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INFORMATION FOR THE PUBLIC.

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ACCOUNT

OF THE

PROCEEDINGS AND DOINGS

OF THE

GOVERNMENT COMMISSIONERS,

AGAINST THE UNFORTUNATE SETTLERS UPON THE  
INDIAN LANDS IN THE TOWNSHIPS OF

**TUSCARORA AND ONEIDA,**

In the Years of our Lord 1846 and 1847.

*By H. S. Cheshire*

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ADDRESSED TO THE SETTLERS BY ONE OF THEMSELVES.

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Printed at the Gazette Office, Court House Square, Hamilton.

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## INFORMATION FOR THE PUBLIC.

Account of the proceedings and doings of the Government Commissioners against the unfortunate Settlers upon the Indian Lands in the Townships of Tuscarora and Oneida, *in* the years of our Lord 1846 and 1847. Addressed to the Settlers by one of themselves.

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The proceedings were commenced under the Statute 2nd Victoria, ch. 15, by information upon the oath of some Indians, and summonses were issued therefore, directed to the Settlers, calling upon them to appear in October last past, at certain places therein mentioned. The Settlers, upon receiving these summonses, employed D. Fraser, Esq. Barrister of Hamilton, as their Counsel, first to memorialize the Government to put a stop to the proceedings until a full investigation could be had of their claims to the privilege of pre-emption, or to the full value of their improvements, and failing to obtain their request, to take all legal means to their defence.

Our Counsel having written to Samuel P. Jarvis, Esquire, late Chief Superintendent over Indian Affairs, requesting his attendance at the trials, received the following communication :

TORONTO, 31st Oct., 1846.

DEAR SIR,—I am just in receipt of your note, of yesterdays date, on the subject of the Ejectment suits, instituted against the Settlers on Indian Lands at the Grand River. It appears to me that I can be of no use personally to the Settlers, unless they compel the Commissioners to produce certain documents to shew that the Government nor the Indians ever contemplated removing them indiscriminately, and to do this, you should notify the Com-

missioners to produce the following documents, viz :

1. The Chief Superintendent's letter addressed to the Chiefs, by order of Sir George Arthur, dated 5th January, 1841.

2. The Surrender of their Lands to Government, for the purposes of sale, dated 18th January, 1841. 3. Chief Sup. Report on the petition of the 6 Nation Indians, dated 9th Feb., 1841. 4. Chief Sup. letter addressed to Mr. Sec. Murdock, on the general affairs of the 6 Nation Indians, dated 17th October, 1841. Mr. Gwynne's Report on the condition of the 6 Nation Lands, dated 7th Sept., 1840. The Report of the Executive Council thereon, dated 27th November, 1840. These two documents should be first on the list. Also Order in Council, dated 29th March, 1844, approving of the draft of a notice, issued by me, respecting the sale of Indian Lands on the Grand River. Order in Council, dated 12th Jan., 1843, on the Petition of certain Settlers on the Grand River Lands. O. C., 28th Jan., 1842, directing 10 sites for School Houses, to be set apart within the Indian Tract by the Warden of the District. This would shew that it was the intention of Government to extend the benefit of the School Act to the Settlers on the Grand River Tract. You may also demand a copy of Lord Metcalfe's answer to the Six Nations Chiefs, in the spring of 1844, which you might get from Smoke Johnston. In this reply his Lordship distinctly told the Indians that he regretted that the Indians have ever "encouraged the encroachments of their White brethren on their lands, and this circumstance at present constitutes the chief difficulty in removing intruders. That the surrender to the Crown in 1841 was a wise measure, and should have been strictly adhered to by the Indians, as the sale of these lands would place them in a state of affluence. That the Indians had no right to expect that the Government will

“ comply with their desire to remove indiscriminately from their lands, persons placed on them, although without proper authority, by the Indians themselves ; neither justice nor a due regard to the Indian interests require or would justify such a proceeding.” I shall wait to hear from you again before I go up, but you must see that without the documents above referred to, any evidence I can give would be unimportant.

I am, your's, faithfully,

SAMUEL P. JARVIS.

D. FRASER, Esq.

In consequence of the absence of Mr. Jarvis and the documents which had been applied for to the Government, the Commissioners, upon affidavits being filed, consented to a postponement of the trials. The following is an account which appeared in the public Journals of the Province, regarding these proceedings and addressed by me to the Settlers.

The adjourned enquiry before the Commissioners, Messrs. Cleach, Thorburn, and Bain, respecting our rights, came on, on the 2nd inst., at Brantford ; after two days and a half hard trial, the Commissioners failed to prove a case against any of the parties. The Counsel for the defence, Mr. Fraser, shewed all their proceedings from the beginning to be irregular. The testimony produced was scandalizing to a Court of Justice. An Indian who deliberately swore on oath before Mr. Thorburn that the Defendants were illegally in possession, admitted on cross examination that he believed so, but had not seen them for months on the lots in question. The manner in which the prosecution was conducted, backed by the Counsel for the Indian Department, and the manner in which the evidence was taken down for the Settlers, determined our Counsel to leave the Court, and to refuse to appear before the Commissioners again. Having been present when the final cause for our Counsel

leaving happened, I can only say that it at once struck me as the only course which could be adopted by him, and which was unanimously approved of by all our fellow Settlers present with myself. Mr. Fraser was understood to say in a short conversation with his clients after leaving Court, that he foresaw this difficulty and that he had addressed the Governor General to the effect that it was not right that persons altogether connected with, and paid out of the Indian Department Fund, should be the constituted Judges of a question which involved the interests of persons out of whose funds they were paid, and in whose behalf they were the recognized Agents, and that the Settlers were firm in the belief that the utmost hostility was entertained against their just claims by every person connected with that Department, and that owing to some misunderstanding with the head Commissioner (Mr. Thorburn,) (who had been instructed by the late Lord Metcalfe to "investigate and report upon each individual case for the final decision of the Governor General," and which instructions the Settlers declared had not been complied with,) that the Settlers had come to the conclusion that they could not expect that impartial trial and investigation, which the justice of their case and the helplessness of their situation demands. He was also understood to say that he had no doubt that the head of the Government would appoint a new Commission.

The proceedings of the Commissioners are taken under the Statute 2nd Vic., chap. 15, which in the first place excepts persons holding possession by virtue of any lease; and further, the jurisdiction of the Commissioners under that Statute depending upon the fact whether the lands in question, are the lands "for the cession of which to her Majesty no agreement hath been made by the Tribes occupying the same." It is well known to all the Government Officers in the Indian and Crown Lands



Departments, that all the Grand River Lands were surrendered to the Crown at a very early period by the Indians occupying the same, and claiming title thereto; they were surrendered for the purpose of the appropriation to the five nations of Indians who were driven from their Settlements in the present United States during the revolutionary war, and by them were subsequently surrendered to the Government in 1841, for the purpose of sale, excepting only a certain Tract known as the Johnson Settlement, and which Tract has been subsequently offered for sale. The following is a copy of the Surrender of 1841, produced by the Commissioners pursuant to Notice served upon them.

