VANCOUVER, B.C.
September 14, 1989

THE REGISTRAR: Order in court. In the Court of Appeal of British Columbia, this 14th day of September, 1989, my lord.

THE COURT: I wish before I begin this morning to make a statement on behalf of myself personally and all the members of the Court of Appeal who, if they were with me, I am sure would concur in what I'm about to say, but it is with regret that I must announce the death of Mr. Justice John Somerset Aikins recently, a judge of this court, who died yesterday. Mr. Justice Aikins was a loved and valued and much respected member of this court. He was born in 1914 in his native Naramata, had his education at various locations, mainly in the Okanagan, he served with distinction as an officer in the Canadian Army in Europe, he practised in Penticton in the well-known firm of Boyle Aikins with great distinction. He was appointed to the Supreme Court of British Columbia February 1st, 1962, and I had the pleasure of being counsel on his first trial. He was elevated to the Court of Appeal in 1978 and served there with great distinction until his retirement on February 9th, 1987. Mr. Justice Aikins will be remembered not just for the quality of his judgments and the kindness with which he presided in all the courts in which he sat, but more so for his great humanity, his gentleness, his kindness and the considered way in which he treated everyone who came before him. If there was ever a gentleman it was Mr. Justice Aikins, and we all regret exceedingly his passing. Thank you.

MR. GOLDIE: My lord, if I may speak for myself and those associated with me, I would like to add, for the purposes of your lordship's remarks, the sorrow that we feel in the death of Mr. Justice Aikins. He was, both at the trial court and Court of Appeal, one of the most painstaking judges that the bench had the pleasure of having, and was always courteous to counsel. It was invariably a pleasure to appear before him.

THE COURT: Thank you, Mr. Goldie.

MR. RUSH: My Lord, for my colleagues, for the plaintiffs, I would like to join with Mr. Goldie's remarks and your lordship's remarks.

THE COURT: Thank you, Mr. Rush.

MS. KOENIGSBERG: On behalf of my colleagues and behalf of the Attorney General of Canada, I would also concur on those remarks and express sorrow.
THE COURT: Thank you, Ms. Koenigsberg, I will take the liberty of passing your comments onto Mrs. Aikins. All right, we will now resume the trial in the Supreme Court.
MR. GOLDIE: My lord, this morning I propose to deal with documentary evidence to be read in in part, and the first document which I will tender as an exhibit is entitled "Papers Relative to the Affairs of British Columbia", in four parts, each of which was presented to both Houses of Parliament, that is to say both Houses of Parliament in the United Kingdom, by command of Her Majesty, part one being presented on the 18th of February, 1859; part 2 on the 12th of August, 1859, part 3 in 1860, and part 4 in March of 1862. The four parts are in the binder which I have handed up to your lordship, each distinguished by a tab, 1 to 4. Included in tabs 5 and 6 are documents which I wish to refer to in the course of my reading in, but I would ask that this binder, consisting of tabs 1 to 4, "Papers Relative to the Affairs of British Columbia", I tender that as an exhibit, my lord.
THE COURT: Mr. Rush.
MR. RUSH: My lord, I have not gone over this binder in detail, but I make the assumption that the documents which are contained in it would come within the ambit of your lordship's ruling on July the 15th.
THE COURT: As ancient papers.
MR. RUSH: Yes. Excuse me, it was July the 14th, as ancient documents.
THE COURT: That's right.
MR. RUSH: And on the basis of that ruling, I do not object to Mr. Goldie tendering the documents, because I do think that these are in accord with that ruling. I wish to add, however, that I understand from correspondence with my friends that Mr. Goldie intends to read certain passages of these documents, and if my friend chooses to read from the documents or from passages in them I do not object to that, if that is the intended procedure. However, in the course of reading from a document I think my friend is entitled only to draw your lordship's attention to the document, the date, the author and the recipient, and if he chooses to read a passage then that I don't think is objectionable, but to go beyond that, in my submission, is objectionable, and I say that any

comments by way of an explanation of the document, how the document might relate to other documents or circumstances, I say all of that is impermissible. In this type of procedure, that is to say where my friend chooses to select a document, tender it and then read it, it is the document which is the evidence and nothing Mr. Goldie has to say about the documents which constitutes the evidence. I say that commenting or linking the document to other events or contexts is the giving of evidence or the making of argument, and at this point in the trial neither is permissible. Mr. Goldie is not giving evidence, the documents are the evidence in this case, and now is not the time for argument. So with those observations I have no objection to the procedure that I expect to be followed is embarked upon, but I think that there are those limitations which I would ask both my friend to comply with and for which I will make objections if he doesn't.

THE COURT: Mr. Goldie.

MR. GOLDIE: Well, my lord, it is both the right and the duty of counsel to inform the court of the relevance of a document, and I proceed on that basis. May a number be assigned to this, my lord?

MR. RUSH: Excuse me, I don't accept that proposition at all.

MR. GOLDIE: We'll debate it as we go along, my lord.

THE COURT: I should ask Miss Koenigsberg if she has any objection to the documents.

MS. KOENIGSBERG: None at all.

THE COURT: All right. Then the book of documents may be the next exhibit number.

THE REGISTRAR: Exhibit 1142.

(EXHIBIT 1142 - Book of documents with Papers Relative to the Affairs of British Columbia)

THE COURT: And that will include all of the contents of the six tabs. All right. Well, how far beyond reading the documents do you propose to go, Mr. Goldie? Can you give us a summary of what you propose to do in addition to reading from the documents?

MR. GOLDIE: I propose primarily to read, but I will not read in a purely sequential basis. When I come to a document that is replied to in another portion of the book I will probably refer to that document so that your lordship has a closer chronological sequence than the arrangement in the document provides. I am going

to -- and I will give your lordship an example. I'm going to say the reason for the existence of this exhibit is found in section 2 of the United Kingdom Act to provide for the Government of British Columbia, and that's found at page 1 of part 1. It's the fifth page in. And I now read section 2 of the Act to provide for the Government of British Columbia:

> "It shall be lawful for Her Majesty, by any Order or Orders to be by her from time to time made, with the advice of Her Privy Council, to make ordain, and establish and (subject to such conditions or restrictions as to Her shall seem meet) to authorize and empower such officer as She may from time to time appoint as Governor of British Columbia to make provision for the administration of justice therein, and generally to make, ordain, and establish all such laws, institutions, and ordinances as may be necessary for the peace, order, and good government of Her Majesty's subjects and others therein; provided that all such Orders in Council, and all laws and ordinances so to be made as aforesaid, shall be laid before both Houses of Parliament as soon as conveniently may be after the making and enactment thereof respectively."

As Dr. Lane stated in her evidence, this collection does not include all of the ordinances -- I'm sorry -- all of the Orders in Council and all of the dispatches which passed between the Governor of British Columbia and the Colonial office. It contains those selected, and it is from that selection -- and it is that selection which was laid before Parliament in the manner that is provided for in the section I have read from the Act. I now refer your lordship --

THE COURT: Is this the Act that came into force on the 19th of November, 1869?

MR. GOLDIE: No. It was earlier than that, my lord.

THE COURT: This is dated 18 --

MR. GOLDIE: July of 1858 -- 2nd of August. I said July, it came into effect on the 2nd of August, 1858.

THE COURT: We have -- we have in British Columbia, or what we used to have was the English Law Act.

MR. GOLDIE: Oh, yes. That was a proclamation of Governor Douglas.

THE COURT: All right. So it's separately brought into British

Columbia the Common Law of England.
MR. GOLDIE: Yes.
THE COURT: As of that later date.
MR. GOLDIE: The introduction of English Law, as your lordship will see, because that proclamation is one of those found in this collection --
THE COURT: Yes.
MR. GOLDIE: -- was passed by -- was enacted by Governor Douglas.
THE COURT: Yes, all right, yep.
MR. GOLDIE: The title on page 1 I next refer to, "Copies of Despatches from the Secretary of State".
THE COURT: Sorry, where are you?
MR. GOLDIE: I'm on page 1, my lord. I've gone back to the very title page itself.
THE COURT: All right.
MR. GOLDIE: And I'm doing so in order for your lordship to be given a glimpse of what is to come.
THE COURT: Yeah.
MR. GOLDIE:

> "Copies of Despatches from the Secretary of State for the Colonies to the Governor of British Columbia, and from the Governor to the Secretary of State relative to the Government of the Colony; Also,
> Copies of the Act of Parliament to provide for the Government of British Columbia; Governor's Commission and Instructions; Order In Council to provide for the Administration of Justice; and instrument revoking so much of the Crown Grant of 30th May, 1838 to the Hudson's Bay Company for exclusive Trading with the Indians as relates to the Territories comprised within the Colony of British Columbia."

Now, my lord, I want to refer to the case of Attorney General versus Ludgate, and I have it here, my lord. The Ludgate case, otherwise known as Deadman's Island case, was decided by the Supreme -- by the Supreme Court of British Columbia in 1901. It was reversed by the full court in 1904, and the judgment of the full court was affirmed by the Judicial Committee of the Privy Council in 1906.
MR. RUSH: What's the purpose of this?
MR. GOLDIE: Because it makes reference to the exhibit to which I am referring.
MR. RUSH: And my question is so what.

MR. GOLDIE: May I answer that, my lord, by referring to the judgment?
THE COURT: Yes.
MR. GOLDIE: The action was for "a declaration that the title to the land" -- and I'm reading from the headnote, my -- not the headnote, I'm reading from the statement:

> "a declaration that the title to the land situate in Burrard Inlet, in British Columbia, and known as Deadman's Island, was in Her Majesty the Queen on behalf the Province of British Columbia."

The Deadman's Island was -- the action came about because the Dominion Government granted leave to Ludgate to cut trees on Deadman's Island. The issue before the court was whether Deadman's Island formed part of a reserve constituting largely Stanley Park, what is known as Stanley Park, and the reserve was -- and the question was whether the reserve had been created by Governor Douglas under the powers granted him by the Act that I have just referred to. At page 258 of the trial judgment, Mr. Justice Martin said, and I am referring to the last paragraph on the page:

> "Before leaving this branch of the case it is Desirable to make a remark on the documentary evidence. During the course of the trial a good deal was said about the incompleteness of the old records, and while in some respects this is true, yet on the other hand we are fortunate indeed, in having, so far as the old Colony of British Columbia is concerned, the four Imperial Blue Books of 1859-62, which in the admirable despatches of Governor Douglas, contain an account as interesting as it is exceptionally complete of the early administration of the affairs of that Colony. And I trust it may not be out of place for me to say, after a repeated perusal of those despatches (which a proper understanding of this case necessitated), that they bring home to one how well it was for the proper establishment of the infant colony, under trying and peculiar circumstances, that there was placed at the head of its affairs so able an administrator as Governor Douglas."

Now, the reason I am referring to that is that I rely

firstly upon the characterization of the court of the importance of the exhibit before your lordship, because that is what Mr. Justice Martin is referring to, the four Imperial Blue Books of 1859 and 1862. I rely upon that and I rely upon his characterization of the Governor and the picture which this exhibit gives of the administration of the Colony.

THE COURT: Well, does Exhibit 1142 equal the four Blue Books?

MR. GOLDIE: Yes, my lord, parts 1, 2, 3 and 4.

THE COURT: I see. I think that we ought to resolve this question that's been raised by Mr. Rush. Is there anything else you want to say, Mr. Rush?

MR. RUSH: Yes, I do. I think that Mr. Goldie makes the very point that I made, in fact he supports it by his reference to the Deadman Island case and his submission to you that "I relied on the characterization of the exhibits, I relied on the characterization of the picture". No doubt he does, and no doubt we will hear this all in March of 1990. That, however, is argument. What my friend wants to do today is to give you a window into his argument, and he's not entitled to it. This is not argument, this is not the appropriate time for his submissions. What I say he's entitled to do is to refer you to the documentary evidence without comment, explanation, amplification. My lord, if the Province wants to rely upon commentary explanations, contexturalizations, then they should call a witness and then I could cross-examine that witness. I can't cross-examine Mr. Goldie, much I might like to. To explain a document or to say what it means or how it might be related, its significance or what its affect might be, in my submission, my lord, is either giving evidence or making a submission on argument. And as I've said, as evidence Mr. Goldie's not a witness. Also, our witnesses were not allowed to get into the meaning or effective documents. Rulings were made preventing them from expanding on their opinion on the interpretation of a document, and I need only to refer to your lordship's ruling at page 16243, where this very issue came before your lordship on the issue of the evidence of Mr. Morrison, and this is what you said at that time. You said:

> "It is competent and is expected of counsel to discharge that function."

That is to say the function of leading the witness to documents.

> "I do not think I should allow this or any witness to give me a theory of construction. I think that he may put in evidence, if requested by counsel, whatever historical facts he has or can direct my attention to in the way of documents for the purposes that I have mentioned, that is for counsel's arguments, but I do not think that I can allow him to give me theories of construction or theories of history that go beyond the proof of historical facts."

Now, my lord, the historical fact here is the document. That's as far as your lordship, in my submission, can entertain the reference to the documents. Mr. Goldie's in no position to give anything beyond that and certainly in no position to tell you what the effect or meaning or his interpretation or his theory of that document is as a matter of evidence. Well, my lord, if it's not evidence, the only thing it can be is argument, and as argument on the document, I say now is not the time for that submission. As I said earlier, no doubt Mr. Goldie will give the court his version of the meaning and effect of these documents, but I say that is for argument and we will deal with it then. In fact, I think it's somewhat ironic that my friend at this time embarks upon this path, because it's the very path he said he wouldn't embark upon. Mr. Goldie's view of this was amply expressed during his objections made to Dr. Lane's qualifications, and this is when he -- what he said there at page 16675. In his argument, and I'm reading in part at line 27, he says:

> "All of that goes to underline the proposition that the skill of the witness is not interpretation. The skill of the witness is in the research activity which she has undergone and which her assistants have undergone in order to winnow out what she considers to be the significant documents.
>
> Now, I have no intention of taking the documents which I consider to be significant and putting them to the witness. That would be a fruitless exercise, even if she was qualified to

comment on it."

And here are the material words:

> "What I intend to do, and which in my submission is the only appropriate thing to do, is to have the documents tendered and marked, and then we'll hear in argument what it's all about."

And, my lord, that's exactly what he put to your lordship and what is the appropriate thing for him to do. If he wants to amplify or refer to the Deadman Island case, fine, he can do so in the course of his argument. Now, I take this position, my lord, because if Mr. Goldie were allowed to be allowed to do more than simply tender the documents and refer to their undisputed characteristics, such as date, author and recipient, the plaintiffs would lose their advantage in being able to go first to the documents and to argue the plaintiff's interpretation of the document on the point. The plaintiffs carry the burden, the plaintiffs are entitled to make their case to you first and to give their characterization of these documents. To do otherwise in the circumstance, in my submission, would mean that the plaintiffs would lose their right to present our version of the documents. Now, if Mr. Goldie were to proceed on the basis of making a submission on the documents, as I dare say that was entirely his purpose by his own language in the reference to the Deadman Island case, he would then be in the envious position on this point to get to make his submissions twice, now and when he comes to it in argument. He said all the way along that the appropriate course of action is to raise his interpretation of these documents in argument, and I say fine, do it then, and in my submission it's not appropriate to do it now, and I say the only appropriate path to follow for him is one of tendering, which he's done, marking, which he's done, and if he wants to identify or isolate passages for reference to your lordship, fine, but beyond that I say it's objectionable and should not be permitted.

THE COURT: All right, thank you. Mr. Goldie, you have the burden, so I will ask Miss Koenigsberg if she wishes to make a submission.

