Land Policy of the Colony of Vancouver Island
1849 - 1866

By Leonard A. Wrinch
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by
LEONARD A. WRINCH
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LAND POLICY OF THE COLONY OF VANCOUVER ISLAND

1849 -- 1866

by

Leonard A. Wrinch

A Thesis submitted for

the degree of

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"All experience is an arch where through
Gleams that untravelled world whose margin fades
Forever and forever as I move."

These glorious words of Ulysses might well have been written of one particular branch of human experience--historical research. I think that no one, privileged as I have been to glance into a small section of the history of our province, could fail to be impressed by the enormous and untouched field before him. In the following venture into this great field I have benefited by the able piloting of Dr. W.N. Sage, an experienced navigator in these uncharted seas. To his inspiration and to the technical training gained in Professor Soward's seminar, a great measure of the worth of this thesis must be accorded.

---L.A.W.
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Chapter I
THE GRANT OF VANCOUVER ISLAND
August 1846 --- January 1848

A policy must be laid down by some authority. The first authority on Vancouver Island was the Hudson's Bay Company which on January 13th, 1849, received a charter to "establish upon the said island a settlement or settlements of resident colonists emigrants from the United Kingdoms of Great Britain and Ireland or from other our Dominions."¹ This grant has been severely criticised by Bancroft and later historians but the conditions under which the grant was made do much to justify it.

The Oregon treaty had just shown England that prior rights of discovery were to be of little avail against actual occupation and settlement in any dispute with the nation whose symbol for the period may well be the covered wagon and whose most popular catchword was "Manifest Destiny". The presence of the emigrant was sure to count in the long run.² The aristocrats of the

¹ R.M. Martin "Hudson's Bay Territories and Vancouver's Island" London 1849 pp.168-73 for text of a trial draft submitted to Hudson's Bay Company for amendment. This form contained no mention of any rewards for the Company.

² Miss E.E. Dye in "McLaughlin and Old Oregon" Chicago
Colonial Office realized that British settlement was necessary. But this was no Oregon to be reached by poor emigrants in wagon trails. The Cordillera in Canada had only been traversed by canoe and pack-horse. Settlement obviously must come by sea, a long and expensive journey not to be undertaken by laborers. Hence capital was courted. As in the 17th century chartered companies were to take up the extension of the Empire. Wakefield was busy in the Antipodes, investigating the possibilities of systematic colonization—why not such a plan for the north? One was presented by Mr. James Edward Fitzgerald. Unfortunately his plan did not meet with the approval of the Colonial Office and when the grant was made to the Hudson's Bay Company, he worked off his disappointment by the publication of "Vancouver's Island and the Hudson's Bay Company" wherein he brings out all the faults.

2.(cont.) A.C. McClure and Co. 1902 p.284, tells the following anecdote, expressive of the feelings of the American settlers in Oregon. A 14 year old lad climbed on board the Hudson's Bay Company London ship explaining that he "wanted to see the ship as I never saw one before to recollect". The captain asked him where he had come from and why he had come to Oregon and in the youth's inclusive reply stood the spirit of the emigrants. "We've come from Missouri, we've come from Missouri across the Rocky Mountains. We've come to settle Oregon and rule this country."
ascribable to the Hudson's Bay Company both as traders and colonizers. Judge Howay says that his proposition was "generous" but "as he could give no guarantee, such as that offered by a corporation of such high standing in the financial world as the Hudson's Bay Company, the ministry could not in fairness listen to his proposals." Let us see what these proposals were.

He proposed a joint stock company whose capital should be subscribed "in shares of £100 each, to be expended in the conveyance of labor to the Colony." These laborers were to be young married men, between the ages of eighteen and thirty-five and temporary rules were to be set up whereby the fair sex should not be in a minority among the emigrants. Arrived at the island, one half of these laborers were to work on the land of the shareholders and the other half were to be set up...

3. This work is quoted extensively by Bancroft who did not know or wisely neglected to state the personal reasons behind Fitzgerald's bias.

4. Howay and Scholfield. "British Columbia" J.S.Clarke Vancouver p.504 He continues--"Fitzgerald apparently soured by his defeat and feeling that he had been injured, bitterly attacked the Company in a work entitled "Vancouver's Island and the Hudson's Bay Company" which created some stir at the time."

5. Fitzgerald to Hawes. London. 9 Jan. 1847
as artisans. Six laborers (twelve or more counting families) were to be brought out for each hundred acres—the amount allotted to each purchaser of three £100 shares. A board of thirteen directors, choosing one of their number chairman, were to be elected by the shareholders from amongst the colonists holders of at least ten shares and resident on the Island. This board was to "settle the mode of allotting land, the quantity to be allotted per share (subject to change), the granting of title to the land, the surveying of land and the treatment of natives for the possession of the soil."

Should the colony prosper and settlements be built up, Fitzgerald had plans for a colonial government—a governor appointed by the Crown, a council of heads of departments appointed by the governor and removable only by three consecutive votes of an assembly chosen only from among shareholders and possessors of £100 bona fide property.

This was the "generous proposal under which Vancouver Island was to be settled. It's author

6. He chooses the proportion by comparing Ireland, four fifths agricultural and in great misery, with England, one third agricultural and very prosperous. The compromise was utopian. Wages for the laborers are not laid down definitely but left to the working of economic laws and a regulation of land prices.
suggested it as a suitable field for the capital of small Irish landholders who might wish to exchange the struggle with recalcitrant tenants for the less familiar struggle of colonization. Though its form is of the closest monopoly, vesting economic control in a plutocracy with an investment of at least £1000, and voting power in a landholder class, he protests rather too forcibly that the "proposal is not in the nature of an attractive speculation, offering prospects of rapid or exorbitant returns. It contemplates rather an ameliorated condition to many, than a monopoly of wealth by a few. Whilst appealing to that self interest which stimulates to exertion in the mass of those who engage in it, it will demand some sacrifice on the part of many of those who still stand in the position of leaders in the colony."

So much for Fitzgerald's proposal. The Colonial Office also had news of possible Mormon immigration especially by way of Kootenay. George Simpson spoke of commercial relations with them in the North West and feared "they may direct their steps to Vancouver's Island from whence it would be quite impossible for us, even if assisted by the natives to dislodge them . . . it is said they are favorably disposed to British interests so that they might hereafter become useful partisans in the event of difficulties with the United States."

He refers to a letter from Grant at Fort Hall of 31 December 1847, "by which it would appear that the Mormons
have been in communication with Her Majesty's Government with a view to settling on Vancouver's Island and that they consider their application as having been favorably received. 7 In 1846 Mormon converts in England, fearing the civil opposition that had driven their co-religionists from Nauvoo sent a petition to His Majesty and a copy thereof to every Member of Parliament, suggesting that the Latter Day Saints might occupy Vancouver Island where they could be near the main colony in Utah and yet under the protection of British . . . .

7. See report of Simpson to the Colonial Office, from Norway House, 24 June 1848. Grant's letter is lost. Search of the indexes of the London "Times" and of Hansard for 1847-50 produced no report of this petition but the fear of Mormon pressure appears in the Colonial correspondence with Downing Street (hereinafter D.St.) and Hudson's Bay House (hereinafter H.B.H.) for some time. See Douglas to Smith, Vancouver Island (hereinafter V.I.) 31 March 1858 wherein H.B.H. recommended asking for military support if they came "in overpowering numbers."; also, Douglas to Labouchere, V.I., 6 April 1856, acknowledging Labouchere's advice of 1Feb.1858, to receive single immigrant families but to enforce the laws against polygamy and to refuse mass immigration.
law. Until Salt Lake city was chosen as the permanent abiding place of the faithful, Vancouver Island was held out to the converts in Great Britain as the one "gathering point of the Saints from the islands and distant portions of the earth."^8

The memorial mentioned the timely threat of possible American aggression unless the island were settled by British subjects. "While the United States do manifest such a strong inclination, not only to extend and enlarge their possessions in the west, but also to people them, will not your Majesty look well to British interests in those regions, and adopt timely precautionary measures to maintain a balance of power in that quarter which, in the opinion of your memorialists, is destined at no very distant period to participate largely in the China trade". To help them build up a British centre they asked, for each man over 21 years old "who may become an actual settler, a grant of land corresponding in extent to grants proposed to be allowed by the United States Government, to its subjects who become actual settlers in the extreme Western Territories, . . . .

8. W.A. Linn "The Story of the Mormons" New York 1923
Most of the details of the following plan and the correspondence are taken from an essay by J.B. Monroe, "Mormon Colonization Scheme for Vancouver Island" presented to the B.C. Historical Society at Victoria 2 Mar 1932
namely from 320 to 640 acres." The petitioners also asked for "a small military force for protection of emigrants against savage invaders against that coast" and "employment in improving the harbors of those countries or in erecting posts of defence; or if this be inexpedient to furnish them provisions and means of subsistence until they can produce them from the soil." In order to provide an inducement to the Crown, they offered to take up the odd sections in each township, upon clearing of which the even sections would acquire a higher value "that would go far to recompense the British government for their present expenditure" and they would guarantee twenty thousand settlers "as soon as vessels can be found to convey them."

One member, Dr. Bowering, was sufficiently interested to send a query as to the financing of this project. In the reply, the requests for grants of land was repeated and a further request put forward for "a free passage, or its equivalent, £10, . . . for each grown up person, to be repaid within six years." It was

9. Extract from the petition as published in the "Millenial Star", Mormon organ, 28 Nov.1846, v.8, p.142 Linn, op.cit., p.412 states that the petition had nearly 13000 signatures.

10. Bowering to Brown, House of Commons, 8 Feb.1847 and Brown to Bowering, Liverpool, 11 Feb.1847. This and
further stated that a ship load of emigrants had been sent to California "where they are solicited to remain. The Americans offer many inducements to settlers in California but our friends would prefer the protection of the British flag." This may have the "Brooklyn" expedition which reached California in July of 1846. The above reference to the flag recalls the legend that when Brannan found Americans in charge at San Francisco he exclaimed "There is that damned flag again".

Unfortunately these demands were too high to receive serious consideration. Beyond acknowledging the receipt of the petition the Colonial Office was silent and Bowering's interest faded when confronted with what was obviously "pauper immigration" which required not only a free passage but maintenance after arrival in the new colony. On the other hand "Voluntary and self-supported emigration I should be glad to see encouraged towards Oregon and Vancouver Island and I would expect any such emigrants as had pecuniary resources at their disposal would meet with encouragement from the government."12

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10 (cont.) following correspondence was printed in the "Millenial Star" of 1 Mar. 1847, v. 9, pp74-5. The Mormons had been sending converts from England to Nauvoo but in no great numbers. Between 1840-1846 about 3700 arrived. Linn. op. cit. p.233
Two other offers were made to the Colonial Office which entailed colonization but both placing it in a position subsidiary to another industry. A Mr. Shillingham presented "A Proposal To Form a Company for the purpose of Working the Coal and Establishing A Company In Vancouver's Island" (sic.) which stated that "it will also be the interest of the Company that some sound scheme of general colonization should be adopted by which labor may be continually supplied" and promised to call a meeting, unfortunately unrecorded, to consider the best way to achieve this end. 14

Later in the summer a Mr. Enderby, having heard that the Hudson's Bay Company were being urged to colonize Vancouver Island suggested that the Hudson's Bay Company and the Puget Sound Agricultural Company who had lots of capital should join a whaling scheme which he had earlier failed to float using a base in the Falkland Islands. Vancouver Island was to be saved.

11. Keppel to Brown. D.St. 9 Feb.1847
13. Shillingham to the Colonial Office, received London 28 Feb.1848. This company, especially the coal mining branch was strongly backed by Mr. Fitzgerald whose ardor was not cooled by the rejection of his own proposals.
from oblivion by being made the northern base of operations.

"It is impossible to imagine how Vancouver’s Island, considering its remote position and great distance from the Mother Country, can be of any commercial advantage, or be made to hold out any inducement to parties to locate themselves there as settlers, unless by being adapted to the purpose of a Whaling station."\textsuperscript{15} The Company had not ignored the idea of a whaling station. When Forts Taku and McLoughlin were abandoned in 1843 in favor of Fort Victoria, Finlayson notes as follows "This course was adopted in consequence of instruction being sent from Red River settlement in Hudson’s Bay (sic) then the headquarters of Governor Sir George Simpson, to establish a depot for whalers on the south point of Vancouver’s Island, as there were many whalers then visiting the North Pacific."\textsuperscript{16}

Even after the grant was made Messrs. Parrot and Walmesly presented a prospectus for the "Vancouver’s Island Steam Sawing Mill and Agricultural Company", an ephemeral venture which leaves us only the following pleasing advice for emigration policy—"Married persons will besought to counterbalance any desire which might arise of their leaving the Colony for the neighboring ..."

15. Enderby to Grey. London. 25 Aug.1848
16. Roderick Finlayson "History of Vancouver Island"
Bancroft Collection.
Gold district." Petticoat government was to be the rule on Vancouver Island.

The project of the Hudson's Bay Company was guarded but on the whole generous. When it had been established that the Hudson's Bay Company could hold land in the North West outside of the trade area which they held by charter, Pelly informed Grey that "If Her Majesty's Government should be of the opinion that the territory in question would be more conveniently governed and colonized (as far as that may be practicable) through the Hudson's Bay Company, the Company are willing to undertake it and will be ready to receive a grant of all the territories belonging to the Crown which are situated to the north and west of Rupert's Land." 18

17. enclosed in Le Marchand to Merivale Board of Trade 15 Jun.1850
18. Pelly to Grey H.B.H. 5 Mar. 1847 The actual text of the legal decision has not been obtained but in Pelly's letter to Grey, 22 Jan.1847, he states that he encloses a decision "whether the H.B.Co. have power under their charter to hold lands within Her Majesty's dominions westward of the Rocky Mountains" and in the reply (Howes to Pelly, D.St., 2 Feb.1847) it is stated that having considered this verdict Lord Grey "is now ready to receive and consider the draft of such a grant as the Company would desire to receive of lands belonging
This was rather more than the Colonial Office was ready to give and during the subsequent exchange of notes, the limitation of the grant to Vancouver Island was advanced so firmly by Downing Street that Pelly was forced to retire to the position that the mainland had been included only from fear of the consequences of settlement "under a different authority and want of unity in the ruling power"; the Company "really caring little whether it was so or not" since the original area "though its addition to the grant gives the latter a formidable appearance in point of extent . . . is really little better than a barren waste." The island grant was however, thankfully received though any suggestion of remuneration was at first shied at. "If the government is to be clogged with any payment to the Mother Country, the Company would be under the necessity of declining it." Though refusing to act as treasurer or accountant, the Company was willing to undertake the sale of land and the expenditure of the money for colonization and development gratis. "The security of their property from American aggression will be the advantage they expect to derive from the contemplated plan." 19

This was accepted by the Colonial Office and a trial draft sent to Hudson Bay House contained the following reasons.

18. (cont) to the British Crown in the Oregon Territory.

19. Pelly to Grey. H.B.H. #9, 4 Mar. 1848. The position
for the grant.  

"Whereas it would conduce greatly to the maintenance of peace, justice and good order and the advancement of colonization and the promotion and encouragement of trade and commerce and also to the protection and welfare of the native Indians" Vancouver Island was granted to the Company. The terms of sale were put in later; compensation for the Company was introduced at the suggestion of the Colonial Office, to abate the public fear of the possible consequences of getting something for nothing, and finally a mutually satisfactory form was drawn up and received official confirmation on 13 January, 1849. There it was stated that the Company "shall dispose of the land there as may be necessary for the purposes of colonization . . . and shall with a view to the aforesaid purpose dispose of all land hereby granted to them at a reasonable price, except so much thereof as may be required for public purposes . . . and that all monies (land sales, mineral royalties and licenses after the deduction of 10% from the gross proceeds) shall be applied towards the colonization and improvement of the Island . . . and that the said Company shall once in every two years at least certify . . . 19. (cont) of D.St. was stated in Hawes to Pelly, D.St. 25 Feb.1848 20. Acceptance in Hawes to Pelly, D.St., 13 Mar.1848
what colonists... shall have settled in the said Island and what land shall have been disposed of as aforesaid.*22

Criticism of the measure was inevitable. Fitzgerald's pen supplied material for charges against the Hudson's Bay Company and Martin's sincere but less skilful defence was almost overwhelmed.23 It was reasonably urged that a fur-trading company would oppose settlement as against the interests of their trade but this did not affect the pressing motive for the grant. Grey in the Lords briefly stated the case of the Colonial Office with a clarity that showed the futility of criticism. "If the island were not speedily settled it would soon be over-run by irregular squatters; its settlement would occasion expense so that if it were accomplished at all; it must be accomplished by some public company or private individuals; private individuals did not possess sufficient funds but the Company did."24

20.(cont) The trial draft (see n.1) had no reference to remuneration for the Company. A copy is printed in Martin, op.cit. pp.168-73.

21. Hawes to Pelly. D.St. 4 Sep.1848

22. Returns To Three Addresses of the Honorable House of Commons, England. ordered printed 7 Mar.1849

23. Martin published his work first and Fitzgerald took his statements one by one and refuted or contradicted
The Company at once took the first logical step toward colonization. They issued a set of regulations for the granting of land and within six days of the receipt of the signed grant they had published these regulations in the London "Times" with the footing that "Applications for land or further information may be addressed to A. Barclay, Esq., Secretary to the Hudson's Bay Company, 4 Fenchurch St., London." 25 The conditions for taking up land were briefly as follows:

1. No purchase of less than 20 acres.

2. Price to be £1 per acre, payable in London. 26

23. (cont) them. He was much more plausible and is certainly more popular with historians seeking a stick with which to beat the Hudson's Bay Company.

24. Grey in the House of Lords. 29 Jun.1849

25. The date of publication was 27 Jan.1849. A copy of the Resolutions may be found in Beggs "British Columbia" and in the Report of the B.C. Archives for 1913.

26. The Hudson's Bay Company (hereinafter H.B.Co.) is usually given full responsibility for this price but this should be shared by Lord Grey as the following excerpt from Colville to Pakington, H.B.H., 1 Dec.1852, shows.

"(During negotiations) the price of land to settlers . . . 20 s per acre . . . was submitted to and approved by him (Grey)." Even more forcible is the statement of Ellice before the Select Committee of 1857 (see Report
3. Purchasers were to pay their own passage out.

4. In the case of all purchases of more than 20 acres, 5 single men or 3 married couples were to be brought out for each hundred acres purchased. Ten percent (10%) of the land in each section was to be set aside for a minister and his passage and the passage of enough laborers to work his allotment were provided.27 Another 10% was to be set aside for roads, sites for church and graveyard, schools and other public purposes.

There is no record that Hudson's Bay House in Fenchurch Street was stormed by eager land seekers but neither is there proof that the advertisement was only to make a nominal showing which would refute later charges of neglect. Queries for information form a large folder in the Colonial Office correspondence from such diverse sources as Mecklenburg and Peru.28 In Lima the California lure had turned the eyes of progressive British citizens northwards but the tales of the social conditions which were later to bring into existence

26.(cont) #585l) "Lord Grey insisted that the Company should not sell land under a pound an acre."

27. The laborers may be some whose passage out was charged to the account of colonization when the bill was presented. v.infra.

28. The Mecklenburg letter was of later date--Cordua to Barclay, Mecklenburg, 31 Oct.1856
lynch law and the vigilantes, deterred these serious adventurers from settlement in the actual regions of the discoveries. But Vancouver Island was comparatively close to wealthy California and there they might settle under the British flag and "by the working of coal and agricultural land, they might realize ready profit from the expected commerce with California and obtain a permanent settlement with an excellent market for their produce."

However it was rumored that this land was ruled by the Hudson's Bay Company so the British charge d'affaires, W. Pitt Adams, wrote to Palmerston urging him not to lose this chance to procure settlers so near to the island. Palmerstone passed the idea on to Grey at the Colonial Office and the latter sent via the Foreign Office an assurance that the island would be under the Imperial Government and administered by a governor appointed by the Crown. The rights of the Hudson's Bay Company were stated to be only with regard to land holding and a copy of the above prospectus was enclosed. Before the wheels of state had rolled this message out from London, Grey added the further suggestion that Adams might "receive on the behalf of the Hudson's Bay Company, payments for Grants of Land . . . .

29. Adams to Palmerston, Lima, 12 Jan.1849
30. Merivale to Eddisbury, D.St. 27 Mar.1849
and give certificates of purchase to Emigrants desirous of settling in Vancouver's Island.*31 Adams did not consider that this gave him enough authority so he reported that in the absence of further information "I am unable to take any further steps towards the Execution of Your Lordship's Instructions for receiving on behalf of the Hudson's Bay Company payments for grants of land in Vancouver's Island and can do no more than to communicate to intended settlers the information with which Your Lordship has furnished me.32

This communication could not be followed farther from lack of the complete files, but it serves as a good illustration of how widely the advertisements of the Hudson's Bay Company were disseminated.

31. Accepted and detailed in Eddisbury to Merivale, Foreign Office, 14 Apr. 1849. The proposal was made in Hawes to Pelly, D.St., 31 Mar. 1849, and this latter despatch went to Lima with other papers from the Foreign Office.

32. Adams to Palmerston, Lima, 12 Jul. 1849. Barclay to Adams, H.B.H., 16 May 1849 which probably went out with the Foreign Office papers mentioned above, gave some general information--climate, timber and fishing--and promised more.
Chapter II
POLICY UNDER BLANSHARD
January 1849 --- August 1851

Having seen in the last chapter how the grant was obtained, we now turn to the early administration under its rules. James Douglas who was in charge of the Hudson’s Bay Company establishments at Fort Victoria became the agent for government by the Company on Vancouver Island. In this position it was his duty "to make and keep registers of all sub-grants of land, to superintend the sales of timber, minerals, etc., and to keep an account of the same on behalf of the Company."¹

It is usual at this point in a history of British Columbia to half the narrative and give a description of James Douglas to set up a bias which will color his deeds with the shade preferred by the author. Since the development of the character of Douglas is not one of the primary aims of this thesis, this step will be omitted and the reader will be allowed to form his own estimate from the speeches and actions of Douglas as hereafter recorded.

The civil authority for the island was to be represented by a governor appointed by the Crown. The

Hudson's Bay Company had hoped to get the job for a company man, preferably Douglas, but desisted from fear of "the jealousy of some parties and the interested motives of others." An earlier project for a military governor had been rejected in February of 1849 since the Company did not feel like guaranteeing a salary "unless the British government paid it or we discover a gold mine... . An allotment of land, and people taken out free of expense to cultivate his portion, and without any payment for the land (as it would be considered for public purposes) is all I can hold out to any Governor."3

The governor finally sent out was Mr. Richard Blanshard, a barrister, with some executive experience in the West Indies and India. He received no salary but believed that he was to be granted a thousand acres of land. In his evidence presented before the Select Committee in 1857 he stated that Sir John Pelly had ...

2. Pelly to Douglas, H.B.H., 4 Aug. 1849. The Colonial Office probably refused Douglas to show that the Company's authority was merely economic and that political sovereignty was still in the hands of D.St. See the reply to Adams, c.1, n.30, p.13, Merivale to Eddisbury, 27 Mar. 1849
3. Pelly to Tulloch, H.B.H., 2 Feb. 1849. Note the similarity of these terms with those Blanshard claimed had been promised to him.
promised him this land with permission to "select such portions as he (I) thought would turn out valuable" with the expectation "that they would sell advantageously." Unfortunately he had no written record of this promise and the Company obviously had other ideas about the area. In August of 1849 Douglas was authorized to grant the governor one thousand acres "in his public capacity" and in a spot chosen outside the Reserves of the Hudson's Bay Company and the Puget Sound Agricultural Company. During his sojourn on the island, His Excellency registered a claim on one hundred acres of land in Metchosin district but since "no payment was received or delivery made", Douglas referred the matter to Hudson's Bay House and judging from Blanshard's positive statements that he had received no remuneration whatever the claim must have been disallowed.

Douglas' first task was to extinguish the Indian title to the land granted by the Crown. In this policy he had definite instructions from Hudson's Bay House. The natives were to be considered "the rightful possessors of such land only as they occupied ....

No despatch from Barclay referring to this matter has been found.
by cultivation or had houses built on it in 1846.⁷ Such lands as were needed were to be purchased and an average compensation of £1 per head of the tribe was to be paid. This compensation need not be paid for wild land as this was taken to belong to the Crown. "Natives will be confirmed in the possession of their lands as long as they occupy and cultivate them themselves but will not be allowed to sell or dispose of them to any private person." All land sales were to be made by the Company.

Douglas negotiated with chiefs and warriors on a different basis. He proposed to the Songees who claimed "the district of Victoria from Gordon Head (an Ano) Strait (Haro) to Point Albert on the Strait of De Fuca "that they sell" the whole of their lands with the exception of village sites and enclosed fields for a certain remuneration, to be paid at once to each member of the tribe."⁸ Douglas had suggested a system of annual payments but the Songees preferred an immediate potlatch so each of the "one hundred twenty two men or heads of families" received "a quantity of goods equal to seventeen shillings sterling and total sum disbursed . . . .

8. All the details of these first transactions are taken from Douglas to Barclay, Ft. Victoria, 16 May 1850.
on this purchase (was) £103.14.0 sterling at Dept. (sic) price. Further bargaining resulted in the acquisition of the lands of the Clallum tribe "lying between Albert Point and Soke Inlet" for £30.0.8 and those of the Soke tribe between Soke Inlet and Point Sherungham for £16.8.8.

There were offers from other tribes but Douglas refused to purchase more until he could take possession and thus avoid later claims brought forward by savages with conveniently short memories or claims based on absence during the negotiations. Indeed he might well rest content for he had obtained "the seacoast and the interior from Gordon Head on the Ano (Haro) Strait to Point Gonzales and from thence running west along the Strait de Fuca to Point Sherungham a distance of about forty-four miles" for an outlay of £150.3.4. In all cases the Indians were not to be disturbed from their villages and enclosed farms, had full fishing rights and could hunt over unoccupied land.

In February of the next year, Blanshard sent . . .

9. It might have been wiser to accept the advice of H.B.H. and take the villages. The problem of the reserves which led to so much later friction in Victoria and Cowichan would thus have been avoided. Douglas, however, had not the power even if he had the inclination to slaughter the Indians or drive them into the interior.
a despatch from Vancouver Island to Lord Grey criticising the behavior of the Company. Among other items he stated that in rendering their accounts, the officials entered the goods paid to the Indians at a price "three times as great as they are in the habit of paying them at, for their own work." The charge appears to be true since the sum in their accounts was $2,130 about three times the £150.3.4 that Douglas gives above as the value of goods paid. This Blanshard considered as evidence of evil designs on the part of the Company.

"At this rate they may continue for the next three years, paying away a few goods to Indians to extinguish their claims to the soil and by attaching an ideal value to their goods, they will at the end of that time (i.e. first five years when contract could be cancelled by Downing Street) appear as creditors to the Colony to an overwhelming amount, so that the foundation will be laid for a Colonial debt which will forever prove a burden."

When this charge was passed on to Hudson's Bay House Pelly replied sharply that "as Mr. Blanshard has resigned the office of Governor of Vancouver's Island, the Hudson's Bay Company do not consider it necessary to make any remarks on the Extracts referred to, nor indeed do they think it falls within the province of the Governor to enquire into the transactions between the Company and . . . .

10. Blanshard to Grey, V.I., 12 Feb. 1851
the natives with respect to the extinctions of the titles
of the latter to their lands."11 The Colonial Office
however did not wish to enter into an extended quarrel
and while asserting that Blanshard was justified in
checking any account that might be presented to the
House of Commons, smoothed the matter over by a very
conciliatory letter.12

Blanshard's chief complaint was that there
no independent settlers coming out. During the summer
of 1850 "no settlers or emigrants have arrived."13 In
November he reported high prices in the Hudson's Bay
Company stores—"as there are no independent settlers
every requisite for existence must be obtained from them."14
and in the spring of 1851 a Canadian squatter at Rocky
Point is noted as the only independent settler.15 In
the same despatch is noted the advent of Chancellor
who came from California to enquire about prospects
for land but who went away rather discouraged by the

11. Pelly to Grey, H.B.H., 12 Jun.1851
12. Hawes to Pelly, D.St., 26 Jun.1851
behind this complaint was that lack of settlers meant
absence of any revenue from which a governor's salary
might be paid.
14. Blanshard to Grey, V.I., 18 Nov.1850
15. Same to same, ibid.  3 Feb.1851
situation. By June of 1851 a few settlers were arriving. Blanshard stated that "with the exception of the Muir family there are not five persons in the island except the Hudson's Bay Company's servants" but there were at least six Muirs which doubles the total. This lack of independent settlers certainly seemed the verification of the fears of those who had opposed the grants to the Hudson's Bay Company, but

16. In giving evidence before the Select Committee Blanshard refused to state that Chancellor's report had hurt emigration from California. Chancellor did take up land. See Pelly to Grey, 12 Jun. 1851. Among the sales listed was 20 acres to Elisha Chancellor.

17. Blanshard to Grey, V.I., 10 Jun. 1851

18. cp. Fitzgerald "Examination of the Charter and Proceedings of the Hudson's Bay Company with reference to the grant of Vancouver's Island". London. Trelawney Saunders. 1849. "There will be every possible discouragement to emigrants of the better class to settle in a colony where a large part of the country will be peopled only by the lowest order of workmen--where they may have to compete with the capital of a wealthy Company and that Company not only their rival in trade but at the same time possessed of the supreme power and of political influence in the Colony. Certainly it does not seem very likely that, as long as there are other
there were not lacking either excuses or apologists for the Company. Grey informed Blanshard that he had "reason to know that it is a subject of much regret to the Hudson's Bay Company that the colonization of Vancouver's Island has not been attended with the success at first anticipated for that enterprise. The attractions of California have probably contributed with other causes to draw Emigrants away from Vancouver's Island but it is to be hoped that this emigration will eventually be beneficial to Vancouver's Island in creating a demand for its productions and making it a desirable place for settlers." Moreover the Company's avowed policy had been against the mass immigration of farm-seekers and adventurers which had been to them the most objectionable feature of American expansions. In December of 1849 Barclay had stated the Company's theory of colonization quite clearly in a despatch to Douglas. "The object of every sound system of colonization should be, not to re-organize Society on a new basis, which is simply absurd, but to transfer to the new country whatever is most valuable and most approved in the institu-

18.(cont) colonies to go to, any man with money in his pocket and brains in his head, will go to Vancouver's Island." He feared that the H.B.Co. would grant all the good land to the P.S.A.Co. and go in for farming on a big scale.
tions of the old, so that society may as far as possible, consist of the same classes, united together by the same ties and having the same relative duties to perform in one country as in the other.  

Care was to be taken that all things were ready before settlers arrived, even if that meant holding back settlement for a while. "It is not likely that many settlers will be offering who can pay down £1 per acre (and none other will be accepted) but at all events care will be taken that you are not exposed to inconvenience by any large number until there is time to accumulate and store up a sufficient stock of provisions. This preparation inferred laborers who should do the rough work of clearing brush and building rough cabins. Pelly at one time considered the use of "a whole company" of army pensioners, but this plan was dropped. English laborers were therefore brought out under five-year contracts at a salary of £17 per year, and with the prospect of receiving twenty acre grants at the expiration.

19. Grey to Blanshard, D.St., 23 Oct. 1851

21. Same to same, ibid. 8 Feb. 1850
22. Pelly to Tulloch, H.B.H., 2 Feb. 1849
23. Clemens account in Moresby to Parker, 7 Jul. 1851. See also Pelly to Grey, H.B.H., 14 Jan. 1852 for salary and conditions. v. infra. n. 41
of their contract if this had been "fulfilled faithfully and industriously." Before he left, Blanshard reported the arrival of one hundred twenty people on the ship "Tory", one hundred eighteen of whom were servants of the Hudson's Bay Company, and Moresby stated that "the greater part (were) servants of the Hudson's Bay Company intended for the preparation of farms under an agreement with individuals on the reserved districts of Victoria and Esquimalt." It is generally assumed that all these men worked for the Company, but in the colonization account presented in 1856 was an item for the expense of bringing out three hundred fifty settlers at a cost of £50 each (passage and one year's wages) to fill the gap left by the absence of voluntary immigrants.


25. Blanshard to Grey, V.I., 10 Jun., 1851

26. Moresby to Parker at sea (Lat. 40° 52' N, Long. 128° 35' W) 7 Jul. 1851. He continues stating the terms of agreement—"The Company erecting the buildings, supplying the tools, seed and live stock; the young stock reared to be equally divided and a moiety of outlay being chargeable to the settlers—such is the spirit of the contract as related to me by a Mr. McAuley." Terms indicate the P.S.A.C.
These three hundred fifty were not required for the services of the Hudson's Bay Company.  

Records of the land actually sold are not systematic. Blanshard's report of February, 1851, notes only the sale of one hundred acres to Captain Grant and refers to an agreement between Tod and Douglas over one hundred acres of land whereon the former had done some ploughing, but owing to title difficulties was considering its abandonment. In April Douglas reported to Barclay that J.S. Helmcken had applied for twenty acres in the Fur Trade Reserve, which being situated on the coast could be sold "without prejudice to the Reserve". The sale was held up for the consideration of the Committee as was also the request of John Muir, Sr. for twenty acres but in the latter case only till it was certified that Muir's account with the Company would stand the strain of such a purchase. The most detailed report for the period is in a despatch from Hudson's Bay House to Downing Street, 12 June 1851, compiled from...

27. Shepherd to Labourchere, H.B.H., 16 Sep.1856. Barclay to Douglas, H.B.H., 3 May 1850 stated that "efficient laborers will be sent out for settlers in the country at the cost of their passage" but no further reference was found.

28. Blanshard to Grey, V.I., 3 Feb.1851

29. Douglas to Barclay, Ft. Victoria, 28 Apr.1851
left reports which must have Vancouver Island not later than March of that year. 30 This gives the following sales at £1 per acre:

<table>
<thead>
<tr>
<th>Acres</th>
<th>To</th>
</tr>
</thead>
<tbody>
<tr>
<td>100</td>
<td>W.E. Grant</td>
</tr>
<tr>
<td>320</td>
<td>James Douglas</td>
</tr>
<tr>
<td>100</td>
<td>John Tod</td>
</tr>
<tr>
<td>300</td>
<td>J.M. Yale</td>
</tr>
<tr>
<td>200</td>
<td>James Cooper</td>
</tr>
<tr>
<td>100</td>
<td>R. Finlayson</td>
</tr>
<tr>
<td>70</td>
<td>J. Nesbit</td>
</tr>
<tr>
<td>20</td>
<td>Elisha Chancellor</td>
</tr>
<tr>
<td>200</td>
<td>W. McNeil</td>
</tr>
</tbody>
</table>

In his despatch last mentioned Blanshard stated that in the area reserved by the Hudson's Bay Company and Puget Sound Agricultural Company the officials of the Companies were subdividing and "attempting to sell small lots to their own servants at greatly advanced rates." 31

The above sales were not of reserved land for Helmcken

30. Pelly to Grey, H.B.R., 12 Jun. 1851. Even using the Panama route, three months would be a good passage to England in 1850.

31. Blanshard to Grey, V.I., 3 Feb. 1851. A later despatch, same to same of 25 February stated that one or two had taken plots "at a very high rate; others who are willing to settle are deterred by the price."
is not mentioned and the price is £1 per acre, certainly not "greatly advanced." By November 1852, however, Hudson's Bay House reported that from the 3084 acres of the Fur Trade Reserve they had "sold portions of this land to some of their retired servants who have settled themselves upon it."  

Another criticism of the Hudson's Bay Company's policy was that their prices for provisions were so high as to make the early expenses of settlement practically prohibitive. Blanshard stated that it cost him £1100 a year and from all accounts he did not fare sumptuously. Attempts to break the practical monopoly were checked in various ways. The agents who were to ship supplies to Blanshard via the Company's boat were promised that they should have due notice of the ships as they sailed and the next thing they generally heard was that the ships had gone. That happened on two occasions and as the ships do not go very often missing two ships running was rather a serious thing to a man who depended for his supplies upon England. Cooper brought out an iron steamer from England and after assembling it at Victoria started a coasting trade.

32. Colville to Pakington, H.B.H., 24 Nov.1852. Accounts of the Colony to 27 Apr.1852
33. Report of the Select Committee. Evidence #5162
34. Report of the Select Committee. Evidence #5179
purchasing potatoes and cranberries from the Indians for the California market. The Company shut this trade off by charging him exorbitant prices for the barrels and then purchasing all the available cranberries at a price which drove this adventurous free trader out of business.  

Blanshard complained that settlers in general and himself in particular were hurt by the several rates which the Company maintained in its stores. "I think they had three several prices in the Hudson's Bay Company stores at that time, one for the superior officers of the Company, another for the servants and third which they called their cash price at which they sold the goods to settlers... The officers received their goods at thirty-three per cent increase upon the cost price, the servants and inferior officers varying from fifty to one hundred and the cash price was regulated by the price in California as nearly as they could do it... generally about three hundred per cent over the cost price." When a similar complaint was made by navy officials at Vancouver Island Douglas blamed neglect of agriculture and the increase in population of Oregon...

35. This story told in Bancroft "British Columbia" pp.255-6 quoting from Cooper's "Maritime Matters" M.S.pp.5-6

and California. He suggested that since the naval officers complained that the price of Hudson's Bay Company rum (best quality and "we make it a point to charge nothing over one hundred per cent on the cost price in our sales to them") the Committee had better sent out some of poorer quality which could be sold at a more suitable price. He further explained that the low rate to servants was in part to make up for the low wages paid. Specie was scarce in the colony. Cooper estimated the total amount at from £10,000 to £15,000.

