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UNIVERSITY OF LONDON
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11 OCT 1956

INSTITUTE OF ADVANCED
LEGAL STUDIES

In the Privy Council.

No. 9 of 1896.

On Appeal from the Supreme Court of
British Columbia.

BETWEEN

THE ESQUIMALT AND NANAIMO
RAILWAY COMPANY (*Defendants*) *Appellants*

AND

WILLIAM HERBERT BAINBRIDGE
(*Plaintiff*) *Respondent.*

JOINT APPENDIX.

HEPBURN, SON, & CUTCLIFFE,

For Appellants.

GARD, HALL, & ROOK,

For Respondent.

INDEX OF REFERENCE.

NUMBER.	DESCRIPTION OF DOCUMENT.	PAGE.
1	British Columbia Gold Mining Act, 1867 (The Gold Mining Ordinance, 1867), Sections 1 and 2	5
2	An Act relating to Minerals other than Coal (Consolidated Acts, 1877, Cap. 126), Sections 1 and 2	6
3	British Columbia Act, 47 Vic., cap. 14 (Amending 43 Vic., cap. 11). 19th December, 1883	7
4	Dominion Act, 47 Vic., cap. 6. 19th April, 1884	13
5	British Columbia Consolidated Acts, 1888, cap. 82, Sections 1 and 2 (Mineral Act, 1884, 47 Vic., cap. 10)	27
6	British Columbia Consolidated Acts, 1877, cap. 98, Sections 80 and 81, (Land Act, 1875)	28
7	British Columbia Consolidated Acts of 1888, cap. 66, Sections 1, 95, and 96 (Land Act, 1884, 47 Vic., cap. 16)... ..	29
8	British Columbia Placer Mining Act, 1891, 54 Vic., cap. 26 ...	30

JOINT APPENDIX.

Joint
Appendix.

No. 1.

British Columbia Gold Mining Act, 1867.

BRITISH COLUMBIA.

Anno Tricesimo Victoriae Reginae. No. 34.

AN ORDINANCE TO AMEND THE LAWS RELATING TO GOLD MINING.

[2nd April, 1867.]

WHEREAS it is expedient to amend and assimilate the Laws relating to Gold Mining in this Colony; Preamble.

Be it enacted by the Governor of British Columbia, with the advice and consent of the Legislative Council thereof, as follows :

10 I. From and after the passing of this Ordinance "The Gold Mining Ordinance, 1865," and the Proclamations, Rules, and Regulations, and Ordinances, repealed thereby, are hereby repealed; provided however that such repeal shall not in any manner affect any rights acquired, or any liabilities or penalties incurred thereunder, or any remedies or punishments prescribed thereby, but such remedies and punishments may still for the purposes of such enforcement, but not further or otherwise, be available and capable of imposition. Repeals former Acts.

20 II. In the construction of this Ordinance the following expressions shall have the following interpretations respectively, unless there be something inconsistent or repugnant thereto in the context. Interpretation clause.

The words "Her Majesty" or "The Crown" shall mean Her Majesty, Her Heirs and Successors. Her Majesty, the Crown.

The word "Governor" shall mean and include any person administering the Government of this Colony. Governor.

"Gold Commissioner" shall include Chief Gold Commissioner, Assistant Gold Commissioners and others lawfully acting as Gold Commissioners, either under special authority or the authority of this Ordinance. Gold Commissioner.

30 The word "Mine" shall mean any locality in which any vein, stratum, or natural bed of auriferous earth or rock shall be mined; and the verb "to mine" shall include any mode or method whatsoever of working the same for the purpose of obtaining gold therefrom. Mine.

Joint Appendix.	The word "Claim" shall mean the personal right of property or interest	
Claim.	in any mine; and in the term "Mining Property" shall be included every	
Mining property.	claim, mine, ditch or water privilege used for mining purposes, and all other	
Bar Diggings.	"Bar Diggings" shall mean every mine over which a river extends when	
	in its flooded state.	
Dry Diggings.	"Dry Diggings" shall mean any mine over which a river never extends.	
Bench Diggings.	The mines on benches shall be known as "Bench Diggings," and shall for	
	the purpose of ascertaining the size of claims therein be excepted out of the	10
	class of "Dry Diggings."	
Streams and Ravines.	"Streams and Ravines" shall include water-courses, whether usually	
	containing water or not, and all rivers, creeks, and gulches.	
Hill Claims.	"Hill Claims" shall include all claims located on the surface of any hill.	
Ditch.	"Ditch" shall include a flume or race, or other artificial means for con-	
	ducting water by its own weight, to be used for mining purposes.	
Ditch Head.	"Ditch Head" shall mean the point in a natural water-course or lake	
	where water is first taken into a ditch.	
Free Miner.	"Free Miner" shall mean a person named in, and lawfully possessed of a	
	valid existing Free Miner's Certificate, and no other. And words in the	
	singular number shall include the plural, and the masculine gender shall	20
	include the feminine gender.	
Record, &c.	The words "Record," "Register," and "Registration," as hereinafter used	
	shall be synonymous.	

No. 2.

The Consolidated Statutes of British Columbia.

Chapter 126.

AN ACT RELATING TO MINERALS OTHER THAN COAL.

[18th April, 1877.]

Preamble. WHEREAS the "Mineral Ordinance, 1869," is not calculated to develop the mineral resources of the Province;

Therefore Her Majesty by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows: 30

Interpreta-
tion clause. 1. The word "minerals" in this Act shall be construed to mean and include all minerals (other than coal) found in veins or lodes, and whether separately or in combination one with the other.

"Minerals
Act, 1869,"
not to apply
to minerals
defined by
this Act. 2. The "Mineral Ordinance, 1869," shall not apply to minerals as defined by this Act.

No. 3.

British Columbia Act, 47 Vic., Cap. 14, amending 43 Vic.,
Cap. 11.Joint
Appendix.

ISLAND RAILWAY GRAVING DOCK AND RAILWAY LANDS ACT, 47 VIC., CAP. 14.

AN ACT RELATING TO THE ISLAND RAILWAY, THE GRAVING
DOCK, AND RAILWAY LANDS OF THE PROVINCE.

[19th December, 1883.]

WHEREAS negotiations between the Governments of Canada and British Columbia have been recently pending, relative to delays in the commencement and construction of the Canadian Pacific Railway, and relative to the Island Railway, the Graving Dock, and the Railway Lands of the Province:

Pr.amble.

And whereas for the purpose of settling all existing disputes and difficulties between the two Governments, it hath been agreed as follows:—

(a) The Legislature of British Columbia shall be invited to amend the Act No. 11 of 1880, intituled "An Act to authorize the grant of certain Public Lands on the Mainland of British Columbia to the Government of the Dominion of Canada for Canadian Pacific Railway purposes," so that the same extent of land on each side of the line of railway through British Columbia, wherever finally settled, shall be granted to the Dominion Government in lieu of the lands conveyed by that Act.

(b) The Government of British Columbia shall obtain the authority of the Legislature to grant to the Government of Canada a portion of the lands set forth and described in the Act No. 15 of 1882, intituled "An Act to incorporate the Vancouver Land and Railway Company," namely that portion of the said lands therein described, commencing at the southern boundary thereof and extending to a line running East and West, halfway between Comox and Seymour Narrows; and also a further portion of the lands conveyed by the said Act to the northward of and contiguous to that portion of the said lands last hereinbefore specified, equal in extent to the lands within the limits thereof which may have been alienated from the Crown by Crown grants, pre-emption, or otherwise.

(c) The Government of British Columbia shall obtain the authority of the Legislature to convey to the Government of Canada three and one-half millions of acres of land in the Peace River district of British Columbia, in one rectangular block, East of the Rocky Mountains, and adjoining the North-West Territory of Canada.

(d) The Government of British Columbia shall procure the incorporation, by Act of their Legislature, of certain persons, to be designated by the Government of Canada, for the construction of the Railway from Esquimalt to Nanaimo.

(e) The Government of Canada shall, by the adoption by the Legislature of British Columbia of the terms of this agreement, seek the sanction of Parliament to enable them to contribute to the construction of a Railway from Esquimalt to Nanaimo the sum of \$750,000, and they agree to hand over to the contractors who may build such Railway the lands which are or may be placed in their hands for that purpose by British Columbia; and they agree to take security, to the satisfaction of the Government of that Province, for the construction and completion of such Railway, on or before the 10th day of June, 1887; such construction to commence forthwith. 10

(f) The lands on Vancouver Island to be so conveyed shall, except as to coal and other minerals, and also except as to timber lands as hereinafter mentioned, be opened for four years from the passing of this Act to actual settlers, for agricultural purposes, at the rate of one dollar an acre, to the extent of 160 acres to each such actual settler; and in any grants to settlers the right to cut timber for railway purposes and rights of way for the railway, and stations, and workshops shall be reserved. In the meantime, and until the Railway from Esquimalt to Nanaimo shall have been completed, the Government of British Columbia shall be the agents of the Government of Canada for administering for the purposes of settlement, the lands in this sub-section mentioned; and for such purposes the Government of British Columbia may make and issue, subject as aforesaid, pre-emption records to actual settlers, of the said lands. All moneys received by the Government of British Columbia in respect of such administration shall be paid, as received, into the Bank of British Columbia, to the credit of the Receiver-General of Canada; and such moneys, less expenses incurred (if any), shall, upon the completion of the railway to the satisfaction of the Dominion Government, be paid over to the railway contractors. 20 30

(g) The Government of Canada shall forthwith take over and seek the authority of Parliament to purchase and complete, and shall, upon the completion thereof, operate as a Dominion work, the Dry Dock at Esquimalt; and shall be entitled to and have conveyed to them all the lands, approaches, and plant belonging thereto, together with the Imperial appropriation therefor, and shall pay to the Province as the price thereof the sum of \$250,000, and shall further pay to the Province whatever amounts shall have been expended by the Provincial Government or which remain due, up to time of the passing of this Act, for work or material supplied by the Government of British Columbia since the 27th day of June, 1882. 40

(h) The Government of Canada shall, with all convenient speed, offer for sale the lands within the Railway belt upon the Mainland, on liberal terms to actual settlers; and

(i) Shall give persons who have squatted on any of the said lands within the Railway belt on the Mainland, prior to the passing of this Act, and who have made substantial improvements thereon, a prior right of purchasing the lands so improved, at the rates charged to settlers generally.

Joint
Appendix.

(k) This agreement is to be taken by the Province in full of all claims up to this date by the Province against the Dominion, in respect of delays in the commencement and construction of the Canadian Pacific Railway, and in respect of the non-construction of the Esquimalt and Nanaimo Railway, and shall be taken by the Dominion Government in satisfaction of all claims
10 for additional lands under the terms of Union, but shall not be binding unless and until the same shall have been ratified by the Parliament of Canada and the Legislature of British Columbia.

And whereas it is expedient that the said agreement should be ratified, and that provision should be made to carry out the terms thereof.

Therefore Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:—

1. The hereinbefore recited agreement shall be and is hereby ratified and
adcped.

Adopts the
agreement
above recited.

2. Section 1 of the Act of the Legislature of British Columbia, No. 11 of
20 1880, intituled "An Act to authorise the grant of certain public lands on the mainland of British Columbia to the Government of the Dominion of Canada for Canadian Pacific Railway purposes," is hereby amended so as to read as follows:—

Amends section 1, chapter 11, Act of 1880.

From and after the passing of this Act there shall be, and there is hereby granted to the Dominion Government for the purpose of constructing and to aid in the construction of the portion of the Canadian Pacific Railway on the mainland of British Columbia, in trust, to be appropriated as the Dominion Government may deem advisable, the public lands along the line of the railway before mentioned, wherever it may be finally located, to a width of twenty
30 miles on each side of the said line as provided in the Order in Council, section 11, admitting the Province of British Columbia into Confederation; but nothing in this section contained shall prejudice the right of the Province to receive and be paid by the Dominion Government the sum of \$100,000 per annum, in half-yearly payments in advance, in consideration of the lands so conveyed, as provided in section 11 of the Terms of Union: Provided always that the line of Railway before referred to, shall be one continuous line of Railway only, connecting the seaboard of British Columbia with the Canadian Pacific Railway, now under construction on the East of the Rocky Mountains.

Grant of lands to Dominion Government in aid of construction of the Canadian Pacific Railway.

Annual grant of \$100,000 to the Province not to be prejudiced hereby.

3. There is hereby granted to the Dominion Government, for the purpose
40 of constructing, and to aid in the construction of a railway between Esquimalt and Nanaimo, and in trust to be appropriated as they may deem advisable (but

Grant of Crown land on Vancouver Island in aid of the Esquimalt-Nanaimo Railway.

