

## The Connaught Tunnel Construction Suit.

The British Columbia Court of Appeal gave judgment at Victoria Nov. 5, dismissing the appeal against Justice Clement's decision fixing the damages in the case of McIlwee & Sons vs. Foley, Welch & Stewart, at \$575,595.78 and costs. The action arose out of an alleged breach of contract in connection with the boring of the C.P.R. tunnel at Rogers Pass, B.C.

The C.P.R. in 1913 let a contract to Foley, Welch & Stewart for the construction of a tunnel about five miles long, with lines connecting it with the C.P.R. main line, in order to secure a better gradient through Rogers Pass. In 1914 the general contractors let a subcontract to McIlwee & Sons, of Denver, Col., for boring the pioneer and heading tunnels. In addition to a general contract price for this work, the subcontract contained provision for the payment of a bonus of \$1,000 a foot for every foot bored in excess of a stipulated amount per month, the limit being fixed at \$250,000.

In Sept., 1914, after McIlwee & Sons had been at work on their contract for four months, and had proceeded with such rapidity that they claimed that they had earned \$215,000 bonus, in addition to the profits of their contract, troubles arose between them and Foley, Welch & Stewart. The engineer for Foley, Welch & Stewart complained that the McIlwees were using too much compressed air for

their machines and fans and hindering the other workmen. After considerable trouble and counter charges by the McIlwees that the chief contractors were purposely holding back the work, the McIlwees were ordered to stop work on the ground of disobedience of instructions given by the chief contractors' engineer. Later, after some six weeks of negotiations, Foley, Welch & Stewart offered to allow McIlwees to resume work. Instead of resuming work the McIlwees entered suit, claiming the full amount of the bonus and profits on the contract. After a protracted trial the judge decided that the McIlwees should have returned to work on Nov. 9, 1914, when invited to do so, and that their failure to return to work prevented them from obtaining damages for breach of contract. He disallowed the claim for bonus, and gave judgment for \$32,000, which comprised damages at the rate of \$600 a day unearned profits for the period from the time of stoppage of work until Nov. 9.

Both the plaintiffs' and defendants appealed from the judgment and the B.C. Court of Appeal on Aug. 10, 1915, allowed the McIlwee appeal in full with costs and dismissed defendants' appeal. A majority of the court found that McIlwee & Sons were entitled to the full amount of the bonus claimed and also to all the damages for loss of profits they could show on reference to the trial judge. Subsequently leave was granted to amend the statement of claim in accordance with this finding and this was done, the total

claimed for bonus and damages being put at over \$800,000. Foley, Welch & Stewart then appealed to the Judicial Committee of the Imperial Privy Council, which unanimously sustained the B.C. Court of Appeal's judgment. The Privy Council's judgment was given in Canadian Railway and Marine World for July, 1916, pg. 275.

The case subsequently came up again in a British Columbia court for the purpose of fixing the amount of the damages for which judgment was to be entered. After a lengthy hearing judgment was finally given in favor of plaintiffs for \$575,595.98 and costs. Notice of appeal against the judgment was at once given and as a condition of the consent the defendants were required to pay into court a marked cheque for \$600,000 as security for the payment of the judgment in case the appeal was not sustained. As an additional precaution, the plaintiffs served a garnishee on the C.P.R., attaching the funds due on the contract, which it was stated had not been paid out. This action on the part of the plaintiff was opposed, and the garnishee order was refused by Justice Morrison. The application was then taken to the Court of Appeal and the garnishee order made. So that in addition to a marked cheque for \$600,000, the plaintiffs had a garnishee on the C.P.R. as security for the payment of their judgment if they were finally successful.

Argument on the appeal was heard in Victoria lasting for 10 days. The final result was a unanimous judgment of the appeal court dismissing the appeal.

## Orders by Board of Railway Commissioners for Canada.

Beginning with June, 1904, Canadian Railway and Marine World has published in each issue summaries of orders passed by the Board of Railway Commissioners, so that subscribers who have filed the paper have a continuous record of the Board's proceedings. No other paper has done this.

26747. Nov. 19.—Authorizing G.T.R. to build bridge across main track at milepost 3.38 from Harrisburg, Ont.

26748. Nov. 15.—Extending to Dec. 15, time within which G.T.R. shall build crossing on road allowance between Cons. 11 and 12, near Stevensville, Ont.

