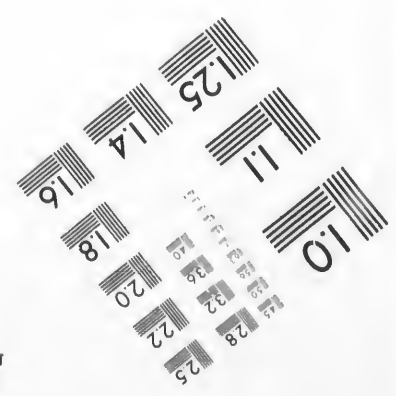
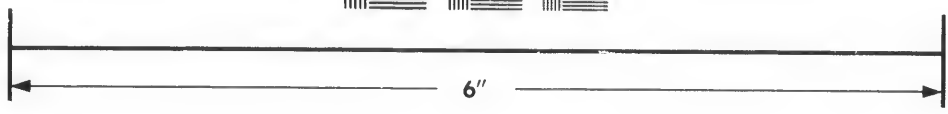
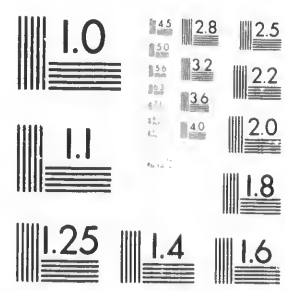


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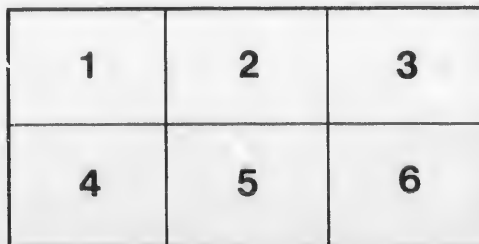
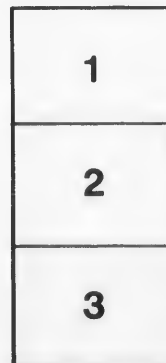
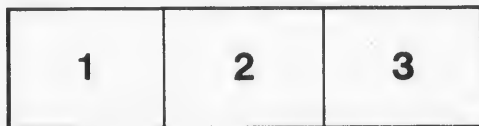
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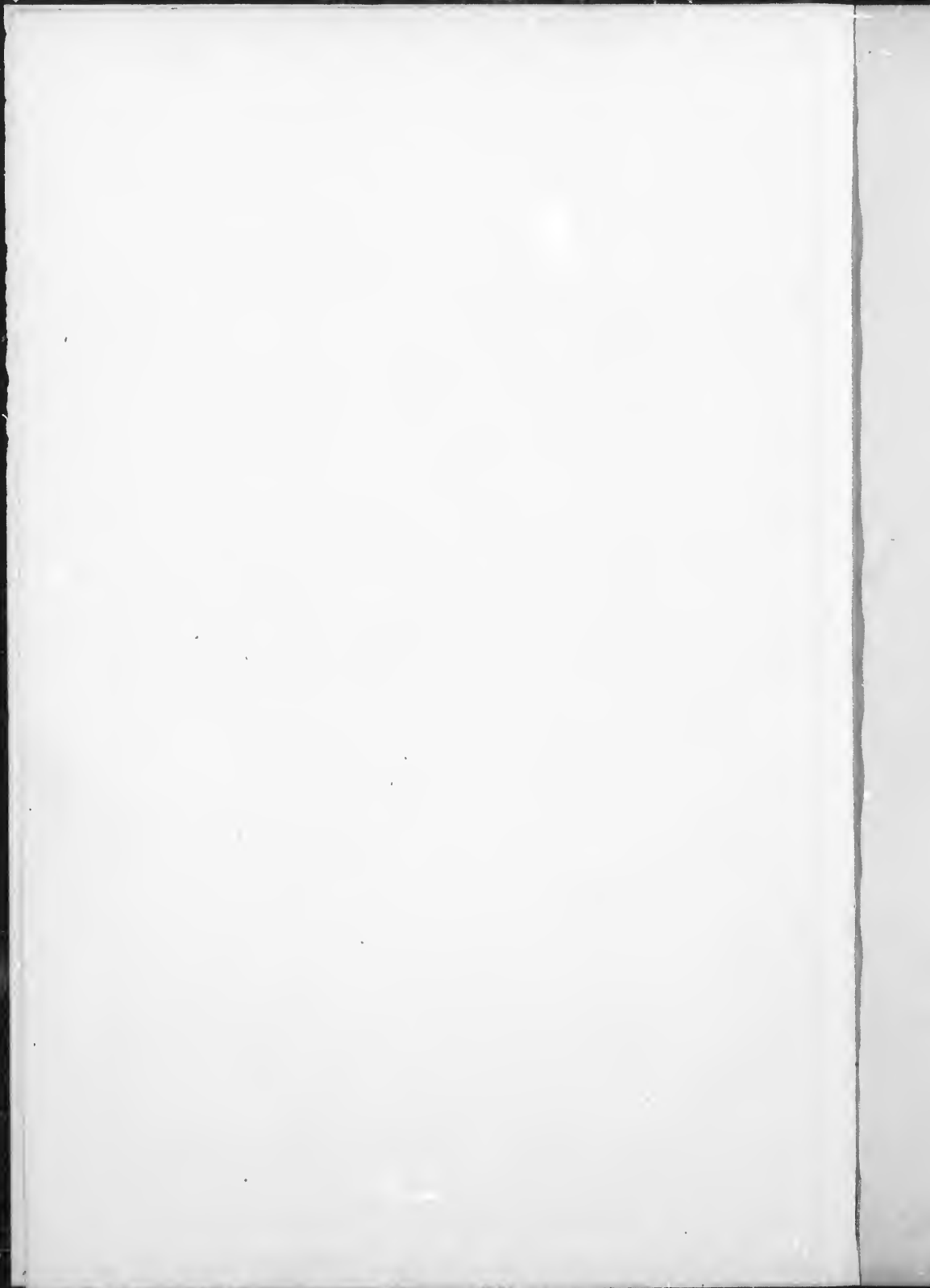
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MEMORIAL in respect to the
Unpaid Claim of MR. H. BINGHAM HIGGINSON,
in connection with IRON BRIDGES
on THE INTERCOLONIAL RAILWAY.

CHRYSLER & BETHUNE,
SOLICITORS,
OTTAWA.

1897

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MEMORIAL

TO HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL.

The Petition of H. BINGHAM HIGGINSON, formerly of Halifax, Nova Scotia, now of Liverpool, England ;

HUMBLY SHEWETH :—

1. That the Petitioner performed work more than twenty years ago for the Government of Canada for which he has never been paid, that in order to carry out the wishes and directions of the officers of the Government, he in good faith expended a considerable sum of money, that he has applied several times in each successive year for a settlement, and that during the whole period which has elapsed since the work was completed the Canadian public has enjoyed the use and benefit of his labours and outlay without having compensated him for the same.