He further stated that all wages were taken out in goods and any balance was finally paid by a bill upon London which is comparatively useless to a laboring man, as he cannot negotiate it, except perhaps at a great sacrifice. The running accounts received no interest but the deposits, at least those of the officers, received three or four per cent and this is confirmed by Simpson's evidence before the Committee which stated that "the Company allow the interest of the day, I think it is four per cent to any parties who may choose to leave their money in their hands, or they will pay . . . ."

37. Douglas to Barclay, Ft. Victoria, 1 Feb. 1852
38. Cooper to Ellice; Report of Select Committee. Evidence #3814
39. Same to same. ibid. Evidence #3975.
their balances as they accrue from year to year as they desire."40

A pitiful picture of the life of the Hudson's Bay Company's servants is given in Clemens' narrative. "The wages too, £17 annually for men--this miserable pittance does, must revert into the purse of the Company for the indispensables of life. Every article of clothing, implement, utensil, and food must be obtained from the Fort and placed to the account of these poor people and the price is even withheld (?) or some punishment inflicted if asked for. But nothing can be got less than half a dollar--a little thread, half a dollar, and so on,"41 though this charge was refuted . . .

40. Simpson to Kinnaird. Report of Select Committee. 26 Feb.1857. The reference was to the Red River area but the policy of the H.B.Co. was uniform throughout its territory.

41. Clemens, Richard, in Moresby to Parker, 7 Jul.1851. The reports of the Company of course give a contrasting picture. "They are lodged, fed, supplied with implements and conveyed out and home at the Company's expense. They almost all remit money to their families during the term of their contracts and many of them when they quit the service have considerable balances to receive." Pelly to Grey, H.B.H., 14 Jan.1852.
by study of Hudson's Bay Company accounts wherein were many items of 2d and 4d, etc.

At this point it would be well to say something of the Puget Sound Agricultural Company on Vancouver Island. The organization and policy is detailed fully in appendix A and such policy of course was continued on Vancouver Island. There was much confusion of the employees of the Companies. Blanshard stated that the Puget Sound Agricultural Company was "the Hudson's Bay Company under another name for the Association has no real existence." Grey politely corrected him. "I observe that you have fallen into a mistake with regard to the Puget Sound Agricultural Company. That Company, though its shares are held by persons more or less connected with the Hudson's Bay Company is a distinct and separate association having a capital of its own and possessing rights which are recognized by the Treaty of 1846 between Britain and the United States." But Blanshard gave a most convincing list of evidence to offset the technical separation. He noted that the Puget Sound Agricultural Company had no other official than Douglas.

42. Blanshard to Grey, V.I., 15 Jun.1850
43. Grey to Blanshard, D.St., 27 Oct.1851
45. See Appendix A re government and Douglas and Ogden to Simpson, Ft. Vancouver, 19 Mar.1847—"The Governor and Deputy-Governor and the governor-in-chief of their (H.B.Co)
that the Hudson's Bay Company laborers worked on both farms and had built a sawmill on Puget Sound Agricultural Company land. Stock was moved from one farm to another, considered the property of the farm on which it grazed and was tended by Hudson's Bay Company shepherds "none of whom acknowledge any service to the P.S.Co's (sic), the greater part being ignorant of its very name." His further statement that the Puget Sound Agricultural Company people got the servants rate at the Hudson's Bay Company stores is indirect proof that there was a distinction made at the time, but in evidence before the Select Committee he declared that Douglas would not differentiate between the employees of the companies, the business of which is carried on under a "Deed of Settlement."

45. (cont) territories are the Agents of the P.S.A.Co.;

46. Blanshard to Grey, V.I., 25 Feb.1851

47. Same to same. ibid. c.p. the following letter from J.W.MacKay for the H.B.Co. to Kenneth MacKenzie at the P.S.A.Co. farm of Craigflower on 5 Jan.1856--"no sales on open account should be made at the H.B.Co.'s Shop at Victoria to any persons not immediately engaged in the service of the Fur Trade; to all other persons I can only make sales for immediate payment... Any supplies you may take at the Company's stores will be charged to you as heretofore at servants' prices."
merely handing Blanshard a list of emigrants and saying "These are the number of settlers we have brought out." Against such evidence Simpson could only repeat the legal situation. "The Puget Sound Agricultural Company is an offshoot of the Hudson's Bay Company; an agricultural establishment formed by the Hudson's Bay Company or parties connected with or interested in the Hudson's Bay Company, encouraged by the Government of the day." Shortly after Blanshard's departure, certain regulations on taking up land were relaxed. In Staines letter of complaint forwarded to Pakington, he stressed the factors which hindered settlement. "Here with land at £1 per acre, tied down as it is by conditions, which do not allow a man more than twenty acres, except he imports English laborers at the rate of one man for every twenty acres (this condition the Company are wisely blinking at present, otherwise they would not have one private proprietor of more than twenty acres on the Island at this moment, which they are aware of no doubt) the laborer has no chance of achieving independence." There


49. Simpson to Ellice, Report of Select Committee. Evidence #1124.

50. included in Elliot to Barclay, D.St., 3 Nov.1852.

The evasion of this regulation by the H.B.Co. was further
was no move yet to lower prices but it was felt that the labor requirements might well be lifted. As early as August 1850, Simpson, writing to Douglas from Lachine spoke of "that condition in the prospectus that renders it binding on settlers to take out five laborers for every hundred acres of land they may purchase--a condition which appears almost tantamount to a prohibition of settlement in the present state of the Pacific North-West. This point has been so urgently pressed on the attention of the Governor and Committee that I fully expect they will modify that clause in the prospectus." On the receipt of Staines's complaint the Colonial Office started correspondence with Hudson's Bay House that resulted in the following concession. "Under existing circumstances it may perhaps be expedient not to insist on the purchasers of land, to some limited extent--say one hundred acres--bringing in laborers, and if you should be of this opinion and shall signify the same, the directors of the Hudson's Bay Company will adopt that rule for the future."
The end of this early period is fittingly marked by the resignation of Governor Blanshard. Indeed there was no reason for him to stay. His grant of land had turned out to be no more than right of occupation, the settlers, whose taxes and licenses would have provided his salary did not materialize and he was reduced to his last avowed reason for coming to this remote island. "I had hoped that my services would be considered by Her Majesty's Government afterwards." From two often conflicting authorities on this period may be taken the two following conclusions on this event.

1. "By resigning he took the only course open to him and allowed James Douglas to become the de jure as well as the de facto ruler of Vancouver Island."  

2. "The fur-traders have triumphed. On Vancouver Island they are the Crown; and until the settlers shall become stronger than the Company, their absolutism is assured."  

53. Report of Select Committee. Evidence #5161  
55. Bancroft "British Columbia" p.284
During this period, 1851-1858, Douglas occupied three positions concurrently—Chief Factor for the Hudson's Bay Company, Agent for the Puget Sound Agricultural Company, and Civil Governor in Vancouver Island. The politics of the period are not spectacular. Douglas ruled with the aid of a nominated council till 4 August 1856, when in obedience to pressing despatches from Downing Street he reluctantly summoned an elected assembly of seven members, at least five of whom had been connected with the Hudson's Bay Company. As might have been expected this body did not have a great effect on his policy. The Hudson's Bay Company still had control of all land sales and the only revenue at the disposal of the Assembly was the proceeds of the liquor licence fund. It was not till 1858, when gold-seekers built Victoria up to a city of some importance and great expectations, that the Assembly with vociferous backing from De Cosmos of the "British Colonist", another importation with the gold-seekers from California, began to challenge the governor, whose double sphere of duty presented obvious points to attack. With this period came the end of the control
by the Hudson's Bay Company whose grant expired 13 January 1859, and the presentation of the Company's accounts whose settlement will occupy much space in later chapters.

This is another point where it is customary to make a brief pause, in this case to delineate the character and background of this pioneer journalist who inherited the commonplace name of William A. Smith but in British Columbia was known as Amor de Cosmos—a hybrid appellation which he fondly imagined to mean "Lover of the World" and which he held by the grace of a bare majority in the California legislature. As with Douglas let us judge De Cosmos by his actions and speeches.

This period marked the loosening of another restriction on the purchase of land. The strict rule of immediate payment was slowly relaxed. It was hastened by the delays of surveying and the problem of title deeds. In August of 1851 Douglas was still waiting for some temporary forms which were being sent out in the "Norman Morrison" and which, he hoped, would put him in a position to "satisfy purchasers of land until deeds under the Company's seal can be forwarded from London."¹ The procedure for getting title deeds was cumbersome—after the completed survey of each block, the details of each lot were inscribed on blank forms in duplicate. When the full price was paid one copy went...

¹ Douglas to Barclay, Ft. Victoria, 26 Aug. 1851
to the purchaser as a receipt and the other was sent
to London where a regular deed was made out, sealed and
returned to the Colony. As long as the Hudson's Bay
Company retained the title to the land all title deeds
were made out at Hudson Bay House by the Company officials.

The first move towards a systematic plan of
paying by instalments is noted in a report to Barclay
of February 1854, where Douglas speaks of some changes
in policy recommended by Pemberton. The first proposal
was probably to permit settlers who were qualified to
run their own survey lines, since Douglas comments that
"the effect will be to lessen the expense of his depart-
ment." But the second proposal--of instalments--mett
opposition because it would "involve the necessity of
keeping many additional accounts" and accounting was
not Douglas' forte.

Nothing was done for some time and about the
only reference to land tenure was made by Douglas when
avenging the murder of Williams "one of that class of
men known in this country as squatters, that is persons
who have not purchased and therefore have no legal
right to the land they occupy." "Though I have always
made it a rule to discountenance the irregular settlement

2. Douglas to Barclay, Ft. Victoria, 23 Jun.1852
3. Same to same. Ft.Victoria 11 Feb.1854
4. Douglas to Labouchère, V.I. 22 Aug.1856
of the country, yet it is essential for the security of all that those persons should be protected," said Douglas and sent an expedition which captured, tried and hanged the Indian.

Some time in the winter of 1856 Hudson's Bay House issued the statement of a new land policy including: 1. a system of deductions for areas of rock and swamp, and 2. receiving payments, if required, by instalments. Pemberton wrote quite favorably of these innovations, stating that owing to their introduction sales of two thousand acres would be made in the course of the spring of 1857, and in October of that year Douglas was able to send home the following report on the new system: "I am glad to inform you that the instalment system continues to work well; becoming every day more popular as it is better understood by the lower classes who at first did not appear fully to appreciate its advantages." In the reports for the sales from 10 October 1857 to 4 November 1858, Douglas was able to report an increase from 6,303 acres to 30,984 acres, on which instalments to the amount of £24,056 were owing at five percent interest.

5. Pemberton to Smith, V.I., 27 April 1857.
7. Douglas to Lytton, V.I., 11 Dec. 1858. The great increase is of course also due to the coming of the miners and consequent rise in land values.

45
More land was acquired from the natives in February of 1852. Douglas negotiated with the Saanitch Indians paying £109.7.6 in "woolen goods which they prefer to money" for "all the land north of a line extending from Mt. Douglas to the south end of the Saanitch Inlet, bounded by than inlet and the Canal de Orro(Haro) (which) contains fifty square miles or thirty-two thousand statute acres of land," and in August of 1854, he reported an Indian reserve for sale, whose area was not really needed but whose purchase was advisable "particularly if any other party should be tampering for the purchase of their rights."

For actual sales of land, the best source is the biennial reports that the Hudson's Bay Company was required by its charter to turn into the Colonial Office. It seems that they were really triennial, for the only ones available were presented in 1852, 1855 and 1858. Wherever possible these have been checked by the despatches of Douglas to Hudson's Bay House, which are complete to 1855 but sporadic from that year to 1859. In Douglas' report of April, 1852, proceeds of sales outside the reserve were £1378 which, allowing for the ten percent taken by the Company showed sales of about

8. Douglas to Barclay, Ft.Victoria, 1 Feb.1852
9. Same to same, Ft.Victoria, 26 Aug.1854
1530 acres.\textsuperscript{10} This agrees closely with the official report of November which reported sales of 1478\frac{1}{2} acres to 11 different persons. The report also stated that nineteen people had applied for 2355 acres which they could not receive till the survey had been completed. There was notice of the Hudson's Bay Company Reserve of 3084 acres and of prospective purchase of 2500 acres of land by the Puget Sound Agricultural Company who expected to pay the regular price of twenty shillings\textsuperscript{11}

The next official report was presented in June of 1855 and in the interim there are quite a few despatches from Douglas which give details of sales. In May of 1853 the following list of purchases is given.

\begin{itemize}
  \item George Hawkins 57.5 acres
  \item James Cooper 64.5 "
  \item Henry N. Peers 200. "
  \item Robert J. Staines 46.5 "
  \item James Yates 41. "
  \item George MacKenzie 60. "
  \item John Greig 30. "
  \item Isabella Ross 99. acres\textsuperscript{12}
\end{itemize}

\textsuperscript{10} Douglas to Barclay, Ft. Victoria, 27 Apr. 1852
\textsuperscript{11} Colville to Pakington, H.B.H., 24 Nov. 1852
\textsuperscript{12} Douglas to Barclay, Ft. Victoria, 18 May 1853

Staines apparently had got tired of waiting for free land. (\textsc{c.p.} c.10, m.7, and c.3, n.31)
In July came the record of a sale of 250 acres to Paul Fraser and rumors of land to be purchases around Nanaimo by the Puget Sound Agricultural Company. The next despatch listed sales to John Tod of 100 acres and to Robert Parsons of 40 acres. There was mention of further sales but from the prices paid they seem to have been from the Company Reserve. A letter despatch noted that the Puget Sound Agricultural Company had taken 2574 acres, the price of which had been paid to the Company's account by the Agents in London.

The last details for the period from Vancouver Island came in despatches sent by Douglas to Hudson's Bay House and Downing Street in October of 1853. The latter gives 16,028 acres "transferred to private hands" which together with 3023 acres registered for purchase gave a total of 19,051 acres. In the despatch to Hudson's Bay House the amount sold was broken up into 11,626 acres to Hudson's Bay Company and the Puget Sound Agricultural Company, 2958 acres paid for in full and 1443 acres paid for in part. Of the lands taken by the Companies we have noted above the 2574 acres taken by the Puget Sound Agricultural Company and we can...
add the 6193 acres of the Nanaimo coal farm noted in the report of 1855 (v.infra, n.18) leaving 2859 acres taken by them and unaccounted for.\textsuperscript{17}

The report of 1855 gives total sales of 11455 acres which is about 1700 acres short of the total given above if the Nanaimo farm and Puget Sound Agricultural Company lots are subtracted.\textsuperscript{18} The importance of purchases by the Companies was so obvious to the Colonial Office that Labouchere sent a warning to Douglas. "It appears that owing to the cessation of purchases of land by the Hudson's Bay and Puget Sound Companies (sic) the land sales would not prove so productive a source of revenue as they have been hitherto and that therefore other measures must be resorted to for raising the necessary funds for the support of the Government of the Colony."\textsuperscript{19} This pessimism seemed borne out by the reports of 1857 when 4206 acres only were sold but much must have been registered for sale since Douglas took the questionable liberty of boasting . . . .

\textsuperscript{17} Douglas to Barclay, Ft. Victoria, 10 Oct.1853
\textsuperscript{18} The report is, Colvile to Russell, H.B.H., 9 Jun.1855
\textsuperscript{19} Labouchere to Douglas, D.St., 23 Aug.1856

v.infra n.37
that the sales for 1857 exceeded sales of 1856 by 4166 acres.  

In 1858 a complete list of all land sales made to date was presented together with the names of the purchasers and the amounts taken by each. Roughly totalled, this gives 30,815 acres alienated of which the Hudson's Bay Company took 9911 acres (6190 acres in the Nanaimo coal farm) and the Puget Sound Agricultural Company 2784 acres. This of course does not include the 3084 acres Reserve for which no payment was made. This completes the record of sales for the period covered by this chapter.

The colonists who arrived were still largely servants of the Hudson's Bay Company or bailiffs and laborers for the Puget Sound Agricultural Company farms. Kuper, who visited the island in 1852 reported to his superior officer that "there are no new colonists since you visited in the Portland last year, and the only new arrivals during the year have been about twenty-five servants of the Hudson's Bay Company, who

20. Douglas to Smith, V.I., 30 Oct.1857. Unfortunately no despatches from V.I. to H.B.H. were available for 1856 and Douglas' despatches to D.St. are singularly reticent in the matter of land sales.

I understand are barely sufficient to supply the vacancies caused by desertions or otherwise, and Douglas urged the wisdom of spending "a few thousand pounds judiciously laid out in improvements" which would "infuse a general feeling of satisfaction and have the effect of attaching people to the Company. The freeholders and colonists are nearly all, without exception, actual or former servants of the Company and every private enterprise has been carried on with capital acquired in the service." 

Kuper's figures must have been based on rumor or else a deliberate misstatement for in the official report of November, 1852, a list of emigrants sent out by the Company gave a total of four hundred thirty-five (271 males, 80 females, and 84 children). During the next three years further emigrants to the number of three hundred sixty-two (146 males, 80 females and 136 children) were sent out by the Company, of whom some who came in the Norman Morrison were miners for the coal areas.

There are a few references to independent

23. Douglas to Barclay, Ft. Victoria, 3 Oct. 1854
24. Colvile to Pakington, H.B.H., 24 Nov. 1852
26. Douglas to Barclay, Ft. Victoria, 12 Jul. 1853
settlers. As early as December, 1851, John and Andrew Muir came to Douglas with a proposal to bring out ten persons of their connections in Scotland—"the first application of the kind that has yet been made for the introduction of settlers unconnected with the Company's service." Douglas suggested that they be given a special rate "more especially as several . . . are young unmarried women of good character who will be a great acquisition to the Colony." A despatch of April next spoke of a group of New Brunswickers in California who might be induced to emigrate. Douglas offered them a warm welcome but reminded them that they would have to work as laborers till they could earn enough money to buy land. This was also the period of Cordua's application mentioned above but no rumor of the proposed German immigration appears to have reached Vancouver Island, and Downing Street pigeonholed the request pending a legal decision on the rights of aliens to hold land in a colony.

27. Douglas to Barclay, Ft. Victoria, 9 Dec. 1851
28. Same to same, Ft. Victoria, 27 Apr. 1852
29. See above, c.1; n.28, p.17. Cordua asked for information. "In Germany I cannot find a single work over (sic) Vancouver." If satisfied "I think I could bring many of my Countrymen of the Northern part of Germany to Vancouver." Cordua to Barclay, Mecklenburgh, 31 Oct. 1856
A rather interesting project for the settlement of Vancouver Island has heretofore been neglected. Though it is well known that Red River was considered a good site for a penal settlement, the plan for making Vancouver Island a convict colony has not appeared. As early as January, 1856, a certain Captain Swanston 30

30. Swanston, the agent of a California shipping company, was wrecked near Victoria in November of 1853 and on refusing to attend the Vice-Admiralty court called by Douglas, was jailed and fined £50 for contempt. He received the sympathy and support of Staines and joined with him in criticism of Douglas. Both applied for land in Vancouver Island in hopes of the coming of free grants but paid no deposits at the time—(see lists in Douglas to Barclay, 10 Oct.1853)—though Staines finally paid up—(v.supra n.12, p.47). The remainder of the letter quoted below was a jeremaide on colonial conditions stating that his friends were preparing to leave. Douglas rather acidly stated that "Mr. Swanston's friends are few in number and certainly do not represent the respectable portion of the community nor their real wants." (Douglas to Labouchere, V.I., 15 Sep.1856) In an earlier despatch he had declared that "since the departure of the Rev. Mr. Staines and his coadjutor Mr. Swanston I have not heard a complaint from any person in the colony except in regard to the sale price of land."
stated that "the colonists are all delighted at the idea of having convicts introduced and they express themselves strongly as to the benefits likely to result to the Island by such a measure." In his reply Douglas was positive about Swanston's character but made no reference to the suggestion of convict labor and later in the year protested vigorously when Swarthout in the American steamer "Massachusetts" tried to land Indian prisoners from Washington on Vancouver Island. Douglas protested that the landing of convicts upon the soil of another country was a violation of all international law and after a threat of force which was disregarded, Swarthout was forced to buy canoes for the Indians, take them north and let them go.

Nothing more was said about convicts on the Island but in London a learned gentleman, R.G. Nicolay, Esquire, F.R.G.S., was extolling a spot on the north west coast of British North America, where a colony might be founded with convict labor as its basis. "The land might be surveyed and everything prepared for the reception of the immigrant who would most gladly pay

30. (cont) .. and that grievance I have no power to redress." Douglas to Grey, V.I., 11 Dec. 1854
32. Douglas to Labouchère, V.I., 26 Nov. 1856
for such improvements". The initial expense would be little beyond the passage out—"in a short time the settlement might be self-supporting ... the convicts might build their own barracks of the timber with which the country abounds and the whole thing might be done in less time than I am afraid it will take to talk about it." Though he stated that it would be easier to get a grant on the mainland, the plan was coupled with Vancouver Island by the direct reply of Mr. A.K. Isbister who proceeded to show up the weaknesses of Vancouver Island as a penal settlement as compared with Red River, his choice for such a project. He stressed chiefly the long ocean voyage with its consequent expense and the possible international friction which might result from setting up a convict colony so near to the territory of another nation. "I do not see how the United States whose territory is separated from Vancouver Island only by a narrow strait, in some parts I believe not more than two miles in width, could tolerate for a moment the establishment of a general receptacle for the criminal population of the British Empire within sight of their very shores or hesitate to resent it as a wanton if not premeditated outrage." Such a policy would be "fraught with danger to the permanency and stability of our power in North West ..."

Mr. Nicolay replied with a host of arguments favoring Vancouver Island and refuting the claims of Mr. Isbister. "That Vancouver Island is the worst possible place for a convict settlement may admit of a doubt . . . there are parts of that island from which escape would be almost if not quite as difficult as from the shores of Hudson's Bay." He admitted the high cost of transportation which was however balanced by the cheapness of wooden establishments which would suffice on Vancouver Island while the extreme cold of Red River required buildings of stone. Moreover, Vancouver Island would produce crops more quickly and afford a better grazing ground for cattle since, owing to the mildness of the climate, stock "live and find sustenance for themselves as well in winter as in summer." Nor were the arguments of trade forgotten. Vancouver Island was pointed out as the logical rival of San Francisco as a centre for coal and naval stores and for the requisite establishments convict labor was the cheapest means by which the necessary works might be performed."35 The argument however did not affect the policies of Downing Street so we have to wait till 1866 before transportation is again mentioned in connection with . . .

34. A.K. Isbister, in the "Times" of 29 Dec. 1856
35. R.G. Nicolay in the "Times" of 2 Jan. 1857
Vancouver Island. This mention was an isolated letter to the Colonist advocating the importation of convicts for labor only.\(^{36}\)

The falling off in land sales during 1854-5 led to a correspondence through Downing Street and Hudson's Bay House with hopes of increasing the commerce of Vancouver Island by including that area in the Reciprocity Treaty then in the process of negotiation. Douglas displayed the sad state of affairs on the island. "The colony has been heretofore mainly supported by the large sums of money expended in house-building and other works by the Hudson's Bay and Puget Sound Companies and by the servants of these Companies. That resource must necessarily soon fail and then follows the perplexing question, as to what the laboring people of the Colony will find to do... The probable consequence will be a general desire for emigration to the American settlements where grants of land are freely proffered to all parties who become settlers and improvers of the soil."\(^{37}\) To avoid this solution Douglas suggested the building of navy storehouses at Esquimalt and inclusion in the Reciprocity Treaty. He had previously urged the latter plan in his despatch of May 1854. "I would therefore most earnestly entreat Your Grace to take the commercial position of this

\(^{36}\) Letter of Colonist of 27 Aug 1854

\(^{37}\) Douglas to Grey, V.I., 3 Oct 1854
Colony into consideration that it may become a party
to the advantages of any commercial regulations that
may be established between the United States and the
British North American provinces with the view of
putting them on a satisfactory footing of Reciprocity. 38
and repeated it in an August despatch to Hudson's Bay
House. 39 The latter received a supporting despatch
to Downing Street in which the desirability of Reciprocity
was stressed since though Victoria was a free port "all
produce and manufactures imported (sic) from thence into
the United States are subjected to very high duties." 40
but ten days before Grey had sent the following con­
clusive despatch to Vancouver Island. "With respect
to including Vancouver Island in the Reciprocity Treaty
with the United States I have to inform you that it
was not found practicable to extend that treaty to the
possessions of the two countries on the Pacific side
of North America, and that in any case your despatch
of thirteenth May in which you proposed that this should
be done, did not reach me until after the treaty had
been concluded." 41 Douglas rather sadly accepted this
dictum in his reply to Downing Street, 42 but in his

38. Douglas to Grey, V.I., 13 May 1854
39. Douglas to Barclay, Ft. Victoria, 26 Aug. 1864
40. Colvile to Grey, H.B.H., 28 Dec. 1854
41. Grey to Douglas, D.St., 18 Dec. 1854
42. Douglas to Grey, V.I., 6 Mar. 1855

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despatch to Hudson's Bay House he more openly lamented the failure of the scheme and complained that the interests of the island "have been completely overlooked by Her Majesty's Government." 43

With the discovery of gold on the mainland, the rush of miners through Victoria was bound to cause some drastic changes in the life of the settlement where the fur trade had so long been viceroy if not king. The city's population increased and the value of land rose with the demand. As early as August, 1858, Hudson's Bay House informed land seekers that all the land near Victoria and Esquimalt not reserved for Government or Indians "is fully occupied and the owners are asking high prices in consequence of the great influx of people and speculation on account of the Gold diggings," 44 while in San Francisco, a Mr. George Nias sent a petition to Queen Victoria stating that lots "have been sold fifty or sixty to one person at the Government Price of £5 to £10 per lot, are in reality worth from £50 to £1000 and upwards in some instances and are now held at from twenty to two hundred times their first value," and recommending a law requiring some improvements on lots purchased since.

"numbers of American 'Land Speculators' (sic) have

43. Douglas to Barclay, 24 Apr.1855
44. Berens to Higgins, H.B.H.; 13 Aug.1858
gone down with the sole purpose of buying all the land in and about the town of Victoria, they can lay their hands on merely for the purpose of holding and reselling it at an enormous advance. Douglas made haste to reply that high prices reported were on resale of land purchased beforehand at £1 per acre over which he could exercise no control. The Hudson's Bay Company were making a good profit out of their Reserve, selling suburban lots of 5 acres for £25 and town lots 120' by 60' for £20.16.8 a price which was double their old rate. The top price received had been £100 an acre for choice lots. Douglas did not share Nias' fear of speculation. He showed that the average holding was 12 lots or 238 acres of farming land. He believed that the vast amount of good land available at £1 per acre was a bar to speculative holdings and was rather averse to any policy which would frighten away capital. He made vague suggestions of a tax on unimproved lands to replace a rule requiring improvements, citing cases of perjury and unsettled titles under the improvement system as in force in Oregon.

With the conclusion of this chapter any attempt at a general narrative is abandoned and the

45. Nias to Derby, San Francisco, 3 Jul.1858, in Lytton to Douglas, D.St., 16 Aug.1858
46. Douglas to Lytton, V.I., 13 Oct.1858
following will treat special problems arising from the new conditions brought about by the arrival of the miners and the business men, etc., who followed their trail. The increased value of land brought on the quarrel over the quarrel over the Hudson's Bay Company Reserve, the raison d'être of two succeeding chapters. The rise of public opinion backed by the press had an influence on land policy shown in the chapter on land legislation and led to the perennial quarrel over the exchange of a Civil List for the Crown Lands--another two chapter topic. The concluding chapter is a sketch of parallel conditions in British Columbia which can only claim to be an introduction to a field well worth deeper study.
Chapter IV

THE ACCOUNT OF THE HUDSON'S BAY COMPANY

February 1858 --- October 1862

In this chapter all the available figures given by the Company in the presentation of their bill and the various bargainings and negotiations which led to the final settlement are brought forward. From the considerable reductions during the communications it might be inferred that the Company set their bills high and bargained for as much as they could get—a policy unethical perhaps but certainly not unusual in business. Possible they considered it their only chance of getting fair remuneration, in view of the known strength of opposition.

Anticipating the discontinuance of their rule after 13 January 1859, Hudson's Bay House sent in a preliminary account in February of 1858 which was for some time the basis of negotiation. Following the text of the grant which had promised repayment of any "sums of money heretofore laid out and expended by them in and upon the said island and premises and of the value of their establishments property and effects then being thereon" they included estimates of the value

1. Shepherd to Labouchère, H.B.H., 24 Feb. 1858
of their establishments and stock.

The first item was the expenses of colonization. Public works and expenses of government to 31 January 1858 left a balance in favor of the Company of £850. The expenses of bringing out servants who were not actually employed in the Company's projects was stated as £25,550, and extra expenses of searching for coal were set at £12,469, giving a total of £46,524. Further items were as follows:

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Farms</td>
<td>£12,384</td>
</tr>
<tr>
<td>Victoria buildings</td>
<td>12,575</td>
</tr>
<tr>
<td>Nanaimo mine</td>
<td>38,326</td>
</tr>
<tr>
<td>Esquimalt mills</td>
<td>3,000</td>
</tr>
<tr>
<td>Goods, stock and trading vessels</td>
<td>112,899</td>
</tr>
<tr>
<td>Colonial expenses as above</td>
<td>46,524</td>
</tr>
</tbody>
</table>

**Total** £225,699

Definite action could not be taken till the actual period of the grant ran out, the date accepted by the Hudson's Bay Company being 31 May 1859. Shortly after this date Berens wrote to Downing Street in a style calculated to bring to the minds of the officials there something of the services rendered by the Company and attempting to arouse a feeling of generosity. "Your Grace is probably aware that from the time that this Company took possession of Vancouver's Island under the grant from the Crown they have been looked to provide all the funds that might be required for its colonization.
and improvement, and they have not hesitated on any occasion, although often at considerable inconvenience to advance their own moneys for the purpose when they were not in funds from receipts for the sale of land or otherwise.\textsuperscript{2}

In January of the next year, Berens discreetly reminded Newcastle that the period of the grant was up and that the time for settlement had arrived.\textsuperscript{3} The bill then presented no longer included the details of the establishments which the Company were to maintain but simply stated the costs of colonization with two changes, 1. The claim for expenses of searching for coal had been cut down to half, viz. £6234\textsuperscript{4} and 2. the expenses connected with the emigrants had been detailed.

\begin{itemize}
  \item Passage £12,717
  \item Wages for one year 7,890
  \item Maintenance 5,053
\end{itemize}

Total £25,550

The number of emigrants by years was given as follows:

\begin{itemize}
  \item 1848 . . 19
  \item 1849 . . 60
  \item 1850 . . 102
  \item 1851 . . 27
  \item 1852 . . 70
  \item 1853 . . 184; Children under 14 brought out
  \item 1854 . . 89
  \item Total 551\textsuperscript{2}
\end{itemize}

\textsuperscript{2} Children under 14 brought out at half fare.
At this stage of the game Newcastle sent a despatch to Douglas informing him of the accounts as presented. He stressed the reductions and the insistence by the Company that the accounts to date were not "a final restriction of their claims."\(^5\)

Attention was also called to the fact that a sum of £25,000 had already been passed by the Treasury for extinguishing the claims of the Hudson's Bay Company and to the willingness of the Company to transfer the granting of land to the Colonial authority.

The actual despatch delegating that authority was sent to Douglas the day after Newcastle's despatch just quoted and contained restrictions that rather weakened the concession. Douglas was allowed to dispose of all land not yet disposed of by the Company nor claimed by them as held prior to the grant of 1849—thus leaving open the perennial dispute of the Hudson's Bay Company Reserves. No transfer of land could yet be made without the seal of the Company so all conveyances.

2. Berens to Newcastle, H.B.H., 19 Jul. 1859
3. Same to same, H.B.H., 23 Jan. 1860
4. Correspondence about this cut passed between D.St. and H.B.H. but presents nothing but the language of barter. The Company backed down and offered to bear half of the expense itself.
5. Newcastle to Douglas, D.St., 28 Jun. 1860
were still to be sent to England to be officially stamped at Hudson's Bay House. Douglas sent a strong note of protest against the continuance of this system stating that it had bred distrust and that the occasional loss of documents during transmission had not helped to cure that feeling. Downing Street could do nothing but advise patience. "Inconvenience and delay must be occasional by the system ... but this appears to be unavoidable so long as it is necessary to the validity of the grants that they should bear that seal. The arrangement however is temporary only and I trust will be shortly discontinued--As soon as the pecuniary accounts between H. M.'s Government and the Company are adjusted and the island is conveyed to the Crown the usual more convenient system will no doubt be brought into operation."  

The accounts though presented and paid in London did not escape criticism on Vancouver Island. Douglas transmitted some accounts to the Assembly and after checking them over, De Cosmos declared his belief that there was a balance of £21,106 due to the Colony and that investigation might well be worth while to the government officials since such a sum would enable the ...  

7. Douglas to Newcastle, V.I., 10 Jan.1861  
8. Newcastle to Douglas, D.St., 15 Apr.1861
government to carry on without taxes for a year.9

The completion of the payments in London was however held up by a sudden increase of their claims by the company. In a despatch of March 1861, Berens acknowledged the receipt of the £25,000 down payment but presented a new bill which demanded further payments of £53,569. The increase was due to some checking up of Vancouver Island accounts by Mr. Dallas who had succeeded Douglas as chief Factor at Victoria and soon got into disputes with his predecessor over the finance government.10 At any rate the increased account was not accepted at the Colonial Office whence it was submitted to Mr. Andoe of the Treasury for audit.

His report cut harshly into Mr. Dallas' additions and sundry other details.12 In all he advised a cut of £26,157 under the following heads:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mr. Dallas' extra claims</td>
<td>£15,123</td>
</tr>
<tr>
<td>Commission on land sales not realized</td>
<td>2,405</td>
</tr>
<tr>
<td>Interest</td>
<td>3,712</td>
</tr>
<tr>
<td>Excess charge for settlers</td>
<td>4,667</td>
</tr>
<tr>
<td>Reduction on coal seeking account</td>
<td>247</td>
</tr>
<tr>
<td>Total</td>
<td>£26,157</td>
</tr>
</tbody>
</table>

9. De Cosmos editorial, 8 May 1860. The accounts were published in the Colonist of 3 Apr.1860 and are rather obscure. De Cosmos' claims seemed to be based on the theory that the HuB.Co. and P.S.A.Co. had paid nothing for the lands that they took.
leaving a balance of only £27,412 due to the Company.

The reply of Hudson's Bay House arrived in a despatch of February 1862. Here Berens went over the criticisms of Andoe and denied them all. Mr. Dallas' additions were explained as the result of his visit to Vancouver Island where in examining the Company's books he found that "no proper distinction had been made between the outlay specially on behalf of the Colony and that made on behalf of the Company's furtrade. . . . He had selected such items as appeared to him to be properly chargeable to the Colony." The only reduction Berens accepted was the striking out of an item of £4,000 as expenses for using the steamer Beaver in the interests of the Colony. The expense had been assumed by the Company in a much earlier despatch, so the claim was given up but not any too graciously.

This reduced the claims of the Company to £49,569 but the Colonial Office seems to have become rather tired of this relatively fruitless correspondence and informed Hudson's Bay House that while the reduced

10. v.infra c.5, n.26 re advances on public buildings
14. Shepherd to the Colonial Office, 14 Dec.1856
claims could not be considered, a note for the payment of £30,000 more had just been passed through the Commons and would be offered in payment of the Company's claims in full.\textsuperscript{15} Probably heartened by reports of the Parliamentary discussion of the account the Hudson's Bay Company sent in a somewhat reduced bill demanding £38,445 and after referring to the last offer of the Colonial Office reluctantly suggested that they would accept £35,000 in full settlement "in order to put an end to further discussion."\textsuperscript{16}

This proposition apparently convinced the Colonial Office that the Company was attempting to squeeze the last possible penny so a rather curt despatch was sent to Hudson's Bay House offering to split the difference of the Company's offer of £35,000 and their offer.

\textsuperscript{15} Portescue to Berens, D.St., 21 Jun.1862. A note for £55,000 was voted on in the House of Commons on 12 Jun.1862, the £25,000 noted above having been advanced by the Treasury. There was some talk of calling for detailed estimates and it was stated that the Colonial Office hoped to be able to compromise and settle the account with the Company for a further sum of less than £10,000 but the general opinion was that the payment was due to the Company and the item was quickly passed.

\textsuperscript{16} Berens to Newcastle, H.B.H., 4 Jul.1862
of £30,000 by the payment of £32,500.¹⁷ Within a week the Company decided to make the best of the bargain and Berens wrote to Newcastle assuring him that "Although I still hold to the justice of the claim originally advanced by this Company I am prepared . . . to agree to the compromise suggested by Your Grace in order to bring the affair at once to an amicable settlement."¹⁸

The bill was therefore presented and paid. There seemed no obstacle to the further development of the colony with the land policy thus transferred from the Company to the Executive and Newcastle sent a special despatch to Douglas giving him the details of the transfer.¹⁹ But the lands were still retained by the Company pending the settlement of a further dispute which was to hold up the transfer of the lands till 1867—the quarrel over the Hudson's Bay Company Reserve at Victoria fully described in other chapters.

