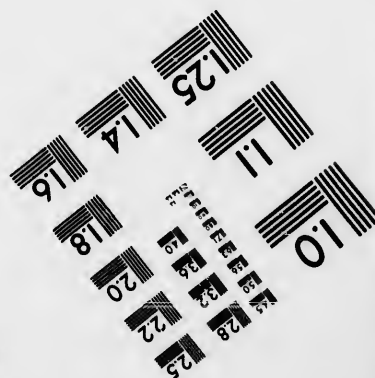
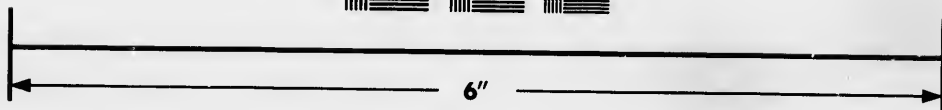
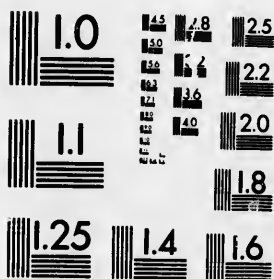


**IMAGE EVALUATION  
TEST TARGET (MT-3)**



**Photographic  
Sciences  
Corporation**

23 WEST MAIN STREET  
WEBSTER, N.Y. 14580  
(716) 872-4503

**CIHM  
Microfiche  
Series  
(Monographs)**

**ICMH  
Collection de  
microfiches  
(monographies)**



Canadian Institute for Historical Microreproductions / Institut canadien de microreproductions historiques

**© 1993**

Technical and Bibliographic Notes / Notes techniques et bibliographiques

The Institute has attempted to obtain the best original copy available for filming. Features of this copy which may be bibliographically unique, which may alter any of the images in the reproduction, or which may significantly change the usual method of filming, are checked below.

L'Institut a microfilmé le meilleur exemplaire qu'il lui a été possible de se procurer. Les détails de cet exemplaire qui sont peut-être uniques du point de vue bibliographique, qui peuvent modifier une image reproduite, ou qui peuvent exiger une modification dans la méthode normale de filmage sont indiqués ci-dessous.

- Coloured covers/  
Couverture de couleur
- Covers damaged/  
Couverture endommagée
- Covers restored and/or laminated/  
Couverture restaurée et/ou pelliculée
- Cover title missing/  
Le titre de couverture manque
- Coloured maps/  
Cartes géographiques en couleur
- Coloured ink (i.e. other than blue or black)/  
Encre de couleur (i.e. autre que bleue ou noire)
- Coloured plates and/or illustrations/  
Planches et/ou illustrations en couleur
- Bound with other material/  
Relié avec d'autres documents
- Tight binding may cause shadows or distortion  
along interior margin/  
La reliure serrée peut causer de l'ombre ou de la  
distorsion le long de la marge intérieure
- Blank leaves added during restoration may appear  
within the text. Whenever possible, these have  
been omitted from filming/  
Il se peut que certaines pages blanches ajoutées  
lors d'une restauration apparaissent dans le texte,  
mais, lorsque cela était possible, ces pages n'ont  
pas été filmées.
- Additional comments: /  
Commentaires supplémentaires:

- Coloured pages/  
Pages de couleur
  - Pages damaged/  
Pages endommagées
  - Pages restored and/or laminated/  
Pages restaurées et/ou pelliculées
  - Pages discoloured, stained or foxed/  
Pages décolorées, tachetées ou piquées
  - Pages detached/  
Pages détachées
  - Showthrough/  
Transparence
  - Quality of print varies/  
Qualité inégale de l'impression
  - Continuous pagination/  
Pagination continue
  - Includes index(es)/  
Comprend un (des) index
- Title on header taken from: /  
Le titre de l'en-tête provient:
- Title page of issue/  
Page de titre de la livraison
  - Caption of issue/  
Titre de départ de la livraison
  - Masthead/  
Générique (périodiques) de la livraison

This item is filmed at the reduction ratio checked below/  
Ce document est filmé au taux de réduction indiqué ci-dessous.

10X	12X	14X	16X	18X	20X	22X	24X	26X	28X	30X	32X
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

The copy filmed here has been reproduced thanks to the generosity of:

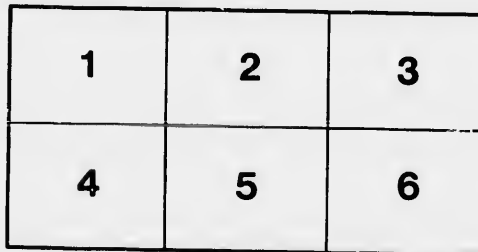
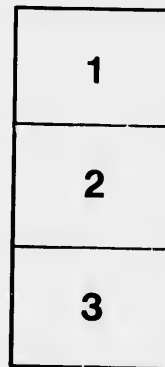
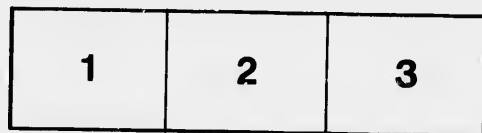
National Library of Canada

The images appearing here are the best quality possible considering the condition and legibility of the original copy and in keeping with the filming contract specifications.

Original copies in printed paper covers are filmed beginning with the front cover and ending on the last page with a printed or illustrated impression, or the back cover when appropriate. All other original copies are filmed beginning on the first page with a printed or illustrated impression, and ending on the last page with a printed or illustrated impression.

The last recorded frame on each microfiche shall contain the symbol  $\rightarrow$  (meaning "CONTINUED"), or the symbol  $\nabla$  (meaning "END"), whichever applies.

Maps, plates, charts, etc., may be filmed at different reduction ratios. Those too large to be entirely included in one exposure are filmed beginning in the upper left hand corner, left to right and top to bottom, as many frames as required. The following diagrams illustrate the method:



L'exemplaire filmé fut reproduit grâce à la générosité de:

Bibliothèque nationale du Canada

Les images suivantes ont été reproduites avec le plus grand soin, compte tenu de la condition et de la netteté de l'exemplaire filmé, et en conformité avec les conditions du contrat de filmage.

Les exemplaires originaux dont la couverture en papier est imprimée sont filmés en commençant par le premier plat et en terminant soit par la dernière page qui comporte une empreinte d'impression ou d'illustration, soit par le second plat, selon le cas. Tous les autres exemplaires originaux sont filmés en commençant par la première page qui comporte une empreinte d'impression ou d'illustration et en terminant par la dernière page qui comporte une telle empreinte.

Un des symboles suivants apparaîtra sur la dernière image de chaque microfiche, selon le cas: le symbole  $\rightarrow$  signifie "A SUIVRE", le symbole  $\nabla$  signifie "FIN".

Les cartes, planches, tableaux, etc., peuvent être filmés à des taux de réduction différents. Lorsque le document est trop grand pour être reproduit en un seul cliché, il est filmé à partir de l'angle supérieur gauche, de gauche à droite, et de haut en bas, en prenant le nombre d'images nécessaire. Les diagrammes suivants illustrent la méthode.

u'il  
cet  
de vue  
e  
tion  
és

MEMORANDUM

ON

COMMISSION OF EXPERTISE

ON

DISPUTED TERRITORY AND BOUNDARY SURVEY ACCOUNTS

BETWEEN

NEW BRUNSWICK

AND THE LATE PROVINCE OF CANADA.



OTTAWA:

PRINTED BY A. S. WOODBURN, ELGIN STREET.

1880.

# MEMORANDUM

—ON—

## COMMISSION OF EXPERTISE

—ON—

DISPUTED TERRITORY AND BOUNDARY SURVEY ACCOUNTS

—BETWEEN—

### NEW BRUNSWICK

AND THE LATE PROVINCE OF CANADA.



OTTAWA :

PRINTED BY A. S. WOODBURN, ELGIN STREET.

1880.

7

S

o

t

f

t

F

b

i

F

b

C

F

t

i

F

C

c

I

b

o

v

s

s

b

ti

ti

si

w

th

ti

t

2

THE HON. J. C. AIKINS,  
*Secretary of State,*  
OTTAWA.

OTTAWA, July, 1880.

SIR,

I have the honor to lay before you the following remarks by Mr. Tibbits, one of the creditors of the debt originally due by New Brunswick, but assumed by the Dominion under the provisions of the British North America Act, and which, for facility of reference, it has been deemed desirable to print.

Speaking as a lawyer and strictly on the legal aspects of the case, I would say that I think the following points are well taken and quite indisputable from a legal point of view.

1st. That the Imperial Commissioners, appointed to carry out the survey of the boundary line—and who appear to have been selected with a special view to watching the interests of both Provinces—were the sole judges of both the territorial and pecuniary interests involved in their operations.

2nd. That if any difference arose among them, the decision of the majority was binding,—unless of so serious a character as to render it the duty of the dissenting Commissioner to appeal therefrom.

3rd. That such appeal lay only to the Imperial Authorities from whom the powers of the Commissioners, by virtue of the Imperial Statute, emanated,—although of course it might be conducted through the medium of the aggrieved Province or Provinces.

I am sustained I believe, in this view by the Government itself through a report emanating from the Department of Justice and confirmed by the Hon. the Privy Council in relation to the case now under consideration, wherein the matters decided by the minor Provincial Commission of Messrs. Cutler and Dawson, and Dawson and Harding, though not based upon any particular statute, were taken to be acts of a competent tribunal, that could not be disturbed: Whereas on the part of the case now under consideration, we have an Imperial Statute, not only providing for the Commission, but *providing also the funds with which the Commissioners were to accomplish the work required of them by the Statute*, thus surely constituting a tribunal whose acts, within the compass of their legal duties, cannot now be disturbed.

I am further fortified in this opinion by a precedent that actually occurred on the survey: It appears that difficulties did arise on the territorial part of the question, but only in one instance of such gravity as to make the dissenting Commissioner—in that case Mr. Bouchette—appeal from the decision of his colleagues, in which he was so far sustained that although the aggrieved Province gave way rather than incur the expense of a new survey, it required a new Imperial Statute to rectify the boundary and give effect to that erroneously and improvidently adopted by the majority.



