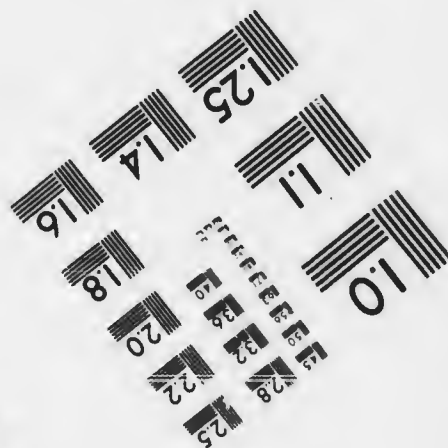
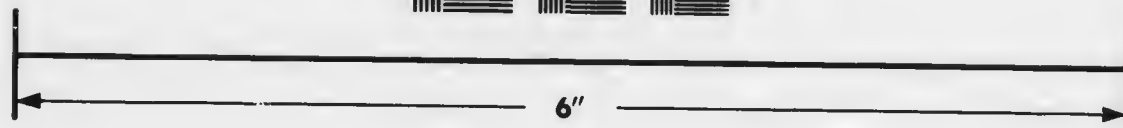
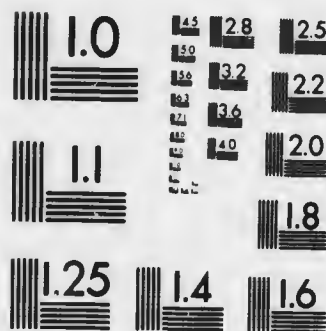


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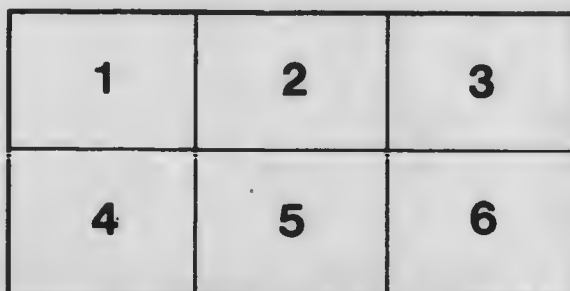
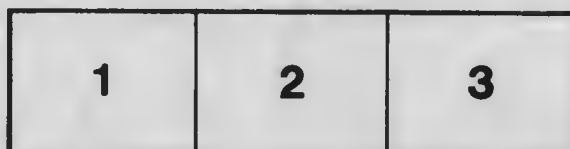
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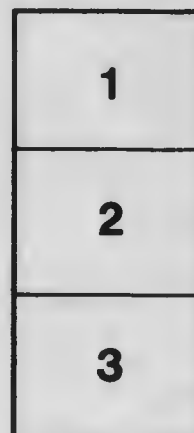
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1880.

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ON APPEAL
IN THE COURT IN EQUITY.

WINDSOR AND ANNAPOLIS RAILWAY COMPANY,
Plaintiffs, Respondents.

AND

THE WESTERN COUNTRY RAILWAY COMPANY AND THE
ATTORNEY GENERAL OF CANADA,
Defendants, Appellants.

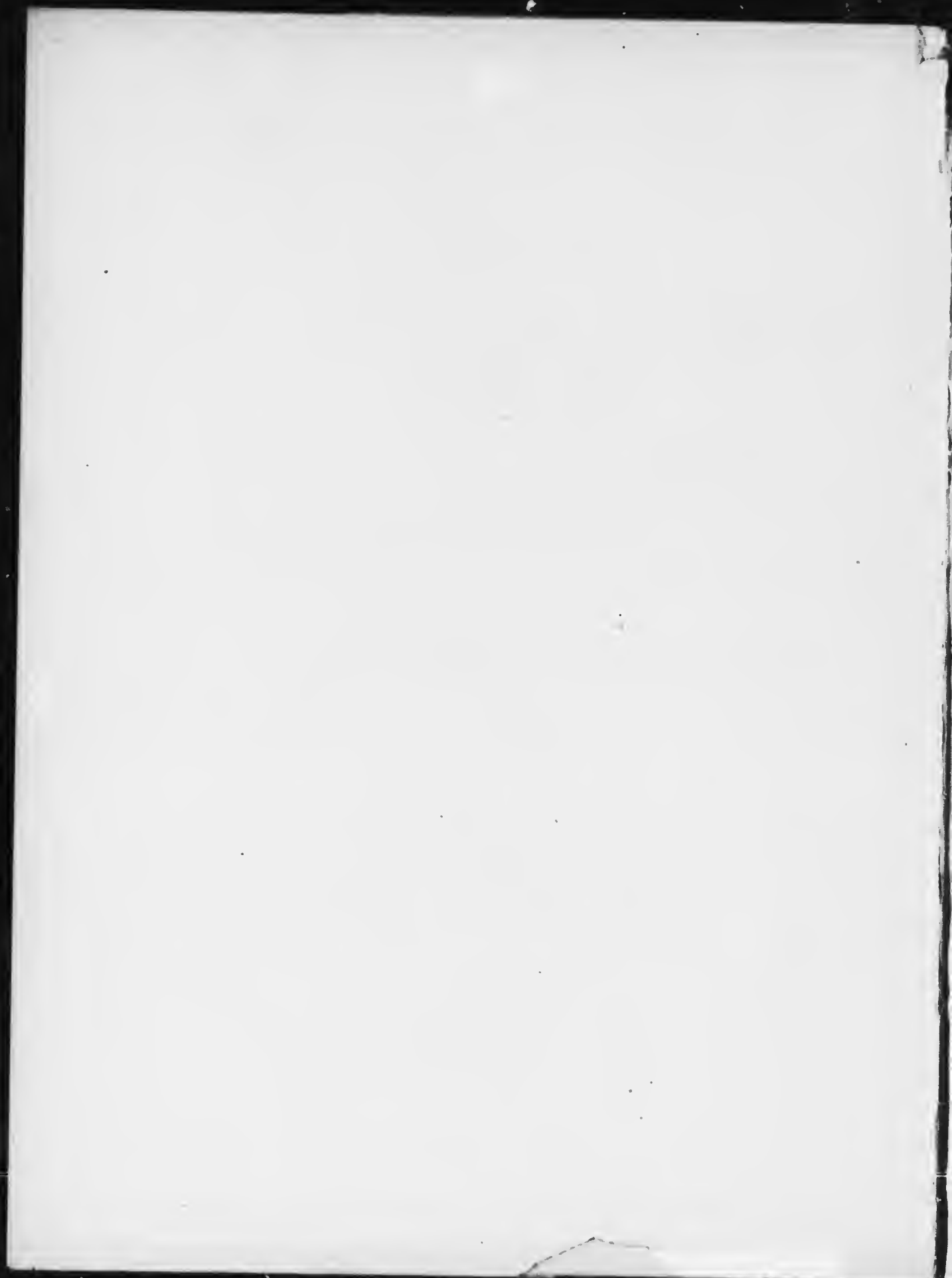
H. McD. HENRY,
Plaintiffs Attorney.

N. H. MEAGHER,
Attorney of Western Counties Railway Company.

ROBERT SEDGEWICK,
Attorney of the Attorney General of Canada.

HALIFAX, N. S.:

WM. MACNAB, STEAM JOB PRINTER, PRINCE ST.
1880.



In the Supreme Court of Nova Scotia,
1880.

ON APPEAL
FROM
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Plaintiffs, Respondents.
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THE WESTERN COUNTIES RAILWAY COMPANY AND THE
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Defendants, Appellants.

H. McD. HENRY,
Plaintiff's Attorney.

N H. MEAGHER,
Attorney of Western Counties Railway Company.

ROBERT SEDGEWICK,
Attorney of the Attorney General of Canada.

HALIFAX, N. S.:
WM. MACNAB, STEAM JOB PRINTER, PRINCE ST.
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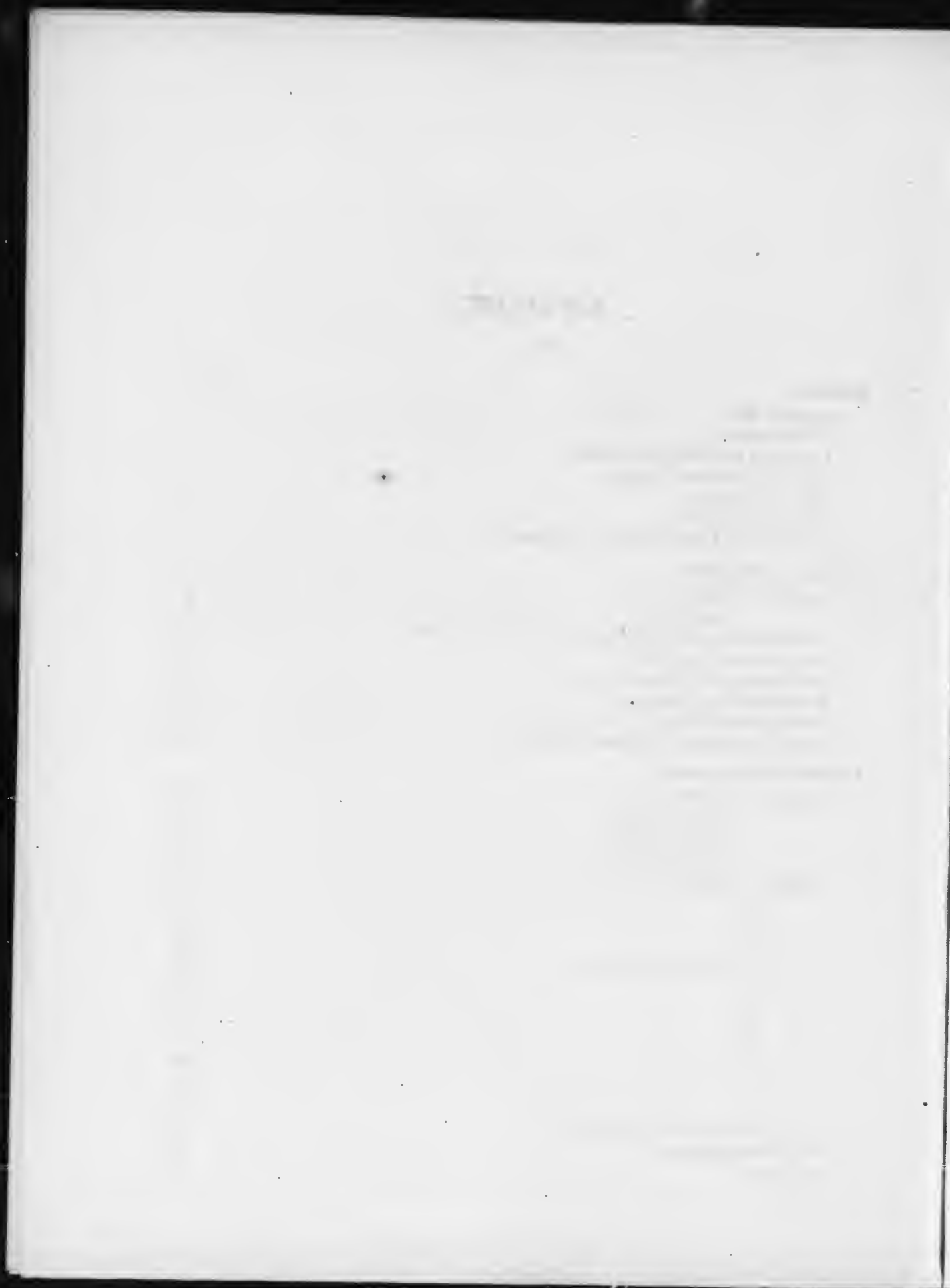
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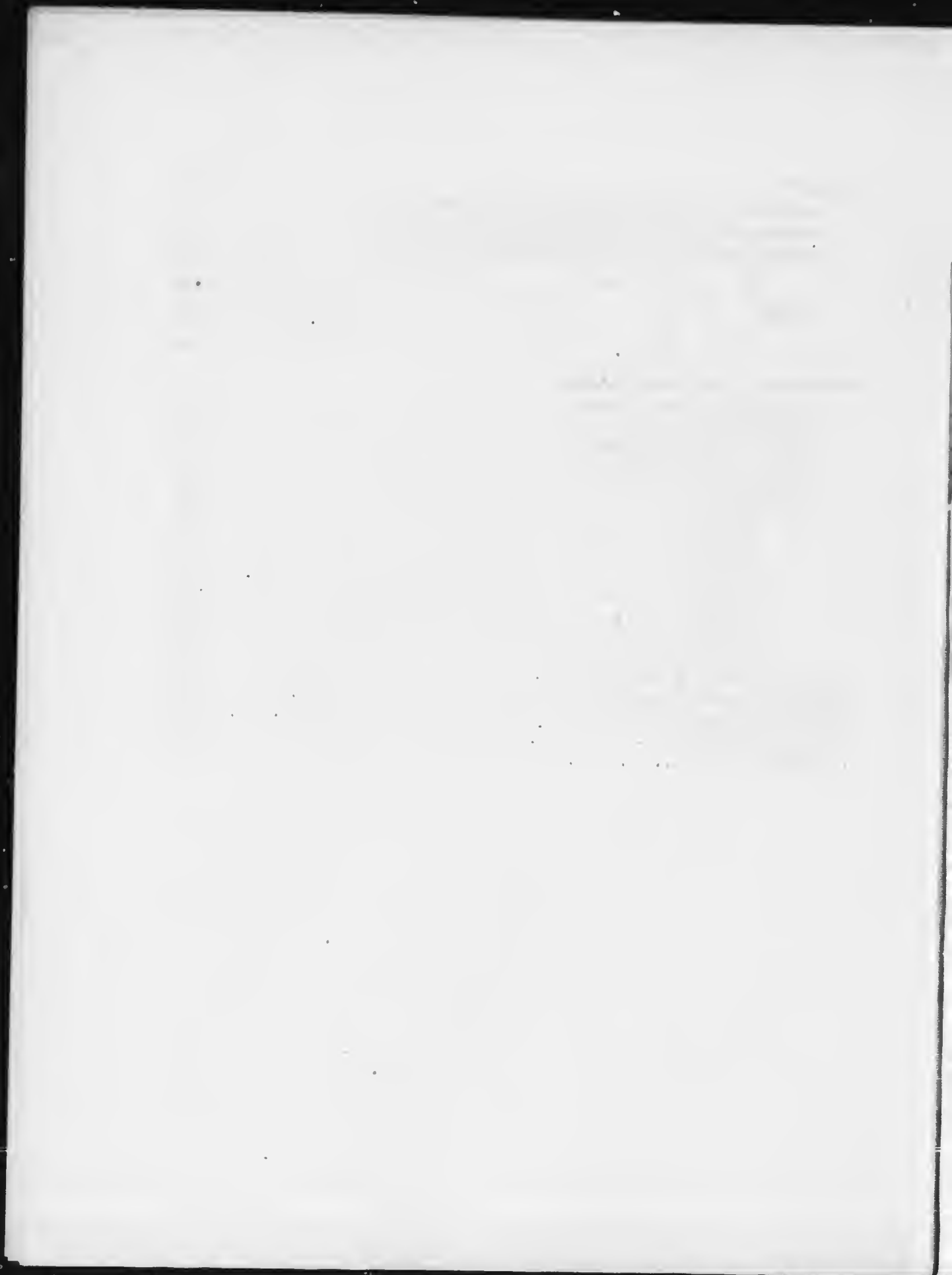
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HALIFAX, SS.

Victoria, by the Grace of God of the United Kingdom of Great Britain
and Ireland, Queen, Defender of the Faith, &c.

To the Sheriff of the County of Halifax, or to any other of our Sheriffs:

We command you to summon the Western Counties Railway Company, and her Majesty's Attorney General for the Dominion of Canada, to appear in the Supreme Court, at Halifax, within ten days after the service of this writ, at the suit of the Windsor and Annapolis Railway Company, who say that on the second day of May, A. D., 1865, the Legislature of the Province of Nova Scotia, by an act of the said Legislature, provided for the construction of a line of Railway from Windsor to 10 Annapolis in the said Province; and on the 22nd day of November, A. D., 1866, under the authority of the said Act, the Commissioner of Railways for the Province of Nova Scotia entered into an agreement with Messrs. Pimhard, Barry & Clark, of London, G. B., for the construction of said Railway. It was, amongst other things, provided in the said agreement as follows; "And it is hereby mutually agreed that prior to the opening of the Railroad, a traffic arrangement shall be made between the said parties of the second part and the Provincial Government for the mutual use and employment of their respective lines of Railway, between Halifax and Windsor, and Windsor and Annapolis, including running powers or for the joint operations thereof, on equitable terms, to be settled by two arbitrators, to be chosen by the said parties in the 20 usual way in case of difference." On 7th day of May, A. D., 1867, by an Act of the Legislature of Nova Scotia, the members of the said firm of Pimhard, Barry & Clark, together with their associates, successors and assigns, were constituted a body corporate by the name of The Windsor Annapolis Railway Company, which is the Plaintiff Company herein; and by the said Act of Incorporation, the said Act first above referred to, and said agreement, were incorporated with, and made part and parcel of the said Act of incorporation.

On the 22nd day of September, A. D., 1871, in pursuance of the power and authority of the said Act of incorporation, the Government of Canada, who by due course of law became the successors of the Government of Nova Scotia, in relation to the line 30 of Railway between Halifax and Windsor, entered into an agreement with the said Plaintiff Company, which agreement is as follows:—

Agreement between the Windsor and Annapolis Railway Company, limited, and

the Government of Canada, (approved and ratified by his Excellency the Governor General of Canada, in Council, on the 22nd day of September, A. D., 1871.)

The Several expressions hereinafter referred to shall, when used in this agreement, have the signification and meaning following: "The Company,"—The Windsor and Annapolis Railway Company, limited.

"The Authorities,"—The Department of the Government of Canada, which, for the time being, shall have the command or control of the Nova Scotia Railways. 40

"The Trunk Line,"—So much of the Nova Scotia Railway, with the branches, appurtenances, buildings, and conveniences thereto belonging or attached as lies between the Terminus at Halifax, and the Windsor Junction (both inclusive), together with any extensions into Halifax hereafter to be made.

"The Windsor Branch,"—So much of the Nova Scotia Railway, with the branches, buildings, appurtenances, and other conveniences thereto belonging or attached as lies between the said Windsor Junction and the Junction of such Railway, with the Windsor and Annapolis Railway at or near Windsor.

"The Superintendent,"—The Superintendent or other officer, for the time being managing the Nova Scotia Railways. 50

"The Manager,"—The General Manager or other officer, for the time being, managing the Windsor and Annapolis Railway.

2.—The Company (meaning the plaintiffs) shall except, for the purpose of the Authorities, (meaning the Government of Canada) in maintaining the Railway and works have the exclusive use of the Windsor Branch, with all station accommodation, engine sheds and other conveniences (but not including rolling stock and tools for repairs) now in use thereon.

3.—The Company shall also use, to the extent required for its traffic, the Trunk Line with the station accommodation thereon, including engine shed accommodation for fire engines, water supply, fuel stages, turntables, signals, telegraphs, wharves, sidings and other conveniences, but not including machine shops and other shops, buildings and appliances for repairs of rolling stock. 60

4.—The company shall run every day, Sundays excepted, between Halifax and Windsor, not less than two trains each way, carrying passengers, and shall adopt the same tolls as at present levied, or such other tolls as may from time to time be approved of by the Governor in Council, and shall furnish and maintain its own rolling stock.

5.—The authorities shall maintain in workable condition the Windsor Branch and the Trunk Line, including all the station accommodation and other conveniences thereon. 70

6.—The Company shall, on the Windsor Branch, employ their own Station Agents, Booking Clerks, Watchmen, Porters, Signalmen, Switchmen, and other servants, for the management of the traffic.



7.—The authorities shall, on the Trunk Line, employ all Station Agents, Booking Clerks, Watchmen, Signalmen, Switchmen and other servants, not provided by the Company under clause 17.

8.—The Company shall not, except with the concurrence of the authorities, carry any local traffic between stations on the Trunk Line, but if so carried they shall charge the same tolls as may be charged by the authorities.

9.—The Company shall keep and render to the Superintendent an exact detail 80 account of all traffic carried by them over the Windsor Branch Trunk Line.

10.—The Company shall pay to the authorities monthly one-third of the gross earnings from all traffic carried by them over the Windsor Branch and Trunk Line.

11.—All accounts between the authorities and the Company, under this arrangement shall be adjusted regularly at the end of each calendar month, and the balance struck and paid over in cash, and not later than 21 days after the end of each month.

12.—The authorities and the Company respectively, shall, at all reasonable times, have access to and be allowed to inspect all such books, papers and vouchers in possession of the other of them, as have reference to the accounts between them.

13.—All regular trains on the Windsor Branch and Trunk Line shall be run in 90 the usual way by time table, which time table shall, in respect to the Trunk Line, be prepared by the Superintendent, on consultation with the Manager. The Superintendent shall arrange for the arrival and departure of the trains of the Company at the times desired by the Manager, or as near thereto as practicable; and in this respect, and in every other respect, the Superintendent, the officers and servants of the authorities shall conduct the business and work the traffic of the Company and of the authorities with perfect impartiality and fairness.

14.—With respect to special and irregular trains, in order to insure public safety, the Company shall use the Trunk Line in strict accordance with such rules and regulations as are now in use, or as may hereafter be adopted and enforced by the Superintendent. Similar rules shall also be adopted and enforced by the Manager on the Windsor Branch, so far as necessary, for the guidance of officers and men engaged in maintenance of the Railway. 100

15.—The speed of the Company's trains on the Trunk Line and Windsor Branches shall not exceed the speed adopted by similar trains on the Government Railways in Nova Scotia.

16.—The Station Agents and other servants of the authorities at Windsor Junction shall receive, and, as far as practicable, carry out the instructions of the Manager in regard to the arrival and departure and working of the Company's trains, from or to the Windsor Branch; and he or they shall record in a book, to be kept for that 110 purpose, the numbers and particulars of all engines, carriages, truck cars or other vehicles passing through such junction, and shall make a return of the same daily to their respective owners.

17.—The Company shall employ on the Trunk Line their own Booking Clerks,



Carting Agents, Carting Staff or such other staff as they may deem necessary for the booking, collecting, checking, invoicing, receiving, delivering or forwarding their own traffic; and the authorities shall, so far as practicable, provide suitable and convenient accommodation for such servants, and for the accommodation of such business.

18.—The Company in using the Trunk Line shall, at all times, observe the Regulations and By-Laws, for the time being, in force thereon; and the authorities in using the Windsor Branch for the purpose of repairing and maintaining it, shall, at all times, observe the Regulations and By-Laws, for the time being, in force thereon. 120

19.—In the event of the Company failing to operate the Railways between Halifax and Annapolis, then this agreement shall terminate, and the authorities may immediately proceed to operate the Railway between Halifax and Windsor, as they may deem proper and expedient.

20.—The termination of this agreement under the preceding clause is not to prejudice any rights which the Company may now have.

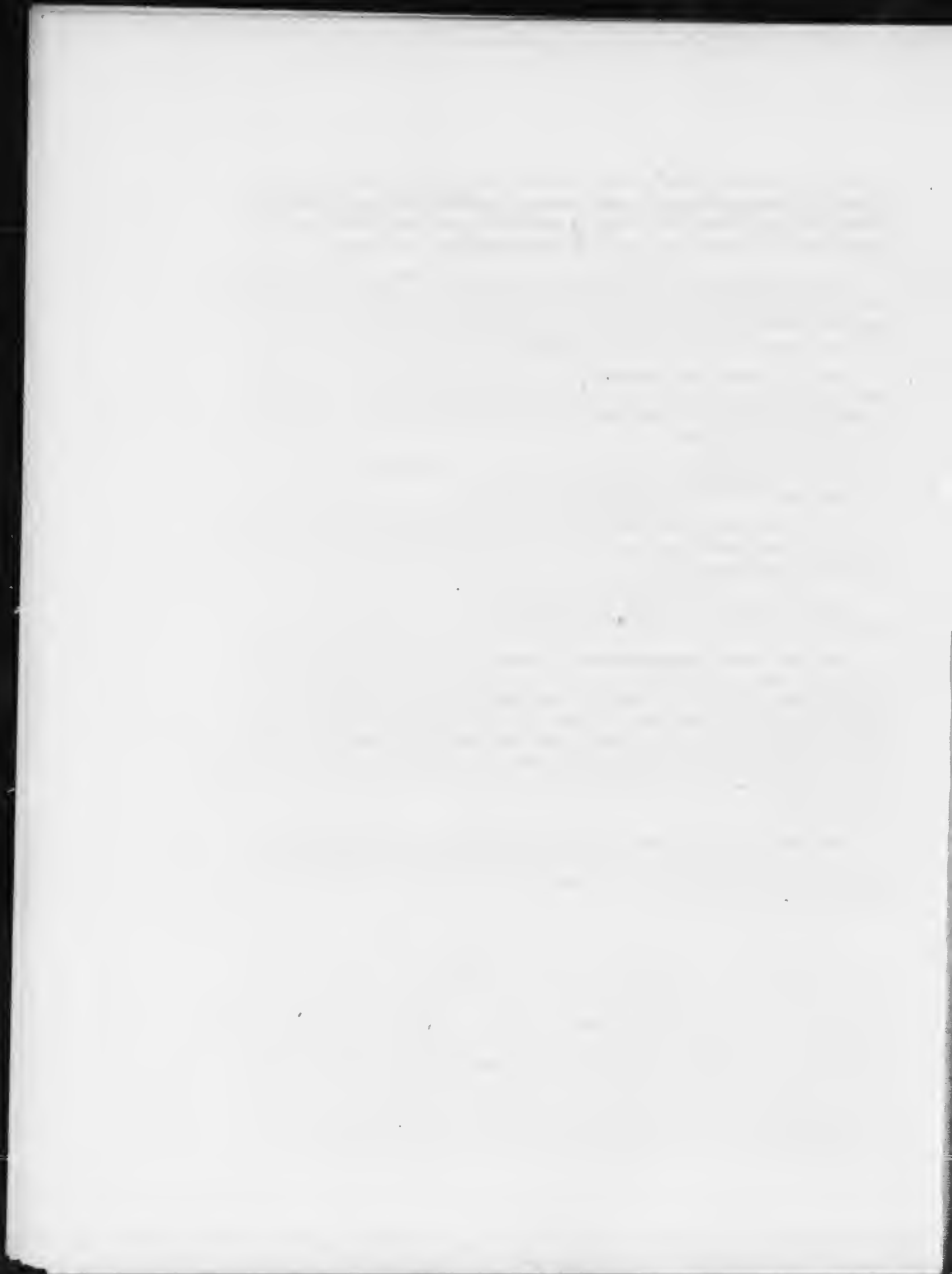
21.—This agreement shall take effect on the 1st day of January, 1872, and continue for 21 years, and be then renewed on the same conditions or such other conditions as may be mutually agreed on. 130

And the said agreement has never been broken by the said Company, except as to non-payment of rent, as hereinafter mentioned.

The said Company began accordingly to operate the said Windsor Branch Railway, in connection with the Windsor and Annapolis Railway, and to exercise the said running powers over the said Trunk Line into Halifax, and, at the same time, necessarily increased their rolling stock, in order to perform the additional service rendered incumbent by such an extension of their operations; and the said plaintiffs continued fully to operate the whole line between Halifax and Annapolis up to the 1st day of August last past, and never failed, at any time, to operate the same according to the said agreement. 140

The Parliament of Canada, on the 23rd day of May, A. D., 1873, passed a resolution authorizing the Government to enter into negotiations for the transfer of the Windsor Branch Railway to reliable parties who would construct a railway between Annapolis and Yarmouth.

The Plaintiff Company having certain equitable claims against the said Government, a consideration of which they were unable to obtain at the hands of the said Government, allowed a certain amount of the one-third tolls or earnings, reserved under the said agreement of 22nd September, A. D. 1871, to fall into arrear, with the hope and to the end that the Government would allow the said equitable claims to stand as an offset against the said one-third tolls or earnings; but the Government declining to do so, and threatening to resume possession of the said Windsor Branch, the said Plaintiff Company, in November, A. D. 1872, paid the said arrears so due under the said agreement. Under similar circumstances, the said one-third tolls or earnings were again allowed to fall into arrear, and the Minister of Public Works made several applications to the Plaintiff Company to have the balance settled, and finally threaten- 150



ed that unless payment were made on or before the 1st day of October, A. D. 1873, the Government would resume possession of the said Windsor Branch. The Company being unable to provide the amount within the time stipulated, requested a further delay, and the Minister of Public Works, on behalf the said Government, accordingly 160 agreed to take no further action in relation to the said arrears, before the 1st day of November, A. D. 1873, his promise to this effect being given verbally to Thomas Reynolds, Esq., the agent of the Plaintiff Company at Ottawa, and also by telegram to Leverett DeV. Chipman, Esq., a member of the Dominion Parliament of Canada for Kings County, in Nova Scotia, who was also acting on behalf of the Plaintiff Company.

On the 22nd day of October, A. D. 1873, the following Minute of Council was passed by the Privy Council of Canada, but no official or other notice of this was given to the plaintiffs, either previous or subsequent to its passing, by the Government of Canada, by any person or persons on its behalf: "On a report dated 21st October, 170 1873, from the Honorable the Minister of Public Works, stating that the Windsor and Annapolis Railway Company have failed to operate the railway known as the Windsor Branch, mentioned in the Order in Council of the 22nd September, 1871, and to comply with the other terms and conditions of that Order in Council, and now owe over \$30,000 to the Government of Canada, and though repeatedly called upon to pay, have failed to do so, and recommending that, inasmuch as the said Company have failed to operate one of the railways between Halifax and Annapolis, the Government of Canada, known as the 'authorities,' by the said Order in Council, do proceed immediately to operate the railway between Halifax and Windsor." And the said plaintiffs say that the statement in the said Minute of Council, namely, that they failed to operate one of the 180 railways between Halifax and Windsor, is wholly incorrect.

On the 26th day of May, A. D. 1874, by an Act of the Legislature of Canada, entitled: "An Act to authorize the transfer of the Windsor Branch of the Nova Scotia Railways to the Western Counties Railway Company," the Windsor Branch, so called, was transferred, or the said Act purported to transfer it, to the Western Counties Railway Company, under certain conditions, as will appear on reference to said Railway Act.

At the time when the proposal contained in Schedule "A" of the said last mentioned Act, was made, the said Minute of Council, purporting to cancel the said agreement of the 22nd day of September, A. D., 1871, had not been passed, nor as 190 far as the plaintiffs can learn, was the said Report from the Minister of Public Works, upon which the said Minute of Council purports to be based, made until after the making of the said last mentioned proposal.

On the 20th day of June, A. D., 1875, an agreement was entered into between Her Majesty the Queen, represented by the Minister of Public Works for the Dominion of Canada, and the Windsor and Annapolis Railway Company Limited, which agreement is in the words and form following, that is to say:—

"Articles of agreement made and entered into the twenty-second day of June, "in the year of our Lord one thousand eight hundred and seventy-five, between the "Windsor and Annapolis Railway Company, (hereafter called the Company,) of the 200



" first part, and her Majesty Queen Victoria, represented herein by the Minister of Public Works of Canada, (hereafter called the Minister,) of the second part.

" Whereas, the Company was on the 1st day of January last indebted to the Government of Canada, in a large sum of money, being one third of the accrued gross earnings of the Windsor Branch of the Intercolonial Railway, worked and managed by the Company, under an agreement entered into by them with the Government of Canada, dated the 22nd day of September, A. D. 1871, granting the said Branch to the said Company for twenty-one years, from the 1st day of January, 1872.

" And whereas the Company have preferred certain claims against the Government of Canada, by way of set-off to such indebtedness, but which claims have not been recognized or admitted. 210

" And whereas, it is found desirable that the gauge of rails on the said Branch should be changed from their present 5 feet 6 inch gauge to the standard gauge of 4 feet 8½ inches.

" These presents witness that the said Company, for the consideration hereinafter named, do hereby contract and agree to and with her Majesty, represented as aforesaid, that the Company shall and will, at their own cost and charge, on or before the 1st day of July now next, in a proper, substantial and workman-like manner, but subject to the approval of the Minister or officer appointed by him change the gauge of the Windsor and Annapolis Railway, and make it conform to the present standard gauge above named, and deliver over to the said Minister, or whom he may appoint for that purpose, at such place or places as may be fixed, 9 broad gauge locomotive engines, 14 sets of broad gauge passenger car trucks, and 145 sets of broad gauge freight car trucks, and also execute and deliver a release of all claims and demands whatsoever against Her Majesty, or the Government of Canada, up to the 1st day of July, 1875. 220

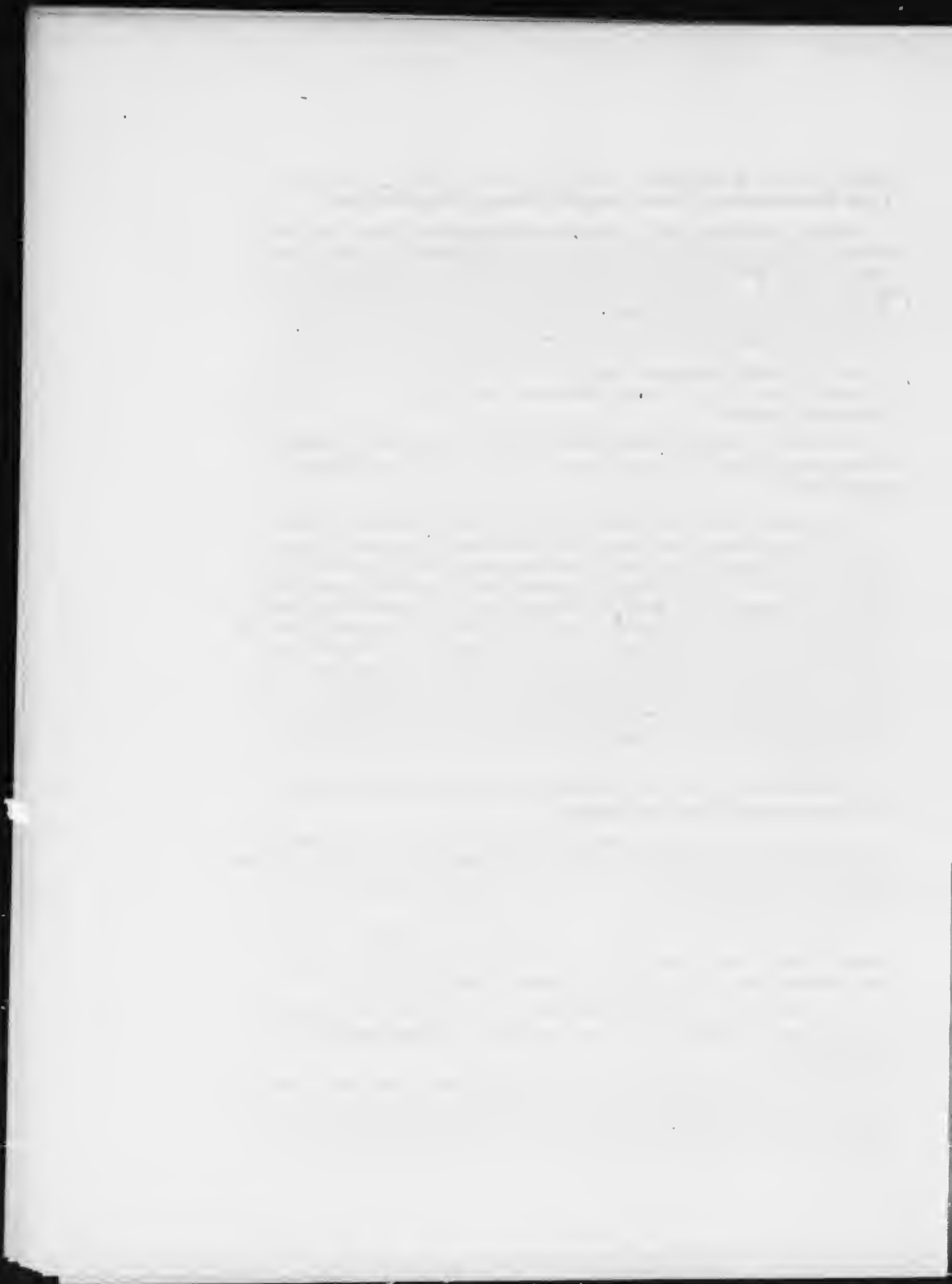
" In consideration whereof, her said Majesty, represented as aforesaid, doth promise and agree to and with the said Company:

" That upon the said change of gauge being effected, in the manner hereinbefore described, all debts and liabilities accrued due by the Company to the Government of Canada, in monies aforesaid, up to the 1st day of January last past, shall be discharged and extinguished. 230

" That the Minister will deliver to the said Company, at Windsor Junction, 9 standard gauge locomotive engines (3 new and 6 converted ones), 14 sets of standard gauge passenger car trucks, and 145 sets of standard gauge freight car trucks.

" That the said nine standard gauge engines shall be and remain the property of the Government of Canada, and in no way liable for the debts and liabilities of the said Company.

" And it is hereby distinctly understood and agreed between the parties hereto that nothing herein shall in any wise, (except as to discharging the indebtedness and claims herein above named,) alter, vary or interfere with the terms of the agreement under which the said Company hold the said Branch line; but that all monies accrued due 240



"as being one third of the gross earnings of the said Branch, from the first day of January last, shall be paid by the Company to the credit of the Receiver-General of Canada, on or before the 31st day of July next, and thereafter those accruing shall be paid monthly, as provided in the said agreement, under which the Company hold and work the Branch as aforesaid, which, except as aforesaid, is hereby declared in full force and effect."

The said last-mentioned agreement was prepared under the direction of the Minister of Justice of Canada, and executed by the Minister of Public Works, and accepted and acted upon by the Government of Canada and by the Plaintiff Company. That the Plaintiff Company, in accordance with the said last mentioned agreement, and on the faith of the same, changed the gauge of rails on their railway and delivered up to the Minister of Public Works 14 sets of passenger car tracks, 9 broad gauge engines, and 145 sets broad gauge freight car trucks, and incurred very large expense in making arrangements to carry out said agreement on their part. 250

That the plaintiffs continued in exclusive and undisturbed possession of the said Windsor Branch, and continued to operate the same and paid the rent as hereinbefore set forth, until the first day of August, instant, when Charles J. Brydges, the Superintendent of Government Railways, without the consent of the plaintiffs, and against their will, took forcible possession of the said Windsor Branch Railway, and removed plaintiffs' trains therefrom, and prevented the plaintiffs from using the said Branch Railway or the said Trunk Line, and from running any train thereon. 260

The said Windsor Branch and Trunk Line continued to be operated by the said Charles J. Brydges and his subordinates, employees of the Intercolonial Railway, until Monday, the 24th day of September last, when the possession of the said Windsor Branch was formally transferred to the Defendant Company by the said Charles J. Brydges, who was then acting on behalf of the Government of Canada, as the Plaintiff Company are informed and believe, and the Defendant Company accordingly took possession of the said Windsor Branch, and continue to hold the possession of, and to operate the same. 270

The plaintiffs, by Hugh McD. Henry, of Halifax, Barrister, on the 24th day of September last, past, sent to James Wentworth Bingay, Esq., the Secretary of the Defendant Company, a demand or notice, in the words and form following, that is to say:—

HALIFAX, September 24, 1877.

JAMES WENTWORTH BINGAY, Esq.,
Secretary Western Counties Railway Company,
Yarmouth, N. S.

Sir: As the Solicitor and on behalf of the Windsor and Annapolis Railway Company, I hereby demand immediate possession of the line of railway between Windsor and Windsor Junction, known as the Windsor Branch. 280

Unless I receive an answer to this communication on or before the 1st day of October next, I shall consider that the possession hereby demanded is refused.

I have the honor to be, sir,

Your obedient servant,

HUGH McD. HENRY.

x

Which demand or notice was served on the said James Wentworth Bingay on or about the 26th day of September, aforesaid. No answer having been received to the said demand or notice, the plaintiffs, by their said attorney, on the 2nd day of October, instant, sent by mail to the said Secretary of the said Defendant Company, a letter, 290 in the words and form following, that is to say:—

HALIFAX, October 2, 1877.

JAMES WENTWORTH BINGAY, Esq.,
Secretary Western Counties Railway Company,
Yarmouth, N. S.

*Sir:—*As the Solicitor and Attorney of the Windsor and Annapolis Railway Company, and on their behalf, I hereby demand the privilege of running trains over the Windsor Branch Railway, of which the Western Counties Railway Company are now improperly in possession. You are hereby notified that, unless in the meantime provisional arrangement is made, granting the privilege to the Windsor and Annapolis 300 Railway Company, the said last-mentioned Company will run an engine over the said Branch line, from Windsor to Windsor Junction, on Tuesday next, the ninth instant. This demand is made only for provisional running powers, and is not intended to waive the rights of the Windsor and Annapolis Railway Company to the exclusive possession of the said Branch Railway, to which they are entitled under their lease.

I have the honor to be, sir,

Your obed't serv't,

HUGH McD. HENRY.

And to the said letter the plaintiffs have as yet received no reply. According to the terms of the said last mentioned letter, the plaintiffs, on Tuesday, the 9th day of 310 October, instant, attempted to run an engine from Windsor towards Windsor Junction, but were forcibly prevented from doing so by the defendant company.

And the plaintiffs say that they have reason to believe and do believe that the said agreements came to the knowledge of the Defendant Company, at or shortly after they were entered into respectively, and that the said Defendant Company had full knowledge from time to time of the rights of the Plaintiff Company in the premises.

And the plaintiffs charge:—

1st.—That the agreement of the 22nd day of September, A. D., 1871, has never been legally cancelled, and is still in force, and the plaintiffs are entitled to operate the said Windsor Branch Railway under the same.

320

2nd.—That the said Act of the 26th day of May, A. D., 1874, was not intended to transfer, and did not in fact transfer to the Defendant Company any rights save such as were held by the Government of Canada subordinately to the rights of the plaintiffs, under the said agreement of the 22nd day of September, A. D., 1871.

3rd.—That if the said last Act purports to interfere with or cancel any of the plaintiff's rights, it is *ultra vires* of the Parliament of Canada.

4th.—That if the said last mentioned Act is *intra vires* of the Parliament of Canada, and can be held to take away any of the rights of the Plaintiff Company under the said last mentioned agreement, the right of the Plaintiff Company to running powers over the said Windsor Branch and Trunk Line still remains.

330

The plaintiffs therefore pray that it may be decreed and declared by this Honorable Court, that the said agreement of the 22nd day of September, A. D., 1871, is a valid and binding agreement, in no way cancelled or vacated by any Order in Council or other Act of the Government of Canada, but that the same is still in full force and effect. And that it may be further declared that the said Act of the Dominion Parliament, passed on the 26th day of May, A. D., 1874, in no way affected the rights of the plaintiffs in, to, and over the said Windsor Branch Railway, but only affected the rights of the Government of Canada in such road, subject to the plaintiff's rights, under the said agreement and under the Act of Incorporation, passed by the Legislature of Nova Scotia; and that if the said Act of the 26th of May, A. D., 1874, purports to do more than to convey the rights of the Government of Canada, subject to the plaintiff's rights, and to affect the plaintiff's rights under the said agreement and Act of Incorporation, then that the said Act of the 26th day of May, A. D., 1874, may be declared to be *ultra vires* of the Parliament of Canada. Also, that under any view of the said Act of the Parliament of Canada and under the facts disclosed in this bill, the running powers of the plaintiff over the said Windsor Branch Railway are still in force and effect.

340

The plaintiffs also pray that the Defendant Company may be ordered and decreed to deliver up possession of the said Windsor Branch Railway to the plaintiffs, and that they may be restrained by order or injunction from this Honorable Court from further keeping possession of the said Railway and running trains thereon, and that an account may be taken of the full amount of the moneys received by the Defendant Company for freight or passengers on said road since the same came into their possession. And that until a final decree shall be made in this suit a receiver shall be appointed by this Honorable Court to take and receive all monies earned or to be earned by the Defendant Company or any other Company or persons whomsoever. And that such further or other relief in the premises may be granted to the plaintiffs as shall be in accordance with Justice and Equity, and as to this Honorable Court shall seem expedient.

360

Issued at Halifax this 10th day of October, A. D., 1877.

HUGH McD. HENRY,
Atty. of Plaintiffs.

(Signed)

M. I. WILKINS,
Prothy.



HALIFAX, SS.

IN THE SUPREME COURT

IN EQUITY, 1877.

Cause—

THE WINDSOR AND ANNAPOLIS RAILWAY COMPANY, *Plaintiffs.*

vs.

THE WESTERN COUNTIES RAILWAY COMPANY, *Defendants.* 370

I, Elias A. DePass, of Kentville, in the County of Kings, Commissioner of the Windsor and Annapolis Railway Company, the Plaintiff Company, herein, make oath and say as follows:—

First—I have a personal knowledge of the matters set forth in the annexed bill, or summons in this suit.

Second—All the statements made in the said bill, so far as the same relate to or concern the Acts of the said Plaintiff Company, are true to the best of my knowledge; and all the statements in the said bill, so far as the same relate to or concern the acts or deeds of any other person or persons, are true to the best of my knowledge and belief.

(Signed) ELIAS A. DEPASS. 380

Sworn to at Halifax, in the County of Halifax, this tenth day of October, A. D., 1877, before me,

(Signed) P. H. LENOIR,
Com. Sup. Court, Co. Halifax.

HALIFAX, SS.

IN THE SUPREME COURT.

IN EQUITY, 1877.

Cause—

THE WINDSOR AND ANNAPOLIS RAILWAY COMPANY, *Plaintiffs.*

vs.

THE WESTERN COUNTIES RAILWAY COMPANY, *Defendants.* 390

I appear for the defendants in the above cause.

Dated Halifax, October 22nd, 1877.

Yours, &c.,

N. H. MEAGHER,
Attorney of Defendants.

To the Plaintiffs
Or their Attorney.

THE HISTORY OF THE

REIGN OF

CHARLES THE FIRST

BY

JOHN BURNET

OF

THE UNIVERSITY OF OXFORD

IN TWO VOLUMES

THE SECOND VOLUME

CONTAINING

THE HISTORY OF THE

REIGN OF

CHARLES THE FIRST

BY

JOHN BURNET

OF

DEFENDANTS' ANSWER.

HALIFAX, NS.

IN THE SUPREME COURT, 1878.

IN EQUITY.

400

Cause—

THE WINDSOR AND ANNAPOLIS RAILWAY COMPANY, *Plaintiffs*.

vs.

THE WESTERN COUNTIES RAILWAY COMPANY, *Defendants*.

The defendants saving and reserving to themselves all and all manner of benefit and advantage that can or may be had or taken to the many errors, uncertainties, and imperfections in said Bill contained for answer thereto, or to so much thereof as they are advised it is material or necessary for them to make answer unto by N. H. Meagher, their attorney, answering say as follows, that is to say: They admit it to be true that on the second of May, A. D., 1865, the Legislature of Nova Scotia, by an Act 410 thereof provided for the construction of a line of Railway from Windsor to Annapolis, and that an agreement under date of the twenty-second of November, 1866, was entered into between the Commissioner of Railways for said Province and Punchard, Barry and Clark, which contained the clause set forth in said Bill. They also admit that the plaintiffs were incorporated by the Act referred to in said Bill, as having been passed on the seventh day of May, A. D., 1867. They also admit that the agreement set out in said Bill was made between the said plaintiffs and the Government of Canada, on or about the twenty-second day of September, A. D., 1871, but they allege that no agreement for a traffic arrangement for the mutual use and employment of the respective lines of Railway between Halifax and Windsor, and Windsor 420 and Annapolis, including running powers, or for the joint operation thereof on equitable terms, was made between the plaintiffs and the Provincial and Dominion Governments, or either of them, prior to the opening of said Windsor and Annapolis Railway, nor was there at any time any settlement of the terms thereof made by arbitrators.

That as to the allegation in said Bill, that said agreement never was broken by the plaintiffs except as to non-payment of rent, defendants say that they have been informed and believe and therefor aver that said plaintiffs did, in many respects, other than the failure to pay rent, break the terms of said agreement.

The defendants admit that plaintiffs began to operate said Branch soon after the 430 making of said agreement, but whether they increased their rolling stock as alleged in said Bill, defendants have no knowledge, and leave the plaintiffs to make proof thereof.

THE JOURNAL OF THE

ROYAL SOCIETY OF MEDICINE

AND THE LONDON MEDICAL SOCIETY

FOR THE YEAR 1881

EDITED BY

JOHN H. GREEN, M.D.

AND

JOHN H. GREEN, M.D.

AND

JOHN H. GREEN, M.D.

AND

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AND

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AND

JOHN H. GREEN, M.D.

That as to the allegation in said Bill that plaintiffs continued fully to operate the whole line, and never failed at any time to operate the same, according to said agreement, defendants say they have been informed and believe, and they therefore aver, that the said allegation is not true, and that said plaintiffs did on divers days and times (other than Sundays) during the Winters of 1872 and 1873, and at other times, fail to run two passenger trains per day each way, and on various week days during said winters or one of them ran only one train per day, and on many days during said 440 period, and at other times did not run even one train per day. That the engines and rolling stock used by said plaintiffs upon said roads were defective, insufficient, and were so out of repair, as to be unfit to be used in operating said road, and were unable to do the work necessary or required to be done under said alleged agreement of September 1871, and to convey the trains of plaintiffs with ordinary speed. That during the said winters of 1872 and 1873, and at other times, the said plaintiffs had not and did not provide or use any, or any suitable snow-ploughs wherewith to clear obstructions upon said road arising from snow storms, and by reason and means of the neglect and refusal of the said plaintiffs to provide and use such snow-ploughs and other suitable means and appliances for the purpose of clearing and keeping said roads 450 clear and by reason and means of the want of suitable engines, or engines in good working order, the said roads were not efficiently worked, and the trains of the plaintiffs upon the said roads were often delayed for a long time in arriving at their destination, whereby the public were greatly inconvenienced and injured, the earnings of said road seriously diminished, and the said agreement broken. That the passenger and other cars used by the said plaintiffs upon the said Railway were defective and out of repair, and not fit to be used in operating the said road, and the public suffered inconvenience and injury therefrom. That the plaintiffs did not furnish or provide or use or have sufficient cars, and did not run a sufficient number of trains to convey the freight which was required to be carried over said Branch, and which, but for 460 the wilful neglect and default of said plaintiffs, and the want of sufficient trains and freight cars, and suitable engines to convey said freight, would have been carried over said road.

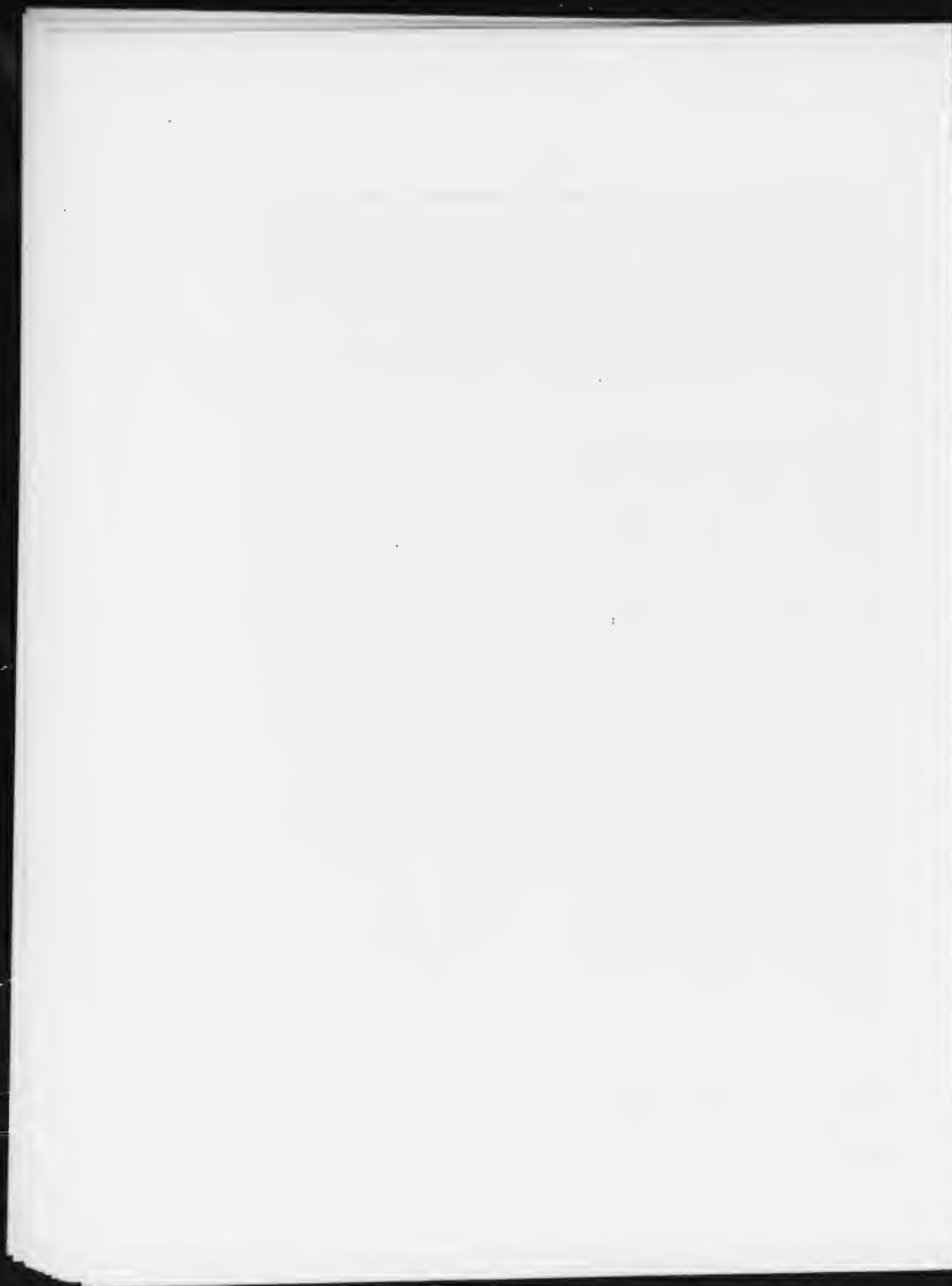
That complaints were from time to time made to the Government of Canada, or some or one of its officers in that behalf, by persons travelling over said roads, or having or requiring freight to be carried over the said Branch, of the neglect and default of the plaintiffs in the premises. And defendants further say that owing to the neglect and default of the plaintiffs by using weak, insufficient and unsuitable engines and old and leaky passenger cars in operating said Branch and the delay, loss of time and inconvenience to the travelling public, arising therefrom and the irregularity in the 470 running of the said trains, many persons who otherwise as these defendants believe and therefore aver would have travelled by the said road, were induced to travel by other and different routes and that owing to the like neglect and default of the plaintiffs in not having a sufficient number of freight cars and suitable engines and appliances to convey the freight requiring transportation over said road, the public were put to great inconvenience and loss and large quantities of freight which but for said neglect and default would and might have been carried over the said road, was shipped by water and other means of conveyance and the freight which would have arisen therefrom was thereby lost to the said Government. That besides the above, the said plaintiffs were unable to pay the rent from time to time accruing under said alleged agreement and at the 480

date of said order in council, owed said Government about thirty-eight thousand dollars for rent, under said alleged agreement; and defendants aver that the non-payment of said rent in manner and form, and at the times required by the said agreement was a failure to operate said road according to said agreement, and well justified the making of said Order in Council. And defendants say that in other respects and in addition to the foregoing breaches of said agreement, the plaintiffs failed to operate said road, and they aver upon their information and belief that the statement in said Order in Council to that effect was true. That the failure to pay the said rent to said Government was not because of said supposed equitable claims being outstanding, but because of the inability or unwillingness of plaintiffs to pay 490 the same.

The defendants leave plaintiffs to make proof that the Minister of Public Works agreed to take no further action in relation to said arrears before the first of November 1873, or gave the promise or sent the telegram alleged in relation thereto, and the defendants insist that if any such promise were made the same would have no binding force or effect. That when said Order in Council was passed, the agent of the said plaintiffs, to wit, one Elias A. DePass, was at Ottawa, and in communication with some or one of the then members of the Government of Canada in relation thereto, and he went there as defendants believe in consequence of an intimation given to the plaintiffs from the said Government of their intention to cancel said agreement, and said agent 500 knew of the passage of the said Order, either on the day it was passed, or in a day or two thereafter. So far as defendants know or believe said Agent did not object or claim that the said Government of Canada had no right or power or authority to pass said Order, but on the contrary recognised and admitted such right or power. That within a few days after the passage of the said Order in Council, the plaintiffs entered into a temporary arrangement, as these defendants are informed and believe, and therefore aver, with the then Minister of Public Works, for the running of the said Branch for a short time by the plaintiffs on new, different and more stringent terms than those contained in the agreement of 1871, and they were suffered and permitted by the Government of Canada to remain in possession of the said road, and to operate it 510 under said temporary arrangement, and not otherwise; and the defendants insist that the making of such new arrangement for the operating of said Branch, and the concurrence therein of the plaintiffs was a recognition of and acquiescence in the cancellation of the agreement of September 1871. That after the plaintiffs became aware that the said Order in Council had been passed, and after they knew its contents, and before the passage of said Act transferring said Branch to the defendants, the plaintiffs approached the defendants and opened negotiations with them for a lease from the defendants to the plaintiffs of the said Branch, and submitted to the defendants a draft lease, drawn up by or on behalf of the plaintiffs, and at their request, and requested the defendants to execute the same, and which said draft is in the words and figures 520 following:

"This agreement made this day of A. D., 1873., between the Yarmouth Railway Company of the first part, and the Windsor and Annapolis Railway Company of the second part.

Whereas, the lease of the Windsor Branch Railway from Windsor Junction to Windsor, from the Minister of Public Works of Canada to the Windsor and Annapolis



Railway Company, has been cancelled for non-fulfilment of the covenants to be performed by the said Windsor and Annapolis Railway Company. And the said line of Railway has under the authority of an Act of the Parliament of Canada been transferred to the Yarmouth Railway Company.

530

And Whereas, the said Yarmouth Company have agreed to let the said Railroad to the Windsor and Annapolis Company until the first day of April next, on the terms and conditions hereafter written,

Now this agreement witnesseth that the said Yarmouth Railway Company doth hereby let and lease to the said Windsor and Annapolis Company, the said line of Railway known as the Windsor Branch, and extending from Windsor Junction to Windsor, for and during the term above mentioned, namely, till the first day of April next, for the rent or consideration of one dollar to be paid therefor by the said Windsor and Annapolis Company to the said Yarmouth Company.

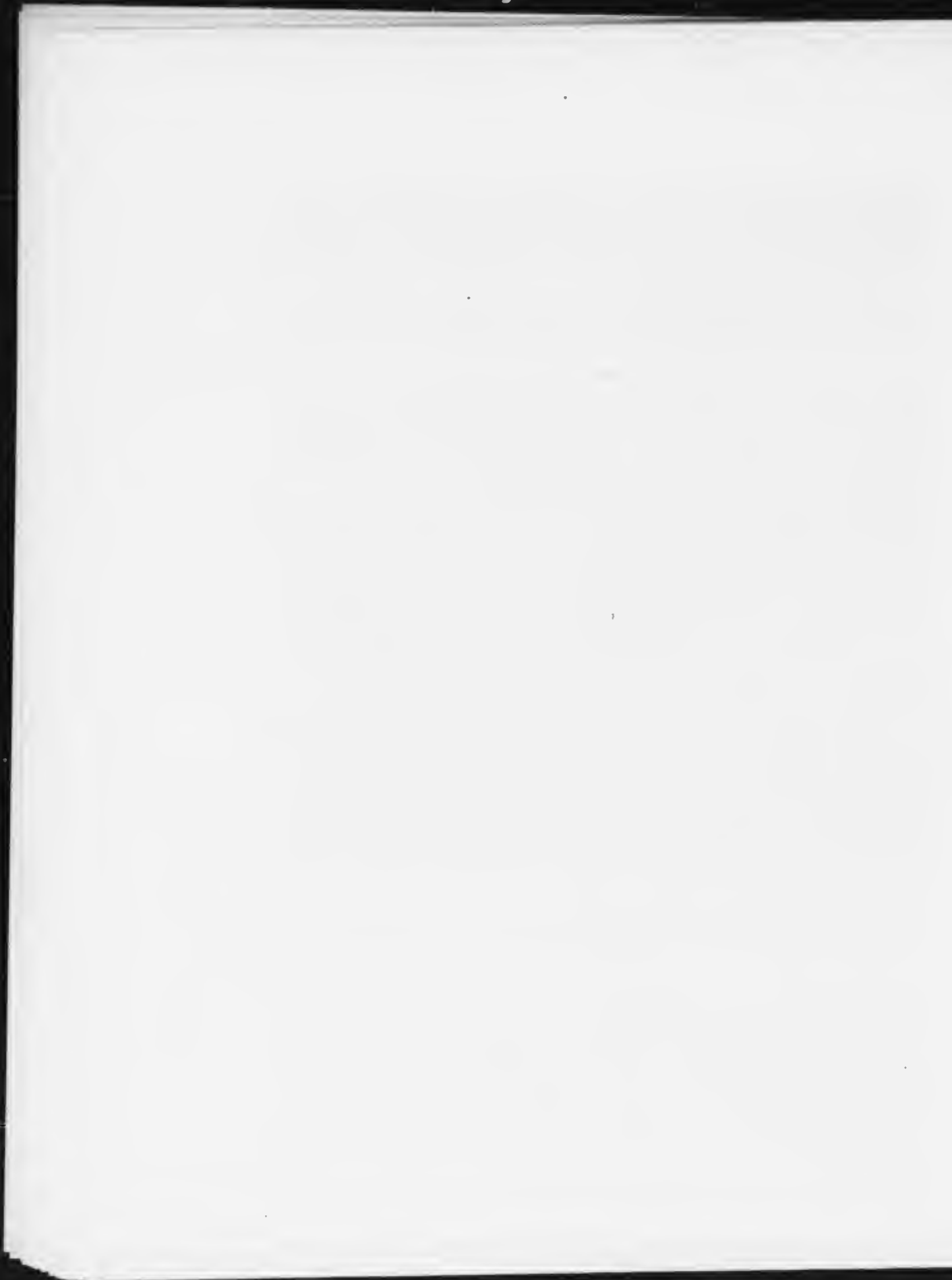
And it is agreed by and between the said parties, that the party of the second 540 part shall enter into possession of the said Road and use and occupy the same as a Railway, with its Engines, Tracks, Carriages and Cars for the period above mentioned, and shall at the expiration of such period deliver up the said Railway in as good a condition as it now is, ordinary wear and tear excepted. And also that the said party of the second part shall, during the said period, at their own expense maintain, uphold, and repair the permanent way and buildings of the said road. And the party of the first part agrees that the party of the second part shall, and may enter upon, possess, and hold the said Railway for the time and on the terms and condition above mentioned."

