

Executive Council Chamber Toronto

Thursday 17<sup>th</sup> January 1839

Present

The Honourable Robert Baldwin Sullivan

Presiding Councillor

William Allan

John Stronach

Richard G. Sullivan

To His Excellency Sir George

Arthur D. C. B. Lieutenant

Governor of the Province of Upper

Canada and Major General

Commanding Her Majesty's

Forces therein &c. - &c. - &c.

May it please your Excellency

The Executive Council

according

Upper Canada Land Petitions "L" Bundle 21, 1837-1838  
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mentioned in the petition, was  
 charged to the petitioners in  
 conformity to the usage of the  
 Surveyor General's office. The  
 Surveyor made at the instance  
 of the petitioners, and intended  
 for their benefit, and the  
 Surveyor General is not author-  
 ized to incur expense in survey-  
 ing private applications, or  
 intimations of erroneous survey.

The Council are disposed  
 to admit fully the public loss,  
 of it which has arisen from the  
 settlement near Woodstock, but  
 they are still of opinion, that the  
 petitioners received a highly

*Substant*

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valuable and favorable Location,  
 at a very low valuation. They  
 have not been treated differently  
 from the other Settlers, who  
 uniformly purchased the improve-  
 ments of the Squatters, and who  
 have never urged any complaint  
 on that score.

Finally the Council beg  
 to represent to your Excellency,  
 that there are no funds at the  
 disposal of Government, which  
 could be applied in Satisfaction  
 of claims like the present, and  
 few grants of Land are no  
 longer legal: and if such  
 funds or Lands were at your

Excellency

58k

Excelsior's disposal, the Council  
cannot but see the great public  
inconvenience which would  
result, were your Excelsior to  
consider every detail of Government  
which was supposed to be settled  
in the time of your Excelsior's  
predecessor as open for investiga-  
tion, and capable of being  
redressed or amended at present  
or future periods. All the  
present matter was disposed of  
without remembrance on the  
part of the petitioners by Sir  
John Colborne; and the Council  
think it would be a dangerous  
precedent, had not statements  
of subsequent circumstances to

Settle

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resting the presumption that the  
proceeding was settled with a  
due regard to the rights of  
parties and the ends of Justice.

All which is  
respectfully Submitted.

R. Halloran

By  
6

Report of the Executive  
Council on the petition  
of Colonel Light and  
Captain Graham.

dated: 2<sup>nd</sup> Jan 1837

copy of Report sent to Col.  
W. Light. Newcastle 2<sup>nd</sup> Feb.  
1837

Return Council

58m

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The Petition of Colonel Alex<sup>r</sup> W Light and Captain Philip Graham. 58<sup>th</sup>

The above Petitioners understand all grievances that either Officers or individuals may suffer, are to be presented to your Excellency for redress. In consequence they beg to state the following case for your consideration

Your petitioners formerly submitted the case to Sir Francis Head, and received the enclosed answer N<sup>o</sup> 10, which they are prepared to show, is not borne out by the facts of the case, and they humbly assure it is no adequate answer to their memorial. + C. 23<sup>rd</sup> Feb 1837

Colonel Light in the first place, begs to state, that when Sir J<sup>r</sup> Colborne and the Commissioners of Crown Lands, wished him to proceed to Bladford, he was assured that any ground belonging to the Government he could discover, he should receive, without any reservation for the claims of Squatters.

When your petitioners saw their grant in this neighbourhood, they were both expressly informed by the Surveyor General and Commissioners of Crown Lands, that the Squatters therein had no right to be there, and that they would positively be ejected by the Government, without any expense to them.

One of your petitioners was in consequence induced to commence building an expensive stone and brick house, had purchased the materials and lumber to complete it, and in consequence could not leave the premises without a considerable loss, at this time he was told to eject the squatters at his own expense, and pay for their clearances.

When your petitioners received this intelligence, they could not be aware of the exhausted state of these grounds, having but very lately come from England: that to be compelled to pay for their grants, without adequate fences on the cleared grounds, and this to be totally exhausted, having the timber all cut down that could fence them, and sold by the squatters, by which 100 acres was also destroyed, was a great injustice to them, and not worth their acceptance, because it would cost 20 dollars an acre to fence such land, whereas, buying wild land from the grant, and then wholly clearing and fencing it, would at that time only cost 14 dollars an acre altogether.

The value of these premises, specially sent by the Government, was equally ignorant with your petitioners of all the essential information, or necessary to be known before he could assent fairly in the case, as he ought to have known from experience and long standing in the country. The peculiar and <sup>in which</sup> manner all such lands are leased by squatters, to keep them indefinitely in their own hands, purposely exhausting them, to prevent any private individuals from wanting them.

