fixed and approved of by the governor-general in council. The Liquor License Act, 1883, s. 6.

Appeal dismissed without costs.

L. H. Burroughs for appellant.
Hogg, Q.C., for respondent.

British Columbia.]

HOGGAN v. THE ESQUIMAULT & NANAIMO RAILWAY CO.

WADDINGTON v. THE ESQUIMAULT & NANAIMO RAILWAY CO.

Government lands—Pre-emption—Statutory right to—Lands reserved.

By 47 Vic., c. 14 (B. C.), "The Settlement Act," certain lands in the province previously withdrawn from settlement, purchase or pre-emption, were thrown open to settlers, and it was provided that for four years from the date of the Act, "they should be open to" actual settlers for agricultural purposes" at the rate of $1 per acre, except coal and timber lands which were expressly reserved. A part of these lands, which had been reserved for a town site many years previously, had been granted to the defendant company as part consideration for the construction by them of a railway from Esquimault to Nanaimo. H. & Co. claiming that the statute entitled them to a conveyance of these lands from the company, applied under the pre-emption Act for registration of lots of 160 acres each, which was refused and the refusal was confirmed by the chief commissioner. No appeal was taken to the Supreme Court as the act allows, but suits were brought against the company by each applicant for a declaration of his right to purchase said lands upon payment of said price of $1 per acre therefor.

Held, affirming the decision of the Supreme Court of British Columbia, that the Settlement Act did not operate to open for settlement lands reserved as these were for a town site; and that the applicants had never entered thereupon as actual settlers for agricultural purposes, but had express notice when they entered that they were not open for settlement as agricultural lands.

Appeal dismissed with costs.

S. H. Blake, Q.C., for the appellants.
Moss, Q.C., and *Davie, Q.C.*, for the respondents.