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CORRESPONDENCE respecting a Reserved
Bill of the Canadian Parliament,
intituled "An Act to Regulate the
Construction and Maintenance of
Marine Electric Telegraphs."

*Presented to both Houses of Parliament by Com-
mand of Her Majesty. February 1875.*

LONDON :
PRINTED BY HARRISON AND SONS.

16
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RESERVED BILL

OF THE

CANADIAN PARLIAMENT,

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Correspondence respecting a Reserved Bill of the Canadian Parliament, intituled "An Act to Regulate the Construction and Maintenance of Marine Electric Telegraphs."

No. 1.

The Earl of Dufferin to the Earl of Carnarvon.—(Received June 17.)

My Lord,

Government House, Ottawa, June 4, 1874.

I HAVE the honour to inclose a copy of a Bill which I have thought it desirable to reserve for your Lordship's approbation.

Accompanying the Bill is an Order in Council explaining its provisions, and insisting with very great force on the desirability of the object it is intended to effect.

My Government attach the very greatest importance to the measure, and have requested me to urge their views upon your Lordship in the strongest possible language.

I have, &c.
(Signed) . DUFFERIN.

Inclosure 1 in No. 1.

An Act to regulate the Construction and Maintenance of Marine Electric Telegraphs.

HER Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows :—

1. This Act shall apply—

(1.) To every Company or association of persons hereafter authorized by any special or general Act of the Parliament of Canada or under the provisions of this Act, to construct or maintain telegraphic wires or cables in, upon, under, or across any gulf, bay, or branch of any sea, or any tidal water within the jurisdiction of Canada, or the shore or bed thereof respectively, so as to connect any province with any other province of the Dominion, or to extend beyond the limits of any province.

(2.) To every Company authorized to construct or maintain such telegraphs before the passing of this Act by any such special or general Act of the Parliament of Canada, or by any other special Act or Charter of any of the provinces constituting the Dominion and at the time of the passing of this Act in force in Canada.

2. The term "Company" in this Act shall mean any Company or association of persons in the preceding section mentioned.

3. The Company shall not place any telegraphic wire, cable, or work connected therewith in, under, upon, over, along, or across any gulf, bay, or branch of the sea or any tidal water, or the shore or bed thereof respectively, except with the consent of all persons and bodies having any right of property or other right, or any power, jurisdiction, or authority, in, over, or relating to the same which may be affected or be liable to be affected by the exercise of the powers of the Company.

4. Before commencing the construction of any such telegraph or work as last aforesaid, or of any buoy or sea-mark connected therewith, except in cases of emergency for repairs to any work previously constructed or laid, and then as speedily after the commencement of such work as may be, the Company shall deposit in the office of the Department of Marine and Fisheries a plan thereof for the approval of such Department. The work shall not be constructed otherwise than in accordance with such approval. If any work is constructed contrary to this provision, the Department of Marine and Fisheries may, at the expense of the Company, abate and remove it, or any part of it, and restore the site thereof to its former condition.

5. The Company may, in or about the construction, maintenance, or repairs of any such work, use on board ship or elsewhere any light or signal allowed by any regulation to be made in that behalf by the said Department.

6. If any such work, buoy, or sea-mark is abandoned or suffered to fall into decay, the said Department may, if and as it thinks fit, at the expense of the Company, abate and remove it, and restore the site thereof to its former condition, and the said Department may at any time, at the expense of the Company, cause to be made a survey and examination of any such work, buoy, or sea-mark, or of the site thereof.

7. Whenever the said Department, under the authority of this Act, does in relation to any such work any act or thing which the said Department is, by this Act, authorized to do at the expense of the Company, the amount of such expense shall be a debt due to the Crown from the Company, and shall be recoverable as such with costs, or the same may be recovered with costs as a penalty is or may be recoverable from the Company.

8. The Company may, with the consent of the Governor in Council, take and appropriate for the use of the Company, for its stations, offices, and works, but not alienate, so much of the land held by the Crown for the Dominion and the shore or bed adjacent to or covered by any gulf, bay, or branch of the sea, or by any tidal water, as is necessary for constructing, completing, and using the telegraph and works of the Company.