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was as a gift, he was therefore quite incapable of adjudging the real value of such clearances, in which no charge whatever ought to have been made to your petitioners. While the Government ought to have known the real merit of such cases, and have prevented the injustice, if they were aware that cleared ground is only worth acceptance in this country, when well fenced and unexhausted, which they only ought to be paid for, and not as has been awarded, to the great injury of old and meritorious officers.

It is a great error in the Council, to state it was voluntary in your petitioners locating these lands, with immunities subsequently obtained, they only located them because they were positively assured, as before stated, that all the lands belonging to the Government should be given them as their free grants, without expense, and without any reservation whatever that the squatters should be paid by them a fictitious value for clearances found not worth their acceptance, and not more valuable as wild land in the situation, which it will be admitted, they presume, they could have obtained, without any payment. And had they been at all aware of the unprecedented orders issued, that they would be compelled to give the squatters at their own expense, contrary to the Council's order of 27 Sept 1833, see copy no 3: to pay also for the survey of the land; the expenses of the arbitration, improperly ordered by the Government; unaware (as all Officers must be who have just arrived from England) that exhausted lands were with good fences well cultivated, because to cultivate them would be ruinous. They would have rejected them without hesitation, and have bought as private individuals, unexhausted cleared lands from the surrounding settlers, with the money they were compelled to pay to the squatters, whilst they after wards could have demanded their free grants due for their long services, besides without any obligation whatever to the Government by which they could have then possessed near double the quantity of ground they now own, instead of only possessing just half the quantity. See the proof No 11. and this purchased ground one fourth cleared and unexhausted, while their present lands are not one ninth cleared, and completely exhausted.

The real cause of the survey of the year 1834 (for which they have been compelled to pay) that the then Surveyor General declared in positive contradiction to what your petitioners asserted, that there were 1500 acres in the zone, instead of about 1000 only as stated by them, and so far from their requiring a survey, this their statement was found to be most correct, and was above the quantity to be actually disposable, although the Surveyor General asserted there was enough ground both for Colonel Light's and Captain Graham's grants, the surplus, above the 900 acres given to the former, was only 37 acres, and consequently within the 1000 as stated by them, which 37 acres after being received by Captain Graham for near three years, was only then discovered to

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belong to some one else! How then could this survey be your petitioners' own survey? declared by the Council, and which they disclaim, they are at a loss to discover.

It is now also in proofs of Law by Mr. Wm. B. Sturges and others that a considerable part of the rest of the said land will be taken away from Colonel Light, in like manner, after being deduced to him for near five years, it is now discovered that a former Government Surveyor of the name of Jones appertained the lands (long since deduced to them) different to that of the late Surveyor Mr. Mulick, by whose Survey Colonel Light's was granted, so that if he defends the suit he may be injured, and may lose above 200 acres of his grant also.

As for the "peculiar value" of your petitioners' lands, as stated by the Council, they declare, and are ready to prove, that they were of less value, from their exhaustion, than all the other lands in this neighbourhood, which could have been bought by them for five dollars an acre, unexhausted, and well fenced, whereas they have been made to pay very near that sum per acre for the whole of their respective grants of 1740 acres. Should they attempt to fence in, and cultivate, the ground of 142 acres, that is now without any fence. And of what use are these wastes, which it will be ruin to fence and cultivate? But to more clearly demonstrate the error of the Council's referring to the "peculiar value" of your petitioners' grants, and to prove the worthlessness of these cleared lands, Colonel Light has offered them to the five acre men of Lord Egremont's last emigrants, quartered at Woodstock to cultivate them, free of any expenses, but they decline doing so - nor with any other persons to whom they have been offered without rent for five years or at their own lease, undertake to cultivate them, does not this clearly contradict their "peculiar value". And were the fenced lands, he cannot obtain one farthing rent for.

Your Petitioners are then, that instead of obtaining their grants free, as was designed by the British Government, they will have bought them by unprecedented compulsion, which no private individual, with any sense or experience, would have been silly enough to have done, with one month only cleared, and that exhausted. But with the money wrong from your petitioners' distress - the Yankee Squatters and others have bought Estates very superior to their former ones, and do now regularly vote at all elections against the Government which favors to such men, at the expense of old officers, the Government may ultimately be subverted.