On the pecuniary part of the question no difficulty ever arose among the Commissioners. They got what they required from whichever Province any of them asked it, and if any undue expenditure, or which any Commissioner thought to be undue or excessive, was thus being incurred, of which each Province had to bear half, *it was the duty* of the dissenting Commissioner to object *then* and take the sense of his colleagues upon it, and if over-ruled—if he thought it of sufficient importance—appeal, as was done by Mr. Bouchette on the territorial question. When however, the service not only went on, but the Commission, after completing its duties, was dissolved without such objection having ever been raised before the Commissioners, the expenditure had become absolute and no longer subject to discussion. Errors of account could be corrected but items of expenditure could not be changed. The recent experts or Commissioners could have no power, and the Government could give them no power to annul any part of the expenditure on the boundary survey long since closed by the only tribunal, the Imperial Commission, competent to deal with it, save in so far as there was an appeal from a majority decision, had any question of undue expenditure arisen before that tribunal.

4th. Another question to be considered from a legal point of view is the *conditional* balance reported by Mr. Dawson as agreed to by himself and Mr. Harding, the particulars of which are stated. I am of opinion that it could not possibly be within the powers of the Commissioners to make *the concession valid and the condition null*.

But I think the legal consequence would go farther than this, and that New Brunswick, having rejected that balance and appealed to the books and accounts, is bound by the true balance fairly resulting therefrom.

Mr. Botsford has given no evidence except on one point. He has proved that he never objected to any expenditure while the survey was in progress. His present "*impressions*" are not evidence and are absolutely valueless.

With regard to the entire majority report of the late Commission, it is hardly necessary to say that the objections to it, which I need not repeat, are well founded. The Commissioners, Messrs. King and Heard, having gone so manifestly beyond their powers in dealing with an expenditure resting upon a higher authority than their own, and duly audited and entered upon the books of the Government, it is hardly necessary for me to add that their *mode* of doing it, without any figures in support of conclusions so different from what any accountant with the same data would arrive at, is not such as could be accepted by any tribunal of justice by which the details of a disputed account had been submitted to experts for revision.

I think then that it may be taken as established that the Dominion Government was fully justified at the time—and *more than justified by the investigation that has now taken place*—in passing the Order in Council of 30th August, 1877. The accounts were all before the Government: the conditional remission of a part of the debt, by consent, under the admitted fact that there was no power to revise the expenditure of the Imperial Commissioners, was there: The New Brunswick account was there in every detail, to which not an item has been added before the Commissioners: The whole had been twice fully audited before confederation, and once specially audited by Mr. Langton since, who, though averse to the transfer

of the debt to the present creditors, found it correct with all the items in view that were before the Commission; and now a more complete justification of it as a final act of Government could not possibly be found than the late investigation itself, by the figures it officially brought to light, affords.

The account should therefore stand as it has been found in the books. For there has in fact been no report upon the objects of the Commission, which were to deal with "matters in difference," while we are yet left entirely in the dark as to anything whatever having been in difference, and the so-called report can only be looked upon in the light of a little smoke left in camp to cover a hasty retreat, while the figures brought to light remain and establish the accounts and balance.

The "accounts and matters unsettled, undetermined and in difference," were the objects of investigation and, reduced to the fewest possible words, were embraced in the demand made by the Dominion Government by dispatch of 11th February, 1878, for the payment of a debt due by New Brunswick to the late Province of Canada, and the reply of the Government of New Brunswick on 23rd Jan. 1879, denying the debt in toto, and further declaring that in so far as such a debt had ever existed, she had a set off to balance it. Such being the issue, it is an elementary principle of law that no Court of Justice would accept or confirm a report, or award, of experts that did not deal with and state their finding on each and all of the points submitted, and that no other points were considered. And if further correspondence between the Governments gave rise to any complication, besides that above stated, the more *imperative* would it be that each point in "difference" should be so dealt with and the finding thereon stated, and without this, the report or award, would be held to be null and void.

With regard to the costs incurred in prosecuting the matter I think it must be conceded that the Government is bound in some way to make good the amount to the creditors.

For the present, however, I have the honor simply to request, on behalf of the creditors, that the liquidated Dominion debt, established by the Order in Council of August 1877, calculated to the date of payment, be paid to them, and the question of such further payment, as they may be found entitled to, taken into early consideration.

I may state in conclusion that the Order in Council of 30th August 1877, being thus fully justified, and, after the sole condition of it had been fulfilled, permission given to negotiate for money, under the obligation it represented on the part of the Dominion Government, and such negotiation having been actually accomplished through a broker and money paid thereunder, I would respectfully suggest that this is a matter of such grave importance as to require the prompt and immediate attention of Ministers to the true nature of the responsibility resting upon them in relation to a legal and accepted debt of the Dominion.

I have the honor to be,

Sir,

Your most obedient servant,

A. J. CHRISTIE.

## INTRODUCTORY.

---

The following memorandum on the Commission of Expertise on the accounts of the old disputed territory and boundary survey, having run to a greater length and taken a somewhat wider range than anticipated, and yet left the origin of the difficulty to be gathered from the mass of papers in the Department of State, it is deemed desirable to make a few prefatory remarks, to enable such of the Ministers as may not have made themselves acquainted with its earlier details, to master the whole subject submitted.

In 1842 the Treaty of Washington settled the North Eastern Boundary between Great Britain and the United States.

Soon after, applications were made to the Crown Lands Department of Canada for licenses to cut timber on such part of the territory, that had been in dispute with the United States, as was then deemed to be undoubtedly Canadian territory, which applications were granted in the ordinary course.

The timber cut however, when on its way to market, to which, from its position, it had necessarily to pass through New Brunswick, was seized by the authorities of that Province and subjected to heavy "*finer and penalties*" on the plea that it was cut in trespass within her boundaries. This led to a correspondence and very angry discussion between the Provinces, which continued for several years without further result than that New Brunswick ultimately made the "*finer and penalties*" so heavy that it amounted to virtual confiscation, which brought the business practically to a close.

After the controversy commenced, Canada made a condition with her licensees that if, from the position in which the lands were situated, she should be unable to protect them in the usufruct of their limits, she would be subject to no other indemnity than that, practically, she would charge them nothing and refund the money they paid: While New Brunswick, on the other hand, in the strongest manner possible, *protested against the sufficiency* of such a refund and maintained the right of the licensees, to "*a large amount of indemnities*" besides, from whichever Province proved to be in the wrong.

A boundary between the Provinces was made by Imperial Statute in 1851, and three Imperial Commissioners were appointed thereunder to carry out the provisions of the Act by the survey of the boundary line, *with the funds thereby appropriated for that purpose*. These funds so appropriated by Imperial Statute and expended by Imperial Commissioners, consisted, 1st, of the revenues of the disputed territory itself, and if insufficient—2nd, of such further funds as might be necessary, to

VII.

be supplied equally from the revenues of the two Provinces; and the survey went on during the years 1853-4-5, each Province furnishing whatever was required of her by any of the Imperial boundary Commissioners towards the service.

In the last year of the survey, Provincial Commissioners were appointed to investigate and report upon the state of the funds accrued from the disputed territory, the claims thereon, and the amount applicable to the expenses of the survey.

This Commission was suggested by New Brunswick, at the instance of the Canadian licensees, whose claims to refund of the "fines and penalties" exacted of them were to be considered.

The Commission consisted of Mr. Cutler for New Brunswick, and Mr. Dawson for Canada. They reported the amount accrued from the disputed territory available in this case, and the principle upon which a refund should be made to the licensees, with certain recommendations, which were accepted by both Provinces and the Commissioners directed to proceed upon the basis therein set forth,—Mr. Harding for New Brunswick, having however, from a change of administration, replaced Mr. Cutler. The further report of Messrs. Dawson and Harding, specially named the amount of the joint fund accrued from the disputed territory and the respective amounts in the hands of each Province applicable to the survey, after payment of certain adjudications they made in favor of the licensees: And the only duty remaining to be done was to strike a balance between the Provinces on the amount *actually expended* by the Imperial Commissioners on the survey and the amount in the hands of each Province respectively applicable to it. Mr. Dawson's resignation from extraneous causes, prevented a final joint report at the time.

The accumulated mass of writing since then, upon so simple a matter need not be touched upon in this brief notice further than to say that the survey cost much more than the whole available amount of the joint fund accrued from the disputed territory, and that it was found that while New Brunswick held the larger part of the joint fund applicable to the survey she had paid out less than she had in hand, while Canada had paid out much more than the small amount of the joint fund in her hands, a balance thus necessarily resulting against New Brunswick.

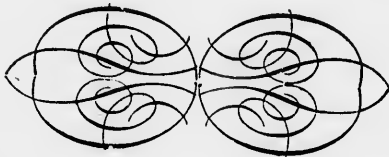
The present creditors have, as a further indemnity for her inability to protect them at the time, in the rights she conferred upon them, been substituted for the late Province of Canada in the ownership of the debt thus due, as before understood and finally concurred in by Quebec and Ontario and recognized by the Dominion Government. It was in view of all the facts that the Dominion Government passed the Order in Council of 30th August, 1877, to pay the debt to the present creditors, subject to the sole condition that Quebec and Ontario representing the original creditor should concur, which they have done.

It is further to be remarked that New Brunswick, that took such strong grounds originally in maintaining that the licensees were entitled to "*a large amount of indemnities*" and has since acknowledged that she was the wrong-doer in seizing their timber, *is contributing nothing to this indemnity.* It is Canada's money that is going to indemnify them, not hers, and she is only interfering to prevent Canada

VIII.

from indemnifying them with her own money. Canada, though at the time protecting herself against more than a specific amount of indemnity by a condition accepted by the licensees, has done all she promised to indemnify them for the wrong done by New Brunswick, while the latter Province has not contributed one cent towards the indemnity she was the first to proclaim them to be entitled to.

The present creditors of the debt, as it now stands, have nothing whatever to do with New Brunswick. The debt has been transferred to them: The Dominion is liable for it: The debt is indisputable: The Dominion has acknowledged it; and even the Commissioners or Experts whose foolish report is dealt with in the following remarks, have not attempted to dispute it, *nor have they attempted to shew that it should be less than it is claimed to be.*



Memorandum on Commission of *Expertise* on disputed  
territory and boundary survey accounts between Canada  
and New Brunswick.

