

DATED APRIL, 1912.

Petition

—of—

THE GRAND TRUNK PACIFIC
RAILWAY COMPANY

—to—

HIS ROYAL HIGHNESS THE
GOVERNOR GENERAL IN COUNCIL

—to—

rescind and set aside Order No. 15735 dated January 2nd, 1912, of the Board of Railway Commissioners for Canada, directing the Petitioner to remove sufficient of the rock fill at Cameron Bay to leave an opening at the deepest point of at least thirty feet in width, and to file with the Board before February 15th, 1912, and furnish the applicants with a plan showing the location of opening and the depth of the girders for carrying its tracks;

To rescind and set aside Order No. 15730, dated January 2nd, 1912, refusing the Petitioner's application for approval of location Prince Rupert Westerly, Mile 0 to Mile 3.23;

To issue an order approving of the location of the Petitioner's Railway from Prince Rupert Westerly, Mile 0 to Mile 3.23, Range 5, Coast District, British Columbia, as shown on plan, and profile on file with the Board of Railway Commissioners.

*This is Exhibit "a" referred to
in Notice of Mrs. J. H. Ruggan
dated May 22nd, 1912.*

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See back cover

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TO HIS ROYAL HIGHNESS PRINCE ARTHUR WILLIAM
PATRICK ALBERT, DUKE OF CONNAUGHT AND OF
STRATHEARN, AND EARL OF SUSSEX IN THE
PEERAGE OF THE UNITED KINGDOM OF GREAT
BRITAIN AND IRELAND, DUKE OF SAXONY,
PRINCE OF SAXE COBOURG AND GOTHA; KNIGHT
OF THE MOST NOBLE ORDER OF THE GARTER,
etc., etc., GOVERNOR GENERAL OF CANADA.

In Council

THE PETITION of the Grand Trunk Pacific Railway Company,

Humbly Sheweth

1. That on or about the fourteenth day of February, 1910, an application was made on behalf of John Y. Rochester, The Georgetown Lumber Company, Limited, the Union Transfer Company, Westenhaver Brothers, The Westholme Lumber Company, Limited, and W. M. Law, all doing business at Prince Rupert in the Province of British Columbia, by Messrs. Carss & Bennett, their Solicitors, to the Board of Railway Commissioners for Canada, as follows:

TO THE BOARD OF RAILWAY COMMISSIONERS OF CANADA.

Application No.

John Y. Rochester, The Georgetown Lumber Company, Limited, The Union Transfer Company, Messrs. Westenhaver Bros., The Westholme Lumber Company, Limited, and W. M. Law, all doing business at Prince Rupert in the Province of British Columbia, hereby apply to the Board for an Order under Section 233 of The Railway Act directing the Grand Trunk Pacific Railway Company to construct a bridge across part of the entrance to Cameron Bay on the portion of their line westerly from 0 between Stations 28 and 30 in the townsite of Prince Rupert, so as to leave an entrance at least 45 feet in width for the passage of barges and other small craft, beneath the same, from Prince Rupert Harbor into the said Cameron Bay.

1. Each of the applicants are lessees for a term of years of a lot or lots abutting or adjacent to the waters of Cameron Bay several of which lots are now being used by the lessees as storage places for sand, gravel, lumber, coal and other merchandise, and for the unloading of the same from barges.

2. That by reason of the construction of the Railway line across the entrance to Cameron Bay the applicants will be deprived of the use of the said lots as an unloading place and as warehouse ground, unless access to the harbor be provided for.

3. That for the profitable enjoyment of the said lots it is necessary that provision should be made for free access for barges and small craft to and from the harbor below the Railway grade.

4. It is necessary for the safety and convenience of the public that access to this sheltered bay be available in time of the sudden storms which arise on the harbor, it being the only sheltered place on that part of the waterfront easterly for several miles.

5. It is necessary for providing a safe berth for coal and lumber barges, there being no other place on the waterfront for more than a mile on either side of Cameron Bay, that free access be had from the bay to the harbor.

Dated this 14th day of February, 1910.

"Carss & Bennett"

Solicitors for Applicants.

Address, Prince Rupert, B.C.

2. That in due course Your Petitioners filed with the Board the following answer to the said application:

March 1st, 1910.

Mr. A. D. Cartwright,
Secretary, Board of Railway Commissioners,
Ottawa, Ont.

Dear Sir:—

In regard to the application of John Y. Rochester and others for a bridge across the entrance to Cameron Bay (Cow Creek), you have already on file a letter from our Chief Engineer on this subject, which I sent you on 27th January, 1910.

I beg further to say that the City of Prince Rupert is not yet incorporated although a bill for that purpose is now before the House. The water front in Prince Rupert is owned by the Provincial Government and the Railway Company. The division of this water front occupied considerable time, and was the subject of an agreement between the Province and Company, in which provision was made for what the Province deemed to be a reasonable number of crossings over the Railway property. These crossings are also shown on the registered plan of the townsite. No provision was made for an opening at Cameron Bay, and it was understood between the Engineers of the two parties that there should be a solid fill at this place.

Yours truly,

"D'Arcy Tate,"

Solicitor.



The letter referred to in the foregoing answer addressed to the Secretary of the Board is as follows:

January 25, 1910.

Mr. D'Arcy Tate,
Solicitor.

Dear Sir:

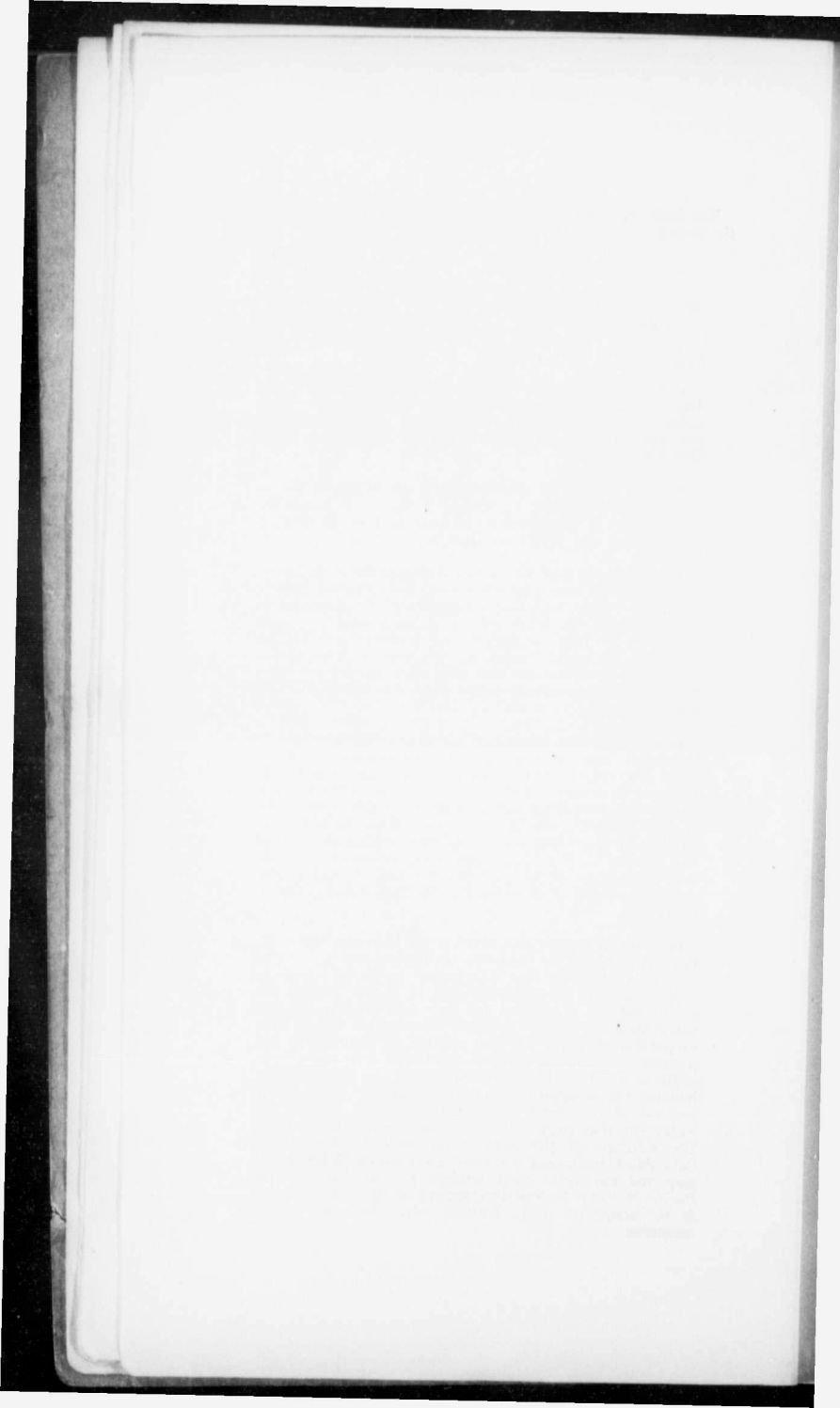
I am returning herewith letter from the Secretary of the Board of Railway Commissioners and the enclosures which accompanied it, referring to the approval of our location for the extension of our line at Prince Rupert from Mile 0.00 to Mile 3.25.

For the purpose of illustrating the conditions as far as they affect the subject which Mr. J. Y. Rochester has drawn the attention of Commissioner McLean to, I am attaching a lithographed map of Prince Rupert.

The inlet referred to in the correspondence is locally known as Cow Creek. By reference to the maps and profiles on file, it will be seen that the elevation of the ground in front of Cow Creek where our centre line is located is eight feet above low tide. At high tide the water extends back as shown on the map. During the few hours of high tide, a scow could be towed into this inlet for a distance of about 300 feet from the railroad and be taken out during the next high water.

It may be some advantage to the parties who have a temporary lease of some ground adjoining this inlet to enjoy that facility, but in order to make this possible the Railroad Company would have to go to an extra expense of between \$300,000.00 and \$400,000.00 on the construction of open bridges across the entire yard, which is to be constructed at that point, and for all time maintain a staff of men to open these bridges when it was desired to take the scow in and out of the inlet, which would, of course, also entail suspension of all railroad traffic during that period at that place.

In order to explain the extent of the hardship which Mr. Rochester draws the Commissioner's attention to, I would like to supplement the information which he gives by explaining that when the townsite of Prince Rupert was subdivided into blocks and lots the water frontage was also subdivided, the British Columbia Government taking their proportion of each. All land suitable for building or city purposes was divided into lots and blocks and such portion of the land within the area subdivided as was unsuitable for building lots or other city purposes, especially in the neighborhood of the water front, was considered part of the water lots that went with the division of the water front. The selection of the water front made by the British Columbia Government is colored green on the lithographed map and the water front retained by the Grand Trunk Pacific Railway for the development of its ocean terminal in the shape of yards, building sites, wharves, etc., is uncolored.



When this subdivision was being made, maps were submitted to the British Columbia Government showing the proposed use which the Railway Company would make of the property which they desired. The British Columbia Government selected the water frontage and water lots and other property colored green at Cow Creek. The arrangement was that we were to have 100 feet wide for right of way through all property selected by the British Columbia Government on the location of our line, but in order to admit of the construction of the yards and other plant to be located at Cow Creek and easterly over the estuary known as Hays Creek they extended this necessary width right of way of 100 feet to 350 feet in front of Cow Creek. The inlet at Cow Creek was never for a moment considered water frontage or navigable water. The British Columbia Government are now constructing a Government wharf on their water frontage as far as it extends from Cow Creek westerly and the Grand Trunk contemplate the construction of a wharf on their water frontage from Cow Creek easterly. The construction of these wharves will, of course, shut up Cow Creek Inlet.

Recently Mr. Rochester and a few more associated with him got a temporary lease from the British Columbia Government to occupy some of their land on Cow Creek, for how long I do not know. It was fully understood of course by the British Columbia Government at the time of the division of this water front that we were going to build our yards as shown across Cow Creek. From this it is evident that the carrying out of our plans now as originally contemplated is working no hardship on anybody. The first request made on the Company was to put in a pile bridge in front of Cow Creek so that row boats, etc., could be pulled in. Later, as the subject got agitated, the demand has been made for an open channel. I have explained all these conditions to you at your request for information for the other departments. It is of importance to the Railway Company to have the subject disposed of as soon as possible as the building up of the town and especially along the water front is making it very hazardous and expensive work to construct the railroad on account of the danger from shooting rock, etc.

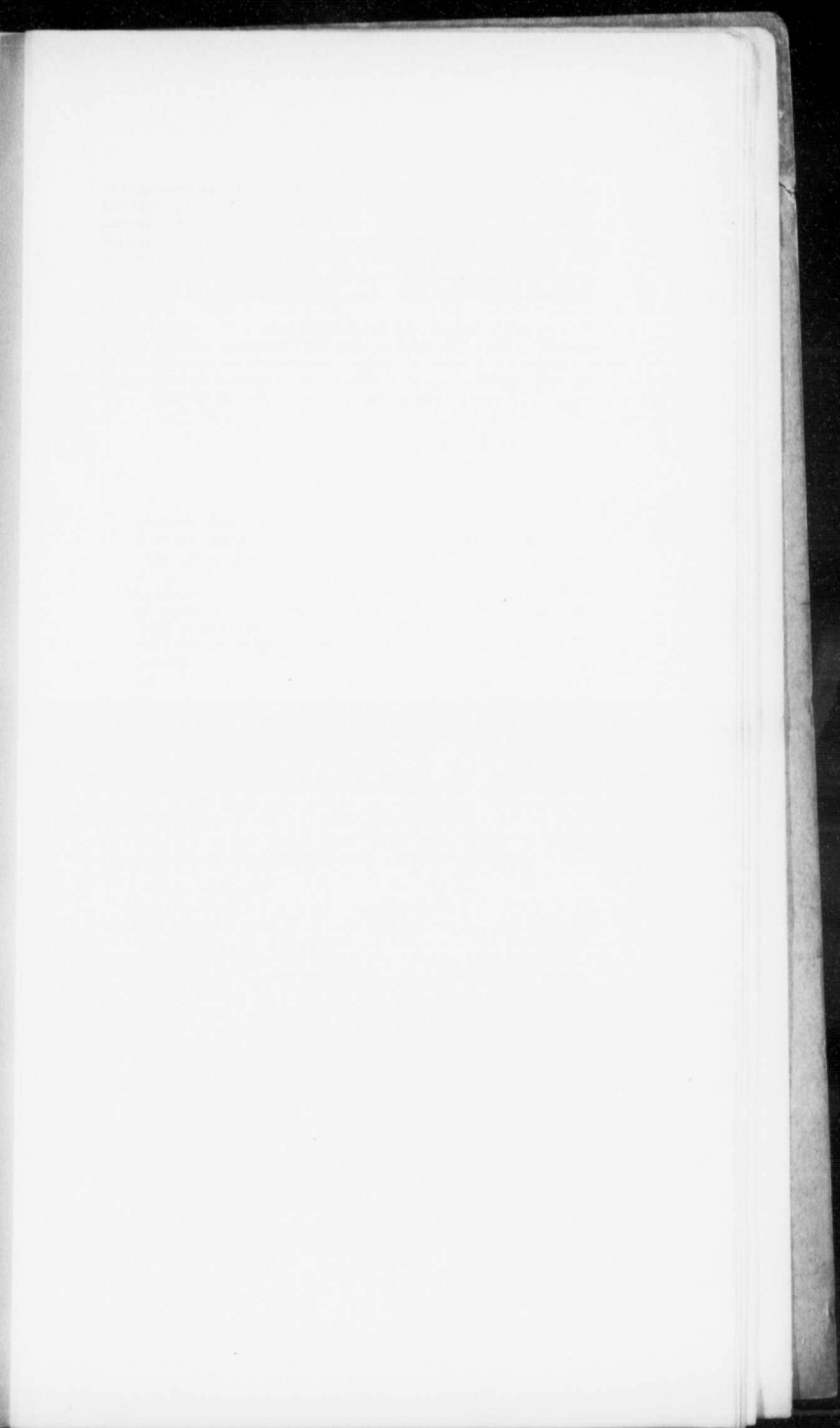
Yours truly,

"B. B. Kelliher"

Chief Engineer.

3. That on or about the 20th day of September, 1911, Your Petitioners forwarded to the Secretary of the Board of Railway Commissioners an application for the approval of its location—Prince Rupert Westerly, mile 0.00 to mile 3.23, (which location traverses the cove known as Cameron Bay or Cow Creek).

4. The application referred to in the preceding paragraph was not made merely for the purpose of securing the approval of the Board to the location in question, as such location was entirely upon lands owned by the Railway Company, and did not traverse any public streets or thoroughfares; no sanction therefore being necessary to enable the Company to proceed with construction on its own land. The real object of the application



was that by obtaining the approval of the Board to the location in question, the mileage embraced therein might be considered as part of the mileage of the Grand Trunk Pacific Railway, for the purpose of enabling Your Petitioners to obtain payment of the amount applicable to such mileage out of the proceeds of the bonds guaranteed by the Government of the Dominion of Canada, under the provisions of the deed of trust by way of mortgage set forth in Schedule A to chapter 98 of the Statutes of Canada 1905.

5. Both applications came on for hearing before the Board on 19th August, 1911, when judgment in each case was reserved.

6. On the 27th day of November, 1911, the Chief Commissioner delivered the following written judgment upon the application of Your Petitioners, referred to in clause 3 hereof,—

RE. PRINCE RUPERT LOCATION OF GRAND TRUNK PACIFIC RAILWAY COMPANY.

THE CHIEF COMMISSIONER:

The Railway Company applies for approval of its location "Prince Rupert westerly, mile 0 to mile 3.23." The facts are as follows:

The plans for the location of this railway from Prince Rupert easterly were long ago approved, the road constructed and opened for traffic in June, 1911. Without submitting any route map for approval by the Minister, or any location plans for approval by the Board, the Company proceeded to construct some three and one-quarter miles of road from the western terminus at Prince Rupert in a westerly direction. The work covered a very large quantity of blasting of solid rock along the face of the city on the harbor front. The road bed has been completed for some time, but in August last the ties and rails had not yet been laid. The reason that the Company now comes to the Board for the approval of its location plans is that it is unable to obtain some \$400,000.00 from the Government under the contracts between the Government and the Company, unless it is able to show that the three and one-quarter miles has been constructed under the provisions of the Railway Act. I presume if the Company had not been prevented in getting its money it would have continued to ignore the provisions of the law that must be observed before construction is commenced.

Section 157, requiring the approval of the route map by the Minister, sections 158 and 159, requiring a plan, profile, and book of reference to be prepared and filed with the Board, were all overlooked by the Company. Instead of proceeding as the law required, work was commenced and stone fills were constructed across tidal lands, and access from the harbor to the lots of several persons, including a saw mill, was entirely cut off. It was contended by Counsel for the Company, when this application was made, that he did not think the application necessary; that he was of opinion that this was merely the yard of the Company, and



required no route map or location plan, but that the Company was compelled to apply in order to get the money from the Government. Prior to January 1st, 1910, the Board had held, in many cases, that it had no jurisdiction to grant approval of works done in contravention of the Railway Act, and by 9 and 10, Edward VII, Cap. 50, sec. 2, the Board was empowered to approve of works constructed, without approval, before December 31st, 1909. It was thought this would enable the Companies to get matters cleared up, and under that section the Board has made many Orders. The road bed in question here was built subsequent to above date; and so the Board has no jurisdiction to grant approval of the location plan.

The application must be refused.

Ottawa, Nov. 27th, 1911.

7. On the 20th December, 1911, the Chief Commissioner delivered the following written judgment upon the application referred to in paragraph 1 hereof:

Rochester v. Grand Trunk Pacific Railway Company.

THE CHIEF COMMISSIONER:

On November 25th, 1909, J. Y. Rochester complained to the Board upon behalf of himself, the Georgetown Lumber Company, the Union Transfer Company, the Westholme Lumber Company, Westenhaver Bros., and W. M. Law, that the Grand Trunk Pacific Railway Company intended to make a solid embankment across the entrance to Market Cove, in front of lots leased by the above parties from the Government of the Province of British Columbia. The Board was asked, if plans were filed for approval, that the rights of these parties should be protected.

On December 29th, 1909, the Railway Company filed location plans from mileage 0.00 to mileage 3.23, Prince Rupert westerly, and asked for their approval. At this time no route map for this portion of the Road had been approved by the Minister, and as the complaint of Rochester, et al, was before the Board, approval of these location plans was withheld pending further enquiry.

On January 5th, 1910, the Company was advised by the Board that as lands of the Province seemed to be affected, the Government of British Columbia should be served with a copy of the application of the Company.

On January 18th, the Company was furnished with a copy of the complaint and request of Mr. Rochester and his associates.

On January the 27th, the Solicitor for the Railway Company forwarded to the Board a copy of a letter from the Chief Engineer of the Company, which is important, and is as follows:—

“I am returning herewith letter from the Secretary of the Board of Railway Commissioners, and the enclosures



which accompanied it, referring to the approval of our location for the extension of our line at Prince Rupert from mile 0.00 to mile 3.23.

"For the purpose of illustrating the conditions, as far they affect the subject which Mr. J. Y. Rochester has drawn the attention of Commissioner McLean to, I am attaching a lithographed map of Prince Rupert.

"The inlet referred to in the correspondence is locally known as Cow Creek. By reference to the maps and profiles on file it will be seen that the elevation of the ground in front of Cow Creek, where our centre line is located, is eight feet above low tide. At high tide, the water extends back as shown on the map. During the few hours of high tide, a scow could be towed into this inlet for a distance of about 300 feet from the railroad and be taken out during the next high water.

"It may be some advantage to the parties who have a temporary lease of some ground adjoining this inlet to enjoy that facility but in order to make this possible the Railroad Company would have to go to an extra expense of between \$300,000.00 and \$400,000.00 on the construction of open bridges across the entire yard, which is to be constructed at that point, and for all time maintain a staff of men to open these bridges when it was desired to take the scow in and out of the inlet, which would, of course, also entail suspension of all railroad traffic during that period at that place.

"In order to explain the extent of the hardship which Mr. Rochester draws the Commissioner's attention to, I would like to supplement the information which he gives by explaining that when the townsite of Prince Rupert was subdivided into blocks and lots, the water frontage was also subdivided, the British Columbia Government taking their proportion of each. All land suitable for building or city purposes was divided into lots, and blocks, and such portion of the land within the area subdivided as was unsuitable for building lots, or other city purposes, especially in the neighborhood of the water front, was considered part of the water lots that went with the division of the water front. The selection of the water front made by the British Columbia Government is colored green on the lithographed map, and the water front retained by the Grand Trunk Pacific Railway for the development of its ocean terminal in the shape of yards, buildings, sites, wharves, etc., is uncolored.

"When this subdivision was being made, maps were submitted to the British Columbia Government showing the proposed use which the Railway Company would make of the property which they desired. The British Columbia Government selected the water frontage and water lots and other property colored green at Cow Creek. The arrangement was that we were to have 100 feet wide for right of way through all property selected by the British Columbia Government on the location of our line, but in order to admit of the construction of the yards, and other plant to be located at Cow Creek and easterly over the estuary known as Hays Creek they extended this necessary width of right of way of 100 feet



to 350 feet in front of Cow Creek. The inlet at Cow Creek was never for a moment considered water frontage or navigable water. The British Columbia Government are now constructing a Government wharf on their water frontage as far as it extends from Cow Creek westerly, and the Grand Trunk Pacific contemplate the construction of a wharf on their water frontage from Cow Creek easterly. The construction of these wharves will, of course, shut up Cow Creek Inlet.

"Recently Mr. Rochester and a few more associated with him got a temporary lease from the British Columbia Government to occupy some of their land on Cow Creek, for how long I do not know. It was fully understood, of course, by the British Columbia Government at the time of the division of this water front that we were going to build our yards as shown across Cow Creek. From this it is evident that the carrying out of our plans now as originally contemplated is working no hardship on anybody. The first request made on the Company was to put in a pile bridge in front of Cow Creek so that row-boats, etc., could be pulled in. Later, as the subject got agitated, the demand has been made for an open channel. I have explained all these conditions to you at your request for information for the other Departments. It is of importance to the Railway Company to have this subject disposed of as soon as possible as the building up of the town, and especially along the water front, is making it very hazardous and expensive work to construct the railroad on account of the danger from shooting rock, etc."

On February 5th, the Board received from the Department of Public Works a copy of petition sent to the Minister of which the following is a copy:

"We the undersigned Lessees from the Provincial Government of British Columbia of the whole of the warehouse lots marked in red as per attached sketch plan, on what is known as Cow Bay, Prince Rupert Harbour, beg respectfully to direct the attention of your Department to the necessity of a Drawbridge being installed on the Grand Trunk Pacific Railway at the point of the crossing of the Bay in front of our property. As this property was acquired by us for the purpose of handling lumber, coal, sand, and gravel from scows and barges, the blocking of the channel with a solid embankment by the Railway Company will render our property worthless.

"As the Railway Company contemplate the extension of their line from the present wharf along the waterfront to the easterly end of the townsite, we would respectfully request that the approval of the Governor-in-Council to the plans of the extension be not granted, unless a draw-bridge of sufficient width, say, 50 feet opening, be given, or in the event of any question arising as to the navigability of that portion of the water front, that the matter be referred to your Departmental Engineer at New Westminster for his report.

"We have the honor to remain, Sir,

Your obedient servants,

Westholme Lumber Co., Ltd.
per Sol. Cameron, for Pres.

Prince Rupert Sand and Gravel Co.
per J. Y. Rochester.

Union Transfer Co.
per J. A. Lindsay.

Westenhaver Bros.
per C. C. Westenhaver.

W. M. Law,
per M. D. Moore.

Georgetown Saw Mill Co., Ltd.
per O. W. Peck."

The resident Engineer of that Department had reported upon this matter as follows:

"In reply to your letter No. 5161, of 9th October last, enclosing a memorandum from the Honorable the Minister calling attention to an attached communication from the lessees of the Warehouse lots in Cow Bay, Prince Rupert Harbor, B.C., with reference to the necessity for a draw-bridge being installed on the Grand Trunk Pacific Railway at that place, as per accompanying plan, I beg to state that I am enclosing herewith a report from Mr. Worsfeld, Assistant Engineer, together with a plan showing the locality and the proposed tracks of the G.T.P. Railway, which will fully explain the situation.

"Your applicants are the lessees of the lots marked and colored red on the plan I am sending. They are held under tenure of a five year's lease, renewable on expiration, I assume at a valuation. The annual rental of these lots, some 15 in number, aggregates \$2,225.54, showing that considerable value attaches to them. At the sale of these leases the purchasers (your applicants), were assured by the representative of the Provincial Government that they would always have free access to these lots from the harbor, —this being the governing factor in the value of the lots. From the wording of the application, the lessees are apparently under the impression that only one or two, at most, lines of railway were contemplated between their lots and the harbor, whereas no less than nine or ten are shown on the plan attached as intended by the Railway Company, covering a width of 260 feet. This space would require not less than six lift or bascule bridges of 25 feet in width, with a clear 40-foot span, which is sufficient for business purposes.

"I do not see exactly where our Department comes in. It is first a matter between the lessees and the vendors (the Provincial Government), and it is up to the latter to make good their assurance, or cancel the leases and remunerate the holders for their outlay, etc., or an appeal to the Board of Railway Commissioners would seem to be in order. It all depends on the point of view. The Railway Company reserved this right of way when allotting the townsite property to the Provincial Government, and claim



they have a right to close the entrance to Cow Bay. I do not know that the reservation of a right of way, with the privileges it conveys, justified them in preventing access to business property abutting on the Bay, and upon which the value of such depends. As matters at present stand, and pending settlement, I would suggest that the Railway be obliged to give in, in any case, temporary access by means of a 40-foot bascule, or lift bridge on the present track; but, as before stated, I do not think the adjustment of this matter comes under the jurisdiction of our Department.

"The memorandum of the Honorable the Minister is herewith returned."

In the communication to the Board it was said that—

"in the case of railway lines cutting across bays or indentations forming part of navigable waters, the Department is of the opinion that detailed plans of structures or embankments proposed across such waters should be submitted to the Department before final approval is given."

This is in accordance with section 233 of the Railway Act, and had always been the practice of the Board. However, before anything further was done, the Railway Company, by letter under date of March 1st, received by the Board March 5th, withdrew the application for approval of these plans, and asked to have them returned.

In the meantime, the railway company, without any apparent authority whatever, had been actively proceeding with the work of construction of its line of railway along the route in question, without approval of any route map by the Minister or of location plans by the Board; and on February 16th, some of the parties were served with notices to vacate, by what authority I do not know. On February 18th, the work had so far proceeded that the entrance to the Cove was blocked, and the scows of some of the applicants were prevented from entering. This cove is of considerable extent, and from a personal inspection of all the properties, I have no hesitation in finding that blocking access from the harbor to the lots and lands surrounding the Cove is a serious loss and inconvenience. A dock built of substantial timber, I think from sixty to one hundred feet in length, is constructed near the head of the Cove, used for loading material from the scows. A saw mill stands at the head of the Cove, and to various points around this Cove during high tide there was free access for scows and small tugs, before the Company constructed a solid stone embankment across its mouth. In February, the Board received strong resolutions from the Board of Trade of Prince Rupert, protesting against the Company closing up this Bay, and alleging that such action would divert all sand, gravel, and building material over the Grand Trunk Pacific docks to the advantage of that Company, and at the expense of the builders.

The Board, on March 3rd, telegraphed to the Company that the applicants were complaining about the work being proceeded with, and the reply was received that the Company was only proceeding with construction of yard lay-out on their own land.



On February 24th, these applicants caused to be served upon the Railway Company a formal complaint, which is as follows:

"John Y. Rochester, the Georgetown Lumber Company, Limited, the Union Transfer Co., Messrs. Westenhaver Bros., the Westholme Lumber Company, Limited, and W. M. Law, all doing business at Prince Rupert, in the Province of British Columbia, hereby apply to the Board for an Order under section 233 of the Railway Act directing the Grand Trunk Pacific Railway Company to construct bridge across part of the entrance to Cameron Bay, on the portion of their line westerly from O, between stations 28 & 30, in the townsite of Prince Rupert, so as to leave an entrance at least 45 feet in width for the passage of barges, and other small craft, beneath the same, from Prince Rupert harbor into the said Cameron Bay.

"1. Each of the applicants are lessees for a term of years of a lot or lots abutting or adjacent to the waters of Cameron Bay, several of which lots are now being used by the lessees as storage places for sand, gravel, lumber, coal, and other merchandise, and for the unloading of the same from barges.

"2. That by reason of the construction of the railway line across the entrance to Cameron Bay, the applicants will be deprived of the use of the said lots as an unloading place, and as warehouse ground, unless access to the harbour be provided for.

"3. That for the profitable enjoyment of the said lots it is necessary that provision should be made for free access for barges and small craft to and from the harbor, below the railway grade.

"4. It is necessary for the safety and convenience of the public that access to this sheltered bay be available in time of the sudden storms which arise on the harbor, it being the only sheltered place on that part of the waterfront easterly for several miles.

"5. It is necessary for providing a safe berth for coal and lumber barges there being no other place on the waterfront available for more than a mile on either side of Cameron Bay, that free access be had from the bay to the harbor."

The Railway Company filed no answer, and the hearing came on at Vancouver on September 8th and September 9th, 1910, when it appeared that the applicants, or some of them, had no leases for their holdings. They produced certain receipts for payment of rent, but no formal leases had been executed to them, and the matters were allowed to stand to enable them to complete their title.

Later on, certain leases were filed, and the objections to the title of the applicants removed, and the cases came on for final hearing at Prince Rupert on August 19th, 1911.

At the last hearing it appeared that the Railway Company was not ready to establish its title, and, after argument, the matter was again deferred to enable it to file further proof. These documents, or copies, are now to hand, and although there has been great delay, the parties are entitled to have their rights declared.



The Board finds,—

1. That these applicants located upon the lots abutting on this Cove, took leases, and paid rent therefor, because of the access to the water and the riparian rights that possession of these lots carried with them.

2. The railway company has cut all access off from the harbor to all points around this Cove or Bay.

3. At the time the embankment was constructed, the Company had no title to the land across the mouth of the Cove, and the statement made by them when withdrawing location plans, that they were only constructing on their own lands, was untrue.

4. Even if the Company had title to these lands, they had no right to construct this road without approval of the route map by the Minister, and thereafter the approval of location plans in accordance therewith.

5. The applicants' lands, and the business carried on by them thereon, have been damaged and injured by the wrongful and illegal acts of the railway company;

6. Having made an inspection of the whole locality, we find there is no necessity for a stone embankment across this Cove, and no reason exists why an opening should not have been left, say thirty feet in width, to enable scows to pass in and out during high tide.

We do not think it reasonable that a swing bridge should be erected, as this would impose an intolerable hardship upon the Company. I may say, if the location plans had not been withdrawn, the Board would have required the Company to leave a thirty foot clear opening at the deepest part of this Cove, and, as I understand the law, this condition could be imposed upon the Company no matter whether they had acquired title to the land covered by the waters, at the point where the embankment crosses the Cove or not.

An Order may go directing the Railway Company, on or before May 1st, 1912, to remove sufficient of the rock fill to leave an opening at the deepest point of at least thirty feet in width; the Company to file, before January 15th, 1912, and furnish the applicants with a plan showing the location of the opening and the depth of the girders for carrying their tracks; and if any dispute arises as to these details, it may be adjusted by the Board's Chief Engineer.
Ottawa, Dec. 20th, 1911.

And on the 29th December, 1911, Mr. Commissioner McLean delivered written judgment upon the last mentioned application, as follows:—

I agree to the disposition recommended to be incorporated in the order.

At the same time I am prepared to consider with open mind any application to modify the order if I am assured within six weeks from the date of the order, by the parties applicant, that the railway company has made a satisfactory pecuniary settlement with them for the losses, past and



future, which the construction of the work above referred to has by its interference with the leases subjected them to.

(Sgd) S. J. McL.

Dec. 29th, 1911.

8. Formal orders were issued in respect of the said applications, as follows:

Order No. 15730

THE BOARD OF RAILWAY COMMISSIONERS
FOR CANADA.

Tuesday, the 2nd day
of January, A.D. 1912.

Hon. J. P. Mabee,
Chief Commissioner.

S. J. McLean,
Commissioner.

IN THE MATTER OF the application of the Grand Trunk Pacific Railway Company, hereinafter called the "Applicant Company," under section 159 of the Railway Act, for approval of the location of its Prince Rupert Westerly line, mileage 0.00 to mileage 3.23, Range 5, Coast District, Province of British Columbia, as shown on the plan and profile and described in the book of reference on file with the Board under file No. 3452.18:

UPON hearing the application at the sittings of the Board held at Prince Rupert, August 19th, 1911, in the presence of Counsel for the Applicant Company, and what was alleged at the hearing—

IT IS ORDERED that the application be, and it is hereby refused.

(Signed) J. P. MABEE,,

Chief Commissioner,

Board of Railway Commissioners for Canada.

Order No. 15735.

THE BOARD OF RAILWAY COMMISSIONERS
FOR CANADA.

Tuesday, the 2nd day of
January, A.D. 1912.

HON. J. P. MABEE,
Chief Commissioner.

S. J. McLean,
Commissioner

IN THE MATTER OF the application of John Y. Rochester, The Georgetown Lumber Company, Limited, the Union Transfer Company, Westenhaver Brothers, The Westholme Lumber Company, Limited, and W. M. Law, all of the City of Prince Rupert in the Province of British Columbia, and the Board of Trade of Prince Rupert, for an Order directing the Grand Trunk Pacific Railway Company to remove the obstruction caused to navigation



by the construction of the railway grade across the entrance to Cameron Bay on that portion of its line westerly from mileage 0 in the City of Prince Rupert. File 3452.30.

UPON hearing the application at the sittings of the Board held at Prince Rupert, August 19th, 1911, in the presence of Counsel for the applicants, the City of Prince Rupert, and the Grand Trunk Pacific Railway Company, and what was alleged at the hearing—

IT IS ORDERED that, on or before the 1st day of May, 1912, the Grand Trunk Pacific Railway Company remove sufficient of the rock fill at Cameron Bay to leave an opening at the deepest point of at least thirty feet in width: the said Company to file with the Board, before February 15th, 1912, and furnish the Applicants with a plan showing the location of the opening and the depth of the girders for carrying its tracks; and if any dispute arises as to these details, the same to be submitted to the Chief Engineer of the Board for adjustment.

(Signed) J. P. MABEE,
Chief Commissioner,
Board of Railway Commissioners for Canada.

9. A transcript of the proceedings before the Board, as well as copies of the documents produced to the Board, will be found in the schedule attached to this Petition.

10. Your Petitioners submit that Order No. 15735 is unfair to the applicants, and is without regard to the merits of the case, or the rights of the parties, and humbly petition Your Royal Highness in Council to rescind the said Order, for reasons herein stated, and which will be more fully set forth upon the hearing of this petition.

11. A reference to the documents of title set out in the schedule hereto will establish that Your Petitioners are the owners or lessees of, or otherwise equitably entitled to the absolute use and possession of the land from which the Board, by the Order appealed from, affects to direct Your Petitioners to remove the rock fill placed thereon by Your Petitioners, and to leave an opening therein of thirty feet in width, and it is upon this main ground that Your Petitioners seek to have the said Order rescinded and set aside by Your Royal Highness in Council.

12. By Letters Patent, dated 10th March, 1905, Your Petitioners obtained from the Province of British Columbia inter alia a grant of Lot 251, Range 5, Coast District, and thereby became the riparian owners of the land containing or surrounding Cameron Cove, and as such, entitled to the riparian or foreshore rights appurtenant to the land comprised in the Provincial patent.

13. Under the terms of the said Patent in the preceding clause mentioned, it was incumbent upon Your Petitioners to reconvey to the Province of British Columbia one-fourth of the water front comprised therein.



14. On 3rd April, 1907, Your Petitioners made application to the Department of Marine and Fisheries for a grant of the foreshore rights, as follows:

Ottawa, April 3rd, 1907.

Honourable L. P. Brodeur,
Minister, Marine & Fisheries,
Ottawa, Ont.

Dear Sir: On behalf of the Grand Trunk Pacific Railway Company I hereby apply for grant of all the foreshore rights and water lots vested in the Dominion of Canada, in front of, abutting on or contiguous to the lands margined in red on the plan hereto annexed, which lands are owned by the Grand Trunk Pacific Railway.

Yours truly,

"D'Arcy Tate."

The lands margined in red on the plan referred to in this letter comprise the land occupied by Cameron Cove.

15. The water front comprised in the provincial grant of 10th March, 1905, was subsequently divided between the Province of British Columbia and a subsidiary company of Your Petitioners, then known as the Grand Trunk Pacific Town and Development Company, Limited, and that part of the water front in which Cameron Cove was situate, was assigned to the Province, excepting thereout a strip of land forty feet in width at the western end, and widening out to 314 feet at the eastern end; it being understood that the application made to the Department of Marine and Fisheries, as mentioned in the preceding clause, should enure to the benefit of the Province, except as to the said strip of land which was reserved to Your Petitioners for railway purposes.

For the ready comprehension of the division of the water front between the Province and Your Petitioners, as in this clause mentioned, a plan is included in the schedule, on which is shown part of water front block "E" belonging to Your Petitioners, colored red; water front block "F" belonging to the Province, colored green, showing in red the strip across the same reserved to Your Petitioners; and part of water front block "G" belonging to Your Petitioners.

16. After the division of the water front between the Province and Your Petitioners, a plan showing such division was prepared, which plan was approved by Provincial Order-in-Council, dated 11th August, 1908, and an Act of the Legislature of the Province ratifying such Order-in-Council was passed on the 12th day of March, 1909, chapter 22, Statutes 1909, B.C.

17. After the approval of the plan showing the division of the water front between the Province and Your Petitioners and the reservation to Your Petitioners of the strip of land herein-before referred to across Provincial water front block "F," a duplicate original of such plan was deposited in the Land Titles office for the district in which the lands in question were situate.

18. At the time of the passage of the said Act, chapter 22, statutes of 1909, B.C., and of the registration in the Land Titles office of the plan referred to in preceding clause, Your



Petitioners and the Province of British Columbia together owned all the land immediately surrounding Cameron Cove, as well as the land covered by the waters of Cameron Cove at high tide, which included the property subsequently leased by the said John Y. Rochester and other applicants, and all title derived by the said John Y. Rochester and other applicants, or any other outside parties, was subject to the rights of the Province and Your Petitioners inter se, as evidenced by the said plan so confirmed and registered.

19. Owing to departmental delays, consequent upon the filing with the Department of Marine and Fisheries from time to time of amended plans by Your Petitioners, a grant of the foreshore rights applied for on 3rd April, 1907, as hereinbefore mentioned, did not issue until 11th August, 1911, as per letter from the Department of Marine & Fisheries, reading as follows:

Ottawa, 15th August, 1911.

Dear Mr. Tate,

As advised in my telegram of today's date I enclose herewith, certified copy of an Order in Council dated 11th instant, authorizing the issue of a lease of certain water lots in the public harbour of Prince Rupert to the Grand Trunk Pacific Railway Company for a period of 21 years, with the privilege of renewal for two further periods of 21 years upon payment of an annual rental of \$6,400.00 on the conditions embodied in the general form of lease of water lots approved by Order in Council of 6th April, 1908, in so far as the same are applicable.

I enclose a blank form of the lease referred to.

I am, sir,

Your obedient servant,

"C. Stanton,"

Assistant Deputy Minister.

D'Arcy Tate, Esq.,

Solicitor, Grand Trunk Pacific Ry. Company,

Empress Hotel,

Victoria, B.C.

20. The title of Your Petitioners to the foreshore at Prince Rupert must be held in equity to have accrued from and after the receipt by the Department of Marine and Fisheries of the application of 3rd April, 1907, as only riparian owners are in law and in practice entitled to a grant of foreshore rights.

21. After the registration of the plan referred to in clause 16 hereof and its confirmation by the Legislature, the Province leased to the Applicants at a nominal or small rental certain lots, described as "warehouse" lots as shown on plan contained in schedule, and contiguous to what was formerly Cameron Cove. In granting these leases, the Province could, of course, confer upon the lessees no better title than that which was vested in itself by the division of the water front, as shown on the plan confirmed and registered. As hereinbefore set forth, the Province had by grant to Your Petitioners divested itself of title to the strip of land across Cameron Cove, given for railway purposes, and the Province could not, without derogating from its grant, prevent Your Petitioners from filling in upon the



said strip of land. If it is not competent for the Province to prevent Your Petitioners from filling in upon this land, it is equally incompetent for Rochester and the other lessees to do so, as these derive no higher title from the Province than it possesses.

22. In taking leases from the Province, the Lessees were in no wise misled as to the true situation, and the right of Your Petitioners to construct a solid fill across Cameron Cove, inasmuch as the plan showing the work contemplated was, as already stated, on file in the Local Land Titles office, and constituted due and sufficient notice to the public, or to persons dealing or proposing to deal with the lands affected thereby.

