BRITISH COLUMBIA CLAIMS.

REPORT OF T. G. ROTHWELL, COMMISSIONER, ON CLAIMS OF SETTLERS IN ESQUIMALT AND NANAIMO RAILWAY BELT, B. C.

DEPARTMENT OF THE INTERIOR,
OTTAWA, 21st December, 1897.

SIR,—In accordance with a direction given in and by the commission which issued to me upon the 10th day of August last, of which a copy is hereunto attached, I have the honour to report to you the result of my investigation into the claims referred to in that commission, the evidence taken before me concerning such claims, and the opinion which I have arrived at thereon, and which under the terms of my commission I am to express thereon.

The claims in question consist of the claims of certain settlers upon the tract of lands which was conveyed to the Government of the Dominion of Canada, by the Province of British Columbia, under the provisions of chapter 14 of 47 Victoria, of the Statutes of that Province, entituled: "An Act relating to the Island Railway, the Graving Dock and Railway Lands of the Province," and which, in accordance with the purpose and intention of certain provisions of that Act, in that behalf contained, and under the authority of section 3 of chapter 6 of 47 Victoria, of the Acts of the Dominion of Canada, entituled: "An Act respecting the Vancouver Island Railway, the Esquimalt Graving Dock and certain railway lands of the Province of British Columbia, granted to the Dominion," was granted to the Esquimalt and Nanaimo Railway Company (hereinafter referred to as the railway company) by letters-patent bearing date the 21st April, 1887, of which a copy is attached hereto.

The settlers mentioned are those who are referred to as *bonâ-fide* squatters, in section 23 of the Provincial Act before referred to, and which is hereinafter referred to as chapter 14, and in sub-section 2 of section 7, of the Dominion Act before referred to, and which is hereafter referred to as chapter 6. It was provided by this section and sub-section, that each *bonâ-fide* squatter, who had continuously occupied and improved any of the lands within the tract of lands so granted to the railway company, for a period of one year, prior to the 1st January, 1883, should be entitled to a grant of the freehold of the surface rights of the land settled or squatted upon by him to the extent of 160 acres, at the rate of $1 per acre.

The settlers affected by these provisions have always claimed, and now claim, however, that they are entitled to a grant in fee simple not only of the surface rights, but also of the under-rights including the coal and all other minerals, except gold and silver, or, in other words, to the same title, to their respective lands, which a settler, who had applied for and obtained a pre-emption record under the provisions of the Act passed in the year 1875 by the Province, being chapter 5 of 38 Victoria, or under the provisions of any of the Acts which were repealed by the first section of that Act, and who had complied with the conditions of his pre-emption entry, secured from the Province by the issue of a Crown grant in the form of which a copy is hereto attached.

As none of the settlers, to protect whose rights section 23, of chapter 14 and sub-section 2, of section 7, of chapter 6 have always been understood to have been passed, obtained entries for the lands they respectively settled upon and claimed, until they obtained entries by the acceptance of pre-emption records subject to the provisions of section 23, it is clear that they have no claim to the under-rights which they could establish by any legal proceedings. In other words, the settler who accepted a pre-emption record, subject to the provisions of section 23, for the land which he claimed, thereby agreed, although unintentionally and in ignorance of the meaning of those

provisions, to pay $1 per acre for the surface rights of the land he claimed and to accept a grant thereof in full settlement of his claim.

This is the legal position in which each of these settlers or persons claiming title from such settlers, respectively, now stands with regard to his land. This is the standpoint from which the claims have been invariably considered by all persons who have had to deal with them officially in the past. These settlers had "no status" with regard to the lands they claimed, and it may be that it is the only standpoint from which I should consider them. But, as Mr. Patrick Dolan, one of the claimants, stated in his evidence, "the law does not always do right by settlers," and as I think I can show not only from the evidence, but from the Acts which have been passed, and the notices that have been issued by the Province with regard to this matter, that these settlers did not receive the protection, when such Acts and notices were framed, which they were justly entitled to, I propose to go into it and set out in detail all material particulars concerning it, from the time of the issue of the notice of the 1st July, 1873, referred to in the evidence of Mr. W. S. Gore, Deputy Commissioner of Lands and Works for the Province, up to and inclusive of the passing of the Provincial chapter 14, and Dominion chapter 6 of 47 Victoria, before referred to. When I have completed this task I feel satisfied that I will have established the conclusion I have arrived at, that although these settlers, speaking generally, have now no legal right to the coal and other minerals under their lands, they or those claiming from them have a just claim for redress at the hands of the Province in which they live and a claim which that Province cannot honourably refuse to recognize and settle. Up to the present date the Province appears to have been perfectly satisfied that all blame for this matter should be laid upon the Dominion, notwithstanding that the sole interest of the Dominion was that of the trustee for the Province; but even if the Dominion was responsible for the injustice which I consider has been done to these settlers, it is the duty of the Province to redress that injustice.

