
REPORT OF SELECT COMMITTEE.

DONALD MCKENZIE'S APPLICATION TO PRE-EMPT SECTION 98, ESQUIMALT DISTRICT.

The Select Committee appointed "to enquire into the application of Donald McKenzie to pre-empt Section 98, Esquimalt District, or (in the event of the refusal of such pre-emption record) to enquire into the value of the improvements effected by him upon such land and report to this House," beg to report as follows:—

That D. McKenzie first went on the land in 1875, under the impression that it was comprised in the Railway Belt.

That he applied by letter to the Crown Lands Department, Ottawa, by which department the application was returned to the office here, where it was filed.

That the land is marked "Government Reserve" on a map of Esquimalt District, issued in 1858.

That there is no evidence that the land was reserved for military or naval purposes.

That D. McKenzie made application on February 20th, 1888, to be allowed to pre-empt the section, having previously resided thereon since 1875, cleared a portion of the land, and made substantial improvements, in the belief that when the land came into market he would be allowed to pre-empt or purchase it.

That the section is now, and has been since 1858, at least, a Provincial Government Reserve.

That the value of D. McKenzie's improvements on Section 98 is \$2,300, which includes cost of buildings, fences, clearing and slashing.

All of which is respectfully submitted.

D. W. HIGGINS,

Chairman.

MINUTES AND EVIDENCE.

LEGISLATIVE ASSEMBLY

FEBRUARY 24TH, 1888

On the motion of Mr. Higgins, seconded by Mr. John, it was resolved that a Select Committee be appointed, with power to call for persons and papers, to enquire into the application of Donald McKenzie to pre-empt Section 98, Esquimalt District, or (in the event of the refusal of such pre-emption record) to enquire into the value of the improvements effected by him upon such land and to report to this House. Said Committee to consist of Messrs. Semlin, John, Baker, Cowan, and the mover.

The Committee met at 10:20 A.M., March 6th. Present—Messrs. Higgins, Cowan, Baker, John and Semlin.

D. MCKENZIE, sworn—Am a farmer and reside on section 98, Esquimalt District; have resided there since 1875. Mr. Beaven was Minister of Lands and Works at the time I went on the land. I went to the Lands and Works Office and saw Mr. Beaven there, also Mr. Farwell, then Surveyor-General; both told me that section (98) was railway land, reserved for railway purposes for the Dominion Government, and they advised me to write to the Public Works Department at Ottawa, and make application for the land. I wrote to Ottawa, and my letter was sent back to Mr. Beaven, so he told me on the street. Mr. Beaven told me I would have the first preference for the land, being a settler upon it, and being the first who had made application for it. After Mr. Beaven told me this, I built a house and fenced the land. I also cleared and cultivated it. I have been there ever since. I calculate my improvements to be worth \$2,000. After Mr. Beaven came back into the Government, about 1880, I spoke to him again about it frequently. He then told me that there had been a mistake, that the land was a Provincial Government Reserve, but told me to hold on and keep possession, and I have done so. Before Mr. Beaven came back to the Lands and Works I called on Mr. Smithe, who was then in the Lands and Works, and he told me that the land was a Provincial Government Reserve. He said I was all right, but if the land was sold it would have to be by auction, because others were offering for it. I put in for the entire section—about 300 acres. Have fenced and improved ten acres. There are about ten acres more cleared. I was told by Mr. Smithe, about the spring of 1886, not to make any more improvements until he had come out and seen the land; if it was not wanted by the public domain it would be sold by public auction. Mr. Gore was present at the time Smithe was talking to me. All my improvements were *bona fide*. After the conversation with Mr. Smithe I discontinued making improvements. Geo. McKenzie jumped a portion of the section, part that I had cleared, and has held it for two years back. I have resided continuously on the section since 1875. Have cropped it regularly, and settled there in good faith. I have buildings and fences on it, and have made it my home for nearly 13 years. Settled on it in the belief that the section was railway land, and that it would be open to purchase on the same footing as has since been accorded settlers on the Mainland Railway Belt. I claim that I should be put in possession of the land in fee simple, or, failing that, that I should be paid full value for the land. Know that Price Bros. have applied to purchase the land. Muller has fenced in a portion of the land, and claims it. Muller ran a line through my farm yard.

DONALD MCKENZIE.

