

FURTHER REPORT OF SELECT COMMITTEE

Appointed to enquire into the claims of certain applicants to purchase land near the mouth of Carpenter Creek, West Kootenay District.

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LEGISLATIVE ASSEMBLY,

March 21st, 1893.

MR. SPEAKER:

Your Select Committee appointed to enquire into the claims of certain applicants to purchase land near the mouth of Carpenter Creek beg leave to report as follows:—

That Angus McGillivray first staked out the land in question on October 9th, 1891.

Then he returned to the land on the 22nd or 23rd of October, and put a new notice on the stake, throwing off a portion of the land on the east side, making no change on the other three sides.

That it was the second notice that he published in the Gazette, dated October 17th, 1891.

That he tendered the purchase money, but it was refused.

That when the reserve was taken off he immediately had the land surveyed, tendered payment, and deposited the field-notes in the Lands and Works Department within the time allowed by the Act.

That it appears that Messrs. A. S. Farwell and Josiah Fletcher had a claim staked out by two agents on the 21st of October, 1891.

That the notice on the stake read as follows:—

“October 21st, 1891.—Notice is hereby given that we, the undersigned, claim three hundred and twenty acres of land, commencing at this post, extending forty chains west; thence 80 chains north; thence 40 chains east; thence 80 chains south to initial post, containing 320 acres of land, more or less.

(Signed)

“J. FLETCHER,

”

“A. S. FARWELL.”

That the notice was different to that published in the Government Gazette, which called for a different piece of land. Said notice being as follows:—

“Notice is hereby given that we intend to apply to the Chief Commissioner of Lands and Works to purchase 320 acres, more or less, of land in the District of West Kootenay:—Commencing at a post placed on the east shore of Slocan Lake, about 40 chains south from the mouth of Seaton Creek; thence west along the lake shore 40 chains; thence north along the lake shore 80 chains; thence east 40 chains, more or less, to a point 80 chains due north from the point of commencement.

“J. FLETCHER,

“A. S. FARWELL.

“Nelson, October 21st, 1891.”

That no correction appears to have been made towards making the notices correspond.

That Messrs. Farwell and Fletcher never had the land surveyed.

We also find that the application of Messrs. Farwell and Fletcher, as published in the Gazette, conflicts with the application of Angus McGillivray only in respect to a small portion on the west side.

From the evidence obtained we are of the opinion that Angus McGillivray has more nearly complied with the law than Messrs. Farwell and Fletcher.

J. M. KELLIE,

Chairman.

MINUTES AND EVIDENCE.

MEETING HELD MARCH 17TH, 1893.

Present: Messrs. Kellie (Chairman), Croft (Secretary), Booth, and Rogers.

The following affidavits were handed in by Mr. A. S. Farwell, marked "A" and "B":—

Affidavit "A" reads as follows:—"I, William Lynch, of Kaslo, in the Province of British Columbia, solemnly and sincerely declare—

1. That I am engaged in the West Kootenay Mining District.
2. That in October, 1891, I was at the mouth of Carpenter Creek with Angus McGillivary and James McNeill.
3. That the three of us agreed to stake and apply for purchase of land at that place with joint equal interests.
4. That we staked an area of what we believed to be one hundred and sixty (160) chains square, or two thousand five hundred and sixty acres (2,560), on either the eighth, ninth, or tenth day of October, A.D. 1891.
5. That the said land included the whole or a large portion of the area which the Government afterwards reserved.
6. That we agreed to use Angus McGillivary's name on the notice, as I was not a British subject, and as both James McNeill and I had entire confidence in him.
7. That I wrote the notice on the back of a printed power of attorney, and Angus McGillivary affixed the same to the stake.
8. That on reaching the Government Office at Ainsworth we found we had applied for too much and the staking was faulty.
9. That I returned to Carpenter Creek (in the company of Eli Carpenter) by way of Nelson and Slocan River Valley, and reached Carpenter Creek on, I believe, the twenty-first day of October, 1891.
10. That on the next morning at daylight John Sandon and Bruce White came to where we were camped and told me they had staked the land at the mouth of Carpenter Creek on the previous day in the names of Joseph Fletcher and A. S. Farwell.
11. That John Sandon and Bruce White further told me that Angus McGillivary had also staked the land on the same day that they had done so, and stated, to the best of my belief, that he, Angus McGillivary, had staked the land after them.
12. That on the day following my arrival at the mouth of Carpenter Creek I visited the stake which Angus McGillivary, James McNeill, and I had placed on or about the ninth day of October, A.D. 1891.
13. That the notice which I had written, and which Angus McGillivary had affixed to the said stake, was torn into pieces and scattered near the stake.
14. That I collected and kept in my possession for some months the fragments of the said notice, but I have now lost them.
15. That a new notice, dated the 17th day of October, A.D. 1891, and bearing Angus McGillivary's name, was upon the said stake.
16. That Angus McGillivary did not inform me of his intention to remove the old notice and substitute one with an erroneous date.
17. That to the best of my belief the second notice was not written by Angus McGillivary, as he had asked me to write the first notice, and had then given me the impression that he could not write it himself.
18. That I believe it was written for him at Ainsworth, and dated either when written or at the future date when he hoped to reach, but did not reach, the mouth of Carpenter Creek.

