

for sections 9 and 15. They assigned to Mr. John Ross in 1876. The work was practically done, but settlement of the claim was not discharged in 1879. Mr. John Ross filed a petition of right in the Exchequer Court. His claim then was for a sum of \$576,904. The contracts provided, as was usual in such cases, that the work was to be done to the satisfaction of the chief engineer of the line, who would give his certificate on approving of it. The engineer of the line at that time was Mr. Sanford Fleming. Mr. Fleming, about 1874, ceased to discharge his duties on being appointed engineer of the Canadian Pacific Railway, and the adjustment of the various claims under the contracts remained in abeyance. In 1880, a Dominion Order-in-Council was passed, re-appointing Mr. Sanford Fleming to deal with the claims, but he declined to act, and, thereupon, Mr. Frank Shanly was appointed for the purpose of investigating and reporting upon them. He reported that there was properly payable to Mr. John Ross, as representing Messrs. Bertrand, a sum of \$231,806, which sum was now claimed. The real point in dispute, to be decided by their Lordships, was whether Mr. Shanly was appointed Chief Engineer, and whether his report was a certificate.

LORD DAVEY—Do you say he was appointed?

Mr. *Fitzgerald*—Yes, we say he was properly appointed, and could give a certificate. The Government deny it, pointing out informalities. The case of *McGreevy v. The Queen* then came on. Mr. Shanly had reported a certain sum as due to McGreevy; and, as the action was considered as a test case, the Ross petition and others were left in abeyance.

LORD DAVEY—Is this a claim for extra work?

Mr. *Fitzgerald* said it was, to a certain extent. The McGreevy case, like this one, turned on the appointment of Mr. Shanly, and he explained that, on June 1st, 1874, the Intercolonial Railway Commissioners became, by virtue of the Canadian Act, 37 Vic., chap. 15, *functi officio*, and their powers were transferred to the Minister of Public Works. In 1879 the Ministry of Works was divided, and a Minister of Railways appointed. Mr. Shanly's appointment was made by Sir Charles Tupper, then Minister of Railways, and was dated June 21st, 1880. When the Ross petition came up in the Exchequer Court, on January 26th, 1895, Mr. Justice Burbidge dismissed it, saying that he was bound by the Supreme Court judgment in the McGreevy case. On the