2. That in consequence of the delay in the settlement of his claim the Petitioner has been put to expense and loss of time and has in addition lost the use of the capital in his business ; a circumstance which owing to his limited means has caused him serious embarrassment.

3. That in order to set the matter clearly before His Excellency in Council, the Petitioner asks permission to append a history of the circumstances relating to the claim. The evidence of facts therein set forth establishes as follows.

4 That the unadjusted claim is in connection with the building of iron bridges on the Intercolonial Railway, and amounted on the completion of the work over twenty years ago to \$20,128.36.

5. That the work was done in the name of the Fairbairn Engineering Company, of Manchester, England, but the real position of the Petitioner was that of the contractor importing the material and building the Bridges.

6. That, but for the Petitioner there would have been no tender from the Fairbairn Engineering Company and possibly no iron bridges on the Intercolonial Railway. That largely through his instrumentality the iron bridges were erected in their position at a cost actually less than the cost of the structures of wood which had previously been determined on, and that had the perishable structure been employed, they would before this time have passed into a state of decay and would have had to be rebuilt.

7. That the Commissioners and Officers of the Government were aware of the position of the Petitioner and the Fairbairn Engineering Company ;

MEMORANDUM

TO : [Illegible]

FROM : [Illegible]

SUBJECT: [Illegible]

[Illegible text body]

that the latter merely furnished the prepared material for the bridges in England and handed it over to the Petitioner in Liverpool; that the shipping of the material to Canada and its carriage by land on its arrival in Canada to each bridge site, together with the employment of skilled workmen, to construct and erect the bridges on the line of railway, with all the attending risks and responsibility, were assumed by the Petitioner.

8. That a settlement (so called) under peculiar circumstances (explained in the appended document) was affected between a representative of the Government and a representative of the Fairbairn Engineering Company, but this settlement, if such it may be called was made in the absence of and without the consent of the Petitioner and without any reference to him, or due consideration of his interests.

9. That the Petitioner makes no claim for what the Fairbairn Engineering Company have been paid or settled for; that he asks payment for that which is due to himself alone and which has never been paid by the Government to any party.

10. That the Fairbairn Engineering Company having been in liquidation for some years, is wound up and is not now in existence; that before going out of existence its representatives gave a written statement offering no objection to the Petitioner urging his own claim as his moral right to it was recognized, and expressing the hope that it would be paid to him.

11. That the claim is perfectly valid and that the Petitioner is the only party making the claim, or entitled to make the claim, and that he is the only person to whom the amount due can be paid,

12. That the claim of the Petitioner has been investigated by a Commissioner specially appointed by the Governor General in Council, and that the Commissioner reported in the Petitioner's favour.

13. That all the statements herein set forth, can be established by parliamentary returns, and by the documents of record in the possession of the Government.

WHEREFORE the Petitioner begs leave respectfully to ask attention to the explanations narrated in the accompanying statement of facts and earnestly entreats that the case be considered and dealt with on its merits.

And your Petitioner will ever pray.

H. BINGHAM HIGGINSON,

6 York Buildings, 14 Dale Street,
Liverpool, England,

October 15th, 1897.

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STATEMENT OF FACTS

**Referred to in the Memorial of H. Bingham Higginson,
of date October 15th, 1897.**

Directly after the Confederation of the British Provinces, the construction of the Intercolonial Railway was undertaken by the Government of the Dominion, and an Engineer was appointed as the Chief Executive Officer. When the Chief Engineer prepared his first designs and specifications, he acted under the direct authority of the Privy Council. On December 11th, 1868, four Commissioners were appointed to manage construction, and it then became the duty of the Chief Engineer to act under them.

Contrary to the strongly expressed views of the Chief Engineer, the Commissioners resolved to change the character of the Railway by constructing the bridge spans of *wood* and not of *iron* as originally designed. The Chief Engineer felt that the decision resolved upon would degrade the character of the line as a national highway. Finding that his arguments had failed to convince the Commissioners, he was constrained to appeal to the Privy Council; a step which brought him into conflict with the four Commissioners and which formed the commencement of a controversy and struggle which extended over a period of more than two years.

In a Parliamentary Return of date May 22nd, 1874, eighteen documents directly connected with the controversy were laid before the House of Commons by the Secretary of State. Of these No. 1, dated January 27th, 1869, is the first appeal of the Chief Engineer to the Government against the decision of the Commissioners. The last, No 18, dated May 12th, 1871, is an Order in Council finally concurring in the opinion of the Chief Engineer that the bridges throughout the entire length of the Intercolonial Railway should be of iron and not of wood, and authorizing the acceptance of tenders for their construction.

Some three months before the final decision was reached, Mr. H. Bingham Higginson, of Halifax, when on a visit to his father in Yorkshire, England, received a letter dated February 6th, 1871, from the Chief Engineer, setting forth that he was extremely anxious to have all the bridges on the Railway constructed of iron in place of wood. The Chief Engineer explained the difficulty he had with the Commissioners on this question, and that he felt it to be most important that the Government should receive satisfactory offers from the best iron bridge builders in England, to erect in their proper place all the bridges of iron from end to end of the line.

The following is a copy of this letter to Mr. Higginson: It is marked "private," meaning "informal," as it was evidently written hurriedly and without reserve. In further explanation of its familiar tone, it may be stated that the writer of the letter, Mr. Sandford Fleming, then Chief Engineer, was on terms of intimacy with Mr Higginson, being related by marriage. This letter is produced with consent of the writer.

INTERCOLONIAL RAILWAY,
CHIEF ENGINEER'S OFFICE,

(Private)

OTTAWA, Feb. 6th, 1871.

MY DEAR BINGHAM,—

We saw the arrival of the "Abyssinian." about a week ago, so I suppose you are now at Thormanby. You are perhaps aware that I have had a good deal of controversy with the Commissioners about Iron Bridges. I have had a great fight recently, and am glad to say have induced the Government to ask for tenders. I enclose papers which will explain. I sent copies of them to James Livesey, 9 Victoria Chambers, Victoria Street, Westminster. The Commissioners have stated that the bridges cannot be put up for my estimate or any thing like it, and I am naturally anxious that the tenders will show that I am correct. I have no fear of it myself, and, although the Government have only authorized tenders to be asked for 80 ft. and 100 ft. spans, you will see a letter, (paper No 5) from me to Bridge Builders asking them to send in prices for all spans; this can be done on the form of tender marked No. 4, but as the bridge sites are not defined, it only asks them to tender for delivery F. O. B. I would very much like, however, to have at least one tender for erection complete (the party running the risk of the bridge sites,) in order to show that they can be had within my estimate, and thus induce the Government to have all bridges made of iron. If this can be done they will, without a doubt be all iron. I would be glad if you would run up to London and see Mr. Livesey on the subject. I enclose my estimate as follows, for each span completed in place, namely:—