And I make this solemn declaration conscientiously believing the same to be true, and in virtue of the Oaths Act.

(Signed) WM. LYNCH.

Signed and declared by the within named William Lynch at Kaslo, British Columbia, this twenty-eighth day of January, in the year of Our Lord one thousand eight hundred and ninety-three, before me,

[L.S.]

B. H. LEE,

Notary Public.

Document marked "B" is as follows :—

NELSON, B. C., February 22nd, 1893.

N. Fitzstubs, Esq.:

SIR.—I beg to state that Mr. Angus McGillivary, who claimed to have made an application to purchase a certain piece of land on Slocan Lake, at mouth of Carpenter Creek, said to me last fall that he had put in an application at this office for said land. I examined the records and could find no entry of such application from Mr. McGillivary for land filed in this office, and further, that in questioning Mr. McGillivary in regard to the matter he admitted to me that he did not make said application, but trusted to some one else to do it for him. I have forgotten the name of the person which he mentioned.

(Signed) T. H. GIFFEN,
Recorder at Nelson.

Sworn before me at Nelson this 22nd day of February, 1893.

(Signed) GEORGE A. BIGELOW, J. P.

ANGUS MCGILLIVARY, being called, and being under oath, saith as follows :—

Mr. Kellie :—You have heard it read from that affidavit that the first notice you put up was removed. Did you remove that notice?

Mr. McGillivary :—No. I never did remove it at all.

Witness was excused.

JOSIAH FLETCHER, being called and duly sworn, saith as follows :—

Q.—What do you know about this matter?

A.—I know very little about this case, except my instructions to those people to stake this claim, and their being under the impression that no one had staked it or intended to stake it. They had been over in that country staking claims. We were in a company in mining; they were Sandon and Bruce White. They were telling me about that piece of land at the mouth of Carpenter Creek, and I advised them to go back and locate it. It was decided that it should be staked in my name and Mr. Farwell's; we agreed to that. I knew nothing about McGillivary's claim for six weeks after that, or two months. Then I heard that he pretended to have some claim to it. This is all I know, but I will answer any questions that you wish to ask me.

Mr. Croft :—I just heard you say to Mr. McGillivary, in conversation with him, that he had removed the first notice?

Witness :—That is hearsay, of course.

Mr. Croft :—You don't know that positively?

Witness :—No; as for the staking, I don't know anything about how it was staked or where they were.

Mr. Kellie :—All you know is from hearsay?

Witness :—Yes.

Mr. Croft :—What was the date that you were on the ground?

Witness :—I was there all summer; I lived there for some months.

Mr. Croft :—You were not there in 1891?

Witness :—No.

Mr. Kellie :—You simply don't know anything about the staking of the land?

Witness :—Nothing more than my instructions to the boys; and when they came back they told me what they had done.

Mr. Croft:—What was the date?

Witness:—I could not say; somewhere along about the 20th or 21st—somewhere along about there.

Mr. Croft:—When you sent your party out, and they afterwards returned, they did not tell you that the land was previously staked?

Witness:—They did not come that way; Mr. Farwell saw them before I did. I had nothing to do with them after that, except to forward the business.

