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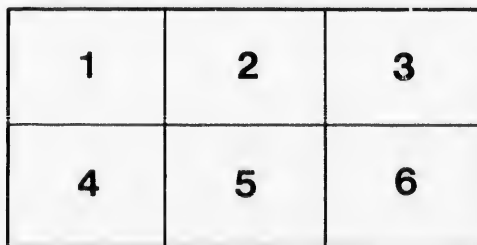
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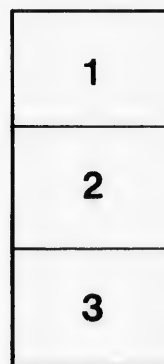
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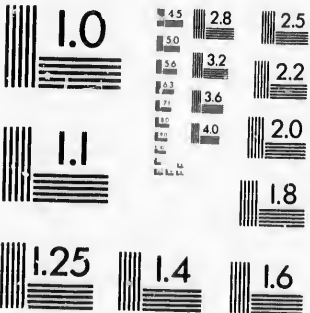
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MARINE TELEGRAPH BILL.

STATEMENT for the information of Honorable Members of the Houses of Parliament.

The Direct United States Cable Company (Limited).

1. This Company was formed in March, 1873. Its capital was chiefly subscribed by commercial houses desirous to reduce existing rates. Its object is to connect Canada and the United States with Ireland by one or more cables. It soon became apparent to the Company, that in order materially to reduce the rates, the right to land in Newfoundland was necessary. By touching at that Island the speed of transmission could be much increased, and dangers attending the laying of the cable elsewhere avoided.

2. It was found that the right of the New York, Newfoundland and London Telegraph Company to exclude any other Company from touching any part of that Island, could be determined *at any time* after 20 years from the passing of the Newfoundland Act which Incorporated the Telegraph Company—and, in effect, that after the 15th of April, 1874, the Newfoundland Government could, when it pleased, buy out, at a valuation, all the Company's Telegraph Lines and property, after notice given by that Government of its intention to purchase—the value to be fixed by arbitration. (*See Act of Newfoundland, 17 Vic. c. 2, passed 15th April, 1874, sec. 14 and 15.*)

3. After communication with the Governor of Newfoundland, the Direct Company, early in 1873, was informed by him, and his Chief Minister, that it was the intention of that Government to terminate the concession to the New York Company in 1874.

4. As a preliminary to carrying such policy into effect, the Newfoundland Government

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sent the following official despatch to Mr. Cyrus Field, the principal promoter and proprietor of the New York, Newfoundland and London Telegraph Company:

GOVERNMENT HOUSE,
NEWFOUNDLAND.
The Colonial Secretary to Mr. Field.

SECRETARY'S OFFICE,
26th May, 1873.

Sir,

The Executive Council of Newfoundland make the following propositions to the New York, Newfoundland and London Telegraph Company, in view of a speedy arrangement of certain matters that may shortly arise under the charter granted to the Company in 1854:—

First. The surrender on the part of the above Company of their exclusive right to land cables on our shores.

Second. The surrender on the part of this Government of their right of pre-emption.

Third. These mutual concessions to be made only on the distinct understanding that they are merely preliminary, or the basis of an arrangement by which the New York, Newfoundland and London Telegraph and all other Companies landing cables on the shores of this island and Labrador shall be subject, among other conditions, to a certain tariff or charge payable to our Government, on messages sent or received through or by such cables, or over their lines in this Island.

Fourth. If the above arrangement fails the pre-emption to be put in force by this Government.

I have, &c., &c., &c.,

(Signed)

JAS. L. NOONAN,

Col. Secretary.

CYRUS FIELD, Esq., &c., &c., &c.

5. A copy of this despatch was at the same time forwarded by the Newfoundland Government to the Direct Cable Company, and was received by that Company in London, before the 13th June, 1873. The execution of the Deed of Amalgamation of the New York, Newfoundland, and London Company with the Anglo-American and French Companies, being on the 26th of the same month,—the original despatch must have reached Mr. Field before that time.

6. So clearly and distinctly did the Newfoundland Government announce its intention to put an end to the concession of the New York Company, by the exercise of its right of purchase, that on the 24th of July, 1873, Mr. Knatchbull Hugessen, then Under-Secretary of State for the Colonies, replied to a question in the House of Commons, in these words:—"The Government of Newfoundland has given notice to the Company now enjoying a monopoly in telegraphic communication with that Colony, of its determination to terminate that monopoly. Their intention is to open the matter

"to that competition which they believe to be wise, just, and salutary. They will probably establish a tariff, though nothing has been settled as to uniformity. Correspondence has passed upon the subject, and there will be no objection to lay it before Parliament, but it is at present incomplete."

