

INFORMATION FOR THE PUBLIC.

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**THE CASE**

OF THE

**INDIAN DEPARTMENT,**

IN REFERENCE TO THE

**GRAND RIVER SETTLERS**

**AS SUBMITTED BY COL. BRUCE,**

CHIEF SUPERINTENDANT OF INDIAN AFFAIRS.

IN A LETTER TO

**SIR ALLAN NAPIER MACNAB,**

AND

THREE THOUSAND MEMORIALISTS, WITH THEIR PETITION  
TO THE EXECUTIVE, FOR AN ENQUIRY &c.

AND

**A REVIEW OF THE SAME**

**BY JAMES LITTLE, ESQ., OF CALEDONIA,**

ONE OF THE MEMORIALISTS.

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HAMILTON:

"SPECTATOR" STEAM PRESS, CORNER OF COURT-HOUSE SQUARE.

1852.



## INTRODUCTION.

TO THE LEADER,

Either a Memorialist, or one who may not have joined in that remonstrance to the Executive, complaining of the jugglery of a Department, which, for years has been accumulating its "*Canadian-withering*" strength, and now is a foul incubus upon the free working of those free institutions which are a "Briton's boast,"—these pages have been thus hastily thrown together, from the columns of the *Spectator*, by one truly averse to double-dealing, who has taken this course "for the double (or further) purpose," and as a more convenient form for reference, of shewing that Memorialists do not "labour under an entire misconception of the history of these transactions"—that those statements above the signature of Col. Bruce are not "a full explanation of the merits of the case," are not "a simple statement of facts," but are, in fact, *a compound jumble of fictions, assumptions, and miserable contradictions*; the shewing of a lame case, clothed in a little truth, and the marked suppression of material facts.

As men of all shades of political and religious "*isms*" have joined in this remonstrance, they are most fervently, but respectfully invited to give these pages an attentive and impartial perusal; to discard from their minds assertions of "false tongues" and "hiredling pens;" who would mar the accomplishment of a great good, by charging "the whole of this Indian Land affair as the work of rabid toryism;" at the same time, by a singular contradiction, the late move is charged also, upon the *said-to-be* delinquent party; making them press for an exposure of their delinquencies!

Most emphatically, this question is not a party one—the only "*isms*" connected with the question, are a *fireside-ism* and a *Canadian-ism*. The question is, shall nearly three hundred emigrants and their families, amounting to upward of two thousand souls, be first entrapped on landing in this country, by such letters as are set forth in pages 21 and 22 of this pamphlet; and after years of toil and labor, and sacrifice of health and wealth, be stripped of all by a flourish of the pen of an officer of an irresponsible department, and this without the benefit of those inimitable institutions, at once the safeguards of a limited monarchy and the boast of a free people—"trial by jury?"

As a communication on this subject has recently been transmitted from Downing Street, to Lord Elgin, it will, with the reply thereto, and *action taken pending those communications*, form the subject of further comment.

Gross neglect was paid to the Memorials of 1844, "referred to the Special Commissioner for his report, by command, (Signed) J. M. Higginson, Jan'y 8, 1845;" retained by Thorburne up to April 10th, without any communication to Petitioner, and without any Report,—excuse made, "he did not know the address of Petitioner,"—replied to, it was given in letter of 9th Nov., '44,—the false assertion made, "the letter had not been received,"—proved to be false by the following:

"Indiana, Dec. 12, 1844.

Dear Sir,—In answer to yours of 9th ult., &c. &c.,  
(Signed)

DAVID THORBURNE,  
*Special Comm'r."*

MR. F. J. CHESHIRE,

When these and other important documents, not referred to by, probably not known to, Col. Bruce, are set forth; the author of all the Grand River difficulties, will stand forth in his true colors, and in that day, be it near or remote, will need strength to bear the accumulated weight of all his honors, nor least of them, the crushing one,

*"Falsus in uno, falsus in omnibus."*

Hamilton, August 7, 1852.

## P E T I T I O N .

*To the Right Honorable James, Earl of Elgin and Kincardine,  
Kt., Governor General of British North America, &c. &c.,  
in Council:*

MAY IT PLEASE YOUR EXCELLENCY :

The Memorial of the undersigned respectfully sheweth :

That in the year 1839, an Act of the Provincial Parliament, the 2nd Vic. ch. 15, was passed, protecting the unsundered Indian Lands from trespass and injury.

That on the 27th November, in the year 1840, an order in Council was passed, granting pre-emption rights to the white occupiers of Indian Land on the Grand River.

That on the 8th day of January, 1841, the Indians surrendered to the Crown, for the purpose of sale, all the lands on the Grand River, except a few acres near the town of Brantford, which they directed to be leased. That the Indians surrendered the latter portion also, which has since been sold, thus making a surrender of the whole tract.

That the whole of the said lands were, under instructions from the Surveyor General's Department, directed to be surveyed, and the Government authorized their appraisal. That they were surveyed into farm lots and appraised.

That, by the surrender, the said lands were taken out of the control of the Indian Department.

That by 8th Vic. ch. 7, these lands were divided into and declared Townships, for judicial, municipal, and all other purposes.

That, under said surrender, several Townships were thrown open for sale, and disposed of accordingly.

That in ignorance, in which they remained wilful, notwithstanding the altered character of these lands, by the cession to the Crown, for the purpose of sale, the Indian Department, subsequently to the Gov-

ernment of Sir Charles Bagot, and during a portion of the time of Lord Metcalé, has not ceased to exercise control over a portion of these lands, namely, in Oneida and Tuscarora, as if the said lands were in their original unsundered wilderness state, by prosecuting, under the 2nd Vic. ch. 15, aforesaid, the parties in whose favor the said orders in Council were passed, and others who took possession under assurances and directions from Officers of the Indian Department and Government, the lands having been surrendered for this purpose.

That many of your Memorialists, in perfect reliance in the many acts and declarations of the Government, have become the purchasers or occupants of land in the adjoining Townships, and have been long deeply injured by a tract of 65 or 70,000 acres so kept in a semi-wilderness state, not only depriving them of roads to valuable markets, but inflicting other injuries which have been repeatedly brought before the attention of the government.

That, notwithstanding the Government were repeatedly memorialized on the subject of the illegality of the prosecutions against the settlers, no attention whatever was given to said memorials, except a reference of them to the Indian Department, which had no legal right to adjudicate on the question.

That in the year 1847, a Committee of the Provincial Legislature reported upon a petition, recommending that, as the settlers had been guided by representations made by the Government, they be paid a full remuneration for improvements before removal.

That the only remuneration offered is \$8 per acre, but without admeasurement, and the valuator, James Kirkpatrick, on oath.

has stated that they could not be made for less than £1 per acre more.

That in the year 1848, the Gore District Municipal Council also memorialized the Government, giving a very clear elucidation of the case—a copy of which is enclosed.

That the Government, after allowing the settlers to be harassed by prosecutions, fines, and imprisonments, for the space of five or six years, seemed at last to come to the conclusion, that the acts of the Officers of the Indian Department were illegal, as they passed an *ex post facto* law, 12th Vic. ch. 9, giving authority to the Governor General to appoint Officers to turn off the settlers; and, notwithstanding many of them had been on the lands for eight or ten years, and had made large improvements thereon.

That another act was passed, the 14th year Vic. ch. 74, with the view of giving increased authority to the said Officers to effect the removal of the settlers.

That, under these last mentioned acts, to which your memorialists would beg the attention of the Government, as most arbitrary, despotic, and unconstitutional, in regard to the rights of property and the liberty of the subject, no less than seventeen families were turned out of house and home during the recent severe snow storm. Men, women, and children, thrown out on the highway, with nearly two feet of snow on the ground, and without a shelter over their heads.

That the outrages and cruelty which the settlers on these lands have suffered, and continue to suffer, demand the most instant and searching investigation of the Government; and in order to this, your memorialists earnestly pray that all further proceedings be stopped against the settlers, and an impartial inquiry made in reference to the whole question.

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

## REPLY.

The following reply to the petition of 3000 inhabitants of Upper Canada, asking for the appointment of a commission, to investigate the proceedings of the Indian Commissioners and claims of the settlers, has been handed us by Sir Allan N. MacNab:—

### INDIAN DEPARTMENT.

QUEBEC, 10th July, 1851.

SIR,—I am directed by the Governor General to acknowledge the receipt of a numerous signed Memorial, headed by you, and addressed to his His Excellency, complaining of the course pursued towards the Squatters on the Grand River Indian Reserve, and praying that further proceedings against them may be stayed, and an impartial enquiry made into the whole question.

Under ordinary circumstances it might be sufficient to state in reply, that the measures complained of were taken under the authority of Orders in Council, or Acts of the Legislature, specially passed for the

protection of Indian property and rights, and that when appealed against they have been sustained by the highest judicial and constitutional authorities; and further, that the parties on whose behalf these representations are submitted, have, for a long period, openly set the laws and the authorities at defiance.

But having very carefully examined the several allegations of this petition, and knowing the high character and respectability of many of the Memorialists, His Excellency is satisfied that they labor under an entire misconception of the history of these transactions, and he, therefore, considers that it is due to them, to the Government, and above all to the Indians, that upon the present occasion I should enter into a full explanation of the facts and merits of the case.

Before touching upon the details connected with this subject, His Excellency directs me to remark that the Government and Legislature of Canada have always been

honorably distinguished for their humane and liberal policy towards the Indians. Its uniform aim has been, not to expel them from the settled portions of the province, but rather, by means of exceptionable laws, to guard them against the arts of speculators and other interested persons. With that view, agreements with Indians, involving the alienation of their lands, have always been held to be void, unless ratified by the Governor in Council, and in no single instance have they been compulsorily removed from the spot that they have selected as their place of residence. But apart from these considerations of general policy, it is to be observed that the Six Nations' Indians have strong and peculiar claims to the protection of the Government, and that their property is not held in virtue of undefined territorial rights as Indians, but upon a different and far more solid tenure. Owing to the steadfast adherence to British rule during the revolutionary struggle, they forfeited large and valuable possessions in the United States; and the Grand River Tract, of which the present Reserve is but a very small remnant, and which extended from the shores of Lake Erie to the neighborhood of Galt, was conferred upon them by the Crown, not only as a merited reward for their gallant services in the field, but as a compensation for the actual loss which they had sustained in the conflict. It is manifest, therefore, that the Government is bound by every consideration of honor, as well as of justice and humanity, to secure them to the best of its ability in the undisturbed enjoyment of their property; and the following narrative, drawn from official records, will satisfactorily show that it has, throughout the proceedings complained of, been solely actuated by a desire to maintain their just rights. In order that the origin of these transactions may be clearly understood, I have to state in the first place, that the attention of Government having been repeatedly called to the number and depredations of the intruders upon the Indian lands, the Chap. 15 Vic. 2, was enacted for their protection from trespass and injury. Although its provisions embraced the lands of all the Indian tribes,

the act was passed with special reference to those on the Grand River, where these disorders had risen to the greatest height. The Commissioners appointed to carry it into effect represented the state of affairs in that District to be so unsatisfactory, that Mr. Gwynne, a barrister of standing, was despatched to the spot, with instructions to investigate the claims of persons in possession of lands belonging to the Six Nation Indians, and to make suggestions with reference to their future management. An Order in Council of the 27th November, 1840, which was based upon this gentleman's report, recommended that the whole tract should be surveyed into Town Lots and appraised, for the double purpose of more advantageously settling the Indians, and facilitating the sale of their surrendered lands—that the surrendered blocks, viz., Cayuga, Brantford and Dunn, should meanwhile be withheld from sale, but that the right of pre-emption should be accorded to persons having settled thereon prior to that date. Further, that in consideration of the injury inflicted on their interests, and of the difficulties occasioned by the dispersion of the Indians over the whole extent of the unsundered land, the Government should exert its influence to persuade them to settle as a concentrated body in such part of the tract as they might select for their permanent residence, and to cede the residue for sale—lastly, it emphatically disclaimed any intention, however, remote, of inducing the Indians to remove from the Grand River Settlement. Negotiations were accordingly opened with the Indians, but for various reasons, and more especially from disinclination to adopt the views of the Government with reference to the dimensions of the future Reserve, no final decision was come to until October 1843. On the 4th of that month a very elaborate Order in Council was passed, which forms the ground work, on which the subsequent proceedings in reference to the management of the land affairs have been based. While regretting that the Indians would not be satisfied with a smaller reserve, it advises that their request be acceded to, and thus describes the tract to be set apart for

their use. "All the lands on the South side of the Grand River, with the exception of a tier of lots on the plank road from Hamilton to Port Dover, a distance of more than twenty miles along the River." Also the Church Lot at Tuscarora, and certain other detached pieces of lands. A Proclamation founded on this Order in Council was issued on the 20th July, 1844, prohibiting trespass on the Tuscarora and Oneida Lands.

