

PETITION OF WILLIAM FORSYTH.

Copy of

A PETITION to the House of Assembly, from *William Forsyth*, Proprietor of the *Niagara Falls Pavilion*, in the Township of *Stamford*, and County of *Lincoln*.

PRESENTED BY JOHN MATTHEWS, ESQUIRE.

Ordered, by The House of Assembly, to be Printed. 23th January, 1823.

Unto the Honourable the Commons House of Assembly of Upper Canada.

The humble Petition of *William Forsyth*, Proprietor of the *Niagara Falls Pavilion*, in the Township of *Stamford*, and County of *Lincoln*,

SHEWETH:—

THAT your petitioner did, sometime in the year 1821, purchase from *William Dickson*, Esquire, a tract of land in *Stamford*, adjoining the cataract of *Niagara*, being composed of Lot No. 159, with the broken front between it and the *Niagara* river—also other parts of lots, the whole of which was granted to one *Francis Ellesworth* thirty years ago, and has ever since been in his and his successors' peaceable possession.

That in the original grant from the crown to said *Ellesworth*, the line in one place runs southerly parallel the shore of the river, "thence east to within *one chain of the said river* fifty chains, then northerly along the bank, always at the distance of one chain from the top of the bank."

That your petitioner is the proprietor of two other farms on the bank of the *Niagara* river, both of which are bounded according to the description in the conveyances by the bank of the said *Niagara* river, with the stream, save and except the government reservation of one chain from the edge of the bank of the river bounding the waters thereof.

That the said chain along the river's edge was reserved for public purposes, will fully appear by the contents of a letter from *Major General Darling*, by order of the commander of the forces, hereto annexed; notwithstanding which, *Messrs. Thomas Clark & Samuel Street* have warned your petitioner not to trespass on said lands, which they state to have been leased to them last August, under the great seal of the colony.

That notwithstanding this their warning, it was argued by the *Solicitor General*, last assizes, in open court, that the lease had been granted to said *Street & Clark*, for a public highway.

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THE PETITION OF WILLIAM FORSYTH.

That during the administration of Lieutenant Governor Hunter, his excellency in council granted a lease of the chain of reservation in front of the first named tract, to Isaac Swayze, Esq. which lease has never been cancelled; but is now in the possession of the lessee.

That for a period of forty four years, your petitioner and his father have been in peaceable and undisturbed possession of the estate in Stamford; and also of the new farms, since the date of their purchase from the honourable William Dickson, until the 18th May last.

That early in May, Capt. Philpotts, Royal Engineers, accompanied by Col. Thomas Clark, surveyed and laid out the chain of reservation on the bank of the river, ostensibly for a highway:—to this proceeding your petitioner had no possible objection.

That soon after they had thus laid off a chain from the bank of the river at highwater mark, Captain Philpotts called upon your petitioner and stated, that he and Mr. Clark (one of the oldest residents in the neighbourhood) had been mistaken in the survey:—that the reserve came to the top of the hill in front of the pavilion.—and that the top of the hill was the bank of the river, intended as the extreme point of the reserve. He ordered your petitioner to remove his blacksmith's shop and fences, which your petitioner refused to do; said shop and fences being upon his private property.

That upon this refusal, Capt. Philpotts, acting as your petitioner has reason to believe, by command of Major General Sir Peregrine Maitland, came upon petitioner's premises, accompanied by a strong military force, to wit, a sergeant, three privates, and a Colonel, the latter being also high sheriff of the district. The soldiers stacked their arms in front of John Brown's hotel, and your petitioner took witnesses and warned the party to desist from trespassing on and cutting down and destroying his premises, ~~blacksmith's shop and fences, contrary to law, and on pain of incurring~~ legal penalties: but said Philpotts together with said Colonel (Richard Leonard) nevertheless returned upon said premises, accompanied by the soldiers, who being armed with chopping axes, did, by Capt. Philpotts' orders, cut down said shop, and threw it over the hill, a distance of 70 or 80 feet. They also cut and threw down a large string of post and rail fence, and left the front of the farm open, and the crops in the ground subject to waste. All this violent military proceeding was done and carried on in the presence of a great number of ladies and gentlemen, visitors at the Falls, from the United States and other foreign countries: your petitioner, in order to save his gardens and meadows, upon which the supplies of his hotel greatly depended during the season then just begun, got assistance and immediately rebuilt his fences, and re-completed his enclosures and placed them in the same condition as before the outrage.

That soon afterwards, said Capt. Philpotts returned upon your petitioner's premises, accompanied by a band of armed soldiers, and said Leonard; they had a rope for a chain, and therewith measured off a quantity of land at the top of the hill, and destroyed and threw down the field and garden fences a second time, throwing open from fifty to sixty acres of cultivated lands to commons. After some time your petitioner again rebuilt his fences, and has not since been attacked by His Majesty's Forces.

That at the last court of King's Bench held in the Niagara District, your petitioner brought an action of trespass against Philpotts and Leonard, and obtained judgment against them by default, with £200 damages; but the Court above set aside the verdict. Captain Philpotts has since gone off to Europe, and your petitioner is without a remedy for these repeated acts of violence.

Your petitioner earnestly but respectfully submits to your honorable

THE PETITION OF WILLIAM FORSYTH.

3

house, that if a dispute had arisen respecting the true boundary of the property of a British subject, the substitution of a military force to decide the question of right, and remove by force of arms the peaceable possessor, in defiance of, and unknown to the civil authority, would have been a high breach of the rights of the freeholders of the Province, whose privileges, your honorable house is always watching over with the utmost vigilance: that throwing down, by means of British soldiers, and destroying the offices and fences of your petitioner's estate, wantonly exposing the fruits of the earth and growing crops to waste, and attempting to eject him from off his property, without any process of the civil law, and for the ostensible purpose of getting possession of a reserve not wanted, and about the location of which, from his several measurements, the officer of Engineers, evidently was at a loss, and which was then leased to and consequently under the control of Mr. Swayze; committing those acts by the means of a band of hired soldiers, in a country not under martial law, by command of (as your petitioner expects to prove) a military officer, who was himself under the orders of a British Major General, is a daring and unprovoked encroachment upon the privileges of a people unfitted for enduring slavery, and forasmuch as the orderly book and other evidence will go far to prove, that the said acts of lawless military violence were done and committed by the express command, and at the direct instigation of Major General Sir Peregrine Maitland, commanding His Majesty's forces, sent here to guard us against all oppression and tyranny :

Your petitioner humbly prays your honorable house to watch over and protect the rights of the people from the encroachment of military power, and that you enquire as speedily as may conveniently be, into the circumstances attending his case, and if it shall appear that the allegations contained in this petition are true, that such representations may be made to His Majesty's Government in England by a safe channel, concerning the said transactions, as will ensure to your petitioner that redress to which he as a British subject is entitled, and which, as has already been shewn, he cannot obtain in the courts of this province; but which your honorable house is at all times, very anxious to obtain for petitioners, who repose confidence in your wisdom, honor, and integrity.—And your petitioner, as in duty bound, will ever pray.

WILLIAM FORSYTH.

Niagara Falls Pavilion, 21st January, 1828.