100 feet	\$5,600 per span.
80 "	3,759 " "
60 "	2,200 " "
50 "	1,600 " "
40 "	1,200 " "
30 "	600 " "
24 "	360 " "

I know from the cost of the spans on other Railways (supplied by Mr. Livesey) that they can be erected on the Intercolonial for these prices at a profit (not large), and I think any party offering to do them near these prices and getting the whole would be perfectly safe. I would have no hesitation in offering to do it myself, if I was at liberty to do so. See Mr. Livesey about this, and if possible get the tender filled up in the way indicated in the loose form enclosed. I have no doubt anyone tendering so that the whole would come under my estimate would stand a good chance of getting all the bridges on the line, amounting to over three quarters of a million dollars. If Mr. Livesey does not tender in his own name, perhaps he and you together could induce such a respectable firm as the Fairbairn Company of Manchester to do what I want. I wrote Sir William Fairbairn, enclosing specifications for his sons but suggested nothing. I wished him to propose me as a member of the Institution of Civil Engineers. I would rather be proposed by him than anybody. I do not, however, know that he is well enough to attend to this. Should you see any of his sons or himself, you might bring up the subject. It will be a great victory for me to have the bridges of iron after all and I will be greatly obliged if you, while in England, will take some trouble to accomplish what I want. You can

explain to Mr. Livesey that the freight out will be very low by timber ships to all ports on the Gulf and River St. Lawrence, as well as to St. John, say from 15/ to 20/ per ton. The land carriage will not be much, as the railway runs along the coast and any bridges far inland can be taken on the rails as we did at Riverdale. Timber for staging is abundant and cheap. The staging for Mirimachi Bridges will be the most expensive, as there is some 20 feet of water and 20 feet of silt underneath at the bridge site, but these are 200 ft. spans and are not in the question I am interested in so much.

Should he want some one to go in for the erection on the line, I know of none better than . . . and I dare say he would be very glad to join in the contract I have not seen him however.

We hope you will have a pleasant visit home and safe return. We are all well here.

The tenders are to be received here on the 6th April, . . . Should Mr Livesey think it would be advisable to consult with . . . before putting in the additional rates for erection he might authorize you to fill them in on your arrival on this side. A bona fide signature should however be to the tender, whether or not the blanks be filled up afterwards.

Yours truly,

(Sgd.) SANDFORD FLEMING.

H. B. HIGGINSON, Esq.

In compliance with Mr. Fleming's request, Mr. Higginson visited several of the first bridge manufacturers in England, among others he called on the Fairbairn Engineering Company. Mr. Fleming was personally known to the head of the firm, the late Sir William Fairbairn; Mr. Higginson had a brother in the establishment, and other friends of Mr. Higginson were personal friends of the leading members of the firm. It is not customary for English manufacturers to undertake the erection of bridge work out of England; the custom is to deliver the iron work ready for erection in foreign parts F.O.B. at Liverpool or some other port. A serious difficulty consequently presented itself. The price of wooden bridges erected on the railway was known to the Government, and in order to compare iron with wooden structures it was necessary to have definite information respecting the price of completed iron bridges. Tenders were accordingly wanted for the iron bridges erected in their permanent position on the railway, but the manufacturers were not willing to undertake any work or responsibility beyond preparing the iron work for shipment.

In order to have the tenders for the erection of the whole work as desired, Mr. Higginson after much consideration and consultation with the Fairbairn Engineering Company, was induced to assume the risk and responsibility of carrying out that part of the work which the Fairbairn Company would not undertake.

He accordingly agreed to take delivery of the iron material at Liverpool, find tonnage for it in Atlantic ships and cover all sea risks, transport it from Quebec or other landing port to the different bridge sites on the line of railway, employ skilled mechanics and all other men necessary to erect, paint, and in every respect complete the bridges in their permanent places.

ready to be run over by trains, according to conditions stipulated in the specifications; and in order to meet the earnestly expressed aims and wishes of Mr. Fleming, all this miscellaneous work was calculated at the lowest rates for which it could possibly be performed without actual loss.

A combined tender was sent in, in the name of the Fairbairn Engineering Company, but in reality the work to be performed by that Company was to prepare the iron material and place it on board ship at Liverpool; their part of the undertaking terminated at the shipping port in England; the whole responsibility of transporting the material by sea and land, and erecting the bridges on the line of railway, was to be borne by Mr. Higginson.

The tender, which was found to be more than one hundred thousand dollars lower than any other tender, was accepted (May 12th, 1871,) and the construction and erection of all the bridges on the Intercolonial Railway with the exception of three (awarded to another firm), was to be carried out by Mr. Higginson, in the name of the Fairbairn Engineering Company. Immediately afterwards, the preparation of the iron material for bridges was commenced by the Company in England, while Mr. Higginson at once proceeded to carry into execution the work undertaken by him.

In engaging to perform his part of the work Mr. Higginson had to consider all the circumstances, among other things the period when the grading of the roadway, the track-laying, and the masonry would be sufficiently far advanced to allow him to proceed with the transportation of the material to the sites of the bridges, and the erection of the iron work on the finished piers. The printed copies of contracts for grading of sections, reports of Commissioners, and other public documents containing the information by which he was guided, set forth that the contracts for piers and abutments on which the iron superstructures were to be placed would be completed at the latest by the following dates, viz:—About one half of the whole number of bridges by July 1st, 1871; the other half by July 1st, 1872.

Instead of the work of grading and masonry being finished by these dates, through causes beyond the control of Mr. Higginson, only a limited number of the bridge sites were ready. The greater number were not ready until the years 1873, 1874 and 1875, and the last was not ready until 1876. The iron-work was manufactured in ample time for its erection within a reasonable period after the completion of the masonry piers by the contract dates, but it was necessary to put large quantities of it in store to await the completion of the masonry. As a matter of fact, the whole of the iron bridge-work undertaken in 1871 was ready within that and the following year, but it was impossible to erect it owing to the unfinished state of the grading and masonry. The last bridge was not finished until 1876, although the iron-work was prepared for it in 1872. The piers and abutments for this bridge were to have been finished by July 1st, 1872. They were not actually ready until mid winter 1875-76, and immediately thereafter Mr. Higginson proceeded with the erection of the iron superstructure although at great inconvenience and extra cost on account of the unseasonable period of the year for such work.

In consequence of this prolonged delay, the Fairbairn Company and more particularly Mr. Higginson, whose duties and responsibilities were more affected by the delay, sustained serious injury.

The unadjusted claim of Mr. Higginson is made up chiefly of expenses incurred, consequent on the delays referred to, and wholly through causes for which the Government, and not Mr. Higginson, was responsible.