23. Moreover, the Lessees were not in fact misled as to the extent of Your Petitioners' rights in the matter, inasmuch as prior to the time when they obtained title, and accepted their leases from the Province, they made application to the Provincial Government for an Order-in-Council, requiring Your Petitioners to leave an opening at Cameron Cove, when it was pointed out by the Provincial Executive that, in view of the agreement arrived at between the Province and Your Petitioners respecting the division of the water front, it was no longer in the power of the Province to require Your Petitioners to leave an opening at Cameron Cove.

24. The Province, in granting these leases, did not purport to give any rights to the retention of an opening at Cameron Cove, as the trivial amount of rental reserved in the several leases abundantly demonstrates.

25. The Lessees having come on the ground subsequent to the adjustment of rights between the Province and Your Petitioners, and the due notification of those rights to the public by passage of an Act of the Legislature, and the registration in the Land Titles Office of a plan defining those rights, it would be inequitable to permit the Lessees to disturb the rights so settled.

26. The Lessees are deprived of any claim on the merits, by reason of the fact that, apart altogether from a question of notice of the agreement entered into between the Province and Your Petitioners, and the consequent inability of the Province to give to the lessees any right or title to a channel at Cameron Cove, the Province did not purport to sell waterfront leases, or charge water front rentals, and to permit the Lessees to succeed in their application to the Board, would be to give them something at the expense of Your Petitioners, which they had not bought, and for which they did not pay.

27. In connection with this matter, Your Petitioners refer to the plans on file in the Department of Marine and Fisheries, relating to the construction by Your Petitioners at Prince Rupert of a floating dry dock, under the provisions of 9-10 Edward VII, Cap. 17, (Can.).

28. In view of the railway construction contemplated at the place in question, the plans of which have been on file with the Provincial Government, at Victoria, and open to inspection by the public there, a long time prior to the issuance of the leases to Rochester and others, and in view of the relation of this construction to the projected dry dock, it is absolutely impractic-



able to leave an opening at what was formerly known as Cameron Cove, as the Board has seen fit to order upon a cursory and casual consideration of the matter, and as Your Petitioners submit without comprehending the effect of its order.

29. While the magnitude of the work, and the necessity for constructing a solid fill across Cameron Cove, would not afford a ground for interfering with private vested rights, it is entirely different where the alleged rights do not exist, or where they accrued subsequent to the title of Your Petitioners to construct the fill complained of.

30. In the foregoing part of this petition Your Petitioners have endeavored to address Your Royal Highness in Council upon the equity of the case, for the purpose of demonstrating that, apart from any bare legal or technical grounds, Your Petitioners are entitled, according to the very merits and justice of the case, to do the work complained of across what was formerly known as Cameron Cove, Prince Rupert, and that before proceeding with such work they acquired absolute title to the land, and there is not any person or corporation who can assert an adverse title to Your Petitioners, or who can complain that any legally vested rights have been interfered with by Your Petitioners' works. Your Petitioners now crave leave to refer to the Order itself, and submit that the same cannot be supported upon any principle or practice to be found within the Railway Act. The Order is not merely irregular but a nullity, and is not made in the exercise of any inherent or express jurisdiction vested in the Board.

31. In considering the validity of Order 15735, Your Petitioners would refer to the application mentioned in clause 3 hereof. In his judgment refusing that application, the Chief Commissioner held that the Board had no jurisdiction over the location in question, and yet within less than a month after the date of that judgment, we find the Chief Commissioner, upon the application of Rochester and others assuming to exercise jurisdiction over the location in question by Order 15735, in which he directs an opening to be left in the rock fill placed by Your Petitioners at Cameron Cove, which is within the limits of the location in question.

32. Your Petitioners submit primarily that the Order is a nullity, inasmuch as it interferes with Your Petitioners' work upon their own land, and an Order might be as easily supported in which the Board would attempt to prescribe the depth of foundations to be left for buildings which Your Petitioners were desirous of erecting upon the said land. In this connection Your Petitioners would respectfully refer to the fact that the work complained of is simply a bare rock fill and without any railway tracks thereon, and is as much adapted for the erection of buildings as for the construction of such tracks.

33. Even assuming that the location of Your Petitioners' railway at this point was not wholly upon their own lands, but traversed the lands of others, or public streets, Order 15735 could not be supported, and if not a nullity, would at least be premature and irregular. Before the Board would be in position to make an Order under section 233 of the Railway Act with respect to the character of a structure forming part of the railway, it would require to approve the location of the railway under section 159, and even then the Board would only derive jurisdiction to make an Order under section 233, when the plans of the structure in question and the site thereof had first been

approved by the Governor-in-Council (section 233, subsection B.); whereas in the present case, without any prior approval of location by the Board, (on the contrary with a judgment of the Chief Commissioner holding that there was no jurisdiction in the Board to grant such approval) or prior approval of the plans for a bridge at Cameron Cove, the Board attempts to make an Order, prescribing the character of the structure to be erected at this point. Your Petitioners can point to several instances where plans for bridges inadvertently sent to the Board for approval under section 233, before the approval of the Governor-in-Council had been obtained, as required by that section, have been returned by the Board, with the intimation that they had no jurisdiction to entertain the application until the plans submitted had received the prior approval of the Governor-in-Council, in accordance with the provisions of said section.

34. Your Petitioners further submit that an Order should be made upon Your Petitioners' application, mentioned in paragraph 3 hereof, approving of the location in question, inasmuch as such location is entirely upon Your Petitioners' lands, and the rights of third parties are not interfered with, or involved in such approval.

35. Your Petitioners applied to Mr. Justice Duff in Chambers for leave to appeal to the Supreme Court of Canada under subsection 2, section 56, of the Railway Act, but the learned Judge was of opinion that in view of the question of title to the foreshore raised, as well as the work incident to the construction of the floating dry dock at Prince Rupert, the plans of which had been filed with the Federal Government, the subject matter of this petition could more properly be dealt with by the Governor-in-Council, under sub-section 1, section 56, of the Railway Act, and refused Your Petitioners' application accordingly.

YOUR PETITIONERS therefore humbly pray that Your Royal Highness in Council will be pleased:

(a) To order and direct that the said Order No. 15735 of the Board of Railway Commissioners for Canada be rescinded and wholly set aside.

(b) To order and direct that Order No. 15730 of the Board of Railway Commissioners for Canada, refusing application of Your Petitioners, mentioned in clause 3 hereof, be rescinded and wholly set aside.

(c) To issue an Order approving of the location of Your Petitioners' railway from Prince Rupert Westerly, mileage 0.00 to mileage 3.23, Range 5, Coast District, British Columbia, as shown on the plan and profile on file with the Board of Railway Commissioners.

**AND AS IN DUTY BOUND YOUR PETITIONERS
WILL EVER PRAY.**

Dated at Montreal this 30th day of April, A.D. 1912.

THE GRAND TRUNK PACIFIC RAILWAY COMPANY,

By W. H. Biggar,
General Counsel.

SCHEDULE

THE BOARD OF RAILWAY COMMISSIONERS FOR CANADA.

Vancouver, Sept. 9th, 1910.

Before

HONORABLE J. P. MABEE,
Chief Commissioner.

DR. JAMES MILLS,
Commissioner.

H. A. K. Drury,
Assistant Engineer.

R. Richardson,
Acting Secretary.

(Nelson R. Butcher,
Official Reporter, per F. B.)

28. Application of G. G. Rochester et al, of Prince
Rupert, B.C., re obstructions in Cameron Bay.

MR. MACDONALD, K.C., appears on behalf of the applicants.

MR. D'ARCY TATE appears on behalf of the Grand Trunk
Pacific Railway Company.

MR. MACDONALD: In this Prince Rupert matter, my clients are lessees of the Provincial Government of a piece of property lying to the—

HON. MR. MABEE: Have you got a plan?

MR. MACDONALD: Here is one of the railway maps. This is the line of railway of the Grand Trunk Pacific. The Grand Trunk Pacific has all the frontage that is shown between this green line and this green line, and the division of the townsite between the Grand Trunk Pacific and the local Government. The local Government got a fourth, and the Grand Trunk got three-fourths, but the three-fourths lie, you might say in the present centre of the city, and all the way along here. (Indicating.) Now, all shown in green on the map became Government property on division, the Government instead of selling this portion, reserved and sold it, or rather leased it, and amongst, other purchasers were these complainants—in fact, they got all that territory in there. There was a plan made up showing the different lots.

HON. MR. MABEE: That is a subdivision.

MR. MACDONALD: This is a blue print showing that subdivision giving the lots owned by the different parties. The Rochester lots are 22, 23, 24; the W. M. Law lots 25 and 26 west; Hayward Brothers 27, 28 and 15; the Georgetown Sawmill Com-



pany 16, 17 and 18; the Westholme Lumber Company 12, 13 and 14.

Now, between these two lines marked with the crosses there is a portion there. What about those lots?

MR. ROCHESTER: Those were reserved by the Government, and they are undisposed of still as far as I know.

MR. MACDONALD: At the south end of the portion of what you call Cameron Bay, the south side of Cameron Bay, what is the nature of the ground there?

MR. ROCHESTER: It has a muddy bottom.

MR. MACDONALD: And how has it been used up to the time of the railway?

MR. ROCHESTER: After we leased these lots the Government extended Third Avenue or planked it right down, graded this. (Indicating.)

DR. MILLS: "This" does not mean anything.

MR. MACDONALD: This street?

MR. ROCHESTER: That has got no name. It is a planked street.

MR. TATE: Call it "A" or "B." They are all planked streets.

MR. MACDONALD: And it is planked down towards the water?

MR. ROCHESTER: Yes.

MR. MACDONALD: How was it used?

MR. ROCHESTER: We used it for handling building material on to these lots.

MR. MACDONALD: That we have mentioned.

MR. ROCHESTER: That we have mentioned, from scows.

MR. MACDONALD: What is your business?

MR. ROCHESTER: I handle sand and gravel, building material, stone.

MR. MACDONALD: Do you carry on business actively?

MR. ROCHESTER: Yes.

MR. MACDONALD: What has occurred?

MR. ROCHESTER: Stopped.

MR. MACDONALD: Explain to the Commission about that.

MR. ROCHESTER: The railway company commenced construction of their line from zero that way, and blocked the entrance.

MR. MACDONALD: To what?

MR. ROCHESTER: To Cameron Cove, or Bay.

MR. MACDONALD: Did you object at the time?

MR. ROCHESTER: Yes.

MR. MACDONALD: In what way?

MR. ROCHESTER: We served the contractors with a protest and served the G.T.P. engineers in Prince Rupert with a protest.

MR. MACDONALD: Did you take any active means to try and stop them?

MR. ROCHESTER: Yes. We sent a scow there at the crossing to try and stop them, but they simply filled it in in spite of us and destroyed the scow.

MR. MACDONALD: What has occurred there?

MR. ROCHESTER: The whole place is filled in.

DR. MILLS: Is that water portion filled up now?

MR. ROCHESTER: No.

MR. MACDONALD: There is no communication?

MR. ROCHESTER: No.



MR. MACDONALD: The water as far as your business is concerned—

MR. ROCHESTER: Is out of business.

MR. MACDONALD: Well now, speaking generally, what public access have the Prince Rupert people outside of the railway company?

MR. ROCHESTER: There is no access only out through McBride Street to the water front in any shape or form, and Manson way comes in here.

MR. MACDONALD: Is that shown on the townsite?

MR. ROCHESTER: Yes. There is no other access to the water front.

MR. MACDONALD: Referring to this street marked "A" planked on the blue print, is that utilized by the public?

MR. ROCHESTER: Yes.

MR. MACDONALD: And improved by public money?

MR. ROCHESTER: Yes. Previous to this being done between the time the planked street was completed and the blocking.

DR. MILLS: What is this line?

MR. ROCHESTER: High water mark.

DR. MILLS: Does it extend into any of those lots?

MR. ROCHESTER: On all of these lots. That is the reason these lots were reserved, so that access could be had by the public, and no monopoly created by the owners of the other lots.

MR. MACDONALD: So the public locally used to have access?

MR. ROCHESTER: Yes.

MR. MACDONALD: Has the Board of Trade moved in the matter?

MR. ROCHESTER: Yes.

DR. MILLS: Is that where the transfer is done?

MR. ROCHESTER: Yes, along the water front. This is the Government wharf. This other part, 600 feet from here to about there (indicating) has been leased. This has not been leased, the other end.

MR. MACDONALD: I file a resolution of the Board of Trade of Prince Rupert in connection with this matter, dated February 18th, 1910. I might explain to the Board—

HON. MR. MAGEE: Why was that so long ago?

MR. MACDONALD: I might explain to the Board that it was expected when this question first came up in February, and the people actively opposed the construction of that embankment, there would have been an application by the G.T.P. to approve the plan. They have never had their plans approved by this Board yet. They did make application to the Board for approval of the plan, but on opposition being made by these complainants that was withdrawn, and they are at the present time, and have been, closing up this Cameron Bay without the law authorizing the construction of the road at all. In other words, they have started the construction of that road without the approval that is required by the Railway Act. So that has forced these complainants to take one of two courses, either to come to the Board for redress, or to bring an action for an injunction to restrain the closing up of these water rights. They thought the speedier and better mode was to come to the Board.



This resolution was passed on February 18th, 1910. I will read the resolution.

(Reads resolution which is filed.)

DR. MILLS: Is there much depth of water inside the line of railway?

MR. MACDONALD: Just explain to the Board how it works out in practice.

MR. ROCHESTER: The depth of water right along here (indicating) is from 6 to 8 feet at high tide.

DR. MILLS: You would not be able to put anything in but scows?

MR. ROCHESTER: Nothing but scows.

DR. MILLS: What headroom do you want? A.—I suppose we ought to have from about 12 to 15 feet.

MR. MACDONALD: Is that important at all, Mr. Rochester?

DR. MILLS: What is the height above the water?

MR. ROCHESTER: Ten feet.

MR. MACDONALD: Has that southerly portion of that bay been improved?

MR. ROCHESTER: Yes. The material taken out of this planked road was used for building a stone wall of breakwater right along the front.

DR. MILLS: By whom?

MR. ROCHESTER: The Provincial Government.

MR. MACDONALD: What is the mode of operation?

MR. ROCHESTER: We brought our scows in here at mean tide or high tide.

MR. MACDONALD: Explain to the Board the benefit of Cameron Bay to Prince Rupert on account of the want of harbor there.

MR. ROCHESTER: It was the only sheltered place on the harbor until you get up to Hay's Creek, for small craft. We run in here for shelter from heavy winds in the harbor, and into Hay's Creek too, and the idea of leasing these lots was for the handling of this heavy material chiefly. We have no other facilities on the water front.

DR. MILLS: What solution do you suggest?

MR. ROCHESTER: We have been put out of business.

DR. MILLS: I know, but what solution? You are a reasonable man. You want railroads there, I suppose, with tracks on the water front?

MR. ROCHESTER: Decidedly. The only way would be a draw there, as far as I can see. The opening was there, we enjoyed the use of this block. Since that we have been deprived of it.

MR. MACDONALD: That was, as I understand, navigable water before the construction of the road?

MR. ROCHESTER: Yes, at high water.

MR. MACDONALD: And until that you used it continuously?

MR. ROCHESTER: Yes.

MR. MACDONALD: Could you use it today if it was open?

MR. ROCHESTER: Yes.

MR. MACDONALD: I mean the business of building is going on.

MR. ROCHESTER: Certainly, and always increasing.

MR. MACDONALD: Mr. Hayward, explain to the Board how you were injured.



MR. HAYWARD: Of course we purchased these lots 15, 26 and 27. We are in the lumber business, and of course we wished the lots for the purpose of handling all kinds of building material, and about the time of the closing up we had a scow loaded with gravel here (indicating). In order to get the scow out we were compelled to dump it into the bay and take the scow out. It simply stopped our business as far as we were concerned. It is practically of little use outside of that purpose, and the way they are handling stone and gravel today makes it always equal to the cost of cement.

DR. MILLS: How are you handling it now?

MR. HAYWARD: Well, Mr. Rochester, I believe, is using a portion of the Westholme docks.

MR. ROCHESTER: I had permission of the Westholme Company to use a portion of their water front so long as they did not need it. About a month ago I was notified by them I would have to vacate, which I did. I have no place to do business now at all.

MR. HAYWARD: Here you can unload all times of the day. If you take it over here any place the tide comes up and down. You can only work a few hours, and there it makes it very cheap in the way of handling any amount of material off the scows, especially lumber and stone, brick and gravel. Of course, this here place in here before it was closed up was quite a good space, in fact we had removed a boathouse, or rather a slaughter house I should judge 50 or 60 feet wide by 80 to 100 feet long right in here, so that shows a pretty steep place in there to bring in any kind of scows, no matter how large, alongside.

DR. MILLS: Do you unload anywhere along this line?

MR. HAYWARD: In here? (Indicating.)

MR. MACDONALD: Just mark in pencil.

MR. ROCHESTER: Our unloading line is here. (Indicating.)

DR. MILLS: Very near the proposed railway track.

MR. MACDONALD: Marked B and C.

MR. HAYWARD: As far as the Government goes, that road comes right in here. (Indicating.) Every bit of this space could be used, and as far as that goes that side as well. (Indicating.)

HON. MR. MABEE: Well, Mr. Tate.

MR. TATE: Our main answer to this application, my lord, is this, that the lessees take no higher title than was possessed by the lessors, and this matter has all been threshed out by the lessees with the lessors and the company three several times in Victoria: First before the Minster, and before the Minster and Premier, and then before the full council, and the council in view of the agreement with the company concluded they could do nothing, and they left the lessees to their rights in the lease.

I might state briefly for the Board that we take our main title from the Government to the foreshore. We subsequently got from the Dominion a patent to this part of the land called the Indian Reserve, and afterwards arranged with the Province for a Crown grant to transfer the reversionary interest. That constituted the supreme title, so that at that time we had the absolute title in all this tract of land. We then made an agreement with the Province. The first agreement was for the division of the water front, not the interior lots, just the water front lots, known as lots A to K, which go right around here. (indicating.) As my learned friend pointed out, the blocks in green are the ones assigned to the Province, and the ones in



red, as in the original plan, go over to the company. As promised in the agreement, the Province gave us 100 feet there. We then come to the division of the water front lot F. In the first place we only proposed giving them a much shallower depth of lot there, but by special arrangement increased the depth to there. (Indicating.)

DR. MILLS: I do not understand that.

MR. TATE: This is where the actual lot goes now to Third Avenue, but originally it only ran to here. (Indicating).

MR. MILLS: Is this Cameron Bay?

MR. TATE: Yes. We stipulated there for a greater width than 100 feet. The Province won't give us any more than 100 feet up to Manson Way, and although they gave us 100 feet on this agreement, they subsequently had that cut down to 60 feet, but the agreement relating to the east portion remains unchanged. Now, that agreement is confirmed by an Act of the Legislature.

MR. MACDONALD: Excuse me. Is that the 1908 Act?

MR. TATE: No. This would be 1909. There are two Acts, one is 1908, and one 1909. This one confirms the plan showing that width of 100 feet at Manson Way, extending to about 350 feet at the eastern extremity of water front block F.

Now, in that water front block F, my lord, if we had left the water front as it was without this proposed construction, we would have been entitled, as trustees for the Province to a patent from the Dominion of the water front along the shores of Cameron Bay, as is now claimed by the lessees, but the Province arranged with us that we would give them, the foreshore rights in front of our right of way on the harbor, in lieu of these rights, which, of course, are very much more valuable than those in here (indicating) would be. So that is all covered by the agreement, and at the present time we hold the patent from the Dominion Government of this land, and they have got our agreement to apply to the Dominion for the foreshore rights in front of our right of way, and to make a transfer of those foreshore rights to the Province.

Now, the Court will readily see that if the foreshore rights were retained, on Cameron Bay, it would render nugatory the agreement for giving the Province the foreshore rights from there out to the harbor, which are much more valuable than the interior lots would be.

DR. MILLS: In what respect more valuable?

MR. TATE: This is open harbor where ships could anchor. This is only available for scows. (Indicating.)

DR. MILLS: Would it serve the purpose for scows?

MR. TATE: I suppose it would serve the purpose of any kind of craft.

MR. MACDONALD: Open harbor.

MR. TATE: Open harbor. This is really about the most valuable part of the water front. This is where the Grand Trunk Pacific wharf is at the present time, a little west there. (Indicating.) So the position is this. If the Province came here today, could they ask to have the water line of Cameron Inlet kept open in derogation of the agreement which they made with the company for the exchange of the water front abutting on their right of way and embankment? I submit they could not, and the lessees should be in no better position. Here is the position of the registered title.

HON. MR. MABEE: What are the respective dates of these leases?

MR. TATE: The leases, my lord, are subsequent to the



registration of this plan and to the confirmation of these agreements.

HON. MR. MABEE: What is the date of your lease, Mr. Rochester?

MR. ROCHESTER: The 30th of August, 1909.

MR. TATE: The matter really speaks for itself, because the Province could not make a subdivision of that until they got a transfer from the company. This subdivision is not shown on the plan. I might say in passing that this street my learned friend mentioned is not a registered street. This is a copy of the registered plan, and it was after this was approved by the Legislature. That was the weak point in my friend's case. Mr. Bowser said he could not do anything in view of that, and left the lessees to any rights they had. They cannot get any more than the leases gave them. That puts them on the lessors. What is the position of the lessors themselves? My learned friend cannot claim they were misled, because they had notice not only under these two Acts, but notice under the registered documents.

As I was about to say to the Board, the first document registered in the Prince Rupert Registry office is the Crown grant from the Dominion, and the Crown grant from the Province, and then a certified title. I do not think it is an indefeasible title in the company for the whole thing. After that this plan was registered. Subsequent to the registration of the plan there is a transfer from the company to the Provincial Government of these water front lots colored green and the interior lots likewise colored green. After the transfer of the water front lots the subdivision of the Province is, if registered at all, registered. I am not aware it is registered even yet. But at any rate a subdivision was made subsequent to the registration of this plan.

HON. MR. MABEE: Do you admit you have never had a location plan approved?

MR. TATE: I admit I never had it approved.

MR. MACDONALD: Didn't you withdraw it?

MR. TATE: Yes.

MR. MACDONALD: Why?

MR. TATE: Because in deference to the ruling of the Board in a previous case. We filed plans of our Edmonton yard for approval, and they were returned to me with an official letter—

HON. MR. MABEE: Which is your main line there?

MR. TATE: Our main line stops at zero.

HON. MR. MABEE: Which way do you come in?

MR. TATE: This way.

HON. MR. MABEE: Where does that go to?

MR. TATE: Around the water front to no objective point.

MR. MACDONALD: That is a dead end.

MR. TATE: Yes.

DR. MILLS: Where is your station?

MR. TATE: Here. This is what is known as railway ground.

MR. MACDONALD: As far as the present purpose of carrying on your railway is concerned, you might have stopped at that point, except for the purpose of having the townsite you carried it out to that point.

MR. TATE: I might say further, in answer to the Chief Commissioner, that before this extra width across block F was approved of the Government required me to submit a plan



showing the proposed railway development, and I submit a copy of this plan, (Exhibit B) which shows that we contemplate putting in some ten tracks.

DR. MILLS: Part of your proposed yard?

MR. TATE: Yes; and if necessary I could call our engineer to show how this yard was laid out, and how it would be impossible to put an opening there and still retain the yards.

I might explain incidentally—

DR. MILLS: Is this where the water front is granted?

MR. TATE: Yes.

MR. MACDONALD: Mr. Tate, will you allow me to ask you some questions?

MR. TATE: Yes.

MR. MACDONALD: How do you reconcile the closing up of that bay with this purpose of carrying on business without having a plan approved by the Board.

MR. TATE: I was going to tell you that. We have none of our plans of our terminal points approved by the Board, in consequence of its not being the practice of the Board to approve of yard layouts. We have got some 7 or 8 divisional points now established, and our yards are all in operation there, and none of them have been approved by the Board. I filed one of those at Edmonton, and it was returned by the Board.

MR. MACDONALD: Does not the Act say you shall not under section 68 commence construction until the plan is approved of?

MR. TATE: We can construct what we like on our own lands so long as we do not annoy the public.

MR. MACDONALD: That is what I say. The public were carrying on business there.

MR. TATE: No, they were squatters.

MR. MACDONALD: They had leases from the government.

MR. TATE: I know. We are quite willing to have their rights measured under those leases. At the time they took those leases we were owners of that land, and we were simply laying tracks on our own land.

HON. MR. MABEE: Do you suggest this, that you can build a railway from here to Halifax simply if you go ahead and buy land and do not have to expropriate?

MR. TATE: You would have to cross streets though. If your lordship would allow me to make a little more particular reference to the Edmonton application. There are two quarter sections with a street. We made application before we acquired title to the street. Afterwards we acquired title to that street from the municipality. We were told by the Board that it was not necessary to have that approved, but if that street was not closed we would have had to have your approval. But that being our own land, what objection can there be to making our yards there?

HON. MR. MABEE: I do not know there is any objection, but is that this case?

MR. TATE: I am under the impression we have got the patent.

MR. MACDONALD: Is not that navigable water you are on?

MR. TATE: That is a mixed case of law and practice.

MR. MACDONALD: That has been and was used by boats for the last three years.

MR. TATE: By scows.



MR. MACDONALD: And it was used by the inhabitants of Prince Rupert for unloading materials.

MR. TATE: By squatters.

MR. MACDONALD: By the people.

MR. TATE: No one having any title.

MR. MACDONALD: Never mind, these lessees. That is a point that people needed for coming to and using for the purpose of a harbor, for unloading their scows.

MR. TATE: Without conceding their right, that is the fact, yes.

MR. MACDONALD: That is what I want. Admitting that, then aside from these lessees altogether do you contend you have the right, as a railroad, to build across the mouth of a bay or harbor of that kind without coming to the Railway Board?

MR. TATE: If we get a sufficient title from the Government I presume we have.

MR. MACDONALD: My recollection of the Railway Act—I have not got a copy of it here—was that you go to the Minister of Railways—no, the Minister of Public Works—and get plans approved of, the same as you get a route plan approved by the Minister of Railways, and when he concurs then the Railway Board can place such conditions as will benefit not only those lessees, but the inhabitants of Prince Rupert.

MR. TATE: The public cannot have both.

MR. MACDONALD: Sections 158 and 159.

HON. MR. MABEE: No company shall cause any obstruction to the free navigation of any water across which its railway is carried. It does not say "navigable water." I do not know what navigable water may mean, but the law is that no company shall cause any obstruction to the free navigation of any water across which its railway is carried.

MR. TATE: Yes.

HON. MR. MABEE: Then when the company desires to construct any bridge across navigable—now we come down to the words "navigable water"—the company shall before the commencement (a) In the case of navigable water, not a canal, submit to the Minister of Public Works—did you do that?

MR. TATE: We did not.

MR. MACDONALD: Excuse me. I thought you said you did that. Your protection was the Minister of Public Works.

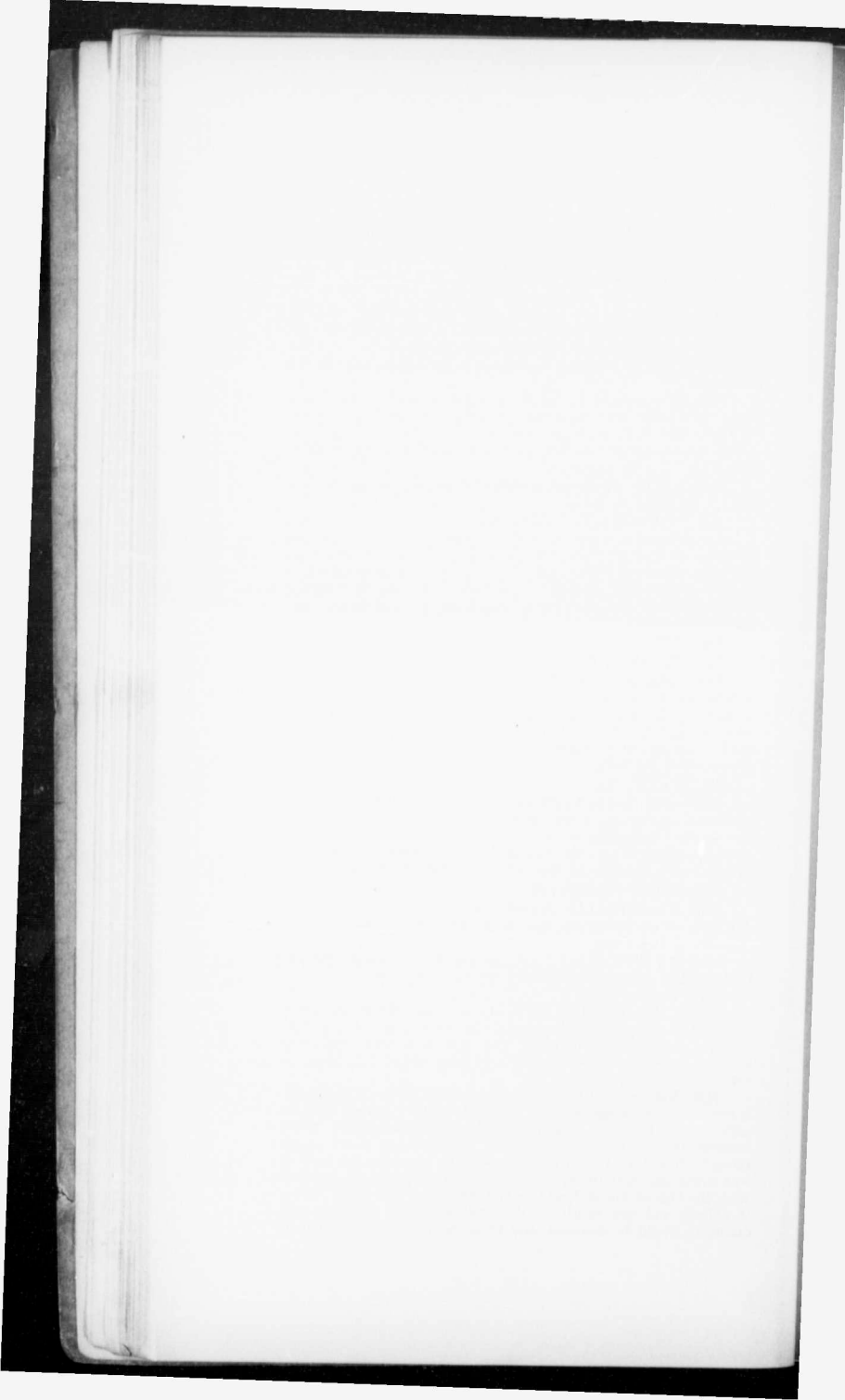
MR. TATE: No.

MR. MACDONALD: I misunderstood you. I thought you told me that yesterday or the day before.

MR. TATE: No.

HON. MR. MABEE: Why do you not bring an action against this company for damages, or in the alternative to compel removal of this obstruction? The law says they shall not obstruct. We have never done anything permitting them to construct this road.

MR. MACDONALD: When the papers came to my hands a few days ago I had a letter from Mr. Ewart saying that an action could be taken. Anyone of these his prominence would suggest at once an action could be brought, but these people thought this Board having the power to regulate railways it was much speedier to come here than to drag along a lawsuit with the Grand Trunk Pacific which would be two years before it ended, and the result in the end would be perhaps that damages would be assessed, and these people would be in fact



out of business. There is no way of determining what damages they will suffer. They want to get facilities.

MR. TATE: They have suffered no damage. The Province had no right to give them that. They knew that.

MR. MACDONALD: That is foreign to the point. The arrangement was that one-fourth should go to the Province and three-fourths to the Grand Trunk Pacific.

MR. TATE: That is right.

MR. MACDONALD: But in the interests of the public the riparian rights of the Province in the one-fourth were specially reserved by the statute.

MR. TATE: And we are giving them this part in the harbor in lieu of the irregular outline.

MR. MACDONALD: Surely, you do not want to mislead the Court. You do not call those riparian rights, the right to build a wharf away out in that water?

MR. TATE: Yes.

MR. MACDONALD: That is not a riparian right.

MR. TATE: If you will pardon me, that is where the wharf is being built today. They could not build that without our consent.

MR. MACDONALD: Between the land proper and that wharf there is a filling up going to take place.

MR. TATE: Yes. I think perhaps you follow me. The province could not get that water front there without our concurrence, because the rule of the Department is that water front lots are only given to the riparian owners.

MR. MACDONALD: Here is a sketch plan showing leaseholds to be sold by public auction on August 30th, 1909, and this does not give the number to the lots you speak of out in the water. That is opposite this portion F, as you term it, the reason being that was used from that time on for the purpose of these persons who bought leasehold property.

MR. TATE: All you refer to now is something the company has nothing to do with; that is subsequent to the arrangement with the company. There is the arrangement with the company showing that land undivided, and they got in exchange for the water front the regular outline of the natural land, the water front abutting on our railway dump. They cannot get both.

DR. MILLS:—Have you your agreement there?

MR. TATE: I have a copy of the agreement here.

MR. MACDONALD: Do you mean to tell me, Mr. Tate, do you want the Board to understand, that in this arrangement it was not always as it stood at the start that the Province of British Columbia should have one-fourth of the water front?

MR. TATE: And this is the portion agreed on.

MR. MACDONALD: Do you call that the water front?

MR. TATE: Yes.

MR. MACDONALD: Is not the water front that line contiguous to the land?

MR. TATE: That is land.

MR. MACDONALD: You and I do not agree on the facts. As I am instructed, that is water.

MR. TATE: There is a copy of the plan registered, and that shows it is land.

MR. MACDONALD: That is not included in the Crown grant.

HON. MR. MABEE: What do you say about section 230?

MR. TATE: Well, technically speaking, we have not applied to the Minister of Public Works under that section, but



we did that in pursuance of an agreement with the Province, and we are now applying to the Government. We are applying to the Government for—

HON. MR. MABEE: But the Railway Act says no railway company shall impede or obstruct the free navigation of any water across which its railway is carried. Now, you start out with that prohibition, you shall not impede the free navigation of any water. Then the law gives you a way to get your railway across by making an application to the Minister of Public Works.

MR. TATE: Yes sir.

HON. MR. MABEE: If you do not apply to him, the prohibition is surely on you.

MR. TATE: As your lordship suggested, that would be a matter for action. Then we can bring in this agreement of ours with the province, and show how it was confirmed.

HON. MR. MABEE: The Province has not got any authority to give you any right to impede free navigation.

MR. TATE: They have, with the concurrence of the Dominion, and, as I was saying to your lordship, we have applied to the Dominion Government to confirm this arrangement, by issuing a grant of the water front lot in front of F. If that grant is issued—and we have the assurance of the Minister that it will be issued—that settles the whole arrangement, and although we have not an express or formal approval of the Minister of Public Works, we have the approval of the Dominion Government. It would be most unfair if we had to give a patent of the water front lots to the Province in front of our right of way, and at the same time leave the province free.

HON. MR. MABEE: Did not the Province trade you something they had not the right to?

MR. TATE: Their lessees—

HON. MR. MABEE: How can the Province give you any authority to impede navigation on that bay?

MR. TATE: Supposing they cannot, if the Province was coming here today would you allow them to impeach their own agreement? And can their lessees stand in any higher position?

MR. MACDONALD: Read that section and see if you cannot agree with me that that gave the riparian rights to the owners.

MR. TATE: I am trying to explain that. Will you follow me?

MR. MACDONALD: Excuse me. This is not a case of compensation. We want to utilize those lots and do business.

MR. TATE: Look here, Mr. Macdonald, there is an outline of the shore shown in that plan. (Indicating.)

MR. MACDONALD: Yes.

MR. TATE: In lieu of that the Province desired to take the water front abutting on our dump, and that is shown colored green on the registered plan, and that is what they are getting. They are getting their one-quarter there, and getting something they could not get without our concurrence.

MR. MACDONALD: The government and you can get over to Victoria and arrange anything outside of the statute?

MR. TATE: We could so long as no other rights are interfered with.

MR. MACDONALD: That is the statute.

MR. TATE: This is not an application by the public, or an application for not having complied with section 230, but it is an application of the grantees of the province to impeach that



agreement entered into with the Province. I submit it is not competent—

MR. MACDONALD: It is an application by these men and the Board of Trade as well.

HON. MR. MABEE: Is that quite the right way to put it? These men who own property on the bay are not the only ones to be considered. If I come down that harbor with a boat I have as much right to go into Cameron Cove as those men. It is the general public. As I understood it when the Act says that the free navigation of water shall not be impeded, it is not only the riparian owners abutting on the water; you have just as much right to go into Cameron Cove as Mr. Rochester has.

MR. TATE: If that view were allowed to prevail it would stop all railway construction along the water here. Here are indentions along the water front equally navigable.

HON. MR. MABEE: It would not stop you. You would go to the Minister and get rights from him.

MR. TATE: Your lordship says we should take the preliminary consent of the Minister of Public Works. We are not doing it in that precise way, but we try to accomplish the same end in another way. We are going to the government. There is a bay to the northeast, and if your lordship will look here to the northeast you will see there are at least a dozen bays and inlets along this water front.

HON. MR. MABEE: That makes it all the worse.

MR. TATE: With respect to each one of these inlets, the same claim could be made as in the case of Cameron Bay, which would effectively prevent the construction of the Railway along the water front. You would have to get your line out of the bay and destroy the town.

MR. MACDONALD: Don't you know a little better than that. Don't you know the Railway Act has got a procedure for the railway company?

MR. TATE: Yes.

MR. MACDONALD: And the first thing where you encounter navigable water you apply the provisions of the Railway Act, and go to the Minister of Public Works, and get approval of the scheme as a scheme, then you follow that up by getting the Railway Board to approve of your line of location, and then these parties have an opportunity of going before the Board, and obtaining from the Board under the sub-clauses of that section the right of protection, not only of themselves but of the public. The whole matter is mapped out in sections 158 and 159.

MR. TATE: Those parties were non-existent then.

MR. MACDONALD: No, they were ahead of you so far as possession goes.

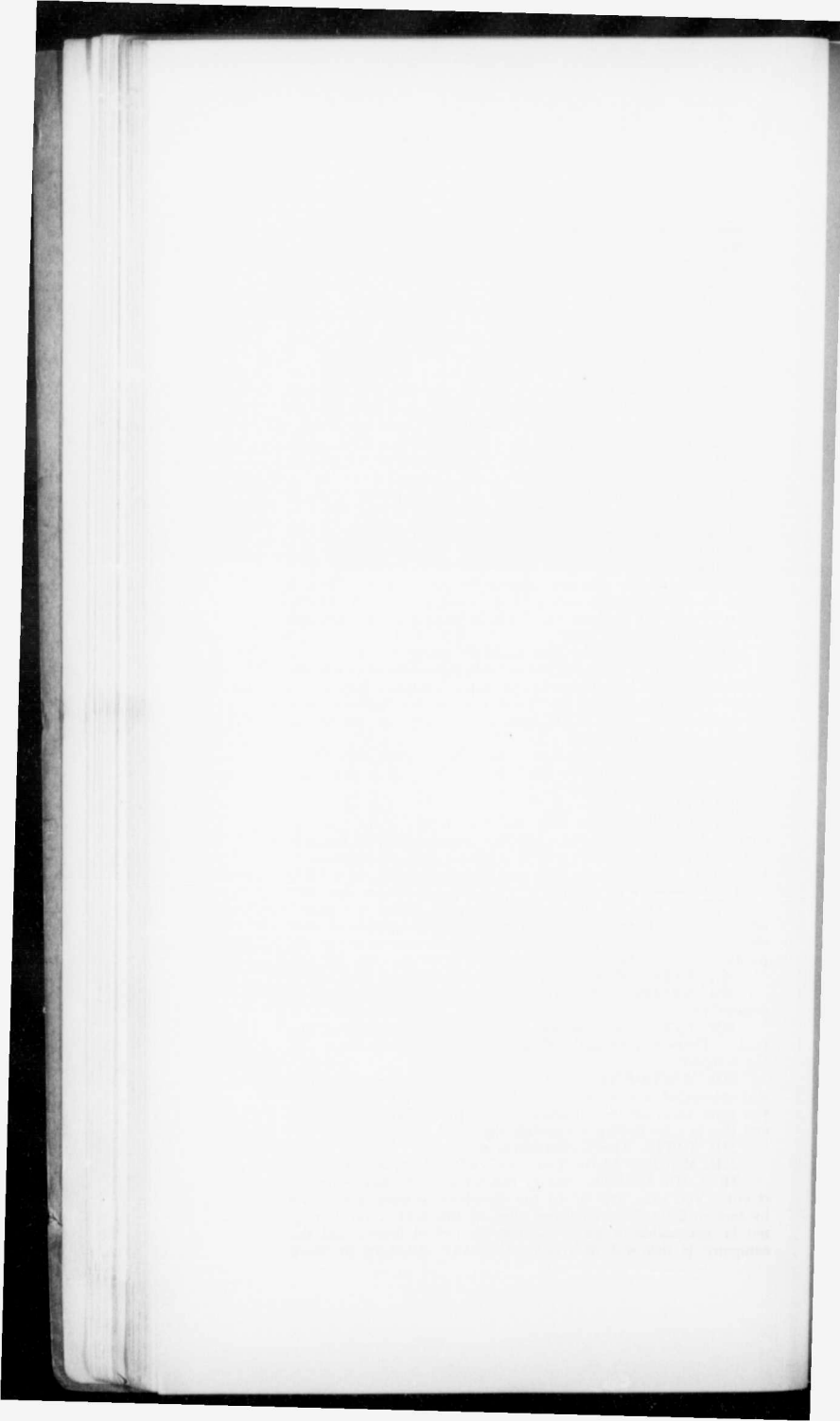
MR. TATE: I am speaking of the time the agreement was made. There was no one then concerned but the Province and the company.

MR. MACDONALD: Oh yes, anyone who might buy land was interested, and under the Act you made with the Province you gave them all the riparian rights appurtenant to the lots, and this is a lot having a riparian right.

MR. TATE: This is riparian land.

MR. MACDONALD: You have put it out in the water then.

HON. MR. MABEE: Surely this must be the way you work it out. You have first of all the statutory provisions imposed by section 230. Then covering cases of this sort where it may not be reasonable to leave openings or put in draws, and the company is desirous of constructing any structure or work



across any navigable water, or upon the beach, bed or lands covered by water, the company shall, before the commencement of any such work submit to the Minister of Public Works a plan and description of the proposed site for such work and a general plan of the work to be constructed. Then upon the approval of the Governor in Council of such site and plan they shall apply to the Board for an Order authorizing the construction. Then the rest of the section deals with the powers of the Board. Now, is not that clearly intended to prevent a railway company taking it into its own hands to close up all the indentations in the shore line it chooses, and imposes on the railway company the obligation of getting such structures as this seems to be approved by the Governor in Council.

MR. TATE: Well, that would be the more regular way to proceed.

HON. MR. MABEE: Is there any other statutory way to proceed?

