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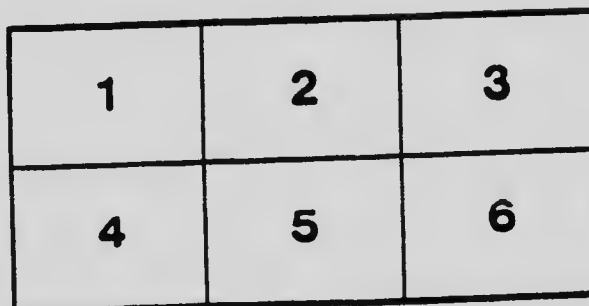
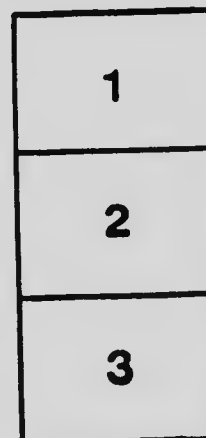
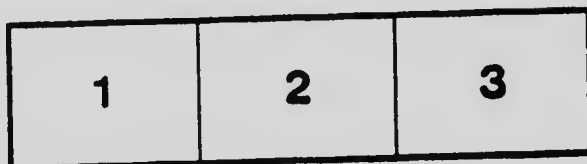
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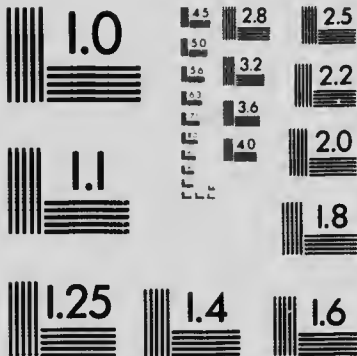
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CHIGNECTO RAILWAY

PRIVATE.

**NOTE of an Address to
The Honourable the Council
by A. D. Provand.**

OTTAWA, 8th MAY, 1912.

THE CHIGNECTO RAILWAY

After thanking the Council for graciously permitting him to address them on behalf of the Bond and Shareholders in the Company, and offering to answer all questions put to him in regard to any point he might overlook Mr. Provand said:—

When the investors in an important public work have been forcibly compelled to abandon it after expending all their capital as we did with the ship railway, the question naturally arises as to who was responsible for the failure. That responsibility must rest entirely on the Canadian Government.

Firstly, for the origin and promotion of the ship railway;

Secondly, for the stoppage of construction after about three-fourths of the work had been done;

Thirdly, for the non-reinstatement of the Company with its charter and subsidy when in compliance with an Order-in-Council we were ready with our capital to resume construction and complete the railway.

May I here say a few words personal to myself and why I became a Director? I found that the Canadian Company created by Parliament to promote the undertaking numbered 18 incorporators whose names were in the Act and included engineers, merchants, ship owners, members of the Nova Scotia and New Brunswick Legislatures, the Premier of New Brunswick, a former Governor of Prince Edward Island and Judges of the Courts of New Brunswick and Nova Scotia. With two exceptions the 18 were all connected with the Maritime Provinces.

The first proposition was a ship Canal brought before Parliament in a speech from the throne by Mr. Mackenzie (p. 3)* who would have built it if practicable for the estimated sum of five million dollars, but as the cost might have been nine or ten millions the Railway was adopted for three reasons; more practicable, much cheaper, and London was to find the capital. The 18 incorporators were merely parliamentary machinery to bring this about.

With the good wishes of Sir John Macdonald and the Hon. Alexander Mackenzie, which they expressed in Parliament (p. 5) Mr. Ketchum came to London bringing the five Dominion Acts and an Act of the Nova Scotia Assembly, a Resolution of the Cumberland County Council, Reports of the Royal Commission of 1871, of Mr. Schreiber, Government Engineer, and of Mr. Johnson, Government Statistician, with statistics of probable traffic. The Subsidy Act stated that the subsidy was granted in consideration of the great advantages which would accrue to the Maritime Provinces from the construction of a ship railway. There were also resolutions of public bodies, boards of trade, press opinions,

*The bracketed numbers refer to pages in the printed Company's Case.

statements of public men and other evidence of the railway being a necessary public work. On page 8 of the printed "Press Opinions" there is the resolution passed by the St. John Board of Trade in favor of the scheme, and on pages 7 and 8 two articles from the "Montreal Herald" and the "St. John N.B. Telegraph" advocating its construction.

