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To His Excellency the Governor General of Canada

In Council.

May it please your Excellency:

Under the powers and authority vested in me by the Commission issued under the Great Seal of Canada, dated the twenty-second day of November, A. D. 1906, I took upon myself the duties therein imposed, and I have the honor to report as follows:

RE ST. PETER'S INDIAN RESERVE.

Pursuant to the Commission above mentioned, I commenced the investigation of the matters therein referred to by holding a first meeting at Selkirk on the 24th day of December, A. D. 1906, in presence of Mr. Clark, of Counsel for the Indian Band, and Mr. Heap, appearing for various claimants, The Chief of the Band was also present, together with a representative from the Indian Office at Winnipeg. Meetings were from time to time held thereafter, chiefly at Selkirk and at points in the Reserve and a large amount of evidence was taken at these meetings, a transcript of which is herewith returned, divided for convenience into seven volumes.

Before reporting upon the various claims for patents to portions of this reserve I think it well to consider the environment at the time of the treaty and also to discuss some points of law.

At the time of the treaty and for a long time previously the territory along the Red River from Winnipeg northward was divided into Parishes by the Church of England, the boundaries of each of which were well defined.

Reference

Reference to Vol. 1 of H. Youle Hind's work published in 1860, being a report of his own observations, will show, at page 173, that at that date the Parishes of St. Andrews and St. Peters were adjoining and there was then no St. Clements.

It further shows that the southerly limit of the Parish of St. Peters was south of Sugar Point and included all of the present Town of Selkirk.

The evidence given before me establishes that at the time of the treaty the southerly boundary of the Church Parish of St. Peters was in the same place. See Vol. 3 - pages 298, 299, 309, 310, 313, 314, and that the Parish of St. Clements had been carved out of St. Andrews.

At the date of the treaty the survey by the Dominion Government of the Red River belt north of Winnipeg had not yet begun - see Vaughan's evidence - so of course when in the treaty the following language is used "beginning on the south line of St. Peters Parish" the Church Parish and not the Dominion Government Survey Parish of St. Peters must have been intended.

According to the language of the treaty then the Reserve should have its place of beginning at the south side of Sugar Point, nearly a mile further south than its present boundary, and including the fine lands of the Town of Selkirk and the lands to the westward and eastward thereof.

nIt seems to me the treaty is only an executory contract, in other words, an agreement that thereafter a tract of land beginning at the southern boundary of the Church Parish of St. Peters and extending therefrom either northerly or southerly, without defining the

distan

distance, and extending easterly and westerly from the River also for an undefined distance so as to include an area sufficient to give 160 acres to each family of five, or in other words, 32 acres for each member of the band.

Mr. Vaughan, who assisted his father in the original survey of the River lots as shown on the maps of the Parishes of St. Andrews, St. Clements and St. Peters, says that they commenced the work in the autumn of 1872 and that they began at the south end of St. Andrews and proceeded northward to the north end of St. Peters, and they divided the land into lots of uneven width as now shown so as to conform with holding of the people, carrying on the same principle in the three parishes. After the territory was so divided into lots it was then divided into three Parishes and the lots were then numbered consecutively for each Parish. The work on the ground included showing building and improvements then upon the land, all of which is now to be seen on the present Parish maps. I gather from the evidence that the territory was not divided into Parishes until the field work was completed, and probably not until 1874. See Vaughan's evidence pages 1 to 28 Vol. 1, and Vol. 3, pages 297 to 302.

He cannot tell why the Parish of St. Peters, according to the survey, was located as to its southern boundary as shown on the maps, but he says they must have been instructed from Ottawa to so fix its southern boundary.

It seems to me clear that "the south line of St. Peters Parish," referred to in the Treaty of 1871, does not correspond with the south line of St. Peters Parish

according

according to the Dominion Government Survey, and in this respect the terms of the Treaty were not carried out.

In the latter part of 1874 the same Mr. Vaughan was employed to survey the Reserve provided for by the Treaty and his son, the witness, assisted in this survey also. He tells us that, pursuant to instructions from Ottawa, they laid out the Reserve, as it now appears, commencing at the south line of St. Peters Parish according to their survey and that the sections at Nettby Creek on the west side of the Reserve were left out of the Reserve because of white settlers being then in possession thereof, thus making the western boundary irregular.

It does seem to me that the limits of the Reserve were settled ex parte by the Government without the concurrence of the Indians. at all events, there was no pretence before me of any participation in the selection by the Band.

1st Claim:

The Indians claimed before me that the southern boundary of their Reserve should have been at Boilleau's lot, south of Sugar Point, nearly a mile further south than as ultimately fixed.

At the time of the treaty and for several years prior thereto Henry Prince was Chief of the Band. He was preceded by his father, Chief Reguis, who held that position for a very long time and was a man of great force. He claimed and asserted the right to sell and convey the lands in the Indian Settlement of St. Peters, but whether he claimed this right as Sovereign or through rights acquired from Lord Selkirk under his purchase from the Hudsons Bay Company, or from that Company, does not appear. It is, however, clear that for very many

years,

years, and up to his death, he did assert this right and the people in this country seem to have admitted his right and the most of the people, whether pure Indian, Half Breed or White, who at the date of the transfer to Canada occupied or claimed rights to lands within this Reserve, did so by purchase, either directly or through others, from Peguis, the most of whom had a written memorandum or conveyance from him. These papers were commonly called "Peguis deeds," some of which were confirmed by deeds from Chief Prince above referred to.

The evidence of Mr. Vaughan shows that at the time of his survey the people of this Indian Settlement were then quite thrifty, the most of them could speak English, they were largely crossed with white; they had horses, cattle and poultry; their houses were well built, better even than now, and their homes were those of Whitemen rather than Indians. His map shows the houses by black dots, and the pink coloring shows the extent of ground then cultivated.

At the time of the treaty "The Manitoba Act," 33 Vic. cap. 3, was in force. Section 32 gives rights to parties in possession under the sanction of the Hudsons Bay Company, which rights were extended by 37 Vic. cap. 20 sec. 3, and the method of proving or asserting these rights was facilitated by 38 Vic. cap. 52 sec. 1, which seems to be retroactive.

It seems to me clear that the Manitoba Act applies to Indians, Half Breeds and White men alike, and that if an Indian proved possession and title sufficient to come within Section 32 of the Act and amendments he is entitled to a patent, notwithstanding the purity of his

ab[illegible]ginal

aboriginal blood. See Totten v Watson, 15 U.C.R. 392.

It will be observed that by the terms of the treaty the Indians surrendered to the Crown all the lands, including the Reserve, and that the Dominion Government out of the surrendered lands agreed to set aside a reserve. It is not the case of the Indians retaining the Reserve and surrendering the remainder. And it must further be borne in mind that upon the surrender of the Indian rights to the Reserve, the land reverts to the Dominion and not to the Province as in the St. Catherns Milling Co. v The Queen, 13 S.C.R. 577.

The Treaty provides that if "there are any settlers within the bounds of any lands reserved by any Band Her Majesty reserves the right to deal with such settlers as She shall deem just so as not to diminish the extent of land allotted to the Indians." The question at once arises as to the meaning of the term "settler." Does it mean a mere squatter who has come to this country and has settled on the land prior to surveys but after the 15th of July 1870, the date of the transfer, or does it refer to those having rights under The Manitoba Act above referred to?

The mere setting aside of a tract of land for an Indian Reserve by the treaty could not deprive any person of a statutory right to any lands which he then had in any portion of the Reserve.

The various members of the Band who were in possession of their separate parcels as owners, nearly all claiming title through Peguis or Prince, were recognized in the locality as separate owners and had their rights marked out as separate lots fronting on the River by Vaughan in his survey commenced in 1872 and completed in 1874. And following the invariable practice of the Department of the Interior in this country, which is

well

well known to me, if this Parish of St. Peters had not been made a part of the Reserve it seems to me that patents would have issued to the occupiers of this land as in other Parishes.

It is argued, however, that because of the provisions of the Indian Act, these people lost their rights. However startling it may be there was no Indian Act in force in this Province at, or for some years after, the treaty. It is further argued that because the Indians made a treaty, which provides that a Reserve be set aside, beginning at the south boundary of the Parish, they each individually agreed to abandon separate and private property to the Government so as to establish a Reserve. In other words, by the law of estoppel these wards of the Government are prevented from setting up their individual rights against their guardian.

