

MINING IN THE CARIBOO THE GROUSE CREEK WAR

The snows of 1867 lasted 'til June in the mountain creeks. The Cariboo Gold Rush was on the decline. Barkerville still retained some of its hurdy-gurdy excitement, but fewer miners were striking it rich. More joint stock companies consolidated their claims. Mining was becoming big business. Companies were granted charters from the Colonial Government for developing large areas of prospective ground, usually creek beds. The Grouse Creek Bed Rock Flume Company, with its board of directors residing in Victoria, was typical of these chartered investment companies. But the Flume Company failed to fulfill the requirements of its charter. Eager Cariboo miners staked over its land. By the summer of 1867, the Flume Company became involved in a boundary confrontation with a local company of miners, a confrontation solemnly recorded in various British Columbia histories as "The Grouse Creek War."

The original charter of the Flume Company, granted on April 30th, 1864, conceded to them a four and a half mile, 100 foot wide strip of Grouse Creek on which to build a flume for hydraulic washings. The main stipulation was that the company must construct 600 feet of flume the first year and 1500 feet of flume each succeeding year for the full ten year lease period. Duncan Cameron was contracted as foreman, and construction of the flume began in August, 1864. The Company hired local miners as workmen, often promising them shares in the company in addition to regular wages. Construction of the flume continued at a fairly steady pace through the summer of 1865, but fell short of charter requirements. Also, company debts were piling up. Alex McWha, owner of a Grouse Creek general store, gave large credits to the company and to its workmen in 1865.¹ By 1866, he hadn't recovered any of the considerable debt. Angry miners demanded the back wages due, them, but Cameron had not received the funds to pay them.

In the spring of 1866, a company of local miners staked over part of the Flume Company's ground. Stewart Smith, a member of the "Anti-Heron Company," said: "We took up the ground on the 9th of May, 1866, because we thought the Flume Co. failed to comply with the terms of their charter, not because it was abandoned; we knew that part of the claim was on Flume Co.'s ground."² When Cameron returned to the area later that month, he attempted to have the Anti-Heron Company ejected as trespassers. The Gold Commissioner would not hear the suit, however, until Cameron paid all the back rent due on the property. The Commissioner decided that, since the Government hadn't revoked its charter to the Flume Company, the charter was still valid. The security of the Government charter thus officially outweighed local grievances against the Flume Company.

Resentment toward the Flume Company increased in the summer of 1866, especially when the directors in Victoria appeared to be incommunicado.

No more work was done on the flume. Cameron, himself a shareholder in the company, said: "In September I ceased to carry on the contract, having been sued for money due Before giving up the contract I wrote repeatedly to Leneveu (David Leneveu, Chairman of the Flume Company in Victoria), but received no instructions; I did all I could to carry on the works of the company, but was compelled to give it up for want of means, Mr. McWha having refused to give me any more credit."³ McWha, in an attempt to recover the money owed him, also wrote to Leneveu, offering to supervise the work himself in exchange for the repayment of the company's debt. He received no reply. The following winter, Robert McWha went to Victoria and served Leneveu with a writ for the company's debts. "He told me at the time there was no such company as the Flume Co. in existence; that the secretary had run away, but that he meant to hold the ground, and pay the debts, and would call the rest of the members of the company together,"⁴ said McWha upon his return. Also, that winter, the Canadian Company was formed with the intention of once again staking over ground claimed by the Flume Company. In Barkerville and Grouse Creek City, it was rumoured that the Government would soon revoke the controversial charter.

The Flume Company's fortunes improved, however, by the spring of 1867. Leneveu had succeeded, not in paying company debts, but in regrouping the company membership. He also had succeeded in petitioning the Government for a revised charter. The new charter reduced the amount of land granted to 1250 feet and reduced the required amount of flume to be constructed to 750 feet over a two year period. The British Columbian explained the rationale for the revised charter in this way: "It would scarcely have been expedient . . . that the Company should have been left in a position which compelled them, in order to protect their interests, to expend a large amount of capital upon a questionable work, merely to comply with the letter of their Charter. For the Government to do this would be to place themselves very much in the position of "Shylock," who demanded in fulfillment of the Bond that which really possessed no commercial value — which, in point of fact, could benefit nobody."⁵ The flume, then, was formality; the mining itself was the important work. The Grouse Creek Bed Rock Flume Company, "a company of enterprising gentlemen who have expended the sum of forty thousand dollars in endeavouring to carry to a successful issue a most important undertaking" could now concentrate on mining the rich ground left to them, a work which would profit company shareholders and the colony's tax coffers alike. However, in the Cariboo, a group of local miners continued working the ground they had staked. The Canadian Company refused to recognize the Flume Company's revised charter rights.