The Prospectus includes a map showing the geographical position of the railway and how hundreds of miles would be saved by vessels using the line instead of sailing around Nova Scotia. There were also embodied in the Prospectus reports of Sir Benjamin Baker, the eminent civil engineer, with the Governor General's signed approval of the plans, and references to the statistics prepared by Mr. George Johnson.

It was no hasty promotion by the Dominion Government. Consideration by Parliament commenced about 1880, and it was eight years afterwards when the last of the Company's five Acts was passed by Parliament (when they had been considered during seven sessions).

With all this undoubted official evidence of the genuineness of the project I agreed to be a Director. My name is on the Prospectus, of which copies were sent to the Government. The Subsidy Clause in the Act is set out and every dollar of the capital was therefore subscribed in reliance on it. The subscriptions were paid to the Bank of Montreal, the Company's bankers. I took £1,600 in preference shares and paid £1,600 for them, pound for pound, and hold them still. I never sold one.

In reference to the preliminary work by the Government in Canada before we took up the business, Sir Charles Tupper, referring to the stockholders, said (p. 21) that:

"They have entered upon the measure upon no imperfect calculations, every means that were possible or could be taken to warrant the enterprise being presented to capitalists as a sound enterprise were taken."

And I presume no one will question the above statement. We certainly had every assurance of it from the Government and in good faith supplied the capital. Let me add that Sir Richard Cartwright in speaking in the House afterwards referred to the association of the Government with the Railway and that granting the subsidy would imply to English investors that the Government believed it to be a valuable work and reasonably profitable (p. 7).

* * * * *

For the stoppage of the work the Government is also responsible. Particulars are given on pages 8 and 9 of the Company's Case of how the Government had mistakenly amended the General Railway Act, which prevented the Company issuing its bonds. This was the sole cause of the Chignecto Company's troubles, and four years after the amendment was passed the Government

admitted that it had been a legislative error and they repealed it in 1892 (p. 9).

The Government promised by Order-in-Council to reinstate the Company, when they were ready with the capital to recommence construction and finish the work. We cabled in June, 1894, that we had secured the capital and made a contract to complete the Railway, but Sir John Thompson replied that it was then too late to consider the question, and Parliament prorogued on 23rd July. Sir John's death afterwards caused a further postponement and in 1895 the Government for its own financial reasons (p. 11) again postponed reinstatement until 1896 when it tried to keep its promise, but the Bill introduced to revive the Company's charter was defeated by one vote on a snap division.

The Government then by Order-in-Council recorded the fact that the Company had secured its capital before the 1st July, 1894, and was bona fide desirous to complete the undertaking and recommended Parliament to reinstate the Company, but the general election which followed brought in a new Administration.

I have briefly stated how the project came to us and summarized what took place with the Government down to the general election of 1896. The origin and promotion was that of the Government and the unfortunate amendment to the G. R. A. was also theirs.

The Government officially recognized the thoroughness of the Company's work and (p. 10):

"That the suspension of the works was owing to unforeseen circumstances."

and that the delay (p. 12)

"had been owing to circumstances beyond the control of the Company."

The Company's moral claim was admitted in the correspondence with the Government (p. 11) which would undoubtedly have kept their pledge and reinstated the Company but for the result of the general election in 1896. On this point Sir Charles Tupper said:

"That they (i.e. the Canadian Government) will give you whatever extension of time is found necessary to enable this enterprise involving such a large amount of money which in good faith has been expended to be carried to successful completion I entertain no doubt whatever."

* * * * *

Soon after the new Government took office I laid the Company's Case before them. They replied refusing to renew the charter, but suggested another settlement might be come to. The Company, therefore, renewed the offer to complete the railway or to accept two million dollars compensation towards meeting

part of their loss. Neither offer was accepted. Nor was our offer to refer the claim to arbitration or to a committee or to a judge. (p. 12).