SURRENDER.

The Chiefs and Warriors of the Six Nations Indians upon the Grand River, in full Council assembled at Onondaga Council House, this 18th day of January, 1841,—Having maturely considered the proposal made to them by Samuel Peter Jarvis, Chief Superintendent of Indian Affairs, contained in the annexed documents dated the 5th and 15th January, 1841. In full reliance and confidence in her Majesty's Government that they will dispose of the property of the Six Nations Indians for the sole benefit of them and their posterity forever, according to the intent and meaning of the said annexed documents, and for no other purpose whatsoever to the best of their judgment; and also in full confidence and reliance upon Her Majesty's Government that they will not sell or dispose of in fee simple any portion of that tract called the Johnson Settlement, unless what is available to be sold as Town Lots in the immediate neighbourhood of the town of Brantford, without the assent of those Indians for whom the same was formerly reserved first being obtained,—

Have and hereby do assent to Her Majesty's Government disposing of the lands belonging, and formerly reserved upon the Grand River for the Six

Nations Indians for the sole benefit of the said Six Nations and for the full and valuable consideration according to the best of their judgment, so as to preserve the benefit thereof for them the said Six Nations and their posterity for ever, and for no other purpose according to the intent and meaning of said annexed documents dated, the 5th and 15th January, 1841, respectively.

In testimony whereof we Moses Walker, John Smoke Johnson, J. Kanawate, Kanakariatarie, Peter Green, John Whitecoat, and Jacob Fishcarrier, being deputed by the said Six Nations in full Council assembled to assent to the same on their behalf, have hereto set our hands and seals this 18th day of January, 1841.

(Signed,) MOSES WALKER, [L. S.]  
 " JOHN S. JOHNSON, [L. S.]  
 His  
 " J. KANAWATE, ✕ [L. S.]  
 Mark.  
 His  
 " KANAKARIATARIE ✕ [L. S.]  
 Mark.  
 His  
 " JOHN WHITECOAT, ✕ [L. S.]  
 Mark.  
 " PETER GREEN, [L. S.]  
 " JACOB FISHCARRIER, [L. S.]

Signed, sealed and delivered in the presence of us, being fully interpreted by Mr. Martin, a subscribing witness to these presents.

(Signed,) J. MARTIN, I. I. Dept.  
 " JAMES WINNIETT, S. I. A.  
 " JOHN W. GWYNNE.

Certified a true Copy. Signed,

GEORGE VARDON.

There was also produced two letters written by Mr. Jarvis, by command of his Excellency the late Lord Metcalfe, in the Spring of 1844, in one of

which he distinctly declared "That the surrender to the Crown in 1841 was a wise measure, and should have been strictly adhered to by the Indians, as the sale of these Lands would place them in a state of affluence—that the Indians have no right to expect that the Government will comply with their desire to remove indiscriminately from their Lands persons placed upon them (although without proper authority) by the Indians themselves—neither justice nor a due regard to the Indian interests require or would justify such a proceeding"—and in the other it is stated also, that should the Indians require any part of the north side of the River to be reserved from Sale, that they would be expected to give up an equal portion of Lands on the South side of the River, in order that an arrangement might be effected with the Settlers thereon.—These two letters, it is in the evidence of Major Winniett and Dr. Digby, were read by the latter at the request of the former at a public meeting of Settlers in Brantford, as an encouragement for the Settlers to proceed with their improvements,—and to confirm their opinion that they would eventually obtain Deeds for their Lands.

There is no doubt that the Government are morally bound to protect the Settlers, and at least to see that the full claims upon the Lands are discharged before ejection. Precedent, justice, equity, and humanity, demand of the Government this course ;—the claims and rights of myself and fellow-settlers who are resisting the illegal proceedings of the Commissioners, require the investigation of an impartial tribunal, such as has ever been the glory of our noble Constitution. It was this which was guaranteed by Lord Metcalfe's letter of Oct. 28th, 1845, to myself and G. Strong, acting as a Deputation on behalf of the Settlers. This letter states, "1st, That it is not the intention of His Excellency to sanction the removal of the

Settlers without affording to each of them the opportunity of establishing the claims which they may consider themselves to possess, either to the privilege of pre-emption of the Lands occupied by them, or 2nd, *to the value of their improvements thereon.*”

And 1st, as to the opportunity of establishing our claims to pre-emption, the necessary documents to prove this have, after two years earnest application, only just been wrung from Heads of Departments by application to Earl Cathcart, through Mr. Fraser; and then, as to the 2nd point, even if an impartial review of these documents failed to prove our pre-emption rights, Mr. Kirkpatrick's evidence on oath at Newport, proves the value put upon them is just £1 per acre less than they could have been made for, and this is leaving roads, which manifestly are improvements, out of the question.—Our cause is a just one and must ultimately prevail, notwithstanding the unjust attempt which *Head Clerks* and others are making to blind his Excellency and to Burke our claims. Let us patiently and fearlessly await the result.

I remain, Fellow Settlers,

Your's ever faithfully,

F. J. CHESHIRE.

Hamilton, Dec. 16, 1846.

FELLOW SETTLERS,—

Since my last letter to you, I am informed that the Commissioners, Messrs. Clench, Thorburn and Bain, have thought proper to proceed upon the judgments which they delivered at Brantford some time ago against some of you. That they have issued a notice against several of you, requiring you to remove from the occupations or possession of your farms and houses and firesides with your families within the space of thirty days. In the case of Strong and his family, many of you may recollect

that our Counsel, Mr. Fraser, objected to the informations on various grounds, but particularly that the information did not contain the charge direct as specified in the Statute, and did not negative the exceptions therein. The information was sworn to by an Indian. This Indian, however, upon cross examination, admitted that he could not say positively whether they were upon the land in question or not, and that he had not seen them upon the land for months previous to his taking the oath.— The Commissioners having failed to make out a case against the defendants by this witness; produced another Indian who did not understand English, but through the Interpreter, (the former witness,) was understood to say, that he considered himself a party interested in the cause, and that when the Settlers were expelled that it would be for his benefit. It might have been known, without any examination, that the witness was substantially interested in the ejection of the Settlers, without paying them for their improvements. Another attempt was then made to prove the possession by the constable who served the summons, and here the prosecution was closed by the Counsel for the Indian Department. But the Commissioner, Mr. Thorburne, thought that this evidence did not look regular, because it would not support the information upon which the summons was founded, and you all know how, subsequently, by his orders to the constable, the streets of Brantford were scoured for witnesses, but without effect. One witness swore one thing, and another witness swore to another, and many of them declared they knew nothing of the lands in question; in fact there was no case made out for the prosecution to proceed upon. Nevertheless, the Commissioners, without a moment's hesitation, refused to consider the exceptions which were taken by our Counsel, determined under any circumstances; not to be foiled of their prey. If the Commissioners considered there was

