

Rhodes Scholarship for 1924.

The election of the Rhodes Scholar for 1924 will be completed in the last week of September next, when candidates must be prepared to appear before the Committee.

Applications with ten typewritten copies of certificates and recommendations must be lodged with the undersigned not later than Saturday the 15th of September next.

The following are the conditions under which candidates are eligible to compete:—

- (1) They must be British subjects and unmarried.
- (2) They or their parents must have been domiciled in the colony for five years immediately preceding the selection.
- (3) They must have completed their second year at some recognized degree-granting University or College before going into residence at Oxford.
- (4) They must have passed their nineteenth birthday, but not have passed their twenty-fifth birthday on October first of the year for which they are selected.
- (5) Birth certificates must be submitted.

Forms of application can be obtained from me at any time.

A. WILSON, Secretary,
Council of Higher Education.
June 20, 1925.

NOTICE.

GOODRIDGE & CO., LIMITED, IN LIQUIDATION.

I hereby give notice that it is my intention to pay a Dividend in the above matter, and that all persons having claims against the Company should take steps to see that particulars of such claims are filed in my office before the 10th July 1925 next, after which date it is my intention to pay the said Dividend, regard being had only to the claims of which I shall have had notice.

ERNEST R. WATSON, Liquidator,
Bank of Montreal Building, St. John's, Newfoundland.

NOTE.—Creditors may ascertain by telephoning to No. 560 whether, and for what amount, they are already included as Creditors. June 19, 1925.

NOTICE.

ALAN GOODRIDGE & SONS.

I hereby give notice that it is my intention to pay a Dividend in the above matter, and that all persons having claims against the firm should take steps to see that particulars of such claims are filed in my office before the 10th July 1925 next, after which date it is my intention to pay the said Dividend, regard being had only to the claims of which I shall then have had notice.

ERNEST R. WATSON, Trustee,
Bank of Montreal Building, St. John's, Newfoundland.

NOTE.—Creditors may ascertain by telephoning to No. 560 whether, and for what amount, they are already included as Creditors. June 19, 1925.

TINWARE

Good Grade, 40c. lb.

Potatoes. 15c. lb.

Turnips. 6c. lb.

Carrots. 15c. lb.

Cabbage. 15c. lb.

Peas. 15c. lb.

St. JOHN, & LeMarchand.

ment

standing

pleadown,

Barrels

Portland

MENT

Barrels.)

Shob & Co

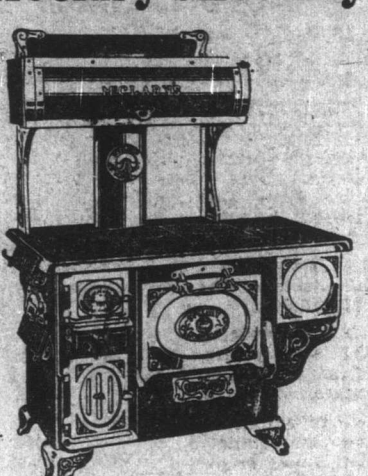
FRESH LOCAL EGGS.

Ample supplies of FRESH LOCAL EGGS now coming forward.

WE CAN SUPPLY YOUR NEEDS.

Soper & Moore
Phone 420-202. P. O. B. 1845.

McClary's Kootney



A Range with a Record

Wm. J. Clouston, Ltd.
AGENTS.
184 WATER STREET.
may 19, 25, tu, th, fr

If you wish to make a good job of your walls and ceilings—have them sound proof, well insulated and give them a beautiful finish use

TEN TEST FIBRE BOARD.
Prices can be had from

W. J. ELLIS.
jan 20, 6 mos, eod

HERE AGAIN

Crown Porter.

Crown Lager.

Royal Ale.

TRY IT.

BAIRD & CO.,
Water Street, East.

JUNKS

AND

Kindling Wood

Birch junk, finest quality for sale cheap; also dry kindling wood delivered daily to any part of city.

West End

Wood Factory.

