
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.

LEGISLATIVE ASSEMBLY,

27th February, 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.

That he returned to the land 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.

We also find that A. S. Farwell and Josiah Fletcher had practically the same land staked off by agents on October 21st, 1891.

That the notice written on the stake was not the same as the notice published in the Gazette.

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

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

We therefore consider, from the evidence given, that Angus McGillivray has a just claim to the land in question.

J. M. KELLIE,
Chairman.

The evidence accompanies the Report.

MINUTES AND EVIDENCE.

February 7th, 1893.

Present :—Messrs. Booth, Rogers, Kellie, and Croft.

Moved by Mr. Booth, and seconded by Mr. Rogers, that Mr. Kellie act as Chairman.

It was moved and seconded that permission be asked of Mr. Speaker to employ a stenographer. The secretary *pro tem.* was instructed to notify Messrs. Farwell and McGillivray to appear before the Committee on Thursday next at eleven a.m., to give any information they can upon the New Denver townsite controversy.

It was moved and seconded that Mr. Croft be secretary.

Mr. Johns was written to, to be present at 10:30 a.m. on Friday next.

Messrs. Farwell and McGillivray were asked to be present at 11 a.m. on Friday next.

SECOND MEETING.

10th February, 1893.

Present :—Messrs. Kellie, Rogers, Croft, and Booth.

Mr. Johns was present and explained briefly the matter in dispute. He left sundry plans, and returned to Land Office the original letters which were not examined by the Committee.

MR. ARTHUR STANHOPE FARWELL being sworn :—

Q.—What date did you place stakes on the land you applied for?

A.—I did not stake it; it was staked by Bruce White and John Sandon, who were instructed to do so by Josiah Fletcher.

Q.—What date was it staked?

A.—They said they staked it October 21st, 1891.

Q.—When did you advertise it?

A.—In the Nelson Miner and Government Gazette. I do not know date in Miner, but Gazette, December 10th, 1891.

Q.—Did you learn that the ground was staked before White and Sandon staked it for you?

A.—They stated that it was not staked.

Q.—Do you know now that it was staked?

A.—It was staked by the men; I do not know.

Q.—Have you any complaint against the Government in connection with their not granting you the land applied for by you?

A.—I have no complaint against the Government.

Q.—Have not the Government refused to give you a title?

A.—No.

Q.—Why do they not grant it to to you?

A.—I cannot tell.

Q.—Don't you know that there is another application for the same land, McGillivray's.

A.—No, I don't know it, but I have heard of it. I never saw an application of Mr. McGillivray's.

Q.—Have not you sent a written statement to the Land Office protesting against McGillivray's claim?

A.—No, I have no recollection of it. They are on file, if ever written. I have no recollection of it.

Q.—Have the Government any deposit of yours on account of purchase of this land?

A.—I think they have \$288.

(Signed) A. S. FARWELL.

MR. ANGUS MCGILLIVARY being sworn :—

Q.—Where do you live?

A.—West Kootenay; occupation, miner.

Q.—Have you any claim on the New Denver Reserve?

A.—Yes.

Q.—Did you stake any lands there?

A.—Yes.

Q.—When?

A.—9th October, 1891.

Q.—Was there any one in that part when you staked them?

A.—Two; James McNeill and William Lynch.

Q.—Have the Government accepted your application for the land?

A.—No; they have not given me any notice to that effect.

Q.—Have you complied with all the requirements of the Land Act?

A.—Yes.

Q.—Have you made a deposit?

A.—No, as the reserve was put on before the time for making the deposit expired.

Q.—When was the reserve taken off the land?

A.—About the 8th September, 1892.

Q.—In your second application what did you apply for?

A.—320 acres, more or less.

Q.—Was any ground staked off at this point—Carpenter Creek—prior to yourself?

A.—No; I was the first one to stake off any land in that locality.

Q.—After noticing that the reserve had been taken off, did you take any steps to carry out the requirements of this notice?

A.—I did. I had it surveyed by Mr. Perry, and I came down to Victoria and deposited through my agent the field-notes in the Land Office about September 24th, 1892.

Q.—Did you tender the money to any one?

A.—At least my agents did (Messrs. Wootton, Barnard & McPhillips). I do not know whether they refused the deposit; they did at Nelson refuse the 10% deposit I offered the Government Agent there.

Q.—The reserve was put on the land before your time was up?

A.—Yes. I tendered the Government Recorder at Nelson the 10% deposit on or about 16th September, 1892, and he refused to accept, saying that he was not sure the reserve was lifted. The first notice I saw of the reserve being taken off was in the Vancouver World.

