

WOODSTOCK AND LAKE ERIE RAILWAY.

Special Committee of the Legislative Assembly, May 12th, 1857.—M. FOLEY, Esq., in the Chair.

The examination of witnesses was continued, Mr. Hodge being still before the Committee, as follows, viz:—

- No. 1. Q. You said you could produce the balance sheet to represent the receipts and expenditure of the Company. Is it here? A. It is.
- No. 2. Q. What was the amount of your salary? A. £500 per annum.
- No. 3. Q. What was the amount of Mr. Benedict's salary? A. £750, with travelling expenses. A certain description of my travelling expenses were also paid.
- No. 4. Q. How were the claims of parties for rights of way decided? A. By the persons employed for the purpose of securing the rights of way. Various persons were so employed.
- No. 5. Q. Were some claims settled privately, and some by arbitration? A. Some were settled by arbitration: all that could be settled privately were so settled.
- No. 6. Q. You stated yesterday that 25 per cent. was a fair profit on contracts. Did you mean for cash or credit?—A. I spoke of a first class contractor having a cash contract.
- Cross-examined by Mr. Henry DeBlaquiere:*
- No. 7. Q. Mr. McClenaghan stated that there was a contract for £10,000 per mile given out in 1853. Are you aware that two contracts were let? A. I do not know of two contracts being let; but I know there was a change in the plan of the contract.
- No. 8. Q. Was there a credit contract given out, subsequently cancelled, and another one given out? A. All I can say from recollection is that there was a change in the system of the contract. I am not aware of a contract such as mentioned being let, signed, sealed, and delivered.
- No. 9. Q. You made a statement respecting something written by Mr. Benedict regarding the Davis property. Can you produce that paper? A. I will produce in writing the statement of Mr. Benedict referred to yesterday, respecting the purchase of the Davis property. Messrs. Farmer and Benedict had been travelling together in a carriage, and arrived at Hamilton at 3 o'clock in the morning, and Mr. Benedict was so annoyed that he sat down then at 3 o'clock and wrote about it.
- No. 10. Q. Your impression is that the change was made in the line because I could not purchase the Exford property, and did purchase Davis? A. That is my impression.
- No. 11. Q. Are you aware of reasons for fixing the Depot on the Davis property other than you have given: viz., the enabling of Mr. Farmer and myself to speculate on Davis' land. A. It was never fixed there at that time. I did not presume to fix the Depot without consulting Mr. Benedict.
- No. 12. Q. Was the Depot fixed without consulting Mr. Benedict? A. I am not able to say from recollection whether the Directors fixed the Depot themselves or not.
- No. 13. Q. You stated yesterday that the Directors did fix the Depot? A. I said that Mr. Benedict said it was the first time he had known the Directors fix a Depot without consulting the Chief Engineer.
- No. 14. Q. Then it must have been fixed? A. It may have been fixed awaiting the consent of Mr. Benedict on his return. I cannot tell from recollection, I suppose if Mr. Benedict had objections, the Directors on his return would not have insisted.
- No. 15. Q. You say that Mr. Benedict mentioned to you on a report of yours that Messrs. DeBlaquiere and Farmer, had bought this land, and that Mr. Benedict remarked it was the first time he had known a depot fixed without consulting the Chief Engineer? Where is that report? A. That report of mine is in the hands of your Secretary.
- No. 16. Q. Are you aware that the depot was, at that time, fixed by the Directors? And do you think it was so fixed in the interest of Mr. Farmer and myself? A. I am under the impression on the whole case that you and Mr. Farmer meant to make a speculation out of that land. I judge from what I have since seen and ascertained.
- No. 17. Q. Was this subsequent to my endeavour to purchase the Exford property? A. I imagine that it was. Duncan Clarke can give better information.
- No. 18. Q. You say there was a new line run prior to the 28th October, 1853. Do you remember more than one new line being ordered in Simcoe? A. At a subsequent period there was a third line run. It was at a time when the Directors had not a very friendly understanding with regard to the Ritchie property after he had acquired the Davis (?) property. In reference to what I stated respecting the letter written by Mr. Benedict, I further state that being much annoyed at that letter of Mr. Benedict's, on receipt of the same, I took the earliest opportunity of showing it to Mr. DeBlaquiere, and asking him verbally if ever I induced him to purchase the Davis property? I will produce a copy of the letter when I can get my letter book from the Court of Chancery. When I spoke to Mr. DeBlaquiere, the latter said that Mr. Farmer was foolish, and that he (Mr. DeB.) would make it all right. I pursued the same course with Mr. H. C. Barwick, at that time Cashier of the Montreal Bank. Mr. Benedict's letter found fault with me for fixing the depot without his concurrence, and my representations were with the view of setting myself right in this matter.
- No. 19. Q. You state that you made an estimate for Hall & Co. In what capacity did you do so? A. As Mr. Hall's Engineer, I conceived that I had a right to do so.
- No. 20. Q. Were you in the employment of the Company at that time? A. I considered myself so.
- No. 21. Q. Is it usual for Engineers to perform such services. A. I think it is quite compatible with their duties.
- No. 22. Q. You say £6,788 per mile was the amount of your Estimate. What was included in that price? A. I cannot tell from recollection. I could probably produce documents that would show to-morrow.