No allusion is made in the foregoing Order in Council to the alleged surrender of the 19th January, 1841, upon which so much stress is laid by the Memorialists as having placed these lands beyond the jurisdiction of the commissioners appointed under the 2 Vict. Chap. 15. The question has already been set at rest by the Court of Chancery. I may observe, for the information of the Memorialists, that an instrument was executed at the date by a small minority of the Chiefs, but of a very different purport from that ascribed to it in this Petition. It confided to the Government the entire management of their lands, but stipulated "that the arrangement is to be carried out by the Government in the true meaning and intent of the Chief Superintendent's letters of the 5th and 15th January." These communications called upon the Indians, in very urgent and peremptory terms, to empower the Government to dispose for their exclusive benefit and advantage, either by lease or otherwise, of all available lands, excepting a Reservation of 20,000 acres, and lots then in the occupation of individual Indians. The Government coming under an obligation to protect their property from trespass and injury, "and the selection of the Reservation to be deferred until after a general survey of the Tract, when the position most advantageous to the general interest and peculiar wants of the Indians, can be more judiciously selected." This agreement having created great dissatisfaction, and been repudiated by the large majority of the Chiefs and Indians, never received the formal sanction of the Government.

The Memorialists will not fail to have perceived throughout these transactions,

the scrupulous respect which was paid by the Government to the rights of the Indians, and that even when differing from them in opinion with reference to the precise extent of their proposed Reserve it felt constrained to yield to their ascertained wishes. Nor can the cautious avoidance of any public act upon which even any colorable claims or rights would have accrued to individuals in virtue of the pending negotiations, have escaped notice. I might also cite numerous notices, warning parties not to enter into private agreements with Indians, and official letters stating that the lands were not open for sale. Even the surrendered tracts were formally withheld from sale, and the right of pre-emption was not granted to parties who settled upon them after the date of the Order in Council, of 27th November, 1840. Persons who had entered upon the unsundered lands could therefore only be regarded as trespassers, and the Order in Council, of the 4th October, 1843, accordingly declares "That the proposed reservation will involve the necessity of ejecting the intruders, without regard to the means by which they acquired possession.

Formal surrenders having been executed by the Indians, of the land not included in their Reserve, it now became the duty of the Indian Department to give effect to the foregoing arrangements. Mr. Thorburn, who had been appointed in September, 1844, a Special Commissioner to adjust disputed claims, with a supervision of the tract, received instructions from Lord Metcalfe, under date the 3rd August, 1845, to give public notice that all white persons were to retire from the Reserve before the 1st of January next, ensuing. In reply to a petition addressed to His Excellency by Messrs. Cheshire and Strong, on behalf of themselves and other squatters; he stated that the notice had been well considered, and could not, therefore, be withdrawn; but that the claims of the Petitioners to the lands in their occupation should be thoroughly investigated, and Mr. Thorburn was thereupon directed, to make a separate report on the case of each settler, recommending the amount of compensation, if

any, that should be awarded. He accordingly procured the assistance of Mr. Kirkpatrick, who had previously inspected the lands, and in order to give the Petitioners the most ample opportunities of personally communicating with him, and substantiating their claims, stationed himself from time to time at different points in the Reserve. He stated in his report, which was furnished in April, 1846, that the complainants had failed to show the Government had authorized the occupation of these lands by White Settlers;—that the only ground upon which they could demand, or the Government be justified in awarding compensation from the Indian Funds, consisted in the inference which they might have drawn from the survey of the lands, and allusions contained in certain letters addressed by Mr. Jarvis, and Officers of the Crown Land Department, to individual applicants for land, to the possible contingency of sales being made at some future period. Under these circumstances, he recommended that compensation, to be measured by the increased value which the land had acquired from the labor bestowed upon it, and for which the occupant had received no return in crops or otherwise, should be granted. I may mention that even in surrendered lands, compensation was strictly confined, by Order in Council, within these limits. Each occupant had accordingly been requested by him to state the extent and nature of his improvements. The work done was then examined by Mr. Kirkpatrick, who jointly with Mr. Thorburn, determined the amount of compensation to which the party appeared to be entitled. In Tuscarora 166 cases were reported, of which 31 only were of a date prior to 1841. In Onida, 74, all of which were subsequent to 1840. The amount of compensation recommended was £8602 5s. Mr. Secretary Higginson replied, that although the Squatters had no legal claim for compensation, the Governor General was prepared to act upon the recommendation of the report with reference to parties who had settled previous to the issue of the Chief Superintendent's notice, of the 22nd Jan.,

1844, a reasonable deduction being made for rent during the period of occupation. He instructed Mr. Thorburn to place the Reserve forthwith at the disposal of the Indians, and to give public notice that all White persons remaining there after the 1st September, would be held to have forfeited all claim for compensation, and the law put in force to compel their removal. A large portion of the Squatters accepted the terms offered by the Government. Lists of those who expressed their willingness to retire, were furnished by Mr. Thorburn, to the Indian Department, and cheques were transmitted to him in favor of the several parties for the amounts respectively awarded to each, and handed to them on their making affidavit that they had retired from the Reserve. On the 28th January, 1837, Mr. Thorburn reported, for Earl Cathcart's information, that 127 had actually received payment.

Meanwhile, however, a number of the Squatters, headed as it would appear by Mr. Cheshire, who having by his own showing not come into the tract until after the publication of the Chief Superintendent's Notice of the 22nd January, 1844, was debarred, according to the rule laid down by Earl Cathcart, from any claim to compensation, refused to quit the Reserve. It became necessary therefore, to proceed against them as trespassers, and Messrs. Thorburn, Clench, and Bain, who had been appointed Commissioners under the 2nd Vic. Chap. 15, held a Court in November, 1846, for that purpose. On the application of the accused parties, the Court was adjourned till the 2nd December, in order that they might procure the attendance of Mr. Jarvis, as a witness for the defence, and copies of certain documents from the records of the Indian, and Crown Land Departments. The trials took place on that day, Counsel appeared for the defence, the required documents were produced, and Mr. Jarvis examined, but his evidence was entirely unfavorable to their pretensions. He declared that it had always been intended to locate the Reserve on the South side of the Grand River, and that answers to that effect were



given whenever parties applied for permission to settle them. Also, that such of his letters as might have been susceptible of a different interpretation could only have reference to the opposite side of the River. Mr. Solicitor Turner watched the proceedings on the part of the Government, and the Court having decided against the Defendants in every case, they were served with Notices of Judgment to retire in 30 days. They gave notice of appeal to the Court of Chancery, and the appeals were heard on the 3rd May, 1847. All the documents and evidence on which they relied were produced, and the convictions affirmed with costs. In the year 1847 the Squatters petitioned the Legislative Assembly on the subject of their claims and grievances. The report of a Committee which was appointed to investigate the circumstances of the case declared, that "the Petitioners were dispossessed by due course of law of the lands they occupied, and that such lands are in fact Indian Reserves." They also recommended, on grounds similar to those set forth in Mr. Thorburn's Report that a fair and reasonable compensation be allowed to them.

His Excellency does not consider that he is called upon to enter into a vindication of the two acts which the Legislature has seen fit to pass since that period for the general purpose of more effectually protecting the Indians. I have merely to state in continuation of my narrative, that under the provisions of the 12 Vic. Chap. 9, and the 2nd Vic. Chap. 15, the Commissioners proceeded anew against the Squatters, and that on appeal to the remodelled Court of Chancery their convictions were again affirmed with costs. On this occasion the Chancellor and Vice Chancellor both delivered elaborate Judgments in this case. The efforts to get rid of the Squatters, still proving unsuccessful, the 14th Vic. Chap. 74, was enacted, giving the Commissioners summary jurisdiction. The trespassers having been convicted under this Statute, Writs of Ejectment were placed in the hands of the Sheriffs of Haldimand and the Gore District, in April, 1851. These officers

proceeded without delay to serve the writs, and ejected a few of the Squatters, but on receiving positive assurances from the remainder that they would retire after harvesting their growing crops, they suspended further operations with the full assent of the Department. Finding that this pledge remained unfulfilled, and after several months' delay, Sheriff Martin proceeded in the discharge of his duty to eject the trespassers in February last, an act which is represented in the petition as one of unprecedented severity. Even in this instance, although the parties have held illegal possession of these lands, rent free for so many years, Mr. Thorburn was authorised to allow them the amount of compensation awarded in 1846, making only a reasonable deduction on account of legal expenses incurred by the Department.

Referring to the allegations of the Petition, the Memorialists may judge from this simple recital of facts, whether the Indians have knowingly, or even technically denuded themselves of their right to reside within the tract, and how far the Indian Department is justly chargeable with having outstepped its authority, or having adopted harsh and oppressive measures against the Squatters. Taking into consideration the express injunctions, as well as the spirit of the Orders in Council which I have cited, assuming the Judicial decisions of the Court of Chancery to be sound, and that in the words of the report of the Committee of the Legislative Assembly "these lands are in fact Indian Reserves;" it is difficult to conceive any mode of dealing with the Squatters, short of a total abandonment of the lawful rights of the Indians, more considerate and forbearing than the one that has been pursued. That the average rate of compensation was not unreasonably low, may be safely inferred from the fact, that it was unhesitatingly accepted by upwards of one half of the Squatters, and that a considerable number have since followed their example. Those who were returned, as having settled before 1841, were, with one or two exceptions, among the first to retire from the Reserve. Finally, Lord Cathcart's instructions have been so far released, that

no deduction was made for rent; and that all the settlers comprehended in Mr. Thorburn's Report, have received compensation, on making the necessary application, irrespective of the date of their occupation.