The Indians claim, and there is a good deal of evidence to support it, that at the treaty they were told that each was to retain his private property and holdings and were to get a reserve in addition thereto. And further that it was not known until after the survey of the Reserve, in the latter part of 1874, that their separate holdings were to be a portion of the Reserve. Sales and conveyances of this land were freely made until after the survey of the Reserve convinced the people that the occupied River lots were a part of the Reserve. See evidence of Rev. Taylor, Vol. 3 page 314; Vaughan 300, and other evidence.

It is claimed on behalf of the Indians that the terms of the treaty did not require the selection of the Reserve to include their individual lands, the language "so much of land on both sides of the Red River, beginning at the south line of St. Peters Parish as will furnish"

furnish" does not imply that the land to be reserved shall come to the water's edge on each side of the River. The Reserve might have had greater width and have left out their separate holdings. It might have, by the terms of the treaty, extended southwards from the south boundary of St. Peters.

2nd Claim.

The Indians claim that each is entitled to a patent under The Manitoba Act of the land occupied at the transfer by themselves or their ancestors, and that therefore the Reserve was not originally large enough to satisfy the terms of the treaty.

The area of the Reserve as originally surveyed and set apart contained 55,246 acres made up as follows: River lots, Parish Survey 17.331 acres; Lands outside Parish survey 37,915 acres, and these lands are barely sufficient in area to satisfy the terms of the treaty taking the Indian population to be as shown by the payments actually made in the years 1871, 1872, 1873 and 1874 to individual Indians, according to the books of the Indian Department.

I therefore act on the assumption that the original Reserve surveyed by Vaughan in 1874 and sometime afterward set aside by the Government for this Band of Indians satisfied in area the terms of the treaty if the River lots are to be included.

Since the treaty Letters Patent have already been issued whereby the Crown has alienated about 5,000 acres of this Reserve and in this report I have recommended that further patents be issued which will further reduce the area of the Reserve by 1323 acres, all granted or to be granted under the provisions of the Manitoba Act.

Beyond

Beyond any question the lands for which patents have been issued and those recommended for patent in this report are of the best in the Reserve. All but one small parcel front on the River and on the main highway.

3rd Claim.

The Indians claim a very large sum as damages for the loss of these lands and for the difficulty of carrying on their Tribal affairs on account of strangers holding practically alternate blocks of land in the midst of the River settlement and interfering largely with their Communal rights.

This Reserve is in the main excellent farm land and the adjoining lands are fairly well settled and cultivated and the Town of Selkirk joins it on the south side. Nearly all the Indians of the Band live along the River on each side and the lands already patented practically divide the Reserve in alternate blocks. These patented lands, although within the boundaries of the Reserve, are not parts of the Reserve and so intoxicating liquors can be kept on those parcels of land and all sorts of people can congregate there and vice and immorality can exist in various parts of the territory of the Reserve beyond the control of the officers of the Indian Department. The better class of Indians claim that all this arose from the acts of the Government in setting aside a Reserve which was afterwards cut up by patented lands to strangers thereby permitting numbers of non-treaty pepple to settle amongst them and to interfere with their tribal life. Owing to the intermingling of treaty and non-treaty people living in the same locality great

difficulty

difficulty arises to both classes in keeping up schools and churches.

Early in the investigation these claims and matters were brought before me. Out of about 50,000 acres, which remains of the Reserve after deducting the area already patented, not more than 250 acres are cultivated. The buildings and fences are not as good as at the date of the transfer. They have not now as many horses or cattle as the Band then had and the people of the Band as a general rule are retrograding. From time to time I approached the Band for the purpose of inducing them to surrender the Reserve and take a new one and our negotiations continued for many months. After many proposals and counter offers had been discussed the matter finally culminated in the deed of surrender, the terms of which are in writing and now on file in the Indian Department. Without giving further reasons for my urging the surrender and without further description of the negotiations I can only say that they were the best I could get. Best for the Government and best for the Indians and without any hesitation I recommend the carrying out of the same.

The new Reserve is accepted by the Band in full satisfaction of all damages claimed and of all rights, individual or tribal, asserted as above set forth.

I recommend that each member when he gets a patent for his land releases all his rights to any land in the Reserve under The Manitoba Act, and it would be well to get the release signed when he applies for the patent.

I assume that the surrender will be carried out and I am therefore relieved from the burden of finding the amount

amount of damages due the Band for the grievances above detailed.

It might not be improper for me to add that in my view of the matter the Government by granting a new Reserve of 75,000 acres have readily and cheaply got out of a nasty tangle and have greatly benefitted the Band, and have taken a step which in the near future will relieve the locality of an undesirable element, to say the least.

I shall now proceed with the consideration of claims to patents for lots in the reserve. In considering these claims it is well to keep in view the following matters;

1st. The Indian Act did not come in force in Manitoba until the 26th day of May 1874.

2nd. Section 24 of the Indian Act (Sec. 19 of Revised Statutes) did not become law until April 12th 1876.

3rd. Sec. 164, ss (a) of the Act (Sec. 126 of Revised Statutes) became law May 7th 1880.

4th. The treaty did not set aside a definite tract of land for a Reserve, it was merely an agreement that a tract of land, beginning at the south boundary of St. Peters Parish, would thereafter be set aside for a Reserve. Whether the Reserve is to be north or south of the boundary is not, by the terms of the treaty, settled.

5th. The Reserve was not in fact set aside until the latter part of 1874, when it was surveyed, and I assume that after that date some Order in Council must have been passed confirming the survey and the limits of the Reserve but I have been wholly unable to find

any

any trace of such Order in Council and cannot fix a date at which the Crown is bound as to the limits of this Reserve--it must have been after the year 1874.

6th. The Indian Act abundantly shows and the cases hereinbefore cited establish that a treaty Indian may own land in fee simple outside the Reserve.

7th. I take it for granted that the treaty was merely a surrender of tribal rights and was not and was not intended to be a conveyance to the Crown of real estate the private property of any individual member of the Band.

8th. That on the 26th day of May 1874 (the day when the Indian Act was made applicable to Manitoba) an Act, 37 Vic. cap 30, Sec. 3, was passed extending the rights of those in possession at the transfer and this right was further extended and facilitated by 38 Vic. cap. 52 Sec. 3.

It seems to me I can safely say that these lots for which patents are claimed were not in the Reserve until the Reserve was set aside by metes and bounds by some Act binding on the Dominion Government, the date of which I have been unable to fix, but I must put it after the end of 1874.

I shall now proceed with the claims to the various lots and shall dispose of them in the order in which they were brought before me, thus treating the evidence in consecutive order.

Claim No. 1— Lot 88 and South 1 chain of 89--
Duncan McIver, Claimant.

Baptiste Parisien was in possession of the whole lot No. 88 at the Transfer.

He

He sold to Murdock McIver, who went into possession in the Spring of 1874 of the north 3 chains in width thereof. See Colcleugh's evidence, Vol. 1 page 49 and Vol. 3 page 225. In 1875 a conveyance was executed by Parisien to Murdock McIver of the three chains.

Kipling was in possession of 89 at the Transfer and sold the south one chain thereof to Murdock McIver the same time that Parisien sold, and let the purchaser into possession. McIver was thus in possession of 4 chains in the Spring of 1874. He put on valuable improvements and the buildings now upon this property are amongst the most expensive in the Reserve.

Conveyances from Murdock McIver to Duncan McIver of this land are duly registered. I find that Duncan McIver, of St. Peters, Farmer, is entitled to a patent for the north three chains in width of lot 88 and the south one chain in width of lot 89 in the Parish of St. Peters.

The whole of lot 88 is 3.72 ~~ch~~ in width and when Parisien sold the three chains he reserved the 72 links to himself and lived on it until his death. He died about 20 years ago and Murdock McIver claimed he got title as shown in evidence Vol. 3 page 228. The claimant got the rights of Murdock McIver and has for a long time fenced in and improved that portion of the north half of the 72 links which lies between the Main highway and the River. The remainder of the 72 links was surveyed by Green, D.L.S., at the instance of the Indian Department into a highway. I recommend that all the 72 links not surveyed into a highway be granted to the claimant. If this recommendation is followed the claimant is entitled to a patent for all of lot 88 except

except the most southerly 72 links, lying between the Main highway and the rear of the lot and except the most southerly 36 links lying between the Main highway and the River.