¹⁷ Elliot to Berens, D.St., 11 Sep.1862
¹⁸ Berens to Newcastle, H.B.H., 18 Sep.1862
¹⁹ Newcastle to Douglas, D.St., 1 Oct.1862
Chapter V
THE HUDSON'S BAY COMPANY RESERVE--TILL THE INDENTURE OF 1862
September 1846 --- February 1862

In treating the problem of the Hudson's Bay Company Reserve one is tempted to misquote Henry of Navarre in the famous statement immortalized by Sellars and Yeatman in "1066" and declare that the whole question of the Reserve is "rather a mess." There is a wealth of material in correspondence with all possible permutations of the routes between three points--Vancouver Island, Downing Street, Hudson's Bay House--together with interjections from the Vancouver Island Assembly and editorials of the Colonist. To keep this straight chronologically is quite a task. As the argument progressed both sides tend to refer, with their own interpretation, to the same authorities and there is much special pleading. In this treatment therefore more stress will be laid on the early documents which later form the basis of argument in learned and lengthy treatises.

The first reference that may be said to bear on the subject is a despatch from Hudson's Bay House in 1846. "The Company having formed an establish--
ment on the south point of Vancouver's Island which they are annually enlarging, are anxious to know whether they will be confirmed in the possession of such lands as they may find it expedient to add to those which they already possess.¹ This despatch was later taken as a confession of doubt on the part of the Company as to their right to hold such land but as above noted (c.1, n.18, p.12) a legal decision was produced which supported the Company's claim, so it must here be accepted solely as evidence that the Company had formed a settlement prior to the date of writing.

When Douglas took over the control of the Hudson's Bay Company government department at Victoria he received instructions to pay for any land taken by the Fur Trade except "that portion they were in possession of before 1846."² The extent of land taken

1. Pelly to Grey, H.B.H., 7 Sep. 1846
2. Pelly to Douglas, H.B.H., 4 Aug. 1849. It would be well to note here the distinction between the H.B.Co. "government department" and "Fur Trade". The former operated under the grant of 1849, the latter was the ordinary business corporation under the charter of 1670 and later confirmations. Their accounts were kept by the same book-keepers but in separate books. Confusion is increased by the position of Douglas who occupied

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for the reserve was for a long time in doubt— the
discussion over the exact boundaries becoming more and
more acrimonious as the value of the land increased.
Blanshard made rather vague charges of appropriation
of "all the available land in the neighborhood (of
Victoria)" and hinted at a huge reserve, ten miles
square, "bounded by a line drawn nearly due north
from the head of Victoria Harbor to a hill marked on
the chart as Cedar Hill or Mount Douglas and thence
running due east to the Canal de Arro(Haro)" together
with a similar area for the Puget Sound Agricultural
Company containing Esquimalt Harbor, all of which
would be under the control of the Hudson's Bay Company.
It is impossible to decide whether Blanshard was ex-
taggerating or whether the Company had not at one time
plans for the acquisition of such an area. A despatch
from Hudson's Bay House of July, 1851, seems to hint
at some such plan. Barclay warned Douglas that if only
six square miles were taken for the Fur Trade, the
. . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .
2. (cont) four posts concurrently— civil governor of V.I.,
head of the H.B.Co. government branch, Chief Factor of
the Fur Trade and Agent for the P.S.A.Co.— a situation
requiring the wisdom of a Solomon or the versatility of
a chameleon.
3. Blanshard to Grey, V.I., 18 Sep. 1850
4. Same to same, V.I., 15 June 1850

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proposed £4000 advance for public works was to be cut in half—the full sum was to have been expended on the condition that the Company purchased "a considerable tract of land."  

At any rate Blanshard revised his estimate to thirty square miles in a despatch of February 1851 and requested definite information of the intentions of the Hudson's Bay Company on the Reserve. "The agent here professes ignorance of every arrangement but has admitted that they do not intend to pay for it."  

Later in the year he protested against reserves which "prevent any bona fide Colonists from settling," and declared that any important town would have to be established outside of the Reserves or the Hudson's Bay Company would seize all the land around it as they had done at Victoria, "where there is no probability of a population ever gathering, beyond a few of their own servants."

At this point appears a despatch from Pelly to Douglas which was later to be quoted by Cary in an attempt to take back portions of the Reserve for  

5. Barclay to Douglas, H.B.H., 16 Jul. 1851. This might be accepted as support of the suspicion voiced by Fitzgerald, c.p. c.2, n.18.  
6. Blanshard to Grey, V.I., 3 Feb. 1851  
7. Same to same, V.I., 28 Apr. 1851
the Colonial government. The message ran—"In all cases of reserves of land such as those made by the Fur Trade and the Puget Sound Agricultural Company it must be understood that if any part is required for public purposes, it may be resumed upon repaying the price and any improvements that may have been made upon it."8

Blanshard's reiterated complaints had aroused some interest in Downing Street and Peel was moved to mildly protest the policy of free reserves. "It is obvious that no private individual can be expected to buy land if all the land most valuable from its position is reserved by the Company for its own use or that of another Company without... applying the price which would have been charged for it if sold for the benefit of the Colony."9 In reply to this Hudson's Bay House sent two despatches in which their case was strongly presented. The first reported the arrival of returns from Vancouver Island showing "surveys of the land which the Fur Trade propose to take in which Surveyor Pemberton had "omitted to distinguish..."

8. Pelly to Douglas, H.B.H., 23 May 1851. In Douglas to Newcastle, D.St., 7 Dec. 1860 this is used as the basis for argument, v.infra n.35. p.91
9. Peel to Pelly, D.St., 20 Dec. 1851

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that which they possessed previous to the Boundary Treaty from the whole quantity. The former will be made over to them without purchase and for any addition thereto they will have to pay 20s an acre as all other settlers do.  

When this despatch did not appear to have aroused conviction, a second was sent giving the arguments of the Company in the following succinct review. "Before 1846 while in fact the sovereignty was in abeyance the Company reclaimed from the wilderness and occupied portions of land wherever their trading establishments were planted. These lands they claim as theirs without purchase and the possessory rights thus acquired in that portion of territory which is situated south of the 49th parallel, have been guaranteed to them by the Boundary Treaty. Among the lands occupied by the Company north of the 49th Parallel is that situated at Ft. Victoria in Vancouver’s Island where they formed an establishment in 1843 and this is the land alluded to. . . The Company consider they have a right to hold that land without paying for it while for any additional quantity that may be required the same price will be paid as is paid by other purchasers of land." This last despatch drew from the Colonial Office a reply which may be taken as accepting the . . .

11. Same to same, H.B.H., 11 Feb. 1852
Company's claims. Grey demanded "a statement of the extent and description of the land so claimed by the Company ... land occupied and made use of, beyond which (no claim could be accepted)" but stated that he was "not disposed to question the right of the Company to land actually occupied by them previous to 1849."  

The next correspondence available is a group of three letters from Douglas written during May and June of 1852. The first is a report to Hudson's Bay House. He referred to a set of sketches sent in his despatch of 24 November, 1851, as showing both the 3084 acres which he considered should make up the Fur Trade Reserve and also "the extent of land under tillage and occupied as a cattle range for the Fur Trade prior to the treaty with the United States." Douglas asked for fuller instructions as to the amount the Hudson's Bay Company expected to take. He warned them that if the whole area were taken the cost of improvements would be very high. On the other hand if the Company were to grant itself 3084 acres free, people might "remark" and there would be "a risk of disputes hereafter." He therefore suggested that it be purchased ...  

12. Peel to Pelly, D.St., 13 Feb. 1852. This seems enough to satisfy the Company for correspondence with D.St. on the subject ceases for some time.  
13. Douglas to Barclay, Ft. Victoria, 5 May 1852
at 18s per acre which would give a certain title when
the Company could "improve and make sub-grants of land
with certainty and despatch and likewise claim the
the privileges in respect to public improvements enjoyed
by other purchasers of land."

The second despatch, also to Hudson's Bay
House shows a definite limitation of the Company's
claims made in accordance with orders from London. 14
It stated clearly that all the land the Fur Trade could
take without pay "will be two square miles actually
occupied by tillage and enclosed, and four square miles,
together six, occupied by enclosures and as a cattle
range prior to the treaty with the United States." 15
Further in the letter Douglas referred definitely to
a Fur Trade Reserve of twenty acres which seems to have
been all that was originally enclosed, though there is
no suggestion of a date and in the interim the area
might well have been increased. The rest of the Victoria
farm, the farm at Cadboro Bay and the North Dairy Farm
"was occupied merely as a cattle range and was neither
tilled nor enclosed." Here enters a note of doubt
which seems to have been neglected by later commentators. 16

14. in Barclay to Douglas, H.B.H., 16 Jul.1851
15. Douglas to Barclay, Ft. Victoria, 23 Jun.1852
16. Probably this was a Company letter and never seen by
the politicians unless disclosed by Douglas after his
quarrel with Dallas.
"Probably the mere use of land in a state of nature as a cattle range without any expenditure of capital in its improvement may not be considered as an act of bona fide occupation and the Colonial Office may therefore not sanction a title being granted without payment for land that is not actually improved."

The third despatch is interesting because it displays none of the doubts expressed above. It is Douglas' official report to Downing Street and declares as follows "(Before 1846) it became the custom of all parties forming settlements within the limits of the disputed territory to mark the extent of their land claimed by certain fixed metes and boundaries." At Fort Victoria, they had marked out "the site of the establishment and the extent of land required for tillage and a sufficient cattle range" from fear of American intrusion and boundary disputes such as had caused so much trouble in Oregon. The area marked out originally was "about twenty five square miles. Commencing at Victoria Harbor the line follows the salt water inlet to near Knocken Hill, thence it runs by Lake Hill, Mt. Douglas to Cadboro Bay on Canal de Orro(Haro), from

18. c.p. Berens to Lytton, H.B.H., 12 Oct.1858, speaking of land around the Forts in B.C. "The Company did not fence off this land as there were no neighbors to fence against."
whence it follows the coast by Gordon Head and Point Gonzales to the point of commencement at Victoria Harbor. But it was no longer the intention of the Company to keep so much, "a great part of it having lately been sold as and with other public land." The actual area that the Company "propose to retain out of its former possessions" consisted of three farms with an area of about 4000 acres, mostly for cattle range, though the farm at Victoria "will become valuable as the Colony improves."

Next spring formal preparation were made for taking over the reserve. The Company surveyor, Mr. Pemberton was ordered "to make out as soon as possible a title for consideration of five shillings and setting out the precise qualities and boundaries of the land as in the case of an ordinary sale," and in April he transmitted a map and "a patent or title of the Fur Trade Reserve No. I containing 1212 statute acres. The outline boundaries and extent of land are described and filled in but all other particulars left blank." The details for the remaining farms, viz., North Dairy Farm (710 acres) and the Cadboro Bay Farm (1130 acres) were sent in a

20. Same to same, Ft.Victoria, 8 Apr.1853
From this date there was a period of some six years in which the claim to the Reserve was never openly questioned. It was a period of slow growth and low land values. The coming of the gold seekers in 1858 pushed land values up and suddenly turned the farm land into valuable city property. The city was built on the Hudson's Bay Company Reserve. The Company had sold some lots and had more to sell. They were prepared to reap a rich harvest. The new immigrants did not understand the intricacies of the Company government. Here was just another boom town. They had bought lots and they saw a few improvements being made but what was this Company beyond the owner of more lots? Why had it had a voice in government? The obvious answer was Douglas who controlled all expenditure and had, till lately, been the head of the commercial branch. Doubtless it was through his connection that the Company now held the cream of city lots. A strong sentiment arose against Douglas and the Company, based on envy of the Reserve and a desire to control the benefits which might flow from improvements.

The leader of this section of immigrant opinion was De Cosmos of the British Colonist. His editorial indignation must often be excused on the grounds

of his ignorance of colonial history and the exigencies
of daily hack work in an isolated town, but his policy
of irritating attack on the Company and the Governor
deserves credit for persistence if not for fairness. One
early outburst was as follows "It appears that the Agents
of the Company sold last week all the trees on our streets
to a party for firewood. . . Aside from the vandalism
which would sell and cut down a single tree for a few
paltry dollars where it was no obstruction to traffic
but an ornament to the street—the act in itself is a
foul wrong—and without a solitary particle of right to
support it, either in law or equity. . . Selling the
trees may be to maintain color of title to the streets. .
These streets are used for public purposes and for that
reason the Company have no more right to them nor the
trees than anyone else." 22

Neglecting the violence of language, this
editorial struck shrewdly at the base of the Company's
financial position. It denied their right to any payment
for the portions of the Reserve they had not sold, in
this case the streets and the trees. From this position
it was not a long step to declaring that the Company had
no right to the payments they had received for the portions
they had already sold. The news of the Hudson's Bay

(hereinafter "Colonist") 14 Nov. 1859

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Company account about to be presented in London was abroad in the colony. The two ideas combined to form the subject of another excellent philippic. "The Hudson's Bay Company prefer a large claim against this island. No doubt it is their earnest desire and aim to get it allowed and paid by the Home Government before the items are known here. Hence the dogged and disrespectful refusal of Governor Douglas to lay the public accounts before the late Assembly... A just settlement of the financial affairs of this colony would no doubt leave us little or none in debt; if not a surplus in the treasury. The liquor license fund has paid for many small local improvements. Nearly $40,000 were realized for the Reserve on Government Street. Nine-tenths of the proceeds of the townsite which by timely application of potent emetics the Company ought to be made to disgorge, will go far toward making a fair balance sheet, without taking into account the land fund."  

While De Cosmos was keeping public interest focussed on the question of the Reserves, the problem ...

23. De Cosmos editorial, "Colonist", 29 Dec. 1859. It is well to note here De Cosmos' fundamental error or omission—the bill was against D.St., not V.I. He could afford to neglect this technical point since V.I. stood in the happy position of benefitting by any surplus of the accounts and having any deficit absorbed by D.St.
came up again in another connection—the dispute over the site of the old government buildings. Here again the earliest accounts are apt to be most revealing. Douglas reported that the Government office of the time had become too small for the increased business of the Colony and he desired to erect new buildings for his staff and for other officials "whose business had hitherto been transacted within the stockade of the Hudson's Bay Company." 24

Another reason for leaving the old site was that "it had become surrounded by other buildings, in close proximity and two of the principal streets passed by its doors." For this reason it had become very valuable and Douglas conceived that by selling it he might receive sufficient funds to construct the required new buildings "on a piece of ground reserved for government purposes... ten acres in extent and most conveniently situated, being sufficiently near to the town while removed from its noise and confusion." However there was one serious snag in the way of this proposition--"The Colonial Government, though in actual possession of the land had no deed of transfer and consequently could not grant a title." To avoid this difficulty Douglas consulted Mr. Dallas for the Hudson's Bay Company and arranged "to surrender the land on condition of his..."

24. Douglas to Lytton, V.I., 12 Sep. 1859 On map of 1854 this latter area is labelled "Indian Reserve" facing p.223

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placing at my disposal for the erection of new buildings the sums of money obtained for the sale." The land was sold with the exception of two lots held in reserve and the proceeds, £6500, were expended on the erection of the famous "bird-cages" which housed the governments at Victoria till the present permanent buildings were erected in 1897.

Let us now hear Dallas' story of the transaction. "Up to a recent period all the public business of this and the sister colony of B.C. was carried on in the premises of the Hudson's Bay Company; latterly at a great inconvenience to all parties." Dallas does not here give any account of the sale except that "without the assistance of the H.B.Co. the buildings in question (the Bird cages) could never have been erected." But he states that the $27,000 was given "reluctantly, on the pressing solicitation of the Governor and on condition that the sum advanced should be passed by him as fairly coming within the head of sums expended by the Company during the period of their grant of the Island" (and therefore repayable by the Colonial Office).

25. Dallas to Fraser, Ft. Victoria, 14 Sep. 1859
26. N.B. The end of Company rule was set as 31 May 1859 so some special arrangement was necessary. See c. 4, n. 10. The bill presented had an item of £6500 for new government buildings— one of the new items introduced by Dallas,
That Douglas had other ideas on the matter of repayment can be proved by the following excerpt from his despatch just quoted above. "It was no part of my plan nor is it now my intention to ask Her Majesty's Government for funds to meet the expense of that undertaking." The tone of this despatch hints that he was aware of Dallas' view of the repayment and the following letter from Pemberton shows that he, like Douglas, expected the price of the lots to be turned over without any strings. "With regard to the expenditure by me of £289 on Government Buildings, I would remind Your Excellency that $6500, realized by sale of town lot #182E and included in the sum first mentioned was considered available for this purpose." Lots 182A--D & G are grouped around the corners of Wharf and Johnson Streets. These were the buildings sold at the Hudson's Bay Company sale. Lot 182E is the south east corner of Yates and Government and probably was one of the lots spoken of above as reserved. "The "sum first mentioned" seems to be the proceeds of that sale.

The obvious conflict of opinion made necessary the transfer of the quarrel to London. Berens sent Dallas' letter to Downing Street to explain the...

26.(cont.) probably on the authority of the above understanding.
27. Pemberton to Douglas, Land Offices, 24 Aug. 1859

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additional charges which had been lately added to the Hudson's Bay Company account, and Newcastle sent this letter to Douglas under cover of his despatch of 1 December, 1859, demanding an explanation. At the same time he sent Douglas' report to Hudson's Bay House whence came an angry reply.

Douglas' version was dismissed rather scornfully. "As we read his communication, while on the one hand it is suggested that the advance in question was met by the surrender to Mr. Dallas of the site of the old Public Offices, it is added on the other that this surrender is made on the condition of Mr. Dallas placing at the disposal of Governor Douglas the sum of money obtained from the sale. Unless it is meant that the Government are to be responsible to the Company for the amount of such sale, the Company would appear literally to receive nothing in respect of the advance that has been made."

This would seem to have been a sound and sufficient reply but Berens seized upon the occasion to clinch the claim to the Reserves as a whole so he added "But in point of fact, this Company entirely denies the right or power of Governor Douglas to deal with the land in question at all as it formed part of . . . ."

28. Berens to Newcastle, H.B.H., 4 Nov. 1859
29. Same to same, H.B.H., 16 Dec. 1859
the property possessed by this Company in the island before the grant was made to them by the Crown and therefore entirely irrespective of it." He backed this up by recalling that Douglas had been unable to sell the land except "under the direction and on account of the Hudson's Bay Company." He then repeated his first case and added that the old buildings had been paid for by the Company. The statements of Douglas and Pemberton before the Assembly on Vancouver Island were enclosed as favoring his case,30 and the despatch ends with the threat that in the same way the Company will have a claim on the site of the new buildings on the grounds "that it is part of the land held by the fur trade long prior to the grant from the Crown."

It is a matter of conjecture whether the $27,000 might not have been accepted had not Berens coupled with it the general claim to all the Reserve. Merivale's reply to this despatch let the loan go past with a mere proposal to get more information but it came out strongly on the case of the Reserve. Beren's reference to title anterior to the grant is declared to

30. "They (Douglas and Pemberton) had been convinced after taking legal advice upon the matter, that the Fur Traders were rightful owners of the aforesaid property"—Proceedings of the House of Assembly (hereinafter As.), 17 May 1859, extract from Gazette of 18 May 1859.
be "new to his Grace" who had heretofore believed "that such land had been legally acquired by the Company in their private capacity since the original grant."\(^{31}\) He then stated quite definitely—"that Her Majesty's Government can recognize no claim to land in the foreign possessions of the Crown except such as is derived either mediately or immediately from the Crown"—the decision already given for British Columbia. In the case of Vancouver Island a further case was made by reference to Pelly to Grey, H.B.H., 7 September 1846, (v.supra n.1, p.72) and to subsequent correspondence which had proceeded throughout in the assumption that such a grant (of 1849) was necessary.\(^{1}\) Moreover the final form of the grant had "contained no distinction or reservation whatever with regard to the lands now alleged by the Company to have been theirs by anterior title. All the lands of the Island 'were granted' alike and all were made subject to the like power of re-purchase by the Crown."

These last two despatches went to Douglas under cover of a message from Newcastle which contained the following passage, later very popular among Vancouver

31. Merivale to Berens, D.St., 7 Jan. 1860. It must be borne in mind that Newcastle had been in opposition at the period of the Grant and did not take over the Colonial Office till December of 1852.
Island orators. "You will let it be fully understood that Her Majesty's Government are not prepared to recognize any private ownership of soil in Vancouver Island by the Company by any title anterior to the grant." 32

Unfortunately there are no more London despatches available on this dispute, (since the case was referred to the Privy Council during the summer of 1860) but there are three despatches from Douglas which bear on the subject. In February of 1860 he sent a despatch stating that Dallas had made his position on the matter of the advance more clear but that the two had been unable to come to any agreement. 33 In the interim before the next despatch Douglas received Newcastle's momentous communication of 2 January and his next message breathes defiance based on its support. Beren's claim to the land of the Government Reserve, (across James Bay) he refuted by calling to mind an early offer, by the Company to Blanshard, of £4000 for government buildings, declaring that the offer had included "the lands that may be appropriated to them," 34 and that the Company had insisted "that the site of...

32. Newcastle to Douglas, D.St., 2 Jan.1860
33. Douglas to Newcastle, V.I., 16 Feb.1860
34. Same to same, V.I., 28 Mar.1860. (#17). The offer was made in Barclay to Blanshard, 1 Jan.1851. Blanshard refused, wanted a site outside of the H.B.Co. Reserve.
these buildings should be near Ft. Victoria for convenience and protection." Douglas' letter declared that this land had been kept as a government reserve and no lots sold off it; but he neglected to state that Blanshard refused the £4000 and therewith any lands included in the offer.

The third despatch from Douglas quoted Pelly to Douglas, 22 May 1851 (v.supra n.8, p.75) as proof that any land required for public purposes could be resumed on payment of the price. In this case "no repayment of the original price of the land was required, the Fur Trade having paid nothing for it (nor have they, I believe, up to this day (made?) any payment for the 3084 acres claimed by them) and no compensation was necessary, no expenditure having been made in improvements."

He also accused the Company of retaining part of the proceeds of the sale of the buildings on the old government reserve although the cost of all (sic) the buildings erected upon the disputed land was charged to the Colony.

35. Douglas to Newcastle, V.I., 7 Dec.1860
36. In this statement he is partially supported by Berens who admitted that the cost of the government buildings with the exception of the Custom House, Post Office, and possibly others had been "included in the account of expenditure rendered to the Government by this Company and those buildings are therefore without doubt the
It would be a more satisfactory conclusion to this incident if we could say that the loan was either repaid or repudiated but it was included in the general account of the Hudson's Bay Company and since that was reduced and finally paid in a lump sum, the Company refusing to deny any specific item, neither answer can be given. Of one thing we can be sure, it did not settle the question of the Reserve.

In the meantime another occasion had arisen for the airing of opinions on the Company's claims. The Vancouver Island House of Assembly decided to discuss the accounts presented by the Company but only after a spirited objection from Messrs. Carey and Franklin who feared that this action might result in the presentation of the bill to Vancouver Island instead of Downing Street. De Cosmos supported the investigation by an editorial breathing hopes of recovering some assets, declaring the opposition tactics were based on fear of disclosure and voicing the classic suspicion that there

36.(cont) property of the Government." However if the Reserve decision favors the Company "there can be no question that the land upon which those buildings were erected would be their property and that the proceeds arising from any sale of it would belong to them". Berens to Newcastle, H.B.H., 26 Jun.1860

was "Something rotten in Denmark." The opposition 
*Gazette* advised caution "Whether there is a balance 
due to the Hudson's Bay Company or not is no business of 
ours as we are not called upon to settle it."\(^{38}\)

The issue was further aggravated by the 
Hudson's Bay Company selling certain lots along the 
waterfront of the Fur Trade Reserve. Douglas reported 
the matter to the Colonial Office,\(^{39}\) whence a message 
went to Hudson's Bay House asking for immediate cess­
ation of such sales of land and threatening that should 
the Company lose the case of the Reserve, now before the 
Privy Council for decision, "the sales will not be 
recognized by the Crown."\(^{40}\) Beren's reply was most 
conciliatory. Since "There is no wish on the part of 
this Company to do anything that would militate against 
the Public interests" he would give the required instruc­
tions immediately.\(^{41}\)

Before these instructions could reach 
Vancouver Island Mr. Pemberton appealed for an injunction 
from the Supreme Court of Vancouver Island. This question-

38. Gazette of 27 Apr. 1860. The motion was reconsidered 
and lost.

39. Douglas to Newcastle, V.I., 7 Feb. 1861

40. Rogers to Berens, D.St., 23 May 1861

41. Berens to Newcastle, H.B.H., 24 May 1861. There is 
some ambiguity about the wording, v.infra n.47.\(^{36}\)
ed the right of the Company to lots 24, 31 and 32 in Victoria city, and accused them of making sales from various public Reserves. Section 9 stated "The Company have not paid any money for the said land (lots 24, 31, 32) and they have sold a portion of the same to purchasers." The injunction demanded that:

1. The sales of water frontage be set aside.

42. Lot 24 is now the two blocks bounded by Douglas, Fort, Government and Courtenay Streets, lots 31-2 the two blocks bounded by Meares, Cook, Bellot and Vancouver Streets.

43. See notes on Lowenberg and Lot Z and on Church and Springs Reserves. In reporting the Injunction to D.St. Douglas states—"It will be perceived that no interference was attempted with any portion of the land forming the actual sites of the Company's establishments at Victoria. To this it was considered the Company would probably obtain a good title upon payment of the fixed price, $1 (sic, probably copyist error) per acre, Her Majesty's Government having declined to purchase such establishments upon the "expiring" (probably but the writing was illegible) of the grant. The Injunction was intended only to apply to other portions of the 3084 acres, to which no such equitable and consistent claim could be advanced". Douglas to Newcastle, V.I., 8 Aug. 1861

44. Colonist of 29 May 1861
2. The sales of Reserves and Springs be set aside.
3. " " lots sold in controversion to the design laid down in the official maps, (Lot 2) to be set aside.
4. There be no future sales in lots 24, 31, 32.
5. The Company receive no more instalments on sales in lots 24, 31, 32 except their own establishments.
6. A receiver be appointed to collect unpaid instalments.

The case was pleaded by Attorney-General Carey but his eloquence failed. "The court refused in present stage of the case to grant an injunction against the Hudson's Bay Company to restrain them from selling any more land, or to appoint a receiver, on the ground that it was before the highest court in England. That court had power to institute inquiries if it wished." 45

Of course this was highly unsatisfactory to Colonial opinion. De Cosmos sadly lamented the loss of some check on the sale of the Reserves and then twisted the case into an attack on the Executive by stating that information must have been criminally withheld from the Colonial Office or they would have issued the necessary injunction.

In June Douglas reported to the Assembly that

45 Decision of Supreme Court in Colonist of 19 Jun. 1861
no settlement had been made with the Hudson's Bay Company as yet but "Her Majesty's Government will enter into no final arrangement with the Company in regard to the disposal of the ground in the Vicinity of Victoria until the Government of the Colony has been consulted." 46

About this time Dallas must have received his orders from Hudson's Bay House to stop sale of lands, for he sent a despatch in reply, dated 14 July, expressing his compliance. Unfortunately we have no copy of these orders but by a second-hand account we are told that they "were not confined as had been supposed to the Water Frontages more immediately under discussion but were intended to apply to the whole of the 3084 acres of which those frontages form a part." 47 Acting in accordance with these instructions "the Agent expressed his intention to refrain from selling any further portions of the 3084 acres."

This was not what Douglas wanted at all. It showed altogether too much good intention on the part

46. Douglas to Assembly in Colonist of 27 Jun.1861, quoting from Newcastle to Douglas, 15 Apr.1861. This was pleasing to the members, whose vanity hid from them the obvious hint that though they might be consulted, the final decision rested in Downing Street.

47. Newcastle to Douglas, D.St., 4 Dec.1861. Newcastle appears to be quoting, though not verbatim, from Berens' account.
of a corporation whose intentions had been painted black by local tradition. He states rather in sorrow than in anger that these orders "have the effect of retarding the progress and settlement of the Colony and if accepted of relieving the Hudson's Bay Company from the onus thereof insomuch as most of the land still in the hands of the Company is capable of being immediately utilized and would find ready purchase if offered for sale." His keen sense of business dictated the request for some provisional arrangement whereby the lands might be sold and the funds held over till the decision was made since a large immigration from California was expected. "Business men from that state are already flocking hither to form establishments and land is consequently much in demand."

Douglas' efforts at a solution were wasted for while he was penning this despatch, letters were already on their way to tell him that the dispute was at least temporarily settled. "It had been determined to submit the claims to the Judicial Committee of the Privy Council and the preliminary steps had been taken for that purpose. But a long time must necessarily have elapsed before the decision of the Council could have been obtained, a protracted and expensive investigation must have been undertaken and delay incurred which could not ...

48. Douglas to Newcastle, V.I., 27 Feb. 1862
fail to create a serious impediment to the progress of the Colony. The claims had therefore been withdrawn and private negotiations opened, which had produced a mutually satisfactory arrangement—the Indenture of 1862. Its most important terms were as follows:

1. All land occupied before 1849 and sold before 1 January 1862 was given a valid title. (This included the Water Frontage lots)

2. The Company should keep the price of this land.

3. Certain areas were to be kept by the Company
   a. Uplands Farm, 1144 acres
   b. North Dairy Farm, 724 acres
   c. The Old Spring and adjoining land (except one well set aside for public use)
   d. The Fort Property

4, 5, & 6. Certain areas turned over to the Crown
   b. All unsold lands in Victoria district lying to the south and west of James Bay except 50 acres to be chosen by the Company within 18 months in such places where they would not interfere with streets, etc.
   c. Reserves for Park, School, Church and burial ground, about 200 acres "except such portions thereof as may have been sold already which
are to remain as regards the Crown in the undisturbed possession of the purchasers thereof."

The feeling of Downing Street is well shown by the following quotation. "The speedy settlement of these questions of title which, by keeping the public mind in suspense, retard the progress of the Colony, must be of far more value to the community than the issue, however favorable to the government, of a tedious and expensive litigation."50

The colonist, quite used to being kept in suspense and nurtured on hatred of the Company's wiles, was quite willing to carry on "tedious and expensive litigation" for which the bill would be paid by Downing Street and from the colony could lose nothing and might gain much. To the efforts of Douglas De Cosmos, now partially allied by a common hatred, to break or modify the terms of the Indenture another chapter must be devoted.

49. Newcastle to Douglas, D.St., 24 Jan.1862

50. Same to same, ibid.
Chapter VI

THE HUDSON'S BAY COMPANY RESERVE--CONCLUDED

February 1862 --- May 1867

The Indenture was not immediately published in Vancouver Island but De Cosmos chose the moment of its arrival for an attack on the policy of the Assembly. "The land on which the town is built, by all laws, human and divine, belonged to the Colony. The proceeds of the sales would have prevented the imposition of taxes for the next four years. Yet the Hudson's Bay Company is allowed to pocket the entire proceeds and no member of the Assembly even inquires how or why such a thing is allowed to be done." In his attack he is willing even to accept the opinion of Attorney General Carey, until recently under his extreme displeasure for his share in the Springs Reserve dispute.1 "How is it that the colony is made to pay annually $100,000 when Attorney General Carey and two other barristers have given their opinion that the townsite claim--worth $500,000--equal to the whole revenue for four years--belongs rightfully to the Colony?"2

1. v. infra. note on Springs Reserve. n.3.
2. De. Cosmos editorial in Colonist of 23 Jun.1862
Douglas certainly did his best to cut down all that the Company expected to get. His despatches home are full of complaints of the behavior of the Company officials at Victoria and of dissatisfaction with the terms of the Indenture. He declared that if the fifty acres south of James Bay were given to the Company, nothing would be left for the Crown since the "assessment roll of 1861 whose the unsold land then possessed by the Hudson's Bay Company to amount to exactly fifty acres." Moreover he claimed that in drawing up the Indenture "(Mr. Dallas only having any local knowledge of the land treated of)" the Company had not only given nothing but "had actually obtained from the Crown the whole of the very small portion of ground not covered by buildings, actually now and for years past in the possession of the government and to which the Company had no sound claim."(Lot 3)

He complained that he could not get the Company officials to turn over an authentic map of the areas to be transferred and he suggested that they were procrastinating until their payments had been turned over "before rendering statements that would disclose the character of the Indenture and agreement of February last and would show how little the Crown benefitted by that indenture." Nor had he received a definite

3. Douglas to Newcastle, V.I., 30 Jul.1862
4. Same to same, V.I., 3 Dec.1862

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list of the lands sold before 1 January 1862, and ventured
to suspect some pre-dating of sales because "since the
receipt of the Indenture, surveyors have been placing
boundary posts and apparently running lines upon portions
of land that is still unoccupied and which was supposed
to be unsold." 5

To speed up the production of a map he
offered the services of the public surveyor but the
Company refused his offer. In July McTavish had promised
a map "at the earliest possible moment" and when in
December, Douglas was only informed that the map was
"in a forward state and would be presented at an early
date" his impatience may well be pardoned. 6

However the map was finally presented in
January of 1863 but Douglas' feelings were soon dis­
turbed again by the contents of a despatch from Downing
Street, wherein Newcastle accepted the Company's map and
passed on the following polite complaint from Berens.
"It is quite obvious that Governor Douglas' communications
are conceived in a spirit of hostility to the Company
and their representatives in the Island." 7 In the

5. Douglas to Newcastle, V.I., 3 Dec. 1862. The Report of
the Committee on Crown Lands declared there was no proof
of this charge.

6. see Douglas to Newcastle, V.I., 5 Dec. 1862

7. Berens to Newcastle, H.B.H., 7 Mar. 1863

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Park and School Reserves.

Included in Newcastle to Douglas, D.St., 19 Dec. 1862
covering despatch Newcastle advised speed and diplomacy in the negotiations. "I can only impress upon you the importance of not raising unnecessary controversies with the Company's officers but of conducting the correspondence in a liberal and conciliatory spirit, the primary object being to put an end to the questionable tenure of the Company which is calculated to impede the progress of the Colony." Under the same cover was a list of the property to revert to the Crown under the Indenture, made up by McTavish in Victoria:

<table>
<thead>
<tr>
<th>Property</th>
<th>Acres</th>
</tr>
</thead>
<tbody>
<tr>
<td>Beacon Hill Park</td>
<td>165</td>
</tr>
<tr>
<td>School Reserve</td>
<td>10</td>
</tr>
<tr>
<td>Church Reserve, Parsonage and Cemetery</td>
<td>25</td>
</tr>
<tr>
<td>Government Buildings</td>
<td>10</td>
</tr>
<tr>
<td>Beckley Farm</td>
<td>50.5</td>
</tr>
</tbody>
</table>

Town Property

- Police Barracks (worth $15,000)
- Post Office (worth $6,000)
- Harbor Master's Office (worth $5,000)

and an account of the 8 sections of 48.77 acres and the site of the farm buildings which the Company received in place of Beckley Farm. In all the Crown was to receive "ten sections and seventy-eight town lots—containing about Sixty and a Half Acres, together with the entire...

8. Newcastle to Douglas, D.St., 14 May 1863
9. McTavish to Fraser, Victoria, 21 January 1863
10. McTavish to Young, Victoria, 7 Jan. 1863
waterfront to seaward of the street or drive marked Dallas Road." This had been accepted by Young,¹¹ and transmitted to Douglas.

A further enclosure from Dallas stated that any errors in the text of the Indenture were due to his inability to estimate areas from memory,¹² and declared the cause of the quarrel over the Reserve was only the increased value of the land. In the good old days during "the earliest portions of my residence in Victoria • • • Governor Douglas and the Colonial Surveyor handed over to me the control of the land as being the private property of the Company. • • • (When ) the Duke of Newcastle first took exception to the validity of our claims • • • the people of the Colony eagerly grasped at the prospect of such an acquisition and with the change of rulers and paymasters, both Governor Douglas and the Colonial Surveyor changed their ideas as to the ownership of the land."¹³

In answer to the accusations of Berens and Dallas, Douglas utterly denied that he had raised any "unnecessary controversy. • • Mr. Berens alleges that my communications are conceived in a spirit of hostility to the Company. I need make no further observations than

¹¹. Young to McTavish, V.I., 8 Jan.1863
¹². He wasn't so bad. He guessed Beckley Farm (60.5 acres) at 60 acres.
to remark that this is not the first time that an attempt has been made by the Hudson's Bay Company to give such a complexion to the public acts in respect to the Company which my position has required me to take."¹⁴

His objections to the scheme as embodied in the maps were presented in a despatch of April. He admitted that his estimates had been wrong and that the Crown did receive about sixty acres, but some of that was swamp and the rest unsuitable for building. He estimated the loss to the colony in the case of the water frontage at a present sales value of £10,000 and a possible future income of £5,000 per annum if dredging and harbor improvements were carried out. The various Park Reserves satisfied him but he insisted on the Colony receiving all the three lots, on one of which the Post Office stood. These lots together with Lot 2 he declared to belong by right to the Colony. To this "amicable arrangement" of the matter he hoped that the Company would agree. "Under the agreement they have already immense advantages. A vast property is assured to them. They are left in undisturbed possession of large sums of money which the sale of portions of that property have brought them, not one farthing being deducted for the benefit of the colony or even to pay for the expense of surveying and selling, which has been mainly borne by the Colony and the Imperial Government. ¹⁴. Douglas to Newcastle, V.I., 11 Aug.1863
All their actual outlay in connection with their tenure of Vancouver Island has been generously repaid in money by Her Majesty's Government. ... And what does H.M. Govt. (sic) take by the agreement? A few acres of comparatively valueless land on the seacoast and a few town lots that would have been sold long ago had anybody considered them worth buying.¹⁵

Douglas also repeated his suspicion of sales made after 1 January 1862 being antedated. To back this up he quoted the opinion of Attorney General Carey who would not commit himself to anything more than the suspicion that "some of these sales represented to be made prior to 1 January 1862 are (not) bona fide."¹⁶ Douglas could produce no positive evidence but his doubts were aroused by the delay and refusal on the part of the Company to make immediate returns of land sales; while the Company's claim of "want of assistance in making the necessary surveys and plans of the property" was interpreted as a confession of doubt as to title "for how could legal transfer and bona fide sales of property be effected in no survey had been made at the time of sale?"¹⁷

In London there seems to have been a mutual desire to get the matter settled and done with. Hudson's Bay House accepted Douglas' compromise with the proviso ... ¹⁵ Douglas to Newcastle, V.I., 20 Apr., 1863 ¹⁶ quoted in above.
that any lots sold to a third party should not be included.\textsuperscript{18}

The policy of the Company in these negotiations is hard to gauge. They seemed ready to accept most of Douglas' demands but whether it was because of a mixture of disgust at delay and willingness for concession or because of fear of investigation and willingness to accept what they had already obtained, is a question which cannot be answered definitely now--probably not until the private correspondence of the Company is at the disposal of the student.