But there are other classes of Squatters now on the Tract, still more unworthy of consideration. Of sixty self-styled settlers, who signed a Petition to the Governor General in 1849, nine had returned to the Reserve, after having actually received compensation, and twenty-one, encouraged no doubt by the examples before them of successful resistance to the law, entered upon the lands since the date of Mr. Thorburn's inspection; and there can be little doubt, that intruders of the latter description form a considerable proportion of the present white occupants of the Reserve.

In conclusion, His Excellency directs me to state, that, as Governor General, he is especially charged with the maintenance of the Indian rights and privileges. He can, on no account, give his assent to any mea-

asures which would seem to compromise the rights of property, or evince a disregard of the claims of the Indians upon the British Crown. It has, however, always been his earnest endeavor to make the claims harmonize with the general interest of the community, and to bestow as favorable a consideration as a due administration of the Trust reposed in him permits, on cases in which the assertion of these claims may seem to be attended with hardships towards individuals. His Excellency entertains a confident hope that, having received this full explanation of the facts of the case, the Memorialists will exert their influence to induce the Squatters to submit themselves to the laws of the land, and thus relieve the Government from the painful necessity of resorting anew to compulsory measures.

I have the honor to be, Sir,

Your obedient Servant,

R. BRUCE,

*Superintendent General.*

## THE DISPUTED LANDS ON THE GRAND RIVER.

CALEDONIA, July 28th, 1852.

To Sir Allan Napier MacNab.

SIR,—The reply of the Chief Superintendent of Indian Affairs, having reference to a memorial for enquiry into the matter connected with the settlers on the Grand River lands, having been laid before the memorialists and the public, through the medium of the *Hamilton Daily Spectator*, I beg to furnish you, through the same source, with a review of that reply, for the information of His Excellency the Governor General, and all others interested in the subject.

I have the honor to be, Sir,

Your very obedient servant,

JAMES LITTLE.

SIR:—Some three thousand persons of all classes and political shades, headed by yourself, respectfully addressed His Excellency in Council, complaining of the course pursued by the Indian Department against certain Settlers in the Townships of Tuscarora and Oneida, and praying that proceedings might be stayed, and an impartial enquiry made into the whole question.

I see, by the *Daily Spectator* of the 17th instant, that you have received what purports to be an answer to that Memorial from the Chief Superintendant Indian Affairs. It was, Sir, supposed that a memorial so numerously signed, and as His Excellency admits, by many of high character and respectability, would meet with a different fate from the numerous memorials and remonstrances before addressed to the Government by the humble Settlers themselves, and others interested to see justice done them in the matter; but I regret to find that the same invariable course has been pursued in this as in all other instances. Memorial after memorial—remonstrance after remonstrance—petition after petition, is addressed to the Government against the unjust and oppressive proceedings of the Indian Department, and the Government hands them over, one after another, to be dealt with as seemeth good by the very party complained against. Under irresponsible Government, I say emphatically it was not so, and if this is the system of Government called responsible, which I and others so earnestly and successfully contended for, then I say it fails to carry out my expectations.

The reply of His Excellency, through the Chief Superintendent, containing no new matter or arguments that his Excellency's Indian advisers have not time and again favored the public with, over fictitious names, and which have as often been refuted, denied, and their proof challenged. It might appear a work of supererogation again to enter on the exposition of the fallacies and sophistries of what has so often before been exposed; but the present document being the case of the Indian Department submitted to the public by its highest functionary. I am constrained to give it a respectful consideration, and now proceed to the task.

The Memorialists are informed in the commencement, that under ordinary circumstances, it might be sufficient to state in reply, that the measures complained of were taken under Order in Council, or Acts of the Legislature.

The measures complained of are, that respectable inhabitants are imprisoned in the common jail with felons, for no crime; their wives and children are turned out of doors in the depth of winter, and their stock of provisions and furniture cast out on the road side. And this, Sir, we are now informed, is done by authority of Orders in Council, or of Acts of the Legislature. Is it true, Sir, that the Legislature has granted power to the Executive to pass Orders in Council to clothe the Indian Department with authority to deprive people of their liberty and property. If this is the case, it is certain the community is utterly ignorant of it, as such a law has never found its way to the Statute Book; but under whatever form it is embodied, it is of too dangerous a nature to be allowed to remain in force, and the public welfare will be consulted by the earliest action of the Legislature in its repeal.

In the same paragraph, His Lordship is made to say,—“That the parties in whose behalf these representations are submitted, have for a long period openly set the laws and the authorities at defiance.” These unfounded charges, Sir, have again and again been made by His Excellency's Indian advisers, who have been as repeatedly challenged to the proof; they are now publicly promulgated by the highest functionary in the land, and the calumniated parties are deprived of the possibility of establishing their want of foundation, by His Excellency's withholding from them an impartial enquiry into the charges. This may indeed be in accordance with the uniform management of the Indian Department; but it

will fail to impress the community with its justice, or as tending to good Government.

It will, Sir, be within your recollection, that the late Attorney General, Mr. Baldwin, who was then one of His Excellency's Executive Councillors, offered by "Royal Proclamation," large rewards for the apprehension of a number of the settlers, who, it was stated, had set the laws at defiance, and openly resisted the Sheriff and his officers. Now, Sir, every officer of the Indian Department knows that so soon as the proclamation was known to the parties whose names it contained, they immediately delivered themselves up to the Sheriff, whom, it was stated, they had outraged, and that that officer refused to receive them—that on his subsequently receiving instructions directing him to receive them into custody, he had only to intimate the same to the parties, and without a moment's hesitation they again voluntarily placed themselves under his charge—that the Grand jury, with one exception, threw out all the bills; yet the Indian Department reiterates the slander of the Proclamation, and again publicly brands these individuals and the other settlers with outraging the laws and authorities. But I am reminded that one conviction was obtained out of the whole number outlawed—this I admit, but I have reason to know that instead of branding the whole community with systematic and long continued criminalities, it would be more to the credit of the Department if they maintained perfect silence on this isolated case. A man by the name of Cavanah, who is one of the most harmless, and inoffensive in the community, but whom the Special Commissioner characterizes in a letter to Wm. L. McKenzie, Esq., as the "Great Ringleader," whom he was determined to make an example of, while, as he states, he exerted his influence to save *Cheshire* and the others, named in the Proclamation, from punishment—just the very last thing in the world he would have done. Cavanah was convicted, and what was his offence? Why, Sir, it was that he had, ignorant of the consequences, in the way of an incarceration obeyed the directions of the authorities, who told him to go into his house and shut the door, and then threaten any one who would attempt to break it in. He did as the authorities directed, and afterwards rode back with them towards Caledonia.—A long period after this event he was prosecuted for this offence, with the other proclaimed parties, and heroically submitted to a loathsome imprisonment rather than inculpate those who, with feelings honorable to human nature, which it would be well for the peace and welfare of this section, the Indian Department in some degree possessed—realising the outrageous duty they were sent to perform—were fain to have any pretext to relieve them from its execution. His Excellency's Indian advisers are as cognizant of these facts as I am. They knew they could not obtain the conviction of *Cheshire*, and the other

parties who had not been guilty of the offences charged in the Proclamation and poor Cavanah was hunted up for a "scape goat" to get a conviction, to make capital for the Special Commission, when it was supposed his offence was entirely forgotten. As well, Sir, and with as much show of reason, might His Excellency insist, that because he honored you with a shake of the hand at the Mechanic's Festival, that all the other members and guests forcibly took hold of both his hands, and wrung the arms out of their sockets. But, Sir, notwithstanding the course of oppression that has for years been pursued against the settlers, sufficient to drive them to desperation, let a single individual be pointed out who is obnoxious to the charges, and I will guarantee his *soliciting* a trial. The subjects of these disreputable slanders are men as well as you and I; they possess feelings in common with humanity; they have relatives and friends, both here and in the lands they have left, whose good opinions they would not like to forfeit, and whose feelings they would not outrage by the commission of the crimes attributed to them, if the Department offered reparation by the gift of the whole disputed territory; and yet when they seek to establish their innocence, they are not only refused the opportunity, but are again met by criminal accusations.

"Good name, in man, or woman dear, my lord,  
Is the immediate jewel of the soul;  
Who steals my purse, steals trash; 'tis something,  
nothing;  
'Twas mine, 'tis his, and has been slave to thousands;  
But he who filches from me my good name,  
Robs me of that which not enriches him,  
And makes me poor indeed."

It may, Sir, be considered by the Department a high crime and offence against the laws, that these poor people do not at once voluntarily turn themselves adrift upon the world, "denuded" of the means of supplying their children's cry for bread, on the promulgation merely of *ex post facto* arbitrary Acts of Parliament, passed, as I have shown in a former letter, without the knowledge of the Executive Council, and smuggled through the legislature on the morning succeeding the evening of the festivities provided for the entertainment of the guests of the City of Toronto, from Buffalo, and just before the house broke up, and when, if it had been counted, in all probability there would not have been a quorum present; but others will view the matter differently; the settlers have all along submitted peaceably to the execution of these laws, notwithstanding their character, and the extent of the calamities they bring with them, but it cannot be expected they will do more. The present Premier of His Excellency's Cabinet, publicly declared in his place in Parliament, that he had evaded the Usury Laws, and would evade them again, and in all the abuse that has been so liberally bestowed on that gentleman by the Press this has never, to my knowledge, been imputed

to him as a crime, and it cannot therefore reasonably be expected that those whom the Indian Department term "Squatters" should voluntarily anticipate the execution of laws that totally ruin them, any more than that his Excellency's chief adviser should feel it his duty not to evade the law that stood in the way of his interest. I hope, Sir, this is the last time the public will be advertised of the outrageous conduct of the settlers, till they are guilty of them.

In the next paragraph we are informed, "that the memorialists, labor under an entire misapprehension of the history of these transactions."

I think Sir before I have finished this review, it will be shewn this is not the case, but that His Lordship has been imposed upon, on those furnishing the information, on which the reply is founded. They commenced in utter ignorance of the question, with the most high handed measures: prosecuted, fined and imprisoned under an Act of Parliament, that applied to the wild unsundered domain of the Indians, and not to lands that had been ceded for sale, and surveyed, inspected and appraised for this purpose, and even now, when they have obtained no less than two *ex post facto* Acts of Parliament sort of bills of indemnity for the past, and to enable them legally to continue prosecutions for the future, they yet are put to their extremest shifts, and to their wits end, to form a colorable excuse for their proceedings, as the reply of the Chief Superintendent, clearly and unmistakably manifests.