Q.—Did you know of any other parties staking the land after you?

A.—I saw a stake on the ground—Farwell and Fletcher. I saw the stake this spring.

Q.—Do you recollect the dates?

A.—October 21st, 1891, was the date on the stake; the notice was written on the wood.

Q.—What was the notice?

A.—“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.”

Q.—Did any one else see this notice?

A.—Yes, others saw it.

Q.—Who?

A.—A. Anderson that runs the Slocan House.

Q.—Were you on the ground when it was surveyed?

A.—Yes.

Q.—Did you ever have any conversation with Farwell or Fletcher about this matter?

A.—No.

Q.—Have you had any one go to the Government about the claim?

A.—I saw Mr. Giffin at Nelson last September.

- Q.—Why has your application not been granted?
 A.—I do not know. They have given no reason.
 Q.—Did you know of an application of Wilson Hills or G. B. Wright?
 A.—I know only of G. B. Wright's.
 Q.—Does his claim conflict with yours?
 A.—It is right back of mine, adjoining.
 Q.—Have any of the other parties had their claim surveyed?
 A.—I believe Mr. Wright had. Mr. Perry told me so.
 Q.—Did you know the date of Wright's application?
 A.—I do not know.

(Signed) ANGUS MCGILLIVARY.

THIRD SESSION.

- Present:—Messrs. Kellie (Chairman), Croft (Secretary), Booth, and Rogers.
 Mr. Croft read the evidence taken at the previous meeting, and signed by the deponents.
 Mr. Farwell, who was present, asked leave to question Mr. McGillivary and was permitted to do so, witness being still under oath.
 Mr. Farwell:—How much land did you apply for in that notice posted on October 9th, Mr. McGillivary?
 A.—For 320 acres.
 Q.—Was it described as so many chains square, or as so many acres?
 A.—It was described by chains and by acres.
 Q.—Is that notice in the Gazette dated 17th October—is that the same notice?
 A.—It is the same notice, only it is not exactly the same number of chains. I altered the chains a little afterwards.
 Q.—In that notice you put up were the chains ever altered?
 A.—I changed the number of chains afterwards.
 Q.—What date did you change it?
 A.—I am not certain if it was the 22nd or the 23rd—something like that.
 Q.—Of what month?
 A.—Of October. Your man was on the ground on the same day. It was on or about the 22nd.
 Q.—What was the notice you put up on the 9th of October? Was it on paper or on what?
 A.—It was on paper.
 Q.—Who wrote it?
 A.—Mr. Lynch. I wrote the first notice. When I came down to where they were camped we disagreed as to how much land I had staked. Lynch claimed that he wrote the notice for the Soda Creek townsite. I am not sure how much he said, whether he said 60x80 chains or not. It overran the amount any way. They both argued that I was wrong, and I told them to write another notice. They were at breakfast, and as soon as they were over breakfast they did it. Then I went back to Ainsworth and found out that I was wrong.
 Q.—The notice of October 22nd was written by Lynch?
 Mr. Wootton:—I would like to ask if it is proposed to bring forward as witnesses the men who staked the claim for Mr. Farwell? I don't think that it is fair to cross-examine Mr. McGillivary in this way if the other men are not produced to be cross-examined in the same way on his behalf.
 Mr. Farwell:—Until I started asking him questions I had no idea what his case was.
 Mr. Wootton:—We may not be in a position to know what you base your claim on. We are entitled, I submit, to the same privilege of cross-examining your witnesses if you are going on to cross-examine Mr. McGillivary.
 Mr. Croft:—Mr. McGillivary will have exactly the same show that Mr. Farwell has.
 Mr. Wootton:—I now ask if it is Mr. Farwell's intention to produce the men who staked the land for him?

Mr. Farwell:—I don't propose to bring witnesses here from West Kootenay at enormous expense. I do propose to get affidavits from them, though. To bring down three or four men here would cost something.

Mr. Wootton:—Then I think that if the affidavits are to be admitted, it should be subject to the same privileges being accorded us as are given to Mr. Farwell. These affidavits should not be considered unless Mr. Farwell is prepared to allow us to give similar affidavits.

Mr. Croft:—That would be only fair.

Mr. Booth:—What we want is to get at the facts of the case and we will give each side the same show.

Mr. Wootton:—We are prepared to go into the matter as thoroughly as possible.

Mr. Croft:—I think if one side has liberty to produce affidavits and to cross-examine, the other side should have the same.

Mr. Kellie:—We have the right to call for all persons and papers that are necessary to the enquiry.

Mr. Croft:—I move that any witnesses that can throw any light on the case be called.