1. This Commission was appointed by the Dominion Government in effect to examine the books and accounts bearing upon the subject-matter of the joint liability and respective expenditures, under an Imperial Act, by the Provinces of Canada and New Brunswick on the survey of the boundary line, on which a balance heretofore found to be due to Canada, and for the payment of which the Dominion had become liable by the British North America Act, was, by consent of Quebec and Ontario, to be paid to Messrs. Tibbits, Glasier and others, as per schedule attached to an order of the Honorable the Privy Council of 30th August 1877.
2. The creditors of this debt were present at the sittings of the Commission, at the instance of the Government, assisting with information, but they were not parties to it, nor had they a voice in its constitution.
3. They had no possible objection however to any means of *expertise* the Government might see fit to adopt, whereby to be informed, or to inform New Brunswick of the exact state of the accounts, nor did they raise any objection except to advise the Government not to bring about additional difficulty by giving too wide a scope to their enquiry.
4. When however, perhaps inadvertently, an arbitration was once or twice mentioned, at the time the Commission was being talked of, they did most decidedly object to anything partaking of the nature of an arbitration, inasmuch as, although they would of course, on an Arbitration, have had the naming of an Arbitrator, and a joint voice by themselves or their Arbitrator, in the naming of an Umpire, they had in fact nothing to submit to an arbitration, their transaction with the Government being of a distinct and definite nature which had long passed that stage when its validity could be affected by one party to it, or by any change in the personnel of the Government. There was nothing in doubt on which to base an arbitration so far as they were concerned.
5. The Commission was composed, as thus appointed by the Dominion Government, of the ablest man and late Premier of that Province, whom New Brunswick could provide, as her nominee and deeply interested in maintaining her views: The Auditor General, who could have no possible interest in the matter, one way or the other, (except his professional character as Auditor;) and Mr. Wm. Heard, of Prince Edward's Island whose utter incapacity to understand the simplest account made it a matter of some curiosity and much speculation how in the name of common sense he ever came to be there. The creditors interested had no representative on the Commission,

6. And thus, with two principal Ministers of New Brunswick in active prosecution of their views and their late colleague and chief (himself committed to those views as Premier when demand of payment was made in 1856) acting as one of the Commissioners, it need not perhaps be wondered at that Mr. Heard, who thus became the *sole Judge* in all in which the Auditor could not agree, should, in view of the passionate appeals of Mr. Premier Fraser, have decided to hear all the pretended grievances of New Brunswick *arising from her own acts* in the Cutler and Dawson and the Dawson and Harding reports, notwithstanding that the Commission was by the order of reference, specially precluded from entering upon them, as finally decided phases of the question. But so it was that the chief part of the sittings of the Commission was taken up with matters which, influencing as they were intended to do, *and did in his person*, the majority report of the Commissioners, were *ultra vires* of their powers.

7. The order of reference to the Commissioners was to determine the "*legal liability*" if any, of the one Province to the other arising out of the Imperial Act, settling the boundry and the expenditure by each Province for the running of the boundary line in connection with the amount of a joint fund, of which each had a part in hand for that purpose, and for which each was bound by the Act to provide the balance equally. There was not and there has been no pretence that there was anything in controversy beyond that: Even the re-opening, *de novo*, of points already settled (which they were precluded from touching) could add nothing to the objects of the enquiry: It could only increase or diminish the amounts in the hands of the one or the other Province applicable to the survey: But this having been already definitely settled by the Dawson and Harding report of 12th November 1856 which the Commissioners were precluded from re-opening, the Commission was simply an *expertise* upon the accounts of the boundary survey—nothing more—nothing less. The striking of a balance thereafter, in connection with the respective amounts in hand (which were not within their power to alter) was a mere arithmetical deduction which could not vary from the figures subsisting in support of it.

8. An expertise upon accounts to be of any value, must deal in some rational manner with the figures presented to the *experts*. If a mistake has been made, the mistake must be *shewn* and amended; if a sum is thrown out of the accounts altogether as an improper charge, it must be shewn what it is and why thrown out and if a sum has been changed from one side of the account to the other, it must be shewn why it has been so transposed. In short an *expertise* must be an intelligent one and not a mere *brutum fulmen*, that so much is due on a set of accounts from which, with the same set of figures before him, no other expert or accountant in the world could draw the same result. *It must be such as, with the same data and the same corrections, intelligently stated, could produce no other result.*

9. Two of the three Commissioners have made a majority report, but does it comply with these conditions? It simply states that they adjudge and determine that the balance or sum of \$7,734.63 is due by New Brunswick to the late Province of Canada. No figures leading to this on either side are given, no statement of account made, no balance struck and no explanation vouchsafed, but merely their dictum, unsupported, that such is the balance. Does this satisfy the conditions of

an expertise upon accounts? Is it, unsupported by figures, and without reasons or motives stated, an admissible result? *If it is, then they might have said instead, that Canada owed New Brunswick \$7,734.63, and it would have been equally valid.* If they had a right to alter one item of the account, or annul a large portion of one side of it, without intelligent explanation and sufficient reason, and by their mere will, then they had an equal right to alter the whole, reverse the ordinary principle upon which the business world hangs together and make the creditor pay the amount due, to the debtor, which is practically what they have sought to do with regard to a portion of the debt.

10. The report of the majority of the Commission (besides being beyond the reference as will be shewn farther on) is therefore absolutely valueless and null, as being based not only on no recognized principle, but in fact as having no basis at all, and so entirely inconsistent with the data before the Commission that with the same figures and accounts, placed in the hands of any expert or accountant accustomed to deal with figures, the result produced would be so entirely different that this majority report, taken by itself and without explanation, could only appear as presenting a false balance which by no possible manipulation and no process of arithmetic could be produced from the duly authenticated accounts before them—an awkward dilemma which the Auditor General's minority report alone explains by shewing, while dissenting therefrom, the grounds upon which they desired him to join in the action they had taken.

A short resume of the case as it stood at the sitting of this Commission is therefore desirable to shew the true position.

11. The account and balance sheet submitted by the former Canadian ex-Commissioner, Mr. Dawson, had been for a long time before *all* the Governments interested in or dealing with this matter, uncontradicted. This account and balance sheet professed to shew, against New Brunswick, less than the actual legal balance due by that Province, but the papers submitted, and which have been before all the Provinces, stated at the same time what he said the actual balance would be according to the authentic accounts. The difference, as he explained it, arose from the fact that at the last, but unreported meeting with his co-Commissioner from New Brunswick, Mr. Harding, he had, with the consent of his Government, made certain concessions to smooth over the asperities of the former contest between the Provinces, but on the *absolute condition* that the accounts then submitted, audited and balanced were conclusive and final.

12. This statement of account and balance had been found correct by the old Province of Canada, on the basis on which it stood, of a concession to New Brunswick on condition of the balance then struck being final; and later it had been found correct by the Dominion Auditor General, Mr. Langton, on the same basis and thus authenticated had been made the foundation of the Order in Council of 30th August 1877, and the demand made thereunder upon New Brunswick by despatch of 11th February, 1878.

13. At the sitting of the Commission these facts and figures so authenticated were laid before the Commissioners by Mr. Dawson, the ex-Canadian Commissioner of that day.



Mr. Harding however, his New Brunswick Colleague of that period, denied and admitted and didn't remember, but on the whole would not acknowledge that their action at that time was final.

14. The action of the recent Commission, and its powers, were therefore very simple. There being no actual concert of agreement as to what had been done or agreed to after the date of the last completed report of the old commission, this Commission was authorized to take up the matter just as it stood, where the said last completed report of the former Commissioners (Dawson and Harding) had left it by their adjudications of 12th November 1856—the date at which all the liabilities and expenditures, on either side had become fixed, and determinate—and examining the accounts of expenditure by either Province and the amount in the hands of each for the purpose of the Service, declare what was the legal liability resulting therefrom under the Imperial Act—in short produce a balance sheet between the Provinces on the basis of the joint fund, as found in the hands of each and the joint expenditure as disbursed by each.

15. The sole work of the Commission therefore resolved itself into an audit of the respective expenditures by New Brunswick and Canada on the boundary survey, and, taking these things into account with the respective amounts—already determined—of the joint fund in the hands of each Province for that purpose, produce the correct balance resulting therefrom.

16. The New Brunswick account of expenditure had never been audited by Canada. It was not and it never had been objected to or inquired into. The whole work of the boundary survey, on which the expenditure took place, was the work of three Imperial Commissioners *each and all of whom were alike responsible for the whole outlay*. Two of these however, although Imperial Commissioners, were chosen, one each from the two Provinces, Mr. Bouchette and Mr. Botsford thus watching the interests of their respective provinces.

17. The accounts of what each Province had supplied were rendered to the respective Governments and, it is presumed, properly investigated and audited and under these circumstances Canada has, from the first, accepted the account rendered by New Brunswick without hesitation or objection and without investigation or audit, taking it for granted that the good faith of the sister Government was sufficient guarantee of its accuracy, that is to say the mere accuracy of the account, but as for the expenditure, it was not and had not been within her control; the three Imperial Commissioners were responsible for that, *each and all of them alike*. To have taken that responsibility from any one of them individually, it would have been necessary that he should have objected to, or protested against any improper or excessive expenditure—of which he knew his Province had to bear an equal share—at the time. This would have enabled the Governments to have taken some means to have a stop put to any undue expenditure, if it existed, and would at all events have relieved the protesting Commissioner from any complicity in the extravagance objected to—and perhaps his Province from liability therefor, had the other Province refused to join in finding some means of restraining it, by representation to the Imperial authorities or otherwise.

18. The Canada account, however, not having been finally revised when the Commissioners (Dawson and Harding,) had concluded their adjudications of 12th November 1856, they took the accounts in hand, as they were placed before them, and found some apparent discrepancies in some advances and paylists, with corrections and deductions applicable thereto, not sufficiently explained to harmonise them, and they made a very sharp remonstrance against an incomplete account (for that is the worst that can be said about it) being placed in their hands for audit, and they separated then, with a view to the accounts being completed before they met again.

