

[L. S.]

## CROWN GRANT.



HENRI G. JOLY DE LOTBINIERE,  
*Lieutenant-Governor.*

W. S. GORE,  
*Deputy Commissioner of Lands and Works.*

No.  $\frac{1524}{127}$ .

PROVINCE OF }  
BRITISH COLUMBIA. }

EDWARD VII., by the Grace of God, of the United Kingdom of Great Britain and Ireland, KING, Defender of the Faith, &c., &c.

*To all to whom these presents shall come, Greeting :*

KNOW YE, that in pursuance of the Order in Council approved on the 4th day of September, A. D. 1901, by His Honour the Lieutenant-Governor, We do by these presents, for Us, Our Heirs and Successors, in consideration of the fulfilment of the provisions of the "Columbia and Western Railway Subsidy Act, 1896," and amending Acts, give and grant unto the Columbia and Western Railway Company, its successors and assigns, in full settlement of all claims for subsidy under said Acts, or otherwise, all that parcel or lot of land situate in Kootenay District, bounded as follows:—

Commencing at the intersection of the westerly limit of Lot 4,589, Group one (1), Kootenay District, with the north boundary of the B. C. Southern Railway right of way, said point being opposite station zero of a traverse of a portion of said railway made by N. B. Gauvreau, P. L. S., and recorded in the Department of Lands and Works at Victoria; thence due north to the fiftieth parallel of north latitude; thence easterly along the said parallel of latitude to the west bank of the Elk River; thence southerly along said west bank of Elk River to its intersection with the north boundary of the British Columbia Southern Railway right of way; thence westerly along said north boundary of said railway to the place of beginning; said to contain three hundred and eighty thousand acres, more or less, and more particularly indicated on the sketch plan hereunto annexed, coloured red, and numbered Lot four thousand five hundred and ninety-three (4,593), Group one (1), Kootenay District, in the Province of British Columbia, to have and to hold the said parcel or lot of land, and all and singular the premises hereby granted, with their appurtenances, unto the said Columbia and Western Railway Company, its successors and assigns forever.

Provided, also, that it shall at all times be lawful for Us, Our Heirs and Successors, or for any person or persons acting in that behalf by Our or their authority, to resume any part of the said lands which it may be deemed necessary to resume, for making roads, canals, bridges, towing-paths, or other works of public utility or convenience; so nevertheless that the lands so to be resumed shall not exceed one-twentieth part of the whole of the lands aforesaid, and that no such resumption shall be made of any lands on which buildings may have been erected, or which may be in use as gardens or otherwise, for a more convenient occupation of any such buildings.

Provided, also, that it shall at all times be lawful for Us, Our Heirs and Successors, or for any person or persons acting under Our or their authority, to enter into and upon any part of the said lands, and to raise and to get thereout any minerals, precious or base (other than coal) which may be thereupon or thereunder situate, and to use and enjoy any and every part of the same land, and the easements and privileges thereto belonging, for the purpose of such raising and getting and every other purpose connected therewith, paying in respect of such raising and getting and use reasonable compensation.

Provided, also, that there shall be and there is hereby reserved to Us, Our Heirs and Successors, the royalty upon and in respect of each and every ton of coal and barrel of petroleum raised or gotten from the lands hereby granted, now in force or from time to time reserved by the Legislature.

Provided, also, that there shall be and there is hereby reserved to Us, Our Heirs and Successors, the royalty upon and in respect of all timber suitable for spars, piles, saw-logs or

railroad ties, props for mining purposes, shingle or other bolts of cedar, fir or spruce, and cordwood cut upon said lands, now in force or from time to time reserved by the Legislature.

Provided, also, that the royalties herein mentioned shall not be construed as taxation, within the meaning of any provision exempting the Company or its property, real or personal, or any part thereof, from taxation.

Provided, also, that it shall be lawful for any person duly authorised in that behalf by Us, Our Heirs and Successors, to take and occupy such water privileges, and to have and enjoy such rights of carrying water over, through or under any parts of the hereditaments hereby granted as may be reasonably required for mining or agricultural purposes in the vicinity of the said hereditaments, paying therefor a reasonable compensation to the British Columbia Southern Railway Company, its successors or assigns.

Provided also, that it shall be at all times lawful for any person duly authorised in that behalf by Us, Our Heirs and Successors, to take from or upon any part of the hereditaments hereby granted, without compensation, any gravel, sand, stone, lime, timber or other material which may be required in the construction, maintenance or repair of any roads, ferries, bridges or other public works.

Provided, also, that in the event of any of the lands hereby granted being divided into town lots, one-fourth of all the blocks of lots shall be re-conveyed to Us, Our Heirs and Successors.

Provided, also, that all travelled streets, roads, trails and other highways existing over or through said lands at the date hereof shall be excepted from this grant.

Provided, also, that the cost of surveying the said lands shall be borne by the Company.

Provided, also, that this grant shall not include any lands held by grant, lease, agreement for sale, or other alienation by the Crown, nor shall it include Indian Reserves or settlements, Military or Naval Reserves, or lakes, or lands in which any person other than the Crown has a vested interest.

IN TESTIMONY WHEREOF We have caused these Our Letters to be made Patent, and the Great Seal of Our Province of British Columbia to be hereunto affixed: WITNESS, His Honour The Honourable Sir Henri Gustave Joly de Lotbinière, K. C. M. G., Lieutenant-Governor of Our said Province of British Columbia, and its Dependencies, at Our Government House, in Our City of Victoria, this third day of October, in the year of Our Lord one thousand nine hundred and one, and in the First year of Our Reign.

By Command.

(Signed) J. D. PRENTICE,  
*Provincial Secretary.*

[Across the first page of this Crown grant (containing the description) are written in red pencil,—“Cancelled, W. C. W.” The signatures “W. S. Gore” and “J. D. Prentice” have pen marks written through same.]

*Geo. McL. Brown, Esq.,*  
*Executive Agent, Vancouver, B. C.*

8th October, 1901.

DEAR SIR,—I am in receipt of your letter of the 1st inst., enclosing certified copies of the Order in Council dealing with the Columbia and Western and B. C. Southern land grant settlements, and also of the maps forwarded under separate cover.

I am very much pleased that these matters have finally been satisfactorily disposed of.

Yours truly,  
(Signed) T. G. SHAUGHNESSY,  
*President.*

VICTORIA, B. C., Oct. 10th, 1901.

SIR,—I have the honour to acknowledge the receipt of your letter of the 30th ultimo, enclosing the applications of C. J. Bulger, D. Tracey, J. Rudolph, August Baldauf, S. Graham, W. A. Switzer, Ed. Coleman, J. Levis, Geo. McGlincey, J. D. Quail and J. Darr for licences to prospect for coal on certain land situated on Elk River, together with cheque for \$550 in payment of fees.

In reply I beg to inform you that the lands over which licences are desired have been granted to the British Columbia Southern Railway Company, consequently the applications cannot be entertained.

Herewith I return your cheque for \$550.

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

*J. F. Armstrong, Esq.,  
Govt. Agent, Fort Steele, B. C.*

VICTORIA, B. C., Oct. 10th, 1901.

SIR,—I have the honour to transmit to your address by even mail a plan of portion of East Kootenay District.

The parcels of land represented thereon by the colour red have been granted to the Railway Company.

In dealing with applications for land in the Government blocks, every precaution must be taken to prevent encroachments being made upon the railway lands.

I have, &c.,  
(Signed) W. S. GORE,  
*Deputy Commissioner of L. & W.*

*J. F. Armstrong, Esq.,  
Govt. Agent, Fort Steele, B. C.*

(Personal.)

VANCOUVER, B. C., 19th Oct., 1901.

*Sir Thomas Shaughnessy, Montreal, P. Q.*

MY DEAR SIR THOMAS,—Mr. Peters, my partner, Mr. Leckie and several others of us some weeks ago located claims of coal and petroleum on certain lands situated in East Kootenay. I enclose a sketch plan of the locality, with an explanatory report as to the situation. We are now applying for licences to prospect, etc., under the provisions of the general Statute. Our attention has been called within the last day or two to the Statute respecting the B. C. Southern Railway, and Orders in Council reserving in 1891 blocks of land apparently covering this location.

From the short examination I have been able to give to the matter, it would appear to me that under the Revised Statutes of this Province, chapter 113, section 81, notwithstanding section 9 of the Crown Lands Amendment Act, 1899, c. 38, repealing section 72 of c. 113, R.S.B.C., as free miners [we are entitled] to work the coal and petroleum we have located, even though the Crown has reserved these lands as under the Order in Council many years back, which would now appear to be the case.

Coming then to the B. C. Southern, c. 40, B. C. Acts, 1890, and sections 9 and 5, if the above position be tenable, we would have the right to insist that the Company, in order to obtain lands outside the 32-mile belt, would be obliged to come within the conditions laid down, and show that the full quantity could not be had inside that belt.

Learning that Mr. Geo. McL. Brown was shortly going East, I mentioned this subject to him, in order that he might discuss it with you, so as to ascertain whether there might not be a possibility of making some amicable arrangement, in the mutual interests of the Company and of our syndicate, whereby we could make valuable use of the information we have obtained and the properties which in good faith we have located; I therefore write this letter with this view.

Believe me, etc.,  
(Signed) CHARLES HIBBERT TUPPER.

(Enc.)

VICTORIA, B. C., 24th Oct., 1901.

SIR,—I have the honour to inform you, in reply to your request for my opinion as to the power of the Lieutenant-Governor in Council to grant the parcels marked L. 4,594 and L. 4,593, coloured red on one of the plans herewith enclosed, to the Company entitled to the subsidy under the "Columbia and Western Railway Subsidy Act, 1896," that, in my opinion, the Lieutenant-Governor in Council has such power.

The Statute in question, by section 1, gives absolute authority to grant lands in the Districts of Kootenay and Yale, upon the condition that a railway is constructed according to the terms of the charter. This power is not cut down, as far as I can see, by anything in the Act. In section 6 it is provided that the Company should be entitled to lieu "lands in the districts, to be taken up on blocks of not less than one mile square, and to be reserved, selected and granted to the Company from time to time as the work proceeds, in such manner as the Lieutenant-Governor in Council may determine and in localities as near as practicable contiguous to said lands and railway," etc.

