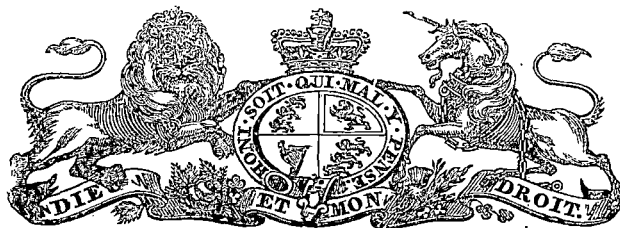


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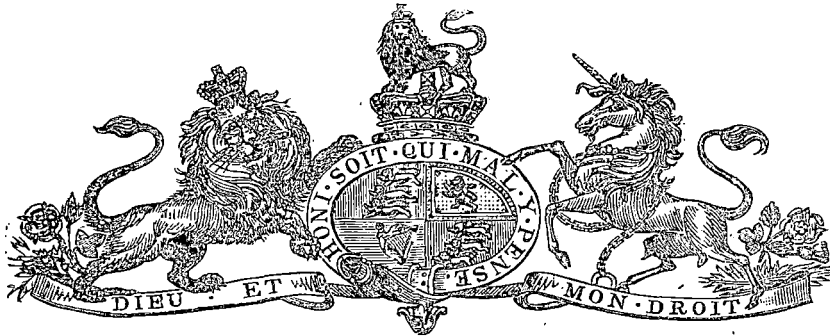
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ALIENATION OF THE BELLERIVE LAGOON :

REPORT OF SELECT COMMITTEE, WITH MINUTES OF  
PROCEEDINGS, EVIDENCE, AND APPENDICES.

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Brought up by Mr. Woollnough, November 1, 1893, and ordered by the House  
of Assembly to be printed.



*SELECT COMMITTEE appointed, on the 20th October, 1893, to enquire into the circumstances under which a Lagoon, being Crown Property, in the Clarence District, was included in a Grant to K. L. Murray.*

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MEMBERS OF THE COMMITTEE.

MR. BARRETT.  
MR. BENNETT.  
MR. DUMARESQ.

MR. MACKENZIE.  
MR. WOOLLNOUGH. (*Mover.*)

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DAYS OF MEETING.

Friday, October 27; Wednesday, November 1.

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WITNESSES EXAMINED.

Mr. George Browne; Mrs. Henry Chapman Wise; Mr. Charles Chipman; Hon. Nicholas J. Brown; Mr. Williams Young; Mr. Leventhorpe Hall; Hon. C. H. Grant, M.L.C.; Hon. A. T. Pillinger.

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EXPENSES OF WITNESSES.

*Nil.*

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REPORT.

YOUR Committee, having taken evidence and heard Counsel, are of opinion that the Wentworth Lagoon was the property of the Crown, and was improperly obtained by Kynaston Lathrop Murray by a grant from the Crown in the year 1892, and further, that no valuable consideration was received in return for the alienation from the Crown of the said Lagoon. We are further of opinion that the Lagoon is needed for public use. We therefore recommend that the Law Officers of the Crown be authorised to take the necessary steps for the recovery of the Lagoon.

J. B. W. WOOLLNOUGH, *Chairman.*

*Committee Room, 1st November, 1893.*

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MINUTES OF PROCEEDINGS.

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FRIDAY, OCTOBER 27, 1893.

The Committee met at 11 A.M.

*Present*—Mr. Dumaresq, Mr. Bennett, Mr. Mackenzie, and Mr. Woollnough.

Mr. Woollnough was voted to the Chair.

The Chairman tabled the correspondence laid upon the Table of the House.

*Resolved*—That the Clarence Municipality be allowed to be represented by Counsel.

Counsel (Mr. Propsting) was admitted, and addressed the Committee.

Counsel tabled the following documents:—

- (a) Letter dated 9th January, 1869, from Surveyor-General to Henry Chapman Wise, Esq. *Vide* Appendix A.
- (b) Ditto, 6th January, 1869, ditto.—*Vide* Appendix B.
- (c) Report from Deputy Surveyor-General on the Correspondence relating to the Second Lagoon, situated near the Town of Bellerive.—Appendix C.

Mr. George Browne, Registrar of the Caveat Court, was called in and examined.

Mr. Browne produced the following papers;—

1. Application from Kynaston Lathrop Murray for a grant of land.
2. Tracing of land applied for.
3. Caveat signed by Solicitor-General.
4. Withdrawal of caveat.
5. Abstract of title.
7. Declaration of Trust.
6. Declarations in support of the application by Mrs. Eleanor Murray, Mr. H. C. Wise, Mr. William Wotton.
8. Original Grant.

Mr. Browne withdrew.

Mrs. Henry Chapman Wise was called in and examined.

Mrs. Wise withdrew.

Mr. Charles Chipman, Warden of Clarence, was called in and examined.

Mr. Chipman withdrew.

The Hon. Nicholas J. Brown, Speaker of the House of Assembly, was called in and examined.

The Hon. N. J. Brown withdrew.

Mr. William Young was called in and examined.

Mr. Young withdrew.

Mr. Leventhorpe Hall, Chief Draftsman, was called in and examined.

Mr. Hall withdrew.

The Committee adjourned at 12.55 P.M. until 11 A.M. on Wednesday, the 1st November.

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WEDNESDAY, NOVEMBER 1, 1893.

*Present*—Mr. Bennett, Mr. Barrett, Mr. Dumaresq, Mr. M'Kenzie, Mr. Woollnough (Chairman.)

The Minutes of last Meeting were read and confirmed.