MS. KOENIGSBERG: I would only comment, my lord, that it would seem to me that counsel, in attempting to carry out a

relatively expeditious putting in of documents which are admissible and which form part of counsel's case, that counsel in discharging the appropriate duty to the court should indicate the relevance of those documents, that sometimes this will be the same as or verge into legal argument. It's of course true. It's true that much of everything we do results in being argument and it becomes some judgment as to when you are doing but argument and when you are putting things into context and making them relevant and of an assistance to the court, and in my submission, so far what Mr. Goldie has been doing is, if legal argument, and it could form part of legal argument, is just as easily characterized as placing documents in -- in the context of their relevance, which is part of counsel's duty. So I certainly have no objection to it continuing, albeit there is the -- Mr. Rush's point is well taken, there is a difference between argument and evidence, but we cross that line all the time.

THE COURT: Thank you. Mr. Goldie.

MR. GOLDIE: My lord, my friend's concept of counsel's duty is a very sterile one. I take, for example, the question of an opening. In an opening it is usually considered appropriate for counsel to indicate where he is going, and in doing so, and it's done every day of the week, there is a foreshadowing of argument. I am not going to talk about interpretation, I am seeking to place this particular exhibit in its historical context. I say I rely upon the words stated by Mr. Justice Martin. It would be more appropriate if I said I adopt those words as an indication as assistance to your lordship in understanding how these documents arose and what they are, and I have never had any experience in being restricted in stating name, date, recipient. Paragraph 2 I read. There is no witness who can prove these documents, and that's why we have a ruling that allows them to come in. Conversely, there is every reason why the documents should be placed in its proper context. If my friend's argument is taken to its logical extreme, a witness who identifies a document that he has written is precluded from stating the circumstances under which he did write it, that's the parallel that we have with us today. My lord, I have done no more than place this document -- started, I haven't finished, placing this document in its context and giving your lordship some indication of its significance, and that's what the

witnesses for the plaintiff -- and no objection was taken to them stating the significance of the document or stating the context of the document. The objection was taken to them interpreting the document, and I have no intention of interpreting this document.

MR. RUSH: I have a few points on rejoinder. Miss Koenigsberg says that it's counsel's duty to indicate the relevance. Well, my lord, by your ruling the question of admissibility and relevance has been dealt with. The issue isn't either of those. The documents are before the court, the only question is what weight should you attach to them. The second point she makes is the point echoed by Mr. Goldie, you should place the document in the context of their relevance. Well, she mixes relevance and context, but I took her to mean in there "context". It's not for Mr. Goldie to place them in context except by his view in argument, the Province's mind or intelligence being placed to the document in argument, not in evidence. And in my submission, my lord, it doesn't matter what Mr. Goldie's view of their context is today -- or their significance is today whatsoever. We will hear it again when the argument comes forward. The fact of the matter is, my lord, that Mr. Goldie is not a witness, he's not an expert, he's not in a position to tell you as a matter of evidence what the significance is of a document, what the context is of the document, none of those questions are open to him. Others with more qualifications than he could be called to give that evidence if my friend thought that they -- that that's what was necessary. He didn't think that was necessary, what he thought was necessary was to put his position as the Province's position, vis-a-vis those documents, as a matter of argument. My friend said he doesn't need a witness to prove documents. True. The question -- there is no question of the proof of documents, these documents are in under your lordship's ruling, and those questions all -- of those questions of admissibility, tendering, the question of the effect is the only remaining question. And the effect, my lord, is an issue which your lordship has decided goes to the question of weight, which will be dealt with at the end of the day when we both get our chance to submit to you on why you should accept one document or the passage in one over the other. Thank you.

Order
By Mr. Goldie

THE COURT: Thank you. I am satisfied that Mr. Rush is correct when he says that counsel may not mix the tendering of evidence and the function of argument. I am persuaded that there may well be a province of counsel or a function of counsel which falls short of argument but which permits counsel, in tendering documentary evidence the admissibility of which does not depend upon calling a live witness, to explain what the document is, and if counsel thinks useful an indication without argument of the issue or -- the issue to which the document relates or the reason why it was being tendered. I think Mr. Goldie's analogy about counsel tendering documents in opening is a useful one. In a commercial case, for example, say an action for specific performance on an interim agreement of a purchase for sale on a piece of property, counsel could, and I think should, though it isn't done nearly often enough, put in all his documents in his opening, provided they're all admissible, and that -- those hurdles have been cleared by discovery or by way of admissions, and counsel could say "I tender as my first agreement", if it's relevant, "the listing agreement" which was signed by the plaintiffs or signed by the defendants, as the case may be, "an interim agreement as Exhibit 3, the vendor's copy upon which the purchaser has placed his signature", and would then tender the next document, which is the vendor's statement of adjustments, or perhaps to add some more meat to the bare bones of the case, some documents relating to the removal of the subject clause, and counsel would explain what they are, and so on and so forth until the documents are in, and the evidence can then be called without constant interruptions of the narrative testimony to identify and remark and explain documents. And I think therefore that Mr. Goldie may tell me what the document is from which he's reading, and he may refer to his date and generally describe what the document is. I do not think you can go much beyond that. He can say it relates -- if he thinks it's useful to say that this relates to a particular issue in the case, although it may relate to so many issues in a case that that isn't a useful thing to do. I tend to think Mr. Rush is right, that it may be going beyond what counsel can do in tendering documentary -- admissible documentary evidence of this kind to refer to authorities which have help for the

document, because I think that is argument. But I think it would be helpful and I think it's common sense which should carry someone to inform me as to what these documents are as the reading from them proceeds, and I am sure that there is always room or perhaps latitude for some brief explanation of what the document relates to, both in a contextural and in the issue sense. But counsel's right in this regard is closely circumscribed by both the practise as it pertains to ordinary trials and in what I have said. I think in short that it's useful to know what the document is and what it's about, but I do not think it is permissible to make anything that could reasonably be described as an argument. And for that reason, I think we will have to proceed perhaps piece meal. I would have hoped to be able to deliver a comprehensive ruling, but I don't think that's possible, but I hope that I have outlined what I think the general guide-lines are that should apply in this case, and if Mr. Goldie goes beyond what counsel think is permissible, no doubt I will give them the --

MR. GOLDIE: Thank you, my lord. I can say this: I have referred your lordship to the dates, I have referred your lordship to the nature of the document. In my submission, while it is one document that warrants reading in full, I will confine myself to reading those parts which relate to the factual circumstances giving rise to a number of the enactments which are relevant to the issues of extinguishment.

THE COURT: What you say are relevant in the issue of extinguishment.

MR. GOLDIE: Yes, I do. And a number of these enactments, my lord, are not just my judgment, a number of them are part of the so-called Calder 13, but they provide these despatches, and I'm doing no more than saying what will become amply evident, they provide a context. My lord, there is one other point that I wish to comment on before I go -- before I start my reading, and that is the nature of the Governor's powers in the period covered by these despatches. As will become clear from what I'm going to read, Mr. Douglas was given the power to legislate as well as the executive authority. It is characterized in these despatches as unusual. He was in the true sense of the word, and again I'm using a word that -- well, a word that is used, where it's not my own, as an autocrat in the dictionary sense, that he was an

independent government. All this will become evident.
THE COURT: Well, does this rise out of this passage that you read, generally make ordinances, is it?
MR. GOLDIE: Yes.
THE COURT: I'm sorry, no, that says "make or ordain".
MR. GOLDIE: It doesn't arise -- let me put it this way: It arises -- this is the Parliamentary authority for it.
THE COURT: Yes.
MR. GOLDIE:

> "Empower such officer as She may from time to time appoint as Governor of British Columbia to make provision for the administration of just therein, and generally make, ordain and establish all such laws, institutions, and ordinances as may be necessary for the peace, order and good government of Her Majesty's subjects."

MR. RUSH: Well, I just wish to say, my lord, whether Governor Douglas was an autocrat, whether my friend thinks he was, whether Dr. Barbara Lane thinks he was, it's really immaterial in terms of that issue. That is my friend's applying interpretive intelligence to this material. That's really the point that I'm making, and he may well persuade you of that fact. I may want to try to tell you he was a benevolent dictator, for all that I know, at the end of the day. I doubt that, but what does that matter in terms of what's happening now.
THE COURT: Like me?
MR. RUSH: I don't think I would use either of those words, my lord.
MR. GOLDIE: The point that I'm making, my lord, is important. He had the power to legislate as well as to execute, that's not my interpretation. Those are the words of the statute and the words of the Secretary of State of the Colonies that we will come to. Now, my lord, one other fact which is not a matter of interpretation is the remoteness of British Columbia, and I give one instance of that, because in my submission it is a relevant contextural fact. Despatch number 1, which is Douglas to the -- who he thought was the Colonial Secretary of the day, is dated May 19th. It's at page 11, my lord.
THE COURT: Yes.
MR. GOLDIE: And it was -- it is dated -- Douglas is writing as of May 19th, 1858, and it was not received in London until July 13th, 1858. And I will be asking your

lordship to bear in mind the lapse of time which occurs between the sending of a despatch, its receipt, and the answer, which was July 16th, and I'll come to when that was received.

THE COURT: How do you understand these despatches were sent?

MR. GOLDIE: At this time my understanding is that they went around the Horn.

THE COURT: Mm-hmm.

MR. GOLDIE: At a later point arrangements were made to send them to San Francisco and then over land.

THE COURT: Mr. Rush, I think I should say this, that I would welcome when Mr. Goldie is finished if there was anything in these despatches or documents that you think I should have in mind at this stage, and I would be glad to hear from you in that.

MR. RUSH: Well, my lord, I don't think that's appropriate.

THE COURT: Well, you don't have to do it.

MR. RUSH: No. But the implication behind the request of me is that again it's permissible for Mr. Goldie to proceed on that basis, and just a simple explanation by Mr. Goldie that this despatch was sent to the person whom he thought was the Colonial Secretary. Well, what, are we to take from that, that Mr. Goldie knows who the real Colonial Secretary was or that Governor Douglas knew that was somebody else? My point, my lord, is that these editorializations are not the proper course for the evidence, because I dare say, that in the interpretive aspect of what Mr. Goldie is doing, he -- I suggest is going farther than what Dr. Barbara Lane was about to do in some instances, and the fact is that the plaintiffs chose a pattern, in my submission, to introduce its evidence in this -- in the manner that they chose. The way that I can respond is not to respond item by item without having the benefit of assistance from an advisor or without the assistance of how this fits with Dr. Barbara Lane or other witness' evidence, which is the advantage I would have at the course of argument.

THE COURT: Well, I don't take that narrow a view, Mr. Rush. Both Mr. Morrison and Dr. Lane and others gave me much information about the context of documents. I remember Mr. Morrison telling me all about the circumstances in which the despatches were sent from New England and who the Colonial Secretary was and all these things, and I don't think that calling a witness is the only way to put admissible documents into evidence, but I make the offer. I certainly don't see

any reason for you to accept or to decline to do so.
MR. RUSH: The distincton, however, my lord, is that in the case of Mr. Morrison, he was there available to be cross-examined and he wasn't. In the case of Dr. Lane she was available there to be cross-examined and she was. In this case Mr. Goldie is not available for cross-examination.
THE COURT: But I hadn't made the ruling on ancient documents at the time of Dr. Lane's evidence. Maybe it wouldn't be necessary to do that if I made that ruling earlier.
MR. RUSH: My lord, in my submission her documents were admissible at the time she put the documents in. The issue was not her documents unreferred to by her but other documents.
THE COURT: That may be. I don't think there's only one way of doing these things, and I think that we who sit here alone are aided by whatever counsel think we should have in mind, and I put it no higher than that. Go ahead, Mr. Goldie.
MR. GOLDIE: My lord, the fact of Lord Stanley not being the -- not being the Secretary of State will appear from the documents.
THE COURT: All right.
MR. GOLDIE: And in Dr. Lane's cross-examination a document was tendered, Exhibit 1056-20, which sets out the tenure of the Secretaries of State of the Colonies, and at this particular time Mr. Douglas thought that Lord Stanley was the -- was the Secretary of State, and it appears from that -- from that document that Mr. Edward Bulwer Lytton became Secretary of State May 31st of 1858. Now, I -- just to complete the -- my comment about the time lag, as will appear later, the reply to Douglas' Despatch of May 19th, which is dated July 16th, what was not apparently received, and I say apparently because I'm using the dates in the book, until sometime toward the end of September 1858. Now, my lord, I have referred to the Act, and I wish to go back to the Act on page 1, and I read the preamble, and a couple of the other sections. The preamble:

> "Whereas divers of Her Majesty's subjects and others have, by the licence and consent of Her Majesty, resorted to and settled on certain wild and unoccupied territories on the north-west coast of North America, commonly known by the designation of New Calednoia, and from and after the passing of this Act to be named 'British

> Columbia', and the islands adjacent, for mining and other purposes; and it is desirable to make some temporary provision for the Civil Government of such territories, until permanent settlements shall be thereupon established, and the number of Colonists increased."

Paragraph I:

> "British Columbia shall, for the purposes of this Act, be held to comprise all such territories within the dominions of Her Majesty as are bounded to the south by the frontier of the United States of America, to the east by the main chain of the Rocky Mountains, to the north by Simpson's River and the Finlay Branch of the Peace River, and to the west by the Pacific Ocean, and shall include Queen Charlotte's Island, and all other islands adjacent to the said territories, except as herein-after excepted."

And without referring to the specific section, Vancouver Island was excepted.

THE COURT: Simpson's River?

MR. GOLDIE: No, no.

THE COURT: I'm sorry, what do I understand is Simpson's River?

MR. GOLDIE: Oh, I think, my lord, if I may be permitted to say so, it's the Skeena.

THE COURT: Thank you.

MR. GOLDIE: And --

MR. RUSH: My lord, just on that point, Dr. Ray commented on that, and he indicated that it was the Simpson, whether known at that time, but it was the Bulkley, and the Skeena -- the Skeena from the forks down.

THE COURT: Thank you.

MR. GOLDIE: And then the last section:

> "This Act shall continue in force until the 31st Day of December 1862, and thenceforth until the end of the then next session of Parliament: Provided always, that the expiration of this Act shall not affect the boundaries hereby defined, or the right of appeal hereby given, or any Act done or right or title acquired under or by virtue of this Act, nor shall the expiration of this Act revive the Acts of parts of Acts hereby repealed."

Then I refer, my lord, to the Commission:

> "Letters Patent Under The Great Seal appointing James Douglas, Esquire, to be Governor and Commander-in-Chief in and over the Colony of British Columbia and its Dependencies. Letters Patent dated 2nd September, 1858."

Now, my lord, it will appear from the later despatches that this Commission did not reach Douglas until about the 1st of November, 1858. Now, the first paragraph largely recites the appointment of Douglas and the nature of his appointment and the boundaries of the -- of the Colony of British Columbia. And then in paragraph III:

> "And whereas it has been appointed by Parliament that it shall be lawful for Us, by any Order or Orders to be by Us from time to time made of Our Privy Council, to make, ordain and establish, and subject to such conditions and restrictions as to Us shall seem meet, to authorize and empower such officer as We may appoint to administer the Government of Our said Colony, to make provision for the administration of justice therein, and generally to make, ordain, and establish all such laws, institutions and ordinances as may be necessary for the peace, order and good government of Our subjects and others residing therein; and whereas We have, in pursuance of the said Act by Our Order made by Us in Our Privy Council, bearing date this 2d instant, ordered, authorized, empowered, and commanded Our Governor of Our said Colony to make provision for the administration of justice in Our said Colony, and generally to make, ordain, and establish all such laws, institutions and ordinances as may be necessary for the peace, order, and good government of Our subjects and others residing therein, wherein the said Governor is to conform to and exercise the directions, powers and authorities given and granted to him by our Commission, subject to all such rules and regulations as shall be prescribed in and by Our instructions under Our Signet and Sign Manual accompanying Our said Commission, or by any future instructions, as aforesaid."