An interesting sidelight on the quarrel was an attempt on the part of certain enterprising citizens of Victoria to possess themselves of the pasture lands of the Puget Sound Agricultural Company near the city. They registered pre-emption claims "on the ground that, the Puget Sound Company having no good title to the land in question, it is the property of the Crown and being unreserved is consequently open for pre-emption."\textsuperscript{19} They hired lawyers and were prepared to fight the case, but unfortunately for them the area had been fully paid for and the case never reached a decision.\textsuperscript{20}

\begin{itemize}
\item 17. Newcastle to Douglas, V.I., 20 Apr.1863
\item 18. Head to Newcastle, H.B.H., 1 Aug.1863
\item 19. News item in Colonist of 21 Oct.1863
\item 20. No further note appears in the columns of the Colonist before 1867. For payment see c.3, n.21, p.50
\end{itemize}
In September of 1863 the House of Assembly on the motion of Mr. Trimble, appointed a committee with power to produce papers, persons and records to investigate the condition and value of the Crown lands in the colony. Though the ostensible reason was to decide on the value of the lands with regard to exchanging for them a guaranteed civil list, the hope of getting some rebate from the Company was manifestly quite as important, the mover himself stating that "Vast tracts of land, thousands of acres in the vicinity of Victoria were held by men who were not the legal owners."21

De Cosmos, newly elected to the Assembly and no longer connected with the Colonist, was an active member of the Committee and his hand was obvious in the form of the report submitted. The committee sat intermittently throughout the summer and winter and into the spring of 1864, examining many witnesses but hampered by the refusal of Company officials to surrender business records. For a time discussion of the matter ceased in the Assembly, and Douglas as a retiring Governor was pleased to let the matter rest. He left Vancouver Island in March of 1864 and Governor Kennedy had to gather up the dreadfully tangled strands of this cat's cradle, a process over which he took his time. Popular opinion as expressed by the Colonist, now under the editorship

21.Trimble in the Assembly. Colonist of 19 Sep. 1863
of McClure, became disgusted at the delay and demanded action. The following editorial is quoted to show both the feeling of the times and the style of journalism favored by contemporary editors. "To send anything in to the Assembly is like throwing a child to a pack of hungry wolves. The only organ that seems developed in their political cranium is that of destruction. There is a kind of animal relish and ferocity in their manner of dealing with useful measures—a kind of savage playfulness such as the cat exhibits towards the unfortunate mouse—that oftentimes starts the query whether we live in the Feejeees (sic) or in Her Majesty's Island of Vancouver. . . . Another measure comes before these men—a question resolving itself simply into whether a Commission with ample powers to make enquiry, shall be appointed to endeavor to regain a large portion of that patrimony which has been illegally wrested from the people or the Crown—and what is likely to be the result? Why in two or three more days the House will be prorogued, the whole labor of the Crown Lands Committee will be lost and with them the last chance afforded the people of obtaining justice from the Hudson's Bay Company."22

The report was finally presented in June. It was a verbose document and lack of space presents its insertion in full. It will be discussed again in its bearing on the Crown Lands question but in this chapter.

22. Colonist editorial of 11 Apr.1864
we will notice only the references to the Hudson's Bay Company Reserve. 23

Section 17. showed that the value of all lots still held in the Reserve by the Hudson's Bay Company together with the price of all past sales from that area amounted to $765,437.

Section 18. showed that Colonial sales outside of the Reserve amounted to $475,000. If the Company got their 10% commission on this they would receive $812,937 from land sales, while the Colony received only $437,500. All the Company deserved was 10% on all sales—$120,000—in other words they should turn over $688,893 less the expenses of colonization.

Section 19. treated the terms of the Indenture of 1862—"a remarkable document" which spoiled the rosy picture of large payments. Unable to attack its validity the Committee turned to an attack on the absent Douglas accusing the Colonial Executive of not presenting the case for the Colony with sufficient vigor to Downing Street. They considered the Indenture a mistake—the dispute should have been left before the Privy Council. "If it had been done the $688,893 with interest might today have been in the Colonial . . . .

23. A M.S. of the report is preserved at the Victoria Archives but several printed copies were available. It is bound in N.W.971.13 E56, p.2
Treasury and the title to the Crown Lands might have been vested in the Crown instead of as now in the Hudson's Bay Company. Means however were found by some party to prevent the question being heard before the Privy Council and to have it referred to arbitrators, whose decision is a virtual robbery of the Colony, though perhaps not intentionally so; but may probably be due to imperfect information respecting the value of the property in dispute on the part of the Crown or to the ex-parte statements of the Hudson's Bay Company. On no other grounds of public honesty can this remarkable decision of the arbitrators be accounted for.  But they were forced to accept it as binding and unless it could be cancelled "there is no hope whatever of the colony every coming into possession of what is otherwise its lawful due, the $688,693.30."

Section 20. stated with an air of regret that there had been no proof established of any fraud in Hudson's Bay Company sales and that on that score it was impossible to challenge the Indenture.

Section 23. estimated the value of the land turned over by the Company under the terms of the Indenture at $68,000.  

Section 32. estimated the value of the Water Frontage...

24. c.p. c.5 for contrasting views of D.St.
25. c.p. Douglas estimate, supra n.15, p.106
turned over to the Company at $500,000, a sum which the Committee felt the Colony should have received.

So much for the terms of the Report. It showed the extent of Colonial information but could suggest no action. This was provided by De Cosmos, who presented a petition in the Assembly to do away with the Indenture and set up a committee to settle the claims of the Colony against the Hudson's Bay Company. He declared that the Colony had a right to the proceeds of the sales of Reserve Land and to the property presently held in the city, including the waterfront area. This sum he totalled at $1,265,437 and demanded its repayment, less the ten percent of the $426,237 proceeds of sales outside of the Reserve—a nice lump sum of $1,222,814.26

De Cosmos showed the weakness of his position by admitting that any amount returned by the Company would go to the Crown (a point wisely neglected by the politicians to date but balanced by the fact that the costs of any lawsuit would also be borne by that authority) but stated that unless his petition were acted upon "there will be a serious injury done to the finances of this colony, affecting materially the proposition of His Grace the Duke of Newcastle."27 De Cosmos seems to have expected that Downing Street, after recovering the £57,500 paid to the Company would turn 26. De Cosmos in Assembly in Colonist of 17 Jun.1864
over the remainder to the Legislature, but like the proceeds of land sales, this sum would have been applied to the Crown Revenues Fund thus strengthening the Executive and making it independent of the lower House. This eventuality however can hardly have occurred to De Cosmos for he pushed his motion stoutly in spite of vigorous opposition from the members interested in the Company or wary of consequences.

Dr. Helmcken took up the cudgels for the Company in a rather confused speech with intermittent solos of applause by Dr. Tolmie. He claimed that any commission should be unbiased and composed of members chosen not in the Colony but in England and he doubted whether Kennedy would be justified in reopening a case which had already been decided by Downing Street. His chief point was well made; that the Hudson's Bay Company had held the land without opposition while it had been of little value. "But now because they had become so valuable they were looked after and thus the Company's title had been disputed. It was only a question of $700,000, not of right! (Dr. Tolmie, 'Hear, Hear')."28

Next day Mr. Franklin felt called upon to support De Cosmos' motion. He accepted the idea of a

27. The refusal of a Civil List was to be used as a lever to force action.

28. Helmcken in As. in Colonist of 17 Jun. 1864

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royal commission and tried to work up a case for the Colony against the Company. "The Colony had been seriously damaged and affected . . . they had a strong case to go to the Home Government." He rhetorically declared that there had been $1,000,000 worth of property disposed of but where had the 90% been invested? The simple answer—that the land now worth a million would have been purchased at £1 per acre and that only from that smaller sum could improvements be made—quite escaped him. Dr. Tolmie entered the lists by recalling that Dr. McLoughlin's claims in Oregon had finally been paid and urged the analogy to an audience, whose imagination had been captured by the big figures of De Cosmos and Franklin.

When the motion came to a vote next week Mr. Foster advanced the cautious objection that this was likely to be an expensive operation in any case. If the decision favored the Colony still the expenses must be taken out of the spoils and if the Company won, expenses would come on the Colonial legislature, not the Colonial Office, as that body had already made its agreement with the Company by the Indenture of 1862. Moreover the Company was not likely to pay out a million without putting up a good fight which was bound to be costly to

29. Franklin in As. in Colonist of 18 Jun. 1864
30. Tolmie in As. in Colonist of 18 Jun. 1864
both sides.31 De Cosmos crushed such reasonable opposition with a sarcastic tirade that swept the motion to a successful passage with only Helmcken and Tolmie dissenting. "They (the Hudson's Bay Company) had come here in early days and taken up land which was then worthless and they had paid nothing for it and now when it had become valuable they wished to get it for nothing. Because, forsooth, there was a fort on the harbor, a piggery here and a dairy there, and a few blades of grass somewhere else; therefore the Hudson's Bay Company had a moral and legal right to the townsite and adjoining lands."32

The Assembly was prorogued soon after and when it was re-opened in August the question of Crown Lands and the Sooke gold rush provided the main topics of discussion. It was not till October that De Cosmos re-opened the issue by presenting an address "praying that the House may be informed of what steps have been taken or are proposed to be taken by the Executive with regard to the settlement between the Crown and the Hudson's Bay Company respecting the Crown Lands of the Colony."33

In his reply Kennedy brought up the question

31. Foster in As. in Colonist of 22 Jun.1864
32. De Cosmos in As. in Colonist of 22 Jun.1864
33. De.Cosmos in As. in Colonist of 21 Oct.1864

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of the repayment of sums lent from the Crown Funds, (v. infra, c. 8, n. 21) but assured them that "this will in no way impair the rights of the Colony or prejudice the claims asserted by the Legislative Assembly against the Hudson's Bay Company in the Resolution of 27 June 1864."  

The "Colonist" labelled this suggestion "a trap" and suggested that a further delay would not harm the Colony which had already waited several years for its due. The idea of the Colony itself having a claim against the Company had been so persistently advanced by De Cosmos and Company that it was well on its way to becoming a local tradition.

The reply of the Assembly was a set of resolutions moved by Young on 22 November. With regard to the Hudson's Bay Company Reserve he stated that "As the grant of the whole Island was made to the Hudson's Bay Company in 1849 without any reservation . . . for possessory rights (based on occupation before 1846) . . . this House cannot recognize such rights." Such rights, worth about a million dollars had been claimed by the Hudson's Bay Company and "inconsiderately admitted" by Her Majesty's Government by the Indenture of 1862 "to the great prejudice of this colony". The resolution . . .

34. Kennedy to As. in Victoria Daily Chronicle (hereinafter Chronicle) of 31 Oct. 1864
35. Colonist editorial of 7 Nov. 1864

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demanded a reconsideration of this indenture in favor of "a more just and final settlement" on the grounds that it had not been submitted for their approval. In conclusion the mover calmly regretted that a civil list must be withheld and showed an avid desire to see what could be got out of the Indenture "by making an appeal to the justice and Consideration of Her Majesty's Government." Kennedy's reply was brief and might have been further condensed to a phrase, "Too bad!" 37

During this period another attack was made on the Hudson's Bay Company. This was the deed of Attorney General Carey who filed information "against the Company, praying that certain sales alleged by the Company to have been made by them prior to the agreement with Her Majesty's Government of February, 1862, may be set aside." 38 The Executive council, however, decided to discontinue the suit which was thus choked off and Kennedy in reporting the matter expressed a strong desire for a speedy settlement. He declared that the prolonged quarrel of the preceding Executive and the Company had necessitated "a court of Law, a special Commission or arbitration" and favored the last solution. It is one of those subjects on which a correspondence may be kept.

36. Young in As. in Colonist of 22 Nov. 1864
37. Kennedy to As. 5 Dec. 1864
38. enclosed copy in Cardwell to Seymour, D.St., 1 Nov. 1864
up for years without any result." Kennedy for his part refused to act as arbiter from fear of arousing the personal antipathy of certain Hudson's Bay Company men who "have shown a very persistent and unmistakable hostility to my administration from a period anterior to it." The reply from Downing Street, contained only a promise from Hudson's Bay House to supply Kennedy with all the information he might desire on the subject—it said nothing about a solution.

Before this reply had even been despatched, Kennedy sent home the Report of the Committee on Crown Lands for the decision of the Colonial Office. His own comments on it were rather caustic, inferring contradictions and general statement, many not based on sworn evidence. Admitting failure to settle the matter himself he suggested that a local commission, perhaps under a new Chief Justice might succeed.

The reply to this last despatch rejected all...
ideas suggesting compromise and submitted a legal decision on the question of the Reserve which sadly squelched the aspirations of the colonial agitators. From the Emigration Office came also a justification of the Indenture of 1862. "The land itself has been actually disposed of to purchasers and could not of course be reclaimed. The only question was, therefore, whether the Company could be required to account for the money they had received for the land as money received by them, not in their private character but as Trustees for the Crown. It appeared to us impossible under the circumstances to come to such a conclusion with justice. Nor if such a conclusion had been adopted could it have been carried into effect except through legal proceedings which would have been expensive and dilatory, and the result doubtful." 43

The final decision was given in the report of the law officers for the Crown. "After all that has occurred the Crown cannot now dispute the right of the Hudson’s Bay Company to regard the land of which they came in possession before 1849, as absolutely their own." 44

This rude negation of Colonial aspirations

43. Report of the Emigration Commissioners, 14 Jul. 1865
44. Report of Palmer and Collier, Law Officers at Lincoln’s Inn, 26 Jul. 1865

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was transmitted to the Assembly on 3 November, 1865, and in the issue of that date the "Colonist" came from the press with an editorial of half-polished and cumbrous sarcasm entitled "The Test of Loyalty"—a loyalty proved by patience under such affliction. "Was there ever such an instance of gross injustice perpetrated by even the Khan of Tartary? We hope Vancouver Island will never forget its patrimony was jealously guarded by its trustees—and how the English Colonial Office consented to measures which left the Island a pauper—a disinherited heir. ... Do our Imperial authorities really desire to drive us out of the British connection or are they simply carrying out one of their paternal schemes for testing our colonial loyalty?"45

The rival "Chronicle" seized the occasion for an attack both on the defeated policy of the agitators and the heated rhetoric of its competitor. "The schemes which have served the double purpose of rendering some of the members popular and giving them an excuse for doing nothing but agitate, have been blown to the winds by the annihilating narrative of Mr. Cardwell. ... Mr. De Cosmos is about to crawl from under the debris of his 'watchtower'. Mr. Duncan is in the sad act of folding away the faded flowers of rhetoric which for so many months bloomed in the bear-garden. Even Mr. Franklin may be...

45. Colonist edit. of 30 Nov. 1865. Shades of Sam Adams & Co.
congratulated on the discovery of his 'data'; while our
morning co-temporary, unable ever to bear defeat with a
good grace covers its "Farewell! oh! farewell" with a
confused medley of desperation and noise. The great
bubble has burst." 46

There were still technicalities to go
through before the title to the land of Vancouver Island
was relinquished by the Hudson's Bay Company. A draft
of the conveyance was sent to Kennedy 47 asking for a
plan to exhibit "only the land surrendered to the Crown
and the land remaining actually in the possession of
the Company", taking care not "to confer on the Company
any advantage not intended by the Government."

In the trial draft are detailed the payments
received by the Company and a list of the lands that
they retained:

I. In Victoria Town. The Church Reserve and
any lands sold there before 1 January 1862.

II. Uplands Farm  1144 acres

III. North Dairy Farm  724 acres (460 interpolated
in pencil)

IV. Old Spring area.

V. Fort Property except Harbor Master's Lot.

VI. Lots chosen to make up for Beckley Farm.

The Hudson's Bay Company had signified their acceptance

46. Chronicle editorial of 1 Dec.1865
47. Cardwell to Kennedy, D.St., 26 Apr.1866 (#16)
of the form sent and to avoid any further friction Kennedy was to refer any questions to the Colonial Office where the Colonial Secretary could "conclude a reasonable settlement with the Company without any further reference to the Colony."

Final details were arranged quietly if not amicably in London and in June of 1867 Governor Seymour received a despatch containing "the deed for the reconveyance of Vancouver Island to the Crown which has been executed by the Hudson’s Bay Company under their Corporate Seal and by the Colonial Land and Emigration Commissioners on the part of Her Majesty." Eight years overdue the sovereign rights of the Hudson’s Bay Company were withdrawn from Vancouver Island.

48. Buckingham to Seymour, D.St., 11 May 1867. The text of the deed may be found in N.W.971.113, H.886c
Chapter VII
CROWN LANDS AND CIVIL LIST UNDER GOVERNOR DOUGLAS

July 1859 --- March 1864

The exchange of Crown Revenue for a civil list seems at first sight a rather simple transaction, a brief phase in a treatment of lands policy. During the period of this thesis however it remained a constant point of contention, a source of hours of eloquence and reams of correspondence. Though at time closely bound up with the question of the Hudson's Bay Company Reserve it will received separate treatment in two chapters, the present one dealing with the origins of the dispute in the regime of Douglas and the second carrying it through the term of his successor.

There is a long early period of uncertainty in the Colony when the terms of such a bargain were not clearly understood and when the Colonial Office did very little to make it clearer. The first reference appears in July of 1859 when Skinner of the House of Assembly asked if it lay within the power of that body "to modify the land system of this colony."¹ To this Douglas

¹ Skinner in As. in Colonist of 15 Jul. 1859

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replied that "the Legislature does not possess that power but if the House of Assembly will grant a civil list which will provide for the expenditures of the Colony I shall be happy to recommend to the Imperial Government that the management and control of the Crown Lands in the Colony (subject to such reserves as may be required for Imperial purposes) and the appropriations of the proceeds of the sales of such lands shall be vested in the Colonial Legislature."  

In a despatch from Downing Street of the same month Newcastle makes the following statement which may have some bearing on the subject. "Reserves should be made for any public object requiring the use of land but not for the purpose of raising a revenue either by its cultivation or by its sales at a future period."  

In September Douglas reported a grievous lack of revenue. He declared that since he controlled land sales, the Assembly would vote no more new taxes and that even the proceeds of land sales might "prove insufficient to defray the unavoidable expenditure of the Colony."  

In October a despatch from Downing Street issued the first definition of a Civil List. In discussing the appropriation of Colonial Revenue Newcastle

2. Douglas to the As. in Colonist of 15 Jul. 1859
3. Newcastle to Douglas, D. St., 24 Jul. 1859
4. Douglas to Lytton, V. I., 12 Sep. 1859

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stated that "payments for services of a permanent nature (such as the salary of Governor and Chief Justice) should be fixed by law, and not merely placed on the annual estimates," and two days later Douglas penned a despatch wherein he declared his opinion that "no unrestricted control of Colonial funds should be placed in the hands of the House of Assembly until that body provides for the Civil List required by the Colony." When the enlarged Assembly was about to meet Douglas wrote home anticipating a demand for the "control and entire disposal of all monies arising from the sale of Crown Lands and other sources of revenue," and asking if he would be permitted to exchange this for a civil list "provided that such payment whatever the amount may be will be fixed by law, not merely placed on the estimates for the year." The question received mention several times during the session. In April Carey mentioned the exchange during the discussion on the accounts of the Hudson's 5. Newcastle to Douglas, D.St., 20 Oct.1859 (#14) 6. Douglas to Newcastle, V.I., 22 Oct.1859. It is not clear whether Douglas was clear about the idea of a permanent grant but it is certain that the Assembly were not. 7. Douglas to Newcastle, V.I., 26 Jan.1860 8. Douglas is quoting Newcastle, v.supra n.5
Bay Company." and in June Helmcken introduced the follow­
ing motion, passed unanimously--"Resolved that the Civil
List . . . be paid from the time when the Crown Lands
and the entire revenue of the Colony are placed under the
control of the Legislature in the Colony."10

It became obvious that the offer of the
Assembly was by no means an olive branch but only a quid
pro quo if they got the lands. This attitude was clearly
expressed by Franklin when Douglas came to the House
asking for a grant to pay a small back debt (£649) on
the lately erected government buildings. "I have before
condemned the manner in which the business of this colony
has been carried on. I do fear that the land fund may be
kept from us for a long time yet. I shall not vote for
paying the balance to the treasurer until the lands of
the colony are placed in our possession."11 Later, on a
petition asking Downing Street to quiet the Indian title
to wild lands the valiant auctioneer declared that he would
never vote for the acceptance of the Crown Lands if in
return the Colony had to extinguish the Indian title."12
Finally after nearly a year of intermittent discussion
Douglas was able to report to Downing Street that the
Assembly had voted a Civil List of £3,200 *subject to the

9. Carey in As. in Colonist of 25 Apr.1860
10. Helmcken in As. in Colonist of 9 Jun.1860
11. Franklin in As. in Colonist of 19 Jul.1860
12. Franklin in As. in Colonist of 29 Jan.1860
proviso that the entire revenue of the Colony whether derived from taxation or sale of Crown Lands shall be placed at the disposal of the Colonial Legislature."

"At this generous offer Douglas expressed a rather modified rapture. "I submit that there should be no formal surrender of the Crown Revenues to the Colonial Legislature until it has made a sufficient provision for defraying the cost of Her Majesty's Civil Establishment according to a scale which I propose to bring forward at the next session."13

A point that Douglas neglected to mention was that the lands could not be turned over to the Colony until the Hudson's Bay Company relinquished the sovereignty conferred by the grant of 1849. No action could be taken and in the Assembly the feeling arose that they had done their share and that the blame rested with the Executive. This sentiment together with an obvious ignorance of the idea of a permanent civil list was well displayed by the following effusion of Mr. Waddington, a choleric member who didn't mean any harm. "The Hudson's Bay Company affairs with the Colony last year, we were told, would be settled, and the lands handed over to the Colony, if the Civil List was granted. The Civil List was granted and where are the Crown Lands? Still in the possession of the Company!"14

13. Douglas to Newcastle, V.I., 18 Feb.1861
14. Waddington in the As. in Colonist of 28 Jun.1861
In July Douglas presented the annual estimates to the Assembly. Our interest is solely in the Crown Revenues which were not then differentiated from the general revenue. The Treasurer expected land sales worth £6000 and fines and fees of court worth £1100—a total Crown Revenue of £7100—from which might have been paid:

- Surveyor's Department £700
- Exploration of Vancouver Island 500
- Diffusion of Information about Vancouver Island 500
- Roads 2000
- Salaries (Governor, Chief Justice, Colonial Secretary, Surveyor, Treasurer, Attorney-General) £3300

Total £7000

with a balance on the side of the Crown Revenue. The estimate of sales, however, may have been unduly optimistic since of the estimated £6000 only £1446 had been paid in by June.

With the estimates were sent the actual returns of 1860 from which we may more fairly decide on the possibility of Crown Revenues being maintained as a separate account. For the past year the revenue (Land sales £4576 and Fines, fees and forfeitures £1155, totalling £5731) would have been sufficient to meet the

15. Figures from Douglas to the As. in Colonist of 23 Jul. 1861
following expenses:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salaries as in 1861</td>
<td>£3300</td>
</tr>
<tr>
<td>Works and buildings</td>
<td>835</td>
</tr>
<tr>
<td>Surveys</td>
<td>209</td>
</tr>
<tr>
<td>Roads, Streets, and Bridges</td>
<td>68</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>£4412</strong></td>
</tr>
</tbody>
</table>

with a balance of £1319 which would have nearly covered
Vancouver Island's share of the expense of maintaining
a jail (£1322).

The consideration of the estimates produced
several relevant resolutions. The first was presented
by Dr. Tolmie and asked that the proceeds of land sales
"if not demanded by the Imperial government should after
payment of the Civil List be applied to the opening and
improvement of roads into and within the rural districts .

in accordance with the terms on which the lands were
purchased."^{16} To this Mr. Franklin added a claim to even
more complete control in an amendment "that the proceeds
arising from the sale of Crown Lands be applied toward
the colonization and improvement of the Island, such
being the original intention of Her Majesty's Government
in relation thereto,"^{17} suggesting that the lands might
be mortgaged for a £200,000 immigration fund and mentioning
the possible weapon of refusal of supplies.

16. Tolmie in As. in Colonist of 16 Aug. 1861
17. Franklin in As. in Colonist of 16 Aug. 1861
Calmer counsels prevailed and the House contented itself with passing a motion similar to that of Dr. Helmcken of the year before and moved by the versatile Mr. Franklin—"That the Civil List be payable from the time when the Crown Land and the entire revenue of the Colony are placed under the control of the Legislature of this Colony." A sensible solution was presented by Mr. MacDonald who declared that the "would like to see the Civil List erased from the estimates and the Governor made responsible for it. Why should the House vote on it if it is not to be paid?" Following the time honored political custom this sensible idea was ignored.

So much for the estimates of 1861. When next the tranquillity of the Assembly was broken by the arrival of estimates there was little change in the situation or the response. Crown Revenue, estimated for 1862 at £6500 (£5000 land sales and £1500 Fines, Fees and Forfeitures), was still sufficient to cover the Civil List of the six chief officials (£3400) together with all the expenses of their departments (£2710). With the estimates came the actual returns for 1861. The total Crown Revenue had amounted to £7,372 justifying the possible independence of a Crown Revenue account for that ...
Discussion in the House followed much the same course and the resolution of last year refusing the Civil List was again presented, this time by Mr. Burnaby, and passed. While refusing to have anything to do with the Civil List, the House had the presumption to claim control of land policy. They asked Douglas that "interest be no longer charged on payments due on land in consequence of annual taxation." But Douglas evaded the issue of control and refused on the pretext that the Executive had not power "to alter the terms of payment or to annul any conditions of the contract" and alleged a fear that any interference with the contract might "unsettle the whole land transactions of the Colony and involve the Government in very serious liabilities." 21

Thus the issue was shelved for another year and the only mention during the rest of 1862 was an editorial by De Cosmos, dashed off in the absence of any more seasonable topic. "Who does not remember the expectation that was excited over the speedy settlement of the important question of handing over the Crown Lands to the Colony when in 1860 the Attorney-General, representing the governor, advocated the granting of the Civil List declaring that the Crown Lands would be handed over to

20. Figures from Douglas to As. in Colonist of 21 Mar. 1862
21. Douglas to As. in Colonist of 7 Apr. 1862
the Colony upon its being voted by the Assembly and that despatches lay in the Acting Colonial Secretary's office which authorized it to be done. . . The Civil List was obtained by a clever dodge but the lands remained and remains (sic) to this day in status quo." The author was either sublimely ignorant of the conception of a permanent Civil List or took good care to appear so. Since the Assembly had for three years running refused to pay a civil list, there seems to be no great grounds for his accusation that it had been "obtained by a clever dodge."^{22}

Perhaps moved by Douglas' reports, Downing Street at last issued a definite pronouncement on the subject. The following despatch of June 1863 was the basis for all future negotiations. "A permanent Act of the Legislature should be passed securing to the principal Officers of the Government, Salaries at the following rates:

- Governor £3000
- Chief Justice 800 *
- Colonial Secretary 600
- Attorney General 300
- Treasurer 600
- Surveyor General 500

* £1200 if post held by a lawyer


Estimates for 1863 not checked, see also Carey in As.
29 Jun. 1863
The initiation of all money votes should also be secured to the Government. When all this is done I am prepared to hold the Crown Revenues of Vancouver Island at the disposal of the Legislature (holding power to settle the agreement with the Hudson's Bay Company). When this is effected I shall be ready to transfer the management of the Revenue to the Colonial Legislature."\(^{23}\)

Two days before this despatch was presented to the Assembly, De Cosmos produced an editorial declaring that all was ready for the transfer of the Crown Lands to the Colony since the bill of the Company had been paid in full. "We may assume no obstacle now exists to prevent negotiations being entered into for the transfer of public lands to the government of this colony."\(^{24}\) He objected to the power that the control of the land fund gave to the Executive and politely suggested the legislature as the proper recipient of that authority. "The transfer would relieve the Colonial Office of a great deal of useless trouble and at the same time render the administration of of our affairs much more efficient and satisfactory."

The presentation of Newcastle's despatch to the Assembly on September 4th rather took the wind out

\(^{23}\) Newcastle to Douglas, D.St., 15 Jun. 1863

\(^{24}\) De Cosmos editorial in Colonist of 1 Sep. 1863. He conveniently forgets the issue of the H.B.Co. Reserve controversy which he had done so much to raise.
of De Cosmos' sails. It showed definitely that the Company's claims had not been settled and that the Colonial Office had definitely adopted the attitude of the Vancouver Island Assembly but with reverse English--first, demanding the Civil List, then, promising the proceeds of the Crown Revenue Fund but retaining the management of the fund until the Company's claims were settled. All that De Cosmos could manage in the way of editorial comment was the weak suggestion that perhaps under Douglas' successor, the vote of the Civil List might be more easily passed, and the bromidic tag that "Time will tell." 25

In the House the despatch was discussed quite fully but the general attitude was one of depreciation of the lands which had formerly been declared so desirable, while one and all declared that Newcastle's Civil List was ruinously high. Finally it was decided to appoint a committee which could collect definite information on the value of the lands. With this information it was hoped that a more intelligent and advantageous bargain could be made. The proceedings of this committee have been noted elsewhere and its report discussed in so much as it referred to the Hudson's Bay Company Reserve. 26

As the sittings of the Committee dragged on through the fall of 1863 without the appearance of any  

25. De Cosmos editorial of 4 Sep.1863
26. v. supra c.6
report, the "Colonist (now edited by McClure since the elevation of De Cosmos to the Legislature) began to express disgust at the delay and fear of its possible consequences. "It is now more than six months since the Duke of Newcastle requested our legislature to pass a permanent Act fixing the salaries of the Government officials, and should His Grace be kept in suspense much longer, we need not be surprised, judging from the tone of his despatch in reference to the Civil List to learn by an early mail that he has relieved us from the onus of deciding on the matter. The Committee have, we think, obtained a sufficient knowledge of the value of Crown Lands proposed to be handed over to the Colony to judge whether they are worth the price we are called upon to pay for them."27 The Committee however proceeded on its leisurely way till its members were called from their investigations to consider the estimates for 1864.28

Before we note the reaction of the Assembly let us examine the condition of the Crown Revenue as estimated. It totalled $42,440 (Land sales $31,912, Land Revenue $1528, Fines, fees and forfeitures $9,000) which would have sufficed for the following salaries:

<table>
<thead>
<tr>
<th>Office</th>
<th>Salary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Governor</td>
<td>$15,500</td>
</tr>
<tr>
<td>Colonial Secretary</td>
<td>5,890</td>
</tr>
<tr>
<td>Treasurer</td>
<td>4,830</td>
</tr>
<tr>
<td>Surveyor General</td>
<td>2,825</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$28,095</strong></td>
</tr>
</tbody>
</table>
leaving a balance of $14,345 towards the salaries of the Attorney General (£300) and the Chief Justice (£800) as in Newcastle's list, or if it had been a matter of salaries only would have covered Newcastle's maximum list of $31,000 with a margin for essential clerical assistance.

Studying the enclosed returns for 1863, we find the Crown Revenues showing a total return of $32,756 (Land sales $23,759, Land Revenue $395, Fines, fees, and forfeitures $8602) which would have sufficed for the Civil List, though with less margin.29

The Colonist calmly advised the legislators to take some positive action on the question of the Civil List. "There is no doubt that until the result of the vote on the first item of the estimates (salaries) is known in London we shall not hear of the new Governor for this colony taking his departure from the old country.30

The editorial suggested union of the colonies as a possible solution to the payment of all of a Civil List which was considered beyond the local tax-paying ability.

When the debate opened in the Assembly De Cosmos took the floor armed with an interesting speech

27. Colonist News Item of 23 Dec.1863
28. Presented 16 Jan.1864 in Colonist item of date
29. Figures for 1863 from Auditor Ker's report in Colonist of 2 Feb.1864
30. Colonist editorial of 1 Feb.1864
in which he performed some miracles or prestigidations with figures which are recorded here in his phrases but for whose accuracy the author cannot vouch. He declared Newcastle's proposition to be a bad bargain for the Colony. While the fixed salaries on the list amounted to $31,070, the estimated land revenue for 1863 had been only $22,000 (actual land revenue was $24,154—author's note) leaving $8061 to be paid by the Colony. Assuming the same rate, for ten years the revenue would be $213,000 (sic), for fifty years $1,150,450 (sic). "In round numbers the Colony in ten years would have to make up £30,000 . . . if we look farther into the future . . . the loss in fifty years would be $1,150,450. . . This being his view the hon. member thought it a very grave matter to vote the Civil List proposed by the Duke of Newcastle."31

After this interesting feat of statistics he assumed a grieved tone at the suggestion in the despatch that "The Colony must be self-supporting" and that the difficulty should be met either by increased taxes or by "some compact or union with the neighboring colony." The idea of more taxes could hardly be supported . . . .

31. De Cosmos in As. in Colonist of 2 Feb., 1864. The proceeds of Fines, fees and forfeitures for 1863 ($9000) would have more than made up his multiplied deficit. The Chronicle of even date does not quote these weird figures so they might be due to a reporter's error.
by an elected tribune of the people so the more agreeable and safely nebulous solution was advanced—a scheme for union of the colonies with contributions on the basis of revenue, a situation quite favorable to free port Victoria.

His imagination fired by this magic eloquence, Dr. Helmcken arose to add his diatribe on the iniquitous snare of Downing Street. For several years, he stated, the colony had offered a Civil List in exchange for the Crown Lands but had received no answer except the above despatch. After this piece of mendacity he advanced to a striking and much applauded conclusion. "There was one thing he would state, however, which was that he would not vote a cent of the Civil List, till the whole of the Crown Lands were made over to the Colony (Hear! hear!)." 32

Amid such bombast Young's quiet reminder that the Crown revenues involved more than land revenues passed unnoticed in the debate, but in an editorial of the Chronicle this point was elaborated. Mention was made of the revenue from gold licenses and of the chance of getting some rebates from the Hudson's Bay Company in connection with the waterfront sales. 33

Two days later Dr. Helmcken presented a ....

32. Helmcken in As. in Colonist of 2 Feb.1864
33. Chronicle editorial of 2 Feb.1864

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motion refusing Newcastle's offer. Rationalization was not difficult. Expenses in the Colony were high and the Civil List would only make them higher "leaving a very small sum for the great necessity of the Colony, viz. internal improvements." Future land revenue would decrease since the instalments on £1 an acre land were nearly all in and the fund might have to bear the expense of extinguishing Indian title.

Douglas received the petition and passed it on to Downing Street with laconic comment on the prospects for land revenue--"in future years the revenue from that source may be less considerable." Douglas was no longer interested. The end of his rule had come. Victoria gave him a farewell whose heartiness hardly made up for its lack of sincerity. De Cosmos had the grace to relinquish his usual place in the spotlight and let Mr. Trimble officially speed the parting governor. How the latter availed himself of the opportunity may be judged by the following excerpt from the farewell speech. "We consider the great prosperity of this portion of her (sic) Majesty's dominions during the past few years as mainly ascribable to the wise policy which Your Excellency inaugurated and we trust that the continued advancement of this colony may ..."

34. Helmcken in As. in Colonist of 4 Feb.1864
35. Douglas to Newcastle, V.I., 12 Feb.1864
be equal to Your Excellency's good wishes in its behalf.\textsuperscript{36}

Retrospect of Chapter 7
At this point it may be permitted the author to make a brief survey of the essential facts which he considers to have been developed from the foregoing mass of heterogeneous but in his opinion relevant material. The offer of the Assembly is always conditional and impossible of acceptance, at any rate till the Hudson's Bay Company title to the land is extinguished. Newcastle's offer is also made with this proviso. The Crown revenues so disdainfully refused, proved themselves capable of paying the required Civil List and many expenses during the period 1860-64 pointing to a solution later adopted. Finally let it be noted that the Crown Funds were administered with the general Colonial Revenue, for thereby hangs a tale.

\textsuperscript{36}Trimble in As. in Colonist of 12 Mar.1864
Chapter VIII
CROWN LANDS AND CIVIL LIST UNDER KENNEDY
March 1864 --- August 1866

Having made a formal farewell to Douglas the Colonial Reformers returned to the quarrel of the Crown Revenue and the Civil List. Governor Kennedy, who is the third of actors in this drama cannot in fairness receive the introduction that his predecessors have been refused, though he as yet lacks a literary defender. It is fair to state that in the mind of the author he is the tragic hero of the play but how well he fills that role must be judged from his actions hereinafter described.

