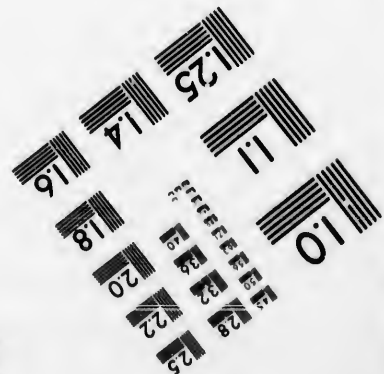
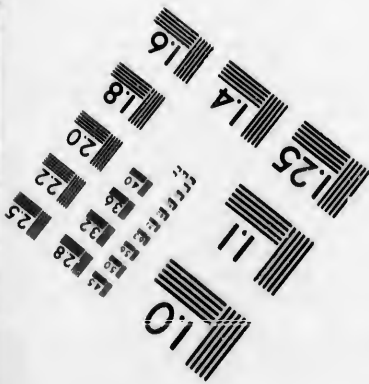
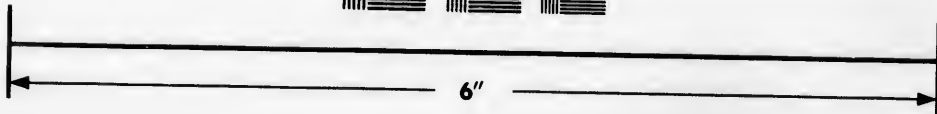
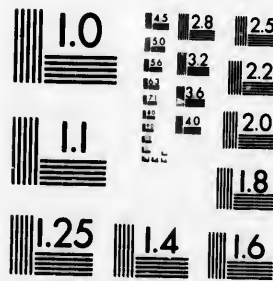


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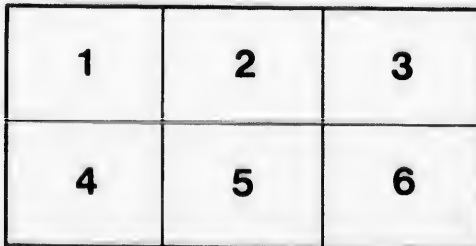
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Court House, Sydney, Cape Breton,

JANUARY, 1877.

GISBORNE VERSUS KENNELLY.

(Robt. Martin, Esq., Post Master, and Chas. Clarke, Esq., being the Magistrates upon the Bench.)

F. N. GISBORNE'S REPLY

TO

D. J. KENNELLY'S STATEMENT

IN DEFENCE.

(With extracts from correspondence, &c., added.)

YOUR WORSHIPS have kindly permitted me to answer in detail the extraordinary and monstrous counter charges made against myself and others by Mr. Kennelly, nominally in defence of the criminal action which I have been necessitated to bring against him for trespass upon my suspended railway works, but *de facto* with the object of delaying justice to my claim against the Cape Breton Company. As I am, however, obliged to trust to memory and a few notes, taken during the reading of his very carefully and cunningly prepared statement, I trust you will allow me to supplement my reply, hereafter, with additional remarks and extracts from correspondence.

Mr. Kennelly became connected with the Amalgamated Coal and Railway Companies, now known as the "Cape Breton Co., Limited.," early in January, 1874, at the instance of his friend Sir Jas. Anderson, who made it a condition of his acceptance of office as Chairman, that Mr. Kennelly should be his assistant, as Managing Director of the company, at a salary of £1000 per annum.

Appointments
and contracts.

A few weeks later I was invited to visit London (being then in Cape Breton) by the new Board of Directors with a view to being appointed Local Manager of the Company, and also as a probable contractor for the Louisburg railway and pier. The final result of many interviews with the Directors was that I returned to Sydney as Local Manager & Engineer in Chief at a salary of £1,000 stg. per annum, and a per centage upon anticipated profits to the company, limited to £2,000 per annum additional;—Also as contractor for mining all their coal at a fixed price per ton and minimum out-put, to bank or into trucks,—And furthermore as contractor for the construction of the Louisburg railway and pier for the lump sum of £95,000 stg., plus extras, this amount I may here observe being some £40,000 less than other English contractors would have tendered at. I was also the lessee of all the company's stores from whence the workmen and to a limited extent, *under agreement*, the collieries, had been and were to be supplied with provisions and other goods.

Unconnected
with matters of
finance.

With such emoluments and powers I returned to Cape Breton about the end of April, 1874, the collieries having been worked from 1st January (at which time my salary was dated) upon my private account; but I was expressly instructed to make no change in the original Company's officials or management until Mr. Kennelly as Managing Director of the Company should arrive in Cape Breton and it thus happened that *de facto* I never entered upon the duties or responsibilities of Local Manager; but continued to act in my former capacity as Engineer in Chief. And you must please bear in mind that from the conception of the several Companies I was entirely unconnected with matters of payments, Mr. Harvey being Manager and Financial Agent for the "Glasgow and Cape Breton" and "Schooner Pond" Companies, and Mr. Nichols being the Accountant sent out from London by the "Lorway Mining" Company. Without direct collusion, therefore, with a charge which even Mr. Kennelly dares not advance, it was impossible that I could obtain any unfair advantages from the Companies' resources.

Loss of impor-
tant coal sales.

It is also necessary to explain that before leaving Cape Breton for London, my Montreal agent, Mr. Walter Burke, had negotiated the purchase of the entire out put of the Lorway Emery colliery (estimated at 75,000 tons minimum) at \$2.75 per ton F. O. B. at Sydney; but that through extreme dilatoriness in accepting an offer made in Dec. 1873 to March '74 and the then demand for unusual terms of payment made

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by Mr. Kennelly the offer was withdrawn, and even a subsequent offer for 10,000 tons at \$2.50 from the same agent, was again lost through Mr. Kennelly's mismanagement, who first in a fit of his usual ill-temper cancelled Mr. Burke's agency, and then offered to re-appoint and sell him the coal at \$2.25, an offer which he respectfully declined.

The primary and immediate result of the foregoing disappointments, and the utter failure of Mr. Kennelly's personal endeavour to sell coal in the United States and Canada, was that I received orders from Mr. Kennelly and also from the Company's Secretary in London, Mr. Kidson, to reduce the output from the mines and thus *they* practically broke the basis upon which I made my estimate for raising coal to a profit. Shortly afterwards Mr. Kennelly arrived in Cape Breton, quite prepared to regard the entire enterprise with the most gloomy forebodings as to trade prospects, and having due regard to the large quantity of coal already in bank and no prospective sales, I cheerfully consented to cancel contracts which it would have been impossible for the Company to have fulfilled, Mr. Kennelly agreeing to take over all mining materials and pay for all such store goods as were debited to my private colliery account from the 1st January, preceding. These accounts were then carefully adjusted by Mr. Kennelly and the Company's accountant, Mr. Stirling, with my accountant, Mr. Clarke, and $\frac{1}{3}$ ths of the amount was paid, the remaining $\frac{2}{3}$ th being retained, per agreement, pending the settlement of other accounts within 3 months, and I have now an action pending, consequent upon the non-fulfilment of such agreement.

Contract for raising coal cancelled.

I then visited Louisburg with Mr. Kennelly, and also the Company's Collieries and in explanation of various economical improvements then attainable through the amalgamation of the several Companies, I stated, that although experienced in copper, lead and gold mining, I had, until 1871, been new to coal mining and therefore had commenced work on the Reserve and Lorway Emery properties under advice from the Government Inspector of mines, Mr. Rutherford, that I had also consulted Mr. Hy. Poole, Captain Rutledge sr, and other experienced Colliery Managers, and that after a short experience with Capt. Bushby I had engaged the services of Capt. Geo Scott, (who as Manager of the Block House Colliery, enjoyed a first class reputation as a skilful and reliable man), who took entire charge of the Reserve;—That the Lorway pits were also opened under advice from the

Management of collieries.

Govt. Inspector of mines and were in charge of Capt. Arkley, (who was sent out from England) until discharged by advice of Mr. E. W. Young, C. E. then acting as Manager of the Company, and was succeeded by Capt. Rutledge, Jr., and then by Mr. Albert Hill with Capt. Harkley, the latter being still retained as Mining Manager over all the Company's collieries;—That the Schooner Pond property was worked from a short slope into old cuttings under the management of Mr. Bourinot, (formerly owner of the Block House mine,) and afterwards by Capt. Thos. Scott late, manager of the General Mining Associations' works at Lingan, and then for a short time by Capt. Johnson, from Wales, Eng.

And I must here call your particular attention to the fact, that all these collieries were originally owned and worked as independent Companies, without any regard to future amalgamation and consequent alterations in plans, plant, or other economical arrangements. Also that they were started without the advantage of even ordinary roads: in fact all was swamp, woods, and wilderness; the exact locality of the coal seams being unknown. It is therefore unjust to judge of the past management of such properties by the light of present experience.

With such explanation Mr. Kennelly was at the time satisfied; and yet he now dares to make the following charge, which I shall quickly disprove, viz.:

That I had wasted the capital of the various recited Companies from want of skill in opening coal pits, &c., and that for this and other malpractices had been called to resign my position as Manager and Engineer in Chief.

After consultation with parties who were inimical to myself and jealous of my position, and in accordance with what I now know to have been a premeditated intent, he wrote me the following note on the 25th of June, 1874:

“ Archibald House (Sydney),
Thursday.

My Dear Sir :—Will you kindly give me a call here on your way to the office.

Yours truly, D. J. KENNELLY.”

At the ensuing interview he surprised me by suggesting that I should resign my appointment as Manager, stating that such position was incompatible with my duties as contractor for the Louisburg railway, and in further explanation added, that the prospects of trade and the financial condition of the

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Company required great economy and in fact, as already hinted, a thorough *reconstruction*, with a view to lessening the amount of share capital. Knowing that he had not the power to cancel any of my appointments I demurred to his proposal, upon which he lost all control of his temper and vowed that unless I would accede to his wishes, he would make such a report upon the Company's property and prospects, when he returned to London, as would force them to wind up, and that meanwhile he would stop all work upon the Louisburg railway and shut down the collieries; but that he made any offensive charges or threatened "to take me in his teeth and shake me if I resisted his demand," is an unqualifiedly fabrication and no one to whom I am personally known would give credence to such a childish threat, having the *least* influence over my decision.

After some *hours* of reflection however I came to the conclusions to resign, 1st.—Because I believed it would be impossible to work harmoniously with such a man. 2ndly.—Because I could make a more profitable use of my time if freed from my engagement, and finally, because I had a very heavy stock of goods in store against which acceptances were maturing and that ruinous loss would ensue from any sudden suspension of work.

I therefore again saw Mr. Kennelly, who promised that great advantages should arise from my acquiescence to his wishes, that he would do everything possible to provide additional capital upon Louisburg R. R. account, and that he would covenant, with Messrs. Burpee & Schriber, (whom he stated were then acting in concert with him for Eastern Extension), that I should have the contract for constructing the line between the Straits of Canso and Louisburg. A promise which he afterwards endeavoured to fulfil during an interview with Messrs. B. & S., my former solicitor (now Judge Henry) being present. After settling preliminaries, I then addressed Mr. Kennelly as follows:

Sydney, June 25th, 1874.

D. J. Kennelly, Esq., *Managing Director C. B. Co.*

Dear Sir,—Understanding that you do not consider the office of manager compatible with my position as contractor of works for the above company, I hereby resign such office in accordance with the terms of arrangement entered into with you this morning as per memo enclosed.

Yours respectfully,

F. N. GISBORNE.

Memo. That Mr. G. resign his office as manager and chief engineer of the Cape Breton Company, Lt., with salary paid to date, plus £500.

Thus, in fact, I was paid, and promised, the full years' salary of £1000 for my voluntary resignation; and if further proof be necessary, I afterwards wrote Mr. Kennelly a letter under date July 9th, 1874, from which I submit the following extract:—"That the £500 compensation is to be paid upon adjustment of coal sales and consignment account, said adjustment to be made within three months from date;" and my resignation is thus acknowledged:

"CAPE BRETON COMPANY. Sydney, July 4th, 1874.

F. N. GISBORNE, Esq., Sydney:

Dear Sir,—I beg to acknowledge receipt of your letter of the 25th ult., and enclosed memo. accompanying, conveying your resignation of manager and engineer-in-chief of this company from this date.

Your faithfully,

D. J. KENNELLY,
Managing Director."

But what must your Worships think of a man who *now* advances foul and slanderous accusations, which he swears were made on *Thursday*, June 25th, 1874, and then addresses the person, whom he so vilely accuses, in the following language:

"FRIDAY EVENING.

My dear Gisborne,—I think I'll fish from 7 to-morrow till the train picks me up at 11. Can you let me have the promised rod and line, and oblige,

Yrurs truly,

D. J. KENNELLY."

And if still further proof be necessary of the truthfulness of my assertions, and the unblushing falsehood of my opponent, I now quote from my letter to Mr. T. P. Baker, R. N., C. B., who was interested in my proceedings, and was then acting in London as my Agent and Representative, under Power of Attorney.

SYDNEY, June 25th, 1874.

My dear Baker,—I have visited the collieries, and also Louisburg, with Mr. Kennelly. He is surprised and pleased with the progress made upon the railway, and also with the

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quality of the work done; but he was down upon my having the stores, (a system, which, be it here observed, he himself reinstated as proved per subsequent letter,) and I at once said I would give them up if he would take over the stock-in-trade at *cost and charges*. Finally we arranged that he should take over all mining materials, and that I should have the stores *free of rent* until the goods for workmen were disposed of or removed elsewhere. I was the more willing to agree to such an arrangement, as he informed me of his intention to shut down the collieries and sell off the bank coal as an auxiliary aid towards the completion of the Louisburg railway, which railway, he firmly believes, is the *only* thing which will make the Company a paying concern. He then put it to me, that the *necessity* of economy being the order of the day, that the stoppage of the (colliery) works would make my office, as manager, a *sinecure*, more especially as my *whole* time appeared to be occupied with the railway contract (which *entre nous* is a fact,) whether I would not resign such office. To this I also agreed, he paying me salary in full to date, plus £500. By the stoppage of the collieries, the contract for working them is, of course, cancelled, for my bargain was for a *minimum* output. To myself personally Mr. Kennelly expresses kindly feelings, and also as to my open and fair dealings; but he thinks my services much more valuable an an organizer of labor and driver of works, than as a *sitter-down* (I use his own words) manager of works *when completed*. In this he errs, as proved by my telegraphic experience; but I cannot do *both*; and, as active work *pays* best, I naturally gave it the most attention, and *am, therefore, quite satisfied with present arrangements* to relieve me of *sitting down* work.

Yours, &c., F. N. GISBORNE.

And again :

"SYDNEY, July 10th, 1874.

My dear Baker,—I fancy Mr. Kennelly has modified many of his first impressions, and somewhat over hasty actions. After a thorough investigation he has passed every disputed account rendered against the company, and *relet both the Reserve and Lorway stores to me at reduced rentals*, ordering Mr. Sterling to give my stores the first offer for any materials required by the *collieries* at prices not exceeding those charged at other stores. He also remarked that all my accounts were honest and above board."

Yours, &c., F. N. GISBORNE.

The above letter is fully confirmed by the following note :

SYDNEY, C. B., July 9th, 1874.

D. J. KENNELLY, Esq.,

Dear Sir,—

[“Memo. Items.”]