And then the same language is found again in paragraph IV, whereby Douglas is given:

> "full power and authority, by Proclamation or Proclamations to be by you from time to time for that purpose issued under the Public Seal of Our said Colony, to make, ordain, and establish all such laws, institutions, and ordinances as may be necessary for the peace, order and good government of Our subjects and others residing in Our said Colony and its Dependencies: Provided that such laws, institutions and ordinances are not to be repugnant, but, as near as may be, agreeable to the Laws and Statutes of our United Kingdom of Great Britain and Ireland: Provided also, that all such laws, institutions, and ordinances of what nature or duration soever, be transmitted under the Public Seal of Our said Colony for Our approbation of disallowance, as in Our said Order provided."

And then he's enjoined to follow the instructions that were given him. The instructions are at page 5. These two were dated the 2nd of September and were the instructions of the Queen as given at Her court at Osborne House, Isle of Wight. Paragraph I:

> "With these Our instructions you will receive Our Commission under Our Great Seal of the United Kingdom of Great Britain and Ireland, constituting you to be Our Governor and Commander-in-Chief in and over Our Colony of British Columbia and its Dependencies; you are therefore with all convenient speed to assume and enter upon the execution of the trust We have reposed in you.
> 2. And you are, with all due and usual solemnity, to cause Our said Commission, constituting you Our Governor and Comander-in-Chief as aforesaid, to be read and published in the presence of the principal persons of Our said Colony, and you will then and there take the Oath of Allegiance as prescribed by the Act of the first year of King George the First, Statute 2, chapter 13, section 2, and likewise the usual oath for the due execution of the office and trust of our Governor and Commander-in-Chief in and over Our said Colony and Dependencies, and for the due and impartial

> administration of justice, and further, the oath required to be taken by Governors of Plantations, to do their utmost that the several laws relating to trade and plantations be duly observed, which oaths any two Justices of Our said Colonies and its Dependencies or of Vancouver's Island, have hereby full power and authority and are required to tender and administer unto you; all of which being duly performed, you will administer the said Oath of Allegiance to each of the principal persons then present."

Your lordship will see that that was done in November of 1858.

THE COURT: Is there any reference to the instruction to Indians?

MR. GOLDIE: No, my lord. I'm just about to deal with that now. The paragraph I of the instructions is -- I won't read -- it is concurrent with the style of the --

THE COURT: You did read paragraph I?

MR. GOLDIE: I'm sorry, I haven't read paragraph I. It was paragraph II I had in mind, and I have read that. In paragraphs Roman VIII to XIX, these are the laws that the Governor may not make, and in no case is the Governor prohibited from making laws with respect to Indians or affecting Indians. And in paragraph XXXI on the next page, it provides -- or the instructions provide:

> "If anything shall happen which may be of advantage or security to Our Colony and its Dependencies under your Government which is not herein or by Our commission provided for, We do hereby allow you to take orders for the present therein, giving unto Us, through one of Our Principal Secretaries of State, speedy notice thereof."

Et cetera.

THE COURT: Where -- I'm sorry, where was that?

MR. GOLDIE: That was the bottom of page 7 top of page 8 in part. They're merging what --

THE COURT: Yes, yes.

MR. GOLDIE: Provision in the event of something occurring which is not covered by, in the words of the instruction, "not herein or by Our Commission provided for". And then Her Majesty's Order in Council, the Order in Council of the same date in the presence of her

Majesty in Council. The second paragraph beginning in the fifth line from the bottom of that page:

> "Her Majesty, by virtue of the powers vested in Her by the said recited Act" --

That's the Act of 1858.

> "and by and with the advice of her Privy Council, is pleased to order and doth hereby order, authorize, empower, and command the Governor, or the officer for the time being administering the Government of the said Colony of British Columbia, to make provision for the administration of justice, and, further, by Proclamation or Proclamations to be by him issued for that purpose, under the Public Seal of the said Colony, to make, ordain, and establish all such laws and ordinances as may be necessary for the peace, order, and good government of Her Majesty's subjects and others in the said Colony; subject, nevertheless, to the following conditions, that is to say: that every such law or ordinance as aforesaid shall by the said Governor or the officer administering the Government be with all convenient expedition transmitted to Her Majesty, for Her approbation of disallowance thereof or of any part thereof, through one of Her Principal Secretaries of State, or that the same or any part thereof shall not be in force within the said Colony after Her Majesty's disallowance as aforesaid shall be made known therein: Provided nevertheless, and Her Majesty doth hereby reserve to Herself, Her heirs and successors, Her and their right and authority to make and established, from time to time, with the advise of Her Privy Council, all such laws as may to Her or them appear necessary for the order, peace, and good government of the said Colony and its Dependencies, as fully as if this present Order had not been made."

My lord, if I may, that in a subsequent assembly of documents relating to the 13 enactments that were before the court in Calder, and to certain other selected enactments of this and the subsequent Colonial period, your lordship will be provided with

the correspondence and despatches under which the proclamations and laws and ordinances were transmitted to Her Majesty for her approval -- or for her approbation or disallowance. That correspondence is found in part in these despatches, but not wholly. The next document is again dated the 2nd of December -- 2nd of September, I should say, 1858, and it is the instrument under the Royal Sign Manual revoking so much of the Crown Grant of the 30th of May, 1838 to the Hudson's Bay Company for exclusive trading with the Indians, as relates to the Territories comprised within the Colony of British Columbia. And I'll read in part the preamble:

> "Whereas by an Instrument under the hand and seal of the Right Honourable Lord Glenelg, then one of our Principal Secretaries of State, and dated the 30th day of May, 1838, We did, for the reasons and and considerations therein recited, grant and give Our licence to the Government and Company of Adventurers trading to Hudson's Bay and their successors, for the exclusive privilege of trading with the Indians in all such parts of North America to the northward and westward of the lands and territories belonging to the United States of America as should not form part of any of Our provinces in North America, or of any lands or territories belonging to the said United States of America, or to any European Government, State or Power, but subject, nevertheless, as therein-after mentioned ; and did give, grant, and secure to the said Governor and Company, and their successors, the sole and exclusive privilege, for the full period of twenty-one years from the date of Our said grant, of trading with the Indians in in all such parts of North America as aforesaid."

And then there's an exception to that. And then the last clause in that preamble, beginning about five lines from the bottom of that paragraph:

> "And we did thereby reserve to Us, Our heirs and successors, full power and authority to revoke Our said grant or any part thereof in so far as the same might embrace or extend to any of the territories aforesaid which might thereafter be comprised within any colony or colonies, province

or provinces, as aforesaid."

Now, turning to the first despatch with the background of those -- of the enactment of the 2nd of August of 1862, and the Letters Patent constituting Douglas' Commission is the Royal Instructions and the Order in Council with respect to the administration of justice and the instrument revoking the Hudson's Bay's exclusive right of trading, all of the -- all of the 2nd of September. I'm turning now to the circumstances which gave rise to the Act and the enactments, statutory instruments which I have referred to. And at page 11 --

THE COURT: Should we take the morning adjournment before we move onto that?

MR. GOLDIE: Yes, thank you.

THE REGISTRAR: Order in court. Court stands adjourned for a short recess.

(PROCEEDINGS ADJOURNED AT 11:15)

I hereby certify the foregoing to be a true and accurate transcript of the proceedings herein transcribed to the best of my skill and ability

Graham D. Parker
Official Reporter
United Reporting Service Ltd.

(PROCEEDINGS RESUMED FOLLOWING RECESS)

THE COURT: Mr. Goldie?

MR. GOLDIE: I was about to start with the first despatch in the papers laid before parliament and this is dated May 19th, 1858 and is part of what was laid before parliament on February 19th, 1859. And as I noted earlier, my lord, this what was received in July of 1858. Paragraph one:

> "Since I had the honour of addressing you on the 8th instant, on the subject of the Couteau Gold Mines, it was currently reported that boats and other small craft from the American shore were continually entering Fraser's River with passengers and goods, especially spirits, arms, amunition, and other prohibited and noxious articles, and as those acts are in direct violation of the Custom's laws, as extended to the British Possessions in America, and infringe the rights of the Hudson's Bay Company, I took immediate steps to put a stop to those lawless practices, by issuing a Proclamation, of which a copy is transmitted, warning all persons against the consequences of such offences, and I have since applied to Captain Prevost, of Her Majesty's Ship 'Satellite', for an effective force to carry out the measures proposed and set forth in my Proclamation."

My lord, we will see that that proclamation was disallowed by the secretary of state for the colonies on the grounds that it sought to protect the interests of the Hudson's Bay Company in a manner which was beyond the powers of the governor. But, of course, Douglas didn't receive that until sometime in October.

The reference to Couteau Gold Mines, my lord, from the next -- not the next but in another series of documents, that subject will be dealt with. That is up near the Thompson River, and there was a gold strike of a minor character in 1857. And that will be followed through in another series of documents.

I should refer at this point to page 42, which is the reply to Douglas of the 19th of May. It's dated the 19th of May:

"I have to acknowledge your Despatch, No. 23 of the 19th of May last, enclosing a Proclamation which you had issued on the subject of boats and vessels entering Fraser's River for trade, and reporting further on the state of the Couteau Gold Diggings.

The accounts which have reached Her Majesty's Government from other quarters as well as your own afford abundant evidence of the critical nature of the circumstances in which you are placed. They have much satisfaction in reflecting that the maintenance of public order and the rights of the Crown in that quarter is placed in the hands of an officer so vigilant, and so well acquainted with the country and the people as yourself; and you may rely on their support in the performance of this arduous duty, under the very peculiar difficulties of your position.

They are now engaged in conducting through parliament a measure for the purpose of giving the sanction of law to the steps which the Crown will be advised to take for the establishment of regular government, and protection both of the immigrants and the natives, as far as practicable; and they are also devising the means for affording your support of a military force, as soon as this can be effected.

In the meantime I must lay down a few rules for your guidance in the administration of the authority which has thus devolved on you.

In strict law, your commission extends to Vancouver's Island only; but you are authorized, under the necessity of the case, to take such measures, not inconsistent with the general rights of British subjects and others within Her Majesty's Dominions, as that necessity may justify."

I said, my lord, that Douglas didn't receive this until October. I should give your lordship the exact date. Page 36, Douglas to Lytton, of September 30th, 1858.

"I have the honour to acknowledge the receipt of your Despatch No. 4 of the 16th of July."

THE COURT: So you say he received it after September 30th?
MR. GOLDIE: Yes. Well, he is acknowledging it by his despatch dated September 30th, I believe I said October and I wish to correct that.

Now, I had interrupted my reading of the May 19th despatch to read the reply to it. And --

MR. RUSH: What page are you on now?
MR. GOLDIE: I am now going back to page 42. Lytton approves of despatching an officer of the Customs from Vancouver's Island, I am reading the paragraph that -- sixth paragraph down. He says:

"I approve, therefore, of your having detached an officer of the customs from Vancouver's Island (if the intention announced in your Despatch was carried into execution), for the purpose of preventing the landing in Fraser's River of articles prohibited under the Custom's laws to which you refer.

Subject to this restriction, her Majesty's Government wish no obstacle to be interposed to the disembarkation of passengers and goods at the mouth of Fraser's River by foreign vessels.

But it is necessary to maintain the principle that the navigation of Fraser's River itself above the mouth is open to British vessels only. American or other foreign vessels, therefore, if admitted to navigate that river (to which it is the desire of Her Majesty's Government that no unnecessary obstacles should be interposed), should be required to take a licence from yourself or such officer as you may delegate for the purpose.

But I must distinctly warn you against using powers hereby entrusted to you in maintenance of the interests of the Hudson's Bay Company in the territory.

The company is entitled, under its existing licence, to the exclusive trade with the Indians, and possesses no other right or privilege whatever."

Then skipping a paragraph I read the first sentence:

> "I am compelled, therefore, to disapprove, and to disallow if still in force, the Proclamation of which your Despatch transmitted a copy."

And then I go back, my lord, to Douglas's despatch itself on page 11. And I don't propose reading all of this, but I draw your lordship's attention to paragraph 7:

> "Those accounts are sufficiently promising to nourish the prevalent mania for gold. On all sides the Americans are striving to force a passage into the Gold District through their own territories, attempts being at once made to open roads from Bellingham Bay, for Nisqually, and by the way of the Columbia River."

Paragraph 8, Douglas's conviction that "it is impossible, through any means within our power, to close the Gold Districts against the entrance of foreigners."

And paragraph 9, his attempts to legalize the entrance of gold miners under certain conditions and to protection of the interests of the Hudson's Bay Company, and I go to the top of page 12:

> "...and are intended to draw the whole trade of the Gold Districts through Fraser's River to this colony, which will procure its supplies directly from the Mother Country."

As I have read to your lordship Lytton's Despatch of 42, page 42 in response to that, the attempt to protect the interests of the Hudson's Bay Company was disapproved of.

Reading of Despatches
by Mr. Goldie

My lord, I wish at this point to refer to Lytton's Despatch of July 1st, 1858, which was before he got Douglas's report of May 19th, and it is at page 41. And it reads in part as follows, and after informing him of a letter which indicates that the Admiralty is about to take steps in connection with the circumstances of the gold strike, I refer to the second complete paragraph:

> "Her Majesty's Government, feeling the difficulties and the critical nature of your present circumstances, have not hesitated to place these considerable powers in your hands; but they rely upon your forbearance, judgment, and conciliation to avoid all resort to military or naval force which may lead to conflict and loss of life, except under the pressure of extreme necessity. Still less need I impress upon you the importance of avoiding any act which directly or indirectly might be construed into an application of Imperial resources to the objects of the Hudson's Bay Company, in whose service you have so long been engaged."

If I may pause there, my lord, he is still in the employ of the Hudson's Bay Company.

And then continuing:

> "Even the suspicion of this, however unfounded, would be eminently prejudicial to the establishment of Civil Government in the country lying near the Fraser's River, and would multiply existing difficulties and dangers. All claims and interests must be subordinated to that policy which is to be found in the peopling and opening up of the new country, with the intention of consolidating it as an integral and important part of the British Empire."

Of course, my lord, I ask your lordship to note the word policy, which is to be found in the peopling and

opening up of the new country.

That despatch was received by Douglas on September 9th, as appears from his despatch at the bottom of the page:

> "I have to acknowledge the receipt of your Despatch (confidential) of the 1st of July last, and observe with feelings of indescribable satisfaction that Her Majesty's Government approve of the measures which I conceived it necessary to resort to, in order to assert the dominion of the Crown over the Gold Districts of Fraser's River, and the rights of the Crown over precious metals "

THE COURT: Where is that?

MR. GOLDIE: That was page 33, my lord. I am sorry, I am referring to Douglas's response to Lytton of the 1st of July. And it's at the bottom of the page, my lord.

THE COURT: Thank you.

MR. GOLDIE: And I am not going to --

THE COURT: What is the organization of these things, why are they jumping back and forth like this?

MR. GOLDIE: What they have done, my lord, is simply put all of Douglas's despatches in one group and all of Lytton's despatches in another. They seek to assist the reader, assuming that we are in the position of a member of the houses of parliament, by placing a side note, and if your lordship will look at page 33, the side note page 41, is a reference to the despatch which Douglas is acknowledging.

THE COURT: All right.

MR. GOLDIE: As I said in my opening comments, without, I hope, contributing to the confusion, I wanted to place these in some chronological sequence.

But I do refer to paragraph 4 on page 34, where after referring to protecting British interests and developing the resources of the gold regions, he goes on to say this:

> "It was necessary for that purpose that we should maintain a proper control over the mixed multitude that have literally forced an entrance into the British Possessions; that Americans and other foreigners should, on

certain conditions, be admitted into the Gold Regions; that stocks of food should be thrown into those districts; that, for want of British ships, foreign vessels should, as a temporary arrangement, be allowed, under a sufferance, renewable at the close of each voyage, to navigate the inland waters of Fraser's River, for the purpose of supplying the miners with food and clothing; that roads should be opened, to render the Gold Districts accessible to the miner and to the merchant; that Courts of Law should be established, and officers appointed for the administration of justice, the punishment of offences, and the protection of life and property; and that the powerful native Indian Tribes who inhabit the Gold Regions should be at once conciliated and placed under proper restraint."

