

tion of the right of way beyond Ste. Anne's had been procured. This may or may not be so. The proof before me is lacking on this point. Here there is a distinct difference between the views put forward by the counsel for the railway company and the counsel for the Crown. The counsel for the railway company contend that what the court has to do, is to find the cost as if it were an accounting between the directors of the railway and its shareholders; and that this amount being shown by the books of the company as the amount expended at that date, should therefore be accepted as the cost. Numerous witnesses were called, gentlemen of good standing—accountants from Montreal—who gave evidence as to the custom in regard to the charging up of interest, etc., to capital account.

When I deal with the case of the Saguenay railway, the absurdity of this contention put forward on the part of the railway company will be apparent. The directors of a company might have to pay fifty per cent commission for obtaining a loan of a million dollars. It would undoubtedly be quite right as between themselves and their shareholders to charge this fifty per cent in their accounts. So also they might delay construction for a period of say 20 years, in the meanwhile paying interest on this bonded indebtedness. As between the directors and their shareholders, as a matter of book-keeping, it may be quite reasonable to charge up every item of expenditure. But the case before me is of a different character. I am not dealing with the accounts as between the shareholders and their directors. What I have to ascertain is the value as between the vendor and the purchaser and that value must be the actual cost of the railways, less subsidies and less depreciation.

The railway company contend that owing to the books kept by Mr. Beemer being destroyed, there is no other proof available. There is no suggestion that there was any intention of destroying these books with the view of preventing inquiry. Colonel Wurtele's evidence is to the effect that he was the executor of Mr. Beemer, that it turned out that Mr. Beemer's estate was insolvent. He advised the heirs next of kin to relinquish all claim to the estate. The books were retained by him for several years, and as he considered them of no value, and they were occupying space required, he destroyed them. This may render it more difficult to arrive at the value. I suggested at the trial that it did not seem to me so impossible as counsel seemed to think. Two or three times I pointed out to them that it would be easy to have competent valuers go over this line of railway from Quebec to St. Anne, and to value in detail the present railway. Of course it would not be by any means conclusive. The present values would probably be considerably higher than when the road was originally constructed. Under the agreement with the Crown made pursuant to the statute, a good title has to be made to the right of way, and I would imagine that the title deeds conveying this right of way would show the price paid.

By the Trust Deed which executed on the 11th day of June, 1898, entered into after the passing of the statute, Cap. 59, 58-59 Vic. dealing with the application of the proceeds of the stock and the bonds, it is provided that out of the proceeds of the bonds, the trustees

[Mr. Carvell.]

shall pay off and redeem the present interim bonds, the whole as set forth in schedule "A" to the deed; and also to pay the floating debt detailed in schedule "B."

Now it is admitted that these two items of \$500,000 referred to in schedule "A," and also the item of \$794,869.58 floating liabilities, comprise part of this item of \$2,038,149.40. Crown counsel in their statement were of opinion that these two items of \$500,000 and \$794,869.58 should be taken as the cost up to that date, namely July 1st 1898. I do not agree with that contention. I fail to see how it can be assumed without further proof that the proceeds of these interim bonds, namely \$500,000, went into the construction of the railway. They may or may not. That is a question of proof. The bonds were held by the various parties shown on page 15 as Schedule "A." They were held as collateral security by the various parties. What the nature of the debts due to these various parties is I would have thought susceptible of proof—at all events before such an item can be allowed, further inquiry will be necessary, and so with regard to the liabilities.

Unquestionably a considerable portion of them never went into the railway. Colonel Wurtele states as follows:

Q. A lot of these items on their face do not appear to be items that went into the construction of the road, how is that?

A. They may have gone into the operation of the road, we were operating the railway.

It would be impossible to accept Colonel Wurtele's evidence as proving the fact that these two particular items went into the construction of the railway. Other evidence would be required before I would be willing to accept those two sums of \$500,000 and \$794,869.58 as having been expended in the construction of this 21 miles of railway.

I have to determine the value of the railways, the actual cost of them—and construing the statute as I think it must be construed, I would be unable upon the evidence as presented before me, to come to the conclusion that this item of two million odd dollars should be taken as being the actual cost of the railway to that date.

I do not think as I have stated before, that I am concerned with the manner in which as between the directors and their shareholders, the company kept their books. What I have to ascertain, as well as I can, is what the meaning of the words 'actual cost and value' is.

I pointed out during the progress of the trial the course which I thought might be followed. My remarks will be found at page 102, and the following pages, of the transcript of the evidence.

I may call the attention of counsel to the fact that in the trust deed, Schedule "D," at page 19, there is the estimate of cost of constructing certain extensions. The total is 11 miles—and the total estimate is \$149,947, which would be under \$14,000 a mile—and while of course the main railway previously built may not have been built at that low figure, the contrast between the two figures, namely, \$92,500 a mile and the \$14,000 a mile, is striking. There seems to be a little controversy as to the expenditure after July 1, 1898. At present it is unnecessary for me to deal with the expenditure between that time and November, 1916. It can be taken up later.