nothing in Mr. Fraser's objections, why did they in all subsequent proceedings invariably adopt the mode pointed out by him as the only correct one? and why does their notice contain all the requisites which he pointed out as wanting in the informations? Surely the Solicitor for the Indian Department did not advise them that it was necessary to put the notice in a different legal shape from the information which is the foundation upon which all the subsequent proceedings must rest? It having been done, however, is a clear admission by them, that the information *was incorrect*; and under these circumstances, I would ask, how they could pronounce judgment against the Defendants? For persons who preside over a Court, to act in this way, is to declare that they are ignorant of the first principles of justice, and shows to the world what might be done in poor Canada against the rights and liberties of the people, backed by such an irresponsible night-mare of an administration, as at present rule the destinies of this fine country and brave people. I would tell the Commissioners that this patching and plastering of their work will not do—that the foundation, bad and rotten, (i. e. illegal) any superstructure they may attempt to raise thereon, must fall to the ground. They ought to beware, for the sake of their own characters, how they attempt it, least (however remote they may flatter themselves) the building may eventually fall upon their own heads. There is no possibility of making them feel through their pockets, as in most cases where Justices of the Peace are concerned. They, happen what may, will be indemnified out of that famous budget, Indian Funds! They are paid as Indian Agents!! they are paid also as Commissioners out of Indian Funds!!! and I believe their chief support has been derived for some years past out of those Funds—poor Indian Goose, *what a plucking!!!*

In my former letter, I mentioned the grounds

upon which Mr. Fraser petitioned his Excellency to appoint a new Commission. In his memorial, he states further that although the Act gave the Defendants an appeal to the Vice-Chancellor from the judgment of the Commissioners, that he considered it a cruel mockery of justice to poor persons to drive them to that expensive court in order to undo what ought not to have been done, and that the Defendants sincerely felt, without wishing to reflect upon the Commissioners, that it was hopeless for them to expect a decision in their favor unless some disinterested individuals were appointed to try their causes—persons wholly unconnected with the Indian Department.

His Excellency, however, by and through the advice of his Ministers, declined interfering with their proceedings, although it was quite competent for his Excellency (and common justice required it) to appoint a new Commission to try the disputed claims of these lands. The whole proceedings showed what a farce such a trial must be where the Commissioners are the recognised Agents of one of the parties. It was too much for our Counsel to stand, and he accordingly left the Court under the impression that a new Commission would be granted as requested by him, in his memorial to his Excellency, Earl Cathcart. Before the final cause of Mr. Fraser's leaving Court happened, he called upon the Commissioners to produce certain documents, and official letters, written in the name of the late Governor General, by Mr. Jarvis, in the spring of 1844, in favor of the Settlers upon Indian Land, and especially those who held Indian leases. These letters, or at least two of them (the others called for, many in number, not being forthcoming) were found by Mr. Fraser upon a permitted search on the day of trial, among the papers of the Indian Department at Brantford, held by Commissioner J. B. Clench. I have already given you as far as I could the contents of these two letters. The

Commissioner having refused to allow our Counsel a copy of them, it is out of my power to lay them before you and the public. Several letters were not forthcoming which the Defendants had given the Commissioner notice to produce and which were very much missed by the Defendants, particularly one important letter written by certain of the Settlers to Mr. Jarvis, (and which was certified by the Indian Department to have been lost) who replied thereto as follows, addressed, I believe, to Mr. Stewart :—

“ INDIAN OFFICE,  
“ Kingston, 14th Nov., 1843. } ”

“ SIR,—In regard to those persons who have taken possession of lots of land and made extensive improvements, the right of pre-emption will be extended to them in all cases, where practicable, and in no case will a stranger be permitted to purchase a lot in the possession of another person, but on the express condition of paying the occupant the full value of the improvements thereon. You will confer a favor by *making this generally known to the Settlers*, for I have received information from several quarters *that there are individuals residing along the river who have circulated reports with respect to the sale of these lands calculated to alarm the people*, and indeed to induce them to suppose the Government, at the suggestion of the Indian Department, was disposed to deal harshly with them.

“ I have, &c.,  
(Signed) “ SAMUEL P. JARVIS.”

In the year 1841, Mr. Jarvis wrote as follows to Messrs. C. Stewart, John McCabe, Sullivan Brown, &c. &c. &c. :—

INDIAN DEPARTMENT, }  
Kingston, Dec. 26, 1841. }

“ Gentlemen, I received this morning your



communication dated 20th inst., on the subject of the lands you occupy respectively on the west side of the Grand River, and as soon as the survey now in course by Mr. Kirkpatrick is complete and his report sent in, your claims shall receive full consideration. With respect to the depredations being committed upon the timber, (by a Mr. Smith,) I shall write by this day's post to Major Winniett, and to Mr. Bain to investigate the matter without delay and proceed against the parties.

“ I have, &c.

(Signed) “ SAMUEL P. JARVIS.”

John Davidson, Esq., of the Crown Lands, Office, writes as follows to certain of the Settlers :—

“ CROWN LANDS, DEPARTMENT, }  
Kingston, 24th May, 1842. } ”

“ Mr. S. H. SWAINE, SIR,—In reply to your letter of the 16th inst., I have to inform you, that application to purchase Indian Lands on the Grand River cannot at the present time be entertained, as they must all be inspected and valued previous to a sale being made, under Order in Council—upon return of that inspection the lands will be for sale to the first applicant. It is, however, recommended in that order that all persons reported as Resident Settlers up to the date of that order, be considered as the first applicants, and entitled to pre-emption for the space of six calendar months.

“ I have, &c.

(Signed) “ JOHN DAVIDSON.”

“ CROWN LANDS DEPARTMENT, }  
Kingston, May 17, 1842. } ”

“ Mr. A. LIVINGSTON, SIR,—In reply to a letter, signed by yourself and three others, I have to inform you that the lands on the Grand River have

been recently inspected under Order in Council, and no sales can take place until the valuation has been approved of by His Excellency in Council, when those that have been in occupation for a term of years, and improved, will be considered as having a right to pre-emption. You will be pleased to communicate the above to your neighbors, Messrs. Wm. McDonald, Donald McKenzie, and D. McInnes.

“ I have, &c.,

(Signed) “ JOHN DAVIDSON.”

