

[Confidential.]

DEPARTMENT OF THE INTERIOR,

OTTAWA, 8th March, 1892.

The Hon. E. DEWDNEY,
Minister of the Interior.

MY DEAR MINISTER.

I beg to make the following report on the various matters relating to the public lands in the Railway Belt in British Columbia which appear to need prompt and definite action:—

I.—DELIMITATION OF THE RAILWAY BELT.

On the 27th May, 1887, an Order in Council was passed (printed copy herewith, marked A.) pointing out that there would be difficulty and expense in determining the boundaries of the belt by lines exactly 20 miles from and following the sinuosities of the railway, and suggesting a plan by which they could be readily determined and the inconvenience of having irregular parcels of land on the borders of the belt be obviated, while the work of the administration for both the Government of Canada and the Government of British Columbia would be simplified. The contents of this Order were duly communicated to the Lieutenant Governor of the Province by the Secretary of State. Meantime, during the month of June, 1887, I visited British Columbia on public business, and by authority of the First Minister (Sir John Macdonald) and the Minister of the Interior (the Hon. Thomas White) I submitted the proposition informally to the Hon. Mr. Vernon, Chief Commissioner of Lands and Works, who seemed disposed to regard it favourably, subject to the approval of his colleagues. I may add that his predecessor, the Hon. Mr. Smith, had similarly expressed himself while the scheme was still merely in contemplation, and only its general principles had been discussed. On the 24th August, 1887, a report of the Executive Council of the Province was approved by the Lieutenant Governor, and by him was transmitted to the Government of Canada, which admitted that the mode of defining the boundaries by means of the lines of townships instead of by lines exactly 20 miles from the railway would simplify administration, but objected to the proposal contained in the Order in Council of the 27th May, 1887, on the ground that the course of the railway through the Province was crooked, and that in every case the 20 miles had been measured from the extreme outward angle of the alignment of the railway, thereby embracing a belt alleged to be in many places very much in excess of 40 miles in width, "so much so that approximately the area of the belt within the proposed boundaries is about 1,000,000 acres more than would be contained in a belt or ribbon 40 miles in width, having for its centre the average course of the line of railway." It was further contended that "the provisions of Section 11 of the Terms of Union cannot fairly be construed to admit of the belt being more than 40 miles,

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"or thereabout, in width; and that this Government (the Government of British Columbia) would not be justified in concurring in the adoption of the boundaries suggested." Accompanying the report was a plan showing the boundary with which the Province would be satisfied. A map of the belt, having shown upon it the boundaries proposed by the respective Governments, is submitted herewith, marked B. This map as originally printed shows the actual boundaries of the railway in green from the summit of the Rocky Mountains to the dividing lines between Townships 15 and 16, and from that line westward to the terminus of the belt in brown. The proposal contained in the Order in Council of the 27th May, 1887, is indicated by a red line, and the counter-proposal of British Columbia by a blue line.

On the 1st December, 1887, I was informed by Mr. Pearce, Superintendent of Mines, that while in Victoria a short time before he discussed this question with the Provincial Surveyor General, Mr. Gore, and had no difficulty in gathering from him that one reason why the British Columbia Government desired to have the boundary established according to their own proposition was that they had already disposed of considerable areas of land in the Railway Belt to which they had no right, particularly in Township 17, Range 18, and Townships 15 in Ranges 8, 9 and 10, West of the 8th Meridian, in the Spallumcheen and Salmon River country, where the lands are undoubtedly of more than the average value of the lands in the Belt generally. One of the grounds on which Mr. Gore based his argument in favour of the proposal of his Government as to the boundary was that in the North-West the land grant of the Canadian Pacific Railway within what is commonly called the forty-eight mile belt was measured due north and south from the main line. It is true that this was the first arrangement made between the Surveyor General of Canada and the Company's Land Commissioner, without however any authorization either from the Government or the Company, but the Company have since fallen back upon their undoubted right to have a belt of 24 miles wide along the main line of their railway, and their contention has been admitted by Order in Council of the 8th February, 1888, of which a printed copy is herewith, marked C.

On the 20th December, 1887, a report of the Executive Council of British Columbia, proposing an exchange of the whole Railway Belt in that Province for lands in the Peace River country, was approved by the Lieutenant Governor and by him duly transmitted to the Secretary of State of Canada. The grounds on which this proposal was made were that it was impracticable to establish the boundary of the belt, and that inconvenience and complication would arise from the administration by the Dominion of a strip of land extending through the Province. On the 20th February, 1888, I made a report upon this proposal, which was concurred in by the Commissioner of Dominion Lands, Mr. H. H. Smith (copy herewith, marked D), and which I think effectually disposes of the proposition. The statement of revenue and expenditure attached to that report has been corrected up to the end of the last calendar year.