Whitcher and McColl recommends patent. See Schedule C page 4.

I have searched the conveyances in the Registry Office and I find the following documents duly executed and registered:

Deed Baptiste Parisien to Murdock McIver dated 29th April, 1875, registered 18th December, 1875, lower three chains of Lot 88.

Deed Edward Kipling to Murdock McIver dated 3rd July, 1875, upper or southern one chain of Lot 89, registered 18th December, 1875.

Deed Baptiste Parisien to Henry Thomas dated 12th March, 1886, of the whole Lot 88, registered 18th March, 1886, Lot 88 St. Peters.

Henry Thomas by Deed 29th June, 1886, conveyed to Murdock McIver the whole Lot 88.

Deed Murdock McIver to Duncan McIver dated 6th December, 1902, registered 27th May, 1903, all of Lot 88 and south one chain of Lot 89.

Claim No. 2-- Lot 233. Rev. Edward Thomas, Claimant.

For action see file 140100

The Claimant is Patentee of Lot 34 and received scrip for 130 acres. He also shared in Half Breed grants.

I am not satisfied that he purchased this land from Chief Henry Prince before the Transfer. Undoubtedly many of these deeds were ante-dated. The only evidence of possession is his own, see page 51,

Lot 233. mentd on papers on file 140186 but not material

and

and I am not satisfied with it. The claimant has been generously treated and I am allowing him another claim.

I find that the claimant is not entitled to a patent for Lot 233.

Claim No. 3-- North 1 chain Lot 33. Rev. Edward Thomas, Claimant.

The evidence in support of this claim is on pages 5 to 65 Vol. 1 and page 120 Vol. 2. The deed Exhibit 3 is not for this piece of land, but describes quite another property.

The evidence does not show that the claimant has any title to this one chain. I find that he is not entitled to a patent for the land claimed.

Claim No. 4- South 3 chains of Lot No. 33 and lots 32 and 31. John Sinclair, Claimant.

The claim is made under Exhibit No. 4, which is for 4¾ chains, the whole lot, and is dated March 29th 1873.

The Rev. Edward Thomas claims (see claim No. 3) that he also bought a part of the same land under Ex. 3, which purports to be from the same grantor and is dated 13th May 1873.

The Rev. Edward Thomas, who lived on 34, swears on page 69 Vol. 1, that at Transfer Thomas Sandison lived on Lot 32, and he further says that the claimant never lived on this lot, and he repeats it on page 71. He further says that Sandison lived on the lot many years after and died there. The claimant gives evidence See Vol. 5, page 1.

There is no right or title shown for Lot 32 or for any part of 31.

Rev.

Rev. Edward Thomas says on page 61 ~~x~~ that John Sinclair never lived on 33. He lived on 36.

Neither the claim of the Rev. E. Thomas nor that of John Sinclair were submitted to the Commissioners Whitcher and McColl.

I am not at all satisfied that the claimant ever got title to or ever occupied Lot 33.

In any event he continued a treaty Indian until 1886. long after Sec. 24 of the Indian Act became law, and if he had any claim to this lot he abandoned it to the Band.

He is not entitled to a patent for any of the land claimed.

Claim No. 5- Park lot in rear of Lot 34. Rev. Edward Thomas Claimant.

Re file 170184 for claim Dept to note to note 8.8 W.

The claimant asserts that in the rear of Lot 34 he occupied a parcel of land at the Transfer.

I find that he had an irregular tract of about 20 acres partly cultivated. The evidence is in Vol. 1 pages 74 to 119. Surveys are shown in file 170,189.

At the clase of the evidence I suggested that he get a Legal Subdivision of land at or adjacent to the old cultivation and this seemed satisfactory to him. He should therefore get a Patent for 40 acres in that locality, but not to interfere with the present holding of a Treaty Indian named Abram Thomas, who has a tract fenced in that neighbourhood.

Claim No.6-

Claim No. 6- Lot 145. Murdock McIver, Claimant.

This Lot was known in the locality to be and was generally recognized as the property of Wm. Leask at the time of the Transfer. He was not a Treaty man and used it at that time as a wood lot.

The evidence satisfies me that he had a good claim under the Manitoba Act. Conveyances from him through others to the claimant are duly registered in the Registry Office. The affidavit of Leask on file No. 140,008 supports the claim also.

I find that a patent should issue to Murdock McIver for Lot 145 St. Peters. Subject, however, to a mortgage to the Hudsons Bay Company.

I searched the Registry Office and find the following registrations:

Deed dated 8th September 1873, William Leask and wife to Peter R. Young. Consideration $500.00. Property is the six chains of land on the east side of the Red River bounded on the north by lot of Jacob Brown, on the south by the lot of John Starr; on the east by the Indian Reserve, commencing at the end of the two mile limit, and on the west by the Red River and also four chains on the east side of the Red River bounded on the north by the lot of George Kingsbury. on the south by the lot of William Leask, on the east by the Indian Reserve at the end of the two mile limit and on the west by the Red River. Registered on the 23rd day of September 1873. (This last parcel corresponds to Lot 145)

Deed P. R. Young to Murdock McIver dated 23rd

April

April, 1875, registered 2nd May, 1875, description the same as in former deed.

Mortgage Murdock McIver to Hudson's Bay Co. dated 22nd May, 1903, registered same day for $1000.00

Claim No. 7- Lot 156. Colin McIver, Claimant.

The Chief witness in this claim was Joseph Monkman upon whose evidence I place great reliance. He gives in his evidence the history of how the inhabitants got their wood. For domestic fuel they usually used dry wood got from dead trees, and for this purpose they, by common consent, took it where they could find it from the "Broad lot" or the "Wide lot", but if building timber or green wood was required the party must seek this where he had some individual right. See Vol. 2, pages 109, 110 and 121.

Monkman owned and obtained a patent for Lot 90 and directly opposite across the River is this Wood lot 156. He purchased this lot 156 from Chief Prince in 1865, and he seems to have been generally recognized as owner, but it is not clear that he cut wood upon it or was otherwise in possession at the Transfer.

Monkman and all those through whom the claimant traces title are Non-treaty people and Monkman obtained scrip for some rights appurtenant to lot 90 and the wood lot seems to be the only appurtenant.

The claimant, however, asserts that Monkman did not get scrip until after he had sold the wood lot.

The deed Monkman to Colclough bears date the 17th of February, A. D. 1882, and by a regular succession of conveyances duly registered the claimant has acquired title to this lot. This claim was not before Whitcher and McColl.

If

If it were not for the issue of Scrip to Monkman I would not hesitate to recommend the issue of a patent to the claimant. I think a patent should issue.

Claim No. 8- Lot 144. George Kingsbury, Claimant.

Francis Rose was in possession at the Transfer and by deed dated 1873 and registered, sold to the claimant. Rose took Treaty in 1871, 1872 and 1873 and then went out of Treaty. He was not a Treaty Indian when the Reserve was set aside.

I believe the story of the claimant as to letting the Indian Kippling into possession as tenant.

The evidence begins at page 121 and again at 170, Vol. 2.

I find that George Kingsbury is entitled to a patent for this lot.

The Treaty Indian Geo. Kippling is in possession and has been for many years. After mature consideration I have decided that in all such cases I would recommend that the Indian in possession should be reasonably paid for his improvements by the party to whom patent is recommended. In practically all cases the Indian has been in possession for such a period, which, if open to him, he could set up the Statute of Limitations, and further the possession by the Indian has prevented taxation. I fix the value of the improvements made by the Indian at $90.00, which sum is to be paid to Geo. Kippling upon his surrender of possession.

I searched the Registry Office and found registered:

Deed Francis Rose to George Kingsbury dated 26th March, 1873, registered 18th April, 1873. The description in this deed is the usual one before the survey was completed wherein the land was described by the adjoining owners. I find that the description in this

deed

deed corresponds with the land Lot 144.

Claim No. 9- Lot 36. James Wilson, Claimant.

