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PRINCE EDWARD ISLAND.

No. 16.

FURTHER CORRESPONDENCE

RELATIVE TO THE

LAND TENURE QUESTION.

(In continuation of [C.–1487] April, 1876.)

Presented to both Houses of Parliament by Command of Her Majesty.
February 1881.

LONDON:
PRINTED BY GEORGE EDWARD EYRE AND WILLIAM SPOTTISWOODE,
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TABLE OF CONTENTS.

Serial No.	From or to whom.	Date.	Subject.	Page.
1	Gov. Gen. the Earl of Dufferin.	May 26, 1876 (Rec. June 6, 1876).	Forwarding copy reserved Bill of the legislature of Prince Edward Island to amend the Land Purchase Act of 1875," together with a Memo. by the Attorney-General.	1
2	The Honble. S. Ponsonby Fane.	June 19, 1876	Informing that the Colonial Government have purchased and paid for his property in Prince Edward Island at the award price.	7
3	Gov. Gen. the Earl of Dufferin.	July 27, 1876 (Rec. Aug 8, 1876).	Forwarding copy of report of Privy Council concurring in a Memo. by the Chief Justice advising disallowance of the Prince Edward Island reserved Bill to amend the Land Purchase Act, 1875; also copies of documents received from landed proprietors protesting against the bill.	7
4	Ditto - -	April 4, 1877 (Rec. April 19, 1877).	Forwarding copy, judgment, and official report in the case of the Appeal of Miss Sulivan under the Prince Edward Island Land Purchase Act of 1875.	16
5	To Gov. Gen. th Marquis of Lorne.	Aug ust 16, 1880	Requesting to be furnished with a full report of the proceedings under the Prince Edward Island Land Purchase Act, 1875, with a view to presentation of same to Parliament.	48
6	Gov. Gen. the Marquis of Lorne.	November 23, 1880 (Rec. Dec. 10, 1880).	Forwarding copy of a full report of the proceedings under the Prince Edward Island Land Purchase Act of 1875.	49

No. 1.

GOVERNOR GENERAL THE EARL OF DUFFERIN, K.P., K.C.B., to the RIGHT HON. THE EARL OF CARNARVON. (Received June 6, 1876).

MY LORD, Government House, Ottawa, May 26, 1876.

I HAVE the honour to enclose for your lordship's information a copy of a letter addressed to the Secretary of State for Canada by the Lieutenant Governor of the Province of Prince Edward Island, submitting for my consideration an attested copy of a reserved Bill passed in the late session of the Legislature of that province, entitled "An Act to amend the Land Purchase Act of 1875," together with a memorandum by the Attorney General assigning reasons for passing the measure.

I have &c.

The Right Honourable the Earl of Carnarvon, &c. &c. &c. (Signed) DUFFERIN.

Enclosure 1. in No 1.

The LIEUTENANT GOVERNOR, Prince Edward Island, to the SECRETARY of STATE FOR CANADA.

Province of Prince Edward Island, Government House,

SIR, May 12, 1876.

I HAVE the honour to transmit herewith for the consideration and approval of His Excellency the Governor General, an Act passed in the late session of the Legislature of this Province, entitled "An Act to amend the Land Purchase Act of 1875," in triplicate, sealed and certified in the usual manner, and accompanying it, are the reasons, in duplicate, assigned by the Attorney General for its passing.

* * * * * *

The Act amending the Land Purchase Act, 1875, was reserved by me for the signification of His Excellency's pleasure thereon.

* * * * * *

I beg respectfully to call His Excellency's attention to the Attorney General's report, and to his reasons therein stated for the passing of the Act amending the Land Purchase Act, 1875, in which I concur, and which appear to me so pertinent and cogent, and I think so clearly show how necessary its provisions are to the effectual working of the Act alluded to, as to call for no particular observations on my part, beyond expressing my hope that it will receive His Excellency's favourable consideration.

* * * * * *

The Land Commissioners Court, standing adjourned to the 1st day of July next, it is very desirable to know His Excellency's pleasure as regards the Act amending the Land Purchase Act previous to that period.

* * * * * *

I have &c.

The Hon. the Secretary of State, Ottawa. (Signed) R. HODGSON, Lieut. Governor.

Enclosure 2. in No. 1.

Attorney General's Office, Charlottetown, Prince Edward Island, May 6, 1876.

REPORT of Attorney General setting forth reasons for the passing of the Act to amend "The Land Purchase Act, 1875."

This Act was passed by the Legislature of this Province last session for the purpose of removing doubts as to the meaning and construction of some of the provisions of "the Land Purchase Act, 1875," and to extend its powers.

By the 28th section and subsections of said Act, it is provided that the Commissioners appointed thereunder in estimating the amount of compensation to be paid to a proprietor for his estate should take into consideration the price at which other proprietors had heretofore sold their lands to the Government, the number of acres under lease, the length of leases, the rent reserved, the arrears, the years over which they extend, and the probability of their being recovered, the number of acres unleased, and their value, the gross rental actually paid for the previous six years, with the expenses incident to their collection, the number of acres held adversely, the reasonable probabilities of the proprietor sustaining his claim against squatters, and the expenses attending thereon, the performance or nonperformance of the conditions in the original grants from the Crown, the effect of such nonperformance, and how far the several despatches from the English Colonial Secretaries to the Lieutenant Governor of this Island or other action of the Crown or Government have operated as waivers of any forfeitures, the quitrents reserved in the original grants, and how far the payments of the same have been waived or remitted by the Crown.

Proceedings have been taken in many cases under "the Land Purchase Act, 1875," by the Commissioner of Public Lands for the purchase of the estates of proprietors, and awards have been made by the Commissioners appointed to adjudicate thereon. The awards made in those cases adjudicated upon by the Commissioners, of whom the Right Honourable Hugh C. E. Childers was chairman, were on the face of them silent as to the matters set forth in the section 28 and its subsections, although, in fact, they were as fully investigated and enquired into by the Commissioners as the nature of the several cases would permit of, and were taken into their consideration in estimating the value of the lands. This section was looked upon and construed as merely directory of the matters they were to consider in forming their conclusions as to the value of the proprietors' estates.

It never was contemplated as enacting matters which the Commissioners should be bound specifically to set out on the face of their awards; such a construction as that would operate to defeat the object of the Act entirely, inasmuch as no specific award could be made on some of the points, such, for instance, as the boundaries of the land held by each squatter, without endless trouble and expense.

The awards were drawn in general terms, simply stating the sum awarded to the proprietor, giving no description of the land nor the acreage, and making no reference to the matters mentioned in section 28.

A large majority of the proprietors whose estates were thus awarded for have not appealed from the awards, but the decision of the Supreme Court has thrown doubts upon the validity of these awards, which doubts it is essential should be removed. Applications were made in two cases on behalf of the proprietors (Miss Sulivan and the Honourable Ponsonby Fane) to restrain the public trustee from executing a conveyance of their estates under section 32 of the main Act, and to set aside the awards on the grounds that they did not expressly find and determine on their face the matters mentioned in said section 28 and subsections, and that they were uncertain inasmuch that they did not describe the lands by metes and bounds, nor give the acreage.

The Supreme Court of this Province has decided in favour of these objections, and has quashed the awards in both of the cases argued before them.

The Commissioner of Public Lands has appealed Miss Sulivan's case to the Supreme Court at Ottawa; negotiations for a peaceful settlement of the Fane estate are pending. I have no hesitation in stating that the intention of the Legislature was that the facts and circumstances set forth in the said section 28 and subsections were merely to be taken into consideration by the Commissioners in valuing the land and not that the finding on each fact and circumstance should be specifically set forth in their awards.

Indeed it would seem from the very matters themselves that they were intended more as guides to the Commissioners in making their awards than subjects for any specific finding, such, for instance, as the probabilities of proprietors recovering land from squatters, and the effect of despatches from the Colonial Office relative to the performance and nonperformance of the conditions under which this island was originally granted away by the Crown.

For the purpose of carrying out the intention of the Local Legislature, this Act provides that no awards heretofore made or hereafter to be made shall be void by reason of the said facts and circumstances not being expressly found in such awards, but still retains to the Supreme Court the power of remitting them back to the Commissioners in cases where they do not contain descriptions of the estates, and also power to restrain the public trustee from executing a conveyance of such estates until a description shall be settled by the Court.

It also extinguishes all quitrents and arrears thereof due on all estates adjudicated on, and releases the proprietors from all liability on account thereof.

The Act also makes provision to meet the case of James F. Montgomery, Esquire, who made an application to the Supreme Court to have the award in his case remitted back to the Commissioners to correct an alleged omission. It appears that between the time of making the award and the order to remit it back Mr. Childers, the Commissioner appointed by his Excellency the Governor-General resigned his position and left this Province; doubts were consequently entertained whether the Court, as constituted after that gentleman's vacancy, had been filled up, would be competent to review the matters taken into consideration by the Commissioners who made the award.

The Act gives Mr. Montgomery power to appoint a new Commissioner, and provides for the mode of procedure; it also empowers the Commissioners, if they think fit, to make a new award, and they are not to be tied down to the sum named in the award so remitted to them. These provisions and powers are not to be confined to Mr. Montgomery's case, but are to be general in their application, and are intended to apply to any similar case that may arise in working out the Land Purchase Act.

The Act also makes provisions to meet the case of the estate of John Winsloe, a lunatic.

The Master of the Rolls declined to appoint a Commissioner to act on behalf of the proprietor, deciding that the provisions of the Land Purchase Act did not provide for such a case.

This Act supplies this defect by declaring that the law shall extend to such cases.

This estate of John Winsloe is the only estate owned by a lunatic proprietor, and as the lands surrounding it have been purchased under the Compulsory Act, it is thought necessary to make the law plain enough to embrace John Winsloe's estate.

There is also provision made that where notices for hearing cases have been given under section 14 of the principal Act, and such hearings from some cause or other have not taken place, that the proceedings are not to abate on that account, but that fresh notices may be given. There is a necessity for this amendment.

The Act also extends the time stipulated in section 2 of the main Act for notifying proprietors of the Government's intention to purchase their estates. There are one or two small estates that will elude the operations of this Act if this amendment is not sanctioned. It is proposed to extend the time for a further period of 60 days from the publication of His Excellency the Governor General's assent to this Act.

Provision is also made to meet the case of a Commissioner who may be disqualified to act on account of relationship to a proprietor by authorising the appointment of a new Commissioner ad hoc. A case has arisen which has rendered this provision necessary.

The deed from the Public Trustee to the Commissioner of Public Lands on its production in any Court of Law or Equity in the Province is to be received as primâ facie evidence that the proceedings taken under the Land Act have been regularly complied with. This provision is in my opinion very necessary, without it, it will be difficult to protect the interests of the Government of this Province, and will not, I think, work injustice to individuals.

Proprietors under this Act will be required, before receiving the amount of their awards, to deposit with the Government, their muniments of title, leases, and plans. Without this provision it will be difficult, if not impossible, for the Commissioner of Public Lands to carry out the sale of the lands to the tenants or occupiers.

The Act extends the definition of the term "proprietor" so as to include tenants in tail, this has become necessary in consequence of the decision come to by the Supreme Court, that the Land Purchase Act, 1875, only extends and applies to owners of land in fee simple. As estates tail in land situate in this Province may at any time be barred by the tenant in tail, who can exercise as full a disposing control over such estates as a tenant in fee, it is not considered that this provision is of an objectionable or exceptional character. Provision is made that nothing in this Act shall in any way affect the case of Miss Sulivan, appealed from the Supreme Court of this Province, to the Supreme Court of the dominion of Canada.

All the provisions of this Act are, in my opinion, absolutely necessary for the satisfactory and speedy winding up of the long vexed land question of this Province. It involves no new principle, quoad the intentions of the framers of the principal Act, and will not work any wrong or injury to any proprietor, and is really an Act to remedy practical defects, many of which were not forseen when the Land Purchase Act, 1875, was passed, and have arisen chiefly from the construction put upon that Act by the Supreme Court of this Province.

As the Land Commissioners Court stands adjourned to the 1st of July next, it is very desirable to obtain His Excellency the Governor General's decision upon the Act in question before that date, if possible.

FREDK. BRECKEN,
Attorney General for Prince Edward Island.

Enclosure 3. in No. 1.

AN ACT TO AMEND THE "LAND PURCHASE ACT."

Passed April 29, 1876.

Preamble. WHEREAS doubts have arisen as to the meaning and construction of many provisions of "The Land Purchase Act, 1875," and it is highly expedient that all such doubts shall be removed:

Be it therefore enacted by the Lieutenant Governor, Council, and Assembly, as follows:

Award not to be void because matters to be considered by Commissioners under 28th sec. of 38 Vict. c. 32. are not expressly found in such award.

I. No award heretofore made or hereafter to be made by the Commissioners appointed or to be appointed under the provisions of "The Land Purchase Act, 1875," or by any two of them, shall be held or deemed to be invalid or void in any court of law or equity, nor shall any injunction or other order be granted by the Supreme Court, or by any judge thereof, restraining the public trustee from executing a conveyance pursuant to the said Act, of the lands and estates of the proprietor for which such award was or shall be made, by reason of the facts or circumstances or any of them, which the Commissioners are directed to take into their consideration by the twenty-eighth section, and sub-sections of the said Act, in estimating the amount of compensation to be paid to any proprietor not having been found expressly in such award, it having been and being the intention of the legislature that such facts and circumstances should only be taken into the consideration of the Commissioners in estimating the compensation they award, but should not be expressly found by them in their award.

No award to be void for want of discription of lands for which award is made. Public Trustee may be restrained.

II. No award heretofore made or hereafter to be made by the Commissioners appointed or to be appointed under the provisions of the said Act shall be held or deemed to be invalid or void in any court of law or equity by reason of such award not containing any description of the lands of the said proprietor for which such award was or shall be made; but the Supreme Court shall have power in any such case to restrain the public trustee from executing a conveyance of the estate of any such proprietor until the description of the lands of such proprietor has been settled by the said court or a judge thereof.

Quit rents released in all cases where award made.

III. No proceedings either *in personam* or *in rem* shall be commenced, prosecuted, or maintained in any court of law or equity, for the recovery of any quit rents reserved in the original grants or the lands of any proprietor for which any award has been made under "The Land Purchase Act, 1875," and all such quit rents shall be deemed and held to have been and to be absolutely and for ever released by such award, and such award shall and may be pleaded in bar by any person or persons whomsoever of any action brought for the recovery of such quit rent.

Preamble.

IV. And whereas the Supreme Court of this island have remitted back the award made by the Commissioners in the matter of the application of the Commissioner of Public Land for the purchase of the estate of James Frederick Montgomery, to correct an alleged mistake or omission therein, and owing to the resignation of the Right Honourable Hugh C. E. Childers, the Commissioner appointed by the Governor General in Council, and one of the Commissioners by whom the said award was made, and his absence from the Colony, doubts have arisen respecting the Commissioners and the mode of procedure to be adopted so as to make an examination into such alleged mistake or omission, and also so as to make a new final and binding award, and it is expedient to remove such doubts and provide machinery to carry out the order of the said Court effectually:

Estate of James F. Montgomery.

Be it therefore enacted that the existing Commissioners respectively appointed by the Governor General of Canada in Council and the Lieutenant Governor of this island in Council, together with the Commissioner appointed or to be appointed by the said proprietor, James Frederick Montgomery, shall have and are hereby declared to have as full power and jurisdiction with reference to the estate of the said James Frederick Montgomery, and the order of the Supreme Court referring the award therein back, and the revising of such award, and the correcting of any mistake or omission therein, and the making and publication of a new award therein, as the Commissioners who made the

said award so remitted back could or would have; and they shall have full power to hear and rehear all evidence offered before them either by the said James Frederick Montgomery or the Commissioner of Public Lands, and to make a new award which shall be legal and binding on all parties and on the estate and land of James Frederick Montgomery.

Notice of hearing.

V. The said Commissioners or any two of them shall cause the Commissioner of Public Lands and the said proprietor, James Frederick Montgomery, to be served with a notice of a time and place when they shall proceed to hear and determine the matters so remitted as aforesaid; and such notice shall be served at least fourteen days before the day of such hearing, and no other notice or publication shall be necessary or requisite.

Vacancy of proprietor's commissioner how filled up.

VI. In case of the death, absence, or refusal to act of the Commissioner appointed by the said James Frederick Montgomery, he shall be at liberty to appoint a new Commissioner; and in case no such new Commissioner is appointed by the said James Frederick Montgomery, and the Commissiener appointed previously by him is dead, absent, or refuses or declines to act, then, and in each and all of such cases the Commissioners for the time being appointed by the Governor General of Canada in Council and the Lieutenant Governor of this island in Council may hear and determine such case and make as valid and binding an award as fully and effectually as if the proprietor's Commissioner had acted.

Power to Commissioner to remodel award.

VII. In case the said Commissioners, or any two of them, find it necessary to make a new award, they shall not be bound in any way by the sum awarded by the Commissioners whose award was so remitted back as aforesaid, but shall award such sum as they may deem just and right, whether the same is greater or less than that awarded by the Commissioners whose award has been remitted back as aforesaid.

Order remitting back award to contain alleged errors, &c.

VIII. In any case where an application is hereafter made, either by the proprietor or the Commissioner of Public Lands, to the Supreme Court to remit any award back to the Commissioners to correct any error, informality, or omission therein, and any order is made by such Supreme Court remitting such award back, such order shall expressly contain the alleged error, informality, or omission for the correction of which such award is remitted; and in any such case where such order is made the Commissioners appointed respectively by the Governor General of Canada in Council and the Lieutenant Governor of this island in Council, and holding office at the time such order remitting back the award is made, shall have full power and jurisdiction, together with the Commissioner of the proprietor, if he will act, to consider such order and such alleged error, informality, or omission, although they may not be the same Commissioners who made the award; and if they, or any two of them, find any such error, informality, or omission, they shall have full power to make a new award, correcting any such error, informality, or omission, as the case may be; and if they are unable to find or do not find any such error, informality, or omission, as alleged in the order of the Supreme Court, they shall certify the same under their hands to the said Supreme Court, and shall file or cause the same to be filed in the office of the prothonotary: and such new award, when made and published, or when a new award is made, or such award so remitted back where the Commissioners certify that they do not find any such error, informality, or omission as alleged, shall respectively be binding, conclusive, and final on all parties and on the lands of the proprietor for whose lands the award is respectively made.

What Commissioners may consider remitting order and correct award.

Notice by Commissioners of hearing order remitting back award.

IX. In any case where an order is made by the Supreme Court remitting any award back, the said Commissioners, or any two of them, shall cause fourteen days' notice at least to be served on the Commissioner of Public Lands and upon the proprietor or his agent for the time being, of a time and place when they shall proceed to hear and determine the matter so remitted as aforesaid; and no other notice or publication shall in any such case be necessary or requisite.

Vacancy of proprietors commissioner how filled up.

X. In case of the death, absence, or refusal to act of the Commissioner appointed by the proprietor, he shall be at liberty to appoint a new Commissioner, and in case no such new Commissioner is appointed by a proprietor, and the Commissioner previously appointed by him is dead, absent, or refuses or declines to act, then, and in each and all of such cases, the other two Commissioners may hear and determine such case, and make as valid and binding an award as fully and effectually as if the proprietor's Commissioner had acted.

The estate of John Winsloe, a lunatic.

XI. And whereas a notice was served upon Henry Jones Cundall, the committee of John Winsloe, a lunatic, by the Commissioner of Public Lands, under and pursuant to the second section of the said Act, of the intention of the Government of this Province to purchase the township lands of such lunatic under the said Act, and doubts have been expressed whether the provisions of said Act extends to or embraces such a case, and it is expedient to remove such doubts:

Land Purchase Act, 1875, to extend to lunatic proprietors.

Be it enacted that the "Land Purchase Act, 1875," shall be construed to extend to, and is hereby declared to extend to, the cases of lunatic proprietors; all notices heretofore served upon or hereafter served upon the committee of any such lunatic proprietor shall be deemed and held to be good and valid notices and services, and shall bind the estate of such proprietor to the same extent as if such proprietor was *compos mentis* and had been personally served; and every Commissioner appointed or to be appointed by any such committee of a lunatic shall be deemed and held to be properly and legally appointed; and every such committee so notified who may not, by reason of the said recited doubts or from any other reason or cause, have appointed, and any such committee shall, within thirty days after the publication of the Governor General's assent to this Act, appoint a Commissioner on behalf of the proprietor or estate of which he is such committee as aforesaid; and in default of any such appointment the Supreme Court shall, on the application of the Commissioner of Public Lands, appoint a Commissioner on behalf of such committee of such lunatic proprietor.

Commissioner for lunatic proprietor.

Proceedings confirmed.

XII. After the appointment of any such Commissioner as provided in the last preceding section, all such proceedings shall be had and taken as if such Commissioner had been duly appointed under the ninth or eleventh section of "The Land Purchase Act."

Proceedings not to abate because case not heard pursuant to notice under 14th sec. 38 Vict. c. 32. but fresh notice may be given.

XIII. In any case or cases where the Commissioners, or any two of them, under "The Land Purchase Act, 1875," have published, or shall hereafter publish, a notice or notices under the fourteenth section of said Act, of a time and place for hearing and considering the matters referred to them, relating to the lands of any proprietor, whose Commissioner shall have been appointed, and from any reason or cause whatsoever, such hearing has not taken place, or shall not take place, pursuant to such notice, or any mistake has been made in the publication, such case or cases or the proceedings therein shall not abate, but it shall be lawful for such Commissioners, or the Commissioners for the time being, appointed under the said Act, or any two of them, without any fresh petition or other proceedings on the part of the Commissioner of Public Lands or proprietor, to publish fresh notices pursuant to the said fourteenth section, for the hearing and considering the matters referred to them relating to the lands of any such proprietor, and all subsequent proceedings based or taken upon any such fresh notice or notices, shall be, in all and every respect, as legal and binding upon all parties and persons as if such notice or notices was or were the first or original notice or notices.

Preamble.

XIV. Whereas there are several proprietors in this Island who were not notified of the intention of the Government to purchase their estates under the second section of "The Land Purchase Act, 1875," because of the difficulties and impossibilities of ascertaining the proper parties upon whom to serve the notices; and it is expedient to extend the time allowed by the said second section for serving such notices:

Time for giving notice to proprietors extended.

Be it therefore enacted that the time allowed by the second section of the said Act, within which the Commissioner of Public Lands must notify any proprietor or proprietors of the intention of the Government to purchase his or their township lands, shall be, and the same is hereby extended to sixty days after the publication of the Governor General's assent to this Act, in the Canada "Gazette," and any notice served within such last mentioned sixty days, shall have the like effect and force as if the same had been served within the time limited by the second section of "The Land Purchase Act, 1875."

When Commissioners appointed by Lieut. Governor disqualified by relationship or otherwise, another to be appointed in his place.

XV. In any case or cases under the "The Land Purchase Act, 1875," where it has been found, or shall hereafter be found, that the Commissioner appointed by the Lieutenant Governor in Council, was or is related to any proprietor whose lands are sought to be taken under the said Act, or from any cause or disability unable to act as Commissioner on any particular estate: It shall be lawful for the Lieutenant-Governor of this Island in Council to appoint a Commissioner *ad hoc* in his stead and place, *quod* the particular proprietor or estate that such Commissioner is related to, or incapacitated from hearing or adjudicating upon, and such Commissioner shall have as full power and authority in every respect, with reference to the estate of such proprietor, as if he had been the Commissioner appointed under the fifth section of the said Act.

No fresh notice, &c., required.

XVI. No fresh notice, petition, or other proceeding shall be necessary on the part of the Commissioner of Public Lands or proprietor, on the appointment of any such Commission *ad hoc*, but such Commissioner shall, together with the other Commissioner or Commissioners, cause a notice of a time a place of hearing to be published pursuant to the provisions of the fourteenth section of said Act.

Deed from Public Trustee to Commissioner of

XVII. Every deed or conveyance executed by the Public Trustee, under "The Land Purchase Act, 1875," shall be taken and received whenever the execution is proved, by the Public Trustee, in any court of law or equity in this Island, as *primâ facie* evidence that all proceedings had been regularly and legally had, and taken, and done, and that

all conditions had been performed, and all things had happened and existed, and all times had elapsed necessary to entitle such Public Trustee to execute, and that such Public Trustee was at the date thereof entitled to execute such deed or conveyance, and to convey the lands described in such deed, in fee simple, to the Commissioner of Public Lands, at and from the date of such deed and no other evidence of any kind, or of any fact or circumstances, shall be necessary or required to make such deed *primâ facie* evidence, as aforesaid, of the right of such Public Trustee to execute such deed and convey the lands therein described, in fee simple, to the Commissioner of Public Lands, or that the lands therein described became vested in fee simple at the date thereof, in the Commissioner of Public Lands.

Public Lands to be *primâ facie* evidence that proceedings have regularly taken, &c.

XVIII. The Supreme Court shall not make any order for the payment of any moneys awarded for any lands under "The Land Purchase Act, 1875," unless and until the proprietor or person making application for such moneys shall first deposit with the Prothonotary all such deeds, plans, leases, counterparts of leases, agreements, and muniments of title relating to the lands or any part thereof, for which such moneys have been awarded, as may be in the possession, custody, or control of such person so applying, and this clause shall apply as well to all applications already made, as to those which hereafter may be made.

Proprietor to deposit all deeds, leases, &c., of estate with prothonotary before recovering moneys awarded to him for his estate.

