

one-half of this claim be paid. After a number of consultations, including interviews with the contractors during which they urged very strongly the payment of their whole claim, the practice that had been followed by the department in similar cases, of dividing under such exceptional circumstances the loss with the contractors, was adopted.

SIR GEORGE PERLEY: The latter part of the minister's explanation seems to be quite proper. The main item, I understand, was the extra cost of ballast which had been estimated at \$2 and which it was found for certain reasons cost over \$3. Is that a good reason for making an extra payment? Would the contractors have presented the government with some money if they had been able to get their ballast at \$1 instead of having to pay \$2 as was estimated?

Mr. ELLIOTT: There is no doubt about that and I may tell my hon. friend the contractors feel they are very badly treated as it is. They have lost their time and they are out now the sum of \$27,000, but it is this force majeure that is, in the opinion of the engineers, responsible for the fact that the contractors were not able to get into the new quarry which they owned.

Mr. HANSON: I listened very attentively to everything the minister said. Does it not all come down to this, that the department is making a compassionate allowance? There is not a single instance of a legal or even equitable claim against the department, but because the contractors have fallen upon bad days and met a serious contingency they had not counted upon, the department now, as a compassionate allowance, is making a contribution of 50 per cent of the loss. This is on the same basis as the Escuminac item in New Brunswick.

Mr. ELLIOTT: Quite so.

Mr. HANSON: I should like, for the information of parliament, to know what is the annual cost to the country of proceeding on that principle; because I know the amount is increasing. A claim for extra cost of procuring ballast would never be allowed by a private company if they had a contract with the contractor, or by a municipality which was guarding money collected from the taxpayers by direct taxation. I am satisfied on that point, having had a very substantial municipal experience in connection with public works. I am not at the moment adversely criticizing this policy, because I know of cases of great hardship such as occurred in the Escuminac

case where not the contractor but the sub-contractor lost \$10,000 and was pretty nearly wiped out. This policy is costing the country a great deal of money and we ought to know for the last fiscal year how many such cases there have been and what it is going to cost the country to divide these losses. It cannot be urged that there was any force majeure in connection with the ballast; it was simply lack of foresight on the part of the contractor. He did not make a contract for the delivery of his ballast; someone else got in ahead of him, and he had to open up a new quarry, and that accounts for \$32,000 of the total loss, according to the minister's statement. I do not think the contractor was entitled to a cent on account of the increased cost of the ballast. We might as well understand the principle on which this money is voted. This is purely a gift to the contractor. He did not look after his contract in a businesslike way. Had he secured the ballast before the other people got in ahead of him, he would have been able to do the work at the bid price. It is not a case of force majeure. Floods and high water, of course, are beyond the control of a contractor, but he ought not to be paid because of his neglect in securing the ballast.

Mr. ELLIOTT: I think my hon. friend has taken a pretty reasonable view, and if I may say so, a fairly accurate view of the legal situation, except that the law with regard to force majeure is that if the circumstances were so unusual that they could not by any reasonable diligence have been foreseen and provided against, it could not have been in the contemplation of the parties.

Mr. HANSON: It is not quite that wide.

Mr. ELLIOTT: I think my hon. friend will find that that is exactly what it is.

Mr. HANSON: That would cover lack of business ability.

Mr. ELLIOTT: I want to be fair to my hon. friend because I think that he has been absolutely fair in his criticism of the Escuminac case as well as the one now under consideration. Might I point out that it was not lack of diligence on the part of the contractor that prevented his getting the stone before the Wayagamack company got in? They got in between the time he submitted his tender and the time he was awarded the contract.

Mr. HANSON: He should have had an option on the stone.

Mr. ELLIOTT: I think my hon. friend would hardly say that a contractor who did not know whether he was going to get the