9. The Company may also acquire from any province of the Dominion any land or other property necessary for the construction, maintenance, accommodation, and use of the telegraph and works of the Company, and also alienate, sell, and dispose of the same when no longer required for the purpose of the Company.

10. The Company may also acquire from any person or corporation any land necessary for the construction, maintenance, and use of the telegraphic cable and works of the Company, adjacent to or near the shore end or place of landing of the telegraph. And in case the Company and such person or corporation should fail to agree upon the possession or price of such land, the Company is hereby empowered to enter upon and take such land, limited to an area of five acres, under the powers, authorities, and provisions of "The Railway Act, 1868," the sections of which, in respect to compulsory powers for the acquisition of lands, are hereby declared to be applicable to any Company within this Act, and the powers, authorities, and provisions contained in the said sections of the "Railway Act, 1868," are hereby declared to be vested in and exercisable by any such Company for the purpose aforesaid.

11. The Company shall not be entitled to exercise any of the powers of this Act until the Company shall have submitted to the Governor in Council a plan and survey of the proposed site and location of such telegraph and its approaches at the shore, and of its stations, offices, and accommodations on land, and of all the intended works thereunto appertaining, nor until such plan, site, and location have been approved by the Governor in Council, and such conditions as he shall have thought fit for the public good to impose touching the said telegraph and works, shall have been complied with.

12. The Company shall transmit all messages in the order of which they are received, and at equal and corresponding tariff rates, under the penalty of not less than 50 nor exceeding 200 dollars, to be recovered with costs of suit by the person aggrieved; and the Company shall have full power to charge for the transmission of such messages, and to demand and collect in advance such rates of payment therefor as shall be fixed from time to time as the tariff of rates by the bye-laws of the Company: Provided, however, that arrangements may be made with the proprietors or publishers of newspapers for the transmission for the purpose of publication of intelligence of general and public interest, out of its regular order, and at less rates of charge than the general tariff rates.

13. Any message in relation to the administration of justice, the arrest of criminals, the discovery or prevention of crime, and Government messages or despatches, shall always be transmitted in preference to any other message or despatch, if required by any person officially charged with the administration of justice, or any person thereunto authorized by the Secretary of State of Canada, or by the Secretary of State for the Colonies on behalf of the Imperial Government.

14. No Company or association of persons other than those mentioned in the first section of this Act, or which become incorporated in Canada under the next following section shall maintain, construct or use any telegraphic wire or cable connecting two or more Provinces of the Dominion, or extending beyond the limits of any Province in, upon, under or across any gulf, bay or branch of any sea or any tidal water within the

jurisdiction of Canada or the shore or bed thereof respectively: Provided that nothing in this section contained shall be construed to prohibit any existing Telegraph Company or association from continuing to receive and transmit messages over its line of marine telegraph, until such time as another Company, under the authority and within the provisions of this Act, has constructed and is operating a line of marine telegraph which has been determined by the Governor in Council to afford reasonable facilities for the transmission of marine telegraphic messages in lieu of the line or lines of such existing telegraph company or association, or to be a line for doing business over a route of a competitive nature.

15. In case any Company is now or shall hereafter be authorized by any special Act of the Parliament of Great Britain, or incorporated under the Imperial Joint Stock Companies' Act, or any other general Act of the Imperial Parliament or by Royal Charter, for establishing or maintaining telegraphic communication in, upon, under or across any gulf, bay, or branch of any sea or tidal water within the jurisdiction of Canada, the Governor in Council may by letters patent under the Great Seal of Canada, and upon the terms and conditions to be contained therein, grant a charter to the persons forming such Company, upon the Company petitioning therefor, and such persons and others who may become shareholders in the Company shall be constituted a body corporate and politic by the same name, and with the same power and constitution in Canada, for the said purpose and object of establishing and maintaining their said telegraph and works within the jurisdiction of Canada, but any such grant shall be expressly subject to this Act, and conditional upon the Company doing, observing, and performing the several provisions thereof, and such Letters-Patent being published in "The Canada Gazette" with any Order or Orders in Council relating to the said Letters-Patent, shall have the like force and effect, as if the Company had been incorporated by special Act of Parliament, but no such Letters-Patent or grant of corporate powers to be exercised within the jurisdiction of Canada shall be made to or conferred upon any Company or association which possesses any exclusive privilege of landing wire or cable for a marine telegraph in or upon the coast of any State, Province, or country in America, Europe, or elsewhere, unless an equal or reciprocal right or privilege of landing wire or cable, and establishing a marine telegraph upon the same coast is conceded to any and each of the Companies in the first section of this Act mentioned, or which may become incorporated in Canada under the provisions of this section of this Act, so that any Company incorporated or to be incorporated in Canada, may enjoy the same advantages in maintaining its marine telegraph line in and upon the same coast as the said Company which may possess such exclusive privilege.