XIX. The Prothonotary shall keep all such deeds, plans, leases, and counterparts of leases, agreements and muniments of title so deposited in each estate carefully by themselves, and apart from all papers and muniments of title in any other estate deposited with him as aforesaid, and shall deliver them over to the Commissioner of Public Lands, together with the deed from the Public Trustee in each estate, pursuant to the rules of the said court.

Custody of deeds, plans, leases, &c.

XX. The term and expression "Proprietor," whenever used in "The Land Purchase Act, 1875," shall, in addition to the definitions thereof given in and by the said Act, but not in anywise in limitation of such definitions be held and construed to have included and extended to and to include and extend to all tenants in tail, and the said "Land Purchase Act, 1875," and all proceedings taken or to be taken thereunder shall be construed as if this provision had been enacted therein and formed part of the Act at the time of the passing thereof.

Term proprietor to include tenants in tail.

XXI. Nothing in this Act contained shall be construed to prejudice or affect the rights of Charlotte Antonia Sulivan, the proceedings to purchase whose estate are now pending before the Supreme Court of Canada.

Act not to affect rights of Miss Sulivan, appealed to Supreme Court of Canada.

A true copy,
Which I certify,
(Signed) FREDK. BRECKEN,
Attorney-General.

Charlottetown,
Prince Edward Island.
May 9, 1876.

No. 2.

The HON. S. PONSONBY FANE, to the UNDER SECRETARY OF STATE, Colonial Office.

Lord Chamberlain's Office,
St. James's Palace, S.W.,
June 19, 1876.

DEAR MR. HERBERT,

I THINK it right to let you know that the Government have purchased and paid for my property in Prince Edward's Island by private contract at the award price.

I have, &c.
(Signed) S. PONSONBY FANE.

Robert G. W. Herbert, Esq.

No. 3.

GOVERNOR-GENERAL THE RIGHT HON. THE EARL OF DUFFERIN, K.P., K.C.B., to the RIGHT HON. THE EARL OF CARNARVON. (Received August 8, 1876.)

Government House, Ottawa,
July 27, 1876.

MY LORD,

IN my Despatch of May 26,* I had the honour of forwarding to your Lordship an attested copy of a reserved Bill passed in the last session of the Legislature

* No. 1.

of the Province of Prince Edward Island, entitled " An Act to amend the Land Purchase Act, 1875."

I have now the honour of enclosing a copy of a report of a Committee of the Privy Council concurring in a memorandum by the Minister of Justice advising me for the reasons stated, not to assent to the Bill in question.

I also forward for your Lordship's information, copies of two documents which I have received from the landed proprietors and the counsel for all the English proprietors respectively, protesting against the provisions of the Bill, and praying that it may not become law.

I have, &c.

The Right Hon. the Earl of Carnarvon, &c. &c. &c.

(Signed) DUFFERIN.

Enclosure 1. in No. 3.

Copy of a Report of a Committee of the Honourable the Privy Council, approved by His Excellency the Governor General, on the July 21, 1876.

The Committee of Council have had under consideration the report hereunto annexed, dated 18th July 1876, from the Hon. Mr. Scott, acting in the absence of the Minister of Justice, relating to "An Act to amend the Land Purchase Act, 1875," passed in the Legislature of the Province of Prince Edward Island and reserved by the Lieut.-Governor for the signification of the Governor General's pleasure, and on the recommendation of the Hon. Mr. Scott, and for the reasons stated in his report, the committee advise that the Bill entitled "An Act to amend the Land Purchase Act, " 1875," do not receive the assent of the Governor General in Council.

Certified.

(Signed) W. A. Himsworth, C.P.C.

Department of Justice, Ottawa, July 18, 1876.

The undersigned has the honour to report :—

That a despatch from the Lieutenant-Governor of Prince Edward Island of 12th May last, mentioned for the consideration of the Governor General, two Acts passed by the Legislature of the Province, as to one of which, relating to certain departments of the Public Service, action has already been taken.

As to the other Bill so transmitted. It is entitled " An Act to amend the Land Purchase Act, 1875," and was reserved by the Lieutenant-Governor for the signification of the Governor General's pleasure. With the despatch of the Lieutenant Governer is a certified copy of the Bill so reserved, and the report of the Attorney General giving his reasons for the passing of the same by the Council and Assembly.

The Lieutenant Governor calls attention to the Attorney General's report and his reasons therein stated for the passing of the Act, in which he (the Lieutenant Governor) concurs, and he expresses his hope that it will receive His Excellency's consideration.

The Lieutenant Governor adds that as the Land Commissioner's Court stands adjourned until the 1st July next, it is very desirable that he should know His Excellency's pleasure as regards the Act in question previous to that period.

The Bill so reserved purports to be an amendment of the " Land Purchase Act, 1875," and recites that doubts have arisen as to the meaning and construction of many provisions of " The Land Purchase Act, 1875." and that is highly expedient that all such doubts should be removed.

It then proceeds to enact that no award theretofore made or thereafter to be made shall be held void in any Court of Law or Equity by reason that certain matters which were required by the Commissioners to be taken under consideration are not expressly mentioned in any award, and that no award shall be void for other reasons.

It also provides that nothing shall affect the rights of Miss Sulivan to purchase, whose estate is now pending before the Supreme Court of Canada.

The effect of the first portion of the Act appears to be that the interpretation of the Supreme Court of the island of the Act of 1875, upon which certain awards of the Land Commissioners were held bad, is reversed, and the awards in question to be declared as valid.

Against the assent to this Bill, Mr. Edward J. Hodgson, by letter of the 8th June last, addressed to the Secretary of State, urges that the Bill in question very seriously affects the rights and the property of persons holding land in the province. He represents that the Act is for the purpose of giving effect to certain awards considered to be void by those whose property is dealt with by them, and that the award similar to those now attempted to be legalized has been declared to be void by the Supreme Court of Prince Edward Island.

Mr. Hodgson further represents that there is another case pending of Miss H. McDonald, of Montreal, and that if the Bill be assented to, it will have the effect of declaring the award to be valid, and not only so, but there are no provisions made for indemnifying her in the costs incurred by her in the proceedings she has instituted.

He also represents that further hardship will arise to individuals in case the Bill should become law; and he adds that memorials explaining the objections in question are being prepared, and requests that consideration of the Act may be delayed for an opportunity of considering the memorials referred to.

In the report of the Attorney-General of Prince Edward Island it is represented that applications to the Supreme Court of the Island were made on behalf of Miss Sulivan and of the Hon. Ponsonby Fane, and the Court quashed the awards in both cases, but that negotiations for a peaceful settlement of the Fane estate are pending.

The undersigned has the honour under the circumstances to report:—

That there does not appear to be any reservation in the Act of the rights of the Hon. Ponsonby Fane, or of any other parties as to whom awards may have been made, and who are similarly situated with Miss Sulivan and Mr. Fane, and who may have regarded the decisions of the Supreme Court of the Island in the cases before them as applicable to themselves.

That by telegraphic communications with the Lieutenant Governor of the Province, it is ascertained that Mr. Fane's case has been settled and withdrawn from the Court, and that the only additional case pending before the Supreme Court of the Province on the 21st June instant is that of John Alister Macdonald, which is not yet tried, but in which a rule nisi has been granted by that Court to set aside the award, on the 19th of June instant, to be tried at the sittings of that Court at Charlottetown on the last Tuesday in June instant.

But petitions have been presented at a later date, (1), by Mr. Edward J. Hodgson, before mentioned, and who describes himself as one of the proprietors of land, and also as counsel for all the English proprietors, and nearly all those resident therein; and (2) from the following proprietors and owners of land in Prince Edward Island, viz., James F. Montgomery, Jane B. Douse, Arabella Douse, John A. McDonell, J. P. Douse, Rev. John A. S. McDonald, by his attorney, Alexander McLean, Edward J. Hodgson, Helen Jane McDonald, and W. C. McDonald.

The allegations in the two petitions are substantially the same, and the petitioners pray that the assent of the Governor-General in Council be not given to the reserved Bill in question.

It is stated:—

1. That it was notorious at the time of passing the Bill that the errors (in the Land Purchase Act of 1875) would be made the grounds of judicial applications to set aside the proceedings, and the awards founded upon them whenever the Government attempted to enforce them.

2. That petitioners did not avail themselves within the period fixed by the Act of 1875 for remission back to the Commissioners of the awards in their cases, relying on their ordinary right to oppose the awards, of which right the reserved Bill would deprive them; which also neglects to provide any means for remission of these irregular and erroneous awards to the Commissioners.

3. That the reserved Bill puts land owners to additional costs and expenses, but makes no provision for the refund of the same.

4. That the Commissioners' award having neglected to specify the portion of the lands taken from the portion reserved, the owners are by the reserved Bill put to additional costs on proceedings before the Court without provision for payment thereof.

5. A special complaint of petitioner James F. Montgomery as to an error in his case, in respect of which he obtained an Order of Court for remission of the case back to the Commissioners; but the reserved Bill provides for a hearing of the case before other Commissioners and a new award; and that the provision in respect to other cases than his own is confined as to the point on which such other cases may be referred back.

6. That in the case of one John Winsloe, a lunatic, the reserved Bill is practically to set aside a judgment of the Master of the Rolls, deciding that the Land Purchase Act, 1875, did not apply to the estate of the lunatic.

7. That proprietors whose claims were to have been heard by the first Commissioners, but which were not heard, and the proceedings as to which have abated through the neglect of the Government, have no indemnification as to their costs.

8. That the 17th section gives an extraordinary and dangerous effect to deeds executed by the public trustee.

9. That many of the proceedings taken in the Commissioners' Court, and which are pending and undetermined, are manifestly irregular, informal, and invalid; and that it is contrary to British legislation to remove doubts in contested proceedings by retrospective legislation as sought to be effected by this Act.

The undersigned has the honour further to report that without giving weight or consideration to any great extent to the allegations in the petitions which are unsupported by any actual proof, he is of opinion that the reserved Bill is retrospective in its effect; that it deals with rights of parties now in litigation under the Act which it is proposed to amend, or which may yet fairly form the subject of litigation; and that there is an absence of any provision saving the rights and proceedings of persons whose properties have been dealt with under the Act of 1875.

He therefore recommends that the Bill entitled "An Act to amend the Land Pur-"chase Act, 1875," do not receive the assent of the Governor-General in Council.

(Signed) R. W. Scott,
Acting Minister of Justice.

Enclosure 2. in No. 3.

To His Excellency the Right Hon. Sir Frederick Temple, Bart., Earl of Dufferin, the Governor-General of Canada.

The humble petition of the undersigned proprietors and owners of land in Prince Edward Island respectfully sheweth:

That an Act was passed in the last session of the General Assembly of Prince Edward Island, entituled "An Act to amend the Land Purchase Act, 1875," which was reserved for the signification of your Excellency's pleasure thereon, and which is of so unusual a nature, and will, if assented to, so prejudicially affect your petitioners that they solicit your Excellency's attention to some of its provisions.

The Land Purchase Act of 1875, in the opinion of your petitioners, affected the rights of private property to an unusual extent, and the Act of last Session is an attempt to cure certain omissions and errors committed by the Commissioners appointed under that Act in proceedings before them, which are still pending between the Government on the one hand and certain proprietors on the other. Although it was notorious at the time of passing the Act that these errors would be made the grounds of judicial applications to set aside those proceedings and the awards founded upon them whenever the Government attempted to enforce them. Indeed, at the very time of passing the Act, awards made in the estates of certain proprietors had been declared invalid by the Supreme Court of the Colony for objections similar to those which the Government now attempt by special legislation to correct in the cases of other proprietors.

By the Land Purchase Act, 1875, leave is reserved to proprietors to make application to the Supreme Court within a limited period after the making of awards to have those awards remitted back to the Commissioners for reconsideration; but because certain of your petitioners were advised that the awards made in their cases were illegal and void, they allowed the time granted for applications to remit them back to elapse, relying upon their ordinary right to oppose the awards whenever the Government attempted to enforce them, but the Government now seek by retrospective legislation to remove objections that have been judicially decided to be fatal to the awards, and by that legislation make no provision for enabling the proprietors thus subjected to the consequences of these irregular and erroneous awards to have them remitted back to the Commissioners for amendment or correction.

The "Land Purchase Act of 1875" makes no provision for indemnifying proprietors whose estates are adjudicated on in the Commissioners Court against expenses to their solicitors' counsel and witnesses, and the second section of the Act of 1876 renders awards legal without any description of the lands taken from proprietors, but subjects such proprietors to the additional expense of settling the description of such lands by the

Supreme Court or a judge thereof, and makes no provision for refunding such proprietors the expenses caused by such additional proceedings.

Your petitioners submit that inasmuch as by the "Land Purchase Act, 1875," proprietors are allowed to retain certain portions of their lands defined by that Act, while the rest is compulsorily taken from them, it is but reasonable and proper that the Commissioners should be required to distinguish in their awards the portion of each estate taken from the portion reserved, and that it is arbitrary and unjust by retrospective legislation to subject proprietors to the expense of having the omissions and errors of the Commissioners corrected by additional proceedings before the Supreme Court without at least providing for the payment of all expenses incident to such supplemental litigation.

The estate of your petitioner, James Frederick Montgomery, was adjudicated on by the Commissioners, who made an award in September last, and your petitioner discovered after the same was made that one year's rent was omitted by them from the award under the impression that your petitioner could recover that year's rent notwithstanding the award, whereas, in fact, it could not be so recovered, because it was overdue in law at the time the award was made, although, in fact, the custom pursued by your petitioner with his tenants was not to collect it until the autumn following. Your petitioner, James F. Montgomery, on discovering this omission applied to the Supreme Court pursuant to the provisions of the Land Purchase Act, 1875, to have his award remitted back to the Commissioners to correct the alleged error, and an order was made in October last remitting back the award to the Commissioners for correction. No application was made by the Government to have his award remitted back or set aside. He has urged the Commissioners of Public Lands, in whose name these proceedings on behalf of the Government are conducted, to have the case re-heard, but hitherto without success. He has also made repeated reasonable offers for the voluntary conveyance of his estate to the Government. If he is in error concerning the said year's rent the amount of the award should stand; on the other hand, if that year's rent has really been omitted the amount of the award should be increased. But the Government, instead of entertaining his offers of a voluntary settlement or bringing the case to a re-hearing within a reasonable time, now pass an Act affecting him individually, and enabling certain persons therein named to hear and re-hear all the evidence and to make a new award (*see* sec. 4), and by section 7 of the same Act, such new award may give your petitioner a less amount than was awarded by the Commissioners whose award has been so remitted back.

The Commissioner on behalf of the Local Government has made and filed an affidavit against the claim of your petitioner, James F. Montgomery, notwithstanding which the Supreme Court remitted back the award; the present Commissioner appointed by the Governor-General had not been appointed when your petitioner's case was heard. If the Act of 1876 becomes law, your petitioner will be obliged to go to the expense of having his whole case re-heard and all his evidence reproduced for the information of the new Commissioner to avoid the danger of having his award reduced notwithstanding the fact that the alleged omission for which his award was remitted back consists of whether said years' rent was omitted; even if your petitioner is in error in contending that it has been omitted, the fact of his being so mistaken could not lessen the award. No provision is made by either Act by which your petitioner can recover the expenses of the former or subsequent hearings, and he confidently hopes that your Excellency will not sanction retrospective and personal legislation of this kind, enacted without cause, and the only effect of which would be to harass your petitioner unnecessarily. Your Excellency will observe that while your petitioner is thus dealt with personally and by name and put to the annoyance and expense of a general re-hearing, the same Act provides that in all other cases (see sec. 8) when awards are remitted back, the duty of the Commissioners in such a case is confined to correct the very error for which such awards are so remitted back.

Your petitioners show that special provision is made by sec. 11 of the Act for bringing the estate of John Winsloe, a lunatic, within the operations of the "Land Purchase Act, 1875," on the ground that "doubts have been expressed whether the provisions of "the said Act extend to or embrace such a case." What this Act terms a "doubt," your petitioners are informed is really a judicial decision of the Master of the Rolls of this island.

Your petitioners learn that the Committee of the said lunatic, on being notified by the Government under the "Land Purchase Act, 1875," petitioned the Master of the Rolls (who has co-ordinate jurisdiction with the Chancellor concerning lunatics and their estates) for the appointment of a Commissioner for said lunatic's estate under the "Land Purchase Act, 1875," and the Master of the Rolls gave a written decision or judgment deciding that the case was not within the provisions of the Statute. A copy of that judgment was served by the

lunatic's committee or trustee upon the Commissioner of Public Lands. The Government took no steps to over-rule or appeal from the decision of the Master of the Rolls, but they now adopt the summary method of annulling that decision by an Act of Parliament.

Your petitioners also show that certain proprietors have been notified that their estates would be valued and taken under the provisions of the "Land Purchase Act, 1875"; that such proprietors appointed Commissioners and were in attendance at the Commissioners' Court with their witnesses, but the Court in the fall of 1875 suspended its labours without hearing these cases, and it is now sought (see sec. 13) to revive proceedings which have abated through the neglect of the Government without indemnifying such proprietors in their former or future costs.

In some instances when proceedings so abated, the then owners or proprietors of land executed conveyances and made other legitimate dispositions of property, and your petitioners submit that it would be unjust to revive these proceedings by means of an Act of Parliament, and have these lands compulsorily assigned to the Government without notice to the persons who since the abatement of the proceedings have acquired them by purchase or conveyance.

Your petitioners cannot allow the 17th section of the Act to pass without pointing out the extraordinary and dangerous effect sought to be given to deeds executed by the public trustee. It is well established that the Commissioners who appraise estates have no power to adjudicate upon titles. If the Commissioners appraise lands in which the proprietor has only a life estate (as in fact they have done), and the public trustee executes a deed of such lands to the Government, this section raises a presumption that such deed conveys an estate in fee simple. Again.—Many occupants of lands on estates hold lands by virtue of many years occupation, but if this section becomes law, the deed of the public trustee will be *primâ facie* evidence that the grantee named in such deed and not the occupant of the land is seized in fee simple.

Your petitioners lastly show that many of the proceedings taken in the Commissioners' Court, and which are pending and undetermined are manifestly irregular, informal, and invalid. And they submit that it is unusual and contrary to the course of British legislation to correct mistakes and remove doubts in contested proceedings by one-sided and retrospective legislation in the manner sought to be effected by this Act, and your petitioners pray that in view of the exceptional, novel, and dangerous nature of the provisions of the Act in question, your Excellency will be pleased to prevent its becoming law.

And your petitioners, as in duty bound, will ever pray.

(Signed) James F. Montgomery.
Jane B. Douse.
Arabella Douse.
John A. McDonell.
J. P. Douse.
Rev. John A. S. McDonald, by Alex. McLean, his Attorney.
Edward J. Hodgson.
Helen Jane McDonald.
W. C. McDonald.

Enclosure 3. in No. 3.

From Mr. E. J. Hodgson to the Earl of Dufferin.

Ottawa, June 17, 1876, Library of Parliament.

May it please your Excellency, as one of the proprietors of lands in Prince Edward Island, and also as counsel for all the English proprietors, and nearly all those resident thereon, I venture to address your Excellency on their behalf, with reference to an Act passed by two branches of the Legislature of Prince Edward Island (but not assented to by Sir Robert Hodgson, the Lieutenant-Governor), entitled "An Act to amend the Land "Purchase Act, 1875."

Since the passing of the "Land Purchase Act, 1875," the following proprietors have received what has been awarded for their estates, and therefore I do not speak on their behalf, viz:—

1. Robert Bruce Stewart.
2. S. C. B. Ponsonby Fane.
3. George W. de Blois.
4. William Cundall.
5. Miss Cundall.

I left Charlottetown last Monday week to attend the Supreme Court of Canada, for the argument of Miss Sullivan's case under this Act. At that time the proprietors whose names I have given above are only those who have been paid for. The great majority of the remainder are still pending, 11 months having elapsed since the unfortunate owners have been brought before the court, deprived of their right to receive the arrears of rent due to them, and still unable to obtain their money.

The Act amending the Land Purchase Act has been reserved for the special consideration of your Excellency as the Governor-General of Canada, and I humbly petition your Excellency to disallow that Act for the reasons, which in this memorial, I shall state for your Excellency's consideration.

As I shall have occasion to make frequent reference to the awards made by the Commissioners, it would be convenient if I should set out the form in which they have been made. It is as follows (omitting the title) :—

"The sum awarded under section 26 of the said Act by us, Commissioners appointed under the provisions of the said Act, is $."

Signatures.

It is provided by the Statute reserved for your Excellency's consideration, that no award, heretofore made, or hereafter to be made, shall be void by reason of its not finding any of those facts which by "the Land Purchase Act, 1875," it was bound to have found expressly.

I shall assume that the decision of the Supreme Court of Prince Edward Island in Miss Sulivan's case is valid. True an appeal has been taken out against it, but until reversed it must be considered to be law. And the legislature must have believed very strongly in the validity of that judgment or they would not have passed a legislative enactment to reverse it.

Now, by that decision, it was declared to be the duty of the Commissioners to find specifically, certain matters in issue submitted to their consideration, which are set forth in section 28 of "the Land Purchase Act, 1875," among others.

1. The quit rents reserved to the crown.
2. The effect of the non-performance of the conditions of the original grants, if they found they had not been performed.
3. The arrears of rent.

There are various other matters in section 28, but I desire to call your Excellency's attention to these three especially. The Supreme Court held that it was the duty of the Commissioners to find these matters on the face of their award, because if they did not the proprietor would be seriously prejudiced. For instance, the quit rents reserved to the crown, by the original grants, have by an Act of the Legislature of Prince Edward Island (14 Victoria, cap. 3), been assigned to the Government of that Province. Sub-section (*c.*) of the 28th section of the "Land Purchase Act," directs the Commissioners to consider (and as a necessary consequence I submit to determine, for it is difficult to understand why any matters were referred to them unless it were that they should determine them,) "the quit rents reserved in the original grants, and how far payment "of the same have been remitted by the crown." This is a Legislative declaration that there is a question whether the quit rents have been waived or remitted by the Crown. Now the effect of the complete absence of any reference to the quit rents in the award might have this effect. That a sum of (say 20,000 dollars) might have been deducted from a proprietor, and a balance of (say) 80,000 dollars awarded him, but this fact not appearing when the 80,000 dollars had been paid into court for the proprietor. There would be nothing to prevent the Attorney-General from coming into court, and by "information" or proceedings in the nature of such, claiming the quit rents over again. It would be unavailing for the proprietor to plead that this matter had been determined and that already thousands of dollars had been deducted from him. He could not plead the award. It is perfectly silent as to this fact, and by its terms is expressed to be made not in pursuance of the "Land Purchase Act, 1875," *but only of its 26th section.*

The Attorney-General, when presenting his claim would, under section 40 of the last mentioned Act, be entitled to the quit rents if found to be due; and thus the unfortunate proprietor would be compelled to pay them a second time.

Now the Legislature of Prince Edward Island recognised this mode of viewing the case to be correct, for by the Act now petitioned against, section three, it is provided :—

"No proceedings either in *personem* or in *rem* shall be commenced, prosecuted, or maintained in any court of law or equity for the recovery of any quit rents reserved in the original grants, or the lands of any proprietor for which any award has been made under the "Land Purchase Act, 1875," and all such quit rents shall be deemed and held

to have been, and to be absolutely and for ever released by such award, and such award shall and may be pleaded in law by any person or persons whomsoever of any action bought for the recovery of such quit rent."

This provision is most fair and just, and gives to the proprietor that protection which he is entitled to.

But it is evident that if these inefficient and illegal awards are to be rendered valid, the proprietors whose lands are dealt with are equally entitled to protection from the consequences which are certain to ensue from all omission to find respecting—

(1.) The conditions of the original grants from the Crown.

(2.) The performance or non-performance of these conditions.

(3.) The effects of such non-performance.

("The Land Purchase Act, 1875," section 28, sub-section (E.).)

A course somewhat similar to that already pointed out regarding the quit rents would be pursued but with consequences still more serious to the proprietor.

The Crown has ceded all its rights in the lands in Prince Edward Island to the Government of that Colony. Having got possession of the proprietor's lands, it would be an easy matter to procure an inquest of office to find whether the conditions of the original grants had been performed; but it may be said, if upon the execution of this inquest of office it were found that the land is liable to escheat, how could it affect the proprietors? Very seriously, and in this way. Upon the resumption of the lands by the Government of Prince Edward Island, every tenant is liable to be ejected from his farm, and under the covenant for quiet enjoyment contained in his lease he would have his remedy by an action for damages against his landlord. The tenants who had no leases would have no cause to fear from the action of the Government, nor indeed would those who have leases, they would be well recouped for any temporary dispossession, or liability to such, but the power of forcing a landlord into court to answer actions of damages by hundreds of tenants would never be allowed to lie dormant. Stripped of their property, allowed in many instances not one third of its value, the unfortunate proprietors never would be allowed to withdraw from the Island the pittance they have been awarded in order to invest it in some other portion of her Majesty's realms, where to own land is not considered in the light of a crime.

This in truth and in fact is the real reason why this Act, now petitioned against, has been passed. The proprietors are withdrawing the money they have received to invest it elsewhere. Their experience of owning property in Prince Edward Island has been too bitter and too dearly purchased, to induce them to risk further there, the wreck of their property. To stop this withdrawal of their money is now sought, and it must be admitted that the mode taken is a most ingenious one. When the proprietors are brought into court to answer their tenants for disturbance of their holdings, under the proceedings soon to be instituted, it will be useless for them to produce the bold naked award consisting of 23 words (exclusive of the amount), for it raises no presumption that this matter has been determined.