The Chief Superintendent in the next and succeeding paragraph labors hard to impress it upon the memorialists, that the Government and Legislature of Canada, have always been honorably distinguished, for their humane and liberal policy towards the Indians &c. This is enforced at such length, in the document under consideration, that one would be inclined to infer it was a major part, of the complaint of the memorialists, while the memorial is perfectly silent on the subject. The information is evidently volunteered, for the purpose of creating sympathetic capital with the public, for the Indians. But I can assure the Department, the Indians are, and have for years back, been exceedingly against being "killed with kindness." They would be altogether better satisfied, with less of this expensive sympathy, which they can neither eat, drink or wear, and more of the interest on the sale of their large estate, to keep them from starvation. A sympathy that swallows up all their funds, except the pittance of thirty-five shillings a man, per year; they have more than once intimated to the Government, they would be glad to dispense with—feeling exceedingly dissatisfied with the enormous waste of their funds, in keeping up a large official Staff of Commissioners, Constables, paid witnesses and subsidized Chiefs, together with interminable prosecutions, and the ill feeling, those engender between them and the white Settlers, they recently submitted a pro-

posal to the Special Commissioner, either to pay the Settlers the value of their improvements at once, or *lease the lands to those in occupation*, and distribute the proceeds among the Indians. It would be supposed, Sir, that in view of the fact, that the Government "regretted the Indians would not be satisfied with a smaller reserve," this approximation to the wishes of the Government, in the latter alternative, would have been gladly accepted, but what was the reply of the Commissioner, "*He would not listen to any such propositions*," "*and tore the document in pieces*," But is the sympathy of the Government for the Indians, no matter how sincere it may be and its "*feeling itself constrained to yield to their ascertained wishes*" against its own convictions of the folly of doing so, a good argument for depriving others of their rights.

The reply now goes on with what purports to be a history of the transactions touching these lands. Which is chiefly made up of information, afforded the Department from documents in my letter of the 21st April last, but the inferences drawn from these documents, for the purpose of bringing these lands under the provisions of the 2nd Vic. c. 15., by the efforts made to leave the impression, that their general surrender had never been obtained by the Government, are so puerile and absurd, that no one not wilfully blind, could possibly escape seeing the total want of grounds the Department had for argument, and the extraordinary shifts it was put to, to screen the proceeding of the Commission in its prosecutions, under an obsolete Statute, or one that did not apply to the lands in question.

It goes on to say: In order that the origin of these transactions may be clearly understood, I have to state in the first place, that the attention of Government having been repeatedly called to the number and depredation of the intruders upon Indian lands, the 2nd Vic. C. 15., was enacted for their protection from trespass and injury. Although its provisions embraced the lands of all the Indian tribes, the act was passed with special reference to those on the Grand River, where these disorders had risen to the greatest height. The Commissioners appointed to carry it into effect, represented the state of affairs in that district to be so unsatisfactory, that Mr. Gwynne, a barrister of standing, was despatched to the spot, with instructions to investigate the claims of persons in possession of lands belonging to the Six Nations' Indians, and to make suggestions with reference to their future management. An order in Council, of the 27th Nov. 1840, which was based upon this gentleman's report, recommended, that the whole tract should be surveyed into Town lots, and appraised *for the double purpose of more advantageously settling the Indians, and facilitating the sale of their surrendered lands*. That the surrendered blocks, Cayuga, Brantford and Dum, should meanwhile be withheld from market; but that the right of preemption should

be accorded to parties having settled thereon prior to 1840."

How much trouble is here shewn to have been taken by the Government. What a vast amount of labor was performed. What a large sum of the Indian Funds must have been expended—and for what purpose was all this done? Why, this "*best written*" official document that has emanated from the Executive for years," says that it was all done for no valuable purpose whatever.

Depredations were committed on the unsundered lands of the Indians. The 2nd Vic. chap. 15, was passed for the protection of those on the Grand River, where disorders had risen to the greatest height. The Commissioners could not carry the law into effect, the affairs being in so bad a State. Mr. Gwynne, an eminent Barrister, was despatched to the spot with instructions to investigate the claims of persons in possession of these lands, and to make suggestions for their future management. An Order in Council based on this gentleman's report, which recommended that *the whole tract* should be surveyed into Town lots, and appraised—most carefully prepared plans of survey of four Townships, namely,—Seneca, Oneida, Onondaga and Tuscarora, were made in the Crown Land's Office. These Townships were carefully surveyed into Farm lots. Two sets of surveyors and their staffs, had to make their beds behind logs in the woods, during a whole winter, while engaged in the survey.—The lots were then separately inspected, with reference to every thing that could add to their value. A price was put on each lot, in accordance with a very elaborate inspection, and diagrams given with particular remarks on each. A large amount of Indian funds was expended in the prosecution of these labours. And all this was done for what? Why the Chief Superintendent of Indian Affairs replies, for the double purpose of *more advantageously settling* the Indians, and *facilitating the sale* of lands in other Townships. And these are "the documents so unsophisticated, so unvarnished, and so consecutively put together, which had they been earlier known the name of one of your able City journalists would not have been appended "to a petition in behalf of appointing a commission of enquiry," although a lad of five years old would feel ashamed of their downright absurdity.

It is precisely the logic of the Indian Department, established at the advent of the special Commissioner, and acted on ever since—and what are these "unsophisticated and *unvarnished*" arguments" given us to prove? Why, that these lands were not surveyed, inspected and valued, for the purpose of sale, in accordance with the terms of the Deed of surrender, of 21st January, 1841, but for the purpose of concentrating the Indians and enabling the Government to dispose of *other property*, and having established those Indian Department logical conclu-

sions, the special Commissioner could then exercise legally under the 2nd Vic. c. 15, its six years judicial functions in turning people out of possession of lands so conclusively proved not to have been surrendered. What position in society would be assigned you, Sir, if, after giving the public to understand you wished to sell your city property, in lots, and those who first occupied them would be entitled to pre-emption, that in accordance with this understanding, numbers settled themselves on the tract before, during, and after you had surveyed, appraised and mapped them; that after the parties had made extensive and valuable improvements, and that *notwithstanding you could make no use whatever of them, but must leave them to ruin and decay*, you then turned round and informed them that if they did not accept of half their value, you would summarily eject them, without giving them any compensation whatever. You commenced, and carried on for years a series of prosecutions—fined, imprisoned, and ejected the occupants of your lots, and when the other citizens petition you to stay proceedings, and submit the matter for an impartial enquiry into the facts, you reply that the petitioners labor under an entire misconception of the history of these transactions. That the reason you incurred the expense of survey, valuation and mapping, was for the double purpose of enabling you more satisfactorily to *select a pasture field for your horses, and facilitate the sale of the lands you owned in the city of Toronto*. I think, Sir, in view of such a reply as this, which is precisely the import of that you have received from the Chief Superintendent, that instead of lauding your arguments to the skies, your friends would feel themselves under the painful necessity of arranging for your accommodation in one of the public institutions of the country.

The Chief Superintendent continues. Further that in consideration of the injury inflicted on their interests, and of the difficulties, occasioned by the dispersion of the Indians, over the whole extent of the unsundered land. The Government should exert its influence, to persuade them, to settle in a concentrated body, in such part of the tract, as they might select for their permanent residence, and to cede the residue for sale. Lastly it emphatically disclaimed any intention, however remote, of inducing the Indians to remove from the Grand River Settlement. Negotiations were accordingly opened with the Indians, but for various reasons, and more especially, from their disinclination to adopt the views of the Government, with reference to the dimensions of the future Reserve, *no final decision* was come to, until October, 1843. On the fourth of that month, a very elaborate order in Council was passed, which forms the *ground work*, on which the *subsequent proceedings*, in reference to the management of the land affairs, have been based. While regretting that the

Indians, would not be satisfied with a smaller reserve, it advises that their request, be acceded to, and thus describes the tract to be set apart for their use. "All the the lands on the South side of the Grand River, with the exception of a tier of lots on the plank road from Hamilton to Port Dover, a distance of more than twenty miles along the River. Also, the Church lot at Tuscarora, and other detached pieces of lands. A Proclamation founded on this order in Council, was issued on the 20th July, 1844, prohibiting trespass on the Tuscarora and Oneida lands."

Again, "Persons who had entered upon the unsundered lands could, therefore, only be regarded as trespassers, and the order in Council, of the 4th Oct., accordingly declares. "That the proposed reservation, will involve the necessity of ejecting the intruders, *without regard to the means by which they acquired possession.*" Then follows, that, "Formal surrenders having been executed by the Indians of the lands, not included in the reserve; it now became the duty of Mr. Thorburn, who was appointed, in Sept. 1844, a special Commissioner, to adjust disputed claims, with a general supervision of the tract, received instructions from Lord Metcalfe, under date the 5th August, 1845, to give notice, that all white persons, were to retire from the reserve, before the 1st of Jan'y. next ensuing."

It would, Sir, be difficult to find any piece of composition, more artfully worded, to make a wrong impression, and at the same time, to leave a loop hole to creep out at, than the foregoing. No one can read what is said on the subject of the "final arrangement," but would without hesitation, say, that the partial surrender mentioned, was obtained, *in Oct., 1843*, and yet I challenge them, to produce any such surrender of an earlier date than 1847, which is long after Mr. Thorburn's appointment in Sept., 1844. Nor were these useless instruments obtained, till after he had illegally prosecuted the parties, under the 2nd Vic., c. 15, and if they really exist at all, they must have been clandestinely procured, to set aside if possible, the general surrender, made in Jan'y, 1841, *in order to afford a pretext, for perpetuating the judicial authority of the Commissioners.*

But, admitting these statements for argument sake, what do they prove? Why, that although the Government and the Indian Department knew through their officers, who were well paid for "a general supervision of the tract,"—That the lands were rapidly being filled up, and extensive improvements being made; they are as silent the grave on the subject of intrusions, from the time "the Commissioners appointed to carry the law (2nd Vic. C. 15.) into effect, represented the state of affairs to be so unsatisfactory" in 1840—until the issuing of Mr. Jarvis' Proclamation in 1844—and beside that, *not a single prosecution was instituted against the settlers, from the fall of 1840 to the close of 1846, a period of six*

years; and the Indian Department takes credit to itself for this line of conduct disgraceful to its management, even on its own showing.

But, Sir, the Chief Superintendent is entirely wrong in the reasons assigned for thus unintentionally accusing his own Department and the Government of gross derelictions of duty. And it will be my business, before I have done, to relieve the accused parties in this instance, from the shameful position that gentleman has placed them in, and in doing this, I will not have the exceedingly difficult task to perform, of establishing conclusions without first having premises to base them on. Before, however, I attend to this matter, I wish to notice one or two others on which great stress is laid by the Department and its supporters.

It is regarded as criminal, that the settlers did not take the same view of the question as the Chief Superintendent's contradictory and exceedingly sophistical document has established, and the Proclamation of Mr. Jarvis', of July 1844, is made the basis of its strongest accusations against the settlers for not removing at once, without a word of remonstrance. I now design to show the value which it could reasonably be expected the settlers and others would attach to such documents *in the face of the facts* of these lands having been surrendered for sale several years before—were surveyed, inspected, and appraised, for this purpose—the Government security of preemption by order in Council, and the published assurances of the Indian and Crown land departments—and if, when I have given them in full, they will appear valuable for any thing, it assuredly will be to establish the claims of the Department to be considered as managed in such a way as to excite the laughter and ridicule of the community. The Chief Superintendent will hereafter not only be able to quote one "final arrangement," but he will have several others, all issued by the same officer within a few months of each other, to strengthen his "final arrangements" position in the next reply he may favor the public with.

#### PROCLAMATION 1ST.

INDIAN OFFICE, Kingston,

Nov. 14, 1843.