John Sinclair was in possession at the Transfer and by deed dated 16th August 1873, now on file 140,016 he sold and conveyed to Hugh Pritchard, who is not a Treaty man. Hugh Pritchard by deed dated August, 1876, and duly registered, conveyed to the claimant.

Pritchard, a Non-treaty man, acquired this land before it was a part of the Reserve. The evidence begins on page 138, Vol. 2, and on page 13, Vol. 5.

The claimant, James Wilson, is entitled to a patent for Lot 36 of the Parish of St. Peters.

Claim No. 10- Lot 113. John George Smith, Claimant.

John Prince, a life Councillor (commonly known as "Long John") was in possession at the Transfer, and on the 21st of September, 1874, by Exhibit 6, which is registered, sold the land which included lot 113 to the claimant. The claimant put his brother in law in possession and made large improvements.

The conveyance having been completed before the land was in the Reserve the claimant John Geo. Smith is entitled to a patent for lot 113.

Owing to "Sr." being in the deed as part of the name of the grantee (although "Jr" is in the affidavit of execution) it would be safer to have a conveyance from father to son. Both parties gave evidence and admit the claimant was intended. The evidence begins at page 177, Vol. 2 and again at 262 Vol. 3.

The deed is Exhibit 6.

Claim No. 11-

Claim No. 11- Not 116. Henry George Birston, Claimant.

From a careful consideration of the evidence after it was extended, I am confirmed in the impression that was made upon me when the evidence was given, that the land to which the claimant set up a right was not lot 116, but a parcel of land in the swamp some distance north of this lot, and of much less value.

The claim to lot 116 should not be allowed.

Claim No. 12- Lot No. 51. Dr. David Young, Claimant.

One George Sayer was in possession of this land at the Transfer. He was one of Reil's men and when the Troops passed this land coming up the River in August, 1870, he hurriedly sold out to Thomas Bear, who at the Treaty in 1871 was in possession. The present Chief, at page 223, Vol. 3, says that Sayer was in possession in August 1870. As to the nature of the title got by Bear besides possession, see page 221.

After this lapse of time without any claim from Sayer, I am satisfied with Bear's title, he having gone into possession.

Bear conveyed to James Gunn by deed dated April 14th. 1874 and the land was not then in the Reserve, and Gunn conveyed to the claimant. All the deeds are registered. Gunn was not a Treaty man.

The claimant Dr. David Young is entitled to a patent for lot 51 in the Parish of St. Peters.

One Robert Sanderson is in possession, and I value his improvements at one hundred dollars, to be paid to him upon surrender of possession.

Claim No

Claim No. 13- North 3 chains of lot 55. John Clemens. Claimant

This matter is referred to in Whitcher and McColl's Report, Schedule A, page 6.

Mrs. Clemens by paper dated 11th September, 1873. attached to file No. 140 030, purchased this land from Prince, the present Chief. This is admitted by the Chief on page 244, Vol. 3.

Prince was in possession at the Transfer.

The claimant is willing to have the patent issued in the name of his wife, who appears to have a paper title, page 243. The claimant and his wife have been in possession for a long time and have made improvements.

The land was purchased by Margaret Clemens, a Non-treaty person, who went into possession before it was a part of the Reserve. A patent should be issued to her for the north three chains in width of Lot No. 55 in the Parish of St. Peters.

For further safety it would be well to require a conveyance from John Clemens to his wife Margaret Clemens.

Claim No. 14- Lots 231 and 232. Margaret Clemens, Claimant.

John Bear, the father of the claimant, an Indian, owned these lots and died in 1864. He left his wife in possession and she, with some of the children, of whom the claimant was not one, remained in possession until five or six years after the Transfer.

She took treaty as an Indian and died about three years ago.

The claimant has not established any claim to the land.

I would refuse the claim.

Claim No. 15-

Claim No. 15- South 2 chains of Lot 81. John Robert Harper, Claimant.

One Thomas Harper, a Non-treaty man, owned and was in possession of the whole lot at the time of the Transfer.

He sold the north half and a patent ha issued for it.

The south half was reported on by Whitcher & McColl, See Schedule A, page 10, and the evidence submitted to me fully supports their finding. All the conveyances are on file, 140,107.

The claimant purchased from Alexander McCaulay by deed duly registered, dated
and is in possession. This deed should be produced, as I have not seen it and a Registrar's Abstract should be filed.

As pointed out by correspondence on the file there seems to be an outstanding claim in Catherin Monkman owing to the Habendum clause in the deed from Thomas to Monkman on file No. 140,107.

If this objection is overcome a patent should issue to John Robert Harper, and I suggest that the land be described as all of the lot 81 which has not already been patented to the Ross Estate.

Claim No. 16- Jane Sinclair.

Her land had been patented and then sold for taxes. It was not within the Commission. I merely listened to her complaint.

Claim No. 17- Lot No. 60. Narcisse Chastelain, Claimant.

Andrew Spence was in possession of this lot with improvements

improvements at the Transfer.

By deed dated February 1874, Spence sold and conveyed to the claimant, who at once went into possession and remained in possession until in 1885.

The claimant took treaty for the years 1871, 1872 and 1873, he did not take treaty ~~af~~ thereafter. He went out and got Scrip as a half breed in 1874. See evidence Vol. 3 pages 267 to 279 and Vol. 6 pages 63 to 82.

I find therefore that the claimant, a Non-treaty man, purchased this lot and went into possession before it was set aside as a Reserve.

A patent should issue to Narcisse Chastellain for lot No. 60 of the Parish of St. Peters.

One Thomas Spence, a Treaty Indian, is now in possession. I value the improvements put on by him at two hundred dollars and this sum should be paid by the claimant to Spence as a condition for his surrender of possession.

I have searched the Registry Office and find the following registrations:

Deed Andrew Spence and wife to Narcisse Chastellaine dated 27th February, 1874, and registered 17th August, 1875. The land is described as was common in those times between the owners on each side. I am satisfied it is the same land as Lot 60.

Mortgage Narcisse Chastellaine dated 7th September, 1880, registered 4th November, 1880, which mortgage was assigned on the 12th November, 1880, to James Greig. This mortgage was given to secure a halfbreed claim. Tax sale certificate 8th May, 1891, to Municipality of St. Andrews, barring certificate 10th February, 1903, Winnipeg Registry Office.

These

These registrations should be removed before patent issues.

Claim No. 18- Lot No. 1. Charlotte Hodgens, Claimant.

William Stevenson, the father of the claimant, was in possession at the transfer with considerable improvements. He took treaty up to and including 1875 and died in May 1876. For the years 1871 and 1872 he took treaty for the claimant. She then married a white man, which disentitled her to Treaty and she never after received any treaty payments.

The claimant in 1872 went off with her husband and lived with him 23 months when he died and she came back to her father. Her bargain with her father is shown in Vol. 3 page 288.

She procured a conveyance of this land from her father dated 24th September, A.D. 1875, and duly registered the same on the 7th day of October, A.D. 1875, and she remained in possession after her father's death. She put improvements on the lot valued by Whitcher & McColl, Schedule C page 1. at $600. She says, page 284 Vol 3, the house alone cost $300.

The Indian Department wished to get her out of possession and a cheque of the Department for $200 got into the hands of her worthless husband and she got none of it. See her evidence and how by force she was dispossessed by the Department.

Mrs. Prince, a Treaty woman, was let in possession by the Indian Agent. After being in possession for a time she sold to James Cook, a Treaty man, for $75. and he is now in possession without any cultivation, and with buildings almost worthless.

The

The question now to be considered is the date when by irrevocable conduct or action on the part of the Crown this Reserve was really set aside. As I before remarked I have been unable to learn of any Order in Council. It is to be observed too that this conveyance was executed before the original of Section 24 of the Indian Act came into force. The lot is a valuable one and it seems to me the following compromise would be reasonable.

Let the claimant repay the $200 paid out to her husband in the following manner, one hundred and twenty-five dollars to the Department for the benefit of the Band and seventy-five dollars to James Cook for improvements for which he is to surrender possession.

I recommend the issue of a patent to Charlotte Hodgens for lot one on the above terms.

There Should be an abstract of title filed showing registered title in her.

Claim No. 19- Lots 17, 48, 49. Estate late Thos. Taylor, Claimants.