If the proprietors are entitled to protection in the matter of the quit rents, and the Legislature of Prince Edward Island have conceded that point, they are also entitled to protection from being twice charged with damages on account of alleged non-performance of the conditions of the original grant.

But this is another matter which the Commissioners are bound to find under section 28, which by the amending Act they are relieved from doing, and although it does not affect so many of the proprietors, still there are some who will be very seriously injured by its omission from the award. It is the direction to find the arrears of rent.

The Commissioners have every power enabling them to do this. They can compel, under section 20, the production of all documents, books, papers, &c. in order to enable them to see how the estate stands.

Where a proprietor has died the arrears of rent due at the time of his death pass to his executors, the rents due since being inciden to the reversion pass with it, to the heir-at-law, or the devisee.

There is a class of cases of this kind which has been dealt with by the Commissioners. Under their award a lump sum has been given. Now, when the executor goes into the Supreme Court to ask for his share of the award, that is, the arrears due to the deceased proprietor at the time of his death, if the award had set out as it should have done the arrears of rent, there would have been no difficulty. But under the award sought to be confirmed, how can the court tell what amount he is entitled to? It may be assumed that, in any case, something has been deducted from these arrears. How can the Supreme Court tell how much? If it gives the executor more than the Commissioners it must come out of the lump sum awarded, and the proprietor unjustly loses by the amount of such

excess. If it gives less than the Commissioners the executor loses the deficiency. I am the administrator *cum testamento annexo* of the estate of the Rev. John McDonald, which at his death passed to his nephew the Rev. J. A. S. McDonald. But the arrears due at the time of the first named gentleman's death passed to me, and, when collected, are to be handed over to Cardinal Manning in trust for certain charitable purposes in England. I would here quote the words of Judge Peters, one of the judges of the Supreme Court of Prince Edward Island, in giving judgment in Miss Sulivan's case.

"There are two lines in the 20th section (of 'The Land Purchase Act, 1875,') which I think have been very much overlooked. They are these, 'And the facts which 'they may require to ascertain in order to carry this Act into effect.' The meaning of these, I take to be, is facts which it is their duty to ascertain in order to give full effect to this Act. This goes far beyond what they themselves have to perform; it points to all that has to be done by others to carry out what they have begun; to what the public trustee has to do, and to what this Court has to do in making distribution. I see it stated that in one case the arrears are assigned to Cardinal Manning. If the award finds a lump sum, and the Cardinal's claim comes in to participate in the distribution, how could we ascertain how much of the lump sum was awarded in respect of the land, and how much in respect of arrears of rent? We could make no distribution in such a case; and the same thing may happen in other cases where arrears are due to the deceased proprietor, and the present proprietor is not his personal representative, we could be compelled to hold the award void in such a case."

There is, however, another consideration which I venture to press upon your Excellency's consideration, as even a still stronger reason why this Act should not be permitted to go into operation.

It assumes (and assumes correctly enough) that awards made in the general terms above alluded to are void. In some instances application has already been made to the Court to set them aside. In an application made by myself, as representing Miss Helen McDonald, of Montreal, proceedings have been taken in the Supreme Court to set aside the award for the very defects which this Act now legalizes. The words of the first section of the Act are so strong that they will have, as they are intended to have, a retroactive aspect, so as to make the proceedings already taken of no effect; nor does it provide that the parties who have taken these proceedings shall be indemnified in their costs.

I beg to direct your Excellency's attention to the opinion of English judges to legislation such as this, as reported in the case of Moore *v.* Durden, 2 Exchequer Reports, 22.

In that case the Court refused to follow the rule which requires Acts of Parliament to be construed by giving to its language the interpretation ordinarily attached to it, because its effect would be to make that illegal which but for such rule would have been legal. Alderson B. says, "It is contrary to the first principles of justice to punish those "who have offended against no law, and surely to take away existing rights without "compensation is in the nature of punishment." His Lordship further stated that he would not suppose "that the Legislature contemplated so gross an act of injustice as "without compensation to take away an existing right of action already pending, and "that, too, with no provision even for the costs incurred in the enforcing of what was "before a legal right;" but it was added that this was only a rule of construction, and would yield to the intention of the Legislature if sufficiently expressed.

There can be little doubt that in the Act now under consideration the Legislature has expressed itself in such a manner that "the first principles of justice" have been violated by enacting "so gross an act of injustice as, without compensation, to take away an "existing right." The words of the 1st section, "No award heretofore made or here-"after to be made" will compel the Court "to punish those who have offended against "no law," by compelling them to relinquish proceedings in a court of law which at the time they instituted them they had a legal right so to do, and by compelling them to pay costs for availing themselves of a perfectly legal right. But surely this great wrong, ineffective as it will be for us to argue, should this Act become law, is a strong valid reason why its operation should be stayed, and why the proprietors, whose great misfortune it is to hold lands in Prince Edward Island, should not be still further oppressed by so cruel an act of injustice.

Any forbearance, any clemency on the part of the Commissioners of Public Lands, the proprietors have no reason to hope for or to expect. And I would point out to your Excellency that section 11 of this Act now under consideration arms him with power to seize the lands of an unfortunate lunatic whose income barely enables him to be supported in the Provincial Asylum at Nova Scotia. When his estate has been taken away, if anything be left him at all after the Attorney-General has procured the confiscation of

a large proportion of his award, in the manner I have already pointed out, his fate will indeed be a sad one.

This, however, is a matter in which I have not a right to address your Excellency except in the interest of common humanity, but knowing the circumstances, that the son of an English gentleman, now deceased, an unfortunate lunatic in the Nova Scotia Asylum, is sought to be deprived of his property, and that sections 11 and 12 of the Act, now under consideration, amount to, and are intended as a statutary reversal of the decision of the Master of the Rolls of Prince Edward Island, in whose charge he is, in the matter of the estate of that very lunatic. I venture to express the hope that your Excellency will cause that decision to be laid before you, before your Excellency will cause the Royal Assent to be given to so objectionable a measure.

The question whether "The Land Purchase Act, 1875," is not "*ultra vires*," being in excess of the jurisdiction given to the Local Legislature under the British North American Act, has been raised on behalf of the proprietors, and has been decided adversely to their contention that it is so. Such being the case, the measure now under consideration is freed from any of those considerations which attach to the giving of the Royal Assent to those measures over which the Dominion Government has jurisdiction.

Before the admission of Prince Edward Island into the Dominion it was not unusual for those whose rights were attacked by Acts of a nature similar to this to lay their humble petition at the foot of the Throne. Since confederation, they now cannot do it. But in matters such as this solely under the control of the Local Legislature, your Excellency is regarded as in no ordinary degree the special representative of the Queen's Majesty, clothed with the authority, and, we dare not doubt, not indisposed to use it to protect those of Her Majesty's subjects who are conscious of having done no wrong, and who humbly trust that although they are the possessors of landed estates out of England, your Excellency will not on that account refrain from exercising the Royal prerogative to save them from being the victims of a cruel wrong by the operation of a harsh, unjust, and oppressive measure.

I have, &c.

The Right Hon. the Earl of Dufferin, K.C.B., &c. &c. &c.
Governor-General of Canada.

(Signed) Edward J. Hodgson.

No. 4.

Governor-General the Right Hon. the EARL OF DUFFERIN, K.P., K.C.B., to the Right Hon. the EARL OF CARNARVON. (Received April 19th, 1877.)

My Lord, Ottawa, April 4, 1877.

With regard to previous correspondence relative to the appeal in the case of Miss Sulivan to the Supreme Court of the Dominion, under the Prince Edward Island Land Purchase Act of 1875, I have the honour to enclose herewith for your Lordship's information a copy of a letter from the Registrar of that court, covering an official report containing the judgment of the Chief Justice and Justices.

I have, &c.

The Right Hon. the Earl of Carnarvon, &c. &c. &c.

(Signed) DUFFERIN.

Enclosure 1. in No. 4.

Sir, Ottawa, March 29, 1877.

By direction of the Chief Justice, and in compliance with the request contained in your letter to him of the 24th inst., I have the honour of transmitting to you, herewith, for the information of His Excellency the Governor-General, a full report, prepared by the official reporter of the court, of the case appealed to the Supreme Court of Canada, in which the Commissioner of Public Lands of Prince Edward Island, was Appellant, and Miss Charlotte Antonia Sulivan, Respondent.

The report contains at length the reasons for judgment given by the Chief Justice and Judges of the court.

Together with the report I send a copy of the case and factum of both parties, and also a copy of the formal judgment entered in the matter of said appeal.

I am, &c.,

Edward J. Langevin, Esq.,
Under Secretary of State, Ottawa.

ROBERT CASSALS, R.S.C.C.

Enclosure 2. in No. 4.

DOMINION OF CANADA.—IN THE SUPREME COURT OF CANADA.

In the matter of the application of Francis Kelly, the Commissioner of Public Lands, for the purchase of the Estate of Charlotte Antonia Sulivan, and the "Land Purchase Act, 1875."

Charlotte Antonia Sulivan is proprietor of townships numbers 9, 16, 22, and 61, in this island.

Proceedings were commenced to take the said township lands compulsorily under the Land Purchase Act of 1875.

The matter came up for hearing before the Commissioners mentioned in printed case, and the said Commissioners made an award therein, as set out on page 2 of the said case.

The Supreme Court of Prince Edward Island made an order setting aside the award, which rule is set out on page 76 of the printed case.

From the order of the Supreme Court of Prince Edward Island, Francis Kelly, the Commissioner of Public Lands, now appeals to the Supreme Court of Canada.

The respondent, Charlotte Antonia Sulivan, will contend before the Court of Appeal:—

I. That an appeal does not lie direct from the Supreme Court of Prince Edward Island to the Supreme Court of Canada.

II. That if such appeal does lie, this appeal must be dismissed, and the Judgment of the Court below confirmed with costs.

I. No appeal lies direct from the Supreme Court of Prince Edward Island to the Supreme Court of Canada.

By section 11 of the Supreme and Exchequer Court Act: "When an appeal to the Supreme Court is given from a Judgment in any case, it shall always be understood to be given from the Court of last resource in the Province were the Judgment was rendered in such case."

See also Section 17.

The Lieutenant-Governor in Council is constituted a Court of Error and Appeal, in Prince Edward Island, by various Royal Instructions. See *e.g.* Royal Instructions, Appendix to Journal of House of Assembly of Prince Edward Island, A.D. 1851, Appendix F.

See also, Clarke's Colonial Law. Page 111.

By Section 24 of Supreme and Exchequer Court Act, proceedings in appeals shall be *** as nearly as possible in conformity with the present practice of the Judicial Committee of Her Majesty's Privy Council.

It has been decided that appeals from the Supreme Court of Prince Edward Island must, in the first instance, lie to the Governor in Council, and that no appeal lies direct from the Supreme Court to Her Majesty's Privy Council.

Re Cambridge, 3, Moore, P.C.C., 175.

In Nova Scotia and New Brunswick, in which the Governor in Council of each constituted a Court of Appeal, it was found necessary to obtain Orders under the Imperial Act, 7 & 8 Vict., Cap. 69, to allow appeals from the Supreme Courts of these Provinces respectively direct to Her Majesty's Privy Council.

See the order affecting New Brunswick appeals, dated 27th November, 1852, in 4 All. N. B. Reports, page 497.

Do. do. N. S. Journals of the House of Assembly of Nova Scotia, A.D. 1854, page 94, Appendix 10.

No similar order was passed regulating appeals for Prince Edward Island, and therefore the practice as set out in Re Cambridge is unchanged.

The Governor in Council of Prince Edward Island is recognised as a Court of Appeal by the Island Act, 6 Vict., Cap. 26, s. 51, which provides that any person dissatisfied with a decree of the Surrogate, may appeal to the Governor in Council.

The existence of a Court of Error and Appeal for this Province is recognised by various local Statutes ranging from A.D. 1781 to A.D. 1873. See *e.g.* Local Acts, 21 Geo. III. Cap. 17, 6 Vict., Cap. 26, 36 Vict., Cap. 22, &c.

It is submitted that the above authorities show that the Supreme Court of Prince Edward Island, is not the Court of last resort in this Province.

II. The award in this case should be set aside for the reasons recited in the Rule absolute on page 76 of the printed case.

Because:

1. The award is not final, and 2, it is uncertain.

It is uncertain.

Because it does not show that the Commissioners have adjudicated on matters on which they were bound to adjudicate by the "Land Purchase Act, 1875." The submission is of matters specified in Section 28 of that Act, and must be treated as if it contained the terms of a voluntary submission made by the parties. Award is not made *de praemissis*, and there is nothing to show that the various matters specified in this section were taken into consideration by the Commissioners.

The rule of law is, if it be doubtful whether the award has decided the question referred it will be set aside for the uncertainty.

Russell on Awards, 2nd Ed., p. 284.
Tribe *v.* Upperton, 3 A. & E., p. 295.
Pearson *v.* Archibald, 11 M. & W., p. 477.

The award is not only silent as to some matters submitted under Section 28, but it shows on its face that it was made with respect only to matters embraced by Section 26, as the compensation to which Miss Sulivan is entitled by reason of her being divested of her land.

This does not embrace sub-sections 1, 2, and 3 of Section 28.

The rule of law is, if several specific matters are referred and there be no specific adjudication upon any one, the award is void.

Russel on Awards, 2, Ed., p. 261.
Randall *v.* Randall, 7, East., p. 81.
Re Rider and Fisher, 3, Bing. N. C., 874.
Witworth *v.* Hulse, L. R. 1, Exch., 252.
Harrison *v.* Creswick, cited in Russel Awards, page 273.
See Madkins *v.* Horner, 8, A. & E., 235.
Robinson *v.* Henderson, 6, M. & W., 276.
Wakefield *v.* Llanelly, 3, De. G. J. & S., p. 11.
Stone *v.* Philips, 4, Bing. N. C., p. 37.
Ross *v.* Boards, 8, A. & E., p. 290.

The award is uncertain, inasmuch as it only decides some of the matters submitted by the 28th section of the Land Purchase Act, 1875.

It is also uncertain, inasmuch as it does not define or describe the subject matter for which the award gives the sum of 81,500 dollars.

Moreover, a proper construction of the Act requires that the land for which a sum is awarded shall be described by metes and bounds, or such description as is necessary in a deed.

By Section 32 the Public Trustee is empowered to execute a deed in form B—that form requires (what indeed would be necessary without such direction) the land to be particularly described by metes and bounds. The office of the Public Trustee is only ministerial. He is to convey "the estate of the proprietor." What estate? The estate adjudicated on, and for which the sum awarded shall have been paid into the Treasury. *See* Section 32.

Either the Commissioners or the Public Trustee must prepare the description; but the Public Trustee is not a party to the proceedings *until after* "the number of acres under lease," "the length of the leases," "the rent reserved," "the arrears," &c., Section 28, are adjudicated on. Indeed, the Public Trustee need not receive his appointment until *after* the award is made.

Can he settle these particulars *ex parte?*

It is submitted the Public Trustee can only convey the estate specified in the award; and that if the award contains no description of the land the Public Trustee is not authorised to supply the omission.

See Doe-dem Matkins *v.* Horner, 8, A. & E., page 243, where Patterson, J. says he thought residue of land not embraced in award should *be described by metes and bounds.*

If it be the Commissioners duty to define the land for which they award a sum of money, it was improper for them to leave or delegate this duty to the Public Trustee.

The Commissioners, by section 28, are also to take into consideration the conditions of

the original grants from the Crown, and the performance or non-performance of those conditions, &c. .

The award is uncertain, inasmuch as it does not show that the Commissioners have considered or adjudicated on the matters submitted to them by sub-sections 1, 2, and 3 of section 28.

A copy of the original grant of one of the lots in this case, viz., township number nine, extracted from the office of the Public Registry of Deeds of this Island, and certified by the Registrar, is annexed, and contains the conditions referred to in the first part of Mr. Justice Peters' judgment on page 87 of the printed case.

The award being that of an inferior Court should show by express words, or by necessary implication, that the Commisssioners had complied with all preliminaries necessary to enable them to adjudicate upon the estate, and make an award.

See cases quoted, 2, Shelf. on Railways, 4 Ed., 302 notes.

Inasmuch as the Commissioners have thus omitted a duty cast upon them by the Act, and without doing which they had no jurisdiction to make the award in this case these preliminary *questions and the award* are open to inquiry by the Supreme Court, notwithstanding the 45th section of the Land Purchase Act, 1875.

Colonial Bank of Australia *v.* Willan, L. R., 5, P. C., 442.

Reg. *v.* Jus. of Staffordshire, 5, Ell & Bl., 49.

So, though Certiorari be taken away by Statute, if cause be decided by majority of a Court improperly constituted, Certiorari yet lies.

Reg. *v.* Cheltenham, 1, Q. B., 467.

Also,

Reg. *v.* St. Albans, 17 Jurist, 531, S. C., 22, L. J. (M. C.), 142.

Also,

Richards *v.* S. Wales R. R. Co., 18 L. J. (Q. B.), 310.
S. C. 6, Rail. Case, 197.

[*Grant referred to in foregoing Brief.*]

ISLAND OF ST. JOHN, S.S.—EDMUND FANNING,

TO ALL TO WHOM THESE PRESENTS SHALL COME GREETING:

Know ye that I, Edmund Fanning, LL.D., Lieutenant-Governor and Commander-in-Chief in and over His Majesty's Island of Saint John and the territories thereunto adjacent, &c., &c., &c. By virtue of the power and authority to me given by His present Majesty King George the Third under the Great Seal of Great Britain, have given, granted, and confirmed, and do by these presents pursuant to His Majesty's Order in Council bearing date the 16th day of April in the year of our Lord 1794, give, grant, and confirm unto Stephen Sulivan, Esquire, of the Kingdom of Great Britain, his hiers and assigns all that tract, lot, or township of land situate, lying and being in the said island of St. John, and distinguished and known by the name of lot or township No. 9, and bounded in manner following, that is to say: bounded on the north by the division line of lot No. 6, east and west distance 4 miles and 3,100 feet; on the south by the Sand Cove and the sea towards Percival Point; on the east by the division line of lot No. 9 and No. 10, north and south distance 8 miles and 2,000 feet; and on the west by the division line of lot No. 8, north and south distance 5 miles, and containeth in the whole by estimation 20,000 acres (be the same more or less), and hath such figure and shape as is delineated and expressed in and by a certain map or plan thereof made and hereunto annexed. Together with all and all manner of mines opened and unopened excepting mines of gold, silver, and coals. To have and to hold the said granted premises with all the privileges, profits, commodities, and appurtenances thereunto belonging unto the said Stephen Sulivan, his heirs and assigns for ever. Saving and reserving to His Majesty, his heirs and successors all such part or parts of the said tract of land as hath or have been already set apart for building wharves, erecting fortifications, enclosing naval yards, or laying out highways for the communication between one part of the said island and another. Also saving and reserving to His said Majesty, his heirs and successors, 100 acres of the said tract of land for the site of a church as a glebe for a minister of the gospel, and 30 acres for a schoolmaster. And further saving and reserving for the disposal of His Majesty, his heirs and successors, 500 feet from high water mark on the coast of the said tract of land hereby granted to erect stages or other necessary buildings for carrying on the fishery. Yielding and paying therefor by the said grantee, his heirs and assigns (which by the acceptance hereof he binds and

obliges himself, his heirs, executors, administrators, and assigns, to pay to his said Majesty, his heirs and successors, or to any person lawfully authorised to receive the same), for His Majesty's use a free yearly quit rent of 6*s.* for every 100 acres hereby granted, the first payment of the same to commence and become payable on one half of the said granted premises on the feast of Saint Michael which shall first happen after the expiration of five years from the date hereof or within 14 days after. And also yielding and paying the like quit rent for the whole 20,000 acres hereby granted on the feast of Saint Michael next coming after the expiration of ten years from the date hereof or within 14 days after, and so to continue payable yearly and every year thereafter for ever. And the said grantee doth hereby oblige himself, his heirs and assigns, to settle the said tract of land within 10 years from the date hereof with Protestant settlers in proportion of one person to every 200 acres the said Protestant settlers to be introduced from such parts of Europe as are not within His Majesty's Dominions or to be such persons as have resided within His Majesty's Dominions in America two years antecedent to the date hereof. And if the said grantee shall not settle one-third part of the said tract of land in the proportion aforesaid within four years from the date hereof, then the whole of the said tract shall become forfeited to His Majesty, his heirs and successors, and this grant shall thereupon become null and void and of none effect. In witness whereof, I have signed these presents and caused the seal of this island to be thereunto affixed at Charlottetown, this 18th day of May, in the 35th year of the reign of our sovereign Lord George the Third, by the grace of God of Great Britain, France, and Ireland, King Defender of the Faith and so forth, and in the year of our Lord 1795.

By His Excellency's command,

PETER MACGOWAN,
Dep. Secretary.

Registered the 8th day of August 1795.

Office of the Registrar of Deeds, Prince Edward Island, March 31, 1876.

I hereby certify that the foregoing writing is a true copy of a grant from Edmund Fanning, Lieut.-Governor, to Stephen Sulivan, registered in this office in liber 8. Folio 57.

BENJ. DES BRISAY,
Registrar.

Enclosure 3. in No. 4.

DOMINION OF CANADA.—IN THE SUPREME COURT OF CANADA.

In the matter of the application of Francis Kelly, the Commissioner of Public Lands, for the purchase of the estate of Charlotte Antonia Sulivan, and the Land Purchase Act, 1875.

APPEAL BY THE COMMISSIONER OF PUBLIC LANDS OF PRINCE EDWARD ISLAND.

Factum or Points for argument in appeal on the part of the Commissioner of Public Lands.

STATEMENT OF FACTS.

CHARLOTTE A. Sulivan was proprietor of certain township lands of Prince Edward Island, comprising townships or parts of townships, Nos. 9, 16, 22, and 61.

The Commissioner of Public Lands commenced proceedings in August last for the compulsory purchase of these lands under the Land Purchase Act, 1875.

The application was heard by the Commissioners appointed under the said Act and by the proprietor, both parties appearing by counsel.

On the 4th September 1875 two of Commissioners made an award, as follows:—

Dominion of Canada, Province of Prince Edward Island.

In the matter of the application of Emanuel McEachen, the Commissioner of Public Lands, for the purchase of the estate of Charlotte Antonia Sulivan, and the Land Purchase Act, 1875.

The sum awarded, under section 26 of the said Act, by us, two of the Commissioners appointed under the provisions of the said Act, is 81,500 dollars ($81,500).

HUGH CULLING EARDLEY CHILDERS,
Commissioner appointed by the Governor General in Council.

JOHN THEOPHILUS JENKINS,
Commissioner appointed by the Lieutenant Governor in Council.

Charlottetown, 4th September 1875.

The award was duly published on the 7th September 1875.

No application was made, within the time allowed by the 45th section of the Act, to remit the award back to the Commissioners to correct any error, informality, or omission in the award.

On the 3rd November 1875 the public trustee served the proprietor with a *notice of* his intention to execute a conveyance of her estate to the Commissioner of Public Lands, in which notice the lands were described by metes and bounds (see cases in appeal, pages 3 to 7 inclusive).

On the 16th day of November 1875, the proprietor obtained an injunction restraining the Public Trustee from executing the conveyance of which he had given notice (case, page 10).

She also obtained a rule nisi (case, page 10) calling upon the Commissioner of Public Lands to show cause why the said award and all subsequent proceedings should not be set aside, on four grounds, viz.:—

1. That the award is not final.
2. That it is uncertain.
3. Because a delegated authority must be exercised under it to ascertain metes and bounds of lands to be conveyed by public trustee to the Commissioner of Public Lands.
4. Because the money awarded had not been paid into the Treasury of the Province.

This rule nisi was in 17th January 1876 made absolute (case, pages 76 and 77), and on the 7th February leave was granted to the Commissioner of Public Lands to appeal to the Supreme Court of Canada.

Finality of Award.

The proprietor contended—

1st. That the award is not final, because it did not expressly award on the subjects which the 28th section of the Act directs that the Commissioners shall take into consideration. The Commissioner of Public Lands contends that the award is final, and that the Act only required that the Commissioner should find in their award the sum or amount due to the proprietor for his estate. The 28th section is merely directory. It is true it pointed out certain facts or circumstances which the Commissioners should take into their consideration in making their estimate of the amount to be paid the proprietor.

That 28th section is an enabling clause. It does not exclude other matters or facts from the consideration of the Commissioners in making up their award. It merely enables and directs them to take facts into consideration, many of which certainly without the aid of that clause they would not be justified in considering. Each of these facts, if brought properly in evidence before them, was to be an element to be taken into their consideration. If any of these facts was not brought properly before them in evidence, or was withdrawn by counsel, the Commissioners were not bound to consider them. The several facts and circumstances, as stated in the sub-sections, of themselves afford the clearest evidence that they were intended merely as beacons to light the Commissioners on their way to a true conclusion, and that they were not of necessity to form expressly a part of that conclusion.

All the sub-sections of section 28 are on the same footing, and the intention of the legislature was manifestly the same regarding them all. If one had to be expressly found, then all had. If any one need not be expressly found on the face of the award, then none need. Take sub-section A., the price at which other proprietors on the island had sold to the Government. That price was a mere piece of evidence, which it cannot be argued successfully should appear on the face of the award. *Cui bono?* It was very well as an item to be considered and weighed by the Commissioners. It may have afforded some data on which to found a conclusion of the general value of proprietors' lands on the island. It certainly could not form any part of the conclusion itself. It was a bare, bald fact, not in dispute, and not necessary, in anybody's interest, to be expressly stated in the face of the award. The same argument will apply with more or less force to each of the other sub-sections.

