

PROVINCE HAD TO PAY  
MANY AMOUNTS NOT  
PROPERLY CHARGEABLE

struction Company, Limited, was duly incorporated under the companies act of the Dominion of Canada, with all the rights and powers given by said act, with authority among other things to carry on the business of a construction, contracting and development company with authorized capital stock of the said company of \$1,000,000, divided into 10,000 shares of \$100 each, subject to the increase of capital stock by said act.

Wherefore it appears that said construction company assumed the position and was substituted in place of the said railway company so far as the construction of said line of railway and all the works connected therewith was concerned. The railway company remained nominally the contractors for the construction of said line of railway, the said construction company becoming the real and actual contractors therefor and it was through their officials and books of accounts that evidence was furnished to us of the receipt upon progress estimates and otherwise of all moneys from the proceeds of said bonds for the construction of said railway, as well as the payment and disbursement of all moneys to the several sub-contractors and other employees in the construction of said line of railway. The incorporation and organization of the said construction company and the assigning and transferring to the said construction company of the said contract for the building of the said line of railway, the guaranteed bonds, the dominion subsidy and the capital stock of the said railway company, and the assumption of the said line of railway, under the advice and counsel for the purpose of making the said capital stock of the said railway company paid-up and non-assessable, a proceeding necessary for the purpose of satisfying the said act, authorizing the issue of said stock in respect to said capital stock being paid-up and non-assessable.

## TRANSFER OF GOULD CLAIMS.

"Memorandum of assignment and transfer

"Whereas, the said transferee has contracted with the said railway company to construct the said railway, and that the said railway company has agreed to transfer to the said transferee, in consideration of such construction, all its debenture stock guaranteed by said government, as aforesaid, or the proceeds thereof, together with other securities which have been accepted as sufficient by the said transferee;

"Whereas, the transferor has offered to transfer his said claim against the said railway company to the said transferee, in consideration of the sum of nine hundred and ninety-nine thousand dollars. (\$999,000), payable to said transferor in fully paid-up and non-assessable shares of the said transferee;

"The present transfer and assignment is thus made for and in consideration of a sum of nine hundred and ninety-nine thousand dollars (\$999,000), which the said transferor hereby acknowledges to have received from the said transferee by the delivery to him of nine thousand nine hundred, and ninety (9,990) fully paid and non-assessable shares of the capital stock of the said transferee.

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It was agreed by and between the said railway company and the said Prudential Trust Company Limited, trustee, as aforesaid that the trust company would pay or allow interest to the said railway company on all balances in their hands at the rate of four per cent. per annum.

It is quite manifest that Gould and his associates who constituted the Saint John & Quebec Railway Company believed that with the guaranteed bonds of \$25,000 per mile by the province and the amount of money they would be able to raise from the second mortgage bonds and the moneys received from the dominion subsidy they would be in a position to construct the said line of railway, according to their said contract, and it appears by the evidence that but for the disturbance and depression of the money markets, they would probably have been able to market the second mortgage bonds and would have performed the said contract to construct the said line of railway, and they are evidently convinced that the said line of railway is one of their resources and should be in order the preferential order, notwithstanding the fact that

This failure, on account of the acute stringency of the money market, or Lisan & Company who were, it was proved, reputable bankers of New York and who had undertaken the marketing of the second mortgage bonds to implement their undertaking made it necessary for the government in order to save the situation to come to the rescue of the railway company and on the 18th day of April, 1914, an act of legislative assembly, & George W. was passed granting further aid to the Saint John Valley Railway, by which a further guarantee of the bonds of the said company was authorized upon the terms and conditions in said act expressed.

## INVESTIGATING DIVERSION OF FUNDS.

With reference to this question the charge is formulated thus:

"In the argument which was presented to the commission by counsel on behalf of Mr. Dugal a distinction was drawn between the general moneys of the railway company and the moneys furnished the company from the proceeds of the guaranteed bonds. Counsel took the position that many items of expenditure, not improperly chargeable to the construction of the railway, should not be a charge upon the proceeds of the bonds for reason which will be more specifically alluded to when necessary, and it was contended that the use of the moneys in the way indicated by such expenditure would properly fall to construction account to the general fund. It was also stated that another class of items which will be mentioned in detail were not in any way primarily or ultimately chargeable to the proceeds of the bonds, but were properly chargeable to the general fund.

If the payments in question were bona fide construction payments-it was urged that the said fund was properly chargeable therewith in every instance; but it was virtually admitted by the last named counsel that there were some items, few in number and insignificant in amount, which had found their way into the account and were not properly chargeable to construction at all.