- Joint Appendix. save as is hereinafter excepted) all that piece or parcel of land situate in Vancouver Island, described as follows :
- Boundaries of land granted. Bounded on the South by a straight line drawn from the head of Saanich Inlet to Muir Creek on the Straits of Fuca ;
On the West by a straight line drawn from Muir Creek aforesaid to Crown Mountain ;
On the North, by a straight line drawn from Crown Mountain to Seymour Narrows ; and
On the East by the coast line of Vancouver Island to the point of commencement ; and including all coal, coal oil, ores, stones, clay, marble, slate, 10 mines, minerals, and substances whatsoever thereupon, therein, and thereunder.
- Certain land exempted from the grant. 4. There is excepted out of the tract of land granted by the preceding section all that portion thereof lying to the northward of a line running East and West half way between the mouth of the Courtenay River (Comox District) and Seymour Narrows.
- Other lands to be given for those alienated out of the tract granted. 5. Provided always that the Government of Canada shall be entitled out of such excepted tract to lands equal in extent to those alienated up to the date of this Act by Crown grant, pre-emption, or otherwise, within the limits of the grant mentioned in section 3 of this Act.
- Grant not to include lands alienated, nor Indian or Naval reserves. 6. The grant mentioned in section 3 of this Act shall not include any 20 lands now held under Crown grant, lease, agreement for sale, or other alienation by the Crown, nor shall it include Indian reserves or settlements, nor Naval or Military reserves.
- Grant of 3,500,000 acres of land in Peace River District to the Dominion Government. 7. There is hereby granted to the Dominion Government three and a half million acres of land in that portion of the Peace River District of British Columbia lying East of the Rocky Mountains and adjoining the North-West Territory of Canada, to be located by the Dominion in one rectangular block.
- Incorporation of "The Esquimalt and Nanaimo Railway Company." 8. For the purpose of facilitating the construction of the Railway between Esquimalt and Nanaimo, it is hereby enacted that such persons, hereinafter called the "Company," as may be named by the Governor-General in Council, 30 with all such other persons and corporations as shall become shareholders in the Company, shall be and are hereby constituted a body corporate and politic by the name of "The Esquimalt and Nanaimo Railway Company."
- Gives the said Company power to construct a line of railway from Esquimalt to Nanaimo. 9. The Company and their agents and servants shall lay out, construct, equip, maintain, and work a continuous double or single track steel railway of the gauge of the Canadian Pacific Railway, and also a telegraph line, with the proper appurtenances, from a point at or near the harbour of Esquimalt, in British Columbia, to a port or place at or near Nanaimo, on the eastern coast of Vancouver Island, with power to extend the main line to Comox and Victoria, and to construct branches to settlements on the east coast, and also to extend

the said railway by ferry communications to the mainland of British Columbia, and there to connect or amalgamate with any railway line in operation or course of construction. The Company shall also have power and authority to build, own, and operate steam and other vessels in connection with the said railway, on and over the bays, gulfs, and inland waters of British Columbia

Joint
Appendix.

Power to operate steam and ferry boats.

10 10. The Company may accept and receive from the Government of Canada any lease, grant, or conveyance of lands, by way of subsidy or otherwise, in aid of the construction of the said railway, and may enter into any contract with the said Government for or respecting the use, occupation, mortgage, or sale of the said lands, or any part thereof, on such conditions as may be agreed upon between the Government and the Company.

Power to receive grants of land, &c. from Government of Canada in aid of construction.

11. The capital stock of the Company shall be three millions of dollars, and shall be divided into shares of one hundred dollars each, but may be increased from time to time by the vote of the majority in value of the shareholders present in person, or represented by proxy, at any meetings specially called for the purpose, to an amount not exceeding five million dollars.

Capital stock
\$3,000,000.

20 12. The persons to be named as aforesaid by the Governor-General in Council shall be and are hereby constituted a board of provisional directors of the Company, and shall hold office as such until other directors shall be elected under the provisions of this Act, and shall have power to fill any vacancies that may occur in the said board; to open stock books at Victoria, British Columbia, or any other city in Canada; procure subscriptions, and receive payments on stock subscribed.

Provisional
Directors.

30 13. When and so soon as one-half of the capital stock shall have been subscribed, and one-tenth of the amount thereof paid into any chartered bank, either at Victoria or San Francisco, or partly in each, the provisional directors may order a meeting of Shareholders to be called at Victoria, British Columbia, at such time as they think proper, giving at least three weeks' notice thereof in one or more newspapers published in the City of Victoria, and by a circular letter mailed to each shareholder, at which meeting the shareholders present in person or by proxy shall elect five directors qualified as hereinafter provided, who shall hold office until the first Wednesday in October in the year following their election.

First general
meeting of
shareholders.

Notice of
meeting.

40 14. On the said first Wednesday in October, and on the same day in each year thereafter, at the City of Victoria, or at such other place as shall be fixed by the by-laws of the Company, there shall be held a general meeting of the shareholders for receiving the report of the directors transacting the business of the Company, general or special, and electing the directors thereof; and public notice of such annual meeting and election shall be published for one month before the day of meeting in one or more newspapers in the City of Victoria, and by circular letter mailed to each shareholder at least one month prior thereto. The election of directors shall be by ballot, and all shareholders may vote by proxy.

Annual
meetings of
Shareholders.

Election of
directors.

- Joint Appendix. —
Quorum. Qualification of directors. 15. Three of the directors shall form a quorum for the transaction of business, and the Board may employ one or more of their number as paid director or directors, provided that no person shall be elected director unless he owns at least twenty-five shares of the stock of the Company on which calls have been paid.
- Calls. 16. No call shall be made for more than ten per centum at any one time on the amount subscribed, nor shall more than fifty per centum of the stock be called up in any one year.
- Consolidated Railway Act, 1879, of Canada to apply. 17. The Consolidated Railway Act, eighteen hundred and seventy-nine (1879) of Canada, shall, so far as its provisions are applicable to the under- 10 taking and are not inconsistent with or contrary to the provisions of this Act, apply to the said railway, and shall be read with and form part of this Act.
- Interpretation 18. The words "Superior Court," "Clerks of the Peace," "Registry Offices," "Clerk of Court," as used in the said Consolidated Railway Act, eighteen hundred and seventy-nine (1879), shall for the purposes of this Act be read and construed in the same sense and meaning as is provided by the Act passed by this Legislature thirty-eight (38) Victoria, chapter thirteen (13), section three (3).
- Sections 5 and 6 of said Act to be read herewith. 19. Sections five (5) and six (6) of the said last-mentioned Act shall be 20 read with and form part of this Act.
- Commencement and completion of the line. 20. The said railway line from Esquimalt to Nanaimo shall be commenced forthwith and completed on or before the 10th day of June, 1887.
- Exemption from Provincial taxation for ten years. 21. The railway, with its workshops, stations, and other necessary buildings and rolling stock, and also the capital stock of the Railroad Company, shall be exempt from provincial and municipal taxation until the expiration of ten years from the completion of the railroad.
- The lands granted to be free from taxation until alienated by the Company. 22. The lands to be acquired by the Company from the Dominion Government for the construction of the railway shall not be subject to taxation unless and until the same are used by the Company for other than railroad purposes, or leased, occupied, sold, or alienated. 30
- Provides for grant of 160 acres to squatters who have been in possession of land one year. Surface rights only to be granted. 23. The Company shall be governed by sub-section (*f*) of the hereinbefore recited agreement, and each *bonâ fide* squatter who has continuously occupied and improved any of the lands within the tract of land to be acquired by the Company from the Dominion Government for a period of one year prior to the first day of January, 1883, shall be entitled to a grant of the freehold of the surface rights of the said squatted land, to the extent of 160 acres to each squatter, at the rate of one dollar an acre.
- Provision as to price of coals sold to Railway Companies. 24. The Company shall at all times sell coals gotten from the lands that may be acquired by them from the Dominion Government to any Canadian

Railway Company having the terminus of its Railway on the seaboard of British Columbia, and to the Imperial, Dominion, and Provincial authorities, at the same rates as may be charged to any Railway Company owning or operating any Railway in the United States, or to any foreign customer whatsoever.

Joint
Appendix.

25. All lands acquired by the Company from the Dominion Government under this Act containing belts of timber fit for milling purposes, shall be sold at a price to be hereafter fixed by the Government of the Dominion or by the Company hereby incorporated.

Price of
timber lands,
how to be
fixed.

10 26. The existing rights (if any) of any persons or corporations in any of the lands so to be acquired by the Company shall not be affected by this Act, nor shall it affect Military or Naval Reserves.

Existing
rights not to
be affected.

20 27. The said Esquimalt and Nanaimo Railway Company shall be bound by any contract or agreement for the construction of the railway from Esquimalt to Nanaimo which shall be entered into by and between the persons so to be incorporated as aforesaid, and Her Majesty, represented by the Minister of Railways and Canals, and shall be entitled to the full benefit of such contract or agreement, which shall be construed and operate in like manner as if such Company had been a party thereto in lieu of such persons and the document had been duly executed by such Company under their corporate seal.

Contracts, &c.
entered into
with the
Dominion
Government
for construction
of Esquimalt-Nanaimo
Railway to be
binding on the
Company.

28. The railways to be constructed by the Company in pursuance of this Act shall be the property of the Company.

Railway, &c.,
to be the pro-
perty of the
Company.

29. The Act of 1883, chapter 14, intituled "An Act relating to the Island Railway, the Graving Dock, and the Railway Lands of the Province," is hereby repealed.

Repeals chap.
14 of Statutes
1883.

No. 4.

Dominion Act, 47 Vic., Cap. 6.

30 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.

[Assented to 19th April, 1884.]

WHEREAS negotiations between the Governments of Canada and British Columbia have been recently pending, relative to delays in the commencement

Preamble.

Joint
Appendix.

and construction of the Canadian Pacific Railway, and relative to the Vancouver Island Railway, the Esquimalt Graving Dock, and certain railway lands of the province of British Columbia.

Recital of
agreement as
to—

And whereas, for the purpose of settling all existing disputes and difficulties between the two Governments, it hath been agreed as follows:—

Lands on
mainland of
British
Columbia.

(a) The Legislature of British Columbia shall be invited to amend the Act number eleven, of One thousand eight hundred and eighty, intituled "An Act to authorize the grant of certain public lands on the Mainland of British Columbia to the Government of the Dominion of Canada for Canadian Pacific Railway purposes," so that the same extent of land on each side of the line of railway through British Columbia, wherever finally settled, shall be granted to the Dominion Government in lieu of the lands conveyed by that Act: 10

Lands on
Vancouver
Is and.

(b) The Government of British Columbia shall obtain the authority of the Legislature to grant to the Government of Canada a portion of the lands set forth and described in the Act, number fifteen, of One thousand eight hundred and eighty-two, intituled "An Act to incorporate the Vancouver Land and Railway Company," namely, that portion of the said lands therein described, commencing at the southern boundary thereof and extending to a line running east and west, half-way between Comox and Seymour Narrows; and also a further portion of the lands conveyed by the said Act to the northward of and contiguous to that portion of the said lands last hereinbefore specified, equal in extent to the lands within the limits thereof which may have been alienated from the Crown by Crown grants, pre-emption or otherwise: 20

Lands in
Peace River
district.

(c) The Government of British Columbia shall obtain the authority of the Legislature to convey to the Government of Canada three and one-half millions of acres of land in the Peace River District of British Columbia, in one rectangular block, east of the Rocky Mountains and adjoining the North-West Territories of Canada:

Incorporation
of railway
company on
Island.

(d) The Government of British Columbia shall procure the incorporation, by Act of their Legislature, of certain persons, to be designated by the Government of Canada, for the construction of the Railway from Esquimalt to Nanaimo: 30

Grant of land
by Canada for
railway from
Esquimalt to
Nanaimo.

(e) The Government of Canada shall, upon the adoption by the Legislature of British Columbia of the terms of this agreement, seek the sanction of Parliament to enable them to contribute to the construction of a railway, from Esquimalt to Nanaimo, the sum of seven hundred and fifty thousand dollars and they agree to hand over to the contractors who may build such railway the lands which are or may be placed in their hands for that purpose by British Columbia; and they agree to take security, to the satisfaction of the Government of that Province, for the construction and completion of such railway on 40

Security for
construction.

or before the tenth day of June, One thousand eight hundred and eighty-seven—such construction to commence forthwith :

Joint
Appendix.

(*f*) The lands on Vancouver Island to be so conveyed shall, except as to coal and other minerals, and also except as to timber lands as hereinafter mentioned, be open for four years from the passing of this Act to actual settlers, for agricultural purposes, at the rate of one dollar an acre, to the extent of one hundred and sixty acres to each such actual settler ; and in any grants to settlers the right to cut timber for railway purposes and rights of way for the railway and stations and workshops shall be reserved ; in the
10 meantime, and until the Railway from Esquimalt to Nanaimo shall have been completed, the Government of British Columbia shall be the agents of the Government of Canada for administering, for the purposes of settlement, the lands in this sub-section mentioned ; and for such purposes the Government of British Columbia may make and issue, subject as aforesaid, pre-emption records to actual settlers of the said lands : all moneys received by the Govern-
ment of British Columbia in respect of such administration shall be paid, as received, into the Bank of British Columbia, to the credit of the Receiver-
General of Canada ; and such moneys, less expenses incurred, if any, shall,
20 upon the completion of the railway to the satisfaction of the Dominion Government, be paid over to the railway contractors :

Administra-
tion of lands
for such rail-
way granted
by British
Columbia.

Provincial
Government
to act as
agent for
Government
of Canada.

As to moneys
received
under such
agency.

(*g*) The Government of Canada shall forthwith take over and seek the authority of parliament to purchase and complete, and shall, upon the completion thereof, operate as a Dominion work, the dry dock at Esquimalt ; and shall be entitled to have conveyed to them all the lands, approaches and plant belonging thereto, together with the Imperial appropriation therefor, and shall pay to the Province as the price thereof the sum of two hundred and fifty thousand dollars, and shall further pay to the Province whatever amounts shall have been expended by the Provincial Government or which remain due up to the time of the passing of this Act, for work or material supplied by the
30 Government of British Columbia since the twenty-seventh day of June, One thousand eight hundred and eighty-two :

Purchase and
completion by
Canada of
dry dock at
Esquimalt.

(*h*) The Government of Canada shall, with all convenient speed, offer for sale the lands within the railway belt upon the mainland, on liberal terms to actual settlers ; and

Sale of rail-
way lands on
mainland.

