

# PETITION.

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*To the Honourable the Speaker, and the Legislative Assembly of the Province of British Columbia, in Parliament assembled.*

The humble petition of the undersigned sheweth as follows :—

That your petitioners are settlers on land within the Esquimalt and Nanaimo Railway Company's belt, British Columbia, who had bonâ fide settled upon and improved their lands some years prior to the passing of chapter 14 of 47 Victoria of the Statutes of British Columbia, entitled "An Act relating to the Island Railway, the Graving Dock, and Railway Lands of the Province."

That your petitioners took up their holdings with the knowledge and approval of the Provincial Government, in the full belief and understanding that they would be allowed to acquire the titles to the same and receive a grant for the same, without any reservations or conditions save the usual reservations and conditions contained in the grants from the Crown of unreserved lands.

That they paid for said lands at the same rate as the Government of British Columbia received for unreserved Crown lands.

That your petitioners, although applying for and paying for said lands as aforesaid, and settling upon and improving same with full confidence that they would be able to acquire a title in fee simple to said lands, free from encumbrances save the usual reservations and conditions contained in the Crown grants of unreserved Crown lands, have been offered the alternative of accepting conveyances of their said lands containing reservations of all mineral rights whatever, and other onerous conditions, or of abandoning the lands which they have settled upon and improved and paid for as above set out

That your petitioners have, from time to time, petitioned the Government of the Dominion of Canada for redress for their said grievances, and finally Mr. T. G. Rothwell was appointed a Commissioner under the Great Seal of Canada, to enquire into and report upon the rights of your petitioners, and during the months of September and October, 1897, the said Commissioner received evidence concerning the said matters in the City of Nanaimo and elsewhere in the Province of British Columbia, and on the 21st day of December, 1897, reported upon the said matter, in which report he stated that in his opinion the Canadian Government could not be held responsible for the grievances of your petitioners, but that your petitioners must look to the Provincial Legislature for any redress which they may be able to obtain.

That your petitioners have used all other lawful means at their command to obtain relief, without avail.

We herewith enclose a statement of facts, wherefore your petitioners pray that your Honourable Body may take into consideration the matter above set forth, and devise some means whereby the grievances of your petitioners may be alleviated, and whereby they may speedily receive what they fully believe to be their rights with respect to the matters above set out.

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

Samuel Jones,  
William Noye,  
John Poole,  
Wm. M. Thomas,

Laurence Manson,  
Mrs. M. A. Rowe,  
Agnes Seen,  
James Malpass,

George Graham,  
John M. Davies,  
Mrs. D. G. Dailey,  
W. H. Wall,

John Brenton,  
John Richards,  
Geo. McGregor,  
Alex. Stewart,  
E. D. Michael,  
J. L. Michael,  
John Hill,  
John Bennie,  
Charles Bennie,  
Samuel Bennie,  
Henry Maguire,

W. D. Cochran,  
George Vipond,  
William Turnbull,  
Patrick Dolan,  
Aneniel McDonald,  
John Marwick,  
Chas. Fiddick,  
Mrs. E. Fiddick,  
Thomas Swan,  
Cornelius Bollater,  
George Stevens,

Isabella Bates,  
A. Dunlop,  
Josie Emblem,  
Walter Michael,  
A. Muhle,  
George Taylor,  
John Hemer,  
Albert Greenerway,  
A. McKinnell,  
S. Stockand,  
Joseph Carson.

### STATEMENT OF FACTS.

In the B. C. Gazette of July 5th, 1873, there appeared a public notice to the effect that after date a strip of land 20 miles in width, along the eastern coast of Vancouver Island, would be reserved, the above being in compliance with a request by the Dominion Government, who at the same time required a transfer of the same for railway purposes. Owing to a disagreement the negotiations were not consummated and the proposed reserve fell to the ground. The Government of British Columbia having made provision in 1873 to reserve the land, but failed in consummating, they decided to not again lock up the lands, but made provision by section 60 of the "Land Act, 1875," whereby the lands could at any time be reserved as follows:—

"The Lieutenant-Governor in Council shall, at any time, by notice signed by the Chief Commissioner of Lands and Works and published in the British Columbia Gazette, reserve any lands not lawfully held by record, pre-emption, purchase, or Crown grant, for the purpose of conveying the same to the Dominion Government."