Many of these sub-sections are only applicable to particular cases. As regards the sub-section, relating to the original Grants and quit rents. Miss Sulivan was a consenting party to the Island Statute, 27 Vict. Cap. 2, commonly called the 15 Years Purchase Act, and the questions relating to these subjects, were withdrawn by the counsel, for the Commissioner of Public Lands, from the consideration of the arbitrators, so that under no circumstances could the award be set aside for its silence on these points.

But the Act, we contend, is positive as to the duty of the Commissioners, and that duty is expressly stated twice in different parts of the Act. The Act clearly intended that the Commissioners, in making their award, should simply find and award a sum of money,—they had no power to award anything else, any other award would be *ultra vires*.

In the 4th section it is enacted that the amount of money to be paid to any such proprietor, shall be "*found* and ascertained by three Commissioners, or any two of "them, to be applied as hereafter mentioned."

That section is express and clear. It is the *amount of money* to be paid *they are to ascertain and find;* not any collateral facts.

Then, again, the 26th section:—"*After hearing the evidence* the Commissioners "shall,"—not find a number of collateral facts,—but "shall award the sum due to such "proprietor as the compensation or price to which he shall be entitled, &c."

The *evidence* referred to in this section means in part such evidence as may be offered them on the several matters pointed out in the 28th section and its sub-sections.

It is submitted then as clear from the Act that the intention of the legislature was that like a jury assessing damages, the Commissioners should find *an amount*, and not that they should express their reasons for such findings, so that—as stated by one of the learned judges—if any one of reasons were in the opinion of the court wrong the result might be set aside. It was clearly to avoid any such difficulty and the endless litigation that would follow, that the law declared their award should contain simply their conclusions, and not their arguments in coming to those conclusions, or their findings upon the different branches of evidence. Then, again, it does not appear that any of the sub-sections were not considered, the onus surely lay on the party impeaching the award to show this. The court will not certainly *presume* that the Commissioners neglected anything they were bound to consider. The presumption will be the very contrary.

Omnia, presumuntur, rite esse, acta, here applies. All the arguments as to the possible injury a proprietor may suffer from the omission to consider any of these sub-sections, is simply begging the question, because it must first affirmatively appear that there was an omission on the part of the Commissioners. Of this there is not a scintilla of evidence.

In support of this branch of the argument is cited:—

Duke of Beaufort *v.* Swansea Harbour Trustees, 8, C. B. N. S., 765.

Mays *v.* Cannel, 24, L. J. C. P., 41.

In Re Byles, 25, L. J., Ex., p. 53.

——— 23, L. J. Q. B., p. 185.

Wrightson *v.* Bywater, 3, M. and W., 199.

Harrison *v.* Creswick, 13, C. B., 399.

Uncertainty of Award.

The proprietor contended the award was uncertain in not describing the lands awarded for by metes and bounds, or by some definite description.

The Commissioner of Public Lands contends:—

1. That no description need appear on the face of the award.

The Commissioner of Public Lands, under the 2nd section of the Act, notified Miss Sulivan of the intention of the Government to purchase "all of her township lands in "the island, liable to the provisions of the Land Purchase Act," (notice page 2 of case.) Miss Sulivan was not a resident proprietor, and had no lands "in her actual use and "occupation," within the meaning of the terms, in the 1st section of the Act, which were exempt from the operation of the Act.

The Act grasped all her township lands in Prince Edward Island, none were exempt. Those lands constituted her "estate" within the meaning of the Act. The Commissioners had no power to embrace any lands not part of her estate, or exclude any which were part of it.

Their powers were discretionary as to the sum they should award, not as to the lands for which they made the award.

No description they might insert in their award could alter or change the lands really affected and bound by the award.

If ejectment was brought by the Commissioner of Public Lands, to recover any part of Miss Sulivan's estate, he would be bound to prove that the lands he was seeking to recover *really formed part of the estate of the proprietor, bound and grasped by the Act.*

That fact would require to be proved *aliunde*, the award and the deed from the Public Trustee to the Commissioner of Public Lands. If the award contained a description, embracing the lands sought to be recovered in the ejectment, that would not relieve the Commissioners from proving that such lands really form part of the proprietor's estate.

A *primâ facie* uncertainty in an award does not vitiate it, if capable of being rendered certain.

The "Estate" and the lands in this case are capable of being ascertained with accuracy.

Id certum, est, quod certum, reddi potest. No *bonâ fide* dispute exists as to what constitutes Miss Sulivan's estate; the description given by the Public Trustee is correct description, and therefore no possible harm can accrue to any one.

The following cases are cited:—

Round *v.* Hatton, 10, M. & W., p. 659.
Willoughby & Willoughby, 12, L. J. (N. S.) Q. B., 281.
Mays & Cannel, 24, L. J. (C. P.), 41.
Taylor *v.* Clemson, 2.
Osther *v.* Cooke, 22, L. J. Q. B.
Wilcox *v.* Wilcox, 4, Exch., 499.
The Duke of Beaufort *v.* Swansea Harbour Trustees, 29, L. J. (C. P.), 241, S. C. S. C. B. N. S., 756.
Aitcheson & Cargay, in error, 9, Moore, 381.

Delegation of Authority to Public Trustee.

There is no delegation of authority. The award bounded all the proprietor's estate. There was no power delegated to the Public Trustee, to add to or detract from the lands bounded. He had merely to describe lands for which the arbitrators had awarded money. He correctly described them at his peril, and the peril of the Government he represented. His describing the lands could not prejudice the proprietor or any third person. In this case it appears he correctly described them. If he did not do so the Court would have restrained him from conveying, as provided by the Act.

But there could be no exercise of any judicial functions by the Trustee in describing the lands. It was purely a ministerial act on his part.

Russel on Awards, Ed. of 1856, p. 281.
Thorpe *v.* Cole, 2. C. M. & K., 367. S. C. 4. Dowl., 457.

The proprietor would be entitled to draw the sum awarded by the Commissioners, irrespective of any description given by the Public Trustee.

In making his application to the Court for the money awarded, the question would not be what lands the Trustee had described, but what *lands really formed part of the proprietors estate*, for which the award was made. *Primâ facie*, the proprietor notified, was entitled to all the money awarded.

An application by any third party, mortgagee, judgment creditor, &c., for any part of the money, might involve an inquiry by the Supreme Court, as to *what really constituted the estate proceeded against*, and whether any particular piece of land formed part of it, but could have nothing to do with the description the Public Trustee might make or give.

Jurisdiction of Court to set Award Aside.

The Court had no jurisdiction to declare the award void. In doing so it acted *ultra vires*. The 45th section of Land Purchase Act (case, page 115), expressly takes away the ordinary jurisdiction of the Court, and declares that no "award shall be invalid or void, for any reason, defect, or informality." The same section gives ample powers to the Court to remit the award back, to correct any error, informality or omission made in it, and gives the Commissioners full powers to revise and re-execute.

If there was any error, informality, or omission, the proprietor should have moved under this section to remit award back, but did not do so.

A further power is given by the 32nd section to the court, or a judge, to restrain the Public Trustee from executing a conveyance.

The award made is clearly on a matter within arbitrators' jurisdiction.

It does not appear that they awarded on any matter not within their jurisdiction. It does not appear that they neglected to exercise a jurisdiction which they should exercise. No attempt is made to show that in estimating the amount awarded to Miss Sulivan, the arbitrators omitted the consideration of any of the circumstances set out in the 28th

section of the Act, the award is expressly made under and pursuant to the Act, and in a matter within the scope of the Act; their jurisdiction appears on the face of the award.

Presumptions will not be made against the award, but rather in its favour.

Richard *v.* South Wales Railway Co., 13 Jurist, 1097.
Faviell *v.* Eastern Counties Railway Co., 17, L. J. Ex., p. 222.
Colonial Bank of Australasia *v.* William, 5 L. Rep. P. C., 442.
Thorpe *v.* Cooper, 2. C. M. & R., 367.

Non-Payment of the money into the Treasury.

The money awarded was paid into the Treasury in Dominion notes, which it afterwards appeared were not legal then in Prince Edward Island.

This is a subsequent act to the award, and does not affect the validity of that document.

The money paid in not being legal tender, the proprietor had a right to an injunction, restraining the Public Trustee from executing a conveyance until legal tender money was paid in. This she got.

The Commissioner of Public Lands would be entitled to dissolve that injunction, when legal tender money was substituted. The section is directory, not *imperative.*

It declares that the money shall be paid *at the* expiration of 30 days—not within 30 days. The non-payment of the legal tender money within 30 days, could not therefore operate to vitiate the award; but could only have the effect of entitling the proprietor to restrain the Public Trustee from executing a conveyance until legal tender money was paid into the Treasury.

Enclosure 4. in No. 4.

In The Supreme Court of Canada, Monday, January 15, 1877.

Present:

The Honourable the Chief Justice.
" " Mr. Justice Ritchie.
" " Mr. Justice Strong.
" " Mr. Justice Taschereau.
" " Mr. Justice Fournier.

Francis Kelly, *Appellant*, and Charlotte Antonia Sulivan, *Respondent.*

In the matter of the application of the said Francis Kelly, the Commissioner of Public Lands for the Province of Prince Edward Island, for the purchase of the estate of the said Charlotte Antonia Sulivan, and "the Land Purchase Act, 1875," and in the matter of an appeal to the Supreme Court of Canada by the said Francis Kelly from the Judgment of Her Majesty's Supreme Court of Judicature for Prince Edward Island, rendered on the 17th day of January 1876, making absolute a rule nisi granted in the said cause by the said last-mentioned Court on the 17th day of November 1875, calling on the said appellant to show cause why the award made and filed in the matter of the said application and all subsequent proceedings should not be set aside.

The above appeal having come on to be argued before this Court on the eighth, ninth, and tenth days of June last past, in presence of counsel, as well for the appellant as the respondent, whereupon and upon hearing what was alleged by counsel aforesaid, this court was pleased to direct that the same should stand over for judgment, and the same having come on this day for judgment, it was ordered and adjudged by the said Court that the said appeal should be and the same was allowed, and that the said judgment of Her Majesty's Supreme Court of Judicature for Prince Edward Island be reversed, that the said rule nisi should be discharged, and that the respondent should pay to the appellant as well the costs incurred in the said last-mentioned court as the costs of this appeal.

Certified,
Robert Cassels, Jr.,
Registrar, S.C.C.

SUPREME COURT of CANADA, June Session, 1876.

PRESENT:

Their Lordships Chief Justice Richards; Ritchie, J.; Strong, J.; Taschereau and Fournier, J.

IN the matter of the application of Francis Kelly, Commissioner of Public Lands for the purchase of the estate of Charlotte Antonia Sulivan, and the Prince Edward Island Land Purchase Act, 1875.

APPEAL by the Commissioner of Public Lands of Prince Edward Island.

Jurisdiction of Supreme Court of Canada. Court of last resort in Prince Edward Island. Jurisdiction of Court to set aside award. Remedy by remitting back award, provided application be made to Supreme Court of Prince Edward Island within 30 days after publication of award. Finality of award.

Held, that the Court of last resort in the Province of Prince Edward Island, from whose judgment an appeal lies direct to the Supreme Court of Canada, is the Supreme Court of Judicature of Prince Edward Island.

Held, that by Statute of Prince Edward Island, known as "The Land Purchase Act, 1875," an award of the Commissioners cannot be quashed and set aside or declared invalid and void on an application made to the Supreme Court of Prince Edward Island, but can be remitted back to the Commissioners in the manner prescribed by the 45th section of the Act.

The island of Prince Edward Island long ago granted in large blocks of about 20,000 acres each was, as time went on, let by the grantees in small parcels, generally for long terms of years, reserving an acreable rent of about one shilling.

Out of these tenures sprung an agitation, which under various names occasioned much discord in the Colony, and in 1862 an Act of Assembly was passed under the provisions of which a portion of the island was purchased by the Government from its owners; but a considerable portion remained in the hands of others, who declined to sell. The Land Purchase Act of 1875 was passed. Under its authority a tribunal called the Commissioners Court was organised, and it is out of proceedings instituted in that Court for the purchase of the township lands of Miss Sulivan the present questions arise.

The nature of the questions decided and the manner in which they arose are fully set forth in the reasons for judgment given by their Lordships.

Mr. Brecken, Attorney-General, Prince Edward Island; Mr. Cockburn, Q.C.; and Mr. L. H. Davies, for appellants.

First, as to the jurisdiction of this Court.

The power of the Governor in Council to sit as a Court was given by Royal instructions previous to Lord Monk's appointment. In subsequent Royal instructions there are clauses which expressly revoke the power given to the Governor.

If this Court exists in Prince Edward Island, it also exists for Nova Scotia; and the practice there shows that the Appeal to the Privy Council lies direct from the Supreme Court. McPherson P. C. Pract., 9392. The Act, 1873, Prince Edward Island, is a copy of the English Procedure Act, and reference is made to a Court of Error and Appeal, because it was intended to provide for a Court of Error and Appeal under the British North America Act, it being only two months previous to confederation that this Act was passed.

No rules were ever made, and since confederation the Lieutenant-Governor is appointed by the dominion Government, and he is not given any judicial functions. Reference is made to Commission to Lieutenant-Governor Patterson, and Royal Instructions to Lieutenant-Governors since 1854.

II. The award is final.

The Act only required that the Commissioners should find in their award the sum or amount due to the proprietor for his estate. Section 28 of the Act, with sub-sections *a*, *b*, *c*, *d*, *e*, are merely directory, and as stated in sub-section *e*, "*the number of acres, the* "*reasonable probabilities, and expenses of the proprietor* shall each and all be *elements* "to be taken into consideration by the Commissioners in estimating the value of the "lands." This proves that these facts and circumstances, as stated in the sub-sections themselves, were merely intended as beacons to light the Commissioners on their way to a true conclusion. In section 27 of the Act, it is stated that the *object of this Act is to pay every proprietor a fair indemnity or equivalent for the value of his interest, and no more.* Now the intention of the Legislature is certainly well expressed, viz., to find the

amount to be paid. It is the *amount of money* to be paid they are to ascertain and find, not any collateral facts. All the arguments as to the possible injury a proprietor might suffer from the omission to consider any of these sub-sections is simply begging the question, because it must first affirmably appear that there was an omission on the part of the Commissioners. Further, the evidence as to quantity was taken from respondent's own agent, and to set aside an award there must either be manifest fraud or excessive jurisdiction or some material matter that has not been taken into consideration. There could not have been any fraud when the evidence given and accepted was that of the agent of the respondent. The case of Withworth *v.* Hulse, L. R. 1 Exch., 252, is not in point, because it does not appear in this case that any of the sub-sections were not considered. On the contrary, all respondent's estate was adjudicated upon.

In support of this branch of the argument is cited--

Duke of Beaufort *v.* Swansea Harbour Trustees, 8, C. B. N. S., 765.
In *re* Byles, 25, L. J. Ex., p. 53.
Mays *v.* Camel, 24, L. J. C. P., 41.
Queen *v.* London N. W. Railway Co., 23, L. J. Q. B., p. 185.
Wrightson *v.* Bywater, 3, M. & W., 199.
Harrison *v.* Creswick, 13, C. B., 399.
Russell on Awards, 2 Ed., pp. 266, 267, 258, 262.

As to the uncertainty of the award, all respondent's estate was adjudicated upon; the Trustee's Act was simply ministerial. The Commissioner of Public Lands, under the 2nd section of the Act, notified Miss Sulivan of the intention of the Government to purchase "all her township lands in the island liable to the provisions of the Land "Purchase Act." The Commissioners had no power to embrace any lands not part of her estate or exclude any which were part of it.

It was decided lately in the island that the mere notice given under the Act brought all the lands of a proprietor under the provisions of the Land Purchase Act, and therefore Commissioners had to estimate only the sum they should award, and their powers were not discretionary as to the lands. There could be no necessity of describing the lands by metes and bounds. The describing of the land is purely a ministerial act. No description they might insert could alter or change the lands really affected and bound by the award. A *primâ facie* uncertainty in an award does not vitiate it, if capable of being rendered certain. The "estate" and the lands in this case are capable of being ascertained with accuracy.

The following cases are cited:—

Round *v.* Hatton, 10 M. & W., p. 659.
Willoughby *v.* Willoughby, 12 L. J. (N.S.) Q. B., 281.
Mays *v.* Camel, 24 L. J. (C.P.), 41.
Taylor *v.* Clemson, 2, Q. B., 978.
Osther *v.* Cooke, 22, L. J. Q. B., 71.
Wilcox *v.* Wilcox, 4 Exch., 499.
The Duke of Beaufort *v.* Swansea Harbour Trustees, 29, L. J. (C. P.), 241.
S. C. & C. B. N. S., 756.
Aitcheson *v.* Cargay in Error, 9, Moore, 381.
On delegation of authority to Public Trustee.
Russell on Awards, Ed. 1856, p. 281.
Thorpe *v.* Cole, 2, C. M. & R. 12, 367, S. C. 4, Dowb., 457.
15 U. C. (C. P.) 565, 2. Pract. Rep. U. C., p. 98.
Duguet *v.* Green, 4 U. C. Q. B. O. S., p. 110.
20 U. C. Q. B. N. S. 283, 24, Q. B. U. C., p. 581.

The Court had no jurisdiction to declare the award void. The 45th section of Land Purchase Act expressly takes away the ordinary jurisdiction of the Court, and declares that "no award shall be invalid or void for any reason, defect, or informality," but the Court had amply power under the same section to remit the award back to the Commissioners to correct any error, informality, or omission, provided application is made 30 days after rendering of the award. This remedy was treated with silent contempt. Now, after reading that prohibitory clause of the Act, nothing in this case could reasonably justify the Court below to quash the award in this summary way. The award is expressly made under and pursuant to the Act; the arbitrator's jurisdiction appears on the face of the award. Presumptions will not be made against the award, but rather in its favour. They referred to—

Richard *v.* South Wales Railway Co., 13, Jurist 1097, & 18 L. J. Q. B.
Favielle *v.* Eastern Counties Railway Co., 17, L. J. Ex., p. 222.
Colonial Bank of Australasia *v.* William 5, L. Rep. P. C., 442.
Thorpe *v.* Cooper, 2, C. M. & R. 367, Queen & Botton, 1, Q. C., 66.

Mr. M. C. Cameron, Q.C., and Mr. E. T. Hodgson, for the respondent.

I. No appeal lies direct from the Supreme Court of Prince Edward Island to the Supreme Court of Canada. Sections 11 and 17 of the Supreme Court Act declare that all appeals to the Supreme Court must be from the Court of last resort in any province. In Prince Edward Island there is a Court of Error and Appeal, composed of the Lieutenant-Governor in Council, before which this case should have been tried before coming here. By various Acts of the Legislature of the Island this Court is recognised to have an existence, 1 vol. Prince Edward Island Statutes, p. 291; Rev. Stat., p. 51, 21 Geo. III. ch. 17; and section 145 of Prince Edward Island Act, 1873; 6 Vict. c. 26, sec. 51. The discussion on *re* Cambridge, 3 Moore P. C. C., 175, shows that in the year 1841 the Privy Council decided that an appeal would not lie to them from the courts of the Island, except through the Governor in Council. By section 24 of the Supreme Court Act, the practice in appeals to the Privy Council must be followed in similar cases in the Supreme Court here.

In all other British Colonies there have been Orders in Council passed to enable parties to appeal direct from the supreme courts of the respective provinces to the Privy Council without recognising or appealing to the intermediate court, composed of Governor in Council, but in Prince Edward Island no Order in Council or Act of Parliament has changed or affected the law as it once stood. Reference is made to Royal Instructions, Appendix F. Journals of House of Assembly, Prince Edward Island. Clarke's Colonial Law, p. 111, L. R. 4, Q. B., p. 225.

II. As the jurisdiction of the Supreme Court of Judicature of Prince Edward Island is questioned, it is well to remark that it has always been admitted that an appellate court would never inquire into the manner or process of an inferior court provided it was legally seized of the cause. By the 32nd section of the Land Purchase Act, the Supreme Court had a right to restrain the Public Trustee from executing a conveyance of the estate of a proprietor to the Commissioner of Public Lands. It is not the duty of this court, as an appellate court, to inquire if this was obtained by a rule *nisi* or otherwise. The court is given a jurisdiction which it would not have were it a case of arbitration. When a Statutory power is given to deprive a person of his land, the strictest interpretation must be given to the Statute, and every means afforded to the proprietor to find out if any omission or error has taken place. The award was open to inquiry by the Supreme Court, notwithstanding the 45th section of the Land Purchase Act, 1875. Colonial Bank of Australia *v.* Willan, L. R. 5, P. C., 442; Reg. *v.* Jus. of Staffordshire, 5, E. U. B. C., 49. So though *certiorari* be taken away by Statute, if cause be decided by a majority of a court improperly constituted, certiorari yet lies, Reg. *v.* Cheltenham, 1 Q., B. 467; Reg. *v.* St. Albans, 17, Jurist, 531, S. C. 22, L. J. (M. C.) 143; Richards *v.* S. Wales, R. R. Co., 18, L. J. (Q. B.), 310 S. C. 6; Rail., case, 197. The Commissioners had no jurisdiction in this case, and therefore their award was bad, and should be set aside first, because the notice required by the Act had not been properly given. This being a proceeding *in rem* the notice from the Commissioner of Public Lands should have set out a description of the lands by *metes* and *bounds* over which jurisdiction was claimed; second, because it did not appear on the record that notification of the appointment of the Commissioner had been given, or that the Commissioners were sworn under sections 9 and 13 of the Act.

L. Canada Rep. 11 Vol., 499; Joseph *v.* Ostell. Third, because the notice in the Royal Gazette, required to be given under section 14, of time and place of hearing for three consecutive weeks was advertised for only two weeks.

3. C. P. U. C., p. 19.; 28 Q. B. U. C., p. 333; 24 Q. B. U. C., p. 439. No appearance of respondent by counsel could waive these defects, because (a.) no consent can give jurisdiction. (b.) The interests of parties other than Miss Sulivan's were affected whom no consent of hers could bind. (c.) The Commissioners derive their authority from the Statute and not from the consent of the parties. The award is not final and it is uncertain.

It is uncertain: It does not show that the Commissioners adjudicated on matters on which they were bound to adjudicate under section 28 of the Land Purchase Act. The award is not made *de priemissis*, and there is nothing to show that the various matters specified in this section were taken into consideration by the Commissioners. The Act is intended to convey an absolute and indefeasible estate of fee simple from all incumbrances of every description, and to divest the proprietor not only of the land but also of all arrears of rent. Now unless a proper description be given somewhere, how can Commissioners award on these arrears of rent.

The rule of law is, if it be doubtful whether the award has decided the question referred, it will be set aside for the uncertainty. Russel on Awards, 2nd Ed., p. 284. Tribe *v.* Upperton, 3 A. and E., p. 295. Pearson *v.* Archibald, 11 M. and W. p. 477.

The award does not embrace sub-sections 1, 2, and 3 of section 28, and the rule of law is if specific matters are referred and there be no specific adjudication upon any of them the award is void. Moreover the form of conveyance used in the schedule annexed to the Act, implies that the lands should be described by *metes* and *bounds*. In answer to the contention of the counsel for the appellant that in this case it would have been impossible for the Commissioners to find on the matters and things contained in sub-section *c.* of section 28 of this Act, it is well to remark that section 24 clearly confers authority which would enable them not only to examine the quality of the land, timber, &c., but also to cause such surveys to be made as might be necessary for carrying the Act into effect. How could the Public Trustee execute a deed in form B. of the Act if the award were held to be valid? The Public Trustee is merely a ministerial officer and he could not execute a deed to the Commissioner of Public Lands without exercising judicial functions in ascertaining what lands to insert in such deed.

Reference is made to the following cases: Russell on Awards, 2 Ed., p. 261. Randall *v.* Randall, 7 East, p. 81. Re Rider *v.* Fisher, 3 Bing, U.C., 874. Whitworth *v.* Hulse, L.R., 1 Exch., 252. Robinson *v.* Henderson, 6 M. & W., 276. Wakefield *v.* Llanelly, 3 De G. L., &c., S., p. 11. Stone *v.* Phillips, 4 Bing, U.C., p. 37. Ross *v.* Boards, 8 A. & E., p. 290.

Further the award shows an excess of jurisdiction inasmuch as it deals with all Miss Sulivan's lands, whereas they had jurisdiction only over the excess above 500 acres. As Judge Peters, in his judgment puts it, "Now, surely if I say you shall not hold over "500 acres the plain and necessary implication is that you may hold 500." It can only be with regard to this excess that the compulsory clauses of the Act were intended to operate. The respondents counsel rely also on the reason for judgment by the court below, and referred also to the following authorities:

Rorer on Judicial Sales, p. 36, vol. II. Hopper *v.* Fisher, Head's Reports, vol. II., p. 353. Grey *v.* Steamboat Reveille, 6 Wisconsin, p. 61. Little *v.* Pitts, 33 Alabama, 343. Lawson *v.* Kerr, 10 M. P. C., p. 162. Devino *v.* Holloway, 14 M. P. C., p. 290.

Mr. L. H. Davies in reply—

In this case Miss Sulivan did not wish to retain her 500 acres. The scope of the Act was to reach proprietors whose lands were not in their actual use and occupation. The presence of respondent's Commissioner, her appearance by counsel, and affidavit of her agent, G. W. Le Blois, surely put at rest any contention that certain preliminary formalities of the Act were not complied with. Supposing an omission had taken place, the remedy was marked out in the 45th section of the Act.