I understand from our verbal arrangements of this evening. “That Mr. Sterling is instructed to collect for me miners’ stoppages (due) to date, and also back debts (due) from miners employed, or if re-employed, on the company’s works. That Mr. Sterling is instructed to give me the first offer for the supply of any goods or materials required at the collieries, and that my tender be accepted if the prices do not exceed those of other storekeepers.

Yours, &c.,

F. N. GISBORNE.

And now your Worships it may be well that I should explain more fully the modus operandi under which my stores were conducted, and thus meet Mr. Kennelly’s slanderous accusation against Mr. J. L. Elkin whom he accuses of receiving a bribe of £2,500 stg. in order that I might obtain his consent to my supplying the companies’ collieries with goods from my stores, a practice, he it observed, which I have already shown was sanctioned and approved by himself two years later.

The mines stores were opened about the end of May 1872, and Mr. Harvey the Manager and Financial Agent of the Glasgow and Cape Breton and the Schooner Pond Companies arrived at Sydney in June. He assumed, among other duties, the charge of the above Companies’ Collieries until after the arrival of Mr. Elkin (with full powers as their representative) during the fall of the same year. After an inspection of Mr. Harvey’s management I again took charge of the Collieries at Mr. Elkin’s special request, and continued so to act until March 1873, when I entered into a contract with the above Companies’ to mine their coal at a fixed price per ton, to bank or into railway trucks. All coal thus raised was duly weighed and the quantities checked, by two tally-men, the one being appointed and paid by Mr. Harvey on behalf of the Company, and the other by the miners who were cutting the coal at a price per ton. Such daily out-puts were telegraphed to Mr. Harvey and myself, and all accounts were settled monthly and paid by Mr. Harvey. From the opening of the Collieries until Mr. Elkin arrival, the G. & C. B. and

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Schooner Pond Companies imported their own supplies, and placed them under Mr. Harvey's care; but after a most careful investigation and *entirely unsolicited on my part*, Mr. Elkin arrived at the conclusion that it would be more economical to obtain, in *small quantities as required, suitable* small ware goods from my stores as practiced by the Lorway Emery Company and gave Mr. Harvey orders accordingly; but that Mr. Elkin was induced to favor me in consideration of any bribe or payment, past, present, or prospective, is a base and calumnious assertion of Mr. Kennelly's, and doubtless Mr. Elkin will prosecute him for it in due course. Accounts for all such supplies were rendered to Mr. Harvey monthly, duly certified, and without my having anything to do with them personally, beyond giving general instructions to my head storekeeper, Mr. John McDonald, (who unfortunately had the whole control and sole management of all my store purchases and sales,) to invoice all goods at 10 per cent. advance upon cost. When such accounts had been examined by Mr. Harvey, the Company's accountant, Mr. Stirling, passed and paid them. At the same time counter accounts, for railway freight and charges upon goods conveyed to my stores were put in as an offset, thus proving that the goods were my private property, and not as falsely stated by Mr. Kennelly, purchased upon Company's account, and then transferred by me to them at a profit. It should also be remembered that I leased *all* store buildings *from the* Companies at an annual rental of 17½ per cent. interest upon cost of construction, and that all goods were supplied with their full knowledge and consent. I may here add, that the accounts for all goods furnished to the Lorway Company were examined and passed by their London accountant, Mr. Nichols, then resident in Cape Breton, before being paid, and that I was the lessee of their store buildings at a similar annual rental.

It will be seen, however, from the foregoing statements, that the Glasgow & C. B. and the Schooner Pond Companies were only supplied from the Fall of 1872 to March, 1873, with articles from my stores, as from that date I worked the collieries at my own expense and risk; the same system of accounts being continued; goods being charged against the mines, and credited to the stores' account.

The final result of such contracts was a *small* profit upon the Glasgow & C. B.'s *Reserve* colliery; but a much heavier loss upon the Schooner Pond Company's colliery, although

both Companies were the gainers; the prices per ton to bank paid me being considerably *less* than the cost of previous mining.

From January 1st, 1874, (when the several companies were amalgamated under the name of the "Cape Breton Company, Limited,") the collieries were being worked upon company's account, and so continued until after my arrival in London during February, when I again entered into a contract, (which was to take effect from the 1st of January,) to raise coal at a fixed rate per ton, *based* upon a large *minimum* out-put, and when I returned to Cape Breton, all expenditure from that date was debited to my private account, and all coal raised credited in like manner, the accounts being adjusted between Mr. Stirling, (the C. B. Company's new financial agent, Mr. Harvey having meanwhile resigned and left for England,) and my accountant, Mr. Clarke. This arrangement continued until the arrival of Mr. Kennelly in June, the company having meanwhile, for reasons already explained, ordered a great reduction in out-put, and thus greatly increased the current rate of cost per ton for mining; under such circumstances, and having regard to the large stock of coal in bank, and Mr. Kennelly's utter inability to place coal either in the United States or Canada, where his management had already prevented the consummation of important sales, I consented to cancel my contract, upon terms already explained. I may add in conclusion to this portion of Mr. Kennelly's charge, namely:—that the late Thomas P. Baker, R. N., C. B., and myself had "vultured" the several Companies and thrived at their expence; and that I had improperly supplied the collieries with goods, at a profit, from my own stores when acting as manager for the Companies; that these stores were finally closed after 2½ years' experience, with a *cash loss* of about \$15,000! and that instead of "*vulturing*" the company, I am to this day a heavy loser by both stores and mining contracts.

Mr. Kennelly then adds that *he* compelled Mr. Baker to resign his seat at the Board of Directors in consequence of discovering that he was a partner in the railway contract; and thus, true to his nature, attacks, in the most cowardly manner, the memory of the *dead*.

Mr. Baker, as you are doubtlessly aware, was a distinguished officer in Her Majesty's service, a Commander of the Bath, and late Chief Engineer of H. M. Dockyard, Chatham, and I can truly assert that a more upright, honest, noble-

Loss on store
keeping.

Attack upon Mr.
Baker.

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hearted man never lived ; but he was much too inexperienced in business to guard against the wiles of such a man as Mr. Kennelly, unsuspecting as he did, until near the close of his earthly career, the duplicity of the man with whom we were unfortunately connected ; and it is a fact, your Worships, that I was obliged within the year to cancel Mr. Baker's Power of Attorney, in order to protect myself from the influences brought to bear upon him by Mr. Kennelly to the detriment of my claims upon the Company.

And *who is* this Mr. Kennelly who now comes before you with these slanderous charges against the dead, wrapping himself up in the assumed dignity, and endeavouring to shield his actions under the protective garb of an officer of the High Court of Chancery ? He, as already shown, but the jackall of his patron, Sir James Anderson, and so soon as the Cape Breton Company are out of liquidation he loses the temporary position of official liquidator, which he obtained by consent of Court, solely upon the prior, but *not unanimous* nomination of the Directors of that company, and he will then have no more connection with the High Court of Chancery than you or I have.

He is, moreover, avowedly a man of small means and dependent in great measure upon his salary for a livelihood. He has invested, I believe, £2000 only in the company's bonds, but holds none of the ordinary shares of the company (unless possibly by free gift, or acquired at a mere nominal price,) and hence his anxiety to sweep them out of existence.

Mr. Baker was not my partner your Worships ; but he was interested in my contract with the full knowledge and consent of his Co-Directors and Mr. Kennelly, and I verily believe he would never have been asked to resign his seat at the Board ; but through the machinations of Mr. Kennelly who feared that I might thus become conversant with the financial difficulties of the company, and that my sureties, Mr. Baker and Major Martin Petrie, might take the alarm at an inconvenient moment. Nothing could however have been more courteous than the note which was written to Mr. Baker in acceptance of his resignation, and informing him that upon completion of the contract he would be kindly welcomed back to his seat at the Board.

And yet this man dares now to say, when safe from the indignant denial of the accused "That he *demand*ed his resignation" and that connected with myself "he, Mr. Baker,

ravaged the companies, and fattened upon them from their first conception."

And next Mr. Kennelly states:

That I debited the Companies with any losses upon coal sales under plea that such cargoes were consignments; but had credited myself when profits were made, as if such cargoes had been purchased upon private account.

Coal sales,

I shall endeavour to show, however, in as concise a manner as possible. 1st. The result of sales effected by myself and agents when I was a purchaser of coal under agreement with the several companies; and 2ndly, per letter (A) hereto annexed, my authority for making subsequent consignments of coal upon company's account, it being understood that no purchases were made upon private account after I commenced shipping coal upon consignment, and that the results of all such consignments were accounted for to the company in due course, either by myself or the consignee; but perhaps the best proof of coal being primarily shipped upon consignment, is the fact that no notes were given for such cargoes, although such was invariably the case when purchases were made upon private account.

Statement of Coal sold by F. N. Gisborne during season of 1873:

MONTREAL.

766 tons Reserve @ \$2.25 less com.	= \$2.13 $\frac{1}{2}$ ton nett.
9,700 " " 2.75 " "	2.62 $\frac{1}{2}$ " "
4,577 " " 3.00 " "	2.85 " "
130 " " 3.25 " "	3.08 $\frac{1}{2}$ " "
<hr/> 15,173 " "	Value \$40,521.40, or \$2.67 aver. per ton.
The 766 tons @ \$2.25 was the coal used the previous winter to ballast the pier, and sold by Mr. Harvie at a reduced price.	
1,516 tons schr. Pond @ \$3.00 less com.	= \$2.85 ton nett.
968 " " 3.25 " "	3.08 $\frac{1}{2}$ " "
<hr/> 2,484 " " "	Value \$7,300.30 or \$2.94 $\frac{1}{2}$ aver per ton.
6,350 " Lorway @ \$3.00 less com.	= \$2.85 ton nett.
963 " " 3.25 " "	3.08 $\frac{1}{2}$ " "
<hr/> 7,313 " " "	Value \$20,987.40 or \$2.87 aver. per ton.

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Bal

3,83
80
63
1,43

5
1,68
12
1,87
39

1,66

2,54

80

3,34

58

55

1,14

1,30

8

1,31

Less

ST. JOHN, NEW BRUNSWICK.

3,834	tons Reserve, value \$10,926.90, or \$2.85	“	“
802	“ Lorway @ 2.75 less com.=2.62½	ton nett.	
630	“ “ 3.00 “ 2.85	“	“
<u>1,432</u>	“ “ Value \$3,898.74, or \$2.75	aver per ton.	

ST. JOHN'S, NEWFOUNDLAND.

56	tons Reserve @ \$2.75 less com.=2.62½	ton nett.
1,685	“ 3.00 “ 2.85	“
129	“ 3.25 “ 3.08½	“
<u>1,870</u>	“ Value \$5,345.39, or \$2.85½	aver per ton.
395	tons Lorway value \$1,125.75, or \$2.85	aver. per ton.

HALIFAX.

1,666	tons Reserve, value \$4,748.10, or \$2.85	aver. per ton.
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OTHER PLACES.

2,547	tons Reserve @ \$3.00 less com.=2.85	ton nett.
801	“ 3.25 “ 3.08½	“
<u>3,348</u>	“ Value \$9,732.03, or \$2.90½	aver. per ton.
589	tons Lorway @ \$2.50 less com.=2.37½	ton nett.
555	“ 3.00	
<u>1,144</u>	“ Value \$2,987.02 or \$2.68	aver per ton.

FRENCH MEN-OF-WAR.

1,305	tons Reserve @ \$2.07.	} Per Special Contract.
8	“ Lorway @ 2.07.	
1,313	“ Value, \$2,717.91	
	Less Com., 67.95	
	<u>\$2,649.96, or \$2.01½</u>	aver. per ton.

RECAPITULATION.

Montreal,	24,970 tons, value \$68,818.10.
St. John, N. B.,	5,266 “ 14,825.64.
St. John's, Nfld.,	3,265 “ 6,471.14.
Halifax,	1,666 “ 4,748.10.
Other places,	4,492 “ 12,719.05.
French Men-of-War	1,313 “ 2,649.96.

39,972

110,332.99.

Less allowed for short
weight

525

1,447.96.

Total

39,447 tons value \$108,784.03.

Showing a nett average of \$2.75 $\frac{1}{2}$ per ton, which was 50 cents per ton higher than the price obtained for other new mines coal of equal or superior quality, as proved by my purchases from the Little Glace Bay Company at 2.25.

Memo—In consequence of the Company's Manager, Mr Harvie's, interference with the vessels chartered by me, and loading those consigned to him out of turn, claims for demurrage were made, law suits and other difficulties arose, and the value of the "Titian" and "Peerless" cargoes were almost exhausted in said suits, etc., but they should not detract from the value of the quantity of coal sold by me, as I was not responsible for the Manager's acts; still even allowing the deduction of the value of the above vessels cargoes, viz., about \$5,500.00, there was still a nett average result of over \$2.61 per ton upon sales effected by myself.

A much larger number of tons could have been sold, but for the defect in the pier shoots, which would not allow of more than 400 tons being shipped per day. Several large orders had to be refused in consequence of the great delay to vessels, a difficulty afterwards remedied by my inventing the tip shoots now in use, by which from ten to fifteen hundred tons of coal can be easily shipped daily, and with a much less loss and injury to the coal by breakage than heretofore.

Loss on coal
shipments,

The result of said shipments to myself was a loss of nearly \$1000, which would have been much greater if I had not purchased and sent to Montreal about 10,000 tons of coal from the Little Glace Bay Company at \$2.25 cents per ton, having had to buy said coal to fill orders consequent upon the inability of the company to ship their coal within contract time for delivery.

The company have been paid by me for all the within mentioned coal, with the exception of the "Titian" and "Peerless" cargoes, as hereinafter referred to.

After the foregoing arrangements for purchasing coal had ceased, I was instructed to ship coal on consignment as explained in letter (A) in appendix. All returns for consigned coal, including the cargo of "British Lion," have either been made by me to the recited companies, or direct from agents.

In final explanation of the outstanding notes, which ought to have been cancelled, I would observe that when questions as to demurrage arose the first claim was made by the captain of the "Kafferland," who demandid a large sum, but finally settled for a few hundred dollars, which was afterwards repaid to me by Mr. Harvey, the companies' manager.

The captain of "Peerless" next claimed a much larger sum, and as no immediate arrangement could be made with him, he, upon arrival at Montreal, landed the cargo and held it through his agent; but at last the dispute was arranged by Mr. Harvey's consent, the coal was sold by Mr. Burke on company's account, and a note endorsed by Mr. Harvey was given for freight, and the demurrage agreed upon.

Peerless, Titian
cargoes.

The "Titian's" cargo was purchased by Mr. Molson, of Montreal, he being charterer of the ship; but payment for the coal was refused until his claim for demurrage was settled. Under instructions from Mr. Harvey an action was commenced by Mr. Burke, at Montreal, to recover the value of said cargo, and a judgment in his favor was finally obtained; but previous to said judgment being given, Mr. Molson became insolvent, and I am not aware what dividend has been declared by his estate.

The "British Lion" was sent to Quebec with a trial cargo, which was stored there for a better market, and afterwards sold by Mr. Kennelly on company's account as per paragraph from his letter to me of 8th June, 1874:—"I have sold the Quebec shipment lying over since last year at \$5.50 per chaldron. It simply would have eaten itself up in charges."