That the Yarmouth Company named in said Lease, was, and is the Defendant 550 Company and no other. The after considerable negotiations between said parties the defendants at length refused to execute said Lease, though the plaintiffs urgently requested them so to do. That afterwards, and after the passage of the said Act, the plaintiffs again opened the negotiation with defendants, with a view of procuring from defendants a lease of said Branch, and thereupon and after protracted negotiations and discussions between the said parties, a memorandum in the words and figures following was agreed to and signed on behalf of said parties, plaintiffs and defendants respectively, which is in the words and figures following:

Memorandum of proposed agreement between the Western Counties Railway Company, and the Windsor & Annapolis Railway Company, for leasing the Windsor Branch with their right of running powers to Halifax.

560

1. Western Counties Railway Company shall lease to Windsor & Annapolis Railway Company the Windsor Branch for 99 years.
2. The running powers granted to the Western Counties Railway Company by the Act of Parliament 1874, shall be enjoyed by the Windsor & Annapolis Railway Company while this lease remains in force, and Windsor & Annapolis Railway Company shall assume all obligations connected therewith.
3. Windsor & Annapolis Company shall maintain at their own expense the Windsor Branch and its appurtenances in good and efficient order.



4. Windsor & Annapolis Railway Company shall pay to Western Counties Railway Company seven per cent. of their gross receipts between Windsor and Halifax 570 during the first four years, and ten per cent afterwards, payments to be quarterly.

5. The Western Counties Railway Company shall have the right at any time to enter and inspect, to see that the road is efficiently maintained, &c.

6. Lease may be forfeited for non-payment of rent, or failure to comply with other conditions.

7. Settlement of disputes to be left to arbitration.

8. The agreement shall take effect on 1st July, 1874.

(Signed.) On behalf Western Counties Railway Company.

F. KILLAM.

On behalf of Windsor & Annapolis Railway Company,

580

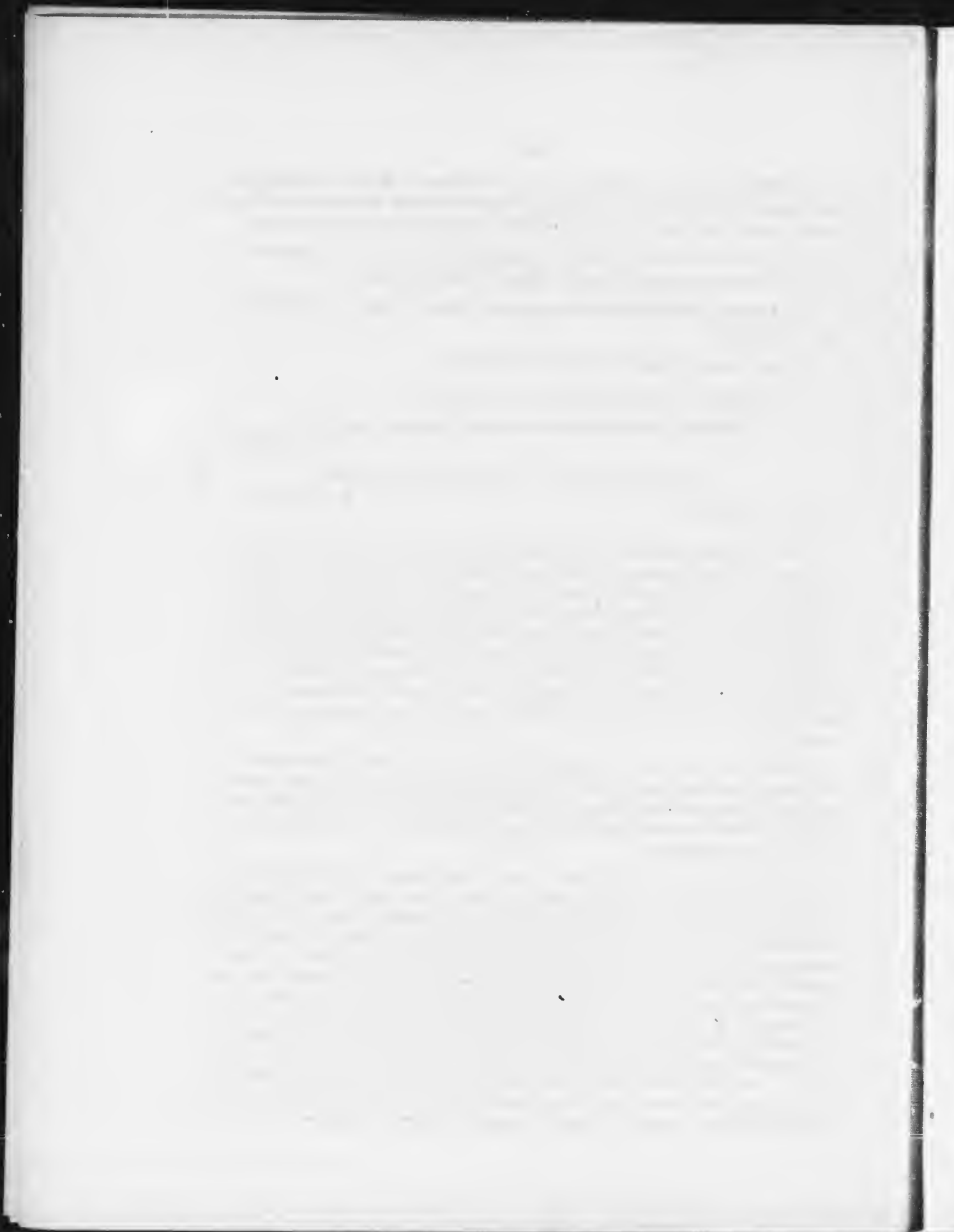
E. A. DEPASS.

OTTAWA, May 1874."

The said agreement refers to said Branch Railway and to no other. That the defendants not having possession of said Branch at the time, it was thought advisable by defendants to submit said agreement for the approval of the Government of Canada which was done, but the Government refused to ratify or approve of said agreement, on the ground that said Branch having been granted to the defendants upon certain conditions, the Government held the defendants alone responsible for the faithful observance of these conditions, and would not look to the Lessees or assignees of defendants for the performance of said conditions, and by reason of said refusal on the 590 part of said Government and for no other reasons the said agreement was not carried out.

That after the said order in Council was passed, the plaintiffs, as defendants long afterwards discovered, memorialised said Government in regard thereto, but never in any way so far as defendants know until shortly before this suit was brought, questioned the power or right of said Government to pass said order under the then existing facts and circumstances.

The plaintiffs in the memorial above referred to in recognition of such right and power, requested said Government to suffer or allow said agreement of 1871 to continue in force. That as to the said alleged agreement of the twentieth June, A. D. 1875, 600 the defendants say that the said agreement was not made, signed, or executed in manner or form, required by Section seven of Chapter 12, of the Statutes of Canada passed in the year A. D. 1867, relating to the Department of Public Works, nor was the same signed and sealed by the said Minister of Public Works or his Deputy, and countersigned by the Secretary as required by said Statute, and the said agreement was, and is null and void. And defendants further allege that even if said agreement was executed according to the form of the Statute in such case made and provided, the same was and is invalid and void, and the said Minister had no power or authority to execute the same, or to agree to the provisions thereof, in so far as the same professed or purported to revive, confirm, or continue, or otherwise ratify or renew said 610



agreement of September 1871. The defendants had no knowledge whatever of said alleged agreement of June 1875, until some time in the year 1877. The defendants do not know by whom said agreement was prepared, nor under whose directions, nor do they know whether it was accepted or acted upon by the Government of Canada, and they allege that if it were accepted or acted upon by the Government of Canada, the said Government was at the time when they so accepted or acted upon it, in ignorance of the clause therein, which professes to continue or confirm said agreement of 1871, and they allege and aver that the said Government had no power or authority to agree to or to accept, or act upon such agreement, and the same was in contravention of the provisions of said Statute transferring said Branch. 620

And defendants further say that the Government of Canada having decided prior to or in the early part of the year A. D. 1873, as part of the public policy of said Government to secure the construction of a line of Railway, from Yarmouth to Annapolis, in furtherance of said policy caused a resolution to be introduced into the House of Commons of Canada in the session of said last named year, and to be passed by said House at said session, which said resolution authorised said Government to enter into negotiations during the parliamentary recess with some reliable Association or Company, for the transfer of the Railway from Windsor to the Trunk line from Halifax to Truro, upon condition that such Association or Company should extend the Railway from Annapolis to Yarmouth subject to the approval of Parliament at the 630 next session. That afterwards and in pursuance thereof the defendants entered into negotiations with said Government for the transfer of said Branch to them, and they accordingly entered into an agreement with the said Government, whereby they engaged to build and complete said Railway upon condition of receiving the said Branch and having certain running and other powers and privileges over that portion of the Intercolonial Railway, lying between Halifax and the Windsor Junction granted and conceded to them. And defendants further say, that the said Order in Council and the said agreement were ratified and made valid and binding by the passage of Chapter 16 of the Acts of Canada, passed in the thirty-seventh year of Her Majesty's reign, intituled "an Act to authorise the transfer of the Windsor Branch Railway to the 640 Western Counties Railway Company" and to which act and all and every the provisions thereof defendants crave leave to refer and to make part hereof as if pleaded at length. And the defendants allege and aver that the said act was not *ultra vires* of the said Parliament, and they further allege, that in and by the said act and under and by virtue of the premises, the said Branch Railway became and was and is absolutely vested in the said defendants, and they now have and hold, and are entitled to have and hold, the said Branch with its appurtenances free, absolutely, of and from any and all claims on the part of the said plaintiffs, under and by virtue of said agreement of November 1866, the Act incorporating plaintiffs Company, the said alleged agreements of September, 1871, and June, 1875, both as regards running powers or otherwise 650 howsoever.

That upon the faith of the said agreement entered into by the defendants with the Government of Canada, for the transfer of the said Branch to them, and also upon the faith and strength of the said Act, the defendants expended large sums of money in their said undertaking, and entered into contracts for the building and completion of their said road and the equipment thereof, which said contracts in-



volved large sums of money and which contracts have to a large extent been carried out. That in order to enable the defendants to carry out and perform their part of said contracts and to pay said contractors, and otherwise to carry on said undertaking they issued bonds upon their said road and undertaking, and which said bonds are 660 now held by divers third parties for good and valuable consideration in that behalf. That in order to secure the payment of said bonds so issued, the said defendants under and by virtue of the power and authority vested in them in that behalf, made, and executed to one Thomas Edward Kenny, of the city of Halifax, merchant, as trustee for said bond-holders, a mortgage upon certain of their property including the said Branch with its appurtenances and all their then present and future right, title and interest in and to said Branch.

That the said Branch forms a principal part of the property over which said mortgage extends. That as the defendants believe the plaintiffs had full knowledge of the issuing of said Bonds, and the giving of the said mortgage, and well knew of 670 the making of the said agreement with the Government, but they did not and have not in any way until shortly before the commencement of this suit, raised or made any objection thereto, or given any notice whatever either to the defendants, said trustee, said bond-holders, or any of them, as the defendants believe that they claimed or intended to claim said Branch under said agreement of 1871, or otherwise, or said running powers, but on the contrary, by the said proposed lease, and by the agreement hereinbefore set out under date of May, 1874, and otherwise the said plaintiffs induced and led the defendants to believe that they did not intend to assert or make any claim to the said Branch or said running powers. That the said Bonds were issued, and said mortgage given, during the year 680 1875, and the same are still in full force and effect. That the said defendants made the said expenditures and entered into the said contracts, issued the said bonds, and gave the said mortgage *bona fide* and in the full conviction and belief that they had full power and authority so to do. And defendants say that had the said plaintiffs raised or made any objection to the said Order in Council, or intimated their intention to contest the force, effect or validity of said Chapter 16, or if they had abstained from recognizing the title of defendants to the said Branch, the defendants might not and probably would not have made many of said expenditures, or issued said Bonds, or given said mortgage upon said Branch, and they aver that the plaintiffs 690 by reason of the premises, are now estopped from claiming or asserting any right or title to the said Branch or said running powers, to the great and manifest injury of the defendants and those who contracted with them and said Bond-holders.

And defendants further say, that the plaintiffs were not and are not since the cancellation of said agreement of 1871, and more especially since the passage of said Chapter 16, entitled to running powers over said Branch under or by virtue of the said alleged agreement with Punchard, Barry and Clarke or under their said Act of Incorporation or otherwise, and that the only right or claim, if any, they may have under the said last named agreement or Act of Incorporation is a claim for breach of contract against the Government of Nova Scotia, or of Canada, but which did not and does not constitute a right or claim against these defendants or upon said 700 Branch.



And defendants further say that they have incurred large expenses in procuring rolling stock necessary to equip and work said Branch, and have also expended large sums of money in repairing and maintaining the permanent way and buildings connected with the said Branch.

That if the plaintiffs as alleged expended large sums of money under said agreement of 1875, they also derived and received large benefits thereunder, inasmuch as a large sum of money which was then due by them to said Government was extinguished and released.

Wherefore defendants pray that the plaintiff's bill may be dismissed with costs. 710

(Signed) GEO. B. DOANE,
President of Western Counties Ry. Co.

JAS. WENT. BINGAY,
Sec'y W. C. R. Co.

N. H. MEAGHER,
Defendants Atty.

HALIFAX, SS.

IN THE SUPREME COURT,

IN EQUITY, 1878.

Cause—

720

THE WINDSOR AND ANNAPOLIS RAILWAY COMPANY, *Plaintiffs.*

vs.

THE WESTERN COUNTIES RAILWAY COMPANY, *Defendants.*

I, James Wentworth Bingay, of Yarmouth, in the County of Yarmouth, Barrister at Law, make oath and say as follows:

1. I am the Secretary of the Western Counties Railway Company, the defendants herein.

2. That the facts, matters and things set forth and referred to in the foregoing answer are severally true to the best of my knowledge, information and belief.

(Signed) JAMES WENT. BINGAY. 730

Sworn to at Yarmouth, in the County of Yarmouth, this thirteenth day of May, A. D., 1878, before me,

(Signed) GEORGE BINGAY,
*Commissioner for taking Affidavits in the Supreme Court,
in and for the County of Yarmouth.*

HALIFAX, SS.

IN THE SUPREME COURT,

IN EQUITY, 1879.

Case—

THE WINDSOR AND ANNAPOLIS RAILWAY COMPANY, *Plaintiffs*. 740

vs.

THE WESTERN COUNTIES RAILWAY COMPANY, *Defendants*.

Upon hearing read the rule nisi granted herein, on motion and after argument, It is ordered that said rule nisi be made absolute, and the Attorney General of Canada be added as a defendant herein, and that the writ and pleadings be amended accordingly, the defendants to be paid their costs, if any, arising from the amendment.

Dated at Halifax, this 2nd day of August, A. D., 1879.

By the Court,

(Signed)

M. I. WILKINS,
Prothy. 750

On motion of Mr. HENRY for Pltffs.

IN THE SUPREME COURT OF NOVA SCOTIA,

IN EQUITY.

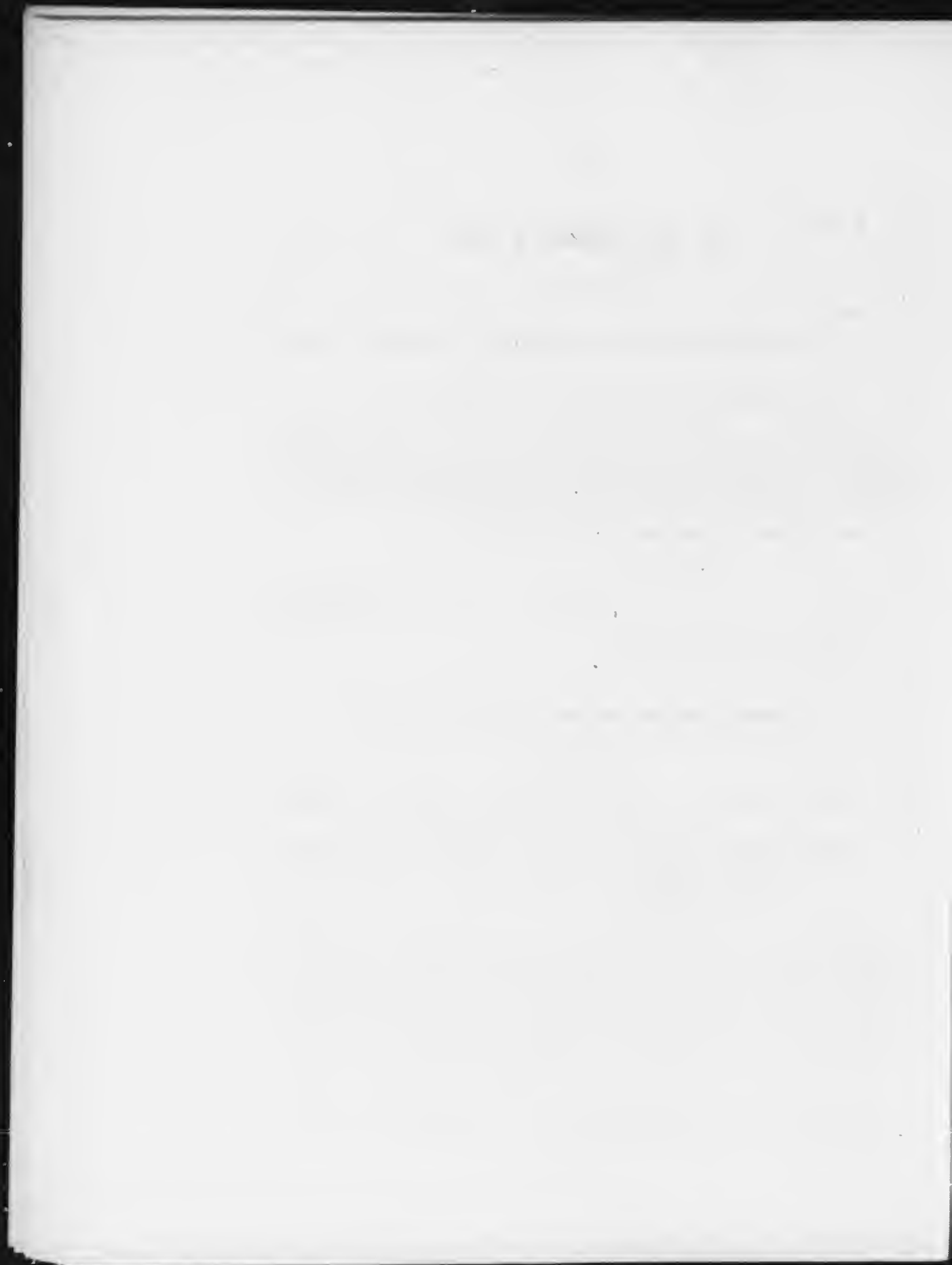
THE WINDSOR AND ANNAPOLIS RAILWAY COMPANY, *Plaintiffs*.

vs.

THE WESTERN COUNTIES RAILWAY COMPANY AND HER MAJESTY'S ATTORNEY GENERAL FOR THE DOMINION OF CANADA, *Defendants*.

I, the Hon. James McDonald, Her Majesty's Attorney General for the Dominion of Canada, without admitting any of the statements or allegations contained in the Plaintiff's bill except such as are hereby expressly admitted, and saving and reserving to myself all and all manner of benefit and advantage that can or may be had or taken of the errors, uncertainties and imperfections in the said bill contained, for answer thereto or to so much thereof as I am advised it is necessary or material for me to make, answer by Robert Sedgewick my Attorney, say as follows:

1. I admit the passing of the Act of May, 1865, by the Legislature of the late Province of Nova Scotia, and the making of the agreement of 22nd November, 1866, and the passing of the Act of May, 1867, referred to in the plaintiffs' bill, but I crave leave to refer to the same and to all the provisions thereof.



2. I admit that an instrument, dated 22nd September, 1871, in the the form set 770 out in the plaintiffs' bill, purported to have been executed on behalf of Her Majesty, and that an order of the Governor in Council was passed purporting to ratify and approve of the same, but I submit that the same was not and is not binding upon Her Majesty, and that the Government of Canada at the time the same purported to have made had not power to bind Her Majesty by such an instrument.

3. I admit the passing of the resolution of the House of Commons of Canada (not the Parliament as mentioned in the bill) on the 23rd day of May, 1873, but I crave leave to refer thereto and to all the terms thereof.

4. I admit the passing of the Minute of Council by the committee of the Privy Council of Canada on the 22nd day of October, 1873, as mentioned in the bill. I 780 charge that the statements contained therein were and are true, and that the plaintiffs had notice of the passing of the said minute shortly after the passing thereof.

5. I admit the passing of the Act of the Parliament of Canada of May, 1874, but I crave leave to refer thereto and to all the terms thereof.

6. I admit that an instrument dated 20th June, 1875, in the form set out in the plaintiffs' bill, was executed by the Minister of Public Works of Canada, but I say that before the execution thereof minute of the Governor General in Council, dated 22nd April, 1875, was passed, whereby it was provided for certain reasons therein mentioned that "until further ordered the existing arrangement with The Windsor and Annapolis Railway Company, be continued." 700

The Windsor and Annapolis Company above referred to was and is the plaintiffs in this suit, and I charge that the "existing arrangement" above mentioned was a temporary arrangement only with the plaintiffs respecting the possession of and working of the said Windsor Branch line. I crave leave to refer to the Minute of Council of 22nd April, 1875, and to all the terms thereof.

I submit that the said instrument, dated 20th June, 1875, was not and is not binding upon Her Majesty in so far as the same purported to confer upon the plaintiffs any rights with respect to the said Windsor Branch other than such as were determinable by further order of the Governor in Council, and in so far as the same purported to confer upon the plaintiffs any rights with respect to said Branch beyond the 800 time when arrangements might be completed for giving possession thereof to the Western Counties Railway Company, as referred to in the second section of the said Act of May, 1874.

I claim the benefit on behalf of Her Majesty of all the contentions and defences raised by The Western Counties Railway Company to the plaintiffs' bill, in so far as the same are applicable.

I submit that I am not as Her Majesty's Attorney General for Canada a necessary or proper party to this suit, and I claim the same benefit from this objection if I had demurred to the said bill.

I submit that the plaintiffs cannot in this suit obtain any relief or decree against 810 Her Majesty.

I pray to be hence dismissed with my costs of suit,

(Sgd.) ROBT. SEDGEWICK,
Atty. for Atty. General.

(Sgd.) JAS. McDONALD,
Atty. General, Canada.



Evidence of Peter Innes and Kenneth Sutherland.

HALIFAX, SS.

IN THE SUPREME COURT,

IN EQUITY, 1878.

Cause—

THE WINDSOR AND ANNAPOLIS RAILWAY COMPANY, *Plaintiffs.* 820

vs.

THE WESTERN COUNTIES RAILWAY COMPANY, *Defendants.*

Evidence taken in the above cause under an order of Reference made therein by his Lordship, the Judge in Equity, dated the twenty-seventh May, 1878,—before William Twining, a Master of this Court, and examiner herein, at his office, in Halifax, Friday, 7th June, 1878, 10 a. m.

Present,—Mr. H. McD. Henry, Counsel for Plaintiffs; Mr. N. H. Meagher, Counsel for Defendants, and Mr. Jno. S. D. Thompson, do., do.

Mr. Meagher, for Defendants, objects to any evidence being taken in this cause because the cause is not at issue and the pleadings not completed. 830

Peter Innes, (A Witness for Plaintiffs.) Sworn. Examined by Henry.

I am general manager of the Windsor and Annapolis Railway Company and have been so since May, 1872. My appointment was in writing. (*Mr. Meagher objects to any evidence of witness' appointment, it being in writing.*) Before that time I was accountant and cashier from July, 1871. That appointment was also in writing. (*Same objection by Mr. Meagher.*) As manager, I have attended to the affairs of the Company generally, and have seen to the efficient and economical working of the road. I have been the responsible officer of the Company in this Province. I remember the agreement of Sept. 1871. I remember the Plaintiff Company commencing to operate the road under that agreement. On the 1st January, 1872, we got possession of the road from Windsor to Windsor Junction, with running powers to run our trains from Windsor Junction to Halifax. We increased our rolling stock, and spent at least sixty thousand dollars in making provision for the efficient working of the branch. We had more stock and plant than was necessary for working our own road. The tolls to Government were not paid by us, as provided by the agreement, until November, 1872. We had unsettled claims against the Government: First, For their preventing our trains running into Halifax; second, For unrefunded Customs duties, amounting to about six thousand dollars; for two acres of land at Windsor; also, to be relieved of liability for an accident to Edwin Blanchard, and other claims. 840

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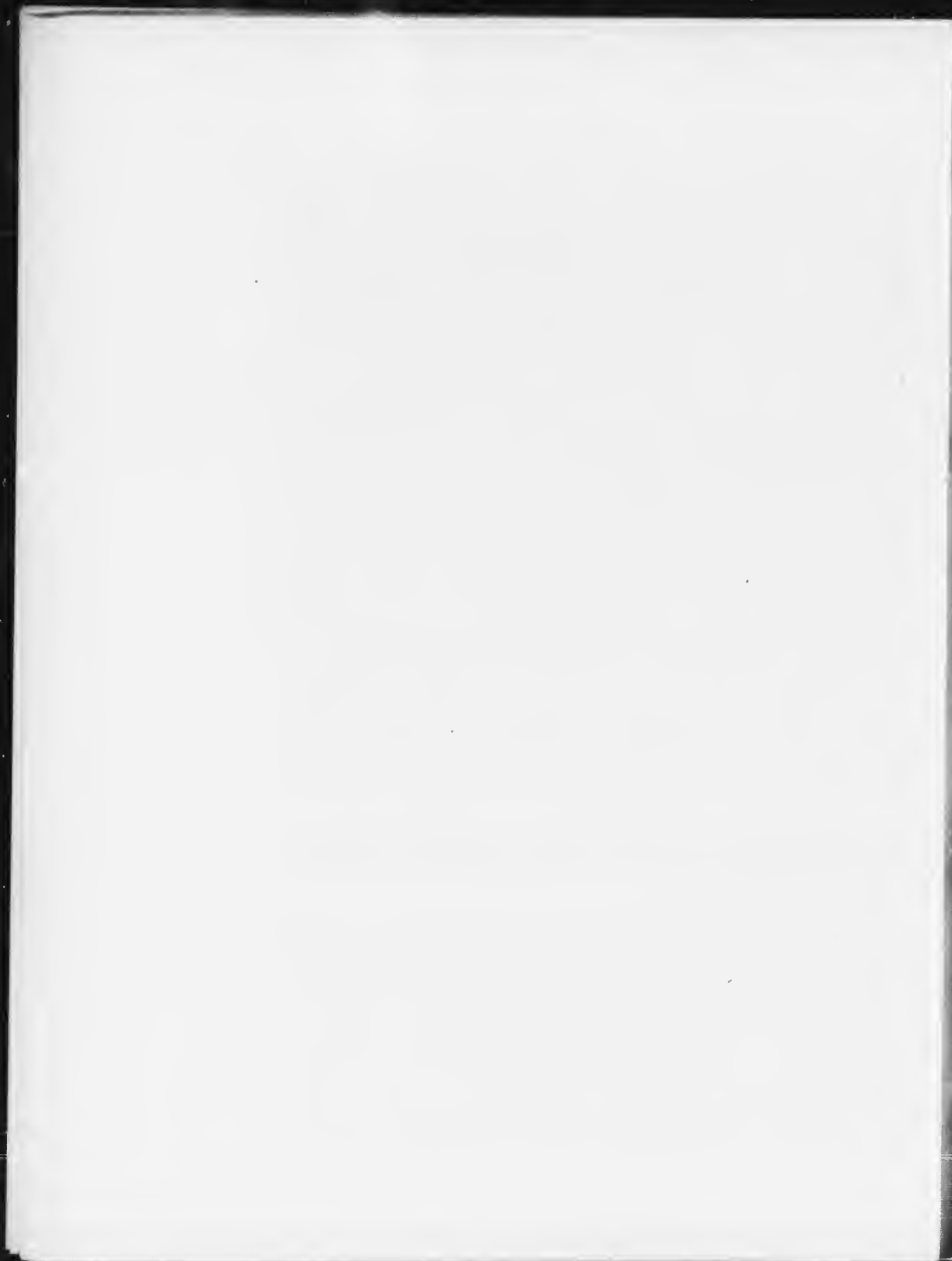
THE UNIVERSITY OF CHICAGO

That was one reason why we did not pay the tolls; and the other reason was, that we 850 required the money for the necessities of the road. To keep the road safe. The tolls were paid up in November, 1872, under the threat of the Government to take the branch from us if we did not pay. They fell into arrears again, after that, for the same reasons. They remained unsettled until the change of gauge took place on 26th June, 1875. Up to that time our claims against the Government had not been settled. They never were abandoned by the Company. In November, 1873, we commenced paying tolls again, leaving a balance due to be settled thereafter. They were paid weekly for a short time; for about three or four months. Sometimes the payments were made fortnightly. The counter claims and all claims on both sides were settled in June, 1875. The agreement has not been broken by the Plaintiff Company, except 860 as to the matter of rent. (*Objected to by Mr. Meagher.*) We began to operate the road on the 1st January, 1872, in accordance with the agreement. We worked the whole road efficiently from Halifax to Annapolis. We never ran fewer trains than was called for by our agreement, and very often more. The only times we failed to run trains to their destinations were during heavy snow storms. We had snow ploughs and very strong engines, and engaged extra men to clear the track, besides using the ordinary appliances. (We endeavored to keep the road clear of snow from Windsor to Annapolis, and the Government endeavored to keep the road clear of snow from Windsor to Halifax, and we both of us sometimes failed to do so.—*Objected to by Mr. Meagher.*) We have operated the road according to agreement up to the 1st August last, except 870 about a day and a half, when the gauge was being changed. On the 1st August last we were forcibly prevented by Mr. Brydges from running our trains over the road. I mean Charles J. Brydges, General Superintendent of Government Railways. He forcibly removed our trains and engines from the Windsor Branch, and detained them on the trunk line, and prevented us from running on the trunk line. We attempted to exercise our rights of ownership on that line at that time and were prevented as before stated. From 1st August, 1877, till September 24th, 1877, the road from Windsor to Halifax was operated by the Dominion Government. From September 24th, 1877, the Western Counties Railway have been in possession of that road and have operated it.

880

(The service of letter from H. McD. Henry to Jas. Wentworth Bingay, dated Halifax, September 24th, 1877, and also of a letter from said H. McD. Henry to Jas. Wentworth Bingay, dated October 2nd, 1877, both of which are set out in the bill, is admitted.—W. TWINING, M. S. Ct.)

On the morning of Tuesday, 9th October, 1877, we attempted to run our trains on the Windsor Branch,—we were prevented from doing so by Mr. Linskey, the Superintendent of the Western Counties Railway, who had spiked the points, and had a train standing on the track. We have not had possession of that road since 1st August, 1877, nor have we been able to get it. We had ten engines for most of the time we were operating the Windsor Branch, except for about three months at first, 890 when we had eight. We never ran less than two trains each way, per day, and frequently three each way. We never ran only one train per day between Halifax and Windsor, except when prevented by snow, or at time of change of gauge. We had six superior English engines, stronger than any in this Province, which were of the value of about fifteen thousand dollars each, and four smaller engines of the value of



four to eight thousand dollars each. The passenger cars were fair, and the freight cars were superior. There was sufficient rolling stock of all kinds to carry the traffic. We always had a snow plough. With the English engines, we did not require to use a snow plough so frequently, as they were so powerful. Our snow plough was specially made to suit our engines. It was superior to the ordinary snow plough, and was 900 affixed to the engine, which gave it more power. The engines and cars were always kept in order. We had more cars than could carry all the freight offering. Never knew of any complaints made by the Government as to the way in which the road was operated by us. My evidence as to the operating of that road applies to the operating of the whole road from Halifax to Annapolis. The Defendant's Company are still in possession of the road from Halifax to Windsor. It took a day and a half to change the gauge. We changed the gauge on the line from Windsor to Annapolis at our own expense, and the Government changed the gauge on the line from Halifax to Windsor. (The direct charges of changing the gauge cost our Company about \$16,000, but there were other expenses entailed by the change of gauge which were 910 charged to working expenses, probably from \$4000 to \$5000.—*Objected to by Mr. Thompson.*) We had to alter the cars in consequence of the change of gauge, and that was charged to working expenses, because the stock was thereby improved. I got no notice from the Government of the cancellation of the Lease.

Cross-examined by Mr. Thompson.—My appointment as manager was in writing, I have it at Kentville. Mr. Elias A. DePass was commissioner of the Windsor and Annapolis. I had no knowledge of that fact until Nov. 1873. He ceased to be such commissioner in January or February last. I think he came to this country in May, 1873. He held no office in the Company between May and November, 1873. Am not aware of any regular duties done by him during that time. He interested him- 920 self to endeavour to get the fares and rates increased. He assisted me in doing so. He did not receive any remuneration during that time. No monies paid him between those dates that I know of, nor anything paid him for expenses that I know of. I am speaking from memory. DePass held no other office. I believe he had a power of attorney at one time from the Plaintiffs. I saw it. Not for more than a year past. I do not know where it is; it is not under my control. DePass is now in New York. At time of cancellation of the agreement, I think he was on the way to, or in, Ottawa. I speak of the expenditure on rolling stock and other appliances from my own knowledge. The claims asserted against the Government were, some of them, as old as the opening of the road in 1869. One claim was for delay in fulfill- 930 ing the terms of the charter. The two acres of land we claimed under an Act of the Legislature of Nova Scotia. Another claim was for an engine and car burned at Richmond, for which we considered the Government responsible. Another claim was for carrying their passengers under Intercolonial season tickets from Halifax to the Junction. The fire that destroyed the engine was in 1872. When I said, "The money was used to keep the road safe," I referred to the road between Windsor and Annapolis. The repairs of our roadway between Windsor and Annapolis never formed any claim against the Government. The reason "that we required the money to make the road safe" was given to the Government. We claimed that they owed us more than the tolls. Those repairs had nothing at all to do with the tolls. Do 940 not know that in the fall of 1873 any new arrangement was made with the Government; I had no advice of any. Think it was about the 1st November we commenced

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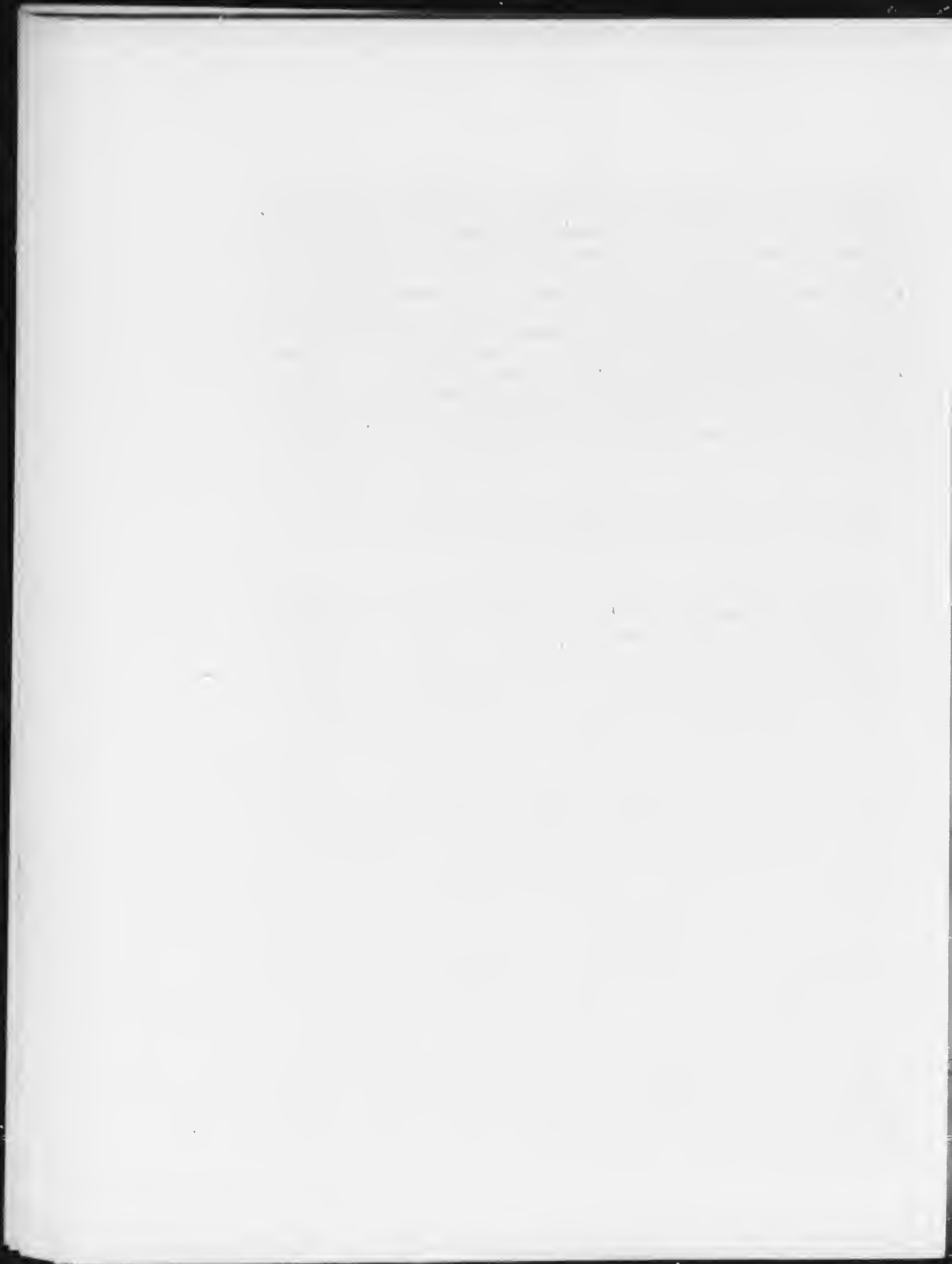
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PART 2
1880

to pay the tolls. I thought it was good policy to do so ; no other reason. It was done at request of DePass. The Government had threatened to take the Branch away from us, and I thought it was good policy to pay the tolls. DePass was in Ottawa about that time. He was there about the increased tariff at that time. The weekly payments continued irregularly for three or four months. Then they became monthly. Had no directions from the Government as to the payment of those tolls weekly. The payments were always made on account. There was no adjustment of the accounts. The weekly payment was an estimate of what I considered due to the 950 Government for each week. Cannot say that I ever made any payments specifically on account of the amount due prior to November, 1873. I did not appropriate them to any particular account. Those payments were placed to the credit of the Government in the bank here. The monies were put to their credit without any particular appropriation of them. We got receipts for those payments both from the bank and from the Receiver General. The receipts of the Receiver General are at Kentville.

Question—Was it brought to your notice in the fall of 1873, that the Minister of Public Works, Mr. Langevin, would only allow Plaintiff Company to work the Branch temporarily and on payment of the tolls weekly ?—*Objected to by Mr. Henry.*

Answer—I received no such notice from the Government, nor from my own Com- 960 pany. I heard of something like that from Mr. DePass and from Mr. L. DeV. Chipman. Neither DePass or Chipman showed me a copy of the Order in Council to that effect; but I did see one. It was in December, 1873. It came in a letter from Mr. Killam to Mr. DePass, and DePass being away I opened the letter. When I saw the Order, I was perfectly astonished at the grounds on which it was based, and at once communicated it to my Company. I believe that was the first intimation the Company had of it. Cannot remember from what part of the month of November DePass entered on his duties as Commissioner; nor from what part he commenced to be paid. Cannot say that when DePass went to Ottawa he went as Commissioner of the Company; nor whether he had received his appointment as Commissioner be- 970 fore he went. Nor do I think he had been appointed Commissioner when he went. It was about 20th October. I have not in my possession, nor under my control, either here or at Kentville, any power of Attorney from the Company to Mr. DePass, I was informed of the cancellation of the lease by DePass and Chipman about the time of its being done. It was by letter from Chipman and by telegram from DePass. The telegram came first, the letter afterwards. The change of guage was made at the same time from the Windsor Junction through to Annapolis. Our guage was made to correspond with that of the Intercolonial. Cannot remember the number of stoppages on account of snow; nor how long they respectively continued. The trains were several times blocked for more than one day on account of snow. The snow 980 plough was constructed when the road was built, I think. We always had one. There was no block on the freight longer than a couple of days, and that only at one season of the year, in the fall, when some of the cars would be at Richmond, in consequence of a rush. The principal time when the road was blocked with snow was in March, 1872, when we paid two or three thousand dollars in extra wages, and worked the road at a loss of \$10,000 for the month. There were ten engines on the road when I became Manager; six first class passenger cars; three second and baggage; three composite, and two postal (two second and baggage were not quite



finished at that time); I think about forty to forty-five box cars, and about seventy flat cars; ten cattle cars are included in the box cars. In October, 1873, we had 990 same number of engines and passenger cars; and, I think, about twenty extra box and flat cars. No increase subsequent to that. That is the stock we have now on hand. Those twenty extra cars cost us about \$14,000. We made no attempt to run our trains after the Government took possession of the line. I do not know what duties devolved on DePass as Commissioner. I never saw his authority as such. His power of Attorney was for a specific purpose. The duties that DePass performed as Commissioner were to try and settle the differences between the Government and the Company. Do not know of any other duties he had. The adjustment of our mutual claims in June, 1873, which I referred to in my direct examination, culminated in the agreement. DePass was not at Ottawa when that agreement was signed. It was 1000 signed in London by the Company. The negotiations which culminated in that agreement were conducted by Brydges and DePass, both by letter and by personal interviews. We had one snow plough on our own road regularly, and sometimes other appliances. We had our engines, cowcatchers fitted up so that they would throw snow. I had no monies specially to pay those tolls with, except when I drew out of the road. In November, 1872, when the payment was made to Government, the money was raised by the Directors in London. I think they paid it themselves without raising a loan. The arrears up to January, 1873, were never paid; they were cancelled by the agreement. The arrears of tolls up to November, 1873, were never paid otherwise than by the deposits I made. The Company have always been 1010 short of money. (I think the interest on the bonds of the Company was all paid as required by law as far as I know; and the bonds were paid as they became due or as the law required. I am not aware that the interest was ever in arrears. I am aware that there was a foreclosure, and a Receiver was appointed, but he never entered into office. The claims that led to the foreclosure were paid by the Directors.—*Objected to by Mr. Henry.*)

Re-examined by Mr. Henry—I did not see the Power of Attorney that DePass had, executed. I think it was signed by DePass' father, one of the Directors of the Company. It was not in the handwriting of any one with whose handwriting I am acquainted. DePass told me it was a Power of Attorney, and beyond that I did not 1020 know whether it was a Power of Attorney or not. It was an authority to DePass to execute at a future time an agreement with the Western Counties Railway, if it could be done.

(Signed)

P. INNES.

Sworn to, &c., &c., 7th June, 1878.

W. T., M. S. Ct.



Evidence of the contents of the Power of Attorney objected to by Mr. Henry, on the ground that DePass is not now a servant of the Company; and the document should be in his possession and not in plaintiff's; and because he is not allowed to cross-examine the witness as to whether the document was executed by the 1030 Company.

(Signed)

W. TWINING,
M. S. Ct.

Evidence of contents of Power of Attorney—Notice of produce having been given.—W. T.

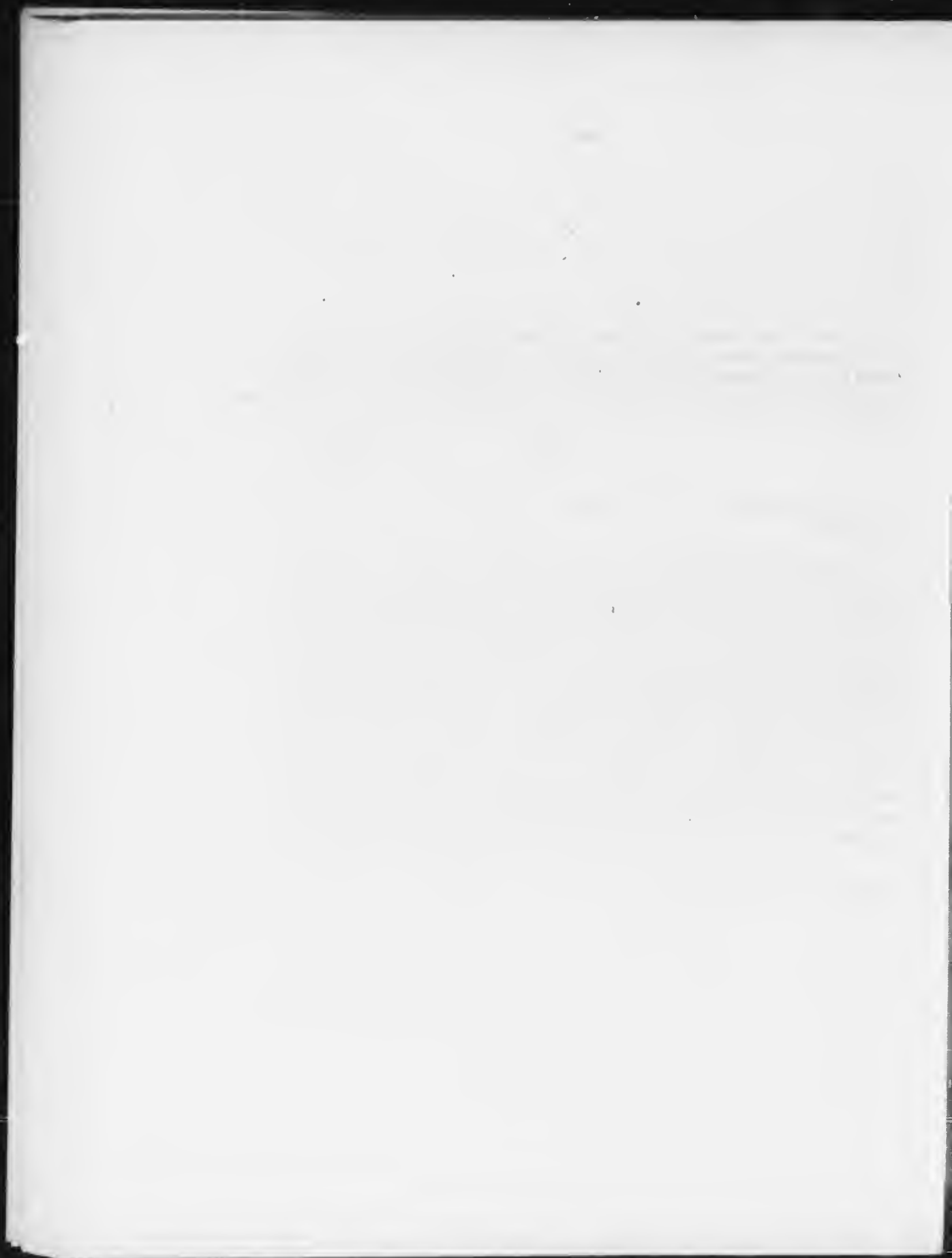
The matter which DePass was specially authorized to transact under his Power of Attorney, was to arrange an agreement with the Western Counties Railway on the basis of a memorandum of proposed agreement, signed by Mr. Killam and Mr. DePass, and which had been submitted to our Directors and approved of by them. It is the memorandum of agreement set out in the answer. Our Company's head- 1040 quarters are in London. I have not any letters from the Company on the subject of that Power of Attorney and proposed agreement. I have not under my control the correspondence between DePass and the Company. I think that correspondence is in Mr. DePass' possession. DePass had no authority over me. I was the principal officer of the Company in this Province. I had not any authority over him. I do not know that DePass went to Yarmouth to confer with Killam on the subject of that agreement. He was there several times. I think he went for that purpose. I mean to say, that the only ground I have for saying that the proposed agreement was approved of by our Directors was that I was so informed by Mr. DePass.

(Signed)

P. INNES. 1050

Sworn, &c., &c., 7th June, 1878.

W. T., M. S. Ct.



IN THE SUPREME COURT, 1878.

1060

Cause—

IN EQUITY.

THE WINDSOR AND ANNAPOLIS RAILWAY COMPANY, *Plaintiffs*.

vs.

THE WESTERN COUNTIES RAILWAY COMPANY, *Defendants*.*Kenneth Sutherland (a witness for Plaintiffs) sworn.*

Examined by Mr. Henry—I have been acquainted with the running of the road since May, 1872. The road from Halifax to Annapolis. I was Traffic Superintendent, and had charge of the running of the locomotives and trains on the whole of the road, From January to May, 1872, I was joint agent at Windsor Junction of Plaintiff Company and the Nova Scotia Railway. From 1st January, 1872, to 1st May, 1872, the road, so far as I could see, was efficiently operated, except when delayed by snow storms. The trains arrived as regularly during snow storms as the trains of the Nova Scotia line. The Plaintiff Company had six new English locomotives; the finest that have ever been in this country; fifty ton engines. I heard no complaint about the rolling stock. When I took charge in May, 1872, I found that we had more rolling stock than the traffic required during the whole season. I found then the six English engines, already spoken of; one Scotch engine, a good one; two American wood-burning engines; one Canadian, and another engine which I never saw working. There were six first class passenger cars, in fair order; three second class, in fair order; three composite cars; two postal cars; forty-two box cars, and eight building, which were completed that season; seventy flat cars and twenty more building, which were completed next season. The box and flat cars were in first class order. The operation of the road was never suspended, except on account of snow, and the day and one-half the gauge was being changed. From May, 1872, three trains were run each way during summer. Never less than two trains each way. I believe we had all the modern appliances to combat the snow—snow ploughs and flanges—and we employed extra hands to clear the track. The whole road, from Windsor to Annapolis, was operated continuously, as I have stated. I have had twenty-five to thirty years' experience of railways. I believe that the train service from 1st January, 1872, to last August, was efficiently conducted. From 1st January to May, 1872, I think that the Plaintiff Company never ran less than two trains each way per day.

Cross-examined by Mr. Thompson—The Government cleared the Branch line of snow with snow ploughs. The six new engines I have spoken of had been in use for two years before. I saw the maker's name and the date on one of them. Their names were, the *Minnehaha*, the *Grand Pre*, the *Gaspereaux*, *Hiawatha*, *Gabriel*, and *Evangeline*. My other knowledge of their age is from hearsay. I did not notice the dates on all of them. When I was stationed at the Junction I did not travel the road much; never but once. After May 1st, 1872, I travelled over the whole line never less than twice a week. Cannot tell the amount of rolling stock that went to Government at time of change of gauge.

Question—Were the wheels of the locomotives changed before their transfer to Government.—*Objected to by Mr. Henry.*

Answer—I don't know anything about that. I do not know it from Mr. Innes.

Sworn, &c., &c., 7th June, 1878.

(Signed)

K. SUTHERLAND.

W. T., M. S. Ct.

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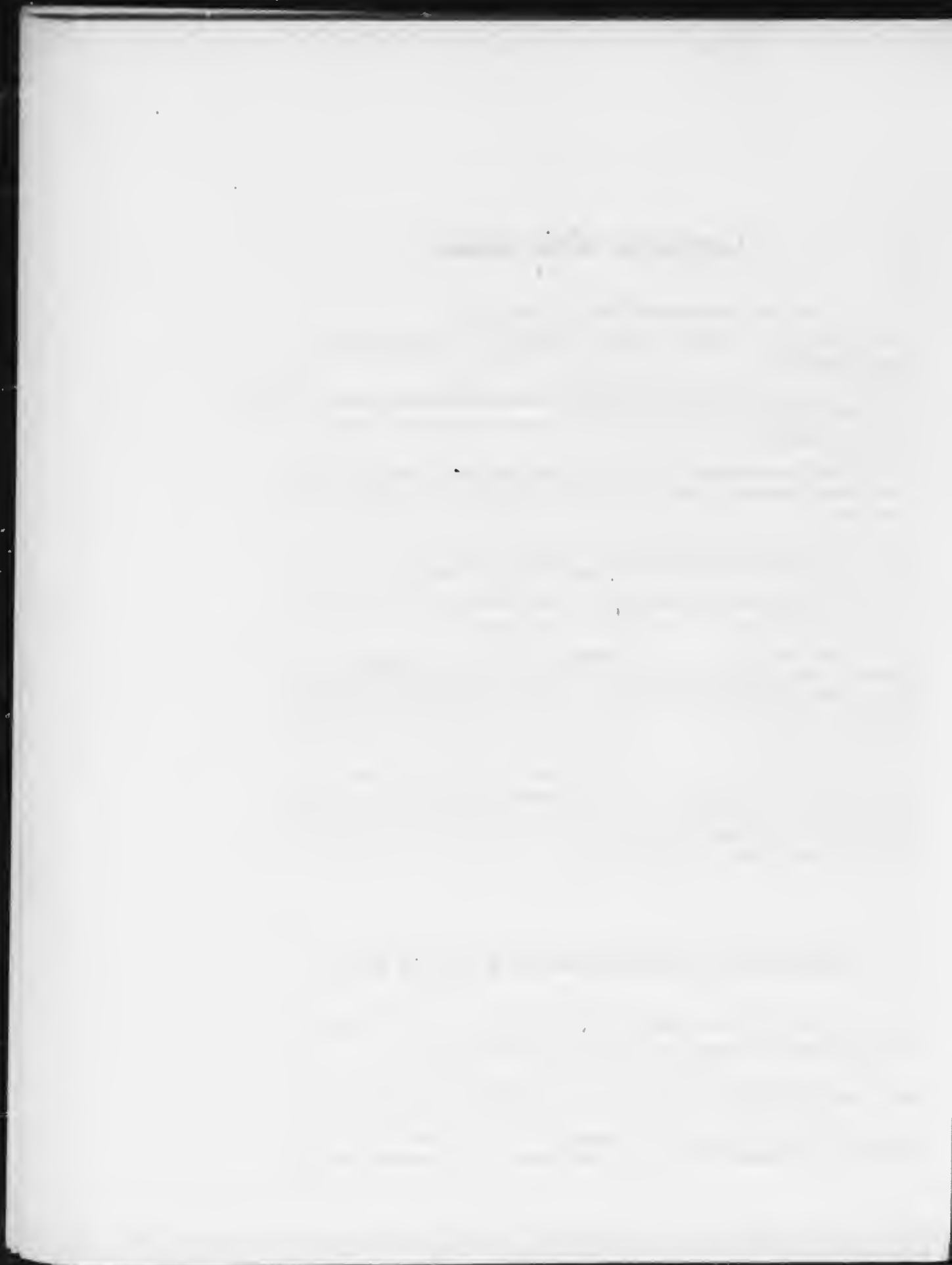
Interrogatories to Thos. Reynolds.

1. What is your occupation, and where do you reside?
 2. Have you ever acted on behalf of the Windsor and Annapolis Railway Company, and when?
 3. In relation to what were you employed, and what was your authority? If 1110 your authority was in writing, produce the writing to be annexed to the answers to these interrogatories.
 4. Had you anything to do in relation to any claim of the Windsor and Annapolis Railway Company against the Government of Canada, and what claims were they, if any?
 5. State what you did with the Government in relation to the matter in which you were acting for the Windsor and Annapolis Railway Company.
 6. What interviews had you with the Minister of Public Works, and what took place at those interviews, in respect to the Windsor Branch.
 7. Had you any interviews in particular in which the said Minister made any 1120 promise or undertaking through you, to the Windsor and Annapolis Railway Company, in relation to the threatened taking of the Windsor Branch by the Government? What was the date of that interview, and what was then promised by the Minister of Public Works?
 8. Do you know of any matter or thing touching the matters in question in this cause, that they may tend to the benefit and advantage of the plaintiff herein, besides what you have been interrogated upon? Declare the same fully and at large, and all circumstances and particulars relating thereto, to the best of your knowledge, as if you had been particularly interrogated thereon.
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Evidence of Thos. Reynolds, taken at Riviere Du Loup.

1130

1. My name is Thomas Reynolds, I am Managing Director of the St. Lawrence and Ottawa Railway Company, and I reside in the city of Ottawa.
2. I began acting for the Windsor and Annapolis Railway Company on the 25th day of October, 1872, and continued to do so up to the 12th March, 1874.
3. I was requested to act for the Company in relation to certain claims of the Government on account of tolls due to the Government by the Company, under the



agreement or lease of the 22nd of September, 1871; also on account of certain counter claims which the Company had against the Government. The only authority from the Company which I had in writing, is contained in the letter from the chairman of the Board of Directors of the Company, which I now produce as required, 1140 and hereunto annexed, marked "A."

4. The claims of the Company against the Government, with which I had to do were for the loss of an engine and a freight car burned in the engine shed of the Government; for rolling stock damaged in an accident near the "Three Mile Plane" Windsor Branch, on the 11th January, 1872; also for an engine damaged in a collision near Halifax, on the 29th January, 1873, and also for a return of Custom duties, and for sundry other matters.

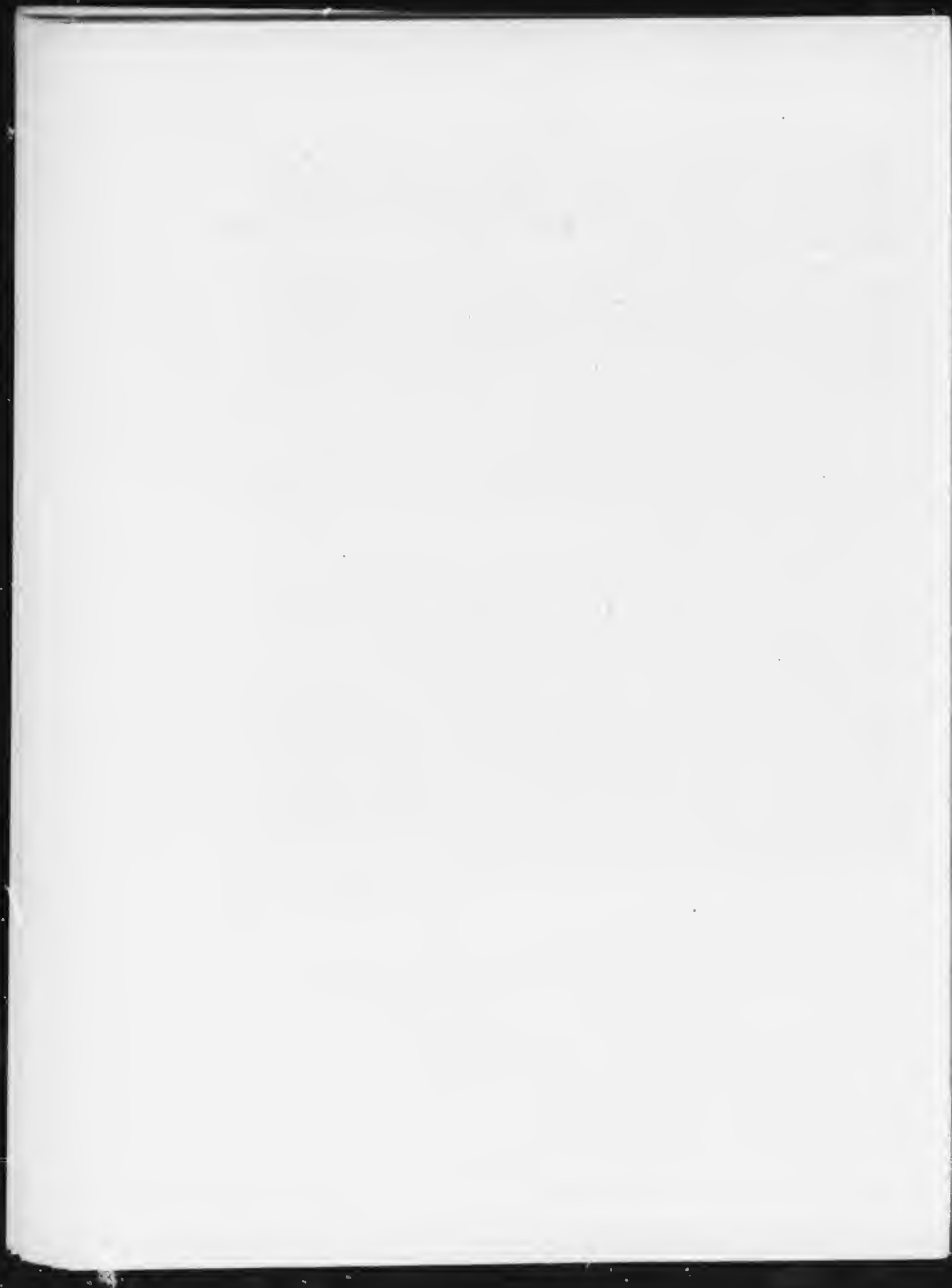
5. I endeavored to obtain consideration by the Government and to obtain time for the Company to pay the arrears of tolls due from them to the Government.

