

No. 23.

PETITION.

—:—

To the Honourable Speaker and Members of the Legislative Assembly of British Columbia.

The petition of John McLarty, of 1,115, Pender Street, Vancouver, B. C., Cruiser, humbly sheweth:—

1. That on or about the 5th day of July, 1907, your petitioner entered into a syndicate agreement with J. Edward Bird, Malcolm McBeath, Herbert W. Baker, E. T. Kingsley, all of the City of Vancouver, in the Province of British Columbia, and Thomas R. Pearson, of the City of New Westminster, in the Province of British Columbia, for the purpose of cruising and staking timber in the neighbourhood of the Alberni Canal, Barclay District, Vancouver Island, your petitioner to act as agent for said syndicate in return for a one-sixth interest in the stakings and half expenses.

2. That in pursuance of said agreement your petitioner staked thirteen claims or sections in the name of J. Edward Bird, between the 7th day of July, 1907, and the 28th day of July, 1907, all of which stakings were properly made by your petitioner in compliance with the Statutes in that behalf then in force.

3. That the necessary affidavits and documents in connection with said claims were forwarded by J. E. Bird, on behalf of syndicate, to Messrs. Oliver & Johnston, Victoria, to record.

4. That Mr. Hoy, an officer in the Department of Lands and Works, objected to the notices on the ground that they were printed on Manilla paper.

5. That your petitioner restaked all of said thirteen claims and four more, between the 5th and 25th days of August, 1907, posted the proper notices and had the advertisement inserted in the Alberni News, the newspaper circulating in the district nearest to said locations, and also in the B. C. Gazette, as required by law.

6. That immediately upon completion of said restaking your petitioner searched the records in the office of the Government Agent at Alberni to find out whether any other person or persons had filed any notices or affidavits covering any of the ground or claims so staked by your petitioner, and found that no filing or recording whatever had been made in respect of same.

7. That at the same time your petitioner inquired from Mr. R. J. Burde, proprietor of the Alberni News, if any notices regarding any of the above-mentioned seventeen claims, or the ground covered by them, had been published in his paper, and was informed by him that no such notice or notices had been published.

8. That at the time of making such stakings your petitioner searched carefully for any tracings of former stakings or occupancy of the ground covered by the claims located by him and could find none, although your petitioner and his assistants searched diligently for same.

9. About this time your petitioner also staked and recorded twenty timber limits or claims on the Nitnat River, also in the Barclay District, all of which claims were properly

staked, recorded and advertised in the Alberni News before any other person or persons had staked, recorded or advertised same. The said claims were also duly advertised in the British Columbia Gazette.

10. In all your petitioner's cruising and surveys of the above-mentioned 27 claims, he could not discover any trace of former staking or occupancy.

11. Shortly after the time your petitioner made the stakings above referred to, he learned that one Edward Henderson claimed to have staked the seventeen claims above referred to, and one J. N. Britten the twenty claims above referred to.

12. That these parties had never staked said claims nor had they advertised them in the paper circulating nearest to said district, but only in the B. C. Gazette.

13. That the Deputy Commissioner of Lands and Works issued Licences in respect of said timber to Edward Henderson and J. N. Britten, notwithstanding the protests against such lodged in his department by your petitioner and J. E. Bird.

14. That in March, 1908, after much insistence upon the part of your petitioner and his syndicate, the Attorney-General granted a fiat to sue in his name for a declaration as to the title to said timber limits, in which action Henderson & Britten and their assigns, the Chippewa Falls Lumber Co., were defendants.

15. That the said Attorney-General demanded the sum of \$800 as security for costs, which sum was deposited as required.

16. That on or about June 13th, 1908, the Attorney-General demanded a further deposit of \$1,200 as security for costs.

17. That as result of such demand, your petitioner's syndicate was compelled to abandon said action, to the damage of said syndicate in general and your petitioner in particular.

18. Your petitioner then had and still has evidence to show that the stakings made by him were properly and legally made, and were recorded and filed in proper time and before any others in respect of said claims, and that the alleged stakings of Henderson & Britten were not properly or legally made and their declaration in that respect false and fraudulent.

19. The said Henderson & Britten never staked any of the said claims until after the contest between them and your petitioner began, and they refused to send a surveyor into the field with one named by your petitioner to prove these facts, although urged by your petitioner to do so.

Your petitioner, therefore, prays that a Select Committee of the House be appointed to investigate and inquire into the matters herein set forth, and to give your petitioner such relief as may be just and the circumstances of the case require.

And your petitioner, as in duty bound, will ever pray.

JOHN McLARTY.

Witness : W. C. BROWN.

DOMINION OF CANADA, .
PROVINCE OF BRITISH COLUMBIA. }
To WIT :

In the matter of the " Land Act " and in the matter of the petition of John McLarty re certain timber limits staked at or near the Alberni Canal, Vancouver Island.