Besides these letters, two Indian leases were put in by the Defendants,—Strongs. The Commissioners and the Counsel for the Indian Department, attempted to shew that they were given whilst under the influence of intoxication from drink—the contrary of which was duly testified by the witness to the Leases. This I consider as scandalous a part of the proceedings, as any which took place, in as much as the Lease was manifestly to the advantage of the Indian granting it, and as it was well known to every one in Court, that the Indian merely granted a Lease of part of a wild unsurveyed forest, which by the hard and noble industry of the Defendants, has been turned into a highly cultivated and productive Farm, and I fear (unfortunately for the Defendants) has become the envy of some of the more civilized of the Chiefs of the Indians who desire to possess it. I do not wish, however, to attach any blame to those kind-hearted people—they are far more magnanimous and just in their ideas, than many who claim to be their superiors in civilization and christian virtues. Some of them have declared, almost in the words of our late lamented Governor, Lord Metcalfe,—“ That the persons who have Leases from individuals of their Tribes must be let alone, or at all events be bought out again.” Every attempt was made by the

Agents of the Government, backed by the Counsel for the Indian Department, to destroy their just claims, to hold possession of the lands under their Leases, because it is presumed they knew that the Statute excepted persons holding Leases. In fact it had evidently become a personal matter with *one* of the Commissioners, to prove that they had not the right which they claimed, and which the Governor General had clearly recognized. It is quite needless for me to add that all the objections taken by Mr. Fraser, (some of which requires considerable legal research to deliver judgment upon) were instantaneously overruled, and the law Authorities produced to support these objections were actually laughed at. I agree with them that it was quite laughable to suppose that they, with even the Authorities before them could give judgment upon a controverted point of law. But this only shews the necessity of our having a competent tribunal to decide our claims, and it is with the view of obtaining an impartial trial of our rights by a Jury of our Country that we are determined to appeal to the Vice-Chancellor as the Statute directs, and which gives him the power to direct an issue at Law, and which I feel confident he will do. I am by no means confident that our rights have been properly represented to His Excellency—on the contrary, I am of opinion, that Mr. Vardon, (who is one of the Clerks of the Indian Department at Montreal, but who has recently given himself all kinds of unheard of names at least in that Department, and which I hope will not prove burthensome to the Department bye and bye, as these high-sounding names must be backed by proportionate salaries) has directed the whole proceedings against the Settlers. Notwithstanding, however, his apparent anxiety to have the whole Land in question given up for the use of the Indians:—I have been informed that whilst these proceedings were ac-

tually going on to expel the Settlers, who had by great toil and industry for many years, at last acquired support for themselves and families, he was in treaty with a person in Montreal to dispose of part of this very land to a Speculator. I hope the Gentleman, if this is not true—if no offer has been made to him for what is called the "Sour Springs" of the Grand River, or encouraged by him, that he will contradict it. There are persons in possession of these Springs, who have paid the Indian's hard money for their right. As I concluded my last letter, I would conclude this. Let us patiently and fearlessly await the result, we may be dragged by the neck from our Homes, by the Sheriff, as Mr. Vardon said before the trials commenced, and that, that was the justice we would get. Our wives and little ones may be exposed to endure the perils of a Canadian Winter, and thrown destitute upon the world—but the day I hope is not far distant, when the parties who have advised and so cruelly carried out these measures will be brought to the bar of public opinion; that vast archimedean lever, whose fulcrum is the fourth estate, a *Free Press*, which has ever been the scourge of Tyrants, the advocate of the oppressed, which has and does, and ever will move the world. Already the Public is putting his hand to that lever—a Montreal paper gratuitously taking up my former letter to you, in the *Hamilton Gazette*, thus writes—"We repeat, of the justice or injustice of their claims we know nothing; and all we wish the Executive to bear in mind is the necessity of allowing them to continue right or wrong in their habitations until Spring. There is not a person in the Province who would not feel shocked were these unfortunate Settlers to be turned out of House and Home at the commencement of winter, and *it would even be a disgrace to the British Nation were such to occur.*" My next communication will more particularly deli-

neate the doings of the chief actors in such an outrage upon common humanity, which is already doing its work, as your wandering families at this inclement season, and after all the severe sickness you have been exposed to for so many months, too truly can attest. Had the very distinguished Commissioner Thorburn, taken the matter into consideration as he ought, and used the discretionary power according to circumstances" which was given to him by Lord Metcalfe, he would have "recommended the Government to place an hospital upon the spot with the necessary attendants, this would have been more in accordance with the dictates of common humanity." But some men paint their own portraits, others leave them drawn for them, and a combination of both in my next, shall leave you and the public to judge who sat for his portrait to the Great Wizard of the North, when he thus wrote on "Stoicism." Heaven forbid that any process of philosophy were capable so to sever and indurate our feelings, that nothing should agitate them but what arose instantly and immediately out of our own selfish interests! I would as soon wish my hand to be as callous as horn, that it might escape an occasional cut or scratch, as I would be ambitious of the stoicism which would render my heart like a piece of the nether millstone." I sometimes wish when reviewing the hardships, trials, sickness, and great deprivations, we have most of us suffered, that a portion of such stoicism were mine, but it is not, or I could not so fully subscribe myself, Fellow Settlers and Sufferers,

Your's, ever faithfully,

F. J. CHESHIRE.

Hamilton, Dec. 30, 1846.

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In the mean while the arrival of a new Gover-

nor, the Earl of ELGIN, induced our Counsel again to Memorialize the Government on our behalf, as follows:—

*To His Excellency, the Right Honourable Earl of ELGIN and KINCARDINE, Governor General of British North America, &c. &c. &c.*

MAY IT PLEASE YOUR EXCELLENCY,

In the month of September last past, I addressed a Memorial to your Excellency's predecessor in the Government, Earl Cathcart, which is now filed in one of the Public Departments at Montreal, and to which I beg leave to refer your Excellency for a statement of the claims for consideration and lenity, advanced on behalf of certain individuals who have unfortunately under, it is said, some misapprehension of the intentions of the Government, in respect thereto, located themselves upon certain Indian Lands on the Grand River, in the Gore District, in the full belief that these lands would be offered for sale; and that they, as the first Settlers thereon, would be allowed the privilege of pre-emption, or at all events, the full value of their improvements. For a number of years after they had so located themselves, nothing appears to have occurred to disturb this belief; on the contrary letters were written by the Agents of the Government to individual Settlers, assuring them that so soon as the Lands were surveyed and valued that they would be offered for sale, and actual Settlers allowed the privilege of pre-emption, and whether they purchased or not they would be paid for their improvements according to their just value. It is true that certain notices were published, it is believed in a Brantford newspaper, forbidding persons settling upon these Lands, but the Government, at the time of issuing them, had no apparent intention of disturbing those who had already, previous to the notices, located themselves thereon; and the only instance in which steps were taken by the

Government Agents to remove certain of the Settlers, tended to confirm them in this belief, and that the Lands would be for sale, and that they would be allowed the privilege of pre-emption I allude to. Strong's case tried before Major Winniett, then Chief Superintendent of Indian Affairs, at Brantford, who not only dismissed the prosecution, but told the Defendant he might go on with his improvements. This person, who has served his Country for 30 years, and who has brought up a large family, is now about to be deprived of the fruits of many years hard industry of himself and family in the heart of a forest. These lands were actually surrendered to the Government in January, 1841, and subsequently surveyed and valued for the purpose of sale. Certain letters also written in the Spring of 1844, by order of the late Lord Metcalfe, then Governor General, and read at the request of Major Winniett, Chief Superintendent of Indian Affairs, at a public Meeting held in the Town of Brantford, and composed in a great measure of these very Settlers, which seemed to guarantee them these privileges. In one of these letters his Lordship says, "That the surrender to the Crown in 1841, was a wise measure and should have been strictly adhered to by the Indians, as the sale of these Lands would place them in a state of affluence, that the Indians have no right to expect that the Government will comply with their desire to remove indiscriminately from their Lands persons placed upon them (although without proper authority) by the Indians themselves, neither justice nor a due regard to the Indian interests require or would justify such a course." Your Memorialist further sheweth that a great many of those persons whom the Commissioners are seeking to eject, hold Indian leases of the Lands they occupy. It is only very recently, your Memorialist believes, that the Government determined to reserve this large tract of