In our view the late Government was morally bound by the Order-in-Council of the previous administration to make such reparation to the Company as they could by reinstatement, because it was the Government's own mistake amending the G. R. A. that destroyed the Company. But they refused to do so and for their refusal gave two reasons:

Firstly, because the railway might not be a commercial success. But it was the Government's own scheme which they knew might not at first be profitable, and therefore subsidized it just as in the beginning steel works, lead mining, petroleum wells and other enterprises have been subsidized.

But our claim to consideration is far stronger than companies engaged in such industries which are formed to take advantage of terms offered in general Acts to anyone while the Chignecto Acts were special and exclusive to construct a special work.

Their second reason is stated in the Order-in-Council of 27th January, 1898. That the renewal of the Company's charter

"was defeated in Parliament in 1896 on the express ground that a renewal of the charter might involve a renewal of the subsidy."

But the O.-in-C. did not state all the facts, namely, that the Opposition called the division and voted against the Bill which was thus defeated on an unexpected snap division. Treatment without precedent. Never before was a Railway Bill so dealt with on its second reading.

The Company's case at length came before the House on 10th June, 1903, and Mr. Fielding confirmed their Order-in-Council to which I have just referred, in these words:

"This Government took the ground that whatever might be said in favor of the scheme in earlier days—and I do not wish to go into that—it was now pretty well admitted by business men that the scheme was not a sound one, and therefore we felt that we should not give it a new lease of life in order that other people might be induced to put money into it and throw good money after bad."

Such words did not mislead anyone. Our four million dollars of good money were already in the railway and a reinstatement of the Company would have enabled it to earn the subsidy of three and a half million dollars, one million of which would have completed the railway, leaving two and a half million dollars for the stockholders. Therefore it was not our money that was to be saved, it was the money of the Government.

Let me refer to what the Company had done to show how well it deserved very different treatment. On terms which were really settled by the Government, we expended four million dollars on their scheme, as they wished it spent according to plans to which the Government had given their approval and—please note—the Government was not to pay the whole subsidy but only the balance, which added to the net earnings, would make up the amount. Any excess had to be handed to the Government until they were repaid the whole sum they might have given to the Company. The tolls to be charged were also subject to Government approval. Moreover, the subsidy was only payable when the line was finished and while operated to the satisfaction of the Government. No risk of any nature or kind was taken by the Government beyond payment of the subsidy provided the railway was built and worked entirely to their satisfaction, and the first year it was to be on trial. And it was for doing such service to Canada on these terms that the Company's property was practically confiscated.

Besides the foregoing the Company paid in Duties and for I. C. R. charges about \$650,000 which with interest now amounts to more than twice that sum. Therefore, while the Government's legislative mistake wrecked the Company, the Government itself obtained and he'ds a large profit made out of the business.

* * * * *

Besides the three important points in the Company's Case, namely, the promotion of the railway, the stoppage of construction and the refusal by the Government to reinstate the Company, there are several other features in the case to which I wish to call attention.

Many misstatements were made regarding the Company, one was—and it was many times repeated—that we had received several extensions of time to complete the railway. We received only one extension. It was for one year, in 1891, and was for the reasons fully stated in the House by the Finance Minister, namely, the difficulty of obtaining labor on account of the extensive railway building going on in that part of the country, also on account of the extraordinary wetness of the seasons, and lastly, because to get solid rock foundation the excavations of the docks had to be carried 24 feet deeper than the preliminary borings indicated would be necessary. Overcoming these difficulties cost more in time and greatly more in money, and no government could hesitate for a moment to grant all the time required to do such work. The British Government has probably carried out more work of this character than any other, and I interviewed Sir Ewan McGregor, permanent secretary (now retired) of our Admiralty, who told me they had never refused time to a contractor doing such work, as no one could tell what difficulties might be met with in construction under water. And he also said they had never deducted one shilling in penalties from a contractor. Extending the time by one year for the reasons stated was therefore not a concession for which the Government

was entitled to any special credit. We were spending our own money and were entitled to all the time necessary to complete the docks. No one in Canada was prejudiced in the slightest degree by the delay. The investors alone could suffer and for this reason would carry out the work as rapidly as possible.

