RETURN

To an Address of the Legislative Assembly for copies of all correspondence between the Government, or any members thereof, and C. O'Keefe, and the Government, or any members thereof, and the Indian Commissioners, relating to the award by the Commissioners to the Indians of certain lands at Okanagan claimed by C. O'Keefe.

By Command.

GEO. A. WALKEM,
Chief Commissioner of Lands and Works.

Lands and Works Department,
19*th August*, 1878.

Messrs. Drake & Jackson to the Chief Commissioner of Lands and Works.

VICTORIA, 20th December, 1877.

SIR,—Mr. O'Keefe is a pre-emptor of land at Okanagan, which pre-emption was made the 29th of April, 1873, since which time Mr. O'Keefe has been in continuous personal occupation of the land. He has fenced a large portion of it and cultivated and built on it. In May this year, after his four years' occupation had expired, he left to go to Canada, leaving a man in possession of a large quantity of cattle. While in Ottawa, he received a letter from persons calling themselves Indian Reserve Commissioners, informing him that they had handed over his property to the Indians and that his claim was cancelled, and that the Indians, on the representation of this powerful body, consented not to enforce their right to his crops, buildings, and fences, provided they were removed by 12 o'clock on the 1st March next.

As far as we can ascertain this Indian Reserve Commission have no right to override the rights of settlers and give their interpretation of Acts of Legislature. We are prepared to prove that the Act has been complied with; that Mr. O'Keefe values his land and improvements at $4,000, which it would be most cruel to take possession of in this summary way, without compensation. We shall be glad if the acts of the Indian Commissioners have any sanction from yourself, as by the "Land Act, 1870," you are the only person authorized to cancel a claim, and no cancellation would be made without notice to the parties affected thereby. We have, &c.,

(Signed) DRAKE & JACKSON.

Memorandum on the case of Mr. Cornelius O'Keefe, Head of Okanagan Lake.

January 20th, 1878.

Messrs. Drake & Jackson, in their letter of 20th December, 1877, herewith returned, are in error in stating that the Commissioners have assumed to act judicially in Mr. O'Keefe's matter. The Commissioners have no judicial powers, strictly speaking; and in Mr. O'Keefe's case, even had they been clothed with such powers, they could not have properly exercised them, after discovering that at the time of their visit Mr. O'Keefe was absent, and (as his trading partner, Mr. Greenhow, stated) had left nobody to represent him in land matters. What the Commissioners can do under their commissions and instructions is to assign to the Dominion Government, for the use of the Indians, a reasonable area of land which is not in the legal possession of any one.

The exercise of this function involves, when necessary, an enquiry into the facts of alleged holdings of land, otherwise it would be in the power of individuals, by assuming to own lands which were not theirs, and which were necessary for the Indians, to defeat to some extent the objects of the two Governments in appointing the Commission.

Settlers have claimed to be the owners of land, and even of old gazetted Indian reserves, merely because they have seen fit to pay taxes on them, and, in one case, a gentleman argued that he was the legal owner of an abandoned pre-emption, a dozen miles away from his own pre-emption, because the man who abandoned the pre-emption, and who several years ago left the Province, owed him, as he said, some money in a general account.

In cases of this kind, the Commissioners obviously must take some responsibility, and act on the spot, or delay and great additional expense would be incurred, of which the Dominion Government might complain, but their actings are of course subject to formal ratification by the Chief Commissioner of Lands and Works, or his assistants, who have certain judicial powers conferred on them by law. The Commissioners never act without communication with the Assistant Land Commissioner of the district. They are guided by their practical judgment and common sense in these matters generally, and by the moral assurance they have that they will be backed by the Chief Commissioner of Lands and Works, where the public interests and the spirit of the agreement between the two Governments as to Indian affairs prescribe a certain course of action.

Mr. O'Keefe's case is a case of this class, differing only in degree from those described above. If the Commissioners have made a mistake in this or in any other case (and they do not know of any such mistake since they first took the field) it has been from want of ability and judgment, and not from carelessness in performing this delicate and anxious portion of their duties.

I do not think it is part of the duty of the Commissioners to apply to have records cancelled. This probably is the duty of the assignee of the lands, the Dominion Government, represented, I presume, by the Indian Department in the Province.

Messrs. Drake & Jackson are also in error, in stating that the Chief Commissioner alone can cancel a record. Under the "Land Ordinance, 1870," sections 15 and 16 (or sections 10 and 11 of "Land Act, 1875") the Chief Commissioner of Lands and Works, or *Assistant Commissioners* (see interpretation clause) as the case may be, may, upon being satisfied of the cessation of occupation, cancel the claim of a pre-emptor; this of course being a judicial act involving, I presume, notice to parties and formal hearing of both sides, even though the facts may privately be well known to the judge. In practice, this rule of hearing the other side must be limited, for instance in the case of pre-emptors who have left the country, and upon whom no notice can be served.