Land, comprising about 65,000 acres, for the sole use of the Indians for Agricultural purposes. The object proposed is to make farmers of the Red-men. Your Memorialist believes your Excellency is too well informed in regard to the Indians and their affairs on this Continent, to venture any opinion of his own respecting this renewed experiment about to be made to induce the Indians to adopt the habits and customs of their white brethren. Your Memorialist, however, as far as his own individual experience enables him to judge, would beg leave to remark that he fully concurs in the views and opinions of almost, if not all, your Excellency's predecessors in the Government of Canada. In the meantime, this reservation of land is doing incalculable mischief to the prospects of the white Settlers, who are settled in the Townships adjoining it—having embarked a great deal of capital and labour, not only in clearing the land, but in erecting mills, warehouses, &c., calculating no doubt upon these lands being brought into the market and settled by Agriculturists. Nothing would induce your Memorialist to say one word against the present scheme for civilizing and making agriculturists of the Indians, but the most solemn belief that it must prove injurious, nay ruinous, not only to the moral character of the Indians, but even so in a pecuniary point of view. Your Memorialist believes that the land which they now individually occupy is quite sufficient for their wants. It is quite notorious in fact that so far from increasing in number "their race is melting like snow before the sun." The course pursued at present in managing the Indians and their property, cannot possibly reflect credit upon the Government. The destitution of the Indians is extreme in many cases, and they are no doubt forced to support themselves in a great measure by voluntary contributions, which they receive from the whites, and thus they are frequently kept in

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the most slavish and disgusting dependence upon persons, many of whom are mere adventurers, and know but too well how to take advantage of their necessities. Your Memorialist in concluding this part of his observations upon the Indians, would beg leave to remark, that the simplest and most profitable way of managing their property would be to sell the whole of their land, except what is at present occupied by themselves, and invest the proceeds in safe and profitable securities. The revenue derived from which your Memorialist conceives would be quite sufficient, joined with their own industry, to make them comfortable and would, your Memorialist believes, afford a fund to buy more lands hereafter, should it be required, while on the other hand, the proposed reserve must for ever be unprofitable to the pure Indian race, and its management must necessarily entail a vast expense upon their already diminished funds, depriving them of all prospect of attaining any support therefrom. Your Memorialist believes that an investigation will be called for by the Provincial Parliament at its next Session, when it will fully appear that, should the present system continue, it may be necessary in a few years hence to bring these lands into market to meet the expenses of the Department. Your Memorialist has no doubt but this must ultimately, if not shortly, happen; supposing it should not be necessary to increase the funds of the Department in that way, because the evil arising to the Settlers surrounding this reservation or block of uncultivated land in the very heart of some of the finest settlements in Canada, will soon compel the Settlers to take active measures to obtain their cultivation or sale, and to overcome any opposition which may be made by the Indian Agents, joined by a very few other interested parties, who are now inducing the Indian Chiefs to withhold their consent to remove from the settlement of the

whites, as desired by the Government. Your Memorialist believes the proceedings which are now being taken by the Commissioners to eject the Settlers under the Provincial Statute, 2nd Victoria, chap. 15, to be illegal, and that the lands in question having been once ceded, the Commissioners can have no jurisdiction. Your Memorialist contends also that the Settlers have not been fairly dealt with ; that the proceedings of the Commissioners have been hasty, injudicious and contrary, from the beginning to the instructions of the late Lord Metcalfe, the neglect of obedience to which, has truly been the cause of all the difficulty which has arisen in the matter between the Commissioners and the Settlers. Your Memorialist has reason to complain that the representations which he made in his professional calling, as the chosen advocate of the Settlers, by memorial to Earl Cathcart, then administering the Government of this Province, did not receive that consideration which they were entitled to, and your Memorialist subsequently requested that his memorial and documents relating thereto, should be forwarded to Her Majesty's Government in England, to which request your Memorialist is still without reply. Your Memorialist desired on behalf of the Settlers that the Commissioners should before commencing proceedings against these poor, but industrious people, to drive them and their families from their homes, have a fair investigation, such as was promised by the late Lord Metcalfe, to every individual Settler of their claims to the privilege of pre-emption, and to the value of their improvements, Your Memorialist still claims on behalf of the Settlers, the fulfilment of the promise, and which Your Memorialist conceives the Government are morally bound to carry out.

The Report of Mr. Thorburn, one of the Commissioners upon which all subsequent proceed-

ings seemed to have been based, was extremely objectionable, in many respects, Your Memorialist has not been able to obtain a copy thereof, and copies of many other documents, which are essentially necessary to a fair investigation of the claims of Your Memorialist's clients, but from what Your Memorialist gathered of the Report from other documents, he at once perceived that the Commissioners had overlooked the virtual promises of the Government to the Settlers. In this report, a great number were to be excluded, altogether, from any remuneration for their improvements, and were simply to be ejected. Your Memorialist candidly pointed out the injustice and difficulty of proceeding in this way, but his representations were not met in the same spirit that they were intended.

The difficulty, however, soon became apparent to the Commissioners themselves, who were glad to recommend the petition of certain of the Settlers for a re-consideration of their claims, which the report of Mr. Thorburn had entirely precluded them from hoping for. If this had been made known to all the Settlers through me, upon whom they rested the defence of their claims, or even by a general Public Notice, the Government would have been spared a vast deal of trouble, and the Indians a great deal of expense. Some of Your Memorialist's clients were advised, without consulting Your Memorialist, or letting him know what they intended doing, or without even consulting the other Settlers, to withdraw themselves from the rest, and to petition the Government as above stated, for a reconsideration of their claims, in which petition they denied all right or claim whatever to payment for their improvements, and by every possible mode of expression, they endeavoured to shew the Government that they considered their claims unfounded, and consequently, the Government were to infer, that the rest of the claimants had just about as much

right as they had. The leader of this Memorial, who was one of the chief movers in the opposition to the proceedings of the Commissioners, was soon found out to have been in great favour with one or two of them, notwithstanding his apparent opposition, and his Memorial was heartily seconded by them, and the Government were immediately pleased to grant their request. Comment upon such proceedings is quite unnecessary. Your Memorialist begs leave humbly to submit for your Excellency's consideration that the claims of some of the Settlers are entitled to more consideration than others.—1st, Those of them who hold under Indian Leases. The late Lord Metcalfe's letter, an extract of which is herein contained, in reference to this subject, Your Memorialist conceives to be a sufficient acknowledgment of the rights of parties so circumstanced, and a moral guarantee that so long as these Indian Leases were in force, they would not be disturbed in the quiet possession of the land they occupied by such right, and the Indians themselves are averse to disturb this class of Settlers, and say, justly, that they ought to be bought out.—2nd. Those of them who have made permanent and valuable improvements upon the land, and who have contributed all their energies and resources for a number of years for that purpose, and whom it was recommended in the first instance, in the Commissioners report should be paid the full value of their improvements. This, as Your Memorialist is informed, and believes, has not been done in any one case. It was sworn upon the trial of one of the Settlers by Mr. Kirkpatrick, who valued the clearances, that they would cost 15s or 20s more per acre, than he had valued them at. Almost certain hopes of their obtaining titles to their lands, were held out to this class of Settlers; also, 3rd, The last class of Settlers are those who settled subsequent so January, 1844, and who were

