
CORRESPONDENCE

Relating to the cancellation of Charles Dundee's Pre-emption Record for 320 acres of land near Rossland.

GEO. B. MARTIN,

Chief Commissioner of Lands and Works.

Lands and Works Department,

2nd May, 1898.

NELSON, B. C., 8th January, 1894.

To the Surveyor-General:

SIR,—I have the honour to mail to you, under another cover, the returns of survey of Mr. Thompson's pre-emption on Trail Creek; also two affidavits, with explanatory plan, respecting a claim to said pre-emption by Mr. Dundee. The affidavits show that there are two posts, either of which might be taken as Mr. Thompson's initial post. Mr. Dundee claims that I took the wrong one. I commenced at the most westerly of the posts mentioned, as the claim thus surveyed is, as near as may be, the land included by Mr. Thompson's four pre-emption posts, and also included his house and improvements. It is evident the land he intended to pre-empt. If I had commenced at the other post the area surveyed would include land to which Mr. Thompson has no legal claim, as he has neither lived on or improved it.

I have, &c.,

(Signed) J. F. RITCHIE.

I, the undersigned, Charles Dundee, of Trail Creek, in the District of West Kootenay, in the Province of British Columbia, make oath and say as follows:—

I am the pre-emptor of three hundred and twenty acres of land near the Centre Star and LeRoi mines, in Trail Creek aforesaid, as per Certificate of Pre-emption Record, dated 16th August, 1893, page 236 of records in books of the Land Commissioner at Nelson, B. C.

Ross Thompson is the pre-emptor of one hundred and sixty acres of land lying to the east of my said pre-emption.

That the said Ross Thompson pointed out to me the direction of his post, which post I found to be marked as follows, and it is so marked at present:—"N. W. Cor., No. 1 of R. T. Pre-emption Claim."

That the said Ross Thompson has lately had his pre-emption surveyed by Mr. J. F. Ritchie.

That the said survey did not start from the said N. W. cor. No. 1 post, but from a post planted about five hundred yards in a westerly direction from said N. W. cor. No. 1 post, which latter post the said Ross Thompson now claims as his original N. W. corner post.

That the said latter post is upon the land pre-empted by the said Charles Dundee, and that the said survey is therefore incorrect, and should not be accepted by the Land Office.

(Signed) CHARLES DUNDEE.

Sworn before me at Fort Sheppard, in the Province of British Columbia, this twenty-sixth day of December, A. D. 1893.

(Signed) W. M. NEWTON,

*One of Her Majesty's Justices of the Peace
in and for the District of West Kootenay.*

I, the undersigned Edmond Haney, of Trail Creek, in the District of West Kootenay, in the Province of British Columbia, miner and mine owner, make oath and say as follows:—

That I have resided at Trail Creek for a period of nearly four years.

That in company with Charles Dundee, of Trail Creek, on the twenty-fifth instant, I inspected a post on Ross Thompson's pre-emption claim, on which post is written "N. W. cor. No. 1 of R. T. Pre-emption Claim," and which, to the best of my knowledge and belief, is his original initial corner post.

That the said Ross Thompson has lately had his pre-emption surveyed by Mr. J. F. Ritchie.

That the said survey did not start from the said N. W. cor. No. 1 post, but from a post planted about five hundred yards in a westerly direction from said N. W. cor. No. 1 post, which latter post the said Ross Thompson now claims, I am informed, to be his original N.W. corner post.

(Signed) EDMOND HANEY.

Sworn before me at Fort Sheppard, in the Province of British Columbia, this twenty-sixth day of December, A.D. 1893.

(Signed) W. M. NEWTON.

*One of Her Majesty's Justices of the Peace
in and for the District of West Kootenay.*

GOVERNMENT OFFICE, NELSON, June 18th, 1894.

*B. H. John, Esq.,
Chief Clerk Lands and Works.*

DEAR SIR,—I have the honour to acknowledge receipt of yours of 7th inst. The surrendered and cancelled record will be sent down hereafter. Nos. 236 and 264 were abandoned by Charles Dundee. He now holds No. 268.

Yours obediently,
(Signed) W. J. GOEPEL,
Government Agent.

Re Dundee's Pre-emption.

VICTORIA, B. C., May 12th, 1896.

SIR,—We have the honour to call your attention to a claim made by Charles Dundee, in which he claims that he has pre-empted the following lands, and has warned all persons from trespassing upon it:—"Commencing at the north-east corner of Lot 535, Group one, known as the Town of Rossland; thence north 40 chains; thence west 80 chains; thence south 40 chains; thence east 80 chains to the point of beginning."

From information which we have received, we are informed that this alleged pre-emption record was made on the 19th April, 1894. This was after the date of the Government reserve of the lands in question, and that Dundee's pre-emption is therefore invalid, and, we submit, should be cancelled.

We have the honour to request that you will communicate with the Government Agent at Nelson upon the subject, and that he be directed to cancel Dundee's certificate and notify him that he has no claim on the land in question.

The Nelson & Fort Sheppard Railway, to which corporation this land has passed under the Crown grant issued by your Department, are desirous of entering into occupation of the land, and do not wish to come into direct conflict with Dundee unless such a course is found unavoidable.

We have, etc.,

(Signed) BODWELL & IRVING,

Solicitors for the Nelson & Fort Sheppard Railway Company.

*To the Honourable the Chief Commissioner,
Victoria, B. C.*

VICTORIA, B. C., May 15th, 1896.

SIR,—I have the honour to enclose herewith a copy of a letter from Messrs. Bodwell & Irving, respecting a claim made by Charles Dundee to certain lands adjoining the Townsite of Rossland.

Upon examination of the records at this office it is found that a pre-emption record was granted to Charles Dundee on the 16th August, 1893, for 320 acres of land near the present Town of Rossland. The record was cancelled and another granted on the 5th April, 1894, which was also cancelled, and another one, No. 268, issued on the 19th April, 1894. The three records related to the same piece of ground, which is found to be within the boundaries of the tract of land reserved, in pursuance of the provisions of the "Nelson & Fort Sheppard Railway Subsidy Act, 1892," from pre-emption or sale, on the 12th day of August, 1892, and upon Block 12, selected by the Nelson & Fort Sheppard Railway Company on 23rd March, 1893, under their "Subsidy Act."