It will thus be seen that the cargoes of the three mentioned vessels (for which the five notes, now over three years past date, were given,) were assumed by the company, thereby fulfilling the understanding upon which they were obtained. Payment for said notes was not, and I believe never would have been demanded, had not legal proceedings been instituted by me to recover claims re Louisburg railway contract, &c.

I am, furthermore, entirely ignorant of the final result of said cargoes, as the returns have been made direct to the company or their agent.

Mr. Kennelly then asserts:

That Messrs. Gisborne & Baker had conspired with other Directors to make large and fraudulent profits by the purchase of coal areas which were afterwards sold to the various Companies recited at exorbitant prices.

But what are the facts, your Worships, before these recited companies were formed, I, in my private character, bonded every available coal area on or near the presumed route of the railway since constructed to Schooner Pond. The properties were then of comparatively little value as they were without facilities for coal shipments. These bonds I main-

Coal area asso-
ciation.

tained for about two years, paying the interest regularly; but when nearly expired and renewals refused or doubtful, I associated myself with some gentlemen who formed and registered themselves, under the Joint Stock Companies's Act, as the "Coal Area Association, Limited," and to this association I transferred all the lands bonded or purchased by me as agent and trustee. A large sum of ready money was thus primarily expended in acquiring these properties, and in due course they were disposed of *by the Association* to the various companies recited; but in *every* instance the great preponderance, of the consideration demanded, was accepted in the ordinary shares of the company purchasing, and in one notable instance, recited by Mr. Kennelly viz, the purchase by the Cape Breton Company of the "Lake," "Haven" and "Balmoral" areas for £42,000, (as set forth in their original prospectus) £30,000 was accepted in shares and only £12,000 was paid in cash, although I had an opportunity of selling them in Canada for £30,000 in *cash* and objected to the sale of the properties to the Cape Breton, until assured by my associates, that we must forego present cash profits as the acquirement of all the collieries over which the Cape Breton Company's railway ran was of paramount importance to the company, and would add to the value of our investments in their ordinary share capital.

Another of Mr. Kennelly's false accusations and most easy to disprove is, that I sold the Reserve area to the Glasgow and Cape Breton Company for £40,000 vantage; but their prospectus shows that £5000 in cash and £5000 in shares was the consideration paid for the entire enterprize, including elaborate and costly surveys of the proposed railway line, the Reserve area, and also the *preliminary expenses of forming and organizing the Company*, such being the only *legal* manner in which provision can be made for such necessary outlay, and I can truly add, and prove by correspondence and accounts, that personally I never received one dollar or a single share of the above consideration.

Before entering upon the *main* subject before your Workshops, viz.: The disputed claims and counter charges relating to my contract for the construction of the Louisburg Railway and Pier, I have a few words to say in reference to Mr. Kennelly's *wilfully* false (because to him already fully explained) accusation relative to my dealings with the "Louisburg Land Company's" funds and property. He says:

That I, as Agent for the Louisburg Land Company, Limited, had repurchased lands which were already in their legal possession, had constructed various buildings thereupon without proper authority, some of which the Cape Breton Co. had purchased and one of which I had mortgaged to the Company, knowing that I had no title to the land upon which it was erected. Also, that I had paid a less sum for one lot than I had received from the Company.

Louisburg Land
Company.

"The Louisburg Land Company, Limited," is an association organized for almost precisely similar objects as was "The Coal Area Association, Limited," viz.: the acquisition of lands at a low price, with a view to selling them at a considerable advance, so soon as the *completed works* of the *Cape Breton Company, Limited*, made them of value. It so happens, however, that Mr. Kennelly is one of the shareholders who own *all* the lands thus acquired, and is thus satisfied; but because he was not included in the eight or ten gentlemen who formed the Coal Area Association, he seeks, with all the malice natural to his envious and avaricious nature, to throw discredit upon their transactions.

Twenty gentlemen, all shareholders in the Cape Breton Company, are *equal* shareholders in the Louisburg Land Company and, in consequence, Mr. Baker's executors' and myself own 1-10th of the property and have paid 1-10th of *all* the money required for its purchase and subsequent management. It is important to remember such fact, as it utterly discredits the charge now made that I have voluntarily purchased and paid for lands already in legal possession of the Company.

Under an *old judgment* of nearly 20 years standing (which subsequently and inadvertently was made the *readiest means* of conveyance) the Company became possessed of a *certain clearly specified* property purchased by me, as their agent, from the late Mr. John Scott, of Louisburg, for the sum of \$7,000, and under such transfer of the judgment Mr. Kennelly *now* seeks to claim *all* the estate from his executors and among other properties the lands of a Mr. J. Martin and Mr. S. Tutty which they purchased and paid Mr. Scott for many years ago and have since improved, being meanwhile in happy ignorance of the aforesaid judgment. Subsequently I purchased these properties for \$1,600 and \$1,100 respectively and any Court of Equity would sustain such course of action. Nothing, however, more clearly proves the greed and contemplated injustice of the man (who now tries to revenge himself, if possible, for the scathing rebuke which I adminis-

tered to him upon discovering his intentions) than his present attempt to rob these poor men of their honestly acquired properties, and who now accuses me of appropriating to my own use \$1,400 of the \$1,600 purchase money paid for the Martin property. Let us examine the *facts*.

Upon obtaining the title I paid the said Martin, per check, \$1,400 and, per cash, \$200 (which I brought out from Sydney at his request) as he wished to *invest* the \$1,400 and to pay off small liabilities with the \$200. Now, it so happened that Mr. W. H. Morley, builder, had erected a store and offices in Sydney and that I become, during construction, a 2-3rds partner or shareholder in a venture which yielded us 12 per cent. interest upon its cost of \$4,200. As the largest shareholder, the property was registered in my name—Mr. Morley holding a mortgage deed for \$1,400 as his share in the building.

It was *this* mortgage that Mr. Martin purchased by advice of his own and the Company's Solicitors, (Messrs. McKay & Hill,) from Mr. Morley, to whom the \$1,400 was paid, and it is thus clear that I never received a dollar of the money and yet Mr. Kennelly now *repeats* a *false* charge already explained to him.

While upon the Louisburg Land Company accusation I may as well at once explain that after surveying and laying off the streets and lots of the proposed new town I, in accordance with an expressed intention before leaving London in March, '74, ordered, as Manager, the necessary building materials per cable despatch, and afterwards caused to be erected for the company's requirements, sundry buildings, composing 2 double dwellings suitable for laboring men, a large barn and stable and forges, presuming, of course, that the Cape Breton Company would pay for them in due course, which they finally did, and this constitutes the sum of £1,400 received by me (entirely outside the railway contract,) and to which Mr. Kennelly refers in his charge.

I also caused to be erected for my private use and at my private cost, a dwelling house outside the limits of the street lots, presuming that the Louisburg Land Company, for whose interests I had been working for 2 years, without any profits or remuneration whatsoever, would only have been too pleased to sell me an acre or even half an acre at a reasonable price, and when Mr. Kennelly arrived in Cape Breton I, at *his instigation*, addressed a letter to the Company, soliciting in part acknowledgment of my services, a title to an unim-

proved acre of wild land, offering for it over three times its original cost to the Company; but thro', as I now believe, Mr. Kennelly's secret machinations, the land was offered me in exchange for the transfer of a mining license (obtained surreptitiously by one of the Company's employees, whom I had no means of controlling,) and thus the matter rested pro tem; but with a final assurance, thro' Mr. Baker, that the Company would do what was liberal and right if I did not succeed in obtaining the coveted license.

Having meanwhile, however, received an *assurance in writing* from the Company's Solicitors, Messrs. McKay & Hill, that I had an *equitable title* to the land in question, I transferred (in my then capacity of Trustee) all the lands previously bonded and purchased. Some months later (when pressed for money in consequence of the Cape Breton Company's inability to meet their engagements on Louisburg R. R., and when they had advised me that *they* were borrowing money at 12½ per cent. themselves) I cabled to London a request, to obtain for me £1000 on mortgage of the house in question, which money they at once sent with a full knowledge of the foregoing facts, the Directors of the Cape Breton Company being identified with those of the Louisburg Land Company. When, however, I discovered, at a later date, that the £1000 had been advanced out of funds set aside by the Cape Breton Company to meet the interest upon their own bonds shortly becoming due, and that it had not been borrowed from independent sources, I refused to pay either interest or principal pending a settlement of my claim against the Company, I replevined all the property conveyed under such agreement when seized by the Sheriff, and still hold possession of said property pending a settlement of accounts.

Mr. Kennelly next charges me with having sold the Solicitorship of the Glasgow and Cape Breton Company to Messrs. McKay & Hill for the sum of \$1,200; but what are the simple facts of the case. Upon the formation of the Company I appointed Mr. Alonzo J. White (not then, as now, Atty. Genl. of Nova Scotia) Solicitor to the Company; but soon afterwards, for reasons *at present* quite unnecessary to explain. Mr. White wished to dispose of his appointment which was estimated to be worth \$800 per annum in prospective, and requested me, as a favor, to negotiate the matter for him with Messrs. McKay & Hill with whom he was not upon friendly terms. Upon my recommendation (and I may here observe that the arrangement was a good one for both the

Sale of solicitorship.

Company and the Solicitors in question) the purchase was completed, and the money paid over by Messrs. McKay & Hill to Mr. White, and I need scarcely add that I never received or claimed a dollar for commission. I think, however, that both Messrs. McKay & Hill and the Hon. Alonzo J. White have now every reason to exclaim, "Save us from our friend Kennelly!" for the transaction was, it appears, an *unprofessional* one as between firms of "highly respectable lawyers." And is it not somewhat singular that Messrs. McKay & Hill were "weak enough" to have exposed this transaction in an endeavor to obtain an advance from Mr. Kennelly in consideration of the purchase made from Mr. White? You will thus perceive how readily another of Mr. Kennelly's false and malicious charges is explained and disproved.

Louisburg railway contract.

And now, your Worships, I must, as briefly as possible, relate the history of my Louisburg Railway Contract during which I shall endeavor to show, (by extracts from original correspondence) the statements and terms upon which I undertook it—the nature of the disputes relating to "right of way, land purchases"—trucks—"orders to accelerate speed of construction in advance of contract time"—ordinary extras incidental to all railway contracts and specially provided for in my own—and final breach of contract upon the Company's part. consequent upon their financial difficulties."

I was induced to enter into a contract for the construction of the Louisburg Railway and Pier upon a statement made by Sir James Anderson, Chairman, and endorsed by Mr. Keunelly, Managing Director, at the first general meeting of shareholders in London, myself and sureties, Major Martin Petrie and Mr. Baker, being present, the truthfulness of such statement having previously been impressed upon us by Mr. Kennelly in private conversation. The Chairman said, thus publicly, that £90,000, out of the required £95,000 for the construction of the work had already been subscribed, and that a further amount was promised and in reply to an enquiry made at the instigation of one of my sureties answered that the said sum of £90,000 would be applied *exclusively* for contract purposes, and would not in any manner be used on account of liabilities appertaining to any of the amalgamated Companies. Upon such an assurance being given, two thousand pounds of additional capital was subscribed for by gentlemen present and we considered our security for payment satisfactory. But what were the facts, your Worships? Before I had well

commenced operations in Cape Breton, my agent, Mr. Baker, was called upon to subscribe, and did subscribe, £2,000 cash, towards a syndicate or loan, dated July 10th, 1874, for £70,000 *required to meet the first certificates for work performed under my contract!!* The natural and immediate consequence was, that the 8 per cent. preference shares (which I had consented to accept in one-fourth part payment of my contract and which were quoted at a premium when I signed it,) became utterly unmarketable and valueless for contract purposes. No one would accept *such* shares in part payment of railway material as is usually the custom, and I was thus embarrassed from the outset. Mr. Kennelly was not slow to take advantage of my necessities and as Managing Director and, I may add, *factotum* of the Cape Breton Company he *dictated* just such terms as he thought fit, and in proof thereof hear what my unfortunate agent wrote in answer to my complaints:

“October 7th, 1874.

“Mr. Baker to Mr. Gisborne,—

“I was at the time obliged to consent to anything asked me by Mr. Kennelly except that of *signing your death warrant!!*” But, adds the poor man, “it will, however, be all right in the end, for Mr. Kennelly desires me to inform you with his kind regards that he is quite for you (*going for you*) would, however, be nearer the truth) now and hereafter, and will assist you all in his power.”

I am advised that in consequence of the foregoing misrepresentation of facts, that I am entitled to regard the contract as a *cash* transaction only, and in fact the Company, (by granting me an amended contract, in part acknowledgment of the injustice of the first and Mr. Kennelly, per various admissions,) have endorsed this very reasonable view of the case. As I shall have occasion to refer to this amended or supplementary contract hereafter, I will only now state that it *professed* to give me £10,000 additional in cash, thus leaving £13,750 payable in the 8 per cent. preference shares, but which waste paper I decline to accept for valuable considerations given.

In answer to Mr. Kennelly's first charge, namely, that I had failed in completing my contract although paid in full by the Company for all that was done I invite your attention to the following balance sheet prepared by my Accountant, Mr. W. H. Clarke, from the accounts current *rendered to me by the*

Company and more fully explained in the detailed accounts.
See appendix marked B.

BALANCE SHEET.

The Cape Breton Company Limited in account with F. N. Gisborne.

Dr.	1876.	
To amount of Contract.....	£95,000	0 0
Extra Expenditure upon ac- celerating work within con- tract time.....	5,472	10 7
Ordinary Extras.....	3,224	7 11
	<hr/>	£103,696 18 6

Cr.	1876.	
By amt. paid for material as per account.....	£27,356	13 6
Cash payments as per acct....	38,827	17 2
Cash advanced upon signing Contract and not to be charged until final settle- ment of account as per supplementary Contract clause 2	5,000	00 0
Amount estimated for rolling stock as per Letter March 3, '74, to Managing Director	9,500	00 0
Maximum balance of resident Engineer's 1875 estimate for completion of contract work	7,000	00 0
Balance due H. W. I. Works guaranteed to them by the Company	1,387	10 0
	<hr/>	£ 89,072 00 8

Balance due F. N. Gisborne.....	£14,624	17 10
Plus amount of private account.....	402	19 9
	<hr/>	£15,027 17 7

Or	\$73,111.80
Plus damages.....	71,174.37
And as claimed under the writ	<hr/>
	\$144,286.17

etailed accounts.

th F. N. Gisborne.

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—£103,696 18 6

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0

—£ 89,072 00 8

.£14,624 17 10

. 402 19 9

—£15,027 17 7

30

37

—\$144,286.17

From which claim £1,000 will be deducted upon release of the Contractor's property now held under mortgage by the Company.

W. H. CLARKE, *Accountant*.

The various items in the above Balance Sheet will be explained as I proceed to answer Mr. Kennelly's statement.

The next charge made by Mr. Kennelly is:

That I wrongfully purchased land required for the right of way, &c., in my own name and held possession until compelled to transfer it.