The notice of the 1st July, 1873, I have referred to, is the notice which was published in the British Columbia Gazette of the 5th of that month and the first one which, according to the evidence of Mr. Gore, was issued by any Government of the Province to reserve from settlement a tract of land to be conveyed to the Dominion Government, in trust, to aid in the building of any railway upon Vancouver Island. It was passed upon the authority of the Order-in-Council therein mentioned, for the purpose above stated.

It is doubtful, I think, that this notice and the reserve therein referred to were in force when many of the settlers applied for entry for the lands they had squatted upon, but as none of them was granted a pre-emption record it is unnecessary to consider this question. Apparently, however, such notice and reserve were assumed to be in force by the officials of the Province who had to deal with the lands in question, because this notice was the only notice of reservation that was issued by the Provincial Government until the notice which was published in the British Columbia Gazette of the 22nd April, 1882, reserving the tract of land therein described for the purpose of enabling the Government of that Province to carry out the provisions of the "Vancouver Land and Railway Company Act, 1882," chapter 15 of 45 Victoria, commonly known and referred to in the evidence as the "Clement's Act," from the name of one of the promoters of that company, Mr. Lewis M. Clement. It was because of this notice of the 1st July, 1873, that the applications of all the settlers who applied prior to the passing of the Clement's Act were refused.

That the Provincial Government of 1883 also considered this notice of 1873 to be in force is evidenced by the fact that in the notice of the 12th June, 1883, which was published in the British Columbia Gazette of the following day, reserving "in furtherance of the construction of the Island Railway," the tract of land therein reserved, it was provided that this notice of the 1st July, 1873, was thereby rescinded. A copy of each of these three notices, which according to the evidence of Mr. Gore, are the only notices of the kind which were issued by the Province, is attached hereto, and I wish particularly to point out that no mention is made in either of them, in any of the Land Acts passed by the Province or in any Act passed by the Province incorporating or otherwise concerning any Railway Company, until the Clement's Act was passed, of

the reservation of the minerals or under-rights. As the section of the Clement's Act by which the minerals were to be granted to the company incorporated by that Act, and not to the settler, will be quoted further on, it is unnecessary to quote it here, but by such section the settler was given, for the first time, intimation of any kind that even though he might obtain title to lands upon which he had squatted, he would not be granted the under-rights which before that time passed to each grantee by his Crown grant. Indeed in each of the Land Acts which were in force from 187) the form of Crown grant to be issued thereunder is provided to be the form in the schedule thereto, in which form the only minerals mentioned as being reserved are gold and silver.

It may be well to state here the several Land Acts that were in force in the Province from 1870 to 1884. Until the 22nd April, 1875, when the "Land Act, 1875," was assented to, the law of the Province under which settlers had to obtain title to their lands was the "Land Ordinance, of 1870," as amended in 1872 and 1873, as the Act of 1874 was not brought into force. Its provisions, however, are the same as the provisions of the "Land Act, 1875." In 1876, an Act, chapter 25, of 39 Victoria, was passed to amend one section of the "Land Act, 1875," but this amending Act was repealed in the following year by chapter 26, 40 Victoria. The "Land Act, 1875," was, however, amended in 1878, by chapter 25, of 42 Victoria, in 1879, by chapter 21 of 42 Victoria, in 1882, by chapter 6, of 45 Victoria, and in 1883, by chapter 17, of 46 Victoria. In 1884, by chapter 16, 47 Victoria, the laws affecting Crown Lands in British Columbia were again amended and consolidated, and the "land Act, 1875," and its amending acts were repealed.

In none of these Acts until chapter 6, 45 Victoria was passed, were any minerals reserved but gold and silver, but by section 6 of that Act coal was also reserved. It was not until the passing of the Clement's Act, chapter 15, 45 Victoria, however, as I have before pointed out, that any provision was passed to reserve minerals from the settler and to grant them to a railway company.

In 1875, by section 1, of chapter 13, 38 Victoria, a grant of land not to exceed 20 miles on each side of the railway line was made to the Dominion Government to aid in constructing a railway between Nanaimo and Esquimalt Harbour, provision for building a railway between that harbour and Victoria having been made in 1873, by chapter 23, 36 Victoria, no land grant being, however, provided for this enterprise. By one of the sections of this latter Act provision was made that none of its provisions were to take effect until the Pacific terminus of the Canadian Pacific Railway had been officially announced, and not until the 31st December, 1874, unless that company had previously selected and acquired all the lands in the district through which the Victoria and Esquimalt Railway was to run. The charter of the then proposed Canadian Pacific Railway Company having been revoked, the time in which the construction of the Victoria and Esquimalt Railway was to be commenced and completed was fixed by section 2, of chapter 29, 39 Victoria (1876), by section 3 of which Act it was, however, provided that nothing in that Act should affect or interfere with the Esquimalt and Nanaimo Railway Company. In 1882, however, when the Clement's Act was passed, chapter 16, 45 Victoria was passed to repeal chapter 13, 38 Victoria.