7. At this period a general election in Newfoundland was pending, which resulted in a change of Ministry, and so delayed further progress in the purchase of the New York Company's Telegraph property.

8. It being then uncertain when the Direct Co., would be permitted to touch Newfoundland, and having steamships ready for laying its cables between Ireland, Canada, and the United States, the Company proceeded during the season of 1874, to secure a complete connection across the Atlantic, between Ireland and Nova Scotia, independently of landing in Newfoundland for the present. That connection will probably be completed early in the present season, as 250 miles only remain to be laid.

9. The immediate effect of laying this cable will be materially to reduce the rate now charged, and the Direct Company intends to lay down a second cable so soon as the first has been successfully placed.

10. The Direct Company has been allowed the right to land its cable on the coast of the United States, which is freely conceded to all Telegraph Companies who may not have, or retain monopoly rights elsewhere—and that Company is desirous of exercising a similar right on the coast of Canada under the like conditions as exist there, which, if this Bill is passed into an Act, it will be enabled to do. At present, by an injunction obtained in January, 1875, in the Supreme Court of Newfoundland, at the instance of the Anglo-American Company, the Direct Company is prohibited against buoying its cable within three miles off the line of coast measured from headland to headland, and is so excluded—without its having any present intention of landing—from the shelter of any of the bays of the Island.

The Anglo-American Company—Limited.

11. The present Company arose from the consolidation of the New York, Newfoundland, and London Telegraph Company, and the French Company (*Société du Cable Transatlantique*) with the Anglo-American Company. The resolutions of the Shareholders' meetings of the Anglo-American and French Companies, were passed on the 22nd and 23rd May, 1873, respectively, and on the execution of the formal deeds, about the 26th of June, 1873, the old Companies became merged into the new Consolidated Company, under the name of the Anglo-American Company.

12. The capital stock of the new Company was placed at £7,000,000 sterling; the nominal capital of the Companies so uniting, being, in the aggregate, about £7,000,000.

The Shareholders of each Company received Shares in the new Company as follows :

- (1) The Anglo about £152 per £100.
- (2) The French " 190 " 100.
- (3) The New York £864,520, and to call for £135,480 more, in case Newfoundland did not exercise its right of purchase, *before the 1st of May, 1875*. At the same time the New York Company retained for itself its valuable land grants, mines, &c., also granted to it as a *bonus* by Newfoundland, when incorporated in 1854.

13. The value of the assets taken by the new Company at £7,000,000, may be safely estimated at about *half that amount*.

14. At these meetings of the Shareholders of the Anglo Company, and the French Company, held in May, 1873,—it was stated by the respective Chairmen (Sir W. Drake and Lord Monck), and by their Counsel, Mr. Lloyd, that Newfoundland would lose its right of purchase, inasmuch as it was against the New York Company only, which upon amalgamation would cease to exist. Nevertheless, one of the terms agreed upon was, as mentioned, that the new Company should retain, as against the proprietors in the New York Company, the sum of £135,000 against the contingency of this purchase before the 1st May, 1875.

15. The Shareholders of the new Company must therefore be taken to have fully known their position with respect to the Government of Newfoundland; and they would even appear to have been assured,—however erroneous this assurance was—that, as one of the congratulatory advantages of amalgamation, the right of that Colony to acquire the Telegraph property of the New York Company, would be entirely defeated by that Company ceasing to exist.

16. Further, the French Company was established in 1869. This Company had laid its cable between Brest and the shores of the United States, touching at the French Island of St. Pierre, in the Gulf of St. Lawrence. It had obtained an exclusive right of using the French Coast for cable purposes, and the Company was obliged by the action of Mr. Hamilton Fish, United States Secretary of State, to concede reciprocal rights to citizens of that country, of landing cables in France, before it was permitted to occupy any part of the coast of the United States.

17. In March, 1873, the position of the cable lines was this:—

Two cables of the Anglo Company, connecting Ireland and Newfoundland (the cable of 1858 having been acquired from the Atlantic Telegraph Company).

One cable of the French Company, connecting Brest with the United States, *via* St. Pierre.

