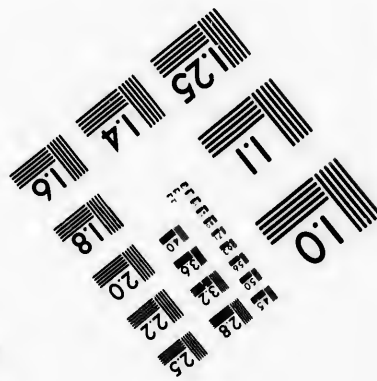
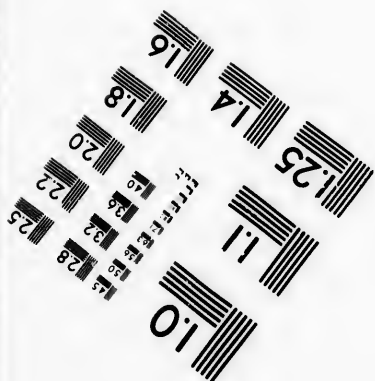
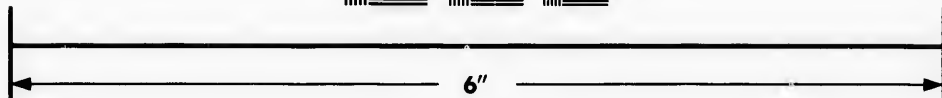
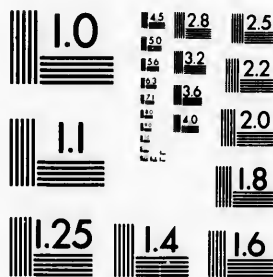


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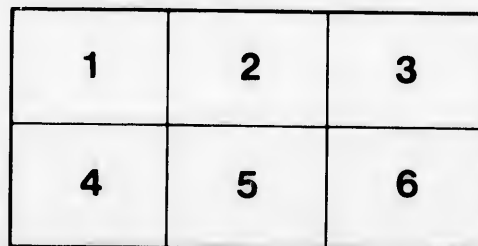
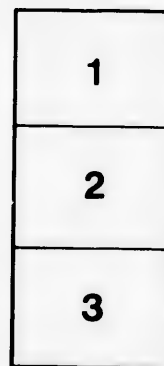
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*N. 10, 2nd
15th April, 18

DESPATCHES.

VANCOUVER ISLAND, No. 92.

Government House, }
Victoria, 12th December, 1865. }

To the Honorable the Speaker and Members of
the Legislative Assembly.

GENTLEMEN—I have the honor to acknowledge the receipt of an Address from the Legislative Assembly praying that I would lay before the House copies of all Despatches forwarded to Mr. Cardwell in reference to the Resolution passed by this House in June, 1864, in connection with the Crown Lands, and all Despatches sent to Mr. Cardwell in reference to the Union Resolutions which passed the House in January last.*

With the most earnest desire to meet the wishes of the Legislative Assembly and afford the fullest information on these subjects, I regret that I am precluded from complying with the conditions of their Address without the sanction of Her Majesty's Secretary of State for the Colonies previously obtained.

I now upon my own responsibility lay before the House extracts of Despatches* transmitted by me on the subject of the Crown Lands of Vancouver Island relating to the matters treated of in the Despatch of Her Majesty's Secretary of State recently laid before the House; but the production of Despatches addressed by me to Her Majesty's Secretary of State on the subject of the "Union Resolutions" either in whole or in part before I had received replies thereto would be a manifest breach of duty and wholly without precedent.

The object of the Legislative Assembly in the present instance will be probably attained by my stating that in addressing Her Majesty's Secretary of State in March, 1865, I expressed my deliberate conviction that the Union of these Colonies would be conducive to the best interests of both, and my earnest desire that it should be consummated.

My subsequent experience having fortified that conviction and sentiment, I continue to be firmly of opinion that the Colonies of British Columbia and Vancouver Island should be united, and that the Union of them would be an important means of securing their substantial progress and prosperity.

I have the honor to be,
Gentlemen,

Your most obedient servant,

A. E. KENNEDY,
Governor.

[COPY.]

VANCOUVER ISLAND, No. 10.

Victoria, 2nd February, 1865.