6. I had numerous interviews with the Minister of Public Works, the result of which was that I obtained some extension of time for the payment of the tolls in question, and had reason to expect that a favorable consideration would be given to the Company's claims as a sett-off. 1150

7. On the 20th October, 1873, I had an interview with the Honorable Mr. Langevin, Minister of Public Works, acting for the Government of Canada, when he promised me, acting on behalf of the Windsor and Annapolis Railway Company, that, if the arrears of tolls then due were paid before the 1st November, then next ensuing, no action would be taken by the Government in respect thereof.

8. I do not know of anything else on which I can give information in relation to the Windsor and Annapolis Company's affairs, except that the promise made by the Minister of Public Works, described in my answer to the last interrogatory was not fulfilled for two days after that promise was given, namely, on the 27th of October, 1873. I was credibly informed that an order in Council had been passed, transferring the Windsor Branch to another Company. I never received the slightest intimation of the existence or submission of the report on which that order in council was alleged to be founded, until some time after the latter date, and I then first heard of it informally from a person not connected with the Government. 1160

T. REYNOLDS.



Letter referred to in answer to Interrogatory Number 3.

Windsor & Annapolis Railway Company, (limited), 1170
 24 Great Winchester Street,
 London, June 5th, 1873.

Thos. as Reynolds, Esq.,

St. Lawrence and Ottawa Railway, Ottawa.

MY DEAR SIR,—Your letter of the 8th ult. to Mr. Robinson, on the subject of this Company, has been perused with much satisfaction by the Directors, and they beg to tender you their best thanks for the lively interest you have taken in the concern.

With reference to the tolls due to the Dominion Government, Mr. Innes writes that he has promised payment of \$17,618 in the course of current month. In doing this, we apprehend that he reckoned on our success in raising the additional capital of £100,000, to accomplish which we have been straining every nerve the last few months. We had made great progress in this, but our course has been checked by a series of untoward circumstances. 1180

Regarding the statements made in the Local House of Assembly, nothing can be more false than the suggestion thrown out by the Company's enemies, that we are not honestly and sincerely desirous of fulfilling all its obligations towards the Government and the public. Nothing, as you are aware, but the want of capital, prevents the Company from repairing and stocking the line, and paying the tolls with regularity; and had the Company been aided and supported by the Government and the colony, the needful funds would have been raised; but the opposition from which it has suffered, has impeded its every step, and injured its credit in the eyes of the British public. 1190

In this emergency, I am compelled, not only to involve your friendly offices with the Government of the Dominion, and ask from them an extension of time for the payment of the tolls, but also to ask you kindly to advise the Board as to the course which they should adopt regarding the resolutions of the Nova Scotia House of Assembly, of which I annex a copy.

I am, my dear Sir,

Yours very faithfully,

JOHN FIELD, *Chairman.* 1200

THE HISTORY OF THE

REPUBLIC OF THE UNITED STATES

OF AMERICA

FROM 1776 TO 1876

BY

JOHN P. FLETCHER

OF THE

BAR OF THE DISTRICT OF COLUMBIA

AND

OF THE

REPUBLIC OF THE UNITED STATES

OF AMERICA

IN

THE

REPUBLIC OF THE UNITED STATES

OF AMERICA

Interrogatories administered to H. A. Fissault.

1. What is your occupation or profession, and where do you reside ?
 2. Have you ever seen the paper writing presented to you, and was it duly executed in your presence ?
 3. Whose signatures are to the said paper writing, and in what capacity do the parties whose names are to the said paper writing act, respectively ?
-

Answers of H. A. Fissault.

To the first interrogatory the said deponent saith :

1. My occupation and profession is a Clerk in the Public Works Department of the Civil Service at Ottawa, and I reside at Ottawa, in the Province of Ontario. 1210

To the second interrogatory the said deponent saith :

2. I have seen the paper writing presented to me and marked Exhibit "A," and the same was executed in my presence.

To the third interrogatory the deponent saith :

3. The signature "A. Mackenzie" is the signature of Honorable Alexander Mackenzie, Minister of Public Works of Canada, and he acts in the capacity of Minister of Public Works of Canada ; and the signature of "F. Braun" is the signature of Frederick Braun, and he acts in the capacity of Secretary of Public Works of Canada. I know nothing of the signatures of "Joseph Brass," Director, and "William Ross Campbell," Secretary. 1220



Agreement annexed to Fissault's Answers and referred to therein
as exhibit "A."

ARTICLES OF AGREEMENT made and entered into the twenty-second day of June, in the year of our Lord One Thousand Eight Hundred and Seventy-five, between the Windsor and Annapolis Railway Company, hereinafter called "the Company," of the first part, and Her Majesty Queen Victoria, represented herein by the Minister of Public Works of Canada, hereinafter called "the Minister," of the second part:

Whereas, The Company was, on the first day of January last, indebted to the Government of Canada in a large sum of money, being one-third of the accrued gross earnings of the Windsor Branch of the Intercolonial Railway, worked and managed by the Company, under an agreement entered into by them with the Government of Canada, dated the twenty-second day of September, in the year one thousand eight hundred and seventy-one, granting the said Branch to the said Railway Company for twenty-one years from the first day of January, one thousand eight hundred and seventy-two;

And, Whereas, The Company have preferred certain claims against the Government of Canada by way of set-off to such indebtedness, but which claims have not been recognized or admitted;

And, Whereas, It is found desirable that the gauge of rails on the said Branch should be changed from their present five feet six inches gauge to the standard gauge of four feet eight and one half inches:

These Presents Witness, That the said Company, for the consideration hereinafter named, do hereby contract and agree, to and with Her Majesty, represented as aforesaid, that the Company shall and will, at their own cost and charge, on or before the first day of July now next, in a proper, substantial, and workmanlike manner, but subject to the approval of the Minister, or officer appointed by him, change the gauge of the Windsor and Annapolis Railway, and make it conform to the present standard gauge above named, and deliver over to the said Minister, or whom he may appoint for that purpose, at such place or places as may be fixed, nine broad gauge locomotive engines, fourteen sets of broad gauge passenger ear trucks, and one hundred and forty-five sets of broad gauge freight ear trucks, and also execute and deliver a release of all claims and demands whatsoever against Her Majesty or the Government of Canada up to the first day of July one thousand eight hundred and seventy-five.

In consideration whereof, Her said Majesty, represented as aforesaid, doth promise and agree to and with the said Company:

That upon the said change of gauge being effected in the manner hereinbefore described, all debts and liabilities accrued due by the Company to the Government of Canada in the manner aforesaid, up to the 1st day of January last past, shall be discharged and extinguished:



That the Minister will deliver to the said Railway Company, at Windsor Junction, nine standard gauge locomotive engines (three new and six converted ones), fourteen sets of standard gauge passenger car trucks, and one hundred and forty-five sets of standard gauge freight car trucks;

That the said nine standard gauge engines shall be and remain the property of the Government of Canada, and in no way liable for the debts and liabilities of the said Company.

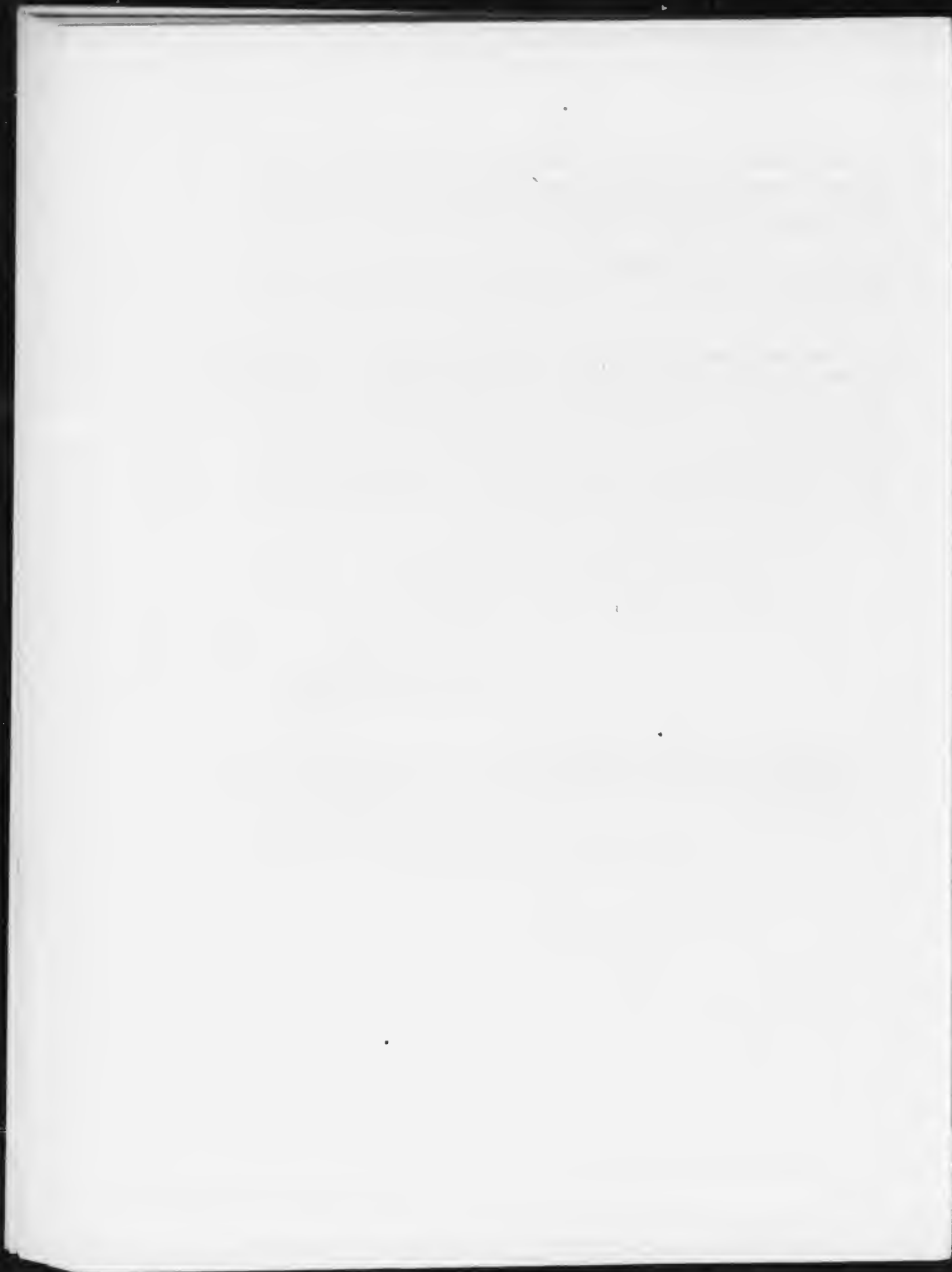
And it is hereby distinctly understood and agreed upon, between the parties hereto, that nothing herein shall in anywise (except as to discharging the indebtedness and claims herein above named) alter, vary, or interfere with the terms of the agreement under which the said Company hold the said Branch line, but that all monies accrued due as being one-third of the gross earnings of the said Branch from the first day of January last, shall be paid by the Company, to the credit of the Receiver General of Canada, on or before the thirty-first day of July next, and thereafter those accruing shall be paid monthly as provided in the said agreement under which the Company hold and work the Branch as aforesaid, which (except as aforesaid) is hereby declared in all respects in full force and effect. 1270

The Corporate Seal of the Company was hereto affixed this }
 twenty-fourth day of August, one thousand eight } (SEAL)
 hundred and seventy-five, in the presence of }

JOSEPH BRASS, 1280
Director.

WM. ROSS CAMPBELL,
Secretary.

Approved, signed and sealed by the Minister of }
 Public Works of Canada, and countersigned }
 by the Secretary of said Public Works, in }
 the presence of }
 H. A. FISSIAULT. }
 A. MACKENZIE,
Minister of Public Works of Canada.
 F. BRAUN,
Secretary Public Works, Ottawa.



HALIFAX, SS.

IN THE SUPREME COURT,

IN EQUITY, 1878.

1290

*Cause—*THE WINDSOR AND ANNAPOLIS RAILWAY COMPANY, *Plaintiffs.**vs.*THE WESTERN COUNTIES RAILWAY COMPANY, *Defendants.*

Evidence taken in the above cause under an Order of Reference made therein, dated the twenty-seventh day of May, 1878, before William Twining, a Master of this Court and Examiner herein, at his office in Halifax.

THURSDAY, October 17th, 1878, 2.30 A. M.

Present—J. S. D. Thompson and N. H. Meagher, Counsel for Defendants; J. N. Ritchie and H. McD. Henry, Counsel for Plaintiffs.

1300

James W. Bingay, a witness for Defendants, sworn :

Examined by Mr. Thompson—I am Secretary of the Defendants Company. Have been so since 16th December, 1871; immediately after that Company was formed. As such Secretary I have possession of the record books, books of account, and most of the documents. The Order in Council referred to in the bill in this suit was made in October, 1873. I was in Ottawa at that time. The President, George B. Doane, the Treasurer, Frank Killam, and one of the Directors, Wm. H. Moody, were in Ottawa at that time. We made to the Public Works Department, in Ottawa, a proposition on the 20th October, 1873, and another on the 22nd October, 1873. The one of the 20th October, 1873, is the one contained in Schedule A of Chapter 16 1310 of the Dominion Acts of 1874. The proposition was made under the belief that the Order in Council above spoken of had been or was about to be made. I met Elias A. DePass in Ottawa at that time.

Note by Master—Mr. Thompson is proceeding to examine this witness as to the interviews and negotiations between Elias A. DePass as agent of the Plaintiffs and the Defendants. Mr. Henry objects thereto, on the ground "That no authority from the Plaintiffs to DePass to act for them has been proved"; and requests that such evidence (if taken) be taken on separate paper, so that the Judge may, if he think fit, reject it. I allow it to be so taken, Mr. Thompson objecting to my ruling.

(Signed)

WILLIAM TWINING, 1320

Master Sup. Ct.



Objected Evidence of J. W. Bingay.

HALIFAX, SS.

IN THE SUPREME COURT, 1878.

IN EQUITY.

Cause—

THE WINDSOR AND ANNAPOLIS RAILWAY COMPANY, *Plaintiffs.*

vs.

THE WESTERN COUNTIES RAILWAY COMPANY, *Defendants.*

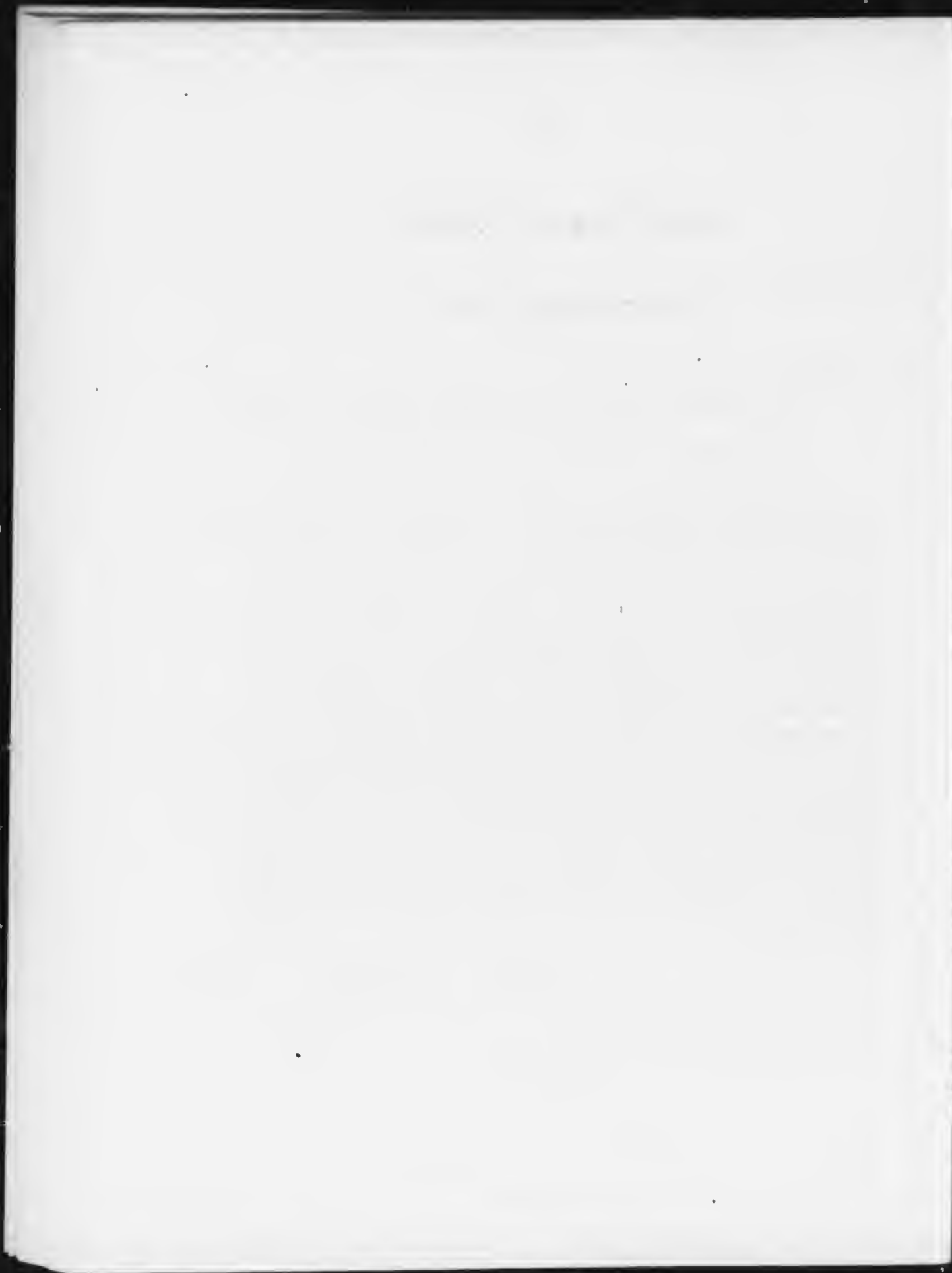
Jas. W. Bingay.—I met Elias A. DePass in Ottawa at that time. DePass was agent for the Plaintiffs Company at that time. I had an interview with him, either 1330 on the day the Order in Council cancelling the lease was made, or the day after. At the time I refer to, DePass talked as if the lease had been cancelled. That interview was at the hotel in Ottawa. DePass called on us. Our President, Treasurer, Wm. H. Moody and myself were present. DePass was attended by Counsel. He entered into negotiations with us respecting the Windsor Branch. He wished a lease from our Company to the Windsor and Annapolis Company of the Windsor Branch. He produced a draft of a lease which I now produce. (It is put in, marked A.—W.T.) He desired that our Company should execute it. He urged us considerably to execute the lease. The interview lasted for some time, and resulted in nothing as far as the lease was concerned. We declined to execute such lease, and it never was executed. 1340 The first I heard of any claim of the Plaintiffs to the Windsor Branch was when I received a notice from Mr. Hugh McD. Henry. The notices were received a few days after their date. They are the notices referred to in the bill. There was a meeting of Defendants Company on 8th June, 1874, when the question of leasing the Windsor Branch to the Plaintiffs Company was taken up. I was present and kept the minutes of that meeting. Mr. DePass was present on behalf of the Windsor and Annapolis Railway Company. That is the same DePass to whom I referred as being in Ottawa. A resolution was then passed as follows: (A copy of same is put in by consent, and is marked B.—W. T., *M. S. Ct.*) Mr. DePass was present when that resolution was passed.

(Signed.)

W. TWINING,

1350

Master Sup. Ct.



Jas. W. Bingay.—Bonds were issued secured by a mortgage to the extent of Two Hundred and Eighty Thousand pounds sterling, (£280,000 Stg.) by the Defendants Company. I think they were dated 1st November 1875, and they were issued about end of 1875, or beginning of 1876—before this suit was commenced.

That mortgage was executed by Defendants Company, and it conveyed among other property, the following (on page fifth and sixth of the printed copy.—W. T.):

"All the right, title and interest, of the said Company, in that certain completed railway known as the Windsor Branch, being that certain Railway running from Windsor in the said Province to the Trunk Line of the Intercolonial Railway intersecting the same between Halifax and Truro to be by the Government of the Dominion of Canada, transferred and conveyed to the said Western Counties Railway Company, upon the completion of the Railway of the said last mentioned railway from Annapolis to Yarmouth; Together with all rights, privileges and running powers over the Intercolonial Railway between Halifax and Windsor Junction, accruing to the said Company, together with the aforesaid right to the said Windsor Branch, under and by virtue of an Act of the Parliament of the Dominion of Canada, entitled "An act to authorize the transfer of the Windsor Branch of the Nova Scotia Railway to the Western Counties Railway Company," and under and by virtue of an order of the Honorable Privy Council of Canada, duly made and passed on the 30th day of October, 1873, and referred to in the said Act and in the schedule thereto appended." 1360 1370

A Copy of this mortgage was afterwards put in by consent and is marked "C"—W. T.

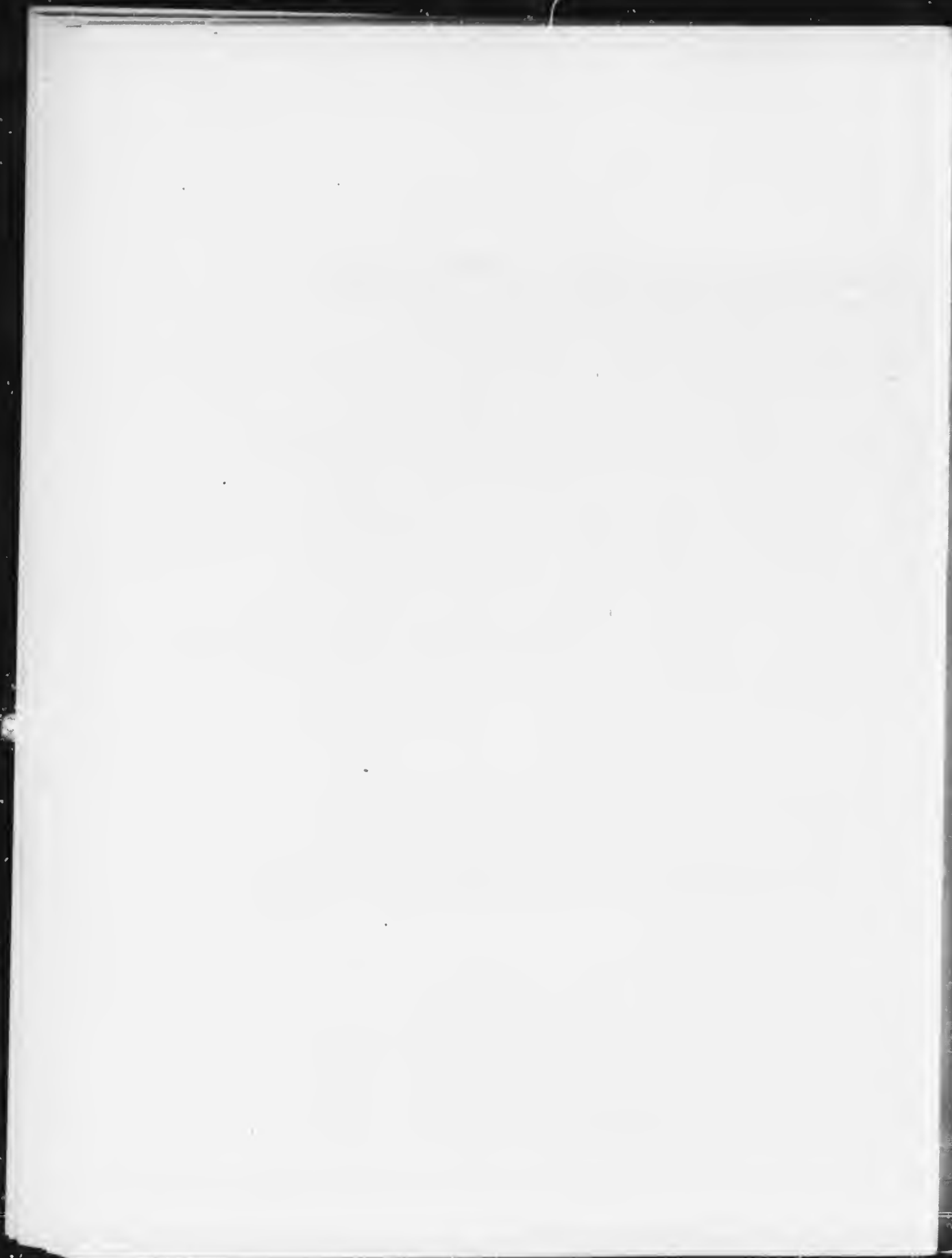
Our Company made the proposals (on 22nd Oct. 1873,) which are mentioned as first and second in schedule "B" of Chapter 16 of Acts of 1874, before referred to.

Our Company entered into a contract with Shanley & Plunkett for the completion of the Railway from Yarmouth to Annapolis. It was entered into 21st Oct. 1875, for the following considerations. They are set forth on Page 2 of the printed contract now produced from Letters "A" to "H" as will fully appear by reference to such contract. 1380

A copy of this contract is put in by consent and is marked "D"—W. T.

That mortgage was given, the Bonds were issued, and that contract entered into in good faith and with the belief that our Company had power to do so.

Cross-Examined by H. McD. Henry.—The paper referred to by me which has been already put in marked "A" was a draft of a lease to be signed. I never saw any written authority to Mr. DePass, to act for the Plaintiff's Company. DePass on the interview spoken of by me was accompanied by Hon. Jas McDonald, as his Legal Counsel. I do not know in whose handwriting that draft of lease is. I believe it to be in the handwriting of said James McDonald. The negotiations were simply these, "They requested a lease from us upon the terms mentioned in that draft." 1390



I do not think the terms were discussed at all—Simply the question of lease or no lease. The lease of the Windsor Branch from the Government to Plaintiffs Company had been cancelled. I first knew of the lease of 1871 a short time after or about the time of the passing of the order in Council. I may have known of it before, but I do not remember. I do not know that I had any knowledge of the lease of 1871 at the time we made the proposal of Oct. 20, 1873. I presume I must have known then of the terms on which the Windsor and Annapolis Railway were operating the Road; *that is* I mean to say that I knew that the Plaintiffs Company were working the road under some lease or arrangement with the Government, but, the *particular* 1400 terms of it I did not know. On Oct. 13, 1873, a committee of our Company was appointed to go to Ottawa, consisting of Messrs Doane, Moody and myself, to make arrangements about the Windsor Branch, and also to make arrangements about capitalizing the subsidy. That was the first time the matter of the Windsor Branch came up as far as I can tell by the Records or from memory. I will not undertake to say whether the matter was previously discussed or not. If it had been previously discussed by the Directors, some minutes of it would have been made by me in the records. I cannot say how many bonds or what amount was issued to *bona fide* holders. The bonds were executed and delivered to a trustee to be handed to the contractors from time to time. I think private parties outside of the contractors 1410 purchased about \$70,000 worth.

(Signed)

JAS. W. BINGAY.

Sworn, &c., &c.

W. T., M. S. Ct.



HALIFAX, SS.

IN THE SUPREME COURT,

IN EQUITY, 1878.

*Cause—*THE WINDSOR AND ANNAPOLIS RAILWAY COMPANY, *Plaintiffs*.

vs.

1420

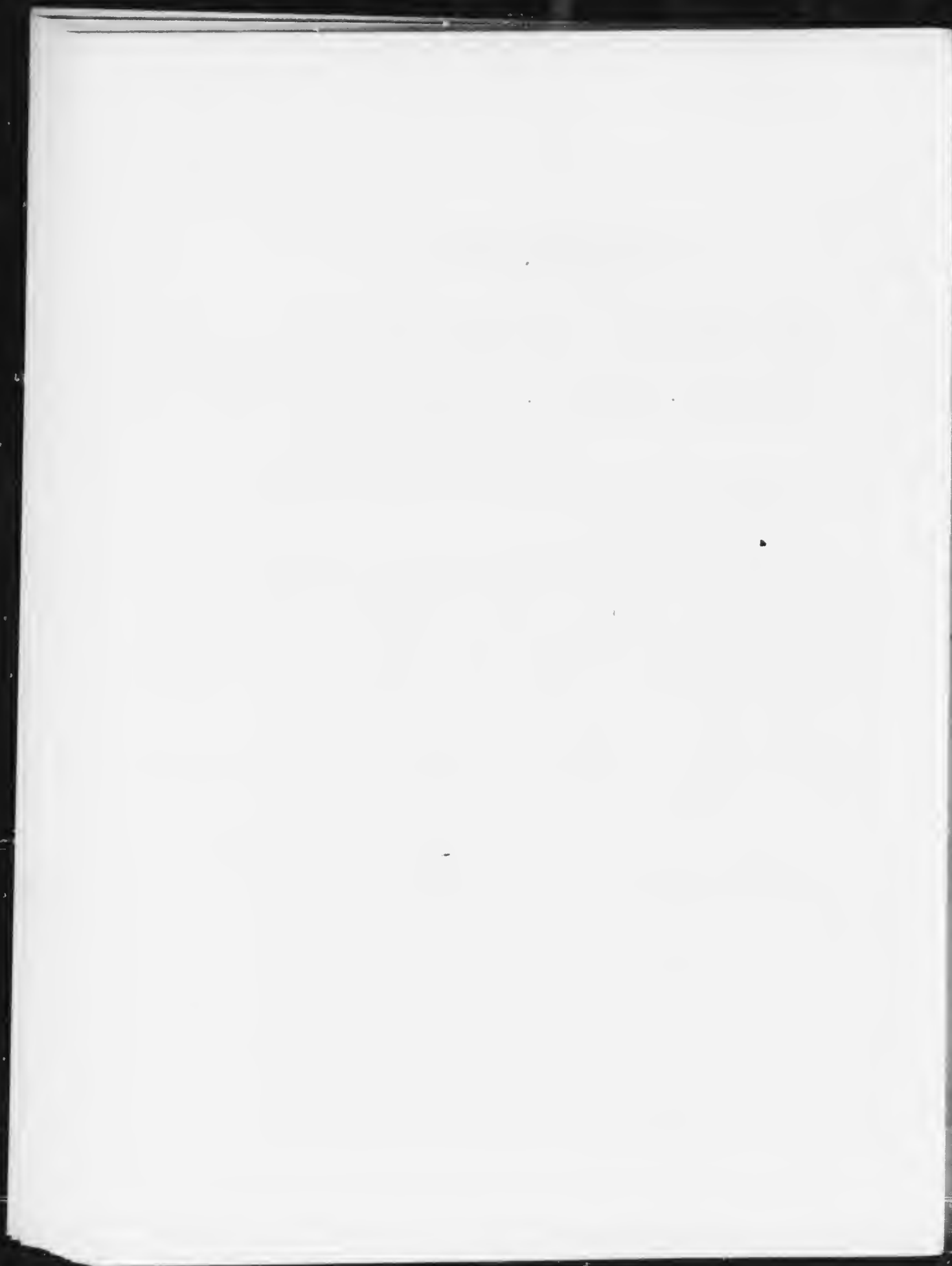
THE WESTERN COUNTIES RAILWAY COMPANY, *Defendants*.

MONDAY, October 21st, 1878, 2.30 P. M.

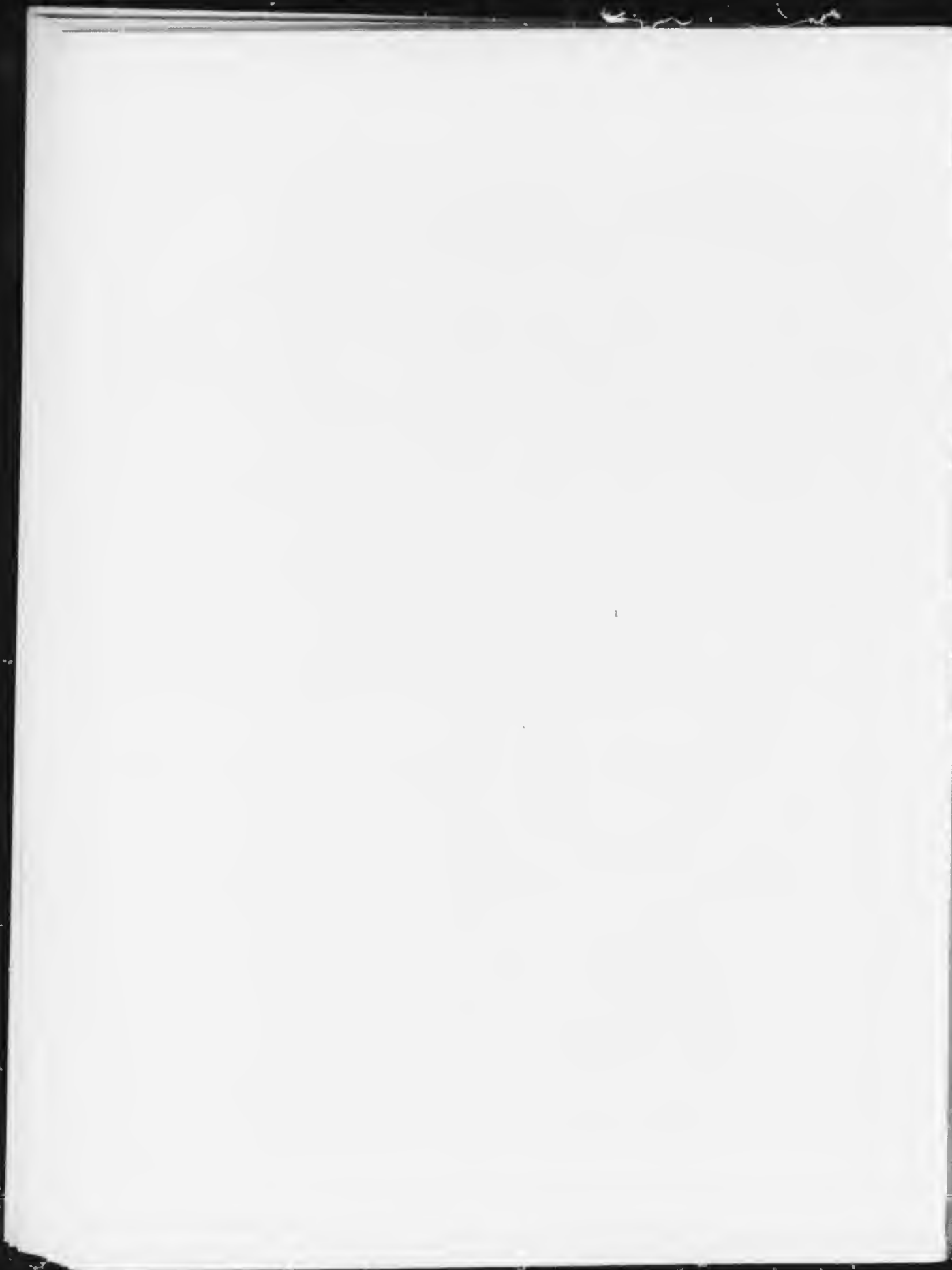
Present—Messrs. J. N. Ritchie and H. McD. Henry, for Plaintiffs; J. S. D. Thompson and N. H. Meagher, for Defendants.

Frank Killam, a witness for defendants, sworn:

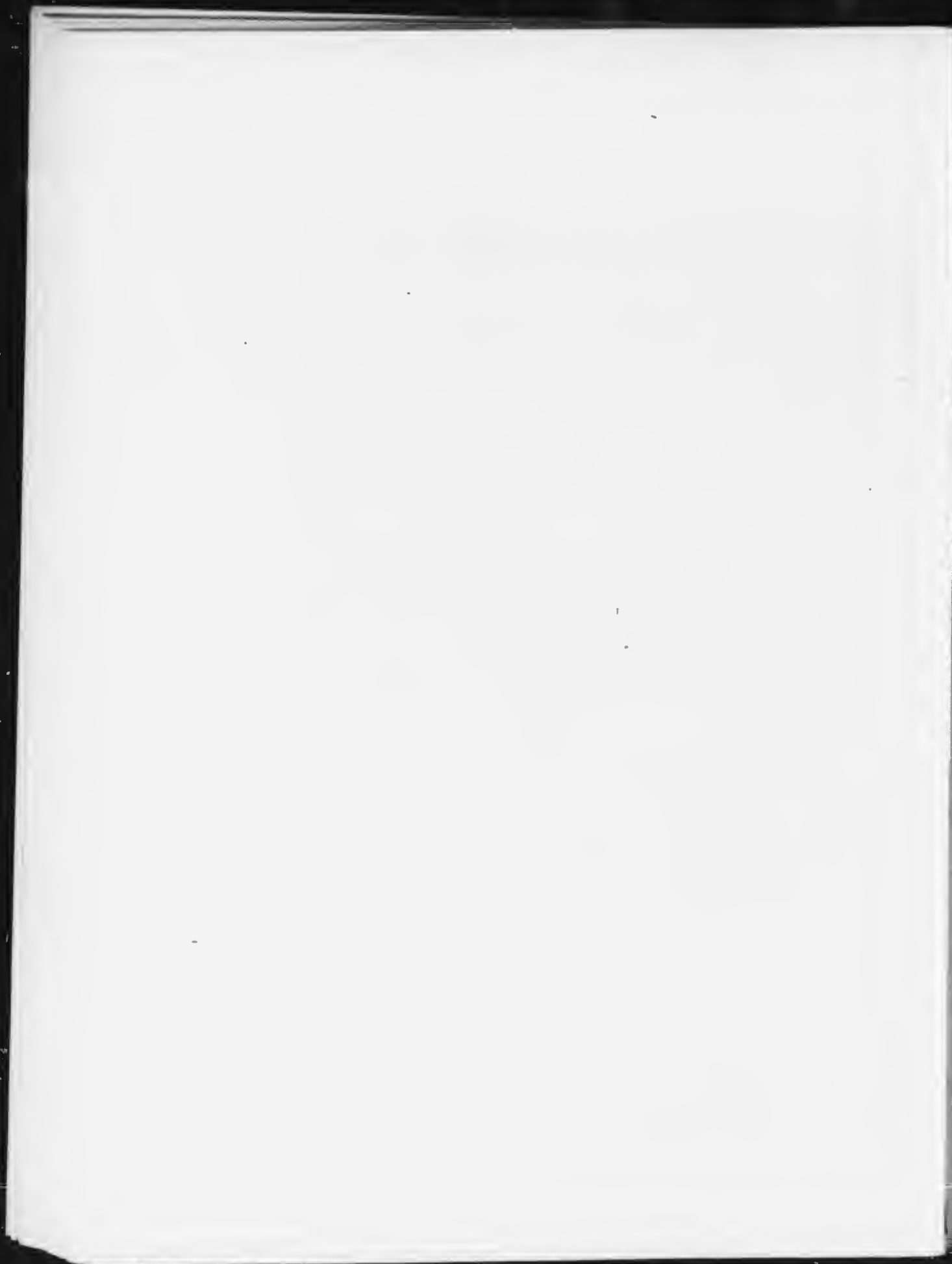
Examined by Mr. Thompson.—I am a Director and Treasurer of the Defendants Company. I have been so ever since the organisation of the Company. I was in Ottawa in Oct. 1873. A committee representing our Company was sent there then. I was there on other business and consulted with that Committee. That Committee was sent to Ottawa in consequence of a Resolution which had been passed in the House of Commons in the May previous That was the resolution referred to in the Act, Chapter 16 1874. The Railroad to Annapolis had then been commenced by our Company. The Committee met some of the ministers at Ottawa. I was present when they discussed the question of the transfer of the road to our Company and I was present at the negotiations between Mr. DePass and the Committee of our Company. Mr. DePass met the members of our Committee on the morning on which he arrived at Ottawa. DePass asked me to procure him a copy of the Resolution of Council. DePass knew of the forfeiture of the lease. I was present, when he was informed, by a Minister, that the Plaintiff Company had forfeited their lease and it would be cancelled. That was on the 21st day of October. Part of DePass' business there was to get the Minister to consent to an increase of fares on the railway. He asked me to assist him in getting such increase, and through my influence he got it. That increase went into effect. I got for DePass a copy of the Resolution in Council cancelling the lease. I sent it to him. It was within a few days after the passage of the resolution. I do not know whether DePass received it or not. DePass' business with the Minister partly related to the threatened cancellation of the lease. Our Committee and DePass had an interview on 23rd October. He proposed at that interview that a lease should be given by Defendants Company to the Plaintiff's Company of the Windsor Branch. A draft of a lease was then submitted by him or his Counsel. That is the paper already produced by Mr. Bingay. (Put in, marked A.— 1450 W. T.) The Order in Council had then been passed. DePass was aware of it. He had been informed of it that day by Mr. Langevin, the Minister of Public Works, and the interview with the Committee took place that evening. That interview resulted in nothing. The matter was discussed and dropped. DePass wished to have



a lease granted to their Company, so that there would be no doubt of their being confirmed in the possession of the Branch. I was present on 23rd October at an interview between DePass and the Minister, when DePass desired the Minister to permit the Plaintiffs Company to remain in possession until the 1st December. The Minister agreed to do this as a temporary arrangement on condition that the Plaintiffs should pay certain sums to the Government weekly. Those sums were to be paid for the use of the Windsor Branch. In case the weekly payments were not made the Minister stated that he would take the road from them immediately. That arrangement was agreed to on both sides. (Some time after that I saw a Power of Attorney from the Plaintiffs Company to DePass.—*Objected to by Mr. Henry.*) It was after the close of Parliament in 1874. The paper was under the Seal of the Company and signed by the Secretary. I think his name was W. Ross Campbell, or something like that. I am certain it was *Campbell*. It was also signed by a Director; but I don't remember which Director. I read a part of it. That part that I read conferred authority to accept a lease of the Windsor Branch from the Western Counties Railway Company. Negotiations for such a lease were then on foot between DePass on behalf of the Plaintiffs Company and myself on behalf of the Defendants Company, with the knowledge of both Companies. I was acting for our Company with their knowledge and consent. An agreement of that kind had been entered into between us before he produced that Power of Attorney. That agreement was signed at Ottawa. (The original of this agreement to be produced by defendants. A copy of it is now put in, marked E.—W. T., *M. S. Ct.*) It was signed in May, 1874; after the Act had passed the House of Commons. DePass was in Ottawa while the Act was being passed. He was aware of its provisions. I am speaking of my own knowledge. He went with me to the printing office and got a copy of it, before its second reading in the House. Immediately after it had been amended in the House, I furnished him with a printed copy with the only amendment written on it. I had conversations with DePass respecting it, while the Act was going through. He commenced negotiations with me while the Act was passing the House, which negotiations resulted in that agreement. DePass was at Yarmouth about 8th June, 1874; that time spoken of by Mr. Bingay. He was present at the meeting of our Directors, and the resolution (copy already in) marked B, was the result of that interview. (I received a telegram about end of June, 1874, from DePass. I have searched carefully for it since this suit was commenced through my papers connected with the Railway affairs, but have not been able to find it. I did not search for it in the Company's office. I received it at home. I kept the papers connected with the railway which came to me in my own possession.—*Evidence of the contents of the telegram objected to by Mr. Henry; the loss of the original not being sufficiently proved.* W. T.)—I thought I might find it among the papers of others who had acted as Treasurer of the Company during my absence. I did not try whether they had it or not. I applied to the telegraph office for a copy, but could not obtain it. That telegram contained a request, "That I would ask the Minister of Public Works to maintain the permanent way of the Windsor Branch until January, 1875. In consequence of that request the agreement already spoken of, signed at Ottawa, did not go into effect. (I telegraphed his request immediately to Mr. Mackenzie, and received a reply in the affirmative. The Government complied with such request. I have not that telegram nor the answer to it. After signing that agreement, I wrote to the Minister of Public



Works Department, and sent him a copy of it.—*Objected to by Mr. Henry.*) That letter was replied to by Mr. Braun, the Secretary of Public Works Department. The negotiations continued until the latter part of the session of 1875. DePass was there during all that session. He was there on Railway business connected with the Plaintiffs Company. He had claims against the Government, and was negotiating with them about the change of gauge. The paper I now produce is the handwriting of DePass. It was written in my presence in the library of Parliament at Ottawa. (It is put in, marked F.—W. T.) It was written in pursuance of the negotiations which were going on then. He wished me to sign it there; but I did not think it 1510 desirable, and declined. In October, 1873, (29th October,) I wrote a letter to DePass of which I produce a correct copy. (Notice to produce this letter is admitted by Plaintiffs Counsel to have been given.—W. T.) I delivered that letter to DePass personally, in presence of Mr. Reynolds, who was acting as an agent there of the Windsor and Annapolis Railway. It was on the day of its date. Immediately before that I had a conversation with Reynolds and DePass. (Copy of letter put in, marked G.—W. T.) They requested me to promise to Plaintiffs Company a lease of the Windsor Branch. Mr. DePass had requested me to go into Mr. Reynolds office (the St. Lawrence and Ottawa Railway office at Ottawa.) They were particularly anxious that I should put it in writing, and I wrote it in compliance with their request. Mr. 1520 Reynolds made a press copy of that letter in his letter book. The Premier (MacKenzie), DePass, and I, had a conversation during the session of 1875. It was in MacKenzie's office. He was the Minister of Public Works then. The object of that interview was to induce the Government to assist the Plaintiffs Company in changing the gauge of the Road. I went there at Mr. DePass' request. (I had been advocating their cause during all the session. The Government agreed to assist him by giving them certain narrow gauge locomotives and car trucks for broad ones. The locomotives were to remain the property of the Government so as not to be liable for the debts of the Company. The Company were to change the gauge at their own expense. The Government were to change the gauge of the Windsor Branch. The 1530 Plaintiffs were to continue to work the Windsor Branch until the Government were ready to hand it to the Defendants and the Defendants were ready to take it. The Minister also stated to DePass that he wished it distinctly understood that that arrangement was to be merely temporary and that as soon as the Western Counties Railway Company were prepared to take the branch he should hand it over to them under the terms of the Act. That concluded the conversation and we came away. DePass expressed himself very well satisfied with the arrangement.—*Objected to by Mr. Henry as being included and incorporated in an agreement in writing not produced.*) I was not aware of the written agreement of 1875 (referred to in the bill) until January, 1877. The letters I now produce are written by DePass. I know his 1540 handwriting. They are all written to me. Three in number. [Put in, marked H, (April 1, 1874,) I, (November 26, 1874,) J, (February 5, 1875.)—W. T.] Besides what I have said about DePass, I have known him to be actively engaged in the business of the Plaintiffs road since 1873. He has had his office at Kentville, the head office of the Plaintiffs Company in this Province. I have seen him frequently in the office. He appeared to me to have general conduct of the business of the Company outside the working of the road. I have known him to give passes on the road. The *annual* referred to in one of those letters was an *annual pass*. DePass

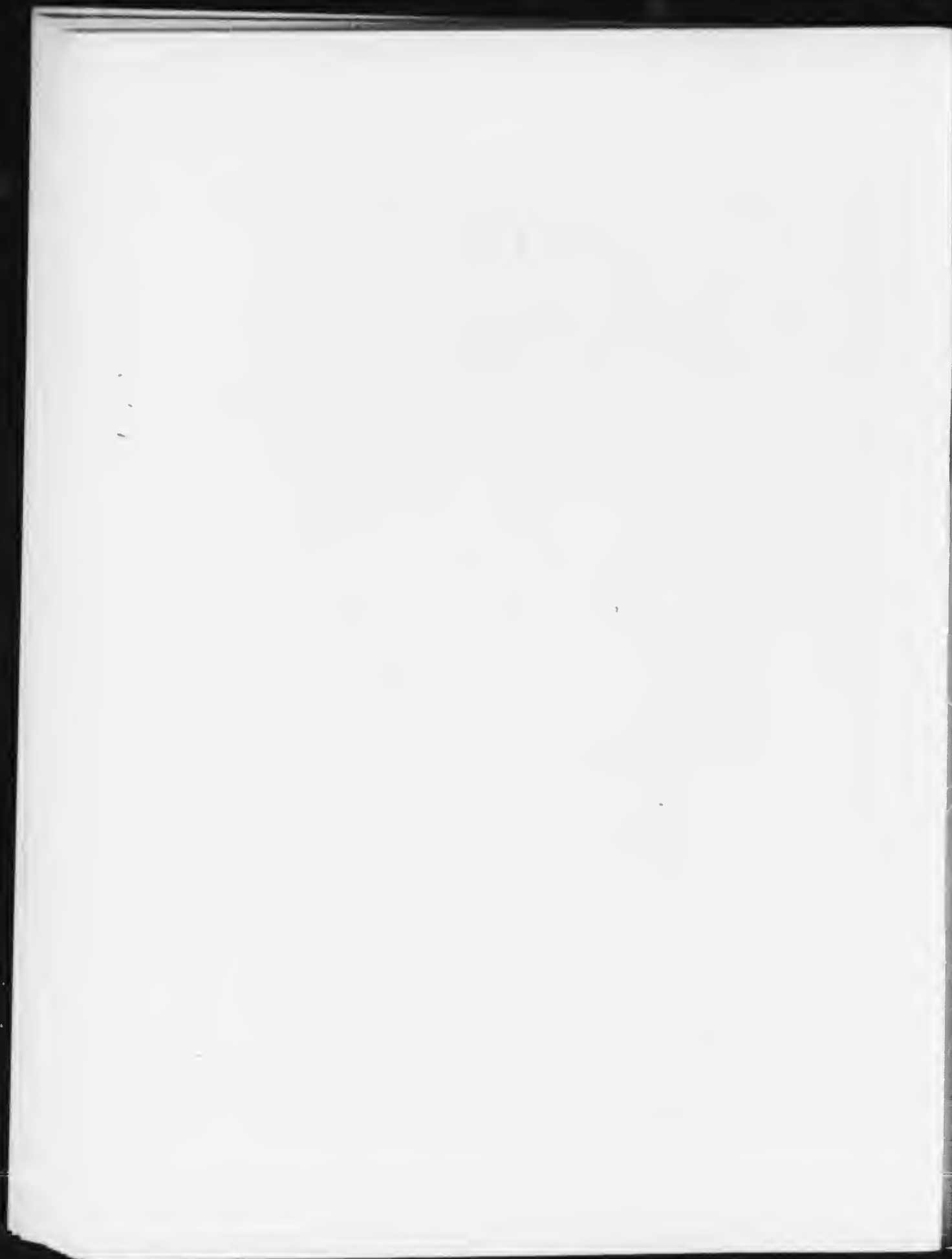


was aware of the intention of our Company to execute the contract with Shanley and Plunkett before it was entered into. He was acquainted with its general terms. 1550
 He was also aware of the intention of our Company to issue the bonds and make the mortgage. I informed him of these matters and of the progress things were making from time to time. The terms which were subsequently carried out were in substance these that I communicated to DePass. They may have differed somewhat in the detail. [I know F. Braun's handwriting. He is Secretary of Public Works Department, at Ottawa, I received the letter now produced, from him. (It is put in, dated Ottawa, July 25, 1877, addressed to F. Killam, Yarmouth, marked K.—W. T.) It enclosed the Order of Council referred to therein. The defendants went into possession of the Windsor Branch, under the authority contained in those documents, on 24th September, 1877.—*Admission of the letter objected to by Mr. Henry as irrelevant.*] 1560
 After receipt of those documents, and before we went into possession, we had negotiations with DePass in Halifax. He endeavored to procure a lease of the Windsor Branch from Defendants Company on several occasions. The amount of bonds issued by Defendants Company is two hundred and eighty thousand pounds sterling (£280,000.) £142,000 of them are held by the trustee for purpose of the payment of the contract with Shanley and Plunkett. The remainder are in the hands of private individuals; partly purchased by them originally, and partly paid over to Shanley and Plunkett, under the terms of that contract, in payment.—W. T. I know that Shanley and Plunkett have sold some of their bonds to outsiders. They are coupon bonds and payable to bearer. The Windsor Branch forms a large portion of the 1570
 property covered by our mortgage. The defendants have expended about seventy-two thousand dollars in equipping the Branch with rolling stock. The maintenance of the road has cost between fifteen thousand and twenty thousand dollars. I am not able to state the amount positively. The engagements and expenditure that I have spoken of were entered into in good faith by the Defendants Company. Mr. DePass' connection with Plaintiffs Company, as testified to by me, continued until after we got peaceable possession of, and were working, the Branch. Mr. Reynolds, at Ottawa, was aware of the Minutes of Council as I gathered from him at the time of the interview spoken of when I wrote the letter of 29th October, 1873. I gathered from that conversation that he and DePass had been in constant communication about it from the 1580
 time of DePass' arrival. The negotiations of May, 1874, and subsequently, of which I have spoken, were made in pursuance of the promise in that letter of 29th October, 1873. Mr. Reynolds was fully aware of such negotiations of May, 1874.

TUESDAY, October 22nd, 1878, noon.

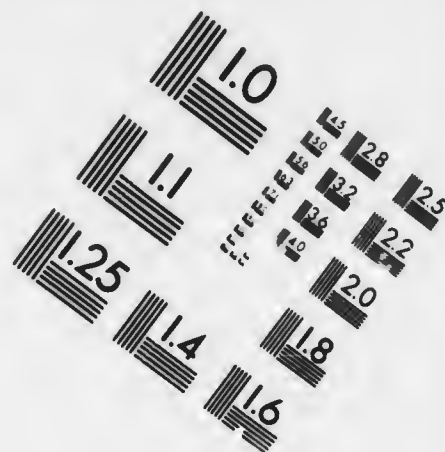
Ritchie and Henry, for Plaintiffs; Thompson and Meagher, for Defendants.

Frank Killam, Cross-Examined by Mr. Henry.—I requested Reynolds to write to me at Young's Hotel, Boston, in December, 1873, or November. The paper now shewn me is a copy of a letter I wrote him, dated Yarmouth, November, 25, 1873. I have no recollection of getting any reply from him to that letter. (Copy of letter put in marked "L" W. T.) I was one of the original promoters of the Yarmouth 1590
 and Annapolis Railway and assisted actively in the formation of the Company and have been ever since actively interested in the affairs of the Company. Since 1869, I

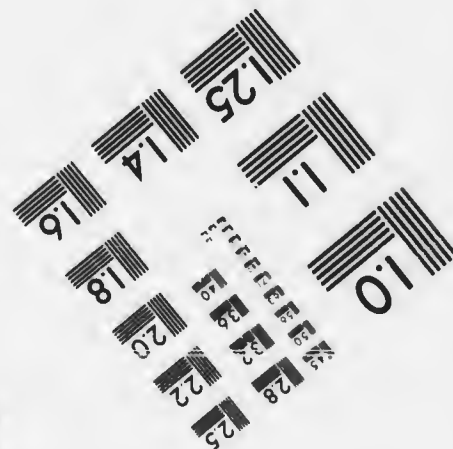
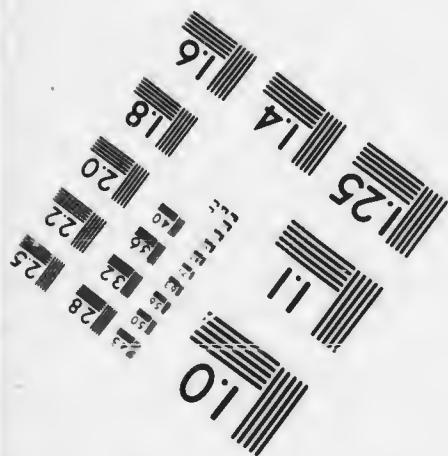
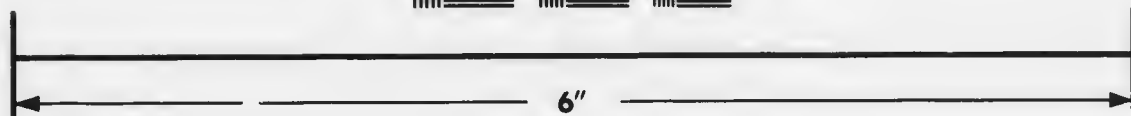


have been member for Yarmouth of the Dominion Legislature. As member of Parliament I assisted the Western Counties Railway as far as was consistent with my position. I became aware that the Plaintiffs Company were operating the Windsor Branch about January, 1872. In September, 1871, I knew that an arrangement had been made between Plaintiffs Company and the Dominion Government relative to the Windsor Branch. But I did not know the particulars thereof until after the Publication of the Parliamentary returns in the latter part of the year 1872. I was not aware of them during the session of 1872. Those returns contained a copy of the agreement under which they operated the road and the orders in Council relative thereto. (I was in Ottawa in the spring session of 1873. I asked for the introduction of a resolution respecting the road. That is the Resolution contained and set out in the Plaintiffs bill herein and referred to in the Act. I did not originate the idea of that resolution. It was at my instance that such a resolution was introduced. The resolution was introduced by Sir John A. Macdonald. I may have had interviews with other members of the Government relative to the matter. I have no doubt I mentioned it to some of them at different times. I desired in the promotion of that resolution to get all the aid I could from the Government for our Railway. There was no question of existing rights or discussion thereon. I was not acting on the assumption that the rights of the Plaintiffs Company had been forfeited.—*Objected to by Mr. Thompson on general grounds.*) (It was notorious that the relations between the Government and the Windsor and Annapolis Railway were unsatisfactory. I did not expect the relations would continue any length of time.—*Objected to by Mr. Henry.*) I have no recollection of mentioning that to any member of the Government. But I will not undertake to say I did not. (I expected that the passing of that resolution would have the effect of giving a Company which should build the Railway from Yarmouth to Annapolis the possession of the Windsor Branch at any time considering the notorious circumstances that then existed and knowing that the lease would be taken away in consequence of those circumstances.—*Objected to by Mr. Thompson.*) It was my intention to obtain any advantage possible by promoting that resolution that could be got under that state of affairs. (As member for the County of Yarmouth I promoted the passing of that resolution. I do not know that I discussed those circumstances of the Plaintiffs Company with members of the Government. I have no recollection of having discussed the relations between the Government and Plaintiffs Company with members of the Government. I may have done so. I cannot say anything more definite than I have said.—*Objected to by Mr. Thompson.*) When I say the relations of the Company with the Government were notorious I mean it was a matter of common report in this province. I do not remember that any discussion took place between myself and the Government relative to the condition of Plaintiffs Company. (In December, 1871, I first became a promoter of a scheme to form a Company to construct a Railroad from Yarmouth to Annapolis.—*Objected to as not being in issue.*) The Act of incorporation was passed at my instance and with my consent and as a promoter of the Company. I was a promoter of the Company during the year before the Act of Incorporation was passed. I first became a promoter of a company which afterwards became the Western Counties Railway—during the session of the Legislative in which the Act of Incorporation was passed. I was interested in the building of that Railroad ever since '68. The obtaining the cession of the Windsor Branch was generally discussed





A resolution test chart featuring various patterns of horizontal and vertical lines of increasing frequency. Each pattern is accompanied by a numerical value indicating its resolution. The values include 1.0, 1.1, 1.25, 1.4, 1.6, 1.8, 2.0, 2.2, 2.5, 2.8, 3.2, 3.6, 4.0, 4.5, 5.0, 5.6, 6.3, 7.1, 8.0, 9.0, 10, 11.2, 12.5, 14, 16, 18, 20, 22.5, 25, 28, 31.5, 36, 40, 45, 50, 56, 63, 71, 80, 90, 100, 112, 125, 140, 160, 180, 200, 225, 250, 280, 315, 360, 400, 450, 500, 560, 630, 710, 800, 900, 1000, 1120, 1250, 1400, 1600, 1800, 2000, 2250, 2500, 2800, 3150, 3600, 4000, 4500, 5000, 5600, 6300, 7100, 8000, 9000, 10000.



