

(No. 98.)



1879.

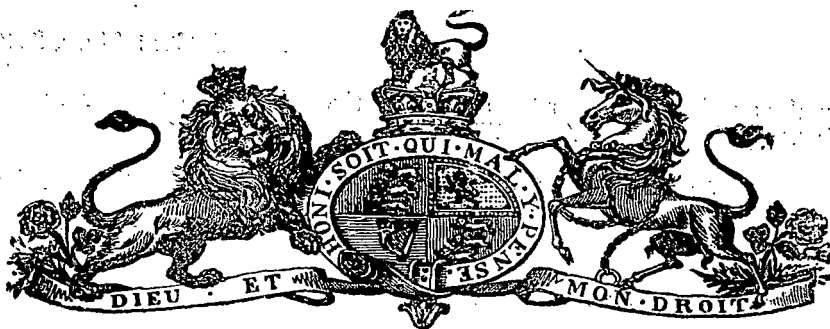
T A S M A N I A

H O U S E O F A S S E M B L Y .

CRAWFORD AND SHARP :

CORRESPONDENCE CONNECTED WITH PURCHASE OF LAND.

Laid upon the Table by the Minister of Lands, and ordered by the House to be printed, February 3, 1880.



Leslie, 10th April, 1877.

SIR,

I BEG to make application to purchase on credit the following Lot of Crown Land under the 24th Section of "The Waste Lands Act, 1870."

County of Buckingham, Parish of Longley, 25 acres. Fronting on the Huon Road and opposite land purchased by A. Crawford.

I am, &c.

A. CRAWFORD.

The Commissioner of Crown Lands.

Hobart Town, 27th July, 1877.

DEAR SIR,

YOUR letter of the 18th instant to Mr. John Sharp has been handed by that gentleman to me; and in reply I beg to state that the land mentioned therein as leased from the Government is my land, and that I claim the benefit of the Act in respect of the fences put up:

I am, &c.

R. J. LUCAS per WILLIAM F. TURNER.

JAMES COMBES, Esq., Huon Road.

MEMORANDUM.

THE land alluded to on the other side is part of John Sharp's leasehold from the crown adjoining the Huon Road, a portion of which has lately been surveyed for purchase by Andrew Crawford. What Mr. Lucas can have to do with it I know not, except as a tenant to Sharp.

It would appear from the letter that they intend claiming something for the fencing.

JAMES COMBES.
26. 11. 77.

Will Mr. Combes give an estimate of the value of Fencing, in case a claim should be made.

H. J. HULL.
28th November, 1877.

JAMES COMBES, Huon Road.

ESTIMATED value of Fencing erected on Land leased by J. Sharp from the Crown, and subsequently selected for Purchase by Mr. Andrew Crawford. Parish Longley.

	£	s.	d.
To 84 rods of post and 4-rail fence on boundary line adjoining Bartels' lot, at 3s. 6d. per rod, £14 14s. 0d. (a moiety)	7	7	0
To 53½ rods dog-leg fence erected adjoining on the New Huon Road, at 1s. 6d. per rod	4	0	3
	£11	7	3

JAMES COMBES, Government District Surveyor.

Huon Road, 30th November, 1877.

MR. WINDSOR.

BEFORE A. Crawford's survey can be acted upon he must pay this amount for fencing.

H. J. H.
6. 12. 77.

Hobart Town, 25th April, 1879.

SIR,

I BEG to make application to purchase on credit the following Lot of Crown Land under the 24th Section of "The Waste Lands Act, 1870."

County of Buckingham, Parish of Longley, about 80 acres. Fronting on the Huon Road adjoining lots purchased by August Bartels and John Sharp.

I am, &c.

J. SHARP.

The Commissioner of Crown Lands.

Huon Road, 17th May, 1879.

SIR,

I BEG to make application to purchase on credit the following Lot of Crown Land under the 24th Section of "The Waste Lands Act, 1870."

County of Buckingham, Parish of Longley, 25 acres. Fronting on the Main Road, and west of and adjoining August Bartels.

I am, &c.

A. CRAWFORD.

The Commissioner of Crown Lands.

MEMO.

WILL the Solicitor-General be good enough to advise the Minister of Lands and Works whether he can legally dispose of land under the 24th Section of 34 Victoria, No. 10, that has been gazetted open to selection under the 38th Section of that Act?

H. J. HULL, *Lands and Works Office.*
June 9, 1879.

The Solicitor-General.