In view of the circumstances, I must request you to be good enough to cancel the record granted Mr. Dundee on the 19th April, 1894, and notify him that he has no legal claim to the ground, because the declaration made by him that the land was unoccupied and unreserved Crown lands was not in accordance with facts, and to return the pre-emption record granted to him.

I have etc.,
(Signed) W. S. GORE,
Deputy Commissioner of L. and W.

Captain N. Fitzstubs,
Government Agent, Nelson, B. C.

VICTORIA, B. C., May 16th, 1896.

GENTLEMEN,—I have the honour to acknowledge the receipt of your letter of the 12th inst., respecting Mr. Charles Dundee's claim to certain land adjoining the Townsite of Rossland.

In reply, I beg to say that Captain Fitzstubs, Government Agent at Nelson, has been requested to cancel the record granted to Mr. Dundee on the 19th April, 1894, and to notify him that he has no claim to the ground, as it is found to be within the boundaries of the tract of land selected by the Nelson & Fort Sheppard Railway Company on 23rd March, 1893, under their "Subsidy Act."

I have, etc.,
(Signed) W. S. GORE,
Deputy Commissioner of L. and W.

Messrs. Bodwell & Irving,
Barristers, etc., Victoria, B. C.

NELSON, B. C., July 3rd, 1896.

SIR,—I beg to enclose herewith a copy of a letter I received from the Assistant Commissioner of Lands and Works, Nelson, and a copy of my answer thereto.

The Assistant Commissioner's action in this matter appears most arbitrary, in view of the fact of my having lived three years on the ground in question without the slightest interference from anyone. I have the honour to request that you will be good enough to inform me where Mr. Fitzstubs derives his authority for any such peremptory proceeding. Under what section of the "Land Act" does that official claim to have the power to deprive me of my home without an opportunity of being heard in the matter?

I have, etc.,
(Signed) CHAS. DUNDEE,
by his Attorney in Fact, A. S. Farwell.

W. S. Gore, Esq.,
Deputy Commissioner of Lands and Works,
Victoria.

NELSON, 19th May, 1896.

Mr. Charles Dundee, Waneta.

SIR,—By direction, I have the honour to inform you that your pre-emption record No. 268, dated 19th April, 1894, has been cancelled, and that you have no legal claim to the land, the declaration made by you that it was unoccupied unreserved Crown land not being in accordance with facts.

I enclose cheque for two dollars, refund of pre-emption fee, and voucher, which last sign and return.

I am, etc.,
(Signed) N. FITZSTUBBS,
Assistant Commissioner.

NELSON, B. C., July 3rd, 1896.

Capt. Fitzstubs,
Assistant Commissioner of Lands and Works,
Nelson, B. C.

SIR,—I beg to acknowledge the receipt of your communication of the 19th May, 1896, informing me that my pre-emption record No. 268, dated April 19th, 1894, has been cancelled, and that I "have no legal claim to the land, the declaration made by you that it was unoccupied unreserved Crown land not being in accordance with facts," and enclosing two dollars, refund of pre-emption fee, and voucher.

In reply, I beg to state that I fail to discover any authority under the "Land Act" by which you have the power to cancel my record for the reason assigned. I consider your action in the matter most arbitrary, after being in peaceful possession of my claim for over three years, and, without being afforded an opportunity to be heard in the matter, to be summarily ejected from my home.

I return herewith the check for two dollars and the voucher.

I may remark that I first pre-empted the land in 1893, and since then I have had two more pre-emption records forced on me by your Department. I have paid \$6 for three pre-emption records and my taxes for each year I have occupied the land.

I shall lay the matter before the Chief Commissioner of Lands and Works, who, I am sure, is not a party to such a gross act of injustice to a bonâ fide settler.

I have, etc.,
(Signed) CHAS. DUNDEE,
by his Attorney in Fact, A. S. Farwell.

NELSON, B. C., July 7th, 1896.

Hon. G. B. Martin.

DEAR SIR,—I have before me a letter from Mr. Chas. Dundee *re* the cancellation of his pre-emption record at or near the Town of Rosslund, in the Trail Mining Division, and, if the facts are as he states, there seems to me to be a very great injustice done him. He asks my assistance towards getting his claim investigated by you.

He, to my own knowledge, has had possession of this land going on three years, and on or about May 19th, 1896, he received a letter from the Assistant Commissioner of Lands and Works that his pre-emption record had been cancelled, he, Chas. Dundee, not having the opportunity of being heard in the matter. This, I think, must be against the spirit of the law. He recorded the land in question in August, 1893, and on the survey of Mr. Ross Thompson's claim (now Rosslund) he complained to the Assistant Commissioner at Nelson that it encroached on his land, and after some correspondence between the Victoria office, Capt. Fitzstubs, Mr. Ritchie, and himself, he was induced to take a second record, dated April, 1894, wherein the description of his land was made to conform with Mr. Ritchie's survey. This record only gave him 160 acres, so a short time afterwards he made a fresh declaration and obtained a third record of 320 acres. Thence comes along the above notice of cancellation of his pre-emption, on the ground of his declaration being untrue. Section 7, "Crown Land Act, 1895," I don't think gives the Assistant Commissioner authority to cancel

any record. Section 13 (same Act) gives the Chief Commissioner power to cancel records after proper enquiry, and if section 7 was intended to confer the same power it would have been so stated.

As regards the knowledge of the land he pre-empted being reserved when the discussion was going on between Dundee and Ross Thompson as to their respective rights at the Victoria Land Office, and in adjusting the matter fresh records were being made, it is very evident at that time (the spring of 1894) the officials conducting the business in the different offices were ignorant of the fact of any reservations to this land. That being the case, it is very evident Mr. Dundee is not to blame, and, as far as I have the facts before me, I cannot see why, at this late date, he should have his record cancelled. I ask you as a favour to take this matter up with the proper parties, and if possible, give Mr. Dundee his rights.