In subaqueous or submarine works there are two risks, the cost and the time to execute. A contractor will usually take the first but rarely the second except on extraordinary terms. I could give many instances of original surveys which misled and involved much extra expense and time. At Port Talbot Dock in Wales, Pearson & Son, misled by borings, had to put in 30,000 cub. yds. of concrete more than was estimated. Some years ago, while making the new harbour, nearly all the service works at Dover were destroyed by a gale. The lifting bridge on the Thames had time extended as required. I was myself on a parliamentary committee which did so. The London County Council Engineer told me contractors for the Thames tunnels got all the time necessary. Sir John Aird, contractor for the barrage in Egypt, told me he got whatever time was required on the engineer's certificate. And in the Chignecto docks the contractor had to go 24 feet deeper than the borings indicated would be required to find solid rock foundations. The cost was his risk, but to say that he was not entitled to the extra time required is unthinkable. Of course a finish date is in all contracts to ensure due diligence, but if our investors had been told that if the contractor might be denied all the time required to finish the docks, after it was discovered that more excavation was necessary and four million dollars had been already spent they would not for one moment have considered the business.

Canadian contractors have also made mistakes in estimating even for earth work. The New Glasgow and Oxford Railway is a case in point. The contractors estimated for earth at about 20 cents per yard, but they found it proved to be what is called hard-pan, costing two and a half times more to handle than earth. The Government recognized the mistake of the contractors, allowed all the time required and paid them the whole of the extra cost.

Permit me to read what I may call a semi-legal opinion on the defeat of the Company's Bill and the Order-in-Council of the late Government, which was confirmed in the House by Mr. Fielding. An investor who subscribed for several hundred bonds and shares and still holds them all, sent a copy of the Company's Case to a retired Chancery Judge, a friend of his, and in a private letter the Judge commented on the case as follows:

"SHIP RAILWAY. I have read and reread the Case of the Company in which I regret you invested. Notwithstanding failure so far, I believe redress will come. I observe a striking fact—the division in Parliament on the Bill to renew the

Company's concession—such a division being without precedent. And an Order-in-Council states that your Bill was defeated to void the Government's liability to pay the subsidy. This Company, stopped in its work by a mistaken amendment to a Railway Act, promised in an Order-in-Council, a renewal of the concession, when ready with its capital to complete—a Government promoted work—on which it had spent £800,000—was refused a right to finish, to void the contract with the Government—a contract made and confirmed by five Acts of their House—and this statement was officially recorded in the Order-in-Council with apparent satisfaction as if it justified the vote."

I am not a lawyer, and although we may have no legal claim, as our charter expired on the 1st July, 1893, I venture to believe competent counsel would make a powerful equity argument for the Company on the foregoing facts.

Politics have, unfortunately for us, had much to do with our case, but I trust they are now behind us for good. There are, however, two matters to which I must refer.

The Company's Acts were passed by the Dominion Parliament, but I have heard it said that some of the Provinces would probably expect to be consulted regarding a settlement, which I hope is not the case. Every Province was represented in the Parliament that passed the Acts and every Province will be represented in any Parliament that has to consider a settlement. I therefore beg to submit the question of a settlement is exclusively that of the Dominion.

Another matter I may also refer to is that our stockholders were surprised to hear that our case had been considered at a meeting of one of the political parties, the proceedings of which were secret. If before we had agreed to finance the railway we had asked if any after differences would have to be dealt with in this way, I have no doubt we should have been assured that such would not be the case. Secret consideration by one political party of matters affecting Canadians alone may be fair as they are represented, but we are distant and have no representation.

We have suffered much from statements made by those who did not know the facts, and after the meeting to which I refer took place, I was told of such by several of those who were present. A Quebec member said one speaker had spoken of the money paid to the Company by the Government and was afterwards surprised when he read the Company's Case and learned the truth, that we had paid the Government hundreds of thousands of dollars and had never received one cent. Another gentleman told me candidly he believed that by what he said at the meeting he was the cause of our case being turned down. He then knew nothing of the facts, but he afterwards read the Company's Case, and I shall read what he wrote me:

"Dear Mr. Provand,

"I have just had time to take a hurried glance at the pamphlet, but not to read it thoroughly. I am leaving to-night for the West. I will take it with me and try and read it carefully when I am gone. I expect to be in Ottawa early next week. I am scarcely in a position to express an opinion, but from the cursory glance I took at it you seem to have made out not only a strong but an unanswerable argument.