As to mentioning in the award all the matters submitted to the Commissioners by sub-sections 1, 2, and 3, section 20, the Act would have been absolutely unworkable.

The following is a Synopsis of the Land Purchase Act of 1875.

The Island Statute known as the Land Purchase Act of 1875, came in force by the proclamation of the Lieutenannt-Governor on the 13th June 1876. It refers to the fact that the government of the island was entitled to receive from the dominion government $800,000 for the purpose of enabling the Province to purchase the *township lands* held by proprietors in the island; and further recites that it was desirable to convert leasehold tenures into freehold estates upon terms just and equitable to the tenants as well as to the proprietors in the island. The first section declared that the term "proprietor" should include and extend to any person for the time being receiving or entitled to receive the rents, issues, or profits of any *township lands* in the island (exceeding 500 acres in the aggregate), in his or their own right or as a trustee, guardian, executor, or administrator for any other person or persons, or as a husband in right of or together with his wife, and whether such lands are leased or unleased, occupied or unoccupied, cultivated or wilderness. But nothing in the Act contained should be construed to affect any proprietor whose lands in his actual use and occupation and untenanted did not exceed 1,000 acres.

Section 2. That the Commissioner of Public Lands shall, within 60 days after the publication of the Governor-General's assent to the Act in the "Canada Gazette," notify any proprietor that the Government intend to purchase his or their township lands under the Act.

Section 3 provides for the service of notice.

Section 4. The amount of money to be paid to any such proprietor shall be ascertained by three Commissioners or any two of them appointed under the Act.

Sections 5, 6, 7, 8 and 9 provide for the selection of the three Commissioners, one by the Governor-General in Council, one by the Lieutenant-Governor of the Island, and the third by the proprietor.

Sections 10, 11, 12 and 13 refer to appointing Commissioners in place of those who die or who are incapacitated from serving or who refuse to serve, and electing a commissioner to preside at the meetings.

Section 14. Notice of the day and place of the sitting of the Commission to be published in the "Royal Gazette."

Section 15 makes the Commissioner of Public Lands in all proceedings the claimant, and subjects him to process for contempt.

Section 16 provides for the cases of proprietors who are lunatics, infants, &c.

Section 17. Court may appoint a guardian *ad litem.*

Section 18. Commissioner of Public Lands may appoint a solicitor to act for him.

Section 19. Either party may obtain subpœnas for witnesses.

Under the 20th section the Commissioners are authorised to examine witnesses on oath upon the matters submitted to their consideration, *and as to the facts which they may require to ascertain in order to carry this Act into effect.*

Section 21. The Commissioners, when appointed, shall make oath before one of the judges of the Supreme Court that they will well and faithfully discharge the duties imposed upon them under the Act, and adjudicate on all matters coming before them to the best of their judgment.

Sections 22, 23, 24 and 25 authorise Commissioners to proceed *ex parte* when parties neglect to appear, to extend time to proprietors before entering on case, and to have power to enter on and examine lands and adjourn the hearing of any matter from time to time.

Section 26. "After hearing evidence adduced before them, the Commissioners, or any "two of them, shall award the sum due to such proprietor as the compensation or price "to which he shall be entitled by reason of his being divested of his lands and all "interest therein and thereto."

Section 27 provides that no compensation shall be allowed in consequence of the purchase being compulsory, "the object of the Act being to pay every proprietor a fair "indemnity or equivalent for the value of his interest and no more."

Section 28 enacts that in estimating the amount of compensation to be paid to any proprietor for his interest in, or right to, any lands, the Commissioners shall take the following facts or circumstances into consideration:—

(*a.*) The price at which other proprietors in the island have sold their lands to the Government.

(*b.*) The number of acres under lease in the estate or lands they are valuing, the length of the leases on such estates; the rents reserved by such leases; the arrears of rent, and the years over which they extend, and the reasonable probability of their being recovered.

(*c.*) The number of acres of vacant or unleased lands; their quality and value to the proprietor.

(*d.*) (1.) The gross rental actually paid by the tenants on any estate yearly for the previous six years; (2.) The expenses and charges connected with and incidental to the recovery of such rent and its receipts by the proprietor; and (3.) the actual net receipts of the proprietor for the said period of six years.

(*e.*) The number of acres possessed or occupied by any persons who have not attorned to or paid rent to the proprietor, and who claim to hold such land adversely to such proprietor, and the reasonable probabilities and expenses of the proprietor sustaining his claim against such persons holding adversely in a court of law, shall each and all be elements to be taken into consideration by the said Commissioners in estimating the value of such proprietor's land; (1) the conditions of the original grants from the Crown; (2) the performance of those conditions; (3) the effects of such non-performance, and how far the despatches from the English Colonial Secretaries to the different Lieutenant-Governors of the island have operated as waivers of any forfeitures.

(*f.*) The quit rents reserved in the original grants, and how far the payment of the same have been waived or remitted by the Crown.

Section 29. A copy of the award to be delivered to the proprietor or his agent and the original to be filed in the office of the prothonotary of the Supreme Court.

Section 30. At the expiration of 60 days from such publication, the Government shall pay into the Colonial Treasury the sum awarded to the credit of the suit or proceeding in which the award is made.

Section 31. A certificate of the amount paid in to be delivered to the prothonotary of the Court.

Section 32. The Public Trustee shall (unless restricted by the Supreme Court or a judge) after 14 days notice to the proprietor, execute a conveyance of the estate of such proprietor to the Commissioner of Public Lands, which conveyance may be in the form B. of the Act.

Section 33. The conveyance shall rest in the Commission of Public Lands an absolute and indefeasible estate of fee simple free from all incumbrances of every description, and shall be held and disposed of by him as if such lands had been purchased under the provisions of 16 Vict. c. 18., and shall also vest in the Commissioner all arrears of rent due upon the said lands.

Section 34. The appointment of the Public Trustee to be under the Great Seal, and shall be registered.

Section 35. Party entitled to sum awarded or portion of such sum to obtain the same by obtaining an order from the Supreme Court on petition, and proving his or their right to such sum or portion thereof. Provided the Commissioner of Public Lands be made a party to such application.

Section 36. The Supreme Court, on application, to make all proper persons parties to such proceedings and to apportion the sums amongst the parties entitled to receive the same.

Section 37. When the full sum for the land is paid into the Treasury and the conveyance executed by the Trustee, the Government shall be exonerated from all claims on the estate.

Section 38. The party obtaining an order from the Supreme Court for any money to which he is entitled or any interest therein shall be indemnified his cost on the application, but a person failing in his application is not to get costs, but must pay to the party obtaining the order his costs incurred by the unsuccessful application.

Sections 39 and 40 refer to the Court ordering money to be invested in the name of trustees, &c., to meet the circumstances of each case and the same or the interest thereof to be paid to the proper parties.

Sections 41 and 42. Trustees to hold purchase money upon same trusts as they held the lands. Court may appoint trustees and dismiss them and appoint others in their stead.

Sections 43 and 44. Compensation of Commissioners and Public Trustees.

Section 45 refers to the setting aside of the award.

Section 46. The Supreme Court to have power to make rules and regulations for the carrying the Act into effect.

Section 47 declares, as it is expedient that the matters referred to the Supreme Court under the Act should not interfere with the ordinary business of the Court during term time, the Court from time to time may appoint sessions for the purpose of hearing proceedings under the Act, and provides for one week's notice to be given.

Section 48. Penalty on Commissioners for neglecting to proceed under provisions of the Act.

And, lastly, the 49th section enacts: After the Commissioners shall have given notice to any proprietor under the second section of the Act, no such proprietor shall maintain any action at law for the recovery of more than the current year and subsequent accruing rents due to him from any tenant or occupier upon his lands, and if any such action is brought the tenant may plead the Act in bar of the action; nor shall any execution issue on any judgment, recovered or to be recovered, for rent by any such proprietor against any tenant on the Island, except the current year's rent and subsequent accruing rent; and in case any such execution is issued the Supreme Court, or a judge thereof, shall, on application, stay any such execution until the award of the said Commissioners shall be made.

January 15th, 1877.—Chief Justice Richards.

The appeal is from the Supreme Court of Prince Edward Island, making absolute a rule to quash the award made and filed in this matter and all subsequent proceedings, wherein it was ordered that the said award be quashed and set aside, and that the said Commissioner of Public Lands pay the costs of the application and the rule. Against this judgment and order of the Court the Commissioner appeals. On the hearing, the first objection taken on behalf of the respondent was first discussed, viz., that no appeal lies direct from the Supreme Court of Prince Edward Island to the Supreme Court of Canada.

The latter part of Section 11 of the Supreme and Exchequer Court Act, reads as follows:—"And when an appeal to the Supreme Court is given from a judgment in any "case it shall always be understood to be given from the Court of last resort in the "province where the judgment was rendered in such case." The respondent in the factum suggests that the Governor in Council is constituted a Court of Error and Appeal in Prince Edward Island by various Royal Instructions, and refers to the instructions to Sir John Colborne, accompanying his Commission of 13th December, 1838, appointing him Captain-General and Governor-in-Chief of the Island.

The instructions, which in the absence of the Captain-General and Governor-in-Chief were intended for the Lieutenant-Governor or officer administering the government for the time being, are referred to as being in the Appendix to the journals of the House of Assembly of the Island, A.D. 1851, Appendix F. The Commission to Sir John Colborne is also to he found in the same book.

The 23rd and 24th sections of the Instruction were especially referred to on the argument. The first part of the 23rd section is as follows:—"Our will and pleasure is that "you do in all civil causes, on application being made to you for that purpose, permit "and allow appeals from any of the Courts of Common Law in our said Island of "Prince Edward; and you are for that purpose to issue a writ in the manner which has "been usually accustomed, returnable before yourself and the Executive Council of the "said Island of Prince Edward, who are to proceed to hear and determine such appeals." It goes on to provide that the judges of the Court whose judgment is appealed from shall not vote on the appeal, though they may be present and give the reasons of their judgment. It also directs that the sum or value appealed from must exceed 300*l.* sterling, and security be given, and when the sum exceed 500*l.* sterling, and either party is not satisfied with the judgment of the Governor in Coucil, an appeal may lie to the Queen in Council, the same to be made within 14 days, and security given. And in certain cases when the rights of the crown are involved, he is to *admit* an appeal to the Queen in council, though the value be less than 500*l.* sterling.

The 24th paragraph directs him to *admit* appeals to the Queen in her Privy Council in case of fines to a certain amount for misdemeanor. Clarke's "Colonial Law," page 111, was cited, and referring to the position of most of the North American Colonies the following language is used:—"From the Common Law Courts an appeal in the nature "of a Writ of Error lies in the first instance to the Court of Error in the Colony, and "from them to Her Majesty in Council. The Colonial Court of Error is usually com-"posed of the Governor in Council, who decide by a majority."

Re Cambridge, 3 Moore, P. C. C., 175. An application was made for leave to appeal where the amount was under 300*l.*; the Court of Appeal in the Island only allowing appeal when the amount was over 300*l.* Lord Brougham, in giving judgment, refers to the existence of the Court of Appeal in the Colony.

The Act 6 Vict. c. 26, sec. 5, provides that any person dissatisfied with the decree of the Surrogate may appeal "to the Governor in Council." Under section 51 he was to give a bond for the payment of such costs as should be awarded by the Governor in Council (sec. 52). If the decision of the Surrogate should be reversed or altered the Governor in Council should make such order touching the subject of the appeal as to them shall seem fit, and by section 53 every license to sell real estate "shall be made in "such form as the Surrogate (or in case of the decision of the Surrogate being altered "by the Governor in Council) may prescribe." The Island Statute 21 Geo, 3 ch. 17, relates to the limitation of actions. Section 4 provides that when "judgment given for "a plaintiff is reversed on a writ of Error, arrest of judgment, &c., he may commence "another action within a year."

The Island Statute 5 Wm. IV. c. 10, constitutes the Governor in Council a court for hearing matters of divorce, with full power, authority, and jurisdiction. The court to sit on the second Monday in May in each year. The Governor may appoint the Chief Justice to preside.

In re Monckton, a barrister, 1 Moore P. C. C., p. 455. The Chief Justice of the island had made an order in a matter wherein the applicant, a barrister, was arrested, striking his name off the rolls as a barrister. On appeal to the Privy Council the order was set aside.

The sections of the Island Statute 36 Vict. c. 22, from 136 to 158 inclusive, and section 230, refer to appeals to a court of error or appeal. Sections 136 to 157 inclusive, are the same as those in the English Common Law Procedure Act, 15 & 16 Vict. c. 76, from section 146 to 167 inclusive, slightly varied to adapt them to the circumstances of the island. The 136th section begins, "And with respect to proceedings in error, be it

enacted," &c. The 145th section speaks of the setting down of the case for argument in the Court of Error in the manner heretofore used, refers to the roll being sent into the Court of Error or Appeal, and "the Court of Error or Appeal shall thereupon review the proceedings."

The appellants on the argument contended that as a matter of fact no such tribunal as a court of error and appeal was ever established in the island.

There is no existing official document of any kind showing the establishing of such a court. There is no record of any case ever having been brought before such a tribunal, and the reference in the island Statute 21 Geo. 3. c. 17, respecting the limitation of actions to a year for bringing an action when cases are reversed in error, &c., cannot be considered as establishing or recognising the establishment of a court of appeal as a court of the last resort from the Supreme Court in the island.

That the Statute 6 Vict. c. 26, so far as it relates to an appeal from decisions of the Surrogate Court to the Governor in Council, does not form them into a general appellate tribunal, but in those special cases allows an appeal to the Governor in Council, and directs the Probate Court to carry out the decision of that body when the appeal is made to them.

That the reference to appeals in the Act 36 Vict. c. 22, arose from hasty legislation in adopting the general provisions of the Common Law Procedure Act, and if no court of appeal actually existed, would not necessarily establish one.

A copy of instructions to Governor Patterson was produced at the argument, but his commission was not.

It was suggested that application should be made to the Colonial Office for copies of the commissions and instructions of such Governors as would be likely to throw light on the subject, and any other documents of a like nature, and these documents were to be placed before this court.

Reference was also made on the argument to Stuart's History of Prince Edward Island, printed in 1805, and to Haliburton's Nova Scotia, vol. 2, p. 330.

Since the argument copies of the commission of Governor Patterson of Prince Edward Island, then the island of St. John, and of two commissions to Guy Carleton, Esq., as Governor of the Province of Quebec, and the instructions accompanying each of the commissions, have been filed with the registrar of the court. No other documents referring to the establishment of a court of appeals have been brought to the notice of the court. We must, therefore, dispose of the preliminary question on the materials before us.

Copies of the commissions of Lord Monck, Sir John Young, Lord Dufferin, and of the present Governor of the island, Sir R. Hodgson, were obtained in Ottawa.

Prince Edward Island, or the island of St. John, as it was then called previous to the year 1764, was under the same Government with the Province of Nova Scotia, and giving the boundaries of that province in the commission of William Campbell, Esq., commonly called Lord William Campbell, dated 11th August 1766, appointing him Captain General and Governor of Nova Scotia, the island of St. John is included. In the commission to Walter Patterson, dated 4th August 1769, so much of the patent to Lord William Campbell as mentioned the island of St. John was revoked, and Patterson was appointed Captain General and Governor-in-Chief of the island and territories adjacent thereto. Under the commission to Governor Patterson he had power, by and with the consent of the Council, to erect and establish courts of judicature within the island, for the determining and hearing of all causes, civil and criminal, according to law and equity, and to constitute and appoint judges and commissioners of oyer and terminer for the better administration of justice. The commission also refers to such reasonable Statutes as should thereafter be made and agreed upon by him, with the advice and consent of the Council and Assembly of the island; and as soon as the situation and circumstances of the island would admit thereof, and as soon as need should require, he was to call general assemblies of the freeholders and planters, to be called the Assembly of the island; and by the consent of the Council and Assembly he had power to make laws for the good government of the island. By the instructions he was to constitute a council to assist him in the administration of the affairs of the Colony, and the council to have all the powers and privileges and authority usually exercised in the other American colonies.

He was to give his immediate attention to the establishing of such courts of judicature as might be found necessary for the administration of justice. He was to consult the Chief Justice as to the measures proper to be pursued for the purpose, governing himself, as far as difference of circumstances would admit, by what had been approved and found

advantageous in Nova Scotia. He was to transmit to the Secretary of State copies of all acts, orders, commissions, &c., by virtue of which any courts, officers, jurisdictions, &c. were established.

The consideration of calling a Lower House of Assembly could not too early be taken up.

There is no authority in his commission or instructions directing him to establish a court of error or appeal, nor to permit or allow appeals to himself in council.

The commission of Guy Carleton, afterwards Lord Dorchester, appointing him Governor of the Province of Quebec, dated 12th April 1768, is similar to that of Governor Patterson, which was dated 4th August 1769. It appoints him Captain General and Governor-in-Chief of the Province of Quebec. His instructions differ somewhat from those afterwards given to Governor Patterson, and as to summoning a general assembly of freeholders as soon as the more pressing affairs of Government would allow, stated, as it was impracticable to form such an establishment, then he was to make such rules and regulations, with the advice of the Council, as should appear to be necessary for the peace, order, and good government of the Province.

He was to establish courts of justice, and consider what had been established in that respect in the other colonies in America, particularly in Nova Scotia.

He was to allow appeals from any of the Courts of Common Law to the Governor in Council and for that purpose was to issue a writ "in the manner which has usually been accustomed" before himself and the Council who were to proceed to hear and determine such appeals. (As already stated, no such direction or authority as this is contained in the commission to Governor Patterson).

He was again appointed Governor of Quebec, his commission being dated 27th December, 1775, after the passing of the Imperial Statute 14, Geo. III. ch. 83, for making more effectual provision for the Government of the Province of Quebec. Following the provisions of the Imperial Statute he was authorised, with the consent of the Council, to make ordinances for the peace, welfare, and good government of the Province, certain exceptions as to ordinances imposing taxes. He had authority to appoint judges, &c., as in his former commission.

Under his instructions he was directed by and with the advice of his Council to establish courts of justice. Suggestions were made as to the kind and number of courts, but he was to be guided by circumstances, and amongst other suggestions as to what should be done was the following, viz.:—That the Governor and Council should be a court of civil jurisdiction for the hearing of appeals from the judgments of the other courts when the matter in dispute exceeded 10 pounds.

The decision of the Governor in Council to be final in cases not exceeding 500*l.* sterling, in which case an appeal from the judgment to be admitted to the King in Council.

An ordinance was passed by the Governor in Council on 25th July 1777, establishing certain courts according to the suggestions contained in the Royal Instructions, and under that ordinance the Governor in Council was constituted a court of appeal.

On the margin of the ordinance in the copy in the library of Parliament here, there is the following entry in manuscript, "vide ordinance of 17th Sept. 1773, passed on Ch. J. Hayes going home." It was the model of this and the next ordinance in some instances.

The next ordinance was to regulate the proceedings in the courts of civil judicature in the Province of Quebec. From this it appears that before the Act of 14 Geo. III. and the commission and instructions under it were given, the Governor in Council had passed an ordinance to establish a court of appeal in Quebec, and this under a commission and instructions similar to that under which Governor Patterson was acting in Prince Edward Island, except so far as the power to grant appeals was wanting in the instructions to Governor Patterson, which was contained in the instructions to Governor Carleton.

In August 1769, the commission to Governor Patterson was issued, and he is said to have arrived in the colony in 1770. The first meeting of the Legislature composed of the Council and Assembly, with the Governor, of course, was, according to Stewart's History of Prince Edward Island, p. 177, in 1773, and the first Statute, as appears by the Acts of the General Assembly of the island, published in 1862, was passed in 1773. It is entitled "At the General Assembly of His Majesty's Island of St. John, begun and "holden at Charlottetown the seventh day of July, Anno Domini, 1773, in the thirteenth "year of the Reign of our Sovereign Lord George the Third, by the Grace of God of "Great Britain, France, and Ireland, King, Defender of the Faith. Being the first "General Assembly convened in the Island." The first Statute passed recited that it had been found absolutely necessary and expedient by His Majesty's Governor in Council of the island to make several resolutions, ordinances, and regulations for the good

government of the said island, it then repeats these ordinances and confirms what was done under them.

Cap. 2 is entitled "An Act to confirm and make valid in Law all manner of process "and proceedings in the several Courts of Judicature within this Island, from the first "day of May 1769, to this present Session of Assembly."

The recital states:—

"Whereas this Island has been without a complete Legislature from the commence- "ment of the goverment thereof, which took place on the first day of May 1769, unto "this present Session of Assembly, during which time many and various proceedings "have been had at the several Courts of Judicature in the Island." It then declares the writs, judgments, and proceedings in the courts from and after the said 1st May, 1769, to the end of that session good and valid in law. That it should not extend to take away or rectify errors in the using of process, mispleadings, and erroneous rendering of judgment in point of law, but in all such cases the parties aggrieved might have their writ or writs of error upon such erroneous judgment in such manner as they might have done before the making of the Act.

Governor Patterson apparently remained Governor until 1786, when he was succeeded by Governor Fanning, who continued in office, it is said, for 19 years, that would be until 1805. Governor Patterson was authorised by his commission, with the advice and consent of the Council, to establish such and so many courts of justice within the island as they should think fit for determining causes, as well criminal as civil, according to law and equity, and to constitute and appoint judges, and in cases requisite, to issue commissions of oyer and terminer.

We have nothing to show that in Governor Patterson's time any court of error or appellate court was established by any act of his; and it seems admitted that, as a matter of fact, no such court ever exercised any jurisdiction in the island, and no case was ever brought before such a court. If it had been established under any ordinance of the Council, before the first sitting of the Legislature, we have not been referred to any such ordinance. It is shown by Statutes passed at that sitting, that courts of judicature had before that been established and have been continued ever since. As to those courts that have been exercising their functions and powers ever since with legislation from time to time with reference to them, they would no doubt be considered as established tribunals, and as having been legally established. But when it is contended that so important a tribunal as a court of last resort exists in a province, it should be shown there was such a court actually exercising judicial functions, or that it was established by some act of the Legislature or of the Crown. As far as Governor Patterson is concerned, it does not appear that by any kind of legislative enactment or order, either by the Governor in Council or by the more perfect legislation after the General Assembly was called, such a court was established nor does it appear that he was by instructions specially authorised to establish such a court or to allow appeals from any of the courts of the common law as Governor Carleton was in the instructions accompanying his first commission, and as Sir John Colborne was in the instructions accompanying the commission to him in 1838.

Under the instructions to Governor Patterson he was to send to the Secretary of State copies of all acts, orders, commissions, &c., by virtue of which any courts, &c. were established. We presume the parties have had proper inquiries made as to the existence of copies of such documents, and that none can be found. It is said none exist in the island.

Whether, under any subsequent commission or instructions, an attempt was made to establish such a court in the interval between the commission to Governor Patterson 1769, and that to Sir John Colborne 1838, we have nothing before us to show.

Under that commission, as already stated, he was authorised to allow appeals, and for that purpose to issue a writ in the manner "which has been usually accustomed," returnable before himself and the executive council who were to proceed to hear and determine the same. The instructions to most of the Colonial Governors were said to be to the same effect. In Macpherson's Practice of the Privy Council, Appendix 72, he speaks of the Governor in Council as forming the Court of Error in the colony.

The instructions accompanying the commission to Lord Monk in 1861 do not in any way refer to the allowing of appeals, and from what is said on the subject in Macpherson's Practice in the Privy Council, it seems that in the Royal Instructions issued to Colonial Governors of the Colonies (that have legislatures) for some time past no mention is made of appeals. And the same can be said as to the instructions to Lord Lisgar in 1868. Nor is anything said as to allowing appeals in the commissions to Lord Monk and Lord Dufferin, nor in the instructions accompanying the same.

The reference to the matter in Haliburton's Nova Scotia, Vol 2, p. 330, is to the effect that "The Governor in Council conjointly constitute a court of error from which an "appeal lies on the *dernier ressort* to King in Council." He considers the origin of this appellate jurisdiction to have been the custom of Normandy when appeals lay to the Duke in Council.

In Stewart's Nova Scotia, after stating the only common law court established in the island was the Supreme Court, pointing out how the Chief Justice was appointed and how the proceedings were conducted, adds: "An appeal in the nature of a writ of "error is allowed from the Supreme Court to the Governor or Commander-in-Chief in "Council where the debt or value appealed for exceeds 300*l.* sterling, with an appeal "from their judgment when the debt or value appealed for exceeds 500*l.* sterling."

There is a chapter on appeals in Clark's Summary of Colonial Law, p. 106, in which he refers to the right of determining in the court of last resort all controversies between the citizens of a state as having been always considered the best evidence of the possession of sovereign power. At page 111 he uses the language already referred to, and at page 120, referring to the practice in the Privy Council, and to the case of a party who has been prevented, by accidental causes, from applying to the Governor of a colony within the period limited in the particular colony, for leave to appeal to His Majesty in Council, the Governor having no jurisdiction after that to allow the appeal, he proceeds, "but His Majesty in Council, from whom the right of appeal itself in all "cases emanates, may of course, at his pleasure, relax in any such particular instance "when it appears equitable to do so, the restrictions to which it is generally subject. "So it may happen that a Governor improperly refuses to allow an appeal from some "doubts as to its competency or regularity or from any other cause where justice "required a contrary decision. In all such cases the party aggrieved is of course "entitled to apply to His Majesty in Council."

