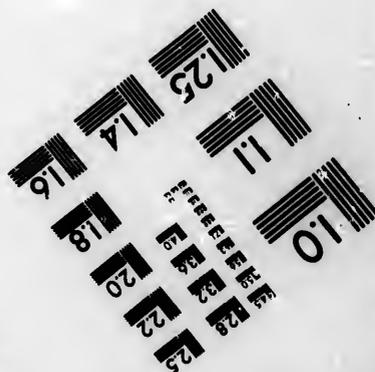
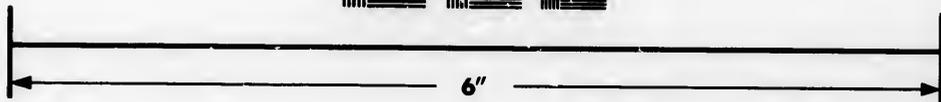
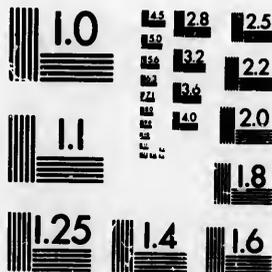


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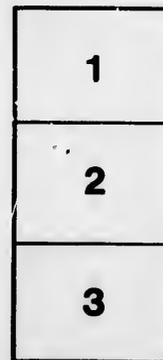
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REPLY TO A PAMPHLET,

PUBLISHED BY

WM. HY. SCOVIL, ESQUIRE,

PURPORTING TO CONTAIN A

CORRESPONDENCE

BETWEEN HIM

AND

THE PROVINCIAL SECRETARY,

RELATIVE TO THE ALLEGED LOSS

SUSTAINED BY THE PROVINCE

ON

ONE THOUSAND TONS OF IRON,

IMPORTED THROUGH MESSRS. NAYLOR & CO.,

In 1857.

SAINT JOHN, N. B.
PRINTED BY BARNES AND COMPANY,
66 PRINCE WILLIAM STREET.
1859.

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Re id: 1913

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TO THE PUBLIC.

WM. HY. SCOVIL, Esquire, late Chairman of the Railway Board, having published a Pamphlet, purporting to be a copy of correspondence between that Gentleman and myself, arising out of a statement made by me in my place in the House of Assembly, on the 29th March, 1858, to the effect, that the Commissioners had incurred a loss of £2000 by mismanagement in the purchase of Railway iron from Messrs. Naylor & Co., of Liverpool; and finding on perusal, that a part of that correspondence has been omitted, and that it is accompanied by certain notes and comments involving unfairly drawn inferences, I am compelled in self-defence to adopt the present means of supplying such omissions, and correcting any erroneous impression that may have thereby been produced.

The manifestation of unpleasant feeling which pervades certain portions of Mr. Scovil's letters and notes, is to me a source of sincere regret, and as I am not actuated by similar feelings, I will not further notice this matter.

With the assurance, that if the correspondence had been given in full, without any notes, comments or omissions, I would have been perfectly satisfied to have left the issue with the judgment of each individual reader, I now proceed to give the correspondence as it occurred.

[Extract from Letter, dated Saint John, N. B., 7th April, 1858.]

"I find under date of 29th March, at page 79 of the Official Reports of the House of Assembly, the following sentence in a speech of yours, viz :

"*The late Commissioners had not bought iron through Messrs. Barings, but through a firm, Naylor & Co., by which they lost £2,000 by mismanagement.*"

"I cannot understand how this can be; will you oblige me by explaining how this loss occurred. Your early reply will oblige,

"Yours, &c.,

"WM. HY. SCOVIL.

"To the Hon. S. L. TILLEY."

"FREDERICTON, 14th APRIL, 1858.

"SIR—Your letter of 7th instant, reached me at Saint John a day or two since, and I now hasten to reply thereto. The loss of

£2,000 referred to, appears to have been occasioned in the following manner :

" The late Commissioners agreed with Messrs. Naylor & Co. to furnish a certain quantity of Iron Rails, agreeable to certain plans and specifications, and at a certain price. When these Rails were received in New Brunswick, it was found that they were not manufactured in accordance with such regulations, and the present Commissioners refused to pay the amount claimed by Messrs. Naylor & Co. Mr. Light's certificate, now in the office of the Commissioners, shews that the Rails received are not worth as much by £2,000 as they would have been, had the exact specification been complied with. On the Commissioners' demanding a reduction of the above amount, they produced the agreement, which shewed that the Rails had been approved of by the person employed by *them* to inspect them ; and the Solicitor General gave it as his opinion that, under that agreement, the Commissioners were bound to pay the claim.

" *The conditions then, which provided that the inspection of these Rails should be made by a person appointed by Messrs. Naylor & Co., led to the loss, certified by Mr. Light, to be £2,000. It was on these facts that I felt myself authorised to state what I did upon the subject.*

" Yours, &c.,

" S. L. TILLEY.

" To W. H. SCOVIL, Esq., St. John."

" ST. JOHN, N. B., 28th APRIL, 1858.

" SIR—I received your favour of 14th inst., in due course, and knowing you were absent, have delayed writing until now.

" You refer me to a certificate of Mr. Light's, respecting the Rails imported from Naylor & Co. ; will you furnish me a copy of that certificate, and oblige,

" Yours, &c.,

" WM. HY. SCOVIL.

" The Hon. S. L. TILLEY."

" FREDERICTON, 4th MAY, 1858.

" SIR—In a conversation with Mr. Jardine on the 14th ult., relative to a certificate referred to, he said you could see it at the office if you desired to do so.

" If you prefer a copy of the certificate, I will apply to him for it.

" Yours, &c.,

" S. L. TILLEY.