Yours truly,

M. K. Cowans."

On pages 15 and 16 of the Company's Case there are some shocking misstatements quoted from Hansard, made in the House by two speakers who knew nothing about the Company. They were Mr. Lister, afterwards a Judge in Ontario, and Mr. Joseph Martin, now a member of the Imperial Parliament. When Mr. Lister subsequently read the Prospectus, he laughingly told me that Chignecto had been a club with which to beat the Government, that there was nothing whatever except what was favorable in the Prospectus and that the claim was "just such a one as he would like to have against the Government."

Mr. Martin, who also spoke without knowledge, wrote to me recently as follows:

"Dear Mr. Provand,

"I did not in any way examine the position as between the Chignecto Railway and the Government in connection with the subsidy, and I hope that anything I said then will not in any way affect the question of a fair settlement between the Government and the Railway Company.

Yours truly,

Joseph Martin."

There have been many statements made by speakers and also in the press, that the Government paid the Company money. A member spoke in the House about so much money paid to the Company. In many cases, but not in all, no doubt, such statements were made by those who were unaware of the facts. That the Company could not get a cent until the railway was completed to the satisfaction of the Government, and then only while it was operated to their satisfaction, was so different from the settled policy of the Canadian Government, which is to pay for railway work on progress certificates, section by section, that many never thought any other way was possible. Hence the fact that one speaker at a meeting said that if any more money was to be spent on the railway it must be the Company's own money.

I wish to remark that if we had been paid on progress certificates like other railways we should only have lost the unpaid balance, but the refusal to reinstate the Company destroyed the

value of our costly imported plant and compelled us to sell it as scrap. This is a further reason which entitles the Company to consideration.

I have also heard that some look upon our claim as an old one; true, but we have kept it constantly before the Government. For years we asked for reinstatement and were ready with our capital to complete the work, but were refused, and for the last twelve years we have asked for compensation which was first suggested by the Government. I have been here every year since 1892, sometimes twice, seeking a settlement for those I represent, but have always received only half promises or postponements for some reason or other. In such case we ought not to hear anything about the claim being old, because the Government has made it so, and the Government cannot weaken liability by successive postponements to settle. Not only by my coming here have we pressed the claim, but also by correspondence. Here is a letter from Sir Wilfrid Laurier, and I have several similar dealing with our application for a settlement:

"Ottawa, 28th September, 1897.

"Dear Mr. Provand,

"With reference to the Chignecto question, I brought the matter to the attention of my colleagues on my return from England, and it has been referred to a sub-committee of the Privy Council for consideration and report.

"I am aware that time is an object with you, and that you are naturally impatient of having an answer. This I can promise at an early day, whether the answer be affirmative or negative. The period of suspense must come to an end promptly.

Yours respectfully,

(Signed) Wilfrid Laurier.

A. D. Provand, Esq.,
London."

A word as to the parliamentary history of the Chignecto legislation (p. 17). From the first the object was to get British capital and the first four Acts contain every condition necessary and passed with little debate and without a division in the House. Then was the time for the Opposition to have defeated the proposal if they intended to do so, but they did not even try so far as Hansard shows.

The Government had then occupied six of the seven years' time allowed in the first Act to complete the work in doing what I suppose was necessary preliminaries and if in 1888 Parliament had not granted more time asked for in the fifth Act to construct the railway the capital could not have been obtained, therefore to secure the capital, it was granted. There was a division, 84 for and 52 against the bill. Sir Wilfrid took no part in the debate, Sir Richard Cartwright and Sir Louis Davies criticised the project and the

former voted against and the latter voted for the Bill which read a third time without a division.

All this took place before we were connected with the project. Our connection commenced in the following year, 1889.

In 1891, after spending four millions we had to ask for a year's extension and there was then more criticism, but no opposition from the Leader of the party. Sir Richard Cartwright and Sir Louis Davies again spoke but there was no division.

The Company came again to Parliament in 1896 with the bill to revive the charter. Sir Wilfrid took no part, Sir Richard Cartwright and Sir Louis Davies did, and in the division, Sir Richard voted against and Sir Louis for the Bill, as before. In this debate the bond and shareholders were described in language which shall not further refer to. (p 15 and 16)

The late Liberal Administration said in our Order-in-Council that they

"fully understand that any legal or moral obligation arising under an Act of Parliament can in no way be affected by any consideration as to whether the legislation in question was generally approved or otherwise. Any obligation assumed by the Dominion is recognized as fully binding upon the country irrespective of the numbers supporting or opposing it."