In the British Colonist and Victoria Chronicle of April 20th, 1867, David Leneveu published an advertisement stating the position of the Flume Company, in answer to the criticism he'd received from the Cariboo District. "Judge Cox . . . recommended to the Government the propriety of granting to the Company twelve hundred and fifty feet, applied for

last autumn by the Company, . . . on the condition that the Company should abandon the balance of their ground; thus securing to all the miners above and below the twelve hundred and fifty feet, a good and secure title, so far as the Company's charter was concerned, and avoiding trouble, litigation and ill-feeling. The Company accepted the above terms, and in so doing, probably sacrificed the richest ground in Cariboo. The only parties who can consider themselves aggrieved by the action of the government, were trespassers . . ."⁶ Leneveu's card was soon answered by a letter in the Cariboo Sentinel signed, "One Who Knows a Thing or Two about the G.C.B.R.F. Co." The letter recounted the company's failure to live up to its past charter, its debts, and its unpaid workmen. "Is Mr. Leneveu aware that numbers of these poor men, after being humbugged out of their seasons work by promises of pay in shares and otherwise that never were made good, have barely managed to eke out a subsistence in want and dependence through last winter; and one of them, to whom was owed a handsome sum for work done on this immaculate company's property, died a few days since in a miserable hut in poverty and distress."⁷ Whether justifiably or not, the Flume Company was blamed for much of the hardship of the previous winter. The favour of the Government toward the company was also resented. " . . . all miners are also agreed that the late charter granted by this Government to the Grouse Creek Flume Co. is simply a bonus given to a company, to all appearance, as a reward for breach of contract. Mr. Leneveu's whining about the Company's probably sacrificing the richest ground in Cariboo, somewhat resembles the lusty beggar abusing the liberal donor because he did not fill his wallet to overflowing."

The Canadian Company was originally formed of twenty local miners, several of whom favoured confederation for British Columbia and were politically active. Cornelius Booth and Joseph Hunter were both prominent residents of Barkerville. Booth became foreman of the Canadian Company and remained its spokesman throughout the troubled summer of 1867. He was also chairman of the Cariboo Mining Board. The Canadian Company first faced trespassing charges on April 22nd, 1867, when Gold Commissioner Warner Spalding declared the ground the property of the Flume Company. Booth recalled later, "I objected to the legality of the grant, when Mr. Spalding recommended that Mr. Park, who appeared for the Flume Co., take both charters and eject us under either of them; I contended that a party could not hold two titles to property, it was illegal, inasmuch as the old charter was void and the new one illegal they had no title to eject us, but the Gold Commissioner overruled this, and said that the government had given the Flume Co. this grant of land and that I would have to go elsewhere and have the legality tested."⁸ Resolved to test the legality of the charter, the Canadian Company appealed to Judge Matthew Baillie Begbie of the Supreme Court. His answer came two months later. Meanwhile, to add to the confusion, the new Gold Commissioner, H.M. Ball, decided that stakes posted by the Flume Company in 1864 entitled them to only thirty-seven and a half feet on one side of the creek bed, leaving a twelve and a half foot strip unclaimed. Members of the Canadian Company immediately began to work the strip and were arrested. Ball convicted the men on the



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grounds that Commissioner Spalding had ejected the Canadian Company from fifty feet of ground on either side of the flume, and that Ball's recent decision on the open strip of land didn't matter. The miners of the Canadian Company called the Commissioner's decisions discriminatory. Cornelius Booth declared that his company had become a "sacrificial scapegoat."

The Canadian Company stayed off the controversial strip of ground until they received Judge Begbie's answer to their request for appeal. Because of technicalities contained in the new Mining Laws passed by the Legislature the year before, Begbie ruled that cases involving "matters of fact" could not be appealed after the Gold Commissioner's decision. He claimed he had "no jurisdiction" to hear the Canadian Company's appeal. An application for a new trial before Commissioner Ball was also refused for the same reason. The Canadian Company could go to no higher court with their grievances. On July 12, forty men, including all members of the Canadian Company, again took possession of the twelve and a half foot strip and began working it. Booth wrote a letter to the Cariboo Sentinel explaining the Company's action: "They totally disavow the idea that they are acting in opposition to the law of the land. Since the Supreme Court sat, they have made the most strenuous efforts to bring their case into court . . . Their case would not be heard at any time, and any action they may have taken since, is simply with the object of coming into court in such a manner, that the rights they contend for, may be contested on the real merits of the case, supported by evidence, which is, I opine, the spirit of British Law."⁹ Thus, the Canadian Company claimed that their action was a deliberate, peaceful provocation to bring their case into court.