SIR,—In regard to those persons who have taken possession of lots of land, and made extensive improvements, the *right of preemption* will be extended to them in all cases, where practicable, and in no case will a stranger be permitted to purchase a lot in the possession of another person, but on the express conditions of paying the occupants the full value of their improvements thereon. *You will confer a favor by making this generally known to the settlers*, for I have received information from several quarters, that there are individuals along the River who have circulated reports with respect to the sale of these lands, calculated to alarm the peo-

ple, and, indeed, to induce them to suppose the Government, at the instigation of the Indian Department, was disposed to deal harshly with them.

(Signed) SAMUEL P. JARVIS.

This is "final" decision No. 1, in direct opposition to the "final" decision of the orders in Council of the preceding month, Oct. 1843, and refutes all that has been said or insinuated by the Chief Superintendent, with reference to PRE-EMPTIVE RIGHTS.

PROCLAMATION 2ND.

INDIAN OFFICE, KINGSTON,  
January 22nd, 1844.

It having been represented to His Excellency the Governor General, that a number of persons have intruded themselves upon the lands on the south side of the Grand River, between the Townships of Brantford and Dunn, exclusively appropriated to the use of the Six Nation Indians, to the serious injury and great inconvenience and annoyance of said Indians; such persons are required forthwith to remove from said tract.

And public notice is hereby given, that all persons holding unauthorized possession of any part or parts of the said Reserve, whether on the North or South side of the river, after the first day of April, now next ensuing, will be prosecuted with the utmost rigour of the Law.

(Signed) SAMUEL P. JARVIS,  
Chief Sup. Indian Affairs.

This is "final" decision No. 2, setting aside "final" decision No. 1.

PROCLAMATION 3RD.

INDIAN OFFICE, KINGSTON,  
March 28th, 1844.

The inspection and valuation of certain lands, on the North side of the Grand River, in the Gore and Niagara Districts, belonging to the Six Nation Indians, being now completed, in pursuance of an order in Council, dated the 27th November, 1840, the public are hereby notified that the said land, with certain exceptions, are for sale under the following regulations:

"All persons reported as resident settlers upon, and prior to, the 27th November, 1840, will be considered the first applicants, and entitled to the right of pre-emption for six calendar months thereafter, at the rate fixed upon the lands, without paying for the value of improvements." The lands comprised within those tracts designated the Johnson and Martin Settlements, the Ox-Bow Eagle's Nest, will be let on leases for a term of years at an annual rental, &c."

Further notice is hereby given, that the Indian lands on the South side of the Grand River, between the Townships of Brantford and Cayuga, with the exception of one Concession on either

side of the Plank Road, between the Caledonia bridge and the Southern limits of the Indian Lands are set apart for the exclusive occupation of the Six Nation Indians; and all persons are hereby cautioned against trespassing upon, or holding unauthorised possession of the same.

(Signed) SAMUEL P. JARVIS,  
Chief Sup. of Indian Affairs.

This is "final" decision No. 3, setting aside final decision No. 2, by excepting the Townships of Cayuga, and establishing pre-emption by Orders in Council, denied by the Chief Superintendent as applying to the lands in question.

PROCLAMATION 4TH.

INDIAN OFFICE, Kingston,  
July 20, 1844.

Reserving all the lands on the south side of the River, with the exception of a tier of lots on the Plank Road, from Hamilton to Port Dover, &c.

This is THE "final" decision mentioned by the Chief Superintendent, and setting aside final decision No. 3.

PROCLAMATION 5TH.

INDIAN OFFICE, Kingston,  
1844.

Reserving all the lands between the Townships of Brantford, to within one tier of lots on the west side of the Plank Road from Hamilton to Port Dover.

This is "final" decision No. 5, completely setting aside all preceding final decisions.

Now, Sir, here are no less than five Proclamations, all issued from the Indian Department, within a few months, contradicting each other in every direction, and nearly all, indirect opposition to the Chief Superintendants unsupported statements,—and not one of the whole number has since been acted on by the Government.—And yet, Sir, parties are actually accused by the Department, and others not knowing the question, as criminal, for paying no attention to such a tissue of contradictions, which the Government and Indian Department themselves in no instance regarded.

I hope, Sir, for the credit of the Department, no Proclamation of 1844 will again be intruded on the notice of the public.

I now, Sir, give copies of letters from the *special Commissioner* and the Civil Secretary, to show that no "final arrangement" was come to up to 3rd April, 1846, "with reference to the dimensions of the future reserve."

In reply to a letter addressed by Nelson Boughner to the *special Commissioner*, making enquiry respecting the sale and purchase of certain lands in TUSCARORA, that Officer replies,—



INDIANA, 2nd May, 1845.

SIR:

THE RESERVE QUESTION STILL CONTINUES TO OCCUPY THE ATTENTION OF THE GOVERNMENT,—the FINAL DECISION of the question will be made known so soon as that takes place. I would have replied to the letter of March, at an earlier day, but had nothing positive to make known till the ULTIMATUM was made known to me by the Government.

(Signed,)

DAVID THORBURN.  
Special Commissioner.

CIVIL SECRETARY'S OFFICE, }  
Indian Department, }  
3rd April, 1846. }

SIR:—I am commanded by the Administrator of the Government, to acknowledge the receipt of your petition, dated 13th ult., which has been referred to the special Commissioner; and I am to inform you that that Officer has been directed to report upon the value of the improvements of each settler in Tuscarora, with a view to his being remunerated in the event of its being found necessary to remove him from the land he occupies, provided he can establish an equitable claim to compensation.

I have the honor to be, Sir,

Your most obedient Servant,

J. M. HIGGINSON,  
Civil Secretary.

MR. NELSON BOUGNER, Seneca.

Can anything be more conclusive than these documents, to prove that no "final arrangement was made with reference to the dimensions of the future reserve" as late as April, 1846?—and yet the parties in occupation of these lands for ten or eleven years, and owning large and valuable improvements, are turned out of possession on the strength of Mr. Jarvis' quintuple contradictory Proclamations, which the subsequent officers of the Indian Department, and the government themselves deny as true, and consequently, having no force whatever.

With respect, now, to what is said about Lord Metcalfe's giving instructions to Mr. Thorburne, under date the 3rd August, 1845, to issue a notice "that all white persons were to retire from the reserve before the first of January next, ensuing," I have reason to believe Lord Metcalfe never gave any such outrageous instructions, involving a large amount of property, and the rights of parties, secured by the whole prior action of the government.

His Lordship distinctly stated, Oct. 28, 1845, "that it was not the intention of His Excellency to sanction the removal of the Settlers, without affording to each of them the opportunity of establishing the claims which they may consider themselves to possess, either to the privilege of pre-emption of the lands occupied by them, or to the value of their improvements thereon."—

Again, "that the persons who have leases from individuals of the tribes must be let alone, or, at all events, be bought out again." Not the slightest regard has been paid to these directions, but the parties have been proceeded against without any investigation whatever, or "regard to the means by which they acquired possession." If, instead of charging Lord Metcalfe with directing such arbitrary steps to be taken, the Chief Sup't had said, that an officer of the Indian Department, had assumed the functions of the Executive, in this, and other cases, I could readily believe him. In a matter affecting myself, which covered a correspondence of over two years. I was constantly advised, that the Governor General in Council, had done this, and the Governor General in Council, had done that, until the Governor General in Council, at last, came to a decision, adverse to my rights. But on personal application, to his Excellency, on the subject, in presence of witnesses, His Excellency expressed his surprise, that I had not submitted the matter to him before. And Mr. Draper, the Attorney General, at the same time, informed me that Mr. Higginson, had taken upon himself, the entire management of the Indian land, and that no such question as mine had been submitted, for the consideration of the Government, but if I would lay it before them, immediate attention would be given to it. I did so, and that evening was favored with a note from the Hon. Mr. Wm. Morris, requesting me to call next morning, when the whole matter was satisfactorily arranged, in less than an hour. I mention this case to show that when it is stated, elaborate orders in Council were passed by the Government, of Lord Metcalfe, or that this, or that notice, was directed to be given by His Excellency, or Earl Cathcart? It merely means, that the Indian Department, did so and so, and the Government, which knew nothing of what was done by its predecessors, touching the matter, endorsed such orders as the Indian Department chose to furnish them with. And now when conduct, that has so long, and so justly been complained of, is sought to be enquired into, that Department should not be permitted to shelter itself, under *ex post facto* documents, manufactured by it, which are in direct opposition to the whole action of the two preceding Governments.

With respect to the instructions of Lord Metcalfe to Mr. Thorburn, to thoroughly investigate the claims of the Settlers, and make separate reports on the case of each; and his placing himself in communication with them, to afford the most ample opportunities of personally communicating with them, to enable them to substantiate their claims by stationing himself from time to time at different points in the reserve."—I have simply to say that these instructions were never complied with, notwithstanding the contrary is assumed by his report furnished in April, 1846, and therefore all that is based on the sup-

posed fulfilment of these instructions falls to the ground.

The report continues that the complainants had failed to show that the Government had authorised the occupation of these lands by white settlers, and that the only ground upon which they could demand, or the government be justified in awarding compensation from the Indian funds, consisted in the inferences which they might have drawn from the survey of these lands, and allusions contained in certain letters addressed by Mr. Jarvis, and officers of the Crown Lands department, to individual applicants for land, to the possible contingency of sales being made at some future time." What was done in the matter by the government will by and by be shown, but that the formal surrender of these lands by the Indians for sale in January, 1841—the Orders in Council securing pre-emption rights to the settlers—the survey, inspection and valuation of these lands, with the positive declarations of the Indian and Crown Lands Department, would fail to show in Mr. Thorburne's estimation that the government had authorised their occupation, is readily granted, when the only inference he and the Department could draw from these combined evidences was, that it was all to enable the government to congregate the Indians in some corner of the tract, and facilitate the sale of lands in OTHER TOWNSHIPS.—These documents, however, will be given in their proper place, and you will then be able to comprehend the "allusions" and the "possible contingencies" on which the Indian Department conclusions are arrived at.

The Chief Superintendent's reply goes on to state, that a "large portion of the squatters accepted the terms offered by the government; lists of those who expressed their willingness to retire were furnished by Mr. Thorburn to the Indian Department, and checks were transmitted to him in favor of the parties, for the amounts respectively awarded to each, and handed to them on their making affidavit that they had retired from the reserve." Again, "That the average rate of compensation was not unreasonably low, may be simply inferred from the fact that it was unhesitatingly accepted by upwards of one half of the squatters, and that a considerable number have since followed their example. Those who were returned as having settled before 1841 were with one or two exceptions, among the first to retire from the Reserve."

That the large amount of £8602 5s. of the Indian funds was far worse than thrown away in paying for improvements to be abandoned to under-brush, and the growth of Canada thistles; that a large number of the settlers were forced to accept a moiety of the value of their improvements; that many were compelled to sign humiliating petitions, drawn up by the officers of the Indian Department, praying for this moiety to be allowed them, under threats that if they

did not do so they would lose the whole—are truths that cannot be controverted; but that any man knowing the facts could deliberately furnish the information that these parties expressed their "willingness" to retire, or that the compensation was "unhesitatingly accepted" by upwards of one half of them, and that a considerable number have since followed their example is beyond credibility.