See file 167232 for action. file to Mr A.O. to note action 13/10/18

The evidence is given on pages 295 and 321 of Vol. 5 and pages 122 and 135 of Vol. 6.

There is no evidence of possession or occupation at the Transfer.

I would not allow the claim.

Claim No. 20- Lot 57. Peter Smith, Claimant.

See file 167298 for action. to A.O. to note 13/10/18 R

He lived on the lot and had improvements at the Transfer. He had a paper title from Chief Prince at that time and joined in the Treaty in 1871 and has been in possession ever since and has always received his

Treaty

Treaty payments. He is from appearances as nearly a full blooded Indian as any of the Band. He claims a patent under the Manitoba Act.

This is put forward by the Band as a test case.

Under the terms of the surrender he will no doubt get a patent for this lot. And then he must as a term abandon all rights under the Manitoba Act.

I disallow the claim

Claim No. 21- Lot 158. Estate of Thomas Truthwaite, Claimant.

One Peter George, a Treaty Indian, was in possession with house and improvements at the transfer. The claimants assert that he was merely a tenant for the deceased a Non-treaty man.

This matter came before Whitcher & McColl, the evidence given before them is on pages 37 and 38 of their evidence and their report on this lot is on page 21 Schedule B. Both parties were then before them and they saw their demeanour and decided against the claim. George was actually in possession at the Transfer and to defeat that apparent title the onus is clearly upon the claimants. The only new evidence brought before me was dependant upon memory of facts which occurred 57 years ago.

Subsequently Peter George was called. His evidence is upon pages 3, 4 and 5 of Vol. 7, and it seems to me he admits that he was in possession for Truthwaite at the Transfer and that Truthwaite was then owner. He is not now in possession.

I think

I think a patent for this lot should issue to the Legal Representatives of the late Thomas Truthwaite.

Claim No. 22- Lot 72. Estate of Joseph Parisien, Claimant.

One Stevenson, a Treaty Indian, was in possession with house and other improvements at the Transfer and by Exhibit 11 he sold to the late Joseph Parisien who went into possession. It appears he owed $80 or $90 of the purchase money and after a couple of years he abandoned the land because of his inability to pay.

The claimant then was and continued to be a Treaty Indian until 1886.

I hold that he did not complete his purchase and abandoned the property to the Band. In any event he continued to be a Treaty Indian and got the benefits long after the Indian Act of 1876.

The claim is refused.

Claim No 23- The North 7 chains of Lot 50. Estate of S. L. Bedson, Claimant.

(See amendment of claim Vol. 6 page 83)

One Vincent or Roy, a Treaty Indian, was in possession of the whole lot at the Transfer under a Peguis deed. He by writing dated 5th April, 1872, attached to file 140 121, sold to Narcisse Chastellain then a Treaty Indian, but who withdrew from treaty in the early part of 1874 and ceased to be a Treaty Indian before the lot became part of the Reserve (see claim No. 17)

On 27th February 1874, Chastellain conveyed to Andrew Spence a Treaty Indian, who at once went into possession.

By

By deed March 1874. Spence conveyed to Deschambault the south 2 chains. See Claim 37 By deed dated 14th July 1874 he conveyed to James Sette, Jr. the three chains next north of the two chains just referred to and Sette by deed bearing same date conveyed to the late S. L. Bedson. By deed dated April 5th 1875 Spence conveyed four chains next north of the parcel last above mentioned to the late S. L. Bedson. All the deeds and papers through which this claim is made are attached to file No. 140 121. I hold that the conveyances of the three chains vested the title in the late S. L. Bedson. The deed of the four chains may have been executed after the Reserve had been irrevocably set aside. If so then we must consider the question of a conveyance before the original of Section 24 became law.

Following the principle laid down by me in claim No. 18 I recommend that this deed of four chains should also be recognized.

If this recommendation is adopted the patent should issue to the representatives of the estate of the late Samuel Laurence Bedson for all of lot except the southerly two chains. The claimant for the two chains has the first right and there are not nine chains in the lot.

Gilbert Smith, a Treaty Indian is now in possession of the whole lot, and I value the improvements put on by him at three hundred dollars, seven-ninths of which sum must be paid by the claimants to him for a surrender of the premises.

Claim No. 24- Lot No. 2. Estate Wm. Johnston, Claimant.

All the parties through whom the claim is made, and apparently all claimants, were Treaty Indians and died in Treaty. The

The claim is refused.

Claim No. 25- Lot No. 18. Estate of Geo. Sutherland, Claimants.

For action see file 79384/7 74/8/8 R as to note

The late Geo. Sutherland was in possession with improvements at the Transfer. He continued to be a Treaty Indian from the beginning until the 27th day of December, A. D. 1897, when he went out of Treaty.

Before his death in the year 1898, and before he went out of Treaty his grandson, Thomas Sutherland, a Treaty Indian, at the request of the deceased, moved upon this lot. and he says he was to have it for taking care of the old man, and he was in possession at the death and has remained in ever since.

The claim is refused.

Claim No. 26- Lot No. 66. Estate of Ellis W. Hyman, Claimants.

For action see file 140081 McColl's note 74/8/8 R

Angus Prince, a Treaty Indian, was in possession with improvements at the Transfer. By deed dated the 19th day of March, A.D. 1873, he conveyed to one MacPherson a Non-treaty man who it is claimed conveyed to the claimant.

This case comes within the rule I have laid down, it having been conveyed away before the land was brought into the Reserve. Sed Whitcher & McColl's Report, Schedule B page 8- File 140,081.

I searched the Registry Office and found the following registrations:

Deed dated 19th March, 1873, registered 20th March, 1873, Angus Prince to Alexander McPherson. The land is described as being on the west side of the River by the owners on each side, and I find it to correspond with

Lot

Lot 66.

Deed dated 10th June, 1874, registered 10th July, 1875, Walter S. Hyman to Ellis W. Hyman describing the land as in the former deed. There seems to be no conveyance registered from Alexander McPherson.

In addition to the above registrations there is a Quit Claim Deed from Cody to Bennett and a Lis Pendens registered, both dated in 1882.

If the claimants can show title from MacPherson they are entitled to a patent.

Mrs. Angelique Favil, a Treaty person, is now in possession and I value the improvements made by her at one hundred dollars, which should be paid to her upon releasing possession.

Claim No. 27- Part of unsurveyed land in front of Lot 244.
John Sanderson, Claimant.

Between Cook's Creek and the Red River on the east side there is a quantity of unsurveyed land. It was originally considered as part of the lots which run down to the creek. The claimant, a Treaty Indian, set up a claim to lot 244 which with other lots was surrendered by the Band to the Government many years ago. The Government paid him $150 in full for his claim and improvements, and he moved away. He now asserts title to the land in question. I have no doubt that the claimant intended to surrender all his claim and he did abandon it. He continued a Treaty Indian until 1886. The claim should be refused.

Claim No. 28-

Claim No. 28- Lot No. 228. Hugh Pritchard, Claimant.

The claimant is patentee for Lot 22. Lot 228 is a wood lot on the opposite side of the River which the claimant asserts he used for wood purposes in the occupation of Lot 22. He received Scrip for some appurtenant to Lot 22 and one would think it would be the wood lot.

Wm. Thomas, through whom the claimant asserts title, says he bought from Chief Prince and produces Exhibit 14 as his title paper. Manifestly this paper was not got earlier than 1873. There is no satisfactory evidence of possession or purchase before or at the Transfer. I think the purchase was made after the Transfer.

The claim must be refused.

Claim No. 29- Portion of unsurveyed land in front of 245. Nancy Cochrane, Claimant.

See statement, Vol 5, page 38.

She was not in possession at the Transfer. Took possession in 1874. Afterwards took Scrip.

The claim must be refused.

Claim No. 30- Lot No. 94. Sarah Cessford, Claimant.

The evidence is on page 39 Vol. 5 and 99 to 101, Vol. 6.

I do not think the claimant's father or mother either lived on the lot at the Transfer. If any one did it was a Treaty Indian. Mrs. Cessford took treaty up to 1886. Either fact would defeat her claim.

The claim must be refused.

Claim No. 31-

Claim No. 31- Lot No. 39. Christina Ross, Claimant.