It was at first the purpose of the Commissioners accordingly to ask Mr. Lenihan, Indian Superintendent, then at Okanagan, to request the Assistant Land Commissioner of that division of the district, Mr. C. A. Vernon, to cancel, in his judicial capacity, the claim of Mr. O'Keefe. Had this request been made, Mr. C. A. Vernon would doubtless have summoned Mr. O'Keefe before him and explained to him that he thought the land had not been occupied as by law required, and given him an opportunity of answering or explaining. The absence of Mr. O'Keefe, or any authorized agent of his from the Province, made this course impossible, and the Commissioners accordingly in their discretion, and on their own responsibility, did what the public interests demanded on the spot, leaving the question of the formal cancelling of Mr. O'Keefe's record to the judgment of the Chief Commissioner of Lands and Works, or of his assistant, when the Indian Superintendent should apply to have the record cancelled. The Commissioners, I may remark, assured themselves by exhaustive enquiries, and by the written evidence herewith submitted, dated 20th September, 1877, of the Assistant Commissioner of Lands and Works, that Mr. O'Keefe had not occupied the land as by law required, and that therefore, in all probability, the formal hearing of the case by the Chief Commissioner could have but one result.

They deemed it right, however, to inform Mr. O'Keefe of what they had done, but in writing to him (see copy of letter herewith, dated 1st October, 1877) that his claim was cancelled, they, in reality, meant cancelled by his own default, not by any act of the Commissioners. Their letter shows this, for it states that the Commissioners are acting under their commissions and instructions, which it is well known authorize them to examine (not to judge), and as the result of that examination they gave Mr. O'Keefe,

or meant to give, the information that his default had, in fact, cancelled his claim. The Commissioners took further action with respect to Mr. O'Keefe's improvements, which, though apparently complained of by Messrs. Drake & Jackson, was undertaken solely in the interest of Mr. O'Keefe. It is singular that the two cases which have caused most talk in the upper country amongst ill-informed persons, viz.: Mr. O'Keefe's improvements and Mr. McBryan's firewood, are two special cases in which the Commissioners unsolicited have studiously protected the interests of the persons concerned.

Believing that the hearing of the case of Mr O'Keefe by the Chief Commissioner of Lands and Works must, as above said, result in the formal cancelling of the claim, they had to consider the effect of that judgment on Mr. O'Keefe's improvements.

It did not appear that the Chief *Commissioner of Lands and Works* had, by law, any power to deal with these improvements, but merely with the cancelling. Under section 15 of the "Land Ordinance, 1870," when the claim is cancelled, the deposits, buildings, and all improvements are by the act of cancelment absolutely forfeited to the *Crown*, and I think, according to the custom of the country, such improvements invariably go to the next occupier of the land. The Crown does not take to them. The Commissioners, foreseeing this, refused, in so far as they represented the Dominion Government, to have anything to do with these improvements, and they so informed the Indian Superintendent, but they fixed a date precisely for their removal, in order to prevent disputes between the Indian Department and Mr. O'Keefe. The value of the improvements on the piece of land in question would not exceed $400, and Mr. O'Keefe has had the benefit of crops.

The above explains shortly the action of the Commissioners, in so far as they were guided by the best interpretation of the law, which, without pretending to any professional knowledge, they, as laymen, could adopt, and they respectfully submit their views for the consideration of the Hon. the Attorney-General, in order to show, at least, that their action was not hasty or high-handed, as the letter of Messrs. Drake & Jackson suggests.

The case of Mr. O'Keefe, with other cases which I could mention, illustrates, from one point of view, the extreme difficulty of the work of the Commission. They have in the first place to be studiously careful, except as afore-mentioned, not to assume nor exercise powers beyond those actually possessed in virtue of their commissions and instructions. Some of the public, and many of the Indians, appear to have been under the impression that the Commissioners had as great powers as the Supreme Court, if I may judge from the visits to their camp of persons who came to see the Commissioners on questions of the ownership of lands, of divorce, the custody of children, and so forth. Secondly however, while restricting their actions within legal limits, the Commissioners have to look particularly to the general purpose of their appointment, to the real interests of the two Governments, and to the tenor of their instructions requiring them to adjust all matters "on the spot." They have also to consider the expense being incurred. The implied duty which under the agreement as to Indian Land matters between the two Governments, and under the circumstances generally, the Local Government owes to the Dominion Government has also to be appreciated by the Provincial Commissioners for instance in such cases as those above mentioned.

In Mr. Greenhow's case, at the head of the lake, a nice question of law arose, which the Commissioners did not presume to judge of. They communicated by telegram with the Local Government, after discussion with Mr. Greenhow, and afterwards were enabled to settle the question satisfactorily.

Mr. O'Keefe's case was different, The facts were clear and admitted by the Assistant Land Commissioner, and by everybody on the spot.

Another important practical consideration was that owing to the state of feeling amongst the Okanagan Indians, which I can explain if required in conversation, but do not wish to describe in this memorandum, arising very largely from their view of the two above cases of Mr. Greenhow and Mr. O'Keefe, it was necessary in the public interests to pay special attention to our instructions to adjust matters "on the spot." The tribes were leagued for a common object, and without settling these questions at Okanagan, the Commissioners could not have proceeded towards the frontier, but must have abandoned their care of the public interests at a critical time. The damage and loss thus sustained by the public would have far exceeded any compensation possibly due to Mr. O'Keefe as the result of the action of the Commissioners. I do not say that any circumstances would justify an attempt to take away a man's property even for

public purposes, except by express authority of the Legislature. I only say that the Commissioners were confronted by these facts, and had, on the spot, to decide on a course of action in reference to them, and to the well known fact that this land was not the legal property of O'Keefe. It was land which the Indians claimed as an old place of theirs, which they had been expecting to have confirmed to them for many years; and Mr. O'Keefe attempted to get possession of it without conforming to law, thus largely causing a state of affairs productive of alarm and great expense to the public. Had he, owing to the Government not quite appreciating local circumstances, been permitted to get possession of the piece of land (as I suppose he might have done had he conformed to the law) the only course open would have been to have bought the land from him.