I remain, etc.,

J. FRED. HUME.

VICTORIA, B. C., July 13th, 1896.

SIR,—I have the honour to acknowledge the receipt of your communication of the 3rd inst., enclosing copies of correspondence which has passed between yourself and Captain Fitzstubs, Assistant Commissioner of Lands and Works at Nelson, relating to the cancellation of the pre-emption record granted to Charles Dundee on the 19th April, 1894, for 320 acres of land adjoining on the north the Townsite of Rossland, and asking to be informed what authority the Assistant Commissioner had for the cancellation of the record.

In reply, I beg to advise you that the attention of the Department was called by Messrs. Bodwell & Irving to the fact that one Charles Dundee had obtained a pre-emption of certain lands adjoining the Town of Rossland, that the record had been obtained after the reservation had been made, and that the record was invalid and should be cancelled.

An examination of the record granted to Charles Dundee showed that the ground desired adjoins the Town of Rossland, that it is within the boundaries of the tract of land reserved from sale and pre-emption on the 12th day of August, 1892, in pursuance of the "Nelson & Fort Sheppard Railway Subsidy Act, 1892," and that it forms part of one of the alternative blocks (No. 12) of land selected by the Company on the 23rd day of March, 1893, a Crown grant of which was issued on the 23rd day of March, 1895.

Under the circumstances, the Department had no alternative but to instruct the Assistant Commissioner to cancel the record, which was obtained by the pre-emptor making declaration that it was unoccupied and unreserved Crown lands. I might also point out that the pre-emption applied for overlapped a number of mineral claims previously located.

I enclose herewith a copy of the letter of instructions to Captain Fitzstubs.

I have, etc.,

(Signed) W. S. GORE,

Deputy Commissioner of Lands and Works.

A. S. Farwell, Esq.,

Attorney in fact for Charles Dundee,
Nelson, B. C.

VICTORIA, B. C., July 15th, 1896.

SIR,—I have the honour to acknowledge the receipt of your communication of the 7th inst., relating to the cancellation of the pre-emption record obtained by Charles Dundee of a tract of land adjoining the Town of Rossland.

In reply I beg to assure you that instructions to cancel the record were not given to the Assistant Commissioner until after the question had been properly investigated at this Department.

I enclose herewith, for your information, a copy of the letter of instructions to Captain Fitzstubs and a copy of a letter to A. S. Farwell, Mr. Dundee's agent, in which is set forth the reasons why instructions were given to cancel the record, a perusal of which will, I am sure, convince you that no other action was open to the Department.

I have, etc.,

(Signed) GEO. B. MARTIN,

Chief Commissioner of Lands and Works.

J. F. Hume, Esq., M. P. P., Nelson, B. C.

NELSON, B. C., September 17th, 1896.

SIR,—I beg to acknowledge the receipt of your letter of the 20th ultimo, in reply to my communication of the 7th August, 1896, with reference to the cancellation of Charles Dundee's pre-emption record, covering certain lands adjoining the Town of Rossland, wherein, in conclusion, you remark as follows:—"In reply to your request that the cancellation of the record be reconsidered I beg to say that if you can in any manner suggest to the Department how this pre-emption record of lands previously reserved from pre-emption and sale can be validated the matter might be re-opened, but at present the Department is satisfied that no amount of correspondence would advance the cause of your principal."

I assume from the above extract taken in conjunction with my letter of the 7th August, 1896, that your Department claim and exercise the right to cancel pre-emption records, without giving the pre-emptors a hearing in the matter, a practice which I am advised is directly contrary to the law of the land.

I beg to draw your attention to Canada Supreme Court Reports, Duval, vol. xxii., page 482, where will be found a report of the following case from British Columbia: The Queen on the information of the Attorney-General of Canada, appellants; and J. C. Demers and M. Demers, respondents, on appeal from the Exchequer Court of Canada.

The Court found for the respondents. The points of law involved in this case are, I submit, precisely similar to those raised in the Dundee case.

You will observe also great similarity in the facts:

"Whereas the Dominion Government reserved a large tract of land in the Peace River country to compensate it for lands alienated in the railway belt; the Nelson & Fort Sheppard Railroad Company obtained a Crown grant for some 4,000 acres of land for a similar purpose. I may remark, incidentally, this grant of say, 4,000 acres, at a most conservative estimate was 1,500 acres in excess of what the Company were entitled to.

I beg to point out the question of an accretion to a Crown grant mentioned in my letter of the 7th August last, is unquestionably settled by the judgment above mentioned.

I beg to point out that Mr. Corbin, acting for the Nelson & Fort Sheppard Railroad Co., has commenced to survey the land claimed by Dundee into town lots, with the intention, no doubt, of selling them.

Mr. Corbin has also served notices of ejectment on the squatters on the said land and is generally acting as if the said Company owned the property.

In conclusion, I submit the judgment above referred to sets at rest the question of Dundee's right to the land he pre-empted on the 16th August, 1893, in his favour, although it had previously been reserved by your Department from pre-emption and sale. I further submit Dundee's land is not included in the conveyance to the Nelson & Fort Sheppard Railroad Co. by the Crown grant dated March 8th, 1895.

I have, etc.,
(Signed) A. S. FARWELL,
Attorney in Fact for Charles Dundee.

*W. S. Gore, Esq., Deputy Commissioner,
Lands and Works, Victoria, B. C.*

VICTORIA, B. C., September 23rd, 1896.

SIR,—I have the honour to acknowledge the receipt of your letter of the 17th inst., on the subject of the cancellation of Charles Dundee's pre-emption record covering certain lands adjoining the Town of Rossland.

I have, etc.,
(Signed) W. S. GORE,
Deputy Commissioner of Lands and Works.

*A. S. Farwell, Esq.,
Attorney in fact for Charles Dundee,
Nelson, B. C.*

VICTORIA, B. C., 21st December, 1896.

The Honourable the Attorney-General, Victoria, B. C.:

SIR,—We have the honour to bring to your notice the following statement of facts in support of an application to obtain your consent to recommending a fiat for a Petition of Right being granted.