19. That they were corrected and a final balance agreed upon at their last meeting, being however, though maintained on the one side, and partially acknowledged on the other, more or less in dispute, and as there was no joint report of it, from the break up of that Commission, the Commissioners on this occasion, had of course to go back to the original accounts and Government books and take their figures from there, and it now remains to be seen how they have accomplished their task

20. The Accounts before the Commissioners were as follows:—

Of the joint fund held for the purposes of the joint survey on joint account, there was:—

In the hands of Canada.....	£2,586 9 4
In the hands of New Brunswick.....	8,798 15 11
	<hr/>
More in the hands of New Brunswick than Canada.....	£6,212 6 7
Of the expenditure on the joint survey on joint account there was:—	
Disbursed by Canada.....	£11,715 0 9
Less account sales.....	£181 16 9
" Error.....	45 10 0
	<hr/>
	227 6 9

Total disbursed by Canada on joint account.....	£11,487 14 0
Disbursed by New Brunswick on joint account including arbitration fees paid by her.....	£6,689 8 0
More disbursed by Canada than by New Brunswick on joint service and joint account.....	4,798 6 0

Total excess on joint account viz: excess of joint fund in hands of New Brunswick and excess of joint expenditure on survey by Canada £11,010 12 7

Thus with £6,212 9 7 more of the joint fund in her hands than Canada had, and £4,798 6 0 less expended on the joint Survey than Canada disbursed, being in all, out of the joint fund in hand and the joint expenditure, the sum of £11,010 12 7 against New Brunswick, these Commissioners report the somewhat curious result that the balance due by New Brunswick is £1,933 13 2, whereas by the ordinary rules of arithmetic, any ordinary mortal in possession of the most ordinary intelligence would have said that New Brunswick was indebted, on the joint account, by half the difference: £5,505 6 3½.

21 This majority report of the Commissioners, covering just one page of foolscap, gives no figures whatever, but the £1,933 13 2 (or as they put it in currency \$7,734,133) and no statement of how the balance was arrived at, so that any expert or accountant, taking up the accounts after them and dealing with the same figures, would be compelled to say that they had misstated the result of the accounts and falsified the balance.

22. Before proceeding further, the accounts may be repeated in a different form so that the balance may come clear to the apprehension of every one capable of understanding figures from whatever point of view they may be looked at:—

Amount of joint expenditure paid for by Canada on the joint survey .....	£11,487 14 0
Amount of joint fund in hands of Canada applicable to the joint survey, .....	2,586 9 4
Excess advanced by Canada on joint survey over the amount of the joint fund in her hands .....	£8,901 4 8
Amount of joint expenditure paid for by New Brunswick on the joint survey including arbitration fee paid by her .....	£6,689 8 0
Amount of joint fund in hands of New Brunswick ap- plicable to the joint survey .....	8,798 15 11
Excess of joint fund remaining in her hands over her payments on joint expenditure on joint survey .....	2,109 7 11
Total excess on joint account in favor of Canada .....	<u>£11,010 12 7</u>

and this we are told by these *experts* in matters of account, yields by their system of arithmetic a balance of £1,933 13 2, due by New Brunswick to Canada, and, to account for this extraordinary result they give no information and no figures whatever: But the figures are there, as they were taken from the public records and laid before them. and in stating what they have given as the balance, it will be seen at a glance that they have stated what is not true, and what the figures do not sustain. From the utter condemnation of the statement of the result made in this report, and which might be characterised in much stronger language than it is deemed desirable to use, there is no gleam of light to relieve it: The figures are there— withheld by them—but to be found in the duly authenticated papers laid before them, and their report is there, in utter—and to any fair minded person—*painful* contradiction, the one with the other.

23. But here the third Commissioner, the Auditor-General, in a manifestly honest desire to make everything plain, comes to their relief by telling how they came to the result they did, that is to say *how they told him*, in asking him to join them, that they had done so, though there is good reason to believe, to know in fact, that their real reasons were not within the compass of the accounts, the result of which they were thus compelled to falsify to attain their end. Whether the Auditors' explanations, however, take off, in any degree, the rough edge of the plain, palpable misstatement contained in the majority report, unsustained as it is by any-

thing in support of it, and hence operating in itself as a public deception, it may be left for Casuists capable of making very nice distinctions, to determine.

24. There are three heads under which the Auditor General informs us that deductions were made in the Canadian account, in the first of which he concurred and in the other two of which he refused to concur as unjust and unreasonable; and one head under which the New Brunswick account was increased, in which he could not concur, as it was taken from an expenditure the terms of the Commission absolutely precluded them from entertaining.

25. The first of these heads is for errors of account, possibly even at this late date, a legitimate object of enquiry, if the means of making the enquiry had been sought and found available and sufficient. The amount is stated at £428 17 0 of which £181 16 9 was for sale of stores and is quite correct—and £45 10 0, for errors, both of which, amounting to £227 6 9, had already been deducted, when the accounts were audited, twenty-four years ago, leaving a deduction over former accounts submitted of £201 10 3 which the Auditor concurred in.

26. It is not intended here to fully discuss this deduction as no doubt the Auditor saw reason, as the accounts stood before him, to concur in it, but it is simply denied that the Commissioners could possibly have all the information necessary before them to arrive at a just conclusion on such details, and hence that they had no right to go beyond the authentic records to be found in the books and accounts of the departments. The throwing out for instance of an item (included in the above) of £21 17 2 for want of a voucher at this late date, with no one capable of explaining it before the Commissioners, should hardly, in fairness, be deemed admissible. And the sums of £71 4 11 and £16 5 6 (£87 10 5) said to have been charged in error to the survey, might have been as easily explained—in fact were so, as follows:—A Mr. McDonald was in charge of the Temiscouata Road for the Canadian Government, which crosses the line of the boundary survey, at the same time that the survey was in progress, and the mere fact of some supplies &c, being charged in his name to the survey instead of to his road account, is at once taken as sufficient evidence of error. Whereas, after it had come to the knowledge of Mr. Dawson, that this item was being thrown out, he went to make enquiries at the Department of Public Works, when the Deputy Minister, Mr. Baillairge, informed him that he had had something to do with the overseeing of Mr. McDonald's works on the Temiscouata road at that time, and had a distinct recollection of Mr McDonald having been required to make some roads for the boundary survey, to the right and to the left of his own works to facilitate the transport of supplies to the survey parties on the line. Such an expenditure was undoubtedly correctly charged to the boundary survey and should not have been struck out.

27. This whole deduction, however, of £201 10 3, if admitted, would only reduce the balance due by New Brunswick to £5,404 11 2, and here came the difficulty for the New Brunswick advocates on, or off the Commission. Mr. Dawson had given the balance as having been consented to by himself and Mr. Harding when Commissioners 24 years before at £5,065; but, while ever since adhering to these figures he had always said that it was a balance by agreement, *less than*

*the true one* and only arrived at by a concession which he was allowed to make *on condition* of its being, at the time submitted, *made final*. Here then was his statement verified, and, with all the deductions that could be squeezed out for want of full explanations of the items being now possible, here was the balance of their own making, with all duly authenticated accounts before them, and yet, just as predicted by him, larger than that submitted by Mr. Dawson. How to compass this difficulty was then the question, and the Auditor shows how they assume to have done it.

28. This brings us to the second deduction, in which the Auditor general could not concur, and which has been made upon a pretext so flimsy and absurd and so palpably unjust that it requires only to be stated to be set aside. The deduction consists of a sum of £1,190, for salary of Olivier Fiset, the gentleman who had charge of the accounts and the purchasing and forwarding of the supplies to the parties working in the field, during the three years the survey was in progress. This sum had been attacked formerly by Mr. Harding on the ground that no similar charge appeared in the New Brunswick account; but, as the Auditor justly remarks, it was an essential service and a similar service must have been performed somehow in forwarding the supplies from that province, by some one paid under some other head or, as appears by some evidence taken, by having the goods delivered—*including* cost of carriage,—on the ground.

29. It is difficult to argue against premises so untenable and absurd that the parties acting upon them have been ashamed to state them. It is understood from the Auditors' remarks, however, that the basis of the majority action in this matter was that the Canadian Ex-Commissioner had 24 years ago consented to this deduction and that the item was actually deducted in the account rendered by him. To which it is answered that neither for instance does the Arbitration item of £493 6 8, which New Brunswick had a right to be credited with, appear in that account. The one was just as valid a credit on one side as the other was on the other side. New Brunswick was there credited, as may be seen, with only the bare amount of her expenditure on the survey, £6,095 15 3, leaving out other items, the result of the whole being that the concession made by the Canadian Commissioner, by permission of his Government, was merely a *conditional* but greater remission made by Canada than New Brunswick, to close the account. It has been so stated by Mr. Dawson in every statement that has ever issued from his hands,—and now when New Brunswick has gone back upon that agreement, and denied it, these commissioners come in and say—we make that deduction in the Canadian account because the Canadian Commissioner allowed it twenty-four years ago, but we will not allow the equivalent, though less deduction in the New Brunswick accounts, which we have on the *same authority* as having been the *condition of it*. We deny the agreement in toto, but we will accept what it gave in our favor, and repudiate what we gave up as a consideration for it. Anything more absurdly untenable could not be advanced.

30. The third head of deduction from the Canadian account is so utterly preposterous that it is not worthy of consideration and is a mere blind to cover up \* real reasons for the attempt to justify the New Brunswick Ministers for having sought to repudiate a legitimate debt incurred under an Imperial Statute.

31. To deal calmly with these irrational proceedings it may be asked how the Commissioners—King and Heard—found an excuse for the action taken, but we find none. It was too weak to be reduced to writing by a man of Mr. King's capacity, and we have again to find it in the Auditor's brief remarks:—It was done it seems on the ground of extravagance: 'The evidence of such extravagance is Senator Botsford, one of the Imperial Boundary Commissioners, and himself *responsible*—though he does not seem to have seen that part of the absurdity—for every cent of the joint expenditure as much as either one or both of his colleagues.

32. It is to be regretted, on his own account, that Mr. Botsford has been induced to place himself in a position of invidious comparison with his co-Commissioners.

Mr. Botsford says that Mr. Bouchette's management was extravagant, but when questioned as to particulars he could not name any one thing in which it was so: It was just a *kind of impression he had*; and (although each Province was equally and jointly responsible for every cent of the expenditure) *he had never mentioned it to Mr. Bouchette*. He thought that if New Brunswick's expenditure was £6,000—the Canadian expenditure, through Bouchette, should only have been about £8,000—but it was *only an impression* he had that that should be about the relative amount, he could give no details, nor even a suggestion as to where the extravagance lay.