The legal obligation was assumed and the moral obligation was recognized by both Administrations and it continues.

However, for many years past, there has been no open opposition to a settlement of our claim so far as I know. The question was before the House on the 10th June, 1903. Every member who took part in the debate spoke sympathetically, including Mr. Fielding and Mr. Tarte. Sir Edmund Osler, Mr. Tisdale, Mr. Haggart, Mr. Barker and Mr. Kaulbach all supported the Company's Case and no one opposed a settlement.

And let me add that no Minister has ever said a word against us. Many Ministers and every Prime Minister since Confederation could be quoted as favorable to the Company before we supplied the capital or as sympathetic with us after we were in difficulties (p. 18).

* * * * *

Put in a few words, I am asking you to treat us as you have invariably treated Canadian contractors, and I have given reasons showing how we are entitled to this.

Eleven years ago I addressed a meeting of Senators and drew attention to our treatment, being diametrically opposite to that accorded by the Government to your own people. When I concluded Sir Mackenzie Bowell, formerly Prime Minister, said:

"Mr. Provand did not claim he had any legal right, but put his claim on moral and equitable grounds, and on the

ground that all other subsidized enterprises, except this one, had been given renewals when they failed to carry out their work in the first instance. He knew of no other company than the Ship Railway Company that had been treated otherwise. Mr. Provand's position was 'treat us as you have treated others, otherwise give us compensation.' He claimed the investors had looked at the Acts of Parliament, and seeing that they were ensured so much, had therefore put their money into the project."

During all our negotiations the late Government did not put forward a single fact to justify our separate treatment.

Interrogatively may I put our case? If the Four Million dollars had been Canadian money with votes behind it, would any party have voted against the Bill to renew the Company's charter as ours was in 1896?

Or, would Canadian stockholders have been described in the language applied to us in the House in 1896, and on many platforms in language just as bad, or worse, during the general election of that year?

Or, would they have been refused time to complete the railway after they had spent Four Million dollars—a request never denied to Canadians who had spent money on a work or in numerous cases where they had spent nothing?

Or, would they have had to come and go year after year seeking a settlement of the amount of compensation for nine years, after the Finance Minister, Mr. Fielding, had stated in the House that nothing but compensation remained to be agreed to? (p.23).

Yet we have had to endure all these.

Extensions of time to contractors is the rule and practice of the Government. Currier's Index gives scores and scores of instances. The Georgian Bay Canal scheme has had nine extensions. The Interprovincial Bridge received extension after extension of time for 20 years, waiting for subsidies from the Dominion and Provincial Governments and other authorities. The Canadian promoters got all the extensions of time asked for in order to obtain the money of others with which to build the bridge, while we were refused an extension to allow us to spend our own money completing the railway.

Mr. Ives, Minister of Trade and Commerce, told the House that in 20 years' experience of Parliament he had never known the renewal of a charter to be refused and had known of hundreds granted although not one dollar had been spent, yet the Chignecto Company which had spent \$4,000,000 was refused.

For our treatment the Ottawa press, conversant with all the facts, have never assigned any reason whatever save our entire lack of any political influence, and many public men have con-

firmed this. On this point I beg to refer to the articles reprinted in "Press Opinions."

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The only remaining point to settle is the amount of compensation, which I dealt with when I addressed the Committee of Council on the 30th of last November. We do not wish to ask for any particular sum, but hope that quiet consideration of the question will enable us to reach a settlement that will leave no unpleasantness afterwards. Let me add here that in 1895 the Government postponed renewing the Company's charter solely for financial reasons of their own (p. 11). All of these have now passed away many years ago and I am pleased to be able to congratulate Canada on her overflowing treasury.