On the 16th day of August, 1893, Charles Dundee obtained a pre-emption Record No. 236, for 320 acres of land at Trail Creek, described as follows:—Starting from post No. 1, planted about seven miles west of the Town of Trail, Columbia River, on a flat at the head of Trail Creek; thence running west 80 chains; thence south 40 chains; thence east 80 chains; thence north 40 chains, to the point of commencement.

Subsequently, on the survey of the adjoining claim of Ross Thomson, it was discovered that there was a conflict of the boundary lines; and accordingly, to avoid disputes, Mr. Dundee, with the approbation of the Assistant Commissioner, abandoned his record No. 236, and in lieu thereof, on the 5th day of April, 1894, a further record No. 264 was granted to Mr. Dundee of the following land, viz.:—Commencing at Ross Thomson's N.E. corner post; thence running north 40 chains; thence west 40 chains; thence south 40 chains; thence east 40 chains, to point of commencement, and containing one hundred and sixty acres, more or less.

Mr. Dundee having discovered that this last-mentioned record contained only 160 acres instead of 320 acres as contained in his original record, again abandoned his record with the approbation of the Assistant Commissioner, and was granted in lieu thereof a record No. 268 on the 19th day of April, 1894, of the following land, viz.:—Commencing at Ross Thomson's N.E. corner post; thence running north 40 chains; thence west 80 chains; thence south 40 chains; thence east 80 chains, to point of commencement, and containing 320 acres, more or less.

The said Charles Dundee has been in continuous occupation of the said land since the 16th day of August, 1893, and has paid all taxes on the same for the year 1893 down to the present time, amounting to the sum of \$25.35.

It appears that on the 8th day of March, 1895, a Crown grant was issued to the Nelson & Fort Sheppard Railway Company for 59,200 acres of land, covering the pre-emption of the said Charles Dundee, and application for registration of part of the area, viz.:—Sections 34 and 35, Township IXa., Kootenay District, wherein Mr. Dundee's pre-emption is included, was made on the 22nd day of October, 1896.

That on the 19th day of May, 1896, Mr. Dundee was notified by the Assistant Commissioner of Lands for the Kootenay District, that his pre-emption record No. 268 had been cancelled on the alleged ground that he had "no legal claim to the land, the declaration made by him that it was unoccupied and unreserved Crown land not being in accordance with the facts."

The foregoing notice was the first intimation that Mr. Dundee had that the land in question was included in a Government reserve, and no opportunity whatever was offered him at any time of being heard in defence of his record.

We respectfully submit and contend that before any legal cancellation of our client's record could be made he had the right of being heard before the Chief Commissioner of Lands and Works in support of his claim to the land which he had occupied under his record for three years; that on this ground such alleged cancellation is invalid and made in violation of the spirit of the Land Act; and we claim that his record is still valid and subsisting.

We also respectfully submit for your consideration that as a Crown grant was issued to the Nelson & Fort Sheppard Railway on the 8th day of March, 1895, embracing the land covered by the said record, the Crown had no further interest in the said land, and the Commissioner was not at the date of the alleged cancellation in a position to legally cancel his record, and that if the record was invalid the onus was upon the Company to clear its title by ejectment or other legal proceedings against him.

Under these circumstances we respectfully request that you will take this matter into your very favourable consideration and accede to the application which we hereby make on behalf of our client.

We have, etc.,

(Signed) DRAKE, JACKSON & HELMCKEN.

21st December, 1896.

*Messrs. Drake, Jackson & Helmcken,
Barristers, &c., Victoria:*

Re Charles Dundee, Pre-emption Record.

DEAR SIRS,—I beg to acknowledge the receipt of your letter of this date, with statement referring to the above pre-emption, and applying for consent for a fiat for a Petition of Right being granted.

Yours truly,
(Signed) D. M. EBERTS,
Attorney-General.

22nd December, 1896.

*Hon. G. B. Martin,
Chief Commissioner of Lands and Works, Victoria:*

SIR,—I have the honour to enclose herewith a letter from Messrs. Drake, Jackson & Helmcken with reference to a claim of Charles Dundee for a pre-emption No. 268.

I shall be pleased if you would cause to be made in your Department a brief of the facts in connection with the matter, and return enclosed letter.

I have, etc.,
(Signed) D. M. EBERTS,
Attorney-General.

VICTORIA, January 12th, 1897.

Re Chas. Dundee's Pre-emption.

SIR,—Replying to yours of 22nd ultimo, I have the honour to enclose herewith a brief statement of facts in connection with the matter referred to in the letter of 21st ultimo, from Messrs. Drake Jackson & Helmcken to you, which I herewith return.

I have, etc.,
(Signed) GEO. B. MARTIN,
Chief Commissioner of Lands and Works.

*Hon. D. M. Eberts,
Attorney-General, Victoria, B. C.*

*Memorandum respecting the cancellation of Charles Dundee's pre-emption record No. 268,
dated 19th April, 1894.*

(1.) On the 12th day of August, 1892, a tract of land 16 miles in width on each side of the proposed line of the Nelson and Fort Sheppard Railway, was reserved from pre-emption and sale. This reserve was made in pursuance of the provisions of the "Nelson and Fort Sheppard Railway Subsidy Act, 1892" (*See* section 2 of the said Act).

(2.) On the 23rd of March, 1893, the Company deposited a plan (as required by section 3 of the said Act) showing the boundary lines of the alternate blocks of land selected by them including, *inter alia*, block 12 (6 x 16 miles) which embraced a large portion of the Trail Creek Mining Division within its boundaries, including the townsite of Rossland. The boundary lines of this block were surveyed during the fall of 1894.

(3.) On the 8th March, 1895, a Crown grant of block 12, estimated to contain 59,200 acres (*i. e.* after allowing for lands known to have been alienated by the Crown prior to 23rd March, 1893, and not including the suppliant's pre-emption), was issued to the Railway Company. Amongst other specific exceptions made in the grant it has endorsed thereon: "And excepting also thereout all other lands which prior to the 23rd day of March, 1893, were alienated by the Crown, or held by pre-emption, uncompleted sale or lease, or as mineral claims."

