DISPOSAL OF CROWN LANDS IN BRITISH COLUMBIA, 1871 - 1913

by

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B.A., University of British Columbia, May, 1947
B.Ed., University of British Columbia, Oct., 1947

A THESIS SUBMITTED IN PARTIAL FULFILMENT OF
THE REQUIREMENTS FOR THE DEGREE OF
MASTER OF ARTS

in the Department
of
History

We accept this thesis as conforming to the
standard required from candidates for the
degree of MASTER OF ARTS

THE UNIVERSITY OF BRITISH COLUMBIA
September, 1956

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ABSTRACT

The history of the disposal of Crown lands in British Columbia is in reality the history of the economic development of the province. It covers the progress of British Columbia from its days as a hunting and trading preserve of the Hudson's Bay Company through its brief colonial period and formative years as a province down to its years of rapid settlement and development in the decade before 1913. Once the colonial period had passed, the attack upon the natural resources began in earnest. So rich and abundant did those resources of land, mine, forest, and water prove that British Columbia found itself launched into an industrial era almost before adequate legislation had been framed to deal with its land and resources.

Legislation was necessary to guide the economic progress of the province and to establish regulations governing the disposal of Crown land and its appurtenant resources of mineral, timber, and water. The laws were framed always with a view to accomplishing three things - encouraging settlement, forestalling speculation, and securing revenue. Since in every case the basis of provincial legislation was to be found in the proclamations and ordinances framed from 1858

to 1864 by Governor Douglas, a survey of colonial regulations is needed to clarify subsequent policy.

To assist him in framing proclamations for guiding the progress of the two colonies, Douglas looked to the Colonial Office, the terms under which the Hudson's Bay Company had held Vancouver Island, and his own judgment. The first regulations adhered closely to principles laid down by the Colonial Office. Douglas was carefully instructed to ward off speculation in public lands by making beneficial use the criterion of alienation. No agricultural land was to be pre-empted other than by bona fide settlers. Land was not to be sold without some guarantee that it would be improved. Timber leases were to be granted only to the operators of saw mills. Miners could not divert water from streams unless it was needed at once. By 1871 the principle of beneficial use had been so thoroughly established in law that it was never thereafter abandoned. Practice, however, was at variance with principle and until the McBride ministry had devised adequate administrative machinery after 1909 little could be done to enforce regulations.

Secondly, Douglas was instructed to reserve certain rights to the Crown. Gold, wherever found, was so reserved; by 1913, silver, coal, natural gas, and oil had been added. Land for government purposes was similarly reserved to the Crown.

As for other principles, Douglas found he could not enforce them in the face of existing conditions. Sale of

land by auction did not work, nor did insistence upon immediate payment. Neither principle could prevail for long. To secure money, Douglas soon discovered he must dispose of lands on easy terms. Had the Colonial Office seen fit to heed Douglas's plea to lend credit to the new Pacific colonies to relieve them of the pressing need for money, the subsequent wholesale alienation of large tracts of the best land at very low prices would have been unnecessary. Beneficial use, sale only by auction, cash sales, and survey prior to alienation could all have been firmly established and carefully supervised. As it was, British Columbia did none of these things and indeed, became the only province in Canada where land could be alienated prior to survey.

From 1871 to 1913 British Columbia followed the pattern set in colonial days. The only reason the province retained ninety per cent of the timber stands was that, before legal safeguards were enacted, timber was regarded more as a nuisance than as an asset. But the necessity for securing revenue by selling or otherwise disposing of Crown lands on as easy terms as possible established a pattern of thinking that was to see the reckless alienation of millions of acres of land to railway promoters between 1883 and 1900. Much of the land was later repurchased. And because of the difficulties which arose between the Dominion and the province over jurisdictional conflicts stemming from the presence of a forty-mile strip of land through the heart of the province granted in exchange for rail connections with eastern Canada,

enough ill-feeling was engendered to make the allotting of Indian reserve lands one of the most vexed problems in provincial history.

Crown lands in unlimited quantity were disposed of to land and timber speculators and railway promoters from 1871 to 1900. Not until 1900 did provincial governments begin to question the wisdom of such wholesale alienation. Land was so eagerly sought from 1905 to 1913 that effective machinery was finally devised to regulate its disposal on terms most favourable to the province. Pre-emptions were inspected, water rights were clarified, timber lands were placed under reserve for sale of the timber by auction only, extensive surveys of agricultural lands were made, and settlement was at last directed to areas served by communication facilities. By 1913 Crown lands and their natural resources were recognized for what they were - priceless expendable assets and the people's heritage - no longer to be disposed of heedlessly but rather to be conserved for posterity.

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DISPOSAL OF CROWN LANDS IN BRITISH COLUMBIA, 1871 - 1913

Introduction

Throughout the last century in British Columbia the most complex and comprehensive of all legislation has been that concerned with public land policy. Its complexity results from two factors. In the first place, there was no precedent readily available for the colony prior to Confederation. Governor Douglas, upon whose shoulders rested the responsibility for devising land policy, had to formulate that policy before the example of the American Homestead Act of 1862 was available for his guidance. Instructions from the Colonial Office and his own common sense were his only guides. Even had the American example been at hand, it is entirely unlikely that Douglas would have considered granting 160 acres free to bona fide settlers. Nor was any advice forthcoming from Canada. As quite separate colonies, there was practically no interchange of ideas between Canada and the two Pacific colonies, nor was there any interchange of population. Not until after the union of the two colonies of Vancouver Island and British Columbia in 1866 was there any appreciable Canadian element in British Columbia. And as Hudson's Bay Company employees had never concerned themselves greatly with the formulation of a land policy looking

to the organized settlement of the country, James Douglas, on his appointment as Governor of "Vancouver's Island" in 1851, had to work out his own salvation. In the process of doing so he worked out a policy which was a surprisingly good one in nearly every respect.

The second reason for the complexity of land legislation in British Columbia was the topography and climate of the province. To create a policy for the disposal of public land in the Northwest Territories was a much simpler process for the Dominion government than it was for any governor or government in British Columbia. Where there is available for immediate settlement a large area of cultivable land, for the most part treeless and not known to contain any minerals, the legislation governing its disposal resolves itself into determining what quantity shall be allowed each settler and under what terms. Surveying constitutes no problem.

The matter was considerably more complicated in British Columbia owing to the very reason which brought the mainland colony into existence in 1858 - the presence of gold. Until after Confederation it was gold that brought settlers to the Pacific colony, not land. It is significant that Douglas's chief concern from 1858, when he severed all connection with the Hudson's Bay Company, until 1864, when he retired from public life, was to draw up regulations governing the miners' rights to their discoveries and claims; only after that was he concerned with the disposal of lands to disgruntled

miners for purposes of settlement. Because placer mining could only locate the surface gold, hydraulic developments soon appeared, and for them water was necessary. Very early in its history then, land legislation had to recognize the miners' water requirements, even if it meant abandoning the English Common Law principle of riparian ownership of water.[1] The same departure from Common Law became necessary later in the interior dry belt in regard to water for irrigation purposes. Moreover, land legislation had to recognize the fact that much of British Columbia was heavily timbered. Although the economic significance of timber was not recognized until after 1900, provision had to be made for the disposal of timbered lands in the land laws.

After the union with Canada in 1871, cognizance was taken of both American and Canadian land legislation, sometimes with the inevitable confusion arising from the application of half-understood principles, but, on the whole, the Land Acts of British Columbia were home-grown products. Because they had to encompass such divergent elements as water rights, forest lands, mining claims, coal lands, and

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[1] Laws from the English civil code had been in effect in British Columbia since November 19, 1858, except "so far as the same are not from local circumstances inapplicable," and could be modified and altered by local legislation. (See British Columbia. Legislative Council. List of Proclamations for 1858, 1859, 1860, 1861, 1862, 1863, and 1864, 1864, p. 15. Also to be found in: British Columbia. Legislative Assembly. Revised Statutes, 1871, No. 70, s. 2. Hereafter cited as R.S.B.C., 1871.)

pastoral lands, as well as the more customary agricultural lands, the acts dealing with land in British Columbia could not be modelled on those which might apply in other parts of Canada.

Complications in administering the land laws, just as in framing them, were many. The first difficulty resulted from the vastness of the colony. However well devised the act, it was worse than useless if it could not be administered with some degree of efficiency and uniformity. The miners returning from the Cariboo gold fields after 1858 were not greatly concerned with the niceties of phraseology in a land act which they had never seen and for which there was no administering agency close at hand. Communication was slow and difficult and the country seemed boundless in extent. Small wonder that unauthorized homesteads were taken up throughout the Fraser Valley and even on Vancouver Island.[2] These homesteads had to be legalized in later revisions of, or amendments to, the main ordinance.

A further difficulty was that of ensuring so far as possible that lands were taken up by genuine settlers, not by speculators. For fifty years the official documents,

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[2] With a view to raising foodstuffs to feed miners, pioneers took up isolated unauthorized homesteads wherever they considered the conditions suitable. This led to the practice of Crown-granting isolated blocks of land whose geographic position was not definitely known. (See British Columbia. Legislative Assembly. Sessional Papers, 1912, p. G 9. Report of G.H. Dawson, Surveyor-General, February 5, 1912. Hereafter cited as B.C.S.P.)

correspondence, and reports dealing with land were filled with innumerable references either to the existence - or to the fear of the existence - of speculators. Starting with Douglas and continuing to the present time, the Land Act tries to make it impossible for land to be taken up for any other purpose than that of beneficial use. Provided that the land was to be used in all good faith by the settler, almost unlimited quantities of it could be had for many years for practically nothing. For this reason, clauses inserted in every act stipulated that pre-emptors must begin occupation within a specified period and make certain improvements by a definite date after recording the pre-emption. Failure to do so would result in forfeiture of the pre-emption, whether agricultural, mineral, or timber lands were sought. But because no effective administrative machinery was provided until after 1900, such regulatory clauses were often disregarded completely. Governor Douglas made every effort to see that his proclamations were rigidly enforced. Hampered as he was by a very meagre and uncertain revenue for the administration of such a large colony, he could do little.[3] After 1871, even when money

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[3] As early as November 14, 1861, Douglas was borrowing money to finance road construction and maintenance. (See British Columbia. Legislative Assembly. Consolidated Statutes of British Columbia, consisting of the Acts, Ordinances & Proclamations of the Formerly Separate Colonies of Vancouver Island and British Columbia, of the United Colony of British Columbia, and of the Province since the Union with Canada . . . , 1877, No. 174, p. xvi. Hereafter cited as B.C. Consolidated Statutes, 1877.) After 1861 such loans became an annual event.

became available, only desultory attempts were made to enforce the regulations. For thirty years the prevalent attitude was that land was plentiful and most of it useless; if anyone had enough initiative to pay a nominal price for it, no hindrance should be placed in his way.

Indians did not qualify as genuine settlers nor for the first few years were they thought of as speculators. So long as Douglas remained governor little difficulty arose over Indian lands. Douglas left the tribes entirely unmolested on any lands settled or used by them, and even made a start on buying out their beneficial interest in all lands on Vancouver Island. After Douglas retired in 1864, however, Indian reserves became an increasingly troublesome issue in British Columbia and, along with the complications stemming from the existence of the Railway Belt within the province, gave rise to the strained relations between Victoria and Ottawa that culminated in the secession resolution of 1878.

The most troublesome of all administrative problems arose as a result of the Terms of Union under which the colony entered the Canadian Confederation in 1871.[4] Section 11 of the terms under which the union was effected specified that in return for railway connection with Canada, British Columbia should convey to the Dominion a strip of land forty miles

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[4] Land difficulties arising from Section 11 of the Terms of Union are dealt with fully in Chapter 3; those stemming from Section 13 are the subject of Chapter 4.

wide from the seaboard to the border of the Northwest Territories[5] along the line of railway wherever it should be located. Five years were spent in surveying and locating the route which as then planned came through the Rockies by the Yellowhead Pass, through the gap in the Cascades provided by the Thompson River valley, and through the Coast range by means of the Lower Fraser Valley. The route was right through the most heavily settled portion of the province, then as now. The transfer of the forty-mile strip of land through the heart of the province to the Dominion created a dual administration in British Columbia, one set of regulations for what came to be known as the Railway Belt, administered by the Dominion, and another set for the rest of British Columbia, administered by the province. The resulting complications required sixty years to disentangle.[6] In the process, British Columbia came close

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[5] The border was not completely delineated until January 21, 1953. At that time the Alberta-British Columbia boundary commission completed its report on the final 178 miles of the 912-mile boundary, but the report was not tabled until February 20, 1956, following the completion of the twelve maps showing the boundary in detail. The survey was begun in 1913, suspended in 1924 because there was no pressing need for the continuation of the survey in the sparsely-settled northern areas of the two provinces, and resumed in 1950 when accurate demarcation became imperative following the discovery of oil and mineral deposits. (See Nelson Daily News, February 21, 1956, p. 10.)

[6] For the genesis and first fifteen years of this problem, see: Ormsby, M.A., "The relations between British Columbia and the Dominion of Canada, 1871-1885," Ph.D. Thesis, 1944, Ann Arbor, Michigan, in University of British Columbia Library (microfilm), or MSS in Provincial Archives, Victoria, B. C.

to withdrawing from Confederation;[7] and the Dominion government was badgered almost beyond endurance. The wonder is not that British Columbia did not withdraw from Confederation but rather that Canada did not ask for its withdrawal to rid herself of what became the most involved and unpleasant problem in domestic politics for fifty years.

But all this was in the future. To follow the story of the disposal of public lands in British Columbia from 1871 to 1913, it is essential first to go back into the past of colonial days. The regulations of Governor Douglas formed the firm basis of the new province's land legislation after 1871.

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[7] On August 30, 1878, a secession resolution proposed by Premier G.A. Walkem passed the Assembly on a vote of 14 to 9. It said, in part, "That British Columbia shall hereafter have the right to exclusively collect and retain her Customs and Excise duties and to withdraw from the Union. . . ." In the confusion attendant upon the general election in Canada that September, the resolution was 'mislaid' in Ottawa and did not reach London until January 24, 1879. In the meantime, however, a much more conciliatory attitude replaced the former hostility and the resolution was forgotten both by the Walkem Ministry in British Columbia and the newly elected Macdonald government in Ottawa. (See Howay, F.W., "Political history, 1871-1913," in Canada and its Provinces, 1914, Vol. 21, pp. 202-204.)

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CHAPTER 1

LAND SETTLEMENT POLICY, 1871-1913

i.

With the revoking of the Hudson's Bay Company charter in 1858,[8] Douglas, as Governor of both Vancouver Island and British Columbia, faced the problem of framing legislation for the disposal of public lands. There was no thought then of railroads and conflicting jurisdictions, nor was there any intimation of the value Crown lands were later to acquire. It is all the more remarkable, therefore, that Douglas's proclamations covered every major contingency ever to arise in the land policy of the province. Close study of Douglas's ordinances and a comparison of them with later Land Acts leads one to the conclusion that had Douglas continued his role of leadership in British Columbia until after Confederation, not a fraction of the land problems which plagued the province for so many years would have arisen. Douglas would

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[8] Because of the distinctly unfavourable comments about the rule of the Company made before a Select Committee of Inquiry before the British Parliament in 1858, and of the similar remarks from another investigation made in Canada, the British government, convinced a change was necessary, revoked the Hudson's Bay Company privileges, conferred in 1849, by Act of Parliament on August 2, 1858. The act provided that Douglas should be governor of both colonies on condition that he sever all connection with the Hudson's Bay and Puget Sound Agricultural companies. This Douglas did, saying that "I place my humble services unhesitatingly at the disposal of Her Majesty's government, and I will take early measures for withdrawing from the company . . . ." (See Coats, R.H. and R.E. Gosnell, Sir James Douglas, 1926, p. 219. (Makers of Canada series, Vol. IX.))

no doubt have been a leader in any society or any period, not a popular leader, but one respected and deferred to for his qualities of mind. Not least of these qualities was his capacity for clear and concise thinking. Nowhere is this quality more evident than in his despatches to the Colonial Office asking for instructions on lands policy, or recounting an analytical and informed recital of reasons for actions he had already taken.[9]

The problem Douglas faced was that of providing for the systematic alienation of public land in an uncharted wilderness of unknown area and unsuspected resources, inhabited by unnumbered thousands of Indians in addition to a few thousand transient miners who had suddenly descended on the colony of Vancouver Island in 1858. Douglas had to accommodate a land system to most unaccommodating and widely scattered areas of arable land.

Douglas had three sources from which he could get help. There were the provisions under which the Hudson's Bay Company had allotted lands, there was the Colonial Office,

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9 All these despatches may be found in: British Columbia. Governor. Despatches . . . to the Colonial Office. October 12, 1858 - July 24, 1871. I-III: Douglas. October 12, 1858 - April 13, 1864. (Photostat copy of MSS in Archives Department, Ottawa, G series, no. 353-358.) Also to be found in: Great Britain. Colonial Office. British Columbia. Papers relative to the affairs of British Columbia . . . Copies of despatches from the Secretary of State for the Colonies to the Governor of British Columbia, and from the Governor to the Secretary of State . . . , 1859-1862. Parts I, II, and III. (Hereafter cited as Papers relative to the affairs of British Columbia.)

and there was his own experience.

Under the grant made by Royal Proclamation of January 13, 1849, the Hudson's Bay Company had been given absolute lordship and proprietorship of Vancouver Island, its land and its minerals, forever, subject only to the domination of the British Crown and to an annual rent of seven shillings.[10] In addition, the Company was to settle upon the Island within five years a colony of British subjects. It was solely for this reason that the Home Government had acceded to the Company's request when it was before Parliament in 1849.[11] The stipulation to which Douglas must now have directed his attention required the Company to dispose of land for purposes of colonization at reasonable prices, retaining as a service charge ten per cent of all money received from the sale of land, as well as from coal or other minerals. The other ninety per cent was to be applied to public improvements, chiefly roads, The Company was further empowered to reserve such lands as were

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[10] The complete text of the agreement of January 13, 1849, may be found in: British Columbia. Legislative Assembly. Report of Provincial Archives Department of the Province of British Columbia for the year ending December 31, 1913, 1914, Vol. V, pp. 73-74. It is discussed at length in: Bancroft, H.H., The history of British Columbia, 1792-1887, 1887, pp. 212-222; Sage, W.N., Sir James Douglas and British Columbia, 1930, pp. 158-162; and Wrinch, L.A., "Land Policy of the Colony of Vancouver Island, 1849-1866," M.A. Thesis, 1932, in University of British Columbia Library.

[11] For details, see: Gosnell, R.E., "Colonial history, 1849-1871," in Canada and its Provinces, Vol. 21, pp. 81-87.

necessary for public improvements, but every two years an accounting was to be made to the Colonial Office of such reservations, as well as of the number of colonists settled on the Island, and of lands sold. At the end of five years the Crown reserved the right to recall the grant should the Company have failed to effect any colonization; at the end of ten years the Crown could repossess the grant upon reimbursing the Company for any and all expenses incurred in its administration of the island, civil or military. Repossession took place in 1858.[12]

The sections that must have interested Douglas particularly were those specifying price, size of holdings, provisions for survey, and reservations to the Company. No grant was to contain less than twenty acres; the price was fixed at £ 1 per acre, after which the land was to be held in "free and common soccage"; the Island was to be divided into districts of from five to ten square miles; and all minerals, wherever found, were to belong to the Company. The Company could dig for minerals upon payment of adequate compensation for any surface damage.[13]

So long as the colony was held as an *imperium in imperio*, Douglas had no quarrel with the terms under which

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[12] See n. 8. For reasons why the grant should never have been made if colonization were the object, see: Gosnell, R.E., *op. cit.*, pp. 83-84. With the end of Company rule on Vancouver Island, the Company received £57,500 as compensation for its expenditures on the colony.

[13] Sage, W.N., *op. cit.*, pp. 158-159.

the land had been granted to the Company, although he recognized that those terms were inimical to colonization. Notwithstanding the high price of £ 1 per acre, he himself purchased land, but he stated that other Company men were "scared at the high price charged."[14] He knew that Vancouver Island from 1849 to 1858 should have been a favourable field for settlement under other auspices, and that the Company had sufficient capital to carry out successfully any scheme of colonization it might have felt inclined to initiate. The Company was familiar with the country and its resources; its officials understood the natives thoroughly, and could conduct trade and develop the country in a way not possible by individual effort. But Douglas also knew that what had happened was just the reverse of what had been possible. Bancroft, an historian of the Pacific Northwest who was never too charitable toward the Hudson's Bay Company, remarked that:

> Not alone must the pound per acre for wild, and thus far worthless, land, stolen from the savages, be paid the imperial government, but to the representative of the government as the representative of a crushing monopoly must the settler go for every necessity, every article of comfort or form of requirement, paying therefore often two or three hundred per cent on London cost; to this same hydra-head he must carry his produce, and receive for it whatever the Company might please to pay. Who among nineteenth-century Englishmen would leave his happy English home with all its hallowed memories,

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14 Quoted by F.W. Howay in Appendix to "The Raison d' Etre of Forts Yale and Hope," Royal Society of Canada Transactions, Third Series, 1922, Vol. XVI, section II, p. 63. Douglas to Anderson, March 18, 1850.

> and take up his residence in this far-away north-west wilderness only to breathe so stifling an atmosphere as this? Nobody.[15]

Although Bancroft overlooked the fact that had it not been for the presence of this "hydra-head" the territory could well have fallen into American hands by default, it is true that settlers were conspicuously absent. In 1849 there were no more than twenty,[16] all of whom were obliged to retire at least ten miles from Victoria to obtain land, since the Company had reserved for its own use all land within ten miles of the fort, an area which contained the best and most easily cleared farm land.[17] Because the lands at the periphery of the reservation were heavily timbered and devoid of adequate communication with the fort, Douglas was aware in 1858 of the frustrations experienced by settlers in such areas. Accordingly, he made provision in his first proclamations for road-building on the mainland. Up to the end of 1853 about 20,000 acres had been applied for, upon which had been paid approximately £ 9,000.[18] Between July 12, 1855, and October 10, 1856, public lands amounting to 2,137 acres had been sold to settlers at £ 1

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[15] Bancroft, H.H., op. cit., p. 311. For comments substantiating the gist of Bancroft's remarks, see: Gosnell, R.E., op. cit., p. 83.

[16] Gosnell, R.E., op. cit., p. 105.

[17] The Company did release some of its reserved land to encourage its retired servants to become settlers, but this was a special concession confined solely to Company employees. (See Bancroft, H.H., op. cit., p. 313.)

[18] Gosnell, R.E., op. cit., p. 116.

per acre.[19]

Douglas, then, could look for no positive help from the terms under which the Company he had served for 37 years[20] had held the land. All that had really been accomplished between 1849 and 1859 was to demonstrate, from the limited way in which settlement and farming had been started, that under more favourable conditions the country might have possibilities for increased settlement. Even before his investiture as Governor of the mainland Colony on November 19, 1858, Douglas had transmitted his views on a land policy to the Colonial Office. To this body he now turned for guidance. That he was without any legal authority to make regulations designed to protect British interests on the mainland he very well knew,[21] but as the only official in the region whose authority might apply, he felt constrained to do all in his power to reduce to some order the chaotic conditions resulting from the influx of the hordes of miners and adventurers going up "Fraser's River" to the gold fields. Because he felt that "the country will be filled with lawless crowds, the public lands unlawfully occupied

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[19] Bancroft, H.H., op. cit., p. 339.

[20] Sage, W.N., op. cit., p. 20. Douglas joined the Hudson's Bay Company when it merged with the Northwest Company in 1821. He had been a Northwest Company employee for two years.

[21] By proclamation on November 19, 1858, the same day he was invested with the governorship of British Columbia, Douglas's previous actions were legalized. (See British Columbia. Legislative Council. List of Proclamations for 1858, 1859, 1860, 1861, 1862, 1863, and 1864, p. 13.)

by squatters of every description, and the authority of the Government will ultimately be set at naught,"[22] he recommended that "as a measure of obvious necessity" the whole country should immediately be thrown open for settlement, and that "the land be surveyed, and sold at a fixed rate, not to exceed 20 shillings an acre."[23] From these measures he hoped, aside from securing order out of chaos, to acquire a large revenue for the service of the government.

Before this despatch of June 10 had reached the Colonial Office, Sir Edward Bulwer Lytton, Colonial Secretary, had written cautioning Douglas to make the colony self-supporting as soon as possible, and suggesting that this could be done by the disposal of public lands, especially of town lots, "for which I am led to believe there will be a great demand".[24] Lytton referred to the fact that "many of our colonial settlements" possessed lands which had afforded them "safe though not very immediate sources of prosperity," but characterized British Columbia as possessing, "in a remarkable degree, the advantage of fertile lands, fine timber, adjacent harbours, rivers, together with rich mineral products," the latter of which blessings would "furnish the Government with the means of raising a Revenue which will at once defray the necessary

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22 Papers relative to the affairs of British Columbia, Part I, pp. 13-15, s. 23. Douglas to Lord Stanley, Secretary of State for the Colonies, June 10, 1858.

23 Loc. cit., s. 21.

24 Ibid., Part II, pp. 44-46, s. 1. Lytton to Douglas, July 31, 1858.

expenses of an establishment."[25]

When Lytton had received Douglas's despatch of June 10, he again warned Douglas that he must manage the colony without any financial assistance from the Home Government. He spoke of the "immense resources" of the colony, which assured him that the mother country would be freed "from those expenses which are adverse to the policy of all healthful colonization."[26]

In a second despatch of August 14, 1858, Lytton laid down five principles regarding public lands which, had they been followed not only throughout the colonial period but also into the provincial era, would have prevented much speculation with its consequent retardation of settlement and dissatisfaction to settlers. But a lack of a sufficient revenue from those "immense resources" referred to by Lytton rendered his efforts fruitless.

In his despatch, Lytton authorized Douglas to sell land solely for agricultural purposes whenever the demand for it should arise. It was to be many years before the wisdom of this principle was appreciated in British Columbia. Secondly, he advised that the land be sold only at an upset price to be determined by Douglas after consideration of the price charged in neighbouring American territories. An upset price of at least £ 1 per acre Lytton considered to be absolutely necessary so that the government could participate in the profit from

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25 Loc. cit.

26 Ibid., pp. 47-48, s. 10. Lytton to Douglas, No. 8, August 14, 1858.

sales and so that "mere land jobbing may be in some degree checked."[27] In regard to land for town lots, "to which speculation is almost certain to direct itself, I cannot caution you too strongly against allowing it to be disposed of at too low a sum."[28]

Thirdly, Douglas was directed to open lands for settlement gradually, and to sell only what was surveyed or ready for immediate survey, and to prevent "as far as in you lies," squatting on unsold land.[29] Next, he was to keep a separate account of all revenue from land sales. These revenues were to be used for the time being for the dual purposes of survey and communication, the first charges on all land revenue.

Finally, recognizing the presence in the colony of a great many aliens, Lytton directed that while foreigners as such were not entitled to grants of waste Crown Lands, "it is the strong desire of Her Majesty's Government to attract to this territory all peaceful settlers, without regard to nation."[30] For this reason, naturalization was to be granted to all who asked for it. Only then would the right to acquire land be accorded.[31] The precedent thus established by Lytton

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27 Ibid., pp. 49-50, s. 1. Lytton to Douglas, No. 9, August 14, 1858.

28 Loc. cit.

29 Loc. cit., s. 2.

30 Loc. cit., s. 4.

31 The "Proclamation respecting the Naturalization of Aliens," May 14, 1859, took care of this point.

and incorporated by Douglas into the Land Ordinances has been followed ever since.

These were most statesmanlike proposals and Douglas did his utmost to follow them. Immediately upon receipt of the despatch, Douglas sent the Surveyor-General, J.D. Pemberton, to lay out townsites at Fort Langley, Fort Hope, and Fort Yale. On October 11, 1858, he was able to tell Lytton that a public sale of lots at Fort Langley would be held in the near future, such lots to be 64 by 120 feet and to be sold at an upset price of $100.[32] Douglas permitted himself the hope that the disposal of these lots, as well as the sale of public lands generally, would, besides having the effect of opening the country for settlement, "prove a prolific source of revenue".[33] He took the opportunity to remind the Colonial Office that he had been called upon to act with no legal authority while at Yale and Hope, doubtless hoping to have such action subsequently legalized.[34] He said that the most urgent appeals had been made to him by intending settlers for the purchase of town lots and, because of the approaching winter, he had granted monthly

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32 Papers relative to the affairs of British Columbia, Part I, pp. 37-39, ss. 9 and 10. Douglas to Lytton, October 11, 1858. There is no explanation as to why Douglas quoted the price in dollars other than that the Americans in Victoria dealt in dollars. British Columbia used the British system of pounds, shillings, and pence until 1866.

33 Loc. cit., s. 8.

34 Following receipt of such authority, Douglas could issue a proclamation on December 2, 1858, stating that henceforth the Governor could "grant to any person or persons any Land belonging to the Crown" and that such grants were to be valid. (See British Columbia. Executive Council. Appendix to the Revised Statutes of British Columbia, 1871, containing certain repealed

leases to be continued with a pre-emption right until the lands could be legally sold. He had evidently taken Lytton's advice to charge a high enough price for his leases. He granted them at 41 shillings a month. Anyone speculating at that rental would have been taking a dangerous chance.

Following the first public auction of lands held in British Columbia on November 25, 1858, Douglas could report that the result had been "highly satisfactory". It showed public confidence in the resources of the colony and, more important, provided a needed supply of money for defraying current heavy expenses.[35] From the sale of a portion of the 3,294 lots at Fort Langley which had been carved from 900 acres[36] surveyed on the townsite,[37] over £ 13,000 had been

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Colonial Laws, useful for reference, Imperial Statutes affecting British Columbia, Proclamations, etc., n.d., No. 11, December 2, 1858. Hereafter cited as Appendix to R.S.B.C., 1871.)

[35] Papers relative to the affairs of British Columbia, Part II, pp. 37-38, s. 6. Douglas to Lytton, November 29, 1858.

[36] The 900 acres were divided into 183 blocks of five by ten chains, and each block was subdivided into eighteen building lots of 64 by 120 feet. (See Loc. cit., s. 3.) A similar sale of town lots in June, 1859, brought $89,000, with the price per lot going as high as $1,925. (See Coats, R.H. and R.E. Gosnell, op. cit., p. 236.)

[37] Around Fort Langley, as around all other Hudson's Bay posts, an area of ten square miles had been reserved for the Company. (See Bancroft, H.H., op. cit., p. 406.) On p. 416, n. 25, Bancroft also reports that on June 1, 1859, lots at Queensborough (name changed to New Westminster by proclamation of July 20, 1859), sold at from $110 to $1,375 each, aggregating over $40,000 the first day of the sale.

realized. Although the upset price had been £ 20.16.8 sterling, or $100, the keen competition from the large gathering had resulted in prices going as high as $725. Ten per cent of the price had been paid down, with the remainder to be paid within one month. Failing this, the lots were to be forfeited and resold.

Two precedents were set here which were to affect land policy after 1871. The first was sale by public auction; the second was deferred payment, both of which became the subject of Lytton's next despatch. Referring to sale by public auction as opposed to sale at a fixed price, Lytton found two advantages for the former; namely, that it formed the best available precaution against disposing of lands at an inadequate price, and secondly, that it prevented "both the occurrence and even the suspicion of imputation of any favouritism or irregularity in the disposal of the public property."[38] Lytton need not have concerned himself on that score; throughout all the correspondence and official records there is not the slightest evidence that Douglas ever displayed any favouritism where the Hudson's Bay Company was concerned, although there are numerous references to the opportunities that he had for so doing. The only objections Lytton could find to the sale by auction were that it could have served to "discourage enterprise by exposing the discoverer of eligible lands to be outbid

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38 Papers relative to the affairs of British Columbia, Part II, pp. 78-79. Lytton to Douglas, February 7, 1859.

at their sale",[39] and such a method might have caused some delay in effecting transfer of title. In summary, however, Lytton found the advantages to outweigh by far the drawbacks, particularly because auction would have afforded "the inestimable advantage of perfect confidence in the purity of the land administration." Any objections to auctioning the lands could be met by adopting the system common in other colonies of permitting an applicant to purchase country lands at the upset price as a fixed price once the land had been unsuccessfully offered for sale. In this way, there would always be available an adequate reserve of land for any settler unwilling to wait for the next auction.

Had such a policy been followed after 1871, thousands of acres of land would have been retained by the government for purposes of bona fide settlement, acres which found their way into private hands for speculative purposes at very low prices established by statute as the price of Crown Lands. But, like many governments which came after his, Douglas's suffered from chronic poverty, and not even he before 1864 could refrain from letting large acreages go at nominal prices in order to secure a revenue. Having assumed the responsibility for administering the country out of its own resources, and having been refused financial aid from England with which to supplement the very meagre colonial revenue, Douglas had no alternative but to abandon the auction system almost before

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[39] Loc. cit.

it was well started. To supply the pressing needs of government, land, being the readiest asset upon which to draw, was disposed of on terms likely to prove most attractive to investors. Had the Home Government seen fit to lend its credit to the colony, the land might have been more wisely conserved and settlement directed more systematically to ensure compact and gradual expansion. In this way, provision for improvements could have been made that would have been a boon to the settler and a manageable burden to the government. But although Lytton had a remarkably clear grasp of the numerous problems involved in developing and settling a new colony, he seems to have been unduly influenced by reports reaching him of the colony's wealth, overlooking the fact that very little of that wealth found its way into the colonial treasury.

In the matter of payments, Lytton also gave sound advice, but again he took no cognizance of the exigencies of colonial life in British Columbia. He said that "I have not a doubt myself, . . . that prompt payment is the proper rule,"[40] and for three reasons. It would serve as the best indication of a purchaser's being really possessed of adequate means to cultivate his land; it would avoid harassing the government with the existence of a whole population of small debtors from whom it would be next to impossible to collect payments; and, finally, it would "maintain a sounder state of society by not encouraging the premature conversion into petty and impoverished

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40 Loc. cit.

land owners of those who ought to be labourers."[41]

When he read that at the auction of the Fort Langley lots two partial payments had been permitted, and when he saw Douglas's Land Proclamation of February 14, 1859, Lytton again drew Douglas's attention to the probable difficulties which might arise:

> Under the present rules, if payment of the second moiety should be resisted, it would be extremely difficult to eject persons who by the very conditions of the case would have been in occupation of their lands for a period of two years. And again, if some of the landowners do pay their obligation, whilst others do not, a grievance arises out of the distinction.[42]

For these reasons, Douglas was asked to give further consideration to the matter of prompt payments.

On February 19, 1859, Douglas had forwarded to Lytton a copy of his first proclamation having to do with public lands. The preamble of the proclamation, issued five days before, stated that "it is expedient to publish for general information, the method to be pursued with respect to the alienation and possession of agricultural lands, and of lands proposed for the sites of towns in British Columbia".[43] The first nine of the provisions were as follows:

1. All the lands of British Columbia, and all the mines and minerals therein, belong to the Crown in fee.
2. The price of lands, not being intended for the sites of towns, and not being reputed to be mineral lands, shall

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41 Loc. cit.

42 Ibid., pp. 86-87. Lytton to Douglas, May 8, 1859.

43 Appendix to R.S.B.C., 1871, No. 13, February 14, 1859.

be ten shillings per acre, payable one half in cash at the time of sale, and the other half at the end of two years from such sale. Provided, that under special circumstances, some other price, or some other terms of payment, may from time to time be specially announced for particular localities.

3. It shall be competent to the Executive, at any time, to reserve such portions of the unoccupied Crown Lands, and for such purposes as the Executive shall deem advisable.

4. Except as aforesaid, all the lands in British Columbia will be exposed in lots for sale, by public competition, at the upset price above mentioned, as soon as the same shall have been surveyed and made ready for sale. Due notice will be given of all such sales. Notice, at the same time, will be given of the upset price and terms of payment when they vary from those above stated, and also of the rights reserved (if any) for public convenience.

5. All lands which shall remain unsold at any such auction may be sold by private contract, at the upset price, and on the terms and such conditions herein mentioned, on application to the Chief Commissioner of Lands and Works.

6. Unless otherwise specially notified at the time of sale, all such sales of Crown Land shall be subject to such public rights of way as may at any time after such sale, and to such private rights of way, and of leading or using water for animals, and for mining and engineering purposes, as may at the time of such sale be specified by the Chief Commissioner of Lands and Works.

7. Unless otherwise specially announced at the time of sale, the conveyance of the land shall include all trees and all mines and minerals within and under the same, except mines of gold and silver.

8. When any "Ditch Privilege" shall be granted, there shall be included (unless excluded by express words) the right to lop, dress, or fell any trees standing on unoccupied Crown Lands which, in the opinion of the proprietors of the ditch, might by their accidental fall, or otherwise, endanger the safety of the ditch or any part thereof.

9. Until further notice, gold claims and mines shall continue to be worked subject to the existing regulations.

No words were wasted in the proclamation; the principles were clearly defined. The constitutional right of the

Crown to all lands and to all mines and minerals was stated; lands were to be divided into town, general country, and special settlement lands and offered for sale by public auction, each group at its previously announced price. In his covering despatch, Douglas drew Lytton's attention to the fact that all known mineral lands, as well as those reputed to contain minerals, would be reserved.[44] He expressed his intention of making large reserves for roads, churches, schools, and other public purposes, as well as for towns and villages, but not to the point of retarding the progress, improvement, or settlement of the colony. And, as a general rule, he said that no land was to be offered for sale without its first having been surveyed and mapped off under government authority. To calm any fears the Colonial Office may have had about the low upset price established in the proclamation, Douglas said that there were many reasons for departing from Lytton's advice. The first reason expressed in an oblique manner Douglas's distrust of the many Americans within British territory.

> We think it a matter of the greatest importance to encourage emigration from England, in order to supply the want now so much felt of an English element in the population, a want which, in fact, lies at the root of all the difficulties which now so much embarrass all attempts at legislation for the country. We are, therefore, especially desirous of placing before the English public the attractions of cheap land.[45]

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44 Papers relative to the affairs of British Columbia, Part II, pp. 64-65, s. 3. Douglas to Lytton, February 19, 1859.

45 Loc. cit., s. 8.

He also feared that the establishment of a higher price of land would drive "the sturdy yeomen expected this year from Canada, Australia, and other British Colonies" across the frontier "in hundreds" to seek homes on American territory where it had been the custom to grant free land.[46]

Finally, however, Douglas hoped that in addition to proving attractive to prospective settlers, a low upset price would "guard the land operations of the Colony, as much as in the nature of things is practicable, from the designs of speculators who make purchases of land not for actual settlement but merely for profitable resale."[47]

To amplify the "special circumstances" mentioned in section 2 of his proclamation, Douglas explained his plan for a special settlement along the American border. There he proposed to create a military reserve on behalf of the Royal Engineers, "and if possible also otherwise to settle it with a population composed exclusively of English subjects."[48] Douglas had not lived through the 1840's in Oregon for nothing; he could no doubt still remember the spirit that had been abroad in a land where the president-elect would chant with

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[46] Loc. cit., s. 9.

[47] Loc. cit., s. 10.

[48] Loc. cit., s. 11.

conviction "Fifty-four forty or fight."[49]

The last two clauses of the proclamation dealt with laying out and selling lands in the colony's capital, New Westminster, the name bestowed on the proposed city by the Queen. Three-quarters of the lots were to be sold at public auction, but the remaining quarter of the lots were to be reserved for purchasers in the United Kingdom and in other colonies in North America and elsewhere. So objectionable did Lytton find this reservation that no government in British Columbia had the temerity to embark on a similar scheme until 1896. Lytton could hardly find words strong enough to condemn the measure. Besides being "entirely objectionable", it could serve no purpose but to "stimulate the acquisition of property by non-residents." After pointing out that this would be one of the worst evils to which any new community could be liable, he said that "The lots are bought by speculators who hold them on a chance of a rise in value, with the effect in the meanwhile of obstructing the progress of the town, interrupting its communications, and creating a

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49 In the 1844 presidential election in the United States, James K. Polk had been elected in part on the strength of the Democrats' slogan of "Fifty-four forty or fight," which had reference to the Oregon area held under joint occupation by Britain and the United States under agreement of 1818 and 1827. The settlement of 1846 gave the valuable Columbia basin to the United States. The Hudson's Bay Company had been in control of the area since its absorption of the North-west Company in 1821. Douglas had been Dr. John McLoughlin's assistant at Fort Vancouver at the mouth of the Columbia since 1830.

nuisance to the holders of adjoining lots". The provisions were ordered rescinded at once.[50]

Douglas had no alternative in the face of this order but to abandon the plan, but he held out temporarily on other points. He accepted Lytton's advice that there should be one general upset price and that all sales should be by auction, but he did not give in at once in the matter of requiring all cash sales. He wished to make easier the acquisition of land by settlers with small capital who formed the bulk of the population at that time.[51] He might have abandoned this plan also had he not been in dire need of money which such sales could provide. In order to assure a sufficient quantity of surveyed lands for immediate requirements, Pemberton had been sent to "Fraser's River" with instructions to survey as quickly as possible all open districts "so that the Country may be laid out for immediate settlement and occupation."[52]

Such was the persistence of the Colonial Office, however, that by the end of the year Douglas agreed to require prompt payment for land.[53] But the attempt was unsuccessful. On

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50 Papers relative to the affairs of British Columbia, Part II, pp. 86-87. Lytton to Douglas, May 7, 1859.

51 Ibid., Part III. Douglas to Lytton, May 23, 1859.

52 Loc. cit., s. 10.

53 Ibid., p. 69. Douglas to Newcastle, November 10, 1859.

January 4, 1860, the Land Ordinance[54] for the mainland made provision for payments by instalment, and so it continued for 25 years. The new ordinance incorporated all Douglas had learned from experience in the past year, his first in land operations. Among other things he discovered that the Royal Engineers, sent out by Lytton in 1858 charged with the task, among others, of surveying,[55] could not keep pace with the demand for land. In addition, the cost of transporting the Engineers to localities where settlers were requiring surveys would have exceeded the price of the land. Lytton's recommendation that the cost of the actual survey be added to the price of the land did not solve the problem of insufficient surveyors. In order to remove "so pregnant a cause of complaint", and to hasten settlement by promoting the lawful acquisition of unsurveyed agricultural land, the new ordinance authorized the occupation of such land to the extent of 160 acres, with a pre-emptive right, by any person immediately occupying and improving such land, provided the settler would pay the price of ten shillings an acre whenever the survey was

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54 Loc. cit., pp. 91-92. Douglas to Newcastle, January 12, 1860.

55 Ibid., Part I, pp. 44-46, s. 2. Lytton to Douglas, July 31, 1858. For the history of the Royal Engineers in British Columbia, see Cope, M.C.L., "Colonel Moody and the Royal Engineers in British Columbia," M.A. Thesis, 1940, in University of British Columbia Library.

completed and title granted.[56] Thus for the first time in either colony provision was made for the pre-emption of Crown Land. At the same time, bowing to stern necessity, Douglas provided for more extensive purchases of unsurveyed country land by persons of larger means, but "it being in that case provided, in order to guard against the mere speculative holding of land," that five shillings an acre be paid at once, and the residue when the survey had been completed.[57]

As occupation was made the test of title, and as no pre-emption title could be perfected without complying with that condition, the object of the new ordinance was solely to encourage the settlement of the country.

Douglas discussed the land problem with his Council in March, 1860. It was recorded in the minutes that "the council are unanimously of the opinion that a low price. . . combined with occupation and improvement, would conduce to the general settlement of the country."[58] From this sound observation it is apparent that already Douglas and his advisors, although constantly short of money for administrative purposes, had abandoned the idea of enriching the treasury

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[56] Ibid., Part III, pp. 90-92, s. 3. Douglas to Newcastle, January 12, 1860. It was this provision adopted in 1860 as a matter of practical necessity by Douglas and continued by provincial governments that has caused British Columbia to be the only province in Canada where land could be secured prior to survey. The topic is fully discussed in part iii of this chapter.

[57] Loc. cit., s. 4.

[58] Quoted in Gosnell, R.E., op. cit., p. 109.

out of the sale of public lands. Instead, the real problem - that of encouraging settlement - was met head on. Never again in British Columbia has any government tried to enrich itself at the expense of bona fide settlers. The council went on record that, if the price should be reduced, conditions must be imposed which would frustrate any large-scale alienation of land bought for speculative purposes to the prejudice of settlers of limited means who wished to cultivate it; that further provisions should be made for the pre-emption of unsurveyed land; that pre-emptions must be limited to 160 acres; and finally that all waste land should not be tied up in pre-emptions. Some waste land should be available to the capitalist wishing "extensive quantities of land when required for laudable purposes," in which case a higher price could be charged and the grant could be circumscribed by "conditions that would prevent abuse."[59] In trying to devise such a contradictory clause as the last one, the council must have become aware of the impossibility of doing so. Not one of Douglas's later ordinances contained any such provision, although every other suggestion was enacted by February of 1861.

Particularly important was the provision of extending to pre-emptors of 160 acres the right to acquire any other quantity of land they desired at the price of ten shillings

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59 Ibid., p. 110.

per acre. This principle henceforth was embodied in every land ordinance and proclamation, but it at no time exempted the pre-emptor from the necessity of improving his pre-emption claim. Having purchased land, any settler could do what he liked with it, and was under no further obligation; but as of January, 1860, the pre-emptor either improved his claim or forfeited it to make way for someone who would put the land to beneficial use. In passing, it may be noted that this principle came to apply to any type of claim - land, mineral, or timber - as well as to water rights and coal leases. No rights were to be conferred on anyone unless he had demonstrated his willingness to proceed with his undertaking, whether it was to cultivate land, cut timber, dig minerals, irrigate soil, or produce coal. It was the principle of beneficial use, designed not only to prevent speculation in public lands, but, in its positive aspects, formulated specifically to offer every possible encouragement to the settler, prospector, free miner, or farmer whose intentions were honest. By holding out such inducements, successive governments hoped to settle the country with people who would develop the natural resources for their own benefit and, indirectly through duties, taxes, and royalties, contribute to the government's income. If Douglas had achieved nothing else until 1864, he would for this provision alone deserve a place of honour in British Columbia's history.

As will become evident later, not all governments subsequent to Douglas's regime insisted upon strict conformity with the statutory provisions respecting improvements, but the principle had been established and was never questioned officially. Fortunes small and large were probably made in defiance of the statute; from the 1860's until at least 1910 there was scarcely a public figure in British Columbia who did not acquire large holdings of agricultural, pastoral, or mineral lands. So far as it is possible to trace any transactions through official sources, the acquisitions were all perfectly legal. Doubtless, however, information acquired either as a member of the government or as a confidant of such a member must have been valuable. So long as Douglas was governor, there was never the slightest hint of any impropriety on the part of any public official.

In February, 1861, conditions on Vancouver Island made necessary a new ordinance to lower the upset price of country lands to four shillings and two pence per acre, as well as to make public other conditions on which land could be acquired.[60] Douglas had been so preoccupied guiding the development of the mainland colony that he had found little time to consider the state of affairs closer to home. The 1861 ordinance was the first to give detailed regulations in either colony for pre-empting Crown Land. It stipulated that

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60 Appendix to R.S.B.C., 1871, No. 4.

all British male subjects (and aliens who had taken the oath of allegiance) over 18 years of age could pre-empt waste Crown Land, other than an Indian reserve or settlement, to the extent of 150 acres for a single man, 200 acres for a married man whose wife was resident in the colony, and ten acres for each child under 18 years. Having selected his land the settler had to record his claim with the Surveyor-General in Victoria and pay the required fee. If the land was unsurveyed, as it usually was, his application had to be accompanied by the "best possible description thereof in writing", and a map.[61] As soon as the land was included in a government survey, but not before, the settler had to pay the required four shillings tuppence per acre, but if the pre-emption were on land already surveyed, three years were allowed in which to make full payment. Within two years of securing his certificate of record, and upon the satisfactory evidence of third parties that he had continued in permanent occupation for the two years and had effected improvements of two shillings per acre, the settler was entitled to a certificate of improvement. The land could not be transferred until this certificate had been issued. When all requirements had been fulfilled and all payments made, a Crown Grant was issued in which, however, the right to repossess any part of the land required for roads or other public purposes was reserved to the Crown. Moreover, the right was reserved

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61 Loc. cit. Land Ordinance, 1861, s. 7.

by the Crown to enter and work any precious minerals.[62] Once the settler received a Crown grant to his pre-emption he could buy any additional amount of land at the current price. This land must, of course, be surveyed land. The settler was allowed to be absent from his claim for two months only; after that, the Surveyor-General could forfeit the claim. There is no record of any such forfeiture, however, until the entire Department of Lands had been reorganized in 1912. At that time the numerous and onerous duties of the Chief Commissioner of Lands and Works were greatly reduced[63] and a Superintendent of Inspection was appointed to investigate pre-emption claims.

Following the report of a Select Committee set up in 1863 to investigate the condition of Crown Lands,[64] a change was made on the mainland by which the most land the pre-emptor

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[62] The reservation of the precious minerals was a departure from the ordinance of February 14, 1859, in which section 7 had made no such reservation.

[63] B.C.S.P.,1914. First Annual Report of H. Cathcart, Superintendent of Inspection Branch, Department of Lands, December 22, 1913, pp. D 13-18. Authority for the organization of the Inspection Branch was provided by the Land Act Amendment Act, 1912, s. 28, subsection 2.

[64] This report was printed in 1864, and later the Committee's proceedings were printed verbatim, including the evidence of all the witnesses examined. So far as is known, these are the only documents of the kind printed by the government of Vancouver Island. (See Lamb, W.K., "Records of the early proceedings of the Legislature in British Columbia," in Canadian Historical Review, Vol. 21, 1940, pp. 394-400, at p. 395.)

could purchase in addition to his pre-emption was 480 acres at four shillings tuppence an acre. Any quantity could be leased and water could be diverted for agricultural purposes.[65]

Although the Colonial Office took little notice, Douglas probably appointed the Select Committee of 1863 as a result of a memorial presented to him in April, 1861, by J.A.R. Homer and others of New Westminster. Homer criticized the absence of a land tax, the careless administration of public lands, and the failure to establish a land registry office.[66] What perhaps the memorialists overlooked and what the Colonial Office seemed not to understand was that Douglas was hampered constantly in his plans for the two colonies by a lack of revenue. His only sources of income on the mainland were land sales, a customs impost of ten per cent, and liquor and miners' licences. To levy miners' fees and to collect them were two quite different things. Although millions of dollars in gold were taken from the Cariboo gold fields, the royalty owing the colonial administration on the gold was evaded. Thus, however rich miners may have become, their wealth added little to the colonial treasury other than indirectly through the volume of general business. To open the country and to meet the requirements of the population

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[65] Gosnell, R.E., "History of farming," in Canada and its Provinces, Vol. 22, p. 544.

[66] Scholefield, E.O.S. and F.W. Howay, British Columbia, from the earliest times to the present, 1914, Vol. II, p. 163. (Hereafter cited as British Columbia, from the earliest times to the present.)

required large annual expenditures for public works. Douglas had to ask the Colonial Office for financial relief and cut down drastically on public spending in the two colonies in order to keep out of bankruptcy.[67] He referred the complaint that public lands had been wrongly administered to Colonel Moody, commander of the Royal Engineers and Chief Commissioner of Lands and Works. Douglas forwarded both Moody's and his own report to the Colonial Office on April 22, 1861.[68] No action was taken by the Colonial Office but Douglas did take steps to establish a registry office in New Westminster.[69]

Just before his retirement Douglas was forced to confess to the meeting of the first Legislative Assembly on the mainland that the results of his land policy had been disappointing. His policy, he said, had been to advance public works as quickly as possible in order to give waste lands of the colony a value they did not then possess. Solely with a view to increasing population by encouraging settlement, he had thrown open the public lands to actual settlers on the most liberal terms, but the results had not yet fulfilled his expectations. No doubt Douglas was disappointed at the slow pace development was taking but he can hardly be held responsible for that. With Lytton's despatches to guide

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67 Gosnell, R.E., "Colonial history, 1849-1871," in Canada and its Provinces, Vol. 21, p. 159.

68 For lengthy extracts from the report, see Sage, W.N., op. cit., pp. 293-298.

69 Gosnell, R.E., op. cit., p. 168.

him and his own keen sense of what was needed, he had met realistically the present requirements of the two colonies and in so doing had displayed an advanced and liberal conception of the philosophy underlying a public lands policy in a new country. Actually, with 254 pre-emptions recorded on the mainland between 1858 and 1862 encompassing 50,000 acres of land,[70] Douglas need not have been so pessimistic.

Essentially, it was the legislation formulated by Douglas that was still in effect at Confederation in 1871. The specific ordinance, the Land Ordinance, 1870,[71] in effect in 1871, was altered in detail only from those written by Douglas up to 1864 when he had retired. Certain details, however, had been changed. Pre-emptions of unsurveyed land were restricted to 320 acres east of the Cascades and 160 acres west; pre-emptors were forbidden to hold two claims simultaneously, and improvements now were to be made to the value of $2.50 an acre. 'Occupation' under section 16 was to consist of "a continuous bona fide personal residence of the pre-emptor", added to prevent the former practice of constructing a shanty on the claim, running cattle on the land, and living elsewhere. The personal

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70 Borthwick, D., "Settlement in British Columbia," in Transactions of the Eighth British Columbia Natural Resources Conference, 1955, pp. 97-108, at p. 100.

71 Because this ordinance will be used extensively hereafter as the standard by which to gauge subsequent progress, it is included in its entirety as Appendix A.

residence clause, however, was to cease after four years of such continuous occupation, presumably on the understanding that by that time the government would have surveyed the claim. After being surveyed, the land could be bought at $1.00 an acre, payable in four equal annual instalments. A Crown grant was to be obtained conveying the land in fee simple once all payments were made.

No restriction was placed on the quantity of surveyed land that could be purchased at the upset price of $1.00 an acre. Lands thought to contain minerals were reserved from such sale, as were townsites and their suburbs. Provision was made for the Governor to set the upset price of town lots as circumstances dictated, a wise stipulation in that it secured to the government any advance in current land prices. The Crown reserved the right to enter any land for the purpose of obtaining road-building materials, but all trees, mines, and minerals within and under the land, with the exception of gold and silver, were conveyed by the terms of sale. The only other reservations made were rights of way for leading animals to water, or for mining and engineering purposes, but only if these reservations had been in existence at the time of sale.

For the purpose of pasturing cattle or horses, section 26 permitted the leasing of any amount of unpre-empted and unsurveyed waste Crown land, but only to genuine pre-emptors or buyers in the immediate vicinity and at such

rent as the Governor in Council might specify. The only restriction placed on such leases was that within six months the lessee was required to stock his land in such proportion of animals to the hundred acres as the Land Commissioner might require. Leased land was subject at all times to pre-emption, government reserve, or purchase, but it is not probable that the cattle kings of the interior of the province would sit idly by while some interloper staked out a pre-emption on his range land, however legal such pre-emption might have been. To benefit the cattlemen further, waste land could be leased for cutting hay, for five years and for 500 acres only.

ii.

Such was the prevailing land legislation when the united colonies of Vancouver Island and British Columbia entered Confederation in 1871. As the history of land laws during the next forty years was simply the history of the expansion of the 1870 Ordinance, its principles merit consideration. Those sections pertaining to timber leases, mining claims, free miners' privileges, and water rights will be left for later consideration.

The most outstanding principle underlying land legislation by 1871 was that of beneficial use. This principle in the 1870 Ordinance applied to all pre-emption claims of 320 or 160 acres and to leases of pastoral land.

It did not apply to surveyed land which had been bought outright at $1.00 an acre. In other words, anyone buying land could do as he chose with it, but where the government was extending privileges, it demanded that those privileges go to genuine ranchers and settlers. No lease went to anyone not already an established resident; no pre-emptor could retain land unless he could show under oath that he had improved it. That was the principle. To what extent it was departed from in practice can never be conclusively established; any illegal transactions could so easily have been camouflaged in making official returns. But there was no necessity for circumventing the law - it was liberal enough.

The fact remains, however, that the 1870 Ordinance was unwise legislation in that it did not take cognizance of the fact that good agricultural land was severely limited. To this day, only 1,250,000 acres in the province have been developed as agricultural land, although 6,500,000 acres are classified as arable or potentially so.[72] It would have been in the best interests of the province to conserve this land by having it surveyed into small holdings for the benefit of the greatest number. Douglas had done his utmost to retain the land for the Crown until it had been surveyed, but lack of money, resulting in the recall of the Royal

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[72] Borthwick, D., op. cit., p. 108.

Engineers in 1863,[73] frustrated his plans. Further, it was forty years before any systematic survey of the province was undertaken to determine precisely just what cultivable land existed. Until the results of these surveys were known, land seemed to be limitless. To have restricted sales to perhaps 160 acres in the face of seemingly limitless empty spaces would have been miserly indeed.

The second principle to be found in the Ordinance of 1870 was that of sale by public auction at an upset price established prior to the sale. This principle was based on the premise that arable land would be eagerly sought by the flood of immigrants expected annually. When the flood turned out to be a mere trickle, and when buyers realized that it would be foolish to bid one another up at auction, they waited until after the sale in order to obtain the land at the upset price. The provision for auction became a dead letter.

More realistic was the third principle, that of deferred payments by instalments for pre-emptors who, under section 21 of the Ordinance, were given four years after the claim had been included in a government survey in which to make payment. Formerly full payment had been required upon

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73 For a full discussion of their recall, see Sage, W.N., op. cit., pp. 298-300. Douglas wrote that "The expense of the Royal Engineers is overwhelming." When instructions were received in 1863 for the disbanding of the corps, all officers and twenty men returned to England in October. The other men remained in the colony as settlers.

survey. As the government surveys were frequently long delayed, the pre-emptor often paid for his own private survey and bought the land in the usual way. Only one pre-emption claim could be held at any one time, and the residence requirement called for continuous genuine personal occupation by the pre-emptor. These last two stipulations were both designed to prevent speculation.

Fourthly, it was firmly established that no Crown grant to any land could be secured until the land had been surveyed. This requirement was rigidly enforced, as indeed it had to be lest Land Office records become hopelessly confused.

Finally, the Crown reserved to itself certain rights and privileges; namely, the right to repossess a portion of granted lands for public purposes, and the right to gold and silver wherever found, unless they were specifically exempted in the conveyance.

All these principles were formulated by Douglas and altered only slightly by every other Land Act in subsequent years. They still form an integral part of the provincial land laws. Occasionally one of the principles was dropped only to be reinserted shortly thereafter.

But what of agriculture itself in 1871? It was estimated that 13,384 acres were being cultivated, almost entirely in the New Westminster and Victoria districts. In that year 125,000 bushels of potatoes, 140,000 bushels of turnips, and 215,000 bushels of grain were grown. On pastoral

land 28,737 head of cattle were running, and 2,373 tons of hay were cut.[74] The faith of the settlers in the future of their province was high although they realized that, until the railway was built to connect them with Canada, development would be slow. Until that railway link with Eastern Canada became a reality in 1885, the major market for the province's exports had to continue to be found in San Francisco. Exports in 1872 confined almost entirely to gold, coal, and furs, amounted to $1,792,347;[75] "miscellaneous" items, including agricultural produce, amounted to only $59,231. These figures show how extensive was the market within the province for the products of the soil.

And what of population in the year of Union? The white population of 9,092 was to be found in the Victoria and New Westminster areas also,[76] with scattered settlements only throughout the interior. The future of these

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74 Scholefield, E.O.S. and R.E. Gosnell, British Columbia, Sixty years of Progress, 1913, Part II, p. 1, n. 2. (Hereafter cited as British Columbia, Sixty years of Progress.)

75 Ibid., p. 3, n. 4.

76 Detailed statistics are as follows:

	White	Coloured	Chinese
Victoria	2842	217	210
Victoria District, South Saanich	1512	56	36
Nanaimo and District	601	92	36
Comox	102	-	-
Lillooet-Clinton	235	3	80
Cariboo	920	32	685
New Westminster City and District	1292	37	27

(Continued on page 38)

settlers, which was intimately associated with the land laws, looked secure and prosperous. It was said that:

> On the whole, the new province brought to the Dominion a dower of no ordinary richness in the way of accomplished development and of promising outlook for the future. From the lavish expenditures of the early years a system of retrenchment and economy had been evolved, while the permanent results of these expenditures remained. Roads had been opened. Agriculture had been planted; it was estimated that not less than one hundred and twenty-five thousand acres, valued at from two dollars and a half to five dollars per acre, were available for cultivation.77

Apart from the 13,000 acres under cultivation and the fort property, town lots, and several thousand acres of farming lands retained by the Hudson's Bay Company around Victoria,[78] there was a vast area of country to be settled, mining resources to be developed, timber lands to be exploited, and a more specific legal code to be established. And although by 1871 Hudson's Bay officials, prospectors, miners, hunters, trappers, and travellers had explored much of the province, no one had any idea of the area of the land surface, much less any conception of what proportion of it was arable. A good deal of this information was not even known by 1913, but it has subsequently been determined that the province

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	White	Coloured	Chinese
Columbia and Kootenay ...	108	2	145
Yale, Lytton	524	5	50
Cowichan and Islands	456	5	25
Omineca	500	10	25
TOTALS	9092	459	1319

(See Ibid., p. 1, n. 1.)

77 Coats, R.H. and R.E. Gosnell, op. cit., p. 306.

78 Gosnell, R.E., op. cit., p. 127. See also Bancroft, H.H., op. cit., p. 235.

contains a total land area of 359,279 square miles and a fresh water area of 6,976 square miles,[79] or a total of approximately 230,000,000 acres of land, of which about three percent, or 6,900,000 acres, is now considered to be arable agricultural land.[80]

In his Speech from the Throne to the second session of the first Legislative Assembly on December 17, 1872, Lieutenant-Governor Trutch stated that:

> A Bill will be submitted to you substituting for the existing Land Laws a measure on a sounder and more liberal basis, which it is believed will be more satisfactory to the Public and more conducive to the speedy settlement of the Province. Provision will also be made for accurate and extensive Surveys of those Districts in the Province most available for settlement.[81]

Amor DeCosmos no doubt had a hand in this, for it was he who had successfully proposed a motion at the Yale Convention in 1868 condemning the Land and Works Department and its land policy in no uncertain terms. His Resolution No. XXXVI asking for free grants of at least 320 acres to actual settlers upon public lands was now to receive

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79 Canada Yearbook, 1951, p. 2.

80 British Columbia. Legislative Assembly. Department of Trade and Industry. Government News, Vol. 3, No. 5, June, 1955, p. 1. "Representations made by the Government of British Columbia to the Standing Committee on External Affairs. . . , April 27th, 1955."

81 British Columbia. Legislative Assembly. Journals, 1872-73, p. 2. (Hereafter cited as B.C. Journals.)

consideration.[82] As Chief Commissioner of Lands and Works in the colony from 1864 to 1871,[83] Trutch must indeed have found it bitter to have to read the speech written for him on this occasion. No doubt DeCosmos in the Assembly had many remarks to make which would have amplified his Resolution No. XII, which read as follows:

> That the Office of Lands and Works is maintained at a great annual expense, amounting in 1868, for a Chief Commissioner and three clerks, to 8,490 dollars, and in former years to a larger sum. That the greatest ignorance prevails in the department as to the lands in Vancouver Island and on the mainland, although a land office has been kept open in the former place seventeen years and in the latter for ten years. That nothing is done by the department to assist in the sale and settlement of the public lands, except recording a few pre-emptions on Vancouver Island, and on the mainland the pre-emptions are recorded by the magistrates. That a few parcels of public lands are leased for the purposes of trade, agriculture, lumbering, and mining, and the rents collected for the same. That instalments on lands sold or pre-empted are collected. That a few maps are made or extended occasionally. That the above includes the total services performed by this department pertaining to land, and could be transacted by one clerk. That the public works carried on by the department are confined to repairing roads, constructing some small bridges, cutting out or keeping open a trail, or repairing or enlarging a public building, and are either performed by contract or by temporary service. That the entire public works, including map-making, could well be attended to by one competent civil engineer.[84]

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82 Great Britain. Colonial Office. Miscellaneous papers relating to British Columbia 1859-1869, 1869, p. 25. Governor Seymour to the Duke of Buckingham, November 30, 1868, Enclosure No. 1, "Memorial from Messrs. R. Wallace and DeCosmos and others to Governor Seymour." (Hereafter cited as Miscellaneous papers relating to British Columbia 1859-1869.)

83 Wallace, W.S., Dictionary of Canadian biography, 1945, Vol. II, pp. 672-673.

84 Miscellaneous papers relating to British Columbia 1859-1869, p. 22.

Such a forthright denunciation of the department which he had headed must have incensed Trutch, but the aspersions cast on his ability as an engineer must have caused him to regard DeCosmos and his associates with active hostility. Since DeCosmos headed the second provincial ministry after McCreight's defeat on December 23, 1872, this personal animosity was to have serious consequences for the province.[85]

Leaving aside temporarily the considerations of free lands DeCosmos proposed, the Assembly gave its attention to the other changes which could be made in the 1870 Ordinance. To accomplish these changes, a Select Committee was appointed in 1872.[86] Chief among its recommendations were those which simplified the process of granting pre-emption records, and which permitted the occupation requirement to be met either by the pre-emptor or an agent, "provided no such agent shall be an Indian or a Chinaman."[87] Instead of having to wait until after the land had been surveyed, a pre-emptor now could secure a certificate of improvement after four years' continuous occupation. The certificate entitled him to a Crown grant. To protect pre-emptors of lands located in pastoral leases from the wrath of the cattle-men, section 12 granted pre-emptors

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85 A full discussion of such of Trutch's actions as were inimical to the best interests of the province may be found in Chapters 3 and 4.

86 B.C.S.P., 1873. "Report of Select Committee on Land Ordinance, 1870."

87 The recommendations were embodied in: British Columbia. Legislative Assembly. Statutes, 1873, No. 1, s. 2. (Hereafter cited as B.C. Stat.)

the right to pass over such leased land without being considered trespassers; and so far was the sanctity of such leases violated that the pre-emptor who cultivated ten acres of his pre-emption was allowed by law to run up to fifty head of his own stock on the lessee's range in the winter months. Finally, under section 16 dealing with the sale of land, no mention was made that the land had to be surveyed, a complete reversal of former policy. The provision for the sale of lands at public auction was set aside to the point that the clause read that land would be auctioned only "whenever so ordered by the Lieutenant-Governor in Council" and "as may be deemed by him expedient."

In his Speech from the Throne in 1872 Trutch intimated that some provision would be made for free grants of land. The Select Committee recommended that a major departure from previous policy be adopted by making provision at the discretion of the government for limited free grants of land to any settler who made the requisite improvements, and that the grant should be issued at any time after the improvements had been made.[88] Sections 21 to 31, inclusive, of the Amendment of February 21, 1873, dealt with such free grants. Any land suitable for cultivation and settlement, whether surveyed or not, could be used for these free grants. A maximum of 250 acres was set. This was 90 acres in excess of what the Dominion was granting under its Homestead Act of

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88 B.C.S.P., 1873. "Report of Select Committee on Land Ordinance, 1870."

1872.[89] No one could receive a free grant who had already obtained land by any other means. To prevent speculation, any applicant for a free grant had to sign an affidavit declaring that the land sought was solely for his own personal use for settlement and cultivation and not for such other purposes as mining. Provided that twenty acres had been brought under cultivation within three years and that a habitable house had been built, a Crown grant could be secured. As an indication of how anxious the government was to obtain settlers and of how far it was willing to go in relaxing previous regulations, the "locatee" of such a free grant, who was supposed to reside on his "location", could still be absent more than six months a year "provided such land be cultivated as aforesaid". Such a provision enabled settlers to work elsewhere part of the year for cash with which to finance themselves. All that was required of the settler to secure title to the land was a house and twenty cultivated acres at the end

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[89] Canada. Parliament. Statutes, 1872, c. 23. (Hereafter cited as Can. Stat.) Undoubtedly the Select Committee had been greatly influenced by the Dominion statute which had thrown the prairies open to settlement, by purchase at $1.00 an acre, with a 640-acre limit, or by homestead, 160 acres being granted free on condition of three years' residence and cultivation. In 1874, homesteaders were allowed to pre-empt a further quarter section. In all cases, the Dominion statutes followed the American example. Through this indirect route, British Columbia land laws were influenced by American precedent. (See Skelton, O.D., "General economic history, 1867-1912," in Canada and its Provinces, Vol. 9, p. 112.)

of three years. Under section 29 these favoured "locatees" received the further protection of being guaranteed against having the land attached for any debt or liability before the initial three-year period had expired. After the Crown grant was issued, provided the original settler and his family still occupied the land, the guarantee was extended for another twenty years! This guarantee did not, however, apply to any valid mortgage on the land.

Such was British Columbia's first tentative venture into the competitive race for immigrants by offering free land. During this session of 1873, a land return was tabled by Robert Beaven, Chief Commissioner of Land and Works, showing that only 8,284 acres of land had been sold by auction at an average price of $1.21 49/100 an acre, making a total of $10,064.50.[90] This acreage, in a province the size of British Columbia, was negligible. Hence the DeCosmos Ministry became dissatisfied with its land policy and decided to offer free land to all comers. The United States had been offering free land since 1862. Canada had followed suit ten years later. Now that the railway reserve imposed on all provincial lands under Section 11 of the Terms of Union was about to lapse in July because of the Dominion's failure to begin railway construction within two years, British Columbia was free for the first time to compete with the rest of Canada and with the

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[90] British Columbia. Legislative Assembly. Report of the Chief Commissioner of Lands and Works . . . , 1873, p. 64. (Hereafter cited as Report of C.C.L.W.)

United States for Europe's land-hungry immigrants.

In passing, it is interesting to note that the neglected auction method was at this point resulting in a price twenty per cent higher than the upset price.

As an illustration of how completely another of Lytton's principles of 1858 had been abandoned, a further return tabled by Beaven, giving both the number of acres sold and the price received for lands on the mainland for the years 1870, 1871, and 1872,[91] is significant. The return showed that 75 per cent of the land was bought by deferred payment, the method Lytton so heartily deplored. Of 27,880 acres sold, only 6,955 were paid for in full; of the $16,919.82 received, only $1,224.01, or 14 per cent, represented full payment.

A third significant conclusion can be drawn from Beaven's returns of that 1873 session. Figures tabled by him show 11,134 acres for the last six months of 1870, 13,512 acres for all of 1871, and only 3,234 acres sold throughout 1872, demonstrating already that the railway complication was beginning to have its effect in demoralizing public business in the province.[92]

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91 B.C.S.P., 1873. "Return to an Address . . . of the number of Acres of Land sold by the Provincial Government June 1871 - December 1872," and on the next page, the return showing all lands sold.

92 The whole problem is discussed in Chapter 3, but it may be noted here that the situation is certainly not without parallel in more recent provincial history. When the Canadian Chemical and Cellulose Company, Limited, through its subsidiary, Celgar Development Company, announced its intention in 1951 of building a $70,000,000 pulp mill at Castlegar, the village was soon

Still another return indicated that the government had placed under reserve 190,857.8 acres throughout the province for purposes of Indian settlements, schools, parks, military and naval establishments, townsites, coal lands (78,520 acres), and timber lands (39,100 acres).[93] Pre-emption claims had been recorded for 44,827.5 acres,[94] an average of 210 acres per claim.

Finally, Beaven included in his Report a list of all the holders of pastoral leases, showing names of lessee, district, acreage, rental, and a comment indicating that certain leases had not as yet been issued.[95] At the rate of from three to six cents an acre rental charged for the 80,342.9 acres under lease, the government was to receive $3,393.68 a year in rent. Because it is enlightening as to the cattle-raising regions of the province, and because the names of several men are found in it who later became provincial figures

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overflowing with men looking for work on the construction of the plant. Property values skyrocketed from $25 for an ordinary lot to as high as $1200 for the same lot, some of which were on gravel pits. As soon as it became apparent that any construction was to be postponed indefinitely, the bubble burst, leaving in its wake dejection and gloom, as well as a few embarrassed holders of high-priced gravel.

[93] B.C.S.P., 1873. "Return to an Address . . . for a Return of Government Reserves."

[94] Ibid. "Return . . . of Pre-emptions in . . . British Columbia, from 1st January to 30th November, 1872."

[95] Report of C.C.L.W., 1873, p. 65.

of some prominence, the complete return is reproduced.[96]

RETURN OF PASTORAL LEASES

Name of Lessee	District	Acreage	Rate	Remarks
Maxwell and Lummey	Salt Spring Island	852	3¢ per acre per annum	
John Tod, Junior	Pender Island	2330	6¢ per acre per annum	
John Tod, Junior	Pender Island	2000	6¢ per acre per annum	Not yet issued
Buckley and Hope	Pender Island	4100	6¢ per acre per annum	Not yet issued
Buckley and Hope	Pender Island	1400	6¢ per acre per annum	Not yet issued
Samuel Truesworthy	Saturna Island	940	6¢ per acre per annum	Not yet issued
O.W. Browne	New Westminster	382	$10 per annum	
Samuel Herring	New Westminster	--	$150 per annum	
D.W. Miller	New Westminster	303	4¢ per acre per annum	
A. Smith and J.D. Evans	New Westminster	400	10¢ per acre per annum	
E.G. Perry	Yale	6200	4¢ per acre per annum	
Whitfield Chase	Yale	1085	4¢ per acre per annum	
Cornwall Bros.	Yale	10,000	3 1/3¢ per acre per annum	
W.H. Sandford	Yale	3430	3 1/3¢ per acre per annum	
H. Ingram	Yale	1711	4¢ per acre per annum	
Jas. Uren	Yale	1154.9	4¢ per acre per annum	
Nicholas Hare	Yale	2425	4¢ per acre per annum	
C.A. Vernon	Yale	3252	4¢ per acre per annum	
A.G. Pemberton	Yale	3505	4¢ per acre per annum	
Jacob Buck	Yale	1710	4¢ per acre per annum	
Charles Heuling	Yale	400	4¢ per acre per annum	
Gannon, McKinlay, and Manson	Yale	4000	4¢ per acre per annum	Not yet issued
James Stuart	Yale	1400	4¢ per acre per annum	
J.B. Greaves	Yale	4940	4¢ per acre per annum	
Charles A. Semlin	Yale	2880	4¢ per acre per annum	
John Wilson	Yale	10,980	4¢ per acre per annum	
Henry Morton	Yale	1710	4¢ per acre per annum	Not yet issued
F. Peranet	Yale	1147	4¢ per acre per annum	Not yet issued
William Fortune	Yale	2055	4¢ per acre per annum	Not yet issued
P. Gotin	Yale	1151	4¢ per acre per annum	Not yet issued
Haynes and Lowe	Kootenay	2500	4¢ per acre per annum	Not yet issued
		80, 342.9		

On March 2, 1874, the provincial legislature passed the first Land Act since Confederation, a complete revision of

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96 An application to lease lands for pastoral purposes was not tantamount to getting it. Between October 4, 1868, and May 10, 1873, a return in 1876 showed that 34 men had applied for such leases but had not received them. The most common reason for refusal was that the rent had not been paid in advance, as required. Some of the applications were abandoned, others were cancelled by Minute in Council. (See B.C.S.P., 1876, pp. 762-763.)

the 1870 Ordinance and its amendments.[97] Fortunately, the last section of the act provided that it should not come into force until published in the British Columbia Gazette. The second, or interpretation clause, defined Crown lands as "all lands of this province held by the Crown in free and common soccage." When the act reached Ottawa, the Hon. Telesphore Fournier, Minister of Justice, drew attention to this definition as one which applied only to lands of the Crown acquired from some previous owner.[98] Had such a definition been intentional, it could only have meant that the province was recognizing the original Indian sovereignty in provincial lands and that the Crown was tenant by freehold. This recognition the province had no intention of giving, but the Minister of Justice had no quarrel with the definition on constitutional grounds. He did find objectionable the fact that nowhere in the act was any provision made for Indian reservations, nor were Indians accorded any rights or privileges in respect to lands, reserves, or settlements. On the contrary, sections 3 and 24 specifically exempted the Indians from any rights of recording unsurveyed land or of pre-empting surveyed land unless they previously had obtained written permission from the Lieutanant-Governor in Council. Because

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97 B. C. Stat., 1874, No. 2.

98 Hodgins, W.E., Correspondence, Reports of the Ministers of Justice, and Orders in Council upon the subject of Dominion and Provincial Legislation 1867-1895, 1896, p. 1024. (Hereafter cited as Dominion and Provincial Legislation 1867-1895.)

Section 13 of the Terms of Union required the province to transfer lands to the Dominion for the use of the Indians,[99] the act was disallowed. At the same time, Fournier took the opportunity to point out that there was no provision in the act for a reservation of land for railway purposes, as required under Section 11 of the Terms of Union. Fournier noted that neither had the Dominion government lived up to those terms, which required construction to begin by 1873, but he drew to the Cabinet's attention the great embarrassment which might result later should it be found that the provincial government had granted pre-emptions in the forty-mile strip, wherever it was finally located.[100] The act was disallowed by Order in Council of March 16, 1875.[101]

After communication with the British Columbia government, it was agreed that the act should not be proclaimed, but rather that a new bill should be introduced at the next session. This was done, and on April 22, 1875, Trutch assented to the "Land Act, 1875".[102] There were only two changes from the 1874 version. The definition of Crown lands

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[99] The topic of Indian lands is the subject of Chapter 4.

[100] Dominion and Provincial Legislation 1867-1895, p. 1029.

[101] Canada. Parliament. Canada Gazette, Vol. VIII, No. 38, March 20, 1875, p. 1134. (Hereafter cited as Canada Gazette.) Also to be found in Can. Stat., 1876, p. lxxiv.

[102] B.C. Stat., 1875, No. 5. In the meantime, land transactions had been conducted under the 1874 act.

now read, "all lands of this Province held by the Crown in fee simple," and section 60, dealing with reserves, had been added:

> The Lieutenant-Governor shall, at any time, by notice, signed by the Chief Commissioner of Lands and Works, and published in the British Columbia Gazette, reserve any lands not lawfully held by record, pre-emption, purchase, lease, or Crown Grant, for the purpose of conveying the same to the Dominion Government, in trust, for the use and benefit of the Indians, or for railway purposes, as mentioned in Article 11 of the Terms of Union, or for such other purposes as may be deemed advisable.

While these two were the most significant additions to the provincial land laws, there were others of a less radical nature. Although pre-emptions on surveyed land still could not exceed the 320-acre limit east of the Cascades and 160 acres west, section 6 of the new act did provide for claims of 40, 80, and 120 acres, thereby permitting pre-emptions where the topography precluded a larger acreage. Still only one claim could be held under pre-emption, but in order to legalize the existing conditions within the province, section 15 provided that any settler could have his claim surveyed at his own expense. Under section 24 settlers, designated now as "homestead settlers", could pre-empt surveyed lands given in a list in section 33. This listing of surveyed lands was a departure from past procedure. Since the only surveyed lands in the province were sections near Victoria and New Westminster, much of which had been surveyed ten years before by the Royal Engineers and long since settled, the provision was largely meaningless. After two years'

continuous occupation and permanent improvements of $2.50 an acre, a certificate of improvement could be obtained. Then, upon payment of the $5.00 fee, the homestead settler was entitled to a Crown grant. Under section 66, this land was free. Steps in this direction had been taken by the amendments of 1873 and now, with no restrictions, all land under pre-emption was granted free of charge. For this reason, the act of 1875 was known as the "Free Grant Act."

Unlimited pastoral leases and 500-acre hay leases were retained. Anyone wishing to buy surveyed land could do so for $1.00 an acre, but if the land were unsurveyed, it could only be bought after the land had been surveyed at the buyer's expense. Shades of Lytton at the Colonial Office fifteen years before were recalled by section 79 under which the Chief Commissioner was authorized to insert notices in the Gazette reminding all persons from whom the balance of purchase money under previous acts was overdue that unless the money were paid their records or agreements would be cancelled. A return tabled on April 25, 1876, showed that in the six land divisions established in the province, there was owing on such lands $56,596.38. From 22 persons in New Westminster alone, $7,906.46 was due.

As there was still no specific reservation for Indian lands, Edward Blake, by now Minister of Justice in Ottawa, was not any better satisfied with this act than his predecessor had been with the act of 1874, but because the Indian lands problem had been temporarily solved by the

agreement to appoint a Joint Reserve Commission, and because "great inconvenience and confusion might result from its disallowance,"[103] his opinion was that it would be the better course to leave the act to its operation.

In the session of 1875, returns were tabled listing all the lands taken up in the New Westminster district between 1872 and April 14, 1875.[104] For the investigator into early New Westminster history, these records would be a mine of information. They list the name, the location of land, the acreage, the type of land, the price, and the section of the Land Act under which the land was acquired. For instance, there were 380 pre-emption records, all of which were for 160 acres, plus 3,860 acres of irregular size, including a claim by Charley Brew, an Indian of Langley. By purchase, 22,761.5 acres, nearly all of 160-acre blocks, were obtained at $1.00 an acre; by deferred payment, 15,884 acres had been obtained at fifty cents an acre at a public auction on September 30, 1873.

In his Report for the year as Chief Commissioner of Lands and Works, Beaven assessed the worth of the free grant system introduced two years before:

> The liberality of the Province in dealing with its land far exceeds that of any other Province or State on this continent, as settlers now coming in can record 160 acres West of the Cascades and 320 acres East of the same mountain range, in any part of the mainland portion of the Province, and can eventually obtain the land as a

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103 Dominion and Provincial Legislation 1867-1895, p. 1038.

104 B.C.S.P., 1875, pp. 706-723.

"Free Grant" simply by residence and improvement. The question, therefore, as to whether indiscriminate "Free Grants" have a tendency to quickly settle up the Province has had, for the last two years, a practical test. Many settlers and others who have given the subject consideration, are strongly of the opinion that it would eventually be more beneficial to the Province if the "Free Grant" system was confined to certain surveyed Townships, instead of virtually giving away the Crown Lands throughout the Province, and having subsequently, in all probability, to resort to a direct tax to make up the loss to the Provincial revenue. The machinery of the present Land Act, in reference to the adjustment and "proving up" of claims, has worked admirably, and saved the Province a considerable expenditure in ascertaining the exact locality of the different claimants, who, in many instances, are absent, and the improvements under which they have obtained their certificates, years ago, having become obliterated.[105]

Since the act granting free land had been Beaven's own creation, his enthusiasm over what he chose to consider its success is pardonable. It is highly doubtful, however, that he had any real conception of the country to which he expected settlers to flock to take up 320-acre pre-emptions under its clauses. Only in regard to the size of the free pre-emptions did the act differ from either the Dominion or the American Homestead Acts.

Despite free pre-emptions, some settlers continued to buy land outright in order to circumvent the residence and improvement requirements for free grants. In 1877, a return gave details of all lands sold in the province from July 31, 1871, to December 31, 1876.[106] The following results

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105 Report of C.C.L.W., 1875, p. 115.

106 B.C.S.P., 1877, pp. 481-487.

were compiled from the return:[107]

District	Acreage	Price	No. of Sales
Vancouver Island	7,701.38	$7,395.38	78
New Westminster	9,900	8,465.86	71
Cariboo	-	162.00	3
Yale	3,087.41	2,897.41	11
Lillooet	12,818.70	12,875.50	32
TOTAL:	33,507.49	$31,796.15	195

These statistics are of interest for several reasons. They show that land sales had not been large - a mere 6700 acres a year, most of which had been sold at the statutory price of $1.00 an acre. They indicate that lands on Vancouver Island were still being sold in 100-acre blocks, following the practice established 25 years before by the Hudson's Bay Company. In the New Westminster district the average size of each purchase was 140 acres, indicating that there was still a good supply of farming land available along the Fraser River flats. In the Cariboo, however, assuming the standard price of $1.00 per acre, the three sales made were more than likely for mineral claims, since fifty acres was the size later allowed purchasers of such claims. (The Act usually followed established practice in cases of this kind.) The Yale

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107 As a comparison with the figures just given for New Westminster in 1875 will readily show, the compilation of statistics in Victoria was at least two years in arrears. It was 35 years before the Land Office statistics more nearly reflected the actual situation as it existed each year.

average[108] of 280 acres and the Lillooet of 400[109] reflect the predominant occupation of the settlers - cattle raising. In such districts larger acreages were required for pasture.

By the time the next land returns had been tabled in the Legislature, covering the period from April, 1875, to February, 1878, there were 279 applicants to purchase 86,942.5 acres of unsurveyed land. Five of these applications were refused with no reason stated. During 1877 there were 31,282 acres of every other classification sold, and town lots, nearly all in Hastings and Granville, were sold to 41 buyers.[110] For the same year there were only 127 pre-emptions recorded for free grants[111] under the 1875 "Free Grant Act," indicating either that British Columbia's pioneers were an independent breed, or that the lands available to them as free grants were so far removed from the settled districts that few settlers wanted them.

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108 In Yale are included two lots for C. O'Keefe at Okanagan Lake, one of 480 acres of October, 1871, and one of 162 acres of March, 1872. For both O'Keefe paid $1.00 an acre.

109 See Appendix B, Table III, "Certificates of Purchase, 1873-1913, inclusive." (Compiled from the Annual Report of the Chief Commissioners of Lands and Works, 1873-1913, inclusive.) Table III shows the troublesome fact that two sets of statistics for this period seldom agree. The total certificates of purchase listed to the end of 1876 in the Table for Lillooet is only 23, whereas the 400-acre average is based on the 32 listed on page 54 of the text. Examination of Table III figures illustrates how the pattern of buying land throughout the province over the years went by fits and starts. Gauging by purchases of land, Kamloops shows the steadiest development.

110 B.C.S.P., 1878, pp. 581-593.

111 Ibid., p. 377.

A return in 1878 showing the arrears in rent on pastoral leases since 1870 indicated that few lessees were paying their rent and that the government was doing nothing about it. Twenty-one lessees, including the Cornwalls and C.A. Semlin, were in arrears to the extent of $7,114.63 on land whose annual rental amounted to $2300.06. A note at the bottom of the return said that "the apparently large amounts of rent due are caused by the difficulty of collection, on account of the additional charge of Road Tax; disputes respecting boundaries, and pre-emptions, etc.; many of the above leases, though not formally cancelled, being regarded by the Lessees as surrendered."[112] Probably this explanation meant simply that the lessees had no intention of paying their rent and there was not much the government chose to do about it, evidence already that lack of supervision was rendering many clauses of the Land Act inoperative.

By this year, 1878, the Land Office had caught up slightly in its records. The returns for lands sold since July 31, 1871, now showed the following:

Vancouver Island Districts	17,601.38 acres
Cariboo District	3,087.41 acres
Lillooet District	12,818.70 acres [113]

At the 1878 session of the Legislature there was a renewed determination to force rental or purchase money out of those in arrears. Lytton had warned Douglas about instalment

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[112] Ibid., p. 628.

[113] The Lillooet acreage was the same for 1878 as for 1877.

purchases, saying that just such a contingency as that now confronting the province could arise. An amendment to the act was passed imposing no less than 24 per cent interest per annum on all unpaid purchase money for surveyed Crown land, and on all arrears in rentals for leases.[114] If these payments were not made after a notice had appeared in the British Columbia Gazette, any records or agreements were to be cancelled at once.

When the act reached Ottawa, there was a mild flurry in the Justice Department. When reporting to Sir John A. Macdonald, then Minister of Justice, Z.A. Lash, his Deputy Minister, began his comment by saying that "The provisions of this statute are of a startling nature."[115] After outlining the provisions of the act, he said that it cast upon persons who had purchased or leased Crown lands a liability never contemplated by them when their agreements had been drawn up. He added that, had the subject matter of the act been entirely within the competence of the province to enact, he would feel some difficulty in recommending disallowance "merely because its provisions did not accord with my views of justice". But because it dealt with interest, a subject assigned exclusively to the Dominion, and because of the

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114 B.C. Stat., 1878, c. 25. There seems some likelihood that this statute was nother manifestation of the Island-Mainland controversy. None of the leases was held on Vancouver Island. The 1873 Land Amendment Act had specified that leases should henceforth be confined to the mainland.

115 Dominion and Provincial Legislation 1867-1895, p. 1066.

difficulty any individual would experience in testing the validity of the act in court, he had no hesitation in recommending its disallowance. This was done by Order in Council of August 15, 1879.

After the disallowance of the amendment in 1878, a further amendment the next year insisted on immediate payment of the $1.00 an acre charged for land bought outright, wiped out the provision for free grant pre-emptions, and extended the time for the payment of the $1.00 an acre again charged pre-emptors. Prior to the "Free Grant Act" of 1875, two years had been allowed for these pre-emption payments. Now four years were given in which to complete payment in equal annual instalments, although the last instalment was not payable on unsurveyed land until it had been surveyed.[116] Default on any one of these instalments could result in forfeiture. In section 5 a return was made to the system of requiring public auctions of all surveyed lands "which are not the sites of towns or the suburbs thereof, and not Indian settlements" at the upset price of $1.00. These provisions clearly indicate that the government hoped to end the former laxity in administration of public lands. R.E. Gosnell, an historian of this period of provincial history, has sweepingly denounced the whole public lands policy both before and after Confederation:

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116 B.C. Stat., 1879, c. 21, s. 1.

> . . . without any system of surveys except those made by the owners of land and without practically any conditions attaching to the sale, vast areas could be alienated. As a matter of fact, wide tracts of the best and most available land were parted with in large blocks, to the detriment of *bona fide* settlement, and, consequently, of the development of agriculture. . . . This unwise legislation appears all the more deplorable when it is considered that arable land was extremely limited, and that it was obviously in the best interests of the province that it should be carefully conserved and surveyed into small holdings for the benefit of the greatest number.[117]

The reforms of 1879 showed swift results. The number of pre-emption records for the year dropped from 245 in 1878 to 100 in 1879, and the certificates of purchase reached the highest point they were to reach from 1870 to 1884.[118] Victoria residents seem to have been the worst offenders in letting payments lapse. In 1879 the certificates of purchase in Victoria jumped 290 percent, whereas in New Westminster there was an increase of one purchase only from the previous year's total of 198,[119] a mere one half of one per cent. Cash received for the year's land transactions doubled, going from $21,100 in 1878 to $40,100 in 1879, so there was little doubt the legislature was getting results. Having spent two years in the Opposition ranks, George A. Walkem was once again premier and was making his strength felt.[120]

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117 Gosnell, R.E., "History of farming," in *Canada and its Provinces*, Vol. 22, p. 544.

118 See Appendix B, Table III. In 1879 there were recorded 404 purchases as compared with 317 in 1878 and 236 in 1880.

119 *Loc. cit.*

120 Howay, F.W., "Political history, 1871-1913," in *Canada and its Provinces*, Vol. 21, p. 202.

As part of the general tightening-up process, section 6 of the 1879 amendment required every intending purchaser at his own expense to give two months' notice of his intention in both the British Columbia Gazette and in a local newspaper. These notices were to list his name, locality, the boundaries and the extent of the land applied for, as well as its distance from any mining or mineral claims. The notice was to be dated and a copy of it posted in a conspicuous spot on the land sought to be acquired, and on the local government office, if any. This provision was to prevent the many conflicting claims which rendered the work of the local Assistant Commissioners, as well as that of the head office, exceedingly difficult. In the same section it was specified that from then on no land could be either surveyed or sold in such a manner as to dispose of less than 160 acres. Moreover, any applicant for land under previous legislation could no longer complete title under the relevant statute as had formerly been the case. "Every applicant for land . . . to whom a Crown Grant has not been issued, shall comply with the provisions of Section 6 of this Act." Nor could any applicant longer hope to remain anonymous so far as the public was concerned. Any notice of survey inserted in the Gazette on any purchaser's behalf was to contain the applicant's name.

It is interesting to speculate why the free grant system was abandoned so unceremoniously. During the years 1874 to 1879 while the "Free Grant Act" was in effect, only

437 grants were made under its provisions.[121] For the same period only 349 certificates of improvements were issued.[122] But the figure that no doubt resolved the government to do something about the whole free grant situation was the one showing 1497 certificates of purchase. Of every five persons acquiring land for any purpose, four were paying for it. The government reasoned that if four could do so, the fifth could do likewise. Walkem was convinced that the free grant system had outlived its usefulness in British Columbia in spite of its retention both in the Northwest Territories to the east and in Washington Territory to the south. Free grants of land to the settlers, except under unusual circumstances, were never heard of again. On page 62 is a complete summary of the free grants from 1874 to 1879.