MR. TATE: We have made application as I say, to the Government.

HON. MR. MABEE: No, you made application to get the Government to recognize a kind of left handed agreement you made with the British Columbia Government. You have swapped something for something they were supposed to have had.

MR. TATE: Which is a good deal more valuable.

HON. MR. MABEE: Possibly. Possibly it is much more valuable, I do not know.

MR. TATE: And if the order in council issues giving us a Crown grant for the land shown in green in front of F, that settles the whole matter.

HON. MR. MABEE: I do not know that it does.

MR. TATE: Well, I do not know what higher authority we can get.

HON. MR. MABEE: How can you then say that you had ever submitted and got the approval of the Governor in Council to the blocking up of that cove?

MR. TATE: Well, it necessarily follows if they give us a Crown grant.

HON. MR. MABEE: Does it?

MR. TATE: I submit so. If they give us a Crown grant of the land shown in green, it must show they regard that as land, and therefore to regard it as land the filling must be done. Of course, perhaps, part of the trouble arises from this fact, that all along this water front a large part of the shore which is bare at low tide, was treated as land both by the Province and the company, and if your lordship's ruling is to prevail, apart from our right of way altogether, it would abridge the water front blocks there considerably.

HON. MR. MABEE: I do not know what the Province would have done. I suppose they did what they thought was right and proper. We have to do what we think is right and proper just in the same way.

MR. TATE: If there is any formal procedure that your lordship thinks we should take, we are very willing to make any application that is necessary, but so far as the facts and the merits of the case go, that is the way the water front must be treated by some proper authority, otherwise the water front at Prince Rupert would be valueless.

HON. MR. MABEE: Surely that is the way, is it not the clear intention of Parliament just to prevent a railway company



closing up those indentations that the Almighty put there for some purposes?

MR. TATE: I would answer your lordship in the affirmative in regard to one isolated case, but the Government concerned thought that this one matter here was one so comprehensive that it would require larger and more radical treatment. Therefore we applied to the two governments, not to the Minister of Public Works at all. Mr. Schrieber examined all this water front, and he reported on it to the Government.

HON. MR. MABEE: What has the Federal Government done?

MR. TATE: The Federal Government have got under consideration now our application for a Crown grant of the land shown in green.

HON. MR. MABEE: To the British Columbia Government?

MR. TATE: To us in trust for the British Columbia Government.

HON. MR. MABEE: Well then, the foundation of that is that you gave to the British Columbia Government something you did not own.

MR. TATE: Which they wanted.

HON. MR. MABEE: Which you did not own.

MR. TATE: We covenanted to try and get it though.

HON. MR. MABEE: The further west you fellows get the worse you get.

MR. TATE: No.

HON. MR. MABEE: You would not do such a trick as that in Ottawa if you were building around below the Parliament Buildings there.

MR. TATE: My lord, is not the only question between myself and the Board one of procedure? You do not pretend to dispute that that is the only way of treating the water front?

HON. MR. MABEE: I do not know what is practicable. I know the law says the railway company is not the one to sit in judgment as to what is practicable.

MR. TATE: I am quite prepared to take the judgment of the Board's engineer as to what is the practical treatment of the water front.

HON. MR. MABEE: After you have got it all built.

MR. TATE: I think the Board might take judicial notice that the treatment of Prince Rupert was a matter of negotiation between the Government and the company for three years.

HON. MR. MABEE: Will you tell me where the Province of British Columbia could give you authority to depart from what the Railway Act lays down as your code of procedure?

MR. TATE: You would not want me to argue that. I could not argue that.

HON. MR. MABEE: It gets back to that.

MR. TATE: We acted in conjunction with the Provincial Government and the Federal Government in the treatment of Prince Rupert. I do not think we acted unreasonably.

HON. MR. MABEE: I am not saying you did, but I know if you came to us after you got the approval of the Governor in Council you would have given notice to the people there who are interested before you could block up those waterways.

MR. TATE: That is the point. There was no public. There were only the Province and the Government.

HON. MR. MABEE: There was an Indian Reserve.

MR. TATE: We got a transfer from the Government.

HON. MR. MABEE: Surely, the Indians have a right?

MR. TATE: No.

HON. MR. MABEE: Surely, the red man has some right in Prince Rupert. These men had a right to land on those public shores, anybody up there had that right, fishermen, or even the Grand Trunk Pacific engineers.

MR. TATE: Even the Indians had been paid off before this time; they got their money and went away.

DR. MILLS: They were paid and left?

MR. TATE: Yes. So the only two interests were those of the Province and the company.

HON. MR. MABEE: I do not regard the Province as being concerned at all.

MR. TATE: Yes, they are one of the quarter owners, and the company owns three-quarters.

HON. MR. MABEE: The Province did not own land covered by these tidal waters.

MR. TATE: They owned one-quarter of the land in the townsite.

HON. MR. MABEE: I am not talking about the townsite. I am talking about that cove.

MR. TATE: They had the right to apply for a Dominion Crown grant of all water lots abutting. They gave that to us, and we arranged that we should apply for this water front grant shown on exhibit A in lieu of a water front grant following the original line of the shore. That is the whole situation, but it is obvious that if the Province are to get a Crown grant of the waterfront marked "B" that they cannot get a Crown grant of the water front further inland.

MR. MACDONALD: That would not close your entrance then.

MR. TATE: Yes, this would have remained open.

MR. MACDONALD: Do you agree with me that so far as navigable water is concerned neither Government could deal with that, nor the Governor in Council, except under the provisions of the Railway Act?

MR. TATE: I think the Order in Council would be sufficient.

MR. MACDONALD: Navigable water is supposed to be left to the public, is it not?

HON. MR. MABEE: Is there anything more to be said?

MR. TATE: Would your lordship like any evidence from our engineers with regard to this being the only way to treat the water front? The matter was gone into during two or three years, it was not done in a day, and I think neither these people nor any member of the public had any rights on this ground at all when this matter was arranged.

MR. MACDONALD: Mr. Tate, you are not correct in that. Mr. Rochester was up there four years ago.

MR. TATE: Had you any rights there four years ago?

MR. ROCHESTER: How do you mean "rights"?

MR. MACDONALD: I thought you meant residents. There was nobody living there at that time?

MR. TATE: There were squatters. If any part of the public had an interest at that time—

HON. MR. MABEE: You got a grant of your townsite from the British Columbia Government?

MR. TATE: And the Dominion.



HON. MR. MABEE: What had the Dominion to do with it?

MR. TATE: There was an Indian Reserve up to this tide line.

MR. MACDONALD: It does not affect this piece in question.

HON. MR. MABEE: What title, or what description of land does the Crown grant from British Columbia carry?

MR. MACDONALD: Here is the statute.

MR. TATE: The Crown grant is not in that, Mr. Macdonald.

HON. MR. MABEE: What does it give as your boundaries on the water front, high water mark, or what?

MR. TATE: I would like to have had the Crown grants here for the Board, but I could not get them here in time. I think it follows this, the wording of this subsequent grant.

HON. MR. MABEE: What is it?

MR. TATE: The conveyance from the Province to the Townsite Company of the above land hereinafter referred to, would include all the foreshore and riparian rights which the Province may have in the said lands, including lands below as well as above high water mark.

HON. MR. MABEE: To the Townsite Company?

MR. TATE: That expression is retained in both grants. I am speaking subject to correction.

MR. MACDONALD: I think that is fairly put.

HON. MR. MABEE: Where did the Grand Trunk Pacific get its title?

MR. TATE: We got title from the Province.

HON. MR. MABEE: That provides for a conveyance to the Townsite Company. That is not the Grand Trunk Pacific Railway Company.

MR. TATE: Yes. We took this in the name of the Townsite Company, and then the Townsite Company conveyed those blocks intended for railway purposes, comprising 340 acres, and the balance we left with the Townsite Company to keep clear of our bond mortgage.

MR. MACDONALD: Read over to the Board where you give back all the riparian rights.

MR. TATE: We gave back what we could.

MR. MACDONALD: One got one-fourth and the other three-fourths, and you got no advantage over one another?

MR. TATE: Yes.

HON. MR. MABEE: And the Province does not make any attempt to give you any riparian rights?

MR. TATE: Yes, they give all they got, including any riparian rights above or below high water mark.

MR. MACDONALD: Take that as a sample, they got back all the riparian rights that attached to that green piece.

MR. TATE: Except so far—

MR. MACDONALD: No, there is no exception.

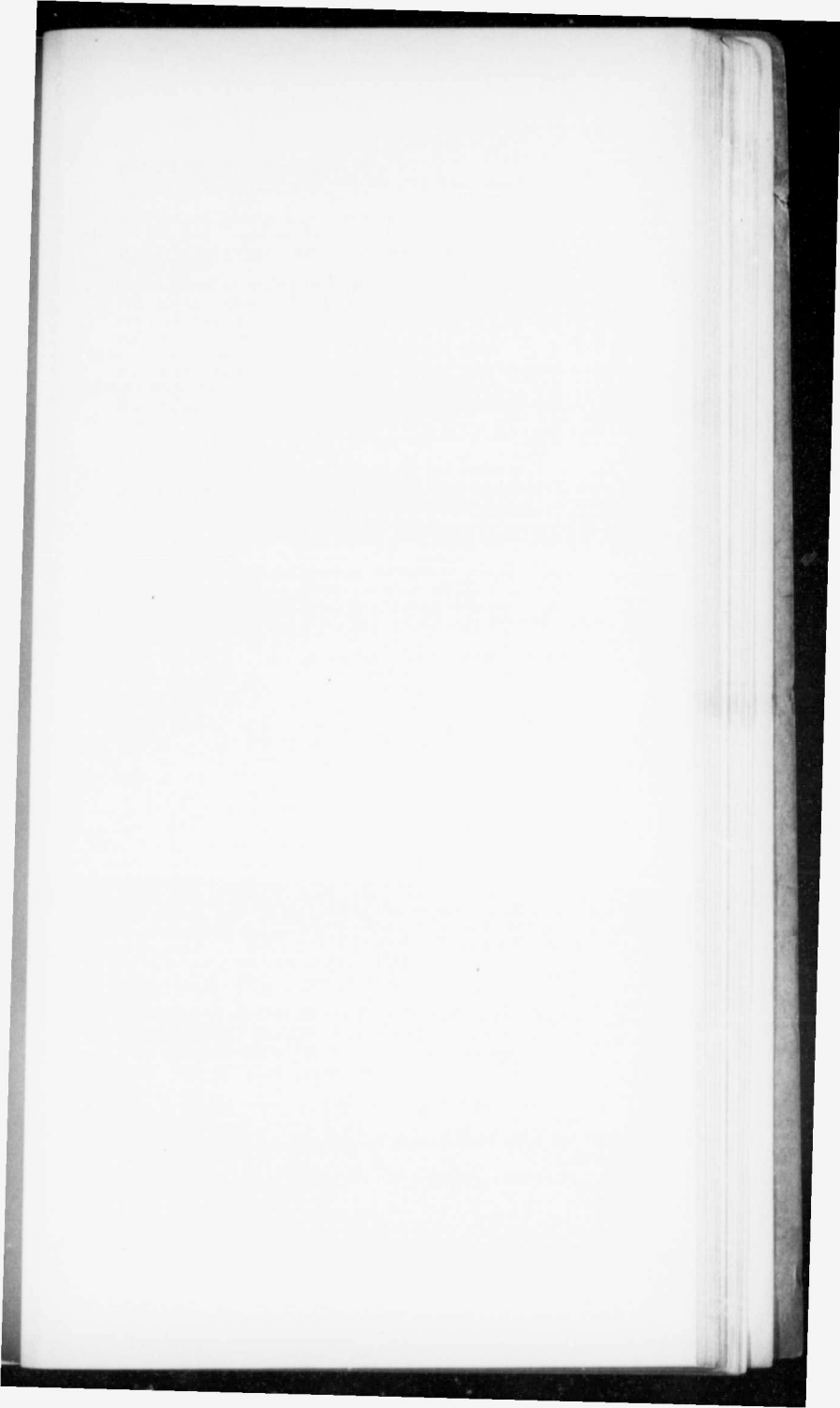
MR. TATE: Pardon me. Except so far as they derogated from their rights by substituting under this agreement. They cannot get both.

MR. MACDONALD: You could not depart from that statute, and that is what the parties took the agreement under.

MR. TATE: They took that knowing this agreement was in force.

HON. MR. MABEE: Now, you say that these lessees—

MR. TATE: And the public.



HON. MR. MABEE: Have got no higher rights than the Province would have?

MR. TATE: Yes, that is our proposition.

HON. MR. MABEE: Why could not the Attorney General file information against you?

MR. TATE: The Attorney General signed this agreement. I do not know how he could.

HON. MR. MABEE: I was not aware the Crown could be estopped.

MR. TATE: After making a regular formal agreement?

HON. MR. MABEE: Does estoppel run against the Crown?

MR. TATE: After being confirmed by Act of the Legislature? Yes, my lord. You see, the agreement is confirmed by Act of the local House; in fact, it is confirmed first by the Order in Council, and the Order in Council was confirmed by the Act. Surely, it would. Otherwise there is no security in making an agreement with the Government.

MR. MACDONALD: So far as the agreement is concerned with the local Government, it is all outlined in the statute, and when that parcel F was given back by the Grand Trunk Pacific Townsite people to the local Government, there was a special provision that all the riparian rights attached thereto go back if they had already been deeded away.

MR. TATE: Yes.

MR. MACDONALD: "Should the said townsite be located in whole or in part on land embraced in the said Crown grant of the 10th of March, 1905, the blocks and lots into which such land has been subdivided, together with the foreshore and riparian rights of and appurtenant to the said blocks and lots, including land below as well as above low water mark, falling to the Province under the provisions of the said Crown grant, shall be conveyed to the Province on or before the first day of December, 1908."

That is what they got.

MR. TATE: This plan may be a little misleading to you. On the plan that is the exhibit to the agreement this white thing is not white, it is red, and there is the whole block, and the water front that is referred to as the water front abutting on the northerly part of this green line.

MR. MACDONALD: What these lessees tell me is that so far as that being red, there is no power making that red.

MR. TATE: It is red in the agreement.

MR. MACDONALD: You had no power to make that red. Neither one of you owned that property.

HON. MR. MABEE: Who owns this cove now?

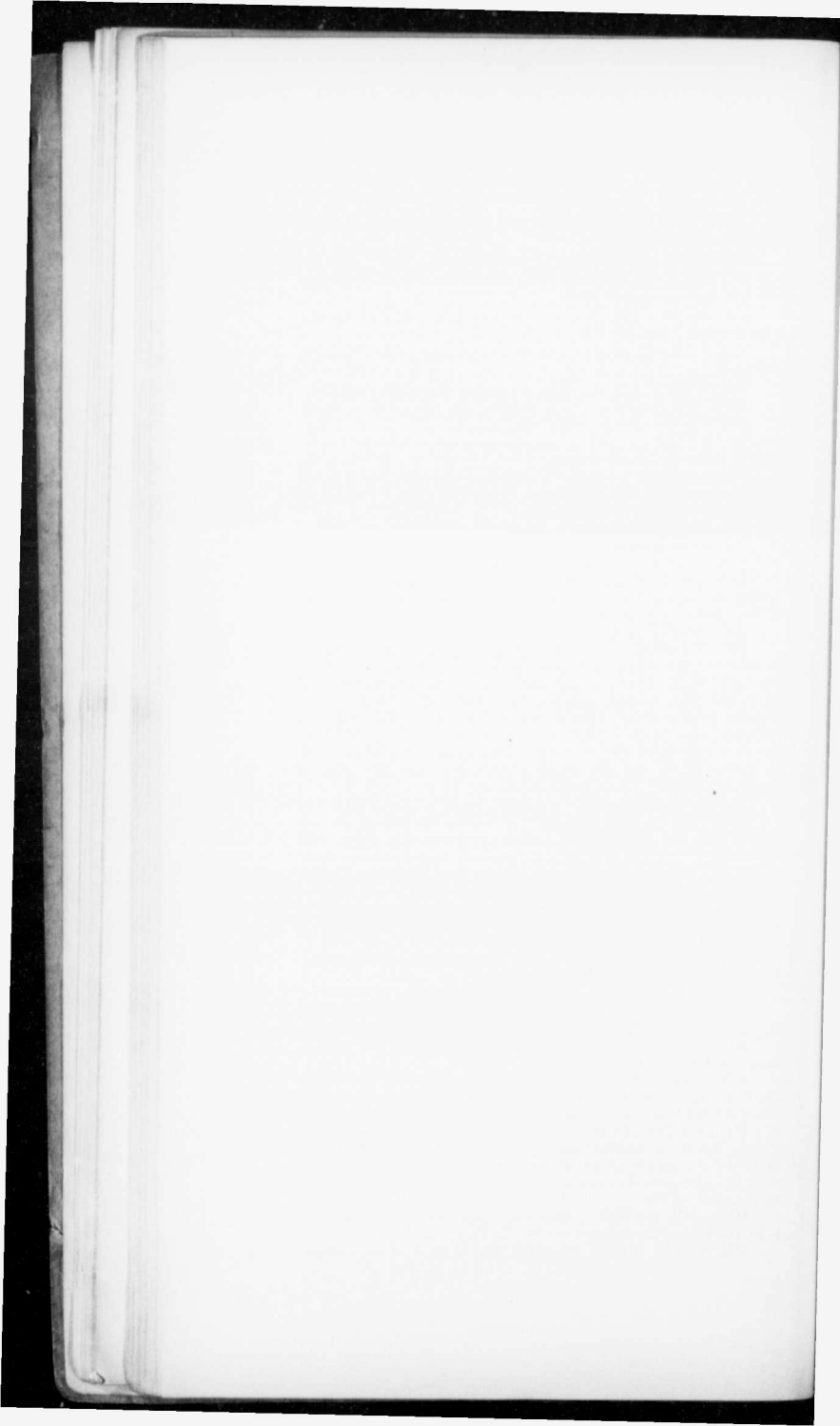
MR. TATE: The Province owns that part of the cove that is colored green. The railway own that part that is colored red.

HON. MR. MABEE: How does the Province get title to land covered by navigable water?

MR. TATE: I say we have applied for a Crown grant from the Dominion, and they have our agreement to transfer it to them when we get that from the Dominion. It is assumed we will get it. We have the promise of the Minister to get these Crown grants, but he is holding them up by reason of the fact that we applied for a larger area than he at present thought was necessary, but this part is not objected to, nor is the part immediately to the west of that.

HON. MR. MABEE: Then you admit the title to the cove is in the Crown as represented by the Governor General?

MR. TATE: I could not admit that in view of the conflict-



ing decisions of the Privy Council as to whether the bed of navigable water is vested in the Dominion or the Province. The Dominion has dominion over navigable water, but the Province say not in the land under the navigable water, and that point has never been authoritatively settled yet. For instance, the Ontario Government are issuing Crown grants of land abutting on water on Manitoulin Island, and getting substantial consideration for it. The Dominion Government claim the right to issue those Crown grants.

HON. MR. MABEE: I suppose, Mr. Macdonald, we should defer dealing with this matter until we see whether the Government gives these people a grant of that property, should we not?

MR. MACDONALD: I cannot make out from what Mr. Tate says what portion he has applied for. What portion are you applying for?

MR. TATE: For a grant of the water front north of the line shown in green on exhibit A, as I suppose this plan is.

HON. MR. MABEE: I understood you to say you were applying for title to the cove.

MR. TATE: We have filed a plan showing all this as land colored green and red, and for a grant of the foreshore rights in front of the green land.

MR. ROCHESTER: This has all been leased by the Government with the exception of 100 feet.

MR. TATE: That is right. We won't dispute those leases. I think your lordship can see that if there is any way at all by which the Province could prevent putting that obstruction there they would have given effect to the application of the lessees when they came before the House last session. Great pressure was brought on the company then, but the opinion of the Attorney General and the House shows that—

MR. MACDONALD: What was said was this: These people have got their leases, they are able to do their own fighting. If they feel like fighting, let them go ahead.

HON. MR. MABEE: It is quite possible the Attorney-General could not do anything. He could not order you to stop your railway, or order you to take it up after you had it built. He might have put some considerable indirect thumb screw pressure on you.

MR. TATE: But I do not think the Board disputes that the lessees have no higher rights than the lessors, and there was no question at that time—

HON. MR. MABEE: I am not going to dispute a proposition of that kind.

MR. MACDONALD: The people of Prince Rupert say they are anxious to have the use of that cove still as they have had for two or three years. They think the proceedings of the Grand Trunk Pacific not only illegal, but very high-handed in closing it without giving them a chance to be heard, and the only chance they had was to bring it before the Board. Of course, they could start an action, but an action would drag along.

HON. MR. MABEE: I suppose the position of the Railway Company is that they have got to make use of that property for yards.

MR. MACDONALD: Not at present.

HON. MR. MABEE: Looking to the future.

MR. MACDONALD: It may be they will take that ground.

HON. MR. MABEE: Why did you not apply to get title to this cove?

MR. TATE: We have. In fact, the Dominion Government



are interested to this extent, they have had us put a floating dock there.

HON. MR. MABEE: Why is not the better way, Mr. Macdonald, to defer action until the railway company make application to the Government to get title to these lots? Then it is entirely under the control of the Government to impose whatever equitable terms they see fit upon the railway company in granting them conveyances, if they have to use all these lands for yards in future.

MR. MACDONALD: But there is no procedure, as I understand. The procedure he adopted along the foreshore at Vancouver was that he simply obtained grants; that is the end of it.

MR. TATE: There is no foreshore at Vancouver.

MR. MACDONALD: Yes, on English Bay. Those concerned have no opportunity—

HON. MR. MABEE: If they have got to locate a railway yard there there is no use requiring them to put in a draw. If they have to fill that cove up and widen out their tracks there is no use asking for a draw.

MR. MACDONALD: My clients say that is not the place where they widen their tracks; it is further down.

HON. MR. MABEE: How many acres are covered by water from inside the dump at ordinary high tide?

THE RAILWAY CO.'S ENGINEER: At ordinary high tide I think less than two acres.

HON. MR. MABEE: Between one and two acres?

THE ENGINEER: Yes.

HON. MR. MABEE: When the tide is down it is just mud?

THE ENGINEER: The deepest part above our railroad embankment, that is this portion that will be covered, is ten feet above zero. Zero is low tide established by the Government. Then the ground rises gradually from that up.

MR. MACDONALD: I cannot hear.

THE ENGINEER: At 15 or 18 feet of tide there would be perhaps 100 to 150 feet square that would be covered with any depth of water, and that would be shallow in portions. I do not think there would be over 150 feet square there at the average high tide where you could float any scow drawing 3 feet to 4 feet of water.

MR. ROCHESTER: A good deal more than that.

THE ENGINEER: At the average tide?

MR. ROCHESTER: Yes. We have had 100 foot scows in there.

MR. MACDONALD: The lots on the ground surveyed would show more than that.

THE ENGINEER: That runs to the extreme high tide, does it not?

MR. MACDONALD: I assume the marks are correct as shown in the plan.

MR. ROCHESTER: There is 500 feet in each lot.

MR. MACDONALD: I am also instructed, Mr. Chairman, there is only one track there at present, and no indication of any other tracks going in.

MR. TATE: There is a track going in to the graving dock. There is our present grade showing double tracks. There is the track going to the graving dock down there, (indicating) so that all this space between those two tracks would have to be filled in.

May I ask you a question, Mr. Macdonald?

MR. MACDONALD: Certainly.



MR. TATE: Are your clients just to get something from the company that their lease does not cover?

MR. MACDONALD: No. They are trying to get the use of those lots.

MR. TATE: The consideration they gave the Province did not include any water front rights.

MR. MACDONALD: They paid their money in good faith at the auction sale.

HON. MR. MABEE: What is the length of time the leases have to run?

MR. ROCHESTER: Five years.

HON. MR. MABEE: I would like to have a copy of one of those leases.

MR. TATE: The man who was the auctioneer does not agree he sold any water rights.

MR. MACDONALD: That is a dispute between those parties and the auctioneer.

MR. ROCHESTER: Mr. Ramm told me a week before the sale regarding a few lots marked "R." I asked him what they meant. He told me, "Those are reserved by the Government so the people can use the lots behind and get to the water." They simply reserved those few on the front.

MR. TATE: If he sold you that you have a good claim against the Province.

MR. MACDONALD: What about the leases?

MR. ROCHESTER: They have never issued yet.

MR. MACDONALD: What have you got?

MR. ROCHESTER: We have a receipt for 6 months' rent.

MR. TATE: MR. RAMM says he did not sell any water rights; these parties says he did.

HON. MR. MABEE: Without the leases, Mr. Macdonald, what do you say?

MR. MACDONALD: I do not see the position is weakened at all, if the Government allowed them to get into possession and said—

HON. MR. MABEE: Supposing the Government refuse. They may say that in view of all this complication that exists they will only give you a lease subject to the rights of the railway company.

MR. TATE: That is all they are going to get from the Government.

MR. MACDONALD: Of course, if that is the position taken by the Government the public would have to take the stand that is now being taken by these individuals.

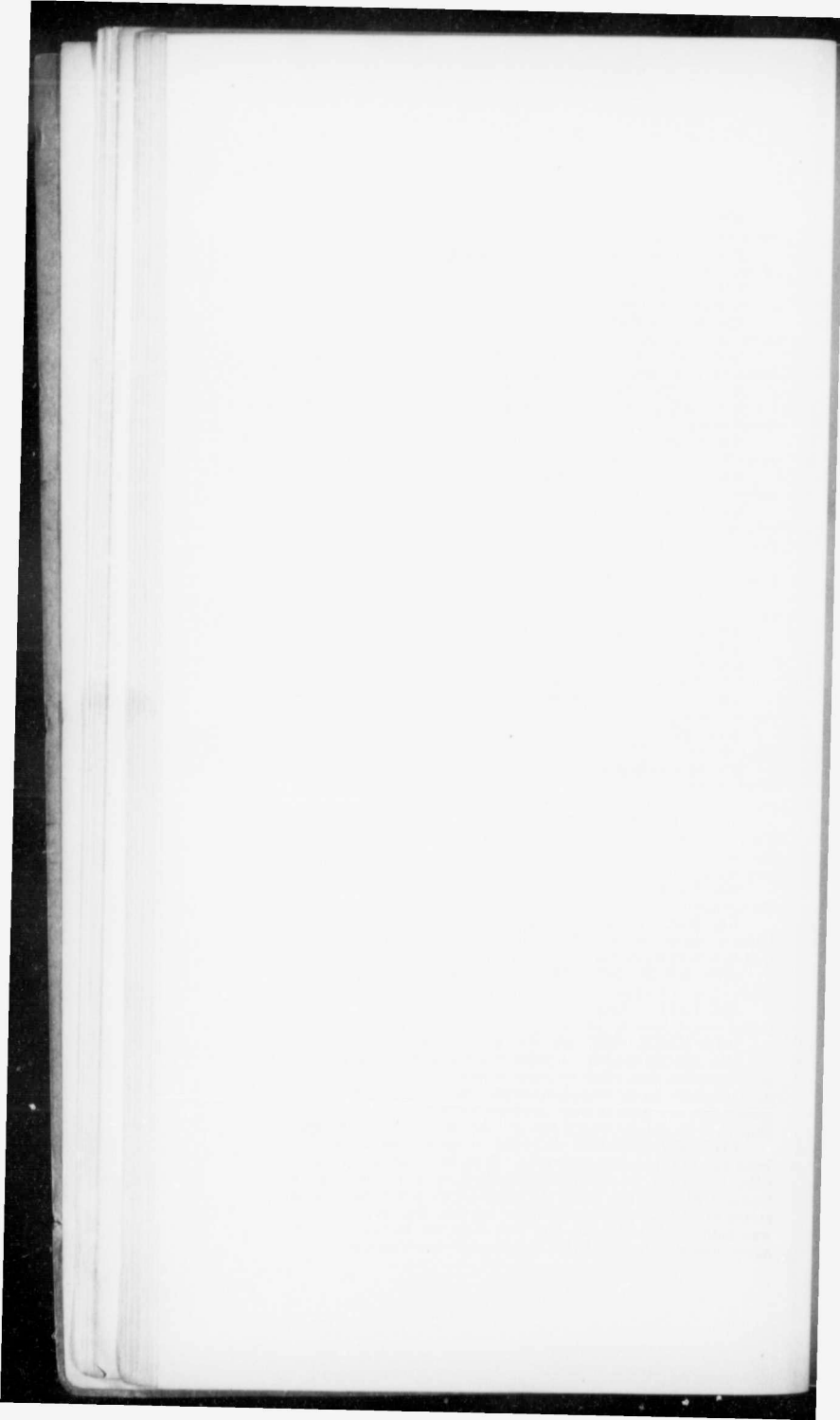
HON. MR. MABEE: This is on account of lot F, 5 years. (Referring to receipt.)

MR. TATE: And is not the Board of opinion that the public would have to ascertain, as it did, the agreement?

HON. MR. MABEE: Oh, I think perhaps that is so.

MR. MACDONALD: I think the Board would agree with my contention that when we come to navigable water, that is a matter where more than individuals are concerned, that any person who has gone in with the expectation of living in Prince Rupert, if he did not own a foot of land, would have that right.

HON. MR. MABEE: It seems to me a question of this lease not having issued is serious. You have got an equitable title, but when the Government comes to give your clients leases, I do not know what the terms of them will be. There seems to be a misunderstanding as to what Mr. Ramm did, or was authorized to do, but Mr. Tate says Mr. Ramm does not agree with the statement that one of your clients makes.



MR. TATE: Mr. Macdonald admits that.

HON. MR. MABEE: But at any rate, the terms of the leases have got to be adjusted, as they never have been adjusted between your clients and the Government. I do not know what terms the Government may impose.

MR. MACDONALD: It might be superfluous. If they simply give a lease of the lot, if they follow Mr. Tate's idea and impose something that cuts us out, it might be. If they give us a lease of the lot I think possession superfluous.

HON. MR. MABEE: It seems to me you have got to get title in black and white before we can interfere.

MR. MACDONALD: You would not deal with the matter on the strength of the Board of Trade intervening? They really support the application as shown by the resolution.

MR. TATE: It only came into existence subsequent to the agreement.

MR. MACDONALD: Of course, for my part, I am not concerned with the agreement very much. I am concerned as to whether we have status here.

HON. MR. MABEE: I think we will have to ask you to furnish us with your paper title, and then we will try and ascertain what your rights are.

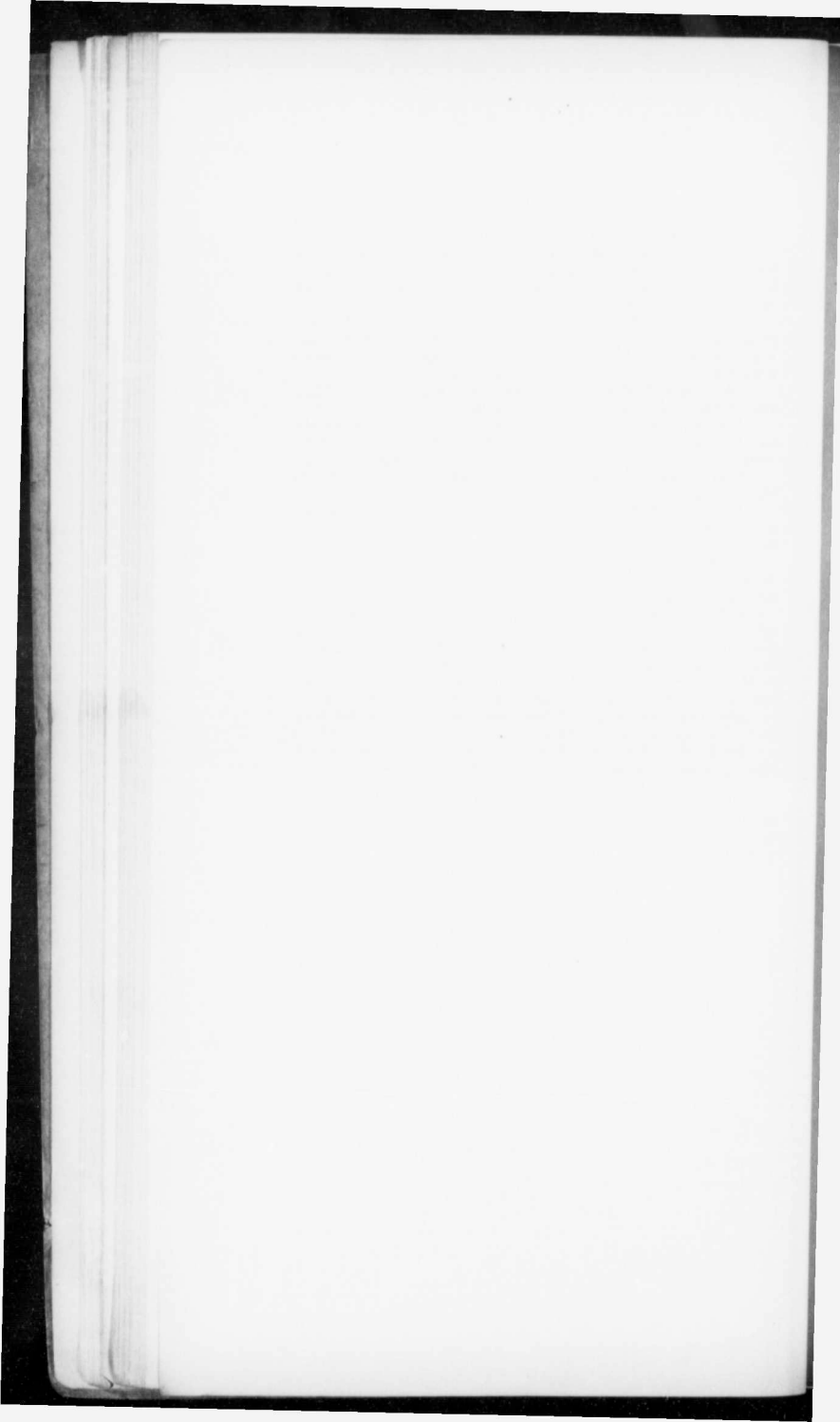
I do not know what the Government may do. It is not at all likely they would, but suppose the Government took the position: We won't give you leases for this. The Attorney General might say, "We will give a fiat to file a petition of right. We have got a tangle, we do not know what to do. Take your fiat and we will do what the Court says we ought to do."

MR. MACDONALD: When could you deal with the matter? We can argue it further?

HON. MR. MABEE: Yes, you can argue it further, and you can send to the Secretary your lease.

MR. MACDONALD: Without further argument?

HON. MR. MABEE: Or with any further statement you desire to make or further argument. If there are any necessary facts you think should be placed before us, you can communicate with the Secretary.



THE BOARD OF RAILWAY COMMISSIONERS FOR
CANADA.

Prince Rupert, B.C., 19th August, 1911.

Before:

HONORABLE J. P. MABEE,
Chief Commissioner.

S. J. McLEAN,
Commissioner.

R. Richardson,
Acting Secretary,

(Nelson R. Butcher,
Official Reporter.)

File 1. Appl'n of John Y. Rochester, Georgetown
3452.18 Lumber Company, Union Transfer Company, Westen-
haver Bros., Westholme Lumber Co., and W. H. Law, of
Prince Rupert, B.C., for an Order under Sec. 233,
directing the G.T.P. to construct a bridge across part of
the entrance to Cameron Bay so as to leave an entrance
of 45 feet for the passage of barges and other small
craft beneath the same from Prince Rupert Harbor to
the said Cameron Bay.

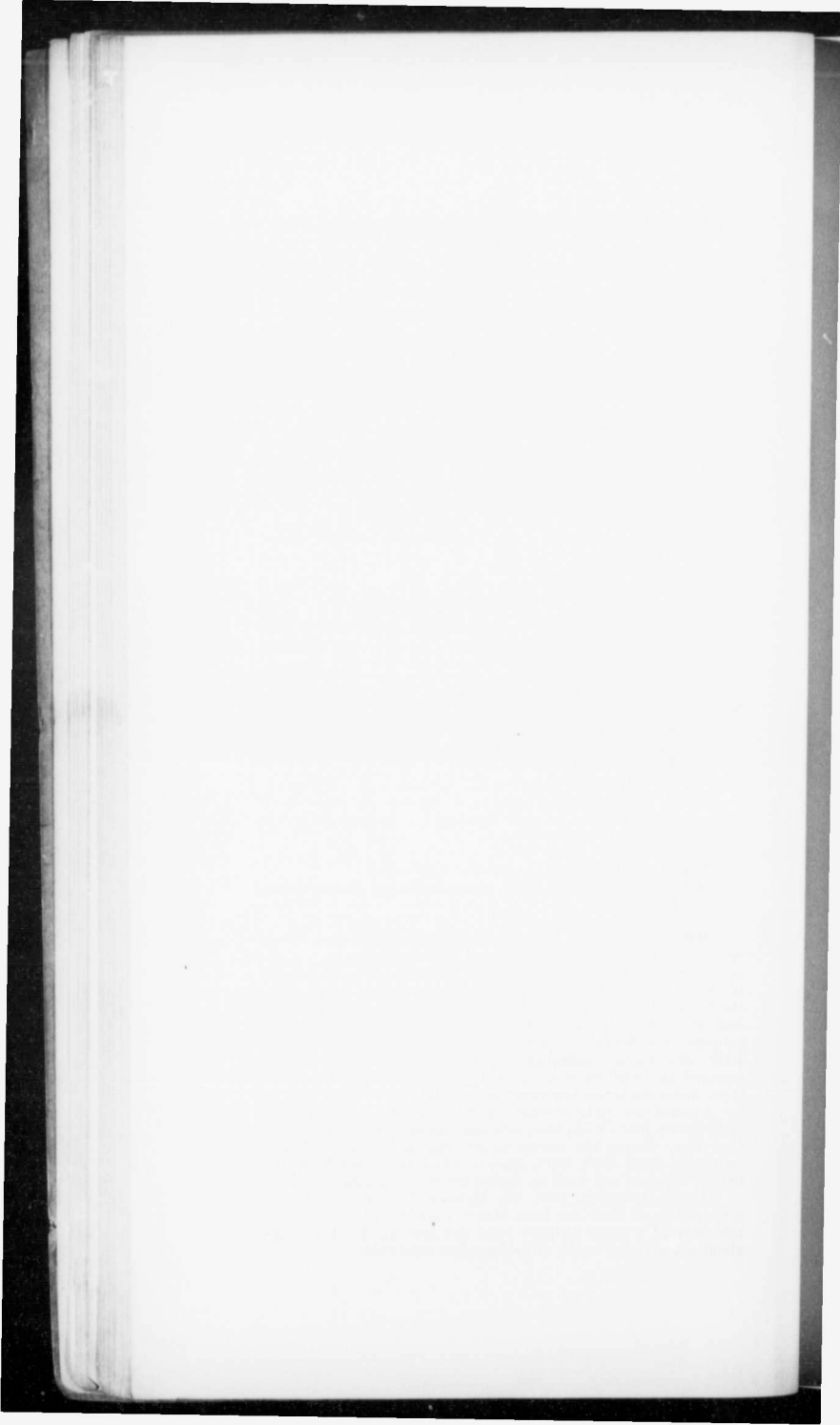
MR. A. CARSS appears for the Applicants.

MR. D'ARCY TATE, K.C., appears for the Grand Trunk
Pacific.

MR. CARSS: This is an application which has been before
the Board in Vancouver before and relates to certain lots, of
which there is a sketch here. I have a sketch plan which I will
place before you. The applicants in this matter are lessees from
the Provincial Government of certain foreshore lands on a small
bay off the main harbor in the City of Prince Rupert here. The
property was leased by public auction on the 30th of August,
1909, and almost immediately afterwards the lessees, being
engaged in handling sand, gravel and lumber, began hauling
these materials to the lots that they had leased.

I might say that previously to this time this same Cow Bay
or Cameron Bay (it has been variously named Cameron Bay and
Cow Bay) during the winter season especially was used as a
refuge for small craft, and a place in which they were from time
to time repaired and fixed up during the winter season.

About December, 1909, the Railway Company began the
construction of their line from Mile 0 westerly, which passes by
this cove at a short distance from the zero mark. I presume
about a quarter of a mile or perhaps less than that.



The applicants in this case were at that time using the place. The fill which the Railway Company were putting in for their line crossed the entrance to this Bay. My clients (the applicants) were using it at the time, and they objected to this water way being filled in. They served notice on the contractors who were working on the ground, and also on the Railway Company, asking them to desist from the filling in of the entrance to the Bay. However, the company proceeded with the fill, and although the applicants placed some of their scows in the line of the grading that was being filled in the contractors did not take any notice of that, but filled in over the tops of the scows which they had placed there as an obstruction or as a mark beyond which they did not wish the Railway Company to go. I understand that all this proceeding was taken without any of the permission required by the Railway Act on the part of the Company.

I believe that counsel for the Railway Company admitted at the hearing in Vancouver that they had not even received the sanction of the route map by the Lieutenant Governor in Council at the time. Whether that has been received since I am not aware. At all events the plans and profiles were not filed here in the Registry Office (or if they had been filed they were withdrawn at that time) as required by the Act.

Leases were issued by the Provincial Government for these lots as foreshore leases, showing that the Provincial Government understood that the lands leased by them conveyed the right to the lessees of free access to the water.

Now, these people were engaged in this trade of handling building material, and by the action of the company they have been prevented absolutely from the user of these lots for two years, up to the present time, and as a matter of fact some of the parties had to go completely out of business. They could not carry on their business for this reason. Although they applied to them for other facilities for handling their material they could not procure them.