On the question of Mr. O'Keefe's absence without leaving any one to represent him I must here make a remark.

The Indians have for some time claimed this piece of land, and would not permit Mr. O'Keefe peacefully to possess it. So much trouble was caused that Mr. O'Keefe wrote to the Commissioners at Victoria, begging them to go to the place to adjust matters. He also came to Victoria and expressed his anxiety to the Commissioners, who told the Provincial Government what he said (see letter). These representations of Mr. O'Keefe were influential in inducing the Commissioners to submit to the Provincial Government a programme of work, including a visit to Mr. O'Keefe's place, and probably also influenced the Provincial Government in approving that programme. Mr. O'Keefe nevertheless went away, and left no one to represent him. Messrs. Drake & Jackson state he left a man in charge. No such person could be found to represent his interests, nor did anybody live on the land. His trading partner, Mr. Greenhow, his (O'Keefe's) nephew and Mr. Walker, workmen, were the only persons within miles of the place. If the Commissioners had supposed that Mr. O'Keefe, when he urged them to visit his place, had the intention of absenting himself, and leaving nobody to represent him, they certainly would not have included that place in their programme of work for the season. Once there they could neither advance nor retreat. The Governments may rather complain of Mr. O'Keefe's absence than show consideration to him on that account. The interests of the public have to be considered, as well as the interests of individuals, particularly of individuals who in the matter in question are outside of the law.

With these preliminary observations I come to the question of Mr. O'Keefe's alleged title to the piece of land. What are the facts?

Mr. Cornelius O'Keefe, under 1865 Act, holds by Crown Grant issued on 14th October, 1872, 160 acres of land near the head of Okanagan Lake. This piece of 160 acres is not in question.

Permitted, as he states, by above Act, he, in 1871, became a pre-emptor of a purchase claim in respect to 480 acres, adjoining the 160 acres. This piece of 480 acres is not in question, but it is important to know what was Mr. O'Keefe's position in respect to these 480 acres. Was he (see Act of 1865 and Order in Council, 20th September, 1873) a pre-emptor subject to the disability of holding another pre-emption?

This is important, because, if so, he by pre-empting 320 acres in 1873, the piece that is in question, forfeited the 480 acres, inasmuch as he could not hold two pre-emptions.

The land mentioned by Messrs. Drake & Jackson is the above 320 acres, recorded by Mr. O'Keefe 29th April, 1873. (See map herewith.)

This is the only piece of land, of which Mr. O'Keefe is the alleged owner, that is affected by the action of the Commissioners.

This land being an Indian "Settlement" was unpre-emptable, but, waiving for a time this contention, on account of the inconvenience of raising questions respecting "Indian Settlements," the nature of which has not so far as they know been authoritatively defined, the Commissioners say that the land was not in the legal possession of anybody, and being vacant land, they, acting within their powers, assigned it to the Dominion Government, and told the Indians they had done so.

Mr. O'Keefe recorded the land on 29th April, 1873, but he did not fulfil the condition of occupation required by clause 16 "Land Ordinance, 1870."

Messrs. Drake & Jackson say, that Mr. O'Keefe has been in "*continuous personal occupation*" of the land. This is evading the point. What is occupation? The clause 16, Act 1870, requires a "continuous *bona fide* personal *residence* of the pre-emptor *on his pre-emption claim.*"

The real meaning of the Legislature appears to be clear enough. The Legislature had gradually increased the stringency of the occupation requirement in the several Land Acts, until it was made as strong by this 1870 Act as words could make it. The intention, I should say, was that every pre-emptor should actually live on, that is to say within the limits of, his pre-emption, and that thus the population should be increased. The plain meaning is that a man should have his dwelling-house, his farm-buildings, and his homestead generally, actually *upon his pre-emption*, and that he personally should live at that homestead.

The above Act of 1870 seems to have been found so stringent, as regards the occupation condition, that it was amended by an Act in 1873, permitting occupation *by an agent*, but leaving the occupation requirements of the 1870 Act in force. By these requirements the agent would be bound, of course, as much as his principal. The cultivation condition was added in 1873.

As this Amendment Act did not come into force until the 21st July, 1873, and as Mr. O'Keefe's record of the land in question is dated 29th April, 1873, and he did not re-record, I presume the Amendment Act does not bear on the present case. I have mentioned it merely to throw light on the general intention of the Legislature.

The question of an agent therefore is probably not concerned in the inquiry. The question is what did Mr. O'Keefe personally do?

About the *facts* there can be no question whatsoever, because the Commissioners, as above said, ascertained them by patient exhaustive inquiries on the spot specially made in the interest of Mr. O'Keefe.

The direct inquiries made of Mr. Greenhow (who is stated to be Mr. O'Keefe's partner in cattle and in store keeping, but not in land), together with the correspondence and documents herewith, namely:—

McKinlay and Sproat to Vernon,	20th	September	1877.
Vernon to McKinlay and Sproat,	,,	,,	,,
Mohun to Sproat,	22nd	,,	,,
Sproat to Greenhow,	,,	,,	,,
Sproat to Baudre,	24th	,,	,,
Baudre to Sproat,	28th	,,	,,
Deposition of two Indians,	,,	,,	,,
Commissioners to O'Keefe, 2 letters,	1st	October,	,,
Blenkinsop to Commissioners,	4th	,,	,,
Commissioners to Vernon,	3rd	,,	,,

show the care taken by the Commissioners under the circumstances of Mr. O'Keefe having invited them to Okanagan, and then having gone away, leaving nobody to represent him; but additionally I may remark, the Commissioners ascertained as much as was necessary by conversation with other settlers in the neighbourhood, whom they did not like to ask to testify in writing to facts which might bear against Mr. O'Keefe's claim, as the act on their part might be considered unneighbourly.