The totals for 1879 indicate that the usefulness of the free homestead legislation apparently had passed; those for New Westminster indicate it to be the area profiting most from the legislation, although it is well to remember that New Westminster district included the entire lower Fraser Valley from Hope to what is now Vancouver City.

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121 Figure compiled from Annual Reports of the Chief Commissioners of Lands and Works for the years 1874-1879, inclusive.

122 See Appendix B, Table II, "Certificates of Improvement, 1873-1913, inclusive." (Compiled from the Annual Report of the Chief Commissioners of Land and Works, 1873-1913, inclusive.) No statistics are available in the Reports for 1878, but by adding the average figure of 58 per year obtained for the other five years, a total of 349 was obtained.

HOMESTEAD PRE-EMPTIONS UNDER THE 1874 AND 1875 LAND ACTS.

Year	Victoria	Cowichan and Salt Spring	Nanaimo and Comox	New Westminster	Yale	Kamloops	Osoyoos	Lillooet	Kootenay	Cariboo	Cassiar	Total
1874				5								5
1875				69								69
1876				49								49
1877	1	5	11	110								127
1878		11	21	98	1		3					134
1879	6	2	15	12	1	13		3		1		53
Total	7	18	47	343	2	13	3	3		1		437

Another possible reason for abandoning the free grant system is that the districts in which land was most sought after by settlers had by now been placed under reserve for railway purposes. By Order in Council of August 3, 1878, a forty-mile belt of land from the Yellowhead Pass to tidewater on Burrard Inlet had been reserved, as had a similar belt from Esquimalt to Seymour Narrows.[123] Since extensive areas had also been withdrawn from settlement for Indian reserve lands,

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123 The situation created by the railway reserves was discussed by Premier Walkem in his capacity of Chief Commissioner of Lands and Works. Although the railway route was subsequently changed, the change did not alter the problem, since the Fraser and Thompson River valleys were still affected. (See Report of C.C.L.W., 1878, p. 322.)

it would seem obvious that insufficient land was available to make the free grant system practicable.

The Chinese problem which was causing so much public agitation in the province[124] found its way into a special act in 1884 concerning Crown lands.[125] The act made it unlawful for any Commissioner of Lands or any other person:

> to issue a pre-emption record of any Crown land, or sell any portion thereof, to any Chinese, nor grant authority . . . to any Chinese to record or divert any water from the natural channel of any stream, lake or river in this Province.

The Secretary of State for Canada, J.A. Chapleau, wrote to John Robson, Provincial Secretary, to say that although the act was within the competence of the local legislature, he wondered if perhaps such an act, applying as it did to only one segment of the population, were constitutional on those grounds, but he was willing to let the courts decide the issue should a case arise.[126]

This same year - 1884 - saw a new Land Act on the statute books.[127] Its major provision raised the price of both surveyed and unsurveyed agricultural land from $1.00 to $2.50 an acre. The provision for pastoral leases was removed, but it provided that "mountainous tracts of land, which are unfit for cultivation and valueless for lumbering purposes, may be purchased at the rate of $1 an acre." To ensure that it was truly waste land, the applicant had to make a statutory

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124 Howay, F.W., op. cit., pp. 211-212 and 250-273.

125 B.C. Stat., 1884, c. 2.

126 B.C.S.P., 1885, p. 464.

127 B.C. Stat., 1884, c. 16.

declaration to that effect. The Chief Commissioner of Lands and Works reserved the right to refuse any such application if he had any reason to doubt the declaration. One dollar remained the price of pre-empted land, as did the provision for four equal annual instalments, but the first payment was not due for two years from the date of record. As formerly, the last payment was not due until the land had been surveyed.

Of much greater significance was the provision stating that no more than 640 acres of unsurveyed land could be bought, although the lower limit of 160 acres remained unaltered. Thus, for the first time, an upward limit was placed on land purchased outright. Land pre-emptions, of course, had long been limited to 160 acres west and 320 acres east of the Cascades.

Fortunately for 101 applicants to purchase land, section 76 of the 1884 Act provided that title to land applied for under any previous acts, all now repealed, could be acquired as if the present act had not been passed. A return tabled March 5, 1885, showed that title to 109,959.25 acres was acquired under that clause by the 101 men. Among the group were Thomas Greenhow, who thereby secured 3,460 acres; F.G. Vernon, who obtained 4,739 acres; T. Harper, who did the best of all with 12,146 acres; and G.B. Wright in the Kootenays, who acquired 1800 acres.[128] Instead of receiving the $55,362 to which the government would have been entitled under the new rate of $2.50 from these four men, the Treasury was enriched

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[128] B.C.S.P., 1885, p. 573.

only to the extent of $22,145 at the former $1.00 an acre rate.

The provisions of the 1884 act raising the price of all but "mountainous and rocky tracts" of land to $2.50 an acre, and limiting the amount of unsurveyed land that could be purchased to 640 acres, showed the government's realization that agricultural land was not abundant and was therefore to be conserved. Land transactions had doubled in 1883,[129] largely as a result of the influx of population attendant upon the building of the Canadian Pacific and the Esquimalt and Nanaimo railways. When the figures issued by the Land Office for 1884 showed that land transactions had again doubled in spite of the increased price per acre, the wisdom of the provisions of the new statute was obvious. Total land transactions for the two years had increased from 436 in 1882 to 1847 in 1884, with the total amount deeded increasing from 23,609 acres to 146,197 acres.[130]

The established statutory price of $2.50 an acre was, of course, the minimum price of good land. Desirable lands were still being sold by auction at many times the upset price. In 1885 a return listed all those persons who had bought town lots at auction in November of that year at English Bay. The summary of this transaction is as follows:

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[129] See Appendix B, Table V, "Total Land Transactions, 1873-1913, inclusive." (Compiled from totals given in Tables I, II, III, and IV.)

[130] Loc. cit.

Total acreage sold	98 acres	
Acreage of streets	160 acres	
Expense of sale	$805.96	
Net price per acre	$145.84	
Estimated cost of survey	$3,000.00	
Distance of rear lots from water	1 mile	131

This sale was held on the eve of the completion of the Canadian Pacific Railway, the imminent arrival of which would have provided the impetus to the advanced price of lots. Even so, the buyers no doubt considered a price of $145 an acre large for lots heavily timbered and at least fifteen miles from the terminus of the railway at Port Moody. Today the price paid for the entire 98 acres - $14,292.32 - would not buy one standard 66-foot lot, or 1/10 of an acre, on English Bay.[132]

Two related incidents occurred, one in 1886 and the other the following year, which illustrate well the great difficulty involved in satisfying everyone in regard to claims for favourably situated lands. In the first case, four different settlers wanted to buy Section 4, Block 4, Range 7 West on Lulu Island, in all, 80 acres. H. Youdall, D.S. Milligan, Hugh Boyd, and James G. Jaques each thought he had a prior claim to the land. Numerous situations of this kind must have arisen every year, but because this one involved the integrity of John Robson, Provincial Secretary

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131 B.C.S.P., 1886, pp. 449-454.

132 The 66-foot lot, 130 feet deep, on the east side of Pacific Avenue directly opposite the junction with it of Beach Avenue, and on which an apartment block was built in 1954, cost the buyer $16,500.

and Minister of Finance and Agriculture, questions were asked in the House which resulted in the tabling of an interesting correspondence.

Boyd based his claim on a conversation with his friend, John Robson. In a letter to Robson on July 8, 1886, Boyd had said, "I would ask you as a great favor to try and get it for me."[133] Youdall based his claim on prior notice to the local Government Agent, C. Warwick, of his intention to buy the land as soon as the government reserve then on it was removed. His intention, which he had discussed with Premier Smithe, Chief Commissioner of Lands and Works, was to settle on the land five or six families of Newfoundland fishermen.[134] Milligan contended that the land should be his by virtue of the letter he had written to Smithe in September making application for the land, adding that "I am prepared to pay for same at once."[135] Jaques, who had been quietly waiting until December 1 when the government reserve would come off, appeared at the Government Office when it opened at 9 o'clock that morning, money in hand. His money was refused. He sent a telegram to Smithe at once. "He refused same, saying land already disposed of, and declines to say how. Instruct at once, as I am first purchaser and I consider I am alone entitled to Crown Grant of such land."[136]

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133 B.C.S.P., 1887, p. 339. Boyd to Robson, July 8, 1886.

134 Loc. cit. Warwick to Smithe, August 31, 1886.

135 Ibid., p. 340. Milligan to Smithe, September 24, 1886.

136 Ibid., p. 341. Jaques to Smithe, December 1, 1886.

On September 1, however, W.S. Gore, the Surveyor-General, had notified Warwick that the next issue of the Gazette would contain a notice removing the reserve from the land, subject to the three months' notice required by law,[137] and that after December 1 the land would be open to purchase. "You will remember, however," he added, "please make a note that a sale is not to be made before you are more particularly instructed from this office."[138] There was no legal basis for Gore's instructions, as Jaques, Youdall, and Boyd well knew, a fact which led them to the conclusion that here was nepotism at its worst. W. Norman Bole,[139] solicitor for Jaques, arrived at the same conclusion. It was Bole, elected in 1886 as one of the members from New Westminster District,[140] who asked that all the pertinent correspondence be tabled.[141]

Smithe telegraphed back the same day to say that in conformity with the statutory requirement the land would be

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137 B.C. Stat., 1884, c. 16, s. 57.

138 B.C.S.P., 1887, p. 340. Gore to Warwick, September 1, 1886.

139 Bole, born 1846 in Ireland, had come first to Ontario and then west to New Westminster in 1877. The year of his arrival he was admitted to the British Columbia bar; ten years later he was appointed a Queen's Counsel. He sat as M.L.A. for New Westminster from 1886 to 1889, retiring in order to assume his duties as judge of the County Court to which he had been appointed on September 19, 1889. In 1891 he was elevated to the British Columbia Supreme Court. (See Morgan, H.J., Canadian men and women of the time . . . , 1912, pp. 116-117. 2nd ed.)

140 Parker, C.W., ed., Who's who in Western Canada, 1911, Vol. I, p. 114.

141 B.C. Journals, 1887, p. 14.

sold at public auction.[142] But this was not to be the easy way out that Robson and Smithe had hoped. Within a week Youdall wrote to Smithe to say that he could not believe the land was to be auctioned, since he was quite prepared to fulfil all the conditions previously agreed upon in regard to his colonization scheme. He said that he had several Newfoundland fishermen already making preparations to come to British Columbia in the spring. With commendable caution he added that "I have been told - what truth there is in it I do not know - that Mr. Robson has been working tooth and nail to get this lot put up at auction, so as to fill some obligation to a Mr. Milligan, who owns 900 acres adjoining, and who dyked in some 30 acres of the lot and used it for a number of years."[143]

A week later Smithe assured Youdall that if indeed he had not dropped his plan for bringing out fishermen, the government would certainly honour its agreement, but warned Youdall that he would have to pay Milligan $500 for his improvements.[144] Should the Robson correspondence ever be located, it would be interesting to see if there were not a letter from him to Milligan some time in the week of December 7 to 13, 1886, asking Milligan to set a price on his improvements and to withdraw his claim to the land.

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142 B.C.S.P., 1887, p. 341. Smithe to Jaques, December 1, 1886.

143 Ibid., p. 342. Youdall to Smithe, December 7, 1886.

144 Loc. cit. Smithe to Youdall, December 13, 1886.

Not to be out-manoeuvered, Bole drew up and presented to Lieutenant-Governor Cornwall on December 28 a petition headed "Let right be done," outlining his client's case.

But in vain was the appeal made to the foot of the throne. As it was a cash transaction, no further record of the land is found in the Gazette. On March 8, 1887, Youdall acquired the land. His certificate of purchase was endorsed as follows:

> This Certificate of Purchase issued pursuant of Mr. Youdall's Agreement to settle five or six families of Newfoundland fishermen upon the land (Sec. 4, B 4 N, R 7 W) and upon the express condition that a Crown Grant will not be issued until Mr. Youdall's said obligation is fulfilled.[145]

That obligation written into the endorsation on the certificate of purchase was fulfilled. On January 21, 1890, the five fishermen - James Millis, Joshua Parsons, Thos. Wm. Horne, Robert Gordon, and George Waugh - as well as Youdall himself, wrote to the Chief Commissioner as follows:

> We the undersigned residents of "Terra Nova" being anxious to secure a Title to our respective homes. The same being parts of Sec. 4, Block 4 North Range Seven West are desirous that a Crown grant of the said Section be issued to Mr. Hugh Youdall.

Less than one month later the Crown Grant was issued from the Lands Office.[146]

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145 The writer is indebted to the courtesy of Mr. R.E. Burns, Superintendent of Lands, Lands Branch, Department of Lands and Forests, Victoria, for this information and that immediately following concerning the Crown grant.

146 Crown grant No. 849, Vol. 48, dated February 24, 1890, was sent to Youdall, who acknowledged its receipt March 20, 1890.

The following letter, having to do with a similar case shortly afterward, illustrates not only the complications which arose continually in regard to lands, but also something of the spirit in which public business was occasionally carried on. Neither of the protagonists in the dispute warrants any sympathy, nor does the client; it is reserved for Warwick, the same Government Agent from New Westminster, whose task it was to administer the land laws in an impartial manner. An error on his part could have led to serious political difficulties, and it is quite likely that throughout the province in these early years errors both of execution and of judgment were being made. Neither nepotism nor patronage was unknown, as Bole's letter to Smithe suggests.

> I beg to call your attention to a most extraordinary circumstance which occurred, as I am informed by Mr. Kelly, in the Land Office here, today. Mr. Philip Kelly, a client of mine, who has pre-empted a piece of land on Burrard Inlet, north of Lot 204, Group 1, New Westminster District, inadvertently placed on the counter of the office a document, referring to said land, signed by one Stalker, and which Mr. Kelly had no intention of parting with, or using. Mr. Warwick's name appeared in the document, and that gentleman seeing the document took it up, and insisted on keeping it, notwithstanding Mr. Kelly's formal demand for the return thereof; Mr. Warwick further remarking "that" (referring to the document in question) "will be sufficient to prove Henderson's claim." Mr. Kelly is, as you are aware, the <u>bona fide</u> pre-emptor of the land in question, while Mr. Henderson is but a speculative purchaser, representing, probably, much bigger individuals in a convenient background. May I trust that you, officially, entertain as strong a repugnance to speculative land purchasers as Mr. Robson, on behalf of himself and his colleagues from his place in the House, when discussing the Jaques' claim, as if that gentleman, which I doubt, honestly meant what he said, his Government now has an opportunity of proving their sincerity, and preferring the claim of the <u>bona fide</u> settler to the speculative purchaser. I am, therefore, to request that you will direct Mr. Warwick forthwith to return to me, on behalf of Mr. Kelly, the

> document above referred to. Your refusal to do so I must deem conclusive evidence that your Government are siding with Mr. Henderson against Mr. Kelly, who is determined, however, to exhaust every legal remedy before he surrenders his just rights. May I venture the hope that in expecting an answer of some kind to this letter, that I am not imposing too severe a strain on your official courtesy.[147]

No, Bole could not be counted among Smithe's supporters, nor had he forgiven Robson for having bested him in the Lulu Island land affair. If this were the tenor of official correspondence between one member of the Legislature and another, it may well be imagined that in the House there were verbal altercations which, had they been preserved verbatim, would indeed have made delightful reading now.

Three days later Smithe wrote to Warwick asking for details of the complaint,[148] to which Warwick replied the same day, explaining that he had been in receipt of three separate applications for the land all within a week. On Monday, February 14, J.B. Henderson had applied for the 160 acres in question; by the afternoon mail of the same day Hugh Stalker of Moodyville had applied for it; and on Friday, February 18, Kelly had applied in person for it. "I, as a matter of course, informed Mr. Kelly that there were already two applications for the land in question, and that his

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147 B.C.S.P., 1887, p. 423. Bole to Smithe, February 18, 1887. All this correspondence was asked for by W.H.D. Ladner, senior M.L.A. for New Westminster, and was tabled March 15, 1887. (See B.C. Journals, 1887, p. 89.)

148 B.C.S.P., 1887, p. 423. Smithe to Warwick, February 23, 1887.

application could not be granted."[149] Warwick then explained how at that point Kelly had become "quite hostile", insisting that as he had been occupying and improving the land for the last six months, he was going to have it at whatever cost. At this point Kelly drew from his pocket a letter from Stalker, dated February 7, and addressed to Warwick, in which Stalker had abandoned all claim to the land, saying that he had had no idea Kelly had made permanent improvements on the land.[150] Warwick did not explain how Kelly had come by the letter, but the logical answer would seem to be that Kelly had gone to Stalker, explained the situation, and received the letter from Stalker for transmission to the Government Agent. As Kelly was about to leave the Land Office with the letter, Warwick said that he had asked for it on the grounds that it belonged not to Kelly but to the office files. After some argument, Kelly agreed to leave it, and Warwick then offered to see Henderson when he returned to town in a few days' time and ask him to withdraw his application in favour of Kelly. At this, Kelly had seemed satisfied, but in a few minutes he returned to the office accompanied by one of Bole's clerks and made an unsuccessful attempt to retrieve the letter, but Warwick permitted the clerk to make a copy of it. Finally, Warwick could report to Smithe that

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149 Ibid., p. 424. Warwick to Smithe, February 23, 1887.

150 Loc. cit. Stalker to Warwick, February 7, 1887.

on the next day he had seen Henderson, who had agreed to withdraw, and that a record for the land had been issued to Kelly. This had cleared up the entire difficulty to everyone's satisfaction.

Apparently this long and diplomatic letter from Warwick containing all the details had been intended to be the official answer, and for that reason confined itself to a bare recital of the facts. In a separate letter of the same date, Warwick briefly outlined what had led to all the difficulty in the first place.

> The whole trouble in connection with the land. . . originated in Mr. Bole's office. It appears Mr. Kelly left instructions with Mr. Bole some months ago to file application when the land in question came into market, that is, on the expiration of the timber lease within which the land was situated. Previous to the land coming into market Mr. Kelly had occasion to go up the coast, and on his return, about the 17th inst., found his instructions had not received any attention. Hence the trouble.[151]

Armed with the facts as reported to him by his official in New Westminster, Smithe answered Bole's letter, part of which follows:

> Having received the report. . . I find that the occurrence to which you are pleased to allude as a "most extraordinary circumstance" consisted simply in Mr. Warwick's most commendable determination to retain possession of a letter which, though addressed to himself, was not his personal property, but belonged to the archives of which he is in charge. I also find that Mr. Warwick showed very proper courtesy in allowing your clerk to take a copy. . . in the interest of your client, Mr. Kelly; but it seems to have been convenient to you to omit mention of that

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[151] Ibid., p. 425. Warwick to Smithe, February 23, 1887.

> circumstance when preferring your complaint.
> In view of the fact that Mr. Warwick did nothing more than his duty in retaining possession of the letter in question, that he went beyond the requirements of official duty and succeeded in arranging the matter in the interest of your client, I can only characterize the charge brought by you against the officer as frivolous, if not something worse.
> It is more difficult to find words in which to convey adequate censure of the tone of discourtesy - perhaps insolence would be the more appropriate expression - which pervades your letter; and this appears all the more inexcusable in the light of Mr. Warwick's explanatory note, to the effect that Mr. Kelly's troubles were the result of your own professional laches in not having attended to his instructions at the proper time. This is not the first time I have received a letter from you of a character undeserving of reply; and I have to request that in any future correspondence with this Department you will endeavour, as far as may be in your power, to observe those rules of politeness common among gentlemen.[152]

A discreet silence should now have fallen over the entire affair, but an election was in the offing. Without awaiting a reply from Bole, Smithe published his own letter to Bole. This action was later characterized by Bole as a "mean and spiteful way by which Mr. Robson, through you, is trying to get even on me for my part in the debate of the 10th March, 1887, when, in the discharge of my public duty, I had occasion to make some severe remarks on the conduct of the Provincial Secretary."[153] Bole denied the

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[152] Loc. cit. Smithe to Bole, March 5, 1887.

[153] Ibid., p. 489. Bole to Smithe, March 24, 1887. There undoubtedly was some truth to Bole's charge in his letter that Robson was the real author of the letter to him. All during the 1887 session Smithe, though re-elected in July, 1886, was too ill to take his seat. He died in March, 1887. (See Howay, F.W., op. cit., p. 214.)

charge that he had been neglecting his professional duties, and told Smithe that he, as neither a slave nor follower of the government, intended to exercise his own judgment as to the best method by which official correspondence should be conducted, "even with so high and mighty an individual as the Chief Commissioner of Lands and Works," because "whatever other claims you may have to distinction, I was unaware that you claimed to be considered the Government Chesterfield."

When the Public Accounts were submitted to the Legislature late in the fall of 1887, Bole moved a vote of censure against Robson for having dispensed patronage with a lavish hand in the New Westminster riding the previous summer. Bole's contention was that, while travelling through the district soliciting votes, Robson had given orders for the expenditure of large sums on public works, and that although Robson was Provincial Secretary, Minister of Mines, Agriculture, and Finance, he was not the Chief Commissioner of Lands and Works, but that the Accounts proved his orders had been honoured by the Lands Office. Bole seemed to have put together a good case but when the vote was taken, his motion was defeated 15 to 8.[154]

However much indignation Bole could show at patronage, he was quite willing to avail himself of the liberal land law in order to acquire extensive tracts of public land.

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154 B.C. Journals, 1887, p. 43.

In 1889 he made application to purchase one block of 8400 and another of 1600 acres of pastoral land in the Osoyoos District.[155] Land of this type, providing it were "mountainous" and unfit either for cultivation or lumbering, could still be had in unlimited quantities for $1.00 an acre, and there was no requirement other than that it be surveyed.[156] As Chairman of a Select Committee in 1887 on the sale of timber lands,[157] Bole had introduced some sweeping changes in regard to limiting the size of timber leases, but the Assembly did not consider it necessary to alter the requirements under which surveyed agricultural or pastoral land could be obtained.

No further significant changes were made in the Land Act until 1888 when a further amendment was enacted and an extensive consolidation made. In this year two changes merit consideration. In the first place, land was now classified as first class and second class. First class was land suitable for cultivation, lumbering, or hay meadows and was priced as formerly at $2.50 an acre. Second class land was

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155 British Columbia. Legislative Assembly. British Columbia Gazette, January 3, 1889, p. 4. (Hereafter cited as B.C. Gazette.)

156 B.C. Stat., 1884, c. 15, s. 59. This statute limited mountainous tracts to 640 acres; section 30 limited unsurveyed land to the same acreage. Neither the Land Amendment Act nor the Consolidated Statute of 1888 restricted the sale of surveyed land in any way. Whitford and Craig had been misinformed when they stated that "every purchaser" was limited under the 1888 Consolidation to 640 acres. (See Canada. Parliament. Commission on Conservation. Forests of British Columbia, by H.N. Whitford and R.D. Craig, 1918, p. 83, line 12. Hereafter cited as Forests of B.C.)

157 B.C. Journals, 1887, p. xxxi.

that unsuitable for any of these purposes and was priced as before at $1.00 an acre.

The second change concerned hay leases and indicated the growing importance of the cattle industry. Whereas "Animals and their Produce" had merited no inclusion in export statistics in 1872, by 1891 the value of such produce had increased to $346,159, third only to mines and fisheries, and ahead of timber products by $20,000.[158] By 1891 there were 251,367 head of livestock in the province, for which 102,146 tons of hay were cut.[159] Cattle-raising in the interior had become big business. The change in the Land Act in 1888 in regard to hay leases was simply reflecting the situation. The alteration provided that if there were two or more applicants for the same hay lease, the land should be tendered for by the applicants. The man who submitted the highest cash bonus was to get the lease.[160] As this type of amendment to the act was not added until after circumstances had made it necessary, its enactment reveals clearly that cattle raising was one of the major industries of the province at that time.

A glance down any of the lists headed "Applications for Purchase" in the British Columbia Gazette for the years 1888 to 1891 indicates that it was in this period of provincial history that the 'landed' families of the province

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158 British Columbia, Sixty years of Progress, Part II, p. 3, n. 4.

159 Ibid., p. 1, n. 2.

160 B.C. Stat., 1888, c. 16, s. 9.

acquired most of their holdings. Although at the time some of the land was good only for pasturage, subsequent irrigation developments have increased the value of the land many times over. In the 1889 Gazette the name of Judge Bole is not the only one to appear more than once for large surveyed acreages. Cornelius O'Keefe was applying for a further 808 acres at the head of Okanagan Lake; Samuel L. Robins of the Vancouver Coal Company at Nanaimo was applying for 30,000 acres on the west coast of Vancouver Island, as was Judge Drake; and J.S. Chase was asking for 21,120 acres in the Kootenay District. The largest application for the year came from John Irving, R.P. Rithet, James A. Laidlaw, and James Carrall, all of Victoria, who together made application for 65,920 acres in Rupert District in northern British Columbia. The pages listing these names throughout the year read like a "Who's Who" for the province. Such men as D.M. Eberts, J.C. MacLure, Thomas Earle, and John Bryden were all prominent at some time in provincial affairs. Certificates of purchase for 1889 increased 63 per cent from the year before and the total acreage deeded increased 42 per cent, but both the number of pre-emption records and certificates of improvement decreased.[161] These figures suggest that in the alienation of public lands, new settlers were running a poor second to established residents bent on acquiring more land, possibly for personal use but more

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161 See Appendix B, Table V.

probably for speculative purposes. No doubt most of these shrewd men, many of them influential in affairs of the province, foresaw the imminent finish to unrestricted buying of large acreages at cheap prices.

These restrictions and price increases, in fact, came into effect in the Land Act of 1891. To reduce the amount of speculation, a limit in that year was placed on the amount of surveyed land that could be purchased. Henceforth 640 acres was to be the limit of land that could be bought, either surveyed or unsurveyed.[162] As had been true since 1884, no land could be bought until it had been surveyed and the survey approved. In surveying from now on, however, the Provincial Land Surveyor was to classify the lands as first, second, and third class. Agricultural, hay, and timber lands as before were to be designated first class lands, but now they were worth $5.00 an acre. Agricultural lands requiring irrigation or drainage were to be sold as second class lands at $2.50 an acre. "Mountainous and rocky tracts wholly unfit for agricultural purposes" which could not "under any reasonable conditions" be brought under cultivation were now classed as third class lands and priced still at $1.00 an acre. Neither second nor third class lands were to contain more than 5,000 feet of timber per

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[162] B.C. Stat., c. 15, s. 4. It will be recalled that under B.C. Stat., 1884, c. 16, s. 30, the 640-acre upward limit had been placed on the sale of unsurveyed land, which had to be surveyed before the title could be issued; under section 31, however, no such limit was placed on surveyed land offered for sale. Both sold for $2.50 an acre.

acre. When the Chief Commissioner of Lands and Works was satisfied that the lands had been correctly classified and when the applicant had paid the cost of surveying plus the full purchase price the sale was allowed to proceed. Even then, the proceedings were cancelled if the applicant did not complete all the requirements within six months after making his original application (accompanied by ten per cent of the purchase price). To make doubly sure that speculation would be halted, this section specified that no person could secure any other land until he had been in occupation of his first purchase for two years and effected permanent improvements thereon of $5.00, $2.50, or $1.00 an acre for first, second, and third class lands, respectively. Land which was actually cultivated was to be considered as improved and it was generally accepted that the running of a specified number of cattle per acre on the land would constitute improvement. Although the acreage deeded in 1892 increased to its highest point - 309,878 acres - and was not to go so high again until 1897, this high figure is merely a reflection in official statistics of the fact that a good many applications made under the former act the previous fall were only now being processed in Victoria. Not until 1894 did the drastic reductions effected in acreage deeded under the amendment in 1891 show up in official records. For 1894 only 47,167 acres were alienated,[163] although this

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[163] See Appendix B, Table V.

decrease was a reflection also of the severe depression then prevailing not only in the province but also throughout America and Europe. Land sales in 1894 accounted for only $33,917 of the provincial income, whereas in 1890, $244,529 had been received from this source. It seems clear from this sharp drop in revenue that the 1891 amendment had satisfactorily achieved its purpose of reducing speculation.

By a further amendment in 1892 pre-emptions of 40- and 80-acre lots were once again authorized.[164] This figure was lowered again in 1894 to permit the leasing of 20-acre lots on land surveyed and sub-divided, for the purpose solely of personal occupation and cultivation. The lease was good for five years but if the annual rental of one-fifth the value of the land as determined by the Chief Commissioner were paid regularly for those five years, and if a house had been built on the lot the first year and all other residence and improvement qualifications fulfilled, the lessee was then to receive a Crown grant to the lot.[165]

In January of 1895 a return of all Crown grants issued in the province, for whatever reason, from January 1, 1880, to the end of 1894, was called for. In the return was to be shown the name of the grantee, the acreage, the method by which the land had been obtained, and the district in which the grant was situated. The reply tabled on February 5 by

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164 B.C. Stat., 1892, c. 25, s. 2. Pre-emptions of this size, authorized in 1875, had been cancelled in 1884.

165 B.C. Stat., 1894, c. 24, s. 2.

G.B. Martin, Chief Commissioner, is interesting:

> The Return called for covers a period of 15 years, during which time some 5,400 Crown grants have been issued.
> To prepare such a Return will necessitate repeated reference to all the numerous Land Registers in the office of Lands and Works, and will involve considerable expense.
> The Return will cover over 350 pages of foolscap and will form a volume nearly as large as the Sessional Papers.
> It is not apparent that such a Return is a matter of public interest or value. Any Member wishing for particular information as to the issue of Crown grants can always ascertain what he desires by applying at the Land Office.[166]

Getting down to more manageable business, Beaven introduced an amendment to the Land Act in the 1895 session which reduced the size of pre-emptions east of the Cascades from 320 to 160 acres.[167] Hoping to capitalize on the rapidly increasing activities apparent in the Kootenays, the government in section 8 did, however, permit settlers east of the Cascades to buy 360 acres of waste Crown land adjoining their locations at $1.00 an acre, but only if the land were unfit for cultivation.

In view of the numerous changes which had been made in the Land Act since its consolidation in 1888, another consolidation was made in 1896, although there was only one important change having to do with agricultural land. Because of the tremendous activity involved in railway building and because the province was granting land subsidies to many

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[166] B.C.S.P., 1895, p. 667.

[167] B.C. Stat., 1895, c. 27, s. 8.

of the railway companies who had applied for such subsidies, the province determined to reap some benefit from the development by returning to the principle of reserving to itself one-quarter of the lots in any Crown-granted land that should be subdivided into town lots.[168] When Douglas had reported a similar procedure to Lytton in connection with lots in New Westminster, he had been ordered to rescind the provision immediately. The province now, however, was to reap a rich harvest from its share of these town lots. At the same time, the deposit accompanying applications to purchase lands was increased to 25 per cent, and prospective pre-emptors were warned that from now on no pre-emptions were to be granted for any other than agricultural purposes and no certificates of improvement or Crown grant would be issued until at least ten acres had been brought under cultivation.

From 1896 until the end of the century all types of land transactions showed a marked increase, particularly as a result of the railway construction and mining activity in the Kootenays. Throughout the entire decade preceding 1900, however, the Okanagan Valley regularly accounted for from 25 to 50 per cent of all pre-emption records in the province, and, as an indication of the serious intentions of the residents of the Okanagan, more certificates of improvement were issued for that area than for any other district in the

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[168] B.C. Stat., 1896, c. 28, s. 13.

province. In 1900, of the 113 such certificates issued, 58 went to Osoyoos land district, which embraced the whole of the Okanagan Valley from the border to Enderby. But in the entire province for any one of the years during the 1890's, five and six times as many certificates of purchase were issued as were certificates of improvement. The Kootenays showed by far the greatest number both of these certificates of purchase and of Crown grants. Of 1,101 certificates of purchase issued in 1900, 620 of them were granted for lands in the Kootenays.

Although an extensive consolidation of the Land Act was made in 1897, no significant changes were made until 1908, when a completely new act was written, designed to incorporate changes in the industrial pattern of the province, such changes for instance as the one reflected in the return for 1903 which had shown that of the 10,032,700 acres under government reserve, every tenth acre was being reserved for applicants for pulp leases.[169] Since the 1908 Act found its way with very few changes into the revised edition of the Statutes in 1911, the edition in effect in 1913, the major provisions of the 1908 Act are significant.

First of all, since the work of the Chief Commissioner of Lands and Works had by now become exceedingly onerous, a separation of his duties was effected. Ever since 1871, as the province had developed, the work of the Chief Commissioner

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169 B.C.S.P., 1903, p. J 23.

had increased to the point where he found himself responsible for such diverse matters as roads, bridges, government buildings, water rights, drainage and irrigation works, maps and surveys, and government lands - agricultural, timber, mineral, and coal. On all of these he was required to make a yearly report.[170] Henceforth there was to be both a Minister of Lands and a Minister of Public Works.[171] Thomas Taylor became the first Minister of Public Works and Price Ellison became the first Minister of Lands.

Under section 10 an innovation was made to permit the pre-emption of surveyed and sub-divided lots not exceeding forty acres for bona fide personal occupation and cultivation.[172] This provision was made as a result of repeated complaints from J.H. Turner, Agent-General for British Columbia in London, that he had had to discourage a good many intending emigrants who wanted a smaller allotment than was allowed under the existing pre-emption regulations.[173] In his 1904 report to Premier McBride he had said that:

> A large proportion of the inquiries from agricultural parts of Britain are desirous for information as to the possibility of obtaining small holdings in British Columbia on easy terms, and if there were any provision of that nature hundreds would emigrate and take advantage of it.[174]

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[170] B.C. Stat., 1873, No. 9.

[171] B.C. Stat., 1908, c. 44, s. 13.

[172] B.C. Stat., 1908, c. 30.

[173] B.C.S.P., 1904, p. G 41. Turner to McBride, April 8, 1903.

[174] Ibid., p. G 45. Turner to McBride, November 3, 1904.

Apparently the 1894 arrangement for five-year leases of twenty-acre lots did not satisfy these would-be immigrants.

Pre-emptions of surveyed or unsurveyed Crown land were still not to exceed 160 acres, and were to be obtained at $1.00 an acre. After two years of continuous personal occupation and after making improvements of $2.50 an acre, the pre-emptor was to receive his Crown grant. The restriction to one claim at one time still held good. In this year the category known as third class lands disappeared, but the other two classifications remained. First class lands, those suitable for agricultural purposes, now cost $10.00 an acre - a doubling of land prices since 1891, as second class lands were now to cost $5.00 an acre. In addition, the Minister reserved the right to increase the price on either class if and when he saw fit.

Timber lands were now defined as lands containing 5000 feet of milling timber per acre east of the Cascades and 8000 feet west, and were no longer for sale for agricultural purposes. No purchase of any land could exceed 640 acres nor be below 40 acres. No second purchase was permitted until the previous one had been completed and improvements to the extent of three dollars an acre made.[175] Cultivation

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[175] Unofficial figures set the number of acres of alienated agricultural land up to this point at 2,500,000 acres. As a stimulus to the improvement of the land, it was taxed as wild land at four per cent per annum on assessed value until improvements were made. Then the tax was materially reduced. (See Gosnell, R.E., "History of farming," in Canada and its Provinces, Vol. 22, p. 546.)

constituted improvement. Hay leases were still available, and still no Chinese was allowed to pre-empt or buy land.

In 1908, the year this act was passed, 1,535 pre-emptions were filed, of which surveys were made amounting to 66,788 acres.[176] The 2,438 certificates of purchase accounted for another 147,980 acres, an average of 60 acres per purchase. Only 1,667 Crown grants were issued and, as usual, the number of certificates of improvement lagged far behind at 256. Cash received for purchased land, due to go up 400 per cent in two years, amounted to $548,036.

A radical departure from established practice was made in 1911 by reserving all unsurveyed lands along the rights of way of the Canadian Northern and Grand Trunk Pacific railraods,[177] and by requiring that all land, taken out of these reserves only after it had been surveyed by the government, should be disposed of by public auction only. In this way the government would secure to itself some of the increase in price caused by the inflationary tendencies resulting from railway construction, and would escape having to sell the land at the minimum prices provided for in the act. The second reason for the reservation was to make some belated attempt at regulating settlement throughout the districts served by the railways. By forcing settlement into

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176 See Appendix B, Table VII, "Private and Government Surveys, 1900-1913, inclusive." (Adapted from: British Columbia. Legislative Assembly. Department of Lands. Annual Report, 1914, p. D 50.)

177 B.C.S.P., 1912, pp. G5-6. "Report of the Minister of Lands, 1911."

those areas already surveyed, it was felt that the process of establishing himself would be considerably easier for the new settler than had formerly been the case when, left entirely to his own devices, he had wandered far off into the bush. For many years the scattered settlements had constituted a grave problem for the government in providing communication. In placing the reservation on these lands, the government realized that temporarily its revenue would drop,[178] but hoped to be able to recoup its losses within a very short time as land within the reserve was surveyed and released for sale by auction. It was anticipated that within two years at least 1,500,000 acres of reasonably good land would be available for sale.

In the same 1912 Report, hope was derived from the fact that 624 certificates of improvement had been issued for 1911, as against 439 for 1910. The remark made that "These figures are interesting in that they disclose the bona fides of the pre-emptor rather than the issuance of pre-emption records"[179] pin-points the weakness of the

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178 The report said that sales had dropped from 2,000,000 acres in 1910 to 900,000 acres in 1911. Tables V and VI show no such drop. The Minister's figures are correct, but he has included an unknown portion of sales from mineral, railway, and coal, as well as from agricultural, land. It has been impossible to obtain any two sets of statistics for the whole period covered in the survey, and which purport to show the same figures, which agree. This is so because in different years and under other administrations, varying returns were included in the totals. (Table VI, "Land and Natural Resources Receipts, 1871-1913," was adapted from: B.C.S.P., 1910, p.B 21, Table 2, and Ibid., 1915, Vol. I, p. C 21, Table 3.) The Crown grants issued in 1913, for example, include grants for town lots, pre-emptions, purchase, minerals, reverted lands, reverted mineral lands, School Act lands, and a miscellaneous group.

179 B.C.S.P., 1912, p. G 6.

entire pre-emption system. Without government inspectors it was too easy for anyone to exploit the land for the two, three, or four years allowed and then acquire it by purchase at the lower pre-emption price without making the required improvements. For the period 1871 to 1913 there were 34,216 pre-emption records issued,[180] but only 7,811 certificates of improvement were ever issued.[181] Part of the discrepancy can be accounted for by the fact that a good many pre-emptors chose to pay for their survey and for the land without waiting the full period allowed under the statute, in which case they would have received a certificate of purchase, not one of improvement. No doubt a large number of pre-emptions were simply abandoned and many never "proved-up".

To provide some check on pre-emption claims, authority was provided at the next session of the legislature to appoint Pre-emption Inspectors whose job it would be to examine into and report on the compliance of the pre-emptors with residence and improvement requirements under the Land

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180 See Appendix B, Table I, "Pre-emption Records, 1873-1913, inclusive." (Compiled from Annual Report of the Chief Commissioners of Lands and Works, 1873-1913, inclusive.)

181 See Appendix B, Table II. Certificates of improvement issued in 1871 came to 44, and for 1872, there were 30. Since there were no detailed statistics by district for those two years, the yearly totals of 44 and 30 have been excluded from the grand total in the lower right-hand corner of the Table. They are, however, included in the 7,811 figure just given above.

Act.[182] By 1913 Robert A. Renwick, Deputy Minister, was able to report to Hon. William R. Ross, Minister of Lands, that:

> The Department has taken up the closer supervision of pre-emptors and pre-emptions with a view to securing due performance, on the part of the pre-emptor, of the requirements of the "Land Act" as to residence. On this work, one Inspector was in the field for several months, effecting a fairly complete examination of the pre-emptions throughout two agencies. His reports justify his employment, as in a great number of instances it was found pre-emptors were availing themselves of the privileges conferred by this part of the "Land Act" for the sole purpose of securing title by cash payment at the rate of one dollar per acre with scant regard to the Statute requirements as to occupation. It is the intention to have a number of Pre-emption Inspectors in the field during the present year.[183]

As was to be expected, the innovation was welcomed by those who were honestly trying to comply with the requirements of the law and whole-heartedly resented by those whose efforts were directed toward holding the land under pre-emption record in complete disregard of the residence and improvement requirements.[184] H. Cathcart, Superintendent of the Inspection Branch, and his five inspectors visited 1,540 pre-emptions during 1913, of which 819 were found occupied and in the course of improvement; 660 pre-emptors were notified

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182 B.C. Stat., 1912, c. 16, s. 12. The Inspectors' tasks were to enter "upon any land held under pre-emption record or purchased from the Crown . . . and report . . . upon the extent, character, and value of improvements made, and any other matter concerning which information shall be required . . . ."

183 B.C.S.P., 1913, pp. D 8-9.

184 B.C.S.P., 1914, p. D 8.

that they must conform more closely to the statutory provisions, and 222 pre-emptions were cancelled and re-opened to settlement. The inspections undoubtedly encouraged the genuine settlers and served to convince the delinquents that they must either conform or make way for settlers who were prepared to do so. In his first report, Cathcart expressed the hope that by the end of 1914 his Branch would have the entire province covered.[185] He was furnishing the Department with a formal report on every pre-emption claim in the province. In each report the details of occupation, improvement, and value of improvements were all listed. As these were to be attached to each individual file, the long-standing confusion over the exact status of such pre-emption claims was about to terminate. Where inspection indicated that the settler was delinquent, he was given sixty days in which to show cause why his record should not be cancelled. Failure to do so resulted in immediate cancellation of the claim. Wherever it was apparent that the settlers were making a genuine attempt to live up to the spirit of the law even though seeking employment off their claims in order to earn a living, Cathcart instructed his men to be as lenient as possible by confining their admonitions to a reminder to live up more closely to their contracted obligations.

As a special condition written into the agreement made with the railway company gave the province a half interest

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185 Ibid., pp. D 13-18.

in many of the townsites being developed along the Grand Trunk Pacific,[186] these inspectors were called upon to select the government lots in them. Their greatest difficulty was keeping off squatters. As though the double tasks of checking pre-emption claims over the province and of selecting government lots along the Grand Trunk Pacific would not have kept the six men busy, it also fell to them to clear and dispose of by public auction government lots held in Point Grey, Kitsilano, and Hastings.[187] After paying $380 an acre to have the 9.6 acres in Kitsilano cleared, the Inspectors sold the 96 lots at an average price of $914. In Hastings, 59.4 acres were cleared at $225 an acre; for the 128 lots sold, the average price obtained was $1,162. These lots had been sold by auction on May 20, 1913. During the summer, the 122 acres in Point Grey bounded by English Bay, Alma Road, 10th Avenue and Crown Street were cleared, but only 160 lots in ten blocks were sold at the auction held November 3. Although the returns were not then all in, Cathcart reported that thus far $240,000 had been received from the sale, indicating that even forty years ago a house in Point Grey was likely to prove

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186 These special conditions had been imposed on the Grand Trunk at the time of sale. (See B.C.S.P., 1914, p. D 7.) In addition to guaranteeing principal and interest on debentures for the Canadian Northern up to the sum of $35,000 per mile for 500 miles on the mainland, the McBride government's agreement also gave the company free right of way through Crown lands and exemption of the whole line from taxation until 1924. The special condition consisted of free land grants to the company of certain areas for townsite purposes provided the government received a one-third interest. (See Howay, F.W., op. cit., pp. 232-233.)

187 B.C.S.P., 1914, p. D 17.

expensive.

The previous year the second sale of government townsite lots along the Grand Trunk Pacific had been held at Prince Rupert. A most successful sale it was, completely vindicating the decision taken in 1896 to incorporate in the Land Act provision for the reservation of one-quarter of all such lots to the government. In 1909 at the first sale, 1,346 lots had sold for $765,191, an average of $570 a lot; but at the 1912 sale, at which only 282 lots were sold, $1,192,475 was realized, an average price per lot of $4,228.[188]

With three railroads nearing completion - the Grand Trunk Pacific to Prince Rupert, the Canadian Northern down from the Yellowhead Pass to Vancouver, and the Pacific Great Eastern northward to Quesnel - the government could well take some comfort in contemplation of its holdings of town lots and could look for a material increase in the provincial revenue. But unfortunately for its hope of increased revenue, a depression intervened in 1913. The war began the next year. Land purchases fell off from a total of over 1,000,000 acres in 1912 to less than half that amount in 1913,[189] with a decrease in revenue for the same two years of over $1,500,000 from the $2,525,497 received from sales in 1912. But having embarked on an ambitious plan for assisting and directing settlement, the government was pleased that, if sales were falling off, pre-emptions had increased over 50 per cent for the year.

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188 B.C.S.P., 1913, p. D 8.

189 See Appendix B, Table VII.

The outstanding increase from 2,383 pre-emptions in 1911 to 3,655 in 1912 was largely accounted for by settlers being enticed into the areas served by the two new transcontinental railroads,[190] but the government was now fully prepared for these settlers.

Having kept abreast of the requirements in the way of adequate surveys of lands previously set aside for pre-emption entry, the government was securing data on the adaptability of various sections of the province to different agricultural pursuits.[191] By means of pamphlets and adequate maps the Department of Lands could inform any settler of the type of land to be found where he proposed to locate. For those who wanted to buy land, its average selling price, including the cost of survey, was now $6.00 an acre, which compared very favourably with the average price of $12.68 an acre being charged by the Canadian Pacific and by large land-holding companies throughout the rest of Canada.[192]

For the final year before the war there was a marked falling off in land revenues. Much of the drop was due to the fact that in 1912, with the establishment of a separate Forestry Department, $1,000,000 had been transferred

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190 Appendix B, Table I, shows that for 1912 Alberni district with 435 pre-emptions was running close behind Prince Rupert. With 631 registered, Prince George had the highest number and left all other areas far behind in 1913 with its record number of 1,071 pre-emption entries.

191 B.C.S.P., 1913, p. D 8.

192 Loc. cit.

to it. Because of the "financial stringency prevailing,"[193] there was a noticeable decrease in land activities. Sales fell off rapidly because of the Department's decision to hold no further auctions during the period of depression. The deficit was expected to be overcome when the Grand Trunk Pacific was completed later in the year. In the spring lots had been sold in Prince George for about $1000 each.

Thus at the end of 1913 provincial land legislation was such as to have the effect Lytton had envisaged for it in 1858. Town lots were being sold by public auction in order to capitalize on local land booms, and at such prices that even if the lots were being bought for speculation, the government had no cause for complaint. Land for settlement by pre-emptors was being surveyed before it was made available to settlers.[194] Immediate cash payment was being required from purchasers. Speculation in country lands was being forestalled by the upper limit of 640 acres placed on sale of Crown lands. No unreasonable impediment to pre-emption was placed in the way of settlers whose desire to fulfil their pre-emption obligations was sincere. Better still, although no systematic classification for agricultural purposes was being made during the survey of land held under government reserves, the Department of Lands was now fairly

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193 B.C.S.P., 1914, p. D 7.

194 Settlers need not, of course, take up land in the government reserves. They would only do so if they wished to settle along the lines of the Grand Trunk Pacific or the Canadian Northern railways.

launched on a program of directing settlement into areas where the settler would at least have the benefit of railway outlets for what produce he might grow.

For its program to have been of maximum benefit, however, the Department of Lands should have insisted that its surveyors carefully classify the land surveyed with a view to its agricultural potential. Paid as they were on an acreage basis,[195] and in all probability not too well qualified to make such classifications in any event, the surveyors were not inclined to differentiate between good and bad farm land. In British Columbia, where soil conditions are so variable, a much more detailed examination of land is required by surveyors than was given in any field notes sent to the Lands Office. The result was that, in many instances, settlers took up lands totally unsuited for agriculture. Because pre-emptors as a group were usually men of limited financial means and frequently of equally limited experience in the selection of lands, it was manifestly the responsibility of the government to safeguard them from wasting their time, money, and energy on marginal land. The sincere settler who was willing to spend his life in turning the wilderness into a productive farm might reasonably have felt entitled at least to good land. Rather than leave the choice of location to the settler himself, with his limited knowledge of the country, the government should have accepted the responsibility. But as it did not, anyone who cares to look

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195 Forests of B.C., p. 101.

may find the ruins of hundreds of abandoned homesteads in any one of a number of valleys in British Columbia, some perched on mountainsides, others on benches, and still others beside small creeks, all deserted because either the cost of clearing was excessive, the soil was unproductive, or no market was available.

Between 1859 and 1913 then, the wheel had gone full circle in certain aspects of land legislation. The pre-emption price of four shillings tuppence established on Vancouver Island in 1861 by Douglas was not far removed from the $1.00 per acre charged pre-emptors from 1870 to 1913. Deferred payments, allowed by Douglas, were still allowed in 1913. Douglas, too, restricted pre-emptions to 160 acres, a provision to which the provincial government did not return until 1908. Thus it can be seen that though changes in the act from 1860 to 1913 in regard to pre-emptions were numerous, changes of any significance were comparatively few.

Changes in the act with respect to purchasing government land outright were perhaps more significant. From 1871 an almost steady increase in price per acre is apparent. By 1871 the original price of ten shillings had been reduced to four shillings tuppence and presently to $1.00 an acre. But in 1884 it was raised to $2.50 for all except "mountainous tracts", which still cost only $1.00. In 1891 price of first class land became $5.00, with second class at $2.50, and third class at $1.00 an acre. Finally in 1908 the best land was selling at $10.00, second class at $5.00, and the category

of third class was abandoned altogether. At this time it was specified that the Minister of Lands could increase the price of any land if he so wished. The many changes in the act from year to year chiefly regulated whether payments were to be cash or deferred, and whether land must be surveyed or not before payment was made. If the settler had the money, the amount of Crown land that could be bought outright in 1871 was unlimited. In 1884 the first limits to purchases were imposed when the amount of unsurveyed government land that could be bought was limited to 640 acres. In 1891 came the one big restriction on outright purchase - no more than 640 acres could be purchased, whether surveyed or not, nor could a second purchase be made until the first had been occupied for two years and improvements made equal to the original cost of the land. These limits were still effective in 1913.

Certain motives become clear at each stage in provincial policy in the disposal of agricultural lands. When, in 1860, Douglas realized that his ordinance of the previous year dealing only with the sale of land could not meet the requirements of miners who had been unsuccessful in their search for gold, he instituted the pre-emption system. With minor alterations, the privilege of pre-emption remained permanently effective, its purpose being to make land readily available at a nominal charge to <u>bona fide</u> settlers. The charge of $1.00 an acre was levied in an attempt to forestall speculation only, and never as a means of raising revenue.

By 1875, when government morale was at its lowest point owing to the non-fulfillment of Section 11 of the Terms of Union, and when the province was competing for immigrants with eastern Canada and the United States, free grants were instituted, only to be abandoned in 1879 when the actual construction of the Canadian Pacific was well under way. The year before its completion in 1885, when immigrants became more numerous with a consequent sharp increase in the demand for land, the upset price was raised to $2.50,[196] although no change was made in the pre-emption price. In 1891 the further rise in price to $5.00 and the 640-acre limitation placed on any type of land that could be bought showed the continuing trend. When, after the turn of the century, as a result of the promotional activities of the Agent-General in London, the Provincial Bureau of Information in Victoria, and the numerous land companies, the demand for public lands rose to its highest point,[197] the price of land was raised again, this time to $10.00 for good farming land, and more severe limitations were placed on the quantity that could

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196 A comparison of the 1883 and 1884 figures given in Appendix B, Table V, shows that pre-emption records went up from 200 to 707, certificates of purchase increased from 328 to 615, and total acreage deeded jumped from 54,637 to 146,197 acres.

197 Some indication of the increasing interest in lands in the province can be gained from the fact that in 1890 the Department of Lands received 4,168 letters; by 1900, the figure was 12,943, and in 1910, a total of 37,188 queries was received - an average of 100 letters a day for every day of the year. (See Appendix B, Table V.)

either be bought or pre-empted.

By 1913 the government had realized finally that good farm land in British Columbia was not inexhaustible and that it had an obligation to settlers to direct them away from isolated areas and onto land which would be served at least by railway communication. Thus the problem confronting the government by the end of 1913 was not the increased alienation of agricultural land, but the development of the lands already granted.[198]

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Many of the problems of land disposal in British Columbia before 1913 arose from the ever-present difficulty of getting the land surveyed ahead of pre-emptor or settler. Although his intentions with regard to surveying the vacant lands of the colony were of the best, Douglas was unable to proceed far. It was his purpose, as indicated in the letter to Lord Stanley at the Colonial Office, to survey the land before opening it for settlement. This survey he considered to be a "measure of obvious necessity."[199] To facilitate this operation, Lytton informed Douglas on July 31, 1858, that he was sending out a detachment of the Royal Engineers,

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198 Appendix B, Table VII, shows that in the years 1900-1913, inclusive, 13,980,360 acres were surveyed. Since this amount of land could not possibly have been fully developed by 1913, a major task of the Department of Lands became that of directing its settlement through legislative action.

199 Papers relative to the affairs of British Columbia, Part I, pp. 13-15, s. 21. Douglas to Stanley, June 10, 1858.

whose most important task was "to survey those parts of the country which may be considered most suitable for settlement."[200] At the same time, Lytton said that it would only be "reasonable and proper" to expect private individuals buying land to pay for the cost of survey. This opinion became permanent policy, and British Columbia has ever since required purchasers or pre-emptors of unsurveyed land to pay for the cost of such surveys, a practice differing from that in every other Canadian province.[201] In discussing the most urgent demands upon the public revenue of the colony, Lytton listed those demands as police, absolutely necessary officials, public works to facilitate landing and travelling, and, above all, surveying.[202] In citing for Douglas what he considered to be the principles by which public lands should be disposed of, Lytton emphasized the value of not selling land "beyond the limit of what is either surveyed or ready for immediate survey."[203] Douglas acted upon this principle without delay by sending the Royal Engineers to the mainland to survey "all the open districts of land on Fraser's River, so that the country may be laid

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200 Ibid., Part I, pp. 44-46, s. 2. Lytton to Douglas, July 31, 1858.

201 B.C.S.P., 1913, p. D 229.

202 Papers relative to the affairs of British Columbia, Part I, pp. 47-48, s. 11. Lytton to Douglas, No. 8, August 14, 1858.

203 Ibid., Part I, pp. 49-50, s. 2. Lytton to Douglas, No.9, August 14, 1858.

out for immediate settlement and occupation."[204]

The theory of requiring lands to be surveyed before sale was excellent. In practice, Douglas soon discovered that it would not work, for development of the colony would be seriously impeded and squatting on government lands would be widespread. On January 12, 1860, Douglas was compelled to confess to the Colonial Office that since the surveys could not begin to keep pace with the demand for land, he had authorized the pre-emption of 160 acres of unsurveyed Crown land intended for agricultural purposes, subject to a charge of ten shillings an acre at the time of survey.[205] The same regulation with regard to surveying was in effect at 1913:

> Any pre-emptor of unsurveyed land shall have the land recorded by him surveyed at his own expense (subject, however, to a rectification of boundaries) within five years from the date of the pre-emption record by a surveyor approved of and acting under instructions from the Minister.[206]

By the end of 1858 "a few thousand acres" in the immediate neighbourhood of Victoria had been surveyed. By the end of 1860, 175,000 acres had been completed and divided into 100-acre lots[207] on Vancouver Island, and

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204 Ibid., Part III, p. 12, s. 10. Douglas to Lytton, May 23, 1859.

205 Ibid., Part III, pp. 90-92, s. 3. Douglas to Newcastle, January 12, 1860.

206 R.S.B.C., 1911, c. 129, s. 25.

207 Report of C.C.L.W., 1873, p. 54. The lands of Vancouver Island were laid out in areas five miles square, then subdivided into the 100-acre lots.

41,000 acres of valuable delta lands at the mouth of the Fraser River had been laid out in 160-acre blocks in conformity with the system adopted in the United States. Those surveys on Vancouver Island had not been done by the Royal Engineers, and were subsequently found to be very incomplete; checks of the surveys made by the Engineers on the mainland revealed that their work required no corrections of any kind.[208]

Between 1860 and 1871 only insignificant sums were appropriated by the colonial government for surveys, most of the work that was completed having been done on Indian reserves and some few pre-emption claims. Large tracts of land for timber cutting and pastoral purposes were surveyed, but the cost of these surveys was borne entirely by the lessees themselves.[209] The colonial government, with an empty treasury, was confronted with the task of surveying an area considerably larger than any one of the prairie provinces and so rugged as to make a systematic survey of the whole practically impossible, particularly as much of it was covered with a growth of timber which rendered the country absolutely inaccessible, even for pack-horses. Members of survey parties had to pack their own supplies. After the arrival of the Royal Engineers, provision was made for the office of Surveyor-General. Colonel Moody was the first of a succession of such officers

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208 B.C.S.P., 1913, p. D 226.

209 Report of C.C.L.W., 1873, p. 54.

who tried to do what they could with the meagre resources at their disposal, but the annual appropriation for the purpose was grossly inadequate to meet the demands placed on the office by the development of the province.

After 1871, the importance of surveying the public lands upon some uniform system was recognized by every government, but even in 1873 Beaven, then Chief Commissioner of Lands and Works, was complaining that the $10,000 voted in 1872 was "totally inadequate."[210] In addition to a lack of funds, the Department was seriously hampered in its work by the acute shortage in the province of properly trained surveyors. The provision contained in section 10 of the 1870 Land Ordinance permitting the surveyor to survey lands "by such metes and bounds he may think proper" together with the absence of a trained corps of surveyors resulted in the Crown-granting of isolated blocks of land whose exact position was only roughly known to the Lands Office.

The confusion became even greater after 1875 when surveyors hired by private individuals were permitted when absolutely necessary to depart from the official Polyconic, or township, system adopted in 1873 (adopted "as nearly as circumstances will permit"),[211] and even to omit connecting the survey by a tie-line with some known point

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210 Loc. cit.

211 Loc. cit.

established in a previous survey if it were found impracticable to do so.[212]

A further difficulty arose from the confusion surrounding the location of the land to be granted to the Dominion government for railway purposes after 1871. The appropriation for provincial surveys fell from a peak of $40,000 in 1874 to a low of $500 in 1879.[213] Beaven said in his Report for 1873 that the early beginning on a systematic survey was delayed "for the same causes as last year, viz., the restrictions placed upon our lands by the Terms of Union, and the uncertainty which existed as to what lands would be claimed by the Dominion Government for railway purposes."[214] He even made an attempt to get the Dominion to agree to reimburse the province for the cost of any surveys made on lands subsequently found to be included within the Railway Belt, but "this, however, was unsuccessful."

On July 21, 1873, the day on which the time-limit before which the Dominion was to have begun construction expired, Beaven sent two surveyors into the New Westminster district to subdivide townships into sections of one square mile each. Under this system, which had already been adopted by the Dominion government and used in Manitoba, and was currently employed in the United States, each township

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212 B.C. Stat., 1875, No. 5, s. 62.

213 B.C.S.P., 1913, p. D 227.

214 Report of C.C.L.W., 1873, p. 54.

contained 36 sections, each section containing one square mile or 640 acres. By placing a post in the center of each section, four quarter-sections of 160 acres each could be obtained. It was a simple system. It had the advantages of conforming with surveys elsewhere on the continent, of making it easy for settlers to locate their lands, and of reducing by its simplicity the cost of surveying and the possibility of mistakes. Since many of the townships surveyed in the New Westminster area under this plan were done on contract, the price varied, but in 1873 Township No. 7 was surveyed by W.D. Patterson at a cost of $19 per mile.[215] At this rate, it would have cost $1,596 to survey the entire township. It was the custom in eastern Canada to adopt a fixed survey price per mile for all the different classes and grades of survey, but such a plan was found to be impracticable in British Columbia. There were not enough surveyors; there were too many conflicting claims to many parcels of land, all of which the surveyor had to check; there were too many old lines of previous surveys that had to be discovered and taken up correctly and traced through dense timber and underbrush. Such factors rendered a fixed price out of the question for British Columbia. Surveyors would not accept it.

It was with much pleasure that Beaven could inform the House in 1875 not only that the pre-emption claims in

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215 Loc. cit.

the main settlement centers taken up by settlers fifteen years back had been surveyed, but also that the government now had at its disposal for incoming settlers a large area of surveyed land, "the nature and character of which are minutely described upon the maps in the Land Office, thus enabling intending settlers to obtain as much reliable information in reference to the lands as it is possible to gain without personal inspection."[216] And indeed, the survey of 160,729 acres throughout the Fraser, Thompson, and Nicola valleys was a creditable performance. But as the gloom deepened over the failure of the railway from eastern Canada to materialize, the Walkem government decided in 1876 to reduce the expense of surveying until "the influx of population and the financial circumstances of the Province warrant the expenditure."[217] Accordingly, the appropriation was reduced from $8,000 in 1877 to $5,000 in 1878, and the next year it went down to a mere token allotment of $500. Not until 1907 did the amount of money expended on surveys again begin to reflect the urgent need for extensive government surveys.[218]

For the first time, codification of the survey system to be employed throughout the province found its way into the Land Act in 1879.[219] It was the Township, or Polyconic,

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216 Report of C.C.L.W., 1875, p. 115.

217 Ibid., 1876, p. 350.

218 B.C.S.P., 1913, p. D 227.

219 B.C. Stat., 1879, c. 21, s. 8.

system, the details of which were exactly as those found in the Dominion Homestead Act of 1872.[220] At the same time, instructions were listed by which surveyors were to be guided in keeping their field notes, certified copies of which had to be sent to the Land Office in Victoria for approval. Approval was given only after the notes had been checked in detail to see that they agreed with previous surveys and field notes made in the district. Seventeen different instructions were included for the surveyor's guidance, every one of which had to be followed in detail and in sequence. Beginning with the instructions as to how the pages of his book must be ruled, the section went on to tell him to place the date in his books as the first entry every morning; to make full notes as to the character of the country and its soils, lakes, and timber; to make all entries in pencil and to make no additional entries therein; to keep duplicate copies in ink; to construct a plan on the scale of four inches to the mile; to chain correctly; and to note the direction, width, and volume of all rivers or streams crossed; to make a general description of each township as it was completed; to note carefully the location of all bearing trees and to make an especially careful record of the kind of timber and the size of trees; to locate accurately all Indian villages, cabins, and fields; to describe all settlers' cabins and improvements and to give the names of the settlers; to locate all roads and trails

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220 Can. Stat., 1872, c. 23, ss. 3-16.

"with their direction whence and whither"; and then to proceed with his survey!

Reports submitted by all surveyors were included in the Annual Report of the Lands and Works Department each year up to 1898, but thereafter they were deleted. Not until G.H. Dawson was appointed Surveyor-General to replace E.B. McKay in 1911 were the reports resumed. Under statutes which had been passed in 1886[221] and 1891[222] to protect surveyors from action for trespass and to regulate the qualifications for admission to practice, the government surveyors had been working away quietly doing what they could under their severely restricted budget to survey timber, mineral, agricultural, and coal lands, as well as to make valuable exploratory surveys[223] throughout the province, but not until Dawson took over the Surveyor-General's office were the

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221 B.C. Stat., 1886, c. 20.

222 B.C. Stat., 1891, c. 17.

223 In 1873 an exploration party had been directed to obtain information about the land from Yale to New Westminster on the south side of the Fraser. (Report of C.C.L.W., 1873, p. 55.) Periodically thereafter such exploratory surveys of certain areas were made to secure information for the government regarding the agricultural potentialities, ranching suitability (Report of C.C.L.W., 1890, pp. 281-293, report of a survey of the Chilcotin country), mining prospects (B.C.S.P., 1874, report on the east coast of Vancouver Island and Cassiar district), or for an opinion regarding the practicability of a railroad (Report of C.C.L.W., 1897, pp. 436A-436C, notes on a trip from Teslin Lake to Dawson City.) For results of additional surveys throughout the province, see: British Columbia. Legislative Assembly. Department of Lands. Crown Lands Surveys; extracts bound in one volume for convenience, 1901.

reports submitted to the Lands Office considered to be of sufficient interest to the public to warrant their inclusion in the Sessional Papers where the public could have access to them. Upon assuming office, Dawson thoroughly overhauled the entire division by increasing the staff, obtaining new and increased office space, and establishing new branches within the Department.[224]

Dawson soon discovered that the system of surveys in the province, regardless of what the statutory provisions had been, was quite unlike anything he had previously encountered. To begin with, he found that government surveys of Crown lands were lagging far behind the other western provinces. But it is to be noted that the Dominion had been responsible for the surveying of Manitoba and the Northwest Territory lands, and the surveys carried out there are generally recognized as being among the best in the world. Dawson recognized these facts. The lack of funds had, of course, seriously retarded surveys, but so had the terrain with which surveyors had had to contend. Finally, when it is realized that only in British Columbia of the four western provinces were there found such a variety of natural resources, all of which had to be surveyed before development could proceed, it will be obvious that Dawson had at hand extenuating circumstances for the conditions

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224 The first new branch established was the Geographic Branch in 1912, whose function it was to keep abreast of the great demand for reliable maps in the various provincial land divisions. Up to 1912 the only maps available had been not only long out of date, but also grossly inaccurate.

he found in his Department. He did not complain of what he found; indeed, in explaining why British Columbia could not be compared with any of the other western regions he said that "it is seldom that a country is so wonderfully endowed by nature that portions of its Crown lands can be sold several times, and made a more or less permanent source of revenue by taxation, under a variety of Statutes, without serious inconvenience by the holders of any rights by the grants in question."[225]

It is necessary to anticipate somewhat here the material to be found in the following chapter in order to explain Dawson's comment. The work of the Survey Branch involved, among other duties, making surveys under two other acts in addition to the Land Act. Under the Mineral Act, no claim could be Crown-granted until it had been surveyed, and under the Coal and Petroleum Act the provision was the same. Under the Land Act, the Survey Branch was called upon to survey pre-emptions, purchases, and leases, and until the establishment in 1911 of the Forest Branch, it was also called upon under the Land Act to survey all timber leases and limits. The Survey Branch had to regulate surveys made under all these acts; the overseeing and regulating was not always done but the provision was there. Surveys made under the Land Act were by far the most numerous; titles given under the act reserved to the Crown all coal and minerals, Crown grants to which could

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225 B.C.S.P., 1913, p. D 230.

be obtained under the appropriate acts. It was possible, therefore, to have on the maps of the Department a piece of land to which a Crown grant to the surface had been given under the Land Act, another Crown grant under the Coal and Petroleum Act, and a third Crown grant issued through the Mineral Act for the metals under the surface. At the same time, the whole area embraced within these three Crown grants could be included in a timber leasehold granted since 1892. And then to add to the existing confusion, a fifth record could be given to another man to divert so much of the water contained in any stream running by or through the property. Such a piece of land would have been required to be surveyed four separate times, and would have had four official designations, all of which would appear on the Department map. Until 1912, the Survey Branch had little actual control over the work of private surveyors by whom much of the provincial surveying had been done, any one of whom could have submitted notes that did not accord with the others already received.

Some confusion resulted from the two kinds of surveys - government and private. In the case of the former, a continuous survey was made over an extensive area of unalienated Crown lands, carried out in the manner prescribed by the Department. Returns of all these surveys were accompanied by reports on the character of the country, its physical features, and other details. In the case of surveys made at the instance of private individuals, however, and known as private surveys, the jurisdiction of the Lands Department was not clearly defined

until 1912,[226] and surveyors, although authorized by the Department to survey provincial lands, naturally felt called upon to survey the lands in the best interests of their clients. Such private surveys consisted in the marking off of land held under pre-emption record, application to purchase, timber licences, and coal leases, among others. As the Department contributed in no way to the cost of such surveys, it was found practically impossible to insist upon conformity with adjacent surveys, particularly where tie-lines of any considerable length were required. The result was that over the province isolated patches of land were surveyed and Crown-granted although the position of the lands relative to any previously established point was rarely definitely shown.[227]

The annual expenditures on surveys listed in the Public Accounts for each year show how little was spent on this essential service before 1909. From 1871 up to and

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[226] B.C. Stat., 1912, c. 43, s. 3.

[227] The 1879 Land Act established the price of private surveys carried out by surveyors in the employ of the Lands Department at not less than $10 for each 160 acres. (B.C. Stat., 1879, c. 21, s. 11.) In 1891 the charge was raised to fifteen cents an acre (B.C. Stat., 1891, c. 15, s. 15), but in 1910 was altered to "such fees as are considered by the Department sufficient to defray the cost." (B.C. Stat., 1910, c. 28, s. 11.) Table VI in Appendix B shows that between 1878 and 1913 the government collected $101,437 for private surveying. If an average cost of fifteen cents an acre is assumed for the entire period, some 676,250 acres were surveyed by government surveyors for private individuals. It is significant that 72 per cent of the surveying was done in the four years beginning in 1910.

including 1900, a total of $466,970 had been expended on surveys, an average of $16,102 a year, hardly enough to have paid for the surveying of pre-emption claims for which certificates of improvement had been issued. As late as 1906, only $6,987 was being spent for this vital service, but with the general reorganization that took place within the Department of Lands and Works in 1909, and with the establishment of a separate Ministry of Lands, $190,118 was spent on surveying, a sum which had risen to $448,885 in 1911. The expenditures of the years 1909, 1910, and 1911 were largely for the purpose of surveying the reserved lands along the Grand Trunk Pacific Railway. By the end of 1912 that entire portion of the province extending from the Alberta border to Prince Rupert was completed, making it the first such carefully planned and completely executed survey of its kind in British Columbia.

When Dawson took over his new duties in 1911, he found that the plotting and gazetting of lands from the books of field notes sent in to Victoria had fallen seven months in arrears, and that so great was the increased land activity throughout the province, reports of which had to be funnelled through the Lands Department, that the entire attention of the staff was being devoted to the handling of field notes to the exclusion of such work as plotting the tie-lines necessary for the compilation of connected plans of surveyed lands for which there was such a public demand.[228] He

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228 B.C.S.P., 1912, p. G 8.

was able to state in his second annual report in 1912 that because of the increased staff, field notes which required no amending were being dealt with three weeks after their receipt and that the Geographic Branch was utilizing the information thus obtained to prepare new maps as quickly as possible.[229]

To convey some idea of the magnitude of the task assigned the Survey Branch, the following table will be helpful:

Work of the Survey Branch, 1907 - 1913[230]

Year	No. of books received	No. of lots received	No. of lots gazetted
1907	1622	1830	1762
1908	1862	2161	2145
1909	2204	3365	2942
1910	2893	5098	3072
1911	5259	7312	6737
1912	5900	7950	7950
1913	6813	6770	6770

When a government survey of a district was made, all pre-emption records, applications to purchase, and leases were assigned to district lots or portions of lots which had been surveyed on a regular system, a procedure which meant that the work to be done in Victoria was comparatively light. When an isolated pre-emption had to be dealt with, however, the procedure was not always so simple. Upon receipt of a pre-emption record the settler had his land surveyed at his own expense by a surveyor for whose services he paid himself. It

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229 Ibid., p. G 9.

230 Compiled from figures given in B.C.S.P., 1912, p. G 10, and Ibid., 1913, p. D 299.

was a private survey. The field notes went in to Victoria. If the description contained in the original certificate of record was clear, if the boundaries as determined by the private survey agreed with that description, and if the pre-emption was so situated as to leave no possibility of its conflicting with other pre-emptions or applications, the field notes were then checked and plotted on the official plan and on the master reference map. Then a notice was published in the British Columbia Gazette indicating that the claim had been surveyed and the survey found to be satisfactory. The local Government Agent was then supplied with a copy of the official plan of the survey. If a Crown grant was applied for within the time specified in the act, two more copies of the plan had to be made. But if the pre-emption was located in the vicinity of an old Crown grant, or of an unsurveyed timber or coal licence, or of any application which pre-dated the pre-emption record, the Department had to satisfy itself that there was no interference. To do this meant protracted correspondence with the surveyor who by this time could have been at the other end of the province. The process of checking the one set of field notes could have dragged along for a year. Fortunately for the Department and for the settler, there seem not to have been too many negotiations of this kind, since the number of books of field notes and the number of lots gazetted in each year in the above compilation coincided reasonably well.

By 1913 the full effect of the reorganization begun in 1911 was being felt, not only in coping with the office work, but also in surveying throughout the province.[231] There were now 75 surveyors working in the field, scattered from one end of the province to the other and no longer confined to the vicinity of the transcontinental railway lines. One million acres of Crown land had been surveyed for the government,[232] most of which was subdivided into lots varying in size from 160 to 40 acres; 400 miles of district boundaries were run; explorations of the Cassiar and Peace River districts were carried out and, in conjunction with the governments of Alberta and the Dominion, a beginning was made on the survey of the Alberta-British Columbia boundary.[233]

Private surveys for the year covered 1,500,000 acres of land held under special timber licence,[234] an acreage which represented only about thirty per cent of all land held under

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231 B.C.S.P., 1914, p. D 296. Some indication of the current activity in public lands may be conveyed by the fact that the report of the 1913 programme carried on by the Department of Lands occupied 508 pages, of which 188 pages were devoted to work within the Surveyor-General's branch. In addition to the Surveyor-General's report, there was one on forests, one on water, and a general one covering agricultural lands.

232 See Appendix B, Table VII.

233 For the complete report on the project, see B.C.S.P., 1914, pp. D 317-322. See also n. 5.

234 Since this acreage was all within the Railway Belt, it will not appear in Table VII but will in the immediately following summary in the text.

such licences and still unsurveyed at the beginning of the year. In addition, 500,000 acres of land held under application to purchase were surveyed privately.[235]

In spite of a late beginning, government surveys accounted for one-quarter of all surveys made in the province since the turn of the century. Altogether, 13,980,360 acres had been surveyed since 1900, distributed fairly evenly among agricultural, mineral, and timber lands. Much of this surveying had been greatly facilitated by the fact that provincial surveyors were able to use what was referred to as the "Canadian Pacific traverse", a base line established through the Railway Belt to Port Moody[236] by the Canadian Pacific Company. Lines were run from either side of this established base throughout the province. Including the area surveyed in the Railway Belt, 26,299,689 acres of provincial territory had been surveyed at the end of 1913, roughly one-ninth of the total land area.

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235 See Appendix B, Table VII. It shows the number of acres surveyed privately for each of pre-emptions, purchases, mining claims, timber limits, coal licences, and leases for the years 1900-1913, inclusive, as well as the government surveys for the same period.

236 B.C.S.P., 1913, p. D 229. In 1891 the system of triangulation was being used in the Railway Belt. Two surveyors covered 60 miles a year at a cost of $2.50 per square mile, or two cents an acre, "certainly a very cheap rate considering the character of the country surveyed." (See British Columbia. Legislative Assembly. Department of Lands. Crown land surveys 1891-1897, p. 352.)

Total Area Surveyed in British Columbia by 1913.[237]

	In area under provincial jurisdiction Acres	In Railway Belts - Dom. and E & N. Acres	Total Acres
Area of land surveyed	16,635,000	2,967,659	19,602,659
Area of timber surveyed	4,182,000	1,581,863	5,763,863
Area of coal lands surveyed	-	-	546,000
Area of mineral claims surveyed	-	-	387,167
			26,299,689

As predicted by T. Kains, Surveyor-General in 1891, Dawson found that to survey British Columbia in such a way that it would conform to the survey system uniformly adopted elsewhere in Canada was a task "attended with enormous expense."[238] Because of its rugged terrain, British Columbia was not at all suited to the township system of surveying. Dawson himself admitted that were the surveying of the province to be started again, it was improbable that the township system would again be used. Of the $1,557,515 spent on government surveys to the end of 1911, as listed in the annual Public Accounts, half of it had been expended in the two years 1910 and 1911. The great amount of work involved in connecting all the isolated and scattered surveys which had been made for the past fifty years, and in making these surveys conform to the township plan required all the appropriation Dawson could persuade the legislature to vote.

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237 B.C.S.P., 1914, p. D 300.

238 British Columbia. Legislative Assembly. Department of Lands. Loc. cit.

The main reason, however, why British Columbia practice deviated so far from that in the rest of Canada was the statutory authority given by Douglas's Land Proclamation of 1860[239] to the alienation of Crown lands before they had been surveyed, a practice which was continued unaltered throughout the years. The theory, so well understood by Douglas, that lands should be surveyed before being sold, had to give way in the face of the realities of British Columbia topography.

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239 Papers relative to the affairs of British Columbia, Part III, pp. 91-92. Proclamation of January 4, 1860.

CHAPTER 2

LAND AND NATURAL RESOURCES

In considering the problems of land settlement policy in British Columbia, mention has already been made of the many complications arising from the province's wealth of natural resources. There are those who delight in developing the theme that 'the people' have been 'robbed' of this heritage of natural wealth. But a detailed examination of continuing government policy in handling mineral lands, timber lands, and water rights reveals how painstaking were the efforts made to give a fair chance to enterprising individuals willing to face the hazards of a new country, to discourage those bent only on speculation, and at the same time to provide sufficient revenue to maintain and develop such a remote and sparsely populated part of the world.

And, in point of fact, were the natural resources so recklessly exploited? It is judged that by 1913 perhaps 500,000 acres of land had been alienated for mining activities and about 8,500,000 acres for timber purposes. Out of British Columbia's 230,000,000 acres, this amount does not seem excessive. It is true that once the minerals had been extracted they could not be restored, and once the timber had been cut it could not be replaced for many years. But the revenue from these activities had sustained and

developed the province during its struggling years, so that 'the people' of today are reaping the increasing benefits of its growth.

An incredible amount of legislation, in addition to that for land settlement, was enacted to regulate the use of these resources of mine, forest, and water course. Mineral resources were the first to engage the ingenuity of the early legislators. Much later, base metals and coal were to come in for their share of legislation, but the regulating of gold mining was the major problem confronting the first governor of the colony of British Columbia.

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With millions of acres of easily cultivated land available for settlement one hundred years ago on the central plains of North America, settlers would never have been attracted to British Columbia for its agricultural lands alone. The Irish tenant-farmer, the Scottish crofter, and the German peasant were all lured to North America by its limitless prairie. Under the prairie sod lay a rich clay loam, easily worked and highly productive. The rugged mountains, the rushing rivers, and the towering forests of British Columbia presented a barrier rather than an inducement to settlement. The fur-traders of the western plains, eventually to be replaced by the farmers of Europe, found their last stronghold in the mountains of Northwest America. But they

were pushed from it not by men searching for land, but by men searching for gold.

Until 1858 the Hudson's Bay Company, interested only in furs, was left in sole possession of New Caledonia and Vancouver's Island, its activities undisturbed by land-seekers. As yet the few treeless acres of the interior dry belt were unsettled. The fur-trade era would doubtless have continued undisturbed for another generation had not the purser of the Hudson's Bay steamer "Otter" taken some gold dust to the United States' Mint at San Francisco in 1858.[1] Within a year, word had spread among the California mining camps that a rich strike had been made in British territory to the north. The rush to the new gold fields which began in 1858 marked the end of one era and the beginning of another in British Columbia. Mining, not farming, replaced the fur-trade as the major economic pursuit of British Columbia.

Having known of the presence of gold on the mainland at least as early as 1856, Governor Douglas took steps in 1857 to protect the interests of the Crown. As in the case of agricultural land, the regulations in effect in 1871 governing mining claims were based on the principles established by Douglas in 1857 and thereafter expanded as the necessity arose.

The laws relating to mining, which were to occupy much of the government's time for years to come, were enacted

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[1] Sage, W.N., op. cit., p. 203.

even before provision had been made for the disposal of such agricultural lands as did exist. As in the case of California, the mining frontier preceded the settlement frontier in British Columbia. Gold, until recent years the most spectacular of all natural resources, lured the first immigrants to the colony.

To regulate the conditions under which gold could be mined by the first swarms of immigrants, Douglas's proclamation of December 28, 1857, declared that "by law all mines of gold," whether on lands "of the Queen or any of Her Majesty's subjects," belong to the Crown.[2] Anyone disturbing the soil in search of gold without authorization was to be prosecuted. The authorization was a mining licence, to be obtained in Victoria at a cost of ten shillings a month (later raised to 21 shillings). Conveyance of land carried no right to the gold, and later silver, under the land. Rights to these had to be obtained by the formal staking of a claim in accordance with the regulations issued along with Douglas's proclamation. The principle so early established that precious metals remain in the possession of the Crown[3] unless formally claimed under the relevant Mining Act has never been altered.

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[2] Quoted in Ibid., p. 206. Douglas to Labouchere, Secretary of State for the Colonies, December 29, 1857. Enclosure 1.

[3] British Columbian, February 12, 1862, p. 2. "The right of the Crown to the minerals in the soil of British Columbia and Vancouver Island."

Subsequent legislation defined how claims were to be recorded and what size and shape they could be. All further changes in the Gold Mining Acts were of detail only. As placer mining gave way to the more expensive and elaborate hydraulic operations, provision was made for Crown-granting mineral lands, but Douglas's omission of such a provision was no oversight. The type of gold mining known to Douglas was confined to the banks of creeks and the sand-bars of rivers, whose gold content was soon exhausted. Hence owning the land was unnecessary. Even the longer-term hydraulic operations required comparatively small tracts of land. Land for gold mining purposes was therefore an insignificant aspect of the provincial land policy. Gold mining, which had attracted to British Columbia large numbers of immigrants, did not require the alienation of extensive tracts of public lands.

To clarify the situation regarding leases of mineral lands, Lytton told Douglas that for base metals and for coal, the holder of such leases was to have secured to him the surface rights also, but where gold and silver were involved, the surface rights were to remain with the Crown.[4]

When he issued his first Land Proclamation on February 14, 1859, Douglas pointed out that all the lands in British Columbia "and all the mines and minerals therein," belonged to the Crown. No lands reputed to be mineral lands

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4 Papers relative to the affairs of British Columbia, Part II, pp. 78-79. Lytton to Douglas, February 7, 1859.

could be purchased, but ownership of agricultural lands not then known to contain minerals would include rights to all minerals on them which might be discovered later. Gold and silver were excepted. Until further notice, gold claims and mines were to be worked under the 1857 regulations.[5]

On August 31, 1859, Douglas proclaimed at Victoria the Gold Fields Act which embodied all that he had learned in the last two years about legislating in respect to mining. In this important document, miners' rights were jealously guarded. As a class, miners were free from the levy of any direct taxes beyond the annual charge of £ 1 for their miner's certificate. Without this certificate they had no rights whatsoever. Mining leases could be secured to cover ten acres for a period of as many years, on payment of £ 25. Bar diggings, that part of the creek or river bank covered at high water, were to be 25 feet wide; dry diggings, never covered by water, were to be 25 by 30 feet, and quartz claims could extend 100 feet along the seam.[6] Only one claim by pre-emption could be held by any one miner, although any number of claims could be purchased. But the discoverer of a mine was entitled to two pre-emption claims, or if the mine had been discovered by a party of men, each could hold one and

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5 Ibid., Part II, p. 65. Proclamation of February 14, 1859, ss. 1, 2, 7, and 9.

6 Ibid., Part III, pp. 58-65. Douglas to Newcastle, September 13, 1859. Enclosure No. 1.

one half claims. Having seen for himself some of the rich claims along the creeks in the Cariboo, Douglas considered that 25 feet was adequate as the width of the claims along those creeks. Since all claims had to be recorded, any dispute concerning the ownership of a claim was to be settled by the Gold Commissioner on the basis of prior registration, not prior discovery.

Between the time the Gold Fields Act was issued in 1859 and his retirement in 1864, Douglas issued seven further mining proclamations,[7] all designed either to regulate gold mining in such a way as to prevent troublesome litigation in respect to claims, or to define further the privileges of free miners. In every Land Ordinance, the right of free miners to enter any waste Crown land, or any private land held under pre-emption or purchase, was reserved, providing that reasonable compensation for any damage done to the surface should be paid.[8]

By the time British Columbia entered Confederation in 1871, mining was regulated by the extensive Gold Mining Ordinance of 1867[9] which consolidated all the enactments of the past ten years. To the variety of claims that could be staked were added bench claims, located behind the dry

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7 See B.C. Consolidated Statutes, 1877, Numbers 152, 183, 186, 188, 191, 197, and 200.

8 See Appendix A, s. 48.

9 B.C. Consolidated Statutes, 1877, No. 123.

diggings, which in turn were to the back of the bar diggings. These bench claims could be 100 feet square; bar diggings could now be 100 feet wide, extending from high water mark into the bed of the stream, and dry diggings above them were to be 100 feet square. In recognition of the fact that the richer bar and dry diggings were being exhausted, hill claims were added to provide for those areas where no benches existed above the creek or river. These hill claims were to have a base line of 100 feet, and extended from there to the top of the hill on which they were located.

Free miners' certificates were issued to anyone, male or female, over the age of sixteen, at a cost of $5 a year, but had to be renewed every year. The record to every claim held under the certificate also had to be renewed each year. A free miner was allowed to hold any number of claims by purchase, as formerly, but now he was permitted to hold two pre-emption claims in the same locality, although one of them had to be a quartz claim. This provision meant that he could have one claim near the water and one, 1500 by 400 feet, along a lode or vein. In addition, he could hold further claims elsewhere, provided always that one was near the water and the other along a lode, and neither of them on the same hill, creek, ravine or bench as his other claims. The interest in his claim was held to be a chattel interest, equivalent to a lease, good so long as he worked the claim regularly and renewed his certificate of record.

For the first time, provision was made in the 1867 Ordinance for the operation of mining companies. Any three or more miners could constitute themselves into a Bed-Rock Flume Company. As placer mining along the creek-beds was no longer yielding the phenomenal returns secured ten years before, it became necessary somehow to get down to bed-rock. Lying on top of the bed-rock was a rich layer of gold, but the labour and expense involved in washing away the surface soil was beyond the resources of the individual miner. As a means to overcome these obstacles, the Ordinance provided for the organization of Flume companies.

On payment of $125 for the privilege, such a company was entitled to construct a flume to convey the water necessary for washing away the surface soil. Permission was granted not only to divert into the flume water from any nearby stream but also to build the flume over any free miner's claim. The water record, however, was subject to the limitations imposed by any previous water record, and the free miner's rights were safeguarded by granting him the right to use as much water from the flume as he needed, provided he returned the water to the flume when it had served his purpose.

Subject to the Governor's approval, leases could be secured for ten acres of dry diggings, half a mile of new bar diggings, and a mile and one half of abandoned bar diggings and quartz reefs. These leases could not be obtained where such land either was or might be worked by free miners,

and in any case, could only be secured "for the miner-like working thereof." Operations had to begin within a specified time and all rights were cancelled once those operations ceased for more than 72 hours. In this way, beneficial use of the lease was assured, and the holding of mineral lands for speculative purposes was thwarted.

Indicative of the temporary and transient nature of the mining operations in the two colonies up to 1866 was the omission from the 1867 Ordinance of any mention of Crown grants to the lands held by free miners as mining claims. Leases were provided for and the miners were secure in all rights to their claims other than surface rights, but there was no section under which the miner could obtain a Crown grant to his pre-emption.

By 1869, mining operations throughout the colony had altered from the easy panning in the creek beds to the more tedious prospecting in the hills away from the once-rich creeks and river sands. The change was taken care of by the Mineral Ordinance of 1869.[10] The new regulations introduced a prospector's licence for coal and base metals, provided for purchase of coal lands, and arranged for Crown grants to mineral claims.

First of all, the 1869 Ordinance provided for a prospecting licence entitling a free miner to seek for and mine coal on all vacant Crown lands and other minerals <u>on all lands</u>. The prospecting licence, as distinct from the

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10 <u>Ibid.</u>, No. 125.

free miner's certificate, was an innovation designed to encourage the search for silver and base metals. Should the prospector discover a mine of silver, copper, lead, iron, or cinnibar, he was authorized to work it regardless of location. The free miner with a gold claim had a secure right to all the gold in the claim, but from now on the prospector could pursue his search for any other mineral even under the free miner's claim. Occasionally the latter had uncovered less valuable mineral deposits in his search for gold and had disregarded them. When any such deposit was uncovered by the prospector, he could work it for two years under the authority provided in the licence now for the first time available to him. At the end of the two years, however, the prospector could select half an acre of land for purchase. But the price was high. The half-acre cost $50 plus the cost of surveying, but the price was waived if at least $1,000 were expended on the mine within the two years covered by the prospecting licence.

As well as permitting search for base metals, the prospector's licence entitled the holder to seek and mine coal on all waste Crown lands. Thus coal mining, which gave the earliest impetus to permanent mining development[11] under the aegis of the Hudson's Bay Company at Fort Rupert, received legislative attention for the first time in the 1869 Mineral

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11 British Columbia, Sixty years of Progress, Part II, p. 189.

Ordinance. For the first time, coal lands could be purchased. A Crown grant to 1000 acres could be secured by a company of at least ten persons at the rate of $5.00 an acre. As in the case of the individual prospector, the purchase price was waived if at least $10,000 had been expended on the development of the property prior to the expiry of the company's licence. The Crown grant conveyed outright ownership of the land. Before the grant could be secured, conclusive proof was required by the Gold Commissioner that the mine had been worked continuously for the previous two years.

Finally, the 1869 Mineral Ordinance made provision for securing a Crown grant to an ordinary mining claim. Until the enactment of section 40 by which this was done, no free miner had been able to secure anything but a lease to the land he had staked as a mineral claim unless he purchased it outright. Thus the ordinance in 1869 laid the foundations of subsequent mining policy in British Columbia by granting duly licensed prospectors the right to search wherever they chose for base metals, by providing for purchase of coal lands, and by granting to both free miners and prospectors the right to acquire title to their mines by means of Crown grants.

When British Columbia entered Confederation in 1871, placer mining for gold was the only mining of any consequence in the province. According to the mining returns for 1879 there were 505 companies authorized to work

mining claims, 31 of which were bar claims, 236 creek claims,[12] 42 bench claims, 109 hill claims, and 3 quartz claims.[13] If the same proportion held true for individuals' claims, the creeks of the province were obviously still the scene of the most mining activity. Although it is true that mining laws regulated lode and coal mining as well as placer mining, no annual returns on lode mining appeared until 1887[14] and coal output was of little volume until the 1880's. By 1871, the Fraser and Cariboo diggings had been followed by discoveries at Granite and Rock Creeks, at Wild Horse Creek in the East Kootenay, and at the Big Bend on the Columbia River. The Cariboo fields were the most important and the most permanent, but the other discoveries created minor rushes. In 1871 the Omineca mines were discovered, and following upon the Omineca rush came the Cassiar discoveries. Except for these occasional strikes after the 1864 and 1865 placer fever in the Cariboo, a comparative lull in placer mining followed until the Atlin strike of 1898.

Only spasmodic returns concerning the number of free miners' certificates were available during the early years of

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[12] Authorized by B.C. Stat., 1872, No. 14, s. 2. These claims, 100 feet long, were to extend from base to base of the hill or bench on each side of the creek.

[13] B.C.S.P., 1880, after p. 232.

[14] British Columbia, Sixty years of Progress, Part II, p. 190.

the province, but for the Omineca district alone, Peter O'Reilly, the local Gold Commissioner, reported in 1872 that he had issued such certificates to the value of $4,672.50.[15] At the fee of $5.00 per certificate, it can be assumed that approximately 900 such certificates were issued in Omineca in the peak year. Lost certificates could be replaced for $2.50, which would account for the uneven multiple in O'Reilly's returns. Mining licences required by prospectors accounted for $2,645 of the total revenue of $14,707.32 O'Reilly collected for the same year. Again, at $5.00 each, that would have meant that 529 prospectors were searching for minerals in his district alone.

By the end of 1873, mining exports at $1,224,362 accounted for seventy per cent of the total exports of the province.[16] To take charge of the expanding mining activities, the office of Minister of Mines was added to the Executive Council in 1874, although its duties were assigned to one of the Ministers already provided for and carried no additional salary.[17] John Ash, Provincial Secretary, assumed the new portfolio. In his first report as Minister of Mines he indicated that the income for the first year from free miners' licences, including renewals and 1,841 new licences,

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15 B.C.S.P., 1872, pp. 86-87.