I have deemed it advisable to refer to all these Acts in this report to facilitate reference in case it may be thought necessary to examine them, because of my statement that it was not until the passing of the Clement's Act that provision was made for the granting of surface rights only to the settler of lands he had squatted upon, or because of any other reason.

The tract of lands which was reserved to aid in the construction of the railway to be built by the company incorporated by the Clement's Act, is the tract of land reserved by the notice of the 21st April, 1882, and all of which, except the portion described in section 4 thereof, was granted to the Dominion Government by chapter 14.

I may here quote section 19 of the Clement's Act:—

"19. All farming squatters who have made permanent improvements, and who "have permanently resided for not less than two years previous to the passing of this Act "upon any of the lands to be granted in pursuance of this act, shall be entitled to pur- "chase from the company the lands upon which they have so resided, at the price of one

'dollar per acre; but all coal and other mines and minerals, in and under such lands, 'shall be reserved and granted to the company."

Until these provisions became known to the settlers or squatters whose claims are the subject of this report, it is established, I consider, by the evidence that although most of them knew of the reservation of the tract of land, all of them expected and believed that they would ultimately receive Crown grants for the lands they respectively claimed, which would make them owners in fee thereof, without any reservation in the Crown grant as regards minerals, excepting only gold and silver.

When the provisions of the section (19) I have quoted from the Clement's Act became known, the settlers united in an effort to secure what they evidently believed they were justly entitled to, and having brought their troubles and fears to the attention of the then Governor General of Canada, the Marquis of Lorne, when he visited Nanaimo, during the tour he was then making through the Province, by his advice, prepared and forwarded to Ottawa the petition which is repeatedly referred to in the evidence, and of which a copy is thereto attached. It is as follows:—

"To His Excellency the Governor General of the Dominion of Canada in Council "assembled:

"The undersigned settlers and squatters on sections of lands within the railway "reserve belt on Vancouver Island, humbly beg that Your Excellency in Council will "take into your early consideration the previous prayers of your petitioners, wherein "they have requested that an official intimation would be given them that the settlers "or squatters would be secured in their promised rights and that they would be able to "obtain the land on the same terms and conditions as similar lands outside the railway "reserve have in previous years been conveyed to preemptors.

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

As it appears by the records of the Department of the Interior this petition having been referred to the Privy Council was referred to the then Minister of the Interior for report. The only material action which seems to have been taken with regard to it was to refer it, on the 2nd February, 1884, for report to the Honourable Joseph Trutch, then resident agent for Canada in British Columbia. Mr. (now Sir Joseph) Trutch simply acknowledged the receipt of the reference and stated that the claim set forth in the petition had been fully dealt with by the Act, chapter 14, before referred to. The manner in which the claims had been "fully dealt with" will be made clear to any one who will first read the petition of the settlers above quoted, and then read section 23 of chapter 14, which limited the settlers to a grant of the surface rights only, on the lands they claimed. It is very difficult to pass, without severe criticism the studied cold-blooded indifference, to the claims set forth in the petition, which was displayed by the then resident agent of the Dominion in the "report," I have referred to. That it was his duty to have secured to these settlers, what I consider they had a right to expect, I do not think. That duty was then, as I consider it is to-day, upon the Government of the Province, in which these settlers lived, and in which were the lands upon which these settlers had been permitted to make their homes. But it was the duty of the resident agent, when a reference of the petition was made to him, to have reported either for or against the claims and to have stated clearly the grounds upon which his opinion was based. However, his report in this matter exactly corresponds with the action which appears to have been taken by all persons who had to deal with it, and I cannot pass unnoticed here a point that struck me when reading the 15th clause of the "Agreement with British Columbia" which is contained in the schedule to chapter 6. That clause relates to the then proposed amendment by the Legislature of the Province of chapter 14, of 46 Victoria, and in it particular reference is made to the proposed amendment of sections 23, 24, 25 and 26 of that Act.

By comparing the corresponding sections 23, 24, 25 and 26, of chapter 14, 47 Victoria, by which chapter 14, 46 Victoria was repealed, with sections 23, 24, 25 and 26 of that Act, it will be seen that no alteration whatever is made in two of the sections, and that the only material amendment is to make provision for the payment by the settler of $1 per acre for his land. This very necessary provision, in the interests of the Railway Company, had been overlooked when section 23 of chapter 14, 46 Victoria, was framed.