Messrs. O'Keefe and Greenhow always have lived, and now live, upon Mr. O'Keefe's purchase of 480 acres, in the dwelling houses shown on the map herewith.

Mr. O'Keefe never has continuously, *bona fide*, personally *resided* on the 320 acres in question, nor has he ever lived upon that land at all. His dwelling, his stable, barn, outhouses, &c., are on the 480 acres at the place shown on the map.

This piece of 480 acres is entirely separated from the 320 acres in question, by intervening land, formerly vacant, now Indian Reserve.

The condition of *cultivation* which, as well as residence, is required by the 1873 Act, if that Act applies, on the 320 acres, has probably been fulfilled by Mr. O'Keefe, though not much land has been cultivated on the piece of land in question. The Commissioners found a piece of fencing and about 20 acres of grain, cultivation partly, they think, on the piece of land recorded by Mr. O'Keefe, and partly on the Crown land intervening between that and the 480 acre piece.

There were also the walls of an unfinished log house, apparently of new material, and without a roof. Some one began to work again at this house, and to put a roof on it *after* the Commissioners had assigned the land to the Indians.

Mr. O'Keefe then, as shown, lived upon his 480 acres, about 1½ miles from the nearest part of the land in question.

All he did was to record this land and do a little ploughing and fencing on it, and

by this he seems to have considered that he acquired a title to the land under the 1870 Act.

If this be so, it is difficult to understand what the 1870 Act means. The homestead must be on the pre-emption, and the man must continuously live there; this is what the law says.

If the homestead may be off the pre-emption ½ mile, why not 10 miles, why not 20? What distance off would constitute conformity?

Under older land Acts in which "occupation" was mentioned without definition, I could understand questions arising, but the 1870 Act seems to me to have been meant precisely to prevent such action as that of Mr. O'Keefe.

Mr. O'Keefe is not a poor ignorant settler, but a wealthy intelligent cattle farmer, already in possession of 640 acres near the piece of land in question.

It is right to expect that he should strictly conform to the plain meaning of the law.

It is contrary to the public interest that any one should, in order to get a piece of land, separated from his own claim (which, for some reason, he is unable at the time to secure, or which it is inconvenient for him to secure) plough and fence a bit of it, and thus frighten off intending settlers, who do not make proper inquiry at the local Land Office, until it is convenient for him to get a legal right to the land coveted. I do not say this is Mr. O'Keefe's case, but I know such cases, and I think the law was meant to prevent them, and to effect the object of having numerous settlers upon the lands.

Adopting, without prejudice to Mr. O'Keefe, and merely for argument's sake, an adverse theory as to his attempt, it might be said that he wilfully neglected to comply with the law, because such compliance must have necessitated his changing his place of residence and his homestead. Rather than do this, he in fact took his chances, hoping to get the land in some manner by and bye, and meantime the ploughing and fencing he considered might keep off settlers in search of land. He knew, also, that the land was claimed by the Indians, and perhaps looked to establishing some ground of compensation in connection with the settlement of Indian questions in the district. His neglect personally, or by an agent, to meet the Commissioners, after urging them to go to his place, may, from this point of view, have been designed.

The only argument I have heard on Mr. O'Keefe's side is, that as the 4 years (see clause 16, Act 1870,) had expired before the visit of the Commissioners, the question of occupation could not arise.

The requirement of residence by the Land Acts, 1870 and 1873, ceases after 4 years residence. The Act of 1875 seems to be silent as to such ceasing, but in Mr. O'Keefe's case there appears never to have been any residence at all, and therefore no pretence for saying that the requirements ceased. A man cannot die who never lived.

Four years continuous breach of the law cannot have the effect of giving a legal title.

Upon these facts I submit that when Mr. Lenihan, as agent of the Dominion Government, applies for cancelment of the record, the Honourable the Chief Commissioner, or his assistant, is at least morally bound to ratify the action of the Commissioners by deciding, of course judicially, and after notice to Mr. O'Keefe, that he neither personally, nor by agent, occupied the land, and that his claim or record should be cancelled; and I submit further that this should be done soon, because Mr. O'Keefe has perhaps completed his log hut on the land in question (see page 719 of this Memo.) and perhaps has an agent *now* resident thereon, placed there to embarrass proceedings to obtain a forfeiture. Questions about the improvements also might arise if they are not removed in time. But I should, nevertheless, be glad of an opportunity of offering further comments, for the information of the Chief Commissioner, on any case which Mr. O'Keefe may set up, should the Chief Commissioner think it necessary in view of the propriety of having every light thrown upon a question which might become the subject of correspondence, or possibly litigation between the two Governments. Mr. O'Keefe, I learn, was lately in Victoria. It would have been well had he seen the Commissioners and had his case heard by the Chief Commissioner of Lands and Works in their presence.

(Initialed) G. M. S.