Mr. Farwell:—I think that those affidavits will be down in a day or so. They will be here in a few days, anyway. The men do not know anything except about the staking.

Mr. Croft:—I think, Mr. Wootton, you may leave the matter to the Committee with perfect confidence. If it is necessary, we will have those witnesses down.

Mr. Farwell:—At whose expense?

Mr. Kellie:—We want to give every man a chance.

Mr. Croft:—If Mr. Farwell cross-examines Mr. McGillivray, who staked his own land, then Mr. McGillivray, if he wishes it, ought to have the same chance with Mr. Farwell's men.

Mr. Rogers:—It seems to me that those affidavits and the communications that have been had with the Lands and Works Department ought to be enough.

Mr. Croft:—Mr. Wootton has just as much right to cross-examine Mr. Farwell's witnesses as he (Mr. Farwell) has to cross-examine Mr. McGillivray. If Mr. Farwell's agents were down here, both parties would then be on the same footing.

Mr. Booth:—All we want is to get at the facts.

Mr. Farwell:—I can tell you all that I know about it. I only go on what my men tell me about it. These men were Bruce White and Sandon. This is what I presume they will do, for what I wrote them was to go down to a Justice of the Peace and make a declaration of what really occurred. What they tell me is that they went and staked the ground, and McGillivray came the same day and went and placed on the post a notice written by Lynch. Lynch says he was travelling with McGillivray and a man named James McNeill. As I understand it, Lynch wrote the notice and attached McGillivray's name to it. This was on the 8th of October, 1891. Then he returned to Ainsworth. According to Lynch's story, they separated there. They found at Ainsworth that it was a wrong area of land, and, according to Lynch's statement, they abandoned the idea of having it altogether. He returned to Carpenter Creek with a man named Eli Carpenter, after whom the creek is named. They got into camp on the 21st, and found both Bruce White and Sandon there. They had just staked the ground for themselves. Then McGillivray came along and took off the notice that had been put up, and put a fresh one there dated the 17th.

Mr. Wootton:—That is just a bare statement of yours.

Mr. Farwell:—Yes, of course it is.

Mr. Wootton:—Then those affidavits you will get can only prove compliance with the Land Act, so far as the staking is concerned.

Mr. Croft:—Do you want to ask Mr. McGillivray any more questions, Mr. Farwell?

Mr. Farwell:—Yes.

Q. (by Mr. Farwell):—Lynch wrote that notice and attached your name?

A.—No; I wrote the notice myself,—the first one.

Q.—Then you all returned to Ainsworth?

A.—Yes.

Q.—What date did you go back the second time?

A.—I think it was about the 18th.

Q.—On the 15th?

A.—No; on the 18th.

Q.—Which way did you go, by the Slocan River or by Bear Lake?

A.—I went by Bear Lake.

Q.—Did you take down that notice when you got there—that notice of the 9th of October?

A.—No, I did not. That notice was left there on the stake.

Q.—What did you do?

A.—I posted a new notice. All the change I had made was in the number of chains.

Q.—That was on the fresh notice?

A.—Yes, a new notice entirely.

Q.—It was dated the 17th of October?

A.—Yes, it is the same as that published in the Gazette, but I sent the notice first to the Gazette.

Q.—Did you put that on the same stake as the notice of the 9th of October?

A.—Yes, on the same stake.

Q.—What date did you put this second notice up?

A.—You have asked me that question already, and I have answered it.

Mr. Wootton:—Answer the question.

Witness:—It was on the 22nd or 23rd.

Q.—Did you make any written application to the Lands and Works Department and deposit ten per cent. before the 11th of February, 1892?

A.—No; it was reserved before that. I wrote to Mr. Kane, who was down here, and he told me it was too late.

Mr. Kellie:—You wrote to Mr. Kane?

Witness:—Yes; to George Kane, of Kaslo, who was down here. He wrote me back that the reserve was on, and that the Lands and Works Department would not accept the money.

Mr. Wootton:—I will examine Mr. McGillivray at some length. I would like to go over the whole ground and have the thing cleared up as much as possible so that the circumstances may be better understood. When did you first come into the West Kootenay country, Mr. McGillivray?

A.—Two years ago, or it was three years ago. Two or three years.

Q.—What do you mean, what section did you go into?

A.—Into this particular section surrounding Nelson.

Q.—When did you first stake this particular land in question?

A.—On the 9th of October, 1891.

Q.—Just look at this plan (handing witness plan)—is that a true plan of the land?

A.—Yes; that is a true plan.

Q.—Will you just tell the committee how you staked the land on that particular date?