" W. H. SCOVIL, Esq."

" ST. JOHN, N. B., 18th MAY, 1858.

" SIR—I received your note of the 4th inst. I *prefer* a copy of Mr. Light's certificate. If you will furnish me one, you will oblige,

" Yours, &c.,

" WM. HY. SCOVIL.

" The Hon. S. L. TILLEY, Fredericton."

("PRIVATE.")

"FREDERICTON, MAY 27th, 1858.

"DEAR SIR—I now forward you a copy of Mr. Light's certificate. I send it to you for your personal information, and do not wish its contents made public, without first obtaining the consent of the Government to such a course. I suppose that the present permission will answer your purpose.

"Yours truly,

"S. L. TILLEY.

"W. H. SCOVIL, Esq., St. John."

(COPY.)

"EUROPEAN AND NORTH AMERICAN RAILWAY,
Engineer's Office, 30th Nov. 1857.

"ROBERT JARDINE, Esq.,
Chief Commissioner of Railways.

"SIR—I have carefully examined the Iron Rails delivered by the 'Favourite' and the 'Middleton,' and am sorry to be obliged to report that they are very badly rolled indeed. Many of the bars are $\frac{1}{8}$ of an inch larger on the base than the pattern sent, and an equally large number $\frac{1}{8}$ of an inch smaller, entirely precluding the possibility of the Rail making a proper fit in the chair. The ends of the bars are likewise very carelessly sawn off, many of them being full $\frac{3}{8}$ of an inch off the plumb, so that if the ends of two of these Rails are laid together, there would be a ∇ or vacant space of $\frac{3}{4}$ of an inch at either the top or bottom of the joint, as the case may be, and this is quite common. The tops of the Rails are likewise not of the same size, and very many of those already delivered, are odd lengths other than those specified.

"We have laid about an half mile of the iron brought by the 'Favourite,' and although we have taken unusual care to match the Rails, and have rejected a large number as unfit to lay at all with the present fastenings; we have yet found it *almost impossible* to lay a perfect track with them, the sizes of the Rails being so uneven. I have no hesitation in saying that, taking the iron as a whole, I consider it the very worst specimen of rolling I have seen. *I have as yet had no opportunity of testing the quality, but if Mr. Reed's surmise be true, viz., that the manufacturers have put the best portion of the pile in the base of the Rail, this will have the effect of reducing the ultimate durability of the iron very materially.* Assuming the cost of the iron in England to be £8 5s. per ton, and adding the commissions, freights, insurance, &c., as well as the carriage to the works in this country, I conceive that this iron, when laid down upon the road, is actually worth at least £2 per ton less than good iron made exactly in accordance with the patterns and specifications, and the best part of the pile laid, where it ought to be, viz., in the top or bearing surface of the Rails.

"I am, Sir, yours, &c.,

"ALEX. L. LIGHT,
"Engineer."

“SAINT JOHN, N. B., 3d JUNE, 1858.

“SIR—Your note of 27th ult., inclosing copy of Mr. Light's certificate or report on the Rails imported in 1857, I have received. This document does not contain the information I expected, nor does it establish the charge made by you against the late Railway Board. As I am not likely to receive any further light on this subject, or do I require any more to refute the charge made by you, I will now do so.

“Your charge was, that the late Commissioners, by their mismanagement, caused a loss to the Province of £2,000 on an importation of Railway iron. On seeing this charge in the published reports, I applied to you for an explanation, you referred me to Mr. Light's report, and from that report I learn that he makes up the sum of £2,000, by valuing the iron at £2 per ton less than it cost, thus fixing the quantity of iron at 1,000 tons. You also, in your letter of 14th April, after referring me to Mr. Light's certificate, say, *the conditions then that provided that the inspection of those Rails should be made by a person appointed by Messrs. Naylor & Co., led to the loss certified by Mr. Light to be £2,000.* There were no such conditions made by the Board of which I was a member. The order of Messrs. Naylor's was for 700 tons of Rails, and expressly provided for an inspector, to be appointed by the Railway Board. In absence of an inspector from that Board, Messrs. Naylor were to employ one, who could be superseded at any time by an inspector from the Board. These were the conditions on which the order was sent to Messrs. Naylor's. A small portion, about 100 tons (of the 700 tons of Rails ordered) were made, when Mr. Reed, a member of the new Board, arrived in England, and visited the works, and the additional 300 tons were, I suppose, ordered by the new Board. These being the facts, I think you have failed in establishing the charge of loss and mismanagement made by you *against the old Railway Board.*

“Awaiting your reply, I am, yours, &c.,

“WM. H. Y. SCOVIL.

“Hon. S. L. TILLEY, Fredericton.”

“FREDERICTON, 29th JUNE, 1858.

“SIR—On my return from Canada, a few days ago, I received your letter of 3d instant, relative to the Provincial loss on Railway Iron, and in reply thereto, I beg to state that I differ from you relative to some important facts of the case, and entirely dissent from the conclusions to which you would appear to have arrived.

“The facts and arguments may be briefly and truthfully stated thus:

“1. The late Railway Board commissioned Messrs. Naylor & Co., of Boston, to import 700 tons of Railway Iron, of special dimensions and quality, and partially agreed for 300 tons in addition. This is established by the letter of Messrs. Naylor & Co. to you, of date 22d June, 1857. The present Board, immediately after taking office, perfected your previous arrangement, by ordering the additional 300 tons; not, however, because you had spoken of them,

or partially agreed for them, but for that reason as well as because it was represented to them that the iron would be necessary.

"2. Under these orders, 1,000 tons of iron were imported, and as Mr. Light, the Chief Engineer, has officially represented that the iron, owing to defects, is not worth the price agreed for by £2 per ton, the loss to the Province is, on official evidence, one of £2,000.