16. In case any Company heretofore incorporated by any special Act of the Parliament of Canada, has acquired any exclusive privileges of landing wire or cable for a marine telegraph upon the coast of any other country, such Company shall be entitled to exercise and enjoy any such existing privilege, unimpaired by this Act; but no Company heretofore incorporated by any such special Act, shall acquire any further or additional exclusive privileges of landing wire or cable as aforesaid.

17. The Parliament of Canada may at any time amend, vary, or repeal any of the provisions of this Act.

The above is a true copy of the Bill passed by the Senate and House of Commons of Canada and reserved for the signification of the Queen's pleasure thereon, on Tuesday the 26th day of May, 1874.

(Signed)

ROBERT LE MOINE, C.P.

Ottawa, June 2, 1874.

Inclosure 2 in No. 1.

Report of a Committee of the Honourable the Privy Council, approved by his Excellency the Governor-General, on the 4th day of June, 1874.

THE Committee of the Privy Council have the honour to report—

That at the last Session of the Parliament of Canada a Bill was passed by both Houses entitled "An Act to regulate the construction and maintenance of Marine Electric Telegraphs," which, in accordance with paragraph 7 of the Royal Instructions was, upon the advice of the Minister of Justice, reserved by his Excellency the Governor-General for the signification of Her Majesty's pleasure: and that the Minister

of Justice thus advised, as the Bill "is one of some importance, and may possibly be considered to prejudice the interests and rights of property of Her Majesty's subjects not residing in Canada."

That the Anglo-American Telegraph Company appeared by Counsel before the Committee of the Senate to which the Bill was referred and urged that their rights and privileges would be prejudiced by it, but that the Committee reported in favour of the Bill, and the same was then passed by that body.

That the advice to the Governor-General that the Bill should be reserved was given merely in deference to the language of the Royal Instructions, and not from any conviction or belief that the Bill in any way interferes with or is prejudicial to the rights of the Anglo-American Telegraph Company, or of any other Company with similar objects or with similar rights.

That the Bill in question is calculated to afford facilities to any persons seeking incorporation for the purposes of marine telegraphs, and will tend to promote, not the establishment (or monopoly) of one Company only, but of several, for the same purposes.

Whilst, as regards any supposed rights or franchises of the Anglo-American Company, or of any other Company with which this Bill can be alleged to interfere, the Committee are quite at a loss to know in what they can be said or supposed to exist, or what peculiar rights of any kind that Company or any other can at present claim in Canada.

The 14th section prohibits any Company, except such as have been or may be incorporated in Canada from maintaining or constructing a marine telegraph (saving the user of any existing Telegraph Company, during the non-existence of any company arising within the provisions of the Bill). But the 15th section provides that the necessary corporate powers in Canada (for any company so prohibited by the 14th section) may be procured from the Governor in Council, upon condition, however, that other companies created under the authority of the reserved Bill, shall have conceded to them and enjoy equally with it any advantages or privileges which it may possess.

In these provisions, therefore, will be found the object of the Act—the encouragement of marine telegraph companies in Canada, but so as that all such companies, whether of Imperial or Canadian incorporation, shall enjoy equal rights and privileges in all respects amongst themselves, and without any special monopoly.