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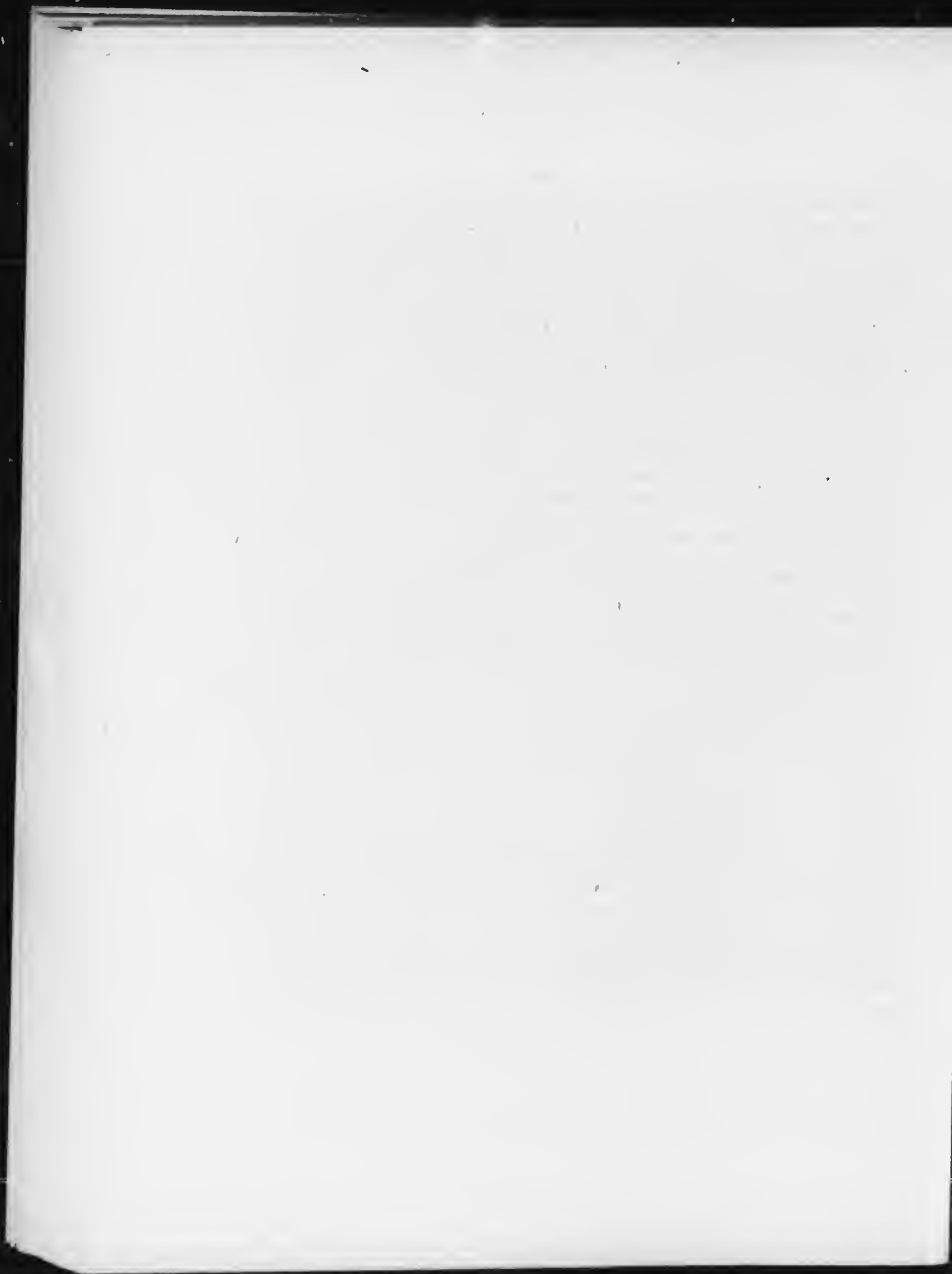




months before the committee went to Ottawa in October, 1873. I do not remember 1640
any particular discussion of it among our Directors, but it must have been discussed.
Do not remember that it was discussed at any meeting of our directors previous to
the 13th October, 1873. Nor that there was any discussion on 13th October, 1873,
of that matter. I did not explain the relations of the Plaintiff's Company and the
Government to our Directors. They were all of them I presume as much aware of it
as I was. They were all fully aware of the passage of the Resolution. I went to
Ottawa with that committee and introduced them to some of the Government. At
those meetings the position of the Plaintiff's Company was discussed. It was there
stated that there was a prospect that the lease would be immediately cancelled. I
did not do anything to accelerate the cancelling of that lease. I was satisfied from 1650
those interviews that the cancellation of the lease had been decided on long before.
(I do not think the committee went at my instance. I will not say they did not, they
went with my consent. I did not to my own knowledge make any representation as to
the financial affairs of the Plaintiff's Company to the Government. Nor did I say
they were insolvent. I did not say to the Minister of Public Works that the
Plaintiff's Company were unable to meet their engagements. I have no recollection
of saying so to him or to Dr. Tupper. I think it is impossible that I could have said
so. I do not think I ever expressed any opinion to any one then as to the inability
of the Plaintiff's Company to pay their arrears. I said nothing at that time or
previously to accelerate the cancellation of the lease.—*Objected to generally by Mr.* 1660
Thompson.) At the time the proposal was made to build the Western Counties
Railway, I was aware that the lease to Plaintiff's Company was to be cancelled im-
mediately. I was informed, and our Committee were informed, and Mr. DePass was
informed, by the Government, that the lease was to be cancelled. Cannot say why
the proposal to build was not made until after the lease was cancelled. The proposal
was made on the 25th October. DePass was not in Ottawa then. I never heard
DePass say at that time that he had no authority in the matter, but was doing what
he could in the interest of the Company. It never was stated by him in my hear-
ing. He stated to me previously that he was a Commissioner of the Company. I
never heard the right of the Government to cancel the lease questioned before the 1670
suit was brought. (DePass never denied the right of Government to cancel the lease
but objected to the terms and statements in the Order of Council cancelling the lease.
—*Objected to by Mr. Thompson.*) He used to say that they could not prove that they
had ever failed to operate the road. I would not undertake to say that
DePass did not distinctly deny that they had ever failed to operate the
road. I did not pay much attention to his conversation. We never were made
aware until this suit was brought that the Plaintiff's Company intended to contest
the possession of the Windsor Branch with anybody but the Government. I do not
recollect that DePass, in August, 1877, told me that his Directors intended to contest
with us our right to the road. In my negotiations with DePass he was principally 1680
engaged in endeavoring to obtain a lease from us, a lease which would continue
Plaintiff's Company in possession of the road. *Question*—Did he (DePass) not tell
you that it was a matter of comparative indifference to them whether Defendants
Company got the right of the road or not, provided the Plaintiff's Company could
obtain a favorable lease from them? *Answer*—I do not remember anything about it.
I will not say that it was communicated to me before 1st August, 1877, that the



Plaintiffs Company would forcibly resist the taking of the road from them. The Honorable Albert Smith did what he could to effect an amicable arrangement between us to get Plaintiffs Company a lease from us. Sir Albert Smith suggested the propriety of leaving to arbitration the question of what rent the Plaintiffs Company 1690 should pay us for the Branch, and nothing else. DePass was willing to leave his whole case to arbitration (that was in July, 1877) as between the Government and them and difficulties with our Company. DePass did not state to me, previous to August, 1877, that our rights would be contested by them, nor did he give me to understand that, at any time during our then negotiations. DePass went to England about November, 1873. I saw him after that in England. He went to England before the agreement 'E' was signed. I saw the Power of Attorney after that agreement was signed. I think in the same summer. I was in England in January, 1874, and saw then the Directors of the Plaintiffs Company. I went over there at request of DePass to see if any arrangement could be made for the amalgamation of the two Com- 1700 panies for the extension of the road to Yarmouth. Do not think the subject of the lease was then discussed. It may have been referred to. They did not decline to recognize that their lease was cancelled. Do not know that they recognized that fact or not. That interview was in their office. Mr. Leonino was present, and several others. I think Mr. Bravo was there. Do not remember whether any draft of agreement was produced between DePass and myself. Previous to going to England I had discussed the possible amalgamation with DePass, and also mentioned it to the Board in England. Mr. Campbell, the Secretary of the Board, was also present. I have no recollection that they contended that their lease could not be avoided by the Govern- 1710 ment by an Order in Council, or in any other way. Do not think they said they would assist our Company in any way that was not inconsistent with their rights under the lease. Prior to leaving here, I got no invitation to discuss the matter except from DePass, who sent a cablegram to me asking me to come. Nothing resulted from that meeting. I did not understand at that meeting that they insisted on the integrity of their lease. I went again to England in 1874. Saw several of Plaintiffs Company's Directors, and discussed informally the amalgamation of the road. The views I presented to them as regarded amalgamation were based on the fact that their lease was at an end. I never discussed with them the existence or non-existence of the lease. I brought before them the negotiations I had had with DePass, and those negotiations were based on the fact that the lease had been cancelled. At the time of my last 1720 interview with those Directors, the original agreement 'E' was in my possession. Do not remember that it was produced at those interviews, but I have no doubt it was spoken and discussed between us. That agreement was not carried out in consequence of DePass having telegraphed me to postpone it. I do not recollect having told DePass or the Company that Mr. Mackenzie would not agree to this agreement being made.



HALIFAX, SS.

IN THE SUPREME COURT,

IN EQUITY, 1878.

Cause—

1730

THE WINDSOR AND ANNAPOLIS RAILWAY COMPANY, *Plaintiffs.*

vs.

THE WESTERN COUNTIES RAILWAY COMPANY, *Defendants.*

THURSDAY, October 31st, 1878, 11 A. M.

Present—J. N. Ritchie, Q. C., Counsel for Plaintiffs; J. S. D. Thompson and N. H. Meagher, Counsel for Defendants.

Frank Killam's cross-examination resumed by Mr. Ritchie.—The negotiations with Plaintiffs and DePass were principally carried on with me. I never asked DePass to shew me his authority to act for the Plaintiffs Company. I do not remember whether DePass' Power of Attorney contained any clause requiring the sanction of the Company to his actions. I do not think there could have been such a clause in it. I am almost sure it did not contain a clause limiting his powers and requiring the confirmation of his Acts by Plaintiffs Company ere they took effect. I think it was in June or July 1874, that I saw DePass' Power of Attorney. DePass had been in England and returned with me in January, 1874. Do not recollect having had negotiations or correspondence with any other persons in 1873 in regard to these leases. I had no correspondence with Thomas Reynolds except the letter of November, 25th, 1873, as far as I remember; but I may have written him other letters. I corresponded with Reynolds as an agent of Plaintiffs Company. Cannot say whether L. DeV. Chipman was present at the time of the interview of 23rd October, 1873, with our committee and DePass. Cannot say who produced the pencil draft of the lease (A) on that occasion. Do not remember that that particular draft of lease was ever referred to afterwards. When I wrote the letter to DePass dated October, 29, 1873,—I do not remember that the purpose of writing it was that DePass should take it to England. It may have been. I do not remember that on 23rd October, that we declined to make any lease. On the 29th October, when I wrote that letter I thought our Company would give a lease if the terms suited them. I wrote that letter of 29th October without consulting my Company. I had not the authority of my Company for all the negotiations I contracted. I never had any written authority from my Company until 1874. Cannot say whether our Company approved of that offer of 29th October, 1873, or not. I never heard the question raised. I never told any one that I could get better terms in relation to the Windsor Branch from the MacKenzie Government than from any other. *Question*—Did you tell L. DeV. Chipman so?—*Objected to by Mr. Thompson.* *Answer*—No. I was at Ottawa in 1874. Do not remember having had any conversation with Mr.

1740

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THE HISTORY OF THE

REIGN OF

CHARLES THE FIRST

BY

JOHN BURNET

OF

THE UNIVERSITY OF OXFORD

IN TWO VOLUMES

LONDON

Printed by J. Streater, at the Sign of the Gun, in St. Dunstons Church-yard, near St. Dunstons Church

1679

MacKenzie relative to the Act of 1874. That Act was not introduced at my instance. I had conversation with DePass at Ottawa in 1874 relative to the passing of that Act. DePass did not give me any reason to suppose that he would oppose the passage of that act on behalf of Plaintiffs Company. I think paper "E" was made about 26 May, 1874. Do not remember whether it was made before the Act was 1770 passed or not. That agreement was made at request of DePass. DePass wanted it because he wanted to use the Windsor Branch to make the road more profitable. That was the only reason he gave. I knew of the change of gauge about the time it took place. I knew that DePass in the session of 1875 was in Ottawa asking the Government to assist the Plaintiffs Company in changing their gauge. The gross receipts of the Road from Halifax to Windsor from the time we took possession of it until 1st October, inst., amounted to about eighty-eight thousand dollars. The expenses of operating the road during that period were about fifty-seven per cent., including everything. The road from Annapolis to Yarmouth is not yet finished. There has not been any regular construction work done on it since January, 1877. 1780 The contractors have their staff on it, taking care of it. The amount of capital paid in by our Company was five hundred thousand eight hundred dollars, share capital paid up, exclusive of subsidies and bonds. I mean paid up in cash or its equivalent.

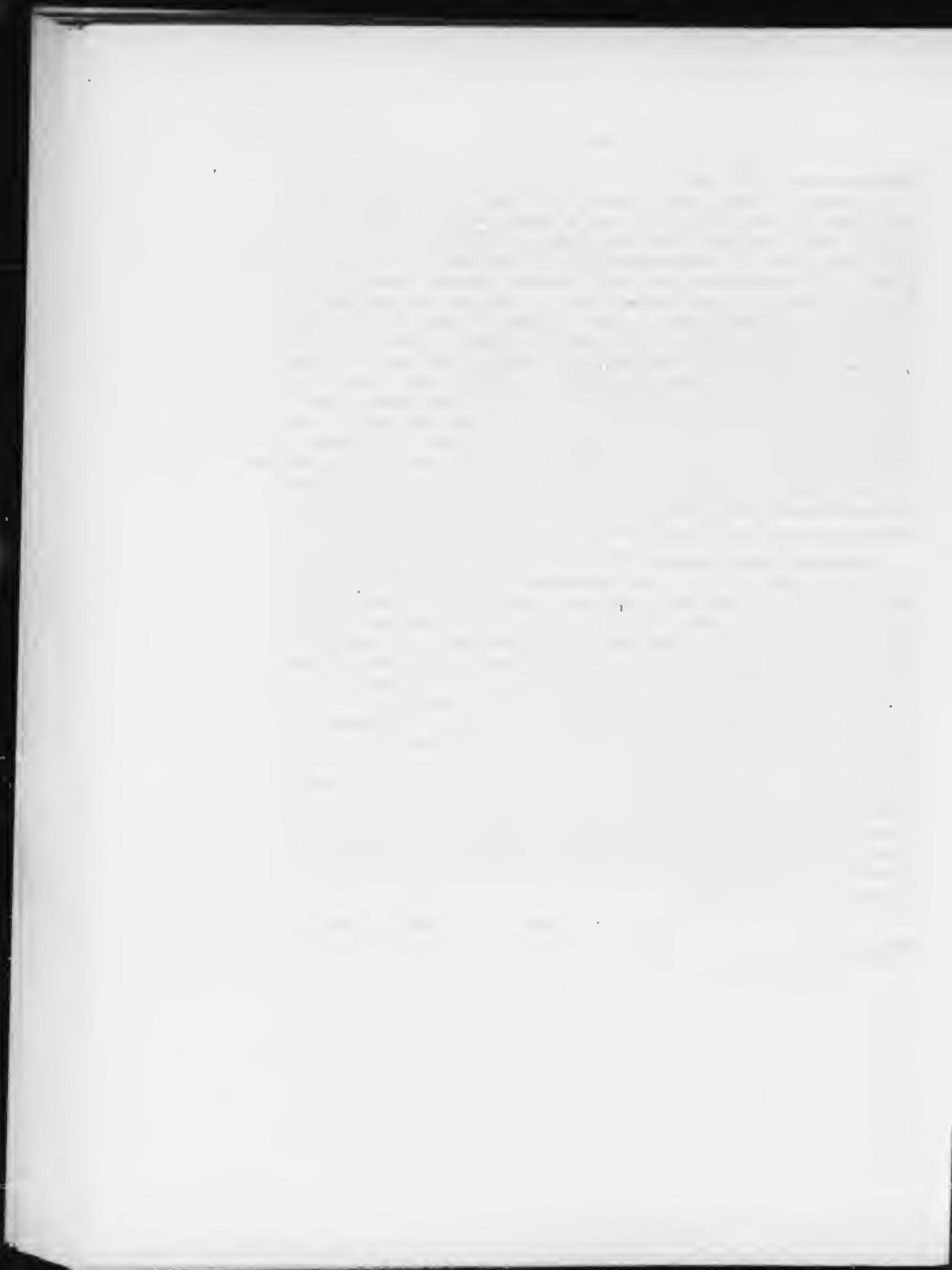
Re-examined by Mr. Thompson.—The Directors of Plaintiffs Company in England, in conversation, referred to the negotiations I had with DePass on this side. They were desirous to have some arrangement between the two Companies which would be mutually beneficial as regards the working of the Branch and the extension of the Railway. They wished, before taking a lease from us, to be assured that the running powers over the main line of the Intercolonial would be free of charge. DePass was not then present. That was in October, 1874. DePass was then in this 1790 country. That was told me by Mr. A. D. DePass, one of their Directors. I have discussed my negotiations with DePass with others of the Directors at different times. The agreement of May 26th, 1874, was spoken of by those Directors whom I met at different times. They were acquainted with its terms. None of them repudiated DePass' authority. At none of the interviews at which I was present, at Ottawa, with reference to the change of gauge, was the subject of the Plaintiffs being confirmed in the possession of the Windsor Branch, ever discussed. I was present when change of gauge was discussed between DePass and Ministers. Our Company have given security to the Local Government for the completion of the line from Yarmouth to Annapolis in 1879 or 1880.

(Signed)

FRANK KILLAM. 1800

Sworn, &c., &c.

W. T., M. S. Ct.



HALIFAX, SS.

IN THE SUPREME COURT,

IN EQUITY, 1878.

Cause—

THE WINDSOR AND ANNAPOLIS RAILWAY COMPANY, *Plaintiffs*,

vs.

THE WESTERN COUNTIES RAILWAY COMPANY, *Defendants*.

WEDNESDAY, October 30th, 1878, 11 A. M. 1810

Present—N. H. Meagher, Counsel for Defendants; H. McD. Henry, Counsel for Plaintiffs.

(Mr. Frank Killam not having arrived in the city, his further cross-examination is postponed until to-morrow, 31st October, at eleven a. m.—W. T., M. S. Ct.)

Addison LeCain, a witness for defendants, sworn:

Examined by Mr. Meagher—I have been engaged since the spring of 1871 on Railways; continuously in working of Railways. I first entered into the employ of the Windsor and Annapolis Railway Company. At first I was Brakesman on the road between Annapolis and Windsor, in that summer and fall, and then I ran over the whole road from Annapolis to Halifax. About two years from the beginning of 1820 my service I removed to Windsor. I was baggage master the latter part of that two years. In summer on Passenger Trains and in winter on mixed. When I removed to Windsor I took charge as Conductor of special trains as I was required. (In 1872 and 1873 at certain times in the fall of the year when there was a rush of freight we sometimes had not sufficient cars to move the freight promptly. When there was a great quantity of Deals, Plaster and Produce.—*Objected to by Mr. Henry.*) It would last a couple of months. The freight might be delayed for a day or two but it went all right. People wanting cars could not always get them at once. When I speak of a day or two I mean it might be perhaps a couple of days. The cause of delay was the quantity of freight moving during that time of year. (In the winters of 1872 1830 and 1873 the cars were sometimes delayed by snow storms. I cannot say how often. I think twice in 1872 between Windsor and Annapolis, I think we were delayed eight days on one occasion and two days on the other. The eight days delay was nine miles this side of Annapolis. We had a *Snow Plough Fixture* on the Engine. We had not a snow plough by itself such as the ones they use now. That *Snow Plough Fixture* was the only one of the kind that I have ever seen. I presume that snow plough fixture was not as good as those in common use. The cause of those delays was heavy snow storms. I presume if we had had the snow plough they use now-a-days, we might have got through a little sooner.—*Mr. Henry objected to any evidence of delays caused by snow storms.* If we had had snow ploughs such 1840 as those then in use it would have hastened our getting out of the snow in my opinion. (The Plaintiffs had not an ordinary snow plough in use on their road between Annapolis and Windsor in the winter of 1872. They only had this one

THE HISTORY OF THE

REIGN OF HENRY THE SEVENTH

BY JOHN HALLAM

IN TWO VOLUMES

LONDON: PRINTED BY J. JOHNSON, ST. PAULS CHURCH-YARD, 1797

THE HISTORY OF THE

REIGN OF HENRY THE SEVENTH

BY JOHN HALLAM

IN TWO VOLUMES

LONDON: PRINTED BY J. JOHNSON, ST. PAULS CHURCH-YARD, 1797

snow plough fixture attached to one engine, specially for snow purposes.—*Objected to by Mr. Henry as only opinions of witness.*) *Question*—What was the condition of the engines as to their sufficiency in running the road during 1872 and 1873? *Answer*—It is a hard question for me to answer. But the engines did break down sometimes during the winter months. *Question*—Did they break down frequently or not? *Answer*—They broke down once a week during the snow storms. I am not a locomotive driver, and therefore cannot speak as to the sufficiency or condition of the engines. In 1872 and 1873 the drivers had no limit as to the number of cars on a train. About two years ago they ceased to use the *fixture snow plough*, and since then used the ordinary snow plough. In the winter of 1873 there were some delays on account of snow; not often, and not more than a day at a time. I cannot say how often. Perhaps three times during that winter. *Question*—What effect would two engines have in getting through snow? *Answer*—They would get through quicker. We had only had one engine on the train at the time of the eight days' delay. There have been times when they have had two engines on the train. There have been at times complaints by persons who could not get freight cars sometimes as soon as they wanted them. I cannot say how often it occurred. Several times in the Fall, during the moving of the heavy freight. 1850

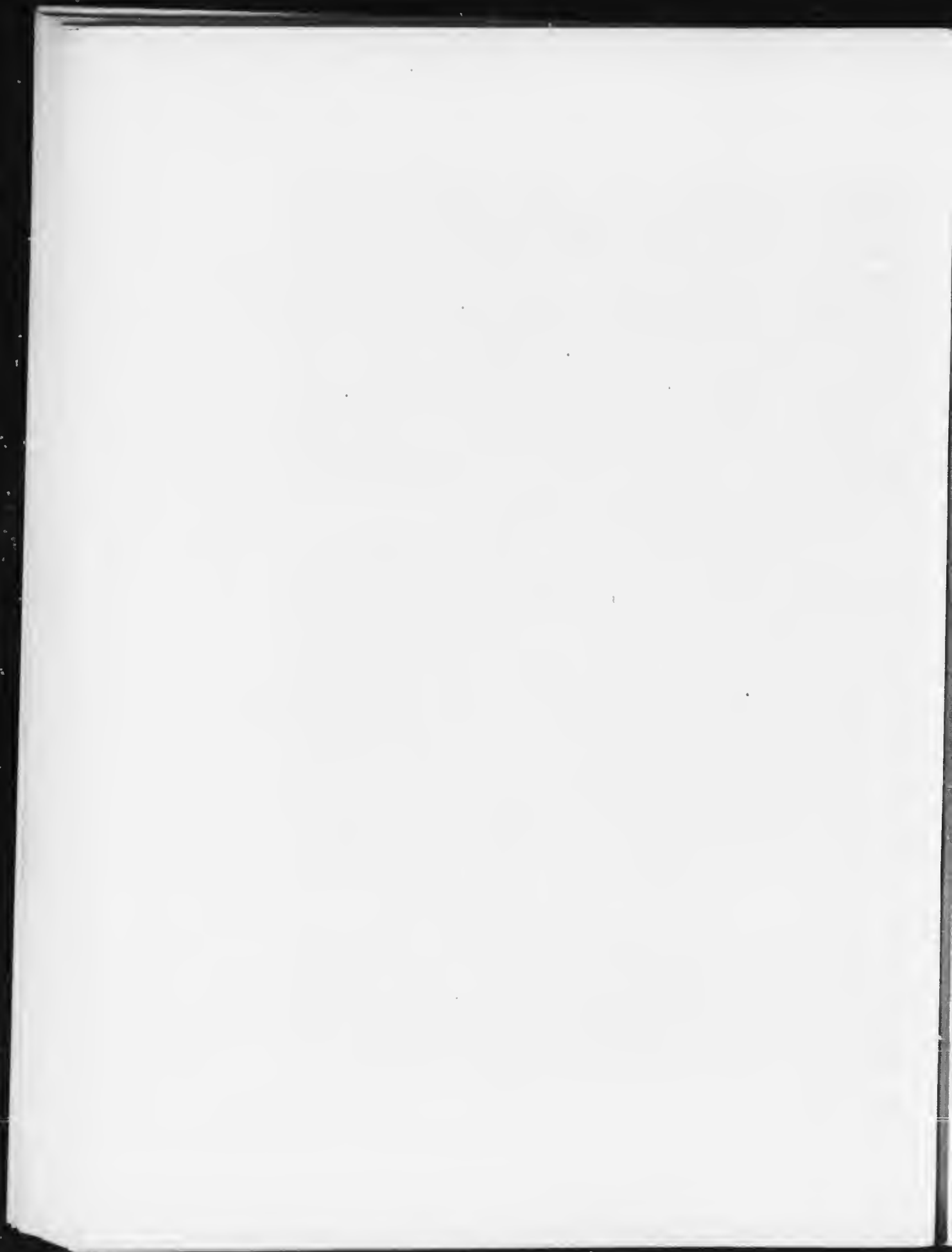
Cross-examined by Mr. Henry—During my experience on Plaintiffs road, the road was operated constantly, except in cases of snow storms; the trains were run through regularly; though sometimes they might be a little late. The engine to which the snow plough fixture was attached was one of the heaviest engines of the Company. That engine and fixture together made a special machine for clearing the road. I have known it to run through five or six feet of snow, if the cutting was not too long. As regards labor, the Company had as many men as could be used in shovelling snow; though they could have got through quicker in my opinion if they had had more snow ploughs such as they use now. In my opinion reasonable energy was always used by the Plaintiffs Company with the men employed, and the one plough used by them, to keep the road clear of snow in those winters of 1872 and 1873. As far as I know, that snow plough fixture was as good as any for the work. I had not seen any other snow plough at that time at work. During winter months it is a common thing for engines to break down on railways. During that eight days' delay we were all the time in one place. It was drifting constantly. As fast as the snow was thrown out it drifted back. It was very difficult to get out without more help. A train came from Kentville to help us; it took them some days to reach us. It was an uncommonly severe storm. We never had such a snow storm since. I do not know of any snow plough then in use in Nova Scotia that would have carried us through at that time. All the stoppages I know of in 1873 arose from snow storms. The Company always had plenty of extra men to clear the snow. I was once stuck for four hours on the Windsor Branch by snow storms in 1874, between Mount Uniacke and Stillwater. The Windsor Branch is not nearly as bad for snow drifts as the road between Windsor and Annapolis. During midsummer and midwinter a good many of the Plaintiffs cars would be idle. Except in the fall, during the heavy traffic at times, for a couple of months, there were plenty cars for the work. 1880

Sworn, &c., &c.

W. T., M. S. Ct.

(Signed)

A. LECAIN.



HALIFAX, SS.

IN THE SUPREME COURT,

IN EQUITY, 1879.

*Cause—*THE WINDSOR AND ANNAPOLIS RAILWAY COMPANY, *Plaintiffs.**vs.*THE WESTERN COUNTIES RAILWAY COMPANY, *Defendants.*

THURSDAY, 13th February, 1879, 7 P. M.,

*Present—*J. N. Ritchie, Q. C., Counsel for Plaintiffs; N. H. Meagher, J. S. D. Thompson, Counsel for Defendants.

1900

George B. Doane, witness for Defendants, Sworn:

*Examined by Thompson—*I am President of Defendants' Company. Have been so for some time. I was at Ottawa in Autumn of 1873. I remember being at Ottawa in October, 1873, when Frank Killam, W. H. Moody, J. W. Bingay, and Mr. DePass and Honorable James McDonald were present. Either Mr. McDonald or Mr. DePass presented a paper. It was in pencil. I think the paper now shewn to me, written in pencil (marked A) is the paper then produced. The matter of granting a lease to the Windsor and Annapolis Company was then talked over, but nothing I can speak of definitely transpired. The decision arrived at was that we declined to grant a lease. Cannot say definitely which of the persons present asked me to execute the lease. 1910 Either Mr. McDonald or Mr. DePass. I was present in Langevin's office with DePass and Mr. Killam in October, 1873. Mr. Langevin was then Minister of Public Works. DePass asked Langevin: "that the time might be extended for the working of the Windsor Branch by plaintiffs." I think it was until the first of December in that year. Mr. Langevin at the time spoke sharply to him, and said "the arrangements between the Company and the Government are at an end, and the only condition on which you can work the Windsor Branch is by making weekly payments." I think he said every Saturday. He further said: "On the first failure the road will be taken out of your hands." He repeated that. He was very emphatic about it. DePass accepted those terms. I was present in June, 1874, at a meeting of the Defendants' Company when the resolution 1920 marked "B" (already in evidence) was passed. Mr. DePass was present then. Professing to represent the Plaintiffs' Company.

*Cross-examined by Ritchie—*I have given all that took place in Langevin's office as far as I remember. I am not sure that the words were used by Langevin that the arrangements between the Company and the Government were at an end. But I am sure that words to that effect were used. I am sure that there was no one else present. At the first meeting we had (it was at the Russell House) I cannot remember whether Mr. Chipman was present or not. I do not think that meeting was by appointment. We were all staying at the Russell House, except McDonald. I think they came and asked to see us. DePass never submitted to me any authority or power of 1930 attorney from the Plaintiffs' Company to act for them. [Before we went to open negotiations with the Government, I knew that the Windsor and Annapolis Company were working the Windsor Branch under a lease.—*Objected to by Mr. Thompson*].

(Signed)

GEORGE B. DOANE.

Sworn, &c., &c.,

W. T., M. S. Ct.

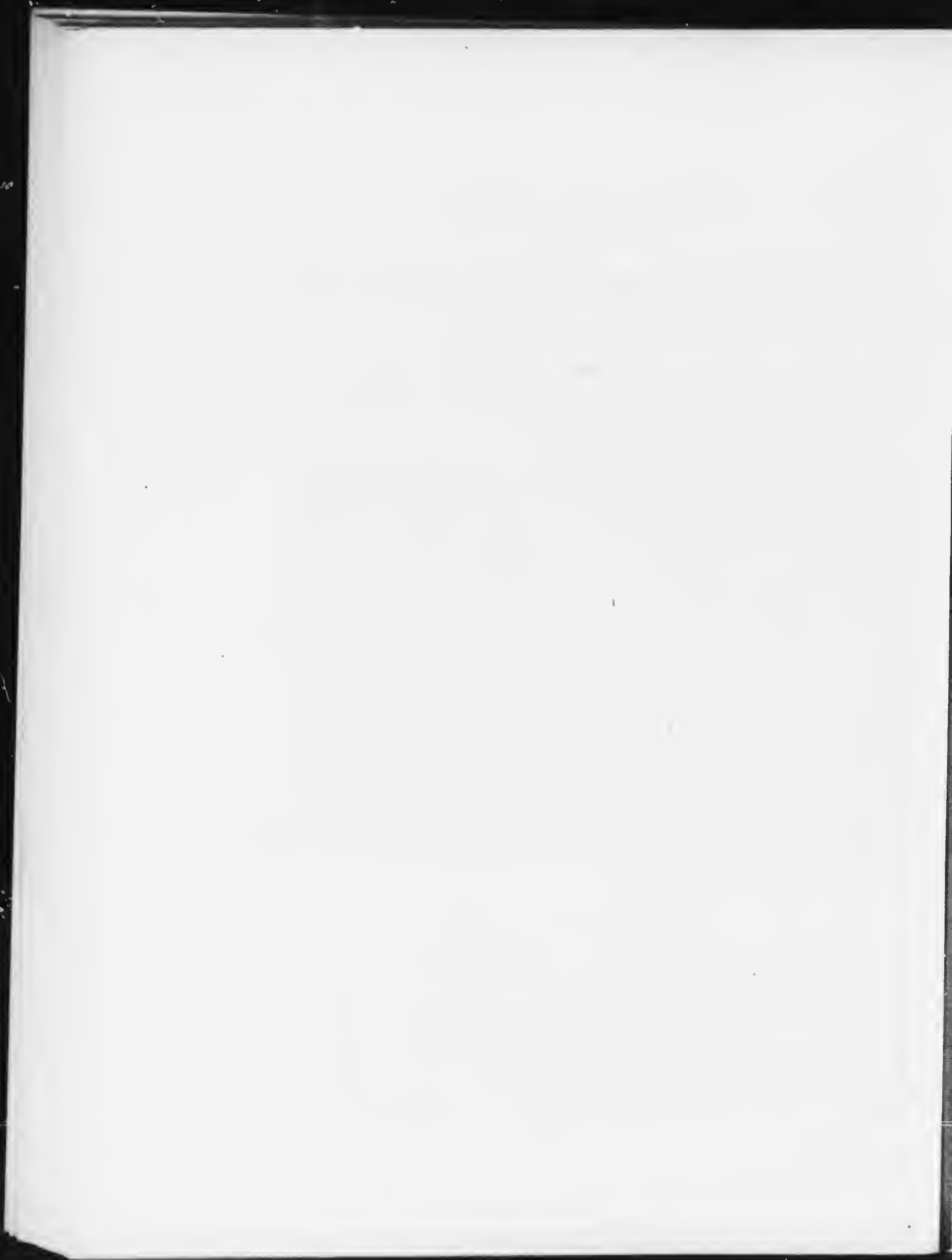


EXHIBIT A.

IN BINGAY'S EXAMINATION.

HALIFAX, SS.

IN THE SUPREME COURT,

1940

IN EQUITY, 1879.

*Cause—*THE WINDSOR AND ANNAPOLIS RAILWAY COMPANY, *Plaintiffs.**vs.*THE WESTERN COUNTIES RAILWAY COMPANY, *Defendants.*

This agreement, made this day of A. D., 1873, between the Yarmouth Railway Company of the first part, and the Windsor and Annapolis Company of the second part :

Whereas the lease of the Windsor Branch Railway from Windsor Junction to Windsor from the Minister of Public Works of Canada to the Windsor and Annapolis Railway Company has been cancelled for non-fulfilment of the covenants to be performed by the said Windsor and Annapolis Railway Company, and the said line of railway has, under the authority of an Act of the Parliament of Canada, been transferred to the Yarmouth Railway Company ;

And, whereas, the said Yarmouth Company have agreed to let the said railroad to the Windsor and Annapolis Company until the first day of April next, on the terms and conditions hereafter written.

Now, this agreement witnesseth that the said Yarmouth Railway Company doth hereby let and lease to the said Windsor and Annapolis Company the said line of railway, known as the Windsor Branch, and extending from Windsor Junction to Windsor, for and during the term above mentioned, namely, till the first day of April next, for the rent or consideration of one dollar, to be paid therefor by the said Windsor and Annapolis Company to the said Yarmouth Company.

And it is agreed by and between the said parties that the party of the second part shall enter into possession of the said road and use and occupy the same as a railway with its engines, trucks, carriages and cars, for the period above mentioned, and shall, at the expiration of such period, deliver up the said railway in as good a condition as it now is, ordinary wear and tear excepted. And, also, that the said party of the second part shall, during the said period, at their own expense, maintain, uphold and repair the permanent way and buildings of the said road ; and the party of the first part agrees that the party of the second part shall and may enter upon possess and hold the said railway for the time and on the terms and conditions above mentioned.

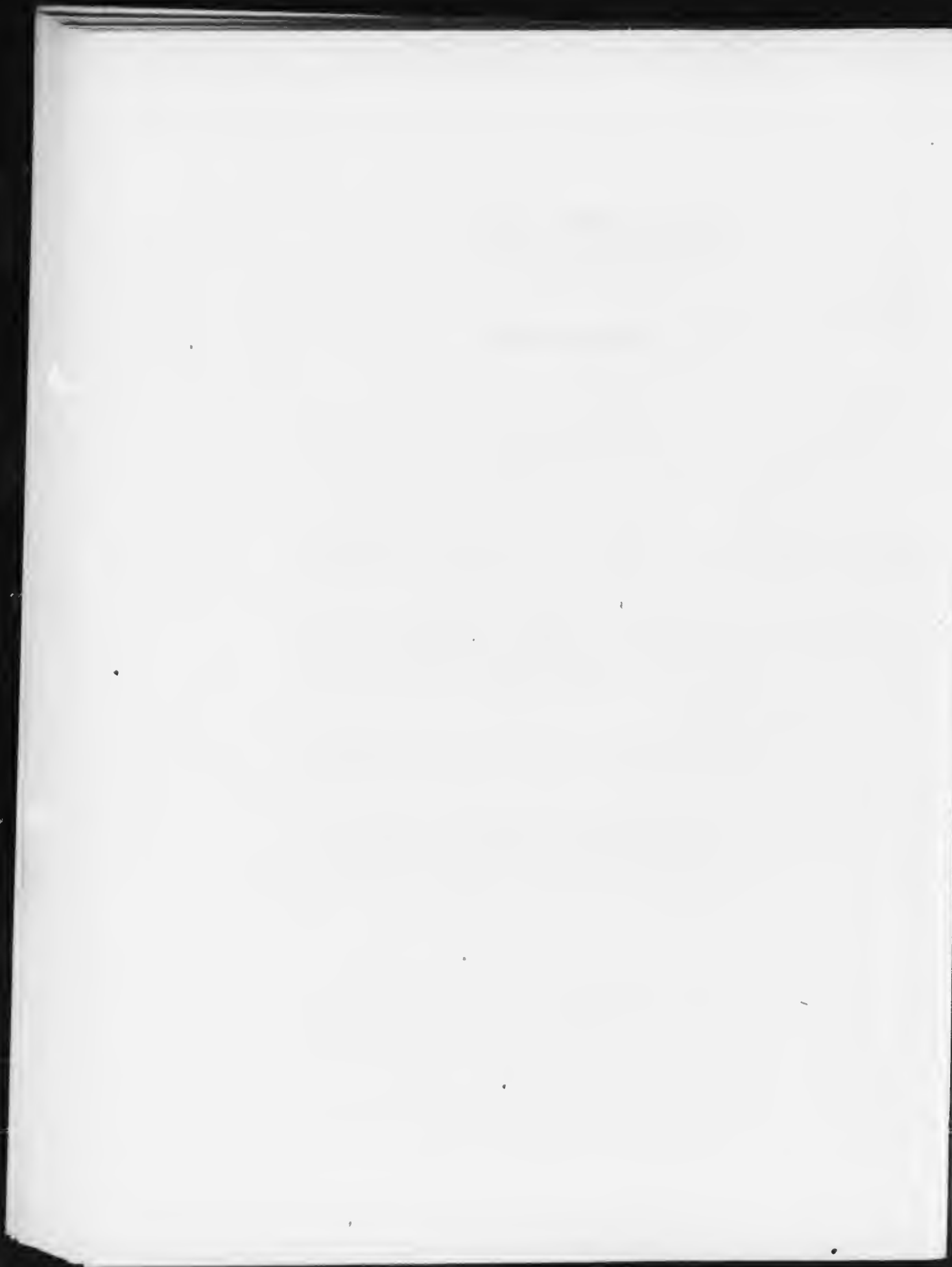


EXHIBIT B.

IN BINGAY'S EXAMINATION.

HALIFAX, SS.

IN THE SUPREME COURT,

IN EQUITY, 1878.

*Cause—*THE WINDSOR AND ANNAPOLIS RAILWAY COMPANY, *Plaintiffs.**vs.*THE WESTERN COUNTIES RAILWAY COMPANY, *Defendants.*

1980

YARMOUTH, June 8th, 1874.

Directors met, present—Doane, Killam, Blethen, Ryerson, Ladd, Moody.

Question of leasing Windsor Branch to Windsor and Annapolis Company taken up. Mr. DePass present in behalf of that Company.

On motion of F. Killam, seconded by S. M. Ryerson :

Resolved, that the Windsor Branch be maintained by the Western Counties Railway or by the Dominion Government, and worked by the Windsor and Annapolis Railway Company until January 1, 1875, on payment by the W. and A. Company of one-third of the gross receipts as heretofore, and that arrangements for a new lease to 1990 the W. and A. Company be deferred until a commissioner of this Company shall go to England to make such arrangements as may be deemed advantageous, either on the basis of a memo. signed by Mr. DePass and Mr. Killam, dated at Ottawa, May, 1874, or otherwise.

[A true copy].

JAS. WENT. BINGAY,
Secretary.

W. T., M. S. Ct.

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EXHIBIT C.

IN BINGAY'S EXAMINATION

HALIFAX, SS.

IN THE SUPREME COURT,

2000

IN EQUITY.

*Cause—*THE WINDSOR AND ANNAPOLIS RAILWAY COMPANY, *Plaintiffs,**vs.*THE WESTERN COUNTIES RAILWAY COMPANY, *Defendants.*

THIS Indenture, made this day of A. D., 1875.
 between the Western Counties Railway Company, a body politic and corporate, incorporated by the Legislature of the Province of Nova Scotia, in the Dominion of Canada, herein represented and acting by George B. Doane, of Yarmouth, in the Province of Nova Scotia, the President thereof, and James Wentworth Bingay, the Secretary thereof, 2010
 of and duly authorized to act herein by a resolution of the Board of Directors of the said Company, passed at a meeting thereof, duly called and held at Yarmouth aforesaid on the Tenth day of February, 1875, a duly certified copy whereof is hereto annexed, identified by the signatures of the parties hereto, hereinafter called "the Company," parties of the first part and

Thomas Edward Kenny, of the City of Halifax, in the Province of Nova Scotia, Esquire, hereinafter called the Trustee, party hereto of the second part,

Whereas the said Company, under the powers conferred upon them by the several Statutes relating thereto, have commenced, and are engaged in the construction of, their line of railway in the Province of Nova Scotia, which, by the said Statutes, they are duly authorised to construct from Annapolis to Yarmouth, with a branch to Digby. 2020

And whereas to enable the said Company the more readily to complete the said undertaking, they have resolved to borrow under the provisions of the said Statutes, an amount not to exceed two hundred and eighty thousand pounds sterling, and to issue debentures therefor; and to secure the payment of such debentures with interest by the mortgage of the said Railway and its tolls, revenues, property and effects, franchises and appurtenances; each of the said debentures being for the sum of one hundred pounds sterling, and being in the following form, namely:

DOMINION OF CANADA,

PROVINCE OF NOVA SCOTIA,

THE WESTERN COUNTIES RAILWAY COMPANY.

2030

Issue of £280,000. 0. 0. First Mortgage, Coupon Debentures—

£100 Sterling

No.

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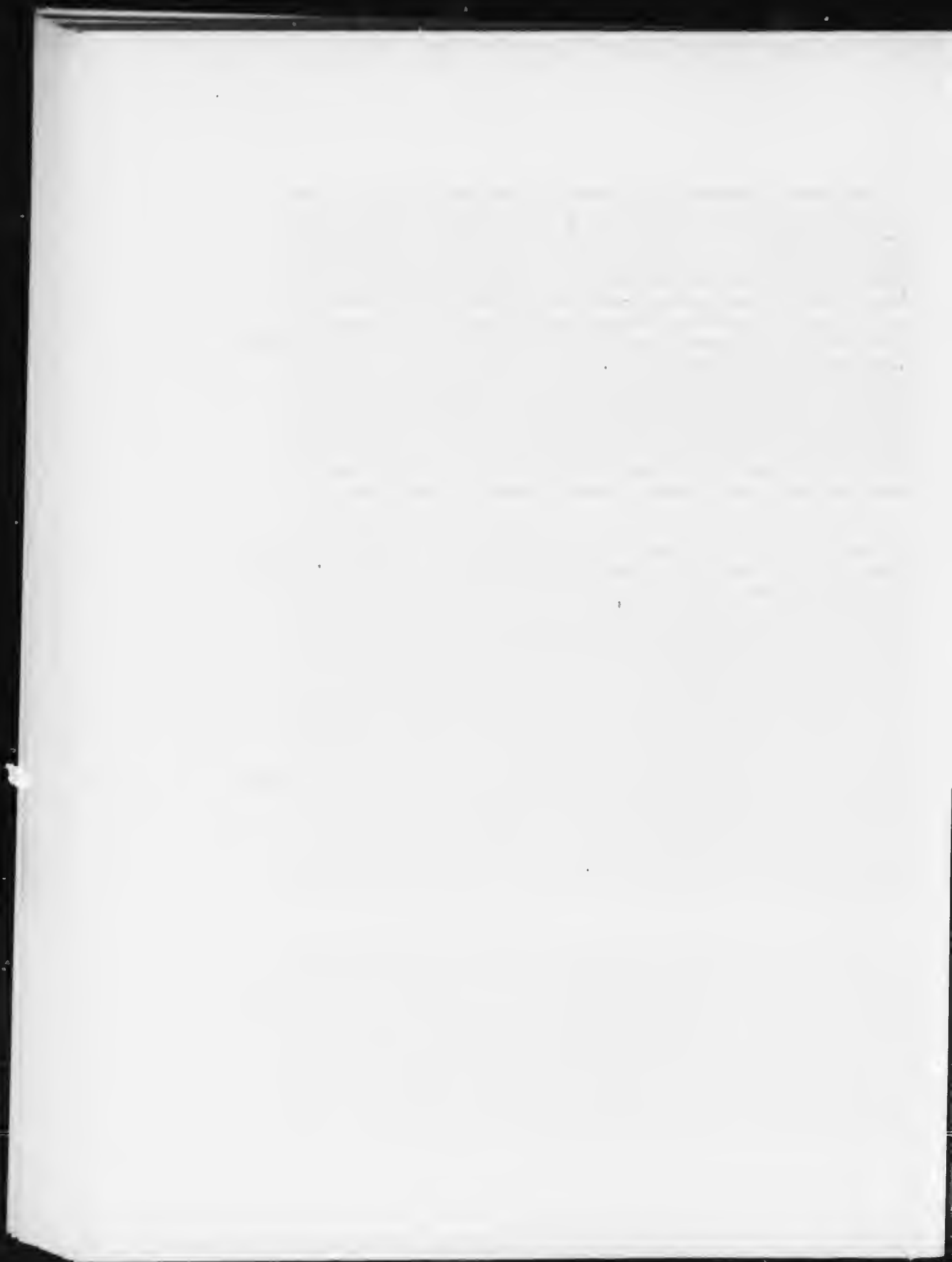
1867

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This Debenture witnesseth that the Western Counties Railway Company, under the authority of their Act of Incorporation and of the Acts amending the same, acknowledge themselves to be indebted to the bearer hereof in the sum of One Hundred Pounds Sterling, which sum they undertake to pay to the bearer on the first day of November one thousand nine hundred and five or upon such earlier day as this Debenture shall be drawn for payment as hereinafter provided, and in the meantime to pay interest thereon from the day of the date hereof at the rate of seven per centum per annum, by half-yearly payments on the first day of May and the first day of November 2040 in each year, the first payment thereof to be made on the first day of May one thousand eight hundred and seventy-six, upon presentation of the annexed Coupons as they shall respectively become due, all such payments to be made in British Sterling Money: at the office of the Bank of Montreal, in the City of London, England; and in each case without making any deduction from either principal or interest for any tax which may be at any time hereafter levied thereon or on the Company or Debenture holders in respect thereof by the law of Canada, all which the Company undertake to pay.

This Debenture is one of a series of two thousand eight hundred Debentures of like date, tenor, and amount, numbered consecutively from one to two thousand eight hundred inclusively, amounting in the aggregate to two hundred and eighty thousand 2050 pounds, sterling money aforesaid, and the payment whereof is equally secured by a certain Deed of Trust or Mortgage bearing even date herewith, duly executed and delivered by the said Company to Thomas Edward Kenny, as Trustee, which conveys to the Trustee by way of Mortgage the property of the Company therein described and all appurtenances thereof, and all the right, title and interest of the Company in that certain completed Railway from Windsor, in the said Province, to the Trunk Railway line from Halifax to Truro, under and by virtue of the Act of the Parliament of the Dominion, 37 Vict, Cap. 16, and in and to the other privileges and running powers authorized by the said Act to be conveyed to the said Company, and which deed creates an accumulative sinking fund in aid of the redemption of the said Debentures of one per 2060 cent per annum on the principal of the entire issue, and the interest which would have from time to time accrued on the debentures previously drawn for redemption, the first annual payment of the said sinking fund to be made on the first day of November one thousand eight hundred and eighty, which sinking fund is to be applied by the Trustee in the redemption of the said Debentures at their par value in accordance with the following provisions.

The Debentures to be redeemed each year are to be drawn by lot by the Trustee, or by a person authorized by him, in the month of January of each year, the first drawing to take place in January one thousand eight hundred and eighty-one at the said office of the said Bank of Montreal, in the presence of a Notary Public; and a notice 2070 of the numbers drawn is to be published and posted at the said office on or before the first day of February next after the drawing, and on the following first day of March after the drawing of this debenture, the principal thereof shall be payable at the office aforesaid upon the surrender of the debenture with the interest coupons: and after the day when this debenture shall so become payable, no interest coupons, or interest thereon, shall be payable, whether it shall be presented for payment or not.



This Debenture shall pass by delivery unless registered on the Books of the Company, but after registration of ownership certified hereon by the transfer Agent of the Company in London or in Yarmouth, in the said Province, no transfer hereof except upon the Books of the Company shall be valid, unless the last registration shall have been to bearer, in which case its transferability by delivery shall be restored; and this Debenture shall continue subject to successive registrations and transfers to bearer at the option of the holder.

This Debenture shall not become obligatory upon the Company until countersigned by the Trustee.

In witness whereof George B. Doane, the President of the Company, and James Wentworth Bingay, the Secretary thereof, have hereunto set their hands and affixed the Common Seal of the Company at the Town of Yarmouth, this day of , one thousand, eight hundred and seventy-five, and the said Trustee has countersigned the same for the purpose of authenticating and identifying it.

(L.S.) (Signed) GEORGE B. DOANE,
President.

(Signed) JAMES W. BINGAY, Secretary.

(Countersigned) Trustee.

And whereas each of the said Debentures has annexed thereto coupons or interest warrants representing the several half-yearly instalments of interest to fall due thereon, which coupons bear the lithographed signature of the Secretary of the Company, and are, omitting the day of payment, in the form following:

THE WESTERN COUNTIES RAILWAY COMPANY.

Issue of 2,800 First Mortgage Debentures.

£3.10.0 stg.

No.

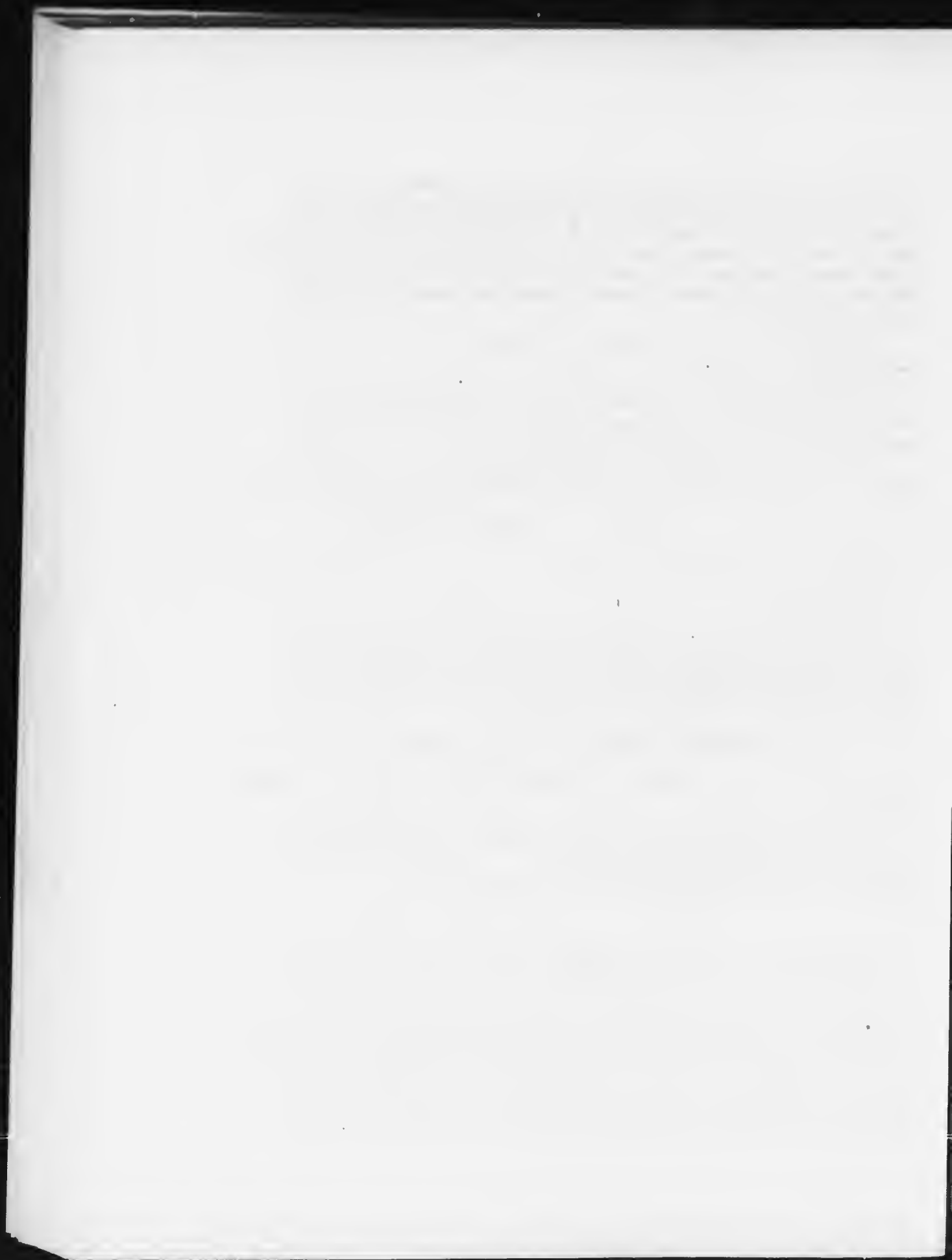
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The Company will pay to bearer, at the office of the Bank of Montreal, in London, three pounds ten shillings sterling, on the first day of A. D., 18 , being six months interest due that day on Debenture No. .

(Signed) JAMES W. BINGAY, Secretary.

Now, therefore, this Indenture witnesses that the parties hereto have covenanted and agreed, and do hereby covenant and agree, to and with each other as follows, viz.:

ARTICLE I—The Company, for and in consideration of the premises, covenants with the Trustee to pay in accordance with the terms of the said debentures, the interest to accrue due thereupon to the holders for the time being of the coupons attached thereto, as and when such interest shall become due, upon presentation of the said coupons as directed by the terms of the said debentures. And if they shall make default in any such payment, will forthwith pay to the Trustee, for the use and benefit of the holders for the time being of the said debentures the total amount of interest

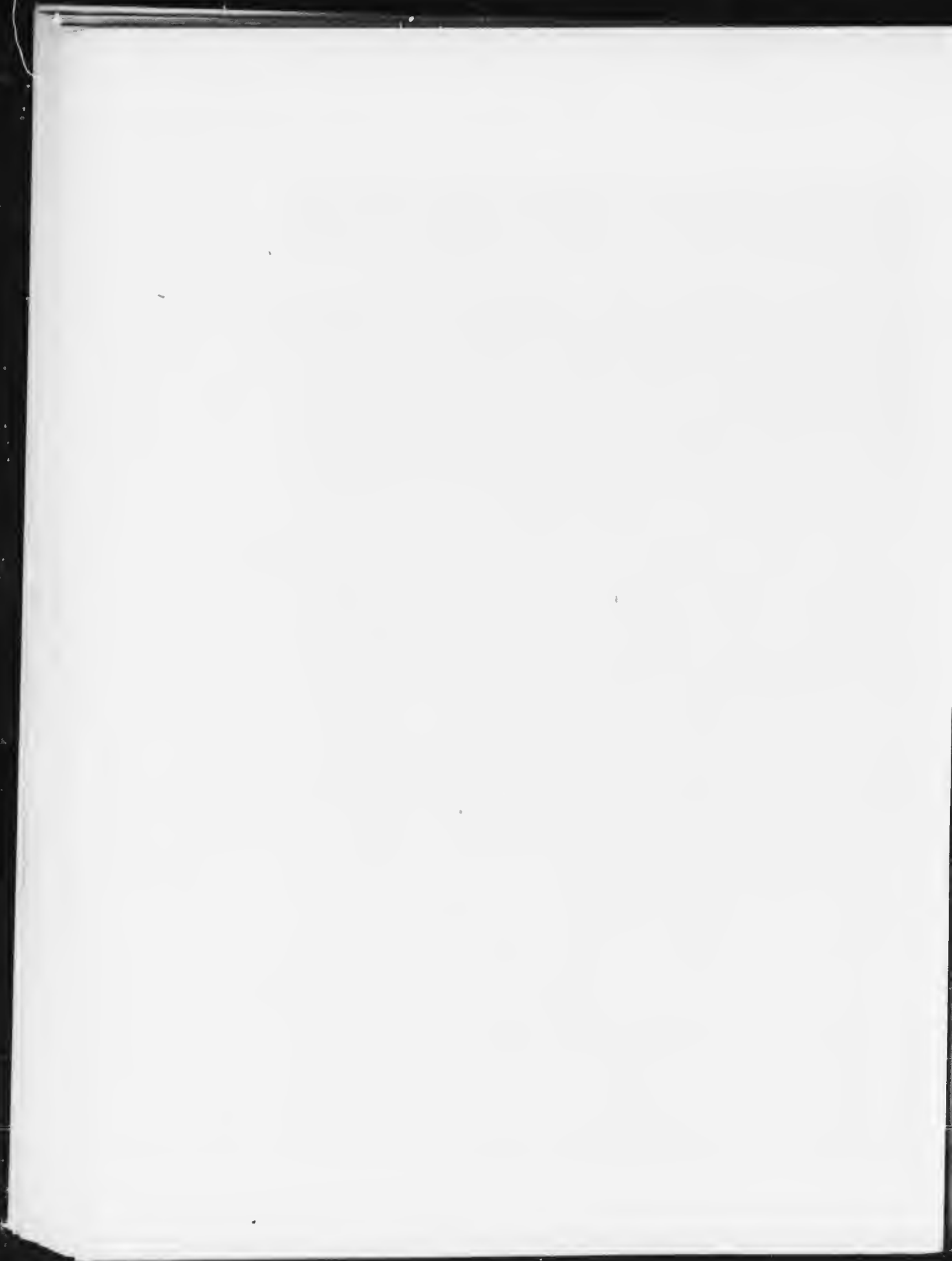


then due and owing upon such of the said debentures as shall then have been issued and be outstanding, without requiring previous presentation of the said coupons which sum, when received by the Trustee, shall be applied by him to the payment of the said coupons as and when presented.

ARTICLE 2.—On or before the first day of February, one thousand eight hundred and eighty-one, and on or before the first day of February in each and every year thereafter, while any of the said debentures shall be outstanding, the Company shall 2120 pay over to the Trustee two thousand eight hundred pounds sterling, being at the rate of one per cent. upon the total amount of the debentures to be issued, and also a sum equal to all the interest which would have accrued during the preceding year on the debentures previously drawn for payment, if they had not been so drawn; and the total amount so paid shall be the sinking fund for the year and shall be used and applied by or under the direction of the Trustee in the redemption of the then outstanding debentures in the manner hereinafter mentioned. The Company shall also pay to the Trustee all the cost and loss on exchange on remitting to England so much of the said sinking fund as shall be required for the payment of debentures there.