We did not suggest compensation, our desire was to complete and work the line, but it was in the mind of the Government, Mr. Haggart told the House, that Sir Charles Tupper intended to bring down a measure to compensate the Company (p. 23). Within a few months after the Liberal Administration took office, Mr. Blair wrote to Mr. Arthur Hill, a London banker, on the subject. The late Mr. Dobell, when in London to finance a fast Atlantic service, promised a generous settlement. Mr. Justice Mills, formerly Minister of Justice, framed a proposal to the Ministers, but died just as he was ready to put it forward. Sir Charles Fitzpatrick, Chief Justice, on reading the Company's case, said: It was only a question of how much the Government should pay; and Mr. Fielding, after reviewing the case, said in the House, "that left the question of compensation" as the only matter unsettled. I pray we may now come to a settlement, which I beg to respectfully submit should bear some relation to the position the Company would now occupy if no mistaken amendment had been made to the General Railway Act.

We know we must take what we can get. It will be an ex gratia payment because we have no legal position to enforce. But why is this so? Simply because the Government refused to extend the time to complete the railway and revive our legal right to earn the subsidy. If they had extended the time we should have done so, and I submit that the Government was as fully bound to give us the time as if we had had a signed and sealed agreement to that effect. There is the Order-in-Council of the Conservative Administration of 9th July, 1892, promising an extension of time, and there is the same Administration's Order-in-Council of 22nd May, 1896, issued before they left office, stating that we had secured our capital and were anxious to complete the work, and these Orders-in-Council were morally speaking as binding on the late Liberal Administration as they had been on their predecessors.

Let me state what the Company's position would have been if there had been no amendment to the G. R. Act. The line would

have been completed in 1892 and would now have earned its 20 years' subsidy of \$170,602 per annum, say, \$3,412,040. Paid to the Bondholders this sum would at 5 per cent. during the 20 years have earned for them half as much again, say, \$1,706,020, together, \$5,118,060, and this without reckoning any earnings from the Railway, a valuable property costing \$5,000,000, doing the work it was designed for in summer, with light operating expenses; with the Tidnish dock occupied in winter building and repairing vessels, and the Amherst dock loading and discharging vessels as it would be always ice free. Both docks doing business that would have developed yearly. Every railway and dock creates traffic and work for itself.

And what is the Government's position by not giving us time to complete the work? They have retained the subsidy of \$3,412,040 and \$600,000 of the Company's money plus interest, say \$1,260,000, or \$4,672,040, and added to this we are entitled to reckon the interest on the subsidy withheld, but which we would now have earned and collected, and these figures clearly show that the Government by what they have retained and what they have received from the Company are about \$6,378,060 in hand arising out of their mistaken amendment to the G. R. Act.

And our position is that we spent about \$4,000,000, 22 years ago, which with interest now would amount to \$8,400,000, and there is nothing to show for it but 17 miles of track and two docks all incomplete, the Company being without a dollar to meet heavy monetary liabilities, a result for which the Government is solely responsible.

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When I addressed the Committee of Council in November, I mentioned a case which came before the British Parliament, as it bears strongly on the moral liability of Governments. It is referred to in "Todd's Parliamentary Government," Vol. I., p. 782. The Government had contracted with a Telegraph Company to lay a cable down the Red Sea, for a subsidy of £36,054 per annum for 50 years while the cable worked. It was laid, but never worked. The Government was not under any legal liability whatever; nevertheless, Mr. Gladstone's Government at once recognized their moral liability and passed an Act confirming the subsidy which was paid for the whole 50 years.

On one point the cases of the Telegraph Company and the Chignecto Company are alike, viz.: each was induced by the subsidy to undertake the contract which without the subsidy would not have been considered for a moment by either Company. On another point the cases differ materially. The British Government had no connection with the origin of the Telegraph Company, which took the contract in the ordinary course of their business, but the Chignecto Company was a Government promotion of 18 incorporators created in a nominal sense to build the railway, but actually

to hand over the powers conferred by Parliament to British investors, the subsidy being given as the inducement for them to accept the business. The Canadian incorporators never intended to, and never did, find any of the capital.

The moral claim of the Chignecto Company on the Canadian Government is therefore far stronger than was that of the Telegraph Company on the British Government, but Mr. Gladstone's Cabinet at once gave practical effect to their conviction that the Government was morally liable to the investors and confirmed the subsidy.

Another difference marks the two cases. The British Government did not prevent the Telegraph Company completing the cable, and making it of service, if that could have been done; but the Canadian Government would not allow the Chignecto Company to complete the railway, because by doing so it would then have had to pay the subsidy (p. 23).