That is to say, Parliament is willing to extend to companies of Imperial or Parliamentary origin in Great Britain the same corporate powers which it is proposed shall exist in any companies of Canadian incorporation, provided that equal rights and privileges in all respects are enjoyed by all.

The Committee are of opinion that no company is in existence possessing rights and privileges in Canada which can in any way be legally affected by the reserved Bill.

They at the same time desire to express their strong conviction that this measure is calculated to be highly beneficial to the interests of Canada, and is also in accordance with the established policy of the country, and they submit that Her Majesty's Secretary of State for the Colonies be requested to pray Her Majesty's sanction to the Bill at an early date.

Certified,
(Signed) W. A. HIMSWORTH, C. P. C.

No. 2.

The Earl of Dufferin to the Earl of Carnarvon.—(Received October 13.)

My Lord,

Canada, October 2, 1874.

I HAVE the honour to forward, for your Lordship's information, copy of an Order in Council dated the 2nd day of October, 1874, in reference to the recent Telegraph Act of the Dominion Legislature which has been reserved for your Lordship's consideration.

The Order in Council is accompanied by a copy of "The Money Market Review,"* and a pamphlet entitled "Memorandum of Association of Anglo-American Telegraph Company,"* and by copy of an Order in Council of the 4th of June, 1874, relative to the same subject.†

These documents have only reached me as the mail was upon the point of closing.

* Not printed.

† Vide Inclosure 2 in No. 1.

and I have not had time to do more than glance at the principal document. I forward it, however, being unwilling to delay its arrival in your Lordship's hands.

I have, &c.
(Signed) DUFFERIN.

Inclosure 1 in No. 2.

Report of the Honourable the Privy Council, approved by His Excellency the Governor-General in Council on the 2nd day of October, 1874.

THE Committee of Council having reference to an Order in Council of the 4th June last, of the reserved "Marine Electric Telegraph Company's Bill," have the honour further to report:—

That a telegram to the following effect from the Honourable the Secretary of State for the Colonies was submitted by your Excellency :

"Before a decision is given as to the Marine Electric Telegraph Act, Her Majesty's Government desire to know whether effect of concession of exclusive rights of Anglo-American Company, confirmed so lately as 1869 by Prince Edward Island Act, has been duly considered, and whether that Company could claim compensation for its withdrawal, also whether interests of proprietary were fully considered before the Bill was passed.

(Signed) "CARNARVON."

To which the following reply was sent :

"I am advised that the charter given by Prince Edward Island was not urged upon the Committees in Parliament (when considering the Telegraph Bill), nor was it brought before the Government. It is difficult to ascertain what privileges the concession of exclusive rights to 'New York, Newfoundland, and London' Telegraph Companies originally embraced. It is doubtful whether any such privileges now exist, as the Company is now apparently merged in another Company without Legislative sanction of Prince Edward Island or Canada.

"Despatch will be sent giving further particulars.

(Signed) "DUFFERIN."

That some delay has necessarily arisen in the further consideration of the subject of the above telegram to your Excellency, in order that the Privy Council for Canada might obtain full information thereupon.

That after full inquiry the Committee find as follows:—

1. That any exclusive concession in Prince Edward Island, by Acts of its Legislature, was in favour of "the New York, Newfoundland, and London Telegraph Company," a Newfoundland Corporation, and it was expressly limited "during its existence."*

See Statutes Prince
Edward Island—
17 Vict., c. 4, 1854;
20 Vict., c. 13, 1857;
25 Vict., c. 9, 1862;
32 Vict., c. 34, 1869.

2. That the Newfoundland Company did not, in fact, avail itself of the exclusive provisions of the Act of 1854, or construct any cable on the faith of this protection.

3. That another Company had previous to the passing of that Act, laid down a cable from the island to New Brunswick, and this by section 8 was vested in the Newfoundland Company.

4. That the Committee are informed that the service was continued to be so inefficiently performed as to give rise to the conditional revocation of the Company's powers by the Act of 1862.