The amount claimed is not large, but it is of very great importance to Mr. Higginson, seeing that originally he undertook the work at but little over bare cost and the delays have caused him serious loss. The attached bill includes the sum of \$1,773.00, which he paid in expenses for agents specially sent out from England to press a fair settlement, and he was compelled in the year 1880, at very great inconvenience and serious neglect of his business, personally to make a visit to Canada, to make a renewed effort to obtain payment of a debt which he considered and still considers is justly due him by the Government of Canada. Since the last mentioned date, Mr. Higginson has incurred further expenses almost annually in similar efforts.

About a year and a half before the masonry for all the bridges had been completed, Sir William Fairbairn died, and it became necessary to wind up the affairs of the Fairbairn Engineering Company. Mr. Higginson was not interested in the general business of the Company, but only with respect to this particular bridge contract.

Four years after the death of Sir William Fairbairn, the liquidators, in order to complete the winding up of the estate, and wearied by long delays sent out an agent to Canada with imperative instructions to close the account by accepting any sum he could get. This agent remained in Ottawa for several months endeavouring to obtain a settlement. In the end he was offered a sum very much less than the liquidators felt they were entitled to receive, provided he would give a receipt in full. The agent after some further delay was constrained to accept the offer, leaving Mr. Higginson to his chance of obtaining compensation for his individual losses by an appeal to the equity of the Government at a future day.

Mr. Higginson submits that he ought not, as a matter of justice between man and man, to be concluded by any settlement made or receipt given by the agent of the liquidators under the circumstances of this case.

The above brief statement of facts sets forth the circumstances which led to the connection of Mr. Higginson with the construction of the iron bridges on the Intercolonial Railway. It will be obvious that his co-operation with the Fairbairn Engineering Company, as set forth, was one of the means by which the country secured permanent instead of perishable structures. The Parliamentary returns show that the total cost of the bridges, including masonry, would have cost with *wooden spans*, \$1,293,459, and that the actual cost with *iron spans* was \$1,274,029. Thus an actual saving was effected and permanent bridges secured.

* Every year since the completion of the work and the opening of the Intercolonial Railway to the public, Mr. Higginson has repeatedly made application for payment of what is due him. In 1880 the Government

so far recognized his claim as to order an investigation to be made by a special Commissioner, the late Mr. Frank Shanley. Evidence was regularly taken and counsel heard. After evidence was concluded, the counsel for the Crown stated openly to the Commissioner that Mr. Higginson had proved all the items of his account, with two exceptions. The Commissioner reported October 4th, 1880, and recommended the payment of \$12,752.15, reserving the two items for consideration.

No payment having been made, Mr. Higginson in a letter of January 29th, 1887, (appended) made an appeal to Mr. Sandford Fleming, who, as Chief Engineer of the Railway, had led Mr. Higginson in the first instance to interest himself in the substitution of iron for wood work in the construction of the bridges. Mr. Fleming in consequence addressed explanatory letters to the Minister of Railways and Canals, March 11th, 1887, and to the Premier, Sir John A. Macdonald, March 14th, 1887, both of which are appended. In order further to aid Mr. Higginson in obtaining a settlement, Mr. Fleming, while in London in 1892, interviewed the liquidators of the Fairbairn Engineering Company and subsequently addressed them by letter to allow their names to be used in representing the case again to the Canadian Government. This letter and reply are appended. The Liquidators as far as they could do so, willingly assented to Mr. Higginson urging his claim and expressed the hope that the Government of Canada would pay the amount due him.

The claim of Mr. Higginson, as originally presented after the opening of the Railway, will be found on the last page.

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PAPERS APPENDED TO THE ABOVE STATEMENT OF FACTS :

- No. 1—Letter from Mr Higginson to Mr. Fleming—January 29<sup>th</sup>, 1887.
- No. 2—Letter from Mr. Fleming to the Minister of Railways and Canals—  
March 11<sup>th</sup>, 1887.
- No. 3—Letter from Mr. Fleming to the Premier, Sir John A. Macdonald—  
March 14<sup>th</sup>, 1887.
- No. 4—Letter from Mr. Fleming to the Liquidators of the Fairbairn Engineering Company—July 29<sup>th</sup>, 1892.
- No. 5—Letter from the Liquidators of the Fairbairn Engineering Company  
—August 13<sup>th</sup>, 1892.
- No. 6—The unadjusted claim of Mr. Higginson.

—————

No. 1.

*Letter from Mr. Higginson to Mr. Fleming.*

19 SWEETING ST., LIVERPOOL,  
JANUARY 29<sup>th</sup>, 1887.

MY DEAR SANDFORD,—

I regret that I should again be compelled to trouble you about my claim against the Canadian Government. I have written so often to the Minister of Railways, and have exhausted every other means of gaining

attention and receiving justice that I have no alternative. The loss is too serious for me to bear: I have already been kept out of the balance honestly due me for over ten years, and I am at last driven to appeal to you to come to my aid. The Corresponding Secretary of the Department disposes of my letters very readily, when they are answered at all, by informing me that the Fairbairn Engineering Company have given a receipt in full of all demands they had, and that there is no privity of contract with me, therefore I have no claims that can be entertained.

Now you know all the facts, and you are perhaps the only person who does know the circumstances bearing on my early connection with the Iron Bridge Contract on the I. C. R. It was at your strongly expressed desire that I waited upon iron bridge manufacturers here in 1871 to induce them to send tenders that would be acceptable to the Government. I am aware that you were quite ignorant of the fact that I allied myself with the Fairbairn Engineering Company as a co contractor until some time after their tender had been accepted, but they positively declined to send in a tender which would have been of any use unless some responsible person undertook to do the work which I undertook, viz: the transportation of the material and erection of the bridges on the line of Railway. That the work was done at a very low figure, I may say at bare cost, is clear from the fact that the Fairbairn tender was 20 per cent lower than any other tender received, and had it not been low—the object you had at heart—securing the bridges of iron—would not have been accomplished. As to the Fairbairn Company having given a receipt in full of all demands, you are also quite aware that that receipt was obtained by an officer of the Government (Mr. . . .) by means which were not creditable, to say the least, and which the Government could not possibly countenance if they knew the facts. I may do Mr. . . . injustice, but his conduct in the whole affair looks as if he wished to punish me for coming to your rescue in the only practicable way possible when tenders were invited. But for the combination which resulted in the acceptance of the Fairbairn tender, he would in all probability have carried his point, the bridges on the I. C. R. would have been constructed of wood, and before this they would be breaking down. You however know all this as well as I can tell you, and I do not see that I can help calling upon you to explain the facts to the Government and urge my claim. I have written to the Department that it is impossible for me to abandon it, and the Government will, I feel sure, listen to explanations coming from you, and I do think that it is only fair to me that you should aid me in this matter. It is too bad that I should be so much the loser in consequence of having been the means of practically settling the controversy between you and the Commissioners and securing permanent bridges on the Intercolonial Railway. Kindly let me hear from you soon.