The building of the railway had of course vastly increased the value of the lands, timber, and minerals in the belt, and for that reason alone it would, no doubt, have been in the financial interest of the Province to have the rights of the Dominion therein extinguished. Having an object of that kind in view, it would perhaps be too much to expect the Provin-

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cial authorities to be very eager to facilitate the settlement of the boundary and other disputed questions. At all events, they are up to the present time apparently no nearer settlement than they were then.

The Surveyor General of Canada reported on the 17th October, 1888, and has in effect renewed that report repeatedly since, that there is no insurmountable difficulty, as there would be no extravagant outlay, in defining the belt strictly in accordance with the provisions of the Statute, and that he would be prepared to carry out the work systematically. The cost of the triangulation survey in the mountains, which is being carried on chiefly in British Columbia, is in the neighbourhood of half a cent per acre, and will be less in the future than in the past, so that the question of expense has been pretty well settled—settled too in such a manner as to show that the fears we at one time entertained ourselves that the cost would be excessive are not likely to be realized. Mr. Klotz is now engaged in completing a series of computations which will settle definitely the position of the boundary on every section line according to the Dominion system of survey, from the summit of the Rocky Mountains to the western end of the belt, and when that has been done a proper legal description of the belt will be prepared which will enable any qualified surveyor at a trifling outlay in money to mark the boundary upon the ground at any point where it may be necessary or desirable to do so.

I therefore recommend that the Government of British Columbia be informed that since the proposal of the 27th May, 1887, was submitted, the delimitation of the boundaries of the Belt in strict accordance with the provisions of the Statute has been shown to be comparatively simple and inexpensive, and that the proposition in question is withdrawn.

On the 16th January, 1891, you wrote to the Hon. F. G. Vernon, Chief Commissioner of Lands and Works for British Columbia, urging an agreement between the two Governments on this question of the definition of the boundary of the belt, and I quote a part of your letter:—

"I had some discussion with Mr. Robson when he was here in the Autumn of 1888, on this subject; and I have had the honour of discussing it with you still further during your present visit to Ottawa. In the course of that discussion I pointed out to you that the length of the Canadian Pacific Railway from the eastern boundary of British Columbia to the statutory terminus of the road at Port Moody is, in round numbers, 500 miles; that, to use the language employed by your Government in the report of the Executive Council of the 24th August, 1887, 'a belt or ribbon 40 miles in width' along a line of that length would contain 12,800,000 acres; that owing to the sinuosities of the line of railway, the area which would be comprised within the belt described in the proposition of this Government would be only 11,770,000 acres, or more than 1,000,000 acres less than this Government would be entitled to under the Terms of Union; while the proposition of your Government would give as a belt containing only about 11,000,000 acres, being 1,000,000 acres less than we are actually entitled to if the principle is applied of giving as such an area as would be comprised in a belt or ribbon 40 miles in width for a line of railway 500 miles long. For my own part, I submit that the reasonable construction of the provisions of the Terms of Union is that the Government of Canada is entitled to all the land which is not more than 20 miles distant from the railway. * * * * *

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"I may add that this construction is that to which the Government of Canada has agreed in construing the provisions of the Canadian Pacific Railway Act relating to the land grant of that Company. I hope that on reconsideration your Government will take this view, in which case the proposition made by this Government would seem to include as nearly as possible the territory which would fall to the Dominion Government if an exact survey were made."

The Government of British Columbia, in a recent despatch upon which you have reported, suggest that the description of the boundary be submitted to the Courts. You have reported that there is nothing in relation to that question to submit to a court.

In this relation it would be well to direct the attention of the Minister of Justice to the fact that the proposal of the Government of British Columbia is for a reference to the Supreme Court of the Province instead of to the Supreme Court of Canada. Since there is nothing in what is submitted at present to refer to any court, this point may not be of consequence.

2.—PRE-EMPTION RIGHTS WITHIN THE RAILWAY BELT.

In May, 1880, upon a reference from the Department of the Interior, the Minister of Justice expressed the opinion that under the Settlement Act the Government of British Columbia had not, subsequent to the date of the transfer effected by that Act, the right to survey, receive payment for and issue Crown grants for lands within the Railway Belt in cases where pre-emption records had been granted prior to that date.

In a report of Sir Alexander Campbell to the Governor in Council, dated 6th June, 1885, the following question and answer are found:—

"4. By what authority are grants to be made of lands in the Railway Belt which were not patented on the 19th December, 1883?"