By my contract, which it is here advisable to remind you, was for the gross or lump sum of £9500, plus extras; I had to provide all such lands at my *own expense*, and purchase them for and in the name of the company. I therefore, according to law, caused arbitrators to be appointed to assess the value of said lands, and (as I was not then an officer of the company, as was the case when the contract was made,) the awards were rendered, as between myself, as contractor, and the property owners. In consequence thereof the title deeds, in so far as they could be obtained, were made out in my own name by the *company's* solicitors, Messrs. McKay & Hill, with whom I had previously arranged that a single deed of conveyance should be made from myself to the company so soon as all the titles had been approved and obtained; the company's resident engineer, Mr. LeBreton, being also fully aware of the mode of purchase. Before, however, the titles were completed, the Cape Breton Company went into liquidation, and several months later, when a demand was made upon me for the transfer, I was advised, by counsel, to refuse pending a settlement of my claim for work performed and breach of contract. Soon afterwards, however, I visited London by invitation, and upon a promise made by Mr. Kennelly, in his then position of official liquidator, that, conditionally upon an immediate transfer, my claim should at once be referred to arbitration, I acceded to his wishes, and yet you now find this said Mr. Kennelly, resisting (with all the malignity of which I have proved him to be capable,) the arbitration order, which after many vexatious delays and heavy expenditure, I have at last obtained from your own Supreme Court. He further accuses me of misappropriating the sum of £700, paid by the company as an item for these lands, and for which he claims to hold Mr. Baker's receipt: but there is no such special sum recited in my contract, neither

Railway Bonds.

is there any covenant therein that I should account for any payments made account thereof. It was advanced in like manner, as were other lump sums, for engineering, freights, customs, contingencies, &c., and I had perfect liberty to expend such amounts in accordance with the more immediate requirements of my contract; and it must not be forgotten that I have expended a much larger sum upon works and materials, as certified by the company's engineer, than the aggregate amount of money received from the company.

Mr. Kennelly also says:

That I covenanted to pay 8 per cent. interest upon cash advanced account railway material purchased for me by the company, and that £6000 is thus charged against, and repudiated by me.

Interest,

Now, what are the facts? It was never agreed nor anticipated, when I signed the contract, that I was to pay any interest whatsoever, and the first intimation of such a demand was a letter dated August 25th, 1864, Mr. Kennelly to Mr. Gisborne: "I think that you must allow that the 8 per cent. upon cash advances for materials which the company charges you is moderate, considering that they are *borrowing* the same at 12½ per cent.!!" and with such primary notice comes a document dated August 20th, 1874, corroborative of the above intimation, and signed by my agent under Mr. Kennelly's skilfull pressure and most *friendly* assurances, that the interest would not amount to any sum of consequence, as it would simply date from the time of payment by the company for railway materials purchased, and run until such materials were accepted and paid for, under the engineer's monthly certificates; and yet £6000 is now Mr. Kennelly's modest little estimate for interest upon *borrowed* money, which ought, according to the public statements of Sir James Anderson and himself, to have been at the credit of the company when the contract was entered into.

Coal trucks.

Mr. Kennelly then asserts that so soon as the company stop supplying me with funds, viz.: during the month of January, 1875, I repudiated an arrangement entered into with Mr. Baker for the transfer to my account of 100 railway trucks in part payment under the contract; but what are the facts?

In the first place it is necessary to explain that the original coal shoots and shipping apparatus attached to the Cape Breton Company's Pier at *Sydney*, and also their *coal trucks*, were very defective; the coal was broken up into slack,

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and a large amount of labor was required when unloading. Perceiving that the reputation of the company's coal was thus being ruined, while at the same time the shipping capacity of the pier was reduced to a minimum, *I invented* a new tip shoot, which effectually overcame every difficulty, and was adopted by the company; but without any compensation being awarded to me. The company's old trucks were *altered* at considerable expense, in order to render them serviceable; but only after considerable opposition from Mr. Badham (locomotive superintendent) who meanwhile had tried several expensive plans of his own which resulted in failure. The company were however still deficient in necessary rolling stock for the Schooner Pond traffic and finally determined to order 100 additional trucks for such purpose. At my suggestion, complete drawings and specification, for an improved form of truck, were prepared by Mr. Albert Hill the company's engineer and manager at Lorway Colliery, and after my approval, were duly submitted to the company, who then passed a resolution authorizing me to order 100 trucks for use upon their *Sydney and Schooner Pond Line*. Finally a tender for 50 trucks was accepted from Messrs. D. Starr & Sons of Halifax, who offered to supply them through an American firm in Massachusetts, and 50 were contracted for with an English firm, both contractors being furnished with copies of the original drawings and specification. In due course the American trucks were delivered, by the manufacturer in person, at Sydney Cape Breton, where they were received and accepted by Mr. Kennelly himself, who ordered the account to be paid. Upon subsequent trial it was found that, although built to specification the springs were not placed quite high enough and in consequence the truck bodies would not carry the required 4 ton load without occasionally making contact with the axle gear. Mr. Kennelly then requested the company's servants, Messrs. Badham, Rumble & Sterling to furnish him with a condemnatory report upon them and it is needless to add that they were pleased to report as directed. Some weeks later the English trucks were delivered and proved to be satisfactory, their springs were properly placed and amply strong, thus the *specification* was proved to be correct and I was free from any possible blame or responsibility in the matter.

I must also explain, that in the contract for constructing the Louisburg railway for the lump sum of £95,000, plus extras, it was stipulated that I should furnish two loco-

Purchase of trucks.

motives and 100 trucks (at an estimated cost of £9500) for the *equipment* of that line when finished, and meanwhile that the company should furnish me with two engines, and 50 trucks *free of charge* during the construction of the railway.

Imagine therefore my surprise when I received the following letter July 28th 1874, Mr. Kennelly to Mr. Gisborne :

"It has been ruled, under the circumstances of the case that the 100 trucks furnished—50 by Messrs. Starr & Co., and 50 from this side—shall form the 100 trucks to be delivered to the company under your contract, the same to be delivered in good working order and capable of carrying safely 4 tons of coal. *It is trusted you will acquiesce* in this very reasonable arrangement, which will tend to overcome a difficulty experienced, so far as concerns 50 of those trucks received from Messrs. Starr & Sons. !!"

Mr. Baker, per same mail advised me "that he should be obliged to agree to such an arrangement *as the company were short of funds*," to carry out all the provisions of the contract.

Per return mail I wrote: to Mr. Kennelly "That Mr. Baker had evidently consented to an agreement relative to the 100 trucks without knowledge of the circumstances under which the contractor was asked to accept them under his contract." And immediately upon receipt of a copy of the agreement I wrote Mr. Kidson (Secy to the Cape Breton Company) as follows.

September 29th, 1874.

Refusal to accept trucks.

"With regard to the trucks I have to observe that they were purchased for the Schooner Pond and Sydney line, and that many of them are in use upon that line, while the few supplied me under my contract have the *old* car dangerous screw couplings, the *new* ones being added to the company's old trucks! *I cannot therefore confirm* the conditional agreement entered into with Mr. Baker to debit my contract with the trucks now in Cape Breton."

At the same time I wrote Mr. Baker "That the truck arrangement is a downright imposition and we must repudiate it, or their full value, (£6,000 plus freight duty &c.) will assuredly be deducted from the contract !!"

The company repeatedly reverted to the disputed truck arrangement; but I as constantly refused to acknowledge the agreement entered into with Mr. Baker vide extracts from the following subsequent letters to the company.

October 14th 1874.

Mr. Gisborne to Mr. Kennelly, "I am sorry that I cannot agree with you as to the *equity* of the 100 truck arrangement; but hope the matter will be settled without any disagreement between myself and the Directors."

May 12th, 1875.

Mr. Gisborne to Mr. Baker, "In a court of equity the per-empory debit against me of £6,551 16 4 for trucks, which were estimated under my contract to cost £6,000 only, would be considered *sharp practice* and would be disallowed."

May 13th, 1875.

Mr. Gisborne to Mr. Kidson, "Both as regards the debiting my account with the trucks and the tying up of all preference shares as security for £10,000, *de facto to cover cost* of said trucks, engine, bridge extension, &c., &c. I have from first to last ignored the facts and do not believe a court of equity would admit them as facts; but desiring to complete my contract amicably and in good faith, I have always trusted that a final settlement of accounts would render it unnecessary to revert to such disputed topics."

During the same month (May 21st, 1875) I received the following notice from the company's resident Engineer:

Mr. LeBreton to Mr. Gisborne, "I am instructed by my Board of Directors, that it is now time that the 100 trucks to be provided for the Louisburg railway were prepared to be handed over, subject to my approval. I request you to take immediate steps in this matter."

To which note I replied as follows:—

May 22nd, 1875.

Mr. Gisborne to Mr. LeBreton, "In reply to your note of 21st inst., I beg to state; that as the Cape Breton Company have, contrary to my protest, charged my account with the cost of 100 trucks ordered by them, for another service, a number of which trucks have been and are still in use by the Cape Breton Company for general purposes, coal traffic included, I am in consequence prevented from perfecting my present arrangements for the purchase of the 100 trucks deliverable upon completion of my contract."

May 26th, 1875.

Mr. Gisborne to Mr. Kidson, "*Trucks*. I do not admit *any* items charged against my contract in connection with trucks imported nor any cash payments made on account thereof. I have never been in possession of or received any trucks beyond those specified for contractor's service, vide copies of my reply, forwarded to your resident engineer per present mail."

July 8th, 1n75. •

Mr. Gisborne to Mr. Kidson, "*Trucks*, I am sorry to be so diametrically at variance with your Directors relative "to the right, justice and equity" of the proposed arrangement, and, therefore, regret that *I cannot yield the point in question.*" "It is evident, that even when trade is brisk, your Company have, under proper management, more than sufficient locomotive power at command, also that no additional trucks will be required for some time to come. I think, therefore, that Arbitrators would rule, that the only just and equitable solution of the question, would be to strike out of my contract the £9,500 estimated for such items, as proposed and specified in my letter to your Managing Director under date March 3, '74."

It is evident from Mr. Baker's letters that important facts as regards the trucks were withheld from him when he signed the agreement. He was told that an outlay of a few cents upon each would rectify the weakness of the springs, and he was promised that they should *not* constitute an immediate interest bearing charge against the contract, but be taken into account *at the final settlement of contract claims.*

In conclusion, I may add that I have never accepted or taken possession of said trucks; but contrariwise, the Company have contantly made use of them for the general purposes of their traffic, and I prove conclusively that I repudiated the placing of these trucks to my contract account immediately and months before I solicited pecuniary assistance.

Mr. Kennelly next endeavors to show that when in need of funds I solicited assistance from the Company in lieu of demanding it as a right, and thus adduces non-indebtedness upon the Company's part.

Having already shown the primary cause of my embarrassments how the *good will* of Mr. Kennelly and the Directors was expressed in their letters, and the constant *assurances* of my agent (long after the Company had gone

into liquidation) that Mr. Kennelly assured him that fresh capital was being obtained, and that *all would end well*. I think your Worship's will allow that a courteous request for assistance was both politic and more seemly, than an abrupt demand for payment of all that was considered due from a Board of Directors among whom I had personal friends.

Mr. Kennelly says that I had made a sub-contract for the Mira Iron Bridge, and then sought to make the Cape Breton Company a party directly interested therein, and I thus explain the transaction:—

"I contracted with the "Hamilton, Windsor, Iron Works Company" for the Iron Bridge at Mira, at a definite price, based upon plans and measurements duly signed by the Cape Breton Company's consulting engineer, Mr. Samuel, I never having previously visited the crossing at Mira river, or having had any opportunity of proving the correctness of the plans and measurements, prior to signing the Louisburg Railway Contract. I afterwards discovered, however, that through an error in measurement the said iron bridge would require to have 30 feet additional span, and in consequence the Hamilton Windsor Iron Company demanded and my agent agreed to pay them, the additional sum of £840 stg. This amount the company's *Resident* engineer reported would be a fair charge as an extra, and Mr. Kennelly has since admitted the justice of the claim. Before, however, the bridge was completed to the satisfaction of myself, the company's Resident engineer accepted the bridge from the sub-contractor, and authorized payment of the final instalment due thereon, the company having guaranteed the H. W. I. W. Company in such payment, and although the company rendered me an account in which the item was entered as *guaranteed*, they afterwards sought to repudiate it. In consequence, the Hamilton Windsor Iron Works Company commenced legal proceedings both against myself and the company; and in order to avoid law costs, and afford the Cape Breton Company *time* to reconstruct or obtain additional capital, I gave the H. W. I. W. Company a *conditional lien* upon any funds belonging to me in the company's possession, for the amount of their claim;—the condition imposed, being, the *completion* of the draw bridge to the satisfaction of *myself*; but such condition has never yet been fulfilled.

Mr. Kennelly states that no authority was given to instruct

Mira Bridge
contract

the contractor to complete the railway works in advance of contract time; but I thus prove to the contrary.

Under date, June 28th, 1874, Mr. Baker (then a Director of the Capé Breton Company, the Managing Director, Mr. Kennelly, being absent in Canada,) writes to Mr. Gisborne as follows: "If you can get the line open *early* in 1875 you will gain *golden laurels*. The only fear I have is the completion of the pier; but you might run out something temporary to enable the company to commence business. I am certain the company will *gladly meet any extra expense* caused by your urging the work on to completion and *otherwise compensate* you for your energy."

June 30th, 1874.

Mr. Baker to Mr. Gisborne, "If you can materially reduce the time of opening the railway to Louisburg telegraph me. Mention the time and additional cost in next letter."

Under same date, July 30th, 1874.

Extra speed,

Mr. Kidson (Secretary) to Mr. Gisborne, "The directors are of opinion that it will be to the *advantage of the Company* that the railway should be pushed on with *all possible speed*, and have *requested Mr. Baker* to write you on the subject which he will do by this mail."

Upon receipt of the above letters I cabled July 15, 1874: Mr. Gisborne to Mr. Baker, "Can complete railway April," and per following mail, July 21st, 1874, Mr. Gisborne to Mr. Baker, "As cabled, I could complete the line by the *end of April next, presuming that I am furnished with all necessary funds*. * * * * I do not anticipate that the pier will delay me. and certainly we shall have one or two deep water berths ready for vessels by April."

July 22nd, 1874.

Mr. Gisborne to Mr. Kennelly, "I am satisfied that with the increased force *now at work* we can ship coal from Louisburg next April."

It is thus evident that I was duly authorized to accelerate the time for completion of the contract, that the company promised to *meet any extra expense*, and that I immediately increased my *force* with such object in view. Also, that I declined giving *any estimate of cost*, either by cable or mail, as it was then impossible to make any approximate calculation — of the extra cost upon either logs, timber, or work in winter.

July 13th, 1874.

Mr. Baker to Mr. Gisborne, "Can you not shorten the time of completion (i. e. even earlier than the end of April) of the line to Louisburg? I should think you could with unlimited labor."

July 28th, 1874.

Mr. Kennelly to Mr. Gisborne, "You are requested to make *all possible despatch* in prosecuting completion of the line to Louisburg, *the Company being prepared to offer you every aid in their power.*"

August 9th, 1874.

Mr. Baker to Mr. Gisborne, "I received your cablegram informing me that you could complete the line by the end of April next *provided you were furnished with the necessary funds.*"

August 11th, 1874.

Mr. Kidson to Mr. Gisborne, "I beg to acknowledge receipt of your letter of 20th ult., and *note that you have increased your force* on the line considerably, and that *you hope* to ship coal from Louisburg by April next year. My directors are prepared to render you all the monetary assistance in their power, within the spirit of your contract."

The final sentence of this letter, (which reached the contractor several weeks after heavily increased expenditure had been incurred,) was evidently an after-thought and probably inspired by Mr. Kennelly. It is, however, evident from the following letter that Mr. Baker clearly understood and fully conveyed to the contractor that all such expenses would "*be met* immediately by cash payment, and would not form a portion of the ordinary extras to be paid only upon completion of the contract."