A.—I placed the stake post at "A," and I called for 80 chains, following the meanderings of the lake north—

Q.—That is true north, is it?

A.—Yes. That would bring the land to about "B," thence 40 chains east to "D," thence 40 chains south to "C," and from there 40 chains west to the initial post.

Q.—Now, what was that initial post? How was it marked?

A.—It was marked "A. McGillivray."

Q.—Was it four inches square?

A.—Yes.

Q.—Did it stand more than four feet above the surface of the ground?

A.—Yes.

Q.—Did it show what corner-post it was?

A.—Yes.

Q.—What did it state?

A.—It stated that it was A. McGillivray's south-west corner post.

Q.—Were there any other persons present on the ground at the time?

A.—Yes; William Lynch, James McNeill. They were about 40 chains from there, at the mouth of the creek.

Q.—Do you know McNeill's signature?

A.—Yes.

Q.—Is that his signature?

A.—Yes.

Mr. Wootton:—I will now read the affidavit of James McNeill, which is as follows:—

"To whom it may concern: I, James McNeill, free miner, now residing at Bear Lake in the Slocan Mining District, make oath and say as follows, viz.: That on or about the tenth day of October, in the year of our Lord one thousand eight hundred and ninety-one, I was camped on the bank of Slocan Lake near the mouth of Carpenter Creek, together with one Angus McGillivray and one William Lynch, and that in my presence the said William Lynch wrote a location notice for the locating of a portion of the land situated on the east bank of Slocan Lake, and at or about where the townsite of New Denver lies, for and in behalf of the said Angus McGillivray, and that the said William Lynch did hand the said notice to Angus McGillivray, who left us with avowed intention of putting said notice up, and that I saw him, Angus McGillivray, later, when he told me he had posted said notice.

(Signed.) "JAMES MCNEILL.

"Sworn before me on this 25th day of January, at Bear Lake, Slocan District.

(Signed.) "R. F. GREEN, J. P."

Mr. Wootton:—I put this in for what it is worth. It is, no doubt, similar to the affidavits that will be produced by Mr. Farwell.

Q.—At that time did you give any notice of your intended application to purchase this land by the insertion of any notice in any particular paper?

A.—Yes; right after I came out from Slocan.

Q.—What did you do?

A.—I sent the notice to the Miner.

Q.—Have you a copy of the Miner here containing the notice?

A.—I have not one, but there will be one at the office of the Lands and Works Department.

Q.—Will you look at this notice. Is that a true copy of what was sent to the Miner?

A.—Yes, it is.

Q.—Is this the notice that you posted on the 10th of October?

A.—No, it is not; because I found out that I had too many chains.

Q.—We will come to that later on. Now, did you see that first notice in the Miner?

A.—Yes.

Q.—In what issue?

A.—I think in the issue of the 19th or 20th of October.

Q.—Did you send a copy of that first notice to the Gazette?

A.—Not of that first notice.

Q.—Why did you not?

A.—Because I had called for too many chains.

Q.—Explain what you mean by that. Explain what you mean when you say you called for too many chains. Did that first notice call for more than 640 acres?

A.—It called for 320 acres, but I had the chains 60x80.

Q.—You had made a mistake in the notice?

A.—Yes.

Q.—Show us in what way?

A.—I made a mistake by calling for 80 chains west and 60 chains east. It was Lynch that insisted on my having it that way. I was not well posted on the land laws.

Q.—Where would 60 chains have taken you to?

A.—Up beyond there (indicating on plan); I would have had nearly a whole section.

Q.—A section is how many acres?

A.—640, I think.

Q.—You were under the impression that you could not get 640 acres?

A.—Yes; and I did not want that much, anyway.

Mr. Wootton read from document, formerly put in as Exhibit, the first notice. He said: It shows that McGillivray, being under the impression that he had applied for more land than the Act warranted, returned to rectify his supposed mistake. We will show that this was done on his next coming on the land.

Q.—When you discovered the supposed mistake, what did you do?

A.—I went right back on the land.

Mr. Kellie produced copy of the Nelson Miner, which he had procured at the request of the Committee.

Mr. Wootton:—Was that first notice, to which you refer as being wrong, in either of these papers?

A.—No; that first notice was not in any paper. I seen that I made a mistake, and didn't have that notice in any paper at all.

Mr. Croft :—The original notice, then, was never published in any paper at all?

A.—No.

Mr. Croft :—Simply put on the stake?

A.—Yes.

Mr. Wootton :—When did you return for the purpose of rectifying that notice?

A.—It was on or about the 18th of October.

Q.—When did you next appear upon the land?