Francis Anderson, a Treaty Indian, was in possession with improvements at the Transfer and in October 1878, by writing, Exhibit 15, sold to John Flett, also a Treaty Indian, who by deed duly registered dated the 2nd day of July, 1874, sold to the claimant.

I searched the Registry Office ar' found registered:

Deed dated 2nd July, 1874. John Flett, Jr., to Christina Ross. The land is described as bounded on the east by the Red River, on the lower or northern side by the lands in possession of and belonging to John Thomas, Sr., on the west by the two mile limit, and on the southern side by the lands belonging to and in the possession of one Francis Sinclair, registered 2nd July, 1874. Which corresponds, I find, to lot No. 39.

Christina Ross is entitled to a patent for Lot No. 39 of the Parish of St. Peters.

Robert Sinclair, a Treaty Indian, is now in possession and I value the improvements put on by him at one hundred dollars, to be paid to him on relinquishing possession. See page 10 Vol. 7.

Claim No. 32- Lot 28. Estate of A. G. B. Bannatyne, Claimant.

Robert Bear, a Treaty Indian, was in possession at the Transfer and by mortgage dated July 13th, 1875, he encumbered the property to the late A. G. B. Bannatyne. Whitcher & McColl report a sale as of July 1875.

I do not see how this claim can be sustained. Bannatyne was never in possession.

I would refuse the claim.

Claim No 33-

Claim No. 33- A parcel of land 6 chains wide next north of the most northerly surveyed lot on east side of River. Estate of Thomas Flett, Claimant.

I am not at all satisfied that the late Thomas Flett had before the Transfer any specific piece of land. He may have had a right to cut hay with others where he could find it.

The claim is put forward as supported by Eshibit 16. That paper was no doubt ante-dated and was in fact signed after the Transfer. See Vol. 6 pages 24 and 47, 48.

However, the parcel of land which he claimed after the Transfer, See file 140 076, and the parcel described in Exhibit 16 was not the parcel herein claimed, but one at least a half a mile further north. This fact is clearly proved.

The claim must be refused.

Claim No. 34- South half of Lot 232. Annabella Crump, Claimant

Claim No. 35- North half of Lot 232 Estate E. W. Nyman. Claimant.

The two claims may be considered together.

The evidence, Vol. 6 pages 49 to 62, is vague and conflicting, but the conclusion I draw is that at the Transfer the farm was the property of Antouine Kennedy, a Treaty Indian and I am satisfied that if Flett ever occupied this property he did so merely by the consent of and as a tenant of Kennedy, the two families living together. See Whitcher & McColl's Report, Schedule B page 35 - File 140 108.

Neither

Neither Flett nor his wife were in possession at the Transfer, otherwise than as living with Kennedy, the owner, as members of his family.

They had no other title and could give no right to the person through whom the Hyman estate claim.

Kennedy lived on the land as a Treaty Indian until 1883. He therefore at that date had nothing to will.

Both claims must be refused.

Claim No. 36- Part of unsurveyed land in front of Lot 242. John Cochrane Claimant.

The claimant claims title through a deed from Prince which he swore he got before the Transfer. This is not true. It is dated in 1873 and judging from the appearance of the document it was written much later even than 1873.

After close pressing he admitted no house on the property until 1872, but he said he had clearing before that date. He took treaty from the beginning until 1886 and got Scrip as a half breed.

I do not think he was in possession at all at the Transfer. I do not think he bought the land prior to the Transfer. On each of the grounds he is not entitled.

I would refuse the claim.

The claim was not before Whitcher & McColl.

Claim No. 37- The south 2 chains of Lot 50. Geo. Black, Claimant.

This claim is considered in claim No. 23 where the history of the lot is given. As therein set forth

Spence

Spence conveyed to Henry Deschambault the south two chains by deed dated March 4th A. D. 1874.

I searched the Registry Office and found the following registrations:

Deed 4th March. 1874, registered 23rd June, 1874, Andrew Spence to Henry Deschambault, the southerly 2 chains of a parcel of land described by adjoining owners which corresponds with the southerly two chains of Lot 50.

Deed dated 10th June, 1874, registered 23rd June, 1874, Henry Deschambault to Thomas Black. Same land, described in the same way.

Deed Thomas Black to George Black describing land in the same way, dated 28th July, 1874, registered 22nd August, 1874.

Mortgage George Black to Kew Stobart for $1465.00. Land described as above, dated 1st August, 1874, and registered 22nd August, 1874.

The claimant George Black is entitled to a patent for the southerly two chains of lot 50 if the mortgage is disposed of.

Gilbert Smith, a Treaty Indian, is in possession of the whole lot and I value the improvements put on by him at three hundred dollars.

The claimant must pay two ninths thereof to Gilbert Smith upon surrender of possession of the two chains.

Claim No. 38- Lot 223. Nancy McKenna, Claimant.

At and for a long time prior to the Transfer the late Rev. James Settee, a Treaty Indian, owned and was in possession of the land claimed.

The

The claimant took treaty until 1886 when she went out of Treaty. I do not think she ever occupied the land as her own. If her father, who was an educated man, wished to give her land he would no doubt have had a deed or writing prepared.

In no way of looking at the evidence can this claim be allowed.

Claim refused.

Claim No. 39- That part of unsurveyed land in front of lot 245. Mary Cochrane, Claimant.

Claimant is the widow of Baptiste Cook. She claims that there was some clearing on the land at the Transfer done by her husband, and that seven years later a house was put up on the land. Her husband first took Treaty in 1875 and afterwards in 1884 went out of Treaty.

I have no doubt that there was no possession until long after the Transfer. The claim cannot be allowed.

Claim No. 40- The North 4 chains of Lot 167. Alexander Macaulay, Claimant.

Claim No. 41- The South 3 chains of Lot 167. Robert Harper, Claimant.

A claim for part of this lot was made before Whitcher & McColl. Harper then gave evidence, page 42, and then he did not pretend ever to have owned more than the north 4 chains of the lot. He claims he bought the three chains from his brother, but has no writing. I do not believe the story. He got a patent for Lot 83 and drew Scrip for something appurtenant to this lot.

Claim

Claim No. 41 should be refused.

As to claim No. 40. There is no independent testimony that Thomas Harper ever owned this lot 167. Robert said he got it from Thomas, his father, but no writing, and on the evidence I do not think any possession at the Transfer was proved. I have not seen the File 140 171, as it was not sent to me, so I am not aware of what further evidence there may be.

I think the claim No. 40 should not be allowed, but I am not free from doubt.

I searched the Registry Office and found the following conveyances:

Deed 18th March, 1875, registered 7th April, 1875, Robert Harper to John McLeod. The land is described by a registered Instrument and by other ownerships. I am satisfied the land corresponds with the northerly 4 chains of Lot 167.

Deed 26th August, 1881, registered same day, John McLeod to Alexander McAulay. The land is described as the north four chains of Lot 167.

Grey-eyes in possession of claim 40 and his improvements are valued by me at fifty dollars.

Claim No. 42- Lot 130. Murdock McIver, Claimant.

See file 140 155 for action. File to note in Oct 08 JAR

The claim is made through Exhibit 18, from a Treaty Indian named Catfish. One Starr, a Treaty Indian, was in possession at the Transfer and by some verbal testimony which I do not think reliable, it is claimed that Catfish was then the owner and merely permitted Starr to be in possession.

This claim came up again, see pages 16 to 22, Vol.7,

and

and more evidence was given from which I conclude that Starr was in possession as owner.

The matter came before Whitcher & McColl, Schedule B, page 15.- Evidence 76.

I place little reliance upon the story sworn to before me.

The claim is refused.

Claim No. 43- Lot No. 191. Geo. Tait, Claimant.

Baptiste LeClaire claims that he purchased the property from Prince in 1866 or 1867. That he went away as a Missionary, returned for two weeks in 1870 and again away for 7 or 8 years. He never occupied or in any way used the property. He claims he got deed Exhibit 19 in 1870. He says he sold to Ballenden through whom the claimant claims in 1878.

It is clear that the affidavits on file 140 090 are falsehoods. LeClaire clearly shows that he was never in possession, although his affidavit on file asserts the contrary.