The first real clash arose late in June but before describing it, a brief survey should be made of three important documents which show pretty clearly the attitude and probable plan of action adopted by the Assembly, Kennedy and the Colonial Secretary, Mr. Cardwell.

The Committee on Crown Lands had finally presented their long-awaited report. Besides their l. 14 Jun.1864. v.infra. appendix 2, n.23
opinion on the Hudson's Bay Company Reserve noted above, they produced some statistics and some opinions on the value of the remaining lands:

Section 11. Statistics to 31 December 1863

Area sold in surveyed districts 74,193 acres
" pre-empted 88,509 "
" not sold, reserved, or pre-
empted in the surveyed districts 92,264 "
" pre-empted in unsurveyed districts 31,860 "
" reserved 14,710 "
" of Crown Lands sold and pre-
empted 162,505 "

Remainder including Reserves which would be taken 7,435,710 "

Section 12 gave a detailed review of the nature of the Crown Lands yet unsold and ended with the opinion that "Very little revenue can be derived therefrom."

Section 33 listed the probable returns. There was about $80,000 due on land sales but little prospect of further payments except from mining lands or pre-emption fees. There seems to be a deliberate attempt to minimize these returns but this is only the impression gathered in reading the report. For example note the concluding
sentence—"The land revenue in future years will be very small"—an indefinite yet infinitely discouraging statement.

Section 34 (and last) refers to the Civil List suggested by Newcastle and prophesies that "The Crown Lands will yield little or nothing towards paying it."

Governor Kennedy showed his opinion of the Colonial Reformers in a despatch of 5 May. "While they ignore and strike out many items in the Civil List, (they) deal with various items of 'Crown Revenue' as assets for general Colonial purposes." To define and segregate this fund and to increase it wherever possible was his aim, keeping in mind the fact that the exchange would help the Colony that the cupidity of the Assembly, once sufficiently aroused, would be the force most likely to consummate it. He had little sympathy with reiterated Colonial pleas of poverty. "The resources of this Colony properly administered are ample to meet all reasonable demands"; efficiency of administration was the need, "the present mode of raising revenue is crude, unproductive and inequitable."

The attitude of the Colonial Office was clearly shown in the following despatch replying to Douglas' report of February. Kennedy was advised to use

2. Kennedy to Newcastle, V.I., 5 May 1864

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the land sales revenue of £4500 (figures of Douglas, v. supra c.7, n.35, p.138) to pay the salaries of the Governor (£3000) and the Colonial Secretary (£600) while the rest of the salaries might be paid as the Assembly saw fit. Downing Street was quite aware of the other sources of Crown Revenue and authorized Kennedy to use any such—"fines, fees, forfeitures and fees of office"—as they were available.

When this despatch was transmitted to the Assembly it aroused a flutter in the Bird Cages. By a curious anomaly it set Helmcken and De Cosmos, bitter opponents where the case of the Company was concerned, side by side in an attack on the Executive. The Doctor moved that the salaries (Chief Justice, Attorney General, Colonial Treasurer, and Surveyor General) left out of the estimates for 1864, should be paid out of the Crown Funds. This usurpation of the authority of the Executive was feebly justified by the plea "that this House had not refused to vote these salaries during the present session but only acted according to precedent; the House never having voted a Civil List but only a proposition for one." Mr. Franklin rose to lament the lands which now seemed so definitely slipping from the possible control of the Legislature but his plea for further bargaining was beaten down by the combined oratory of...

3. Cardwell to Kennedy, D.St., 30 Apr.1864
De Cosmos and Helmcken. In the speech of the latter was a note of the value of the land sales and Fines, Fees and Forfeitures. Since he totalled these at over $40,000 (land sales $31,912, Fines, Fees, and Forfeitures $9,000) and his motion was a refusal to exchange for such a sum, an annual Civil List of $31,000, he must lay himself open to the charge of factious opposition in opposing the acquisition of such a bargain for the Colony he represented.

To this high-handed resolution, Kennedy's reply was dignified but firm. "The terms of the despatch of the Secretary of State which you have had under consideration, unfortunately prohibit me from adopting that recommendation and clearly points out that the salaries of the Governor and Colonial Secretary only are chargeable to that fund. It is therefore obvious that unless the Legislature make provision for the remuneration of the remaining officers of the Government from some other source... Their salaries must cease and a question will then arise as to the authority under which they have received salary since 1 January 1864." 5

For the time Kennedy's tone seems to have cowed the unruly Assemblymen. De Cosmos "foremost still in every deed or good or ill" moved the following set of

4. Helmcken in As. in Colonist of 30 Jun.1864
5. Kennedy to As. in Chronicle of 1 Jul.1864

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resolutions which seemed to put control definitely into the hands of the governor:

2. "The House pledges itself to indemnify the Governor in case he shall take the responsibility of paying the said salaries out of the Crown Revenues while awaiting further instructions from Her Majesty's Government."

3. In case of refusal to pay from Crown Revenue or of its insufficiency "should he issue his warrant for payment . . . out of the general revenue, this House hereby pledges itself to indemnify him for so doing."

4. This is a temporary measure and does not bind the Colony to pay the Civil List out of general revenue.

5. The payment of salaries out of Crown funds is according to precedent and "consonant with the views of this House."

6. A request that the Governor ask the Colonial Office to authorize the payment of Crown Officers out of Crown funds as heretofore.

When these resolutions were transmitted through the Executive Council, Nos. 2 and 3 were accepted but the remainder were cut out as being no affair of theirs.

Well satisfied with the Resolutions and . . . .

6. De Cosmos in As. in Chronicle of 3 Jul. 1864
6. Meeting of 5 Jul. 1864
probably surfeited with the behavior of the members
Kennedy hastened to prorogue the Assembly and took care
that his speech should contain the following references
to the exchange:

"11. That this colony has ample resources to provide
for its own Government on a becoming scale
cannot be doubted, and I feel confident that
the people, if appealed to, would cheerfully
accede to a provision for the public servants
commensurate with the responsibilities and duties
of their respective positions.

12. The important subject of immigration must be
left untouched while the possession and disposal
of the Crown Lands remain unsettled. A colony
without a fixed population cannot be permanently
prosperous."8

Had Kennedy kept the assembly prorogued for a
sensible recess and maintained the moral ascendancy he
had gained, the exchange might well have been effected
under his regime. In July however, there occurred the
only exciting event in the little island community since
the departure of the gold seekers. An exploring party
under Lieut. Brown had been sent out to investigate the
little known hinterland of the city.9

8. Kennedy to As. in Chronicle of 9 Jul. 1864
9. Financed by public subscription to which Kennedy offered
dollar for dollar from official funds.
By the end of the month reports of fairly good panning on the Sooke River were circulating in Victoria, and the Colonist editor stated that "while we write parties are organizing to leave for the embryo diggings at once."\textsuperscript{10} Using the analogy of New Zealand where gold was not found till after the Australian rush was over, he prophesied great things in the near future. Brown's report, published 29 July, was conservative but promised enough to send most of the floating population of Victoria in steamers, rowboats and even canoes to the new diggings where plans were being made for laying out a townsite.

Kennedy was quick to take advantage of what looked like a glorious opportunity. He reported his plan of campaign to Cardwell in a rather jubilant series of despatches which tell their own story. "The district where these alleged discoveries have been made, is unsurveyed and unoccupied, and I have therefore marked it on the maps and notified it as a Crown Reserve to be dealt with as may hereafter be found expedient."\textsuperscript{11}

The "Colonist" of even date published the following proclamation under the Royal Arms. "Notice is hereby given that from and after the date hereof, all

10. Colonist editorial of 27 Jul.1864
11. Kennedy to Cardwell, V.I., 30 Jul.1864
Crown Lands now unsold and unoccupied, (in the Sooke area) shall be reserved from the operation of the
Vancouver Island Land Proclamation Act of 1862.

By His Excellency's Command.

Henry Wakeford
Acting Colonial Secretary.\(^{12}\)

Below was a list of mining regulations including notice of a $5 license fee. Further developments were soon reported. "I yesterday sent up the Surveyor-General to take such measures as may be necessary toward reserving Crown Lands for a Townsite and other public purposes. . . Victoria is being rapidly emptied of its population. . . Several of the police have already gone and the remainder, unless bribed by higher pay will speedily follow."\(^{13}\)

In the despatch of 16 August, Kennedy disclosed the coup d' état that he had planned. This was to call the Assembly and use the increased value of Crown Funds due to the gold discovery as a lever to force the acceptance of Newcastle's Civil List towards which "the discovery of gold will probably induce the local Legislature to modify their views."\(^{14}\)

12. In Colonist of 30 Jul.1864. The act referred to permitted purchase and pre-emption. v.infra c.9
13. Kennedy to Cardwell, V.I., 4 Aug.1864
14. Same to same, V.I., 16 Aug.1864

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Two days after writing the above despatch, Kennedy issued a special call for reassembly of the Legislature on four days notice. The reason for such haste is obscure but was probably the absence of further discoveries and a desire to profit by the excitement and enthusiasm already aroused. In his opening speech he pleaded the excitement and disorder aroused by the rush and suggested that the present conditions made imperative a change in the present condition of the Crown Lands.

"The management of Crown Lands and the expenditure of Crown Revenue freed from the control of the Legislature is a responsibility I do not desire to incur unless devolving upon me as a necessary duty. The mining interests bid fair to rival any other in importance and the Colonial Legislature is in my opinion the proper power to frame laws and regulations for their development and guidance. The adoption of any other course must, I fear, lead to complications which may prove detrimental to the best interests of the colony."15

The coup d'état, however, failed dismally. The "Colonist" gave away the hidden motive in a sarcastic editorial jesting that Kennedy was afraid that "in a few weeks the place will be over-run with a hundred thousand savages from California—that bowie-knives and revolvers will be the most common mining implements on ... ."

15. Kennedy to As. in Colonist of 22 Aug., 1864
the diggings." The real reason was shrewdly guessed—
"to induce the House of Assembly to swallow the civil list
pill well coated with Leach river gold and take the
Crown lands from the control of the executive"—and
the natural distrust "when such inconsiderate haste is
used in an attempt to force them (the Crown Lands) on the
colony" was made obvious to all who read.16

The members seized upon the hasty summoning
of the Assembly as a point of attack and in face of their
constitutional objections, Kennedy gave way rather too
courteously. The House wanted the full two weeks before
re-assembling and though Kennedy won himself the reputa-
tion of a thoroughly constitutional executive, he lost
his big chance. In the interim the Sooke finds showed
themselves inconsiderable,17 and the Assembly's glee
over its triumph quite overcame the advantage which
Kennedy's original firm stand had given him.

He kept up nominal hopes for some time and
a despatch in early September transmitting Brown's report
contained the confident note that "Public opinion has
already undergone a great change as to the value of Crown
..."

16. Colonist editorial of 23 Aug. 1864
17. The mother lode was never located but panning is
still profitable and this year many unemployed were
prospecting Sooke hills and the tributaries of Leach
River with small successes.
Lands in this Colony." But as October wore on he could only report that though the Legislature had been sitting sixty days "the subject of a Civil List or Crown Lands has not yet been taken up." 

The issue was finally forced by a despatch from Downing Street which threatened the happy chaos of Colonial finance. It noted that, although the Colonial accounts were not audited in London the Crown revenues were and requested a report in full detail unless the Assembly were willing to take them over. A statement of the balance to date was required anyway. This was transmitted to the Assembly with a rider from Kennedy stressing the need of an immediate settlement which "will necessitate the adjustment of the account between the local government and the Crown and a refund of the amount advanced from the Crown Revenues for Colonial purposes, under the Resolutions of indemnity passed by the House of Assembly on 2 July 1864, together with all sums appropriated without due authority." A "Colonist" editorial described this proposition as "a trap" and laid stress on the chance of getting a refund from the Hudson's Bay Company which would provide revenue without granting ... 

18. Kennedy to Cardwell, V.I., 5 Sep.1864
19. Same to same, V.I., 19 Oct.1864
20. Cardwell to Kennedy, D.St., 1 Aug.1864
21. Kennedy to As. 31 Oct.1864 in Chronicle of 2 Nov.1864
After leisurely discussion and some wild proposals the House accepted a rather moderate set of resolutions put forward by Mr. Young which we have already noted in their bearing on the question of the Reserves. They ignored Kennedy's demand and made only passing and conflicting references to granting a Civil List. The resolution stated that no civil list would be given until "the extent and nature of said Crown Lands shall be determined and submitted to the House"—an obvious stall since the report of their own committee had been presented less than six months before. The last resolution repeated the refusal with the suggestion that by making "an appeal to the justice and consideration of Her Majesty's Government" they might recover from the Hudson's Bay Company the million that the oratory of De Cosmos and Franklin had convinced them was their due.

With this reply and other resolutions continuing the salary arrangement Kennedy was forced to rest, if not content. His reply to the Assembly was a model of brief regret but in his report to Downing Street he confessed little hope for satisfactory action from the Assembly "who have not yet, I think, fully realized the injury and inconvenience likely to result ...

22. Colonist editorial of 7 Nov. 1864. v.supra c.6,n.35, p.116
23. Young in As. in Colonist of 22 Nov. 1864
from the course they have adopted and which must, I think, ere long work its own cure." Henceforth he hoped to dispense with their assistance or hindrance.

"I will avail myself of this decision of the Assembly to put the administration of the Crown Lands and Revenue on a sounder footing . . . and limit the charges against the Crown Fund to those you have authorized and which there are ample funds to meet."24

After the usual long Christmas vacation the House met again and Kennedy presented the estimates for 1865. The proceeds of land sales, land revenue and rents were carried to the Crown Revenue and though Fines, Fees and Forfeitures (estimated at $9,000) were listed with the Colonial Revenue it was with the note that any excess of receipts over expenditure would go to the Crown funds.25 Among the items of expenditure suggested were $10,000 for introducing emigrants and $2500 for expenses connected with Indians.

With the accounts came also a survey of the actual as against the estimated receipts of 1864 of which the following items are of interest.

<table>
<thead>
<tr>
<th>Revenue</th>
<th>Estimated</th>
<th>Received</th>
</tr>
</thead>
<tbody>
<tr>
<td>Land Sales</td>
<td>$24,250</td>
<td>$23,759</td>
</tr>
<tr>
<td># Revenue</td>
<td>---</td>
<td>395</td>
</tr>
<tr>
<td># Rent</td>
<td>485</td>
<td>1,261</td>
</tr>
<tr>
<td>Fees, Fines and Forfeitures</td>
<td>8,730</td>
<td>8,602</td>
</tr>
<tr>
<td>Totals</td>
<td>$33,465</td>
<td>$34,017</td>
</tr>
</tbody>
</table>

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The Crown Revenue was obviously still equal to carrying the Civil List and had slightly exceeded the estimates. In accordance with orders from Downing Street the accounts of the Crown Revenue had been made up and these were presented also. Kennedy may have expected them to please the Assembly by giving them information as to the extent of the funds but the result of their publication was not an amicable settlement but further rancour. The details were as follows:

**Creditor**

1. Balance to 31 December 1863 $34,321
2. Estimated Revenue for 1864 (including rents and fees of court) 27,412
3. Refund for account of salaries not charged against General Revenue in terms of the Resolutions of 2 July 1864. 10,670

**Total** $72,303

**Debtor**

1. Salary of Governor and Colonial Secretary for 1864 $14,057
2. Arrears of salary to Douglas 1861–4 13,611
3. Salaries struck from estimates of the current year but afterwards provided for by the Resolutions of 2 July 1864 10,670
4. Probable balance 31 December 1864 34,066

**Total** $72,404
The last item, the balance due the Crown Revenue account was included in the Colonial expenditures under the heading Disbursements "$34,066, due by the Colony to the Crown Revenue account as shown by the accompanying statement to the Treasurer." (just quoted)

As the Assembly blundered through the estimates the above item was finally reached and happily seized upon as a chance to save $34,000 in real money by the simple process of a repudiation without fear of financial consequences. The creditor was Her Majesty's Government as represented by Governor Kennedy and had not the latter given in to their constitutional objections of a few months before? Probably he would do so again. So a few pseudo-constitutional objections were lined up and the sum refused by a motion of De Cosmos, alleging that Cardwell's despatch of 1 August last had asked only for a prospective, not a retrospective organization of the accounts.26 Let the dead past bury its dead, especially when the corpse happened to be a credit to the Crown Revenue by which Kennedy might retain his independence of the Legislature's financial control. Conveniently forgetting the force of his own motion of 2 July 1864, De Cosmos stated that any monies heretofore voted

24. Kennedy to Cardwell, V.I., 5 Dec.1864
25. Kennedy to As. in Colonist of 14 Jan.1865
26. De Cosmos in As. in Colonist of 24 Feb.1865
out of the Crown revenues for general purposes, had had the temporary consent of the Governor and the ultimate consent of the Queen for their dispensation.

He was ably supported by Dr. Helmcken who "would decidedly object to the Executive taking the general revenue to pay our debts to the Crown. . . This alleged debt was partly incurred when the Hudson's Bay Company held the Island and they had always refused to hold themselves responsible for debts."27 The account of the Company and the Colonial Office had been settled and the Colony could and would not pay. "Hear! hear!"
The Doctor extended his eloquence to the matter of fines, fees, and forfeitures and protested their inclusion in the Crown Revenue, in the following remarkable pronouncement. "We paid the Chief Justice and other officials out of the general revenue—the only color Her Majesty's Government had for claiming the Fines, Fees and Forfeitures was that they were collected in the name of the Queen." Besides the lack of respect for divine right we might note that the Assembly over which Helmcken had presided so long, had systematically refused to pay those very salaries since 1860—but of pointing out inconsistencies in the legislators' logic there is no end.

Kennedy did not immediately answer this petition and in the interim received a despatch from

27. Helmcken in As. in Colonist of 24 Feb.1865

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Downing Street that must have made him wish that he had destroyed his confident despatches of last summer before transmitting them. "I trust that it will not be long before you will find yourself in a position to forward from the Legislature a proposal to grant a Civil List on condition of receiving a surrender of Crown Lands."28

In his reply Kennedy sent the Report of the Crown Lands Committee to show the attitude of the Assembly towards the exchange and took occasion to criticise its value as evidence. At the same time he promised further discussion of the Crown Lands question during the consideration of the estimates and stated his intention of paying no salaries beyond his own and that of the Colonial Secretary till he either received Newcastle's Civil List in full from the Assembly or instructions to the contrary from Downing Street.29

On 21 April Kennedy sent to the Assembly a full explanation of the $34,000 balance due to the Crown Fund, which should have removed any uncertainty as to the duty of the Colony in repayment. This sum represents the amount which should have been on hand on 31 December 1864, on account of Crown Revenues. The balance however was wholly expended during the year for the general expenses of the Colony, including a sum of...

28. Cardwell to Kennedy, D.St., 2 Jan.1865
29. Kennedy to Cardwell, V.I., 15 Apr.1865
$10,670 paid in the same year for the salaries of Chief Justice, Attorney-General, Treasurer and Surveyor-General.\(^{30}\)

As many items in the accounts leading to the $34,000 had been estimates only, it was now possible to check them against the actual returns for 1864 and this had been done by Auditor Ker. The corrected figures were transmitted to the Assembly immediately after the above explanation. The details are as follows:

**Revenue**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Land Sales</td>
<td>$15,528</td>
</tr>
<tr>
<td>&quot; Revenue</td>
<td>565</td>
</tr>
<tr>
<td>&quot; Rent</td>
<td>1,140</td>
</tr>
<tr>
<td>Mining Revenue</td>
<td>4,030</td>
</tr>
<tr>
<td><strong>Balance on 31 December 1863</strong></td>
<td><strong>$34,321</strong></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$55,585</strong></td>
</tr>
</tbody>
</table>

**Expenditure**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Douglas' salary</td>
<td>$13,611</td>
</tr>
<tr>
<td>Kennedy's salary</td>
<td>11,323</td>
</tr>
<tr>
<td>Colonial Secretary's salary</td>
<td>1,529</td>
</tr>
<tr>
<td>Gold Commissioner</td>
<td>1,608</td>
</tr>
<tr>
<td>Court House at Leach River</td>
<td>791</td>
</tr>
<tr>
<td>Pre-emption Fees</td>
<td>151</td>
</tr>
<tr>
<td><strong>Refunds</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$29,034</strong></td>
</tr>
</tbody>
</table>

which reduced the balance due to the Crown Funds by $7,515, viz., to $26,550. These are the last figures available ...

30. Kennedy to As. in Colonist of 21 Apr. 1865

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on the Crown Revenue for Kennedy hereafter not only administered it himself but refused to issue any accounts on the Island and the enclosed reports sent to Downing Street are, after the accepted fashion for enclosures, missing.

The message did not clear up the financial situation but a hint that the exciting uncertainty might hold up considerations union produced a resolution from Dr. Powell which declared the Civil List too high but "to remove any impediment to union" made the cautious offer to vote the full Civil List till 31 December 1866 on condition that the control of Crown Lands and Revenue be granted to the local legislature. To this none too generous offer McClure tacked the amendment that "if union be not consummated before 31 December 1866, either the officials of the colony shall be made responsible to the inhabitants by election to the Legislature or otherwise, or the representatives of the people shall have the power to cut down the Civil List to a figure more commensurate with the revenue of the colony." The motion as amended was passed after a six-hour session featured by violent opposition from De Cosmos to "a gross act of duplicity" which would "place the government of the Colony in the hands of the executive--in the hands

31. Powell in As. in Colonist of 29 Apr. 1865
32. McClure in As. in Colonist of 29 Apr. 1865
of an ex-clerk of a bank, of an ex-officer in the navy, of an ex-official of a convict colony, of a briefless barrister, in the hands, in fact, of God knows what."

In his reply Kennedy stated that he was pleased "to transmit the manifestation of a desire on the part of the Legislative Assembly to adjust a difficulty which has seriously impeded and must while unsettled continue to retard the progress of the Colony," but regretted that the offer did not entirely satisfy the conditions of Downing Street so that he would be forced to follow the policy of Cardwell's despatch of 30 April 1864. (v. supra n.3, p.143) At the same time he expressed his willingness to co-operate in "recommending or establishing a scale which may be found compatible with that true economy which consists in obtaining for the public that best possible service at a reasonable cost," and threw out the barren suggestion, discreetly ignored by the Assembly "that the salaries of officers necessary for the conduct of public services be voted and charged against the public revenue 'till Her Majesty's Government replied to the resolution."

Kennedy's comments on the resolutions in his report to Downing Street are worthy of note. He listed the expenses of his position to show that far

33. De Cosmos in As. in Colonist of 29 Apr. 1865
34. Kennedy to As. in Colonist of 6 May 1865
from being excessive the gubernatorial stipend was really inadequate. To the request for responsible government he was distinctly unfriendly. Only 2000 out of 6000 population were British male subjects, the rest being "Americans, German, French, Italian and Chinese."35 and the adoption of responsible government would strengthen the position of the American element.

With the proroguation of the Assembly, active discussion of the problem ceased and throughout the summer and fall the only reference was in a despatch to Downing Street in August, wherein Kennedy described the iniquity of the Assembly in repudiating his loan and forwarded a statement of the receipts and expenditures of the Crown funds since 1859—a very valuable and interesting enclosure which unfortunately was not kept in duplicate at Victoria.36

When the members reassembled on 29 November...

35. Kennedy to Cardwell, V.I., 4 May 1865. This seems rather mixed since by the count above the wives and children of the "British male subjects" must needs be "Americans, German, French, Italian and Chinese."

36. Kennedy to Cardwell, V.I., 20 Aug. 1865. The figures given above and in the previous chapter constitute practically a complete account but verification by this report would have been most gratifying.
1865 the question of union was of all absorbing interest and the attitude of the legislators seems to have been one of delaying taxes till union and if necessary borrowing in the interim since the public debt was small compared to that of the Mainland province. In this spirit Mr. Dickson bethought him of the fees for special marriage licenses and moved an enquiry into the disposition of this source of revenue.37

However he was about seven months late in his idea. As early as May Kennedy reported that Douglas had been in the habit of applying the receipts from this fund to unorganized charity for which there was no provision in the Colony.38 Cardwell's reply had ratified the provisional disposition of the fund but advised that in future this should be credited to the Crown Revenues. Kennedy informed the House of the arrangement for the fund and when they refused to accept his word he sent the actual despatch of which the following excerpt gave him authority to refuse any information as to the disposal of the fund—"So long as marriage licenses are issued by the Governor of Vancouver Island in virtue of his commission, the fees receivable on the issue of such licenses form properly a part of the Crown Revenue."39

37. Dickson in As. in Colonist of 1 Dec. 1865
38. Kennedy to Cardwell, V.I., 25 May 1865 (#3)
39. Cardwell to Kennedy, D.St., 25 Sep. 1865
On 23 December the estimates for 1866 were presented. Land sales, land revenue, rent and mining licenses were omitted as withdrawn to the Crown funds but it was noted that in 1864 these items had produced $21,313, a distinct falling off and for the first time not sufficient for the full Civil List. With the estimates came the Treasurer's report for 1865—not a very pleasant, seasonable greeting since it showed a deficit of $51,476. Among its items were still found Fines, Fees and Forfeitures which had produced $9,272, though only estimated at $9,000.

During the Christmas pause Kennedy received two despatches which supported him in his course of action. He was instructed to pay his salary and that of the Colonial Secretary and such a portion of the Surveyor-General's salary as would repay that portion of his duties performed on the Crown lands. Beyond these charges and any payments for the "administration, maintenance and increase" of the Crown Revenues, Kennedy was to build up a fund to cover liabilities where "the interest or credit of the Crown is concerned and which

40. Kennedy to As. in Colonist of 23 Dec. 1865. If to the $21,313 of Crown Revenue in 1864 were added the proceeds of Fines, fees, and forfeitures ($8602) it will be seen that the deficit in the Civil List would have been negligible.
the Legislature refuses to adopt.41

The House did not mention the Crown Lands question for some time. Discussion of projects for union occupied much attention and the rest of the time was spent in cutting down the estimates. This did not affect the Crown Revenue but Kennedy was aroused when they voted to do away with the office of auditor and have his duties performed by the clerk of the Legislative Assembly. His Excellency explained that the office was held under the Royal warrant and that although the Legislature could cut the salary, the position was outside of their jurisdiction.42

In defending their action the Assembly took the position that they had voted the sum for auditing not for an auditor and that they were at liberty to say who should do the work. Kennedy however appointed Henry Wakeford who had been Acting Surveyor-General, the salary to which post had also come under the axe of the Assembly. He was now to be paid out of Crown Revenue since "much of the work (as auditor) is connected with Crown Lands and Crown Revenues,"43 and under the further

41. Cardwell to Kennedy, D.St., 12 Oct.1865. A further despatch of 17 inst. specified that the expense of managing Crown Lands should be paid from the Crown Revenue.
42. Kennedy to As. in Colonist of 4 Feb.1866
43. Kennedy to Cardwell, V.I., 10 Mar.1866

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authorization of Cardwell's despatch of 12 October 1865. (v. supra, n.41, p.164)

Kennedy's reports showed disgust at the behavior of the Assembly and despair of any useful relations. Their retrenchment policy he criticized as senseless reductions, quite inadequate to meet the deficit. Meanwhile the pork barrel policy was gaining force. "The Assembly have under the head of 'Roads, Streets and Bridges' voted ten sums of money not proposed to them in the estimates or initiated by the Governor, amounting in all to $42,800. . . these votes appear to have come by a process which can only be described as a general scramble among the Members of the Assembly."44 Conciliation would be both difficult and unwise. "I will not attempt to analyze the debate . . . it must be heard to be appreciated. . . The desire of the Assembly to legislate and govern without reference to other branches of the Legislature is very clear. . . The impossibility of conciliating the present majority in the House or of removing their non-existent grievances is too apparent; short of surrender of all it is my duty to guard into the hands of a few I fear very unscrupulous men."45

Meanwhile another call had come on the Crown Reserves. There were constant expenses incurred . . .

44. Kennedy to Cardwell, V.I., 30 Jan.1866
45. Same to same, V.I., 8 Feb.1866

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in the upkeep of the various lighthouses which made the passage of the straits safe for shipping and although British Columbia shared the expense, Kennedy feared that in the chaos of Vancouver Island finance these expenses might not be paid. He therefore wrote to Downing Street suggesting that these might come under the category of liabilities "where the interest or credit of the Crown is concerned," and presenting plans to carry "to the account of the Imperial government" all such Crown Revenues as Fines, Fees and Forfeitures. This produced a rather sharp rejoinder from Downing Street. "It is not quite clear whether you mean that payments such as Fees, Fines, and Forfeitures were ... to be for the first time carried to the account of the Crown Revenues, or whether that such payments are from that date to be applied to defraying the expenditure on Lighthouses. If the former be the case, I would request to be informed whether Fines, Fees, and Forfeitures were not previously carried to the credit of the Crown Revenues and if not, for what reason." It is hard to imagine that Kennedy had been as remiss as this suggested. Fines, Fees, and Forfeitures had been particularly listed as Crown Revenue in Cardwell's

46. as in Cardwell to Kennedy, D.St., 12 Oct. 1865
47. Kennedy to Cardwell, V.I., 6 Mar. 1866
48. Cardwell to Kennedy, D.St., 25 Jun. 1866
The last clash on the subject came in June when the Assembly asked for returns of the Crown Revenue, with special interest in the balance, if any. Kennedy considered this a claim to control the fund and issued a general refusal, though still leaving an opening by promising the desired information, if the request were a preparatory step to the long-desired exchange. The House however demanded the returns as a question of right and Kennedy refused on authority of Cardwell's despatch of 12 October 1865 which gave the administration of Crown Revenue definitely into his hands.

49. Kennedy often did not acknowledge a despatch to which there was obviously no reply, except by inclusion in a list of despatches received and if he had a clear conscience there was obviously no reason to reply to the despatch above. If he had been guilty of such neglect, there was an equally potent reason for stating his case.

50. Sitting of 6 Jun. 1866

51. Kennedy to Assembly, 18 Jun. 1866
House of Assembly, Sitting of 19 Jun. 1866
Kennedy to Assembly, 22 Jun. 1866
Union came in August and in September
Kennedy left Vancouver Island after a farewell less
spectacular but no less sincere than that accorded to
his predecessor two years before. He had failed to
achieve the exchange of the Crown Lands for a Civil
List. Under his régime the issue had been clarified
and the Crown Revenue had been segregated and established
but the Crown Lands were still under the administration
of the Executive and under the sovereignty of the Hudson's
Bay Company. The Reformers had bargained too closely
and under the more autocratic government of the united
colony, they were further than ever from control of the
whole revenue.
Chapter IX

LAND LEGISLATION ON VANCOUVER ISLAND

January 1849 --- August 1866

The aim of this chapter will be to show the modifications of the land rules of Vancouver Island from 1849 to 1866. The conditions of land holding under the charter have already been described and in Chapter Two it was shown how the early requirements of transportation of labor were removed. In the following pages other changes in policy—instalments, pre-emption, price reduction and alien policy—will be traced through the correspondence of the period till authorized by a definite proclamation or act.

The idea of instalments was certainly not in the minds of the Governor and Committee at the time of the grant. In 1850 Douglas received orders to sell land to none but those "who can pay down £1 per acre."\(^1\) But when the absence of immigrants and resultant land sales became serious in 1853-54 the idea of allowing...

1. Barclay to Douglas, H.B.H., 8 Feb. 1850
instalments began to receive serious consideration on
the Island. Pemberton who had replaced Grant as surveyor
made a list of suggestions (unfortunately not preserved)
which Douglas transmitted for consideration by Hudson's
Bay House. It appears that a policy of instalments was
among the recommendations since Douglas attached the
objection that "paying for the land by instalments will
... involve the necessity of keeping many additional
accounts."

The actual despatch inaugurating this system
was not available but in a letter of Pemberton to Hudson's
Bay House of April 1857 he refers to a policy established
in October which permitted (1) "making liberal deductions
for rocks and swamps and (2) receiving if required
payment by instalments," and states that as a result
2000 acres would be bought on instalments in the coming
spring. In the fall of the same year Douglas was able
to report "that the instalment system continues to work
well; becoming every day more popular as it is better
understood by the lower classes who at first did not
appear fully to appreciate its advantages." The amount
paid down was at first not less that 25% of the value
and in 1858 there were instalments of £24,000 as yet

2. In Douglas to Barclay, Ft. Victoria, 11 Feb. 1854
3. Pemberton to Smith, V.I., 27 Apr. 1857
4. Douglas to Smith, V.I., 7 Oct. 1857

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unpaid and carrying interest at 5%.5

The size of the initial payment was the subject of a petition signed by "a large and respectable body of immigrants chiefly from the province of Upper Canada,"6 and considering that their affairs were in a "truly distressing case" Douglas relaxed the old rule (5s on purchase and the remainder by 5s payments at the end of the second, third, and fourth years) and set up a more lenient rule which required payment of one shilling at purchase, one shilling at the end of the first month and the remainder in six-shilling payments at the same periods as under the old rule. The effect of the change was to reduce the initial capital required by 60% and leave more of the settlers funds free for the necessary immediate improvements.

Pre-emption was not achieved till a later period. In 1853 a group of malcontents in Victoria, led by Captain Swanston and the Rev. R. J. Staines, registered intention to purchase certain areas but paid down no money, hoping for free grants of land,7 but this was not continued and can hardly be considered as pre-emption. The first reference to anything approaching the policy is found in the Land Proclamation of June 1858.

5. Douglas to Lytton, V.I., 11 December 1858
6. Same to same, V.I., 20 Jul. 1859
7. Douglas to Newcastle, 28 Jul. 1853
which was an emergency measure to facilitate the sale of city lots when the rush of gold seekers and realtors found much of the townsite of Victoria unsurveyed. The Proclamation read as follows—"Pending the completion of the plans, purchasers may on or after the 21st inst. pay for any number of lots not exceeding six (60' X 120') at this office, taking a simple receipt for the payments, naming an Agent at Victoria who will be empowered to select from the unsold lots, when the plans are complete, in the order in which they are paid." The Proclamation was also applied to Colonial Lands in "the eight surveyed districts and the Cowitchan Country", Government reserves excluded.

In the same month Douglas sent instructions to Pemberton, including measures to speed up surveying for the reason noted above.

1. No allowance for rock and swamp on purchases under 640 acres and then only if such area is considerable.
2. No sales of agricultural land under 100 acres.
3. "Discontinue to register Pre-emption claims upon any ground whatever".

This raises the possibility of past pre-emptions but when "a considerable number of persons, chiefly Canadians who are desirious of settling in Cowitchan Valley" asked...

8. The Proclamations are bound in a volume on call at the Archives.
for pre-emption rights engaging "to settle on the condition of actual occupancy and improvement, and if they fail to do so, their lands to be forfeited," Douglas refused.

The policy was finally adopted in part on the recommendation of Pemberton that certain lands within the surveyed areas near Victoria mostly "spots of fertile land interspersed among rocks, forests and swamps not admitting of continuous cultivation and which in consequence has not been sold, though repeatedly put up for sale at the low price of 4s 2d per acre ... be thrown open to pre-emption, believing that many persons who now wish to occupy lands at a distance, at Saltspring Island for example or Chemainis would thereby be induced to seek out and occupy the fertile spots alluded to and that an impetus would be given to settle up lands which although so near to Victoria are too wild to sell at present." Full payment was to be made when surveys reached the pre-empted land and no land was to be pre-empted unless it had already been offered for sale at £1 an acre. This received Douglas' approval and was accepted by the Colonial Office in February though not without warnings against possible defects of the system.12

10. Cowitchan Petition in Colonist of 11 Jul.1859
11. Pemberton to Douglas, Land Office, 12 Dec.1859
12. Recommended by Douglas in his despatch to D.St.
The actual proclamation was not made till February of 1861. It applied to unsold land in "the districts of Victoria, Esquimalt, Metchosin, the Highlands, Sooke, North and South Saanitch, Saltspring Island, Sallas Island and Chemainis," thus going beyond Pemberton's original scheme. It allowed male British subjects and aliens who took the oath of allegiance, over eighteen years of age, to pre-empt 150 acres of land (200 acres to a married man whose wife lived in the Island and ten acres for each child under 18). If the land was unsurveyed payment was required at survey but if the area pre-empted had already been surveyed payment was spread over three years. More than two months absence counted as abandonment of the claim but after two years residence and the completion of improvements worth ten shillings per acre, a certificate of improvement was issued which permitted lease, mortgage or sale of the area "subject to any unpaid grants." When the survey was completed the pre-emptor had the right to choose any amount of unpre-empted land in the same district, either paying for it at 4s 2d per acre or forfeiting an equivalent area in his pre-emption.

Although a big step forward, this scheme had defects which De Cosmos was not slow in pointing out.

12.(cont) 17 Dec.1859. Accepted by Newcastle in reply of 21 Feb.1860
He noted the possible injustice that immediate full payment on surveying might work in the farmers whose lands were chosen to be surveyed first,¹³ and made complaint that lands opened had all been picked over by speculators. He asked that all lands be similarly opened.