And then paragraph 14 he says:

"Being now engaged in visiting the various districts of Fraser's River, with the intention of reporting to you on their present state and condition, and being exceedingly busy with various matters of detail, I will bring my present Despatch to a close, after informing you that the mining population in this quarter continue quiet, orderly, and submissive to the laws."

Now, my lord, if I may go back to page 13, and I apologize once again, I have read to you a despatch of September 9th, which was in response to Lytton of July 1st, but going back to the conditions under which Douglas was operating, I now refer to page 13, which is his despatch of June 10th, 1858, he says:

"Since I had the honour of addressing you on the 19th of May last, in reference to the Couteau Gold Mines, and the immigration of foreigners into Fraser's River, as well as the measures taken to assert the rights of the Crown to enforce the revenue laws of the

empire, and to protect the rights of the Hudson's Bay Company, I have, as therein proposed, made a journey to the Falls of Fraser's River, visited the gold diggings..."

If I may be permitted, my lord, the Falls at Fraser's River is Yale, as I understand it from subsequent despatches.

"...and seen all the miners below that point; and I will now proceed to give a brief narrative of my proceedings, and the information gathered in respect to the auriferous character of the country in the course of that journey."

After that is stated how he gets there and what the revenue officers have done.

THE COURT: What does auriferous mean?

MR. GOLDIE: Gold bearing.

THE COURT: Gold bearing?

MR. GOLDIE: Yes.

He then locates, in paragraph 6, the diggings on the Fraser River:

"The actual gold diggings commence on a bar of Fraser's River about one mile below the point at which Fort Hope is situated, and from that point upwards to the commencement of the Falls, a distance of 20 miles, we found six several parties of miners successfully engaged in digging for gold on as many partially uncovered river bars; the number of whites on those bars being about 190 men, and there was probably double that number of native Indians promiscuously engaged with the whites in the same exciting pursuit."

And then over on page 14 in paragraphs 18 to 21, Mr. Douglas, who was, your lordship has seen, has no power or authority whatsoever in the mainland, says,

Reading of Despatches
by Mr. Goldie

and I quote:

> "Evidence is thus obtained of the existence of gold over a vast extent of country situated both north and south of Fraser's River, and the conviction is gradually forcing itself upon my mind, that not only Fraser's River and its tributary streams, but also the whole country situated to the eastward of the Gulf of Georgia, as far norh as Johnstone's Straits, is one continued bed of gold of incalculable value and extent."
>
> Such being the case, the question arises as to the course of policy in respect to Fraser's River which Her Majesty's Government may deem it advisable in those circumstances to follow.
>
> My own opinion is that the stream of immigration is setting so powerfully towards Fraser's River that it is impossible to arrest its course, and that the population thus formed will occupy the land as squatters, if they cannot obtain a title by legal means.
>
> I think it therefore a measure of obvious necessity that the whole country be immediately thrown open for settlement, and that the planned be surveyed, and sold at a fixed rate, not to exceed 20 shillings an acre. By that means, together with the imposition of a Customs' duty on imports, a duty on licences to miners, and other taxes, a large revenue might be collected for the service of government."

And then in his final -- the final paragraph:

> "In consequence of the unceasing demands upon my time by the crowds of people who are flocking to this place, and the want of assistants, my secretary, Mr. Golledge, being greatly overworked, I have been compelled to prepare this report in the midst of numberless interruptions, and I beg that its inaccuracies may be overlooked and that I may receive your instructions by return of post, as the case is urgent, and calls for rapid and decisive

measures in the outset, for in the course of a few months there may be one hundred thousand people in the country."

The note at the top of page 13 indicates that that despatch of June 10th was received August 9th, and was answered on August 14th.

THE COURT: And the page?

MR. GOLDIE: The one of August 14th, my lord, it --

MR. RUSH: It says page 47.

MR. GOLDIE: -- that's the date of the despatch of August 14th. The date of its receipt by Douglas is October 21st. And, of course, I point out that his cry for instructions or his request for instructions, on June 10th, was not received until October 21st. And, indeed, from page 47 it will be apparent that he had sent off some five Despatches before he received a response.

Now, the others which were sent off by Douglas before he knew that he had been authorized to -- by law, page 15, and 16, there are two Despatches of June 15th, the first encloses "a copy of an address presented to me by a committee appointed for that purpose at a public meeting lately held at this place."

I am not going to read anything further. The address by merchants of Victoria and the -- they are hoping to participate in the trade arising out of the gold fields.

The second, however, my lord is on page 16, and again it's addressed to Lord Stanley, who had ceased to be the secretary of state some two or three weeks before the date of this despatch. He says, and I quote:

"In reporting the other day the result of my observations of the Gold Regions of Fraser's River, I omitted to mention several things that I ought to have communicated to you.

In consequence of that omission I have now to state that during my stay at the Falls of Fraser's River I appointed Mr. Richard Hicks, a respectable Englishman engaged in mining pursuits there, as Revenue officer for the district of Fort Yale, at a salary of 40 pounds

a year, to be paid out of the Revenues of the Country.

On the arrival of our party at 'Hill's Bar," the white miners were in a state of great alarm on account of a serious affray which had just occurred with the native Indians, who mustered under arms in a tumultuous manner, and threatened to make a clean sweep of the whole body of miners asembled there.

The quarrel arose out of a series of provocations on both sides, and from the jealousy of the savages, who naturally feel annoyed at the large quantities of gold taken from their country by the white miners.

I lectured them soundly about their conduct on that occasion, and took the leader in the affray, an Indian highly connected in their way, and of great influence, resolution, and energy of character, into the Government service, and found him exceedingly useful in settling other Indian difficulties.

I also spoke with great plainness of speech to the white miners, who were nearly all foreigners, representing almost every nation in Europe. I refused to grant them any right of occupation to the soil, and told they distinctly that Her Majesty's Government ignored their very existence in that part of the country, which was not open for the purposes of settlement, and they were permitted to remain there merely on sufferance; that no abuses would be tolerated; and that the laws would protect the rights of the Indian, no less than those of the white man.

I also apointed Mr. George Perrier, a British subject, as justice of the peace for the district of 'Hill's Bar' and directed the Indians to apply to him for redress whenever any of them suffer wrong at the hands of white men, and also cautioned them against taking the law into their own hands, and seeking justice according to their own barbarous customs.

I also appointed Indian magistrates, who are to bring forward, when required, any man of their several tribes who may be charged with offences against the laws of the country; an arrangement which will prevent much evil; but

without exercise of unceasing vigilance on the part of the Government Indian troubles will sooner or later occur.

The recent defeat of Colonel Steptoe's detachments of United States troops, consisting of dragoons and infantry, by the Indians of Oregon Territory, has greatly increased the natural audacity of the savage, and the difficulty of managing them. It will require, I fear, the nicest tact to avoid a disastrous Indian war.

I transmit herewith a handbook and map of the Gold Region of Fraser's River, which will prove useful as a reference."

The enclosure is set out below, extract from "Pioneer and Democrat." And it's dated May 28th, 1858, Washington Territory, and I don't propose to read it, my lord, I believe I put this to Dr. Lane, but it reports the defeat of a substantial body of military, U.S. military people, and in fact 400 such. And the defeat of the military resulted in three officers and 50 men killed.

Page 17, Douglas despatch of June 19th, again another one that was answered by Lytton's despatch of August 14th. He starts off by saying:

"I fear the frequent and desultory nature of my Despatches will give you much trouble, but the pressure of business compels me to address you in this form."

He goes on to give some further examples and in paragraph 8 he is still being ignorant of the disapproval of his protection of the interests of the Hudson's Bay Company, he says and I quote:

"I herewith forward, for your information, a copy of the terms on which it is proposed to allow steam vessels to ply upon Fraser's River enforcing at once the Revenue laws of the Empire, and respecting the trading rights of the Hudson's Bay Company."

And the enclosure, as your lordship will see, is one that was designed to not only protect the rights of the Hudson's Bay Company but to provide them with a source of revenue.

Paragraph 14, the enclosure is the one that's immediately below that. Paragraph 14:

> "The miners have applied to me for protection against the Natives, and when that is accorded will have no hesitation in paying the licence duty; otherwise it will be paid with reluctance."

That succeeds his paragraph:

> "I have no doubt that your lordship will send out a body of troops for the service of this colony and the Fraser's River District."

And then finally, the last of the Despatches which is acknowledged in the Despatches of Lytton's Despatches of the 14th of August is Douglas's despatch on page 19, dated July 1st, 1858. Paragraph one:

> "Since I had last the honour of addressing you on the 19th instant, the excitement on the subject of the Fraser's River Gold Mines has been more than ever exhibitted in the rush of people from all parts of the coast to this Colony."

Then he records the number of ships clearing through the customs house in Victoria as carrying 6, 133 passengers, all either bound directly for Fraser's River or proposing to settle at this place with a view of entering into business connections with parties at the mines.

Paragraph two:

> "The an ascertained number of persons who had actually sailed from the Port of San Francisco with the intention of going into the Fraser's

River mines, up to the 15th instant, was 10,573, and there was then no abatement in the demand for passages, every vessel being taken up as soon as advertised to sail to Vancouver's Island.

Those statements give approximate idea of the number of persons at and on the way to Fraser's River from California and other more distant countries, but do not represent the increase of population derived from the United States territories of Washington and Oregon, through parties of adventurers who have entered the British Possessions by land. We are, therefore, led to the inference that this country and Fraser's River have gained an increase of 10,000 inhabitants within the last six weeks, and the tide of immigration continues to roll onward without any prospect of abatement "

Then he goes on to talk about some of the results of the mines.

In paragraph 14 -- well, I will read paragraph 12, 13 and 14:

"I have appointed Mr. Travaillot Revenue officer for the District of Fort Dallas, or Forks of Thompson's River, and will authorize him to issue licences to miners, and to collect the legal fees in that District. The law must, however, be imperfectly executed until there be a military force placed at my disposal.

I will authorize Mr. Travaillot to raise and maintain a force of eight men for the service of Government, and to swear in all persons who take out mining licences as special constables for the maintenance of law and order, granting to them also certain privileges in respect to mining claims, in order to secure their fidelity and attachment.

About two-thirds of the emigrants from California are supposed to be English and French; the other third are Germans and native citizens of the United States. There is no congeniality of feeling among the emigrants,

> and provided there be no generally felt grievance to unite them in one common cause, there will, in my opinion, always be a great majority of the population ready to support the measures of Government."

And I now, my lord, wish to refer to that response of the 14th of August in a little more detail, which is in response to these despatches I just finished reading.

Actually, there are three despatches of August 14th, the first one on page 46 transmits to Douglas for his information and guidance a copy of the Act to provide for the Government of British Columbia, and Sir Edward Bulwer Lytton states in the second paragraph:

> "There has been as yet time at furnish you by this mail the necessary Order-in-Council, commission and Instructions to yourself as governor, which are necessary in order to complete your legal powers.
>
> You will continue nevertheless to act during the brief interval before their arrival as you have hitherto done, as the authorized representative of Her Majesty's Government in the territory of British Columbia, and take without hesitation such steps and you may deem absolutely necessary for the government of the territory, and as are not repugnant to the principles of British law; but you will do so in conformity with the directions which I transmit to you on several subjects by my Despatches of even date herewith, and in such others as you may receive from me."

Now, turning to the next one, which is the acknowledgement of the Despatches of the 10th of June, the 15th of June, the 15th of June, two of the 19th of June and one of the 1st of July. The despatch begins:

> "I have to acknowledge the very important series of Despatches of which the numbers and

dates are specified in the margin, showing the manner in which you have continued to administer the government of the territory in which the recent discoveries of gold have taken place, and detailing the extraordinary course of events in that quarter.

Her Majesty's Government feel that the difficulties of your position are such as courage, judgment, and familiarity with the resources of the country and character of the people can alone overcome. They feel also that minute directions conveyed from this distance, and founded on an imperfect knowledge, are very liable to error and misunderstanding. On some points, however, you have asked yourself for approval and Instructions; on others it is absolutely necessary that the views of Her Majesty's Government should be made clear to you."

Then he goes to approve appointments of revenue officers and justices of the peace and Mr. Young as Gold Commissioner. He says that he approves the temporary measure with respect to the surveying department but he has in contemplation to send to the colony ahead of that government in England. Likewise with respect to the office of collector of customs and an officer authorized to act as judge, who as your lordship would suspect, is Mr. Begbie.

Then in the fourth line:

"I await your intimations as to the wants and means of the Colony, in this sudden rise of social institutions in a country hitherto so wild, in order to select such law advisors as you may deem the condition and progress of immigration more immediately require. And it is my wish that all legal authorities connected with the Government should be sent from home, and thus freed from every suspicion of local partialities, predjudices and interests."

Then his -- Lytton goes on in paragraph five to state something that's highly relevant to this proceeding:

"I highly approve of the steps which you have taken, as reported by yourself, with regard to the Indians. It is in the execution of this very delicate and important portion of your duties that Her Majesty'sGovernment especially rely on your knowledge and experience, obtained in your long service under the Hudson's Bay Company. You may in turn rely on their support in the execution of such reasonable measures as you may devise for the protection of the natives, the regulation of their intercourse with the whites, and, whenever such a work may be commenced, their civilization. In what way the fur trade with the Indians may be henceforth carried on with the most safety, and with due care to save them from the demoralizing bribes of ardent spirits, I desire to know your views before you make any fixed regulations. No regulations giving the slightest preference to the Hudson's Bay Company will be in future admissable; but possible, with the assent of the whole community, licences for Indian trade impartially given to all who would embark in it, might be a prudent and not unpopular precaution."

The approval of the measures to which Lytton refers in respect of Indians is found at page 16, my lord. These are the ones that I read in his despatch of June 15th. On page 16. Paragraph --

MR. RUSH: Well, my lord, I am not sure what emerges from the document that would lead my friend to that conclusion. It might be a reasonable conclusion, but I say that's something perhaps your lordship ought to determine in the course of argument.

THE COURT: You are talking about paragraph 55 and despatch number 40, page 16?

MR. RUSH: Yes, I am simply saying that my friend draws your attention to the despatch at page 16 and asks you to conclude that those are the measures approved of.

MR. GOLDIE: Well, I invite my friend to find any other reference.

MR. RUSH: Well, isn't that the argument?

Reading of Despatches
by Mr. Goldie

THE COURT: I don't think your friend wants to do that at this time, Mr. Goldie.
MR. RUSH: But I only rise, my lord, to point out that that, this exchange is simply indicative of the debate.
THE COURT: Yes. Yes, it is.
MR. GOLDIE: Paragraph 8:

> "Further, with regard to these supposed rights of the Hudson's Bay Company, I must refer you, in even stronger terms, to the cautions already conveyed to you by my former Despatches."

Then in paragraph 10:

> "The immense resources which the information that reaches England every day, and is confirmed with such authority by your last Despatch, assure me the Colony possesses, and the facility for immediate use of those resources for the purpose of Revenue, will at once free the Mother Country from those expenses which are adverse to the policy of all healthful colonization."

It says "heathful", I hope my friends might agree that that is healthful, but if not I will leave it to be debated.
MR. RUSH: Due at any time, my lord.
MR. GOLDIE: Any time you please.

> "You will bear the principle I have thus laid down perpetually in mind, so as to apportion the expenditure to the Revenue, and not to allow the former to exceed the latter.
>
> The most important objects to which the local revenue can be applied would seem to be, police, public works to facilitate landing and travelling, payment of the absolutely necessary officers, and above all, surveying. But your own local judgment must mainly decide."