A.—It was on or about the 22nd of October.

Q.—And what did you do then?

A.—I posted a new notice.

Q.—Is that a copy of the new notice (Mr. Wootton handed witness copy)?

A.—Yes.

Q.—Was that new notice written by you?

A.—It was written by Mr. Hughes.

Q.—Was it signed by you?

A.—Yes.

Q.—What date did it bear?

A.—The 17th October.

Q.—Was the other notice there at the time?

A.—Yes.

Q.—Did you leave it there?

A.—Yes.

Q.—On the post?

A.—Yes.

Q.—On the same post as the fresh notice?

A.—Yes.

Q.—What did you do immediately after posting that notice?

A.—I went prospecting for a time.

Q.—When did you cause that notice to be inserted in the Miner?

A.—Two days afterwards. I went down after staking the land and putting up the first notice. Seeing my mistake, I wrote a notice again, and went back with it with the intention of going prospecting. At the same time, I forwarded a copy of the corrected notice to the Miner and the Gazette. I went on the land and posted the notice, and then went out prospecting. It appeared in the Gazette after I was on the ground.

Q.—Do you know as a matter of fact that the notice was in the Miner for two months?

A.—Yes.

Q.—Did it appear in the British Columbia Gazette?

A.—It did.

Q.—Now, you stated in reply to a question put to you by Mr. Farwell that the notice contained the area of land for which you intended making application to purchase? I will read the notice to you (Mr. Wootton read notice); that does not state the area of the land applied for, does it?

A.—No.

Q.—Is the Miner a paper circulating in the district in which the land is situated?

A.—It is.

Q.—Does that notice call for more than 640 acres of land?

A.—No, it does not.

Q.—Was a copy of that notice posted in a conspicuous place?

A.—It was.

Q.—Was it posted in the Government Office for the district?

A.—Yes; at Ainsworth. That is the nearest one.

Q.—Was that done by you?

A.—It was.

A.—Do you remember when?

A.—I think it was on the 15th or 16th of October.

Q.—Well, then, it was before you were on the land the second time?

- A.—It was the same time that I forwarded the notice to the Miner and to the Gazette.
- Q.—Was the initial post planted and marked “A. McGillivray’s south-west corner post” before you gave notice of your intention to apply for the land?
- A.—Yes; it was.
- Q.—Have you deposited ten per cent. of the purchase money with the Chief Commissioner of Lands and Works?
- A.—It was offered to him, but he refused it.
- Q.—When did you first make application to the Commissioner for the land?
- A.—I first wrote down here to Geo. Kane, of Kaslo, who was here. That was on or about Christmas—something like that. He wrote back that the land was reserved, and that they would not accept the money. He said that it was too late then to put up the money.
- Q.—Had you previously made a tender of the deposit to the Government Agent for the district?
- A.—Yes.
- Q.—Who was the agent?
- A.—Mr. Giffin.
- Q.—Tell us what you did, and when?
- A.—I think that it was on the 18th of September, as soon as I noticed that the reserve was lifted, I tendered him the ten per cent. and he refused it.
- Q.—You tendered him ten per cent. of the purchase money?
- A.—Yes.
- Q.—How much?
- A.—Eighty dollars.
- Q.—A cheque?
- A.—Yes.
- Q.—Was it marked good by the bank?
- A.—Yes.
- Q.—He did not object to the tender?
- A.—No.
- Q.—What did he tell you?
- A.—He told me that he was not aware that the reserve was lifted.
- Q.—Now we come to the reserve. What do you know about that? Does this plan cover the reserve?
- A.—The reserve covered the whole block a mile square at the mouth of Carpenter Creek.
- Q.—How did that reserve come about? What indications had you that there was any reserve, and when?
- A.—I think that it was on the 31st of December, 1891, that the Government put the reserve on.
- Q.—Did you receive any special notification that the reserve had been put on?
- A.—No; nothing except what I saw in the papers.
- Q.—This is the notice that you saw in the papers. (Mr. Wootton reads notice.) That is the notice that you saw?
- A.—Yes; that is the one.
- Q.—You say that the Government Agent up there told you that he did not know that the reserve had been lifted?
- A.—Yes.
- Q.—When was that?
- A.—On the 18th of September, I think.
- Q.—What year?
- A.—1892.
- Q.—Had you previously seen the notice of the lifting of the reserve?
- A.—Yes.
- Q.—He was not then aware of it?
- A.—Yes; I seen the notice half an hour after I offered him the ten per cent.
- Q.—Then you were not aware at the time you offered him the money that the reserve had been lifted?
- A.—I seen it in the Vancouver World first. Then I went down and hunted it up in the Gazette. I think I got the Gazette from Mr. Giffin.