Three short cables, connecting Newfoundland with Cape Breton, and uniting in Nova Scotia with the land lines of the Western Union Telegraph Company, an American

Corporation. These short cables belonged to the New York Company, and were used by the Anglo Company on payment of certain stipulated rates.

18. The pretensions of the Anglo Company to maintain these short cables on the coast of Nova Scotia are based upon the supposed rights of the New York and Newfoundland Company to occupy that shore.

The Situation in Nova Scotia.

19. The landing of any cable from one country upon the seashore of another would require the sanction of the sovereign authority of the latter country before it could become lawful, inasmuch as, besides the occupation of part of the coast itself, it involves the exercise of a franchise, which can emanate only from that authority.

20. The New York and Newfoundland Company has uniformly proceeded upon the distinct recognition of this principle. It was Incorporated by an Act of Newfoundland on the 15th April, 1854, and obtained for 20 years, an absolute exclusion of all other Companies from the Island, or the waters within its jurisdiction. On the 10th of May, 1854, it obtained similar exclusive rights from the Legislature of Prince Edward Island. In March, 1855, a Bill, seeking similar rights, was introduced into the Legislature of New Brunswick, but the House of Assembly negatived it.

21. In March, 1855, the Legislature of Nova Scotia passed an Act to confer the like exclusive privileges on this Company, but this Act was disallowed by Her Majesty as questionable in principle. (See Despatch, 2nd August, 1856, Colonial Secretary to Lieutenant Governor, Journals of Nova Scotia, 1857; appendix No. 4, p. 17.) In the Session of 1857 the Nova Scotia Legislature passed a second Act in favor of this Company, but reducing the period of the exclusion from 50 to 25 years, and making the exclusive privileges conditional on the cable not being extended by the Company to Canada, New Brunswick or Prince Edward Island, or to the United States direct. This Act was also disallowed by Her Majesty. The Despatch of the Colonial Secretary, dated 18th January, 1858, (Nova Scotia Journals 1858, appendix 277,) states the reasons for disallowance, which are so opposed to any sanction of monopoly privileges that it should be quoted. The despatch is as follows:—

“DOWNING STREET,
18th January, 1858.

SIR,

Her Majesty's Government have had under their consideration an Act passed by the Legislature of Nova Scotia, in the month of May last, entitled, &c. This Act purports to give the New York, Newfoundland, and London Telegraph Company (subject to their performance of certain conditions, and to the conclusion of the agreement specified in section 6,) the exclusive right to furnish the Province with the means of telegraphic communication for a period of twenty-five years. I wish to refer you to the despatch addressed to you by Sir George Grey, holding the seals of this Department on this subject, under the date of 22nd March, 1855. Her Majesty's Government see no reason to modify the views expressed in that despatch and its enclosures, which have

on the contrary, gained additional force by later experience. They consider that the grant for such exclusive privileges is highly inexpedient, not only for the interest of the Province, but of the Empire in general. They are fully aware that it was urged that similar privileges have been conceded by the Legislatures of Newfoundland and Prince Edward Island, without the disallowance of the Crown. But they must reply that the implied sanction of these Acts, given without fully advertent to considerations, the magnitude of which has been ever since requiring a greater development, does not bind them to a continuance in a course of policy which they are satisfied cannot but prove extremely injurious, and this beyond the limits of the colony immediately concerned. An order for the disallowance of this Act will accordingly be submitted to Her Majesty, &c.

(Signed) H. LABOUCHERE.

To Lt.-Governor
Sir G. LEMARCHANT,
&c., &c., Nova Scotia.

23. This Bill was disallowed after the customary reference to the Lords of the Committee of the Privy Council on Trade and Plantations, for their opinion, which was communicated to the Colonial Office in the following letter :

OFFICE OF COMMITTEE OF PRIVY COUNCIL FOR TRADE.

Whitehall, Jan. 11, 1858.

SIR,—In reply, my Lords direct me to observe that, having on many former occasions expressed their opinion that the granting to telegraph companies of the exclusive right to lay wires in any of Her Majesty's Colonies is most injurious to Imperial interests, my Lords are unable to do more on the present occasion than to suggest that no opportunity should be lost that may present itself to the Colonial Government of putting an end to the monopoly of laying telegraphic wires in Newfoundland and its dependencies, which has been granted to the New York, Newfoundland, and London Telegraph Company, a monopoly which appears to my Lords not less injurious to the interests of the Colony than it is to them of this country.