R. F. JOHN, M. P. P., sworn—Know Donald McKenzie, and on his behalf I interviewed Mr. Smithe, Chief Commissioner of Lands and Works, think it was the Session of 1885, relative to land settled on by him in Esquimalt District. I asked Mr. Smithe why Mr. McKenzie could not obtain a title to the land claimed by him, now that the land in question was released

from the railway reserve. Mr. Smithe replied that he had enquired into the matter, and found that the land settled on by Donald McKenzie was a Provincial Reserve, reserved for military purposes, and that if it was disposed of at all he thought it would be by public auction, as the land was valuable property, and that Mr. McKenzie would be paid for whatever improvements made by him, as the Government wished to deal fairly with Mr. McKenzie, as no doubt he had gone on the land under the impression that it was railway land; but he (Mr. Smithe) could not see his way clear to grant a title to McKenzie for the land.

R. F. JOHN.

SECOND DAY.

MARCH 13TH, 1888.

The Committee met at 10:20 A.M. Present—Messrs. Higgins, Cowan, Baker, John, Semlin.

R. Beaven, M. P. P.—Was Chief Commissioner of Lands and Works in 1875. Remember D. McKenzie, the petitioner in this case, speaking to me in 1875, and again in 1882, about land in Esquimalt District. I have been to the Lands and Works Office and examined the documents on record there. I find that the first letter in reference to this matter is one of Mr. McKenzie's, which had been referred to the Department from the Crown Lands Department, Ottawa. In the letter McKenzie says that he wishes to purchase a piece of land in the railway reserve, describing it by pre-emption lines and natural boundaries, and stating that he has previously applied at the Lands and Works Office, Victoria, to purchase the land, and has been told that the Department has nothing to do with it. There is a pencil memo. on the letter, in my own handwriting, to the effect that on the 28th December, 1882, I was informed by Mr. McKenzie that this land was a portion of Section 98, Esquimalt District, which was and is a Provincial Government reserve, and is not necessarily included within the railway reservation. The letter to the Crown Lands Department was written in 1875. It is very likely that I told McKenzie in 1875, from his description of the land, that it was a portion of the railway reserve. In 1882 he told me he was on Section 98, Esquimalt District, which is a Provincial Government reserve. Never heard of Section 98 being a naval reserve.

ROBERT BEAVEN.

A. S. FARWELL—Was Surveyor-General in the summer of 1875. Know D. McKenzie, here present. Have seen him several times in the Lands and Works Office. Do not know on what business he came. Have no recollection of telling McKenzie to write to the Dominion Government about the land. Knew that all the land from Esquimalt to Seymour Narrows was reserved for railway purposes for the Dominion. Do not know that Section 98 was ever reserved for Provincial Government purposes. May have given McKenzie the address of the Department at Ottawa that had control of the railway lands. Do not remember taking a bound volume from a high shelf and Mr. Beaven and I looking at it, and telling McKenzie that the land was reserved for railroad purposes.

A. S. FARWELL.

GEORGE MCKENZIE, sworn—Settled in Esquimalt District in 1858, on the section adjoining No. 98. Before I settled on my own land I applied to Mr. Pemberton, then Surveyor-General, to be allowed to purchase Section 98. He told me it was a naval reserve, but that I might lease it for 20 years. I did not lease it. I cleared a portion of the Section, and put a fence about it. I did this work before I touched my own land. I have held all I fenced ever since. Cleared from 3 to 5 acres in 1858; think it cost me \$150. Never asked to be put in possession of the land after what Mr. Pemberton told me. Four or five years ago, Mr. D. McKenzie and J. Scafe jumped the piece I had cleared. They put some fencing around it, and got a crop out of it. The following year I told them I would take the land again. Mr. Hett wrote warning me not to meddle with the land. I went to Pooley, who wrote D. McKenzie, and they did not interfere with the land again. I have held it ever since, and I have been clearing a part of Section 98 ever since. Cannot estimate the value of D. McKenzie's house and outbuildings. Part of the ground cleared by D. McKenzie was pretty rough. It would cost \$100 an acre or more to clear. The big stumps were hard to get out. The land was principally alder, with a good deal of fir and other trees common to the Island.

To D. McKenzie—Do not remember telling you that I had nothing to do with the land. The land was poor, having been cropped for many years, and I let it lay awhile. Saw no new growth on the land I had cultivated.