16 Ibid., 1873, p. 19.

17 B.C. Stat., 1874, No. 16.

amounted to $11,232.50; that 470 claims had been staked and recorded, and that 67 water records had been issued.[18] Sometime between the issuing of this report and the preparation of the next, Ash must have realized the discrepancy between the number of claims recorded and those actually worked. Hence the second report made clear that although 1,117 claims had been recorded, only 293 were being worked.[19] The prospector was a gambling man who staked to the limit of the law, but in most areas found that little over one quarter of what he had staked was worth working.

Owing to its ephemeral nature, placer mining did not result in any appreciable alienation of Crown lands. Although diggings abandoned after the initial strikes were often reworked by Chinese miners and other prospectors content with a small return for their labour, there was little reason for acquiring permanent title to the land on which the claims were located. Even when hydraulic methods were introduced, the anticipated boom in the Cariboo and Omineca diggings failed to materialize owing to the remoteness of the placer camps. Until the completion of the Canadian Pacific Railway in 1885, mining activities were relatively slow. The speculation consequent upon the rich strikes of the 1860's did not indicate real prosperity, even though the excitement did

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18 B.C.S.P., 1875, p. 543.

19 Ibid, 1876, after p. 597.

bring population which sought new avenues of employment when the original incentive had been lost. Many of the thousands who went to the Cariboo took up land and formed a nucleus of an agricultural settlement. Others who had been lured into British territory by the stories of fabulous strikes turned to trading; became interested in lumbering or fishing, transportation or shipping. The population of the interior in 1871 was scattered and sparse, but the origins of the present commercial and industrial pursuits of the province had been laid as a result of the gold strikes.

Placer mining for gold, then, contributed indirectly to the disposal of large tracts of Crown land for agricultural and industrial purposes, particularly before Confederation, but its activities required no permanent acreage. Lode mining and coal mining, on the other hand, required holdings of a more permanent nature, but the total acreage alienated, either directly as mining property or indirectly for settlement, formed a negligible amount of British Columbia's vast area.

Although the output from placer mines was decreasing in the 1870's and that from lode mines and collieries was comparatively slight until the 1890's when the Kootenay and Nanaimo developments came into serious production, still the government continued conscientiously to regulate mining procedures with frequent amendments and revisions of the

mining laws. The changes through these twenty years, and indeed up until the first World War, suggest the three continuing aims - to encourage legitimate prospectors and miners in exploring and developing new country, to discourage speculators among them who would hold land idle while waiting for inflated prices, and to provide a reasonable revenue toward the administration of the struggling province. The difficulty of reconciling these aims was reflected in the fluctuations of the mining laws. One year requirements were eased - the next they were tightened. Perhaps personal and regional interests also contributed their share to the frequent changes in the mining regulations.

In the years after 1871, regulations for obtaining a Crown grant to mining pre-emptions were changed particularly often. In 1873, in conformity with the Free Grant land policy initiated that year by the legislature, the land in which the mineral claim was situated was given to the miner. The $1.00 an acre charged was looked upon merely as the fee for recording the claim. If the miner improved his holding within the next two years to the extent of $10 an acre, the land was his.[20] In 1877, under the Walkem administration, the size of a mining claim was enlarged to become 1500 by 600 feet, or 20.6 acres. A Crown grant to it could be obtained by paying $5.00 an acre and the cost of surveying.

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[20] The Crown grant conveyed "an absolute estate in fee simple of and in the lands described in such Crown Grant," as well as the precious metals upon or underneath the land.

This arrangement which required no 'proving up' must have been popular, since in 1878 the number of Crown grants doubled.[21] The next year, however, requirements were raised, with $5,000 expenditure in money or labour required before receiving the Crown grant. At this time a company was required to pay a tax of five cents an acre on a claim that was being worked, and fifty cents a lineal foot on an unworked claim, amounting to $750 a year on a regulation 1500 foot claim.

Perhaps these regulations were found to be too rigorous, or perhaps the initial stages of the Canadian Pacific Railway construction was luring miners elsewhere. At any rate, in 1879 the revenue derived from free miners' certificates dropped from nearly $12,000 to $4,600, and general mining receipts from $8500 to $2600.[22] Four years later, in 1883, requirements for obtaining the Crown grant were made easier through another amendment to the Mineral Act. Now only $1000 instead of $5000 had to be expended in money or labour in 'proving up' the mining pre-emption. Also under this same amendment a miner could be absent from his claim for six months instead of for the 72-hour limit previously in effect.

In 1884, still another amendment, designed no doubt to close the ever-present gap between the number of mineral claims recorded and those being worked, provided that the

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21 See Appendix B, Table IV.

22 See Appendix B, Table VI.

miner applying for a Crown grant had to swear that a vein or lode had actually been found, that he was in undisputed possession, that the survey had been accurate, and that $500 had been expended in money or labour.[23] In 1892 the size of the claim was again increased, making it 1500 feet square,[24] or nearly 52 acres, as it is still. By 1898 the expenditure on a mining claim had only to be $100 a year, but this amount had to be maintained for five years before obtaining the Crown grant. This regulation was still in effect at 1913.

As was the case with agricultural lands, ownership of mineral claims through outright purchase of the Crown land was always possible for anyone having the money and wishing to by-pass the 'proving up' process of the pre-emption system. In 1869 a half-acre had cost $50 plus the cost of survey; in 1883 a full acre could be bought for the same amount.[25] In 1886 the price was lowered to $25 an acre,[26] but in the 1898 peak of mining activity the cost of one acre rose to $500.[27]

As with placer mining, no figures are available on the total amount of Crown land alienated for mineral claims up to 1913, but a Table of government surveys of the years

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23 B.C. Stat., 1884, c. 10, s. 68.

24 B.C. Stat., 1892, c. 32, s. 5.

25 B.C. Stat., 1883, c. 19, s. 7.

26 B.C. Stat., 1886, c. 14, s. 10.

27 B.C. Stat., 1898, c. 33, s. 6.

1900 to 1913 gives some basis for an opinion.[28] During these years, a total of 265,871 acres were surveyed for mining claims (not including coal claims). In comparison with over 10,000,000 acres surveyed during the same period for disposal in other ways this acreage is small and suggests, in the absence of more exact figures, that the amount of land permanently alienated for mineral purposes was actually not great.

Because of the nature of coal deposits, which usually cover a much larger area than do other mineral deposits, special regulations for coal had been enacted as early as 1869. These were changed through the years as circumstances dictated. The 1000 acres which a company could obtain at $5.00 an acre in 1869 was reduced in 1873 to 640 acres at $1.00 an acre.[29] In 1883, "An Act to encourage Coal Mining" provided for the sale of coal land at $10.00 an acre east of the Cascades and $5.00 west of the Cascades.[30] In 1892 an amendment to the Coal Mines Act provided for purchasing up to 640 acres of coal lands at $5.00 an acre, but the prospective buyer had first to lease the land for five years at ten cents an acre, pay for the surveying, and pay a royalty of five cents per ton on all coal and one cent per barrel on all petroleum that was taken

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28 See Appendix B, Table VII.

29 B.C. Stat., 1873, No. 3, s. 3.

30 B.C. Stat., 1882, c. 6, s. 8.

out.[31]

By 1913, coal prospecting licences still allowed the holder to buy 640 acres, and the five-year lease remained in effect. The price was now fifteen cents an acre annually for the lease, and the purchase price had risen to $15.00 an acre. Before leasing, the miner had to pay the survey charges as formerly, spend a fixed sum on development, and prove that coal existed.

Since 1899, all the provisions with respect to coal had applied also to petroleum lands, but the insertion of the petroleum reserve to the Crown was not to provide any revenue to the provincial government for another half-century.

By 1913 throughout the province 546,000 acres of coal had been surveyed,[32] but this did not necessarily mean that the land had been alienated. It meant only that such land could now be leased at whatever the current price happened to be.[33] A portion of the land already surveyed might have been Crown-granted, but unless the coal mine was proving lucrative, the holder of the lease was better advised to work his mine on a lease as long as he could, and pay the annual rental of fifteen cents an acre. Between 1884 and 1900, as reported by the Chief Commissioner of Lands

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[31] B.C. Stat., 1892, c. 31, s. 5.

[32] See p. 120.

[33] Price of coal lands in 1913 was $20.00 an acre, payable in advance. (See B.C. Stat., 1913, c. 44, s. 9.)

and Works,[34] coal prospecting licences had been taken out at the rate of fifteen a year; between 1900 and 1913, an average number of 859 were issued annually, reaching a peak of 2,223 in 1911. None of these licences was granted until the prospector could swear under oath that his land contained coal or petroleum; the lease was not granted until the land had been surveyed and coal proved to exist by actual production.

From time to time predictions were made that coal mining would become one of the major mining activities of the province. As in the case of the hydraulic developments in the Cariboo, Cassiar, and Atlin gold fields, however, the real advance in coal mining had to await more adequate and cheaper transportation facilities. By 1910 only 32,000,000 of the 40,000,000,000-ton provincial coal reserves had been mined.[35] The comment in 1912 of A.R. Renwick, Deputy Minister of Lands, that a "remarkable stimulus" had been given to coal-prospecting since the completion of the railway lines of the southern interior is supported by the peak issue of 2,223 coal prospecting licences in 1911.[36] Speaking of coal lands along the Grand Trunk

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34 Compiled from the Annual Report of the Chief Commissioners of Lands and Works, 1883-1911, inclusive, and the Report of the Minister of Mines, 1912 and 1913.

35 British Columbia, Sixty years of Progress, Part II, p. 189.

36 B.C.S.P., 1912, p. G 6. Renwick quotes a figure of 2,566 coal prospecting licences.

Pacific Railway, Renwick predicted that coal mining would "doubtless contribute greatly in providing a market for the farmers. . . and tonnage for the railway." The Telkwa coal, however, found its market locally,[37] and the extensive deposits of the Peace and Pine River areas still await railway facilities.

Although Renwick's prediction that coal mining would become a major mining activity of the province was not fulfilled, in 1913 there were 697,000 acres of coal lands held under 1,090 coal licences and 114,307 acres held under leases.[38] Since 864,640 acres of coal lands were known to exist,[39] this leaves about 53,000 acres of coal lands that must have been alienated by 1913.[40]

The matter of overlapping mineral rights in Crown grants is an interesting and often tortuous subject. Under the laws in force by 1873, it was possible for one piece of land to be Crown-granted three separate times for mining purposes - once for a mining claim applicable to gold only, once for a mining record to search for and mine other minerals

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37 Jacobs, E., "Mines and mining," in Canada and its Provinces, Vol. 22, p. 573. By 1912 the province had produced 37,250,937 long tons of coal, half of it in the preceding ten years. Only a small portion was produced in the northern section of the province.

38 B.C.S.P., 1914, p. D 10.

39 British Columbia, Sixty years of Progress, Part II, p. 190.

40 The Dominion coal reserve in the Crow's Nest Pass amounted to 50,000 acres. (See Chapter 3, n. 111.) The Dunsmuir acreage at Nanaimo accounted for most of the remainder.

excepting coal, and once for coal mining. There was nothing to prevent any free miner from entering coal lands to seek for gold. Every encouragement was given him to do so. Any prospector looking for other minerals could do likewise. It is not likely that such a complication arose on the Dunsmuir coal lands at Nanaimo, but it could well have happened in the East Kootenay.

In 1878 one of these sources of confusion was removed when rights to precious metals as well as to base metals were included in the same mineral claim. Henceforth whatever minerals a miner encountered in his diggings were his, except coal. No other miner could stake for gold on his claim, as had formerly been the case. But a farmer or a holder of coal lands had no right to any precious metals found on his Crown-granted property, and a free miner could still prospect there at will. Gold and silver continued to be reserved whenever Crown land was disposed of for purposes other than mining, a situation which still exists.

Coal rights followed a less straightforward pattern, although it was fairly consistently established that coal lands carried rights to coal only, and that other lands carried no coal rights unless specifically stated. In the Mineral Acts of 1878 and 1882, coal was reserved to the Crown when a mineral claim was Crown-granted,[41] and in the Land Act of 1882 coal was added to gold and silver as a mineral reserved

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41 B.C. Stat., 1882, c. 6, s. 5.

to the Crown when agricultural lands were disposed of.[42] But in the Coal Mine Act of 1883, it was specified that an owner of agricultural land who found coal on his property could purchase the coal rights at $9.00 an acre. In the Land Act of the next year, 1884, it was decided to include coal rights in the Crown grant to non-mineral lands, and in all such grants already issued, provided that the owner paid five cents a ton royalty if he mined the coal. By 1891 this policy was reversed and coal was once more reserved to the Crown.[43] Again in 1899 coal and petroleum were expressly reserved from all Crown-granted land.[44] In 1913 natural gas was similarly reserved.[45]

As the Judges' Bench Books in the Provincial Archives will attest, these shifting mining laws were a prolific source of litigation. One wonders how British Columbia ever found enough lawyers to handle it. And as though the mining laws themselves could not provide sufficient grounds for dispute, in 1871 had come a further complication with the introduction by the Terms of Union of provision for the Dominion Railway Belt.

The belt of land twenty miles wide on either side of the proposed railway through British Columbia was transferred

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42 Ibid., s. 6.

43 B.C. Stat., 1891, c. 15, s. 11.

44 R.S.B.C., 1924, c. 131, s. 119.

45 Ibid., s. 120.

to the Dominion to subsidize construction costs of the gigantic project. The confusion arising from the defeat of Sir John A. Macdonald's government in 1872 and from the many delays in deciding the actual route of the railway through the mountains prevented the setting up of Dominion administrative machinery to look after this land. For two years all Crown land in British Columbia was placed under reserve in accordance with the Terms of Union, but when railway construction failed to begin within the prescribed two years, the provincial government proceeded to administer all lands as though they were provincial lands, especially in regard to minerals. Eventually, thirteen years later, the formal transfer of the land to Dominion control was completed by the provincial Settlement Act, ratified by the Dominion on April 19, 1884. The Act provided for the disposition of the land in these words:

> 11. (i) The lands granted . . . shall be placed upon the market at the earliest date possible, and shall be offered for sale on liberal terms to actual settlers
>
> . . . .
>
> (iv) The Governor in Council may from time to time regulate the manner in which and the terms and conditions on which the said lands shall be surveyed, laid out, administered, dealt with and disposed of.[46]

This was meagre language with which to transfer so large a belt of land in the heart of the province.[47] The real nature of the grant was difficult to determine.

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46 Can. Stat., 1884, c. 6.

47 See Appendix D, Map I.

Misunderstandings and litigation between the two governments arose as a result of the ambiguity of the administrative jurisdiction within the Belt. One of the questions which naturally arose was whether the grant carried only surface rights or included rights to the minerals beneath the surface.[48] Was this grant similar to a grant of land by the province to any freeholder, or did the Dominion as the second party to the contract acquire with the lands the rights to administer the minerals?

The years immediately following the Settlement Act were the worst possible ones for the Dominion government to be making an issue of the point. British Columbia was in no mood for temporizing with the Dominion, since these were the years in which endless difficulties were arising between Victoria and Ottawa over Indian lands.[49] When A.W. Vowell, the provincial Gold Commissioner in the Kootenays, reported in the summer of 1884 to the provincial Executive Council through the Minister of Mines, John Robson, that he had been accused by a Mr. Burgess[50] of issuing gold miners' licences illegally, the Executive Council issued a Minute which was transmitted at once to Ottawa. The Minute minced no words

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[48] For newspaper comment, see Victoria Colonist, September 5, 1884, p. 2, "Provincial right to minerals"; September 23, and October 9, 1884, p. 2, "Shall we surrender the precious metals"; July 4, 1885, p. 3, "Our mineral deposits"; and December 9, 1886, p. 3, "The minerals, the ownership of British Columbia's."

[49] See Chapter 4.

[50] A.M. Burgess was federal Deputy Minister of the Interior.

in laying claim to the right to the precious metals within the Railway Belt.[51]

> The Committee . . . desire to call to the attention of the Dominion . . . that the right to the precious metals within the twenty-mile belt is not in the Dominion but in the Province, and that the Province has the right, under the 'Mineral Act, 1884' to grant free mining licences and to authorize the entry by free miners upon lands within the belt, for the purpose of mining for the precious metals - subject to the provisions of section 23 of such statute, and section 64 of the 'Land Act, 1884'. (52) There is nothing to indicate that in the granting of these lands it was intended to part with the sovereignty of the Crown, as represented by the Province, or that any greater right was conferred than the right of sale for railway purposes, or that the Province had intended to part with those rights of the Crown which, without being expressly mentioned, would not pass. If these lands had been separated from the Province, if they had become part of the territory of the Dominion, then, it is conceded, the right to the precious metals would not have remained in the Province. But as there has been no such separation, and as the Crown as represented by the Dominion is not possessed of the sovereignty of these lands, all prerogative rights remain in the Crown as represented by the Province.
>
> An opposite conclusion would go far toward withdrawing the lands from the operation of the Provincial Statutes relative to the acquisition of rights of way and water, and the like for public and private purposes.

The Dominion government's failure to issue any regulations governing mining affairs within the Railway Belt lent weight to the province's argument. The province contended

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51 B.C.S.P., 1886, p. 361. The whole matter is dealt with in pp. 361-365.

52 Section 23 of the 1884 Mineral Act (B.C. Stat., 1884, c. 10) provided for compensation to be paid by a free miner to the occupant or owner for any loss or damages, provided the occupant or owner were in lawful possession of the land. Section 64 of the 1884 Land Act (B.C. Stat., 1884, c. 16) gave free miners the right to enter any lands in the province to search for and work mineral lands, provided security were given any previous lawful occupant.

that had the Dominion really believed it had such rights under the Settlement Act, it would have issued regulations immediately. The Dominion Lands Act of 1883 did include sections dealing with "mining and mining lands",[53] but section 42 had said that "lands containing coal or other minerals . . . shall be disposed of in such a manner and on such terms and conditions as may, from time to time, be fixed by the Governor in Council by regulations to be made in that behalf." These regulations had not as yet been issued for British Columbia.

On February 17, 1885, the Dominion requested British Columbia to provide a test case for the courts.[54] Having given the matter study, A.E.B. Davie recommended to the Executive Council that, as a test case would undoubtedly be appealed from the Exchequer Court to the Supreme Court to the Privy Council, no arguments should be presented to the first two courts in order to save time. In addition, he advised the Council to seek permission from the Dominion to continue the administration of mineral lands under provincial statutes. On April 27, 1885, Davie's recommendations were incorporated in a Minute in Council and forwarded to Ottawa.

Meanwhile, a week earlier, on April 20, 1885, the Dominion had belatedly issued a series of "Regulations for the Disposal of Dominion lands within the railway belt in the

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[53] Can. Stat., 1882, c. 17, ss. 42-44.

[54] B.C.S.P., 1886, p. 362.

Province of British Columbia."[55] To these regulations the province took immediate and violent exception:

> The Executive Committee regrets these regulations are so cumbersome and have so many vexatious provisions and excessive imposts and are altogether unsuited to the wants and conditions of this Province. . . . and any attempt to enforce them would be prejudicial to the best interests, if not dangerous to the peace, of the community.[56]

The Executive Council felt particularly that section 27 which reserved all minerals could not be carried out. Since British Columbia reserved only gold and silver, the Committee desired "respectfully but most emphatically, to protest against an innovation so inconsistent with the principles of justice and common law."[57] It was also felt that the charge of $100 for a Crown grant to a mining claim within the Railway Belt, as laid down by the Dominion regulations, was excessive. At this time the province was charging nothing, although it was requiring expenditure on the claim of at least $500.[58] After roundly declaring every other of the regulations detrimental to the best interests of the province, the Minute concluded:

> It is respectfully submitted that the people of British Columbia are the best judges of what is calculated to promote internal prosperity and well-being, and the simple circumstance of their own Legislature in dealing with the Provincial lands, imposing regulations

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55 Ibid., p. 367.

56 Ibid., pp. 367-368.

57 Ibid., p. 368.

58 See p. 140.

> immeasurably less onerous and charges less than one fourth of those under review may fairly be accepted as a very conclusive argument in support of the contention that the Dominion Regulations are illiberal and burdensome.
>
> The Committee most respectfully submit that the true interests of the country, both Dominion and Provincial, would be best promoted by having the lands within the railway belt administered on terms similar or approximating to those governing contiguous Provincial lands.[59]

After considering these emphatic communications, the Dominion undertook to clear the way at once for appeal to the Privy Council, and at the same time permitted mineral lands in the Belt to continue under provincial jurisdiction. The permission was in no way to be considered as waiving Dominion claims. Should the case be decided in favour of the Dominion, British Columbia was to be held to a strict accounting of all money collected.[60]

In 1887 while the case to decide the ownership of the precious metals within the Railway Belt was still before the courts, the Dominion issued a new set of regulations governing the disposal of mineral lands within the Belt,[61] but excepting gold and silver until the case should be settled. These regulations conformed exactly to those in

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59 B.C.S.P., 1886, p. 368.

60 Ibid., p. 362. Order in Council, June 20, 1885.

61 Bligh, H.H., ed., Consolidated Orders in Council of Canada, under authority and direction of His Excellency the Governor-General in Council, 1889, c. 99, pp. 870-901. Order in Council, October 5, 1887. (Hereafter cited as Consolidated Orders in Council of Canada.)

effect in British Columbia.

And what exactly were these regulations? Among other clauses, they provided that a free miner could explore vacant and unreserved Dominion lands with a view to obtaining a mining location, but no location or mining claim was to be granted until the actual discovery of a mine had been made. Having discovered a mineral deposit, the miner could secure his 'mining location' by marking it suitably, by filing an affidavit with the Dominion Lands Agent within sixty days of having uncovered mineral, and by paying the $5.00 fee. The receipt issued to the miner entitled him to entry on his location for five years, provided he renewed his receipt each year for a further $5.00 annually. The renewal would only be granted if he had expended $100 a year on the location. Having fulfilled these requirements, he was permitted by his receipt to remove and sell any minerals taken from the mine. Once he had expended a total of $500 on his location, he was permitted to buy it for cash at $5.00 an acre. First, however, he had to deposit $50 with the Lands Agent to cover the cost of survey. Not until the survey was complete could a patent be issued.

As in the provincial mining law, priority of right was determined not by priority of discovery, but by fulfilment of all the obligations entailed in securing a receipt. The miner was restricted to one location on any one vein or lode, the size of which was 1500 by 600 feet. No surface

rights were conveyed, but the right was granted to use any water flowing through or upon the claim. With the consent of the Minister of the Interior the right to divert forfive years any other water from streams or lakes was granted. The water so diverted had to be put to beneficial use and could be neither wasted nor sold.

Precisely the same regulations were enacted on October 1, 1887, and enlarged upon the following May 2 for obtaining mining locations on abandoned and surrendered Indian lands. A forty-acre location could be secured under the May 2 Order in Council at the same price and under identical conditions.[62]

On April 3, 1889, the Privy Council rendered its decision in what has subsequently become known as the Precious Metals Case.[63] The Committee supported the view of the province that the jurisdiction over precious metals within the Railway Belt lay with the provincial government. In delivering the judgment, Lord Watson passed some general remarks on the nature of the transfer of the Belt which were

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62 Ibid., c. 31, pp. 182-209. Order in Council, October 1, 1887, and May 2, 1888.

63 A.G. of B.C. v. A.G. of Canada (1889) 14 App. Cas. 295. The case is discussed in Cameron, E.R., The Canadian Constitution, interpreted by the Judicial Committee of the Privy Council in its Judgements, together with a collection of all the decisions of the Judicial Committee which deal therewith, 1915, pp. 403-413. The decision is also quoted in full in B.C.S.P., 1889, pp. 443-446. For newspaper comment, see Victoria Colonist, April 26, 1889, p. 1, "The mineral case."

later to cause a great deal of discussion.

> Leaving the precious metals out of view for the present, it seems clear that the only 'conveyance' contemplated was a transfer to the Dominion of the Provincial right to manage and settle the lands and to appropriate their revenues.
>
> It was neither intended that the land should be taken out of the province nor that the Dominion Government should occupy the position of a freeholder within the province. The object of the Dominion Government was to recoup the cost of constructing the railway by selling the lands to settlers.
>
> Whenever land is so disposed of the interest of the Dominion comes to an end. The land then ceases to be public land and reverts to the same position as if it had been settled by the Provincial Government in the ordinary course of its administration. That was apparently the consideration which led to the insertion in the agreement of 1883 of the condition that the Government of Canada should offer the land for sale on liberal terms with all convenient speed.[64]

With the province's claim maintained, the Dominion government passed an Order in Council agreeing to make no further leases or other dispositions of any minerals in the Railway Belt, excepting coal,[65] other than by outright sale of the lands wherein such minerals lay. This agreement was all that was necessary. There never had been any dispute concerning the province's right to administer lands in the Belt once they had been permanently alienated by Crown grant from the Dominion. The Order in Council added that thereafter all minerals in the Belt (again,

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[64] A.G. of B.C. v. A.G. of Canada (1889) 14 App. Cas. at p. 301.

[65] Since 1878, a mining claim to precious metals had included rights to base metals as well, except coal. (See p. 145.) Hence it was logical for the Dominion to relinquish control of base as well as precious minerals, but to retain coal rights which might be of practical value in railroad operations.

excepting coal), should be administered under the local government's regulations, and that any Dominion lands which might be for sale from time to time within the Belt containing minerals within the meaning of the provincial Mineral Act, "not being Indian reserves or settlements or portions thereof, and not being under licence or lease from the Dominion Government", should be open to purchase by the province at the price of $5.00 an acre.[66] Lieutenant-Governor Nelson conveyed to Ottawa the province's acceptance[67] on March 13, 1890, of the Dominion's conciliatory Order in Council.[68]

Now that the Precious Metals Case was decided, the government in British Columbia enacted in 1890 that no railway chartered locally was to have any rights in any mines of iron, slate, or other minerals on lands purchased by it unless such rights were expressly stated in the conveyance and the minerals named. Any miner who wanted to continue working his mine at a distance of forty yards or less from the line of the railway was entitled to do so. Should the railway company consider the mining operations detrimental to its railway, it could buy out the owner of

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66 Canada Gazette, Vol. XXIV, p. 353. Order in Council, February 11, 1890. Also to be found in Can. Stat., 1890, p. cxi.

67 B.C.S.P., 1890, p. 461. Minute in Council, March 13, 1890.

68 Canada Gazette, Vol. XXIV, p. 354. Despatch of March 18, 1890.

the mine, the price to be determined by arbitration if necessary.[69]

So that the Dominion regulations should conform with the provincial ones governing the mining of coal, a Dominion Order in Council of 1895 authorized the Minister of the Interior to permit settlers in the Railway Belt to mine a certain quantity of coal for domestic purposes only, upon payment of the royalty in advance. The royalty was nominal, consisting of twenty cents a ton for anthracite, fifteen cents for bituminous, and ten cents for lignite.[70] In 1899 the price to the provincial government of all lands within the Belt containing minerals was reduced by the Dominion to $1.00 an acre. The Dominion could only be pushed so far, however, for when Premier Dunsmuir on his mission to secure better terms asked the Dominion in 1901 for permission for the province to administer the base minerals under Indian reserves, with half the royalties as payment to the province for administrative costs, his request was not granted. At the same time Dunsmuir pointed out that gold and silver on Indian lands were "clearly within the right of the Province."[71] On this score the Dominion remained discreetly silent. The Department of the Interior

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69 B.C. Stat., 1890, c. 39, ss. 21 and 22.

70 Canada Gazette, Vol. XXI, p. 973. Order in Council, November 11, 1895.

71 B.C.S.P., 1901, p. 582.

had not the slightest intention of admitting any such claim, but rather than stir up another hornets' nest, kept silent on the whole matter of mineral rights under Indian lands. Minerals so located had up until this time been administered for the benefit of the Indians and they continued to be so administered.

So much then for the Precious Metals Case and the Dominion's part in administering mineral lands in British Columbia.

Throughout the whole period from 1871 to 1913, the large mineral resources of the province were developed under laws peculiarly adapted to the circumstances of the province,[72] laws which seem to have been both wise and liberal. During the decade after 1903 the government gave a great deal of care and attention to the framing of laws regulating the mining of coal, both in regard to the nature of the claims and to the manner in which it should be mined. The Coal Mining Act of 1913 seems to have met with the approval of both the owners and the miners. Since mineral claims other than coal had been restricted to 51.6 acres since 1891, and as much of the coal mining apart from the Dunsmuir operations at Nanaimo and the Crow's Nest Pass Company in the East

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[72] For a brief history of mining operations in British Columbia up to 1912, see Jacobs, E., op. cit., pp. 555-581. See also Pitt, D.L., "What mining has done for British Columbia," in Washington Historical Quarterly, Vol. 23, 1932, pp. 94-109.

Kootenay had been done on leases, only a small acreage of provincial Crown lands had been alienated for mining purposes. By nature the placer mines were of only temporary value. When the gold had been removed the land was worthless to the miner, and so not worth the price required to secure a Crown grant. As a rule, only miners engaged in lode or hydraulic operations were interested in Crown grants.

By 1913, a total of 387,167 acres of mineral claims exclusive of coal had been surveyed.[73] This figure indicates the highest possible acreage that could have been alienated from the Crown for mineral purposes, since no patent could be issued until the survey had been made. The true figure, however, must be considerably smaller. Many claims were undoubtedly allowed to revert to the Crown once the mineral had been exhausted. For the majority of miners, however, there was little advantage in buying the land when they could hold it from year to year simply by re-recording the claim and renewing their free miners' certificates. The mining laws had been framed to lend them every assistance as free miners, and although there had been numerous changes in detail from year to year, those changes had been made solely with a view to protecting the interests of the genuine miners and to discouraging the speculators.

The quantity of land Crown-granted to miners up to 1913 conveys no realistic impression of the activity in

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73 See p. 120.

mines and minerals. The land itself was of no value to the miner, and once he had obtained from it all the mineral he could, his claim was abandoned, to become once again waste land of the Crown. It is still possible to see anywhere off the beaten track any number of such abandoned mineral claims, many of which had never been Crown-granted. Many of those for which a title had been issued have long since reverted to the Crown.

But even if 387,167 acres had been permanently alienated for mining purposes by 1913, it would be a negligible acreage in contrast with British Columbia's 230,000,000 acres. The acreage deeded for mining purposes during the years before World War 1 was no less insignificant than the revenue the government derived from the provincial mineral resources. Total government revenue from all sources in the 43 years from 1871 to 1913 amounted to $93,560,441.[74] Of this amount, only $7,642,678, or roughly eight per cent, was derived from mining sources.[75] This would seem to be small revenue indeed from British Columbia's rich deposits of gold, base minerals, and coal, although it must be remembered that the risks to the individual miner were great and the rewards often small. When the almost annual changes

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74 See Appendix B, Table VI.

75 Free miners' certificates, mineral tax, general mining receipts, and royalty and tax on coal account for this figure. In Table VI, revenue from the sale of mineral lands is included under the general heading of land sales but, for reasons already mentioned, would be very small.

in the Mineral Acts are considered, it becomes apparent that British Columbia's legislators did their best to provide for maximum revenue and yet to render mining sufficiently profitable to attract the adventurous spirits who pioneered the development of this remote and rugged province.

ii.

As in the case of the alienation of agricultural and mineral lands, British Columbia evolved its own unique legislation to deal with the disposal of its forest lands. Since 1871, forest legislation has followed nearly as tortuous a course as was followed in the granting of farming or mining lands. In spite of the failure of provincial governments for years to recognize the value of forest resources, a surprisingly small area of forested land was permanently alienated by 1913.

The outstanding principle incorporated into the forest legislation by 1913 was that of disposing of the timber separately from the land under it. When to this principle was added the right retained by the government of varying from year to year its royalty and rental on the timber granted under the differing forms of tenure, it becomes apparent that by 1913 the government had become a 'sleeping partner' in forest exploitation and a sharer in the profits of the lumber industry.

Although British Columbia has been spared such wholesale alienation of its forest land as occurred in the

United States where, under the Timber and Stone Act, four-fifths of the public forests were acquired by speculators and 'timber-barons',[76] the earliest forest legislation cannot be given the credit. The fact that there was no interest in British Columbia's timber during the years forest lands were being alienated in huge acreages in the United States was all that saved the province's forests from falling into private hands. By 1900, when the immense potential value of the provincial forests was gaining recognition, the basis of a sound forest policy had been unwittingly laid.

Prior to the completion of the Canadian Pacific Railway, then, the forests of the province, like the water in the rivers and streams, were considered to be of little value. Only after the economic life of the province had surged forward as a result of the railway link with Canada, did the provincial government awake to a realization of its potential forest wealth. In the 1880's this realization resulted in the first systematic forest legislation.

From the colonial period to the first World War, timber lands could be disposed of in four ways. The first method, inaugurated by Douglas as early as 1859, was by outright sale of the land on which the timber stood. The second method, initiated in 1870, was by means of a lease on the land; the third method, introduced in 1884 and the one

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76 Flumerfelt, A.C., "Forest resources," in Canada and its Provinces, Vol. 22, p. 491.

found to be the most satisfactory of the first three, was through a timber licence; the fourth method, introduced in 1912 and seemingly the best method yet devised, was by auction sale of the timber, the land being retained for the Crown. By 1913 approximately 1,000,000 acres of forests had been alienated under the first two methods, whereas the licensing system had alienated 7,500,000 acres, more or less in perpetuity.

Throughout the colonial period in British Columbia, when timber lands seemed to have had little if any value in the eyes either of the public or of the government, such lands could be acquired by purchase and Crown grant in the same way as any other land and at the same price. Douglas's Land Proclamation for British Columbia in 1859 laid the basis for this policy when it declared that "Unless otherwise specially announced at the time of sale, the conveyance of the land shall include all trees. . . ."[77] The Crown grants to land, forested as well as agricultural in the absence of any distinction having been made, carried all timber rights without any reservation of royalty. Valuable although not extensive tracts were acquired under Douglas's Proclamation at the nominal charge of ten shillings per acre,[78] lowered on

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77 Papers relative to the affairs of British Columbia, Part II, p. 65. Proclamation of February 14, 1859. (See p. 17.)

78 B.C.S.P., 1911, p. D 11. "Final Report of the Royal Commission of Inquiry on Timber and Forestry 1909-1910." (See p. 17.)

Vancouver Island in 1861 to four shillings twopence.[79] The magnificent timber stands of the coast were looked upon by the early settlers more as a nuisance and an obstacle to progress than as an economic asset. Of so little worth did Douglas consider timber lands that he did not find it necessary even to mention them in the Proclamation issued in 1861 dealing with country lands on Vancouver Island.[80] It is ironical that section 12 of the Proclamation did reserve the precious metals on Vancouver Island to the Crown. Since 1861 the forests of Vancouver Island have been productive of far greater wealth to the province than have all the precious metals yet found there.

At Confederation in 1871 timber lands were still available for purchase at the current rate of $1.00 an acre. Section 47 of the 1870 Land Ordinance retained the earlier clause stating that the conveyance of land included all trees,[81] and there was no limit on the acreage that could be bought. Indeed, until 1906 timber lands were sold like any other lands.[82]

As early as 1884, however, the law had forbidden the sale of timber lands. In the absence of any administrative

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79 See p. 26.

80 Appendix to R.S.B.C., 1871, No. 4. Proclamation of February 19, 1861.

81 See Appendix A, s. 47.

82 B.C.S.P., 1911, p. D 15.

staff to enforce compliance with the law, and in the face of the public's attitude that standing timber was of no value, the law became a dead letter for twenty years. Throughout these twenty years a legend persisted that the provincial timber lands amounted to at least 182,000,000 acres, and was consequently regarded as inexhaustible.[83]

The Land Act of 1884 forbade the sale of timber lands by stating that "no land chiefly valuable for timber shall be disposed of by public or private sale."[84] The provision was reinforced in the act of 1887. An applicant for the purchase of land, by the 1887 act called 'patented land', was required to make a declaration before a Justice of the Peace that the land for which he sought a Crown grant was not chiefly valuable for its timber.[85]

The language of the 1884, 1887, and 1888 acts seems to have been clear enough. Timber lands in all three were excluded from sale. But the comprehensive Land Act of 1888 reveals either the existence of pressure applied to members of the government to leave a loop-hole in the law, or some very muddled thinking in regard to the legislation.

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[83] Ibid., p. D 14.

[84] B.C. Stat., 1884, c. 16, s. 59.

[85] B.C. Stat., 1887, c. 17, s. 2. The owners of these patented lands, as well as pre-emptors who had not proved up, were required by this act to obtain licences to cut timber on their land if the timber were for other than domestic or farm use or for clearing and improving. These licences permitted owners to cut timber for the manufacture of lumber. The licences cost 25 cents per thousand board feet for the amount of timber applied for in the application.

Timber lands were still not for sale, and provision was made for the first time to collect revenue on lands containing timber but not classified primarily as timber land. The royalty, amounting to fifty cents per thousand board feet on "all timber suitable for spars, piles, saw logs, or railroad ties,"[86] was levied on all timber to be cut on any subsequently granted lands. In effect, the provision meant that timber was no longer to be given away, but was henceforth to be sold at the flat rate of fifty cents per thousand. But under the land classification system begun by the same act, no restrictions of any kind were imposed on the purchase of Crown land by the ordinary methods.

This Land Act of 1888, curiously described as the first "coherent legislation" dealing with timber,[87] dwelt at length with the classification and sale of Crown lands.[88] All unsurveyed lands could be bought for $2.50 an acre and surveyed lands were divided into two classes. First class lands included those suitable not only for cultivation but also for lumbering, and sold at $2.50 an acre. Second class lands, priced at $1.00 an acre, were the marginal lands valuable neither for cultivation nor for lumbering. How this statute could be described as "coherent" in the face of the two contradictory clauses dealing with the

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86 B.C. Stat., 1888, c. 16, s. 21.

87 Flumerfelt, A.C., op. cit., p. 492.

88 For a full discussion, see Forests of B.C., p. 83. See also p. 77.

sale of timber lands is difficult to understand. On the one hand, no lands chiefly valuable for timber were to be sold; on the other, first class lands suitable for lumbering could be purchased in the usual manner. Whatever the intent of the act may have been, timber lands continued to be sold.

The difficulty probably lay in the failure of the act to define timber lands. But even after this omission was rectified by section 4 of the 1891 Act,[89] timber lands continued to be sold as usual. By the 1891 Act, lands fit for lumbering, still first class lands but now worth $5.00 an acre, were loosely defined as those containing 5,000 board feet per acre on each 160 acres. This was the first attempt to define timber lands, and it was the first time an upward limit of 640 acres had been placed on purchases. By placing the square mile limit and by requiring improvements to the original value of the land, an attempt was being made to limit the sale of timber and to encourage agricultural development.

Not until 1896 was timber land more carefully defined as land having 8,000 board feet per acre west of the Cascades and 5,000 feet per acre east of the summit.[90]

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89 B.C. Stat., 1891, c. 15, s. 4.

90 B.C. Stat., 1896, c. 28, s. 12. The Cascade mountains are defined in legal descriptions so as to include the Coast mountains also. "Coast" is the name applied to the mountains bordering the Pacific mainland coast and lying north and west of the Fraser River. (See Forests of B.C., p. 83n.)

This was still the statutory description of timber lands in the province at 1913. By the 1896 act, such lands were removed from the classification of first class lands and were reserved from sale. In spite of the repeated attempts made to reserve timber lands from sale, lack of inspection forestalled the clear intent of the various acts. It would be reasonable enough to assume, too, that the definition of timber lands could in many cases have been liberally interpreted by such government timber cruisers as were available from the Lands Department. Difficult as it was to enforce, the 1896 act did, however, establish the principle of the public ownership of all timber lands by withdrawing them permanently from sale and by providing a form of licensing tenure by which only the timber on those lands could be disposed of, the land itself being retained for the Crown. In 1905 the modifications to the licensing system made that method of holding timber land so desirable that the buying of it was no longer attractive. It is generally agreed that by 1906 there was no longer any outright sale of timber lands.

The government had shown concern over timber resources through its taxation policy in 1905. A tax of four per cent was levied on all wild land. All unimproved land, including timber land, was classified as wild land for taxation purposes. But the act permitted all private holdings of timber lands to be taxed at half the wild land rate. Had the higher tax been retained on private holdings, the holders

of these Crown-granted lands[91] would have resorted to wasteful logging methods in their haste to get the timber off and let the lands revert to the Crown.

It is indicative of the low value attached to Crown-granted timber lands that in 1901 the assessed value of certain stands on Vancouver Island known to contain 50,000 feet board measure per acre[92] was lowered from $6.00 to $4.00 an acre.[93] Although the assessed value of timber lands in private ownership was to rise precipitously before 1913, their value in 1906 was set at a mere $1,907,546, from which the revenue to the Crown by means of the two per cent tax amounted to $38,150.[94] By 1913, there were 922,948 acres of privately held timber land in British Columbia which had been alienated by the method of outright sale.[95]

The second method adopted in the province for disposing of timber land was by lease, a system of timber land tenure which ran concurrently for 35 years with the method of outright sale of the land and the timber on it. The issuing of timber leases goes back to the Land Ordinance of 1870. Section 28 of the ordinance permitted the leasing of unlimited

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91 Flumerfelt, A.C., op. cit., p. 504.

92 B.C.S.P., 1911, p. D 16.

93 Ibid., p. D 22.

94 Loc. cit.

95 See Appendix B, Table VIII, "Timber Statistics," part (2). (Compiled from Forestry Inspectors' Reports in Report of C.C.L.W., 1883-1911, inclusive.)

areas of Crown land "for the purpose of cutting spars, timber, or lumber".[96] The only stipulation was that the lessee had to be in the lumber business prior to the granting of such a lease. Once again, as in the case of agricultural and mineral lands, the principle of beneficial use was re-affirmed. So well had Lytton in 1859 impressed upon the administrators of the colony the necessity of preventing speculation in its public lands that, however little attention may have been paid to the regulations at times, the actual use of the land for the stated purposes for which it was granted was always incorporated into the regulations governing its disposal.

The principle of beneficial use to forestall speculation undoubtedly lay behind this early timber legislation. Equally important, however, could have been the recognition of the need for some form of tenure distinct from the ownership of the land. As a result of the introduction of the latter principle, British Columbia has retained a degree of interest in and control over ninety per cent of its timber lands, a unique situation on the North American continent.[97]

The timber lease clause as enacted in 1870 was re-enacted in the Land Act of 1875 and 1884 and remained unchanged

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96 See Appendix A, s. 28.

97 Forests of B.C., p. 81.

until 1888. The rental varied from one to ten cents per acre per annum, and the royalty was set at from 20 to 25 cents per thousand feet.

The first indication of the area of timber lands taken up under lease was contained in the 1873 report of Robert Beaven, Chief Commissioner of Lands and Works. Beaven's report listed the names of ten lessees who had been granted a total of 54,078.58 acres.[98] The list was as follows:

TIMBER-CUTTING LEASES, 1873

Name of Lessee	District	Acreage	Date	Rate
W.P. Sayward	Chemainus	1,370	June 23,1868	2¢ per acre per annum
Michael and John Muir	Sooke	3,316	Jan. 13,1872	1¢ per acre per annum
George Askew	Chemainus	519	Dec. 8,1870	2¢ per acre per annum
R.P. Rithet	Coast	15,000	Feb. 22,1873	1¢ per acre per annum
Hastings Sawmill Co.	New Westminster	18,559	Nov. 30,1865	1¢ per acre per annum
Moody, Dietz, & Nelson	New Westminster	2,634	Jan. 31,1866	1¢ per acre per annum
Moody, Dietz, & Nelson	New Westminster	11,110.58	Jan. 1,1870	1¢ per acre per annum
W.T. Collison	New Westminster	365	Feb. 25,1870	$15 per annum
Jeremiah Rogers	New Westminster	780	Nov. 30,1868	$40 per annum
Walker, Bowes, & Robertson	Omineca	425	Mar. 5,1872	1¢ per acre per annum
		54,078.58		$603.23

98 Report of C.C.L.W., 1873, p. 66.

As most of these leases had been granted for a period of 21 years, the annual charge could only be regarded as a holding charge and could in no way be construed as a source of revenue. To the lumberman of today, the rental of one cent an acre charged the Moody Sawmill owners in the 1870's on their seventeen square miles of virgin coastal timber at the head of Burrard Inlet must seem quite unreal. In the early 1870's, however, the provincial government was only too glad to grant timber leases to individuals or companies actually engaged in sawmill operations in order to ensure a supply of lumber for purely local needs. Until this time much of the lumber used in the colony had been imported from San Francisco.[99] Willing as it was to lease timber lands, the government did insist that the applicant for a lease already be engaged in the lumber business. The application of William Sutton and W.A. Robertson in 1875 for a lease of 27,000 acres in the Cowichan district was refused because they were not operating a sawmill in the neighbourhood of the lands specified in their application.[100] They were looked upon as speculators.

The second list of leases tabled in 1876 shows the application for a lease at Quatsino for 15,769 acres.[101] Comparison with the first list of leases makes it obvious that the major attack on the provincial forests had begun in the

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99 Forests of B.C., p. 174.

100 B.C.S.P., 1876, p. 707.

101 Ibid., p. 706.

most accessible areas as well as in the most heavily timbered sections of the province. Such timber lands as were secured by lease in the early years were in the regions of New Westminster, Chemainus, and northern Vancouver Island.

The first of many such Select Committees was appointed in the 1875-76 session of the Legislature to study the efficacy of the timber lease clause within the Land Act. The brief report of the Committee is interesting because it reflects the casual attitude of the government towards its timber resources. The single recommendation in the report called for the easing of the regulations to permit the granting of more extensive leases.[102] It is difficult to see how the regulations could have been eased except by permitting speculators who did not operate sawmills to acquire leases. As it was, leases were being granted for "any extent" of unalienated Crown land, at a purely nominal rental and for 21 years.

That timber leases were not an important source of revenue is evident from the fact that in 1876, the year the Select Committee recommended easing the restrictions on leases, rental of $52.27 on 4,686 acres held in two leases was the sole income received from this source. The four holders of the remaining 24,727 acres of leased timber land paid no rental that year,[103] and there is no indication that the government felt any concern about the situation. Lumbermen took their cue

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[102] Ibid., p. 739.

[103] B.C.S.P., 1878, p. 627.

from official laxity in the collection of the holding charge. By 1878 there was not a single holder of a large lease paying rent. William Sutton, who had finally secured a 187-acre lease, was the only one to pay rental, the sum of $175.83.[104]

By 1888 the provincial government had begun to realize that perhaps some revenue might be derived from leases. As a result, the 1888 Land Act contained evidence that some serious thought had been given the subject.[105] The act levied a rental of five cents an acre on all leases granted between 1879 and 1888. All subsequent leases were granted for a term not to exceed thirty years at a fixed annual rental of ten cents per acre and a royalty of fifty cents per thousand. The royalty was also made applicable to the leases granted since 1879. The annual charge of ten cents an acre gave owners of sawmills, or those who would undertake to build a mill with a capacity of 1000 board feet per 12-hour day for each 400 acres held under lease, exclusive cutting rights over an unlimited forest area. By establishing a reasonably low rental, the government demonstrated its desire to encourage the lumber industry, but the ten cents rental, low though it was, served to act as a brake on the indiscriminate alienation of the province's best timber lands. By insisting upon the operation of a sawmill in conjunction with the lease, the government indicated its

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104 B.C.S.P., 1879, p. 393.

105 B.C. Stat., 1888, c. 16.

determination to discourage speculation.[106]

In 1891, leases good for thirty years were authorized for cutting hemlock bark for tanning purposes,[107] but this section of the Land Act was not used until 1905-06, when 32,252 acres were leased at a rental of two cents per acre for the first five years and five cents per acre after that.[108] Before one of these hemlock leases was granted, the applicant had to prove that he operated a tannery. All the leases of this type granted in 1905 and 1906 were still being held in 1913.

Ten years after hemlock leases were granted, the government in 1901 authorized the granting of still another form of lease - a lease for cutting pulp wood. These leases were granted for 21 years at an annual rental of two cents an acre and a royalty of 25 cents per cord on all pulp wood cut. Under the terms of the lease, however, the lessee agreed to build a pulpmill in the province with a capacity of one ton of pulp or a half-ton of paper per day for every square mile of land leased.[109] Before such leases were abolished in 1903, four of them comprising 354,399 acres of choice merchantable timber had been granted and a further 1,300,480 acres had been

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106 See Appendix B, Table IX, "Timber Leases Held, 1888." (Adapted from B.C.S.P., 1888, p. 153.)

107 B.C. Stat., 1891, c. 15, s. 13.

108 Forests of B.C., p. 86.

109 B.C.S.P., 1902, pp. 791-792.

placed under reserve for similar pulp leases.[110]

For several reasons, the granting of all timber leases was abolished in 1905. In spite of annual changes in the act designed to provide the sawmill owners with a source of supply at cheap rates, too often leases were granted to speculators anxious to retain the timber for a future sharp increase in value. Since 1897 the operation of a sawmill had no longer been required,[111] although there was a reduction in rental for mill operators. Leases, since 1895 granted for 21 years and not 30 as formerly, were proving to be an unsatisfactory way of anticipating the future of the lumber industry, particularly as an immense new market was opening on the Canadian prairies.

As a means of securing greater revenue from leases, the government in 1901 had tried offering perpetual renewal of their leases in consecutive periods of 21 years at new and increased rentals to all leaseholders who would surrender their leases within one year. Not only would the government be able to impose the new rates set in 1898 of fifteen cents per acre per annum plus a royalty of fifty cents per thousand, but the leaseholder would know that by surrendering the lease and taking it up again under the new rates he would be guaranteed the right to the timber as long as he wished. By promising to renew these

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110 Ibid., 1903, p. J 23.

111 Forests of B.C., p. 87.

leases at the end of 21 years, but at the then existing rates, the government hoped to secure to itself a fairer share of the appreciation in timber value.

Even so, it had become obvious by 1905 that leases were no longer in the best interests of the province. When a return tabled in that year showed that between July 1, 1903, and February 21, 1905, eleven leases totalling 109,228 acres of first-rate timber land had been granted for 21-year periods,[112] the government became convinced that to leave the rental and stumpage fixed on these acreages, in addition to all the older leases, for 21 years, was shortsighted. Because so little was definitely known concerning the extent of British Columbia's timber and because there was the probability of a sharp increase in the demand for that timber, the McBride government in 1905 felt that to tie up extensive acreages for 21 years at a nominal holding charge was a poor way of drawing immediate profit from a substantial portion of the best timber areas.

And although the low revenue derived from the leasehold system was the final reason for its abolition, the fact that it was such a wasteful system weighed heavily against it. No provision required that a single lease be in one large block. It could contain ten or more lots scattered over a wide area within the same forest district. Some of these lots were as small as 150 acres. As the Royal Commission on Timber and

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112 B.C.S.P., 1905, p. F 35.

Forestry pointed out in its Report in 1910, the system resulted in the culling of the finest stands. The intervening, less valuable stands, irregular in shape, were left as unproductive Crown land.[113] For these reasons no further leases were granted after 1905, although those previously granted were still renewable if they contained merchantable timber.

By 1913, timber leases, exclusive of those for pulp and hemlock bark, covered 613,000 acres, of which 386,458 acres were renewable.[114]

The third method by which the Crown disposed of its timber was by licence. If the leasing system begun in 1870 initiated the policy of disposing of timber apart from the land under it, the licensing system begun in 1884 was a refinement of that policy.

From 1884 to 1913 the conditions under which licences were granted altered greatly. The original purpose of the licence, in 1884 called a 'general' licence, was to make timber available to the small independent operator who could not afford to own a sawmill, a condition required of all leaseholders. For an annual rental of $10.00, the holder of the licence obtained cutting rights to 1000 acres of timber land. The term of tenure was four years; the licence was not transferable; it could be cancelled if the holder did not

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113 Ibid., 1911, p. D 15.

114 Flumerfelt, A.C., op. cit., p. 505.

"continuously proceed to cut and manufacture the timber" within the specified limits.[115] To secure additional revenue from these licences, the holder was required to pay fifteen cents a tree royalty, as well as twenty cents per thousand on the timber cut.

In 1888, the 'general' licence became a 'special' licence and its tenure was reduced from four years to one, although it was now renewable at the discretion of the Chief Commissioner of Lands and Works.[116] Each holder was henceforth limited to one licence, and his rental was increased from $10 to $50. Royalty on timber cut under any former tenure-Crown lands, patented lands, leaseholds, as well as timber limits or licences - was increased to fifty cents per thousand. Indicative of an awakening interest in an export market was the provision in section 32 of the act for rebating half the royalty if the lumber were exported from the province. In the first six months of its operation, 25 per cent of the royalty collected by the government on all timber handled by the 25 sawmills in operation in 1888 was rebated. Of the total royalty of $12,675.59 paid on the 31,868,384 board feet of timber going through the mills, $3,051.40 was rebated.[117]

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115 B.C. Stat., 1884, c. 32. This act is of interest because it is the first of its kind in the province to deal with the disposal of timber apart from the Land Act.

116 B.C. Stat., 1888, c. 16, s. 16.

117 B.C.S.P., 1888, p. 151. These statistics are from the first Forestry Inspector's report to be issued by the Chief Commissioner of Lands and Works.

The licensing system was soon to become popular. At the end of 1888 there were 78 general licences still in force, but 36 of the new special licences had been issued. R.J. Skinner, the first Forestry Inspector, predicted the rapid expansion about to take place in the provincial timber business, but at the same time sounded a note of warning on the necessity for much closer supervision of this expanding industry:

> It is satisfactory to note that as far as can be judged from present appearances and circumstances, there is a prospect of a very considerable increase in the timber business of this Province taking place in the immediate future. Eastern as well as local capital is now being directed to and invested in that industry. . . . The revenues which will accrue. . . from the Crown Lands and Timber Limits of the Province, judging from the increased number of General and Special Licenses now, and soon to be, issued promises to be much greater than it has been in former years. The increase in the number of licenses and the more extended operations carried on by them will render it necessary that a close and careful supervision should be kept, and will at the same time considerably increase the difficulties (now sufficiently apparent) there are in making such a supervision thoroughly effective over the very large scope of country in which the lumbering industries of the Province are distributed.[118]

Before the licence system was completely abandoned, a total of 65,180 special licences had been issued.[119] Skinner's warning about more careful supervision had been sounded none too soon. Even though the area of timber which could be held under licence was reduced from 1000 acres to 640

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[118] Ibid., p. 152.

[119] Compiled from "Forestry Inspector's Report" for the years 1888-1910, inclusive, in B.C.S.P. for those years. Appendix B, Table VIII, part (1) lists 81,132 licences up to 1911 but that total contains all the older general as well as the newer special licences.

acres in 1901, and the fees increased first to $100 in 1901 and then to $140 west and $115 east of the Cascades in 1903,[120] these areas comprised by far the largest timber holdings in the province by 1913. Under this form of tenure licence holders held 8600 square miles (5,504,000 acres) west of the Cascades and 6400 square miles (4,096,000 acres) in the interior of the province.[121]

Since the 15,000 square miles of timber land alienated under licence represented a major portion of the best timber areas of the province, it is of interest to note what made this form of tenure so popular. Originally, the 'general' licence had been good for four years, but this period had been reduced to one year in 1888 under the 'special' licence provision. Although the licences were renewable at the discretion of the Chief Commissioner of Lands and Works, the licence holders were placed at a distinct disadvantage when compared with the lease holder who held his acreage at the original rental and royalty for a 21- or 30-year period. In 1903, therefore, the period of time for which a licence was valid was raised from one year to five. As a result, the number of licences issued jumped from 129 in 1901 to 1307 in 1903.[122] Even so, the growth of the lumber industry required a more

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120 B.C.S.P., 1911, p. D 13.

121 Plumerfelt, A.C., op. cit., pp. 505-506.

122 See Appendix B, Table VIII, part (1).

stable supply of timber than a five-year licence provided so that the licence holder could secure financial support for his enterprise. His chief asset was an assured supply of timber. This he did not have under his licence.

Just at this juncture the government decided that the system of granting leases was unsatisfactory owing to inadequate revenue. The system of licensing was unsatisfactory to the operator because of the insecure supply of timber. To solve the problem, at least temporarily, in 1905 the McBride government wiped out the leasing system entirely, along with the limited, non-transferable licences. A completely new principle of disposing of timber was adopted. The new principle, and the one which made British Columbia's timber policy unique on the continent, was the reservation of the government's share in the increasing value of standing timber as it should accrue. This was done by issuing transferable licences good for 21 years on a specified square mile of forest, with existing licences extended for 16 years.[123] The method was unique because it was left entirely to the government to fix annually the payments, both rental and royalty, that would be charged for renewal of the option each year. The method was attractive as well as unique, since the operator, for a small outlay, was able to stake a timber claim without waiting for survey. The claim was his for 21 years so long as he renewed his licence each year.

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[123] Forests of B.C., p. 89.

The effect of the new legislation was immediate and startling. Writing about it thirteen years later, the Committee on Forests of the Dominion Commission of Conservation had this to say:

> Coming at a time when speculation was rife in land and timber, and when the conservation propaganda in the United States was calling attention to the failing timber supplies in that country, this legislation, permitting the acquiring of timber with such small initial expense, resulted in a real timber boom, and the number of licenses increased from 1451 in 1904 to over 15,000 in 1907. Including the cost of locating, which probably averaged $50 per license, and advertising, about $15, the average claim cost the stakers about $205 on the coast and $180 in the interior. This gave them the right to cut anywhere from 5,000,000 to 40,000,000 feet, depending on the timber staked. By the end of 1907, there was little accessible timber not staked and much, with slight prospect of ever being exploited by means then known, had been taken up. As surveys were not required, except as the land was to be logged, much confusion has resulted from the overlapping of claims, and considerable additional revenue has accrued to the Government as a result. As one example of what has happened, the case may be cited of six different licensees who, for several years, paid fees on the same block of 400 acres of timber. The failure of many licensees to locate their limits accurately also resulted in the unnecessary inclusion of non-timbered lands, such as burns, areas above timber-line, etc., with consequent loss to themselves. 124

In 1908, the peak year, the fees alone from the 17,700 licences issued accounted for $2,301,449.47, or ninety per cent of the total revenue from forests.[125] The major objective of the new policy had been materially to increase revenue from forests. In accomplishing its objective,

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124 Ibid., p. 90.

125 B.C.S.P., 1907-1908, p. H 49.

the policy was an immediate success, but perhaps too much of one. Some uneasiness was being felt by the end of 1907 at the "insatiable nature of the continental demand for standing timber."[126] The new policy pleased the timber interests, many of whom were American, and resulted in an astonishing increase in revenue, but it was also jeopardizing the future welfare of the province for the sake of immediate gain.

Having given the matter serious consideration, the government issued a Minute in Council on December 27, 1907, withdrawing all unalienated timber lands from all forms of alienation.[127] The 15,000 licences then held by operators were still valid, as were the rights to 792,295 acres held under lease,[128] but the market then in sight could not absorb in 21 years all the timber held under lease or licences.[129] By the end of 1907 over 9,000,000 acres were held under licence.[130]

Between 1905 and 1908, the holders of licences made a concerted effort to persuade the government to grant them the same privilege of unlimited tenure as was enjoyed by lease holders. All they had under the present regulations were cutting

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126 Ibid., 1911, p. D 16.

127 Loc. cit.

128 Ibid., 1907-1908, p. H 49.

129 Although the holders of such licences do not discuss the matter publicly, there are still operators who have retained intact timber stands acquired by licence in the years 1905, 1906, and 1907.

130 Forests of B.C., p. 90.

rights for 21 years. To settle the complicated matter of timber land tenure, the government appointed a Timber and Forestry Commission in July, 1909. As a result of its recommendations, the government permitted licensees in 1910 to convert their present licences into what have amounted to perpetual licences. To accomplish this objective, the new regulations required licence holders to surrender the 21-year licences within two years. In place of the old licence, a new transferable licence, renewable annually so long as merchantable timber remained on the land, was issued. The new licence thereby became to all intents and purposes perpetual.[131] The result has been the more or less permanent alienation of some 7,500,000 acres of valuable timber stands all held under the 12,850 licences which were converted by their holders.[132] The Timber and Forestry Commission's final report estimated the acreage held under licence to represent sixty per cent of the merchantable timber acreage in the province.[133] The report also stated that the largest number of licences known to be in the possession of a single holder was 375, and that there were a number of licensees who held between one and two hundred.[134]

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131 Ibid., pp. 90-91.

132 Loc. cit.

133 B.C.S.P., 1911, p. D 17. "Final Report of the Royal Commission of Inquiry on Timber and Forestry 1909-1910," pp. D 1-116.

134 Ibid., p. D 27.

As an indication of how the lumber industry had spread throughout the province by 1915, the following tabulation is of interest.[135]

LOCATION OF LICENCES

Forest District	Number of Licences
Cranbrook	908
Hazelton	560
Kamloops	1672
Lillooet	53
Nelson	1306
Prince Rupert	1248
Fort George	962
Tete Jaune	1001
Vernon	328
Vancouver	3352
Vancouver Island	2357
Total:	13,747

East of Cascades: 7046
West of Cascades: 6701

When all unalienated timber land had been summarily placed under reserve in 1907 by an alarmed government, it was impossible to arrive at even a rough estimate of the acreage under reserve until every timber limit had been surveyed. By August, 1910, only 1466 of the 15,000 licences had been surveyed and located on a map,[136] a total of 869,585 acres. An informed guess set the reserved acreage at 3,750,000 acres. This was one-quarter of the total merchantable timber, estimated to be 15,000,000 acres.[137]

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135 Forests of B.C., p. 93. Although these figures are given for December 1, 1915, they still represent the distribution of licences throughout the province immediately prior to the first war.

136 B.C.S.P., 1911, p. D 27.

137 Ibid., p. D 17.

Whatever the exact acreage may have been, it remained under reserve until the passage of the Forest Act in 1912.[138] This major item of legislation provided for a fourth method of timber disposal, that of timber sales, the only method by which Crown timber was disposed of from 1912 until recently. The Forest Branch examined, cruised, and surveyed the area, and set an upset stumpage price. If it were considered in the public interest to do so, the standing timber was then sold to the highest bidder. The highest bidder was the operator who submitted the highest cash bonus per thousand feet of merchantable timber. Rentals and royalty were paid as the timber was cut, and on the same scale as that charged holders of licences.[139] The distinguishing feature of the sale system is that the fair market value of the timber, or more if the bidding exceeds the upset price, goes into the public treasury. The timber is sold for a much higher price than the land would bring, and the land still belongs to the Crown. As the land is logged, it is released for settlement.

The introduction of the sale system marked an end to the former exploitation and the beginning of a modern

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[138] For a full discussion of the act, see Forests of B.C., pp. 95-96.

[139] Typical of the timber sales in recent years was that of August 8, 1955, when the Herman Logging Company of Mission bid successfully on 6,348 acres of timber at American Creek, between Hope and Yale. The company bid $1,210,005 for 62,000,000 board feet. Based on estimates of the Forest Service surveyors who had cruised the area, the upset price had been set at $521,094. The successful company is allowed ten years in which to clear the stand. (See Vancouver Daily Province, August 8, 1955, p. 1.)

enlightened forest policy in British Columbia. The early systems of granting leases and licences to cut timber while retaining the land underneath, and the later method of reserving all unalienated timber lands while selling only the timber crop, has left the province in control of all but four per cent of its forested area.[140] This four per cent, which was alienated by the original system of outright sale of both land and timber, is the lowest percentage in Canada. In Prince Edward Island, practically all the timber lands are in private hands; in Nova Scotia, 73 per cent is in private hands; and in New Brunswick the figure is 50 per cent. The remaining provinces vary between seven and nine per cent as the percentage of permanently alienated forest land. Since 1913, it has been determined that British Columbia has 37,902.05 square miles (24,257,312 acres) of forest reserve, led only by Saskatchewan with its 141,037 square miles (90,263,680 acres).[141]

From 1871 to 1913, then, British Columbia has disposed of its timber in four ways - by outright sale of the timber along with the land, by leasing of timber land, by issuing a licence to cut timber, and by sale of the timber apart from the land.

In addition to these four distinct methods of disposing of timber directly to private individuals or companies

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140 Canada Yearbook, 1951, p. 445.

141 Ibid., p. 446.

interested in the lumber business, the government disposed of some of its timber lands indirectly as part of subsidies to railway companies. In 1883 the Dominion government was granted the forty-mile Railway Belt through the center of the province and a 2,000,000-acre block on Vancouver Island. Later, provincially incorporated railway companies were granted more than 6,000,000 acres in southeastern British Columbia, also as subsidy lands.[142] By 1913 some of this land had been sold by the companies into private hands and permanently alienated. However 4,065,076 acres were re-purchased by the government from the Columbia and Western and the British Columbia Southern.[143] Reports from the companies stated in 1910 that practically none of the remaining land could be classified as timber land.[144] No statistics from the Canadian Pacific Railway concerning timber in the Railway Belt were available other than the estimate of a Dominion forester who said that 1,280,000 acres in the Belt were under licence and permit in 1910.[145]

In the case of the Esquimalt and Nanaimo Railway lands, however, there was no doubt as to the existence of valuable timber stands. The subsidy lands for this railway had been given

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142 For full discussion, see Chapter 3.

143 See p. 291.

144 B.C.S.P., 1911, p. D 23.

145 Ibid., p. D 17.

by the province to the Dominion in 1883; the Dominion in turn gave the lands to the Esquimalt and Nanaimo Railway Company to construct the Island portion of the main line of the Canadian Pacific.

An interesting court case developed in recent times over the taxing of some of the timber on these lands. For three decades, the 375,000 acres of valuable timber stands still unsold in the possession of the Esquimalt and Nanaimo Railway Company had caused provincial governments concern because they yielded neither royalty nor tax.[146] Then in 1945, while conducting an enquiry into the provincial forest resources, Commissioner Chief Justice Sloan was struck by the fact that these timber lands were yielding no revenue to the province. In his report, Chief Justice Sloan suggested that the province should be collecting a tax on this timber and, in addition, might well assess the Island Railway Belt lands for the fire protection tax levied on all timber lands since 1912.[147] A contrived case was taken to the Canadian Supreme Court. The Court declared the levying of a tax on the Company's timber lands ultra vires of the British Columbia legislature.[148] The Company had argued successfully that the imposition of the tax would be contrary to the contract entered

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146 Forests of B.C., pp. 85-86.

147 B.C. Stat., 1912, c. 17, ss. 125-133.

148 Sup. Court (1948) S.C.R. 403.

into between the Dominion and the railway company on August 20, 1883, subject to the provisions of section 22 of the Settlement Act of 1883, which had said:

> The lands to be acquired by the Company from the Dominion Government for the construction of the railway shall not be subject to taxation unless and until the same are used by the company for other than railroad purposes, or leased, occupied, sold, or alienated.[149]

The province contended that no such contract as the company was suggesting had ever come into existence between the province and the company, regardless of what had taken place between the Dominion government and the company.

When the case reached the Privy Council, the arguments presented in the Canadian Supreme Court were reviewed, but the only question the province asked to have settled was that concerning the contract. The Judicial Committee's decision reversed that given in the lower court by saying that there never had been any contract between the local government and the railway company, and that the timber tax, in reality a land tax, was within the competence of the provincial government to enact and to collect.[150]

On the other hand, the decision agreed with that of the Supreme Court in regard to the imposition of the six cents an acre charge levied on unalienated timber land held by the Company under the clauses of the act authorizing a forest

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[149] B.C. Stat., 1883, c. 14, s. 22.

[150] A.G. for B.C. v. E. and N. Rwy. Co. (1950) 7 App. Cas. 87 at p. 112.

protection charge. Authority for this tax, it was stated, was derived directly from section 22 of the Settlement Act exempting the unalienated lands of the company from taxation, and therefore could not be imposed.[151] Thus the company was forced to pay the provincial government the timber taxes but not the forest protection tax.

Mr. H.R. MacMillan, British Columbia's first Chief Forester, estimated in 1913 that over 100,000,000 acres of provincial land were timbered, of which about 65,000,000 acres held merchantable timber.[152] According to one tabulation made in that year, only 16,000,000 acres of first class timber, a small fraction of the total potential, had been accounted for, under the following forms of tenure:[153]

TIMBER LAND ACREAGE, 1913

	Acreage	Average stand per acre ft. B.M.
Vancouver Island Crown grant timber	344,000	35,000
Mainland Crown grant timber	484,000	10,000
Esquimalt & Nanaimo Railway Co.	350,000	14,500
Canadian Pacific Ry. (Unpublished conjecture)	822,000	-
Timber leaseholds	613,000	26,000
Special licence timber	9,000,000	12,000
Mill timber on pulp leaseholds	387,000	13,000
	12,000,000	
Reserve timber land (Conjecture)	4,000,000	
	16,000,000	

151 Ibid., p. 88.

152 B.C.S.P., 1913, p. D 82. The latest figures available show that 90,000,000 acres are timbered, although only 40,000,000 contain mature timber. Over 38,000,000 acres are covered by immature timber, and the remaining 12,000,000 acres are forest land not presently supporting a satisfactory forest crop. (See Vancouver Daily Province, Industrial Supplement, May 1, 1956, p. 7.)

153 Adapted from Flumerfelt, A.C., op. cit., p.508. Statistics given in B.C.S.P., 1914, p. D 74, do not correspond exactly with these. The total acreage listed in the Sessional Papers as alienated timber land is 11,074,190 acres.

In the final report of the Timber and Forestry Commission of 1909-1910, the Commissioners predicted that "the value of standing timber in British Columbia is destined to rise to heights that general opinion would consider incredible today."[154] Evidence before them showed that British Columbia probably contained half the stand in Canada, that the province faced a rising market east, west, and south, that over ninety per cent of that timber was Crown property; and, above all, that government policy had made the province a sharer in the profits from the lumbering industry. It is not surprising that the Commissioners concluded by stating that, as a result of its income from timber, British Columbia should become "that phenomenon of statecraft and good fortune - a country of 'semi-independent means'".[155] In spite of their sanguine hopes for the future, the Commissioners would probably have been astounded had they known that the value of forest production would increase from $25,000,000 in 1913 to $631,699,562 in 1955.[156]

The policy formulated in 1905 and 1907 has been instrumental in retaining for the public in British Columbia an equity in its forests which has become the envy of other

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154 B.C.S.P., 1911, p. D 20. The three Commissioners were F.J. Fulton, K.C., Chief Commissioner of Lands and Works and Acting Attorney General; A.S. Goodeve, M.P., Rossland; and A.C. Flumerfelt, J.P., Victoria.

155 Loc. cit.

156 Vancouver Daily Province, Industrial Supplement, May 1, 1956, p. 7.

countries. Whether throwing open the forests in 1905 to all comers was part of a long-range plan or merely a temporary expedient for halting the increasing annual deficits, the tremendous enthusiasm of timber interests led to the reservation of all Crown timber lands in 1907. That the acreage of permanently alienated forest land is such a small fraction of the total productive forested area is largely a direct result of the principle of beneficial use applied to the forests, as it was to agricultural and mineral lands and, as will be shown, to water rights.

iii.

If lack of interest in forests resulted in casual timber legislation in the early days of the colony, the opposite was true in the case of water courses. Mining, the earliest profitable activity, required the extensive use of water, and early legislation provided detailed instructions for recording water rights. Had these been adhered to, few of the later difficulties would have arisen. But because water in British Columbia was in abundant supply and because water rights produced no revenues for the government, the resulting laxity in recording procedure produced incredible confusion. As with surveying, the fault lay not with the regulations but with the administration. The division of authority arising from the creation of the Railway Belt added to the chaos. Not until 1913, in fact, was the problem

satisfactorily settled.

The earliest use to which water was put in British Columbia was to aid gold miners in their search for placer deposits along the banks of streams or on the sand bars bordering the creeksides. Under English Common Law the principle existed that the public and those living on the banks of streams had the right, called "riparian proprietorship", to have the waters of streams flowing through or by their property left undisturbed.[157] Since any diversion of the water was considered damage to the adjoining property, the owner was protected against such diversion. Adherence to this Common Law principle of riparian ownership of water in British Columbia would have been impossible in the face of the miners' needs, and hence would have been directly opposed to the best interests of the colony.

Governor Douglas recognized by a Proclamation in 1859 the necessity of departing from the principle of riparian ownership. The Gold Fields Act of that year provided that:

> Any person desiring any exclusive ditch or water privilege shall make application to the Gold Commissioner . . . stating the name of every applicant, the proposed ditch head and quantity of water, the proposed locality of distribution, and if such water shall be for sale, the price at which it is proposed to sell the same, the general nature of the work to be done, and the time

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157 Grunsky, H.W., "Water Legislation and Administration in British Columbia," in B.C.S.P., 1913, p. D 117.

> within which such work shall be completed; and the Gold Commissioner shall enter a note of all such matters as of record. [158]

The Land Proclamation of February the same year made provision also for the granting of a 'Ditch privilege' to any holder of Crown lands.[159] The Land Ordinance of 1870 not only extended the privilege of diverting any water from streams flowing over or adjacent to any land held under pre-emption or purchase, but went so far as to state that no one had any exclusive right to the water in any stream until he had recorded such quantity of water as might be considered necessary.[160] The water so recorded could be diverted across adjoining land, whether held by the Crown, pre-empted, or purchased, upon payment to the lawful owner of reasonable compensation for damage; but the owner of those adjoining lands could not prevent the diversion of the water over his land however extensive the damage or troublesome the ditch. To ensure beneficial use of the water, section 37 required the owner of a ditch or water privilege to "take all reasonable means of utilizing the water taken by him; and if he shall willfully waste any unreasonable quantity of water", the rights to it could be cancelled.

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158 Papers relative to the affairs of British Columbia, Part III, p. 63, s. VII, Enclosure No. 1. "Gold Fields Act, 1859," pp. 58-65. Douglas to Newcastle, September 13, 1859.

159 Ibid., Part III, p. 65. Proclamation of February 14, 1859.

160 See Appendix A, ss. 30-37.

By 1871 it had become firmly established in law that no rights to any water passed with the rights to the land. Water rights had to be secured by means of a water record. As in the case of mining claims, priority of record established priority of right. However disconcerting it may have been to the new settler to discover that the creek or stream on his property was not necessarily his to use as he chose, the exigencies of mining development and of the later irrigation needs dictated the abandoning of the old world principle of riparian ownership. In British Columbia it was recognized that economic development necessitated putting the available water to the most beneficial use. It had already been decided for the future that there would be no such expansion of the riparian rights doctrine as had taken place in some of the western American states in which the courts, without any guidance from statutes, had expanded the old Common Law right until it had included the right to irrigate large acreages of arid land.[161]

Because the water record was automatically transferred with the transfer of the land or mining claim,[162] it should have been provided that the land on which the water was to be used be specifically designated in all water records. This oversight was later to cause "terrible confusion and

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161 B.C.S.P., 1913, p. D 119.

162 B.C. Stat., 1886, c. 10, s. 1.

endless trouble",[163] and the benefits to be derived from the transfer of water records were nullified in practice.

Although all water resources were not declared to be in the Crown until 1892,[164] the government proceeded to act as though such were the case. Where, previous to the granting of lands under any form of tenure, some access had been granted to the water for the purposes of watering stock, such access was preserved in the conveyance of the land. These access rights are explicitly preserved in all Land Acts.

Until 1892 the only classes of persons mentioned specifically in the sections of the Land and Mineral Acts dealing with water were farmers and miners, and it was further provided that to secure a water privilege the farmer had to be in lawful occupation of his land and actually cultivating it:

> Every person lawfully entitled to hold land under this Act, or under any former Act, and lawfully occupying and bona fide cultivating land, may record and divert so much and no more of any unrecorded and unappropriated water from the natural channel of any stream, lake, or

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163 Canada. Parliament. Department of the Interior. Water Power Branch. Report on Railway Belt Hydrographic Survey for 1911-12, by P.A. Carson, 1914, p. 29. (Hereafter cited as Railway Belt Hydrographic Survey for 1911-12.) Cf. p. 39. The discrepancy is accounted for by the fact that the figure given by Carson includes water as well as land surface.

164 For full discussion, see B.C.S.P., 1913, p. 119. While declaring the Crown's control over all unrecorded water and providing a method by which persons and companies holding water records could gain entry upon land not their own, the act neglected to enumerate the classes of persons entitled to procure water privileges.

> river adjacent to or passing through such land, for agricultural or other purposes, as may be reasonably necessary for such purpose. 165

In neither case, however, did any section require that the land or claim on which the water was to be used should be specified.

The Water Privileges Act of 1892[166] rectified the oversight. The land upon which the water was to be used had henceforth to be defined exactly. This was the first act in the province dealing entirely with water and in it the Crown's right to all unrecorded and unappropriated water was declared, "save in the exercise of any legal right existing at the time. . . or except in the exercise of the general right of all persons to use water for domestic and stock supply." All riparian rights acquired by long usage were denied; every owner of land could secure the right to divert unrecorded water for agricultural, domestic, mechanical, or industrial purposes; every owner of a mine could secure water for milling, concentrating, or any general mining purposes. Section 18 recognized the fact that water records for far more water than could be used had been granted for the past thirty years. Thus it provided that, should existing records of water on his land preclude the obtaining of water by a farmer or miner, he could apply for a record. With his application he was to submit evidence that the previous records had granted excessive quantities

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165 B.C. Stat., 1884, c. 16. s. 43. The wording is almost identical with that of section 30 of the 1870 Land Ordinance.

166 R.S.B.C., 1897, c. 190.

of water. The Gold or Land Commissioner was then to adjudicate the needs of the prior record holders and render a decision. The only omission from the act was the listing of the classes of persons entitled to water privileges. The most serious weakness of the act was that it left to the discretion of the already over-burdened Chief Commissioner of Lands and Works the amount of water to be granted in any record. Except for the one omission, it was a beginning of a first-rate modern Water Act. Later difficulties arose not from deficiencies in the act but from the failure to administer it properly. Supervision and protection of rights under the law were badly neglected.

Failure to provide for satisfactory supervision under the act resulted in much confusion concerning water records. Even until 1897 the records were made out in longhand in blank registers at the different government offices, the applicant asking for and receiving without question the right to use any quantity of water from 100 to 1000 miners' inches with no real consideration of his needs or knowledge of whether the stream could actually supply the quantity of water called for in the record. Regardless of the quantity of water sought to be recorded, the recording fee of $2.00 was the same. If the owner needed 100 inches[167] for the irrigation of his homestead he almost invariably took

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[167] Under B.C. Stat., 1882, c. 6, s. 4, a miner's inch was defined as that quantity of water measured at the sluice head in a trough which would go through an opening two inches high and one inch wide with a constant head of seven inches above it.

out a record for 500 or 1000 inches. Many pioneers had records for "all the water in the stream".[168] No track was kept of the records from the same water course, and many streams were recorded ten times beyond their available supply. The Board of Investigation set up in 1909[169] to untangle some of the complications discovered that in many cases the original record holder had never received a copy of his record. When all records were called in for examination, the holders of the records at that time had great difficulty in establishing their claims to the use of the water. It was discovered that in some records the quantity of water was not specified. In others the purpose was not mentioned. Sometimes the land on which the water was to be used was not listed. In still other cases the source of supply was either unnamed or impossible to identify.

As early as 1886 the government was aware of the complications resulting from the inaccurate and incomplete book-keeping. The Land Amendment Act of that year stated that:

> Whereas many records of water rights and privileges have in past times been honestly, but imperfectly, made, and it is desirable that such records should have legal recognition; therefore, it is declared and enacted that in all cases where the validity of any water record made before the sixth of April, 1886,

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168 Grunsky, H.W., "Water rights in the British Columbia Railway Belt," in Canada. Parliament. Department of the Interior. Dominion Water Power Branch. Annual Report, 1915-16, p. 180.

169 Authority was provided by statute in 1909. (See R.S.B.C., 1911, c. 239, Part III.)

> may be called in question, and the Court or Judge before whom the case is pending shall be of opinion that such record was bona fide made, the same shall be held to be good and valid so far as the making and entry thereof is concerned, and effect shall be given thereto according to the intent thereof.170

But as there were no regular offices established for the purpose of recording these water rights even after 1886, the confusion was compounded rather than clarified. Each land office in the province performed the duties pertinent to water records after its own fashion. Since no system of numbering or registering by districts was carried out, the Board of Investigation discovered after 1909 that any record in the interior might be located at Yale, Lytton, Nicola, Ashcroft, Clinton, or Kamloops, depending on where the original applicant had happened to be when he had made his application.[171] Defective grants were still made until 1909, and there had been very little cancelling or cutting down.[172]

By 1907 clarification of the water rights throughout the province could no longer be neglected. The government appointed a Commission of Investigation and, after receiving its report, passed the new Water Act of 1909, the principle feature of which was the creation of a Board of Investigation. The duties of this Board were to hold sittings

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170 B.C. Stat., 1886, c. 10, s. 3.

171 B.C.S.P., 1913, p. D 108.

172 Ibid., p. D 120.

and to hear claims of all persons holding or claiming to hold water records or other water rights; to determine the priorities of the claimants; to lay down terms upon which new licences should be granted; and to cancel old records.[173] The theory was that every water user in the province should have his right clearly determined and specified. The new licences replacing the former records were to be issued as fast as the Board could determine the validity of existing claims.

Before holding a sitting in any district[174] to adjudicate the claims to water rights on any stream, the Board inserted a notice in the British Columbia Gazette and the local paper requiring the filing of all claims before a certain date. As the notice commanded but slight attention, each present record holder was served with individual notification of the date of the sitting. But as holders had not been asked to come supplied with the necessary documents to support their claim, and as many holders did not possess such documents,[175] the Board instituted a search of the books in the Department of Lands to discover what land, if any, the grantee named in the record had occupied lawfully at the time

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173 R.S.B.C., 1911, c. 239, Parts III, IV, and V.

174 The first sitting was held in Trail on May 19, 1910.

175 The information required was the correct name of the stream, the purpose to which the water was applied, the land on which the water was used, and the quantity of water which could be used beneficially. (For details, see B.C.S.P., 1913, pp. D 108-110.)

the record had been issued. These findings were placed at the disposal of the claimants.

In this way the problem of dealing with the previous unsatisfactory records was met squarely for the first time. The aim was to erase all past mistakes and to start afresh in water administration. The 1909 act was an excellent beginning but, after it had been in operation for two years, it was discovered that some of its provisions were unworkable and that there had been serious oversights. For example, there was no mention of irrigation companies[176] whose projects might have saved the individual land owner from embarking upon extensive systems of his own. Nor was there any mention of the inspection of dams or the restraining of waste water. More serious still, the determination of the proper use of water was left in the hands of the local Government Agent, already too busy with other office duties and quite inexperienced in the management of water resources.

Before these shortcomings could be remedied another and more urgent water rights problem had been thrust upon the province. This problem, like the Precious Metals Case of 1889, was a direct outcome of Section 11 of the Terms of Union by which the province granted the forty-mile belt to the Dominion to aid in the construction of the Canadian Pacific Railway. One of the many questions which arose after the transfer of the lands in 1884 was whether the province was

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176 For a discussion of how this difficulty was overcome after 1909, see B.C.S.P., 1914, pp. D 128-131.)

to continue to administer the waters upon those transferred lands.[177]

Assuming its legal right to do so and noting the absence of any Dominion regulations concerning the waters within the Belt, the province continued to administer water rights as it had done since 1871. The Privy Council decision of 1889 which accorded the province the right to the precious metals in the Railway Belt strengthened the province's contention that it should also administer the water rights. Since no one within the province realized that the right to the waters might be vested in the Dominion, the settlers on the railway lands continued after 1884 to apply to the provincial authorities for water records. As it had already been conclusively demonstrated that riparian ownership was an untenable principle, it was from sheer necessity that the settlers sought their records as before. Very few of the settlers were either far-sighted enough or sufficiently versed in law to have applied to the Dominion for their record or for confirmation of provincial ones.

The question of jurisdiction did not come to a head until 1906 when several holders of Dominion timber licences on Lillooet Lake protested to Ottawa the granting to the Burrard Power Company by the province of a water grant of some 25,000 miners' inches from the lake for water power development. The

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177 The material for this section is taken from Railway Belt Hydrographic Survey for 1911-12, pp. 17-27, and Grunsky, H.W., "Water rights in the British Columbia Railway Belt," in op. cit.

timber licensees contended that the water grant would render the Lillooet River flowing out of the lake useless for their lumbering operations, and, as holders of Dominion licences, not unnaturally asked that the Dominion protect their interests by causing the grant to be withdrawn.

The Dominion government decided on a test case in order to clarify once and for all the water rights situation in the Railway Belt. Within the next four years the case, known as the Burrard Power Case, proceeded through the Exchequer Court and the Supreme Court of Canada to the Judicial Committee of the Privy Council, where judgment was rendered November 1, 1910.[178] The judgment, one of the shortest on record, not only reviewed the arguments of the lower courts[179] but also encompassed in itself a concise outline of the entire problem of the divided jurisdiction necessitated by the grant of the Railway Belt in 1884. While the question decided by the Judicial Committee was in itself a most important one for British Columbia, the judgment had an even wider significance. From it undoubtedly arose the offer of the province made by Premier McBride in 1911 to purchase outright the Dominion interest in both the Railway Belt and the

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[178] Burrard Power v. the King. (1911) A.C. 87.

[179] The Exchequer Court of Canada gave the initial judgment on May 10, 1909 (Ex C.R. XII, 295) in favour of the Dominion. British Columbia appealed the case to the Supreme Court of Canada, which gave its judgment dismissing the appeal on February 15, 1910 (40 S.C.R. 27).

Peace River Block.[180] For these reasons the judgment as delivered by Lord Mersey is quoted in full.

> This is an appeal, by special leave, from the judgment of the Supreme Court of Canada affirming a judgment of the Exchequer Court of Canada rendered on 10th May, 1909. The only question raised upon the appeal is whether certain water rights in the Railway Belt of British Columbia are vested in the Dominion Government so as to preclude the Provincial Legislature from dealing with them. The circumstances in which the dispute has arisen are shortly as follows: The province of British Columbia was admitted into the Dominion of Canada in the year 1871 under the provisions of the British North America Act, 1867. The admission was subject to the provisions of that Act and also to certain Articles of Union duly sanctioned by the Parliament of Canada and by the Legislature of British Columbia. The eleventh of these articles stipulated that the Dominion Government should secure the construction of railway communication between the railway system of Canada and the seaboard of British Columbia, and that the Government of British Columbia should convey to the Dominion Government 'in trust, to be appropriated in such manner as the Dominion Government may deem advisable in the furtherance of the construction of the said railway', certain public lands along the line of railway throughout its entire length in British Columbia. In consideration of the land to be so conveyed in aid of the construction of the said railway the Dominion Government agreed to pay to British Columbia from the date of the union the sum of $100,000 per annum. The conveyance contemplated by this part of the eleventh article was effected by subsequent statutes of the Legislature of the province, and the land so conveyed is known as the 'Railway Belt'. The railway has now been built. By the Water Clauses Consolidation Act, 1897, 61 Vict., chap. 190 (R.S.B.C.), section 4, the right to the use of the unrecorded water in any river, lake, or stream was declared to be vested in the Crown in the right of the province, and it was enacted that save in the exercise of any legal right existing at the time of such diversions or appropriation no person should divert or appropriate any water from any river, watercourse, lake, or stream, excepting under the provisions of the Act. By section 5 it was provided that no right to the exclusive use of such water should be acquired or conferred under the provisions of the Act

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180 B.C.S.P., 1911, p. N 2. McBride to Borden, November 6, 1911. (For discussion, see p. 289.)

or of some existing or future Act. By section 2 'water' was declared to mean all rivers and waterpower not being waters under the exclusive jurisdiction of the Parliament of Canada and 'unrecorded water' was declared to mean all water not held under a record under the Act or under certain appealed Acts or under special grant by public or private Act, and should include all water for the time being unappropriated or unoccupied or not used for a beneficial purpose.

On the 7th April, 1906, the Water Commissioners for the district of New Westminster, British Columbia, purporting to act under the provisions of this Act, granted to the appelants, the Burrard Power Company, Limited, at an annual rental of $566, a water record for 25,000 miner's inches of water out of the Lillooet lakes and the Lillooet river to be used for generating electricity. These waters are within the Railway Belt.

On the 26th December, 1906, the Attorney General for the Dominion of Canada filed an information in the Exchequer Court of Canada against the power company, claiming a declaration that the record was invalid and conveyed no interest to the defendant company and asking that the same should be cancelled. The information (which will be found set out on pages 717, 718, and 719 of the Record) alleged that the works of the power company if carried out would have the effect of diverting the water of the river, thereby interfering with its navigation, and would otherwise materially diminish the value of the lands of the Dominion Government in the Railway Belt. In support of the claim, reliance was placed on the agreement contained in the Terms of Union, and on the provisions of the Acts of the Provincial Legislature passed for the purpose of giving effect to that agreement. Reliance was also placed on the provisions of section 91 of the British North America Act, 1867, which declares that the exclusive legislative authority of the Parliament of Canada shall extend to all matters coming within certain classes of subjects, including the Public Debt and Property and Navigation. It was further submitted, that having regard to subsection 2 of section 131 of the Water Clauses Consolidation Act, 1897, the grant of the record by the Commissioners was not authorized by the Water Clauses Act.

After the filing of the information the Attorney General of British Columbia was added as a party to represent the interests of the province.

On the 23rd December, 1907, the determination of the issue of fact was referred for inquiry and report to Mr. Justice Archer Martin, who found the facts to be in accordance with the allegations of the Dominion Government, and reported accordingly. Thereupon the Attorney General of Canada prayed judgment as asked by the information. On the 13th April, 1909, the case came on for argument before Mr. Justice Cassels, and on the 10th May, 1909, that learned judge declared that the grant of the record of water in question was invalid and conveyed no interest to the defendant company. The judgment proceeded on three grounds: First, that the grant was an interference with property subject to the exclusive authority of the Dominion of Canada; secondly, that the diversion of water intended to be authorized thereunder would be a very serious interference with the navigability of the river; and thirdly, that the record was not authorized by the provisions of the Water Clauses Act under which it had been granted. The judgment as drawn up will be found at page 715 of the Record. From this judgment an appeal was brought to the Supreme Court of Canada. The appeal was dismissed on the 15th February, 1910.

Their Lordships are of the opinion that the judgments of the courts below are right. The grant by the province of British Columbia of public lands to the Dominion Government undoubtedly passed the water rights incidental to those lands. In the argument addressed to their Lordships this was not really questioned. But it was said that though the proprietory rights of the province in the land and in the waters belonging thereto were transferred to the Dominion Government, the legislative powers of the province over the same neither were nor could be parted with, and that therefore it was competent for the Provincial Legislature to enact the Water Clauses Act of 1897 under which the record was granted. In support of this contention a passage was cited from the judgment of Lord Watson in the Attorney General of British Columbia versus the Attorney General of Canada (1889), 14 Appeal Cases, p. 301. Their Lordships are of opinion that the contention is wrong, and that the passage in Lord Watson's judgment affords no kind of support for it. The object of article 11 of the Terms of Union was on the one hand to secure the construction of the railway for the benefit of the province and, on the other hand, to afford the Dominion a means of recouping itself in respect of the liabilities which it might incur in connection with the construction by sales to settlers of the land transferred. To hold that the province after the making of such an agreement remained at liberty to legislate in the sense contended for would be to defeat the whole object of the agreement, for if the province could by legislation take away the

water from the land it could also by legislation resume possession of the land itself; and thereby so derogate from its own grant as to wholly destroy it. Lord Watson's reference in the Precious Metals Case as to the eleventh article, so far from supporting the appelant's contention is against it. He says: 'The conveyance contemplated was a transfer to the Dominion of the provincial right to manage and settle lands and to appropriate their revenue.'

The grant of the water record in the case now under consideration is an attempt on the part of the province to appropriate the revenues to itself, and would if carried into effect violate the terms of the contract as interpreted by Lord Watson. It is true that Lord Watson adds that the land is not by the transfer taken out of the province, and that once it is 'settled' by the Dominion it ceases to be public land, and 'reverts to the same position as if it had been settled by the Provincial Government in the ordinary course of its administration.' But this also is against the appelant's contention, for it implies that until settled by the Dominion it remains public land under Dominion's control.