"3. In due course, Messrs. Naylor & Co. demanded payment, and on the present Board representing to them the inferiority and defects of the Rails, Messrs. Naylor & Co., writing to Mr. Jardine, under date of 5th December, 1857, say—'We must disclaim any responsibility whatever in regard to the same, as according to contract made with us by your predecessor, Mr. Scovil, it was most clearly agreed that the decision of the Inspector was to be final.'

"4. I have not before me your letter of June 3d, 1857, which ordered the iron, but on turning to Messrs. Naylor & Co.'s recital of it in their letter to you of 22d June, which in your letter to them of 27th June, you admit to be correct, except as to the place of inspection, which you there say must be at the works, and not at the place of shipment, I find it distinctly stated that the inspection is to be final, and the Inspector is to be appointed by the Liverpool House of Naylor & Co., and to act under their direction, you *merely reserving the right to supersede him* by one of your own appointment, *should you see fit to do so.*

"5. From the facts, that you arranged for a final inspection of the Rails by an officer appointed by the shippers, unless you saw fit to supersede him by an appointment of your own; that you made no such appointment, and that the defects in the Rails were not discovered until they were being landed, I think it incontrovertibly follows that the responsibility of the Province being deprived of a right of re-survey, and being consequently subjected to the loss of £2,000 on these Rails, devolves on the late Board, who provided for the final inspection.

"6. I note your argument, that Mr. Reed was in England before the order was executed by shipment of the iron, but I scarcely think it necessary to suggest to your intelligence that neither Mr. Reed, nor any other Commissioner, casually visiting England, though engaged in other Railway negotiations, would thin^l himself called on to interfere with contracts made by his predecessors on this side the Atlantic, and which were being executed by a highly respectable House in England, and under special inspection.

"7. Hoping these statements will prove satisfactory,

"I am, yours, &c.,

"S. L. TILLEY.

"W. H. SCOVIL."

The two following Letters were furnished Mr. Scovil, by his request :

"BOSTON, JUNE 22, 1857.

"Messrs. Railway Commissioners, Saint John,

"W. H. SCOVIL, Esq., Chairman.

"DEAR SIR—We have the pleasure to acknowledge the receipt of your esteemed favor of 3d inst., and have to thank you for the

obliging order for 700 tons of iron rails contained therein, which order with the wood pattern subsequently received, have been forwarded to our Liverpool House, Messrs. Naylor, Vickers & Co., at whose hands they will command the most careful attention. The shipments will be made as nearly as possible to your requirements, though we beg to suggest the probability of no considerable quantity, perhaps none can be got ready as early as August, as rolls must be specially prepared for your Rails, the pattern being a peculiar one.

"We note the alteration proposed by you in regard to the terms of payment, to which, although less acceptable to us than those previously named, we shall not hesitate to conform.

"We understand that in accordance with your letter, and with the verbal arrangement made with you at Saint John by our Mr. Huntingdon, the Rails are to be inspected before shipment, on your account and at your expense, which inspection is to be final; the inspector to be appointed by our Liverpool house, and to act under their directions, *you reserving the right to supersede him at any time by one of your own appointment*, should you see fit to do so.

"We are glad to learn through Mr. Huntingdon that you probably will soon place a further order in our hands for about 300 tons of Rails, to be shipped the present season, and we cannot but hope that our attention to both these orders will be such as to secure for us the privilege of being the medium of supply for future and still larger quantities.

"Respectfully tendering to you our best services, and those of our Liverpool House, for the transaction of any business in this country or Great Britain, to which you may require attention, and begging your acknowledgment of the receipt of this communication, we are

"Yours, &c.,

"NAYLOR & CO.

"P. S.—Your message by telegraph came duly to hand advising us that a change had been made in the model of the rails to be used.

"N. & CO."

RAILWAY COMMISSIONERS' OFFICE,
St. John, 27th June, 1857.

"Messrs. NAYLOR & Co., Boston.

"GENTLEMEN—Your favour of 22d instant has been received and contents noted, which are in accordance with former letters, and conversations with your Mr. Huntingdon, excepting the inspection, which you state to be done before shipment. The inspection must be done at the works as the Rails are manufactured. A portion of this shipment will be required soon, and I hope a portion of it will be shipped in August.

"Yours, &c.,

"WM. HY. SCOVIL,

"Chairman, Railway Board."

"St. JOHN, N. B., 18th August, 1858."

"SIR—I am in receipt of your note of 3d instant, with enclosures. There is nothing in these letters of 22d and 27th June

that alter the facts as stated in my letter to you of 3d June. Mr. Huntingdon, a partner of the firm of Naylor & Co., was at St. John in May, 1857. At that time 1000 tons were named as the probable quantity of Rails that would be required that season.

"Before the order was sent to Messrs. Naylor & Co., the subject was brought before the Board, when it was decided that 700 tons were sufficient until more could be imported in Spring of 1858, and 700 tons only were ordered; and of this 700 tons, about 100 tons were manufactured when a member of the new Railway Board arrived in England, and it appears (from the Chief Engineer's Report) that this gentleman was of the opinion that the manufacturers were not doing justice in the manufacture of the Rails. Notwithstanding this they were allowed to continue the manufacture of them, without an inspector from the Railway Board, although this was expressly stipulated and provided for by the former Board, and not only so, but the present Board gave them a further order for 300 tons more Rails.

"With all these facts before you, you in your letter of 29th June attempt to justify the correctness of the charge made by you, viz: 'That the former Board by their mismanagement caused a loss to the Province of £2,000 by an importation of Railway iron,' when you knew that this sum was made up by estimating the value of 1000 tons of Rails, at £2 per ton less than it cost; and you also knew of this 1000 tons of Rails, 300 tons were ordered by the present Board, and 600 tons more were manufactured under their supervision.