Mr. Croft:—You had no knowledge about McGillivary staking the land for six weeks?

Witness:—No; I don't know but what it was longer than that. I did not see them. It may have been two months; it was quite a long time. I would not say positively, but I was told by Lynch that McGillivary had staked it. He said that McGillivary had made a mistake, and that these parties got on and staked it before McGillivary got back. He went back and put up a new notice and dated it back, and I heard that he had given up all hopes of holding it, or trying to hold it. I am not one of the jumping kind, and I don't want to rob any good man of anything. If McGillivary had come to me and told me what he had done, I would either have given it up, or would have compromised with him in some way. I don't know that he ever told me that he had the land staked. I never had but very little conversation with anyone about it.

Mr. Kellie:—You did not know then, as a matter of fact, that McGillivary had staked the land or had not?

Witness:—I did not; it is all hearsay. But I should say that when he altered his notice he forfeited all right he might have had to claim to land.

Mr. Wootton:—How do you know that he altered the notice?

Witness:—He says so himself; he don't claim the land on the first notice he put up. I have been in this country a long time, and I know that if I made a mistake and staked less or more than the law allows me, I can't alter the notice without losing all claim.

Mr. Wootton:—It is useless to make such statements as that to this Committee. They know the law as well as anyone. They have evidence before them as to what McGillivary did.

Mr. Croft:—It seems to me that Mr. Fletcher does not know any more than Mr. Farwell did; he, like Mr. Farwell, did it through his agents.

Witness:—Yes; they were partners of mine—Sandon and Bruce White.

Mr. Wootton:—When did you last see Bruce White and Sandon?

Witness:—When did I see them?

Mr. Wootton:—Yes; when did you see them?

Witness:—About four months ago.

Mr. Wootton:—You have not seen them since?

Witness:—No.

Mr. Wootton:—Where were they.

Witness:—At Kaslo.

Mr. Wootton:—Were you aware at that time that there was liable to be some trouble in connection with this claim?

Witness:—No.

Mr. Wootton:—Have you since taken any steps whatever to procure evidence from Bruce White and Sandon?

Witness:—I do not know where they are.

Mr. Wootton:—You have not taken any steps to ascertain where they are?

Witness:—No.

Mr. Wootton:—You are not prepared to take any such steps?

Witness:—No.

Mr. Croft:—Where have you been the last four months, Mr. Fletcher?

Witness:—In California. I expect that Bruce White is in Milwaukee, Wisconsin, where he had some friends. I am not sure, though. I think his father lives there. Sandon was drowned here about a month or six weeks ago.

Mr. Wootton:—All that you did then in reference to this land was to instruct these parties to stake it for you in the names of yourself and Mr. Farwell?

Witness:—Yes.

Mr. Wootton:—Nothing further?

Witness:—No.

Mr. Wootton:—You have never made any effort to have the land surveyed?

Witness:—No, nothing more than that I lived on it for a time. I was living on the ground last summer.

Mr. Kellie:—Are there any more questions anyone would like to ask of Mr. Fletcher?

Mr. Wootton:—I do not think it is necessary; he does not know anything about it.

To witness: You never saw any of these notices?

Witness:—No, I was on the ground quite near to the stakes, and they were pointed out to me.

Mr. Kellie:—Why did you not have the land surveyed?

Witness:—It has been surveyed by the Government—surveyed and plotted. At least half of it is plotted.

Mr. Croft:—Don't you think that that survey was made for the purpose of getting a townsite put on it?

Witness:—I suppose so. I don't know what it was surveyed for, but the land was for sale.

Mr. Kellie:—Any other questions anyone would like to ask?

Mr. Booth:—The only thing I can see about this affidavit is this: It will tend to make the first notice faulty, but I don't see that it can affect the second notice at all. It does not affect anything else than the first notice.

Witness was excused.

ANGUS MCGILLIVARY being recalled, saith as follows:—

Mr. Croft:—You heard that affidavit of Mr. Giffin's read. I will read it again for you. (Read affidavit) Do you know anything about that? Have you got anything to say in answer to that?

Witness:—No, I don't think so. He asked me about my making my application and if I had deposited my money, and I told him I had done it through an agent.

Mr. Croft:—Who was your agent?

Witness:—Frank Hughes.