Their Lordships are of the opinion that the lands in question, so long as they remain unsettled are 'public property' within the meaning of section 91 of the British North America Act, 1867, and as such are under the exclusive legislative authority of the Parliament of Canada by virtue of the Act of Parliament. Before the transfer they were public lands, the proprietory rights in which were held by the Crown in the right of the province. After the transfer they were still public lands, but the proprietory rights were held by the Crown in the right of the Dominion, and for a public purpose, namely, the construction of the railway. This being so, no Act of the Provincial Legislature could affect the waters upon the lands. Nor, in their Lordships' opinion, does the Water Clauses Act of 1897 purport or intend to affect them; for, by clause 2, the Act expressly excludes from its operation waters under the exclusive jurisdiction of the Dominion Parliament.

The appeal was dismissed with costs.

A situation which had been merely confusing and troublesome prior to this judgment now arose in the Railway Belt which was alarming in its implications. The holders of water records up to now in the Belt were, or thought they were,

protected by law. When news spread that the hundreds of records within the Belt had no legal standing, each interested party began looking out for himself and water-grabbing became the order of the day.[181] Rivalry, formerly keen, became bitter in its intensity.[182] The situation was further aggravated by the extreme dryness of the 1911 and 1912 seasons.

The newly created Board of Investigation could do nothing in the face of the decision transferring water administration in the Belt to the Dominion authorities. As water grants are quite unlike land grants in that each water grant is not separate and distinct but entirely dependent on all previous grants, the inheritance of the Dominion was not enviable. The chief stumbling block to Dominion regulation was that it had had no control over the granting of water records prior to 1884.[183] The early records granted by the province would practically control the situation throughout the Railway Belt in view of the accepted principle 'first in time, first in right' applicable to all water records granted in British Columbia since 1859. Dominion-provincial co-operation in solving the dilemma became

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181 Railway Belt Hydrographic Survey for 1911-12, p. 29.

182 P.A. Carson, author of the Hydrographic Survey report for 1911-12, makes an interesting comment on p. 29. "The very origin of the word 'rivals' indicates the tendency of man to dispute over questions of water, its derivation being from the Latin 'rivus' (a river or ditch) and 'rivals' signifies those who quarrel about water."

183 Grants made by the province prior to April 19, 1884, were declared valid by the Court of Appeal in British Columbia on November 5, 1912, in re George v. Mitchell, 17 B.C. Reports 531, at p. 533. This was just one of the many court cases arising from the confusion after 1910.

essential, particularly as no new water licence, however carefully defined, could remain anything but indefinite until all prior rights had been assessed for their validity, and this the Dominion had no authority to do.

Before the matter was finally settled in 1916 to the satisfaction of all concerned, it was discovered that ten different kinds of water rights had been in existence in the Railway Belt, the legality of each of which had to be determined. There were first those records which had been granted prior to 1884 by the province; then records granted after the transfer of the Belt but appertaining to old provincial lands; records granted from 1884 to 1909 on lands formerly belonging to the Dominion but for one reason and another transferred back to the province; records granted by the province to unpatented Dominion lands; records granted by the Indian Reserve Commissioners for Indian reserves; records granted for Indian reserves by the province; rights to the use of or affecting the use of water granted by the Dominion; incompleted water power projects under contract with the Dominion to which water rights were clearly incidental; rights granted by the Dominion to timber interests; and finally, indefinite and unestablished riparian rights.[184]

A further embarrassment arose from the realization that streams having their source in the province and flowing into the Belt, and vice versa, could not be dealt with by one

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184 Railway Belt Hydrographic Survey for 1911-12, p. 29.

government without affecting the rights and interests of the other. Nor could water rights be administered independently of the land, since power rights required land for power sites and reservoirs, and irrigation rights required land as rights of way for canals and storage facilities.

Because of these insurmountable difficulties, and because the establishing of an entirely different administrative procedure for the Railway Belt would have been a cumbersome and needless duplication of effort, the Dominion government passed an Order in Council on December 20, 1911, transferring the administration of water rights in the Belt to the province pending such action as the Dominion might take later, and without prejudice to any existing rights.[185]

On April 1, 1912, the Dominion passed the Railway Belt Water Act,[186] which vested all ungranted water rights in the Crown and put a stop to any further riparian privileges accruing as a result of the purchase of land. The legislation was helpful, but it provided no machinery for adjusting the numerous conflicting claims within the Belt, which were left exactly as they had been. It did not supply any system under which these claims could be settled by the Dominion; neither

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185 Grunsky, H.W., "Water rights in the British Columbia Railway Belt," in op. cit., p. 181. The Order in Council was a direct and immediate outcome of the mission to Ottawa of Premier McBride, Hon. W.J. Bowser, and Hon. W.R. Ross, in November 1911. They had made urgent representations to the Dominion for transfer of the water rights' administration to the province. (See B.C.S.P., 1912, p. N 7.)

186 Can. Stat., 1912, c. 47.

did it transfer the adjudication of the existing rights and claims to the provincial authorities. It left the holders of the numerous grants made by the province since 1884 and of the riparian interest of certain Dominion grants without any procedure by which they could have their claims validated or rescinded. This oversight left the provincial Board of Investigation with nothing to do but assess the rights of water record holders outside the Railway Belt and those who held valid provincial records obtained before 1884 within the Belt. Since records held by residents in the Lower Fraser Valley and the South Thompson area, both in the Railway Belt, were the most contentious records in the province, the usefulness of the Board was seriously impaired.

Section 5 of the Dominion Act dealt with future or pending applications and was phrased as follows:

> The water so vested and reserved to the Crown. . . shall, during the pleasure of the Governor-in-Council, be administered under and in accordance with the provisions of the 'Water Act, 1909' of British Columbia.

The only difficulty was that the provincial Water Act had already been repealed. The Dominion legislation did apply to any provincial act to come into effect after the passing of its own act, but this authority did not extend to any provincial act passed between 1909 and 1912. The result was that the only act then in force in British Columbia, the Consolidated Act of 1911, could not apply to the Railway Belt, which would have to be administered under a statute no longer in force.

The difficulty was resolved the next year by the enactment of the new Dominion Railway Belt Water Act of 1913.[187] Under section 5, all waters without distinction within the Railway Belt were to be administered by British Columbia and all records issued by the province were to be regarded as valid grants. Section 6 stated that all provincial Water Acts were to apply to the Railway Belt even though they had been enacted for the provincial lands alone. In this way, subject only to grants made by Canada during the period, all records issued by the province within the Belt since 1884 were held to be as valid as though they had been issued for territory outside the Railway Belt, and the provincial Water Consolidation Act of 1911, with its amendments, was to apply to all land in the province irrespective of where it was located. Consistency of administration was now possible.

After 1913 a further adjustment was made between the two governments to permit landowners to co-operate in the construction and operation of water systems, but the major difficulties had been resolved. Although the Dominion government reserved the right to abrogate the agreement at any time, for all intents the provincial government had become guardian or trustee of the Dominion's interest in the water within the Railway Belt. The Dominion continued to exercise a careful check on activities within the Belt by virtue of its control

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187 Ibid., 1913, c. 45.

of the lands, since it had to protect the extensive timber interests within the Belt. The lands were controlled and administered under the Railway Belt Act of 1906[188] and under section 9 of the 1930 Water Act, which expressly reserved to the Dominion control over all its land.

Settlement of the dispute served to strengthen the authority of the Board of Investigation by permitting it to proceed with its interrupted investigation of every record, regardless of when issued or by whom. The Board set June 1, 1916, as the final date for the filing of riparian owners' claims.[189] Once they were settled, the entire province was again to be covered by the record or licence system of diverting water for beneficial use begun in 1859 by Governor Douglas.

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188 R.S.C., 1906, c. 59.

189 Grunsky, E.W., op. cit., p. 187. Grunsky had acted as British Columbia's legal advisor in connection with water administration both during the litigation proceedings before the Privy Council in 1910, and afterward, assisting in framing water legislation. By 1915 he was acting as liaison between the Dominion and the province in perfecting the details of water and land administration within the Railway Belt.

CHAPTER 3

LAND AND RAILWAYS

If the British Columbia government allowed comparatively little Crown land to be alienated through mining and lumbering activities, it was a vastly different matter when it came to the building of railroads. Railroads were vital in developing provincial resources as well as in attracting immigrants, and the local government gave lavishly of its lands to get the lines built. The pattern was set by the enormous grant of the Railway Belt to the Dominion in 1871 under section 11 of the Terms of Union. It was followed by numerous land grants to shorter provincial lines, many of which were fortunately not built.

i.

As railways were an indispensable prelude to the development of the Canadian prairies,[1] so they were to the entry of British Columbia into the Canadian confederation in 1871. Section 11 of the Terms of Union, under which British Columbia entered Confederation, provided in part that:

> The Government of the Dominion undertake to secure the commencement simultaneously, within two years from the date of the Union, of construction of a Railway from the Pacific towards the Rocky Mountains, and from

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[1] Heaton, H., History of trade and commerce, with special reference to Canada, 1939, p. 316.

> such point as may be selected, east of the Rocky Mountains, toward the Pacific, to connect the seaboard of British Columbia with the railway system of Canada; and further, to secure the completion of such Railway within ten years from the date of the Union.[2]

When the British Columbia delegation of Helmcken, Trutch, and Carrall went to Ottawa to discuss terms, there was no suggestion from them of a railroad. Their request was limited to a wagon road across the mountains to join a railroad at the foothills, but when the Dominion delegation proposed the railroad, the suggestion was accepted eagerly.[3] Nor would it appear from the discussion on the proposed terms in the Dominion House that the provincial delegation set any time limit on the completion of the line.[4] In answer to

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[2] Can. Stat., 1872, pp. lxxxiv-cvii. Imperial Order in Council, May 16, 1871. Also to be found in: Canada. Parliament. Parliamentary Debates, 1871, Vol. II, pp. 935-941. (Hereafter cited as Parliamentary Debates, 1871.) Also to be conveniently located in R.S.B.C., 1897, pp. cv-cviii, and B.C. Journals, 1871, pp. 14-16.

[3] For proposed and accepted terms, see B.C.S.P., 1881, pp. 140-143. For evidence that the railway was proposed by the Dominion delegation, see: British Columbia. Legislative Assembly. British Columbia and the Canadian Confederation: Submission presented to the Royal Commission on Dominion-Provincial Relations, Victoria, 1938, p. 10. The view persisted in eastern Canada for many years, however, that British Columbia "had insisted, as an essential condition of its entrance to the Union, on a substantial guarantee of the construction of a railway to connect it with the eastern provinces." (See McLean, S.J., "National Highways Overland," in Canada and its Provinces, Vol. 10, p. 421.)

[4] For the complete discussion of the Terms, much of which had to do with the railway clause, see: Parliamentary Debates, 1871, pp. 660-683, 692-703, 711-733, and 744-755. For the debate in the Senate, see Ibid., pp. 772-815, 832-881, and 899-935.

A.T. Galt's charges that the terms as first presented were much easier on the Dominion, the Hon. Mr. Tilley replied that:

> The only difference was as regards communication, it being decided that there should be a guarantee for the specified time of ten years, which would allow ample time for the construction of the Railway, and the Government had thought it better to limit the matter to ten years instead of making a guarantee in perpetuity.[5]

Because of the prevailing optimism in the newly-federated Canada which had led to the incorporation of numerous railway companies,[6] and because of the realization that British Columbia would not be interested in Union without provision for a transportation link with Canada,[7] little concern was felt at the time about implementing this clause, either in Victoria or Ottawa. And when, in addition, public thinking about the completion of such a grandiose scheme was crystallized by the Dominion government itself as of:

> vast importance not only to the political and commercial interests of Canada, as tending to the closer union of its several Provinces, but also to the British Empire at

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[5] Ibid., p. 666.

[6] Since 1854 governments in Canada had been caught in the railway fever. Sir Allan MacNab, prime minister in the MacNab-Morin ministry of that year, had been elected on a platform he described tersely as "Railways." Between 1853 and 1857 £15,000,000 was spent in Canada in speculative development arising from the enthusiasm for building railways. There was active land speculation along the Grand Trunk and the Great Western; towns and villages were projected wholesale; building lots at auction sold for prices fostering the hope of speculative profit. All of these developments were to become features of a similar phase 30 years later in British Columbia, but which were in 1871 still influencing men in public life in Canada. (See McLean, S.J., op. cit., p. 408.)

[7] Brebner, J.B., North Atlantic Triangle, 1945, p. 178.

> large, as affording rapid and direct communication through British Territory with her Australian and Asiatic possessions. . .[8]

it was fully expected that if the financial burden were to prove excessive for Canada's meagre resources, British assistance would be forthcoming.

Before he left Washington in May of 1871 after maintaining his watching brief on the writing of the Treaty of Washington, John A. Macdonald was reasonably sure of obtaining this aid. He had discovered that Britain had no intention of compensating Canada, nor of pressing the American government to do so, for the losses suffered from the Fenian raids. When it was intimated to him that Britain would proffer some balm to Canada's wounded pride, but that it would be done unofficially, Macdonald is said to have "stiffly refused", but to have suggested how much more convenient for Canada it would be, and how distinctly more compatible with national dignity, were the British government to guarantee a large loan for the construction of the transcontinental railway.[9]

The aid was given as Macdonald expected. When the loan of £ 2,500,000 was being discussed in the British House of Commons on June 24, 1873, it was suggested that it was in the form of a bribe for Canada's concessions in regard to the fisheries clause of the Treaty of Washington, but Prime Minister

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[8] From the Preamble to the original Canadian Pacific Railroad Act. (Can. Stat., 1872, c. 73.)

[9] Brebner, J.B., op. cit., p. 193.

Gladstone hotly denied the accusation, saying that the money had no connection with the Treaty. Its object, he explained, was not to give Canada a certain amount of hush-money, but simply to recognize her just demands on England on account of the Fenian raids. Canada had thus suffered on England's account, and England wanted to discharge the debt.[10]

Lulled by the buoyant spirit of the day, and with the assurance of aid from England should it be necessary, the Dominion government maintained a discreet silence about any doubts of the possibility of fulfilling the terms of the railway clause within the time specified. It took ten years to realize fully what actually was involved and to discover what a tremendous obligation had been assumed under section 11. Difficulties over the building of the line brought down Macdonald's government within a year of the passing of his first Canadian Pacific Railway Company Act. The same difficulties led to very strained relations between the provincial and the federal governments, as well as between the mainland and Island sections within the province. Before all problems were resolved and the railway an actuality, three Governors-General had come to British Columbia in connection with railway matters - Earl Dufferin, the Marquis of Lorne, and the Marquis of Lansdowne. Had the federal authorities not realized that railroad union alone could make the 1867 political union a fact, and that the transcontinental line would be a vital link

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10 From the London Telegram, quoted in the Victoria Colonist, July 6, 1873.

in the "all-red route" between Britain and the Orient and Antipodes, British Columbia might well have found herself abandoned by Ottawa, in spite of section 11.[11]

The construction of the line, however, was not a provincial problem. That was up to the federal government. All that was required of the province, aside from waiting for the railway to arrive and haggling over when and where it should be built, was to fulfil her part of the bargain contained in the remaining portions of section 11:

> And the Government of British Columbia agree to convey to the Dominion Government, in trust, to be appropriated in such manner as the Dominion Government may deem advisable in the furtherance of the construction of the said railway, a similar extent of public lands along the line of the Railway, throughout its entire length in British Columbia, not to exceed, however, Twenty (20) Miles on each side of the said line, as may be appropriated for the same purpose by the Dominion Government from the public lands in the North-West Territories and the Province of Manitoba. Provided, that the quantity of lands which may be held under pre-emption right or Crown grant within the limits of the tract of land in British Columbia shall be made good to the Dominion from contiguous public lands; and, provided, that until the commencement within two years, as aforesaid, from the date of the Union, of the construction of the said Railway, the Government of British Columbia shall not sell or alienate any further portions of the public lands of British Columbia in any other way than under right of pre-emption, requiring actual residence of the pre-emptor on the land claimed by him. . .

The government members in Ottawa were pressed closely for an explanation of how they proposed to pay for a railroad through such a "sea of mountains" as British Columbia was

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[11] Angus, H.F., ed., British Columbia and the United States, by F.W. Howay, W.N. Sage, and H.F. Angus, 1942, p. 238.

reported to be, if reliance had to be placed on a strip of land however wide in such a wilderness. The financial details were gone over in the House every day the matter came up for discussion, and on every occasion the government sought to impress upon doubtful members the fact that the utmost cost would be a mere $100,000,000 for the whole line, all of which would be paid for out of the land grant. Sir George E. Cartier, government leader in the absence of Macdonald in Washington, said that:

> While this clause was under discussion between the delegates and the Government it was proposed by the Dominion that the Colony should hand over a forty mile strip of land towards the construction of the railway. That would be 24,000 square miles of land, or 50,360,000 acres of land, not merely agricultural land, but mineral land. Placing that land at $1.00 per acre it would equal a grant of $50,360,000 towards the construction of the railway.[12]

Cartier assured the House not only that the cost would be a manageable one for the country, but also that there would be no increase in taxation. Although this announcement was greeted with cheers, it was all the ministry could do to scrape by on several motions put during the debate.[13] When questioned

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[12] Parliamentary Debates, 1871, p. 662. The 50,360,000 acre figure, although quoted twice, must surely have been a clerical error. Anxious as Sir George was about the acceptance of the Terms of Union, he would hardly have expected many members to believe that 24,000 square miles, even in a land as large as British Columbia was reputed to be, contained 50,360,000 acres. The figure should read 15,360,000.

[13] Although the government usually could rely on a three-to-one majority, one motion against acceptance of the Terms was lost by only 10 votes. The numbers were 75 to 85. Eighteen regular supporters of the Ministry voted for the motion of non-acceptance and many others declined to vote. (See Canada. Parliament. House of Commons. Journals, 1871, p. 161. Hereafter cited as Can. Journals.)

concerning the value of the lands to be conveyed by the province, the Hon. Alexander Morris, Minister of Inland Revenue, was reported as saying that:

> He could state on the undisputable authority of Mr. Trutch, the Surveyor General of British Columbia, that taking the whole of British Columbia and Vancouver Island fully one third, or about 50,000,000 acres was good farming land, while the whole acreage of Ontario was 77,000,000 acres.[14]

In view of the amazing amount of mis-information that came out in the debate concerning British Columbia, and in view of the magnitude of the task ahead of the federal government, it is not surprising that to many disinterested persons in 1871, the agreement contained in section 11 seemed almost impossible to fulfil. The fate of the resolution might have been very different had the government not agreed that the undertaking should be carried out by private enterprise and not by the Dominion government, and that it should be assisted by such liberal grants of land, and such subsidy in money or other aid, without increasing the rate of taxation, as Parliament should determine.[15]

Whatever the opposition in Ottawa may have been to the terms, they were accepted in good faith in British Columbia,

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[14] Parliamentary Debates, 1871, p. 714. This was not to be the only instance in which either through ignorance of design Trutch was to mislead the federal government. Bancroft says of Trutch that he "was accounted a shrewd politician, not over-truthful in speech, an able ruler, and one having always at heart the interests of the province though never forgetting those of Joseph W. Trutch." (See Bancroft, H.H., op. cit., p. 655, n. 32.)

[15] Can. Journals, 1871, p. 264.

although much subsequent bickering and animosity might have been avoided had the fact that the railroad was to be built by a private company been incorporated in the eleventh section.

The statutory authority under which British Columbia had been able to make the contract contained in section 11 was to be found in section 49 of the Land Ordinance, 1870,[16] the 'Free Grants' section:

> It shall be lawful for the Governor in Council to make such free or partially free grants of the unoccupied and unappropriated Crown lands of the Colony, for the encouragement of immigration or other purposes of public advantage. . .

Not without some justification, the Dominion government considered this clause to be inadequate authority for a grant as extensive as that proposed by the Terms of Union. Hence the 1875 Land Act authorized the reserve of any lands not otherwise lawfully held "for the purpose of conveying the same to the Dominion Government, in trust, for . . . railway purposes, as mentioned in Article 11 of the Terms of Union."[17] To facilitate the progress of provincially incorporated lines, an additional clause in 1891 authorized the grant of a right of way up to 100 feet in width through Crown lands to any railway company incorporated within the province. Any land needed for stations, sidings, wharves, warehouses, bridges, culverts, or drains could also be granted to the company.[18]

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[16] See Appendix A, s. 49.

[17] B.C. Stat., 1875, No. 5, s. 60.

[18] B.C. Stat., 1891, c. 15, s. 17.

Even before the Dominion questioned the authority under which the province could undertake to convey lands, and two years before the province authorized in 1875 the grant of the Island Railway Belt[19] from Esquimalt to Nanaimo, trouble arose between the two governments over the projected land grant. The first session of the British Columbia Legislature had appointed a Select Committee to investigate the legality of certain land sales made since July 20, 1871.[20] Section 20 of the 1865 Land Ordinance had permitted any owner of 160 acres to pre-empt a further 480 acres of waste land of the Crown contiguous to his own land at the reduced price of two shillings, one penny an acre. The second section of the 1870 Ordinance repealed this clause, but it stated that "such repeal shall not prejudice or affect any rights acquired or payments due. . . prior to the passing of this Ordinance."[21] Subsequently, several Assistant Land Commissioners had permitted holders of 160-acre settlements to purchase the additional acreage, for which the settlers had paid fifty cents an acre. On July 2, 1872, Premier and Attorney-General McCreight gave it as his opinion that these recent acquisitions were illegal.

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19 B.C. Stat., 1875, No. 13. This grant was repealed by B.C. Stat., 1882, c. 16.

20 B.C.S.P., 1872-73. "Report of a Select Committee appointed to draft an Explanatory Address to His Excellency the Lieutenant-Governor, in respect to legalizing Sales of Land in the Province, since 1870."

21 See Appendix A, s. 2.

Immediately the government notified all purchasers that their lands must be surrendered and that their money would be refunded. McCreight, however, suggested an appeal to the legislature, but A. Rocke Robertson, Chairman of the Select Committee, said that "The Provincial Government holds itself disabled by the 11th Article of the Terms of Union to pass an Act legalizing the purchases made under the circumstances above set forth."[22]

This was the first concrete instance of the problems which developed in British Columbia as a result of the reservation placed on all its lands. Lieutenant-Governor Trutch's Speech from the Throne to the second session of the legislature which opened on December 17, 1872, pin-pointed the difficulty.

> In consequence of the Railway clause of the terms of union preventing free grants of lands and other equally insuperable difficulties, no practical result in the way of introducing new settlers into the Province has been attained.[23]

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[22] B.C.S.P., 1872-73. "Report of a Select Committee . . . . ," s. 6.

[23] B.C. Journals, 1872-73, p. 2. The whole tone of Trutch's speech was the antithesis of what it had been the year before. So keen was the local government to have the railway built that it let its wishful thinking override the many practical considerations involved before the line could become a reality. Simply because a few scattered preliminary surveys had been made in 1872, Trutch's speech to the first session of the first legislature on December 17, 1872, had said that because those surveys had been conducted with "such energy and success, that if any doubt ever existed as to the certainty of the work of construction being undertaken within the time limited in the Terms of Union, it can now no longer be entertained." But if his government spoke too hastily on the beginning of construction, it could assess astonishingly well the role the railway was to

Hopes had been high in the new province that with the promise of a railway within ten years, the construction of which was to start in two, immigration would increase, business would prosper, and labour would be in great demand. So convinced of this was the province that on February 21, 1873, the legislature passed an act imposing a tax of four cents an acre on all wild land in the province. William Smithe, one of the two members for Cowichan, had introduced the bill in the first session early in 1872. In moving the bill, he said that the tax should be imposed on "unoccupied and uncultivated Country Lands, with a view to preventing speculation therein."[24]

It had been supposed that so great would be the rush in the new province to acquire public lands by pre-emption, the only method since 1871 of obtaining lands, that protection against speculators was necessary, particularly for the lands lying along the Fraser River and between Nanaimo and Esquimalt. However, McCreight, a good lawyer if not a first-rate rough-and-tumble politician, reserved the bill for the consideration of the Governor-General on the grounds that it could apply to "land hereafter appropriated for Railway purposes."[25]

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play in the future of the province. Trutch said, "Railway communication with the Eastern Provinces will supply the great desideratum of British Columbia. . . and the Canadian Pacific Railway will prove in many ways one of the most active and efficient agents in settling the Province." (See B.C. Journals, 1872-73, p. 1.)

[24] B.C. Journals, 1871-72, p. 17.

[25] B.C.S.P., 1872-73, p. 3.

John A. Macdonald, as Minister of Justice, disallowed the act when it reached Ottawa. Although the tax did not apply to lands vested in or held in trust for the Crown or for public uses of the province, Macdonald felt that the act would tend to discourage private capital on which he depended for the building of the railway. He said:

> The Government of Canada are taking active steps to endeavour to induce capitalists to engage in the great undertaking of constructing a Railway to connect the two Oceans. The chief inducements to such capitalists, is the promise of a large grant of Land in aid of the enterprise, and the imposition of such a Tax upon these Railway Lands, would greatly diminish the prospect of a Company being formed.[26]

A new act was passed in 1873 levying the same rate of tax on lands of non-residents, but exempting all property then or later to be held as railway lands.[27] The looked-for rush of settlers did not develop as had been eagerly anticipated and, in spite of the somewhat meagre returns to the Treasury from the Wild Land tax, the government increased it in 1876 to five cents an acre on top of the rate levied on all land. The collapse of the railway negotiations in the mid-seventies, the depression that settled on the province following the optimism of the first years after union, and the serious financial problems which the government had to face made any

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26 Dominion and Provincial Legislation 1867-1895, pp. 1018-1019; also B.C.S.P., 1872-73. "Return . . . relative to Acts of last Session," p. 8. Order in Council, October 12, 1872.

27 Consolidated Statutes, 1877, c. 152, s. 10, part (1).

source of revenue, however small, highly desirable. The Wild Land tax, ostensibly enacted to circumvent speculation in public lands, also alleviated the burden placed on settlers in paying for the extensive road-building program undertaken by the government. The extension of the Cariboo Wagon Road, begun ten years before by Douglas, was in itself proving a serious drain on the Treasury. Any tax that would contribute to defraying the cost of such expensive undertakings was not likely to be abandoned. The public lands of the interior would never be disposed of without easier access to them - both ranchers and miners needed roads.

The free grant land policy begun in 1873 had not been a success, partly because few immigrants were arriving and partly because those who did arrive could not be enticed into the interior where the better agricultural lands were located. In spite of road expenditures amounting to 57 per cent of the total cost of government in 1875,[28] the interior remained empty with the exception of a few cattle ranchers and some miners. The total population of the province in 1881 was estimated to be no more than 49,500, including Indians.[29] Part of the blame for this stagnant condition was laid on the Dominion government for not having begun the railway construction. In an effort to lighten the burden of road construction

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[28] Total government expenditure in 1875 was $833,396.79; of this, road maintenance and construction was allotted $413,160. (See Report of C.C.L.W., 1875.)

[29] B.C.S.P., 1901, p. 557.

costs on settlers, the government had been levying a toll on all goods entering the mining and cattle regions over the Cariboo road. The policy of giving away lands appeared to the settler one of dubious value if the taxation on his land had to be sufficiently heavy to carry the building costs of roads in such a territory as the Fraser Canyon. Although the federal government pointed out in 1876 that the collection of the one-half cent a pound on all goods entering the Fraser Canyon was infringing on its prerogative of regulating trade and commerce, Blake, the Minister of Justice, refrained from disallowing the legislation. He was too well aware of the hostility already prevalent in British Columbia toward the Mackenzie government's railway policy. He contented himself with pointing out that, in effect, the toll charge was placing upon consumers of imported goods the chief burden of constructing the public roads of the province.[30]

It was a different matter, however, when in 1878 the provincial government proposed to raise the toll charge to one cent a pound.[31] The correspondence between the Canadian Pacific officials, the Dominion government and the provincial government which preceded the passing of the act reflected the atmosphere in which the railway was built so long as Walkem

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[30] Dominion and Provincial Legislation 1867-1895, pp. 1040-41.

[31] The charge was raised to one cent per pound under authority of B.C. Stat., 1878, c. 37, s. 2.

was premier of British Columbia and Mackenzie prime minister of Canada. The province, implacable in its demands to have the railway built on schedule, and determined that the contractors should contribute handsomely to the local treasury to help pay for the roads to the interior made necessary by the non-existence of a railroad, adopted in their toll charge what proved to be both an untenable and a short-sighted policy.

From his reading of the Victoria Colonist in the spring of 1878 while the bill was being discussed in the legislature, John Robson, then paymaster and surveyor for the Port Moody to Kamloops section of the Canadian Pacific, knew that the proposed road tolls were large enough to cripple the railway construction.[32] On August 8 he wrote to Premier Walkem that the imposition of such a toll as proposed by the bill would not fail to impede seriously, "if not render practically impossible", work to begin next spring just beyond the toll gate. He asked for an exemption on all railway material.[33]

Walken's reply two days later was hardly reassuring to Robson,

> In reply to your letter of the 9th inst., recommending the inconvenience of applying the Road Tolls Act to railway plant, or material passing the Yale toll gate, I have to assure you that whenever construction is commenced, the government will afford every facility for its being carried on expeditiously, and so far as they are concerned,

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[32] Dominion and Provincial Legislation 1867-1895, p. 1069.

[33] Ibid., pp. 1069-1070. Robson to Walkem, August 9, 1878.

> as cheaply as possible, arrangements just to the Dominion and province, can then be made.[34]

Coldly courteous as always in his correspondence, Walkem could not forego the satisfaction of including the phrase "whenever construction is commenced" and its implication that he doubted that it ever would be, but that if it were, "arrangements just", both to the Dominion and the province, would be arranged. Robson felt that Walkem's conception of justice in this case would not be to his liking. He had read the Speech from the Throne, written by Walkem, for the opening of the legislature on July 29, 1878, which had said, "I would remind you that the time has come when delay in the construction of the work, both on the mainland and the island, can no longer be justified," and that the time had come "to take measures much more decisive than the mere entry of protest" which had been "systematically disregarded" by the Dominion.[35] Robson had also read Walkem's lengthy Address to the Queen in which, after outlining the injurious effects which the constant delays in construction were having, he had moved the secession resolution.[36]

In his reply to Walkem, Robson pointed out as diplomatically as he could that Walkem's assurances were not "altogether satisfactory." Because, he said, the Yale section

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[34] Ibid., p. 1070. Walkem to Robson, August 11, 1878.

[35] Quoted in Howay, F.W., "Political history, 1871-1913," in Canada and its Provinces, Vol. 21, p. 202.

[36] Ibid., p. 203.

was to be placed under contract the next spring, the one cent per pound toll would exert a "most serious influence upon tenders", since the contractors would make allowances for the toll charges, charges which "it seems hardly necessary to add . . . must amount to something enormous" on all railway plant and supplies. Warming to his subject, he continued:

> I beg, therefore, most respectfully to submit that however willing your government might be to meet the Dominion government in a fair and liberal spirit 'whenever construction is commenced', the remedy would have come too late, as the tenders would have been sent in and the contract awarded at the greatly increased price, or what is far more likely to happen, the tenders would be rejected on account of undue appreciation in prices thus occasioned, and instead of the province 'making a haul' out of the Dominion, its interests and revenues would suffer on account of consequent delay in railway construction.[37]

For these reasons, Robson asked for the insertion of a clause exempting railway supplies and materials.

Having become convinced that he could look for no remedy from the province in the mood then prevailing, Robson forwarded all correspondence to the federal Department of Public Works on August 17. That Department lost no time in bringing Walkem to task. On September 4, Robson was able to report that a partial concession had been made and that the bill had been sent back to the House for the insertion of an exemption clause. He pointed out, however, that the exemptions were only on "plant and material" used by the railway company

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[37] Dominion and Provincial Legislation 1867-1895, p. 1070. Robson to Walkem, August 13, 1878.

itself, that the exemption did not apply to supplies employed or consumed in construction, and that the modicum of relief offered was made dependent on a revocable Minute of the Executive, "rather insecure ground it is to be apprehended, for contractors to go upon in tendering for the work." The charge of $20.00 a ton on all contractors' supplies to be used "within the shadow of the toll gate" he considered not only enormous but unjust.[38] Because he had reason to suspect that the measure was a deliberate attempt to operate prejudicially against construction at Yale, Robson asked that the measure be disallowed. It had passed the provincial House two days before, on September 2, 1878.

The Minister of Justice, the Hon. James Macdonald, disallowed the bill not only because it imposed unfair charges on the Dominion Exchequer, but also because it interfered with trade and commerce.[39] When Robson was asked to give reasons for his suspicions that the Tolls Act was a deliberate attempt to frustrate construction of the railway, he explained that he had definite proof that the words "and supplies" had been erased from the exemption clause when it had come before the legislature, and that a full discussion had taken place in the House as to whether supplies should have been included or not.

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38 Ibid., p. 1071. Robson to Department of Public Works, September 4, 1878.

39 Canada Gazette, 1879, Vol. XIII, No. 14, p. 471. Order in Council, October 4, 1879.

What had begun as a method of relieving incoming settlers from burdensome taxation on their free grant land had backfired on the Walkem Ministry. However, the imposition of such a tax on the contractors' supplies had almost become a point of honour with Walkem. Exactly the same bill which had been disallowed once was re-introduced and passed through the House a second time on May 8, 1880. Moreover, a second act was passed setting the toll on all rice carried over the road at two cents, double the levy on all other goods.[40] Both acts were disallowed.[41] It is only fair to add that Walkem had not begun the agitation against the Chinese and that, although the heavy toll placed on rice was aimed directly at the Chinese labourers imported by the Canadian Pacific Company to labour on the construction of the line, he was simply giving expression to the general attitude toward Chinese.

Still unwilling to let the Dominion government proceed unmolested with the multitudinous details of awarding railway contracts in British Columbia, Walkem continued to harass Ottawa. He had had to admit defeat on the matter of road tolls, but he could still register protests over the failure of the Dominion to open the lands in the Railway Belt to settlement. These lands had been reserved by the province since August 3, 1878; since their transfer to the Dominion in

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[40] B.C. Stat., 1880, c. 28 and c. 29.

[41] Canada Gazette, 1881, Vol. XV, No. 5, p. 143. Order in Council, July 29, 1881.

1880, no regulations had been issued to facilitate their settlement. The failure to do so, Walkem protested, had resulted in great injury to provincial development. Both in 1881 and 1882 he complained bitterly to Ottawa about the situation, and asked that the Belt be opened immediately to settlement.[42]

Typical of the many irritating complications which arose from the Dominion's delay in constructing the railway was a dispute over reclaimed lands in the Lower Fraser Valley. On April 10, 1878, four months before the reserve had been replaced on the railway lands on the mainland, the provincial government had authorized E.L. Derby, an engineer from California, to construct a line of dykes in the Chilliwack-Sumas-Matsqui area which would reclaim some 50,000 acres of land subject to periodic overflow from the Fraser River and hence useless for settlement and agriculture. As a statute had been in effect since 1873 empowering the government to grant Crown lands to anyone willing to undertake a reclamation scheme,[43] the 1878 act was simply to stipulate the amount of land Derby should receive in return for dyking effectively lands in the Sumas area. Providing he should "well and effectually dyke all the said Lands" by July 1, 1880, he was to be given 45,000 acres in the Chilliwack-Sumas region,

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42 B.C.S.P., 1881, p. 146, and Ibid., 1883, p. 349.

43 B.C. Stat., 1873, c. 10.

including Sumas Lake, and 6000 acres at Matsqui.[44] The work progressed very slowly. Derby did not meet his commitments, and the Matsqui section, the only one on which any work was done, gave way each spring. Finally, in 1881, Derby assigned his entire interest to G.B. Sword, who later in the year received a Crown grant of the 6000 acres at Matsqui.[45] When Derby failed to dyke the eastern portions of the land, a group of twelve men, including such public figures as C.A. Vernon, B.W. Pearse, J.R. Hett, R.G. Tatlow, J.D. Pemberton, and C.E. Pooley, requested authority to undertake the reclamation of the land they described as "cranberry marsh, continually flooded, and worthless until reclaimed."[46] The syndicate asked for and received permission to buy all the land they reclaimed at $1.00 an acre.

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44 B.C. Stat., 1878, c. 6. In 1876, Edgar Dewdney, C.E., had been sent to the area by H.G. Vernon, Chief Commissioner of Lands and Works, to assess the practicability of dyking the land between Sumas Mountain and Cheam. (For Dewdney's favourable report, see Report of C.C.L.W., 1876, pp. 269-275. For all the correspondence between Derby and the government, see B.C.S.P., 1879, pp. 359-366.)

45 Report of C.C.L.W., 1881, p. 369. The entire history of dyking and reclamation projects in the province may be followed through the Reports from 1878 onward. After the unsuccessful attempts made by Derby and his successors to dyke effectually the lands subject to overflow, provision was made for the formation of Dyking Districts. By the end of 1911 there were seven such districts in the Fraser Valley in which 43,036.02 acres of land had been reclaimed. (See Report of C.C.L.W., 1909, pp. F 64-66.)

46 See B.C.S.P., 1887, pp. 365-366 for the correspondence. This description found its way unaltered into the Minute in Council of July 9, 1884.

Without any authority to do so from the Dominion government, the province had sanctioned the grant of 45,037 acres of Dominion lands. It was argued, of course, that the original agreement had been made before the railway reserve had been gazetted. But the province by a new act in 1885[47] had cancelled the Derby agreement of 1878 and offered the lands for sale to anyone willing to undertake the dyking project. The Minister of Justice in Ottawa promptly disallowed it, arguing that when the act had been passed on March 5, 1885, the lands were described as Crown land. But these lands automatically become Dominion property the moment the Derby agreement was rescinded, since the Settlement Act of 1884 had transferred all public lands in the Railway Belt to the Dominion. The act of 1885 was disallowed on March 16, 1886.[48] But Robson, by now the Hon. John, Provincial Secretary and Minister of Finance and Agriculture, managed to get around the disallowance. This hard-hitting and aggressive public servant succeeded in persuading the Dominion to reconvey the disputed acreage to the province "to make valid certain titles and interests which the province had undertaken to create therein."[49]

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47 B.C. Stat., 1885, c. 9.

48 Dominion and Provincial Legislation 1867-1895, pp. 1096-1098.

49 Can. Stat., 1889, c. 7. To settle this difficulty was only one of the reasons why Robson had made a special trip to Ottawa in 1887. (For his report on the mission, see B.C.S.P., 1888, pp. 327-330. For the papers relating to the mission, see Ibid., 1889, pp. 159-66, and Ibid., 1890, pp. 403-404.)

Although the financial slump from 1873 to 1885 affected British Columbia as severely as it did eastern Canada, it did not impose any such burden on the province as it did on the Dominion concerning the Canadian Pacific Railroad. All British Columbia had to provide was land, a forty-mile strip along the right of way wherever it might be located, and to refrain from alienating any further portion of the public lands of the province other than by pre-emption. This reserve on public land was seriously affecting the development of the province, as it meant that no titles to land could be issued. The provisions concerning disposal of land within the forty-mile strip obviously could not be carried out until the route had been determined and the western terminus decided.[50] With the selection of the Kicking Horse Pass route in 1882 and the establishment of Port Moody as the terminus, British Columbia was called upon to convey to the Dominion the Railway Belt. This conveyance had been made in 1880, but as the route chosen

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50 Interest was high in British Columbia as to the route eventually to be selected for the railroad. By 1876 the Dominion government had determined that the route would be via Bute Inlet to Esquimalt. On June 7 an Order in Council to that effect had been passed and given to Lord Dufferin for transmission to Lieutenant-Governor Trutch. On July 4, Trutch acknowledged its receipt from the hands of Lord Dufferin, who was then in Victoria. In addition to designating the route, the Order in Council asked British Columbia to convey the 40-mile strip along its length. But once Trutch acknowledged receipt of the despatch, it disappeared, not to be found until years afterward in Government House. A Select Committee was appointed in 1879 to investigate, but no responsibility could be affixed. Trutch stated emphatically that he had personally given it to his private messenger to take to the Provincial Secretary, but both those men denied ever having seen it. The only fact established was that Lord Dufferin had given it to Trutch. (See British Columbia, Sixty Years of Progress, Part II, p. 93, n. 6.)

at that time was through the Yellowhead Pass, a new instrument of transfer became necessary.[51] By the time the route had definitely been selected[52] across the mountains a further complication had arisen, resulting from Prime Minister Mackenzie's Railway Act of 1874.[53] The findings of the preliminary surveys made by Dominion surveyors had resulted in the inclusion in the act of a clause stating that the lands to be conveyed must be of "fair average quality". It had been ascertained by then that not so much of the province was good land as members of the Macdonald government had led the House to suppose.

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[51] The Railway Belt through the Yellowhead Pass was conveyed by B.C. Stat., 1880, c. 11. The lands along the route finally chosen were conveyed by B.C. Stat., 1884, c. 14, known as the Settlement Act. As to why the route was changed from the Yellowhead Pass, see Roe, F.G., "An unsolved problem of Canadian History," in Canadian Historical Association. Annual Report, 1936, pp. 65-77. As to why it had not been located farther south, see Lamb, W.K., "A bent twig in British Columbia History," in Ibid., 1948, pp. 86-92.

[52] The description of the route given in the B.C. Gazette for the section from Kamloops to the Alberta border was as follows: "Commencing at Kamloops, thence on a line by the Valley of the South Thompson River and through Eagle Creek Pass to the Columbia River, thence by the Ille cillewaut (sic) River and the Beaver Creek Valleys, and by Roger's Pass through the Selkirk Range to the Boundary of British Columbia at the Bow River Pass, and having a width of twenty miles on each side of said line." (See B.C. Gazette, 1884, p. 2.) There was some confusion as to where the boundary was between Alberta and British Columbia. Simeon Duck of Victoria, who became Minister of Finance and Agriculture in March, 1885, and Hans Helgesen of Esquimalt, moved in the Assembly in 1884 that "whereas there is a probability that Calgary, on the line of the Canadian Pacific Railroad, is situated in this Province," an enquiry should be launched as to where the boundary actually was. Duck and Helgesen must have received a hasty lesson in geography, however, as their motion was withdrawn. (See B.C. Journals, 1884, p. 28.)

[53] Can. Stat., 1874, c. 14, s. 8, part (4). See Chapter 4, n. 111.

To settle all the questions which "have so long agitated the public mind and have tended to embitter the relations existing between the two Governments,"[54] the newly elected Smithe government attempted early in 1883 to adjust all difficulties connected with the Island Railway, the Esquimalt Graving Dock, the railway lands on the mainland, and compensation for delay in the building of the Canadian Pacific Railway. Walkem's elevation to the Bench as a judge of the Supreme Court in May of 1882[55] ended the provincial policy of "fighting Canada" and cleared the way for settlement of Dominion-provincial differences. In May, 1883, the Smithe Ministry passed "An Act relating to the Island Railway, the Graving Dock, and Railway Lands of the Province."[56] But in their rush to settle all problems left by the Walkem regime, members of the Smithe government drew up the act too hastily. After a visit from Sir Alexander Campbell, Minister of Justice, the act was re-drafted and passed by the provincial legislature on December 19, 1883.

This act came to be known later as the Settlement Act, for obvious reasons. The forty-mile strip containing 10,976,000 acres was conveyed to the Dominion for the third time, together with a block of land of 3,500,000 acres[57]

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54 B.C.S.P., 1883, p. 459. "Papers relating to the Island Railway, the Graving Dock, and Railway Lands." Dominion Order in Council, May 7, 1883.

55 Howay, F.W., op. cit., p. 208.

56 B.C. Stat., 1883, c. 14.

57 The selection of the lands in the Peace River block was not made until 1907. At that time, 73.6 square miles

in the Peace River area. In addition 1,900,000 acres on Vancouver Island[58] was conveyed to the Dominion, to be turned over to some company which would undertake to build the line from Esquimalt to Nanaimo.[59] The Dominion was also to pay $750,000 in cash to this company. Further, the Dominion was to take over and complete the partly-built Esquimalt Graving Dock and to pay the province $250,000 for expenses already incurred on that project.

When the act came up for discussion in the federal House, it was ably defended by Sir Charles Tupper, Minister of Railways and Canals, supported by the members from Victoria, Noah Shakespeare and E. Crowe Baker. Two mainland members, J.A.R. Homer of New Westminster and D.W. Gordon of Vancouver, objected strenuously to the terms by which the Dominion government would receive such large and valuable tracts of British Columbia land. Sir Charles Tupper opened the debate, discussing at length the Railway Belt and the 'in lieu of'

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adjoining the Alberta border and straddling the Peace River were selected. (See Forests of B.C., p. 102. For Premier McBride's statement concerning the greatly enhanced value of these lands by 1911, see B.C.S.P., 1912, p. N 9.)

58 See B.C. Stat., 1882, c. 15 for the legal description of the land.

59 On the advice of Victoria, "His Excellency the Governor-General was pleased" to name Robert Dunsmuir, John Bryden, James Dunsmuir, Charles Crocker, Charles F. Crocker, Leland Stanford, and Collis P. Huntington as a "body corporate and politic", under the name of the "Esquimalt and Nanaimo Railway Company" to construct the line. (See Canada Gazette, Vol. XVII, p. 1648. Also to be found in Can. Stat., 1884, Vol. I, p. 117.)

lands in the Peace River.

> It was found, owing to the location of the land by the the gorges of the Fraser, that a question arose as to whether the land was to be horizontal or perpendicular, as in many cases you would pass a mile or a long distance from the railway without reaching any land available for cultivation. Those questions were presented and made the subject of discussion between Mr. Trutch, the agent of the Dominion Government, and the Government of British Columbia, and that Government finally made a proposal to the Government of Canada for the solution of these various questions. That was in 1883, and the result of these proposals was that a new act was passed, again appropriating the land in the twenty mile belt on each side of the line, on a new arrangement. . . . 60

Turning to the problem of the Island railway, Sir Charles continued:

> . . . I am sure we all recognize the great importance of the construction of a railway between Nanaimo and Esquimalt. It is well known that although it is somewhat rocky and precipitous, and, to a considerable extent, barren country, there are valuable coal lines contained within that area; and I have been told by some of our friends from British Columbia that they have objected to the terms of this proposal because it was handing over to a company the development of these mines. But it must not be forgotten that, valuable as are these coal areas in Vancouver Island, they have lain for a long time in a comparatively undeveloped state. With the exception of Mr. Dunsmuir's mine, and another one which has not been very successful, I believe that up to this moment, practically, very little has been done in developing these coal areas. We have reason to believe - in fact I am informed by the able Premier of British Columbia, who is now here, that he has applications for large tracts of coal mining areas believed to possess very valuable coal mines outside the section that is covered by these resolutions. 61

Tupper's speech was answered by J.A.R. Homer of New Westminster who, though not a frequent speaker in the House,

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60 Canada. House of Commons. Debates, March 21, 1884, p. 1024.

61 Ibid., p. 1025.

could always be relied upon to talk good sense. It is probable that Sir Charles expected little debate on his bill, since Smithe himself, who was in Ottawa, had assured him that his government was as anxious to clear up the whole problem as was the federal government. Also the provincial administration had already passed the province's version of the bill. Undoubtedly both Homer and Gordon knew that their opposition would not delay the bill for more than an hour or so, but it was characteristic of both men to oppose what they felt to be wrong. Speaking to the bill, Homer said:

> It is with regret, Mr. Speaker, that, owing to the conditions contained in the agreement on which the resolution is based, I cannot give it my support. It was supposed that after twelve months' deliberation the negotiation between the Dominion Government and the Government of British Columbia, the result would have been some compensation to that Province for the delay which has occurred in carrying out the terms of Union. But, Sir, instead of that Province receiving any compensation according to this agreement, it is being relieved of property consisting of lands, timber, coal, and other minerals to the value of $20,000,000, for which the Province is to receive a railway, seventy miles in length, involving a cost of above $2,250,000. . . .
>
> With regard to this railway to which we are asked to give 2,000,000 acres of land on Vancouver Island, including 450 square miles of coal land, it is true that a small portion of these lands have been alienated, but the greater portion of that which has been alienated is owned by one of the members of the present Company, thus creating the greatest coal monopoly in existence. They do not expect to realize their money from the railway, but out of the coal mines; and in addition to the Dominion Government granting this enormous monopoly, they are to receive $750,000, and the effect will be, to create one of the largest coal monopolies that ever existed. . . .

> With regard to the 3,500,000 acres of land on the Peace River, according to the terms of Union, the Government of the Dominion of Canada will receive from the Government of British Columbia a belt of land 20 miles wide on each side of the line, or in all, a belt forty miles wide along the entire line running through British Columbia, and for all the lands which were alienated from that belt previous to its being reserved, they are to receive other lands contiguous thereto. Now, it has been stated by the Minister of Railways that there are 800,000 acres of land alienated, but I think the honourable gentleman is under the mark. I think I am nearer correct when I say, that there are 1,000,000 acres of land alienated, previous to the reserve being placed on it, so that, as I contend, they are receiving 1,000,000 acres more than they were entitled to under the terms of Union, thereby enabling them to subsidize this company with $750,000. 62

In support of Homer's objections, Gordon of Vancouver informed the House that the Dominion geological surveyor had computed productive coal measures to amount to 300 square miles in the Comox area alone, containing an estimated 4,800,000,000 tons of coal.[63] He felt this to be entirely too lavish a grant, particularly when considered along with the other clauses of the bill, notably the clause granting the acreage in the Peace River.

Gordon was then castigated by Noah Shakespeare of Victoria for his opposition to the bill.

> In almost every instance, when any large question has come before this Parliament, if it has been on the Island, the Mainland has opposed it; if it has been on the Mainland the Island Island, has opposed it 64

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62 Ibid., p. 1026.

63 Ibid., p. 1027.

64 Ibid., p. 1029.

Shakespeare had ample grounds for his exasperation, since the petty bickering between Island and mainland was a frequent impediment to the progress of provincial affairs. Victoria members, intensely aware of the Islanders' almost fanatic determination to have a railway, could not be expected to see the whole problem as objectively as could those from the mainland.

Speaking in support of the bill, E.C. Baker, also of Victoria, suggested that as this bill had already passed the provincial legislature by a vote of 15 out of 25, he could see little reason for lengthy discussion in Ottawa. He reported that he had been in the local legislature when the vote had been taken and noticed that seven members only voted against the bill, that two - Dunsmuir and the member from Cassiar - abstained, and that the twenty-fifth person was the Speaker. In an attempt to help the Dominion recoup the $750,000 which it was going to have to pay the new company, he suggested that the Peace River block could readily be sold to a 'colonization scheme', the directors of which would "gladly pay 50¢ an acre."[65]

Still feeling it his duty as a member from Vancouver Island to convince the House that the Dominion would be losing nothing were the measure to be passed, Baker pointed out the probable value to the company of the lands they would receive

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65 Ibid., p. 1034.

for building the line on the Island. From the grant of 2,000,000 acres, the company could derive the following revenue:

Net value of coal lands	$2,160,000
Net value of timber lands	1,346,100
Net value of agricultural lands ...	1,125,000
	$4,631,100

As the line from Esquimalt to Nanaimo would be seventy miles long, Baker drew the attention of the House to the fact that the company would receive forty square miles of land per mile of railway, or 25,600 acres, which, based on his calculation of $1.00 per acre for timber land and $5.00 per acre for agricultural land, was tantamount to a cash subsidy of $61,000 per mile.[66]

Homer, well aware of the extreme generosity of the Dominion's grant to the company for building the Island line, concluded the debate with a word of prophecy:

> As I said before. . . the Government should hesitate before they give away all this valuable property, as they will find in five or ten years that the Local Government will have to come back to them for assistance, instead of being able to open up various resources of the country.[67]

Shortly thereafter the vote was called and the Settlement Act became law.

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66 Ibid., p. 1036. To arrive at his figure for the value of the timber lands, Baker set the price at $1.00 an acre for 2800 square miles, but from this figure he deducted one quarter of the value to allow for land already alienated. Although he did not give the source of his statistics, Baker assumed 300,000 acres of agricultural land to sell at $5.00 an acre with a similar one quarter deduction for prior alienation.

67 Ibid., p. 1037.

With its passage the Esquimalt and Nanaimo Railway Company received not only a substantial land grant and the $750,000; it also received all the coal, coal oil, ores, stones, clay, marble, slate, mines, minerals and "substances whatsoever in, or under the lands so to be granted"; the foreshore rights in all its lands; the privilege of mining under the foreshore and the sea opposite and of retaining for their own use all coal and minerals under the foreshore; all the timber; and exemption from taxation on all property until alienated. The speeches in Ottawa of the opponents of the bill show clearly that, even before it became law, some British Columbians realized only too well the prodigality of the terms of the Settlement Act.

It would seem that Trutch, by now the Dominion's confidential agent in British Columbia,[68] was solely responsible for the inclusion in the Settlement Act of the Peace River block. Since the provincial government had alienated approximately 900,000 acres of Railway Belt land[69] between 1871 and 1883, it was only reasonable and just that it should make substitution elsewhere for those lands. Such compensation had been provided for in section 11 of the Terms of Union. But the Dominion government went considerably beyond this when it insisted that since much of the land within the

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68 See C.S.P., 1881, No. 8 (21k), p. 48, for the correspondence concerning his appointment.

69 This is the figure Gosnell used in 1913 in British Columbia, Sixty Years of Progress, p. 128; writing in 1927, he lowered the figure to 800,000. (See Gosnell, R.E.,

Belt was not of 'fair average quality', British Columbia must convey an equivalent in good lands elsewhere.[70] R.E. Gosnell, the originator of the Better Terms movement in British Columbia and the man who worked for over 25 years to have the Railway Belt lands returned to the province, says that Trutch raised "an issue never heard of before, namely, that as the Railway Belt was largely useless, or unfit, for agricultural purposes, it should be supplemented by fertile lands elsewhere."[71] This was indeed strange behaviour for the man who had assured the Dominion government in 1870 that at least 50,000,000 acres of land in British Columbia was good agricultural land and who, acting as though much of this acreage would be included in the Railway Belt, had written every word contained in section 11 of the Terms of Union

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Memorandum for The Hon. Mr. Justice Martin, Commissioner in re Railway Lands of British Columbia re Conveyance of Railway Belt and Peace River Lands to British Columbia, 1927, p. 12. Pamphlet in Howay-Reid Collection, University of British Columbia Library. Hereafter cited as Memorandum for The Hon. Mr. Justice Martin.)

[70] Gosnell said this transaction took place "as the result of a subterfuge - in the guise of 'lieu lands,' as a substitution for barren lands in the Railway Belt, for which there was not a title of warranty legally or justification morally in the terms of section 11 of the Terms of Union. . . ." Gosnell's insinuation is that Trutch was responsible for the subterfuge. (See Ibid., p. 22.)

[71] Ibid., p. 11. Gosnell must certainly have known whereof he spoke. Before presenting his Memorandum to Hon. Mr. Justice Martin he had spent nearly a year in the Dominion Archives searching records, newspapers, diaries, and letter-books. His complete file is in the Provincial Archives, Victoria.

himself.[72] Trutch's assurance had allayed any fears as to the quality of British Columbia land, so much so that Cartier in 1871 had spoken not only of agricultural land for the settlers who would be enticed into the province, but also of mineral land as an added inducement to immigrants. It is a fact that the quality of land in the Railway Belt had not been a consideration at the time of Union, and that the province was in no way bound to supplement it by land of a better quality.[73]

Wherever responsibility lay for the terms of the Settlement Act, the opinion held in British Columbia twenty years later was summed up by Premier McBride:

> By the terms of the 'Settlement Act' the Province, tired of delays and wearied with fruitless negotiations, agreed to transfer 3,500,000 acres of the best land in the Peace River District in lieu of expenditures on the part of the Dominion, amounting in all to about $1,100,000. These lands, worth now, at the lowest valuation, $17,500,000, were parted with to secure a railway from Esquimalt to Nanaimo, costing less than $3,000,000, which, under the Carnarvon Terms, the Dominion Government had pledged itself to build without cost to the Province. The value of such concession was not then foreseen. The Treaty of 1871, as revised in 1884, was made in misapprehension of the possibilities of British Columbia and the development to accrue from the building of the Canadian Pacific Railroad. 74

But these second thoughts lay in the future. Now that the long-negotiated Settlement Act had finally been passed, the Smithe government determined to do what it could

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72 Loc. cit.

73 British Columbia, Sixty Years of Progress, Part II, p. 128.

74 B.C.S.P., 1912, p. N 9. "Memorandum Re British Columbia's Claims for Special Consideration," in "Report on Mission to Ottawa."

to make up for the delays of the past decade. Its first action was to remove the reserve which had remained since 1878 on Crown lands in the province. On May 9, 1884, the Dominion relinquished all claim to the land west of Port Moody; the next day, a provincial Minute in Council cancelled the reserve which had been still in effect on these lands and threw them open for sale and pre-emption.[75]

But these lands west of Port Moody did not remain open long. It had soon become obvious that the eastern end of Burrard Inlet was not a satisfactory terminus for the Canadian Pacific Railway. A government reserve was placed on the lands on August 7.[76] With more liberality than good sense, the Smithe government readily agreed on February 23, 1885, to grant an additional 6000 acres west of Port Moody to the Canadian Pacific Railway,[77] plus a number of sizeable lots in Granville, for the extension of its line into Coal

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75 B.C.S.P., 1887, pp. 325-326.

76 Loc. cit.

77 Ibid., p. 322, and B.C. Journals, 1886, p. 37. For the full text of the Agreement between the province and the C.P.R., see B.C.S.P., 1888, pp. 545-546. Under section 2 of the Agreement the extension was to be completed by December 31, 1886; if not, the province could claim $250,000 from the company. The line was not finished on time; on January 13, 1887, the province asked for the surrender of the bond. C. Drinkwater, Secretary of the C.P.R., admitted that the line had not been completed on schedule, but charged that this was so "solely in consequence of the active interference of the judiciary of the Province." The case was taken before Chief Justice Begbie of the B.C. Supreme Court, who gave his decision in favour of the province. (See B.C.S.P., 1888, pp. 549-551.) It is not without interest that only five days

Harbour, or Vancouver, as it was then being called. In addition, the Company received from private owners a gift of one-third of their holdings.[78] For this 12-mile extension of a line which, in its own interest, the Canadian Pacific Company would have had to construct anyway within a year or so, the gift of these 6,275 acres by the Smithe government of what shortly became valuable land, was indeed a liberal gesture, if not a prodigal one, and one to which this same government was subsequently held to very strict account in the legislature.[79] These lots, previously held under timber lease by the Hastings Sawmill Company, soon comprised the most valuable acreage in Vancouver.[80] In all justice to Smithe and his colleagues, however, it should be explained that they had ample precedent, and that these acres, like all other lands

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before the Minute in Council had been passed asking for the forfeiture of the $250,000 bond, H. Abbott, General Superintendent of the C.P.R., had had to ask the provincial legislature for the $37,500 bonus promised by the government for the completion of the New Westminster branch line. A Minute in Council of April 21, 1886, had agreed to pay the bonus, but the C.P.R. had never received the money.

78 British Columbia, from the earliest times to the present, Vol. II, p. 431. It was not long before litigation arose over the ownership of many lots in the Granville townsite. The C.P.R. protested that certain lots were being held by squatters, but in vain. (For the evidence regarding ownership, see B.C.S.P., 1894, Vol. 2, pp. 1143-1148.)

79 Howay, F.W., op. cit., p. 213.

80 The writer's grandfather, Robert H. Urquhart (1864-1951) acquired some of these lots in the 1880's. At the same time, he bought several other lots along the Fraser River in what is now South Vancouver. When reminiscing about his early days in Vancouver he often spoke of how he had paid taxes for more than 50 years on the river lots, having long ago sold those which are now in the West Hastings Street area. He had been sure that sooner or later a city would develop along the river.

in the province, not only had been reserved from sale since 1878, but also had been reserved specifically for railway purposes, and even tentatively had been transferred to the Dominion to this end.[81] In the next year - 1886 - the government continued its generous policy toward the Canadian Pacific Railway by granting it a bonus of $75,000 and a free right of way to construct its nine-mile branch line from Vancouver to New Westminster.[82] In law, the extension from Port Moody into Vancouver and the line to New Westminster are still branch lines.[83]

Had the government granted no other lands, the opposition in the province could hardly be blamed for deploring what it termed the "give-away" policy of the government. During the election campaign of 1886 it did so vociferously. But the voters so heartily endorsed that policy that they returned the government with 19 supporters out of a House of 27 members![84] Obviously the male property owners of British Columbia considered it good business to construct rail lines by subsidizing them with Crown land. And, indeed, why not? Was British Columbia not so vast that a few million acres would never be missed? It was, apparently, a matter of

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81 British Columbia, from the earliest times to the present, p. 432.

82 B.C.S.P., 1887, p. 321.

83 Angus, H.F., ed., op. cit., p. 243.

84 British Columbia, from the earliest times to the present, p. 444.

no concern that by 1886, as the opposition charged, the government had given away the Graving Dock, 3,500,000 acres in the Peace River, 1,900,000 acres on Vancouver Island, 750,000 acres including the mineral rights to the Columbia and Kootenay Railway Company,[85] 60,000 acres for a useless road,[86] 78,000 acres for a worse than useless canal,[87] and 6000 acres for an extension which the Canadian Pacific Railway would have been obliged to make for its own protection.

So far, however, none of these land grants could truthfully be said to have been made to companies whose motives were purely speculative. Certainly the invitation was there and was soon to be accepted by literally dozens of companies, and with their government's blessing. All that any enterprising men had to do to form an incorporated company was to subscribe their names to a printed memorandum

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[85] B.C. Stat., 1883, c. 25.

[86] Granted to G.B. Wright, 1883, in the Yale and Kootenay Districts, for building the Eagle Pass Wagon Road, a 12-foot road from Shuswap Lake to the Columbia River to aid in the construction of the C.P.R. in the Columbia region. (See British Columbia, from the earliest times to the present, p. 442.)

[87] Built by W.A. Baillie-Grohman, 1883-1888, across Canal Flat to turn the Kootenay River into the Columbia, thereby reclaiming land which was under water every spring. To build the canal, which was to be 45 feet wide and 6700 long, Baillie-Grohman was granted 48,000 acres of rich alluvial soil lying along the Kootenay River. Fearful of danger to the C.P.R., the federal government required the insertion on the canal of a lock. For the extra work and expense, 30,000 acres of picked land in the Upper Kootenay Valley were granted. To climax the absurdity of the project, within 12 months of its completion, the local government voted Baillie-Grohman $2500 to have his canal closed. (See B.C. Journals, 1887, p. 17; B.C.S.P., 1887, p. 316.)

of association, name the termini of their line - which had to be within the province - and indicate the location of their registered office. Only one man's name had to appear in the Act of Incorporation.[88]

It was as simple as that. The liability of the company was limited to the amount, if any, "unpaid on shares respectively subscribed for and held by them." Shares were regularly $100. In order to persuade the public, either in British Columbia, eastern Canada, or abroad, of the company's sincerity, each director usually bought a block of shares, although he was not required to do so. No doubt if the company intended to proceed with its undertaking, each director would buy a sizeable number of shares in the expectation of reaping rich rewards from the completed line. The directors of those companies whose sole interest lay in speculation in public lands or public money perhaps bought equally heavily of their own stocks, but only to convince the public of their good intentions. How many millions of dollars went into the pockets of directors of stillborn railway companies cannot be known, but the capitalization of such defunct companies in British Columbia amounted to the huge sum of $343,715,000 for Canadian

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88 R.S.B.C., 1911, c. 194, part 2, s. 8. Though the act to incorporate railway companies received minor emendations from time to time, the 1911 act was little different from those of the previous 30 years. For an example of an act incorporating an intraprovincial railway, see Appendix C, Item 1.

and £ 4,400,000 for English companies.[89]

ii.

Section 11 of the Terms of Union set the pattern for thirty years by which land subsidies were granted to intraprovincial railroads. Usually two separate acts were required to get a line underway. The Act of Incorporation, introduced by a private member, constituted the company under the Private Acts of the session, and a Subsidy Act, introduced by one of the ministers, stipulated the number of acres the government would grant to the company under the Public Acts of the legislature. Each subsidy act ensured the protection of the rights of pre-emptors. Once the government had set aside a reserve of land from which the company could choose its portion, no further sections could be alienated from the reserve. All these provisions, the model for which was section 11, became standard practice in the provincial subsidy acts.[90]

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[89] These figures were compiled from all the provincial Acts incorporating railroads but which were never built. The capitalization may not be too significant, as it meant only that the directors were authorized by Statute to sell shares up to the figure specified in their Act of Incorporation, and not that they did so or that they had that amount available. It is more than likely that many of these companies sold very few shares and, conversely, that some sold shares up to the statutory limit. In the latter case, it is doubtful that any money was ever returned to subscribers. (For the list of all the defunct companies, their names, capitalization, and date of incorporation, see Appendix C, Item 3.)

[90] See Appendix C, Item 2. It is a copy of B.C. Stat., 1887, c. 25, which will serve as a model of a provincial subsidy act. By this Act, the Kootenay and Athabasca Railway Company

Once a road was built and running to the satisfaction of the Lieutenant-Governor in Council,[91] the lands selected by the company were conveyed to it. Only then was the unused portion of the government reserve opened again for pre-emption. Since many companies petitioned the legislature for at least one, if not more, time extensions,[92] there were further delays in freeing land from reserve. With the passage each year of more acts to incorporate railway companies, more and more land was reserved from settlement. That many companies never took up their lands did not alter the fact that these lands were for several years not open to settlers. Although Premier James Dunsmuir abandoned the land grant policy in favour of cash subsidies after 1900,[93]

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was to receive land for its right of way and termini, in addition to its grant of 300,000 acres for building the road. Clause 4 honoured the monopoly clause of the C.P.R. agreement, and under clause 5 the company received no mineral rights.

91 This was done by having a government engineer inspect the line and submit a detailed report on it to the Chief Commissioner of Lands and Works. If the engineer gave the line his approval, the company was notified by the Chief Commissioner that it could begin operations and that its subsidy lands would be released to it. After 1900 the plan of releasing a certain fraction of subsidy lands per mile of construction was adopted. The engineers' reports appeared annually during the 1890's. The Trail-Robson section of the Columbia and Western, as an example, was reported on by H.B. Smith, M. Inst. C.E., to Hon. G.B. Martin on October 12, 1897. Smith gave the 19.3 miles in the division his approval. (See B.C.S.P., 1897, pp. 411-417.)

92 See Appendix C, Item 4, "Railways Incorporated under Acts of the Legislature of British Columbia since 1883," in which there are listed numerous companies whose original charter was amended. Invariably the amendment extended the date for beginning construction.

93 B.C. Journals, 1900, p. 2. The chief argument presented against the former policy of granting either 10,240 or 20,000 acres per mile was that it retarded development by reserving

discouraged immigrants still complained bitterly of the extensive land reservations. The fact that at this time land in the Railway Belt was not readily available for settlement because of administrative and jurisdictional difficulties did not help the situation.[94] The most potent weapon of the opposition in the legislature continued to be loud denunciation of the government's "give-away" land policy.

The Smithe government had begun in 1883 the policy of granting public land in aid of the construction of railways and other public works. Up to 1889 this policy expanded almost annually. By an act "to authorize the granting of a certain Land Subsidy for and in aid of the Canadian Western Central Railway" of that year,[95] the A.E.B. Davie Ministry, one of the 'Smithe Dynasty', reached the height of the land grant spree. This company, incorporated on April 6, 1889,[96] was to begin construction within six months after filing its plan on a line "from a convenient point near the eastern boundary of the Province to the northernmost terminus of the

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all lands in the vicinity of the proposed railway until the company had selected its lands or abandoned the whole project.

[94] As late as 1910 the provincial government was still urging the Dominion to take action "looking to the better settlement of the lands in the Dominion Railway Belt throughout the Province." (See B.C.S.P., 1911, p. M 29.)

[95] B.C. Stat., 1889, c. 20. The line was to use the old Yellowhead route and connect with the Esquimalt and Nanaimo and, through some contortion, was required to pass through Barkerville.

[96] B.C. Stat., 1890, c. 34. See Appendix C, Item 4, nos. 39 and 40.

Esquimalt and Nanaimo Railway." For the railroad, beginning no one knew where and ending at a similar destination, the company was to receive a grant of land extending 32 miles on each side of the proposed railway, or approximately 14,000,000 acres of British Columbia's public domain. The only stipulation in the act, other than the usual time limit for beginning construction, was that the line "shall be continuously prosecuted to completion with reasonable diligence." As work progressed, the land was to be conveyed to the company in alternate blocks of 20,000 acres each on both sides of the line. Moreover, the lands, once conveyed, were not to be taxed until the company had used them for other than railway purposes. All stock and property was to be free from provincial and municipal taxation for ten years.[97]

In view of this liberal but customary treatment accorded a company, it is interesting to note the names of the six directors, who capitalized their company at $50,000,000. They were Robert Paterson Rithet and Thomas Earle, both merchants of Victoria; Frank Stillman Barnard and Edward Gowler Prior, both Members of Parliament; Henry Purdom Bell, Civil Engineer; and the Hon. James Reid, Senator. It was not in any way unusual to receive a land grant for the construction of

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97 The general attitude toward railway building at the expense of Crown lands may be gauged from the fact that the bill to incorporate this company passed the House without a division. (See B.C. Journals, 1889, pp. 76 and 78.) The act to incorporate the line entailed no obligation, but every member would have been aware of the land subsidy bill about to be presented. Lobbying was keen.

their railway, telegraph, and telephone line. But it was somewhat beyond the ordinary, even in that age of grandiose schemes, for the legislature to incorporate a railroad company with so few specifications in the act concerning its termini and other details. Nor was it customary to grant so much land - as much in this case as in the Railway Belt and the Peace River block combined. Perhaps it is significant that each of the men named seems to have been on intimate terms with the Hon. A.E.B. Davie. Fortunately for British Columbia the line, designed to go where the Canadian Pacific Railway had originally been intended to go and where the Canadian Northern 25 years later did go, was never built. The Canadian Northern received no such princely grant.

In justice to the governments of British Columbia in the eighties and nineties, it must be remembered that in an era of annual deficits, land was the only asset the province had to grant as a bonus, unless a policy of borrowing money to give such companies were to be adopted. But up to 1900 no care was taken either by Ottawa or by Victoria to question the need for the line or the ability of the directors to carry out construction. From a reading of all the acts, it is significant that the largest subsidies in cash or lands or both were granted to well-known public figures.[98] But all who

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[98] There is ample evidence that even Cabinet Ministers were involved in land grants. In 1903, Premier Prior requested and received the resignations of Hon. W.C. Wells, Chief Commissioner of Lands and Works, and Hon. D.M. Eberts, Attorney-General, who were involved in the provincial land grant to the Columbia and Western. These lands contained valuable coal

asked, received.

> The attitude of the Dominion, which was shared by the province, was that the granting of a subsidy was not to be considered as the expression of an official opinion with reference to the probable success of the railway. . . . 99

The reckless granting of aid did hurt Canadian credit, since the bondholder, often English, naturally regarded the government which was granting the subsidy as a "partner in the enterprise, not as a careless distributor of largesse."[100]

Between the years 1890 and 1900 no fewer than 87 railway companies were incorporated in British Columbia.[101] By 1890 a number of promising mineral strikes had been made in the Okanagan and in the Kootenays, and the mining promoters were anxious to secure railway communication with the outside world. They cared little whether the railway they sought would be economically sound or whether the outlets arrived from Vancouver or from the United States,[102] but the Robson government, constituted in August, 1889, following the

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deposits. The evidence gathered by the investigating committee indicated that the complicated situation extended back over several years and implicated members of four preceding administrations. (See British Columbia, Sixty Years of Progress, Part II, pp. 154-155.)

99 McLean, S.J., op. cit., p. 448.

100 Loc. cit.

101 This total is computed from Appendix C, Item 4.

102 With the completion of the Northern Pacific in 1883, the Kootenays received their first rail link with the outside through Sand Point, Idaho.

death of A.E.B. Davie, cared a great deal. To attempt to forestall American interests, the Robson Ministry instituted the policy of bonusing railways to the extent of 20,000 acres per mile.[103] Of the 87 lines incorporated in the decade following 1890, 34 were to be constructed in the Kootenays. The Canadian Pacific, which was later to lease in perpetuity the lines which were eventually built, would have built them in the first place. It was prevented from doing so owing to the widespread fear of creating a monopoly in western Canada similar to those formed among railway promoters in the United States. Voters in British Columbia wanted either independent or government lines. Whether the government was as sensitive to the people's wishes as it pretended is doubtful, since a good many public men were directors of companies incorporated by the government to build lines in the Kootenays, and since all those companies received sizeable land grants. During the 1890's five railway companies received grants as follows: 580,783 acres to the Nelson and Fort Sheppard in 1891; 250,022 acres to the Kaslo and Slocan in 1892; 188,593 acres to the Columbia and Kootenay in the

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[103] B.C. Stat., 1890, c. 40. This was an act called "An Act to aid certain Railways." Under the act, four railway companies were to receive 20,000 acres per mile providing the construction of the line was begun and completed on time. The Preamble to the Act stated that the construction of these lines "would materially advance the welfare of the Province, and it is expedient to offer inducements for the construction of such lines." There is nowhere a clearer statement than this of the government's attitude toward granting substantial land subsidies to railway companies.

same year; 3,755,733 acres to the British Columbia Southern in 1893, and 1,348,225 acres to the Columbia and Western in 1896.[104]

Because the promoters of these lines were practically assured of rich rewards from their lines, every one was built. No better proof exists in all the complications of British Columbia's railroad history that the development of mining provided the stimulus for the building of railroads. The directors of these lines, among whom were F. Augustus Heinze[105] and his brother Arthur P., the Hon. F.W. Aylmer, Lieutenant-Governor Edgar Dewdney, William Fernie and Robert G. Tatlow, seem to have assessed remarkably well the permanent nature of the Kootenay mining operations. Elsewhere in British Columbia many companies were failing to act upon their charters.

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104 British Columbia. Provincial Bureau of Information. Manual of Provincial Information; Province of British Columbia, Victoria, 1930, p. 181. This source is used for the acreages since it is the most recent official publication of the province to list them. Other authorities disagree on the acreage granted the Nelson and Fort Sheppard line. Forests of B.C., p. 82, gives 550,783 acres, as does Canada. Parliament. Railway Statistics of the Dominion of Canada, for the year ended June 30, 1917, Ottawa, 1917, p. xiii. British Columbia, from the earliest times to the present, p. 484, give 614,400 acres.

105 F.A. Heinze, builder of the first smelter at Trail, is a classic example of a promoter who built his line entirely from loans and shares acquired by using his land and cash subsidies as security. In 1897 his line, the Columbia and Western, was built from Rossland to Trail and thence to Robson. It was leased to the C.P.R. in 1898 and is still used by the C.P.R. to carry ore to the smelter and minerals and fertilizer back to the Kettle Valley line at Castlegar. The line no longer carries passengers.

Following upon the Klondike excitement ten lines were incorporated between 1898 and 1900 by men such as Lord Edward Stanley and Lord Charles Montague, Donald A. Mann and William Mackenzie, but not one of these lines was built. No doubt the remoteness of the territory as well as the temporary nature of the mining activity contributed to this failure.

Contrary to the situation which developed in the prairie provinces, no railroad in British Columbia was built as a colonization road. Two, however, were incorporated, one under the name of the Skeena River Railway, Colonization and Exploration Company,[106] and one known as the Stickeen and Teslin Railway, Navigation and Colonization Company.[107] The English directors of the Skeena River Company received neither land nor cash subsidy for their line which was to be built from the head of navigation on the Skeena to the eastern border of the province, either by way of the Fraser or Parsnip rivers. Since these were the only two companies of their kind, it is interesting to note two powers of the Skeena Company:

> The Company shall have power and authority -
> To carry on generally the business of a colonization and improvement company, and to settle and improve any lands acquired by the Company, and to aid and promote immigration thereon.

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[106] B.C. Stat., 1898, c. 63.

[107] B.C. Stat., 1897, c. 71.

> To carry on generally the business of an exploration company, and for that purpose to organize and maintain from time to time parties of surveyors, engineers or scientific men, and to do all things necessary or conducive to the comfort and success of such expeditions.

In the lands acquired, the company was not to have any mineral rights.

In not building their lines, these two colonization companies were by no means unique. When the provincial legislature finally enacted out of existence all the defunct railway companies, 127 were dissolved as legal entities.[108] The success of the Canadian Pacific had brought many promoters to the scene in British Columbia, as in all of Canada. Many of them had tried to capitalize on the liberal subsidies granted by the provincial government during the years of over-development from 1885 to 1914. These were the years when the idea prevailed that railways were vitally necessary for the development of the province, at whatever the cost.

Of the 210 railway companies incorporated in the province up to 1913,[109] only 34 built their lines, and of these 34, only five earned their land grants.[110] Although the land grant policy was not officially terminated until 1900, it became an accepted rule after 1897 under the Turner

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[108] B.C. Stat., 1927, c. 56. For the complete list, see Appendix C, Item 3.

[109] Note that nos. 36 and 37 in Appendix C, Item 4, were incorporated in 1914.

[110] Although incorporated in British Columbia, the Esquimalt and Nanaimo Railway Company received its land grant from the Dominion. It is not included, therefore, as one of the five companies receiving land grants from the province.

Ministry to grant no further lands.[111] The public debt had been increasing at such an alarming rate[112] that the opposition's cry of waste could not go unheeded by any government wishing to retain its hold on the electorate. And when this charge was coupled with that of squandering public lands, Premier Turner concluded that he could no longer afford to add fuel to the fire by making any further grants, particularly of the type made to lines in the Kootenays. The ministry was subjected to very severe attacks in the legislature as a result of the 10,240 acres of land per mile made in 1896 in aid of construction of the Columbia and Western. Turner was attacked even more vigorously for the unconditional extension of time awarded the British Columbia Southern, a branch of the Canadian Pacific, in which to earn its subsidy of 20,000 acres per mile in the coal fields

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[111] Land grants were made hereafter to transcontinental lines holding federal charters, but of inconsequential amounts. On March 10, 1905, Premier McBride granted 10,000 acres at Kaien Island to the Grand Trunk Pacific for its terminus. (see p. 399 . For papers dealing with the land grant from part of the Indian reserve at Prince Rupert, see B.C.S.P., 1907, pp. F 33-43. For the correspondence, see Ibid., 1909, pp. G 51-58.) McBride's 1909 agreement with the Canadian Northern included free right of way through Crown lands as well as the grant of certain areas for townsite purposes. (See Howay, F.W., op. cit., pp. 231 and 233.)

[112] On June 30, 1894, the public debt stood at $2,398,767; in 1898, it had increased to $4,845,414. (See Howay, F.W., op. cit., p. 221.)

of the Crow's Nest Pass.[113] Further, the aid amounting to 700,000 acres promised to the Cassiar Central in 1897[114] caused no little dissension among the government's own supporters. In 1898, shortly before the legislature was dissolved, D.W. Higgins, Speaker in the House since 1890, handed in his resignation as a protest against this prodigality.[115]

With the virtual abandoning of the land subsidy policy in the late 1890's, the provincial government adopted the policy followed by the Dominion of granting cash subsidies to railway companies. Having been persuaded in 1882 that land was not sufficient inducement to railway promoters, John A. Macdonald's government had begun giving cash subsidies of $3200 per mile, the cost of the 100 tons of steel at $32.00 a ton needed for each mile of track.[116] By 1894 the Dominion had

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[113] See B.C. Stat., 1894, c. 39 and c. 53; 1896, c. 4. and c. 53; 1897, c. 33. These were all acts to extend the time-limit in which the subsidy could be earned. When it was completed, the 202-mile line from Nelson to the Crow's Nest Pass was leased in perpetuity to the C.P.R., but before the line was completed the company had granted 50,000 acres of valuable coal lands to the Dominion government in return for a cash subsidy of $10,000 per mile. (See British Columbia, from the earliest times to the present, p. 487.) The matter of the provincial land grant of 3,755,733 acres was protested by the province when the C.P.R. leased the line and the case was eventually taken to the Privy Council. (For the report on the case, see B.C.S.P., 1900, pp. 439-462.)

[114] B.C. Stat., 1897, c. 52.

[115] Howay, F.W., op. cit., p. 222.

[116] McLean, S.J., op. cit., pp. 443-444.

abandoned its policy of making land grants, since these grants hindered rapid settlement and caused taxation difficulties.[117] The provincial government followed suit a few years later and adopted the cash subsidy system which, however, it had already been using to a certain extent along with or instead of land subsidies.[118] Unfortunately, it adopted also the Dominion's practice of granting these subsidies indiscriminately to any group which made application.

The following statistics show the land grants for railway purposes by provincial governments and by the Dominion, and the cash subsidies paid by British Columbia and by all the provinces. They provide a basis for comparison of the situation in British Columbia with that elsewhere in Canada.

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[117] Ibid., p. 468. The last land grant undertaken by the Dominion government was to Mackenzie and Mann for the construction of a line from Stikine River to Teslin Lake, a distance of 676 miles, only 325 of which were to be provided for by the rail line. For this line, the promoters were to receive 3,750,000 acres, including mineral rights, in the Yukon. The bill passed the House of Commons but owing to the exaggerated ideas of the wealth of the Yukon, the Senate felt it to be an extravagant proposition and defeated the bill in 1898. Nothing further was heard of it. (See British Columbia, Sixty Years of Progress, p. 262.)

[118] See Appendix C, Item 5, "An Act to authorize the granting of a certain subsidy for, and in aid of, the construction of the Shuswap and Okanagan Railway." This will serve as an example of a provincial statute granting a cash subsidy to an intraprovincial line.

LAND GRANTS TO RAILWAYS[119]

*	By the Dominion Government	31,864,074 acres
	By Quebec	1,681,690 acres
**	By British Columbia	8,119,221 acres
	By New Brunswick	1,647,772 acres
	By Nova Scotia	160,000 acres
	By Ontario	624,232 acres
	Total acreage	44,096,989 acres

* 18,206,986 acres of this went to the Canadian Pacific for its main line.

** This figure includes the acreage granted the Dominion for transfer to the Esquimalt and Nanaimo Railway Company.

CASH SUBSIDIES PAID[120]

Year	By British Columbia	Total for all Provinces
1893	$ 37,500	$ 23,460,507.70
1899	37,500	28,039,412.31
1905	37,500	32,304,304.61
1911	798,209	36,506,695.04
1915	1,284,572	37,437,895.16

Although an insignificant amount of land was received by railway companies in British Columbia after 1900, the results of Premier Dunsmuir's cash assistance policy may be seen from the 1915 figure given above.[121] The requirement

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[119] Canada. Parliament. Department of Railways and Canals. Railway statistics of the Dominion of Canada, for the year ended June 30, 1917, 1917, p. xiii.

[120] Ibid., p. xii. As in the case of the land, these figures show only a small fraction of the total cash assistance made available to railway companies. Those companies which did not build, of course, did not receive their subsidies, or, rather, they should not have.

[121] In the United States, where the whole matter of land subsidies became a national scandal, six railway companies, all transcontinental lines, received 131,350,534 acres of public lands, as compared with Canada's total of 44,096,989 acres. The United States' government, however, loaned only $64,623,512 to railway companies, receiving back in 1896 $63,000,000 in principal plus $104,000,000 in interest. (See

that the lines had to be built and approved before the subsidy was paid accounts for the fact that not until 1911 was any appreciable amount of money paid out under this policy. By 1900, however, most intraprovincial roads receiving land subsidies had been constructed.

Meanwhile promoters had discovered the Dominion government to be another source of ready cash assistance to intraprovincial lines. The Federal Railway Act of 1883[122] stated that all main lines were "works for the general advantage of Canada", and that any branch line of these main lines, the Intercolonial and the Canadian Pacific, "connecting with or crossing them. . . is a work for the general advantage of Canada"; and that any branch lines to be built in the future should also come under the act. It was argued that this Dominion jurisdiction would lead to "better and more uniform government of all such works," and would result in "greater safety, convenience and advantage to the public." In reality, the act provided justification for subsidies which the Dominion had already given to various intraprovincial railways. Although Ontario and Nova Scotia objected that the Dominion was

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Holbrook, S.H., Story of American Railroads; New York, 1947, p. 157, citing U.S. General Land Office, "Annual Report," 1943.)

122 Can. Stat., 1883, c. 24, "An Act to further Amend 'The Consolidated Railway Act, 1879,' and to declare certain lines of Railway to be works for the general advantage of Canada," May 25, 1883.

infringing on their rights, British Columbia made no such objection. More and more roads in British Columbia sought Dominion charters,[123] partly because of their desire for financial assistance from the federal treasury and partly because of the better status such a charter would give them in disposing of their bonds. Indeed, in 1887 there is the unusual spectacle of the British Columbia ministry itself petitioning the Dominion for a subsidy for the Shuswap and Okanagan line, already incorporated under a federal charter.[124] The argument British Columbia used was that not only would the line be of advantage to the provincial mining interests, but also that it would be of advantage to Canada in the event of war![125]

To eliminate the ambiguity in the 1883 federal Railway Act under which arose the jurisdictional conflict, the federal government clarified its position in 1903 by enacting that:

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[123] In the Dominion House, bills incorporating intra-provincial lines became as routine and excited as little discussion as the divorce bills of a later era. The five companies which completed their lines and received their land grants (see pp. 263-264) also received cash subsidies from the Dominion. The Columbia and Kootenay, the Nelson and Fort Sheppard, the Kaslo and Slocan, and the Columbia and Western received $3200 per mile. The B.C. Southern received $10,000 per mile, but only because it gave the Dominion 50,000 acres of coal land. (See n. 113.)

[124] Not only did the line receive a federal cash subsidy; it also received $200,000 from the province. (See Appendix C, Item 5.) This cash subsidy was later changed to a guarantee of interest at 4½ per cent for 25 years on $1,125,000. (See B.C. Stat., 1890, c. 42.)

[125] McLean, S.J., op. cit., p. 446.

> Where any railway, the construction or operation of which is authorized by a special Act passed by the legislature of any province, is declared, by any Act of the Parliament of Canada, to be a work for the general advantage of Canada, this Act shall apply to such railway, and to the company constructing or operating the same, to the exclusion of such of the provisions of the said Special Act as are inconsistent with this Act, and in lieu of any general railway Act of the province.[126]

Land speculators in British Columbia did not miss the potentialities for personal gain under this Act. As there was nothing to prevent any company from seeking a federal charter, 32 British Columbia companies had done so by 1913. Of these 32 incorporated by Ottawa, 17 were built,[127] a considerably higher percentage than prevailed among the provincially incorporated companies where, out of 210, only 34 were built.

After 1903 a new development of the cash subsidy policy across Canada was the guaranteeing of interest on bonds rather than the making of an outright gift. In this matter, as in so many others, the provinces followed the example set by the Dominion. The bond guarantees made by the Dominion and the provinces up to 1913 were as follows:

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[126] Can. Stat., 1903, c. 58, s. 6.

[127] These statistics were compiled from the B.C. and Canadian statutes, 1871-1913, inclusive, and were checked against Canada. Parliament. Department of Transport. A statutory history of the steam and electric railways of Canada, 1836-1937, 1938.

BOND GUARANTEES[128]

Dominion	$91,983,553
Manitoba	20,899,660
Alberta	55,489,000
Saskatchewan	32,500,000
Ontario	7,860,000
British Columbia	38,946,832
New Brunswick	1,893,000
Quebec	476,000
Nova Scotia	5,022,000
Total	$245,070,045

These bond guarantees representing contingent liabilities had a much wider appeal among the electorate after 1900 than did the former subsidy policy. Bond guarantees did not sound quite so prodigal as did the outright subsidies, and if the government were ever called upon to redeem the bonds, it did not need to enact a special statute with all its attendant publicity. Moreover, the burden of the redemption of those guarantees would become the heritage of a later administration.[129]

All these railway assistance policies - land subsidies, local and Dominion cash subsidies, and bond guarantees - were adopted to hasten railway building in a sparsely populated pioneer province, recklessly determined to secure railway communication at any price. Nonetheless, in all these policies

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[128] McLean, S.J., op. cit., p. 469.

[129] The Railroad Inquiry Commission of 1916 recommended that the federal government should take over the two new trans-continental lines - the Grand Trunk Pacific and the Canadian Northern - as well as their subsidies. This the Dominion did, to the intense relief of all provinces, including British Columbia. Had these two lines gone into bankruptcy, the local legislature would have been faced with huge liabilities as guarantors. (See Angus, H.F., ed., op. cit., p. 262.)

British Columbia followed closely the pattern set by the Dominion.

During the railway building spree, however, successive British Columbia governments were considerably less reckless in granting minerals rights to the companies than they were in making grants of land or cash. Though the grant of 750,000 acres to the Columbia and Kootenay in 1883 had included "all mines, minerals, and substances of whatever kind,"[130] the grant of the mineral rights proved to be a temporary lapse, by the newly formed Smithe Ministry, from long established policy. Later land grants to railway companies in the 1880's included a separate clause specifically reserving mineral rights on subsidy lands to the Crown. Then in 1890 the Railway Act excepted all mines or minerals of any kind in land purchased by or granted to railway companies "except only such parts thereof as shall be necessary to be dug or carried away, or used in the construction of the works, unless the same shall have been expressly purchased; and all such mines, excepting as aforesaid, shall be deemed to be excepted out of the conveyance of such land, unless they shall have been expressly named therein

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[130] B.C. Stat., 1883, c. 25, s. 17. The land grant to this company, whose line was to run from Nelson to Castlegar, covered the rich silver-bearing veins of the Slocan and Nelson districts. Fortunately the company failed, its grant lapsed, and its $25,000 deposit was forfeited. Interest in the line revived in 1889. (See B.C. Stat., 1889, c. 21 and 1890, c. 41.) The new company was to receive 200,000 acres. It finally got 188,593 acres. (See p. 278.)

and conveyed thereby."[131] The previous year, provincial jurisdiction over metals in the Railway Belt had been established by the Privy Council's decision in the Precious Metals Case.[132]

The provincial Mineral Act of 1897 consolidated numerous provisions respecting the rights of free miners, most of which had been in effect since before Confederation. To protect the rights of the miners was good business. It was the individual prospector, then as now, who made the strikes, rich or poor; and it was the mining activity, permanent or temporary, which stimulated railway promotion. The 1897 Railway Act made provision for the protection of the rights of any "owner, lessee, or occupier" of any mines or minerals lying under any railway, or up to forty yards from the line. If the owner wished to work his mine, he was to give the company thirty days' notice of his intention; if the company felt that the working of the mine was "likely to damage the works of the railway", the directors could petition the Chief Commissioner of Lands and Works to prevent the owner from operating his mine. Were the request to be granted, elaborate arbitration machinery was provided in the act for determining compensation to the owner if a mutually satisfactory agreement could not otherwise be reached.[133]

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131 B.C. Stat., 1890, c. 39, s. 21.

132 See p. 149.

133 R.S.B.C., 1897, Vol. 2, p. 1802; see also B.C. Stat., 1898, c. 163, ss. 21 and 22.

In reserving mineral rights from land grants to railway companies, the British Columbia government departed from the Dominion's example, which it otherwise followed so closely in the matter of land and cash subsidies and bond guarantees to railways.[134]

During the thirty years of railway promotion and construction up to 1913, British Columbia seems to have been concerned chiefly with incorporating railroads which were never built and granting generous land and cash subsidies to those that were. To a degree, this was true. Once the main line of the Canadian Pacific to the seaboard had been built, the problem was to provide outlets from remote corners of the province to join it. But unfortunately the problem was not seen in this light until the Great Northern and the Spokane Falls and Northern for a few years drew the trade of the Kootenays away from Canadian outlets.[135]

The railway history of the Kootenay region was largely a struggle for control between the American interests and the Canadian Pacific, both of which were anxious to secure

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[134] Like most policies, that of reserving minerals to the Crown from railway lands had its exception, although in this case it was a minor one. Under section 13 of B.C. Stat., 1890, c. 40, "An Act to aid certain Railways," four lines - the Canadian Western Central, the Crow's Nest and Kootenay Lake, the Ashcroft and Cariboo, and the Okanagan and Kootenay, none of which was built - were to receive the right for 25 years after their completion to exact and collect a royalty of 5 per cent on all gold and silver subsequently found on their lands. Kootenay miners were not slow to protest this royalty levied on all ores shipped from mines in these railway lands. (See B.C.S.P., 1890, p. 465.)

