

The Honorable Mr. Simonds, by command of His Excellency the Lieutenant Governor, laid before the House the following documents, viz:—

ACT VACATING SEATS OF MEMBERS.

Extract of a Despatch from the Right Honorable Lord Stanley to Sir W. M. G. Colebrooke.

[No. 87.] *Downing Street, August 11, 1842.*

The Act No. 1408, to vacate the Seats of Members of the Assembly in certain cases, was passed as I collect from your own Despatch, and from the Reports of the Attorney and Solicitor General of New Brunswick, for the purpose of bringing the Law of that Province into correspondence with the Law of England. To an enactment on this subject, fully carrying that principle into effect, Her Majesty's Government would entertain no objection.

I should have supposed that the words "Public Works" as employed in this Act were used as synonymous with the words "Government Works," had it not been that Government Works are mentioned immediately afterwards as the subject of an additional and distinct provision.

It appears also by the third clause that during the recess of the Assembly, the Speaker is to direct the issuing of Writs on vacancies of this kind, that is the Speaker must find and adjudicate on the fact that the vacancy has arisen. Here again is a material innovation on the Law of England. The Speaker of the House of Commons is invested with this power in the case of death vacancies, because in that case the fact to be found is one in which it is scarcely possible to suppose that a controversy could in any case arise; and because no question of Law can ever be involved in it. But the House reserves to itself the important Constitutional privilege of adjudicating on all questions of vacancy by acceptance of Office, and Government Contracts, and I am not aware of any reason to suppose that it was the deliberate purpose of the Assembly of New Brunswick to divest themselves of an authority apparently so essential to the exercise of their important functions.

For these reasons I apprehend that Her Majesty's Government will best conform to the probable wishes of the House of Assembly themselves, by requesting that House to resume the consideration of this Act. If it is really the case that it does not accomplish the designs of its authors, they will of course be not merely willing but prompt to correct any errors into which the framers of the Law may have fallen. It is almost superfluous to say that Her Majesty's Government are at all times most reluctant to advise the disallowance by the Queen in Council of any Act passed by the Legislature of New Brunswick, and rather than resort to such a measure, we are content that notwithstanding the objections I have pointed out, the Act should remain in force until it shall have been brought under the revision of the Provincial Legislature.

I have &c.

(Signed) STANLEY.

Extract from the opinion of the Law Officers of the Crown.

20th October, 1842.

As to the observations of Lord Stanley, we have to observe that we think his Lordship is not aware that all works in this country coming under the denomination of Public Works, are in fact carried on by monies granted by the Legislature from the public funds, and expended by Commissioners appointed for that purpose by the Executive, and therefore are in strictness Government Works—and are what was meant by the term public works used in the Act, and although the term "Government Works" are also used in the Act, as applying to works under that denomination, distinguished from what are termed Public Works, this we conceive was intended to apply to such works as might be carried on in the Colony by Government, from funds not provided by the Provincial Legislature, at the same time we think the Act is very loosely and indefinitely worded in this respect and requires amendment.

As to the provision giving to the Speaker the power of adjudicating in the recess on what seats are vacated under the Act, and for issuing Writs for a new Election, without first bringing the subject under the consideration of the House, we quite agree with His Lordship in the observations he has made on this head, and this is a highly objectionable provision in the Act, and certainly calls for re-consideration by the Legislature, and we can see no objection to Your Excellency calling the particular attention of the Legislature to this or any other of the provisions of the Act, at their next meeting, when it will of course undergo a more deliberate consideration.

(Signed) C. J. PETERS, *Atty. Gen.*
G. F. STREET, *Sol. Gen.*

CANAL BETWEEN BAY OF FUNDY AND GULPH OF ST. LAWRENCE.

[No 71.]

(Copy) *Downing Street, 9th June, 1842.*

Sir,—Having in pursuance of the intimation made to you in my Despatch No 17, of 30th November, readily taken into consideration the mode of giving effect to the proposed survey of the line of Canal between the Bay of Fundy and the Gulph of Saint Lawrence, I have now to inform you that at my request the Master General and Board of Ordnance have selected Captain Crawley of the Royal Engineers, for this service, it being considered that an

able Civil Engineer could only be obtained on such terms as would leave very little of the sum at your disposal applicable to the expenses of the Survey.