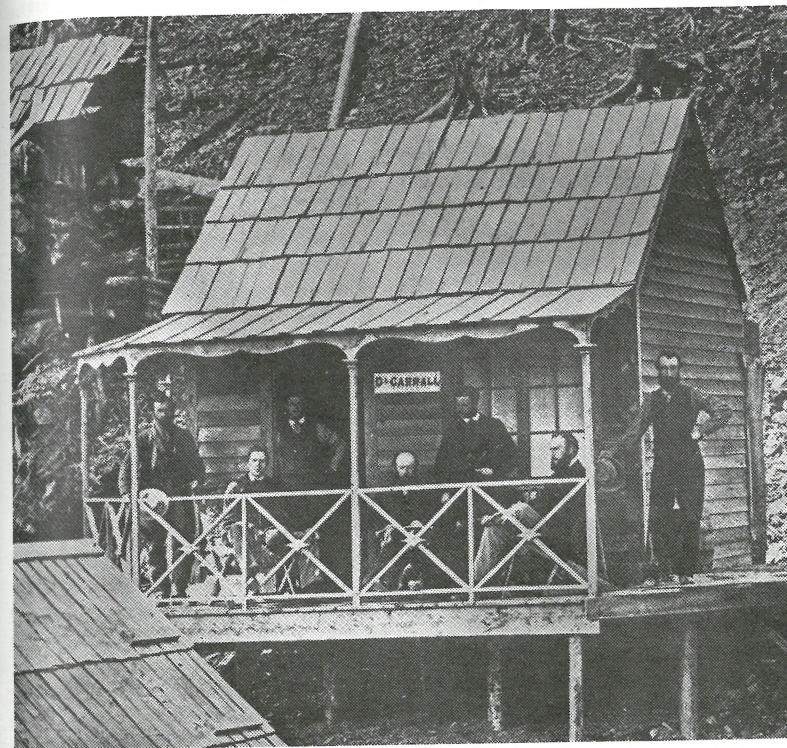
Commissioner Ball reacted by sending officers Fitzgerald, Sullivan and Wilson to Grouse Creek to remove the trespassers. Confused and outnumbered, Fitzgerald watched the men work the ground all day, then decided, in the afternoon, to arrest one man, who was operating the windlass. All the other men then dropped their work, came over to Fitzgerald and, saying that they were all as liable for arrest as the one man, demanded to see Fitzgerald's warrant. Fitzgerald hastily decided to return to headquarters, and the members of the Canadian Company resumed their work. Two days later, a public meeting was held in Barkerville "for the purpose of laying a full and truthfull statement of the grievances and position of the Canadian Company." A crowd of 500 sympathizers attended. Cornelius Booth addressed them: "They are now in possession of the ground, and I hold that they are entitled to a fair hearing, whether their claim to it is just or unjust. (Cheers from the crowd at this point, reported the Cariboo Sentinel). There are three things the most despotic of governments claim, namely, the right to take property, liberty and life. The first two of these have already been taken from the Canadian Co., and there is but one step to the last."¹⁰ A resolution was then passed unanimously, saying, "That this meeting after hearing Mr. Booth's speech, sympathize with the Canadian Co. in their present difficulties, and pledges itself to aid them by all lawful means to obtain their rights."¹¹ Obviously, the Canadian Company had the sympathy of most Barkerville citizens. The Victoria papers reflected a

different feeling, however. The morals of the Cariboo miners had long been called into question (i.e. "Sabbath Desecration" in the British Columbian, September 25, 1867), and the Grouse Creek incident seemed further proof of their lawlessness.

