

was to take from it the amount of \$2,500,000 as represented by these bonds. There were other deductions to which I shall refer later on.

There are other provisions in the agreement in question which it is unnecessary for me to refer to at the present time. There are provisions protecting and guarding the Crown against any charges or encumbrances on the properties or any defect in regard to the titles to the right of way, etc.—the intention of the agreement clearly being that His Majesty shall receive an absolute and clear title to all the properties in question.

On the opening of the case, I suggested that the duties of the Exchequer Court did not extend to an ascertainment of whether the various railways had good titles to the properties being transferred. These questions of title are questions provided for by the agreement, and it is a matter for the crown attorneys and counsel to be satisfied upon. This view was assented to by the counsel for the railway companies and for the Crown. The court assumes that the railways are deeding the various properties with good title thereto, and the valuation is based on that assumption.

The method of procedure was one of considerable moment. I came to the conclusion that the only practical way of arriving at a result would be to adopt the method adopted in the arbitration in which I acted as counsel for the C.P.R. company in regard to what was known as the Onderdonk sections of the railway in British Columbia. The same course of procedure used to be adopted in the administration of estates in Ontario. The counsel, both for the railways and for the Crown, acquiesced in my view as to the course of procedure to be adopted. I therefore directed the railway companies to file and furnish to the Crown accounts showing in detail what they claimed to be the amount to which they were entitled under the agreement in question. I also directed that upon counsel for the Crown being furnished with these accounts they should investigate them and such items as they were prepared to admit should be admitted and such items as they were not prepared to admit would then become the subject of inquiry, and evidence could be adduced in respect thereof. I also directed that the Crown counsel should furnish to the counsel for the railways a statement of the amount which the Crown claimed should be set off for depreciation in respect of each of the three railways. Pursuant to these directions the railway companies by their counsel filed and served a complete and detailed account of their claim.

Competent experts were employed by the Crown to make a minute examination of the three lines of railway, and to furnish in detail what they considered the proper amount to be deducted for depreciation. A large amount of time was occupied by these gentlemen in making this inquiry. Subsequently, the railway companies, by their counsel, accepted as correct the amounts as found by the experts for the Crown. The amounts of the depreciation to be offset against the value of the railways has therefore been settled. The figures I will deal with later.

From a cursory reading of this I do not think the actual figures of the deductions are referred to in the judgment. Of course,

they may be found in the evidence, because it was admitted by all parties:

Another question of considerable importance is in regard to the offset referred to in the statute as subsidies. Before me it was conceded by Counsel for the Crown that the only subsidies in contemplation at the time of the Statute, were subsidies granted by the Dominion Government. This view is, in my judgment, untenable. I have to follow the Statute. The Statute say "less subsidies." There is nothing in the Statute which would limit the meaning of the word "subsidies" to subsidies granted by the Dominion Government only. The word "subsidy" as defined in Webster's International dictionary, page 2070, is as follows:

"A grant of funds or property from a Government as of the state or municipal corporation to a private person or company to assist in the establishment or support of an enterprise deemed advantageous to the public, a subvention."

The manifest object of the statute is that any grants furnished by the public towards the construction of the railways should be deducted. If in point of fact the Statute and the agreement based upon the statute does not carry out what the parties intended, the only course in my judgment open to the parties is to have the statute amended. I must take the statute as I find it, and according to my view, subsidies include not merely Dominion but Provincial as well. This construction is of importance as the Quebec subsidies amount to something in the neighbourhood of \$440,000, which according to the view I entertain must be deducted from the value as ascertained.

Inglis v. Buttery (1). In the Dominion Coal Co. v. Dominion Iron & Steel Co. (2). Judge Longley rejected evidence tendered as to the communings preceding the agreement, and this view was upheld in the appellate court in Nova Scotia, and also in the Privy Council (3). And in a late case the city of Toronto v. Consumers Gas Co. (4) decided by the Privy Council, Lord Shaw in delivering the judgment of the board uses the following language.

I shall not read that because it is the judgment of Lord Shaw and simply buttresses the opinion of the learned judge of of the Exchequer Court. Judge Cassels continues:

I come now to the consideration of the accounts as filed by the railways. I will deal first with that relating to the Montmorency division. The first item is dated July 1, 1898: road and equipment, real estate, buildings, etc., Montmorency division, \$2,038,149.49. This starting point is assumed by the railways to have been the cost of construction up to that date. At the date in question, namely, the 1st July, 1898, according to Colonel Wurtele, the road had been constructed as far as Ste. Anne's. The mileage of this road was about 21 miles, and it may be that they were running a mile or two beyond. Even if it were granted that 22 miles instead of 21 miles of the railway had been constructed at that date, the cost would be in the neighbourhood of \$92,500 a mile. Colonel Wurtele puts it about \$100,000. It seems a high figure. It is stated by counsel for the railway company that a certain por-