I transmit to you herewith the copy of a letter from the Inspector General of Fortifications to the Secretary to the Master General, suggesting that, exclusive of the travelling expenses which would, I presume, be defrayed by you at once, Captain Crawley's pay, subsistence and allowance, should be discharged by the Board of Ordnance, the Province reimbursing the Board the amount so expended. Having on the faith that you possess ample authority, and ample funds at your disposal, acquiesced in the above suggestion, I have only to instruct you to act upon the pecuniary arrangement proposed by the Inspector General.

I have the honor, &c.

(Signed) STANLEY.

Lieutenant Governor Sir W. M. G. Colebrooke, &c. &c. &c.

(Copy)

84 Pall Mall, 2d June, 1842.

Sir,—In returning the enclosed correspondence relative to the contemplated Survey for a Canal between the Bay of Fundy and the Gulph of the Saint Lawrence, I have in consequence of the Master General's Order of the 28th ultimo, had communication with Captain Crawley, who is at present employed at Chatham, under an impression that he would be well qualified for the duty, and as he has expressed his wish to be named for the employment, I submit his name for the Master General's approval.

I infer this to be intended as a special duty not under the Ordinance, and therefore being a Colonial work and not of a Military character under the Commanding Engineer, the Officer, I presume, should be placed in communication with the Colonial Office, for the purpose of being sent to the Civil Governor of New Brunswick, in compliance with his letter of the 25th February last.

In respect to the pay that this Officer should receive during the time that he is employed on this duty, which it may be well previously to consider, it should not be less than if employed under the Ordinance, with the Command pay of his rank, vide margin,* exclusive of course of his travelling expenses, which cannot be now stated; and it would probably simplify the business, and be much more convenient to the Officer, if the Ordinance were to pay him in the first instance, and the amount reimbursed from the Colony or Colonial Office, the same as is done with the Officers lent to the Admiralty, &c.

I have to add that Captain Crawley, with the Master General's sanction, will be prepared to obey such orders as he may receive for his communication with the Colonial Office.

I have, &c.

(Signed) F. W. MULCASTER.

Major General Sir F. W. French, K. C. H., &c. &c. &c.

*Subsistence, 11s. 1d., Extra pay, 8s., Command pay for 2d Captain, 6s., Lieutenants allowance, 1s. 6d.—£1 6 7.

GREAT ROAD TO CANADA.

Application of Surplus Civil List Fund towards, and survey of, by Captain Crawley, R. E.

Extract from the Despatch of the Secretary of State to the Lieutenant Governor of New Brunswick.

Downing Street, 18th June, 1842.

Having since my Despatch of the 16th instant, received from the Lords Commissioners of the Treasury an answer to the reference which I had made to them on the subject of the Address of the House of Assembly of New Brunswick, praying that Her Majesty would permit the surplus of the Civil List fund to be applied towards the completion of the Great Line of Road from Nova Scotia to Canada, and having offered the Queen my advice upon that subject, Her Majesty has commanded me to signify to you Her pleasure, that you acquaint the House of Assembly, in answer to their application, that any general appropriation from the Civil List fund would not be sanctioned without specific information as to the amount of the surplus which will remain at the disposal of Her Majesty's Government, and as to the demand to which such surplus ought to be liable.

From the proceedings which I have taken for the purpose of securing the services of Captain Crawley, you will at once understand that I concur with you in thinking that before any such advance as that which has been contemplated by the Address of the House of Assembly would be sanctioned, (supposing the funds to be forthcoming,) a previous competent survey of the whole line of Road, accompanied by a full estimate of the sums required for the completion of it, and a Report as to the state and sufficiency of the portions already executed, would be absolutely indispensable. But as funds are apparently not provided for this service, I have to suggest to you the propriety of calling the attention of the Provincial Legislature, at the earliest practicable period, to the expediency of making the necessary arrangements for that purpose.

I have, &c.

(Signed) STANLEY.

(Copy)

Downing Street, 1st July, 1842.

[No. 81.] Sir,—With reference to my Despatch, No. 73, of the 16th ult., I have the honor to acquaint you that the Master General and Board of Ordnance have intimated to me their concurrence in the