The Indian Reserve Commissioners to Mr. C. A. Vernon, J. P.

I. R. C. CAMP, HEAD OF OKANAGAN LAKE,
20th September, 1877.

SIR,—Mr. O'Keefe, on 29th April, 1873, recorded a pre-emption claim, as shown in the enclosed rough sketch. The claim, you will observe, is distant from any other land of his about half a mile.

Annexed, are extracts from the law of 1870 and 1873, stating the conditions of pre-emption with respect to occupation and cultivation. The question is, whether Mr. O'Keefe has fulfilled the conditions of four years' continuous *bona fide* personal occupation within the meaning of the law.

Mr. Greenhow, who we believe represents Mr. O'Keefe in the absence of the latter, states that he thinks Mr. O'Keefe has done what is necessary. It is stated on the other hand that Mr. O'Keefe neither personally nor by an agent has lived on this pre-emption claim during the period of four years now past. Can you give us any information with respect to this disputed fact of his residence or non-residence on this claim?

(Signed) ARCHD. MCKINLAY, *Provincial Commissioner.*
G. M. SPROAT, *Joint Commissioner.*

Extract from "Land Ordinance, 1870."

Clause 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 requirements of such personal occupation shall cease and determine after a period of four years of such continuous occupation shall have been fulfilled.

Extract from Clause 2 of the "Land Ordinance Amendment Act, 1873."

The "occupation" required under the Principal Act, shall mean a *bona fide* residence of the pre-emptor or his agent on the pre-emption claim, and a *bona fide* cultivation thereof by such person: Provided no such agent shall be an Indian or Chinaman: 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.

Mr. Mohun, C. E., to the Indian Reserve Commissioners.

OKANAGAN LAKE,
20th September, 1877.

GENTLEMEN,—I have the honour to report that, upon examination, I find that there is a piece of land containing about 250 acres vacant between the southern boundary of Mr. O'Keefe's purchase of 480 acres and the northern boundary of the pre-emption claim of 320 acres, as described by him and shewn on the accompanying rough sketch.

I have, &c.,
(Signed) EDWARD MOHUN, C. E.,
Surveyor to Indian Reserve Commissioners.

Mr. C. A. Vernon, J. P., to the Indian Reserve Commissioners.

OKANAGAN, September 20th, 1877.

GENTLEMEN,—As I was not Land Commissioner for the District at the time Mr. O'Keefe pre-empted his 320 acres on Okanagan Lake, I am unable to state accurately whether or not Mr. O'Keefe has complied with the requirements of the Land Act under which he pre-empted. To the best of my knowledge and belief, Mr. O'Keefe has not, by himself or agent, ever *bona fide* occupied the land to which your letter refers.

I have, &c.,
(Signed) CHAS. A. VERNON,
Assistant Commissioner.

Mr. Sproat, Joint Commissioner, to Mr. T. Greenhow.

I. R. C. CAMP, HEAD OF OKANAGAN LAKE,
22nd September, 1877.

DEAR SIR,—I have to thank you for the information you have given us from time to time. I am laid up in bed by a trifling though troublesome ailment, or I would come to see you, but not being able to do so, I ask Mr. Mohun to take this over and to ask you to be good enough to say what you know about Mr. O'Keefe's pre-emption claim.

That gentleman's absence is awkward, but you, probably, as his agent or friend, can give us the information we require.

The matter at present stands as follows: The Indians must have a considerable increase of the area of *agricultural* land; their pastoral lands we can probably arrange satisfactorily.

After fully examining different localities, and carefully considering whether the Indian Reserve could not be laid out entirely on the west side of Okanagan Lake, there seems to be no option but to give them agricultural land on the east side of the lake.

The first land we come to in that direction, outside the present reserve, is a tract of vacant Crown land, lying between the southern line of Mr. O'Keefe's purchase of 480 acres and the northern line of an alleged holding of 320 acres by Mr. O'Keefe.

The Dominion Commissioner takes the view that this alleged holding of Mr. O'Keefe's is in fact vacant Crown land, and that Mr. O'Keefe is really a squatter thereon for the reason that he has not fulfilled the very stringent residential conditions imposed by the Act under which he recorded the land in April, 1873.

The Provincial Commissioner has not stated any important facts or arguments against this view.

Under these circumstances, seeing that we must shortly come to a decision in the matter, I, as Joint Commissioner directing my attention for the time entirely to the protection of Mr. O'Keefe's alleged interest, am desirous of knowing the facts with respect to his side of the case, so that a settlement may be made according to strict justice and law. If the land belongs to Mr. O'Keefe, his right must be acknowledged and confirmed, but if it is vacant there cannot be any complaint if it is included in the extended Indian Reserve.

With a view of ascertaining the facts, I enclose a list of several questions about this land, and will thank you to fill in the answers in writing as the agent, friend, or partner of Mr. O'Keefe.

Before communicating with yourself upon the subject, it was our duty to communicate with the Assistant Land Commissioner for this District. I enclose a copy of his statement.

I am, &c.,
(Signed) G. M. SPROAT,
Joint Commissioner.

Questions relative to Mr. O'Keefe's alleged holding of 320 *acres, North-East side, North Arm, Okanagan Lake.*

1. Has he a Certificate of Improvement, or simply a Pre-emption Record? State date of Certificate of Improvement.

No Certificate, simply Record.

2. Has Mr. O'Keefe himself or by a proper agent, and if so from what date to what date, resided *bona fide* continuously upon, that is to say within the limits of these 320 acres?