(*i*) Shall give persons who have squatted on any of the said lands, within the Railway belt on the mainland, prior to the passing of this Act, and who have made substantial improvements thereon, a prior right of purchasing the lands so improved at the rates charged to settlers generally ;

Provision as
to squatters,
&c.

(*k*) This agreement is to be taken by the Province in full of all claims up
40 to this date by the Province against the Dominion, in respect of delays in the commencement and construction of the Canadian Pacific Railway, and in respect of the non-construction of the Esquimalt and Nanaimo Railway, and

Agreement to
be settlement
in full of
certain claims
of British
Columbia on
Canada.

Joint
Appendix.

shall be taken by the Dominion Government in satisfaction of all claims for additional lands under the terms of Union, but shall not be binding unless and until the same shall have been ratified by the Parliament of Canada and the Legislature of British Columbia ;

Ratification of
agreement by
British
Columbia.

And whereas the Legislature of British Columbia has by an Act assented to on the Nineteenth day of December, One thousand eight hundred and eighty-three, intituled "An Act relating to the Island Railway, the Graving Dock and Railway Lands of the Province," adopted the terms of the said agreement, and it is expedient that it should be ratified by the Parliament of Canada, and that provision should be made to carry out the terms thereof according to their 10
purport ;

Therefore Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows :—

And by
Canada.

1. The hereinbefore recited agreement is hereby approved and ratified.

THE ESQUIMALT AND NANAIMO RAILWAY.

Agreement
for construction
of rail-
way ratified.

2. The agreement, a copy of which with specification is hereto appended as a schedule, for the construction, equipment, maintenance and working of a continuous line of railway of a uniform gauge of four feet eight and one-half inches, from Esquimalt to Nanaimo in Vancouver Island, British Columbia, and also for the construction, equipment, maintenance and working of a telegraph 20
line along the line of the said railway is hereby approved and ratified, and the Governor in Council is authorised to carry out the provisions thereof according to their purport.

Subsidy of
\$750,000 and
land towards
construction
of railway.

With certain
rights con-
nected with
the lands.

3. The Governor in Council may grant to "The Esquimalt and Nanaimo Railway Company," mentioned in the said agreement, and incorporated by the Act of the Legislature of British Columbia lastly hereinbefore referred to, in aid of the construction of the said railway and telegraph line, a subsidy in money of seven hundred and fifty thousand dollars, and in land, all of the land situated on Vancouver Island which has been granted to Her Majesty by the Legislature of British Columbia by the Act last aforesaid, in aid of the con- 30
struction of the said line of railway, in so far as such land shall be vested in Her Majesty and held by Her for the purposes of the said railway, or to aid in the construction of the same ; and also all coal, coal-oil, ores, stones, clay, marble, slate, mines, minerals and substances whatsoever in, on, or under the lands so to be granted to the said Company as aforesaid, and the foreshore rights in respect of all such lands as aforesaid, which are to be granted to the said Company as aforesaid, and which border on the sea, together with the privilege of mining under the foreshore and sea opposite any such land, and of mining and keeping for their own use all coal and minerals, herein mentioned, under the foreshore or sea opposite any such lands, in so far as such coal, coal-oil, 40
ores, stones, clay, marble, slate, mines, minerals, and substances whatsoever,

and foreshore rights are vested in Her Majesty as represented by the Dominion Government.

Joint
Appendix.

4. The said money subsidy shall be paid to the said Company by instalments on the completion of each ten miles of railway and telegraph line, such instalments to be proportionate to the value of the part of the lines completed and equipped in comparison with the whole of the works undertaken, the proportion to be established by the report of the Minister of Railways and Canals.

Conditions of
payment of
subsidy to
Company.

5. The said Company shall furnish profiles, plans, and bills of quantities of the whole line of railway in ten mile sections, and before the work is commenced on any ten mile section, such profiles, plans, and bills of quantities shall be approved by the Governor in Council; and before any payments are made the said Company shall furnish such further returns as may be required to satisfy the Minister of Railways and Canals as to the relative value of the works executed, with that remaining to be done.

Further
conditions for
plans, profiles,
and estimates.

6. The Minister of Railways and Canals shall retain five per centum of the subsidy, or of such part thereof as the said Company may be entitled to for three months after the completion of the said railway and telegraph line and the works appertaining thereto, and for a further period until the said Minister is satisfied that all failures or defects in the said line of railway and telegraph line, respectively, and the works appertaining thereto, that may have been discovered during the said period of three months, or such further period, have been permanently made good, and no lands shall be conveyed to the said Company until the road is fully completed and equipped.

Percentage to
be retained
until comple-
tion and
approval of
work.

7. The land grant shall be made, and the land, in so far as the same shall be vested in Her Majesty and held by Her Majesty for the purposes of the said railway, or to aid in the construction of the same, shall be conveyed to the said Company upon the completion of the whole work to the entire satisfaction of the Governor in Council, but so, nevertheless, that the said lands and the coal-oil, coal, and other minerals and timber thereunder, therein or thereon, shall be subject in every respect to the following provisions:—

Provisions as
to conveyance
of lands
granted to
Company.

(1.) The lands to be so conveyed shall, except as to coal and other minerals, and also except as to timber lands as hereinafter mentioned, be open for four years from the nineteenth day of December, in the year of our Lord one thousand eight hundred and eighty-three, to actual settlers, for agricultural purposes, at the rate of one dollar an acre to the extent of one hundred and sixty acres to each such actual settler; grants thereof shall be made under the Great Seal, and in any such grants the right to cut timber for railway purposes and rights of way for the railway and stations and workshops shall be reserved: in the meantime, until the railway from Esquimalt to Nanaimo shall have been completed, the Government of British Columbia shall be the agent of the Government of Canada, for administering, for the purposes of settlement, the

Subject to
certain
conditions.

(1.) The lands to be so conveyed shall, except as to coal and other minerals, and also except as to timber lands as hereinafter mentioned, be open for four years from the nineteenth day of December, in the year of our Lord one thousand eight hundred and eighty-three, to actual settlers, for agricultural purposes, at the rate of one dollar an acre to the extent of one hundred and sixty acres to each such actual settler; grants thereof shall be made under the Great Seal, and in any such grants the right to cut timber for railway purposes and rights of way for the railway and stations and workshops shall be reserved: in the meantime, until the railway from Esquimalt to Nanaimo shall have been completed, the Government of British Columbia shall be the agent of the Government of Canada, for administering, for the purposes of settlement, the

Grants
thereof to
settlers.

Joint
Appendix.

Government
of British
Columbia to
act as agent
in respect of
such grants
until com-
pletion of
railway.

lands in this sub-section mentioned ; and for such purposes the Government of British Columbia may make and issue, subject as aforesaid, pre-emption records to actual settlers of the said lands ; all moneys received by the Government of British Columbia in respect of such administration shall be paid, as received, into the Bank of British Columbia, to the credit of the Receiver-General of Canada ; and such moneys, less expenses incurred, if any, shall, upon the completion of the railway, to the satisfaction of the Dominion Government, be paid over to the railway company :

Provision as
to squatters.

(2.) Every bonâ fide squatter, who has continuously occupied and improved any of the lands within the tract of land to be acquired by the Company from the Dominion Government for a period of one year prior to the first day of January, one thousand eight hundred and eighty-three, shall be entitled to a grant of the freehold of the surface rights of the said squatted land, to the extent of one hundred and sixty acres, at the rate of one dollar per acre :

As to sale of
coal got from
lands by
Company.

(3.) The said Company shall, at all times, sell coals gotten from the lands that may be acquired by them from the Dominion Government to any Canadian railway company having the terminus of its railway on the seaboard of British Columbia, and to the Imperial, Dominion, and Provincial authorities, at the same rates as may be charged to any railway company owning or operating any railway in the United States, or to any foreign customer whatsoever :

Timbered
lands.

(4.) All lands acquired by the said Company from the Dominion Government under this Act, containing belts of timber fit for milling purposes, shall be sold at a price to be hereafter fixed by the Government of the Dominion, or by the said Company :

Existing
rights saved.

(5.) The existing rights, if any, of any persons or corporations in any of the lands so to be acquired by the Company, shall not be affected by this Act.

Admission of
certain
articles for
railway free
of duty.

8. All steel rails, fish-plates and other fastenings, spikes, bolts, and nuts, wire, timber, and all material for bridges, to be used in the original construction of the said railway, and of the telegraph line in connection therewith, and all telegraphic apparatus required for the first equipment of such telegraph line, shall be admitted into Canada free of duty.

Commence-
ment and
completion of
railway and
telegraph
line.

9. The said Company shall commence the works included in the annexed schedule forthwith, and shall complete and equip the said railway and telegraph line by the tenth day of June, one thousand eight hundred and eighty-seven ; and in default of such completion and equipment as aforesaid on or before the last-mentioned date, the said Company shall forfeit all right, claim or demand to the sum of money and percentage retained by the Minister of Railways and Canals, and any and every part thereof—to any moneys whatever which may be at the time of the failure of the completion, as aforesaid, due or owing from Her Majesty to the said Company—to the land grant and also to the moneys deposited as security for the construction of the said railway and telegraph line.

Forfeiture in
case of
default.

THE ESQUIMALT GRAVING DOCK.

Joint
Appendix.

10. The Government of Canada may purchase and complete, and shall, upon the completion thereof, operate as a Dominion work, the dry dock at Esquimalt, and shall be entitled to and have conveyed by the Government of British Columbia to Her Majesty, for Canada, all the lands, approaches, and plant belonging thereto, together with the Imperial appropriation therefor, and shall pay to the Province of British Columbia as the price thereof, the sum of two hundred and fifty thousand dollars, and shall further pay to the said Province whatever amounts shall have been expended by the Government of that Province, or which remain due by it up to the time of the passing of this Act, for work or material performed or supplied by the said Government in respect of the said dock and works since the twenty-seventh day of June, one thousand eight hundred and eighty-two.

Purchase of
and payment
for the Esqui-
malt dry dock.

THE CANADIAN PACIFIC RAILWAY BELT.

11. The lands granted to Her Majesty, represented by the Government of Canada, in pursuance of the eleventh section of the Terms of Union, by the Act of the Legislature of the Province of British Columbia, number eleven of one thousand eight hundred and eighty, intituled "An Act to authorize the grant of certain public lands on the mainland of British Columbia, to the Government of the Dominion of Canada for Canadian Pacific Railway purposes," as amended by the Act of the said Legislature, assented to on the nineteenth day of December, one thousand eight hundred and eighty-three, as aforesaid, intituled "An Act relating to the Island Railway, the Graving Dock and Railway Lands of the Province," shall be placed upon the market at the earliest date possible, and shall be offered for sale on liberal terms to actual settlers:

Lands
granted by
British
Columbia to
Canada for
the purposes
of the
Canadian
Pacific Rail-
way to be
offered for
sale.

(2.) The said lands shall be open for entry to bonâ fide settlers in such lots and at such prices as the Governor in Council may determine:

And open for
settlement.

(3.) Every person who has squatted on any of the said lands prior to the nineteenth day of December, one thousand eight hundred and eighty-three, aforesaid, and who has made substantial improvements thereon, shall have a prior right of purchasing the lands so improved, at the rates charged to settlers generally:

Rights of
squatters
thereon.

(4.) The Governor in Council may, from time to time, regulate the manner in which, and terms and conditions on which the said lands shall be surveyed, laid out, administered, dealt with, and disposed of: Provided, that regulations respecting the sale, leasing or other disposition of such lands shall not come into force until they are published in the *Canada Gazette*:

Regulations
by G. C.
Proviso.

(5.) The Act forty-third Victoria, chapter twenty-seven, intituled "An Act to repeal the Act extending 'The Dominion Lands Acts' to British Columbia, and to make other provisions with respect to certain lands in that Province," is hereby repealed.

Act of
Canada, 43 V.,
c.27, repealed.

Joint
Appendix.

LANDS IN THE PEACE RIVER DISTRICT OF BRITISH COLUMBIA.

To be in one
block and
to be
Dominion
lands, under
46 V., c. 17.

12. The three and one-half million acres of lands in that portion of the Peace River District of British Columbia, lying east of the Rocky Mountains, and adjoining the North-West Territories of Canada, granted to Her Majesty, as represented by the Government of Canada, by the said Act assented to on the nineteenth day of December, one thousand eight hundred and eighty-three, as aforesaid, intituled "An Act relating to the Island Railway, the Graving Dock and Railway Lands of the Province," and to be located by the said Government in one rectangular block, shall be held to be Dominion Lands, within the meaning of the "Dominion Lands Act, 1883." 10

PAYMENTS FROM CONSOLIDATED REVENUE FUND.

Payments
out of Con.
Rev. Fund.

13. All payments authorised by this Act shall be made out of any unappropriated moneys forming part of the Consolidated Revenue Fund of Canada.

CIVIL AND CRIMINAL JURISDICTION.

Jurisdiction
in criminal
cases.

14. Until the boundary line between British Columbia and the North-West Territories is finally settled and located, and such settlement and location is published in the *Canada Gazette*, the courts of the said Province shall have civil and criminal jurisdiction in and over all the territory west of the line laid down in Trutch's map of eighteen hundred and seventy-one, as the eastern 20 boundary of the Province, and the continuation of that line along the one hundred and twentieth meridian of west longitude until it reaches the northern boundary of the Province; and all offences committed in any part of the said territory may be stated in any warrant, indictment or other legal instrument or proceeding to have been committed in British Columbia.

SCHEDULE.