September 6th, 1874.

Mr. Baker to Mr. Gisborne, "I instructed you to make *all possible progress*, as it was the *express wish of the Board* and in order to do so I gave you authority *to draw upon me*, with the understanding that I should receive a certain payment monthly from the working certificates *to meet these liabilities.*"

Meanwhile the contractor informed Mr. Baker privately that *if* the weather proved *favorable*, and if relieved from all anxiety regarding prompt payment by the company, he could probably still further reduce the time for first shipments from Louisburg.

September 22, 1874.

Mr. Kennelly to Mr. Gisborne, "We are doing all in our power to have the contract carried out as *rapidly as possible*."

October 3, 1874.

Mr. Kennelly, per note to Baker, requests contractor to complete works by middle of Feb'y. if possible.

October 6, 1874.

Mr. Baker cabled Mr. Gisborne to like effect.

October 20, 1874.

Mr. Kennelly to Mr. Gisborne, "*Do not be afraid for want of funds*."

N. B.—Observe the instability of this last encouragement, in Baker's letter of 29th Dec. following.

December 29th, 1874.

Mr. Baker to Mr. Gisborne, "I have not yet received *anything* from the *last two* working certificates of LeBreton (*i. e., for October and November work*.) They (*the directors*) *inform me that they have not the money and therefore cannot pay!*"

October 20, 1874.

Mr. Kidson to Mr. Gisborne, "My directors are glad to learn (*i. e.* from the Resident Engineer) of the rapidity of progress you are making with the line and as before *assured*, you may depend upon every *fair assistance* on the part of the Board."

Being thus *cautioned*, I applied for an immediate credit of £3,000 account extra expenditure upon expediting works, and in reply received the following letter:

January 26th, 1874.

Mr. Kidson to Mr. Gisborne—"I am instructed by my Directors to express their satisfaction that the railway and pier works are progressing satisfactory, despite very severe weather and the interference of Christmas holidays. In regard to the extra cost of \$15,000 (£3,000) for hastening the line, I am to observe that this is a matter which will admit of settlement only upon completion of your contract. I am to point out, however, that so far as the item for \$6,000 is concerned for extra for logs, my directors are unable to see any ground for such claim, inasmuch as you had the winter to draw the logs, and that, therefore, whether used a few months earlier or

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later, it could not, it is considered, be a matter of extra expense, particularly when you had telegraphed for the cutting and drawing of the logs before you left England. Again, as regards sleepers, it is within the knowledge of the managing director that those were being placed on the ground before he left Sydney for England; and it is presumed the same reason will apply in reference to the extra charge for timbers. The directors never contemplated paying, at most, more than the sum of £1,000 for expenses, which you would incur in running the line down more rapidly than was contemplated by the contract; and I am to say that that opinion was supported by a statement made by the Resident Engineer in July last." Mr. Kidson enclosed copies of extracts from a portion only of the foregoing correspondence, and concludes by stating that they do not justify the claim made!!

Now, it is evident from the correspondence herein set forth,—1st, That I was induced to incur considerable extra expense, upon the distinct understanding that such outlay would be met by the company, 'a liquidation of the authorized drafts upon Mr. Baker; secondly, as regards logs, that the contractor's cable from England reads as follows: "Let Townshend purchase 3,000 20-foot logs (9 or 10,000 being the actual number required for the pier) under dollar." Mr. Townshend, however, reported "that the sleighing season was so far advanced, that he could not get them delivered under three dollars, and only a much smaller number even at that price." No logs were, therefore, purchased until after I was requested to expedite the works, upon which 5 or 6,000 were cut upon the borders of Mira River; and the schooner "Louisburg," with two very large scows, were necessarily purchased to float them down the river, (for summer cut hard wood logs will not float the first season,) and transport them to Louisburg, a distance of some 25 miles, by sea. Again, only a small number of sleepers were contracted for when Mr. Kennelly was in Cape Breton, and only half of the number used and delivered have been charged the small, extra cost price, actually paid for them; and finally it was impossible for the company's Resident Engineer to have so early (as July,) estimated correctly the probable cost for hastening on the completion of the works. Many Sub-Contractors (who tendered upon the original contract time) had to be compromised with, &c., &c.; but some months later, the Resident Engineer informed me, that he had only estimated the additional earth-works at £1,000, which sum he feared would

be exceeded, and that I must settle with the company direct for logs, timber, &c. ; but that, so far as he could judge, the claims made therefor were *moderate and reasonable*. In confirmation of Mr. LeBreton's fears and anticipations, his written orders and instructions for earth *waste* alone amount to the sum of £1,815 10d. 3d., i. e., nearly double his own estimate; and, in further proof of the *authority* under which I was acting, Mr. LeBreton included some of such items *in his monthly certificates*; which sums ought, therefore, to have been *added to*, and not *subtracted from*, the lump sum contract of £95,000. It is only necessary to add that during the following fall and winter, contracts were made to *deliver* similar wharf logs at the Louisburg pier for \$1.20 each, and alongside the railway at 60 cents each. Also, that there was *then* ample time to have completed the pier well within the contract time, provided that the company had met the expenditure.

Upon receipt of Mr. Baker's letter of 29th Dec., 1874, (warning me that the company were in pecuniary difficulties,) I should not have been justified in maintaining a heavy force upon the works during a singularly severe and tempestuous season; and as the company were at that time practically insolvent, and had, otherwise, as already proved, violated the contract, they are alone responsible for all subsequent disappointments and delay.

As the *history* of the order for extra speed has already been so fully explained I have merely to add that I wrote to the company for an advance of £3000 account thereof, and that the resident Engineer to whom I read *all* my letters to the company *approved* of the request, although, as he remarked at the time, he could only give certificates for work performed under the *actual contract*, and on more than one occasion I so reported to the managing director, videlicet: Jan. 6, 1875. Mr. Gisborne to Mr. Kennelly,—Mr. LeBreton examined my expenditure accounts last night and thinks my claim for £3,000 (and here let me observe that I had previously on the 9th Dec., 1874, given Mr. Kennelly particulars as to £2,500 already expended and claimed under the order *for speed*) quite within the outlay incurred to complete the work, and that it would only *be fair to reimburse me*."

I therefore drew upon Mr. Baker as advised in his letter of 6th Sept., already quoted, and when the Directors from financial incapability demurred to assist him, he, as usual, was induced to *appeal* to the company and offer such securities as Mr. Kennelly advised and dictated.

Mr. Kennelly then adds—that the Company's Resident Engineer returned an estimate for all extras at \$1,500 only, and also estimated the cost of completing the entire contract at £10,000.

The first assertion is most effectually disproved by reference to the accounts marked B in the Appendix, and I need but add extracts from two of his letters to substantiate my claims for both classes of extras.

October 3rd, 1874.

Mr. LeBreton to Mr. Hill (Mr. Gisborne's engineer in charge), "The sidings on the railway will require to be 900 feet in length in lieu of 700 feet as shown on the contract sections, the extra cost will of course be allowed as an addition to the contract." The extra cost of *sidings alone* being \$2,144!!

September 25, 1875:

Mr. LeBreton to Mr. Ritchie Asst. Engineer, (Mr. Gisborne being then in New York), "I certify that the wasting of materials from cuttings on the southern section of the railway was, with the exception of cutting No. 56, done under *my* order with a view to *accelerating the progress* of the works." At contract schedule price, viz.: 25 cents per yard, this waste alone cost \$8,835.50!!

Neither can Mr. Kennelly plead ignorance, for I wrote Mr. Kidson a full explanation under date February 17th, 1875, and again called attention to the fact that Mr. LeBreton's original estimate of £1000 to cover ordinary extras had already been considerably exceeded.

But your Worships will scarcely believe, that upon my mentioning such fact when in London, Mr. Kennelly made answer, "Oh! I am aware of that order; but Mr. LeBreton said that he only gave it, *knowing that we could get out of it!*" Such, however, was *not* the truth, for Mr. LeBreton gave the order months after the suspension of all work upon the line, and *avowedly* as a *matter of justice*, as I was absent from Cape Breton and he just starting for England.

And now as to cost of completion. Mr. LeBreton reported to the company, during January 1875, that his estimated cost (at schedule prices) for the completion of the entire contract was £8,500 and he furnished me with a copy of his calculations. After this date I received his monthly certificates for £2000 worth of additional work and when operations were suspended, during the following June, I estimated that from

Estimate to
complete R. R.

£5000 to 6000 would finish it and I actually wrote Mr. Kennelly that I would complete the contract if £4000 only was remitted.

Mr. LeBreton then returned to London and furnished another estimate which Mr. Kennelly inadvertently allowed me to glance at, and when I expressed my surprize at the total being £10,000 he allowed that Mr. LeBreton had at his suggestion *saltd* the estimate in order to cover contingencies; such contingencies being, as I then suspected, a covert intention on Mr. Kennelly's part first to deprive me of the result of my labors and then to have an ample margin in order to cover the expenses of his future experiments in engineering, &c.

Mr. Kennelly says:—That assistance to the extent of £3000 was offered by the Directors, and rejected by me if I would therefore undertake to complete my suspended works.

Such was the case and I think the perusal of foregoing facts will justify my refusing to have a portion of the large sum then due for actual works performed *doled out to my men and employees* at the caprice of the company's agent in Cape Breton. Such being the *actual* condition of the offer.

Mr. Kennelly says that notice was then served upon myself and sureties to complete the contract.

Forced into
liquidation.

This notice was served upon me after the directors had satisfied themselves (in accordance with a lithographic letter to the shareholders, a copy of which I hold,) that the company would be forced into liquidation, as £2,500 only was subscribed, (after more than one postponement to allot, towards the £100,000 asked for, and no better proof can be given that up to this time I had been kept in abeyance upon false hopes imparted to me by Mr. Kennelly, through Mr. Baker, than the fact that the special clause in my contract, whereby the Resident engineer was bound to give me 40 days' *written notice to proceed* with the work, in case of stoppage, was *never acted upon*.)

Mr. Kennelly next complains that the company were consequent upon my failure to complete the railway, *forced into liquidation*.

I have already proved that the company was in pecuniary difficulties from its earliest conception, that in June, 1874, the directors were borrowing money at the rate of 12½ per cent., although at that time they ought (according to the public statement made by Sir James Anderson and Mr. Kennelly) to have had many thousands of pounds in the bank at in-

terest, but in further proof I will now quote extracts from the following letters:—

June 30th, 1874.

Mr. Baker (then acting as a director) to Mr. Gisborne, "You must not order the 100 wagons named in your agreement, the company will supply you with *their* 100 new trucks and one tank engine only must be ordered. *This arises from want of cash!*"

December 29, 1874.

Mr. Baker to Mr. Gisborne, "I have not received anything from the last two working certificates of LeBreton (i. e. for October and November), they (i. e. the company) inform me *they have not the money and, that therefore, cannot pay!*"

The company then issued circulars and endeavored to raise the £100,000 already alluded to (in part to repay the loan obtained under the syndicate) and failing in so doing they could neither meet the interest on their debenture bonds nor on their preference shares, and were *thus* forced into liquidation, and it is *impudent* as well as idle for Mr. Kennelly now to assert that my inability to complete the railway, (6 months in advance of contract time,) caused the collapse of the company. Mr. Kennelly took precious good care, however, that the company should go into liquidation *with a shot in the locker*, although at the expense of *some* of the bond holders, and hence in my opinion the cause of present delays which profit no one but the liquidators.

Mr. Kennelly professes great indignation because I then instituted legal proceedings in the Supreme Court of Nova Scotia *versus* the company, and claimed \$144,286.17—(about £30,000)—for monies due and damages for breach of contract.

Action versus C.
B. Co'y.

In answer to such charges I have only to refer you to the accounts annexed, and it simply remains for me to prove hereafter that such accounts are correct, and for the arbitrators to award me such damages as they may consider fair and reasonable for over two years loss of time and capital.

Mr. Kennelly states that with a view to some settlement I was invited to visit London by one of the Directors, and when there consented to finish the contract for the sum of £10,000 in full of all claims previously advanced.

This is not so. The facts being as follows: £10,000 stg. plus £840 account Mira Bridge was offered by the *official liquidators*, as liquidators, if I would complete the *railway and pier*

they paying for the locomotives, etc., provided in the original contract. At the same time Mr. Kennelly distinctly stated that beyond that sum the *Liquidators*, no matter how willing, had *not power* to go, as the £50,000 of new capital was being raised upon terms which precluded them from exceeding the sum offered, and that any additional compensation must be left to the new Board of Directors. It was intimated to me that so soon as the company was out of liquidation, and again under control of the directors, I might rely upon receiving an additional £2,000 in cash, and also the exclusive *agency* for the sale of all the company's coal,—an appointment worth (under *my* management and the advantages of Louisburg as a port of shipment) from £2,000 to £5,000 per annum. At the same time Mr. Baker, then upon his death bed offered me all his shares in the Cape Breton Company (about £5,000 worth), and his shares in the Louisburg Land Company (valued at £1,000 present minimum), if I would end all litigation, and thus enable him to settle all his worldly affairs before he died.

Offer made Mr.
Gisborne.

Under such circumstances, Your Worships, I consented to accept the terms offered by the *Official Liquidators* last July, but with this proviso, that I should be furnished with the funds necessary to complete the railway and part of *pier last season*, and the balance of the pier during this winter,—a condition, as I shall prove in the next paragraph, which *they* were unable to fulfil, and as Mr. Kennelly adds:—

That from some cause not fully explained I withdrew from such arrangement, returned to Cape Breton and renewed legal proceedings against the company.

Mr. Gisborne's
visit to London.

I was detained in London by the official liquidator, upon one pretext or another, from *May until the end of August*, but not without an indignant protest. Witness my letter marked C, in the Appendix, and addressed to the Committee, representing the Bond and Shareholders in the Cape Breton Company. I soon afterwards discovered that only £11,000 had been subscribed towards the £50,000 imperatively demanded by the High Court of Chancery, *as the condition upon which the company would be released from the order for liquidation in bankruptcy*. I, however, waited in London until it was almost too late in the season for completing the line during 1876; and then (August 17th) wrote to the liquidators for a definite order to proceed with the work, and on the 21st received answer, that they were not *in a position* to proceed further in *negotiating* an agreement for the

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completion of the Louisburg Railway and pier!! *Not one-half* of the £50,000 had *then* been subscribed,—strong doubts were expressed to me as to the *possibility* of such contraction being fulfilled, it was contemplated that the Court of Chancery must again be petitioned to reduce the amount of required capital,—the liquidators left London for the month on six weeks' holidays; and *then only*, Your Worships, after losing another year of valuable time, at a cost of several hundred pounds, did I return to Cape Breton in order to attend to my action against the company at the ensuing October term of your Supreme Court; and when at last I obtained an order, by *consent of Council on both sides*, that my claim should be referred to arbitration, Mr. Kennelly steps in and upon, (as herein proved,) an utterly false affidavit obtained an injunction, until I answered the various charges referred to in my present reply.

Mr. Kennelly states also:—That £10,000 had again been offered me to complete the railway and quash all claims, and that such offer had been rejected.