Mr. Greenhow declines to answer.

3. Was there ever since the date of Mr. O'Keefe's record any habitation other than the unfinished log building now there?

Not to Mr. Greenhow's knowledge.

4. Is it or not the fact that Mr. O'Keefe, since the date of the record of this land, has resided upon his purchase claim of 480 acres, which is separated from the alleged pre-emption claim by a tract of about 250 acres of vacant Crown land?

Mr. Greenhow declines to answer first part of question, but states that by records there is no vacant land between 480 acres purchase and 320 acres pre-emption claim.

5. What is the value of the fencing and unfinished log house upon the pre-emption claim; and what has been the cost of cultivation, less the net value of the crops?

Mr. Greenhow will furnish his estimate of the value of the fencing, house, and cultivation; but cannot state the value of the crop.

6. If Mr. O'Keefe has not resided upon the 320 acres in conformity with the law, which requires both residence and cultivation, on what ground can he claim any legal interest in the land, or object to the forfeiture of improvements and buildings which follows the non-occupancy or the cessation of occupation of the land?

I certify that answers to the questions Nos. 1, 2, 3, 4, 5, were taken down by me from Mr. Greenhow's statements, and read over to and approved by him.

(Signed) EDWARD MOHUN, C. E.,
22*nd September*, 1877. *Surveyor to Dominion Government.*

Mr. Mohun to Mr. Sproat, Joint Commissioner.

I. R. C. CAMP, OKANAGAN LAKE,
22nd September, 1877.

SIR,—I have the honour to inform you that, in accordance with your verbal instructions, I have waited upon Mr. T. Greenhow with your letter of to-day and enclosures, and have requested his answers to the questions therein contained.

After reading the above-mentioned letter and enclosures, Mr. Greenhow stated that though he would willingly supply you with some of the information requested, yet not being Mr. O'Keefe's attorney, authorized agent, or partner in the 320 acres referred to in your letter, some of your questions he must decline to answer.

To the last and important question, referring to Mr. O'Keefe's residence on the alleged pre-emption claim, Mr. Greenhow declined to make any statement in answer, except that he believed that Mr. O'Keefe could prove that he had fulfilled the law.

I enclose the questions and the answers, to which I called Mr. Greenhow's attention, and he stated that I had taken down his answers correctly. I have, &c.,

(Signed) EDWARD MOHUN, C. E.,
Surveyor to Dominion Government.

Mr. Sproat, Joint Commissioner, to the Rev. Father Baudre.

I. R. C. CAMP, HEAD OF OKANAGAN LAKE,
24th September, 1877.

DEAR SIR,—May I ask the favour of your perusing the enclosed papers, relative to an alleged claim of Mr. O'Keefe's to a piece of land (320 acres) on north-east corner of the north arm of Okanagan Lake.

The north boundary of this land is a line drawn true east from the mouth of Meadow Creek, which flows, as you are aware, past the church into the head of the lake.

You will oblige me by stating whether, to the best of your knowledge and belief, Mr. O'Keefe or any agent of his did, during four years past last April, reside *bona fide* continuously upon this land. This is the real point at issue.

My impression is, that Mr. O'Keefe lived where Mr. Greenhow now lives, and did not have any agent living on the land as required by the conditions of the Act, which you will see in our enclosed copy of a letter to Mr. Vernon.

If so, the land is vacant. As Mr. O'Keefe is absent, I am particularly anxious to ascertain the facts of the case, and I trouble you with the present enquiry as you have probably often visited this locality during the four years in question. Be so good as to return the enclosed papers by bearer.

There is another request which I have to make. We wish to get the formal evidence of two Indians, in reference to land matters here; one Indian to speak of the 320 acres, about which I ask you for information in this letter; the other Indian to speak with reference to a claim of Mr. Greenhow's to 160 acres at the north-west corner of this arm of the lake (where our camp now is.) It is desirable that the witnesses should be com-

petent and of good character, and I therefore ask you to be good enough to name them.

The evidence in the case of a christianised Indian may be taken under oath, and by statutory declaration in the case of a Pagan Indian. I am, &c.,

(Signed) G. M. SPROAT,
Joint Commissioner.

The Rev. Father Baudre to Mr. Sproat, Joint Commissioner.

OKANAGAN MISSION,
September 28th 1877.

DEAR SIR,—In answer to your question, I will tell you to the best of my knowledge and belief that Mr. O'Keefe or any agent here never resided upon the land in question. I have been there for eight years, I have visited the Indians of the head of the lake several times every year. I have always seen M. M. O'Keefe and Greenhow residing where they are residing now. I have had many occasions of speaking of the land in question with the Whites and Indians, and never heard a word about agent and new residences taken by the said gentlemen. They have only removed from their old house to their new ones.

Nearly all the Indians of the head of the lake are Christians. Those who, in my opinion, are able to understand the gravity of an oath, are the Chief, Moses, his two sons, Isaac, Joseph, Lue, Basile, Louis, Antoine, and Abraham.

Let me tell you gentlemen that I am happy to thank you for your prudence and kindness towards the Indians; your wisdom was necessary to overcome the immense difficulties of your delicate commission. I have, &c.,

(Signed) I. M. BAUDRE,
Catholic Missionary.

Deposition of Basile and Aleck.