The expression "to be taken up on blocks of not less than one mile square" has already been decided by our Courts to be merely directory and not imperative, and a grant to the Fort Sheppard Railway Company of a parcel taken up less than one mile square was held valid.

Mr. Justice Drake, in *Hall v. The Queen*, VII. B. C. Reports, at page 93 (affirmed by the Full Court, page —), says:—

"Mr. Hunter, in his argument, contended that the suppliant, by making an application for leave to purchase lands already Crown-granted, obtained a *locus standi* to discuss and regulate the amount of lands to which the Railway Company were properly entitled to under their several Acts, and evidences are adduced directed to this view, but it was clear that the Crown had not granted the Railway Company nearly as much land as they were entitled to; and he further argued that it was incompetent for the Crown to grant any lands in less quantities than a mile square. This limitation in the Act is merely directory and clearly was inserted for the purpose of preventing the Company from picking out valuable pieces of land all over the district, and leaving the worthless, but it did not prevent the Crown from granting smaller pieces of land when, owing to circumstances, it became expedient to do so. I have alluded to these points thus raised because they were strongly pressed as acts in derogation of the Statute, and therefore void. But, in my opinion, this argument, even if I was entitled to consider it on these pleadings, is not well founded."

It is obvious that the rest of the clause stands on the same footing, that is to say, that the whole clause is merely directory and not imperative.

It is also, I think, clear that the Legislature did not intend that the validity of any grant within the prescribed districts should be dependent on the view that a judge or jury might happen to take as to whether or not the land was "as near as practicable contiguous to the railway," as so precarious a title would be worthless, and in the absence of clear language it is not to be supposed that the Legislature contemplated the issue of such titles, which would, in fact, amount to grants, not of lands, but of lawsuits of great possibilities.

The power, then, to make the grant is, I think, beyond doubt, and if, as I understand the fact to be, the settlement contemplated by the Government involves the giving up by the Company of a much larger acreage to which it is now entitled, such settlement would appear to be a reasonable and proper exercise of the power.

I am, etc.,

GORDON HUNTER.

Hon. W. C. Wells, Victoria, B. C.

CANADIAN PACIFIC RAILWAY Co.,  
MONTREAL, October 25th, 1901.

DEAR SIR CHARLES HIBBERT,—Referring to your personal letter of October 19th, enclosing a report by Mr. R. G. Edwards Leckie, which I return herewith.

G. McL. Brown is now on his way East, and, on his arrival, I will ascertain about the lands to which you refer. The British Columbia Southern Railway Company and the Columbia and Western Railway Company were both entitled to land grants, for which only a portion of

the patents have, as yet, been received. Naturally, it will be our effort to make these land grants valuable for the Company as is possible, but, in doing so, we would not attempt to overlook any legal rights that miners or prospectors might have.

Yours sincerely,  
(Signed) T. G. SHAUGHNESSY.

Hon. Sir Charles Hibbert Tupper, K.C.M.G.,  
Vancouver, B. C.

(Enc.)

6879/01.

FORT STEELE, B. C., 29th October, 1901.

The Deputy Commissioner of Lands and Works,  
Victoria, B. C.

SIR,—I have the honour to acknowledge the receipt of your letter of the 19th instant, informing me that you had transmitted me a plan of portion of this District on which lands granted to the Railway Company were coloured red.

I would beg to state that the plan referred to has not yet come to hand.

I remain, etc.,  
(Signed) J. F. ARMSTRONG,  
Government Agent.

255/40.

L. O. 674, Vol. 89. 6879/01

Nov. 8th, 1901.

SIR,—In reply to your letter of the 29th ultimo, I beg to advise having forwarded to your address by even mail the plan referred to in my letter to you of the 19th ultimo, showing lands in your District granted to the Railway Company.

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

J. F. Armstrong, Esq.,  
Government Agent, Fort Steele, B.C.

[Memo, Hon. W. C. Wells to Sir T. G. Shaughnessy, Nov. 1901; see p. cx.]

[Letter, Sir T. G. Shaughnessy to Hon. W. C. Wells, 22nd Nov., 1901; see p. cx.]

[Letter, G. McL. Brown to Hon. J. Dunsmuir, 25th Feb., 1902; see p. dcx.]

CANADIAN PACIFIC RAILWAY COMPANY,  
VANCOUVER, B. C., Feb. 25th, 1902.

Chas. Drinkwater, Esq.,  
Assistant to the President, Montreal, Que.

DEAR SIR,—For your information, I enclose herewith a copy of Mr. Jas. Dunsmuir's letter of the 15th May, 1901, promising to bring in at this Session of the Legislature an Act granting the lands to the Columbia and Western Railway for its fourth section. The original I have sent to the President. I presume it should be carefully filed with Columbia and Western papers.

Yours faithfully,  
(Signed) GEO. McL. BROWN,  
Executive Agent.

(Enc.)

1884/02

COLUMBIA AND WESTERN RAILWAY COMPANY,  
VICTORIA, B. C., March 14th, 1902.*To the Hon. the Attorney-General, Victoria, B. C. :*

SIR,—Having regard to the facts relating to the understanding in June, 1898, between the Government of that day, Messrs. Mackenzie & Mann, and the C. & W. Ry. Co., for the construction of a line from Penticton to Midway, B. C., connecting at the latter place with the C. & W. Ry.

The Government of the day desiring to enter into an arrangement with Messrs. Mackenzie & Mann for the construction by that firm of the line above mentioned, and in view of the clause in the C. & W. Ry. charter which provides that the Company would not be entitled to its land subsidy in respect of the fourth section until it had completed the fifth section, the C. & W. Railway Company, on the representations being made by the Government, consented to surrender its right to construct the fifth section, on the understanding that the Company be relieved of all responsibility in the construction of the fifth section, and was fully protected in respect of the subsidy for the fourth section; in other words, that the Company would receive the subsidy on completion of the fourth section. On this understanding the Government entered into the arrangement with Messrs. Mackenzie & Mann.

Will you kindly let me know the terms of the proposed Bill promised by the Government of 1898, and confirmed by the Premier in his letter of the 15th June, 1901, to me.

I have, etc.,

(Signed) GEO. McL. BROWN,  
*Executive Agent.*

Order in Council No. 103, 1902.

AT THE EXECUTIVE COUNCIL CHAMBER, VICTORIA, B. C.

The 18th day of March, A. D. 1902.

On the recommendation of the Honourable the Chief Commissioner of Lands and Works, His Honour the Lieutenant-Governor of British Columbia, by and with the advice of the Executive Council, doth order as follows:—

That Order in Council No. 393, dated 4th September, 1901, relating to the land subsidy in aid of the Columbia and Western Railway Company in respect of sections one and three of the said railway, be and is hereby rescinded, in so far as, but no further than, it relates to the Deficiency Blocks 1 and 2, referred to in Memorandum B attached to the said Order, and indicated on plan marked C, accompanying the Order.

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

Approved and ordered this 18th day of March, A.D. 1902.

(Signed) HENRI G. JOLY DE LOTBINIERE,  
*Lieutenant-Governor.**To His Honour the Lieutenant-Governor in Council :*

The undersigned has the honour to recommend that the Order in Council approved by His Honour the Lieutenant-Governor on the fourth of September, 1901, and numbered 393, on the subject of the Columbia and Western Railway Land Subsidy, be rescinded, in so far as, but no further than, it relates to the Deficiency Blocks 1 and 2, therein referred to and indicated by a plan marked C.

Dated this 18th day of March, A. D. 1902.

(Signed) W. C. WELLS,  
*Chief Commissioner of Lands and Works.*

Approved this 18th day of March, A.D. 1902.

(Signed) JAMES DUNSMUIR,  
*Presiding Member of the Executive Council.*

[Letter G. McL. Brown to Hon. W. C. Wells, 19th March, 1902 ; see p. xlix.]

1744/02.

VICTORIA, B.C., March 20th, 1902.

GENTLEMEN,—I have the honour to acknowledge the receipt of your letter of yesterday's date, and in reply to your inquiry beg to inform you that the Columbia and Western Railway Company have received a Crown grant covering Lots 4,597, 4,598, 4,599, 5,816, and 5,817, Group 1, Kootenay District, and Lots 2,698, 2,699, 2,700, 2,701, 2,702, 2,703, 2,704, 2,705, 2,706, Group 1, Osoyoos Division of Yale District, in full and final settlement and satisfaction of all lands earned by the company under its Subsidy Act with respect to section one, and these lands aggregate 543,180 acres.

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

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

[Letter, Hon. W. C. Wells to G. McL. Brown, 21st March, 1902 ; see p. l.]

[Letter, G. McL. Brown to Hon. W. C. Wells, 22nd March, 1902 ; see p. cclxi.]

[TRANSLATION.]

VICTORIA, B.C., March 22nd, 1902.

Sir Thos. G. Shaughnessy.

Personal. Columbia and Western grant 2 block East Kootenay cancelled without notice. Wells and other Ministers explain political expediency, and now propose Company accept alternate Government blocks along line in settlement third section, that grant will issue at Company's request ; promise introduction of Bill to reinstate subsidy fourth section. Wells promises East Kootenay block settlement fourth section. Doubt sincerity. Am making formal written protest, and stating discussion this proposal without prejudice Company's right insist on settlement already reached. Have done so Ministers separately and meet Cabinet Monday as Premier ill to-day. If any suggestion or instructions, please wire.

(Signed) G. McL. BROWN.

[Letter, G. McL. Brown to Hon. W. C. Wells, 23rd March, 1902 ; see p. cclxii.]

[TELEGRAM.]

MONTREAL, 24th March, 1902.

George McL. Brown, Vancouver :

Understand from your message that Government have cancelled Order in Council granting parcel of land in South-East Kootenay as portion Columbia and Western Subsidy, and propose to give land elsewhere. I do not see that we have any means of forcing Government to keep faith, and therefore we must accept situation as it is. Apparently politics permit with impunity methods that would destroy character in business life.

(Signed) T. G. SHAUGHNESSY.