Counsel (Mr. Propsting), appeared before the Committee.

The Hon. C. H. Grant, M.L.C., was called in and examined.

The Hon. C. H. Grant withdrew.

The Hon. A. T. Pillinger was called in and examined.

The Hon. A. T. Pillinger withdrew.

Counsel (Mr. Propsting) addressed the Committee.

The Committee deliberated.

The Draft Report was tabled, read, and agreed to.

The Committee adjourned *sine die*.

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## EVIDENCE.

FRIDAY, OCTOBER 27, 1893.

GEORGE BROWNE, *called and examined.*

1. *By Mr. Propsting.*—What is your name? George Browne.
2. You are Registrar of the Caveat Board? Yes.
3. And you produce the papers connected with an application made in the name of Kynaston Lathrop Murray for certain land in the County of Monmouth, Parish of Clarence? I do.
4. What do the papers consist of? The first paper is an application from Kynaston Lathrop Murray for a grant of land. That was forwarded to the Survey Department for a description and tracing of the land claimed. It was returned with a tracing, which I produce. The description of the land, as furnished to me by the Survey department, I published in the Government *Gazette*.
5. What is the date of that *Gazette*? 3rd March, 1885.
6. Does the description published in the *Gazette* include the lagoon? Yes. At the expiration of the time prescribed the Government entered a caveat. I produce the caveat, which is signed by the then Solicitor-General, Robert Patten Adams.
7. Upon what grounds did the Government enter the caveat against the granting of this land? On the ground that it was the property of Her Majesty the Queen. No further step was taken in the matter until the 4th January, 1892, seven years afterwards, when the Government withdrew the caveat. I produce the withdrawal of the caveat, signed by Mr. E. D. Dobbie, Crown Solicitor. The claim then being uncontested, came before me in the ordinary course for the purpose of investigating the title. I produce the abstract of the title.
8. Do you produce affidavits in support of the application? I produce declarations in support by Mrs. Eleanor Murray, K. L. Murray (the applicant himself), Mr. C. H. Wise, Wm. Walton, and a further declaration by the applicant.
9. Is there any declaration by C. E. Featherstone? No. I also produce a Declaration of Trust, executed by the applicant, to the effect that he holds this property as trustee.
10. In the ordinary course, when a caveat is lodged against an application, what means are open to the applicant to have the caveat disposed of? An application is made to the Supreme Court.
11. Was any application made by the applicant in this case during the seven years the caveat was lodged to have the matter investigated? No, no such steps were taken. I also produce the original grant, dated 12th July, 1821.

MRS. CHAPMAN HENRY WISE, *called and examined.*

12. *By Mr. Propsting.*—What is your name? Mrs. Chapman Henry Wise.
13. You are the widow of Mr. Chapman Henry Wise? Yes.
14. With your husband did you occupy the Wentworth estate? Yes.
15. As a tenant of whom? Mrs. Murray.
16. Was she the wife or mother of Kynaston Lathrop Murray? She was his mother, and wife of William Lathrop Murray.
17. During that time did the second lagoon form part of Murray's property? No; when we took the lease over from Mr. Simpson we did not get it. My husband asked him if the lagoon was included, and he said "No," and that it was Government property.
18. Sir Valentine Fleming was in the habit of coming to the lagoon fishing? Yes.
19. What passed between you and him? He put some English tench into the lagoon: and, as soon as people found that out, they came fishing for them. Sir Valentine Fleming asked me if people came there fishing, and I said "Yes;" and he then told me to turn them off, or all the fish would be destroyed. My husband then said that he could not turn the people off, as the lagoon was a Government reserve, although we can prevent them coming on our land. Sir Valentine Fleming said he would stop it, and gave me some documents.
20. Is this one of them? Yes. (Document produced, and marked A 1.)
21. After that did you receive another? Yes, dated 9th January, 1869. (Document produced, and marked A 2.)
22. How long had you been a tenant in 1869? Since 1862.
23. Did you commence your tenancy there in 1862? Yes.
24. And in 1869 the Government gave you permission to occupy that lagoon? Yes.
25. And when did you give up possession? In 1884 or 1885.
26. Was the lagoon fenced in? It was partly fenced in.

27. *By the Chairman.*—Was there any fence between the sea and the lagoon? When we got the permits to occupy the lagoon we ran a bush fence across between it and the sea, to keep stock in.
28. But up to that time there was no fence? No, I think not.
29. But you would not have put a fence up if there was one there already? No, I don't suppose we would.
30. During your tenancy did people use this lagoon for watering their cattle? Yes, and they also used to take the water away in casks.
31. Is there any water for watering cattle, other than this lagoon, in your immediate neighbourhood? No, not at that time. There has been a quarry opened on the point since, where there is a little water.
32. But that is on private property? I believe so.
33. The whole of the lagoon is surrounded by private property? Yes.
34. Then how do people get their cattle there? Only by sufferance.
35. Can you declare that Mrs. Murray told you that the lagoon was Government property? Yes.
36. Does the lease you took over describe the property? Yes, so far as the 60 acres and 30 acres are concerned.
37. Does it say whether the lagoon was in the lease or not? No. There is not a word about the lagoon, except by word of mouth. When we took Simpson's lease we asked him about the lagoon, and he said it was a Government reserve.
38. Up to 1885 it continued to be used by the public? Yes, it was used occasionally at various times.
39. *By Mr. Propsting.*—It was through people coming there to fish that you got the permits? Yes; we could not turn them off before, as the lagoon belonged to the Government.
40. When you were leaving the property the Murrays offered it to you for sale? Yes.
41. Did you have any conversation with Mr. Featherstone then? Yes. He asked if we were going to buy the property, and we said we had not considered the matter, pointing out that the title was not good, and the fences were in bad repair.
42. Was anything said about the lagoon? He asked if the lagoon was included in the property, and I told him that it belonged to the Government. Just before he applied for the lagoon he asked me the same question, and I replied as before.