The facts are as follows:—Mr. Kennelly arrived in Nova Scotia last December and upon an *ex parte* statement and the affidavit above stigmatized he succeeded in obtaining an injunction to *stay proceedings* until I answered his charges. He then boasted that he had, floored the arbitration as the order would expire many weeks before I could disprove his reckless assertions. In this however he was mistaken, for my Halifax solicitors, Messrs. McDonald & Rigby, assisted by Mr. Norman Ritchie obtained the necessary extension of time to enforce it in due course.

Mr. Kennelly
arrives in Nova
Scotia 1876.

Defeated in this attempt Mr. Kennelly then arranged a meeting with me through the company's local solicitors, Messrs. McKay & Hill and my solicitors, Messrs. Dodd & Gillies, and on Jan. 4th, 1877, he stated that good and substantial contractors had offered to complete all my suspended works for the sum of £7000 stg., and asked me if I would treat upon such basis, *I declined*; but called his attention to the fact that £7000 was the exact sum which I had allowed for such work in my account rendered for claims against the Cape Breton Company. He then asked me if I would finish the work upon the basis of the London arrangement, viz.: £10,000 plus £840 and stay all legal proceedings, giving security for due fulfilment of the new contract or, if I pleased, working under inspection without sureties, the Company accounting to me for the balance remaining in their hands after

the work was completed. In conclusion he stated that he had no *power or authority* to deal with me unless I would consent to *quash all prior claims for work performed, &c.* I again declined.

He then begged me to reconsider his proposal and *not to write but to see him again*; but I knew my man too well by this time and thus wrote to him:—

Sydney, January 4th, 1877.

D. J. KENNELLY, Esq.,—

Official Liquidator Cape Breton Company (Limited).

Offer made Mr.
Gisborne.

DEAR SIR,—In reply to your verbal communication of this morning, I beg to state that I am prepared to enter into a contract, *and to furnish Sureties* for the completion of the Louisburg Railway and pier for the sum of £10,000 stg., (plus £840 stg., account lengthening Mira iron bridge), as per estimate of the company's late Resident Engineer, and as offered to me when in London; but I am not, as then, prepared to forego my claims for services rendered, work performed, &c., &c.; *the collateral advantages then available for so doing* not being at present command. Or should it meet your views—(memo., this being *Mr. Kennelly's proposal*)—I am willing to complete the railway and pier for the sum of £10,000 stg., under inspection, *you* paying for labor and material and accounting to me for the balance (less £500, as provided in the original contract for six months' maintenance) upon completion of the work,—and *settlement of all accounts, claims and charges*, which, meanwhile, shall, as quickly as possible, be *adjudicated* upon, either by *arbitration, or perforce* at law.

Yours, &c.,

F. N. GISBORNE.

To which he replied as follows:—

January. 4th.

Mr. Kennelly to Mr. Gisborne,—I beg to acknowledge receipt of your letter of this date containing two propositions for the completion by you of the railway to Louisburg neither of which, for reasons I verbally explained to you to-day, I am unable to accept.

And in a P. S. he invited me to call and examine his books and late contract accounts, which I declined doing, as my book-keeper was absent from Cape Breton. I was, however,

in possession of all accounts rendered by the company vide B. in Appendix, and therefore declined to enter into the trap thus prepared for me, and thus addressed him:—

Sydney, January 5th, 1877.

D. J. KENNELLY, Official Liquidator, &c. :

Dear Sir,—I reply to the P. S. in your note of yesterday's date. We (i. e., myself and counsel) are of opinion, that, *under the circumstances* which induced me to undertake the original contract at so low an estimate (viz., about £3,300 per mile, exclusive of a costly iron bridge, large pier, and rolling stock), neither arbitrators nor an Equity Court would treat it otherwise than as an *all cash transaction*; but I maintain that under the original and *amended* contracts, there was still a sufficient sum in cash to credit, to have enabled me, *if paid*, to complete the works *in advance of the time* specified. I am obliged for your offer of an inspection of the company's accounts; but (Mr. Clarke being away) I am not sufficiently *an fail* at book-keeping to understand them. I have, however, submitted the Company's accounts, as *rendered to me*, to a competent accountant, and his results are open to your inspection at this office. As the matters in dispute are, in great measure, re-accounts, I can see no reason why you should oppose their being referred to two honest and competent business men, leaving any professional questions to be decided by a Civil Engineer as umpire. The question *must* eventually resolve itself into some such *modus operandi*, before you can proceed with any works in this country; and it rests *entirely with yourself* if the dispute should interfere with spring operations. I think it right to advise you *that I have never abandoned my suspended works*; but still hold possession as contractor, as proved by your agent. quite lately, asking and obtaining permission from me to run an engine over a portion of the line, and to lower the draw-bridge across the Mira River. My agent in charge was authorized to allow you to pass over the line with an engine for the purpose of inspecting the works, as a matter of courtesy, but not of right. Excepting, however, for such legitimate purposes, the line will be closed *after any future attempt* to run an engine over it *without permission*; and I shall take all requisite steps to prevent any interference with my suspended works, plant, sub-contractors, &c., until all disputed claims are settled *by the proper authorities*.

Yours, &c.,

F. N. GIBBORNE,

Contractor L. R. R.

Notice of possession.

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And in answer I quote the following extracts:—

January 6th, 1877.

Offer to Mr.
Gisborne.

Mr. Kennelly to Mr. Gisborne,—“Under the powers committed to me *and on the basis of the withdrawal and dropping of all legal proceedings for claims of whatsoever nature, I was and am ready to negotiate with you a fair contract for the completion of the railway and pier.*”

Sydney, C. B., 6th Jan., 1877.

F. N. GISBORNE, Esq. :

Notice from Mr.
Kennelly.

Dear Sir,—Having regard to your letter of yesterday's date, I hereby formally give you notice, that, as Joint Official Liquidator of the Cape Breton Company (Limited), on Monday last, the 1st day of this month of January, I entered into possession of the unfinished railway and pier between Lorway Junction and Louisburg Harbor, and of all the abandoned works and line of railway connected therewith, together with the buildings and material thereon, the property of the company, and that the whole line of railway, and other the company's property, is now in possession and held by the servants of the company.

Yours, &c.,

D. J. KENNELLY.

To which I thus replied:—

Sydney, January 8th, 1877.

Mr. Gisborne to Mr. Kennelly,—In consequence of your notice (delivered per hand at 8 p. m., Saturday evening), I have served your employees this day with the following notice, and have also instructed my agents to *resist* the forcible seizure of my works now or when attempted:—

Mr. Gisborne's
notice.

TAKE NOTICE, That as Contractor, and under my *lien* as Contractor, I have held, and still hold, possession of my suspended works on the Louisburg Railway and pier, until my claims against the “Cape Breton Company, Limited,” for work performed, material supplied, and damages for breach of contract, are settled as the law directs; and that I shall at once institute *criminal* proceedings against any person trespassing upon my work, or interfering with any materials, or plant, connected therewith.

F. N. GISBORNE,

Contractor Louisburg Railway and Pier.

Sydney, C. B., 1876 and 1877.

I also gave Mr. Kennelly notice that I held him personally responsible for any breach of the peace in his attempt to take

forcible possession of my works, and he replied as per following extracts:

January 9th, 1877.

Mr. Kennelly to Mr. Gisborne:

"I decline to accept service of any notice of the character contained in your letters of to-day and yesterday." "I took possession of the Louisburg railway on the 1st inst. in my capacity under the Court of Chancery as I have already advised you." "I came here with power to enter into a contract with you for the completion of the company's railway on a basis discussed in London." "I have tried all available means to get you to join the company in completing your abandoned contract, and to do so have gone to the utmost limit of the powers entrusted to me," and "you have declined to meet me on the ground offered you."

And thus with a reply, from which I make the following extracts, all correspondence between us ceased:

January 9th, 1877.

Mr. Gisborne to Mr. Kennelly:

"I have given my agents written instructions to abstain from committing any breach of the peace, and only to defend themselves in case of any attack or interference with my orders." "I, however, feel and know that I am unjustly dealt with, as proved by my desire to go to arbitration, and only asking to appoint one member out of the three selected!"

And now, your Worship's, as you are fully cognizant of all late proceedings, I have only to notice Mr. Kennelly's closing remarks. He completes his statement with a self-laudatory peroration in which he expresses great commiseration for our half-starved laborers, although it is well known that even now he is endeavoring to take advantage of their poverty and has offered them wages upon such cruel terms of payment that they preferred to starve or rather than accept them. He demands acquittal as an officer of the High Court of Chancery, and in the same breath appeals to your sympathy as a stranger in a strange land. He boasts of his own local standing and acumen, tries to flatter you with an opinion that you know the law, and then makes a savage onslaught upon my counsel, Mr. Gillies, for knowing more about justice than himself. He basely repeats his slanders against the memory of the honest, noble-hearted man who almost, with his last breath, deplored his duplicity, and then has a final

Mr. Kennelly's
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blow at me which I thus contemptuously ward off with the following quotations from his own letters:—

December 31st, 1874.

Mr. Kennelly to Mr. Gisborne, "I am candidly of opinion that the capability you have shown in the Louisburg line marks you out as a contractor of first rate ability, for constructing railways, and I have no doubt that, short as this line is, it will not be without its influence in obtaining for you heavier works of that character."

March 23rd, 1875.

Commendatory
letters.

Mr. Kennelly to Mr. Gisborne, "I shall much regret should you not put the road down in readiness for our first shipments for I have now (orders for) 4 foreign cargoes on hand. I shall regret, for my part, should you fail to make a fair profit out of the line, for there can be *no doubt you deserve to do so.*"

June 15th, 1875.

Mr. Kennelly to Mr. Gisborne, "As a railway contractor I believe you have the qualities which would, with *some* capital, (this, by the way, being a delicate *reminder* that *he* could obtain capital if interested with me in future railway contracts), would make you eminently successful as such. Speaking at our annual meeting, at the London Tavern, on Friday last, I expressed this opinion openly, and praised the efforts you had made under your contract with the company."

But even in the letter just quoted, he endeavored to deceive me as proved by my letter to Mr. Kidson, and marked D in the appendix,—a letter which I imagine some of the late Directors will now see for the *first* time.

I also beg to call your attention to the fact that all Mr. Kennelly's charges have been concocted within the last few days: *no* such accusations appear in the writ served upon my London Solicitors on the 27th of November last, and his statement that I transferred my suit against the company to escape arrest when there, is as untrue as other alligations.

I also ask you to remember what Sydney was under *my* management of the Company's coal trade,—your harbor thronged with shipping and the hum of business in your streets, and then compare its appearance under Mr. Kennelly's term of office with collieries shut down and hardly a

vessel at the pier, although the International, Caledonia and other neighboring Companies were doing a fair business at a moderate profit; but what can you expect from a GIMLET (an apt simile which I heard applied to Mr. Kennelly in his connection with another English Company) which can only bore a hole into a sound cask and is then incapable of stopping the leak which it has created!

As I have now, I trust, clearly proved, to the satisfaction of your Worships, that Mr. Kennelly's statements and charges are totally unworthy of credence, and as my learned counsel, Mr. Gillies, has shown in some measure through the evidence of those most *unwilling* witnesses, Messrs. Stirling and Rumble, (two *worthies* whom, I shall prosecute hereafter for neglecting the precepts enjoined in the *ninth* commandment,) that he has attempted to take violent possession of my railway works,—that servants, acting directly under his orders, have forcibly removed one of my agents from the line when in execution of his duty,—that they used slack coal which I had paid for, and placed upon the road for ballasting purposes, to feed their engine with although it was within a short distance of their own coal bank,—that he caused the removal of my fence and the destruction of my written notices,—that Mr. Wm. McDonald was my paid servant in charge of the six Black Brook Bridges,—that the telegraph line to Louisburg was being worked under a special agreement with myself,—that permission had been asked and obtained from Mr. W. H. Clarke (agent under power of attorney when I was in England) to run locomotives over my works as a matter of courtesy but not of right, and that I can and *shall* prove hereafter most conclusively, both by correspondence and witnesses, that Mr. Stirling also solicited such favor although *now he denies that which he knows to be true*, we ask your Worship's for a conviction, not as a *punishment*, but simply as a confirmation of your already openly expressed opinions, viz., "that as you have *no* authority or jurisdiction to decide as to the rights of the dispute between Mr. Kennelly and myself, and in order to prevent your giving, *even a colorable title* to the possession of the suspended works of the Louisburg Railway, you will send *all parties* in this suit before the Grand Jury at the next term of the Supreme Court.

And now, your Worship's, I must conclude with an apology for so long a speech; but it is much easier for Mr. Kennelly to *make false accensions* than to *prove* them, neither can his *hazy* assertions be refuted in as few words as they were made.

Facts proved
versus Mr.
Kennelly.

Mr. Martin then asked Mr. Clarke *if he had again changed his mind or was still of the same opinion which he had expressed before hearing Mr. Gisborne's reply!* and being answered in the affirmative, Mr. Martin pronounced the judgment of the Court to the effect, "that in his opinion Mr. Kennelly should be bound over to stand his trial; but that as his brother Justice did not agree with him the prosecution fell to the ground.

Mr. Kennelly was by no means gratified, however, with the reception given by those present to this "*non-proven*" style of acquittal, and before leaving the crowded court room angrily *whispered* to Mr. Gisborne, "that he would have him in a criminal dock next;" but received for answer "that before that happened he would be at the bar of public opinion himself," and thus the *passage at-arms* (for, *legally*, the whole enquiry was little else in a magistrate's Court) terminated; not, however, without the prospect of a plentiful crop of lawsuits at the final cost of the Cape Breton Company Limited.

Memo—After the above verdict was rendered Mr. Kennelly was served with a writ by Mr. Gisborne in \$20,000 damages for trespass and slander, and it transpired that a writ had been served upon Mr. Kennelly, in London, by Mr. Rooney, for aiding and abetting in a conspiracy to defraud him by inducing him to take shares and invest monies in the company upon a misrepresentation of facts.

N. B.—The publication of this pamphlet has been rendered imperative in consequence of Mr. Kennelly's attack being published in the Cape Breton Times newspaper.

F. N. GISBORNE.

APPENDIX A.

[COPY.]

SYDNEY, C. B., July 10th, 1874.

D. J. Kennelly, Esq., Managing Director Cape Breton Company Limited.

DEAR SIR,—

In reply to your enquiry as to my authority or reasons for shipping Coal upon consignment last year I beg to state:

That upon finding the coal banks at the several collieries were still large last September, and no sales or contracts were being made by my several Foreign Agents at the prices limited, I wrote to the Glasgow and Cape Breton Company recommending them to ship upon consignment, and in reply received the following letter:—

[Extract, Sept. 23rd 1873.]

“With reference to the postscript in your letter of 2nd instant, recommending as freights were low, that you should ship coal that was banked last winter upon consignment, I instructed Mr. Harvie to inform you that the Board agreed to act thereon, and I cannot think that you did not suggest this course earlier.”

W. WRIGHT, *Secretary.*

At the same date I wrote to the Schooner Pond Company as follows:—

“I recommend your allowing me to ship the coal in bank on consignment to my several agents, and in reply I received the following:—

“23rd September 1873.

“Referring to your postscript I telegraphed Mr. Harvie on 19th inst. to inform you that the Board agreed to your consigning coal in bank to your several agents, and I trust the result may be advantageous.