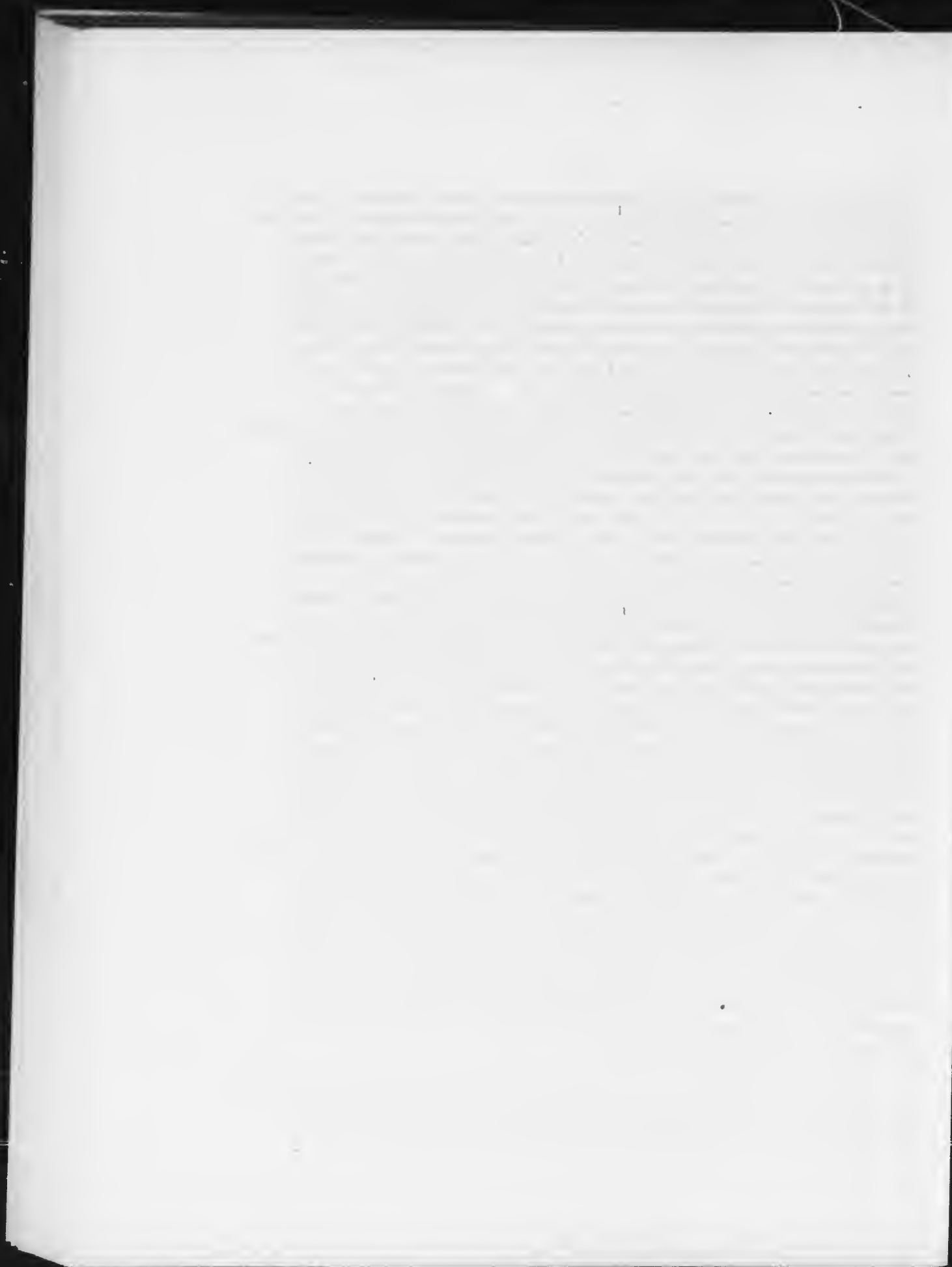
ARTICLE 3.—The Trustee shall cause the numbers of the debentures to be redeemed 2130 in each year to be drawn by lot, in accordance with the terms thereof, in London, under the direction of persons to be appointed by him, and shall inform the Company of the numbers drawn, and the Company shall give notice of the said numbers by advertisement in one or more daily newspapers in London, once a week, until the day when the principal of the debentures shall be payable, and shall put up a list thereof in the office of the Bank of Montreal, in London where the same shall be payable; and in default of the Company giving such notice, the Trustee shall do so. And upon the day appointed for the payment of the said debentures, the Trustee shall apply the sinking fund to the payment of them on presentation thereof in London, according to the terms thereof and all subsequent interest on the said debentures so drawn shall 2140 cease from the day on which the principal of such debentures became payable, whether presented or not. The Trustee shall, without any unreasonable delay, effectually cancel the debentures so paid by him, and return them to the Company. The Trustee and the Company shall keep separate registers of all the debentures drawn, and of those paid off, which registers shall, at all reasonable times, be open to the inspection of all stock holders and debenture holders of the Company. The numbers and amounts of the debentures in each year drawn, and of those paid off, shall be stated by the Company in the next annual report to the shareholders, and the cancelled debentures shall, at the request of the meeting of shareholders, be produced for inspection by them.

ARTICLE 4.—The Company, for and in consideration of the premises, and in order 2150 to secure the payment of the said sum of two hundred and eighty thousand pounds sterling in principal, and the interest thereon, as herein recited and provided, and every part of the said principal and interest, as the same shall become payable according to the tenor of the said Debentures, and of the coupons thereto annexed, have granted, bargained, sold, transferred, conveyed and assigned, and by these presents do grant, bargain, sell, transfer, convey and assign unto the said Trustee, his heirs and assigns, and to his successors in office, as Trustee for the holders of the said Debentures, their heirs and assigns, to the extent of the said sum of two hundred and eighty thousand pounds ster-



ling, and all interest accrued thereon, at the rate and in the manner aforesaid; all and singular the following present, and hereafter to be acquired, estate and property of the said Company, that is to say, their railway and undertaking, made and in course of construction, and to be made, between Yarmouth and Annapolis, with a branch to Digby, being and situate in the counties of Yarmouth, Digby and Annapolis, in the Province of Nova Scotia and Dominion of Canada, including the right of way and the land occupied thereby, together with the superstructure and track thereon, and to be thereon, and all rails, ties and other material placed or to be placed or used thereon, and all bridges, viaducts, culverts, fences, stations, station grounds, buildings and erections thereon, and all machine shops and other shops held or acquired for use in connection with said railway or the business thereof, and including also all locomotives, tenders and cars, and other rolling stock or equipment, and all machinery, tools and implements, fuel and materials for the constructing, operating, repairing or replacing the said railway or any part thereof or any of its equipments and appurtenances, whether now held or at any time hereafter acquired, all of which things are hereby declared to be appurtenances and fixtures of the said railway, and to be included, and to pass by these presents, and also all corporate and other franchises, which are now, or may be hereafter possessed or exercised by the said Company, in so far as the Company are by law capable of conveying or mortgaging the same. Also all the right, title and interest of the said Company in that certain completed Railway known as the Windsor Branch, being that certain Railway running from Windsor in the said Province to the Trunk line of the Intercolonial Railway intersecting the same between Halifax and Truro to be by the Government of the Dominion of Canada, transferred and conveyed to the said Western Counties Railway Company upon the completion of the Railway of the said last mentioned Railway, from Annapolis to Yarmouth, together with all rights, privileges and running powers over the Intercolonial Railway between Halifax and Windsor Junction, accruing to the said Company, together with the aforesaid right to the said Windsor Branch under and by virtue of an Act of the Parliament of the Dominion of Canada, intituled, "An Act to authorize the transfer of the Windsor Branch of the Nova Scotia Railway to the Western Counties Railway Company," and under and by virtue of an order of the Honorable Privy Council of Canada, duly made and passed on the 30th day of October, 1873, and referred to in the said Act and in the schedules thereto appended. Together with all and singular the appurtenances thereunto belonging, or in any wise appertaining, and the reversions remainders, tolls, incomes, rents, issues and profits thereof, and all the estate, right, title, interest, property and possession, claim and demand whatsoever, as well in law as in equity, of the said parties of the first part of, in and to the same and any and every part thereof, with the appurtenances thereof. To have and to hold the said premises, and every part thereof, unto the said party of the second part, his heirs, and assigns, and to his successors in the trust, to the only proper use and behoof of the said Trustee, and of his heirs and assigns, and of his successors in the trust, but nevertheless upon the trusts and for the purposes herein expressed, that is to say,

ARTICLE 5—Until default shall be made or have occurred in the payment of all or some part of the interest on the said Debentures, or of some one of them, or in the payment of some one of the annual payments of sinking fund to the Trustee, as prescribed in Article three; or until default shall be made or have occurred in respect of some-



hing by these presents required to be done, observed, performed or kept by the Company; and until the Trustee shall have acquired the right to exercise the powers contained in Article seven, the Company shall be suffered and permitted to possess, manage, operate and enjoy the Railway, equipment, appurtenances, movable and immovable, property and franchises aforesaid, and to take and use the rents, revenues, incomes, profits tolls and issues hereof.

ARTICLE 6 — If default shall be made in the payment of the amount of any of the interest coupons upon the said Debentures, as and when they shall become payable, upon being presented in accordance with the terms of the said Debentures; or in any payment to the Trustee, of the amount for the time being of the sinking fund, hereinbefore mentioned, as and when it shall become payable; or in the performance of the covenant of further assurance hereinafter set forth; or in the payment of any taxes, assessments or other Governmental charges which may be lawfully levied or imposed upon the said railways and premises or any part thereof, and the lien whereof might or could be held prior to the lien of these presents; then and in any and every such case, it shall be lawful for the Trustee to exercise the powers contained in Articles seven, eight and nine respectively after the expiration of the times, and after the notices, in the said Articles respectively mentioned 2210 2220

ARTICLE 7.— If the defaults mentioned in the last foregoing Articles, or either of them, shall have continued for three calendar months, it shall be lawful for the Trustee for the time being, personally, or by his attorneys or agents, to take possession of, without the authority of any Court, and enter into and upon, all and singular the premises hereby conveyed, and each and every part thereof, and to have, hold, and use the same: operating the same personally, or by his superintendents, managers, receivers or servants, or other attorneys or agents, and conducting the business thereof and exercising the franchises pertaining thereto, and making from time to time, all repairs and replacements, and such useful alterations, additions and improvements thereto, as may seem to him to be judicious: and to collect and receive all tolls, freights, incomes, rents, issues and profits of the same, and of every part thereof, and after deducting the expenses lawfully incurred in making such entry, or otherwise obtaining possession of the said premises, and of operating said railways, and conducting their business, and of all the said repairs, replacements, alterations, additions and improvements, and all payments which may be made for taxes and assessments, upon the said premises or any part thereof, as well as just compensation for his own services, and for the services of such agents, attorneys and counsel, as may have been by him employed; to apply the moneys arising as aforesaid to the payment of interest in the order in which such interest shall have become, or shall become due, rateably to the persons holding the coupons evidencing the right to such interest; and in the next place to the payment of all debentures which shall have become due either by being drawn for payment or by a sale under Article eight, or by a direction of the Trustee under Article ten; and if and when all the said payments of interest and principal, which shall have become due, shall have been made in full, and if no sale shall have been made in conformity hereto, the Trustee after making such provision as to him may seem advisable for the payment of the half-year's interest then next to fall due, shall restore to the said Company the possession of the premises hereby conveyed, and the books, documents and papers 2230 2240



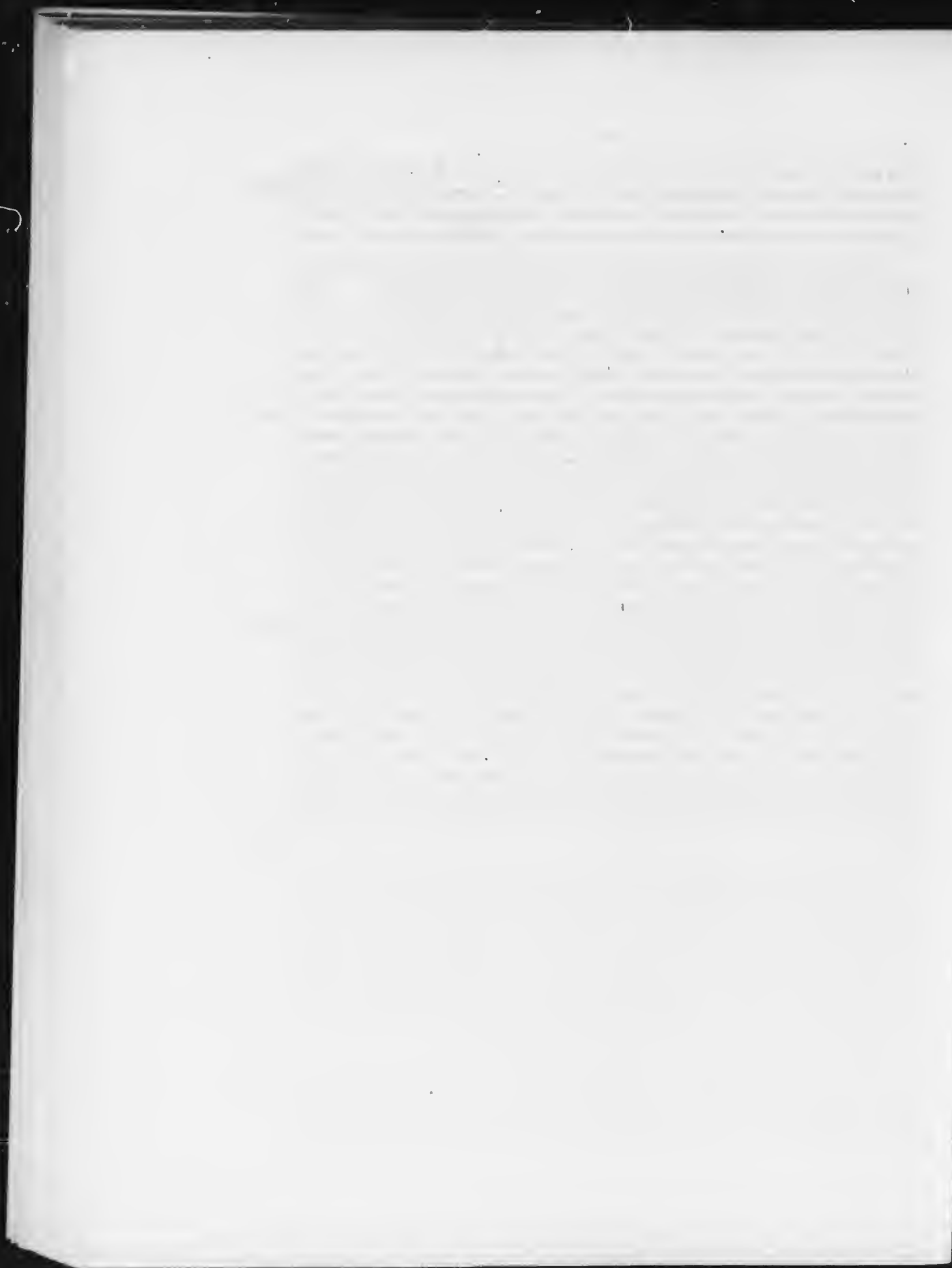
relating to his administration as Trustee: provided always that if any of the defaults hereinbefore specified be subsequently made or occur, such restoration shall not, nor shall any previous entry be construed to, exhaust or in any manner impair the powers of entry or sale, or any other power hereby granted to or conferred upon the Trustee. 2250

ARTICLE 8.—If the defaults mentioned in Articles five and six, or any of them, shall be made as aforesaid, and shall continue for one year, it shall likewise be lawful for the Trustees, after entry as aforesaid or other entry, or without entry, to sell and dispose of all and singular the railway property and premises hereby conveyed, or intended to be, or any part thereof, at public auction in the city of Halifax, or at such place within the Dominion of Canada as the Trustee may designate, and at such time as he may appoint: having first given notice of the place and the time of such sale by advertisements published for not less than ten weeks in one or more newspapers, in each of the cities of London, in England, of Halifax, St. John, Montreal, Ottawa, Quebec and Toronto, in Canada, or to adjourn such sale from time to time in his discretion, and if so adjourning to make the same without further notice, at the time and place, to which the same may be so adjourned. And to make and deliver to the purchaser or purchasers thereof good and sufficient deed or deeds in the law for the property so sold: which sales, made as aforesaid, shall be a perpetual bar both in law and equity against the said Company, and against all other persons claiming the said premises, or any part thereof, by, from, through or under the said Company; and after deducting from the proceeds of such sale, just allowances for all expenses of the said sale, including Attorney's and Counsel fees, and all other expenses, advances or liabilities which may have been made or incurred by the Trustees for taxes and assessments, and for charges and liens (if any) prior to the lien created by these presents on the said premises, or any part thereof, as well as compensation for his services, to apply the said proceeds in the first place to the payment of interest coupons, which shall have become due, and in the next place to the payment of the principal of all the said debentures, which shall then be issued, and outstanding and whether due or not, rateably to the aggregate amount of such unpaid interest and principal respectively; and if after the satisfaction thereof, a surplus of the said proceeds shall remain, to pay over the said surplus to the Company, or to such person as any Court of competent jurisdiction shall order 2260

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ARTICLE 9.—At any sale of the aforesaid property or any part thereof, whether made by virtue of the power herein granted or by judicial authority, the Trustee may in his discretion bid for and purchase, or cause to be bidden for and purchased, the property so sold, or any part thereof, on behalf of the holders of the debentures, secured by this instrument, and then outstanding, in the proportions of the respective interests of such holders, at a reasonable price, if but a portion of the said property shall be sold, or if all of it be sold, then at a price not exceeding the whole amount of such debentures then outstanding with the interest accrued thereon, and the expenses and previous charges and liens (if any) payable in respect thereof.

ARTICLE 10.—The receipt or receipts of the Trustee shall be a sufficient discharge to the purchaser or purchasers for the price of any such sale, and his or their heirs, executors, or administrators, shall not, after payment thereof, and having such receipt, be liable to see to its being applied upon or for the trusts and purposes of 2290



these presents, or in any manner howsoever be answerable for any loss, mis-application or non-application of such purchase money or any part thereof, or be obliged to enquire into the necessity, expediency, or authority of or for any such sale.

ARTICLE 11.—The Trustee shall render to the Company annually full and true accounts of his receipts and payments made in the exercise of the foregoing powers. And if by virtue of any act of the Legislature of the said Province, or any by-law of the Company made thereunder, the voting power of the shareholders shall be lost and 2300 shall be acquired by the holders of the said debentures, such annual accounts shall be so rendered also to a committee of the private shareholders, if any such be elected under the provisions of such act or by-law. And upon and after the rendering of each of the said annual accounts, the said Trustee shall grant to such Company or Committee reasonable access to his books and vouchers; and other reasonable facilities to enable such accounts to be verified and audited by the Company or by such Committee; or by such person or persons as they or either of them shall appoint for that purpose.

ARTICLE 12.—In case the defaults mentioned in Article five, or any of them, shall continue for one year, the Trustee may by writing under his hand declare the 2310 principal of all the debentures then issued and outstanding, due and payable.

ARTICLE 13.—And it is hereby further agreed by and between the said parties hereto, that the said Company will endeavour to procure from the Legislature of the said Province at its next session, power and authority to the holders of the debentures hereby secured, in case of the occurrence of either of the defaults mentioned in Article five, of this Indenture, to vote in the election of directors of the said Company, and in all other matters respecting which the shareholders thereof can now vote, in the place and stead of such shareholders, whose right to vote at such meetings and for such purposes shall thereupon cease; with such provisions for enabling the said debenture holders to exercise the said power and authority, as may be found convenient and as may be enacted by the said Legislature, the whole, however, without pre- 2320 judice to the remedies hereby provided for and granted for enforcing payment of the said debentures, and of the interest thereon.

ARTICLE 14.—It shall be the duty of the Trustee to exercise the powers given him by Article six, seven, eight, nine and twelve, or any of such powers (if the events upon which such powers shall be exercisable shall have happened) upon being thereunto required in writing by the holders of not less than one-fourth of the debentures issued upon the security of these presents, and for the time being outstanding, and upon a proper indemnification being given to the Trustee by or on behalf of the persons making the said requisition against the costs and expenses to be incurred by the 2330 trustee, and against any damages he may suffer by acting upon such requisition; but the Trustee may, if he thinks fit, exercise the said powers, or any part of them, in the proper cases, without any such requisition or security.

ARTICLE 15.—A general meeting of debenture holders may, by resolution to be passed thereat, instruct the Trustee to abstain from exercising all or any of the powers given in Articles six, seven, eight, nine and twelve, or any of them, or to discontinue and withdraw from the exercise of them if already entered upon, or to exercise them subject to any terms or conditions or in any particular manner, and the

Trustee shall forthwith, or so soon as shall be reasonably possible, give effect to and obey such resolution, provided always that no such resolution shall annul or make void any acts already done by the Trustee in the exercise of such powers, and that no resolution shall have any effect under this Article, unless the convening of the meeting, and the voting, passing and authenticating of the resolution shall be in accordance with Article twenty-five; provided further that no action of the Trustee or of the debenture holders, or both, in waiving such default or otherwise, shall extend to or be taken to affect any subsequent default, or to impair the rights resulting therefrom. 2340

ARTICLE 16.—The Trustee shall have full power in his discretion, from time to time, to become party to and to confirm and ratify any deed of sale or conveyance executed by the said Company to any person or persons of any lands acquired or held for the purpose of stations, depôts, shops, or other buildings, and of any lands or property which shall not be necessary for use in connection with the said railway or branch, or which have been held for a supply of fuel, gravel, or other materials, or of any lands not used for the track of the said railway, or which may become disused by reason of a change of the location of any station, house, depôt or other building connected with the said railway or of such lands occupied by the track and adjacent to such station, house, shop, or other building, as the Company may deem it expedient to disuse or abandon by reason of such change; and to consent to any such change, and to such change in the location of the track or depôt or other buildings, as in the judgment of the Company shall have become expedient; and to execute such release or discharge of the mortgage created by these presents and by the said debentures upon the property so conveyed as may be necessary to carry such conveyances into effect. But the purchase money accrued upon all sales and conveyances under this Article shall be received and held by the Trustee, and shall be applied by him at the option of the Company, either in increasing the sinking fund and drawing a larger number of debentures, or in purchasing other lands or buildings which shall be vested in the Trustee for the time being subject to the trusts created by these presents. 2350 2360

ARTICLE 17.—The Trustee shall also have power to allow the Company, from time to time, to dispose of, according to their discretion, such portion of the equipments, machinery and implements at any time held or acquired for the use of the said railway, as may have become unfit for such use, replacing the same by new, which shall be subject to the operation of these presents. 2370

ARTICLE 18.—The Trustee or his successors in office may resign and discharge himself or themselves of the trusts created by these presents by notice in writing to the Company three months before such resignation shall take effect, or such shorter time as the Company may accept as adequate notice, and upon the due execution of the conveyances hereinafter required.

ARTICLE 19.—The Trustee or his successors in office may be removed by a resolution of a general meeting of the holders of the said debentures, convened and held in accordance with Article twenty-five.

ARTICLE 20.—In case at any time hereafter, the Trustee or any Trustee hereinafter appointed shall resign or be removed as herein provided, or by a court of com- 2380



petent jurisdiction, or shall become incapable or unfit to act in the said trust, a successor or successors to such Trustee shall be appointed by the surviving or continuing Trustee or Trustees, if any, or by the resolution of a general meeting of the holders of the said debentures, convened and held in accordance with Article twenty-five; or in case it shall, at any time hereafter, prove impracticable or inconvenient after reasonable exertions to appoint in the manner hereinbefore provided, a successor in any vacancy which may happen in said trust, application may be made on behalf of holders of the said debentures to the aggregate amount of one-twentieth of the debentures for the time being issued and outstanding, to a Judge of the highest Court 2390 of original jurisdiction in said Province or to the said Court itself, or if such Judge or Court should refuse to act officially in respect of such appointment, then to any person then holding the office of Judge of such Court as a private referee, for the appointment of a new Trustee or Trustees, and the appointment thereupon made by such Court, or any Judge thereof officially, or as a private referee, of any Trustee or Trustees to fill any vacancy in the said trust, shall have the same force and effect as if made by the debenture holders as hereinbefore provided.

ARTICLE 21.—The Trustee or Trustees appointed in any of the ways mentioned in Article twenty, shall thereupon become vested with all the powers, authorities and estates granted to or conferred upon the Trustee appointed by these presents, and all 2400 the rights and interests requisite to enable him or them to execute and carry out the purposes of this trust without any further assurance or conveyance. And upon the resignation or removal of any Trustee or Trustees, or any appointment in his or their place, in pursuance of these presents, all the powers and authorities conferred upon the retiring Trustee or Trustees by virtue hereof shall cease, and all the estate, right, title and interest in the said premises of any Trustee or Trustees so retiring shall wholly cease and determine, but the Trustee or Trustees so retiring their heirs, executors and administrators shall, on the written request of the newly appointed Trustee or Trustees immediately execute a deed or deeds of conveyance to vest in such new Trustee or Trustees, jointly with the continuing Trustee or Trustees (if any), upon the trusts 2410 herein expressed, all the property, privileges, mortgages, liens, rights and franchises which may be at that time held upon the said trusts.

ARTICLE 22.—The Trustee and his successors in the trust, shall be accountable for reasonable diligence in the management thereof, but shall not be responsible for the acts or defaults of any agent employed by them in good faith.

ARTICLE 23.—The Company in consideration of the premises and of one dollar to them duly paid by the trustee, the receipt whereof is hereby acknowledged, hereby further covenant and agree to and with the said trustee, his heirs, assigns and successors, that the company shall and will from time to time, and at all times hereafter, and as often as thereunto requested by the trustee execute, deliver, and acknowledge all such 2420 deeds, conveyances, and assurances in the law for the better assuring unto the trustee the property, privileges charges, and liens, herein and by the said debentures created, or intended so to be, as by his counsel learned in the law shall be reasonably advised, directed or required. And specially, shall use due diligence in procuring from the government of the Dominion of Canada, a conveyance to the said Trustee either directly or through the Company, of the said Windsor Branch; and of the running powers and

other rights and privileges referred to in the Statute of the Dominion of Canada hereinbefore mentioned.

ARTICLE 24.—The Company, for themselves and their successors, in consideration of the premises and of one dollar to them duly paid by the trustee, further covenant 2430 and agree to and with the trustee and his heirs, assigns and successors, that the Company shall and will at all times hereafter provide for and keep an agency in London, aforesaid, at the place aforesaid, for the payment of the principal and interest of and upon the debentures hereinbefore recited and described, as the same shall become payable; and also an office or agency for the transfer and registration of the said debentures; and that any and every default in the due performance of this covenant shall be deemed and taken to be a waiver of presentment and demand of payment of all and every of the Debentures and coupons aforesaid, which may become payable during the continuance of such default.

ARTICLE 25.—Whenever any contingency shall arise in which the resolution of a 2440 general meeting of debenture holders is hereinbefore declared to have any effect, such meeting shall be convened by the trustee, or by the holders of one-tenth in amount of the debentures for the time being outstanding, and shall be held in the city of London, England. It shall be called by advertisement (the expense whereof shall be a liability of the Company, and may be defrayed if necessary from any trust fund) to be published three times in each week, for six weeks, in two daily newspapers of good circulation; one newspaper in the city of Halifax and one in the said city of London. The notice shall state the hour and place of such meeting; and also in general terms the nature of the resolution to be proposed at such meeting, and no resolution shall be proposed which shall not come within the terms of such notice. Holders of debentures to bearer, shall 2450 deposit their debentures two days before the meeting, at some place to be appointed by the notice, and shall receive in exchange tickets entitling them to vote thereat. The chairman shall be appointed by the meeting. Holders of debentures may vote in person or by proxy. No resolution shall be passed unless there shall be present or by proxy the holders of one tenth of the total amount of Debentures for the time being issued and outstanding. Resolutions shall be passed by a simple majority of votes, each person having one vote for each Debenture. The holding of the meeting and the resolutions passed thereat shall be authenticated by a notarial instrument, signed by the Chairman and a notary.

ARTICLE 26.—The word "trustee" as used in these presents shall be construed to mean the trustee or trustees for the time being, whether original or new. 2460

ARTICLE 22.—The trustee shall be entitled to just compensation for all services which he may hereafter render in his trust, which compensation shall be paid by the said company, or out of the income of the property hereby conveyed.

ARTICLE 27.—If the Company shall well and truly pay the principal and interest of the said Debentures at the times and in the manner herein specified, and shall well and truly keep and perform all the conditions and things herein required to be kept or performed by the said Company, according to the true intent and meaning of these presents, these presents and the effect thereof shall cease, determine and become void, otherwise the same shall be and remain in full force and virtue.

In witness whereof the parties hereto have executed these presents in Halifax 2470 aforesaid, on the day, month and year hereinabove written.



EXHIBIT D.

IN BINGAY'S EXAMINATION.

HALIFAX, SS.

IN THE SUPREME COURT,

IN EQUITY, 1878.

*Cause—*THE WINDSOR AND ANNAPOLIS RAILWAY COMPANY, *Plaintiffs,*

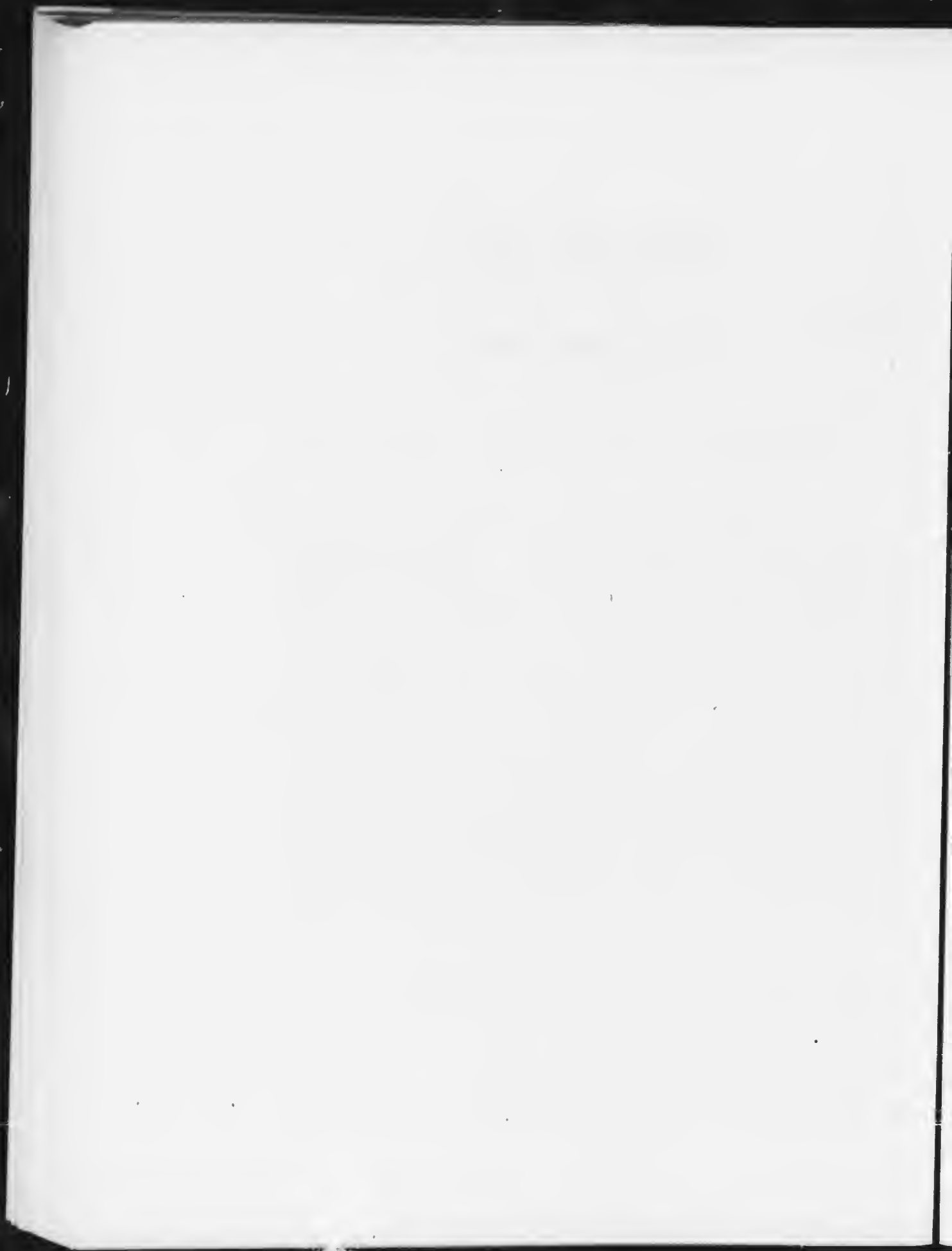
vs.

THE WESTERN COUNTIES RAILWAY COMPANY, *Defendants.* 2480

THIS Agreement, made this twenty-first day of October, in the year of our Lord one thousand eight hundred and seventy-five, between Walter Shanly and Edmund Walter Plunkett, both of the City of Montreal, in the Province of Quebec, Engineers and Contractors, herein called "The Contractors," of the first part, and the Western Counties Railway Company, of the Province of Nova Scotia, herein called "The Company," of the second part, Witnesseth: That for and in consideration of the payments and covenants hereinafter set forth and to be paid and performed by the Company, the Contractors, for themselves, their heirs, executors, administrators, and assigns, covenant and agree with the Company, its successors and assigns, to construct, build, and equip, in a good, substantial, and workmanlike manner, the line of the Western Counties Railway, from Yarmouth to Weymouth, Digby and Annapolis, in the Province of Nova Scotia, a distance of about ninety miles, more or less, in accordance with the plans and specifications signed by the parties hereto, and the schedules and certificates prepared for and accepted by the Nova Scotia Government, for purposes of monthly payments, on account of the Provincial subsidy to said line; and said schedules and certificates are attached to this agreement, and marked R, and are hereby declared to form a part of this contract to the same intent and purpose as if they had been embodied herein. And the Company and the Contractors hereby formally covenant, promise, and agree, as set forth in the following clauses, numbered from one to twenty-eight, inclusive: 2490

2500

1. That the Contractors, in addition to building, completing, and equipping the railway, as specified, shall also provide and pay all the expenses of the requisite engineering staff and office assistance.
2. That the several items of work included in this contract, are set forth in the schedule and certificates aforesaid, attached hereto, and signed by the parties.
3. That the works to be executed and the materials to be delivered and used, shall be of similar character to that of the line already constructed under the Company's own auspices from Yarmouth northward.



4. That the entire railway, from Yarmouth to Annapolis, shall be completed by the first day of May, A. D., 1877, provided that no extraordinary delay or hindrance be caused by want of the requisite right of way, service grounds, or other unforeseen circumstances. 2510

5. That the Contractors shall hold the Company harmless in case of suits at law, as to drainage caused to the lands, fences, or property of owners of land adjoining the line of railway, by reason of any negligence or unskilfulness on the part of the Contractors agents, servants, or workmen.

6. That all materials delivered by said Contractors, shall become the property of the Company, as between the Company and Contractors, when delivered on the lands of the railway, and when the Engineer's estimate for the same shall be delivered to the Contractors. 2520

7. That the Contractors shall, at the end of the current month, assume the existing sub-contract between the Company and George S. Cutten.

8. That at the end of the current month, the Company will cause its Engineer, with one appointed by the Contractors, to make a final measurement of work done under said sub-Contract, up to that time. And it is understood and agreed, in order to avoid disputes between the sub-Contractor and the Contractors hereafter, that the Company shall obtain and transfer to the Contractors, if possible, the sub-Contractor's written acknowledgment of the correctness of said final estimates and measurement to date aforesaid.

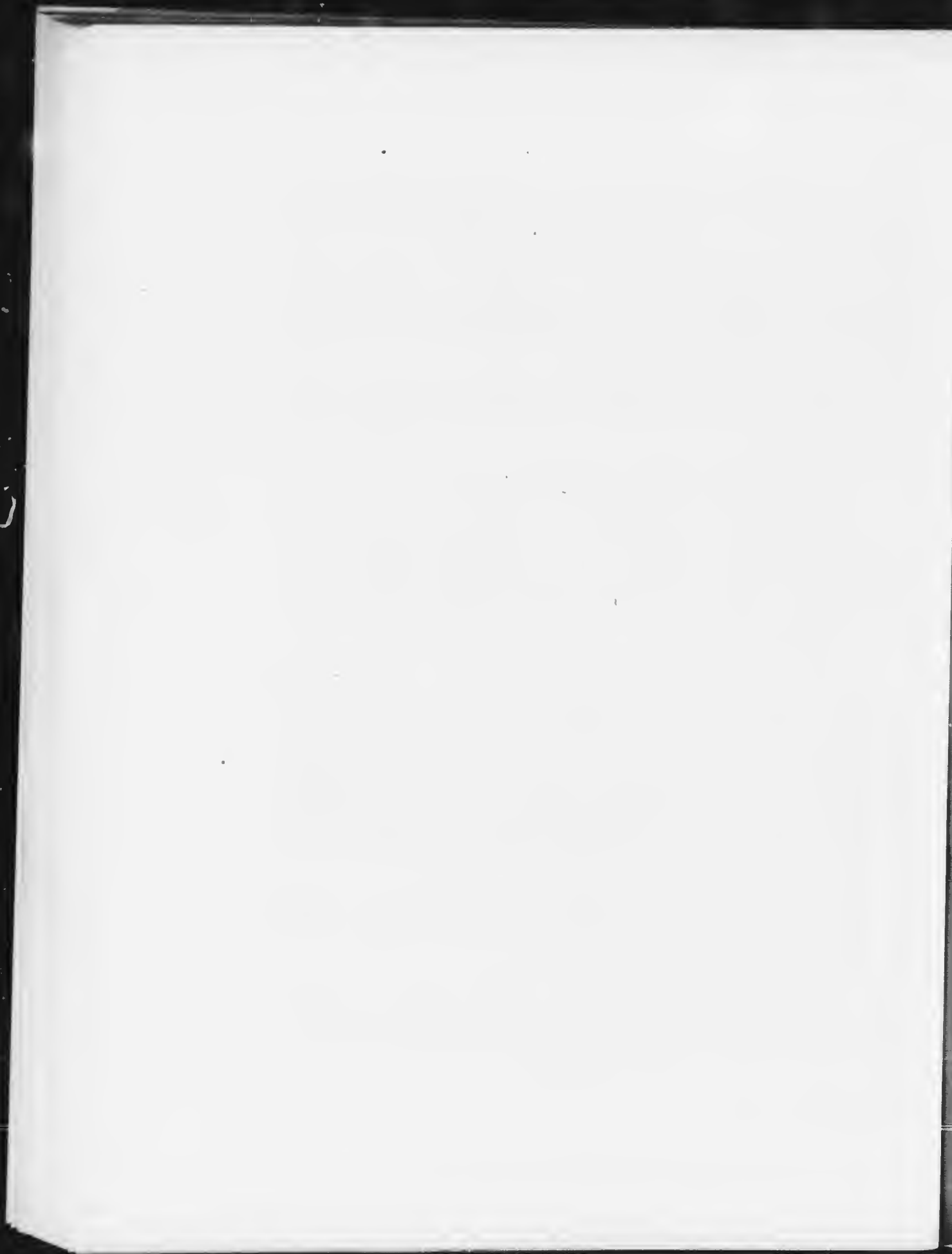
9. That the Contract price and consideration to be paid by the Company to the Contractors, for the due execution of the work required for the entire completion and equipment of the railway, as set forth and described in the plans, specifications, and the schedules and certificates hereto attached, and for fulfilment of the covenants herein mentioned, shall be (1) a lump sum, consisting partly of cash and partly of securities, (2) a transfer of the Company's right to an allotment to one hundred and fifty thousand acres of land; and (3) a transfer of the Company's prospective rights to the Windsor Branch Railway and other privileges, granted under a Dominion Act of Parliament, passed in 1874; the whole more particularly described and classed under the following eight items, A to H inclusive, that is to say:— 2530

A. Cash from the Nova Scotian Government, being the whole of the subsidy, less the portion so far paid on account granted to the Company, at the rate of \$8,000 per mile of line, under authority of Provincial Acts, 37 Viet., chap. 12, passed A. D., 1874, and 38 Viet., chap. 22, passed 1875. 2540

B. All the unsold bonds of the township of Yarmouth, issued under authority of Provincial Act 1873, chap. 26, payable in 1893, bearing interest at the rate of six per cent. per annum, payable half-yearly, and free from local taxation, amounting to sixty thousand seven hundred dollars, or thereabouts.

C. The unexpended amount of all the private stock subscriptions in promissory notes of stock subscribers.

D. First mortgage bonds of the Company, to the amount of one million dollars. 2550



E. Certificates of paid-up shares of the Company's stock, to the amount of two hundred and seventy-three thousand dollars.

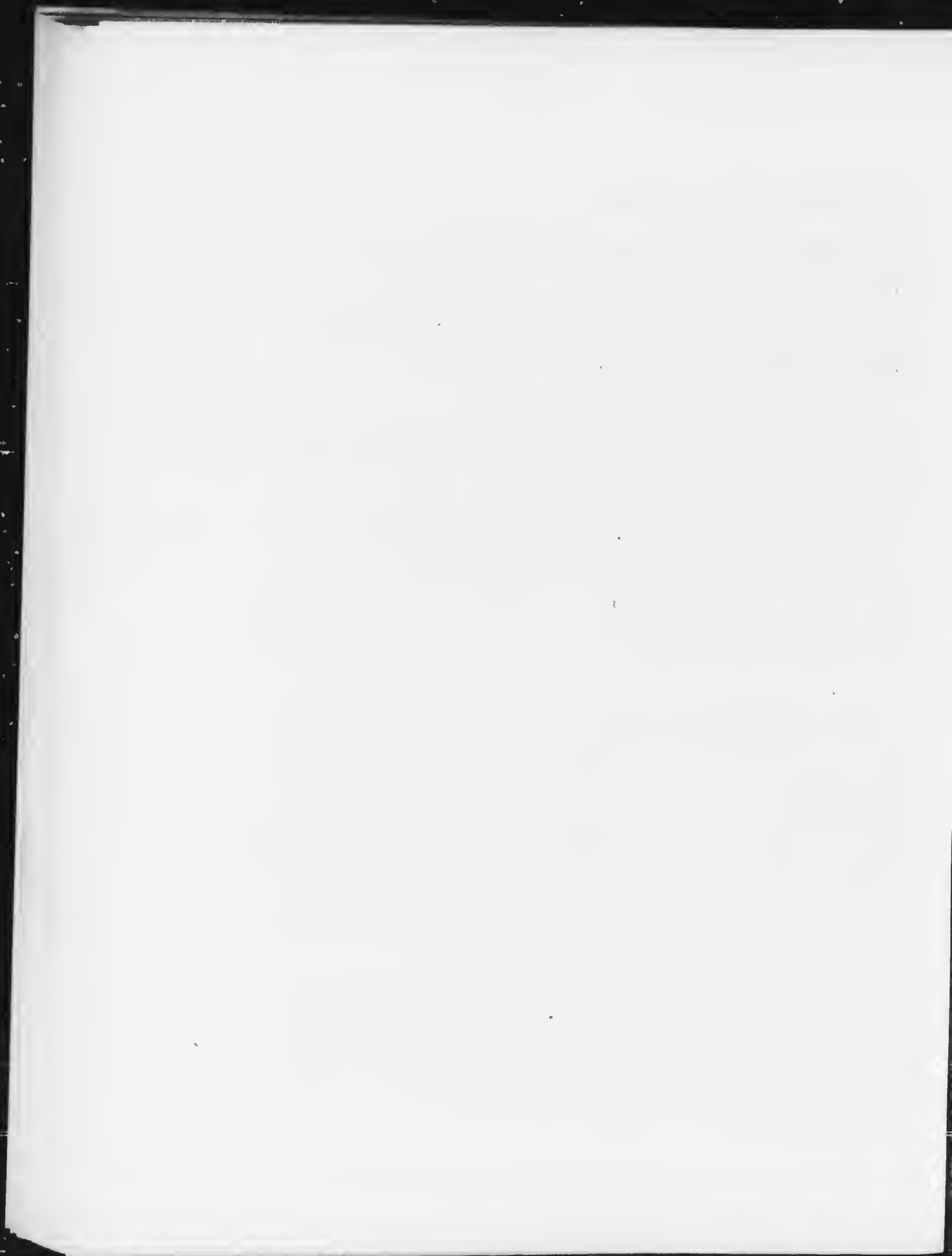
F. A legal transfer of the Company's right, title and interest, in one hundred and fifty thousand acres of land in the Province of Nova Scotia, granted to the Company, under authority of Provincial Act, 37 Vict., chap. 12, passed A. D., 1874.

G. A legal transfer of all the Company's prospective rights and privileges to accrue under a Dominion Act of Parliament, passed in pursuance of Orders in Council, 22nd and 30th October, 1873, and authorizing the transfer of "the Windsor Branch of the Nova Scotia Railway to the Western Counties Railway Company."

H. Promissory notes to the amount of two hundred and fifty thousand dollars, 2560 with interest at seven per cent. per annum added, being for a subscription to \$350,000 of bonds, at seventy per cent. of par value, as required by Contractors' offer of 7th July, 1875, a copy of which is hereto annexed. But said offer being since modified from \$250,000 cash, for \$350,000 of bonds, to \$250,000 promissory notes, with interest, it is now agreed between the parties that the Contractors shall accept the following for \$350,000 bonds: (1) Twenty-eight notes of various persons, as per list hereto attached, amounting with interest to \$77,350; (2) For the balance of purchase money of bonds, viz., \$180,000, the Company engages to procure additional responsible subscriptions, satisfactory to the Contractors; but failing these or a portion of them, it is agreed that the Company shall give its own notes at such times and dates 2570 as may be agreed upon, for such deficiency in the stipulated bond subscription referred to in letter of 7th July, 1875, before mentioned.

These promissory notes shall have the purchased bonds attached to them as collateral security, with power to sell said bonds in case of non-payment of the notes at maturity; and at any time before maturity of the notes, the Contractors may elect to take and hold all or any of the bonds instead of collecting the notes to which the bonds are attached as collateral security, and in that case Contractors shall give up such notes to the makers thereof, and pay to the said makers ten per cent. per annum interest on the agreed cash value of bonds (namely, seventy per cent. of face) less interest at seven per cent. per annum on said agreed cash value. But if said notes 2580 are paid, the bonds attached thereto as collateral, shall be delivered to the makers; the interest coupons shall remain attached to the bonds, and shall follow the ultimate possession of the bonds, but the Contractors shall provide, at the maturity of the notes, for the payment of the three first coupons aforesaid, should the notes be then paid.

An in case the Government of Nova Scotia shall grant to the Company an additional subsidy, in consideration of a re-cession by the Contractors of the land grant, or in consideration of any other matter or thing, then the additional sum so granted shall be applied wholly to the payment of such notes, and if not sufficient for that purpose, it shall be applied *pro-rata*; but it is understood that, in this event, all the 2590 bonds, or a proportionate share of them, as the case may be, attached to said notes, shall become the property of the Contractors, to compensate them for surrendering the land grant aforesaid.



10. That the Company shall, when requested by the Contractors, hold meetings, pass votes, execute conveyances, and do such further acts as may be necessary to carry out their undertakings contained herein, according to the true intent and meaning hereof.

11. That monthly payments on account of the contract price shall be made to the Contractors by the Trustee hereinafter named on the certificate of the Chief Engineer of the Company for the time being, who, in making such certificate, shall estimate the entire amount of work done and materials, etc., delivered to the end of each month. He shall then deduct all previous estimates and certify for the difference or remainder. Such certificate shall be delivered to the Contractors not later than the tenth of the month following the month to which the certificate applies. 2600

12. That the monthly progress, estimates, or certificates, aforesaid, shall consist of the several items of work included in the annexed certificate or schedule, marked R, but the prices in said certificate R shall, for the purpose of progressive payments under this contract, be increased by one-third, to allow for so much of the contract price being in securities. The progress estimates shall be payable by the Trustee to the Contractors immediately on presentation of the engineer's certificate aforesaid, 2610 and in such proportions of the different items of the contract price as the Contractors from time to time may elect.

13. That for the purposes of this contract, the agent of the Bank of Montreal, at Halifax, N. S., is hereby appointed Trustee to receive and hold under a deed of trust to be hereafter prepared and executed by the Company and the Contractors, in accordance with the terms of this agreement, the following transfer, promissory notes and securities:

A. A legal transfer and right to collect the subsidies hereinbefore mentioned, granted by the Legislature of Nova Scotia to the Western Counties Railway;

B. Bonds of the Township of Yarmouth, to the amount of about sixty thousand seven hundred dollars; 2620

C. Promissory notes with certificates of full paid stock in the Company attached as collateral, to the amount of at least seventy thousand dollars, per detailed stock list hereto attached;

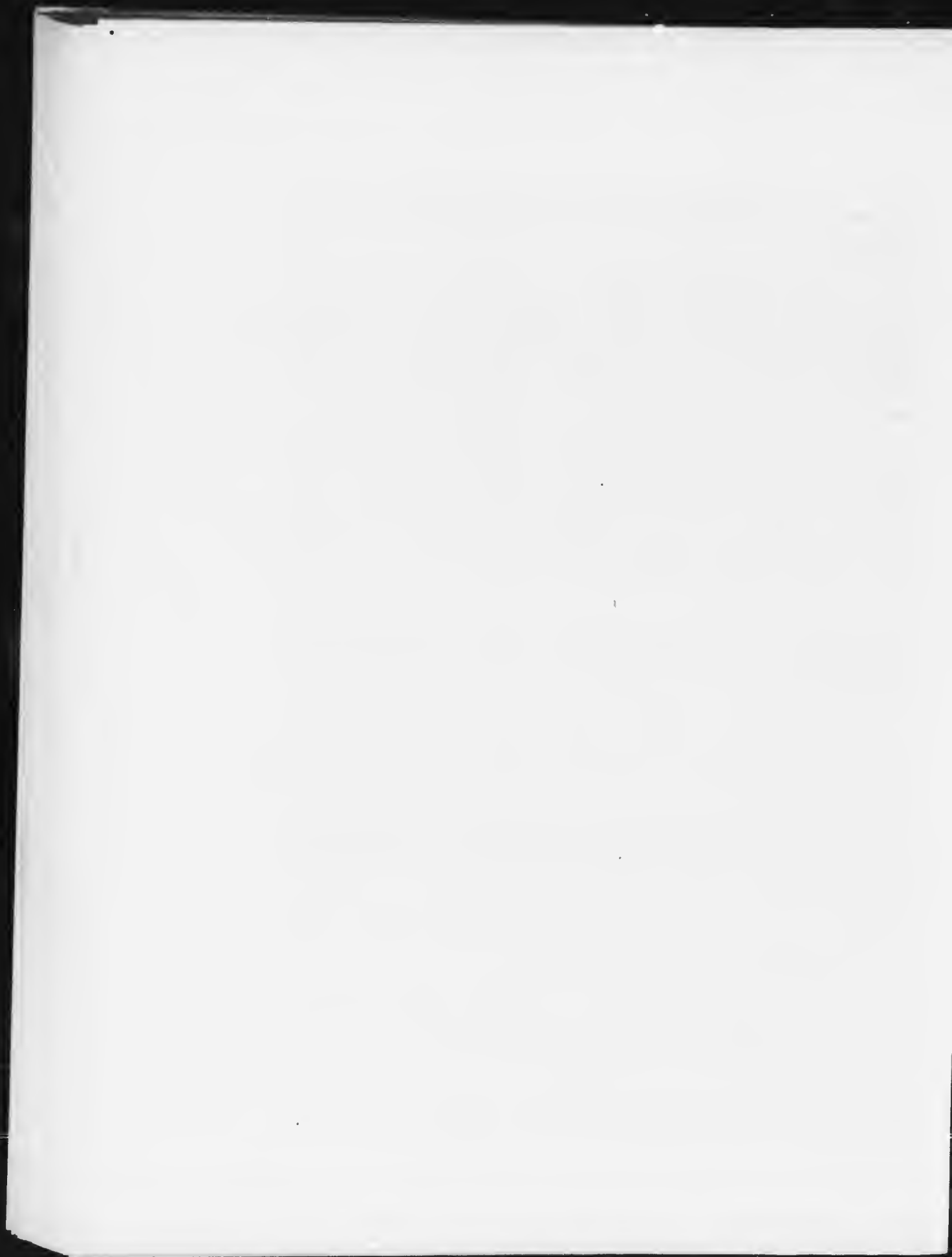
D. First Mortgage Bonds of the Company to the amount of one million of dollars;

E. Certificates of paid up stock in the Company to the amount of two hundred and seventy-three thousand dollars;

F. A legal transfer of the land grant of one hundred and fifty thousand acres;

G. A legal transfer of the Company's prospective rights to the Windsor branch 2630 of the Nova Scotia Railway;

H. Promissory notes at six and eighteen months date to the amount of two hundred and seventy-six thousand two hundred and fifty dollars, per detailed list annexed thereto, and with Company's First Mortgage Bonds at the rate of seventy per cent. of the par value attached to said notes as collateral.



14. That all the existing works, lands, materials, plant, tools, machinery and rolling stock of the Company are hereby transferred to the Contractors, and shall be estimated upon by the Chief Engineer, as herein required, and as if performed and furnished under this contract.

15. That the contractors shall provide for the prompt payment of interest on 2640 bonds during construction unless where expressly stipulated to the contrary.

16. That the Company shall not, during the existence of this contract, increase or alter its share or bond capital or seek any new legislation, without the formal written concurrence of the Contractors.

17. That any portion of the railway may be opened for traffic before its entire completion from end to end, provided an agreement is made between the Company and the Contractors to that effect. In any case, it is understood that the Contractor's men, tools, plant, material, machinery, rolling stock and all other things that may be required in the construction of the line, shall pass over the railway free of toll and charge of every kind, during the existence of the contract.

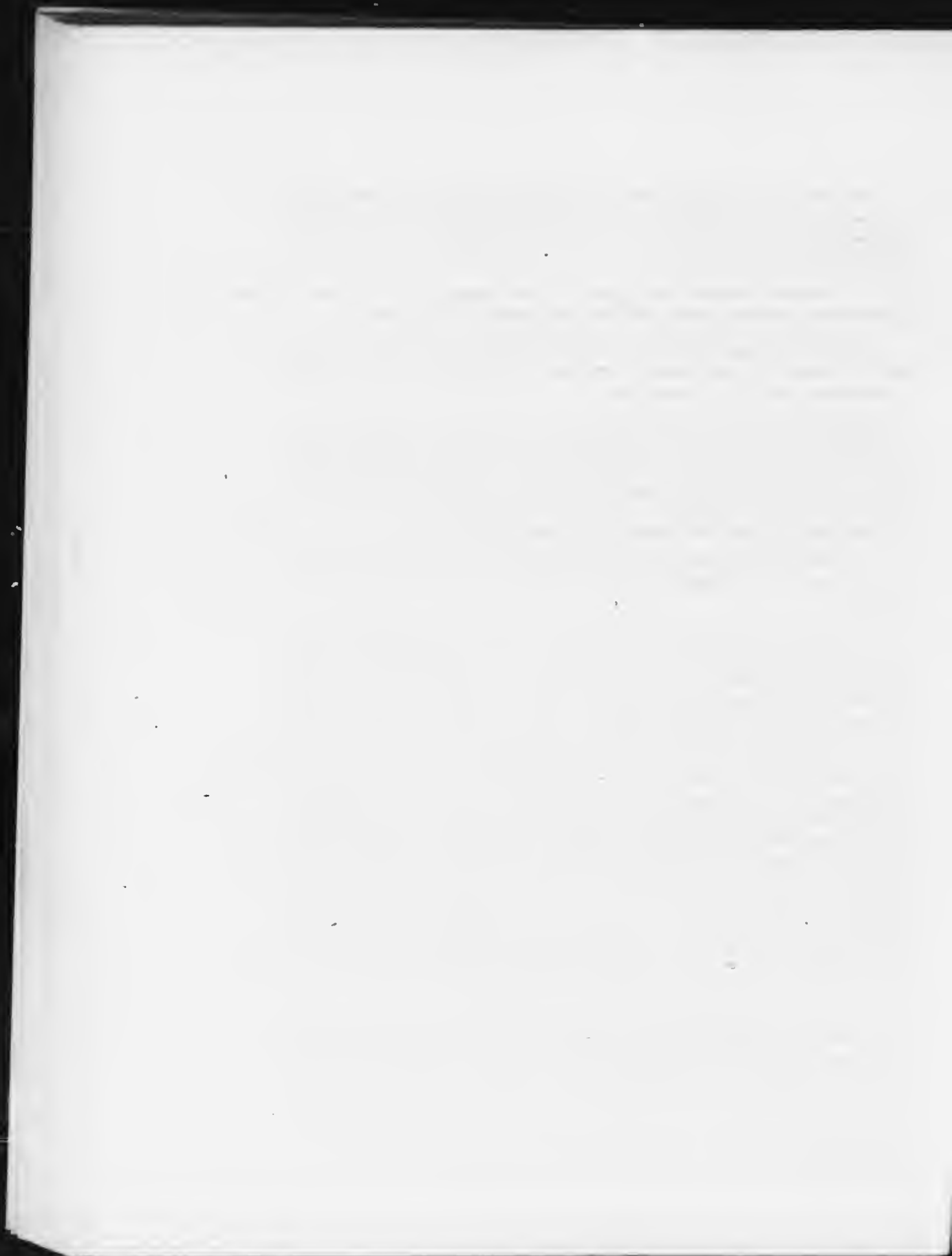
2650

18. That the Company shall give the assistance of its corporate powers whenever required by the Contractors for purposes connected with the construction of the railway.

19. That the Contractors shall conform in all respects to the plans and specifications and the directions of the Chief Engineer of the Company for the time being, by whose measurements and calculations the amount and quality of the different kinds of work performed and the materials delivered under this agreement shall be determined, and who shall have power to reject and condemn all work and materials not in conformity, in his opinion, with the specifications, plans, and this agreement, and who shall arbitrate and decide all disputes and differences that may arise between 2660 the parties hereto in reference to this contract. Nevertheless, in case his decision or arbitrament on any point upon which he may adjudicate should not be satisfactory to the Contractors, they shall give notice thereof, and thereupon such matters shall be referred to arbitration in the usual way; that is, each of the parties hereto shall name an arbitrator, and the two so appointed shall name a third, and the decision of any two of them shall be final and conclusive between the parties, and the costs attending such arbitration shall follow the result. But in case either party hereto shall neglect to appoint an arbitrator within two weeks after notice in writing of the appointment made by the other shall have been served, then the arbitrator so appointed by the other party shall proceed in the premises and decide the matters in dispute alone; 2670 and his decision shall be final and binding on the parties hereto.

20. That on the completion of the work to be done by the Contractors under this contract they shall be entitled to receive from the Trustee whatever balance may then remain unpaid of the contract price and consideration; and it shall be the duty of the Chief Engineer of the Company to give such orders or certificates to the Contractors as will enable them to obtain the full payment thereof from said Trustee.

21. That for receiving notices and the general purposes of the contract, the Contractors elect domicile at Digby, N. S., and the Company at Yarmouth, N. S.



22. That the Company shall provide payment of its outstanding liabilities, and guarantees them not to exceed eighty-three thousand five hundred dollars, and undertakes to settle said liabilities within a reasonable time, so that the creditors of the railway cannot obstruct in any way the operations of the Contractors. 2680

23. That the Company hereby guarantees the railway property and franchises to be free from lien or incumbrance, other than the eighty-three thousand five hundred dollars liabilities aforesaid.

24. That the Contractors will advance to the Company the sum of forty-five thousand dollars in cash, and thirty-eight thousand five hundred dollars in any of the assets referred to in clause nine hereof, excepting the Government subsidy and the Township Bonds to assist in settling said liabilities, and it is agreed that said advances are to be made immediately upon the deposit with the trustee of the contract price specified in clause nine hereof, or a reasonable proportion of said contract price. 2690

25. That pending the additional subscription of \$250,000 for bonds herein referred to in clause the ninth, item H, the Company shall deposit with the Trustee its own notes for \$180,000, with interest and bonds as collateral, and said notes of the Company shall be exchanged for satisfactory notes of individuals of like amounts or other securities of equal value at any time when so obtained.