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CHARLES CHIPMAN, *called and examined.*

43. *By Mr. Propsting.*—What is your name? Charles Chipman.
44. You are Warden of Clarence? Yes.
45. And you reside in the neighbourhood of this lagoon? Yes, ever since I was born.
46. Has it been the custom for people in the neighbourhood to get water from this lagoon? Yes, from my earliest recollection; more so in the early days.
47. Is there any other supply for stock? No, there is not a drop of fresh water anywhere near.
48. Have the people of Bellerive any watering-place for their cattle? They are using now the water from a quarry on private property. That is all the water they have at present.
49. If that water was taken for private use, what supply would they have? This lagoon is the only other source I know of.
50. An application has been made for a grant of the Wentworth estate, including this lagoon, against which a caveat was lodged by the Minister of Lands in 1885; that was withdrawn by the then Minister of Lands in 1892. Were you, as Warden of the District, consulted as to whether it would be convenient to the people to give this lagoon up? No, I was not consulted.
51. Are you aware if the municipal body you represent was consulted at all? No. The Town Surveyor got notice that there was an application for a grant from Elliston and Featherstone. He showed it to me, and I went with him to the Lands Office, but was informed that it only referred to the streets. The streets being under the control of the Municipal Council, he, as Town Surveyor, received notice in case there was any encroachment.
52. Did you see the Minister of Lands in regard to this claim? Yes; about the end of 1891 I saw Mr. Reid, and he advised me to see Mr. Pillinger. He told me that, acting upon the advice of the Law Officers of the Crown, he had withdrawn the caveat, as it would be an expensive process and very uncertain in its results, and he thought that, under the circumstances, it would be better to withdraw the caveat.
53. Did he say anything about the public bodies concerned not objecting? No, nothing of the kind was mentioned.
54. *By the Chairman.*—I understand you to say that the Council were never consulted by Mr. Pillinger as regards the withdrawal of this caveat? No. I was Acting-Warden at the time, Mr. Lamb, the Warden, being away on leave, and there was no notice given to the Council with reference to the matter. It was in consequence of the notice in connection with the streets that I went and saw the Deputy-Commissioner, Mr. Reid, and he advised me to see Mr. Pillinger.
55. And Mr. Pillinger simply said that, by the advice of the Law Officers of the Crown, he was about to withdraw the caveat, and he did not ask if your Council agreed? No, that was all. I said if we

could not retain the lagoon, could not an exchange be made for a piece of land to continue the esplanade from the first to the second beaches, and he said it was possible it might be done that way.

56. You were under the impression that action was going to be taken without any reference to the Council? Yes, I was told it was Crown property, and nothing whatever to do with the Council.

57. Are you aware if any payment has to be made for the right to use the water in the quarry at Bellerive? I hear there is a rental charged.

58. And therefore the only free water for watering cattle would be this Second Lagoon? Yes. I may mention there is no road to it at present, and the only access to it is from the sea. There is a road through to the sea at the further end that connects with the esplanade along the beach, which has been used many times for watering cattle in the dry seasons.

59. *By Mr. Propsting.*—Have you ever carted water from that lagoon yourself? Yes, on many occasions. The whole neighbourhood would cart water from there for drinking purposes in dry seasons.

60. *By the Chairman.*—Can you tell us whether there ever was at any time in your memory a fence on the sea side of the lagoon fencing it off from the sea? There was a sand-bank there covered with honeysuckles, and there were some posts there with the gaps filled in with the honeysuckles.

61. Do you know whether the fence, such as it was, has continuously remained? I think it has. It was only sufficient to keep quiet stock from straying away?

62. *By Mr. Dumaresq.*—Was the fence erected by the Wises? It was erected before the Wises' time, but was maintained by the Wises to keep their cows in. They had a dairy farm. From my earliest recollections there was a fence there. There was a fence on the inland side as well. I was a schoolmate of Murray's, and when we were quite lads we used to go fishing about the lagoon.

63. You say there was access from the Esplanade? Yes. Not more than 4 or 5 years ago a neighbour named Luckman had to take his cattle there for water, and he drove them there without let or hindrance.

64. *By the Chairman.*—Would such a fence as there was be a matter of necessity for any tenant of that farm in order to keep his stock in? Yes; the cows would feed very much in the lagoon, and if there was no fence there they would stray into the Esplanade.

65. *By Mr. Mackenzie.*—You knew Elliston and Featherstone were endeavouring to get a title to this lagoon? I heard so.

66. And you knew it had been used by the public for years? Yes.

67. Was no action taken either by private individuals, or by the Council, as representing the ratepayers, to prevent this claim being granted? There was no further action taken than that I have mentioned. I understood it was a matter for the Crown alone, not the Council. The lagoon was never vested in the Council at all.

68. Although the public knew that their right to the lagoon was being alienated from them, they did not take any action to prevent it? No, they felt as I did, that we were powerless.

69. That, then, was the reason? Yes.

70. *By the Chairman.*—I understand you distinctly to state that the Minister of Lands informed you that he was going to act on the advice of the Law Officers of the Crown, and that you were out of Court, and had no *locus standi* in the matter? Yes. He said it was Crown property, and we had nothing to do with it.