THE facts, as I to-day understand from Mr. Hull, are as follows:—Twenty-five acres, formerly applied for by Mr. Crawford and afterwards forfeited, were put up for sale by auction and not sold, and afterwards were gazetted for sale pursuant to Sec. 38 of "The Waste Lands Act." Thereafter, on the 25th April last, Mr. Sharp made application to purchase the lot referred to—that is to say, he applied for 80 acres, including therein the 25 acres. If then the Government had a right to sell the 25 acres as in case of forfeiture, which I must assume, I am of opinion that Mr. Sharp has become entitled to require the completion of his purchase, both of the 25 acres which were put up for sale under Section 38, and of the residue of the block of 80 acres which he was entitled to purchase under Section 24. Mr. Crawford's application to purchase the same 25 acres was posterior to Mr. Sharp's, and is therefore too late.

R. P. ADAMS.
June 28, 1879.

The Minister of Lands and Works.

MEMO.

THE following question is submitted for the opinion of the Honorable the Attorney-General:—Has the Commissioner of Crown Lands power to add (in addition to the amount of deposit to be paid by a selector under Section 24, 34 Vict. No. 10) any sum he may think fit to impose for improvements made on the land which had been brought to his knowledge by the survey of the land under selection? For example—Suppose A selects 100 acres of land under Section 24, and when surveyed the surveyor reports improvements on the land in buildings and fences of the value of £100—has the Commissioner power to refuse to accept deposit on the purchase of the land unless the selector takes the improvements at a valuation fixed by the Commissioner?

C. O'REILLY.
25 Aug., 1879.

The Honorable the Attorney-General.

MEMO.

ANDREW Crawford made application, under 24th Section of 34 Vict. No. 10, to purchase 25 acres of land in the Parish of Longley on 10th April, 1877, and on the same day paid Survey fee. The land at that time formed portion of a block under License to R. J. Lucas.

The application was granted, and the land was surveyed on the 27th June, 1877. On the 22nd January, 1878, he was called upon to pay deposit on the purchase, as provided by Schedule of the Act, amounting to 16s. 8d.; and in addition to which he was required to pay £11 7s. 3d., being the value of fencing on the land as estimated by Surveyor.

On the 26th September, 1878, in consequence of the non-payment of deposit, which had been tendered but refused unless the £11 7s. 3d. was also paid, I cancelled Crawford's application, and had the land offered for sale by public auction on the 27th March, 1879, at the upset price of £30, being £1 an acre for the land, and £5 for survey and grant fee. The land not being sold, on the 8th April, 1879, it was advertised as open for private selection under the 38th Section of the Act at the upset price of £30.

On the 25th April, 1879, John Sharp applied to purchase "about 80 acres, Parish of Longley, fronting on the Huon Road, adjoining Lots purchased by August Bartels and John Sharp," under the 24th Section of "The Waste Lands Act," and which 80 acres included the 25 acres offered for sale under the 38th section, which I was not aware of at the time the application was received.

On the 17th May, 1879, Andrew Crawford called at the office, and, after an interview with the Minister of Lands and myself, he was directed to apply under the 38th section of the Act for the land; but in having application filled up by the clerk he made it under the 24th section, which when brought to me, knowing that he was directed to apply under the 38th section, I corrected in pencil.

The applications of both were referred to the Chief Draftsman to be charted and dealt with; and on the 17th May, 1879, Mr. Windsor reports to me as follows:—

Sharp's application.—"Noted, but there will only be about 60 acres available, as 25 acres have been applied for by A. Crawford under 38th section."

Crawford's application.—"Yes; Lot 7307, 25 acres, upset price £30; but the land must be sold subject to a right of access to the water, represented as necessary by the Board of Education for public school purposes."

Sharp was called upon to pay Survey fee on the 19th May, and Crawford's application was held over until the road to water was excluded from area of lot.

When Sharp called to pay his Survey fee, I told him he could not have the 80 acres, but only the 60; and that Crawford had applied for the 25 acres originally surveyed for him under the 38th section. Sharp objected to pay for the 60 acres, and hence the dispute.

Crawford presses his claim on the following grounds:—

1st. That the land was first applied for by him under the 24th section, and that he was prepared to pay and did tender deposit, but which was refused unless he paid £11 7s. 3d. for improvements in fencing.

2nd. That he now has on the land buildings of the value of £150.

I respectfully submit that it appears to me inconsistent with the provisions of the Act and Schedule attached to sell land under the 24th Section that is advertised for selection under the 38th Section. The modes of payment are different, and the price of the land is different. The 25 acres under the 24th Section would be valued at £25, and the purchaser would be required to pay 16s. 8d. deposit; but, under the 38th Section, the price of the land is £30, and the purchaser would have to pay £5 deposit.

Sharp wants to purchase 80 acres of land for £80, but 25 acres have already been valued and offered for sale for £30; so that if he bought these 80 acres he should give £85 for them, which cannot be taken under Section 24.