ARTICLES OF AGREEMENT made and entered into this twentieth day of August, in the year of Our Lord, one thousand eight hundred and eighty-three :

Between Robert Dunsmuir, James Dunsmuir and John Bryden, all of 30 Nanaimo, in the Province of British Columbia; Charles Crocker, Charles F. Crocker, and Leland Stanford, all of the City of San Francisco, California, United States of America; and Collis P. Huntington, of the City of New York, United States of America, of the first part; and Her Majesty Queen Victoria, represented herein by the Minister of Railways and Canals, of the second part.

Whereas it has been agreed by and between the Governments of Canada and British Columbia, that the Government of British Columbia should procure the incorporation, by an Act of their Legislature, of certain persons to be designated by the Government of Canada, for the construction of a railway from Esquimalt to Nanaimo, and that the Government of Canada should take security from such Company for the construction of such railway :

And whereas the parties hereto, of the first part, are associated together for the purpose of constructing or contracting for the construction of a railway and telegraph line from Esquimalt to Nanaimo, and are hereafter referred to
10 as "the said contractors" :

Now these presents witness that in consideration of the covenants and agreements on the part of Her Majesty hereinafter contained, the said contractors covenant and agree with Her Majesty as follows :—

1. In this contract the word "work" or "works" shall, unless the context requires a different meaning, mean the whole of the works, material, matter and things to be done, furnished and performed by the said contractors under this contract.

2. All covenants and agreements herein contained shall be binding on and extend to the executors, administrators and assigns of the said contractors,
20 and shall extend and be binding upon the successors of Her Majesty; and wherever in this contract Her Majesty is referred to, such reference shall include Her successors; and wherever the said contractors are referred to, such reference shall include their executors, administrators and assigns.

3. That the said contractors shall and will well, truly and faithfully lay out, make, build, construct, complete, equip, maintain, and work continuously a line of railway of a uniform gauge of four feet eight and a half inches, from Esquimalt to Nanaimo, in Vancouver Island, British Columbia, the points and approximate route and course being shown on the map hereunto annexed, marked B, and also construct, maintain, and work continuously a telegraph
30 line throughout and along the said line of railway, and supply all such telegraphic apparatus as may be required for the proper equipment of such telegraph line, and perform all engineering services, whether in the field or in preparing plans or doing other office work, to the entire satisfaction of the Governor in Council.

4. That the said contractors shall and will locate and construct the said line of railway in as straight a course as practicable, between Esquimalt and Nanaimo, with only such deviations as may seem absolutely indispensable to avoid serious engineering obstacles, and as shall be allowed by the Governor in Council.

40 5. That the gradients and alignments shall be the best that the physical features of the country will admit of, without involving unusually or unnecessarily heavy works of construction, with respect to which the Governor in Council shall decide.

6. That the said contractors shall and will furnish profiles, plans and bills of quantities of the whole line of railway in ten mile sections, and that before the work is commenced on any ten mile section, such profiles, plans and bills of quantities shall be approved by the Governor in Council, and before any payments are made the said contractors will furnish such further returns as may be required to satisfy the Minister of Railways and Canals as to the relative value of the works executed with that remaining to be done.

7. That the Minister of Railways and Canals may keep and retain five per cent. of the subsidy, or of such part thereof as the said contractors may be entitled to, for three months after the completion of the said railway and telegraph line and the works appertaining thereto, and for a further period, until the said Minister of Railways and Canals is satisfied that all failures or defects in the said line of railway and telegraph line, respectively, and the works appertaining thereto that may have been discovered during the said period of three months, or such further period, have been permanently made good, and that no lands shall be conveyed to the said contractors until the road is fully completed and equipped. 10

8. That the said contractors shall commence the works embraced in this contract forthwith, and shall complete and equip the same by the tenth day of June, eighteen hundred and eighty-seven, time being delared material and of the essence of the contract, and in default of such completion and equipment, as aforesaid, on or before the last-mentioned date, the said contractors shall forfeit all right, claim or demand to the sum of money and percentage hereinbefore agreed to be retained by the Minister of Railways and Canals, and any and every part thereof, and also to any moneys whatever which may be, at the time of the failure of the completion as aforesaid, due or owing to the said contractors, as also to the land grant and also to the moneys to be deposited as hereinafter mentioned. 20

9. That the said contractors will, upon and after the completion and equipment of the said line of railway and works appertaining thereto, truly and in good faith keep and maintain the same, and the rolling stock required therefor, in good and efficient working and running order, and shall continuously and in good faith operate the same, and also the said telegraph line and will keep the said telegraph line and appurtenances in good running order. 30

10. That the said contractors will build, construct, complete, and equip the said line of railway and works appertaining thereto in all respects in accordance with the specification hereunto annexed marked A, and upon the line of location, to be approved by the Governor in Council.

11. The character of the railway and its equipments shall be in all respects equal to the general character of the Canadian Pacific Railway, now under construction in British Columbia, and the equipments thereof. 40

12. And that the said line of railway and telegraph line, and all works appertaining thereto respectively, together with all franchises, rights, privileges, property, personal and real estate of every character appertaining thereto, shall upon the completion and equipment of the said line of railway and works

appertaining thereto, in so far as Her Majesty shall have power to grant the same respectively, but no further or otherwise, be the property of the said contractors.

13. And Her Majesty in consideration of the premises, hereby covenants and agrees to permit the admission free of duty of all steel rails, fish-plates and other fastenings, spikes, bolts and nuts, wire, timber and all material for bridges to be used in the original construction of the railway, and of a telegraph line in connection therewith, and all the telegraphic apparatus required for the first equipment of such telegraph line; and to grant to the said contractors a
 10 subsidy in money of \$750,000 (seven hundred and fifty thousand dollars), and in land, all of the land situated on Vancouver Island (except such parts thereof as may have, at any time heretofore, been reserved for naval or military purposes, it having been intended that all of the lands so reserved should be excluded from the operation of the Act passed by the Legislature of the Province of British Columbia, in the year 1883, entitled "An Act relating to the Island Railway, the Graving Dock and Railway Lands of the Province," in like manner as Indian reserves are excluded therefrom), which has been granted to Her Majesty by the Government of British Columbia by the afore-
 20 said Act in consideration of the construction of the said line of railway, in so far as such lands shall be vested in Her Majesty, and held by her for the purposes of the said railway, or for the purpose of constructing or to aid in the construction of the same, and also all coal, coal oil, ores, stones, clay, marble, slate, mines, minerals, and substances whatsoever, in, on or under the lands so agreed to be granted to the said contractors as aforesaid, and the foreshore rights in respect of all such lands as aforesaid, which are hereby agreed to be granted to the said contractors as aforesaid, and border on the sea, together with the privilege of mining under the foreshore and sea opposite any such land, and of mining and keeping for their own use all coal and minerals (herein mentioned) under the foreshore or sea opposite any such lands, in so
 30 far as such coal, coal oil, ores, stones, clay, marble, slate, mines, minerals, and substances whatsoever, and foreshore rights are owned by the Dominion Government, for which subsidies the construction of the railway and telegraph line from Esquimalt to Nanaimo shall be completed, and the same shall be equipped, maintained and operated.

14. The said money subsidy will be paid to the said contractors by instalments, on the completion of each ten miles of railway and telegraph line, such instalments to be proportionate to the value of the part of the lines completed and equipped in comparison with the whole of the works undertaken; the proportion to be established by the report of the Minister of Railways and
 40 Canals.

15. The land grant shall be made, and the land, in so far as the same shall be vested in Her Majesty and held by Her Majesty for the purposes of the said railway, or for the purposes of constructing, or to aid in the construction of the same, shall be conveyed to the said contractors upon the completion of the whole work to the entire satisfaction of the Governor in Council, but so, nevertheless, that the said lands, and the coal oil, coal and other minerals and timber thereunder, therein, or thereon, shall be subject in

every respect to the several clauses, provisions and stipulations referring to or affecting the same respectively, contained in the aforesaid Act passed by the Legislature of the Province of British Columbia, in the year 1883, entitled "An Act relating to the Island Railway, the Graving Dock and Railway Lands of the Province," as the same may be amended by the Legislature of the said Province, in accordance with a draft bill now prepared, which has been identified by Sir Alexander Campbell and the Hon. Mr. Smithe, and signed by them and placed in the hands of the Hon. Joseph William Trutch, and particularly to sections twenty-three, twenty-four, twenty-five and twenty-six of the said Act.

10

And it is hereby further agreed by and between Her Majesty, represented as aforesaid, and the said contractors that the said contractors shall, within ten days after the execution hereof by Her Majesty, represented as aforesaid, or by the said Minister on behalf of Her Majesty, apply to the Government of Canada to be named by the Governor in Council as the persons to be incorporated under the name of the Esquimalt and Nanaimo Railway Company; and that immediately after the said contractors shall have been so incorporated, this contract shall be signed and transferred by them to the said Company, and such Company shall forthwith, by deed entered into by and between Her Majesty, represented as aforesaid, and the said Company, assume all the obligations and liabilities incurred by the said contractors hereunder or in any way in relation to the premises.

20

The said contractors shall, on the execution hereof, deposit with the Receiver-General of Canada the sum of \$250,000 (two hundred and fifty thousand dollars) in cash as a security for the construction of the railway and telegraph line hereby contracted for; the Government shall pay to the contractors interest on the cash deposited at the rate of four per cent. per annum, half-yearly, until default in the performance of the conditions hereof or until the return of the deposit, and shall return the deposit to the said contractors on the completion of the said railway and telegraph line according to the terms hereof with any interest accrued thereon; but if the said railway and telegraph line shall not be so completed, such deposit and all interest thereon which shall not have been paid to the contractors shall be forfeited to Her Majesty for the use of the Government of the Dominion of Canada. In witness whereof, the parties hereto have executed these presents, the day and year first above written.

30

For the Minister of Railways and Canals.

(Signed)

A. CAMPBELL,
Minister of Justice.

(Signed)

ROBERT DUNSMUIR,

40

"

JOHN BRYDEN,

"

JAMES DUNSMUIR,

"

CHARLES CROCKER,

"

CHARLES F. CROCKER,

"

LELAND STANFORD,

by Chas. Crocker his Attorney in fact.

"

COLLIS P. HUNTINGTON,

by Chas. Crocker his Attorney in fact.

Signed, sealed and delivered by the within named Robert Dunsmuir, James Dunsmuir, John Bryden, Chas. Crocker, Chas. F. Crocker, Leland Stanford, and Collis P. Huntington, and by Sir Alexander Campbell for the Minister of Railways and Canals, as an escrow, and placed in the hands of the Honourable Joseph William Trutch, until the sanction of Parliament shall have been obtained to the payment of the subsidy, and to the other stipulations on the part of the Dominion herein contained requiring its sanction, and until the Act passed by the Legislature of the Province of British Columbia in the year One thousand eight hundred and eighty-three, entitled "An Act relating to the Island Railway, the Graving Dock and Railway Lands of the Province," shall have been amended by the Legislature of the said Province in accordance with a draft Bill now prepared and which has been identified by Sir Alexander Campbell and the Honourable Mr. Smithe, and signed by them, and deposited in the hands of the said Joseph William Trutch, in the presence of

Joint
Appendix.

(Signed) H. G. HOPKIRK.

A.

(THIS IS THE SPECIFICATION MARKED A REFERRED TO IN THE CONTRACT HERETO ANNEXED, DATED THIS 20TH AUGUST, 1883.)

20 SPECIFICATION for a line of railway from Esquimalt to Nanaimo, in Vancouver Island in British Columbia.

1. The railway shall be a single line, with gauge four feet eight and a half inches, with necessary sidings.

2. The alignments, gradients and curvatures shall be the best that the physical features of the country will admit of, the maximum grade not to exceed eighty feet to the mile, and the minimum curvature not to be of less radius than eight hundred feet.

3. In all wooded sections the land must be cleared to the width of fifty feet on each side of the centre of line.

30 All brush and logs must be completely burnt up, and none thrown on to the adjacent lands.

4. All stumps must be grubbed out within the limits of cuttings under three feet in depth, or embankments less than two feet in depth.

5. All stumps must be close-cut where embankments are less than four feet and more than two feet in height.

6. Through settlements the railway must be enclosed with substantially built legal fences.

7. Road crossings, with cattle guards and sign boards, shall be provided wherever required.

8. The width of cuttings at formations shall be twenty feet, embankments sixteen feet.

9. Efficient drainage must be provided either by open ditches or under drains.

10. All bridges, culverts and other structures must be of ample size and strength for the purpose intended. Piers and abutments of bridges must be either of substantial massive stone masonry, iron or wood, and in every essential particular, equal to the best description of like works employed in the construction of the Canadian Pacific Railway in British Columbia. Arched culverts must be of good solid masonry, equal in every respect to similar structures designed for the Canadian Pacific Railway in British Columbia. Box culverts must be of either masonry, iron or wood. 10

11. The passenger station houses, freight sheds, workshops, engine houses, other buildings and wharves, shall be sufficient in number and size to efficiently accommodate the business of the road, and they shall be either stone, brick or timber, of neat design, substantially and strongly built.

12. The rails shall be of steel, weighing not less than fifty pounds per lineal yard of approved section, and with the most approved fish-plate joints. 20

13. The roadway must be well ballasted with clean gravel or other suitable material.

14. Sufficient siding accommodation shall be provided by the contractors, as may be necessary to meet the requirements of the traffic.

15. Sufficient rolling stock, necessary to accommodate the business of the line, shall be provided by the contractors, with stations and terminal accommodations, including engine sheds, turn-tables, shops, water-tanks, machinery, wharves, &c.

A. CAMPBELL,

Minister of Justice,

for the Minister of Railways and Canals.

30

ROBERT DUNSMUIR.

No. 5.

Joint
Appendix.

The Consolidated Acts of British Columbia, 1888.

Chapter 82.