"I enclose a copy of a letter from Messrs. Naylor, Vickers & Co., of Liverpool, dated Dec. 18, 1857, addressed to Mr. Reed, as Railway Commissioner, for your perusal.

"I am, Sir, yours, &c.,

WM. HY. SCOVIL.

"The Hon. S. L. TILLEY, Fredericton."

"LIVERPOOL, DEC. 18, 1857.

"ROBERT REED, Esq.,
Railway Commissioner of the Province of New Brunswick, at Liverpool.

"DEAR SIR—We have duly received the report of Alex. L. Light respecting the Rails supplied by us as per our contract with the Railway Commissioners, bearing date June and *September*, 1857.

"Although by the express stipulations contained in that contract, our responsibility ceases with the inspection at the works, and we are not bound to notice or entertain any complaints made subsequently, nevertheless, act of courtesy to you and your brother Commissioners, with whom our business relations hitherto have been of the most satisfactory and straightforward character, we proceed at once to investigate the merits of the sweeping charges brought against the quality, regularity and finish of the Rails.

"1. As regards the charge that there is a variation of $\frac{1}{8}$ of an inch in the width of the flange, and also in the tops of some of the

Rails, we will merely say that a nearer approach to uniformity is impracticable, and that a thousand tons of Rails, or one hundred for that matter, never were or never will be rolled without more or less variation.

"2. The ends of the Rails are said to be unevenly sawn off, and on enquiry of the manufacturer, we learn that some of the largest Rails might possibly be a little off the square, but not sufficiently so to interfere with a close fitting, provided a little extra care was taken to attain that object. We may however state that the Rails in this country are generally roughly filed at the ends where there is any of the irregularity complained of.

"3. With respect to the rolling and general finish of the Rails, independently of their being inspected by one of the best men in the trade, *you had every opportunity given you of inspecting them both at the works and when in course of shipment here.* And as far as our experience goes we may safely assert that we never saw a better article sent out from this port.

"We must enter our protest against the delay and inconvenience we are experiencing in not being put in funds in accordance with the terms of the contract. We have submitted without a word of complaint to the loss inflicted upon us by the strict interpretation the Commissioners have exacted from us in respect to the rate of interest to be allowed on our cash advances. We contended that 5 per cent. was named at the time the contract was made, simply because it was the then Bank of England rate, and that we were entitled to a corresponding advance if that institution raised its rates, but we at once conceded this point when you referred to the contract, and exacted a literal compliance therewith. We claim the same compliance on behalf of yourself and the other Commissioners, and beg you will take immediate steps to place us in funds for the balance of our account, with Bank of England rate of interest added from the 14th inst., the date we ought to have received the remittance, until we are in funds.

"Yours, &c.,

"NAYLOR, VICKERS & CO."

"SECRETARY'S OFFICE,

Fredericton, 7th September, 1858.

"SIR—After having written to you on 29th June, and agreeably to the request in your note of 29th July, sent you a copy of Messrs. Naylor & Co.'s letter to you of 22d June, and of your reply thereto of 27th June, I have now to acknowledge the receipt of your letter of 18th August, which I have carefully perused, touching the loss on Railway iron. I remain of opinion that my letter of 29th June contains a more correct recital and better arrangement of the facts of the case, and decidedly more valid conclusions than are to be found in your letter of 18th ultimo.

"In my letter of 29th June, I noted and answered your argu-

ment as to Mr. Reed's being in England, when, as you say, only about 100 tons of Rails had been manufactured; and I now observe that in connection with a repetition of the same argument, you add, 'that it appears from the Chief Engineer's Report that Mr. Reed was of opinion that the manufacturers were not doing justice in the manufacture of the Rails.' If you substantiate this last assertion of Mr. Reed's early opinion of the carelessness or injustice of the manufacturers, I confess you will weaken my conviction that the late Board are alone responsible for the loss in question. I have however carefully searched all the documents to which I have access, and find no foundation for your assertion.

"I have received the copy you have sent to me of the letter from Messrs. Naylor, Vickers & Co. to Mr. Reed, of date 18th December, 1857, but I feel more confidence in the statements and arguments of the disinterested persons who have seen the Rails landed in the Province. To enlighten you on this point, I enclose a copy of a letter dated 11th May, 1858, from Mr. Jardine, the Chairman of the present Board, to Messrs. Naylor & Co., of Boston, and also of a letter to Mr. Jardine, dated 10th May, from Mr. Walker, one of the Contractors who laid the Rails.

"I am Yours, &c.,

"S. L. TILLEY.

"Wm. H. SCOVIL, Saint John."

The two following letters, also furnished Mr. Scovil, were suppressed by him:—

(COPY.)

"RAILWAY COMMISSIONERS' OFFICE,
Saint John, May 11th, 1858.

"DEAR SIRS—I have to acknowledge receipt of your letter of 23d April, in which you inform me that a report had reached you that dissatisfaction continued to be felt by us with the Rails furnished by your Liverpool House, and stating that if we can make out a good case, you will present it, and that you hope, from the high character of the makers, that we will receive justice under any circumstances.

"You will recollect, that soon after the receipt of the Rails in question, we sent you certificates as to their character, from Mr. Light, our Chief Engineer, and from Mr. Fleming, a Founder and Machinist of standing here. We now enclose copies of these certificates.

"The Rails have now been laid, which has afforded an opportunity of testing the opinion of those who previously inspected them; and I now enclose additional certificate from Mr. Light, and a certificate from Messrs. Walker & Co., the contractor, who laid a portion of them.