I have a note that there is no reference in what I have just read to Indians.
14:

"I now come to the important subject of future Government. It is possible (although on this point I am singularly without information) that the operations of the gold diggers will be to a considerable extent suspended during the winter, and that you will, therefore, have some amount of leisure to consider the permanent prospects of the Colony, and the best mode of administering its affairs.

You will be empowered both to govern and legislate of your own authority; but you will distinctly understand this is a temporary measure only. It is the anxious wish of Her Majesty's Government that popular institutions, without which they are convinced peace and order cannot long prevail, should be established with as little delay as practicable; and until an Assembly can be organized (which may be whenever a permanent population, however small, is established on the soil.)"

And so on. 15:

"You will receive additional directions along with your Commission, when forwarded to you; and I have embodied in a separate Despatch those regarding the very important question of disposal of land."

And then 17:

"I will only conclude with the general caution, that inasmuch as your legal powers are as yet incomplete, it will be well that you should therein confine yourself as much as possible to the mere issue of regulations absolutely required, and not seek to carry into effect the Crown's general power of legislation until fully authorized thereto."

And then the third one of August 14th, the one that Lytton characterizes as regarding the very important question of the disposal of land, starts off with the

statement:

> "Frequent inquiries are addressed to this office on the subject of disposal of land in British Columbia to companies or private individuals in this country."

And then he says that there is general ignorance in that country with respect to this matter and concludes that paragraph by saying:

> "It is therefore very necessary that you should, at your earliest convenience, communicate to me the impressions that you entertain on this subject, accompanied with all the information which you can collect.
>
> In the meantime you will take the following Provisional Rules to guide you:-
>
> With regard to the very important subject of the disposal of land, you are authorized to sell land merely wanted for agricultural purposes (whenever a demand for it shall arise) at such upset price as you think advisable I believe that a relatively high upset price has many advantages; but your course must, in some degree, be guided by the price at which such land is selling in neighbouring American territories. But with regard to land wanted for town purposes (to which speculation is almost certain to direct itself in the first instance) I cannot caution you too strongly against allowing it to be disposed of at too low a sum. An upset price of at least one pound per acre is, in my opinion, absolutely required, in order that the local Government may in some degree participate in the profit of the probable sales, and that mere land jobbing may be in some degree checked. Whenever a free Legislature is assembled, it will be one of its duties to make further provision on this land.
>
> 2. To open land for settlement gradually; not to sell beyond the limits of what is either surveyed or ready for immediate survey, and to prevent, as far as in you lies, squatting on unsold land. Mineral lands will require a

special care and forethought, and I request your views thereon."

Then he is told to keep a separate account and then in paragraph 4:

"Foreigners, as such, are not entitled to grants of waste land of the Crown in British colonies but it is the strong desire of Her Majesty's Government to attract to this territory all peaceful settlers, without regard to nation. Naturalization should, therefore, be granted to all who desire it, and are not disqualified by special causes; and with naturalization the right of acquiring Crown land should follow."

Then he again exhorts him not to grant any favours to the Hudson's Bay Company.

Now, this -- I now go back to the situation which Douglas was in, and I refer to his despatch of July 26th, on page 22, and your lordship will now see that Mr. Douglas has anticipated the question of the disposal of land and has in fact made some regulations with respect to it.

And then he says in paragraph 6:

"I will, for your lordship's information, concisely enumerate the objects we wish to attain through those regulations.

In the first place, I have distinctly, and to all applicants for land, refused the grant of any rights of occupation in accordance with the instructions from Mr. Secretary Labouchere, as detailed in his Despatch No.4 of the 1st of February, 1858, and also with the view of presenting the confusion and numberless evils that have in all cases grown out the the practice of squatting on Crown lands, or the lawless occupation of a country."

Now his instruction from Mr. Secretary Labouchere

as contained in the Despatch of the 1st of February, 1858 was put into evidence by Dr. Lane in her Exhibit 1039-39.

THE COURT: 1039-39?

MR. GOLDIE: Yes, 1039-39, my lord.

THE COURT: Yes.

MR. GOLDIE: And I will be referring to it at a later time, not in connection with this series, but in connection with the earlier and subsequent events touching the colony.

Then his second object, going back to page 22:

> "I have endeavored to protect the trading rights of the Hudson's Bay Company as by law established.
>
> Third, I have established the system of issuing licences for digging gold, the charge for each mining claim 25 feet of river frontage, or 20 square feet of river bar or dry diggings, being fixed at 21 shillings or $5 a month, the revenue derived from this source being held for the benefit of the Crown.
>
> There are also regulations respecting the draining of water ponds and working quartz veins which will, I trust, hereafter yield a large amount of Revenue for the Crown."

Then he states the people he has appointed, and how he proposes to pay for them, and in paragraph 20 he says this:

> "I am not without cause looking forward to most anxiously to receiving your instructions respecting the plan of government for Fraser's River. The torrent of immigration is setting in with impetuous force, and to keep pace with the extraordinary circumstances of the times, and to maintain the authority of the laws, I have been compelled to assume an unusual amount of responsibility."

Now that, his actions in that regard, I can say, were approved, and I refer to page 66.

THE COURT: Mr. Goldie, I have to adjourn just a few minutes early. Is it convenient to do it now?
MR. GOLDIE: As your lordship can see it's convenient at the end of any despatch.
THE COURT: All right. 2 o'clock, please.

(PROCEEDINGS ADJOURNED FOR LUNCH)

I hereby certify the foregoing to be a true and accurate transcript of the proceedings herein to the best of my skill and ability.

Wilf Roy
Official Reporter

(PROCEEDINGS RESUMED AT 2:00)

THE REGISTRAR: Order in court.
THE COURT: Mr. Goldie.
MR. GOLDIE: Thank you, my lord. At the luncheon adjournment I had just finished reading Douglas' dispatch to Lord Stanley of July 26th, 1858, and I believe I have read paragraph 20.
THE COURT: Yes.
MR. GOLDIE: I had referred in paragraph 6 to Mr. Secretary Labouchere's dispatch number 4 of the 1st of February, 1858 -- Dr. Lane has -- I believe, it's a draft of that dispatch in her Exhibit 1039-39. Under tab 5 of the book before your lordship is a type script of Mr. Labouchere's dispatch of the 1st of February, 1858, and it is before any word of the initial gold strike, that Couteau gold strike, reached London. The circumstance which gave rise to this dispatch is indicated in the first paragraph:

> "The governor and directors of the Hudson's Bay Company have communicated to me the draft of a letter which they propose to address to you as Agent for the company, instructing you as to the course which ought be taken in the event of an immigration of the Mormons from the Territory of Utah into British territory on the North West Coast of America.
>
> Her Majesty's Government have expressed to the Governor and Directors their concurrence in the instructions conveyed in that Despatch. But although it is possible that the apprehended immigration may not take place, they are of opinion that you should be furnished as an Officer of the Crown with a more distinct impression of their own views on the subject."

And then he goes on to talk about the origin of the Mormons, the fact that they are fleeing from the United States. And then the next paragraph:

> "Should they apply for admission to occupy any portion of the North Western Territory peacefully and as a community or in scattered communities: you will remember that the soil of this Territory belongs to the Crown subject only to such rights as may be recognized in the Indian Tribes (who are

not authorized to part with the soil without permission of the Crown) and to the trading rights of the Company."

And then he goes on to say:

"Her Majesty's Government are not prepared at present to exercise the right reserved to them in the Company's license of forming a Colony in these parts. Least of all would they exercise that right in favour of refugees who have defied both the authority of their Country and the usage of Christian and Civilized life.

No rights of occupation whatever are therefore to be granted to them."

If I may pause there, my lord. You may recall that on page 9 of part 1 of the papers laid before Parliament is the instrument under the Royal Sign Manual which revoked so much of the Crown Grant to the Hudson's Bay Company of their exclusive rights to trade in what was the mainland of part of the Indian territories. And there in the last paragraph -- or the last clause of the second-to-last paragraph, the instrument recited the fact that:

"We did thereby reserve to Us, Our heirs and successors, full power and authority to revoke Our said grant or any part thereof in so far as the same might embrace or extend to any of the territories aforesaid which might thereafter be comprised within any colony or colonies."

So that your lordship will thus be able to identify the reference in the despatch at page 22, where Mr. Douglas said:

"I have refused the grant of any rights of occupation in accordance with the instructions from Mr. Labouchere."

Now, at that time his reliance upon that was approved by the Colonial -- by the Secretary of State for the Colonies in his letter of September 16th -- or his despatch of September 16th at page 66, paragraph 5, and I believe I have read that.

THE COURT: No. You haven't read that.

MR. GOLDIE: Well, in that case I will, my lord. This despatch begins with the word:

> "I have received your despatch of the 26th of July, No. 31, with its enclosures, reporting the public measures which you have adopted for the Government of British Columbia since the 1st July. It affords me much satisfaction to signify to you generally the continued approval by Her Majesty's Government of your proceedings in the difficult position in which you have been so unexpectedly placed; but there are a few points mentioned in your Despatch on which it is necessary that I now should touch."

And he is concerned about the traffic on the Fraser, and paragraph 2 he said:

> "Is totally impossible for Her Majesty's Government to provide you with such a force from England."

Necessarily adequate for the protection of the revenue laws. Then over the page, he again comments that the rights that Douglas purports to be safeguarding, this is paragraph 4, of the Hudson's Bay Company have never existed. And he -- Litwin says:

> "By the time this Despatch reaches you they will have ceased all together, if the instrument forwarded to you for that purpose has been put into operation, as I trust it has, without delay."

And paragraph 5:

> "I entirely approve the course you are following with respect to applications for Crown land, and for the prevention of Squatting. The party of Royal Engineers which has been despatched to British Columbia will relieve you from much anxiety on this score, as they will immediately on their arrival proceed to survey and lay out lands for sale and occupation."

And then he approves of the nominations of Messrs. Travaillot and Hicks and of Mr. Bevis, and

subsequently other appointments. Turning back then to page 29 -- well, I should perhaps touch very briefly on what follows after the despatch of July 26th on pages 22 and 23. There were enclosures in that despatch which I needn't dwell upon which acknowledge the assistance of the Royal Navy to Douglas at the time of his attempts to deal with the matters on the Fraser River. And at page 27 his despatch of August the 19th, where he reports that he does not expect to receive additional assistance from the navy, and in paragraph 4 he says, and I quote:

> "There are now about 10,000 foreign miners in Fraser's River, and upwards of 3,000 of that number are profitably engaged in gold mining." I have appointed Sub-Commissioners to mark out the mining claims, and to receive the duty of 21 sh. a month payable on each claim. Those officers require support, and the miners demand protection, while I have not a single man to detach to either of their assistance. The affairs of Government might be carried on smoothly with even a single company of infantry; but at present I must, under Providence, depend in a great measure on personal influence and management; a position inconsistent with the dignity of the Queen's Government."

And I ask that that be taken into consideration. And then he reports at paragraph 8:

> We have commenced the work of improving the internal communications of the country, as referred to in the 17th paragraph of my despatch No. 31 of the 26th of July last, a party of 500 men being now engaged in opening a road into Upper Fraser's River by the valley of Harrison's River."

Your lordship will appreciate that that was a route that was eventually opened to Lillooet. And then on page 29 of his despatch of August the 27th, 1858 to -- still to Lord Stanley, my lord:

> Since I last addressed you on the 19th instant, an alarming report reached this place of murder

> of 42 miners by the Indians of Fraser's River, and I, in consequence, made a requisition on Major Hawkins, Her Majesty's Commissioner for determining the land boundary, for an officer and ten men, and for an equal force respectively."

My lord, I should point out that it will become apparent a little later that there were a party of engineers sent out from England specifically for the purposes of the Colony. These people were surveying the boundary and not -- are not part of that group. Nevertheless these are the people to whom Douglas turned. He says that: A large report has since been contradicted in a despatch from Mr. Hicks:

> "States that two men only were killed by the Indians, instead of the larger number previously reported. I am nevertheless preparing for an excursion to Fraser's River, with a small military force of 35 men, composed of 15 Sappers and Miners furnished by Major Hawkins, and Lieutenant Jones with 20 Marines, kindly furnished by Captain Prevost of Her Majesty's ship "Satellite"."

And then there was -- the enclosures, his letter to the commanding officer of the Calypso and the response to that. Then in his despatch of August the 30th, 1858 he encloses a copy of instruction issued to the assistant gold commissioner employed at Fraser's River and also a proclamation establishing harbour regulations. There follows the instructions to the assistant gold commissioners, which are laid out in very considerable detail, and I'm not going to read that. The enclosure number 2 in number 10 is, if I may be permitted to say so, something of a puzzle, this is on page 33. Your lordship will notice the date. It's a proclamation by Mr. Douglas' governor of Vancouver's Island and given under his hand and seal at Victoria, the 28th of December in 1857. The description of that as something for the regulation of boats and other small craft employed on the coast of Vancouver Island appears to be establishing harbour regulations, appears to be difficult to fit into that despatch. On the other hand, it is the proclamation that he issued in the December 28th, 1857, when the

first news of the Couteau gold strike came to him. That's established in other places. And then his despatch of September the 9th at the bottom of page 33 is one that I have referred to. It acknowledges receipt of the Secretary of State's despatch of the 1st of July, and expresses his delight at being -- having his actions approved. The number 12 at page 35 is acknowledging receipt of Lytton's despatch of the 1st of July, marked "Confidential". That was Lytton's letter before he received the report of May the 19th. And then on page 36 is his despatch of September 30th in which he acknowledges receipt of Lytton's despatch of July 16th in which Lytton told him, amongst other things, that they were putting a measure through Parliament for the Government of the mainland. He acknowledges the comments about the Hudson's Bay Company and he explains why he believed that there was some ground for his concern over the rights of that company. Then I should say, my lord, at this point, that page 43, Mr. -- Lytton's despatch to Douglas of July the 16th, it's the confidential despatch, and he says in it:

> My public Despatch of this date will have shown you the high value which Her Majesty's Government attached to your services, and at the same time will guard you against some of the errors into which you may be led by your position as an Agent of the Hudson's Bay Company, while at the same time an officer of Her Majesty's Government.
>
> I wish to inform you, confidentially, in addition, that a Bill is in progress through Parliament to get rid of certain legal obstacles which interpose to prevent the Crown from constituting a government suited to exigencies of so peculiar a case, over the territory now resorted to, according to a report, by the multitudes whom the gold diggings on Fraser's River have attracted.
>
> It is proposed to appoint a Governor, with a salary of at least 1,000 L. per annum, to be paid for the present out of a parliamentary vote. And it is the desire of Her Majesty's Government to appoint you at once to that office, on the usual terms of a Governor's appointment; namely, for six years at least,

> your administration of that office continuing to merit the approval of her Majesty's Government; this Government to be held, for the present, in conjunction with your separate Commission as Governor of Vancouver's Island."

And then he goes on to say that the administration of the government should be entrusted to an officer or officers entirely unconnected with the Hudson's Bay Company, and soliciting Douglas' acceptance of that. Now, this reached Douglas, as I say, in October, and he was therefore formally advised that he was being offered the Governorship of the new Colony, but on the condition that he severed his relationship in the Hudson's Bay Company. My lord, that brings me to Douglas of -- Douglas to Lytton of September 30th on page 36. And he says:

> "I have the honour to acknowledge the receipt of your despatch No. 4 of the 16th of July."

That's page 42. And I have -- I have referred to that. He says in paragraph 3:

> "I observe with satisfaction that Her Majesty's Government were engaged in conducting through Parliament a measure for the establishment of government in the Gold Country, and were devising means for affording me the support of a military force."

