

Dominion Government. Owing to the House having arisen, no amendment could be made until the next Session of the Legislature.

7. In the interval between the closing of the Session in May, 1883, and the meeting of the House in December, 1883, all questions between the two Governments relating to the Island Railway had been arranged, and steps had been taken by the Dominion Government to carry out the Act of 12th May, 1883, in respect of the provisions of that Act, to which no objections had been taken by the Dominion Government, especially with regard to the gravating dock and sale of the Dominion lands in the Province.

8. In 1882 an Act was passed by the Dominion Government authorizing the Governor General in Council to abandon the Yellow Head Pass and adopt another route, and in November, 1883, the Dominion Government notified the Provincial Government that the Yellow Head Pass was definitely abandoned, and that the line adopted instead for the Canadian Pacific Railway crossed the Rocky Mountains by Bow River or Kicking Horse Pass, the Selkirk Range and through Roger's Pass by Beaver Creek and Illicelliwaest River valley and Eagle Pass creek to Kamloops.

9. It was also arranged and understood between the two Governments that any lands taken up in the 40-mile belt should, on proof of *bond fide* settlement, be granted to actual settlers, but it was always maintained on behalf of the Dominion Government that grants for such pre-empted lands should be issued by the Dominion Government.

10. During the negotiation which took place between the agent of the Dominion Government and Mr. Smithe, the Premier of British Columbia, it was understood from Mr. Smithe by the agent of the Dominion Government that no grants should be issued by the Provincial Government in respect of lands within the railway belt, applications to purchase which had been made to the Provincial Government subsequent to the passage of the Act passed 12th May, 1883, but if any claims were put forward for grants of such lands the Chief Commissioner of Lands and Works should refuse to issue the same, leaving the applicants to any legal remedy they might have.

11. In November, 1883, notices were given in the *British Columbia Gazette* of the intention of various parties to apply for leave to purchase lands east of Kamloops, and the necessary steps were claimed to have been taken to comply with the land laws of the Province, in order to purchase lands east of Kamloops.

12. The plaintiff claims that until the line of railway was definitely settled from Kamloops to the eastern boundary of British Columbia no lands could be sold by the Provincial Government, or by the defendant acting on behalf of the said Government, and that after the line of railway had been defined, in November, 1883, no lands within twenty miles of either side of the railway from Kamloops to the Rocky Mountains could be either pre-empted or purchased without the leave and license of the Dominion Government.

13. In December, 1883, a further Act relating to the Island Railway, the gravating dock and railway lands of the Provinces was passed, in order to meet the views of the Dominion Government with reference to certain clauses affecting the Island Railway only, and the Act of May, 1883, was thereby repealed.

14. The defendant, in his capacity of Chief Commissioner of Lands and Works and Premier of the Province, has expressed his intention of issuing Crown grants to purchasers of lands within the 40-mile belt, providing that the regulations of the Land Act have been complied with in respect thereof.

15. The defendant has issued Crown grants to purchasers, and pre-emptors since 13th May, 1883, in respect of lands within the railway belt, the particulars whereof are unknown to the plaintiff.

The plaintiff claims:—

1st. A declaration that the true construction of the Act of 12th May, 1883, and 1st December, 1883, is that no lands in British Columbia could be disposed of by the Provincial Government until the line of railway from Kamloops to the Rocky Mountains was located, and that after such location no lands within 20 miles of either side