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THE HON. NICHOLAS J. BROWN, *examined.*

71. *By Mr. Propsting.*—What is your name? Nicholas John Brown.

72. You were Minister of Lands in what year? From 1881 to 1885.

73. During the time you were Minister of Lands, did the matter of the Bellerive Lagoon come under your notice? Yes. I am acquainted with some of the circumstances connected with the lagoon which is the subject of this enquiry. A verbal application was made to me on several occasions by Mr. Featherstone, at the time I was Minister of Lands and Works, for the purpose of inducing me to agree to the alienation of the lagoon. I cannot say how many applications there were; I know there were several personal applications, and more than one formal application, in writing, I believe. As a means of settling the matter in my mind, I suggested to Mr. Featherstone that I should go across and see the lagoon in question, which I did.

74. After that, did you come to any decision? Yes. After seeing the locality and making inquiry, I carefully considered the matter, and I came to the conclusion that it would be contrary to the public interest for the lagoon to be alienated. I saw that it was a sort of natural reservoir, and in future years I thought it would be of very much more importance to the residents in the vicinity of Bellerive and Clarence Plains than it was at that time.

75. Did you then receive notice that an application had been made for a grant including this lagoon? I do not remember that I received formal notice as Minister of Lands, but of course the records of the office will show that.

76. Did you then instruct your officers to enter a caveat against the application? I have no recollection of having taken any formal action in the matter. I have a clear recollection of having been so impressed with the necessity for the action, either formal or informal, I had taken being upheld, that on leaving office I impressed on the Surveyor-General, Mr. Albert Reid, the necessity of watching the matter.

closely in the public interest, and interfering if any attempt were made to alienate this lagoon from the public use.

77. In any of your conversations with Mr. Featherstone did he admit that this was Crown lands? Beyond the fact that he applied for a grant I cannot recall any admission on his part; but I should presume from the fact that he applied so pertinaciously to me for a grant that he knew it was not alienated—otherwise, why should he ask for a grant?

78. You are now a resident of Bellerive? Yes.

79. Do you attach as much public value to that lagoon now as you did in 1885? Yes, it is more valuable, as the population increases and the land becomes more and more occupied.

80. You think it is a valuable part of the public estate? Most decidedly so.

81. *By the Chairman.*—Is it within your knowledge that the second lagoon has ever been used for water? I am not aware of my own knowledge of such having been the case.

82. Is your objection to the claim based in any way on your knowledge or belief that possession for 40 years or upwards was not made out? I think the records of the office will show that I obtained the advice of the Law Officers of the Crown—either the Solicitor-General or Attorney-General of the time—before I took any steps in the matter, and that I was advised to take no notice of anything but the strong ground that it would be contrary to the public interest to alienate the lagoon. I can hardly think that I wrote to the claimants without legal advice.

83. *By Mr. Mackenzie.*—Did you examine the lagoon to notice whether it was fenced or not? As far as I can recollect, there was a fence on either side of the lagoon, and some old posts, evidently the remains of a fence, in the lagoon, but at this length of time I would not like to state that positively.

84. Did you notice whether it was then used by the public or enclosed? No, I formed no opinion on that point, and have simply hearsay evidence to go upon. I was told by the residents that they used it for watering their cattle, but how they got to it, and whether on sufferance or not, I do not know.

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WILLIAM YOUNG, *called and examined.*

85. *By Mr. Propsting.*—What is your name? William Young.

86. You are a resident of the District of Clarence? Yes.

87. For how long? Ever since 1841, with the exception of six years.

88. Do you know the neighbourhood of the second lagoon on the Wentworth Estate? Yes.

89. Did you at any time live on the Wentworth Estate? Yes.

90. In what year? At the end of 1841 or the beginning of 1842.

91. When you removed from there you went to live on adjoining land? Yes, at the eastern end of the lagoon.

92. Were you in the habit of using the water for stock? Yes.

93. Were you ever asked to desist from doing so? Yes, I was asked to desist from trespassing on the lagoon.

94. In what year? Between 1843 and 1847,—I cannot recollect the year exactly.

95. By whom were you requested to desist? On one occasion by two of Murray's daughters, and on another occasion by a man-servant of Murray's.

96. Did you, in consequence of that, leave the lagoon? No.

97. Did they compel you to leave? No.

98. Was there at that time any fence across the sandbank between the lagoon and the sea? No, not at that time.

99. Is there any fresh water for stock in the neighbourhood besides this lagoon? No, there is no other fresh water. In dry weather, when the water-holes are all dried up, there no other place to go for water but this lagoon.

100. *By the Chairman.*—Could people get to the lagoon without going on other people's land? No, unless they went along the beach.

101. Are you sure there was any fence on the sea side of the lagoon? Yes, I remember it being fenced on more than one occasion.

102. And you remember a time when it was not fenced? Yes.

103. When was the first fence put up? I cannot recollect.

104. But you are sure there was a time when there was no fence? Yes, I am quite sure of that.

105. *By Mr. Mackenzie.*—Are you sure you are not making a mistake about the years when you first knew the Wentworth estate? No.

106. You must have been very young then? Well, I am turned 60 now.

107. And you have known that part of the country since 1841? Yes.

108. Are you quite sure the fences you speak of were there? Yes. We went to live on the Wentworth estate in 1841, and we lived there until the place known as Knopwood House was put in repair.

109. How long were you there? About seven years.

110. *By the Chairman.*—Do you remember a man named James French complaining of the tenant of the Wentworth estate, Mr. Nicholson? No.

111. He complained that he encroached on the Second Lagoon? No, I don't remember. We left there in 1849, and were away for six or seven years. When we left the estate was occupied by a person named Brown.

