## POOR DOCUMENT

THE SEMI-WEEKLY TELEGRAPH, ST. JOHN, N. B., WEDNESDAY, MARCH 23, 1904.

## ATTORNEY GENERAL PUESLEY ANSWERS

Many Items of Expenditure in His Department Explained.

Efforts to Get New Brunswick's Share in the Halifax Award Told Of-Also, About the Reduction of Representation, and Other

Fredericton, March 18—The house met at 3 o'clock. Mr. Flemming having put his question with regard to the payment made to the attories general in connection with the claim, to the Halifax award, reduction of representation and Dunn vs. The King.

Hon. Mr. Pugsley said these services were not all confined to last year. In order to answer this inquiry fully and sattern with the preparation of the brief for der to answer this inquiry fully and sat-isfactory to my honorable friend, it will

committee in 1898 upon the subject of the pared and are now in the hands of my fisheries, the government took up the question of the right of property in the fisheries in the tidal waters of the province—in other words, what are known as the sea coast fisheries, and also the subject of the Halifax award.

trips to Ottawa, which occupied considerate the considerate the whole question, examining the proceedings which led up to the appointment of the commissioners under the treaty of Washington having obtained a number of documents both from Washington and Ottawa kern leaves the constraint of the commissioners and open control open con ed an argument on behalf of the province which will be found set out in the pamphlet which was laid before the legislature at the last session. I also assisted in the preparation of the statement of the case which we dain in both with Onebec and which we claim, jointly with Quebec and P. E. Island, should be submitted to the courts for decision. The brief on behalf of New Brunswick, as well as the proposed statement of case will be found in the pamphlet referred to. These services oc-cupied a great deal of time and the sum of \$850 was paid to me on account. Beor seco was paid to me on account. Be-fore drawing the money, as well for these services as for others. I talked the matter over with the premier, who was familiar with the services performed and the value, and he thought it would be reasonable to pay this amount upon account. I may say that the time actually occupied by me in connection with the claim to the Hali-

I am sure, exceed two months.

I may say to the house that in January, 1903, a draft of case was agreed upon between the representatives of the province of New Brunswick, Quebec and P. E. Island, and verbally assented to by the minister oncluded that he could not agree to the case as presented, and proposed a case which we thought would not be fair to the provinces. I have objected on beto the provinces. I have objected on behalf of New Brunswick to the ease suggested by the minister of justice and have insisted that the question proposed by the provinces sould be one of the questions submitted to the Supreme Court.

I have presented these views as strongly

of the action I have taken, within a comparatively few days, I am in receipt of a proposed draft of case from the department at Ottawa, in which the 'uestions formerly proposed by the ministe, 'justice and which the representatives is the province thought to be unjust have been withdrawn, and I have every reason to believe that there will be no difficulty in agreeing upon the case for submission to agreeing upon the case for submission to the court.

I may say that the minister of justice

I may say that the minister of justice proposed that among the questions to be submitted was whether the monies paid over under the Halifax Award were clothed with a trust. We felt that if we agreed to that proposition we would be giving away the rights of the province. We claimed that the questions to be submitted should be whether the proprietory rights in respect to which the awards were paid were in the four provinces in the Domin. were in the four provinces in the Domin-ion of Canada or in the United Kingdom.

tion with the preparation of the brief for argument before the Supreme Court of Canada and the argument. The charge be necessary to take up the items separately and to explain somewhat in detail the nature of the services performed in The claim of the province to a portion of the Halifax award has been pending for a considerable time and I have devoted a great deal of attention to the subnecessary petition and brief have been pre-

With regard to the item of \$300 in con-

honorable gentlemen will remember that at my request the Hon. Mr. White ap-peared on the argument. The decision The decision of the Supreme Court

legal authority and which had been im-

	on debt account.
'	The amounts so charged are as follows:
,	1904. W. McK. Dawson, acting for
9	Glasier Tibbits 3 2,940
眶	James Tibbits 500
	J. Glasier 1,250
3	J. Glasier 1,000
9	James Tibbits 2,000
蠹	John Glasier 1,000
3	W. Dunn 2,000
e	J. Tibbits 649
68	B. Beveridge 830
ı	R. Kerr
3	R. Melli
188	
3	J. Clasici
e	J. Triasier
醤	Estate Jas. Tibbits 277
e	O'Connor and Hogg, professional ser-
8	vices 200
	O'Connor and Hogg, professional ser-
	vices 277

LINIMENT highly as the best

hous hold remedy I have ever used.

Blekville, N. B.

