

The Subject Comprehensively Reviewed in the Legislature by J. H. Hawthorthwaite, M.P. P. for Nanaimo City.

In the House of Assembly, April 25th, 1902, Mr. Hawthorthwaite moved the following resolution:

"Whereas certain persons who settled upon government lands located within the present Esquimalt & Nanaimo railway land belt have been denied in some cases their lands and others the coal and base minerals under their lands; and

"Whereas the Dominion government in 1897 issued a commission to T. G. Rothwell, Esq., of Ottawa, to inquire fully into the matter, and the said T. G. Rothwell, after a full inquiry, at which all persons interested were represented by counsel, reported that the claims of the said settlers were well founded; and

"Whereas the provincial government issued a commission to Hon. Eli Harrison, Jr., in 1900, to inquire into the matter, and the said Hon. Eli Harrison, Jr., after inquiry into the matter, but without the aid of counsel, reported against the claims of the settlers; and

"Whereas the claims of the said settlers should be adjusted;

"Be it therefore resolved, that in the opinion of this House, the Dominion government should take their grievances into immediate consideration."

In support of the motion he said: It is my desire to draw the attention of this House to the claims of a large number of settlers on Vancouver Island, whose grievances, though of long standing, have not yet been redressed. The case of these people, while simple in its justice, has been embroiled in a perplexity of dispute, and I must therefore crave the indulgence of the House, in order that I may deal with it satisfactorily, publishing my argument hereafter, in this last court to which an aggrieved people can appeal, to consider their claims without prejudice and regardless of the claims of the government. I am satisfied that wrong has been done these people, that they have suffered great injustice. Whether intentional or otherwise it is not for me to say, it is not for this House to decide, but an entire satisfaction that their case will soon become unless adjusted a burning political issue on this Island, and one that can never be put aside until settled with equity and justice. For truth and equity must and will prevail, although dissonant by generations of careless or suborned representatives. I have every confidence in members of this House, and although divided on political issues, I am sure, nearly all I believe, is to do what is right as best they may, not only in this matter but in every other matter which they are called upon to decide. Now it is not my intention to endeavor to make political capital out of these cases, it is not my wish to hamper or embarrass the government of the day by bringing in this resolution. But I am firmly of the opinion that these settlers have strong legal claims to sustain their demands, that their cause is just, and therefore I must insist that their claims shall be considered and settled with equity and fairness.

In this opinion I am not alone. Official inquiry has, in instances, sustained their claims. Such men as Sir Wilfrid Laurier, Hon. Louis Davies, Hon. Wm. Mulock, Hon. David Mills and the late Hon. Thomas White, have acknowledged the men of such eminence ranged on the side of the settlers, I have a strong case to present to this House.

The land in question is all included in that which is known as the Esquimalt & Nanaimo railway belt. Under the terms of union with Canada, the Dominion agreed to build a line of railway through British Columbia, having its terminus somewhere at Esquimalt, or near Victoria. These terms were never fully carried out. The railway was not built, and some thirteen years later a company known as the Esquimalt & Nanaimo Railway Company undertook to build this railway, in consideration of the grant of the land to the Canadian Pacific railway, and in addition a cash bonus of \$750,000.

It is perhaps pertinent at the present time, because we are about to bonus other railway corporations in this province, and members may take a lesson in such legislation by listening to the history of this case.

The aggrieved settlers are divided into two classes. By far the largest class are those settlers, who located on Vancouver Island prior to the enactment of what is known as the Settlement Act. Some of these have accepted under pre-emption titles from the government of Canada and the railway company, having the right to do so, but they did not want to give them their full rights—that is, a conveyance in fee simple. Two of this class, namely, Samuel Waddington and David Hogan, have been refused the right to the minerals and coal of those lands, but also denied a right to the surface.

This second class includes only those who settled on the land after the passing of the Settlement Act, and who have also been refused even surface rights.

All these settlers complied with the regulations required of them by law so far as laid in the matter, they made the necessary improvements and observed the obligations of the undertaking in every way, and yet were denied the rights which I justly believe to be theirs under the laws of this province.

To intelligently discuss the case it will be absolutely necessary to go into the history of the matter.

I wish to draw here the attention of the House to the terms of union between the province and Canada, 1871, especially section 11, which bears clearly upon the case. I am satisfied that the legal claims of these settlers rests, to a very great extent, upon this section, and that this fact has been considerably glossed over in the different investigations in the House. I find that Mr. Robson, member for Nanaimo, asked the following question:

"The Premier of Canada, having stated from his place in parliament that the British Columbia government have power under the 11th section of the Act of Union to allow persons to go upon the land reserved on Vancouver Island for railway purposes, and having insisted that the Dominion government would be disposed favorably to regard the exercise of such power, is it the intention of the government to permit pre-emption upon the said lands?"