SIR—

I have deferred replying to your predecessor's Despatch, No. 5, 16th March, 1864, in the hope that the local Legislature would accept the administration of Crown Lands and

*No. 10, 2nd February, 1865, and enclosures; No. 23, 16th April, 1865.

thus enable me to adjust this and other complicated questions connected therewith, without troubling you with their details.

* * * * *

3. I may state at once that I have not complied with the instruction conveyed in the concluding paragraph of the Despatch under reply, namely, "to give Mr. Lowenberg a valid title to the land in question," for the simple reason that I have no such power till the re-conveyance of the public lands by the Hudson Bay Company to the Crown has been completed, and this has not been yet done, and may I fear in the present temper of the Legislative Assembly be indefinitely delayed. In the mean time Mr. Lowenberg suffers no serious inconvenience, inasmuch as he has fenced in the disputed lot known as letter Z, and exercises the rights of ownership over it, which I have not in any way disputed.

4. The receipt of the Despatch under reply necessarily caused me to make myself acquainted with the details of this dispute, and I am of opinion that had the circumstances as they present themselves to my mind been fully known to the Hudson Bay Company they would not have sanctioned the action of their Agent in the sale of this lot.

5. You will gather from the accompanying papers* and others to which reference is made, that a piece of land containing ten acres (lot 24, section 18.) was surveyed in 1854, and set aside as a Government Reserve by the then Governor, who had full powers from the Hudson Bay Company so to do. This lot was in consequence of the sale by mistake of a part of the ten acres, re-surveyed by the same Surveyor General in 1858, and the same quantity, ten acres, included, though differing in shape.

6. It is on record that both these surveys were reported to the Hudson Bay Company, and the quantity contained in the Reserve stated as ten acres. The Surveyor General states (and I think quite correctly) that the right of the Hudson Bay Company over this Reserve ceased when it was finally surveyed and dedicated as a Reserve in 1858.

7. It is admitted by Mr. Mactavish, in a letter dated 21st January, 1863, that the lot "Government Buildings" contained ten acres. (See Blue Book, page 59)

8. On the faith of this survey, admitted by the Hudson Bay Company and approved by their then Agent (Mr. Douglas), the Government Buildings, comprising five separate edifices, namely, Main Offices, Treasury, Land Office, House of Assembly and Court House, were erected at a cost of about £8000, bounded by the water to the front and by a public street in the rear.

9. In the spring of 1861 the Agent of the Hudson Bay Company, * * laid off and sold the portion of the ten acre Reserve marked Z on the accompanying sketch, thus cutting

*Memorandum of Governor Kennedy, 6th July, 1864; Queries of Governor Kennedy and replies of Surveyor General, 17th June, 1864; Attorney General, 13th July, 1864; Acting Surveyor General, 1st February, 1865.

off all ingress and egress to the rear of the public buildings and rendering them comparatively valueless. The Government Reserve being unfenced, the Surveyor General had no knowledge of this transaction till January, 1862.

10. The accompanying papers named in the margin will further elucidate the matter.

11. I would state in conclusion that the abstraction of the piece of land marked letter Z from the Reserve renders the public buildings and the ground on which they stand comparatively valueless, and it ought to be acquired by the Crown by purchase or other means, if the sale to Mr. Lowenberg is held valid.

12. It is alleged by the Attorney General (in his letter 13th July, 1854,) that Mr. Lowenberg knew his title was questionable, and that an unusual covenant for good title was therefore contained in the deed of sale.

13. The sale of this piece of land (lot Z) is regarded by the public generally with great indignation, and by the Legislative Assembly as unwarrantable. (Vide Resolutions 27th June, 1864, herewith, No. 15.)

14. It is an unworthy and will continue to be a bitter cause of quarrel between a great Company and the local Government, and could I think be readily adjusted and a great deal of bitterness allayed by its transfer to the local Government on paying the original amount of purchase money if the Company desire it, but, on whatever terms, it ought in my humble opinion, as a matter of honor and equity, to be relinquished by the Hudson Bay Company.

15. I could enlarge upon this subject considerably, but I think I have stated enough to enable you to form an opinion on the merits of the case.

16. This question I may state stands by itself and may be adjusted without reference to other causes of difference.

17. I may add that in a conversation with the resident Chief Factor of the Hudson Bay Company, I many months ago suggested this mode of adjusting a question which was a cause of bitter contention both in and out of the Legislative Assembly.