*Report of meeting in the office of the Chief Commissioner of Lands and Works, Victoria, on the morning of the 24th March, 1902, between the Government of British Columbia and George McL. Brown, for the purpose of discussing the Government's new proposal for the settlement of the subsidy in respect of the third section of the Columbia and Western Railway, and for the purpose of ascertaining the Government's reasons for wishing to set aside the settlement already made.*

Present : The Hon. the Premier, the Hon. the Attorney-General, the Hon. the Chief Commissioner of Lands and Works, the Hon. the Minister of Finance and Agriculture and Acting Provincial Secretary, the Hon. the Minister of Mines, for the Government, and George McL. Brown, representing the Columbia and Western Railway Company.

Brown : I opened the meeting by thanking the Premier for the opportunity of placing before the Cabinet the Company's position in connection with the Government's new proposal for the settlement of the subsidy for the third section Columbia and Western Railway, as conveyed to me, verbally, on the 19th inst., by Mr. Wells, and in writing from him, under date of 21st March, in reply to my letter of inquiry of 19th inst. I then explained to the Cabinet how, on the 19th inst., on my return to Victoria, I had called on Mr. Wells, had seen him for a moment in his outer office, where he informed me that Mr. Gore, Deputy Commissioner of Lands and Works, wished to see me, that I immediately called on Mr. Gore, who informed me that on the previous day the Government had cancelled the grants for the two blocks in East Kootenay (part of the third section settlement already made), and proposed to convey to the Company, in lieu of them, the Government alternate blocks along the line of railway. How that Mr. Gore also advised me of the Government's intention to carry out the Premier's pledge to introduce a Bill at this Session granting to the Company the lands earned by the construction of the fourth section. I then pointed out to the Cabinet that having had no advice whatsoever of this change, I was hardly able to credit Mr. Gore's statement, and thereupon again called upon Mr. Wells, who confirmed the statement; that I asked Mr. Wells for the reasons, and he explained that political expediency necessitated the Government action—that so many questions had been raised in the House that the carrying through of the original arrangement would mean the defeat of the Government. That I had told Mr. Wells that I could not express an opinion on the matter before submitting it to you, and that in submitting the matter to headquarters, I did so entirely without prejudice to the Company's right to the two blocks.

The following then passed between the members of the Cabinet and myself:

Brown : Gentlemen, it has come to me vaguely that my integrity and that of my chief was, in some way, impugned in a recent meeting of the Cabinet, over this matter. I have appealed to Mr. Dunsmuir and Mr. Wells, who have given me their emphatic assurances to the contrary. Before going further, I desire a similar assurance from the other gentlemen present. Colonel Prior, have I yours?

Colonel Prior : Most certainly.

Brown : Yours, Mr. Prentice?

Prentice : Yes—your names have not been mentioned in such connection.

Brown : Yours, Mr. Eberts?

Eberts : Most certainly; such a thing is silly.

Brown : I thank you, gentlemen, for your ready replies to my somewhat bald question, I understand from them that you confirm Mr. Dunsmuir's and Mr. Wells' statement that political expediency, and that alone, necessitated this change of plan. The danger of Government by expediency is your affair; I pass on to mine, the Company's position in this matter. A settlement of the subsidy for the third section has already been reached, and partially carried out. This you propose to set aside, substituting a new settlement. I wish here and now to register a formal protest on behalf of the Company and to insist, should the Company so elect, on the completion of the original settlement, and I shall apply for fiat for a petition of right. I cannot help remarking on the unusual course you have pursued, in not advising the Company beforehand of your intention to set aside the existing settlement.

Mr. Wells : What difference, Mr. Brown, would it have made if we had advised you?

Brown : This difference, Mr. Wells, that if the Government was seeking only its own safety and not the spoliation of the Company, a discussion before the act might have shown the non-necessity for it. The Government may refuse a petition of right, and in such case the



Company is without resource, but I am satisfied that none of you, gentlemen, contemplate the repudiation of your obligations. I have telegraphed Sir Thomas Shaughnessy, as nearly as I recollect, as follows:—

“Columbian and Western blocks East Kootenay cancelled without notice. Wells and other Ministers explain political expediency and now propose Company accept alternate Government blocks along line in settlement third section, that grants will issue at Company's request. Am making formal written protest and stating discussion on this proposal without prejudice Company's right to insist on settlement already reached.”

It is not necessary, Mr. Dunsmuir, for me to assure you that the Company has no desire to embarrass your Government. You have had too many practical demonstrations of its goodwill towards you to look upon it as an enemy, and you should not take issue with it for wishing to maintain its rights.

Dunsmuir: I know, I know, Brown, but new complications have arisen.

Brown: What complications?

No reply.

Brown (continuing): My chief replied to my telegram as follows: “Understand from your message that Government have cancelled Order in Council granting parcel of land in South-east Kootenay as portion of Columbia and Western subsidy and propose to give land elsewhere. I do not see that we have any means of forcing Government to keep faith, and therefore we must accept situation as it is. Apparently politics permit with impunity methods that would destroy character in business life.” Applicable words, gentlemen, if you contemplate depriving the Company of what has already been given. Only one term applies to such a case—“repudiation.”

Wells: Mr. Shaughnessy told me that if the Government was to be defeated he did not want the grants.

Dunsmuir: No, no, Brown, we made a mistake, and should, in the interest of the people, correct it. We went outside the Act to give the lands.

Brown: Surely there is no reason, Mr. Dunsmuir, for discussing now details of a settlement deliberated over by your Government for many months, concluded to be right and just, and carried out.

Dunsmuir: Yes, but we went outside the Act.

Brown: But before doing that, you asked and obtained the opinion of the new Chief Justice of British Columbia, which opinion was that the Government had full power. I am told that other outside opinion obtained by the Government corroborated it. You will recollect that in this settlement the Company had to accept the lands in full of subsidy for third section, though the settlement left a deficiency of some 300,000 acres unprovided for. It was explained to the Company by your Government that those lands being supposed to be more valuable than others, the Company should be satisfied with them, in lieu of the full acreage elsewhere.

Wells: The Chief Justice's opinion was to the effect that the Government had power, but the question of policy should be considered.

Brown: Yes, exactly—a matter of policy. This settlement the Government duly considered as one of policy, submitted its proposition to the Company, which accepted it.

Prentice: Why not leave the matter for the House to decide?

Brown: This discussion of political expediency, Mr. Prentice, is one in which I cannot enter. My duty begins and ends in placing before you, in plain language, your position and that of the Company. It has been hinted, Mr. Dunsmuir, that it is because these two blocks in East Kootenay are valuable that the present situation has arisen. They may be valuable or they may not. What has that to do with it? If they are, which no one knows, is that a reason for the Company's being deprived of them? Let me bring it home to you more clearly. The Esquimalt and Nanaimo Railway Company enjoys from the Dominion a very large grant of land. The Crown grants have not issued for the whole of it; but that they will issue from time to time, until every foot of the area granted has been conveyed, is beyond question. You hold your land, then, under the pledge of one of the Governments of the eighties—1883, I think. You would never think of doubting that pledge; you know that with each succeeding Government your grants issue as applied for, and so it will be to the end. Supposing a portion of your lands still unconveyed to you turned out to be, or rather were rumoured to be, unusually valuable; would you lose any sleep over it? I think not. You would have no fear of the Dominion Government telling you that it is intended to keep that portion of your lands which had turned out valuable and forcing you to accept, in lieu, the tops of a range of mountains;

yet that is precisely the course you propose to take in the case of the Columbia and Western Railway. If such treatment were meted out to you by the Dominion in connection with your lands, you would call it repudiation, and you would be quite correct.

Prior : Pretty straight talking, Brown.

Brown : Don't you think the situation justifies it, Colonel Prior ?

Mr. Dunsmuir : No, no, Brown ; the cases are not the same. The E. & N. gets its lands from the Dominion.

Brown : Exactly so, and the Columbia and Western Railway *does not get its land* from the Province.

Dunsmuir : There are other complications.

Brown : What are they ?

Dunsmuir : I told you.

Brown : Do you refer to what you told me of a conversation alleged to have taken place between Mr. Wells and Mr. Taylor in Montreal, after the deeds had issued, about some Company which Mr. Taylor proposed to form, in which the members of the Cabinet were to take stock ?

Dunsmuir : Yes.

Brown : Then you still have doubts of the integrity of the Company ; for without its connivance how could Taylor, or anyone else, other than the Company, deal with its lands ?

Dunsmuir : No, no, that's what I say ; only the Company could deal with the lands.

Brown : But, yes, yes ; and if you have the slightest doubt in your mind on that score, there is only one way to settle it, and that is a Royal Commission. It is outrageous.

Prior : Sit down, McL., and keep cool ; nothing of the sort is suggested.

Brown : Keep cool ? It makes me d—— hot. I beg your pardon ; my language should be parliamentary. Mr. Dunsmuir, all I know of this alleged conversation of Mr. Taylor comes from you and Mr. Wells, who, I understand, a day or two ago communicated it to Mr. Prentice ; and further, Mr. Wells stated to me that there was nothing dishonourable in Mr. Taylor's proposition. But what had Mr. Taylor got to do with the conveyance of these lands to the Company ? Not he, but only the President and the shareholders could deal with the lands, and the deeds go direct to them. The whole situation is absurd, and I cannot conceive its object, except in so far as it may work on you and block the settlement. Who besides Mr. Wells is Mr. Taylor supposed to have spoken to ? To you, Mr. Prentice ?

Prentice : No, never ; no one ever spoke to me of any company or of anything unusual or exceptional in the matter.

Brown : Did he speak to you, Mr. Eberts ?

Eberts : No ; I have already explained this to the Cabinet.

Brown : Did he speak to you, Mr. Dunsmuir ?

Dunsmuir : By dang, no.

Brown : Then what does it all amount to—absolutely nothing.

Prior : Who would have power to deal with the Company's lands ?

Brown : Only the President and Directors of the Company.

Eberts : Of course. It is foolish.

Prentice : Yes.

Brown : There is nothing more to be said. I have done my duty, and it is quite within the Company's right to force the Government, should it see fit, to the original settlement.