Another matter which goes to establish my opinion that the claims of these settlers were neither carefully nor fairly considered is shewn by the time that was given to them to decide whether they would accept the settlement of their claims secured to them by section 23, of chapter 14, and sub-section 2, of section 7, of chapter 6, or not. This time was fixed by the notice of the 7th of May, 1884, of which a copy is hereunto attached, and which was published in the British Columbia *Gazette* of the 8th and 15th of that month, and in one or two local newspapers. Settlers who had been agitating for upwards of two years for a title to both the surface rights and the under-rights of the lands claimed, were thereby given, at the most, twenty-three days, and in all probability, in view of poor postal and travelling facilities of that day, not one-quarter of that time in which to decide whether they would accept what had been provided for them or run the risk of the lands being given to others, as they were warned by the notice that the lands in question would be thrown open to other settlers after the 1st June next (1884). First the claims of these poor settlers "were fully dealt with" by taking from them what they had all along been claiming they were entitled to, and then they were given short and peremptory notice to come in and accept what had been left for them, and save it from being given to others. Truly, Mr. Patrick Dolan had much ground for believing that: "the law does not always do right by settlers."

It may be argued, however, that as the reservation for railway purposes of the tract of land referred to in the notice of July, 1873, was known to the most, if not all, of these people when they went into possession of the lands in question, and before they commenced to improve them, and that as none of them was granted a pre-emption record for the lands so taken up, until pre-emption records were granted subject to the provisions of section 23 of chapter 14, and of sub-section 2 of section 7, of chapter 6, they were reasonably dealt with under those provisions, and were solely responsible themselves for the results of their own illegal conduct in settling upon land which they knew was not open to settlement.

In reply to such a contention I desire to point out that the evidence of the settlers and others who appeared before me does not support it. Although they were told that their applications for pre-emption record could not be granted they were not warned to keep off the land, nor were they told that if they were in time granted records it would be for the surface rights only. Indeed, I think the weight of evidence supports the view that they were induced to remain upon the lands they had squatted upon and to believe that they would ultimately be granted the ordinary pre-emption record for such lands. Those of the original squatters who appeared before me were intelligent men, and the improvements which they made upon their lands are sufficient to establish their industry. They were a good class of settlers, men whom the officials they made application to would naturally consider should be induced to remain in the Province.

Mr. Thomas Cassidy, who first took possession of his land in 1878, made an application in writing with another settler, Mr. Charles Stewart. Mr. Fawcett, the Agent to whom the applications were made, refused to grant entries, but kept the applications. Mr. Cassidy was one of the four who made application for 1,000 acres of mineral land. This application was refused, the Agent stating that if he ever got land he would only get 160 acres. The meaning is clearly 160 acres by the usual Crown grant, not simply the surface rights thereto, the grant of surface rights with the under-rights reserved being then unknown in the Province. The Agent did not warn Mr. Cassidy off the land, but on the contrary allowed him to go to his home with the belief that he would ultimately obtain the usual title for the land he had applied for to the extent of 160 acres.

Mr. George Vipond first took possession of his land in 1875. He made a written application for entry to Mr. Fawcett who told him the land was not open to entry, but when it was open he would get it subject to the provisions of the Land Act in force when he made application. Later on in the evidence Mr. Vipond stated that Mr. Fawcett told him that the settlers' rights would be respected.

Mr. Archibald Hamilton first located his land in 1878. He made a verbal application to Mr. E. G. Prior, who is now one of the representatives in the House of Commons, for Victoria, and who in 1878 was Assistant Commissioner of Lands and Works, at Nanaimo, that being the correct title of Mr. Fawcett, of Mr. Prior who succeeded him,

and of Mr. Bray, the present Agent, who succeeded Mr. Prior. According to Mr. Hamilton's evidence Mr. Prior told him, when he verbally applied to him for entry, that he could not give him entry but would note that he had applied.

Mr. James Patterson, who was sent by his brother settlers in 1891, to Ottawa to urge these claims upon the Government of that day, and who then had an interview with the present Premier of the Dominion, the Right Honourable Sir Wilfred Laurier, first located his land in 1879. He applied to Mr. Fawcett, and, as he had heard of the Railway Reserve asked him whether, if he was taking up land as a home for himself and family, he would take a piece of the tract reserved. Mr. Patterson swore that Mr. Fawcett said he would and I believe Mr. Patterson. Depending on Mr. Fawcett's answer, Mr. Patterson went on the land he had selected and made it his home. His improvements are valuable and he is living on the land to-day. When Mr. Prior was agent Mr. Patterson had his land surveyed. He brought the plan of survey to Mr. Prior, who took it and said "nothing." Mr. Patterson's application was in writing. It was produced by Mr. Bray and a copy of it is attached to the evidence, and I have not the slightest doubt that when Mr. Patterson left it with Mr. Fawcett he firmly believed that he would in time receive the usual Crown grant for his land.