In the report of the case in re Cambridge, cited on the argument, Lord Brougham said there is no instance of allowing an appeal from the Supreme Court at once to the Queen in Council, there being by the constitution of the island a Court of Appeal, namely, the Governor in Council, from whose decisions alone an appeal lies and then says the proper course and the only course their lordships can take is to advise Her Majesty to allow it to be appealed to the Governor in Council, it may then be brought before us in a future stage if the parties are not satisfied with the decision.

In the statement of the case it is said (this was in 1841) that by the royal instructions to the Governor, he was directed to allow appeals to himself in council in cases where the value appealed from amounts to 300*l.* sterling, and to the King in Council only where the value appealed from amounts to 500*l.* sterling. That the amount being below 300*l.*, the case was not appealable either to the Governor in Council or to Her Majesty.

Now if a court in the sense now contended for by the respondent had been created by the constitution of the Colony, or in any other way recognised by law, where the jurisdiction it had was only in matters above 300*l.* sterling, could an appeal be allowed in that court by order of the Queen in the manner suggested in Cambridge's case, I should think not. But if it be considered as the exercise of the prerogative right of the Crown to review the judgments of Colonial courts, and the Crown chooses to exercise that right through the Governor and Council, appeals may be allowed to them according to instructions, which, of course, may be varied from time to time or according to specific cases, as to the Crown may seem just. The Governor in Council may be considered a court as long as the instructions exist, but when they are withdrawn the court must fall with them.

At the time of the passing of the Dominion Statute establishing the Supreme Court, the Lieutenant-Governor of the Island was not an officer holding a commission under the Great Seal of Great Britain, nor did he receive any instructions to allow appeals, nor was he authorised to issue writs for that purpose returnable before him and the Executive Council, nor were they directed or authorised to proceed to hear and determine such appeals.

In the absence then of any evidence showing the establishment of a court of error, or that any tribunal ever exercised within the Island the powers of such a court, I am of opinion that the unmistakeable references to such a court in the Island Statute of 1873, or in the other Acts to which we are referred, do not create such a court, if it had not an existence previous thereto. If it had been shown that such a court assumed to exercise the functions of a properly organised court and had been doing so for years, the recognition of it by the Acts of the legislature might be considered as affirming its legal existence, but not to create a court.

In the reference to the Court of Error or Appeal in the Statute referred to, mention is not made of the Governor in Council constituting such court.

The Island Statute of 21 Geo. III. c. 17, does not necessarily imply that the revising of a judgment in error must be by a court superior to the Supreme Court, or if it does that that court must be necessarily one existing in the Colony. The King in Council might revise in error.

As to the Statute relating to the estates of intestates special jurisdiction is by the Statute given to the Governor in Council, who are to decide the matter on appeal, and their decision, I apprehend, is to be carried out by the judge of the court.

The fact that in the instructions to most of the Governors in the American Colonies, reference is made to their granting letters of administration and probates of wills, probably suggested that it was desirable to have an appeal to the Governor, and that appeal is expressly given to him and the Council by name in the Statute. The Act constituting the Governor in Council a divorce court, creates them for that purpose, and does not make them a court of error or appeal. In the Imperial Act of 1791, 31 Geo. III. c. 31, the existence of the ordinance of the Governor in Council of the Province of Quebec, constituting the Governor in Council a court of civil jurisdiction for hearing and determining appeals in certain cases is recognised under section 34, which enacts that the Governor of each of the Provinces (of Upper and Lower Canada) with such executive council as shall be appointed by His Majesty for the affairs of such province shall be a court of civil jurisdiction within each of said provinces for hearing and determining appeals within the same, in like cases and manner, and subject to such appeal as before the passing of the Act might have been heard and determined by the Governor in Council of the Province of Quebec, but subject nevertheless to such further or other provisions as might be made by the Legislature of the Provinces.

The Legislature of Lower Canada passed a Statute on the subject, 34 Geo. III. c. 6. In Upper Canada, the same year, by 34 Geo. III. c. 2, sec. 33, the Governor, Lieutenant-Governor, or person administering the Government, or the Chief Justice of the Province, together with any two or more members of the executive council of the Province, shall compose a court of appeal for hearing and determining all appeals from such judgment or sentences as might lawfully be brought before them. Section 35 declared in what cases an appeal should lie to the court. Appeals were also allowed under the Upper Canada Act of 1837, from the decisions of the Vice-Chancellor, though the Governor was Chancellor.

In Woodcock's West Indies, page 288, the following reference is made to appeals in the Colonies:—

"Appeals from decisions of Colonial courts may be considered as existing at the common law as affected by the King's instructions to the Governors, by Colonial law and parliamentary enactment. It has been said to be an inherent right of the subject of which he cannot be deprived, to appeal to the sovereign to redress a wrong done to him in any court of justice, and also an inherent right of the king inseparable from the crown to distribute justice amongst his subjects."

"His Majesty by his instructions declares his Royal will and pleasure to be that his representative shall in all cases, on application being made to him for that purpose, permit and allow appeals from any of the courts of common law, and he and the council, with the exception of such as may have heard the cause as judges in the court below (who are nevertheless allowed to give their reasons for the judgment complained of), are to proceed to hear and determine the appeal. It is provided, however, that the sum or value appealed for do exceed 300*l.* sterling, and that security be first given by the appellant to answer such charges as shall be awarded in case the first sentence be affirmed. And if either party be dissatisfied with the decision of the Governor in Council, then an appeal is allowed to the King in Council, provided the sum or value appealed for exceed 500*l.* sterling; the appeal to be made within 14 days after sentence, and good security given by the appellant that he will effectually prosecute the same and answer the condemnation, and also pay such costs and charges as shall be awarded in case the sentence of the Governor in Council be affirmed."

It is also provided that in special cases the Governor is to admit the appeal.

In McPherson's Practice of the Privy Council, Appendix 72, the instructions to Governors, previous to 1854, are referred to; they were said to be substantially the same in all the American colonies, and were generally to the effect mentioned in Mr. Woodcock's book. It is added in the Royal Instructions now issued to colonial governors, no mention is made of appeal.

Special orders are made in the Privy Council as to appeals from the Supreme Court in

the colony named in the order, where the sum or matter in issue is above a certain amount. Such orders appear to have been made in reference to the Provinces of New Brunswick and Nova Scotia.

It may be that after the powers conferred by the Statute 3 and 4 Williaam IV. c. 41, on the Judicial Committee of the Privy Council, had began to be exercised, it was found by experience that it was better not to continue to all the governors of the colonies the right to permit appeals to the Governor in Council, but rather that the appeals should come direct to the Queen in Council, and that, in consequence, when it was not desired to continue such powers, the governors were not authorised to exercise them by their instructions. Whatever may be the reason, the latest instructions I have seen to the Governor of the Island, viz., those to Sir John Young, afterwards Lord Lisgar, date December 29, 1868, contain no authority to allow appeals to the Governor in Council from any of the courts of the island.

When the Provincial Statute of 1875, called the Land Purchase Act, was passed, and when the judgment now appealed from was pronounced, the Governor of the Island was appointed by a commission issued under the Great Seal of Canada, and attested and signed by the present Governor-General of Canada, Lord Dufferin, and no instructions accompanied that commission.

During the time instructions of the kind alluded to and the appeal to the Governor in Council existed and was exercised, it might be referred to as a court in the same way as the Queen in Council or the Judicial Committee of the Privy Council is frequently called a court, but when these instructions were withdrawn and no other authority existed by which the appeals to the Governor in Council could be made, then I fail to see how the Governor in Council for the time being could be such a court. If the commission to any Governor had ordered and directed that he and his Executive Council and the Governor and Council for the time being should constitute a court to which appeals might be made, it could then with more force be urged that a court was thereby established. But I do not think such authority as was contained in the instructions to Sir John Colborne by itself constituted a court of appeals as a permanent institution, but for the time being he was to exercise the prerogative right of the Crown to hear appeals from the Colonial Court under such instructions; and when such instructions were withdrawn the right of the Governor in Council to hear appeals ceased.

I am not satisfied that any court of error or appeal, or any court or the last resort, save the Supreme Court, within the meaning of the Dominion Act creating this court, was established or existed in the Island of Prince Edward, during the time that Mr. Patterson was Governor of the Province. We were not referred to any case that had ever been brought before such a court, and it was not denied that no case had ever been taken to such a court within the Island. It is not pretended that such a court had ever been established by Legislative enactment, though it was contended the existence of such a court was recognised in Statutes passed by the Legislature. If established at all it must have been by an instrument under the Great Seal, or under the instructions to the Governor, if that would establish a court of that kind. No instrument under the Great Seal either of Great Britain or of the Colony has been referred to establishing such a court.

Now the Governor in Council was constituted a court of appeals by an ordinance of the Province of Quebec, when the instructions expressly authorised an appeal to the Governor in Council. The instructions to Governor Carleton with his second commission, when referring to subjects for (if I may use the term) legislation, directs his attention to constituting the Governor in Council a Court of Civil Jurisdiction for the hearing of appeals. The Act of 31 Geo. III. c. 31, distinctly recognises such a court, and the subsequent Legislation, both in Upper and Lower Canada, constitute the Governor in Council a court. The tribunals so established were properly courts, and exercised their powers under laws which continued them as long as the laws existed. There is a manifest difference between tribunals so constituted and those which exercise powers conferred by the Royal Instructions alone, and which seem only to exist whilst the instructions are continued. In the one case they exist and continue by positive enactment, and in the other by virtue of the prerogative right, to revise the decisions of the Colonial courts, and when the Governors are not authorised to exercise that right it seems the natural and logical result that they cease to possess it. The commissions issued to the Governors since Sir John Colborne's time, which we have seen, do not contain any authority to the Governor to hear and allow appeals, and the reference to this matter in Macpherson's Practice indicates that in most, if not all, of the commissions issued lately, that authority which was formerly given has been intentionally withdrawn.

On the whole I come to the conclusion that the present Governor of the Island of Prince Edward had no authority to allow an appeal in the matter now before this court, and that it is properly brought before us. As already stated, I do not think the references to the Court of Error or Appeal in the Island Statute of 1873, create such a court if none existed at the time.

The other Statutes referred to do not necessarily imply that a court of appeal existed in the Colony, and none of those Statutes create a general court of appeal.

I do not think the Dominion Parliament when they enacted that the appeal given to this court was to be "understood as given from the court of last resort in the Province "in which judgment was rendered," meant to compel suitors, before bringing their cases here, to have them heard in, if I may use the term, a mythical court that had never been resorted to by suitors, or to courts to which, if such recourse ever existed it had long been abandoned and disused. I think, therefore, that this Appeal is properly before us, and we have jurisdiction to hear it.

The case states that the Right Honourable Hugh C. E. Childers was duly appointed a Commissioner by the Governor-General in Council under the seventh section of the Act (the Land Purchase Act, 1875). John T. Jenkins, Esquire, was duly appointed a Commissioner by the Lieutenant-Governor in Council under the fifth section; and Robert Grant Haliburton was appointed by Miss Sulivan as her Commissioner under the ninth section.

That the Commissioners so appointed met at a day and place in Charlottetown then appointed for the purpose of hearing and considering the matter referred to them, and at the same time and place so appointed the Commissioner of Public Lands and the proprietress, Miss Charlotte Antonia Sulivan, were represented by counsel, and evidence tendered on both sides having been heard, the said three Commissioners made an award which was set out. The notice of the Commissioner of Public Lands, served on Miss Sulivan's agent, is set out in the case, and refers to the Act and the powers of the Commissioner under it, and states that the island Government "intend to purchase all of her "township lands in the island liable to the provisions of the Act, including all such parts "or portions of lots or townships, numbers 9, 16, 22, and 61, in the island, as she was or "claimed to be the proprietor of and as were liable to the provisions of the Act."

It appears from the Statute that the Government of the island was entitled to receive from the Dominion Government a large sum of money for the purpose of enabling the Government of the province to purchase the township lands held by the proprietors in the island.

We may, without going beyond what is considered the legal province of a judge, be supposed to know that there had been difficulties in the island existing for many years in relation to the collection of rents on these lands; that there had been legislation on the subject, and that further legislation was deemed necessary.

The recital in the Statute, that it was desirable to convert leasehold tenures into freehold estates, indicates that it was a matter affecting the public interests. This Statute ought, therefore, to be viewed not as ordinary legislation, but as the settling of an important question of great moment to the community, and in principle like the abolition of the Seignorial tenure in Lower Canada, and the settling of the land question in Ireland. In carrying out such measures as these there may be cases where the law works harshly, where important rights may seem to be disregarded and private interests are made to yield to the public good without sufficient compensation being given; yet the legislation on the subject generally assumes to be based on the principle of compensation to individuals when their property is taken from them, and points out a mode of ascertaining what the indemnity shall be and how it shall be paid.

It is not doubted in the court below, and we do not doubt that the Legislature of the island had a right to pass the Statute. The great object of the Statute seems to have been to convert the leasehold tenures into freehold estate. A matter of very great importance, and one which, if not settled, would be likely to affect the peace as well as the prosperity of the province.

Their intention seems to have been as to all questions connected with the lands, such as rents and judgments obtained for the rents and claims arising out of the ownership of the land, and, as far as the proprietors were concerned, that they should no longer be enforceable by them; and that those incidents, such as arrears of rent, and the like rights, should, with the soil itself and all interest in it, pass from the proprietor to the Government. That the money value of the rights of the proprietor, taking into consideration in estimating such value, certain circumstances, such as the price at which other proprietors had sold their lands, the annual rentals due and actually received each year, the expense of collecting the net receipts for six years, &c., was to be fixed by three Com-

missioners. These Commissioners were to be selected—one by the Dominion Government, one by the island Government, one by the party interested. It can hardly be disputed that this was a fair mode of selecting the Commissioners, who were, after hearing evidence, to make the award, and the money awarded was to be paid into the island treasury to the credit of the suit or proceeding. The object, no doubt, being that the money should represent the land, and the different parties interested should, on application to the court, receive what they were entitled to from that fund.

They intended the award of the Commissioners to be final, but if either party wished to have any error, informality, or omission in the award corrected, he could apply within 30 days after the publication of the award to the Supreme Court to have it remitted back to the Commissioners.

A trustee was to be appointed to convey the estate of the proprietor to the Commissioner of Public Lands, notice was to be given to the proprietor and the court, or a judge might restrain the execution of the deed. This conveyance and the payment of the money awarded into the Treasury was to vest the lands in the Commissioner in fee simple.

The money awarded in each case was to be paid into the provincial Treasury at the expiration of 60 days, and the Public Trustee, after the money was so paid, was to execute a conveyance of the estate of the proprietor unless restrained after 14 days' notice to the proprietor. Why should not the intention of the Legislature be carried out in this matter? I do not think it necessary to discuss the elaborate judgments given by the learned judges in the court below. The view I take of the Statute renders that unnecessary. The view I take is that the mode pointed out by the Statute is the one which should have been pursued by the proprietor in this matter if there were any error, informality, or omission in the award, and that the court had no other authority to inquire into the proceedings of the Commissioners further than to see if the subject matter was properly before them, and perhaps to see if they had been guilty of any fraud in their proceedings; and if they had the strict legal right to do so, in the exercise of a sound discretion according to the best of my judgment, the proprietor's application to set aside the award should have been refused.

I see no reason to doubt that the Commissioners properly entered on the enquiry as to the compensation to be awarded to Miss Sulivan for her rights as a proprietor in township lands in the island.

It is not denied that Miss Sulivan was a "proprietor" within the meaning of the Act of Township Lands, exceeding in the aggregate 500 acres. Her lands were therefore liable to be purchased under the Act.

The appointment of the Commissioners is stated in the case, and the notice to Miss Sulivan of the intention to purchase all her lands is set out. The notice complies with the Act. If only a portion could be purchased it might be that the portion selected would be that which was most profitable to the proprietor and most desirable or her to keep. In my opinion the Statute contemplates the purchase of all of the peculiar description of lands owned by a proprietor whose estate exceeded 500 acres, and when the value was to be ascertained it would be for the interest of the proprietor to show what the land was in order that compensation might be given for all, and that none might be omitted. If the Statute had required the Commissioner of Public Lands to define by metes and bounds in his notice the land he intended to "be purchased" under the Act, it would probably induce them to describe such lands as were well known to belong to the particular proprietor, and which probably would be those that were most valuable and most for the interest of the proprietor to retain, or it would have the effect of making the Statute useless if the Commissioner could not give a minute description of each parcel of land owned by the proprietor. The court below thought the notice sufficient, and I see no reason to dissent from that view.

It was suggested on the argument for the first time that it did not appear that the Commissioners were sworn, or that the Commissioner appointed by the proprietor ever notified the Commissioner of Public Lands of his appointment. It was also suggested that the notice of the sitting of the Commissioners was not published a sufficient length of time before the day fixed for their sitting.

The provisions of the Statute as to these matters seem directory, and it is reasonable to presume they were followed. Particularly as the objections were not taken on the argument in the court below, nor in the rule, nor mentioned as relied on in the respondent's factum. It is not now shown affirmatively that as to the points suggested, the proceedings were not regular except as to the time of giving the notice of the sitting of the Commissioners, which as the parties appeared could be no objection. If necessary

to show in any proceeding that these things were done, it could, I apprehend, be averred in pleading and proved by evidence.

If the proprietor Commissioner gave the Commissioner of Public Lands no other notice of his appointment than claiming to sit and sitting as such when the matter was proceeded with, when the said Commissioner was either personally present or was represented by counsel, that would be some notice of his appointment, and on a bare suggestion of this kind we will not presume that the parties did not do what they ought to have done.

The papers before us show that the case was fully inquired into before the Commissioners, a large number of witnesses examined, able advocates addressed the Commissioners, and two of them made their award as follows :—

" Dominion of Canada, Province of Prince Edward Island."

" In the matter of the application of Emmanuel McEachen, the Commissioner of Public Lands, for the purchase of the estate of Charlotte Antonia Sulivan, and the 'Land Purchase Act of 1875.'

" The sum awarded under section 26 of the said Act by us, two of the Commissioners appointed under the provisions of the said Act, is eighty-one thousand five hundred dollars.

" Hugh Culling Eardley Childers,
" Commissioner appointed by the Governor-General in Council.
" John Theophilus Jenkins,
" Commissioner appointed by the Lieutenant-Governor in Council.

" Charlottetown, 4th Sept. 1875."

The award was duly published 7th Sept. A.D. 1875, pursuant to 29th section of the Act. The application was made to set it aside on the 17th November. The Public Trustee having notified Miss Sulivan's agent, on the 3rd November, that the sum awarded had been paid into the Treasury of the Island to the credit of the suit, and that after 14 days from the service of the notice he would execute a conveyance to the Commissioner of Public Lands of the estate of Miss Sulivan, the proprietor, which estate was more particularly described in the four schedules annexed.

The question is whether the court below had any authority to make the rule absolute to quash the award, and in discussing this question it is necessary to refer to the 45th section of the Act, which is as follows :—

" No award made by said Commissioners, or any two of them, shall be held or deemed to be invalid or void for any reason, defect, or informality whatsoever, but the Supreme Court shall have power, on the application of either the Commissioner of Public Lands or the proprietor to remit to the Commissioners any award which shall have been made by them to correct any error, informality, or omission made in their award. Provided always that such application to the Supreme Court to remit such award to the Commissioners shall be made within thirty days after the publication thereof as aforesaid; and provided further, that in case any such award is remitted back to the Commissioners, they shall have full power to revise and re-execute the same, and their powers shall not be held to have ceased by reason of their executing their first award, and in no case shall any appeal lie from any such award, either to the Supreme Court, the Court of Chancery, or any other legal tribunal; nor shall any such award or the proceedings before such Commissioners be removed or taken into or inquired into by any court by *certiorari*, or any other process, but with the exception of the aforesaid power given to such Supreme Court to remit back the matter to such Commissioners, their award shall be binding, final, and conclusive on all parties."

Could any more emphatic language be used to show that the Legislature intended that this award should be " binding, final, and conclusive on all parties," and should not be held or deemed to be invalid or void for any reason, defect, or informality whatsoever?

On the application of the court below certain facts were stated by the agent of Miss Sulivan in his affidavit.

One, that in Schedule B. there is a farm alleged to be 34 acres, purchased by Arthur Ramsay on lot 16, whereas Ramsay had purchased 84 acres, this being 50 acres more than Miss Sulivan claimed to own or demanded compensation for.

2. That in the 15,000 acres claimed to be conveyed to the Commissioner by the trustee, there is included 1,100 on lot 16, held under verbal agreement, whereas in truth under verbal agreement the lands owned by Miss Sulivan, and for which she claimed compensation, amount only to 708 acres.

The following matters are in dispute, and evidence given concerning the same :—

The amount of arrears of rent due by several tenants upon the estate. The performance of the conditions of the original grants from the Crown, and how far the performance has been waived. That Miss Sulivan contended the conditions of the original grants had been waived; the Commissioner of Public Lands alleged the contrary, and gave in evidence despatches of Secretaries of State for the Colonies, printed in the journals of the House of Assembly, in support of his claim and in denial of her contention.

That in Schedule B. in four several plots of land purchased by Arthur Ramsay and Samuel Yeo upon township lot No. 16, and excepted out of the said township claimed to be conveyed as aforesaid, are referred to as "being numbered or coloured green upon "the plan of the said township in the possession of Miss Sulivan's agent, and produced "by him before the Commissioners under the Land Purchase Act"; whereas there was more than one plan of lot 16 in the agent's possession and produced by him before the Commissioners. There were two produced by him, and they differ from each other, and he had no means of finding out from the notice which of the plans is referred to.

The same thing is stated in effect as to Schedule D., township lot No. 61.

If in relation to these matters thus stated in the affidavit it was necessary to protect Miss Sulivan's interest, or even to prevent inconvenience in carrying out the award, that something more explicit should be stated in the award relative thereto, application might have been made, under the 45th section of the Act, to the Supreme Court to remit the award to the Commissioners to correct the same. But that was not done. If an application had been made to the court, and it had been shown that the omissions or errors referred to in the affidavit would prejudice Miss Sulivan, or were such as ought to be remedied by the arbitrators, the court would have sent it back for that purpose. But the course taken on Miss Sulivan's behalf in lying by until the time for applying to the court under the Statute had passed, it can be seen, has worked great injustice and inconvenience to those acting on behalf of the public. If it had been urged that the award was faulty, it could have been corrected. The Commissioner of Public Lands does not complain of it, therefore there was no reason to apply on his behalf; the proprietor does object, therefore she ought to have applied sooner. She might have applied according to the terms of the Statute, she has deliberately chosen not to do so, she must therefore abide by the consequences. As I understand the judgment of the court below, the matter, in their view, was properly before the Commissioners; it was within their jurisdiction, and they were fully authorised to decide on all questions arising in relation to the inquiry and decision they were to make. The objection is that they did not decide matters which they ought to have decided, and that the award is void by reason of that defect, though if the proprietor had applied within the 30 days, the award might have been remitted to the Commissioners to correct the error or omission.

It is not pretended that after the 30 days the court have the power of setting aside this award under the Statute, nor am I aware that they have any peculiar powers conferred on them by local Statutes to interfere when the legislature has declared that an award shall be final. I understand that the court below proceed on the common law right of the court to review the decisions of inferior tribunals, and to see that they properly carry out the powers and authority vested in them; not that they are a court of appeal to review the conclusions at which the inferior tribunal has arrived, but that they can, if that tribunal has not done all that it should have done, declare void its decision. The more logical course to take under such circumstances would be to require the inferior tribunal to do what it ought to do, and that was what the Legislature authorised the court to do. But in this case I do not think any such right existed in the court below. The Statute emphatically declares that in no case shall an appeal lie from any such award either to the Supreme Court, the Court of Chancery, or any other legal tribunal; nor shall any such award or the proceedings before such Commissioners be removed or taken into or inquired into by any court by *certiorari* or any other process, but, with the exception of the power of the Supreme Court to remit back the matter, their award shall be binding, final, and conclusive on all parties.

If a power of a superior court to review or set aside an award or decision of a special tribunal can be taken away by Act of Parliament, it seems to me that the words in this Statute ought be held to do it. In Richards *v.* South Wales Railway Co., 13 Jurist., p. 1097, Sir William Earle, in his judgment said, "It was admitted that the writ (of "*certiorari*) was taken away as to all proceedings under the Acts (which he referred to), "this rule therefore cannot be made absolute unless it distinctly appears that in the "proceedings the sheriff and the jury have taken upon themselves to decide on a "matter on which they had no jurisdiction. When that is made out the statutory "prohibition does not apply, and the inherent jurisdiction of this court is unrestrained.

" . . . There is, however, a great disposition to evade clauses in Acts of Parliament " which take away the certiorari on the alleged excess of jurisdiction, and we feel bound " not to yield to attempts of this kind unless they rest on very clear and satisfactory " grounds."

In the Colonial Bank of Australasia *v.* William, 5 L. R. P. C., p. 442, the following language is used in the decision of the Judicial Committee of the Privy Council: " There are numerous cases in the books which establish that notwithstanding the " privative clause in a Statute the Court of Queen's Bench will grant a certiorari, but " some of those authorities establish and none are inconsistent with the proposition that " in any such case that court will not quash the order removed except upon the ground " either of a manifest defect of jurisdiction in the tribunal that made it or of manifest " fraud in the party procuring it." And at p. 450 the following language is used, " The " Court of Queen's Bench, whose exercise of this power is discretionary, would certainly " not quash an order of an inferior court upon the ground of fraud unless the fraud " were clear and manifest."