I am satisfied that LeClaire did not purchase before 1870 and I am inclined to think that Exhibit 19 was not obtained until 1878.

LeClaire was and is a Treaty Indian. There was no possession at the Transfer.

The claim must be refused.

Claim No. 44- Lot No. 226. The Bannatyne Estate, Claimants.

The only evidence given was that of William Thomas page 121.

There is no evidence of title or of possession at the Transfer.

The

The claim is refused.

Claim No. 46- The northerly 6 chains of Lot 195, Estate of Ellis W. Hyman, Claimants.

Note. There is no No. 45.

Claim No. 47- The south 3 chains and the most northerly 9 chains of Lot 195. W. J. Porter Estate, Claimants.

At the time of Vaughan's survey there was apparently no building upon the lot. Baptiste Rat owned and occupied the land and died upon it before the Transfer. His widow, who took treaty occupied it for a time after his death. William H. Prince, the only witness to support this claim before me. was a sort of adopted ~~brough~~ brother of this woman and gives some evidence of a parol sale by her to George Irvine through whom both claimants assert title. Prince was the man who drew a large number of the documents of title at that time. He was educated and knew the necessity of a writing to evidence a title.

An examination of the affidavits on file 140 138 shows how little reliance can be placed on what Prince swore to. In the affidavit it is asserted that Irvine bought from Rat about eight years before the Transfer and not from the wife. In 1887 Porter thought he was only entitled to three chains. It is interesting also to lookmat the affidavits attached to file 140 088.

I do not think that Irvine was in possession at the Transfer, and no title has been shown in him. The affidavits and evidence are unworthy of any attention.

Both claims should be refused.

Claim

Claim No. 48- Lot 187. Estate of Ellis W. Hyman, Claimants.

For action see files 734204 + 140094

The late Joseph Cameron, a Treaty Indian. lived on the lot at the Transfer and had a house on it.

The witness Williams, a Councillor, and a reliable man confirms this.

Cameron conveyed to McPherson by deed dated February 14th 1873. who by deed dated 30th April 1873 conveyed to Andrew E. Wilson, and Walter F. Hyman, both of which deeds are on file 140 094.

The land having thus been conveyed to Non-Treaty persons prior to it being in the Reserve a patent should issue for lot 187 in the Parish of St. Peters to Wilson and Hyman, or to the claimants if they show title through these parties.

I have searched the Registry Office and make the following remarks.

The claim is covered by Deed 637 referred to in another of the Hyman estate claims.

Upon the registered title appears a plan registered by the Roman Catholic Church showing that they have located a church upon this lot and this objection should be removed before patent issues.

Henry Flett, a Treaty Indian is in possession and I value the improvements put on by him at fifty dollars to be paid on surrender of possession.

Claim No. 49- Lot 198. Hyman Estate, claimants.
Claim No. 50- Lot No. 197. Hyman Estate, Claimants.

For action see file 140124 also file No 140126 also both to No. 6 Cole 29/K 8 No. 8

The claim No. 49 is asserted through a deed from Alexander Cochrane, and to No. 50 through deeds from Adam

Adam Cochrane.

These two claims should be considered together.

The two parties above named are brothers and their father was originally the owner and occupier of both parcels used as one property. Whether he was or was not alive at the Transfer seems uncertain. No doubt the mother was then alive and she with her whole family of many children, including the two above mentioned, lived on this land at the Transfer. See also the evidence of Mr. Muckle, Vol. 6 page 180.

I cannot think that either of the above mentioned sons occupied specific portions of the farm at the Transfer. The mother and all the children were Treaty Indians. No title is shown in either Adam or Alexander.

The evidence of Adam, a witness called on behalf of the claimant as to being drunk is significant, and both parties have ever since occupied the lands claimed.

I would disallow both claims.

Claim No. 51- Lot No. 120. B. R. Ross Estate, Claimants.

Mr. Muckle, the late Indian Agent, purchased this land before the Transfer. He built a house and left Morriseau. from whom he purchased, in possession.

I place great reliance upon Mr. Muckle's evidence, Vol. 6 page 175. He also gave evidence before Whitcher and McColl see pages 24 and 25 of their evidence.

Muckle swears he got a deed from Morriseau and gave it to Ross with a deed from Prince to Morriseau.

I searched the Registry Office and found the following registrations only:

Deed

Dedd dated 31st January, 1873, registered 4th February, 1873, A. M. Muckle to B. R. Ross.

The land is described as being in the Parish of St. Peters on the east bank of the Red River, bounded on the west side by the Red River, on the east side by a line parallel to and two miles distant from the Red River, on the south side by the Red River running east, southeast to the eastern boundary (commencing from the Red River) of Dr. Schultz lot and following the said lot to eastern boundary, on the north side by a line running parallel to and eight chains distant from the southern boundary.

The deed Muckle to Ross was no doubt intended to convey land identical with lot 120, but the description is so vague that it seems to me a conveyance by way of confirmation from Muckle should be required.

The Department has notice that Brunell has a claim to this. I caused a notice to be mailed to him at the address shown on the files of this application, but received no reply and no one appeared before me representing him.

The land should be patented to the person showing title from Muckle. ~~R~~ If Ross did convey to Brunell the latter is entitled to a patent.

The evidence of Monkman given before Whitcher & McColl, page 25, asserts that Ross sold to Brunell. And it is significant that Brunell was then the claimant See Whitcher & McColl's report Schedule A page 14, where it recommended for patent. See file 14091. Some person seems entitled to patent.

Thomas

Thomas Vincent is in possession and I value his improvements at dollars, which must be paid to him upon his relinquishing possession. The evidence of possession was not satisfactory and I asked the Indian Agent at Selkirk to visit the property and send me an affidavit of the result. This he has not done and an enquiry should be made as to the improvements before patent issues.

Claim No. 52- Lots Nos. 107 and 108. Estate of Ellis W. Hyman, Claimants.

The claimant asserts title through a conveyance by David Prince, a Treaty Indian.

Wm. H. Prince swore on page 181, Vol. 6, that Daivd Prince was in actual possession at the Transfer. This, like other of his evidence, is to my mind untrue. Joseph O. Prince was called, see page 190 and following.

W. H. Prince was recalled after Joseph gave evidence and admitted at pages 194, Vol. 6 that there was no house on David's land at the Treaty.

I find that David Prince was not in possession nor had he a title to either lot at the date of the Transfer.

The claim should be refused.

Claim No. 53- Lot No. 190. Estate of late Ellis W. Hyman, Claimants.

The claimants assert title through a deed from Wm. Cook to McPherson.

The only witness called in support of the claim is Wm. Cook the man who it is claimed signed the deed.

He

He swears that he was drunk when he signed the deed and that there could have been no real sale.

On the file 140,092 the deed is shown, also an affidavit signed by him, both by his mark. W. H. Prince is witness to the signature to the affidavit which excites my suspicion for Prince was employed in 1876 to get affidavits to prove the McPherson claims.

Cook has remained in possession ever since and is now in possession.

If this were an action for possession against Cook tried by me. I would upon this evidence refuse to disturb him. I would refuse the claim.

Claim No. 54- Lot 204. Ellis W. Hyman estate, Claimants.

One Baptiste Kennedy, a Treaty Indian. was living on this lot and owned it at the Transfer. He took treaty and remained on the lot until his death many years later.

Alexander. his son also then a Treaty Indian, lived with him (See evidence of W. H. Prince, page 195 Vol.6) in the same house at the Transfer. The affidavits on file 140,118 I have no doubt are untrue. On page 199 of the evidence it is shown that at the very time of the sale by Alexander the father was living on the lot.

The possession at the transfer was that of the father. No title is shown in the son.

The claim is refused.

Claim No. 55- Lots 67 and 186. George Black, Claimant.

The claimant claims title to both lots by deed from John Hope.

One

One John Hope occupied lot 67 and had buildings upon it long before the Transfer. From the evidence I gather that he either died or disappeared before the treaty and at that time his wife and children(all of whom were Treaty Indians) amongst whom was his son, occupied the lot about the time of the Transfer.

I find that the possession was that of the mother.

The son John Hope who purported to convey had not the possession required by the Act and no title is shown in him. There seems no title whatever in any way as to lot 186.

Even if the claimant's title were established he has conveyed his title away to Kew Stobart.