Because you gave up half your money on the demand of a highwayman, who, if you refused, threatened to take the whole—or that one having the option of being hung, or transported, and accepted the latter alternative—that it could be considered in either of these cases it was done "willingly" and "unhesitatingly accepted." And yet this is precisely the kind of "willingness" and the "unhesitating acceptance" which these 127 expressed to retire on the receipt of the pitance that was paid them.

With respect to the nine who, it is stated, "had returned to the reserve, after having actually received compensation," I have to remark, that they took what Mr. Thorburn chose to allow them, under threats, as I have already stated, if they did not accept that, they would be turned off without anything; ascertaining, however, that Mr. Thorburn was assuming jurisdiction under a statute that did not apply to these lands, from their having been ceded by the Indians, they either proffered a return of the moiety paid them, or advised him they were prepared to do so. The reply continues:—

"Meanwhile, however, a number of the squatters headed, as it would appear, by Mr. Cheshire, who, having by his own showing, not come into the tract until after the publication of the Chief Superintendent's notice of the 22nd Jan., 1844, was debarred according to the rule laid down by Earl Cathcart, from any claim to compensation, refused to quit the Reserve. It became necessary therefore to proceed against them as trespassers, and Messrs. Thorburn, Bain and Clench, who had been appointed Commissioners under the 3rd Vic. C. 15, held a Court in Nov., 1846, for that purpose. On application of the accused parties, the Court was adjourned till the 2nd December, in order that they might procure the attendance of Mr. Jarvis, as a witness for the defence, and copies of certain documents from the records of the Indian and Crown Land Department. The trials took place on that day—Council appeared for the defence—the required documents were produced—and Mr. Jarvis, examined, but his evidence was entirely unfavorable to their pretensions. He declared that it had always been intended to locate the Reserve on the south side of the Grand River, and that answers to that effect were given, whenever parties applied for permission to settle there, also, that such of his letters as might have been susceptible of a different interpretation could only have reference to the opposite side of the river;

they were served with notices of judgment to retire in thirty days, they gave notice of an appeal to the Court of Chancery, and the appeals were heard on the 3rd May, 1847. All the documents and evidences on which they relied were produced, and the convictions confirmed with costs."

Now, Sir, is not this a sickening recital, here is a number of poor people who, (except Mr. Cheshire, who came into possession of another party) I am led to believe, were settled on this tract, even before Mr. Jarvis' quintuple contradictory Proclamations, not one of which, I am persuaded, the parties ever saw, and were, besides, never acted on by the Government. These parties offered in my presence that, on being paid the value of their improvements, they would at once give up peaceable possession; but this would not be listened to, they were debarred according to an arbitrary and unjust rule, which Earl Cathcart is slandered with as having laid down, excluding them from any claim to compensation. Well, they must either turn themselves and families adrift upon the world, and abandon their hard earnings to be given up to waste and ruin, or otherwise make the best of their case they could; the little means they possessed was wrung out of them, in being forced to maintain their rights by expensive proceedings in the Court of Chancery, against the whole power of the Indian funds, where the only satisfaction they got was the information that, "*except they had debts, the Court could give no decision against the Crown.*" One would suppose on reading the statement of the Chief Superintendent, that the parties had a trial on the merits of their case before both the Commissioners, Court, and Chancery; but this they well know is not the fact, the obsolete statute under which they were prosecuted, gave the Commission arbitrary authority to eject, if it was only proved the parties were settled on the lands, and the Court of Chancery dismissing their cases in the manner above described. It is not true that all "the required documents were produced" by the Department at the adjourned meeting in Dec., and even if they had been, it would have mattered nothing, as the Court refused to record those that were produced, and Counsel for the settlers not being able to have this done, left the court in disgust and did not afterwards return.

The whole was an expensive farce at the charge of the Settlers and the Indian funds. The Department has given all the testimony on which the Commissioners grounded the convictions, namely: Mr. Jarvis's declarations of the "INTENTIONS" to locate the reserve on the south side of the river. HIS REPLIES to OTHER parties, and a REPUTATION of his own published documents. I am exceedingly obliged to the Chief Superintendent for placing the information before the public, that these are the grounds on which his Court—composed of Indian agents, sitting as

Indian judges, and Indian juries trying Indian cases—give decisions, to turn people out of their possessions. I UTTERLY DEFEY THE PRODUCTION OF ANY TESTIMONY—*except of this description—WHATEVER, AGAINST THE PARTIES.*

I will now mention a highly aggravated case of very recent occurrence, Settler Strong was summoned before the late Commissioner Winniet, as a trespasser in 1841, who dismissed the case, on the ground of the lands being surrendered for sale, and told the party to go home and continue his improvements. This individual was in the language of an unjust and arbitrary order—"without regard to the means by which he acquired possession,"—turned out of his extensive and very valuable property, the fruits of the labor of some eleven or twelve years, by the present commission, only a few months back.

With regard to the report of a committee of the House of Assembly "investigating the circumstances of the case," I have only to say it is wrong to characterise it as an investigation.

The only witnesses examined before that Committee were David Thorburn, J. B. Clench, Indian Commissioners; George Varden, Deputy Superintendent General Indian Affairs; and Mr. Turner, Solicitor to the Department. Mr. Cheshire was asked a few questions, and handed in a list of witnesses to be called, to which the Chairman of the Committee replied as follows:

HOUSE OF ASSEMBLY,  
Friday Even'g—8½ P. M.

"Col. Prince presents his compliments to Mr. Cheshire; he has received Mr. Cheshire's letter, and as the Special Committee meets at 11 o'clock to-morrow, (at least it has been summoned for that hour) he then will take the sense of such Committee, whether the distant witnesses named in the letter ought to be summoned or not."

Those witnesses were not sent for, as the House was prorogued a few days after, and therefore any decision the Committee may have arrived at must have been upon *ex parte* evidence, furnished by the Indian Officers—the parties complained of. This is the true state of the case, so far as regards the investigation before a Committee of the House of Assembly. But it is in bad taste for the Chief Superintendent to mention anything on this subject, while refusing to carry out the recommendation of the Committee by "allowing the settlers a fair and reasonable compensation for their improvements."

In continuation of the narrative, the Chief Superintendent says, that under the provisions of the 12th Vic. c. 9, and the 2nd Vic. c. 15, the Commissioners proceeded anew against the Squatters, and that on an appeal to the remodelled Court of Chancery, their convictions were again affirmed with costs; the efforts to get rid of the Squatters still proving unsuccessful, the 14th Vic. c. 71, was enacted, giving the Commissioners summary jurisdiction."

Now, Sir, what does the above admit, and in fact?—Why, that the prosecutions covering several years, under the 2nd Vic. c. 15, were illegal, and recourse was had to *ex post facto* Legislation to enable the commission to continue its well paid and valuable labours; and on appeal to the remodelled Court of Chancery, under these remodelled statutes, “the convictions were again affirmed with costs.”

I have now, Sir, passed in review all the matters of importance in the reply of the Chief Superintendent of Indian Affairs to the Memorial for an enquiry into the question of the claims of the settlers on the consideration of the government, and the management of the Indian Department. I have examined the Orders in Council given, and have expressed an opinion, both as to the extent of their authority; the propriety of the applications; and the value that should be attached to them in this discussion. I have examined the charges made against the settlers of outrageous conduct, and defied the proof. I have endeavored to show “that the Memorialists do not labor under an entire misapprehension of the history of these transactions,” by an examination of that history, as furnished by the Chief Superintendent. I have given the various proclamations by the Indian Department, with observations on the value that could properly be attached to these documents. I have furnished proof, from documents of the Special Commission and the Civil Secretary of 1845 and 1846 respectively, that no final decision was come to, up to the latter period “with reference to the dimensions of the future reserve,” notwithstanding Mr. Jarvis’ proclamation in 1844. I think I have proved that the government had failed to show the occupation of these lands by white settlers was unauthorized. I have pointed out with what “willingness” and “unhesitating acceptance one hundred and twenty seven of the settlers were forced to take “compensation,” and have assigned the reasons why nine had again resumed their improvements. I have examined the question of the trials of the parties before the Commissioners and Chancery Court, and paid some attention to the Parliamentary investigations; and if I have failed to show the want of grounds, which the document under consideration in my estimation clearly exhibits, for refusing such enquiry, it is from inability and want of time to do the subject justice. I leave these questions, however, to the decision of the public.

Before I enter on the consideration of the question as presented by facts, and with authenticated documents, on which the case of the settlers is rested, I will very briefly relate how it comes that the Chief Superintendent has been placed under the necessity of attempting to reconcile contradictions, and unwarrantable inferences and conclusions.

It will be seen that notwithstanding Major Winniett, who resided on the spot, held commis-

sion under the 2nd Vic. C. 15., no one was ever convicted for trespass from the date of surrender of Jan. 1841, to the close of his connection with the Indian Department in 1844. That gentleman understood the true position of these lands, and hence the absence of all litigation in regard to them. Mr. Thorburn, at this period, was appointed to adjust the conflicting claims of the settlers on my representation of its necessity to Lord Metcalfe. The management of the Indian Department had now become vacillating and contradictory, to such a degree, that one would be led to infer, it did not know one day what it had done on the preceding. Mr. Higginson now took the sole management of the lands, as stated by Mr. Draper, and the Government forgetting that they were placed under its management by the surrender aforesaid, thence forward, ceased to exercise any control in the matter.

The Indians meantime, not receiving anything out of the property they had surrendered, and instigated by parties interested in keeping the land unoccupied, became urgent on the Department not to allow the sale of any more of their lands, and insisted on having all those on the south side of the river set apart for them. These were now settled on to a large extent, and the Department “being especially charged with the maintenance of the Indian rights and privileges,” and “that even when differing with them in opinion with respect to the *precise extent* of the *proposed* Reserve, felt constrained to yield to their ascertained wishes.” The question now arose, how was this to be carried out? how were the settlers to be got rid of? the Department finding the remedy in an old statute, empowering the Governor General to appoint a Commissioner summarily to eject the occupiers of unsundered lands that Commission was consequently appointed to deal with these lands, notwithstanding their surrender to the Crown, and consequently their altered character. The Commissioners proceeded on the duties assigned them, and issued their summonses to parties in the language of the statute, “for the occupation of lands, for the cession of which to the Crown no agreement *hath* been made with the tribes occupying the same, who may claim title thereto;” but finding at last that a surrender was made by the Indians, and an “agreement made with the Crown,” they then clandestinely, it appears, (for it has never been heard of before,) obtained a surrender covering only *a part* of their lands, and leaving the “residue” for the jurisdiction of the special Commission. This is the “formal surrender” referred to by the Chief Superintendent, and must have been obtained six or seven years after the surrender of Jan. 1841, and after the Township of Seneca, Onondaga, and the greater portion of Oneida, had been brought into market, and much of these Townships disposed of.—The surrender of Jan. 1841 being the only authority giving the Government jurisdiction over

these lands, as distinguished from these Imperial instructions. "We do, therefore, with the advice of our privy Council, declare it be our royal will and pleasure, that no Governor General in any of our Colonies, do PRESUME, UPON ANY PRETENCE WHATSOEVER, to grant warrants of Survey, or pass any Patents for lands, &c., which not having been ceded to, or purchased by us as aforesaid, are reserved to the said Indians or any of them as hunting grounds." And hence the difficulties that have since arisen, and the impossibility of the Chief Superintendent being able to assign satisfactory reasons for the proceedings of the Department under his management.