I have, &c.,
JAMES BOOTH.

H. MERIVALE, Esq.

24. The New York Company failed to make any telegraphic connection with Prince Edward Island, but relying on the Nova Scotia Bill becoming law, laid its cable between Newfoundland and the coast of Nova Scotia, at Cape Breton; but its occupation of that coast, for cable purposes, became unlawful upon the disallowance of the Nova Scotia Bill, and was so at the time of Confederation. An occupation thus retained by the Company for its own convenience, and without the sanction of an Act, cannot be deemed as equivalent to a vested interest, which, notwithstanding its being to the public detriment, the Parliament of Canada would be bound to respect.

25. An occupation of Nova Scotia, if permitted to the Anglo Company, coupled with the retention of its exclusive right in Newfoundland, is further attended with disastrous consequences to telegraphic enterprise in the Dominion. So long as the Western Union Company possesses an exclusive contract with the Anglo Company, it retains a practical monopoly of business in the Maritime Provinces. Uniformity in rates

throughout the Dominion is thus rendered impossible, and the tariff in three of its Provinces is controlled by a purely American Corporation, to the prejudice of its business, and the injury of its own Telegraph Companies. The passing of the Bill will terminate this state of things. The Dominion Telegraph Company is ready to extend its lines into Nova Scotia, to connect with the Direct United States Company, and the Montreal Company will then gain an independent status. Canada, which geographically commands the position, is now made dependent for its Atlantic telegraphic communications upon a foreign Company, and any recognition of the Anglo Company in Nova Scotia, would only serve to rivet, upon the Maritime Provinces, the fetters of the Western Union Telegraph Company, from which all America is struggling to escape.

The Situation in Newfoundland.

26. By Act of Newfoundland, 17 Vic., c. 2, (15th April, 1854) Cyrus Field and his New York associates, were incorporated under the name of "The New York, Newfoundland and London Telegraph Company," which was authorized to construct a main line from St. John's to Cape Ray, and from St. John's to Trepassay, and also branch lines; and received by way of bonus 100 square miles of mineral lands, at the selection of the Company.

27. By section 14 of this Act, the Company was to enjoy the exclusive right of this line between St. John and Cape Ray, and other points on the Island, for fifty years from the passing of the Act, (subject to pre-emption), and during that period all other persons were excluded from touching the coasts of the Island with Telegraphic Cables. Newfoundland also agreed, by resolution of the House of Assembly, to guarantee interest at 5 per cent, for 20 years, on £50,000 of Bonds of the Company. (*See Nova Scotia Journals 1857, p. 102.*)

28. By section 15 of the Act, at any time after 20 years, the right was given to the Government to purchase "the Telegraph Lines, Wires, Cables, Apparatus, Vessels, and other property connected therewith" at a valuation to be determined by arbitrators.

29. By another Act of the Colony, 20 Vic., cap. 1, (3rd March, 1857), the New York, Newfoundland and London Company were authorized to permit the Atlantic Telegraph Company (Limited), to extend their Submarine Cable Line to the Island. By section 2, power is given to the two Companies to consolidate; and under the provisions of this section, the new Anglo American Company was formed in May, 1873.

30. In the same month, legal opinions were obtained from eminent counsel in England, (one being the present Attorney General, and the other the Ex-Attorney General,) upon the subject of the purchase, and the principle for its valuation. These opinions were at the time, published in the London Newspapers, and are as follows:—

"We are of opinion that the Government of Newfoundland can, at any time after the 15th of April, 1874, exercise its rights of pre-emption, and take possession of the telegraph lines and plant of the Newfoundland and London Telegraph Company.

"In the event of the Government exercising such rights, we are of opinion that the amount to be paid to the Company will be the value of the property of the Company, such as poles, wire, cable apparatus, &c. ; to be valued, not as mere materials, but as erected for the purpose of telegraphy.

"But the Company will not be entitled to receive any sum for the value of its business, nor any compensation for good-will, or in relation to the future earnings of the Company.

"The Company is incorporated and obtains its powers under 17 Vic., cap. 2 (Newfoundland Act.) By the 14th Section the Company obtained an exclusive right, as against other Companies and individuals, to erect and work telegraph lines within the Colony for 50 years, subject to the powers of the Government in Council to determine that right at the end of 20 years.