GEORGE MCKENZIE.

ERNST MILLER, sworn—Live at Parsons' Bridge. My land is Section 97. It adjoins Section 98. Went to live on my section in 1874. Always heard that Section 98 was reserved for naval purposes for the Home Government. Never applied for it myself, but heard that Mr. Price did, and Mr. Dunne told me he had applied and got the answer that it was a naval reserve. Had no portion of Section 98. Had a suit with D. McKenzie about four or five acres of my land, which he claimed. I proved my line and he lost the case. I have to move a little portion of my fence in to straighten it. Think D. McKenzie's house and outbuildings cost \$500. The fence would cost \$100. Think the land cost to clear on an average \$150 an acre. At the Lands and Works Office, where I called to inquire about the lines, I was told the Province had nothing whatever to do with the land, and there was no use going to any expense in the matter. Smithe told Mr. Gore that the Province had nothing to do with the land—it was a Government reserve for naval purposes.

To Mr. Semlin—Do not know what land is worth to rent in our neighbourhood. Do not think the rent of the land occupied by D. McKenzie would have been worth the improvements.

ERNST MILLER.

H. PRICE, sworn—Reside at Parsons' Bridge. Bought the hotel about 11 years ago. McKenzie was living on Section 98 when I went there. There was then and is now a house occupied by him on the section. Some of the land is cleared. It is pretty good land. Have been in the house, but could not estimate its value. There are outhouses and sheds, but they are not of much value. Some of the land is cultivated around the building. The cultivated land adjoins Mr. Muller's land. Made application at the Lands and Works to purchase or pre-empt some of the land on the south side of Millstream. Mr. Gore, Surveyor-General, told me the land could not be got, as it was a Naval Reserve. Geo. McKenzie, in 1863, was in possession of a portion of Section 98. I was then on the land a good deal, and know that he was there. He has always been on the land, and I thought it belonged to him. Geo. McKenzie did not hold, in 1863, the portion of the land now under cultivation by D. McKenzie, although he was on Section 98. D. McKenzie has done a lot of work on the land he has cleared. Have cleared land in the vicinity that cost me \$300 an acre to clear. The trees had been all cut down from the land I speak of, and I had to get rid of the stumps, realizing nothing from the sale of wood. McKenzie sold some wood from his clearing. On the south side of Section 98 I did some work, and D. McKenzie said the land was his. I am told a notice afterwards appeared in the *Colonist* forbidding any person to take timber off or do any work on Section 98. At the Lands and Works I was told the land was a Naval Reserve, and that I could not get it. Mr. Smithe told me that.

HENRY PRICE.

JOHN H. SCAFE, sworn—I reside in Highland District. Have known Section 98 ever since D. McKenzie went on it to live. Went there about 1875 with a load of lumber for a house, which Mr. McKenzie intended to put up on the land. He put up a house and outbuildings. I assisted him. Am a rough carpenter. Was off and on working at building. The house is 22 by 24, divided into four rooms. Think the house cost \$400 to build. The outbuildings might have cost \$100. The fence is principally round poles that were cut off the land. About ten acres were enclosed. 3,000 poles would make the fence, which would cost in all \$100. The land was so thick when I went there that I had to cut a way for the waggon through the second growth. There were large stumps on the land. D. McKenzie has cleared, stumped, drained and stoned ten acres of the land, and I have ploughed it since. The land is good, but is getting run out a bit. D. McKenzie has resided continuously on the land since 1875. Could not say what it was worth to clear the land and prepare it for cultivation. Think Mr. Muller's evidence is very fair on that subject. Spoke to Mr. Smithe about the land, and he told me to tell McKenzie not to mind what any one said, but to stay on the land and not to interfere with any one, and no one should interfere with him.

To D. McKenzie—You asked me to help you plough a small piece of land. We had to clear a good part of it. In conversation with Geo. McKenzie he said he had once cleared part of the land, but had since abandoned all claim to it. Afterwards it was given up to him, and his son and son-in-law have since worked it.

JOHN H. SCAFE.

H. PRICE, re-called—Mr. Smithe told me at the Lands and Works that Mr. McKenzie could not own the land, and it was doubtful if any other party could ever buy or pre-empt it, as it was a reserve.

HENRY PRICE.

Adjourned.

THIRD DAY.

Present—Messrs. Higgins (in the Chair), John and Semlin.