AN ACT RELATING TO GOLD AND OTHER MINERALS,
EXCEPTING COAL.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows :—

SHORT TITLE.

1. This Act may be cited as "The Mineral Act," 1884, c. 10, Sec. 154. Short Title.
2. In the construction of this Act, the following expressions shall have the following meanings respectively, unless inconsistent with the context :— Interpretation
- 10 "Mine" shall mean any land in which any vein, stratum, or natural bed of earth or rock shall be mined for gold or other minerals, except coal. Mine.
- "Claim" shall mean the personal right of property, or interest in any mine, and may include a mineral claim; and in the term "mining property" shall be included every claim, ditch, or water privilege used for mining purposes, and all other things belonging thereto, or used in the working thereof. Claim.
Mining property.
- "Bar diggings" shall mean any mine over which a river extends when in its flooded state. Bar diggings.
- "Dry diggings" shall mean any mine over which a river never extends. Dry diggings.
- 20 The mines on benches shall be known as "bench diggings," and shall for the purpose of defining the size of such claims, be excepted from "dry diggings." Bench diggings.
- "Streams and ravines" shall include water-courses, whether usually containing water or not, and all rivers, creeks, and gulches. Streams and ravines.
- "Ditch" shall include a flume or race, or other artificial means for conducting water by its own weight to be used for mining purposes. Ditch.
- "Ditch head" shall mean the point in a natural watercourse or lake where water is first taken into a ditch. Ditch head.
- "Free miner" shall mean a person named in, and lawfully possessed of a valid existing free miner's certificate, and no other. Free miner.
- 30 "Record," "register," and "registration" shall have the same meaning. Record, &c.
- "Full interest" shall mean any mining claim or mineral claim of the full size, or one of several shares, into which a mine may be equally divided. Full interest.
- "Close season" shall mean the period of the year during which claims are in general laid over. Close season.
- "Cause" shall include any suit or action. Cause.
- "Judgment" shall include "order" or "decree." Judgment, &c.

Joint
Appendix.

Mineral.

“Mineral” shall include all minerals, precious or base (other than coal), found in veins or lodes, or rock in place, and whether such minerals are found separately or in combination with each other.

Real estate.

“Real estate” shall mean any mineral land held in fee simple under this or any Act relating to Gold Mines, or to minerals other than coal.

Joint Stock
Company.

“Joint Stock Company” shall mean any company duly incorporated for mining purposes. 1884, cap. 10, ss. 1 and 61.

No. 6.

British Columbia Land Act, 1875.—The Consolidated Acts of British Columbia, 1877.

Chapter 98.

AN ACT TO AMEND AND CONSOLIDATE THE LAWS AFFECTING CROWN LANDS IN BRITISH COLUMBIA.

10

[22nd April, 1875.]

Preamble.

Whereas it is expedient to amend and consolidate the Laws affecting Crown Lands in British Columbia, therefore, HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows :—

FREE MINERS' RIGHTS.

Free miners
may search
for minerals.

80. Nothing herein contained shall exclude free miners from entering upon any land in this Province and searching for and working minerals: Provided that such free miner, prior to so doing, shall give full satisfaction or adequate security to the satisfaction of the Commissioner to the pre-emptor or tenant in fee simple for any loss or damage he may sustain by reason thereof. If the amount of compensation (if any) cannot be agreed upon, the Stipendiary Magistrate or Gold Commissioner of the district wherein the land lies, with the assistance if desired by either party of a jury of five persons to be summoned by him shall decide the amount thereof, and such decision and award shall be final. If there be no such Stipendiary Magistrate or Gold Commissioner in the said district, the Supreme Court shall have jurisdiction in the matter.

20

81. Nothing in this Act contained shall be construed so as to interfere prejudicially with the rights granted to free miners under the "Gold Mining Ordinance, 1867," or any subsequent Acts or Ordinances relating to gold mining.

—
Saves free
miners' rights.

No. 7.

The Consolidated Acts of British Columbia, 1888.

Chapter 66.

AN ACT TO AMEND AND CONSOLIDATE THE LAWS AFFECTING CROWN LANDS.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:—

SHORT TITLE.

10 1. This Act may be cited as the "Land Act," 1884, c. 16, s. 77.

Short Title.

FREE MINERS' RIGHTS.

95. Nothing herein contained shall exclude free miners from entering upon any land in this Province and searching for and working minerals: Provided that such free miner, prior to so doing, shall give full satisfaction or adequate security to the satisfaction of the Commissioner to the pre-emptor or tenant in fee simple for any loss or damage he may sustain by reason thereof. If the amount of compensation (if any) cannot be agreed upon, the Stipendiary Magistrate or Gold Commissioner of the district wherein the land lies, with the assistance if desired by either party of a jury of five persons to be summoned by him shall decide the amount thereof, and such decision and award shall be final. If there be no such Stipendiary Magistrate or Gold Commissioner in the said district, the Supreme Court shall have jurisdiction in the matter. 1884, c. 16, s. 64.

Free miners
may search
for minerals.

96. Nothing in this Act contained shall be construed so as to interfere prejudicially with the rights granted to free miners under the "Mineral Act," or any subsequent Acts relating to gold mining. 1884, c. 16, s. 65.

Saves free
miners' rights.

No. 8.

British Columbia Placer Mining Act, 1891.

54 *Vic.*, *Cap.* 26.

AN ACT RELATING TO PLACER MINES.

[20th April, 1891.]

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:—

SHORT TITLE.

- Short title. 1. This Act may be cited as the "Placer Mining Act, 1891."
- Inter-pretation. 2. In the construction of this Act the following expressions shall have the following meanings respectively, unless inconsistent with the context:—
- Mine, placer mine, diggings. "Mine," "placer mine," and "diggings" shall be synonymous terms, 10 and shall mean any natural stratum or bed of earth, gravel, or cement, mined for gold or other precious metals.
- Placer claim. Mining property. "Placer claim" shall mean the personal right of property or interest in any "placer mine," and in the term "mining property" shall be included every placer claim, ditch, or water right used for placer mining purposes, and all other things belonging thereto or used in the working thereof. Placer claims shall be divided into creek diggings, bar diggings, dry diggings, bench diggings, and hill diggings.
- Creek diggings. "Creek diggings" shall mean any mine in the bed of any river, stream, or ravine, excepting "bar diggings." 20
- Bar diggings. "Bar diggings" shall mean any mine over which a river extends when in its flooded state.
- Dry diggings. "Dry diggings" shall mean any mine over which a river never extends.
- Bench diggings. "Bench diggings" shall mean any mine on a bench, and shall for the purpose of defining the size of a claim in bench diggings be excepted from "dry diggings."
- Hill diggings. "Hill diggings" shall mean any mine on the surface of a hill and fronting on any natural stream or ravine.
- Streams and ravines. "Streams and ravines" shall include all natural watercourses whether usually containing water or not, and all rivers, creeks, and gulches. 30
- Ditch. "Ditch" shall include a flume, pipe, race, or other artificial means for conducting water by its own weight to be used for mining purposes.
- Ditch head. "Ditch head" shall mean the point in a natural watercourse or lake where water is first taken into a ditch.

- “Free miner” shall mean a person or joint stock company, or foreign company, named in and lawfully possessed of a valid existing free miner’s certificate, and no other. Free miner.
- “Legal post” shall mean a stake standing not less than four feet above the ground and squared or faced on four sides for at least one foot from the top, and each side so squared or faced shall measure at least four inches on its face so far as squared or faced, or any stump or tree cut off and squared or faced to the above height and size. Legal post.
- 10 “Record,” “register,” and “registration,” shall have the same meaning, and shall mean an entry in some official book kept for that purpose. Record,
register,
registration.
- “Record,” when used without qualifying words showing that a different matter is referred to, shall be taken to refer to the record of a location of a placer claim. Record.
- “Full interest” shall mean any placer claim of the full size or one of several shares into which a mine may be equally divided. Full interest.
- “Close season” shall mean the period of the year during which placer claims in any district are laid over by the Gold Commissioner of that district. Close season.
- “Cause” shall include any suit or action. Cause.
- “Judgment” shall include “Order” or “Decree.” Judgment.
- 20 “Real estate” shall mean any placer mineral land held in fee simple. Real estate.
- “Joint stock company” shall mean any company duly incorporated for mining purposes under the “Companies Act,” “Companies Act, 1890,” and any company duly incorporated in British Columbia for mining purposes under the “Companies Act, 1862” (Imperial), and shall include all companies falling under the definition of a foreign company in the Companies Act. Joint Stock
Co.

PART I.

FREE MINERS AND THEIR PRIVILEGES.

3. Every person over but not under 18 years of age, and every joint-stock company shall be entitled to all the rights and privileges of a free miner, and shall be considered a free miner upon taking out a free miner’s certificate. A minor who shall become a free miner shall as regards his mining property and liabilities contracted in connection therewith be treated as of full age. A free miner’s certificate issued to a joint-stock company shall be issued in its corporate name. A free miner’s certificate shall not be transferable. Free miner’s
certificate.
4. A free miner’s certificate may be granted for one or more years to run from the date thereof or from the expiration of the applicant’s then existing certificate, upon the payment therefor of the fees set out in the Schedule of Fees to this Act. Only one person or one joint stock company shall be named therein. Duration of
certificate.

Fees.

5. A free miner’s certificate shall be in the following form :—

BRITISH COLUMBIA.
FREE MINER'S CERTIFICATE.
NOT TRANSFERABLE.

Date _____ Valid for _____ year only. No. _____

This is to certify that _____ of _____ has
paid me this day the sum of _____ and is entitled to all the
rights and privileges of a free miner for _____ years from the
day of _____ 18 _____ .

*(Signature of Gold Commissioner or Mining
Recorder as the case may be.)*

Mode of
renewal of
certificate.

6. If any person or joint stock company shall apply for a free miner's 10
certificate at the Mining Recorder's Office during his absence and shall leave
the fee required by this Act with the officer or other person in charge of the
said office, he or it shall be entitled to have such certificate from the date of
such application, and any free miner shall at any time be entitled to obtain a
free miner's certificate commencing to run from the expiration of his then
existing free miner's certificate, provided that when he applies for such
certificate he shall produce to the Mining Recorder, or in case of his absence
shall leave with the officer or other person in charge of the Mining Recorder's
office, such existing certificate.

Substituted
certificate.

7. If any free miner's certificate be accidentally destroyed or lost, the 20
owner thereof may, on payment of the fees set out in the Schedule to this
Act, have a true copy of it signed by the Mining Recorder or other person
by him or out of whose office the original was issued. Every such copy shall
be marked "Substituted Certificate," and unless some material irregularity
be shown in respect thereof every original or substituted free miner's
certificate shall be evidence of all matters therein contained.

Penalty for
mining
without
certificate.

8. Every person and joint stock company engaged in placer mining shall 30
take out a free miner's certificate, and any person or joint stock company
who mines or works as a miner in any placer claim or on any bed-rock flume,
drain or ditch without having taken out and obtained such certificate, shall on
conviction thereof in a summary way forfeit and pay a penalty not exceeding \$25
besides costs. Provided always that nothing herein contained shall prejudice
the right to collect wages or payment for work done by any person or
company who through not being a free miner has rendered himself or itself
liable to the above penalty.

Proviso.

Unless a
person holds
certificate he
shall have no
right to
mining
property.

9. No person or joint stock company shall be recognized as having any
right or interest in or to any placer claim, mining lease, bed-rock flume grant,
or any minerals in any ground comprised therein, or in or to any water right,
mining ditch, drain, tunnel or flume, unless he or it shall have a free miner's
certificate unexpired, and on the expiration of a free miner's certificate the

owner thereof shall absolutely forfeit all his rights and interests in or to any placer claim, mining lease, bed-rock flume grant, and any minerals in any ground comprised therein, and in or to any and every water right, mining ditch, drain, tunnel, or flume which may be held or claimed by such owner of such expired free miner's certificate, unless such owner shall, on or before the day following the expiration of such certificate, obtain a new free miner's certificate. Provided nevertheless that a shareholder in a joint stock company need not be a free miner, and though not a free miner shall be entitled to buy, sell, hold or dispose of any shares therein. And provided also that this section shall not
 10 apply to placer mines for which a Crown grant has been issued.

Proviso.

10. Every free miner shall, during the continuance of his certificate but not longer, have the right to enter, locate, prospect and mine for gold and other precious metals upon any lands in the Province of British Columbia, whether vested in the Crown or otherwise, except upon Government reservations for town sites, land occupied by any building and any land falling within the curtilage of any dwelling-house, and any orchard and any land lawfully occupied for placer mining purposes and also Indian reservations.

Right of
certificate
holder to
prospect.

11. Previous to any entry being made upon lands already lawfully occupied such free miner shall give adequate security to the satisfaction of the Gold
 20 Commissioner for any loss or damage which may be caused by such entry, and after such entry he shall make full compensation to the occupant or owner of such lands for any loss or damage which may be caused by reason of such entry; such compensation, in case of dispute, to be determined by a Court having jurisdiction in mining disputes with or without a jury.

Free miner to
give security
for damage
caused by
entry on land.

12. Any free miner may enter upon any Crown lands or lands covered by timber leases, or any lands the timber whereon has been reserved by the Crown, to cut timber for mining purposes.

Right to cut
timber for
mining
purposes.

13. Any free miner shall be at liberty at any period of the year, while actually prospecting or engaged in mining, to kill game for his own use.

Right to kill
game.

30 14. A free miner shall have all the rights and privileges granted to free miners by the "Mineral Act, 1891."

Mineral Act,
1891.

PART II.

SIZE AND NATURE OF PLACER CLAIMS.