Basile and Aleck, Indians of Okanagan, depose that Mr. O'Keefe, or any agent of his, has never lived upon the land which he has enclosed and seeks to claim, at the head of Okanagan Lake.

Antoine Gregoire being Interpreter. Messrs. McKinlay and Anderson present.

(Signed) BASILE, his + mark. A. C. A.

(Signed) ALECK, his + mark. A. C. A.

Dated, at T. d'Epinettes, Great Okanagan Lake, 28th September, 1877.

Signed in presence of ALEX. C. ANDERSON, J. P.

The Indian Reserve Commissioners to Mr. O'Keefe.

(Letter A.)

I. R. C., HEAD OF OKANAGAN LAKE,
1st October, 1877.

SIR,—With reference to a record of pre-emption made by you on 29th April, 1873, of 320 acres at the north-east corner of the north arm of this lake, claimed by the Indians as a portion of their old place, and necessary in our judgment for their reserves, we find, after full enquiry made on the spot, that you have not occupied the land either yourself or by an agent, as required by the Land Ordinances of 1870 and 1873, and that your claim therefore is cancelled, and the improvements and buildings absolutely forfeited to the Crown. It is, under these circumstances, unnecessary for us in this letter

to advert to the result of our inquiries into the claim brought forward, as above, by the Indians.

This vacant land and these forfeitures being consequently at our disposal, in virtue of commissions and instructions from the Governments of British Columbia and Canada to us as Indian Land Commissioners, we have assigned the same to the Government of Canada, as part of the reserves to be held by that Government in trust for the use and benefit of the Okanagan tribe usually residing at the head of the lake.

You are, accordingly, hereby notified that from and after this date it will be illegal for you, or any agent of yours, to occupy or use any portion of the said land, or to remove anything therefrom without the license of the Superintendent General of Indian affairs, Ottawa, or of such officer or person as he may thereunto depute and authorize.

As regards your fences, houses, movables, and growing or stacked crops and produce on these 320 acres, the Indians have, on our recommendation, consented, subject to the approval of the Superintendent General, which may be asked for by you, through the Indian Superintendent, New Westminster, not to enforce their right to the same, provided they are entirely removed by you outside the limits of the Okanagan Reserve by 12 o'clock of the day on 1st March, 1878. The Indians will, in the meantime, pull down and remove the fences from their present lines to some other place of deposit, if they should interfere with fences of their own which they may be making.

We are, &c.,

(Signed) A. C. ANDERSON, *Dominion Commissioner.*
A. McKINLAY, *Provincial Commissioner.*
G. M. SPROAT, *Joint Commissioner.*

The Indian Reserve Commissioners to Mr. O'Keefe.

(Letter B.)

I. R. C., HEAD OF OKANAGAN LAKE,
1st October, 1877.

SIR,—Referring to our letter "A" of this date, respecting your former property in fences, &c., on an alleged pre-emption of 320 acres which you recorded at the head of this Lake, we beg to inform you that a part of the north line of the new reserve, laid off by us for the Okanagan Indians residing here, is the south line of your portion of land of 480 acres, as the said south line has been marked off by the Surveyor of the Provincial Government; and that, consequently, it will be necessary for you to remove before 1st March, 1878, any fences, timber, or other property of yours placed by you upon that portion of the extended reserve, which, until our decision, was vacant Crown land lying between the said south line of the 480 acres and the north line (according to your record) of the alleged pre-emption of 320 acres.

The Indians will, in the meantime, pull down and remove the said fences from their present lines to some other place of deposit, if they should interfere with fences of their own which they may be making.

We are, &c.,

(Signed) A. C. ANDERSON,
A. McKINLAY,
G. M. SPROAT.

Mr. Blenkinsop to the Indian Reserve Commissioners.

I. R. C. CAMP,
4th October, 1877.

GENTLEMEN,—I have to inform you that, acting on your instructions, I have this day delivered to Mr. Thomas Greenhow the letter entrusted to my charge for Mr. C. O'Keefe, dated 1st October, 1877. I am, &c.,

(Signed) GEO. BLENKINSOP.

The Indian Reserve Commissioners to the Assistant Land Commissioner, Okanagan.

HEAD OF OKANAGAN LAKE,
3rd October, 1877.

SIR,—Referring to our letter to you of 20th September, and to your reply, we beg leave to inform you that, after full enquiry on the spot, we find that Mr. C. O'Keefe has not occupied the land mentioned in these letters either himself or by an agent, as required by the Land Ordinances of 1870 and 1873, and that consequently the land has been vacant and the buildings and improvements are forfeited to the Crown.

We have assigned the land to the Dominion Government, as part of the Okanagan Indian Reserve, but have recommended the Superintendent-General to permit Mr. O'Keefe to remove his property on the above ground and other parts of the reserve, provided he does so by the 1st March, 1878.

(Signed) ALEX. C. ANDERSON,
A. McKINLAY,
G. M. SPROAT.

Messrs. Drake and Jackson to the Attorney-General.

VICTORIA, B. C.,
31st January, 1878.

DEAR SIR,—We are anxiously awaiting a reply respecting Mr. O'Keefe's complaint about the Indian Commissioners. They graciously gave Mr. O'Keefe permission to remove his crops up to a certain time and a certain day in March. We have advised Mr. O'Keefe to resist all attempts of the Indians to interfere with his land, crops, or property, by force if necessary, and as the time is drawing near, it may be possible that the Indians will act on the unwarranted orders of the Indian Commissioners; if so, it may lead to disastrous results, which in justice ought to fall on the heads of those gentlemen who have brought it about.