The Chairman read a letter from E. Muller stating that he sold to the Railway Company an acre and three-quarters of his land (Section 97) for \$170. That he might have got more if he had gone to arbitration.

W. S. GORE, Surveyor-General, sworn—Know Section 98, Esquimalt District. The section is marked in the land register as a Government Reserve, and there is a note as follows:—"Returned to Select Committee of House of Assembly as a Government Reserve" (without mentioning specific purpose), "November, 1863." The official map of Esquimalt District, 1858, shows Section 98, and across its face is printed "Government Reserve." Am not aware that there is on record any mention that Section 98 was reserved for Imperial Government purposes. I have examined the correspondence respecting this lot on file at the Lands and Works. The following letter from the petitioner is numbered on the register ^{2932/75}; after the number comes the name, the purport and the words, "forwarded (or) returned from Ottawa." The record shows that this letter was not addressed to the department at Victoria, but was sent by Mr. McKenzie to Ottawa. There is a note written across the face of the letter, "Returned from Crown Lands Department, Ottawa;" then a stamp, "Received at the Land Office, Victoria, September 7th, 1875." There is another pencil mark on the letter in Mr. Beaven's writing, "28th September, 1882, Donald McKenzie says that this land is a portion of the Provincial Government Reserve, Section 98."

VICTORIA, BRITISH COLUMBIA, July 3rd, 1875.

HONOURABLE SIR,—There is a piece of railway land which I wish to purchase, situated about four miles from Esquimalt. Bounded on the south by Hudson Bay Company's land; on the west by Mr. George McKenzie's pre-emption claim, and on the east by Mr. Muller's purchase land. It contains 160 or 200 acres, taking in part of Mill Mountain. If said land is not open for sale just now, please let me know if I may settle on it, and make improvements; or if I get the first chance to purchase it, or, if another should purchase it, would I get anything for my improvements, &c.

An answer to the above will much oblige,

Your, &c.,

(Signed) DONALD MCKENZIE,
Victoria P. O., B.C.

P. S.—I made enquiry at the Land Office in this place, and was told that they had nothing to do with it, that I should write to Ottawa.

(Signed) D. MCKENZIE.

Witness—There is no record of any reply having been made to that letter; and there is no further correspondence up to June, 1883. Then there is a letter from McKenzie's lawyer:—

VICTORIA, 21st June, 1883.

The Honourable

The Chief Commissioner of Lands and Works:

SIR,—I have the honour to apply, on behalf of Mr. Donald McKenzie, for leave to purchase Section 98, Esquimalt District, or at least that portion of it which he has improved.

I may mention that Mr. McKenzie applied for leave to purchase this land in 1875, but some doubt seems to have existed as to whether it was within the railway reserve; and he then, with the consent of the Chief Commissioner of Lands and Works, entered on the land and erected buildings, and made other improvements on it, and has ever since resided on it.

I have, &c.,

(Signed) EDWIN JOHNSON.

Witness—I find in the letter book the following copy of reply to the above :—

LANDS AND WORKS OFFICE,
VICTORIA, B. C., June 28th, 1883.

SIR,—Referring to your letter of 21st inst., applying on behalf of Mr. Donald McKenzie, for permission to purchase section 98, Esquimalt District, or at least that portion which he has improved, I am directed by the Honourable Chief Commissioner of Lands and Works to inform you that the land described is a Government Reserve, and that he has no power to deal in any manner therewith; and that he is further not aware of any consent having been given by the Department to its occupation by Mr. McKenzie—officially or otherwise—(no such power having existed over such reserved lands).

I have, &c.,
(Signed) JNO. J. AUSTIN,
Clerk of Records.

*Edwin Johnson, Esq.,
Victoria, B. C.*

The next letter is dated January 10th, 1884 :—

VICTORIA, B. C., January 10th, 1884.

*The Honourable
The Chief Commissioner of Lands and Works:*

SIR,—On the 21st June, 1883, I had the honour to apply, on behalf of Mr. Donald McKenzie, to purchase Section 98, Esquimalt District, or at least that portion of it which he has improved.