I have mentioned the Oxford and New Glasgow Railway hardpan case to show the fairness of the Government in dealing with Canadian contractors. Other cases might be cited, but I shall only refer to that of Messrs. Mackenzie & Mann, which is a still more striking illustration than the hard pan case.

In January, 1898, the Government made a provisional contract with them to construct a sleigh road and a railway between British Columbia and the Yukon, subject to the approval of Parliament, but Parliament did not approve. Mackenzie & Mann had, however, made preparations for the work, and although they did not make the sleigh road or commence the railway, they made a claim on the Government for preliminary outlay. In an Order-in-Council, 30th November, 1901, the Minister of Justice stated that the claims of Mackenzie & Mann in equity and good faith should be recognized and paid, and he defined them as follows:

"The Minister considers that the claims which should be recognized are for time and services and money losses actually sustained, and money expenditure actually made or liabilities therefor incurred in good faith in connection with said agreement, and in preparing to carry out the same, and in procuring and transporting men, materials, plant and supplies therefor, and in carrying on the works so far as they may have been proceeded with, and the interest paid on the moneys expended."

The Hon. Mr. Justice Burbidge reported that Mackenzie & Mann should be paid \$327,678. The vote came before the House on the 13th May, 1902. The Minister of the Interior, who signed the agreement with Mackenzie & Mann, in reply to questions said:

"There were no specific instructions given by the Government or by any member of the Government to the firm of Mackenzie & Mann or any of their agents to proceed with this work before it should be ratified by Parliament."

And that the contractors had proceeded with the work of their own motion. Mr. Borden said:

"I agree with my Honorable friend from Toronto (Mr. Osler) that so far as this claim is concerned it ought to be paid. It is the Government we are censuring for their conduct in connection with this contract, and we are not objecting to the payment of the claim of Messrs. Mackenzie & Mann."

Sir Wilfrid Laurier in the course of his remarks said:

"Of course I am bound to say at once that there is no legal recourse against the Canadian Government which can be enforced in a Court of law, but we admit that Mackenzie & Mann have a moral claim against the honor of the Canadian people, against the honor of the Canadian Government, and against the honor of the Canadian Parliament for the money which they then expended," etc.

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"I have only to repeat what I said, we cannot present the claim as a legal one, we present it simply as an equitable one, which ought to appeal to the sense and fairness and equity of Hon. members on both sides of the House."

The House was in unanimous agreement with these sentiments and passed the vote without division.

Mackenzie & Mann had an undoubted moral claim, and no one will question the fairness of the award, but the contrast between the way they were dealt with and the treatment the Chignecto Company has received must strike everyone as very remarkable. The differences between their position and ours may be thus expressed on some points.

Mackenzie & Mann never had any legal position and started work on their own initiative in hope of obtaining it. The Chignecto Company had five Acts amended and reamended with plans and specifications bearing the signed approval of the Government before they commenced construction.

Mackenzie & Mann did not make the sleigh road or commence the railway. The Chignecto Company continued construction of their railway until the Government's mistaken amendment to the G. R. Act caused their being compelled to stop.

Time was of the essence of Mackenzie & Mann's provisional contract. This was not the case with the Chignecto Railway. No person or interest was prejudiced in the slightest degree by any delay that might take place.

Nevertheless Mackenzie & Mann were repaid their whole outlay with interest at 6 per cent. for part time and 5 per cent. for the remainder. Also the entire costs of the reference to Mr. Justice

Burbidge and included in the award of \$327,678 were \$44,354 allowed to Mackenzie & Mann for their own personal time and services.

If the Chignecto Company, whose case is beyond question far stronger than Mackenzie & Mann's, were compensated for in the same manner it would take a sum exceeding \$9,000,000 to do so.

There is no precedent in Canada for our treatment, nor indeed anywhere else. British investors have supplied capital to carry out public works of all kinds in many parts of the world under contracts with governments, but none ever treated them as the Dominion Government has treated the Chignecto Company.

Our claim is a debt of honor, made so by the Government's refusal to reinstate the Company in the legal position to which it was undoubtedly entitled.

I beg to thank the honourable gentlemen of the Council for the patience and courtesy with which they have listened to me.