112. Is there any place in the neighbourhood where people can get water for their cattle other than this lagoon? No, not in the neighbourhood.

113. *By Mr. Propsting.*—Within what distance? The next permanent water is at Rokeby Rivulet, three miles away.

114. *By Mr. Mackenzie.*—You heard that Elliston & Featherstone were trying to get a title to the lagoon? Yes.

115. Were you interested in the use of the lagoon then? Yes; we have used the water within the last few years in dry seasons.

116. Were you interested in the water at the time Elliston & Featherstone tried to get the lagoon? Yes.

117. Did you or anyone else make objection? As a municipal councillor I objected to the grant being made.

118. Why was your protest not carried further? I brought the matter up in the Clarence Council, and I understood Mr. Chipman to say that he had seen the Minister of Lands, and had been informed that the Council had nothing to do with it, as it was a Government reserve.

119. You did not take any further steps to prevent the grant being given? No.

120. You considered you were quite powerless then? Yes. Of course the Council had notice through the Inspector of Streets; but that was simply to see that the proposed grant did not encroach on any of the streets.

121. Although you and the whole community had enjoyed this water-right for a long time, you did not persist in opposing this grant? We left it in the hands of the Warden, and he said we were powerless.

122. *By the Chairman.*—The impression given to the Council by the Warden was that the Minister of Lands had said that the Council could take no further action in the matter? Yes.

123. *By Mr. Dumaresq.*—You have used the water for cattle? Yes.

124. Do you of your own knowledge know that up to a late day that water has been used by the public? Yes.

125. Without let or hindrance from the holder of the land? Yes.

126. How long ago? Within the last three or four years Mr. Jacobs, living at Howrah, came there to water his cattle without let or hindrance. In the dry summers we had always to bring the cattle there for water.

127. You never asked permission? No.

128. And did anyone ever object? No.

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#### LEVENTHORPE HALL, called and examined.

129. *By Mr. Propsting.*—What is your name? Leventhorpe Hall.

130. You are Chief Draughtsman in the Survey Office? Yes.

131. Do you produce the plans relating to the Second Lagoon on the Wentworth Estate? Yes, and the original location order of Wm. Jacobs.

132. Was the lagoon included in the original location order? No.

133. *By the Chairman.*—Have you a letter from Mr. Counsel, dated July 24th, 1891, in connection with this case? Yes, I produce it.

134. Have you any survey previous to 1851, or any evidence to show that the lagoon was fenced prior to that date? No, there is no survey prior to 1851 that shows a fence.

135. Is this plan dated 1814 the only evidence you have before the survey in 1851? Yes.

136. The survey of 1851 shows a fence on the southern side of the lagoon? Yes.

137. And the previous one shows none? Yes.

138. Is there any survey after 1851? Yes, there is one in 1854 that shows a fence on the southern side of the lagoon.

139. And after 1854? There is no other survey until we come to 1884.

140. *By Mr. Propsting.*—You are sure the lagoon was not included in the location order? Not in the original location order: there are two location orders in the claim, Jacobs' of 30 acres, and Nicholls' of 60 acres. Nicholls' is not accurately defined. There is no length given for the western side.

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WEDNESDAY, NOVEMBER 1, 1893.

CHARLES H. GRANT, *called and examined.*

141. *By Mr. Propsting.*—What is your name? Charles H. Grant.
142. And you reside in Hobart, and have property situated at Bellerive? Yes.
143. Do you know the Second Lagoon at Bellerive, in regard to which this Select Committee is enquiring? I do.
144. Is that lagoon a fresh or salt water one? It is a fresh water lagoon.
145. And is it of any use to the neighbours living about? I don't know whether it is much used at present, but it is calculated to be of immense benefit as a storage place for water during dry seasons. At present in a rainy season I don't think it is required so much.
146. Do you consider the reservation of that lagoon of any importance to the residents? It is a matter of supreme importance. It is the only storage place for water that I know of in the district, except a small quarry, which is private property, and might be enclosed at any time.
147. Is Bellerive situated advantageously or otherwise in regard to getting fresh water for stock and so on? It is very badly situated.
148. Do you think that lagoon of value to the residents for other purposes than watering stock? It would be of great value as a storage place for water in times of water famine, and also as a place of recreation. On Sunday last the water was quite drinkable, although it was discoloured a little, as all surface water is that has run over peaty soil. There is no doubt that it would be an admirable site, in case of the extension of Bellerive, for a place of public recreation, as it could be planted, and the lagoon made into a fresh-water lake.
149. *By Mr. Bennett.*—What is the distance of the lagoon from Bellerive? It is about a mile or a mile and a half, close to the Clarence Road.
150. *By the Chairman.*—When you speak of the water as drinkable, did you taste it yourself? Yes.
151. And it was quite drinkable? Yes. My children also drank some of it. I am speaking, of course, simply of Sunday last. I don't know what the water would be like after a long dry season.
152. You speak of a quarry in the neighbourhood. Do you know whether that quarry is public or private property? I believe it to be private property, and can be closed up at any moment.
153. Do you know if a rent is charged for the use of the water in that quarry? No, I cannot say.
154. Can you now get to that lagoon, except from the sea, without trespassing? No; we have to go over a small piece of private property. There was a right-of-way originally from the Clarence Road, but it seems to have gone into disuse. Many persons who have resided in the neighbourhood for a long time say they remember a right-of-way from the road.
155. Do you know whether it has been recommended that a public road should be made to the lagoon from the Clarence Road? No.
156. *By Mr. Machenzie.*—You say the lagoon is accessible from the sea; is there an esplanade along the beach? There is a high beach by which the people can get along.
157. And can they have access to the lagoon? Yes, from that side. There is a special reserve made about the middle of the lagoon.
158. How long have you known the locality? I have only known that particular locality within the last twelve months.
159. You have no personal knowledge of whether the public have access to that lagoon or not? No, except what I have heard from old residents.