Here there is no defect of jurisdiction and it is not pretended that there is any fraud; but as I understand the argument, it was urged that all the jurisdiction was not exercised and that it is a defect of jurisdiction. They were to consider and award on the matters referred to in the 28th section, and not having done so the whole proceeding is void.

After giving the matter my best consideration, I have arrived at the conclusion that the Legislature did not intend that the Commissioners should find, as specific facts, the facts and circumstances mentioned in the 28th section which they were to take into their consideration in estimating the amount of compensation to be paid to a proprietor for his interest or right in any lands.

If it had been intended they should find specifically on each of these points, I think different language would have been used, and if the court thought some kind of decision necessary on the points, they could have referred the award back to the Commissioners for that purpose. In any view it does not seem so plain a question of want of exercise of jurisdiction as to justify setting aside the award under such a Statute as this.

The object of this section 28 being to allow the Commissioners to take evidence on all these subjects, and having all these matters and the evidence relating to them before them, and seeing that the declared object of the Legislature was to pay every proprietor a fair indemnity or equivalent for the value of his interest and no more in the land to be purchased, all this was to be taken into consideration, and then they were to award under section 26 the sum due to the proprietor as " the compensation or price to which he should " be entitled by reason of being divested of his land and all interest therein and thereto."

The papers before us show that the matters referred to in the 28th section were brought before the Commissioners, except, perhaps, those relating to the conditions of the original grants. It is said that as Miss Sulivan was one of the parties referred to in the Act of 27 Vict. c. 2, she was not a party affected by any decision of that question. After hearing the evidence the Commissioners made their award. They say, in express terms, the sum awarded under the 26th section of the Act is 81,500 dollars. Is there any reason why we should presume they did not take the matter into consideration, which the law directed them to do, before they made their award? They were to make their award after hearing the evidence; this, of course, implies they were to consider it, or it would be useless to offer evidence. On the contrary, we ought not to assume that they could not properly make an award under the 26th section, unless they considered these matters, that they have done so.

In Brittain *v.* Kinnaird, 1 Brod *v.* Bing, at p. 430, Dallas, C. J., said, formerly the rule was to intend anything against a stinted jurisdiction, that is not the rule now, and nothing is to be intended but what is fair and reasonable, and it is fair and reasonable to intended magistrates will do what is just. It is fair and reasonable to presume here that the Commissioners did what was right. It is a fair and reasonable intendment that they did what the law required of them, unless it appears on the face of the award that they did not. The proceedings before the arbitrators show that these matters were discussed before them, and the only reasonable conclusion is that they must have taken them into consideration. In the view that I take, then, the award ought not to have been set aside. The Commissioners were not required to find specifically on the matters they were to take into consideration under the 28th section, and the presumption is they did take them into consideration. Then as to the necessity of describing the specific land as to which they made the award. Suppose they had in the award described lands that Miss Sulivan did not own, or lands that were not liable to be purchased under the Act, would their finding bind anyone not a party to the award? It is not pretended it would. The Commissioner notified her he intended to purchase all her township lands,

that being the kind of land referred to in the Statute, which he was authorised to purthase; and it was concerning all these lands the award was made. The money has been paid into the provincial Treasury, and represents all these lands. When those claiming the money are brought before the court they will decide to whom and in what proportion the money is to be paid. *Primâ facie* it is Miss Sulivan, and those who contest her right must show how their claim originates. The finding of the Commissioners could not in any way deprive the parties of rights which arose out of matters in which they and Miss Sulivan were alone connected. The court might say, if the Commissioners took a certain view, it would be only fair as between individuals that the other parties should have a certain sum, but the court would not necessarily be bound to take that or any particular view. The whole matter is open to them, and when the parties are before them they will dispose of their rights as they show them to be. Mere speculative difficulties ought not to be very seriously considered when the party suggesting them had an opportunity of having them all settled, but did not choose to avail herself of it.

I do not consider the describing of the property in the deeds by the Public Trustee a transfer of their authority by the Commissioners. There were certain lands, the value to be paid for, which was the subject of their inquiry. What those lands were seems to me easily ascertainable, and if the particular maps in the description cannot be identified and the conveyance is held void for uncertainty, I fail to see how Miss Sulivan is injured by that, or why she should concern herself with it. It seems to me all her township lands and her interest in them and in the rents were properly before the Commissioners, and they have awarded her all the compensation she is entitled to for them. The amount so awarded has been paid into the Treasury, and I see no reason why she should not get what she is intitled to out of it. Why she should concern herself about the conveyance unless it may affect her interest is not so apparent. If this conveyance included any of her land not liable to be purchased under the Act, she might then say she was interested as to that, and insist upon its being put right. She might apply to the court to restrain the conveyance under the 32nd section until it was corrected. I fail to see that the omission to describe the lands in the award is ground for setting it aside. The trustee is to execute a conveyance of the estate of the proprietor. If he executes a deed of property not a part of her estate, that cannot prejudice her nor anyone else, as I can see.

It has indeed been suggested that if it was her estate the conveyance gives a *primâ facie* title; and if a squatter on the estate were sued, the Land Commissioner or purchaser under him would only be obliged to show title under the conveyance by the trustee, instead of tracing the title from the Crown. I hardly think a court would set aside an award like this on that ground alone.

The money was awarded under the 25th section, for the lands of which Miss Sulivan was divested, and they were all the lands of a certain description of which she was proprietor in the Island. As it was not necessary to describe them in the notice, I fail to see why it is necessary for the Commissioners to describe them in their award. If she had devised all her township lands in the island and died, it is not doubted that such a description would carry to her devisee all the lands of that description which she owned in the colony. It urged that the form of deed appended to the Statute makes it necessary the lands should be described by metes and bounds. The Section 32 says, the deed may be in the form, and if a clear and intelligible description were given without metes and bounds I do not think the deed would be inoperative.

It seems to me that the words of the 20th section of the Act anthorising the Commissioners to summon and examine witnesses upon matters submitted to their consideration "and the facts which they may require to ascertain in order to carry this Act into effect," taken in connection with the 28th section, mean the facts and circumstances they are to take into consideration in order to make their award, and they could not do this unless they had power to examine the witnesses as to these facts. That cannot mean all the facts necessary to carry the Act into effect as far as the action of others is concerned. Much must be left to the court to ascertain when they are called upon to distribute the money, and as the Commissioners were not called upon, in my view, to find specially on these matters referred in the 28th section, I do not think the words referred in the 20th section compelled them to do so.

Take the converse of the case before us. Suppose after the time for moving to refer the case back to the Commissioners had passed, and after the money had been paid into the Treasury and an application had been made on Miss Sulivan's behalf to the court for an order to pay over the same, then for the first time the Commissioner of Public Lands had applied to set aside the award, because he would be embarrassed in

discharging his duties under the Act, inasmuch as the Commissioners had not found specially on the matters referred to in the 28th section, would not the answer have been, you had the knowledge of the award and its contents long ago, you have deliberately chosen to let the opportunity pass of having the alleged errors corrected, and you must now work out your rights under the award as you best can, Miss Sulivan has had a certain sum awarded to her, by your notice you claimed to purchase all her township lands, she has been awarded a sum for her interest in those lands and she ought to have it. If this would be the proper answer to such an application, a similar answer to Miss Sulivan seems to me equally just and proper. I have not met with any case where the special provision was made for the correction of the errors or omissions of the tribunal created by the Statute and where the private re-enactments was so stroug and emphatic as it is in this Statute, when the court has felt justified in setting aside the award of the inferior tribunal.

Under such circumstances, on an application like this, I think that the declared intentions of the Legislature ought to be respected and the parties should be left to assert their rights in some other way than by asking the court on an application such as this is to declare the award invalid and void, where the Legislature has said it shall be binding, final, and conclusive on all parties, unless inquired into in the manner prescribed by the Act, and shall not be enquired into by any court on *certiorari*.

If either of the parties to the award find a difficulty in obtaining all the benefits under it to which they claim to be entitled, that is a matter which may be said to have arisen either from their own deliberate act or want of reasonable care and attention.

The appellant in this matter does not anticipate difficulties of a serious character as far as his part of the case is concerned. If the respondent finds a difficulty she ought to have taken the steps that were open to her to have had it remedied.

The case may be briefly summed up as follows:—After considering what has been brought before us relating to the subject, we are not satisfied there is a court of last resort in the Province of Prince Edward Island other than the Supreme Court from whose judgment this appeal is brought, and therefore the appeal is properly brought to this court.

Secondly. That by the Statute passed by the Island Legislature, and which they had a right to pass, the award of the Commissioners could not be quashed and set aside or declared invalid or void on an application made to the Supreme Court, but it could have been remitted back to the Commissioners in the manner prescribed by the 45th section of the Act. The application for the rule in the court below not having been made within the proper time nor according to the provisions of that section, the decision of that court is against the express words of the Statute, and cannot be allowed to stand.

Mr. Justice Ritchie.

I think this appeal is properly before us. It was admitted on both sides on the argument that no evidence could be discovered of the establishment of a court of appeal, either by charter or patent under the Great Seal, or by any statutory enactment; nor could it be discovered that any such court has ever sat in the island. The observation of Lord Brougham in the Cambridge case must therefore, I think, refer to the clause at that time usually inserted in the Royal Instructions to Colonial Governors authorising the Governor in Council to permit and allow appeals.

I think this was not the establishment of a court, because there is clear authority for saying that the power to establish courts cannot be granted by the Crown, by instructions or otherwise, than under the Great Seal, but is rather, I think, an exercise of the Royal Prerogative in furtherance of the right of the Queen to receive and hear appeals from colonial courts, by which the Queen directs that, before coming to her direct, the appellant shall first go to her representative in council in the colony. A governor without instructions to that effect has, it appears to me, no authority to entertain such appeals, and no such instructions exist at present. If the Queen's representative, without instructions, would have no such power, much less would the officer of the Dominion Government. I do not think it can be said that there is either *de jure* or *de facto* any court of appeal in the island, therefore I think the matter was appealable to this court from the Supreme Court as being the highest court of final resort in the island.

It was clearly the object of the legislature to provide for a speedy, final, and conclusive decision by the Commissioners of all questions referred to them, and to make

their award "final, binding, and conclusive on all parties," at the same time it was obviously the desire of the legitlature to secure to the public through the Commissioner of Public Lands, and to the proprietors the means of having the doings of the Commissioners reviewed, and any errors they may have committed corrected, any omissions supplied, and any informalities or defects cured. For accomplishing which, the commissioners were placed, as is were, under the immediate supervision of the Supreme Court of the Island, and ready access to that court was afforded by the simple application either of the Commissioner of the Public Lands or the proprietors, and to enable the court, when its aid was invoked, to see that right was done; ample power is given to remit the awards to the Commissioners to correct any error or informality or omission, provided the application was made within the time limited, and on such award being remitted to the Commissioners, full power is given them to revise and re-execute the same.

The Statute first declares that "no award made by the Commissioners or any two of "them shall be held or deemed to be invalid or void for any reason, defect, or infor- "mality whatsoever," and then provides a suitable tribunal for the correction "of any "error or informality or omission," and declares that in no case shall any appeal lie from any such award, either to the Supreme Court, the Court of Chancery, or any other legal tribunal, nor shall any such award or the proceedings before such Commissioners be removed or taken into or inquired into by any court by certiorari or any other process, and as if to prevent the possibility of the intention of the Legislature being misapprehended, the section of the Act after being thus minute thus concludes "but with "the exception of the aforesaid power given to such Supreme Court to remit back the "matter to such Commissioners, their award shall be binding, final, and conclusive on "all parties." It cannot be denied that the Legislature had the power to deal with this subject, and if it chose, make the award of the Commissioners final, and most certainly it had the right to establish a court of review final in the island, so far as the courts of the island were concerned, and could they have selected a more suitable tribunal than the Supreme Court, the Court to which, under ordinary circumstances, belongs especially the duty of supervising the proceedings of the inferior tribunals of the island. The practical effect really was merely to give the Supreme Court a more summary and ample jurisdiction to enable it more speedily and effectually to deal with the matter free from the technicalities and delays, and possibly costs incident to the ordinary mode of proceeding. If this was the intention of the Legislature, as from the Statute I gather it to have been, I am at a loss to conceive what language could have been used to achieve that object if the language of the 45th section of the Land Purchase Act of 1875 does not do it.

In the case of Nawab of Surat, 9 Moore, P. C. C., p. 88, an Act of the Legislature of India empowered the Governor in Council of Bombay to administer the private estate of the Nawab of Surat, and it was by Section 2 enacted, "that no act of the said Governor "of Bombay in Council in respect to the administration of and administration of such "property, from the date of the death of the said late Nawab, should be liable to be "questioned in any court of law or equity." No provision was made for an appeal from the Governor's decision. On an application by a claimant dissatisfied with the award made distributing the estate for leave to appeal to the Judical Committee, Knight Bruce, Lord Justice, said: "Their Lordships are of opinion that the intention of the "Act was not to create a court; that the intention of the Act was to delegate either "arbitrarily or subject to certain limitations of discretion, the administration and dis- "tribution of the Nawab's property, but in such a way that the administration and "distribution should not be judicially questioned. * * * It seems," he says, "an "anomalous and extraordinary proceeding to vest powers of this description, not liable "to be checked by any ordinary course or powers of law, in any individual or in any "body; but the Indian Legislature had power over the property; they might, in the "exercise of that power, which is inherent in legislation, have given the whole property "at once to any stranger, or devoted to any purpose, and whether, with moral justice "or not, is not the question. Instead of doing that, they do what, to their Lordship's "appear substantially the same thing, they vest the power of dealing with it in a "particular individual or a particular body, and declare that its acts shall not be liable "to be questioned in any court of law or equity."

How different is this case in view of the exigencies and necessities of the country. The Legislature compels proprietors to sell, no doubt, in many cases against their will, and makes provision for compensation to be estimated by disinterested parties and not by parties whose acts cannot be judicially questioned. It only provides that if such acts are

questioned it must be before a particular court within a specified time and in a specified manner.

I have been unable to discover, after a most careful investigation, that the Commissioners have in any way dealt with any matter over which their jurisdiction did not extend, or that in dealing with matters over which they had jurisdiction, they exceeded in any way that jurisdiction. The only question the Commissioners had finally to determine and award was in the words of the Statute, "the sum due to the proprietor as the compensation of price to which he shall be entitled by reason of his being divested of his lands and all interest therein or thereto."

The provisions of the Act as to how they were to proceed and what they were to take into their consideration to enable them to arrive at a just and proper conclusion were directory, though not the less obligatory, on them, and which, if they failed to regard ample remedy as we have seen was provided. It is not shown that they did not do everything that they were required to do, and did not follow the directions of the Statute in every particular; but the complaint seems to be that this does not appear on the face of their award. But if they did not do as they were required, or if they did, and it should have appeared on the face of the award, which I by no means affirm, is not the answer to the complaining party very obvious? If you were aggrieved thereby, or in any other way, why did you not avail yourself of the remedy provided for you and apply to the Supreme Court within the time and in the manner prescribed and have the error or omission, irregularity, or defect, rectified?

The Commissioners have referred to and so incorporated in their award the application of the Commissioner of Public Lands and the Lands Purchase Act, 1875; and in the matter of such application for the purchase of the estate of C. A. Sulivan, have awarded, under Section 26 of the said Act, a certain sum. This, it seems to me, is just what they were authorised and required to do. If in their proceedings the Commissioners were guilty of any error, informality, or omission, a remedy was at hand. The course to be pursued by a dissatisfied party was plain and simple in the extreme; but it was a course they could adopt or not; if they did not choose to take it, and so get the error corrected, or omission supplied, and award revised and re-executed in the mode prescribed, but have allowed the time given them by the Legislature to elapse, they have only themselves to blame. The law, in clear, strong, and unambiguous language, not to be misunderstood, says in effect, "if the Commissioners err or for any reason you are dissatisfied with the award go to the Supreme Court within a certain time, and in a certain way, and get the error corrected; but you shall go to no other court, and with the exception of the power given to the Supreme Court to remit the matter to the Commissioners, their award shall be binding, final, and conclusive on all parties;" and neither the Supreme Court of the island nor this court have, in my opinion, any right to say to the contrary. Therefore I think the adjudication of the Supreme Court was not warranted, and their judgment must be reversed.

Mr. Justice Strong.

Although entirely concurring in the conclusion arrived at, I am unable to assent to all that has been propounded in the preceding judgment as to the law on the question of the jurisdiction of a Colonial Governor and Council as a court of appeal. I consider it sufficient to say that the preliminary objection raised in this case to the jurisdiction on the ground that the Supreme Court of Prince Edward Island was not a court of last resort has not been sustained, for the following reasons:—If any appellate court exists in the island, it must owe its origin either to an Imperial Act of Parliament, a Statute of the island Legislature, or to letters patent under the Great Seal of the United Kingdom or of the island, if, indeed, a court, exercising a jurisdiction by way of appeal which was unknown to the common law, could be created otherwise than by Statute. No such Statute can be shown to have been in existence, and no letters patent conferring such a jurisdiction are now extant. For this reason, and this reason only, I think the objection fails.

As regards the merits, I agree on all points with the judgments of his Lordship the Chief Justice and my brother Ritchie.

Mr. Justice Taschereau.

The facts of the case have already been stated by my learned brother judges who have just expressed their opinion, and I will therefore abstain from repeating them. I shall neither notice the objection made on the part of Miss Sulivan to the right of appeal *de*

plano in this case from the judgment of the Supreme Court of Prince Edward Island on the ground that the same appeal should have been in the first instance to the Governor in Council as a court of error and appeal, and thence to our own court, viz., the Supreme Court of Canada, as it has been clearly shown no such court of error and appeal exists in the island, and thereiore the appeal was rightly brought before this court, the judgment complained of being rendered by the court of last resort in Prince Edward Island.

But coming to the merits of the case, I say that the respondent had no right such as she claimed in the court below, and such as the same court entertained; that is to say, to set aside the award made by the Commissioners appointed under the Land Purchase Act of 1875, stating the amount of money to be paid to respondent, Miss Sulivan, as proprietor of certain township lands.

The grounds on which the respondent based her motion to set aside the award were on account of pretended irregularity and insufficiency in the wording of the award. Looking at the text of the Act in question, we find at Section 4 that the amount of money to be paid as an indemnity to any such proprietor shall be found and ascertained by three Commissioners, or any two of them duly appointed; no form of procedure is indicated, and it seems that the duty of the Commissioners is purely and simply limited to the award of an amount as an indemnity, and, in fact, they were authorised to proceed in a summary way, without even reducing the evidence to writing. It is also to be observed that by Section 45 of the Land Act in question it is provided that "in no case "shall any appeal lie from such award, either to the Supreme Court, the Court of "Chancery, or any other legal tribunal; nor shall any such award or the proceedings "before such Commissioners be removed or taken into or inquired into by any other "court by *certiorari* or any other process, but" (mark this) "the Supreme Court shall "have power, on the application of either the Commissioner of Public Lands or the "proprietor, to remit to the Commissioners any award which shall have been made by "them, to correct any error or informality or omission made in their award; provided "always that any such application to the Supreme Court to remit such award to the "Commissioners shall be made within thirty days after the publication thereof, and "provided further that the said Commissioners shall have power to revise and re-execute "the same."

I think the above enactment of the Land Purchase Act clearly indicates the intention of the Legislature as to celerity of action and proceedings as to denial of any revision or appeal, as to avoiding a multiplicity of proceedings in the law courts, and as to the correction and revision, by the Commissioners themselves alone, of any defect or informality duly pointed out to them by any of the parties within 30 days from the promulgation of the award. Now the 30 days had elapsed before any of the parties had, in the terms of the Statute, lodged any complaint. I infer that the respondent is now estopped from lodging her complaint before a court of justice, unless section 45, above referred to, means nothing and should be looked upon as a dead letter. The language of the section seems so clear and so energetic that I can see no way of eluding it. It is true that the learned judges of the court appealed from have quoted a number of decisions having some bearing on the case, but others of equal strength are to be found to show we could not interfere and set aside such an award, supported by a section so formed as the 45th section of the Land Act in question. I, for one, would not be disposed to set aside the law (which is clear and positive in its terms) on the strength of decisions whose authority is destroyed by contrary rulings.

Now, referring to the 46th section of the said Land Act, we will see that the Supreme Court of Prince Edward Island has power to make rules and regulations not inconsistent with the provisions of the Act for the purpose of more effectually carrying out the requirements of the Act, and I say that it is not shown that any such regulations have been made authorising all the forms of proceeding claimed in the respondent's brief.

But what did the Commissioners omit to do? To declare in their award the matters mentioned in the 28th section of the Land Purchase Act of 1875, and therein indicated as to be taken into consideration by them in estimating compensation to proprietors? An attentive perusal of that section has convinced me that the suggestions therein contained are merely directory for their investigation, and, as it was very well said in appellant's factum, were intended merely as beacons to light the Commissioners on their way to a final conclusion, and that the mention of details was not a necessary ingredient in their award.

In arriving at their award the Commissioners must be presumed to have taken into their consideration all the suggestions contained in the Land Purchase Act, and this, under the very common rule of law, "*omnia presumuntur rite et solemnia ipse acta.*" The Commissioners by the Act in question are put in the position of juries. It is not

either evident that all the details required by the respondent can easily be reached, and in fact of what great use would it have been for the respondent if the Commissioners had categorically alluded to each of the matters of fact mentioned in the 28th section? None whatever, for the report was final to all intents and purposes; it could not be questioned in any way nor reversed. The respondent, if desirous of knowing her true position, can easily ascertain it, the important facts being very few in number, her number of acres guaranteed, and her rights to arrears of rent not affected.

All the presumptions are against the respondent, and so is the law of the case. She did not comply with the law; she did not complain in due time (and she had ample time to do so), but allowed her adversary to rest in peace; she does not avail herself of the only efficient proceeding pointed out by the Statute, but an after thought leads her to adopt in the Court below the proceedings alluded to. I consider the respondent is not rightly before this Court, and as one of its members I am not disposed to disturb the award of the Commissioners for the reasons mentioned in the rule *Nisi* granted by the Supreme Court of Prince Edward Island. I would therefore maintain the appeal.

MR. JUSTICE FOURNIER.

La première question: Cette cour a-t-elle jurisdiction pour entendre cet appel? L'Intimée pretend que non. Il existerait d'après elle, dans l'Isle du Prince Edouard un tribunal supérieur à la Cour Suprême, composé du Gouverneur en conseil, auquel il aurait du s'adresser avant de porter son present appel. Elle fonde cette prétention sur l'article de notre acte declarant qu'il n' y aura d'appel à cette cour que du jugement de la cour de dernier ressort dans la province d'où l'appel provient.

Les nombreux documents cités par l'Honorable Juge en chef et les recherches historiques faites pour constater l'existence de cette Cour n'ont eu d'autre resultat que de prouver d'une manière bien certaine qu'un tel tribunal composé du Gouverneur en Conseil, comme Cour d'Appel pour l'Isle du Prince Edouard n'existe pas, s'il a jamais existé.

Consequemment l'Appel est bien porté—Ce point règlé, reste la question de savoir si l'Intimée en s'adressant à la Cour Suprême de l'Isle du Prince Edouard, au moyen d'un *certiorari* pour faire mettre de côté la sentence arbitrale dont elle se plaint. Dans se procédé devant la Cour Suprême, l'Intimée a eu gain de cause.

Mais l'Acte concernant la vente des terres de l'Isle du Prince Edouard "The "Land Purchase Act" contenant une disposition formelle enlevant le recours au procédé du *certiorari* pour attaquer les procédures des arbitres, et y substituant un mode particulier, l'Intimée ne devait-elle pas recourir au remède particulier que lui indique le Statut pour se proteger contre les erreurs et omissions qui pouvaient se glisser dans les procédés des arbitres?

N'ayant pas jugé à propos d'invoquer le seul remède que lui indiquait la loi, elle ne doit s'en prendre qu'à elle si elle n'obtient pas de faire reformer la sentence arbitrale. Mais au surplus je suis convaincu comme mes honorables collègues que les formalités voulues par la loi ont été remplies par les arbitres et que l'Intimée n'a pas de griefs réels.

Solicitors: For Appellant - Louis H. Davies, of Prince Edward Island.
„ „ Respondent - Edward J. Hodgson, of Prince Edward Island.
Agents in Ottawa: For Louis H. Davies—Bradley & Bell.
„ „ „ Edward J. Hodgson, Cockburn & Wright.

Certified a true copy of my Report,
G. DUVAL.
Précis writer of the Supreme Court of Canada.

No. 5.

The RIGHT HON. THE EARL OF KIMBERLEY to GOVERNOR-GENERAL THE RIGHT HON. THE MARQUIS OF LORNE, K.T., G.C.M.G.

MY LORD, Downing Street, August 16, 1880.

WITH reference to the Earl of Dufferin's Despatch of the 24th February 1876,* relating to the proceedings before the Commissioners under the "Land Purchase Act, 1875," passed by the Provincial Legislature of Prince Edward Island, I have the honour

* Not printed.

to request that you will obtain from the Lieutenant-Governor of that Province a full report of the proceedings under the Act in question, containing the following particulars:—

(1.) The awards (in a tabular form), by the Commission, whether during the chairmanship of Mr. Childers or afterwards, including a statement of the acreage, the sums awarded, and any particulars of the annual rent, &c.

(2.) The cases in which the amount was disputed and the result of the dispute.

(3.) The total amount paid.

(4.) Particulars of the sales to the tenants of their holdings up to the present time.