"By the 15th Section, if the right of pre-emption be exercised, arbitrators are to be appointed, who shall appraise the telegraph lines, wires, cable apparatus, vessels, and all other property connected therewith, and on payment of the amount of the valuation all that which is above mentioned becomes the property of the Government of the Colony.

"Throughout the whole of the Act we can find nothing which points to any compensation being paid for the business or good-will, but only for the chattels and actual property of the Company. While the word "property" sometimes has an extended meaning, it is clearly used in the 15th section as applying only to things *ejusdem generis*, with wire, cables, apparatus, &c.

"We would observe that when it was intended under the English Act (31 and 32 Vic., cap. 90,) to give compensation for the future profits of the telegraph lines purchased by the Government, the words were clear and explicit that 20 years' purchase of the net profits during the year preceding the passing of the Act should be paid to the Companies (see sect. 8.)

"The reason why no compensation is to be paid to the Newfoundland Company for goodwill or future profits is that the Company obtained 20 years' exclusive right as a return for their outlay, which the English Companies never had.

"For the above reasons, we are of opinion that the New York, Newfoundland, and London Telegraph Company is entitled to no payment for goodwill in the present or future, nor for any value of its business, but only for the plant, &c., plus the cost of erecting it.

(Signed,) "RICHARD BAGGALLAY.

"HENRY JAMES.

"April 1st."

(Copy.)

"I have perused the second and third of the above-mentioned Acts, viz., the Colonial Acts 20 Vic., cap. 1, and 30 Vic., cap. 17, and see no occasion to modify the opinion given by Mr. James and myself under date the 1st instant. The latter Act merely confers power to increase the capital of the Company, and I can see nothing in the former to deprive the Newfoundland Government of its power to determine the Concession at the expiration of twenty years secured to it by the Act of 1854, but on the contrary, an express provision that all the rights of the Government under that Act are to remain in force.

(Signed,) "RICHARD BAGGALLAY.

"April 2nd."

"We believe the questions raised in the case have been fully brought before us. We see no reason to modify our former opinions in any way. By section 4 of the Act of 1857 the right of pre-emption is clearly reserved.

(Signed)

"RICHARD BAGGALLAY.

"HENRY JAMES.

"LINCOLN'S INN, May 31st, 1873."

31. These opinions have been recently confirmed upon a reference of the whole subject by Lord Carnarvon, to the Law advisers of the Crown, and in his despatch of the 17th November, 1874, to the Governor of Newfoundland, the Colonial Secretary states, "I am accordingly advised that the expressions 'other property,' and 'all other property connected therewith,' used in the 15th sec. of the Act of 1854, were intended to comprise merely property of the same nature as the property mentioned in the parts of the section immediately preceding those expressions, and therefore that upon payment of the amount awarded as the value of the Telegraph Lines, Wires, &c., under the provisions of the above section, the undertaking of the Telegraph Company will become vested in Her Majesty, and that the Telegraph Company *will not be able to insist upon the arbiters, or umpire, awarding an amount of compensation for the good will of the concern, or the loss of the monopoly.*" (*See Despatch printed in message of Governor General to House of Parliament, pages 14 and 15.*)

32. The purchase then by Newfoundland involves only the value of the land line from Saint John's to Cape Ray, with Telegraphic appliances. The line from Saint John's to Trepassy was never made, and the Atlantic Cables do not come within the terms of the 15th section of the Act of 1854, the permission to land them having been first granted by the Act of 1857.

33. An estimate of the cost of constructing the proposed lines was submitted by the promoters of the New York Company to the Newfoundland Legislature, before the passing of the Act of 1854, and it confirms the construction placed by Counsel upon the 15th section. This estimate appears in the Journals, Assembly of Newfoundland, 1854, appendix, p. 265, and is as follows:—

Cost of land line, St. John's and Cape Ray.....	£56,596
" " Trepassy, completed 75	
miles.....	7,500
Total cost of land lines.....	£64,096
Cost of cable to connect Newfoundland and Prince Edward's	
Island, 150 miles.....	£37,500
Cost of Attendant Expenses.....	2,500
" Steam Yacht "Victoria".....	5,000
" Running Expenses, 6 months.....	1,500
	£110,596
" 25 per cent for Contingencies.....	27,649
	£138,245 sterling.