33. But Mr. Botsford, at the close of the survey, had made a report to his own Government in which he named the figures, in round numbers, and nearly correct, shewing the expenditure of each Province and claiming that the whole survey was cheaply and economically performed; in fact that it was extraordinarily and exceptionally so, in proof of which, he compared its cost with that of the international boundary, run through precisely the same region of country a few years before, shewing that our Provincial boundary survey had cost, mile for mile, only between a third and a half as much: Mr. Botsford was cross questioned as to this report and answered that he still maintained that, taken as a whole, the survey was, as he had thus reported, the cheapest and most economical ever performed, but that his part of it was so *par excellence*! By the very evidence upon which they rely therefore the expenditure was *not* extravagant *per se*; It only assumed the *appearance* of extravagance when looked at in the light of Mr. Botsford's unparalleled economy in achieving a great work with small means—that light coming too from Mr. Botsford's eyes, through Mr. Botsford's spectacles, and with Mr. Botsford for sole witness of the phenomenon.

34. Now, what is Mr. Botsford—who thus challenges criticism—in capacity and experience in relation to a service of the kind? Simply a country gentleman whose experience has been mainly confined to his farm, or town or city life, and the exigencies and surroundings of a settled region of country. If a lumberman of lifelong experience in the very difficult commissariat operations conducted in similar countries to that through which the boundary survey was being run, had been put in Mr. Botsford's place, he might have spoken with authority upon the subject, even with such men as his Canadian colleague. But where was Mr. Botsford's experience acquired?

35. And what was Mr. Bouchette in relation to similar operations? In the conduct of surveys from his earliest youth (under his father, the former Surveyor-General) involving the transport of supplies through all the difficult regions of the country: And from a very early period, up to old age, the acting Surveyor-General of his Province himself, directing every survey, controlling the expenditure on surveys everywhere throughout the now Province of Quebec—checking, guarding,—with vigilant eyes over him—every cent of outlay on all the surveys of the Province, knowing what they should cost in remote and inaccessible regions as well as in localities easy of access and contiguous to settlement, pruning, curtailing, watching the outlay on all for more than half a century to the satisfaction of successive Governments; and now to be told by such men as Mr. Botsford, Mr. King and Mr. Heard (the best of them without the slightest knowledge on such subjects) that his extravagance (unproved and unobjected to even by the man *whose duty* it was to object *then*) was such, on a survey to which his own personal unremitting attention was given, that *they* must disallow his account, and that too *without pointing to a single item* that is wrong or extravagant—and without having heard him,—simply on Mr. Botsford's "*impressions*"! The thing is too preposterous for argument.

36. Now, with regard to Mr. Fisets salary, while employed as a Commissary, or purveyor, it has been urged that New Brunswick had no similar officer, as a reason for disallowing his salary,—Mr. Botsford having forwarded the New Brunswick supplies himself. But what else had Mr. Botsford to do? It will not be pretended that he was a scientific man, capable of conducting astronomical observations. He had of course his position: He was a Commissioner (and increased the expense vastly by interfering sometimes when he should not) but it was but natural that, while the two scientific gentlemen of the Commission were otherwise occupied in determining the niceties of a very absurd description—made by a pedant—of a boundary "tangent to the height of land &c., he should attend to his supplies personally. By his own evidence too, he had the easiest parts to supply, a matter upon which the late Commission (at least as regards two of its members, who had never carried, directed the carriage, nor ever saw carried, a barrel of pork into such a country) was wholly incapable of forming an intelligent opinion: Besides he purchased his supplies, in part at least, as shewn by the evidence, delivered at the scene of operations, which of course involved a corresponding expense in another form to the forwarding done for Canada by Mr. Fiset.

37. But again the question arises was not the supplying done, to some extent in common? Of course the whole service was in common and each of the Commissioners alike responsible for the whole and for every item, unless relieved from that responsibility by remonstrance or protest at the time. But, apart from this, did they not in part at least use the supplies in common, and not only the supplies, but the labour, was not the force employed and paid for by Canada used, at least in part, by the other Commissioners as well?

38. Mr. Bouchette has been communicated with since the sitting of the Commission and it appears from him that while he was in the pursuance of the scientific portions of his duty, taking astronomical observations to determine certain points, Mr. Botsford had got control of his chief surveyor. Mr. Blaiklock, and had been

surveying a considerable part of the boundary line some six or seven miles out of its proper place—all which had to be abandoned and the line resurveyed in its proper position. And again with regard to abandoning the Mistouche in which he got the third Commissioner to join him on account of the facilities, in adopting the Patapedia for the boundary instead,—which caused considerable additional expense, and in which they were both wrong inasmuch as—to avoid the necessity of a new survey, and with Canada's consent, a further Imperial Act had to be passed to substitute the boundary they had adopted, at that point, for the true one—thus vindicating Mr. Bouchette's better judgment

39. It has been said—in fact Mr. King gave it as a reason, immediately after the so-called award had been signed,—that they had to act on Mr. Botsford's evidence, as the evidence of Mr. Bouchette had not been brought before them to convert it.

40. Now,—this is utterly untenable on two grounds.

*First*:—Because on such a Commission, it was the duty of the Commissioners to invite evidence of necessary facts wherever they could find them, when, as in this case there was but *one side* to the expertise. They were told that Mr. Bouchette's evidence was available, but they did not take means to obtain it.

*Second*:—Because in fact Mr. Botsford *has given no evidence*. He was sworn it is true, and favored the Commissioners with *his impressions*. But impressions are not evidence, and Mr. King as a lawyer, knows it. Even if specific on certain points, which they were not, they would not be evidence. Impressions of a general nature, contradicted by facts and figures, audited and accepted by authority of a Government and established by its accounts and books are still less evidence; and the impressions against certain things, of one who was equally responsible for those things against which he was so impressed but did not object to, reach the very height of absurdity when adduced as *exparté* evidence against acts which he was jointly liable for and did not object to at the time when, if his impressions were right, he could have corrected them, or relieved himself from complicity, by the least objection, which he says he never offered. Impressions too of the shortcomings of a colleague, which, when confronted with his own previously expressed and well sustained approval, he still declares to be no shortcomings at all but approved acts of the highest and best character—such in fact as no similar acts in the world could equal and which only fell short in so far as they did not come up to the standard of *super-excellence* of like acts performed by the witness himself—to call this *evidence* reaches a yet more sublime height of absurdity: And yet such is the sole evidence upon which, by their majority report, the Commissioners have taken upon themselves to alter the figures and present a false balance the accounts do not sustain.

41. But they have not even acted fairly upon Mr. Botsford's impressions. He made a *guess* that according to his *impressions* Mr. Bouchette's expenditure, to have made it as economical in proportion as the New Brunswick expenditure, should have been about £8,000. But to improve upon this *guess*—unsustained by exception to so much as a single item of the accounts—the Commissioners have, as shewn by the Auditor, taken in Major Robinson's account in the £8,000, thus reducing Mr.



Botsford's *guess* of what the Canadian expenditure should have been to £6,472 10 0 instead of £8,000. Even Mr. Botsford's absurd guess was not enough to enable them to attain their pre-conceived object.

42. When we come to consider the character of the Commission by which such untenable results have been adopted, it is reasonable to presume that if its conclusions were to be of any binding effect, both sides would have had a voice in its constitution, but looked at even as what it was, a sort of advisory Commission to inform the Governments of the state of the accounts, its constitution was not such as could be expected to afford the means to deal equitably with the creditors of the debt they were appointed to enquire into.

43. In the first place there was Mr. King, the ablest man New Brunswick could supply, and under ordinary circumstances, possibly a very fit person for any task within his knowledge or experience; but as regards this case, a *partizan*, the very head and front of the objecting Province whose absolute refusal to acknowledge the debt at all, was the cause of the Commission, and of which Province he, Mr. King, was Premier, when the long unanswered dispatch, stating the account and the payment required was sent there on 11th February 1878. This gentleman, backed by two of his late colleagues,—one of whom was his successor Mr. Premier Fraser, who replaced him, not as one Premier usually succeeds another, by ousting him from office, but as his former colleague whom Mr. King, on voluntarily retiring for other reasons, placed there to continue his policy,—represented *New Brunswick*: And if, under such circumstances Mr. King, instead of being as he was, the ablest advocate of the views to which New Brunswick Ministers had committed themselves, could have been an impartial judge, he would have been something more than human.

44. The second was Mr. McDougall, the Auditor-General of the Dominion, of whom it need only be said that the mere capacity to fill such an office, and who could have no possible object except his reputation and character as an accountant to maintain, rendered him unobjectionable; and who, if he had any preconceived notions of the case, could only have derived them from having, the first time he had ever known of the case, heard the former New Brunswick Commissioner, Mr. Harding, a year before, give almost identically the same figures as Mr. Dawson.

45. Then there was the third Commissioner, Mr. Wm. Heard of Prince Edward's Island, and how such a man came to be on such a Commission—of all things in the world on *accounts*! it is for those who placed him there to explain.

46. But as this gentleman was virtually the *sole* judge in the matter and could only judge through the eyes or minds of others according as he was influenced in things of which he was incapable of forming an opinion of his own, or even in the least degree understanding,—and as Mr. McDougall had no object to attain by seeking to gain an ascendancy over such mental faculties as he may be supposed to have possessed, this interesting specimen of humanity becomes an object of some consequence, inasmuch as, not wanting in the faculty of *will*, by which some other specimens of animated nature—not of the wisest—are characterized in an eminent

degree, Mr. Heard became in fact, if not according to the light that was in him, at least according to the light that he reflected, the outward dictator and sole judge in the premises.

47. Thus, when it was proposed to enter upon a hearing (which the main time of the Commission was taken up with) of the merits of the old reports which the Commission was specially precluded from entering upon, and it was objected to on behalf of the claimants, the long discussion as to the propriety of such a hearing (which the Government, by the Order in Council constituting the Commission, absolutely forbid) was of course brought to an end when Mr. Heard nodded his wise head and said he would hear it. The fiat of Olympian Jove had gone forth and there was none to say nay, and the hearing of the matter, the Commission was forbidden, by its very constitution to touch, went on for an object it is needless now to discuss, but occupying about three-fourths of the time the Commission sat.

48. The point it is here desired to deal with is, was Mr. Heard competent to fill the position of an expert upon accounts, not to speak of his being on a divided board and thus becoming at the same time the sole arbiter and judge and the tool of those who could manipulate him; was he even capable of understanding the two sides of an ordinary balance sheet? A few episodes which every one present will easily call to mind will solve that point.