Mrs. Agnes Frew, to whose deceased husband a Crown grant had issued, in his lifetime, for 196·75 acres of "Belle Isle Island," and by which the only minerals reserved were gold and silver, applied in 1880, for the remainder of the Island, 83·25 acres. Mr. Bray gave her to understand she could have it, but subsequently she applied to Mr. Gore, who told her it belonged to the Railway Company.

Mr. Samuel Jones having in 1880 agreed to buy the stock and improvements Mr. Crane had made upon a certain piece of land, made enquiry of the then agent as to Mr. Crane's right to the land before he—Mr. Jones—closed the purchase.

Mr. William Hodson, who first located his land in 1877, made a verbal application to Mr. Fawcett, who did not warn him off the land, but on the contrary simply told him it was not in his power to give him any right to the land at that time. Mr. Hodson surely expected from Mr. Fawcett's reply that he would in time receive entry for his land, as he went ahead and made very valuable improvements upon it.

Mr. George Taylor did not locate his land until 1883, but his claim to it was based upon the prior claim or right thereto of a Mr. McKay, whose improvements upon the land he purchased. Mr. Bray recognized his right to the land before he obtained a pre-emption record in 1884. A Mr. Frank Holden wanted 60 acres of it but his application was refused by Mr. Bray, who decided that Mr. Taylor was entitled to the land.

Mr. William Jack first located his land in 1876, and in that year he had a partner, Mr. Emmanuel Wiles, who made application to Mr. Fawcett, in writing, for two adjoining parcels of land. Mr. Fawcett took Mr. Jack's application, wrote his name on an envelope, and put both in a drawer in the office, saying that he could do nothing further for him then, but would let him know later on and that he would have the first right to the land.

Mr. McGregor applied in 1879 for his land, to Mr. Prior, who took his application, and said that the land was not open for entry just then but that he would keep the application until the land was thrown open.

Mr. Emmanuel Wiles gave evidence on the point I am now dealing with, which corresponds with the evidence of Mr. Jack before noted. Mr. Fawcett took his application and put it away and told him he would have to pay for the land when notified, that he could go on the land and would get it when it came into market.

Mr. William Morgan, in 1882, bought out the interests of Mr. Bruno Mellado, who he believed had taken up the land in 1876. At all events when he bought it he went to Mr. Bray's office, and Mr. Bray first looked at the conveyance to him, Mr. Morgan, of Mr. Mellado's improvements and "transferred Mellado's right to him," Morgan.

Mr. Charles Bennie located his land in 1881. He then applied for entry to Mr. Bray, who told him that all he could do was to put a mark on the section on the plan. Part of the lands so applied for was an Island, but as there was another applicant for it, Mr. Bray refused to note his claim as to the Island, but set aside other land in lieu of it for him.

Mr. James Malpass, to whose evidence I draw particular attention, as I was very much impressed with both the man and his statement, and know that he is held in the highest esteem by his neighbours and by all who know him, who spoke of him to me, stated that he first took up his land in 1879, when he made a written application to Mr. Prior for it; that Mr. Prior told him he could not record his entry, but that he could leave his application and when the lands were thrown open to entry he would get the first chance; that neither Mr. Prior nor any one else objected to his going on the land, but that they encouraged the settlers to remain on their lands. I wish to draw special attention to the following statement which Mr. Malpass made:—"The officials at Victoria, the Premier at that time and our member advised us to stay on the land, they thought it would be safe to stay on the lands and when there was a settlement we would get our rights."

Mr. Patrick Dolan first located his land in 1879, when he made application to Mr. Prior for it. His application was one of those which Mr. Bray was able to produce. A copy of it is embodied in the transcript of Mr. Dolan's evidence. The original bore Mr. Prior's initials. Mr. Dolan's statement with regard to Mr. Prior's acceptance of it, after he had made his initial upon it, was: "I will put it away for you, Mr. Dolan, and you will have first right to the land when it is thrown open." He also swore that Mr. Prior advised him to go into possession of the land, "as if he didn't somebody else might get it;" that he advised him, Mr. Dolan, to build a house on it; that he did so and that he and his family had been living there ever since and were living there when he gave his evidence. The extent and nature of the improvements which Mr. Dolan made upon his land show him to be a settler of whom any country should be proud. After Mr. Bray had succeeded Mr. Prior, Mr. Dolan purchased the improvements of a Mr. Samuel Saunders on an adjoining 160 acres of land, and his rights thereto; he told Mr. Bray of the transfer to him, and as Mr. Bray told him he could not hold the Saunders claim and the lands he had originally located, as he would not have more than 160 acres, he selected the 160 acres for which he subsequently obtained from the Railway Company a grant of the surface rights only.