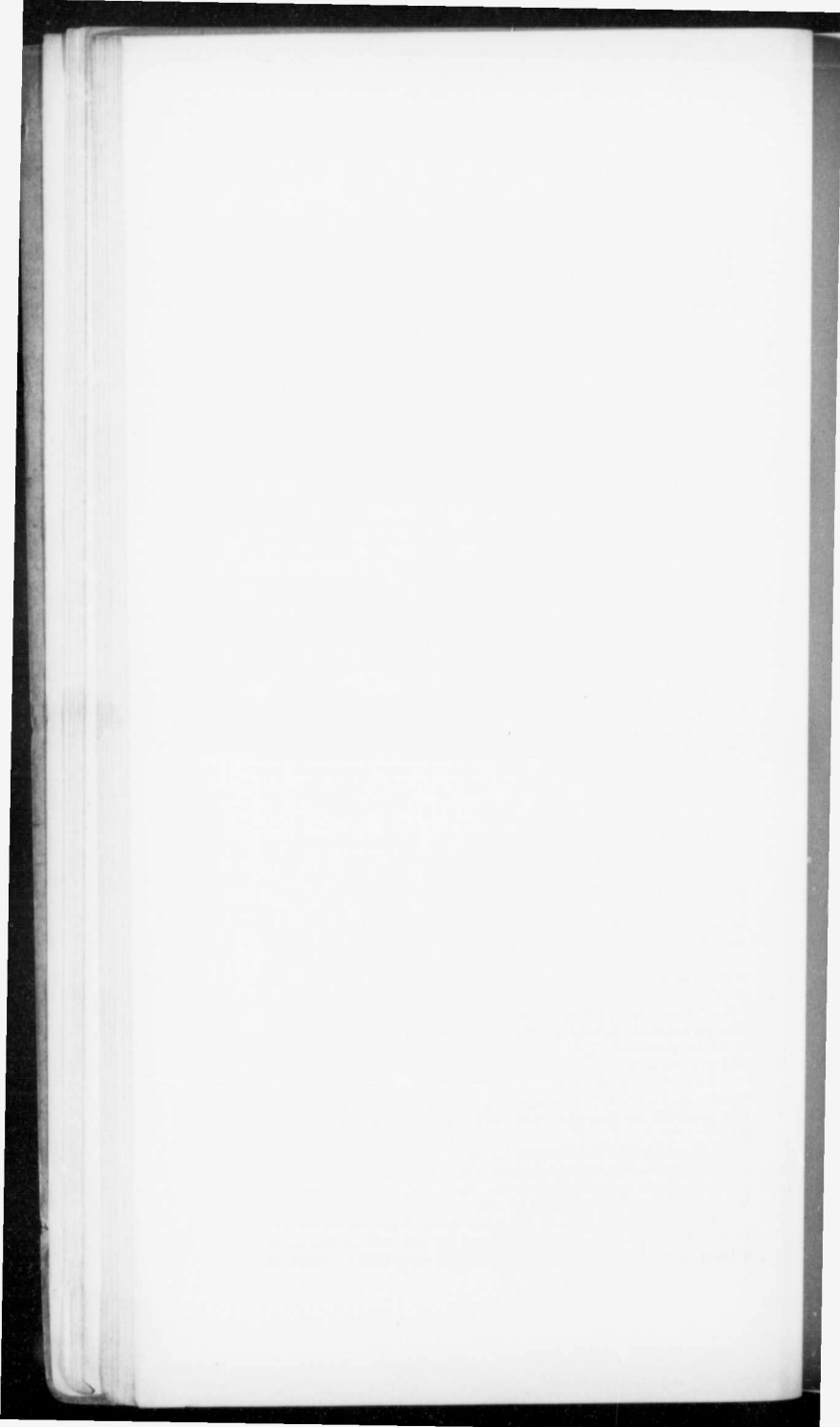
The situation is such here that there is great difficulty and expense in handling building materials. There are only certain stages of the water at the dock here, on account of the very great rise and fall of the tide, in which lumber can be conveniently handled even on to the dock from barges, or in fact can be handled at all, and very frequently during these hours when it may be handled vessels at dock are such that there is not room at the place where this may be delivered, so that sometimes it may be days before any lumber can be handled over the dock at all.

So far as the handling of sand and gravel is concerned, there was an absolute refusal on the part of the company to allow it to be handled over their dock, the reason given being that they had not room for it.

Now that is the situation in which my clients had been placed, and we ask that a waterway be left or be made through this solid fill so that they can land their barges and use their lots.

I may say that the charges too are a very important incident in this matter—the extra expense that is incurred for dockage if the material is handled over the dock—there is not only that but the extra loss of time and trouble.

From Cameron Bay or Cameron Cove these materials can be handled very very cheaply, because the lots will be almost on a level with the barges. The dockage is such that it would be



very convenient, and when the tide goes out the bottom of this place is quite level. The barges can rest there and be unloaded during the time the tide is out.

COMMISSIONER McLEAN: It is a tidal bay then.

MR. CARSS: Yes, it is a tidal bay.

MR. TATE: It was.

MR. CARSS: Well, the water passes in and out now to the bay to a certain extent too.

I do not know that there is any further information I can give you in regard to this matter. I have no doubt that you would gain a great deal of information with regard to the situation by viewing it. It is not very far from here.

HON. MR. MABEE: We will go and look at it after we hear what is to be said about it.

MR. CARSS: If it would be possible for you to see it both when the water is out and when the water is in you would have a very much better idea.

HON. MR. MABEE: Does the tide rise and fall through the stone embankment?

MR. CARSS: Yes, to a certain extent.

MR. ROCHESTER: Oh yes, altogether. There is a small culvert.

MR. TATE: There is a culvert there to accommodate the creek.

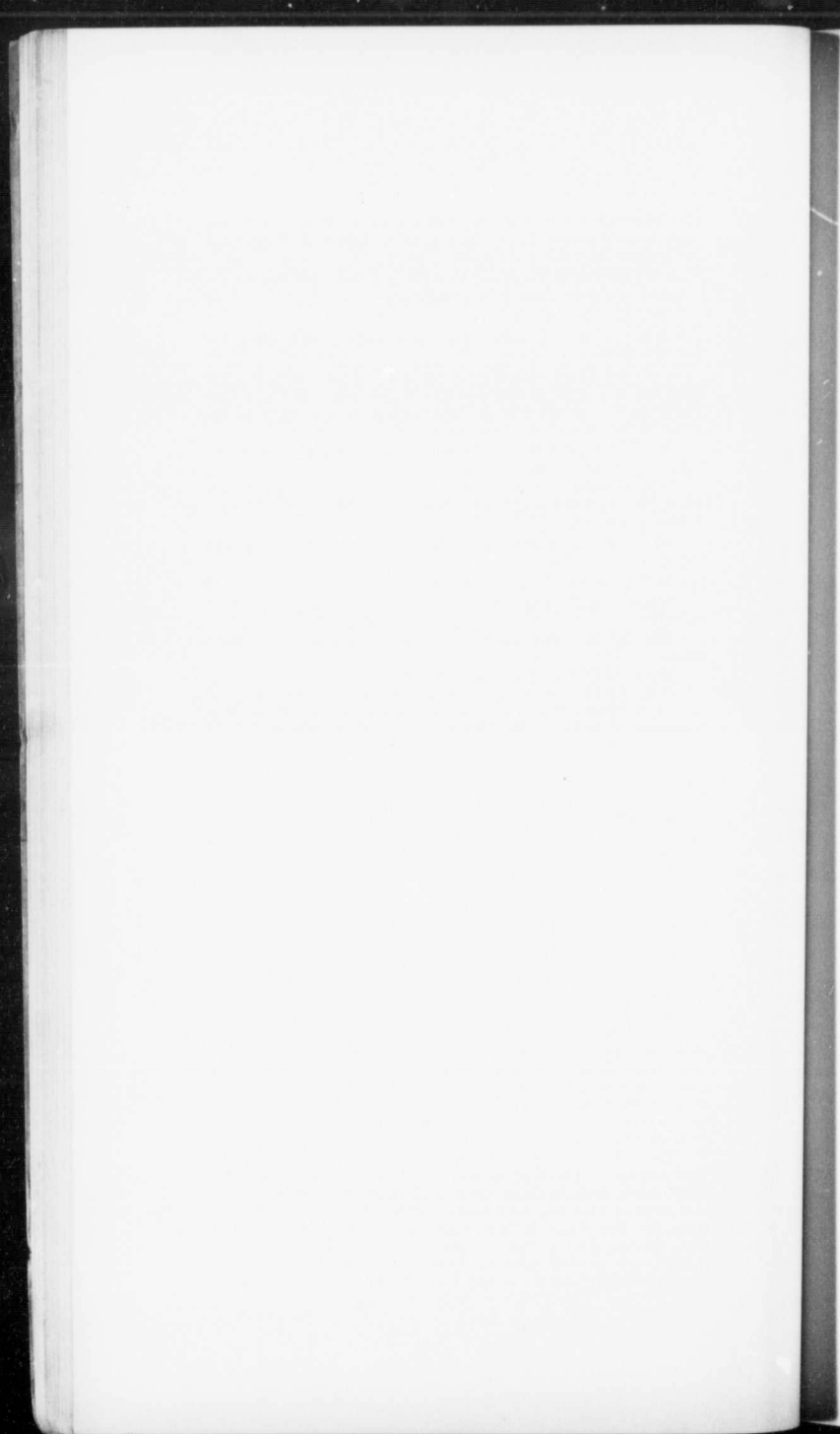
HON. MR. MABEE: Now, Mr. Tate?

MR. TATE: Of course, in regard to the history of this matter my learned friend perhaps gives it to the Board in a fragmentary manner. He does not begin back far enough. In the first place, we, as the Board no doubt will take judicial notice of, selected this for our terminals, not mainly but wholly on account of the water front, and in our negotiations with the Dominion Government we had in view altogether the adaptability of the water front for affording a good harbor, and the only delay in getting a title to the water front was for this reason—we made two purchases of land in this vicinity; first, 10,000 acres from the Provincial Government, which was known as the Kaien Island grant. Part of that enters into this townsite. We made a second purchase, in the first place, through a surrender from the Indians to the Dominion Government and then from the Dominion Government of 13,000 acres immediately adjoining known as the Metlakatla Reserve.

Then there is a question pending between the Province and the Dominion as to who is entitled to the reversionary interest in this Indian Reserve, the Province holding that when the patent from the Dominion issued to the Company for this 13,000 acres that ipso facto the Indian Reserve was at an end and the Province was entitled absolutely to the fee in this land. That question, I understand, is going to the Privy Council. We did not wish or could not afford to be delayed, so we purchased the reversionary interest of the Province rather than wait for the judicial determination of this question.

Then we had title from the Dominion and title from the Province to the 13,000 acres, and title from the Province to the 10,000 acres, making altogether a holding of 23,000 acres.

At that time the only people using this cove in question were the Metlakatla Indians, and my learned friend's clients were not heard of in that vicinity. The only people interested in 1907, say, or 1908, were the Province, in virtue of their one-quarter interest, and the Grand Trunk Pacific Railway Company



with its auxiliary land company, known as the Development Company.

HON. MR. MABEE: How in this grant is the land described?

MR. TATE: It is described by metes and bounds as to the 13,000 acres.

HON. MR. MABEE: Is this cove in the 13,000 or the 10,000?

MR. TATE: It is in the 10,000.

HON. MR. MABEE: That was granted by the Dominion Government in the first place?

MR. TATE: Pardon me a moment. Yes.

HON. MR. MABEE: Then how does your boundary line run, for instance? How is it described? By metes and bounds?

MR. TATE: I have a plan here showing it.

HON. MR. MABEE: I do not mean by the plan, but how does the grant read?

MR. TATE: The grant follows this plan. There is the line. It is a grant of the water lots. The yellow line is the grant of the land.

HON. MR. MABEE: But how does your grant read?

MR. TATE: The grant is described by metes and bounds following that yellow enclosure. Of course, this was prepared in the first place by our engineers and, secondly by engineers of the Marine Department and the Department of Public Works.

HON. MR. MABEE: You mean the original grant covering the 10,000 acres?

MR. TATE: The original grant covering the 10,000 acres simply follows the line of high water mark.

HON. MR. MABEE: Then that is the first title.

MR. TATE: Yes. Then we applied to the Dominion.

HON. MR. MABEE: Under your original grant do you contend that you took any title to this cove beyond high water mark?

MR. TATE: Only by inference. Our negotiations with the Dominion Government were for the waterfront.

HON. MR. MABEE: How can you get title by inference?

MR. TATE: We were not buying this land; we were only buying the lands for the sake of the water front, and we contemplated then, as we have since got, a deed of the water front abutting upon our land.

HON. MR. MABEE: Then your first grant did not give you any title to this land?

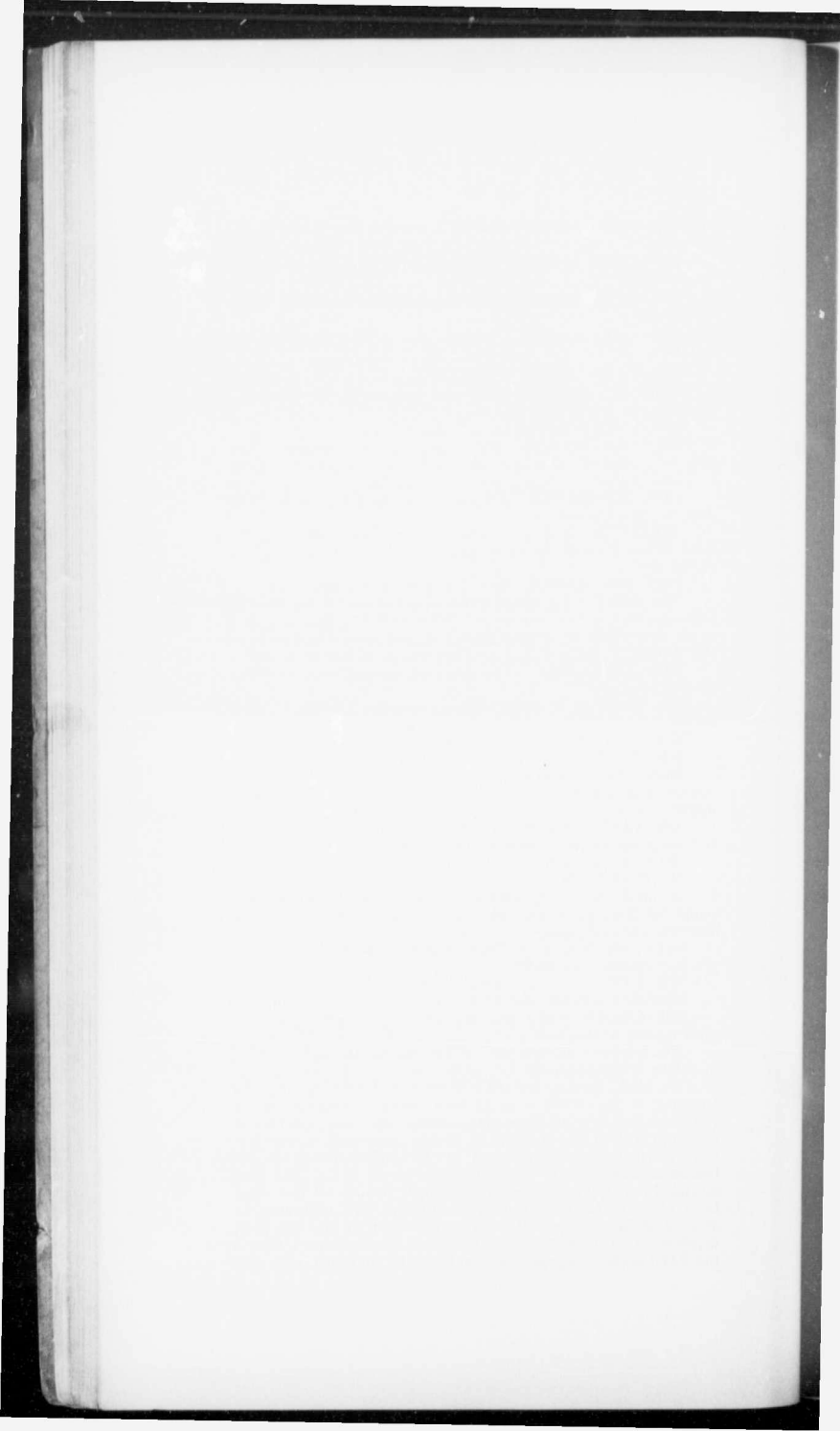
MR. TATE: Only by prospect. It was a step.

COMMISSIONER McLEAN: You had no title then?

MR. CARSS: I may just say there was a reconveyance to the Province of this land.

MR. TATE: Pardon me. I am coming to that. I wish to follow it consecutively.

We then, having got title from the Dominion and the Province to the 23,000 acres of land, made application to the Dominion for the water front surrounding the whole 23,000 acres. That application the Minister of Marine professed to be somewhat startled at and he refused it. He said that was too extensive a grant, and he requested it to be cut down. We then amended our application so as to make it include all the water front of Kaïen Island. Our application was then postponed on account of the claim being too extensive. Then we filed this plan, which includes the water front in front of Prince Rupert, that is the 2,000 acres comprised in the townsite, and that plan was



reported on by Colonel Anderson of the Marine Department and was adopted by the Government, and we now have a lease—a renewable lease for 21 years in perpetuity for the land shown in red, and the description in that lease and in the Order in Council authorizing the lease follows these directions and measurements as shown on this plan, which is a copy of the plan filed with the Department.

HON. MR. MABEE: Was this the dividing line between the 23,000 and the 10,000?

MR. TATE: No. The line runs right through the wharf where we landed this morning.

HON. MR. MABEE: Then you have a grant of all this shown in red?

MR. TATE: Yes.

HON. MR. MABEE: That covers part of this cove?

MR. TATE: Yes. Then if the Board will allow me to explain our relation with the Province with regard to the water front.

We were the owners in fee of the entire area, but under our agreement with the Province they were entitled to a one-fourth interest, or rather a one-fourth undivided interest in the entire tract. We then had sessions of several months at Victoria dividing up, first of all, the townsite, and the lots to the back of the water front were divided between the Company and the Province in that proportion, and the water front formed a special arrangement, and, in as much as the agreement with the Province arranged for the water front being divided in three and one thousand foot lengths, we pointed out that would destroy its availability for a harbor. The Province gave effect to that contention and allowed us to select greater lengths than 3,000 feet, on condition that they of course were allowed to lengthen their proportion, so that this plan shows, say in front of the townsite, two water front blocks belonging to the Grand Trunk Pacific of somewhere around 7,000 feet and one water front belonging to the Province.

Then in our agreement with the Province we were allowed a sixty foot width right of way across the Provincial Government lots, but when we came to block F (that is where I pointed out our development for the purpose of a floating dock and terminals commences) and we would require a greater width there. The Province objected to that, and we said, "All right. We will have to apply to the Dominion Railway Board." The negotiations extended over several months, finally resulting in this: That the Province gave us the width of land across water front block F, having a width of 314 feet at the easterly end, and that, as the Board will notice, covers the mouth of Cameron Bay.

Mr. Bowser, the Attorney General, called attention of course to the water front, and the consideration he gave was that we would resign our right to get a patent from the Provincial Government for the water front in front of the part of block F where the additional width is shown. What is now known as the Government wharf is in deep water. The Province could not have got that unless we had resigned our claim, as the rule of the Department is that only the riparian owner is entitled to a foreshore grant. So that the Province resigned their right to the interior of this bay in consideration of getting, what is infinitely more valuable, the wharf and the harbor proper.

Now, at this time, my learned friend's clients had not appeared on the scene at all, and the agreement between the Province and the Company respecting the division of this water



front was confirmed by the Legislature before these leases were ever heard of, and at the time this application came before the Board in Vancouver two years ago, my learned friend's clients had not even got their leases, nor their agreements for leases, and the Chief Commissioner at that time simply refused the application, or let it drop until the title of the lessees had been perfected, and title of the Grand Trunk had been perfected by the issue of the Order in Council.

Now, I understand the leases for the water front have issued, and our Order in Council has issued. That is the situation today. But my learned friend is trying to make out that these people were on the ground, or arguing as if they were, before the agreement between the Province and the Company was made, and that they would, therefore, have some anterior rights; but everything they did with respect to this was subsequent to the agreement, and I submit they cannot force any title out of the Province, nor are they entitled to.

When this matter came before the Provincial Executive it was pointed out to them by the Premier and by the Attorney General that the consideration included in their leases did not include anything for the water front, because it could not, the Province having parted with that several months before and that agreement having being ratified at that time by the Act of the Legislature.

The matter was brought up by my learned friend's clients several times, both before the Executive and, I think, even before the Government, and the present Mayor (who was then member for this District) I think attempted to get some amendment of the Act in so as to leave an opening here, but the Board can easily see that if an opening were left there while it might benefit these individual lessees it would destroy the Government wharf, and an inspection of the wharves will show the relative importance of the two. This is a most valuable piece of water front, and it is liable to be destroyed altogether if effect be given to the present claim of these lessees. They are trying to get something they never paid for.

COMMISSIONER McLEAN: What is the lease to, a hole in the ground?

MR. TATE: No, the lease is here.

MR. CARSS: Here is the form. This is the sketch plan by which the Local Government made their lease. It seems rather inconceivable that the Government leased this if they had no right.

MR. TATE: Is it not a fact that at the last sitting, or at some time in this negotiation, Mr. Rand, the auctioneer for the Government, expressly stated at the auction that he was not disposing of any rights to the water front. Mr. Rand states that anyway.

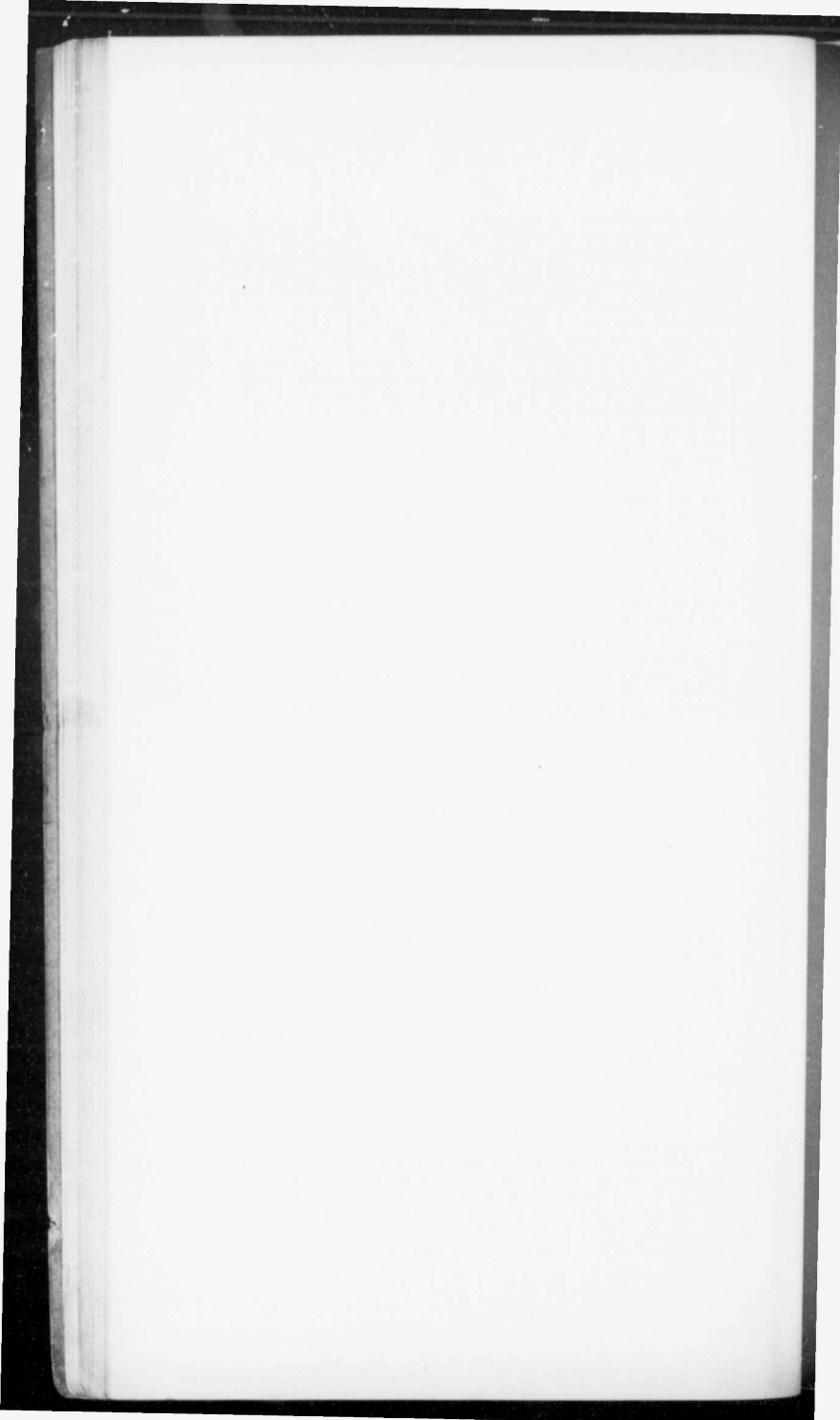
MR. CARSS: He expressly stated otherwise on questions being put to him.

MR. TATE: That is nothing to the Company.

MR. CARSS: The leases have been issued.

MR. TATE: Before that time the Province had parted with their rights to this bay.

After the application of my learned friend's clients had been repeatedly refused at Victoria, they went to Ottawa and brought this application up before the Minister of Marine and Fisheries, the Minister of Public Works and the Minister of Railways, so that the application has been made, refused, revived and refused, and it has now been travelling the rounds for two or three years,



and they are simply to substantiate a claim which has no basis in equity. It would have been better if these people had been on the ground perhaps even as squatters before the Government or the Grand Trunk Pacific came, but they only came there in consequence of the operations of the Provincial Government, the Dominion Government and the Grand Trunk Pacific. They are now trying for their own selfish interests to get something which might accommodate them for scows, etc., but to the great sacrifice of the harbor and the Government wharf.

HON. MR. MABEE: Is not this a question almost solely as to whether you own the land or whether they do?

MR. TATE: I do not see how their claim is arguable.

HON. MR. MABEE: Then give us particulars of your title with dates and descriptions, please.

MR. TATE: I will give your lordship the particulars of these afterwards, if you will let me give you the dates. The Kaien Island grant was in 1905, and the Metlakatla grant was from the Dominion Government in 1906, and was confirmed by the British Columbia Government on the 29th of February, 1908.

HON. MR. MABEE: What are the dates, in 1905 and 1906?

MR. TATE: 10th of March, 1905, was the Kaien Island grant.

HON. MR. MABEE: That is the part that covers the whole of this cove?

MR. TATE: Yes.

HON. MR. MABEE: That carried to the high water mark only?

MR. TATE: To the high water mark. Then immediately following upon that we made application to the Dominion Government for a water front, including Cameron Cove, and that application the Dominion Government deferred action upon from time to time owing to our application being too extended and it was finally reduced to the limit that the Dominion Government engineer thought proper, that is the water front in front of Prince Rupert.

HON. MR. MABEE: The grant then from the Dominion Government cut this cove in two, and you got title from them of the east half of it?

MR. TATE: Yes, to the part that is in yellow.

HON. MR. MABEE: You mean in red. We are talking about the Dominion. You claim a title to that part of this cove under your Dominion Government grant, do you?

MR. TATE: Yes; and also this part under both grants from both the Province and the Dominion.

HON. MR. MABEE: But the Province never had anything to do with the part in red.

MR. TATE: No.

HON. MR. MABEE: Well, why did they claim part and not the other?

MR. TATE: Because the westerly part is in block F.

HON. MR. MABEE: How did the Province get title to block F?

MR. TATE: We gave them title to block F. It was conveyed to us in trust as to one-quarter thereof for the Province, and we deeded to them block F, amongst other lots, reserving thereout the part shown in yellow.

HON. MR. MABEE: Do you mean yellow or green?

MR. TATE: Green.



HON. MR. MABEE: Because if we ever have to read this, and you are color blind, it will mix us all up.

MR. TATE: It may have been intended to be green by the engineer.

HON. MR. MABEE: It has been spoken of heretofore in this discussion as green.

MR. TATE: That is a good Irish color.

MR. CARSS: In the Statutory agreement, chapter 19 of the Statutes of 1908 of British Columbia, I see that the land was described as "abutting upon any tidal waters, etc., and all the foreshore and riparian rights which the Province may have in the said land, including said land as well above as below high water mark." So that the apparent intention was that any land held by the Provincial Government, or reconveyed to the Provincial Government, should include the foreshore rights annexed to them.

MR. TATE: Yes but there was an express agreement covering this part of block F.

HON. MR. MABEE: Then the title that you got from the Dominion Government did not end in the middle of Cameron Cove, but it covered the whole water front across block F, and you gave the Province title to the foreshore in front of block F, reserving the triangle in green. Is that it?

MR. TATE: No, that is not right. We got a title to all the land in the first instance, but we deeded—

HON. MR. MABEE: That did not give you any foreshore rights other than simply as a riparian proprietor.

MR. TATE: We got it in this way. We deeded block F to the Province, reserving thereout a piece of land described as 60 feet in width until it comes to this point (indicating) and then described by metes and bounds. That is expressly reserved in our deed to the Province. We then applied to the Dominion for a deed of these lots shown in yellow by metes and bounds. So we got our patent from the Dominion, but the Provincial Government stipulated that we should end our patent with the land shown in yellow and should not ask to get a grant of the foreshore in front.

HON. MR. MABEE: When you are talking of yellow you mean green?

MR. TATE: Yes. It is all intended to be one color.

HON. MR. MABEE: No. What color do you call that (referring to the plan)?

MR. TATE: That is yellow.

HON. MR. MABEE: Do you think that is the same as this other?

MR. TATE: It is the same, only this is upon a blue ground.

HON. MR. MABEE: You see, you have been using yellow and green alternatively.

MR. TATE: Well, call the whole thing green. Mr. Butcher will make a note to that effect: In regard to exhibit "A" everything that is not red or blue is to be considered as green.

HON. MR. MABEE: I do not understand yet about this title business.

MR. TATE: Here is the position—

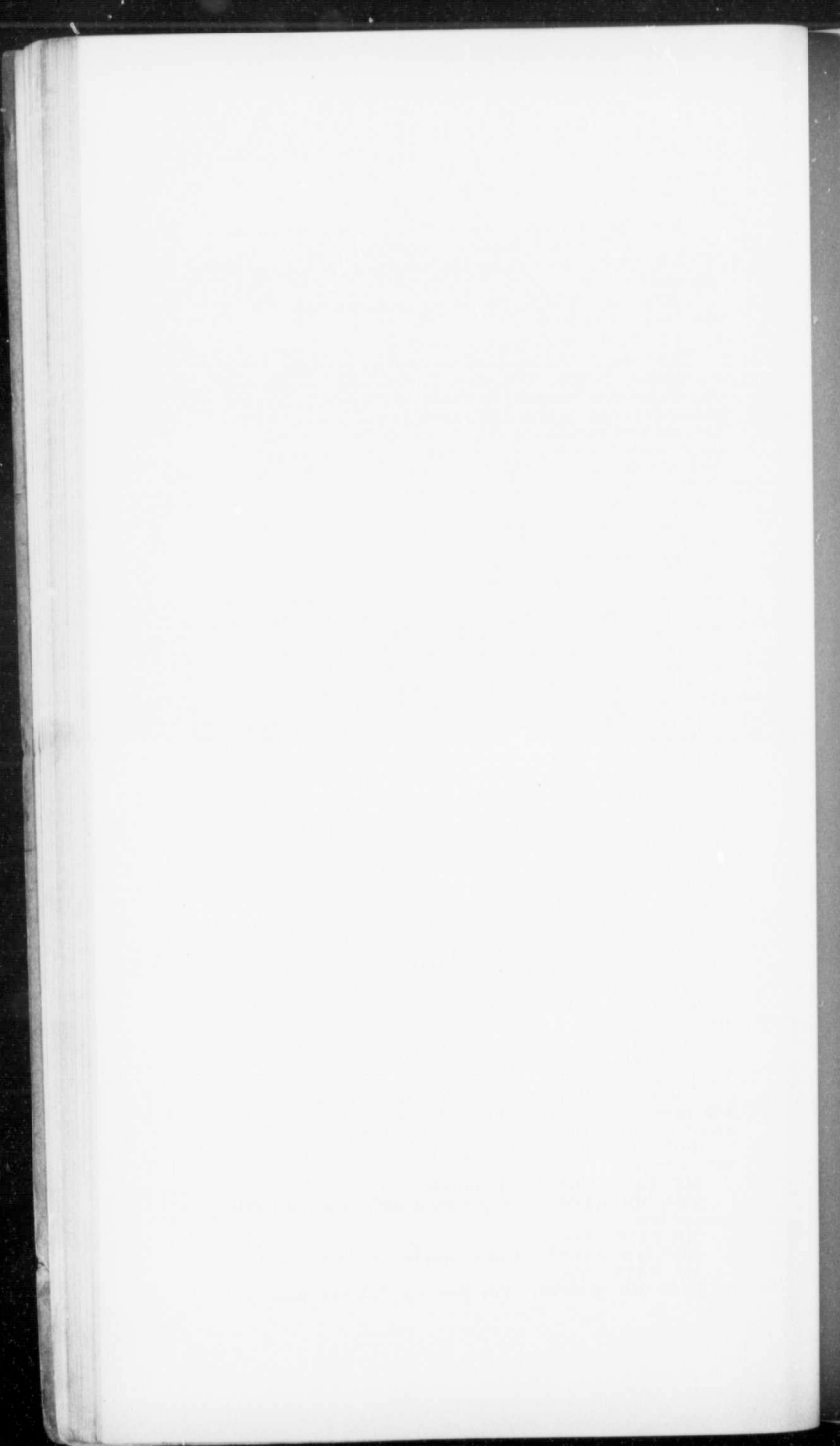
HON. MR. MABEE: But you got in 1905 a grant of 13,000 acres of land.

MR. TATE: Yes.

HON. MR. MABEE: That carried to high water mark?

MR. TATE: Yes.

HON. MR. MABEE: You then say that you made im-



mediate application to get the water lots in front of pretty nearly the whole of British Columbia.

MR. TATE: The whole 23,000 acres.

HON. MR. MABEE: Then that thing was pending for sometime, and you finally got a grant from the Federal Government of all of this foreshore shown in red?

MR. TATE: Yes.

HON. MR. MABEE: I am right, am I, that that grant ended right through this cove as the line shows?

MR. TATE: No. The grant also included this part shown in green so as to prevent any question as to title.

HON. MR. MABEE: Now read us that out of your title.

MR. TATE: All I have got is an Order in Council showing that a patent of the Prince Rupert foreshore is issued with the same description as on your plan on file, and our engineer described that part in green by metes and bounds under my own personal supervision, and that description was confirmed by Colonel Anderson.

HON. MR. MABEE: What is that, a title by telegram?

MR. TATE: Oh no. Here is one from the Department. I asked it for a telegram which I could show to the Board.

HON. MR. MABEE: This is just this week?

MR. TATE: Just this week.

HON. MR. MABEE: The 16th?

MR. TATE: Of course, as soon as the sitting of the Board was fixed I brought pressure to bear upon the Department, saying that we must get this thing disposed of one way or the other, yes or no, because the Board put the matter over before as no action had been taken by the Department.

HON. MR. MABEE: What you now say is that this will give you a title to this other part?

MR. TATE: In green. That part was described under my own supervision so as to cover this point.

MR. CARSS: I would like to mention to the Commissioners that the Local Government evidently fully understood that they had control of that foreshore, and for that purpose they reserved 100 feet here of the front for the purpose of an entrance to the Bay—one hundred feet of their water front.

MR. TATE: Why don't you call an official of the Government? You cannot get anyone to support you. I have heard the Minister of Lands and Mr. McBride controvert that statement you made now.

MR. CARSS: Well, the reserve is shown on the maps and plans, and there it is.

MR. TATE: That is not official.

MR. CARSS: That was issued officially by the Government as an advertisement when they leased these lots.

MR. TATE: Then sue the Government for misrepresentation of title. The official plan confirmed by the Government is that filed next door in the registry office. That shows this land described by metes and bounds and is signed by the Minister of the Province. I think if the Board would look at the plan, which we might call exhibit "B," they will see there is no comparison between the value of a wharf like that for public purposes and a little bit of a makeshift.

HON. MR. MABEE: This plan shows this cove all filled up.

MR. TATE: This is a plan filed showing the ground as it appears at the present moment.

HON. MR. MABEE: The cove is filled up?



MR. TATE: Yes, and the Government wharf is constructed there. Is it finished yet?

MR. CARSS: The cove is not filled up.

MR. TATE: Yes. I walked over it.

MR. CARSS: Only the entrance.

HON. MR. MABEE: Is there any cove, or is it all something that rests in somebody's imagination?

MR. CARSS: There is really a cove there.

HON. MR. MABEE: We were told a little while ago that there was a cove and that the water percolated through. Is it a cove?

COMMISSIONER McLEAN: There is some cove there?

MR. TATE: I would not call it a cove.

COMMISSIONER McLEAN: There is no inlet or bay there now?

MR. TATE: I do not see how you could call this little bit of depression inside a cove. It may have been a cove originally.

HON. MR. MABEE: You see how misleading this plan is. That shows highwater mark all the way round.

MR. TATE: That is the way it was.

HON. MR. MABEE: And this shows it all filled up right out in a kind of circle.

MR. TATE: That circle is on the original plan.

HON. MR. MABEE: There is no cove on this map at all. That was just gotten up to deceive somebody.

MR. TATE: That is the registered plan. These lots are sold.

HON. MR. MABEE: Oh yes, but that shows solid ground there.

MR. TATE: That belongs to the Province. They are going to put it in. We are not going to put it in.

HON. MR. MABEE: However, we will see it when we go down.

MR. TATE: That plan will be exhibit "B."

HON. MR. MABEE: Now then, do I understand, Mr. Tate, that this description in this Order in Council referred to in this telegram covers all the embankment filling in that you have done?

MR. TATE: Every foot of it. A part of that embankment is not to accommodate rails; it is for buildings intended for use in conjunction with the floating dock and the terminals. The most of it will probably be covered with rails, but this plan "B" shows part of the prospective layout. It takes in Hays Cove, as well as Cameron Cove, and the flooding of Cameron Cove is of more importance than the other one; at the other one there are no selfish lessees.

MR. CARSS: At Hays Cove there is a very high hill; it is worse than getting stuff up over a dock. You cannot get it up without a donkey engine. At Cameron Cove there is every convenience for loading.

MR. TATE: It would be a nice place to develop the water front.

HON. MR. MABEE: Then what title have your clients?

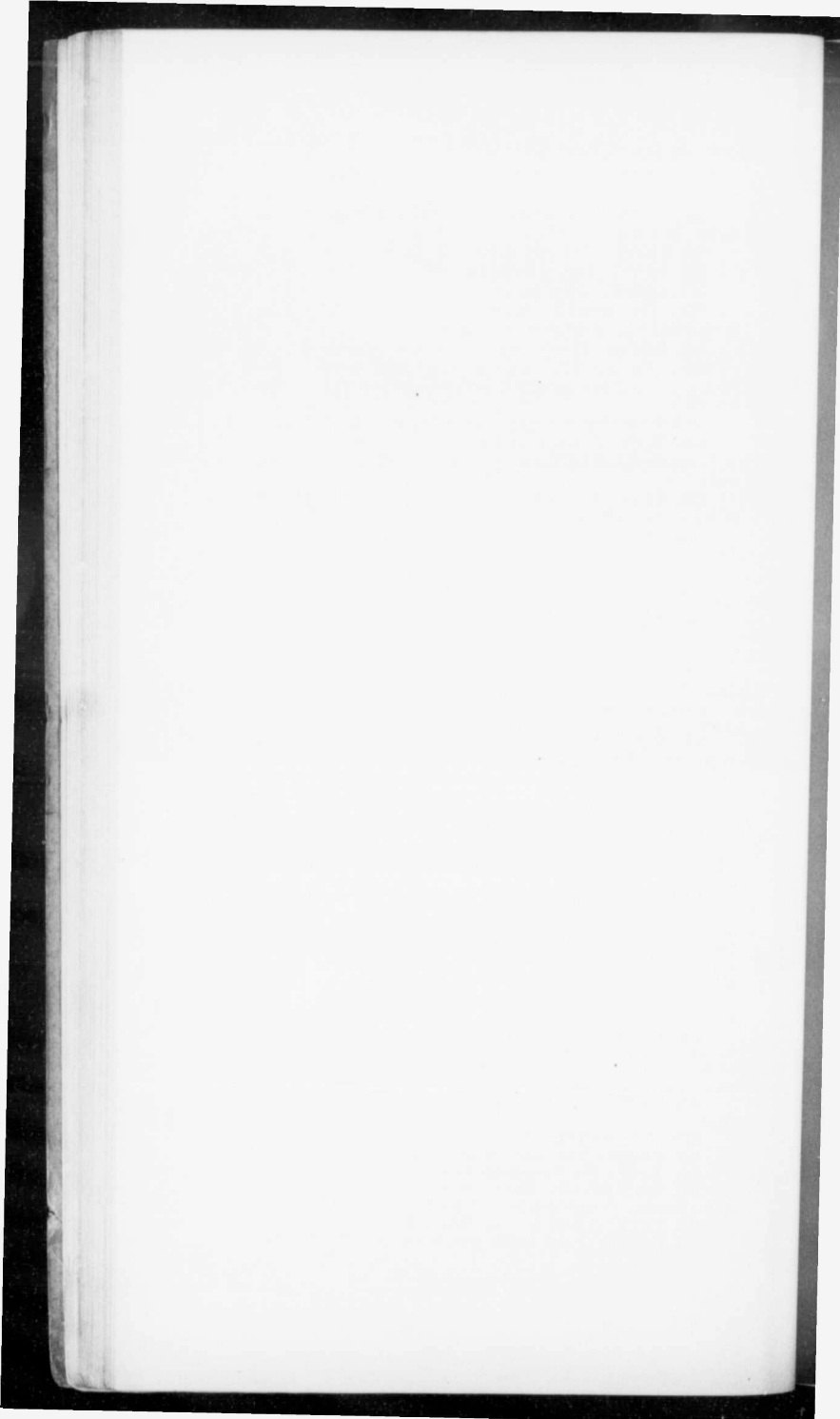
MR. CARSS: The lease I believe has been filed.

MR. TATE: No, it has never been filed.

MR. ROCHESTER: The leases were sent to the Secretary of the Railway Commission last winter, in March I think.

MR. TATE: I have not seen them yet.

MR. CARSS: I put in the advertisement of the Province



when they were advertising the water front, marked as exhibit "C."

MR. TATE: I object to that. We are no party to that.

MR. CARSS: It shows what the intention of the Government was.

MR. TATE: Why don't they have them a party to this application?

HON. MR. MABEE: When was this heard in Vancouver?

MR. RICHARDSON (Acting Secretary): The 9th of September, 1910, is the exact date.

HON. MR. MABEE: I suppose this circular or advertisement might be read this way: Sale of Prince Rupert leases, water front lots and warehouse sidings. Then the water front lots in block F are one to six. Those are out, as the advertisement states, on the harbor and lie directly east of the Government wharf. Then there is a value placed upon those six water front lots. The next bundle for sale is the warehouse lots in block F, 11 to 18, and 22 to 28 inclusive. So that they were selling apparently two separate parcels of property, namely, six water front lots and this series of water front lots.

MR. ROCHESTER: These warehouse lots abut on the water.

HON. MR. MABEE: Not all of them. For instance, only 22, 21, 20, and 8, 9 and 10.

MR. ROCHESTER: Yes.

HON. MR. MABEE: Whoever got these leases of 9, 21 and 20—9, for instance has no way of getting to it, it is out in the middle of the cove—

A CLIENT: They were reserved for a channel.

HON. MR. MABEE: 7, 8, 9, 10, 20 & 19 were not disposed of?

MR. CARSS: No.

HON. MR. MABEE: Well, as it stands now, Mr. Tate, apparently these men have got a good title from the Province, and you claim you have got a title from the Federal Government that shuts them off from access to their property entirely.

MR. TATE: Yes; and we have a prior agreement with the Province. My learned friend cannot bring any official of the Province who will place his construction upon the documents.