(4.) On the 8th of April, 1895, a Crown grant was issued to the Railway Company of 4,480 acres lying north of Rossland and adjoining the northern boundary of block 12, being a small portion of the lieu lands they were entitled to select under their "Subsidy Act." The same exception was made in this grant as in the one above referred to.

(5.) On the 16th day of August, 1893, Charles Dundee obtained a pre-emption record No. 236, for 320 acres of land at Trail Creek, described as follows:—Starting from post No. 1, planted about seven miles west of the Town of Trail, Columbia River, on a flat at the head of Trail Creek; thence running west 80 chains; thence south 40 chains; thence east 80 chains; thence north 40 chains to point of commencement. This pre-emption record was cancelled. No reason was given by the Assistant Commissioner at Nelson why the record was cancelled.

(6.) On the 5th day of April, 1894, a new record, No. 264, was granted to Charles Dundee, of the following land, viz.:—Commencing at Ross Thomson's N. E. corner post; thence north 40 chains; thence west 40 chains; thence south 40 chains; thence east 40 chains to point of commencement, and containing one hundred and sixty acres more or less. This record was cancelled and no reason given by the Assistant Commissioner of Lands and Works at Nelson for so doing.

(7.) On the 19th day of April, 1894, a further record, No. 268, was granted to Charles Dundee of the following land, viz.:—Commencing at Ross Thomson's N. E. corner post; thence running north 40 chains; thence west 80 chains; thence south 40 chains; thence east 80 chains to point of commencement, and containing 320 acres more or less.

(8.) On the 13th May, 1896, Messrs. Bodwell & Irving, on behalf of the Nelson and Fort Sheppard Railway Company, called the attention of the Department to the fact that the pre-emption record obtained by Charles Dundee was subsequent to the date of the reserve, was therefore invalid and submitted that it should be cancelled.

(9.) On the 15th May, 1896, Captain Fitzstubs, the Assistant Commissioner of Lands and Works at Nelson, was advised that upon examination it was found that the land pre-empted by Charles Dundee was within the boundaries of the tract of land reserved from pre-emption or sale on the 12th August, 1892, in pursuance of the "Nelson and Fort Sheppard Railway Subsidy Act, 1892," and situated upon block 12, selected by the Nelson and Fort Sheppard Railway Company on the 23rd March, 1893, under their "Subsidy Act," and he was requested in view of the facts to cancel the record granted to Charles Dundee on the 19th April, 1894, and to notify him that he had no legal claim to the ground because the declaration made by him that the land was unoccupied and unreserved Crown lands was not in accordance with the facts.

SUMMARY.

Date of reservation of block 12, 12th August, 1892.
 " selection " by Railway Company, 23rd March, 1893.
 " Dundee's first pre-emption record, 16th August, 1893.

1st February, 1897.

Messrs. Drake, Jackson & Helmcken, Barristers, Victoria.

Re Charles Dundee's pre-emption.

GENTLEMEN,—I have the honour to acknowledge the receipt of your communication herein of the 21st December ult., asking me to recommend the granting of a fiat for a petition of right under the circumstances you mention.

In regard to your application I have to premise that before the presentation of a petition I can in no case give an assurance that a fiat will be recommended. I have further, in the present case, to point out that your letter does not indicate what the prayer of the suggested petition will be, and without this information I can form no opinion as to whether the present is or is not a proper case to be heard by petition of right.

I would suggest that the usual course be followed, and that you prepare and file your petition in the manner provided by statute, and I can only now assure you that when the same is referred in due course to this Department, it will receive every consideration.

I have, etc.,

(Signed) D. M. EBERTS,
Attorney-General.

VICTORIA, B. C., 10th February, 1897.

*The Honourable Attorney-General,
Victoria, B. C.*

Re Charles Dundee.

SIR,—We have the honour to acknowledge the receipt of your communication of the 1st instant, in reply to which we beg to state that we have this day forwarded to the Honourable the Provincial Secretary the petition of right referred to in our communication to you.

We have, etc.,
(Signed) DRAKE, JACKSON & HELMCKEN.
P.

10th February, 1897.

*The Honourable the Provincial Secretary,
Victoria, B. C.*

Re Charles Dundee.

SIR,—We have the honour to enclose herewith a Petition of Right *re* Charles Dundee's pre-emption claim in the District of West Kootenay, and shall be obliged if you will put the same in the proper channel to have the fiat granted by His Honour the Lieutenant-Governor.

We may state that the matters referred to in the Petition have already been laid fully before the Honourable the Attorney-General, and we trust that there will be no delay in attending to this matter.

We have, &c.,
(Signed) DRAKE, JACKSON AND HELMCKEN.

IN THE SUPREME COURT OF BRITISH COLUMBIA.

To the Queen's Most Excellent Majesty:

TO WIT:

The humble petition of Charles Dundee, of the Town of Rossland, in the Province of British Columbia, Farmer, by his Solicitor, Hugh Bowsby Willson Aikman, of 20, Bastion Street, in the City of Victoria, and Province aforesaid, respectfully sheweth:

1. That your suppliant is a British subject and resides in the Town of Rossland, in the Province of British Columbia.
2. That in the year 1893 your suppliant, in accordance with the provisions of the "Land Act" and amending Acts, duly staked and marked a pre-emption claim in the District of West Kootenay, in the Province of British Columbia, the boundaries of which said pre-emption claim being described as follows:—"Starting at post No. 1, planted about seven miles west of the Town of Trail, Columbia River, on a flat at the head of Trail Creek; thence running west 80 chains; thence south 40 chains; thence east 80 chains; thence north 40 chains to the point of commencement, and containing three hundred and twenty acres, more or less." And on or about the 10th day of August, 1893, such pre-emption claim was duly recorded at the proper office in the said District, to wit, at the office of the Assistant Commissioner of Lands and Works for the District of West Kootenay, whereupon a Certificate of Pre-emption Record, numbered 263, was issued to your suppliant by the said Assistant Commissioner of Lands and Works for the said District.
3. That in the year 1894, upon the survey of an adjoining pre-emption claim, it was discovered that the boundaries of your suppliant's said pre-emption claim as defined in the said Certificate of Pre-emption Record No. 236, conflicted with and overlapped the boundaries of the said adjoining pre-emption claim, whereupon your suppliant, at the suggestion and with the approval, consent and approbation of the said the Assistant Commissioner of Lands and Works for the District of West Kootenay, abandoned his said Pre-emption Record No. 236,