[135] Angus, H.F., ed., op. cit., pp. 254-260.

control of traffic from the mining regions. The competition provided by James J. Hill's Great Northern became severe, and when D.C. Corbin of the Spokane Falls and Northern began securing not only charters but also land subsidies, the Canadian Pacific was nearly forced out. Corbin's company, the Columbia and Kootenay Railway and Transportation Company,[136] was to receive 750,000 acres of tax-free land along its right of way from Nelson to Castlegar, as well as along its steamboat route up the Arrow Lakes, but the federal government disallowed the act. This action was taken ostensibly on the strength of a vigorously worded protest from the citizens of Victoria, who objected to the act on the grounds that it was giving American lines control of the trade in the most valuable areas of the province; that it was unfair to the Canadian Pacific; that it would establish a "mischievous monopoly"; and above all, that it would "convey to three Americans 750,000 acres of the best land in the Province."[137] How much of this opposition was spearheaded by the Canadian Pacific officials is open to question. But in 1890 Harry Abbott, a director of the Canadian Pacific, was one of the successful petitioners for a charter to build the Columbia and Kootenay line. Later in the year the Canadian Pacific leased the road for 999 years.

Within the next ten years the Canadian Pacific acquired all the major lines in the Kootenays including, along with the

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136 Incorporated originally by B.C. Stat., 1883, c. 25. See also n. 130.

137 Angus, H.F., ed., op. cit., p. 250.

Columbia and Kootenay, the Columbia and Western in 1898, the British Columbia Southern in 1898 and 1901, and the Kettle Valley in 1913. That the Canadian Pacific finally achieved supremacy in the Kootenays is owing in some measure to the resolution passed by the provincial government in March, 1898, requesting the Dominion to grant no further railway charters having for their object the diversion of traffic into the United States.[138] Along with the leases of the Kootenay lines, the Canadian Pacific acquired the land grants amounting to 5,292,551 acres.[139]

Even before the Canadian Pacific had bested its rivals, the province realized that it should give its assistance to lines which would keep industrial products at home rather than force them across the international boundary. To this end in 1897 the government had voted $2,500,000 "for the purpose of aiding the construction of Railways and other Public Works." The preamble to the act stated in part that:

> Whereas the existence of extraordinary mineral wealth has been substantiated in many parts of the Province, and there are valid reasons for believing that there are numerous districts in the Province as yet unprospected, which will also prove rich in mineral wealth, and that an extensive immigration and increase of population may be anticipated if means of communication are afforded by railways, roads, and other works for developing the wealth which exists both in minerals, timber and farming land:

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[138] B.C. Journals, 1898, pp. 75-76.

[139] See p. 263.

> And whereas it is expedient that the Trade and Commerce of British Columbia accompanying such development and increasing population should, as far as possible, be retained in the Dominion of Canada, which will be best effected by the early construction of such railways, roads and public works. . . . 140

These clauses demonstrate clearly the prevailing optimism in British Columbia at the turn of the century. Mineral, timber, and farming lands were present in abundance in the province if only they could be made available to immigrants.[141] Railways provided the only practical transportation for settlers and their goods before the era of the passenger bus and the freight truck, and railways had to be built at any price. But the lavish land grants of the 1890's soon constituted a serious obstacle to the rapid settlement of the interior of the province. Although land was not usually conveyed to the company until the completion of the line, an extensive acreage was always at once placed under reserve. A return tabled in 1898 showed that by then 2,719,087 acres had already been conveyed and a further 9,656,040 acres were under government reserve for railway

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140 B.C. Stat., 1897, c. 24.

141 To publicize the province and to direct immigrants to it, the provincial government in 1900 established two agencies, one in Victoria and one in London. In Victoria, the Provincial Bureau of Information was formed. R.E. Gosnell became the first secretary, a post he held until 1909. In London, the Office of the Agent-General for British Columbia was established. J.H. Turner, formerly premier of British Columbia (1895-1898), became the Agent-General. As soon as these offices were opened letters and enquiries began pouring in. Many of the enquiries in the first few years concerned agricultural lands in the interior.

grants to provincial companies.[142] Settlement, with its resulting revenue to the government, was imperative if the government was to pay cash subsidies to railways, popular after 1900, out of public funds. But since railroad lands were generally tax-exempt for from five to ten years, the more land that had been promised to railroad promoters, the less was available immediately for taxation purposes. In the valleys of British Columbia distant from the main line of the Canadian Pacific the best land was not available. It was a serious dilemma. Immigrants needed railroads, but they also needed the land tied up by subsidies to railroads. It is obvious why the government abandoned its land subsidy policy in the late 1890's in favour of cash subsidies, which it in turn abandoned for bond guarantees after 1903.

The land settlement problem in the remoter valleys of the province would have been less serious if lands along the main line of the Canadian Pacific had been readily available to settlers. But for a multitude of reasons lands in the Railway Belt were difficult to acquire, as the local government discovered soon after the passing of the Settlement Act in 1884. A series of unforeseen complications developed, until British Columbia was thoroughly weary of its Railway Belt bargain and determined to trade the Belt for other land.

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142 B.C.S.P., 1898, p. 1101.

iii.

Once the Settlement Act had been passed, British Columbia anxiously awaited the advent of the railroad, fully expecting that with its arrival settlers would pour into the province. Since these settlers would be expected to take up land near the railway, British Columbia had inserted in the act a clause by which the Dominion undertook "with all convenient speed" to offer for sale on liberal terms the land within its Railway Belt on the mainland. Concerning the clause the Dominion government required constant prodding. There is no doubt that its non-fulfillment did retard settlement. The Dominion now owned outright much of what then would have been considered the most desirable acreage in the province. The situation proved to be somewhat analogous to that of the Clergy Reserves in Upper Canada. Settlers had their choice of squatting on Dominion land in the vain hope of having their claims to the land dealt with expeditiously, or of literally taking to the hills.

The problem became so acute that in the spring session of the Dominion Parliament in 1886 Noah Shakespeare, M.P. for Victoria, moved the tabling of all correspondence between the British Columbia and Dominion governments concerning the opening of the lands in the Railway Belt to settlement. He complained that, although British Columbia had lived up to its obligations under the Settlement Act

"to the very letter," the Dominion government had done "little or nothing" to carry out its obligations.[143] Warming to his subject, one on which he felt strongly, he continued:

> The lands referred to are practically withheld from settlement, and actual settlers, who have located, some of them, on these lands in good faith, are still unable to obtain the patents to which they are justly entitled. I am informed that some 3000 applications are on record in the office of the Agent of the Dominion Government in British Columbia, and not one, that I am aware of, has received any satisfaction . . . . Nothing has tended to retard settlement in that Province more than the withholding of the patents to these lands from people who have located upon them. Many of these people became so discouraged that they left the Province. . . .

The responsible minister, the Hon. Thomas White, Minister of the Interior, then did his best to extricate his government from an uncomfortable position. He regretted "as much as the hon. gentleman does the delays that have taken place," and promised to rectify matters by moving the agent, J.W. Trutch, and his assistant from New Westminster to Victoria, "where he would be of more easy access to settlers who desire to get their patents."[144]

J.A.R. Homer of New Westminster followed this conciliatory statement with a few remarks which clearly demonstrated the inevitable divergence of opinion between Island and mainland members. Though he did not deny

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143 Canada. House of Commons. Debates, April 5, 1886, p. 496.

144 Loc. cit.

Shakespeare's allegations, he defended the Dominion's slowness to act on the grounds that such a policy had prevented speculation in land, a problem which was soon to become a very real one. Said Homer:

> The policy pursued by the Government in relation to land in the railway belt of British Columbia has been, although one of delay, the means of placing those lands in the hands of actual settlers. . . . If a different policy, or a more hasty policy had been pursued by which those lands would have been put on the market for sale, the probability is they would now have been in the hands of a few speculators, and that result would have proved very detrimental to the settlement of the Province. No doubt there are some grievances, . . . but, whatever those grievances are, I feel confident that under the energetic administration of the Minister of the Interior they will be speedily removed. 145

After such praise White could hardly fail to act. Three weeks later he moved leave to introduce Bill 120, whose object was to bring the lands in the Railway Belt under the jurisdiction of the Dominion Lands Board. Until now, he explained, these lands had been administered by Trutch, the Dominion government's agent, ". . . but, as he will cease to hold that office after the end of this year,[146] and we now

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145 Loc. cit.

146 During the discussion on the bill, some interesting comments were made concerning Trutch. Peter Mitchell, former premier of New Brunswick (1865), and an ex-senator from that province (1867-1874) who had resigned his senatorship so he could enter the House of Commons (1874-78, 1882-96), insinuated that the whole Dominion land administration policy in the Railway Belt was being subverted by Trutch. When the bill was introduced he expressed his delight at Trutch's removal and tendered his congratulations to White, saying, "and so will all who know the circumstances connected with the management of lands in British Columbia and the administration of Mr. Trutch. I am sure the change will be a great improvement. . . ." (See

have railway communication which will enable us to reach British Columbia easily . . . ," the lands should be administered by the Dominion Lands Board. In order to facilitate matters for those settlers desirous of obtaining patents of their land, he had already ordered Trutch's assistant, a Mr. Aikman, to move to New Westminster. Having questioned White closely regarding Trutch's fate, Hon. Edward Blake, Leader of the Opposition, made sure of the area to be administered by the Dominion Board. "This will include," he asked, "in addition to the forty-mile railway belt, the lands given in the Peace River district?"

White replied that it would embrace all lands of the Dominion in British Columbia.[147]

Canada. House of Commons. Debates, 1886, p. 912.) When the bill came up for second reading on May 11, 1886, White repeated that "Mr. Trutch's services are to be dispensed with." Hon. Edward Blake, leader of the Liberal opposition, then asked, "What is to become of Mr. Trutch, because I believe his services are very dear to the people of that Province, as we know they have been to the country. Is he to be superseded altogether?" With White's answer that he would require notice of that question, Blake was content, but not Mitchell. "I should like to ask the Minister of the Interior," said Mitchell, "whether there is any provision in the Bill for the pet of the Administration. . . because I think it would be very unfair, after he has been petted and pampered by the Government so long, that he shouldn't be provided for." Blake interjected, "He will be," to which Mitchell added, "No doubt." White said nothing. (See Ibid, May 11, 1886, p. 1202.) As the Minister of Marine and Fisheries in Macdonald's government during the visit of the B.C. Confederation delegation in 1869, Mitchell may then have met Trutch and formed a dislike of him, and it may be that as a private member in 1886, he could voice opinions White, as a member of the Cabinet, could not.

147 Canada. House of Commons. Debates, 1886, p. 1202. This is the first positive indication in the debates following the Settlement Act that the federal government had retained all the unalienated portion of the Railway Belt in spite of having received the 'in lieu of' lands in the Peace River.

In spite of the new administration promised for the Railway Belt lands, troubles continued to develop. In February of 1885 the dispute over jurisdiction of minerals in the Belt had resulted in a test case being taken to the courts.[148] In April the province had complained bitterly of the Dominion's regulations for disposing of Railway Belt land, since these regulations differed in so many respects from those in force on contiguous provincial land.[149] In 1887 the problem of defining the northern and southern boundaries of the Belt throughout the width of the province arose. The first method to be used was outlined by the Dominion in an Order in Council of May 27. A second was proposed by British Columbia in its Minute in Council of August 24.[150] But by December of 1887, the local government had enough of the endless complications arising from Dominion jurisdiction over the mostly thickly settled strip of land in the province. The Executive Council passed the following Minute:

> The Committee . . . submit that, apart from the impracticability of establishing satisfactory boundary lines, very great inconvenience and ever-recurring complications will arise from the administration by the Dominion Government of a narrow and extremely irregular strip of land extending through the entire mainland part of the Province, while the whole of the public domain, with the exception of said strip, is

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148 See p. 150.

149 See pp. 151-152. For the Orders in Council, correspondence with British Columbia or with Trutch, the Dominion's agent, as well as for a summary of lands appropriated in the Railway Belt from June 30, 1873 - October 25, 1880, see C.S.P., 1881, No. 8 (21k), pp. 23-50.

150 These are listed in B.C. Stat., 1895, c. 18.

> administered by the Provincial Government. The Committee believe that it would be for the convenience of both Governments, as well as in the general interests of the country, that the belt along the line of railway should be exchanged for such an area of the public lands of the Province in the Peace River. 151

It was suggested that 15,000,000 acres be accepted in lieu of the present Railway Belt.

The Minute was referred to Hon. Edgar Dewdney, by now the Minister of the Interior in the Dominion Cabinet, for consideration and report. Dewdney recommended in the following words that the question should not then be considered.

> It does not appear that such consideration would serve any useful purpose so long as the right to the minerals in the Railway Belt is still unsettled. 152

When the Precious Metals Case was settled in 1889 in favour of the province, nothing further was heard of the proposal for exchanging land.

In 1895 one problem at least was settled when the northern and southern boundaries of the Belt were finally determined.[153] In the same year provincial legislation made it possible for pre-emptors and purchasers of land in the Belt to secure titles to their land which could be registered under

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151 B.C.S.P., 1889, pp. 159-166, and Ibid., 1890, pp. 401-403. For newspaper comment, see Victoria Colonist, May 7, 19, 21, 28, 29, 31; June 1, 2, 4, 5, 6, 7, 12, 13, 16, 18, 19, 30, 1889.

152 B.C.S.P., 1889, p. 165.

153 R.S.B.C., 1911, c. 195. For the Belt as finally determined, see Appendix D, Map I.

the provincial Registry Act.[154] Since the Dominion could not register any titles to land within the Belt, residents on these lands had been unable to obtain their patents.

Though some problems had been settled, others took their place. In 1906 the water rights case developed over the province's granting of a water record in the Railway Belt to the Burrard Power Company at Lillooet Lake.[155] The decision of the Privy Council in 1910 which upheld Dominion jurisdiction over the water in the Belt gave the signal for bitter disputes and unrestricted water-grabbing.

Railway Belt land problems, still unresolved, made their appearance again in 1910. The McBride Ministry forwarded a resolution to Ottawa pointing out the "urgent necessity of some action being taken looking to the better settlement of lands in the Dominion Railway Belt throughout the Province." The reply stated that although it had been found necessary to place a reserve on the lands in the Columbia Valley and Shuswap Lake areas in 1909, these lands would soon be released once more for settlement. Meanwhile, it was pointed out, all other lands were open.[156]

Finally in 1911 the western boundary of the Railway Belt was drawn. In terms comprehensible to surveyors only,

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154 B.C. Stat., 1895, c. 18.

155 See p. 205.

156 B.C.S.P., 1911, p. M 29.

the sinuosities of the boundary were outlined in detail. One more vexatious and contentious issue was laid at rest.[157]

Then later in 1911 came a near settlement of all the problems. Though Robson's offer in 1887 to exchange the Belt for 15,000,000 acres in the Peace River had proved abortive, the province still sought a definitive solution to the steadily increasing problems. The publicity programme carried on through the office of the Agent General in London combined with the efforts of the Provincial Bureau of Information in Victoria, had resulted in the arrival of thousands of settlers clamouring for land. As population increased, so did the complications of divided land jurisdiction stemming from the presence of the Railway Belt. On a mission to Ottawa with his Attorney General, Hon. W.J. Bowser, and his Minister of Lands, Hon. W.R. Ross, Premier McBride offered to purchase the Railway Belt and the Peace River lands. McBride's note to Prime Minister Borden on November 6, 1911, said:

> As the settlement of British Columbia proceeds, it becomes more and more patent, we submit, that the development of the interest held by the Dominion Government in these districts, in the way of settlement and occupation, can best be forwarded by administration through the local authorities. We are prepared, on behalf of British Columbia, to purchase outright the rights of the Dominion in these properties. Pending a final settlement, the Province will undertake to

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157 B.C. Stat., 1911, c. 195. To convey a clearer idea of how significant the western boundary of the Belt would have been to the province by 1911, see Appendix D, Map II.

> administer the lands under local laws and to account for all monies received, less cost of administration, to the Federal Government. 158

Had the war not intervened, the case would have been settled in 1913 by a Royal Commission.[159]

In 1927, Hon. Mr. Justice Martin of the Quebec Supreme Court was appointed Royal Commissioner to investigate the merits of the case which McBride had presented in 1911. In his brief to Hon. Mr. Justice Martin, R.E. Gosnell frankly admitted that "From the strictly legal point of view, the Province has not a leg to stand on, because whatever legal status she possessed prior to 1884, the Act of Settlement of that year places British Columbia definitely out of court." He added, however, that it was "not a question of law but of equity, the undoing of a constitutional injustice."[160] To lend weight to the argument, Gosnell presented statistics to show that from 1871 to 1926, the Dominion revenue for homesteads, sales of land, parks, and timber in the Belt had amounted to $5,798,205. The expenditures for the same period for administrators' salaries, surveys, forestry, parks, and water power investigations had amounted to $7,637,826.[161] Here was proof indeed that the province did not want the lands for the sake of their revenue but merely to remove administrative

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158 B.C.S.P., 1912, p. N 2.

159 Memorandum for The Hon. Mr. Justice Martin, p. 1.

160 Loc. cit.

161 Ibid., p. 16.

complications. In 1930 the Dominion turned the unalienated portions of the Railway Belt and Peace River block lands back to the province.[162] Of the total area of 10,976,000 acres in the Belt, the Dominion had disposed of 4,920,500 acres; hence the province received back 6,055,500 acres together with the Peace River lands.[163] It is ironic that nearly fifty years of inconvenience, dispute, and litigation had to precede this simple solution. No doubt political feeling in eastern Canada would not have allowed the solution earlier.

But as the situation stood in 1913, the province had alienated more Crown land for railway purposes than for mining, forestry, and agricultural activities combined. The following tabulation shows how these railway lands were alienated:

GRANTS TO PROVINCIALLY INCORPORATED RAILWAYS

Esquimalt and Nanaimo	2,110,054 acres
Nelson and Fort Sheppard	580,783 acres
British Columbia Southern	3,755,733 acres
Columbia and Western	1,348,225 acres
Kaslo and Slocan	250,022 acres
Columbia and Kootenay	188.593 acres
TOTAL	8,233,410 acres
Repurchased 1912 from Columbia and Western and British Columbia Southern.	4,065,076 acres
Permanently alienated for intraprovincial lines	4,168,334 acres

162 Can. Stat., 1930, c. 37.

163 The acreage alienated within the Belt had been disposed of as follows:

GRANTS TO DOMINION FOR RAILWAY PURPOSES

Railway Belt	10,976,000	acres
Peace River block	3,500,000	acres
Crow's Nest Pass Coal Lands	50,000	acres
TOTAL	14,526,000	acres
TOTAL LANDS ALIENATED FOR RAILWAY PURPOSES	18,694,334	acres

As indicated in the Table, 8,233,410 acres were granted in aid of intraprovincial lines, including the Esquimalt and Nanaimo. This total represents the land actually alienated. The total acreage granted at one time or another by the legislature as subsidies to railway companies amounted to at least four times this figure. That only slightly more than 8,000,000 acres were taken up was no fault of that same legislature. Either its members knew with a fair degree of certainty that many of the lines to which they had made a land grant were entirely speculative or, more damning still, they did not care. Fortunately for the province, however, as part of his railway policy Premier McBride was able to repurchase 4,065,076 acres from the Columbia and Western and the British Columbia Southern though he had failed in his

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Homesteads	732,400	acres
Sales (including mining lands)	171,800	acres
Parks	747,500	acres
Timber berths	1,057,300	acres
Grazing leases	325,200	acres
Forest reserves	1,713,700	acres
Indian reserves	172,600	acres
TOTAL	4,920,500	acres

(See Memorandum for The Hon. Mr. Justice Martin, p. 15.)

larger plan of buying back the lands in the Railway Belt.[164] This action left 4,168,334 acres permanently alienated for lines within the province which, with the 14,526,000 acres granted to the Dominion, made a total of 18,694,334 acres alienated for railway purposes.

Of British Columbia's 234,000,000 acres, approximately 6,500,000 acres, is classified as arable or as potentially arable land.[165] Since the railway companies were permitted to select their subsidy lands from within the much larger land area reserved by the government for them, it is reasonable to assume that the best land in the reserve was selected by the companies. Had all the companies receiving land subsidies built their roads, there can be little doubt that every acre of arable land in the province would have been permanently alienated as the price of securing railway communication. As matters stood, the 18,694,334 acres alienated by 1913 must have included most of the arable land within the province.

It is still debatable whether the people of British Columbia received a fair return for their lands. Transportation was vital to the development of the province within the framework of Confederation, but the price was high.

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164 The repurchase, authorized by B.C. Stat., 1912, c. 37, permitted the government to buy the unalienated subsidy lands of the two lines at 40 cents an acre.

165 See p. 34.

CHAPTER 4

LAND AND INDIANS

Latest official statistics reveal that the quantity of Crown land reserved for Indians in British Columbia is 1,283 square miles, or 821,090 acres.[1] Under the thirteenth article of the Terms of Union this land has been "conveyed by the Local Government to the Dominion Government in trust for the use and benefit of the Indians."[2] The conveying of these lands proved to be no more simple nor straightforward, nor any more free from legal entanglements, than was the process of determining upon and conveying the land to the Dominion for the transcontinental railway. By no means was as much land involved, either in 1871 or ultimately, in allotting the Indian reserves. But whereas there had been little previous history influencing the interpretation and implementation of Article 11, there was already in 1871 a vexed history attached to the subject matter of Article 13. Moreover, because the province was so sparsely settled in 1871,[3] comparatively few human beings, white or Indian, were

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[1] Canada Yearbook, 1954, pp. 21 and 150.

[2] Can. Stat., 1872, pp. lxxxiv-cvii. Imperial Order in Council, May 16, 1871, Article 13. See also Parliamentary Debates, 1871, Vol. II, pp. 935-941 for copies of Address of Senate to Her Majesty of April 5, 1871, and Report of Privy Council of Canada of July 1, 1870.

[3] There was no accurate count of the white population, but an estimate of 10,000 was made. The allowed population, provisionally established at 120,000 by Governor Musgrave in

immediately affected by any construction placed on Article 11.

The implementation of section 13, however, involved some 50,000 human beings whose centuries-old traditions, ancestral homes, and venerated burial grounds were at stake. Before any satisfactory interpretation of the clause had been arrived at by the two governments, the extensive native population of British Columbia had become alarmed and incensed to the point where a general Indian war was only narrowly averted - not once but twice - first in 1874 and later in 1877.

i.

In drafting section 13, it is possible that both the Dominion and provincial negotiators had no intention of being anything less than candid. Certainly Trutch, Carrall, and Helmcken, the delegates from British Columbia,[4]

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in his Message to the Legislative Assembly of British Columbia on February 16, 1870, was reduced to 60,000 in Ottawa following negotiations between the British Columbia delegation of Trutch, Carrall, and Helmcken, and the Dominion representatives on July 7, 1870. (See Gosnell, R.E., "Colonial history, 1849-1871" in Canada and its Provinces, Vol. 21, pp. 170, 174, 175.) When their claim to beneficial title to the land was being adjudicated some years later, the spokesmen for the Indians were careful to point out that the additional 50,000 population figure was credited to the province on their behalf. In his first Annual Report in 1874, Dr. I.W. Powell, Indian Superintendent for British Columbia, estimated the Indian population at 28,500, but he stipulated clearly that this figure was only an informed guess. (See C.S.P., 1875, No. 29, p. 63.)

4 B.C. Journals, 1871, p. 4. See also Gosnell, R.E., op. cit., pp. 174-175.

had full knowledge of the Dominion's Indian policy in the reservation of land. In the light of subsequent difficulties and disclosures, it is more doubtful whether the Committee of the Privy Council acting on behalf of Canada possessed as accurate information concerning the Indian policy of the colonial government in British Columbia. Trutch certainly could have given a complete summary of that policy. He had been Commissioner of Lands and Works in the colony since 1864,[5] and latterly had been Surveyor General as well. Less than three years after Union, the Dominion was to discover that the meaning which it abstracted from section 13 was the exact opposite of that read into it by the province. The clause, innocent enough to all appearances, reads as follows:

> The charge of the Indians, and the trusteeship and management of the lands reserved for their use and benefit, shall be assumed by the Dominion Government, and a policy as liberal as that hitherto pursued by the British Columbia Government shall be continued by the Dominion Government after the Union.
>
> To carry out such policy, tracts of land of such extent as it has hitherto been the practice of the British Columbia Government to appropriate for that purpose, shall from time to time be conveyed by the Local Government to the Dominion Government in trust for the use and benefit of the Indians, on application of the Dominion Government; and in case of disagreement between the two Governments respecting the quantity of such tracts of land to be so granted, the matter shall be referred for the decision of the Secretary of State for the Colonies.

The assumption by the Dominion of responsibility for Indian affairs, as specified in the first clause of the

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[5] Wallace, W.S., Dictionary of Canadian Biography, Vol. II, pp. 672-673.

first paragraph, was merely a re-statement of the duty already assumed by the Dominion under Article 91, section 24, of the enumerated powers of the British North America Act, 1867. During the preliminary negotiations between British Columbia and the Dominion it appeared that there was no need to include this article in the Terms of Union, as there would have been had responsible government been in operation in the colony. In his despatch of August 14, 1869, to Governor Musgrave, Earl Granville, Secretary of State for the Colonies, was of the opinion that "the Constitution of British Columbia will oblige the Governor to enter personally upon many questions, as the condition of the Indian tribes . . . with which, in the case of negotiation between two responsible governments, he would not be bound to concern himself."[6] Acting on his instructions, Governor Musgrave, when drawing up the Terms of Union in 1870, purposely omitted any mention of Indians "in the terms proposed to the Legislative Council."[7] Musgrave considered that this subject could best be handled either by himself under direction of the Secretary of State for the Colonies, or by the latter officer in direct negotiation with the government of Canada.

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6 Miscellaneous Papers relating to British Columbia 1859-1869, p. 31. Earl Granville to Governor Musgrave, August 14, 1869.

7 Quoted in full in: Canada. Parliament. Special Joint Committee on claims of Allied Indian tribes of British Columbia. Report and Evidence, 1927, pp. 4-5. Governor Musgrave to Sir John Young, Governor-General, February 20, 1870. (Hereafter cited as S.J.C. Report and Evidence.)

For this reason, no mention of Indians appears in the original Union resolutions of the British Columbia Legislature.[8] Subsequently, however, section 13 was added in what proved to be a vain attempt to effect a satisfactory division of responsibility between the two governments, and the Imperial Government acquiesced to this section on May 16, 1871.[9]

In attempting to honour its obligations under section 13, the Dominion government soon discovered that the Indian land policy "as it has hitherto been the practice of the British Columbia Government to appropriate" was not "as liberal as" the Dominion policy pursued in Manitoba and the Northwest Territories, nor "as liberal as" the centuries-old policy pursued by England in her other colonies in North America. As a result, the setting aside of reserves in British

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[8] Amor DeCosmos' Union resolutions of May 15, 1868, in the Legislative Assembly had made no mention of Indians. These resolutions were soundly defeated. Only DeCosmos, Stamp, Robson, and Walkem voted for them. They are quoted in full in Miscellaneous Papers relating to British Columbia 1859-1869, pp. 14-15. Governor Seymour to Duke of Buckingham, July 28, 1868.

[9] The report of the debate in the House of Commons over the Terms of Union occupies 57 pages. The report of the Senate discussions occupies 128 pages, yet in those 185 pages so completely unaware were the members of any possible difficulty with reference to Article 13 that one single sentence sufficed to dispose of the subject. In introducing the whole matter of the Terms of Union in the House, Sir George E. Cartier is reported to have said: "A certain portion of the public lands had been reserved for the Indians, and the only guarantee that was necessary for the future good treatment of the Aborigines was the manner in which they had been treated in the past." (See Parliamentary Debates, 1871, Vol. II, p. 663. March 28, 1871.)

Columbia by the officers of the Dominion government appointed for that purpose became a most difficult and contentious matter in itself, and over the years was to give rise to a further problem which has come to be known as the "reversionary interest" in lands abandoned by the Indians. And out of these two problems was to come a third, that of "aboriginal title", which was to plague the two governments for sixty years.

These three problems stemmed directly from two sources only, the first of which was the British North America Act itself. Under Article 146, provision was made in 1867 for the possible entry of, inter alia, British Columbia "into the Union"; under section 10 of the Terms of Union, the remaining portions of the British North America Act became operative. Article 109 of the British North America Act reads:

> All Lands, Mines, Minerals, and Royalties belonging to the several Provinces . . . and all Sums then due or payable for such Lands, Mines, Minerals, or Royalties, shall belong to the several Provinces . . . in which the same are situate or arise, subject to any Trusts existing in respect thereof, and to any Interest other than that of the Province in the same. 10

The application of this article by which all Crown lands and their natural resources became the property of the Crown in the right of the Government of British Columbia, placed British Columbia in a unique position among the newly acquired areas of the British North American federation. Under authority of the 1868 Rupert's Land Act, the Dominion had been empowered "to accept a Surrender of all or any of the Lands,

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10 Kennedy, W.P.M., ed., Documents of the Canadian Constitution 1759-1915, 1918, p. 678.

Territories, Rights," of government in the entire area heretofore possessed by the Hudson's Bay Company.[11] The surrender was accepted by Imperial Order in Council on June 23, 1870, the Order in Council which formally transferred Rupert's Land and the Northwest Territories to Canada.[12] In this manner the Dominion acquired the land and resources of the Territories.

When Manitoba became a province in 1870, all ungranted lands were vested in the Crown for Dominion purposes.[13] Section 31 of the Manitoba Act of 1870 specifically stated that, in order to extinguish the Indian title to the lands of the province, the province was to select 1,400,000 acres of land for division among the native population of Manitoba, "on such conditions . . . as the Governor General shall from time to time determine."

With the acquisition of the title to the Hudson's Bay Company's preserve, the Dominion applied to it the Indian land policy followed since 1760 in British North America, and since the seventeenth century in the New England colonies.

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[11] Can. Stat., 1868, c. 105, s. 3. For discussion, see Kennedy, W.P.M., The Constitution of Canada, an introduction to its development and law, 1922, p. 325.

[12] Canada. Parliament. British North America Act and Amendments, (together with other Acts and Orders in Council relating to the Constitution of Canada and of its Provinces) 1867-1943, 1943, pp. 139-158.

[13] Kennedy, W.P.M., ed., Documents of the Canadian Constitution, 1759-1915, p. 692. "The Manitoba Act, 1870", s. 30.

While Canada was still under French government, numerous agreements and treaties, some of which from as far back as 1664 are still on record, were made by the English with the Indians of New England. From the time of the first English settlement in those colonies,[14] the aboriginal title of the Indians to the lands they occupied was conceded, with compensation granted for the surrender of their hunting grounds. The English Crown has always reserved to itself the right to deal directly with the Indians for the surrender of their lands. Pursuing this policy after the conquest of Canada, Article XL of the "Articles of Capitulation of Montreal 1760" stated that "The Savages or Indian allies of his most Christian Majesty, shall be maintained in the lands they inhabit, if they chuse (sic) to remain there."[15]

This policy respecting the Indians and their lands was re-affirmed in the "Royal Proclamation, 7 October, 1763," the latter part of which is germane to the first and third of the Indian land problems in British Columbia - allotment of reserves and aboriginal title - since it reveals the constitutional authority on which the Dominion's Indian policy was based. Because British Columbia had been a Crown Colony until 1871, and because its government had been, therefore, directly

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[14] C.S.P., 1923, No. 14, p. 7. "Report of the Deputy Superintendent-General of Indian Affairs," by D.C. Scott.

[15] Kennedy, W.P.M., ed., op. cit., p. 12.

under the aegis of the British government, this passage reveals the policy which the Dominion assumed to have been followed in British Columbia.[16]

> And whereas it is just and reasonable, and essential to our Interests, and the Security of our Colonies, that the several Nations or Tribes of Indians with whom we are connected, and who live under our protection, should not be molested or disturbed in the Possession of such Parts of our Dominions and Territories, as, not having been ceded to or purchased by Us, are reserved to them, or any of them, as their Hunting Grounds. - We do therefore, with the Advice of our Privy Council, declare it to be our Royal Will and Pleasure, that no Governor or Commander in Chief in any of our Colonies of Quebec, East Florida, or West Florida, do presume, upon any Pretence whatever, to grant Warrants of Survey, or pass any Patents for Lands beyond the Bounds of their respective Governments, as described in their Commissions; as also that no Governor, or Commander in Chief in any of our other Colonies or Plantations in America do presume for the present, and until our further Pleasure be known, to grant Warrants of Survey, or pass Patents for any Lands beyond the Heads or Sources of any of the Rivers which fall into the Atlantic Ocean from the West or North West, or upon any Lands whatever, which, not having been ceded to or purchased by Us as aforesaid, are reserved to the said Indians, or any of them.
>
> And We do further declare it to be Our Royal Will and Pleasure, for the present as aforesaid, to reserve under our Sovereignty, Protection and Dominion, for the use of the said Indians, all the Lands and Territories not included within the Limits of Our said Three new Governments, or within the Limits of the Territory granted to the Hudson's Bay Company, as also all the Lands and Territories lying to the Westward of the Sources of the Rivers which fall into the Sea from the West and North West as aforesaid;
>
> And We do hereby strictly forbid, on Pain of our Displeasure, all our loving subjects from making any Purchases or Settlements whatever, or taking possession of any of the Lands above reserved, without our especial leave and Licence for that purpose first obtained.

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[16] The most applicable passages have been underlined.

> And, we do further strictly enjoin and require all Persons whatever who have either wilfully or inadvertently seated themselves upon any Lands within the Countries above described, or upon any other Lands which, not having been ceded to or purchased by Us, are still reserved to the said Indians aforesaid, forthwith to remove themselves from such settlements.
>
> And whereas great Frauds and Abuses have been committed in purchasing Lands of the Indians to the great Prejudice of our Interests and to the great Dissatisfaction of the said Indians; in order therefore, to prevent such Irregularities for the future, and to the end that the Indians may be convinced of our Justice and determined Resolution to remove all reasonable Cause of Discontent, We do, with the advice of our Privy Council, strictly enjoin and require, that no private Person do presume to make any Purchase from the said Indians, of any Lands reserved to the said Indians, within those parts of our Colonies where We have thought proper to allow Settlement; but that, if at any Time any of the said Indians should be inclined to dispose of the said Lands, the same shall be purchased only for Us in our Name, at some public Meeting or Assembly of the said Indians, to be held for that purpose by the Governor or Commander in Chief of our Colony respectively within which they may lie; and in case they shall lie within the limits of any Proprietary Government, they shall be purchased only for the Use and in the name of such Proprietaries, conformable to such Directions and Instructions as we or they shall think proper to give for that Purpose. . . . 17

The explicit language of this remarkable document permitted of no misinterpretation, and from it has derived the entire Dominion treaty policy with the Indians living on Dominion Crown land. The essential elements of the policy have always been the recognition of an Indian title and the recognition of the necessity of securing a cession of that title by the Crown in return for adequate compensation to the Indians. As a Crown Colony, British Columbia was assumed to

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17 Kennedy, W.P.M., ed., op. cit., pp. 20-21.

have followed this policy.

The quotation from the 1763 Proclamation has a still further application to the subject of Indian lands in British Columbia. After Union in 1871, the 1870 Land Ordinance remained in effect as the only law embodying provincial land policy. Not until 1874 were conditions within British Columbia sufficiently stable to permit the legislature time to consider a new act, nor had conditions warranted one before. On March 2, 1874, "An Act to amend and consolidate the laws affecting Crown Lands in British Columbia" was passed, although it was to remain inoperative until the Lieutenant-Governor had given his assent and published notice to that effect in the British Columbia Gazette.[18]

When the act reached Ottawa the Minister of Justice, the Hon. Telesphore Fournier, disallowed it.[19] The consternation in Victoria must have been great when, in the course of his remarks on the act, Fournier pointed out that the act had defined 'Crown lands' as being "all lands of this province held by the Crown in free and common soccage."[20] Such definition implies freehold under grant from the Crown, and could therefore have meant that, if the Crown were indeed tenant by freehold, the British Columbia legislature

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[18] B.C. Stat., 1874, No. 2, s. 86.

[19] The following discussion on the federal disallowance is to be found in Dominion and Provincial Legislation 1867-1895, pp. 1024-1028.

[20] B.C. Stat., 1874, No. 2, s. 2.

was admitting by its own statute the Indian sovereignty to all lands of the province. Doubtless what had been meant was 'in fee simple', and 'in free and common soccage' had been an inadvertent slip; but the significance of the error will become apparent later when it is shown how strongly opposed the provincial government was at all times to admitting any title whatever held by the Indians, equitable or legal, and how reluctant the province was to part with a single acre more than was absolutely necessary for the use of the Indians.

But it was not on the basis of its definition of Crown lands that the act was disallowed. In truth, nothing would have pleased the Dominion government more than to have had British Columbia recognize the Indian title by statute. The act was disallowed because it made no provision for any Indian reservations nor of lands for that purpose; nor were the Indians accorded in it any rights or privileges in respect to land - neither could they pre-empt nor purchase land except by applying to the Lieutenant-Governor in Council for a special dispensation to permit them to do so.

Although Fournier said he did not wish to become involved in the merits of the aboriginal title claim, he did feel it his duty to call attention to the legal position of the public lands in British Columbia, particularly in view of what he termed the

> known, existing, and increasing dissatisfaction of the Indian tribes of British Columbia at the absence of adequate reservation of lands for their use, and at the

> liberal appropriation for those in other parts of Canada upon surrender by treaty of their territorial rights, and the difficulties, which may arise from the not improbable assertion of that dissatisfaction by hostilities on their part. 21

To substantiate his statement that "There is not a shadow of a doubt, that from the earliest times, England has always felt it imperative to meet the Indians in council, and to obtain surrender of tracts of Canada, as from time to time were required for the purposes of settlement,"[22] Fournier quoted sections of the 1763 Proclamation. He also noted the presence of the phrase 'Indian territories' used in the Imperial act of 1849 providing for the administration of Vancouver Island when that territory became a Crown Colony. Because there had never been a cession of the Indian title in British Columbia, because the Indians had already expressed themselves as greatly dissatisfied with the reserves assigned them arbitrarily by the province and were "not averse to hostilities in order to enforce rights which it is impossible to deny them," and because of the express denial to the Indians in the act of any land rights, the Minister of Justice felt he had no choice but to recommend that the act be disallowed. British Columbia, he held, was attempting to legislate with respect to the public lands as though those lands were its absolute property, an assumption ignoring the honour and good

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21 Dominion and Provincial Legislation 1867-1895, p. 1025.

22 Loc. cit.

faith always shown the Indians elsewhere in Canada since 1763.

Fournier also noted that Article 109 of the British North America Act, 1867, conveyed the public lands to the province "subject to any trust existing in respect thereof, and to any interest other than that of the province, in the same."[23] He felt that what was ordinarily spoken of as the 'Indian title' must, of necessity, have consisted of some species of interest in the public lands of the province, and that if it were not a freehold in the soil, it surely must have been a usufruct, a right of occupation or possession for the Indians' use. In that case, if the land of the province were not subject to a "trust existing in respect thereof," at least it was subject "to an interest other than that of the province alone."[24]

Fournier's decision in 1875 was used repeatedly over the years by the Indians and their advisors in their attempts to demonstrate to the province the legal basis of their claims to a beneficial interest to all the land of the province.

The second source of difficulties in British Columbia over Indian affairs was the Legislative Council's

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[23] See p. 299.

[24] Dominion and Provincial Legislation 1867-1895, p. 1025.

outright refusal after Douglas's retirement in 1864[25] to recognize any aboriginal title to the land, as specified in the 1763 Proclamation. This fact is attested by numerous statements, the earliest official one being that made by Hon. Joseph W. Trutch, Commissioner of Lands and Works and Surveyor General, in a memorandum included by Governor Musgrave to Earl Granville in a despatch of January 29, 1870.

In his memorandum Trutch outlined the Indian policy of the colonial government in British Columbia but added, significantly, that:

> . . . the title of the Indians in the fee of the public land, or of any portion thereof, has never been acknowledged by Government, but on the contrary, is distinctly denied. In no case has special agreement been made with any of the Tribes on the Mainland for the extinction of their claims of possession; but these claims have been held to have been fully satisfied by securing to each Tribe, as the progress of the settlement of the country seemed to require, the use of sufficient tracts of land for their wants for agricultural and pastoral purposes.[26]

This policy was precisely the one obtaining in New France prior to the British conquest. The French never admitted that the Indians had any title to the land, but claimed them for the Crown by right of discovery and conquest. Reserves,

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[25] Sage, W.N., Sir James Douglas and British Columbia, 1930, p. 332.

[26] This Memorandum is to be found in: British Columbia. Executive Council. Papers connected with the Indian land question 1850-1875, 1875, Appendix 1, pp. 10-13. (Hereafter cited as Papers connected with the Indian land question.) The Memorandum is also given in B.C.S.P., 1876, pp. 66-69, and in C.S.P., 1876, No. 9, pp. lvi-lix.

however, were set aside as a matter of grace and charity.[27] As early as May 15, 1786, Upper Canada began securing the extinction of Indian title by treaties, paying directly to the Indians either goods or money as compensation. From 1818 until June 27, 1921 - when Treaty Number 11 with the Indians of the Mackenzie River district was made, probably the last of its kind in Canada - the compensation has taken the form of an annuity.[28]

Because the government of British Columbia, both before and after 1871, refused to admit the validity of any aboriginal title, there arose in 1875 the 'aboriginal title' problem. As will become apparent, before the persistent ghost of this issue was finally laid to rest every court and all heads of government in Canada were involved; the Colonial Office and the Crown itself in England were appealed to; and, after the problem became a matter of public concern, every Indian and settler in British Columbia was aroused.

Had British Columbia not been possessed of its Crown lands and had it been willing to secure cession of the Indian title by means of a treaty with the Indians, the same arrangements could have been made as were adopted in Manitoba,

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27 C.S.P., 1923, No. 14, p. 7. In later years, under 14 & 15 Vict., Chap. 106, by an Act of the Province of Canada, dated August 30, 1851, Quebec set aside other reserves than those confirmed by Article XL of the "Articles of Capitulation of Montreal, 1760."

28 Ibid., pp. 8-14.

and later in Alberta and Saskatchewan. Although admitting an Indian title to the lands was at no time considered in the discussions preceding Union, treaties might well have been secured had Governor Douglas been able to continue the Indian policy he had begun in 1850 in his role of Governor of 'Vancouver's Island'. Beginning in 1850, Douglas made fourteen agreements with various tribes of Indians inhabiting the southern portion of Vancouver Island. In consideration of money payments made to them at once,[29] the Indians in these agreements relinquished their 'possessory rights' to the area about Fort Victoria. The payments averaged £2.10.0 per head of a family for the southern 100 square miles of the Island.

The first of these agreements was made with the Teechamitsa Tribe on April 29, 1850, for all lands lying between Esquimalt and Point Albert. It read as follows:

> Know all men, we, the chiefs and people of the Teechamitsa Tribe, who have signed our names and made our marks to this deed on the twenty-ninth day of April, 1850, do consent to surrender, entirely and forever, to James Douglas, the agent of the Hudson's Bay Company in Vancouver Island, that is to say, for the Governor, Deputy Governor, and Committee of the same, the whole of the lands situate and lying between Esquimalt Harbour and Point Albert, including the latter, on the Straits of Juan de Fuca, and extending backwards from thence to the range of mountains on the Saanich Arm, about ten miles distant.
>
> The condition of or understanding of this sale is this, that our village sites and enclosed fields are to be kept for our own use, for the use of our children, and

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29 Papers connected with the Indian land question, p. 19. Douglas to Newcastle, March 25, 1861.

> for those who may follow after us; and the lands shall be properly surveyed hereafter. It is understood, however, that the land itself, with these small exceptions, becomes the entire property of the white people forever; it is also understood that we are at liberty to hunt over the unoccupied land, and to carry on our fisheries as formerly.
>
> We have received, as payment, Twenty-seven pounds, ten shillings sterling.
>
> In token whereof, we have signed our names and made our marks, at Fort Victoria, twenty-ninth April, 1850. 30

Altogether, during his incumbency, 358 square miles on Vancouver Island were ceded by the Indians to Douglas.[31]

Had the Colonial Office acceded to his request in 1861 for a loan of £3,000 to complete the extinction of the Indian title to the 1600 square miles of public lands remaining on Vancouver Island, it would have meant paying approximately $1.00 per square mile for the cession of those lands. In his despatch asking for the loan Douglas stated that "I made it a practice up to the year 1859, to purchase the native rights in land, in every case, prior to the settlement of any district, "but that, owing to lack of funds, he had not been able to continue the practice.[32] He wrote that the Indians "have distinct ideas of property in land, and mutually recognize their several exclusive possessory rights in certain districts," and would, he

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30 Ibid., p. 5. The other agreements are to be found on pp. 6-11, inclusive.

31 S.J.C. Report and Evidence, p. 3.

32 Papers connected with the Indian land question, p. 19. Douglas to Newcastle, March 25, 1861.

believed, feel a sense of injury were white settlers to occupy unextinguished lands. Since all settled districts with the exception of the Cowichan, Chemainus, and Barclay Sound areas had already been bought out, he felt justified in asking for the loan, particularly as he made the offer of repaying it out of the sale of public lands, the price of which had only two months previously been reduced from ten to four shillings tuppence per acre.[33] Unfortunately for the plans both of Douglas and of his Legislative Assembly, Newcastle was not receptive to the suggestion of a loan, and in reply stated that "the acquisition of the title is a merely colonial interest."[34]

In the course of time, Douglas gave blankets, trade goods, and even cash payments to tribes in other sections of Vancouver Island. Trutch was later convinced that all these presents were made for the purpose of securing the friendship of the Indians to the Company, and not in acknowledgment of any general title of the Indians to the lands occupied by them.[35] In view of later developments, it is

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[33] British Columbia. Legislative Council. List of Proclamations for 1858, 1859, 1860, 1861, 1862, 1863, and 1864, 1864, p. 99. Proclamation of January 19, 1861.

[34] Papers connected with the Indian land question, p. 20. Newcastle to Douglas, October 19, 1861.

[35] Ibid., Appendix 1, pp. 10-13.

evident that, whatever Douglas's intent was,[36] the Indians never really understood what was happening. To them, the legal concept of individual ownership in land was meaningless. As Douglas had suggested, they did understand the principle of usufruct, and the rival chieftains thought they were yielding to the white interlopers only the right to use the land, not the right to anything called 'exclusive private ownership.'[37] It was this misunderstanding which gave rise to the request from the Indians throughout the province as years went by for an increase in the size of their reservations, notwithstanding their acceptance without demur of the land allotted to them by the Allottment Commission from 1876 onward.

Douglas, partly in the interests of humanity, partly because it was good business, and partly because he had been instructed to do so by the Colonial Office, regarded the Indians as the special wards of the Crown. In his Address of August 12, 1856, to the first Legislative Assembly on

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36 When the account of the Hudson's Bay Company against the Colony was presented to Governor Blanshard in 1851, he stated in his despatch to the Secretary of State for the Colonies that "The account asserts that they have expended $2,736, of which $2,130 are for goods paid to Indians to extinguish their title to the land about Victoria and Soke (sic) harbours." As it was an accounting procedure of which Blanshard did not approve, he signed the account "with protest." See British Columbia. Governor. Despatches of Governor Blanshard to the Secretary of State, 26th December 1849 to 30th August 1851, 1851, No. 8, February 12, 1851.

37 Stanley, G.F.G., "The Indian Background of Canadian History", in Canadian Historical Association. Annual Report, 1952, pp. 14-21.

Vancouver Island, he said that he proposed to treat the Indians "with justice and forbearance, and by rigidly protecting their civil and agrarian rights; many cogent reasons of humanity and sound policy recommend that course to our attention." He went on to remind the Assembly of the benefits to be derived from the friendship of the Indians, "while it is no less certain that their enmity may become more disastrous than any other calamity to which the colony is directly exposed."[38]

In response to Lytton's despatch enjoining him to "consider the best and most humane means of dealing with the Native Indians" and to see that "in all bargains or treaties with the natives for the cession of lands possessed by them, that subsistence should be supplied to them in some other shape,"[39] Douglas outlined his policy in full. His plan envisioned settling the Indians on reserves where, among other benefits which would follow, they would be secure against the encroachment of white settlers and thereby the possibility of "having the native Tribes arrayed in vindictive warfare against the white settlement" would be lessened. Any land on the reserve not being utilized by the Indians was to

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38 Bancroft, H.H., op. cit., pp. 322-323, n. 11, where the Address is quoted in full. This portion of the Address is also quoted in Gosnell, R.E., op. cit., pp. 114-115.

39 Papers relative to the affairs of British Columbia, Part I, pp. 44-46. Lytton to Douglas, July 31, 1858.

be leased to the highest bidder, the proceeds of the lease to be applied to the exclusive benefit of the Indians.[40] Where land was valuable, Douglas assured Lytton this arrangement would relieve the colony of any financial burden arising from the care and maintenance of the natives; where the land was of no value, the Indians could be left to pursue their wonted course unmolested. On any reserve, each family was to have a distinct portion for its own use,[41] but the Indians were to be denied the power to sell or alienate the land. With this project in mind, reserves were to be made for the benefit and support of the tribes in all districts of British Columbia inhabited by natives. "Those reserves should

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[40] Douglas actually began this procedure. When a return was tabled in the provincial legislature on January 13, 1873, calling for a list of Indian reserves, it appeared that on the Songhees reserve of 112 acres in the middle of Victoria, 13.94 acres were being leased for an annual rental of $222 by five people, one of whom was Rev. George Hills, Bishop of Columbia, whose lease of Lot 51, used for a Mission school, ran for 21 years at $5.00 a year. (See B.C.S.P., 1872-73, Appendix 1, p. 4.) It was many years before leases were sought on any other reserve. Douglas's plan of making the care of the Indians no financial burden on the government by these leases was a forlorn hope.

[41] The Indians appealed for years for a provision in the Indian Act to carry this policy one step further. Plots of land were assigned each family under the Indian Act, 1876, held under what was called a 'location ticket', but this was little protection to the Indian whose neighbour coveted his land, and who frequently set about getting it through a fight. Under this plan there was no incentive to improve the individual plot. Not until 1951 was the deficiency in the act remedied. The 1951 Indian Act provided for 'certificates of possession' to be awarded by the band council after the approval of the Minister or his representative had been secured. Such certificates are the counterpart of a Crown grant.

in all cases include their cultivated fields and village sites, for which from habit and association they invariably conceive a strong attachment, and prize more, for that reason, than for the extent or value of the land."[42]

The procedure as outlined by Douglas was more or less adhered to by the colonial government throughout the next twelve years, and remained in effect at Confederation, when the charge of the Indians passed under section 13 of the Terms of Union to the Dominion government. In assigning reserves, Douglas and his colonial officials followed no consistent pattern other than that of including within a larger reserve, if possible, all Indian settlements, graveyards, gardens, hunting lodges, berry patches, or fishing stations, or of making one or all of them separate smaller reserves. The only principle adopted was that of placating the Indians and keeping them out of the way of incoming settlers by ensuring to each tribe a definite reservation of land. In his Address to the newly elected first Legislative Council of British Columbia at New Westminster on January 21, 1864, Douglas said:

> The Native Tribes are quiet and well-disposed. The plan of forming Reserves of land embracing the village sites, cultivated fields, and favorite places of resort of the several Tribes, and thus securing them against the encroachment of settlers, and forever removing the fertile cause of agrarian disturbance, has been productive

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42 Papers connected with the Indian land question, pp. 16-17. Douglas to Lytton, March 14, 1859.

of the happiest effects on the minds of the natives.

> The areas thus partially defined and set apart in no case exceed the proportion of ten acres for each family concerned, and are to be held as the joint and common property of the several Tribes, being intended for their exclusive use and benefit, and especially as a provision for the aged, the helpless, and the infirm. 43

That this was no hastily conceived scheme is verified by the fact that, with a view to having his carefully prepared plan put into operation, Douglas had three years before instructed his Colonial Secretary to write to the Commissioner of Lands and Works requesting that officer to mark out distinctly the sites of all proposed towns and Indian reserves throughout the mainland colony. He further directed that such reserves were to be defined exactly as the Indians themselves pointed them out.[44] Until after Douglas's retirement, however, the matter of reserving lands for the use and benefit of the various tribes does not appear

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43 Journals of the Legislative Council of British Columbia, 1864, p. 3, quoted in C.S.P., 1876, No. 9, pp. xlvi-lv, "Memorandum to the Executive Council of British Columbia," August 18, 1875. Until the 1865 Land Ordinance came into operation, the Indians had the same right of acquiring and holding land by purchase or pre-emption as anyone else.

44 Papers connected with the Indian land question, p. 21. Douglas to Moody, March 5, 1861. In view of this statement to Colonel Moody, there is room for doubt as to whether the "ten acres for each family" statement was one of happenstance or of policy. After 1864, the British Columbia government, both before and after 1871, chose to interpret it as the latter. At the time, there seems to have been no official communication to prove that Douglas had never intended the reserves to be limited to 10 acres. It does not appears that Douglas put his views in writing until 1874. (See Appendix E, Item 4.)

to have been dealt with on any codified system.[45] The rights of the Indians to hold lands were totally undefined, with the whole subject seemingly kept in abeyance, although the 1865 Land Ordinance specifically withheld from pre-emption all Indian reserves or settlements,[46] as Douglas had wished.

In keeping with the Proclamation of 1763, a notice had been inserted by Douglas in the Victoria Gazette in 1859 stating for public benefit and enlightenment that, in order to prevent anyone from buying land directly from the Indians, land was the property of the Crown and the Indians were

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[45] Ibid., pp. 41-43. Trutch to Acting Colonial Secretary, August 28, 1867. There is only Trutch's word for the fact that he could find no record of reserves or information concerning reserves already allotted.

[46] Every subsequent land law in British Columbia has contained such a clause, but because not one of these acts ever defined an 'Indian settlement', there must surely have been circumstances under which a definition would have been imperative. Particularly must this have been so in later years when reserves were being allotted. Such questions must have arisen as to what period of occupation by Indians gave land the designation 'Indian settlement'. Some time prior to the visit of the Allottment Commission, could a band not have split, half remaining on the old 'settlement' and half making a new 'settlement', in order to receive more land? And in the interior of the province, where large acreages were necessary for pastoral purposes, could such a move on the part of designing Indians not have resulted in totally unforeseen problems from the settler's viewpoint? Had the Indians so wished, it would seem that they could have been most difficult about this point. Perhaps they were, but the only record of such complaint uncovered during the present study was that made by William Smithe, Premier and Chief Commissioner of Lands and Works, to Dr. Powell, Indian Superintendent at Victoria, contained in a letter of November 24, 1884. Powell had requested the provincial government to reserve 100 acres for 54 Indians on the west shore of Okanagan Lake opposite the present city of Kelowna, even though reserves of nearly 50,000 acres had been established at the north end of the

incapable of conveying a legal title.[47] But no reserves of land intended as Indian reservations were made by official notice in the Gazette until 1866,[48] after Douglas had retired and after Trutch had become Commissioner of Lands and Works. Even then, only half the existing surveyed reserves were gazetted. Trutch reported in 1867 that since he was unable to find any written directions on the subject in the correspondence in his office,[49] most of the reserves made before 1865 were made in furtherance simply of verbal instructions from Douglas. It would appear that in many cases lands which Douglas intended to be appropriated for reserve purposes were set apart and made over to the Indians on the ground by

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lake. Smithe, already furious at the size of the main Okanagan reserves, remarked that "No doubt families of Indians were found scattered over the district, and when the Commissioners appeared they gathered in detachments from far and near to swell the number applying for a tribal reserve", and went on to imply that the Indians then scattered and asked for additional and independent reserves "at their nomadic homes or places of temporary abode". (See B.C.S.P., 1885, p. xiii following p. 410. Smithe to Powell, November 24, 1884." In his answer two weeks later, Powell said that until he had read Smithe's letter, he had never heard that such a thing had ever happened, and added that "nor does it appear reasonable that vague reports, or rumours of such deception, should control or influence the action of the Government in withholding for so many years their final approval and confirmation of Indian lands which have been so long in a state of uncertainty." (See Ibid., pp. xx-xxi. Powell To Smithe, December 9, 1884, No. 2.)

47 Papers connected with the Indian land question, p. 15. Douglas to Lytton, February 9, 1859.

48 B.C.S.P., 1876, pp. 324-327.

49 Papers connected with the Indian land question, pp. 41-43. Trutch to Acting Colonial Secretary, August 28, 1867.

Douglas personally. These "on-the-spot" reservations were, for the most part, small, comprising usually a potato garden adjoining a village, a burial ground, or a berry patch. Prior to 1864 few reserves had been staked off or in any way practically defined. After a thorough search through his office Trutch could find record of nine only, three lots at the mouth of the north arm of the Fraser River, an island at the mouth of the Coquitlam River, two lots on its banks, one lot opposite New Westminster, and two lots at Keatsie (Hatzic).[50] It is possible that Douglas avoided committing his decisions to paper because he was too busy, but that would be unlike Douglas. It is also possible that he thought no such formal procedure necessary at that stage in the development of the colonies. What is more likely, however, is that he was constantly mindful of a despatch from Carnarvon in May, 1859, cautioning him against laying out and defining reserves in those localities where they might conceivably in the future impede progress of white colonists.[51] Genuine as its solicitude for the natives undoubtedly was, the Colonial Office in London was also acutely aware that British Columbia, like all other colonies, must finance itself.[52]

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[50] Loc. cit.

[51] Ibid., p. 18. Carnarvon to Douglas, May 20, 1859.

[52] The instructions sent to Douglas in 1858 concerning the Colony of British Columbia advised him to maintain a balance between expenses and revenue, but the first financial statement showed a deficit of about $10,000. When, in the Imperial budget of 1859, a sum of $42,899 appeared for the relief of the new colony, objections were taken on the ground that British

British Columbia could only hope to achieve financial independence by attracting settlers who could be taxed for the resources they extracted from the colony and for the goods they imported into the colony. The Colonial Office knew in 1859 that British Columbia was attracting thousands of immigrants. It viewed this situation as auguring well for the future prosperity of the colony, provided those immigrants could be induced to remain as settlers after the gold fever had abated.[53] Carnarvon doubtless thought it his duty to warn Douglas of the dangers inherent in a too liberal treatment of the natives, particularly if that treatment were to mean appropriating to the Indians the best lands available.

Before Douglas retired from the scene, two interesting incidents involving Indians and lands occurred which, had he but known it, were to be the genesis of the aboriginal

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Columbia should pay its own way, as any other colony was required to do. The vote passed, but only because of the timely intervention of Lytton, by now returned to his duties as Secretary of State for the Colonies. He explained as best he could that conditions were different on the Pacific Coast from those obtaining elsewhere. (See Gosnell, R.E., op. cit., p. 159.)

[53] After detailing "the chief elements of success" seemingly possessed by British Columbia in such abundance, Lytton had already warned Douglas "that. . . the Imperial Parliament. . . will expect that the Colony shall be self-supporting as soon as possible", to which Douglas had replied, "I will not fail to keep steadily in view the fact, that the Imperial Parliament will expect. . . British Columbia to be self-supporting." (See Papers relative to the affairs of British Columbia, Part I, pp. 37-39. Douglas to Lytton, October 11, 1858, and pp. 44-46, Lytton to Douglas, July 31, 1858.)

title difficulty of later years. Both incidents suggest that even at that early date, the Indians were not completely satisfied with their reserve allotments.

At a public sale of lots in New Westminster held in May, 1862, Colonel Moody, then Commissioner of Lands and Works who was conducting the sale, was so perturbed when Snat Stroutan, an Indian, wanted to buy a lot just as the white settlers were doing that he felt it necessary to write William A.G. Young, the Colonial Secretary, for instructions.[54] After pondering Snat's unusual request and consulting with the governor, Young wrote back three weeks later to say that "there can be no objections."[55] Snat was probably unaware that when he received his lot he was indeed setting a precedent. In theory, at least, Douglas was fully prepared to accept the Indians as "rational beings, capable of acting and thinking for themselves,"[56] but when it came to acknowledging the fact in practice, three weeks' cogitation was required.

In June of that year - 1862 - Moody encountered another problem, this time somewhat more serious and not so simple of solution. The 1860 Land Ordinance[57] reserved

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54 Papers connected with the Indian land question, p. 23. Moody to Young, May 27, 1862.

55 Ibid., p. 24. Young to Moody, June 8, 1862.

56 Ibid., p. 17. Douglas to Lytton, March 14, 1859.

57 British Columbia. Legislative Council. List of Proclamations for 1858, 1859, . . . and 1864, pp. 67-68.

Indian settlements from pre-emption, but it did not forbid Indians to pre-empt.[58] Moody discovered that all along the Fraser River, in extended order up to Hope, Indians were pre-empting "precisely as a white man could," and were doing so to a considerable extent, and he observed that the practice was likely to increase rapidly.[59] Moody referred the problem to Young and was told that legislation containing a provision permitting Indians to pre-empt under certain conditions[60] was being drawn up to deal with just such a contingency. Since the next land ordinance was passed in 1865, it is likely that the Indians along the Fraser remained in dubious possession of their pre-emptions. There is no record of their ever having received Crown grants for any of these lands. It was just such situations as this which gave rise to the oft-voiced complaint from the Indians in later years that white men were pre-empting their 'settlements,' and which created a difficult problem for the Allottment Commissioners.

The clause presaged by Young stipulated that Indians could pre-empt only with the prior consent of the governor.[61] When an Indian finally did succeed in obtaining permission to pre-empt a Minute in Council was required to authorize the

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58 See n. 43.

59 Papers connected with the Indian land question, p. 25. Moody to Young, June 11, 1862.

60 Loc cit.

61 British Columbia. Legislative Council. Ordinances passed by the Legislative Council of British Columbia during the session from January to April, 1865, No. 27.

transaction.[62]

The action of the Indians along the Fraser River was no doubt prompted by a not unnatural desire to secure to themselves as large tracts of land as possible before it was all pre-empted in 160-acre blocks by white settlers. Such a location along the river was ideal for their purposes, since it provided hay meadows for their horses and cattle and suitable fishing sites. Even had the reserves been allotted to them, and even had those reserves been large enough, it is unlikely that the Indians would have fully realized what ownership of land meant. The failure to allot reserves officially, the ten-acre restriction imposed after 1864, and the fact that land was only of value to the Indians for what use could be made of it at the moment were all factors boding ill for the future.

Douglas himself dispensed land to the tribes with a generous hand. He issued instructions laying down the policy that the Indians themselves were to be the final arbiters of the extent of land they should have. His experience had shown that the amount chosen worked out to an average of ten acres per family. When he received information early in 1863 that the Indians of the Coquitlam River reserve were dissatisfied with their fifty acres of land, he wrote personally to Colonel Moody in peremptory fashion. After outlining the Indians' complaint, he said:

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62 B.C.S.P., 1876, p. 65. Minute in Council, December 3, 1872. Also in C.S.P., 1876, No. 9, p. iv.

> I beg that you will, therefore, immediately cause the existing reserve to be extended in conformity with the wishes of the Natives, and to include therein an area so large as to remove from their minds all causes of dissatisfaction.
>
> Notwithstanding my particular instructions to you, that in laying out Indian Reserves the wishes of the Natives themselves, with respect to boundaries, should in all cases be complied with, I hear very general complaints of the smallness of the areas set apart for their use.
>
> I beg that you will take instant measures to inquire into such complaints, and to enlarge all the Indian Reserves between New Westminster and the mouth of the Harrison River, before the contiguous lands are occupied by other persons. 63

The subsequent correspondence indicates that Moody was by no means so remiss in his duties as Douglas's letter would suggest, but the letter does emphasize the policy that prevailed so long as Douglas was governor. The correspondence indicates, also, that the Indians were not slow to learn the white man's methods of duplicity in obtaining the desired ends. They too could play both ends against the middle, and did so admirably in this instance.[64] Moody suggested that the missionaries, largely of the Roman Catholic faith, were befriending the Indians to the extent of showing them how to take advantage of gaps in the legislation pertaining to pre-emption. Referring to assistance the Indians were receiving from Roman Catholic priests, Moody said, "It is a

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63 Papers connected with the Indian land question, pp. 26-27. Douglas to Moody, April 27, 1863.

64 On more than one occasion Trutch or the surveyors in his Department suspected with good reason that the Indians were not averse to altering the location of the boundary stakes on their reserves. (See Ibid., p. 32, Trutch to Colonial Secretary, January 17, 1866.)

growing menace that will have to be met."[65] By his objection, Moody revealed that his sympathies did not lie entirely with the Indians in their claims for larger reserves, nor with Douglas in his policy of permitting the Indians to designate the size of their reserves.

Actions of the government officials shortly after Douglas's retirement illustrate clearly that Moody's attitude was not unique in the colony. It has already been pointed out that in 1867 Trutch distinctly denied any Indian title. In 1870, by way of answering criticism levelled at the colony's Indian policy sent to Earl Granville, then Secretary of State for the Colonies, Trutch stated that:

> It is not true . . . that in this colony we have no 'Indian Policy whatever'; that 'there are no Indian Agents'; and that 'the only friends the Indians have in the colony are the missionaries.' On the contrary, for the past ten years at least, during which I have resided in this colony, the Government appears to me to have striven to the extent of its powers to protect and befriend the native race, and its declared policy has been that the Aborigines should, in all material respects, be on the same footing in the eye of the law as people of European descent, and that they should be encouraged to live amongst the White settlers in the country, and so, by their example, be induced to adopt habits of civilization. . . . This policy toward the Indians has been consistently carried out so far as I am aware, by successive Governors. . . . The Magistrates, too, throughout the Colony, are the especially constituted protectors of the Indians against injustice. They are, in fact 'Indian Agents' in all but the name, and I am confident that they have so performed this well-understood branch of their duty, that as full a measure of protection and general advantage has been bestowed on the Indians through their agency by the Government, out of the pecuniary means at its disposal for this purpose, as could have been afforded to them through the medium of a special Indian Department.

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[65] Ibid., pp. 27-28. Moody to Douglas, April 28, 1863.

> The Indians have, in fact, been held to be the special wards of the Crown, and in the exercise of this guardianship Government has, in all cases where it has been desirable for the interests of the Indians, set apart such portions of the Crown lands as were deemed proportionate to, and amply sufficient for, the requirements of each Tribe; and these Indian reserves are held by Government, in trust, for the exclusive use and benefit of the Indians resident thereon. 66

Close reading of this statement reveals that Trutch was not really meeting the criticisms. The wording suggests that Trutch had much, if not everything, to do with the framing of section 13. The evidence leads to the conclusion that, in framing section 13, he deliberately put in those two contentious and ambiguous phrases, "a policy as liberal as that hitherto pursued by the Government of British Columbia," and "tracts of land of such extent as it has hitherto been the practice of the British Columbia Government to appropriate." That these two vague clauses were not discussed in Ottawa in 1870 is reasonably evident from the fact that Sir George E. Cartier found it unnecessary to amplify them when he was introducing the Terms of Union into the House of Commons.[67]

Trutch's defence of his Indian policy, written especially for the Colonial Office, may have served to allay any fears Granville had, but it would not have met with the approval of the Indians. Trutch knew that "such portions of the Crown lands as were deemed proportionate to, and amply

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66 B.C.S.P., 1876, pp. 66-69. Trutch to Musgrave, January 29, 1870.

67 See n. 9. If Trutch wrote this clause without making a full explanation of his government's denial of Governor Douglas's policy of permitting the Indians to designate their own reserves, and if he made no mention of the recent

sufficient for, the requirements of each Tribe" may have satisfied the government, but that the Indians were not necessarily content with what lands were deemed "amply sufficient for" their requirements. So long as Douglas had been governor, the Indians had only to ask to receive additional land; once he was safely retired, a concerted effort was made to reduce in size the larger Indian allotments, particularly in the Kamloops-Shuswap and Lower Fraser River areas.

The most outstanding case of this kind involved reserves marked out in 1864 by a surveyor named McColl who, acting on instructions from the Surveyor General, proceeded to the Fraser River, where he marked out the reserves from New Westminster to Harrison River. Before leaving Victoria, however, McColl received additional verbal instructions from Douglas that all lands claimed by Indians were to be included in their reserves, that the Indians were to have as much land as they wished, and that in no case should any reserve contain less than 100 acres.[68] According to Trutch's comment on the incident three years later when the successful attempt to reduce these reserves was being made, McColl had proceeded to act on the "indefinite authority" given him by

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successful attempts of his government to reduce drastically in size such large reserves as had been defined and gazetted, he was guilty of shocking duplicity and, as will be seen, of doing his adopted colony-province a grave disservice.

68 Papers connected with the Indian land question, p. 43. McColl to Brew, Surveyor General, May 16, 1864.

Douglas, rather than on his written instructions from Brew which had specified what the new administration chose to call the "ten-acre per family" rule.[69] The surveyor, then, "marked out reserves of most unreasonable extent,[70] amounting, as estimated by himself, to 50, 60, 69, 109, and even to as much in one case as 200 acres for each grown man in the tribe." As the Surveyor General in 1866, Trutch was aghast that McColl seemed merely to have walked over the ground, putting in posts where directed to do so by the Indians, and then simply to have estimated the acreage. Because these lands were not all being used by the Indians, and because they contained rich pastures or readily cultivable portions, "greatly desired for immediate settlement" and, at the moment, were "utterly unprofitable to the public interest," Trutch gave it as his opinion that in almost every case these reserves should be "materially reduced."[71]

The two suggestions Trutch made for regaining these lands for public purposes and, only incidentally public profit, are enlightening as to the colonial Indian land policy to which the Dominion government fell heir in 1871 under the 'as liberal as' clause of section 13. Trutch recommended to

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69 Loc. cit. Brew to McColl, April 6, 1864.

70 McColl awarded 39,900 acres to 14 tribes, among which were 143 adult males, an award of 279 acres per man. The 1870 Land Ordinance was to permit the pre-emption of 320 acres per settler east of the Cascades. (See Ibid., p. 47.)

71 Ibid., pp. 41-43. Trutch to Acting Colonial Secretary, August 28, 1867.

A.N. Birch, Colonial Secretary and Administrator of the Government during the absence of Governor Seymour on his fifteen-month wedding tour, that McColl's authority could be absolutely disavowed in view of the "extravagant extent" of the reserves laid out by him in defiance of the ten-acre rule. The surveys could be made anew. Alternatively, negotiations could be undertaken with the Indians with a view to securing a surrender of the greater portion of the area. The latter procedure, he made clear, would be tantamount to buying the lands back from the Indians. Negotiations with the Indians Trutch found repugnant to his nature, asserting that the tribes "have really no right to the lands they claim. . . and I cannot see why they should retain these lands to the prejudice of the general interests of the Colony, or be allowed to make a market of them either to Government or to individuals."[72] Trutch seemed temporarily to have forgotten that the sale of any portion of their reserves by the Indians to any agency other than the Crown had never been countenanced in the colony,[73] although it was debatable whether there was any legal barrier to such sale.[74]

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[72] Loc. cit.

[73] William A.G. Young, Colonial Secretary, was soon to remind him. (See Ibid., p. 45. Young to Trutch, November 6, 1867.)

[74] In 1875, Hon. Telesphore Fournier, Minister of Justice, having instituted a search through all the statutes and ordinances of British Columbia, reported that he could find no legislation in effect in British Columbia providing reservations of lands for the Indians. (See Dominion and Provincial Legislation 1867-1895, p. 1024.)

The first procedure, that of disavowing McColl's authority, Trutch suggested to Birch as being the more judicious course. There was good precedent. Only the year before, in 1866, similar negotiations had been undertaken over the tract of land extending more than forty miles along the right bank of the south bank of the Thompson River which Douglas had granted to the Kamloops and Shuswap Indians. By notice in the Gazette of October 5, 1866, Trutch proclaimed that the claims of the Kamloops and Shuswap Indians "have been adjusted." The adjustment made it possible to open by far the greater portion of the river-bottom lands to pre-emption on January 1, 1867.[75]

In recommending a similar course with respect to the reserves on the Lower Fraser River, Trutch advised caution; in his words, "very careful management of the disposition of the Indian claimants would be requisite to prevent serious dissatisfaction; firmness and discretion are equally essential . . . to convince the Indians that the Government intend only to deal fairly with them and the whites, who desire to settle on and cultivate the lands which they (the Indians) have really no right to and no use for."[76]

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[75] B.C.S.P., 1876, p. 324. Birch personally undertook this mission. Howay refers to it as "a very delicate matter with the Indian tribes, whereby a valuable tract of land, having a frontage of forty miles on the Thompson River, granted by Sir James Douglas and tenaciously held by the Indians, was, with the exception of a small section, surrendered and opened to settlement." (See British Columbia, from the earliest times to the present, Vol. II, p. 194. For details of the settlement with the Indians, see Papers connected with the Indian land question, pp. 29-39.)

[76] Papers connected with the Indian land question, p. 43.

In his reply to Trutch, the Colonial Secretary enunciated another aspect of the colony's Indian land policy which was to be of considerable interest and import after 1871. He agreed with Trutch that the reservations should certainly be "amply sufficient" for the actual requirements or wants of the Indians but that in no case should the allotment "be of such extent as to engender the feeling in the mind of the Indian that the land is of no use to him, and that it will be to his benefit to part with it." With this consideration in mind, Trutch was instructed to effect a severe reduction in the acreage of the reserves. "The Indians have no right to any land beyond . . . their actual requirements," said Young, nor "because they have never possessed it, can they have any claim to any compensation."[77]

To bring about the surrender, Trutch visited the tribes, telling them that since McColl had acted under improper authority, his decisions were extra-legal. The disclosure did not discomfit the Indians. They only complained bitterly of the intrusion of white settlers on land they considered to be their own, "evidently," reported Trutch, "regarding such settlements as unauthorized intrusions on their rights."[78] When Stipendiary Magistrate Ball surveyed the new reserves the next summer he wrote that the Indians

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77 Ibid., p. 45. Young to Trutch, November 6, 1867.

78 Ibid., pp. 45-46. Trutch to Young, November 19, 1867.

appeared perfectly satisfied with the procedure.[79]

At the very time Ball was making the surveys, the delegates to the Yale Convention were soundly condemning the government's Indian policy. Once having resolved that "religion, humanity, and public opinion demand that due and proper consideration be paid to the Indian population, with a view to their preservation, and the improvement of their moral, intellectual, and material condition," the delegates, led by Amor DeCosmos, proceeded to berate the government for having done nothing for the Indians "beyond making reservations of land." These reservations, the resolution stated, were of large and valuable tracts of agricultural land which were not being utilized by the Indians and were in districts where settlers would cultivate them. The resolution concluded by demanding that the government "establish such regulations as would utilize the Indian reserves, and appropriate the proceeds to the benefit of the Indians.[80] The delegates, however, were not critical either of the size or of the quality of the reserves. Their criticism was simply that these lands were lying in an unproductive state.

One last circumstances pertaining to colonial Indian policy may be mentioned. After Confederation the Indian

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[79] Ibid., p. 52. Ball to Governor Seymour, October 17, 1868.

[80] Miscellaneous Papers relating to British Columbia 1859-1869, p. 25. Resolution XXXI. Governor Seymour to Duke of Buckingham, November 30, 1868.

Superintendent appointed by the Dominion registered some surprise at the great number of reserves in the province, and at the fact that many of them were so small. These conditions prevailed because any magistrate or any official of the Lands and Works Department, as well as the governor and Commissioner of Lands and Works, could make reserves at any time.[81] This freedom was a result of the policy of assuring to the Indians their favourite fishing stations along the coast, rivers, or lakes; and of reserving for their use and benefit all their graveyards, cultivated fields, hunting locations, and berry patches.

ii.

Immediately prior to the formal entry of British Columbia into Confederation, the Bishop of Columbia, Rev. George Hills, registered a strong protest with Hon. Joseph Howe, Secretary of State ~~for the Provinces~~, concerning the pressing need for immediate reform of the Indian policy in British Columbia.[82] After union, the complaint was passed on to Trutch. In his reply, in his new capacity as Lieutenant-Governor of the province, Trutch summarized in general terms once again the policy hitherto pursued by the

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[81] Papers connected with the Indian land question, pp. 20-96. In 1866 Ball authorized a reserve on False Creek for a band of Indians comprised of 14 men, 16 women, and 12 children. He did so on his authority as a stipendiary magistrate. This is one example of many. (Ball to Trutch, February 15, 1866.)

[82] Ibid., pp. 97-98. Bishop of Columbia, Rev. George Hills, to Howe, May 27, 1871.

colony. Admitting that the policy was not based on any written code, he was able to assure Howe that the government's policy had nonetheless been both definite and tangible, "a well considered system, ably designed by experienced men specially interested in favour of the Indians . . . consistently carried out so far as the pecuniary means at command will admit of."[83] As proof, Trutch offered the statement that the colony had been remarkably free from Indian disturbances, scattered as was the meagre white population over "this immense territory" among some 50,000 Indians. If the colonial government had not done all it should in defining and gazetting reservations, its inaction was not to be attributed to callousness or indifference, but rather to lack of funds "to take charge of, and apportion out under careful regulation, the lands which have been or may be set apart as Indian Reserves, . . . and to act as the defenders and representatives of the Indians in all matters between them and the white population."

These tasks became now the responsibility of the Dominion government. When Howe, as Secretary of State ~~for the Provinces,~~[84] requested from Trutch specific information

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[83] Ibid., pp. 99-101. Trutch to Howe, November 3, 1871.

[84] Indian Affairs have, since 1867, been administered by the Dominion under the following Departments:
1867-1873 - Secretary of State for the Provinces.
1873-1880 - Department of the Interior (Indian Affairs Branch.)
1880-1936 - Department of Indian Affairs.
Dec. 1, 1936-Jan. 18, 1950 - Department of Mines and Resources.
Jan. 18, 1950 - to the present - Department of Citizenship and Immigration.

as to the number of reserves that were surveyed, their area and location, and the title under which they were held, Trutch could answer that the governor had, by virtue of the authority conferred on him by his Commission and the Royal Instructions,[85] and later by the land ordinances,[86] caused notices to be inserted in the Government Gazette,[87] "or in such manner as we held to be sufficient advertisement of such notices previous to the establishment of the Government Gazette."[88] B.W. Pearse, the first Chief Commissioner of Lands and Works, was asked for a report on the subject,[89] and this was forwarded to Howe.

The information contained in Pearse's letter supported Trutch's contention, or buttressed it, that there were many reserves throughout the province which had been assigned to the Indians but never surveyed because of the

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The major legislative authority for administering Indian affairs has been provided by:
1876 - Indian Act (Can. Stat., 1876, c. 18).
1880 - Consolidation.
1951 - Indian Act (Can. Stat., 1951, c. 29).
1952 - Revision (R.S.C., 1952, c. 149).

85 For text of Douglas's Commission and Instructions, see Papers relative to the affairs of British Columbia, Part 1, pp. 3-8.

86 In the mainland colony after 1865 and on Vancouver Island after 1870, the 1865 Land Ordinance and the 1870 Land Ordinance (see Appendix A, s. 1) conferred the Governor's authority for disposing of Crown lands.

87 Published from 1863-1871. (See Holmes, M.C., Publications of the Government of British Columbia, 1871-1947, 1950, p. 206.)

88 Papers connected with the Indian land question, pp. 101-102. Trutch to Hon. Joseph Howe, November 3, 1871.

89 Ibid., p. 102. Pearse to Trutch, October 16, 1871.

government's policy of making surveys only when settlers reached the area. This system, observed Pearse, had been found effective and far less costly than that of surveying the reserves altogether, since they were "naturally scattered and often at great distances apart."[90] As a result of the necessity for keeping expenditures on surveys to a minimum and the price of land low, many reserves had never been gazetted, and numerous areas in the province which were remote from any settlement had never been visited in order that reserves might be made. This was true of the entire west coast of Vancouver Island, the east coast of the Island above Comox, and the whole coast of the mainland above Burrard Inlet, as well as the interior of the province north of the Fraser River. Finally, Pearse stated that the area of those reserves which had been surveyed amounted to 28,437 acres and that the Indians had at no time been issued titles. Furthermore, the policy had been to prevent the Indians from alienating any portion of their reserves.

The list of reserves Pearse prepared and which was submitted to Howe by Trutch indicated that there were in 1871 a total of 76 reserves of which official notice could be taken.[91]

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[90] Loc. cit.

[91] Not all of these had been gazetted. On October 5, 1866, the large reserve at Kamloops and the two at Shuswap had appeared in the Government Gazette; on July 4, 1867, the Cowichan reserves appeared, and those at Chemainus the day before; on December 18, 1868, the five reserves, comprising 2,370.5 acres, at Lytton were listed; and on November 25, 1869, three reserves of 183 acres were gazetted for the New Westminster District. (See Ibid., pp. 164-167.)

These comprised an area per Indian of less than one acre, hardly liberal in extent. Of the reserves, fifteen were on Vancouver Island, 21 were in the New Westminster area, one was near Lytton, and 37, representing much the largest acreage of 19,561.5 acres, were in Yale district.[92]

After receipt of this information, the Dominion took no further step toward assuming its obligation to the Indians of British Columbia until the appointment in November, 1872,[93] of Lieutenant-Colonel I.W. Powell, M.D., as Superintendent of Indian Affairs in the province.[94] Powell was one of the small group of Canadians in British Columbia who had worked hard from 1867 to see all of British North America under one government.[95] Trutch, originally an opponent of Confederation, protested strongly to John A. Macdonald when

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92 See Appendix E, Item 1 for the complete list, including acreage of each and location. (This list is to be found in the following places: Ibid., pp. 104-105; B.C.S.P., 1872-1873. "Return to an Address of the Legislative Assembly for a Return of Indian Reserves, January 13, 1873"; and C.S.P., 1875, No. 8, Return G, pp. 101-103.)

93 Papers connected with the Indian land question, p. 110. Walkem to Powell, December 5, 1872.

94 The action was not taken until after an Address from the Legislative Assembly in British Columbia had been received in Ottawa, praying the Dominion to move immediately to establish an "Indian policy for this Province, and a proper adjustment of Indian Reserves." (See B.C. Journals, 1872, p. 27.) On August 26, 1872, George A. Walkem, Chief Commissioner of Lands and Works in the McCreight Ministry, had also written to Ottawa to urge the immediate appointment of a Superintendent with power to define Indian reserves. (See Papers connected with the Indian land question, p. 110. Walkem to Powell, December 5, 1872.)

95 Gosnell, R.E., op. cit., pp. 170-171.

Powell's name was proposed for the position and intimated that the support of the navy, hitherto enlisted from time to time to aid the civil authorities in the suppression of what Trutch called "outrageous crime" committed by "utter savages living along the coast," would be given only reluctantly to "one having no experience among them."[96] Nor did Trutch content himself with this tirade concerning Powell's unfitness for the new position. He went on to castigate the entire plan outlined by Macdonald. "I may tell you that I am of opinion, and that very strongly, that for some time to come at least the general charge and direction of all Indian affairs in British Columbia should be vested in the Lt. Governor . . . and that instead of one there should be three Indian Agents, one for Vancouver Island, one for the North-west coast and the third for the interior of the mainland. . . ."[97]

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96 For the complete text of the letter, see Appendix E, Item 2. Its content throw considerable light on subsequent developments.

97 If the Indians were as satisfied as Trutch had led both Granville and Howe to believe (see pp. 326 and 335), and if his government's general policy toward the Indians had been "a well considered system" designed by "experienced men" to "protect and befriend" them, there seems little reason why the details and subsequent implementation of this policy could not have been conveyed to Powell with a modicum of disturbance among the Indians. There is no evidence to suggest that Trutch himself was not convinced that the Indian policy of the province was anything but in the best interests both of the natives and of the white settlers, but the evidence does suggest that he was not anxious to have the details of that policy known to the Dominion authorities.

Powell had been appointed before Trutch's views reached Macdonald. He acted alone in the province until a superintendent was appointed a year later for the New Westminster area. The second appointment temporarily vindicated Trutch's view that not one but several agents should have been appointed. The Indian Board established by the Dominion government[98] in 1874 consisting of the Lieutenant-Governor and the two Indian superintendents was, however, soon discovered to be impracticable. No less an authority on Indian affairs in the province than William Duncan,[99] a lay missionary whose work since 1857 with the Tsimpsean Indians of the Port Simpson area had received plaudits from all over the continent,[100] recommended the abolition of the Board as being "so palpably defective and misdirected" in its labours as to be useless.[101] Partly on the strength of Duncan's criticism, the Annual Report of the Department of the Interior

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98 C.S.P.,1875, No. 8, p. 10. Order in Council of February 9, 1874. The duties of the Board were to suggest general principles under which Indian affairs should be managed.

99 British Columbia, from the earliest times to the present, Vol. II, pp. 618 and 623.

100 Walkem described him in 1875 as a "Missionary remarkable not less for his unselfish devotion to the cause of the Indians than for his marvellous success amongst the tribes of the North-West Coast." (See C.S.P., 1876, No. 9, p. xlvi.) R.W. Scott, Acting Minister of the Interior, spoke of the "marvellous success which has attended his labours" among the Indians. (See Papers connected with the Indian land question, pp. 160-163.)

101 B.C.S.P., 1876, pp. 69-71. Duncan to Laird, Minister of the Interior, May, 1875.

for 1875 admitted the failure of the Board, largely because the Lieutenant-Governor now regarded his position on it as placing him in an anomalous situation.[102] The Report for 1876 announced that after February 1, 1876, the Indian Boards in both British Columbia and the Northwest Territories were to be abolished. For them would be substituted the superintendents and agencies which had proved so successful in Ontario.[103] British Columbia was to have two superintendents, Dr. Powell in Victoria to assume charge of the coast Indians, and James Lenihan at New Westminster to assume charge of the interior tribes. Further reorganization was carried out in 1880 with the appointment of district agents who were to live among the Indians and be accessible to them. The agents were to serve under a single superintendent responsible to the Minister of the Interior.[104] By Order in Council of April 3, 1881, six local agents were appointed, three for Vancouver Island and one each for the Lower Fraser River, Kamloops (Henry Cornwall), and "O'Kanagan" (A.E. Howse) areas.[105] Powell throughout retained his position as

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[102] C.S.P., 1875, No. 8, p. 7. Trutch's feeling can be readily understood in that as Lieutenant-Governor, he was constitutionally bound to uphold the policies of his government, which, as will become apparent, were unalterably opposed to those policies of the Indian Affairs Branch of the Department of the Interior.

[103] C.S.P., 1876, No. 9, p. xiii.

[104] C.S.P., 1880, No. 4, p. xiv. Report of John A. Macdonald, Minister of the Interior.

[105] C.S.P., 1882, No. 6, p. xli. Report of John A. Macdonald, Superintendent General of Indian Affairs.

superintendent in spite of Trutch's disapproval.

It was not an easy task Powell assumed. Immediately he was the victim of antagonism, since members of the provincial ministry held differing views as to the meaning of section 13 of the Terms of Union. From the beginning Powell found his activities obstructed on all sides by the local government. Not having been supplied by Ottawa with anything other than notification of his appointment, he directed letters to G.A. Walkem, Chief Commissioner of Lands and Works in the last days of the McCreight government, and to A.R. Robertson, Provincial Secretary, asking for a statement of previous Indian policy and a list of all reserves. Both men informed him that the necessary information had been forwarded to Howe by Trutch the previous January. Finally, Powell wrote to Trutch for copies. Trutch sent them. No sooner had he been appointed than he was besieged with requests from Walkem and his successor as Chief Commissioner, Robert Beaven, to proceed at once to the Chilcotin country to define the Indian reserves there. Trouble was brewing, Walkem said, because white settlers were ignoring the government reserves on the land and pre-empting land which the Indians held to be their own territory.[106]

Powell did what he could, which was little enough. He had still not received instructions concerning the active duties of his office. Having no idea of how many acres to

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106 This correspondence may be found in Papers connected with the Indian land question, pp. 107-111.

allot per family on each reservation, his hands were tied; yet Beaven kept urging that, since settlers were entering the Cariboo, Alberni, and Cowichan regions, the Indian lands must at once be set aside. The "agrarian discontent" foreseen nine years before by Governor Douglas had materialized. Finally Beaven wrote to Powell explaining clearly the necessity for immediate action:

> I have the honour to inform you that constant complaints are being made to me by parties desirous of pre-empting land at Alberni, that the Indians in that locality claim the lands as their property, and threaten to molest parties occupying said land. Now it is almost impossible to prevent some parties going in there, and I have therefore to call your attention to the imperative necessity of at once having all Indian land claims settled, not only at Alberni, but in other parts of the Province. There are at present numerous parties desirous of settling in British Columbia, but the fact of the Indians being located in almost every district where white settlers would wish to locate is preventing many from doing so, and is consequently retarding the settlement of the Province. I must therefore, most respectfully but urgently, request your earliest attention to this subject, as delay at this juncture may be a very serious matter to this Province. 107

As it was now nearly two years since the Dominion had assumed control of Indian affairs in the province, Beaven, on behalf of the provincial government, had every right to urge action. Settlers were arriving, although not in the numbers Beaven implied. With the prospects of a railroad before their eyes and with all the sanguine hopes its completion aroused, no doubt every member of the DeCosmos-Walkem ministry foresaw clashes over land between the Indians and the incoming settlers.

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107 Ibid., p. 113. Beaven to Powell, April 16, 1873.

But Powell was still helpless, anxious to help as he might have been. He had to content himself with continuing his search for all available data pertinent to his position and sending his findings on to Ottawa as he proceeded. He was not missing very much. In the copies of the letters Trutch sent him containing both Trutch's and Pearse's memoranda, Powell noticed that Pearse had mentioned $1,984.82 deposited in the Treasury to the credit of the Songhees Reserve lease fund.[108] To retrieve the money for present uses, he asked John Ash, Provincial Secretary in the DeCosmos-Walkem government, for an accounting. One can see Ash's delight at being able to reply that, yes, the money had been so deposited in the Treasury to form part of the assets of the colony at Confederation. As a consequence, it had been taken over by the Dominion in 1871.[109]

As isolated incidents, none of these petty annoyances was significant; as part of a series, they seemed to form a conspiracy to frustrate the activities of the new superintendent. But if Powell found these incidents annoying, they were as nothing compared to the storm which broke around him following his letter to Beaven on April 17, 1873.[110]

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108 Ibid., p. 102. Pearse to Trutch, October 16, 1871.

109 Ibid., pp. 112-113. Powell to Ash, February 4, 1873. Ash to Powell, February 5, 1873.

110 Ibid., p. 114. Powell to Beaven, April 17, 1873.

In his letter he included the operative sections of a Dominion Order in Council of March 21, 1873,[111] outlining at last the action Powell was to take in British Columbia.

Having studied carefully Powell's correspondence to the Department of Indian Affairs in which he had cited several instances of attempted pre-emption of Indian lands by white settlers, the Dominion government was now of the opinion that action was imperative, as recommended by Powell. Accordingly, the following instructions were issued and sent to Powell. He, in turn, informed the provincial government.

> The Deputy Superintendent accordingly suggests that each family be assigned a location of 80 acres of land of average quality, which shall remain permanently the property of the family for whose benefit it is allotted.
>
> That it is a matter of urgent importance to convince the Indians of that Province that the Dominion Government will do full justice to the rights of the Indian population, and thus remove any spirit of discontent which in various quarters appears to prevail.
>
> That authority be at once given to Mr. Powell to confer with the Local Government in regard to Indian Reserves already set apart, which may require to be extended and the outlines marked out in survey, also for setting apart such additional reserves, as in his judgment he may deem to be important, for the purpose of fulfilling the just expectations of those Indians.[112]

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[111] B.C.S.P., 1875, pp. 665-666.

[112] The presence of the phrase "of average quality" in this Order in Council passed by the Macdonald Ministry on March 17, 1873, belies the statement frequently made that it was first introduced into legislation by the Mackenzie Ministry over the Railway Belt difficulties stemming from the Terms of Union, section 11. It appears in the Canadian Pacific Railway Act of 1874 (Can. Stat., 1874, c. 14) where, in reference to the lands to be conveyed by British Columbia to the Dominion

The contents of this Order in Council took the local government very much by surprise. In order to stall for time, Beaven asked Powell the next day to supply him with statistics concerning each individual in every Indian family in all tribes in the province, as well as "specifying also the name and locality of all Indian Reservations, and the acreage of such Reservations claimed by you on behalf of the various Tribes; distinguishing (in the manner requested above) Indians whose present abode is on land other than known Indian Reservations, and the acreage desired for them."[113]

All Powell could do in reply was to state what Beaven already knew - that he had no possible way of knowing any of this information. The only figure he could give was for the total Indian population, which he had estimated to be 28,500.[114] On April 30, Beaven informed Powell that the ministry "consider that 80 acres is far too large an average for each family," and that, using Powell's own estimate of the Indian population and the acreage of the then established reserves, the present average per family was six acres. As this was not an official statement of the government's views,

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for construction of the railway, the statement is made that "the said lands to be of fair average quality", s. 8, part 4, but it is not original there.