26. The lawful money of the Dominion of Canada is meant throughout this agreement.

27. That by mutual consent the trustee therein named may be changed, in case of inability or refusal to act, or other reason. 2700

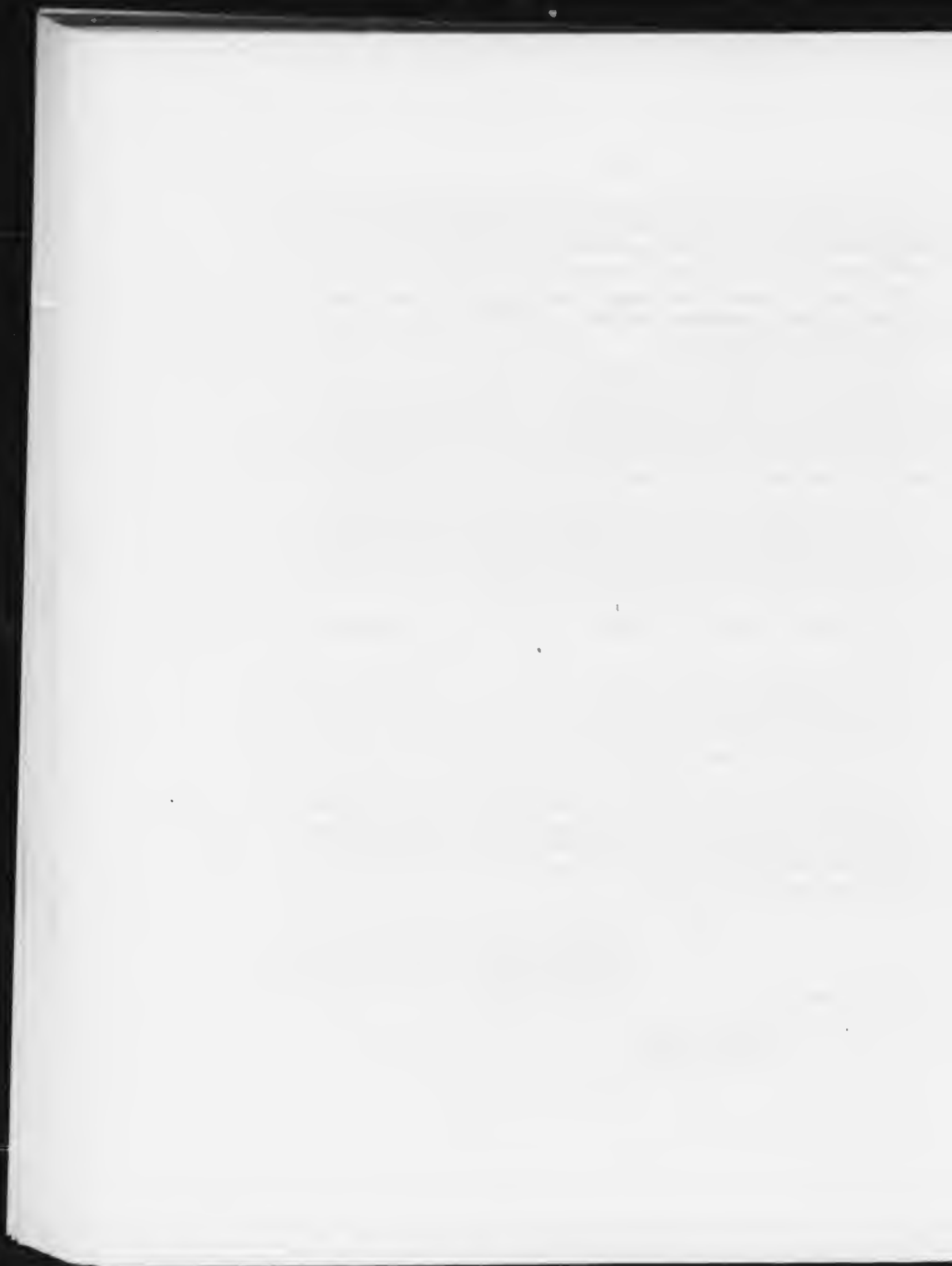
28. That the subscribed share capital stock of the Company shall not exceed the sum of five hundred thousand dollars, without the formal written consent of the contractors.

In witness whereof, the said Western Counties Railway Company has caused its seal to be hereunto affixed, and these presents to be signed by George B. Doane, its President, and Frank Killam, one of its Directors, thereunto duly authorized, and the said Walter Shanly and Edmund Walter Plunkett have hereunto set their hands on the day and year first above written.

(Signed) GEORGE B. DOANE, President W. C. R.
FRANK KILLAM, a Director of W. C. R.
WALTER SHANLY, per E. W. Plunkett. 2710
E. W. PLUNKETT.

Executed in presence of

(Signed) CHARLES ALLEN,
VERNON SMITH,
to all the signatures.



MONTREAL, 7th July, 1875.

FRANK KILLAM, ESQ., M.P., &c., &c., &c.

DEAR SIR,—We make you the following proposition for the construction of the "Western Counties Railway" from Yarmouth to Digby and Annapolis.

We will take the work as it now is, assuming any existing contracts and saving the rights of the Contractors, and complete the road in accordance with a specification to be agreed upon with the Chief Engineer of the Company, with quantities and kinds of work limited to what is set forth in the Engineer's Schedule of prices, &c., as approved and accepted by the Government. 2720

We will undertake to complete the work within the time limited by the charter.

The Company to give us all its assets not hitherto expended in the construction of such parts of the work as are already under contract, viz:

1. Government subsidy.
2. Stock subscriptions.
3. Township loans or subscriptions.
4. The first mortgage bonds of the Company.
5. The stock not already subscribed. 2730
6. The land grant.
7. All the Company's prospective rights and privileges to accrue under "An Act to authorize the transfer of the Windsor branch," &c.

And we further stipulate that the Company shall take, or cause to be taken, \$350,000 of the mortgage bonds, paying us therefor \$250,000 cash, or the equivalent of cash; we, nevertheless, retaining a right of redemption, or purchasing back of said bonds at any time within 1½ years from date of issue thereof, on paying 10 per cent. interest to the holders thereof on the cash price paid therefor.

In the event of further money aid being sought and obtained from the Government of Nova Scotia, either for a recession of the land grant, or a additional subsidy, then we will allow such additional grant to be applied towards the redemption or purchasing back of the \$350,000 of bonds above referred to, at the rate of 70 cents on the dollar. 2740

Your obedient servant,

(Signed)

W. SHANLY,
E. W. PLUNKETT.

(Signed) GEORGE B. DOANE, President.
FRANK KILLAM, a Director.
WALTER SHANLY, per E. W. P.
E. W. PLUNKETT.

2750



YARMOUTH, N. S., August 26th, 1875.

MEMORANDUM of an offer made to Messrs. Walter Shanly and E. W. Plunkett, of Canada, in pursuance of an offer made by them to the Western Counties Railway Company, for the construction of the Railway between Annapolis and Yarmouth.

We, the undersigned, agree to purchase from Messrs. Walter Shanly and E. W. Plunkett, hereinafter called "the Contractors," severally, the amount of Bonds against our names respectively expressed, and to pay for the same in the manner and at the rate hereinafter provided, and upon the following conditions:—

FIRST.—The Bonds to be part of the authorized issue of fifteen thousand dollars 2760 per mile of the "Western Counties" Railway, to be first mortgage Bonds of the Company, and to be secured upon all the property of the Company, including the "Windsor Branch," so called. The Bonds to bear seven per cent. interest, and to be payable to bearer, with Coupons attached, interest payable half-yearly.

SECOND.—The grant (promised by the Legislature of Nova Scotia) of 150,000 acres of Crown land, or any additional bonus or aid secured from any source, shall be specially set apart for the re-purchase of the Bonds hereby subscribed for; and any money received for the sale or reversion of said lands, shall be applied, so far as practicable, to the re-purchase of the said Bonds.

THIRD.—The price to be paid for said Bonds shall be seventy cents per dollar. 2770

FOURTH.—Payment for the said Bonds shall be made in notes of the subscribers hereto, at six months' date, payable, with seven per cent. interest per annum, to the order of the Contractors, at a bank in Canada, to be named by the said Contractors; and it is understood that the said notes may be renewed by the makers, each six months thereafter, and shall be finally payable in eighteen months after the original date.

FIFTH.—The Bonds hereby agreed to be purchased by the subscribers, shall be deposited in the hands of Trustees, to be named by the Contractors and the subscribers, or in a Bank, to be named by the said parties, with the notes to be given by the subscribers; and the notes shall be delivered by the Trustees, or the said Bank to the 2780 Contractors, in such proportions, on monthly or progress estimates, as may be set forth in a Deed of Trust, which the parties hereto agree hereafter to execute.

SIXTH.—The Contractors shall have the right to re-purchase the said Bonds at any time within eighteen months from the date of issue, by paying therefor seventy cents per dollar and ten per cent. interest per annum upon any cash actually paid therefor.

SEVENTH.—Interest Coupons of Bonds to be paid by the Contractors during construction, and to be available in payment of interest on the notes, and it is understood that interest is to be a matter of account between the Contractors and the subscribers.



EIGHTH.—The said subscriptions are made conditionally, upon a Contract for the construction of the said Western Counties Railway, between Annapolis, Digby and Yarmouth, to be entered into between the said Walter Shanly and E. W. Plunkett, Contractors, and the said Western Counties Railway Company, on the basis of an offer made by the said Contractors to the said Company, and dated at Montreal on the seventh day of July, 1875.

(Signed)	L. E. Baker.....	Ten thousand dollars of Bonds.	
	N. W. Blethen	Ten	do do
	Frank Killam.....	Ten	do do
	Saml. M. Ryerson.....	Ten	do do
	Vernon Smith.....	Ten	do do
	A. C. Robbins	Five	do do
	Saml. Killam, Junr. . . .	Five	do do
	Hugh Cann	Five	do do
	Wm. D. Lovitt.....	Five	do do
	H. E. Cann.....	Three	do do
	John H. Killam.	Three	do do
	A. F. Stoneman.....	Two	do do
	Freeman Dennis.	Two	do do
	H. and N. B. Lewis.....	Two	do do
	William Law	One	do do
	Samuel A. Crowell.....	One	do do
	Bowman Corning... . . .	One	do do
	Lyman Cann	One	do do
	W. H. Moody.....	One	do do
	Viets & Dennis... . . .	One	do do
	Thomas B. Flint... . . .	One	do do
	A. M. Hatfield.	One	do do
	Benjamin Killam.. . . .	Four	do do
	John Killam	One	do do
	B. P. Ladd.....	Two	do do
	Thomas Killam.....	Two	do do
	James G. Allen.....	Five hundred dollars of Bonds.	
	T. B. Dane	Five	do do

2800

2810

2820

(Signed) GEORGE B. DOANE, President.
 FRANK KILLAM, a Director.
 WALTER SHANLY, per E. W. P.
 E. W. PLUNKETT.



WESTERN COUNTIES RAILWAY COMPANY.

We, the subscribers, do hereby agree to take as stock in the Western Counties 2830
Railway Company, the number of shares hereinafter set opposite our respective
names.

Dated at Yarmouth, December 12th, 1871.

Frank Killam	Fifty shares	
Samuel M. Ryerson	Fifty shares	
Young, Kinney & Corning	One Hundred shares	
George B. Doane	Fifty shares	
Benj. Killam	Twenty-five shares	
L. E. Baker	Fifty shares	
Samuel Killam, jr.	Twenty shares	2840
Kinney, Haley & Coy	Thirty shares	
B. P. Ladd	Twenty shares	
George S. Brown	Fifty shares	
J. C. Farish	Five shares.	
James M. Davis	Twenty shares	
William J. Hatfield	Five shares	
Thomas Barnard Flint	Three shares	
Sandford H. Pelton	Three shares	
John H. Killam	Twenty shares	
A. W. Savary	Four shares	2850
Vernon Smith	Five shares	
Samuel Killam	Twenty-five shares	
A. C. Robbins	Twenty shares	
Hugh Cann	Twenty shares	
John Killam	Five shares	
F. M. Lewis	Five shares	
Thos. Allen, jr.	Five shares	
Stayley Brown	Forty shares	
A. W. Homer	Five shares	
Nathan Moses	Forty shares	2860
T. E. Dane	Five shares	
J. W. Crowell	One share	
John Turner, jr.	One share	
Geo. H. Porter	Five shares	
G. J. Farish	Five shares	
W. H. Moody, jr.	Three shares	
A. F. Stoneman	Five shares	
R. Balfour Brown	Two shares	
John Lovitt	Three shares	
Bowman Corning	Three shares	2870
W. A. Cann	Three shares	

Freeman Dennis	Seventy-five shares	
Nathan W. Blethen.....	Fifty shares	
Dodds & Joly.....	Five shares	
Henry K. Richards.....	Two shares	
J. W. Moody.....	Ten shares	
G. Sanderson.....	Ten shares	
Viets & Dennis.....	Five shares	
Israel Steele	One share	
E. K. Rogers	Two shares	2880
W. H. Townsend.....	Twenty shares	
Aaron Goudey.....	Twenty shares	
Charles W. Kelley.....	One share	
Dennis Horton	Five shares	
B. Stanwood	Ten shares	
Stephen Patten	One share	
G. H. Artz	One share	
John M. LeCain.....	One share	
John and Robert Patterson.....	Five shares	
Edward S. Williams	One share	2890
Raymond & Israel.....	Two shares	
C. W. Clements	Two shares	
McLaughlin Bros.	Three shares	
N. K. Clements	Ten shares	
Wm. D. Lovitt.....	Twenty shares	
Dennis Sullivan	Two shares	
Daniel Sullivan	Two shares	
Walter Thomson.....	Four shares	
Thos. Coffin by G. B. Doane	Five shares	
William H. Moody	Five shares	2900
Thos. Killam	Twenty shares	
Oscar Davison.....	Two shares	
Amos Crosby.....	Five shares	
Samuel A. Crowell	Five shares	
John K. Ryerson.....	Five thousand dollars	
G. R. Doty	Five shares	

I certify that the above list is a correct copy of the stock subscriptions of the Western Counties Railway Company.

Yarmouth, N. S., October 15th, 1875.

(Signed) FRANK KILLAM, 2910
Treasurer.

(Signed) GEORGE B. DOANE, President.
FRANK KILLAM, a Director.
WALTER SHANLY, per E. W. P.
E. W. PLUNKETT.

THE UNIVERSITY OF CHICAGO

THE UNIVERSITY OF CHICAGO

THE UNIVERSITY OF CHICAGO

WESTERN COUNTIES RAILWAY COMPANY.

Additional Stock List.

We, the undersigned, hereby agree to take as further stock in the Western Counties Railway Company, the number of shares set opposite our names, and to pay to the proper officers of the said Company the several amounts whenever required after six 2920 months from date.

Yarmouth, N. S., February 11th, 1874.

Names.	Number of Shares.	
George B. Doane.....	100	
Frank Killam	30	
Jas. B. Kinney.....	20	
William Haley	20	
Vernon Smith	10	
Samuel M. Ryerson	10	
B. P. Ladd.....	10	2930

(Signed) GEORGE B. DOANE, President.
FRANK KILLAM, a Director.
WALTER SHANLY, per E. W. P.
E. W. PLUNKETT

I certify that the above list is a correct copy of the additional stock subscriptions of the Western Counties Railway Company.

(Signed) FRANK KILLAM,
Treasurer.

YARMOUTH, N. S., October 15th, 1875.

2940

List of Promissory Notes to be deposited with Trustees.

Twenty-eight Promissory Notes of individuals at eighteen months' date, with Company's First Mortgage Bonds as collateral, the whole in accordance with the Bond Subscription List, also hereunto annexed, amounting to one hundred thousand dollars in Bonds or in Notes, with interest, to \$ 77,350

One or more Company's Notes at six months' date, for 198,900

Total.....\$276,250

(Signed) GEORGE B. DOANE, President.
FRANK KILLAM, a Director.
WALTER SHANLY, per E. W. P. 2950
E. W. PLUNKETT.

THEORY OF THE EARTH AND ITS HISTORY

BY J. H. DE LA BECHE

ESQ. OF THE BARR, ATTORNEY AT LAW, AND FELLOW OF THE SOCIETY OF ANTIQUARIES, LONDON.

LONDON: J. H. DE LA BECHE, 1830.



THEORY OF THE EARTH AND ITS HISTORY
BY J. H. DE LA BECHE
ESQ. OF THE BARR, ATTORNEY AT LAW, AND FELLOW OF THE SOCIETY OF ANTIQUARIES, LONDON.
LONDON: J. H. DE LA BECHE, 1830.

R WESTERN COUNTIES RAILWAY. R

Certificate No. 11, for work done to the 8th of October, 1875.

Prepared in accordance with the terms of the Act passed by the Legislature of the Province of Nova Scotia during the session of 1874 (under which the Province agrees to pay \$20,000, as soon as \$40,000 have been expended by the Company, and so on in the same proportion to the amount of \$6,000 per mile of Railway), and on the schedule of prices arranged between the Provincial Government and the Directors of the Western Counties Railway Company. Assumed length of road, 90 miles:

DESCRIPTION OF WORK	PRICES	GROSS VALUE OF WORK DONE.	TOTAL WORK DONE.	AMOUNT PREVIOUSLY CERTIFIED.	VALUE OF WORK PERFORMED SINCE LAST CERTIFICATE.	
Engineering and surveying..... (one half to be due when location is completed and plans approved. 19 miles at \$850; 49 miles at \$425)	\$850 per mile	\$ 76,500	\$ 36,975	\$ 36,975	.....	2960
Clearing and grubbing 38 miles.....	\$450 "	40,500	17,100	17,100	.....
Fencing 21 miles.....	\$400 "	36,000	8,400	6,800	.....
Roadway and works, as per schedule on other side.....		837,000	366,303	313,147	.....	1,600
Sleepers delivered on Line (46,000).....	\$25 per 100...	54,000	11,500	11,500	.....	53,156
Ballasting 2,500 cubic yards per mile, 8 miles.....	\$650 per mile	58,500	5,200	3,250	.....	2970
Rails and fastenings, 1,812 tons..... (Advanced on bill's of Lading)	\$60 per ton...	432,000	108,720	108,720	.....	1,950
Rail laying, &c., 17 miles.....	\$350 per mile	31,500	5,950	5,075	.....	875
<i>Reservation for special services.</i>						
Sissiboo River Bridge.....		70,000			.....
Bear River ".....		100,000			.....
Joggin's ".....		60,000			.....
Allen's Creek ".....		40,000			.....
Station accommodation, including way and terminal stations, engine houses, car sheds, tank houses, &c.		36,000	3,000	3,000	.....	2980
Rolling stock, as per schedule.....		198,000	22,600	22,600	.....
Total.....		\$2,070,000	\$585,748	\$528,167	\$57,581	

I certify that the above Certificate has been prepared in accordance with the terms of the Act, and on the above schedule of prices.

(Signed)

VERNON SMITH,
Chief Engineer Western Counties Railway.

I concur in the above Certificate, under which the amount payable by the Government of Nova Scotia is twenty-eight thousand seven hundred and ninety dollars and fifty cents.

(Signed)

ALEX. McNAB,
Government Engineer, Province of Nova Scotia.

2990

(Signed)

GEORGE B. DOANE, *President.*
FRANK KILLAM, *a Director.*
WALTER SHANLY, *per E. W. P.*
E. W. PLUNKETT.

R WESTERN COUNTIES RAILWAY. R

Certificate No. 11, for the period ending 8th of October, 1875.

Detailed Schedule of Roadway and Works, including earth and rock excavation to formation level, Bridges (excepting those specially reserved,) Culverts, Cattle Guards, Level Crossings, Road and Stream Diversions, Side Ditches, Under Drains, &c., &c.:— 3000

Number of Section.	Boundaries.	Miles.	Rate per 100 feet	Total Amount.	Value of Work done.	Previously Certified.	Amount Due Since last Certificate.
1	To Hebron.....	4½	\$119 04	\$ 28,284	\$ 28,284	\$ 27,784	\$ 500
2	" Old Kenipt Road.....	6	160 00	50,688	50,188	50,188	
3	" Digby County Line.....	8½	170 00	76,296	75,296	75,296	
4	.....	6	185 00	58,608	55,685	41,995	13,990
5	.....	7	160 00	59,136	38,720	37,600	1,120
6	.....	6	140 00	44,352			
7	To Township Line.....	6	140 00	44,352			
8	.....	5	240 00	63,360			
9	.....	10	180 00	95,040	41,130	12,196	28,934
10	To Town of Digby.....	9	200 00	95,040	77,000	68,688	8,912
11	From Junction to Hillsburg	8	190 00	80,256			
12	.....	7	190 00	70,224			
13	To June, with W. & A. Ry. (about).....	7	190 00	71,364			
	Total.....	90		\$837,000	\$366,303	\$313,147	\$53,156

3010

SCHEDULE OF ROLLING STOCK.

Number.	Description.	Total Amount.	Previously Certified.	Delivered since last Certificate.
10	Locomotives.....	\$106,000	\$10,600	
6	First Class Cars.....	20,000		
6	Second Class Cars, Mail and Express.....	12,000		
100	Box and Platform Cars.....	60,000	12,000	
	Total.....	\$198,000	\$22,600	

3020

(Signed)

ALEX. McNAB,

Government Engineer, Province of Nova Scotia.

(Signed)

GEORGE B. DOANE, *President.*FRANK KILLAM, *a Director.*WALTER SHANLEY, *per E. W. P.*

E. W. PLUNKETT.

THE UNIVERSITY OF CHICAGO

PHILOSOPHY DEPARTMENT

1964-1965

PHILOSOPHY 101

PHILOSOPHY 102

PHILOSOPHY 103

PHILOSOPHY 104

PHILOSOPHY 105

EXHIBIT E.

IN KILLAM'S EXAMINATION.

3030

HALIFAX, SS.

IN THE SUPREME COURT,

IN EQUITY, 1879.

*Cause—*THE WINDSOR AND ANNAPOLIS RAILWAY COMPANY, *Plaintiffs.**vs.*THE WESTERN COUNTIES RAILWAY COMPANY, *Defendants.*

MEMO of proposed agreement between the Western Counties Railway Company and the Windsor and Annapolis Railway Company for leasing the Windsor Branch with their right of running powers to Halifax:

3040

1. Western Counties Railway Company shall lease to Windsor and Annapolis Railway Company the Windsor Branch for ninety-nine years.
2. The running powers granted to the Western Counties Railway Company by the Act of Parliament, 1874, shall be enjoyed by the Windsor and Annapolis Railway Company while this lease remains in force, and the Windsor and Annapolis Railway Company shall assume all obligations connected therewith.
3. Windsor and Annapolis Railway Company shall maintain, at their own expense, the Windsor Branch and its appurtenances in good and efficient order.
4. Windsor and Annapolis Railway Company shall pay to Western Counties Railway Company seven per cent. of their gross receipts between Windsor and Halifax 3050 during the first four years, and ten per cent. afterwards. Payments to be quarterly.
5. The Western Counties Railway Company shall have the right, at any time, to enter and inspect to see that the road is efficiently maintained, etc.
6. Lease may be forfeited for non-payment of rent, or failure to comply with other conditions.
7. Settlement of disputes to be left to arbitration.
8. The agreement shall take effect on 1st July, 1874.

(Sgd.) F. KILLAM,
On behalf W. C. R. Co.

E. A. DEPASS, 3060
On behalf W. & A. R. Co.

Ottawa, May, 1874.

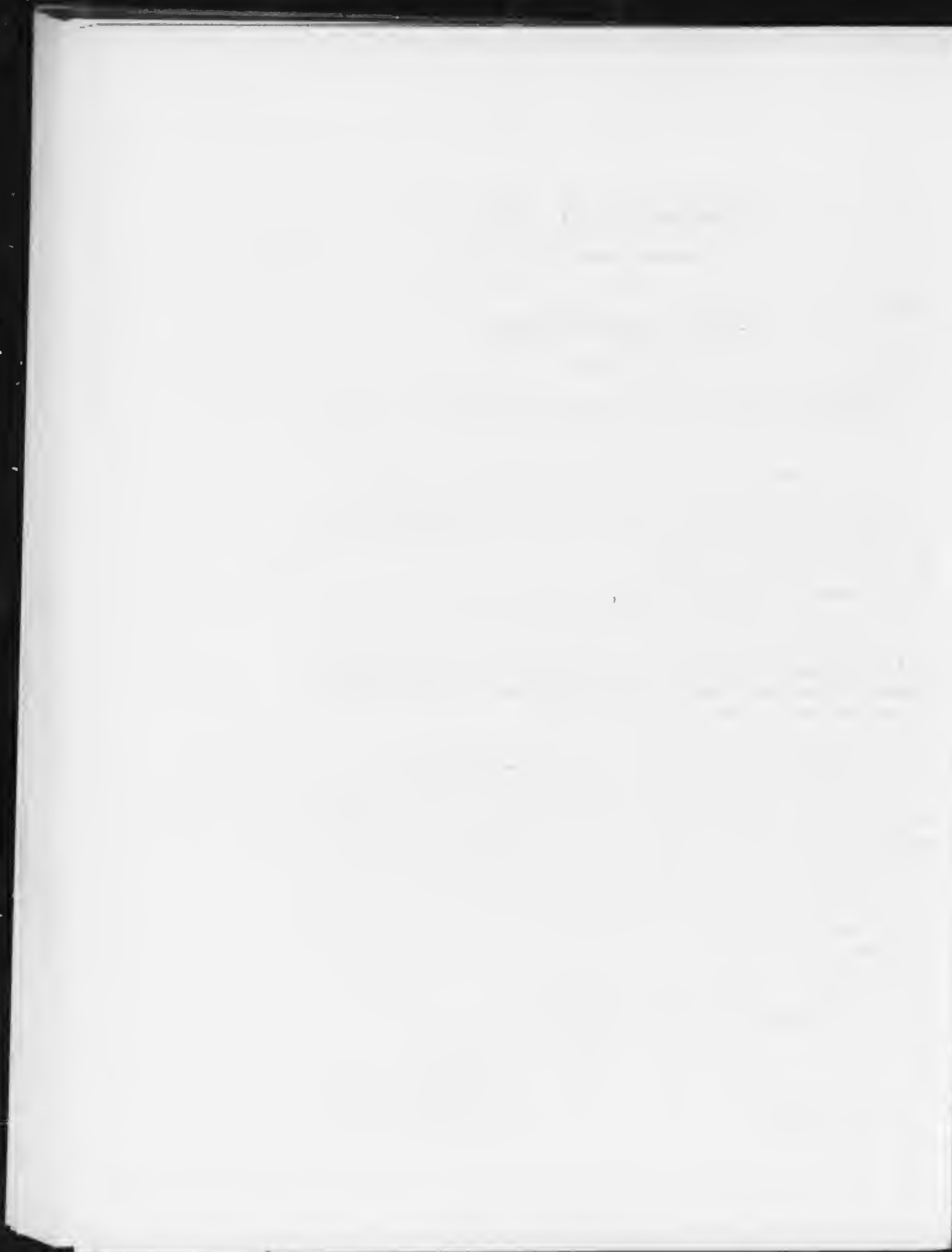


EXHIBIT F.

IN KILLAM'S EXAMINATION.

HALIFAX, SS.

IN THE SUPREME COURT.

IN EQUITY.

*Cause—*THE WINDSOR AND ANNAPOLIS RAILWAY COMPANY, *Plaintiffs,**vs.*THE WESTERN COUNTIES RAILWAY COMPANY, *Defendants.* 3070

MEMORANDUM for basis of agreement to be entered into between the Western Counties Railway Company and the Windsor and Annapolis Railway Company:

The Western Counties Railway Company shall execute a lease of the "Windsor Branch" to the Windsor and Annapolis Railway Company for a term of ninety-nine years.

The running powers over the "trunk line" granted to the Western Counties Railway Company by the Act cap. 16, 1874, shall be assigned to the Windsor and Annapolis Railway Company, together with all privileges and responsibilities connected therewith.

And, in consideration thereof, the Windsor and Annapolis Railway Company shall 3080 maintain the "Windsor Branch" in efficient working order at their own expense, and shall, furthermore, carry any passengers, holding tickets issued by the Government railway, between Halifax and Windsor Junction, free of charge; and

The Windsor and Annapolis Railway Company shall pay to the Western Counties Railway Company a sum equal to seven (7) per cent. of the gross earnings of the line between Windsor and Halifax during the first four years of this lease, and ten (10) per cent. afterwards. Said payments to be quarterly.

And clauses shall be inserted in the lease giving to the Western Counties Railway Company the right, at all times, to enter upon and inspect the "Windsor Branch" for the purpose of ascertaining that it is efficiently maintained, and also to inspect all books 3090 and accounts of the Windsor and Annapolis Railway Company relating to the traffic receipts on the "Windsor Branch."

And providing for the forfeiture of the lease for non-compliance with its conditions.

And providing for the settlement of all disputes by arbitration. One arbitrator to be chosen by each company, and a third by the Lieutenant-Governor of Nova Scotia in Council.

The terms of the lease are to be approved by the Governor-General in Council.

The lease may go into effect on the _____ day of _____

The running powers over the "trunk line," herein mentioned, are to be those defined in the proposal of the Western Counties Railway Company (copy of which is 3100 annexed), and which was referred to in Schedule B, of the Act 1874, cap. 16.

EXHIBIT G.

IN KILLAM'S EXAMINATION.

HALIFAX, SS.

IN THE SUPREME COURT,

IN EQUITY, 1878.

Cause—

THE WINDSOR AND ANNAPOLIS RAILWAY COMPANY, *Plaintiffs.*

vs.

THE WESTERN COUNTIES RAILWAY COMPANY, *Defendants.* 3110

THE ST. LAWRENCE AND OTTAWA RAILWAY,
Managing Director's Office,

OTTAWA, October 29th, 1873.

DEAR SIR,—

On behalf of the Western Counties Railway Company I have much pleasure in approving of your proposal for the Windsor and Annapolis Railway Company to continue running their trains, as hitherto over the Windsor Branch, upon its coming into the possession of the Western Counties Railway Company, on condition that your Company maintain the permanent way, buildings, etc., in good order. The Directors of the Western Counties Railway Company will approve an agreement to this effect, and for 3120 such time as may be mutually settled, pending arrangements between the Companies for the extension of the railway to Yarmouth; as soon as the Order in Council making over the Windsor Branch to the Western Counties Railway Company is ratified by the Dominion Parliament.

I am, dear Sir,

Yours faithfully,

FRANK KILLAM.

E. A. DEPASS, Esq.,
Comm'r W. & A. Ry Co.

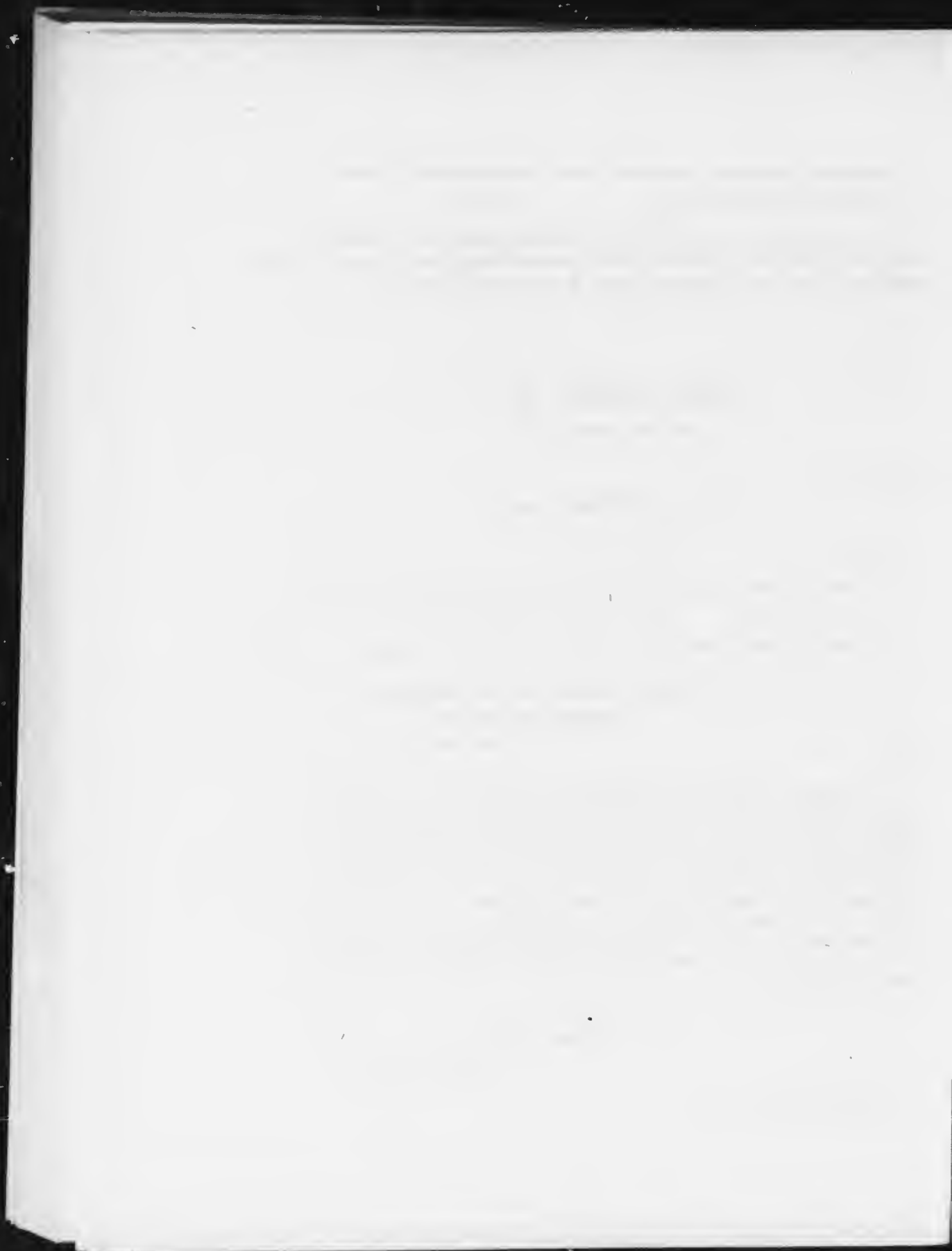


EXHIBIT H.

3130

HALIFAX, SS.

IN THE SUPREME COURT,

IN EQUITY, 1878.

*Cause—*THE WINDSOR AND ANNAPOLIS RAILWAY COMPANY, *Plaintiffs.**vs.*THE WESTERN COUNTIES RAILWAY COMPANY, *Defendants.*

DEAR KILLAM,—

KENTVILLE, April 1st, 1874.

I have, as I promised you, gone into the matter of our maintaining the Wind- 3140
 sor Branch with our Engineer and Manager, and am inclined to think that if it could
 be put in anything like decent condition, such an arrangement as we discussed is feasi-
 ble. I have drafted some such an idea, and hope to be soon in Ottawa to commence
 negotiations. In the meantime, may I ask you to do nothing affecting our interest until
 you see me, and instead to devote your energies and interest to securing from the
 Govt. a grant of money in the estimates for the purpose of improving the Branch and
 Station at Windsor. This is a matter as important (or more so) to you as to us, and I
 think, if you try hard, there is every chance of success. Of course the present state of
 the road is the great bar to any arrangements between you and us, and one of the
 reasons that makes possession of the road of no immediate value to your Company. I 3150
 have got reports from our Engineer showing required expenditure in 1874, and also
 one from our Traffic Supt. showing the new sidings required, and I enclose you copies.
 I have written to Mr. Goudge officially, and sent him copies, soliciting his taking up
 of the subject as most affecting his county. See him about it, and set your shoulder
 to the wheel and get the thing done. Our business is improving, and I hope to be able
 to give you news which will affect you as well as us advantageously when we meet.

In great haste, I am,

Yours very respectfully,

E. A. DEPASS.

[I was in Ottawa a short time ago to be introduced to Mr. Mackenzie, but 3160
 stated that I did not wish to go into the matter of the lease till you were present.]

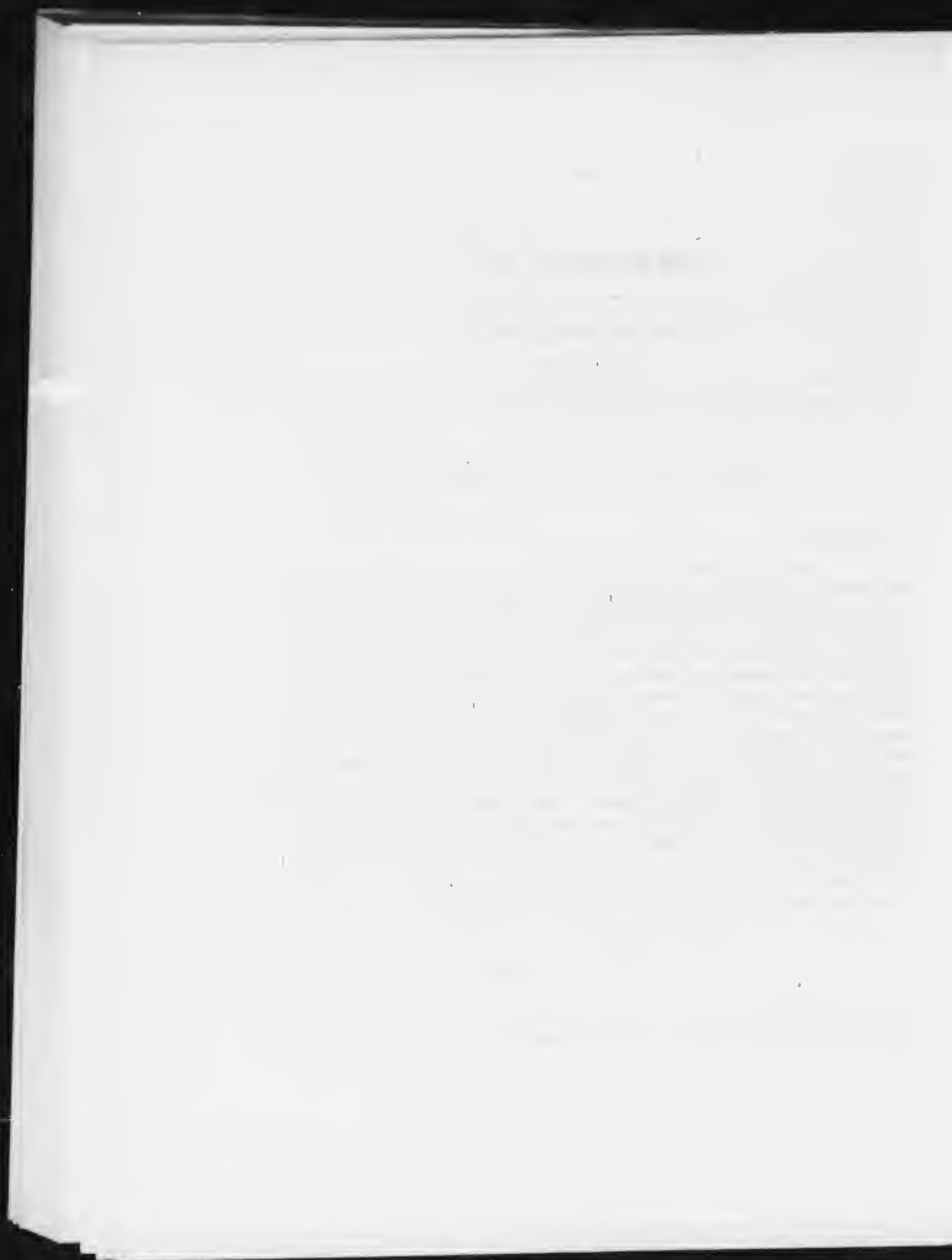


EXHIBIT I.

HALIFAX, SS.

IN THE SUPREME COURT,

IN EQUITY, 1879.

Cause—

THE WINDSOR AND ANNAPOLIS RAILWAY COMPANY, *Plaintiffs.*

vs.

THE WESTERN COUNTIES RAILWAY COMPANY, *Defendants.*

DEAR KILLAM,—

NOVEMBER 26, 1874. 3170

A Mr. Burland, partner in a large railway supplying house of Montreal, informed me that he was about to look you up, with a view of endeavoring to open commercial relations with your Railway Company. As he may possibly be able to assist you to some extent, I gave him a letter of introduction. I cannot say that I have much personal knowledge of him, but I believe the house he is connected with is a very eminent one. His firm are agents for the Low Moor Iron and also for the Montreal Car Wheels, which, if you are going to build your own rolling stock, will be a needed item. Also, rails are part of their business. I hope you may be able to gain some advantage from knowing him.

3180

What do your Company propose to do with the Windsor Branch? I am now *en route* for Ottawa, to get that local Act signed. Had you not better come on to me there, and let us "fix up" arrangements to take the Branch from you, and begin paying rent next year. It would be an acceptable pecuniary trifle, I suppose.

Wire me to the Russell House, Ottawa, if you can come, as I don't want to stay there long.

With kindest regards to your wife and self,

I am, very faithfully yours,

E. A. DePASS.

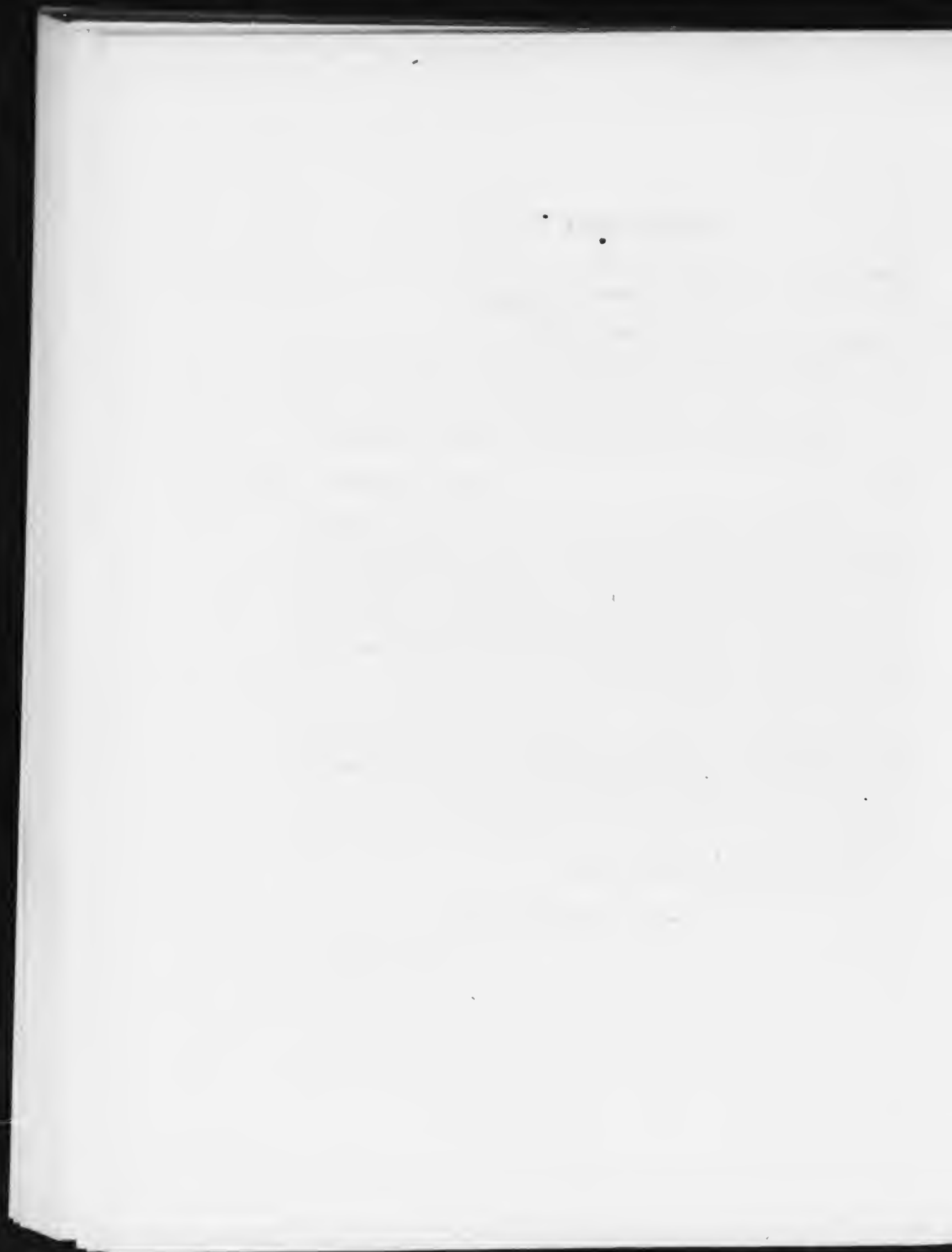


EXHIBIT J.

3190

HALIFAX, SS.

IN THE SUPREME COURT,

IN EQUITY, 1878.

Cause—

THE WINDSOR AND ANNAPOLIS RAILWAY COMPANY, *Plaintiffs,*

vs.

THE WESTERN COUNTIES RAILWAY COMPANY, *Defendants.*WINDSOR AND ANNAPOLIS RAILWAY COMPANY,
Commissioner's Office,

KENTVILLE, February 5th, 1875. 3200

DEAR KILLAM,—

Your letter never reached me until yesterday, Thursday; so meeting you at St. John was an impossibility.

I pass over the inuendoes contained in the first paragraph of your note with the contempt such weak attempts at satire merit, and proceed to more important things.

The scheme in accordance with that "slow looking piece of machinery," left England by last mail, and should be here in a day or two. I may tell you, *in confidence*, what I think its aims are. Firstly, the present debentures, *with the floating debt* (over £100,000), will be converted into a B debenture stock, and the capital needed for our continued working will be raised on A, or preference, debentures; then the profits of the line will go, first to pay the A interest, and the remainder (if any) as far as it will go, for the payment of the B stock. How will that do? 3210

I have sent a lengthy report to the Directors, in which I advocate immediate change of gauge, and extension to Digby.

I am told that the Western Counties Company are going to relinquish all claims to the Windsor Branch. Is that true? Or do you intend to go on with the arrangements made with us, by settling the question of running powers over the trunk line? I am ready to come and meet you at Ottawa, as soon as you like, to get this settled, only come to some conclusion as to what you want.

I shall probably bring some of our affairs under the notice of the Local Assembly at their next session, and I presume you are going for something. Now, it strikes me that I can be of some assistance to you in that quarter 3220

I enclose you "an annual" over our line for current year, and shall be devilish glad when you can reciprocate.

Let me hear from you without delay, what you propose in the matter of leasing the Branch, as, if I am coming to Ottawa, I want to start as soon as possible.

Yours very sincerely,

E. A. DEPASS.



EXHIBIT K.

IN KILLIM'S EXAMINATION.

3230

HALIFAX SS.

IN THE SUPREME COURT,

IN EQUITY.

*Cause—*THE WINDSOR AND ANNAPOLIS RAILWAY COMPANY, *Plaintiffs.**vs.*THE WESTERN COUNTIES RAILWAY COMPANY, *Defendants.*

SIR,—

OTTAWA, July 25th, 1877.

I beg to transmit to you here herewith copy of Order in Council dated the 3240
7th instant, transferring possession of the Windsor Branch Railway to the Western
Counties Railway Company from the 1st August next, under terms of the Act of May,
1874, intituled, "An Act to authorize the transfer of the Windsor Branch of the Nova
"Scotia Railway to the Western Counties Railway Company."

I am, Sir,

Your obedient servant,

F. KILLAM, Esq., M. P.,
Yarmouth, N. S.

F. BRAUN,
Secretary.

(COPY OF ORDER IN COUNCIL.)

3250

COPY of a Report of a Committee of the Honorable the Privy Council, approved
by His Excellency the Governor-General in Council, on the 25th July, 1877:

The Committee have had under consideration a memorandum from the Hon. the
Minister of Public Works, dated July, 1877, recommending that possession of the
Windsor Branch Railway be given to the Western Counties Railway Company on the
first of August, 1877, and they concur in said recommendation and submit the same for
your Excellency's approval.

(Certified)

W. A. HIMSWORTH,

Clerk Privy Council. 3260



OTTAWA, July, 1875.

MEMORANDUM :

The undersigned reports that on the 21st September, 1871, the Windsor and Annapolis Railway Company entered into an agreement for operating the Windsor Branch Railway for a certain number of years, which agreement was approved and ratified by order in Council, dated 22nd September, 1871.

That on the 21st October, 1873, the Hon Minister of Public Works reported that the Windsor and Annapolis Railway Company had failed to operate the Windsor Branch Railway and to comply with the other terms and conditions of the agreement, dated 21st September, 1871, and that upon this report an order in Council was passed 3270 on the 22nd October, 1873, authorizing the Government to proceed immediately to operate the railway between Halifax and Windsor.

That, on the 23rd May, 1873, a resolution was passed by the House of Commons authorizing the Government to enter into negotiations "with some reliable Association or Company for the transfer of the railway from Windsor to the trunk line from Halifax to Truro, upon condition that such Association or Company extend the railway from Annapolis to Yarmouth, subject to the approval of Parliament at the next session."

That such an agreement was entered into by orders in Council, dated the 22nd day of October and 30th day of October, 1873.

That on the 26th May, 1874, an Act was passed reciting the said agreement and 3280 confirming the same, and authorizing the Government, until arrangements were completed for giving possession to the Western Counties Railway Company of the said Windsor Branch railway, to make such other arrangements as might be necessary for the purpose of operating the said Branch Railway by continuing the working of the same by the Windsor and Annapolis Company or otherwise.

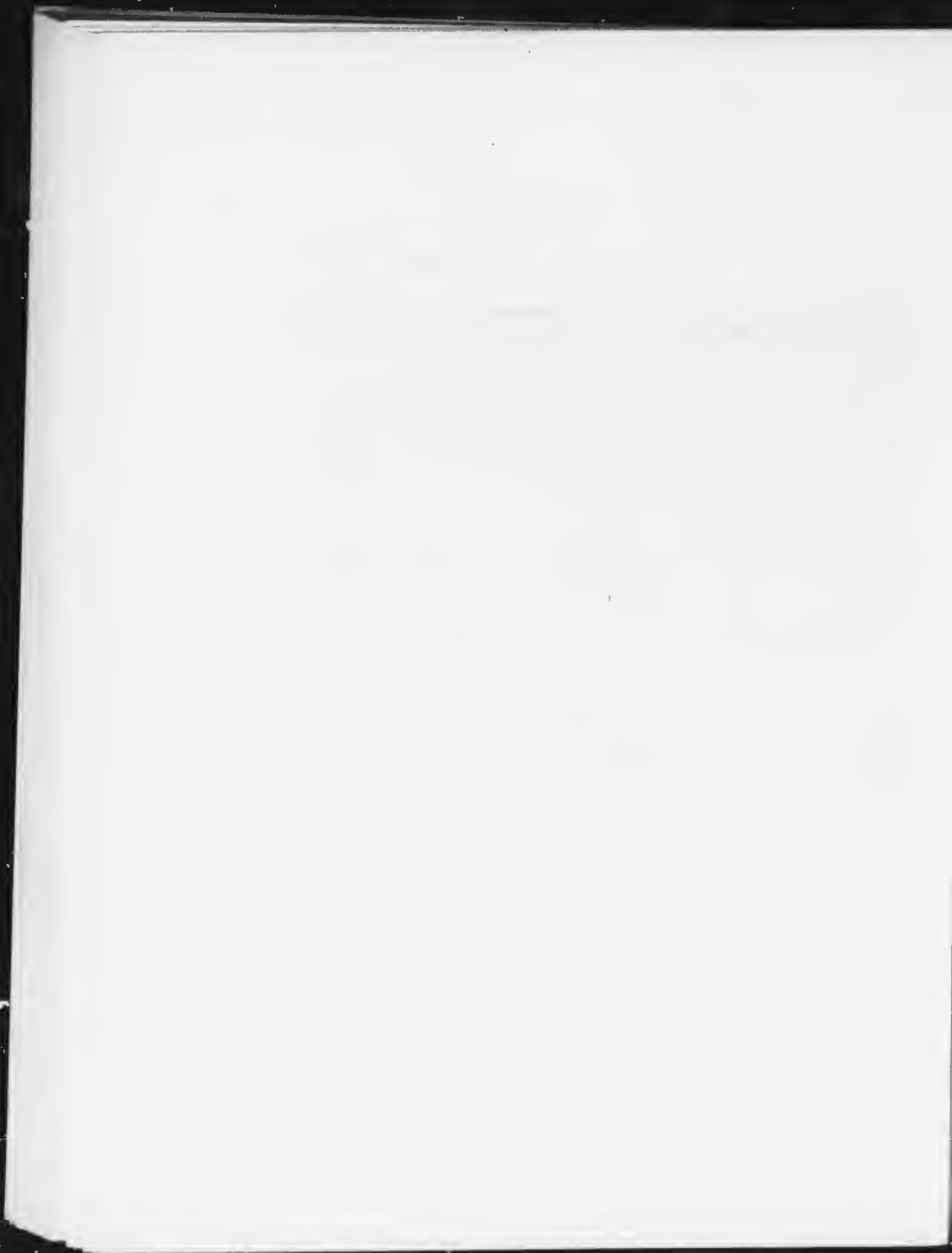
That on the 22nd day of April, 1875, an order in Council was passed providing "that, until further ordered, the existing arrangements with the Windsor and Annapolis Railway Company should be continued."

That on the 2nd June, 1875, an agreement was entered into with that Company for the operation of the said Branch line, which agreement, through error, contained a 3290 clause declaring the agreement of 21st September, 1871, above mentioned, to be in full force.

That under the provisions of the Act of 1874 referred to, and of the order in Council of 22nd April, 1875, the power of the Government to enter into any agreement with the Windsor and Annapolis Railway Company was limited, and the said agreement, therefore, must be considered merely temporary, and "until further ordered"

That it appears from representations made by the said Western Counties Railway Company, that their line will soon be completed to Digby, whence communication can be had by steamer to the railway terminus at Annapolis, and that it is now essential that possession of the said Windsor Branch Railway should be given to them, as provided in the Act of 1874, to enable the Company to avail itself of the advantages to be 3300 obtained thereby for finishing the whole line.

That it was deemed expedient and proper to comply with this request, and that, in accordance with this conclusion, the Windsor and Annapolis Railway Company were notified



on the 11th of May last, that on the 1st August, 1877, the Windsor Branch Railway would be transferred to the Western Counties Railway, and that the temporary agreement for operating the Windsor Branch Railway would terminate at the same date.

That the Windsor and Annapolis Railway Company did, by letter dated 24th May, 1877, acknowledge the receipt of said notice of 11th May, 1877.

The undersigned now recommends that possession of the said Windsor Branch 3310 Railway be given to the Western Counties Railway Company on the 1st August, 1877, under the terms of the Act of May, 1874, entitled "an Act to authorize the transfer of the Windsor Branch of the Nova Scotia Railway to the Western Counties Railway Company."

Respectfully submitted.

(Signed)

A. MACKENZIE,

Minister of Public Works.

EXHIBIT L.

IN KILLAM'S CROSS-EXAMINATION.

HALIFAX SS.

IN THE SUPREME COURT,

3320

IN EQUITY, 1878.

Cause—

THE WINDSOR AND ANNAPOLIS RAILWAY COMPANY, *Plaintiff*.

vs.

THE WESTERN COUNTIES RAILWAY COMPANY, *Defendants*.

THE ST. LAWRENCE AND OTTAWA RAILWAY,

Managing Director's Office,

YARMOUTH, N. S., Nov. 25th, 1873.

MRS. REYNOLDS, Esq., Ottawa.

3330

DEAR SIR,—

Since I arrived home I have received cable messages from Mr. DePass asking me to meet him in London. I intend to start from Portland on the 6th December, of which I inform you by telegraph below. The Company at this place are quite willing to come to any fair arrangement with the Windsor and Annapolis, but I am not sure whether that Company can agree to anything.

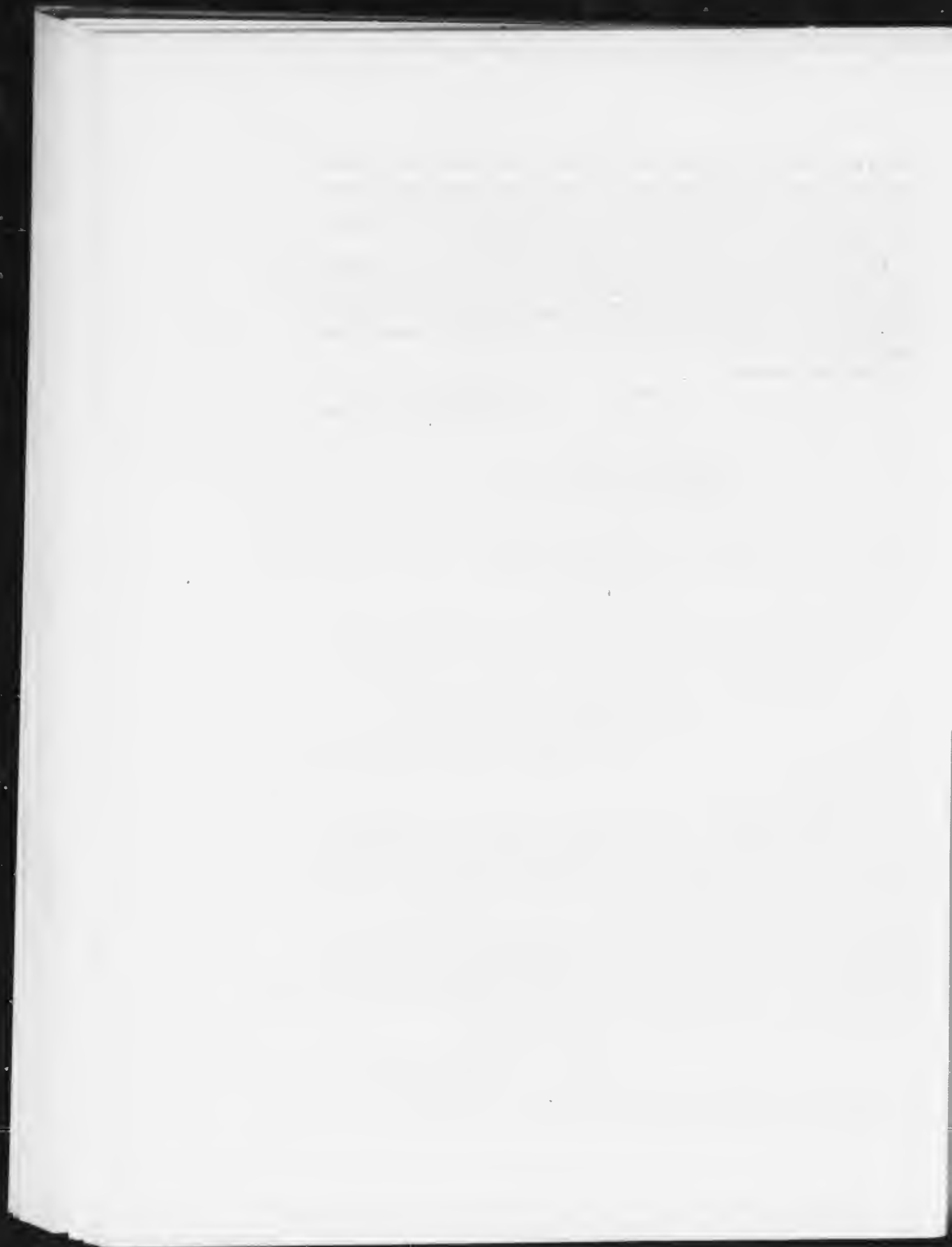
There seems to be a sort of muddle in their affairs, and the Managers, both in England and in the Dominion, must be caused frequent headaches. If you have had instructions to take any further steps in their interests, I would be much obliged if you would inform me, so far as we are affected, either by telegraph to Yarmouth or to 3340 Young's hotel, Boston. I wrote you the day before leaving Ottawa.

Yours very truly,

(Signed)

FRANK KILLAM.

[Leave Portland for England sixth December. Have you any advices.]



HALIFAX, SS.

IN THE SUPREME COURT,

IN EQUITY, 1879.

Cause—

THE WINDSOR AND ANNAPOLIS RAILWAY COMPANY, *Plaintiffs.*

vs.

3350

THE WESTERN COUNTIES RAILWAY COMPANY, *Defendants.*

INTERROGATORIES administered to the Honorable Alexander Macenzie, a witness for Defendants under a commission issued herein and addressed to A. Ferguson, Commissioner.

FIRST.—What is your name, age, and place of residence?

SECOND.—Were you, at any time, Minister of Public Works for the Dominion of Canada? If so, state the period during which you held said office.

THIRD.—Do you know one Elias A. DePass? and if so, have you ever known him to act for the Plaintiff Company, and as their agent in relation to business matters between the Plaintiff Company and the Department of Public Works or the Government of Canada, relating to the railway known as the Windsor Branch? 3360

FOURTH.—If you say you knew the said DePass so to act, please state the earliest period at which you knew him so to act, and how long he continued to do so, and in what transactions?