Your petitioners claim that it has not been shown that any such order had ever been made in compliance with said section 60 of said Act of 1875, and on the ground of no reservation whatsoever having existed prior to the "Clements Bill, 1882," we submit that we are entitled to a conveyance from the Government of British Columbia, of the lands we were encouraged to settle on, and without reservation excepting that on Crown lands generally. If, however, it can be shown that the lands in question have been regularly reserved, your petitioners again claim the same rights on the repeal of the "Clements Act, 1882." The enabling Act of 1883, commonly known as the "Settlement Act," so clearly and fully defines the position of the settlers with respect to their claims, that it is hard to conceive of any fair minded person entertaining views other than that laid down in the Act referred to.

Section 3 of this Act, by which lands were conveyed to the Dominion Government in 1883, provides as follows:—

"There is hereby granted to the Dominion Government, for the purpose of constructing and to aid in the construction of a railway between Esquimalt and Nanaimo, and in trust to be appropriated as they may deem advisable (but save as hereinafter excepted, etc.). And after describing the land to be so granted, we find section 4 excepting a portion of the tract described in section 3, and making of it a provisional grant, out of which are to be conveyed to the Railway Company lands in lieu of our lands, as follows:—

"There is excepted out of the tract of land granted by the preceding section, all that portion thereof lying to the northward of a line running east and west half way between the mouth of the Courtenay River (Comox District) and Seymour Narrows."

The following section clearly shows the intention of the Act as withholding from the Dominion Government all lands such as were settled on by your petitioners, and to secure for us the rights accorded settlers generally on Crown lands, by providing for the Railway Company lands and minerals in lieu of lands and minerals in question, as follows:—

Section 5.—Provided always that the Government of Canada shall be entitled out of such excepted tract of lands, equal in extent to those alienated up to the date of this Act by Crown grant, pre-emption, or otherwise, within the limits of the grant mentioned in section 3 of this Act.

To absolutely prevent any misconstruing of the Act as against the claims of the settlers and others, we find it again positively stated in section 6, that the grant to the Dominion Government “Shall not include any lands now held under Crown grant, lease, agreement for sale, or other alienation by the Crown.”

The English language could not make it more clear, even a leasehold (wherein there is but a temporary right) is withheld from the Dominion Government.

The fact of the Government having encouraged your petitioners to go on the land with the assurance that we would get them constituted “An Agreement for Sale,” accepting and placing our applications on file, which in itself constituted a record of our claims, is further substantial evidence of “Agreement of Sale,” but in addition to all that, the Government expending public funds in the construction of roads, building bridges, protecting our lands from being encroached upon by subsequent applications, and otherwise recognizing your petitioners as *bonâ fide* settlers, is, we submit, the most substantial evidence of our existing rights. If there can be the shadow of a possibility of the aforementioned clauses not fully covering our cases, we submit that the following section (being 26 of the same Act) throws its mantle over everything that could possibly be construed as being a right, and precludes the remotest possibility of our lands as having been conveyed to the Dominion Government. The section reads—

“26. The existing rights (if any) of any persons or corporations in any of the lands so to be acquired by the Company, shall not be affected by this Act.” “The lands so to be acquired by the Company,” having reference to that as stated in section 3.

Owing to the opinion sought to be made prevalent by interested parties, many of the settlers were led to understand that there existed some kind of a provision reserving lands in question, but not of such a nature as would interfere with our rights as settlers on Crown lands generally.

Those legal gentlemen who have dealt with the “Settlement Act,” having, without exception, stumbled over the clause in the Act wherein “squatters” are referred to, necessitates our calling the attention of your Honourable Body to the fact that section 23 is without meaning. In the first place it recognizes on the face of it, that any person who had occupied and improved any of the lands prior to the passing of the “Settlement Act,” had existing rights, and without entering into the merits of a case, section 26 shows conclusively that “this Act” shall not apply to such a case.