Mr. Croft:—How was the deposit paid?

Witness:—This was last fall.

Mr. Croft:—What was the form of the money that was tendered?

Witness:—In 1892; it was a cheque.

Mr. Croft:—Whose cheque?

Witness:—Mr. W. F. Teetzel's.

Witness was excused.

W. F. TEETZEL, being called and duly sworn, saith as follows:—

Mr. Wootton:—Mr. McGillivary has just stated that a cheque of yours was handed to the Recorder at Nelson as deposit or part payment of land claimed by him. Is that correct?

Witness:—To the best of my knowledge it is. I issued a cheque for \$80; took it to the bank, and had it marked good. It was payable to T. H. Giffin. The cheque was afterwards returned. Mr. Giffin had stated, I believe, that the land was still under reserve; still he had at the same time the Gazette in his possession stating that the reserve had been lifted.

Mr. Croft:—What was the date of that?

Witness:—From the 15th to the 20th of September, 1892.

Mr. Kellie:—That was ten per cent. deposit?

Witness:—Well, it was a cheque for \$80. It covered more than ten per cent.

Mr. Wootton:—I would like to have the evidence Mr. Teetzel has given read over. (The stenographer read over the evidence.) Mr. Wootton continued: To whom was that cheque handed, Mr. Teetzel?

Witness:—Either to Mr. McGillivary or to his agent John Elliott. I think that I handed it to Mr. McGillivary himself.

Mr. Wootton:—I just did that for the purpose of clearing up Mr. McGillivary's statement. He said that he tendered the cheque himself.

Mr. McGillivary:—Yes, I tendered the cheque.

- Mr. Wootton read over the printed evidence. He said: I would like to ask the chair man to put one question to both Mr. Fletcher and Mr. Farwell. That is, if they have made any effort whatever to get any evidence from Bruce White and Sandon. The Committee will see from the evidence I have read that this was the object, and the sole object, of the extension of time that was granted to Mr. Farwell some time ago.
- Mr. Kellie:—Mr. Fletcher, have you made any effort to get that evidence?
- Mr. Fletcher:—No.
- Mr. Kellie:—Have you, Mr. Farwell?
- Mr. Farwell:—I sent to an agent at Kaslo to get an affidavit from Sandon, Bruce White and Lynch.
- Mr. Kellie:—But in regard to the staking of the land?
- Mr. Farwell:—Sandon had unfortunately been drowned. I suppose the reason that Bruce White has not been heard from is that he is away seeing his friends, that is what the men who are up there do—they go away for the winter. The reason I did not think that McGillivray thought that his staking was good was that—
- Mr. Croft:—What was your object in getting this affidavit from Mr. Lynch?
- Mr. Farwell:—I met him up on the steamboat going from Nelson to Ainsworth, and he told me he knew something about it. That was why I got his affidavit.
- Mr. Croft:—Where did you meet him?
- Mr. Farwell:—On the steamboat going from Nelson to Ainsworth.
- Mr. Croft:—What date was that?
- Mr. Farwell:—I think the 6th December.
- Mr. Croft:—Did you ask him for this affidavit then?
- Mr. Farwell:—No; I don't know how this subject came up; we were having a general conversation, and at that time I did not know that this affidavit would be necessary.
- Mr. Croft:—Was it in connection with your own staking that he knew something?
- Mr. Farwell:—No, he had nothing to do with that. It was in connection with the staking for McGillivray. He practically told me then what is in that affidavit now.
- Mr. Kellie:—Are there any more questions now that you would like to ask, Mr. Farwell? It is the last chance you will have?
- Mr. Farwell:—I understood that you were going to call Mr. Gore as to what was necessary to be done as to the survey. I said that my opinion was that it was not necessary to survey it. I understood that you were going to call Mr. Gore and go into that matter?
- Mr. Croft:—We examined Mr. Johns.
- Mr. Farwell:—There is nothing in the evidence about it. His evidence does not appear to have been taken down.
- Mr. Booth:—We went over there and saw him. There are general instructions to all surveyors.
- Mr. Farwell:—Yes; but this was a special case. No surveyor in his senses would meddle with a Government survey. I have had practice enough in this country, goodness knows, and I won't go ahead and trouble a Government survey without getting orders to do so.
- Mr. Kellie:—What bearing has the Government survey upon this application?
- Mr. Booth:—He merely expresses his opinion on that point. It simply comes to this: that if the Government survey is recognized—all right. Mr. Farwell never surveyed the land, and he now says that the Government survey was sufficient.
- Mr. Farwell:—Under the Act, when the Government survey the land they charge fifteen cents per acre for surveying it.
- Mr. Booth:—But we understand that these lands are inside the Government survey?
- Mr. Farwell:—Suppose, for the sake of argument, that he is entitled to every foot he applied for, how would he get 120 acres outside of that? The stake is established by the Chief Commissioner of Lands and Works, and he was infringing upon that without special instructions.
- Mr. Booth:—I suppose he would ask for what was outside?
- Mr. Croft:—But anyone applying for 320 acres inside a mile square would have to survey it?
- Mr. Farwell:—The Land Office does not hold it that way.
- The Committee adjourned to report.