H. J. HULL.
29th August, 1879.

THE Deputy Commissioner of Crown Lands will be good enough to put up to auction the 25 acres, Parish of Longley, County of Buckingham, originally surveyed for A. Crawford, at next Land Sale, with value of improvements to be added to deposit.

C. O'REILLY.
30. 8. '79.

Hobart Town, 8th September, 1879.

SIR,

I BEG to make application to purchase on credit the following Lot of Crown Land under the 38th Section of "The Waste Lands Act, 1880 :"—

County of Buckingham, Parish of Longley, Acres 25. Lot 7307, fronting on the New Huon Road adjoining and west of 180 acres purchased by August Bartels.

I am, &c.

J. SHARP.

The Commissioner of Crown Lands.

Lands and Works Office, 9th September, 1879.

SIR,

IN reply to your application to purchase Lot 7307, 25 acres, Parish of Longley, under the 38th Section of "The Waste Lands Act," I beg to inform you that the land is not available for private selection, but will be submitted for sale by public auction in the sale to take place in October next at the Alliance Rooms, Hobart Town.

I have, &c.

H. J. HULL, *Deputy Commissioner Crown Lands.*

J. SHARP, *Esq., Collins-street, Hobart Town.*

ESTIMATE Value of Improvements made by Andrew Crawford since surveyed for him in July, 1877.—(25 acres Lot, Parish Longley.)

Slabbed stable and barn, 43 ft. x 20 ft. 6 in. (unfinished)	} £30
Frame of cow-house partly erected, 23 ft. x 20 ft. 6 in.	
Lean-to shed, back stable, 25 ft. x 6 ft.	
Ringing trees, grubbing scrub, and sowing grass on 4 acres.	

JAMES COMBES, *Government District Surveyor,*
September 1st, 1879.

[BY ELECTRIC TELEGRAPH.]

Hobart Town, 3. 9. 79.

To Mr. J. HELMER, *Port Cygnet.*

PLEASE value improvements on A. Crawford's selection, Huon Track, Parish Longley, on your way home.

H. J. HULL, *Hobart.*

MEMO.

THE improvements on A. Crawford's selection, Huon Track, Parish of Longley, I value at £50.

JOHN HELMER.

H. J. HULL, *Esq., Deputy Commissioner Crown Lands.*

15. 9. 79.

MR. Helmer's valuation approved, and to be added to the upset price.

C. O'REILLY.
16. 9. 79.

Trafalgar Place, Hobart Town, 3rd September, 1879.

SIR,

I HAVE the honor to inform you that I have received instructions from Mr. Sharp to apply for the allotment to him of Lot 7307, 25 acres, in the Parish of Longley, under the 38th Section of "The Waste Lands Act." In your letter to Mr. Sharp of the 9th ultimo you state that the land is not available for private selection, but will be submitted for sale by public auction, &c. My client informs me that the land was some time since exposed for sale, but not disposed of; was subsequently included in a list of lands available for private purchase at the upset price; that he and Mr. A. Crawford made applications under the 24th Section of the Act, the one for the whole, the other for part of the land referred to; that the applications were held informal and invalid, and

that he, Mr. Sharp, subsequently made an application in proper form and under the proper Section for the 25 acres. From the facts laid before me by Mr. Sharp I take it that all necessary legal conditions precedent to the application required by the provisions of the 38th Section had happened; and, as no other application for the said land was made at the same time, Mr. Sharp is entitled to the land, as the language of the Section is mandatory, and the Commissioner has no option in the matter. An early answer will oblige.

I have, &c.

R. J. LUCAS.

H. J. HULL, Esq., Deputy Commissioner of Crown Lands.

Lands and Works Office, 7th October, 1879.

SIR,

I HAVE the honor to acknowledge the receipt of your letter, dated the 3rd September, and received on the 4th October, on behalf of Mr. J. Sharp, reviving his application to purchase Lot 7307, 25 acres, in the Parish of Longley, under the 38th Section of "The Waste Lands Act," and to inform you in reply, that the Commissioner of Crown Lands having decided to submit the lot again to public auction before the receipt of Mr. Sharp's application, the land was not available, and he was so informed on the 9th September last.

I have, &c.,

H. J. HULL,

Deputy Commissioner of Crown Lands.

R. J. LUCAS, Esq., Macquarie-street.

Re SHARP'S APPLICATION.

Trafalgar-place, Hobart Town, 15th October, 1879.