I have, &c.,

A. E. KENNEDY,
Governor.

THE RT HON. EDWARD CARDWELL,
&c., &c., &c. }

[COPY.]

MEMO.

Send the Despatch No. 5, 10th March, 1864, to the Attorney General and request his opinion upon this vexed subject, especially in reference to new matter which has not (I believe) been brought under notice of the Secretary of State, namely, the survey by Mr. Pemberton in 1854, and again in 1858. His Report to Mr. Barclay on the latter date, and the full power of Sir James Douglas to lay out and fix the Reserve at that period, and the subsequent admission by Mr. Macleish that the Reserve contained ten acres.

The Attorney General will refer to the Resolution of the House of Assembly on the subject of lot Z, and advise me generally on the legal bearing of the additional evidence in connection with this matter.

(Signed,) July 6, 1864.

A. E. K.

[copy.]

The Surveyor General will please furnish me with the following information with as little delay as possible:

1. Is lot 24, section 18, that on which the present Government Buildings stand?

2. Did you survey the same in 1854 and present Government Reserve again in 1858, or serve—it so at what date?

3. What number of acres did it contain? Ten acres.

4. Would the subtraction of the lot known as lot Z leave the original quantity by the area of Z, as lot Z leave the original quantity as originally surveyed?

5. You report the survey of that Reserve to the Hudson Bay Co's and send a tracing of the same—if so at what date? Yes—1st September, 1854.

6. Did you state that the Reserve so surveyed by you contained ten acres, and that it was marked on the ground? Yes. 1st Sept, 1854, to A. Barclay, Esq., Sec'y of the Hudson Bay Company, copy of the letter is furnished herewith

7. If so, at what date did you make this report and to whom?

8. Have you any doubt as to the whole of that 10 acres being a Government Reserve for public buildings? I have no doubt that it was so intended.

9. When did the Hudson Bay Co's right over this land cease? When finally surveyed in 1858, at which period the lines were re-adjusted.

10. When was lot Z alleged to have been sold to Lowenberg? In the spring of 1861.

11. Is it within the limits of the ten acres originally surveyed by you? Yes.

12. Was it, under all the circumstances within your knowledge, competent for the Hudson Bay Co's to sell lot Z in March, 1861? No.

13. Did the Hudson Bay Co's occupy this office in 1851, 10 acres previous to the year 1849? I cannot tell; I took office in 1851.

14. Have you any knowledge that lot Z was sold to Lowenberg previous to the 1st January, 1862? None.

15. Are you of opinion that the subtraction of lot Z from the ten acre Reserve would render the ground almost valueless for Government purposes? Yes.

(Signed,) J. D. PEMBERTON.
(Signed) A. E. KENNEDY June 17, '64. 17th June, 1864.

A. Barclay, Comr. Sur,

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September 1st, 1854.

A. Barclay, Esq., Secretary Hudson Bay Company,

Sir, * * * * *

In the transfer to the Fur Trade of Lot No. 24, Section XVIII, a Reserve of 10 acres for the Indians should have been left as marked on the enclosed tracing. The lines enclosing this 10 acres are now marked on the ground and should be transferred to the copies originally forwarded in the Governor's Despatch * * * explaining the completing arrangements * * *

I have, &c.,

(Signed,) J. D. PEMBERTON.

[copy.]

Attorney General's Office,
13th July, 1864.

Sir:—I have the honor to reply in answer to the queries of His Excellency the Governor dated the 6th day of July A D 1864 that I have carefully considered the matter of Mr. Lowenberg's title to Lot Z and cannot help coming to the conclusion that the despatch of the 16th March 1864 has been written without a full knowledge of the history of the lot in question.

Enclosed I return the extract from Mr. Pemberton's report to Mr. A. Barclay Secretary of the Hudson Bay Company dated 1st of September 1854 enclosing a tracing marked A, this tracing therein alluded to is the original tracing of the 10 acres originally dedicated as an Indian Reserve and so far as I can ascertain must have been made from a map at present in the Land Office. Subsequently to this report and in the year 1858 the Hudson Bay Company through Mr. J. D. Pemberton (then being in their employment) laid off on land of their own, immediately to the west of the Reserve, so plotted in the year 1854 certain town lots with a road running along the west side of the said Reserve between such Reserve and such town lots. In laying off such road and lots, Mr. Pemberton was instructed to include in the piece so laid off any portion of the frontage of the said Reserve which it might be to the Company's advantage to include in such road, town lots, and to compensate for the diminution of the area in the said original 10 acre Reserve by adding to the rearmost portion thereof a strip of land which would be equivalent in area to that which he might take from the frontage. The tracing marked B, enclosed herewith shows the piece taken from the frontage of the original 10 acres coloured blue and the compensatory piece added to the residue of the original 10 acres from the land of the Hudson Bay Company coloured red. This arrangement although disadvantageous in point of value was agreed and acted upon by all parties and resulted in the adoption of the southern line of the lot Z as placed on the official map of Victoria town 1858.