34. The cable to Prince Edward Island was never laid, and that to Cape Breton does not come within any of the subjects of purchase contemplated by the Act; so that having regard to the original estimate of the cost of construction, the value to be paid by Newfoundland for the acquisition of this Telegraphic property should not exceed £100,000 sterling.

35. On effecting this purchase, Newfoundland would become the owner of an integral portion of the cable system, and repossess itself of authority to extend to any Telegraph Company the right to land on its coast. It could retain this line as a connecting link for all cable lines, or sell again to the Anglo Company, or any other Company.

Conclusions.

36. It follows from the above statements:

- (1.) That the monopoly right in Newfoundland, which the Anglo-American Company complains will be practically lost by the operation of the present Bill, possesses no money value, if that Government carries out its policy of purchase.
- (2.) That at the time of consolidation, that Company was fully aware, from the legal opinions quoted, that the Newfoundland Government could terminate the monopoly after April, 1874, on payment of the value only of the Telegraph lines and appliances constructed by the New York Company, under the Act of 1854, and the Company had been officially informed, through Mr. Field, by that Government, that it was its intention to exercise the right of purchase unless the monopoly was relinquished.
- (3.) That as a provision against this, and as one of the express stipulations of the amalgamation, in May, 1873, the Anglo Company retained £135,000 of the amount payable to the proprietors of the New York Company, as an indemnity against the probable determination of any monopoly right of that Company, and that the Anglo Company must be taken to have thus fully protected themselves against the results of pre-emption or of the passing of the present Bill.
- (4.) That at the time of the amalgamation the New York Company knew it was an intruder in Nova Scotia, and occupied its coast for telegraphic purposes without any colour of right, or lawful authority, and if any enquiry were made by the persons concerned in the consolidation of the several Companies, they must have known this to have been the true position of the New York Company, and that its attempt to acquire a monopoly in Nova Scotia had been emphatically negatived by the Imperial Government.

(5.) That if the proprietors in the amalgamated Companies were misled, or omitted to be informed upon these material points, they have no claim to be recouped by the continuance of a monopoly which is a burdensome tax upon the commercial intercourse of the world; and as ordinary purchasers they must remain content with their property just as they purchased it. They are in no sense pioneers who are now entitled to some recompense as a compensation for alleged losses in earlier struggles. In fact these losses were sustained only by the Atlantic Telegraph Company, and the Anglo Company, in acquiring its rights and property, reaped the advantages of its misfortunes. The New York Co., while still retaining mineral lands, valued by the proprietors at several millions of pounds sterling, realized by the amalgamation more than eight times their estimated expenditure upon construction; and the large premiums at the same time received by the shareholders of the Anglo and French Companies were more than an adequate compensation for their original investments.

(6.) That it is a matter of surprise, in view of all the circumstances, that the Anglo Company should not have accepted the offer of Newfoundland and relinquished its exclusive privileges in that Island, thus retaining the ownership of its cable system in its integrity, and obtaining under the provisions of this Bill the right to the full exercise of its franchises in Nova Scotia; the present prosperity of the Company, from its large volume of business, showing an annual income of about £750,000 sterling, cannot be seriously affected by the competition of other Companies. That this will subject its rates to a wholesome control, is now made apparent by the recently proposed reduction of 50 per cent. in consequence only of the introduction of this Bill. On this pressure being removed the old rates would revive.

(7.) That the policy of the Bill cannot be impugned; it has been shown to affect no vested rights, or interests, of any private company or individual; it is in accordance with all Imperial and Canadian Legislation, and is carrying into effect principles repeatedly laid down for the guidance of Colonial Legislatures by Imperial authority, and recently again enunciated by the present Secretary of State for the Colonies.

(8.) That the recognition of the right of the Anglo Company to retain its intrusive occupation on its own terms in Nova Scotia, not only sustains the monopoly in Newfoundland, but practically extends it to the shores of the Dominion, in direct defiance of the spirit of Imperial Policy, and furthermore would enable it to evade the principle laid down by the

United States, under which the Anglo Company is prohibited from landing any Cable on its coast, unless it should concede reciprocal privileges in Newfoundland. The commercial world requires, and it can without unfairness or injustice to any one, ask the Canadian Parliament to pass this Bill.

LAURENCE OLIPHANT,

For the Direct United States Cable Company (Limited).

OTTAWA, February 23, 1875.

C. W. MITCHELL, PRINTER, ELGIN STREET, OTTAWA.