- No. 23. *Q.* Have you no general idea? *A.* I will not venture on an answer. I will give a special answer to-morrow; but I should say, interest, engineering, right of way, clearing and grubbing, were taken in.
- No. 24. *Q.* You can produce the document? *A.* Yes. I think I once showed it to you. The simple fact, however, is, that Mr. Hall took my figures to you (Mr. DeB.) and you advised him to raise his price.
- No. 25. *Q.* Hall & Co. tendered on the plans and specifications furnished by the Engineers. Were there such plans and specifications to which they could refer? *A.* There were proximate estimates made before the transit line was cut through, and the quantities made up, which is a plan often improperly adopted in this country.
- No. 26. *Q.* How then was it possible for you to be so clever as to get up such an accurate estimate, which I think was made out to shillings and pence per mile? *A.* Because I imagined myself as shrewd and clever in my calculations as ordinary Engineers, and I had the usual facilities by access to the plans of the Company, having made those plans myself as resident Engineer.
- No. 27. *Q.* You said yesterday that you were associate Engineer? *A.* I was sometimes called so, and sometimes resident Engineer. I located the line.
- No. 28. *Q.* If Hall & Co. in their tender used the words, "according to the plans and specifications to be furnished by the Company," what works would those plans and specifications include? *A.* The plans and specifications which would afterwards be furnished, and which would include from right of way to the entire completion of the work. I do not know if Engineering and travelling expenses were to be there.
- No. 29. *Q.* What is meant by "plans and specifications to be furnished by the Company's Engineers?" What would be included in those words? *A.* Specifications of the plan on which the work was to be constructed.
- No. 30. *Q.* Would it have reference to any expenditure other than the actual construction of the work in the line itself? *A.* "Specifications" would not. In simple language, the tender of Hall & Co. was for the same work exactly which was afterwards tendered for by Mr. Zimmerman.
- No. 31. *Q.* What I want to know is, what is included in the word specification? *A.* I will send you two or three copies if you need information. It includes anything you want.
- No. 32. *Q.* Did you see Mr. Hall's tender? *A.* I did not see the formal offer. I gave Mr. Hall the sum per mile; but in fact all the plans were in a crude state for letting the contract.
- No. 33. *Q.* Your estimate was to include right of way, fencing, engineering, interest, rolling stock, superstructure, station ground, and incidentals? *A.* I do not recollect as to engineering. It included the rest. As to incidentals, I think there was a small sum allowed for contingencies.
- No. 34. *Q.* Was interest included? *A.* I am not quite sure. I think that one year's interest was allowed on the whole amount.
- No. 35. *Q.* You think that Mr. Hall's tender was more profitable in price and terms than the two others which were put in, and that yet they lost the contract? *A.* They lost the contract. I did not see the other tenders; but from the description I have read and from what I know of the other tenders, and from what I know of Hall's before it was altered, I think the latter the most profitable.
- No. 36. *Q.* Do you know how the payments were to be paid under that estimate to Mr. Hall? *A.* It is so long ago that I do not know.

Here Mr. CHRISTIE said he thought this line of cross-examination should not be continued; but that the documents should be produced in order to make evidence of what could be sustained by documentary testimony.