Yours very truly,

(Signed) H. B. HIGGINSON.

SANDFORD FLEMING, Esq., C.E.,  
OTTAWA.

No. 2.

*Letter from Mr. Fleming to the Minister of Railways and Canals*

OTTAWA, MARCH 11th, 1887.

THE HONOURABLE,  
THE MINISTER OF RAILWAYS AND CANALS.

SIR,—I have the honour to address you on behalf of H. B. Higginson, formerly of Halifax, now of Liverpool, England.

Mr. Higginson has an unadjusted claim against the Government in connection with the construction of the Intercolonial Railway, and he considers it a great hardship and injustice that while the public have had the use of his work for ten or eleven years, he should so long be refused payment of a small balance to which, as a matter of fair dealing, he thinks he is fully entitled.

Mr. Higginson having failed in every other way to receive favourable consideration has appealed to me, as the Chief Engineer during the construction of the Railway to assist him in obtaining justice. In view of the peculiar circumstances of the case, I feel it is only due to him that I should submit for the information of the Government, the following explanations

Soon after the appointment of the Intercolonial Railway Commissioners a difference of opinion arose between them and myself as Engineer, respecting the bridges I had designed them of imperishable materials, the piers and abutments to be of stone and the spans to be of iron. The Commissioners took an opposite view and determined that the spans should be of wood. A controversy arose which extended over more than two years, I appealed again and again to the Government, pleading that the decision of the Commissioners should be reversed. The correspondence embraces eighteen reports and letters. It was submitted to Parliament in 1874, and was subsequently embodied in a pamphlet, a copy of which I have the honour to enclose (*vide* the Intercolonial Railway, "The Genesis of the Bridges.")

The correspondence will show how earnestly I pressed the opinion that the bridges should be of iron, how pertinaciously a majority of the Commissioners combated my views, and adhered to their determination to have them built of wood. They were so far sustained during the controversy as to secure three bridges of wood in a total number of one hundred and sixty two spans.

The repeated appeals to the Government resulted eventually in the subject being reconsidered, and on the 19th of January, 1871, an Order in Council was passed as follows:

"That with a view to render all the more important works and structures connected with the roadway as indestructible as possible, the Commissioners be authorized to build iron bridges instead of wooden bridges in cases where the span is over sixty feet, whenever,"

"1st. The Contractors assent, and the change can be made without increase of cost or payment of indemnity."

"2nd. Where there is no material delay caused by the change."

"3rd. Whenever the additional cost of the bridges will not exceed the estimate of the Chief Engineer, already submitted to Council"

"They (the Committee) further advise that the iron bridges be put up to public tender"

I felt it my duty to meet these conditions in every particular, and at once instructed a member of my staff, whose tact and judgment well qualified him for the peculiar duty, to wait upon each contractor on the line of railway and secure his assent and signature to the following document:

"We, the undersigned Contractors for sections of the Intercolonial Railway, having been advised that the Government is anxious to substitute iron for wooden bridges upon said Railway, provided such substitution can be effected without payment of indemnity or additional cost, and being desirous that this great national undertaking (in the construction of which we take a just pride) shall be as permanent and indestructible as possible, we hereby severally concur in the substitution of iron for wooden spans upon our respective sections, in every instance where the Government and Commissioners may consider the same desirable, on condition that the

" Commissioners furnish and erect such spans of iron free of cost to us ; and  
 " inasmuch as such substitution would be a saving to us of the cost of  
 " erecting the spans of timber, and in some cases it would also be a saving in  
 " the quantity of masonry in the abutments and piers of bridges, we hereby  
 " consent to a deduction from the amount payable to us at the close of the  
 " contract, equal to the value of the said wooden spans and masonry saved  
 " to us by such substitution, the same being calculated at the rates given in  
 " the Schedules to our respective contracts, and further we shall not prefer  
 " any claims for indemnity on account of such substitution of iron for  
 " wooden bridges."

I did not anticipate any difficulty in satisfying the Government with respect to the second condition, but the third caused me no little anxiety, for the reason that my calculations had been assailed by the Commissioners, my estimates ridiculed, and every principle which I had advanced to sustain my argument had been rejected and repudiated. Moreover, the Order-in-Council was so worded that even if all the prescribed conditions could be met, it would only admit of bridges of greater span than sixty feet being built of iron, leaving a large number, very nearly half the bridges on the line, to be made of wood. That was not my aim and object : as a public servant I regarded it my duty in the interests of public economy to have them as permanent as possible, knowing as I did that they could be made so without increase of cost.

Under the circumstances it appeared to me expedient to take the following course :

First.—I took upon myself to address the following special communication to Bridge Manufacturers, and sent it along with the specifications and other ordinary documents to various firms.

" INTERCOLONIAL RAILWAY,  
 " CHIEF ENGINEER'S OFFICE,  
 " OTTAWA, January 21st, 1871."

MEMORANDUM.

" TO IRON BRIDGE BUILDERS :

" The total number of spans on this line of Railway will probably be as follows :

|                  |          |
|------------------|----------|
| 16 spans of..... | 200 feet |
| 61 " .....       | 100 "    |
| 10 " .....       | 80 "     |
| 19 " .....       | 60 "     |
| 22 " .....       | 50 "     |
| 21 " .....       | 40 "     |
| 5 " .....        | 30 "     |
| 2 " .....        | 24 "     |

" The Government of Canada and the Railway Commissioners have decided to make the sixteen 200 feet spans, and twenty one of the 100 feet spans above mentioned, of iron ; they have also determined to have the remainder of the 100 feet spans and the eighty feet spans, of iron, provided the cost does not exceed the estimates laid before them."

" The undersigned is not authorized to ask for tenders for any spans under 80 feet, but he advocates the adoption of iron bridges throughout the whole line, and will be glad (in order that the Government may be

' placed in possession of full information on the subject), if parties tendering  
 " will give the prices at which they would be prepared to furnish all the  
 " various spans."

" (Signed), SANDFORD FLEMING,  
 " Chief Engineer."

Second.— At that date the rule with bridge manufacturers in England, was to accept no responsibility beyond the nearest English sea port. They would name a price for the bridge-material delivered on shipboard, but that was the limit of their responsibility under ordinary circumstances. They might agree to send out workmen to erect bridges in any part of the world, adding to the first cost, commission, and every expense to be incurred. Or, they might in some special case undertake to place their work in a distant land, provided they received a price sufficiently high to cover every possible risk and contingency. I felt that if matters were left to themselves, the third condition of the Order in Council would not be met. I had made minute calculations at fair prices and satisfied myself that iron bridges could be erected for no greater outlay than wooden bridges. This estimate was before the Privy Council and my object was to obtain tenders lower than my own estimate; which tenders would embrace not simply the manufactured iron work, but the freight to Canada, insurance, handling, distribution along the partially constructed railway to every bridge site, the cost of erection painting and everything ready for the permanent train service.