5. That the Newfoundland Company were to receive an annual subsidy from the Province for maintaining this line; it would, therefore, appear to have been constructed for no local convenience of the island, and not with reference to any cable line in contemplation by the Company, to which the prohibitory provisions of the Act of 1854 might have been attached.

See recitals in
Prince Edward
Island Statutes,
1862.

6. That, moreover, by section 6 of the Act of 1869, the right would appear to be reserved to the Executive Government to dispense with these services, and to make arrangements with any other Company for this connection.

7. That in May 1873† the Newfoundland Company became merged in the Anglo-

* Act 1854, sec. 2.

† See proceedings at "General Meeting of the Anglo-American Company, May 22, 1873;" also "Société du Cable Transatlantique, May 23, 1873;" also "Terms of Resolution adopted at these Meetings, reported in the 'Money Market Review,' May 24, 1873;" also "Pamphlet of Company."

American Company (a Corporation under the Imperial Joint Stock Companies Act), and the intention and effect of such merger was to put an end to the existence of the Newfoundland Company as a Corporation.

See reference to this Act at General Meetings above.

8. That an Act of the Legislature of Newfoundland had been passed, which authorized such consolidation being entered into, and the transference of the rights of the Newfoundland Company to the Anglo-American Company, but no such Legislation was sought or obtained in the Province of Prince Edward Island.

9. That the Committee believe that, by the terms of amalgamation, the Anglo-American Company retained part of the consideration (135,000*l.*) going to the proprietors of the Newfoundland Company against the pre-emptive claim of the Province of Newfoundland, but that there was no similar provision as to Prince Edward Island.

10. That the concession in the latter Province would appear not to have been deemed of any importance to the contracting parties, or to have formed an element of value in the consideration.

11. That at the same time that negotiations for this amalgamation were proceeding between the Telegraph Companies in May 1873, terms of union between the Province of Prince Edward Island and the Dominion were being discussed, and neither Government could have considered that the Island was in any way subject to any exclusive concession in favour of any Telegraphic Company, for it was an absolute obligation imposed on the Dominion that it should maintain telegraphic communication between the island and the mainland of the Dominion, as well as an efficient steam service for mails and passengers.*

Statutes Canada,
37 Vict., c. 82.

12. The Parliament of Canada during the last Session passed a Private Act, introduced after the duly published preliminary notices, whereby the Dominion Telegraph Company was authorized to extend its lines by cable into Prince Edward Island.

13. It would, therefore, appear to be very questionable whether, under these circumstances, the Newfoundland Company having ceased to exist, any monopoly or concession it might have been possessed of is not also at an end, quite independently of the fact that no transfer of any such exclusive privilege or concession was made, or could be made, without the sanction of the Prince Edward Island Legislature.

It may further be observed that, as far as the Committee can ascertain, this concession does not appear to have formed any part of the consideration for the purchase by the Anglo-American Company, and that as the Dominion has itself assumed the obligation of maintaining telegraphic communication between the Island and mainland, there was nothing which the Anglo-American Company could have urged before the Legislature (if it had thought fit to do so), based on any circumstances connected with Prince Edward Island, which could have availed to defeat the Marine Telegraph Bill or to form the subject of compensation.

There can be no doubt but that the Parliament of Canada fully considered the effect of this Bill, and that although it was urged on behalf of the Anglo-American Company that the interests of the proprietors would be seriously affected if the Company was obliged to give up its occupation, for cable purposes, of the shores of Canada, which, by the provisions of the Bill, it can only retain by consenting to give equivalent privileges to any other company in Newfoundland. The Parliament of Canada considered this occupation to be only on sufferance, and determinable at will.

That such occupation appears to have been taken and used without any authority (which would constitute it a right), but that such occupation can only be lawful and continue by compliance with the terms of the Act, and on condition that the Company yield the like privilege to any other Corporation in Newfoundland.

That no franchise or favour of the Anglo-American Company existed in any part of Canada, and that the Company could not lawfully assume to exercise any such, except with the sanction of the Parliament of Canada.

That it is obvious that Parliament would not recognize the position claimed by the Anglo-American Company, inasmuch as by so doing it would admit that by virtue of an Act of Newfoundland, the Company had gained and could retain in Canada without the sanction of its supreme authority, privileges in the nature of a monopoly.