THOMAS McCARTHY.

In reply to Mr. Smith as to the nature of the service rendered by the attorney general for which he was paid \$350 in a case of Appleby vs. King, the Hon. Mr.
Pugsley said: I may say to my honorable
friend that the services performed were
professional services in connection with

the claim referred to.

The claim is one of very long standing:
It is alleged that the late Thomas B. Appleby in his lifetime was possessed in fee pleby in his highing was possessed in fee simple of a shipyard situate in the parish of Hampton in Kings county, and that in the year 1854 while the said Thomas B. Appleby was owner of the shipyard the commissioners for the construction of the then European and North American Rail-way, what is now the Intercolonial, took way, what is now the Intercolonial, took possession and expropriated the shipyard for the purpose of the railway. It is alleged that the shipyard appurtances and buildings were expropriated and that the said Thomas B. Appleby did not receive

expropriated. It is aneged that the build-ing taken by the commissioners on the part of the government were a three story dwelling, a blacksmith shop, a carpenter shop, also a steam house where the ships

planks were steamed.

The claim is being pressed by Fanny L. Appleby, the widow, and the administra-tix of the estate of Thomas B. Appleby, With regard to the item of \$300 in connection with Dunn vs. The King, in order to five distinction of the dominion government to take charge of the matter, and to press upon the attention of the dominion government the right of the province to the amount of the award. As the claim of the province of New Brunswick, with interest, would amount to a very large sum, probably in the vicinity of \$2,000,000, if will be seen that the matter was one of very great importance and required the most careful attention.

During this year I made a number of trips to Ottawa, which occupied considerable time. I also looked very fully into the whole question, examining the province.

With regard to the item of \$300 in connection with Dunn vs. The King, in order to filly understand this item it is necessary to refer quite fully to this case. The claim of Dunn vs. The King arose out of the boundary dispute between the province of New Brunswick and Quebec prior to confederation. Under the terms of the British North America Act and, as the house is aware, any liabilities of the province prior to confederation, were to be assumed by the dominion and charged up against the debt account between the dominion and the provinces therefore, and the claim known as Dunn vs. The King, if the vicinity of papers are in the department at Ottawa which I have carefully examined. The province is interested in this way, as already stated in reference to Dunn vs. the king, if the claimant should recover against the dominion the amount would be charged up against the province on

of \$800 paid to Mr. Phinney, Hon. Mr. Pugsley said that this sum was paid in connection with the deaf and dumb investigation. When it began the commisvestigation. When it began the commissioner represented that it would be impossible to get along without counsel. The representative of The Telegraph and others waited upon him and said the government should pay counsel. The premier was in England and I said I could not promise this but the matter would be considered after the premier's return. considered after the premier's return. Finally it was agreed to pay moderate fees both to Mr. Phinney and Mr. Gregory, who acted for the defence. The fees of the latter will be met by the proceeds of the sale of the property. The time occupied in the investigation was necessarily long but the fees have been paid on a moderate scale.

Hon. Mr. Pugsley in reply to Mr. Hartt not yet passed the Yalu river.

Said—I did not attend personally in court on the trial of any criminal prosecutions. I have, however, taken a personal charge authorities were startled by the attempt said—I did not attend personally in court on the trial of any criminal prosecutions.

Hon. Mr. Pugsley in reply to Mr. Hartt said—The services rnedered by George W. Allan and C. N. Skinner, for which they

each were paid \$100 were in assisting me in the preparation of the brief setting forth the claim of the province to the Halifax award. These gentlemen devoted a good deal of time to the subject and gave to me very valuable assistance in the preparation of the brief In answer to the question as to "What services George W. Allen rendered for which he received \$253.50 re representa-

Hon. Mr. Pugsley—I thought that would astonish my honorable friend. The sum of said: Those services were rendered by Mr. to other members of the dominion cabinet, astonish my honorable friend. The stand of the stand of the and I am happy to say that as a result \$634 was paid for the expenses of the Court of Canada and taking part in the argument of the special case. George W. Allen to whom these amounts are paid is Mr. G. W. Allen, M. P. P., for the ounty of York.

Mr. Robertson introduced a bill for the emoval of garbage in the city of St. John.

He explained that the dumping of gar-bage had become a nuisance and this bill gives power to the common council to make arrangements for its removal.

Mr. Tweeddale submitted a petition for incorporation of the Andover Masonic

the St. John assessment act.
Mr. Lantalum introduced a bill to per mit the erection of a fire engine house in Guys ward St. John. Guys ward St. John.