I felt that it was necessary for me to select a confidential agent who possessed local knowledge of the various sections of the country where the work was to be erected, to visit the several manufacturers in England, to explain what was required, to answer the queries which would be made to him; and moreover, one in whom I had every confidence, one who was thoroughly in sympathy with me in the main object which I had in view and would leave nothing undone which ought to be done to secure its accomplishment.

It is necessary for me to submit this brief history of the case in order that I may clearly point out the true position of Mr. Higginson. I found in that gentleman the special agent which the circumstances demanded. Mr. Higginson, who is connected with me by marriage, I had known intimately for many years during his residence in Canada. At my earnest solicitation he undertook the duty of visiting various bridge manufacturers in England and giving such information as they required. The sequel proved that Mr. Higginson performed the duty in a way which enabled me to establish beyond question that I had not appealed from the views of the Commissioners on idle or futile grounds, and although it has resulted disadvantageously to him personally, it has been of no little advantage to the Intercolonial railway and to the public.

Among other firms waited upon, Mr. Higginson called upon the late Sir William Fairbairn, head of the Fairbairn Engineering Company. This firm declined to do more than furnish the bridge work F O B. at Liverpool. It was arranged, however, although that was not made known to me until after the contract was entered into by the Government, that Mr. Higginson himself should accept every responsibility beyond the one the Fairbairn Co would assume. The prices of Mr. Higginson for bringing the iron from Liverpool and erecting the bridges on the line of railway were added, and the tender was submitted in the name of the Fairbairn Engineering Company. This is explained in detail in Mr. Higginson's statement of facts, which I append hereto, and to which I beg leave to direct your attention.

The combined tender of Mr. Higginson and the Fairbairn Engineering Company, submitted in the name of the latter, amounted to \$407,014. Five

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eighths of this amount covered the work of the Fairbairn Company in England. Three eighths, or about \$150,000 embraced the work undertaken by Mr. Higginson.

This combined tender was for erecting in their proper places, not simply the eighty and hundred feet spans, but about an equal number of other spans. It came to \$39,781 less than my estimate. Thus every condition laid down in the Order in Council was fully met, and authority was then obtained finally, to abandon the determination to construct wooden bridges and to have them constructed of iron.

The tender so given in the name of the Fairbairn Engineering Company was accepted, and thus it was that Mr Higginson became connected as a contractor with the Intercolonial Railway. The same year (Oct. 6th, 1871) a letter was addressed by the Fairbairn Company to the Railway Commissioners informing them that an arrangement had been entered into with Mr. Higginson for carrying out his division of the work, at the same time asking that certain payments be made to him.

I have found it necessary to explain the precise relationship which Mr. Higginson had with the Fairbairn Company. Whatever he was nominally, or in a strict legal sense, whether agent or representative, or special partner, or all these, he was virtually and for all practical purposes a co contractor with the Fairbairn Company. While his legal position was of no consequence to the public it is to his co-operation with the Fairbairn Company that the public of Canada are so largely indebted for the iron bridges on the Intercolonial Railway in place of the perishable structures which the Commissioners had determined to adopt. The conditions laid down in the Order in Council were stringent to a degree, the last was met by the action taken by Mr. Higginson, in uniting himself with the Fairbairn Company, and in offering to carry out at exceedingly low rates, the portion of the work which that firm declined.

Five tenders were received by the Government as follows:—

|                                                         |           |
|---------------------------------------------------------|-----------|
| 1. From R. James Reekie, for an English firm .....      | \$642,055 |
| 2. " John Walker, for an English firm .....             | 533,257   |
| 3. " Campbell, Johnston & Co., for an English firm .... | 530,455   |
| 4. " Clark, Reeves & Co., Philadelphia.....             | 507,665   |
| 5. " Fairbairn Engineering Co, Manchester .....         | 407,014   |

It will be seen that the tender in which Mr. Higginson was interested was 20 per cent lower than the next lowest tender, and thus in the construction of these bridges \$100,000 was saved to the country by that particular tender. The whole amount of Mr. Higginson's extra claim on the completion of his work was \$20,128.36. I will not cumber my letter by entering at length into the details of the claim for they are not assailed. It may be briefly stated to consist of the cost of necessary work done over and above the original agreement, and in part of losses sustained through delay from causes for which the Commissioners were responsible. The tender was accepted early in 1871, and the masonry under other contracts should have been ready so as to admit of the completion of the iron-work within about two years, while some of it was not ready for more than double that time. The last bridge finished was in 1876.

In 1874 Sir William Fairbairn died. By that date the bridges on the Intercolonial would have been finished and a final settlement in all probability effected, but for the delays caused by other contractors over whom the iron bridge builders had no control. Through these causes the completion of the iron work was kept back until 1876. In the meantime it became necessary to place the Company in liquidation, and as soon as the work was



finished the liquidators pressed the Commissioners for a final settlement. Four years after the death of the head of the firm, every item of business being settled up except this one transaction, the liquidators, wearied with long delays, despatched (May 1, 1878) an agent to Canada to obtain a settlement in any form. This agent remained from week to week in Ottawa, making every effort to obtain a settlement, and on July 5th under instructions from the liquidators, offered to accept half the amount due rather than keep the liquidation open any longer. This offer was met by Mr Brydges, who was then acting for the Government, by a counter offer of a much smaller sum, provided the agent would give a receipt in full payment of all demands. The agent remained until July 24th, and seeing no hope of a reasonable settlement, accepted the money and signed the receipt which was demanded of him. On the ground that this receipt had "in full" written thereon, Mr. Higginson's claim has been refused to be entertained.

Permit me to point out two things, viz.:

1—The losses sustained fell on the division of the work undertaken by Mr. Higginson. The duty of the Fairbairn Company was to produce the component portions of the bridges and place them on ship board in Liverpool. All the risks—all the uncertainty—all the difficulty attendant on the contract after the delivery of the iron at Liverpool were to be found in the responsibility of Mr. Higginson.

2—The settlement, if such it may be called, was made in the absence and without the consent of Mr. Higginson. The money was accepted and the receipt given by the representative of a concern *in extremis*. The liquidators were getting into an unenviable position by prolonged delays, and finding it absolutely necessary to wind up the estate they had no alternative but to direct their agent, who had already waited in Ottawa three months, to close the account on any terms he could obtain.

Some time previously Mr. Higginson had removed to England and had entered into business in Liverpool. Failing to gain attention by correspondence, he made a voyage to Canada in 1880 at great inconvenience to himself and to his business to ask for justice. He was met by the reply that the claim had been settled with the agent of the recognized contractor and that he was not known as having any privity of contract with the Canadian Government.