On July 16, 1867, the "Grouse Creek War" took place. Commissioner Ball summoned thirty prominent businessmen of the town to act as "special constables." The group assembled in Barkerville and, with some men on horseback, headed for Grouse Creek followed by a crowd of eager spectators. Torrents of rain the night before, however, had turned the trail into a knee-deep bog of mud. When Ball and his constables finally reached the creek, they found 400 people gathered there, mostly spectators. Members of the Canadian Company stood on the platform of their shaft. Ball informed them that they were breaking the law. John Grant replied that they intended to hold the ground until they were given a hearing in court. Ball agreed to confer with the Flume Company. Several hours of haggling over the conditions of such a hearing followed, during which, according to the Sentinel, "the most friendly greetings were exchanged between the 'specials' and the Canadian Company. . ."¹² When no agreement could be reached between the Flume Company and the Canadian Company, Ball again read the writ of injunction against the Canadian Company and asked if they were prepared to give up the ground. They refused unless granted a new trial, and Ball and his constables returned to Williams Creek. Such was the extent of the "war."

When Commissioner Ball returned to Barkerville, he immediately telegraphed Governor Seymour requesting a company of marines to enforce the injunction. His excited telegram inspired the imaginations of both Seymour and the Victoria newspapers, who envisioned a full-scale "insurrection in the Cariboo." Seymour requested a company of troops from Admiral Hastings at Esquimalt, but, to his dismay, was refused military assistance. Seymour then decided that his only alternative was to go to the Cariboo and settle the matter himself. He wrote the Duke of Buckingham of his fears on July 31: "The Cariboo district appears to be in a state of insurrection. The Police Magistrate writes to inform me that he is utterly powerless to enforce the law. . . The Police Magistrate leaves me in ignorance as to the present state of things in Cariboo. I hardly know whether his silence is voluntary or compulsory."¹³ The British Columbian was more certain of a course to take: "It is simply a question of British Law vs. Lynch Law. Governor Seymour is called upon this very instant to say which we shall have. If the latter, then we shall have no further need of his services or of the services of those under him. Judge Lynch will be his successor. The colonists look anxiously but confidently for an answer; and upon that answer hangs, to a great extent, the fate of the Colony—Law and order or mobbery and confusion—Protection for life and property or security for neither."¹⁴ Ironically, the Canadian Company was attempting to gain a lawful hearing in a lawful court. But the Columbian, by its sensationalism, was building up the controversy to the proportions of a "civil war."

Seymour's visit to the Cariboo was brief. To his surprise, he found the Canadian Company conciliatory, while the Flume Company seemed to harden its position against arbitration. He was also surprised



JUDGE NEEDHAM AND PARTY AT DR. CARRALL'S CARIBOO
OFFICE
Settlement at "Grouse Creek War"

by the peacefulness of the area. The B. C. Government Gazette of August 24, 1867, reported the details of the Governor's visit. "The Canadian (Company) had from the beginning solicited his interference. In Cariboo they asked for a rehearing of the case before Mr. Begbie, or for an arbitration before any one The Governor might please to appoint."¹⁵ Governor Seymour asked the company to turn over all gold taken from the disputed area, and to leave the area in the custody of the law. He also asked that eight men indicted by the police for resisting arrest turn themselves in. The men did so, and were sentenced to three months' imprisonment by Commissioner Ball. A hasty petition, signed by many townspeople, was presented to the Governor on behalf of the of the jailed miners. "... the Governor, ... in reply to it said that he was willing to consider that the Canadians had only resisted the Police in order that their position in regard to a certain piece of land might be ascertained. He then reduced the sentence to two days' imprisonment. The three months would have been tantamount to the loss of the whole mining season."¹⁶ The Governor's show of sympathy for the Canadians was called "weakness and indecision" by the British Colonist. The British Columbian was no less critical of his action, implying that he was cowed into agreement by the foul language and violent manner of the convicted miners.

Unable to obtain mutual agreement on arbitration, Governor Seymour returned to New Westminster. Before he left Barkerville, he agreed that the Canadian Company was entitled to a new trial and promised to consider the matter. After the Governor's departure, however, another company, called the "Sparrowhawk," jumped the disputed strip of land and began mining it. The Flume Company directors met in Victoria and flatly refused to agree to any arbitration until the Government returned possession of the land to them. Commissioner Ball hastily indicted the Sparrowhawk Company for trespassing. To aid the Commissioner's law enforcement, the Governor sent five new constables to the Cariboo to "keep the peace." He also nominated Joseph Trutch, Chief Commissioner of Lands and Works, as arbiter of the Canadian/Flume Company dispute. Trutch was quickly rejected by both sides as not being well enough acquainted with the complexities of the law. Cornelius Booth called him "a dancing dervish."¹⁷ The Governor reconsidered, then asked Chief Justice of Vancouver Island, Judge Needham, to hear the Canadian Company's appeal in Supreme Court. Needham agreed, in order to resolve the controversy. On September 4, Seymour reported developments in the affair to the Duke of Buckingham, writing: "The matter may be viewed as a question of Law as well as one of fact and reheard by a judge of the Supreme Court. Sincerely thankful for any issue out of a case of such extraordinary difficulty, I am sending Mr. Needham at once to Cariboo. I have telegraphed to Mr. Begbie that I particularly require his presence in New Westminster at once."¹⁸ The recall of Judge Begbie would save embarrassment and simplify any legal complexities arising out of his refusal to hear the appeal. Seymour wanted the matter resolved as soon as possible, hopefully putting an end to the frequent attacks upon his "failure to act firmly and decisively" by the British Colonist. The editors of the Colonist seemed to seize upon