It is impossible to state whether it was as a result of these demands, but Douglas issued a supplementary order on 21 March extending the above proclamation to "the entirety of Vancouver Island and its Dependencies," and a further proclamation on 9 May to increase the period over which a man might leave pre-empted land without forfeiting his claim.¹⁴ When he met the Assembly in June he was able to report that the "changes lately effected in the land law whereby every settler is enabled to acquire land and to make a homestead in the Colony without expense or delay, has (sic) given very general satisfaction."¹⁵

Some measure of the success of the new law may be gathered from the fact that by March of 1862

¹³. De Cosmos editorial of 9 Mar. 1861. The following criticisms are from editorials of 7th and 15th inst. ¹⁴. After eight calendar months of residence the pre-emptor could leave for six months but had to notify the Land Office at Victoria within three weeks of leaving. ¹⁵. Douglas to As. in Colonist of 27 Jun. 1861
254 pre-emptors had already taken up land, which considering an average pre-emption of 200 acres would mean at least 50,000 acres of land taken under private control. The scope of pre-emption was increased and the previous laws consolidated by the Land Proclamation of 1862. The most important change was that allowing a pre-emptor to hire a "substitute" whose presence counted as occupation. To prevent pre-emptors from hiring one another the ruling was made that no pre-emptor could so act.

Pre-emption thus established, the next topic deserving attention is the reduction of land prices. The early insistence on the price of £1 per acre has already been noted. Objections to the price were naturally first voiced by the settlers on the Island who found their leaders in the Rev. Staines and Captain Swanston. "They contend (that the land) is sold at a price far above its fixed value and that every colonist is entitled to a free grant of land." Receiving but scant sympathy from Douglas who certainly had no love for Swanston Staines wrote direct to Parkington. "The great difficulty here is to procure labor at a moderate price, and this . . . .

16. Number of pre-emptors taken from De Cosmos editorial of 15 Mar. 1862
17. Vancouver Island Land Proclamation, 6 Sep. 1862
18. Douglas to Newcastle, V.I., 28 Jul. 1853
difficulty can never be overcome until the price of land on Vancouver Island is reduced so as to bring it nearer to an equality with that in Oregon (where) I could get 320 acres for nothing but residence. . . Here with land at £1 an acre . . . the laborer has no chance of achieving independence. 19

When this was transmitted to Douglas his reply was a sharp contradiction of Staines' thesis of free land and cheap labor. "Free grants of land would in my opinion inevitably enhance the value of labor, an effect of the system of free grants felt, and a subject of great complaint in Oregon where the price of labor exceeds that of Vancouver's Island and also the returns of capital invested in the cultivation of the soil." 20 Even reduction he considered unwise. "A reduction in the price of land at present would be a source of discontent to all parties who have paid the actual purchase price now levied and submitted without a murmur to the rules and regulations established for the good government of the Colony."

Apparently this class became the majority and the petitioning minority were soon deprived of their leaders; Mr. Staines being drowned while on his way to London to protest in person and Swanston returning to his . . .

19. quoted in Elliot to Barclay, D.St., 3 Nov.1852
20. Douglas to Barclay, Ft. Victoria, 27 May 1853
business interest ints in California whence he emitted
jeremaids on the future of Vancouver Island. 21

Although firm enough in defense of the high
price against colonial opposition, Douglas hardly main-
tained the same tone in his despatches to Downing Street.
In May of 1854 he admitted that the free land granted in
Oregon "prodigiously strengthens American influence in
this part of the world and contrasts advantageously with
the system of colonization followed on Vancouver Island
which may suit the condition of other colonies but will
I fear, never succeed in the vicinity of American settle-
ments where free grants of land are made to every settler," 22
and in October with the construction work of the Hudson's
Bay Company and Puget Sound Agricultural Company drawing
to a close, he declared that "the probable consequence
will be a general desire for emigration to the American
Settlements where grants of land are freely proffered

21. Swanston to Bannister, 4 Jan. 1856, enclosed in Labou-
chère to Douglas, D.St., 8 Jul. 1856. "The feeling existing
in the Colony is that the place is doomed; and there is
every possibility, if matters do not mend of a general
Exodus shortly. I know of no fewer than six families who
are preparing to leave next summer; once the move
commences 'twill be too late to attempt restoring
confidence by any patching compromise."

22. Douglas to Newcastle, V.I., 17 May 1854

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to all parties who become settlers and improvers of the soil. By December however he was able to present this idyllic report, only slightly shadowed by the spectre of £1 an acre land. "The people moreover appear happy and contented, the frugal and industrious are rapidly improving their condition in life, there are no taxes nor public burdens, the laws are justly administered, the means of education are extending, intemperance is on the decrease and crimes are almost unknown, in short since the departure of the Reverend Mr. Staines and his coadjutor Mr. Swanston, I have not heard a complaint from any person in this colony except in regard to the price of land . . . and that grievance I have no power to redress." 

The evidence before the Select Committee on the Hudson's Bay Company of 1857 contained several attacks on the high price of land. Blanshard declared that the price was greater than in Canada and New Brunswick and was especially bad policy so near to American territory. "They were making free grants in Oregon." Cooper, also opposed to the rule of the Company was quite definite—"I think (£1 an acre) is extortionately high; . . . why should people go to Vancouver Island and pay . . . .

23. Douglas to Grey, V.I., 3 Oct.1854
24. Same to same, V.I., 11 Dec.1854
£1 an acre when only eight or ten miles from it they can get as good land for $1.25 in the American Territory. 26 —and Ellice though laying the blame for the price on Downing Street declared that "any person accustomed to the settlement of land must know that if you take a pound an acre from a man who comes to settle in a wild country, you take from him all the little capital he wants to establish himself on the land."27

It was not until the gold rush had made land sales a valuable source of income that Douglas, now entirely unconnected with the Hudson's Bay Company was ready to admit a drop in the price and then only when Pemberton recommended that some 20,000 acres of inferior land "consisting of a great measure of rocks and swamp" throughout the surveyed districts around Victoria, which remained unsold at £1 an acre, should be sold at auction at the upset prices of 4s 2d per acre.28 Douglas accepted this plan which was only the thin edge of the wedge for a general reduction.

Public opinion as expressed by the members of the Assembly was in favor of extending the rate to...

26. Cooper to Grogan, Report of the Select Committee, Evidence #3927
27. Ellice to Labouchère, Report of the Select Committee, Evidence #5851
28. Quoted in Douglas to Lytton, V.I., 19 Jul. 1859
all lands. In March of 1860 Mr. Foster "moved an address to the Home Government through His Excellency praying that the price of land be reduced. He adverted to the progress of the United States as resulting from the cheap land system. . . (There) 12½ cents pays the whole cost of survey including instruments, buildings, maps, clerks and surveyors. I think it will be shown very clearly we pay too much."29 After enthusiastic support the resolution was presented to Douglas who forwarded it with a covering despatch in which he stressed the necessity for a liberal land policy to counteract "the allurements held out by the Donation Act and the general pre-emption law of the United States."30 The consent of Downing Street was conveyed in despatches of June and July31 and the price reduction was inserted as the first clause of the Pre-emption Proclamation of 1861.

The change did not meet with the approval of all citizens, especially those who had purchased land at £1 an acre. Some of these unfortunates presented a petition declaring that they would "abandon the land . . . ."

29. Foster in As. in Colonist of 21 and 22 Mar.1860
30. Douglas to Newcastle, V.I., 28 Mar.1860 (#16)
they at present hold and take up other, unless a reduction were made." Their complaint was supported by De Cosmos in a "Colonist" editorial, stressing the absence of the improvements which should have been provided by 90% of the purchase price. The petitioners snapped up the idea and, in presenting their petition which asked Douglas "to reduce the price of lands sold and part unpaid for, to 10s per acre," they added that they had been "led to believe at the time of purchase that 18s per acre would be laid out by the Government in making Roads and Bridges and that a like assertion had been made by one of the agents of the Government in London and a similar statement by Your Excellency." Douglas dodged an outright refusal but he stated that the control of the land by the Hudson's Bay Company made any arrangement impossible till the claims of that Company had been settled.

A definite judgment supported by Downing Street was finally brought about by the appeal of Mr. Irving, an English gentleman who wanted the return of a £50 instalment that he had paid on £1 an acre land. He described his situation as "ruinously injurious and . . . most unjust to the original purchasers of land unless some provisional compensation were made." Newcastle refused his demand but suggested an alternate solution.  

32. News item in Colonist of 5 Mar.1861
"The purchaser must be held to take the land under the circumstances of the moment and subject to the contingencies and implied conditions attaching to it; and one of these contingencies obviously is the liability (especially in a new country) to such changes in the land granting system as the general welfare of the colony may demand," but Irving might be permitted to choose the best fifty acres of his allotment instead of forfeiting his deposit. Douglas appealed to his Attorney General who declared that since the deposits of others had been forfeited and the land resold, Irving's lot could no longer be given special consideration and would now be treated like the others. His Excellency therefore notified Newcastle that such an act would set a bad precedent, besides leaving a residue of culled lands which would have no saleable value whatever and Downing Street concurred in his opinion.

The story of alien land-holding is the story of how a wrong idea held by Douglas was corrected by

33. De Cosmos editorial in Colonist of 11 Mar.1861
34. Irving to Newcastle, Blenheim House, 23 Sep.1861
35. Newcastle to Douglas, D.St., 9 Oct.1861
36. Carey to Newcastle, V.I., 13 Mar.1862, enclosed in Douglas to Newcastle, V.I., 14 Mar.1862
37. Newcastle to Douglas, D.St., 29 Jul.1862 in reply to Douglas' despatch above of 14 March.
the Colonial Office. The question apparently never arose on the Island before 1858 and in that year when reporting preparations for a land sale at Langley Douglas referred to a proposed proclamation "to secure to aliens the full enjoyment of any lands they may purchase of the Crown for a space of three years when they will be required to become British subjects or convey their rights to other parties who are permitted to enjoy that privilege by birth or naturalization--that measure being in conformity with the spirit of your instructions." 38

These instructions have not been found but Douglas had certainly misread them, if we may judge by the return despatch from Downing Street. "Aliens are capable of holding and disposing of land in the same manner as natural-born subjects of Her Majesty and after a continued residence of three years are entitled to a Certificate of Naturalization on taking certain oaths or affirmations of residence and allegiance--and persons so naturalized enjoy and transmit to their heirs all the rights and capacities of natural born subjects. Aliens therefore . . . are not liable to be deprived of their land after the expiration of three years, should they neglect or decline to take out certificates of Naturalization." 39

... ...

38. Douglas to Lytton, B.C., 29 Nov.1858

39. Lytton to Douglas, D.St., 11 Feb.1859
Although Douglas quickly repaired his error in British Columbia by a proclamation of 15 May 1859, he did not act in Vancouver Island till the fall of 1861 when three acts cleared up any doubts which the old policy had allowed to arise. The first was an act "To enable aliens to hold and transmit Real Estate," which stated that "It shall be lawful for any Alien to hold, possess, use, occupy, enjoy and transmit by descent or otherwise, Real Estate . . . in Vancouver Island . . . as fully and indefeasibly . . . as if he had been born a British subject." De Cosmos came out with an editorial lauding the new policy—"No difference should be made between aliens and British born subjects in reference to all concerns trade industry and the investment of capital. Such a policy has caused the new states of the neighboring Republic to make astonishing strides in all the elements of national wealth."  

The next step was an act "to provide for the naturalization of Aliens." Those who could prove "a continuous residence in any part of this Colony for the Space of Three Years or upwards . . . shall enjoy and may transmit all the rights and capacities which a natural born subject of Her Majesty can enjoy or transmit."

40. Act re Alien Real Estate, V.I., 28 Oct.1861
41. De Cosmos Editorial of 29 Oct.1861
42. Alien Act, V.I., 4 Nov.1861
The oath of allegiance was to be administered one month after application and the fees were to be paid "into the Treasury of the Colony, to be applied to the use of Her Majesty, Her Heirs and Successors."

The three-year period of residence was retained though De Cosmos had branded it as a survival of the scare of 1858 when American domination had been considered possible. 43

The recognition of alien rights was completed by an act "to cure defects in Titles to Real Estate held by or derived through Aliens:" 44—"No person, whether an alien or a born or naturalized British subject shall be disturbed in the possession or precluded from the recovery of any lands, tenements or hereditaments in this Colony on the ground that he himself or any person through whom he derived his title before the passage of this Act, was an Alien." Douglas reported progress, noting that aliens were considering selling their land because they believed that they could only hold it for three years. Blithely ignoring his share in the inception of this erroneous belief, he went on to laud the effect of the acts just passed in removing the uncertainty and developing rather an interest in sound improvements than in wild-cat inflation. He suggested that San Francisco

43. De Cosmos editorial of 20 Jul. 1861
44. Alien Lands Act, V.I., 14 Nov. 1861

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capitalists hampered by war conditions and high real estate prices might be interested in Vancouver Island.45

Others than aliens had been in trouble over land titles and frontier conditions had made possible many boundary disputes. An "Act to Cure Imperfect Titles" was passed. This directed that titles of which there was any question might be presented to the Supreme Court. If the Chief Justice were satisfied "that the intention of the original grantor was to sell the fee-simple of such Real Estate to the original grantee" he could give a good title. To prevent causeless litigation costs were to be on plaintiff, but if they had been occasioned by vexatious defence the whole or part "shall (sic) be disallowed in taxation."46

To insure a reliable system in the future an act was passed "to facilitate the transfer of Real Estate and to provide for the Registration of Titles,"47 which remained in force till it was cancelled by the "Land Registry Amendment Act of 1865."48

The only other land legislation was a Homestead Act, one of the few measures in which the Executive and Legislature co-operated. The bill was pushed by De Cosmos and had been recommended by Kennedy in his speech...49

45. Douglas to Newcastle, V.I., 25 Nov.1861
46. Act to Cure Imperfect Titles, V.I., 10 Dec.1860
47. Land Registry Act of 1860, V.I., 18 Jan.1860

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at the opening of the Legislature, 29 November 1865.

De Cosmos proclaimed that "the real object of the bill was, when a man was unsteady or unfortunate, to afford some kind of protection to the wife and children."48

By the terms of the act any "parcel of land held by rental or freehold on which any erection or building" (not necessarily fixed to the soil) stands, might be registered as a Homestead. If this was valued at less than $2,500 it could not be seized or sold "by any process at law or in equity or on any proceeding in Bankruptcy for or on account of any Debt or Liability incurred after the Registration of the Homestead."49

Although Kennedy was favorable to the Homestead Act, he was severely critical of all other land legislation of Vancouver Island. In closing this chapter with his criticism, it is not the intention of the author to defer to him as an infallible judge. He left this form of legislation to the Assembly but his business-like management of the Crown Revenue has been noted above and his official correspondence is a model of order and neatness after the verbosity of Douglas.

Of the old system he says: "(1) It has retarded and obstructed the settlement of the public lands of the Colony, (2) It has alienated 118,506 acres of the cream of the public lands for a consideration of $13,805 (sic) of which only 23,629 acres are in part occupied, a large

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(4) It has encouraged land speculation and discouraged settlement and locked up the best lands in the colony in the hands of speculators who pay neither rent nor taxes for it.\textsuperscript{50}

Lest this be construed as an attack on an absent predecessor with whose problems he was not familiar it will be well to add Kennedy's opinion of the efforts of the Assembly with whom he had had two years of personal connection. "The only laws passed with popular support were the school bill . . . which has already been the parent of expenditure and jobbery and the land proclamation (founded I believe chiefly on the land laws of the neighboring states)" which "has given the greatest encouragement to land speculation and thereby retarded the settlement and consequently the development of the country."\textsuperscript{51}

\textsuperscript{48} De Cosmos in As. in Colonist of 2 Dec.1865
\textsuperscript{49} Homestead Act, 1866. V.I., 21 Aug.1866
\textsuperscript{50} Kennedy to Cardwell, V.I., 19 Jul.1865
\textsuperscript{51} Same to same, V.I., 26 Jun.1866
Chapter X
PARALLEL CONDITIONS ON THE MAINLAND
October 1858 —— August 1866

In this brief resume of parallel conditions in British Columbia, the treatment will follow three main headings—
(1) the influence of a different political situation,
(2) the position of the Hudson's Bay Company, and (3) land legislation. I will deal with the first more generally and the others in greater detail.

Important as Governor Douglas was in the affairs of Vancouver Island he had at least to share the front-stage with De Cosmos and with his successor, Governor Kennedy. In British Columbia he ruled supreme. Never checked by an Assembly, although there was a legislative council in the last few months, he ruled and performed most of his actual law making by proclamation. He was long untroubled by criticism from the Press for the first paper on the mainland was the Gazette, published under his supervision by the Royal Engineers. Perhaps the greatest reason for the lack of that popular opposition so evident at Victoria, was that emigrants to British
Columbia went inland to the mines while more of those who came to Vancouver Island settled at Victoria as business men. The miners were only desirious of strong government and were not always ready to act together. Douglas understood this—"There is no congeniality of feeling among the emigrants and provided there be no generally felt grievance to unite them in one common cause there will always in my opinion be a great majority of the population ready to support the measures of government"¹—and his rule was such that he could report that "The general feeling is in favor of English rule in Fraser's River, the people having a degree of confidence in the sterling uprightness and integrity of Englishmen which they do not entertain for their own countrymen."²

That Downing Street concurred in Douglas' policy of providing strong if not responsible government may be shown by the following despatch of Lord Lytton.

"I cannot conclude without expressing my cordial approval of the manner in which you appear to have carried out the two objects which at the onset of such a colony should be steadfastly borne in view—viz, a liberal and kindly welcome to all honest immigrants and the unquestionable supremacy of British Sovereignty and Law."³ With the

¹. Douglas to Stanley, V.I., 1 Jul.1858
². Douglas to Lytton, V.I., 29 Sep.1858
³. Lytton to Douglas, (B.C.), D.St., 30 Dec.1858. Note—Douglas (B.C.) refers to Douglas in his capacity as governor
period of debt and disillusionment following the exhaustion of the gold-fields this chapter will not attempt to deal. It came after Douglas had retired.

The Hudson's Bay Company's influence on the mainland was solely as a business corporation. It never controlled the government as in Vancouver Island and when Douglas became civil governor of British Columbia he severed his business connection with the Company. His policy was however favorable to the Company till the occasion of his quarrel with Dallas in 1859, so that during the early period we do not note the bitterness which characterized his later dealings with his early associates.

In June of 1858 Douglas refused a petition of the merchants of Victoria asking for free trade on the Fraser River. His reasons for refusal were first that the miners were getting lots of supplies and second that he "had no authority to throw open the trade in Fraser's River which was secured by statute to the Hudson's Bay Company." In reporting the petition he suggested that if the trade were opened, "compensation be made to the Hudson's Bay Company for any sacrifice of interest they may be called upon to make." He continued in this opinion of the rights of the Company...

3. (cont) of British Columbia as separate from that of V.I.


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throughout the summer but it was obvious that local opinion disagreed for in September he wrote what seems to be the reply to a complaint:—"The miners were allowed to carry with them from Victoria an unlimited supply of food, mining tools and clothing, even to the extent of a six-month's stock, for their personal use so that they are not under the necessity of making purchases from the Stores of the H.B.Co. (sic) though they frequently do so in consequence of getting a better quality of goods at a lower price than can be procured from other quarters."  

Some time during September, however, Douglas received a despatch from Downing Street which stated most definitely that the rights of the Company were made out for Indian trade only. In his reply Douglas was quick to disclaim any partiality. The Company "has exercised no right nor enjoyed any privileges of trade in this Colony that was not equally shared by every freeholder in the country." Moreover the special regulations controlling steamships on the Fraser "have fallen into disuse in so much as they are connected with the privileges or tend to promote the interests of the  

5. Douglas to Lytton, V.I., 9 Sep.1858  
6. Lytton to Douglas, D.St., 16 Jul.1858  
7. Douglas to Lytton, V.I., 29 Sep.1858
In a despatch of the next month he affirmed that the Company "no longer enjoys any exclusive rights of trade whatsoever and is placed in all respects in the same position as other British subjects," and went out of his way to defend the position of the Company. "It would be an easy matter to prove that they have been of signal service to their country and that the British territory on the North-West coast is an acquisition won by the Crown through the energy of the Hudson's Bay Company."

Within a week he was called upon to defend the Company, this time from the accusations of an American, O'Brien of Port Townsend who had written to Napier about conditions in the gold-fields--"There is trouble ahead--The exorbitant requirements of the Hudson's Bay Company, it is thought will precipitate a quarrel with the British authorities and the Miners, goaded to madness at being refused a passage up the river until they purchase all their mining implements from the Company, though previously provided with them, will

8. Douglas to Lytton, V.I., 30 Sep. 1858. The regulations referred to were (a) to carry only H.B.Co. goods into Fraser's River, and (b) to pay the H.B.Co. $2--head money." For these terms see Douglas to Labouchere, V.I., 19 May 1858

9. Douglas (B.C.) to Lytton, V.I., 12 Oct. 1858 (#6)
assuredly resist when they shall be in sufficient strength to do so with effect. 10 Douglas' reply showed no fear of a British Columbia Champoeg—the miners as he had already stated were contented and besides the Hudson's Bay Company at Victoria didn't carry miners' tools. O'Brien's letter was described as "a specimen, though indeed a mild one, of the invective that has been indulged in and of the fabrication that has been spread abroad... From the first discoveries of gold in Fraser's River, much petty jealousy has been exhibited by the inhabitants of Port Townsend and other little towns in Washington territory which thought proper to feel aggrieved at the prosperity of Victoria and commenced a crusade against British interests in general and against the Hudson's Bay Company in particular, and the American press in that quarter has teemed with articles of the most absurd fabulous character." 11

The question of Hudson's Bay Company Reserves also rises in British Columbia but fortunately the negotiations were neither so long nor so complicated as on Vancouver Island. The land was not so valuable and both parties were more ready to accept a reasonable settlement. The case for the Company was presented by Berens in

10. O'Brien to Napier, Port Townsend. n.d. enclosed in despatch from D.St. received in October of 1858.

11. Douglas (B.C.) to Lytton, V.I., 3 Nov.1858
October of 1858. "In order to render each post as far as possible self-supporting and independent of imported provisions, a certain quantity of land was squatted upon for the purpose of raising potatoes and grain and also for pasturing and foddering the Cattle. The Company did not fence off this land as there were no neighbors to fence against but now... it becomes necessary to guard against the infringement of the Company's property." These lands the Company expected to receive without payment.

Lytton passed this on to Douglas stating that "it is the wish of Her Majesty's Government to take a liberal view of the claims of the Company, consistently of course with what is due to the public interests of the Colony," but warning him to differentiate between cultivated land and pasture and especially to note if the reserves included any gold-bearing areas.

Douglas was certainly ready to consider the Company's interests as late as December of that year. Referring to the land areas described above "which they have occupied for many years, improved by settlement and otherwise by much expense" he suggested a policy of "judicious liberality" pointing out that the acceptance of the Company's claims in British Columbia would...

13. Lytton to Douglas (B.C.), D.St., 16 Nov. 1858
strengthen the position of similar claims in Oregon still in dispute under the terms of the treaty of 1846 and hinting that a favorable settlement of these latter claims would rebound to British prestige.\footnote{14}

Unfortunately the matter was not settled before the mutual accord between Douglas and the Company had been broken by the quarrel with Dallas noted above (c.5, p.86 et seq.). The Hudson's Bay Company claimed land around Fort Langley and Douglas fixed on that place as the site of his first land sale. Douglas reported his troubles to Downing Street,\footnote{15} but was warned that "these claims have been referred by mutual consent to the Judicial Committee of the Privy Council and until the decision of that tribunal is obtained, no effectual remedy for the inconvenience which you represent can be applied. . . . In the meantime you should abstain as much as possible from dealing with land claimed by the Company so as to avoid increasing their claim to compensation should their title to the land be eventually confirmed."\footnote{16}

In May of the next year Douglas sent a compromise settlement for approval but was informed that an agreement had already been reached. Captain Gosset

\footnotesize{14. Douglas (B.C.) to Lytton, V.I., 7 Dec.1858
15. Douglas to Newcastle, V.I., 21 Jun.1860
16. Lewis to Douglas (B.C.), D.St., 24 Aug.1860}
of the Royal Engineers, was named "arbiter to serve on
behalf of the Government if occasion should arise" with
a pious hope that his services might not be needed."17

There is no further note of this dispute
under Douglas regime but apparently no settlement was
made for when Seymour arrived as governor of British
Columbia he was requested to "take an early opportunity
of dealing with (this problem) and of endeavoring to
bring it to a speedy conclusion."18 With this request
went the terms of an agreement reached between the
Emigration Commissioners and Hudson's Bay House. By
it the Company were permitted to receive the following
areas around their forts:

<table>
<thead>
<tr>
<th>Locality</th>
<th>not exceeding acres</th>
</tr>
</thead>
<tbody>
<tr>
<td>New Fort Langley</td>
<td>200.</td>
</tr>
<tr>
<td>&quot; Langley Farm</td>
<td>500.</td>
</tr>
<tr>
<td>Fort Hope</td>
<td>.5</td>
</tr>
<tr>
<td>&quot; &quot; suburban lot</td>
<td>.5</td>
</tr>
<tr>
<td>&quot; Yale</td>
<td>1.</td>
</tr>
<tr>
<td>Old Langley Fort</td>
<td>2.</td>
</tr>
</tbody>
</table>

17. Douglas' suggestions in his despatch to D.St. of
6 May 1861. Reply in Newcastle to Douglas (BC), D.St.,
16 Nov.1861. Douglas suggested that the H.B.Co. be allowed
their forts and farms but no town lots with which to
speculate.

18. Newcastle to Seymour, D.St., 15 Jan.1864
<table>
<thead>
<tr>
<th>Locality</th>
<th>not exceeding acres</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kamloops</td>
<td>600.</td>
</tr>
<tr>
<td>Fort Dallas</td>
<td>50.</td>
</tr>
<tr>
<td>Berens</td>
<td>50.</td>
</tr>
<tr>
<td>Shepherd</td>
<td>100.</td>
</tr>
<tr>
<td>Simpson</td>
<td>100.</td>
</tr>
<tr>
<td>Alexandria and 12 other forts</td>
<td></td>
</tr>
<tr>
<td></td>
<td>in the north</td>
</tr>
<tr>
<td></td>
<td>Total 1300.</td>
</tr>
<tr>
<td></td>
<td>2913.0 acres</td>
</tr>
</tbody>
</table>

Besides the above "The Company have the liberty of purchasing within six months and in one locality only, viz., at the farm near New Langley, at 4/2 an acre (the present minimum upset price of lands in the Colony) an additional quantity of land not exceeding 1500 acres." 19

Although this sounds quite favorable to the Company it should be borne in mind that their original claims had amounted to 98,000 acres. The despatch also included letters from Hudson's Bay House expressing satisfaction with the above agreement and anxiety to have it ratified and the matter settled beyond dispute.

Probably with memories of Oregon fresh in his mind Douglas early took care that land should be acquired in British Columbia only according to legal forms. In September of 1858 he published at Fort Yale a proclam-

20. Land Proclamation, B.C., 1858
ation declaring that "No lands at or near Langley or elsewhere on Fraser's River have been in any manner encumbered or sold and the title to all such land is vested in the Crown and any persons found occupying the same without due authority from me will be summarily ejected; and all persons, fraudulently selling the same will be prosecuted and punished as the law directs."20

This was none too soon since a certain James Ray and others had taken up land and tried to sell it.21

For the interim before surveying and organized land sales were possible, Douglas permitted the residents at Hope and Yale, living "in tents and unseemly comfortless huts," to lay out a townsite and choose lots, which they were to hold by a monthly rental of 41/8, "payable in advance." This occupation was to serve as a pre-emptive right till the date of a public sale and the accumulated proceeds to be accepted as part of the purchase price of £20.16.8 for lots 120' X 60'.22

In a further despatch of October, Douglas reported that the instalment system had been retained for the benefit of poor settlers but that the price for country land would be kept at £1 an acre (less in purely agricultural districts where no minerals are found, for the purpose of encouraging early settlement)."23 while

21. Douglas (BC) to Lytton, V.I., 12 Oct.1858 (#2)
22. Douglas (BC) to Lytton, V.I., 12 Oct.1858 (#3)
town lots were to be sold "according to the public value of the site." In all sales he promised that "there will be no just cause for complaint for favor shown to the servants of the Hudson's Bay Company and every caution will be taken to prevent speculation and land-jobbing and to protect the public interests." Apparently his precautions in this endeavor were successful for in November he was able to say "We have succeeded with difficulty in preventing the unlawful occupation of the public domain and look forward with anxiety for Colonel Moody's arrival to commence the survey and allotment of land in British Columbia." 24

Douglas' error about the rights of aliens was noted fully in chapter 9. In his early policy, as De Cosmos suggested, he may have been led by a fear of American domination but it was on the mainland, contiguous to United States Territory, that the error was most quickly ratified. In December of 1858 he had issued a proclamation, declaring his right to alienate public lands and promulgating a set of rules governing the acquisition of land by aliens, based on a delivered opinion of Chief Justice Begbie. (These regulations are obviously the source of Douglas' despatch of 29 November 1858, v.supra c.9, n.38, p.184).

1. By British law an alien could hold lands but the
23. Douglas (BC) to Lytton, V.I., 27 Oct.1858
24. Douglas (BC) to Lytton, V.I., 29 Nov.1858
Crown could declare them forfeit.

2. Alien title is safe from any interference except by the Crown, on the ground only that he is an alien.

3. Aliens were to receive "full rights of possession and enjoyment of any lands which they may purchase at the sale for the space of three years." After that a choice of sale or naturalization.

4. These rules to be ratified by the Home Government.

When the opinion of Downing Street reversed the decision Douglas made haste to correct it by the Alien Act of 1859. In this act together with the details of naturalization, is found the following vital paragraph.

"3. Every alien shall have the same capacity to take, hold, enjoy, recover, convey and transmit title to lands and real estate of every description in this colony as if he were at time of the passing this act, a natural born British subject and no person shall be disturbed in the possession or precluded from the recovery of any land or real estate in this Colony by reason only that some person, from or through whom he may derive his title was an alien."

In February of 1859 Lytton sent out a set of suggestions to guide land policy. These advised the maintenance of a fixed high price. "I think the same

25. Land Proclamation, B.C., 2 Dec. 1858
26. Alien Act, B.C., 14 May 1859

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(price, £1 an acre) may with propriety be adopted in Fraser's River and the other Mining Districts. ... I shall not object to your naming ... a lower upset price that £1 an acre for ordinary country lands in other districts but I think that such a price should be general so as not to have a great variety of rates ... (or to) interfere with the course of settlement." The value of sale, by auction, was fully discussed. "It forms the best available precaution against parting with the land at an inadequate price ... and conclusively prevents both the recurrence and even the suspicion or imputation of any favoritism or irregularity in the disposal of the public property" but "it may discourage enterprise by exposing the discoverer to eligible lands to be outbid at their sale ... and may involve a delay in affording purchasers an opportunity to obtain the lots they desire." It was however desirable, especially for town lots and on the condition "that ordinary Country Lots, after once they have been exposed to sale and not purchased may be bought by a fresh applicant at the upset price as a fixed price." The idea of instalments was forcibly discouraged. "Prompt payment is the proper rule. It is a best indication of a purchaser's being really possessed of means to cultivate his lot, it avoids harassing the Government with the existence of a whole population of ..."

27. Lytton to Douglas (BC), D.St., 7 Feb. 1859
small debtors from whom it is next to impossible to collect their dues, and above all it maintains a sounder state of society by not encouraging the premature conversion into petty and impoverished land owners of those who ought to be laborers."

Before this advice so typical of the aristocratic theory of Systematic Colonization could reach British Columbia Douglas had issued a land proclamation which set up the following conditions of sale:

2. All land except Townsites and Mineral Lands to be sold for 10s per acre, payable half in cash and the balance at the end of two years.

3. The government might make reserves.

4. Land to be sold at auction, upset price of 10s, when surveyed and due notice of sale given.

5. Lands not sold at auction to be sold at upset price.

11. New Westminster lots to be sold at auction, one quarter of the lots to be held for purchasers outside of British Columbia. Provision made for their sale by auction if they were not taken up.

12. Holders of Langley lots, fully paid for, might surrender them and apply the price to the purchase of lots in New Westminster. 28

28. Land Proclamation, B.C., 11 Feb. 1859. By a supplementary proclamation of 29 Jan. 1860, section 5 was extended to include town and suburban lots and the instalment
In reporting to Downing Street Douglas stated that the lower price had been adopted "to encourage emigration from England, (to develop) an English element, the lack of which lies at the root of our difficulties and embarass (sic) all our attempts for legislation," as well as from fear of competition with cheap American land and to prevent speculators from purchasing land "merely for profitable resale."

In the reply from the Colonial Office the instalment policy was criticised and the plan for "reservation of one fourth of the lots in the proposed capital for sale in the United Kingdom and the British Colonies" met with immediate condemnation. "This is one of the worst evils to which a new community is liable. . . This provision should be rescinded . . . and if you have already empowered any agents to sell specific lots, you should immediately recall those powers."  

28. (cont) system of section 2 was applied to all agricultural land.

29. Douglas (BC) to Lytton, V.I., 19 Feb. 1859
30. Carnarvon (for Lytton) to Douglas (BC), 7 May 1859.

This despatch preserved at Victoria is annotated in pencil as follows:--"The reservation of lots for sale in the United Kingdom and the British Colonies was made with the view of meeting the demand anticipated by the large immigration expected that year from Britain and the Colonies.
The next problem raised, the lack of rapid and accurate surveying, was met by the introduction of pre-emption regulations. As early as October of 1859, Douglas had "authorized the occupation of land to the extent of 160 acres, with a pre-emptive right to any person occupying immediately and improving such lands and agreeing to pay the Government price not exceeding 10s per acre whenever the land is surveyed and the title granted." This emergency system was confirmed and extended by the Pre-Emption Proclamation of 1860 whose terms practically match those of the Vancouver Island Pre-Emption Proclamation of 19 February 1861.

This proclamation was replaced by the Pre-Emption Amendment Act of 1861 and limited by the Pre-Emption Purchase Act of the same year. To guard against confusion from this variety of laws, they were...

30. (cont) and who it was feared might otherwise be deprived of the chance of obtaining lots in New Westminster. It was however never intended and we have empowered any agents to sell specific lots, otherwise such powers would according to your instructions be withdrawn." The hand is not Douglas—may be Moody's.

31. Douglas (BC) to Lytton, V.I., 12 Jan. 1860
later repealed and their clauses assembled in the Pre-
Emption Consolidation Act passed 27 August 1861.

The reduction of the price from 10s to 4/2
was finally accepted by Downing Street after the following
logical plea by Douglas. "If the public land could be
sold at a high upset price and the country at the same
time filled with people, there would be an advantage
in continuing the present sale price of land but if one
or other of these objects must be sacrificed it is evid­
ently preferable to have the population and to grant
the land without purchase or at a much lower price than
at present."

The Colonial Office while accepting the drop
in price gave a warning that "a maximum price for all
Crown Land cannot with propriety be established by law" and
recommended an idealistic scheme—"such a plan as,
whilst it shall guard against abuses and against an undue
appropriation of land by individuals who have not the
means to turning it to a real account, shall at the same
time be best suited to the circumstances of British
Columbia." On the basis of such permission Douglas
promulgated the Country Land Act of 1861 by which "The

33. Douglas (BC) to Lytton, New Westminster, 23 May 1860
34. Lewis to Douglas (BC), D.St., 16 Jul.1860 (#27). Also
accepted in Newcastle to Douglas (BC), D.St., 28 Jun.1860
35. Lewis to Douglas (BC), D.St., 16 Jul.1860 (#41)
price of unsurveyed land by pre-emption or sale to the pre-emptor . . . and the upset price at sales of surveyed land was set at 4/2 per acre."\(^{36}\)

Registry and titles were looked after by the Land Registry Act of 1861 establishing a Land Registry Office and appointing Registrars-General and District Registrars "for effectually securing the title to and facilitating the transfer of real property in the Colony of British Columbia."\(^{37}\) and by the Town Lot Leases Relief Act of 8 May 1860 which allowed for petitions whereby doubtful or contested claims might be summarily settled before a magistrate.\(^{38}\)

This brief survey of a large field is offered here only as a suggestion for further extended research. The study of British Columbia on the same scale as the preceding study of Vancouver Island, together with the land policy of the united provinces after 1866, forms the complement of this present study and may some day be added.

37. Land Registry Act, B.C., 26 Aug.1861
38. c.p. Act to Cure Imperfect Titles, V.I., 10 Dec.1860
v.supra c.9, n.46, p.187.
Appendix A

THE ESTABLISHMENT OF THE PUGET'S SOUND AGRICULTURAL COMPANY

On the 27th of February 1839 a committee of the Hudson's Bay Company met at Hudson's Bay House to discuss "a prospectus for the formation of an association to be styled the 'Puget's Sound Agricultural Company' having for its objects the rearing of flocks and herds on an extensive scale, with a view to the production of Wool, Hides and Tallow for the British market, and for the cultivation of other agricultural produce, in the District of Country situated to the northward of the Columbia River."¹ The prospectus was "favorably entertained" by the gentlemen present, who were convinced "that a valuable branch of business may arise from the exertions of this association, and that they may be instrumental in improving . . . .

¹ Extract from the Minutes of a Committee, held at the Hudson's Bay House, 27th of February, 1839. Document in B.C. Archives, Victoria, B.C. Envelope M.P.316
the condition of the native Indians and other persons inhabiting that remote country . . . bringing them into habits of industry and civilization. 2 Since the "Governor and Committee (did not consider) it expedient to make this new Branch, a Branch of the Fur Trade", a resolution was passed granting the Puget's Sound Agricultural Company "permission to carry on their contemplated operations" and promising "the assistance and support required from the Hudson's Bay Company, towards carrying into effect the measures set forth in the said prospectus." 3 by turning over to the Puget's Sound Agricultural Company "such portion of the Stock of Sheep and Cattle and of the Agricultural Implements, etc., as can be conveniently dispensed with by the Fur Trade . . . at such fair and reasonable prices as may be determined on, by the Governor and Council of the Northern Department." 4

Let us briefly consider the high points of . . .