Dunsmuir : Yes, that's right, that's right ; force the Government.

Brown : Thank you, Mr. Dunsmuir. I understand you to mean that the Company's application for a fiat for a petition of right, if made, will be granted.

Prior : I have only heard of this matter within a day or so, and cannot give an opinion.

Dunsmuir : I d'no, I d'no ; we will see ; we will discuss it.

Brown : Well, gentlemen, it only remains for me to thank you for this hearing. I shall apply for a fiat if so instructed, confidently expecting that it will be granted. Good morning.

*Memorandum made in room 58, Driard Hotel, Victoria, at 9:55 p.m., 27th March, 1902, of a conversation between Hon. W. C. Wells and myself, in the office of the Driard, a few minutes previously.*

Was in the office paying hotel bill, when was addressed by Mr. Wells, who had come into office from direction of bar. The following conversation ensued:—

Wells: Hello, George, are you going up to-night?

Brown: Yes.

Wells: When are you coming back?

Brown: I don't know. Possibly not again this Session.

Wells: I want to see you about those two letters you wrote me. I think you will have to withdraw them, George.

Brown: I don't know why, Mr. Wells. I only stated facts.

Wells: Yes, George; but you treat of things I said to you in my private capacity, and not as a member of the Government. You had no right to.

Brown: Did you not say to me what I repeated in my letters?

Wells: Yes, but only in my private capacity. I will not have the Government brought in.

Brown: It is difficult to distinguish when "tweedledee" and when "tweedledum."

Wells: If you won't withdraw them, I must reply in my capacity as a member of the Government. I think you take advantage of my friendship for your Company.

Brown: You have a queer way of showing it. However, Mr. Wells, I am not going to bother further. I have reported fully to the President, and the burden of bad faith must rest where it is.

Wells: But don't you see that it is a mistake?

Brown: No, I cannot say that I do. Even in this last proposal you try in your letter of 21st to me to tag on other conditions, or rather, you make, or endeavour to make, the carrying out of a firm pledge of the Premier's as to the fourth section, conditional upon our accepting your new proposal.

Wells: No, that is not the intention. The fourth section Bill is one thing, and the new proposal another.

Brown: I am glad to hear it.

Wells: Well, will you not withdraw your letter.

Brown: I cannot see how I can.

Wells: I will not impose myself with the C. P. R., Mr. Brown.

Brown: What do you mean?

Wells: If they don't want my friendship, then I must do without it.

Brown: I think you have nothing to complain of on that score.

Wells: Yes, I know you have been very kind to me, but you should not ask me to defeat the Government.

Brown: I don't, but do think we were not treated squarely. You act without giving the Company a show for its alley.

Wells: But we were up against it, and had to. The delays were all in your interests.

Brown: The results hardly prove it. However, if you don't intend to keep faith, I don't care what you do.

Wells: I am sorry that you won't withdraw your letter.

Brown: I am sorry that I feel I cannot.

W. and B.: Good night.

NOTE.—The last three or four questions were in the hall leading to the elevator and in the elevator. At the first floor Wells got out; I went on to my room, where I at once made this memorandum.

NOTE.—After reading the above half an hour after writing, I found that I had omitted a statement by Mr. Wells that he had told T. G. S. that he thought the delivery of the grants would defeat the Government, and that if he found it so he would not make delivery. I replied that it was a strange thing that T. G. S. had not said something to me about it.

(Signed) G. McL. B.

(Personal.)

CANADIAN PACIFIC RAILWAY Co.,  
VANCOUVER, March 28th, 1902.*Sir Thomas G. Shaughnessy,*  
*President, Montreal, Que. :*

DEAR SIR THOMAS,—Enclosed is copy of correspondence with the Government, in connection with the cancelling of the undelivered patents for the two blocks in S.E. Kootenay, Columbia and Western subsidy.

Enclosures as follows:—

Copy my letter 19th March, 1902, to the Hon. the Chief Commissioner of Lands and Works.

(Original) Chief Commissioner of L. and W.'s letter 21st March, in reply to mine of the 19th March.

Copy of my letter of 22nd March, in reply to Chief Commissioner's letter as above.

Copy of my letter of 23rd March, in further reply to Chief Commissioner.

Also my report of my meeting with the Cabinet on the 24th March. This report drawn from memorandum made by me within an hour after meeting had been held.

I also enclose memorandum of conversation between Mr. Wells and myself last evening. The letters he wished withdrawn were mine of 22nd and 23rd March, of which copies are enclosed.

Yours faithfully,  
(Signed) GEO. McL. BROWN,  
*Executive Agent.*

P.S.—For purpose of full record, I also enclose copies of telegrams on the subject passing between your office and mine.

(Signed) G. McL. B.

[Letter, Hon. W. C. Wells to Geo. McL. Brown, 3rd April, 1902; see p. cclxii.]

VANCOUVER, B. C., April 13th, 1902.

DEAR MR. WELLS,—On my return to Vancouver Friday last, I received your favour of 3rd inst. In it you refer to my letter of 23rd March. I assume that your letter is really intended in acknowledgment of mine of 22nd ult., and on the correctness of that assumption I now write you.

I would be in accord with you that my reference to our conversation of 19th March was uncalled for, could I admit its inaccuracy, but this I cannot do. Your explanation that the Government proposed to convey to the Company the "alternate blocks, etc.," in settlement of the third section subsidy, in lieu of the land granted under that settlement already reached (this you confirmed in writing), I accepted as an intimation of the Government's intention. In all else you said to me (with the exception of your reference to the fourth section legislation to be introduced), I recognized that you spoke in your individual capacity. If not using the actual term, your explanation certainly conveyed to me the impression that "political expediency" necessitated the Government's course; if not that, what was it? You will remember that, subsequently, I repeated to the full Cabinet that that reason had been assigned, and on asking the confirmation of the Cabinet it was tacitly given, nor was my assertion in any way questioned.

In reference to the paragraph in your letter, "I would have no authority to commit the Government, etc.," I may say that, with the exception of your ministerial assurances respecting the fourth section Subsidy Bill, and your statement of the Government's proposal in respect of the third section, I did not for a moment look upon anything else you said as in any way committing the Government, but merely as an expression of your intention to exercise your personal efforts to the end explained. I, of course, could take no other meaning from your personal assurances, and it would have been ridiculous to have accepted them as an expression of the fixed intention of the Government.

Alluding to the last clause in your letter, permit me to say that it is not a "proposed settlement," but an "actual settlement," partially carried out, which has been set aside.

Your meaning in the last few lines of your letter is not clear—"in any case you could not expect the Government to carry out, etc.") No one could expect the Government to do something impossible to be done. This statement is obviously correct, but what meaning do you wish me to draw from it?

Yours truly,

(Signed)

GEO. McL. BROWN.

*Hon. W. C. Wells, Victoria, B. C.*

(Confidential.)

VANCOUVER, April 28, 1902.

*Sir Thomas G. Shaughnessy, President, Montreal, Que.*

DEAR SIR,—Supplementing my letter of the 28th March, I enclose herewith a copy of the Hon. W. C. Wells' letter of the 3rd April, which was sent me in acknowledgement of my letter of the 23rd of March; also a copy of my reply of the 13th April. You will note that he directed his reply of the 3rd April to me at Vancouver, and that I did not receive it until some days afterwards. He has not yet acknowledged my letter of the 13th. This completes your file to date.

Yours faithfully,

(Signed)

GEO. McL. BROWN,

*Executive Agent.*

(Encs.)

[TELEGRAM.]

MONTREAL, 7th May, 1902.

*Geo. McL. Brown, Vancouver, B. C.:*

Say nothing until Provincial Parliament prorogues. Then say to the Government that we are advised the patent for the land in the south-eastern corner of the Province having issued with the Great Seal attached it could only be restored to the possession of the Crown by a deed from the Columbia and Western Railway Company. We are further advised that, in the case of a Crown patent, actual delivery is not required, but that, if it were, Mr. Wells made such delivery when here, and it was only placed in his possession for one month for reasons which he explained to me. Very important that there should be no hint of this while Parliament in Session, otherwise they might introduce a revoking Act.

(Signed) T. G. SHAUGHNESSY.

(2714.)

CANADIAN PACIFIC RAILWAY COMPANY,

VANCOUVER, May 10, 1902.

*Sir Thomas G. Shaughnessy, President, Montreal, Que.:*

DEAR SIR,—I enclose herewith Return asked for, and submitted to the House 5th May, dealing with Columbia and Western land grants, Lots 4,593 and 4,594.

For your information.

Yours faithfully,

(Signed)

GEO. McL. BROWN,

*Executive Agent.*

(Enc.)

[Letter, G. McL. Brown to Hon. W. C. Wells, 15th May, 1902; see p. cclxii.]

(Copy of Bill—afterwards known as Bill 87, 1902—on which is endorsed the following:—)

VICTORIA, 15 May, '02.

*Sir Thomas G. Shaughnessy, President, Montreal, Que.:*

First proof of Bill:—Government promises introduction by Message to-day, but one cannot be sure these days.

(Signed)

G. McL. B.

## Order in Council No. 230, 1902.

The Committee of Council submit for the consideration of His Honour the Lieutenant-Governor a Bill intituled "An Act to amend the 'Columbia and Western Railway Subsidy Act, 1896,'" and advise that the same be transmitted by Message to the Legislative Assembly. Victoria, 20th May, 1902.

(Signed) JAMES DUNSMUIR,  
*President, Executive Council.*

Approved 20th May, 1902.

(Signed) HENRI G. JOLY DE LOTBINIERE,  
*Lieutenant-Governor.*

(Signed) HENRI G. JOLY DE LOTBINIERE,  
*Lieutenant-Governor.*

HON. CHIEF COMMISSIONER.

No. 87.]

[1902.

## BILL.

An Act to amend the "Columbia and Western Railway Subsidy Act, 1896." 1896, c. 8.