Farwell admits his staking was done by agents, which fact is contrary to the Act.

He produces no evidence to prove that the land was staked even by agents, simply states that he understood it was staked, or that his men told him that they had staked it.

He also admits his stake notice and Gazette notice are not the same. The Committee find his stake notice is as follows:—

“October 21st, 1891.—Notice is hereby given that we, the undersigned, claim 320 acres of land, commencing at this post; extending 40 chains west; thence 80 chains north; thence 40 chains east; thence 80 chains south to initial post; containing 320 acres of land, more or less.

(Signed) “J. FLETCHER,
“A. S. FARWELL.”

Now as this land is situated on the east bank of Slocan Lake, and the lake shore is true north and south, and his initial post was planted within a few feet of the shore, the 40 chains west from initial post would take him immediately into the lake, so you will see that by this notice water was staked off instead of land.

We will now take Mr. Farwell's Gazette notice. You will find he asks for 40 chains following the lake shore *west*; thence 80 chains following the lake shore *north*. You will remember as I stated a moment ago the lake shore runs directly north. Now how would it be possible to run both west and north and follow the shore when the shore line is north?

It is plainly to be seen that when Mr. Farwell's men returned to Ainsworth after staking this land, that he found a mistake had been made by the men in calling for land *west* from initial post, when it should have been *east* from initial post. So to try and overcome the difficulty he sent a different notice to the Gazette than the one that had been put upon the stake, but the change, if anything, made it worse than before.

Now as regards the surveying. As you know, it is necessary by law to have your land surveyed, and the Act on this point is plain and distinct, but Mr. Farwell did not think it worth his while to survey his application, giving as an excuse for his not doing so the fact that the Government had already surveyed a block a mile square at this point, a totally different piece of land altogether, in fact by no stretch of the imagination could his application be made fit the Government survey. The fact is he seems to have forgotten that his men staked *lake* or *lake shore*, or both, in place of land. In fact it would be an impossibility for Mr. Farwell or any other surveyor to survey his application, and he no doubt was fully aware of that fact, or the chances are that he would have complied with the Act, so his excuse in that respect should not have any consideration.

Mr. Farwell stated in his evidence that there was no record in the Land Office of McGillivary's application, but in saying that he gives distinct proof that such record must exist, for he says the Chief Commissioner of Lands and Works told him last July—long before the reserve was lifted—that McGillivary's application apparently covered the same ground as his, and asked him to look the matter up. If there was no record of McGillivary's claim, how did the Chief Commissioner know anything about it; but should no record of McGillivary's claim exist it should in no wise effect the case, as the reserve was put on the land by the Government for the express purpose of stopping the record of these applications, or preventing them filing their claims.

Mr. Farwell also stated in his evidence that he did not know this land had been previously staked by McGillivary, but in the face of this statement he says Sandon and White on their return told him that McGillivary was on the ground the same day they staked it, putting up a *fresh* notice. Well, if he was putting up a *fresh notice*, it stands to reason that he must of put up one previously.

I have shown a few instances in which Farwell has not complied with the Act. The fact is, in no instance has he complied or attempted to comply with the law, excepting that he has paid into the Lands Office \$288.00. Why they accepted his and refused mine I do not attempt to guess.