Mr. Allen presented the petitions of
the South West River Driving Company
and the Upper South West Log Driving
Company in favor of the bill.

Mr. Lantalum presented the petition of
A. Skinner and other citizens of St.

ohn pryaing that ratepayers who have not paid their taxes be not prohibited from voting in civic elections.

Mr. Smith introduced a bill to incor-

ary Society.

Mr. Smith presented the petition of the Bath Village and Fire Commissioners in favor of their bill.

Mr. Grimmer gave notice of inquiry in regard to the appointment of bye-road commissioners.

DID TERRIFIC DAMAGE.

Fuller Details of Port Arthur Battle Tells of Havoc to Czar's Fleet -- No Truth in Story of Capture of 1,800 Japanese Troops.

With the Japanese fleet off Shan Tung Hai-Wei, March 19.—Admiral Togo has been comparatively passive since Feb. 25, and Port Arthur has been given a respite although a close blockade is maintained. Early on March 10 the first division of he Japanese destroyer flotilla, Captain Asia, while reconnoitering southwest of Lian-Tiesthan, were attacked by six Rusvessels were severely damaged early in the fight, and hastened to Port Arthur, followed later by the rest of the squadron desperate character that the Russians must all have sunk or been captured had they not sought shelter.

During the engagement the vessels were so close that a Russian sailor threw a bomb aboard a Japanese vessel, but it did not explode. All the ships engaged were damaged. The Japanese losses were six killed and eight wounded. Russian losses unknown.

division Japanese destroyer flotilla, shows Port Arthur success was greater than first reported. Tseunya's division, after des perate battle with two Russian destroyers captured one and badly damaged the other The Russian craft were about fifteen miles south of Port Arthur. The commanders crowded on all steam, trying to escape, but the Japanese intercepted them and the destroyer swept the bridge of the neares destroyer swept the bridge of the nearest Russian, killing the captain and three men. Then the lieutenant, sub-lieutenant and coxswain succeeding each other in command were all picked off by Japanese sharpshooters. The Russian fire was silenced and two Japanese vessels ranged alongside and swept her decks, killing half her crew. The Japanese then boarded the vessel and raised their sum-rayed ed the vessel and raised their sun-rayed

damage to the other Russian, but her

One of the Japanese vessels was put out of action by a shot below the water line. Another was badly damaged.

London, March 21—Nothing has reached here to confirm the report that a battle has taken place on the Yalu river in which the Russians are alleged to claim that they captured 1,800 prisoners.

A despatch from St. Petersburg to a news agency dated yesterday said there has been no change in the situation and that all is quiet on both land and sea between the Russian line from Ping Yang to the Yalu river, and the Japanese line to Caran.

to the Yalu river, and the Japanese lin to Gensan. There have been slight skin

and cognizance of a very large number of criminal cases, the number and names of which I do not recollect. I am consulted about and advise in respect to nearly all the criminal cases tried throughout weather having indered the Japanese and the distribution of the Japanese of the Japanese to land in Helena Bay, as the nearest Russian force that could have been used against them consisted of three rifle regiments at Newchwang. The weather having indered the Japanese are now being and cognized to the constant of the could be a constant of the property of the could be a constant of the property of the p weather having hindered the Japanese landing, energetic measures are now being

> TEXT OF JUDGMENT IN THE BISHOP SWEENY WILL CASE

Reason Why Estate Was Taxed for Costs Set Forth by Judge Davies.

of the Supreme Court of Canada decision in the Bishop Sweeny will case, and it will be read with interest. Included is the reason why the estate is taxed for all the costs. The decision follows:-

costs. The decision follows:—
In the Supreme Court of Canada—Catherine Travers and Boyle Travers, appeliants; and the Right Reverend Timothy Casey, Very Reverend Thomas Connolly, and the Roman Catholic Bishop of Saint John, respondents; reasons for the judgment of the court on 10th March, 1904, which dismissed the appeal with costs to both parties out of the estate of the late Right Reverend John Sweeny.

estate of the late Right Reverend John Sweenv.

The Chief Justice—I have had communication of my brother Davies opinion and I agree in his reasoning and conclusion. I shared at one time in his doubts and I cannot say that I am yet thoroughly satisfied that the testator intended to bequeath his private property to the church. But though the case on the part of the appellant was foreibly and ably argued by Dr. Quigley as it could possibly have been, yet he failed to convince me that the judgment appealed from is clearly wrong: The testator would have given nothing to the church if his will is to be construed as bequeathing only what really belonged to it. And the devise of all his estate real and personal would be a devise of none of his estate at all.