HON. MR. MABEE: You do not need any official of the Government to enable one to read this title intelligently. Here is a straight lease issued to this man of this property.

MR. TATE: There is some controversy about that between the Province and the lessees. The auctioneer says he told them.

MR. CARSS: It does not matter what Rand says.

MR. TATE: If the Province have the title I am bound by it. I am quite willing to have the matter disposed of on the title. Whether willing or not, it must be disposed of in that way. At the time those leases were made the Province had divested themselves of the right to give a lease.

HON. MR. MABEE: What became of these lots 1 to 6?

MR. TATE: That will be filled in by the Province and sold.

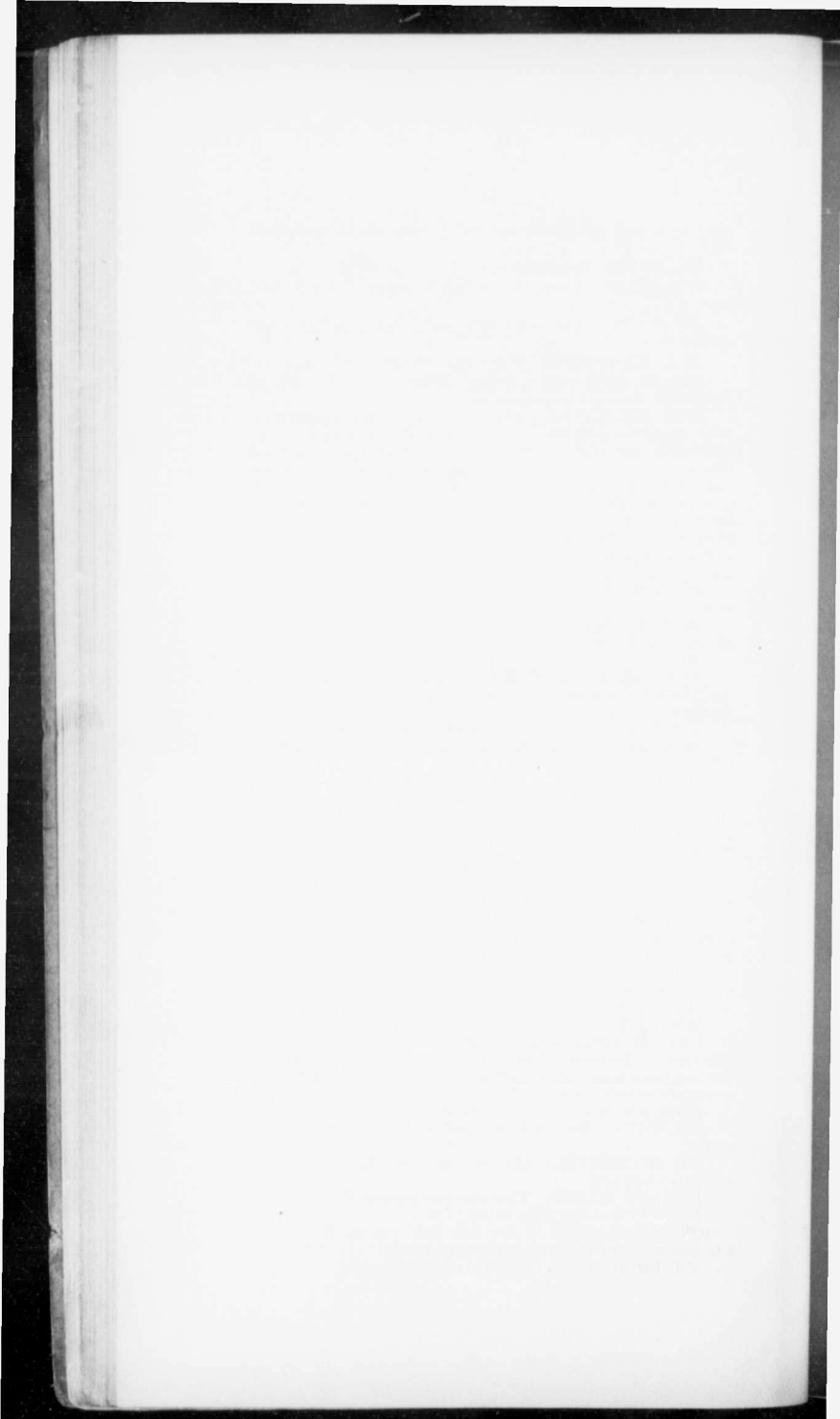
MR. ROCHESTER: They will be sold. Six was reserved and 1 to 5 was sold.

HON. MR. MABEE: Then this was reserved?

MR. TATE: I say, filled in and sold.

HON. MR. MABEE: These lots right out on the harbor, 1 to 5—they were sold; and are they occupied?

MR. ROCHESTER: They are occupied now.



MR. TATE: We are entitled as of right to those as being riparian owners—5, for instance. This is our land from there to there (indicating on plan). In other words, we gave this in exchange for this (indicating).

HON. MR. MABEE: You gave these to the Province?

MR. TATE: We resigned our right to them.

HON. MR. MABEE: Then you did not give them to the Province. They got title from the Federal Government with your consent?

MR. TATE: Yes; or they got a patent. They have not got it yet, but we are supporting them. In other words, they give up the interior for the exterior of the harbor.

COMMISSIONER McLEAN: Whereabouts is this Government wharf? It says lots 1 to 6 which are east of the Government wharf.

MR. ROCHESTER: This is the Government wharf here (indicating).

MR. TATE: It says "Government wharf as constructed at that time." It has since been constructed westerly. Perhaps it might be as well to give the Board a reference to the consecutive documents I have referred to.

HON. MR. MABEE: How did the Province get the title to these lots down here near the cove?

MR. TATE: From the Grand Trunk Pacific—by a conveyance from the Grand Trunk Pacific.

I would refer the Board then, in the first instance, to the Kaien Island grant in 1905; secondly, to the Metlakatla grant; then to the agreement entered into with the British Columbia Province of the 29th February, 1908; to the Order in Council of the Provincial Government, dated 11th August, 1908, approving of the official plan of Prince Rupert showing how the land is divided in block F, as between the Province and the Company; then the agreement with the Province, dated 7th September, 1908, showing the provisions made for overhead crossing at the water front; the agreement with the Province of 2nd March, 1909, confirming the entire plan of the townsite, including the water front and the division thereof between the Province and the Company; and the Act of the Legislature of the Province confirming the agreement last referred to.

COMMISSIONER McLEAN: Has the rental for these lots been running on the same for the last two years?

MR. ROCHESTER: Yes.

MR. TATE: What is the rental?

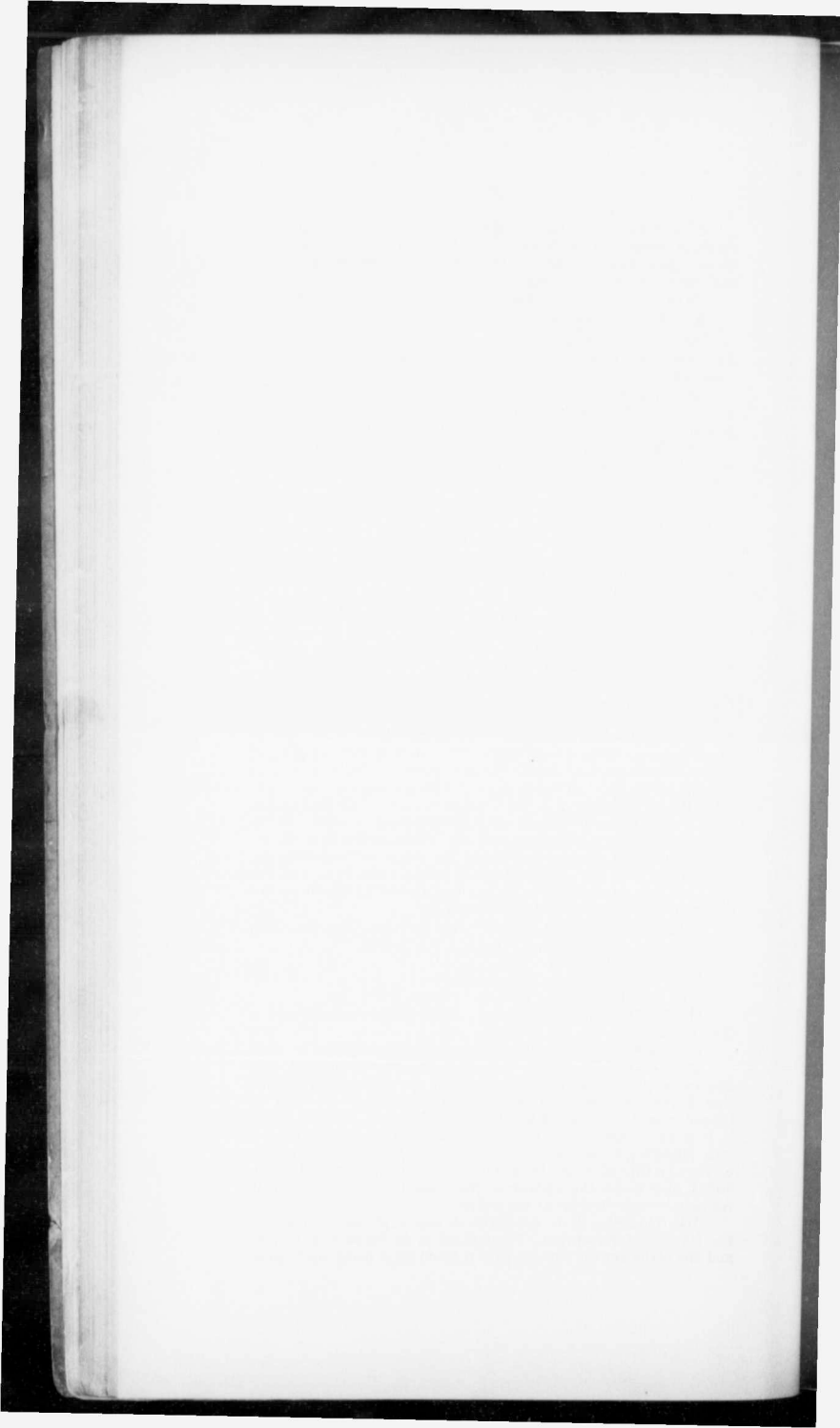
MR. ROCHESTER: Different rentals.

HON. MR. MABEE: Six per cent on the value fixed by the Government.

MR. ROCHESTER: There is a bonus in addition to that.

MR. TATE: I submit then that the Province could only dispose of any left in them by virtue of the various agreements that I have just referred to, and that the lessees can take no higher title than their lessors or the Province. I also think it is a very significant fact, which the Board can draw their own inference from, that my learned friend brings no Minister or Deputy Official of the Government here to support this claim; and I also make the statement that this claim was expressly refused by the Provincial executive.

MR. CARSS: I do not think it was expressly refused by the Provincial Executive. I happened to be there at the time, and the claim set up was not such a claim as is being made now.



MR. TATE: You made the claim in every conceivable form.

HON. MR. MABEE: Well, I do not blame the man for making the claim in every way he can. He is in a hole. He is banked in and he apparently has not any redress against anybody.

MR. TATE: He is trying to get something he never paid for. He did not pay for this water front.

HON. MR. MABEE: He paid for this lease. He cannot get to the land by water.

MR. TATE: No; but he can get to the land by land. That is all he paid for.

MR. CARSS: It is the very opposite.

MR. TATE: He did not pay any rental for a water front alone. That is what I am stating.

HON. MR. MABEE: Never mind the water front part of it. He bought a warehouse lot that was located on a piece of water, by which he could get his material to and from it, and now you have banked in across and he cannot get to it.

MR. TATE: Well, had the lessor any title to that water?

HON. MR. MABEE: I am not discussing that feature of it. Legally the thing probably is fraught with difficulties all around; it is the merits of the case I am discussing.

MR. TATE: He would have been charged more if he had been charged for land abutting on water.

HON. MR. MABEE: He paid more for this than the Grand Trunk Pacific paid for the whole water front; you got it for nothing. He wants to develop his, and he cannot get to it.

MR. ROCHESTER: Lot 18, which we leased, brought the highest rental because of the facilities from the water. It was because of the facilities of the water it brought this big price. It showed we had every intention of using the water.

MR. TATE: Then you have your recourse against the Province.

MR. CARSS: We claim we have our recourse against the Railway Company at the present time. That is what we want. We do not want damages at all; we want a passage in there.

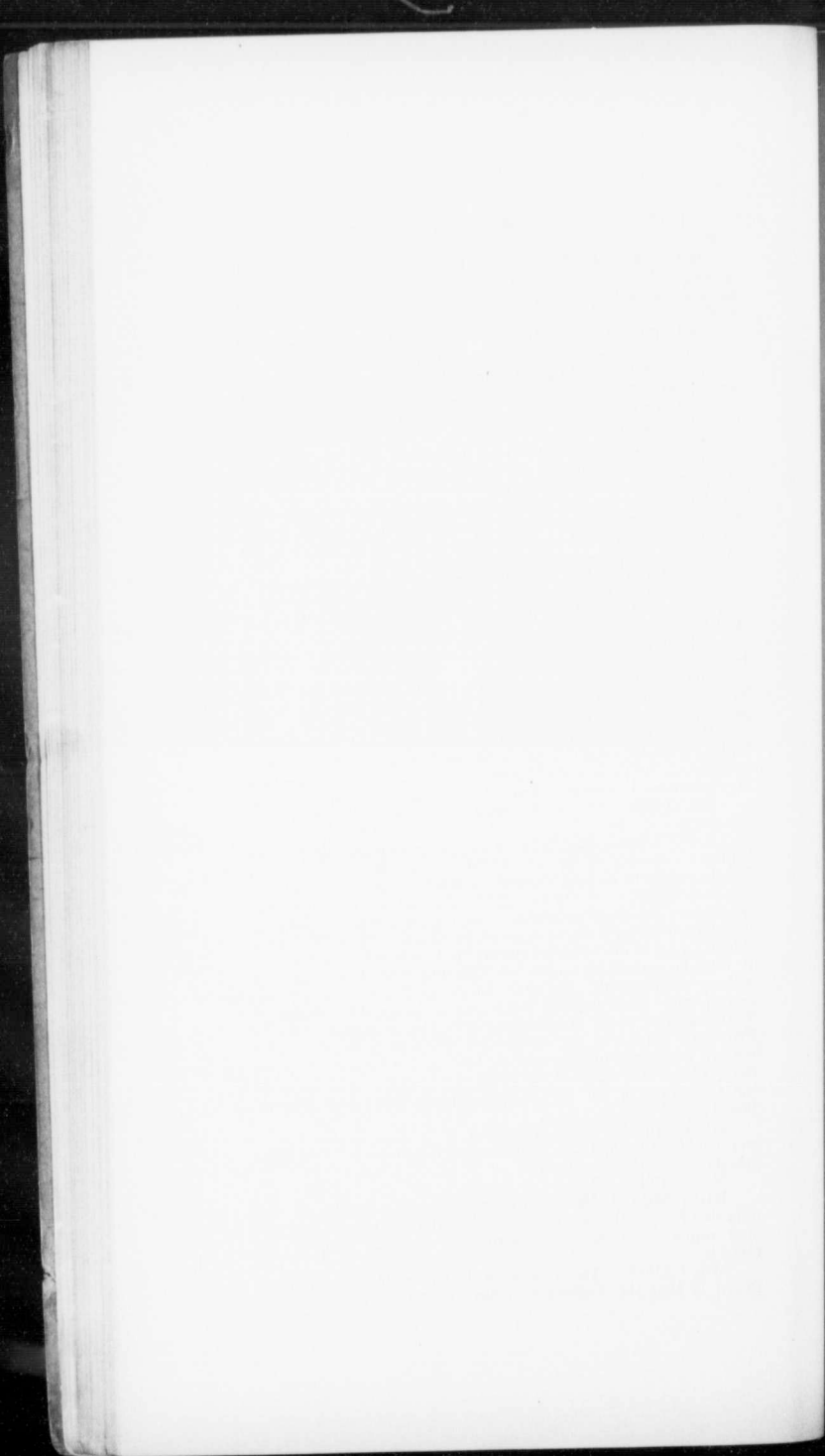
MR. TATE: Of course, the Board understands I am not taking any technical objection to this application; but why do my learned friend's clients come to the Board? We do not show this is a part of our railway; we have not declared it such as yet. It may be something connected with the railway but not the railway proper at all. We have simply put in some filling there, there is some skeleton track, but it may be designed for buildings. That was the whole arrangement with the Dominion and the Province. Now, why my learned friend comes to the Board for redress I cannot conceive—except that he has been everywhere else. If we have invaded any legal right why doesn't he go to the Courts, or if we are making application to the Railway Board—

HON. MR. MABEE: I suppose if he went to the Courts you would get up and say, "What are you here for? Why don't you go to the Railway Board?"

MR. TATE: No.

HON. MR. MABEE: One minute you complain of the number of places he has been at to try and get redress and the next minute you complain because he has not been to the Courts.

MR. CARSS: The reason of being before the Railway Board is that the Engineers of the Railway Company stated



specifically that they were going to put nine rows of tracks across that very point.

MR. TATE: I think we are. We have not put them there yet. There is no application to the Board yet.

MR. CARSS: I do not think the plan of the Railway Company which I have seen shows that the dry dock is in the immediate vicinity of that point; it is further down.

MR. TATE: I think it is. It is the entrance to the dry dock. The plan shows it. It is part of the approach to the development around Hays Cove.

HON. MR. MABEE: There is no doubt about the merits of the thing, but how do you get any higher title than the Province itself would have? And could the Province succeed in this application? Supposing the representative of the Province were here, and supposing this was an application by the British Columbia Government to compel this Railway Company to open the channel and put in a swing bridge, could they compel the Railway Company after all these proceedings to stop? Would they not be estopped from doing it? And have you any higher right?

MR. CARSS: Well, I do not know so far as the Local Government is concerned. I think they have the right to take the action which is being taken now by these applicants.

HON. MR. MABEE: But would not the Provincial Government be estopped? You see, they took title from the Grand Trunk Pacific.

MR. CARSS: Yes, they took title to the whole of that. I do not know that in taking title there is any portion of that land excepted. I think the local Government reserved the riparian rights all the way through.

MR. TATE: Here is the express exception. I have it here.

HON. MR. MABEE: Mr. Tate says that the Provincial Government took its title from the Grand Trunk Pacific to this whole water front property in front of block F.

MR. TATE: It reads: "An additional right of way forty feet in width across the above water front lots selected by the Province, including a width exceeding forty feet across part of block F, as shown on plan, amounting in all to 4.5 acres," etc. That plan is on file in the Registry Office.

HON. MR. MABEE: What is that you are just reading from?

MR. TATE: I am reading from a copy of the Order in Council dated 11th August, 1908, and that Order in Council confirms the agreement. That is a Provincial Order in Council confirming the agreement of the 7th September, 1908, to the same effect—first by agreement and then by Order in Council.

HON. MR. MABEE: Does that acreage you speak of cover the Company's right of way across this cove?

MR. TATE: Yes, my lord; and the official plan is in the Land Titles Office next door.

HON. MR. MABEE: Let me see that agreement.

MR. CARSS: Allow me to read a portion of the Statute here.

HON. MR. MABEE: Let me understand what it is. Is that the Statute confirming the agreement?

MR. CARSS: Yes, as I understand it.

HON. MR. MABEE: What is the date of the agreement referred to in that Statute?

MR. CARSS: Tenth of March, 1905, the schedule to the agreement.



MR. TATE: Oh no. That is the old original Kaien grant.

MR. CARSS: As I understand it, the Kaien grant includes this cove. This is 1908. It is a schedule dated 19th February, 1908.

MR. TATE: The situation has changed a lot since then. What I read to the Board is the last agreement confirmed by statute. The plan shows that. I have just sent in to the Land Titles Office to get the plans referred to in that Order in Council, and they bear the signatures of the Province.

MR. CARSS: What is the date of that Order in Council?

MR. TATE: 11th August, 1908.

MR. CARSS: This statute is assented to in March, 1908.

MR. TATE: There is nothing rescinded. That provides for a division of three and one, and the Order in Council is simply confirming the division.

MR. CARSS: I do not see how it is possible to get away from this statute. I refer to the statute of British Columbia, No. 19 (1908). It says here: "The townsite company agrees to pay to the Province on the conveyance of their right, etc., the sum of \$2.50 per acre, etc., and to reconvey to the Province one-fourth of all of block so and so after deducting the land required for lanes, streets, squares, parks, and such lands as the Lieutenant Governor in Council decides are necessary for railway purposes, together with the foreshore and riparian rights in and appurtenant to the said lots and blocks including the land below as well as above low water mark." Now, that would seem to apply to all lots and blocks wherever they might be situated, that they reserved their riparian rights.

Now, if they had riparian rights to these lots, at all events they had the right of access to them.

MR. TATE: If the Board will refer to that plan, exhibit "B," I think you will see that any order the Board might make here would be very disastrous to the Province, because an opening to Cameron Bay would wipe out the Western end of the Government wharf.

MR. CARSS: Oh no. It will not interfere with the wharf at all. There is a reserve for the channel left. They have not even leased it.

COMMISSIONER McLEAN: Aside from the legal question, I had an impression that these were scows that would not require a large head room. A bridge has been suggested.

MR. TATE: That is what has been before the Provincial Government. They wanted an opening left for scows.

COMMISSIONER McLEAN: A sort of glorified culvert?

MR. TATE: A thing with 300 feet width. Of course, if there is an opening left there it would have to be pretty substantial and you could not have a wharf abutting. It would be a steel structure and approaches.

I may say that before this matter was refused by the Province Premier McBride asked to have the matter left to our Engineers and a special report made as to the feasibility of leaving an opening there.

HON. MR. MABEE: What do you mean by being refused by the Province?

MR. TATE: Before they refused Mr. Rochester.

HON. MR. MABEE: How could the Province make you leave an opening?

MR. TATE: Under these agreements before they were confirmed.



HON. MR. MABEE: Where is there anything in the agreement to make you leave an opening?

MR. TATE: They would not have confirmed the plan. They could simply have said, "Why, we will keep our water front and you can keep yours." Instead of that they make these several agreements, which is a good deal more in the public interest than what is proposed here. If the harbor of Prince Rupert was indented by openings to accommodate a mosquito fleet there would not be much of a harbor. We have to look to the future of Prince Rupert in regard to the best possible development. Here we are not sacrificing any private interests, because they do not accrue until after these agreements were all made.

I am quite willing that the case should be disposed of on the statement of the Chief Commissioner, "Could the Province succeed here?" The applicants cannot stand in any better position than the Province could. That is the crux of the whole situation. For my learned friend to succeed all of these agreements must fall to the ground that were made.

MR. CARSS: So far as the Province is concerned I do not wish to make any particular statement in regard to that, but as a matter of fact I think the Province is perfectly satisfied that we should go on with the matter in the way we have done.

MR. TATE: Would not the Board expect it only natural that someone should be here on the part of the Province supporting this claim. Putting it mildly the Province had a very apathetic feeling in regard to the matter from the first; they have been really opposed to it.

Now here are the official plans. I do not know just which of them shows the water front.

HON. MR. MABEE: Do they show anything that these plans do not show?

MR. TATE: Only on a larger scale. There is the signed plan. It is signed by the Provincial Engineer, by the Commissioner of Lands of the Province, by myself, as Solicitor for the Railway Company, and by Mr. Bacon, as Harbor Engineer; dated 2nd March, 1909. The Provincial land is shown green, there is the water front shown outside, and our reservation. That land did not show any railway tracks or embankments. It is simply a part of our land referred to in the agreement with the Province. The yellow is land which has not been divided; it still remains the joint property of the Province and the Company. Block F is shown in red.

HON. MR. MABEE: You see, this is the map showing what the Government and this Company agreed to do. How could the Province come here and take away a strip there in the face of this agreement?

MR. CARSS: They could not take a strip away; having reserved their riparian rights in all of this they would have a right of access.

HON. MR. MABEE: They might possibly if they had not agreed to give this land to the Railway Company. Under that statute you read that is quite clear, but this is all subsequent to the statute.

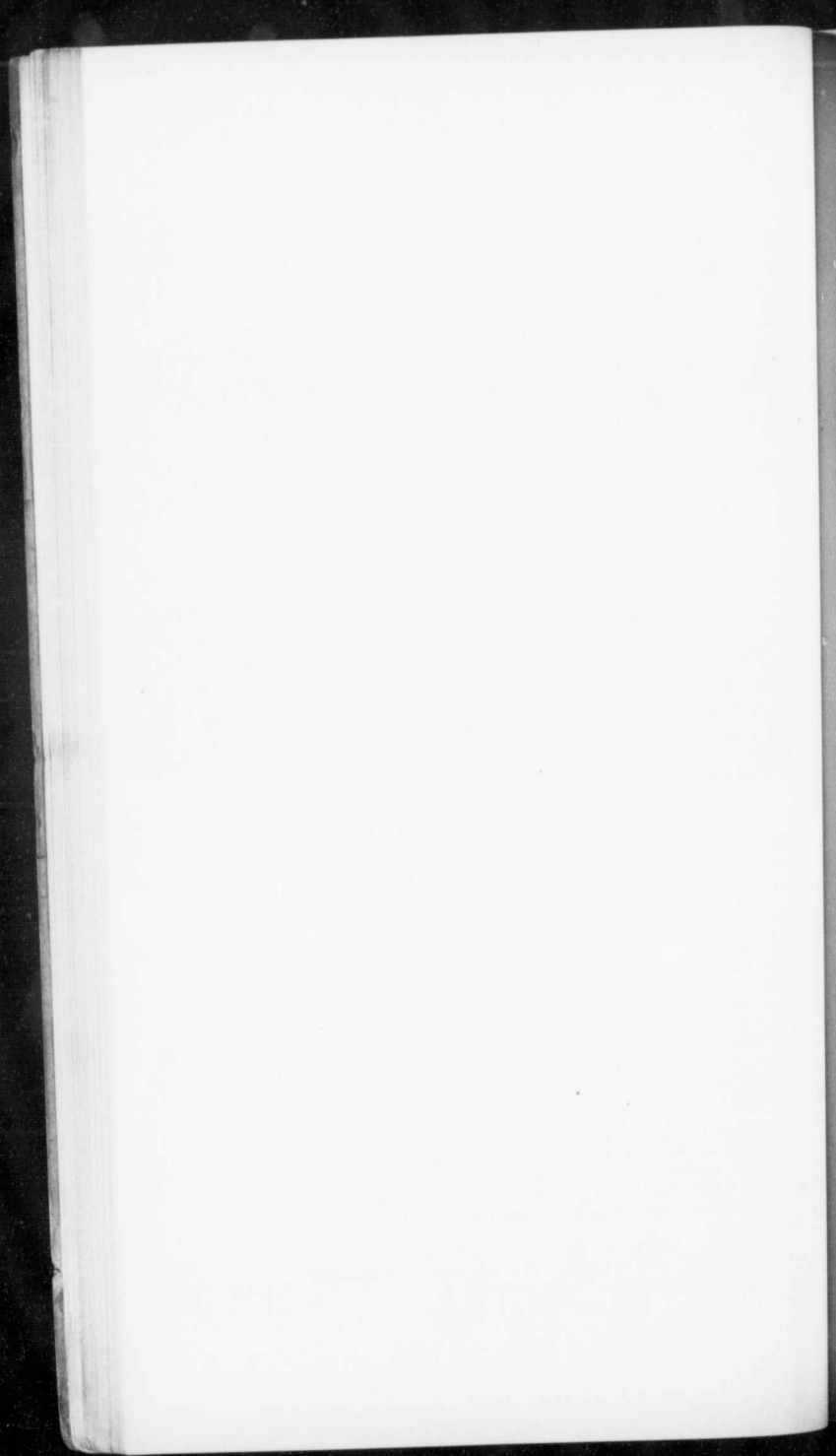
MR. CARSS: But that covers water as well as land.

HON. MR. MABEE: I know it does. What is the date of that?

MR. ROCHESTER: March 2nd, 1909.

HON. MR. MABEE: That is a year after the statute.

MR. CARSS: Yes, it certainly is.



MR. TATE: Mr. Mehan, our general superintendent, informs me that scows could only get in there at high tide. High tide would be away above our present grade, so we would have to raise any bridge considerably above that.

MR. MEHAN: The scow with its load would be as near to grade as possible with the high tide. It would necessarily mean a swing bridge and a high approach on both sides.

MR. TATE: That matter was all reported on very minutely by both the engineers of the Province and ours.

MR. MEHAN: At the present time a scow cannot get up to the present fill, which extends 150 feet. It cannot get to the edge of the fill at the present time.

MR. CARSS: We are prepared with evidence with regard to this to show that the thing is quite feasible, to put a passage way under the railway grade that will be satisfactory for the transport of these materials, if it is necessary to do so.

HON. MR. MABEE: Well, I think, speaking from recollection, that that feature of it is covered by what took place at Vancouver. I do not suppose it is disputed that a passage way could be put through, or a swing bridge?

MR. TATE: I suppose it is physically possible; but it would be absolutely impossible with the development there. I mean to say it would be impracticable.

HON. MR. MABEE: Well, what time do you want us to go and look at this place?

MR. TATE: When is high tide?

MR. ROCHESTER: Eight o'clock is high water.

MR. TATE: How is the tide immediately after lunch?

MR. MEHAN: It is running out then.

HON. MR. MABEE: Suppose we go at two and again at eight?

MR. ROCHESTER: It will be nearly nine tonight before high tide.

HON. MR. MABEE: Then we will go down there about two o'clock.

Now, what time do you want us to hear your witnesses, Mr. Peters?

MR. PETERS: Say three o'clock.

HON. MR. MABEE: All right.

(Adjourned at 1 p.m. until 3 p.m.)

Proceedings resumed at 3 p.m.

HON. MR. MABEE: Is there anything more to be said about this unfortunate matter?

MR. CARSS: There is a matter I would like to call attention to, that is the fact that the Railway Company still recognize and claim the right of the Dominion Government to deal with this matter so far as navigable water is concerned. They have made application for the approval of their route map to the Dominion Government, of which I had notice.

HON. MR. MABEE: The approval of what?

MR. CARSS: Approval of their route map along this portion of the road at which the point in dispute exists. The approval of the Government to the route carried with it I believe the approval of the Commission to the nature of the construction



of the road along there. That is the only point I wish to call attention to, that notwithstanding any grant which may be made that these are still navigable waters subject to the control of the Governor in Council and of the Board.

COMMISSIONER McLEAN: Application to the Department of Public Works by the railway as affecting navigable waters?

MR. TATE: To the Department of Railways.

COMMISSIONER McLEAN: The question of navigable waters would bring up the jurisdiction of the Department of Public Works?

MR. TATE: The Marine Department.

COMMISSIONER McLEAN: Oh yes.

HON. MR. MABEE: I suppose you never made any application Mr. Tate, under section 233, did you?

MR. TATE: No, my lord.

HON. MR. MABEE: "When the company is desirous of constructing any wharf, bridge, tunnel, pier, or other structure or work in, upon, over, under, through or across any navigable water or canal, or upon the beach, bed or lands covered with the waters thereof, the company shall before the commencement of any such work (a) in the case of navigable waters, not a canal, submit to the Minister of Public Works, and in the case of a canal to the Minister, for approval by the Governor in Council, a plan and description of the proposed site for such work, and a general plan of the work to be constructed, to the satisfaction of such Minister."

MR. TATE: When I say no, I should say our plans have been submitted to the Government and have been before the Minister for over a year, all our development at that point, and Dr. Pugsley and M. Brodeur have been in communication, and the two applications were interwoven. That is to say, our application for title to the land and our application for leave to construct this development at Prince Rupert have been before the Government in that way.

HON. MR. MABEE: But it says that before the work shall be commenced you shall apply. Then upon the approval of the Governor in Council you apply to the Railway Commission for an order authorizing the construction.

MR. TATE: Of course, this work that is being done there is not, strictly speaking, railway work; that is, the development at Hays Creek. It is this floating dock. I do not think that would come before the Board.

HON. MR. MABEE: I am talking of this piece of work you have been doing. That is not at Hays Creek.

MR. TATE: That is the commencement of it. It is part of the entire scheme. You could not interfere with the work at Cameron Cove without interfering with the work at Hays Creek. I mean to say the plans have been on file with the Minister of Public Works for over a year.

HON. MR. MABEE: Supposing they were on file with him for over ten years, what difference would that make?

MR. TATE: I said we had made the application in that way.

HON. MR. MABEE: That is, that you did not make application under section 233.

MR. TATE: I would say we did not make application except in the way I have explained. Plans have been delivered by Mr. Hays and Mr. Wainwright to the Government and are under consideration by the Government, and have been for some time



past; and the Government sent up a special engineer to report on the work here, Admiral Kingsmill. A report has been turned into the Dominion Government under this section.

HON. MR. MABEE: Oh well, what is the use of talking of Admiral Kingsmill being sent up to inspect this thing? He is not an engineer at all. He never was sent up here to inspect this embankment you built over this cove.

MR. TATE: Yes, part of that same work.

MR. CARSS: Was it not a part of their agreement with the Provincial Government that they should construct their railway lines from Mile 0 westerly down here for about three miles?

MR. TATE: Yes.

MR. CARSS: Then it is part of the railway.

MR. TATE: I am saying there is land there that is not part of the railway.

HON. MR. MABEE: What difference does that make? Under 233 when a company is desirous of constructing a wharf, for instance, and you may say that was not part of the railway, but before you can build the wharf on navigable waters you have to apply under this section.

MR. TATE: Well, we have made the application.

HON. MR. MABEE: And before you build a structure over navigable waters of any kind you have got to make this application—before you commence the work.

MR. TATE: The work is being done in conjunction with the Dominion Government, so it is idle to say we have not made the application. The plans had all been approved before any of the work was done. We could not go ahead there independently, because we were dependent upon the Dominion Government for the funds to prosecute the work.

COMMISSIONER McLEAN: You have not made an application under that section. You say there is some general kind of application.

MR. TATE: The plans have been filed under that section.

HON. MR. MABEE: Then show us the approval of the Governor in Council of the site.

MR. TATE: I have no approval more than the one shown this morning.

COMMISSIONER McLEAN: There is no approval from the Department of Public Works? There is or is not. Is there one from the Department of Public Works?

MR. TATE: I cannot answer that. I can say the work has been approved by the Dominion Government and the plans have been filed there. The work is being prosecuted under the supervision of the Dominion Government Engineer. I did not personally attend to that part of it, but I know plans have been filed because I have seen them on file.

COMMISSIONER McLEAN: I should think you could say yes or no to my question as to whether there has been an approval under section 233.

MR. TATE: As a fact I would say yes.

COMMISSIONER McLEAN: A moment ago you said it was the Marine Department.

MR. TATE: So far as I am aware I have no formal Order in Council from the Department of Public Works.

COMMISSIONER McLEAN: Then you do not know that it is approved by the Department of Public Works.

MR. TATE: As a matter of fact I know it is approved.

HON. MR. MABEE: Why didn't you follow it up?



MR. TATE: It is a matter the executive of the company in Montreal had taken up with the Government.

HON. MR. MABEE: It is just a deliberate, highhanded violation of the law. That is what it is.

MR. TATE: Well, it seems to me, Mr. Chief Commissioner, that is very harsh language.

HON. MR. MABEE: Of course it is harsh, but it is perfectly true.

MR. TATE: But without your being aware of what has taken place at Ottawa.

HON. MR. MABEE: I do not care what has taken place at Ottawa.

MR. TATE: If we buy a piece of property we can use it surely within our own rights.

HON. MR. MABEE: Yes, you can, subject to the directions of the Railway Act under which you get your charter to build a road.

MR. TATE: We are doing that. We are observing the spirit and substance of the law.

COMMISSIONER McLEAN: But not the letter.

HON. MR. MABEE: Where has the spirit of the statute been observed in connection with this work?

MR. TATE: The spirit of the statute is that we went and filed a plan and got a deed of release in fee simple to that very land, and surely we can put up buildings upon our own land.

HON. MR. MABEE: You did not have any title when you built this structure.

MR. TATE: We have now.

HON. MR. MABEE: You have something now apparently on the strength of that telegram to head these people off.

MR. TATE: No. We had this application in three years ago.

HON. MR. MABEE: I do not care whether you had it in 30 years ago. You had not any title to this land when you built this embankment.

MR. TATE: We had a promised title.

HON. MR. MABEE: And you built the embankment in violation of section 233.

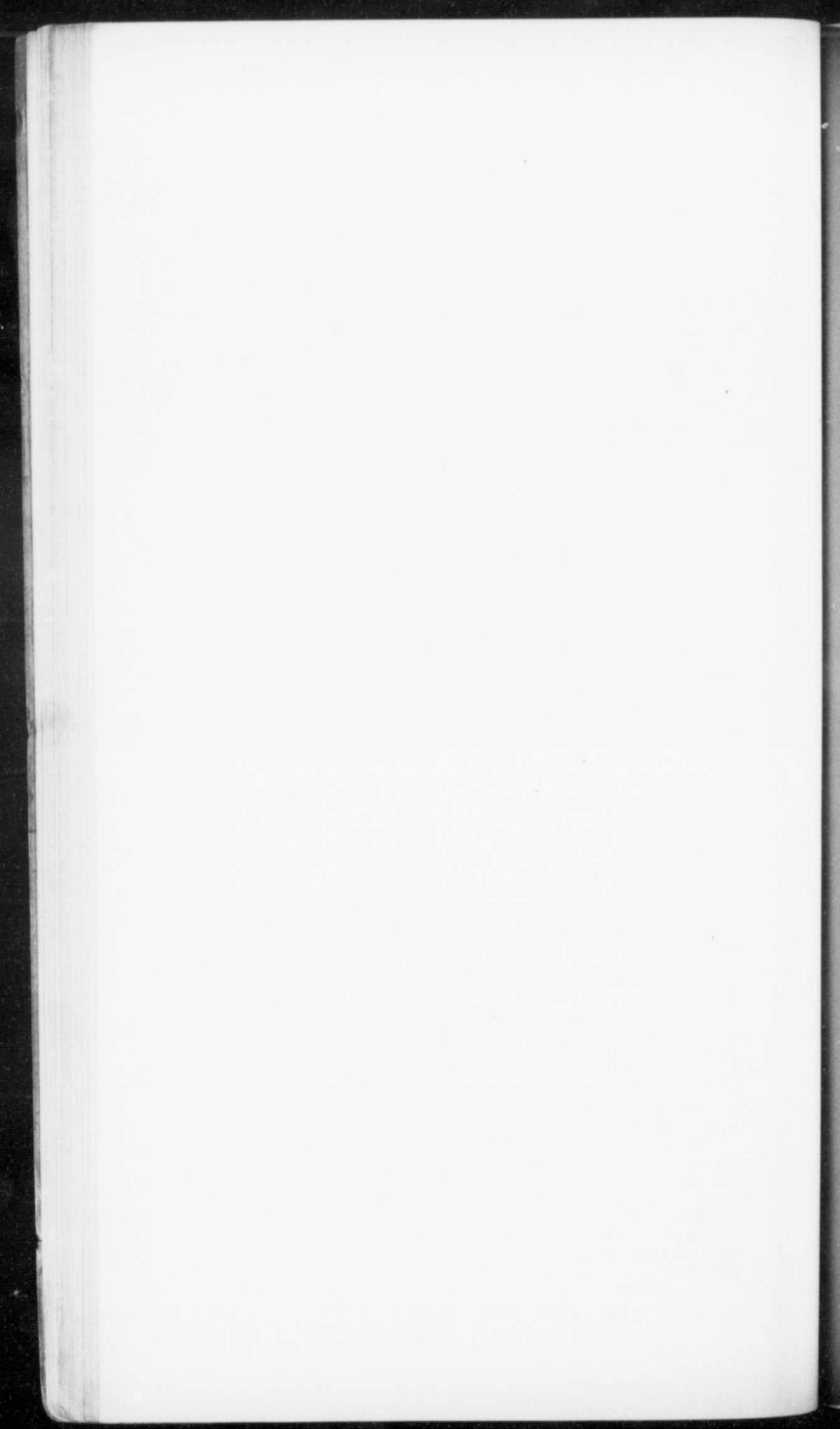
MR. TATE: Surely, the Commission know we only got this land here for the purpose of the Water front and that we would not have come here except for the water front, and that we had to acquire title to the land before acquiring title to the water front. As soon as we got that we filed our application with the Government. Our application was simply laid up for some official routine.

HON. MR. MABEE: Section 233 prohibits your going on with the work until you get the permission of the Minister of public works. Then after you have got that you have to apply for an order from the Railway Board to authorize construction of the work.

MR. TATE: I am trying to present this case upon the equity and the merits.

HON. MR. MABEE: You have no equity. You may have got a title so that possibly we cannot interfere. I do not know how that may turn out, but you have not got any equity or merits upon your side of the transaction at all.

MR. TATE: We have not got a single thing there but what we paid for, and these people are asking for something they have not paid for. They are asking to control the use of our property.



HON. MR. MABEE: Nothing of the kind. You had no title when you built that embankment.

MR. TATE: If we are not within our rights, very well, I will accept the remarks your lordship makes.

HON. MR. MABEE: You may be within your rights now. If you have a title now it may relate back, but whether you have a title now or not you did this all in contravention of the law of the land.

MR. TATE: If we did we did not interfere with the title of these lessees. We were not taking anything away from them.

HON. MR. MABEE: You prevented them from getting to their property.

MR. TATE: They are trying to amplify some rights which they never possessed before.

HON. MR. MABEE: The Provincial Government may be estopped. It looks to me as though there had been a lot of monkeying.

MR. TATE: It seems to me if there is any justice in your remarks it is strange this application is not endorsed by the people who represent the City or the Board of Trade or the Provincial Government.

HON. MR. MABEE: We do not have to have applications endorsed by somebody else to see the merits of them.

MR. CARSS: I would ask your permission to put in a resolution passed by the Council here.

HON. MR. MABEE: It is on file here. The City Council had been backing this man up, then you go and make some dicker with the City Council and they withdraw their help. You did the same thing with the Provincial Government.

MR. TATE: I simply appeared before the Council and stated our case, and they saw the inherent justice and withdrew their protest.

MR. CARSS: That withdrawal was in connection with the general settlement of the assessment and general matters, was it not?

MR. PETERS, K.C.: I may say a word with regard to the City Council concerning that matter.

I have been instructed by the City Council to simply hold a watching brief and nothing else. I do not think the withdrawal of the City Council from a protest which was filed by them should have anything to do with this matter one way or the other.

HON. MR. MABEE: It won't have anything to do with it. If we can give these men relief we will give it to them, no matter whether the City Council are in favor or against.