"If this does not satisfy you as to the quality and character of the Rails furnished by you, I have to request that you will send

some person, or authorise some person here to inspect them, to whom I will afford every facility. The Rails will speak for themselves.

"I am not aware what more I can do to shew you that your view was not correct.

"I may mention that we are now receiving Rails of the same pattern and kind of iron, which are entirely free from the defects found in yours.

"Perhaps this may be accounted for by the rejections made by our Inspector, as, for example, out of the first 106 tons, he rejected—

For unsoundness,	-	-	-	14
Bad lengths,	-	-	-	28
Bad punching,	-	-	-	8
To be better squared,	-	-	-	9
To be re-straightened,	-	-	-	17

And out of 229 tons—

For unsoundness,	-	-	-	29
Bad lengths,	-	-	-	20
Bad punching,	-	-	-	7
To be better squared,	-	-	-	57
To be re-straightened,	-	-	-	41

"By examining the returns of the Inspector appointed by you, on the Rails furnished to us, perhaps you may find the cause of the defects, as the evident carelessness of the manufacture, even when the inspection was so rigid, will account for the state of our Rails, under an inspection, of which we had no knowledge or controul.

"I am, your obd't. servant,

(Signed)

"ROBERT JARDINE.

"To Messrs. NAYLOR & Co., Boston."

(COPY.)

"HAMMOND RIVER, MAY 10, 1858.

"ROBERT JARDINE, Esquire,

"DEAR SIR—We have upon one contract here, about three hundred tons of the Rails you imported last fall, and having laid a large part of these in permanent road, we are able to speak exactly as to the size and pattern, and the way they are rolled.

"We find some Rails so wide in the bottom flange, that we have to cut off a full quarter inch with cold chisel, to allow it to enter the chair, while as many more are so small as to be quite a quarter inch loose in the chair, when laid. The Rails thus vary half an inch in the bottom flange, and are of all widths within that limit.

"In height, the Rails vary one-eighth inch full, so that when laid, they soon begin to bruise at the end, from waggons passing over them.

"Besides this, the slotting and sawing are done so irregularly, that the expansions cannot be kept the same; and the difference in the width of the bottom flange precluding the possibility of laying the Rails in the same straight line, or fair at the joints, will

prevent the road, however carefully laid, from being so perfect as it should be; and I believe, that in twelve months, one half of the chairs laid will be broken, from their being so bad a fit on the Rail.

"I am, Sir, your obd't. servant,
(Signed) "THOMAS M. WALKER."

"SAINT JOHN, N. B., 2d Oct., 1858.

"SIR—I am in receipt of your letter of 7th September. In that letter you charge me with making an assertion without foundation, and say 'You have searched all the documents you had access to.' This extensive search was quite unnecessary, as in my letter I refer to the document which gave the information. Then why not examine the document to which I referred? and if not in it, *then* accuse me with making false statements.

"The letters you enclose have no bearing on the point between us, as I am not aware of having referred to the quality of the Rails. All that has been said of them may be true. You say your letter of 29th June contains a correct recital and better arrangement of the facts of the case, and decidedly more valid conclusions than are to be found in my letter of 18th August. Yours of 29th June may contain facts, but as you say, they are *arranged facts*, any facts that it may contain are certainly so arranged they are almost invisible. As this letter is your standard of facts and conclusions, I will notice a few of them. In that letter you say, 'The Railway Board commissioned Naylor & Co. to import 700 tons of Railway iron, and *partially agreed for 300 tons in addition.*' The Railway Board authorized Naylor & Co., who are Iron Brokers and Commission Merchants, not manufacturers, to purchase 700 tons *only of Rails, no agreement whatever for any further quantity.* This partial agreement for 300 tons in addition; is one of your arranged facts. You say further, 'I find it distinctly stated the inspection is to be final, and the Inspector is to be appointed by the Liverpool house of Naylor & Co., and to act under their directions, you *merely reserving the right to supersede him by one of your own appointment, should you see fit to do so.*' This is your version by your arrangement of facts. The facts, *without your arrangement*, are thus, viz.: The inspection was to be final, but it never was intended that the Inspector appointed by Naylor & Co. was to be a permanent appointment, as the following extract from the original order will clearly shew. '*The Rails to be made under inspection, in absence of an Inspector from this Board, you to appoint one, who may be superseded at any time by one appointed by this Board.*' This was Naylor & Co's. authority to employ an Inspector. It is limited, and distinctly shows the intention of the Board to appoint an Inspector, and without a *dis-arrangement* of facts, will not bear the construction you would give it. Again you say, 'Mr. Reed, nor any other Commissioner casually visiting England, though engaged in other Railway negotiations, would think himself called on to *interfere* with contracts made by his predecessors on this

'side the Atlantic, and which were being executed by a highly 'respectable house in England, and under special inspection.' This is all very plausible, but it is not a *valid conclusion*, as no *interference* was necessary. All that was required, was to *complete* the arrangement made by the former Board by appointing an Inspector. Had this been done, by your own shewing, £1800 of the £2000 would have been saved to the Province, for in your letter of 14th April you say, '*The conditions then that provided that the inspection of these Rails should be made by a person appointed by Naylor & Co., led to the loss, certified by Mr. Light to be £2000.*' I have already shown there were no such conditions, except *by your arrangements of facts to produce your valid conclusions.* When I first called on you for an explanation of your charge against the former Railway Board, I was then under the impression you believed the charge correct, I am now of a contra opinion, and I think this a *valid conclusion.*

"I am Sir, Yours, &c.,

"WM. HY. SCOVIL.

"Hon. S. L. TILLEY, Fredericton."

"FREDERICTON, 12th Oct., 1858.