(5.) Some account of the present holdings in the island; for example, the number and total acreage of holdings exceeding 200 acres, of those between 100 and 200 acres, of those between 50 and 100 acres, &c.

As there appears reason to believe that information on this subject might be interesting to the Imperial Parliament, I should be glad if it should be in your Lordship's power to forward the report to me at an early date in order, that if there should be no objection, the particulars may be in the hands of Parliament early next session.

I have, &c.

Governor-General the Marquis of Lorne. (Signed) KIMBERLEY.

No. 6.

GOVERNOR-GENERAL THE RIGHT HON. THE MARQUIS OF LORNE, K.T., G.C.M.G., to the RIGHT HON. THE EARL OF KIMBERLEY. (Received Dec. 10, 1880.)

Government House, Ottawa,

MY LORD, November 23, 1880.

IN compliance with the request contained in your Lordship's Despatch, of the 16th August last,* I have the honour to forward herewith a copy of a letter from the Secretary of State for Canada, covering a copy of a full report of the proceedings under the Land Purchase Act of 1875, of the Province of Prince Edward Island.

I have, &c.

The Right Hon. the Earl of Kimberley, &c. &c. &c. (Signed) LORNE.

Enclosure 1. in No. 6.

THE DEPARTMENT OF THE SECRETARY OF STATE to the GOVERNOR-GENERAL'S SECRETARY.

SIR, Ottawa, November 19, 1880.

ADVERTING to your letters of the 30th August and the 1st September last, and to the Despatch of the Right Honourable the Secretary of State for the Colonies, of the 16th August last, a copy of which was enclosed in the former of those communications, I am directed to transmit to you herewith, for the information of his Excellency the Governor-General, a copy of a Despatch from his Honour the Lieutenant-Governor of Prince Edward Island, and of the documents referred to in the margin thereof, being a copy of the report of the proceedings of the Commission under the provisions of the "Land Purchase Act, 1875." Nov. 6, 1880.

I have, &c.

(Signed) EDWARD J. LANGEVIN,

The Governor-General's Secretary. Under Secretary of State.

Enclosure 2. in No. 6.

Province of Prince Edward Island, Government House,

SIR, November 5, 1880.

IN accordance with the request contained in the Despatch of the Earl of Kimberley of the 16th August last, addressed to his Excellency the Governor-General, I have the honour to transmit to you certain documents mentioned in the margin, prepared in the

Report of the Commissioner to the Lieut.-Gov. Schedule A. from Commissioner of Public Lands Office.

* No 5.

Schedule B. from Commissioner of Public Lands Office. Recapitulation of Schedules A. and B.

office of the Commissioner of Public Lands of this Province, containing a full report of the proceedings of the Commission under the provisions of the "Land Purchase Act, 1875," in order that the same may be forwarded by you to the Right Honourable the Secretary of State for the Colonies.

I have, &c.

The Honourable the Secretary of State, Ottawa.

(Signed) T. Heath Haviland, Lieutenant-Governor.

To the Honourable Thomas Heath Haviland, Q.C., Lieutenant-Governor of the Province of Prince Edward Island, &c., &c.

Charlottetown, Prince Edward Island, November 4, 1880.

Sir,

I have the honour to submit a report of the proceedings of the Commissioners under the "Land Purchase Act, 1875," as required in Earl of Kimberley's Despatch to the Governor-General of the 16th of August 1880, specifying as required by the Secretary of State for Canada in his letter to your Honour of the 6th September, the points in which the landlords had not complied with the conditions of their respective grants.

In 1767 Prince Edward Island, with the exception of three small reservations intended for county towns, was divided into 67 lots or townships, containing about 20,000 acres each, 65 of which were disposed of in one day by lottery in London before the Board of Trade and Plantations.

Grants were subsequently issued to the various allottees, which contained the following among other conditions.

That the grantee of each township should settle the same within 10 years from the date of the grant. in the proportion of one person for every 200 acres, such persons to be foreign Protestants or persons who had resided in British America for two years previous to 1767.

That if one third of the land was not so settled within four years of the date of the grants the whole should be forfeited.

The payment of a certain quitrent varying from 6*s*. to 2*s*. sterling per 100 acres, according to the different lots, payable annually on one half of the grant at the expiration of five years, and on the whole at the expiration of 10 years from the date of grant.

On these terms the original proprietors accepted their grants, and in the following year they petitioned the British Government that the island might be granted a separate Government, and offered in order to defray the expense thereof, that such portion of the quitrent which would not be payable until five years after the date of the grants should become payable the first of May 1769, and the payment of the remaining half to be postponed for 20 years.

This application was acceded to by Her Majesty's Government.

During the five years following the establishment of the Local Government in 1768 the quitrents were not paid as stipulated, and at the expiration of 10 years from the date of the grants the condition of settlement as regards population was complied with in only 10 townships. Nine others were partially settled, and the remaining townships neglected.

But in no case were the settlers foreign Protestants.

In 1802 the quitrents in arrears amounted to 59,162*l*. sterling, and the British Government, desirous of encouraging the settlement of the Colony, determined to accept a moderate commutation, discriminating in favour of such proprietors as had exerted themselves to any degree in carrying out the conditions of their grants.

The commuted arrears were not paid. The total amount shown to have been paid up to 1833 was only 6,000*l*. sterling; whereas the total amount by the terms of the grants would have been about 145,000*l*. sterling.

The agitation in the island on the subjects of quitrents and escheat for the nonfulfilment of the conditions of the original grants was commenced in 1770. One of the first acts of the local Legislature was the taking into consideration the non-performance of these conditions. From that time forward the agitation was increasing, various attempts having been made to establish a Court of Escheat.

In 1853 an Act was passed by the provincial Legislature for the purchase of the estates of such proprietors as might be disposed to sell them. This Act received the Royal assent, and between the years 1854 and 1871 13 proprietary estates, consisting of

157,260 acres were purchased, and the office of Commissioner of Crown Lands was created for the purpose of managing the sales of the said lands to the tenants or occupiers.

In Schedule A. to this report may be found the following particulars respecting the working of this Act:—

1. Date of purchase.
2. Acreage of the different estates.
3. Amount of purchase money.
4. Rate per acre paid proprietors.
5. Particulars of holdings purchased by tenants.
6. Acreage rate per acre to tenants.

The proprietors of the greater portion of the island having refused to sell their lands under this Act, and the agitation still continuing, it was agreed upon by the provincial Legislature and some of the largest proprietors that the questions which had hitherto formed the subject of agitation should be referred to a commission with power to devise a system by which the leasehold lands might be converted into freehold. At the suggestion of the proprietors, the commissioners were empowered to enter into all the inquiries that might be necessary, and to decide upon the different questions which should be brought before them.

The Commission was constituted in 1860, the Hon. John H. Gray, of New Brunswick, being nominated by the British Government, the Hon. Joseph Howe, of Nova Scotia, by the Legislature of Prince Edward Island, and the Hon. J. W. Ritchie, of Halifax, by the proprietors.

The Legislature of Prince Edward Island on the 2nd day of May, 1860, passed an Act in advance to give effect to the award of the Commissioners, but on the publication of the award the proprietors raised an objection against the manner in which it provided for the valuation of land, and on this objection the award was ultimately set aside.

The excitement in consequence of what was regarded as the bad faith of the proprietors in refusing to accept the award of the Commissioners became very general all over the Colony. An organisation, known as the "Tenant League," came into existence, and resistance was offered to the collection of rent by the civil officers, so that it became necessary in 1865 to despatch a company of about 200 soldiers from Halifax to the island to assist in the maintenance of the law.

In 1868 a minute of Council urging on the British Government the necessity for the adoption of compulsory measures for the settlement of the land question was forwarded to the British Government.

The Land Purchase Act, 1875, produced a final settlement of an agitation which had for over 100 years greatly retarded the prosperity of the province

Schedule B. contains the following particulars respecting the estates purchased under this Act.

1. The acreage of the various estates.
2. The arrears of rent due proprietors.
3. Gross annual rental reserved in leases.
4. Gross amount of rental received in six years preceding the sitting of Commission.
5. Gross amount awarded by Commission.
6. Rate per acre paid by Government.
7. Particulars of present holdings of land sold under the provisions of the "Land Purchase Act, 1875."
8. Rate per acre charged to tenants.
9. Total amount paid by Government.

Applications to the Supreme Court of Prince Edward Island to set aside the awards of the Commission under "the Land Purchase Act, 1875" were made by the following proprietors, viz.:—

Charlotte A. Sulivan.
Robert Bruce Stewart.
John A. S. Macdonald.
Helen J. Macdonald.
William C. Macdonald.
John A. Macdonald.
Spencer C. B. P. Fane.
Sidney T. and Amelia Evans.

The awards were set aside in the cases of Charlotte A. Sulivan, Robert Bruce Stewart, John A. S. Macdonald, and Spencer C. B. P. Fane, but appeals having been taken to

the Supreme Court of the Dominion, and the case of Charlotte A. Sulivan being heard, the decision of the Island Court was reversed with costs.

The case of John A. S. Macdonald was compromised by the payment of the attorney's costs, Mr. Macdonald being allowed interest on the award from the date thereof.

Spencer C. B. P. Fane and Robert Bruce Stewart abandoned their cases and accepted the award. William C. Macdonald's award was affirmed by the Island Court, Sidney T. and Amelia Evans, Helen J. Macdonald, and John A. Macdonald abandoned their cases before they obtained hearings in the Provincial Court and accepted the amounts awarded to them.

An application was made to the Court by James F. Montgomery that the award in his case be referred back to the Commissioners for amendments; the application was granted, but subsequently a compromise was effected, Mr. Montgomery being allowed an additional sum of $1,590 as accruing rent and costs. The foregoing were all the cases in which the amounts awarded by the Commissioners were disputed.

In the case of Colonel Cumberland and wife the sum of $1,000 was deducted from the award, as on the production of titles it was found that "Warren Farm," containing 123 acres, which was included in the award was only held under lease by Colonel Cumberland.

Some delay occurred in perfecting the titles of some of the estates, in which cases the landlords were allowed interest on the amount of the awards until payment was made. This will explain the discrepancy between the sums in the fifth and ninth columns of Schedule B. in the estates of Sidney and Amelia Evans, George A. McNutt, trustee of Mrs. Stephens and Margaret Stewart.

The sums received at this office during the years 1877, 1878, and 1879 in payment of instalments, and interest on purchase money, amount to $177,878 76c.

A much larger sum would no doubt have been received were it not for the great depression in trade existing during that period, causing a decline in the prices usually received for agricultural products.

Whilst some of the tenants are somewhat slow in meeting their instalments as they fall due, the majority are making commendable efforts in that direction, and the public sentiment in the Colony will sustain the Department of Public Lands in firmly but prudently enforcing payment of the balances remaining unpaid by the tenants.

I have, &c.

(Signed) DONALD FERGUSON,
Commissioner of Public Lands.

Enclosure 3. in No. 6.

RECAPITULATION.

	No. 1. Classification.	No. 2. Number.	No. 3. Acres.
SCHEDULE A.			
Holdings of tenants on the estates acquired by voluntary sale from the year 1854 to the year A.D. 1873 - -	1 acre to 50	1,390	41,381
	50 „ 100	3,100	198,667
	100 „ 200	1,124	139,757
	200 acres	90	23,245
SCHEDULE B.			
Holdings of tenants on the estates acquired by compulsory and voluntary sale from the year A.D. 1876 to date -	1 acre to 50	612	18,998
	50 „ 100	1,519	97,060
	100 „ 200	615	69,170
	200 acres	35	8,619
		8,485	596,897

Office of the Commissioner of Public Lands,
Charlottetown, Prince Edward Island, October 1, 1880.

(Signed) ROBT. A. STRONG,
The Assistant Commissioner.

Enclosure 4. in No. 6.

SCHEDULE B.

ESTATES purchased by the Government of Prince Edward Island under the operation of the "Land Purchase Act of 1875;" the Acreage of each, Arrears of Rent due, Gross Annual Rental reserved, Amount received in Six Years, Amount of Award, and Rate per Acre; also the Number and Acreage of Holdings, with Rate per Acre paid therefor, and Actual Amount paid by Government to Proprietors.

Name of Proprietors.	No. 1. Acreage of Estate.	No. 2. Arrears due Proprietor.	No. 3. Gross Annual Rental Reserved.	No. 4. Amount of Rental Received in Six Years.	No. 5. Award of Commissioners.	No. 6. Rate per Acre.	No. 7. Holdings Purchased by Tenants.								No. 8. Rate per Acre to Tenants.	No. 9. Actual Amount paid by Government.
							No.	From 1 to 50 Acres.	No.	From 50 to 100 Acres.	No.	From 100 to 200 Acres.	No.	From 200 Acres.		
		$ c.	$ c.	$ c.	$ c.	$ c.									$ c.	$ c.
Bellin and Traverse	1,986½	—	—	—	6,000 00	3 10	4	125	11	717	4	400	—	—	1 38	6,000 00
Bourke, John Roache	3,114	2,066 33	536 38	1,984 91	5,402 00	1 73	2	73	10	600	8	880	1	204	1 38	5,402 00
*Brenan	1,378½	—	—	—	5,887 69	4 27	—	—	—	—	—	—	—	—	1 65	5,877 69
Crooke, Mary and Frances	2,131⅔	711 93	388 59	2,391 11	5,500 00	2 58	—	—	7	509	6	620	—	—	1 80	5,500 00
Cumberland, Colonel, and wife	6,216⅔	4,623 85	1,919 50	11,101 73	31,900 00	5 13	5	169	39	2,510	13	1,400	—	—	2 66	30,900 00
Cundall, William	2,844	1,187 60	529 84	3,463 00	9,200 00	3 23	10	332	18	1,186	9	938	—	—	2 12	9,200 00
Cundall, Mary Eliza	1,455	2,086 86	266 24	1,506 00	4,450 00	3 05	2	56	18	1,152	1	100	—	—	2 07	4,450 00
Cundall, Henry T.	1,886½	456 18	535 08	—	5,149 00	2 73	8	222	14	817	5	516	—	—	2 17	5,149 00
Cundall, H. T. (Guardian)	7,590	248 18	1,421 76	—	22,300 00	2 93	21	595	57	3,234	25	2,595	1	219	2 02	22,300 00
*Cunningham	2,188	—	—	—	2,055 00	—	—	—	—	—	—	—	—	—	—	2,055 00
Douse, Esther	2,039½	414 01	522 32	5,459 48	7,525 00	3 68	3	101	16	1,235	4	453	—	—	2 16	7,525 00
Douse, Henry C.	788½	—	169 33	5,172 05	3,010 00	3 78	10	146	5	391	1	125	—	—	3 10	3,010 00
*Douse, Arabella	410½	—	—	—	1,486 75	3 50	1	19	3	180	1	146	—	—	1 88	1,436 75
*Douse, James T.	423	—	—	—	1,196 55	2 83	1	28	3	200	—	—	—	—	2 35	1,196 55
*Douse, Jane B.	402	—	—	—	1,407 00	3 50	3	93	2	159	1	100	—	—	2 20	1,407 00
Douse and Strong	809½	—	—	—	6,080 00	7 52	3	137	6	439	2	225	—	—	2 14	6,080 00
*Des Brisay	5,200	—	—	—	16,374 54	3 14	10	383	15	1,083	6	713	—	—	1 94	16,374 54
Evans, Sydney T. Amelia	4,598	927 46	864 54	6,409 88	10,907 00	2 48	25	880	30	2,036	11	1,151	—	—	1 96	11,452 00
Evans, Arthur W.	997½	—	—	—	2,954 00	2 96	1	19	8	426	3	350	—	—	2 12	2,954 00
*Earle, Samuel L.	384	—	—	—	1,383 00	3 34	—	—	2	139	1	100	—	—	2 20	1,383 00
Fane, Spencer C. B. P.	13,000	5,481 68	1,397 93	—	21,200 00	1 63	21	585	49	3,397	15	1,963	1	299	1 84	21,200 00
Fanning, Maria S. M.	8,469	7,818 05	1,194 17	4,123 98	20,200 00	2 40	31	981	58	3,568	23	2,521	—	—	1 56	20,200 00
Fanning, W. W., and others	10,000	17,854 00	1,758 22	—	25,250 00	2 52	21	724	44	2,998	43	4,451	3	614	1 07	25,250 00
Hodgson, Edward J.	1,751	291 70	342 69	—	4,800 00	2 74	18	315	7	381	6	719	—	—	1 93	4,800 00
Hodgson, Daniel (Trustee)	4,780	1,736 52	1,103 78	6,781 10	21,700 00	4 63	13	443	38	2,348	9	939	—	—	2 01	21,700 00
Holland, A. E. C., and wife	4,846	1,556 12	841 80	—	11,734 00	2 42	11	334	22	1,604	9	1,091	1	213	1 70	11,734 00
Holland, A. E. C.																
Holland, F. F.	615	105 59	103 22	—	1,450 00	2 36	3	132	2	120	3	300	—	—	1 57	1,450 00
Irving and Debwis	928⅔	208 71	135 82	—	2,572 00	2 77	4	117	5	393	1	100	—	—	1 52	2,572 00
Lawton, Anna Maria, and others	2,131	878 11	277 59	1,391 28	4,222 00	1 98	1	25	11	727	3	354	—	—	1 33	4,222 00
	93,259				268,245 53											

NOTE.—The estates marked thus * were disposed of by private sale to the Government.

ESTATES purchased by the Government of Prince Edward Island—*continued.*

Name of Proprietors.	No. 1. Acreage of Estate.	No. 2. Arrears due Proprietor.	No. 3. Gross Annual Rental Reserved.	No. 4. Amount of Rental Received in Six Years.	No. 5. Award of Commissioners.	No. 6. Rate per Acre.	No. 7. Holdings Purchased by Tenants.								No. 8. Rate per Acre to Tenants.	No. 9. Actual Amount paid by Government.
							No.	From 1 to 50 Acres.	No.	From 50 to 100 Acres.	No.	From 100 to 200 Acres.	No.	From 200 Acres.		
	93,259	$ c.	$ c.	$ c.	$ c. 263,245 53	$ c.									$ c.	$ c.
Melville, Lord	11,309¾	13,702 02	2,104 37	12,172 32	34,000 00	3 00	1	49	12	728	3	350	—	—	1 52	34,000 00
Montgomery, Sir G. G.	5,610	6,020 79	877 76	3,894 62	12,400 00	2 21	14	455	59	3,911	36	3,800	2	516	1 48	12,400 00
Montgomery, Louisa	1,362½	597 68	253 19	—	4,569 00	3 35	17	542	32	1,973	11	1,307	1	220	2 06	4,569 00
Montgomery, James F.	5,678½	1,028 04	968 99	6,299 60	15,200 00	2 89	5	164	19	1,499	11	1,613	—	—	1 63	16,790 46
Macdonald, W. C. (see note)	10,435	—	—	—	13,775 00										—	23,153 77
Macdonald, H. T.	1,068	450 71	243 82	1,258 52	3,700 00	2 32	14	487	79	5,196	17	1,784	1	200	—	3,700 00
Dower	562						1	35	14	753	3	300	—	—	0 95	1,399 70
Macdonald, John A. S.	21,779	—	3,944 05	—	34,000 00	1 78	21	697	97	6,528	47	5,443	3	600	1 06	38,880 00
MacDonell, John A.	2,400	125 13	624 85	—	7,592 00	3 16	4	110	10	802	5	613	—	—	1 79	7,592 00
MacMillan, Mrs. (Guardian)	2,994½	295 37	603 08	3,572 19	10,247 00	3 42	35	1,129	22	1,311	3	335	—	—	2 07	10,247 00
MacNutt, G. A. (Trustee	3,382¾	1,065 88	584 39	2,882 17	8,875 00	2 62	5	188	17	1,239	9	1,043	1	210	1 65	9,238 50
Palmer, Henry	1,800	—	—	—	4,952 00	2 75	9	245	18	1,164	2	200	—	—	1 56	4,952 00
Rennie, Robert (Trustee)	10,220	8,484 87	2,553 50	14,768 81	33,000 00	3 22	49	1,496	60	3,880	27	3,206	—	—	1 99	33,000 00
*Ramsay, A. A., and others	1,763½	—	—	—	3,350 65	1 90	—	—	5	304	4	493	1	250	1 41	3,350 65
Stewart, Robert Bruce	66,727	32,102 78	6,470 83	—	76,500 00	1 14	72	2,312	252	15,301	92	10,511	12	3,202	1 27	76,500 00
Stewart, Margaret	3,235½	713 41	560 88	—	8,500 00	2 85	21	696	22	1,373	2	200	—	—	1 41	9,240 55
Sullivan, Charlotte A.	66,937	36,303 79	7,289 70	—	81,500 00	1 29	42	1,468	139	9,131	48	5,456	2	600	1 03	81,500 00
																2,606 00†
*Stewart, Mary	592	—	—	—	1,776 00	3 00	2	90	1	72	—	—	—	—	1 94	1,776 00
Thompson, Elizabeth, and others	7,140	9,172 70	1,438 93	3,520 17	10,700 00	1 50	13	358	29	1,971	28	3,157	—	—	1 58	10,700 00
*Wright, George	492	—	—	—	1,476 00	3 00	—	—	—	—	1	140	—	—	2 43	1,476 00
Wiggins, H. D., & others	1,004	303 80	314 41	2,179 76	4,890 00	4 87	6	72	4	240	1	122	—	—	2 00	4,890 00
Wright, Thomas, and wife	1,103½	95 63	172 28	521 26	3,066 00	2 78	4	139	6	372	3	332	—	—	2 75	3,066 00
*Wright, Lemuel	856	—	—	—	2,568 00	3 00	1	25	2	144	—	—	—	—	2 40	2,568 00
*Windoe, John	2,016	—	—	—	6,328 33	3 18	16	409	9	533	4	472	—	—	1 74	6,328 33
Yates, A. H., and wife	611	—	83 06	—	1,483 00	2 45	1	12	—	—	1	100	—	—	2 02	1,493 00
Yeo, estate of the late Hon. J.	17,202	13,248 29	1,894 68	—	37,000 00	2 15									1 06	37,000 00
Ditto. Willd. J. Yeo and others	996½	—	—	—	3,195 28	3 20	27	836	91	6,087	44	4,943	5	1,272	1 62	3,195 28
Ditto. Ditto. J. Jage and others	679	—	—	—	2,283 00	3 30									1 62	2,283 00
	343,216				690,171 79		612	18,936	1,519	97,060	615	69,170	35	8,619		

* The estates marked thus * were disposed of by private sale to the Government. † Rent.

NOTE.—The sum of 9,388 dollars 77 cents. paid in addition to the amount of the award for this estate represents dower rights which were not considered by the Commissioners.

Office of the Commissioner of Public Lands,
Charlottetown, Prince Edward Island, October 1880.

(Signed) ROBT. A. STRONG,
The Assistant Commissioner.

Enclosure 5. in No. 6.

SCHEDULE A.

ESTATES purchased by the Government of Prince Edward Island under the operation of "Act 16 Vict. cap. 18," Date of Purchase, Acreage, Amount paid therefor, Rate per Acre; also Number of Holdings purchased by Tenants, and Average Rate per Acre.

Estates.	No. 1. Date of Purchase.	No. 2. Acreage.	No. 3. Amount of Purchase.	No. 4. Rate per Acre.	No. 5. Holdings Purchased by Tenants.								No. 6. Average Rate per Acre to Tenants.
					No.	From 1 to 50 Acres.	No.	From 50 to 100 Acres.	No.	From 100 to 200 Acres.	No.	From 200 Acres.	
			£ c.	£ c.									
Worrell	December 1854	70,539	66,997 77	0 94	252	7,431	354	26,119	136	16,312	19	4,564	1 44
Walsh, or Lot 11	June 1856	12,720	9,246 67	0 72	26	631	72	4,834	42	5,132	4	981	1 13
Selkirk	September 1860	62,059	32,178 52	0 51	122	4,129	552	34,664	179	20,362	5	1,595	0 94
Winchester	November 1860	13,000	9,733 33	0 74	20	679	77	4,598	48	5,362	5	1,014	1 25
Montgomery	From 1863 to 1866	22,931	24,165 44	1 05	45	1,288	173	10,397	69	7,333	2	526	1 53
Cunard	July 1866	212,885	257,933 30	1 21	732	21,148	1,519	93,466	501	67,727	46	11,888	1 87
Townshend	November 1867	3,715	3,568 88	0 96	11	378	22	1,231	8	863	3	785	1 19
Pope	July 1868	7,413	13,006 98	1 76	37	1,095	51	3,204	25	2,629	1	200	1 84
Haviland	February and March 1869	24,167	29,913 78	1 23	26	788	92	6,014	57	6,409	4	1,468	1 97
Hodgson, Lot 23	March 1869	3,728	7,861 94	2 10	28	861	28	1,487	11	1,346	—	—	2 22
Palmer	March 1870	11,928	24,187 55	2 02	64	2,100	83	5,654	20	2,294	—	—	2 30
Hodgson, Lot 19	December 1871	12,175	39,500 00	3 24	12	336	37	4,076	3	782	—	—	3 40
Loan Act, "28 Vict. cap. 5."		—	—	—	15	517	41	2,923	25	3,206	1	224	—
		457,260	518,294 16		1,390	41,831	3,100	198,667	1,124	139,757	90	23,245	

Office of the Commissioner of Public Lands,
Charlottetown, Prince Edward Island, October 1, 1880.

(Signed) ROBT. A. STRONG,
The Assistant Commissioner.

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