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ALFRED THOMAS PILLINGER, *called and examined.*

160. *By the Chairman.*—What is your name? Alfred Thomas Pillinger.
161. Were you Minister of Lands between 1888 and 1892? Yes.
162. Did you during that time become aware that a certain caveat had been lodged against the granting of the Second Lagoon at Bellerive, in the Wentworth estate? Yes.
163. Did you give instructions for the withdrawal of that caveat? Yes.
164. Were these instructions written or oral? Written, I believe.
165. Who, in the first instance, asked you to take any action as regards the withdrawal of that caveat? Mr. Featherstone.
166. Do you remember about what date it was when Mr. Featherstone first interviewed you on the subject? No, I don't remember the date.
167. Do you remember what reasons were advanced to induce you to withdraw the caveat? Mr. Featherstone asked me either to withdraw the caveat or proceed with it; that is what I understood in the first instance.
168. He gave you the impression that his desire was to bring the matter to a conclusion? Yes.
169. And ultimately you gave instructions for the withdrawal of the caveat? I referred Mr. Featherstone to the Crown Law Officers, as it was a legal question. He consulted the Crown Law Officers, and

then informed me that it was a matter entirely within my own discretion. I believe I then consulted Mr. Clark, the Attorney-General, either at an interview or by a memorandum, and he informed me that the matter was entirely within my own discretion. I then proceeded to deal with the matter.

170. You did not withdraw the caveat upon entering into the merits of the case, or upon any distinct advice given you by the Attorney-General or otherwise, except the general advice conveyed to you that you were at liberty to act at your own discretion? Yes; I understood the matter was free from any legal technicalities whatever.

171. That idea was conveyed to you by Mr. Featherstone? By Mr. Clark. It was first conveyed to me by Mr. Featherstone informing me that the matter was at the discretion of the Lands Department, and confirmed by interviews or correspondence—I don't recollect which—with Mr. Clark.

172. There is no letter or any information in the Attorney-General's office as regards this lagoon subsequent to 1890: it is probable, therefore, that whatever information you got from the Attorney-General to the effect that you could act upon your discretion was derived orally? Yes.

173. *By Mr. Propsting.*—Did you take any opportunity to test the opinion of the local residents as regards the alienation of this lagoon? Mr. Featherstone informed me that there was no objection on the part of the local authorities. I requested him to have a meeting with them, which he informed me he had had, and there was no objection whatever to the caveat being withdrawn.

174. *By the Chairman.*—Mr. Chipman, the Warden of Clarence, says in his evidence that he had an interview with you. Do you remember any such interview? No, I cannot say I do.

175. He says you informed him that the matter was entirely at the discretion of the Lands Department, whereupon he withdrew, having no longer any *locus standi*? I don't remember any such interview, but if Mr. Chipman says so, of course it is correct. I told Mr. Featherstone to have a meeting with the local authorities, and I believe he had one, because I fancy I remember having seen it in the press.

176. *By Mr. Propsting.*—But Mr. Chipman, as Warden, says that the local authorities were not consulted? But there was a meeting called. I am almost certain that I saw it advertised, and subsequently reported, in the *Tasmanian News*, where it stated that all objections were withdrawn.

177. Personally you did not consult the local bodies, but relied on Mr. Featherstone's representations? Yes. He was the Parliamentary representative of the district, and I had some confidence in relying on what he stated.

178. Mr. Chipman says that he suggested that an esplanade should be interchanged for the lagoon: do you remember that? No; but it is likely that, following Mr. Chipman's interview, I instructed Mr. Counsel to report on the matter. It was his report that ultimately decided me in withdrawing the caveat, as he said that the lagoon was useless to anyone but the adjoining proprietors. It appeared to me to be a matter of very little public importance.

179. *By the Chairman.*—You took no steps beyond this to ascertain if it was in actual use by the residents? No; I relied upon Mr. Counsel's statement that it would be useless to the inhabitants, and of course I considered the lengthened occupation. I enquired into the matter, and found one location order was dated 1813, and others 1823, and, as far as I knew, it had been fenced in from the earliest date. It was claimed to have been fenced in from the earliest time, and in a chart of 1851 I saw the fence delineated. As there was no public interest concerned I therefore withdrew the caveat.

180. Did you have before you an application of Mr. Featherstone, dated 8th April, 1884, in which he himself claims possession, because he believes there had been a fence round that lagoon for upwards of forty years? I was not dealing with the matter from a technical point of view.

181. And you ultimately gave permission for the withdrawal of that caveat, as you believed you could act upon your own discretion? Yes, just so.

182. Apart from any legal aspect of the question? Yes, apart from legal technicalities altogether.

183. *By Mr. Machenzie.*—Did Mr. Featherstone buy the lagoon? He bought the property surrounding it, and I understood it included the lagoon in the early days.

184. And the Crown received no return for giving up the right to the lagoon? None at all. Mr. Featherstone told me that the caveat had been lodged for ten years.

APPENDIX A.

*Survey Office, 9 January, 1869.*

SIR,

I AM instructed by the Government to put you in the occupation of that portion of the Second Lagoon in the Parish of Clarence which abuts upon the property occupied by you for the same purpose and on the same conditions as you were authorised to hold the strip of Crown Land between the said Lagoon and the beach by letter dated the 6th of January instant.