"SIR—I am in receipt of your letter of 2d inst., apparently in answer to my letter of 29th June, as well as that of 7th Sept. I have noted its contents, and in some respects I regret the style in which it has been conceived.

"There are only two points of which I find it necessary to remind you.

"1. My information as to the appointment of the Inspector of the Rails, was derived from the letter of Messrs. Naylor & Co. to you of date 22d June, and yours to them of the 27th June. The words of Messrs. Naylor & Co. are these: 'We understand that in accordance with your letter and the verbal arrangement made with you at Saint John by our Mr. Huntingdon, the Rails are to be inspected before shipment, on your account and at your expense, which inspection is to be *final*, the inspector to be *appointed by our Liverpool House*, and to act under their direction, you reserving the right to supersede him at any time by one of your own appointment, should you see fit to do so.' Your answer was in these words: 'Your favor of 22d inst. has been received and contents noted, which are in accordance with former letters and conversations with your Mr. Huntingdon, except the inspection, which must be at the works as the Rails are manufactured. A portion of this shipment will be required soon, and I hope a portion of it will be shipped in August.' Note the dates of the letters just quoted, and it becomes quite clear on whom the responsibility of the inspection arrangement rests, and that had the late Board appointed Mr. Smith, or some other competent person, as recommended by Mr. Light in his report of 1st June, 1857, the loss would not have been sustained. I am happy to find you recognize a plausibility even in Mr. Reed's

position, as alleged by me, but I must repeat that I have not met the foundation of your assertion, that at Mr. Reed's first visit, he was of opinion that the manufacturers were not doing justice in the manufacture of the Rails.

"2. You emphatically assert that the late Board ordered only 700 tons of Rails, and made no agreement whatever for any further quantity. In my letter of 25th June, I was quite explicit as to the manner in which the 300 tons were ordered, and I find no cause for correction. Be so good as refer to Messrs. Naylor & Co.'s letter to you of 22d June, and you will find these words: 'We are glad to learn, through Mr. Huntingdon, that you will probably, soon place a further order in our hands for about 300 tons of Rails to be shipped the present season.' I am justified therefore in what I said on this head. But admit, for argument sake, that your Board had made no allusion whatever to any additional quantity of 300 tons of Rails, the loss imputable to the late Board would not be reducible in proportion, for these Rails *were necessarily inspected under your arrangement*, which the present Board had no opportunity of testing until the Rails arrived here, when the matter was past remedy, in consequence of your having agreed that the inspection should be final.

"I am yours, &c.,

"S. L. TILLEY.

"W. H. SCOVIL, St. John."

SAINT JOHN, N. B., 24th Nov., 1858.

"SIR—I received your letter of 12th October in due course. I intended my last letter to end this correspondence. It is quite apparent from your last letter, as it was from previous ones, that you have no intention of confining yourself to facts. You still strive to cloak yourself under *your arranged facts*, and multiply words in support of these imaginary images of your own creating. Therefore, it is useless to continue this correspondence while you will persist in this unfair course. As proof of this I will make one quotation from your last letter. You say, 'My information as to the appointment of the Inspector of the Rails was derived from the letter of Messrs. Naylor & Co. to you, dated 22d June, and yours to them of the 27th *idem*.' Confining yourself to those letters for information, was done inadvertently or intentionally; if the former, you have had ample time to correct yourself. Not having done so, but instead, heaping up words to support your false position, shews it was done intentionally, and this is more apparent when these letters are referred to; for in Messrs. Naylor & Co.'s letter of 22d June, in the first sentence, they acknowledge my letter of 3d June. My reply of 27th June refers to previous letters and conversations. The conversations are of no importance, as neither the present or former Board, or Messrs. Naylor were bound by any private conversation between Mr. Huntingdon and myself, further than are expressed in the letter, which was the result of these con-

versations, so far as the Board thought advisable to confirm and act upon what had passed. And by this letter all were bound. And you know this letter of 3d June, referred to, contains the order for the Rails, and the conditions for their inspection. There is nothing in these subsequent letters of 22d and 27th June to alter or annul these conditions. This letter of 3d June, you are still determined to keep out of sight. I say still, as it was not convenient for reference when you wrote your letter of *better arranged facts and valid conclusions*, of 29th June last.

"Before closing, I will notice one other remark in your last letter. You say, 'If the late Board had appointed Mr. Smith, as 'recommended by Mr. Light,' &c., &c., &c.'

"This is taking up a new point. You have already selected and assigned your reasons for making the charge of mismanagement against the former Railway Board, and to these you must confine yourself, or acknowledge you were wrong, and then I may reply to the new point you now attempt to introduce.

"However, I do not intend to notice any further communications from you on this subject, unless you confine yourself to facts.

"I am, Sir, Yours, &c.,

"WM. HY. SCOVIL.

"Hon E. L. TILLEY, Fredericton."

[SUPPRESSED BY MR. SCOVIL.]

(COPY.)

"FREDERICTON, 2d DEC., 1858.

"SIR—I have to acknowledge the receipt of your letter of the 24th ult., in answer to mine of the 12th of October.

"Throughout the correspondence that has been carried on between us since June last, relative to the loss sustained by the Government from the defects of the Iron Rails imported for the European and North American Railway by the late Commissioners, I have endeavoured to argue the case in a fair and candid manner; and in order to sustain my views, I have, on all points, produced evidence—the authenticity of which has not been questioned—from the correspondence between the Commissioners, the Contractors, and their Agents; and I must again repeat that the opinion I first arrived at, is still retained by me, and that the arguments I have presented are, to my mind, unanswered.