Mr. John Hill first located his land in 1879. He made verbal application for it to Mr Prior, who said "Jack, I cannot give you any record of your lands now, the lands are locked up," but that "he would have first chance."

Mr. Thomas Rickard, who took up his land in 1877, swore that he applied verbally to Mr. Fawcett, who gave him "good encouragement" to go on the land. He did so, substantially improved the land and proved himself to be a good settler.

Mr. Joseph Hoskin, whose land was first located by his son in 1878, went to Mr. Bray about two years, or so, afterwards, and Mr. Bray struck out the son's name, and put on the father's name for the land in question.

Mr. Parker White, a poor man, who after struggling for years to acquire a home for himself and who yet resides upon the land he selected for that purpose, although he is no longer its owner, having been unable to pay off certain loans made to him to secure the payment of which he had executed mortgages against it, appeared before me on behalf of the present owner. Mr. White's evidence was in effect, that he first located the land in 1877, had applied to Mr. Prior for a pre-emption record, in writing, and that Mr. Prior had put it in a box and given him to understand that when other settlers got their lands he would get his.

I have noted only those cases in which the claimants appeared before me, and gave evidence, upon the point now being considered, namely, what effort they made to obtain entry, and what the reply or action of the Agent was to whom the application was made. Mr. Bray, in his examination, stated that his answer to all who applied to him for entry was "that lands were reserved for railway purposes."

Now, very few of the claimants who gave evidence denied having knowledge of the reserve. On the contrary, nearly all of them acknowledged that they were aware of the reserve, when they went upon the lands they selected. But from what was said and from what was done by the Agent, they without question expected that the tract reserved would be thrown open to entry, and that they would each get the usual title to the lands they claimed. I, therefore, deem it advisable to give in this report the effect of many of the claimants' evidence upon this latter point.

Mr. Thomas Cassidy, a very intelligent though uneducated man, who gave his answers carefully and with evident desire to speak "nothing but the truth," stated that when he paid for his land, after obtaining a record for it, he thought he was paying for all rights, and that he did not know that he had not got them till he received the patent which was issued, for the surface rights only of his land, by this Department. He knew of the reserve, but "not being an educated man he took other people's word" that he would be safe in taking up the land; that he always believed that he would get the minerals, and that the agent had never told him he would not get them.

Mrs. Elizabeth Fiddick, who claimed from one John Grandam, who first located the land in 1875, stated that she was disappointed when she received the patent for it and found the minerals reserved.

Mr. George Vipond, who received a deed from the railway company for the surface rights only, gave evidence to the same effect.

Mr. Archibald Hamilton, who received a patent, issued by this Department, for the surface rights of the land he claimed, gave similar evidence.

Mr. James Patterson swore that when he paid for his land he expected he was paying for it "in its entirety," and that at first he refused to accept a grant for the surface rights only.

Mr. Samuel Jones stated that when he paid for his land he "expected to get it as all former settlers had got theirs;" that had he known his patent was going to contain the reservations it does contain he would never have paid for his land.

Mr. Daniel Webster Cochran, who received a deed from the railway company for the land his deceased father-in-law had taken up in 1877, never knew the minerals would be reserved until he got his deed.

Mr. Andrew McKinley, who first located his land in 1877, and applied to Mr. Fawcett in writing for it, has never received a deed for his land. He obtained a record for it from Mr. Bray in 1884, but stated positively that nothing was said about surface rights. He afterwards paid for the land, but did not consider the deed in the form used by the company was worth asking for. He would not take a deed in that form if one was offered to him.

Mr. William Hedson admitted that he knew of the reserve, but stated that he expected to get the minerals until he received his deed, that until then he always expected the same title to his land that settlers outside of the reserve got to theirs.

Mrs. Isabella Bates gave similar evidence. So did Mr. George Taylor, who although he had heard rumours that they wouldn't get the minerals, believed that as certain of his neighbours, who had obtained title to their lands by Provincial Crown grant, had got their minerals, he would get his. They paid $1 per acre, so did he. Mr. Taylor also stated that he would not have paid for the land had he not expected the minerals.

Mr. William Jack stated that when he applied to Mr. Fawcett in 1876 a grant of lands without the minerals was unknown, that everything was covered by the Crown grant, except gold and silver.

Mr. George McGregor, who had paid for his land and who held a receipt for it, stated that he had never thought it worth his while to apply for a deed after he saw the form of a deed which was being issued by the Company, that he "wanted a home of his own the same as people got in other parts of the province," and that he did not consider he had got what he had applied for or what he had paid for.

Mr. Emmanuel Wiles did not want to take his deed when he saw the kind it was, and he only took it because "it was that or nothing."

Mr. William Morgan also stated that he didn't know he would only get the surface rights until he got his deed from the Company; thought when he paid for the land he was paying for both the surface and under-rights, and considered he had been "robbed of his rights."