I am,

Sir,

Your obedient Servant,

J. E. CALDER, *Commissioner of Crown Lands.*

CHAPMAN WISE, *Esq., Bellerive.*

APPENDIX B.

*Survey Office, 6th January, 1869.*

SIR,

I AM instructed by the Government to place you in occupation of the Crown land described within, for the purpose of protecting the fish in the lagoon abutting upon the same from the wholesale destruction which has for some time past been carried on there.

You will be good enough to understand that this authority will be cancelled whenever it may be deemed necessary to do so.

I am, Sir,

Your obedient Servant,

E. W. BOOTHMAN, *Deputy Commissioner Crown Lands.*

CHAPMAN WISE, *Esq., Bellerive.*

COUNTY OF MONMOUTH. PARISH OF CLARENCE.

THE strip of Crown land between the Second Lagoon and the beach, and bounded by a grant to W. G. Sams and a location to J. Nichols.

APPENDIX C.

*Survey Department, 24th July, 1891.*

SIR,

I HAVE the honor to lay before you the following Report on the correspondence relating to the Second Lagoon, situated near the Town of Bellerive.

Letter A.

In August, 1846, an objection appears to have been taken to the action of the occupier of land adjoining the lagoon in cutting a drain through the sand-bank lying between the lagoon and the Derwent, the object being to let off some of the water in order to prevent his crops from being encroached upon by the water. This is testified to by the surveyor sent to inspect the reported damage done by the occupier of land adjoining the lagoon, such occupier having been served with a notice to repair the damage. (Letter B.)

Letter B.

Letter 73.

On 30th May, 1851, the question was asked whether the Second Lagoon was Crown or private property. The Surveyor-General replied that it was the property of the Crown, and that the same was being interfered with by one who owned the adjoining land. The Chief Police Magistrate was appealed to, to cause a discontinuance of the annoyance complained of, and a Report obtained from the Police Magistrate at Kangaroo Point, dated June 12th, 1851. In this Report it is stated that a grievous injury would be done to the people of the immediate district if the water of the lagoon were drained into the sea, as apparently had been contemplated.

Letter 6112,

R. Power.

On June 15th, 1851, the Surveyor-General addressed a memo. to the Colonial Secretary, advising the propriety of taking measures to enforce the authority of the Crown in removing the annoyances complained of, or to refrain from any interference in the matter.

Letter 6112,

P. Fraser.

The advice of the Crown Solicitor was then sought, and under date June 25th, 1851, he advised that, assuming that the lagoon in question was the property of the Crown, as stated to be by the Surveyor-General (See letter 73), the course to be adopted should be to lay an information for trespass in order to preserve the rights of the Crown, and to protect the interests of the neighbouring inhabitants; but he considered the question was of sufficient importance to be submitted to the Attorney-General as involving the question of the issue of a writ of intrusion, it being claimed that the lagoon was portion of the original grant. The Lieutenant-Governor approved, and the question was submitted accordingly.

No. 7186.

Letter 6112,

A. C. Storer.

The Solicitor-General advised that the matter was one of ordinary trespass on Crown property, and recommended that the wrong-doer be warned to desist from trespassing under pain of legal proceedings; in case of neglect, action to be taken. The Attorney-General concurred.

Letter 6112,

P. Fraser.

Before any steps were taken against the trespasser, the Colonial Secretary wrote asking on what grounds the Surveyor-General had asserted that the Lagoon was the property of the Crown.

The Surveyor-General stated in reply (Letter No. 6112) dated 21/7/51, that there was a special reservation of the lagoon from the fact the adjoining grants had been issued described as bounded by the lagoon. The adjoining locations were also described in the Register being similarly bounded. This

statement appears to have satisfied the Law Officers of the Crown, for upon their advice a notice under the hand of the Surveyor-General was served upon the trespasser before described to desist from cutting the drain or from in any way interfering with the natural water of lagoon, &c. The notice was served August 14th, 1851.

The occupier of Wentworth estate, after having received the notice above mentioned, denied that he had been trespassing on the lagoon, with the result that a surveyor was sent to inspect the same and report upon the alleged encroachment. No. 73,  
J. Nicholson.

The surveyor appointed to report on the dispute stated that the action of the owner of Wentworth estate in preventing persons from crossing his property to obtain water from the lagoon seemed a reasonable one, and that the contention of the complainants, that there was a right-of-way to the lagoon, could find no confirmation in the replies to questions put by him to a former occupier of the estate, as well as to the then present owner. The report of the surveyor sustains the statement of the owner of the estate adjoining the lagoon, that no damage was being done, unless the drains that had been cut were outside of the boundary of the estate, but there was no proof that they were not on the estate, owing to the difficulty of determining the edge of the lagoon. Report dated the 20th September, 1851. J. E. Calder,  
20/9/51.

Nothing further appears to have transpired from the papers handed to me—18 in all, from 1851 till July, 1884—when a survey was effected of the Wentworth estate in connection with a claim for a grant through the Supreme Court; a claim to the Second Lagoon having been lodged by the purchaser of the estate, who asked that the said lagoon be granted to him on the ground of 40 years' possession, and that no public or private rights would be interfered with. Letter C.

The Deputy Surveyor-General then instructed a surveyor to visit the land and report upon the claim to the lagoon. In this Report it is stated that the land surveyed by him, and shown as abutting on the lagoon, seemed in his judgment to be that to which the applicant for grant was entitled. Letter D.