It will be obvious that, although Mr. Higginson's claim may not, to the fullest extent, possess the character of a legal obligation, nevertheless he held a recognized position which conduced largely to the public benefit. He had likewise direct relationship with the Government and the executive officials and the Commissioners recognized his position. He received payments direct from the latter as the work went on. His work was performed to the satisfaction of those deputed to receive it from him. Through no fault of his or his partners, he suffered serious loss, a result attributable to the fact that other classes of work on the railway were being executed for the Government by other contractors who failed in their contracts. For years the public has made use of the work executed by Mr. Higginson, and has profited by his labors. Is it in accordance with any principle of public equity that his just claim should remain unpaid?

The Government so far acted in a spirit of justice as to recognize Mr. Higginson's claim to consideration by ordering an investigation to be made, on the occasion of his visit to Canada in 1880. A commission was formed, presided over by the late Mr. Frank Shanly. Evidence was taken and counsel heard. It is true that the proceeding cannot be held to be an admission that Mr. Higginson possesses legal rights which can be enforced in the Courts. But the result is a moral

recognition that his claim has a foundation to rest upon. Surely it is not to be said that he is to be denied payment for that which is admitted fairly to be due him, owing to a legal informality or technicality.

The counsel for the Crown (Mr Hogg) admitted that Mr Higginson had proved the items of his account. "There is no doubt," the counsel said, "that his evidence has not been contradicted in any one particular that is, as to the actual amount of damage that he has sustained—with the exception of two items in his claim that is, for his own loss of time upon the railroad and for his loss of time in prosecuting his own claims against the Government. As to all the other items in the claim, I do not think I could properly contend here that he has not made out a case, which before a jury or any other tribunal, would entitle him (if he is legally entitled and has a legal right to prosecute the claim) to be paid"

The whole amount claimed by Mr Higginson was \$20,128 36, with interest and expenses to be added. Mr. Frank Shanly agreed with the view taken by Counsel for the Crown—he allowed every item approved by Counsel, and recommended the payment of \$12,752.15. The disbursements in prosecuting the claim seemed to Mr. Shanly to come under the head of costs, these and interests being legal questions, he made no recommendation.

Mr. Higginson's claim is not that of the frequent case of a sub-contractor turning to the Government for relief when the main contractor, after receiving payment, had failed or absconded. In that case if the sub contractors's claim were allowed the work might have to be paid for twice. In this case the amount established to be due has never been paid. At a previous date it would have been regular and proper to have paid it to the Fairbairn Company as Mr. Higginson, representative. In this case the payment would have been solely for his benefit. But that Company has now gone out of existence, and there is no such intermediate party to receive the money for him. It seems, therefore, according to every principle of justice that the money should be paid to Mr. Higginson, the only person in equity entitled to receive it.

While the Fairbairn Company was in operation, not only did it not oppose Mr Higginson's claim, but in every way assisted him in pressing it upon the Canadian Government; to day Mr Higginson is the sole representative of the interests which at the period of the work, he and the Company possessed in common

I most respectfully ask; What course would be followed by any Railway Company in good standing any respectable commercial firm, or any honorable individual under like circumstances? I trust I will be pardoned for saying that during my long experience I have not known a single case in which advantage would be taken of a legal technicality such as is presented in this case to avoid the payment of a claim so just, and, to my mind so modest.

The claim is peculiar and exceptional. I venture to submit that there is no other case of the same nature to be dealt with by the Government, Should another case of this character be found, I further respectfully remark that, in my opinion, it ought to be dealt with in the spirit of fairness, as I confidently believe the Government, when they come to consider the facts, will deal with this case.

I have the honour to be, Sir,

Your obedient servant,

SANDFORD FLEMING.



*Letter from Mr. Fleming to the Premier.*

OTTAWA, 14th March, 1887.

THE RIGHT HONOURABLE

SIR JOHN A. MACDONALD, etc., etc.

SIR,

I beg leave respectfully to invite your attention to a communication of date the 11th instant which I have addressed to the Honourable the Minister of Railways and Canals. - Owing to the position which I had the honour to hold as Chief Engineer of the Intercolonial Railway during the construction of that public work. I am impelled by a sense of duty to bring the matter referred to in that communication to your notice.

It may be within your recollection that early in 1869 a difference of opinion arose between the Commissioners of the Intercolonial Railway and myself as Engineer. My opinion was that the bridges should be constructed of iron, but I was over ruled by the Commissioners who accepted the views of Mr. Brydges that the structures should be of wood. So unwise and objectionable did the decision of the Commissioners appear to me that I felt it my duty to appeal to you as Premier. I submitted the arguments in favor of the system of construction I then proposed which I confidently say no one at the present time would attempt to dispute. It was owing to my appeal to yourself that the subject was re considered and subsequent events led to Mr. H. B. Higginson then of Halifax, now of Liverpool, England, becoming connected with the work, out of which has arisen a claim, for the erection of the iron bridges, which remains to this day unadjusted.

A few weeks back I received from Mr Higginson the enclosed letter dated January 29th. Mr. Higginson mentions the grounds upon which he urgently asks my interference, and in consequence I feel it due to him that I should endeavour to bring all the facts to your notice and make a respectful appeal in his behalf.

You will possibly remember that the contention between the Commissioners and myself extended over two years (1869 and 1870), during which period I was engaged in no ordinary struggle. I was imbued only with the desire of performing my duty as a public servant engaged in establishing a great national undertaking and responsible to the Government equally with the Commissioners. After this lapse of time—seventeen years—the thankfulness which I entertained for the support received and the result attained is fresh in my mind and there is no event in my life to which I look back with satisfaction more unalloyed than my own conduct on that occasion.

Among other things which I did in the interests of the undertaking. I secured the services of Mr. Higginson in a way which the accompanying documents point out. It is undoubtedly in no small degree owing to the course then followed, and of which Mr. Higginson's claim is an outcome, that the object for which I struggled was gained, and the construction of the bridges of perishable material avoided.

Mr. Higginson has very frequently made application to the Railway Department for a settlement, but he has been met with the reply that he has no privity of contract and in consequence his claim cannot be entertained.

Mr. Higginson correctly states in his letter to me that I am perhaps the only person who knows all the circumstances connected with his case, and I have accordingly felt it my duty, in my communication to the Minister of Railways, to enter into explanations which establish his position,

Mr Higginson's claim amounts in all to little more than twenty thousand dollars (\$20,000), while his position in connection with the work saved to the country an actual direct expenditure of at least five times that sum. It is said that Mr. Higginson does not stand on ground which in strict law is unassailable, but his claim on the honour and equity and fair dealing of the Government is undisputable.