**WHEREAS** the Columbia and Western Railway Company was authorised Preamble. and empowered by "The Columbia and Western Railway Company Act, 1896," and amending Acts, to construct a line of railway between Midway and Penticton as a part of its main line of railway, known as the fifth and sixth sections thereof:

And whereas, at the request of the Government of British Columbia, in order to enable the Government to enter into an arrangement with Messrs. Mackenzie and Mann, railway contractors of Toronto, for the construction of a line of railway from Midway to Penticton, the said Company surrendered its right to construct said fifth and sixth sections:

And whereas the said Company was by "The Columbia and Western Railway Subsidy Act, 1896," and amending Acts, entitled only to grants of lands in respect of the portion of its line known as the fourth section after it had constructed said fifth section:

And whereas, as a consideration for the Company's undertaking as aforesaid, it was agreed that the said Company should obtain grants of land in the Districts of Yale and Kootenay in respect of the said fourth section after the Company had constructed said fourth section:

And whereas the failure to construct said fifth and sixth sections was in no wise attributable to the said Company, and it is desirable that the said agreement with the said Company should be carried out:

Therefore, His Majesty, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:—

1. This Act may be cited as the "Columbia and Western Railway Subsidy Act, 1896, Amendment Act, 1902." Short title.

2. There shall be granted to the Columbia and Western Railway Company an area of land equal to twenty thousand acres per mile for each mile of railway constructed by the Company over the said fourth section of its said line of railway, extending from Christina Lake to Midway. The said land so to be granted to the Company shall be selected by the Company within the Districts of Yale and Kootenay, in blocks of not less than ten miles square, within two years after the passage of this Act: Company to receive land grant for section 4, notwithstanding non-construction of section 5.

3. The boundary lines of the lands to be selected, where not indicated by streams, lakes or other natural boundaries, or previously surveyed lines, shall be surveyed by the Company. Survey of land to be selected.

3904/02.

(Stamp—Lands & Works Dept.,  
Jun. 9, 1902.)PROVINCIAL GOVERNMENT OFFICE,  
FORT STEELE, B. C., June 3rd, 1902.*To the Deputy Commissioner of Lands and Works, Victoria, B. C.:*

SIR,—I have the honour to report that I have many inquiries as to whether the land in Lot No. 4,594 is open for pre-emption entry or purchase.

In your letter of October 10th, 1901, No. 6257, you informed me that this land had been \* conveyed to the British Columbia Southern Railway Co., and I am replying to all inquiries to that effect.

It is claimed, however, that the land has not yet been conveyed, and some persons are staking the land and publishing notices of intention to purchase. Will any consideration be given to such applications?

Your obedient servant,

(Signed) J. F. ARMSTRONG,  
*Government Agent.*

\* (Incorrect; see letter annexed [June 18, 1902.]  
W. S. GORE.

June 9, 1902.

*The Hon. the Chief Commissioner of Lands and Works:*

RE LAND GRANT, SECTION 4, COLUMBIA AND WESTERN RY.

SIR,—During the course of the debate upon the Message of His Honour referring to the above matter, it was suggested, after I had given an explanation of the arrangement made in 1898 between Mr. Shaughnessy, on behalf of the Columbia and Western Railway Company, and the Premier, Mr. Turner, that I should write to you, giving you a short history of the events which led up to the contract between Messrs. Mackenzie & Mann and the Government for the construction of a line of railway from the Coast to Penticton, and from Penticton to Midway.

The "Columbia and Western Railway Aid Act, 1896," authorised the Lieutenant-Governor in Council to grant 20,000 acres per mile. This was applicable to sections 1, 3, 4, 5 and 6 only, section 4 of the railway being from Christina Lake to Midway. In the fall of 1897 Messrs. Mackenzie & Mann commenced negotiations with the Government for the construction of a line from the Coast to Robson, upon the terms of a money subsidy of \$4,000 per mile. By the terms of the "Railway Aid Act, 1897," authority was given to subsidise a railway from the Coast to Midway to the extent of \$4,000 per mile. Upon the 23rd February, 1898, it was proposed by Mr. Mann to the Government that if the "Railway Aid Act, 1897," was amended so as to give power to bonus to the extent of \$4,000 per mile a line from Midway to Robson, Messrs. Mackenzie & Mann would enter into a contract to build a railway from the Coast to Penticton as one section, and from Penticton to Robson as another section, and that they would give security to the extent of \$75,000 for the construction of each section.

Early in 1898 the then Government had been acquainted with the fact that the Columbia and Western Railway Company was preparing to build from Robson to Penticton, and that Mr. Shaughnessy would be in Victoria in June to arrange with the Government the final details. The Government at that time was most anxious to secure the construction of a through line from the Coast to Penticton, to connect at that point with the Columbia and Western system, thus securing a through line from the Coast to Robson. Mr. Mann was unwilling to do anything unless the bonus was given to Messrs. Mackenzie & Mann for a line as far as Midway, giving as his reason that if his firm reached Midway, the line would not be dependent solely upon the Columbia and Western, but would have an outlet to the south if satisfactory traffic arrangements with the Columbia and Western Railway could not be made. The Government was then confronted with these facts: The Columbia and Western Railway Company were ready to build from Robson to Penticton, but Messrs. Mackenzie & Mann would not contract for a road to Penticton as its eastern terminus, insisting upon a bonus for a line as far as Midway.

Mr. Shaughnessy arrived in Victoria in June, and negotiations were entered into by the Government with him and with Mr. Mann, with a view of arriving at such a solution of the matter as would result in the construction of a line from the Coast to Robson. The Government intimated to Mr. Shaughnessy its desire to have a through line from the Coast to Robson, and that Messrs. Mackenzie & Mann were willing to enter into a contract for the construction of a line from the Coast to Midway, if the Columbia and Western Railway Company would give up its right to construct from Midway to Penticton. Mr. Shaughnessy consented to this, provided the Columbia and Western subsidy rights were protected in respect of the portion of the Columbia and Western Railway which the Company would, under the changed conditions, be permitted to construct. In other words, when the Columbia and Western Railway Company had constructed to Midway, it should be entitled to its full subsidy acreage for the mileage constructed. This was agreed upon, and accordingly a contract was entered into by the Government with Messrs. Mackenzie & Mann for the construction of a line from the Coast to Midway *via* Penticton. Upon the execution of this contract the Columbia and Western Railway Company entered upon the construction of its line from Robson to Midway. Subsequently, in June, 1898, the Government proposed to the Columbia and Western Railway Company that a cash subsidy of \$4,000 per mile should be taken, and an agreement upon these lines was signed by the Company, but political changes prevented its completion.

I have, &c.,  
(Signed) D. M. EBERTS,  
*Attorney-General.*

(3904/02)

VICTORIA, B. C., June 18th, 1902.

SIR,—I have the honour to acknowledge the receipt of your letter of the 3rd inst., and in reply to your inquiry beg to inform you that the land known as Lot 4,594 has not been conveyed to the Railway Company, and is open to application under the Land Act.

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

*J. F. Armstrong, Esq.,  
Gov't. Agent, Fort Steele, B. C.*

Order in Council No. 457, 1902.

AT THE EXECUTIVE COUNCIL CHAMBER, VICTORIA, B. C.,

The Twenty-first day of October, A.D. 1902.

On the recommendation of the Honourable the Chief Commissioner of Lands and Works, and under the provisions of chapter 113, R. S., His Honour the Lieutenant-Governor of British Columbia, by and with the advice of his Executive Council, doth order as follows:—

That the reserve which was established in pursuance of the "Columbia and Western Railway Subsidy Act, 1896," notice whereof was published in the British Columbia Gazette, and dated 7th May, 1896, be and is hereby cancelled, in so far, but no further than, it relates to a parcel of land in Kootenay District lying within the following boundaries, viz.:—

To the west of Lots 230 and 4,598; to the north of the northern boundary of Townships 8A and 9A, and to the south of the southern limit of the right of way of the Columbia and Western Railway.

(Signed) A. CAMPBELL REDDIE,  
*Dep. Clerk, Executive Council.*

Approved and ordered this 24th day of October, A. D. 1902.

(Signed) HENRI G. JOLY DE LOTBINIERE,  
*Lieutenant-Governor.*



(Stamp—Provincial Secretary's Office,  
24th Oct., 1902.)

To His Honour the Lieutenant-Governor in Council :

The undersigned has the honour to recommend that the reserve which was established in pursuance of the "Columbia and Western Railway Subsidy Act, 1896," notice whereof was published in the British Columbia Gazette, and dated 7th May, 1896, be cancelled, in so far as, but no further than, it relates to a parcel of land in Kootenay District lying within the following boundaries, viz. :—

To the west of Lots 230 and 4,598 ; to the north of the northern boundary of Townships 8A and 9A, and to the south of the southern limit of the right of way of the Columbia and Western Railway.

Dated this 21st day of October, A.D. 1902.

(Signed) W. C. WELLS,  
*Chief Commissioner of Lands and Works.*

Approved this 21st day of October, A.D. 1902.

(Signed) J. D. PRENTICE,  
*Presiding Member of the Executive Council.*

[TELEGRAM.]

(Personal.)

VICTORIA, B. C., 27/11, 1902.

*Sir T. G. Shaughnessy :*

Referring to my conversation with you when in Montreal, regarding settlement of land matters, I am prepared to take this up with you whenever you are ready to do so. I am anxious to have the reservations removed as soon as possible, but do not wish to take any steps before making a settlement with your Company.

(Signed) W. C. WELLS.

[TELEGRAM.]

*Hon. W. C. Wells, Victoria, B. C.*

1st December, 1902.

Ready to further discuss land question with you at any time. Please write or wire me what you have to suggest.

(Signed) T. G. SHAUGHNESSY.

[Letter, J. F. Armstrong, Government Agent, Fort Steele, to Deputy Commissioner Lands and Works, 23rd February, 1903 ; see p. Dxl.]

VANCOUVER, B. C., 10th March, 1903.

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

SIR,—We are acting for the Columbia and Western Railway Company and have taken proceedings against a number of persons who have applied for purchases of land in the East Kootenay District, for which a Crown grant was issued in favour of the Columbia and Western Railway and described as Lot number 4,593.