Mr. DEBLAQUIERE agreed with Mr. Christie, but remarked that much secondary evidence had been already received, and that it was but right that he should have the power of cross-examining the witnesses thereon. A heavy charge had been brought against him in respect of this contract, and what he wanted to show from this witness himself was that Mr. Hall's tender was not the best, and that if it were, it was not rejected in consequence of his (Mr. DeBlaquiere's) advice.

Mr. FOLEY thought this complaint of the nature of the evidence which had been taken, came with a very bad grace from Mr. DeBlaquiere. There had been no secondary evidence taken and none except in Mr. DeBlaquiere's own way. He insisted that Mr. DeBlaquiere should not continue to throw out insinuations on the mode of taking the evidence. Though some latitude had been allowed on the other side, Mr. DeBlaquiere could and did have just the same freedom.

Mr. DEBLAQUIERE said that he wanted to show he had all along objected to secondary evidence, when documentary evidence could be produced. When the Chairman asked the 9th question of Mr. Clenaghan—when was the contract first given, and to whom? He, Mr. DeBlaquiere had objected, "on the ground, that documentary evidence existed as to all these facts, which therefore could not be proved verbally by a gentleman who could know nothing of his own knowledge about them. He desired to conceal nothing; but he wished all these facts to be proved by authentic papers."

That was all that he had taken the liberty to mention to Mr. Christie.

The Chairman remarked that the answer to that question was, that the witness was present at a meeting of the Directors and heard what took place. That was evidence which would be received in Courts of Justice. Mr. DeBlaquiere's questions now had of course the object of showing that Mr. Hodgre's evidence was incorrect. He said that one contract was more profitable to the Company than another; and Mr. DeBlaquiere now wanted to show what that contract was, so that he might afterwards bring evidence to establish that such a contract had never been executed. That course of examination he thought perfectly admissible.

- No. 37. *Q.* Do you remember the terms as to the payments asked by Messrs. Hall & Co.? *A.* I do not; but I shall be able to make out my case, and show from the papers that that contract would be better for the Company than the one afterwards given to Mr. Zimmerman.
- No. 38. *Q.* Then explain why Hall's offer was better than Zimmerman's? *A.* If Mr. Hall had tendered at that price to the Company, even for cash, it would have been better than Zimmerman's tender; but I do not know what Zimmerman's tender was.
- No. 39. *Q.* What have you heard of Mr. Zimmerman's tender? *A.* I saw his cash prices per month, as made up by Mr. Benedict in the estimate book, and it would be of great importance to the Committee to have that book produced.
- No. 40. *Q.* Do you mean to say then that you know nothing of either tender till they are produced? *A.* I cannot say the precise sum till I see the books.

Cross-examination by Mr. Smart :

- No. 41. *Q.* You stated that the rear of Campbell's House was best for the Depot, and would accommodate the town best and that Mr. Benedict had agreed to locate it there. Is the Depot there? *A.* Mr. Ritchie got up a plan of his property, and Mr. Benedict and I figured out upon it the plan of the Depot. If you get that plan you will see there all that I know about it. There is a certain portion marked off upon it for Depot grounds.
- No. 42. *Q.* Where did Mr. Ritchie get that plan? *A.* He had the plan made for himself, and this was a consultation between Mr. Benedict and myself as to the proper place for the depot.
- No. 43. *Q.* Do you not know that that land has been purchased for the depot? *A.* I have heard that Mr. Deedes concluded the purchase for Mr. Ritchie's ground.
- No. 44. *Q.* The situation of Davis' farm is in a part of Windham, added to Simcoe, is it not? *A.* It just comes in at the very point. It lies at the extreme corner of Simcoe.
- No. 45. *Q.* Are you aware that the Company had any agreement with the town of Simcoe? *A.* I am not.
- No. 46. *Q.* You say there was no schedule of prices attached to the contract when the work was let, by which to govern the monthly estimates. Do you mean to say there was none? *A.* None to my knowledge. I am alluding to the period when these tenders were sent in by Mr. Hall.