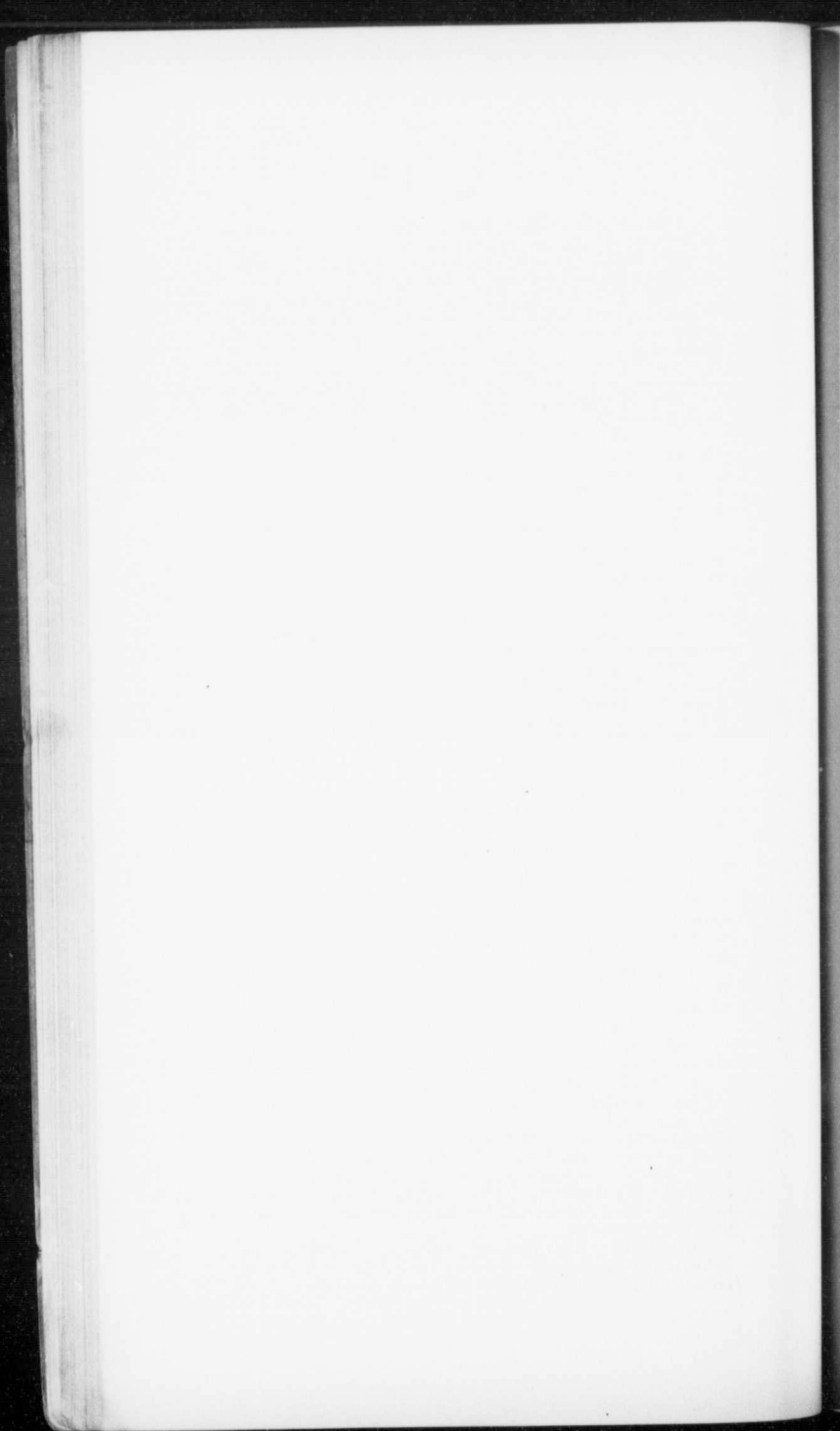
MR. PETERS: The City Council are not for or against.

HON. MR. MABEE: They were "for" a little while ago, and something has happened which makes them become neutral.

MR. TATE: As soon as they understood the case.

MR. PETERS: No, that is not the case. There were very many other questions we wanted to settle between the City Council and the Grand Trunk Pacific, and in order to settle those we simply said, "We will stand aside in this particular fight." There is nothing more than that. There is no dicker of any kind. We simply said, "We think these people can fight their own battles and we will just leave them alone." That is the whole proposition.

MR. TATE: I am perfectly willing they should get any rights to the fullest extent that they are entitled to, and if we are not within our own rights we will accept punishment.



MR. PETERS: I do not wish it to be imagined that the City Council are withdrawing in favor of the Grand Trunk Pacific. They are not doing anything of that kind. They simply say, "Let these men fight out their own trouble."

MR. TATE: I simply say the protest was withdrawn. I make no comment.

MR. PETERS: I do not wish any comment. I do not wish the City Council to be misrepresented.

MR. TATE: I am only stating that the protest is withdrawn.

MR. PETERS: The protest so far as this particular application is concerned is withdrawn. We leave the individual parties to fight it out themselves.

HON. MR. MABEE: Well, when will you complete your case, Mr. Tate?

MR. TATE: By filing these documents?

HON. MR. MABEE: Yes. You have not proved any title as yet.

MR. TATE: That is in regard to the Order in Council. If your lordship will accept a certified copy of the Order in Council I will give you that on the 30th at Vancouver.

HON. MR. MABEE: The Order in Council does not give you title.

MR. TATE: If your lordship wants the formal documents with the seal of the Dominion I will give them to you. I will get a 21 year lease and I will produce a certified copy as soon as it can be got from the Department—the 21 year lease renewable in perpetuity. That is all the Government gives. We have the same title at Fort William. They do not give any more deeds in fee for the last ten years. That is the practice of the Department. It is equivalent to a deed.

HON. MR. MABEE: How soon will you complete your case?

MR. TATE: As soon as I can get them—whatever time your lordship thinks reasonable in which they should be filed. The certified copy of the Order in Council I can give you in ten days. A certified copy of the lease I can file at Ottawa within 20 days or a month. It is a matter of writing down to get our agents to obtain a copy of the lease.

HON. MR. MABEE: There were a number of documents that you stated you would refer us to. Where do we get them?

MR. TATE: I gave them this morning. If you wish certified copies put in I will give them to you.

HON. MR. MABEE: We will have to read those things.

MR. TATE: I will give the Board copies of each of those documents I referred to this morning as soon as I can write to my office for them, and also certified copies of the Kaien Island grant and the Dominion Patent to the Metlakatla Reserve. I think those complete the whole thing. The other items of title are proved by the agreement.

HON. MR. MABEE: I hope you will put them in as soon as possible. We will have to read them all. We will not want to delay them too long.

MR. TATE: I will write for them as soon as I get to Vancouver.

HON. MR. MABEE: Then we will have to delay consideration until this title question is cleared up.

MR. TATE: There is another matter germane to this. There is the question of the approval of the three and a half



miles which has been referred to today by my learned friend. I was contemplating making a formal application for approval, not in connection with this application but in connection with a matter which arises between ourselves and the Dominion Government. The question concerns the payment out of proceeds of the bonds guaranteed by the Dominion Government. The Department of Justice is of opinion that as this three and a half miles forms an integral part of the Grand Trunk Railway it should receive the formal approval of the Board. I have not made an application heretofore for the approval of that from the fact that we are altogether upon our own property and we cross no streets. The crossings are all overhead. I ask permission of the Board to file a blueprint of the plan that I will file at Ottawa, called for by section 158 of the Railway Act. This shows the location of the three and a half miles from the wharf to the western limit to block K.

HON. MR. MABEE: You are asking now then for our approval, among other things, of this identical structure.

MR. TATE: No; merely the centre line of our right of way.

HON. MR. MABEE: Approval of the location?

MR. TATE: Yes.

HON. MR. MABEE: Carrying with it approval of the construction?

MR. TATE: It may be. I would ask for the formal approval of our location without reference to the preceding application.

HON. MR. MABEE: Then the Justice Department seem to take the view that you have been trespassing along that location?

MR. TATE: Not trespassing; but they say before they can release the portion of the bonds applicable to that three and a half miles it should be part of the Grand Trunk Pacific Railway, and it can only become that, formally speaking by the approval of the Board.

HON. MR. MABEE: In other words, you should have built it in accordance with the provisions of the Railway Act.

MR. TATE: Well, that is their contention, but I am not admitting its correctness.

HON. MR. MABEE: That is the ruling of the Justice Department.

MR. TATE: But my contention is that a man can construct anything he likes upon his own land so long as he does not create a public nuisance.

HON. MR. MABEE: A man can, but a railway cannot. It cannot construct a station on its own land without the plan being approved or the location.

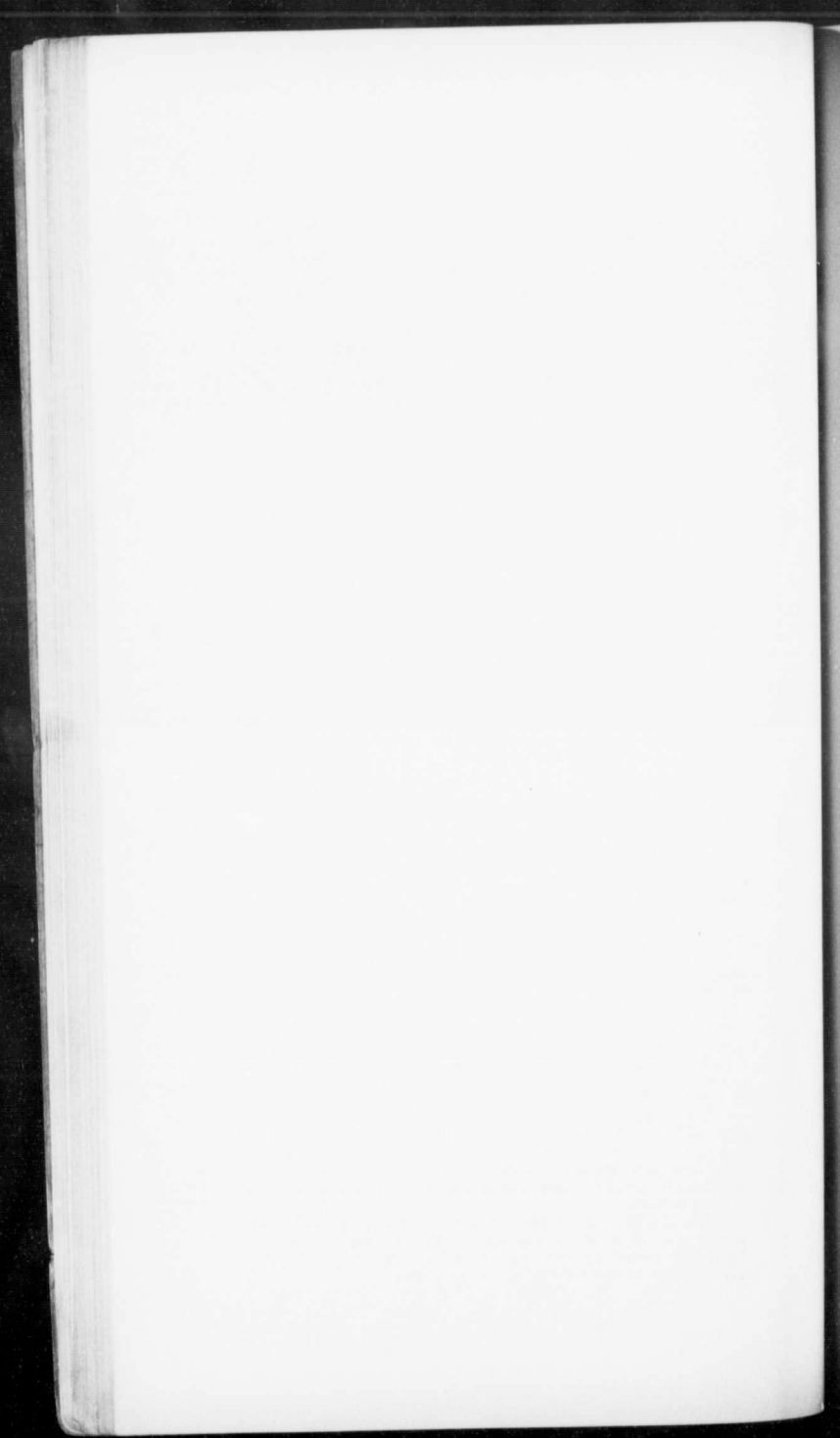
MR. TATE: We can construct a station, but we cannot use it as a station.

HON. MR. MABEE: What is the difference?

MR. TATE: Surely we can construct a grade upon our own land without coming to the Board for approval, but we cannot use that as part of the railway without coming to the Board.

HON. MR. MABEE: I thought the statute provided that you had to file your plans and get them approved before you started to work.

MR. TATE: If we have to get the consent of any third party, yes; but if we are absolutely constructing upon our own land, why should we come to the Board? We do not require your consent to construct upon our own land.



HON. MR. MABEE: I suppose it is all nonsense. I suppose the only reason is because the law says so.

MR. TATE: But what necessity is there for our doing so?

HON. MR. MABEE: My brother commissioner points out this section about your station: "Before a Company can erect any station upon its railway the location of such station shall be approved by the Board."

MR. TATE: But we can erect a station without breaking the law, and we have erected a station.

HON. MR. MABEE: I know you have.

MR. TATE: The case came before Assistant Commissioner Scott. We erected a station. We did not break the law, but he said "I will not approve of it."

COMMISSIONER McLEAN: You might put up a crystal palace upon the line of your railway. It must be looked at in a common sense way.

MR. TATE: If you will excuse my saying so, I repeat with all deference that we can put any structure upon our own land.

HON. MR. MABEE: You mean the Grand Trunk Pacific but no other railway? No other railway does it, or has been doing it, except your road.

MR. TATE: Pardon me. It is done universally. The Canadian Northern Railway has done it I know.

HON. MR. MABEE: I think perhaps the Canadian Northern did to some extent. The Grand Trunk does not do it. The Canadian Pacific does not do it. It did it in one instance. I was not aware that the Grand Trunk Pacific had greater rights than other railways.

MR. TATE: We have not, but we can put up a building upon our own land, although we cannot use it as a station until we get the approval of the Board.

HON. MR. MABEE: You cannot, if I can read the English language, which says "before the company proceeds to erect."

MR. TATE: But we have done it.

HON. MR. MABEE: I know you have.

MR. TATE: And we have broken no law. But you need not approve of it as a station, and therefore it becomes no station until you have approved of it; but we can put a building there. I am not arguing along technical lines.

HON. MR. MABEE: If you were not in British Columbia you would not argue any such bad law as that at all.

MR. TATE: If it is bad law I am willing to take any order the Board will make, that a man cannot put a building upon his own land.

HON. MR. MABEE: I say a man can, but a railway company cannot.

MR. TATE: Then a railway company can put it up.

HON. MR. MABEE: A man, if he wants to build something upon his own land, does not need to get any approval unless it be some building law; but the statute says a Railway Company shall have its site approved before it erects a station on its own property.

MR. TATE: It becomes no station until it is approved; but that does not prevent our putting up the station. Whether it becomes a station or not depends on the Commission but the building is there and it is on their property. Our construction at Prince Rupert is the same. We have broken no law. Whether it becomes a part of the railway or not is another question. You may refuse to approve of it. The construction is there. It is not breaking any law. It simply is not a part of our railway.



Possibly we both mean the same thing, but we are only arguing along technical lines. I do not for a moment say that we can put up any structure down here and call it a station without receiving the approval of the Board; but I do say we can put up a building there and that we are not transgressing any law as to the building.

Well, if the Board likes to hear the application, or give me leave to make the application in this informal way now that they are on the ground, I think perhaps it will be more convenient for all concerned.

HON. MR. MABEE: You are making this just so you can get the advantage of what you are doing.

MR. TATE: I am making this in deference to the advice of the Department of Justice not in consonance with my own views. But I still think we are within our rights; the Department of Justice thinks differently, and possibly your lordship thinks differently. The section that relates to the approval of plans of the western division of the Grand Trunk Pacific is clause 9 of the agreement of 1903 with the Dominion Government.

HON. MR. MABEE: That is in the Dominion Act of 1903, is it?

MR. TATE: Yes, the Dominion Act. I may say, so far as it relates to the Western Division of the Grand Trunk Pacific, our practice from Winnipeg to Prince Rupert has been to duplicate files of the plans and applications with the Government. We file three sets of plans with the Board and three with the Government, and the Board has given their approval first, and that is followed by the recommendation, and is acted upon by the Department of Railways, and with the one exception of our location through Winnipeg, the orders of the Board and of the Dominion were identical. In that case there was a slight divergence which was after reconciled. But the practice is to get the approval of the Board first.

In this case we have made no application either to the Government or to the Board. It is proposed now to make the application. So that I will follow just the same procedure as we did with reference to the line east of Prince Rupert, file the usual plans with the Board and with the Government, and what I am asking is that the approval of the Board be simply an approval of the location without reference to the character of structures, or fills, or anything else. This plan merely shows the centre line or right of way.

COMMISSIONER McLEAN: This portion does not include any portion of the route map?

MR. TATE: Yes.

HON. MR. MABEE: Where is your route map?

MR. TATE: I have not got a copy here, but it has been approved by the Minister of Railways, with the exception of the matter mentioned by Mr. Carss, subject to the details being arranged with the Board. I take the position with regard to the dictum, that section 158 of the Railway Act contemplates the approval of the route map being given by the Minister of Railways, and that it is not competent for him to amend the Railway Act by delegating that to the Board.

HON. MR. MABEE: Then he has not approved of it?

MR. TATE: He has approved of it, but has put an addition on that is repugnant.

HON. MR. MABEE: Then it is not an approval.

MR. TATE: I would submit that it was. Supposing that the addition is *ultra vires*?



HON. MR. MABEE: Then there is no approval.

MR. TATE: The approval is not ultra vires. However, that is a matter I think I am quite willing to—

HON. MR. MABEE: Then you politely want to make use of this Board merely to get your location approved so that you can get your money and snap your fingers in our face about your construction and everything else. So far as I am concerned you won't get any such approval from me.

MR. TATE: I simply ask approval of the location, without the approval carrying with it anything more than what section 159 says.

COMMISSIONER McLEAN: We cannot do that until you get approval under 157. According to your position the Minister has not approved of the route map. You cannot blow hot and cold and say the Minister has given approval, and then say it is beyond his power.

MR. TATE: I say he has given an approval with an addition that is beyond his power.

COMMISSIONER McLEAN: I understand the addition is part of the approval, and that if one falls the other falls.

MR. TATE: I do not say that. He has approved, with a condition that I submit is ultra vires, and that we can ask the approval free from such condition.

COMMISSIONER McLEAN: I understand you suggest that.

MR. TATE: I refer to section 159, subsection 2. "The Board by such sanction shall be deemed to have approved merely the location of the railway and the grades and curves thereof, as shown in such plan, profile and book of reference, but not to have relieved the company from otherwise complying with this Act." That says nothing about details. That can be left to be disposed of subsequently. We are not asking anything but our rights.

HON. MR. MABEE: Oh yes. You are asking for a good deal more than what you are entitled to.

MR. TATE: I am quite willing now to limit my application to the strictest interpretation.

HON. MR. MABEE: You just blazed away and built this piece of road, as you claim, on your own land without any regard whatever to the Railway Act, and now you find you cannot get the money and you come back and make this application for the approval of the location.

MR. TATE: Supposing we have done so, whose rights have we infringed?

HON. MR. MABEE: Well, you infringed Rochester's rights for one man; I do not know how many others.

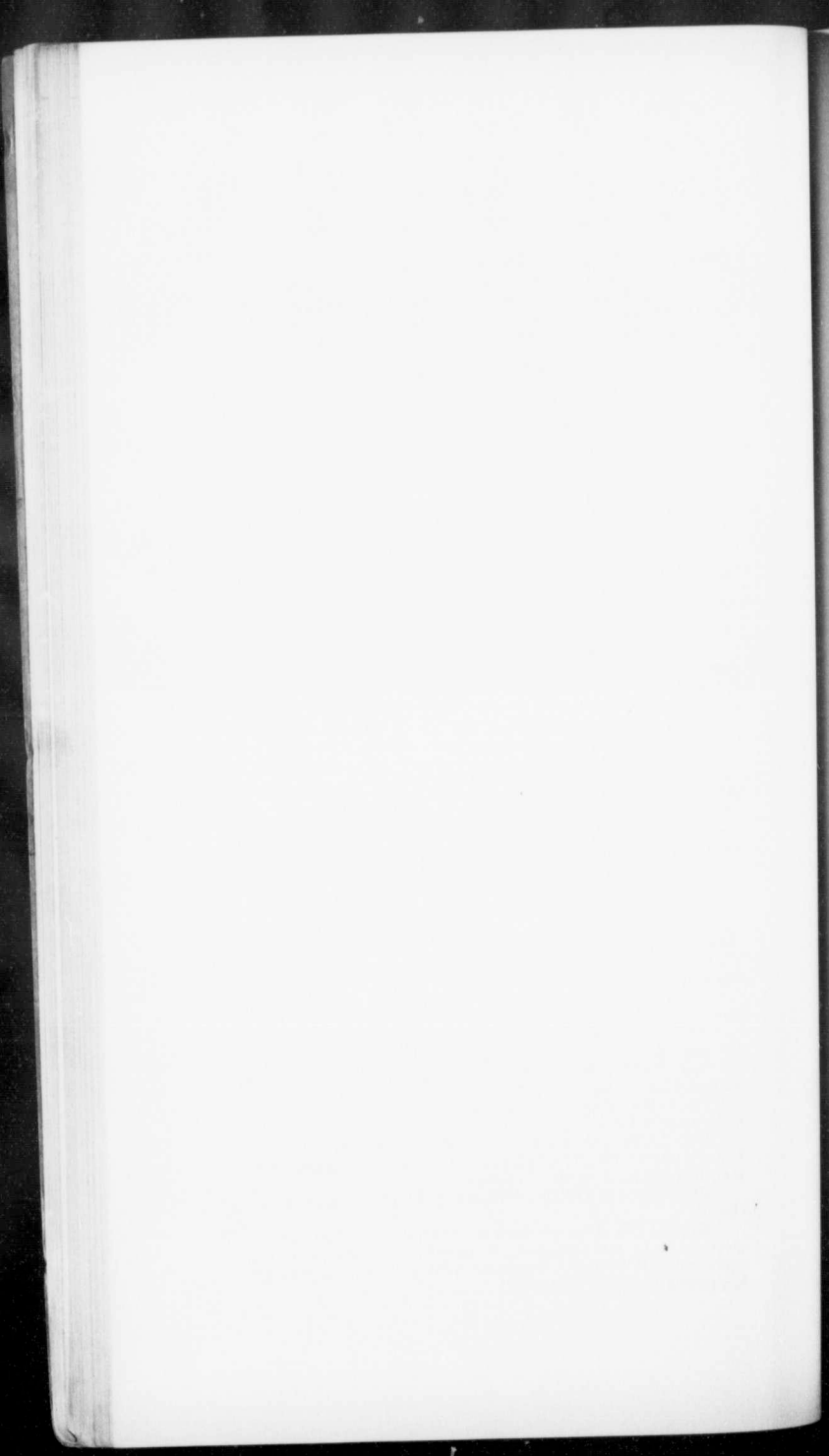
MR. TATE: Excuse me. He has no more right than the Province has; he has no right.

HON. MR. MABEE: He was down there on the property, and you shut him out.

MR. TATE: He never bought it. If your lordship went to get a waterfront you would pay a very different consideration than he paid for that bit of enclosure.

HON. MR. MABEE: You got your water front pretty cheap.

MR. TATE: I do not think so. Any value that this has was given to it by our company. I appeal to the statement you made yourself today: "Whatever right the Province has got has passed on to these lessees."



HON. MR. MABEE: Perhaps that may be the result. I should be sorry if it is.

MR. TATE: Then your commission should not leave one to infer we were trying to get something that did not equitably belong to us. We are not seeking to deprive anyone of their rights. We think we have the merits on our side.

HON. MR. MABEE: Railway Counsel always thinks his company is right.

MR. TATE: If we have infringed the rights of the Province I should like it to be pointed out wherein we have done so. The Province have got a good deal better water front today than they would have got had we not made this agreement with them.

HON. MR. MABEE: The Province gave this applicant a lease of some property down there that had access to it from the water, and the Province had improved the shore by putting in a very considerable frontage of dock. That was the condition upon the ground when the Province gave these men their leases. I am talking of the condition of things on the ground when these men took their property. Then you come and build this embankment across before you get any title, and you slip in now with a telegram at the last moment which says you have some Order in Council giving you a title.

MR. TATE: It was always understood we would get title. Surely if your lordship were buying a piece of property you would investigate the title.

HON. MR. MABEE: Of course I would, and I would not put a lot of money into a building before I got the title. That is what you did.

MR. TATE: We had the title assured us by the responsible Minister of the Crown at Ottawa. You do not imagine for a moment that we would have come in here if we had not been getting the water front? Well, what does your lordship wish me to do about this application?

HON. MR. MABEE: You can file the application. Give it to Mr. Richardson with the plan.

MR. TATE: I will undertake to file the three tracings of which that is the blueprint, and a copy of the route map as approved by the Minister is already on file in your office at Ottawa.





LAND ACT.

PROVINCE OF
BRITISH COLUMBIA.

(Signed) W. S. Gore,
Deputy Commissioner of Lands and Works.

No. 743—162

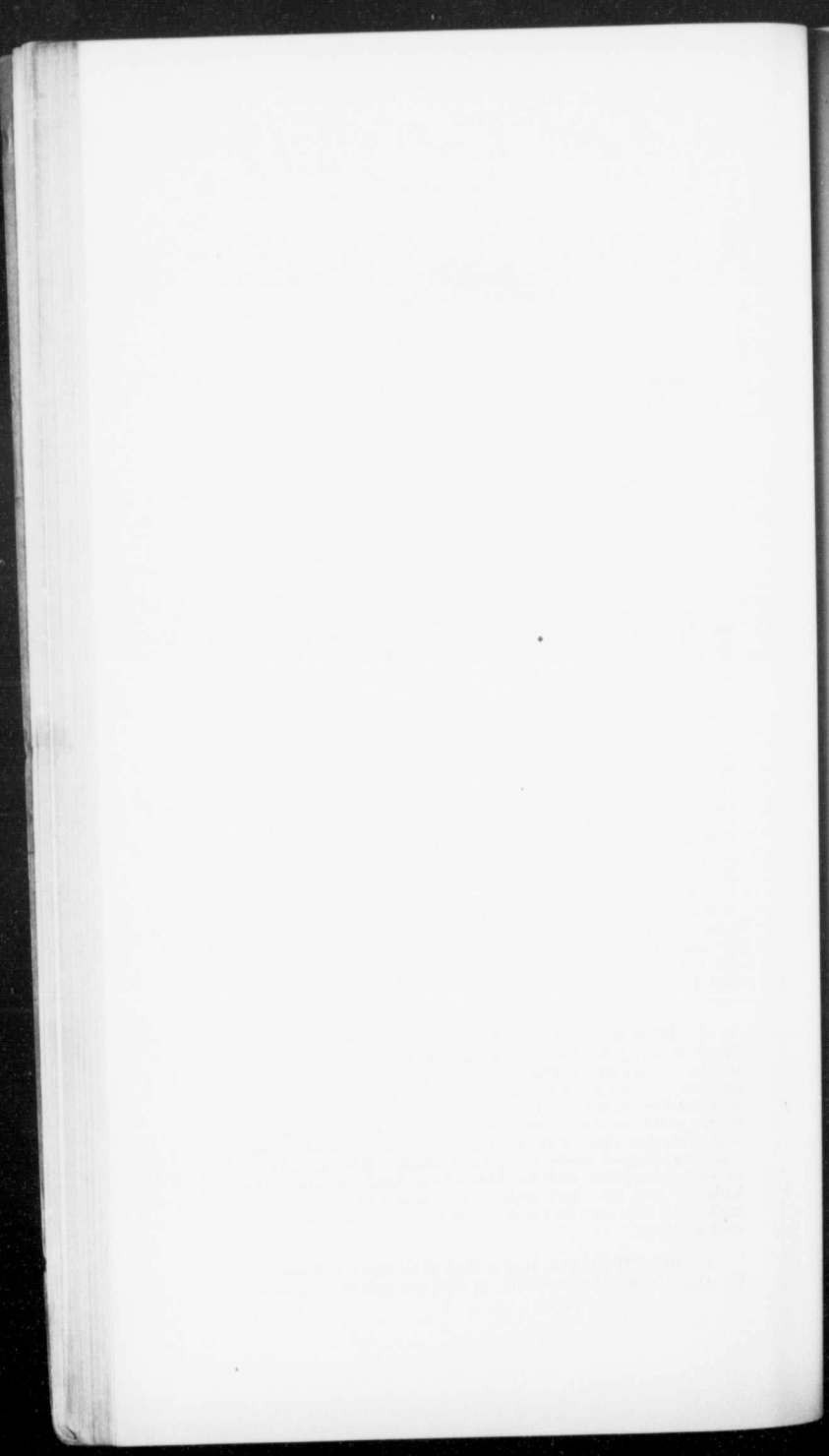
EDWARD VII., by the Grace of God, of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, KING, Defender of the Faith, &c., &c.

To all to whom these presents shall come, Greeting:

KNOW YE, that We do by these presents, for Us, Our Heirs and Successors, in consideration of the fulfilment of the terms of an order in Council, approved by His Honour the Lieutenant-Governor on the fourth day of May, 1904, and of the sum of Ten Thousand Dollars to Us paid, give and grant unto The Grand Trunk Pacific Railway Company, its successors and assigns, all those parcels or lots of land situated in Coast District, said to contain ten thousand (10,000) acres, more or less, and more particularly described on the map or plan hereunto annexed and colored red, and numbered Lots Two hundred and fifty-one (251), Four hundred and forty-three (443), and Four hundred and forty-four (444), Range Five (5), on the official plan or survey of the said Coast District, in the Province of British Columbia, TO HAVE and TO HOLD the said parcels or lots of land, and all and singular the premises hereby granted, with their appurtenances, TOGETHER with (where any of the lands so described abut upon, or form the shore of, any tidal waters, or the bank of any river, lake or stream) all the foreshore and riparian rights which We, in the right of Our Province of British Columbia, may have in the said lands, including the lands below as well as above high-water mark, unto the said Grand Trunk Pacific Railway Company, its successors and assigns, for ever.

1. PROVIDED, NEVERTHELESS, that it shall at all times be lawful for Us, Our Heirs and Successors, or for any person or persons acting in that behalf by Our or their authority, to resume any part of the said lands which it may be deemed necessary to resume for making roads, canals, bridges, towing-paths, or other works of public utility or convenience; so nevertheless that the lands so to be resumed shall not exceed one-twentieth part of the whole of the lands aforesaid, and that no such resumption shall be made of any lands on which any buildings may have been erected, or which may be in use as gardens or otherwise for the more convenient occupation of any such buildings.

2. PROVIDED, also, that it shall at all times be lawful for Us, Our Heirs and Successors, or for any person or persons



acting under Our or their authority, to enter into and upon any part of the said lands, and to raise and get thereout any minerals, precious or base, including coal and petroleum, which may be thereupon or thereunder situate, and to use and enjoy any and every part of the same land, and of the easements and privileges thereto belonging, for the purpose of such raising and getting, and every other purpose connected therewith, paying in respect of such raising, getting and use reasonable compensation.

3. PROVIDED, also, that it shall be lawful for any person duly authorized in that behalf by Us, Our Heirs and Successors, to take and occupy such water privileges, and to have and enjoy such rights of carrying water over, through, or under any parts of the hereditaments hereby granted, as may be reasonably required for mining or agricultural purposes in the vicinity of the said hereditaments, paying therefor a reasonable compensation to the aforesaid Grand Trunk Pacific Railway Company, its successors or assigns.

4. PROVIDED, also, that it shall be at all times lawful for any person duly authorized in that behalf by Us, Our Heirs and Successors, to take from or upon any part of the hereditaments hereby granted, without compensation, any gravel, sand, stone, lime, timber or other material which may be required in the construction, maintenance or repair of any roads, ferries, bridges or other public works.

5. PROVIDED, also, that in the event of any of the lands hereby granted being divided into town lots, one-fourth of all the blocks of lots, to be selected as provided in section 32 of the "Land Act," shall be re-conveyed to Us and Our successors.

6. PROVIDED, further, that the land hereby granted fronting on the sea or other waterway shall be divided into blocks having a frontage on the sea or waterway of not less than one thousand (1,000) feet, and the selection of the water front lands so divided shall be in conformity with section 32 of the "Land Act," and shall be re-conveyed to Us and Our Successors, together with the land appurtenant thereto above and below low-water mark, upon the request of the Chief Commissioner of Lands and Works.

7. PROVIDED, further, that there shall be re-conveyed to Us and Our Successors, upon the request of the Chief Commissioner of Lands and Works, one fourth of all the land embraced in this grant that shall not be divided into town lots or water front blocks, the said lands to be divided into blocks containing not more than eighty acres, and the selection of said lands to be in conformity with section 32 of the "Land Act."

8. PROVIDED, further, that any re-conveyance to Us and Our Successors of any of the lots hereinbefore mentioned shall include (when the lands so described abut upon or form the shore of any tidal waters, or the bank of any river, lake or stream) all the foreshore and riparian rights including the lands above and below low-water mark.

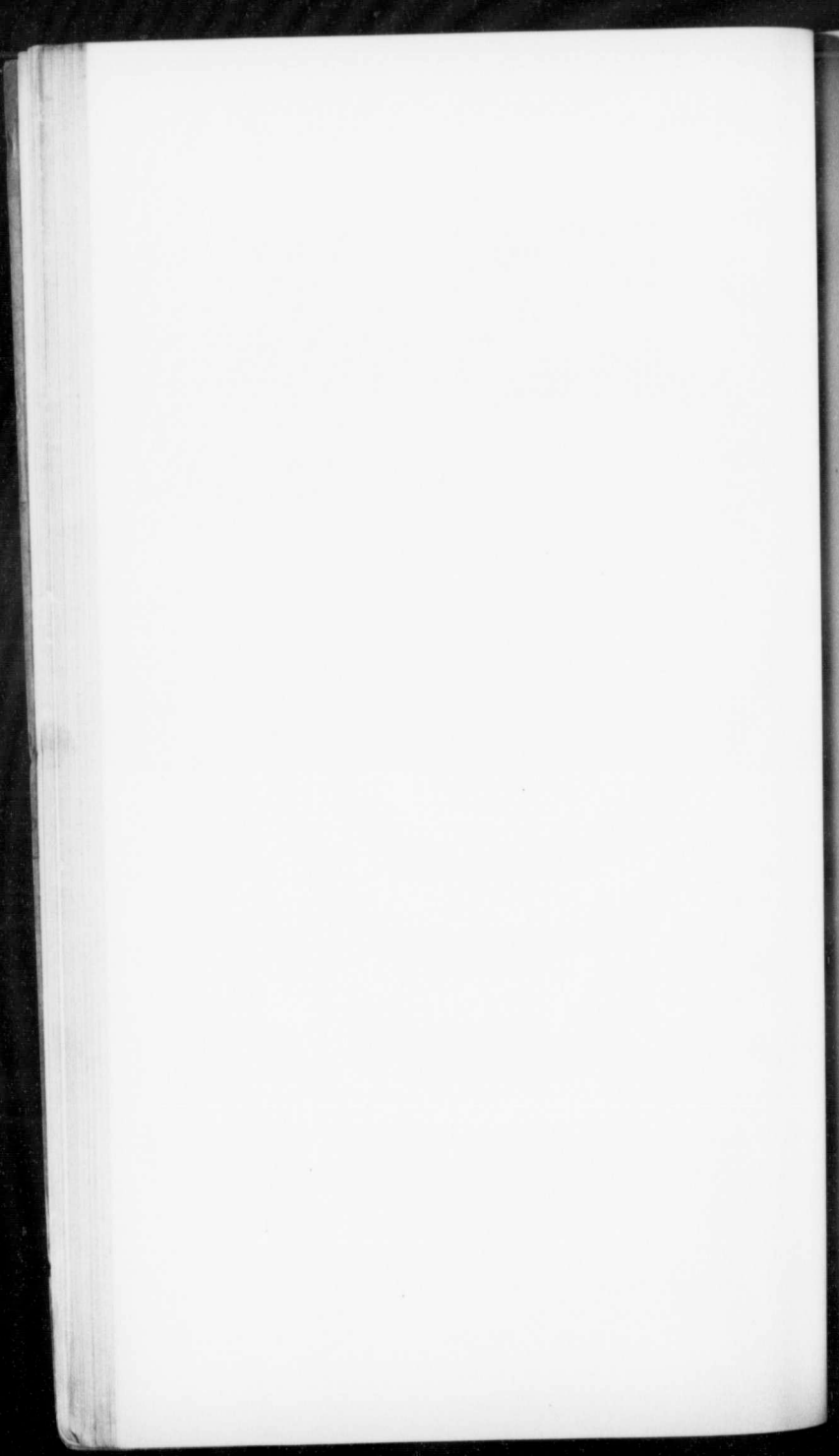
9. PROVIDED, also, that all travelled streets, roads, trails and other highways existing over or through said lands at the date hereof shall be excepted from this grant.



IN TESTIMONY WHEREOF, We have caused these Our Letters to be made Patent, and the Great Seal of Our Province of British Columbia to be hereunto affixed; WITNESS, His Honour the Honourable SIR HENRI GUSTAVE JOLY DE LOTBINIERE, K.C.M.G., Lieutenant-Governor of Our said Province of British Columbia, at Our Government House, in Our City of Victoria, this Tenth day of March, in the year of Our Lord One thousand nine hundred and five, and in the fifth year of Our Reign.

By Command.

(Signed) FRED. J. FULTON,
Provincial Secretary.



CANADA.

DEPUTY GOVERNOR C. J. JONES.

EDWARD THE SEVENTH by the Grace of God of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the seas, King, Defender of the Faith, Emperor of India.

TO ALL WHOM THESE PRESENTS SHALL COME

Greeting.

Whereas the lands hereinafter described are part and parcel of those set apart for the use of the Metlakatla Band of Indians.

And Whereas we have thought fit to authorize the sale and disposal of the lands hereinafter mentioned in order that the proceeds may be applied to the benefit, support and advantage of the said Indians in such a manner as we shall be pleased to direct from time to time.

And Whereas the Grand Trunk Pacific Town and Development Company, Limited, have contracted and agreed to and with our Superintendent General of Indian Affairs duly authorized by us in this behalf for the absolute purchase at and for the price and sum of One Hundred and Six Thousand Two Hundred Dollars of lawful money of Canada, of the lands and tenements hereinafter mentioned and described of which we are seized in right of our Crown.

NOW KNOW YE that in consideration of the said sum of One Hundred and Six Thousand, Two Hundred Dollars, by them the said Grand Trunk Pacific Town and Development Company, Limited, to our said Superintendent General of Indian Affairs in hand well and truly paid to our use at or before the sealing of these our Letters Patent, we by these Presents do grant, sell, alien, convey and assure unto the said Grand Trunk Pacific Town and Development Company, Limited(their successors and assigns forever, all those parcels or tracts of land situate, lying and being in the Southern part of the Tsimpsean Indian Reserve Number Two, in the Coast District, in the Province of British Columbia in Our Dominion of Canada, composed of a portion of Digby Island, all that portion of Kaien Island lying within the limits of the said Reserve and a portion on the Main-land North of the said Kaien Island, together with Lakanian and Lakwilgiapsh Islands, and eight small Islands adjacent to Digby Island, and to the said Mainland. The said Islands comprising all the Islands adjacent to the above mentioned land which pertain to the said Indian Reserve and which may be described as follows:—

FIRSTLY: Commencing at the point on the main land where the East boundary of the said Reserve strikes the water's edge of the channel between the said main land and Kaien Island; thence North along the said boundary eleven thousand four hundred and eighty-two feet to the North boundary of a lot numbered 443; thence S. 89° 40' 30" W. along the said North boundary of lot 443 produced Westerly fifteen thousand five hundred and thirty feet more or less to a line drawn North astronomically from low water mark at the extreme Westerly point of Lakanian Island; thence South along the said line



twelve thousand and four hundred feet more or less to the water's edge of the Channel between the main land and Digby Island; thence Easterly following the sinuosities of the shore to the point of commencement containing approximately four thousand five hundred and ninety-two acres of land be the same more or less.

SECONDLY: Commencing at the water's edge on the North Easterly shore of Digby Island where a line drawn south astronomically from the aforesaid low water mark at the extreme Westerly point of Lakanian Island strikes the same; thence south on the said line fifteen hundred and sixty-five feet more or less to a line drawn East astronomically from high water mark at the head of the large Bay at the North Easterly end of the said Digby Island, known as Sh-kgeauk Bay; thence West astronomically on the said line nineteen hundred feet more or less to the said Bay and again West astronomically on the said line produced eight thousand eight hundred feet more or less to where the said line first strikes the West shore of Digby Island; thence South Easterly, Northerly, Westerly, South Easterly and North Westerly following the sinuosities of the shore of the said Digby Island to the point of commencement, and containing Six thousand eight hundred and forty acres of land be the same more or less.

THIRDLY: Commencing at the point on the North Westerly shore of Kaien Island where the East boundary of the said Indian Reserve strikes the water's edge; thence south along the said boundary twenty-eight thousand four hundred and forty-six feet more or less to the water's edge at the South Westerly shore of the said Kaien Island; thence North Westerly and North Easterly following the sinuosities of the shore to the point of Commencement, containing two thousand six hundred and eighty acres of land, be the same more or less.

FOURTHLY: Ten Islands described approximately as follows:—Lakanian Island above mentioned lying between Digby Island and the main land containing nineteen acres be the same more or less; Lakwilgiapsh Island situated south of Lakanian Island and distant about 460 feet therefrom, containing nine acres be the same more or less. Island Number One, adjacent to the shore of the portion of land firstly described above containing ten acres be the same more or less; Island Number Two, situated East of Lakanian Island and distant about 1000 feet therefrom, containing one acre, be the same more or less; Islands Numbers Three and Four adjacent to the Easterly shore of Digby Island containing respectively one acre and one acre and seventy-five hundredths of an acre, be the same more or less; Island Number Five adjacent to the Eastern shore of the Peninsula at the South end of Digby Island, containing one-half of an acre be the same more or less; and finally Islands Numbers Six, Seven and Eight adjacent to the south westerly shore of Digby Island, containing respectively one acre and seventy-five hundredths of an acre, two acres and half an acre, and one acre and half an acre be the same more or less reserving from the lands firstly above described an area not exceeding five per cent for roads and the right of the Crown to lay out roads where necessary; together with all rights to the fore-shores and rights of access to the water which may pertain to the lands above described.



TO HAVE AND TO HOLD the said parcels or tracts of land hereby granted, conveyed and assured unto the said Grand Trunk Pacific Town and Development Company, Limited, their successors and assigns forever; Saving, Excepting and Reserving nevertheless unto us, our heirs and successors the free use, passage and enjoyment of, in, over and upon all navigable waters that shall or may be hereafter found on or under or be flowing through or upon any part of the said parcels or tracts of land hereby granted as aforesaid.