In conclusion, the Committee desires to call attention to the fact that while the Bill is plainly within the powers and jurisdiction of the Parliament of Canada, the original grant by Newfoundland was declared contrary to Imperial policy. (See despatch January 18, 1858.)

* See Order in Council, Court at Windsor, 26th June, 1873. Appointing of Union, and Schedule of Terms annexed. Statutes of Canada postponed; p. xii.

The Committee submit that it would be in direct conflict with the spirit of the above despatch, now to interfere with the Parliament of Canada in the exercise of its constitutional right to declare on what condition alien corporations should be permitted to make use of any portion of its territory.

Certified,
(Signed) W. A. HIMSWORTH,
Clerk Privy Council, Canada.

No. 3.

The Earl of Carnarvon to the Earl of Dufferin.

My Lord,

Downing Street, October 29, 1874.

I HAVE the honour to acknowledge the receipt of your Lordship's despatch of the 2nd instant,* transmitting a copy of a Report of the Privy Council of the same date on the subject of the Marine Electric Telegraphs Bill of the Dominion Legislature, which has been reserved for the signification of Her Majesty's pleasure.

2. I have for some time past felt little doubt as to the advice which it would become my duty to tender to the Queen with reference to this Bill, but I have deferred any expression of opinion on the subject until the receipt of your promised despatch.

3. The Bill was reserved (as stated in the previous Report of the Committee of Council, dated June 4, 1874, which accompanied the Bill) because the measure was "one of some importance, and might possibly be considered to prejudice the interests and rights of property of Her Majesty's subjects not residing in Canada," and it is further stated that this was done merely in deference to the language of the Royal Instructions, as quoted above. The subject to which this Bill relates is, in my opinion, one of those with which the Dominion Legislature has been, under the 91st and 92nd sections of the Imperial "British North America Act, 1867," expressly empowered to deal. It seems to me to be clearly within the competency of the Dominion Government and Parliament to legislate without any interference on the part of the Government of this country upon a local question such as forms the subject-matter of the Bill, involving, as it does, no points in respect of which it would appear necessary that Imperial interests should be guarded, or the relations of the Dominion with other Colonial or foreign Governments controlled.

4. I am well aware, from the numerous representations which have been made to me on both sides, that the reserved Bill affects the pecuniary interests of many persons not residing in Canada, but Her Majesty's Government is not on that account called upon to review the decision arrived at by the Legislature of the Dominion. Looking to the large intercourse maintained between Canada and this country, and the extent to which British subjects residing out of Canada hold real and personal property, and are interested in joint-stock enterprise within the Dominion, it is obvious that, if the intervention of Her Majesty's Government were liable to be invoked whenever Canadian legislation on local questions affects, or is alleged to affect, the property of absent persons, the measure of self-government conceded to the Dominion might be reduced within very narrow limits.

5. It is to the Dominion Government and Legislature that persons concerned in the legislation of Canada on domestic subjects and its results must have recourse; and this Government cannot attempt to decide upon the details of such legislation without incurring the risk of those complications which are consequent upon a confusion of authority.

6. While, therefore, I entirely appreciate the action of your Ministers in reserving the Bill, I am of opinion that any further consideration of the subject should be given by that body whose province, as I have observed, it is to deal with such questions, and that I cannot properly assume the function of deciding between the conflicting views of those who have addressed me, whether in favour of, or against, the policy embodied in this measure. In order to enable this to be done I have decided to leave the present Bill in abeyance, and to tender no advice to Her Majesty respecting it.

I have, &c.
(Signed) CARNARVON.

The Earl of Carnarvon to the Earl of Dufferin.

My Lord,

Downing Street, November 19, 1874.

WITH reference to my despatch of the 29th of October,* I transmit to you, for your information, and for communication to your Ministers, a copy of a despatch† which I have addressed to the Governor of Newfoundland with regard to the power possessed by the Newfoundland Government under Section 15 of the Newfoundland Act No. 2 of 1854, to purchase the lines of telegraph and other property of the New York, Newfoundland, and London Telegraph Company with the view of terminating the monopoly conceded by that Act.