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l, simply, to be ejected without any remuneration  
 n whatever, for their improvements, and it appears to  
 n have been actually contemplated to turn these poor  
 r creatures to the number of 400 or 500 out of house  
 i and home, just as the winter was about to set in,  
 y and Your Memorialist cannot help observing, as a  
 y most extraordinary fact, that this cruel act was to  
 n be perpetrated without the most distant prospect of  
 - benefiting any one by the proceeding.

f For this class Your Memorialist claimed the  
 1 same consideration offered for the improvements  
 1 of the 2nd class. This, Your Memorialist believes  
 - has been at last acceded to, in some cases, although  
 ) Your Memorialist has received no notification  
 1 whatever of it, either from the Government or the  
 3 Commissioners. In the meantime, the parties had  
 5 been put to so much trouble and expense by the  
 7 Commissioners, that many of them declined avail-  
 9 ing themselves of the offer, and preferred having a  
 full and fair investigation of their claims, with the  
 chance of losing the remainder of the benefits of  
 their labour, bestowed upon the land. It is con-  
 tended for all, that the privilege of pre-emption should  
 still be kept open for the Settlers in case the lands  
 should hereafter (which it is believed they will) be  
 offered for sale, Your Memorialist is quite certain,  
 that if all these claims had been wisely conceded,  
 that the whole of the Settlers would have long  
 since removed peaceably and quietly off the lands,  
 unless those who might have obtained under pecu-  
 liar circumstances, a special license from the Go-  
 vernment, to remain during the winter. The Indians  
 would have been gainers by this arrangement, inas-  
 much as the expense already incurred in carrying  
 out the measures for ejecting the Settlers, has al-  
 ready cost them more than the extra 15s. per acre  
 would have cost them, if paid to the Settlers. Your  
 Memorialist believes that unless the lands are sold  
 very soon, the sum of £15,000 which it has cost the

Indians to pay the claims of the Settlers and other expenses will be totally lost. The improvements of the Settlers will in the course of three years become in a worse state for cultivation, than when they were in their original wild state. It is said that the Indians are prevented by a few interested parties, from understanding what their real interests are. All they know is, that they surrendered, and the Government sold large tracts of their lands; but, as they say, they never derived one dollar's benefit from the transaction, and they conclude, that it would be the same if the rest were sold. £25,000 of their money was invested in Grand River Navigation Stock, which it is believed does not pay expenses, far less give any return. An application, Your Memorialist has been informed, was made recently for a loan of £10,000, out of their Funds for an equally unprofitable investment. If such be the mode of managing their money, it is no wonder that they exclaim against any further sale of their property. The manner it is said, in which the assent or dissent of the Indian Chiefs is obtained to any proposition for a loan or otherwise, is through the dollar talisman, and it has been said, that when any business is to be done with the Chiefs, that they expect to be paid a sum of money when called upon, to support any measure. Your Memorialist does not vouch for the truth of this, but that such has been the common expressed opinion of parties living in the neighbourhood of these Indians for years past.

Your Memorialist has had some conversation with Captain Anderson, head of the Indian Department, at Toronto; formerly in charge of the Indians, settled on the Manitoulin Islands, Lake Huron, when he informed Your Memorialist, that he had for a number of years been recommending the entire removal of the Indians to Lake Huron, and that the Government were favourably disposed to encourage

their removal, but that the great difficulty was in getting the consent of the Indians themselves. He further remarked, to Your Memorialist, that the Indians who are about being removed from the River Credit to Owens' Sound, and who have been for a number of years undergoing the process of what is called civilization, and congregated together in a small village for that purpose, were a great way behind their brethren settled on the Manitoulin Islands, in the arts of civilization.

That they being entirely removed from obtaining intoxicating liquors, had applied themselves diligently to acquire the mechanical arts most necessary to supply the immediate wants of their own tribe.

That they were living in the greatest abundance ; the finest fishery in America, being at their own disposal, and the land being well adapted for raising every kind of farm produce, in the knowledge of which science they were very far advanced beyond those of their brethren, that he had met with in this part of Canada. He further informed Your Memorialist, that he was greatly alarmed to find, that through some secret influence at work, which he was unable to find out, the Indians for whose removal every preparation had been made, were about to withdraw their consent, and place the Government in a very embarrassing position. (Your Memorialist believes the Government had already disposed of part of the property they were about to leave), and that he was then on his way to the settlement to hasten their departure by every means in his power.

Your Memorialist would not wish it to be supposed that he means to find fault with any arrangement which Your Excellency's Government may consider proper to be tried for the purpose of civilizing these remnants of their tribes, but he would offer against this experiment, the past experience

of two of your Excellency's predecessors in the Government, viz. Sir Francis Bond Head, and the late Lord Sydenham, of the hopelessness of the attempt and which was communicated by the former in a despatch to the Home Government, directed to Lord Glenelg, then Colonial Secretary, dated 20th November, 1836, an extract from which Your Memorialist begs to submit for your Excellency's perusal.

“ During my inspectional tour of the Province, I visited with one or two trifling exceptions, the whole of the Indian Settlements in Upper Canada, and in doing so, made it my duty to enter every Shanty or Cottage, being desirous to judge with my own eyes of the actual situation of that portion of the Indian population which is undergoing the operations of being civilized. Whenever, or, wherever, the two races come into contact with each other, it is sure to prove fatal to the red men. “ The red men ” lately exclaimed a celebrated Miami-Cacique, “ are melting like snow before the sun.”

However brave, for a short time he may resist our bayonets and our fire-arms, sooner or later he is called upon by death, to submit to his decree. If we stretch forth the hand of friendship, the liquid fire it offers him to drink, proves still more destructive than our wrath.