And then he goes on to say "I have gone through your despatch and I am going to govern" himself in accordance with the instructions. I refer in that regard to paragraph 10:

> "We shall forthwith discontinue the regulation requiring the prepayment of mining licences and head money on persons going to Fraser's River, in consequence of your instructions to that effect, and in all other respects we shall conform strictly to the instructions contained in your despatch."

Now, on page 37 is a despatch of October the 11th, and I referred to that very briefly with particular regard to the date, but I wish to read parts of it.

Paragraph 1:

> "I have the honour to acknowledge the receipt of your despatch, No. 6 of the 31st of July last, communicating the views which you entertained upon various topics of importance bearing upon the present situation of affairs and the establishment of a regular Government in British Columbia."

And as noted in the margin, that is despatch -- that was despatch No. 6, which starts on page 44. He points out the obvious in paragraph 3:

> "In consequence of the unexpected force of the immigration from the United States, and the pressure of the masses, we were compelled in the emergency by, a stern necessity, either to take initiative, and to give a direction to the masses, or to submit to their dictation as to the measures which the government had to pursue.
>
> For that reason I had to act in many cases without delay, and without distinct legal authority, except that discretionary power derived from my Commission as Governor of Vancouver's Island, which I believe applies to all cases affecting the public interests not provided for in Her Majesty's Instructions.
>
> In asserting the Dominion of the Crown over the Gold Region and the rights of the Crown over the precious metals, I felt that I was acting clearly according to the constitutional law and usage; but I did not feel equally certain about the expediency or the power of enforcing those rights, by levying the licence duty on miners, in a remote and almost inaccessible country."

I might pause there and say we will come, my lord, to a proclamation sent out by England which he was to make validating everything that he had done before he was given the legal power to do that. And then down to paragraph 8:

> "The disposal of public lands and also of town lots, as suggested in your Despatch, will, I

think, prove to prolific source of revenue, besides having the effect of opening the country for permanent settlement. In my late excursion to Fraser's River, of which I will soon forward an account, the most urgent appeals were made to me by intending settlers, on the prospect of approaching winter, for the purchase of town lots at Fort Yale and Fort Hope; but having no legal authority to make sales of land, or to grant sufficient titles, I could evenly meet their wishes by giving leases of the desired lots, at a montly rent of 41 shillings, to be continued with a pre-emption right to the holder, until the land is finally sold."

And then he reports that he sent Mr. Pemberton, the Surveyor General, if I may interject, my lord -- it is clear from later despatches that Mr. Pemberton was the Surveyor General of the Colony of Vancouver's Island -- to lay out three several townsites on Fraser's River, namely at old Fort Langley, Fort Hope, Fort Yale, there being a demand at each of those places for town lots. Paragraph 10:

"The Surveyor has advertised a public sale at this place of town lots 64 X 120 feet, in extent at old Fort Langley, for the 20th of this month, October, the upset price to be $100 for each lot of that size."

And paragraph 13:

"I will not fail to keep steadily in view the fact, the Imperial Parliament will expect that British Columbia will be self-supporting as soon as possible, and that it is a desire of the Mother Country that Representative Institutions and self-government should prevail in that Colony, as soon as the material for those institutions are shown to exist."

Paragraph 14, he observes that it was the intention to despatch a party of Royal Engineers, and 15, he acknowledges the intention of Lytton to send out an experienced inspector of police. And then in paragraph 16:

> "I shall not fail to give the fullest scope to your humane consideration for the improvement of the native Indian Tribes, and shall take care that all their civil and agrarian rights be protected. I have in fact already taken measures, as far as possible to prevent collisions between those tribes and the whites, and have impressed upon the miners the great fact that the law will protect the Indian equally with the white man, and regard him in all respects as a fellow subject. That principal being admitted will go far towards the well-being of the Indian Tribes, and securing the peace of the country."

That paragraph 16 of course has reference, my lord, to the Lytton despatch, paragraph 3 at page 45, which begins with the word:

> "I have to enjoin upon you to consider the best and most humane means of dealing with the native Indians. The feelings of this country would be strongly opposed to the adoption of any arbitrary or oppressive measures towards them. At this distance, and with the imperfect means of knowledge which I possess, I am reluctant to offer, as yet, any suggestion as to the prevention of affrays between the Indians and the immigrants. The question is of so local a character that it must be solved by your knowledge and experience, and I commit it to you, in the full persuasion that you will pay every regard to the interests of the natives which an enlightened humanity can suggest. Let me not omit to observe, that it should be an envariable condition, in all bargains or treaties with the natives for the cession of lands possessed by them, that subsistance should be supplied to them in some other shape, and above all, that it is the earnest desire of Her Majesty's Government that your early attention should be given to the best means of diffusing the blessings of the Christian Religion of Civilization among the Natives."

My lord, I have already indicated to your lordship that, so far as Douglas was concerned, he received that on October the 11th, and on -- just a short period thereafter, about ten days thereafter, he received the despatch which is at page 45 -- I'm sorry, at page 47, dated August the 14th, and I have read the first paragraph and I have referred to paragraph 5.

THE COURT: You say it was received ten days after October 11th?

MR. GOLDIE: Yes, yes.

THE COURT: Thank you.

MR. GOLDIE: I should point out to your lordship that the despatch of July 31st, 1858, going back to pages 44 and 45, has been given considerable prominence. It is part of Dr. Lane's collection, her Exhibit 1039-40. And she has referred to it as a source of policy with respect to Indian title. I'm going to refer your lordship to the -- that's a transcript volume 229, page 16755, and at line 9 my friend said:

> Q Thank you.
> Can I direct your attention now to tab 40?
> A Yes.
> Q And in particular, the dispatch that's under number six?
> A Yes.
> Q And it is entitled "A Copy of a Dispatch from the Right Honourable Sir E.D. Lytton to Governor Douglas on July 31st, 1858."
> A Yes.
> Q And can you give us the context, if you will, of this dispatch??
> A Yes. This is on the eve of the legislation which establishes, on August 2nd, 1858, the new colony of British Columbia on the mainland."

And she was asked what parts are important -- at the bottom of page 45 -- and her exhibit, my lord, is a -- are these pages taken from this exhibit. At the bottom of page 45, after the numeral 3, the second line from the bottom is a section describing the policy. And then she goes over to page 46 and she refers to that as -- she was asked:

> "Q In terms of your review of the documents, after the establishment of the colony of

British Columbia, did you refer to any other documents which addressed the question of government policy or Indian policy with regard to Indian lands?"

It is in that context that I have directed your lordship's attention to the despatch of August the 14th which approved the steps he had taken prior to the receipt of the despatch of July 31st. I should also add that this despatch was referred to by Mr. Justice Hall in Calder, and that is the reference, in case your lordship wishes to make a note of it, I have placed under tab 4 -- an extract from Calder, being the extract from the Supreme Court of Canada judgment, page 311, which is the first page.

THE COURT: Tab 4?

MR. GOLDIE: Tab 4 of this little book of authorities that I handed up.

THE COURT: Oh, I see, yeah.

MR. GOLDIE: At page 408 his lordship said --

MR. ADAMS: Well, excuse me, my lord, in my submission we're well into argument. We're calling up the evidence of other witnesses and comparing it to what my friend says is the appropriate emphasis and the appropriate counter-documents, and now we're into authorities that speak of some of the same documents, and in submission that's squarely within the ruling of this morning.

MR. GOLDIE: I don't intend to counter anything, my lord. I'm endeavouring to supply your lordship with the emphasis which has been given this particular despatch.

THE COURT: Well, I think you've done that. I've read Mr. Justice Hall's --

MR. GOLDIE: It's page 408 where he sites it. I do wish to say this, and I think this is within the terms of your lordship's ruling, because it is in my submission something that is appropriate to your lordship's knowledge in reading this despatch, that so far as I can make out by examining the index of the case on appeal in the Supreme Court of Canada, the present collection of documents that your lordship is looking at was not before that court. The source of the paragraph from the despatch of July 31st is from a collection made in British Columbia called "Papers Relating to the Indian Land Question", and it contains only that paragraph. And I will be coming to that, that will be my next exhibit. The case -- the index of the case on appeal is under tab 6, my lord, in

Calder, and the exhibit which contains the extract in question is Exhibit 11, which is also there. Now, if I may go back to the sequence of the July 31st despatch, the only other part of the despatch to which I wish to make reference is paragraph 4, which impresses upon Douglas:

> "The necessity of seeking by all legitimate means, to secure the confidence and good-will of the immigrants, and exhibit no jealousy whatever of Americans or other foreigners who may enter the country. You will remember that this colony is destined for free institutions at the earliest moment."

And asking him to seek out from the immigrants people of influence who might be of assistance. The -- I will be coming to it shortly, but I emphasize at this point, my lord, that the -- his commission, the Royal Instructions, were yet to reach him. Now, going on then to the passing quickly over the balance of this part 1, it is starting -- starting at page 41 are the despatches of Lytton, and I have referred to a number of these already, so I need only go to the ones of September the 2nd. And there I think there's something like 12 or 13 despatches, all dated that day. The day preceding -- and I'm at page 50 now, my lord. The day preceding, namely September the 1st, 1858, is Lytton to Douglas a letter of introduction of Captain Parsons, who has been directed to repair to British Columbia accompanied by 20 non-commissioned officers and men of the Royal Engineers:

> "I need scarcely observe to you that the object for which this officer and his party have been detached to British Columbia is for the exclusive service of that Colony."

And rendered him of service awaiting the arrival of his commanding officer. Number 11, the first of those, dated September the 2nd, 1858:

> "I have the honour to transmit to you herewith the Queen's Commission under the Great Seal, constituting and appointing you to be the Governor and Commander-in-Chief in and over the Colony of British Columbia."

Number 2, same date, transmits the Order in Council making provision for the administration of justice. Number 3 transmits the revocation of the Crown grant to the Hudson's Bay Company insofar as the grant embraces or extends to the territories comprised within the Colony. Now, your lordship will recall from previous evidence that Crown grant of the mainland extended only to the exclusive trading rights. Number 14 is correspondence with the admirality, which goes on at some length, and another despatch relating to the movements of naval vessels. Number 16 of September 2nd, correspondence with the War Office in respect of the -- of the Royal Engineers, and I'll read the two top paragraphs on page 53:

> "Colonel Moody has been appointed to this command, and also been selected for the office of Chief Commissioner of Lands and Works in British Columbia; and I transmit a copy of the instructions which have been addressed to Colonel Moody with reference to the discharge charge of his duties in that capacity, and specifying the amount of regimental pay and Colonial allowances to which he and the commissioned and non-commissioned officers and Sappers of the detachment are entitled.
>
> I may further observe, that a ship has been chartered, and is in the course of preparation for the conveyance of the larger portion of this detachment by the Horn; but as the passage will consume nearly four months, and it is desirable that you should have the assistance and support of a part of this body without delay, both to represent the military force of the country and to facilitate those serving in engineering operations which it may be expedient to commence forthwith, I have made arrangements for the despatch of 20 men and an officer by the steamer which leaves this country for Panama on the 2nd of next months."

That was Parsons, my lord, that we read about a few minutes ago. The -- the enclosure number 2 is Mr. Merivale's letter to the Under Secretary for War, Mr. Marivale being the -- one of the permanent officials

in the colonies -- Under Secretary of State for the Colonies, and that lays out the duties of the Royal Engineers. And at page 54 he says in the first complete paragraph:

> "Sir E. Lytton desires me to state that it would be very desirable if amongst this party there were one or two persons possessing a knowledge of mineralogy, and capable of reporting upon the gold, and especially upon the subject of the local resources which Sir Edward has been informed exist in the Colony. I am to request that the officer commanding the Engineers may be instructed that as little display as possible should be made of this military force; that it is the desire of Her Majesty's Government that the immigrants should learn that their interests are identical with those of the Government, which should be carried on in harmony with and by means of the people of the country; and that therefore they are not to rely upon the military as a force for the maintenance of peace and order amongst themselves, or amongst the Native Indians."

And then on page 55 is enclosure number 5, and despatch 16 is Mr. Marivale's letter of instructions to Colonel Moody, and I refer to paragraph 1, the first sentence that the Governor is the supreme authority in the Colony. And then over the page, number 5, page 56. Number 8 of September the 2nd, 1858, this is from Lytton to Douglas, that he says:

> "In one of the Despatches, No. 6, which I addressed to you last July, it was mentioned that the detachment of Royal Engineers which Her Majesty's Government considered available to send to British Columbia would be maintained at the Imperial cost for only a limited period, and if that continued afterwards the Colony would have to defray the expense thereof."

And then he goes on to say that more recent intelligence has painted a more alluring picture of the colony's prospects. And in the second to last sentence:

> "It is therefore imperatively necessary for me to repeat, what indeed has been very frequently mentioned, that Her Majesty's Government expect that British Columbia shall be self-supporting and that the first charge upon the land sales must be that of defraying all the expenses which this Engineer party shall occasion."

And of course the words that I emphasize are "The first charge upon the land sales". Then we have despatch No. 9 of September 2nd, which transmits correspondence with respect to postal arrangements, and I needn't trouble your lordship about that, and then No. 19 of September 2nd -- I shouldn't say No.19 -- No. 12 of September 2nd he says:

> "In my despatch of 31st July, No. 6, I directed your attention to the treatment of the Native Indians in the country which it has so recently been decided to establish as a British Colony. I regard that subject as one which demands your prompt and careful consideration. I now transmit to you the copy of a letter from the Aborigines Protection Society, invoking the protection of Her Majesty's Government on behalf of these people. I readily repeat my earnest injunctions to you to endeavour to secure this object. At the same time I beg you to observe that I must not be understood as adopting the views of the Society as to the means by which this may be best accomplished."

And then there follows, as the enclosure, a letter that starts on page 59 and goes over to page 60, and Mr. Chesson, the Secretary, states in the first paragraph the -- that the Society has for many years taken a deep interest in the welfare of Indian --

THE COURT: Sorry, where are you reading from?

MR. GOLDIE: Page 59, my lord. This is the first paragraph of Mr. Chesson's letter.

THE COURT: Sorry.

MR. GOLDIE: And he says that:

> "The Aborigines Protection Society have for many years taken a deep interest in the welfare of the Indian Tribes to the west as well as the east of the Rocky Mountians, I am instructed to

address you" --

That's to say the Secretary of State for the colonies:

> "On certain matters affecting not only the rights and interests but the very existence of the numerous Indian population of the new Colony of British Columbia. It appears, from all the sources of information open to us, that unless wise and vigorous measures be adopted by the representatives of the British Government in that Colony, the present danger of a collision between the settlers and the natives will soon ripen into a deadly war of races, which could not fail to terminate, as similar wars have done on the American Continent, in the extermination of the red man."

And he refers to Governor Douglas' despatches as indicating feelings of hostility on the parts of the native people towards the Americans who are now pouring into Fraser's and Thompson's Rivers. And then he quotes from the New York times, if I may be permitted to say, so lurid an account, and says that:

> "This is something which Her Majesty's Government must protect the Indians against."

I'm not going to read anything further, except the second to last paragraph on that page, my lord, midway down that paragraph -- third of the way down that paragraph, the second complete sentence:

> "It is certain that the Indians regard their rights as natives as giving them a greater title to enjoy the riches of the country than can possibly be possessed either by the English Government or by foreign adventurers. The recognition of native rights has latterly been a prominent feature in aboriginal policy of both England and the United States. Whenever this policy has been honestly acted upon, peace and amity have characterized the relations of the two races, but whenever a contrary policy has been carried out, wars of extermination have taken place; and great suffering and loss, both of life and property, have been sustained

both by the settler and by the Indian. We would beg, therefore, most respectfully to suggest that the Native title should be recognized in British Columbia, and that some reasonably adjustment of their claims should be made by the British Government."

And over the page, and Mr. Chesson says that:

"A treaty should be promptly made between the delegates of British authority and the chiefs, as loyal, just, and specific as that between William Penn and the Indians of Pennsylvania."