and in lieu and instead thereof the said Assistant Commissioner of Lands and Works for the District of West Kootenay duly issued to your suppliant Certificate of Pre-emption Record numbered 261, in which said Certificate of Pre-emption Record, numbered 261, the boundaries of your suppliant's said pre-emption claim were described as follows:—"Commencing at Ross Thompson's north-east corner post; thence running north 40 chains; thence west 40 chains; thence south 40 chains; thence east 40 chains to point of commencement, and containing one hundred and sixty acres, more or less."

4. That upon receipt of the said Certificate of Pre-emption Record No. 261 by your suppliant it was discovered that the boundaries of the said pre-emption claim therein described, covered only one hundred and sixty acres instead of three hundred and twenty as staked and marked by your suppliant, whereupon your suppliant with the approval, consent and approbation of the said the Assistant Commissioner of Lands and Works for the District of West Kootenay, abandoned the said Pre-emption Record No. 261, and in lieu and instead thereof the said the Assistant Commissioner of Lands and Works for the District of West Kootenay duly issued to your suppliant Certificate of Pre-emption Record numbered 268, in which said Certificate of Pre-emption Record numbered 268, the boundaries of your suppliant's said pre-emption claim were described as follows:—"Commencing at Ross Thompson's north-east corner post; thence running north 40 chains; thence west 80 chains; thence south 40 chains; thence east 80 chains to point of commencement, and containing three hundred and twenty acres, more or less."

5. That your suppliant has been in continuous occupation of the said land mentioned and described in the said Certificate of Pre-emption Record numbered 268, since the said 16th day of August, 1893, and has paid all taxes upon the said land, and has in respect to such land complied with all the provisions of the "Land Act" and amending Acts.

6. That on the 8th day of March, 1895, Her Majesty was pleased to issue and did issue to the Nelson and Fort Sheppard Railway Company a Crown grant for 59,200 acres of land in the said District of West Kootenay, which said Crown grant included and covered your suppliant's said pre-emption claim.

7. That upon the 19th day of May, 1896, your suppliant was notified by the said the Assistant Commissioner of Lands and Works for the District of West Kootenay that his said Pre-emption Record numbered 268, dated the 19th day of April, 1894, had been cancelled.

8. That until the receipt of the aforesaid notice dated the 19th day of May, 1896, your suppliant had no notice whatever that the said land in his pre-emption claim had been reserved, granted or otherwise dealt with by Her Majesty, or that his said Pre-emption Record had been cancelled, and in the bonâ fide belief that he was lawfully entitled to the said pre-emption claim, your suppliant occupied the said land and made improvements and paid the taxes thereon.

9. Your suppliant submits that before any legal cancellation of his said pre-emption record could be made, your suppliant, as of right, should have been heard before the Chief Commissioner of Lands and Works in support of his claim to the land he had occupied under his said record. And your suppliant further submits that the alleged cancellation of his said pre-emption record is illegal and invalid, and is and was made in violation of the true intent and meaning of the "Land Act" and amending Acts.

10. Your suppliant further submits that his said record is a good, valid and subsisting record in his favour, and that he is entitled under the provisions of the "Land Act" and amending Acts to complete the purchase of the said land and obtain a Crown grant therefor.

11. Your suppliant further submits that after the issuance of the said Crown grant dated the 8th day of March, 1895, to the Nelson and Fort Sheppard Railway Company for a tract of land including and covering the said land held and claimed by your suppliant under his said pre-emption record, Her Majesty had no interest in the said pre-empted land other than that reserved by the said Crown grant, and that thereafter neither the said the Assistant Commissioner of Lands and Works nor any other person or persons acting for or on behalf of Her said Majesty had any legal right to cancel his said pre-emption record.

12. Your suppliant alleges that at the time of the issuance to the said Nelson and Fort Sheppard Railway Company of the aforesaid Crown grant your suppliant's said pre-emption was valid, subsisting and recorded, and that the said Nelson and Fort Sheppard Railway Company pursuant to section 5 of the "Nelson and Fort Sheppard Railway Subsidy Act, 1892," selected similar lands in the District of West Kootenay in lieu of the said pre-empted land, and received the Crown grant therefor.

Your suppliant therefore humbly prays:—

1. That it may be declared that the said pre-emption record is a good, valid and subsisting record in his favour of the lands and premises mentioned and described in the said Certificate of Pre-emption Record numbered 268.

2. That it may be declared that under the said Pre-emption Record your suppliant is entitled, upon further complying with the provisions of the "Land Act" and amending Acts, to complete his purchase of the said land and to receive a Crown grant therefor.

3. That it may be declared that the said Crown grant dated the 8th day of March, 1895, issued to the Nelson and Fort Sheppard Railway Company, as far as the same covers and includes the land mentioned and described in the said Pre-emption Record, was issued improvidently and in error and should be cancelled.

4. Such further and other relief as may be required.

Dated the tenth day of February, 1897.

(Signed) H. B. W. AIKMAN,
of the firm of Drake, Jackson and Helmcken, No. 20, Bastion
Street, in the City of Victoria and Province of British
Columbia, Solicitor for the Suppliant, Charles Dundee,
who resides at the Town of Rossland, in the Province
aforesaid.

10th February, 1897.

Re Charles Dundee.

GENTLEMEN,—I have to acknowledge the receipt of your letter of even date, with which you transmit the Petition of Right of the aforesaid, and to state that the matter has been referred to the Attorney-General.

I have, etc.,
(Signed) A. CAMPBELL REDDIE,
Deputy Provincial Secretary.

*Messrs. Drake, Jackson & Helmcken,
Barristers, &c., Victoria.*

17th March, 1897.