I, John McLarty, of 1,115, Pender Street, in the City of Vancouver, in the Province of British Columbia, Timber Cruiser, do solemnly declare :—

1. That I have read over the annexed petition and I say positively that the allegations of fact contained in said petition are true in substance and in fact.

And I make this solemn declaration conscientiously believing it to be true and knowing it to be of the same force and effect as if made under oath and by virtue of the Canada Evidence Act.

Declared at the City of Vancouver, in the
Province of British Columbia, this 16th day of
February, A.D. 1909.

JOHN McLARTY.

W. C. BROWN,

A Commissioner for taking affidavits within British Columbia.

STATEMENT MADE BY THE HON. THE ATTORNEY-GENERAL IN CONNECTION WITH A CERTAIN
PETITION ADDRESSED TO THE LEGISLATIVE ASSEMBLY FROM ONE JOHN McLARTY.

The applications for special timber licences referred to in the petition were made in the name of Joseph Edward Bird, of Vancouver, B. C. They were supported by declarations of said McLarty that the lands were as staked on August 23rd and 24th.

On the 28th November the applicants were notified that they were in conflict with certain applications made by one E. Henderson. The Henderson applications were received in the Lands and Works Department on the same day as the Bird applications, and were supported by declarations by Henderson that the lands were staked between July 15th and July 25th, 1907.

The applications of Henderson were adjudicated upon by the Chief Commissioner, after having all persons before him, and under his order the licences were issued to Henderson on January 27th, 1908.

After the issuance of these licences the statement was made by Mr. McLarty that Mr. Hoy, Clerk in the Lands and Works Department, had refused to accept certain previous applications in the name of Bird, for the reason that the notices had been printed and written upon coloured paper. This is denied by Mr. Hoy, and, apparently, he is borne out in this by a letter from Bird to the Department under date of February 15th, 1908.

On the 11th March, 1908, the said Bird made application to the Attorney-General that he should allow his name to be used under sub-section (2) of section 56 of the "Land Act," in an action against Henderson to set aside the licences issued to him, on the ground that they were obtained by fraud, and in this application the said Bird offered to give bonds subject to my approval and amounts, to guard against the costs of the action should it be unsuccessful.

On or about March 24th, the said Bird and Mr. Harold Robertson, representing Henderson and others, appeared before me, and, after hearing what they both had to say, I came to the conclusion that it might have been a physical impossibility for Henderson to have located the number of licences he did in the time set out, and that, therefore, they may have been obtained by fraud. Before coming to this decision, Mr. Bird offered to allow the sum of money then on deposit in the Lands and Works Department, over \$5,000, as security, but I did not consider that, and made an order that he deposit with me a marked cheque for \$600 to protect me against costs in the intended action.

On March 27th Mr. Bird wrote the Department asking that the transferees of the Henderson licences, namely, the Chippewa Farm Lands Company, be added as a party defendant.

On March 30th I wrote back, stating that if a third defendant was brought into the suit I would require an extra sum of \$200, making \$800 in all, to cover my costs, and, at the same time, pointed out that if, in the future, I wanted a further deposit for costs that they would

deposit same, as I pointed out that the case might appear as it went along a very expensive one in the way of obtaining witnesses, and, further, that it might be appealed. I might also point out that in the ordinary case where the Attorney-General's name is used in an action under the "Mineral Act," with only one defendant, the Department has made it a rule to require a deposit of \$600, and as there were three defendants in this case I did not consider it out of the way to ask for \$800.

To my letter of March 30th we received a letter from Mr. Bird, under date of April 1st, in which he undertook that if we demanded a further sum for costs the proceedings would stop until the matter was arranged.

On April 3rd the writ was issued in my name, and some motions were made afterwards in the action but no statement of claim was ever delivered.

In May, 1908, the defendants, I am informed, sent out a survey party to locate the posts put in by their locators, and brought to my attention the fact that it had cost them \$1,600 for this necessary work, and that \$1,200 could be recovered on taxation by way of costs if they were successful in the suit. I required them to file a statutory declaration to that effect. In the meantime, we made enquiries at the Lands and Works Department as to the money deposited there on the Bird application for licences, to see if it would be security, and found out that this money had been assigned to the Herron Timber Company, in which case I would have no claim on it at all.

From certain other information I received, I came to the conclusion that there was some doubt as to whether this action was brought in my name for the purpose of seeing if a fraud was committed on the Lands and Works Department, or whether it was brought with the intention of causing a settlement between the parties, so, accordingly, on the 3rd July, the Department informed Mr. Bird that he must make a further deposit of \$1,200 to indemnify this Department against costs in the action.

After some further correspondence with the Department Mr. Bird discontinued the suit on the 17th August, and the cheque for \$800 which had been deposited with the Department was subsequently returned to Mr. Bird, and the Lands and Works Department remitted the money which had been deposited with them on account of licence fees.

VICTORIA, B. C.:

Printed by RICHARD WOLFENDEN, I.S.O., V.D., Printer to the King's Most Excellent Majesty.
1909.