And then he goes on to suggest that people of Indian blood from the Red -- whom could be found at the Red River might be usefully used."

The 13th despatch of September 2nd is on page 60:

"I have to acquaint you that the Society for the Propagation of the Gospel propose to send one or two Missionary Chaplains to British Columbia."

No. 14 of September 2nd:

"I transmit to you herewith, for your information, the copy of a letter which I have addressed to Colonel Moody on the subject of granting land, on certain conditions, to the non-commissioned officers and men of the Royal Engineers."

Paragraph 2:

"I take this opportunity of instructing you to report to me your opinion whether it would be desirable for the interests of the Colony to grant remissions on the purchase of land to retired officers of the Army and navy, as was formerly the custom in many of the British Columbia Colonies."

Paragraph 4:

"You will report to me officially, by each

successive mail, and by every safe opportunity that presents itself, on all matters of interest and importance to the Colony. At present her Majesty's Government only receive such accounts through the newspapers, or through the courtesy of the Hudson's Bay Company and private individuals."

And then we come to No. 16, the despatch of September the 2nd on page 61, in which Lytton says in the first paragraph:

"I wish to address you a few words on the legal position which you now fill, and the nature of your immediate duties.

Your first duty will be to proclaim the Act of Parliament under which British Columbia was to be governed. This Act has already been sent you, and without any express directions as to the manner and time of making it known. Probably you have already made it public; but I apprehend that no legal proclamation of it, so as to give its provisions effect, could take place until you were yourself commissioned as Governor. The formal proclamation of it must therefore be made as early as possible.

According to the opinion of lawyers in general, the colonists of a territory circumstanced by British Columbia carry with them the law of England, so far as it is applicable to their circumstances. Acts, therefore, done in accordance with the law of England, will be substantially legal, although done before any regular authority was constituted there."

Your lordship has already seen the Governor's comments on the high proportion of foreigners who flocked in, the numbers that receded. And Lytton goes on:

"But your own special authority to make regulations, or enforce them, for the preservation of peace and order, could only be created by the act of the Crown, and cannot commence until you receive their commission; you will therefore have, doubtless, been compelled by the necessity of the case to

perform many acts, in accordance with the spirit of your instructions from myself and my predecessors in this Department, but for which strict legal authority was wanting. It will be necessary to cover these by a Proclamation, having force of law, under the power with which you are invested, to indemnify yourself and those who have acted under your authority from legal proceedings.

You are therefore authorized to issue Proclamations, of the same date with your assumption of the Government.

The one, which is rather matter of solemn form than of absolute necessity, to declare the law of England prevalent throughout the Colony, subject, of course, to your own power of modifying it by laws enacted by yourself when absolute necessity requires."

That of course, when we come to it, is the proclamation to which your lordship earlier referred.

"The other, to indemnify yourself and your subordinate officers in manner aforesaid."

And he sends him the two proclamations. And then there's the establishment of the Court of Justice. And at page 62, he notes that the Queen has issued a commission to Mr. Begbie, who will be setting out to be Judge of British Columbia. The fourth paragraph:

"Mr. Begbie has been fully instructed, that, although invested with the very important office of Judge, he will nevertheless have the kindness, for the present, at least, to lend you his general aid for the compilation of the necessary laws and other legal business. This is the more proper duty of an Attorney-General; and should the Colony advance, as seems at present possible, the services of such an officer will no doubt be urgently required."

And then in the following paragraph:

"With these few observations, I leave with confidence in your hands the powers entrusted to you by Her Majesty's Government. These

> powers are indeed of very serious and unusual extent; but Her Majesty's government fully rely on your moderation and discretion in the use of them. You are aware that they have only been granted in so unusual a form on account of the very unusual circumstances which have called into being the Colony committed to your charge, and which may for some time continue to characterize it."

And then he goes on to talk about their use. And the last sentence of that paragraph:

> "And you will above all remember that the ordinary rights of and privileges of British subjects, and of those foreigners who dwell under British protection, must be sedulously maintained, and that no innovation contrary to the principles of our law can be justified, except for purposes of absolute and temporary necessity.
>
> I will only add that although it has been judged prudent not to make the revocation of the Hudson's Bay Company's licence take effect until proclaimed by yourself, it is the particular instructions of Her Majesty's Government that you proclaim it with the least practicable delay."

MR. GOLDIE: And then the enclosures are the drafts of the Proclamations, which, as we will see, are proclaimed in Langley on November the 19th, number 1 being the introduction of English law, the subject, as Lytton said, to the laws that he himself created in the past. Number 2 is the proclamation to indemnify the government for acts done before the establishment of any legitimate authority in British Columbia.

THE COURT: Take the afternoon adjournment.

MR. GOLDIE: Thank you, my lord.

THE REGISTRAR: Order in court. Court stands adjourned for a short adjournment.

(AFTERNOON RECESS TAKEN AT 3:00)

I hereby certify the following to be a true and accurate transcript of the proceedings herein transcribed to the best of my skill and ability.

_____

Graham Parker.
United Reporting Service Ltd.

Reading of Despatches
by Mr. Goldie

(PROCEEDINGS RESUMED FOLLOWING SHORT RECESS)

THE COURT: Mr. Goldie?
MR. GOLDIE: My lord.

I was at page 63, my lord. And I had gone through fairly quickly, the despatches of the 2nd of September and there is only two or three more. The despatch of September 2nd on page 63, correspondence between the Department of the Foreign Office relating to mail service.

Page 65, number 24 of September 2nd, 1858:

> "From information which has just reached me from the Lords Commissioners of the Admiralty and a report sent by Captain Richards..."

I might interject, he was a commanding officer of one of naval ships on the coast here.

> "It would seem desireable to appoint, if you have not already done so, a Gold Commissioner armed with the powers of magistrate. I submit this suggestion to your local experience and I feel it must be unnecessary to add the self-evident caution to form at once a police at the diggings."

My lord, we have seen in Douglas's despatch at page 30, that he had already done those things.

Pages 27 and 30.

And then we go from September 2nd to September 16th, Lytton's despatch of that date which he acknowledges receipt of Douglas's despatch of the 26th of July.

THE COURT: You have read from that already, Mr. Goldie.
MR. GOLDIE: I have read from that and I am not going to read from it again. I am just pointing out that the -- this was the next despatch after the 14 or 15 or so of September 2nd.

And then further despatches of an administrative character, September 23rd, September 24th, in which Colonel Moody is to hold a dormant position of Lieutenant-Governor of the Colony, and an

administrative one of October 11th. On October 14th, on page 67, acknowledging the despatch of the -- Douglas's despatch of the 30th of August enclosing copies of the regulation issued for the management of gold fields and harbour regulations. And I had referred to that a minute ago. That is the despatch at page 30 of this part one.

I am not going to read any part of that, it simply is a suggestion on Lytton's part that experience elsewhere in the colonies, namely Australia, might be of assistance in framing gold field regulations.

The despatch of October 16th on page 69 is in response to Douglas of the 19th of August, and I am not going to deal with that. It was the despatch in which Douglas said that he needed assistance and Lytton states that he is sending out 150 of the Royal Engineers and how superior they are to the infantry of the line. And the organization of a police force which should be done locally and the valuable services rendered by the natives.

Number 31 -- I am sorry, my lord -- yes, number 31, at page 71, Lytton's despatch to Douglas of October 16th, which I shall read in full:

> "Though I think you must be in complete possession of the my views in respect to the Royal Engineers despatched to British Columbia, I desire nevertheless and for fear of any possible misunderstanding on your part, to mention that Colonel Moody and his men do I look for the performance of all the surveying duties in the Colony, and therefore to caution you against accepting the services of other surveyors or assistants whose employment would add so much to the heavy expenses of the colony colony at its outset is called upon to defray."

If I may say so, my lord, we will find in future despatches leading up to one of the proclamations of, one of the ordinances which figured in the Calder case, a difference of opinion between Douglas and the secretary of state for the colonies, as to when land can be sold. The position taken by the home authorities was that the land had to be surveyed before it was sold and Douglas said that won't do.

And that, as I say, builds up to one of the ordinances which I will be examining in greater detail.

Page 72, the despatch of October 19th acknowledging or stating that a donation had been made by Miss Burdett Coutts for the establishment of a See of the Anglican Church of British Columbia. Page 73, November the 1st, instructions forwarded to Moody and enclosed in his letter to Douglas.

That concludes that grouping of despatches from and to the Governor of British Columbia prior to his appointment as such and subsequent thereto, which were laid before parliament on 18th of February, 1859.

There are -- there is a map and four more pages. The map illustrates the report of Mr. Anderson, late chief trader of the Hudson's Bay Company into the gold areas. And this was appended by Mr. Douglas to one of his reports.

There is nothing of significance in that, except on page 82, the second to last page, where Mr. Anderson remarks upon the the nature of the Indians found up in the Couteau region and states at the top of page 83:

> "As before mentioned the upper and lower Indians have a standing feud which is kept alive by treacherous murder every now and then as occasion presents."

And I -- your lordship will have seen from this collection that the last despatch from Douglas in this part one was dated October 11th, 1858; that the last despatch received by him was July 31st, 1858 --

THE COURT: Sorry Mr. Goldie, last despatch from --

MR. GOLDIE: Last despatch from Douglas was dated October 11th.

THE COURT: 1858?

MR. GOLDIE: 1858. And the last despatch received by him was July 31st, 1858. And that he was -- he still at that point, namely October 11th, 1858 was -- had still to receive the commission, the royal instructions, the proclamations, the form of the proclamations, all of the materials which were sent to him under the despatches of September 2nd. And these -- his acknowledgement of the receipt and his actions on the receipt, are all in the next part, which were laid before parliament on August 12th, 1859.

Now, I do not intend to deal as fully in the

remaining parts but I wanted to place before your lordship the circumstances that were laid before parliament of how Douglas coped with the emergency that he was confronted with and how he acted and the instructions that were sent him. And turning now to part two, the first despatch is that of October 4th, which, as is stated, was received in London on December 10th, and acknowledges receipt of the confidential despatches of the 16th and 21st, and sets out Douglas's acceptance of the offer of a governorship, and his acceptance of the requirement that he sever his relationships with the Hudson's Bay Company.

Page 2, Douglas despatch of October 12th, 1858 encloses a proclamation which he issued on September 6th, that is to say before he had any authority to do such, prohibiting the gift or sale of intoxicating drinks to the native Indians of Fraser's River and also a proclamation issued at Fort Yale, "warning all persons against occupying or disposing without proper authority of Crown lands in Fraser's River, a proceeding rendered necessary in consequence of an attempt made by James Ray and other parties to take possession of certain valuable Crown lands in British Columbia" et cetera. And, the enclosure number one is the proclamation forbiding the sale of spiritous liquors to the native Indians; and number two is notice of sale of lands at Langley; and number three is the prohibition against the sale of any lands at or near Langley and stating that the same would be -- any persons fraudulently selling the same would be prosecuted.

Number 3 on page 3 of October 12th, 1858, is an acknowledgement of his despatch, of the despatch of Lytton found at page 44, page one. And I needn't go into that.

Number 4 on page 3 is a report of his trip into the Interior, into the gold fields, and the portion I wish to draw to your lordship's attention is at page four, paragraph 8.

> "Having just ascertained from your despatch of the 1st of July last that it was the wish of Her Majesty's Government to colonize the country and develop its resources, I propose to the inhabitants of the place..."

That is to Fort Hope,

> "...to lay out certain lands as a townsite and grant a right of occupation of town lots under a lease terminable at the pleasure of the Crown to be held at a monthly rental of 41 shillings eight pence stirling, payable in advance, and with the understanding that the holder would be allowed a preemption right of purchase when the land is sold in which case the sum of monthly rental paid would be considered as part of the purchase money."

And then over to page seven, his acknowledgement of Lytton's despatch of the 14th of August, which was -- three despatches dated that day, "transmitting to me copy of an Act providing for the Government of British Columbia" and mentioning that there had not been time by that mail "to furnish me with the order-in-council commission and instructions as governor, which are necessary in order to complete my legal powers."

They say that's August 21st and received -- I am sorry, his acknowledgement of the despatch of 14th of August is dated October 21st.

And he goes on to say:

> "You nevertheless are pleased to authorize me to act during the brief interval before their arrival as I hitherto have as the authorized representative of Her Majesty's Government of the Territory of British Columbia and to take such steps as I may deem absolutely necessary for the government of the territory and as are not repugnant to the principles of British law and as are in conformity with the directions you have transmitted to me on several subjects in your despatches 8 and 9 of the 14th of August last."

See pages 48 and 49 for part one of those despatches.

The date of this despatch is the source of my statement to your lordship that ten days after he got the despatch, which has been quoted in Calder, he

received the despatch of August 14th, which he pays particular note to in his acknowledgement.

Then the -- on page -- the page eight is his acknowledgement of the last despatch of the 14th of August, or the the particular despatch of the 14th of August, which contains the reference to the Indian peoples. And he states in paragraph 5:

> "I shall not fail to give full effect to the philanthropic views entertained by Her Majesty's Government for the wellbeing of the native Indian tribes. My late despatches will inform you of the measures adopted for their immediate protection and I will hereafter, when time permits, endeavour to arrange some plan by which their interests will be permanently guarded and the race rescued from destruction."

The rest of his despatch is taken up with the matters which were being undertaken with respect to roads and to the interior, and things of a like nature.

And then there is Captain Richards' despatch, which is -- Captain Richards' letter which is a sub enclosure on page 13. That's all relevant, my lord, to the establishment of New Westminster, ultimately, as the capital of British Columbia.

Then on page 17 is Douglas to Lytton of October 27th, 1858, which acknowledges the third despatch of August 14th, and he states in paragraph one:

> "I hasten to attend to your requisition for information on the subject of the disposal of land in British Columbia to companies and private individuals."

And he says that Mr. Pemberton's report, which describes in a general manner the existing arrangements for the sale of land on Vancouver's Island and the proposed arrangement for the sale of land in British Columbia embodies his own views on the subject, except on one or two points.

Paragraph 3:

> "Mr. Pemberton, for instance, suggests that the system of receiving payment for Crown land by four annual installments instead of immediate payment, should be abandoned on account of the trouble and difficulty of collecting the installments, but reasons equally cogent may be urged in support of the existing system, such as the benefit and relief it gives to poor settlers and I am therefore of the opinion that the same system may be extended with advantage to British Columbia in all sales of country lands exceeding 50 acres but not on sales of town lands, which are always paid for on receiving the title deeds."

Then he goes on to say what he proposes to do in the valley of the Fraser's River, paragraph 5, reservation of mineral lands, and paragraph 8:

> "I beg also to assure you that we shall attend to the instructions contained in your said despatch concerning the disposal of land preventing persons from squatting on public lands, keeping separate accounts of all revenue derived from the sale of land and its application at present of the purposes of survey and communications."

I don't propose to refer to Pemberton's report.

The despatch of November 3rd on page 19 really relates to the establishment of the seaport for Vancouver's Island and the difficulty that it has with -- that that poses with respect to the Fraser River.

And then November 3rd, on page 20, he begins to deal with the despatches of September 2nd. The first one, number ten, acknowledges receipt of correspondence between the Colonial Office and the Admiralty. November 4th, he acknowledges the despatch in which it is mentioned that the Royal Engineers would be sent out to take -- undertake certain tasks, and that their costs would be a charge on the Colony.

But he winds up by saying on page 21:

> "I shall not fail to attend most carefully to those instructions without, however, entertaining the hope of being immediately able to meet the expense of the military establishments of the country or of roads, surveys, public buildings and other indispensible outlay which must be incurred before the country can possibly become a fruitful source of revenue; like a nursling it must for a time be fed and clothed, yet I trust it will, before many years, reimburse the outlay and repay the kind care of Mother Country with interest."