"The province is to be reimbursed for whatever expense it may incur for any such survey, report and estimate by any company with which a contract may be entered into, etc., and when the contract itself was entered into between the government and the railway company the above statutory provision was embodied in section 12 of the contract, which reads: '12. Before any such bonds shall be guaranteed the company shall repay or reimburse the Government of New Brunswick the costs and expenses of such survey, plans, report and estimate so made under the direction of the said David F. Maxwell, of and respecting the said line of railway.'"

To say whether or not this payment was diversion depends wholly upon

Having regard to the wording of the statute and of the contract by both of which it is provided that the said expense was to be repaid or reimbursed to the province as a precedent to the guaranteeing the bonds, it seems to me that the manifest and proper construction to be put upon them, in this particular, is that the company should have provided the moneys for the engineer's account before getting the guaranteed bonds, but the course which they followed was known to the government and acquiesced in, if not directed, by that body; consequently, little blame, if any, is to be imputed to the company with reference to this particular propounding, but for the reasons indicated above, WE THINK THERE WAS A DIVERSION IN THE SENSE CONTENDED FOR BY MR. DUGAL'S COUNSEL, BUT AS HEREINAFTER EXPLAINED, WE DO NOT THINK THAT PAYMENT OF THIS SUM ALSO INTENDED TO A DIVERSION WITHIN THE MEANING OF THE CHARGE AS LAID.

Another item in the interest account claimed by Mr. Carvell to be a diversion is the sum of \$12,000, being two years' interest on \$100,000 from July 31, 1912, to July 31, 1914, at six per cent. It seems that an agreement was entered into between the trust company and A. R. Gould and others by which the latter withdrew from the trust company the sum of \$350,000. With a portion of this sum the trust company had been authorized to purchase bonds and other amounts under the progress estimates became available. IT IS APPARENT THAT A PORTION OF THIS AMOUNT—PRACTICALLY \$100,000—DID NOT GO INTO THE ROAD, and from the standpoint of this inquiry as authorized by the statute, it is of no importance to us unless and until it shall appear that moneys arising from the proceeds of the bonds are being utilized to

Before the progress estimators could be realized upon a large part of the sum so borrowed, viz., \$259,000, had been put into the construction of the road, which was equivalent to a repayment of the said loan to that extent. On June 25 last, when Mr. B. Hal Brown, president of the trust company, testified before us, it appeared that the loan then stood at \$143,000, it having been reduced to that amount by payments made from the amounts directed by order-in-council to be paid the railway or the construction company.

## QUESTION OF CONTRACTOR'S PROFITS

Until attention had been specially drawn to this percentage addition nothing in the appearance of the account would indicate its presence or arouse enquiry and there is no evidence that attention is drawn to it. The result, therefore, was that in the months named and indeed until at least the end of July last a part of the proceeds of the guaranteed bonds have been utilized to pay this ten per cent of contractors' profit over and above the cost of the work done on the road.

The next item of expenditure which is criticized was an amount of \$94,625 loaned by the trust company to the railway company to implement the amount which the bonds would have realized if they had brought 98 per cent and the sum which they actually did realize when sold. By the legislation embodied in Chapter 25 of the Acts of 1912 it was provided *inter alia*: "That if the whole or any portion of said bonds be guaranteed and the proceeds thereof deposited with a bank or trust company such deposit must in no case be less than ninety-eight per cent of the par value of said bonds." (Section 8.)

Considerable discussion took place over the fees paid to different solicitors who, from one standpoint or another, had different dealings with the railway company and with the construction company.

Speaking generally on this branch of the inquiry, we do not think that fees paid by either company to secure its incorporation should be chargeable to the proceeds of these bonds, although it is manifest that as far as the construction of the road is concerned, they or some of them, might be a proper charge in the final analysis of the total cost of the road.

THE RELATIONSHIP BETWEEN THE PROVINCIAL GOVERNMENT AND THE RAILWAY COMPANY WAS THIS: THE COMPANY WAS TO BUILD THE ROAD—INVOLVING ALL PREPARATION ON ITS PART TO FIT ITSELF TO DO SUCH WORK—AND THE GOVERNMENT WAS TO ASSIST THE COMPANY BY ORDERING PAYMENTS TO IT FROM TIME TO TIME, FROM THE PROCEEDS OF THE GUARANTEED BONDS, WHICH PAYMENTS SO ORDERED DEFENDED FOR THEIR AMOUNT UPON THE CERTIFICATE OF THE GOVERNMENT

(Continued on page 5).

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