Now, as regards my claim, it is shown that a slight mistake was made in his first notice, calling for too many chains but the right number of acres; but you will also find that when I discovered my mistake, I immediately returned upon the land and rectified it, and in every instance have I fully, and up to the strict letter of the law, complied with every part of the Act.

ANGUS MCGILLIVARY.

VICTORIA, B. C., February 20th, 1893.

J. M. Kellie, Esq., M.P.P.,

Chairman, Committee on Slocan Land Claims.

SIR,—I beg to submit the following remarks, *re* Mr. Angus McGillivray's alleged claim to a certain tract of land at the mouth of Carpenter Creek, on Slocan Lake, West Kootenay District.

According to Mr. McGillivray's evidence he appears to have placed a stake and notice, dated October 9th, 1891, on the said land on the 9th of October, 1891.

On the 22nd or 23rd of October, 1891, he placed a new and different notice, dated the 17th October, 1891, on the same stake. He posted a copy of the said last-mentioned notice on the Record Office at Ainsworth, and published it in the "Miner" and Government Gazette newspapers. He took no other steps to purchase the said land until he saw a notice dated the 7th September, 1892, in the Vancouver "World" lifting a reserve placed on 640 acres of land at the mouth of Carpenter Creek on the 17th March, 1892. He then employed Mr. Perry to make a survey of the land covered by his notice of the 17th October, 1891. He also tendered an application, with a deposit of 10 per cent., at the Government Office, Nelson, which was refused.

(1.) I respectfully submit that the staking and notice on the 9th October, 1891, was dropped by Mr. McGillivray.

(2.) That his second notice was bad, inasmuch as it was antedated five or six days; and section 29 of the "Land Act," as amended in 1891, required the staking should be performed on the same date as that appearing on the notice. In fact, Mr. McGillivray commenced *de novo* on the 22nd or 23rd of October, 1891, with an old stake and a notice dated the 17th October, 1891.

(3.) The act of posting a copy of the notice, dated October 17th, 1891, on the Record Office at Ainsworth was useless, as said section 29 required it to be posted at the Government Office of the district, which was then, and is now, at Nelson.

(4.) Said section 29 requires that the applicant shall "deposit ten per cent. of the purchase money, together with his application to purchase, within ninety days from the date of the publication of his notice in the British Columbia Gazette."

This act Mr. McGillivray failed to perform for the reason, he says, of the land having been reserved.

(5.) Mr. McGillivray's position in this respect, is, I submit, untenable.

The reserve of the 31st December, 1891, and which continued in force until the 17th March, 1892, only covered and did reserve the Crown lands of the Province.

Section 2 of the said Act interprets the meaning of "Crown lands" as follows:—"Crown lands" shall mean all lands of this Province held by the Crown without incumbrance."

Pre-emption claims and applications to purchase are incumbrances on Crown lands; they are separate modes of acquiring land, with the difference that an application to purchase may be refused by the Chief Commissioner of Lands and Works under sub-section 3 of section 29 of the "Land Act." The Chief Commissioner has ruled in similar cases that the applicant not having made his application and paid his deposit within the said ninety days his application could not be entertained.

(6.) With regard to Mr. Perry's survey of the land claimed by Mr. McGillivray, I submit Mr. Perry exceeded his duty as a Provincial Land Surveyor, inasmuch as he had previously surveyed the whole section reserved at the mouth of Carpenter Creek for the Chief Commissioner of Lands and Works, and furthermore had subdivided a portion of the said section into lots and blocks as a townsite for the Provincial Government. Under clause 29 of the said Act surveys of applications to purchase unsurveyed land are provided to be made by Provincial Land Surveyors, approved of and acting under the instructions of the Chief Commissioner of Lands and Works or Surveyor-General, and Mr. Perry was not so instructed.

(7.) The Gazette notice of the 7th September, 1892, lifting the reserve of the 17th March, 1892, at the mouth of Carpenter Creek, states as follows:—

* * * "Any persons who have taken the necessary legal steps to acquire by purchase any portion of such land so released from reserve will be permitted to complete their purchase, upon complying with the further requirements of the 'Land Act.'" * * *

(8.) I respectfully submit, Mr. McGillivray has failed to comply with the "Land Act" in every particular.

I have, &c.,

A. S. FARWELL,