Sedgewick J. concurred in the appeal being dismissed.

Davies J.—The question for determination

and that everything the bishop owned or possessed at his death, and which was not otherwise specifically devised in his will, passed under this clause to the Roman Catholic bishop of St. John. I agree in general with the reasons for his judgment given by that learned judge, but as I entertained for a time, grave doubts arising out of the ambiguous language used at the close of the clause quoted above, I think it desirable to add a few words. The judgment of the equity court was confirmed on appeal by the Supreme Court of New Brunswick and this appeal is taken from the latter judgment. In the able and exhaustive argument addressed to us by Dr. Quigley, for the appellant, much stress was laid upon the opening words of the disputed devise "Although all the church and ecclesiastical and charitable properties, etc., etc., yet to meet any want or mistake." It was said that these words had reference to two subject matters only, 1st, to the real estate, admittedly standing in, the bishop's personal name and which should have stood in his corporate name, and, secondly, to certain personal property and effects used by the bishop in and about the services of his cathedral but admittedly not his private property, and it was argued that the words were intended to rectify this "want or mistake" referred to in the clause and afforded a key to and controlled the meaning of the general words which followed. I cannot accede to this argument. The utmost that can be said for the language used is that it expresses in a more or less ambiguous way, reasons or motives which influenced the testator in making the general disposition of his property which followed. Standing alone, however, the words could not be fairly construed as limiting to church properties only the generality of the succeeding devise. My difficulties and doubts arose not out of the introductory words of the devise but of those at its close, namely: "In trust for the purposes and intentions for which they are used and established." Were these descriptive of the prope

devise and bequeath all he owned or possessed at his death to his successor in the bishoprick, and to and for the benefit of the Roman Catholic religion, education and chartity within the diocese I am satisfied.

I think that intention sufficiently well expressed and if the language does not leave a legal discretion sufficiently broad to the devisee, then, any difficulties arising out of the trusts must be disposed of as and when they arise on a proper application to the courts. No such difficulties are before us for determination now and once it is held that the words are not words descriptive of the property devised and bequeathed but are simply expressive of a trust we need go no further. It was argued that the specific bequests of the coupon bonds held by the testator to the Roman Catholic bishop of St. John, for the special purposes mentioned in the will, showed that the general words of the disputed clause did, not include all of his-personal estate, and that the further bequests of \$500 to have masses "said for the benefit of his soul and the souls of his devared relatives" and \$100 to one of his executors "in token of good will and on account of trouble he may have in the execution of the will" confirmed that view. The argument is a legitimate one to advance. But the fact that the bequest of the coupon bonds was made for certain special trusts and purposes set out in the will, shows that the testator's intention was that these special bonds whatever their amount (about which there was much dispute but no evidence) should be applied only for the particular objects specified by him and not generally "for the benefit of religion, education and charity in connection with the Roman Catholic church in his diocese." He "earmarked" them accordingly. There is more weight in connection with the Roman Catholic other two small bequests but looking at the purposes for which they were made and the trivial amount of the bequests, I do not think they should be considered as in any way altering the construction which ot

ST. JOHN COUNTY LUMBERING NEWS,

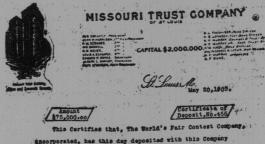
fulmer & Co., of St. Martins, nave moved their mill from near Willow Grove to the McCauley clearing, Church road, where they will cut the logs off the Johnston and Hays properties. Wm. Kirkpatrick, of Quaco Road, had the contract of putting the round lumber to the mill. The roads in many parts of the parish are in bad condition, A St. John M. D. who visited St. Martins on Friday reports not even a track on the middle road on Saturday to ensure a passage through. He thought it best to follow the stage track

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## PROVINCAIL SUBSIDIES' REARRANGEMENTS UP SOON.

Sir Wilfrid Tells Parliament That Matter Will Be Discussed in the Near Future -- Mr. Copp, M. P., Explains His Connection With Digby Dock Improvements.

Ottawa, March 18.—(Special)—In the made against him by Mr. Benneit of East Simece, and Mr. Lancaster of Lincoln.

These members had said that It (Copp) a statement made by Attorney General Pugsley to the effect that Sir Wilfrid Laurier had told him in Ottawa that the

Sir Wilfrid in reply said that the premier of the province had applied for a reconsideration of the terms in regard to the provincial subsidies. He told Mr. Pugsley that matter had not been taken up

rose to a question of privilege and read a

had made a bargain that he would use his