LOCATING, RECORDING, RE-RECORDING, WORKING, AND LAY-OVERS.

15. Every free miner shall be entitled to locate and record a placer claim on each separate creek, ravine, or hill, but not more than two claims in the

What claims
free miner
may record
and purchase.

same locality, only one of which shall be a creek claim. He shall be allowed to hold any number of placer claims by purchase, and every free miner may sell, mortgage, or dispose of his claim or any interest therein.

Record of
claim.

23. Every free miner locating a placer claim shall record the same with the Mining Recorder of the district or division within which the same is situated within three days after the location thereof, if located within ten miles of the office of the said Mining Recorder. One additional day shall be allowed for making such record for every additional ten miles or fraction thereof. Such record shall be made in a book to be kept for the purpose in the office of the said

Record book.

Mining Recorder, to be known as the "Record Book," in which shall be inserted the name of the claim, the name of each locator, the number of each locator's free miner's certificate, the locality of the claim, its length in feet, the period for which such record is granted, the date of location, and date of the record: Provided that a free miner shall not be entitled to a record of a claim until he shall have furnished the Mining Recorder with a written statement of the above particulars. 10

Proviso.

Duration of
record.

27. A free miner, having duly located a placer claim, shall be entitled to record the same for one or more years upon payment of the fees set out in the schedule to this Act.

Terms on
which miner
may hold a
claim.

31. A free miner, having duly located and recorded a placer claim, shall be entitled to hold the same during the existence of his record or re-record of such claim upon complying with all the terms and conditions of this Act. 20

Right of
miner to his
claim.

32. Every free miner shall have the exclusive right of entry upon his placer claim for the miner-like working thereof and the construction of a residence thereon, and shall be entitled exclusively to all the proceeds realized therefrom: Provided that the Gold Commissioner may, upon application made to him, allow other free miners such rights of entry thereon as may be necessary for the working of their claims, upon such terms as may to him seem reasonable.

Proviso.

Interest in
claim deemed
a chattel
interest.

36. The interest of a free miner in his placer claim shall, save as to placer mines held as real estate, be deemed to be a chattel interest equivalent to a lease for such period as the same may have been recorded, renewable at the end thereof by re-recording, and subject to the conditions as to forfeiture, working, representation, re-recording, and otherwise for the time being in force with respect to placer claims. 30

Holder of
placer claim
has no right
to vein or
lode.

37. The holder of a placer claim shall have no right to any vein or lode as defined by the "Mineral Act, 1891," within the limits of such placer claim unless he shall have located and recorded the ground as a mineral claim, and until he shall so locate and record such ground, the same shall be open to any free miner to locate and record as a mineral claim.

PART III.

Joint
Appendix.

TUNNELS AND DRAINS.

46. Any free miner requiring to run or construct a tunnel or drain in connection with his claim through any occupied or unoccupied lands, whether mineral or not, shall obtain a license from the Gold Commissioner for that purpose, which license shall be granted or withheld in the absolute discretion of such Gold Commissioner, and shall also give such security to the Gold Commissioner for any damage that may be caused by such tunnel or drain as such Gold Commissioner may require. Such license shall be subject to such terms and conditions as the Gold Commissioner shall think fit, and shall be recorded in the record book. License to make tunnels or drains through other land.
47. A tunnel or drain shall be considered as part of the placer claim or mine held as real estate for which the same was constructed. To belong to claim.
48. Any free miner may apply to the Gold Commissioner for a grant of right of way and entry through and upon any mining ground in his district for the purpose of constructing a drain for public drainage of mines. Right of way for making tunnels.
49. The application for every such grant shall be in writing, and shall set out the name of each applicant, the nature and extent of the proposed drain, the amount of toll to be charged, the term of years for which such grant is to be made, and all other privileges sought to be acquired. The application shall be left at the Mining Recorder's office addressed to the Gold Commissioner. A notice of such application, setting out the above particulars, shall be posted on the office of the Mining Recorder and on the ground for thirty clear days before such grant shall be made. Form of application.
Notice.
50. The applicant for every such grant shall deposit with the Mining Recorder at the time of the leaving of his application as aforesaid twenty-five dollars, which shall be refunded in case the application shall be refused. Deposit of \$25.
51. Such grants shall be in writing and signed by the Gold Commissioner, and shall not be given for a longer period than twenty years, and shall give such rights of way and entry, and such powers to assess, levy, and collect tolls from all persons using such drain, or benefited thereby, as the Gold Commissioner shall think fit, but not in any case to exceed the term, rights, or powers, set out in the application. Grants of right of way, etc.
52. The following covenants and conditions on the part of the grantee and his assigns shall be deemed to be part of every grant, whether expressed therein or not:— Covenants on part of grantee.
- (a) That he shall construct a drain or drains of sufficient size to meet all requirements, within a time therein named.

Joint
Appendix.

(b) That he shall keep the same in thorough working order and repair, and free from all obstructions; and in default thereof that the Gold Commissioner may order all necessary alterations or repairs to be made by any free miners, other than the grantee or his assigns, at the cost and expense of the latter, such cost and expense to be levied by sale (subject however to the conditions of the grant) of all or any part of the drainage works, materials, and tolls, or any of them.

(c) That he shall within a reasonable time construct proper tap drains from or into adjacent claims, upon being requested in writing by the holders thereof so to do; and if such grantee shall fail to commence the construction of any such tap drains for five days after receipt of such request, or after making such commencement shall for three days fail to proceed with such construction, he shall permit such holders to construct such tap drains, in which case such holders shall only be chargeable with one half the specified rates of toll, or such other proportion as the Gold Commissioner may direct. 10

(d) That he will not in the construction and maintenance of such drains and tap drains in any way injure the property of others, and that he shall make good any damage done by him.

Record of
grant.
Rent.

53. Every such grant shall be recorded in the Record Book, and the deposited sum of \$25 shall be retained as a recording fee. A rent of \$25 for each quarter of a mile and each fraction thereof shall be paid annually to the Mining Recorder by the Grantee, such rent to commence from the date of the grant. 20

PART IV.

WATER RIGHTS.

Water rights.

54. Every free miner shall be entitled to the use of so much of the water naturally flowing through or past his placer claim, and not already lawfully appropriated, as shall in the opinion of the Gold Commissioner be necessary for the due working thereof. 30

Water right
in unappropriated
water.

55. A free miner may at the discretion of the Gold Commissioner obtain a grant to a water right in any unappropriated water for any placer mining purpose for any term not exceeding ten years, upon such terms and conditions as such Gold Commissioner shall think fit.

How water
right obtained

56. Before applying for any such grant the free miner shall—

(1) Post a notice in writing on a legal post upon some conspicuous part of the ground on which such water is intended to be used, and a copy

of such notice on the office of the Mining Recorder for at least twenty days, which notice shall contain the following particulars—

Joint
Appendix.

- (a) The name of each applicant.
- (b) The number of each applicant's free miner's certificate.
- (c) The name, or if unnamed, a sufficient description of the stream, lake, or other source from which such water is intended to be taken.
- (d) The point of diversion or intended ditch head.
- (e) The number of inches of water applied for.
- (f) The purpose for which it is required.
- (g) The date of the notice.

10

(2) If more than 300 inches are applied for a deposit shall be made with the Gold Commissioner of \$25 to be refunded if the grant is not made.

57. The grant of such water right shall be recorded in the office of the Mining Recorder in the record of water grants within the time limited for the recording of placer claims, and shall during each year of the continuance of the grant, and whilst it shall be in operation, be re-recorded as in the case of a placer claim.

Record of
grant.

20 58. No grant shall take effect until recorded.

Must be
recorded.

59. No free miner shall be entitled to a grant of the water of any stream for the purpose of selling the water to claim holders on any part of such stream. The Gold Commissioner may, however, grant such privileges as he may deem just when such water is intended to work bench or hill claims fronting on any such stream provided that the rights of free miners then using the water be protected.

Grant not
made for
selling water
to miners on
the stream.

30 60. The owner of any water right may distribute the water to such free miners, and on such terms as he may deem advisable within the limits mentioned in his grant. Provided always that such owner shall be bound to supply water to all applicants being free miners in a fair proportion and shall not demand more from one than another except where the difficulty of supply is enhanced.

Distribution
of water
within limits
mentioned in
grant.

40 61. If after the grant has been made any free miner or free miners locate and *boná fide* work any placer claim below the ditch head on any stream so diverted, he or they shall collectively be entitled to 40 inches of water if 200 inches be diverted, and 60 inches if 300 inches be diverted, and no more, except upon paying to the grantee compensation equal to the amount of damage sustained by the grantee on account of the diversion of such extra quantity of water, and in computing such damage the expense of the construction of the ditch shall be considered.

Rights of
miners located
below ditch
head.

62. On any dispute between applicants for a grant prior to such grant being made, priority of notice shall constitute priority of right if any.

Priority of
notice,
priority of
right.

Date of grant.

63. A grant duly recorded shall speak from the date of the grant and not from the date of the record.

Rights of
persons using
water.

64. Every such grant shall be subject to the rights of such free miners as shall at the date of such grant be working on the stream above or below the ditch head, and of any other persons lawfully using such water for any purpose whatsoever.

Grant of
water right
appurtenant
to claim.

65. A grant of a water right made in respect of any placer claim or placer mine held as real estate shall be deemed appurtenant to such claim or mine, and whenever the claim or mine shall have been worked out, abandoned, or forfeited, or whenever the occasion for the use of the water upon the claim or mine shall have permanently ceased, the grant shall be at an end and determined. 10

When work
must be
commenced.

66. Within thirty days after the grant is made the grantee shall commence the excavation or construction of the works in which he intends to divert and convey the water, and shall prosecute the work diligently and uninterruptedly to completion, unless interrupted by the severity of the weather. Provided always that the Gold Commissioner may in his discretion allow such work to cease for any time upon cause being shown. Upon the non-fulfilment of any of the conditions of this section the grant shall be forfeited.

Proviso.

Change of
place of
diversion.

67. The grantee of any water right may obtain permission from the Gold Commissioner to change the place of diversion on giving such notices and complying with such terms as the Gold Commissioner may require. 20

Forfeiture for
wasting water.

68. Every such grantee shall take all reasonable means for utilizing the water granted to him, and if he wilfully waste any water or take a quantity of water in excess of his requirements the Gold Commissioner may declare his grant to be forfeited.

Carrying
works across
other land.

69. Any person desiring to bridge any stream, claim, or other place for any purpose, or to mine under or through any ditch or flume, or to carry water through or over any land already occupied, may do so with the written sanction of the Gold Commissioner. In all such cases the right of the party first in possession, whether of the mine or of the water right, is to prevail so as to entitle him to compensation if the same be just. 30

Rules for
measurement
of water.

70. In measuring water in any ditch or sluice the following rules shall be observed:—The water taken into a ditch or sluice shall be measured at the ditch or sluice head. No water shall be taken into a ditch or sluice except in a trough placed horizontally at the place at which the water enters it. One inch of water shall mean half the quantity that will pass through an orifice 2 inches high by 1 inch wide, with a constant head of 7 inches above the upper side of the orifice.

71. Whenever it shall be intended in forming or upholding any ditch to enter upon and occupy any part of a placer claim or placer mine held as real estate or other land or to dig or loosen any earth or rock within 20 feet of any ditch thereon, three days' notice in writing of such intention shall be given to the owner of such ditch before entering or approaching within 20 feet thereof. Notice to be given to owner before approaching within 20 feet.
72. Any person heretofore or hereafter engaged in the construction of any road or work may with the sanction of the Gold Commissioner cross, divert, or otherwise interfere with any ditch, water right, or other mining rights whatsoever, for such period as the said Commissioner shall direct. Gold Commissioner may allow ditch to be diverted.
- 10 73. The owner of any ditch, flume, or pipe, shall at his own expense construct, secure, and maintain, all culverts necessary for the passage of waste and superfluous water flowing through or over any such ditch, flume, or pipe. Owner to provide for waste water.
74. The owner of any ditch flume, or pipe, shall construct and secure the same in a proper and substantial manner, and maintain the same in good repair to the satisfaction of the Gold Commissioner, and so that no damage shall occur to any road or work in its vicinity from any part of the works of such ditch, flume, or pipe. Owner to keep ditch in repair.
- 20 75. The owner of any ditch, flume, or pipe, shall be liable and shall make good in such manner as the Gold Commissioner shall determine all damage which may be occasioned by or through any parts of the works of such ditch, flume, or pipe breaking or being imperfect. Owner liable for damage caused by defect.
76. If any written notice to the party intended to be affected thereby be posted for ten days on some conspicuous part of any premises referred to in such notice, and also on the office of the Mining Recorder, such notice shall be deemed good and sufficient. What is effectual notice.
- 30 77. When the term for which any water right has been granted shall have expired, the grantee thereof may at the discretion of the Gold Commissioner obtain a renewal of the same for a reasonable term not to exceed ten years, provided the necessity for the use of said water for the purpose for which it was originally granted continues to exist. Renewal of water right.
78. Nothing herein contained shall be construed to limit the right of the Chief Commissioner of Lands and Works to lay out from time to time the public roads of the province across, through, along, or under any ditch, water right, or mining right in any Crown Land without compensation, provided that as little damage as possible shall be done. Rights of Chief Commissioner.

PART VI.

BED-ROCK FLUMES.

Application
for right of
way for bed-
rock flume.

100. One or more free miners may apply to the Gold Commissioner for a grant of exclusive rights of way through and entry upon any mining ground in his district for the purpose of constructing, laying and maintaining a bed-rock flume.

How applica-
tion is made.