Box 1366 Phone 1186
dec 12, eod, fr

A wide color range in the sports world includes all shades of tan and brown, tan and black combinations, and jockey red. Sleeveless jackets are in evidence.

MINARD'S LINIMENT USED BY VETERINARIANS.

Newfoundland Government and Newfoundland Railway Co. Ltd.

Opinion of Douglas McGarel Hogg.

1. The first question submitted to me is whether the Government is bound to pay to the Railway Company \$1,500,000, although the actual loss in operating the railway had not amounted to that sum. In my opinion they are not so bound. Clause 4 of 12 Geo. V. c. 16, imposes on the Government the obligation of paying the actual loss incurred in operating the railway up to a maximum of \$1,500,000. It is impossible to construe this as imposing an obligation to pay \$1,500,000 unless and until a loss of that amount is incurred; nor does it impose any obligation on the Government to make advances in order to finance the working of the railway. By its refusal to operate the railway, unless the Government advance funds for that purpose, the Company had committed a breach of its obligations under Clause 4 of the 1898 Agreement; and in my opinion this is a breach going to the root of the Agreement between the parties, and amounting to a repudiation by the Company of its obligations thereunder.

2. The Government has in these circumstances two alternative courses open to it: it can (1) accept the repudiation and treat the contract as thereby determined, or (2) refuse to accept the repudiation and to treat the contract as still alive. The rights of the Government vary according to the alternative which they may select.

3. If the Government elect to treat the Contract as determined it is at an end for all purposes. There is therefore no obligation to go to arbitration; there is no obligation to buy the Company's rolling stock or improvements; the rights and interests which the Government sold in 1898 and repurchased in 1901 remain in the Government freed from any claim by the Company; but the Government has no right to the rolling stock or improvements added by the Company, since its only right to these would be by virtue of the forfeiture clause of the Agreement, and the Agreement is at an end. The Government could bring an action for damages; the measure of damage is discussed later in this opinion.

4. If the Government elect to treat the Agreement as still in existence their rights are regulated by its provisions. These rights would seem to be (1) forfeiture under Clause 38 of the 1898 Agreement, (2) penalties under Clause 27 of the 1901 Agreement, (3) damages to be assessed by arbitration. These remedies require careful consideration.

5. An important point arises under the forfeiture clause, in my opinion the property forfeited to the Government by virtue of that clause is the railway as it exists at the date of forfeiture, including all additional rolling stock and other improvements provided by the Company since 1898. By Clause 2 of the 1898 Agreement the term "railway" includes all rolling stock, buildings and structures "provided and to be provided, and all other materials accessories and equipments, the property or to become the property of the Government, in connection with all or singular the line or lines of railway." The definition is obviously copied from Clause 1 of the operating Agreement of 1893, and is not very apt; but in my opinion the effect is as I have stated. By Clause 8 of the Agreement itself additional rolling stock and equipment, etc., as required by the development of the traffic is "to be provided" by the Company; and under Clause 8 of the 1893 Agreement which is to be read in connection with the 1898 Agreement such additional rolling stock, etc., "was to become the property of the Government." As I read the Agreement the railway is to be forfeited and to revert to the Government on the happening of certain events in the state in which it then is; and I think it is stressing the word "revert" too much to suggest that its effect is to limit that which is forfeited to such part of the railway as belonged to the Government at the date of the agreement. This construction would involve the further difficulty that probably many of the tools, cars and other equipment which existed in 1898 have become worn out before 1923; and yet if the word "revert" has the effect claimed it would seem that all these ought to be returned to the Government. I see no inconsistency in reading Clause 39 as transferring all the Government's interests in the railway at the date of sale to the Company, and Clause 38 as transferring all the Company's interests in the railway at the date of forfeiture to the Government, even though the railway has been improved between the date of sale and the date of forfeiture. Nor do I regard Clause 11 of the 1901 Act as modifying this construction. That clause seems to be intended to prevent the suggestion that the effect of the sale to the Government in 1901 was so to modify the interests of the

parties in the railway as to render the forfeiture inapplicable. I do not regard Clause 13 of the 1901 Agreement as preventing any difficulty; it provides for a sale of certain assets on the termination of the agreement, Clause 38, on my reading of it, forfeits those assets to the Government in a particular event before the Agreement terminates and thereby prevents the sale.