"In the opinion of the undersigned, lands in the Railway Belt at that date held under pre-emption right did not pass from the Government of British Columbia, and of these they may and should complete the title; but of all other lands in the Railway Belt, patents can only be issued by the Crown as represented by the Government of Canada."

And Sir Alexander recommended that "the Lieutenant Governor of British Columbia be informed that in the view of Your Excellency's Government the Crown is seized, for the use of the Dominion, of all lands in the Railway Belt, which on the 19th day of December, 1883, had not been patented, or were not at that date held under pre-emption right; that of lands at that date so held under pre-emption right the patents should be issued by the Government of British Columbia, but only after Your Excellency's Government shall have been informed of the particulars of such proposed patent and shall have by official letter acquiesced in the issue thereof."

"The Government of Canada only can issue patents for all other ungranted lands in the Railway Belt."

This report having been approved by the Governor General, a copy of the Order in Council was transmitted by the Secretary of State to the

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Lieutenant Governor of the Province on the 17th December, 1883. The reference from the Department of the Interior in 1889, however, did not contain any allusion to the report of Sir Alexander Campbell, nor is there anything to show that the attention of the Minister of Justice was called to that report. I should add that the Government of British Columbia, so far as I am aware, took no action on the report of Sir Alexander Campbell in the direction of obtaining the acquiescence of this Government in the issue of patents for any lands held under pre-emption at the time of the transfer of the belt, although I am informed and believe that a large number of such patents have been issued by the Government of British Columbia.

The position of affairs should, I think, be once more brought to the notice of Sir John Thompson, and his advice asked as to the best course to pursue. The Surveyor General represents that if the right of dealing with all the claims described by Sir Alexander Campbell as "valid pre-emption claims" is in the Provincial Government, steps should be taken at once for surveying them, so as to avoid complications with the regular township surveys; but if the right is in the Dominion Government, the regulations should be amended to provide for their settlement—conclusions in which I beg to express my concurrence. We are already aware of the existence of over 70 of these Provincial pre-emptions outside of the New Westminster district. Our system of survey and administration affords the greatest facilities for the equitable and speedy settlement of all claims of this character.

3.—SALES MADE BY THE PROVINCIAL GOVERNMENT WITHIN WHAT IS PRESUMABLY THE RAILWAY BELT, SINCE THE TRANSFER OF THE LANDS TO CANADA.

I respectfully submit that it would be very desirable to communicate with the Local Government to the effect that we are informed and have reason to believe that sales are being made by them of lands, particularly in the Spallumcheen and Salmon River country, which lie within 20 miles of the railway; expressing the hope that we are misinformed, since such an act on their part would constitute a distinct breach of good faith as between the two Governments; and stating that titles granted by them to such lands would be valueless, as purchasers from them would necessarily be regarded as trespassers. While you were in the North-West, about the New Year, this subject came up for discussion with Sir John Thompson, who was performing your duties, and I understood his view to be that if a satisfactory answer were not obtained upon a reference of this kind, we should give public notice that such titles from the Government of British Columbia were valueless, and would not be respected by the Government of Canada.

4.—REGISTRATION, UNDER THE PROVINCIAL REGISTRATION SYSTEM, OF TITLES TO LANDS IN THE RAILWAY BELT DERIVED FROM CANADA.

Subsequent to the date of the transfer of the Belt to Canada, the Government of British Columbia issued Crown grants for such lands in a number of cases, including a grant to one Farwell of a tract which includes the town of Revelstoke and a large area of valuable property adjacent thereto. The Government of Canada contested their right to do this, and this contention was sustained by the Supreme Court. Never-

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theless, the Registrar of Titles for the Province has refused to register patents issued by the Dominion for lands which formed part of the illegal grant to Farwell, on the ground that the grantee of the Province had his title registered under the Provincial Registry Act. Active steps are being taken at the present time by the Agents of the Minister of Justice to remove from the register this illegal and improper entry, and to place beyond dispute the title of the Crown in the right of Canada to the land affected thereby.

It is very undesirable that such a condition of affairs as between the Province and the Dominion should prevail, and it would be particularly unfortunate if the attitude and actions of the Provincial authorities were to be such as to justify any suspicion that they are not anxious to facilitate the administration by Canada of the property which was conveyed by the Settlement Act. Sir John Thompson suggested, on the occasion already mentioned, that if they failed to do what was right and proper, it might be necessary to ask the Parliament of Canada to pass an Act establishing a Registry Office for the registration of titles to the land in the Belt which was so transferred to Canada, and to declare illegal and invalid all titles granted by the Province to land in the Belt the lee of which had not passed from the Crown at the time of the transfer.

I regret not being able sooner to lay this memorandum before you, but getting the facts together has been a work involving a good deal of research.

Yours faithfully,

A. M. BURGESS.

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