REPORT OF SELECT COMMITTEE

Appointed to draft an Explanatory Address to His Excellency the Lieutenant-Governor, in respect to legalising Sales of Land in the Province, since 1870.

The "Land Ordinance, 1865," of the former Colony of British Columbia contained the following Clause:—

"20. Any person in possession of 160 acres of land as aforesaid may acquire the right to "pre-empt and hold any further tract of unsurveyed and unoccupied land contiguous thereto, not "exceeding 480 acres (and no more, either directly or indirectly, save with the express sanction "in writing of the Governor in that behalf) over and above the quantity of 160 acres aforesaid, "upon the payment to the Stipendiary Magistrate of the District of the sum of two shillings and "one penny per acre for the same, as by way of instalment of the purchase money to be ultimately "paid to the Government, after survey of the same land."

2. The "Land Ordinance, 1870," number 144 of the Revised Statutes of British Columbia, repeals the above mentioned "Land Ordinance, 1865," but contains the following provision in Clause 2: "but such repeal shall not prejudice or affect any rights acquired, or payments due, "or forfeitures or penalties incurred, prior to the passing of this Ordinance, in respect of any "land in this Colony."

3. After the passage of the said "Land Ordinance, 1870," the several Assistant Commissioners in British Columbia construed the last above mentioned provision in Clause 2 of the "Land Ordinance, 1870," as preserving the right of such persons as had pre-empted 160 acres under the "Land Ordinance, 1865" to purchase further tracts of contiguous land (as mentioned in section 20 of the said Ordinance of 1865), and accordingly, after the passage of the said "Land Ordinance, 1870," many persons who were in possession of land pre-empted under the "Land Ordinance, 1865," were permitted to purchase contiguous land and enter into possession thereof. Such purchasers were invariably required to pay, and did in fact pay, fifty cents per acre to the Government of British Columbia, on account of the block of land contiguous to their pre-emption claims so purchased by them, and in many instances substantial and costly improvements have been made on the land so purchased by them.

On the 2nd July, 1872, the Attorney-General of the Province gave the following opinion:

"*Opinion of the Honorable the Attorney-General with respect to Pre-emptors taking up land in addition to their pre-emptions, under the Land Laws prior to the Act* 1870.

"I understand the question upon which I am asked to advise, to be this:—Whether a person who has pre-empted land under "The Land Ordinance 1865," can, after the 20th of Oct., 1870 (the date at which "The Land Ordinance 1870," came into force), invoke the assistance of the 20th Section of the former Ordinance, and by payment of two shillings and one penny per acre, acquire the right to Pre-empt and hold a further tract of unsurveyed and unoccupied land contiguous thereto not exceeding 480 acres, &c.; and I am of opinion that he has not that privilege.

"As to such claims, if made since the 20th of July, 1871, I have already advised, having regard to the 11th Section of the Terms of Union, and I then had occasion to consider the present question, though it became unnecessary to give any decided opinion upon it.

"With respect to the general question, it seems plain that such alleged privileges cannot continue after the 20th October, 1870, unless preserved in "The Land Ordinance, 1870," by the words "but such repeal shall not prejudice or affect any rights acquired &c., prior to the "passing of this Ordinance;" and the question arises whether such person had, at that date, *acquired* a *right* within the meaning of those words, and of the 20th Section of the former Ordinance. The words of that section are "any person in possession of 160 acres of land aforesaid,

"may acquire the right to pre-empt and hold any further tract of unsurveyed and unoccupied "land contiguous thereto, not exceeding 480 acres (and no more, either directly or indirectly, "save with the express sanction, in writing, of the Governor in that behalf) over and above the "quantity of 160 acres aforesaid, upon the payment to the Stipendiary Magistrate of the District, "of the sum of two shillings and one penny per acre for the same, as by way of instalment of the "purchase money to be ultimately paid to the Government, after the survey of the same land," and the meaning of "may acquire the right" &c., "upon the payment" &c., appears from decided cases, as well as the reason of the thing, to be that of the acquirement of the right, and the payment of the money, were to be concurrent acts, or that the pre-emptor might acquire the right upon the occasion of or at the time of payment, and not otherwise; and if this be the case no such right can now exist, except when payments were made or tendered prior to the 20th October, 1870.

"Not only does this appear to be the plain grammatical meaning of the words which we are bound to adopt, but inspection of these two Ordinances, I think, shows that such was the intention of the Legislature.

"The words "may acquire the right to pre-empt," are used in the 12th Section of "The Land Ordinance, 1865," where it also seems to be required that the applicant should previously or at least contemporaneously with his pre-emption, perform certain conditions, and this construction was placed upon a very similar section in the "Vancouver Island Proclamation, 1862," by the Supreme Court of British Columbia, in Dr. Trimble's case.

"Again in the 10th Section of "The Land Ordinance, 1870," it is provided that "The Chief Commissioner of Lands and Works may," &c., "survey Pre-emption Claims or purchased lands previous to the date of this Ordinance," but there is silence as to such claims, thereafter to be recorded under the 20th Section of "The Land Ordinance, 1865."

"And, again, in the 25th Section of "The Land Ordinance, 1870," it is provided that a person occupying a Pre-emption Claim to the Eastward of the Cascade Range at the date of the framing of that Ordinance, if less than 230 acres, may, with the permission of the Commissioner, pre-empt contiguous land so as to make the total amount of his claim to 320 acres, in language which seems to be scarcely reconcilable with the continuance of a right to pre-empt the additional 480 acres as prescribed by the said 20th Section.

"It is observable that the right contemplated by the said 20th Section was in the first instance, at most an inchoate right; it was at any time before its exercise, liable to be defeated by the survey or occupation of the contiguous land; moreover as the object of "The Land Ordinance, 1870," was to hand over the Crown Lands of Vancouver Island to the Legislature and to require of Pre-emptors *bona fide* residence, if the Legislature had intended that a Pre-emptor under "The Land Ordinance, 1865," should continue to be entitled, after any lapse of time, to obtain, with the consent of the Governor, as much additional contiguous land as he wished, and that without personal residence, I think we should have found in the former Ordinance clear language to that effect.

"It may be worthy of consideration whether inasmuch as a different construction appears to have been placed upon these Ordinances, relief shold not be sought from the Legislature as regards cases where hardship is likely to ensue.

"(Signed) J. F. McCREIGHT,
"*Attorney-General.*

"*Attorney-General's Office,*
2nd July, 1872."

Immediately after the said opinion was given, the Provincial Government caused the before mentioned purchasers of land to be notified that they would be required to surrender the land purchased by them as aforesaid, and that the Government would refund to them the moneys paid by them therefor.

The Provincial Government holds itself disabled by the 11th Article of the Terms of Union to pass an Act legalizing the purchases made under the circumstances above set forth.

A. ROCKE ROBERTSON,
Chairman.

Victoria, 23*rd January*, 1873.