I have, &c.
(Signed) CARNARVON.

Inclosure in No. 4.

The Earl of Carnarvon to Governor Sir Stephen Hill, K.C.M.G.

Sir,

Downing Street, November 17, 1874.

I INCLOSE, for your information, and for communication to your Ministers, a copy of a despatch which I have addressed to the Governor-General of Canada with regard to the reserved Bill of the Dominion Parliament "to regulate the construction and maintenance of Marine Electric Telegraphs."*

2. Until the course to be taken by Her Majesty's Government in this matter had been decided, I thought it expedient to defer answering you despatch of the 9th May, in which you inclosed a Minute of your Executive Council inquiring whether Her Majesty's Government would, upon terms to be hereafter agreed upon with the local Government, undertake the purchase claimed by the Government of Newfoundland under the Act, cap. 2, of 1854, incorporating the New York, Newfoundland, and London Telegraph Company, with the view of terminating the monopoly conceded by that Act.

3. The decision which has been arrived at to take no action with respect to the Dominion Reserved Bill, in order that, if thought desirable, a fresh Bill may be introduced next session, would seem to render it unnecessary, or perhaps impossible, to decide at the present moment whether the Newfoundland Government should take any steps to terminate the monopoly under the provisions of the Act, cap. 2, of 1854.

4. In the event, however, of a sum of money becoming payable either by arrangement or award for that purpose, Her Majesty's Government do not perceive that they could properly invite Parliament to contribute a portion of that payment.

5. But, having regard to the conflicting legal opinions to which you refer in your despatch, I have thought it desirable, in the interests of your Government, to consult the Law Officers of the Crown as to the subject matter comprised within the power to purchase conferred upon the Newfoundland Government by section 15 of the Act above referred to, that is to say, whether that Government could claim to buy out the whole interest of the Company for the actual appraised value of the telegraph lines, wires, cables, apparatus, vessels, and all other appliances connected therewith, or whether any further claim could be made by the Company for compensation for the loss of the monopoly which would be terminated by such purchase, or for any other right or interest conveyed by the Act, and further as to the course which it might be advisable that the Government of Newfoundland should take with a view to determine its power to purchase.

6. I am accordingly advised that the expressions "other property" and "all other property connected therewith," used in the 15th section 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 to the value of the telegraph lines, wires, &c., under the provisions of the above-mentioned 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 Arbitrators or Umpire awarding an amount of compensation for the good-will of the concern or the loss of the monopoly. If it had been the intention

of the Colonial Legislature that the Telegraph Company, upon the exercise by the Government of the power conferred upon them to purchase the undertaking should not only retain the lands, &c., granted to the Company, but also be paid a sum for the loss of their monopoly, it may be presumed that a very explicit provision to that effect would have been found in the Act.

7. With reference to the course which the Newfoundland Government should take, if it is decided to proceed in the matter, I am advised that it would be desirable for that Government to follow exactly the directions given in section 15 of the Act, and in the event of the Company neglecting to take any of the steps incumbent on them (*e.g.* to choose an arbitrator) to call in, and the Supreme Court of the Colony to enforce compliance with the statutory requirements.

8. An opportunity would then, perhaps, arise of obtaining a judicial determination as to the rights reserved to the Government by the 15th section.

9. In thus conveying to you the advice which I have received on this subject, I do not lose sight of the reason which has rendered your Ministers reluctant to take steps for exercising the right of pre-emption; the apprehension, namely, that the award might possibly be made on the opposite principle to that which, as I have informed you, I am now advised to be the correct one, and might, consequently, involve the payment of a larger sum of money than Newfoundland could undertake unassisted.

10. Looking to all the circumstances, your Ministers will probably now be of opinion that it is not likely that any excessive sum would become payable; but on this subject it might be of advantage for the Government of Newfoundland to confer with the Dominion Government, and consider whether some terms could be laid down, on which any payment found to be necessary might be apportioned between Canada and Newfoundland.

I have, &c.
(Signed) CARNARVON.