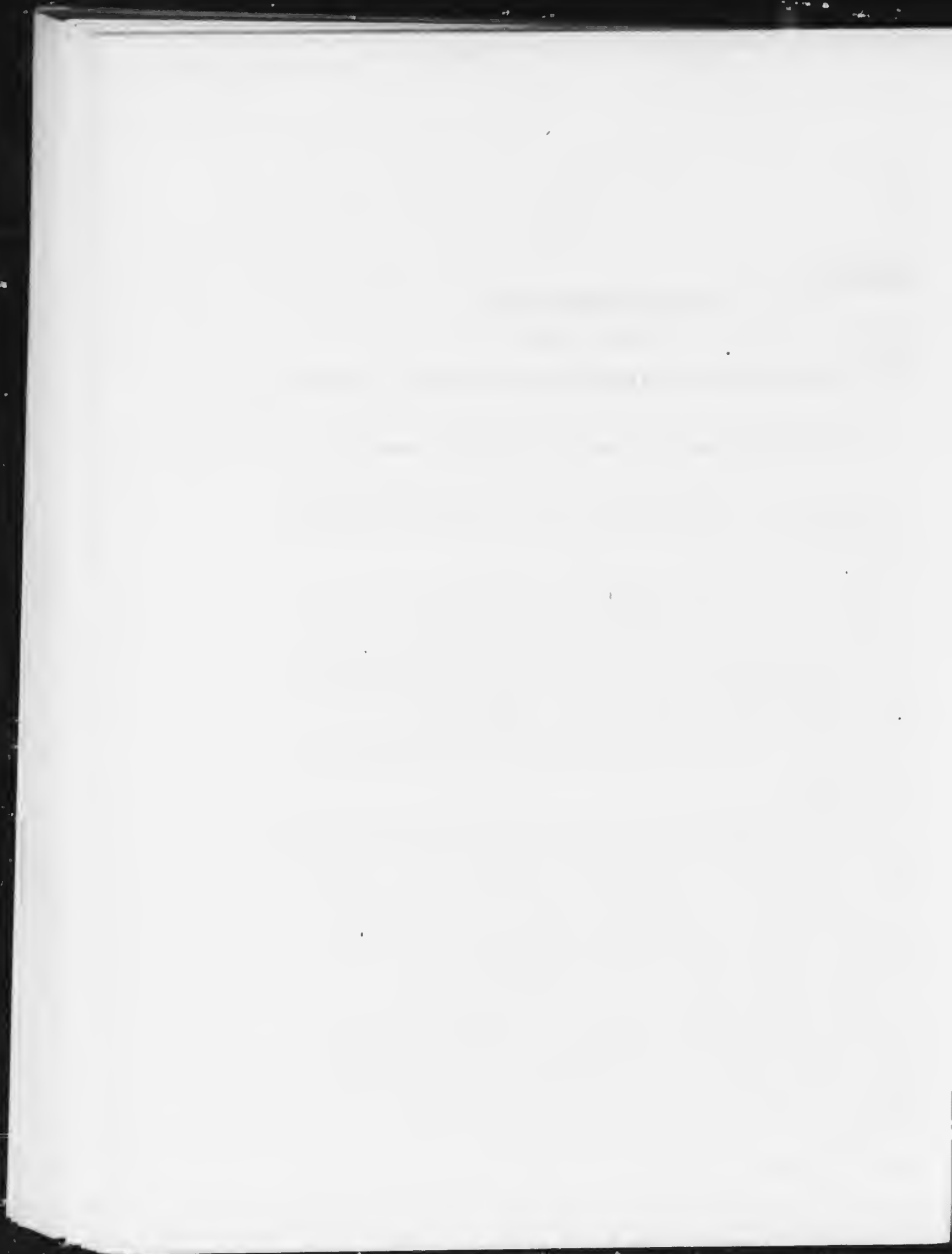
FIFTH.—Had you personally, either as a member of the Government of Canada or as Minister of Public Works, any negotiations or business transactions with said DePass, on behalf of Plaintiff, in regard to the Railway known as the Windsor Branch? and if so, when, and over what period did the same extend? 3370

SIXTH.—Do you remember having had an interview with said DePass in the winter of the year A. D., 1875, or during the Parliamentary session of 1875, when Frank Killam, M. P., for the County of Yarmouth, was present?

SEVENTH.—What was the subject of conversation at that interview?

EIGHTH.—If you say that the subject of conversation at that interview was a proposal to change of gauge on said Branch, please state if anything was said as to the Plaintiff Company continuing to operate said Branch, and what, if anything was said by you as to an intention on the part of the Government of Canada to give the Defendant Company possession of said Branch as soon as Defendants were prepared to receive it. 3380

NINTH.—If you say you informed said DePass at said interview that the Government intended to hand over said Branch to Defendant Company, and give them



possession thereof, under the terms of chapter 16, of the Acts of 1874, as soon as Defendants were prepared to receive it, please state what reply, if any, said DePass made thereto.

TENTH.—At the interview referred to in the eighth interrogatory, what terms and conditions were agreed on between said DePass and you in relation to said change of gauge?

3390

ELEVENTH.—Did you, on or about the month of June, 1875, as such Minister of Public Works, execute an agreement between the Plaintiff Company and the Government of Canada in relation to the change of gauge on said Branch? If yea, state under what authority you signed such agreement. If you say that you signed such agreement under the authority of an Order in Council, please state if the paper now produced and shown to you, is a true copy of said Order in Council, and also state by whom said copy is certified.

TWELFTH.—Had you any other authority than that of said Order in Council for making the agreement referred to in the eleventh interrogatory?

THIRTEENTH.—State under what circumstances the clause was inserted in said agreement purporting to confirm an alleged agreement, or lease, under which Plaintiff Company held said Branch. Were you aware, at the time you signed said agreement, that such a clause was contained therein?

FOURTEENTH.—When did you first become aware that such a clause was contained therein?

FIFTEENTH.—Did you, or so far as you are aware, did the Government of Canada, after you acquired knowledge of such clause being in said agreement, act upon such clause and recognize its validity, or how otherwise? Please answer fully.

SIXTEENTH.—Were there any negotiations between you as such Minister and the Plaintiff Company before or up to the time of, or at the execution of, said agreement, relative to the confirmation of said alleged agreement? If so, state fully what they were, and what reply you made thereon.

SEVENTEENTH.—Did the Government of which you were a member, or did you as the Minister of Public Works, cause a notice to be sent to the Plaintiff Company or to DePass, as their commissioner, on or about the 11th of May, A. D., 1877? If yea, is the paper now shown to you a copy of such notice?

EIGHTEENTH.—Did you receive any reply thereto, if so, can you produce and annex your answer hereto, and if you cannot, state why not?

NINETEENTH.—Did the Governor in Council on or about the month of July, A. D., 1877, pass an Order in Council relating to the transfer of possession of said Branch Railway to the Defendants in accordance with chapter 16 of the Acts of 1874. If yea, is the paper now produced to you a true copy of said Order in Council, and by whom is the same certified?

TWENTIETH.—Was a copy of said Order sent from the Department of Public Works to the Defendant Company soon after its passage, if so, please give the date



when it was so sent, and state whether or not the paper now shown to you is not the copy sent to defendants?

TWENTY-FIRST.—Was any agreement relating to said Branch entered into and executed between the Defendant Company and the Government of Canada after the date of such Order in Council, if yea is the paper now produced and shown to you 3340 such agreement?

TWENTY-SECOND.—Are the first and second signatures thereto respectively the signatures of yourself and the Secretary of said department?

N. H. MEAGHER,
Defendants Attorney.

HALIFAX, SS.

IN THE SUPREME COURT.

IN EQUITY, 1879.

Cause—

THE WINDSOR AND ANNAPOLIS RAILWAY COMPANY, *Plaintiffs.* 3440

vs.

THE WESTERN COUNTIES RAILWAY COMPANY, *Defendants.*

Cross-interrogatories administered to the Honorable Alexander Mackenzie under a commission issued herein.

FIRST.—Can you give the date of the interview referred to in the sixth interrogatory?

SECOND.—Who, if any one, was present besides yourself, Killam and DePass?

THIRD.—Who drew your attention to the fact, that the clause referred to in the thirteenth interrogatory had been inserted in said agreement? 3450

FOURTH.—With whom had you the negotiations, if any, referred to in the sixteenth interrogatory?

FIFTH.—Have you ever compared the paper produced under the seventeenth interrogatory with the original notice?

SIXTH.—Were you present at the passing of the Order in Council referred to in the nineteenth interrogatory?

SEVENTH.—Was the copy of said order sent to defendant by you, if not, state by whom, and how you know that it was sent?

To the Defts. or their atty.

H. McD. HENRY,
Plaintiffs Attorney. 3460



Answers of Hon. A. Mackenzie.

1. To the first interrogatory, the said deponent saith :—"My name is Alexander MacKenzie, my age fifty-six years, and my residence the city of Toronto."
2. To the second interrogatory, the said deponent saith :—"I was Minister of Public Works for the Dominion of Canada, from the 7th of November, A. D. 1873, to the tenth day of October, A. D. 1878."
3. To the third interrogatory, the said deponent saith :—"I know a certain Mr. DePass, but I don't know his first name. I had frequent intercourse with him, but I have no recollection of his presenting any authorization to act for any Company. I had no doubt however of his representing in some capacity, the Windsor and Annapolis Railway. The only business matter I remember specially, in which he acted, was a matter of account between the Government of Canada and the Windsor and Annapolis Railway, and arrangements connected with keeping the plaintiffs road open, and running regular trains in connection with the Government Line. He was then acting also in relation to the Windsor Branch." 3470
4. To the fourth interrogatory, the said deponent saith :—"I have no recollection of the specific time in which he first acted. It must have been late in the year 1873, and throughout 1874, and occasionally afterwards. The transactions were those referred to in the previous answers." 3480
5. To the fifth interrogatory, the said deponent saith :—"There were negotiations between the Government and the Company, in connection with the Windsor Branch, particularly in connection with running the trains on that Branch, until such time as that Branch should be delivered to the Western Counties Railway. I took part in those negotiations as Minister of Public Works, that department being charged with such matters. The period was that referred to in the previous answers."
6. To the sixth interrogatory, the said deponent saith :—"I have no particular recollection of the interview referred to, but I have no doubt that I saw Mr. DePass during that Session in company with Mr. Killam, M. P."
7. To the seventh interrogatory, the said deponent saith :—"I cannot refer to any specific interview, but the principal subject of discussion was relating to the Windsor Branch of the Government lines and the change of gauge, and a very large amount of the correspondence and communications was with the chief officers of the department rather than myself, that is Mr. Trudeau and Mr. Brydges." 3490
8. To the eighth interrogatory, the said deponent saith :—"The Act, chap. 16 of 37 Victoria, section 2, is as follows : 'Until arrangements are completed for giving possession to the Western Counties Railway Company of the said Windsor Branch Railway, for the purpose of operating it until the completion of their line from Annapolis to Yarmouth, as provided in the agreement or proposal hereinafter recited, it shall be competent for the Government to, make such other arrangements as may be necessary by continuing the working of the same by the Windsor and Annapolis 3500



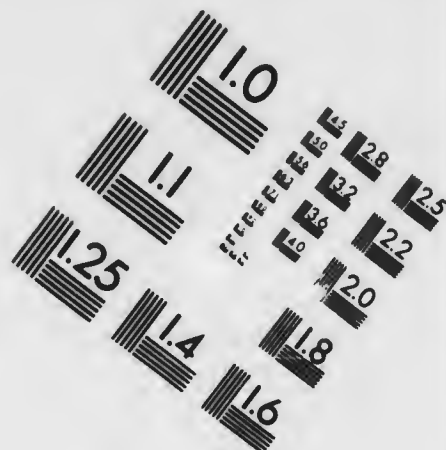
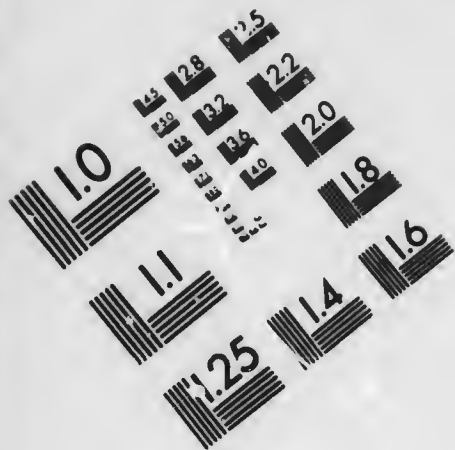
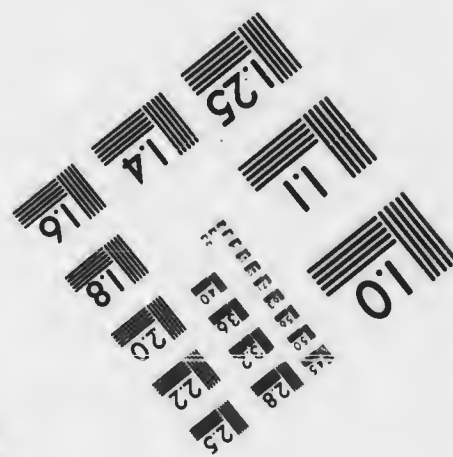
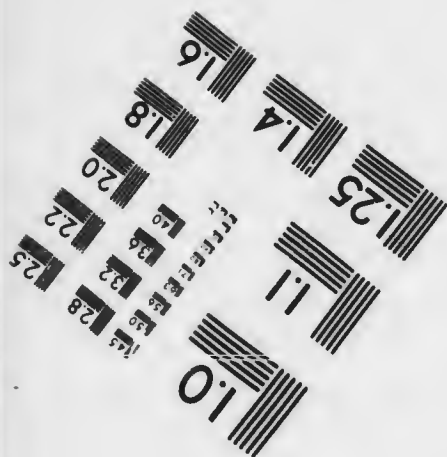
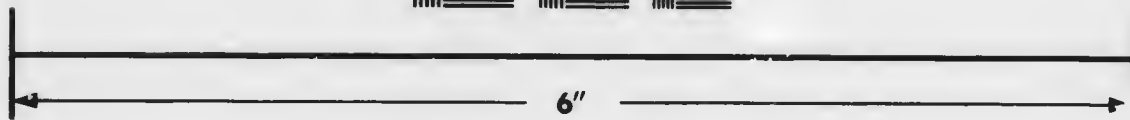
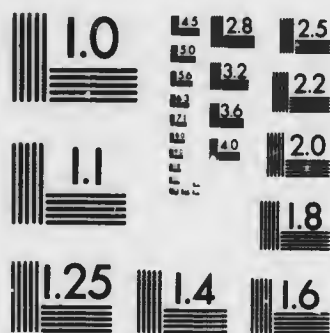


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CHAPTER II

The first part of the chapter is devoted to a discussion of the various forms of the verb 'to be' in English. It is shown that the verb 'to be' is used in a variety of ways, and that its meaning is often different in different contexts. The second part of the chapter is devoted to a discussion of the various forms of the verb 'to have' in English. It is shown that the verb 'to have' is used in a variety of ways, and that its meaning is often different in different contexts.

The third part of the chapter is devoted to a discussion of the various forms of the verb 'to do' in English. It is shown that the verb 'to do' is used in a variety of ways, and that its meaning is often different in different contexts. The fourth part of the chapter is devoted to a discussion of the various forms of the verb 'to go' in English. It is shown that the verb 'to go' is used in a variety of ways, and that its meaning is often different in different contexts.

The fifth part of the chapter is devoted to a discussion of the various forms of the verb 'to come' in English. It is shown that the verb 'to come' is used in a variety of ways, and that its meaning is often different in different contexts. The sixth part of the chapter is devoted to a discussion of the various forms of the verb 'to see' in English. It is shown that the verb 'to see' is used in a variety of ways, and that its meaning is often different in different contexts.

The seventh part of the chapter is devoted to a discussion of the various forms of the verb 'to hear' in English. It is shown that the verb 'to hear' is used in a variety of ways, and that its meaning is often different in different contexts. The eighth part of the chapter is devoted to a discussion of the various forms of the verb 'to smell' in English. It is shown that the verb 'to smell' is used in a variety of ways, and that its meaning is often different in different contexts.

The ninth part of the chapter is devoted to a discussion of the various forms of the verb 'to taste' in English. It is shown that the verb 'to taste' is used in a variety of ways, and that its meaning is often different in different contexts. The tenth part of the chapter is devoted to a discussion of the various forms of the verb 'to feel' in English. It is shown that the verb 'to feel' is used in a variety of ways, and that its meaning is often different in different contexts.

Railway or otherwise.' Under this section the Government desired to make a temporary arrangement with the Windsor and Annapolis Company until the delivery of the Windsor Branch to the Western Counties Company in accordance with the Statute above recited. Mr. DePass was informed on that, as on all other occasions, that the Government was bound by the agreement entered into by the late Administration in October, 1873, which was confirmed in the Statute above recited, to deliver the Windsor Branch to the Western Counties Company on the conditions mentioned, at the earliest date consistent with the fulfilment of the conditions imposed. Mr. DePass was fully informed of this long before that period, and on one occasion he informed 3510 me that he was making arrangements with the Western Counties Railway for operating the Windsor Branch in the expectation at the time that the Government would in 1874 give immediate possession of the Branch to that Company. I cannot now fix the date. It was in 1874 sometime."

9. In reply to the ninth interrogatory, the said deponent saith:—"I am unable to give any reply to that question. I have no recollection."

10. In reply to the tenth interrogatory, the said deponent saith:—"It is impossible for me to say. It is a matter of official record, which can be had from the Government officers if they are willing to give them. I don't recollect the terms in detail. If I did I should hesitate to state them, as they would more properly come 3520 from the official Records."

11. In reply to the eleventh interrogatory, the said deponent saith:—"I believe that I did execute an agreement such as is mentioned in the eleventh interrogatory. I signed it under the authority of the Statute and the Order in Council, a copy of which is now produced and shown to me and marked 'I.' Such copy is certified to by W. A. Himsworth, Clerk of the Privy Council, whose signature I recognize."

12. In reply to the twelfth interrogatory, the said deponent saith:—"The authority of the Statute as well as the Order in Council."

13. In reply to the thirteenth interrogatory, the said deponent saith:—"The answer I have already given, referring to Sec. 2 of Ch. 16, 37 Victoria, shows that 3530 we contemplated making temporary arrangements for the Windsor and Annapolis Railway for operating the Windsor Branch, and the Deputy Minister of Justice, Mr. Bernard, was requested to prepare the agreement with reference to the proposed arrangement, namely: that the Windsor and Annapolis Company should operate the road temporarily, pending its delivery to the Western Counties Company, upon the same conditions as were contained in a prior agreement, dated 22nd September, 1871, which agreement was cancelled, to the best of my recollection, in October, 1873. It never was intended to revive that agreement of 1871; and having given specific instructions to the Deputy Minister of Justice on this point, I signed the agreement without carefully considering its wording." 3540

14. To the fourteenth interrogatory, the said deponent saith:—"I cannot recollect, but it was a long time after its execution."

15.—To the fifteenth interrogatory, the said deponent saith:—"I am not aware of anything having been done to recognize its validity."



16. To the sixteenth interrogatory, the said deponent saith:—"I have no recollection of any negotiations respecting the confirmation of the agreement of 1871, which was cancelled in 1873. There may have been letters from the Company (the Windsor and Annapolis) of which I am not aware."

17. To the seventeenth interrogatory, the deponent saith:—"I am aware that notice was given to the Windsor and Annapolis Railway of the intention to transfer the Windsor Branch on a certain day—I think the first of August, 1877. But as to the date I speak wholly from recollection. I believe a copy was sent by mail from Ottawa, and a copy delivered to some official of the Company by Mr. Brydges. I cannot say if the paper now produced, marked 4, is a copy, as I have not the official copy to compare it with. I have no doubt that it is a copy, and that I wrote it myself and gave it to Mr. Braun to send." 3550

18. To the eighteenth interrogatory, the said deponent saith:—"I have no recollection of receiving any reply. If I did the paper is an official one and I cannot produce it."

19. To the nineteenth interrogatory, the said deponent saith:—"The Governor in Council did pass such an order about the ninth of July, 1877. The paper produced to me, and marked 2, is, I believe, a true copy of such Order in Council, and is certified by the Clerk of the Council, whose signature I recognize." 3560

20. To the twentieth interrogatory, the said deponent saith:—"I am unable to state if a copy was sent to the Plaintiff or Defendant Company. I presume that a copy would be sent to the Defendants."

21. To the twenty-first interrogatory, the said deponent saith:—"There was an agreement. The paper now produced and shown me, marked 3, is the said agreement."

22. To the twenty-second interrogatory, the said deponent saith:—"Yes, they are." 3570

JAMES J. FOY,
Commissioner.

Answers of Hon. A. Mackenzie to Cross Interrogatories.

1. To the first cross interrogatory the said deponent saith:—"I cannot fix the date of any of my interviews with Mr. DePass."

2. To the second cross interrogatory the said deponent saith:—"I have seen Mr. DePass alone, also with Mr. Killam; and also with Mr. Trudeau, and Mr. Brydges."

3. To the third cross interrogatory the said deponent saith:—"Mr. Killam first called my attention to it by asking me if the Agreement of 1871 had been revived? I told him it was not, and on subsequent examination of the document I found the wording was somewhat different from what I had supposed." 3580

4. To the fourth cross interrogatory the said deponent saith:—"I have already answered that I have no recollection of any such negotiations."

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5. To the fifth cross interrogatory the said deponent saith :—" I have not."
6. To the sixth cross interrogatory the said deponent saith :—" Yes, I believe that I was."
5. To the seventh cross interrogatory the said deponent saith :—" The answer to this interrogatory appears by my previous answer."

JAMES J. FOY,
Commissioner. 3590

Viva Voce Examination of Honorable A. Mackenzie.

In reply to Mr. Robinson, Q. C., representing the defendants, the Honorable Alexander Mackenzie, on *viva voce* examination on his oath aforesaid, saith :

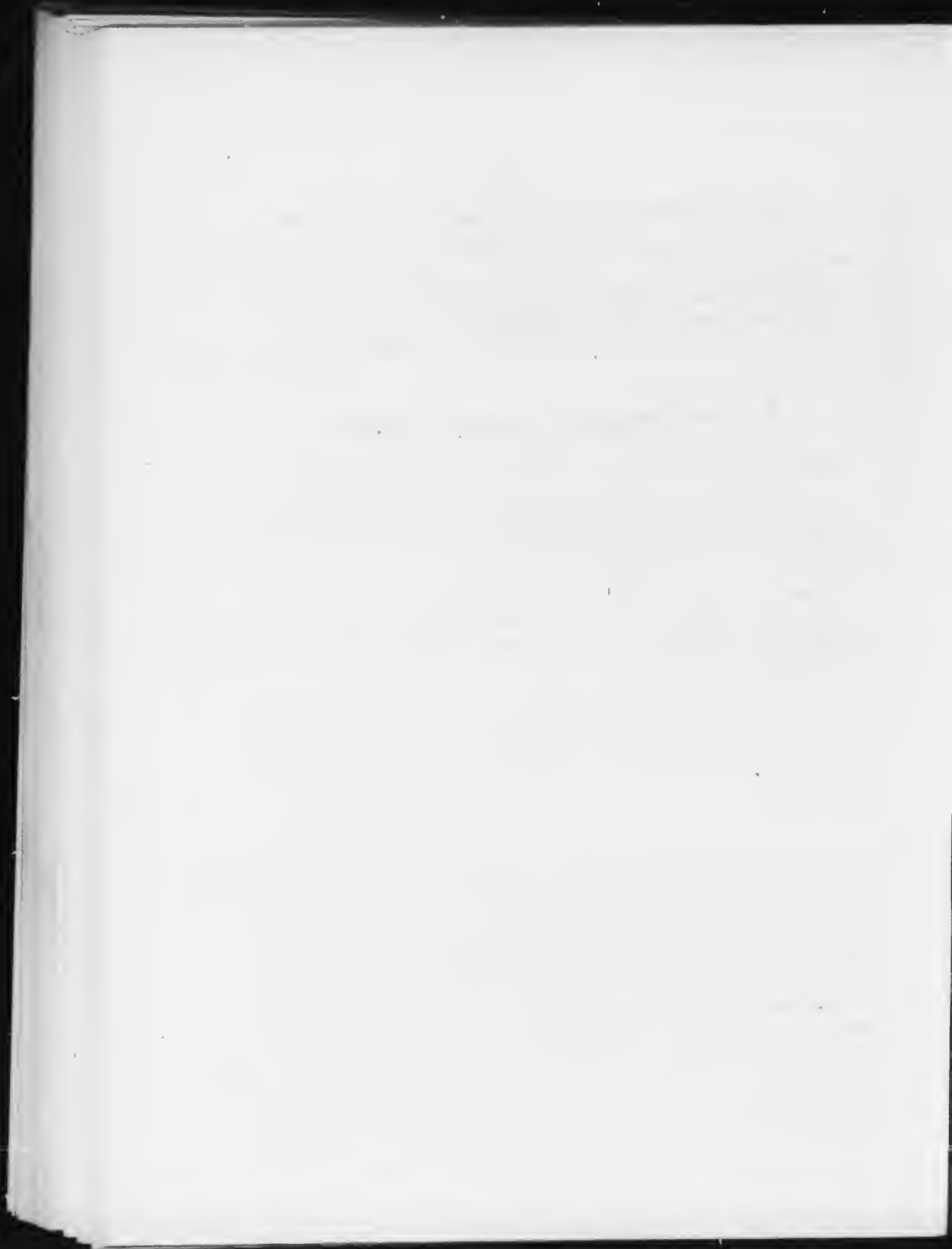
" Mr. DePass was acting as regards the Windsor Branch in relation to the working of the line by the Windsor and Annapolis, to the change of gauge, and the condition of the rails, which were then very bad. These were the only matters I remember. It was not in connection with the transfer.

" DePass' authority to represent the Windsor and Annapolis road was never questioned, so far as I am aware. I don't recollect any other person acting on behalf of the Windsor and Annapolis road. I think he was accompanied by some parties. I 3600 don't remember who they were.

" In reference to the sixteenth interrogatory I further say, that the Government considered themselves expressly debarred by statute from reviving the Agreement of 1871 ; we never had any intention of reviving it. After 1874, my impression is that Mr. DePass had accepted the situation created by the said statute, and the fact that he had entered into negotiations with Mr. Killam for operating the Windsor Branch confirmed that."

JAMES J. FOY,
Commissioner.

In reply to Mr. D'Alton McCarthy, Q. C., representing the Plaintiffs, the said 3610 deponent, Alexander Mackenzie, upon cross-examination saith : " I don't remember the first interview with any one about this railway. I think Mr. Reynolds called, purporting to represent the Windsor and Annapolis Railway Company. I cannot recall any of the conversation. I cannot say if it referred to the Order in Council of October, 1873. It may have been with reference to such Order. My recollection is unequal to recalling the subject of conversation. I don't recollect if Mr. Reynolds protested against the Order in Council putting an end to the agreement between the Windsor and Annapolis and the Government. I cannot say if it did, or did not. I think I remember the general contention that the Windsor and Annapolis had never 3620 failed to operate the road within the terms of the lease, and that they had been unjustly treated in the cancellation of the lease, but I don't recollect that the power of the Government to cancel was called in question. I don't recollect Mr. Reynolds alleging and offering to satisfy me that the Company had never ceased to work the Branch for a day, and that therefore the Order in Council was illegal. It is possible



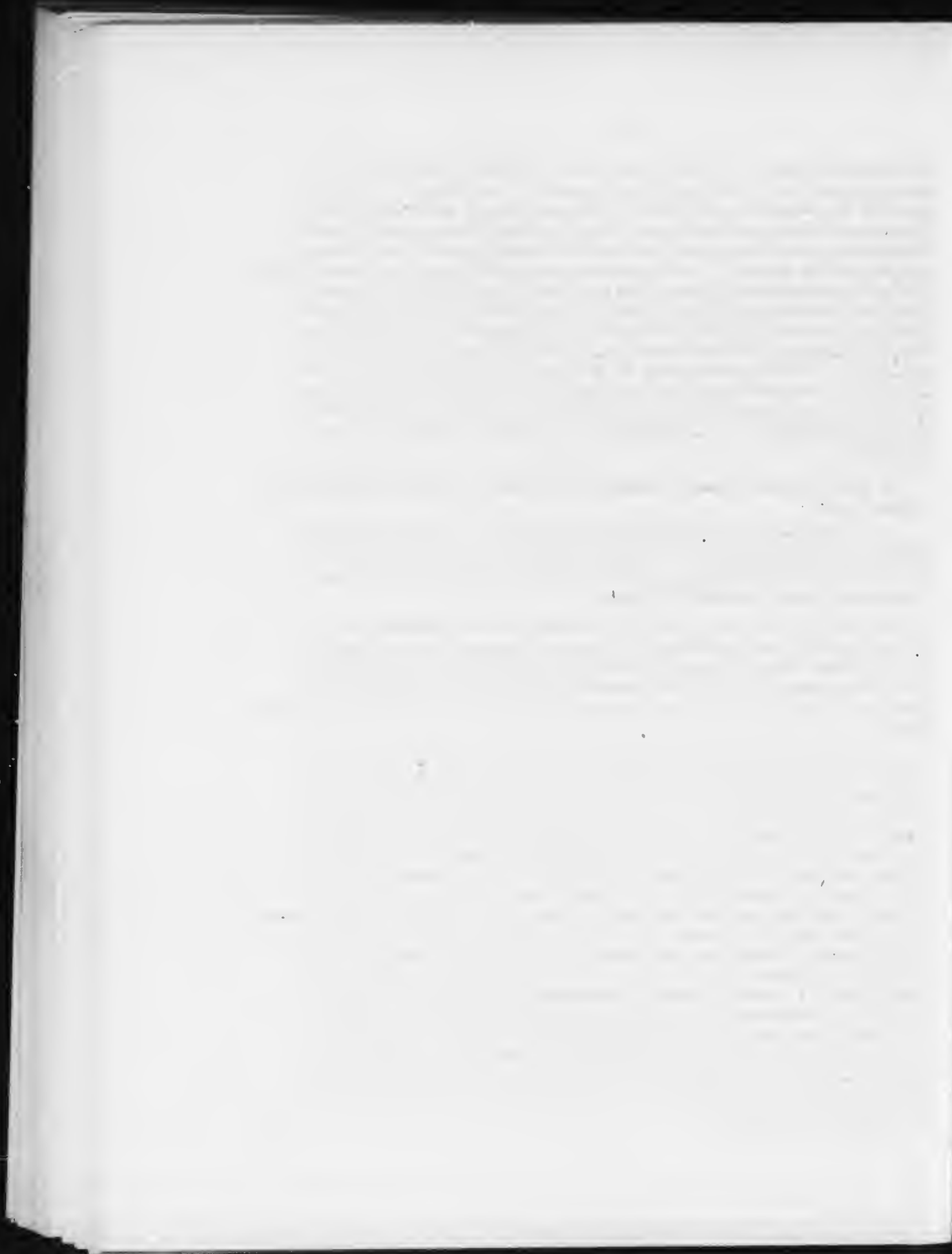
that he may have done so. I found the Agreement of 1873, and determined to have an Act to confirm it. I looked upon it as a contract. In any discussion I may have had with Mr. Reynolds or Mr. DePass, I informed them of such determination. They may have drawn my attention to this contention, that the lease to the Plaintiff Company was still in existence, and had never been legally cancelled. But I cannot recollect any such statement. I don't remember agreeing with Reynolds to telegraph 3630 Counsel to allow matters to remain as they were and not interfere with the possession of the Plaintiff Company, but I think it is very likely that I did so, as in all probability we intended at that time to allow them to operate until we could give effect to the agreement with the Western Counties Railway Company by Parliamentary sanction. I don't remember telling Mr. Reynolds that no steps would be taken adverse to the Plaintiffs Company without giving them notice and giving them an opportunity of being heard. I won't say, as a fact, that such was not so, but I think it extremely improbable, as I considered this matter entirely settled by the agreement made."

Q. Did you at once intimate to plaintiffs that as a matter of Policy you intended 3640 to carry it out?

A. I considered the new Administration was bound to carry out the contract with the defendants entered into by their predecessors by the Order in Council already referred to (Oct. 22nd, 1873). I have no recollection of any specific announcement to representatives of plaintiffs Company.

Q. You have already stated that you were aware that the Plaintiff Company contended generally that the Windsor and Annapolis Company had never failed to operate the Road within the terms of the Lease, and that they had been unjustly treated in the cancellation of it? Did you intimate to the Representative of the Road that nevertheless you would carry out the contract made with the Western Counties 3650 Road?

A. I have no recollection of any specific announcement of the kind. it was not necessary to give such announcement, but if any person asked the intention of the Government I undoubtedly would have replied that the Agreement of Oct. 22nd, 1873, would be carried into effect. I have no recollection at all of what transpired at the interview with Mr. Reynolds. I do remember the fact of such interview, it having been recalled to my recollection by Mr. Innes that Mr. Reynolds did represent the Company, otherwise I should not have remembered it. I do not remember Mr. Reynolds presenting a petition to the Governor-General through me. I do not remember how many interviews I had with Mr. Reynolds, whether one or more. I don't re- 3660 member admitting to Mr. Reynolds that the order of 22nd Oct., 1873, was without legal justification. I knew there were grounds for it and legal justifications. I did not make such an admission. I don't say I did not see the Petition. I have no recollection of it. I recollect of interview with DePass in Spring of 1874. I don't remember if he was introduced as representing the Railway. I have no recollection of it. I have no recollection of the general contention of DePass. I presume it was same as Reynolds. I don't recollect if Bill for Act of 1874 was introduced late in session, or whether the Representatives of the Western Counties Railway did not draw the Bill. My impression is that this (as all such Bills) was drawn by myself or by the Department of Justice.



Q. Do you remember whether Mr. DePass or any other representatives of the Company ever changed his contention that the Order in Council was unjust, and that they were unjustly treated in the cancellation of their Lease?

A. I do not know anything about any change or expression of views on the part of Mr. DePass or any other person concerning the cancellation of the lease, other than what I have stated. I cannot tell whether Mr. DePass acquiesced in the action of the Government or not, but I believe that he accepted the action of the Government as decisive. My reason for believing this is his negotiations with the other Company to operate the road. I have no other reasons for believing it. I might add, because also, the bill passed the Parliament without any serious opposition. I acquired my knowledge of the negotiations about the time of the Act passing, on the Bill being before the House. I am not certain as to the date. I give my impression. I won't state it positively. Mr. DePass admitted to me that he had been discussing the matter of operating the Windsor Branch with Mr. Killam. I don't think he discussed the object of the proposed arrangement. I recollect nothing but about proposed percentages. I advised the parties to come to some arrangement. I always advised them to do that. 3680

Q. Did Mr. DePass say, in making the admission already referred to, that the negotiation was in the expectation at the time that the Government would give immediate possession of the Branch to the Western Counties Company? 3690

A. I have no recollection of any specific admission by Mr. DePass other than I have already stated; but he must have known that the Western Counties Company would, under their agreement, obtain possession of the Windsor Branch when the conditions were, in the estimation of the Government, fulfilled.

Q. What specific admission do you refer to in the above answer?

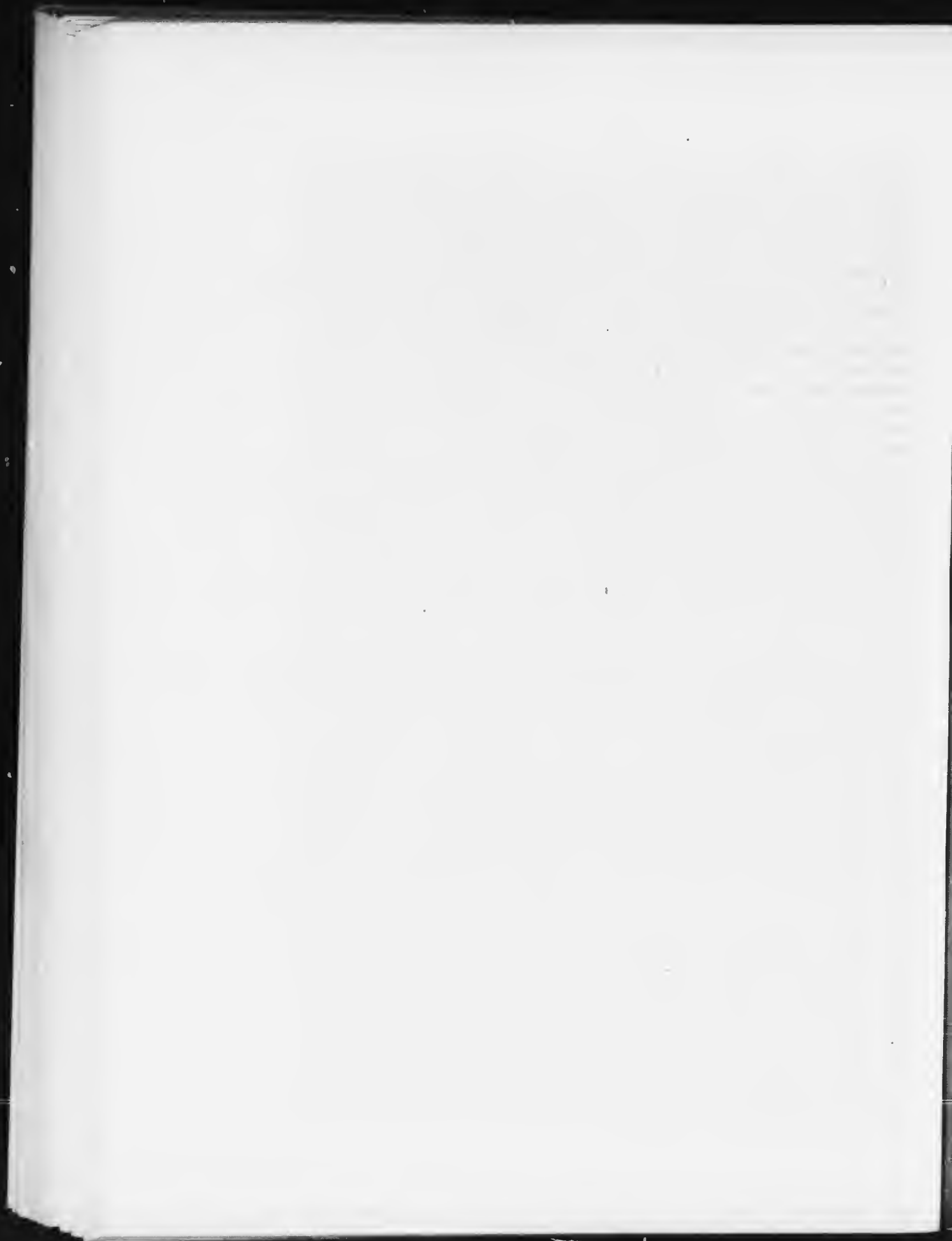
A. I refer to the previous evidence.

Q. Do you refer to the admission in the answer to the eighth interrogatory, or to the answer to my question in this cross-examination?

A. I refer to any part of the evidence which deals with this question. I can't give any more definite answer. I have only a general recollection that Mr. DePass informed me of some negotiations with Mr. Killam, either voluntarily or in reply to a question put by me, but whether this occurred once or twice, I cannot say. I have no distinct recollection of anything occurring in the presence of Messrs. DePass and Killam. I should say that as everything I deemed essential must have been in writing, I did not think it necessary to charge my memory with what I must have considered mere discussion of an indefinite character. The Windsor and Annapolis Company continued in actual possession of the Windsor Branch, so far as I remember, until sometime in 1877. I do not remember of any notice being given to them of the same character as the notice of May 11, 1877, but this can be best ascertained in the Department of Public Works. I think the tolls and share of income provided in the lease of 1871 continued to be paid by the Company, or rather to be charged to them. I cannot recollect any change being made. I made no agreement with them myself, except that of June, 1875, that I remember. What led up to the agree- 3700 3710



ment of June, 1875, was this:—I think it was the necessity of getting the road in condition and changing the gauge in connection with the main line, and up to that time it was hoped the Western Counties Railway would have made such progress with the road that the Government might feel justified in handing over the Windsor Branch. It was then evident that considerable time would elapse before this could be done, and it was considered desirable to make a temporary arrangement for running the Branch road in connection with the arrangement for changing the gauge. I have 3720 no recollection of a petition being presented by the Windsor and Annapolis Railway with reference to change of gauge, and prior to the agreement of 1875. I recollect a claim being made that the Government were impliedly bound to leave the gauge on the Trunk line as it was, or to put down a third rail. They were not necessarily claiming under the lease. My impression was they were claiming under a Nova Scotia statute giving them running power to Halifax. I think it is their Act of Incorporation. I am not sure who commenced the negotiation, which led up to the agreement of 1875, but my impression is it was the Company. I think the negotiations were wholly carried on by Mr. Brydges, under instructions from the department. Mr. Brydges proposed no arrangement without submitting it to the Government. He 3730 could submit no agreement to the Company until he submitted it to the Government. He would have power to see their report, as to values and so on. I have no recollection as to whether Mr. Brydges reported a scheme agreed on subject to the approval of the Government, or whether he proposed a scheme to the Government, to be submitted to the Company. If I did I would hesitate to say, as it would rest with the Government to give this information. I have no recollection of who arranged the terms afterwards embodied in the written contract, on behalf of the Government. I recollect giving instructions to Mr. Bernard. These instructions would be contained in a memorandum in writing. I don't remember anything about the execution of the document by the Company, nor where executed. The part of the agreement of June, 3740 1875, relating to the temporary arrangement, was made under the authority of the Act of Parliament—so we considered. I have no recollection of receiving the letter of which paper marked 5 is a copy. I cannot say if I saw paper 6. I don't recollect. If sent to the department it would be on file. My instructions to the Deputy Minister of Justice should, I think, shew better than anything else, the terms intended to be in the agreement. I did not read the agreement of June, 1875. I remember signing it. I considered that, coming from the Department of Justice, it was right. I don't recollect if it had then been executed by the Company. The practice with contracts was that they should be sent to be signed by the Contractor before signature by the Government. This contract was probably signed by the Company first. 3750 My impression is that it was in 1877 that Mr. Killam drew my attention to the difference in the agreement. I think I was in Nova Scotia at the time. That is my impression. I thought that Mr. Killam was misinformed. If it was in Nova Scotia it would be in the summer. I cannot say if before or after the letter of 11th May, 1877. I cannot recollect whether the Government did or did not take any overt action to correct the mistake in the agreement, except that in the Minute of July, 1877, the error was referred to. I don't know if that Minute was communicated to the Plaintiffs. I decline to answer the question asking if there is any document or writing in Department which would show the arrangement afterwards reduced to writing dated June, 1875, because I have no right to make any statement respecting documents in a Public Department, even if I had knowledge of them, as that rests wholly with 3760



the Government. The road from Yarmouth to Annapolis was not completed by the Western Counties Railway, or otherwise, before the Branch road was handed over to them in July, 1877, or before the making of the agreement. (Exhibit No. 3.) I don't recollect what work was done between the date of the Order in Council of 22nd April, 1875, and the date of the Agreement of September, 1877. It is likely there is a report in the Public Works Department of any work done. My recollection is that the Company considered that they could do the work without serious difficulty if they could get the Windsor Branch, in order to help their credit in London. The defendants did not get possession before September, 1877, because, no doubt, the Government had good reasons; but I decline to discuss the policy of the Government. I am not sure that the Windsor and Annapolis had fully performed their part of the Agreement of June, 1875. 3770

Q. Do you know of anything plaintiffs have omitted which they were bound to do under that Agreement?

A. I have no personal knowledge of the matter, and if I did know, as the then Minister of Public Works, of such information being in the Department, I would decline stating it.

I do not remember an interview with DePass in December, 1874.

I don't recollect the fact of Mr. DePass himself saying that the Company was not able to bear the expense of changing the gauge, but I have no doubt whatever but that he did; it was notorious. 3780

Q. Was the Order in Council of April, 1875, communicated to the Windsor and Annapolis Railway Company?

A. I cannot say if it was.

I do not know that the Agreement of 1875 was executed by the Company under any misapprehension. They never told me so.

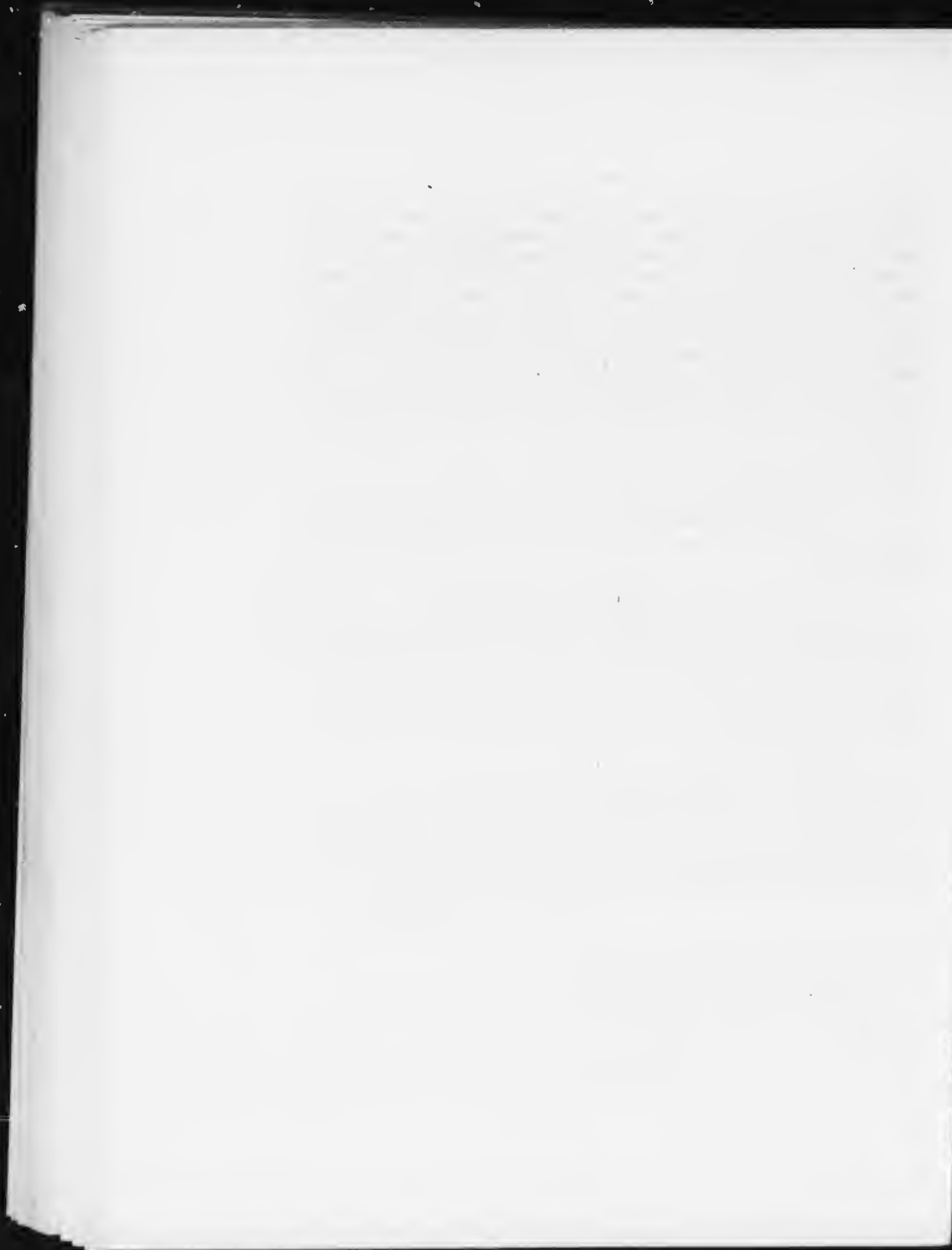
In reply to Mr. Robinson,—If I had read the last paragraph of the Agreement of the 22nd June, 1875, I certainly would not have signed it. I never authorized or intended to authorize any agreement except such as the statute sanctioned. 3790

(Signed)

A. MACKENZIE.

Sworn and examined and signed by the above
named Alexander Mackenzie, at Toronto, in
the County of York, in the Province of
Ontario, this fourth day of January, A. D.,
1879.

JAMES F. FOY,
Commissioner.



**Interrogatories to F. Braun, a witness for Defendants, and his
Answers thereto.**

Q. What is your age, name, and place of residence?

3800

A. My age is fifty-two; name, Frederick Braun; residence, City of Ottawa.

Q. Are you the Secretary of the Department of Public Works of the Dominion of Canada?

A. I am.

Q. How long have you held the office of, and performed the duties of such Secretary for the said Department of Public Works?

A. Continuously since the month of March, in the year of our Lord, one thousand eight hundred and sixty-four.

Q. Do you know one Elias A. DePass? and if so, have you ever known him to act for the Plaintiff Company, and as their agent in relation to business matters between the Plaintiff Company and the said Department of Public Works of the Dominion of Canada, or the Government of Canada, relating to the Railway known as the Windsor Branch?

3810

A. I knew a person of that name acting as Commissioner of the Windsor and Annapolis Railway Company in matters relating to the railway known as the Windsor Branch, between the Plaintiffs and the Department of Public Works of the Dominion Canada.

Q. When did said DePass first commence to act as such Commissioner between the Plaintiffs and said Department, so far as you know?

A. Some time in the year one thousand eight hundred and seventy-three, and before the month of November in said year.

3820

Q. Are you, as Secretary of the said Department of Public Works, the proper custodian of all the letters, documents, and records of the said Department, and the signatory of all public letters written by the order and direction of the Minister of said Department of Public Works?

A. I am.

Q. Did you address a telegram on the twenty-fifth day of September one thousand eight hundred and seventy-three?

A. On the twenty-fifth day of September one thousand eight hundred and seventy-three, I addressed a telegram to P. Innes, Manager Windsor and Annapolis Railway Company, Kentville, N. S., by the Order of the Minister of Public Works of the Dominion of Canada?

3830

Q. Did you address a letter to said Elias A. DePass, Commissioner Windsor and



Annapolis Railway, Kentville, N. S., on the eleventh day of May, in the year of our Lord one thousand eight hundred and seventy-seven?

A. I did by order of the Minister of the Department of Public Works of the Dominion of Canada.

Q. What is the official departmental number of said above mentioned telegram, and what is the official departmental number of said above mentioned letter?

A. The official number of said telegram is 3265, and the official number of said 3840 letter is 616.

Q. Did the Department of Public Works receive any reply to said letter, No. 616?

A. Yes, and the original of which I now produce; but which I decline to allow to be taken from my custody, on the ground that it is a public document; but I also produce a true copy of said original reply, which I have examined and compared with said original, which said copy is marked "A," as an exhibit.

(Said copy of letter was here put in by deponent. and marked by me with the letter A, and my initials —A. F.)

Q. Do you know the official seal of the Department of Public Works for the 3850 Dominion of Canada?

A. I do know the seal of the said Department of Public Works which was in use by said Department during the year one thousand eight hundred and seventy-seven and the whole of said year.

Q. Was the Honorable Alexander Mackenzie Minister of said Department of Public Works for the Dominion of Canada during the year one thousand eight hundred and seventy-seven, and do you know his handwriting, and have you seen him write?

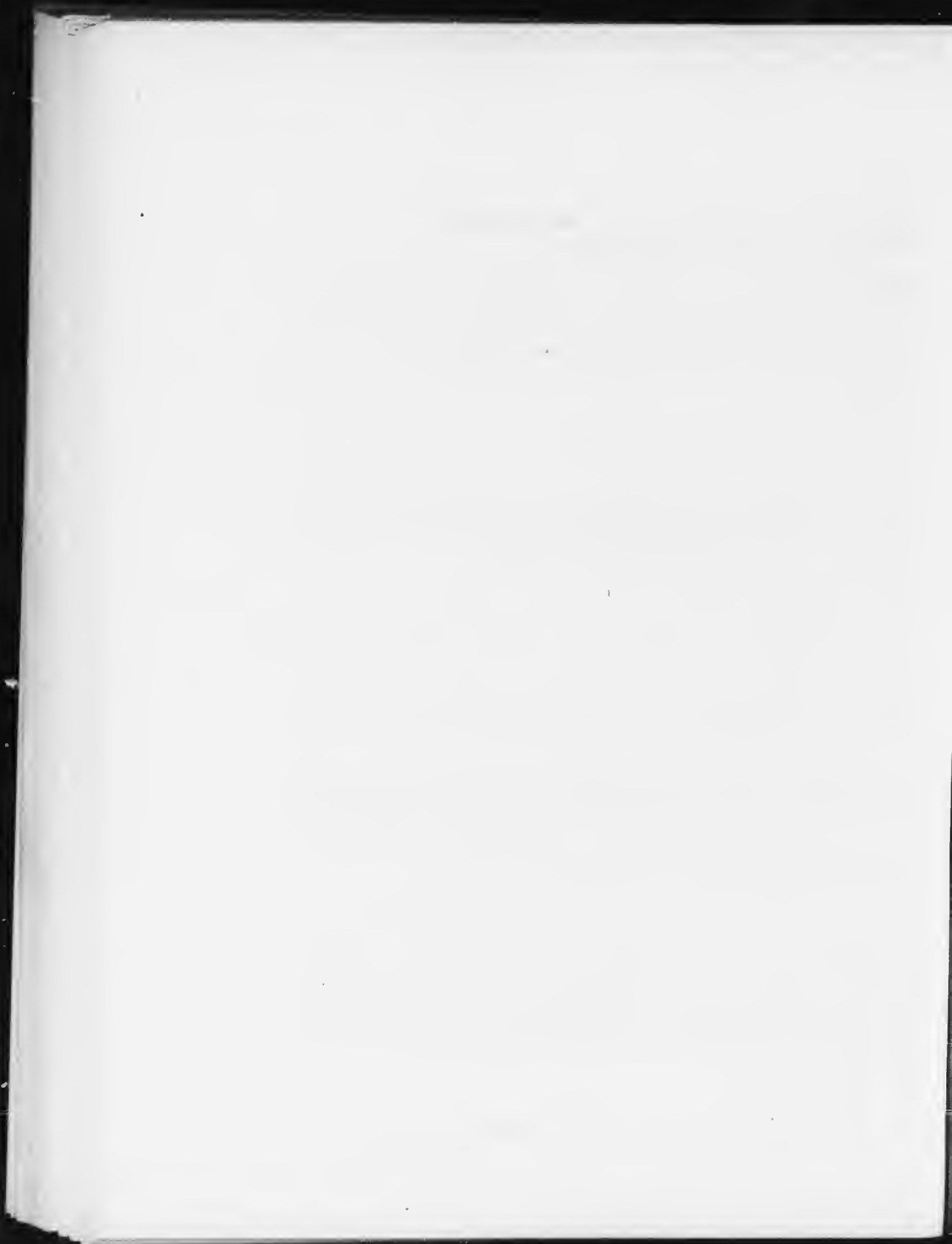
A. Honorable Alexander Mackenzie was Minister of Public Works during said time, and I know his handwriting, and have frequently seen him write.

Q. Is the agreement made the sixth day of September one thousand eight hundred and seventy-seven, between Her Majesty the Queen, therein represented by the Minister of Public Works of the Dominion of Canada, of the first part, and the Western Counties Railway Company of the other part, and now produced and marked with the letter B, sealed with the said seal of said Department of Public Works for the Dominion of Canada, in use by said Department during the said year of one thousand eight hundred and seventy-seven, and countersigned by you, and signed by the said Honorable Alexander Mackenzie, as Minister of Public Works for the Dominion of Canada?

A. It is.

(Said document has been put in, and marked as Exhibit B, by me.—A. F.) 3870

A. FERGUSON, *Comm'*.



Cross-examined by Mr. McCaul, Counsel for Plaintiffs, who was present as such Counsel during the examination in chief:—

Q. Did you know said DePass personally?

A. I did

Q. Did you know of your own personal knowledge that said DePass was acting as Commissioner of the Windsor and Annapolis Railway Company?

A. No further than knowledge I derived from the fact of communications being received by the said Department of Public Works from said DePass, and several interviews had by said DePass with the Minister, Deputy Minister and myself, as Secretary 3880 of said Department of Public Works, on matters concerning the Windsor Branch and Windsor and Annapolis Railway.

Q. Do you know the handwriting of said DePass?

A. I do not, never having seen him write.

Q. Can you say that the communications above referred to and the letter referred to in your examination in chief were written by said DePass?

A. I cannot

Re-examined by Mr. Gormully:—

Q. Was not said DePass from November, one thousand eight hundred and seventy-three, till June, one thousand eight hundred and seventy-seven, always received and treated by the Minister of Public Works of the Dominion of Canada and the officers of said department as representative of the Windsor and Annapolis Railway Company, and were not numerous official letters addressed to said DePass as "E. A. DePass, Esquire, Commissioner Windsor and Annapolis Railway Company, Kentville, N. S." 3890

A. Yes, and prior to November, one thousand eight hundred and seventy three.

Q. Was not the letter above referred to, and a copy whereof is marked Exhibit "A," hereto received by the said Department of Public Works of the Dominion of Canada in due course through the post in reply to their letter number 616, dated eleventh May, one thousand eight hundred and seventy-seven, above referred to, addressed to said DePass as such Commissioner? and is not the signature, to the best of your belief, signed 3900 in the same handwriting as numerous communications purporting to be signed by said DePass and addressed to said department, and received by said department in the course of a long correspondence between said DePass and said department, and in answer to official communications from the said department addressed to said DePass as Commissioner as aforesaid?

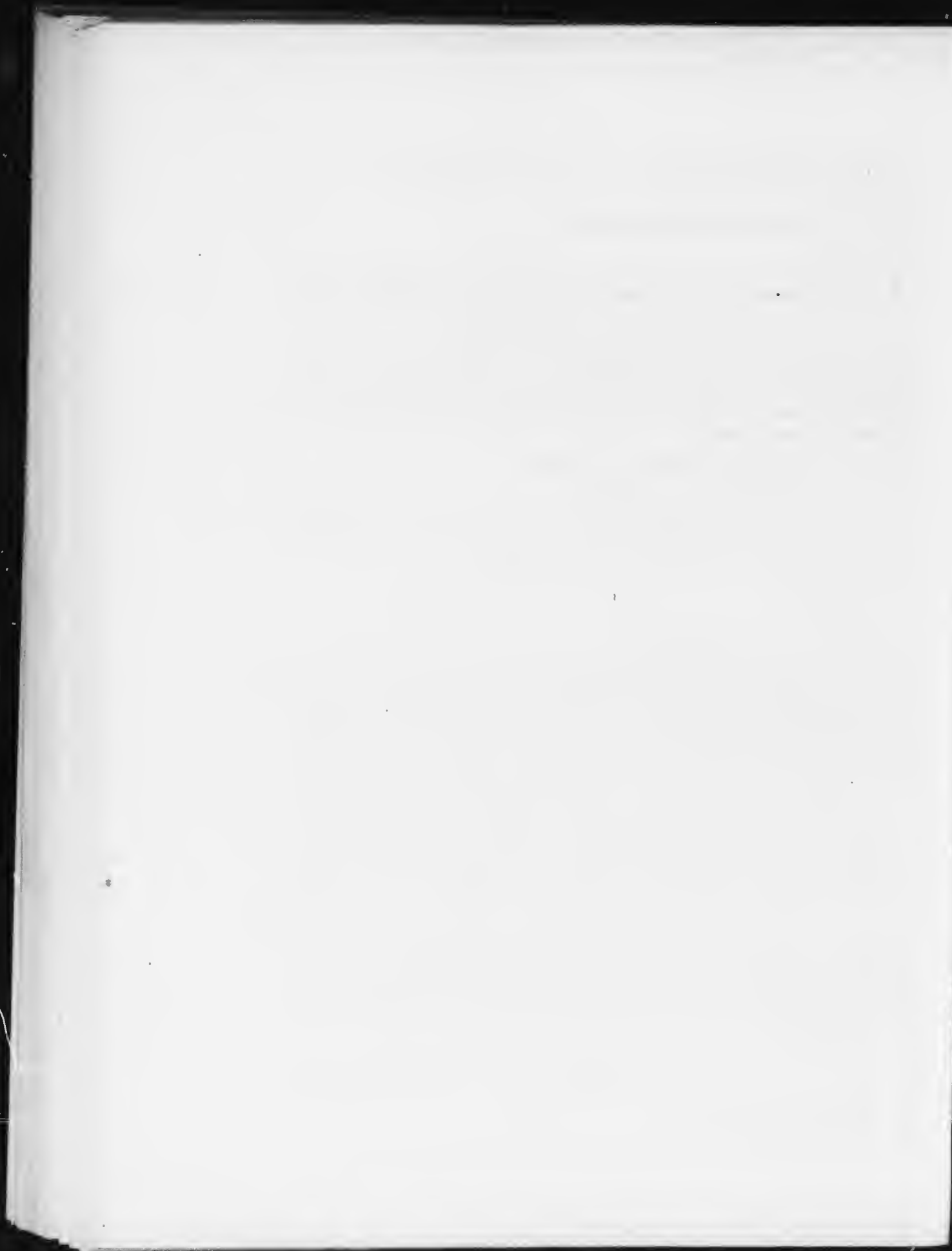
A. Yes.

(Signed)

F. BRAUN.

Secretary.