49. There was a balance sheet submitted by Mr. Dawson, which had been before all the Governments ever since this matter had been a subject of discussion, and before all the Experts or Auditors who had ever examined the accounts. No one had ever found the mode of making this balance sheet to be wrong. In short it was simply a balance sheet in the only way in which a complete balance sheet could be made.

50. Well, after the whole subject and all the figures had been over and over again discussed in the amplest manner, one evening, just as the Commission was about to rise, Mr. Heard called silence and waved attention, and addressing himself to Mr. Dawson said, that he had been studying over his balance sheet a great deal and had come to the conclusion that it was all wrong and did not truly represent the correct balance the figures used should indicate.

51. Mr. Dawson set to work to try and explain, but the discussion was stopped by Mr. King getting near and whispering on the one side and Mr. McDougall on the other, in which the words were heard dinned into him that if the figures used were correct there was no doubt but what the mode of balancing them was quite correct, in fact couldn't be otherwise, and so Mr. Heard was silenced, and looked grave and wise, but, as will be seen by the sequel, was not convinced, or rather did not understand, and was therefore not convincible.

52. But Mr. Heard was a *good* man—one of those *very good* men who take a delight in being an example to their fellow beings of more frail and erring nature: One who was always careful to let the right hand know what the left hand did and *vice versa*, that the force of his goodness might become a light to others. And so the next morning, before any other proceedings commenced Mr. Heard again called for

attention and silence, while he apologised to Mr. Dawson for having erred in supposing his balance sheet to be wrong and explaining that he had taken it home to his lodgings with him and studied it out during the night with the most anxious care—he did not say prayerful, but he looked it most unctiously—and that he had come to the conclusion that the balance sheet was quite correct.

53. Now, as will be shewn in another paragraph, Mr. Heard knew no more about the balance sheet, or any balance sheet that morning than he did the night before, and was not capable of understanding even that much, although the balance sheet in question was composed in fact of only five items, though indeed, for the sake of clearness, put in two distinct balance sheets, the one being Canada in account with New Brunswick bringing the balance to credit, and the other New Brunswick in account with Canada, bringing precisely the same balance to debit.

54. To shew Mr. Heard's perspicuity in such matters and how much his night of prayerful and anxious consideration had enabled him to surmount his difficulty and understand the accounts,—at the close of the very last meeting before the Commissioners shut themselves up with closed doors to deliberate upon the accounts and after the item in question had been under daily discussion for nearly a fortnight, just as the meeting was about to break up, Mr. Heard again called for silence and attention. He set himself this time to his work, as if to say, "it is no fool's business that has now to be accomplished—I have got at the bottom of it at "last" and placing himself in juxta position to Mr. Dawson as if he would transfix him with the keenness of his scrutiny, and shaking at him the roll of papers he held in his hand, "and now Mr. Dawson" he said (with the air of a Daniel come to judgment and all the gravity of the bird of Athens) "I want you to tell me honestly "what has become of that £2,586 9 4 collected by Canada from the disputed territory"? And Mr. Heard looked as proudly round as if he felt that he had hurled Jove's thunderbolt into the astonished camp; and sooth to say, it is needless to speak of the amazement of all present, for most, if not all had got past that stage of feeling towards Mr. Heard's observations and when Mr. Dawson replied "why Mr. Heard it is the very first item charged against Canada in the balance sheet you "now hold in your hand," the gravity of the position as Mr. Heard pondered over the reply with the most intense look of wisdom that ever adorned the arched visage of his Athenian prototype, was ludicrous in the extreme. (This was the same little balance sheet of five items, it must be observed, as had already cost Mr. Heard at least one such anxious night.)

55. It seemed indeed that the imposition upon a weak and incapable man had been carried so far that he was prepared to go all lengths in what he did not understand and that he did not yet understand a balance sheet of five items is enough to shew that he had no business in that position; for it is well understood that had it suited those who had acquired the control of his mental faculties he would, as shewn in paragraph 9 to have been equally justifiable, have been just as ready to have given the balance the other way with precisely the same force and the same entire want of figures to ~~supply~~ it as used in support of the false balance declared.

56. But the end was not yet: The accounts on being all laid before the Commissioners and pruned to the utmost, still shewed a balance against New Brunswick

*Justify*

in excess of that submitted by Mr. Dawson (as he always said it would be if the condition of the concession he had been allowed to make, were repudiated.) Here was a dilemma; the books and accounts of the two Provinces, each complete within itself, each audited and accepted by the Government submitting it, *each of equal authority*, each on the *same* authority, for the Imperial Commissioners were each and all equally responsible for the whole outlay, and yet, there stood the balance, larger than the conciliatory one Mr. Dawson had been allowed to present as a concession to New Brunswick, but which her Ministers had so imperiously rejected. Mr. Dawson had been roundly abused and vilified for years for having trumped up a debt against New Brunswick; but lo! there are the accounts from the books and ledgers of the Governments, with which he had never any concern, representing an expenditure, which he never had any hand in, and yet there are the figures from both Governments and just as he said, a debt due by New Brunswick larger than that submitted by him, the difference being due to a concession obtained by him, conditionally, from his own Government in her favor.

57. This was indeed a dilemma, but Mr. King and his confreres, with the aid of Mr. Heard, were equal to the occasion. They were in a false position; they had repudiated absolutely a debt for which the facts and figures, under an Imperial Statute, were now confronting them, by which it was fully substantiated, and something must be done, if not to justify them in the wrong, at least to mitigate the force of their discomfiture. They had to acknowledge the debt,—that was clear, but if instead of its being in fact greater than the amount they had utterly and wholly denied owing they could only shew that it was less, there would at least be something to claim as the result of their denials. But how give explanations? The figures were there and they could not alter them and they could not explain them away, so they ignored them and by the majority report of the Commission, *simply declared a false balance which the figures did not sustain*. It is useless to attempt any other construction: Mr. McDougall's explanations of *how* they did it,—are not their explanations. Mr. Botsford's testimony is not referred to, and if it were, it is no evidence at all and *does not affect a single item of the account*, and there is not the slightest attempt to deprive the report of its true character: *It simply reports a balance in conflict with the figures from which it is drawn,—a false balance!*

58. It would perhaps be unreasonable to expect of Mr. King, who—although Canada had no exponent of her views there—was on the Commission expressly as the representative and exponent of the views of the New Brunswick Ministers—of his own and his colleagues views in fact—that he should at once frankly acknowledge his own and their condemnation. It was going at least a certain length on the right road to admit at all a debt they had so strenuously denied, and if Mr. King found an instrument, ready made and facile to his hand, which he could mould into an apology for the course they had pursued by erroneously shewing some gain where the true figures shewed a loss upon the issue they had raised, how many are there who will not say, not that he did right, but how few perhaps, situated as he was, would have done otherwise? To have done so would have required the high standard and self abnegation of a man as clever as Mr. King undoubtedly is, and as good and true as Mr. Heard would like the world to believe him.

59. With Mr. King therefore, bound to do what he could to exonerate himself and his colleagues, it is quite clear that Mr. Heard was sole judge, and who is there, it may be asked, having pecuniary rights and interests at stake, and knowing the man would for a moment intrust them to his judgment? or rather to whosoever, interested the other way, with a smooth charm of manner and a magnetism sufficient to control weaker natures, became enabled to speak through his voice. No confusion of ideas in respect of the claimants or the Provinces of Quebec or Ontario, or the late Province of Canada can alter the fact that the Dominion is the creditor, bound to exact—and with the power to exact—the amount due by New Brunswick, the debtor. True the Dominion is in turn the debtor, bound to pay over the money to the claimants representing the original creditor—and equally so bound whether she collects it, or by her remissness fails to collect it, for by the British North America Act, she became liable for it. The basis of the debt is of course the unsettled balance of account between the late Province of Canada and New Brunswick before the liability was changed and the Dominion became, under the law, the sole acting creditor of New Brunswick and at the same time the sole debtor of the representatives of the late Province of Canada: And thus, in whatever terms conveyed—it is not to be supposed by the design, but by the accident of the Commission, with the debtor having a voice upon it to neutralize the third, Mr. Heard became the sole *Steward of the Dominion* to take an account of the amount due. Mr. King was the embodiment of the debtor and Mr. Heard tells him, like the mirror reflecting the shadow it received from the substance, that he shall only pay a part of the debt, and Mr. King finding the reflection from his own mind complete, no third voice was of any effect.

60. This mode of disposing of a debt due, upon the balancing of specific accounts, resting *on each side upon the same specific authority*, is something unparalleled in the jurisprudence affecting transactions between debtor and creditor. But no! it is not quite unparalleled: There is a precedent: There is a like instance quoted, though not exactly with approval, in an old book which the *good* man Heard, will surely acknowledge to be an authority.

61. A certain rich man called upon his steward to see how his accounts stood, and the Steward getting somewhat mixed, but with a shrewd eye as to how he could best have his bread buttered in the future, bethought himself what to do: "So he called every one of his Lord's debtors unto him, and he said unto the first how much owest thou unto my Lord? and he said an hundred measures of oil: and he said unto him, take thy bill and sit down quickly and write fifty." And so Mr. Heard, the Steward of the Dominion, says to Mr. King—the representative of the debtor—"how much owest thou (New Brunswick) unto my Lord (the Dominion)? and he said (as by the books) \$22,021.25: and he said unto him, take thy bill, and sit down quickly and write \$7,734.63;" "and the lord commended the *unjust steward*"—but that was irony: What will the Dominion do in the like case?

62. It is not necessary, to complete the parallel that we should infer that Mr. Heard was "*unable to dig*" or that he was "*ashamed to beg*," or that in modern nomenclature, he wanted a situation, and therefore sought to "*make friends with the mammon of unrighteousness.*" the text is in itself quite apposite, complete and ap-

propriate without trenching upon that intimate perception of human nature, and its motives, St. Luke so graphically describes.