And lastly, if we attempt to christianize the Indians, and for that sacred object, congregate them in villages of substantial log-houses, lovely and beautiful, as such a theory appears, it is an undeniable fact to which, unhesitatingly, I add my humble testimony, that as soon as the hunting season commences, the men (from warm clothes and warm housing, having lost their hardihood,) perish, or rather, rot in numbers, by consumption, while as regards their women, it is impossible for any accurate observer to refrain from remarking, that civi-



lization in spite of the pure honest and unremitting zeal of our Missionaries, by some accursed process, has blanched their Babies-faces, in short, our philanthropy, like our friendship, has failed in its professions; producing death by consumption; it has more than decimated its followers, and under the pretence of eradicating from the female heart the errors of a Pagan Creed, it has implanted in their stead, the germs of Christian guilt. What is the reason of all this. Why, the simple virtues of the red aborigines of America, should under all circumstances fade before the vices and cruelty of the old World, is a problem which no one among us is competent to solve, the dispensation is as mysterious as its object is inscrutable. I have merely mentioned the facts, because I feel that before the subject of the Indians in Upper Canada can be fairly considered, it is necessary to refute the idea which so generally exists in England, about the success which has attended the christianizing and civilizing of the Indians, whereas, I firmly believe every person of sound mind in this country, who is disinterested in their conversion, and who is acquainted with the Indian character will agree.

1st. That an attempt to make farmers of the red men has been generally speaking a complete failure.

2nd. That congregating them for the purpose of civilization has implanted many more vices than it has eradicated, and consequently,

3rd, The greatest kindness we can perform towards these intelligent, simple-minded people, is to remove and fortify them as much as possible from all communication with the whites.

Having concluded the few prefaratory observations I was desirous to make, I will now proceed to state what negotiations I have already entered into with the Indians, and what is my humble opinion of the course we should adopt, as regards

their presents, and the expenses of the Indian Department.

At the Great Manitoulin Islands in Lake Huron, where I found about 1,500 Indians of various tribes assembled for their presents, the Chippéwa and Ottawas, at a great Council, held expressly for that purpose, formally made over to me 23,000 Islands. The Saugeen Indians also voluntarily surrendered to me a million and a half acres of the very richest land in Upper Canada, (For the details attending these Surrenders, see my despatch to Your Lordship, No. 70.)

On proceeding to Amherstburgh, I assembled the Hurons, who occupy in that neighbourhood a hunting-ground of rich land of six miles square, two-thirds of which they surrendered to me, on condition that one of the two-thirds should be sold, and the proceeds thereof invested for their benefit. The Moravian Indians, with whom I had also an interview, have likewise agreed for an annuity of £150 to surrender to me about six miles square of black rich land, situated on the banks of the Thames River.

I need hardly observe that I have thus obtained for Her Majesty's Government from the Indians, an immense portion of most valuable land, which will undoubtedly produce at no remote period, more than sufficient to defray the whole of the expenses of the Indians, and Indian Department in this Province.

On the other hand, as regards their interest, my despatch, No. 70, will explain the arguments I used, in advising them to retire or fall back upon the Manitoulin and other Islands in Lake Huron, the locality being admirably adapted for supporting them from the white men; still it may appear that the arrangement was not advantageous to the Indians, because it was of such benefit to us, but it must always be kept in mind, that however useful

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rich land may be to us, yet its only value to an Indian, consists in the game it contains, he is in fact, Lord of the Manor ; but it is against his nature to cultivate the soil, he has neither right nor power to sell it. As soon, therefore, as his game is frightened away, or its influx of emigration cut off, by the surrounding settlement of the whites, his land, however rich it may be, becomes a "rudis indigestaque moles" of little value or importance, and in this state, much of the Indian property in Upper Canada at present exists.

For instance I found 16 or 18 families of Moravian Indians, living on a vast tract of rich land, yet from absence of game, almost destitute of everything, several of the men drunk, nearly all their children half-caste, the high road through their territory almost impassable, the white population exasperating their indolence, and entreating to be relieved from the stagnation of a block of rich land which separated them from their markets as completely as if it had been a desert.

The above picture (which is a very common one), will I think sufficiently show, that however desirous one may be to protect the Indians, and I hope none feels for them more deeply than myself, yet practically speaking, that the greatest kindness we can do them, is to induce them as I have done, to retreat before what they may justly term the accursed progress of civilization, for as I have stated, the instant they are surrounded by the white population "The age of their chivalry has fled."

The Lieutenant Governor of the Province may protect them from open violence, but neither he nor any other authority on earth, can prevent the combination of petty vices, which, as I have already explained, are as fatal in their operations, as the bayonet itself.

It is impossible to teach the Indians to beware of the white man, for ~~it seems~~ to be the instinct of his

untutored nature, to look upon him as his friend, in short, his simplicity is his ruin, and though he can entrap and conquer every wild beast in his forest, yet invariably, he becomes himself the prey of his white brother.

For the foregoing reason, I am decidedly of opinion, that Her Majesty's Government should continue to advise the few remaining Indians, who are lingering in Upper Canada, to retire upon the Manitoulin and other Islands in Lake Huron, or elsewhere, towards the North-west."

And Lord Sydenham writes the Home Government as follows :—" After minute observation, I am sorry to observe, that the attempt to bring civilization to bear upon the Indian Tribes, has proved a total failure."

And Your Memorialist believes, that the Indians are in no degree changed in their mode of life or character, since these observations were made, a very few excepted, and that no disinterested individual of common understanding, who is acquainted with their present habits, would approve of such an experiment being tried. Your Memorialist, from the observations which he has been able to make, considers the hope of turning them from the habits of their forefathers, to which they have from their infancy been accustomed, and making them rivals in agriculture to their white brethren, in the manner prescribed, as utterly fallacious. If an experiment must be tried, it should not be done at the expense and suffering of so many of Her Majesty's Subjects, whose welfare the Settlers still believe, are equally deserving the regard and consideration of Her Majesty's Government, with those of any other class or colour.

Wherever the Indians are settled in the neighbourhood of the Whites, there are always some of the latter, who subsist entirely upon what they make out of the Indians, by trading with them for

Tobacco and Spirits, and by the influence of the latter article, often obtain a great command over them. These persons are among that class who wish to keep the Indians, and are most interested in keeping them in their present locations. The Government heretofore, have never acted with that promptness and vigor in matters relating to the Indians, so as to make it appear to every one that Government as the guardian of the Indians, were determined to carry out those measures which were most beneficial for them, and that any undue interference with these arrangements, either directly or indirectly through the Indians themselves, would not be permitted, and would not in any degree alter the determinations of the Government; and further, that all the Agents under the Government, would be expected to do their very utmost to see the wishes of the Government in this respect carried out. The Government have assumed the responsibility of Guardians to the Indians and their Affairs, and no assent or dissent which they can give to any loan or transaction, can in any degree lessen that responsibility which attaches as such Guardians. The surrender of the lands by the Six Nations of Indians to Government for the purpose of Sale, in 1841, reserving only a very small tract of land, was characterized by Lord Metcalfe, as a wise measure, and one which ought to have been strictly adhered to by the Indians. Your Memorialist cannot see why it is really for the benefit of the Indians, the Government do not act upon this Surrender, and carry out the terms of it. To keep these remnants of their tribes, lingering upon the borders of White Settlements, with which they are surrounded, Your Memorialist believes is exposing them to certain degeneracy, disease and death, and whilst this dreadful work is going on to the great scandal of the country, and after the Tribes are far more than decimated, It cannot be much gratifica-