In my letter I mentioned that Mr. McKenzie had applied as early as 1875 for leave to purchase this section, but as there was then some doubt as to whether it was within the railway reserve limits, he was unable to obtain the necessary leave. He, however, obtained the consent and sanction of the then Chief Commissioner of Lands and Works to enter upon and improve the said section, or any portion of it, and was promised by him that should the said section not be within the reserve limits he should have the first right to purchase it, and upon that understanding Mr. McKenzie entered upon the land. He has cleared over 30 acres of it, drained it, erected buildings, and made other improvements upon it, and has resided upon it ever since.

Mr. McKenzie is desirous of purchasing this land, and now that the railway reserve limits are no longer in doubt there seems no reason why the promise made by the former Chief Commissioner of Lands and Works should not be fulfilled.

I therefore have the honour to renew my application of June 21st of last year, on behalf of Mr. McKenzie. Awaiting an early reply,

I have, &c.,
(Signed) EDWIN JOHNSON,
Per J. S. G.

P.S.—I am instructed by Mr. McKenzie to say that should his application for leave to purchase be refused he will claim reasonable compensation for his improvements.

(Initialed) E. J., per J. S. G.

The reply to the above is as follows :—

VICTORIA, B. C., 11th January, 1884.

Re SECTION 98, ESQUIMALT DISTRICT.

SIR,—In reply to your letter of yesterday's date I beg to refer you to a communication from this Department dated 28th June last, upon the same subject, the statements contained in which I must now reiterate.

There appears to be a misunderstanding on the part of your client regarding the nature of the reservation applying to this section. Mr. McKenzie was not refused permission to purchase at any time on the ground that the land formed a portion of the railway reservation, but because the section was reserved from sale, and was returned to a Select Committee of the House of Assembly as a Government reserve (without mentioning any specific purpose) in November, 1863.

I cannot recognize that Mr. McKenzie has any claim to the land, and must therefore refuse your application on his behalf

I have, &c.,
(Signed) WM. SMITHE,
Chief Commissioner of Lands and Works.

*Edwin Johnson, Esq.,
Barrister-at-Law, City.*

The next document is dated February 20th, 1888 :—"I hereby make application to record as a pre-emption claim Section 98, Esquimalt District. Donald McKenzie." It is necessary that an application to be allowed to pre-empt should be accompanied by a declaration that the land is not reserved. Mr. McKenzie has always been told by myself and others in the department that the land was reserved, and could not be dealt with in any manner. Do not remember Mr. Smithe asking me if there were any water privileges reserved, nor my replying "No." Recollect McKenzie being in the office, but cannot recall the conversation that took place.

To Mr. Semlin—Have formed no estimate of the extent or value of Mr. McKenzie's improvements.

To the Chairman—Have no recollection of James Dunne applying for the land. I will search and report to the Committee.

W. S. GORE.

D. MCKENZIE, recalled—Had a conversation with Mr. DeCosmos respecting this land. He was out electioneering at the time, and he told me that Mr. J. Dunne had applied at Ottawa for Section 98, and had done so in consequence of information he had received at the Lands and Works Office, Victoria. He (DeCosmos) said he made the application at Ottawa for Dunne, and was told that I was ahead of him, that my application was in first. I understood the date of Dunne's application to be in 1875.

To Mr. Semlin—Have been 13 years on the place. Have made it my home during that time. Have devoted my time principally to working on the land. Have partially made my living from the place. I spent my money in improving the place. Have cultivated about ten acres. Have ten acres more slashed and burned.

To Mr. Cowan—Consider my improvements worth more than \$2,000 ; if paid for my labour they would be worth a good deal more. I was always told by Mr. Beaven and Mr. Smithe that my claim for improvements would be considered if I did not get the land.

To the Chairman—Am a voter in Esquimalt District. No one ever promised to get me the land if I would vote for him for the House. Neither Mr. Pooley, Mr. Hett, Mr. Helgesen, nor Mr. Higgins. If Mr. Scafe says either did he is mistaken.

DONALD MCKENZIE.

Mr. GORE, recalled—Have not been able to find any letters, either to or from J. Dunne, respecting this land.

W. S. GORE.

Adjourned till Wednesday, March 21st, at 10:30 A.M.

FOURTH DAY.

MARCH 21st, 1888.

Committee met at 11 A.M. Present—Messrs. Higgins, Baker, Semlin and John.

Messrs. Scafe and Price were re-examined as to certain rumors connecting candidates for Parliament in the district with the land (Section 98), but threw no light on the subject.

D. W. HIGGINS,
Chairman.