Yours, &c.,
(Signed) DRAKE & JACKSON.

The Indian Reserve Commissioner to the Chief Commissioner of Lands and Works.

INDIAN RESERVE COMMISSION, BRITISH COLUMBIA,
Victoria, 4th May, 1878.

SIR,—Understanding that Mr. Lenihan has not yet formally applied to you to cancel the record of Mr. O'Keefe for 320 acres (29th April, 1873) at the head of Okanagan Lake, which has been the subject of correspondence and reports, he thinking that this formal request should come from me. I have now, as the agent of the Dominion Government in this matter, to request that the Provincial Government will cause the above record to be cancelled, for the reasons stated in my report on this subject sent to the Honourable the Attorney-General in January last.

I respectfully beg leave to express my regret that you have not sooner cancelled this record.

The Provincial Government, as you are aware, was fully represented on the Commission, whose decision was unanimous on the matter. The legal adviser of the Commission has since given his opinion, on the facts placed before him, that Mr. O'Keefe had no claim in law to the piece of land in question, and that, in fact, it was vacant Crown land. The evidence of the Assistant Land Commissioner and other persons in the district, which has been submitted to the Provincial Government, shows that Mr. O'Keefe did not conform to the law.

The delay has weakened the authority of the Commission in the minds of the Indians, and as the same Indian Chief acts both at Okanagan and Nicola, the effect of the delay will now embarrass any attempt to settle, satisfactorily, the long pending land controversies between the Indians and whites at Nicola.

Not only is Mr. O'Keefe's record invalid from non-compliance with the law, but there is a flaw in it from the fact that a portion of the land is an old Indian Settlement, as is stated in the case submitted to the Attorney-General, though the Commissioners have been averse from raising this point, and would only do so in case of necessity.

The delay of the Provincial Government in taking action in this matter, on the ample evidence placed before them, is not only unfortunate as regards its effect on the minds of the Indians, but I respectfully submit that it has also to be considered that, even if the Provincial Government came to the conclusion that Mr. O'Keefe had a legal right to the land by Provincial law, the Indians would still require low lying arable land, and there is no such suitable land in the vicinity of their reserve to be had; consequently the Provincial Government, upon which rests primarily the duty of finding land for the Indians, would have to buy Mr. O'Keefe's pre-emption for the Indians, or the Dominion Government, according to the view they take of the equitable rights of these people, would have to raise in Okanagan the question of their prior title to the soil. The policy of the Dominion Government, while maintaining this claim, has been, as you are aware, not to raise it unnecessarily, hoping that the efforts of the Indian Reserve Commission to adjust land matters among the Indians would prevent the necessity for its being raised.

One of the happiest results of the past labours of the Commissioners has been, in the districts visited by them, to effect this object by a judicious compromise.

Late advices, however, from the southern interior of the Province show that the Indians are freely and broadly raising in their councils the question of the Queen's authority to dispose of their lands without having extinguished their title to the soil, and it is therefore to be feared that some of the good effects of the work of the Commission in 1877 have already passed away.

If the Indians distinctly raise the question, the Dominion Government must entertain it. The probable causes of the above mentioned change of feeling on the part of the Indians in the southern interior of the Province are, so far as I can judge, attributable to the delay of the Indian Reserve Commission in resuming work among them; to the omission in the Lieutenant-Governor's speech at the opening of the late Session of the House of Assembly, to state that though the Indian Reserve Commission was to be dissolved, the land questions of the Indians would still have attention, and also in no small degree, so far as the southern interior of the Province is concerned, to the weakening of the authority of the Commissioners' acts by the delay in adjusting the question with Mr. O'Keefe.

The letters from white settlers to the newspapers on the subject of the reserves for the Indians have, by their general tenor, had also an unfortunate effect on the Indian mind.

I am, &c.,
(Signed) GILBERT MALCOLM SPROAT,
Indian Reserve Commissioner.

The Indian Reserve Commissioner to the Chief Commissioner of Lands and Works.

INDIAN RESERVE COMMISSION, BRITISH COLUMBIA,
In Camp, Nicola River, near Cook's Ferry,
17th July, 1878.

SIR,—Several matters connected with the business I have in hand require immediate attention on the part of the Provincial Government, to enable me to make reasonable progress.

(1.) That matter of Mr. O'Keefe at Okanagan (see the Commissioners' Memo. on the case sent in February, 1878, to the Attorney-General, and my letters to you of 4th and 30th May last). I should immediately be informed by telegram to Cook's Ferry:—

A. Whether you have cancelled Mr. O'Keefe's record:

B. If not, what do you propose to do?

C. * * * * * * * *

I am, &c.,
(Signed) G. M. SPROAT,
Indian Commissioner.

Messrs. Drake and Jackson to the Chief Commissioner of Lands and Works.

VICTORIA, 6th August, 1878.

SIR,—On the 20th December last, we wrote to the Chief Commissioner of Lands and Works with reference to certain proceedings which the Indian Commissioners had taken relative to Mr. O'Keefe's land at Okanagan; we also wrote to the Attorney-General on the same subject, in January and April, requesting attention to the matter. We are now informed that the Indians intend to take this land. As the land is of great importance to Mr. O'Keefe he will be glad to have the matter investigated and some arrangement made.

We are, &c.,
(Signed) DRAKE & JACKSON.