Mr. Kellie:—But you had heard before that that the reserve had been lifted?

A.—Yes; I seen it in the World first.

Q.—Does that plan show the reserve?

A.—Yes; that part on the left (indicating) was the reserve.

Q.—Was any portion of that land sold by the Government?

A.—Yes.

Q.—What portion?

A.—From the creek north.

Q.—This portion for which you have applied, you have reason to believe, is still open for pre-emption or purchase?

A.—It is not sold, so far as I know.

Q.—How would your application be affected by the reserve?

A.—My application would be covered by the whole thing.

Q.—This plan (producing plan) purports to show the reserve placed by the Government—the portion sold by the Government or withdrawn under the reserve?

A.—This is what they sold (indicating), from the creek north.

Q.—Was it because of this reserve having been placed on the land that you did not deposit or make a tender of the ten per cent. of the purchase money with the Agent there?

A.—It was. I never expected that the reserve would be lifted, or that the rest of the land would be open for purchase at all.

Mr. Wootton:—I call your attention to the fact that, according to the notice from the Gazette, the reserve was placed upon the land on the 31st of December, 1891, and was not lifted until the 7th of September, 1892. Now, Mr. McGillivray, as soon as it came to your notice that the reserve was lifted, you made this tender?

A.—Yes; I did.

Q.—Of ten per cent. of the purchase money to the Agent there?

A.—Yes; I did.

Q.—Have you had the land surveyed?

A.—Yes.

Q.—By whom?

A.—By Mr. Perry.

Q.—Do you know if Mr. Perry's survey has been sent to the Lands and Works Department here?

A.—Yes; I brought it down here and handed it to my agent, who made the deposit.

Q.—Was that survey made at your instance and expense?

A.—Yes, it was.

Q.—Was that on or before the 30th September?

A.—Yes; it was on the 24th of September.

Q.—Did you see any other notice on this land at the time you staked it?

A.—No; I did not.

Q.—Have you applied to the Chief Commissioner of Lands and Works for permission to purchase?

A.—Yes.

Q.—Have you made a formal application?

A.—Yes.

Q.—Has that application been refused?

A.—I am not sure of that.

Q.—You have had no formal notice of its being refused?

A.—No; I have not.

Q.—When was your application to purchase deposited with the Lands and Works Department?

A.—On or about the 24th or 25th of September, 1892.

Q.—Had any other application previously been deposited with the Government Agent there?

A.—Not that I know of.

Q.—Have you received any official notification from the Chief Commissioner of Lands and Works that the survey, as made by Mr. Perry, was not satisfactory?

A.—No; I have not.

Q.—Have you ever been asked for further information?

A.—No; I have not.

Q.—You have never been asked for further information?

A.—No; I have not.

Q.—Do you know, as a matter of fact, when that survey was completed?

A.—I am not sure of the date. I think it was about the 20th of September, 1892.

Q.—I would like to ask you, Mr. McGillivray, if you know anything personally about the application to purchase of Messrs. Farwell and Fletcher? That is, if you yourself saw anything that was done?

A.—No; I only know what I have been told.

Mr. Booth:—When did you see the Farwell notice, or have you ever seen it?

A.—Yes; last summer.

Mr. Kellie:—That would be the spring or summer after you had made your application, or after the time that you had done your staking?

A.—Yes.

Q.—You state here that the land was first staked on the 9th of October? Is that date correct?

A.—Yes.

Q.—You told us a short time ago that it was the 10th?

A.—No; it was on the 9th I said.

Q.—Is that a true copy of the notice that you saw on the land? (Mr. Wootton handed witness copy.)

A.—Yes; it is.

Q.—Did you make a copy of it at the time?

A.—Yes.

Q.—You did?

A.—Yes.

Q.—How did that notice appear? Where was it written?

A.—It was written on the wood.

Q.—Read that notice (handing witness notice). Is that notice a *fac simile* of the notice that you saw there written on the wood?

A.—No; I have not seen any notice written like that.

Q.—What date did that notice that you saw on the land bear?

A.—It was dated the 21st October.

Witness was excused.

MR. A. S. FARWELL was called and, being still under oath, was examined and saith as follows:—

Q.—What date did you first go on the land in question?

A.—I passed through it on August 1st, 1892, on my way from Bear Lake to Nakusp.

Q.—That is the first time you were ever on this particular land?

A.—Yes; I have never been on it since.

Q.—Then you only passed through it?

A.—Yes.

Q.—You did not inspect the land closely or remain on it?