GIVEN UNDER THE GREAT SEAL OF CANADA:—

WITNESS, Charles J. Jones, Esquire, I.S.O., B.A., Deputy of Our Right Trusty and Right Well-Beloved Cousin the Right Honorable Sir Albert Henry George, Earl Grey, Viscount Howick, Baron Grey of Howick, in the County of Northumberland, in the peerage of the United Kingdom, and a Baronet; Knight Grand Cross of Our Most Distinguished Order of Saint Michael and Saint George, &c., &c., Governor General of Canada.

At OTTAWA, this twenty-fifth day of June, in the year of Our Lord, one thousand nine hundred and seven, and in the seventh year of our Reign.

By Command.

(Signed) FRANK PEDLEY,

Deputy Superintendent General of Indian Affairs.

(Signed) P. PELLETIER,

Acting Under-Secretary of State.

Ref. No. 14791

Sale No. 1.



CHAPTER 19.

7th March, 1908.

AN ACT RESPECTING THE GRAND TRUNK PACIFIC RAILWAY.

WHEREAS representations have been made to the Govern-^{Preamble.}ment, on behalf of the Grand Trunk Pacific Railway Company, that the lands embraced in the Agreement which is the Schedule to this Act, together with the lands embraced in the Crown Grant to the said Company, dated 10th March, 1905, are necessary for the terminal arrangements of the Company, and it has been made to appear to the Government that the work of construction of the said railway through the Province cannot be proceeded with until such terminal arrangements have been concluded and the lands necessary therefor secured by the Company;

And whereas the said Company has procured, through the Dominion Government, from the Metlakatla Band of Indians, a surrender of all the Indian title in the lands embraced in the said Agreement, together with a grant from the Dominion Government of all its title therein, and is willing to acquire the Provincial interest upon the terms set forth in said Agreement:

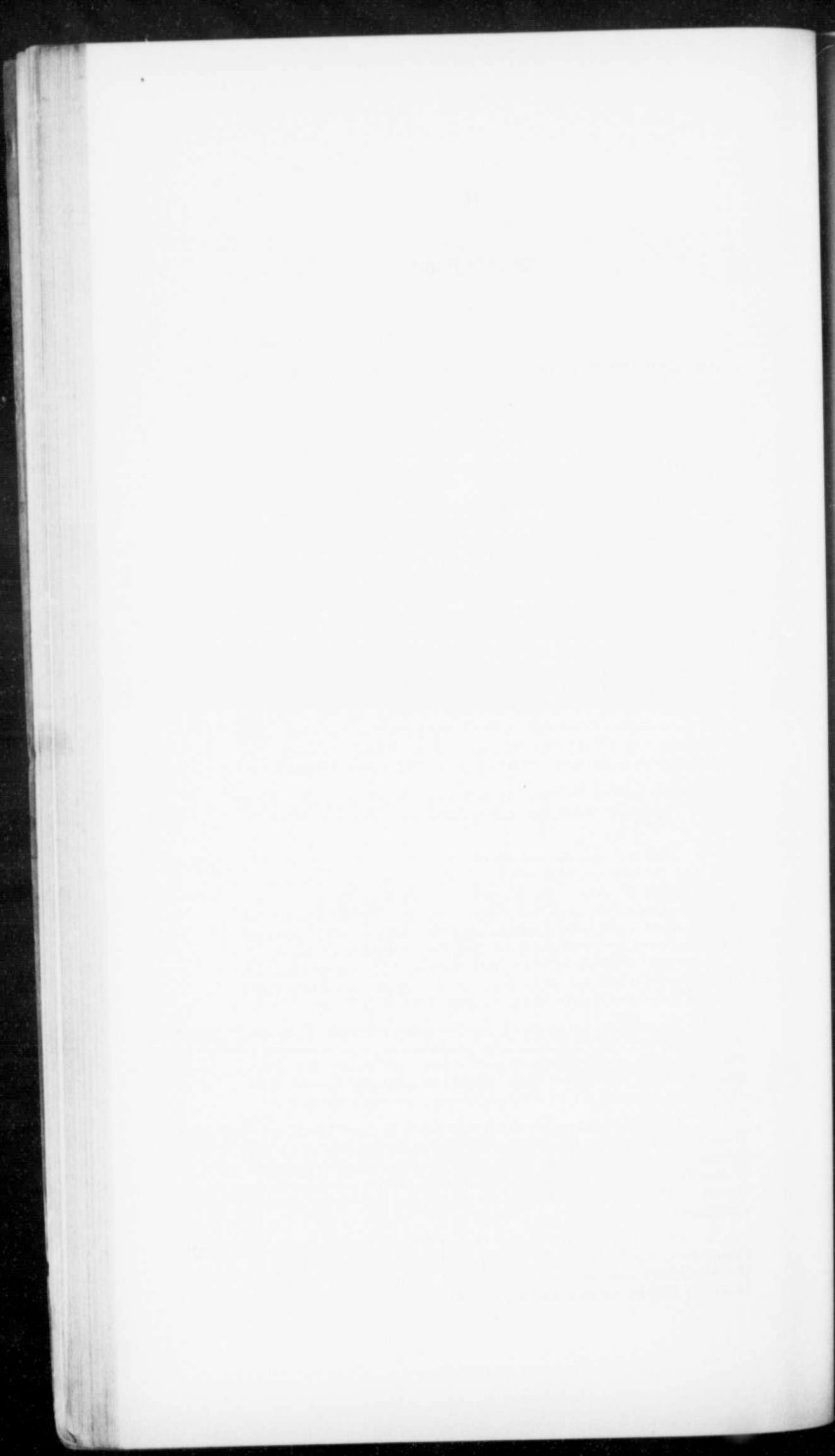
Therefore, His Majesty, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

1. The Agreement, a copy of which forms the Schedule to this Act, is hereby ratified and confirmed and declared to be legally binding upon His Majesty, the Grand Trunk Pacific Railway Company, and the Grand Trunk Pacific Town and Development Company, Limited, and His Majesty and the said Companies are hereby authorized and empowered to do whatever is necessary in order to give full effect to the Agreement, the provisions of which are to be taken as if they had been expressly enacted hereby and formed an integral part of this Act. ^{Ratification of agreement.}

2. As soon as the plan of the townsite referred to in said Agreement has been approved, as provided by said Agreement, the provisions of the "Mineral Act," the "Placer Mining Act," and the "Coal Mines Act," and of all amendments to said Acts, shall cease to apply to the lands embraced in said townsite. ^{Mining Acts not to apply to townsite.}

3. Notwithstanding anything contained in the "Land Act," it shall be lawful for the Lieutenant-Governor in Council to sell or lease in any way he may deem most conducive to the interests of the Province, the lots or blocks, or any portion of the lots or blocks, that will fall to the Crown under the provisions of said agreement. ^{Sale or lease of lands belonging to Crown.}

4. The Crown grant to the Grand Trunk Pacific Railway Company of the 10th March, 1905, subject to the changes made in the conditions thereof by the agreement set out in the Schedule hereto is hereby ratified and confirmed. ^{Ratification of Crown Grant.}



SCHEDULE.

THIS INDENTURE OF AGREEMENT made this 29th day of February, A.D. 1908, between His Majesty the King, in the right of His Province of British Columbia, herein represented and acting by the Honorable Frederick John Fulton, Chief Commissioner of Lands and Works of the said Province, herein-after referred to as the Province, of the First Part;

The Grand Trunk Pacific Railway Company, hereinafter called the "Railway Company," of the Second Part; and

The Grand Trunk Pacific Town and Development Company, Limited, a Company incorporated for the purpose of acquiring, holding, and managing certain lands along the line of the Railway Company, hereinafter called the "Townsite Company," of the Third Part.

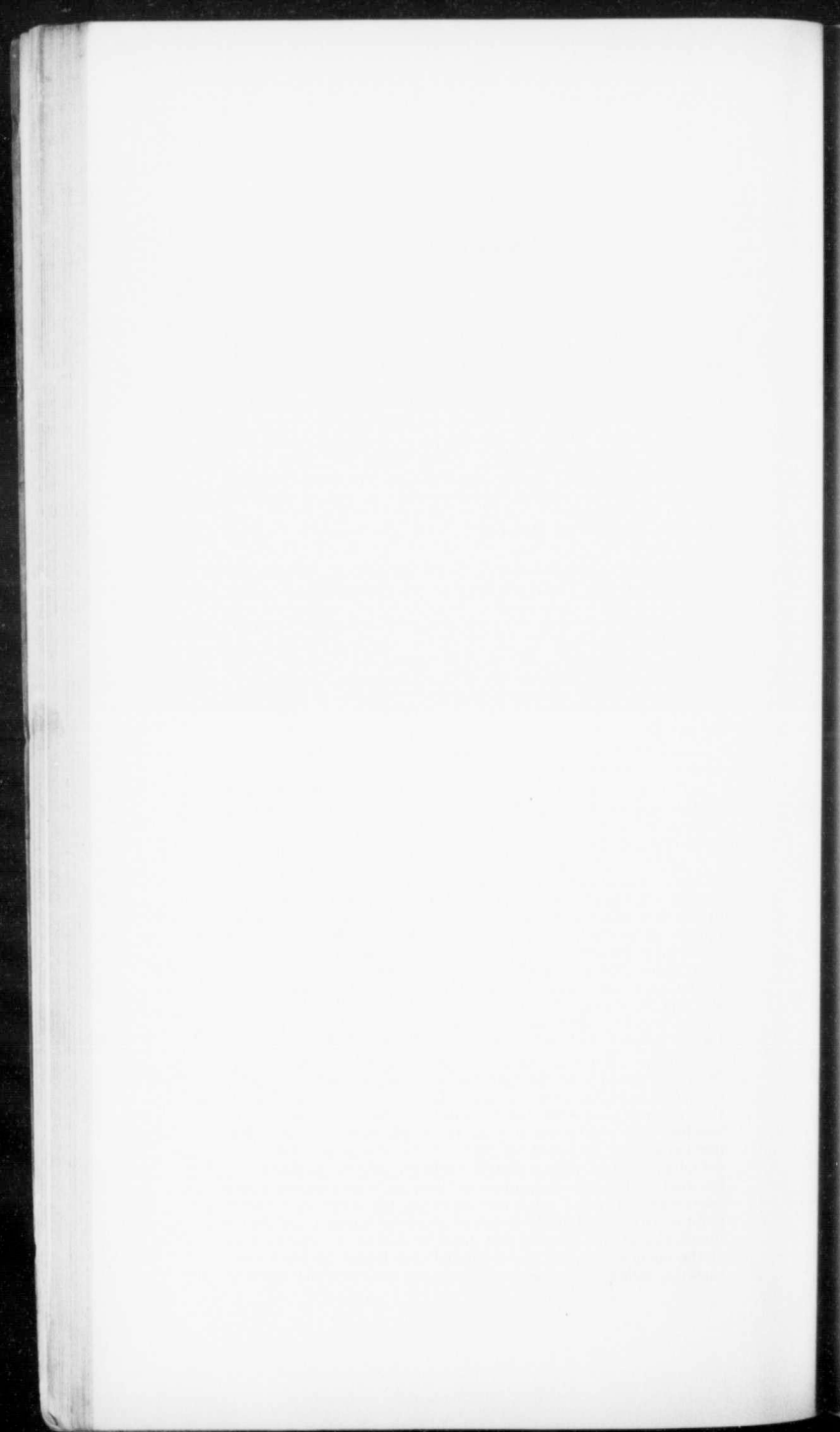
Whereas negotiations have been proceeding between the Province and the Railway Company respecting the early commencement and completion of construction of the Grand Trunk Pacific Railway from its Western Terminus at Prince Rupert to the eastern boundary of the Province, the acquisition by the Railway Company of all the right, title, and interest of the Province in that portion of the Metlakatla Indian Reserve, hereinafter particularly described, the grant to the Railway Company of a right of way for its railway through the Province, the exemption of said railway from taxation and other matters:

And whereas such negotiations have resulted in the following agreement between the parties:

1. The Province, for the consideration hereinafter mentioned, agrees to sell and dispose of all its right, title, and interest in and to that portion of the Metlakatla Indian Reserve more particularly described as follows:

All those parcels or tracts of land situate, lying and being in the Southern part of the Tsimpsean Indian Reserve Number Two, in the Coast District, in the Province of British Columbia, in the Dominion of Canada, composed of a portion of Digby Island; all that portion of Kaien Island lying within the limits of the said Reserve, and a portion of the Mainland North of the said Kaien Island, together with Lakanian and Lakwilgiapsh Islands and eight small islands adjacent to Digby Island and to the said Mainland. The said islands comprising all the islands adjacent to the above-mentioned land which pertain to the said Indian Reserve, and which may be described as follows:

Firstly: Commencing at the point on the Mainland where the east boundary of the said Reserve strikes the water's edge of the channel between the said Mainland and Kaien Island; thence north along the said boundary eleven thousand four hundred and eighty-two feet to the north boundary of a Lot numbered 443; thence S. 89° 40' 30" W. along the said north boundary of Lot 443 produced westerly, fifteen thousand five hundred and thirty feet, more or less, to a line drawn north astronomically from low-water mark at the extreme westerly point of Lakanian Island; thence south along the said line twelve thousand and four hundred feet, more or less, to the water's edge of the channel between the Mainland and Digby Island; thence easterly, following the sinuosities of the shore to the point of



commencement; containing, approximately, four thousand five hundred and ninety-two acres of land, be the same more or less.

Secondly: Commencing at the water's edge, on the north-easterly shore of Digby Island, where a line drawn south astronomically from the aforesaid low-water mark at the extreme westerly point of Lakanian Island strikes the same; thence south on the said line fifteen hundred and sixty-five feet, more or less, to a line drawn east astronomically from high-water mark at the head of the large bay at the north easterly end of the said Digby Island, known as Sh-kgeauk Bay, thence west astronomically on the said line nineteen hundred feet, more or less, to the said bay, and again west astronomically on the said line produced eight thousand eight hundred feet, more or less, to where the said first line strikes the west shore of Digby Island; thence south-easterly, northerly, westerly, south-easterly, and north-westerly, following the sinuosities of the shore of the said Digby Island, to the point of commencement, and containing six thousand eight hundred and forty acres of land, be the same more or less.

Thirdly: Commencing at the point on the north-westerly shore of Kaien Island where the east boundary of the said Indian Reserve strikes the water's edge; thence south along the said boundary twenty-eight thousand four hundred and forty-six feet, more or less, to the water's edge at the south-westerly shore of the said Kaien Island; thence north-westerly and north-easterly, following the sinuosities of the shore to the point of commencement; containing two thousand six hundred and eighty acres of land, be the same more or less.

Fourthly: Ten islands, described approximately as follows: Lakanian Island, above-mentioned, lying between Digby Island and the main land, containing nineteen acres be the same more or less; Lakwilgiapsh Island, situated south (of Lakanian Island and distant about 460 feet therefrom, containing nine acres, be the same more or less); Island Number One, adjacent to the shore of the portion of land firstly described above, containing ten acres, be the same more or less; Island Number Two, situated east of Lakanian Island, and distant about 1,000 feet therefrom, containing one acre, be the same more or less; Islands Numbers Three and Four, adjacent to the easterly shore of Digby Island; containing, respectively, one acre and one acre and seventy-five hundredths of an acre, be the same more or less; Island Number Five, adjacent to the eastern shore of the peninsula at the south end of Digby Island, containing one-half of an acre, be the same more or less; and finally, Islands Numbers Six, Seven, and Eight, adjacent to the south-westerly shore of Digby Island; containing, respectively, one acre and seventy-five hundredths of an acre, two acres and half an acre, and one acre and half an acre, be the same more or less, together with all rights to the foreshores and rights of access to the water which may pertain to the lands above described.

The conveyance from the Province to the Townsite Company of the above lands, hereinafter in several places referred to as the lands embraced in this Agreement, shall include (when the lands so described abut upon or form the shore of any tidal waters or the bank of any river, lake, or stream) all the foreshore and riparian rights which the Province may have in the said lands, including the lands below as well as above low-water mark.

2. The Townsite Company hereby agrees to pay to the Province for the conveyance to it of all right, title, and interest of the Province in and to said lands, the sum of two dollars and



fifty cents (\$2.50) per acre, to be paid from time to time as Crown Grants are received by the Townsite Company, and to re-convey to the Province one-fourth of all lots and blocks into which the said lands shall be subdivided as hereinafter provided, after deducting land required for lanes, streets, squares, parks and such lands as the Lieutenant-Governor in Council decides are necessary for railway purposes, together with the foreshore and riparian rights in and appurtenant to said lots and blocks, including land below as well as above low-water mark, the selection of said lots and blocks to be re-conveyed to be made as follows, viz:—The Chief Commissioner of Lands and Works or the Chief Commissioner of Lands shall first select one lot or block, according as whether lots or blocks are being dealt with, and the Townsite Company shall select three lots or blocks, and so on in turn, the Chief Commissioner selecting one and the Townsite Company three of the unchosen lots or blocks until the division is made.

3. The Townsite Company agrees to lay out at Prince Rupert a townsite an area of not less than two thousand acres. The said townsite shall consist of lands embraced in this Agreement, in the Crown Grant of the 10th March, 1905, to the Railway Company, or of lands embraced as to part of this Agreement, and as to the remainder in said Crown Grant. The survey and subdivision of said townsite shall be shown on a plan to be hereafter prepared, subject to the joint approval of the parties hereto, and when prepared and so approved to be annexed to and incorporated with this Agreement and form an integral part thereof. Said survey and subdivision shall be completed on or before the 30th day of September, A.D. 1908, and the plan thereof shall show the location of the stations and workshops of the Railway Company at said terminal, and shall also show all the lands embraced in this Agreement in said townsite, fronting on the sea or other waterway, divided into blocks having a frontage on the sea or other waterway of not less than one thousand feet, and a depth of not less than one hundred and fifty feet from high-water mark. The water ends of all streets in said subdivision running to the sea shall at all times be open so as to afford the public free and unimpeded access to the sea.

The cost of such survey and subdivision, and of all work incident thereto, shall be borne as to three-fourths thereof by the townsite Company, and as to one-fourth thereof by the Province.

The Chief Commissioner of Lands and Works or the Chief Commissioner of Lands and the Railway Company shall jointly arrange for all surveys mentioned in this Agreement. One surveyor shall be nominated by the Chief Commissioner of Lands, and Works or the Chief Commissioner of Lands, and his salary shall be paid by the Railway Company as part of the cost of said surveys. All vouchers for the cost of all surveys shall be approved by the Chief Commissioner of Lands and Works or the Chief Commissioner of Lands.

Crown Grants for any portion of said townsite located on land embraced in this Agreement shall issue as soon as the survey and subdivision of said townsite and the plan thereof have been approved as aforesaid, and by concurrent conveyance the Townsite Company shall re-convey to the Province the portions of said land falling to it.

Should the said townsite be located in whole or in part on land embraced in said Crown Grant of the 10th March, 1905, the blocks and lots into which such land has been subdivided,



together with the foreshore and riparian rights of and appurtenant to said blocks and lots, including land below as well as above low-water mark, falling to the Province under the provisions of said Crown Grant, shall be conveyed to the Province on or before the first day of December, A.D. 1908.

4. Of the remaining lands embraced in this Agreement, those fronting on the sea or other waterway shall be surveyed into blocks having a frontage of not less than one thousand feet, and a depth from high-water mark of at least one hundred and fifty feet, and the balance of the lands embraced in this agreement, and not included in the townsite shall be surveyed into areas of not more than forty-acre blocks. The said survey, in manner approved by the Chief Commissioner of Lands and Works or the Chief Commissioner of Lands, shall be completed on or before the first day of October, A.D. 1909. Crown Grants for the lands referred to in this clause shall issue from time to time as soon as surveys thereof have been completed by the Townsite Company, the cost of such surveys to be borne as to three-fourths thereof by the Townsite Company, and as to one-fourth thereof by the Province. Concurrently with the issue of such Crown Grants to the Townsite Company, the latter shall re-convey to the Province the portions of land falling to it under the provisions of clause 2 thereof. Provided, however, that such re-conveyance shall be in full of all the interest of the Province in the lands embraced in this Agreement, and the Province shall be entitled to no further conveyance from the Townsite Company under section 32 of the Land Act, in the event of the blocks retained by the Townsite Company being, at any time hereafter, divided into town lots.

5. The lands embraced in said Crown Grant of the 10th March, 1905, not included in said townsite, fronting on the sea or other waterway, shall be surveyed and divided into blocks having a frontage on the sea, or other waterway, of not less than one thousand feet, and a depth of not less than one hundred and fifty feet from high-water mark, and the remainder of the lands embraced in said Crown Grant and not included in the said townsite, and said water blocks, shall be surveyed and divided into areas of not more than forty-acre blocks. The surveys and subdivisions of the lands dealt with in this clause, which shall be at the cost of the Townsite Company and the Province, according to their respective interests, shall be completed on or before the first day of October, A.D. 1909, and conveyances to the Province of its share thereof, as provided by said Crown Grant, shall be delivered to the Province on or before the first day of December, A.D. 1909: Provided, however, that such re-conveyances shall be in full of all the interest of the Province in the lands embraced in said Crown Grant, and the Province shall be entitled to no further conveyance from the Townsite Company under section 32 of the Land Act, in the event of the blocks retained by the Company being, at any time hereafter, divided into town lots.

6. The Crown Grants to the Townsite Company of lands, embraced in this Agreement shall, save as varied by this Agreement, contain all the provisos that appear in the said Crown Grant of the 10th day of March, 1905, with this exception: to wit, that the Crown Grants to the Townsite Company of lands situate in said townsite shall not contain proviso number 2 relating to minerals.

7. The provisions of section 68 of the Land Registry Act, and of section 17 of chapter 24 of the Statutes of 1906, being an Act to amend the Land Act, shall not apply to the said Crown



Grant of the 10th of March, 1905, or to the Crown Grants to be issued pursuant to this Agreement.

8. The Province agrees to convey to the Railway Company by a free grant a right of way not exceeding one hundred feet in width for said railway, so far as the same extends or shall extend through Crown lands in the Province of British Columbia, but the foregoing provision shall not apply to lands dealt with by this Agreement or by the Crown Grant to the Company bearing date the tenth day of March, A.D. 1905, through which two last-mentioned classes of land the Province shall grant a right of way when the location of such right of way has been approved by the Lieutenant-Governor in Council, not exceeding sixty feet in width.

9. The Province agrees by free grant to convey to the Railway Company such vacant Crown Lands as may be necessary for sidings, stations, embankments, cuts, bridges, culverts, drains, and other works and approaches thereto. The Crown Lands mentioned in this clause shall be limited to such quantity as the Lieutenant-Governor in Council may consider reasonable and necessary for the purposes of the Railway Company.

10. The Railway Company, with the consent of the Chief Commissioner of Lands and Works, or the Chief Commissioner of Lands, may take from any public lands adjacent to or near the line of the said railway, its branches or extensions, all stone, timber, gravel and other material which may be necessary for the construction of the railway in and through the Province and not elsewhere, and may also fill in upon any public lands.

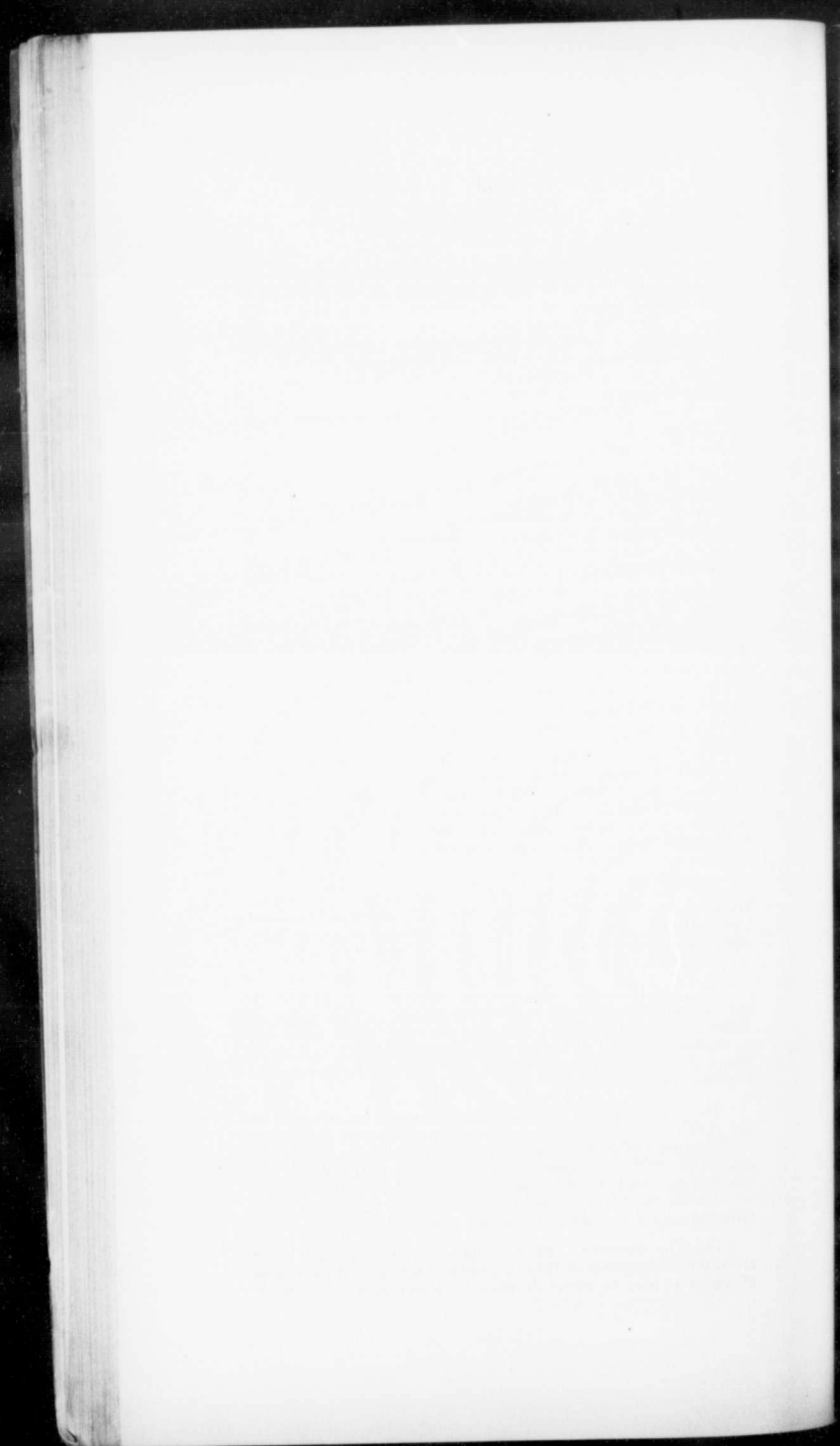
11. The Province grants to the Railway Company exemption from the assessment and tax imposed by section 6 of the "Railway Assessment Act, 1907," for the period of ten (10) years from and after the completion of the railway in the Province to the satisfaction of the Minister of Public Works, but said exemption shall not extend beyond the thirty-first day of December, A.D. 1921.

12. The Railway Company hereby agrees not to expropriate any of the water front lands embraced in this Agreement or said Crown Grant of the 10th of March, 1905, which now are or hereafter may become the property of the Province, so long as said water front lands remain vested in the Crown.

13. The Railway Company agrees to commence construction within the Province, from its Pacific terminus at Prince Rupert easterly, on or before the first day of June, A.D. 1908, and thereafter continuously and with reasonable expedition to prosecute the work of construction in the Province to the eastern boundary of the Province.

14. The Railway Company agrees to purchase all material and supplies required for the construction of its railway through the Province of British Columbia from manufacturers, merchants and dealers within the Province, when such material and supplies can be purchased in desirable quantities and of equal quality, suitable for the purposes for which they are required, and upon terms equally favorable as those procurable elsewhere.

15. The workmen, laborers and servants employed in or about the construction of the said railway shall be paid such rates of wages as may be currently payable to workmen, laborers, or



servants engaged in similar occupations in the district in which said railway is constructed.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties.

Signed, sealed and delivered, in the presence of W. J. BOWSER,, Attorney-General.	}	FREDK. J. FULTON, [Seal.] Chief Commissioner of Lands and Works.
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THE GRAND TRUNK PACIFIC RAILWAY COMPANY,

By FRANK W. MORSE,

[Seal.]

Vice-President and General Manager.

HENRY PHILIPS,

Secretary.

THE GRAND TRUNK PACIFIC TOWN AND
DEVELOPMENT COMPANY, LTD.

By FRANK W. MORSE,

[Seal.]

Vice-President.

HENRY PHILIPS,

Secretary.

D'ARCY TATE,

Assistant Solicitor, Grand Trunk Pacific Ry. Co.



1909.

Chapter 22.

An Act respecting the Grand Trunk Pacific Railway.

12th March, 1909.

WHEREAS an Agreement was entered into on the twenty-ninth day of February, 1908, between His Majesty the King, in the right of His Province of British Columbia, therein represented and acting by the Honorable Frederick John Fulton, Chief Commissioner of Lands and Works of the said Province, of the first part, the Grand Trunk Pacific Railway Company (hereinafter called "the Railway Company") of the second part and the Grand Trunk Pacific Town and Development Company, Limited (hereinafter called "the Townsite Company"), a company incorporated for the purpose of acquiring, holding, and managing certain lands along the line of the Railway Company, of the third part;

And whereas, in and by the said Agreement it was provided, amongst other things, for the completion of the survey and subdivision of the Townsite of Prince Rupert before the thirtieth day of September, A.D. 1908.

And whereas it has been found necessary to extend the time for the completion of said survey and subdivision of the Townsite of Prince Rupert, and to vary in some other respects the terms of said Agreement of the twenty-ninth of February, 1908;

And whereas, by an Order in Council made the eleventh day of August, 1908, the time for completion of such survey was agreed to be extended until the first day of May, 1909, and it was agreed that the Province should allow the Railway Company a right-of-way one hundred feet in width across the lands of the Province in said townsite;

And whereas, in and by said Order in Council, other provisions were made varying in a few particulars the said Agreement of the twenty-ninth February, 1908;

And whereas, by an Agreement bearing date the seventh day of September, A.D. 1908, the Railway Company and the Townsite Company agreed to carry out the terms of the said Order in Council to be performed by them;

And whereas it is expedient that the provisions of said Order in Council and Agreement last mentioned should be ratified and confirmed by the Legislature;

And whereas it may be expedient to include in the Townsite of Prince Rupert the piece of land described as follows: All and singular that certain triangular parcel and tract of land and premises, situate, lying and being on the Government Reserve, Kaien Island, Range five, Coast District, Province of British Columbia, and which may be more particularly described as follows: Commencing at a post planted at the north-west corner of the Government Reserve on Kaien Island, Range five, Coast District; thence south twenty-three minutes fifteen seconds east astronomic for a distance of 1,920 feet, more or less, along the west boundary of said Government Reserve to a post; thence north fifty-nine degrees forty-two minutes thirty-eight seconds east astronomic for a distance of 3,806.68 feet more or less, to a post on the north boundary of Government Reserve; thence due west for a distance of 3,300 feet, more or less, to a



point of commencement, containing seventy-two acres and seventy-three one hundredths of an acre, more or less; and to authorize the conveyance by the Crown to the Townsite Company of the said piece of land subject to the right of the Province to select one-fourth of the lots or blocks into which the said piece of land may be sub-divided, in the same manner as applies to the rest of the townsite in exchange for other land of the Townsite Company in said townsite of equal value;

And whereas it is necessary to extend the time for the completion of the survey of the lands embraced in the grant from the Crown to the Railway Company, bearing date the tenth day of March, A.D. 1905, and in the Agreement of the twenty-ninth day of February, 1908, beyond the limits of said townsite, and to authorize the Government to permit the survey of said last-mentioned lands into blocks of greater area than forty acres wherever the Government considers that the expense of a survey into forty-acre blocks would be too great in proportion to the value of the land;

Therefore, His Majesty, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

1. The time for the completion of the survey of the Townsite of Prince Rupert is hereby extended until the first day of May, 1909.

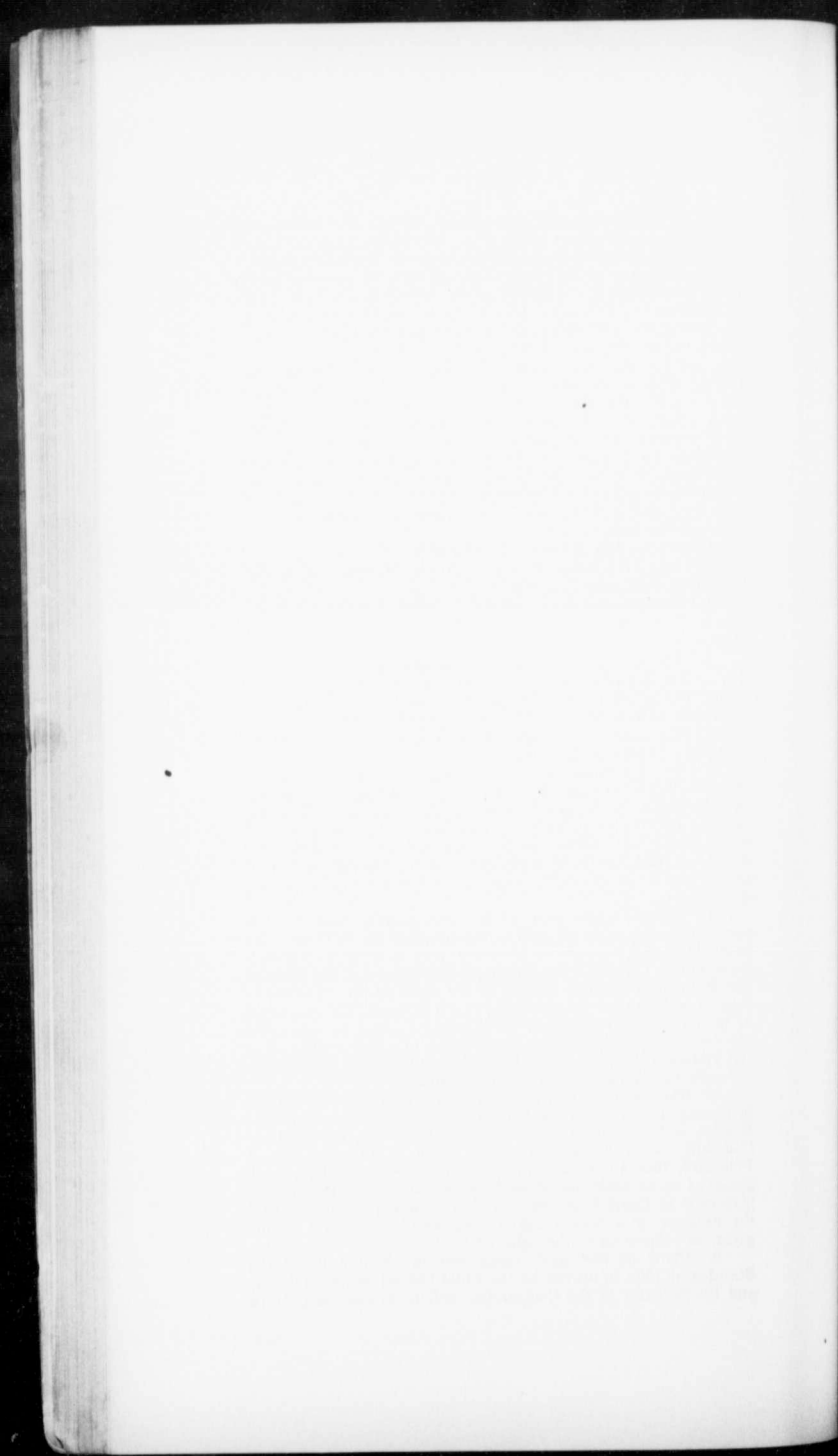
2. The time for the completion of the survey of the lands not in the Townsite of Prince Rupert embraced in the Crown Grant to the Railway Company, bearing date the tenth day of March, A.D. 1905, and in the said Agreement bearing date the twenty-ninth day of February, 1908, is hereby extended to the first day of October, A.D. 1910.

3. The provisions of the said Order in Council, made the eleventh day of August, 1908, a copy of which order is set out in Schedule A hereto, and the provisions of the said Agreement bearing date the seventh day of September, A.D. 1908, a copy of which is set out in Schedule B hereto, are hereby ratified and approved, and the Lieutenant-Governor in Council is hereby empowered to carry out the terms of said Order in Council and Agreement.

4. The triangular piece of land described in the preamble hereto may, by order of the Lieutenant-Governor in Council, be included in the Townsite of Prince Rupert, and the Lieutenant-Governor in Council is hereby empowered to grant the same to the Townsite Company, subject to the right of the Province to select one-fourth of the lots or blocks into which the said piece of land may be sub-divided, in the same manner as applies to the rest of the townsite, in consideration of a conveyance from the Townsite Company to the Crown of land of equal value in the townsite belonging to the Townsite Company.

5. The Lieutenant-Governor in Council is hereby authorized to permit the survey of the lands not in the Townsite of Prince Rupert embraced in the said Crown Grant to the Railway Company and in the said Agreement of the twenty-ninth day of February, 1908, to be made in blocks of greater area than forty acres in those portions of said lands where the Lieutenant-Governor in Council and the Townsite Company consider that the expense of a survey into forty-acre blocks would be too great, in proportion to the value of the land.

6. Plans of the lands mentioned in chapter 19 of the Statutes of 1908, approved by the Chief Commissioner of Lands and the Solicitor of the Companies, shall from time to time be



deposited in the proper Land Registry Office, when the Registrar is satisfied that such plans have been approved as aforesaid. After the deposit of such a plan the Registrar shall keep an index of the lands described or designated by any number or letter on such plan by the name by which it is designated thereon, and all instruments affecting the land, or any part thereof, executed after such plan has been deposited as aforesaid, shall conform thereto, otherwise the same shall not be recorded or registered. No person, except when authorized in writing by the Attorney-General, shall be permitted to copy said plans when deposited as aforesaid.

7. The Order in Council approved on the twenty-sixth August, 1908, purporting to reserve from location, or any other alienation under the "Mineral Act," "Placer Mining Act," or "Coal Mines Act," the following lands, namely: Lots Nos. 251., 443, 444, 1,991, 1,992, and 1,993, Range V., Coast District, and the ten adjacent islands described approximately as follows: Lakanian Island, lying between Digby Island and the Mainland, containing nineteen acres, be the same more or less; Lakwilgiapsh Island, situated south of Lakanian Island, and distant about four hundred and sixty feet therefrom, containing nine acres, be the same more or less; Island Number One, adjacent to the shore of said Lot Number 1,991, containing two acres, be the same more or less; Island Number Two, situated east of Lakanian Island, and distant about a thousand feet therefrom, containing one acre, be the same more or less; Islands Number Three and Four, adjacent to the easterly shore of Digby Island, containing respectively one acre and one acre and seventy-five one-hundredths of an acre, be the same more or less; Island Number Five, adjacent to the eastern shore of the peninsular at the south end of Digby Island, containing one-half acre, be the same more or less; and, finally, Islands Numbers Six, Seven and Eight, adjacent to the south-westerly shore of Digby Island, containing, respectively, one acre and seventy-five one-hundredths of an acre, two acres and a half an acre, and one acre and half an acre, be the same more or less, together with the foreshores which may pertain to the lands above described, is hereby ratified and confirmed, and it is declared that said Order in Council had the effect on, from and after the said twenty-sixth day of August, 1908, of reserving said lands from location or any other alienation under the said Acts and shall continue to have such operation until cancelled.

SCHEDULE A.

(Approved and Ordered this 11th day of August, A.D. 1908)

(Signed) JAMES DUNSMUIR,
Lieutenant-Governor.

To His Honour the Lieutenant-Governor in Council:

The undersigned has the honour to report:

That in pursuance of the Agreement, dated the twenty-ninth day of February, 1908, set out in schedule to and confirmed by chapter 19 of the "Statutes of British Columbia, 1908," the Grand Trunk Pacific Town and Development Company, Limited, hereinafter referred to as the "Townsite Company," has laid out in Prince Rupert a townsite, having an area of



approximately two thousand acres, and has prepared a plan of sub-division thereof, and of certain lands adjacent thereto, in five sheets, scale 80 feet=1 inch, and an index plan, scale 400 feet=1 inch, which have been submitted to and approved and signed by the undersigned, and copies of which are hereto annexed:—

That said plan shows the location of the station and workshops of the Grand Trunk Pacific Railway Company at Prince Rupert, and shows all the lots embraced in said Agreement in said townsite or adjacent thereto fronting on the sea, and divided into blocks A, B, C, D, E, F, G, H, I, and K, and a selection has been made of such waterfront blocks; the blocks colored green and marked B, D, F, H, and K, and having (with a strip across said block not exceeding 60 feet in width of right-of-way, colored red, containing 5.5 acres) a total acreage above the high-water line of 81.5 acres, being selected by the Province, and the remaining water front blocks colored red and marked A, C, E, G, and I, and having a total acreage above the high-water line of 244.5 acres, being selected by the Townsite Company:

That the Grand Trunk Pacific Railway Company have submitted that, in addition to the lands required for railway purposes contained in the said waterfront blocks, it requires certain other lands for railway purposes, namely:

- (a) An additional right-of-way 40 feet in width across the above waterfront blocks selected by the Province, including a width exceeding 40 feet across part of Block F, as shown on plan, amounting in all to 4.5 acres;
- (b) A parcel of land at Morse Creek marked on plan R. 1, containing 74.8 acres;
- (c) A parcel of land at Hayes Cove marked on plan R. 2, containing 14.3 acres, amounting together to 93.6 acres.