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589.  
But to prove still further that the land tendered to them when they first came up to Blanford was not of any peculiar value, altho it is five years since and land has quadrupled in value since then. The late Captain Armstrong last year bought in as good a situation as either of your petitioners an Estate near Benihville of 150 acres, fronting the river Thames, and the stage road passing it, with a good house upon it, with 120 acres cleared, well fenced and unincumbered for 600. Your petitioners have only 68 acres of the squatters in cultivation, which to pay for, fence, and cultivate, has cost 673. 18. 8, and this supposed to be given them as their free grants. While Captain Armstrongs purchase is a continual profit, their free grants, for which they have paid double, according to the quantity of cultivated ground, are a continual loss, and 142 acres besides, totally useless to them.

Mr Rowies also last year bought an estate of 73 acres, within one mile of your petitioners, and equally eligibly situated, directly opposite and close to Benihville possessing a good frame house with six rooms, plastered and painted, having one acre and a half of excellent orchard, with good frame barns and stables. The whole cleared and well fenced - for 250.

Mr Peter Canal lately bought the adjoining estate of 150 acres, with 90 acres cleared and well fenced, having a log house and barn - for 375 and many other estates may be bought for equally reasonable prices, as well situated as your petitioners. Is it then for this situation, that your petitioners lands are considered "so peculiarly valuable" by the Council? They declare they were offered what situation they pleased without favour any been to be paid. Is it then for the wooded land, this was of course tendered to them gratis. And the squatters lands have been proved not worth cultivating. How then can your petitioners grants, have been "so peculiarly valuable," they are at a loss to conjecture.

But the question your petitioners humbly conceive is not the peculiar value of their grants, voluntarily or involuntarily taken, which may or may not have arisen in value, but which they wholly disown, was of any peculiar value, when they first arrived at Blanford. But whether old officers arriving in this Colony ought to.

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58<sup>th</sup> No.

be compelled to pay in any way for their public grants, when those grants were  
aided to be given to them free of any expense whatever by Great Britain. And if  
there had been any compensation required for the necessities of Yankee Squatters  
and rebels, who have long since received the full reward for their unlawful acts,  
and the total destruction of the property they located, whether it was not imperative  
on the government to pay and eject them, without any expense to those Officers who  
have both been obliged to mortgage part of their Estates to pay the unexpected demand,  
or altogether lose the same they had involuntarily expended, on the faith of the  
government. More especially as a Squatter of the name of Hill living at the  
town of Woodstock, has been very lately ejected, without any arbitration, survey,  
or expense of judgment by law, by giving him two half acre lots for his clearing  
of 30 acres all the well fenced, and which could equally have been done to the  
squatters, to whom your petitioners have been compelled to pay so exorbitantly,  
to their individual injury, and as they humbly conceive directly contrary to the  
express letter of the law made for their especial benefit in England.

Your Petitioners therefore believing that they are fully entitled to redress, for the unintentional  
injury done to them by the government. They humbly request, that if pecuniary remuneration  
cannot be given to them in compensation to the desired amount, that their so  
much wild land may be awarded as shall liquidate their expenditure, if sold.

And your Petitioners as in duty bound will ever pray

A. W. Light  
Colonel (Ret.) St Col Comd 25 Regt  
J. Graham = Commander R.A.

According to your Excellency's  
 commands have reconsidered  
 the cases of Colonel Light and  
 Captain Graham.

The usual manner of  
 locating officers on Land at  
 the time of the petitions appli-  
 cation for their grant, was by  
 reference to the Commissioner of  
 Crown Lands, who assigned each  
 officer vacant Land, according to  
 his claim for length of service.

The Commissioner of Crown  
 Lands in common prudence, was  
 bound to choose Lots free from  
 difficulty, and upon which no  
 claims arising from possession.

Location



This calculation is proved as follows  
 Colonel Light has received 1200 acres for his grant  
 Captain Graham has received only 540 acres &c. and there is yet another 60  
 Both the grants make 1740 acres actually received  
 They have paid for fencing and cultivating 68 acres of land \$ 673.18.82 or 2696  
 They possess 142 acres which if they were fenced and cultivated will, at the same ratio,  
 cost 4614 dollars. For if not cultivated this part of their grant might as well  
 be up in the moon for any use they can be to them. But if they had been  
 left in wood might now be cultivated for the clearing, free of any expense to  
 them which is not the case with the squatters exhausted wastes.

To lay the cleared ground left by the squatters now unfenced of 142 acres  
 with the burning of the old rotten logs left as fences, will cost, as actually contracted  
 for, if required to be done, the sum of 23.15. or 95 dollars.