2. Extract from Minutes of Committee, 27 Feb.1839

Note that the instructions to McLoughlin, 16 Mar.1838 (v.infra n.13) contain reference to employment of natives.

3. Ibid. See also Pelly to Grey, H.B.H., 12 Jun.1851 for reference to the "Fur Trade Branch of the H.B.Co" which held land around Victoria.

4. Ibid. Note that valuation was to be made by the only possessors of stock in the North West.
this Prospectus. It is significant that the first clause asserts that this association is to be formed "under the protection and auspices of the Governor and Company of Adventurers trading into Hudson's Bay." The association was capitalized at £200,000 in 2000 shares, but possession could be obtained by an immediate payment of 10% and possible future payments (not more than 5% every three months). If the holder wished to sell shares he had to give the first offer of sale to the agents of the Company, and in any case to sell them only to purchasers approved by the Agents.

The management was entrusted to the Agents, who were required to own at least twenty shares of Company stock. Pelly, Colvile and Simpson were chosen for the first year, but there were to be annual re-elections at the annual meeting in London, where voting was by shares and proxies were allowed.

5. The details are from what appears to be a form sent with the circular letter to the commissioned officers of the H.B.Co. (v.infra n.9) but several copies were available.

6. Though not a large financial bar, this shut out temporarily all save the original three Agents. (v.infra, appropriation of shares). The strict control of sales would prevent much engrossing of stock.

7. v.infra, delegation of voting powers of Hudson's Bay factors to H.B.H.
Not only were the appointed Agents Hudson's Bay men, but although they were empowered to appoint Managers, Agents or Attorneys for the purpose of transacting the business of the Company ... and to make agreements with, and advances to, persons desirous of becoming Agriculturalists it was on the strict condition that the principal direction or management of the affairs of the said Company, in the said district, be under the superintendence of an Officer attached to, and interested in, the Fur Trade of the said Governor and Company ... and subject to instructions from time to time, to be issued by the said Agents in London. The early purchase of stock and agricultural implements from the Hudson's Bay Company was insisted upon, as was also a bond against any trade in furs.

Finally plans were made for the incorporation of the Puget's Sound Agricultural Company in the event of the cancellation of the Hudson's Bay Company license in the West, and for application for a land grant in that contingency. During the summer and fall of 1839, a

8. c.p. Pelly to Grey, H.B.H., 4 Feb.1852. v.supra, n.3, p.210. re lands "reclaimed from the wilderness and occupied 'before 1846 on Vancouver Island'. These lands they claim as theirs without purchase" and recall that the Boundary Treaty guaranteed them rights to similar lands in Oregon. I have not found that this refers also to
circular letter with interesting enclosures, was received by the commissioned officers and clerks of the Hudson's Bay Company throughout the North West. The letter was an invitation to take stock in the Puget's Sound Agricultural Company, and it bore the signature of George Simpson. The enclosures include the prospectus we have just discussed, and a schedule of the number of shares allotted to the different ranks of officials. In case any were not taken up they were to be appropriated by the agents. After signing the prospectus, the

8.(cont.) P.S.A.Co. lands, but the analogy is interesting.

9. The letter is dated 25 Apr.1839, from Lachine and may be found in Envelope E.P.316, B.C. Archives, Victoria.

10. To the Three Agents

- Governor and Committee (H.B.Co.) 10 shares
- Governor of Ruperts Land and
- Secretary of the H.B.Co. 10 shares
- Proprieters of H.B.Co. Stock, 1 share for every £300 stock held by them.
- Chief Factors of the H.B.Co. 10 shares
- Chief Traders 5 shares
- Clerks £100 a year salary 3 shares
- £50 and under £100 2 shares
- under £50 1 share

11. The copy in the Victoria Archives is signed by William Fraser Tolmie, Forbes Barclay and G.B.Roberts.

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purchaser had to fill in three forms. The first was simply an order on The Governor, Deputy Governor, and Committee of the Hon’ble (sic) Hudson’s Bay Company in London to pay the necessary deposit from the trader’s person account. The second form was the notification to Pelly, Colvile and Simpson of intention to purchase shares, but the third is worth copying here.

To J.H. Pelly
A. Colvile
Geo. Simpson

Gentlemen:

Having accepted an interest in the Puget’s Sound Agricultural Company to the extent of .... shares, I hereby nominate and appoint you, jointly and severally as my Agents, Proxies or Attornies, to vote and act for me in either of those capacities, at all General Meetings of Shareholders, and in all other matters connected with my interests in the affairs of the said Puget’s Sound Agricultural Co., in the manner as I could do myself, if present.

I am, Gentlemen,

Your most obedient servant,

We do not know how much of the stock was in the hands of shareholders or employees of the Hudson’s Bay Company, but we can safely presume that it was a majority
probably a monopoly.\textsuperscript{12}

On 16 March 1839 a despatch\textsuperscript{13} was sent by the Directors of the Puget's Sound Agricultural Company to John McLoughlin, who, as the official in charge of the Columbia Department received "the principal direction in North America of the Puget's Sound Agricultural Company." The despatch goes on to detail the establishment of two farms, proposed for Cowlitz and Nisqually. At the former it was desirable "to break up and lay under crop, as much land as convenient with the least possible delay, in order to maintain your people, to relieve the Hudson's Bay Company of a contract for Agricultural Produce which they have entered into with the Russian American Company, and to make provisions for settlers that will be sent out from England as soon as you can conveniently receive them," while at Nisqually...

12. In a list of stockholders (Envelope E.P.316) containing 155 names, 86 were recognized as H.B. men by the Victoria Archives staff, and others held stock in the H.B.Co. The list is undated, but from internal evidence, re the dates of death of some marked "deceased" it's period is between 1860 and 1876. A memorandum included in a report of Douglas and Ogden to Governor Simpson on H.B.Co. and P.S.A.Co. claims in Oregon says that shares in the P.S.A. Co. "were taken by shareholders of the H.B.Co. or persons in their service". This is definite but no exclusive proof.
attention was to be principally confined "to the rearing of Flocks and Herds, cultivating no more ground than may be necessary to maintain the establishment and provide Mangel, Wurzel, etc., for the Sheep and Cattle." Stock was to be obtained from the Hudson's Bay Company farms, but plans were made "to import from California as early as possible, sheep and black cattle, the former to be conveyed by sea, and the latter by the Bona Venture trapping expedition on their return in 1841, say about 1000 young cows." This imported stock was to be kept at Nisqually, while Cowlitz was to be the scene of an endeavor to improve the type of sheep. These imports of stock were to be paid for in goods "forwarded under a distinct mark in the Hudson's Bay Company Annual Ship." and the expenses of freight were to be settled by agreement of the officials of the companies in London, since "it (was) desirable to have as few accounts as possible with the Fur Trade." The personnel of these farms was as follows:

<table>
<thead>
<tr>
<th>Cowlitz</th>
<th>Nisqually</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Principal Farmer</td>
<td>A Clerk in Charge</td>
</tr>
<tr>
<td>1 Principal Shepherd</td>
<td>1 Ploughmen (sic)</td>
</tr>
<tr>
<td>2 Assistant Shepherds</td>
<td>1 Rough Carpenter</td>
</tr>
<tr>
<td>6 Ploughmen</td>
<td>2 European Herdsmen</td>
</tr>
<tr>
<td>1 Blacksmith</td>
<td>2 Indian Herdsmen</td>
</tr>
<tr>
<td>1 Assistant Blacksmith</td>
<td>2 Canadian Laboring Servants</td>
</tr>
</tbody>
</table>
The principal shepherd, Mr. Steel, came out from England with McLoughlin, but the rest were transferred from Hudson's Bay Company posts "until they can be replaced by others that may be sent from this Country from time to time by the Annual Ship." and the Clerk in charge at Nisqually was also to act as agent for the Hudson's Bay Company in the fur trade, for which service the Puget's Sound Agricultural Company received £200 a year.

The despatch concludes with a list of proposed conditions on which settlers from England would be received. The terms presupposed the settler to be a man of means and position, though immediate outlay in cash was limited to his passage out. He must, however, bring with him, two married laboring servants (not, I presume, a man and his wife) who were under a five year...
contract to the Company. The expense of the servant's passage out was made a charge on the farm.

On arrival the farmer was put in possession of 1000 acres of land, 100 acres of which were to be broken and fenced, and provided with "a house 30' by 25' for the farmer, and a house 20' by 15' for each married servant, with a barn and stabling for 8 Horses or Oxen and sheds for sheep in proportion to the flock." Agricultural implements and the following list of stock was to be provided to each settler.

500 sheep @ 10/ each
20 cows @ 20/ "
1 bull @ 20/ "
6 horses @ 40/ "
8 oxen @ 20/ "

The affairs of the farmer were closely regulated. The Company supplied provisions for the first year, but unless they were paid for or returned at once, they bore interest at 5% as did also the cost of stock, implements, and outlay for buildings during the term of the lease. Each year the proceeds of produce sent to market or increase in stock, was to be divided equally between the farmer and the Company after the wages of the laborers and the cost of provisions for the year had been paid. Moreover the age to Cowlitz farm, where none except improved breeds should be kept."
Company retained the right to take extra stock up to one half of the increase at a set price, which might later be to their advantage in a period of rising prices. All produce had to be sold to, or handled by, the Company "at the usual commission" and the farmers were barred from distilling spirituous liquors. They were not to be allowed to forget their sorrows, or to console themselves by illicit trade with the rum-loving Indians.

Finally if the farmer ever got together enough money to go home, the Company took from his stock, animals equivalent to the original grant and the rest of the animals were then divided as evenly as possible between the farmer and the Company, but the latter had the right to take the half the farmer claimed, if they suspected uneven division. The land and building were returned to the Company, and the latter had to be in good repair, though no bonus was returned for improvements.

These, then, were the conditions of settlement. The success of the scheme, had the Columbia Valley remained a fur preserve, is only a matter for conjecture.  

15. The Overland settlers from Oregon who arrived shortly, were very anxious for stock. Whitman insisted that "Sheep and cattle, but especially sheep, are indispensable for Oregon." Whitman to Prentice, 28 May 1843, quoted in Wm. A. Mowry, "Marcus Whitman and the Early Days of Oregon", New York, 1901. p.197
The settlers from America created a situation unexpected by the traders who established this system. How it failed before the competition of free land grants and American aggressiveness is fully told elsewhere.
Legend

EECD (Red ink) mark the corners of the Land on which the Government buildings stand and show the land as allotted in 1858. EFCD in red.

(Black Ink) (Title, scale, lines and lettering as above, corrections sic.)

ABCD mark the corners of the land as originally laid out in 1854 and so reported to the Hudson's Bay Company on 1st Sept. 1854 by the late Surveyor Gen'l.

(signed)

P.M. Pearse

Acting Surveyor-Gen'1
12th December, 1865
Appendix B

LEOPOLD LOWENBERG AND LOT Z

Leopold Loenberg, later anglicized to Lowenberg, was auctioneer and land agent in Victoria after 1860. On occasion he had carried on sales for the Hudson's Bay Company and held some of the lots sold off the Reserve.¹

Sometime in March of 1861 Lowenberg bought the area known as Lot Z from the Hudson's Bay Company.² The exact date of purchase is not known,³ but news of the sale leaked out and the "Colonist" of 20 March 1861 contained the following statement. "We are

1. At a H.B.Co. land sale of property situated between the School Reserve and the Springs held on 1 November 1860, Lowenberg bought two lots.
2. For the general location see Pearse's tracing included in Kennedy to Cardwell, 2 Feb. 1865
3. The transfer was filed at the Victoria Land Registry Office till 1869. At the sale mentioned in n.1 the terms were 10% on purchase, balance within 2 years. The extra time allowed Lowenberg was probably because of his title difficulties.
told, on what we conceive to be good authority that the Government (or the H.B. Co.) (sic) have disposed of one and eight tenths acres of land at the rear of the Parliament Buildings. This land is a portion of the section originally intended for a government garden."

Nothing further was heard till May 8 when Lowenberg was arrested for assault following an altercation with Mr. Tiddeman of the Land Office. This official had started the construction of a fence along the open sides of the Government Reserve. Lowenberg considered this a challenge to his claim so he employed laborers to build a fence on the line between Lot Z and the rest of the Reserve. Tiddeman ordered them off and Lowenberg protested so violently that he was taken in charge. In the press report of this incident it was noted that the Reserve though originally supposed to contain ten acres was really larger and that the removal of Lowenberg's lot left just that much. Three days later an editorial explained that the excess over ten acres was due to a fill on the north side of the Reserve and the completion of the Government fence around the whole was reported.

It was hoped that the trial of Mr. Lowenberg would produce some ruling on the matter of title since the lot was one of the areas under dispute between the Company and the city. But the optimists who hoped for a precedent were sadly disappointed. Mr. Justice
Tracing A

Indian Reserve
(10 acres)

Legend
This is a tracing from the official map of Victoria of 1854.

(signed)
Pearse
Acting Surveyor General
12 Dec. 1865

Scale: 2 chains = 1 inch

JAMES BAY
Pemberton declined to give a decision bearing on the case which he knew to be before the Privy Council so he confined the case to an action of trespass and Lowenberg was dismissed under bond of good behavior. Thus the issue was avoided but the sale of Lot Z was among the offenses imputed to the Company by Surveyor General J. D. Pemberton's Indenture of 29 May.

The Hudson's Bay Company however, took up the case of Mr. Lowenberg. Their story was sent to Hudson's Bay House whence issued a protest to Downing Street. The Colonial Secretary wrote to Douglas giving him the account as presented by the Hudson's Bay Company. The Company's version was as follows. The whole Reserve was originally part of a Hudson's Bay farm (Beckley's farm) claimed by the Company because of occupation before 1849. Lot Z lay between that portion of the Reserve on which the "Birdcages" had been erected and the remainder of Beckley Farm. This despatch also showed the motive for the Company's action. Lowenberg was suing them for compensation and damages and Hudson's

4. Colonist of 13 May 1861
5. Colonist of 29 May 1861, V. supra c.5.
6. v.infra n.16, Kennedy to Cardwell, V.I., 2 Feb.1865 for Carey's opinion of why the Company acted.
Bay House considering Tiddeman the offender had passed on the claim to Downing Street.

Douglas' reply was a thorough and damning case against the Company and Lowenberg. The sale was "an attempt upon the part of the Hudson's Bay Company to repossess themselves of the Fort Reserve, Mr. Lowenberg being merely their agent or instrument in the first step." The reserve had originally been ten acres and subsequent changes in shape had been made to let the Company sell more of the waterfront (at present occupied by the C.P.R. wharfs). Lowenberg's lot was separated from the Reserve by only a "drain or trench about two feet wide to carry of the accumulation of surface water during the winter." Since the last survey of 1858 Lot Z had not been cultivated while that part of Beckley Farm facing it across Superior Street had been subdivided and sold in lots during 1859. Even a second row behind the first had been sold before Lowenberg started to fence. From these facts Douglas drew the inference that if Lot Z had really been bona fide Hudson's Bay Company land it could have been subdivided and sold at a good profit at the same time as its neighbors across the street.

Immediate decision of course lay with Downing Street and there the case of Lot Z was considered as a phase of the dispute about to be settled by the ...

8. Douglas to Newcastle, V.I., 24 Oct. 1861
Indenture of 1862. 9

By this compromise the case of Lot Z was really settled and subsequent claims are only special pleading. Clause 1 of the Indenture stated that all land occupied before 1849 and sold before 1 January 1862 were to be given a valid title. 10 This ruling was not accepted in the Colony and when Douglas put forward a compromise settlement in August of 1863 he named Lot Z as one of the lots to be given up by the Company. He further argued that Lot Z might become a nuisance if built up with "objectionable buildings", that a fire hazard might be created and a rear entrance to the Government Buildings shut off. 11

Hudson's Bay House accepted Douglas' compromise with the reservation that such transfer should not affect the rights of third persons. 12 and when Talmie was called upon to make the surrender he was graciously pleased to state that all other lands referred to were "at His Excellency's immediate disposal on behalf and for uses of the Crown" but in the case of Lot Z "I have very respectfully to state that this lot cannot

10. See text above, c. 5, p. 98.
11. Douglas to Newcastle, V.I., 20 Apr. 1863
12. See Newcastle to Douglas, D.St., 20 Aug. 1863
be conveyed to the Crown for the reason that it has long since been sold to a third party whose rights were distinctly reserved ("saved") (sic) by the arrangement (of 1862)."\(^{13}\)

Before the Hudson's Bay Company's acceptance had left Downing Street Douglas had sent another statement about Lot Z. Though most of it was reiteration of previous arguments he delivered one new fact, viz., "on the map up on which these lots "south side of Superior Street) were publicly sold by the Company in 1859, the rear line of the Reserve was exhibited as laid down in 1858."\(^{14}\)

In spite of all Douglas' advocacy the Colonial Office refused to break this clause of the Indenture and in March of 1864 the new Governor Kennedy was informed that since the land had been purchased in March 1861, Lowenberg's title was good,\(^{15}\) though nothing was said about his damage suit.

Kennedy having just arrived in Vancouver Island was not aware of the circumstances of the case so

\(^{13}\) Tolmie to Young, Ft.Victoria, 21 Nov.1863
\(^{14}\) Douglas to Newcastle, V.I., 11 Aug.1863. The map of Victoria issued by Pemberton in 1861 shows the line of the Reserve coming out to Superior Street, and Lot Z tastefully decorated with imaginary flower beds. There was no driveway across it.
\(^{15}\) Newcastle to Kennedy, D.St., 16 Mar.1864

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he collected evidence from Pemberton and Carey and sent their statements, together with tracings of the area supplied by Pearse, in his reply. He stated that in the meanwhile "Lowenberg suffers no serious inconvenience insomuch as he has fenced in the disputed lot know as letter Z and exercised the rights of ownership over it which I have not in any way disputed" and suggested that the land be acquired by the Crown, if necessary paying the Hudson's Bay Company "the original amount of purchase money, if the Company desire it, but on whatever terms it ought to be relinquished by the Hudson's Bay Company." Pemberton's memorandum is enclosed but added nothing to the facts above presented though he said that Lot Z was "alleged" to have been sold to Lowenberg in the spring of 1861.

Carey's judicial report added little to the facts except stating that the fill in front of the Reserve had been "reclaimed by the Crown since 1858 with the concurrence of the agents of the Company." He

16. Kennedy to Cardwell, D.St., 2 Feb.1865
17. Pemberton to Kennedy, Land Office, 17 Jun.1864
18. It is difficult to see what this proves. If you build a house on another man's lot it belongs to him. If you build up his waterfront I should imagine the same rule would apply to the reclaimed area.
expressed the suspicion that Lowenberg got a special certificate guaranteeing title because he was aware that the title was shaky. Mr. Lowenberg was "a real estate agent thoroughly aware of the position of the government reserve indicated on the official map of Victoria Town of 1858 and buying with his eyes open to the fact that he was purchasing from the agent of the Hudson's Bay Company, land which the Hudson's Bay Company had no longer any power to sell without committing an act which Mr. Lowenberg must necessarily have known amounts to a direct breach of faith, in aiding which he became an accomplice." He further stated that "Dallas wanted to sell Lot Z to prevent the question of its title being tried between the Crown and the Company."

This report went home to Downing Street and a parallel case was made out and sent from Hudson's Bay House with the case for the Company based on Dallas' report. His report ends with the following suggestion. "It appears to me that the Colonial Government would have no difficulty in arranging with Mr. Lowenberg to give him in exchange for Lot Z a portion of the seventy acres awarded to the colony by the Indenture of 1862."19

Cardwell's decision is given in a despatch of August 1865 wherein the arguments of the Committee on Crown Lands are met by the opinion of English law . . .

19. Head to Rogers, H.B.H., 2 May 1865
officers. With regard to Lot Z they state that "it is not made out, to our satisfaction, that as between the Crown and the Hudson's Bay Company, it was ever dedicated, in any binding manner, to any public purpose. 

... (if) (Lot Z had been occupied and tilled by the Company and sold to Mr. Lowenberg before February 1862 and (if) all this was known to the Government)) we think that the indenture of 3rd February 1862 operated to validate that sale, so that the Government cannot now dispute it." The solution offered is purchase from Lowenberg, or, if he should decline to sell, seizure by act of the legislature "on payment of a fair compensation."

This does not quite dispose of Mr. Lowenberg. He was the raison d'etre of still more correspondence. While visiting England in 1865-6 he appealed to the Colonial Office asking if their above decision would be supported and would "not allow him (Kennedy) to use his influence and re-open this question which has given so much trouble and annoyance and caused me so much loss. 

... I was assured by some of the Officials at Victoria that they would do everything to keep me from ever getting possession of this land." This was transmitted

20. Cardwell to Kennedy, D.St., 14 Aug.1865
21. Portion in double brackets (( )) based on Dallas' statement.
22. Lowenberg to Cardwell, London, 15 Jan.1866
to Kennedy in a Colonial Office despatch with the warning that the decision of the law officers was to be adhered to. Here the record of the documents ceases. The final solution was found in the files of the Victoria Land Registry Office. A map was produced showing Lot Z subdivided into twelve lots, #1-9 facing Superior Street, 11-12 facing on Menzies Street and 10 on the corner. Search for the history of all Lot Z was not attempted but portions of lots 2 & 3 facing Superior Street were sold by Lowenberg and after passing through the hands of some five owners were finally taken over by the Government on 11 January 1910 for the sum of $7250. Delay over Lot Z must have been very expensive to the province.

23. Cardwell to Kennedy, D.St., 16 Jan.1866

24. Composite map #3535. The subdivision is marked as plan 272. Along the Government Street side of the Reserve another subdivision of 18 lots was marked out--plan 12--but no sales are recorded.
Appendix C

CHURCH AND SPRINGS RESERVE

Note. These brief treatments are presented to emphasize the attitude of the people of Victoria towards the Hudson's Bay Company Reserve. In both cases there was a violent and futile protest and a final decision by Downing Street supporting the case of the Company.

I. Springs Reserve

In 1858 the members of the Assembly sent a resolution to Governor Douglas asking him to reserve the area around the springs that supplied water to the city. In his reply Douglas reported instructions to the surveyor "to reserve the water springs and adjoining land and the well which formerly supplied the town of Victoria with water for the use of the public."¹ Through some technicality the reserve was not properly registered and in 1861 the rumor passed through the city that the reserve had been sold by the Company to a private interest. Public

¹ Petition of 29 Jul.1858. Douglas reply, 5 Aug.1858
protest was voiced by the Colonist, but this protest was mild compared to the indignation aroused when a week later it was discovered that one of the purchasers was Attorney General Carey and that the associates planned to charge the city $60 a month for the privilege of drawing water. De Cosmos' indignation may well be imagined. This official of the government should have stopped such a plan. In the Assembly he had scouted the suspicion of such a scheme, while all the time he had been planning to carry it out. "Was there ever such consummate duplicity? No wonder Governor Douglas' administration is an unpopular one. Such public servants as Mr. Carey would ruin the ablest ministry in any country of which he was permitted to be a member." Oratory, however fluent, did not hurt the political hide of the Attorney-General and on 8 May, a fence was built around the springs and a watchman installed to charge the very moderate tariff of "one bit" (2 for 25¢) per load.

Next day the citizens adopted direct action. The watermen or rather water-pedlars, tore down the fence, held the watchman and helped themselves to the water they wanted. That night a public meeting was held under the chairmanship of the irascible Mr. Waddington who with De Cosmos and Foster, was chosen to present a petition.

2. De Cosmos editorial of 26 Apr. 1861
3. De Cosmos editorial of 30 Apr. 1861

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to Douglas asking for free access to the springs. The meeting was enlivened by much indignant oratory, the interruptions of inebriates and suggestions of tar and feathers. Douglas received the petition with sympathy and offered to try to arrange a compromise but could take no definite action because the land was part of the Hudson's Bay Company Reserve and the title to that area was under dispute before the Privy Council. Waddington's argument, that twelve years of uninterrupted use created a precedent, was heard but not acted upon. (The law demanded 20 years).

The trial of the offending waterman, Montrose, did not settle the question of the right to the reserve, for he was only sentenced to pay damages and costs. Among the evidence presented was that of "William Harrison, a waterman, who testified for the defence that he was placed in possession of the property in 1858 by Sheriff Muir, who told him to see that no one was charged for water. The Sheriff said that in so doing he was acting under Governor Douglas' orders. Harrison also testified that he had occupied a small house near the springs since 1858 and had paid no rent." In a later issue De Cosmos proved that while the Spring area was down on the assessment roll with a valuation of £100, it had been purchased for $7000, twenty-seven days before the assessed valuation had been attested to by its present
The next move was the injunction against the sales by the Hudson's Bay Company of portions of the Reserve among which was the land in question. The Supreme Court, however, refused the injunction on the same grounds used by Douglas in turning down the petition (v. supra, c.5, n.45, p.95)—that the question was already before a higher court whose decision would over-ride theirs.

The dispute was finally settled by the Indenture of 1862 which gave to the Company the "Old Spring and adjoining land (except one well set aside for public use)," though the feeling of the Island became once more vocal in the Report of the Crown Lands Committee, presented in June of 1864. This could only repeat the case for the colony and lament that it had been "particularly unjust" for the Colonial Office to award the area to the Hudson's Bay Company.

II. Church Reserve

The history of the Church Reserve is in many ways similar.

4. Evidence as reported in Colonist of 15 May 1861
5. De Cosmos editorial of 17 May 1861
6. printed in Colonist of 29 May 1861
7. Indenture of 1862 transmitted in Newcastle to Douglas, D.St., 24 Jan. 1862
Included in Newcastle to Douglas, D.St., 19 Dec:1862
Douglas reported plans for its survey in 1852, and included it by name in 2188 acres reserved for school and church purposes, in a despatch of the following year. During the uneventful years prior to the gold rush the question of the Reserve was undisturbed. In 1869 Attorney General Carey stated in the Assembly that "there was no harm in giving valueless land for religious purposes as it would be valuable by and by whilst it was worth nothing now." 

The wisdom of this pronouncement was almost at once questioned by the trouble which now arose around the Church Reserve. Bishop Hills had built a residence on the portion of the Reserve not occupied by the church and the graveyard. Describing his action as "squatting on the Church Reserve" De Cosmos declared that any right possessed by the Anglican bishop was also possessed by "the Roman Catholic Bishop, the Wesleyan Superintendent, the Congregational minister and the Hebrew rabbi." Though demanding action on the subject, from all available authority, De Cosmos failed to give any definite advice. Later in the month Bishop De Mers won the right of entry to a portion of the Reserve, where those of his flock ....

9. Same to same, Ft.Victoria, 8 Apr.1853
10. Carey in As. in Colonist of 5 Mar.1860
11. De Cosmos editorial of 10 Apr.1861. W.F.Clark, the
Congregational minister wrote in the Colonist as follows: "Editor British Colonist. Sir, I beg through your columns to call public attention to the startling fact that there already exists in these young colonies an embryo church state. . . From returns to the Imperial Parliament just received it appears that a Clergy Reserve of 2118 acres of land has been set aside in Victoria district alone. Similar reservations may, for aught we know, have been made in other districts. . .

Now, sir, permit me respectfully to ask my fellow subjects if they are content that Church endowments should be made in these young regions at the rate of 2000 acres of land per district. . . In view of the history of other British Colonies and especially in view of the declaration of Sir E.B.Lytton, when acknowledging the munificence of Miss Burdett Coutts, that it had ceased to be the policy of Great Britain to make state endowments of religion in the Colonies, there is reason to believe that protest and petition would not be resorted to in vain.

So long as the Episcopalian body has her Couttses she can surely afford to dispense with the clergy reserves. And as Sir E.B.Lytton so justly observes, the spirit of self-sacrifice and devotion awakened when she is 'thrown upon the voluntary efforts of her children both abroad and at home' is richer wealth 'than the ampler resources of the state'." In Colonist of 7 Oct. 1859
were interred and the editor seized on the incident as a sign warning Bishop Hills to move off. The Indenture of 1862 turned the Church Reserve, grouped with other public reserved into the hands of Her Majesty's Government.12

In April 1862, Douglas briefly explained the situation. The "glebe" appointed for church purposes and the salary for the incumbent was a 20-acre farm, of no great value at the moment but of great future value as a city lot. It was therefore to be turned over to trustees, The Governor and the Bishop, "for the general benefit of the Church of England" and any funds left after paying the salary, repairs and clerical assistance needed at Christ Church was to go toward founding schools and churches in other parts of the Island.13 This policy of definite sectarian disposal of the proceeds of the Reserve was officially accepted by Downing Street in June.14

Thus the matter rested till the appearance of the Report of the Crown Land Committee in June of 1864. The area was valued at $60,000 if subdivided and sold for building lots. It was noted that Hills and Cridge had decided to lease parts of the Reserve for revenue and the members viewed with alarm the idea of a grant to any particular denomination, declaring that "no favoritism

12. Newcastle to Douglas, D.St., 24 Jan.1862
13. Douglas to Newcastle, W.I., 16 Apr.1862
14. Newcastle to Douglas, D.St., 12 Jun.1862
should be shown . . . but if conveyed to the Church of England specially it would not be so great a public injury provided the Reserve were kept open as a public park.¹⁵

Before Downing Street's reply reached the Island the Assembly petitioned Kennedy "to take legal proceedings to prevent the Church Reserve from being broken up into lots, or leased out in lots in order to test the right of any party or parties to break up the same into blocks, or lease it out for the benefit of Christ Church or for any other purpose."¹² The "Colonist" editorial of date questioned the right of the Company to make the grant and followed the lead of the Crown Lands Committee in demanding the area as a park—to act as "lungs for the city" but Kennedy's reply stated that the Attorney-General had found the title unquestionable and deemed legal action inadvisable.¹⁷

The Church of England continued fencing the Reserve and public opinion expressed itself in a meeting which adopted the following resolutions (1) That the fences were public nuisances and should be dealt with as such; and (2) Requesting the mayor to remove the fence, the meeting pledged itself "to sustain such actions . . . ."

¹⁶. De Cosmos in As. in Colonist of 23 May 1865
¹⁷. Kennedy to As., V.I., 30 May 1865

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in every possible manner." When the meeting disbanded, certain ambitious members, repaired to the Reserve, prepared to take direct action but finding the police on the job, retired. The City Council refused to take any action on the resolutions.

During the night of August 31st, the fences were torn down and Thorne, a member of the city council, was seized by the police. He produced a notice, issued by the authority of the council ordering the fences to be removed on or before the first of September. During August 31st an injunction had been issued to prevent the councillors from pulling down the fence, but Thorne may not have received his copy, though the Mayor and two of the councillors had received theirs. The most charitable construction that can be put upon Thorne's action was that he dodged the message and acted before it could be presented to him. This explains his acting the day before his instructions justified action. Mr. Justice Pemberton bound him over to keep the peace on a $2000 bond and no more violence was attempted. When the Church rebuilt the fence some citizens laid information against this action

18. In Colonist of 16 Jun. 1865
19. Meeting of 19 Jun. 1865
20. It must have been issued at a secret session since no other reference occurs in the files of the Colonist.
as a breach of the peace, but the police refused to act, though thereby drawing upon themselves the abuse of the "Colonist". 21

In a meeting of the Victoria city council next day Mayor Harris definitely refused to have anything to do with an injunction to stop the Church rebuilding the fence, and in the Assembly a committee appointed to investigate the matter met once without a quorum before 4 May 1866 when the secretary was forced to refer to the minutes of the House to recall the personnel of the committee.

The dispute, thus dying a natural death from neglect and lack of interest was formally despatched by the arrival of Cardwell's reply to the Report of the Crown Lands Committee. He definitely affirmed the right of the Hudson's Bay Company to give the Reserve and the exclusive rights of the Church of England were established by law. "I am not aware of any means by which that deed can be set aside." 22

21. Colonist editorial of 4 Sep. 1865
22. Cardwell to Kennedy, D.St., 14 Aug. 1865
Appendix D

SALES FROM THE HUDSON'S BAY COMPANY RESERVE

We have seen above how the agitators of Vancouver Island laid great stress on the value of the sales made by the Hudson's Bay Company from the Reserve in Victoria. This brief study will present a few more figures on the sales of Reserve Land--statistics which would have been too burdensome for the chapters above. These will be preceded by the few reference available on the policy pursued by the Company in the early administration of the Reserve.

As early as May of 1850, Douglas was planning the sale of the Reserve. In fact this was one of the reasons for the policy of making free grants to servants who had completed their contracts. Douglas asked to be "authorized to dispose of town lots as soon as possible and to make free grants of such I may deem necessary to set the ball in motion,"¹ but he did not advocate any improvements beyond those which the grantees would be forced to make. "I never intended that the Company should . . . .

¹ Douglas to Barclay, Ft. Victoria, 16 May 1850

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be put to any expense whatever beyond the survey of the townsite. This survey was held up by the defection of Captain Grant and as late as March of 1851 Douglas was still waiting for the arrival of surveyor Pemberton before making any sub-grants.

Douglas appears to have gone ahead negotiating for sales. Blanshard declared that out of the Reserve the Company "are already attempting to sell small lots to their own servants at greatly advanced rates," and in April Douglas reported the application of Dr. Helmcken for 20 acres in the Fur Trade area which being on the coast could be sold "without prejudice to the Reserve." Under the same date however Blanshard declared that the Company would neither use nor sell the land from the Reserve,—a statement which he repeated later before the Select Committee.

It is impossible to state when sales actually commenced but in January of 1852 Douglas reported many applications for land "since the Fur Trade reserve was...

2. Douglas to Barclay, Ft. Victoria, 21 Mar. 1851
3. Blanshard to Grey, V.I., 3 Feb. 1851
4. Douglas to Barclay, Ft. Victoria, 28 Apr. 1851
5. Blanshard to Grey, V.I., 28 Apr. 1851
in part thrown into the market." The price of town lots had been set at £10.8.4 and though no money had been paid over the prospective purchasers were "good for the sum" and had made improvements "which are security sufficient in the meantime." That the Company considered the Reserve to be their own property and not held in trust like the rest of the Island may be shown both by the following statement—"The proceeds arising from the sale of Town Lots are I understand to be placed to the credit of the Fur Trade"—and by the fact that the cost of surveying the Reserve was borne by the Fur Trade account. Hudson's Bay House sent a definite acceptance of this policy but Douglas repeated his opinion in at least two more despatches.

The next source of information is a despatch to Hudson's Bay House reporting land sales for 1857. It is of course mainly concerned with the sale of public lands but it notes that there had been sales from the Hudson's Bay Company Reserve and funds from those sales,

8. Same to same, Ft.Victoria, 31 Jul.1852 reports the acceptance by H.B.H. but contains a restatement "I consider (the proceeds of Reserve sales) as belonging to the Fur Trade." A similar passage occurs in Douglas to Barclay, Ft.Victoria, 16 Feb.1853. I have no explanation for the persistent repetition, unless the reply of H.B.H. had not been definite enough.

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not to be confused with the Colonial Revenue, amounted to £105. This was, however, the last year of such small sums for land values jumped from 1858 on. In that year Douglas reported that the Company had doubled their price for Town Lots selling a 120' x 64' lot for £20.16.8 and suburban lots of five acres for £25.

Prices for specially well situated land had risen to as high as £100 an acre.

It was pointed out above that it was the author's belief that these prices were the only cause for the attempts to recover the Reserve from the Company. De Cosmos' attitude has been sufficiently pictured in the chapters above but his paper had other means besides editorials of arousing public greed. The sales of the Company land were given full publicity and the amounts realized were played up. A sale in November of 1860 was declared to have produced $27,836.11 and a larger sale, of the Fort site, netted the Company $121,223 from deposits on which "the Company received into their capacious and ever-ready coffers the snug sum of $30,306--a pretty fair days business, we should say."11 This was corroborated by a despatch from Douglas which stated...

10. Douglas to Lytton, V.I., 13 Oct. 1858
11. News Item in Colonist of 2 Nov. 1860
12. News Item in Colonist of 24 Jan. 1861
that the Company had sold 51 city lots for $125,000 and
were selling suburban lands at £100 an acre.\(^{13}\)

The last and most important document for
this appendix is of later date. It is a report from
Hudson's Bay House to Downing Street showing the total
receipts from the sale of Reserve Lands up to 1864
which are as follows:

```
<table>
<thead>
<tr>
<th>Value of sales up to</th>
<th>July 1855</th>
<th>£  814.</th>
</tr>
</thead>
<tbody>
<tr>
<td>July ... 1855</td>
<td>October 1856</td>
<td>191.</td>
</tr>
<tr>
<td>October 1856</td>
<td>October 1857</td>
<td>80.</td>
</tr>
<tr>
<td>October 1857</td>
<td>December 1858</td>
<td>21,937.</td>
</tr>
<tr>
<td>December 1858</td>
<td>December 1859</td>
<td>9,901.</td>
</tr>
</tbody>
</table>

| " 1859 | " 1860 | 25,175. |
| " 1860 | " 1861 |  6,382. |
| " 1861 | " 1862 | 12,637. |
| " 1862 | " 1863 |  9,332. |
| Total    |          | £86,475. |
```

Less expenses 9,784: £76,690.\(^{14}\)

Leaving a net total of £76,690.