The actions at present started are 15 in number, and others will follow, amounting, probably, to 40 or 50 altogether. These actions cover lands for which Crown grants are alleged to have been issued, applications for Crown grants have been allowed but not completed, and coal and petroleum licences. We enclose a list of these applications, showing the condition in which they stand at the present time. It is the Company's intention to proceed against each person and have the matter tested, the Company claiming that the land is theirs by virtue of the Crown grant issued to them.

In addition to the above tract of land, there is also the lot known as 4,594, another deficiency block for which a Crown grant was issued in favour of C. and W. Ry. Company. In connection with the latter grant, the applications are chiefly for coal prospecting licences and timber licences, but we understand none of them are granted. If they are granted they will run in the neighbourhood of 200.

This means a very great deal of litigation, and the Company think that it would be much better, in the interests of all parties, if the Government would intervene in the proceedings which we have taken to test the validity of the licences and patents, and be bound by the result.

We would be pleased if you would take this matter up with the Government and advise us at an early date of the Government's decision.

We have, etc.,  
(Signed) DAVIS, MARSHALL & MACNEILL,  
Per D. G. M.

[Enclosure.]

#### APPLICATIONS FOR LICENCE TO PURCHASE LAND ON LOT 4,593.

(As published in the B. C. Gazette of 1901 and 1902.)

John Owens—Application page 1,765, B. C. Gazette, 1902. To purchase 320 acres on the west bank of Elk River, adjacent to land staked by H. Petrie. Pending.

Geo. H. Scott—Application page 1,632, B. C. Gazette, 1902. To purchase land on the west bank of Elk River, about five miles north of the mouth of Michel Creek. Allowed but not completed. Brewer at Fernie.

W. S. Keay—Application page 1,560, B. C. Gazette, 1902. To purchase land on the west bank of Elk River adjacent to the land applied for by W. Bullock. Customs Collector at Fernie. Allowed but not completed.

R. W. Rogers—Application page 1,414, B. C. Gazette, 1902. To purchase land on the west bank of Elk River adjacent to J. A. McDonald's claim. Butcher at Fernie. Allowed but not completed.

John A. Ferguson—Application page 1,082, B. C. Gazette, 1902. To purchase land on the west bank of Elk River. Allowed but not completed.

Henry W. Petrie—Application page 1,081, B. C. Gazette, 1902. To purchase land on the west bank of Elk River. Allowed but not completed.

J. T. Laidlaw—Application page 1,079, B. C. Gazette, 1902. Application to purchase land on the west bank of Elk River. Allowed but not completed. Payment made. Mining Engineer, Fort Steele.

H. L. Ameer—Application page 1,079, B. C. Gazette, 1902. Application to purchase land on the west bank of Elk River, one and a quarter miles from and north of the mouth of Morrissey Creek. Allowed but not completed. Payment made. Blacksmith at Wilmer.

Jas. A. McDonell—Application page 851, B. C. Gazette, 1902. To purchase land on the west bank of Elk River, about two miles above the mouth of Morrissey Creek. Completed. Lots 2,314 and 2,315. Crown grants Nos.  $\frac{180}{134}$  and  $\frac{181}{134}$  under South African War Grant. Railway contractor. Foss & McDonnell, at Morrissey.

#### COAL AND PETROLEUM LICENCES.

D. J. Johnson—Application page 1637, B. C. Gazette, 1902. For land "situate on the west side of Elk River, north of and near the new town of Morrissey, East Kootenay District, B. C.:—Commencing at a post marked 'D. J. Johnson, north-west corner,' adjoining Daniel McKenzie's north-east corner post." Granted Licence 680, 19th Nov., 1902. Carpenter at Morrissey.

John Janiesch—Application page 1637, B. C. Gazette, 1902. For land "situate on the west side of Elk River, north of and near the new town of Morrissey, East Kootenay District, B. C.:—Commencing at a post marked 'John Janiesch's south-west corner,' adjoining Daniel McKenzie's north-east corner post." Granted Licence 681, 19th November, 1902.

Daniel McKenzie—Application page 1637, B. C. Gazette, 1902. For land "situate on the west side of Elk River, north of and near the new town of Morrissey, East Kootenay District, B. C.:—Commencing at a post marked 'Daniel McKenzie's north-east corner.'" Granted Licence 683, 19th November, 1902. Former Secretary Miners' Union at Fernie.

Wm. Senkbiel—Application page 1637, B. C. Gazette, 1902. For land "situate on the west side of Elk River, north of and near the new town of Morrissey, East Kootenay District, B. C. :—Commencing at a post marked 'William Senkbiel's south-east corner,' adjoining Daniel McKenzie's north-east corner post." Granted Licence 682, 19th November, 1902. Shoeman at Fernie.

David Tracy—Application page 1552, B. C. Gazette, 1902. For land on the west side of Elk River, about six miles in a southerly direction from Coal Creek, on Lizard Range. Granted Licence No. 674, 6th November, 1902.

John Levis—Application on page 1552, B. C. Gazette, 1902. For land on the west side of Elk River, about six miles in a southerly direction from Coal Creek, on Lizard Range. Granted licence No. 668, 6th November, 1902.

George McClincy—Application page 1552, B. C. Gazette, 1902. For land on the west side of Elk River, about five miles in a southerly direction from Coal Creek, on Lizard Range. Granted Licence No. 669, 6th November, 1902.

S. F. Wallace—Application page 1553, B. C. Gazette, 1902. For land on west side of Elk River, close to Sand Creek Pack Trail, on Lizard Range, about three miles west of Elk River. Granted licence No. 675, 6th November, 1902. Hotel-keeper at Fernie.

C. A. Klingensmith—Application page 1553, B. C. Gazette, 1902. For land on the west side of Elk River, close to Sand Creek Pack Trail, on Lizard Range, about three miles west of Elk River. Granted licence No. 667, 6th November, 1902. Restaurant-keeper at Fernie.

John Rudolph—Application page 1553, B. C. Gazette, 1902. For land on the west side of Elk River, about five miles in a southerly direction from Coal Creek, on Lizard Range. Granted licence No. 671, 6th November, 1902.

Peter VanDusen—Application on page 1553, B. C. Gazette, 1902. For land on the west side of Elk River, about three miles west of Coal Creek, on Lizard Range. Granted licence No. 666, 6th November, 1902.

August Baldauf—Application on page 1553, B. C. Gazette, 1902. For land on the west side of Elk River, about four miles in a southerly direction from Coal Creek, on Lizard Range. Granted licence No. 663, 6th November, 1902. Saloon man at Fernie.

J. D. Quail—Application page 1553, B. C. Gazette, 1902. For land on the west side of Elk River, about three miles south-west of Coal Creek, on Lizard Range. Granted licence No. 670, 6th November, 1902. Hardware man at Fernie.

John Derr—Application page 1554, B. C. Gazette, 1902. For land on the west side of Elk River, about three miles west of Coal Creek, on Lizard Range. Granted licence No. 665, 6th November, 1902.

J. R. Stevens—Application page 1554, B. C. Gazette, 1902. For land on the west side of Elk River, opposite Coal Creek, on Lizard range, about three miles west of Elk River. Granted Licence No. 672, 6th November, 1902.

W. A. Switzer—Application page 1558, B. C. Gazette, 1902. For land on the west side of Elk River, about three miles south-west of Coal Creek, on Lizard Range. Granted Licence No. 673. 6th November, 1902.

Charles J. Bulger—Application on page 1554, B. C. Gazette, 1902. For land on west side of Elk River, opposite Coal Creek, on Lizard Range, about three miles west of Elk River. Granted Licence No. 664, 6th November, 1902.

Charles Walde—Application page 1880, B. C. Gazette, 1902. Granted Licence No. 741, 3rd December, 1902.

Thomas Morrison—Application on page 1880, B. C. Gazette, 1902. Granted Licence No. 740, 3rd December, 1902.

Francis German—Application on page 2205, B. C. Gazette, 1902. Granted Licence No. 827, 19th January, 1903.

Mrs. H. A. Senkbiel—Application on page 2205, B. C. Gazette, 1902. Granted Licence No. 828, 19th January, 1903.

#### APPLICATIONS FOR TIMBER LICENCES.

Donald M. Lineham—Application page 1685, B. C. Gazette, 1902. For timber land on the west bank of Elk River, about two miles north of Lizard Creek. Granted Licence No. 1688, 28th October, 1902. Doctor, brother of John; lives in Territories.

R. J. Davis—Application page 1492, B. C. Gazette, 1902. For timber land, about two miles from Elk River and about four miles from Fernie, B. C.; commencing at a post planted on the north line of McDougall & Proctor timber limit, where the Hartley Trail crosses the said north line. Granted Licence No. 1592; no date.

L. A. Davis—Application page 1492, B. C. Gazette, 1902. For timber land, commencing at a post planted near the north line of McDougall & Proctor's timber limit, where the Hartley trail crosses, about two miles from Elk River and about four miles from Fernie, B. C. Granted Licence No. 1593.

A. K. Paulson—Application page 1492, B. C. Gazette, 1902. For timber land, about three miles from Elk River and about five miles from Fernie, B. C., alongside of Hartley Trail. Granted Licence No. 1594.

J. L. Paulson—Application page 1492, B. C. Gazette, 1902. For timber land, about four miles from Elk River and about six miles from Fernie, B. C., alongside of Hartley Trail, where it crosses the Hartley Creek. Granted Licence No. 1595.

H. W. Herchmer—Application page 1037, B. C. Gazette, 1902. For timber land on the north side of Lizard Creek, about four miles from its mouth. (Special licence applied for.) Granted Licence No. 1477, 12th September, 1902. Lawyer at Fernie.

S. Herchmer—Application page 1037, B. C. Gazette, 1902. For timber land on the north and south sides of Lizard Creek, about three miles from its mouth. Granted Licence No. 1478, 12th September, 1902. Lawyer at Fernie.

A. J. Farquharson—Application page 1036, B. C. Gazette, 1902. For timber land on the north side of Lizard Creek, about two miles from its mouth. Granted Licence No. 1479, 12th September, 1902. Gaoler at Fernie, owns a building or two in Fernie.

J. L. Gates—Application page 1036, B. C. Gazette, 1902. For timber land on the north side of Lizard Creek, about three miles from its mouth. Granted Licence No. 1480, 12th September, 1902. Hotel-keeper at Fernie.