In the second place: section 23, if it had any meaning at all, could only apply to lands that had been conveyed to the Dominion Government as therein stated. That section gives to the “squatter” no further rights than he is entitled to as an actual settler after the passing of this Act. It would have been useless for the Provincial Government to have submitted Articles of Agreement to the Dominion Government that did not fully protect existing rights. By comparing the clauses referring to “Squatters” on the Mainland with that of Vancouver Island, as shown in the Dominion Act, 1884, the fine hand of the Esquimalt and Nanaimo Railway Company will be seen; and while the clause in question would appear to even the trained legal mind as a further safeguard to the settlers, it, in reality, had been interjected with the express hope of withholding from the settlers, by stealth, those rights which the Railway Company well knew could not be directly legislated away, but trusted to time and circumstances to accomplish the end.

We beg further to refer your honourable body to the report of the Commissioner, Mr. T. G. Rothwell, who exhaustively enters into numerous Acts and Amendments, but religiously steers clear of the entire clauses and spirit of the Act most directly bearing on our claims, and which so clearly protects the rights of your petitioners. Notwithstanding the pretensions of the Government of 1883, Mr. Rothwell must be fully aware that a notice published in the British Columbia Gazette in 1873 could not take precedence over an Act of the Legislature in 1875.

The Commissioner, on page 1 of the report, makes it clear that your petitioners had settled on a tract of land conveyed to the Dominion Government, but not a word concerning

the exceptions to be made out of that tract (so to be acquired by the Railway Company) as affecting the rights of settlers. He ten times makes mention of section 23, which in itself could not apply in any case, for it is nullified by the provisions in itself contained.

He also reports that "The settlers mentioned are those who are referred to as *bonâ fide* squatters in section '23' of the Provincial Act." If the Commissioner really believed that to be a "Statement of Fact," as a lawyer, he should know that all the sophistry of the profession could not show cause whereby the Railway Company could by any act of any Government be deprived of that which had been conveyed to them; and if he assumes to chain your petitioners down to section 23 of this Act, why does he at the same time urge the Provincial Government to answer the righteous prayer of the settlers?

Your petitioners have strong reasons to fear that the "cold-blooded, studied indifference" referred to in said report has not entirely been confined to the Government or even the Railway Company.

The Commissioner, in conclusion, extends his appreciation of the services rendered by Mr. Gore, Deputy Commissioner of Lands and Works, and by Mr. Bray, Assistant Commissioner of Lands and Works, but the settlers fail to see where they come in, on account of the information supplied by those gentlemen.

The exceptions stated in the Act of 1883, out of the lands to be conveyed to the Dominion Government, are as follows:—

All those lands alienated by the Crown up to the date of the passing of this Act, 1883, by Crown grant, pre-emption, lease, agreement for sale, existing rights, or otherwise.

Your petitioners claim to come under any one of three of the conditions named, and that, according to such, did not pass to the Railway Company.

The Dominion Act, 1884, does not apply to lands as claimed by the settlers in question, and to the Settlement Act, 1883, sections 3, 4, 5, 6 and 26 only apply.

As farmers, who are doing what we can to open out and develop the resources of the country, we submit that it is within the power of the Legislature to so order the lands to be conveyed, without reservation, to all persons having existing rights within the meaning of the Act as herein stated.

As taxpayers, we submit that it will then be in order for the Railway Company to refund to the Provincial Government all moneys received by them on account of such lands as did not pass to the Dominion Government.

If, on enquiry, it be found that sufficient land had been set apart to be conveyed in lieu of our lands, the entire matter is ended; but if not, it will be in order to make such provisions as the circumstances demand; and by so doing the settlers will feel that the Government will merit the confidence of justice-loving people throughout the Province.

All of which is respectfully submitted.

Signed on behalf of Settlers.

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VICTORIA, B. C.:

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