13. Douglas to Newcastle, V.I., 7 Feb.1861
14. Head to Rogers, H.B.H., 1 Aug.1865
These figures may be checked against the Report of the Crown Lands Committee of 1864. This gives a slightly larger total, detailed as follows:

1. Value of lots and block in section 18, sold by Surveyor General Pemberton up to August, 1859. (vide statement G, Appendix #2) ... $136,817.

2. Value of lots in Section 18 sold for the Hudson's Bay Company by P.M. Backus, on May 3, 1859. (vide Statement I, Appendix #1) ... 29,955.


4. Value of lots and blocks in section 17, "fort property" sold by P.M. Backus Jan. 23, 1861, for the H.B.Co. (vide Statement K, Appendix #1) 121,325.

5. Value of lots and blocks in section 18, sold at different times by the H.B.Co. (vide Statement L, Appendix #1) ... 105,700.


Total $426,132

This amount together with $339,200 the estimated value of the Reserve gave the total of $765,437; and this the Legislature hoped to recover from the Company.

Appendix E

LAND POLICY AND THE INDIANS

We have seen how Douglas departed from his instructions to purchase village sites and set up the opposite policy of letting the Indians keep all occupied and fenced areas as reserves. It is with the evils and problems growing out of this system that this appendix will deal. The problems directly connected with the actual reserves will be treated at some length for there is much correspondence and press comment on the matter. The value of Indian labor and the question of the extinguishing of Indian title to unpurchased lands can be discussed briefly. By way of conclusion will be noted two incidents --to illustrate the inter-racial attitude of the time, and to describe a gallant but futile effort of the Indians to take the white man's responsibilities upon their shoulders so sorely weakened by the adoption of the white man's vices.

The Reserves
In the early pre-gold rush days the question of reserves was not a pressing one. There was land enough and to spare
around Victoria. The Indians did not often molest the whites for the traditions of Company rule were still firmly impressed upon the minds of the Indians. Goods were pilfered from Captain Grant's farm at Sooke but no violence was ever offered to his person.\(^1\) It was not till 1856 that a settler was molested and then it was Williams, the isolated squatter at Rocky Point who was the victim and his murderer was brought to summary justice.\(^2\)

Douglas apparently was content to keep order within the narrow enclosures of the fort, while he regarded Indian quarrels outside with equanimity and impartiality. When the courageous Pere Lampitt barely escaped martyrdom among the Cowichan Indians, Douglas got him an escort to Victoria and advised him to stay there. "It would be a mere waste of energy to send Missionaries to that part of the island, as without powerful support there is not the remotest chance that the cause of religion would be promoted by their presence, while their office would be derided, their persons insulted and their lives exposed to continual danger."\(^3\) In recognized white man's territory

\(^{1}\) Douglas to Barclay, Ft. Victoria, 21 Mar. 1851
\(^{2}\) Douglas to Labouchere, V.I., 22 Aug. 1856. The murder of navy deserters and the subsequent punitive raids were hardly domestic concerns.
\(^{3}\) Douglas to Grey, Ft. Victoria, 28 May. 1852
however, the Indians were taught not only to respect the settlers but to restrain their own feuds for the sake of the innocent bystander—"I teach the natives that the Settlements are sacred ground and must not be polluted with innocent blood." 4

In the intervals between wars with the northern tribes the Indians were adopting the white man's crops and a crude form of agriculture. In February of 1852 Douglas noted that the Indians at Fort Rupert were clearing lands preparatory to planting potatoes, "evincing in that and other things a laudable desire to improve their social condition." 5 Later in the year on a canoe trip up the eastern coast of the Island, Douglas noted that the Cowichan Indians had "many large and well-kept fields of potatoes in a very flourishing state and a number of fine cucumbers." 6

With the coming of the gold-seekers to Victoria, the Indian Reserve, like that of the Hudson's Bay Company, became valuable for townsite lots and many attempts were made to open it to purchase. This consummation so devoutly wished for on economic grounds was urged with ethical arguments of which there was certainly no lack. The aborigines of Vancouver Island . . .

4. Douglas to Newcastle, V.I., 28 Jul.1853
5. Douglas to Barclay, Ft.Victoria, 1 Feb.1852
6. Douglas to Pakington, V.I., 27 Aug.1852
were not especially fitted to resist the inevitably evil influence of the white man. It was the old, old story of bad liquor, easy morals and small-pox. The files of the Colonist provide material for a story gruesome and base enough to give pause to any ravings about the benefits of civilization, but that story cannot be told here.

Realizing the real motive as well as the validity of the arguments advanced, Douglas was naturally disposed to support the situation as it had grown up under his rule and to look on all attacks on the system as aspersions on his wisdom. Downing Street occasionally provided some good advice, under the prodding of such organizations as the Aborigines Protection Society, or practical schemes based on policies which had been successful in other colonies. Using the analogy of Grey's policy with the Kaffirs, Lytton made the following suggestion—"It might be feasible to settle them permanently in Villages. Law and religion would become naturally introduced among the Red Men and contribute to their own security against the aggressions of Immigrants and while by indirect taxation on the additional Articles they would purchase, they would contribute to the Colonial Revenue, some light and simple form of direct taxation, the proceeds of which would be expended strictly and sole-

ly on their own wants and improvement might obtain their consent.\textsuperscript{8}

In the Vancouver Island Assembly Yates proposed that the expenses of Victoria Bridge should be met by the sale of the Indian Reserve. When Speaker Helmcken warned him that any funds so procured must belong to the Indians, he launched into a pointless and confused attack on the Reserve stating that "the Hudson's Bay Company had paid for the townsite of Victoria by giving the Indians three blankets; that the Indians had only resided there since the settlement of the town, that the Hudson's Bay Company's farm was their old camp; that they were a nuisance, the grand jury having recommended their removal."\textsuperscript{9} He estimated the value of the area as between £50,000 and £100,000.

Douglas reported this agitation to Downing Street, stating clearly the policy he favored--"to lease the land and apply all the proceeds arising therefrom for the exclusive benefit of the Indians."\textsuperscript{10} In his message to the Assembly he stated firmly that "the title to the Victoria Reserve was vested in the government; that the Indians were guaranteed the possession of it when the Colony was settled first, but it was advisable to divide up the Reserve and rent it, and that the proceeds be devoted to support a clergyman and teacher . . . ."

8. Lytton to Douglas, D.St., 30 Dec.1858
to instruct them. They cannot be moved."¹¹ Yates described this as "Chief Factor diplomacy" and blamed the present conditions on the policy of the Executive. "Because you (Pemberton) and the Governor have made a blunder in taking all the lands of the Indians, must the Indians remain here to disgust every respectable female in the town; and are we to suffer this sink of iniquity to remain in our midst any longer? Remove them twenty miles away from the grog-shops if you desire their improvement."¹²

Douglas was not persuaded but neither was he in haste to put his own theories into action. During the remainder of 1859 and throughout 1860 there are only a few casual references to the Indians. Downing Street sent another despatch advocating an altruistic policy more easily pronounced than fulfilled. "Her Majesty's Government earnestly wish that when the advancing requirements of civilization press upon Lands occupied by members of that race, measures of liberality and justice may be adopted for compensating them for the surrender of the territory which they have been taught to regard as their

9. Yates in As. in Colonist of 18 Jan. 1859
10. Douglas to Lytton, V.I., 9 Feb. 1859
11. Douglas to As. in Colonist of 8 Feb. 1859
12. Yates in As. in Colonist of 15 Feb. 1859
own." The Assembly appointed an ephemeral committee "to consider the practicability of removing the Indians located in the northern section of the town" but no sessions are reported nor any findings submitted.

In January of 1861 Douglas took the long-awaited step and advertised the water frontage lots of the Reserve for lease. The Colonist was as enthusiastic as it could be over any act of Governor Douglas. "The object we learn is to obtain revenue by this means in order to enable the authorities to appoint missionaries and police for the education and protection of the aborigines. . . . Although the property's present availability for "mercantile purposes" is doubtful, yet there are many occupations for which it might be used advantageously." 

This venture appears to have been fairly successful for in 1862 it was extended to "all unoccupied portions" of the Reserve and a special agent, John Cochran, was appointed to manage the rentals. To this policy De Cosmos objected on the grounds that the irregular plots leased spoiled any organized city planning. He was in favor of hastening the removal of the Indians who

13. Carnarvon (vice Lytton) to Douglas, D.St., 11 Apr.1859
14. Waddington in As. in Colonist of 26 Apr.1860
15. News Item in Colonist of 16 Jan.1861. The text of the advertisement is found in the same issue.
16. Notice in Colonist of 10 Sep.1862
were rapidly dying off. "So long as they live there they will never be better than a nest of two-legged muskrats; and to destroy the order, beauty and symmetry of one of the finest building sites in our community for their sake is a perversion of common sense." 17

Another good reason for their removal had been advanced when smallpox hit the Reserve in late April of 1862. With Indians dying in the back lots of Victoria, De Cosmos could with some reason demand that the Indians be removed and the Reserve cleaned up for fear the infection should spread among the whites. 18 Direct action was taken at Esquimalt where the Indian huts were burned by the police and the inhabitants directed to "clattawa." 19

Unfortunately there is little material available on Kennedy's treatment of the Reserve problem. On his arrival he was very indignant at the conditions which he found: "shameless prostitution of the women and drunkenness of the men who live mainly by their prostitution. The Indians must be removed from this locality and the proceeds of the Reserve, judiciously managed will more than suffice to supply them with all necessaries in a more suitable locality. . . The Indians are fully

17. De Cosmos editorial of 21 April 1863
18. De Cosmos editorial of 28 April 1862
19. News Item in Colonist of 15 May 1862

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competent to appreciate justice and humanity, but while they are managed like wild beasts they will not cease to be ferocious and dangerous." Kennedy's application of his plan has not been accurately ascertained. The only evidence available is an item in the "Colonist," which stated that Indian Commissioners Pemberton and Alston were planning to present "a number of blankets and other iktas to the Songish Indians, purchased with the proceeds of rents of property on the Reserve. His Excellency the Governor will be present and address the tribe.""21

Similar problems arose in the Cowitchan area. There the Indians gladly sold the land but retained their village sites and potato patches. By 1865 the Reserve had become such a nuisance and temptation to the settlers that they petitioned for its sale, the proceeds to be given to the Indians to "provide for their general improvement and good government." They suggested that a small area be fenced off which the Indians could cultivate in safety since, owing to the Indian neglect of fencing "their potato crops are annually destroyed by the cattle and the pigs of the settlers." The "Colonist" advised the more drastic policy of removing the Indians...

20. Kennedy to Cardwell, V.I., 1 Oct.1864
22. News Item in Colonist of 22 Aug.1862
23. Cowitchan Petition in Colonist of 18 Apr.1865
entirely. "There are plenty of islands, lying off the coast on which the natives might be easily induced to settle and on which they could be turned to a great deal more profitable account to themselves and to us than they are at present." 24

In December De Cosmos rose in the Assembly to ask for the opening of the Cowitchan Reserve, arguing that though a large area was held from settlement, "there were (only) several acres occupied by four or five hundred siwashes, cultivating patches of potatoes, in addition to which all they did was to catch salmon." 25 A reform of the Reserve policy might once have been supported by Kennedy but now he looked upon the motion solely as an effort to establish control of Crown Lands policy and he replied stiffly that in the present situation of that dispute, he could take no action.26

Indian Labor

The Indian who had sold his land for a very small mess of Scotch porridge in the early fifties had three possible means of subsistence—he could fish, work for the white man, or live on the Reserve, drinking the proceeds of his squaw's accommodation to the desires

24. Colonist editorial of 18 Apr. 1865
25. De Cosmos in As. in Colonist of 15 Dec. 1865
26. Kennedy to Assembly, 19 Dec. 1865

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of their masters. The first industry scarcely falls within the scope of this study and the last is hardly a fit subject for a Master's thesis, despite the present-day leaning toward pornography disguised as psychology or sociology. On the extent and value of native labor we can however give some little data.

When the Hudson's Bay Company presented their first biennial report in 1851 it was noted that some $600 had been paid in goods "to Indians for work done for the Colony." In this amount was trebled as was the price of the goods spent for land purchase, it may not represent a great amount of labor. Later in the year, Douglas recommended the construction of a road to Sooke which would require Indian labor costing £50. To confirm these isolated instances we may quote a general statement of Douglas made two years later—"A great part of the agricultural labor of the Colony is at present performed by means of the Natives who tho' (sic) less skilled and industrious than white men, work at a comparatively cheaper rate, so that on the whole they are exceedingly useful to the Colonists." 29

Next year it was reported that Indian labor could be procured for $8.00 a month while unskilled white

27. Blanshard to Grey, V.I., 12 Feb.1851
29. Douglas to Newcastle, V.I., 28 Jul.1853
laborers got from $2.00 to $2.50 a day and carpenters as high as $6.00 a day. Little more is heard till 1858 when Douglas recommended Indian labor for the surveys of the Boundary Commission, explaining that the natives could do the heavy work under the supervision of British experts and would not be tempted to run away to the gold fields, "a not unlikely contingency" if the labor were recruited from "the floating white population of Vancouver Island." The other side of the case—the inefficiency of the Indian, especially after 1858 when he had been inoculated with the white man's vices—is given rather forcibly by De Cosmos in a bit of editorial sarcasm at the expense of the Hudson's Bay Company. "Notwithstanding the Indian tribes of these colonies have for the last thirty years been under the protection of the Hudson's Bay Company and have enjoyed the benign influences of their boasted labors in the great work of their redemption from barbarism, the men today are a horde of thieves and cutthroats and the women a community of prostitutes. . . . They never can compete successfully with the whites; for although their services may be had at a much cheaper rate, their indolent habits, dishonest disposition and intellectual degredation will ever cause the labor of . . . .

30. Douglas to Barclay, Ft. Victoria, 20 Aug. 1864
31. Douglas to Labouchère, V.I., 5 Mar. 1858
the white man to be preferred to that of the Indian."\textsuperscript{32}

\textbf{Indian Title}

Though Douglas had had little trouble in buying land from the Indians at a very low rate, he had not purchased any great area and the question of buying out the Indian title to the rest of the Island was for long a problem of the colony. The Assembly made early attempts to saddle the responsibility on the Home Government and when that was repudiated, they tactfully let the matter drift, allowing small-pox and the encroachments of white settlement to decide the issue, effectively and cheaply.

Early in 1860, Mr. Foster entertained the Assembly with the following dissertation on the Indian titles: "We are told that we have to extinguish them: they have never been acknowledged by this House, nor by any Colony or the English Government. (Hear, hear!) They never existed; we merely acknowledge that a compensation is due them for changing their position. This the Home Government should do."\textsuperscript{33} During the consideration of the estimates for the year an item of £2000 for the extinction of Chemainis Indian title was thrown out on the motion of Foster and with the support of Cooper who . . . .

32. De Cosmos editorial of 19 Feb. 1861
33. Foster in As. in Colonist of 22 Mar. 1860

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stated that "until the lands are placed in our possession, the Home Government certainly should pay all these demands."

It was not till 1861 that the Assembly definitely declared its stand but in January of that year Tolmie carried a resolution that "it was the desire of the House that Her Majesty's Government should take steps to quiet the Indian claims to land in this Colony: that the question of quieting these claims was one for the consideration of the Home Government and that these claims not being quieted was at the present time a serious drawback to the improvement of the Colony." |

Douglas took his time about transmitting the petition to Downing Street and it did not leave the Island till 25 March. Meanwhile the Colonist took up the issue. De Cosmos advocated a strong land policy if the Assembly would not vote the necessary funds. "Shall we allow a few red vagrants to prevent forever industrious settlers from settling on unoccupied land? Not at all... Locate reservations for them on which to earn their own living and if they trespass on white settlers punish them severely. A few lessons would soon enable them to form a correct estimate of their own inferiority and settle the Indian title too." |

34. Cooper in As. in Colonist of 23 Jun.1860
35. Tolmie in As. in Colonist of 29 Jan.1861
36. De Cosmos editorial of 8 Mar.1861
the American definition of a "good Indian."

Twelve days later, in reporting a Cowichan potlach, the editor described the Indians' dissatisfaction at the delay in receiving payment for their lands and attributed it to neglect by Douglas. "Year after year he has promised to buy their land, and as yet, has never done it. We are sorry to hear that Governor Douglas' popularity is on the wane among the oldest families on the island. Soberly, however, the statement of the Cowichans shows that the fault of the non-extinction of Indian titles lies at Governor Douglas' door."37

Downing Street's reply, though belated was sufficiently definite. "The acquisition of title is a purely Colonial interest and the legislature must not entertain any expectation that the British tax-payer will be burdened to supply the funds or British credit pledged for the purpose."38

In the Assembly, Mr. Burnaby "thought the Colony unfairly dealt with by the Home Government, as we are asked to buy lands which we are not permitted to acquire,"39 and Mr. Franklin (voiced his fear that insufficient "data" had been disseminated) added lamentations to the effect that "The Colonial Secretary certainly ..."

37. News Item in Colonist of 20 Mar.1861. As has been noted above (n.22, p.253) Douglas did make payments soon after.

38. Newcastle to Douglas, D.St., 19 Oct.1861
must believe that the land here belongs to the Colony—the actual state of the case could never have been communicated." No action was taken but the policy of salutary neglect slowly but surely cleared the way for the stronger race.

The Bute Inlet Massacre

This incident is noted here because it was the occasion of several opinions on the treatment of Indians. Mr. Waddington was constructing a road to the Cariboo by the northern route from Bute Inlet and when his construction camps had moved about forty miles inland, an Indian raid practically wiped out his gang. Governor Seymour led an expedition to punish the Indians but the project for the road was eventually abandoned as Waddington asked for additional guarantees and grants which could not be considered.

Seymour attempted to get at least half of the expenses of the expedition paid by the Colonial Office by Cardwell refused any responsibility since the punitive expedition had been "undertaken exclusively in the interests of the Colony" and "the expense is in in a great measure due to the rate of profits which the colonists are realizing and therefore can hardly be viewed

39. Burnaby in As, 26 Mar.1861
40. Franklin in As, 20 Mar.1861
as any matter of complaint. 1

Seymour was ready for a most ferocious policy of pacification but his suggestion "of inviting every white to shoot every Indian he might meet" met with a sharp reprimand from the Colonial Office. 2 There it was believed that the sale of whiskey was responsible. "I am especially convinced that nothing could be more for their benefit or more favorable to the growth of worthier and less pernicious relationships between the two races than the repression of the sale of ardent spirits to the Indians by unscrupulous European traders. 3

Kennedy with a greater personal knowledge of the Coast Indians, suggested a more sinister solution—"It is known that the Chilcoaten tribe are peculiarly jealous of their women and in the absence of any assigned reason for this ferocious proceeding I should fear that the residence of a number of white men among the Chilcoatens and the almost certain results, may be among the causes which have led to the catastrophe." 4

41. Cardwell to Seymour, D.St., 1 Aug. 1864. The refusal to pay was reiterated in a later despatch of 22 Jul. 1865
42. Cardwell to Seymour, D.St., 1 Dec. 1864 (#53) replying to Seymour to Cardwell, B.C., 4 Oct. 1864
43. Cardwell to Kennedy, D.St., 20 Dec. 1864
44. Kennedy to Newcastle, V.I., 13 May 1864

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The Indian Police at Victoria

During the summer of 1861, the peace of Victoria was often broken by the drunken frolics of northern Indians who camped in large numbers on the outskirts of the city and proceeded to enjoy the dubious hospitality of the whiskey-sellers and lower amusement halls of the "Dawson City" of British Columbia. The numbers of the offenders made the problem almost beyond the control of the city police force, so Governor Douglas went to the camp and held a parley with the head men. They expressed good intentions and explained that the trouble had been caused by "cultus" individuals whom they were ready to hand over to justice. Douglas therefore presented some of the notables with commissions as special constables, "to arrest and bring to the station house all drunken or thievish Indians who resided at or took refuge in the various camps." 45

The chiefs were delighted with their new authority and proceeded to exercise it thoroughly. Officers "Edensah, George, Canary and Sir Robert Peel" were so efficient that within the week the "Colonist" could report that "the lodges are now very quiet and as long as the chiefs who have been commissioned as policemen do their duty, no doubt will remain so." 46

45. News Item in Colonist of 20 Jul. 1861
46. News Item in Colonist of 26 Jul. 1861
content with correcting their erring brethren, the commissioners, deciding to get to the root of the problem, planted stool-pigeons on one Mr. Wyness, a notorious seller of whiskey to the Indians. He was caught red-handed, man-handled and turned over to the police.

But the burden of responsibility became too great when the novelty wore off. On the night of 6 August, Commissioner Edensah allowed himself the liberty of several drinks too many and, meeting another Indian in the same condition, undertook to arrest him. The intended prisoner not illogically protested and the resulting scrimmage ended in the incarceration of both combatants in the city gaol. This incident ruined the prestige of the Indian police and though Edensah endeavored to atone for his conduct by reporting concealed liquor in his camp to the local police, popular opinion condemned the experiment and Tolmie read the obituary of this attempt to develop Indian responsibility in a speech to the Assembly—"The Indian Police was a failure."\(^47\)

\(^47\) Tolmie in Assembly, 14 Aug. 1861
Appendix F

MILITARY SETTLEMENT

This is a development confined almost entirely to the mainland. The early suggestion of military settlement mentioned above (c.2, n.22, p.29) was abandoned and in 1859, Downing Street declared that the usual land regulations favoring retired officers "do not extend to Vancouver Island, the soil of which has been granted to the Hudson's Bay Company."¹

When settlement flowed to the mainland in 1858, Douglas hastened to ask "whether it would be desirable for the interests of the colony to grant remissions on the purchase of land to retired officers of the Army and Navy was was formerly the custom in many of the British Colonies."² This was favorably received and Douglas ventured a further suggestion—"making grants to the men of the Royal Engineers of small portions of . . . ."

1. Fortescue to Leonard, D.St., 24 Feb.1858
2. Answered in Lytton to Douglas, D.St., 2 Sep.1858

Date of Douglas' despatch probably about June, 1858.

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agricultural land on conditions of residence and military service within the Colony if called upon . . . (and thus) introducing a respectable British element to the population and encouraging sentiments of loyalty to the Crown. 3—a policy which he hoped might be continued later when the Crown Lands came under the control of Colonial Legislation.

The reply from Downing Street was not exactly effusive. "I am not aware that they have had any extensive influence in any colony,—but whatever effect they have would be, as you observe, to introduce a superior and very loyal and attached class of settlers." 4 Douglas however was pleased with his idea and in reporting his Land Proclamation of 14 February 1859, included among his plans a military reserve "bordering on the frontier of the United States," which was to be settled "with a population of exclusively British subjects." In this plan Douglas was probably moved by his memories of the system of gradual encroachment by which the American missionary-settlers had closed in on the Company's reserves in Oregon.

During the late summer of 1860 occurred a correspondence relative to bringing out "the wives and children and also the intended wives of certain non-...

3. Douglas (BC) to Lytton, V.I., 8 Nov. 1858
4. Lytton to Douglas (BC), D.St., 19 Mar. 1859
Commissioned officers and men of the Royal Engineers. Downing Street undertook to finance this on the condition that "the men should be required to sign on undertaking to repay the expenses incurred and should state in writing that, if their wishes are complied with, they intend to remain in British Columbia after their discharge from the service." The dependents "proceeded to British Columbia in the 'Marcella' which left for the colony on 12 November 1860." 

In March of 1861 the "British Colonist" of Victoria printed the following article under the heading "Land Grabbing—We are informed that a gentleman, formerly attached to the British Army, has lately arrived in British Columbia having in his possession land-scrip that entitles him to 1000 acres of choice land at $1.00 per acre. Colonel Moody, Chief Commissioner of Lands and Works for British Columbia, has it is said pre-empted over 15,000 acres of land in various portions of the Colony." When this statement was corrected by a correspondent who explained that such land was not sold but granted and then only on retirement, De Cosmos produced a learned editorial based on the "Colonization Circular of 1859" which stated that in certain colonies,

5. Lewis to Douglas (BC), D.St., 21 Jul.1860
6. Fortescue to Douglas (BC), D.St., 16 Nov.1860
7. Colonist of 14 Mar.1861

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among which Vancouver Island was included, "the control of the waste lands of the Crown has been transferred to the local legislatures." De Cosmos pointed out the error of including Vancouver Island since the land was still under the sovereignty of the Hudson's Bay Company.

The editorial also contained the amount of the remissions to various ranks but two days before, these had been promulgated on the mainland in the form of the Proclamation of Officers Remissions. The following table shows the amounts received by different ranks of officers with varying periods of service.

"Ranks of officers and Remissions on purchase service of country land

<table>
<thead>
<tr>
<th>Rank</th>
<th>Period of Service</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Field Officers</td>
<td>25 years service</td>
<td>£600</td>
</tr>
<tr>
<td>Field Officers</td>
<td>more than 20 years</td>
<td>£500</td>
</tr>
<tr>
<td>Field Officers</td>
<td>less than 15 years</td>
<td>£400</td>
</tr>
<tr>
<td>Captains</td>
<td>more than 20 years</td>
<td>£400</td>
</tr>
<tr>
<td>Captains</td>
<td>less than 15 years</td>
<td>£300</td>
</tr>
<tr>
<td>Subalterns</td>
<td>more than 20 years</td>
<td>£300</td>
</tr>
<tr>
<td>Subalterns</td>
<td>more than 7 years</td>
<td>£200*</td>
</tr>
</tbody>
</table>

Further conditions made essential two years of continuous residence in British Columbia, production of a certificate of standing within one year and use of a location ticket within one year of completing the required two years.

8. De Cosmos editorial of 20 Mar. 1861
9. Proclamation of Officers Remissions, B.C., 18 Mar. 1861

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residence. These conditions do not seem to place any opportunity for extensive "land-grabbing" in the hands of army officers.

The only imperial troops stationed in British Columbia were the Royal Engineers and the only references to military grants are connected with their members. When the Boundary Commissioners were at work Douglas suggested that those occupied in that work should be accorded the settlement privileges extended to the Royal Engineers. Newcastle replied as follows:—"If they shall be disposed on the return of the detachment to England, to settle in British Columbia, they shall have the same advantages as to land in that colony as have been promised to the men composing Colonel Moody's party... (but) residence and Military (sic) service, if required, are indispensable conditions for this Indulgence."¹⁰ Again in 1863 when eighteen members of the Commission, formerly Royal Engineers applied for land grants he advised Douglas "to submit to your council a proposal for making free grants... of thirty acres each... But you will be careful to insist on the condition of residence and military service when required."¹¹

Military settlement was the raison d'être of two more acts of legislation. The first was the...

¹⁰. Newcastle to Douglas (BC), D.St., 17 Sep. 1861
¹¹. Same to same, D.St., 9 Oct. 1863

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"Military and Naval Settlers Act, 1863". This was necessitated by the drop in the price of land and changed the grant to a number of acres of land equal to the number of pounds remission under the terms of the Proclamation of 18 March 1861.\textsuperscript{12} The second measure was the "Naval and Military Settlers Relief Ordinance, 1864" which, as its name infers was to help these privileged settlers. It extended the period over which the Proclamation of 18 March 1861 was effective and postdated the effect of the act of 1863 till 31 August of that year.

I am not aware of the amount of land actually occupied under these conditions. That there were some grants made is proved by the following chance references which occurred in the correspondence checked. In 1865 a despatch came from Cardwell to Seymour, referring to the petition of one McCall, late of the Royal Engineers, whose application for free land as a disbanded settler had been neglected.\textsuperscript{13} In the following year was sent a list of members of the Royal Engineers "who are entitled to the gratuities set against their names, on settling in the Colony."\textsuperscript{14} An enclosure from the War Office gave the list of men--1 sergeant, 4 corporals and 7 sappers--together with their terms of service ranging from 14

\begin{itemize}
  \item \textsuperscript{12} An officer who formerly got £600 remission on land purchases now got a 600 acre grant.
  \item \textsuperscript{13} Cardwell to Seymour, 20 Jul.1865. Reply not checked.
\end{itemize}
years to 18 years and the grants to which they were entitled (from £12 to £32) on rank and service and pointed out that "a medical certificate may be required from each to the effect that he is in good health and fit to become a settler in the Colony." 15

To these general notes may well be added the stories of two military settlers—one who succeeded and one whose plans never materialized. The latter was Lieutenant Colonel William Sidney O'Connor whose project will be best stated by himself. "The Colonel is prepared to purchase and pay for 5000 acres of land to be selected by himself in four separate localities. If the lands required be not yet surveyed by the Government Engineer, Col. O'Connor can himself survey them, to save time, and they can afterwards be re-surveyed by the Government official. He is prepared to take out Servants, Artificers, Stock, Sawmills, Machinery and implements of all kinds with abundant capital to work this property." 16

To this attractive proposition Newcastle gave guarded consent. "I shall be glad if you will afford to Colonel O'Connor any protection and services in your power but ... I do not recommend Col. O'Connor to you for any exceptional conditions in the purchase of land." 17

14. Cardwell to Birch (vice Seymour), D.St., 28 Feb. 1866
15. Report from the War Office, 22 Feb. 1866
16. O'Connor to Newcastle, No. 2 Talbot Square, 7 Dec. 1859

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But the refusal of "exceptional conditions" seems to have daunted the spirits of the Colonel for nothing further is heard of his projects.

The successful enterprise was that of Captain Edward Stamp. He proposed to set up a 5000-foot sawmill, a fishing and fish-curing establishment and a patent slip to accommodate vessels up to 2000 tons at Barclay Sound. From this establishment he hoped to open trade with the Sandwich Islands, South America, China, Australia and the Islands of the Pacific. In return for these valuable services he asked—

1. The right of selecting his site.
2. The right to get as much land as he wanted near the site.
3. The exclusive license to lumber neighboring Crown Lands.
4. That his establishment be declared a port of entry."

Douglas readily authorized him to take up any amount of land up to 15000 acres at a maximum price of £1 an acre "subject to a reduction if the price is lowered before the purchase is completed." He refused the exclusive lumbering privilege but granted the request for a port of entry on the conditions that Stamp would make permanent improvements worth £7,500 during 1860.

17. Newcastle to Douglas, D.St., 23 Dec. 1859
18. Douglas to Newcastle, V.I., 26 Jan. 1860

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Downing Street approved of his terms, with the warning that "The selection (of land) should be made in blocks of not less than certain length and breadth and within certain time." Downing Street feared picketing, i.e., selection of good areas.

In January De Cosmos got wind of Stamp's proposal and wrote an editorial about it. "A nice little scheme is set on foot to take up 15000 acres of land in Barclay Sound on the condition of laying out $37,500 in improvements during the year. . . . The ostensible object is to erect machinery for the manufacture of lumber." He approved of encouraging industry but not by granting good agricultural land which might support agriculturally-minded settlers—"Lay it down unalterably that speculators cannot make merchandise of 'the inheritance of the people.'"

On 3 March, Douglas presented Stamp's project to the Assembly and it won the support of Attorney General Carey, himself no mean hand at land speculation. Later in the month appeared a letter from Stamp to Young accepting the land purchase policy outlined by Douglas but refusing to take out a timber license on Crown Lands at 10s a load since in good country this would mean £15 per acre. Purchase of the land would be much cheaper. The Assembly with its usual cheerful neglect of its inability to legislate where Crown Lands were concerned . . . .

19. Newcastle to Douglas, D.St., 6 Apr. 1860

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voted a supporting resolution. "That the Captain be allowed to purchase 2000 acres of farming lands in portions at different points... The extent of timber lands shall be defined for maintaining Captain Stamp's sawmills for twenty years at a rate per mile square licensed. The Government to make the most liberal terms of purchase to the colonists introduced by Captain Stamp after completion of their contract with the mill Company. The timber right shall be maintained to Captain Stamp but no land except the farming land shall be shut out from settlement." Even this measure was opposed in the House by Messrs. Coles, Cooper and Waddington and in the Colonist by De Cosmos who wrote a scathing editorial indicting the scheme as a monopoly opposed to free settlement and free labor and charging the Assembly with handing out unsurveyed land in Barclay Sound like the Pope in the treaty of Tordesillas.

Captain Stamp seems to have prospered. In June Douglas reported "Mr. Stamp has already fixed upon..."

21. Carey in As. in Colonist of 5 Mar. 1860. c.p. Carey's share in the Springs Reserve affair. He was also implicated in a land fraud on Sallas Island.
22. Stamp to Young in Colonist of 21 Mar. 1860
23. Foster in As. in Colonist of 3 Apr. 1860
24. De Cosmos editorial of 3 Apr. 1860
a site for his future operations and he has selected the land he will require. As soon as his first vessel arrives (already on her way from England) he will commence active operations in prosecution of his projected scheme."25 His activities were not confined to saw-milling. In October he was the purchaser of four lots at a sale at Newcastle Town. These lots, two of them business corners, one costing $115, represented an investment of $245.26 Within a year Stamp had set up an establishment in Victoria and inserted the following advertisement in the Colonist, recommending his fire-proof stone warehouse "free from rats and damp", and

2 first rate 12 H.P. Scotch steam engines
Bass's Ale and Porter, Cased Ale and Champagne
And a bargain, superior felt for houses and conservatories.27

His success in the sawmill business was used as an argument in an Assembly debate of November 1862 when a motion was passed to the effect that "licenses to cut timber to mill be granted to parties upon unsold and un-pre-empted lands."28 Of the subsequent career . . . .

27. Colonist advertisement of 25 Oct.1861
28. Tolmie in As. in Colonist of 26 Nov.1862. De Cosmos editorial of 14th inst. in favor of the motion only on
of the Captain we know only that he was justice of the
peace at Alberni in 1863 and that in that year he
returned to England.

28. (cont.) condition that no ownership of land should go
with the grant.
BIBLIOGRAPHICAL NOTE

Primary Sources

At least 95% of the material for this thesis was gathered in the British Columbia Archives at Victoria. The chief sources were:

1. Despatches from the Colonial Office to the Governors of Vancouver Island and British Columbia 1849-67
2. Despatches of Blanshard as governor of V.I. to D.St.
3. " " Douglas " " of V.I. and B.C. to D.St.
4. " " Kennedy " " of V.I. to D.St.
5. " " Douglas to Barclay 1851-55
6. Files of the "British Colonist" to 1867.
7. Transcripts of the Correspondence of Hudson's Bay House with the Colonial Office and Foreign Office and miscellaneous correspondence with H.B.Co. copied by Miss Mains in London for the B.C. Archives.

The first six are both organized and self-explanatory; the last is as yet unorganized but is a mine of valuable information. Among other primary sources may be noted the "Victoria Daily Chronicle" which provides an interesting check on the "Colonist", the private letter books of Douglas, the Kenneth MacKenzie material, the printed statutes of British Columbia and Vancouver Island and the Minutes and Correspondence Books of the Legislative Council and Assembly of Vancouver Island. The files of
Hansard and the "London Times" for the period yielded occasional finds but their bulk and the slipshod indexing of the latter precluded the thorough study which might profitably have been made.

I take this occasion to declare my indebtedness to the staff of the Archives, from Librarian Hosie through all ranks for their patience with and kindly interest in my work.

Outside of the British Columbia Archives I consulted the British Annual Register for the period and the Report of the Select Committee on the Hudson's Bay Company. The latter was of course available at Victoria but a copy is in the Library of the University of British Columbia together with the report of the British Columbia Archives for 1913—a most valuable compilation from the transcripts noted above. I had access also to some of the documents collected by Dr. Sage in preparation for his "Sir James Douglas and British Columbia".

Secondary Sources

These are necessarily few. Bancroft's "British Columbia" is a mine of ideas which need verification and prejudices which need correction. In more recent studies, Howay and Scholfield's monumental work is standard and where Douglas is concerned, Dr. Sage's biography cannot be safely neglected. The full list is

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as follows:

**Bancroft, Hubert H.**  *British Columbia*  San Francisco:

A.L. Bancroft and Co.  1883

Has the personal touch which makes many statements sound probable. Many ideas suggested by Bancroft well repaid further study but his interpretations though based on sound evidence are often biassed and must be examined carefully.

**Begg, Alexander.**  *History of British Columbia from its Earliest Discovery to the Present Time*  Toronto:

W. Briggs.  1894

Consulted only for specific details as noted in footnotes.

**Dye, Eva Emery.**  *McLoughlin and Old Oregon*  Chicago:

A.C. McClure and Co.  1902

A useful treatment of the course and conditions of settlement in Oregon—a field very closely related to and well worth study by the writer of early British Columbia history.

**Fitzgerald, Edward.**  *Examination of the Charter and Proceedings of the Hudson's Bay Company, with reference to the grant of Vancouver's Island*  London:

Trelawney Saunders.  1849

The personal bias of the author has been noted in the text. It is a good case against the Company,
based on carefully selected evidence.

Howay and Scholfield.  *British Columbia*  Vancouver:  
J.S.Clarke.  n.d.

A general work, valuable as a survey but obviously less detailed for any limited field.

Linn, William A.  *The Story of the Mormons*  New York:  
The MacMillan Co.  1923

Contained material on the plan for immigration to Vancouver Island which corroborated and enlarged on Mr. J.B.Munro's essay noted above.

Martin, Robert Montgomery.  *The Hudson's Bay Territories and Vancouver's Island*  London:  1849

The foil to Fitzgerald's indictment, presenting the case for the Hudson's Bay Company. Fitzgerald's work was of later date and had the advantage of the last word.

Sage, Walter N.  *Sir James Douglas and British Columbia*  
Toronto:  University Press.  1930

Sound biography based on primary sources.