26749. Nov. 19.—Ordering Great Northern Ry. to provide a weekly train service to and from Clayton Spur, via Cloverdale, B.C.

26750. Nov. 20.—Authorizing Railways and Canals Department to divert, temporarily, Lake Shore Road, and built two crossings, at grade, over Niagara, St. Catharines and Toronto Ry. near Ten Mile Creek, Ont.

26751. Nov. 20.—Relieving G.T.R. from providing further protection at Victoria St., Thamesville, Ont.

26752. Nov. 20.—Authorizing G.T.R. to build siding and spur for Ontario Sewer Pipe Co., East Flamborough Tp.

26753. Nov. 19.—Approving agreement Oct. 10, between Bell Telephone Co. and Innerkip Rural Telephone Co., Oxford County, Ont.

26754. Nov. 16.—Authorizing C.P.R. to build siding 3,393 ft. long from Sec. 5, Tp. 1, Range 7, West of 1st Meridian, to International Boundary in same section, near Windygates, Man.

26755. Nov. 17.—Dismissing application of E. S. Newman Co., Winnipeg, Man., for joint rates between C.P.R., G.T.R., and C.N.R., and Edmonton, Dunvegan & British Columbia Ry.

26756. Nov. 19.—Rescinding order 20173, Aug. 26, 1913; and permitting G.T.R. to take up siding therein referred to, at Milton, Ont.

26757. Nov. 21.—Amending order 26615, Oct. 9, re handling of fish by express companies at St. Thomas, Ont.

26758. Nov. 22.—Further extending, for six months from date time during which Lake Erie & Northern Ry. pending installation of interlocking plant, may operate over crossing at Brantford, Ont.; crossing to be protected by L. E. & N. R. watchmen.

26759. Nov. 22.—Authorizing G.T.R. to build spur for David Christner, Kitchener, Ont.

26760. Nov. 21.—Authorizing C.P.R. to build spur for G. C. Goodfellow, Outremont, Que.

26761. Nov. 21.—Approving deviation of Essex Terminal Ry., as located but not built, at stake 582-95.16, Sandwich West Tp., Ont.

26762. Nov. 22.—Approving plan and specifications of drain under G.T.R. and across Cedar Rapids Transmission Co.'s lands in Charlottetown Tp., Ont.

26763. Nov. 21.—Authorizing C.P.R. to build extension to spur from Rutley Lumber Co., Regina, Sask.

26764. Nov. 21.—Authorizing James Bay and Eastern Ry. (Canadian Northern) to open for traffic its line from Roberval to end of track at St. Felicien, Que., mileage 13.82 to 30.13.

26765. Nov. 23.—Exempting C.P.R. from submitting plan, profile and book of reference of revision in line of its Shuswan Subdivision, near mileage 29, and approving same.

26766. Nov. 23.—Amending order 8755, Nov. 25, 1909, re Canadian Northern Ontario Ry. crossing of, and connecting with G.T.R. at Brooklyn, Ont.

26767. Nov. 23.—Amending order July 21, 1905, re crossing of G.T.R. by James Bay Ry. (C.N.R.) in East Gwillimbury Tp., Ont.

26768. Nov. 23.—Ordering Canadian Northern Ry. to maintain former schedule of trains 9 and 10, between Deseronto and Toronto, as directed by order 25427, Sept. 15, 1916.

26769. Nov. 24.—Approving Michigan Central Rd. standard freight mileage tariff, C.R.C. 2725, cancelling C.R.C. 848.

26770. Nov. 23.—Amending order Nov. 12, 1906, allowing Canadian Northern Ontario Ry. to cross G.T.R. spur at rail level to Edwards mill's premises at Rockland, Ont.

26771. Nov. 26.—Approving Elgin & Havelock Ry. standard maximum freight mileage tariff, C. R.C. 3, cancelling C.R.C. 1.

26772. Nov. 23.—Extending for 60 days from date time within which G.T.R. shall erect freight shed at Beauharnois, Que.

26773. Nov. 24.—Ordering G.T.R. to lower culvert under its tracks at South River, Ont., and deepen water course by May 31, 1918.