Mr. Charles Bennie, who held nothing but a receipt for his purchase money, stated that he would not have paid for the surface rights only, and that he would not ask for a deed in the form used.

Mr. James Malpass stated that he first heard the minerals were reserved by the Clement's Act; that although a protest was made then he did not feel certain they would not get the minerals until he got his patent, and that he knew of the reserve when he

first applied to Mr. Prior, but there was no such thing as a grant of the surface rights only known then.

Mr. Patrick Dolan gave similar evidence, so did Mr. John Hill

Mr. Isaac Emblen, a young Englishman, who had only come to the Province from Liverpool in 1882, and who stated that he had not even heard of the reserve, also stated that he was certain he was paying for both the minerals and the surface until he got his deed. He refused to accept his deed when he saw what his title was.

Mr. Lawrence Manson, one of Nanaimo's leading merchants, who became possessed of land located by one John Ead in 1879, and who paid his purchase money before he saw the patent which issued in Ead's favour by the Department of the Interior, stated he believed when he was paying his purchase money "he was purchasing the land entire;" although he was aware of the reserve of the Railway Belt, he did not know that the minerals were reserved until he got his patent. Mr. Manson also stated that his assessment notices for the taxes on the land, contained no reference to his being the owner of the surface rights only. The fact that Mr. Manson is a merchant and not a farmer or miner, as nearly all of the other claimants are, and that he did not know that the settlers were to be granted the surface rights only, is of itself strong proof that the provisions of section 23, of chapter 14 and of sub-section 2, of section 7, of chapter 6, had not been made known to the public as clearly as they should have been, if indeed they were ever made known except in so far as the passing and publication of the Acts which contain them, and the notice of the 7th May, 1884, made them known.

Mr. Thomas Rickard acknowledged he knew of the reserve of the land, but stated he expected to get everything, until he got his deed.

Mr. Joseph Hoskin's testimony on this point is to the same effect.

Mr. Samuel Bennie, whose title to all of his land, except 25 acres, is under Provincial Crown grant, which therefore, covers the minerals, and who when he found that most of the improvements, which it was thought were on the Crown granted lands, were on this 25 acres, applied for this piece of land, and in 1884 paid the $1 per acre for it, would not take a deed for it in the form which was issued by the company to the settlers, as he considered two persons could not own one piece of land.

Other persons who appeared before me and whose names I have not mentioned gave similar evidence, and I may close my remarks upon this point with reference to a statement made by Mr. C. C. McKenzie, ex-M.P.P., whose business includes that of securing loans on mortgage security. Mr. McKenzie has lived in Nanaimo for many years, and because of his position and business should have known, it is assumed, what these settlers were to receive, in full satisfaction of their claims. In his evidence as a witness for Mr. Emblen, his statement that he advised Mr. Emblen and a Mr. Fiddick, another settler, not to take a deed in the form which was being used by the company, is a fair expression of a disinterested person's opinion upon the title that was being granted to the settler.

I think no further comment is necessary to support my opinion that the settlers had strong grounds for believing not only that they would receive title but ultimately receive the same title to the lands they claimed which other settlers, on lands outside of the tract reserved, obtained by Provincial Crown grant. Outside of the evidence I have referred to the possibility of a grant of the surface rights only did not arise until the Clement's Act was passed, and as nothing was done under its provisions, it must be acknowledged, in view of the purport of the sworn testimony of so many persons and of the action taken by Mr. Fawcett, Mr. Prior and Mr. Bray to protect them, at different times, with regard to their lands, that they were considered to be entitled to such lands, that the extent of such rights as understood by the settlers was well known, and that before they were deprived of any part thereof they were at least entitled to be heard. The blame does not attach to the above named gentlemen, to the officials of the Department of Lands and Works nor to the shareholders of the Esquimalt and Nanaimo Railway Company, but it does attach to those who are responsible for the provisions of the Provincial Act chapter 14, 47 Victoria, and of the Dominion Act, chapter 6, 47 Victoria, to which I have repeatedly referred. The officials who had to administer the law, appear to have gone beyond the powers of their office in holding for the settlers he lands they claimed. The shareholders of the railway company wanted the best

terms that could be secured, and they got them; settlers' rights were no obstacle to be considered, and the necessary legislation was quickly and quietly obtained to trim down such rights to suit the wishes of the shareholders. The then Government of the Province of British Columbia is responsible for that legislation, and it is to a Government of that Province those who suffer from the injustice done, must look for redress. The duty of the then Dominion Government in the matter was only that of a trustee. True, the petition of 1882 received but the worst kind of attention, and similar indifference to these settlers' rights was displayed in the preparation and passing of the Dominion Act, chapter 6, 47 Victoria; but the duty of safe-guarding the settlers in question was upon the Government of the Province.