H. W. Barnes—Application on page 1037, B. C. Gazette, 1902. For timber land on the north and south sides of Lizard Creek, about two miles from its mouth. Granted Licence No. 1481, 12th September, 1902. Partner of Gates.

T. C. Thompson—Application page 1037, B. C. Gazette, 1902. For timber land on the north side of Lizard Creek, about four miles from its mouth, Granted Licence No. 1482, 12th September, 1902. Dead.

H. J. Johnson—Application page 1033, B. C. Gazette, 1902. Survey authorised, not completed. Land will be put up for tender.

Arthur S. Claxton—Application page 1033, B. C. Gazette, 1902. Survey authorised. Land will be put up for tender by advertisement in B. C. Gazette.

F. S. Barrow—Application page 2299, B. C. Gazette, 1902. Survey authorised. Land will be put up to tender by advertisement in B. C. Gazette.

Order in Council No. 88, 1903.

AT THE EXECUTIVE COUNCIL CHAMBER, VICTORIA, B. C.

The 10th day of March, A.D. 1903.

On the recommendation of the Honourable the Chief Commissioner of Lands and Works, and under the provisions of sec. 116 of the "Land Act," chapter 113, R. S., 1897, His Honour the Lieutenant-Governor of British Columbia, by and with the advice of his Executive Council, doth order as follows:—

That a Crown grant be issued to "The Columbia and Western Railway Company" of a right of way 100 feet in width, being 50 feet on each side of the centre line of the spur line of railway from Smelter Junction to the Town of Trail.

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

Approved and ordered this 11th day of March, A. D., 1903.

(Signed) HENRI G. JOLY DE LOTBINIERE,  
*Lieutenant-Governor.*

*To His Honour the Lieutenant-Governor in Council :*

The undersigned has the honour to recommend that a Crown grant be issued to the Columbia and Western Railway Company, under authority of section 116 of the Land Act, of a right of way 100 feet in width, being 50 feet on each side of the centre line of the spur line of railway from Smelter Junction to the Town of Trail, which is more particularly indicated on a plan deposited at the Lands and Works Department on the 29th day of August, 1902.

Dated this 10th day of March, A. D. 1903.

(Signed) W. C. WELLS,  
*Chief Commissioner of Lands and Works.*

Approved this 10th day of March, A. D. 1903.

(Signed) J. D. PRENTICE,  
*Presiding Member of the Executive Council.*

VICTORIA, B. C., March 12th, 1903.

*Messrs. Davis, Marshall & Macneill,  
Barristers, etc., Vancouver, B. C.,*

RE COLUMBIA AND WESTERN RY. AND LOT 4,593 IN S. E. KOOTENAY.

DEAR SIR,—I beg to acknowledge receipt of your communication of the 10th inst., in which you call the attention of the Government to the litigation recently begun in connection with Lot No. 4,593, in East Kootenay, and in which you make the suggestion that the Government should intervene in the proceedings which you have taken to test the validity of the licences, patents, etc. The matter will be placed before the Executive at an early date.

Yours faithfully,  
(Signed) W. W. B. McINNES,  
*Provincial Secretary.*

VANCOUVER, B. C., March 28th, 1903.

*The Hon. The Provincial Secretary,  
Victoria, B. C.*

DEAR SIR:—Referring to our letter to you of the 10th inst., with reference to the Columbia and Western Crown grant, and to your reply that the matter would be brought before the Council as early as possible, would you kindly let us know if the matter has been taken up, and if a decision has been arrived at as to whether the Government will intervene or not.

Yours truly,  
(Signed) DAVIS, MARSHALL & MACNEILL,  
Per D. G. M.

*Opinion for the Honourable W. C. Wells, Chief Commissioner of Lands and Works, re Order in Council of the 4th September, 1901, relating to land subsidy of the Columbia & Western Railway Company, and Order in Council of the 18th March, 1902, rescinding above.*

1. The Order in Council of the 4th September, 1901 (No. 393), was passed in pursuance, or intended pursuance, of chap. 8 of 1896, British Columbia Statutes. The only difficulty that arises is in respect of the Deficiency Blocks Nos. 4,593, 4,594, marked C. & W. Deficiency Blocks 1 and 2 on plan accompanying the Order in Council (No. 393).

Section 1 of the Act provides for a grant of lands to the Company by the Lieutenant-Governor in Council "in the Districts of Kootenay and Yale," through which the proposed line of railway was to be constructed.

Section 3 provides for a reserve, upon the Company filing a plan of "a tract of land extending sixteen miles on each side of the line of the section or sections as aforesaid of the proposed railway, and also such further area contiguous to the railway as the Lieutenant-Governor in Council may direct, in order to make up a sufficient quantity under this Act."

It may be remarked in passing that from this section it is evident that the Legislature had in contemplation the contingency of the alternate blocks provided for in section 4 being insufficient to provide the full quantity required to make up the subsidy, and so expressly provided for a further reserve "contiguous to the railway."

The first section of the railway being completed, from Rossland to Castlegar, 38.9 miles, the Company took over the even numbered blocks 2 to 24 in part satisfaction of their subsidy to the extent of 458,700 acres, leaving 84,612 acres deficiency, to make up which blocks 26 and 28, containing 84,480 acres, are available. As these blocks are clearly in localities as near as practicable "contiguous to the said line of railway," and the Company has accepted them, no dispute or question of law arises.

In respect of the third section of the railway, from Castlegar to Christina Lake, 53 miles, the Company is entitled, under section 10 of the Act, to a grant of 20,000 acres per mile, or 1,060,000 acres. The available area of alternate blocks, laid out under section 4 (and exhausting all such blocks actually contiguous to the railway), is only 163,512 acres (allowing for alternation), leaving 896,488 acres deficiency. Section 6 of the Act provides how this deficiency is to be made up:—"The Company shall be entitled to equal areas of Crown lands in the said district . . . . . to be reserved, selected and granted to the Company from time to time . . . . . in such manner as the Lieutenant-Governor in Council may determine, and in localities as near as practicable contiguous to the said line of railway."

This leaves a pretty wide discretion to the Lieutenant-Governor in Council; (1) as to the reservations; (2) as to the selection and granting of the lands to the Company. This discretion is not, however, to be arbitrarily or capriciously exercised, but must conform to the spirit and directions of the Statute.

"According to his discretion," means "according to the rules of reason and justice, not private opinion, according to law and not humour." "The discretion must be exercised honestly and in the spirit of the Statute," otherwise the act done would not fall within the Statute. (Maxwell on Statutes, 172-176.)

Do the words "as near as practicable contiguous to the said line of railway" fetter, or impose any conditions on the exercise of this discretion? This depends largely on whether these words are to be deemed "mandatory" or merely "directory"; a most difficult question, and one upon which both lawyers and judges are apt to differ, so that no dogmatic opinion can be expressed. In *Howard v. Bodington* (2, P. D., at p. 211), Lord Penzance says of the general rule: "I believe, as far as any rule is concerned, you cannot safely go further than that in each case you must look to the subject-matter, consider the importance of the provision, and the relation of that provision to the general object intended to be secured by the Act, and upon a review of the case in that aspect, decide whether the enactment is what is called imperative or only directory."

To this general rule, Maxwell (at p. 521) in respect to Statutes granting rights or privileges, adds the following:—

"Where powers or rights are granted with a direction that certain regulations or formalities shall be complied with, it seems neither unjust or inconvenient to exact a rigorous observance of them as essential to the acquisition of the right or authority conferred; and it was, therefore, probable that such was the intention of the Legislature." (Maxwell, p. 521.) "Taking the former class of cases, it seems that when a statute confers a right, privilege or immunity, the regulations, forms or conditions which it prescribes for its acquisition are imperative, in the sense that non-observance of any of them is fatal." (Ib.)

Reviewing the Statute in the light of these principles, I am of the opinion that in passing Order in Council No. 393, the Lieutenant-Governor in Council did not exercise his discretion according to law, and in the spirit of the Statute, and in this connection I have not overlooked the decision in *Hall v. Queen* (7, B. C. R., 93), which, I think, is distinguishable from the present case. It is evident from a perusal of the Statute that the Legislature contemplated the railway lands as adjacent, and more or less parallel, to the line of railway. Section 2 expressly provides for the reservation of "further area contiguous to the line of railway" to make up deficiency lands; and when in section 5 we find the Lieutenant-Governor in Council directed to make his reservation and selections "in localities as near as practicable contiguous" to the railway—which means, I take it, "as nearly contiguous as practicable"—I think these words should be given their plain and obvious meaning. "Practicable" is defined in the cyclopaedia dictionary as "capable of being performed or effected by human means or agency"; "performable"; "possible to be done or effected"; and here there is no pretence for saying that there

were not ample lands, both "contiguous" and "nearly contiguous" to the railway, out of which the deficiency in respect of the third section could be made good, without going to the extreme eastern boundary of the Province, while an ample quantity of land would still remain within the limits of the reservation (to be shortly referred to) for the subsidy to be earned by the construction of the remaining sections of the railway. What, I think, the Legislature contemplated and has pretty clearly indicated in the Statute, is that the lands "contiguous" and "nearly contiguous" should be exhausted before going to other portion of the Districts.

One is strengthened in this view from the fact that, on the 26th of May, 1896, the Company wrote the Chief Commissioner of Lands and Works asking for a reservation along the proposed line of railway of 124 miles by 56, containing 4,443 acres, less alienations, etc., as calculated by their own engineers 1,060,000 acres, expressly to cover the blocks contemplated by section 4 of the Act, and the deficiency that might arise, as contemplated by section 6. This reserve was made by the Government, and for seven years the Province has lost the benefits of pre-emption and sales, etc., so that the Company can hardly complain if the Government adopts practically the construction the Company itself must be assumed to have placed on the Act.

However, the Order in Council (No. 393) can be dealt with on broader and more simple legal principles. The Act of 1896 may be regarded as a "*statutory contract* between the Province and the Company." Under this contract the Company became entitled to 1,060,000 acres in respect of its third section. Now, the Order in Council seems to be nothing more nor less than a *proposal* by the Government to vary this contract, and, indeed, the Order in Council has apt words to express such a proposal. The Minister "proposes that the deficiency shall be made up," etc. . . . "the said grants to be in full and final compensation and satisfaction of all lands earned by the Company," "and that a certified copy of the Minute . . . can be handed to the Company."