SIR,

I HAVE the honor to acknowledge the receipt of your letter of 7th inst., which I have referred to Mr. Sharp, who informs me that the 25 acres referred to in his application were exposed for sale by auction in April last and bought in, was subsequently included in a list of unsold lands purchased at the upset price and duly notified. On the 8th September last my client made his application under the 38th Section, the application having been made within a year from the last auction land sale, and after the expiration of the requisite 14 days from the first publication of the requisite notice, and before the land had been again advertised for sale. The terms of the 38th Section have been fully complied with in every particular by my client, and I take it that the statute rights of the applicant are clear and unquestionable. The fact, as stated in your letter of the 7th September, of the Commissioner "having decided to submit the lot again to public auction before the receipt of Mr. Sharp's application," does not deprive him of that right, nor can the Commissioner, by any decision to submit the lot again to public auction, affect his claim.

In conclusion, I have to inform you that Mr. Sharp has instructed me to notify his intention to oppose the sale of the lot, and to take such proceedings as he may be advised to enforce his legal right to the land in question.

I have, &c.

H. J. HULL, Esq., Deputy Commissioner of Crown Lands.

R. J. LUCAS.

In the absence of the Honorable the Minister of Lands and Works, I beg to transmit these papers to the Honorable the Attorney-General for advice.

The Hon. the Attorney-General.

H. J. HULL.

15 Oct. 1879.

I AM of opinion that the Commissioner cannot refuse to complete the sale to Mr. Sharp, he, apparently, having complied with all the requirements of the 38th Section of the "Waste Lands Act," under which his application of Sept. 8, 1879, is preferred.

J. S. DODDS.

17 Nov. 1879.

Lands and Works Office, Hobart Town, 19th November, 1879.

MEMO.

In reference to the case of Crawford and Sharp, to which the attention of the Honorable the Attorney-General has been drawn by the Memo. of the Deputy Commissioner of Crown Lands of the 29th August, and also 15th October, 1879, submitted in connection with letter signed R. J. Lucas of same date, the Minister of Lands and Works desires to have the Attorney-General's Opinion on the following points, and which appear to have been overlooked; namely,—

The original applicant, Andrew Crawford, applied for the 25 acres now in dispute under 24th Section of Waste Lands Act, 34 Vict. No. 10: his application was approved, the survey fee paid, and the land duly surveyed. When applied to for payment of the legal deposit, 16s. 8d., he was also requested to pay £11 7s. 3d., being the value of fencing on the land as estimated by Mr. Surveyor Combes. The former amount (16s. 8d.) he tendered on two occasions at this Office and at the Treasury, but was refused. It appears to the Minister of Lands contrary to all previous modes of disposing of land under the 24th Section of the said Act, as on all former occasions any improvements on land selected were paid for out of the Land Fund, as provided for by Section 79; and also contrary to the law and policy of "The Waste Lands Act." The question now arises,—was it lawful to impose such a condition on a selector under the 24th Section of 34 Vict. No. 10? and, if not, how can any subsequent proceeding of the Commissioner of Crown Lands vitiate the claim of Crawford, the original applicant, who was always prepared to comply with the conditions prescribed by law and the invariable usages and practices observed by its administrators?

C. O'REILLY, *Minister of Lands and Works.*

The Honorable the Attorney-General.

OPINION.

Attorney-General's Office, 24th November, 1879.

My Opinion of the 17th instant on this matter was given after a consideration of the whole case as submitted by the Deputy Commissioner of Crown Lands, the points to which my attention is now specially directed not having been overlooked. It appears to me to be now unnecessary as regards this case to consider whether the demand made on Crawford for value of improvements can be justified, for he seems to have entirely abandoned his former application and preferred another; and the contract of sale (if entered into at all) must have been liable to forfeiture long since for want of compliance with other requirements of the Act, independently of the question of the payment of the deposit of 16s. 8d. Indeed, the application has been treated as a lapsed one, and the land has been dealt with under the 38th Section; and it is therefore difficult to conceive how Crawford's original application could now be revived. If it were so revived, all the intermediate proceedings of the Lands Office would be stultified.

It is perfectly true that Section 79 of the Act provides for the payment out of the Land Fund of compensation (but to a Licensee) for improvements, and that appears to me to be a strong reason why the Crown should endeavour to obtain the repayment of the amount of such compensation from the selector; for the Legislature never could have intended that improved land, in respect of which the Crown has had to pay compensation, should be sold as unimproved land under the 24th Section. It is possible that the amount paid as compensation might far exceed the purchase money of a lot selected under this section. Take the present case, the area being 25 acres and the improvements valued at £50. Had the land been under licence, the Crown, on resumption, would have had to pay the licensee £50; and if the contention of the Honorable the Minister of Lands and Works be correct, would have to sell it to a selector under the 24th Section for £25.

Viewing the case in this way, I think the statement that the usual practice is contrary to the law and policy of "The Waste Lands Act" should not be hastily made.

It is to be regretted that the land in question was not re-advertised for sale under the 38th Section, and a value which included the improvement put upon it.

J. S. DODDS.