoria and for the sale of which they had now realized enormous sums of money chiefly in consequence of the gold discoveries.

That the negotiations for the repurchase ended in an arrangement intended to settle all these questions and to restore the lands of the colony to the absolute control of the Government.

That under that arrangement the Government was to pay the Company a sum of about fifty-five thousand pounds, being the reimbursement of money spent by them in Government and colonization.

2. That the Emigration Commissioners, on the one side, and the Company on the other, executed an Indenture dated 3d February, 1862, containing the following provisions [Colonial pamphlet, pages 41, 42].

(1). "That all sales made by the said Company previous to the first day of January, 1862, of any portions of the land so occupied by them as aforesaid (viz. the 3084 acres) before the 31st January, 1849, including water frontages and the spaces between high and low water mark, abutting on such portions of land shall be valid and effectual as against Her Majesty, her Heirs and Successors."

(2). "That the Company shall retain for their own use and benefit the proceeds and purchase monies of all lands so sold by them as aforesaid."

(3). "That the whole of the remaining unsold lands in the said Victoria district lying to the South and West of James Bay including the site of the new Government Buildings, as far as the old fence in the rear thereof dividing it from a farm known as Bexley, Beckney, or Duntell's farm shall be forthwith conveyed and surrendered by the Company unto and to the use of Her Majesty Her Heirs and Successors."

That under these circumstances the Colonial Government desires to retain or regain possession of lot Z while the Company desire that the title of their purchase should be completed or allowed.

That it is urged on the part of the Government and public of Vancouver Island that the sale of lot Z was no sale and should not be considered as covered by the Indenture of 1862—1st, because the Company were not authorized by the grant of 1849 to sell land required for public purposes, and lot Z was so required; having been reserved for Government buildings by Mr. Douglas in his double capacity of Governor and Company's agent; 2ndly, because the official plan of 1858, which represented lot Z as Government reserve constituted a pledge to the public that it should be so maintained, on the faith of which pledge certain lots of land have been bought and particularly those on the opposite side of the street.

That the Colonial Government therefore desire that proceedings should be taken against the present occupants under the grant from the Hudson's Bay Company.
That on the other hand the Company will probably contend that reserves of this kind especially reserves of what they consider to have been their private property unaffected by the Trusts of the Deed of Grant, ought to be held to have been provisional, at any rate till confirmed or till granted to the Government in trust for the colony by them (the Company); in the present case no such confirmation was given or grant issued, that as between the Government and the Company, the sales of Government Reserves

could no doubt have been effected by common consent; and therefore whatever may be the rights of private persons the Crown at least is precluded from calling the sale in question, by the first clause of the Indenture of 1862.

That the Company is of course, concerned to avoid any step which would throw a general doubt upon their right to deal as they have done with lands in and near Victoria under their second plan of 1849.

That it is extremely undesirable that the question should remain unsettled, because till it is decided the reconveyance of Vancouver Island to the Crown is delayed, and it is of course possible that much public inconvenience may be caused in the colony by this delay.

Mr. Elliott was therefore desired by you, sir, to request that we would take these circumstances into our consideration and favor you with our opinion.

1. Whether the Reserve and dedication of Lot Z to public purposes was effectually made by or on behalf of the Company.
2. If so, whether the Company with or without the concurrence of the Crown could afterwards cancel that reservation, so as to enable them to sell part of the reserve for their private advantage.
3. Whether the Agreement of February, 1862, would operate retrospectively as a confirmation of the cancellation and sale, or preclude the Crown from impugning their validity.

4. Generally, what course we would recommend the Crown to pursue, having reference to its duty to give all just protection to the interests of the colony; and, on the other hand, to its equitable or legal obligations to the Hudson's Bay Company.

In obedience to your commands we have taken this matter into consideration, and have the honor to report

1. That after all that has occurred we do not think the Crown can now dispute the right to the Hudson's Bay Company to regard the land of which they were in possession before 1849, as absolutely their own; with respect to what is called the "dedication" of ten acres of this land we think that the Agreement of 1862 has rendered it unnecessary to consider any question, except as to parcel marked Z, which is admitted not to have been originally part of the ten acres; and as to this parcel it is not made out to our satisfaction; that, as between the Crown and the Hudson's Bay Company, it was ever dedicated, in any binding manner, to any public purpose.

2. If Lot Z had been so dedicated, and given up to the Crown, the Company could not sell it without, but we think they might sell it with the consent of the Crown.

3. If the facts stated in the Memorandum enclosed in the letter of Sir Edmund Head, of May 2nd, 1865, be correct, viz., that Lot Z had been occupied and tiled by the Company, and sold to Mr. Lowenburg before February, 1862, and that all this was well known to the Government, we think that the Indenture of the 3d February, 1862, operated to validate that sale, so that the Government cannot dispute it.