It is elementary contract law that a *proposal* does not become a contract until accepted, and that until accepted the proposal can always be revoked. The history leading up to the Order in Council clearly establishes that the Order in Council was, in fact, intended as a proposition formally submitted to the Company as a "proposal," and it is clear that the Company could, after receipt of the Minute of Council, either accept or reject the proposition therein contained. As a matter of fact, the Government had not, when the rescinding Order in Council was passed, and have not up to the present time, received any notification from the Company of acceptance; and, in my opinion, before acceptance by the Company would be valid, it would be necessary to have a resolution either of the shareholders or, at least, of the directors (under section 22 of their Act of Incorporation, 59 Vic., cap. 54), and probably also the consent of the holders of land grant bonds, if any issued under sections 23 and 24 of the Act. So that from this aspect—in the absence of "acceptance" by the Company—I have little doubt that the Lieutenant-Governor in Council could withdraw the offer in question and rescind the Order in Council.

The difficulty, however, has been suggested that Crown grants having been prepared to the blocks in question and passed under the Great Seal of the Province, the title has actually passed to the Company. But here, just as in the case of deeds between subject and subject, the *intention* must be looked at (*See Broom's Legal Maxims*, pp. 41, 42, of *O'Grady v. McCaffray*, 2, O. R.) From the history of the matter, and the frame of the Order in Council itself, it is clear that the Crown never had the intention of passing any title to the Company. As before pointed out, the Order in Council is a mere proposal to the Company, and until definitely accepted by them, until they had definitely waived their claims to the deficiency of over 270,000 acres, it is impossible to conceive that the Government intended the grants to become operative. The Order in Council itself does not authorise the issue of the grants. In respect of the alternate and even-numbered blocks from 2 to 24, regarding which there was no dispute, the Order in Council recommends that the lands be "granted," but in respect of the "deficiency lands," the Order in Council recommends that the Company be permitted to make up the deficiency in areas to which it is entitled by a grant of blocks . . . . and that the said grants be in full and final satisfaction of all lands earned by the Company, and that Crown grants . . . . be *prepared*, etc., and not "issued."

In fact, after the grants were *prepared*, the Chief Commissioner, at the instigation of the Government, went to Montreal to discuss with the Company further and better terms of settlement, failing to obtain which, he refused to deliver the grants, showing that the Order in Council was not in any way regarded as a final settlement, or that the grants were intended to be issued, or to pass title to the Company.

The case appears to me to come within the authority of *O'Grady v. McCaffray* (2, O. R., 309), where a patent has been prepared of the lands, which were returned as "patented lands" by the Crown Lands Department to the sheriff, and sold by the sheriff for taxes due by the patentee; it was held that the title had not passed from the Crown because it was not shown that the patent was intended to be operative, and because the patent had not been *delivered*. (Somble—that patent may be issued and held in escrow.) From the facts, as stated to me, it cannot reasonably be contended that there was even a *delivery* of these grants, and it seems equally clear that it was not the intention of the Executive that they should be operative *pro se*.

The contention of the Company that the title has actually passed to it can only be supported by revoking ancient and technical principles of law—and, no doubt, is attempted to be founded on the rule that the King cannot alienate by deed, but only "by matter of record," but if the Company relies upon technicalities, they can reasonably be held to the strict letter of the law. What, then, is a "record" in this sense? A *record* is a memorial of a proceeding or act of a *Court of Record*, entered in a roll of parchment for the preservation of it . . . . (VII. Comyn's Digest, p. 208).

*Record*: An authentic testimony in writing contained in rolls of parchment and preserved in a *Court of Record* . . . . (Wharton). In respect of letters patent, by which the King makes grants of his land, the practice in England was to *inrol* them in the Chancery, where they passed into the custody of the Master of Rolls, and so became *records* of the Courts. (See Encl. Laws of England, Sub. tit. "Master of the Rolls"). It may be said that in British Columbia we have no method of making letters patent a *record* of any Court. Then, if that is so, the whole principle that the King can only alienate by matter of record falls to the ground, so far as this Province is concerned, and it is idle to say that the title in this passed by matter of record, because there is no record in the proper meaning of the term.

It may be argued that *registration* or *recording* in the Government offices should be taken as equivalent to a "record" in the true sense, *i. e.*, a record in a Court of Record; but, even if this be tenable, the answer is that these grants have never been *registered* or *recorded* as required by law. It is true that the Deputy Commissioner of Lands and Works has a record of these instruments, in which a copy (unsigned and otherwise imperfect) is bound up; but the Act of 1889, chap. 59, specifically requires that letters patent shall be registered with the Provincial Secretary, and this has never been done. The Provincial Secretary is the keeper of all registers and archives of the Province (Sec. 3, s/s (c)-). He is a Provincial Registrar, and as such shall *register* all . . . . . letters patent . . . . . and other instruments and documents under the Great Seal . . . . . and his signature shall be proof that such . . . . . letters patent . . . . . and other instruments and other documents exist and are lawfully in his possession," etc., etc.

In respect of these particular grants this Act has never been complied with, and, in my opinion, the letters patent cannot be said to be lawfully registered or *recorded*. Hence, as there is no "record," either in the strict sense, nor registration or record as contemplated by the Act, and no issue or delivery of the grants, there has been no actual alienation by the Crown . . . . no title passed to the Company. On the other hand, if it is argued that it has been the practice in the Province that the title should pass by *delivery*—as in the case of an ordinary deed—then the answer, of course, is that there has been no delivery. The delivery has been expressly and intentionally withheld, and the case comes within the decision in *O'Grady and McCaffray*, before cited.

Finally, it may be noted, that in any case there is no estoppel against the Crown (*Humphrey v. Queen*, 30, S. C. R., 591), nor will an action of specific performance lie by a subject against the Crown (*re Irish*, 2, M. L. R., and see *Crotty v. Vrooman*, 1, M. L. R.).

(Signed) C. C. McCaul.



[As introduced.]

HON. THE PREMIER.

No. 16.]

[1903.]

BILL.

An Act to ratify an Order in Council approved on the Eighteenth day of March, 1902, rescinding certain provisions of an Order in Council approved on the Fourth day of September, 1901, respecting the Land Grant of the Columbia and Western Railway Company.

**W**HEREAS on the fourth day of September, A. D. 1901, an Order in Council was approved by His Honour the Lieutenant-Governor, by which it was provided, amongst other things, that certain blocks of land (hereinafter called "deficiency blocks") should be granted to the Columbia and Western Railway Company, to make up deficiencies in the alternate blocks of land selected by the Company along their line of railway as land to be granted as aid in respect of the construction of the first and third sections of their railway :

And whereas Crown grants to said Company of said deficiency blocks, described as Lots 4593 and 4594, Group 1, Kootenay District, were duly executed, bearing date the third day of October, A. D. 1901, but were not handed over to the Company :

And whereas by an Order in Council approved by His Honour the Lieutenant-Governor on the eighteenth day of March, A. D. 1902, the said Order in Council of the fourth day of September, A. D. 1901, was rescinded in so far as, but no further than, it related to said deficiency blocks :

And whereas it is expedient to ratify and confirm the said Order in Council of the eighteenth day of March, A. D. 1902 :

Therefore, His Majesty, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows :—

1. The said Order in Council of the eighteenth day of March, A. D. 1902, is hereby ratified and confirmed.

Order in Council 18th March, 1902, ratified.

2. The said Crown grants of said deficiency blocks are hereby cancelled.

Cancellation of Crown grants.

3. It is hereby declared and enacted that the said Crown grants of said deficiency blocks did not convey to the said Company any right or title to the lands embraced in said blocks.

Declaration as to said Crown grants.

Certified Correct as passed Third Reading as amended the 21st April, 1903.

W. E. FISHER, *Law Clerk.*

HON. THE PREMIER.

BILL.

No. 16.]

[1903.

An Act to ratify an Order in Council approved on the Eighteenth day of March, 1902, rescinding certain provisions of an Order in Council approved on the Fourth day of September, 1901, respecting the Land Grant of the Columbia and Western Railway Company.

Preamble.

WHEREAS on the fourth day of September, A.D. 1901, an Order in Council was approved by His Honour the Lieutenant-Governor, by which it was provided, amongst other things, that certain blocks of land (hereinafter called "deficiency blocks") should be granted to the Columbia and Western Railway Company, to make up deficiencies in the alternate blocks of land selected by the Company along their line of railway as land to be granted as aid in respect of the construction of the first and third sections of their railway :

And whereas Crown grants to said Company of said deficiency blocks, described as Lots 4593 and 4594, Group 1, Kootenay District, were signed and sealed but not delivered, bearing date the third day of October, A.D. 1901, and were not handed over to the Company :

And whereas the lands described in the Crown grants were not lands within the scope of the "Columbia and Western Railway Subsidy Act, 1896" :

And whereas by an Order in Council approved by His Honour the Lieutenant-Governor on the eighteenth day of March, A.D. 1902, the said Order in Council of the fourth day of September, A.D. 1901, was rescinded in so far as, but no further than, it related to said deficiency blocks :

And whereas it is expedient to ratify and confirm the said Order in Council of the eighteenth day of March, A.D. 1902 :

Therefore, His Majesty, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows :—

Order in Council 18th March, 1902, ratified.

1. The said Order in Council of the eighteenth day of March, A.D. 1902, is hereby ratified and confirmed.

Cancellation of Crown grants.

2. The said Crown grants of said deficiency blocks are hereby cancelled, and it shall be considered for all purposes that the said Crown grants never existed.

Declaration as to said Crown grants.

3. It is hereby declared and enacted that the said Crown grants of said deficiency blocks did not convey to the said Company any right or title to the lands embraced in said blocks, and said lands are hereby declared never to have passed from the Crown by virtue of the said recited Crown grants.

[Letter, Chairman of Committee to Minister of Finance, 8th May, 1903 ; see p. cclxvii.]