101. Every such application shall be in writing and shall be left at the Mining Recorder's office addressed to the Gold Commissioner, and shall state the name of the applicant and the nature and extent of the privileges sought to be acquired. Thirty days' notice of such application shall be given by affixing the same to some conspicuous part of the ground through which the rights of way are asked, and a copy thereof upon the walls of the Court House or of the office of the Mining Recorder of the district. Prior to such application such ground shall be marked out by legal posts placed at intervals of 150 feet along the proposed main line or course of the flume, with a notice of such application affixed to one of such posts. And it shall be competent for any free miner to protest before the Gold Commissioner within such thirty days against such application being granted but not afterwards. Every application for a grant shall be accompanied by a deposit of \$125, to be left with the Mining Recorder, which shall be refunded if the application be refused but not otherwise.

Term.

102. Every such grant shall be in writing signed by the Gold Commissioner and shall be for a term not exceeding five years.

Rights of
grantee.

103. The grantee shall be entitled to the following rights and privileges, that is to say:—

- (a) The right of way through and entry upon any new and unworked river, creek, gulch or ravine, and the exclusive right to locate and work a strip of ground 100 feet wide and 200 feet long in the bed thereof to each grantee named in such grant.
- (b) The right of way through and entry upon any river, creek, gulch, or ravine worked by miners for any period longer than two years prior to such entry and already wholly or partly abandoned, and the exclusive right to stake out and work both the unworked and abandoned portions thereof 100 feet in width and one-quarter mile in length for each grantee named in such grant.
- (c) Such right of way through and entry upon any river, creek, or ravine discovered within two years next preceding the date of his application before mentioned, and upon any portions of which any free miner is legally holding and *bonâ fide* working a claim, as to the Gold Commissioner may seem advisable.

- (d) The right of way through and entry upon all placer claims which are at the time of the notice of application before mentioned *boná fide* being worked by any free miner for the purpose of cutting a channel and laying his flume therein, with such reasonable space for constructing, maintaining, and repairing the flume as may be necessary: Provided that the owner of such last mentioned placer claim shall be entitled to take and receive the gold or other minerals found in the cut so made.
- 10 (e) The use of so much of the unappropriated water of the stream on which the flumes may be located, and of other adjacent streams as may be necessary for the use of the grantee's flumes, hydraulic power, and machinery, to carry on his mining operations, and the right of way for ditches and flumes to convey the necessary water to his works, subject to the payment of any damage which may be done to other parties by running such ditches or flumes through or over their ground.
- (f) The right to all the gold or other minerals in his flumes.
- 20 (g) No person locating new and unworked or abandoned ground within the limits of such grant after the notice above mentioned has been given shall have any right or title as against such grantee to the ground so located.

104. A holder of a placer claim through which the line of the grantee's flume is to run may put in a bed-rock flume in his claim to connect with the grantee's flume upon giving the grantee ten days' notice in writing to that effect, but he shall maintain the like grade and build his flume as thoroughly and of as strong materials as are used by such grantee.

Claim holder may connect with bed-rock flume.

30 105. A claim holder constructing such flume through his claim shall keep his flume free from obstruction, and he shall be entitled to all the gold or other minerals found therein, but he shall be subject to the same regulations with regard to cleaning up the flume, repairs, and other matters in which both parties are interested, as may be adopted by such grantee, and such claim holder shall have the right, at any time before the abandonment of his claim, to become a partner of the grantee by uniting his claim and flume with the ground and flume of the grantee, and taking an interest proportionate to that which he shall cede to the grantee, or he may abandon his claim and flume, and such abandonment shall enure to the use and benefit of the grantee.

Duties of such claim holder.

40 106. The grantee shall lay at least 100 feet of flume during the first year of such grant, and 300 feet annually thereafter until completion of the flume, but the amount of flume to be laid may be reduced at the discretion of the Gold Commissioner.

100 feet to be laid the first year, 300 feet annually thereafter.

107. Any free miner lawfully working any claim where a bed-rock flume exists, shall be entitled to tail his sluices, hydraulics, and ground sluices into

What use claim holder may make of a flume.

Joint Appendix. — such flume, but so as not to obstruct the free working of such flume by rocks, stones, boulders, or otherwise.

Record of grant. Rent. 108. The grantee shall record his grant with the Mining Recorder within three days after obtaining the same, and pay for such record the fee provided in the Schedule to this Act, and he shall also pay to the Mining Recorder annually a rent of twelve dollars and fifty cents for each quarter of a mile of right of way legally held under such grant.

Interest of grantee a chattel interest. 109. The interest of the grantee in his grant, and in all flumes and fixtures connected therewith, shall be deemed to be a chattel interest equivalent to a lease for the term of such grant. 10

Extension of term. 110. Upon the expiration of the grant for a bed-rock flume, it may be extended for any further term, not exceeding five years for any one extension, at the discretion of the Gold Commissioner.

Forfeiture of grant. 111. Any grant of a bed-rock flume shall be forfeited whenever the grantee shall fail to comply with the conditions thereof, or of this Act.

PART VII.

LEASES.

How lease of mining ground obtained. 112. A free miner desiring to obtain a lease of any placer mining ground shall mark out such ground by placing a legal post at each corner, and shall post a notice on the post nearest to the placer mining claims then being worked in the immediate locality, and also on the office of the Mining Recorder, which notice shall set out:— 20

- (1.) The name of each applicant.
- (2.) The locality of the ground to be acquired.
- (3.) The quantity of ground.
- (4.) The term for which such lease is to be applied for.

Application for lease. 113. The free miner after staking the ground and posting the notices as aforesaid shall make an application in writing addressed to the Gold Commissioner and leave the same at the office of the Mining Recorder, which application shall set out:— 30

- (1.) The name of each applicant.
- (2.) The number of each applicant's free miner's certificate.
- (3.) The locality of the ground.
- (4.) The quantity of ground.
- (5.) The term of the lease desired.
- (6.) The rent proposed to be paid.

114. On making such application the free miner shall deposit with the Mining Recorder for the use of the Gold Commissioner a plan of the ground in duplicate. Deposit of plan.
115. Applications shall not be made for a longer term than ten years excepting for bench lands adjoining unworked or abandoned rivers for hydraulic workings, application for which bench lands may be made for any term not exceeding twenty years. Term of lease.
116. Applications shall not be for greater than the following areas or distances:-- Areas of ground.
- 10 In dry diggings, 10 acres.
 In bar diggings unworked, half a mile in length along the high water mark.
 In bar diggings which have been worked and abandoned, one mile and a half in length along the high water mark.
 In creek diggings on abandoned creeks, one mile and a half in length.
 In bench lands adjoining unworked, or abandoned rivers for hydraulic workings, 160 acres; but in such lands the length shall in no case exceed half a mile.
- 20 117. No such application shall be made for any mining ground which is immediately available for mining by individual free miners, or any portion of which is actually occupied by free miners, unless with the consent of such occupiers. Application not to be made for ground available for or occupied by individual free miners.
118. The lease may be granted or refused in the discretion of the Gold Commissioner, who may modify the terms and conditions of any application as he shall think fit. Lease granted at Gold Commissioner's discretion.
119. Every application for a lease for a term exceeding five years, together with a plan of the ground and the Gold Commissioner's report, shall be forwarded to the Lieutenant-Governor, and no lease shall be granted on any such application without his sanction. Application for terms exceeding five years.
- 30 120. Every lease of mining ground shall be in writing, signed by the Gold Commissioner and the lessee. Lease to be in writing.
121. Every lease shall provide for securing to the public reasonable rights of way and water, and shall contain a covenant by the lessee to mine the ground in a miner-like manner, and shall contain such covenants for the continuous working of such ground as the Gold Commissioner shall think reasonable, and shall reserve the right to free miners to enter on such ground and mine for veins or lodes as defined by "The Mineral Act, 1891." Contents of lease.
122. On the non-performance or non-observance of any covenant or condition in any lease, such lease shall be declared forfeited by the Gold Forfeiture of lease.

Joint
Appendix.

Commissioner and become absolutely void, and the ground included in such lease shall thereupon be open for location by any free miner.

Leases to be
only for placer
mining.

123. Leases shall be granted for placer mining only and shall not be assigned or sublet without the written consent of the Gold Commissioner.

Hydraulic
workings on
bench lands.

124. When any bench lands adjoining unworked or abandoned rivers are held under lease for hydraulic working, the lessee of such lands shall be entitled to a grant from the Gold Commissioner of such quantity of unappropriated water from any stream or lake as may in the opinion of the Gold Commissioner be necessary to work the said bench land efficiently and shall have the right of way through any mining ground for the purpose of constructing ditches and flumes to convey such water to the bench lands so held for hydraulic working, which grant shall be for the same term for which the bench land is leased. Whenever such bench lands shall have been efficiently worked as required by the conditions of the lease to the satisfaction of the Gold Commissioner, and if at the expiration of the lease a portion of said lands remain still to be worked, the lessees shall be entitled to an extension of the lease and grant, upon the same conditions as the original lease and grant, for such reasonable time as will enable him to work out such portion of said lands as still remain unworked, and the Gold Commissioner may grant such extension by memorandum endorsed on the lease. Provided that whenever the bench lands so held under lease have been forfeited, abandoned, or worked out, or the occasion for the use of the water upon such bench lands shall have permanently ceased, the grant of such water shall terminate. But in any case where the ditch or flume constructed for conveying such water shall have a carrying capacity of not less than 500 inches, and shall have cost not less than 5000 dollars, such ditch or flume shall remain the property of the owner thereof.

"Record of
Water
Grants."

125. Every grant and every extension of a grant of a water right for bench lands leased for hydraulic working shall be recorded in the "Record of Water Grants," but it shall not be necessary to re-record such grants or extension annually.

Grant of
lease of bed
of river.

126. It shall be lawful for the Gold Commissioner with the sanction of the Lieutenant-Governor in Council to grant a lease for any term not exceeding 20 years of the bed of any river below low water mark for dredging purposes for a distance not exceeding ten miles upon such terms as he shall think fit. Provided always that every such lease shall reserve the right to every free miner to run his tailings into such river at any point thereon and whether such free miner shall locate before or after the date of such lease.

PART VIII.

MINING RECORDERS—APPOINTMENT, DUTIES, POWERS.

Appointment
of Mining
Recorder.

127. The Lieutenant-Governor in Council may appoint any person to be a Mining Recorder in and for any part of the Province.

128. Where mineral land is discovered in a part of the province so situate that the provisions of this Act as to free miners' certificates and records of mining property cannot be justly applied or enforced by reason of there being no Gold Commissioner or Mining Recorder in the locality, it shall be lawful for the miners of such locality to hold meetings at such times and places as may be agreed upon, and at such meetings by a two-thirds' vote to appoint one of their number to issue free miner's certificates and to enter records of mining property, and such certificates and records shall be valid notwithstanding any informality therein. Provided that all records so made and all fees for the same in accordance with the Schedule to this Act, and a list of all free miner's certificates issued and the date and term thereof and the fees for the same, be forwarded to the nearest Gold Commissioner or Mining Recorder as soon thereafter as practicable.

Appointment
of Recorder
by miners
themselves.

Proviso.

129. Every Mining Recorder shall issue free miner's certificates and "substituted certificates" to all persons and companies entitled thereto.

Recorder
to issue
Certificates.

130. Such free miner's certificates shall be taken from a printed book of forms with duplicate counterfoils, one of which counterfoils shall be filed in the office of the Mining Recorder.

Counterfoils
to be filed.

131. Every Mining Recorder shall keep the following books to be used for placer mining entries:—

Books to be
kept by
Recorder.

(a.) A book to be known as the "Record Book."

(b.) A book to be known as the "Record of Abandonments."

(c.) A book to be known as the "Record of Affidavits."

(d.) A book to be known as the "Record of Conveyances."

(e.) A book to be known as the "Record of Water Grants."

132. Upon the application of or on behalf of any free miner, and upon receipt of all particulars required by section 23 of this Act, the Mining Recorder shall record any placer claim by entering all the particulars required by the said section in the Record Book, which entry shall be as near as convenient in the form B in the Schedule to this Act. Upon the application of or on behalf of any free miner, and upon receipt of all the particulars required by section 28 of this Act, the Mining Recorder shall re-record any placer claim by entering all the particulars required by said section in the Record Book, which entry shall be as near as convenient in the form C in the Schedule to this Act. The Mining Recorder shall not make any such record until he has received all the particulars required by section 23, and any record made in violation of this section shall be absolutely void.

Record and
re-record of
Claims.

133. The Mining Recorder shall record every lay-over, leave of absence, license, permit, and other privilege granted and forfeiture declared by the Gold Commissioner, in the record book.

Record of
lay-over.

134. The Mining Recorder shall record all water grants and extensions thereof in the record of water grants.

Record of
Water Grant.

Record of
Abandonment

135. Upon the receipt of a notice of abandonment, the Mining Recorder shall record the same in the record of abandonments, and file such notice and write across the record of the claim affected by such notice in the record book the word "abandoned," and the date of the receipt by him of the notice. If only an interest in a placer claim is abandoned, and not the entire claim, the memorandum in the record shall show which interest is abandoned.

Record of
Affidavits.

136. The Mining Recorder shall record by copying out verbatim all affidavits and declaratory statements brought to him in connection with his office in the record of affidavits.

Record of
Documents
of Title.

137. The Mining Recorder shall record by copying out verbatim in the 10
Record of Conveyances all conveyances, mortgages, bills of sale, contracts for sale, and other documents of title including powers of attorney or other authorities, to execute all or any of the above description of documents when brought to him for that purpose.

Record of
other docu-
ments.

138. The Mining Recorder shall record all other documents relating to mining property which may be brought to him for record, and shall file all such documents which may be brought to him to be filed.