When the provisions of chapter 14 and chapter 6 came to be administered, it was found, said Mr. Gore in his evidence, that no procedure had been thereby established under which the squatters' cases could be dealt with, and the laws in that behalf of the Province with regard to other lands were therefore adopted.

I produced to Mr. Gore the letters and schedules, forwarded by the Chief Commissioner of Lands and Works, upon which the Department of the Interior issued patents to certain of the squatters in question. A copy of one of such letters, and a copy of the schedule which accompanied it, which Mr. Gore identified, with the other originals, are attached hereto. So, also, are copies of a list of the patents issued by the Department of Interior, of one of such patents, and of the patent issued by the Department to the railway company. In reply to a question as to the duty of the Department upon receiving a letter and schedule such as those above mentioned, he answered that it was incumbent on the Department to issue patents in favour of the persons named in the schedule for the lands set opposite their respective names, for the surface rights only. The Department of the Interior, therefore, issued patents to settlers in accordance with such letters and schedules, as they were received, until the company had completed the line of railway between Esquimalt and Nanaimo, when the grant to that company was made. After that date the lands were administered by the company, and those settlers who had not received patents from the Department had to pay their purchase money to the railway company's agent at Nanaimo, and to accept deeds in the form which the company adopted for the purpose.

The Order in Council of the 30th November, 1896, which is referred to in my commission, and of which a copy is hereto attached, particularly relates to a tract of 86,346 acres of land for a grant of which, so that it might be conveyed to the railway company, application had been made, such area being the area of lands to which, according to the application, the Dominion Government was entitled, under the provisions of section 3 of chapter 14, as being "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," that is, within the limits of the tract of lands for which letters-patent issued to the company on the 21st April, 1887.

An impression prevailed when this Order of the 30th November, 1896, was passed that the mineral or under-rights of the lands so alienated had been granted to the company by the above mentioned patent of the 21st April, 1896, and that if the application now being referred to was acceded to the company would own the mineral or under-rights of the tract of 86,346 acres so alienated, and also of the tract of equal area referred to in the application.

A list of the alienated lands, the area of which amounts to 86,346 acres, was produced by Mr. Gore, when he gave his evidence before me, and a copy of it is attached hereto. It will be seen by referring to Mr. Gore's evidence with regard to this matter that the mineral or under-rights of such lands do not belong to the company, as they had been granted to the respective pre-emptors or grantees of such lands, by Crown grant, issued by the Province. I carefully examined the records in Mr. Gore's office and, outside of his evidence, satisfied myself that there were no grounds whatever for the position taken in the Order in Council of the 30th November, 1896, and that if no other obstacle exists, the application I have referred to should be acceded to without further unnecessary delay.

It is not out of place for me to note here that although a copy of the Order of the 30th November, 1896, was submitted to the Provincial Government in the usual manner,

and although attention was subsequently repeatedly called to it, no action has thus far been taken by the Provincial Government concerning it or the matter to which it relates

In view of all the circumstances which I have thought necessary to mention or refer to in this report, I consider it the duty of the Government of British Columbia, notwithstanding the position the settlers, who are affected by section 23 of chapter 14 and subsection 2 of section 7 of chapter 6 unquestionably placed themselves in by accepting pre-emption records, subject to such provisions, to take prompt action which will satisfactorily remove the injustice which has resulted from these provisions and which will end an agitation which was commenced when the provisions of section 19 of the Clement's Act were first known and which was resumed after the settlers found out that they had received or were to receive a grant of the surface rights only of the lands they had settled upon and, I think I may add without fear of contradiction, had been permitted to settle upon.

British Columbia, rich in her mines, her fisheries, her timber and other of nature's stores, gave bounteously of her most valuable lands to the builders of her Railway. Before such lands passed from her keeping it was the duty of the Province, the duty of those who were charged with the conduct of her public affairs, to make proper and sufficient provision for safe-guarding the rights of all settlers who went into occupation of any of such lands, under the circumstances which have been stated in this report. Such provision was not made, however, but, on the contrary, provisions which legalized the injustice against which the settlers had protested, were embodied in the Acts I have referred to. I repeat, therefore, that I consider it the duty of the Government of British Columbia to take such action as will promptly and satisfactorily remove the injustice.

I cannot close this report without expressing my appreciation of the assistance given to me by Mr. Gore, Deputy Commissioner of Lands and Works, at Victoria, and by Mr. Bray, Assistant Commissioner of Lands and Works, at Nanaimo, in my examination of the records of their respective offices with regard to this matter, or without drawing attention to the very intelligent and satisfactory manner in which Miss Barber performed the duties that were assigned to her.

I have the honour to be, Sir,

Your obedient servant,

T. G. ROTHWELL,
Commissioner.