

Department of the Interior,

Ottawa, 22nd December, 1892.

Memorandum : - 1892

Mr. Burgess,

I do not consider that the point referred to in my memorandum of the 21st ultimo to Mr. Hall is settled by the decision of the Supreme Court of Canada in the matter of the Queen V. Farwell.

When I prepared that memorandum I concluded, without referring to the British Columbia Statutes of 1884, a copy of which I have not been supplied with, that "Chapter 14 of the B.C. Statutes of 1883" referred to in papers attached to this file, was 48 Victoria, Chapter 14, which was passed on the 12th May, 1883, (B.C.) and I therefore gave that date in my memorandum as the date up to which I considered the Provincial Government were entitled to exercise the rights therein alluded to.

I have since borrowed a copy of the B.C. Statutes of 1884 and I find that the Chapter referred to in certain papers on this file is Chapter 14, 47 Victoria, passed on the 19th December, 1883, and not Chapter of the same number passed on the 12th May, 1883, which was repealed by the later Act. The 19th December, 1883 is therefore the date I would have given in my memorandum had I referred to the B.C. Statutes of 1884, when I was pre-

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A perusal of the report of the case of the Queen V. Farwell shews that the Provincial Government were probably entitled to exercise the rights in question up to a date subsequent to the 19th December, 1883, but does not settle the exact date.

In his judgment Mr. Justice (now Chief Justice) Strong says :-

"I am of opinion that the objection that the statute required a grant or some subsequent instrument to carry it into execution wholly fails. It was clearly self executing and operated immediately and conclusively so soon as the event on which it was limited to take effect happened, that is as soon as the 'line of railway was finally located.' Whether upon that event occurring it operated by relation from the date of its enactment so as to avoid intermediate grants by the Province of British Columbia is an inquiry which the facts of the present case do not require us to enter upon for the respondent acquired no title to this land until after the line of railway was finally located."

At the close of his judgment the same Judge says :-

"The result is that when the letters patent under the grant seal of British Columbia issued on the 16th January, 1885, assuming to grant this land to the respondent, the province had no title to the land and consequently nothing to grant, an absolute title thereto having previously vested in the Dominion under the statute, 47 Vic., ch.14, upon the final location and ascertainment of the line of railway."

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But in the same case the late Chief Justice Ritchie says :-

"On the 19th April, 1884, the Dominion Parliament passed an Act similar to the British Columbia Act approving and ratifying the agreement set out in both acts, so that assuming that the Provincial Act was inoperative until legislation of the Dominion Parliament in relation thereto, from that time I am of opinion that the legislature of British Columbia had put it out of the power of the executive of the British Columbia to deal with the lands so referred to and granted by the said Act, otherwise than in the manner and for the purpose provided for by that Act."

You will see, therefore, that it is not certain in so far as this judgment goes whether the date ~~the~~ is the 19th April, 1884, the 19th December, 1883, or the date upon which the "line of railway was finally located" if that date was subsequent to the 19th December, 1883.

Probably the 19th April, 1884 is the correct date.

So far as the case referred to in Ref : 306537 is concerned the Provincial authorities were within their powers, the entry for the lands therein mentioned having been granted on the 21st March, 1883, and the Agent should be so advised.

Perhaps under the circumstances you may think it time enough to refer the matter to the Department of Justice when a case arises in which the date is between the 19th December, 1883 and the 19th April, 1884.

Respectfully submitted.

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