6. Although the Government may claim penalties if they keep the Agreement alive, in my opinion it is clear that these penalties are not limited to the \$250,000 security. It is not the law that when a man gives security for the due performance of his agreement, he thereby limits his liability to the amount of such security, and I see nothing in any of the present agreements to justify the implication of such a term. Nor do I regard the penalties under Clause 27 as liquidated damages. The use of the expression "not exceeding" renders it very unlikely that they are liquidated damages; and when one observes the very varying importance of the provisions of the clauses to which the penalty attaches, it seems to me impossible to regard the penalty as a genuine pre-estimate of the damages which a breach of any of these clauses would inflict. The Government must claim the actual damage which it has sustained.

7. Whether the Agreement is treated as ended or is kept alive, the assessment of the damages will present considerable difficulty. The measure of damage would be the extra cost to the Government of operating the railway or procuring it to be operated in accordance with the provisions of the Agreement for the remaining years of the Agreement. Allowance will have to be made for the fact that the money would be payable immediately on assessment, while the loss would be spread over nearly 30 years. If as would seem advisable the Government treated the Agreement as alive, allowance would have further to be made for the profit resulting from the acquisition for nothing of the Company's improvements under the forfeiture clause, as compared with the obligations under Clause 13 to pay for them at the end of the Agreement in estimating the damage, nothing could be claimed for the cost of any service on the railway beyond the minimum which the Company was bound to provide; and while the tender rates and the rates for car load lots of freight are fixed, Clause 13 (a) provides for variation of freight in lots less than car loads and due allowance would have to be made for this in estimating the loss in operating the railway. The probable traffic and cost of operation would have to be estimated for the remaining years of the Agreement. From these considerations it is apparent that any damages which the Government may be entitled to recover will be extraordinarily difficult to prove. I can also see great difficulties arising in enforcing the forfeiture clause should the Company refuse to acquiesce. It seems to me therefore that the case is eminently one in which every effort should be made to arrive at a friendly settlement, if reasonable terms can be found. I am confident that my construction of the agreement is correct; but the litigation necessary to establish it will be protracted and expensive, and the outcome on the question of damages is impossible to foresee with any certainty. I gather that the Company has certain claims against the Government for services rendered and for other matters outside its obligations under the Agreement; and I trust I am not exceeding my duty if I suggest that with reasonableness on both sides a settlement should be effected which would dispose of all matters in controversy, and that such a settlement is very desirable in the public interest.

(Sgd.) DOUGLAS MCGAREL HOGG.
Temple, 16 October, 1922.

Opinion of Mr. Barrington-Ward.

I propose in this opinion to state as definitely as possible what my views are upon the several questions raised, but I desire to say in the forefront of this opinion that nearly all these questions turn upon points of construction, as to which nobody can ever be confident that another mind may not take a different or indeed an entirely opposite view. Further the earlier part of this opinion must be read subject to my observation at the end.

1. The first question is whether there has been a default on the part of the Railway Contractors (hereinafter referred to as "the Company") by reason of their ceasing to work the Railway. The Company contend that upon the true construction of the Agreement of 30th June, 1921, they

are entitled to be paid in advance the whole sum provided for in the Agreement before the actual loss is ascertained. The Government contend that they are not bound to finance the undertaking in advance, but only to recoup ascertained losses in manner agreed upon between the parties.

In my opinion the contention of the Government is correct. The Government have an obligation under ss. 4 to pay the "actual" loss of operating the Railway during the term of the Agreement, and there is a proviso that if "such" losses exceed one and a half million dollars, "such" excess shall be borne by the Company. The words actually used refer only to ascertained and not estimated losses, and it would be ultra vires the Government to have over public moneys to the Company, except upon a basis of actual loss from time to time ascertained. The section gives power to the Government to make interim repayments, but not interim or indeed any advances. In this view it follows that the Company had no right to cease railway operation and that they are in default.