"You now object to my adducing new evidence in the case, and state, that in order to sustain my position, I must confine myself to reasons given in my former communications, or acknowledge that I was wrong. I was under the impression that our object was to elicit all the facts of the case, and, as contributing to that end, we were not to be confined in this correspondence to legal quibbles and technicalities, and your insisting on such a course, must weaken your position with impartial judges. Be that as it may, I am quite willing that my case shall rest upon the facts quoted, and the arguments based on them in my letters, without referring to the new

point of view introduced in my last letter, and now objected to by you, as new matter. In any differences of opinion that may arise between myself and others upon any subject whatever, more especially those affecting the public interests, I hope I shall ever be prepared to discuss them calmly and fully, and that I shall never object to any evidence or argument that may be brought forward, on the ground that it was not stated in a first letter or speech of my opponent.

"As to the extraordinary expressions contained in your letter now acknowledged, I would remind you that it is generally admitted, that to lose temper in a controversy, affords tolerable good evidence of inability to sustain one's position by facts and arguments.

"Time will shew, whether or not you regard this letter as worthy of an answer.

"I have the honor, &c. &c.,

(Signed)

"S. L. TILLEY.

"Wm. HENRY SCOVIL, Esquire,
Late Railway Commissioner, &c. &c."

In addition to that part of the correspondence published by Mr. Scovil, he makes the following statement, as an apology for the neglect of the Board to appoint the Inspector :

"I will here explain why the late Board did not appoint an Inspector. When the above order was made, the Board had under consideration the engagement of Mr. Smith, as Inspector, (who had been recommended by the Chief Engineer). They did not know at the time the order was made, if an arrangement could be made with Mr. Smith to proceed immediately to England, therefore they provided that an Inspector should be appointed, *provisionally*, by Messrs. Naylor, in event of an Inspector from the Board not being present to take charge at the commencement of the manufacture of the Rails. A few days after this order was sent, and immediately after a meeting of the present Government at Fredericton (about 8th June), a member of the Railway Board was informed by a member of the present Government, that the then Board would be superseded by a new Board. And soon after this, hearing also from Messrs. Naylor that but a small portion of those Rails, *perhaps none*, could be got ready in August, the late Board determined to leave the appointment of an Inspector with their successors.

"W. H. S."

Mr. Scovil's defence, then, may be briefly stated as follows :—

First—That the provisional appointment of an Inspector by Messrs. Naylor & Co., was suggested by the Board, because they did not know whether Mr. Smith's services could be immediately obtained in that capacity.

Second—That their declining subsequently to make any appointment was, because a member of the Government, on or about the 8th June, informed one of the Commissioners that they would be superseded; and

Third—That notwithstanding they had appointed no Inspector up to the 14th August—Mr. Reed being in England when but 100 tons of the iron was manufactured, and he not having appointed a new Inspector, although dissatisfied with the quality of the iron—the responsibility necessarily falls upon the new Board, of which Mr. Reed was a member.

I will now proceed to offer some additional remarks, to shew the untenable nature of each position thus assumed by Mr. Scovil.

With reference to the first position, the natural inference is, that before placing this power in the hands of Messrs. Naylor & Co., an effort had been made to secure the services of Mr. Smith; and the public will, doubtless, be surprised to find by the following correspondence, that such was not the case :

(COPY.)

“FREDERICTON, 20th JAN., 1859.

“SIR—In a pamphlet recently issued by Wm. Henry Scovil, Esquire, containing part of correspondence between us relative to a loss sustained by the defective character of the Rails ordered by the late Commissioners from Messrs. Naylor & Co., I find he states, as one of the reasons why an Inspector was not appointed by the late Board, that they ‘did not know at the time the order was made, if any arrangement could be made with Mr. Smith to proceed immediately to England.’ You will oblige me by stating whether or not Mr. Scovil, or either of the other Commissioners, made any proposal to you to undertake the service. If so, when such application was made, and what was the nature of your reply.

“I am, &c.,

(Signed)

“S. L. TILLEY.

“T. T. VERNON SMITH, Esq.”

(COPY.)

“FREDERICTON, JANUARY 20th, 1859.

“SIR—I beg to acknowledge the receipt of your letter of this date, and in reply, to state that Mr. Scovil spoke to me about the usual custom of inspecting Railway Iron at the works during the process of manufacture, but made no proposition to me on the subject, nor, I believe, alluded to my going to England at all.

“I am, Sir, your obdt. servant,

(Signed)

“T. T. V. SMITH.

“Hon. S. L. TILLEY, Provincial Secretary, Fredericton.”

In reply to the second point. I would ask—Had the notice referred to been an official letter from the Provincial Secretary to the Railway Board, informing them that it was the intention of the Government to supersede them, instead of an unofficial and unauthorized intimation by a member of the Government to one of the members of the Railway Board, as stated by Mr. Scovil, would even that have been a sufficient apology for their neglect of a known and acknowledged duty on their part, so long as they retained the office of Commissioners, and received pay for their services? But to shew that Mr. Scovil notwithstanding this intimation, did not feel that he was relieved from the important duties of his office, it will only be necessary to state, that between the 8th June and the 14th August 1857, the Commissioners not only paid out £30,000, but also received tenders, and entered into contracts for the following works, viz.: Construction of the road between the Nine Mile House and Hampton Ferry, and the Shediac Wharf; and purchased two Locomotives, besides other matters of minor importance, at a prospective cost of over £90,000; and even as late as 1st August, took possession of, and recorded the station grounds at the Mill Pond, and the land for the track between that and Gilbert's Island. These extensive undertakings being made by the Commissioners between the 8th June and the 14th August, why did they not also appoint the Inspector of Rails? It only involved the outlay of some hundred pounds, and it might have been the means of saving thousands. The recording of the station grounds at so late a period in their official existence, is especially worthy of note, as it was an act for which there was no urgent necessity at that time; and involving as it did the unalterable adoption of that locality as the terminal station, was only calculated to embarrass the arrangements of their successors.