113 Papers connected with the Indian land question, p. 114. Beaven to Powell, April 18, 1873.

114 Ibid., p. 115. Powell to Beaven, April 19, 1873.

Powell could do nothing other than try to reach the ear of the ministry until such a statement was forthcoming. That he did so is reflected in the Executive Council Minute of July 25, 1873,[115] setting forth the stand taken by the local government. It stated that, in the opinion of the government, eighty acres was "greatly in excess of the grants considered sufficient by previous governments of British Columbia, and recommend that throughout the province Indian Reserves should not exceed a quantity of twenty acres of land for each head of a family of five persons." With his success in raising the amount from ten to twenty acres Powell had to be content,[116] and so he advised his superiors in Ottawa. He had little choice. The July 25 Minute had pointed out that twenty acres, being a larger amount than had been previously granted to the Indians of British Columbia, was, therefore, more than the government was bound to consent to under section 13.

To resolve the difference so that reserves might be assigned at once and generally to lessen tension which was characterized in 1927 as great enough to have disrupted Confederation,[117] Hon. David Laird, Minister of the Interior in the Mackenzie government, submitted a memorandum to the

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115 B.C.S.P., 1875, p. 666.

116 Papers connected with the Indian land question, pp. 130-131.

117 S.J.C. Report and Evidence, p. 148.

federal cabinet on March 1, 1874, advising the lowering of the acreage from eighty to twenty.[118] At the same time, he took the opportunity to deplore the attitude being adopted in British Columbia and suggested that, in view of the provision in the 1870 Land Ordinance permitting white settlers east of the Cascades to pre-empt 320 acres, Powell should try to persuade the local government to permit Indians in that area to have forty acres.

Had the question of acreage been the only point at issue, innumerable additional difficulties might have been avoided and there would not likely have arisen the serious threat of an Indian war. Although the province persisted throughout the next ten years in maintaining that at Confederation the Indians were perfectly satisfied with such reservations as had been assigned for their use and benefit,[119] the fact that Powell was besieged by urgent requests from the government as soon as he had been appointed to move quickly to assign additional reserves suggests that all was not as well

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[118] B.C.S.P., 1875, p. 672.

[119] The Hon. C.F. Cornwall, a British Columbia Senator, remarked in the Senate in 1878 that at Confederation "there was not the slightest ill-feeling in any Indian breast in that country. . . but since Confederation. . . from the unwise interference and meddling of the Dominion Government - irritation has sprung up." He went on to say that, as another result of the unfitness of the present government for its position, "there has been a change and British Columbia has been put to considerable expense and no little alarm has been caused by the slack, procrastinating and injurious policy of this Government." It need scarcely be added that Senator Cornwall was not a supporter of the Mackenzie administration. (See Canada. Parliament. Senate Debates, 1878, p. 547.)

as the government stated. The Indians, in fact, had been complaining for several years that the lands upon which they had settled and which they had cultivated had been taken from them without compensation and pre-empted by white settlers. In some cases, they said, their burial grounds had been pre-empted! In addition, there were numerous complaints that white settlers took advantage of the law in reference to pastoral land to drive cattle and horses belonging to the Indians from the open range country and obtain large pastoral leases for themselves.[120]

During the years 1870 to 1873 grievances assumed a more serious aspect. Several factors were involved. The Indians were feeling for the first time the inconvenience of being hemmed in by white settlers and losing the land for pastoral purposes. They were learning what white men meant by ownership of land. Also, the Indians were beginning to understand the value of agriculture and to desire land for cultivation. The Indians of British Columbia had also learned of the liberal land policy recently extended by the Dominion

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[120] Powell drew one case to Walkem's attention in which an Indian at Cache Creek had been assessed large damages in court "for alleged trespass upon lands which were not fenced but held under lease from the Government for pastoral purposes." (See B.C.S.P., 1875, p. 670. Powell to Walkem, January 12, 1874.) Walkem assured Powell that the action was perfectly legal. Under s. 38 of the 1870 Land Ordinance the lessee had the right to maintain ejectment or trespass in the same manner as if he were the owner. In addition, under English Common Law, in effect in British Columbia (Under "Proclamation of November 19, 1858," in List of Proclamations for 1858, 1859, . . . 1864,) owners did not have to fence their property, but the owners of animals were bound to keep them off private property. (See B.C.S.P., 1875, p. 671. Walkem to Powell, January 13, 1874.)

government to the natives in the Northwest Territories. Three treaties, No. 1 of August 3, 1871; No. 2 of August 21, 1871; and No. 3 of October 3, 1873, reserved to the Indians tracts of land ranging in size from 160 to 640 acres for each family of five and granted each Indian an annuity of from $3.00 to $5.00.[121] In view of these circumstances, it would have required considerably more patience than the Indians of British Columbia possessed to be anything but restless.

Laird spoke of the unrest evident among the Indians in his memorandum of March 1, 1874.[122] In it he outlined the policy of his Department toward the British Columbia Indians:

> In laying the foundation of an Indian policy in that Province, on the same permanent and satisfactory basis as in other portions of the Dominion, the Government of the Dominion feel they would not be justified in limiting their efforts to what, under the strict letter of the Terms of Union, they were called upon to do. They feel that a great national question like this, a question involving possibly in the near future an Indian War with all its horrors, should be approached in a very different spirit, and dealt with upon other and higher grounds. Actuated by these feelings, the Government of the Dominion in the dealings with the Indians of British Columbia has acted . . . in a spirit of liberality far beyond what the strict terms of the agreement required at its hands; and they confidently trust that on a calm review of the whole subject in all its important bearings, the Government of that Province will be prepared to meet them in a spirit of equal liberality.

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121 C.S.P., 1923, No. 14, pp. 11-12.

122 B.C.S.P., 1875, pp. 672-673.

The threat of war was echoed by Father C.J. Grandidier of Okanagan Mission,[123] by the Roman Catholic Bishop of British Columbia,[124] by Powell,[125] and even by Walkem. But Walkem did not attribute the disturbance to any unrest caused by the failure to settle reservations. He drew Powell's attention to the fact that the Indians at Cache Creek "had assumed a hostile attitude," but blamed this solely on Powell's failure to visit them, making them "feel they have been neglected by the Indian Department."[126]

Powell was not too concerned that the Indians might have felt slighted. What gave him far more concern was a restriction placed upon the local government's offer of twenty acres per family. He had received a letter from Ash on July 28, three days after the receipt of the Minute in Council outlining policy for the province, which informed him that "all future reserves for Indians will be adjusted on the basis of twenty acres of land for each head of a family of five persons."[127] At first Powell had no intimation of

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123 Victoria Standard, August 28, 1874. Also to be found in full in B.C.S.P., 1875, pp. 680-681.

124 B.C.S.P., 1875, p. 679.

125 Ibid., p. 673.

126 Ibid., pp. 667-668. Walkem to Powell, December 26, 1873. A telegram from Clinton on January 9, 1874, however, informed the government that in a Council of Chiefs, seven were for war and only two for peace. The message added that Father Grandidier, a confidant of the Indians, gave it as his opinion that the Indians were likely to commence hostilities at any moment. (See Papers connected with the Indian land question, p. 126.)

127 Ibid., p. 119. Ash to Powell, July 28, 1873.

the significance of the word 'future'. In the three days intervening between the passing of the Minute in Council and Ash's letter to Powell, Walkem and his colleagues had realized that as their Minute stood, Powell could increase all present reserves to the limit of twenty acres per family of five. Acting on the authority vested in him under the Order in Council of March 21, 1873, Powell had sent survey crews into the province to begin surveying present reserves as well as to define new reserves.

One of the crews had gone to the Musqueam reserve at the mouth of the north arm of the Fraser River. Here it was discovered that in order to allot twenty acres to each family,[128] 1,197 additional acres would be required for the seventy families, since the present reserves contained only 314 acres, of which 114 were quite useless. On July 31, 1874, Powell applied to Beaven, Chief Commissioner of Lands and Works, for the additional acreage.[129]

After much correspondence back and forth, it became apparent to Powell that his worst fears were being confirmed. To determine precisely the interpretation that the local government was placing on its Minute of July 25, 1873, he directed the following letter to Ash:

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128 By repeated representations to Walkem, Powell had persuaded the government to alter its Minute of July 25, 1873, to read "twenty acres of land to each head of a family" instead of to each head of a family of five persons. (See Ibid., p. 133. Minute of the Executive Council, June 15, 1874.)

129 Ibid., p. 134. Powell to Beaven, July 31, 1874.

> As many of the present reserves do not contain five acres of land to each head of a family, the injustice with which Indians having such reserves would be treated in case they were not extended, and the serious complications which would at once be consequent upon such treatment are so great, that I sincerely trust the interpretation seemingly conveyed by the Honourable Chief Commissioner's letter, of confining the grant to new reserves, is not that intended by the Government in lieu of all reserves containing twenty acres to every head of a native family. 130

But it was. Pending official notification, Powell discharged the survey parties, warned the government again of the serious consequences attendant upon such a policy, and drew to their attention the fact that the action was a gross breach of good faith. On September 28, Ash informed Powell that the operation of the Minute of July, 1873, was "altogether confined to cases in which, at the time of Confederation, aboriginal tribes or communities were not provided with land set apart for their separate and exclusive use."[131]

By now Lenihan, the New Westminster superintendent, had also registered his protest and pointed out in two letters that since the province was deriving some considerable financial advantage each year in the form of annual subsidies based on population, it might well adopt a more liberal attitude toward Indian land grants.[132] Answering the first letter, Ash told Lenihan that the province was being quite "reasonable and just" in honouring its obligations under the Terms of Union,

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130 Ibid., pp. 139-140. Powell to Ash, August 15, 1874.

131 Ibid., p. 143. Ash to Powell, September 28, 1874.

132 Ibid., pp. 148-150. Lenihan to Ash, October 15, 1874.

and that if Lenihan's government found that conduct unsatisfactory, it then "becomes the duty of that Government to make provisions accordingly."[133]

A voluminous correspondence was now carried on between Powell and the local government, and between the local government and the Dominion - "an awful amount of correspondence," as Andy Paull said when he presented his evidence before the Special Joint Committee in 1927.[134] The conclusion is inescapable that the province was carrying over into its dealings with the officers of the federal Indian Department much of the frustration and bitterness engendered by the railway problem. Powell as an appointee of the Dominion and the Indians as its wards were suffering from the 'fight Canada' attitude arising from section 11 of the Terms of Union. No other explanation for the obstructionist tactics offers itself. If the Dominion government was bending every effort to dishonour certain provisions of the railway clause,[135]

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133 B.C.S.P., 1875, p. 682. Ash to Lenihan, October 12, 1874.

134 S.J.C. Report and Evidence, p. 95.

135 The Mackenzie government regarded Article 11 as impossible of fulfillment; Mackenzie characterized it in Parliament as "a piece of madness" and as "a piece of deliberate treason to the country." (See Howay, J.W., "Political history, 1871-1913", in Canada and its Provinces, Vol. 21, pp. 187-188.) For another view, see Ormsby, M.A., "Prime Minister Mackenzie, the Liberal Party, and the Bargain with British Columbia", in Canadian Historical Review, June, 1945, pp. 148-173.

then the provincial government would retaliate by exerting all its resources to adhere as closely as possible to the letter of the law under the Indian clause. Scarcity of land could hardly have weighed heavily as a factor at that time, although in a lengthy memorandum to the Dominion on August 18, 1875, Walkem did object to the stipulation that the Indians' land should be of 'average quality'.[136] To buttress his argument that British Columbia could ill afford such extensive acreages of arable lands as requested by the Dominion, Walkem presented the following table which he based on an assumed Indian population of 40,000:

1st.- Terms of Union. - 10 acres to each Indian family ..... 80,000 acres

2nd.- 21st March, 1873 - Request by Dominion for 80 acres of average quality for each family of five persons, and old Reserves to be regulated accordingly, equal to .....640,000 acres

3rd.- In reply the Province offered 20 acres to each head of a family of five persons, which the Indian Department was authorized by the Dominion authorities to accept, equal to .....160,000 acres

4th. - 15th May, 1874. - In lieu of the above, a further request was made for 20 acres to each head of a family or, as understood, for each Indian adult, (137) (the adults being about three-tenths of the Indian population), equal to .....240,000 acres

Note: From each of the above quantities, the acreage of the old Reserves must, of course, be deducted. The amount cannot be stated with accuracy in the absence of complete surveys. It, however, represents but a very small fraction of the quantities stated. 138

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136 C.S.P., 1876, No. 9, pp. xlvi-lv. Also to be found in B.C.S.P., 1876, pp. 57-65.

137 B.C.S.P.,1875, p. 671. Powell to Ash, May 15, 1874.

138 C.S.P., 1876, No. 9, p. xlvii.

Following the presentation of the table, Walkem stated that in dealing with large tracts of agricultural land which were vitally needed for settlement purposes in order not to impede the progress of the country, his government felt fully justified in hesitating to accede to propositions which might well prove ill-judged and ill-timed in the interests of the present settlers and of the Indians themselves. In presenting what was a well reasoned argument, he said the request from the Dominion for any "reasonable and discriminating acreage of cultivable land" for the use of the Indians would not have been refused, if for no other reason than the very practical one that "as large consumers and as labourers" the Indians were entitled to a kind and liberal treatment. His government, he continued, had granted the request for twenty acres for each family, which was more than they were obliged to do, but felt they could not agree that this should apply to present reserves. "With great reluctance," he added, his government "felt compelled to differ in opinion from the Dominion Government." He considered, however, that the local government could not justly be held responsible for the impasse now reached. "The real causes of this failure are attributable to the want of proper information on the part of the Dominion Government of the physical structure of this country and of the habits of the Indians."[139]

In this statement there was much truth. The Dominion planned to follow the procedure which had been so successful

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139 Ibid., 1876, No. 9, p. xlvi.

on the extensive prairie lands of the Territories. For the most part the habits of the Indians of British Columbia differed from those of the prairie Indians. But because of the animosity existing between Victoria and Ottawa, the local government did not at any time convey this essential information to Ottawa.

With the aid of arguments supplied by William Duncan of the Metlakatla colony on the Nass River,[140] Walkem then proceeded in his memorandum to demonstrate effectively that his government was not being merely difficult. He incorporated Duncan's suggestions in the memorandum in order "that erroneous impressions be removed, unnecessary complications be avoided, a practical land scheme be devised, and the Indian question finally settled to the mutual satisfaction of both Governments."[141]

All these views were attached to a Minute of the Executive Council of British Columbia on August 18, 1875, and forwarded to Ottawa. The Indian Department gave the Minute close study. On November 10, an Order in Council was passed outlining the views of R.W. Scott, Acting Minister of the Interior during Laird's absence in British Columbia.[142] He recommended that, with a view to the prompt and final

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140 Ibid., 1876, No. 9, pp. lxii-lxiv. Duncan to Walkem, July 6, 1875.

141 Ibid., 1876, No. 9, p. lv.

142 S.J.C. Report and Evidence, p. 105.

settlement of the Indian lands question, an Allottment Commission of three men be appointed, one by each government and the third jointly, "to visit, with all convenient speed . . . each Indian nation . . . in British Columbia, and, after a full enquiry on the spot into all matters affecting the question to fix and determine for each nation, separately, the number, extent, and locality of the Reserve or Reserves to be allowed to it."[143]

The remaining clauses of the Order in Council incorporated the recommendations contained in Walkem's memorandum which, in turn, had been based entirely upon Duncan's suggestions. Duncan's influence becomes apparent from a close reading of the last sentence in clause 5 from which originated the vexatious problem of the reversionary interest in Indian lands. The clause reads as follows:

> That each Reserve shall be held in trust for the use and benefit of the nation of Indians to which it has been allotted, and, in the event of any material increase or decrease hereafter of the numbers of a nation occupying a Reserve, such Reserve shall be enlarged or diminished, as the case may be, so that it shall bear a fair proportion to the members of the nation occupying it. The extra land required for any Reserve shall be allotted from Crown Lands, and any land taken off a Reserve shall revert to the Province.

In conclusion, Scott recommended that each commissioner be paid by the government appointing him, and that the expenses and salary of the joint commissioner, who was

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143 Papers connected with the Indian land question, pp. 160-163. Order in Council of November 10, 1875. Also to be found in C.S.P., 1876, No. 9, pp. lxiv-lxvii.

to be allowed $10.00 a day, should be borne jointly. Even the method of paying the joint commissioner was to have unpleasant repercussions.

Meanwhile, increasing unrest was apparent among the Indians throughout the province. This unrest, in turn, caused a growing fear among the white settlers that an Indian war was a distinct and immediate possibility. When the surveys had been discontinued in the summer of 1874, the discontent and alarm among the Indians were greatly aggravated. That there had been no war that year, Powell attributed solely to the lack of unity among the Indians and not in any way to the absence of sufficient provocation.[144] Powell was not being unduly alarmist; the white settlers and the missionaries shared his views. Until such time as the land grievances were settled, no money grants or presents would have placated the Indians. Powell stated that the Nicola and Okanagan Indians, the most seriously disaffected, refused to accept his customary gifts, fearing that by taking any they might be thought to be waiving their claim for compensation for the injustice they felt was being done them over lands.

The Indians along the Lower Fraser River, although just as aggrieved, adopted the white man's procedure and on July 14, 1874, presented a petition outlining their grievances

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144 C.S.P., 1876, No. 9, pp. xli-xlv.

to the government through the medium of Dr. Powell.[145] The hand of the missionaries could be detected in the composition of the petition. This assistance was in no way unusual. The feelings expressed were genuine enough. The Indians were chagrined at the recalcitrance of the provincial government in denying them eighty acres per family, and annoyed at pre-empting of their pastures by white settlers. The petitioners were quite aware that the government had to record the pre-emptions. They were also aware that, under the 1870 Land Ordinance, they themselves were at liberty to pre-empt large acreages, but only after obtaining the written permission of the Lieutenant-Governor in Council.[146] They knew that the provincial government was not granting such permission, and had not been since 1872, pending location of the railway lands.[147] Even had such not been the case, they had a shrewd suspicion of the probable result had the Chief Commissioner of Lands and Works received many applications for pre-emptions from Indians. Further, unless an Indian had money to purchase provisions and implements and to sustain himself over a long period of time, it is doubtful that he could fulfil the pre-emption residence requirements of ten months annually on the

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145 See Appendix E, Item 3, for the complete text.

146 See Appendix A, s. 3. This 1870 Land Ordinance continued the clause forbidding the pre-emption of any Indian settlement.

147 This was one reason given by the British Columbia government. The other one voiced by Walkem was that the practice of permitting Indians to pre-empt had been discontinued "lest it should interfere with the Dominion policy of concentrating the Indians upon Reserves," a policy he was to denounce severely. (See C.S.P., 1876, No. 9, p. lv.)

claim. In all likelihood, he would have found it necessary to work elsewhere to finance his holding. But he could not arrange for another Indian to live on his claim, since under the 1873 Land Amendment Act no one could engage an Indian to live on a pre-emption while he himself was absent.[148]

With all these facts in mind, it is a cause for marvel that the Indian petitioners in 1874 refrained from adding anything other than the veiled threat that "we cannot say what will be the consequence" if what they sought were not granted, and soon. Such moderation was no doubt advised by the missionaries active amongst the tribes, but the note of warning was lost neither upon Powell nor upon the Dominion officials. Still fresh in the minds of the easterners was the rebellion at Red River three years before, the origin of which had been a set of circumstances perilously akin to those now developing in British Columbia.

The two governments exchanged thinly disguised accusations. Each was certain that its position was correct. The Dominion took the position that when the framers of the Terms of Union had inserted the provisions requiring the Dominion to pursue a policy as liberal toward the Indians as that which British Columbia had followed until 1871, they could hardly have been aware of the marked contrast between the Indian policy which had always been pursued in Canada and

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148 British Columbia. Executive Council. Land Laws of British Columbia: together with Land Office Forms and Regulations, 1873, p. 8. Both Indians and Chinese were forbidden to act as 'occupiers' for anyone pre-empting land. Because of the stringent regulations of section 16 of the

the policy which was being enforced in British Columbia. The ten-acre grant, or even the twenty, could hardly compare with the Canadian allotment of eighty acres, and the same contrast prevailed in regard to schools and agricultural assistance. The Hon. David Laird was moved to declare that under such circumstances "the insertion of a policy as liberal as was pursued by the local government seems little short of a mockery" of the Indian claim.[149]

The provincial government struck what it considered to be a telling blow by pointing out to Powell that the very fact of his acknowledgment that many of the existing reserves did not allow of twenty acres per family was conclusive proof that the province, in agreeing to furnish twenty acres in the future, was being more liberal than required under the Terms of Union.[150]

Out of this duel-by-letter was nutured, if not born, the problem of aboriginal title, even before the Allottment Commission had gone into the field. The Indians and their

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1870 Ordinance requiring "continuous bona fide personal residence of the pre-emptor on his pre-emption claim", the 1873 Amendment permitted an 'agent'. Section 16 was aimed directly at speculators, or those whose appetite for land was larger than their ability to utilize it all.

149 C.S.P., 1876, No. 9, pp. xli-xlv. "Memorandum from Hon. David Laird, Minister of the Interior, to the Privy Council, November 2, 1874." It never seems to have occurred to the Dominion authorities to question the interpretation of that ten-acre statement (see p. 317), made by Douglas. For proof that the statement had not been made as policy, see n. 165.

150 B.C.S.P., 1875, p. 676. Beaven to Powell, August 10, 1874.

sympathizers were not slow to appreciate that the federal Indian policy, based on Imperial policy, offered the perfect basis for their claim to all lands in the province. No official action was taken for a good many years in the formal presentation of this claim, but it was to be troublesome to the Allottment Commission among the Tsimpsean tribe of the Upper Skeena and Nass regions. On the first visits of the Commission this tribe refused to permit any reserves to be set aside, fearing that, by accepting them, they would be foregoing their larger claim.[151] These, however, were problems for the future. The more immediate task and one attended by no small degree of urgency, was that of setting apart reserves. The way was cleared on January 8, 1876, when the provincial government agreed to the formation of the Joint Allottment Commission, as recommended by Dominion Order in Council of November 10, 1875. In their Minute accepting all the terms the local government, though denying any wish to be "obstructive," pointed out that "strictly speaking, the Province should not be responsible for any portion of the expenses connected with the charge or management of Indian Affairs which are entrusted by the Terms of Union to the Dominion Government."[152] In May, 1876, the Dominion appointed

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151 C.S.P., 1887, No. 6, p. x. Annual Report of John A. Macdonald, Superintendent General of Indian Affairs.

152 Papers connected with the Indian land question, pp. 169-170. Also to be found in B.C.S.P., 1876, pp. 324-327 and C.S.P., 1876, No. 9, pp. lxvii-lxix.

Alexander C. Anderson of North Saanich as its representative. British Columbia took no action until August, at which time it appointed Archibald McKinlay of Lac la Hache, and recommended Gilbert Malcolm Sproat as the joint commissioner.[153] On August 15, Sproat's appointment was confirmed.[154] In the instructions sent to Anderson and Sproat on August 23, they were told to assure the Indians of the Dominion government's anxious desire to deal with them "justly and liberally"; to do nothing that would militate against the existing friendly relations between the Dominion and the Indians; to refrain from disturbing the Indians in the possession of their villages, fishing stations, fur-trading posts, settlements, or clearings; to confer in all matters with the two superintendents,

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[153] Each of these men had been in British Columbia many years, each was a well-known figure in public affairs, and each had been active on behalf of the Indians. (See C.S.P., 1877, No. 11, p. xv.) Born in Calcutta, Anderson had come at 18 to Fort Vancouver in 1832 as a clerk in the employ of the Hudson's Bay Company. By 1835 he had assumed command of the Fraser Lake post, going on from there to various other posts as Chief Trader - Fort George, Fort Nisqually, Fort Alexandria, and Fort Colville. He retired in 1854, and in 1858, at Douglas's urging, moved to Victoria to assist in the affairs of the colony. He made several exploratory trips throughout British Columbia for Douglas in search of access routes to the gold fields. He was described as pompous and pedantic in his writing, but honest, courteous, and intelligent in his dealings with others. (See Bancroft, H.H., op. cit., pp. 151-159, n. 1.) Like Anderson, McKinlay had also been an officer of the Hudson's Bay Company. For information on Sproat, see Rickard, T.A., "Gilbert Malcolm Sproat", in British Columbia Historical Quarterly, Vol. 1, pp. 21-32.

[154] C.S.P., 1877, No. 11, p. xvi. The information concerning the Commission is all to be found in this Sessional Paper, pp. xv-xvii, "British Columbia Lands", by David Mills, Minister of the Interior, January 15, 1877. Laird had by now gone to the Northwest Territories as Lieutenant-Governor.

Powell and Lenihan; and to work as rapidly as possible. By a proclamation of December 23, 1876, three months after the commissioners had entered upon their formidable task, they were empowered to deal absolutely and at once with any question that might arise, without reference to either government.

By way of indicating that the Dominion government was already cognizant of the native title claim and was not disposed to deny it, the Order in Council establishing the Commission concluded by stating that the question of the rights of the Indians in all lands in British Columbia where those rights had not been extinguished by treaties was still unsettled.

The work of the commissioners was necessarily slow nor was it speeded when they were forced to discharge their secretary after objections from Victoria to the expense. Beginning at the mouth of the Fraser River, the commissioners visited each existing reserve. They went on to Burrard Inlet, up the coast to Jervis Inlet, across to Comox, and down to Victoria the first winter, 1876-1877.[155] In each area they were required to establish accurately the population of the tribe or band for which the reserve was to be either confirmed, created, or extended. At Burrard Inlet, for instance, they discovered that no further land could be allotted because of settlement on all sides and the presence of saw mills.

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155 C.S.P., 1878, No. 10. Special Appendix D, Alexander C. Anderson, Dominion Commissioner, "Report of Commission up to March 21, 1877", pp. li-lxiv.

As the commissioners for the Dominion had been especially instructed under no circumstances to disturb existing settlement, it became necessary to look elsewhere for land. Because the Squamish tribe living on Burrard Inlet had fishing stations on Howe Sound, and because it was desirable to set aside as large tracts as possible in unsettled areas with a view to having the Indians settle permanently, the commissioners eventually went to Howe Sound. After allotting two reserves, one of 2000 acres and a second of 1400 acres, "the highest satisfaction at the result of our proceedings was expressed by the Chiefs."[156] At Comox a reserve of fourteen acres was allotted to include "scattered graves."[157] At Cowichan, Anderson reported that the large reserves given by Douglas[158] had been cut down by successive governors, "especially Seymour, but the Commissioners can do nothing about it, as our

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156 Anderson reported that the men in this tribe received from $80,000 to $100,000 annually in wages from the sawmills on Burrard Inlet.

157 In his Report for the year to Mills, Powell noted that when the Comox Chief came down to Victoria to report on the activities of the Allottment Commission, the Chief expressed approval of all that had been done, but that he and his people had only one further requirement, and that was to know "when I thought it likely they would be paid for their title to all the land in Comox occupied by white people?" (See C.S.P., 1878, No. 10, p. 47. Powell to Mills, October 18, 1877.) In a return tabled April 24, 1901, calling for a list of all reserves on Vancouver Island, the smallest reserve listed is one of 3/100 of an acre for a graveyard at Sooke, allotted by the Reserve Commission June 11, 1877. (See B.C.S.P., 1901, pp. 589-601.)

158 Sproat reported in 1879 that after seeking legal advice on the validity of reserves established by Douglas, he was assured that they were perfectly legal. (See C.S.P., 1880, No. 4, pp.142-145. Sproat to John A. Macdonald, November 11, 1879.)

instructions forbid us from interfering with the vested interests of the whites."[159]

The commissioners' problems on the coast were as nothing in comparison with those encountered in the interior, where they went in June, 1877. The coast Indians could and did hire themselves out as labourers.[160] Hence their land was not as economically important to them as to those tribes who relied almost exclusively upon their cattle and horses for livelihood. After working in the southern interior in the neighbourhood of Osoyoos and up Lake Okanagan for three months, Sproat expressed alarm at the feeling among the Indians.[161] He found that the action of the colonial government in cutting down their former extensive reserves, the unextinguished title to all lands, the delay since 1871 in attending to their complaints, and the presence of an Indian outbreak immediately south of the border had all contributed to a situation in which any unusual event, even a rough

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159 C.S.P., 1878, No. 10, Special Appendix D, p. lv. Anderson to Mills, March 21, 1877.

160 Powell noted in 1876 that "the Indians of this province are its best consumers, and contribute much more to its wealth and vital resources than we have any idea of." After listing the cash value of their fish, fur, oil, and cranberry harvest for 1875 and 1876 - an average of $500,000 a year - he said, "Indeed, in any part of the Province, what the miner, the trader, the farmer, the manufacturer, the coast navigator, or almost any other vocation would do without the assistance of the Indian element, is difficult to imagine." (See C.S.P., 1877, No. 11, pp. 32-36. Powell to Mills, September 1, 1876.)

161 C.S.P., 1878, No. 10. Special Appendix E, pp. lxv-lxxvi. Sproat to Mills, December 1, 1877.

quarrel between an Indian and a white man, might have "an unusually bad effect." To his knowledge, he reported, messengers were being sent constantly back and forth across the border. The two bands were of the same tribe, separated by a political line which was meaningless to the Indians.[162] He said there was valid evidence that the interior tribes, the "O'Kanagans" and the Shuswaps, had agreed to settle their land claims in their own way, and that they were plentifully supplied with ammunition.[163]

Sproat was so disturbed by the effect on the Indians of newspaper stories criticizing the excessive acreage the commissioners were rumoured to be granting that he wrote to the Colonist on October 20, 1877. He pointed out that "the Indian question overshadows every other practical question which we have to deal with at the present time."[164] He added

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[162] J.W. McKay, Indian Agent for Kamloops and the Okanagan, reminded Powell that "at least half the Indians belonging to the Okanagan Valley live in Washington Territory, United States of America, where they are treated to liberal land subsidies. The United States Okanagans twit their British Columbia confreres on the apparent illiberality of our Government toward them. The British Columbia Indians retort by directing the attention of their United States friends to the liberty enjoyed by the British Indians, the security they feel in the honourable intentions of their Government respecting the inviolability of their reserves, and the protection given to life and property by the just administration of our laws." (See B.C.S.P., 1885, pp. xxiii-xxv, after p. 410. McKay to Powell, January 23, 1885.) McKay's information, all known to Powell, was simply for transmission to the provincial government to indicate the necessity for not disillusioning the Indians at this point.

[163] For the report by Hon. David Mills to Lord Dufferin, Governor General, on this critical situation, see C.S.P., 1878, No. 10, p. xix. Mills to Dufferin, December 31, 1877.

[164] Ibid., 1878, No. 10. Special Appendix E, p. lxv.

that there could be no substantial railway progress in British Columbia until the Indian land question had been finally and completely settled. The commissioners, he said, were attempting to give the Indians enough, but not too much, land; and it was to the credit of the province generally that the commissioners were finding that where there had been any trespassing, the Indian was usually the offender. Finally, he wrote, they were instructing the Indians everywhere to withdraw any extravagant claims to supposed prior grants made by the colonial government.[165]

The general alarm gradually subsided as the commissioners made their visits. It is reasonably clear from two facts, however, that the white settlers' fears of a general war were not unfounded. In June it was discovered that the Shuswaps had decided to call a great general meeting at Okanagan Lake of all the tribes. Such a large meeting spelled trouble. In the second place, the interior tribes

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[165] In his Annual Report for 1875, Powell included a statement to the Indian Affairs Branch given him shortly before by Sir James Douglas. In view of what Douglas's impression was in 1875 and what he had done as Governor 15 years before, the advice given the Indians by the Commissioners seems sound. Douglas's statement indicated that no basis of acreage had ever been established for reserves, but rather that it had been his policy "to leave the extent and location of the lands entirely optional with the Indians. . . the surveying officers having instructions to meet their wishes in every particular, and to include in each Reserve the permanent village sites, the fishing stations and burial grounds, cultivated land, and all the favourite resorts of the Tribe," and, in brief, to include "every piece of ground to which they had acquired an equitable title through continuous occupation, tillage or other investment of their labour." (See Appendix E, Item 4, for the complete text of the letter. The original copy of Douglas's letter was uncovered in Victoria recently by Mr. B.A. McKelvie. It is also to be found in C.S.P., 1875, No. 29, pp.62-68.)

were in constant communication with Chief Joseph and his tribe in Washington Territory, who were currently engaged in a bloody battle against troops of the United States' Army.[166] While the Indians were meeting at Okanagan Lake in June, the reserve commissioners were detained in Victoria awaiting the outcome of another disagreement between the two governments. As soon as Dominion officials learned of the critical situation, they directed the commissioners to proceed at once to the scene of the expected trouble. It is possible that without the timely arrival of the commissioners on the spot to adjust reserves, British Columbia might have found itself engaged in an Indian war. The alarming situation paralleled that of 1874. Without a railroad and with American troops occupied in their own Indian war, with nothing but telegraph communication to eastern Canada and slow steamboat connections down the coast, and with an Indian population at least twice as large as the white, such an eventuality is not pleasant to contemplate. Indeed, because of the Indian propensity for brooding over an injustice, real or imagined, it is all the more remarkable that there was no violence. B.S.!!

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166 For outstanding accounts of Chief Joseph's activities at this time, see Glassley, R.H., Pacific Northwest Indian Wars, Portland, Ore., 1953, pp. 207-223, and Wellman, P.I., Indian Wars of the West, New York, 1934, pp. 167-186. For good biographical material, see Fee, C.A., Chief Joseph, the biography of a great Indian, New York, 1936.

167 In discussing this matter, Walkem probably had Powell in mind. It was a legitimate complaint, since Powell's action undoubtedly placed the province in an embarrassing position. (See C.S.P., 1876, No. 9, p. 1.)

In this instance, the Indians felt their grievances to be legitimate, regardless of which government they held responsible for those grievances. On the surface, it would seem to them that the local government was directly responsible for the crises that arose both in 1874 and in 1877. There could be no doubt that the colonial government, at the very least, was careless in its handling of Indian reserves before 1871, since it had made little effort to survey the reserves that had been assigned. To the Indian the terms 'colonial' and 'provincial' were indistinguishable. When agents of the Dominion government, acting under a misapprehension but with all good intentions, promised the Indians eighty acres of land as well as further considerations,[167] the Indians became incited by visions of wealth to be acquired without labour.[168] And when news reached the Indians of the liberal treatment bestowed upon the prairie tribes through Dominion treaties, they had no doubt as to which government was their benefactor.

The provincial government would not accept the proposition that the Royal Proclamation of 1763 applied to

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168 For proof that this was the case, see S.J.C. Report and Evidence, p. 153. At that time, Rev. P.R. Kelly, Chairman of the Allied Indian Tribes, said that had the Indians been dealt with fairly in 1871, they would have received $2,500,000 in cash, in addition to other benefits. This is the same man, — No - 16 was his Sam Reg. whose evidence before the Special Joint Committee had received its warmest praise, who subsequently became an advisor on Indian affairs to the provincial government, the only Indian in the provincial civil service. He resigned his post July 23, 1955, because of an unstated difference of opinion with the Bennett government. (See Vancouver Daily Province, July 23, 1955, p. 5.)

any territory west of the Rockies.[169] Hence it felt under no obligation to secure the cession of the Indian title by treaty. Since in the 1870's three-quarters of the Indian population lived along the coast,[170] the British Columbia government felt that the treaty system should not be used in a country with so predominantly a fishing economy prevailing among its Indians.[171]

Premier Smithe expressed the same opinion to Prime Minister Macdonald in 1884. After noting that "the administration of Indian affairs is in anything but a satisfactory condition," and suggesting radical changes in the treatment of the Indians in his province, he laid the entire blame on the Indian Act, which he said was "framed especially to provide for the protection and government of the native race in Eastern Canada and the North-West Territories, where the habits and customs, and character of the people are entirely

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169 In his presentation before the Special Joint Committee on March 30, 1927, Dr. D.C. Scott, Deputy Superintendent General of Indian Affairs, admitted the validity of this contention by saying, "The French made no claim to any portions of the present province of British Columbia." (See S.J.C. Report and Evidence, p. 4.)

170 Walkem cites the total of those Indians gaining their livelihood from fishing and hunting along the coast as 30,000. He went on to say that should the treaty system of placing Indians on large tracts of land, as in Ontario, be adopted in British Columbia, "a serious injury would be inflicted upon the Indians of the Province," and that such a system would be "fraught with mischief for the Province at large." As an alternative, he suggested that no uniform acreage be decided upon, but rather that each tribe should be assigned land as its circumstances dictated - fishing stations, hunting areas, settlements, and farming areas. This was another of Duncan's suggestions. (See B.C.S.P., 1876, pp. 57-65. Minute in Council, August 18, 1875.)

171 Stanley, G.F.G., op. cit., p. 20.

dissimilar to those found among the tribes of British Columbia," and therefore "would appear to be, in many respects, quite inapplicable to the Indians in the Pacific Province."[172]

Trutch had made the further telling point in 1872 that should the Dominion government now attempt to buy out the Indian title to the land in British Columbia "you would go back of all that had been done here for 30 years past and would be equitably bound to compensate the tribes who inhabited the districts now settled farmed (sic) by white people equally with those in more remote and uncultivated portions. Our Indians are sufficiently satisfied and had better be left alone as far as a new system towards them is concerned . . . ."[173]

The Allottment Commissioners discovered that the Indians were not so aware of the satisfaction between themselves and the local government as was Lieutenant-Governor Trutch. Wherever there had been dissatisfaction, however, the visit of the commissioners to assign lands met with the approval of the Indians once the feelings of distrust and suspicion were disspelled.[174] Notification of the exact size and

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172 B.C.S.P., 1885, p. 1. Smithe to Macdonald, March 7, 1884.

173 See Appendix E, Item 2, paragraph 5.

174 One of their most delicate problems was encountered at the north end of Okanagan Lake. They discovered that on April 29, 1873, Cornelius O'Keefe had pre-empted 320 acres of an Indian settlement, and had done so before receiving a Crown grant for a previous 480-acre pre-emption which had been recorded in 1871. Both O'Keefe's actions were illegal under the Land Ordinances of 1865 and 1870 (see n. 148 and Appendix A, s. 20). After discussing the case at some length, Sproat

location of the allotted land was forwarded to the Chief Commissioner of Lands and Works in Victoria. Notice then was to have appeared in the Gazette to indicate the government's official confirmation of the reserve.

In actual fact no such notice ever did appear in the Gazette for reserves assigned by the Joint Allottment Commission. In spite of Smithe's protestations that "the British Columbia Government are anxious to deal justly and generously with the Indians of the Province,"[175] and that "the Province is ready to give such areas of Crown land for Indian Reserves as are necessary and reasonable,"[176] he labelled the Joint Commissioners as "notoriously prodigal" in their allotment of land[177] and castigated them for having set apart reserves "with such reckless extravagance."[178] Smithe became so vitriolic when Powell begged him in his capacity of Chief Commissioner of Lands and Works to have the reserves gazetted - something Smithe had no intention of doing - that he accused the Allottment Commissioners of setting themselves

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added in his report that "Mr. Keefe (sic) is not a poor ignorant settler, but a wealthy intelligent cattle farmer, already in possession of 640 acres." O'Keefe discovered that he had urgent business to attend to in England immediately prior to the visit of the Commissioners. He left his assistant, Mr. Greenhow, in charge. (See B.C.S.P., 1878, pp. 715-728 for the full correspondence on the case.)

175 B.C.S.P., 1885, p. 13. Smithe to Deputy Superintendent General Vankoughnet, April 11, 1884.

176 Ibid., p. 14.

177 Ibid., p. xiv, following p. 410. Smithe to Powell, November 24, 1884.

178 Ibid., p. xiv, following p. 410. Smithe to O'Reilly, November 29, 1884.

above the law and of encouraging the Indians to do likewise. Smithe wrote:

> The Commissioners would undoubtedly have done service to all concerned in the good government of the country if they had taught the Indians that they were entirely subject to the law of the land, and not superior to it; and they could not have taught the lesson better than by explaining that they themselves were subject to the law and could not grant rights and privileges to water or anything else in the teeth of the express provisions of the Act upon the subject. 179

But Powell's repeated requests to the government to recognize the reserves set aside by the Allottment Commissioners were in vain, and the province continued to dishonour its obligations under the 1875-1876 Agreement. Powell said that the delay was very unfortunate "as tending to unsettle the minds of the Indians in the good faith of the government after they had been informed that the Commissioners were regularly authorized Chiefs, whose decisions were to be final, and after these lands have been duly pointed out to the natives by the Commission as permanent reservations." Moreover, the white settlers were beginning to disregard any Indian reservation and to pre-empt such lands at a rapid rate.[180] Smithe's only answer was that, after seeing such reserves as the two at the north end of Okanagan Lake - one of 24,742 acres (including the Commonage above Vernon) and the other of 29,392 acres (including the range west of Vernon),

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179 Ibid., p. xviii, following p. 410. Smithe to Powell, December 5, 1884.

180 Ibid., p. viii, following p. 410. Powell to Smithe, November 11, 1884.

"separated from the first by a narrow strip of water only," and both "lying in a wild, waste condition without any attempt being made to improve it" - he felt

> . . . an almost criminal wrong had been done in withdrawing from settlement so large a tract of fertile land; a wrong, particularly apparent at this time, when there is such a demand for the land by white settlers, who are entering the country in search of homes. Constantly applications are being made to me for just such lands as are locked up in these reserves by men who would invest large means in their development, and make them productive of wealth to the state. 181

This was more than Powell could accept, particularly as Smithe had accused the Department of Indian Affairs of gross dereliction of duty in not teaching the Indians to use their lands to better advantage. Powell pointed out to Smithe that, although in all those 50,000 acres there was much grazing land on the Commonage, it was "common ground" on which white settlers pastured twenty times as many cattle as did the Indians, and that there was very little cultivable land. He continued:

> You will pardon me for stating that your impression as to 'the immense area of land lying in a wild, waste condition' is, in my opinion, calculated to mislead in a correct consideration of this matter. Nor can I understand, under such circumstances, the justification of your reflections upon this Department in the statement 'that no effort is being made to train the Indians to utilize the broad acres set apart for them' - lands which the Provincial Government refused to confirm as reserves, notwithstanding the length of time which has elapsed since they were set apart by a Commission whose decisions were, by agreement between the two Governments, to have been final.

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181 Ibid., p. xiii, following p. 410. Smithe to Powell, November 24, 1884.

> It is also important to remember that great doubt and uncertainty have been caused as to the intentions of the Provincial Government with regard to all reserves in the Interior, on account of their action in alienating and receiving monies for reserve lands which were gravely promised and given to the Indians by the Joint Reserve Commission. 182

Although on many of the reserves the Indians were left in undisputed possession, it was only because the lands were not being sought by settlers. Not a single reserve set aside by the Joint Commission was ever accepted by the provincial government.[183]

The commissioners at first could have had no intimation of any such complications. They were not permitted, however, to proceed far in their labours before objection was voiced in the local legislature to the "time and expense involved over many years if the present Joint Commission were to continue its work."[184] A.C. Elliott, Provincial Secretary and Premier, the instigator of the motion, recommended to his Executive Council on January 27, 1877, that, because of the expense, the Commission should restrict its activities "to those places where the whites and natives are living in close proximity" as well as to those areas where dissatisfaction was being voiced. Expressing an opinion the opposite of that used

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182 Ibid., pp. xx-xxi, following p. 410. Powell to Smithe, December 9, 1884, No. 2.

183 Ibid., pp. 392-402.

184 B.C.S.P., 1877, pp. 433-434. Minute in Council, January 30, 1877.

earlier by Walkem in an effort to speed up surveys, and thereby revealing the shattering of the rosy dreams respecting the coming of the railway, Elliott said that throughout the greater portion of the province "the Indians are, and will be for many years to come, completely isolated, having little or no intercourse with the whites, and in these remote places no difficulties are likely to be experienced." With this in mind, he advised the dissolution of the Joint Commission in favour of a single Commissioner at the end of 1877, and did so with the full approval of Powell. The reduction was reluctantly concurred in by the Dominion. An Order in Council to that effect was passed on February 23, 1877.[185]

A return tabled in 1878 indicated that the cost to the province of the Joint Commission from its inception in 1876 to the end of 1877 was $12,024.68.[186] At this period

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185 Loc. cit. Order in Council, February 23, 1877.

186 "Return of Expenditures on Account of Indian Commission for the year 1876 to 31st December, 1877."

Salary of A. McKinlay	$4,150
Allowance of A. McKinlay	1,240
*Salary of G.M. Sproat	1,940
*Allowance of G.M. Sproat	575
*G. Blenkinsop, General Assistant	408
*Transport of Commissioners and other expenses	3,711.68
	$12,024.68

(*These four figures represent the province's share only. See B.C.S.P., 1878, p. 499.) For each year, the Reserve Commission was costing the Dominion government close to $50,000. (See C.S.P., 1880, No. 4, p. 249.)

of disenchantment over the railway and of mounting deficits,[187] this sum seemed an unreasonable amount, particularly if it were to continue indefinitely. Especially irksome to the local government, of course, was the fact that Indian affairs were legally the responsibility of the Dominion, as had been carefully noted in the Minute accepting the Allottment Commission.

By Order in Council of March 8, 1878, Sproat became the single commissioner. In the course of his first year's work, he reported to John A. Macdonald that rather than objecting to the reduction in size of the commission, the Indians appeared better pleased to be dealing with "one white chief" than with three, "the respective duties and positions of whom they did not understand."[188] He took up his duties in the Lower Fraser River area, where he found the greatest problem to be that of squatters on Indian lands in the Railway Belt, but he reported that he had exhausted every effort to provide for the Indians without unnecessarily disturbing any of those settlers.[189] Having allotted all the reserves

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187 In 1877, provincial expenditures exceeded receipts of $463,120 by $175,466. In 1878, the deficit had increased to $191,213, although receipts had increased only slightly, to $495,784. (See B.C.S.P., 1901, p. 566. "Table of expenditures and receipts, 1872-1901.")

188 C.S.P., 1879, No. 7, pp. ix-x. Annual Report of John A. Macdonald, Minister of the Interior, April 10, 1879.

189 Ibid., 1880, No. 4, pp. 141-149. Sproat to Macdonald, November 24, 1879.

along the proposed railway line to a distance fifty miles up the North Thompson from Kamloops, he moved his operations to the northern end of Vancouver Island. When his plans became known to the provincial authorities, he discovered that the government was attempting to prevent the investigation and adjustment of reserves in that district, "for reasons I cannot surmise."[190]

Sproat went ahead with his plans, but at the price of his job. He found the conditions among the Indians so deplorable that he felt constrained to report directly to Dr. Powell in Victoria what he had found, in order to give Powell the opportunity to advance any contrary views before Sproat's report was submitted to the Department in Ottawa. In his letter to Powell, and subsequently in his annual report, he said that the "pot-lach" custom, long since illegal, had increased, that sick Indians had to travel all the way to Victoria for care, that cannibalism was not extinct, that prostitution was unchecked, that drinking was as bad as ever, and that he could not find that "any particular remedy had been applied."[191]

Having been so outspoken about his findings so close to Powell's headquarters, and having ignored the veiled threat from the provincial government that it would be

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190 Ibid., p. 144.

191 Ibid., pp. 146-148.

"impolitic" for him to visit the northern end of the island, Sproat could hardly have expected commendation for his efforts. Powell and John A. Macdonald were warm personal friends,[192] so close that Sproat was probably asked for his resignation. At any rate, he tendered it in March, 1880.[193]

In his place Peter O'Reilly, a judge of the County Court and a stipendiary magistrate, was appointed. As a judge, he was unable to take up the duties of his new office until he could be relieved of his other duties in the autumn. The work of surveying, however, went on all summer,[194] since the two survey parties had never been able to keep up with the commissioners, or even with the single commissioner. Since Elliott's memorandum in 1877 dealing with the expense of the

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192 Powell's father had been a Tory member of the old Parliament prior to Confederation in Canada when it met in Montreal. Dr. Powell, the son, came to British Columbia in 1862 after graduating from McGill. He had no sooner arrived than he plunged into politics, becoming an elected member of the Legislative Assembly in September, 1863, where he continued until he and DeCosmos were defeated on the Confederation issue by J.S. Helmcken and M.T. Drake in August, 1866. Powell had made the first pro-Confederation speech in Victoria. After 1871, as a tribute to his standing in the community and out of gratitude to a close personal friend, John A. Macdonald offered Powell the position of first Lieutenant-Governor of the new province, which Powell refused, and then Macdonald proffered a senatorship, but this honour too, Powell felt he could not afford to accept. In 1872 when the offer of the position of Indian Superintendent was made, it was undoubtedly regarded as a rich political 'plum'; otherwise, the offer would never have been made to a man who could have been either Lieutenant-Governor or a senator. It is also probable that there were others in the province who would have liked that position, which may in part account for the unco-operative attitude Powell had encountered early in his incumbency of the office. (See British Columbia,

193 C.S.P., 1881, No. 14, p. 3.

Commission, the provincial government had scrutinized mo closely the commissioner's reports and insisted that the allotments be approved not only by the Chief Commissioner of Lands and Works but also by the Executive Council. Until then, no notice could appear in the Gazette.

For the next eighteen years O'Reilly went up and down the province, first to complete the work of allotting reserves where none had existed before, and then to go back to certain reserves to enlarge them or to settle some difficulty which had arisen with white settlers. The latter problem was not too common, although he did encounter serious trouble in the Cariboo and Kootenay districts. In 1884 he visited the Indians around Soda Creek, Canoe Creek, and Alkali Lake, none of whom had ever had any reserves but who now asked the provincial government to provide land - somehow, someplace. All land in the vicinity had been pre-empted. In view of its responsibility for seeing that every Indian band in the province was supplied with enough land for its purposes, the local government was asked to locate a satisfactory area of land previously reserved by the government.[195]

Sixty years of Progress, Part I, pp. 203-204, n. 1. See also McKelvie, B.A., "Lieutenant-Colonel Israel Wood Powell, M.D., C.M.", in British Columbia Historical Quarterly, Vol. 9, 1947, pp. 33-54.)

194 At the end of 1880, ninety reserves had been allotted and surveyed. (See Ibid., p. 120. Powell to Macdonald, November 15, 1880.)

195 C.S.P., 1885, No. 3, p. lv. Department of Indian Affairs, "Annual Report".

This request had repercussions in the legislature. In a motion designed to remove Indians from their valuable agricultural and timber lands, G.B. Martin and C.A. Semlin sought also to censure the Smithe ministry for acceding to the request of the Reserve Commissioner for such large tracts of land.[196] They succeeded neither in having the Indians transferred to "wild lands equally suitable for the purpose for which they require them," nor in censuring the government. The motion failed of adoption, but it did start ugly rumours circulating among the Indians. These rumours persisted for years and O'Reilly found them exceedingly troublesome.

The provincial government refused to provide the necessary land at Soda Creek and Alkali Lake. It was partly to discuss the injustice felt in British Columbia over this and other Indian matters that Smithe made a special trip to Ottawa in the spring of 1884, just a year after he had become premier. While in Ottawa he expressed his views on the subject of Indians and their lands as follows:

> The Indians at Alkali Lake, as well as at Soda and Canoe Creeks, certainly would seem to have urgent claims for relief at the hands of the Dominion Government; and I cannot but think that that Government have not fully realized their responsibilities in respect of the Indians who are in their charge. It is manifestly wrong that the Indians, whose guardianship the Federal Government assumed at Confederation, should be left, in some instances, to starve, simply because the Provincial Government cannot afford to do that which never ought to have been expected, never asked for at their hands, that is,

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[196] B.C. Journals, 1884, p. 31.

> to purchase improved property at high prices, and give it to the Dominion Government for Indian purposes. The Indians are a heavy burden to the Province as it is. It would not be an exaggeration to say that the cost of administration of justice is doubled to the Province on Indian account, and yet as wards of the Dominion they contribute nothing to the Provincial Treasury. It is quite different however with the Federal Government in that regard. The Indians are large consumers of goods upon which heavy duties are paid to the Dominion; and if there were no other or better reason, the fact that the Indians contribute more to the Exchequer of the Dominion than is expended on their behalf, ought to be sufficient to induce the Dominion Government to make such expenditure in the interest of their Indian wards as circumstances demand . . . . It is not fair to expect that the Province can take of its small and inadequate revenue and purchase improved farms for either the Indians or the Dominion Government. 197

Rather than attempt to force the issue, Powell purchased for the Indians a tract of 1,464 acres from the estate of A.S. Bates.[198] From this land the Indians obtained "a large supply of both hay and grain."[199]

The rumours which circulated as a result of the defeated motion of 1884, coupled with the fact that O'Reilly was incapacitated for some months in 1885 by a serious accident, gave rise to a much more alarming situation in the Kootenays. As early as 1883 A.S. Farwell, a special agent for the provincial government, had warned Victoria that for years the Kootenay Indians had been anxiously awaiting the arrival of the Commissioner to define their reserves and so put a stop

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197 B.C.S.P., 1885, p. 13. Smithe to Vankoughnet, April 11, 1884.

198 Ibid., p. 403.

199 Ibid., p. xxi. Powell to Smithe, December 9, 1884, No. 2.

to the extensive encroachment of pre-emptors on lands the Indians conceived to be their own. He warned that because these Indians were constantly moving back and forth across the border and were consequently aware of the "vast extent" of the American Indian reservations, the Commissioner would probably meet with more difficulty than he would anywhere else in the province.[200] A week later, on January 7, 1884, a similar warning was received from G.M. Sproat, now a provincial land surveyor.[201]

The trouble came in the summer of 1888. It was of sufficient magnitude to prompt the British Columbia government to send 75 North West Mounted Police under Major Steele to quell the disorder.[202] The A.E.B. Davie government was so alarmed that it set up a special commission consisting of F.G. Vernon, Chief Commissioner of Lands and Works, Judge O'Reilly, the Reserve Commissioner, and Dr. Powell, Indian Superintendent. When further lands were allotted to the Indians

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200 B.C.S.P., 1884, pp. 325-327. Farwell to Robson, Provincial Secretary, December 31, 1883. Farwell gave two instances of the size of the American reserves - The Flathead reserve in Montana of 1,500,000 acres, and the Colville reserve in Washington Territory of 2,000,000 acres.

201 Ibid., p. 323. Sproat to Robson, January 7, 1884.

202 C.S.P., 1888, No. 15, p. x. For Steele's own lively account of this expedition, see Steele, S.B. Forty Years in Canada, New York, 1915, pp. 245-256.

the alarm subsided.[203]

As a rule, wherever O'Reilly went the Indians expressed themselves as perfectly satisfied with the just manner in which they had been treated, and he experienced no difficulty in having his allotments confirmed by the Executive Council.[204] But this was not because the local government was in any way relaxing its vigilance. John A. Macdonald complained in 1886 that, to add to "the existing complications in connection with Indian management in this Province", the province was now refusing to allow Indian Agents acting in their capacity as magistrates, the use of courthouses, gaols, and services of constables.[205] The

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[203] For Report of the Special Commission, see C.S.P., 1888, pp. xci-xcvii. Surprisingly, Sproat seemed to be anything but persona non grata to the local government. By 1886 he was a stipendiary magistrate; on July 16, 1886, he was gazetted as Gold Commissioner, Assistant Commissioner of Lands and Works, Registrar of Marriages, and Land Recorder for Kootenay District, replacing A.W. Vowell, Gold Commissioner and Stipendiary Magistrate, and about whom more will appear later. On September 9, Sproat was appointed Coroner for the Kootenay District. (See B.C. Gazette, 1886, pp. 247 and 313.)

[204] Not even for the reserve of 8,552 acres, all of Hope Island in the Queen Charlottes, which he allotted September 17, 1886, and which the government confirmed May 18, 1889. (See B.C.S.P., 1901, pp. 589-601.) In allotting reserves in the Kootenays, however, O'Reilly encountered opposition, first from the Indians and later from the government. In November of 1884, Smithe wrote to O'Reilly saying that "since you have assumed the work of laying out reserves, I am bound to say that a much fairer and more accurate appreciation of the duties and responsibilities of the office has been displayed," but added that "in the Kootenay you have over-estimated the requirements of the Indians and under-estimated those of the whites." (See B.C.S.P., 1885, p. xvi, following p.410. Smithe

[205] C.S.P., 1886, No. 4, p. lvi.

provincial government had taken this action because the agents had refused to pay over to it fines imposed and collected from Indians for infractions of the Indian Act.[206]

The matter of law enforcement among the Indians had been discussed at length by Smithe on his mission to Ottawa in 1884. On behalf of the British Church Missionary Society, Bishop Ridley in 1881 had dismissed William Duncan of Metlakatla for his failure to teach orthodox Anglican rites to the Indians. Serious disturbances had followed at the colony, disturbances so threatening that the province found it necessary to swear in special constables to preserve order. Since the Indians were wards of the Dominion, Smithe maintained that the Dominion should never have allowed the disturbances, as he said:

> . . . to continue to the extent of seriously jeopardizing the interests of the white community or of imposing upon the Provincial Authorities the necessity of incurring heavy expenditure for the administration of justice and the maintenance of law and order among a people who contribute nothing to the Provincial revenue. The Dominion Government have taken the management of Indians on the reserves into their own hands, and I submit that there must be something radically wrong when a number of refractory wards, openly and avowedly resisting Federal authority, are allowed to flaunt with bravado before other tribes their successful defiance of the Indian Office. 207

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to O'Reilly, November 29, 1884.) O'Reilly had set aside 38,630 acres on four reserves for 441 Indians, a per capita allottment of 87.6 acres. (See Ibid., p. 410.) O'Reilly justified the size of the reserves by saying that "I had the utmost difficulty in persuading the Kootenays to agree to the boundaries fixed on by me, and which they look on as meagre in the extreme, compared with the millions of acres set apart by the United States

206 Can. Stat., 1880, c. 22, s. 90.

207 B.C.S.P., 1885, p. 2. Smithe to Macdonald, March 7, 1884.

Smithe then requested Ottawa to pay the salary of a stipendiary magistrate at Metlakatla. Macdonald agreed to the request[208] but said he would have to consider the matter of turning all Indian fines over to the local government. On this point Smithe's argument had been that "it is most desirable that a change should be made in the Act in order to remove the present unfair and anomalous condition of things under which fines are required to be paid to the Dominion, but when not paid by those who have violated the Act the expense of their conveyance to and maintenance while in gaol is required to be borne by the Province."[209] The point was well taken.

Because the province had refused to sanction Sproat's allotments on the grounds of their improvidence,[210] O'Reilly had spent part of the summer of 1885 re-allotting reservations on Vancouver Island and on the southern mainland, redoing Sproat's work. During the year the first provincial statistics were tabled in the legislature showing what work the Joint Allottment Commissioners and the single Reserve Commissioners, first Sproat and then O'Reilly, had been doing. The return,

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Government for American Indians a few miles south of the line. Moreover, I think it important, for Provincial and International reasons, that Indians living on the frontier should have no reasonable ground of complaint, and in this view I feel sure you will concur." (See Ibid., p. xxi, following p. 410. O'Reilly to Smithe, December 10, 1884.)

208 Ibid., p. 9. Macdonald to Smithe, April 10, 1884.

209 Ibid., p. 14. Smithe to Vankoughnet, April 11, 1884.

210 C.S.P., 1887, No. 6, p. lix.

tabled by Smithe as Chief Commissioner of Lands and Works on February 20, 1885, showed all lands set apart for the Indians subsequent to the list tabled on January 13, 1873.[211]

It was a most comprehensive tabulation, as it not only indicated the names of the tribes and the number of Indians for whom each reserve had been made, but also listed all the reserves to which the Chief Commissioner had refused his assent. In addition, it listed the location of the tribes, the date on which the Reserve Commissioner's decisions had been received, and the date on which the Executive Council had given its approval. It also indicated whether the reserve had been surveyed, anything unusual about the reserve, and the acreage. Nothing was overlooked which might have been of interest to the legislature, and it is certain that the list was subjected to the severest scrutiny, particularly from Smithe himself, as well as from the other members of his ministry - A.E.B. Davie, John Robson, and M.W.T. Drake.[212] The return showed that by 1877 when the Joint Commissioners were released they had set aside 145 reserves for 5,158 Indians, and had allotted 186,704.99 acres, a per capita grant of 36.19 acres.[213]

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211 See Appendix E, Item 1, for the 1873 list.

212 Howay, F.W., "Political history, 1871-1913," in Canada and its Provinces, Vol. 21, p. 209.

213 B.C.S.P., 1885, pp. 392-395.

In allotting the reserves the commissioners had faced many complications such as the one in connection with the reserve of 33,600 acres at Osoyoos.[214] A settler's bad faith and a clerk's error combined to cause loss of lands to the Indians and much correspondence for the officials. In 1875, J.C. Haynes had applied to purchase 4,245 acres known to be used by the Indians but not at that time officially reserved to them. Owing to several delays, Haynes's final survey was not completed until 1877, immediately prior to the arrival of the Allottment Commissioners. The commissioners duly allotted most of the land in Townships 50 and 51 to the Indians, although it included the acreage Haynes wanted. In transcribing the Commission's Minute of decision, however, a clerk carelessly entered Townships 5 and 6 as reserved,[215] instead of 50 and 51. Meanwhile Haynes had gone ahead with his claim for a Crown grant in Townships 50 and 51. When the surveyors' notes were checked and found correct,[216] a notice was inserted in the Gazette and the newspapers, advising that anyone with a prior claim to the land should submit the claim in writing. Since none was presented, Walkem accepted Haynes's purchase money and issued him a Crown grant.[217]

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214 Ibid., p. 395.

215 Ibid., p. viii, following p. 410. Powell to Smithe, November 11, 1884.

216 Ibid., p. x, following p. 410. Smithe to Powell, December 4, 1884.

217 Loc. cit.

In drawing the whole matter to Smithe's attention in 1884, Powell quoted from a letter written by Sproat in 1879, then Reserve Commissioner, to Walkem, then Chief Commissioner of Lands and Works, in which Sproat wrote that "Mr. Haynes was perfectly aware that the land purchased by him had been reserved for the Indians" and implied that Haynes, aware of the clerk's blunder, had taken advantage of it.[218] Powell then asked for Smithe's serious and sympathetic consideration of the needs of the Indians at Osoyoos, particularly as the circumstances in the district were such that they could lead to a troubled situation if the obvious injustice was not rectified.

After outlining for Powell what appeared to him to be the facts of the case, Smithe concluded:

> Everything having been done in this office in strict accordance with the law, it would be quite impossible now to dispossess Mr. Haynes of the land, to which he has got a Crown grant in perfectly regular manner. Whatever fault there is in connection with the affair seems to attach to the Indian Commissioners. 219

Powell must have known from long experience the futility of argument, but he was not one to give in until all avenues of settlement had been explored. In this case he was not slow to point out to Smithe that "In attaching blame to the Indian Commission, it should be observed that one of its members was a paid officer of the Province, and the Local Government paid

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218 Ibid., p. viii, following p. 410. Powell to Smithe, November 11, 1884.

219 Ibid., p. x, following p. 410. Smithe to Powell, December 4, 1884.

a moiety of the expense in maintaining the Commission, and, if a mistake was made, it was in a great measure due to its own agent."[220]

No further correspondence occurred on the subject, and as the return discloses no further allotments in the Osoyoos area, presumably the Indians had to manage with the 29,000 acres of bench lands remaining. Powell had constantly to deal with this type of problem, and that he could do so for eighteen years without once displaying any bitterness or animosity in his official correspondence is indeed a tribute to his patience and understanding.

Before leaving the work of the Joint Allottment Commission as tabulated in the return, it is to be noted that under the column headed "Date of Approval by C.C.L. & W." there is not a single entry. Sproat's reserves as sole Commissioner fared even worse.[221] None of his 257 reserves was approved. In addition, the 31 reserves of 81,500 acres he had allotted for 522 Indians in the Nicola Valley were noted as "Not accepted, April 10, '80."[222] Apart from these reserves, he had allotted only 23,962.38 acres on 226 reserves to 3,044 Indians located on the Fraser River and along the

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220 Ibid., p. xix, following p. 410. Powell to Smithe, December 10, 1884.

221 Ibid., pp. 396-402.

222 Ibid., p. 396. It was in March, just one month prior to the refusal of the local government to accept the major allottments he had made, that Sproat's resignation had been received. (See p. 381.)

northern coast of Vancouver Island.

With O'Reilly it was a different matter. His allotments of 216,840.90 acres on 239 reserves to 8,634 Indians[223] were one and all accepted by the government, including those 38,630 acres in the Kootenay to which Smithe had objected.[224] His per capita grant of 25.1 acres apparently did not alarm the government.

By 1885, then, 621 reserves had been allotted. Of these, only 239 had been approved by the local government and only 477 had been surveyed. The area allotted to the 17,358 Indians visited by commissioners was 427,608.27 acres, exclusive of the acreage not accepted in Victoria.

O'Reilly found the most persistent difficulty interfering with his work to be the often extravagant demands made by the northern tribes for more land than their already extensive reserves contained. The Tsimpsean tribe laid claim to all land, not only that contained in their reserves. As in the Kootenay trouble of the year before, rumour among the Indians played its part, all stemming from the motion put and defeated in 1884 by Martin and Semlin. It led the Indians to fear that they were to be herded back into the

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223 Ibid., pp. 403-410.

224 See n. 204. It should not be assumed, however, that O'Reilly escaped his share of condemnation from the government. On several occasions Smithe accused him of an unwarranted assumption of authority. (See B.C.S.P., 1885, pp. 12-14. Smithe to Vankoughnet, April 11, 1884.) On another occasion, Smithe reprimanded him for presuming to make reserves upon his own authority. (See Ibid., p. xvii, following p. 410. Smithe to O'Reilly, December 3, 1884.)

hills, charged for the wood they cut, and forbidden to fish.[225] When, in February, 1887, an Indian delegation waited upon the government in Victoria, Smithe tried to allay their fears as best he could.[226] Still the trouble persisted. Finally a joint Dominion-provincial commission was set up to investigate.

The Hon. Clement F. Cornwall acted for the Dominion and J.B. Planta, S.M. of Nanaimo, acted for the province.[227] Having made a thorough investigation on the spot, the Commission assured the Indians once again that no one would disturb them in possession of their land or customary rights and privileges. The Commissioners discovered that William Duncan was the prime mover behind the disturbance. But the Indians, not to be put off so easily, persisted in stating that unless a treaty were made extinguishing their title in return for a lump sum payment or the privilege of selecting 160 acres of their own choice, they would go on talking about their title until a treaty was made.[228]

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225 There is no doubt that the same Mr. Duncan of Metlakatla was behind a good deal of this agitation. (See John A. Macdonald's letter to Senator Macdonald, p.417.) On October 28, 1884, the provincial government had found it necessary to set up a Royal Commission to investigate the disturbances at Metlakatla. (For the report of the Special Commissioners, Hon. A.E.B. Davie, H.M. Ball, S.M., and Hon. A.C. Elliott, see B.C.S.P., 1885, pp. 131-136 and i-lxxxii. "Metlakatlah Inquiry 1884, Report of the Commissioners together with the evidence." For all correspondence on the subject, see Ibid., pp. 277-291 and 317-321.)

226 B.C.S.P., 1887, pp. 253-272. "Report of Conferences, 3rd and 8th February, 1887."

227 C.S.P., 1888, No. 15, pp. xcviii-cvii. "Report of Indian Commission in British Columbia."

228 Ibid., p. ci.

In 1891, Hon. Edgar Dewdney, now Superintendent General of Indian Affairs in Ottawa, reported that the aboriginal title agitation, "one time so strong . . . appears to have subsided."[229] Dewdney chose his verb well. The Indians, he wrote, "had been falsely informed by unprincipled, and probably self-interested parties." This information had been conveyed to him by A.W. Vowell, the new Indian Superintendent in British Columbia who had been appointed in 1890 after Dr. Powell retired.[230] By 1894 the funds provided by the Dominion government for surveying reserves were exhausted. With numerous allotments still to be defined, O'Reilly had to discharge the survey crews.[231]

There was still work for O'Reilly to do throughout the province even without surveys to oversee. Owing to the awakening of the Indians to the value of agricultural pursuits, their increasing herds of cattle, their growing reliance on irrigation, and the presence of so many Chinese labourers in fields formerly occupied by themselves, interior and coast tribes were requesting additional land. Where good agricultural land was available, O'Reilly gave it to them. He tried always to do so in sections where ultimate conflict with white settlers might be avoided.

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229 C.S.P., 1891, No. 18, p. xxi.

230 Ibid., p. 187. Vowell to Dewdney, November 5, 1890.

231 C.S.P., 1896, No. 14, pp. 206-207. O'Reilly to Hon. T. Mayne Daly, Superintendent General, September 24, 1894.

After Hon. Clifford Sifton took charge of Indian affairs in the Laurier government in 1897 the first Dominion figures for twenty years on the work of the Reserve Commission appeared. For the nine Indian agencies by then established in British Columbia, Sifton tabled the following information:[232]

AGENCY	AREA OF RESERVES	AREA UNDER CULTIVATION
Cowichan	19,634 acres	2,496 acres
Kwawkewlth	17,052 acres	10.5 acres
West Coast	4,288 acres	4 acres
North-West Coast	149,347 acres	147.5 acres
Fraser	47,492 acres	3,705 acres
Kamloops-Okanagan	319,998 acres	2,552 acres
Kootenay	42,061 acres	350 acres
Williams Lake	74,065 acres	1,265 acres
Babine	44,631 acres	197 acres
TOTAL:	718,568 acres	10,727 acres

The total acreage represented a far cry from the 28,437 acres which the Indians had at Union. It had taken a quarter-century of struggle and misunderstanding to get so far but at last the Indians, by and large, appeared to be satisfied. The 10,727 acres under cultivation may have been only a small fraction of their lands, but a comparable percentage for land cultivated by white settlers contrasted with that under pre-emption would not have shown a higher figure. The wonder is not that the area cultivated was so small; rather it was that it had increased so much in 25 years. It is to the credit of the Indians that they could have accepted so many of the white man's ways as to have forsaken the roving habits of their forefathers in a quarter of

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[232] C.S.P., 1897, No. 14, pp. 68-83.

a century and with little violent upheaval. Their acceptance of those ways, however, had very serious effects on their mortality rate. A steady decline in the total native population, although arrested at the present time, was noticed for years. Within twenty years the population had been reduced to exactly half what it had been estimated at in 1871. Vowell reported the population in 1891 as 23,620.[233] If the white man's ways were civilized, their diseases and assorted vices proved anything but civilizing.

After eighteen years as Indian Reserve Commissioner, Judge O'Reilly retired on February 28, 1898. He was succeeded by Vowell, who now assumed this role in addition to that of Indian Superintendent.[234] Until 1908 Vowell's activities were confined to re-defining present reserves and allotting small areas as fishing stations, hay meadows, and gardens.

In 1908 the work of the Reserve Commissioner was brought to an abrupt halt on orders from R.G. Tatlow, Chief Commissioner of Lands and Works in the McBride government. In a statement to Vowell, Tatlow said that "Owing to the unsatisfactory state of affairs between the Dominion and the Province in relation to the question of Indian Reserves, the Executive considers it inadvisable in the meantime to make further allotments, but will be prepared to consider any application

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233 C.S.P., 1891, No. 18, p. xl.

234 C.S.P., 1899, No. 14, pp. 248-249. Vowell to Sifton, November 5, 1898.

by the Department for purchase, or deal with suitable exchanges."[235]

When Vowell received this message,[236] the three strands of the Indian lands problem in British Columbia became inextricably tangled. Tatlow's statement brought into the open the legal battle being waged between the local and the federal governments over the question of reversionary interest in Indian lands. Since the provincial government had arrested all further allotments, a decision as to the reversionary interest had to be sought first. While the litigation was on, the Indians availed themselves of the confusion to push their aboriginal title claim. Doubtless they or their 'rascally advisers' hoped that in the chaos they might possibly get someone in authority to listen to their claim. And indeed they might have had they asked for anything less than what they did - recognition of their beneficial interest in all the land in the province.

What the province sought was somewhat less ambitious but nonetheless of great importance. It was attempting to establish its right of reversionary interest in reserve lands abandoned by the Indians.

In 1904 E.V. Bodwell of Victoria, on behalf of an unnamed client known to be the Grand Trunk Pacific Railway

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235 C.S.P., 1909, No. 27, p. 273.

236 Vowell continued as Indian Superintendent until he retired on March 31, 1911.

Note

Company, had written to R.F. Green, Chief Commissioner of Lands and Works, to ask if the government would give consideration to selling him, on behalf of his client, 10,000 acres of reserved Crown lands on the side of Tuck Inlet opposite the Tsimpsean Indian reserve.[237] Bodwell pointed out that under section 32 of the Land Act, the government would retain one-quarter interest in this land if it were designated a townsite. If his client chose the other side of the Inlet, the side on which the Indian reserve was located, he reminded Green that his client would be dealing directly with the Dominion government. In that case, he said, "no direct benefit will be obtained by the Province."[238] By Minute in Council of May 4, 1904, the provincial government accepted the offer with alacrity, settling on $1.00 an acre as the price.[239]

Requiring a portion of the Indian reserve also, Bodwell the following spring asked Green what price the government would set on its reversionary interest should his client be able to make suitable arrangements with the Dominion government first.[240] In reply McBride reminded Bodwell that if his client considered acquiring a portion of the Tsimpsean Indian reserve on Kaien Island for railway purposes, action could not be taken unless and until the Dominion removed the

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237 D.C.S.F., 1906, p. F 20. Bodwell to Green, January 19, 1904.

238 Loc. cit.

239 Ibid., pp. F 13-14. For copy of the Indenture, see p. F 15.

240 Ibid., p. F 19. Bodwell to Green, February 21, 1905.

Indians from all parts of the reserve. He indicated his government's willingness to deal with the company upon a satisfactory termination of its dealings with Department of Indian Affairs.[241]

On April 2, 1906, a Dominion Order in Council asked the province to waive its reversionary interest.[242] The request was promptly refused.[243] The province based its refusal on the Dominion Order in Council of November 10, 1875, which had stated that "any land taken off a Reserve shall revert to the Province."[244] British Columbia had acceded to the Order by Minute in Council of January 8, 1876.[245] The two together had become known as the 1875-76 Agreement. The province took strong objection to the assumption by the Dominion of the right to surrender portions of the Tsimpsean reserve.[246] This the Dominion had done on September 21, 1906, by Order in Council,[247] to facilitate construction of the terminus and wharf accommodation for the Grand Trunk Pacific, a railway project to which the Laurier

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241 Loc. cit. McBride to Frank W. Morse, Vice-President and General Manager, Grand Trunk Pacific Railway, March 17, 1905.

242 B.C.S.P., 1907, p. F 33.

243 Ibid., p. F 34. Minute of Council, May 7, 1906.

244 See p. 358.

245 See pp. 363-364.

246 O'Reilly made this reserve of 70,400 acres on February 26, 1884. The government allowed it three days later. (See B.C.S.P., 1885, p. 406.)

247 B.C.S.P., 1908, p. D 47.

government had lent its support, both moral and financial. A provincial Minute in Council of March 11, 1907, pointed out that the moment the Dominion assumed to surrender part of the Indian reserve, the property then became the Crown's in the right of British Columbia.[248]

That was all there was to the matter so far as the province was concerned, but the Department of Indian Affairs asked an opinion of the Department of Justice.

Before it was obtained British Columbia proceeded under section 80 of its Land Act to alienate various portions of its reversionary interest in Indian reserves.[249] This alienation was possible by virtue of certain amendments to the Land Act, the first of which had been effected in 1899 in anticipation of just such a contingency as was arising at Kaien Island. To the provision which had empowered the government to reserve lands for conveyance to the Dominion in trust for the use and benefit of the Indians was added a sentence authorizing the government "in trust to re-convey the

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[248] B.C.S.P., 1908, p. D 47.

[249] In 1909, three people bought 161 acres at the rate of $2.50 per acre, for all of which Crown grants were issued. One of these areas was Long Lake Reserve No. 5, containing 128 acres, sold to one John Kennedy, for which the Crown grant was reported to have been issued February 8, 1909. (See B.C.S.P., 1910, p. H 49.) There is no trace of this grant, however, in the B.C. Gazette. As reference to n. 279 will show, the Commissioners who later visited this area in 1915, known as Lot 3,888 of Osoyoos District, were completely unaware of Kennedy's purchase or Crown grant, and proceeded to deal with it as any other reserve. Fortunately for Kennedy, this was one of the reserves classed as being of no further use to the Indians, and hence could be sold by the province. Subsequently, in 1921, of this reserve 5.48 acres were sold for $458. (See Canada. Parliament. Department of Indian Affairs. Annual Report, 1921, p.74.)

same to the Provincial Government in case such lands at any time cease to be used by such Indians."[250] This clause became section 80 of the Consolidated Land Act of 1908. In 1911 a further proviso was added to the effect that the Executive Council should always be at liberty to dispose in any way of its interest, "reversionary or otherwise," in any Indian reserve or portion thereof. A return of all such transactions was to be submitted at the next sitting of the legislature within fifteen days of its opening.[251]

The presence of this legislation still further embarrassed an already complicated situation. The reversionary interest created by the 1875-76 Agreement had established a joint ownership which made it impossible for the Dominion to dispose of any agricultural or timber lands reserved for but not required by the Indians without the concurrence of the province. As a result, no excess Indian lands had ever been sold in British Columbia. Elsewhere throughout Canada excess lands were being sold annually.[252]

The incident involving the Grand Trunk Pacific terminus created an impossible situation. This was particularly so after the announcement by the Indian Department in 1908 that the policy in connection with the sale of agricultural and

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250 B.C. Stat., 1899, c. 38, s. 72.

251 R.S.B.C., 1911, c. 129, s. 127.

252 A Table of land so disposed of is listed in every Annual Report of the Department of Indian Affairs, In 1909 in all Canada, 64,924.21 acres were sold for $462,682. (See C.S.P., 1910, No. 27, p. xxxv.)

timber lands, where such lands were beyond the possible requirements of the Indians, would be relaxed. The Department had always firmly opposed such sale so long as no particular harm or inconvenience arose from the Indians' holding of vacant lands beyond their requirements, and so long as no profitable disposition of the land was possible. But now, because of the large influx of settlers into the western provinces, the Department felt some relaxing of its policy in order lest settlement be seriously impeded. In addition, sale of excess Indian lands would fetch a price sufficiently high to reduce materially the costs of administration of Indian affairs.[253] Under the Indian Act, however, the consent of the Indians themselves was necessary before any lands could be sold.

Concurrently with the development of the reversionary interest dispute there once again emerged in British Columbia the old problem of the size and extent of reserves. The first official intimation the Dominion received that the provincial government wanted reserves cut down came in 1901 when Premier James Dunsmuir presented the claim of his government for 'Better Terms'. A section of his memorandum asked that some step be taken to re-assess Indian holdings. Dunsmuir's suggestion was that many of the reserves in British Columbia should be cut down, since "very valuable agricultural lands are

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[253] C.S.P., 1909, No. 27, p. xxxv.

held by a very small number of Indians."[254] After the many years spent both in securing adequate reserves and in extending to British Columbia the benefits of an Indian policy prevailing east of the Rockies in regions where there had been a cession of the Indian title, the Department of Indian Affairs was chagrined.

No action was taken by the Department in the next ten years to honour Dunsmuir's request. Following the presentation of a similar request by McBride in 1912, this time more strongly worded, action became imperative, since McBride's memorandum associated the two problems of reversionary interest and excessive acreage in the same message. McBride wrote as follows:

> The title of the Crown in right of the Province to Indian reserve lands in British Columbia was never questioned until within the past few years. . . . We still maintain that the reversionary interest. . . is the property of the Province, and that it is essential to the public interest that the attitude of the Province be maintained. It may be well, in this connection, to refer to the large excess acreage held on account of Indian reserves in British Columbia, and to the necessity in view of the rapid increase in white population, of having an immediate readjustment of all reserves, so that the excess acreage may be released to the Province.[255]

And to add to these difficulties the third problem - aboriginal title - became a live issue. By 1912 the Indians, by no means inactive on their own behalf, had secured

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[254] B.C.S.P., 1901, p. 581. Dunsmuir to Sifton, February 2, 1901.

[255] B.C.S.P., 1912, p. N 2. British Columbia Mission (Sir Richard McBride, Premier, Hon. W.J. Bowser, Attorney-General, and Hon. W.R. Ross, Minister of Lands) to Prime Minister Borden, February 12, 1912.

reinforcements through an organization formed in Victoria in March, 1910, called the Conference of Friends of the Indians of British Columbia. Further, they had obtained the support of a Toronto group called the Moral and Social Reform Council of Canada. To advance their cause and consolidate their support they had secured the services of Rev. A.E. O'Meara as a full-time legal advisor.[256]

Prior to securing these reinforcements King Edward VII had been interviewed by a deputation of Indians in 1906,[257] a petition had been presented to His Majesty's Government in 1909,[258] and a 'Statement of Facts and Claims' had been forwarded to the federal Department of Justice in January, 1910.[259] Meanwhile, the petition to England had been referred back to Canada. The Department of Justice recommended that judicial decision should be sought for the claims of the Indians. To facilitate a decision from the courts the Dominion began negotiations with British Columbia. The Dominion and Imperial governments, both sympathetic to the Indian claim, were perfectly willing that the case should go before the Judicial Committee of the Privy Council.[260] Since this procedure was

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256 S.J.C. Report and Evidence, p. 53. Before his ordination as a priest of the Church of England in 1906, O'Meara (1861?-1928) had practised law in Toronto since 1886. (See Wallace, W.S., op. cit., Vol. II, p. 499.)

257 S.J.C. Report and Evidence, p. 133. Chief Joe Capilano and two other chiefs.

258 Ibid., p. 52.

259 Ibid., p. 53.

260 Ibid., pp. 10, 11.

precisely what the Indians wanted,[261] they seemed well on their way to having their forty-year old claim adjudicated by a court which had hitherto, under similar circumstances, rendered decisions in favour of natives.

In May, 1910, the chief civil law officers of Canada and British Columbia met in Ottawa and drew up a list of ten questions for submission to the Supreme Court of Canada. The intention was that the questions should then be presented to the Privy Council. Of the ten questions prepared, the first three dealt with the matter of Indian title and the other seven were concerned with the size of reserves. The Indian claim was that many of the reserves were grossly inadequate for their needs. All the questions received the approval of the Deputy Attorney General of Canada, Counsel for the province of British Columbia, and of O'Meara for the Indian tribes.[262]

The questions were then submitted to Sir Richard McBride. His answer was a categorical no if the first three questions were to be included. So far as he was concerned and so long as he headed the government of the province, the Indians had no title to the public lands of British Columbia.

The Laurier government was by now fully aware that should a case be contrived which could be taken to court, the

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261 Reasons given in full in Ibid., pp. 161-165.

262 Ibid., p. 53.

province of British Columbia would be the defendant.[263] Despite the refusal of British Columbia to consent to a stated case, enabling legislation was twice passed in Ottawa altering the Indian Act to permit the presentation of such a case[264] so as to secure a judicial decision.

At the general election in the autumn of 1911 the Laurier government was defeated.[265] Immediately a more conciliatory attitude was adopted in Ottawa[266] and direct negotiation with British Columbia was resumed in an effort to settle all three of the troublesome questions concerning Indian lands. By Order in Council of May 24, 1912, Dr. J.A.J. McKenna of Winnipeg was appointed as special commissioner

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[263] To a deputation on behalf of the Indians which waited on Sir Wilfrid Laurier, Prime Minister, on April 26, 1911, Laurier had said, "The matter for us to immediately consider is whether we can bring the Government of British Columbia into Court with us. We think it is our duty to have the matter enquired into. The Government of British Columbia may be right or wrong in their assertion that the Indians have no claim whatever. Courts of Law are just for that purpose - where a man asserts a claim and it is denied by another. But we do not know if we can force a Government into Court. If we can find a way I may say we shall surely do so. . . . The Indians will continue to believe they have a grievance until it has been settled by the Court that they have a claim, or that they have no claim." (See Ibid., p. 11.)

[264] Ibid., p. 12.

[265] In spite of Sir Richard's intransigence on the point of aboriginal title, engendered somewhat by political animosity as well as by consideration for the public welfare in British Columbia, he and his government tendered a reception to Laurier on his visit to Victoria in 1910 which "could not have been equalled in point of excellence of detail and in warmth of the reception given if royalty itself had been there." (See Macdonald, E.M., Recollections political and personal, Toronto, 1938, 3rd ed., p. 181.)

"to investigate claims put forth by and on behalf of the Indians of British Columbia, as to lands and rights, and all questions at issue between the Dominion and Provincial governments and the Indians in respect thereto, and to represent the government of Canada in negotiating with the government of British Columbia a settlement of such questions."[267]

The first problem investigated by Dr. McKenna was the aboriginal title claim. After making an exhaustive study, he presented a lengthy memorandum to McBride on July 29, 1912. It said, in part:

> I understand that you will not deviate from the position which you have so clearly taken and frequently defined, i.e., that the province's title to its lands is unburdened by any Indian title, and that your government will not be a party, directly or indirectly, to a reference to the Courts of the claim set up. You take it that the public interest, which must be regarded as paramount, would be injuriously affected by such reference in that it would throw doubt upon the validity of titles to land in the province. As stated at our conversations, I agree with you as to the seriousness of now raising the question, and, as far as the present negotiations go, it is dropped. 268

In this way two politically compatible friends could accomplish to their mutual satisfaction in two months what had[269]

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266 Upon assuming office, Borden had offered McBride a seat in his government, but because Borden had requested an answer by October 13, 1911, and because McBride had not reached a decision by that date, the portfolio went elsewhere. (See Borden, H., ed., Robert Laird Borden, his memoirs, Toronto, 1938, Vol. I, p. 331.)

267 S.J.C. Report and Evidence, p. 8.

268 Ibid., p. 9.

been dividing the two governments for years. McKenna, however, carefully avoided any reference to his own views as to the validity of the Indians' claim. But the Indians, caring nothing for political considerations, were not to be put off so easily. Their petitions and visitations were to harass both governments for another fifteen years.

With the aboriginal title claim removed from the realm of practical politics, McKenna tackled the more delicate problem of reversionary interest. His visits to the Indians throughout British Columbia and his studies of the historical background of the difficulty led him to state in his report of October 26, 1912,[270] that one of the greatest sources of dissatisfaction among the Indians was the provincial interest in their lands stemming from the 1875-76 Agreement. As the Indians progressed in the ways of civilization they realized that the tenure to their lands in the right of the Dominion was considerably less secure in British Columbia than elsewhere in Canada. In contrasting the treatment they had received by the two governments since 1871, it was apparent to the Indians that British Columbia had displayed

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269 Relations as cordial as this did not prevail indefinitely between Borden and McBride. Skelton writes that in 1916, "In British Columbia, the McBride and Bowser governments were assailed for reckless extravagance and wide corruption; 'I ask Conservatives,' Sir Charles Tupper had declared, 'to drive from power this government which has disgraced the province and which has been the servile tool of adventurers.'" (See Skelton, O.D., Life and Letters of Sir Wilfrid Laurier, Toronto, 1921, Vol. II, p. 452.)

270 S.J.C. Report and Evidence, p. 9.

much less sympathy with their claims than had the Dominion. Consequently, the insecurity by which the Dominion held the reserve lands distressed them greatly.

The position taken by British Columbia, however, was that the Indian title to the lands was one of mere use and occupancy; that under section 13 of the Terms of Union no beneficial interest accrued to the Dominion for the lands; and that, whenever the Indian right became extinguished through surrender, cessation of use or occupancy, or diminishment of numbers, the land reverted unburdened to the province.[271] So far as the province was concerned reverted Indian lands were in exactly the same position as were Railway Belt lands once any portion of them had been alienated by the Dominion.

McKenna held the same opinion as the Indians regarding the reversionary interest. He was quite unable to resolve the difficulty with British Columbia. His decision was that only a Royal Commission comprised of representatives from both governments could settle the two problems of reserve acreage and reversionary interest. To this proposal McBride was amenable and the McKenna-McBride Agreement, which laid down the terms of reference for the Commission, was drawn up on September 24, 1912.[272] The location and extent of all reserves was to be settled by five commissioners. Where any reserve land

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271 Loc. cit. McKenna to Department of Indian Affairs, Interim Report, October 26, 1912.

272 See Appendix E, Item 5, Part I.

was found to be in excess of actual requirements, the land was to subdivided and sold at public auction by the province, with half the proceeds going to the Department of Indian Affairs. Should additional land be required, or new reserves, the province was to "take all such steps as are necessary to locally reserve the additional lands."[273] Finally, when the reserves were definitely determined to the satisfaction of the five commissioners, the lands were all to be conveyed by the province to the Dominion. The federal government was to have full power to deal with the lands in any manner, even to selling them. The only interest to be retained by the province was in the case of a reserve unoccupied because the tribe had become extinct. The land in such a case was to revert to the province.

Both governments accepted the terms of reference[274] and on April 23, 1913,[275] the letters patent were issued constituting the Royal Commission. By Order in Council of March 31, 1913, N.W. White of Nova Scotia and Dr. McKenna of Winnipeg were designated as the Dominion appointees; J.P. Shaw, M.L.A. of Shuswap and D.H. Macdowall of Victoria were appointed for British Columbia. On April 12, E.L. Wetmore

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[273] Ibid., Clause 3.

[274] See Appendix E, Item 5, Part II for the Order in Council of November 27, 1912, accepting the Agreement.

[275] Canada. Parliament. Report of the Royal Commission on Indian Affairs in the Province of British Columbia, 1916, Vol. I, p. 8. (Hereafter cited as Report of the Royal Commission on Indian Affairs in the Province of British Columbia.)

former Chief Justice of Saskatchewan, was selected as the chairman.

As recorded in their final report,[276] the commissioners at once considered how best to settle all outstanding differences between the two governments. After careful study of all the pertinent documents and correspondence, extended visits to reserves throughout the province, and numerous meetings with the Indians and public organizations, the Commission presented a massive report in four volumes to both governments on June 30, 1916. During the three years of their work the commissioners submitted 98 Interim Reports[277] and five Progress Reports. Their final full report reviewed the whole question of reserves in detail. Certain specific recommendations, preceded by a statistical analysis, were made regarding each of the 1,103 reserves found in the province.[278] In some cases the existing reserves were confirmed

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[276] See Appendix E, Item 6.

[277] Interim Report, No. 82, August 12, 1915, (Vol. I, p. 112), agreed to the purchase of the Kitsilano reserve by the Vancouver Harbour Commissioners, after due compliance with the law regarding compensation for such purchase.

[278] No one authority seems really to have known exactly how many reserves there were in the province. The Geographic Board of Canada stated in 1913 that there were 934; of these, inspection of their list reveals the largest to have been one of 44,175 acres in the Port Simpson reserve, and the smallest, one of .15 acres on the Squamish River. For the listing of all the reserves in Canada in their Handbook, the Geographic Board publication required 25 pages to list those in British Columbia, but only 9 to list those throughout the rest of the Dominion. The total number in each province in 1913 was:

Nova Scotia	35	Ontario	156
Prince Edward Island	2	Manitoba	54

as previously allotted; in others, reserves were reduced either because the land was not all needed or because it was worthless; in still others, reserves were disposed of as being no longer required for Indian use and occupancy.[279]

In 1919 British Columbia passed the enabling legislation necessary for the adoption of the report,[280] and in 1920 the Dominion also cleared the way for acceptance.[281] Acting on the authority provided by this legislation, the Report of the Royal Commission on Indian Affairs for the Province of British Columbia, as revised and amended since 1916, was adopted by British Columbia in August, 1923, and by the Dominion the following July.[282]

New Brunswick 24
Quebec 20
Saskatchewan 80
British Columbia 934
(See Canada. Geographic Board. Handbook of the Indians of Canada, 1913, pp. 515-549.)