A.—No. I got there at 4 o'clock, I think, and I left there at 10 o'clock the next morning.

Q.—Did you ever sign any notice of intended application to purchase the land, according to the notice that appeared in the Gazette, dated the 21st of October, 1891? Did you ever sign any notice such as this one?

A.—There was a notice put up by our men on the ground.

Q.—You never signed it?

A.—No.

Q.—You never saw it?

A.—No.

Q.—In fact, you do not know, as a matter of fact, that the notice was ever put up on the ground?

A.—No; not of my own knowledge; only from what they told me.

Q.—Do you know, as a matter of fact, if any notice was ever posted in the Government Office in the district where the land is situated?

- A.—Yes; I think there was.
- Q.—But you did not sign it?
- A.—I think I did. I signed the ones for the Miner and the Gazette, and I think that I signed that one at the same time.
- Q.—When did you sign those notices?
- A.—A day or so before the one first appeared in the Miner.
- Q.—That was not before the 21st October, 1891?
- A.—No.
- Q.—Did you sign them six months afterwards?
- A.—I don't remember what date it was. I could not have signed the notices before the 21st of October, as I did not know if they had staked any land before that, or what they had done.
- Mr. Wootton:—I will now read from the Act (read from Act).
- Q.—Did you ever place any such stake as that, or in any respect attempt to comply with that provision?
- A.—No; of course I did not. I sent two men to do the work.
- Q.—Mr. Fletcher never went on the ground?
- A.—I am not aware of that. He did not at that time, anyway.
- Q.—Did you ever tender the amount of the first payment, ten per cent., to the Chief Commissioner of Lands and Works?
- A.—I did.
- Q.—Did you do that in person?
- A.—I made an application on the 27th of January, 1892, and sent it to Nelson. I made out the cheque and sent it to Nelson.
- Q.—You don't know when you posted that notice at the Government Office?
- A.—No.
- Q.—Was it after the 21st of October?
- A.—Yes; it was on or about the date that the first notice appeared in the Miner. I sent them a cheque for \$32, and it was returned to me.
- (Mr. Farwell produced cheque, which was examined and returned.)
- Q.—That cheque was not marked?
- A.—No; I never mark my cheques.
- Q.—What were you informed at the time it was returned to you?
- A.—To the best of my recollection Capt. Fitzstubs handed me the cheque and said, "You can't have the land." That was on the 23rd of February, 1892.
- Q.—When was the reserve lifted on this land—the reserve placed on it by the Government? I suppose you are aware that a general reserve was placed on it?
- A.—Yes; there was a general reserve placed on that on the 31st of December, 1891.
- Q.—Did you know that the reserve was still in existence when you presented the cheque?
- A.—Yes.
- Q.—Didn't Capt. Fitzstubs tell you something more than what you have told us?
- A.—No; I don't think he did.
- Q.—Did he not tell you that the reserve was still on?
- A.—There was no need for him to tell me that; I knew it.
- Q.—When you knew that the reserve was on the land why did you make the offer of the money?
- A.—I knew that that reserve did not apply to the land that was already alienated from the Crown. It did not interfere with this in any way.
- Mr. Croft:—Have not the Government power at any time to reserve any land that they may wish?
- A.—Yes; the Chief Commissioner can refuse any or all applications to purchase if he wished to do so. But that doesn't alter the circumstances.
- Q.—Did you ever see this notice? (Mr. Wootton read the notice cancelling the reserve dated 17th).
- A.—Yes.
- Q.—Where are those lands referred to situated?
- A.—At the mouth of Carpenter Creek.
- Q.—That is the inlet to Slocan Lake?
- A.—Yes.

Q.—Your application did not cover the lands at the mouth of Carpenter Creek ?

A.—The reserve was not lifted from the whole of it.

Q.—The reserve was not lifted from any of it at the time that you tendered your cheque?

A.—No.

Q.—Then you had that in your mind at the time you made the tender?

A.—The question of the Government having reserved the land did not prevent my going on.

Q.—You were aware of the reserve at the time you tendered the cheque?

A.—Yes.

Q.—Did you ever survey the land?

A.—No.

Q.—Did you ever have it surveyed?

A.—No.

Q.—Did Mr. Fletcher?

A.—No.

Q.—You do not know the form of the notice placed upon the stake—the form of the notice placed upon the land?

A.—No.

Q.—You don't know if the notice in the Gazette is a true copy of the notice that was on the land?

A.—No.

Q.—Have you any good reason to suppose that it is not? In your opinion is the notice that was on the land a *fac simile* of the notice that appeared in the Gazette?