tion to the Philanthropist to point to every twentieth or fifteenth man of the Tribes, and say we have civilized them and made them Agriculturists. But on scrutinizing this twentieth or fifteenth man, it would appear that he had very little Indian blood in him, and that amalgamation alone, had saved that little from being buried in the dust. Your Memorialist does not believe that this is an exaggerated picture of what will take place, if the Indians are permitted to remain in their present locations to the great scandal of the Country, and reproach of the Government. Your Memorialist begs leave to annex for Your Excellency's perusal, certain printed documents which were published in the *Hamilton Gazette*, of this City, containing, it is believed, a true statement of the proceedings taken by the Commissioners, against the Settlers on these lands. Your Memorialist prays Your Excellency to stay these proceedings, until Your Excellency has had time to enquire into the rights of the Settlers, who are as loyal and good Subjects as any in Her Majesty's Dominions. There is not a disinterested man in the whole Country who would not sign a Petition to Your Excellency to that effect. The Commission was issued by the late Lord Metcalfe, who understood the subject, and desired a fair investigation, but it was not acted upon, until after his departure, some years after the Commission was given out. The Settlers do not wish to array themselves against what they believe to be the desire of the Government—they depend upon the promises of the Government through its Agents, and of the late Lord Metcalfe, whose commands they feel quite sure Your Excellency will not permit to be overlooked in this matter by the Commissioners. Your Memorialist would further submit for Your Excellency's consideration, that if they really were trespassers (which is doubted) when they settled upon the lands, it was the duty

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of the existing Authorities, to have seen that they had warning of the trespass, as soon as they began clearing, and that on persevering in their operations, they should have immediately been served with a writ of ejectment. An instance or two of this sort would have made sufficiently plain, what was the real intentions of the Government, but in fact, their whole previous course of action before these proceedings, had been rather to invite Settlement than otherwise.

Your Memorialist believes that no impediment to the ejectment of the Settlers, if it shall be so determined by Your Excellency, or injustice to any one can arise, or extra costs be incurred from staying all proceedings for a short time, until Your Excellency has had time to consider the accompanying documents, and to make known your Excellency's views and opinions on the subject, to the parties interested. And Your Memorialist would therefore humbly suggest to Your Excellency, that an immediate notice be given, through the Indian Department to the Commissioners, and their Solicitor to that effect.

And Your Memorialist shall ever pray, &c.

(Signed)

DOUGLAS FRASER.

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### GROUNDS OF APPEAL.

The Settlers appealed to the Court of Chancery, against the decision of the Commissioners, for the following, among other reasons:—

1st, Because Petitioners hold the said lands under and by virtue of Indian Leases, and persons holding under such Leases, are excepted from the operation of said Statute.

2nd, Because the Commissioners by whom the said convictions weremade, were the recognized

Agents of the parties interested in the said convictions.

3rd, Because the informations on which said convictions were founded, were in many respects informal and incorrect, and in particular, they did not contain the charges direct, as specified in the Statute, and did not negative the exceptions contained therein.

4th, Because the evidence adduced at the pretended trials, was not sufficient to support the informations, and in particular, no evidence was adduced to prove that your Petitioners were in possession of said lands, when the informations were sworn to, and because the evidence is in many other respects, imperfect, partial, and unfairly set forth.

5th, Because the witnesses produced and examined on behalf of the Prosecution, were interested and incompetent parties.

6th, Because certain documents in possession of the Commissioners, and for the production of which they received notice, were withheld by them at the trial.

7th, Because the convictions ought to have set forth the evidence on which they were founded, pursuant to the Statute.

8th, Because the proceedings of said Commissioners, are otherwise illegal, informal, and incorrect.

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CIVIL SECRETARY'S OFFICE, }  
 Indian Department, May 8, 1847. }

SIR,—I am directed by the Governor General to acknowledge the receipt of your Memorial on the subject of the removal of certain Squatters from the Six Nations Indian Reserve, and to inform you that as the decision of the Commissioners on this point, has been confirmed by the Vice-Chancellor,



at is not in His Excellency's power to comply with your petition.

With reference to the observation contained in the latter part of your Memorial, in respect to the plans sanctioned by the late Lord Metcalfe, for the location of the Indians, I am directed to remark, that His Excellency would be very unwilling to depart from these arrangements on the assumption, that the Indians are incapable of Civilization and improvement.

I have the honor to be, Sir,

Your obedient servant,

(Signed) T. CAMPBELL, MAJOR,  
*Civil Secretary.*

D. Fraser, Esq.

The above short and very unsatisfactory answer, seems to be based upon the opinion, that the legal and moral claims which the Settlers have to the consideration of the Government, for the improvements, &c., were fairly tried in the Court of Chancery, and that the plan for the expulsion of the Whites, and location of the Indians, was sanctioned by Lord Metcalfe. Such, however, is not the case, and this is a clear perversion of His Lordship's views being diametrically opposed to it, for says he—"neither justice, nor a due regard to the Indians interest, require or justify such a proceeding." The Vice-Chancellor said, that the Statute did not give him the power to decide against the Crown—shewing that there is one law for the Crown, and another for the people! He said he would not interfere, unless the appellants could produce Patents for the lands, although the Statute alludes not to Patents, but does except persons holding under a *Location* from Government. It was argued by our Counsel, Mr. Fraser, that no particular words were necessary to make a power of location, that it

\* See Page 21.

was quite sufficient, if the parties had in writing from the Government or its Agents, authority to remain on the lands and continue in making improvements thereon. The Vice-Chancellor refused to hear our Counsel any further, but stated to him that all these points could be fully gone into in a Court of Common Law, where they might be brought by bringing actions against the Commissioners for trespass, in case they had no jurisdiction, and had acted beyond their Authority and otherwise informally and contrary to the Statute.

From the foregoing, will be gathered a few plain and startling Facts.

Fact 1st, A Surrender of these lands see page 7; to the Government, for the purpose of Sale—designated by Lord Metcalfe, p. 4, as “a wise measure.”

Fact 2nd, A survey and valuation of them proceeded with, and Letters written, that actual Settlers would have right of pre-emption, p. 14.

Fact 3rd, Act 2nd Vic. ch. 15, which was passed for the protection of “The *unsurveyed* Lands of the Crown, or such Indian Lands for the cession of which, to Her Majesty, *no agreement* hath been made with the Tribes occupying the same,”—so perverted as to remove Fact 1 and 2.

Fact 4th, Honest, loyal, industrious Emigrants, from the dear old Island—their wives and little ones in the midst of most severe sickness, and privations, and in the face of Fact 2, cast forth to the world, to make room for the Credit Indians, who have nothing to do with the land except as purchasers.

These few Facts will lead to others, shortly to be set forth, when some Grand doings on the Grand River, will be more particularly delineated by Fellow Settlers, Your's ever faithfully,

F. J. CHESHIRE

Hamilton, May 20, 1847.