279 One of these was Long Lake Reserve No. 5, at the head of Kalamalka Lake. A.H. Green, the B.C. Land Surveyor with the Commission, estimated the value of the 128 acres to be $26,400. The report on it, accompanied by a clear and interesting photograph taken from the road at the head of and looking down the lake, stated that a number of "whites" were renting summer home-sites on it. (See Report of the Royal Commission on Indian Affairs in the Province of British Columbia, Vol. III, pp. 700, 711, and map on p. 697. See also n. 249.)

280 B.C. Stat., 1919, c. 32, the Indian Affairs Settlement Act.

281 Can. Stat., 1920, c. 5, the Indian Affairs Settlement Act.

282 S.J.C. Report and Evidence, p. xx.

The joint ratification settled two of the problems which had been bedevilling Indian affairs in the province since 1871; namely, size, location, and nature of the reserves, and the reversionary interest in them. The 1,103 reserves found already in existence by the Commissioners were increased by 456, bringing the total number of reserves in British Columbia to 1,559. The acreage was increased from 666,640.25 to 773,642.83 acres, an addition of 107,002.58 acres. The work of the Commissioners gave each Indian on the average an increase of 3.58 acres, calculating from the Indian population of 21,489 as determined by the Commission.[283]

Interim Report No. 91 of February 1, 1916, dealt with lands reserved for the Indians in the Peace River district. The Slaves and Sicanees of the Fort Nelson area had signed an adhesion to Treaty No. 8 with the Dominion government on August 15, 1910.[284] This action removed 104,400 square miles of territory east of the Rockies from the jurisdiction of the British Columbia government.[285] The treaty allotted one square mile of land to each Indian. The Commissioners did not visit the area but they did stipulate that if the 75,147 acres in the five existing reserves were

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283 See Appendix B, Table X, "Summary of data, 1916 Indian Royal Commission Report." (Compiled from: Canada. Parliament. Report of the Royal Commission on Indian Affairs in the Province of British Columbia, 1916, Vol. I-IV.)

284 C.S.P., 1923, No. 14, p. 14. Treaty No. 8, of June 21, 1899, took in the Crees, Beavers, and Chipewayans of what is now northern Alberta.

285 S.J.C. Report and Evidence, p. 3.

found after a Dominion census to be less than the square mile per head, the province was to make good the deficiency.[286]

So far as the two governments were concerned, all three problems were now settled, one as a preliminary to the McKenna-McBride Agreement of 1912 and two by the 1916 Report. Laying the ghost of reversionary interest was a source of much satisfaction to the two governments, but it delighted the Indians even more. They now could feel secure on their lands, a security never before possible. The Indian Act had always permitted disposal of reserve land for purposes of public necessity in exactly the same manner as that in which the Land Act authorized the taking of any other land, Crown-granted or otherwise. As portions of their lands had increased in value commensurate with the progress of the province, the Indians were relieved to have their land, some of which was in highly desirable locations for provincial government purposes, transferred irrevocably to the Dominion.

Now that agreement had been reached between Ottawa and Victoria on all three issues, it is interesting to compare the areas of Indian reserves in the various provinces, as well as to note the number of acres per head, the value of the Indian lands, and the number of acres under cultivation in

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286 Report of the Royal Commission on Indian Affairs in the Province of British Columbia, Vol. I, pp. 126-128.

each province.[287]

INDIANS AND INDIAN LANDS IN CANADA, 1924

Prov.	Indian Population	Total area of Reserves	Per capita area	Under cultivation	Value of lands in reserves
		Acres	Acres	Acres	
Alberta	8,990	1,307,343	145.4	58,543	$17,368,117
B. C.	24,316	733,891	30.2	29,154	13,507,881
Manitoba	11,673	415,477	35.6	13,018	2,934,862
N. B.	1,606	34,507	21.5	377	71,008
N. W. T.	4,543	No information supplied			
N. S.	1,827	21,504	11.8	1,333	102,409
Ontario	26,706	1,045,037	39.1	63,959	4,946,005
P. E. I.	315	1,527	4.8	397	20,000
Quebec	13,191	175,220	13.3	9,751	1,429,020
Sask.	10,271	1,195,674	115.9	42,540	14,344,490
Yukon	1,456	No information supplied			
TOTALS:	104,894	4,930,180		219,072	$54,723,792

With the second largest population, British Columbia Indians in 1924 had the fourth highest total acreage and per capita allotment in Canada. In view of the high percentage of Indians in the province who derive their livelihood not from the soil but from the sea, their reserves are adequate if not liberal in extent. Reasonably as they seem to have been treated, however, the Indians were anything but pacified by the Royal Commission's Report of 1916. At no time did they accept it as a final award and settlement. The agitation which had been present among them since before Union now broke forth in a veritable deluge of petitions, statements, and memoranda directed at the local, federal, and Imperial

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287 These statistics have been compiled from information contained throughout the Annual Report of the Department of Indian Affairs and presented to the Hon. Charles Stewart, Minister of the Interior and Superintendent General of Indian Affairs by Dr. D.C. Scott, Deputy Superintendent General, November 6, 1924. (See C.S.P., 1925, No. 14, pp. 60-69.)

governments, and guided throughout by Rev. A.E. O'Meara who, since 1910, had been employed as a full-time counsel by the coast tribes. He served for sixteen years to keep alive the protest from the Indians and in this respect was simply carrying on the work begun by William Duncan after his dismissal by the Church Missionary Society in 1881.[288] Some harsh words had been said about Duncan seventy years ago; some equally harsh words were said about O'Meara not so long since. As the following letter from Sir John A. Macdonald to Senator Macdonald of Toronto indicates, there is little doubt that it was really Duncan, whose village had once been the model native colony on the continent, who was behind the agitation of the earlier era.

> As I learn from the enclosed letter from Mr. Duncan, that you take an interest in his course, I send you some papers concerning it, which please read and return. From my personal communications with Mr. Duncan, I have satisfied myself that he is an ambitious man, brooking no control, and refusing to obey the laws of the land. I believe that when first sent to Metlakahtla he did a great deal of good among the Indians, but afterwards he had become so accustomed to unrestrained power that he lost his head altogether.
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> Some years ago I happened to be in England before Mr. Duncan left for Alaska, and I did what I could to bring him and the Church Missionary Society together. I must say that that body showed every desire to act cordially with him. I went so far, being their Superintendent-General of Indian Affairs, as to offer him the appointment of Indian Agent at Metlakahtla district if he

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[288] In 1887, Duncan had removed himself and part of his colony to Annette Island off the coast of Alaska. (See Pope, Sir. J., Correspondence of Sir John Macdonald; selections from the correspondence of the Right Honourable Sir John Alexander Macdonald, G.C.B., first Prime Minister of the Dominion of Canada, Toronto, 1921, p. 459, n. 2.)

> would carry into effect as an Agent must do, the statutes relating to Indians and Indian reserves. This offer he declined, and did everything he could on his return to the district to prevent the carrying of the law into effect. Of this the British Columbia government complained again and again, and his conduct in disturbing the minds of the Indians caused so much trouble that the Provincial Government was obliged to appoint a stipendiary magistrate for the purpose of seeing the law obeyed - the Dominion Government paying the salary of that functionary. I am convinced that if he had not left the country we should have had armed resistance from some of the Indians of the Metlakahtla district. I send you these papers for your information only. 289

After the turn of the century, the Nishga tribe from Duncan's district spear-headed the drive to have the Indian claim adjudicated by the Judicial Committee. In March of 1909 the Indians had laid their claim before the Imperial government; in January of the next year a 'Statement of Facts and Claims' was placed in the hands of the Justice Department; in the same year a memorial was presented to Laurier, and delegations waited on all three governments. In each case their plea was for a ruling on their aboriginal title claim by the Privy Council.[290] Nor did the activity abate during the period 1913-1916 while the Royal Commission was active. Indeed, the activity increased, since the McKenna-McBride Agreement had set aside the whole matter of aboriginal title. Mr. ~~Justice~~ Newcombe, Deputy Minister of Justice, in answer to the request for an interpretation of

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289 Pope, Sir J., op. cit., p. 459.

290 S.J.C. Report and Evidence, pp. 52-54 and 58-60.

"final adjustment of all matters relating to Indian Affairs in the Province of British Columbia" as contained in the McKenna-McBride Agreement, had given as his official opinion that the words meant precisely what they said and would therefore exclude claims by either government for better or additional terms.[291] The Indians were spurred on to greater efforts.

Wishing to clear the way for a settlement, the Dominion passed an Order in Council in 1914 advising that the Indian claim be referred to the Exchequer Court of Canada with the right of appeal to the Privy Council guaranteed, providing that the Indians "shall, by their Chiefs or representatives, in a binding way, agree, if the Court, or on appeal, the Privy Council, decides that they have a title to the lands of the Province, to surrender such title," receiving in return benefits "in accordance with past usage of the Crown."[292]

The evidence taken before the Royal Commission in 1927 makes it clear beyond a doubt that, left to their own devices, the Indians would have accepted this offer. O'Meara, for reasons of his own, refused to agree to the surrender asked for in the 1914 Order in Council.[293] Throughout the

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291 Ibid., p. 10.

292 Ibid., p. 55. Order in Council, June 20, 1914.

293 When he learned of the Indians' refusal, and when he had received another letter from O'Meara on October 26, 1914, again stating the desire of the Indians to by-pass Canadian courts and go directly to the Privy Council, Hon. C.J. Doherty, Minister of Justice, included the following delightful sentence in his reply. "If, therefore, it be possible for me to make any statement here which can consistently with the

evidence taken in 1927, Hon. H.H. Stevens, familiar with O'Meara's activities since 1910, made it obvious that he had badly misled the Indians.[294]

In November, 1919, in response to a request from the provincial government, the Indians presented still another in a long list of statements to the local government. Included in the statement were their reasons for refusing to accept the findings of the 1916 Commission and a list of twenty 'Conditions proposed as a basis of Settlement.'[295] For the next three years, conferences were held between the executive of the Allied Tribes, an Indian organization formed to press their claims, and both governments, including a conference with the Hon. Charles Stewart. Stewart had come to British Columbia to confer on Indian problems. No agreement was reached.[296]

When the estimates for the Indian Department came up in the House of Commons in 1925, the Hon. Arthur Meighen wanted

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amenities of official correspondence, impress you with the futility of urging upon this government a reference direct to the Judicial Committee, I beg you to consider that statement incorporated in this letter." (See Ibid., p. ix. Doherty to O'Meara, November 14, 1914.)

[294] At one point, Hon. Mr. Stevens was moved to remark, "Oh, I have had twenty years of your nonsense, and I am tired of it." (See Ibid., p. 223.)

[295] See Appendix E, Item 7 for these two statements. The 1927 Committee Report reviewed and discussed each one in turn. (See Ibid., pp. xi-xvii.)

[296] Ibid., pp. 65-71.

to know what the "present position of this long standing controversy over the title to Indian lands" was. If the Indians wanted to present their case to the Privy Council, he could see no reason why that step should not be permitted.[297]

Stewart, as Minister of the Interior and therefore the responsible official, rose to explain that although the McKenna-McBride agreement had been carried out, it had in no way satisfied the Indians, "but inasmuch as the provincial government were threatening to cancel the arrangement altogether if we did not take action," that Agreement and the ensuing Report had had to be ratified.[298]

No better summation of the utter frustration of the Dominion government is available than Stewart's remarks. With rare candour for a Minister of the Crown, he admitted that he had no idea where to turn next.

> Regarding the controversy over the aboriginal title, I have been trying for the past three years to find out just what the Indians mean by this. Do they lay claim to all the lands in British Columbia in view of the fact that in ninety per cent of the cases no treaty had been signed between the tribes and representatives of the Crown? After a great deal of discussion I found that they did not lay claim to the land in its entirety, but they do say that before an adjustment can take place they should have certain specified and unspecified provisions made for them by the government of Canada. This is all so vague and difficult of understanding that it is very hard to arrive at any concrete definition of what their claims are. On behalf of the

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297 Canada. Parliament. House of Commons. Debates. June 26, 1925, p. 4993.

298 Ibid., pp. 4993-4994.

government I have informed them that we are prepared to do for them everything that was done for treaty Indians in any other part of Canada. As a matter of fact we are giving them the same consideration as we have given every other Indian in Canada. Still that does not seem to be enough; certain claims are made for compensation and so on. A gentleman whose name is no doubt known to most hon. members, Mr. O'Meara, spends his whole time investigating this very vexed question and preparing briefs for consideration. My hon. friend says, why not send it to the Privy Council?

Mr. Meighen: Why do you not let them take it?

Mr. Stewart: They want the government of Canada to pay their expenses.

Mr. Meighen: Oh, I see.

Mr. Stewart: I must confess that I do not see very much hope. I have joined with me in the investigation the Speaker of the Senate and the Minister of Public Works (Mr. King, Kootenay) in an endeavor to see whether or not we can get on common ground. We have asked the Indians to prepare a brief and they have done so. Their representatives were here some months ago and the Deputy Superintendent General is now getting ready a brief in reply to theirs. But one of the difficulties we have to meet is the vagueness of their demands. I defy anyone to get them down to a concrete basis, as, for example, so much for education, so much for relief, and so forth. That is one great difficulty and it looks hopeless to me. I believe the Privy Council would only come to one decision. They are quite likely to follow precedent and to say to the Indians, "You are entitled to the same consideration as had been given other tribes throughout Canada." That the government is prepared to give them, and for the life of me I do not know what to recommend. It seems to be an unending difficulty, and I do not see that the government would be warranted in paying expenses of representatives of the Indians to go over and argue the case before the Privy Council unless we have something very concrete presented to us.

Though still willing to give the Indians a hearing, the Dominion was rapidly losing all patience at the apparent lack of reason amongst the Indian executive as revealed in its lengthy 'Petition to Parliament' of June, 1926.[299] A

299 S.J.C. Report and Evidence, pp. xviii-xxii.

Special Joint Committee of the House and the Senate with the Hon. Hewitt Bostock, Speaker of the Senate, as chairman,[300] was convened on March 22, 1927, "to enquire into the claims of the Allied Indian Tribes of British Columbia." The Committee soon discovered that the Indians themselves were not in agreement as to the nature of their claims. The spokesmen of the interior tribes made no claim to any land based on aboriginal title, yet the representatives of the Allied Tribes[301] of the coast rested their whole case upon such a title. Through it they claimed beneficial interest to 251,000 square miles of the province, or all but the 358 square miles ceded to Douglas in the 1850's, and the 104,000 square miles included in Treaty No. 8.

In presenting its report, the Joint Committee took occasion to deplore the "mischievous" agitation "often carried on by designing white men," by which the Indians "are deceived and led to expect benefits from claims more or less fictitious."[302] After dealing with every claim,[303] the Committee

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300 The six senators on the Committee were: Hon. G.H. Barnard, N.A. Belcourt, R.F. Green, J.S. McLennan, Charles Murphy, and J.D. Taylor. The seven members of the House of Commons were: F.W. Hay, Hon. R.B. Bennett, W.A. Boys, E.A. McPherson, L.S.R. Morin, Hon. H.H. Stevens, and Hon. Charles Stewart.

301 It is perhaps significant that Rev. A.E. O'Meara was counsel for the Allied Tribes, but that the Interior tribes declined his assistance.

302 S.J.C. Report and Evidence, p. viii.

303 See Appendix E, Item 7, where these are listed.

arrived at the conclusion that the Indians in British Columbia were receiving benefits in excess of those granted to 'treaty' Indians elsewhere in Canada. The members were of the unanimous opinion that "the petitioners have not established any claim to the lands of British Columbia based on aboriginal or other title" and that "it is the further opinion of your Committee that the matter should now be regarded as finally closed."[304]

Thus ended what Trutch in 1872 had had the prescience to label "the most delicate and presently momentous responsibility of the Dominion Government within the Province."[305] The bitterness engendered between the two governments in the 1870's over implementing section 11 of the Terms of Union had established in British Columbia a pattern of thinking toward section 13 that was never changed. Personal animosities played their part, as did political expediency and individual duplicity. But though it took nearly sixty years to settle section 13, the Indians of the province, left to themselves, conducted themselves with restraint and patience while awaiting a settlement of what they considered to be their legitimate grievances.

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304 S.J.C. Report and Evidence, p. x.

305 In Appendix E, Item 4, last paragraph. So far as the local and federal governments are concerned, the aboriginal title controversy was and is closed. It is not with the Indians. The subject is still discussed at meetings of the Native Brotherhood. At the last meeting, held in April, 1956, at Cape Mudge, Mrs. Tom Hurley, editor of the Native Voice, was quoted in the press as saying that the Brotherhood should 'get an injunction against the government to have it settle for Indian lands.' "Charge them six per cent interest for the use of the land for all these years," Mrs. Hurley said. (See Nelson Daily News, April 14, 1956.)

The reserves in British Columbia, provided for under section 13 of the Terms of Union, allotted in the Commissioners' Report of 1916 and confirmed by both governments, are lands held in trust by the Dominion for the full and permanent beneficial interest of the Indians. All natural resources in the lands as are the property of the Indians are also for their benefit. This means that the provisions of the Land Act apply equally to Indian reserves as to other lands alienated by the Crown.

Under the new Indian Act of 1951, the Indians on a reserve may be granted "certificates of possession," which are the equivalent of Crown grants. The possession of these certificates carries with them the privilege of transferring the land back to the band or to another member of the band.[306] Section 35 of the new act permits the appropriation of any land on the reserve for public purposes, but only with the approval of the Governor in Council. The act also permits Indians to sell reserve land if the Band Council so decides, but the decision is subject to the approval of the Governor in Council. With the increased responsibility accorded the Band Council on any settled reserve or series of reserves, the Indians are now enjoying much the same prerogatives in regard to land as are found in other sections of the community. There is only one exception - Indians on reserves are not yet accorded the privilege of paying the tax bill. This disability has not

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306 Can. Stat., 1951, c. 29, ss. 20 and 24.

aroused any criticism from the Indian community.

At present there are 28,478 Indians[307] in British Columbia. They occupy 821,090 acres of reservation land, a per capita average of 28.8 acres. In 1913, when the Royal Commissioners began their thorough investigation of every reserve in the province, they found the acreage of already confirmed reserves to be 666,240.25 acres, an average of 31.00 acres for each of the 21,489 Indians then living on reserves.[308]

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307 Canada Yearbook, 1954, p. 147.

308 See Appendix D, Map III, "Okanagan Agency." The Commissioners visited every one of the fifteen agencies in the province during the years 1913-1916. Each reserve was surveyed and plotted on a map such as Map III. The task was monumental. Although the original maps are in colour to show old reserves confirmed, cut-offs or reductions advised, and new reserves created, this map conveys some slight conception of the magnitude of the Commissioners' undertaking.

CHAPTER 5

CONCLUSION

The least spectacular phase of the development of British Columbia from 1871 to 1913, but clearly the most significant, was the evolution of a land policy. In a province containing 230,000,000 acres, size alone would have presented numerous problems in legislating for the disposal of public lands. But when to the problem of size is added the further problems of rough and mountainous terrain, the presence of minerals, and the existence of timber stands second to none in the world, the original problem is complicated enormously. In later years, water resources as a source of hydroelectric power have added their difficulties to those already encountered in assuring to miners the water rights necessary to carry on their placer and hydraulic operations.

When British Columbia entered Confederation in 1871, the basis of land legislation had already been laid. Ordinances and proclamations issued from 1858 until 1864 by Governor Douglas had been revised and amended several times by 1871. The Gold Mining Act of 1869 regulated the activities of free miners and the operation of their claims. The Land Ordinance of 1870 made provision for pre-emptions, sale of land, both surveyed and unsurveyed, leases for various purposes, and water rights. As yet, there was no legislation covering timber.

With those two acts as the foundation, provincial governments added to them, altered, and discarded as the occasion required, in every case doing their best to provide wisely for the alienation of Crown land and its natural resources of minerals, timber, and water. By 1913, separate acts dealt with land by itself, minerals, timber, surveys, railways, and water.

Under various sections of the acts, British Columbia had alienated by 1913 approximately 31,000,000 acres of Crown land. In a province containing 230,000,000 acres of land, the figure would at first glance seem insignificant. It only takes on significance when it is realized that of the total acreage, a mere 6,000,000 to 7,000,000 acres are classified either as arable or potentially arable land. So far as can be determined, the acreage alienated was disposed of for the following purposes:

Mineral and coal lands	500,000 acres
Indian reserves	666,240 acres
Agricultural lands	2,500,000 acres
Timber lands	8,500,000 acres
Railway lands	18,694,334 acres
TOTAL	30,860,574 acres

In framing legislation for disposing of the land, three factors were kept constantly to the fore. These factors were the wish to encourage settlement, the desire to prevent speculation in public lands, and the acute need to provide an adequate revenue with which to administer such a large territory. Hardly had Governor Douglas assumed office in 1858 than he was cautioned by the Colonial Office to make land

readily available on attractive terms to all who wanted it. Aware of Douglas's distrust of Americans, Sir Edward Bulwer Lytton, the Colonial Secretary, especially instructed him that aliens should be permitted to secure land as soon as they had indicated their desire to become British subjects. At the same time he was instructing Douglas to encourage settlement, Lytton spoke strongly of the need to take immediate steps that would prevent speculation in public lands. Lytton knew that in a new colony the speculator was omnipresent. Without adequate legal safeguards explicitly designed to forestall his activities, the speculator would acquire large acreages of the best agricultural, timber, or mineral lands, to hold for a future sharp rise in price. Finally, Douglas was warned repeatedly that he must so frame his land legislation as to secure to the colony a revenue adequate to provide all the public services that would be demanded in so large and so new a territory.

The encouragement of settlers, the prevention of speculation, and the securing of a revenue were provided for in every subsequent Land Act after 1871. But there was nothing unique about this. What was more unusual, however, was the fact that Douglas had the opportunity to apply these principles in an uncharted wilderness, inhabited only by scattered bands of Indians. There were no malpractices hallowed by tradition to undo or disgruntled inhabitants spoiled by custom to placate. The field was clear. For that reason, Lytton offered Douglas a few further words of

advice.

In applying the three main principles, Douglas was directed to embody in his proclamations the further lesser principles of reserving to the Crown certain rights, of providing for the sale of land only by auction, of requiring prompt cash payment for the land, of surveying all land before sale, and of assuring beneficial use of the land before alienating it for any purpose.

By so advising Douglas, Lytton was giving him the benefit of the long experience the Colonial Office had had with the disposal of Crown lands in other territories. Realizing the value of the advice and having neither American nor Canadian example before him, Douglas at once implemented the five policies in his land proclamations. He reserved to the Crown all gold, wherever found, and the right of repossessing alienated land for government purposes. By 1913, silver had been added to the reservations to the Crown, as had coal, oil, and natural gas. Beneficial use was insisted upon in lands pre-empted, purchased, or leased. By 1871 the policy of beneficial use had been so thoroughly implanted in land legislation that it was never thereafter abandoned. Settlers who pre-empted land were required to 'prove up' within a specified time; leaseholders, whether of timber, hay, mineral, or coal lands were required to use the land for the purposes stated in the lease; purchasers were under the obligation of improving the land before they could buy any more.

However praiseworthy the legislation in regard to beneficial use, it was only as effective as the supervision required to ensure compliance with the law. To limit the amount of land that could be bought to 640 acres until improvements had been made to the original value of the land, as was done in 1891, was good theory. In practice, however, the law, like so many others, became a dead letter. To require pre-emptors under the law to 'prove up' within two years, as was done in 1875, was admirably fitted to speed the development of the province, but until inspection was provided, it too became a dead letter.

Beneficial use of land could not be insisted upon for the same reason Douglas abandoned the practices of sale by auction, prompt cash payments, and survey of the land before alienation. Neither Douglas nor provincial governments could afford to follow the theory. Settlers early discovered that by waiting until after the land auction they could acquire the land at the upset price rather than at an advanced price. And if Douglas wished to retain within the colonies any of the hapless miners who were coming down from the Cariboo in 1859 and 1860, he had to forego the requirement that they pay cash for their land. So far as surveying the land before alienation was concerned, Douglas reluctantly had to admit to the Colonial Office that much as he should have liked to retain the practice, he could not do so in view of the heavy expense involved. To have sent the Royal Engineers to scattered and isolated sections of Vancouver Island, the Cariboo, or the

Fraser Valley would have cost the colonial Treasury more than the value of the land.

For lack of a few extra thousand pounds sterling, Colonial Office theory had to be abandoned in the face of harsh reality in British Columbia. Fully aware of what was at stake, Douglas had asked the Home government repeatedly for loans with which to cover expenses involved in surveying and providing communication services, only to be curtly informed that Vancouver Island and British Columbia, like any other colonies, had to be financially independent. The result was the end of planned settlement throughout the two colonies, the easing of restrictions to the point where agricultural lands were alienated wholesale, and the granting of natural resources to anyone willing to pay the modest price. Had the British government seen fit to underwrite the paltry sums Douglas required, the history of land disposal in British Columbia might well have been very different.

In view of the constant deficits experienced by every provincial government down to 1905, British Columbians may be justly thankful that more public lands and natural resources were not permanently alienated than was the case by 1913. Land, being the most readily available asset, was disposed of in large tracts on easy terms to all comers for over thirty years. The majestic timber stands on Vancouver Island and the coast of the mainland were alienated with similar abandon. The only reason the Crown in British Columbia retained all but approximately 1,000,000 acres

of the provincial timber lands was that until 1900 standing timber was looked upon with a jaundiced rather than a glinting eye. It was a nuisance, a brake on settlement, and a hindrance to communication. After 1905, when the timber stands of the province were thrown open to licensees, the rush from all over the continent to secure those licences was so great that although a huge revenue was secured, the McBride government took stock of the situation and decided to place all unalienated timber lands under government reserve. There they have remained ever since, henceforth to be disposed of by auction only after an upset price on a limited area had been set by the Forest Service. The land under the timber is retained by the Crown. From 1905 to 1907 a total of 7,500,000 acres of timber land was alienated more or less permanently, since the licences were renewable in perpetuity. The 1,000,000 acres had been bought outright in the days before sale of timber lands was restricted.

Another early result of the financial stringency prevailing in colonial days was that Governor Douglas had to abandon his plan of buying out the Indian title to all the lands of the colonies. His policy then was to set aside for Indian reserves any lands used by the Indians or requested by them. In 1876 when the Joint Allottment Commission took to the field to establish reserves throughout the province, the railway difficulties had so embittered Dominion-provincial relations that the province placed every conceivable obstacle

in the path of a quick, equitable, and final settlement of Indian reserves. The result has been that the original problem of the size of reserves was further confused by the addition of what came to be known as the province's reversionary interest and the Indians' claim of aboriginal title.

Thirdly, lack of money with which to carry on surveying has meant that British Columbia achieved the dubious distinction of being the only Canadian province in which land was alienated prior to survey. To overcome the absence of prior government survey every Land Act has required the holder of Crown lands to have the land surveyed before a Crown grant would be issued. Two unfortunate circumstances have attended the government's failure to survey. In the first place, throughout the province there were for years innumerable plots of legally acquired land the location of which was for many years not definitely known on the maps in the Lands Office in Victoria. The embarrassing situation arose from the fact that private surveyors were hired to do much of the surveying that was done before 1900. To this day there are not many regions in the province where, when modern survey methods are applied, it is not discovered that original survey stakes are badly out of line. In many such cases, the discovery of incorrect surveys is more frustrating and annoying than significant, but in others, expensive litigation has followed.

In the second place, the failure of the provincial government to institute prior surveys of land for settlement

has resulted in scattering settlement even more than would have been the case in such a large province with its widely separated and inaccessible valleys. For more than 35 years settlers received no direction as to where their efforts at farming would be most likely to succeed. The lack of direction was particularly unfortunate in British Columbia where soils and rainfall vary so greatly from one valley to another. With provincial reserves placed on so much land held for subsidizing railroads after 1883 and with no information as to where best to locate, settlers have taken up marginal lands that should not have been pre-empted and where the provision of transportation services became an added burden on the province.

By 1900 settlers were scattered throughout the province with no regard for either probable success or communication facilities. Their isolation made expenditures for public works even more expensive than would normally have been the case. Beginning with Premier Dunsmuir in 1901 and continuing to the present, governments in British Columbia have repeatedly appealed to the federal government for special financial consideration. The basis of the argument for "Better Terms" has been that provision for public services, particularly transportation services, is more expensive on a per capita basis than elsewhere in Canada. The history of provincial settlement would indicate, however, that the expense has been materially increased as a result of indiscriminate settlement permitted by former provincial

governments.

To provide the transportation facilities demanded by miners and settlers, the Smithe ministry began the practice in 1883 of subsidizing railway companies with large blocks of Crown lands. The Smithe 'dynasty' which lasted until the end of the Turner regime in 1898 granted to five railway companies whose lines were built a total of 8,233,410 acres of land. For lines which never were constructed, a conservative estimate would be that four times that acreage was granted as land subsidies. Again, the acreage may be regarded as insignificant among 230,000,000 acres, but only until it is realized that rail lines were built through the valleys of the province and that their subsidy lands were taken from the severely limited acreage of arable land. The reservation of so much land at one time for railway purposes seriously hampered settlement, but by the 1890's provision of railway facilities at any cost was considered of more importance than securing suitable lands to settlers. Protests against locking up so much land under government reserve came in from various sections of the province, but in vain. With the example of the Railway Belt before them, as well as the American example of granting millions of acres of public lands for railway purposes, the government accorded railway promoters preferential treatment. When the heyday of land subsidies to railways had passed, over 4,000,000 acres of subsidy lands were repurchased at forty cents an acre by the McBride government in 1912, and

the unalienated portions of the Railway Belt lands were returned to the province in 1930. Neither event, however, alters the fact that in 1913, a total of 22,759,410 acres of provincial lands had been granted to provide railways.

British Columbia practice followed American example in three respects. The first was with regard to subsidizing railways with large acreages of Crown lands. More particularly, provincial practice in British Columbia copied the eastern Canadian example, but it in turn was modelled directly on American policy. Prime Minister Macdonald's first Canadian Pacific Railway Act in 1872 followed the American example of awarding the contract to a private company in return for huge acreages, from the sale of which the company was expected to reimburse itself. The railway company would sell the land at $1.00 an acre, usually, to land companies. The land companies would then resell the land at whatever price they could get to settlers brought in by the railway company. A similar practice was adopted in British Columbia, and with similar results. It was soon discovered by the railway companies that rather than make money from the sale of the land, it was wiser and more profitable in the long run to dispose of the land as cheaply as possible to settlers and reap the profits from transporting their produce to market and supplying them with necessary materials and equipment.

Secondly, British Columbia adopted the American practice of granting pre-emptions, but again the example came by way of eastern Canada. The pre-emption system,

combined with the activities of land companies and railways, had been found to work well as a method of peopling the American west. It proved to be most satisfactory on the Canadian prairies, but in British Columbia, with the exception of the years 1875 to 1879, land was never free. While homesteads were still available on the prairies, settlers coming to British Columbia discovered that they must either buy the land or pay for it on the installment plan by pre-empting. The system could have been much more successful than it was had the government accepted the responsibility of directing settlement to more favourable areas.

Finally, British Columbia denied the principle of riparian ownership of water embodied in the English Common Law. A similar abandoning of the principle took place in the western American states where mining was also the first attraction to immigrants. In the Gold Fields Act of 1858 Douglas provided that water could be diverted for mining purposes. The practice has been continued ever since, although it was never carried so far as it was in the case of many American states. As in the case of agricultural or mineral lands, prior record of water established prior right.

Framing legislation for such diverse activities as farming and ranching, mining and lumbering, as well as for the construction of railways and the allotting of Indian reserves was a monumental task and one fraught with innumerable obstacles and hazards. That the province could by 1913 boast of the best mining laws on the continent, timber

legislation as enlightened as any to be found in the world, and the most advanced water legislation is indeed a credit to the many pioneer legislators who had a part in the work. More especially is this the case when it is appreciated that to the immensity of the original task was added the further complication of the presence of a forty-mile strip of land through the heart of the province granted to the Dominion government in 1871 in return for rail connections with eastern Canada. Undoubtedly the Railway Belt made British Columbia unique in the world. Had either the province or the Dominion had any intimation of the frustrations that lay in the future regarding mineral rights, water rights, foreshore rights, pre-emption claims and other jurisdictional conflicts, both governments would have hesitated a long time before sanctioning section 11 of the Terms of Union. Sorting out rights took sixty years during which appeals were made constantly to the Privy Council. An attitude of dislike and mistrust arose in British Columbia toward the Dominion government that is even yet not entirely dispelled.

APPENDIX A.

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Land Ordinance, 1870 440

APPENDIX A

"An Ordinance to amend and consolidate the Laws affecting Crown Lands in British Columbia." (British Columbia. Executive Council. The Laws of British Columbia consisting of the Acts, Ordinances, & Proclamations of the Formerly Separate Colonies of Vancouver Island and British Columbia, and of the United Colony of British Columbia, with Table of Acts, Alphabetical Index, and Appendix, Victoria, Government Printing Office, by Authority, 1871. Assented to June 1, 1870.)

WHEREAS it is expedient to amend and consolidate the Laws affecting Crown Lands in British Columbia:

Be it enacted by the Governor of British Columbia, with the advice and consent of the Legislative Council thereof, as follows:

1. In the construction of and for the purposes of this Ordinance (if not inconsistent with the context or subject matter) the following terms shall have the respective meanings hereinafter assigned to them:-

"The Governor" shall mean the Governor of British Columbia, or any person for the time being lawfully exercising the authority of a Governor of British Columbia.

"Chief Commissioner of Lands and Works and Surveyor General" shall mean and include the Chief Commissioner of Land and Works and Surveyor General and any person for the time being lawfully acting in that capacity.

"Commissioner" shall mean the Chief Commissioner of Lands and Works and Surveyor General of this Colony, or the person acting as such for the time being, and shall include every Stipendiary Magistrate for the time being in charge of any District, and every person duly authorized by the Governor to act as and for the Chief Commissioner of Lands and Works and Surveyor General, as Assistant Commissioner of Lands and Works in any District in which the land that may be referred to lies, other than that in which the chief office of the Lands and Works Department is situated, and any other District or Districts for which no such Assistant Commissioner of Lands and Works as aforesaid has been appointed.

"Supreme Court" shall mean the Supreme Court of British Columbia.

"The Crown" shall mean Her Majesty, Her heirs and successors.

"Crown Lands" shall mean all lands of this Colony held by the Crown in fee simple.

"Acts" shall mean any Proclamation or Ordinance having the force of law in this Colony.

Words importing the singular number shall include more persons, parties, or things than one, and the converse.

2. The following Acts, Ordinances, and Proclamations relating to the disposal and regulation of the Crown Lands of the Colony are hereby repealed:-

An Act dated February 14th, 1859:
An Act dated January 4th, 1860:
An Act dated January 20th, 1860:
The "Pre-emption Amendment Act, 1861":
The Country Land Act, 1861":
The "Pre-emption Purchase Act, 1861":
The "Pre-emption Consolidation Act, 1861":
The "Mining District Act, 1863":
The "Land Ordinance, 1865":
The "Pre-emption Ordinance, 1866":
The "Pre-emption Payment Ordinance, 1869": and
The "Vancouver Island Land Proclamation, 1862":

but such repeal shall not prejudice or affect any rights acquired or payments due, or forfeitures or penalties incurred prior to the passing of this Ordinance in respect of any land in this Colony.

Pre-emption

3. From and after the date of the proclamation in this Colony of Her Majesty's assent to this Ordinance, any person being a British subject, of the age of eighteen years or over, may acquire the right to pre-empt any tract of unoccupied, unsurveyed, and unreserved Crown Lands (not being an Indian settlement) not exceeding three hundred and twenty acres in extent in that portion of the Colony situate to the northward and eastward of the Cascade or Coast Range of Mountains, and one hundred and sixty acres in extent in the rest of the Colony. Provided that such right of pre-emption shall not be held to extend to any of the Aborigines of this Continent, except to such as shall have obtained the Governor's special permission in writing to that effect.

4. Any Chartered or Incorporated Company may acquire such right by obtaining special permission in writing from the Governor to that effect, but not otherwise; and the Governor may grant or refuse such permission at his discretion.

5. Any person desiring to pre-empt as aforesaid, shall first apply to and obtain from the Commissioner permission in writing to enter upon such land, which must be fully described in writing by the applicant, and a plan thereof must be deposited with the Commissioner, and such description and plan shall be in duplicate.

6. After such permission has been obtained, and within such time, not exceeding thirty days thereafter, as shall be specified by the Commissioner in such permission, such person shall enter into possession of the land so described, and place at each corner thereof a post marked with his name, or other distinguishing sign, and thereupon shall apply in writing to the said Commissioner to have his claim recorded to such tract of land, not exceeding three hundred and twenty acres, or one hundred and sixty acres, as the case may be, as hereinbefore provided.

7. If such land has not been previously recorded, the Commissioner shall, upon the fulfillment of the applicant of the preceding requirements, and upon payment by him of a fee of two dollars, record such land in his favour as a pre-emption claim, and give him a certificate of such pre-emption record, in the Form A. in the Schedule hereto; and such record shall be made by the Commissioner in triplicate, the original to be handed to the pre-emptor, a duplicate to be retained by the Commissioner for local reference, and the triplicate to be forwarded forthwith to the head office of the Lands and Works Department, to be there examined, and if found in all respects (or if necessary after having been amended by the Chief Commissioner of Lands and Works and the Surveyor General so as to be) in accordance with the provisions of this Ordinance, to be finally registered in the Land Office Pre-emption Register.

8. Every piece of land sought to be acquired as a pre-emption claim, under the provisions of this Ordinance, shall, save as hereinafter excepted, be of a rectangular shape, and the shortest line thereof shall be at least two-thirds of the length of the longest line. Such lines shall run as nearly as possible north and south, and east and west.

9. Where such land is in whole or in part bounded by any mountain, rock, lake, river, swamp, or other natural boundary, or by any public highway, or by any pre-empted or surveyed land, such natural boundary, public highway, pre-empted or surveyed land, may be adopted as the boundary of such land; and it shall be sufficient for the claimant to show to the Commissioner that the form of the land conforms as nearly as circumstances permit to the provisions of this Ordinance.

10. The Chief Commissioner of Lands and Works and Surveyor General may, however, in carrying out any Government Survey, if in his opinion circumstances require it, survey pre-emption claims or purchased lands recorded previous to the date of this Ordinance, by such metes and bounds as he may think proper; and every survey so made and certified by him in writing shall be binding upon all parties affected thereby, and the survey so certified shall be deemed, in any Court of this Colony, to have been done in compliance with the provisions of this Ordinance.

11. A pre-emptor shall be entitled to receive from the Commissioner a certificate, to be called a "Certificate of Improvement", in the Form B. of the Schedule hereto, upon his proving to the Commissioner, by the declarations in writing of himself and two other persons, that he has been in occupation of his pre-emption claim from the date of the record thereof, and has made permanent improvements thereon, to the value of two dollars and fifty cents per acre. Such certificate shall be in triplicate, the original to be handed to the pre-emptor, the duplicate retained by the Commissioner for local reference, and the triplicate transmitted forthwith to the head office of the Lands and Works Department; and it shall be the duty of the Commissioner to note the issue of such certificate on the original pre-emption record, which must be produced to him at the time of applying for the certificate by the pre-emptor, and on the duplicate thereof retained in the Commissioner's office.

12. Every such declaration shall be subscribed by the person making same, and shall be filed with the Commissioner, who is hereby fully authorized and empowered to take the same; and such declarations shall be in the Form C. in the Schedule, and shall be made before such Commissioner, under and subject to the provisions and penalties of the "Oaths Ordinance, 1869".

13. After the grant of the Certificate of Improvement, but not before, the pre-emption right in the land referred to in such certificate may be transferred to any person entitled to hold a pre-emption claim under this Ordinance, subject, however, to the continuance of all the provisions of this Ordinance as to occupation, forfeiture, and payment of purchase money due or to become due to the Crown.

14. Every such transfer must be made in writing, signed by the person making the same, or his attorney in fact, in the Form D. in the Schedule, or in words to that effect, and in the presence of the Commissioner, and if not so made shall be void; and such transfer shall be in triplicate, the original to be retained by the person in whose favour the transfer is made, the duplicate to be retained as a record in the office of the Commissioner, and the triplicate forwarded forthwith to be registered in the head office of the Lands and Works Department. Upon the examination of such transfer in the manner and form so prescribed, and on payment of the fee of two dollars, the Commissioner shall cancel the previous record of such pre-emption right, and record the same anew, in the manner prescribed in Section 7, in the name of the person in favour of whom such transfer shall have been made, subject to the completion of the period of occupation required by this Ordinance, and to all other the terms and conditions thereof.

15. Whenever any pre-emptor shall permanently cease to occupy his pre-emption claim, save as hereinafter provided, the Commissioner may in a summary way, upon being satisfied of such permanent cessation of occupation, cancel the claim of the pre-emptor so permanently ceasing to occupy the same, and all deposits paid, and all improvements and buildings made and erected on such land, shall be absolutely forfeited to the Crown, and the said land shall be open to pre-emption and may be recorded anew by the Commissioner as a pre-emption claim, in the name of any person satisfying the requirements in that behalf of this Ordinance.

16. The occupation herein required, shall mean a continuous bona fide personal residence of the pre-emptor on his pre-emption claim. Provided, however, that the requirement of such personal occupation shall cease and determine after a period of four years of such continuous occupation shall have been fulfilled.

17. Every holder of a pre-emption claim shall be entitled to be absent from his claim for any one period not exceeding two months during any one year. As an ordinary rule he shall be deemed to have permanently ceased to occupy his claim when he shall have been absent, continuously, for a longer period than two months, unless leave of absence have been granted by the Commissioner, as hereinafter provided.

18. If any pre-emptor shall show good cause to the satisfaction of the Commissioner, such Commissioner may grant to the said pre-emptor leave of absence for any period of time, not exceeding four months in any one year, inclusive of the two months' absence from his claim, provided for in Clause 17. Such leave of absence shall be in the Form E. in the Schedule hereto, and shall be made out in duplicate, the original to be handed to the pre-emptor, and the duplicate to be retained in the office of the Commissioner.

19. If any pre-emptor shall show good cause to the satisfaction of the Commissioner, he may grant him a "Licence to Substitute", for any period not exceeding six calendar months, in the Form F. in the Schedule hereto, in duplicate, the original to be handed to the pre-emptor, and the duplicate to be retained of record in the office of the Commissioner. The continuous personal residence of the person named in such licence (such person not being or becoming subsequently to the date of the licence a claimant of land under any Law or Proclamation regulating the pre-emption of land within the Colony), shall, during the continuance of the licence, and after the record therewith with the Commissioner, be as effectual as the continuous personal residence of the claimant himself.

20. No person shall be entitled to hold, at the same time, two claims by pre-emption; and any person so pre-empting more than one claim shall forfeit all right, title, and interest to the prior claim recorded by him, and to all improvements made and erected thereon, and deposits of money paid to Government on account thereof; and the land included in such prior claim shall be open for pre-emption.

21. When the Government shall survey the land included in a pre-emption claim, the person in whose name the said claim stands registered in the Pre-emption Register of the Land Office shall, provided a Certificate of Improvement shall have been issued in respect of such land, and that the condition of four years occupation required by this Ordinance has been duly fulfilled, shall be entitled to purchase the said land at such rate, not exceeding one dollar per acre, as may be determined upon by the Governor for the time being, payable by four equal annual installments, the first installment to be paid to the Commissioner at his office, within three calendar months from the date of the service on the said pre-emptor of a notice from the Chief Commissioner of Lands and Works and Surveyor General requiring payment for the said land, or within six calendar months after the insertion of a notice to such effect, to be published for and during such period in the Government Gazette, or in such newspaper, published in the Colony, as the Commissioner may direct.

If the purchase money for such land be not paid, according to the terms of such notice, the pre-emption claim over such land may, at the discretion of the Commissioner, be cancelled and all such land, and the improvements thereon, and any installments of the purchase money paid thereon, may be forfeited absolutely to the Crown.

22. The Crown grant to a pre-emption claim will not be issued unless it shall have been proved to the Commissioner that written or printed notices of the intended application for such grant have been posted for a period of sixty days prior to such application, upon some conspicuous part of the said pre-emption claim, and upon the adjacent claims (if any), and upon the Courthouse of the District wherein the land lies.

23. Upon payment of the whole of the purchase money for such land, and upon production to the Chief Commissioner of Lands and Works and Surveyor General of a certificate in Form G. in the Schedule hereto, from the Commissioner of the District in which such land is situated, that the notices of intended application for a Crown Grant of such land have been duly posted as required in the previous Section, without any objection to the issue of such grant having been substantiated, a Crown Grant or Conveyance, in the Form H. of the Schedule hereto of the fee simple of the said land shall be executed in favour of the purchaser.

Provided, that every such Crown Grant shall be deemed to include, among the reservations therein contained, a reserve in favour of the Crown, its assignees, and licencees, of the right to take from any such land, without compensation, any gravel, sand, stone, lime, timber, or other material which may be required in the construction, maintenance, or repair of any roads, ferries, bridges, or other public works.

24. In the event of the death of any pre-emptor under this Ordinance, his heirs or devisees (as the case may be) if resident in the Colony, shall be entitled to a Crown Grant of the land included in such pre-emption claim, if lawfully held and occupied by such pre-emptor at the time of his decease, but subject to the payment of the full amount of purchase money for such land then due or to become due: but if such heirs or devisees be absent from the Colony at the time of such decease, the Chief Commissioner of Lands and Works and Surveyor General is hereby authorized and empowered to make such disposition of the pre-emption claim, and such provision for the person (if any) entitled thereto, or interested therein, as he may deem just and proper.

25. Every person lawfully occupying a pre-emption claim situated to the northward and eastward of the Cascade or Coast Range of mountains, at the date of the passing of this Ordinance, if less than three hundred and twenty acres may, with the permission of the Commissioner, pre-empt land liable to pre-emption, and immediately contiguous to or abutting on his said existing claim, so as to make up the total amount of his claim to three hundred and twenty acres, and thereupon such total claim shall be deemed to have been and to be taken up and held under the provisions of this Ordinance.

Leases

26. Leases of any extent of unpre-empted and unsurveyed land may be granted for pastoral purposes by the Governor in Council, to any person or persons whomsoever, being bona fide pre-emptors or purchasers of land in the vicinity of the land sought to be leased, at such rent as the Governor in Council shall deem to be expedient; but every such lease of pastoral land, among other things, shall contain a condition making such lands liable to pre-emption, reserve for public purposes, and purchase by any persons whomsoever, at any time during the term thereof, without compensation, save by a proportionate deduction of rent; and to a further condition, that the lessee shall, within six months from the date of such lease, stock the property demised in such proportion of animals to the one hundred acres as shall be specified by the Commissioner.

27. Leases of unoccupied and unsurveyed land, not exceeding five hundred acres in extent, may be granted by the Governor in Council, for the purpose of cutting hay thereon, to any person or persons whomsoever, being bona fide pre-emptors or purchasers of land, at such rent as the Governor in Council shall deem expedient. The term of such lease shall not exceed five years; but every such lease shall, among other things, contain a condition making such land liable to pre-emption, reserve for public purposes, and purchase by any person whomsoever, at any time during the term thereof, with such compensation for improvements made thereon, to be paid to the leaseholder, as shall be fixed by the Commissioner of the District.

28. Leases of any extent of unpre-empted Crown lands may be granted by the Governor in Council to any person, persons, or corporation duly authorized in that behalf, for the purpose of cutting spars, timber, or lumber, and actually engaged in those pursuits, subject to such rent, terms, and provisions as shall seem expedient to the Governor in Council; provided, however, that any person may hereafter acquire a pre-emption claim to or upon any part of such leased land, by complying with the requirements of this Ordinance. Such pre-emptor shall, however, only be entitled to cut such timber as he may require for use upon his claim; and if he cut timber on the said land for sale, or for any purpose other than for such use as aforesaid, or for the purpose of clearing the said land, he shall absolutely forfeit all interest in the land acquired by him and the Commissioner shall cancel his claim thereto.

29. The application for any such lease must be in writing, in duplicate, addressed to the Commissioner who shall retain the original in his office, and transmit the duplicate through the head office of the Chief Commissioner of Lands and Works, to the Governor in Council, who shall alone decide on any such lease.

Water

30. Every person lawfully entitled to hold a pre-emption under this Ordinance, and lawfully occupying and bona fide cultivating lands, may divert any unrecorded and unappropriated water from the natural channel of any stream, lake, or river, adjacent to or passing through such land, for agricultural and other purposes, upon obtaining the written authority of the Commissioner of the District to that effect, and a record of the same shall be made with him, after due notice as hereinafter mentioned, specifying the name of the applicant, the quantity sought to be diverted, the place of diversion, the object thereof, and all such other particulars as such Commissioner may require; for every such record, the Commissioner shall charge a fee of two dollars; and no person shall have any exclusive right to the use of such water, whether

the same flow naturally through or over his land, except such record shall have been made.

31. Previous to such authority being given, the applicant shall, if the parties affected thereby refuse to consent thereto, post up in a conspicuous place on each person's land through which it is proposed that the water should pass, and on the District Courthouse, notices in writing, stating his intentions to enter such land, and through and over the same take and carry such water, specifying all particulars relating thereto, including direction, quantity, purpose, and term.

32. Priority of right to any such water privilege, in case of dispute, shall depend on priority of record.

33. The right of entry on and through the lands of others, for carrying water for any lawful purpose upon, over, or under the said land may be claimed and taken by any person lawfully occupying and bona fide cultivating as aforesaid, and (previous to entry) upon paying or securing payment of compensation, as aforesaid, for the waste or damage so occasioned, to the person whose land may be wasted or damaged by such entry or carrying of water.

34. In case of dispute, such compensation or any other question connected with such water privilege, entry, or carrying may be ascertained by the Commissioner of the District in a summary manner, without a jury, or if desired by either party, with a jury of five men.

35. Water privileges for mining or other purposes, not otherwise lawfully appropriated, may be claimed, and the said water may be taken upon, under, or over any land so pre-empted or purchased as aforesaid, by obtaining a grant or licence from the Commissioner of the District; and, previous to taking the same, paying reasonable compensation for waste or damage to the person whose land may be wasted or damaged by such water privilege, or carriage of water.

36. All assignments, transfers, or conveyances of any pre-emption right, heretofore or hereafter acquired, shall be construed to have conveyed and transferred, and to convey and transfer, any and all recorded water privileges in any manner attached to or used in the working of the land pre-empted.

37. Every owner of a ditch or a water privilege shall be bound to take all reasonable means of utilizing the water taken by him; and if he shall wilfully take and waste any unreasonable quantity of water, it shall be lawful for the Commissioner to declare all rights to the water forfeited

Ejectment

38. Any person lawfully occupying a pre-emption claim, or holding a lease under this Ordinance may, in respect thereof, institute and obtain redress in an action of ejectment or of trespass in the same manner and to the same extent as if he were seised of the legal estate in the land covered by such claims; but either party thereto may refer the cause of action to the Stipendiary Magistrate of the District wherein the land lies, who is hereby authorized to proceed summarily to make such order as he shall deem just. Provided, however, that if requested by either party, he shall first summon a jury of five persons to hear the cause, and their verdict and award on all matters of fact shall be final.

Jury

39. It shall be lawful for any Magistrate, by any order under his hand, to summon a jury of five persons for any purpose under this Ordinance, and in the event of non-attendance of any person so summoned he shall have the power to impose a fine not exceeding twenty five dollars.

Appeal

40. Any person affected by any decision of a Magistrate or Commissioner under this Ordinance may, within one calendar month after such decision, but not afterwards, appeal to the Supreme Court in a summary manner, and such appeal shall be in the form of a petition, verified by affidavit, to any Judge of such Court, setting out the points relied upon; and a copy of such petition shall be served upon the Commissioner whose decision is appealed from, and such time shall be allowed for his answer to the said petition as to the Judge of the Supreme Court may seem advisable; but no such appeal shall be allowed except from decisions on points of law.

41. Any person desirous of appealing in manner aforesaid, may be required, before such appeal be heard, to find such security as may be determined by the Commissioner whose decision is appealed from, and such appeal shall not be heard until after security to the satisfaction of the Commissioner shall have been given for the due prosecution of such appeal and submission thereto.

Surveyed Lands

42. The Governor shall at any time, and for such purposes as he may deem advisable, reserve, by notice published in the Government Gazette, or in any newspaper of the Colony,

any lands that may not have been either sold or legally pre-empted.

43. The upset price of surveyed lands, not being reserved for the sites of Towns or suburbs thereof, and not being reputed to be mineral lands, shall be one dollar per acre; and the upset price of Town and Suburban lots shall be such as the Governor may in each case specially determine.

44. Except as aforesaid, all the lands in British Columbia will be exposed in lots for sale by public competition at the upset price above mentioned, after the same shall have been surveyed and made ready for sale. Due notice shall be given of all such sales; notice at the same time shall be given of the upset price and terms of payment when they vary from those above stated, and also of the rights specially reserved (if any) for public convenience.

45. All lands which shall remain unsold at any such auction may be sold by private contract at the upset price and on the terms and conditions herein mentioned, on application to the Chief Commissioner of Lands and Works and Surveyor General, or other person for the time being duly authorized by the Governor in that behalf.

46. Unless otherwise specially notified at the time of sale, all Crown lands sold shall be subject to such public rights of way as may at any time after such sale be specified by the Chief Commissioner of Lands and Works and Surveyor General, and to the right of the Crown to take therefrom, without compensation, any stone, gravel, or other material to be used in repairing the public roads, and for such private rights of way, and of leading or using water for animals, and for mining and engineering purposes, as may at the time of such sale be existing.

47. Unless otherwise specially announced at the time of sale, the conveyance of the land shall include, except as provided in Section 23, all trees and all mines and minerals within and under the same (except mines of gold and silver.).

Free Miners' Rights

48. Nothing herein contained shall exclude Free Miners from entering upon any land in this Colony, and searching for and working minerals; provided that such Free Miner prior to so doing shall give full satisfaction or adequate security to the satisfaction of the Commissioner, to the pre-emptor or tenant in fee simple, for any loss or damage he may sustain by reason thereof. If the amount of

compensation (if any) cannot be agreed upon, the Stipendiary Magistrate or Gold Commissioner of the District wherein the land lies, with the assistance, if desired by either party, of a jury of five persons to be summoned by him, shall decide the amount thereof, and such decision and award shall be final. If there be no such Stipendiary Magistrate or Gold Commissioner in the said District, the Supreme Court shall have jurisdiction in the matter.

Free Grants

49. It shall be lawful for the Governor in Council to make such special free or partially free grants of the unoccupied and unappropriated Crown Lands of the Colony, for the encouragement of immigration or other purposes of public advantage, with and under such provisions, restrictions; and privileges, as to the Governor in Council may seem most advisable for the encouragement and permanent settlement of immigrants, or for such other public purposes as aforesaid.

50. Nothing in this Ordinance contained shall be construed so as to interfere prejudicially with the rights granted to Free Miners under the "Gold Mining Ordinance, 1867."

51. The Schedule hereto shall form part of this Ordinance.

52. Each Commissioner appointed under this Ordinance shall keep a book or books in which he shall enter the date and particulars of every pre-emption record, certificate of improvement, licence to substitute, transfer, or other document relating to or in any manner affecting any pre-emption claim within his District.

53. All fines and fees payable under this Ordinance shall be deemed to be made payable to the use of the Crown.

54. This Ordinance shall not take effect until Her Majesty's assent thereto shall have been proclaimed in this Colony.

55. This Ordinance may be cited for all purposes as the "Land Ordinance, 1870".

Passed by the Legislative Council the 22nd day of April, A.D. 1870.

Charles Good,
Clerk of the Council.

Philip J. Hankin,
Presiding Member.

Assented to, in Her Majesty's name, this 1st day of June, 1870.

A. Musgrave,
Governor.

APPENDIX B.

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APPENDIX C, ITEM 1.

EXAMPLE OF A PROVINCIAL ACT OF INCORPORATION OF A RAILROAD.

"An Act to incorporate the Ashcroft and Cariboo Railway Company." (B.C. Stat., 1890, c. 60. Assented to April 26, 1890.)

Whereas a petition has been presented praying for the Incorporation of a Company for the purpose of constructing and working a railway at a point on the Canadian Pacific Railway near Ashcroft, in the Province of British Columbia, running in a northerly direction and terminating at a point at or near Barkerville, in the District of Cariboo:

And whereas it is expedient to grant the prayer of the said petition:

Therefore Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:-

1. David Oppenheimer, Harry Abbott, and John Milne Browning, all of the city of Vancouver, in the Province of British Columbia and the Dominion of Canada, and such other persons and corporations as shall in pursuance of this Act become shareholders, are hereby constituted a body corporate and politic by the name of "The Ashcroft and Cariboo Railway Company," hereafter called the "Company."

2. The Company may lay out and construct and operate a railway of a gauge not less than three feet, from a point on the Canadian Pacific Railway near Ashcroft, in the Province of British Columbia, running in a northerly direction and terminating at a point at or near Barkerville, in the District of Cariboo, in the Province of British Columbia.

3. The capital stock of the company shall be 10,000,000 dollars, divided into 100,000 shares of $100 each, which shall be applied first to the payment of all costs and expenses incurred in obtaining possession of this Act, and the remainder for the purpose of the Company's undertaking, that the said capital stock may be increased from time to time by the vote of the majority in value of the shareholders present or represented by proxy at any meeting specially called for that purpose.

4. The persons named in the first section of this Act shall be and are hereby constituted Provisional Directors of the Company, of whom two shall form a quorum for the transaction of business. And they shall hold office until the first election of Directors under this Act, and shall have power to open stock books and to procure subscription of stock for the undertaking and receive payments of stock subscribed

and to issue stock.

5. The head office of the Company shall be in the city of Vancouver, or at such other place in British Columbia as the Company in general meeting may determine.

6. The Provisional Directors may order a general meeting of the shareholders at such time as they may think proper, giving at least 14 days' notice thereof in one or more newspapers published in the City of Vancouver and by circular letter mailed to each shareholder, at which meeting the shareholders present in person or by proxy shall elect seven Directors qualified as hereinafter directed, who shall hold office until the first Wednesday in March in the year following the election.

7. On the first Wednesday in March, and on the same day in each year thereafter, at the office of the Company, or at such other place as shall be appointed by the Directors in general meeting, and public notice of such annual meeting and election shall be published for three weeks before the day of meeting in one or more newspapers published in the City of Vancouver, and by circular letter mailed to such shareholders at least three weeks prior thereto. The election of Directors shall be by ballot, and all shareholders may vote by proxy.

8. Three of the Directors at all meetings of the same shall form a quorum for the transaction of business, and the Board may employ one or more of their number as paid Director or Directors, provided that no person shall be elected Director unless he owns at least 20 shares of stock of the Company on which all calls have been paid.

9. No call shall be made for more than 10% at any one time on the amount subscribed, nor shall more than 50% of the stock be called up in any one year.

10. The said railway shall be commenced within two years, and shall be completed within five years from the passing of the Act.

11. The Company may construct, equip, maintain, and work a telephone line or an electric telegraph line in connection with the said railway.

12. The Company may receive from any Government, or from any person or bodies corporate, municipal or politic, who may have power to make or grant the same in aid of the construction, equipment, or maintenance of the said railway, grants of land, premises, loans, gifts of money, guarantees, and other securities for money, and hold and alienate the same.

13. The railway constructed under this Act shall be the property of the Company, and shall be maintained by the Company, and operated at all reasonable times so as to meet the requirements of the public.

14. The Company shall have power to enter into working or other agreements, and agreements for the interchange of traffic with any other railway company, and shall have power to grant running rights over the said railway on such terms as the shareholders in general meeting shall determine.

15. This Act may be cited as the "Ashcroft and Cariboo Railway Company's Act, 1890."

APPENDIX C, ITEM 2.

EXAMPLE OF A PROVINCIAL LAND SUBSIDY ACT TO A RAILWAY COMPANY.

"An Act respecting a grant of land to the Kootenay and Athabasca Railway Company, British Columbia." (B.C. Stat., 1887, c. 25. Assented to April 7, 1887.)

Whereas it is expedient to aid in the construction of the Kootenay and Athabasca Railway, from some point at or near Revelstoke to a point at or near the north end of Kootenay Lake, by a grant of public lands to an extent of 300,000 acres.

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:-

1. The said Company shall, subject as hereinafter mentioned, receive a grant of -

(a) A "Right of Way" two hundred feet in width, along that portion of the line of railway which commences at the southern boundary of the Dominion land reservation, thence to the terminus of the Railway at or near the north end of Kootenay Lake, by the way of Ill-com-opolux River, Trout Lake, and Lardeaux Creek;

(b) An area of two thousand acres of land at or near the north end of Kootenay Lake, for terminal purposes;

(c) Alternate and rectangular blocks of land containing two square miles each, adjoining and on each side of the said "Right of Way"; and for the purpose of definition, the first block shall commence at the southern boundary of the Dominion land reservation:

(d) The remainder to form the complement of 300,000 acres of land, to be in alternate blocks of two square miles, adjoining and on each side of Upper Kootenay Lake and its tributary streams.

2. The land to be acquired by the Company under this Act shall be laid out and surveyed in accordance with the land laws of the Province at the expense of the Company, and on or before the time limited for completion of the railway as mentioned in "An Act to Incorporate the Kootenay and Athabasca Railway Company," passed in the present session, and any of the lands not surveyed within such time by the Company shall be forfeited by the Company.

3. As soon as the Company shall (within the time aforesaid) have finally located their line of railway, and have filed a plan of same with the Chief Commissioner of Lands and Works, Victoria, B.C., shewing lands selected by the Company, the Government of British Columbia shall set apart and reserve such lands; and as soon as the said railway shall be in running order to the satisfaction of the Lieutenant-Governor in Council, the Government of British Columbia shall convey said lands to the

said Company, and the same and all the real and personal property of the Company in British Columbia shall be free from Municipal and Provincial taxation for a period of five years after the said railway shall be completed and in running order.

4. The grant of lands to the Company shall not include any lands within twenty miles of the Canadian Pacific Railway, nor shall it include lands in any way alienated before the date of the grant, but any deficiency in area arising out of previous alienations shall be made good to the Company by a grant of an area of land, equal to such deficiency, to be selected by the Lieutenant-Governor in Council, out of such of the public lands of the Province as shall be adjacent or contiguous to the lands granted to the Company.

5. The grant of lands to the Company shall not include the precious metals.

APPENDIX C, ITEM 3.

DEFUNCT RAILWAY COMPANIES LEGISLATED OUT OF EXISTENCE, 1927.

"An Act respecting certain Defunct Railway Companies." (B.C. Stat., 1927, c. 56. Assented to March 7, 1927.)

His Majesty, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:-

1. This Act may be cited as the "Defunct Railway Companies Dissolution Act".

2. The corporations named in the first column of Schedule A which were incorporated under the Acts referred to in the second column of Schedule A opposite their respective names shall, for all purposes, be deemed to be dissolved; and all powers and franchises held by the said corporations respectively are hereby declared to have wholly ceased.

3. The dissolution of a corporation under this Act shall not absolve the property of the corporation or any shareholder of the corporation from any charge, obligation, or liability, or prejudice or impair the right of any creditor or person to enforce in any lawful manner whatsoever any claim against the corporation or any shareholder thereof.

SCHEDULE A

Name	Statute	Capitalization*
1. Adams River Railway Company	1903, c. 30	$1,000,000
2. Alberni, Cowichan and Fort Rupert	1903-04, c.59	2,000,000
3. Alice Arm	1898, c. 46	2,500,000
4. Ashcroft and Cariboo	1896, c. 52	10,000,000
5. Arrowhead and Kootenay	1898, c. 46	1,500,000
6. Ashcroft and Cariboo	1890, c. 60	10,000,000
7. Ashcroft, Barkerville, and Fort George	1906, c. 49	5,000,000
8. Atlin Short Line Railway and Navigation Co.	1899, c. 79	100,000
9. Atlin Southern	1899, c. 80	1,000,000
10. Barkerville, Ashcroft and Kamloops	1897, c. 46	5,000,000
11. Bedlington and West Kootenay	1893, c. 46	1,000,000
12. Bella Coola and Fraser Lake	1906, c. 50	2,000,000
13. Bentinck Arm and Quesnelle	1907, c. 48	3,000,000
14. British Columbia and Alaska	1910, c. 56	1,000,000
15. British Columbia Central	1906, c. 51	3,000,000
16. British Columbia Central	1910, c. 57	1,000,000

Name	Statute	Capitalization
17. British Columbia Northern and Alaska	1906, c. 52	1,000,000
18. British Columbia Northern and Mackenzie Valley	1903, c. 32	30,000,000
19. Burrard Inlet and Fraser Valley	1891, c. 54	1,000,000
20. Burrard Inlet Railway and Ferry Co.	1891, c. 53	500,000
21. Canadian Northern	1892, c. 48	25,000,000
22. Canadian Western Central	1889, c. 34	50,000,000
23. Canadian Yukon	1898, c. 50	1,200,000
24. Cariboo, Barkerville, and Willow River	1910, c. 62	1,500,000
25. Cariboo	1894, c. 55	500,000
26. Cassiar Central	1897, c. 52	£1,000,000
27. Chilkat and Klehini Railway and Navigation Co.	1901, c. 68	1,000,000
28. Chilliwhack	1891, c. 55	200,000
29. Coast-Kootenay	1901, c. 69	10,000,000
30. Coast-Yukon	1903-04, c.58	1,000,000
31. Columbia and Carbonate Mountain	1890, c. 61	500,000
32. Coulmbia and Kootenay Railway and Transportation Co.	1883, c. 25	5,000,000
33. Comox and Cape Scott	1901, c. 71	6,000,000
34. Crawford Bay	1901, c. 72	500,000
35. Crow's Nest and Northern	1908, c. 58	2,000,000
36. Delta, New Westminster and Eastern	1894, c. 57	1,000,000
37. Delta	1887, c. 34	1,000,000
38. Downie Creek	1898, c. 52	1,000,000
39. East Kootenay	1897, c. 61	1,000,000
40. East Kootenay Valley	1898, c. 53	1,500,000
41.Flathead Valley	1903, c. 33	2,500,000
42. Flathead Valley	1909, c. 52	2,000,000
43. Fording Valley	1905, c. 63	500,000
44. Fraser River	1883, c. 26	500,000
45. Graham Island	1909, c. 54	1,000,000
46. Hardy Bay and Quatsino Sound	1909, c. 55	250,000
47. Harrison Hot Springs Tramway Co., Ltd.	1888, c. 47	15,000
48. Hot Springs and Goat River Tramway Co., Ltd.	1891, c. 68	500,000
49. Hudson Bay Pacific	1908, c. 61	3,000,000
50. Imperial Pacific	1901, c. 77	1,000,000
51. Island Valley	1910, c. 68	750,000
52. Kamloops and Atlin	1899, c. 83	1,000,000
53. Kamloops and Atlin	1901, c. 78	1,000,000
54. Kamloops and Yellowhead Pass	1906, c. 58	500,000
55. Kaslo and Lardo-Duncan	1897, c. 58	2,500,000
56. Kaslo and Slocan Tramway	1893, c. 52	300,000
57. Kitimat	1898, c. 54	1,000,000
58. Kootenay and Athabasca	1887, c. 35	1,000,000
59. Kootenay and North-west	1898, c. 55	2,000,000
60. Kootenay, Cariboo and Pacific	1903, c. 34	5,000,000

Name	Statute	Capitalization
61. Kootenay Development and Tramway Co.	1903, c. 36	2,000,000
62. Kootenay Lake Shore and Lardo	1893, c. 53	5,000,000
63. Kootenay Railway and Navigation Co.	1888, c. 46	5,000,000
64. Lake Bennett	1901, c. 80	1,000,000
65. Lardeau and Kootenay	1893, c. 54	500,000
66. Lardeau	1897, c. 64	500,000
67. Liverpool and Canoe Pass	1891, c. 57	1,000,000
68. Meadow Creek	1909, c. 56	200,000
69. Menzies Bay	1910, c. 69	100,000
70. Mid-Provincial and Nechako	1911, c. 68	3,000,000
71. Midway and Vernon	1901, c. 81	2,000,000
72. Mount Tolmie Park and Cordova Bay	1893, c. 55	150,000
73. Mountain Tramway and Electric	1898, c. 56	700,000
74. Naas and Skeena Rivers	1911, c. 69	5,000,000
75. Nanaimo-Alberni	1897, c. 66	1,000,000
76. Nanaimo Electric Tramway	1891, c. 69	100,000
77. Nelson and Arrow Lake	1893, c. 57	2,000,000
78. New Westminster and Port Moody	1882, c. 14	200,000
79. New Westminster and Vancouver Short Line	1889, c. 37	500,000
80. New Westminster Southern	1883, c. 27	600,000
81. North Star and Arrow Lake	1898, c. 58	1,200,000
82. Northern Vancouver Island	1910, c. 71	500,000
83. Okanagan and Kootenay	1890, c. 64	5,000,000
84. Osoyoos and Okanagan	1893, c. 59	2,500,000
85. Pacific Northern and Eastern	1903, c. 39	10,000,000
86. Pacific Northern and Omineca	1900, c. 50	1,000,000
87. Pacific	1910, c. 73	1,000,000
88. Peace and Naas Rivers	1911, c. 73	5,000,000
89. Penticton	1910, c. 74	2,500,000
90. Port Moody, Indian River, and Northern	1910, c. 75	1,000,000
91. Portland and Stickine	1898, c. 59	£2,000,000
92. Portland Canal	1907, c. 56	1,000,000
93. Prince Rupert and Fort Simpson	1909, c. 60	1,000,000
94. Quatsino	1903, c. 42	500,000
95. Queen Charlotte Islands	1901, c. 83	1,000,000
96. Queen Charlotte Islands	1905, c. 68	1,000,000
97. Queen Charlotte	1910, c. 76	1,000,000
98. Rainy Hollow	1907, c. 58	500,000
99. Revelstoke and Cassiar	1898, c. 61	1,000,000
100. Rock Bay and Salmon River	1900, c. 51	500,000
101. St. Mary's Valley	1906, c. 65	1,500,000
102. Skeena River and Eastern	1898, c. 62	£1,000,000
103. Skeena River Railway, Colonization, and Exploration Co.	1898, c. 63	2,500,000

Name	Statute	Capitalization
104. South Kootenay	1899, c. 88	1,000,000
105. South-east Kootenay	1898, c. 64	1,000,000
106. South-east Kootenay	1906, c. 63	5,000,000
107. Southern Okanagan	1906, c. 66	1,000,000
108. Stave Valley	1905, c. 70	1,000,000
109. Stickeen and Teslin Railway, Navigation, and Colonization Co.	1897, c. 71	2,500,000
110. Toad Mountain and Nelson Tramway	1891, c. 70	50,000
111. Upper Columbia Navigation and Tramway Co.	1891, c. 50	100,000
112. Vancouver and Grand Forks	1901, c. 84	1,000,000
113. Vancouver and Lulu Island Electric Railway and Improvement Co.	1891, c. 61	250,000
114. Vancouver and Nicola Valley	1908, c. 63	5,000,000
115. Vancouver and Northern	1909, c. 64	1,500,000
116. Vancouver and Westminster	1900, c. 53	500,000
117. Vancouver Land and Railway Co.	1882, c. 15	4,000,000
118. Vancouver-Nanaimo Railway Transfer Co.	1897, c. 74	500,000
119. Vancouver, Northern, and Yukon	1899, c. 89	1,000,000
120. Vancouver Northern, Peace River, and Alaska Railway and Navigation Co.	1891, c. 62	20,000,000
121. Vernon and Okanagan	1891, c. 63	1,000,000
122. Victoria and Barkely Sound	1909, c. 65	1,500,000
123. Victoria and North American Railway Co.	1891, c. 64	2,000,000
124. Victoria and Saanich	1886, c. 29	500,000
125. Victoria and Seymour Narrows	1902, c. 79	3,000,000
126. Victoria, Vancouver, and New Westminster	1894, c. 64	750,000
127. Yale-Northern	1901, c. 87	3,000,000

(* Capitalization figures do not form part of the act, but were compiled from all the Acts of Incorporation during the period.)

APPENDIX C, ITEM 4.

RAILWAYS INCORPORATED UNDER ACTS OF THE LEGISLATURE OF BRITISH COLUMBIA SINCE 1883

No.	Name of Railway	Cap.	Year	Remarks
1.	Adams River	30	1903	Lapsed
2.	Alice Arm	46	1898	Lapsed
3.	Ashcroft and Cariboo	40	1890	Lapsed
4.	Ashcroft and Cariboo	60	1890	Lapsed
5.	Ashcroft and Cariboo	52	1891	Lapsed
6.	Ashcroft and Cariboo	52	1896	Lapsed
7.	Ashcroft, Barkerville and Fort George	49	1906	Lapsed
8.	Arrowhead and Kootenay	47	1898	Lapsed
9.	Arrowhead and Kootenay	65	1901	Lapsed
10.	Atlin Short Line Railway and Navigation Co.	79	1899	Lapsed
11.	Atlin Southern	80	1899	Lapsed
12.	Barkerville, Ashcroft and Kamloops	46	1897	Lapsed
13.	Beddington and Nelson	47	1897	Declared for public benefit, c. 53, 1899
14.	Beddington and West Kootenay	46	1893	Lapsed
15.	Bentinck Arm and Quesnel	48	1907	Lapsed
16.	Bella Coola and Fraser Lake	50	1906	Lapsed
17.	British Columbia and Alaska	56	1910	Lapsed
18.	British Columbia and Northern	32	1903	Lapsed
19.	Mackenzie Valley	53	1906	Lapsed
20.	British Columbia Central	51	1906	Lapsed
21.	British Columbia Central	57	1910	Lapsed
22.	British Columbia Northern and Alaska	52	1906	Lapsed
23.	British Columbia Southern	36	1893	Amended, c. 47, 1893; repealed, c. 53, 1894; c. 39, 1894; c. 4, 1896; c. 53, 1896; c. 33, 1897. Declared for public benefit, c. 36, 1897.
24.	British Columbia Electric Railway:			
	Vancouver Street Railway	31	1886	Lapsed
	Vancouver Street Railway	38	1889	Incorporation
	Vancouver Electric Railway and Light Co.	51	1890	Amendment
	National Electric Tramway and Light Co.	39	1889	Victoria Electric Railway and Light Co., c. 63, 1894.

No.	Name of Railway	Cap.	Year	Remarks
	National Electric Tramway and Light Co.	52	1890	Amendment
	Westminster Street Railway	65	1890	
	Western and Vancouver Tramway Co.	67	1890	Amendment
	British Columbia Electric Co.	49	1890)	Act to amalgamate
	British Columbia Electric Co.	71	1891)	Western Street Railway Company and Western and Vancouver Tramway Co.
	British Columbia Electric Co.	51	1894	Amendment Land Grant
	Consolidated Railway and Light Co.	56	1894	Incorporation
	Consolidated Railway and Light Co.	55	1896	Amendment
	Victoria Electric Railway and Light Co.	63	1894	City of Victoria to supply light and power
	Victoria and British Columbia Electric Railway Co. Agreement	81	1910	Supply electric light and power in and around City of Victoria
25.	British Columbia Yukon	49	1897	Operating
26.	Burrard Inlet and Fraser Valley	54	1891	Amended, c. 48, 1893 and c. 59, 1895. Lapsed
27.	Burrard Inlet Railway and Ferry Co.	53	1891	Lapsed
28.	Canadian North-eastern	74	1911	Lapsed
29.	Canadian Northern	48	1892	
30.	Canadian Northern	3	1910	Main lines - Agreement
31.	Canadian Northern Pacific	4	1910	(a) Yellowhead Pass to Vancouver completed (b) Victoria to Barkley Sound time extended to Feb. 1st, 1917.
32.	Canadian Northern Pacific	32	1912	Barkley Sound to Nootka Sound, time extended to Feb. 27th, 1917.
33.	Canadian Northern Pacific	57	1913	Branch Lines: (a) Westminster Bridge to Vancouver, time extended to Feb. 1st, 1917; (b) Westminster Bridge to Steveston completed; (c) Victoria to Patricia Bay, completed.

No.	Name of Railway	Cap.	Year	Remarks
34.	Canadian Northern Pacific	58	1913	Amendment to c. 4, 1910
35.	Canadian Northern Pacific	59	1913	Terminals - Port Mann, New Westminster, Vancouver, Victoria, Steveston, and Patricia Bay
36.	Canadian Northern Pacific	61	1914	Further aid toward construction
37.	Canadian Northern Pacific	62	1914	Amendment to c. 57, 1913
38.	Canadian Pacific Railway	11	1880	Lapsed
39.	Canadian Western Central	20	1889	Land subsidy
40.	Canadian Western Central	34	1889	Incorporation. Amended c. 40, 1890; c. 36, 1892; c. 39, 1893; c. 4, 1895; c. 34, 1897. Lapsed
41.	Canadian Yukon	50	1898	Lapsed
42.	Cariboo, Barkerville, and Willow River	62	1910	Lapsed
43.	Cariboo (Ashcroft and Cariboo)	55	1897	Amendment, c. 50, 1897. Lapsed
44.	Cassiar Central	35	1897	Crown grant
45.	Cassiar Central	52	1897	Incorporation. Lapsed
46.	Chilkat and Klehine Railway and Navigation Co.	68	1901	Lapsed
47.	Chilliwhack	55	1891	Declared for public benefit, c. 43, 1893.
48.	Columbia and Garbonate Mountain	61	1890	Lapsed
49.	Columbia and Kootenay	21	1889	Land subsidy
50.	Columbia and Kootenay	62	1890	Amended, c. 49, 1892; c. 60, 1892. Declared for public benefit, c. 89, 1890.
51.	Columbia and Kootenay Railway and Transportation Co.	25	1883	Amended, c. 24, 1884; c. 21, 1889; c. 41, 1890. Lapsed
52.	Columbia and Western	8	1896	Subsidy Act. Repealed c. 8, 1903.
53.	Columbia and Western	54	1896	Incorporation. Amended, c. 12, 1898; c. 14, 1899; c. 4, 1900; c. 70, 1901; c. 8, 1903; c. 9, 1906; declared for public benefit, c. 61, 1898.
54.	Coast-Kootenay	69	1901	Amended, c. 9, 1902; declared for public benefit, c. 199, 1903.

No.	Name of Railway	Cap.	Year	Remarks
55.	Coast-Yukon	58	1904	Lapsed
56.	Comox and Cape Scott	71	1901	Lapsed
57.	Comox Logging and Railway Co.	63	1910	Operating Amended, c. 54, 1906.
58.	Cowichan, Alberni, and Fort Rupert	59	1904	Lapsed.
59.	Crawford Bay	72	1901	Lapsed
60.	Crow's Nest and Kootenay Lake	72	1888	Land Grant Incorporation.
61.	Crow's Nest and Kootenay Lake	44	1888	Amended, c. 63, 1890; c. 56, 1891. Repealed, c. 53, 1894. Lapsed
62.	Crow's Nest and Northern	58	1908	Amended, c. 64, 1911. Lapsed
63.	Crow's Nest Southern	73	1901	Operating (Great Northern Railway or Vancouver, Victoria, and Eastern Railway)
64.	Delta, New Westminster and Eastern	57	1894	Amended, c. 54, 1897. Lapsed
65.	Delta	34	1887	Lapsed
66.	Downie Creek	52	1898	Lapsed
67.	East Kootenay Logging	52	1907	Operating
68.	East Kootenay	61	1897	Lapsed
69.	East Kootenay Valley	53	1898	Lapsed
70.	Eastern British Columbia	60	1908	Operating
71.	Esquimalt and Nanaimo	13	1875	Land Grant. Repealed, c. 16, 1882. Amended, c. 28, 1888; c. 45, 1888.
72.	Esquimalt and Nanaimo	26	1903	Settlers' Rights Act
73.	Esquimalt and Nanaimo	33	1912	Agreement. Amended, c. 60, 1913. Declared for public benefit, c. 90, 1905.
74.	Flathead Valley	33	1903	Lapsed
75.	Flathead Valley	52	1909	Lapsed
76.	Fording Valley	63	1905	Lapsed
77.	Fraser River	26	1883	Lapsed
78.	Graham Island	54	1909	Lapsed
79.	Graham Island	65	1910	Amendment. Time extended to 1918.
80.	Grand Trunk Pacific	19	1908	Crown Grant. Amended, c. 22, 1909; c. 34, 1912.
81.	Grouse Mountain Scenic Incline	16	1911	Time extended to Apr. 1, 1917.
82.	Hall Mines Ltd., Tramway	59	1894	Lapsed

No.	Name of Railway	Cap.	Year	Remarks
83.	Hardy Bay and Quatsino Sound	55	1909	Lapsed
84.	Harrison Hot Springs Tramway Co.	47	1888	Lapsed
85.	Hot Springs and Goat River Tramway	68	1891	Lapsed
86.	Howe Sound, Pemberton Valley and Northern	53	1907	$5000 deposit with Minister of Finance.
87.	Howe Sound and Northern	67	1910	Amendment to c. 53, 1907. Amalgamated with the P.G.E.
88.	Hudson Bay Pacific	61	1908	Lapsed
89.	Imperial Pacific	77	1901	Lapsed
90.	Island Valley	68	1910	Lapsed
91.	Kamloops and Atlin	83	1899	Lapsed
92.	Kamloops and Atlin	48	1900	Lapsed
93.	Kamloops and Atlin	78	1901	Lapsed
94.	Kamloops and Yellowhead Pass	58	1906	Lapsed
95.	Kaslo and Lardo-Duncan	58	1897	Lapsed
96.	Kaslo and Slocan	37	1892	Land Grant
97.	Kaslo and Slocan	52	1892	Incorporation. Amended c. 41, 1894; c. 61, 1894; c. 36, 1897. C.P.R. was paid $100,000 for reconstructing Kaslo and Slocan (c. 37, 1912) Now operating.
98.	Kaslo and Slocan Tramway Co.	52	1893	Lapsed
99.	Kettle River Valley	26	1910	Agreement
100.	Kettle River Valley	35	1912	Ratify agreement Jan. 12th, 1912
101.	Kettle River Valley	53	1912	By-law. Operating.
102.	Kitimat	54	1898	Amended, c. 84, 1899. Lapsed
103.	Kootenay and North-west	55	1898	Amended, c. 85, 1899. Lapsed
104.	Kootenay Lake Shore and Lardo	53	1893	Lapsed
105.	Kootenay and Athabasca	25	1887	Land Grant. Lapsed
106.	Kootenay and Athabasca	35	1887	Incorporation. Lapsed
107.	Kootenay, Cariboo and Pacific	34	1903	Lapsed
108.	Kootenay Central	79	1901	Lapsed
109.	Kootenay Central	35	1903	Declared for public benefit.
110.	Kootenay Railway and Navigation Co.	29	1888	Land Grant. Lapsed

No.	Name of Railway	Cap.	Year	Remarks
111.	Kootenay Railway and Navigation Co.	46	1888	Change of title. Lapsed
112.	Columbia and Kootenay Railway and Navigation Co.	35	1889	Lapsed
113.	Ladysmith Lumber Co. Railway	62	1908	Operating
114.	Lake Bennett	80	1901	Lapsed
115.	Lardeau and Kootenay	54	1893	Lapsed
116.	Lardeau	64	1897	Lapsed
117.	Liverpool and Canoe Pass	57	1891	Lapsed
118.	Meadow Creek	56	1909	Lapsed. $5000 deposited with Minister of Finance.
119.	Menzies Bay	69	1910	Time extended to March 28th, 1917.
120.	Mid-Provincial and Nechako	68	1911	Lapsed
121.	Midway and Vernon	81	1901	Amended, c. 45, 1902. Repealed, c. 45, 1902. Amended, c. 36, 1904; c. 60, 1906. Lapsed
122.	Midway-Penticton	44	1899	
123.	Morrissey, Fernie and Michel	37	1903	Lapsed
124.	Mountain Tramway and Electric Co.	56	1898	Lapsed
125.	Mount Tolmie Park and Cordova Bay	55	1893	Lapsed
126.	Naas and Skeena Rivers	69	1911	Amended, c. 79, 1916, extending time of commencement of construction 1 year from date of Act.
127.	Nakusp and Slocan	56	1893	Amended, c. 43, 1894. Operated by C.P.R.
128.	Nanaimo-Alberni	66	1897	Lapsed
129.	Nanaimo Electric Tramway	69	1891	Lapsed
130.	Nanaimo Railway Act	25	1881	Lapsed
131.	Nelson and Fort Sheppard	58	1891	Amended, c. 42, 1894; c. 37, 1897.
132.	Nelson and Fort Sheppard	38	1892	Land Grant. Declared for public benefit, c. 57, 1893.
133.	Nelson and Fort Sheppard	42	1894	Amended, c. 42, 1894; c. 37, 1897.
134.	Nelson and Arrow Lake	57	1893	Lapsed
135.	New Westminster-Port Moody	14	1882	Amended, c. 25, 1884. Lapsed
136.	New Westminster and Vancouver Short Line	37	1889	Amended, c. 67, 1892; c. 60, 1896. Lapsed
137.	New Westminster Southern	27	1883	Lapsed

No.	Name of Railway	Cap.	Year	Remarks
138.	New Westminster Southern	36	1887	Amended, c. 36, 1889. Operating. Great Northern Pacific purchased from Port Kells to the Bridge, New Westminster.
139.	Nicola, Kamloops and Similkameen Coal and Railway Co.	47	1891	Amended, c. 38, 1903. Declared for public benefit, c. 164, 1903.
140.	Nicola Valley	59	1891)	Declared for public
141.	Nicola Valley	37	1893)	benefit, Cap. 50, 1892
142.	North Star and Arrow Lake	58	1898	Amended, c. 86, 1899. Lapsed
143.	Northern Vancouver Island	71	1910	
144.	Northern Vancouver Island	70	1911	Time extended to March 28, 1917. $5000 deposited with Minister of Finance.
145.	Okanagan and Kootenay	40	1890	Lapsed
146.	Okanagan and Kootenay	64	1890	Lapsed
147.	Osoyoos and Okanagan	59	1893	Lapsed
148.	Pacific Great Eastern	34	1913	Amended, c. 61, 1913; c. 62, 1913; c. 65, 1914.
149.	Pacific Great Eastern	36	1912	Under construction
150.	Pacific Northern and Eastern	39	1903	Lapsed
151.	Pacific Northern and Omineca	50	1900	Amended, c. 55, 1902; c. 77, 1902; c. 40, 1903; c. 67, 1905; c. 58, 1909. Lapsed. Security deposited with Minister of Finance
152.	Pacific Railway	73	1910	Lapsed
153.	Peace and Naas River	73	1911	Lapsed
154.	Penticton	74	1910	Lapsed
155.	Portland and Stickeen	59	1898	Lapsed
156.	Portland Canal Short Line	59	1909	Amended, c. 74, 1911. Now called Northeastern Railway. Abandoned.
157.	Portland Canal	56	1907	Lapsed
158.	Port Moody, Indian River and Northern	75	1910	Lapsed
159.	Prince Rupert and Port Simpson	60	1909	Lapsed
160.	Quatsino	42	1903	Lapsed
161.	Queen Charlotte Island	83	1901	Amended, c. 57, 1907
162.	Queen Charlotte Island	63	1905	Lapsed
163.	Queen Charlotte	76	1910	Lapsed

No.	Name of Railway	Cap.	Year	Remarks
164.	Rainy Hollow	58	1907	Lapsed
165.	Red Mountain	61	1893	Declared for public benefit, c. 60, 1895.
166.	Revelstoke and Cassiar	61	1898	Lapsed
167.	Rock Bay and Salmon River	51	1900	Lapsed
168.	Saint Mary's and Cherry Creek	64	1906	
169.	Saint Mary's Valley	65	1906	
170.	Shuswap and Okanagan	26	1887	Amended, c. 30, 1888; c. 42, 1890; c. 37, 1891.
171.	Skeena River and Eastern	62	1898	Lapsed
172.	Skeena River Railway, Colonization and Exploration Co.	63	1898	Lapsed
173.	South-east Kootenay	64	1898	Lapsed
174.	South-east Kootenay	63	1906	Amended, c. 61, 1909; time extended to Feb. 17, 1917.
175.	South Kootenay	88	1898	Lapsed
176.	South Okanagan	66	1906	Lapsed
177.	Stave Valley	70	1905	Lapsed
178.	Stickeen and Teslin Railway, Navigation and Colonization Co.	71	1897	Lapsed
179.	Toad Mountain and Nelson Tramway Incorporation	70	1891	Amended, c. 44, 1898; c. 40, 1900.
180.	Toad Mountain and Nelson Tramway	185	1897	Cap. 58, 1901, and Act respecting the Incorporation of Tramway, Telephone, Telegraph Companies.
181.	Tramway Inspection	50	1910	Amended, c. 51, 1911.
182.	Upper Columbia Navigation and Tramway Co.	50	1891	
183.	Vancouver and Grand Forks	84	1901	Lapsed
184.	Vancouver and Lulu Island Electric Railway and Improvement Co.	61	1891	Lapsed
185.	Vancouver and Lulu Island	60	1891	Amended, c. 73, 1897; c. 52, 1900. Declared for public benefit, c. 86, 1901.
186.	Vancouver and Nicola Valley	63	1908	Amended c. 80, 1910. Lapsed
187	Vancouver and Northern	64	1909	Lapsed
188.	Vancouver and Westminster	53	1900	Amended, c. 78, 1902.
189.	Vancouver Island Hydro-Electric Tramway Co.	-	-	Incorporated, joint-stock co., Nov. 12, 1912. Lapsed.

No.	Name of Railway	Cap.	Year	Remarks
190.	Vancouver Land and Railway Co.	15	1882	Lapsed
191.	Vancouver-Nanaimo Railway Transfer Co.	14	1897	Lapsed
192.	Vancouver, Northern and Yukon	89	1899	Amended, c. 55, 1900. Lapsed
193.	Vancouver Northern, Peace River and Alaska Railway and Navigation Co.	62	1891	Lapsed
194.	Vancouver, Victoria, and Eastern Railway and Navigation Co.	75	1897	Declared for public benefit, c. 172, 1905.
195.	Vernon and Okanagan	63	1891	Lapsed
196.	Victoria and Barkley Sound	65	1909	Lapsed
197.	Victoria and Northern America	64	1891	Lapsed
198.	Victoria and Saanich	16	1886	Lapsed
199.	Victoria and Saanich	29	1886	Lapsed
200.	Victoria and Seymour Narrows	79	1902	Lapsed
201.	Victoria and Sidney	39	1892	Subsidy) Operated
202.	Victoria and Sidney	66	1892	Incorporation) by Great Northern
203.	Victoria and Yellowhead Pass Railway Aid	70	1902	Lapsed
204.	Victoria Harbour	44	1911	Lapsed
205.	Victoria Terminal Railway and Ferry Co.	85	1901	Amended, c. 54, 1905) Operated
206.	Victoria Terminal Railway and Ferry Co.	86	1901	By-Law) by G.N.
207.	Victoria, Vancouver, and Western	64	1894	Amended, c. 76, 1897. Lapsed
208.	Wellington Colliery	28	1883	Lapsed
209.	Wellington Colliery	44	1911	Operating
210.	Yale Northern	87	1901	Lapsed
211.	Yukon Mining, Trading, and Transportation Co.	38	1897	
212.	Yukon Mining, Trading, and Transportation Co.	77	1897	Lapsed

(Source: British Columbia. Legislative Assembly. Department of Railways. Report of the Department of Railways of the Province of British Columbia, from 1911 to December 31st, 1916, 1917.)

APPENDIX C, ITEM 5.

EXAMPLE OF A PROVINCIAL CASH SUBSIDY ACT

"An Act to authorize the granting of a certain subsidy for, and in aid of, the construction of the Shuswap and Okanagan Railway." (B.C. Stat.,1887, c. 26. Assented to April 7, 1887.)