every available avenue for criticizing the Governor's actions. The Cariboo Sentinel praised Seymour's choice of Judge Needham: "It is very fortunate for us that we have a Chief Justice of Mr. Needham's capacity at our disposal, for had the questions at issue to be tried by any of the officers of the crown, who were previously engaged in the affair, some shadow of prejudice might be supposed to exist. Such, however, can in no way be imagined of Mr. Justice Needham, who comes to us with a perfect knowledge of the law, but otherwise a perfect stranger to our grievances."¹⁹ The Canadian Company had high hopes for a fair hearing.

Judge Needham arrived in Barkerville on September 15, and immediately opened the case. The evidence and testimony lasted for sixteen days. The case of the Canadian Company rested upon the illegality of the Flume Company's new charter. Since no flume had been laid since 1866, and since the Flume Company was deeply in debt, the provisions of the revised charter could not possibly be met, asserted the Canadian Company lawyers. They argued that the Flume Company was subject to local mining laws, which allowed pre-emption of any abandoned property. Various witnesses cited irregularities in the posting of original Flume Company stakes and criticized the company's ethics. Attorneys representing the Flume Company argued that the revised charter was indeed legal and that it cancelled out any previous obligations under the old charter. They "then proceeded to point out several other sections in the various mining ordinances, showing the distinction between the ordinary mining leases for one year, and those for ten years; which under the joint stock company's Act, would render the ordinary mining laws, under which the Canadian Co. claimed, wholly inapplicable."²⁰ The privileges of a joint stock company's claim extended beyond those of an ordinary mining claim. Judge Needham's decision, announced on October 1, upheld the legality of the Flume Company's charter. "The plaintiffs (the Canadian Company) were altogether strangers to the lease and could have no right under or over it. The Crown as lessor could alone enter for consideration broken, or the Crown could waive the forfeiture at any time, and this it did by the new grant, by the release of covenants, and by the acceptance of the rent."²¹ And, thus, judgment was in favor of the Flume Company on every point. Such legal, as well as physical, advantages of joint stock companies in the mining business now rendered individual miners almost powerless to compete. The Canadian Company disbanded. Cornelius Booth and Joseph Hunter gained more prominence in politics. Confederationists, they were both elected as members of the first Provincial Legislative Assembly in October, 1871. John Grant mined in the Cariboo successfully until 1871, when he moved to Victoria. The former member of the "Cariboo mob," as the Colonist had called it, assumed the office of Mayor of Victoria in 1888.

The "Grouse Creek War" was thus never a war at all, but more a sign of the changing times in the gold fields. The mining business was crowding out individual miners working tiny claims. Small companies couldn't compete. Provincial charters outweighed local mining laws. The joint stock companies held all the advantages.

FOOTNOTES

1. Cariboo Sentinel, 30 September, 1867.
2. Ibid., 26 September, 1867.
3. Ibid., 30 September, 1867.
4. Ibid.
5. British Columbian, 11 May 1867.
6. British Colonist, 20 April 1867
7. Cariboo Sentinel, 20 May 1867.
8. Ibid., 26 September 1867.
9. Ibid., 15 July 1867.
10. Ibid.
11. Ibid.
12. Ibid., 18 July 1867.
13. Letter to the Duke of Buckingham, from Governor Frederick Seymour, New Westminster, 31 July 1867.
14. British Columbian, 27 July 1867.
15. B. C. Government Gazette. Victoria, 24 August 1867.
16. Ibid.
17. Cariboo Sentinel, 2 September 1867.
18. Letter to the Duke of Buckingham, from Governor Frederick Seymour, Victoria, 4 September 1867.
19. Cariboo Sentinel, 19 September 1867.
20. Ibid., 30 September 1867.
21. Ibid., 7 October 1867.