Then on November 4th he acknowledges another one relating to the Royal Engineers, and in paragraph 3 he states that Moody's appointment to the office of Chief Commissioner of Lands and Works will relieve him of much responsibility and states again that the revenues couldn't possibly meet the expenditures involved in the -- involved in the cost of maintaining the Royal Engineers.

The despatch on page 22 is another one dealing with Lytton of the 2nd of September and relates to the question of postal service.

On page 23, my lord, is his despatch of November 5th, which acknowledges receipt of Lytton's despatch of the 2nd of September enclosing a copy of a letter from the Aborigines' Protection Society. And that was the letter in which the society urged the Secretary of State of the colonies to acknowledge the title of the Indian peoples to the soil of British Columbia, and Mr. Douglas in acknowledging the despatch says in paragraph two:

> "While you do not wish to be understood as adopting the views of the society as to the means by which that may be best accomplished, you express a wish that the subject should have my prompt and careful consideration and I shall not fail to give the fullest effect to your instructions on that head. As soon as the present pressure of business has somewhat abated, I may however remark that the native Indian tribes are protected in all their

interests to the utmost extent of our present means."

November 6th, two despatches dealing with those of the 2nd of September. And then on page 24, number 17, there is acknowledgement of the revocation of the Hudson's Bay grant, and number 18 is a further acknowledgement of Despatch 14 of the 2nd of September and is almost purely administrative. He suggests certain appointments with respect to the officers of the Colony that would be required.

And in paragraph 8 he says:

"The want of efficient assistants, the multiplicity of the duties devolving on me and the journeys that I have been compelled to make in the gold regions for the enforcement of law and order must be my excuse for not addressing you more frequently in the affairs of the Colony, though the reports of my two journeys to Fraser's River embody almost the whole amount of reliable information that can yet be given with respect to the value and extent of the gold fields."

Number 19 on page 25 acknowledges the despatch with respect to Parsons, and number 20 acknowledges the despatch of the 2nd of September, which explains to Douglas the nature of his legal position, or the lack thereof, and encloses forms of proclamations.

On page 26, paragraph two:

"The instructions contained in your despatch in reference to the discharge of those duties will receive early attention and with that view I propose to proceed in a few days hence to British Columbia and make formal proclamation of the Act of parliament under which the Colony is to be governed."

Paragraph 3:

"I shall also not fail to attend to your further

> instructions respecting the establishment of courts of justice, defining miners' rights by positive regulations instead of allowing them to grow up by mere custom or accident, and the establishment of a police force which, as you will observe by my previous communications, have been to some extent already executed but will be more perfectly carried into effect upon the arrival of Mr. Begbie."

And his -- paragraph 5, his comments on his use of "the extensive powers which Her Majesty's Government has entrusted to me."

Then in paragraph -- in page 26, despatch 22, of November 9th, he deals with the despatch enclosing Captain Richards' report in which Lytton suggested the appointment of Gold Commissioners, and Mr. Douglas states, and I quote:

> "It was highly satisfactory to learn that in respect of those measures I had only anticipated your wishes and I may add that with respect to the Hudson's Bay Company they no longer possess rights nor enjoy any privileges that is not equally shared by all Her Majesty's subjects in these colonies."

The longer despatch, which is found starting at page 27 and is dated January 15th -- sorry, dated November 9th, refers particularly to events which are taking place upcountry. And the numbers of people and the numbers of mining claims. He notes in paragraph 20 on page 28:

> "Some trouble had arisen between the miners and Indians, which was, however, fortunately arrested, after a loss of several lives on both sides."

And then he appends a map of the route of the road that is being constructed through from the head of Harrison Lake up towards Lilloet. And he encloses a

route taken by Mr. Joseph McKay, who took five men through the country between Lillooet Lake and Howe Sound. Mr. McKay states in his report, starting on page 30:

> "I beg to submit to your excellency the following report of my journey to a part of the Fraser's River District carried out according to Your Excellency's instructions. At 10:10 a.m., September 1st, I left Fort Langley accompanied Mr. Downie and four Canadians and the three native guides furnished by Your Excellency on board the steamer MARIA."

My lord, we will come to Mr. Downie again, what's employed by Mr. Douglas to explore various parts of British Columbia and he was one of the first people to travel through the land claims area, doing so on Mr. Douglas's instructions.

MR. ADAMS: One of the first non-native people I take it, my lord.

THE COURT: I am sorry?

MR. ADAMS: One of the first non-native people.

THE COURT: All right.

MR. GOLDIE: I am not sure that I have heard of any non-native people who travelled the route Mr. Downie travelled, from Victoria through the land claims area through Fort St. James and back to Victoria.

Mr. McKay, as indicated, went up the Harrison and over the mountains behind -- west of Harrison, the head of Harrison, and down to the head of Howe Sound, where he reports his observations of some Indians that he ran into.

Then we can go to page 34, of Mr. Douglas's report or despatch of November 27th, 1858, reporting on the events which took place on November 9th at Fort Langley, paragraph 5 -- 4, paragraph 4:

> "The ceremony was performed at at Fort Langley with becoming solemnity, 19th instant, in the presence of these gentlemen, Her Majesty's troops and the inhabitants of the place; the officers holding appointments from Her Majesty were installed in the usual manner, and with the accustomed forms.

Proclamations were then made, - 1st. Of the revocation by Her Majesty of all the exclusive privileges of the Hudson's Bay Company. 2nd. Indemnifying the Officers of Government from all irregularities previous to the proclamation of the act. 3rd. Proclaiming English Law to be the Laws of the Colony.

Copies of these proclamations are herewith transmitted for the information of Her Majesty's Government."

These are the first proclamations, as far as my understanding goes, of Douglas in the exercise of his legislative powers granted him under the Act and under the -- his commission, and which were transmitted to him as we have seen.

The form is followed in a number of instances, in the way of a preamble, and I will refer to the proclamation on page 35, the number three, enclosure number three:

"Proclamation having the force of law to declare that English law is in force in British Columbia, whereas by an act of Parliament passed in session held on the 21st and 22nd years of Her Majesty Queen Victoria, it was enacted that the territories therein described should be comprised within the Colony and thereby created British Columbia; and it was further enacted that on the proclamation of the said Act in British Columbia, certain Acts which were passed in the 43rd year of His Late Majesty King George III and in the 2nd year of His Late Majesty King George IV, by which the law of Upper Canada was extended to certain parts of America therein mentioned, shall cease to have force in the said Colony of British Columbia or to be applicable thereto; and whereas such proclamation of the first mentioned Act has been duly made on this 19th day of November, instant, and whereas by a commission under the Great Seal of the United Kingdom of Great Britain and Ireland, Her Majesty is pleased to appoint James Douglas to be Governor of British Columbia, and to authorize the said James Douglas by

> proclamation issued under the public seal of the said Colony to make laws, institutions and Ordinances for the peace, order and good government thereof. It is, therefore, hereby enacted and proclaimed..."

And so on. Now that last recital is the one that is adopted in almost all of the subsequent proclamations.

Going over to page 36, Douglas to Lytton of November 27th, refers to the difficulties in maintaining or preventing unlawful occupation of the public domain, paragraph 10.

On page 37, the next despatch of November 29th reports on the first operation disposing of public lands in British Columbia. He refers to the arrangements and says that the matter would be resumed or the sale would be resumed on the 1st of December.

And then paragraph 8, he says:

> "I am now preparing a measure which proposes to secure to aliens the full rights of possession and enjoyment of any lands which they may purchase from the Crown for the space of three years and they will be required to become British subjects or convey their rights to other parties who enjoy that privilege by birth or naturalization, that measure being in conformity with the spirit of your instructions."

And then the enclosure on page 38, signed by Pemberton, is simply a report on the results of the sale. The second enclosure is the memorandum with respect to the sale of lands to aliens.

The next despatch of November 30th, two despatches of November 30th, and they are administrative matters.

Then on page 41, a despatch of December 4th -- this is a proclamation reconveyance of Crown lands -- I am sorry, I should say that the despatch encloses the copies of two proclamations issued on the 2nd and 3rd days of December, the first of which is set out at the top of page 32.

THE COURT: 32?

MR. GOLDIE: 42, I am sorry, my lord, thank you.

> "Proclamation having the force of law, to enable the Governor of British Columbia to convey Crown land sold within the colony."

That is one of the proclamations that formed the set that were considered in the Calder case and I will deal with that at greater length in the compilation of Calder proclamations and the correspondence or the legislative history, relating to each of those proclamations.

The sub enclosure is Mr. Begbie's or Judge Begbie's memorandum in which he says, and I quote:

> "It appears to me that the title of the Crown can only be conveyed by letters patent under the great seal or under authority of an Act of Parliament. I should therefore recommend a proclamation under the force of the law to be immediately issued empowering some person or persons to convey the legal estate in Crown lands which have already contracted to be sold."

And the person nominated for that by the governor is himself.

The next one I wish to refer to is page 44 in which Douglas sets out some claims on the part of the Hudson's Bay Company, by their agents. It is dated December 7th, 1858, and he encloses a copy of a letter addressed to him by the agents of the Hudson's Bay Company, and I quote:

> "Setting forth the claims of the company to certain tracts of land connected to their several trading establishments in British Columbia which they have occupied for many years and improved by settlement and otherwise at much expense. Her Majesty's Government may probably consider that the Hudson's Bay Company acquired rights to the soil through promissory occupation and improvement as well as by the

public services which the company had rendered to the country and may therefore may meet their claims in a spirit of judicious liberality especially as the settlement of the company's possessory rights in Oregon, resting on the construction of the third article of the Treaty of the 17th of July, 1846 with the United States of America, will probably be influenced by the decision of Her Majesty's Government in allowing or disallowing possessory rights of the company in British Columbia."

Then there is a report of December 14th at page 45. A further report of December 24th, paragraph 10:

"Many of the white miners had nevertheless left the country in despair of being able to get through the winter without suffering much privation and those who remain behind were peaceable and well conducted. Their conduct towards the Indian population and of the latter to the whites had been good and no serious difficulty had occurred since the month of October."

And he reports on another matter relating to the breach of the law.

Paragraph 15, he reports that Mr. Hicks, the assistant commissioner having failed in carrying out his instructions for collecting the mining licence fee and being deficient in nerve for the position he holds, is removed.

Over the page on page 48 of the despatch of the 27th of December, he reports on his communications with Mr. Brew, Mr. Brew was the gentleman sent out from England as the Inspector of Police.

And in the fourth to last paragraph on that page he says:

"There is every of reason to believe that a well constituted constabulary force with a sufficient staff of stpendiary magistrates supported by the co-operation of the well disposed inhabitants, the military force intended for the country and the naval force on the seacoast will furnish in all ordinary

courses the requisite protection of life and property. Should there be reason to alter that opinion either in consequence of the deportment of the white population or collision with the Indians, I will not fail to ask for additional reinforcements but for the present provided we have the means above described I think such unnecessary."

Then over the page, over to page 51, this is in response to Lytton of October the 14th, it is dated December 30th, 1858. Lytton's despatch was the one in which he commented upon the regulations that had been framed for the management of the gold fields. And Douglas sets out, again, the background that he was, by way of background, the circumstances under which he was working. In paragraph 3:

"It was to establish a legal control over the adventurers who are rushing from all sides into the country to anticipate their own attempts at legislation and to accustom them to the restraints of lawful authority that I prepared and issued the gold regulations."

Page 52 encloses general order of the Supreme Court issued by Mr. Justice Begbie -- which I won't comment on -- together with a number of letters dealing with the problem of insufficient counsel in British Columbia. I take it that's a problem that has been overcome.

At page 55, reports on a -- some difficulty with miners, this is his despatch of January 8th, 1859. A stipendiary magistrate met with serious opposition in the discharge of his official duties, a party of gamblers and refugees from justice had collected at Hill's Bar and Fort Yale. And he comments on the lack of support from the local people there.

The next two despatches are primarily related to the advice he has received from people upcountry.

And in his despatch of January 22nd, on page 58, he states that he has received advice from Lieutenant-Governor Moody, dated Fort Yale, 17th of January, the difficulties there had been for the present quelled.

The despatches --

THE COURT: Will it be convenient to adjourn, Mr. Goldie? Are you near the end of a sequence or something?
MR. GOLDIE: I am nearer to the end than I was this morning, my lord, and it's convenient to stop now.
THE COURT: All right. We will be continuing this for part of tomorrow?
MR. GOLDIE: Well, my understanding, my lord, is that tomorrow morning is given over to matters which my colleague, Mr. Willms, will be dealing with, and I understood that Mr. Adams had something to say in that regard.
MR. ADAMS: My lord, I can speak for the court's benefit and for my friends, just to suggest what the plaintiffs think we are going to be doing starting tomorrow morning. And this has been the subject of some correspondence and I have told at least my provincial friends that I will rush back and correspond on it further. But for the moment, it's my understanding that the defendant Province will be tendering again the alienation maps and materials and we will be prepared to deal with that tomorrow morning. Equally, we will be prepared, I am instructed, to deal with an outstanding amendments to the statement of claim.

The question of the exhibits for identification that relate to Mr. Morrell has been deferred at the request of the federal defendant and the plaintiffs have no difficulty with that. I understand Mr. Macaulay isn't available tomorrow to speak to that. We have been advised that the Provincial defendant proposes to put in transcripts, cross-examinations on territorial affidavits, and we will be prepared to deal with that tomorrow. Marvin George's maps on administrative boundaries, we will be prepared to deal with that tomorrow. There is an item that's really a mixture of things that has to do with documents related to the Special Joint Committee in 1927, and the same item I think in one of Ms. Sigurdson's letters refers to preemption documents. The plaintiffs cannot be in a position to deal with that tomorrow. We have researchers who have not completed collecting documents on that, it won't be a matter for witnesses or evidence, it will be a matter of seeking to put in documents and we will speak to my friends about that.

The Provincial defendant has proposed to begin reading in portions of interrogatories and discoveries. We can be prepared to deal with those. We have been advised that the discoveries that are

sought to be covered are parts of Sylvester Green and Sylvester Williams. We can be prepared to deal with those two. We don't have any advice about which interrogatories and with appropriate notice this evening we can be prepared to deal with those.

It's proposed to tender Mr. Fletcher's affidavit which was cross-examined on in Smithers. The exhibits from that cross-examination I am advised are with Mr. Grant in Hazelton and will be coming down next week, and it would be our proposal that that be spoken to all at once at a convenient time next week.

And, finally on my list, the provincial defendant raised the question of Mr. Marvin George's planametric map, and I am instructed that that is missing at the moment and as soon as it's available we will be in a position to speak to it.

And then, finally, I was to solicit if we could complete all that, what it was that the Province proposed to do, and I understand now that they propose to carry on with what we have been doing today. That's my list.

THE COURT: All right.

MR. GOLDIE: My lord, I should point out that, for the assistance of my friends, that two items which he classified as one are really separate. One is the other documents to accompany the report of the Special Joint Committee. My understanding is that that is an item that the plaintiffs kept open. The other item, preemption documents, relates to the documents put in by the defendant, and the plaintiff I believe takes the position that the Province should file other documents with those. But they are two quite separate things.

THE COURT: All right. Well, sounds like a full day's work tomorrow then?

MR. GOLDIE: Well, any chinks that are left will be filled in, my lord.

THE COURT: All right. You have got quite a bit to go here.

MR. GOLDIE: I am going to be going faster with this, but nevertheless I have got quite a bit more to go and I have got something following in case we are finished earlier.

THE COURT: All right. 10 o'clock.

(PROCEEDINGS ADJOURNED UNTIL 10 O'CLOCK A. M., friday, SEPTEMBER 15, 1989)

Reading of Despatches
by Mr. Goldie

I hereby certify the foregoing to be a true and accurate transcript of the proceedings herein to the best of my skill and ability.

Wilf Roy
Official Reporter