A.—There might be a word or two altered possibly.

Q.—They prepared the notice that was put up on the land themselves?

A.—Yes. I prepared that notice for the Gazette from the information that they gave me. It is very customary for men to send out other men to do their staking for them.

Q.—It may be customary but it is not right. The Act does not contemplate that?

Mr. Croft :—You are supposed to have the same notice on the land that you have in the Gazette?

Witness :—Yes.

Mr. Wootton :—You don't know when the application first appeared in the Gazette?

A.—I think it was on the 10th of December, 1891.

Q.—Were you aware at the time you signed those applications for the land that the same land had already been staked for and by Angus McGillivary?

A.—I was not. I did not know then that there was any such a person in existence as Angus McGillivary.

Q.—You did not know that any such person had staked this particular land?

A.—No.

Q.—You never instructed them to stake that particular land?

A.—No. Mr. Fletcher instructed them when they went out. I never saw Bruce White until after he came back. I never saw the man in my life before.

Q.—You did not know that the land had been previously staked?

A.—No. I knew nothing about it.

Q.—Did they not tell you that a notice appeared on the land signed by Angus McGillivary?

A.—They came back and said that there was no stake there. They said that a day or two after that McGillivary came on and posted a fresh notice, or a notice. They had staked it before McGillivary had his notice up at all. If I had been satisfied that McGillivary had been after the land first I would never have made any move for it at all. I am not in the fashion of taking other people's land.

Q.—Well, do you believe now that they did stake it before McGillivary?

A.—Yes.

Q.—You never instructed those men to stake that particular land?

A.—No. I never saw them until they came down and told me they had done it.

Q.—Did you ever consider that Mr. McGillivary had any claim to the land?

A.—Not the slightest, or I would not have gone on with my application.

Q.—You never represented to the Commissioner that Mr. McGillivary's claim was "uncompleted?"

A.—When I was down here the Commissioner asked me about the matter. He said there was another man after the claim, and he asked me to write when I got back, and I wrote and told him that there was no record of McGillivary, as there was not.

Q.—What date was that?

A.—You can get a copy of my letter from the Lands and Works Department. That was the gist of it. The Chief Commissioner told me that the notice of Mr. McGillivary's application covered the same ground as mine. He asked me if I knew anything about that application, and I told him no. He said there was no record of it here, and asked me when I went up country to see about it and let him know. I wrote him in July, enclosing a certificate that no application had been made.

Q.—Why did you say in that letter, "I have ascertained that Mr. McGillivary's claim is in the same uncompleted state?"

A.—He had never done anything more than to put the notice in—he had never made any application.

Witness was excused.

MR. MCGILLIVARY, being re-called, saith as follows:—

Mr. Booth:—What difference did it make on that plan of your land by the chains being changed?

Witness:—According to Mr. Farwell's notice he calls for 40 chains west, 80 chains north, 40 east, and 80 south.

(Witness showed on plan where Mr. Farwell's claim, as described in the notice, would have been.)

Q.—The change in your notices from the first one to the second does not make any change in the front?

A.—No. It simply makes a change at the rear.

Witness was excused.

(Signed) ANGUS MCGILLIVARY,
 " A. S. FARWELL.

The Committee adjourned to meet at 11 o'clock on Friday next.

FOURTH MEETING

17th February, 1893.

Present:—Messrs. Kellie, Rogers, Booth, and Croft. Messrs. A. S. Farwell and McGillivary.

The report of the third meeting was read over and signed by Messrs. McGillivary and Farwell.

MR. FARWELL, being still under oath:—

Q.—You say you never surveyed this land?

A.—No. I was only there a few hours.

Q.—When did you learn the reserve was taken off the land at mouth of Carpenter Creek, viz., 640 acres?

A.—When the Gazette came up to Nelson, somewhere about the 12th or 15th of September.

Q.—Were you not aware that you had to have your survey completed and money paid by the 30th September.

A.—No. I was not aware that the survey was necessary, as the section had been surveyed by the Government.

Q.—Do you know that as a fact? How did you know that Mr. Perry surveyed it?

A.—I saw his notes and plans.

Q.—When; before that time?

A.—I could not tell you. At the land office.

Q.—Is it usual for the department to show field-notes to persons not belonging to the department?

A.—Yes; especially to surveyors.

Q.—What had Perry's survey to do with your not complying with the Act?

A.—The fact that the Government had already surveyed it.

Q.—Did you apply for 640 acres?

A.—No; 320.

(Signed) A. S. FARWELL.

The meeting adjourned at the call of the Chairman.

VICTORIA, B. C.

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