26774. Nov. 23.—Ordering Town of Virden, Man., to pay C.P.R. \$5,241.22, being half of progress estimate of subway required by order 25751, Nov. 29, 1916, and that security put up by the town be left undisturbed.

26775. Nov. 22.—Authorizing Hull Electric Co. to build spur for R. H. Wright, Aylmer, Que.

26776. Nov. 26.—Approving Northern Express Co. bylaw passed Oct. 13.

26777. Nov. 29.—Authorizing James Bay and Eastern Ry. to build Y at St. Felicien, Que.

26778. Nov. 29.—Amending order 903, Jan. 27, 1906, re crossing of G.T.R. by James Bay Ry. (C. N. R.) near Wishago or Rama Island, Ont.

26779. Nov. 29.—Rescinding order 22132, July 2, 1914, in so far as it restricts Canadian Northern Ry. trains to 22 miles an hour over Vegreville-Calgary line, between mileage 48 and 75.

26780, 26781. Nov. 29.—Authorizing Crows Nest Southern Ry. to build spurs for Adolph Lumber Co., near Mott and near Baynes, B.C.

26782. Nov. 30.—Authorizing C.P.R. to build spur for C. C. Robins, in Lot 6, Sec. 20, Tp. 23, Range 4, east principal meridian.

26783. Nov. 30.—Authorizing Niagara, St. Catharines and Toronto Ry. to open for traffic its temporary diversion in Stamford Tp., Ont., as approved by order 26710, Nov. 5.

26784. Nov. 29.—Extending, for six months from date time during which Lake Erie & Northern Ry. was authorized to operate over crossing in Brantford, Ont., pending installation of interlocking plant.

26785. Dec. 1.—Authorizing C.P.R. to remove station agent at Melville, Ont.

26786. Dec. 1.—Amending order 26722, Nov. 7, re C.P.R. spur for Hydro Electric Power Commission, Toronto.

26787. Nov. 30.—Authorizing C.P.R. to operate over G.T.R. sidings into Libby, McNeill and Luby and Pittsburg Des Moines Co.'s premises, Chatham, Ont.

26788. June 21.—Extending to Dec. 31, 1917, time within which G.T.R. shall complete spur for W. H. Banfield & Sons, Toronto.

26789. Dec. 1.—Approving clearances at siding serving Dominion Cannery, Ltd., St. Catharines, Ont.

26790. Dec. 1.—Authorizing Canadian Northern Ontario Ry. to build spur for Laforest & Clemow, Caitha, Ont.

26791. Dec. 1.—Relieving G.T.R. from providing further protection at crossing near Paynes station, Ont.

26792. Dec. 1.—Approving agreement between Bell Telephone Co. and Dunnville Consolidated Telephone Co., Haldimand, Lincoln, Welland, and Brant Counties, Ont., Nov. 6.

26793. Dec. 3.—Authorizing G.T.R. to build spur for National Shipbuilding Co., Goderich, Ont.

26794. Dec. 3.—Rescinding order 26036, Apr. 17, 1917, respecting certain supplements to G.T.R. and C.P.R. tariffs.

26795. Nov. 8.—Relieving G.T.R. from providing further protection at crossing of Albert St., West Hawkesbury Tp. (Wassons), Ont., in so far as its southbound trains are concerned; trees on northwest angle to be trimmed so as not to obstruct view.

26796. Nov. 30.—Ordering C.P.R., G.T.R., Canadian Northern Ontario Ry. and Toronto Ry. to pay City of Toronto \$115,000, \$30,000, \$135,000, and \$80,000, respectively, in addition to any amounts heretofore paid by them, if any, on account of cost of and damages incidental to the elimination of level crossing at Queen St., Toronto, under order 7813; without prejudice to contentions in regard to correctness of accounts submitted, or any item therein.

26797. Dec. 4.—Authorizing C.P.R. to build highway diversion in s.w. ¼ Sec. 14, Tp. 11, Range 10, west 3rd meridian, and close diverted portion of road allowance; and rescinding order 21880, May 26, 1914.

26798. Dec. 4.—Ordering that each of crossings of Devonshire Road by G.T.R. and Pere Marquette