The third and last argument, is a futile attempt to transfer the responsibility from the old to the new Board. To shew that such a transfer cannot be made, it is only necessary to remember, that Mr. Scovil's order, was for half the iron to be shipped *early in August or before*, and the remainder *early in September or the whole in August*; and that notwithstanding the subsequent correspondence between Messrs. Naylor & Co. and Mr. Scovil, the Commissioners could have had no reason for supposing that the whole shipment would have been delayed beyond the early part of Sept.; particularly as Messrs. Naylor & Co. of Boston, upon the receipt of

Mr. Scovil's letter of 27th June informed him, under date of 1st July, that they had informed their Liverpool house, that a *portion of the rails would be required at once*. It must therefore be apparent to every person, that the non-appointment of an Inspector up to 14th August, must have prevented any Inspector from reaching the manufactory before the 7th or 8th September, at which time his services under the terms of agreement would not have been required. The facts of the case do not warrant Mr. Scovil's assertion, that there was but 100 tons of Rails manufactured on Mr. Reed's arrival in England, and upon this point Mr. Scovil must have been misinformed, as previous to Mr. Reed's leaving this Province for England, 105 tons had been shipped per "Favorite," and a few days after his arrival at the works, 350 tons more were shipped per "Middleton." The assumption that Mr. Reed was at that time dissatisfied with the character of the iron, is not borne out by any known facts, and is completely disproved by his letter, extracts from which I here subjoin :

"LIVERPOOL, 11th SEPT., 1857.

"ROBERT JARDINE, Esquire,
Chairman, &c., St. John, N. B.

"DEAR SIR—Ere this, you will have received Invoice of shipment of 105 tons Rails per 'Favorite,' the lengths are about equal, ^{21 feet,} 21 feet 8 inches; but the proportion, as per order, is to be worked out in shipping the remainder.

"Yesterday I visited the works in Staffordshire, where the Rails are being manufactured. The works are very extensive, and the parties engaged seem to be highly respectable, which is some little guarantee for the delivery of a good article. The Rolls broke a few hours before I arrived, and the Inspector left immediately after the accident, for London, so that I did not see him. This was matter of regret; but, as far as I could judge, the *Rails were well manufactured*.

* * * * *

"By Mr. Seely, I send you a print, shewing different sections of Rails. The Bridge Rail, No. 1, is recommended by the manager of the establishment in which the New Brunswick Rails are being manufactured, as superior to the T Rail, for two reasons—one is, that in the making, the pressure is vertical, by which process the head is more firmly pressed than the head of the T Rail, which is pressed sideways, causing the grain of the iron to be edgeways instead of flat, as in the Bridge Rail. And as they only put a certain proportion of the very best iron in the Rails usually made, styled *best Rails*, the best is put in the top of the Bridge Rails, which is the wearing part, whereas in the T Rails they are obliged to put it

in the flange, in consequence of that part of the Rail being thin, particularly the Saint John pattern, which is thinner than usual. Engineers, like Doctors, differ in opinion, and no doubt Mr. Light will like his own getting up best, but it may be worth while questioning him upon the matter: it can do no harm, and may do good. It is said the Bridge Rail is used entirely on the Grand Trunk of Canada, and on the St. Andrews and Quebec road.

“Yours, very truly,
(Signed)

“ROBERT REED.”

The letter of 3d June, which Mr. Scovil charges me with wilfully withholding, I never saw, until it appeared in his Pamphlet; but why he should attach so much importance to it, I cannot understand, as it does not differ materially from the recital of it in Messrs. Naylor & Co.'s letter of 22d June, a copy of which was furnished Mr. Scovil by me.

I now give an additional certificate furnished by Mr. Fleming on the 21st December, 1857, in further proof of the imperfect manner in which the Rails were manufactured.

“SAINT JOHN, DEC. 21st, 1857.

“Having been requested by the Chairman of the European and North American Railway Board, to examine and report upon a quality of Rails landing from the Packet Ship ‘Imperial,’ at Lawton’s wharf, I have to state, that having examined and compared upwards of one hundred Rails, with a pattern furnished by A. Light, Esq., Chief Engineer, I found them generally from one-sixteenth to one-eighth of an inch higher, from one-sixteenth to one-eighth of an inch wider on the top, and from one-sixteenth to three-eighths of an inch narrower on the bottom than the aforesaid pattern, and that none of them were of the same size. I found, besides, that not over one-third were of any one pattern in height and in width across top and bottom, and that about two-thirds varied, each Rail from the other, from one-sixteenth to an eighth of an inch. I also found several of them defective, presenting an appearance as if there was a deficiency of metal, when passing through the rollers, leaving them ragged on the edge.

“Respectfully submitted.

(Signed)

“GEO. FLEMING.”

I think I have clearly established the defective character of the Rails; that the Commissioners did not take the necessary steps to secure Mr. Smith’s services, or appoint some other Inspector, as recommended by Mr. Light; that they, having entered into large contracts, and incurred heavy expenditures subsequent to their

order to Messrs. Naylor & Co., were not justified in declining to appoint the Inspector for the reasons assigned; that an Inspector, appointed by the Board here, after the 14th August, could not have inspected the iron while being manufactured; and that Mr. Reed, after visiting the works, was not dissatisfied with the Rails, as alleged by Mr. Scovil; and consequently that the responsibility attaching to the transaction necessarily rests upon the late Commissioners.

I now leave the whole question to the calm consideration of a discerning public.

S. L. TILLEY.

FREDERICTON, 1st FEBRUARY, 1859.

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