Entry to show
date.

139. Every entry made in any of the Mining Recorder's books shall show the date on which such entry was made.

Books to be
open for
inspection.

140. All books of record shall during office hours be open to public 20
inspection free of charge, and documents filed shall be open to public inspection upon payment of the fee set out in the Schedule to this Act.

Office copies to
be evidence.

141. Every copy of or extract from any entry in any of the said books, or of any document filed in the Mining Recorder's office, certified to be a true copy or extract by the Mining Recorder, shall be received in any Court as evidence of the matters therein contained.

Fees to be
prepaid.

142. Before issuing any free miner's certificate or substituted certificate or making any entry in any book of record, or filing any document, or making any copy or extract therefrom, the Mining Recorder shall collect the fees payable in respect thereof, as set out in the Schedule to this Act.

30

Recorder to
receive
document for
Commissioner

143. The Mining Recorder shall receive all applications and other documents addressed to or intended for the Gold Commissioner and forward the same to the Gold Commissioner.

To receive
money under
Act.

144. The Mining Recorder shall receive all deposits of money directed to be made by this Act and apply the same as directed by this Act.

To collect
rent.

145. The Mining Recorder shall collect all rents collectable under the conditions of any lease or other documents granted under the provisions of this Act.

146. The Mining Recorder shall forward to the Provincial Treasury all fees, rents, fines, penalties, and other moneys collected or obtained by him in accordance with the provisions of this Act.

—
Moneys
collected to be
paid into
Provincial
Treasury.

PART IX.

GOLD COMMISSIONER'S POWERS.

151. It shall be lawful for the Gold Commissioner to perform the following acts in accordance with the provisions of this Act :—

Powers of
Commissioner.

- 10 (a) He may lay over any or all claims, and may grant to any holder of a claim leave of absence for such period and reasons as he may think proper.
- (b) He may prescribe the number of miners who shall be required to work in prospecting a set of claims until gold in paying quantities is found.
- (c) For the more convenient working of back claims on benches or slopes, the Gold Commissioner may permit the owners thereof to drive a tunnel through the claims fronting on any creek, ravine or water-course, upon such terms as shall seem expedient. Provided that in tunnelling under hills, on the frontage of which angles occur, or which may be of an oblong or elliptical form, no party shall be allowed to tunnel from any of the said angles nor from either end of such hills so as to interfere with parties tunnelling from the main frontage.
- 20 (d) He may mark out a space of ground for deposits of leavings and deads from any tunnel, claim or mining ground, upon such terms as he may think just.
- (e) He may extend the limits of a claim in "bench diggings" beyond the limits of the bench, but not to exceed 100 feet square.
- (f) He may, in cases of disputed boundaries or measurements employ a surveyor to mark and define the same, and cause the reasonable expense thereof to be paid by either or both of the parties interested therein.
- 30 (g) He may permit or order mining posts to be moved.
- (h) He may summarily order any mining works to be so carried on as not to interfere with or endanger the safety of the public, any public work or highway, or any mining property, mineral claim, placer claim, bed-rock drain, or bed-rock flume, and any abandoned works may by his order be either filled up or guarded to his satisfaction at the cost of the party who may have constructed the same, or in his absence upon such terms as he shall think fit.
- (i) He may, upon application made to him, allow a free miner such right

of entry upon any adjacent claim as may be necessary for the working of his claim, and upon such terms as may to him seem reasonable.

- (j) He may grant licenses and rights of way for the purpose of constructing drains or tunnels, and may exercise such powers as are specified in Part III. of this Act.
- (k) He may grant water rights and renew the same, and declare the same forfeited, and grant all such privileges and exercise such powers as are specified in Part IV. of this Act.
- (l) He may grant rights of way for the purpose of constructing a bed-rock flume, and may extend the grant at its expiration in accordance with Part VI. of this Act. 10
- (m) He may grant leases of placer mining ground and of unappropriated water to work the same, and may grant renewals of such leases, and grant such privileges and exercise all such powers as are specified in Part VII. of this Act.

“Gold Mining
Amendment
Act, 1873.”

152. Notwithstanding anything contained in the “Gold Mining Amendment Act, 1873,” or in any Crown grant issued under the said Act, or under this or any other Act, it shall be lawful for the Gold Commissioner in his discretion and with or without any terms or conditions, to allow to the owners of placer claims all such rights or privileges in and over mineral or other claims held as real estate as may be allowed in and over claims not so held, and owners of claims held as real estate shall be entitled to the same rights and privileges as owners of claims not so held. 20

Full power to
carry out this
Act.

153. The Gold Commissioner shall have power to do all things necessary or expedient for the carrying out of the provisions of this Act.

SCHEDULE.

B.

RECORD OF A PLACER CLAIM.

(Name of Claim.)—	Placer Claim.	
Located by	. No. of Certificate,	30

[Set out the name of each locator and the No. of each locator's free miner's certificate opposite such name.]

The claim is situate		.
The length of the claim is	feet.	
Recorded for	years.	
Located on the	day of	, 18 .
Recorded this	day of	, 18 .

I.

Joint
Appendix.

SCALE OF FEES TO BE CHARGED.

	For every Free Miner's Certificate (for each year)	...	...	...	\$5.00
	Every substituted Certificate	...	...	...	1.00
	Recording any Claim (for each year)	...	...	...	2.50
	Re-recording any Claim (for each year)	...	...	...	2.50
	Recording any "lay over" or every other record required to be made in the Record Book	...	...	...	2.50
10	Recording every abandonment including the memorandum to be written on the Record	...	...	...	2.50
	For any other Record made in the "Record of Abandonments"	...	...	...	2.50
	For recording every Affidavit where the same does not exceed 3 folios of 100 words	...	...	...	2.50
	For every folio over 3, 30 cents per folio.				
	The above rate shall be charged for all Records made in the "Record of Affidavits."				
	For all records made in the "Record of Conveyances" where the same do not exceed 3 folios	...	...	...	2.50
	For every folio over 3 a further charge of 30 cents per folio.				
20	For all copies or extracts from any Record in any of the above-named books where such copy or extract shall not exceed 3 folios, per copy	...	...	...	2.50
	Where such copies or extracts exceed 3 folios, 30 cents per folio for every folio over 3.				
	For filing any Document	...	...	...	1.00
	For every Lease	...	...	...	5.00

In the Privy Council.

No. 9 of 1896.

*On Appeal from the Supreme Court of British
Columbia.*

BETWEEN

THE ESQUIMALT AND NANAIMO
RAILWAY COMPANY - *Appellants*

AND

WILLIAM HERBERT BAINBRIDGE
Respondent.

JOINT APPENDIX.

HEPBURN, SON & CUTCLIFFE,
For Appellants.

GARD, HALL & ROOK,
For Respondent.

29430

UNIVERSITY OF LONDON
W.C.1.

11 OCT 1956

INSTITUTE OF ADVANCED
LEGAL STUDIES

*Judgment of the Lords of the Judicial Committee
of the Privy Council, on the Appeal of the
Esquimalt and Nanaimo Railway Company
v. William Herbert Bainbridge, from the
Supreme Court of British Columbia; delivered
28th July 1896.*

Present :

LORD WATSON.

LORD HOBHOUSE.

LORD DAVEY.

SIR RICHARD COUCH.

[*Delivered by Lord Watson.*]

The Respondent in this Appeal is the holder of a free miner's certificate under the "British Columbia Placer Mining Act 1891," (54 Vict. cap. 26), authorising him to work the "Blue Ruin" claim, 100 by 100 feet, which is situate within lands in Vancouver Island belonging to the Appellant Company. The Act of 1891, by Section 10, gives the holder of such a certificate the right to mine for gold and other precious metals "upon any lands in the Province of British Columbia, whether vested in the Crown or otherwise, except upon Government reservations for town sites, land occupied by any building and any land falling within the curtilage of any dwelling-house, and any orchard and any land lawfully occupied for placer mining purposes, and also Indian reservations." By Section 11, the free miner is bound to give adequate security to the satisfaction of the Gold Commissioner for any loss or damage which may be caused by his entry, and to make full

compensation to the occupant or owner of the lands, for any loss or damage which may be caused by reason of his entry; such compensation, in case of dispute, to be determined by a Court having jurisdiction in mining disputes, with or without a jury.

The Appellant Company ejected the Respondent from the land specified in his certificate, which he had entered upon for the purpose of gold mining; whereupon, he brought the present suit against them, before the Supreme Court of British Columbia, in which he concludes (1) for damages, and (2) for an injunction restraining them from interfering with his working, for gold and other precious metals, the "Blue Ruin" claim, as described in his certificate. The defence to the action is disclosed in an affidavit filed by James Dunsmuir, the President of the Appellant Company. Omitting details, the substance of the allegations made in defence is, that the Company were, before the issue of the Respondent's certificate, fully vested with the whole right and interest of the Crown, to and in the mines of gold and other precious metals within the whole lands belonging to them in Vancouver Island, including the land embraced in the Respondent's "Blue Ruin" claim.

Accordingly, the main, if not the only question arising for decision is:—Whether the Appellant Company have right to the mines of gold and other precious metals which may exist within their lands. Mr. Justice Drake, before whom the case was tried, has found that they have not; and has ordered and adjudged that the Respondent is entitled to enter upon and mine the lands belonging to them, upon complying with the conditions contained in Section 11 of the Placer Mining Act of 1891. On appeal, his judgment has been unanimously affirmed by the Full Court, consisting of Justices Crease, McCreight and Walkem. The Respondent does not maintain

that his free miner's certificate would give him any right to enter and work, if it were held that the gold and other precious metals in the lands of the Appellant Company are their property.

The circumstances under which the title of the Appellant Company to gold and other precious metals is asserted, are as follows. By Order of Her Majesty in Council, dated the 16th day of May 1871, the Province of British Columbia was admitted into the federal union of Canada, in terms of Section 146 of the British North America Act 1867, subject to articles of union which had previously been agreed to by the Governments of the Dominion and the Province, and sanctioned by their respective legislatures. These articles included an undertaking by the Dominion to construct a line connecting the Canadian Pacific Railway with the sea-board of Vancouver's Island; in consideration of which, the Government of British Columbia became bound to grant to the Dominion, (1) a belt of land twenty miles in width, on either side of the new railway, across the mainland of the Province, and (2) a large area of land in Vancouver Island, described by boundaries which it is unnecessary, for the purposes of this appeal, to refer to.

The railway has been made, in terms of the undertaking given by the Dominion Government, who delegated its construction to the Appellant Company. The relative obligations of the Government of British Columbia were sanctioned, and given effect to, by the British Columbia Act, 47 Vict. cap. 14. Section 2 of that Act granted, to the Dominion Government, the public lands along the line of railway, to a width of twenty miles on each side of the line. Section 3 granted, to the Dominion Government, the area of land in Vancouver's Island, already mentioned, "in-

“ marble, slate, mines, minerals, and substances
 “ whatsoever thereupon, therein, and thereunder.”

On the 20th day of August 1883, an agreement was made between the promoters of the Appellant Company and the Government of the Dominion, to the effect that the Company, when formed, should construct the line, now known as the Esquimalt and Nanaimo Railway. After the incorporation of the Company the agreement was sanctioned by the Dominion Act 47 Vict. cap. 6, which also authorised the Governor in Council to grant to the Company all the lands situated in Vancouver Island which had been granted to Her Majesty for behoof of the Dominion, by the Legislature of British Columbia, in aid of the construction of the railway, “and also all coal, “ coal oil, ores, stones, clay, marble, slate, mines, “ minerals, and substances whatsoever in, on, “ or under the lands so to be granted to the said “ Company.” In pursuance of that statutory authority, the Dominion Government, by deed under the great seal of Canada, dated the 21st day of April 1884, granted and assigned to the Appellant Company, *inter alia*, all the lands and minerals in Vancouver Island which had been granted to that Government by Section 3 of the British Columbia Act 47 Victoria cap. 14. The extent of the Appellant Company’s interest in these lands and minerals must therefore be determined by reference to the terms of that clause.

In *Attorney-General of British Columbia v. Attorney-General of Canada* (14 Ap. Ca. 295), it was held by this Board that Section 2 of the British Columbian Act, which relates to the lands comprised in the forty-mile belt, did not give the Dominion Government any right to gold and other precious metals in those lands, which were held by the Crown under its prerogative title. The second section, which alone was considered in that case, makes no mention of,

and does not profess to grant any subject, other than "public lands." The Appellant Company, whilst admitting that apt and precise language is necessary in order to alienate the prerogative rights of the Crown, rely upon the enumeration of minerals which is coupled with the grant of lands in Section 3, as sufficient to show the intention of the Provincial Legislature to transfer to the Dominion Government their right to administer the precious metals in these lands.

The words relied on are, "including all coal, coal oil, ores, stones, clay, marble, slate, mines, minerals, and substances whatsoever thereupon, therein, and thereunder." The only expressions occurring in that enumeration, which can possibly aid the argument of the Appellant Company, are "mines, minerals, and substances." Not one of these expressions can be rightly described as precise, or, in other words, as necessarily including the precious metals. According to the usual rule observed in the construction of the concluding and general items of a detailed enumeration, they may be held to signify *alia similia* with the minerals or substances previously enumerated; and it appears to their Lordships to be sufficient for the decision of the present case, that they may be aptly limited to minerals or substances which are incidents of the land, and pass with the freehold.

Being of the same opinion with the learned Judges in both Courts below, in whose reasoning they concur, their Lordships will humbly advise Her Majesty to affirm the judgment appealed from. The Respondent's costs of this appeal must be paid by the Appellant Company.