2. The rights and powers of the Government depend upon: (a) Whether the default is a breach of contract "going to its root" and constituting an entire repudiation or merely a subsidiary breach, giving rise only to a claim for damages. Cessation of operation is such a vital matter that I have no hesitation at all in saying that it amounts to entire repudiation.

(b) Whether, assuming the default amounts to entire repudiation, the Government elect to treat it as such or not. They may do so, but they are not bound to do so. If they do so, then their only claim is for damages flowing from the breach. The contract is fully and finally over and none of its terms remain. If they do not do so, but continue to treat the contract as subsisting, then in addition to a claim for damages, to be assessed by arbitration they can exercise their special powers under the agreement itself, i.e., forfeiture, and claim for penalties.

3. I defer advising as to what course or steps the Government should take to preserve its rights or to provide for the continued operation of the railway until a later stage of this opinion. (See paragraph 12 below.)

4. In my opinion the powers of the Government are wide enough to enable the Government to seize the Railway as a whole and in the state in which it is at the date of the forfeiture. The Government by ss 39 sold to the Company their reversionary interest as at that date, but by ss 38 the Company charged to the Government the entire Railway as a continuing tenancy. I gather from the Company's security for its proper operation by the Company during the term of the Agreement and did not limit the subject matter of the charge to the Railway as then existing. All subsequent additions of every kind covered by the definition clause (as 2) in my opinion become subject to and embraced by the charge—from the moment that they are appropriated to the use of the Railway. It is true that if the agreement had been carried out to its conclusion the Company would have got payment by valuation for subsequent additions (1901 Agreement ss 19). But the Company have repudiated the agreement and as ss 38 of 1898 in the events which have happened, overrides the rights otherwise conferred by ss 13 of 1901. It is to be borne in mind that by ss 1 of the 1901 agreement the 1901 Agreement is to be read in connection with and as part of the 1898 Agreement, and also that by ss 11 of the 1901 Act the forfeiture clause is expressly preserved.

5. RAILWAY is as ss 38 of 1898 in my opinion means the aggregate of property and rights covered by the definition section (as 2), from time to time subsisting and employed in the manifold operations of steamroad transportation. It is not limited to the things provided or rights acquired before any given date; it includes everything covered by the definition clause subsisting in the undertaking on the date of forfeiture.

6. In my opinion Rolling Stock and equipment, provided under Clause 13 of the 1901 Agreement do "revert" to the Government, not as individual chattels, but as forming part of the undertaking charged by ss 38 of the 1898 Agreement. It is an easy claim to say that what was not in existence in 1898 and has never been owned by the Government cannot "revert." My answer is that what reverts is the whole railway as at the date of the forfeiture, and if things have become subsequently comprised in it they go too as part of one entire system.

7. If my views are correct, it follows that the Government can under ss 38 of the 1898 contract and as 11 of the 1901 Act enter upon and take possession of rolling stock and equipment provided pursuant to ss 13 of the 1901 Agreement.

8. The Government can obtain damages from the Company if they cease to operate the Railway (a) if the repudiation is accepted, by action; (b) if it is not accepted, by arbitration.

9. The manner of ascertaining the damages I deal with below.

10. In my opinion the penalties provided for in ss. 27 of the 1901 Agreement are not "liquidated damages." As a matter of construction they are sums provided in round figures to ensure performances by the Company of several different clauses, varying considerably in importance and not surmountable by the terms of the contract as a pre-qualification of damages likely to flow from specific breaches thereof.

11. In my opinion the damages recoverable by the Government in any event are unliquidated and not limited by any of the provisions of the 1901 Agreement. The Government of course would have to give credit for the \$250,000 security held against any damages they might recover. The measure of damages would be the ascertained amount of the actual loss to the Government by reason of the Company's failure to continue the maintenance and operation of the railway in accordance with the several contracts. The main problem would be to ascertain the extra cost resulting from the maintenance and operation of the system under substituted arrangements based upon the requirements of the contracts. The circumstances that nothing was being paid for the additional equipment, etc., would have to be given effect to by way of discount from the total sum awarded, because this release from payment operates to reduce the total loss.