The claim is refused.

Claim No. 56- Lot 207. Ellis W. Hyman Estate, Claimant.

The claim is asserted through D. Travers, who it is claimed was in possession at the Transfer.

The deed through which the claim is made is on file 140,116. The matter came before Whitcher & McColl and was treated as referring to Lot 209, which was patented to Schultz. And Mrs. Bear, the former widow of Travers, in her evidence page 209 Vol. 6, evidently thought this the same property. She says they were in McKenzie River just before the Treaty, page 211.

The witness Prince who gave evidence before me swore to different adjoining neighbours than those referred to in his affidavit on the file.

Mrs. Bear before me differed from him and both differed from the other affidavit on file.

I

I very much doubt if Travers at the Transfer was in possession of any land in that locality and certainly not in possession of Lot 207.

The parties cannot even agree who is in possession now. Prince says John Sanderson. The widow says her son in law John Wilson. No doubt they refer to different properties.

The claim is refused.

Claim No 57- Lot 185. Ellis W. Hyman Estate, Claimants.

Angus Prince lived on lot 66 on the west side and he claimed this lot as a wood lot it is alleged. W. H. Prince swears and reasserts on page 212, Vol. 6, that this lot owned by Prince was south of John Hope's lot. Looking at claim No. 55 it will be seen that Hope's lot was 186 which is south of 185. If this is true then Prince did not claim 185 but 187. I merely point this out to show how utterly unreliable the testimony is.

His affidavit and others on file 140 081 place the lot on the other side. There is no evidence except the most vague that Prince had any title or right to the lot. He was not in possession at the Transfer and the evidence as to his using it as a wood lot is too general for any reliance to be placed upon it.

I would refuse the claim.

Claim No. 58- Southerly 2½ chains of Lot 201. Estate of Michael Rourke, Claimants.

Samuel Stevenson, a Treaty Indian, in possession with improvements at the Transfer, see evidence on page 216

216 and 235, Vol. 6.

He gave a deed to his son in law, the late Michael Rourke, which is registered and a duplicate is on file 140,122, which deed is dated 21st March 1874. Apparently Rourke was then in possession and remained in for some time.

See the affidavits on file.

The late Michael Rourke having acquired title before the land was part of the Reserve was entitled to a patent.

The proper representatives of his estate are entitled now to a patent to the land claimed as above.

Joseph Thomas is in possession of the whole lot and I value the improvements on the part claimed at seventy dollars to be paid to Thomas upon surrender of possession.-- Since writing the above I have begun to doubt if Thomas is in possession now of the part of the lot claimed. The Indian Agent at Selkirk should be required to examine this 2½ chains and say who is in possession and the value of the improvements.

Claim No. 59- Lot 148. James Monkman, Claimant.

Claim No. 60- Lot 150. James Monkman, Claimant.

These two claims should be considered together.

The claimant has already received patents for lots 96 and 102, the proofs for which were solely the affidavits of members of his family.

On the application for 102, file No. 140,099, he swore in an affidavit attached, that the lot had been transferred to him by his late brother William in the fall of 1868 and that in the year 1869 he, the claimant, built a house upon the land and resided thereon from then to the then present time, 1878.

Either

Either this is untrue or the evidence he gave before me. He swore before me that he lived with his father on lot 97 until 1872 when he married.

I gather from his evidence that there was no house on this lot until after 1872. See evidence pages 217 to 227 and ~~to~~ 252 Vol. 6.

In the same file are affidavits as to lot 96. All parties again swear that William Monkman deceased transferred the lot to him.

The original claims for these lots are shown in files 140,147 and 140,117. It may be observed that in the affidavits in support of the claim for 148 (file 140,117) it is asserted that William purchased from Joseph Morriseau. the same man apparently, who in 1870 sold to Muckle lot 120 - Claim 51.

These affidavits also state that William transferred these lots to the claimant. Joseph Monkman, an elder brother of the claimant, was called on his behalf, He swears there was no transfer, but merely a statement by William that he made James, the claimant, his heir without any mention of any property, and it would seem, subject to some rights of his mother, and this is the only evidence of any transfer. Joseph further said that his brother William had only two properties, one on the east side and one on the west. Yet James has already received patents for two lots on the west side, one of which is a large one, together with Scrip for each, and now asks for two on the east side.

From the evidence I do not believe that the claimant was taking wood from both lots at or before the Transfer. No one gives any evidence of purchase of either

either lot by William; no one pretends to be present at any purchase.

If one lot is patented to the claimant I think he is generously treated as Messrs. Whitcher & McColl have apparently recommended 148 I will follow them and recommend the issue of a patent for lot 148 to James Monkman.

Since the evidence above commented on was given, the claimant gave a statement in my absence, herein at the end of this report commented on, and his brother Joseph retold his story in Vol. 7, at page 23.

I notified the solicitor of the claimant to have his client before me at Selkirk to repeat his evidence but he did not appear.

In the face of his affidavit filed in application for patent to Lot 102, little reliance can be placed on his statements.

I adhere to my original view and would recomm- the patenting of one lot only.

Claim No. 61- Lot 112. Estate of Wm. Whitney, Claimant.

There is not the slightest evidence of possession or title.

The claim is refused.

Claim No. 62- Lot 121. Estate of Joseph Monkman, Claimant.

There is no evidence of possession or title.

The claim is refused.

Claim No. 63-

Claim No. 63- Lot 164. Estate of Joseph Monkman, Claimant.

There is no evidence of possession or title. The claim is refused.

Claim No. 64- Lot 232. Estate of Charles Fox, Claimants.

The deceased Charles Fox apparently got right of possession of a portion of this lot for the purpose of building a water mill upon it. He worked at it for a long time and erected a rather large building upon it which was not quite completed when he died in 1869. He also did a good deal of work upon a dam across a creek on the lot, and at his death had a large wheel and machinery on the premises. There were portions of the work still upon the premises at the Transfer. He had something of a paper title in Exhibit D.

At page 239 Vol. 6 there is evidence of payment to the Chief. The extent of the possession is difficult to arrive at, but there was, I think, possession within the Manitoba Act. I would recommend patent for three chains of the lot to the persons entitled to the estate.

Claim No. 65- Lot 122. Bernard Ross estate, Claimant.

The evidence does not show possession or any title. The claim is refused.

On two different occasions I caused notices to be published in a Selkirk newspaper of my appointment as Commissioner and asking for claims to be presented. I also caused the files which were sent to me to be examined and the claimants shown therein were notified by mail at the addresses therein shown as well as could be

be and were asked to present their claims, and I considered all claims that were presented. The above claims numbered 1 to 65 both inclusive above set forth were all that were presented.

Where improvements have been valued I would suggest that such directions as to payments be made that ~~x~~ will secure payment by the party to receive the land on the one hand and release of possession by the party to receive the money on the other.

Perhaps it would not be out of the scope of my duties to add that the carrying out of the terms of the surrender could not well take place until my findings in this matter have been disposed of. It may be that the Department may well think, upon my findings of fact, that the result should be different, at all events in two or three cases. The allotting of the lands to the Indians in carrying out the terms of the Treaty cannot take place until these questions are disposed of, because it will not until then be known what lands may be set aside to the individual Indians. The Chief and Councillors of the Band have urged me to make my report as early as I conveniently could, as they desired early to settle the individual claims to patents to members of the Band pursuant to the terms of surrender.

Unfortunately on the 7th of September last I suffered from a collapse that took me some time to recover from, hence the delay in making this report.

I issued an appointment to take evidence as to the value of the improvements upon certain of the land which I was about to recommend for Patent. On the day fixed I was unable, on account of my health, to attend and I

asked

asked Messrs. Clarke and Heap to conduct the examination in my absence, as the values were unimportant.

At that time other witnesses were called as to James Monkman's claim and McIver's claim, both of which I was suspicious about.

I have refused to consider this examination, but I return it herewith marked A.

For the purpose of getting evidence to replace this I attended at Selkirk and retook the evidence which is shown in Vol. 7.

I gave due notice to the Solicitor of McIver and Monkman that I should take this course, and all the witnesses reappeared except James Monkman.

I have the honor to be.
Your Excellency's most obedient Servant,
(sgd) H. W. Howell.