I will now, Sir, enter on a short but correct history of the question, from *documentary* evidence and facts, in order to disprove the position sought to be established against the settlers, by the Chief Superintendent's reply; and I think I will be able to do so without either making positive misstatements, or involving myself in endless contradictions, and drawing ridiculous inferences.

Having identified myself with the early settlement of the lands—in which I take a deep interest, I may be permitted to say, that my knowledge of the history of what then took place, is not from hear-say but from actual observation, and matters in which I myself bore a considerable part. Confining myself then to the system adopted after the demise of the younger Brant, in relation to those lands, I may state in the language of my letter to the *Spectator*, of the 21st April, last, that the system adopted was, that parties having made selection of a parcel of land, procured a survey and plan of it, and having first secured the good offices of a few of the Indian Chiefs, by some trifling presents; the matter was then laid before a council and a surrender obtained. These lands were then appraised by the Surveyer attached to the Indian Office, at Brantford, and a Patent was issued, on payment of the amount it was valued at. The Indian territory received a large accession to its population from those who were operatives and laborers on the Grand River improvements. In 1834; numbers of these purchased out Indian improvements, and others squatted on the lands, and are now some of our most thriving farmers; the squatting system then also become very general, till an act of the Provincial Legislature was passed; the 2nd Vic., Chap. 15, 1838, which was intended to protect the Indian UNSURRENDERED domain, from trespass, and authority to the Governor to appoint a Commission for this purpose. Immediately after the passing of this Act, I had several interviews with Sir George Arthur, in relation to it; when I took the opportunity of advising him, with respect to the extent these lands were settled on and improved, and pointed out to him, not only the ruin he would bring on the settlers, by putting that law in force

against them, but also the impracticability and folly of preserving such a large tract of land in its original wilderness state in the heart of a densely settled country, and strongly urged the necessity of the Government obtaining a surrender from the Indians, and bringing the lands into market. His Excellency was loth to credit the account I gave him of the extent of the improvements made by the settlers, but said he would not appoint a commission till he made himself acquainted with the facts, none was consequently appointed till the fall of 1839 or the spring of 1840, when the late Major Winniett, the Superintendent of Indian affairs, obtained the additional appointment of Commissioner under the act; some of the most worthless of the Indians now, who had disposed of their improvements to procure the means of supplying their wants without labor, lost no time in availing themselves of the provisions of the statute to regain possession of the improvements they had sold to the whites, and which were now in a greatly improved state and accordingly they lodged complaints against the occupiers before the commissioner, and summonses, convictions, ejectments, fines and imprisonments rapidly succeeded.

A settler, of the name of Howel, near Fairchild's Creek, was summoned before the Commissioner. He was convicted, of course, as it was only necessary to prove he was on the lands to do this, and ordered to pay a fine and costs of about six pounds within thirty days, and leave the farm he occupied immediately, on pain of imprisonment. This was in the autumn of 1840. He had fifty acres of excellent wheat ready for reaping, and not knowing what to do, came to me for advice. I took the conviction and enclosed it to Governor Arthur, to show the injustice that would be done in carrying out that arbitrary law against the settlers, reminding him at the same time of his promise to investigate the matter, and strongly urging the appointment of a commission to ascertain the true condition of the settlement. To this communication I was favored with an immediate reply, through Mr. Secretary Harrison, conveying His Excellency's thanks for again drawing his attention to the subject, with an assurance that he would lose no time in having the matter properly investigated. Accordingly, John W. Gwynne, Esq., barrister of Toronto, was despatched to the Grand River, and on entering on this duty, the following advertisement was issued by him to the settlers:

#### INDIAN LANDS NOTICE.

Mr. Gwynne has been sent from Toronto for the purpose of ascertaining and reporting upon the nature of the claims of all the settlers upon the unsundered lands of the Six Nation Indians on the Grand River, to the lands in their possession, and the description of the position where each individual is settled.

A meeting will be held at Doyle's Inn, in Brantford, on Tuesday next, the 18th inst., at 11

o'clock, A. M., for the above purpose, at which a full attendance of the settlers is requested; they are also requested to bring all evidence of claim, writings or receipts in their possession, relating to the lands, and also a description of the boundaries of the premises where the same have been surveyed, and a map or plan, where any have such.

(Signed) JOHN W. GWYNNE.

Immediately on Mr. Gwynne's report of the nature of the claims, and the extent of the improvements of the settlers being presented to the Government, an elaborate order in Council, of which the following is an extract, and which was furnished for the information of the parties having interest, was founded thereon:

"That all persons reported as resident settlers, up to the date of the present order in Council, be considered the first applicants, and entitled to the right of preemption, for the space of six calendar months thereafter, at the rate fixed upon the lands, without paying for the value of improvements. Dated at Toronto, the 27th Nov. 1840."—A true extract, J. C. Tarbut.

Sir George Arthur, then Lieutenant Governor, visited the Grand River, accompanied by Mr. Gwynne, aforesaid, and Mr. Jarvis, Chief Superintendent, Indian Affairs, a council of the Indians was called, and the following surrender of all their lands obtained.

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

Have and hereby do assent to Her Majesty's Government disposing of the lands belonging and formerly reserved upon the Grand River for the Six Nations Indians, for the sole benefit of the said Six Nations, and for the full and valuable consideration according to the best of their judgment, so as to preserve the benefit thereof for them the said Six Nations and their posterity for ever, and for no other purpose to the intent

and meaning of said annexed documents, dated the 5th and 15th January 1841, respectively.

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

(Signed) Moses Walker, (L.S.)  
John S. Johnston, (L.S.)  
J. Kanawate, his mark, (L.S.)  
Kanakariateni, his mark, (L.S.)  
John Whitecoat, his mark, (L.S.)  
Peter Green, (L.S.)  
Jacob Fishcarrier, (L.S.)

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

(Signed) J. Martin, I. I. Dept.  
James Winniett, S. I. A.  
George W. Gwynne.

Certified a true copy,

(Signed) George Varden.

The above instrument of surrender, as is seen, is signed by seven of the head Chiefs, who, after the death of John Brant, as every one on the Grand River knows, who is at all acquainted with Indian affairs, exclusively transacted every important matter of the tribes, and were expressly deputed on this occasion by the Indians in full Council assembled, to assent in their behalf to the surrender under consideration. It will also be seen that the surrender expressly stipulates that the lands are to be sold for their full and valuable consideration, and are made over to the crown for this and for no other purpose whatever. The surrender of the whole tract having now been obtained, the necessary plans for the survey were immediately prepared by the Surveyor General's Department, and the survey was commenced simultaneously by Mr. Kirkpatrick on the north, and Mr. Walker on the South side of the river, in September 1841, and the field notes of the townships of Seneca, Oneida, Onondago, and Tuscarora, were completed the following spring. In order now to show with what care, and how rigidly the Government of that day adhered to the terms of the surrender, I will here transcribe the particular and minute instructions furnished by them to their inspectors to obtain the actual value of every separate lot, and at the same time to protect the rights of individual occupiers. Blanks to be filled up under the following queries, were furnished for the purpose:

1st. If occupied, by whom and under what color of title?

2nd. If improved, the nature and extent of improvements?

3rd. The quality of the soil and timber?

4th. The nearest distance to any Town or Village, Flour and Saw Mills, Tavern Stands, &c?

5th. What is the value of the lot per acre, in its present improved condition?

6th. What is the full value of the lot per acre without improvements, at the present time, without reference to former upset prices or alleged expectation on the part of the claimants, but the present actual value in the improved circumstances of the whole Indian tract and country adjacent, only excepting the value of improvements on the individual lot now under consideration?

7th. How is it watered? Are there any mill-sites or water privileges on it, or streams adapted for Distilleries, Breweries, or Tanneries, &c?

8th. Has the timber suffered from depredations, and are such depredations still going on?

9th. Has this lot any particular advantage of situation, such as being near to a town or village, or principal road or water conveyance?

10. Are there any salt or mineral springs, beds of plaster, or ore of any description supposed to exist on this lot or within a short distance of it? If so, what may be considered their value, and what increase of value do they add to this lot, and to the adjacent lots within a limited space?

11th. What is the value of the improvements, not estimating at any supposed rate of cost, but at the minimum rate, which they may be supposed to add to the value of the lot in market?

12th. In your inspection of that part of the Township of Brantford called the Johnson Settlement, you will return the names of all squatters, or other persons in possession of lots, stating the number and concession, number of which compose each family, and what in your opinion would be a fair rate exacted, in case the parties should be disposed to remain upon the land under a government lease?

The lands in Seneca, Onondaga and Tuscorora were all appraised, as the foregoing instructions directed, and a return of the same was made in 1843, and some sales were effected before the lands were generally brought into market, which took place on the 28th March, 1844. During the progress of the survey and appraisement, as already detailed, many Old Country immigrants arrived in the Province, seeking for lands to provide homes for themselves and families, and from the Government Officers in Kingston, up to the Grand River, these lands were pointed out to them, as offering the greatest inducements to actual settlers, and consequently the Indian Department, not having yet taken on it the unauthorised liberty of repudiating and reversing all that had been done, by preceding Governments, to bring these lands into Market—lots scattered over the whole tract, were indiscriminately taken up and settled on—the parties holding themselves ready to comply with the terms of sale, so soon as they were brought into market, and as proofs that the Government had no idea of reserving a foot of these lands, and encouraged the

settlement of the whole tract. The following documents it is presumed will be considered sufficient on this head.

BRANTFORD, 16th May, 1842.

SIR,—I have been in possession of a portion of the Indian Lands on the South side of the Grand River, since the 2nd April, 1834, through which Malcolm's Creek passes, on which I have about 50 acres of clearance besides a frame House and a log Barn. By the new survey South of the Township of Brantford, my improvements will fall on Lot No 28 or 29, (and most likely on both) in the Second Concession, from the Western Indian Line. There is a Mill Seat on this property, and I am desirous of erecting a Saw Mill thereon, in company with Mr. Solomon Whelan, and we are desirous of becoming the purchasers of the property, or so much of it as will be sufficient for a good farm, which shall embrace the Mill privilege, say 250 acres. This property is quite in the wilderness, where a new settlement is about being made, a Saw Mill would be of great advantage to the Settlers.

I expect that a part of my improvements will fall on No. 30.

We wish to be protected in the purchase of this property in preference to other applicants, at such terms as the Government are willing to grant. I will therefore be much obliged if you will write me in answer to this, so that we can commence erecting the saw mill without delay, if we can have assurances that we can become the purchasers.

I am, &c.

(Signed)

SAMUEL H. SWAINE.

The Hon. JOHN DAVIDSON, Commissioner of Crown Lands.

CROWN LANDS DEPARTMENT.

KINGSTON, 24th May, 1842.

MR. S. H. SWAINE,

SIR,—In reply to your letter of the 16th inst., I have to inform you that application to purchase Indian Lands on the Grand River; cannot at present be entertained, as they must all be inspected and valued previous to a sale being made under order in Council: upon a return of that inspection the lands will be for sale to the first applicants. It is, however, recommended in that order, that all persons reported as resident settlers, up to the date of that order, be considered as the first applicants, and entitled to preemption for the space of six calendar months.