Cross-examined by Mr. J. C. Morrison :

- No. 47. *Q.* Do you believe there was none when the contract was entered into? *A.* I believe not at the time of letting. I do not like to speak of the time of the execution of the contract.
- No. 48. *Q.* Are we to infer from your answer yesterday that there was no schedule of prices attached to the contract at the time of its execution in the usual form? *A.* I have no belief in the matter.
- No. 49. *Q.* Did you ever see the contract? *A.* Never.
- No. 50. *Q.* You say you never saw the schedule of prices? *A.* Not to my knowledge.
- No. 51. *Q.* What do you mean by that? *A.* That if there were a schedule of prices it would have been furnished to me by the Chief Engineer, to make up the estimates.
- No. 52. *Q.* Did you ask for the schedule of prices? *A.* I never asked for it. Mr. Benedict kept the plan in his own desk, and I had no access to it, and he always used this in making up the monthly estimates.
- No. 53. *Q.* Did you ever see that plan? *A.* I believe I once saw it while Mr. Benedict was using it.
- No. 54. *Q.* Did you mention to the Directors or the other interested parties, that you thought things were going wrong? *A.* I once told Mr. DeBlaquiere, as we were going to Norwich, subsequently to this period.
- No. 55. *Q.* Did you inform the Directors that the estimates were improperly made up? *A.* No.
- No. 56. *Q.* Were you of opinion that they were improperly made up? *A.* They were.
- No. 57. *Q.* Why did you not inform the Directors? *A.* It is not considered etiquette to be standing between your Chief Engineer and the Directors.
- No. 58. *Q.* Did you think the estimates were made up in a dishonest manner? *A.* I will not say dishonest, I will say improper.
- No. 59. *Q.* By whom were you paid for your services? *A.* I am not fully paid yet.
- No. 60. *Q.* By whom were you to be paid? *A.* I looked to the funds of the Company. The accounts were made out "The Woodstock and Lake Erie Railway and Harbour Company, Dr. to Henry L. Hodge."
- No. 61. *Q.* Did you feel you were doing your duty to your Company? *A.* I felt that I had a duty to perform to Mr. Benedict as well as to the Company.
- No. 62. *Q.* What was the duty to the Company? *A.* To attend to the work upon the Line.
- No. 63. *Q.* To see their interests protected? *A.* They would not take my advice. I was never requested to meet them at the Board.
- No. 64. *Q.* Did you on any occasion intimate to the Company that their interests were not well looked after? *A.* No.
- No. 65. *Q.* Did you ever intimate to any person that the interests of the Company were improperly looked after by Mr. Benedict before this day? *A.* Before this day, I never made the statement at all, and I do not know that I have made it to day.

Mr. McCLENAGHAN here asked leave to put a question, which was as follows :—

- No. 66. *Q.* Did you ever hear Mr. Benedict describe the whole affairs of the Company as "a d—d swindle from first to last?" *A.* On one occasion Mr. Benedict and myself were talking over the affairs of the Company in general; it was more than two years ago; and he said in his usual manner, "Oh, it is all a G—d d—d swindle, any way."
- No. 67. *Q.* What gave rise to that particular conversation? *A.* I was annoyed at the stopping of the works and at certain treatment which I had received.
- No. 68. *Q.* Was he alluding to the conduct of himself or the contractors? *A.* I think he was alluding to the conduct of the Directors.
- No. 69. *Q.* When did you mention this to any person? *A.* I cannot recollect. I must have mentioned it to some one, since it is known.
- No. 70. *Q.* Did you coincide with him in opinion on that point? *A.* Positively.
- No. 71. *Q.* Had you any interest in Mr. Hall's tender? *A.* None.
- No. 72. *Q.* Did you expect any interest? *A.* That is not a fair question. Mr. Hall was a very old friend of mine.
- No. 73. *Q.* The question being repeated. *A.* I did not. Mr. Hall had his party of contractors made up.
- No. 74. *Q.* Who were they? *A.* A son of Judge Arnold's, Mr. Morton, of Kingston, Mr. Jno. Barwick, and Mr. Chas. DeBlaquiere.
- No. 75. *Q.* How were you aware that these were the parties? *A.* From Mr. Hall.
- No. 76. *Q.* Why did you interest yourself in making up his contract? *A.* Because he was an old friend.
- No. 77. *Q.* You had no other interest whatever? *A.* I had not.