12. The question as to what course the Government should take in this matter is really one calling for a practical business answer. I have indicated above that in my opinion the Government have in substance a good claim both to take possession of the railway and to recover damages from the Company. But when one descends from the realm of theory to the firmer ground of practical affairs, I see the gravest possible difficulties in substantiating the case.

In the first case the Company will offer the most determined resistance. If the Government attempt to seize the railway system (and by the way how do they propose to do it?) the Company will go forthwith to the Courts (not forgetting appeal to the Privy Council) for injunctions, and even if the Government are there first, what possible directions could be given by the Courts to a recalcitrant Company for securing the continuance of railway operation. The Company will consent to nothing and I really do not see what steps the Government could take to get effective control and then maintain proper services.

The steamship and express services of the Company are wholly outside the forfeiture clause.

How do the Government propose to correlate them with the forfeited railway system?

Further, when it comes to an ascertainment of damages, it is all very well to say that this must proceed on the basis of the extra cost entailed or the loss sustained in consequence of the Company's failure to continue railway operation.

It must alarm any reasonable lawyer to reflect how such a claim could be adequately framed or presented.

One must also bear in mind that the Company has in all probability certain sound cross claims, e.g., for extra services rendered at the express or implied request of the Government during the war and otherwise, and it may conceivably turn out that the Courts take a view in the Company's favour of some of the contentions passed under review in this opinion.

In any event it must be remembered that one is dealing with an arterial service in the national life and not allow technicality to obscure practical judgment. Any litigation would be protracted, uncertain, exceedingly costly and in the last resort would in my opinion inevitably become the subject of a compromise. If this view is correct, it seems to me plain that, notwithstanding the forensic strength of the Government's case, steps should be taken to effect an early settlement. I have naturally taken into account the views of those, who favour the forfeiture of the railway and the institution of legal proceedings, but after weighing the matter most anxiously and deliberately, I have come to the conclusion that it would be only consonant with the public interest to reach by negotiation at the earliest possible moment a proper basis of settlement.

F. T. BARRINGTON-WARD.
Temple, E.C., 27th Sept. 1922.

Grief and Worry
Childbirth
La Grippe
Excesses and
Overstrain
Nervous Exhaustion
Take the new remedy
Asaya-Neural

(TRADE MARK)
which contains the form of phos-
phorus required for nerve repair.
PREPARED BY
DAVIS & LAWRENCE CO.
MONTREAL

Biscuits 37 Varieties Crackers



FRESH AIR
TIP-TOP SODA BISCUITS

contain the very elements that build flesh, bone and muscle—Serve TIP-TOPS with every meal—a wholesome and 100 p.c. nourishing Soda Biscuit.

A Flavour all its own.

TIP-TOP SUGGESTION:—
Place the Sodas in the oven for about five minutes before serving—you will then appreciate the flavour and delicacy of the TIP-TOPS.

A. HARVEY & CO., Ltd.,
MANUFACTURERS.

June 21, eod, fr

WHITE OATS, STRAW, BRAN.

Ex Canadian Sapper from Montreal
AT LOWEST PRICES.

One Carload
(500 Bags)
WHITE FEED OATS.

One Carload
(287 Bales)
STRAW.

One Carload
(400 Bags)
BRAN.

F. McNamara,

PHONE 393 QUEEN STREET

NEWFOUNDLAND FOLIO

NEW EDITION.
(Contents):

Ode to Newfoundland (3 settings).
Banks of Newfoundland.
Flag of Newfoundland (new setting).
Newfoundland Volunteers' Band March.
(Dedicated to Governor Bannerman).
The Pope's March.
Dear Old South Side Hills
And 50 Old Favorites.

PRICE 45 CENTS.

CHARLES HUTTON.

Publisher