63. But there was a refinement in this modern instance in which the Scriptural text is quite wanting. In these our times, the possession and use of money, *is money's worth*. New Brunswick had already paid interest on a part of the same transaction, and by so doing had acknowledged that it was a legitimate charge upon her, and it was computed from precisely the same day as this became due, the 12th November 1856, until it was paid. This interest was not in dispute, but it must be got over some how. It could not be said that the debt had only accrued to day. Oh! no, the *goody good* man Heard, *he* would not tell a lie. Mr. King could not for his own sake say flat out out, "we have used your money but we will not pay for it." That would place his Province, or what might be of more consequence, himself and colleagues, in a false position in relation to existing facts, that need not be discussed, but his ingenuity was again equal to the occasion, and so it was recorded that the balance named (accrued 24 years ago) was due "AS OF" to day!! The idea was a brilliant one, of which no one will accuse Mr. Heard, to attain such an object and save the *goody good* man's conscience, who could not of course, like the "unjust Steward" of old, be in want of another situation, or seeking to make friends with the mammon of iniquity. \*

64. True there was no transaction of to day pending, nor had there been for 24 years; true also, the very Province whose interest, at the time of the transactions, in the debt due was being considered, had ceased to exist for 13 years, and the successors to her assets had, years ago, transferred this part of the estate they had inherited from her, to the present claimants, true also, New Brunswick had been dunned and badgered for the money and an account submitted to her by the Dominion Government demanding payment with interest from 12th November 1856—reminding her at the same time that even that was less by about 12 years than the time for which she had actually had the use of the money—and yet, according to the ingenuity of Mr. King, all this was transformed by his wand of office into a transaction of "to day" by the use of the two little syllables "AS OF" a device which can hardly be said, after all, to afford even a peg to hang an argument upon and is as little likely to have any permanent effect as it is calculated to add to the dignity of Mr. King's standing and position. It was the transactions of the period *as stated in the demand made*, and nothing else they had to decide upon.

65. The Auditor, however, further goes on to state his understanding that the \$7,734.63 is not really the so-called "award" of the majority report of the Commissioners, but that they had taken into account payments made in driblets by the Dominion Government on account, since the passing of the Order in Council of 30th August 1877, which were not in dispute at all. Now it is rather unfortunate that everything upon which the majority report would appear to have been based, requires another report to explain it. They—the Commissioners, were, so far as one party to the question could make them so, experts upon certain matters "in difference" and so, to make their report good for anything, bound to specify the matters "in difference" upon which they arrived at a conclusion. The pretensions of New Brunswick that led to the Commission took the ground that there were

\*:— Should be "as of this date" - an error of words, not of sense - willless before true copy obtained, corrected in proof, but in the meantime

many most important matters "in difference"—not as regards the payments that were being made on account, but as regards the right to make any payment at all and affecting the very basis of the debt claimed to be due, and yet the report of the Commission tells of nothing. Their finding, as already stated, might just as well have given the balance the other way, and for anything it contains it would have been equally valid. These advances were not "in difference," but, as the Auditor explains it, they must have desired to make them bear some inexplicable relation to the amount out of which they were paid, so as to leave the matter in obscurity. *it was the balance due on 12th November 1856, resulting from the then state of the accounts, and nothing else, they had to deal with.*

66. In order therefore to a full understanding it is as well here to state at once the true condition of the account as it existed before and as it was finally accepted by the Order of the Hon. the Privy Council of 30th August 1877, as between the Dominion (the present debtor, by assumption of New Brunswick liabilities at confederation) and the present creditors. By this it will be seen that the matters "in difference" (if there were any, which have never been specified beyond a broad denial of her debt) had nothing to do with these advances, but only with the debt existing at the period of the Dawson—Harding adjudications of 12th November 1856, as finally acknowledged by the Order in Council of 30th August 1877, and communicated to New Brunswick by despatch requiring payment.

67. The account thus acknowledged then stood

Balance due by New Brunswick 12th November 1856.....	\$20,263 31
Interest at 6% for 21 years.....	25,531 76

\$45,795 07

the Order of the Hon. the Privy Council further found in effect, that although there was presumptive evidence that the late Province of Canada had intended to give up this debt as a compensation to the claimants for the injury and wrong done to them by New Brunswick, there was no such specific transfer of it as would justify the Dominion Government in paying it to them without the concurrence of Quebec and Ontario, as the successors to the assets of the late Province of Canada. This concurrence required a long investigation and trial before the Executive Council of each of the Provinces, especially Ontario, where the question was not as well understood, but it was finally procured, and the Order in Council of 30th August 1877, its conditions being then fulfilled, *was thus made absolute.*

68. It was thought desirable however, that before payment should be made, New Brunswick should be apprised of it, not because of any doubt as to the account or the liability, but merely as *a matter of comity*, and that Mr. Dawson should go and explain the position and accounts to the then existing administration there. Out of this arose the first advance.

69. Mr. Dawson objected that the time (two years) already occupied in bringing the matter to its then position had been so great, and the outlay, which had fallen entirely upon him personally, necessarily corresponding thereto, that he had to decline proceeding further: Seeing however, that although the entire debt had

been given up to the claimants, the principle of distribution of it which had been adopted by the Order in Council of 30th August 1877, left the aggregate amount of the claims something short of the total amount of the New Brunswick debt, it was determined in the meantime to pay this surplus on account towards expenses incurred in prosecuting the matter to the position it was then in. It was on this distinct basis and the exhibit made by the following statement of account that it was asked, *and the granting of it made another distinct acknowledgement by the Dominion Government, of the specific amount of the debt—principal and interest—then due.*

70. The account then stood thus :

Original balance due by New Brunswick on 12th November 1856. . . . .	\$20,263 31
Interest thereon at 6%—21 years. . . . .	\$25,531 76
<i>Less</i> , advance made towards costs, and charged to New Brunswick. . . . .	2,940 00
	\$22,591 76
Leaving still due by the Dominion Government on account of New Brunswick. . . . .	\$42,855 07

A little more than sufficient to meet

Amount payable to claimants on mode of distribution adopted, as per schedule incorporated with Order in Council of 30th August 1877, \$42,814 44 and the above advance was accordingly made on the above statement of account as per Order in Council of 6th February 1868.

NOTE.—To keep matters perfectly clear, it may be stated that the amount due by New Brunswick, is calculated for 21 years exactly, to 12th November 1877—while the amount due the claimants is taken exactly as it stands in the schedule forming part of the Order in Council of 30th August 1877, which it will be seen is calculated only to 12th August 1877.

71. Further advances as follows were made of \$500 on 22nd August 1879—of \$1,250 29th October 1879, and of \$3,000 on 10th December 1879, all which, taken together, in their proper connection, in furtherance of the Order in Council of 30th August 1877, will shew the following as the true state of the account on the day the majority report of the Commissioners was signed, instead of the false balance thereby returned.

DOMINION GOVERNMENT IN ACCOUNT WITH CLAIMANTS, DR.

72. To amount due by Dominion Government (on New Brunswick account) as already calculated to 12th Nov. 1877,	\$45,795 07
“ “ Interest continued to date of Commissioner's report 21st May 1880. . . . .	3,069 45
	\$48,864 52

BY PAYMENTS ON ACCOUNT, CR.

By amount paid 6th Feb'y 1878. . . . .	\$2,940 00
“ “ Interest to 21st May 1880. . . . .	403 43
“ “ paid 22nd August 1879. . . . .	500 00
“ “ Interest to 21st May 1880. . . . .	22 42
“ “ paid 29th October 1879. . . . .	1,250 00
“ “ Interest to 21st May 1880. . . . .	42 11
“ “ paid 10th December 1879. . . . .	3,000 00
“ “ Interest to 21st May 1880. . . . .	80 42
	\$8,238 38



Balance due 21st May 1880 under Order in Council of 30th August  
 1877—concurrence of Quebec of 3rd November 1877 and of On-  
 tario 2nd January 1878, and Dominion despatch to New Brunswick  
 of 11th February 1878..... \$40,626 14  
 False balance rendered by Commissioners..... 7,734 63

Error by suppression of figures..... \$32,891 51  
 No expert or accountant in christendom can alter the above statement of account,  
 by so much as one cent, nor question the authorities on which it is based.

73. In an ordinary commercial account, however, the continued interest would be calculated on the amount of the account made up viz: on the \$45,795 07, instead of on the original capital of \$20,263 31, which would make a difference and considerably increase the debt due on 21st May last. The claimants are, however, in equity and justice entitled to much more than that. New Brunswick, having denied the balance submitted as having been agreed to by Dawson and Harding, it was answered by the claimants—"very well, reject that balance,—go back to the "accounts and you will find the balance heavier against you." New Brunswick has done so; she has accepted the challenge: she has ignored the Dawson-Harding balance, and just as foretold (the false balance by the recent Commission, to the contrary notwithstanding) the balance is heavier against her, and it is but just that this *true* balance covered by the accounts, as insisted upon by her, should now be adopted, which would make a difference at simple interest all through, of \$4,239 24, making the total balance on the day the false balance was signed, on the account current \$44,865 38 (this is after rejecting all the figures the Auditor agreed to reject though the propriety of their rejection without further evidence is not concurred in.)

74. The claimants are also entitled to compensation for the enormous expenses to which they have been subjected in prosecuting this matter, at long or short intervals ever since the Dawson and Harding report of 12th November 1856, and having to employ, in order at all times even to get a hearing, high and influential counsel, some of whom, on certain occasions, on the eve of apparent or *certain success*, have had to drop off because of becoming Judges or Ministers, while some have had to give up from sheer disgust and exhausted patience through obstacles thrown in their way, emanating from what should be positions of high dignity and honor,—which it is to be hoped it may not be found necessary to deal with on their merits, to the great scandal, as it would be, of public morality and personal good faith; all those so employed have been, or have to be paid for their services and expenses incurred, which it is needless to say the so-called award of the late Commissioners would not nearly cover.

75. And then we have Messrs. King and Heard declaring that what they admit to be a debt that could only have accrued over 24 years ago, has only become due "*as of to-day*," in order, by such a silly fluke, to throw out the interest, while even within the last two years the claimants have from time to time *raised money for short periods on the distinct and frequently repeated promises of almost every member of the Government*, that the matter would be settled and the debt paid within a brief

period, which promises remaining unfulfilled have subjected them—and disinterested parties who have acted solely on Ministerial promises—not only to interest, but to compound interest and *shaves* to keep paper afloat, and not only that but serious damage and loss of credit besides.