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:-

1. There shall be paid out of the Consolidated Revenue of the Province to the Shuswap and Okanagan Railway Company - a Company incorporated by an Act of the Parliament of Canada passed in the 49th year of Her Majesty's reign, - and towards the construction by the said Company of a railway of the uniform gauge and standard of the Canadian Pacific Railroad, from a point on the Canadian Pacific Railroad at the Sickamoose Narrows, and extending thence up the Shuswap River and Spallumcheen Valley to a point on Okanagan Lake, in the Province of British Columbia, a subsidy not exceeding $4000 per mile, nor exceeding in the whole $200,000.

2. The said subsidy shall be payable upon the railway being completed, equipped, and in running order to the satisfaction of the Lieutenant Governor in Council.

3. The Railway shall be fully completed, equipped, and in running order within three years from the coming into force of this Act, otherwise the subsidy shall lapse.*

4. This Act shall not come into force until a Proclamation declaring it to be in force shall have been issued by the Lieutenant Governor, and published in the British Columbia Gazette.

(* By B.C. Stat., 1888, c. 30, of April 28, 1888, the time limit was extended from three to five years.)

APPENDIX D.

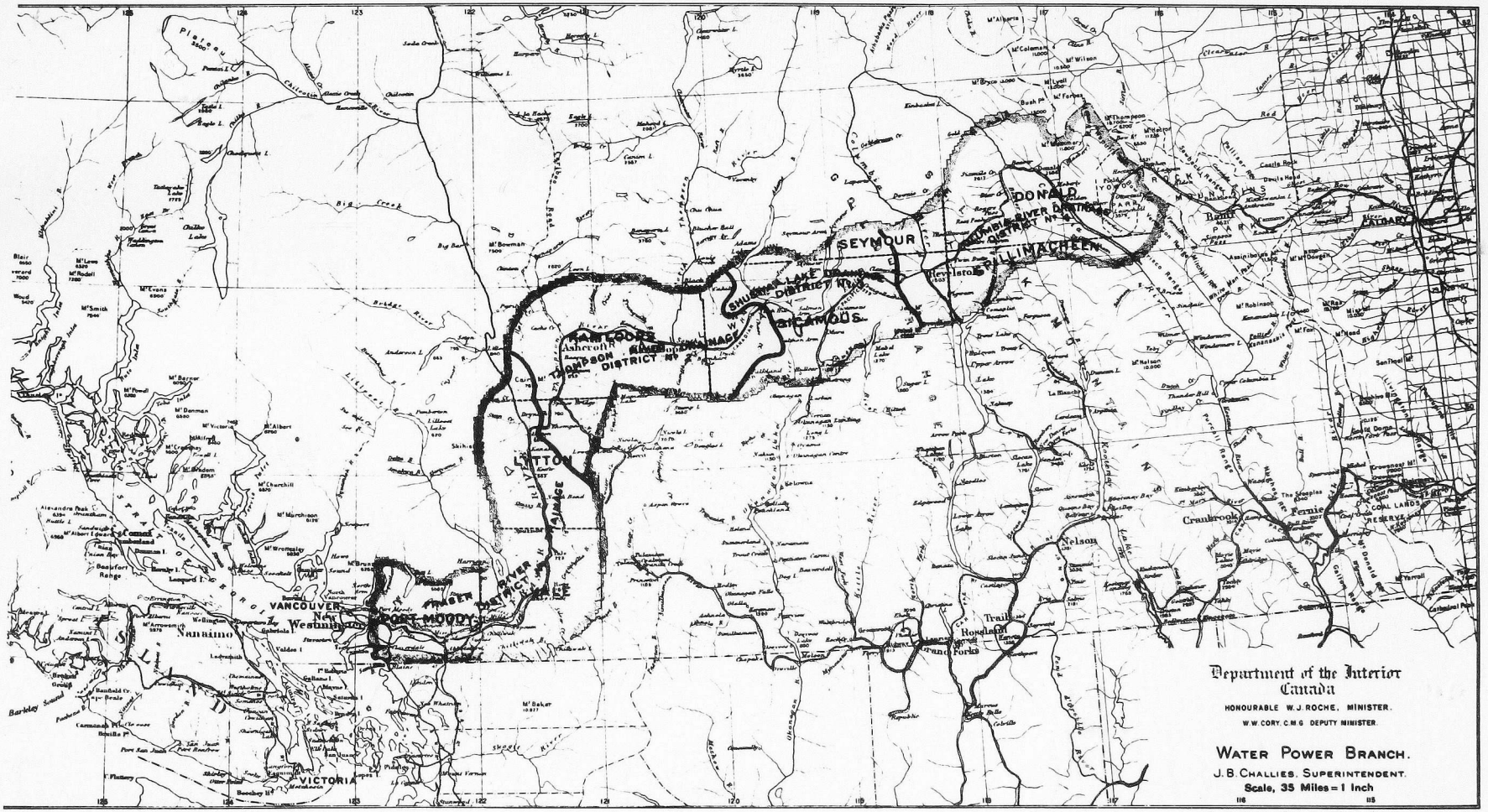
PAGE

Maps

Map I. British Columbia Railway Belt . . 482

Map II. Port Moody Section, British Columbia Railway Belt 483

Map III. Indian Reserves, Okanagan Agency, 1916 484



Base Map from plates of Map of Canada
Geographer's Branch, Dept. of the Interior.

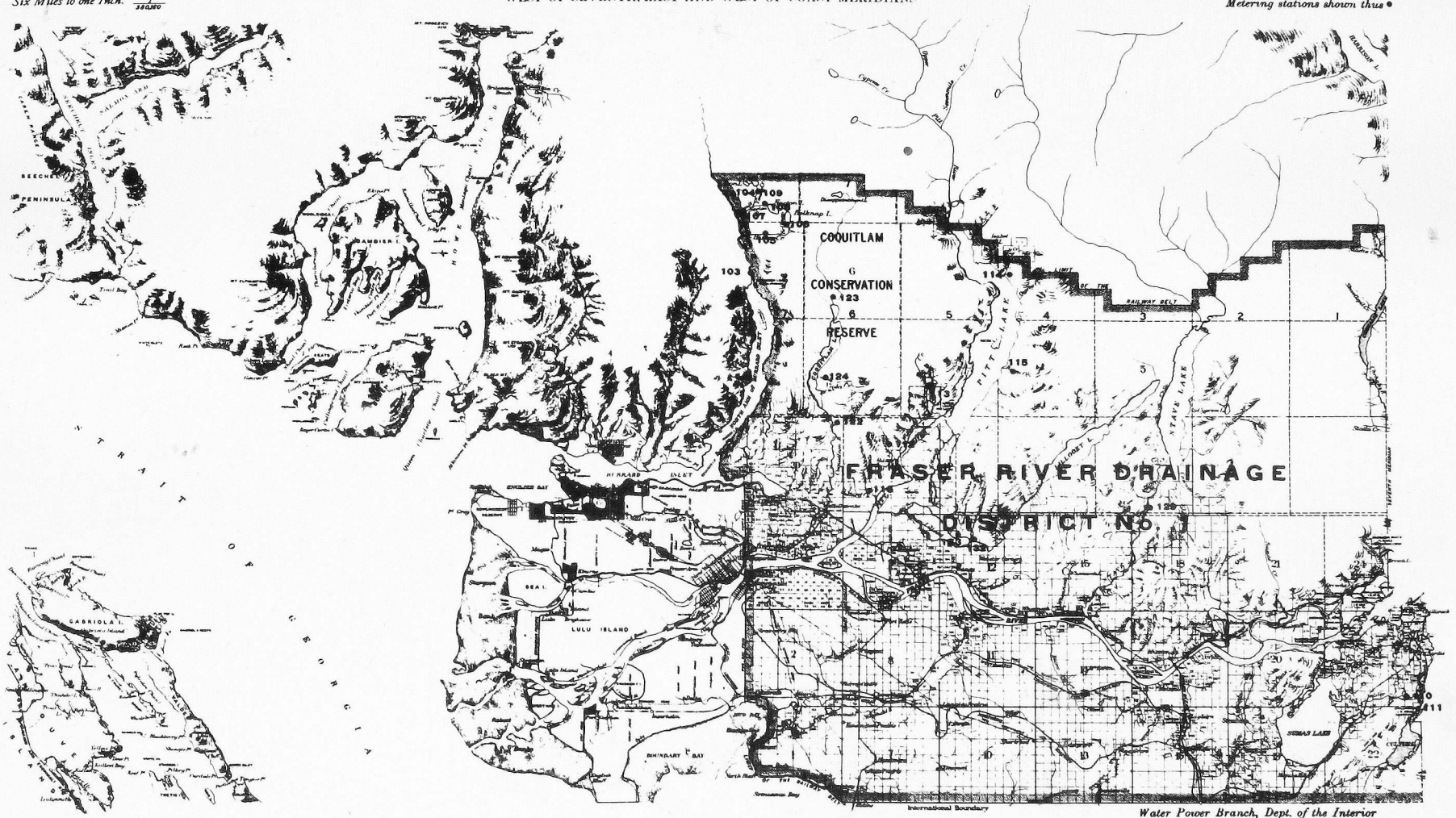
Water Power Branch, Dept. of the Interior
To accompany Report, Railway Belt Hydrographic Surveys.

PORT MOODY SHEET

WEST OF SEVENTH, EAST AND WEST OF COAST MERIDIANS

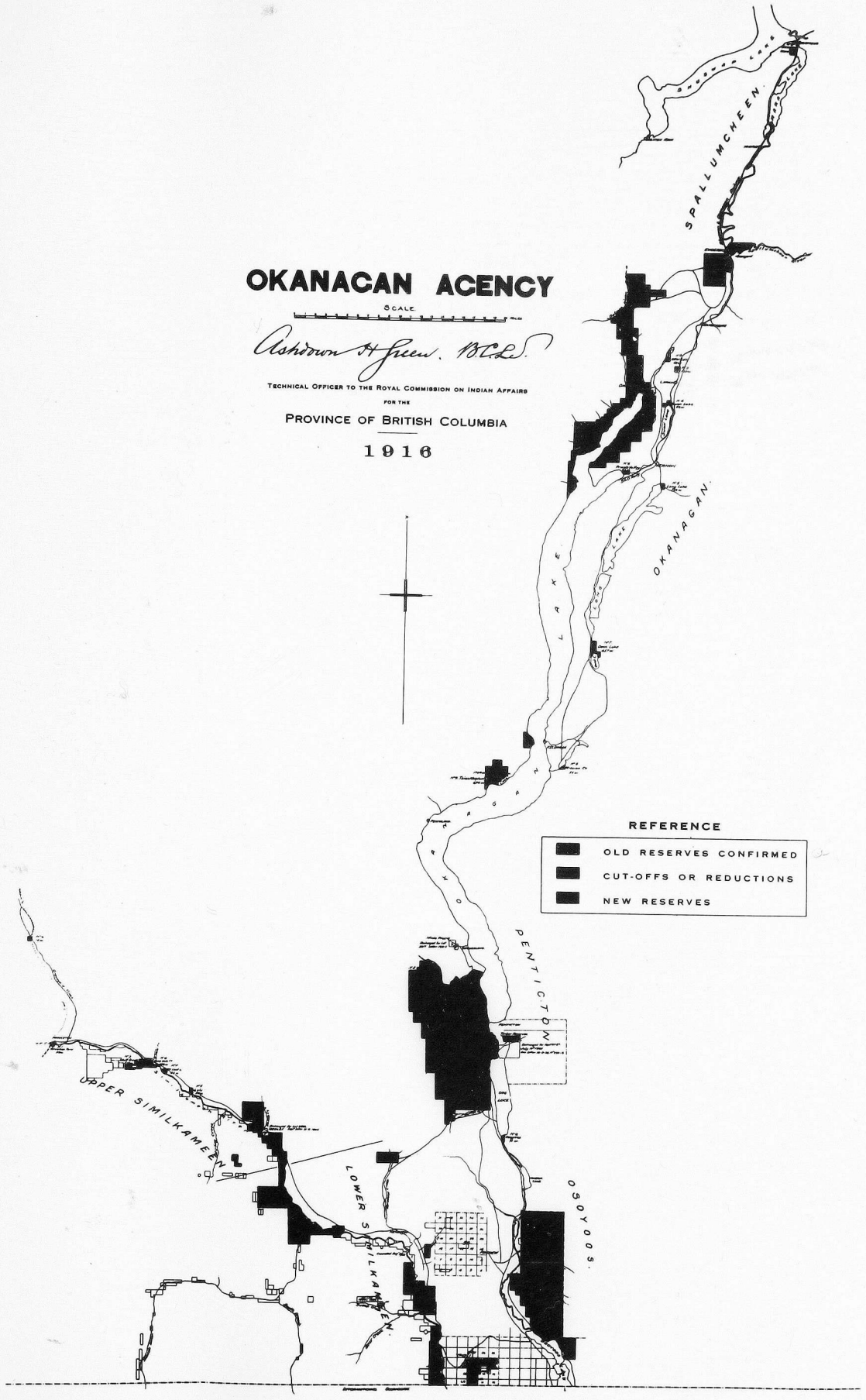
Sectional Map,
Six Miles to one Inch. 1/380

Metering stations shown thus ●



Base Map from Sectional Maps,
Surveyor General's Office.

Water Power Branch, Dept. of the Interior
To accompany Report, Railway Belt Hydrographic Surveys.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SCALE
Ashdown H. Green. B.C.L.S.
TECHNICAL OFFICER TO THE ROYAL COMMISSION ON INDIAN AFFAIRS
FOR THE
PROVINCE OF BRITISH COLUMBIA
1916
SPALLUMCHEEN
OKANAGAN
LAKE
PENTICTON
UPPER SIMILKAMEEN
LOWER SIMILKAMEEN
OSOYOOS
REFERENCE
OLD RESERVES CONFIRMED
CUT-OFFS OR REDUCTIONS
NEW RESERVES

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APPENDIX E, ITEM 1.

INDIAN RESERVES IN THE PROVINCE OF BRITISH COLUMBIA, 1871

No.	District	Locality	Acres
1.	Esquimalt	Esquimalt Harbor	47
2.	"	Songee Village, near Victoria City	112
3.	Saanich, S.	Saanich Inlet	494
4.	Saanich, N.	Union Bay	69
5.	"	Cole Bay	315.02
6.	Saanich, S.	Bazan Bay	727
7.	Sooke	Sooke River	60
8.	Cowichan and Quamichan	Cowichan River	2675
9.	" "	" "	not given
10.	" "	Somers Creek	30
11.	" "	Large Island, mouth of Chemainus River	139
12.	" "	Chemainus Creek	100
13.	" "	Nanaimo Harbour	40
14.	Nanaimo	Nanaimo River, East side	73
15.	"	" " West side	181
16.	New Westminster	First Narrows, Burrard's Inlet	165
17.	" "	Burrard's Inlet	37
18.	" "	" "	37.45
19.	" "	" "	112.46
20.	" "	Near New Westminster	1
21.	" "	Coquitlon River	18.40
22.	" "	" " near Fraser River	6.50
23.	" "	Musquam, north of North arm of Fraser	342
24.	" "	Cheholes, west bank of Harrison River, four miles from its mouth	626
25.	" "	Fraser River, 1½ miles below the mouth of Harrison River	658
26.	" "	Wha Nock Reserve, on Fraser River	92
27.	" "	Motsqui Reserve, No. 1, on " "	96
28.	" "	" " , No. 2, " " "	52
29.	" "	Klat-waas " , Nicoaamen Slough.	86
30.	" "	Scoulitz " , Fraser River, at mouth of Harrison River	330
31.	" "	Nicoaamen Reserve	109
32.	" "	S. Que-aam "	73
33.	" "	Sumas Reserve, No.(?) near Chodsey's Slough	43
34.	" "	Sumas Reserve, No. 1, Fraser River, Nicoaamen Slough	32
35.	" "	Sumas Reserve Upper Forks of Sumas and Slough	440
36.	" "	Katzie Reserve on Fraser River	108
37.	Yale	Ohamil Reserve " " " 10 miles below Hope	488.50

No.	District	Locality	Acres
38.	Yale	Che-aham Reserve, left bank Fraser River, 20 miles below Hope	375
39.	"	Popkin Reserve, left bank Fraser River, 18 miles below Hope	369
40.	"	Squatils Reserve, left bank Fraser River, 13 miles below Hope	380
41.	"	Greenwood Island, opposite Hope	10
42.	"	Lytton, mouth of Thompson River	14
43.	"	South-east of the town of Lytton	12
44.	"	Two miles north of town of Lytton	18
45.	"	Stryan Reserve	297
46.	"	Nohomeen " , 1½ miles above Lytton	30
47.	"	Ma-coi-yai ", 1½ " below Lytton	100
48.	"	Nick-al-palm Reserve, 20 miles above Lytton	111
49.	"	Shoo-ook Reserve, 36 miles on Yale and Lytton Road	204.50
50.	"	Stan-nja-hanny Reserve, 43 miles on Yale and Lytton Road	40
51.	"	Skop-ah Reserve, on Fraser River	58
52.	"	Boston Bar, 24 miles on Yale and Lytton Road	82
53.	"	Kopa-Chechin, 2½ miles above Boston Bar, Fraser River	205
54.	"	Fraser River, 17 miles on Yale and Lytton Road	81
55.	"	¼ mile below Alexandria Bridge, ¼ mile from Fraser River	19
56.	"	2 miles below Alexandria Bridge, left bank of Fraser River	51
57.	"	Right bank of Fraser River, 10 miles on Yale and Lytton Road	110
58.	"	Similkameen River, Vermilion Forks, right bank	21
59.	"	Similkameen River, Vermilion Forks, left bank	342
60.	Lytton	Similkameen River and Spellum-Cheen River	not given
61.	Yale	Skowall Reserve, 7 miles below Hope	135
62.	"	Albert Flat, 4 miles below Yale	163.50
63.	"	Similkameen Reserve, halfway between Princetown Keremeones, called Potatoe Garden	1028
64.	"	Spellum-Cheen Reserve, 1 mile from Spellum-Cheen River	200
65.	"	Spellum-Cheen Reserve, left bank of Fraser and Spellum-Cheen Rivers	18.50
66.	"	Forks of Nicolai and Thompson Rivers	30.50
67.	"	Nicaomeen Reserve, left bank Fraser River, 68 miles on Yale & Lytton Road	61

No.	District	Locality	Acres
68.	Yale	Dead Man's Creek	575
69.	"	Bonaparte Creek	471
70.	"	Nicolai Lake	670
71.	"	" "	60
72.	"	Nicolai River	918
73.	"	Shuswap Lake	3112
74.	"	" " (about)	1900
75.	"	Kamloops River, at the Forks of N. and S. Thompson	6000
76.	"	Adam's Lake, east side	1000

(Source: B.C.S.P., 1872-73.)

APPENDIX E, ITEM 2.

Lieutenant-Governor Trutch to Prime Minister Sir John A. Macdonald, October 14, 1872.

Govt. House, Victoria, B.C.,
Oct. 14th, 1872.

My Dear Sir John,

I received your letter of the 25th ult. the day before yesterday on my return home from a visit of inspection to the interior of B.C. where - at Ashcroft - Senator Cornwall's place - I met Mr. Fleming on his arrival from the other side of the Rocky Mountains. As you will of course hear from himself a full account of his trip and of his impressions as to the country, the line of proposed railway and the competing advantages of the rival Fraser River and Bute Inlet routes, I will only say on this subject that he and his party have made the quickest journey of which we have record between Fort Garry and Victoria - and yet appear as fresh and hearty as if they had not travelled one hundred miles.

I am very glad to find that you are pleased at the result of the steps I took to secure Sir Francis's selection for Vancouver Dist. and I trust the latter has written to Mr. Bunster through whose withdrawal his return by acclamation was effected, and that you may think fit to take some notice of Bunster should an opportunity occur. Had I received the news of Sir George's defeat for Montreal two days sooner he would have been returned for Yale District, as well as for Provencher, but the nomination for the last remaining election in B.C. had already taken place ere the result of the Montreal election was reported here. I cannot tell you how deeply all here regret the serious indisposition which withdraws him for a time from public life, and to me specially who have had the privilege of his friendship, his illness, so unexpectedly announced, occasions heartfelt sorrow. I trust he may soon be so restored in health as to be able to resume his duties, for I am sure that to you particularly and to the country at large his loss would be a great calamity.

At the same time with your letter under reply in which you ask me to write you my private opinion as to Dr. Powell's fitness for the situation of Indian Agent in this Province I received your telegram of 2nd inst. acquainting me of his having been appointed to that office, which would have seemed to render superfluous any further allusion to the subject but that it appears to me to be a matter of such paramount importance to all interests in this country that I think it my duty to convey to you my ideas thereon, and have also taken the opportunity to express the same views more fully to Mr. Fleming who on his arrival at Ottawa will place you in possession thereof, and will also give you the benefit of his own impressions as to the Indians of B.C. and their management.

.....

Dr. Powell has a very good standing here. He has been in good practice in his profession and is reputed to possess business ability, but he is entirely without any special knowledge of Indian matters, has had no experience in managing Indian affairs, has hardly ever been out of Victoria during his residence in this Province, and cannot therefore know much or of concerning our Indians and is certainly unknown by them. Now whether he is at all fit for the post of Indian Agent in B.C. depends on the scope of duties and the extent of authority to be attached to the office; in fact on the manner in which the Indian Department is to be organized here and the system to be adopted towards the Indians. Dr. Powell might perform the duties of the office well enough if acting under the immediate direction and advice of some one of more experience here, but I should not certainly consider it otherwise than most likely to result in all sorts of complications and dissatisfactions if the management of our Indians were left in his hands altogether.

We have in B.C. a population of Indians numbering from 40,000 to 50,000, by far the larger portion of whom are utter savages living along the coast, frequently committing murder and robbery among themselves, one tribe upon another, and on white people who go amongst them for purposes of trade, and only restrained from more outrageous crime by being always treated with firmness, and by the consistent enforcement of the law amongst them to which end we have often to call in aid the services of H.M. ships on the station. I cannot see how the charge of these Indians can be entrusted to one having no experience among them, nor do I think it likely that the assistance of the Navy would be willingly and effectively given to any subordinate officer of the Government. Without further descanting on the matter however, I may tell you that I am of opinion, and that very strongly, that for some time to come at least the general charge and direction of all Indian affairs in B.C. should be vested in the Lt. Governor, if there is no constitutional objection to such arrangement, and that instead of one there should be three Indian Agents, one for Vancouver Island, one for the Northwest Coast and the third for the interior of the mainland of the Province, which latter gentleman might very properly by a Roman Catholic, as the Indians in this section are for the most part under the influence of missionaries of that persuasion. Then as to Indian policy I am fully satisfied that for the present the wisest course would be to continue the system which has prevailed hitherto, only providing increased means for educating the Indians, and generally improving their condition moral and physical. The Canadian system, as I understand it will hardly work here. We have never bought out any Indian claims to lands, nor do they expect we should, but we reserve for their use and

benefit from time to time tracts of sufficient extent to fulfil all their reasonable requirements for cultivation or grazing. If you now commence to buy out Indian title to the lands of B.C. you would go back of all that has been done here for 30 years past and would be equitably bound to compensate the tribes who inhabited the districts now settled farmed by white people, equally with those in the more remote and uncultivated portions. Our Indians are sufficiently satisfied and had better be left alone as far as a new system towards them is concerned, only give us the means of educating them by teachers employed directly by Govt. as well as by aiding the efforts of the missionaries now working among them.

To be rid of all concern with our Indian affairs would of course free me of a very considerable part of the trouble and anxiety I have had for the past year, but, however glad I might be at such a release, I have thought it my duty to express to you my conviction that you had better for some time to come continue the general charge of all Indian matters in B.C. in the Lt. Governor, divide the Province into three districts and appoint an Agent in each subject to direction from the Lt. Governor. By such a course you would secure through the Lt. Governor the benefit of the experience of those who during the past 13 or 14 years have managed the Indian affairs of the country, I mean the County Court Judges, who would be likely to feel diminished inclination to become the assistants of any official of a grade below their own.

I believe I have written all I need to on this matter and I fear at such length as to be tedious, but it is one of much importance to this Province, the care of the Indians here being, as I regard it, and have intimated to you in former letters the most delicate and presently momentous responsibility of the Dominion Government within the Province.

Faithfully yours,
Joseph W. Trutch.

The Rt. Honorable
Sir John A. Macdonald, K.C.B.

(Source: Pope, Sir Joseph, Correspondence of Sir John Macdonald; Selections from the correspondence of the Right Honourable Sir John Alexander Macdonald, G.C.B., first Prime Minister of the Dominion of Canada, 1921, pp. 183-185.)

APPENDIX E, ITEM 3.

Indian Petition to Dr. I.W. Powell, July 14, 1874.

To the Indian Commissioner for the Province of British Columbia.

The Petition of the undersigned, Chiefs of Douglas Portage, of Lower Fraser, and of the other tribes on the seashore of the mainland to Bute Inlet, humbly sheweth:-

1. That your petitioners view with great anxiety the standing question of the quantity of land to be reserved for the use of each Indian family.

2. That we are fully aware that the government of Canada has always taken good care of the Indians, and treated them liberally, allowing more than 100 acres per family; and we have been at a loss to understand the views of the local government of British Columbia, in curtailing our land so much as to leave in many instances but few acres of land per family.

3. Our hearts have been wounded by the arbitrary way the local government of British Columbia have dealt with us in locating and dividing our Reserves. Chamiel, ten miles below Hope, is allowed 488 acres of good land for the use of twenty families; at the rate of 24 acres per family; Popkum, eighteen miles below Hope, is allowed 369 acres of good land for the use of four families; at the rate of 90 acres per family; Cheam, twenty miles below Hope, is allowed 375 acres of bad, dry, and mountainous land for the use of 27 families: at the rate of 13 acres per family; Yuk-yuk-y-yoose on the Chilliwhack River, with a population of seven families, is allowed forty-two acres, five acres per family; Sumaas (at the junction of the Sumaas River and Fraser) with a population of seventeen families, is allowed 43 acres of meadow for their hay, and 32 acres of dry land; Keatsy, numbering more than 100 inhabitants, is allowed 108 acres of land. Langley and Hope have not yet got land secured to them, and white men are encroaching on them on all sides.

4. For many years we have been complaining of the land left us being too small. We have laid our complaints before the government officials nearest us: they sent us to some others; so we had no redress up to the present; and we have felt like men trampled on, and are commencing to believe that the aim of the white men is to exterminate us as soon as they can, although we have been always quiet, obedient, kind, and friendly to the whites.

5. Discouragement and depression have come among our people. Many of them have given up the cultivation of land, because our gardens have not been protected against the encroachments of the whites. Some of our best men have been deprived of the land they have broken and cultivated, with

long and hard labor, a white man enclosing it in his own claim, and no compensation given. Some of our most enterprising men have lost a part of their cattle, because white men had taken the place where those cattle were grazing, and no other place left but the thickly timbered land, where they die fast. Some of our people are now obliged to cut rushes along the bank of the river with their knives during the Winter to feed their cattle.

6. We are now obliged to clear heavy timbered land, all prairies having been taken from us by white men. We see our white neighbors cultivate wheat, peas, etc., and raise large stocks of cattle on our pasture lands, and we are giving them our money to buy the flour manufactured from the wheat they have grown on same prairies.

7. We are not lazy and roaming-about people as we used to be. We have worked hard and a long time to spare money to buy agricultural implements, cattle, horses, etc., as nobody has given us assistance. We could point out many of our people who have those past years bought with their own money ploughs, harrows, yokes of oxen, and horses; and now, with your kind assistance, we have a bright hope to enter into the path of civilization.

8. We consider that 80 acres per family is absolutely necessary for our support, and for the future welfare of our children. We declare that 20 or 30 acres of land per family will not give satisfaction, but will create ill feeling, irritation among our people, and we cannot say what will be the consequence.

9. That, in case you cannot obtain from the Local Government the object of our petition, we humbly pray that this our petition be forwarded to the Secretary of State for the Provinces, Ottawa.

Therefore your petitioners humbly pray that you may take this our petition into consideration, and see that justice be done us, and allow each family the quantity of land we ask for.

And your petitioners, as in duty bound, will ever pray, etc."

Signed by Peter Ayessik, Chief of Hope, and Alexis, Chief of Cheam, and by 54 other chiefs of Douglas Portage, Lower Fraser, and Coast.

July 14, 1874.

(Source: B.C.S.P., 1875, pp. 674-675.)

APPENDIX E, ITEM 4.

Copy of Letter from Sir James Douglas to Dr. I.W. Powell, Indian Commissioner, re Colonial Indian Lands. October 14, 1874.

Sir:

The question presented in your letter of the 9th. Oct., being limited to one specific point, hardly affords breadth of scope enough to admit of an explicit reply without going more largely into the matter. You ask if during the period of my Governorship of British Columbia there was any particular basis of acreage used in setting apart Indian Reserves?

To this enquiry I may briefly rejoin, that in laying out Indian Reserves no specific number of acres was insisted on. The principle followed in all cases, was to leave the extent & selection of the land entirely optional with the Indians who were immediately interested in the Reserve; the surveying officers having instructions to meet their wishes in every particular & to include in each reserve the permanent Village sites, the fishing stations, & Burial grounds, cultivated land & all the favorite resorts of the Tribes, & in short to include every piece of ground to which they had acquired an equitable title through continuous occupation, tillage or other investment of their labour. This was done with the object of securing to each community their natural or acquired rights; of removing all cause for complaint on the ground of unjust deprivation of the land indispensable for their convenience or support, & to provide against the occurrence of Agrarian disputes with the white settlers.

Before my retirement from office several of the Reserves, chiefly in the lower district of Frasers River & Vancouvers Island, were regularly surveyed and marked out with the sanction & approval of the several communities concerned, & it was found on a comparison of acreages with population that the land reserved, in none of these cases exceded the proportion of 10 acres per family, so moderate were the damands of the Natives.

It was however never intended that they should be restricted or limited to the possession of 10 acres of land, on the contrary, we were prepared, if such had been their wish to have made for their use much more extensive grants.

The Indian Reserves in the Pastoral country east of the Cascades, especially in Lytton & Thompson's River

districts where the natives are wealthy, having in many instances, large numbers of horses & cattle were, on my retirement from office, only roughly traced out upon the ground by the gold commissioners of the day. These latter Reserves were necessarily laid out on a large scale, commensurate with the wants of these tribes; to allow sufficient space & range for their cattle at all seasons.

Such is an outline of the policy & motives which influenced my Government when determining the principle on which these grants of land should be made. Moreover, as a safeguard & protection to these Indian Communities who might, in their primal state of ignorance & natural improvidence, have made away with the land, it was provided that these Reserves should be the common property of the Tribes, & that the title should remain vested in the Crown, so as to be unalienable by any of their own acts. The policy of the Government was carried even a step beyond this point, in providing for the future. Contemplating the probable advance of the Aboriginies in knowledge & intelligence & assuming that a time would certainly arrive when they might aspire to a higher rank in the social scale, & feel the essential wants of & claims of a better condition, it was determined to remove every obstacle from their path, by placing them in a most favourable circumstances for acquiring land in their private & individual capacity, apart from the Tribal Reserves. They were, therefore, legally authorized to acquire property in lands, either by direct purchase at the Government offices, or through the operation of the pre-emption laws of the Colony, on precisely the same terms & considerations in all respects, as other classes of Her Majesty's subjects.

These measures gave universal satisfaction when they were officially announced to the Native Tribes & still satisfy their highest aspirations.

A departure from the practice then adopted with respect to this class of native rights will give rise to unbounded disaffection, & may imperil the vital interests of the province.

This letter may be regarded & treated as an official communication.

I remain
Dear Sir
Yours Sincerely
(Signed) JAMES DOUGLAS

Lieut.-Col Powell,
Indian Commissioner.

(Source: Courtesy Mr. B.A. McKelvie, Victoria.)

APPENDIX E, ITEM 5, PART I.

McKenna-McBride Agreement, September 24, 1912.

Memorandum of an Agreement arrived at between J.A.J. McKenna, Special Commissioner appointed by the Dominion Government to Investigate the Condition of Indian Affairs in British Columbia, and the Honourable Sir Richard McBride, as Premier of the Province of British Columbia.

Whereas it is desirable to settle all differences between the Governments of the Dominion and the Province respecting Indian lands and Indian Affairs generally in the Province of British Columbia, therefore the parties above named, have, subject to the approval of the Governments of the Dominion and of the Province, agreed upon the following proposals as a final adjustment of all matters relating to Indian Affairs in the Province of British Columbia:-

1. A Commission shall be appointed as follows: Two Commissioners shall be named by the Dominion and two by the Province. The four Commissioners so named shall select a fifth Commissioner, who shall be the Chairman of the Board.

2. The Commission so appointed shall have power to adjust the acreage of Indian Reserves in British Columbia in the following manner:

(a) At such places as the Commissioners are satisfied that more land is included in any particular Reserve as now defined than is reasonably required for the use of the Indians of that tribe or locality, the Reserve shall, with the consent of the Indians, as required by the Indian Act, be reduced to such acreage as the Commissioners think reasonably sufficient for the purposes of such Indians.

(b) At any place at which the Commissioners shall determine that an insufficient quantity of land has been set aside for the use of the Indians of that locality, the Commissioners shall fix the quantity that ought to be added for the use of such Indians. And they may set aside land for any Band of Indians for whom land has not already been reserved.

3. The Province shall take all such steps as are necessary to legally reserve the additional lands which the Commissioners shall apportion to any body of Indians in pursuance of the powers above set out.

4. The lands which the Commissioners shall determine are not necessary for the use of the Indians shall be subdivided and sold by the Province at public auction.

5. The net proceeds of all such sales shall be divided equally between the Province and the Dominion, and all moneys received by the Dominion under this Clause shall be held or used by the Dominion for the benefit of the Indians of British Columbia.

6. All expenses in connection with the Commission shall be shared by the Province and Dominion in equal proportions.

7. The lands comprised in the Reserves as finally fixed by the Commissioners aforesaid shall be conveyed by the Province to the Dominion with full power to the Dominion to deal with the said lands in such manner as they may deem best suited for the purposes of the Indians, including a right to sell the said lands and fund or use the proceeds for the benefit of the Indians, subject only to a condition that in the event of any Indian tribe or band in British Columbia at some future time becoming extinct, then any lands within the territorial boundaries of the Province which have been conveyed to the Dominion as aforesaid for such tribe or band, and not sold or disposed of as hereinbefore mentioned, or any unexpended funds being the proceeds of any Indian Reserve in the Province of British Columbia, shall be conveyed or repaid to the Province.

8. Until the final report of the Commission is made, the Province shall withhold from pre-emption or sale any lands over which they have a disposing power and which have been heretofore applied for by the Dominion as additional Indian Reserves or which may during the sitting of the Commission, be specified by the Commissioners as lands which should be reserved for Indians. If during the period prior to the Commissioners making their final report it shall be ascertained by either Government that any lands being a part of an Indian Reserve are required for right-of-way or other railway purposes, or for any Dominion or Provincial or Municipal Public Work or purpose, the matter shall be referred to the Commissioners who shall thereupon dispose of the question by an Interim Report, and each Government shall thereupon do everything necessary to carry the recommendations of the Commissioners into effect.

Signed in duplicate at Victoria, British Columbia, this 24th day of September, 1912.

(Signed) J.A.J. McKenna,
(Signed) Richard McBride.

Witness:
(Signed) E.V. Bodwell.

(Source: Canada. Parliament. Report of the Royal Commission on Indian Affairs for the Province of British Columbia, 1916, Vol. I, pp. 10-11.)

APPENDIX E, ITEM 5, PART II.

ORDER-IN-COUNCIL OF 27th NOVEMBER, 1912:

"Certified Copy of a Report of the Committee of the Privy Council Approved by His Royal Highness the Governor-General, on the 27th November, 1912.

The Committee of the Privy Council have had under consideration a Report, dated the 26th October, 1912, from the Superintendent-General of Indian Affairs, submitting an Agreement entered into by Your Royal Highness' Special Commissioner and the Honourable the Prime Minister of British Columbia respecting Indian Reserves in that Province, together with a report of the Commissioner.

The Minister of Justice, to whom the said report was referred, observes that the Agreement contemplates the constitution of a Commission with certain powers, and confirmation of the proceedings of the Commission by the two Governments;

That the statutory authority of your Royal Highness-in-Council to constitute this Commission is to be found in Part 1 of the Enquiries Act, Revised Statutes of Canada, 1906, Chapter 104, and it appears to the Minister that in view of the Statutory provisions the proceedings of the Commission must be subject to approval.

The Minister of Justice, therefore, advises that the approval of the Agreement should be subject to a further provision which should be accepted by the Government of British Columbia before the Agreement can become effective providing that notwithstanding anything in the Agreement contained, the acts and proceedings of the Commission shall be subject to the approval of the two Governments, and that the Governments agree to consider favourable the Reports, whether final or interim, of the Commission, with a view to give effect, as far as reasonably may be, to the acts, proceedings and recommendations of the Commission, and to take all such steps and proceedings as may be reasonably necessary with the object of carrying into execution the settlement provided for by the Agreement in accordance with its true intent and purpose.

The Committee, concurring, advise that a copy hereof approving of the Agreement, subject to the aforesaid modifications, be transmitted to the Lieutenant-Governor of British Columbia for the information and approval of his Government.

The Committee further advise that, as the British Columbia Indian question has been the subject of communications from the Colonial Office, Your Royal Highness may be

pleased to forward a copy of this Minute to the Right Honourable the Secretary of State for the Colonies.

All of which is respectfully submitted for approval.

(Signed) Rodolphe Boudreau,
Clerk of the Privy Council.

(Source: Canada. Parliament. Report of the Royal Commission on Indian Affairs for the Province of British Columbia, Victoria, Acme Press, 1916, Vol. I, p. 7.)

APPENDIX E, ITEM 6.

INTRODUCTION TO REPORT OF THE ROYAL COMMISSION ON INDIAN AFFAIRS FOR THE PROVINCE OF BRITISH COLUMBIA

By Orders-in-Council dated the 27th day of November, 1912, P.C. 3277, and the 23rd day of April, 1913, Your Royal Highness was pleased to appoint a Royal Commission to investigate and make recommendations regarding lands reserved for Indians in the Province of British Columbia and regarding such additional lands as might appear to be required for the necessary use of the Indians of the Province, subject to the terms of the Agreement entered into between the Governments of Canada and of the Province of British Columbia, executed on the 24th day of September, 1912, and signed, on behalf of the Dominion Government, by its Commissioner, Mr. J.A.J. McKenna, and on behalf of the Province by Sir Richard McBride, K.C.M.G., Prime Minister of the Province.

In the performance of its duties Your Commission endeavoured to inform itself as to the history of the administration of Indian Affairs in the Province, and the causes leading to the appointment of your Commission.

In the years 1850, 1851, and 1852, Sir James Douglas made certain agreements with some three or four hundred Indians under which they surrendered their rights to comparatively small portions of Vancouver Island in consideration of a cash payment and the reservation to them of their village sites and enclosed fields, "to be kept for" their "own use, for the use of" their "children" and "for those who may follow after."

When the first Legislative Assembly of the Colony of Vancouver Island met in the summer of 1856, the Indian question was at once given prominence. In his inaugural address, Governor Douglas, after referring to the feeling of insecurity engendered by "the presence of large bodies of armed savages" who had visited the Colony from the North, said: "I shall, nevertheless, continue to conciliate the good will of the native Indian tribes by treating them with justice and forbearance and by rigidly protecting their civil and agrarian rights."

The Secretary of State for the Colonies in his despatches to Governor Douglas constantly expressed the solicitude of the Imperial Government for the welfare of the Indians and the safeguarding of their rights.

In the despatch of 11th April, 1859, Lord Carnarvon wrote Governor Douglas:

"I am glad to perceive that you have directed the attention of the House to that interesting and important subject, the relations of Her Majesty's Government and of the Colony to the Indian race. Proofs are unhappily still too frequent of the neglect which Indians experience when the white man obtains possession of their country, and their claims to consideration are forgotten at the moment when equity most demands that the hand of the protector should be extended to help them. In the case of the Indians of Vancouver Island and British Columbia, Her Majesty's Government earnestly wish that when the advancing requirements of colonization 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 own."

And on the 20th May, 1859, in acknowledging Governor Douglas' despatch of the 14th of that month on the subject of the policy to be observed towards the Indian tribes and conveying the Governor's "opinion as to the feasibility of locating the Indians in native villages, with a view to their protection and civilization," His Lordship wrote:

"I am glad to find that your sentiments respecting the treatment of the native races are so much in accordance with my own, and I trust your endeavors to conciliate and promote the welfare of the Indians will be followed by all persons whom circumstances may bring into contact with them. But whilst making ample provision under the arrangements proposed for the future sustenance and improvement of the native tribes, you will, I am persuaded, bear in mind the importance of exercising due care in laying out and defining the several Reserves, so as to avoid checking at a future day the progress of the white colonists."

On the 5th March, 1861, the Governor officially directed the Chief (sic) Commissioner of Lands and Works to "take measures so soon as practicable, for marking out distinctly the Indian Reserves throughout the Colony." He added that "the extent of the Indian Reserves to be defined" was to be "as they may severally be pointed out by the natives themselves." And the Chief Commissioner gave directions accordingly to the officers in charge of the several districts.

According to Governor Trutch's despatch of the 3rd November, 1871: "The authority of the Governor for creating such reservations was based, up to 1865, on the mainland portion of British Columbia, and up to 1870, in Vancouver Island, on

the power conferred upon him to this effect by his Commission and the Royal Instructions, and since those dates on the provisions of the Land Ordinances, 1865 and 1870, respectively."

In the report made on the 17th August, 1875, by the late Mr. Justice Walkem, when Attorney-General, he described the tracts set aside before the Union for Indians "as the joint and common property of the several tribes, being intended for their exclusive use and benefit, and especially as a provision for the aged, the helpless, and the infirm."

By the Thirteenth Article of the Terms of Union it is provided:-

That (1) "the charge of the Indians, and the trusteeship and management of the lands reserved for their use and benefit, shall be assumed by the Dominion Government";

That (2) "a policy as liberal as that hitherto pursued by the British Columbia Government shall be continued by the Dominion Government after the Union,"

and
That (3) "to carry out such policy, tracts of land of such extent as it has hitherto been the practice of the British Columbia Government to appropriate for that purpose shall from time to time be conveyed by the local Government to the Dominion Government, in trust for the use and benefit of the Indians."

The Terms of Union were sanctioned by the Imperial Government, and were given force and effect by an order of Her Majesty in Council under the British North America Act and thereby became as much a part of the Act as if they had been embodied in it.

The first legislation of the Dominion respecting Indians was enacted by Chapter 42 of the Statutes of 1868. It provided that "all lands reserved for Indians - or held in trust for their benefit, shall be deemed to be reserved and held for the same purposes as before this Act."

At the time of the entry of British Columbia into the Dominion, the Federal Act of 1868 continued in force; and a further enactment, Chapter 6, of the Statutes of 1869, had been made for the gradual enfranchisement of the Indians. It provided (and the law remains with variations) for the subdivision of Reserves into lots, and the holding thereof by individual Indians under location tickets, with a view to the subsequent issue of "Letters Patent" to the holders of such tickets as enfranchised Indians.

At the time of the Union there was no definition of Indian Reserves in the British Columbia Ordinances. In the Ordinance of 1870 respecting Crown Lands there is a provision exempting from pre-emption reserved lands and Indian settlements. But the policy of British Columbia as to allotting and holding lands for the use and benefit of the Indians was clearly defined in practice. And a schedule of Indian Reserves existing at the Union was furnished the Dominion.

By the Land Act of 1875 legislative authority was given for setting apart lands for the purpose of meeting the obligations of the Province under the Thirteenth Article of the Terms of Union. Section 60 of that Act sets forth, as one of the purposes for which land shall be reserved, that "of conveying the same to the Dominion Government in trust for the use and benefit of the Indians."

In the meantime a difference arose between the two Governments as to the basis of acreage of Reserves. The Dominion Government proposed that "each family be assigned a location of eighty acres of land of average quality, which shall remain permanently the property of the family for whose benefit it is allotted."

Correspondence followed, and on the 25th July, 1873, the Provincial Government formally decided that the Dominion requirement of eighty acres per family "was greatly in excess of the grants considered sufficient by the previous Governments of British Columbia," and proposed that "Indian Reserves should not exceed a quantity of twenty acres for each head of a family of five persons."

The Superintendent-General of Indian Affairs, Hon. David Laird, in a memorandum of 1st March, 1874, suggested the allotting of "twenty acres to every Indian being the head of a family, without reference to the number in the family." The suggestion was concurred in by the Province, as per Minute of the Executive Council of the 15th June, 1874, and steps were taken to proceed on that understanding.

Then the Reverend (sic) Mr. Duncan intervened and suggested inter alia (1) that no basis of acreage be fixed for Reserves; (2) that each nation of Indians be dealt with separately on their respective claims; (3) that for a proper adjustment of such claims the Dominion and Provincial Governments each provide an agent to visit the Indians, investigate conditions and report; and (4) that, in case of any Reserve being abandoned, or the Indians on it decreasing so that its extent is disproportionate to the number of occupants, such Reserve or part of a Reserve might revert to the Provincial Government.

The Provincial Government adopted Mr. Duncan's view in so far as it dispensed with a basis of acreage and provided for reversion. The Dominion Government expressed its readiness to adopt his proposal in full, barring his suggested agency of allotment.

The Province concurred, and the two Governments then entered into the agreement of 1875-76, under which a joint Commission was constituted to allot Reserves.

The agreement set forth that the Commission was "to fix and determine for each nation separately, the number, extent, and locality of the Reserve or Reserves to be allotted to it"; that "no basis of acreage be fixed - but that each nation of Indians of the same language be dealt with separately"; that "each Reserve shall be held in trust for the use and benefit of the nation of Indians to which it has been allotted"; that, "in the event of any material increase or decrease hereafter of the numbers of a nation occupying a Reserve, such Reserve shall be enlarged or diminished, as the case may be, so that it shall bear a fair proportion to the members of the Band occupying it"; and that "the extra land required for any Reserve shall be allotted from Crown lands, and any land taken off a Reserve shall revert to the Province."

The reversionary interest thus created proved a stumbling block to administration. A sort of dual ownership was set up which made it practically impossible for the Dominion Government to dispose, for the benefit of the Indians, as in other parts of the Dominion, of any of the reserved land or the timber or other valuables thereon or therein.

The Land Act of 1875 provided for the conveyance of lands to the Dominion Government "in trust for the use and benefit of the Indians." By Section 9, of Chapter 38 of the Statutes of 1899, an amendment was made by adding to the provision in the Land Act these words, "and in trust to reconvey the same to the Provincial Government in case such lands at any time ceased to be used by such Indians." In 1911 this enactment was made:

"Provided always that it shall be lawful for the Lieutenant-Governor in Council to at any time grant, convey, quit claim, sell or dispose of, on such terms as may be deemed advisable, the interest of the Province, reversionary or otherwise, in any Indian Reserve, or any portion thereof." (vide Section 127, Chapter 129, R.S., B.C., 1911).

In the previous year the following had been enacted:

"There shall not be registered in any Land Registry Office any title derived from His Majesty the King in the

right of Canada. . . land forming part, or that at any time formed part, of an Indian Reserve, without the sanction of the Lieutenant-Governor in Council." (Vide Section 2, Chapter 27, Statutes 1910, and Section 59, Chapter 127, R.S., B.C., 1911).

To remove the administrative entanglement thus occasioned, and to provide for the final and complete allotment of lands for Indians in British Columbia, the Agreement hereinbefore quoted in full was entered into by the Governments of the Dominion and the Province, and this Commission was appointed thereunder.

Your Commission organized on the 19th day of May, 1913, and the Commissioners were sworn in before Mr. Justice Morrison of the Supreme Court of British Columbia on the same day, with Mr. E.L. Wetmore, ex-Chief Justice of the Province of Saskatchewan, as Chairman, Messrs. N.W. White and J.A.J. McKenna representing the Dominion, and Messrs. J.P. Shaw and D.H. Macdowall, representing the Province, and Mr. J.G.H. Bergeron being Secretary and Solicitor.

The first meeting of the Commission was held in the Executive Chamber of the Provincial Government Buildings, which had been placed at their disposal, when Mr. McGregor Young, K.C., of Toronto appeared as Counsel for the Indian Department.

Mr. Young remained with the Commission until the meetings with the Indians of Penticton Reserve, in the Okanagan Agency, were concluded, and rendered valuable assistance during his stay with the Commission.

At the first meeting steps were taken to secure permanent premises in Belmont House, Victoria, and the necessary staff was engaged and immediate arrangements were made for commencement of field work in Cowichan Agency.

In December, 1913, the Commission adjourned until the 23rd day of March, 1914, and during the period of adjournment Messrs. McKenna, Shaw and Macdowall met, as occasion demanded, to dispose of routine work, matters that pressed for speedy settlement and to make arrangements for the following year of field work.

Your Commission was accompanied, when travelling over the various Agencies, by the District Inspectors of the Department of Indian Affairs and the Indian Agents, to all of whom they are much indebted for useful local knowledge of persons and places, for which this deserved acknowledgment is made.

In fulfilment of the duties of the Commission it was necessary to visit the Indians of all the various tribes and bands and their Reserves, to explain the object of the Commission and the restrictions imposed, to hear the views of the Indians on all matters connected with the work of the Commission, and to examine the Indians under oath on matters connected with the work of the Commission; also to hear the representations of Public bodies - Municipal Councils, Boards of Trade, etc. - where friction appeared to exist, or a request for a hearing was made.

Your Commission found that the 25,000 Indians to be visited were scattered all over the Province and along the Coastline, and the amount of travelling, both by sea and land, would consume a very considerable length of time. In this connection it may be mentioned that the area of the Province is some 395,000 square miles - equal to one-tenth of the Canadian total area, larger than the States of California, Washington and Oregon combined, or than Italy, Switzerland and France, and three times the size of the United Kingdom, and with a Coastline of 7,000 miles, all of which had to be covered.

Another obstacle to expediting work arose from the occupations of the Coast Indians, whose Reserves could only be visited at stated times of the year. All of the Coast Indians are fishermen and leave their Reserves when the salmon run occurs, and your Commission had numerous letters from these Indians requesting that meetings should be so arranged as to avoid interruption of their work. The managers of the salmon canneries also made similar requests. With Indian villages dotted all along the 7,000 miles of Coastline, a considerable portion of three Summers was occupied in this work.

Some 5,655 folios of typewritten evidence and 253 exhibits have been taken and your Commission, desiring to keep expense of printing within bounds, and with the consent of the Governments concerned, arranged a system of tabulation, giving the material of the evidence, which will appear with maps and conclusions reached, as embodied in the Commission's Minutes of Decision, in a separate chapter for each of the fifteen Agencies. Thus it is hoped that a clear and concise Report is presented at a minimum of cost. At the same time, the extended evidence is sent to both Governments in twenty-seven volumes for future reference.

In the Spring of 1914, Mr. Wetmore having resigned, on account of the hardship necessitated by constant travelling,

your Commission was re-constituted by the appointment by Order-in-Council and letters patent, dated the 3rd day of April, 1914, of Mr. Saumarez Carmichael as representative of the Dominion in the position vacated by Mr. Wetmore, and the selection of Mr. Nathaniel W. White, K.C., as Chairman, his appointment, by Order-in-Council and letters patent, the 17th day of April, 1914, and the Commission, so constituted, completed the work entrusted to it.

Mr. Bergeron retired from the Secretaryship May 1st, 1915, and Mr. C.H. Gibbons, who had been Assistant Secretary from the constitution of the Commission, was, on recommendation of the Commission, appointed to the Secretaryship.

In the course of enquiries, when visiting the various Tribes and Bands of Indians, it was impressed on your Commission that there existed a very strong feeling regarding proper protection for their graveyards, and steps have been taken in most cases to recommend the reservation of small areas for such purposes. In some instances, however, the plots required would be so small that it was not deemed wise to recommend that reserves should be created involving a large outlay for surveys. It is, therefore, recommended that, where such cases arise, the Governments of the Dominion and the Province should, mutually, arrange for the protection of these graves.

On every occasion where meetings were held with the Indians, they expressed their views freely on questions of administration, which are dealt with in another Report submitted by Your Commission under authority of an Order of Your Royal Highness-in-Council dated the 10th day of June, 1913.

Your Commission desires to express its thanks to Mr. Duncan C. Scott, Deputy Superintendent-General of Indian Affairs for his invariable courtesy and assistance to the Commission during their labours; to the Hon. W.R. Ross, Minister of Lands of the Province of British Columbia, for the great assistance he has rendered the Commission in excluding from numerous pre-emption applications various small portions of land occupied by Indian settlements in use; and also to Mr. Robert A. Renwick, Deputy Minister of Lands for the Province of British Columbia, for his invariably prompt attention to all questions regarding lands, many of which entailed a considerable amount of additional work. Your Commission also desires to express its indebtedness to Mr. J.G.H. Bergeron; and to Mr. C.H. Gibbons, Secretary to the Commission, for energetic and valuable work, always willingly performed; to Mr. Ashdown H. Green, B.C.L.S.,

Technical Officer to the Commission, for most useful work, ably executed; and to the other members of the staff for interest displayed in their work; all of which were of the greatest assistance.

In dealing with the recommendations affecting the confirmation of old Reserves, or reductions of these Resereves (sic) and additional lands, it was decided to present the Commission's findings by Agencies.

During the course of its work five Progress Reports were issued and one hundred and four Interim and Special Reports, copies of which are presented herewith."

(Source: Canada. Parliament. Report of the Royal Commission on Indian Affairs for the Province of British Columbia, 1916, Vol. I, pp. 14-20.)

APPENDIX E, ITEM 7.

STATEMENT OF THE ALLIED INDIAN TRIBES OF BRITISH COLUMBIA FOR THE GOVERNMENT OF BRITISH COLUMBIA

Part II - Report of the Royal Commission

Grounds of Refusal to Accept

In addition to the grounds shown by our general introductory remarks, we mention the following as the principle grounds upon which we refuse to accept as a settlement the findings of the Royal Commission:-

1. We think it clear that fundamental matters such as tribal ownership of our territories require to be dealt with, either by concession of the governments, or by decision of the Judicial Committee, before subsidiary matters such as the findings of the Royal Commission can be equitably dealt with.

2. We are unwilling to be bound by the McKenna-McBride Agreement, under which the findings of the Royal Commission have been made.

3. The whole work of the Royal Commission has been based upon the assumption that Article 13 of the Terms of Union contains all obligations of the two governments towards the Indian Tribes of British Columbia, which assumption we cannot admit to be correct.

4. The McKenna-McBride Agreement, and the report of the Royal Commission ignore not only our land rights, but also the power conferred by Article 13 upon the Secretary of State for the Colonies.

5. The additional reserved lands recommended by the report of the Royal Commission, we consider to be utterly inadequate for meeting the present and future requirements of the Tribes.

6. The Commissioners have wholly failed to adjust the inequalities between Tribes, in respect of both area and value of reserved lands, which Special Commissioner McKenna, in his report, pointed out and which the report of the Royal Commission has proved to exist.

7. Notwithstanding the assurance contained in the report of Special Commissioner McKenna, that "such further lands as are required will be provided by the Province, in so far as Crown lands are available". The Province, by Act passed in the spring of the year 1916, took back two million acres of land, no part of which, as we understand, was set aside for the Indians by the Commissioners, whose report was soon thereafter presented to the government.

8. The Commissioners have failed to make any adjustment of water-rights, which in the case of lands situated within the Dry Belt, is indispensable.

9. We regard as manifestly unfair and wholly unsatisfactory the provisions of the McKenna-McBride Agreement relating to the cutting off and reduction of reserved lands, under which one-half of the proceeds of sale of any such lands would go to the Province, and the other half of such proceeds, instead of going into the hands or being held for the benefit of the Tribe, would be held by the Government of Canada for the benefit of all the Indians of British Columbia.

Part III - Necessary Conditions of Equitable Settlement

Conditions Proposed as Basis of Settlement

We beg to present for consideration of the two Governments the following which we regard as necessary conditions of equitable settlement:

1. That the Proclamation issued by King George III in the year 1763 and the Report presented by the Minister of Justice in the year 1875 be accepted by the two Governments and established as the main basis of all dealings and all adjustments of Indian land rights and other rights which shall be made.

2. That it be conceded that each Tribe for whose use and benefit land is set aside (under Article 13 of the "Terms of Union") acquires thereby a full, permanent and beneficial title to the land so set aside together with all natural resources pertaining thereto; and that Section 127 of the Land Act of British Columbia be amended accordingly.

3. That all existing reserves not now as parts of the Railway Belt or otherwise held by Canada be conveyed to Canada for the use and benefit of the various Tribes.

4. That all foreshores whether tidal or inland be included in the reserves with which they are connected, so that the various Tribes shall have full permanent and beneficial title to such foreshores.

5. That adequate additional lands be set aside and that to this end a per capita standard of 160 acres of average agricultural land having in case of lands situated within the dry belt a supply of water sufficient for irrigation be established. By the word "standard" we mean not a hard and fast

rule, but a general estimate to be used as a guide, and to be applied in a reasonable way to the actual requirements of each tribe.

6. That in sections of the Province that in case of which the character of available land and the conditions prevailing make it impossible or undesirable to carry out fully or at all that standard the Indian Tribe concerned be compensated for such deficiency by grazing lands, by timber lands, by hunting lands or otherwise, as the particular character and conditions of each such section may require.

7. That all existing inequalities in respect of both acreage and value between lands set aside for the various Tribes be adjusted.

8. That for the purpose of enabling the two Governments to set aside adequate additional lands and adjust all inequalities there be established a system of obtaining lands including compulsory purchase, similar to that which is being carried out by the Land Settlement Board of British Columbia.

9. That if the Governments and the Allied Tribes should not be able to agree upon a standard of lands to be reserved that matter and all other matters relating to lands to be reserved which cannot be adjusted in pursuance of the preceding conditions and by conference between the two governments and the Allied Tribes be referred to the Secretary of State for the Colonies to be finally decided by that Minister in view of our land rights conceded by the two Governments in accordance with our first condition and in pursuance of the provisions of Article 13 of the "Terms of Union" by such method of procedure as shall be decided by the Parliament of Canada.

10. That the beneficial ownership of all reserves shall belong to the Tribe for whose use and benefit they are set aside.

11. That a system of individual title to occupation of particular parts of reserved lands be established and brought into operation and administered by each Tribe.

12. That all sales, leases and other dispositions of land or timber or other natural resources be made by the Government of Canada as trustee for the Tribe with the consent of the Tribe and that all who may have rights of occupation affected, and that the proceeds be disposed of in such way and used from time to time for such particular purposes as shall be agreed upon between the Government of Canada and the Tribe together with all those having rights of occupation.

13. That the fishing rights, hunting rights, and water rights of the Indian Tribes be fully adjusted. Our land rights having

first been established by concession or decision we are willing that our general rights shall after full conference between the two Governments and the Tribes be adjusted by enactment of the Parliament of Canada.

14. That in the connection with the adjustment of our fishing rights the matter of the international treaty recently entered into which very seriously conflicts with those rights be adjusted. We do not at present discuss the matter of fishing for commercial purposes. However, that matter may stand. We claim that we have a clear aboriginal right to take salmon for food. That right the Indian Tribes have continuously exercised from time immemorial. Long before the Dominion of Canada came into existence that right was guaranteed by Imperial enactment, the Royal Proclamation issued in the year 1763. We claim that under that Proclamation and another Imperial enactment, Section 109 of the British North America Act, the meaning and effect of which were explained by the Minister of Justice in the words set out above, all power held by the Parliament of Canada for regulating the fisheries of British Columbia is subject to our right of fishing. We therefore claim that the regulations contained in the treaty cannot be made applicable to the Indian Tribes, and that any attempt to enforce those regulations against the Indian Tribes is unlawful, being a breach of the two Imperial enactments mentioned.

15. That compensation be made in respect of the following particular matters:

(1) Inequalities of acreage or value or both that may be agreed to by any Tribe.

(2) Inferior quality of reserved lands that may be agreed to by any Tribe.

(3) Location of reserved lands other than that required agreed to by any Tribe.

(4) Damages caused to the timber or other natural resources of any reserved lands as for example by mining or smelting operations.

(5) All moneys expended by any Tribe in any way in connection with the Indian land controversy and the adjustment of all matters outstanding.

16. That general compensation for lands to be surrendered be made.

(1) By establishing and maintaining an adequate system of education, including both day schools and residential industrial schools.

(2) By establishing and maintaining an adequate system of medical aid and hospitals.

17. That all compensation provided for by the two preceding paragraphs and all other compensation claimed by any Tribe so far as may be found necessary be dealt with by enactment of the Parliament of Canada and be determined and administered in accordance with such enactment.

18. That all restrictions contained in the Land Act and other Statutes of the Province be removed.

19. That the Indian Act be revised and that all amendments of that Act required for carrying into full effect these conditions of settlement, dealing with the matter of citizenship, and adjusting all outstanding matters relating to the administration of Indian Affairs in British Columbia be made.

20. That all moneys already expended and to be expended by the Allied Tribes in connection with the Indian land controversy and the adjustment of all matters outstanding be provided by the Governments.

(Source: Canada. Parliament. Special Joint Committee on the claims of the Allied Tribes of British Columbia. Report and Evidence, 1927, pp. 33 and 35-6. Extracts from the larger Statement made on November 12, 1919, pp. 31-8.)

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TABLE I. PRE-EMPTION RECORDS, 1873-1913, INCL.

	Victoria	Cowichan	Nanaimo	New Westminster	Yale	Lillooet	Cariboo	Omineca	Kootenay	Kamloops	Osoyoos	Cassiar	Esquimalt	Comox	Coast(1912-13 Vancouver)	Alberni	Atlin	Telegraph Creek	Golden	Cranbrook	Sloean	Revelstoke	Nelson	Fairview	Vernon	Nicola	Ashcroft	Clinton	Barkerville	Prince Rupert	Hazelton	Fort George	Total
1873	56	35	33	206	76	22	10	3																									441
1874		14	16	106	34	14				8	6	10																					208
1875	5	6	8	152	9	6	1			6	2	3																					198
1876	4	4	7	119	12	8	4			27	2	1																					188
1877	7	9	12	214	17	7			3	31	13	7																					320
1878	6	15	22	141	9	11	4		2	28	5	2																					245
1879	15	7	20	19	3	9	3			20	4																						100
1880	3	5	5	1	3	2	2			7	35	1																					64
1881	18	8	5	6		6	7			13	21	1																					85
1882	14	18	17	1		4	1			7	15																						77
1883	3	28	9	1	2	5	8		7	38	78		15		6																		200
1884	13	239	235	49	2	12	3		15	34	68		33	2	2																		707
1885	10	164	181	25	1	19	11		22	24	107		31	40	3																		638
1886	4	113	154	52		18	13		35	52	69		12	63	4																		589
1887	6	36	6	90		17	15		21	27	67		16	1	1																		303
1888	9	38	5	284		15	12		14	36	94		13	19	9																		548
1889	27	27	8	217	1	12	16		15	26	137		10																				496
1890	45	27	6	228		22	14		46	25	158		37	1	7																		616
1891	80	25	8	347		68	21		62	35	230		59		53																		988
1892	151	21	14	134	1	21	43		150	50	204	2			78																		869
1893	195	14	6	63		45	24		141	34	257	1	8		44																		832
1894	108	15	11	44	2	24	38		109	34	295	2			27																		709
1895	112	14	5	31		32	54		80	28	236	2			36																		630
1896	61	3	6	24		36	45		89	26	177	2			17																		486
1897	50	6	5	19		27	28		148	15	139	6			19																		462
1898	41	2		14		26	12		134	27	181	3			27																		467
1899	54	1	8	9		20	30		164	38	281				11																		616
1900	55		1	31		33	24		218	42	309	2			7																		722
1901	48	3		26	3	34	21		129	56	300	5			21																		646
1902	63	2	3	18	8	42	24		164	58	253	3			17																		651
1903	60	7	4	86	8	31	31		141	33	308	10			39																		758
1904	52			38	12	31	34		151	59	395	8			105																		885
1905	48	11	2	65	7	53	23		155	97	323				171																		955
1906	53	12	13	68	4	64	24		185	149	240	26			210																		1048
1907	41	9	11	49	4	58	42		172	79	293	6			172																		936
1908	77	9	9	64	4	68	62		164	113	448				517																		1535
1909	86	5	6	59	1	102	95		146	125	437				558																		1620
1910	140		16	72						152						130	1	1	20	40	5	9	34	154	221	99	8	144	244	197	362	1	2049
1911	152		12	70						178						247		3	31	39	10	2	52	169	149	77	19	104	123	337	359	250	2383
1912	109		24	146						250					191	435		1	81	84		10	61	144	126	116	25	158	184	538	342	631	3655
1913	31		13	13						206					391	315		1	62	19		4	45	144	109	160	12	367	279	442	167	1071	3855
	2112	952	926	3401	223	1024	799	3	2882	2293	6187	103	234	126	2743	1127	5	5	194	182	15	25	192	611	605	452	64	773	830	1514	1230	1952	33784

Notes: 1. Figures include 970 pre-emptions in Island Railway Belt, 1884-1886, incl.
(Compiled from Annual Report of the Chief Commissioners of Lands and Works, 1873-1913, inclusive.)

TABLE II. CERTIFICATES OF IMPROVEMENT, 1873-1913, INCL.

	Victoria	Cowichan	Nanaimo	New Westminster	Yale	Lillooet	Cariboo	Omineca	Kootenay	Cassiar	Kamloops	Osoyoos	Esquimalt	Comox	Coast(1912, 13-Vancouver)	Alberni	Atlin	Telegraph Creek	Golden	Cranbrook	Slocan	Revelstoke	Nelson	Fairview	Vernon	Nicola	Ashcroft	Clinton	Barkerville	Prince Rupert	Hazelton	Fort George
1873	13	4	15	21	15			1																								
1874	6	12	20	23	9	1				1																						
1875	1	10	5	22	5	3				1	12																					
1876	2	5	7	12	10	1	1		1			3																				
1877	3	5	8	43	4							2																				
1878																																
1879	6		1	48	1				2																							
1880			9	45																												
1881	6	3	7	28	2				1	1	6	1																				
1882			2	24		3																										
1883		3	3	22		2					11	16			3																	
1884	4	19	40	31		3					8	9	3		2																	
1885	2	51	36	31	2	5	1		4		10	14	2	5																		
1886	3	50	34	20	2	5					10	10	2																			
1887		13	17	15	2	1			1		3	16																				
1888	1	15	10	92		3			1		15	11	4	1	4																	
1889	4	11	3	80	1	3			3		13	13	1																			
1890	3	21	8	82		5	3		4	1	9	19	9	1	4																	
1891	11	16	11	146		7	1		6		16	29	13	2	2																	
1892	32	22	8	106	1	9	13		7		25	5																				
1893	27	13	7	32	1	12	4		14		9	30		1	3																	
1894	27	7	3	21		5	6		9		6	26			7																	
1895	29	10	14	14		5	3		17		7	22			2																	
1896	42	9	5	5		4	5		26	2	1	37		1	5																	
1897	13	2	2	85		19	6		27	1		43			6																	
1898	23	4	3	3		9	13		28		8	45			6																	
1899	10	2	2	2		16	11		18		3	48			1																	
1900	17	2	1	3		5	2		16		8	58			1																	
1901	15	2	1	8	2	16	13		37	1	16	53			4																	
1902	10		2	2		8	10		37		11	58			5																	
1903	8		1	9		4	2		32		8	59																				
1904	21			10	1	4	8		43		15	101			6																	
1905	18	2	2	16	3	6	4		85		10	42			5																	
1906	19	1	2	17	1	15	6		52	6	15	41																				
1907	24	6		17	1	20	12		64		16	86			16																	
1908	19	1		20	1		8		80		12	99			16																	
1909	21	2		24	7	19	11		68		38	89			10																	
1910	41			20							24					13	-	-	11	16	4	3	12	63	89	16	4	40	20	63	-	-
1911	38		5	14							38					34	-	1	16	24	3	1	26	60	106	33	7	50	14	56	92	16
1912	43		2	8							46					24	-	-	10	11	-	3	20	36	91	37	5	55	31	70	135	39
1913	16		6	2							44				71	65	-	-	13	17	-	-	9	70	107	39	5	55	51	100	116	176
	578	323	302	1223	71	218	143	1	683	14	473	1151	34	21	204	136		1	50	98	7	7	67	229	393	125	18	188	116	289	343	231

Notes: 1. Figures include 195 certificates of improvement in Island Railway Belt, 1884-86, incl.
(Compiled from the Annual Report of the Chief Commissioners of Lands and Works, 1873-1913, inclusive.)

TABLE III. CERTIFICATES OF PURCHASE, 1873-1913, INCL.

	Victoria	Cowichan	Nanaimo	New Westminster	Yale	Lillooet	Cariboo	Omineca	Kootenay	Kamloops	Osoyoos	Esquimalt	Comox	Coast(1912-13, Vancouver)	Cassiar	Alberni	Atlin	Telegraph Creek	Golden	Cranbrook	Slocan	Revelstoke	Nelson	Fairview	Vernon	Nicola	Ashcroft	Clinton	Barkerville	Prince Rupert	Hazelton	Fort George	Total
1873	5	12		121	4																												142
1874	5	6	14	122	2		5																										154
1875	4	3	11	178	2	1																											199
1876	11	36	17	76		22																											162
1877	1	18	10	140	3	80				9																							261
1878	16	32	20	198	7	2	3			30	9																						317
1879	59	28	23	199	7	2				61	25																						404
1880	33	25	22	107	4	4			2	29	10																						236
1881	40	17	17	80	2	3	3			36	7																						205
1882	34	23	21	68	2	6	2			21	24																						201
1883	52	34	29	41	1	8	10		1	34	61	28	9	20																		328
1884	98	32	40	256	1	11	7		2	63	63	26	3	13																		615
1885	31	46	35	110	1	17	3		12	45	27	6	4	3																		340
1886	12	71	47	157	1	25	6		5	48	46	7	8	3																		436
1887	11	25	22	90	3	32	3		7	67	71	13	2	5																		351
1888	15	22	27	126		19	9		11	46	57	7	7	9																		355
1889	21	29	20	251	2	14	16		121	53	45	7																				578
1890	45	52	17	331	1	27	14		183	36	84	23		16																		829
1891	170	20	15	366	3	37	19		45	39	76	50		23																		863
1892	315	38	18	354	2	56	14		26	7	97		2	68	3																	1000
1893	30	7	7	61	1	9	5		62	4	64	3		3	8																	264
1894	20	6	3	23	1	5	1		29	8	44	2		11																		153
1895	63	37	15	50		33	17		57	24	26			11	1																	334
1896	69	49	22	52	2	54	47		235	49	91	1	1	20	2																	694
1897	47	14	5	11	1	166	34		556	32	85			20	6																	977
1898	47	12	3	64		40	60		344	31	85			29	50																	765
1899	34	13	4	61		38	29		121	12	89			1	16																	418
1900	44	9		51	1	37	23		75	18	134			6	1																	399
1901	33	7	2	66	7	36	27		145	23	169			10	6																	531
1902	41	4	3	72	4	37	39		134	56	142			21	12																	565
1903	20	1	3	61	4	17	34		146	39	122			16	7																	510
1904	50	9	2	115	5	19	36		210	82	356			50	35																	969
1905	38	5	4	183	14	59	26		334	61	835			70	8																	1637
1906	58	7	2	191	14	122	64		583	74	104			258	73																	1550
1907	119	10	5	452	17	132	147		1421	95	499			295	13																	3205
1908	116	9		300	3	114	195		702	93	225			678	3																	2438
1909	313	12	1	644	16	143	451		704	147	229			1681	22																	4363
1910	1939		2	204						120						235	1	1	150	166	42	21	148	115	163	135	29	552	1990	971	2097		
1911	1285		14	449						88						302	1	1	244	94	82	27	171	140	145	184	166	597	431	676	980	1063	
1912	1264		3	84						65						670	1	3	243	153		26	97	74	141	125	65	181	224	480	757	547	
1913	558		5	5						48				62		523	2	3	24	58	-	6	77	70	84	51	12	127	166	552	434	435	
	7166	780	530	6570	138	1427	1349		6273	1794	4000	173	36	3828	306	1730	4	7	461	471	124	-80	493	399	-533	495	-272	1457	2811	2679	4268	2025	52,679

Notes: 1. Figures include 113 certificates of purchase in Island Railway Belt, 1884-86, incl.
(Compiled from the Annual Report of the Chief Commissioners of Lands and Works, 1873-1913, inclusive.)

TABLE IV. CROWN GRANTS, 1873-1913, INCL.

	Victoria	Cowichan	Nanaimo	New Westminster	Yale	Lillooet	Cariboo	Omineca	Kootenay	Kamloops	Osoyoos	Esquimalt	Comox	Coast	Cassiar	Total
1873	9	12	2	14	5											42
1874	23	7	12	57	3		4									106
1875	23	5	8	88	5		26									155
1876	21	14	14	54	2	2	21									128
1877	2	6	7	60	6	2	1			4						88
1878	12	21	6	91	4	5	6		7	9	11					172
1879	7	24	25	128	7	1				14	5					211
1880	11	12	16	70	7	3	3		2	5	3					132
1881	14	11	12	56	2	1	3		1	7	4					111
1882		14	13	66	5	3	1		1	13	6	3	3	1		129
1883	40	23	12	64	5	5	7		1	28	42	23	7	18		274
1884	77	32	16	114	5	19	1		5	29	68	22	2	16		406
1885	29	21	19	124	1	6	4		8	36	50	5	1	2		306
1886	15	24	4	137	1	15	3		11	40	16	5		3		274
1887	12	25	15	92	7	15	6		9	66	60	7	1	5		320
1888	13	27	27	114	1	13	5		26	48	40	9	2	7		332
1889	27	41	15	184	2	15	5		102	34	33	8	2	13		481
1890	70	53	16	221		11	8		99	34	41	18		21	1	593
1891	143	16	10	266		24	8		75	28	54	39		18		685
1892	243	24	16	225	4	41	11		104	51	69	1	1	35	8	828
1893	56	12	10	96	5	11	3		122	8	49	4		9		393
1894	12	5	7	17		4	1		43	11	36	2		8		159
1895	22	12	8	16	2	17	5		80	12	39	1		1		215
1896	29	20	6	16	2	13	19		228	14	57	1	1	5		411
1897	28	5	6	26	2	66	13		503	13	87			14		766
1898	32	11	3	21		45	22		599	24	164			25	3	951
1899	51	6	2	31		38	26		509	4	174			21	6	868
1900	48	5	2	58	8	31	26		620	16	260			6	21	1101
1901	41	13	2	51	8	29	16		440	26	223			42	21	912
1902	87	6	7	46	4	34	19		513	27	257			49	10	1059
1903	97	2	5	54	14	17	17		309	47	238			35	25	860
1904	81	3	5	101	17	29	27		307	32	269			54	28	953
1905	49	33	25	94	25	23	10		347	42	249			154	13	1064
1906	69	4	9	126	10	31	15		334	65	310			132	19	1124
1907	143	7	22	197	7	59	39		524	39	278			119	66	1500
1908	119	11	6	247	10	59	95		604	93	259			149	15	1667
1909	86	5	3	318	10	35	80		479	93	231			339	35	1714
																21,490
1910																1572
1911																2566
1912																2757
1913																2110
	1841	572	393	3740	198	722	569		7012	1012	3682	148	20	1301	280	30495

Notes: 1. Detailed statistics not given, 1910-1913, inclusive.
(Compiled from Annual Report of Chief Commissioners of Lands and Works, 1873-1913, inclusive.)

TABLE V. TOTAL LAND TRANSACTIONS, 1873-1913, INCL.

	Pre-emption Records	Certificates of Improvement	Certificates of Purchase	Crown Grants	Total Transactions for year	Letters received in Land Office	Total acreage deeded by Crown Grant
1873	441	69	142	42	694	2068	*
1874	208	72	154	106	540	3252	*
1875	198	59	199	155	611	4110	17,960.5
1876	188	42	162	128	520	*	17,984.3
1877	320	65	261	88	734	*	9,991
1878	245	*	317	172	734	*	31,210
1879	100	58	404	211	773	*	46,815
1880	64	54	236	132	486	1319	24,115
1881	85	55	205	111	456	1314	23,141
1882	77	29	201	129	436	1617	23,609
1883	200	60	328	274	862	2463	54,637
1884	707	119	615	406	1847	3357	146,197
1885	638	163	340	306	1447	3260	128,811
1886	589	141	436	274	1440	3485	50,472
1887	303	73	351	320	1047	3079	73,950
1888	548	157	355	332	1392	3141	94,278
1889	496	132	578	481	1687	3326	134,169
1890	616	169	829	593	2207	4168	99,334
1891	988	260	863	685	2796	5224	143,455
1892	869	272	1000	828	2969	5321	309,878
1893	832	173	264	393	1662	4339	124,634
1894	709	117	153	159	1138	4018	47,167
1895	630	123	334	215	1302	5079	95,456
1896	486	142	694	411	1733	6532	36,821
1897	462	204	977	766	2409	8034	609,597
1898	467	144	765	951	2327	9126	371,394
1899	616	113	418	868	2015	10993	672,148
1900	722	113	399	1101	2335	12943	104,724
1901	646	168	531	912	2257	13306	4,632,832
1902	655	143	565	1059	2422	13546	87,907
1903	758	123	510	860	2251	14001	83,699
1904	885	209	969	953	3016	15141	107,385
1905	955	189	1637	1064	3845	16609	133,184
1906	1048	180	1550	1124	3902	19661	336,145
1907	936	262	3205	1500	5903	29430	599,420
1908	1535	256	2438	1667	5896	33629	253,542
1909	1620	289	4363	1714	7986	25798	326,230
1910	2049	439	9081	1572	13141	37188	300,588
1911	2383	624	7139	2566	12712	41946	524,325
1912	3655	715	5065	2757	12192	43302	253,141
1913	3855	962	3646	2110	10573	31738	390,036
	33,784	7,737	52,679	30,495	124,695	446,863	11,620,383.8

* No figures available. (Compiled from Tables I, II, III, and IV.)

TABLE VI. LAND AND NATURAL RESOURCES RECEIPTS, 1871-1913

Year	Government Receipts from Natural Resources Only									Total Provincial Revenue, all sources
	Land Sales	Wild Land Tax (Coal and Timber Lands)	Survey Fees	Timber Lease Rentals	Timber Royalty and Licences	Free Miners' Certificates	Mineral Tax	Mining Receipts General	Royalty and Tax on Coal	
1871	$ 8,863					$ 4,760		$ 8,135		$ 191,846
1872	4,269					8,377		7,552		328,160
1873	10,636	950				6,715		4,937		379,782
1874	23,617	2,558				11,187		7,786		567,017
1875	19,417	1,478				8,762		7,009		760,898
1876	16,749	2,118				10,037		7,669		506,162
1877	22,119	7,641				10,087		6,909		436,609
1878	40,092	9,530	991			11,925		8,593		480,512
1879	26,034	6,883	70	$		4,625		2,676		213,587
1880	22,032	5,218	702	1,263		9,527		5,413		392,484
1881	16,570	6,491	200	667		8,900		5,343		397,035
1882	19,178	5,604	355	472		6,982		4,426		454,621
1883	26,034	5,162	462	593		6,625		3,430		439,400
1884	91,432	5,402	725	1,820		7,607		6,292		891,279
1885	174,579	7,657	430	674		8,155		4,601		602,797
1886	77,502	8,418	270	3,266		18,840		8,535		515,281
1887	88,776	9,154	275	7,319		12,850		6,915		540,398
1888	80,873	13,832	180	14,504	$	11,280		8,586		608,678
1889	142,818	15,964	180	11,869	13,286	12,795		9,534		706,779
1890	244,529	21,221	100	6,314	18,356	20,625		10,145		845,522
1891	243,551	25,695	145	16,500	25,172	12,861		12,329		964,943
1892	213,519	53,301	220	23,824	20,475	17,903		14,744		1,038,237
1893	179,999	38,113	342	13,426	9,586	27,868		23,232		1,019,206
1894	33,917	35,947	494	24,925	18,725	23,015		25,545		821,660
1895	25,880	34,566	2,228	49,544	16,581	31,190		41,647		896,025
1896	64,003	36,123	1,076	27,876	31,514	54,953	306	76,638		989,765
1897	86,214	41,511	766	40,663	55,631	166,681	29,788	157,408		1,383,048
1898	104,186	61,575	945	46,076	57,647	139,756	36,061	159,432		1,439,623
1899	73,807	47,309	1,024	24,143	64,323	155,104	34,121	186,702		1,531,638
1900	53,267	49,376	787	38,812	97,517	133,765	31,894	194,303	5,933	1,444,108
1901	43,338	48,241	730	28,981	86,613	93,510	95,483	154,270	85,251	1,605,920
1902	86,161	50,938	1,123	45,861	115,210	78,240	84,077	141,382	85,702	1,807,925
1903	64,834	71,340	1,160	84,111	214,106	67,287	78,273	148,722	75,826	2,044,630
1904	118,276	112,233	1,231	116,382	289,366	59,854	65,844	108,270	95,600	2,638,260
1905	141,510	101,607	1,092	76,228	410,288	53,504	114,236	105,192	94,682	2,920,461
1906	189,391	101,308	1,183	100,449	509,043	54,298	161,904	116,895	107,587	3,044,442
1907	663,035	117,900	3,689	95,219	1,155,346	54,241	151,513	117,778	107,310	4,444,593
1908	548,036	193,974	1,855	74,043	2,258,566	53,256	112,567	92,329	125,518	5,979,054
1909	528,604	37,312	2,887	59,085	1,848,254	13,739	81,927	79,502	143,223	4,664,500
1910	2,618,188	210,904	15,871	85,875	2,234,099	53,095	102,608	91,253	222,722	8,874,741
1911	2,431,231	316,130	18,052	106,857	2,357,951	68,937	91,038	105,319	248,332	10,492,892
1912	1,805,390	428,274	17,544	83,066	2,300,263	68,101	100,659	93,461	195,207	10,745,708
1913	2,344,596	546,087	22,053	84,576	2,457,129	62,685	155,163	94,754	302,225	12,510,215
TOTALS	$13,816,746	$2,895,045	$101,437	$ 1,395,283	$16,655,047	$1,744,504	$1,527,462	$2,475,593	$1,895,119	$93,560,441

Total Government Receipts from Natural Resources only as above: $42,506,236

= 45.4% of Total Provincial Revenue, all Sources

(Adapted from: B.C.S.P., 1910, p. B 21, Table 2, and Ibid., 1915, Vol. 1, p. C 21, Table 3.)

TABLE VII. PRIVATE AND GOVERNMENT SURVEYS, 1900-1913, INCL.

(Acres)

Year	Pre-emptions	Purchases	Mining Claims	Timber Limits	Coal Licences	Leases	B.C.Govt Surveys	Totals
1900	22,873	4,419	33,441	59		664	10,057	71,513
1901	26,493	16,401	33,400	2,207		593		79,094
1902	35,297	29,652	31,057	1,040	626	1,026		98,698
1903	37,615	26,787	18,115	127,992		2,003	800	213,312
1904	48,124	36,468	20,549	155,279	48,670	3,009	179	312,278
1905	42,660	58,705	15,535	214,841	137,218	806	107	469,872
1906	33,573	66,668	9,894	77,829	41,312	9,566		238,842
1907	50,460	162,218	10,017	83,016	20,367	4,387	113,968	444,433
1908	66,788	147,980	14,607	167,925	9,821	2,580	97,072	506,773
1909	71,316	145,325	10,744	426,121	8,310	15,239	512,373	1,189,428
1910	79,273	455,356	12,499	509,201	43,363	5,864	302,536	1,408,092
1911	89,485	1,352,809	21,325	686,909	120,938	6,500	948,644	3,226,610
1912	99,461	1,011,934	16,645	804,730	99,236	8,560	826,362	2,866,928
1913	55,202	508,062	18,043	1,181,355	72,719	4,740	1,014,366	2,854,487
TOTALS	758,620	4,022,784	265,871	4,438,504	602,580	65,537	3,826,464	13,980,360

(Adapted from: British Columbia. Legislative Assembly. Department of Lands. Annual Report, 1914, p. D 50.)

TABLE VIII. TIMBER STATISTICS

(1) Timber Licences issued, 1883-1911, inclusive.

Year	No. Licences	Year	No. Licences
1883	96	1897	78
1884	2	1898	87
1885	1	1899	87
1886	35	1900	143
1887	42	1901	129
1888	36	1902	525
1889	35	1903	1307
1890	21	1904	1451
1891	21	1905	2166
1892	34	1906	3959
1893	36	1907	10456
1894	23	1908	17700
1895	40	1909	15164
1896	68	1910	12195
		1911	15195
		TOTAL:	81,132

(Source: Forestry Inspector's Report, in Report of C.C.L.W., 1883-1911, inclusive.)

(2) Extent and Value of Privately held Timber Lands, 1913.

District	Acres	Acreage Value per acre
Victoria	17,341	$13.30
Cowichen	60,109	14.88
Alberni	44,733	15.45
Nanaimo	84,199	11.05
Kamloops	4,960	1.13
Vancouver	7,428	15.03
Nelson	182,373	3.82
Vernon	4,692	3.06
Comox	219,343	12.54
Rossland	29,385	4.50
Kettle River	6,041	3.00
Golden	77,947	3.85
Revelstoke	48,598	11.47
Fort Steele	95,031	6.41
TOTAL ACREAGE:	922,948	AVERAGE: $ 9.02

(Source: B.C.S.P., 1914, p. D 52.)

(3) Provincial Land Areas, Productive and Unproductive, 1913

Total Land Area

	Square Miles	Acres
Dominion lands	22,647	14,494,000
Provincial lands	331,341	212,058,240
TOTAL	353,988	226,552,240

Productive Area
(Sq. miles)

	Timber	%	Agricultural	%
Dominion lands	4,489	19.8	3,589	15.8
Provincial lands	47,522	14.3	20,700	6.3
TOTAL	52,011	14.7	24,289	6.9

Unproductive Area
(Sq. miles)

	Area	% of total
Dominion lands	14,092	64.6
Provincial lands	263,119	79.4
TOTAL	277,211	78.4

(Source: Adapted from Forests of B.C., Tables pp. 239 and 242.)

TABLE IX. TIMBER LEASES HELD, 1888

Name	Number of Mills and where situated	Daily Capacity	Location	Date	Term of Years	Acreage	Rental At which granted	Rental Revised by Act, 1888
Moodyville Saw-Mill Company	1. Burrard Inlet	105,000	New Westminster District	Jan.1, 1870	21	11,410	$ 114.10	$114.10
			" "	Jan.11,1875	21	10,162	101.62	101.62
			" "	Nov.28,1884	20	1,947	194.70	97.35
			" "	Feb. 6,1886	21	7,825	782.50	391.25
			" "	Jan.10,1888	21	1,433	214.95	71.65
			" "	Mar.16,1888	21	800	120.00	40.00
Hastings Saw-Mill Company	1. Vancouver	65,000	Coast "	Mar.15,1886	21	8,216	921.40	410.80
			New Westminster District	Nov.30,1886	2	704	70.40	
			" "	Nov.30,1886	5	3,220	322.00	161.00
			Coast and Sayward District	Jun.10,1887	21	2,301	345.15	115.05
			Sayward "	Feb. 8,1888	21	1,360	204.00	68.00
			New Westminster District	Mar.16,1888	21	1,467	220.05	73.35
Royal City Planing Mills Co.	2. New Westminster	110,000	Sayward "	Feb. 6,1886	21	6,971	1,045.65	348.55
	1. Vancouver	30,000	Coast and Sayward District	Jun.10,1887	21	3,652	547.80	182.60
			" and N.W. District	Nov.10,1887	21	8,353	1,252.95	417.65
			Sayward "	Jan.27,1888	21	1,482	222.30	74.10
Leamy & Kyle	1. Vancouver	50,000	Coast "	Jun.18,1887	21	2,500	375.00	125.00
			" and Sayward District	Feb. 3,1888	21	3,749	562.35	187.45
W.P. Sayward	1. Victoria		Coast "	Jun.18,1885	21	1,380	138.00	69.00
Wm. Sutton	1. Cowichan	35,000	Cowichan "	Jan. 9,1879	20	7,069	70.69	70.69
J. Martin and Son			Harrison, Lake, N.W. District	Feb. 1,1876	21	787	7.87	7.87
Haslam and Lees	1. Nanaimo	70,000	Sayward "	Mar.16,1888	21	18,462	2,769.30	923.10
Croft and Argus	1. Chemainus	50,000	New Westminster District	Mar.16,1888	21	1,413	211.95	70.65
Leonard G. Little			Sayward "	Feb. 3,1888	21	4,800	720.00	240.00
Ross & McLaren			Sayward "	Feb. 3,1888	21	23,600	3,540.00	1,180.00
Knight Brothers	1.	25,000						
Shuswap Milling Company	2. Yale District	32,000						
Muir Brothers	1. Sooke	12,000						
Brunette Saw-Mill Co.	1. New Westminster	30,000						
Fader Brothers	1. Vancouver	75,000						
Port Moody Saw-Mill Co.	1. Port Moody	15,000						
W.H. Johnston	1. Quesnelle	20,000						
I.B. Nason	1. Barkerville	7,000						
Indians	1. Alert Bay	5,000						
Cunningham Company	1. Port Essington	8,000						
G. Williscroft	1. Georgetown	12,000						
N. Hanson	1. Kootenay District	10,000						
Indians (Kincolith)	1. Nass River	3,000						
Vancouver Lumber Co.	1. Vancouver							
TOTALS						135,063	$15,074.73	$5,540.83

(Source: Adapted from B.C.S.P., 1888, p. 153.)

TABLE X. SUMMARY OF DATA, 1916 INDIAN ROYAL COMMISSION REPORT

Agency	Source in 1916 Report	Indian Population	No. reserves found 1916	Acreage of already confirmed Reserves	Acreage per capita	Acreage cut off 1916	No. reserves added	Total after 1916 Report	Acreage added by 1916 Report	Total Acreage after 1916 Report	Acreage per capita
Babine	Vol. 1 p. 180	1626	-45	30,054.21	18.49	19.59	-23	67	5,734.93	35,808.73	22.02
Bella Coola	Vol. 1 p. 225	1511	-65	18,592.93	12.31	4,075.00	-46	110	7,050.60	25,643.53	16.99
Cowichan	Vol. 1 p. 275	1936	66	19,362.55	10.01	517.04	-	59	Nil	19,352.55	9.99
Kamloops	Vol. 1 p. 306	2340	103	206,959.12	88.44	3,498.53	-	103	1,477.00	171,205.13	73.16
Kwawkewlth	Vol. 2 p. 380	1183	-91	16,466.63	13.92	140.86	29	118	1,902.29	18,228.06	15.43
Kootenay	Vol. 2 p. 359	598	33	43,771.38	73.20	2,370.00	8	41	8,260.00	52,031.38	87.00
Lytton	Vol. 2 p. 442	2502	158	51,381.61	20.53	3,100.00	54	211	15,707.65	67,089.26	26.81
Naas	Vol. 3 p. 550	1799	-63	50,945.72	28.32	11,909.19	130	190	5,671.00	56,616.72	31.47
New Westminster	Vol. 3 p. 626	2487	157	40,923.37	16.45	152.48	18	168	1,168.45	41,939.30	16.30
Okanagan	Vol. 3 p. 696	797	44	127,391.41	159.84	18,536.80	1	35	2,600.00	129,991.41	163.00
Queen Charlotte	Vol. 3 p. 724	597	-25	3,484.50	5.83	Nil	7	-32	360.10	3,844.60	6.44
Stikine	Vol. 4 p. 745	217	-2	415.00	1.90	Nil	26	-28	9,638.00	10,053.00	15.73
Stuart Lake	Vol. 4 p. 767	965	-37	21,638.94	22.85	409.00	97	-131	14,892.20	36,531.14	31.22
West Coast	Vol. 4 p. 851	1683	150	11,543.10	6.85	840.00	14	164	661.95	12,200.25	7.24
Williams Lake	Vol. 4 p. 911	1248	-64	60,940.77	48.83	1,490.00	29	-92	12,167.00	93,107.77	58.56
		21,489	1103	666,640.25		47,058.49	482	1,559	87,291.17	773,642.83	