Re Charles Dundee, Petition of Right.

The undersigned has the honour to report upon a Petition of Right presented by Charles Dundee, by his Solicitor, Mr. H. B. W. Aikman, dated the 10th February, 1897.

A statement of the material facts in this case has been furnished by the Lands and Works Department, and it is found that the Petition omits any mention of the fact that the land is included in the reserve made on the 12th day of August, 1892, in pursuance of the "Nelson and Fort Sheppard Railway Subsidy Act, 1892." There is further no statement in the Petition that the lands when first pre-empted by Dundee were vacant, unoccupied and unreserved Crown Lands.

It appears to the undersigned that on these grounds the facts alleged by the Petitioner do not constitute a claim which is *primâ facie* good in law, and the undersigned therefore recommends that the attention of the Petitioner, or his Solicitor, be drawn to the above reserve, as the granting of the Petition in its present form would appear to involve the unnecessary incurring of legal costs, and that the Petitioner be also requested, if he still desires to prosecute his Petition, to amend the same so as to show in what manner he proposes to deal with the question of the reserve.

(Signed) D. M. EBERTS,
Attorney-General.

VICTORIA, B. C., 21st April, 1897.

*The Honourable the Attorney-General,
Victoria, B. C.*

SIR,—We have the honour to advise you that we have this day transmitted to the Honourable the Provincial Secretary an amended Petition of Right of Charles Dundee.

We have, etc.,
(Signed) DRAKE, JACKSON & HELMCKEN.

VICTORIA, B. C., 21st April, 1897.

*The Honourable the Provincial Secretary,
Victoria, B. C.:*

SIR,—We have the honour to enclose herewith an amended Petition of Right of Charles Dundee.

We have, etc.,
(Signed) DRAKE, JACKSON & HELMCKEN.

IN THE SUPREME COURT OF BRITISH COLUMBIA.

To the Queen's Most Excellent Majesty:

To WIT:

The humble petition of Charles Dundee, of the Town of Rossland, in the Province of British Columbia, Farmer, by his Solicitor, Hugh Bowsby Willson Aikman, of 20, Bastion Street, in the City of Victoria, and Province aforesaid, respectfully sheweth:

1. That your suppliant is a British subject, and resides in the Town of Rossland, in the Province of British Columbia.

2. That in the year 1893 your suppliant, in accordance with the provisions of the "Land Act," and amending Acts, duly staked and marked a pre-emption claim in the District of West Kootenay, in the Province of British Columbia, the boundaries of which said pre-emption claim being described as follows:—"Starting at post No. 1, planted about seven miles west of the Town of Trail, Columbia River, on a flat at the head of Trail Creek; thence running west 80 chains; thence south 40 chains; thence east 80 chains; thence north 40 chains to the point of commencement; and containing three hundred and twenty acres, more or less." And on or about the 10th day of August, 1893, such pre-emption claim was duly recorded at the proper office in the said district, to wit, at the office of the Assistant Commissioner of Lands and Works for the District of West Kootenay, whereupon a certificate of pre-emption record numbered 236 was issued to your suppliant by the said Assistant Commissioner of Lands and Works for the said District.

3. That in the year 1894, upon the survey of an adjoining pre-emption claim, it was discovered that the boundaries of your suppliant's said pre-emption claim, as defined in the said certificate of pre-emption record number 236, conflicted with and overlapped the boundaries of the said adjoining pre-emption claim, whereupon your suppliant, at the suggestion and with the approval, consent and approbation of the said the Assistant Commissioner of Lands and Works for the District of West Kootenay, abandoned his said pre-emption record number 236, and in lieu and instead thereof the said Assistant Commissioner of Lands and Works for the District of West Kootenay duly issued to your suppliant certificate of pre-emption record numbered 261, in which said certificate of pre-emption record numbered 261 the boundaries of your suppliant's said pre-emption claim were described as follows:—"Commencing at Ross Thompson's north-east corner post; thence running north 40 chains; thence west 40 chains; thence south 40 chains; thence east 40 chains to point of commencement; and containing one hundred and sixty acres, more or less."

4 That upon receipt of the said certificate of pre-emption record number 261 by your suppliant it was discovered that the boundaries of the said pre-emption claim therein described covered only one hundred and sixty acres instead of three hundred and twenty as staked and marked by your suppliant, whereupon your suppliant, with the approval, consent and approbation of the said the Assistant Commissioner of Lands and Works for the District of West Kootenay, abandoned the said pre-emption record number 261, and in lieu and instead thereof the said the Assistant Commissioner of Lands and Works for the District of West Kootenay duly issued to your suppliant certificate of pre-emption record numbered 268, in which said certificate of pre-emption record numbered 268 the boundaries of your suppliant's said pre-emption claim were described as follows:—"Commencing at Ross Thompson's north-east corner post; thence running north 40 chains; thence west 80 chains; thence south 40 chains; thence east 80 chains to point of commencement; and containing three hundred and twenty acres, more or less."

5. That your suppliant has been in continuous occupation of the said land mentioned and described in the said certificate of pre-emption record numbered 268 since the said 16th day of August, 1893, and has paid all taxes upon the said land, and has in respect to such land complied with all the provisions of the "Land Act," and amending Acts.

6. That pursuant to section 2 of the "Nelson and Fort Sheppard Railway Subsidy Act, 1892," certain lands in the District of West Kootenay, being a tract extending sixteen miles on each side of the line of the then proposed Nelson and Fort Sheppard Railway were reserved from pre-emption and sale for the period of one year from and after the passing of the said "Nelson and Fort Sheppard Railway Subsidy Act, 1892." Under the terms of the said section 2 of the said Act such reservation operated from the date upon which the "Nelson and Fort Sheppard Railway Company should file with the Chief Commissioner of Lands and Works a map or plan, to the satisfaction of the Lieutenant-Governor in Council, shewing the course and direction of the proposed railway and the lands intended to be traversed, and should deposit with the Provincial Secretary good and sufficient security in the sum of \$25,000 for the due commencement and construction of the railway according to their Act of Incorporation. The lands mentioned and described in the said certificate of pre-emption record number 268 were included in the said lands reserved as aforesaid. No notice was given to the said Assistant Commissioner of Lands and Works for the District of West Kootenay, nor to your suppliant, that the said conditions precedent to the said reserve had been complied with, or that the said reserve had become operative, and your suppliant at the time of making the said location and pre-emption had no knowledge whatever of any such reserve.