W. WRIGHT, *Secretary.*”

It is here necessary to observe that I was acting as Coal Agent for the Lorway Company also, and that I was in duty bound to act impartially by all three Companies in effecting sales, and finding that the Lorway Company had still in bank *all* their first mined crop and clay stained coal I advised the Secretary as follows:—

“September 18th 1873.

“That the trade was utterly stagnant,” “that I considered we should do exceedingly well to realize \$2 per ton,” and that “a

trial cargo to Halifax was now en route, and I will report result for your guidance and further orders."

Sept. 30th '73 I wrote :—

"I fear we cannot clear off Reserve and Schr. Pond banks of coal before the close of navigation. Emery bank I shall clear off during October, and thus have fresh and large mined coal to ship during November and part December," and "I have *trial* cargoes en route to Portland and St. John's, Newfoundland, and also a vessel freighted for New York, as I deem it advisable in the first place to clear off all bank coal, which is in fact the balance of our crop, and, therefore, inferior to present production."

To my letter of the 18th Sept. the reply was as follows :

"LONDON, Oct. 7th 1873.

"Yours of the 18th ult. received. Keeping this view it is very desirable indeed to have no coal left in bank at the end of the season and the Directors are, therefore, willing to leave you a certain discretion as to price, feeling sure that you will do the best you can for the interests of the Company.

W. C. HANBURY, *Secretary*.

Underdate Oct. 21st, the Secretary when acknowledging my letter of September 30th makes no objections to further consignments of cargoes. Under date Nov. 18th which came to hand on the 4th or 5th December, is the first qualified objection made, the result of some of the consignments being meanwhile reported as unsatisfactory, and in the same letter the Secretary writes :

"I cannot too strongly express the Directors' instructions that no further shipments of coal be made on consignment."

To the above letter I replied, Dec. 10, advising further sales of coal on consignment as follows :—

"The Halifax coal sold well, also the Newfoundland coal. The Portland consignments are stored for winter sales. The New York account sales of consignments will be forwarded next mail, and I much regret the result which was quite a surprise. The freight was low, viz., \$3.25 @ \$3.50 *Greenbacks*, and at the date of the consignment the coal sold to the New York gas works by the Block House, Caledonia and other mines was costing \$7.15 Nova Scotia currency, in consequence of the *much* higher rate of freight charged from those parts. The *panic* was the sole cause of loss and disappointment: ordinary dealers and manufacturers could not purchase, and the Gas Companies, though rich, took advantage of the *pressing* necessity to unload vessels within their lay days. When your letter arrived I had already chartered a brig to load for Demerara at \$5.50 freight, and I now enclose my agent's circular which induced the venture. I am, however, quite willing to accept the

1850.

venture upon my own private account, crediting your Company with \$3 per ton F. O. B. By return mail please inform me of your wishes on the subject.

Feeling satisfied that we should have no demand for coal at the end of the season, and being anxious to ship away our first mined tender and clay discolored coal at bank, in order to clear the ground for our permanent banking frames before cold weather prevented, was the reason why I considered it advisable to ship so large a quantity upon consignment, but in future your instructions shall be strictly adhered to."

In reply to this, under date Dec. 30th, the Secretary writes with regard to the brig "Odione" loaded for Demerara, and your offer to take over the venture, the Directors have suggested that you should take over the whole consignments made, as on your private account.

This, of course, I declined as manifestly unfair to myself, as you will gather from the foregoing statement.

Yours, faithfully,

F. N. GISBORNE.

APPENDIX B.

THE CAPE BRETON COMPANY LIMITED IN LIQUIDATION.

In account with F. N. Gisborne upon Louisburg Railway Contract and compiled from accounts rendered to him by the Company.

1874.	Dr.		
	To amount of Contract	£95,000	0 0
	Extra Expenditure upon accelerating work within contract time.....	5,472	10 7
	Ordinary Extras	3,224	7 11
			£103,696 18 6
1874.	Cr.	Material.	
Feb. 31.	Paid for Mira Bridge	£1,225	0 0
May 31.	Stirlings account sundries.....	19	3 8
June 4.	Do. Do.	39	2 4
	Carried forward	£1,233	6 0
			£103,696 18 6

Handwritten notes and scribbles on the right margin, including the number '29' and some illegible text.

1874.	Cr.	Material.	Cash.	
	<i>Brought forward</i>		£1,283 6 0	£103,696 18 6
July 4.	Paid Freight	.....300 0 0		
	" Rails.....	5,236 3 5		
	" Freight	.....155 9 1		
8.	" Insurance	... 136 15 0		
10.	" Mr. Baker	.....£2,800 0 0		
14.	Bills Payable, 30 days,	.....1,000 0 0		
15.	Paid Telegraph Wire	.....79 15 11		
	Paid Fish Bolts, etc.,	.....333 7 6		
28.	Paid Insurance	.....72 18 0		
	" Rails.....	6,115 13 7		
31.	Stirlings account duty on brobs, etc	.....60 14 2		
	Do. Do. Slack	..14 7 9		
	Do. Do. Railway Carriage	.....26 3 8		
	Do. Do. Sundries	19 16 0		
Aug. 1.	Paid Mr. Baker	.....2,126 2 0		
	5. Paid Freight	..... 178 8 5		
	18. Bills Payable, 10 days	.....1,000 0 0		
	19. Paid Insurance	.....88 0 0		
	21. Bills Payable at sight.....	3,000 0 0		
	30. Paid Mr. Baker.....	113 0 0		
	31. " "	350 0 0		
	Stirling's account Railway Carriage	18 12 11		
	Do. Do. Slack.....	35 2 9		
	Do. Do. Sundries	20 3 2		
	Do. Do. Freight per "Brothers' Pride"	.....20 11 0		
Sept. 4.	Paid Mr. Baker	.....1,500 0 0		
8.	" Freight	..... 184 2 11		
	" Rails, etc.,	4,973 5 0		
	" Bill Stamp	.....2 10 0		
9.	" Spoon Head brobs	..... 437 10 6		
	" Charges80 0 0		
19.	" Cablegram5 4 0		
	<i>Carried forward</i>	£19,878 0 9	£11,889 2 0	£103,696 18 6

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£103,696 18 6

	Cr.	Material.	Cash.	
<i>Brought forward</i>	£19,878 0 9	£11,889 2 0	£103,696 18 6	
	Bills Payable, 60 days	3,000 0 0		
26.	Paid Mr. Baker	1,300 0 0		
28.	Bills Payable, 60 days	830 0 0		
29.	Paid Mira Bridge	3,330 0 0		
30.	Stirling's account			
	Railway Carriage	42 17 3		
	Do. Do. Slack.....	33 18 1		
	Do. Do. F't. and			
	Duty.....	548 13 9		
Oct. 3.	Paid Insurance	14 13 9		
	" ..	189 17 5		
	" Brobs	131 9 0		
12.	Bills Payable, 60 days	3,494 15 2		
15.	Paid Mr. Baker.....	3,000 0 0		
24.	" Brobs	254 18 6		
31.	Stirling's account			
	F't. and Duty ...	348 11 7		
	Do. Do. Sundries	22 13 0		
Oct. 31.	Stirling's account			
	Sundries.....	19 1 2		
	Do. Do. Slack.....	47 11		
	Do. Do. Railway			
	Carriage	91 4 9		
	Do. Do. Slack for			
	Engine	7 12 0		
	Do. Do. Rent Stables	5 13 0		
	Cost of Engine for			
	month	24 13 2		
Nov. 5.	Paid charges per			
	"Harmony".....	10 19 11		
	Paid Mr. Baker	1,000 0 0		
	" Brobs.....	120 0 0		
10.	" Mira Bridge	1,387 10 0		
12.	" Telegram.....	3 16 0		
17.	Bills Payable, 60 days	3,200 0 0		
18.	Paid Mr. Baker	2,000 0 0		
19.	" Steel Cross-			
	ings	136 0 0		
21.	Bills Payable	25 0 0		
30.	Stirling's account			
	Railway Carriage	36 2 7		
<i>Carried forward</i>				
	£20,655 16 11	£29,738 17 2	£103,696 18 6	

£3,696 18 6

1874.	Cr.	Material.	Cash.	
<i>Brought forward</i> £20,655 16 11 £29,738 17 2 £103,696 18 6				
Nov. 30.	Stirling's account			
	F't. and Duty	95 17 10		
	Do. Do. Slack	68 18 2		
	Do. Do. Sundries	22 15 2		
	Do. Do. Coal for Engine	2 9 4		
	Do. Hay, oats, etc	15 9 8		
	Cost of Engine for month	24 13 2		
Dec 2.	Paid Mr. Baker.....629 0 0			
15.	Bills payable at sight.....2,000 0 0			
31.	Stirling's account			
	Duty and F't.	17 16 11		
	Do. Do. Sundries	14 6 11		
	Do. Do. Rent			
	Stables	5 13 0		
	Do. Do. Railway Carriage	1 9 0		
	Cost of Engine for month	24 13 2		
1875.				
Jan. 1.	Paid Mr. Baker.....1,160 0 0			
13.	Cash paid by E. Stirling .....2,000 0 0			
14.	Paid Mr. Baker .....1,000 0 0			
20.	Bills payable upon demand .....600 0 0			
22.	Paid cable message...2 0 0			
26.	" Wheatly Shipping Charges .....42 5 2			
31.	Stirling's account			
	Freight and Duty	6 8 11		
	Do. Do. Sundries	4 10 10		
	Do. Do. Slack	50 14 3		
	Do. Do. Coal for Engine	45 19 9		
	Do. Do. Railway Carriage	4 5 0		
	Do. Do. Telegraph Wire	0 0 6		
Feb. 2.	Paid Bolts 156 16 0			
	" Mr. Baker.....700 0 0			
	Stirling's account labor.....4 5 6			
<hr/>				
<i>Carried forward</i> £27,297 5 5 £37,827 17 2 £103,696 18 6				

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No. 5

£103,696 18 6

	Cr.	Material.	Cash.	
<i>Brought forward</i>	£27,297 5 5	£37,827 17 2	£103,696 18 6	6
Mch. 1. Paid Shipping Charges	19 8 7			
Apl. 29. Cash paid by E. Stirling	1,000 0 0			
May 6. Stirling's account Bolts	33 12 11			
26. Do. Do. Freight and wharfage.....	5 1 9			
June 30. Do. Do. Rivets, etc 1 4 10				
	<u>£27,356 13 6</u>	<u>£38,827 17 2</u>	<u>£103,696 18 6</u>	6
To which add	27,356 13 6			
Original advance	5,000 0 0			
Rolling Stock.....	9,500 0 0			
Allowed to finish contract.....	7,000 0 0			
Mira Bridge instalment.....	1,387 10 0		89,072 0 8	
			<u>£14,624 17 10</u>	
	Balance due F. N. Gisborne			

Sydney, C. B., Jan. 28th, 1876.

The above account is compiled from the Company's account current rendered to the Contractor, the items altered in amount being specified and explained in the annexed list of objections.

Credit has been given in the account for all local charges furnished by Mr. Stirling with the exception of the following items in dispute, and exclusive of all items connected with the repudiated coal trucks:

ITEMS OBJECTED TO WITH EXPLANATIONS.

- No. 1. In account of Nov. 20th. 1874. \$176.75 is charged for locomotive expenses in October, when the engine under my own control only cost me \$120, or £24 13 2 per month, which is allowed in above account, the second engine not being delivered to me, as per contract, on the plea that it could not be spared all the time from the coal traffic.
- No. 2. In account Nov. 20th, '74. \$57.25 for repairing cars, was done without my consultation or consent.
- No. 3. In account Dec. 3rd, '74. \$31.87 for repairing cars. Same as No. 2.
- No. 4. In account Dec. 3rd, '74. \$59.04 for break gear and timber. Same as No. 2.
- No. 5. Account Dec. 7, '75. \$6,103.44 for borrowed rails, etc. which were returned.

03,696 18 6

- No. 6. In account Dec. 17, '74. \$34.15 for repairing cars, etc. Same as No. 2.
- No. 7. In account Dec. 17, '74. \$196.20 engine repairs. Same as No. 1.
- No. 10. Account Dec. 28, '74. \$13.70 for brasses for railway wagons. Same as No. 2.
- No. 11. In account Dec. 31, '74. \$233.37 for engine expenses. Same as No. 1.
- No. 12. In account Feb. 2, '75. \$12.50 for noting protest, not chargeable to me but to insurance.
- No. 13. In account Feb. 2, '75. \$41.07 for repairing cars. Same as No. 2.
- No. 14. In account Feb. 14, '75. \$79.03 for engine expenses. As notice was given by my assistant engineer on the 31st Dec., 1874, to the Company's officials, that the engine would not be required until further notice, and as no such notice has ever since been given by myself, or assistant engineer, I am in no manner responsible for the above amount. The engine in question was taken out by the Company's resident engineer, for the purpose of testing Mira Bridge, and was under his control.
- No. 15. In account Dec. 31st, '75. \$37.37 for labor on Mira Bridge. The work was upon the draw and under resident engineer's instructions, as arranged between Mr. Earle, the Hamilton W. I. Works Agent, and himself, therefore chargeable to the Windsor Works Company.

Items objected to as charged in the Cape Breton Company's Sydney account, and omitted from the credits allowed to the Company in the within accounts, with explanations:

- No. 16. June 3rd, '74, paid by Stirling, £9 3 8. No account was ever rendered to me by Mr. Stirling for such sundries. It is, however, ascertained to be for office furniture for the Company's resident engineer, and charged to me in error.
- No. 17. Oct. 31st, '74. Paid, by Stirling, freight on engine £30 16 6. No. account of this was ever sent to me by Mr. Stirling. The engine in question was delivered to me at *Louisburg*. I had nothing to do or say with its getting there and, therefore, am not responsible for the cost.
- No. 18. Oct. 31, '74. Paid, by Stirling, Rumble's expenses, £9 10, in connection with above engine. Same as No. 17.
- No. 19. Dec. 31, '74. Interest on acceptances £30 and £5. As it will be seen by the foregoing account that many of the Bills of Exchange were drawn at sixty (60) days sight, although

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We, the undersigned, do hereby certify that the foregoing items of account are just and reasonable in amount, and that they can be proved either at law or to the entire satisfaction of the Arbitrators.

F. N. GISBORNE,
ALBERT J. HILL,
T. J. RITCHIE,

Railway Contractors and Engineers.

Witness,

W. H. CLARKE, *Accountant.*

Memo—Bill of Items for Extra Cash Expenditure incurred in forwarding Railway Works to completion within contract time as requested, as taken from the Account of Extras over the signatures of Messrs. Gisborne, Hill, and Ritchie.

No.	Station.	Description.	Amount.
17	550	200 feet Bridging.....	400.00
20	660	150 " "	300.00
21	660	Brushing and Extra Piling	250.00
26	880	300 feet Bridging.....	600.00
32	1020	340 " "	680.00
37		Extra expense on 6,000 logs.....	6,000.00
38		" " " Sleepers	1,000.00
38		" " " Timber	2,000.00
40		Advance on Contracts	6,568.20
43		Waste 35,212 c. yards @ 25c	8,837.50
			\$26,633.70

Or.....£5,472 10 7

The Cape Breton Company Limited in Account with F. N. Gisborne.

[PRIVATE ACCOUNT.]