I respectfully submit that the peculiar and exceptional circumstances which this case presents, warrant and require that objections of a merely technical character to the payment of the claim, should be waived, in order that right and justice be done. As the First Minister at the date of the construction of the Intercolonial Railway, and cognizant of many of the facts to which I have referred in the accompanying communication, I confidently appeal to you to intervene, so far, and so far only, as it may be necessary to protect the honour of the Government and extend justice to an individual whose labors contributed directly and indirectly so largely to the public benefit.

I have the honour to be, Sir,

Your obedient servant,

(Signed) SANDFORD FLEMING.

No. 4.

*Letter from Mr. Fleming to the Solicitors of the Liquidators of the Fairbairn Engineering Company.*

LONDON, JULY 29th, 1892.

Messrs. CUNLIFFE & DAVENPORT,  
43 CHANCERY LANE,  
LONDON.

GENTLEMEN,

Referring to the interviews which I have recently had with you as the Solicitors of the Liquidators of the Fairbairn Engineering Company, in regard to Mr. H B Higginson's claim arising out of his interest in that company's contract to construct and erect certain iron bridges on the Intercolonial Railway of Canada. I beg to state shortly in writing, on behalf of Mr. Higginson, what it is he desires from your clients to assist him to try and get payment from the Government of Canada. I need not set forth at length the facts upon which Mr. Higginson bases his claim as these are fully stated in the letter from myself to the Minister of Railways and Canals of Canada, dated February, 1887, a copy of which your Mr. Cunliffe has had an opportunity of perusing.

Although Mr. Higginson accepted from the Liquidators the portion they offered him of the amount paid to them by the Government from the time that he became aware of the nature of of the settlement unduly pressed upon the agent of the Liquidators he objected to its being considered by the Canadian Government as a final discharge to them of his portion of the Company's claim, and so intimated to the then Liquidators of the Company and he has repeatedly made efforts to obtain a reconsideration of the matter by the Government.

In 1890 or thereabouts he so far succeeded in his efforts that as a result of them, a favourable report of his claim was made by Mr. Frank Shanly

C.E. who had been appointed by the Canadian Government to investigate this and other claims in respect of the construction of that railway. The facts in support, not only of the merits of the claim in so far as its items were concerned, but also those connected with the so called settlement, with the Liquidator's agent, were given under oath before Mr. Shanly, and he recommended payment to Mr. Higginson of the balance claimed except as to interest and expenses of pressing the claim, which latter items were not in his discretion. The Government was represented by counsel at this investigation by whom, as reported in the evidence, it was then stated that Mr. Higginson had substantially made out his claim upon the merits and was entitled to payment of it if he had a title in law to make the claim.

When Mr. Higginson, subsequently to Mr. Shanly's report, continued to push the claim, he was met with the objection that he was not the contractor with the Government in respect to the work out of which the claim arose that there was therefore no privity of contract between him and the Government and that they could not recognize him as having a title to claim. But he now feels satisfied that if he could make the claim in the name of the Liquidators, or of the Company there would be a good prospect of its being paid. I have therefore, on behalf of Mr. Higginson, to ask that you will be good enough to bring the matter before your clients and ask them to transfer to him the unpaid portion of his part of the claim and allow him in their name or in that of the Company to represent the case again to the Canadian Government as to his portion of the claim and to obtain if possible a reconsideration and payment of it.

As a condition of your clients compliance with the request now made on behalf of Mr. Higginson he would, of course, give them satisfactory indemnity to save them harmless against any damages or costs to them in consequence of their giving the assignment or authority now asked for, and would also release them and the Liquidators from any right of action or demand which he may have against them in regard to the matter.

Yours very truly,

SANDFORD FLEMING.

No. 5

*Letter from the Solicitors of the Liquidators, Fairbairn Engineering Company to Mr. Fleming,*

43 CHANCERY LANE, W. C.

13th AUGUST, 1892.

Fairbairn Engineering Company, in Liquidation.

Intercolonial Railway Contract.

Re. Higginson.

SIR,

Your letter of the 20th ulto., has been submitted to the acting Liquidator of the Fairbairn Engineering Company and to members of the Committee of Management.

After considering they have decided that they do not see their way to allow Mr Higginson to use the name of the Company for the purpose of reopening this matter. Except for the purpose of disposing of outstand-

ing assets which consist of land in Manchester, the Company is to all intents and purposes dissolved

From the paper that you have submitted to us it would appear that the Canadian Government have allowed the matter of Mr Higginson's claim to be investigated and that without formally recognizing his legal right to payment of the sum claimed by him the finding of the Commission which considered his claim appears to have been in favor of his moral right to payment, and the Acting Liquidator of the Fairbairn Engineering Company hopes that his inability to comply with Mr Higginson's desire that the Company should appoint him their representative to deal with the matter, will, nevertheless, not prevent some satisfactory settlement of his claim being arrived at.

Yours truly,

(Sgd.) CUNLIFFE & DAVENPORT.

To SANDFORD FLEMING, ESQ.

No 6.

ABSTRACT OF ORIGINAL CLAIM.

Unadjusted claim of H. B. Higginson against the Government of Canada for expenses incurred and losses sustained in connection with the erection of Iron bridges on the Interecolonial Railway, as follows :

|                                            |           |                    |
|--------------------------------------------|-----------|--------------------|
| Rimouski Bridge.....                       |           | \$750.00           |
| Grand and Little Bic Bridges .....         |           | 350.00             |
| Metis .....                                |           | 800.00             |
| Metapedia (Casaupscal).....                |           | 1,500 00           |
| “ (Adams).....                             |           | 150.00             |
| “ (Mill Stream) .....                      |           | 1 200 00           |
| Clark's Brook.....                         |           | 25.00              |
| Christopher's Brook.....                   |           | 182.00             |
| Nash's Creek and Louison Brook.....        |           | 8.50               |
| Jacquet River.....                         |           | 96.00              |
| Teteagauche.....                           |           | 200.00             |
| Middle.....                                |           | 21.00              |
| Nipissiquit .....                          |           | 240.00             |
| Folly .....                                |           | 250 00             |
| North and Salmon Rivers.....               |           | 500.00             |
| Trois Pistoles .....                       |           | 970 00             |
| Amount erroneously deducted from payment.. |           | 316,65             |
| Time and expenses caused by delay          | 13,000    |                    |
| Less allowed by Dept., 1878.....           | 2,160     |                    |
|                                            |           | 10,840,00          |
| Expenses of agents from England            |           |                    |
| in 1878 to press claim....                 | £709 10 0 |                    |
| Half paid by me.....                       | 354 15 0  |                    |
|                                            |           | 1,726.21           |
|                                            |           | <u>\$20,128.36</u> |

To this amount should be added the expenses of the undersigned out to Canada in 1880 to effect a settlement, expense of counsel from time to time and interest from the date of the completion of the work on or before the opening of the Railway on July 1st, 1876.

H. B. HIGGINSON.