7. That on the 8th of March, 1895, Her Majesty was pleased to issue, and did issue, to the Nelson and Fort Sheppard Railway Company a Crown grant for 59,200 acres of land in the said District of West Kootenay, which said Crown grant included and covered your suppliant's said pre-emption claim.

8. That upon the 19th day of May, 1896, your suppliant was notified by the said the Assistant Commissioner of Lands and Works for the District of West Kootenay that his said pre-emption record numbered 268, dated the 19th day of April, 1894, had been cancelled.

9. That until the receipt of the aforesaid notice, dated the 19th day of May, 1896, your suppliant had no notice whatever that the said land in his said pre-emption claim had been reserved, granted or otherwise dealt with by Her Majesty, or that his said pre-emption record had been cancelled, and in the bonâ fide belief that he was lawfully entitled to the said pre-emption claim, your suppliant occupied the said land and made improvements and paid the taxes thereon.

10. Your suppliant submits that before any legal cancellation of his said pre-emption record could be made your suppliant, as of right, should have been heard before the Chief Commissioner of Lands and Works in support of his claim to the land he had occupied under his said record. And your suppliant further submits that the alleged cancellation of his said pre-emption record is illegal and invalid, and is and was made in violation of the true intent and meaning of the "Land Act" and amending Acts.

11. Your suppliant further submits that his said record is a good, valid and subsisting record in his favour, and that he is entitled under the provisions of the "Land Act" and amending Acts to complete the purchase of the said land and obtain a Crown grant therefor.

12. Your suppliant further submits that after the issuance of the said Crown grant, dated the 8th day of March, 1895, to the Nelson & Fort Sheppard Railway Company for a tract of land including and covering the said land held and claimed by your suppliant under

his said pre-emption record, Her Majesty had no interest in the said pre-empted land other than that reserved by the said Crown grant, and that thereafter neither the said the Assistant Commissioner of Lands and Works nor any other person or persons acting for or on behalf of Her said Majesty had any legal right to cancel his said pre-emption record.

13. Your suppliant alleges that at the time of the issuance to the said Nelson & Fort Sheppard Railway Company of the aforesaid Crown grant your suppliant's said pre-emption was valid, subsisting and recorded, and that the said Nelson & Fort Sheppard Railway Company pursuant to section 5 of the "Nelson & Fort Sheppard Railway Subsidy Act, 1892," selected similar lands in the District of West Kootenay in lieu of the said pre-empted land, and received the Crown grant therefor.

Your suppliant therefore humbly prays :

1. That it may be declared that the said pre-emption record is a good, valid and subsisting record in his favour of the lands and premises mentioned and described in the said certificate of pre-emption record numbered 268.

2. That it may be declared that under the said pre-emption record your suppliant is entitled upon further complying with the provisions of the Land Act and amending Acts to compete his purchase of the said land and to receive a Crown grant therefor.

3. That it may be declared that the said Crown grant dated the 8th day of March, 1895, issued to the Nelson & Fort Sheppard Railway Company as far as the same covers and included the land mentioned and described in the said pre-emption record, was issued improvidently and in error, and should be cancelled.

4. Such further and other relief as may be required.

Dated the day of April, A.D. 1897.

of the firm of Drake, Jackson & Helmcken, No. 20, Bastion Street, in the City of Victoria and Province of British Columbia, Solicitor for the Suppliant, Charles Dundee, who resides at the Town of Rossland, in the Province aforesaid.

On a memorandum from the Honourable the Attorney-General dated the 3rd day of November, 1897, reporting that he has perused the Petition of Right of Charles Dundee presented through his Solicitor Mr. Aikman, and dated the day of April, 1897, which has been substituted for the former Petition in compliance with an intimation given in pursuance of the report of the Minister dated March 17th, 1897 :

In such report the Minister stated that the Petition then under consideration omitted any mention of the fact that the land is included in the reserve made on the 12th day of August, 1892, in pursuance of the "Nelson and Fort Sheppard Railway Subsidy Act, 1892," and that there was further no statement in the Petition that the lands when first pre-empted by Dundee were vacant, unoccupied and unreserved Crown Lands :

The Minister also expressed the opinion that on these grounds the facts alleged by the Petitioner did not constitute a claim which was *prima facie* good in law and recommended that the attention of the Petitioner or his Solicitor be drawn to the above reserve as the granting of the Petition in its then form would appear to involve the unnecessary incurring of legal costs, and further recommended that the Petitioner be requested, if he still desires to prosecute his Petition, to amend the same so as to show in what manner he proposes to deal with the question of the reserve :

The Minister now further reports that he has carefully perused the amended Petition and that the only substantial alteration therein is the addition of allegations which, in effect, raise the defence that the suppliant was ignorant of the fact that the land was reserved :

The Minister reports that he has not the slightest doubt that this defence is bad in law and adds nothing to the strength of the preceding Petition, and in view of the evil results likely to follow if a fiat is granted for the Petition, and the further fact that the settlement of the titles to land in the neighbourhood of Rossland which is already a difficult and pressing question will be greatly and unnecessarily delayed thereby, he recommends that His Honour be advised to refuse his fiat :

The Committee concur in the report and advise approval of the recommendation.

PROVINCIAL SECRETARY'S OFFICE,
VICTORIA, B. C., 9th November, 1897.

Memo. for the Deputy Commissioner, re Chas. Dundee Petition of Right.

Adverting to the statement of the material facts in this case furnished by the Lands and Works Department, a Minute of Council dated the 4th day of November, instant, approves of the recommendation of the Attorney-General that "His Honour be advised to refuse his fiat" to the Petition.

(Signed) A. CAMPBELL REDDIE,
Deputy Clerk, Executive Council.

VICTORIA, B. C.:

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1898.