76. In drawing to a conclusion therefore, it must be reiterated in the most forcible manner, that the majority of the Commissioners have misconstrued their powers. The Government in nominating the Commission and defining its powers was most careful to withhold from them the power to revise any action of the Cutler and Dawson and Dawson and Harding Commission, and it may be fairly assumed that the Government could never have entertained the idea that, while thus restricted from any revision of the acts of the inferior Provincial Commission, they could conceive themselves at liberty to cancel the acts of the Superior Imperial Commission accomplished within the specific provisions of an Imperial Statute.

77. But more than this, the creditors who were invited to be present, were never made aware of what the matters "*in difference*" were. There was a very tedious discussion, while some very long evidence was taken on the very matters the Commissioners were, by the terms of their Commission, precluded from entering upon or "*re-opening*;" and also as to whether the balance unofficially reported to have been agreed to by Messrs Dawson and Harding should be accepted: The decision was against its acceptance and the accounts were entered upon, but after this, in dealing with the accounts, no one representing the Creditors was admitted to the deliberations, and it can be most solemnly affirmed that they are to this moment in utter ignorance of what the matters "*in difference*" actually were.

78. The Premier of New Brunswick and the President of the Council however, had all the papers put in their hands, to formulate their case upon and state their objections, and, after they had examined them, a statement of the matters "*in difference*" was duly and daily asked for on behalf of the Creditors, and only on the last day save one before the close of the Commission obtained, but was asked back within an hour, presumably to be amended, but was never shewn again, and the Creditors are prepared to shew that it had nothing in it in common with the chief grounds on which the minority report informs us that the majority report was based, nor with the original ground of an offset, *nor, in any form, with the result arrived at*. The majority report therefore, not having been arrived at in consideration of any matters "*in difference*" in the sense of their Commission, but in consideration of things never known nor communicated as being "*in difference*," or else in consideration of matters "*re-opened*" and entertained by them, (which were in fact the only matters fully discussed before them) in defiance of the specific terms of their Commission, and hence *ultra vires* of their powers.

79. It would be a new doctrine to maintain that in any case, or under any circumstances, the debtor should appoint his own nominees to say whether his debt should be paid or not, or how much of it should be paid: The business relations of commerce would be disorganized under such a system: and were the initiative taken by the Government in establishing such a means of repudiating in whole or in part a debt that in the first place rested on an indisputable basis and in the second place had been acknowledged and acted upon by the Government itself,

and, with its consent, had become a negociable security in the hands of the public, the germ of that confidence that holds modern society together would be struck at its root, and the downward career of a people whose Government could introduce and act upon such a principle, without speedy re-action and retribution, would be fatally begun.

80. That such doctrines should, in this Dominion, obtain a moment's intelligent assent of a Government, or even of one solitary individual, is simply impossible; and yet, up to the present point, that is actually the position in which this case stands;—and such an anomaly can only be attributed to some gross misapprehension of some one, here or in New Brunswick, who has in the first instance been so misled in the matter, and so indoctrinated with the false premises set forth, as to be unable to get rid of the halucination.

81. The false view so absurdly got hold of in New Brunswick, as already explained, seems to have been that Mr. Dawson had some how so manipulated the accounts as to bring an undue amount against her;—whereas the recent Commission has at least brought out the fact that Mr. Dawson had nothing whatever to do with the accounts except to strike a balance from figures supplied to him by the accounts of the Imperial Commissioners, and that he did his best in the most friendly spirit to lighten the burden to which New Brunswick's own acts had subjected her: and the accounts being now established from the authentic records of the Government by this Commission (notwithstanding the foolish attempt of the two Commissioners to ignore them) the sooner any one who has opposed payment under the fallacious impressions so long interwoven with the case in his mind, is now enabled to look squarely at the facts and rid himself of all the chrotchets that have been imposed on him, the more creditable will it be to him. To be misled, or to misunderstand an account is one thing, but to resist payment of an established public debt, or to repudiate it in whole or in part by such means as have on this occasion resulted in returning a false balance is something that can never be allowed to demoralise this community.

82. This language is perhaps strong, but it is justified: the late Commission (notwithstanding the foolish report) has so strengthened the position as to make it unassailable. The debtor has failed to prove—even to submit an offset: The Commission has caused the old books, ledgers, accounts, vouchers &c. in the Government archives to be exhumed, and have thus proved the accounts that prove the balance. The creditors are therefore entitled to use strong language and demand that the debt be paid and the Government might just as well order a cargo of Railway iron and after it has been securely spiked to the railway ties, refuse to pay for it as to refuse this.

83. This affair has nothing whatever to do with party politics, but only with the political honor and good faith of all parties holding high position in the state. Corporations do not die by personal changes in the corporate individuality and Governments do not die by political changes in the Administration: Hence these remarks have been carefully guarded not to distinguish between the personal individualities of which the Government is made up at one time and the collective individuality of the Government at all times: The act of yesterday lives as the act of

to-day; and the Order in Council of 30th August 1877, is of precisely the same force as if the ink with which it was written was not yet dry upon its pages; while the absolute failure to find the smallest error in the well considered analysis of facts incorporated with it, by the deadly onset made to break it down, only tends to make more imperative the immediate action it requires; and the mandate of two irresponsible individuals that only a part of the public debt shall be paid can only be looked upon as alike insulting to the honor and intelligence of the Government.

84. While justly claiming therefore, that payment should be on the basis of the increased balance which the figures New Brunswick has insisted on going into, exhibit—that interest should run on the total amount due on 30th August 1877, from that date, and that the costs and expenses of this long prosecution of a just debt, should be fully compensated, all which are within the most ordinary principles of commercial intercourse, commercial honor and common integrity, the creditors nevertheless, for the present, adhere simply to the terms of the Order in Council of 30th August 1877 in their most limited sense, as calculated at page 28 which no manipulation of figures by any competent accountant can alter in the slightest degree.

85. For that at least they have a liquidated Dominion debt due to them, evidenced by a Dominion obligation emanated from the Hon. the Privy Council and surrounded by all the requisite formalities,—conditional in the first instance it is true, but with the very onerous condition fulfilled, at heavy expense to the creditors, to the declared satisfaction of the Government and thus rendered equivalent to a Government bond, the chief item in which has been treated as a negotiable security and actually been negotiated by a broker on the open market with the knowledge and consent of the Dominion Government. It is useless to discuss it,—such a debt *must and will be paid*. It is not creditable that Ministers should so slowly inform themselves of the true state of the case as to permit its being for an hour unpaid, but *that it will be paid is just as sure as that to-morrow's sun will rise, and just as safe as that the bonds maturing in the hands of the Barings or the Glyn's will be paid, for it rests on precisely the same basis, the faith, the honor and the credit of this Dominion.*

86. Nay—while it is to be regretted that anything should be higher—it rests on higher security even than that, on the Imperial Statute enacting that the survey should be made, that the expenditure should be incurred, the proportions in which it should be paid, and the carrying out of that service and expenditure by Imperial Commissioners, so selected that, while doing the work jointly and as *one operation*, there was one Commissioner to watch the interests of each Province, and one for the Imperial Government, so that an acre of land beyond what the Act gave should not be taken from either without the means of remonstrance and immediate appeal, and not a dollar of money, *of which each had alike to bear one half*, improperly expended without the like means,—*the like DUTY*—of immediate remonstrance and protest, and the settling of the matter by the *same commissioners, who alone*, or a majority of them, were competent thereto, unless by further appeal, first to the Provinces and finally to the Imperial authorities, as was done with regard to the difference on the territorial part of the question.

87. On that higher security, were it possible that the Dominion could—which

it is not for a moment intended to insinuate—forget what is due to her honor and good faith, the claimants would be enabled to fall back, and to that higher authority appeal for redress for the debt due to them under the Imperial Act, the Imperial Commission and the transference from the original creditor to them. In that case they would be compelled to shew, what they are well aware of in all its details, but which has not here been touched upon, the personal and unworthy motives which have entered into the opposition that has deceived the Government into its otherwise unaccountable delay in the payment of its acknowledged and long matured obligation. That such a course should indeed become necessary, they, however, entertain no apprehension—for this Dominion will never be permitted to fall into *the position of communities where personal intrigue can tamper with public honor*, or the public creditor be defrauded of his due and a public debt repudiated to gratify the malice, the caprice, or what any man, however high he may be, may think to be his individual advantage;—in that—most unexpected event, however, the claimants undoubtedly would avail themselves of an appeal to the higher security of the original source of the obligation in the most perfect confidence that their grievance would be remedied, the debt paid and a benefit conferred upon the Dominion—if so far forgetful of a just obligation as to render this possible—by an example that would not bear repetition, while to any one who, for the purposes indicated, had brought discredit upon her, the only possible result would be found in *personal dishonor and political death*.

88. Frequent references made to New Brunswick, in these remarks, in any way seeming to reflect upon that Province, must be understood simply to apply to those who, at one time or another, have secured the reins of Government to her misfortune. The people of New Brunswick are as high minded and honorable as any in this Dominion and as able and willing to pay their just debts. It was not the people of New Brunswick who first inflicted the grievous wrong in which the present difficulty originated, and aggravated it by the greatest interprovincial discourtesy, but a set of irresponsible men who controlled her affairs in defiance of popular opinion: and it was only after the overturning of the old order of things in 1854-5 that popular opinion was first brought to bear upon this matter and that measure of justice initiated, the full fruition of which has been prevented, and even the compensation Canada has been willing to pay, out of her own money due by New Brunswick, retarded through means and influences it is to be hoped that it may never become necessary to scandalise the public ear by exposing.

Praying therefore for speedy payment of this long overdue debt and such compensation for the outlay and delay incurred in prosecuting it, as may be just and reasonable—the foregoing is

\*Respectfully submitted,

JAMES TIBBITS.

\* In the evidence taken before the Commission an entirely new feature in the case was brought to light viz: that New Brunswick did not make a correct return to the Cutler and Dawson Commission of the revenues collected from the disputed territory. It appears that the true revenue she derived from the timber cut on the disputed territory was levied in the shape of an export duty, and this was collected on all that timber in addition to the "fines and penalties" but was not accounted for to the Commission. By the true spirit of the Cutler and Dawson report therefore, the whole of the "fines and penalties" (instead of a part constituting the excess over "full duties") should have been refunded and the "full duties" collected upon export should have passed into the joint fund. This is a grave question for New Brunswick, but of course it cannot affect the present issue as it stands.