The increase in the area of the Reserve from 10 acres to the larger amount of 11 acres has arisen simply from new ground with which a small bay running in from the Harbour in front of the Reserve has been filled up, and which was not inclosed in the area of the original

Reserve and was reclaimed by the Crown since. The piece of ground so added to the Reserve was added with the concurrence of the Agent of the Company here acting under a power of Attorney dated 17th May 1854 enclosed herewith, and the addition became thoroughly and intelligibly known to them as the recipients of a copy of the official map of 1858, and was recognized and ratified by their subsequent sale of the lots 1718, 1719, 1720, 1721, 1722, 1723, 1724, 1725, 1726, 1727, 1728, 1729, 1730, 1731, on a line opposite to the said southern line of the Reserve indicated on the Hudson Bay Company's map.

The power of Attorney of the 17th day of May 1854 gives the fullest powers of arrangement with regard to all lands in or near the town of Victoria, and if it did not do so the Company having become cognizant of the transaction and having acted upon their knowledge, and having sold to purchasers lots lying upon the Reserve upon the faith that such Reserve was a public Reserve with the southern boundary line running as indicated on the official map, cannot ask the Crown to assist them in treating such Reserve as a nullity and the more particularly so as the purchaser was a real estate agent thoroughly well aware of the position of the Government Reserve indicated on the official map of Victoria Town 1858, and buying with his eyes open to the fact that he was purchasing from the agent of the Hudson Bay Company land which the Hudson Bay Company had no longer any power to sell without committing an act which Mr. Lowenberg must necessarily have also known amounts to a direct breach of faith in aiding which he became an accomplice.

With regard to the statement made in Sir E. Head's communication dated the 26th of February 1864 "that town lot Z is" a portion of the land held by the Hudson Bay Company previous to the grant of the Island to the Company "and that the same lot was sold to Mr. Lowenberg in May 1861 and that Mr. Lowenberg has therefore a right to be confirmed in its possession under the clause contained in the indenture of the 3rd of February 1863 providing "that all sales made by the said Company previous to the first day of January 1862 of any portion of the lands so occupied by them in Victoria District as aforesaid before the 30th day of January 1849 shall be effectual as against Her Majesty's &c. " must be taken to mean all sales of land so occupied made previously to that date where such land had at the date of the sale in question never been dealt with by the Company before.

Suppose a section of land had been sold to a purchaser in 1858 by the Hudson Bay Company in the usual manner by an instalment paper and suppose the Company had afterward sold the same lot to Mr. Lowenberg in 1861, could the indenture be read to confirm Mr. Lowenberg's purchase and defeat A's title, it would on the contrary confirm A's title to the fullest extent. The exchange of the year 1858 effectually divested the power of the Hudson's Bay Company to deal with lot Z. In the indenture of the 3rd of February 1863 in speaking of the reconveyance of the Reserves in which the Crown (as far as the Crown is concerned) surrenders its claim for the benefit of the purchasers of pieces of the same which have been