The Honorable Mr. Beaven, Chief Commissioner of Lands and Works, replied as follows:

"No official information has been received by the government on the subject referred to, but application was made to the Dominion government, on behalf of the province, for the purpose of securing the settlement of the lands reserved for railway purposes on the East Coast of Vancouver Island, without jeopardizing the rights of British Columbia to railway construction; but no such arrangement has been consummated. The government do not intend at present to issue any certificates of pre-emption for lands in the reservation referred to."

This proves the contention I put forward, that the reason those settlers were at that time not allowed to obtain their proper records, was because of the alarm, the selfish alarm, existing in Victoria, in connection with railway matters. This alarm continued. The Dominion government changed its intentions, and made counter proposals to the province. It offered to release to the province the belt of land that had been reserved, and to grant a bonus of \$750,000 to any railway company which would construct a line from Victoria to Seymour Narrows. The province emphatically declined this offer, and in 1875 it passed an act conveying to the Dominion government the lands in question. The Dominion government refused to accept the lands, apparently thinking that it would find them further to the terms of union which they were seeking to upset.

I may say that the reserve first mentioned was never rescinded until eleven years later, and this was the only reserve existing on those lands during that time. Yet this reserve, which did not apply to their case at all, was one of the reasons advanced, in fact the only reason that the settlers had no right to go on that land.

Now these settlers were of an exceptionally good class. They were largely men of education and spirit, who thoroughly understood their rights and who took every means within their power to protect their interests. It has been said by Judge Harrison, that these men were not aware at the time that coal existed under the lands in question. The learned judge is surely wrong in this. The evidence submitted before the different commissions will prove; in fact one of the settlers, Mr. William Jack, of Nanaimo, actually sank a shaft and proved the existence of coal upon his land. The majority of the settlers would never have gone upon the land, or have settled upon the lands and made the improvements they did had they not believed they would be entitled to the coal and land, and which might exist thereon, and have freehold rights to the surface, without any reservation towards railway companies.

Now, the first settlers within the Esquimalt & Nanaimo railway belt entered subject to the reserve made by Order in Council dated June 30th, 1873, issued on July 1st, 1873, which gives us to say that certain lands on Vancouver Island are to be reserved in accordance with the terms of union for railway purposes.

Now, some twenty-five days later a second Order in Council was issued, which was also given in the House, and although divided on political issues, I am sure, nearly all I believe, is to do what is right as best they may, not only in this matter but in every other matter which they are called upon to decide. Now it is not my intention to endeavor to make political capital out of these cases, it is not my wish to hamper or embarrass the government of the day by bringing in this resolution. But I am firmly of the opinion that these settlers have strong legal claims to sustain their demands, that their cause is just, and therefore I must insist that their claims shall be considered and settled with equity and fairness.

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Settlers' Rights in the E. & N. Railway Belt.

By the Clements Act Messrs. Clements, Turner and others were enfranchised to build a line of railway from Victoria to Seymour Narrows, and obtain the large land grant that had been reserved to the Dominion government, as well as the cash bonus of \$750,000.

The passage of this act expressed the failure, was in fact an acknowledgment of the failure, of British Columbia to carry out the terms of union, which is a matter greatly to be regretted, not only in the interests of Victoria city, but regarding the interests of the province as a whole.

For some reason, I think because of the failure of the corporation to put up the necessary bonds, that is if the scheme was a genuine one at all, no railway construction was effected under the Clements charter, and on May 12th, 1883, another act, called the Settlement Act, was passed by the legislature incorporating R. Dunsmyth and others to build a line of railway from Victoria to Nanaimo city, in consideration of a land grant and cash bonus of \$750,000. I may observe in passing that by this bill the province gave away a great deal more land and received much less in return for it than would have been the case under the Terms of Union or the Clements Bill, 1882. In the first instance the belt of land to be given was only twenty miles in depth, following the sinuosity of the coast, and was for a line running from Esquimalt or Victoria right through to the mouth of the Strait of Juan de Fuca, while the Settlement Act, 1883, which incorporated a local company, assisted by American capitalists, provided the same subsidy as in the second case, for a line extending as far as Nanaimo city.

I want to point out here that in the Settlement Act (it is in the first as well as the second act) the rights of the settlers have been fully preserved, although there is not the slightest doubt that it was never the intention of the originators of these acts that such should be the case.

I have already observed that under the terms of union the settlers had the right

to go on those lands, and that this was confirmed by Order in Council later issued. In sections 4, 5, 6 and 26 of the Settlement Act, 1883, it is set forth:

4. "There is excepted out of the tract of land granted by the preceding section all that portion thereof lying to the north of the line running east and west half way between the mouth of the Courtenay river (Comox district) and Seymour Narrows."

This is the land which was to have been granted in lieu of land alienated by the legislature to the Esquimalt & Nanaimo Railway Company, for sale or other alienation by the Dominion government, and to be granted to the settlers of the province as sections 5 and 6 following will show:

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5. "Provided always that the government of Canada shall be entitled out of such excepted lands to lands of an 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."

6. "The grant mentioned in section 3 of this act shall not include any lands now held under crown grant lease agreement for sale or other alienation by the Dominion government, and to be granted to the settlers of the province as sections 5 and 6 following will show:

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