4. On the whole we think the most advisable course would be to purchase the land of Mr. Lowenburg; if, indeed, he should refuse to sell on reasonable terms, probably there would be no difficulty in obtaining powers of compulsory purchase from the Colonial Legislature on the payment of fair compensation.

We have, &c.,
(Signed) ROUNDELL PALMER,
R. P. COLLIER.

P.S.—The following copies of papers were annexed to Mr. Elliott's letter, and are now returned:

- (1) Parliamentary Paper, House of Lords, 18, 12th February, 1849.
- (2) Parliamentary Paper, House of Commons, 103, 7th March, 1849.
- (3) Parliamentary Paper, House of Commons, No. 83, 1852.
- (4) Despatch from Governor of Vancouver Island, No. 10, of 2nd February, 1865, and enclosures, including Colonial Blue Book.
- (5) Letter of Governor of Hudson's Bay Company, with Memorandum by Solicitor of the Company.
- (6) Copy of official plan of Victoria, (1858) printed 1861.
- (7) Present plan submitted by Company.

On the motion of Mr. DeCosmos the despatches were ordered to be printed.

BANK ACT.
Mr. Duncan gave notice of motion that on that day week he should ask leave to bring in a bill to amend the Bank Act.

IMPRISONMENT FOR DEBT.
Mr. Dennes gave notice of motion that on Thursday next he should request that a day be named to go into a committee of the whole to consider an Act to amend the law as to imprisonment for debt.

JURISDICTION OF INFERIOR COURTS.
Mr. Dennes gave notice of motion that on Thursday next he should ask leave to introduce a bill to increase the jurisdiction of the Inferior Court of Civil Justice.

HOURS OF BUSINESS.
Mr. McClure gave notice that on the following day he would move that the House should meet for the dispatch of business at one o'clock, p. m., every Monday, Tuesday, and Thursday.

RETRENCHMENT.
Dr. Dickson gave notice that at an early day he should move that the House do resolve itself into a Committee of the Whole, to take into consideration the immediate necessity of reducing the present unnecessary and unjustifiable expenditure of the revenue of the colony, to a sum compatible with the circumstances and wants of the people.

UNION.
Mr. DeCosmos gave notice that on the following day he should move that His Excellency the Governor be respectfully requested to communicate to the House copies of all despatches or correspondence forwarded to or received from H. M. Secretary of State for the Colonies, respecting a resolution in favor of union with British Columbia, passed on July 25th, 1865.

MONEY BILLS.
Dr. Dickson gave notice that on a future day he should move that in the absence of a responsible ministry, this House will assert

and maintain its rights to initiate and alter money bills.

BARRISTER'S AND ATTORNEY'S BILL.
Mr. Duncan, in pursuance of notice, moved for leave to introduce a bill for amalgamating the professions of barristers and attorneys in this colony. Leave granted.

THE GOVERNOR'S SPEECH.
The following members were appointed as a select committee to draft a reply to the speech of His Excellency: Messrs. McClure, Trimble and Carswell. The report to be presented on the following day, and submitted to a Committee of the Whole.
The House then adjourned until three o'clock to-day.

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Michael Fitzpatrick.
INFORMATION WANTED—**MICHAEL FITZPATRICK**, a native of New York City, who left Clayton, Contra Costa County, California, two years ago last August, and being more than a year ago he was in Victoria, V.I., intending to go to Sooke river. Information, addressed Fitzpatrick, post office San Francisco, California, will be thankfully received by his father and sisters. Thanked Dec 3rd, 1865. 0010 Lindaw

One of Mr. Macfie's ideas of emigration from young women of to be sent out in until the number gentleman allude twenty females w mouth and Rom managed underta but bad as it wa were steady and says, in obtaining fortably married. has taken a too s gration. To bri women to this co months would b evil on the fema those who would least injurious re such a wholesa wholesa depos the female lab Under present c give employem the reverend ge we are well a bility in his pop is disproportion the melancholy number of indig obtain employ very likely that an inundatio When the colo tion scheme w will meet the In the meanti and to wait."

While, howe Macfie's ideas c confess that the the reverend ge England of an the manner in mischievous of the self-support It is shown at the Federal au in opening up c formed and dis wise assisting branches of the colony is left t burden of loca isolation from is one fallacy, of putting it strength of his younger class footing with the territories of th Federal autho the colonies ma tion, define its wards the nat while the tera tion, have to Federal Govern as occasions ar giving them ev national autho ance upon the therefore in an right; it is sin and any argum taken the very Government v It should have assistance in the or of emigra vest—and t welfare of the tional demand ships of Engle extent done th of exports, fr extra distinct shown how colonial conne lations with f soverely gene warranted. O rts in this re well excuse ir matter if any written will le ment less call drawn any nea tion with th vious insignif people as wel been rendere have earned, his book, a d colonies.

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