I have, &c.,

(Signed)

JOHN DAVIDSON.

BRANTFORD, 12th May, 1842.

THE HON. JOHN DAVIDSON, Commissioner of Crown Lands.

Sir,—We, the undersigned, are living in the

newly surveyed Townships on the Grand River, surveyed by Mr. William Walker, and have each of us a house, and from five to ten acres of clearance on the lots we occupy, namely, Alexr. Livingston, Lot No. 32, North end, in the 1st Concession; Wm. McDonald, South end No. 31, in the second Concession; Donald McKenzie, South end, No. 32 second Concession; Donald McInnes, North end No. 31, first Concession.—We are desirous of becoming the purchasers, when the land is offered for sale, and we beg to ask the favor of having our names inserted on the plan as the applicants for the purchase thereof. We will be much obliged if you will write us an answer what you can do for us in furthering of our wishes. We are, &c.,

(Signed)

{ A. LIVINGSTON,  
Wm. McDONALD.  
DONALD MCKENZIE.  
DONALD MCINNES.

CROWN LANDS DEPARTMENT.

KINGSTON, May 17th, 1842.

Mr. A. LIVINGSTON,

SIR,—In reply to a letter signed by yourself, and three others, I have to inform you that the lands on the Grand River have been recently inspected under order in Council, and no sale can take place until the valuation has been approved of by His Excellency in Council, when those that have been in occupation for a term of years, and improved, will be considered as having a right to preemption. You will be pleased to communicate the above to your neighbors, Messrs. Wm. McDonald, Donald McKenzie and D. McInnes.

(Signed)

I have, &c.,  
JOHN DAVIDSON.

INDIAN DEPARTMENT,  
Kingston, Dec. 26, 1841.

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

I have, &c.,  
(Signed) SAMUEL P. JARVIS.  
To Messrs. C. Stewart, J. McCabe, and Sullivan Brown, &c. &c.

INDIAN OFFICE,  
Kingston, 14th Nov., 1843.

SIR,—In regard to those persons who have taken possession of lots of land, and made ex-

tensive improvements, the rights of preemption will be extended to them in all cases where practicable, and in no case will a stranger be permitted to purchase a lot in the possession of another person, but on the express condition of paying the occupant the full value of the improvements thereon. You will confer a favor by making this generally known to the settlers, for I have received information from several quarters, that there are individuals residing along the river, who have circulated reports with respect to the sale of these lands calculated to alarm the people, and indeed to induce them to suppose the government at the instigation of the Indian Department, was disposed to deal harshly with them.

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

CROWN LANDS DEPARTMENT,  
Kingston, March 27, 1844.

SIR,—I have to acknowledge the receipt of your letters of the 2nd and 9th inst., with reference to the North half of Lot No. 15, in 3rd Con. of Onondago, and the £40 enclosed in the former, on account of the said lands, which will be held in deposit. I beg to state, that as the lot is in the occupation of Peter McKarragher, it will not be sold to another without his consent.

I am,  
Your most obedient servant,  
T. BOUTHELLIER.  
James Little, Esq., Seneca.

CROWN LANDS DEPARTMENT.  
MONTREAL, 14th Jan., 1845.

*Indian Lands on the Grand River.*

NOTICE.—The public are hereby informed that applications to purchase the disposable lands in the Townships of Onondaga, Seneca, Dunn and Cayuga, which were opened for sale by the notice issued from the Indian Office, on the 28th March last, must be made to David Thorburn, Esq., at Indiana, who has been appointed Commissioner, to investigate claims connected with these lands, instead of to this Department as formerly.

The persons who were found in occupation of those lands when inspected, are reminded that their claims to preemption having expired, the respective lots may now be sold to the first applicant who pays the appraised value of the improvements thereon.

By command of His Excellency the Governor General.

D. B. PAPINEAU.

Extract of a memorial of the Chiefs of the Six Nations Indians to the Government, March 27th, 1843.

"And the Chiefs would further represent, that it is the intention of the Government to sell their lands, requiring one-third of the purchase money



down, and the remainder in three years with interest: if so is the case, they respectfully remonstrate against any such course, on the following grounds:—The scarcity of money in the country would place it out of the power of actual settlers to comply with the terms of payment, consequently they would resort to the Canada Company, who do not require any money down; our lands would then remain unsold, and we could derive no benefit therefrom, unless we submitted to the sacrifice at the hands of monied speculators. All that the Chiefs and warriors want, is the interest, and why not let the industrious settlers have the benefit of the principal as well Banking institutions; for if sold for cash, the money must be funded, and one-third of the purchase money would be a great assistance to the poor settlers: we only wish the interest of the purchase money to be paid in advance, the improvements of the settlers will be ample for the payment of the principal.

Signed by WILLIAM JOHN, }  
and 86 others. }

The above documents are given, to show the true position of this question, and to disprove all that has been said on the history of these transactions by the Chief Superintendent. Documents might be multiplied on the subject, but it is presumed enough has been given to make this clearly apparent. In the first place it will be seen that Mr. Gwynne's mission was to the Settlers on the UNSURRENDERED Lands. 2nd.—That the orders in Council based on this report, secured the parties in possession in pre-emptive rights. 3rd.—That the instrument of surrender covers every foot of land then in possession of the Indians on the River, and stipulates for their sale, and for no other purpose. 4th.—That the survey, inspection and valuation was for the purpose of bringing these lands into market for sale. 5th.—That the letters of Mr. Davidson, Commissioner of Crown Lands, of date the 14th, and 17th May, 1842, declares that the unoccupied lands, without making any exception, will be sold to the first applicant, and that pre-emption is secured to those in possession. 6th.—That the letter of Mr. Jarvis, of the 26th December, 1841, to Messrs. C. Stewart, John McCabe, Sullivan, Brown, &c, &c, was written to advise these parties that he would write to Mayor Winnitt, the local Superintendent of Indian Affairs, to protect them from the depredations committed on lands they occupied in Tuscarora.

7th.—That the letter of T. Bouthellier, of the Crown Lands Department, secured the right of pre-emption to Peter McKaracher, in 1844.

8th.—That the notice of Mr. Papineau, Commissioner of Crown Lands, declares the right of pre-emption to have been in force, and the lands open for sale at the date of his notice in January 1845.

9th.—That in March, 1843, the Chiefs and

warriors of the Six Nations Indians to the number of 87, admitted the validity of the surrender made in January, 1841, and solicited easier terms of payment, in order to raise a revenue from the speedy disposal of their lands.

Before I close, I feel it proper to make a few remarks on some of the documents above given. When the surrender of the Indian Lands was obtained, it was agreed by the Government that 20,000 acres would be set apart for their residence, so long as they remained on this tract; had this been done at the time, matters would not be in the unsatisfactory state they now are. It was not, perhaps, decided where the tract would be situated, or whether it would consist of detached pieces, the consequence was, that under the general surrender, pre-emptive rights—the inducements and promises in the documents I have given above, with other supporting circumstances, the whole tract was indiscriminately settled on, and the parties in possession in Tuscarora and Oneida, have consequently as good rights to be allowed to purchase as those in Seneca or Onondago, and this they should be allowed, when it is clearly seen the Indians are not able to occupy the fifth part of the lands yet remaining unsettled.

From the letter of Mr. Jarvis, of the 14th November, 1843, which the party to whom it was addressed, was directed to make generally known to the Settlers, it is evident that strong inducement was held out by that officer to those in possession of these lands, to prosecute their improvements under pledge, that peaceable possession and pre-emption were secured to them, but in bad faith to those unfortunate settlers, it has turned out that they are made the victims of the very policy, from which that letter was designed to exculpate both the Government and himself.

With respect to the letter to Mr. C. Stewart, and others—Mr. Smith was summoned before Mr. Racy, and Commissioner Winnitt, who was also local Superintendent of Indian Affairs—was fined in the costs, and directed to make arrangements with the parties for the timber, and not to take any more off under his license, as they had pre-emption right; these parties were settled on the Tuscarora tract, and the Commissioner, and local Superintendent, was one of the Magistrates on the case. Can anything be more clear than this, that the officers of the Department understood these lands were to be sold, and encouraged their settlement?

I have now, Sir, given a correct history of what led to a general surrender of these lands, and although it was arranged, that a portion would be set apart for the Indians. A cession of the whole was obtained to place it out of their power to dispossess the white settlers, under the provision of the 2nd Vic., c. 15. I have given the surrender itself, and documents from the Crown lands, and the Indian Department, with

an extract from a memorial of 87 chiefs, and head men of the tribes; all tending to shew that the Townships of Seneca, Oneida, Onondago and Tuscarora, were surrendered, surveyed, inspected and appraised for sale, and not "for the double purpose of satisfactorily settling the Indians, and facilitating the sale of the Townships of Cayuga, Brantford and Dunn," as is averred by the Chief Superintendent; and that consequent-

ly all the proceedings based on the latter erroneous assumption, by the Indian Department, have been as unwarrantable as they have been cruel.

I have the honor to be,

Sir, your very ob'dt Servant,

JAMES LITTLE,

One of the Memorialists.

## A D D E N D A .

*From Samuel P. Jarvis, Esq.*

TORONTO, 31st Oct., 1846.

"DEAR SIR,

I am just in receipt of your note of yesterday's date, on the subject of the Ejectment Suits instituted against the settlers on on Indian lands, the Grand River. It appears to me that I can be of no use, personally, to the settlers, unless they compel the Commissioners to produce certain documents, to show that the Government nor the Indians ever contemplated removing them indiscriminately; and to do this you should notify the Commissioner to produce the following documents,"—(most of which have been previously referred to.)

Mr. Jarvis concludes, "Without the documents above referred to, any evidence I could give would be unimportant."

"All the documents were produced," says Col. Bruce,—but this is denied by the Assistant Superintendent General, as follows:

CIVIL SECRETARY'S OFFICE,  
INDIAN DEPARTMENT,

Nov. 16th, 1846.

"SIR,—

I am directed by the Governor General, to acknowledge the receipt of your Memorial of 6th inst., and to inform you that copies of *such of the documents required*

will be transmitted through the solicitor of the Indian Department, *as are to be found in this office*, several of those specified *having been removed by Mr. Jarvis*, at the period of his suspension from the duties of Chief Superintendent.

(Signed,) GEO. VARDON,

*Asst. Sup. General.*

D. FRASER, Esq."

In a Petition of Mr. Cheshire's, printed by the Provincial Parliament in 1847, it is stated "Your Petitioner, will have to lay before your Honorable House, a letter, written by Mr. Hopkirk, dated Montreal, November 2, 1846; 'that the documents applied for by Counsel, had been laid before the Governor General for his *consideration*.' Another application was made on 23rd November, replied to, December 5th; Montreal Post Mark, 8th; Hamilton, 14th; being at each of the positions—one, four, and ten days, after the conviction of Petitioner."

The documents were not furnished; it was a matter of "*consideration*" if they should be!

The most important, in the face of which no conviction could have taken place, were withheld; the suppression being laid upon Mr. Jarvis, whose evidence in their absence, was, of course, "*unimportant*."