The Honorable the Minister of Lands refused the application for a grant of the lagoon, and the land abutting thereon, as shown on the original plan was, it was considered, the land for which a grant might be claimed. Letter E.

The opinion of the Honorable the Attorney-General, dated March 24th, 1890, is to the effect that the lagoon in question was reserved to the public, but that it would require a 60 years' uninterrupted possession to entitle the occupier to a grant from the Crown. He strongly advised the agreement of a right-of-way through the estate to the lagoon, in order that the rights of the Crown might not be impaired. The Deputy Surveyor-General pointed out the desirableness of acquiring the right-of-way consequent on the scarcity of water at Bellerive, and suggested that the matter might be referred to Public Works Department. Letter F.

The Honorable the Minister of Lands and Works states that half the lagoon and land adjoining were claimed by Kynaston L. Murray, through the Lands' Titles Department, in September, 1884; and afterwards through the Supreme Court, in 1885. That grant has not yet issued, and that the papers in connection with the claim are in the possession of the Supreme Court. (Letter of 18th March, 1890.) Letter F.

In a letter dated 17th June, 1891, the present owner of the Wentworth estate asks that the caveat to application for grant of the property be withdrawn, he having been informed that it is not the intention of the Government to pursue such caveat in respect to the piece of land in question. Letter G,  
17/6/91.

*Remarks.*—This somewhat lengthy correspondence undoubtedly establishes the fact that the lagoon in question is the property of the Crown, and that the claimant has no legal right to a grant of the same by virtue of his lengthened occupation thereof. The lagoon is, however, utterly useless to anyone except the adjoining proprietors under the existing circumstances, there being no right-of-way leading to it except over the sand-bank from the estuary of the Derwent. Nor does it appear that any demand has been made by the local inhabitants for a practicable approach to be provided to the said lagoon.

E. COUNSEL, Deputy Surveyor-General,  
Hobart, 26/7/91.

*The Honorable the Minister of Lands and Works, Hobart.*

#### Re SECOND LAGOON, BELLERIVE.

THIS Memo. has just come to hand:—"As the population increases, there would be grave objections to the Lagoon as a reservoir from a sanitary point of view, except for stock."

E. COUNSEL, Deputy Surveyor-General.  
25-8-91.

*The Hon. the Minister of Lands, Hobart.*

#### APPENDIX D.

*Stone Buildings, Hobart, 8th April, 1884.*

SIR,

I HAVE the honor to forward you a tracing of a property near Bellerive, known as Wentworth, recently purchased by me.

Fenced in with this property is what is looked upon as a lagoon (coloured blue in the tracing), which in reality is only low-lying land on which drainage water collects, with a high sandbank on the southern side of it.

From enquiries made at the Survey Office, I have ascertained that this lagoon has never been sold by the Government, and is therefore still vested in the Crown, subject to the occupation by me and those under whom I claim for the past 40 years and upwards, as I am credibly informed that the fence from A. to B., B. to C., and C. to D. was erected some 45 years ago.

On the following grounds I have the honor to request that you will give the necessary instructions to be given for a grant of the lagoon to be issued to me; namely:—

1. Possession of upwards 40 years.
2. No private or public rights would be interfered with.
3. The lagoon could be drained, and if drained would be available for purchase.
4. If it were not fenced in with my property, and consequently available to the public, there is no road to it except from the sea.

I also have the honor to apply to you for permission to purchase the remainder of the lagoon which lies between Josephs' land and the sea.

An early reply will oblige.

I have, &c.

C. E. FEATHERSTONE.

*The Hon. N. J. BROWN, M.H.A.,  
Minister of Lands.*

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#### APPENDIX E.

*Crown Lands Office, Hobart, 18th March, 1890.*

#### MEMO.

IN accordance with the request of the Hon. the Attorney-General, papers referring to the lagoon near Bellerive are forwarded herewith. There are 17 papers referring to the encroachment on lagoon by Mr. Nicholson, a former owner, many years ago.

Also forwarded a copy of letter of Mr. Featherstone, a report of Mr. Counsel, and copy of the Minister's decision in 1884.

The land and half the lagoon were claimed for grant by Mr. Kynaston L. Murray, through Lands' Titles Office in September, 1884, and afterwards through the Supreme Court in 1885, description and tracing being forwarded from this office on 26th February, 1885. Grant has not issued yet. Papers connected with the claim are in possession of the Supreme Court.

ALFRED T. PILLINGER, *Minister of Lands and Works.*

*The Hon. the Attorney-General.*

The scarcity of water in the Town of Bellerive renders it most desirable that a road should be acquired by the Government to this lagoon. Probably a suitable road to which the least exception would be taken by the adjoining proprietors, could be taken along the east boundary of the Wentworth estate, between the Clarence Road and the lagoon. It may, however, be thought desirable to acquire access from the above road to the beach, in which case it will probably be taken along and from the east end of the lagoon. I would suggest that the matter be referred to the Public Works to deal with.

E. COUNSEL, *D.S.G.*  
28. 3. 90.

I am of opinion that the present position of the Crown in regard to the lagoon in question is very unsatisfactory. There can be no doubt that the lagoon has been deliberately reserved for public use, but the Crown has alienated all the land around it except the sandbank which separates it from the River Derwent, and there is now no access to the lagoon for the public except by the river. The consequence is that if Mr. Featherstone is allowed to occupy the lagoon uninterruptedly until the occupation of himself and his predecessors extends to a period of sixty years, the Crown will lose all claim to the lagoon. To prevent this a road should be obtained without delay leading from the main road through Clarence Plains to the lagoon.

A. INGLIS-CLARK.  
24th March, 1890.