1874.		Dr.	
To amount due me upon resignation of Managership.....		£500	0 0
Balance due upon settlement of accounts.....		189	1 0
1875.	Amount Tip Shoot Account.....	51	6 7
Feb.	1 Horse.....	10	5 5
Commission on S.S. "Normanton's" Cargo		10	5 2
May	1 Year's Rent Mr. LeBreton's office	12	6 7
	4 Casks Railway Grease.....	5	15 1
			£779 0 6

Amount.
..... \$267.00
..... 42.00
..... 458.23
..... 262.40
..... 40.00
..... 66.46
..... 100.00
..... 126.00
..... 536.62
..... 300.00
..... 114.00
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..... 40.00
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..... 550.00
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..... 40.00
..... 40.00
..... 680.00
..... 122.00
..... 100.00
..... 2,296.22
..... 800.00
..... 6,000.00
..... 1,000.00
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..... 6,568.20
..... 750.09
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..... 8,835.50
..... 80.00
..... 208.00
\$42,325.07

		Cr.		
1874.	July 31. By Stirling's account, Railway Carriage.....		4	7 9
	Aug. Stirling's Account for work on ballast boxes on Pier.....		5	17 7
	Stirling's Account 50 Fire Brick		8	3
	31. " " Railway Carriage		2	19 5
	Sep. 30. Stirling's Account Railway Carriage		10	1 2
	Oct. 1. Stirling's Account Store Rents...		34	18 6
	Stirling's Account Cask Oxide Paint		8	4 5
	31. Stirling's Account Metal and Steam Pipes.....		2	4
	Stirling's Account Railway Carriage		1	0 6
	Nov. 30. Stirling's Account Railway Carriage		2	4 11
1875.	Jan. 5. Order in favor E. Stirling Louisburg Land Company.....	300	0	0
	June 30. Stirling's Account for Hay.....	6	0	11
			376	0 9
E. & O. E.				
Balance due Mr. Gisborne.....		402	19	9
SYDNEY, C. B., Jan. 20th, 1876.				

APPENDIX C.

3 ADELAIDE STREET, LONDON,
July 22, 1876.

Francis Pavy, Esq., Thos. W. Powell, Esq., Henry Waite, Esq., Thos. Fenn, Esq., Perc. Spurling, Esq., Dr. Wm. Wegg.	} } } } } } }	Committee of Debenture Holders. Committee of Shareholders. Cape Breton Company Limit'd
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Gentlemen,—

Very important interests being entrusted to your judgment, it is advisable that your opinions should not be based upon an *ex parte* explanation of the apparently insurmountable differences be-

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tween the Official Liquidators, Messrs. Price, and Kennelly and myself, I therefore make no apology for soliciting your kind attention to the following facts.

In the first instance it should be remembered that I undertook the contract for the construction of the Louisburg Railway and Pier at a price fully £45,000 less in cash than the estimate of the Surveying Engineer, Mr. Samuel, and that finally I agreed to accept one-fourth payment in 8 per cent. preference shares upon a tender which was £20,000 under his estimate. And wherefore? Because at that time I was a salaried officer of the Company at £1000 per annum,—I had a contract for raising all your coal at a profit to myself,—I had the supplying of all the goods and provisions required by your miners and other employees from my own stores, and finally the preference shares were of marketable value.

Under such very favorable circumstances I could afford to undertake a contract in a country and among a population with whom I was thoroughly conversant, at a minimum margin of profit. It is also apparent that it was greatly to my interest to carry out a work which was designed to increase the value, not merely of the ordinary share capital of your Company, but also all my private investments in Cape Breton speedily and well.

For good and sufficient reasons, however, which I shall explain when required, I resigned my official appointment upon terms not yet carried out, cancelled my contract for raising coal in view of the depressed state of trade, and devoted myself exclusively to the fulfilment of railway works upon which the success of the Company mainly depended.

I had hardly commenced operations, however, under an assurance given by your Chairman, at a public meeting, that the necessary capital had been obtained and would be devoted exclusively to the undertaking, when I was called upon to subscribe £2,000 towards a syndicate of £70,000 required for such purpose. Mainly upon this astonishing and unanticipated demand, the preference shares became valueless and totally unavailable for contract purposes, and at the same time I was urged, under promises of ample pecuniary assistance, to incur very considerable additional expenditure in an endeavor to complete the works some months in advance of the time specified in the original agreement. I was also ordered by your Resident Engineer to make several costly alterations and additions which were not specified or provided for in the contract.

Under such circumstances I appealed to the Company for assistance, and an amended contract was entered into with my agent, Mr. Baker, whereby an embargo was placed upon the £27,250 of preference shares plus all ordinary shares for the nominal advance of £10,000 additional in cash. I say nominal for to this date, as you will perceive by my account current herewith

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forwarded. I have only received £38,827 17 2 in cash and £27,356 13 7 value in material, the remainder of the £81,250 cash to credit under the original and amended contract being deducted for 100 trucks purchased for another service, and which I positively refuse to accept. A locomotive, which has not yet been ordered, and sundry local charges which I disputed and can prove to be grossly erroneous, and the £5000 originally advanced and which cannot be taken into account until after the completion of the work.

In my account rendered, as attested and sworn to by competent authorities, you will notice a charge for extra speed in expediting works, and also a charge for the ordinary extras to which all railway contracts are amenable; I also invite your attention to the monthly certificates for work performed as rendered by your Resident Engineer, for they prove part payment on account of both charges. All such payments of the contract should have been added to the cash to credit of the contract and not deducted from and paid out of the original sum. I would also call your attention to a fact which has only quite lately come to my knowledge and, in consequence, prevented the possibility of settlement of all disputes by arbitration, viz., that in an amended report made by your Resident Engineer since his return to England he not only ignores his own instructions and written orders for ordinary extras, but also suggests a mode of escape from the outlay for expediting works, although only a day or two previous to his departure from Cape Breton and several months after all labor had been suspended, he handed my Assistant Engineer (*avowedly* that justice might be awarded me by the Company) his *written order* and *approval* of such expenditure.

You may, therefore, rely upon the fact that I shall have but little difficulty in satisfying the Court that when I stopped work in consequence of several of your engineers monthly certificates being refused payment nominally upon the plea that no more cash was to the credit of the contract; but, *de facto*, as my correspondence shows because the Company had not the necessary capital at command, there was upon all counts a sufficient sum to credit to have enabled me to complete the works many months within the time specified in my agreement.

As an offset to my just claim I am now met with a balance demand for damages account a primary breach of contract in as much as I purchased the railway lands in my own name in lieu of the Company. The purchase was, however, made solely with a view to economy, with the full knowledge of your Resident Engineer, and through the instrumentality of your own local solicitors, and I hesitated to transfer the lands in part so acquired when demanded some time after the Company went into liquidation, as it was *then* necessary that my solicitors should advise me on the subject as affecting my rights as a contractor. I maintain, how-

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ever, that no damage occurred hereby to the Company, in fact, as I informed the Liquidators, I would not pay a dollar for an exemption from such claim, the purchase of these lands in my name was not even known until after they had advertised for all claims upon the Company to be sent in on before the 25th of March last, and no application for fresh capital could rightfully have been made until after that date. My claim was presented in due course, and within a fortnight of my arrival in London I voluntarily and unconditionally transferred the lands in question, feeling assured as proved to date that it was the non-settlement of my claim and not the non-transfer of lands which prevented progress.

In conclusion I have to observe that I have now been three months in England vainly endeavoring to effect some amicable settlement with the Liquidators rather than appeal to a jury. Every possible concession I have (without prejudice) made; but I am invariably met in hostile spirit, and when an arrangement seemed probable some *arrière pensée* became apparent which prevented its fulfilment.

With the use of the cable and the facilities at my command, it is not yet too late to complete the line, and provide two or three deep water berths at the Louisburg Pier before the close of navigation at Sydney, but if no arrangement is made with me prior to the departure of the mail steamer of 8th proximo, I must decline to interest myself further in the immediate prosecution of the works with the above object in view.

I am, Gentlemen,
Your ob'dt. servt. at command,
F. N. GIBBORNE.

P. S.—I think it right to add that no new contractor or engineer can undertake to complete the works within the time and for the sum which I should have been willing to accept under a settlement with the Official Liquidators.

APPENDIX D.

SYDNEY, C. B., July 19, 1875.

W. H. KIDSON, Esq.,

Secretary Cape Breton Company Limited.

DEAR SIR,—I am in receipt of your brief favor of 29th ult., also of copy of the report upon your annual general meeting of shareholders.

Perceiving that reference was made at said meeting to deficiency

of coal in bank, cost, mining, improved economy in mining, coal contracts, etc., I beg to add a few remarks in continuation of my letter of 8th ult. :—

Coal in Bank. A considerable portion of the banked coal, having been exposed to the disintegrating influence of two North American seasons, produced when re-handled and dumped over double screens a *very* small proportion of purely round coal. And not only was *all* the nut abstracted from the round under your present *illegal* system of double screening, but a considerable portion of the slack, which must otherwise adhere to the nut, was lost to round coal produce account.

Cost of Coal.—There are also good and sufficient reasons why you should raise coal *much* cheaper *at present*, than was formerly, or will hereafter be practicable.

You now pay cutters 38 cents per ton as against 48 and 50 cents during 1872, and 55 cents during the following season, and \$1 per yard for narrow workings as against \$1.20 during 1872, and \$1.40 for 1873. I also drove *all slope work* to the deep at the unprofitable rate of \$2.50 per yard. Again you now pay \$1.20 per day for shiftmen as against my \$1.40 and \$1.50, and *all other wages in proportion*. I also made 10 landings—8 of which are in present use—7 air crossings, and an underground stable of 20 stalls, to say nothing of pumping positions, all of which are unprofitable items, but you have the present advantage of them, both in cost and time. In fact I prepared the mine and left it in the form which has enabled you to mine coal very cheaply for a season; but so soon as you recommence operations upon an extended scale, *wages will rise*, s'pes, levels, landings and air crossings must be provided and your cost per ton of coal will rise proportionately. You will however have, (under proper management) fewer narrow places to cut, comparatively little slope to drive, and the mineral being more compact to the deep, much less slack to raise.

Economic Management.—The amalgamation of Companies had this special desideratum in view and when your Managing Director arrived in this country, trade being stagnant and my contract for raising coal in consequence cancelled, several sub-contractors and overmen were discharged, not because they had not been previously and might not be hereafter required; but because there was nothing to warrant the retention of their present services. This apparent economy you take credit for, forgetting that I was bound by my contract until released therefrom and that I was expressly instructed to make *no* alterations in staff or management pending the arrival of Mr. Kennelly in Cape Breton. My appointment as *General Manager* was therefore purely nominal and its duties were never entered upon.

Montreal Contract.—I am blamed for the "loose manner" in which the 75,000 ton contract with Mr. Burke was negotiated. Such statement is neither correct nor just.

The following are the facts. During December, 1873, my Canada

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Agent, Mr. Burke, wrote enquiring if the Lorway Coal Company would accept an offer of \$2.50 per ton f. o. b. for their entire output of their Emery seam during 1874, to which I replied that the Company's lowest quotation was \$3. and with orders not to pledge their output at any price without further orders, as they expected to do better by waiting. I added, however, that if he could make a firm offer of \$2.75 for the whole produce (estimated at 75,000 tons) I would submit such offer to the Board. To this Mr. Burke assented, when I cabled to Mr. Fenn for instructions, under date 18th Dec. and wrote Mr. Rod. Mackay upon 24th of the same month, recommending prompt acceptance of the offer. I also again addressed Mr. McKay, under date 8th Jany, giving him \$2.50 as the quotation from neighboring collieries. Finally, I again brought the matter to the attention of your Directors, when in London, during February and March. After some delay, you concluded to accept Mr. Burke's offer, and a cable-gram was sent to him to such effect; but *subject to terms contained in contract mailed*, or words to like intent. This *rider* to his offer, Mr. Kennelly will do me the justice to say, I strongly objected to, knowing as I did Mr. Burke's influence and antecedents, and that it would prevent him from closing the sub-contracts upon which his offer was based—and so it turned out. Pictou and other collieries offered an equally good coal to our connection for \$2.50 per ton, and finally succeeded in obtaining all orders of importance pending Mr. Burke's forced inactivity.

After Mr. Kennelly had seen Mr. Burke in Montreal, he expressed himself as entirely satisfied with his explanation, and re-appointed him as *your* Co's agent for Canada. At that time Mr. Burke made an offer of \$2.50 per ton for 10,000 Emery coal, which was refused; but afterwards, upon more mature consideration, accepted; but the delay was again fatal, and when Mr. Burke reported that \$2.25 could *then* only be obtained, Mr. Kennelly accused him of running down prices for his own advantage and cancelled his agency! A very serious mistake, as I then impressed upon Mr. Kennelly, being fully aware that personal influence and connection is *all* important, in obtaining *any* contract of consequence in America. Pictou collieries regained—the trade that myself and agents had obtained for Cape Breton coal, and last years Government reports confirm such statement. It is thus manifest, that Mr. Burke is in *no* manner to blame, and that no "loose contract," was *ever* entered into with him by myself.

As already explained, the delay of settlement, losses and disappointments upon former shipments are clearly traceable to demurrage and other causes, over which neither myself nor agents, had any control, or are in the slightest degree to blame.

Dual management, and I may add London management, will never obtain a North American trade for your Company; but South American, European and Indian traffic can of course be better controlled in your metropolis. I am quite free in expressing such an opinion, as I am not in any manner seeking employment from your Directors.

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Schooner Pond (Ross Seam). Recent mining results upon the above seam at your *Emery Colliery*, prove the incorrectness of Mr. Kennelly's brook theory as the primary cause of the influx of water at your terminal mine. As I maintained, the flow arises from the sub-strata and not from the brook. You will also notice, in Mr. Selwyn's Report to the Dominion Government, that the Lorway & Gardner Co.'s seams, are, as maintained by myself, in contra distinction of the opinion of other mining engineers of reputed experience—*identical*.

Coal Trade.—Vide enclosure, from North Sydney Herald, and Reports from Pictou Mines,—showing the thousands of tons being shipped by other companies, while we figure for the week thus:

Cape Breton Co. L'd, 60 tons!

I do not pretend to be immaculate in either judgment or management; but I do not think sufficient consideration has been given to the primary difficulties which had to be surmounted, in order to obtain possession of and then open up unexplored seams and construct villages in the midst of woods and swamps and without roads to facilitate transit of material, &c., &c.; but my services have always been rendered faithfully to every Government and Company by whom I have been employed, and I therefore protest, most strongly, against any remarks or insinuations reflecting upon my ability, or agency, when absent and thus unable to defend and explain myself.

Railway Contract.—I am still doing a little work upon embankments near Louisburg; but the season of fine weather is fast passing away and I am obliged to retain the services of several persons (at present non-productive), anticipating a cabled remittance to enable me to proceed with my contract at any moment.

The loss to myself in time, expenditure and weather is becoming serious, and will, I trust, be fairly considered in our final settlement of accounts.

Yours faithfully,

F. N. GISBORNE.

ADDENDA.

I am advised by eminent Counsel that my legal position is *impregnable* and that although the proverbial delays of the law may in my case be realized the consequences will ultimately be much more injurious to those who have the misfortune to be represented by Mr. Kennelly than to myself.

I am assured also that it will not be possible for the Official Liquidators to take possession of works now legally under my control until my just claims are adjudicated upon.

F. N. G.