That of the said 93.6 acres the undersigned recommends that the Lieutenant-Governor in Council decide that 24 acres are necessary for railway purposes within the meaning of clause (2) of the said schedule to chapter 19 of the Statutes of 1908, and that the Province agree to allow the Railway Company to take the extra 69.6 acres, asked for by them in lieu of which the Province takes 15.9 acres, coloured green and marked G. 1 on said plan, and also the four blocks, coloured green and marked G. 2, G. 3, G. 4, and G. 5 on said plan, and containing 7.3 acres, making in all 23.2 acres, but said last-mentioned four blocks are given to the Province upon the express condition of their being used for public school purposes exclusively;

That it has been agreed on behalf of the Railway Company, when requested by the Lieutenant-Governor in Council, to construct at the expense of the Province an approach or street through block marked R. 1 to the waterfront block of the Province marked B, connecting with one of the streets shown on plan of Townsite; also to allow all streets crossing the waterfront blocks of the Province to go, by overhead crossing, over the railway track, and to allow a street to the waterfront across about the middle of Block E and over the railway track:

That the Railway Company has also agreed to extend and operate their main line, as shown on the plan, to the southeasterly point of block marked K, and to put in spurs and sidings on the usual terms, to all wharves, warehouses, or other buildings either on the waterfront owned by the Province, or on



any portion of said waterfront lands when requested to do so by the Lieutenant-Governor in Council;

That the Railway Company and Townsite Company have agreed to convey or assign to the Province all such title as they, or either of them, now have, or may at any time hereafter acquire, on the foreshore fronting on the waterfront blocks of the Province;

That, owing to the protracted negotiations over the approval of said plan, the commencement of the survey on the ground of said townsite has been greatly delayed, and, in consequence, the Townsite Company represents that it will be impossible to comply with terms of said Agreement and to complete the survey by the thirtieth day of September next, and have asked that the time for the completion of said survey be extended until the first day of May, 1909;

And to recommend that the said plan, hereunto annexed, be approved, subject, however, to such ratification as may be found necessary when the actual survey is made on the ground to make it conform to same;

And that the selection of waterfront lots above mentioned be confirmed;

And that the additional right-of-way and Blocks R. 1 and R. 2 asked for by the Railway Company for railway purposes be allowed to them for such purposes in consideration of the Province obtaining the 15.9 acres and four school blocks hereinbefore mentioned as an equivalent for the extra acreage over and above what the Province deems actually necessary for such purposes;

And that the lands coloured yellow on said plan be left unsubdivided for the present, and be subject to such sub-division as may hereafter be agreed upon between the Province and the Company;

And that the streets shown on said plan within the block marked F be accepted and confirmed by the Province as part of the plan of the townsite, and are not to be closed or interfered with;

And further that the time for the completion of the survey hereinbefore mentioned be extended to the first day of May, 1909, and that the necessary legislation confirming such extension be introduced and passed at the next session of the Legislature;

And that a certified copy of this Minute, if approved, be given to Mr. D'Arcy Tate, Assistant Solicitor to said Railway Company;

It being distinctly understood, however, that should the Railway and the Townsite Company fail to give the Province within ninety days of the date hereof a valid and binding agreement, under seal, embodying the terms and agreements on their part hereinbefore set out and mentioned, that this Order in Council and the approval therein contained shall be subject to rescission.

Dated this eighth day of August, A.D. 1908.

(Signed)

FRED. J. FULTON,

Chief Commissioner of Lands and Works.

Approved this tenth day of August, A.D. 1908.

Signed)

F. CARTER-COTTON,

Presiding Member of the Executive Council.



SCHEDULE B.

THIS INDENTURE OF AGREEMENT made this seventh day of September, A.D. 1908;

Between:

HIS MAJESTY THE KING, in the right of His Province of British Columbia, herein represented and acting by the Honourable Frederick John Fulton, Chief Commissioner of Lands and Works of the said Province, hereinafter referred to as "The Province,"

Of the first part;

THE GRAND TRUNK PACIFIC RAILWAY COMPANY, hereinafter called "The Railway Company,"

Of the second part;

and

THE GRAND TRUNK TOWN AND DEVELOPMENT COMPANY, LIMITED, a Company incorporated for the purpose of acquiring, holding, and managing certain lands along the line of the Railway Company, hereinafter called "The Townsite Company,"

Of the third part;

Whereas an Agreement bearing date the twenty-ninth day of February, 1908, was heretofore entered into between the parties hereto, which Agreement forms the Schedule to and was confirmed by chapter 19 of the Statutes of British Columbia, 1908;

And whereas, in and by the said Agreement the Townsite Company agree to lay out at Prince Rupert, a townsite, the survey and sub-division thereof to be shown on a plan which was to be approved by the parties, jointly;

And whereas a plan of such sub-division was duly prepared for the Townsite Company and submitted to the Lieutenant-Governor in Council for approval;

And whereas an order in Council passed on the eleventh day of August, 1908, approving of the plan of said subdivision and dealing with certain other matters in connection with the Townsite of Prince Rupert, recited an Agreement on the part of the Railway Company and the Townsite Company to do certain things, and required that the said Companies should, within ninety days, give to the Province a valid and binding Agreement under seal, embodying the terms and agreements set forth on their behalf in said Order in Council, and these presents are executed by the Companies for the purpose of complying with such requirements;

The expression "plan" where here referred to in this Agreement, means the plan of the sub-division of the Townsite of Prince Rupert annexed to the said Order in Council, dated eleventh day of August, 1908.

NOW, THEREFORE, THIS INDENTURE WITNESSETH that the parties hereto have agreed with each other as follows:

1. The Railway Company agrees with the Province:

- (a) To construct, at the expense of the Province, an approach or street through the block marked "R. 1," to the waterfront block of the Province marked "B" on plan, and connecting with one of the streets, as



shown thereon, when requested by the Lieutenant-Governor in Council so to do;

- (b) To allow all streets crossing the waterfront blocks of the Province, as shown on plan, to go by overhead crossing over the railway tracks;
- (c) To allow a street over the railway tracks to the waterfront, crossing about the middle of block E on the plan;
- (d) To extend and operate its main line to the southeasterly point of block marked "K" on plan;
- (e) To put in spurs or sidings on the usual terms to all wharves, warehouses, or other places on the waterfront lands shown on plan, when requested by the Lieutenant-Governor in Council so to do;

2. The Railway Company and the Townsite Company severally agree with the Province:

To convey and assign to the Province all such title as they, or either of them, now have, or may at any time hereafter acquire in the foreshore fronting on the waterfront blocks of the Province.

3. This Agreement shall extend to and be binding upon the successors and assigns of the parties hereto, respectively.

IN WITNESS WHEREOF this Agreement has been duly executed by the parties.

In the presence of

D'ARCY TATE

THE GRAND TRUNK PACIFIC RAILWAY COMPANY.

FRANK W. MORSE,

[L.S.]

Vice-President and General Manager.

HENRY PHILIPS,

Secretary.

THE GRAND TRUNK PACIFIC TOWN AND
DEVELOPMENT COMPANY, LIMITED.

FRANK W. MORSE,

Vice-President.

[L.S.]

HENRY PHILIPS,

Secretary.



THIS INDENTURE OF AGREEMENT, made this second day of March, A.D. 1909,

Between:

HIS MAJESTY THE KING, in his right of his Province of British Columbia, herein represented and acting by the Honorable Frederick John Fulton, Chief Commissioner of Lands of the said Province, hereinafter referred to as the Province,

Of the First Part;

THE GRAND TRUNK PACIFIC RAILWAY COMPANY, hereinafter called "the Railway Company,"

Of the Second Part.

and

THE GRAND TRUNK PACIFIC TOWN AND DEVELOPMENT COMPANY, LIMITED, a Company incorporated for the purpose of acquiring, holding and managing certain lands along the line of the Railway Company, hereinafter called the "Townsite Company,"

Of the Third Part.

WHEREAS an agreement bearing date the twenty-ninth day of February, 1908, was heretofore entered into between the parties hereto, which agreement forms the schedule to and was confirmed by Chapter 19 of the Statutes of British Columbia, 1908;

AND WHEREAS in and by the said agreement the Townsite Company agreed to lay out at Prince Rupert, a townsite, the survey and sub-division thereof to be shown on a plan which was to be approved by the parties jointly;

AND WHEREAS a plan of such sub-division was duly prepared for the Townsite Company and submitted to the Lieutenant-Governor in Council for approval;

AND WHEREAS an Order in Council, passed on the eleventh day of August, 1908, approving of the plan of said sub-division and dealing with certain other matters in connection with the Townsite of Prince Rupert, recited an agreement on the part of the Railway Company and the Townsite Company to do certain things, and required that the Companies should, within ninety days, give to the Province a valid and binding agreement under seal, embodying the terms and agreements set forth on their behalf in said Order in Council;

AND WHEREAS by an agreement, bearing date the seventh day of September, A.D. 1908, the said Companies duly executed an agreement complying with the requirements of said Order in Council;

AND WHEREAS said Order in Council omitted to provide for certain matters which the said Companies have agreed to perform, and these presents are executed by the parties hereto for the purpose of supplementing said Order in Council and agreement of the seventh day of September, 1908.



NOW THEREFORE THIS INDENTURE WITNESSETH:

That the parties hereto have agreed with each other as follows:

1. The expression "plan" where used in this agreement means the plan of the sub-division of the Townsite of Prince Rupert jointly approved by the parties hereto and registered in the Land Registry Office at the City of Victoria.

2. The Railway Company agrees with the Province:

- (a) To allow the Province to construct at its own expense an overhead crossing over the Company's tracks at any point in Block "B" to be mutually agreed upon between the Company and the Province.
- (b) To allow the Province to construct at its own expense overhead crossings over the Railway Company's property at all points in the blocks of the Province where the plan shows such crossings.
- (c) To furnish the Province with the grade of their Railway along the water front in said Townsite, and the Province agreed to construct its wharves in accordance with said grade.

3. The Railway Company and the Townsite Company severally agree with the Province:

- (a) To convey and assign to the Province all such title as they or either of them now have, or may at any time hereafter acquire in the bed of the harbour fronting on the water front blocks of the Province.
- (b) To permit the extension to the water in manner and place to be approved by the Railway Company of the overhead crossing in Block "E" so as to afford the public access to the water, such access however to be availed of at the risk of the parties using the same, and to be of the same width as said street crossing in Block "E."
- (c) To grant the Province at least thirty-one feet from the frontage of one of the water front blocks belonging to the Companies, or either of them, to compensate for extra land gained by the Companies in the apportionment of water front heretofore made such frontage to be taken adjoining one of the blocks of the Crown and the area token to be proportionate to that gained by the Companies as aforesaid.
- (d) To grant to the Province forty feet in width from their right-of-way on the water side of the westerly seven hundred and eighty-four feet of Lot "F."
- (e) The Companies hereby declare that the Province, in accordance with the provisions of the Crown grant of March, 1905, and the agreement of February, 1908, is entitled to an undivided one-fourth of the unsubdivided land on said plan colored yellow, and also to one-fourth of the unsubdivided lands outside of the Townsite which said last mentioned unsubdivided lands are the remainder of the lands outside the Townsite referred to in the agreement of the 29th February, 1908, set out in Chapter 19 of the Statutes of 1908.
- (f) The Townsite Company agrees to apply for copyright of the plans of said Townsite. The said plans if and when sold are to be sold on joint account of the



Province and the other parties hereto and the Province hereby agrees to pay the Townsite Company one-fourth of the expense it may incur in preparing, copywriting and printing such plans, and the Province is to receive one-quarter of the net proceeds from said sales.

- (g) The Townsite Company agrees to convey to the Province 5625 square feet of land in one of the areas colored yellow in said plan, the Province being entitled to select 5625 square feet of land against which the Townsite Company shall be entitled to no selection, that Company having already selected a site for pumping station as shown on sheet five of said plan, containing an area of 22,500 square feet, against which the Province made no selection, the said 5625 square feet being intended to adjust the proportion of land to which the Province is entitled.
- (h) The said parties hereto agree to show on the copy-righted plans two bridges crossing over Morse and Hays Creeks, and connecting sections One and Two and sections Six and Seven on the land of the said Townsite Company, and the said parties hereby agree with the Province that these bridges shall be allowed by them to be constructed over their lands.

4. This agreement shall extend to and be binding upon the successors and assigns of the parties hereto, respectively.

IN WITNESS WHEREOF this agreement has been duly executed by the parties.

Signed, Sealed and Delivered
in the presence of

(Sgd.) F. J. FULTON, (Seal)
Chief Commissioner of Lands.

THE GRAND TRUNK PACIFIC
RAILWAY COMPANY,

(Sgd.) F. Carter Cotton. (Seal)

(Sgd.) E. J. Chamberlain,
Vice-Pres. & Gen. Mgr.

(Sgd.) Henry Philips,
Secretary.

THE GRAND TRUNK PACIFIC
TOWN & DEVELOPMENT
COMPANY, LIMITED,

(Seal)

(Sgd.) E. J. Chamberlain,
Vice-President.

(Sgd.) D'Arcy Tate.

(Sgd.) Henry Philips,
Secretary.



CERTIFICATE OF INDEFEASIBLE TITLE

Date of Application 3rd March, 1909, at 2.10 p.m.

Register of Indefeasible Fees, Vol. 1, Fol. 27, No. 2212.

THIS IS TO CERTIFY that THE GRAND TRUNK PACIFIC TOWN AND DEVELOPMENT COMPANY, LIMITED, is absolutely and indefeasibly entitled in Fee Simple, subject to such incumbrance, liens and interests as are notified by indorsement hereon, and subject to the exceptions and reservations printed hereon, to those pieces of land known as and being Lots Two hundred and fifty-one (251), Four hundred and forty-three (443) and Four hundred and forty-four (444), Range Five (5), Coast District, containing Ten thousand (10,000) acres, more or less.

IN WITNESS WHEREOF I have hereunto set my hand and Seal of Office at Victoria, British Columbia, this Fourth day of March, 1909.

(Sgd.) S. Y. Wooton,

(Seal)

Registrar-General.

NOTICE.

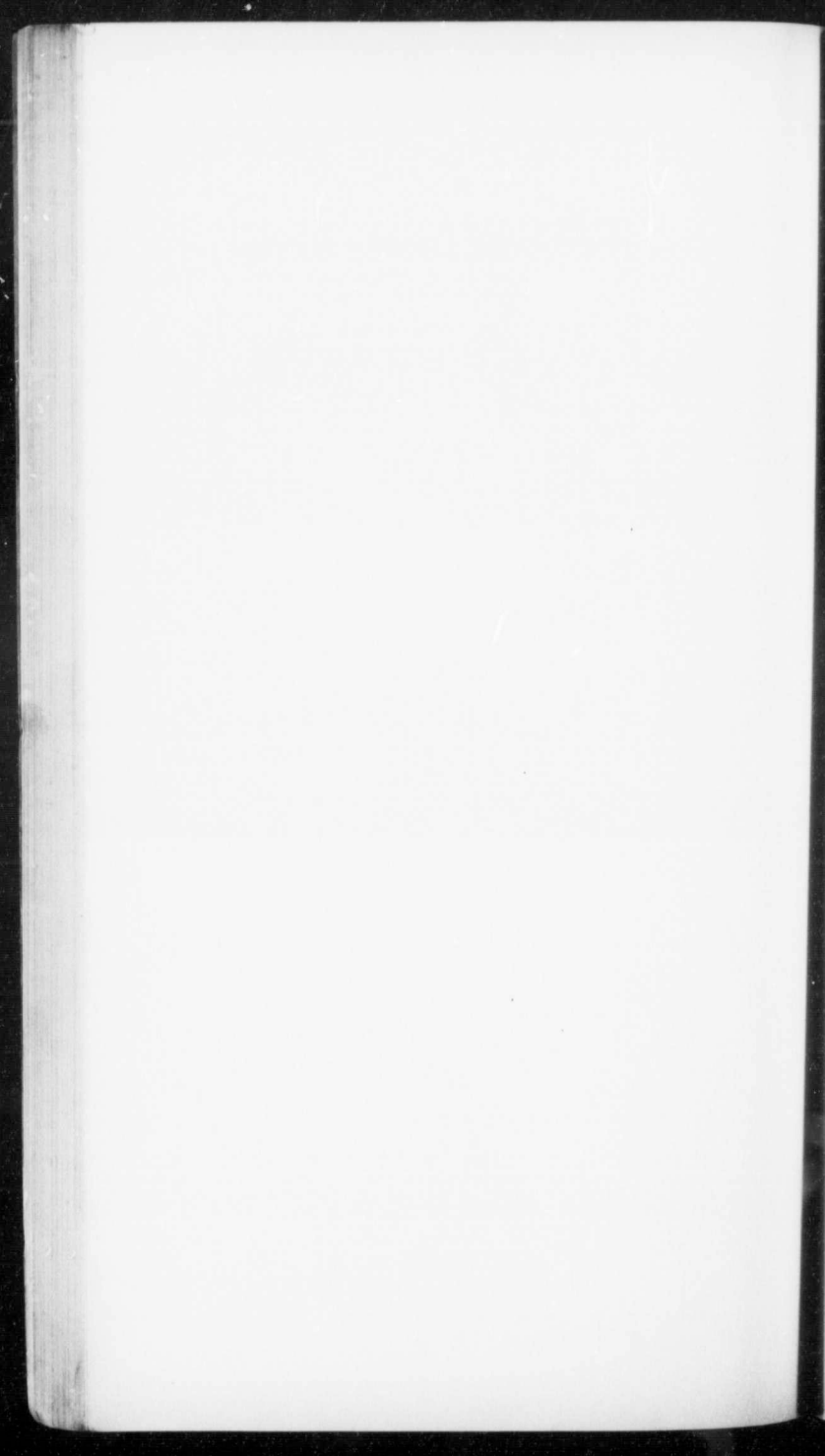
This Certificate of Indefeasible Title is void as against the title of any person adversely in actual possession of, and rightly entitled to the hereditaments included in same at the time of the application upon which this Certificate was granted, and is subject to—

- (a) The reservations contained in the original grant from the Crown;
- (b) Any Provincial taxes, rates or assessments due or accruing due;
- (c) Any Municipal charges, rates or assessments due or accruing due;
- (d) Any lease, or agreement for lease, for a period not exceeding three years' where there is actual occupation under the same;
- (e) Any public highway or right of way, water course or right of water or other public easements;
- (f) Any right of expropriation by Statute;
- (g) Any *lis pendens*, mechanics' lien, judgment, caveat, charge, issue, or assignment for the benefit of creditors registered since the date of this Certificate;
- (h) Any condition, exception or reservation indorsed hereon;
- (i) The right of any person to show that any portion of the land is by wrong description of boundaries or parcels improperly included in this Certificate;



- (j) The right of any person to show fraud, wherein the registered owner has participated in any degree:

Subject to the changes made in the conditions of Grant dated the 10th of March, 1905, from the Crown to the Grand Trunk Pacific Railway Company by Schedule to Chapter 19 of the Statutes of B.C. for 1908.



CERTIFICATE OF INDEFEASIBLE TITLE.

Date of Application 22nd March, 1909, at 1.12 p.m.

Register of Indefeasible Fees, Vol. 1, Fol. 38, No. 1243.

THIS IS TO CERTIFY that THE GRAND TRUNK PACIFIC TOWN AND DEVELOPMENT COMPANY, LIMITED, is absolutely and indefeasibly entitled in Fee Simple, subject to such incumbrance, liens and interests as are notified by indorsement hereon, and subject to the exceptions and reservations printed hereon, to those pieces of land known as and being Lot One thousand nine hundred and ninety-one (1991), containing four thousand five hundred and ninety-two (4592) acres more or less; Lot One thousand nine hundred and ninety-two (1992), containing Two thousand six hundred and eighty (2680) acres more or less; Lot One thousand nine hundred and ninety-three (1993), containing Six thousand eight hundred and forty (6840) acres more or less; Lot One thousand nine hundred and ninety-five (1995) (Lakanian Island), containing Nineteen (19) acres more or less; Lot one thousand nine hundred and ninety-six (1996) (Lakwilgiapsh Island), containing nine (9) acres more or less; Lot One thousand nine hundred and ninety-seven (1997) (Island No. 1), containing ten (10) acres more or less; Lot one thousand nine hundred and ninety-eight (1998) (Island No. 2), containing one (1) acre more or less; Lot one thousand nine hundred and ninety-nine (1999) (Island No. 3), containing one (1) acre more or less; Lot two thousand (2000) (Island No. 4), containing one and seventy-five one hundredths (1 75/100) acres more or less; Lot two thousand and one (2001) (Island No. 5), containing fifty one hundredths (50/100) acres more or less; Lot two thousand and two (2002) (Island No. 6), containing one and seventy-five one hundredths (1 75/100) acres more or less; Lot two thousand and three (2003) (Island No. 7), containing two and fifty one hundredths (2 50/100) acres more or less; Lot two thousand and four (2004) (Island No. 8), containing one and fifty one hundredths (1 50/100) acres more or less. ALL IN RANGE FIVE (5), COAST DISTRICT, BRITISH COLUMBIA, and containing in the aggregate fourteen thousand one hundred and sixty (14160) acres more or less TOGETHER with (where any of the lands before mentioned abut upon or form the shore of any tidal waters or the bank of any river, lake or stream), all the foreshore and riparian rights heretofore possessed by the Crown in the said lands including the lands below as well as above low water mark.

AND

Lot one thousand nine hundred and ninety-four (1994), containing seventy-two and seventy-three one hundredths (72 73/100) acres more or less situate in the Range and District aforesaid.

IN WITNESS WHEREOF I have hereunto set my hand and Seal of Office at Victoria, British Columbia, this Thirtieth day of April, 1909.

"S. Y. WOOTON,"

Registrar-General.



NOTICE.

This Certificate of Indefeasible Title is void as against the title of any person adversely in actual possession of, and rightly entitled to the hereditaments included in same at the time of the application upon which this Certificate was granted, and is subject to:—

- (a) The reservations contained in the original grant from the Crown;
- (b) Any Provincial taxes, rates or assessments due or accruing due;
- (c) Any Municipal charges, rates or assessments due or accruing due;
- (d) Any lease, or agreement for lease, for a period not exceeding three years' where there is actual occupation under the same;
- (e) Any public highway or right of way, water-course or right of water or other public easements;;
- (f) Any right of expropriation by Statute;;
- (g) Any *lis pendens*, mechanics' lien, judgment, caveat, charge, issue, or assignment for the benefit of creditors registered since the date of this Certificate;
- (h) Any condition, exception or reservation indorsed hereon;
- (i) The right of any person to show that any portion of the land is by wrong description of boundaries or parcels improperly included in this Certificate;
- (j) The right of any person to show fraud, wherein the registered owner has participated in any degree.



P. C. 1823.

Certified Copy of a Report of the Committee of the Privy Council, approved by His Excellency the Governor General on the 11th August, 1911.

On a joint Memorandum dated 2nd August, 1911, from the Minister of Marine and Fisheries and the Minister of Public Works, submitting that they have had under consideration an application on behalf of the Grand Trunk Pacific Railway Company for a lease of all those portions of the bed of the public harbour of Prince Rupert, in the Province of British Columbia, lying in front of the water front blocks belonging to the Grand Trunk Pacific Railway Company, as shown coloured pink on the plan attached hereto, which may be more particularly described, as follows all bearings being astronomic:—

(1) As to the waterlot lying in front of Block "A": Beginning at a point in the southern boundary of said block, where said boundary intersects the water's edge at high water mark, said point being 530.64 feet more or less westerly along said southerly boundary from the southeasterly corner of said block; thence north $79^{\circ} 22'$ W., along said southerly boundary produced, 495 feet; thence N. $4^{\circ} 4' 45''$ E., 3,977 feet; thence N. $16^{\circ} 07' 46''$ E. 1642.5 feet more or less to the northerly boundary of said block "A" produced; thence south $69^{\circ} 45'$ E., 1,038.7 feet along the production of said boundary, to a point at high water mark; said point being N. $69^{\circ} 45'$ W., 198 feet along the said boundary from the northeasterly corner of said block; thence southerly following the sinuosities of the shore line at high water mark to the point of beginning; containing an area of 102 acres.

(2) As to the water lot lying in front of Block "C": Beginning at a point in the southerly boundary of said block where said boundary intersects the water's edge at high water mark; said point being 269.6 feet N. $69^{\circ} 45'$ W. along said southerly boundary from the S.E. corner of said block; thence N. $69^{\circ} 45'$ W. along said southerly boundary produced 1087.7 feet; thence S. $16^{\circ} 07' 46''$ W., 2,229.6 feet; thence N. $45^{\circ} 18' 28''$ east 463.8 feet more or less to the northerly boundary of said block produced; thence S. $46^{\circ} 13'$ E., 446.1 feet along the production of said boundary to a point at high water mark, said point being E. $46^{\circ} 13'$ W., 317.6 feet along said boundary from the northeasterly corner of said block; thence southerly following the sinuosities of the shore line at high water mark to the point of beginning; containing an area of 46.5 acres.

(3) As to the waterlot lying in front of block "E": Beginning at a point in the southwest boundary of said block where said boundary intersects the water's edge at high water mark; said point being 254 feet N. $46^{\circ} 13'$ W. along said southwesterly boundary from the south corner of said block; thence N. $46^{\circ} 13'$ W., 453.4 feet along said southwest boundary produced; thence N. $45^{\circ} 18' 28''$ E., 5,427.9 feet; thence N., $52^{\circ} 20' 49''$ E., 1,098.1 feet more or less to the northeast boundary of said block produced; thence south $46^{\circ} 13'$ E., 370.5 feet along the extension of said boundary to a point at high water mark, said point being 273 feet north $46^{\circ} 13'$ West along said boundary, from the west corner of 1st Avenue and McBride Street; thence southwesterly following the sinuosities of the shore line at high water mark and including the portion of the channel of Morse Creek submerged at high tide to the point of beginning; containing an area of 60.2 acres.



(4) As to the water lot lying in front of block "F": Beginning at a point in the northeast boundary of said block at the intersection of said boundary with the shore line at high water mark, said point being 424 feet N. $46^{\circ} 13'$ W. from the N.E. corner of said block as measured along the said boundary of said block; thence N. $46^{\circ} 13'$ W. along said boundary produced 294.2 feet; thence S. $54^{\circ} 46' 12''$ W. along the westerly limit of the G.T.P. right of way produced 266 feet more or less to the intersection of the said right of way limit with the shore line at high water mark; thence following the sinuosities of the shore line at high water mark in a southeasterly direction to the intersection of the southeasterly limit of the G.T.P. right of way with the shore line at high water mark; thence N. $69^{\circ} 49' 41''$ E. along the said right of way limit produced 164 feet more or less to the point of intersection of said right of way limit with the shore line at high water mark; thence following along the sinuosities of the shore line at high water mark in a northerly direction to the point of beginning; containing an area of 1.4 acres.

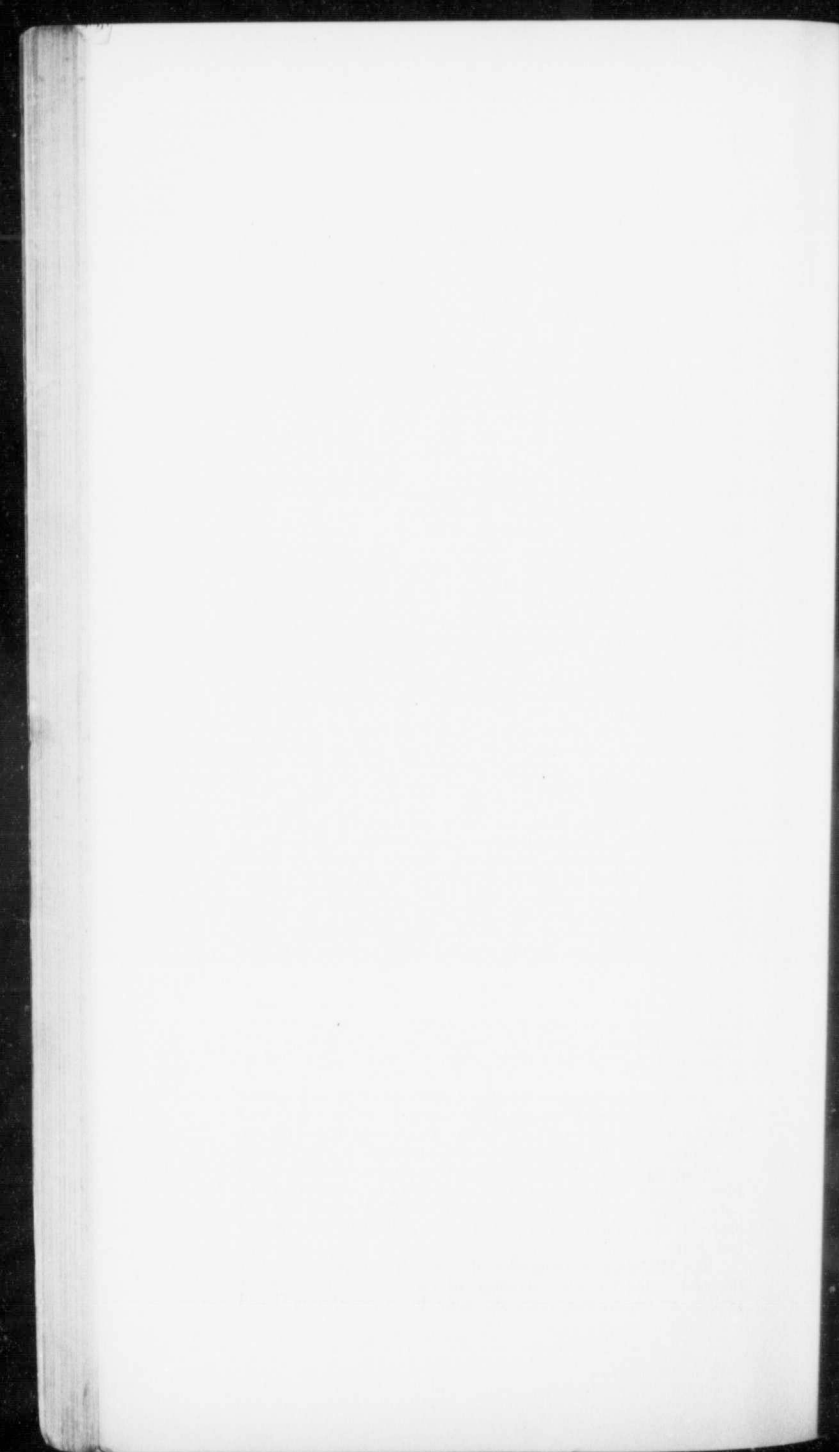
(5) As to the water lot lying in front of block "G": Beginning at a point in the southwest boundary of said block where said boundary intersects the water's edge at high water mark said point being 762 feet N. $46^{\circ} 13'$ W. along the said southwest boundary from the south corner of said block; thence north $46^{\circ} 13'$ W. along said boundary produced 641.6 feet; thence N. $52^{\circ} 20' 49''$ E., 6704.2 feet to the northeast boundary of said block produced; thence S. $46^{\circ} 13'$ E., 269.9 feet along production of said northeast boundary to a point at high water mark, said point being N. $46^{\circ} 13'$ W., 317.23 feet along said boundary from the east corner of said block; thence southwest-erly following the sinuosities of the shore line at high water mark and including the portion of the channel of Hays Creek submerged at high tide to the point of beginning; containing an area of 81.8 acres.

(6) As to the water lot lying in front of block "I": Beginning at a point in the western boundary of said block where said boundary intersects the water's edge at high water mark said point being 289.5 feet N. $1^{\circ} 13'$ W., along said boundary, from the southwest corner of said block; thence N. $1^{\circ} 13'$ W., 439.2 feet along said boundary produced; thence N. $52^{\circ} 20' 49''$ E., 1465 feet; thence S. $61^{\circ} 00' 31''$ E., 2,640.9 feet; thence south 518 feet more or less to the northeasterly boundary of said block produced; thence S. $43^{\circ} 47'$ W., 1548.4 feet along production of said northeasterly boundary to a point at high water mark; said point being N. $43^{\circ} 47'$ E., 867.4 feet along said boundary from the south corner of said block; thence in a general westerly direction, following the sinuosities of the shore line at high water mark to the point of beginning; containing an area of 95.2 acres.

The Ministers observe that the applicant Company state that they are the owners of the adjoining riparian and that the water lot in question is required by them for the purpose of making improvements and extensions thereon at considerable expenditure.

That the Chief Engineer of the Department of Marine and Fisheries state that the water lot referred to is not required for public purposes, that the erection of works thereon will not obstruct navigation, and that the price specified below is fair and just.

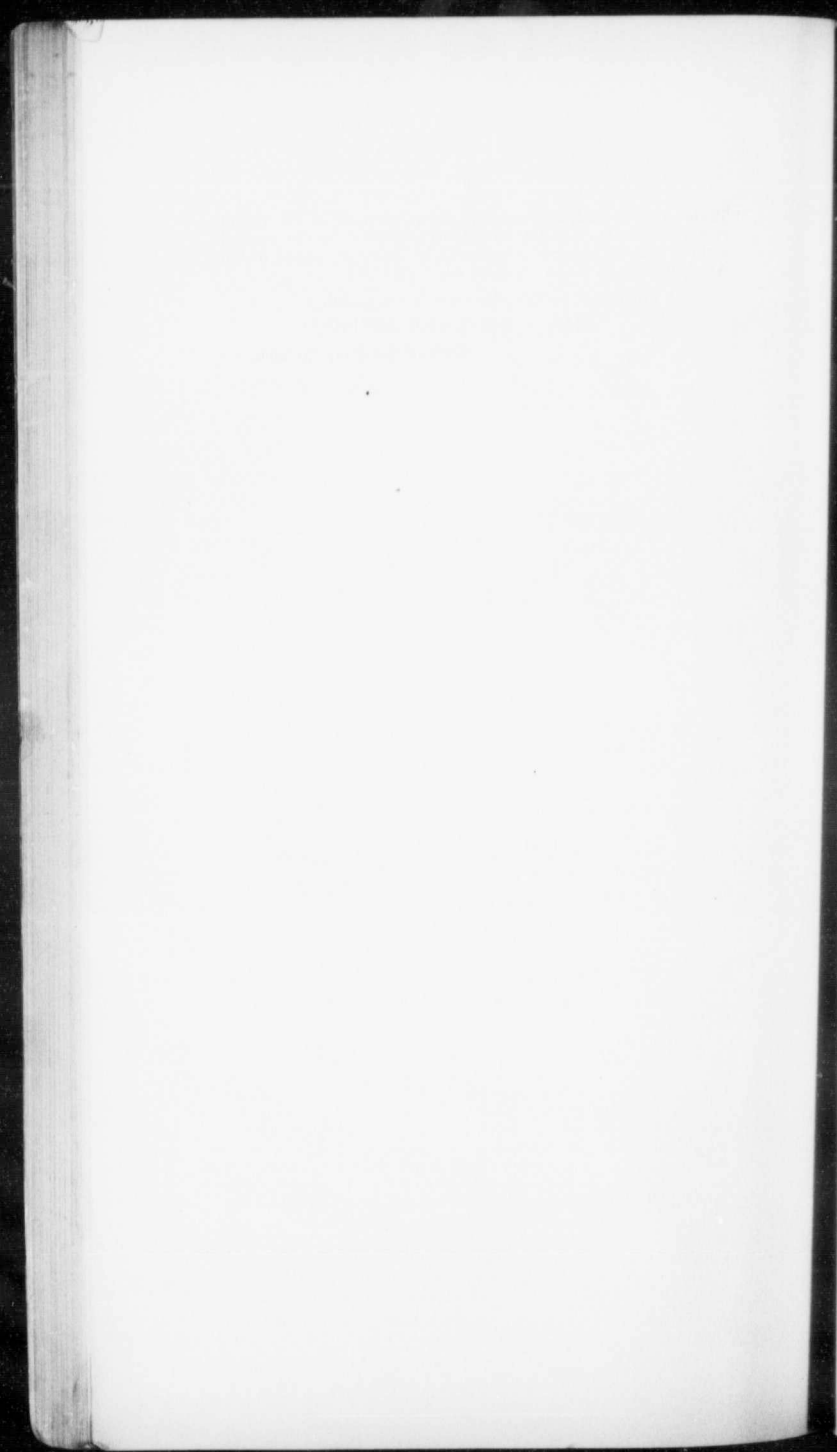
The Ministers recommend that a twenty-one years' lease of the said water lot with privilege of renewal for two further periods of twenty-one years do issue in favor of the Grand



Trunk Pacific Railway Company, upon payment of an annual rental of \$6,400. On the conditions embodied in the general form of lease of water lots approved by Order in Council of 6th April, 1908, in so far as the same are applicable.

The Committee submit the same for approval.

(Sdg) RODOLPHE BOUDREAU,
Clerk of the Privy Council.



FORESHORE LOT.

THIS INDENTURE, made the 1st day of April, A.D. 1911, BETWEEN HIS Majesty the King, represented by the Minister of Lands for the Province of British Columbia (hereinafter called "the said lessor"), of the one part, AND William M. Law, (hereinafter called "the said lessee"), of the other part,

WITNESSETH that His Majesty, under and by virtue of all powers him thereto enabling, doth hereby demise unto the said William M. Law, his executors, administrators, and assigns, ALL that piece of land situate, lying, and being in Coast District and being composed of Lot 26 Block F, Prince Rupert Townsite, with appurtenances.

TO HOLD the same premises unto the said lessee, his executors, administrators, and assigns, for warehouse purposes for the term of five years from the ninth day of February, 1911, determinable, nevertheless, as hereinafter provided, yielding and paying therefor unto His Majesty, in advance, yearly and every year, the rent of seventy-three and twenty-one hundredeth dollars per annum (clear of all taxes, Provincial, municipal, or otherwise, and whether of landlord or tenant, and outgoings whatsoever), and that payable on or before the ninth day of February in each year, at the office of the Minister of Lands at the City of Victoria, and whether demanded or not. AND the said lessee, for himself, his heirs, executors, and assigns, hereby covenant with the said lessor, his successors and assigns, punctually to pay the said rent at the respective times and in the manner aforesaid. AND to observe all and singular the provisions of the Land Laws for the time being of the said Province, and not to assign or sublet this lease or the privileges and rights hereby conferred, or any part thereof respectively, without the written consent of the Minister of Lands thereto first had and obtained. PROVIDED that in case of any dispute or indifference arising as to any matter or thing connected with this demise, or any matter or thing connected with any provisions herein contained, or the interpretation thereof, the same shall be settled finally, without appeal, by the said Minister of Lands, or other the person duly authorised by the said Minister of Lands in that behalf. PROVIDED, also, that in case of neglect or default of the said lessee, his executors, administrators, and assigns, to observe, pay, or fulfil any, or any part of any, stipulation or payment in this Indenture contained or referred to, it shall be lawful for the said lessor, his successors or assigns, without further notice than a notification by the said Minister of Lands, affixed to any conspicuous part of the demised premises, absolutely to forfeit all or any portions of the said premises as in such notification shall be specified, and all of the rights and privileges hereby conferred or expressed so to be from time to time in any such notification, and thereupon this demise shall at once (as to the part so specified only) be absolutely void and of none effect as if it had never been made. PROVIDED that in the construction of this lease rent not paid in advance shall be for all purposes deemed to be rent in arrear, and carry with it all the incidents and remedies attaching by law to rent in arrear, and the said rent, and each instalment thereof, shall be deemed overdue if not paid at the time in that behalf hereinbefore in that behalf appointed, and that without demand. PROVIDED, also, that any assignment by operation of any law of Bankruptcy or Insolvency of the premises and privileges hereby conferred shall of itself be a forfeiture of such premises and privileges, but



no forfeiture hereunder shall be deemed to affect any rights or damages which may have accrued to the said Government against the said lessee by reason of any breach of any of the provisions herein contained.

PROVIDED, always, that these presents are upon the express condition that no Chinese or Japanese shall be employed in or about the said demised premises, or any part thereof. —and shall be subject to all rights of Free Miners under the Mining Laws of the Province for the time being.

IN WITNESS WHEREOF the parties herto have hereunto set their hands and seals, the day and year first above written.

Signed, sealed, and delivered
by the within named Minister of
Lands in the presence of
R. F. CHILD.

WM. R. ROSS X

Signed, sealed, and delivered
by the within named
WM. M. LAW
in the presence of
M. B. KEERE.

WILLIAM M. LAW X



H A R B O R

NOTE WATER FRONT LOTS F 1 TO F 8 INCLUSIVE
AND WAREHOUSE LOTS F 1 TO F 8 AND
F 22 TO F 26 INCLUSIVE LEASED TO
JOHN Y. ROCHESTER AND OTHERS
BY THE PROVINCIAL GOVERNMENT



LIMIT OF FORESHORE RIGHTS

BLOCK E
BLOCK F

Submerged Lands

BLOCK F

F1 F2 F3 F4 F5 F6

BLOCK F
BLOCK G

BLOCK G

STREET
1ST
2ND AVENUE

STREET
MCCBRIDE

1ST AVENUE

MARKET

PLACE

3RD AVENUE

MASONRY

F7 F8 F9 F10 F11 F12 F13 F14 F15 F16 F17 F18 F19 F20 F21 F22 F23 F24 F25 F26 F27 F28 F29 F30 F31 F32 F33 F34 F35 F36 F37 F38 F39 F40 F41 F42 F43 F44 F45 F46 F47 F48 F49 F50 F51 F52 F53 F54 F55 F56 F57 F58 F59 F60 F61 F62 F63 F64 F65 F66 F67 F68 F69 F70 F71 F72 F73 F74 F75 F76 F77 F78 F79 F80 F81 F82 F83 F84 F85 F86 F87 F88 F89 F90 F91 F92 F93 F94 F95 F96 F97 F98 F99 F100

GRAND TRUNK PACIFIC RAILWAY
BLOCK F & PART OF BLOCKS E & G
PRINCE RUPERT B. C.

OFFICE OF CHIEF ENGINEER MARCH 15 1912

SCALE IN FEET



G.T.P.R. LAND SHOWN DARK RED
FORESHORE SHOWN LIGHT RED
RIGHT OF WAY SHOWN HATCHED
PROVINCIAL GOV'T. LAND SHOWN DARK GREEN
FORESHORE SHOWN LIGHT GREEN

PROVINCIAL LIBRARY
PRINCE RUPERT B. C.



IN THE SUPREME COURT OF CANADA

Monday the 4th day of March, 1912.

THE HONOURABLE MR. JUSTICE DUFF

In Chambers.

IN THE MATTER OF the application of John Y. Rochester, The Georgetown Lumber Company Limited, The Union Transfer Company, Westenhaver Brothers, The Westholme Lumber Company Limited, and W. M. Law, all of the City of Prince Rupert in the Province of British Columbia, and the Board of Trade of Prince Rupert relative to construction of Railway grade across the entrance to Cameron Bay by the Grand Trunk Railway Company.

ORDER

UPON HEARING the application of the Grand Trunk Pacific Railway Company for leave to appeal to the Supreme Court of Canada from Order No. 15735 of the Board of Railway Commissioners for Canada, and upon hearing what was alleged by Counsel for the Grand Trunk Pacific Railway Company, and for John Y. Rochester, The Georgetown Lumber Company, Limited, The Union Transfer Company, Westenhaver Brothers, The Westholme Lumber Company, Limited, W. M. Law and the Board of Trade of Prince Rupert.

IT IS ORDERED that the Motion on behalf of the Grand Trunk Pacific Railway Company for leave to appeal to this Court from Order No. 15735 of the Board of Railway Commissioners for Canada, dated the 2nd day of January, 1912, on the ground that the Board had no jurisdiction to make the said Order, is hereby dismissed with costs, and that the costs of this application be and are hereby fixed at the sum of \$75.00 to be paid by the said Grand Trunk Pacific Railway Company to the said John Y. Rochester, The Georgetown Lumber Company, Limited, The Union Transfer Company, Westenhaver Brothers, The Westholme Lumber Company Limited, W. M. Law and Board of Trade of Prince Rupert.

(Signed) LYMAN P. DUFF.

Entd. fol. 431
O.B. to 4