- No. 78. Q. At the time the work was suspended there were, you say, £32,500 paid to contractors—Was any other money paid? A. There was another contractor, and I had no access to his prices. I averaged the fifth contractor according to the prices of the other four.
- No. 79. Q. Did those prices include the right of way? A. No. The Company found their own right of way.
- No. 80. Q. Did that include engineering expenses? A. It included nothing but what the sub-contractors did on the line for Mr. Zimmerman, without engineering or anything of the sort. I made this account out for a particular purpose.
- No. 81. Q. What purpose? A. To see if Mr. Zimmerman was not overpaid.
- No. 82. Q. At whose instance did you make it? A. At no one's.
- No. 83. Q. When did you make it? A. When the work was finally suspended.
- No. 84. Q. Immediately after? A. So I think; but I do not know what you mean by immediately.
- No. 85. Q. Was Mr. Van Voorhies a contractor, and if so, what amount did he receive? A. He was a contractor. I cannot tell what he received.
- No. 86. Q. Who were the other sub-contractors? A. Smith & Co., Alex. McBain, and another who went away. When I spoke yesterday of four contractors out of five, I should have said three out of four.
- No. 87. Q. Have you any memorandum of the way you made up that estimate? A. I have among my papers.
- No. 88. Q. What work did Mr. Van Voorhies execute? A. I cannot tell from memory what any did; but I will get the materials and satisfy you on any point.
- No. 89. Q. Have you any approximate notion? A. Mr. Van Voorhies told me his prices.
- No. 90. Q. What amount was paid him? A. I can not tell; but I will produce my calculations.
- No. 91. Q. How did you arrive at the £32,500? A. I put down the prices that the three got, and made a fair average from them for the amount paid the fourth.
- No. 92. Q. When you say paid, do you speak of the average amount paid in money by Mr. Zimmerman to them? A. It was the average rates for the work done. I do not know whether Zimmerman paid them any money. When I said paid I spoke of the prices which existed between Mr. Zimmerman and them. I am ready to show the Committee the means I took for arriving at my conclusions.
- No. 93. Q. Who did the bridge-making on the line? A. Ah! that was what I forgot. When I spoke of four out of five, I was correct. The fifth was the firm of Bradley and Jenkins.
- No. 94. Q. What did you estimate the bridge-building at? A. I have said that I would lay my papers before you. At present I cannot tell you; and the long period since I left the Woodstock and Lake Erie Railroad, and the dispersion of the contractors from the works, prevent me from having the same facility as I had at the time when I made up that estimate.
- No. 95. Q. Have you the data at your office on which this approximate estimate was formed? A. I have some of it.

The Committee then adjourned.

May 13th, 1857: M. FOLEY, Esq., in the Chair.

Mr. HODGE again appeared before the Committee, and stated that before continuing his examination he wished to enter a Protest.

The Chairman: Well, let us see it.

Mr. HODGE: If I do not get it allowed here, I shall petition the House to-night.

The Chairman: The Committee cannot allow itself to be threatened in that manner; but read the Protest.

Mr. HODGE then read his Protest, to this effect.

“That believing the Hon. Receiver General has great interest in the Zimmerman Bank, and is Chairman of the Woodstock and Lake Erie Railway, I protest against his being allowed to continue his cross-examination in the captious, discourteous, and unbecoming manner pursued to me yesterday; and I farther say that the Hon. Receiver General being President of the Zimmerman Bank, and President of the Woodstock and Lake Erie Railway, he would greatly facilitate the proceedings of this Committee, if he would produce the Ledger and Cash Books of both Companies, and would greatly aid me, your witness, by furnishing data that would refresh my memory as to facts considered by me to be necessary to be known; but which, owing to the great lapse of time since those occurrences, are not exactly remembered as to details.”

He added that he thought the latter part of his Protest contained a very modest request, which would be complied with.

Strangers being ordered to withdraw, on their return,

The Chairman intimated to Mr. Hodge that the Committee had decided not to receive the said Protest, as nothing had occurred on the part of Mr. Morrison or the Committee, to call for it. But Dr. Southwick wished it to be understood, that he was not an assenting party to the decision, as he believed any party before the Committee should be allowed to put in that or any other papers they thought essential to their case.

The Committee then adjourned till 10 o'clock next day.