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sold by the Company. The lot Z is not mentioned whilst the sales improperly made in the other Reserves are as far as known at home distinctly specified. So far as I can learn from enquiring here neither Mr. Dallas or the two gentlemen who acted on behalf of the Crown in settling the terms of the agreement of the 3rd February 1863 were possessed of any information with regard to the exchange of 1853. I think one thing is very plain in the matter of Mr. Lowenberg's claim namely that Mr. Lowenberg was fully alive to the fact that Mr. Dallas wanted to sell lot Z to prevent the question of its title being tried between the Crown and Company, and knew that he bought a bad suit and so provided himself with a covenant for good title not contained in any other deed issued by the Hudson Bay Company to other purchasers, and I cannot help thinking that this circumstance well known here must have caused His Excellency Sir James Douglas to treat the matter as a purchase by Mr. Lowenberg as an agent of the Company. Under these circumstances I look upon any step taken by the Executive here aiding or assisting Mr. Lowenberg to obtain possession as having a direct tendency to add another difficulty in the way of those entitled to have this matter adjusted according to the understanding originally come to between the purchasers of town lots and the Company until the matter under this new light is shewn to Her Majesty's Government. It would scarcely be seemly for me to withdraw the *lis pendens* filed against the piece of land in question or to take any steps to facilitate Mr. Lowenberg's attainment of possession of a piece of land from which it will be my duty as representing the town lot holders to eject him should the result of the present information be the setting aside of the sale of the portions of the Reserves which have been indisputably sold by the Company in violation of the understanding held out to the purchasers of town lots by the Company on the occasion of the sale of the town lots by the official map of 1853.

I have &c.

(Signed,) GEORGE HUNTER CARY,

Attorney General.

THE ACTING COLONIAL SECRETARY, }
&c., &c., &c. }

[COPY.]

Explanation of Tracings A. B.

Tracing A. shows the piece of land now occupied by the Government Buildings. It was laid out as an Indian Reserve in 1854. Reported as being laid out and marked on the ground, by Mr. Pemberton, then Surveyor General, to Mr. Barclay, Secretary to the Hudson Bay Company, on 1st September, 1854. This Report was sent through Governor Douglas.

Tracing B.—The piece of land shown on this tracing by the letters A. B. C. D. is the same as that shown on tracing A. The letters E. F. G. D. show the Reserve as altered in 1858 to suit the general survey of the Town.

Letter Z shows the portion of land sold by the Hudson Bay Company to Leopold Lowenberg in 1861. This part is etched for the sake of distinction |||||

(Signed,) |||||

W. B. PEARSE,

Acting Surveyor General.

1st February, 1865.

[COPY]

VANCOUVER ISLAND, No. 25.

Victoria, 15th April, 1865.

Str.—I, Have the Honor to acknowledge the receipt of your Despatch, No. 33, dated 16th September, 1864, on the subject of the Crown Lands and Civil List of this Colony.

2. I have deferred entering upon this subject in the hope of the Legislative Assembly arriving at some definite and reasonable decision upon it.

3. The Legislative Assembly was in Session when I assumed the Government of this Colony and a Select Committee occupied in taking evidence as to the present condition of the Crown Lands with reference to the proposal of Her Majesty's Secretary of State for the Colonies, dated 15th June, 1863, to hand over the Crown Lands to the Legislature.*

4. Their proceedings extended over a period of eight months, and I now transmit a copy of the Minutes of Proceedings of the Select Committee accompanied by a Report dated 14th June, 1864, and Resolutions on the same subject dated June 29th, 1864.*

5. The manuscript of some of these documents was very imperfect and there was consequently great delay in having them printed.

6. With these documents before you it is unnecessary for me to trouble you with any lengthened remarks upon them. No analysis of mine would make them intelligible where many Members of the Assembly sought to prove opposite and different things.

7. I do not attach much weight to the evidence which has not been taken on oath, and it is difficult to form a sound opinion upon a matter surrounded by such complications and conflicting statements.

8. There are nevertheless some extraordinary facts connected with the sale and management of the Crown Lands disclosed in the Minutes of Proceedings before the Select Committee which I apprehend are new to Her Majesty's Government.

9. If the question is to be re-opened, and the Indenture between the Crown and the Hudson Bay Company, dated 3rd February, 1862, reconsidered or questioned, it can only be done effectually and fairly by a Commission appointed to enquire on the spot, where books, papers, maps and evidence could be produced, and in the event of a new Chief Justice being appointed he might fitly be entrusted with such a duty; I am not however in a position to recommend that course, if the question can be settled and an agitation detrimental to the best interests of the Colony put an end to by any other means.

10. I have endeavored by every means at my disposal to effect a settlement of this question but in vain. * * * I have no public officer in the Assembly to advocate the real interests of the Colony or to correct misapprehensions * * * which have entered largely into the numerous debates which have taken place. * * *

I have, &c.,

(Signed,) _____

A. E. KENNEDY,
Governor.

THE RT HON. EDWARD CARDWELL, }
&c., &c., &c. }

*Correspondence transmitted to Legislative Assembly, 3rd September, 1863.

April, 1865.
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