These sums are as follows 2696 being what is already paid for 68 acres

To cultivate 142 acres will be 4614 at the same ratio

For the contract of burning logs - 95  
 \$ 7405 dollars

So above four dollars an acre for the whole of their grants amount to 1740 acres  
 But if it had been hinted to your Petitioners, which it ought in fairness to have  
 been, that their expenses to quit these squatters we would have amounted to the  
 sum of 673.18.82. They would have unhesitatingly rejected the proffered  
 grant as a gross delusion, and have preferred to purchase wild land from  
 Government with it, which then could be done at 2 dollars an acre. This money  
 would purchase 1348 acres and then they would have taken their grants  
 besides of 1800 acres, which would now amount to 3148 acres of good  
 wild land, which is much more valuable than that of the said cleared lands, because  
 by the value of the wood, the land can now be cleared without expense to the owners, whereas, no  
 one will take the squatters clearances, to cultivate, as a gift.

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*N. 11 - Proof*

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Petition No 21  
No 58  
Colonel Legh  
and  
Captain Graham

Land

Wm. H. H. H.  
9 Nov 1838  
Referred to the  
Hon. the Secy of the  
Council  
By J. M. H.  
W. H. H.

Reported on in

Committee 17 January 1839.

Refer to the Hon. Secy of the Council  
in the Secy's office, and show  
some objection to the  
Hon. Secy of the Council  
by J. M. H.

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location or otherwise existed.

It seems that the petitioners, instead of selecting lands that were of difficulty, desired to obtain Salt, upon which persons had settled, without authority.

Had the petitioners not selected these lands, the Squatters would upon application, have been permitted to purchase them.

The Government have always endeavored to avoid any harsh proceedings against settlers, and notwithstanding the want of authority to take possession of the Lands, would

not

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not have deprived the Settlers of  
them, if they were willing to  
purchase, if it had not been at  
the instance of, and for the purpose  
of benefiting the Settlers.

The Council have  
nothing before them to show  
that the Executive Government  
had pledged itself to give the  
Squatters without compensation,  
but, on the contrary, your  
Excellency will perceive, by an  
enclosure in a former petition  
of Colonel Light and Captain  
Graham, that in John Collins  
required that the Squatters  
should be paid a reasonable sum

for



for their improvements, and by  
 a committee of Council upon the  
 same petition, the settlement is  
 ordered, "unless they shall agree  
 to have their claims arbitrated."

In that petition, the present  
 claimants represent the portions  
 of ground held by the Squatters  
 as "certainly the parts of their  
 grants," and they object to the  
 exorbitancy of the sums claimed  
 by the Squatters, and not to the  
 allowance of a fair compensation.

The petitioners did not,  
 so far as the Council are informed,  
 object to the valuation set upon  
 the improvements by Mr. Castle,



a Surveyor sent to value them,  
 that value was a question between  
 the Squatters and the Claimants,  
 and not between either of the  
 parties and the Government,  
 and if the sum paid was too  
 large, no claim can be set up  
 against the Government,  
 which was taking the best  
 means within its power to do  
 justice between the parties;  
 and if the petitioners have  
 suffered through their ignorance  
 of the value of Land in its  
 cleared and uncultivated state,  
 and consented to pay too much  
 for the clearing, the Government  
 cannot

cannot be called upon to redress  
the injury.

If the Government had in  
any way received a benefit,  
through the mistake of the  
petitioner, or the inadvertence  
of the arbitrator, they of course  
would not object to a reimburse-  
ment, but they cannot be called  
upon to pay money which was  
received by the Squatter, at  
what was considered, at the  
time, a fair valuation.

In like manner the  
Government cannot be called  
upon to pay the expense of an  
arbitration between two private

parties

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parties, instituted for the pur-  
 pose of doing justice between  
 them.

So soon as the claims of the  
 Squatters were satisfied, the  
 means of acquiring possession of  
 the property, was given to the  
 petitioners, by the giving the  
 patents, this was done at their  
 own instance. The lifting  
 expense of ejecting them, was  
 borne by the petitioners, as in  
 other like cases, there being no  
 funds in the control of govern-  
 ment legitimately applicable  
 for that purpose.

A principal item of  
 claim by the petitioners is for

their

less in cultivating portions of their  
 grants. The Council upon  
 this point cannot apprehend a  
 difference of opinion between  
 themselves and any other, but  
 the petitioners. The latter were  
 not required by the Government  
 to cultivate any particular por-  
 tions of their Lands in preference  
 to the others; nor can they be held  
 accountable in any instance for  
 departing from the manner &  
 management of property in which they  
 have an interest, and over which  
 they have a control.

The remaining items  
 of expense of surveying the lands

mentioned.