A. FERGUSON, *Commissioner.*



Interrogatories to Himsworth, a Witness for Defendants, and Answers.

By Mr. Gormully:

Q. Are you the Clerk of the Queen's Privy Council for Canada? If so; how long have you held that office, and acted as such?

A. I am; and have acted as such since the first of July, A. D., 1872.

Q. Is the signature "W. A. Himsworth," subscribed to each of the certificates dated the thirteenth day of December, A. D., 1878, and written on each of the paper writings now produced and shown to you, and marked respectively with the letters "G" and "H," in your handwriting?

A. It is

3920

(Said documents were here put in, and marked as exhibits G and H, respectively, by me —A. F.)

Q. Have you, amongst the records of the Queen's Privy Council for Canada, in your custody, as Clerk thereof, an original Order in Council, dated the twenty-second day of April, A. D., 1875?

A. I have.

Q. Have you compared the said paper writing marked "G" with the said original Order in Council of the twenty-second day of April, A. D., 1875, and is the said paper writing marked "G," a true copy thereof?

3930

A. I have examined it and it is a true copy.

Q. Have you amongst the records of the Queen's Privy Council for Canada, as clerk thereof, in your custody an original Order in Council, dated the twenty-fifth day of July, A. D., 1877, and the Report hereunto annexed?

A. I have.

Q. Have you compared the said paper writing marked "H" with the said original Order in Council of the twenty-fifth day of July, A. D., 1877, and the said Report thereunto annexed and are they respectively true copies thereof?

A. I have examined them and they are true copies thereof.

Q. Are you the custodian of the Records of the Queen's Privy Council for Canada?

3940

A. I am.

Q. Are you permitted to allow the Records of the said Queen's Privy Council for Canada to be removed from their place of deposit in the archives of the said Privy Council?

A. I am not

A. FERGUSON, *Commissioner.*

(Signed)

W. A. HIMSWORTH.

EXHIBIT G.

HALIFAX, SS.

IN THE SUPREME COURT,

IN EQUITY.

3950

Cause—

THE WINDSOR AND ANNAPOLIS RAILWAY COMPANY, *Plaintiffs*.

vs.

THE WESTERN COUNTIES RAILWAY COMPANY, *Defendants*.

COPY of a Report of the Committee of the Honorable the Privy Council, approved by His Excellency the Governor-General in Council, on the 22nd April, 1875 :

On a Report, dated the 22nd April, 1875, from the Honorable the Minister of Public Works, stating that under the provisions of the Act 37 Vic., cap. 16, respecting the Windsor Branch of the Intercolonial Railway, power was given to the Govern- 3960
ment to make arrangements to give to the Western Counties Railway Company pos-
session of the Windsor Branch on the 1st December, 1873, who were to be bound
from this date to work it efficiently and keep the same in repair at their own proper
costs and charges, they receiving all the earnings of the Branch.

That on the completion of the line from Yarmouth to Annapolis, the Windsor Branch was to become the absolute property of the Company.

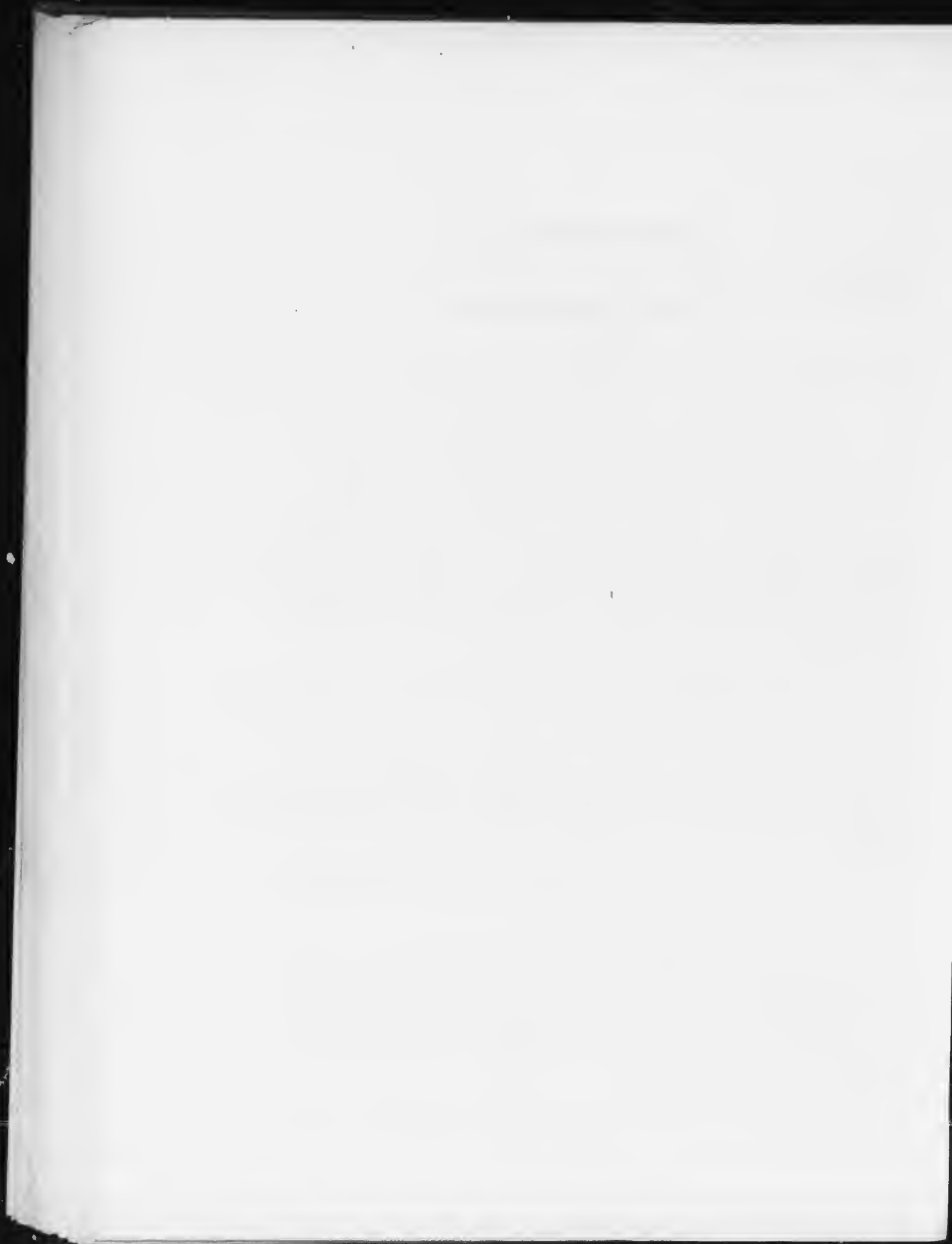
That in consideration of the above, the Company was to undertake to complete the line between Yarmouth and Annapolis, with all reasonable despatch.

That the Company have not been in a position to fulfil that part of the agreement which requires them to have taken possession of the Branch on the 1st 3970
December, 1873, and thereafter work it and keep it in repair at their own costs and charges.

That it is apprehended they will also have great difficulty in securing the construction of the line between Yarmouth and Annapolis, as they are not prosecuting it with all reasonable despatch, as required by the agreement.

That it is, therefore, not expedient under existing circumstances to convey the line to the Western Railway Company, as they have no means of working it or making the necessary repairs at present urgently required, the cost of which, it is estimated, will be about \$80,000 in two years ; and recommending that, until further ordered, the existing arrangement with the Windsor and Annapolis Company be continued, and 3980
that authority be granted to expend the amount required for putting the Windsor Branch in a safe and proper condition.

That in view of the necessity there is for changing the gauge of the Windsor and Annapolis line in order to meet the requirements of the traffic and of the doubts



entertained of the willingness or ability of the Company undertaking, without assistance, to meet the great expense such a change would entail on them. The Minister further recommends that, as an inducement to them, authority be granted for making an agreement with the Company by which they will engage to change the gauge of the line on the following, among other conditions, viz:—

The Government to give them three new passenger engines and six converted 3990 engines now on the Intercolonial line, and to get nine of the engines now belonging to the Annapolis Company.

The cost would be about as follows:—

Three new engines for passenger trains, say.....	\$25,000	
Six engines to be converted, less value of nine old engines, say.....	20,000	
Fourteen trucks for passenger cars, at \$800 each.....	11,200	
One hundred and forty trucks for freight cars, at \$350 each....	49,000	
	<u>60,200</u>	
Less 153 old trucks, at \$100.....	15,500	\$44,700
Total.....		<u>\$89,700</u> 4000

The Company to change the gauge of the rails themselves at their own cost, and to give a legal discharge of all claims against the Government, and the latter to also discharge all claims against the Company.

The Committee submit the foregoing recommendations for your Excellency's approval.

PRIVY COUNCIL OFFICE,
OTTAWA, 13th December, 1878.

I certify that the foregoing is a true copy of the original Order in Council deposited amongst the Records of the Queen's Privy Council for Canada, in my custody as Clerk of the said Privy Council.

W. A. HIMSWORTH,
Clerk of the Queen's Privy Council for Canada. 4010

THIS is the exhibit marked with the letter "G," referred to in the examination of William Alfred Himsworth, taken before me under commission at the City of Ottawa, in the County of Carleton, this 20th day of December, A. D., 1878.

A. FERGUSON,
Commissioner.

THIS is the exhibit marked I, referred to in examination of the Honorable Alexander Mackenzie, taken before me under agreement and order in this cause, at the City of Toronto, in the County of York, this fourth day of January, A. D., 1879.

JAMES J. FOY,
Commissioner. 4020

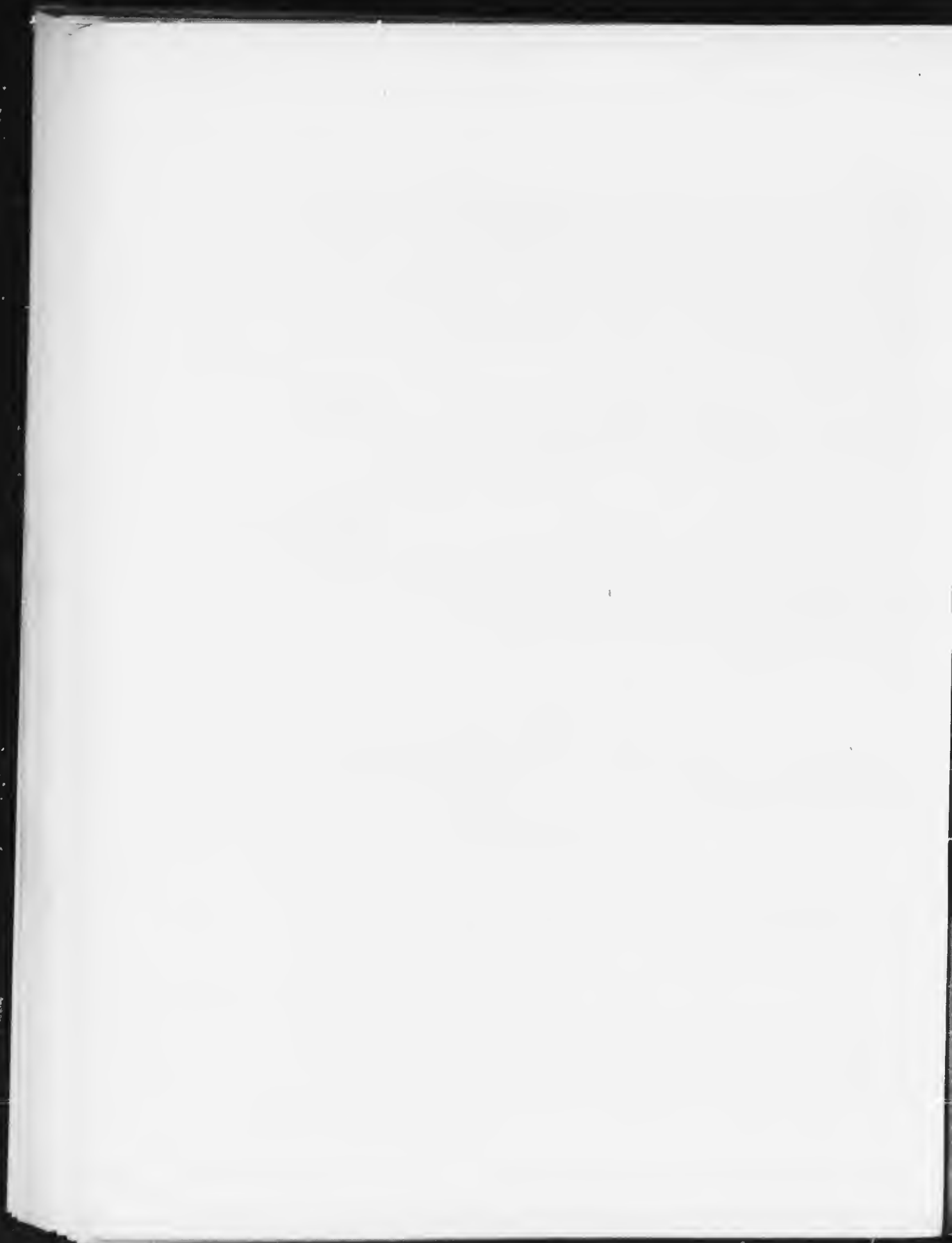


EXHIBIT H.

HALIFAX, SS.

IN THE SUPREME COURT,

IN EQUITY.

*Cause—*THE WINDSOR AND ANNAPOLIS RAILWAY COMPANY, *Plaintiffs.*

vs.

THE WESTERN COUNTIES RAILWAY COMPANY, *Defendants.*

COPY of a Report of a Committee of the Honorable Privy Council, approved by His Excellency the Governor General in Council, on the 23rd day of July, 1877. 4030

The Committee have had under consideration a Memorandum from the Honorable the Minister of Public Works, dated — July, 1877, recommending that possession of the Windsor Branch Railway be given to the Western Counties Railway Company on the 1st August, 1877, and they concur in said recommendation and submit the same for Your Excellency's approval.

Certified.

W. A. HIMSWORTH,
Clerk Privy Council.

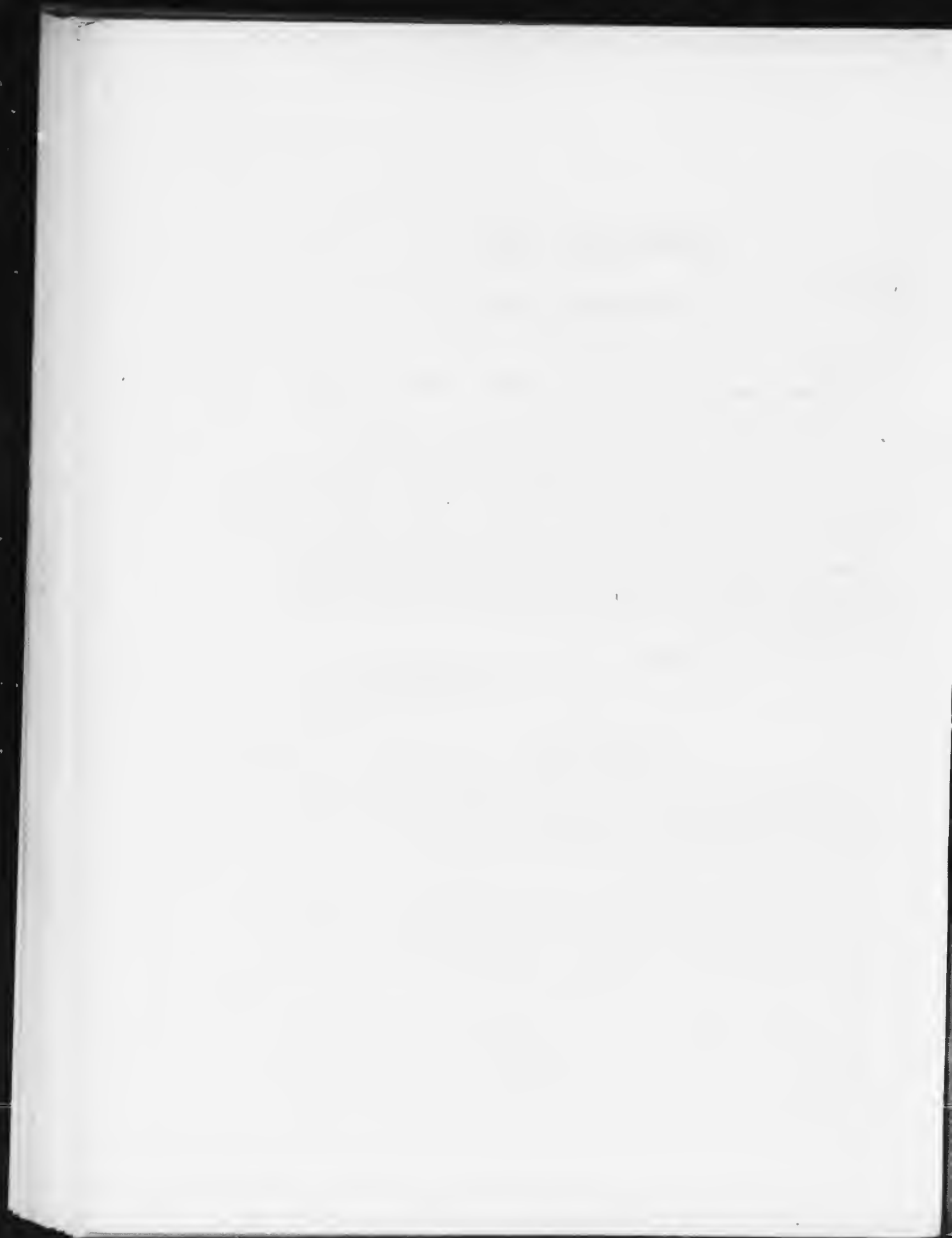
MEMORANDUM.

OTTAWA, July, 1877. 4040

The undersigned reports that on the 21st September, 1871, the Windsor and Annapolis Railway Company entered into an agreement for operating the Windsor Branch Railway for a certain number of years, which agreement was approved and ratified by Order in Council, dated 22nd September, 1871.

That on the 21st October, 1873, the Honorable the Minister of Public Works reported that the Windsor and Annapolis Railway Company had failed to operate the Windsor Branch Railway and to comply with the other terms and conditions of the agreement dated 21st September, 1871, and that upon this report an Order in Council was passed on the 22nd October, 1873, authorizing the Government to proceed immediately to operate the railway between Halifax and Windsor. 4050

That on the 23rd May, 1873, a resolution was passed by the House of Commons authorizing the Government to enter into negotiations "with some reliable Association or Company, for the transfer of the railway from Windsor to the Trunk line from Halifax to Truro, upon condition that such Association or Company extend the railway from Annapolis to Yarmouth, subject to the approval of Parliament at the next session."



That such an agreement was entered into by Orders in Council dated the 22nd day of October and 30th day of October, 1873.

That on the 26th May, 1874, an Act was passed reciting the said agreement and confirming the same, and authorizing the Government, until arrangements were completed for giving possession to the Western Counties Railway Company of the said Windsor Branch Railway, to make such other arrangements as might be necessary for the purpose of operating the said Branch Railway by continuing the working of the same by the Windsor and Annapolis Railway Company, or otherwise. 4060

That on the 22nd day of April, 1875, an Order in Council was passed, providing: "That, until further ordered, the existing arrangements with the Windsor and Annapolis Railway Company should be continued."

That on the 22nd June, 1875, an agreement was entered into with that Company for the operation of the said Branch line, *which agreement, through error, contained a clause declaring the agreement of 21st September, 1871, above mentioned, to be in full force.* 4070

That under the provisions of the Act of 1874, referred to, and of the Order in Council of 22nd April, 1875, the power of the Government to enter into any agreement with the Windsor and Annapolis Railway Company was limited, and the said agreement, therefore, must be considered merely temporary, and "until further ordered."

That it appears from representations made by the said Western Counties Railway Company that their line will soon be completed to Digby, whence communication can be had by steamer to the railway terminus at Annapolis, and that it is now essential that possession of the said Windsor Branch Railway should be given to them, as provided in the Act of 1874, to enable the Company to avail itself of the advantages to be obtained thereby for finishing the whole line. 4080

That it was deemed expedient and proper to comply with this request, and that, in accordance with this conclusion, the Windsor and Annapolis Railway Company were notified on the 11th May last, that on the 1st August, 1877, the Windsor Branch Railway would be transferred to the Western Counties Railway, and that the temporary agreement for operating the Windsor Branch Railway would terminate at the same date.

That the Windsor and Annapolis Railway Company did, by letter dated 24th May, 1877, acknowledge the receipt of said notice of 11th May, 1877.

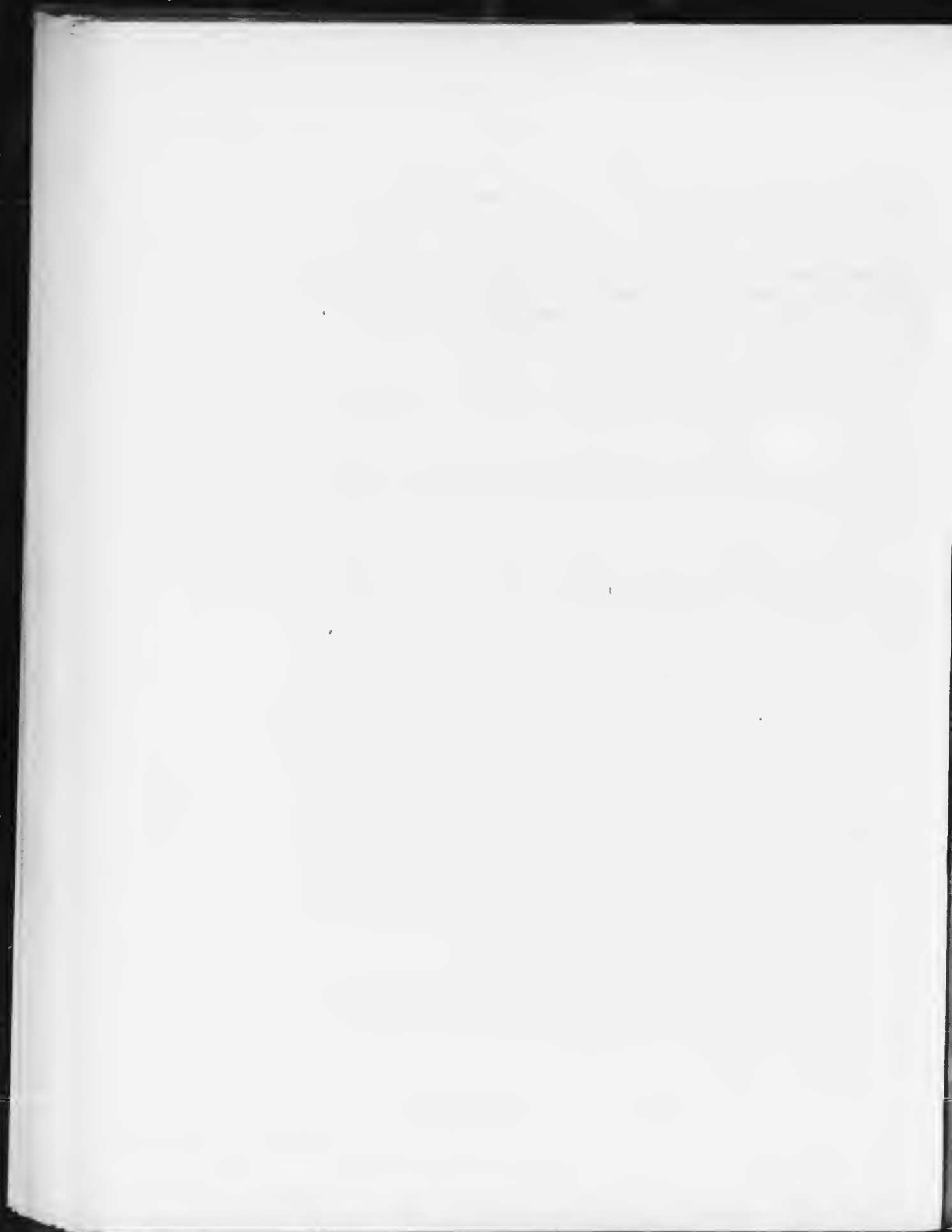
The undersigned now recommend that possession of the said Windsor Branch Railway be given to the Western Counties Railway Company on the 1st August, 1877, under the terms of the Act of May, 1874, entitled, "An Act to authorize the transfer of the Windsor Branch of the Nova Scotia Railway to the Western Counties Railway Company." 4090

Respectfully submitted.

(Signed)

A. MACKENZIE,

Minister of Public Works.



PRIVY COUNCIL OFFICE,

OTTAWA, 13th December, 1878.

I certify that the foregoing is a true copy of the original Order in Council and 4100 Report referred to therein, deposited amongst the Records of the Queen's Privy Council for Canada, in my custody, as Clerk of the said Privy Council.

W. A. HIMSWORTH,

Clerk of the Queen's Privy Council of Canada.

THIS is the Exhibit marked with the letter "H," referred to in the examination of William Alfred Himsworth, taken before me, under Commission, at the City of Ottawa, in the County of Carleton, this 20th day of December, A. D., 1878.

A. FERGUSON,

Commissioner.

THIS is the Exhibit marked 2, referred to in the examination of the Honorable 4110 Alexander Mackenzie, taken before me, under agreement and order in this cause, at the City of Toronto, in the County of York, this fourth day of January, A. D., 1879.

JAMES J. FOY,

Commissioner.

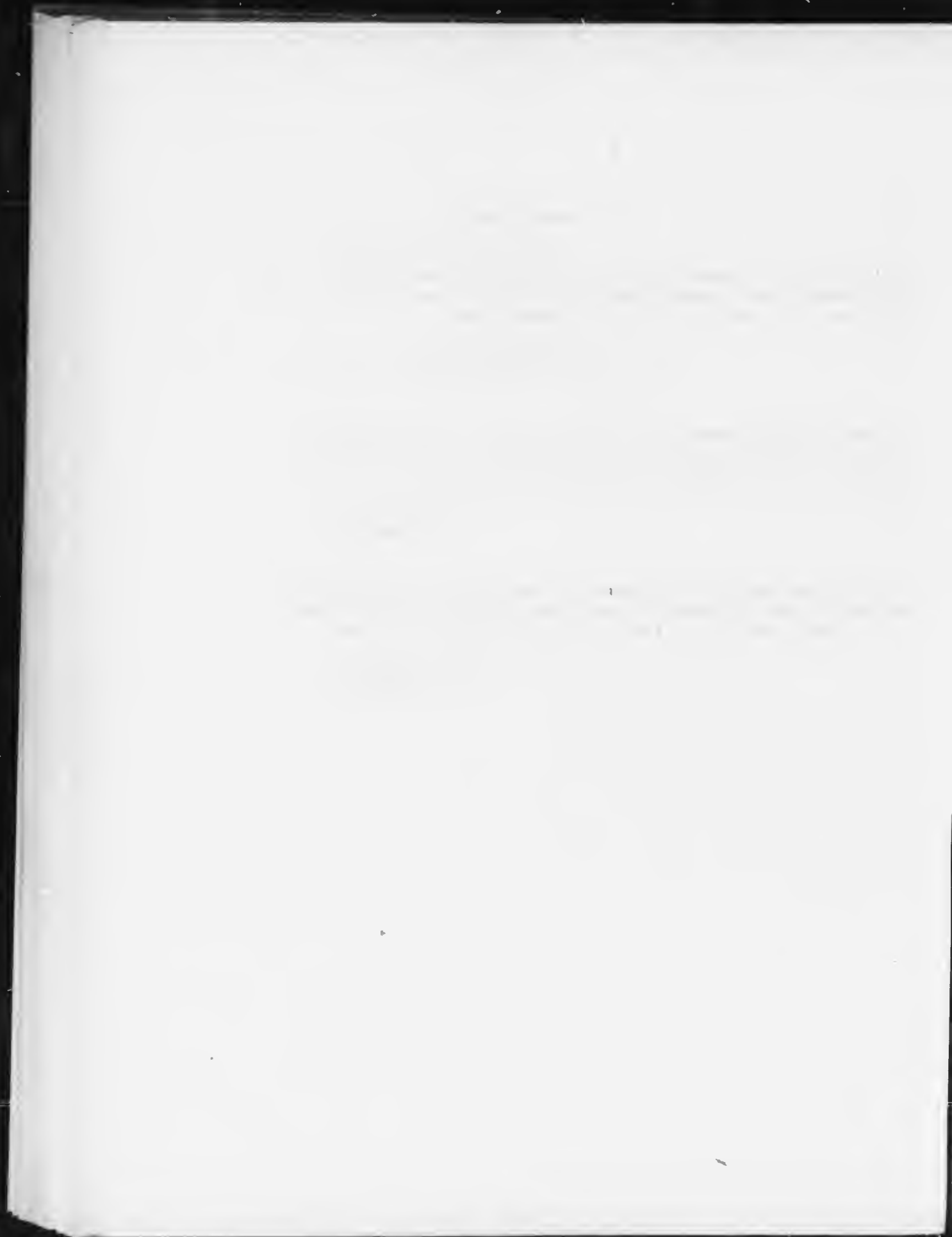


EXHIBIT B.

HALIFAX, SS.

IN THE SUPREME COURT,

IN EQUITY.

Cause—

THE WINDSOR AND ANNAPOLIS RAILWAY COMPANY, *Plaintiffs.* 4120

vs.

THE WESTERN COUNTIES RAILWAY COMPANY, *Defendants.*

MEMORANDUM of Agreement made the sixth day of September, A. D., 1877, between Her Majesty the Queen, herein represented by the Minister of Public Works of Canada, of the first part, and the Western Counties Railway Company, on the other part;

Whereas, by the Act of the Parliament of Canada, thirty-seventh Victoria, 1874, chapter sixteen, the Government of Canada may, prior to the completion by the said Company of the railway from Yarmouth to Annapolis, give possession to the said Company of the Windsor Branch of the Nova Scotia Railway, mentioned in the said 4130 Act;

And, whereas, the said Company have requested the Government to give possession of the same to them at once;

And, whereas, the Government have agreed to comply with their request upon the following conditions:

Now, this agreement witnesseth, That Her Majesty, by and with the advice of Her Privy Council of Canada, hereby gives to the Western Counties Railway Company possession of the said Windsor Branch line, and the said Railway Company accept possession thereof upon the terms following:

The Company to work it efficiently and keep the same in repair at their own 4140 proper cost and charges; collecting, receiving and appropriating to their own use all the tolls and earnings of the same.

The said railway and appurtenances, from Windsor to the trunk line, shall be and become absolutely the property of the said Western Counties Railway Company.

That the said Company hereby engage to prosecute the work of building the railway from Yarmouth to Annapolis, and complete the same with all reasonable despatch, and the parties hereto hereby declare that if the same be completed on or before the first day of October, 1879, it shall be considered to have been completed with all reasonable despatch. And it is hereby agreed, that if on or before the said first day of October, 1879, the said railway from Yarmouth to Annapolis be not com- 4150



pleted, the said Company will, on demand, yield up and deliver to Her Majesty, her successors and assigns, peaceably and quietly, possession of the said Windsor Branch Railway and its appurtenances, and that Her Majesty may enter into and re-possess herself of the said Branch Railway and its appurtenances without the let, hindrance or denial of the said Company, their successors or assigns, or any other person or persons whomsoever.

That the said Company shall carry, free of charge, all passengers holding Government tickets on all their passenger trains running between Halifax and Windsor Junction.

That the said Company, or their agents or assigns, shall have running powers 4160 over the Interecolonial Railway between Halifax and Windsor Junction, with such privileges as have been hitherto granted in the agreement with the Windsor and Annapolis Railway.

In witness whereof the Minister of Public Works of Canada has hereto set his hand and seal of the Department, and the Secretary has countersigned these presents. And the said Company has hereto set its corporate seal, and the same has been countersigned by its President and Secretary.

A. MACKENZIE.

In the presence of:—

W. A. FISSIAULT. }

F. BRAUN,

Secretary.

[L.S.]

4170

JAS. WENT. BINGAY,

Sec'y. W. C. R. Co. [L.S.]

THIS is the Exhibit marked B, referred to in the the examination of Frederiek Braun, taken before me under Commission at the City of Ottawa, in the County of Carleton, this 20th day of December, A. D. 1878,

A. FERGUSON,

Commissioner.

THIS is the Exhibit marked 3, referred to in the examination of the Honorable Alexander Mackenzie, taken before me, under an agreement and order in this cause, 4180 at the City of Toronto, in the County of York, this fourth day of January, A. D., 1879.

JAMES J. FOY,

Commissioner.



EXHIBIT 4.

HALIFAX SS.

IN THE SUPREME COURT,

IN EQUITY.

Cause—

THE WINDSOR AND ANNAPOLIS RAILWAY COMPANY, *Plaintiffs.*

vs.

THE WESTERN COUNTIES RAILWAY COMPANY, *Defendants.* 4190

(Copy No. 616.)

11th MAY, 1877.

SIR,—

I am directed by the Minister of Public Works to notify your Company that it is the intention of the Government to transfer the Windsor Branch Railway to the Western Counties Railway Company on the first day of August next, under authority of the Statute Cap. 16, 37th Victoria, and that the arrangement made for the temporary working of the line with the Windsor and Annapolis Railway, under the second section of that Act, will terminate on that day.

I have the honor to be, Sir,

Your obedient servant,

4200

(Sgd.)

F. BRAUN.

E. A. DEPASS, Comr. W. & A Railway,
Kentville, N. S.

I certify that the foregoing is a true copy of a letter written by the Department of Public Works of the Dominion of Canada.

T. TRUDEAU,

Deputy of the Minister of Public Works of the Dominion of Canada.

This is the exhibit marked 4 referred to in the examination of the Honorable Alexander Mackenzie, taken before me the fourth day of January, A. D. 1879, at the city of Toronto, in the County of York, under agreement and order made in this cause.

JAMES J. FOY,

Commissioner.

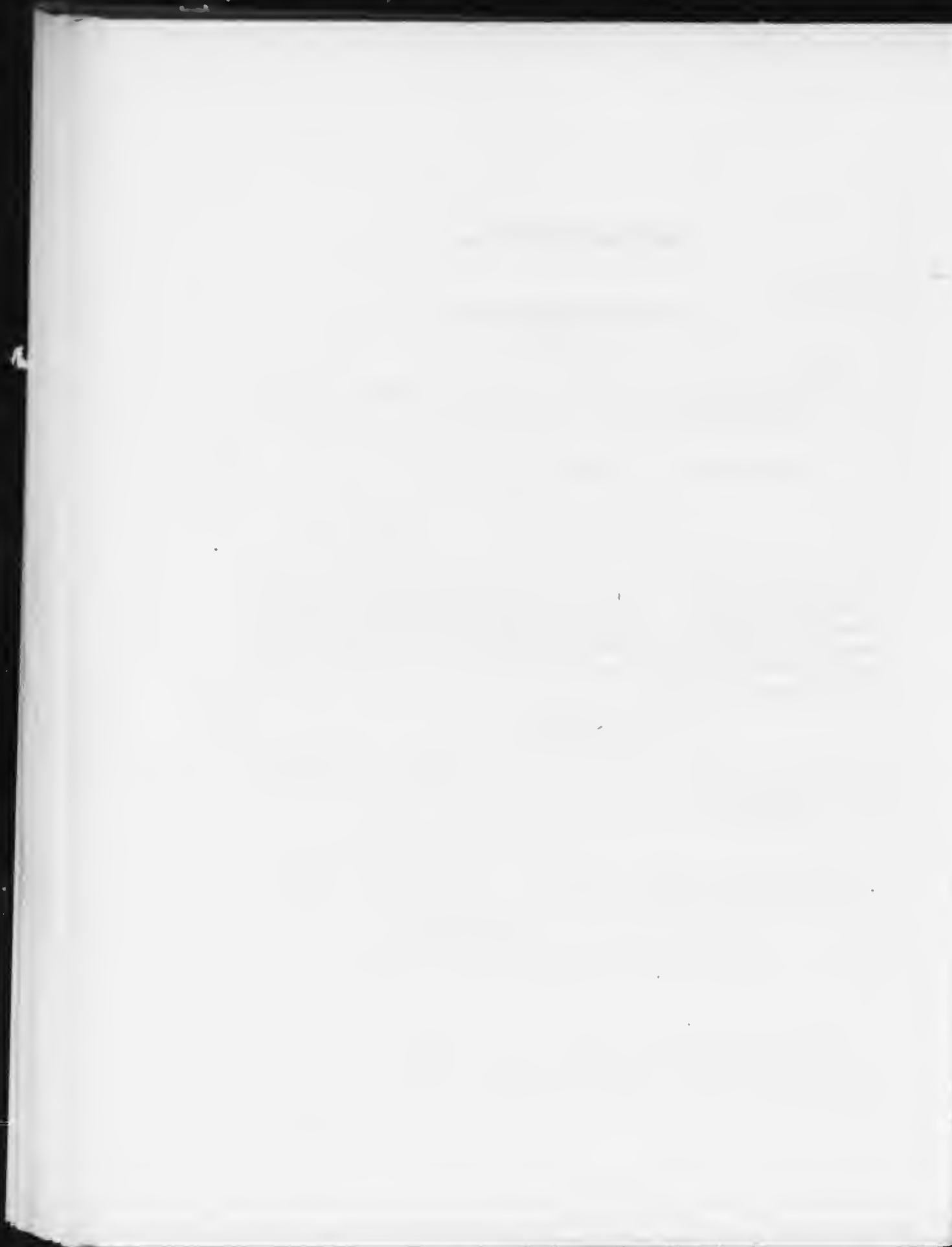


EXHIBIT A.

(Copy of 13841.)

WINDSOR AND ANNAPOLIS RAILWAY,
Commissioner's Office,
KENTVILLE, N. S., 24th May, 1877.

HON. ALEXANDER MACKENZIE,
Minister of Public Works, &c, &c., &c,
Ottawa.

4220

SIR,—

I beg to acknowledge receipt of a letter (No. 616) from Mr. Braun, dated 11th May, informing me of the intention of the Government to hand over the Windsor Branch Railway to the Western Counties Railway Company on 1st August next.

I presume the transfer will be made subject to the lease of running powers over the Branch and Trunk lines which my Company hold, and to which they desire firmly to adhere.

I have the honor to be, Sir,

Your obedient servant,

4230

(Signed)

E. A. DePASS.

THIS is the Exhibit marked with the letter "A," referred to in the examination of Frederick Braun, taken before me, under Commission, at the City of Ottawa, in the County of Carleton, this 20th day of December, A. D., 1878.

A. FERGUSON,
Commissioner.

THIS is the Exhibit marked 5, referred to in the examination of the Honorable Alexander Mackenzie, taken before me, at the City of Toronto, in the County of York, this fourth day of January, A. D., 1879, under agreement and order in this cause.

JAMES J. FOY,
Commissioner.

4240

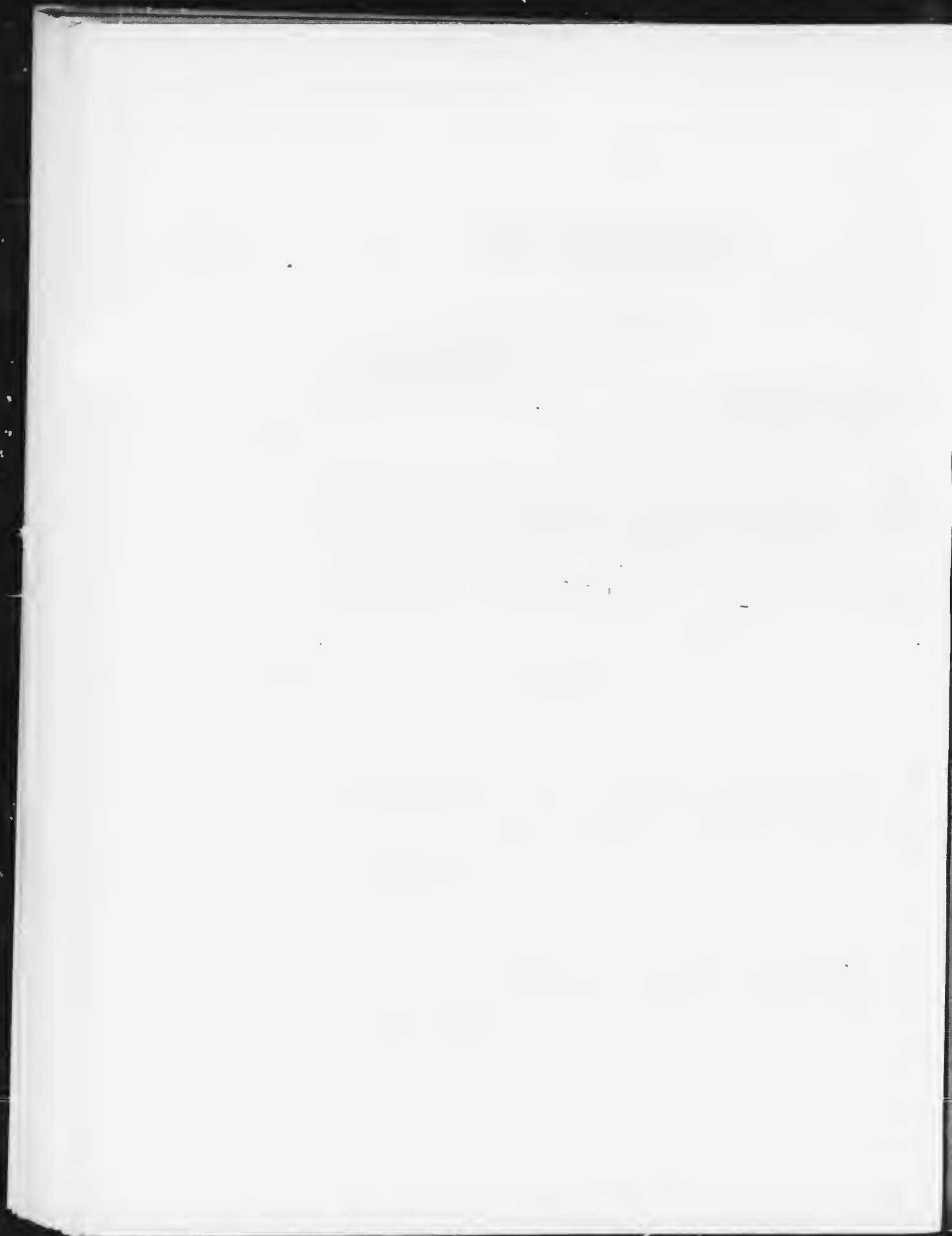


EXHIBIT 6.

HALIFAX, SS.

IN THE SUPREME COURT,

IN EQUITY.

*Cause:*THE WINDSOR AND ANNAPOLIS RAILWAY COMPANY, *Plaintiffs.**vs.*THE WESTERN COUNTIES RAILWAY COMPANY, *Defendants.*

A Statement of the Facts connected with the Operating of the 4250
 Windsor Branch Railway by the Windsor and Annapolis
 Railway Company.

On the 2nd May, 1865, the Legislature of Nova Scotia passed an Act which provided for the construction of a line of railway from Windsor to Annapolis, and declared that such railway should be a public Provincial work.

On 22nd November, 1866, in virtue of said Act, the Commissioner of Railways for Nova Scotia, by his attorneys, entered into an Agreement with Punchard, Barry & Clark, of London, G. B., for the construction of said railway. Article 11 of this Agreement being in the following terms :

" And it is hereby mutually agreed that, prior to the opening of the railroad, a 4260
 " traffic arrangement shall be made between the said parties of the second part and the
 " Provincial Government for the mutual use and employment of their respective lines
 " of railway between Halifax and Windsor and Windsor and Annapolis, including
 " running powers, or for the joint operations thereof on equitable terms, to be settled
 " by two arbitrators to be chosen by the said parties in the usual way in case of
 " difference."

On the 7th May, 1867, the "Windsor and Annapolis Railway Company" was incorporated by an Act of the Legislature of Nova Scotia, 30 vic., cap 36; and by section 11 thereof the above-mentioned Agreement and Act, so far as not altered or modified thereby, "were incorporated into and made part and parcel of this Act," thus 4270
 giving to the Company an inalienable right to exercise running powers over the line of railway from Halifax to Windsor, so soon as their own line from Windsor to Annapolis had been constructed and opened for traffic

Whilst the railway between Windsor and Annapolis was under construction the British North America Act came into operation, and Nova Scotia became part of the Confederated Dominion of Canada, the Government of which, in terms of the provisions



of said Act, became owners of the railway from Halifax to Windsor, and consequently the successors of the Provincial Government in the Before-mentioned Agreement and Acts. However, in direct opposition to the provisions of the section above quoted, the *traffic arrangements and running powers* were refused to the Company, and upon the completion of their works they were compelled to commence operations under a *provisional agreement for the mere interchange of traffic*, which was entered into, under protest, between the then Manager of the Company's Railway, and the Superintendent of Government Railways on the 13th December, 1869. 4280

On 6th March, 1871, the Company, by their then Manager, petitioned the Governor in Council to have the provisions of section 11 of the before-mentioned Agreement carried out, but on report of the Minister of Public Works this petition was refused.

The Company thereupon sent out Mr. J. A. Mann from England, as their Commissioner, to negotiate with the Government; and he immediately petitioned the Government either to purchase the Windsor and Annapolis Railway, as the Act empowered them to do, or to grant "the mutual use and employment of their railway from Halifax to Windsor, including running powers." 4290

On 21st June, 1871, the Minister of Justice, to whom the petition of the Company had been referred, reported that the traffic arrangement of 13th December, 1869, being merely provisional, arrangements must be made with the Company, "either (1) for the mutual use and employment of their respective lines of railway between Halifax and Windsor and Windsor and Annapolis, including running powers; or (2) for the joint operation of the Railways." Thereupon the Minister of Public Works reported that, it not being expedient to purchase the Windsor and Annapolis Railway, he should be authorized to make the "traffic arrangements including running powers," with the Company. A Committee of the Honorable the Privy Council reported (28th July, 1871) in accordance with this, and Mr. Mann thereupon opened negotiations with Sandford Fleming, Esq., Chief Engineer of the Intercolonial Railway, who was appointed by the Government for the purpose, entering at the same time a claim against the Government for loss and damage occasioned by their past refusal to allow the Company to exercise the rights and privileges conferred on them under section 11 of the aforesaid agreement embodied in their Charter. 4300

After meetings and conferences between Sandford Fleming and the Commissioner, they agreed upon certain terms and arrangements, which were submitted to the Minister of Public Works, and by him to the Council. 4310

On 22nd September, 1871, this Agreement was approved and ratified by Order in Council of that date. It provides by

Art. 1.—That the Company shall have the exclusive use of the Windsor Branch Railway.

Art. 10.—That the Company shall pay to the Government one-third of the gross earnings monthly.

Art. 19.—That if the Company fail to operate the Railway between Halifax and Annapolis the Agreement shall terminate.

J

Art. 20.—That such failure shall not prejudice existing rights, and by

Art. 21.—That the Agreement shall subsist for twenty-one years, and be then re- 4320
newable.

The formal sanction of the Dominion Parliament to this Agreement was not considered necessary, inasmuch as it was made in virtue of an Act of Legislature of Nova Scotia, before referred to, at a time when they were proprietors of the line of railway between Halifax and Windsor, and it devolved upon the Dominion Government, according to the opinion of the Minister of Justice, to give effect to that Act.

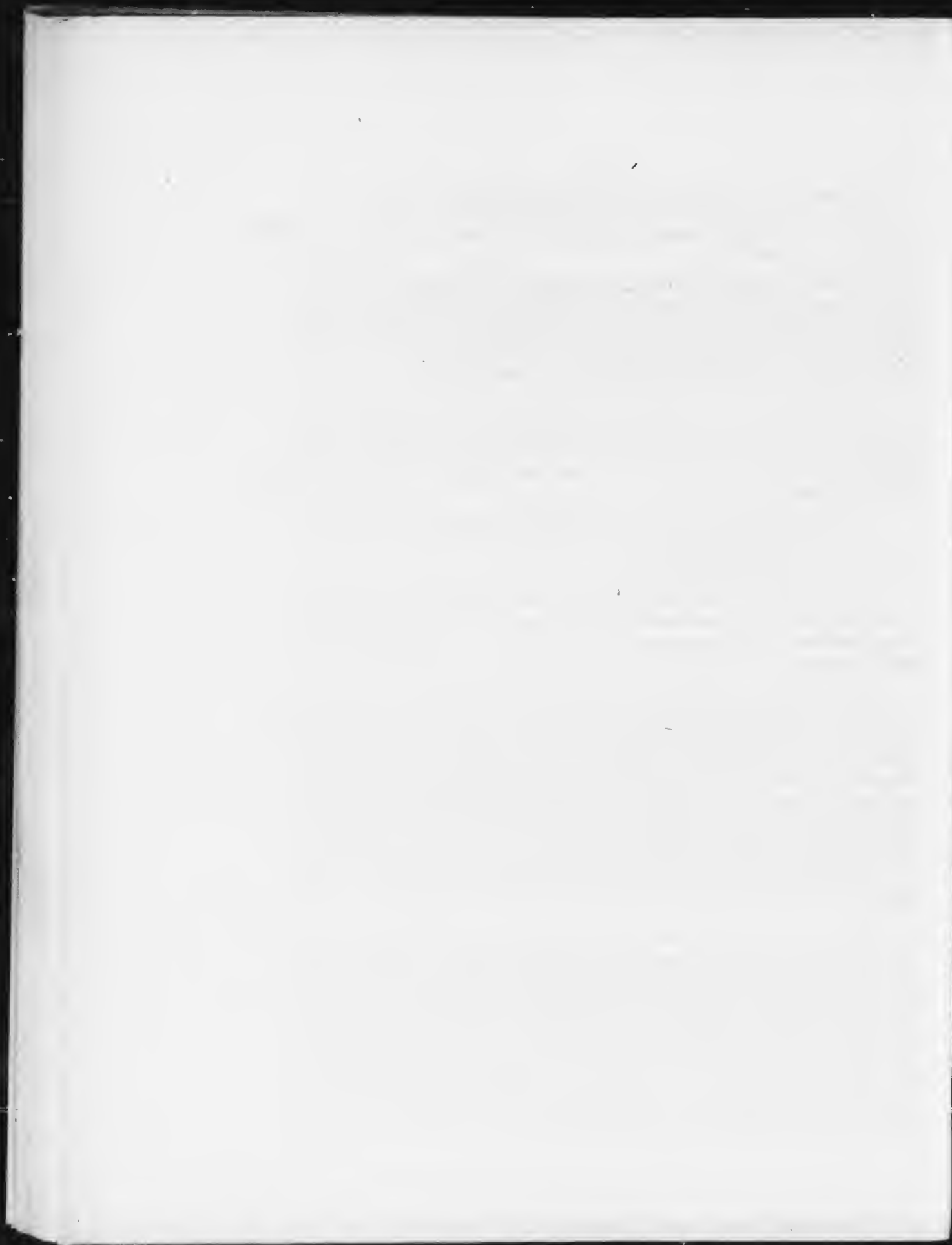
On 1st January, 1872, in terms of the last-mentioned agreement, the Company began exclusively to operate the Windsor Branch Railway, and to exercise running powers over the Trunk Line into Halifax. On the faith of the Agreement the Company largely increased their rolling stock, at very considerable expense to efficiently provide 4330
for the additional service.

In the session of 1870, the Legislature of Nova Scotia passed an Act incorporating the Western Counties Railway Company, for the purpose of extending railway communication from Annapolis to Yarmouth.

On 23rd May, 1873, the Dominion Parliament passed a Resolution authorizing the Government to enter into negotiations during the recess for the transfer of the Windsor Branch Railway to reliable parties who would construct a railway between Annapolis and Yarmouth.

At the same time that application was made to have section 11 of their Agreement carried out, the Company preferred certain equitable claims against the Government of 4340
Canada, partly arising from previous refusal to give effect to this section, but they were unable at that time to obtain any consideration of the said claims at the hands of the Government. The condition of their road being such as to imperatively demand large and immediate outlays, the Company allowed payment of the one-third of the gross earnings to fall into arrear, in the hope that the Government would give a decision as to the said claims, and allow the arrears of one third tolls as a set-off. The Government, however, declined to accept this view, and the Company, under threat that the Government would take possession of the Windsor Branch, paid the said arrears in November, 1872.

From the same causes, and under similar circumstances, the one-third tolls were 4350
again allowed to fall in arrear. The Minister of Public Works made several applications to the Company to have the balance settled, and at length threatened that unless payment was made by 1st October, 1873, the Government would resume possession of the Windsor Branch. The Company, being unable to provide the necessary funds within the time stipulated, entreated for a further delay, so that efforts might be made to raise the money in England; and the Minister of Public Works accordingly agreed to take no action till 1st November, 1873, his promise to this effect being given verbally to the Company's Agent at Ottawa (Thos. Reynolds Esq.), and also by telegram to Mr. Chipman, then M. P. for Kings County, at Kentville.



Relieved of immediate fear by this promise, the Company devoted themselves to the task of obtaining the funds to pay the Government demand ; but to their surprise and dismay, without further notice, on 22nd October, 1873, by Minute of Council, the Government, at their own instance, endeavored to terminate the Agreement of 22nd September, 1871. The Company up to the present day have received no official notification of this Minute, but they learn from a private source that its terms are as follows:—

“ On a report dated 21st October, 1873, from the Honorable the Minister of Public Works, stating the Windsor and Annapolis Railway Company have failed to operate the railway known as the Windsor Branch, mentioned in the Order in Council of the 22nd September, 1871, and to comply with the other terms and conditions of that Order in Council, and now owe over \$30,000 to the Government of Canada, and though repeatedly called upon to pay have failed to do so; and recommending that inasmuch as the said Company have failed to operate one of the railways between Halifax and Annapolis, the Government of Canada, known as ‘ the authorities,’ by the said Order in Council, do proceed immediately to operate the railway between Halifax and Windsor.” 4360

“ The Committee submit the above recommendation for Your Excellency’s approval

“ Certified.

(Signed)

“ W. A. HIMSWORTH,

“ Clerk of Privy Council.” 4370

The Company had never, from the date of their entering upon the Windsor Branch, “ failed to operate” the whole line from Halifax to Annapolis, and have continued up till now uninterruptedly, and to the satisfaction of the public, to operate the whole of said line, running for the greater part of the year one train each way more than the agreement called for. The Government had never in any wise expressed to the Company the slightest dissatisfaction with the manner in which they were operating the Branch. All the correspondence relative to the threatened resumption of the Branch by the Government referred solely to the non-payment of the one-third tolls as the ground of complaint, and the Company were entirely ignorant of any accusation of failure on their part to operate the line, their only knowledge of such charge being derived from the perusal of the Order in Council above referred to, which, as explained, was obtained from a private source. Subsequent to the passing of this Order in Council, the Company resumed payment of the one-third tolls to the Government, leaving the amount of such tolls as were in arrear at that time as a set-off against their claims before mentioned. 4380

On same date, 22nd October, 1873, another Order in Council was passed, subject to future approval of Parliament, whereby certain proposals made by the Western Counties Railway Company for the acquisition and working of the Windsor Branch were approved. See Statutes 37 Vic, Cap. 16, Sch. A.

On 30th October, 1873, by Order in Council, a further proposal by the Western Counties Railway Company, with reference to the Trunk line was approved. See Statutes of Canada 37 Vic., Cap. 16, Sch. B. 4400



On 3rd November, 1873, the Government of Canada resigned, and a new Ministry were formed, of which the Hon. Alexander Macenzie was leader, and Minister of Public Works.

On 10th December, 1873, the Company, by their Agent in Ottawa, petitioned the Government that the Order in Council of 22nd October, 1873 (copy of which they had by this time received from a private source), and any agreements with the Western Counties Railway Company consequent thereon, might be cancelled, and that the "original agreement be allowed to remain in force for the remainder of the term thereby reserved." To this petition the Company received no reply. 4410

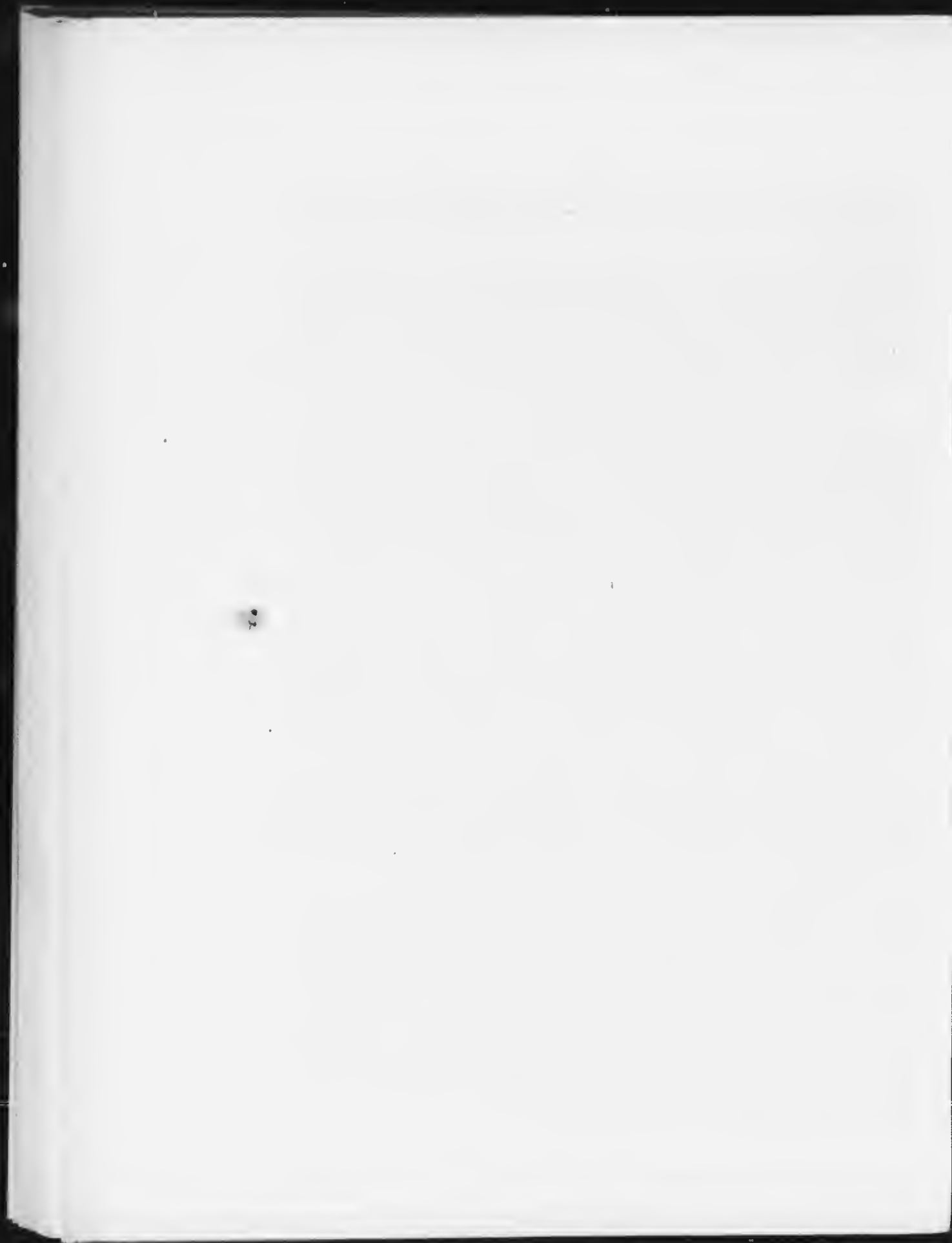
The Company having resumed regular payment of the one-third tolls, and being allowed to remain in undisturbed possession of the Windsor Branch, without any notice of the attempted cancellation of their agreement being served upon them, naturally concluded that the erroneous premises of the Order in Council of 22nd October, 1873, had been recognized by the Government, and that in accordance with the prayer of their petition of 10th December, 1873, the original agreement was to be allowed to remain in force. The Company accordingly continued to operate the Windsor Branch under their agreement with the Government, and to make the monthly payments, and fulfil the several other obligations resting on them thereunder. 4420

On the 26th May, 1874, an Act passed by the Parliament of Canada which authorized the transfer of the Windsor Branch Railway to the Western Counties Railway on the terms contained in the Orders in Council above referred to. Section 2 of the Act, however, modified the Orders in Council to the extent that:—"Until arrangements are completed for giving possession to the Western Counties Railway Company of the said Branch, for the purpose of operating it," the Government may make such arrangements as may be necessary by continuing the working of the same by the Windsor and Annapolis Railway Company, or otherwise."

In the spring of 1875, the Government of Canada was making arrangements for changing the gauge of the Government Railways in the Maritime Provinces, and entered into negotiations with the Company as lessees and users of the Windsor Branch, with rights over the Trunk line, for the purpose of effecting this object 4430

Accordingly, on 22nd June, 1875, an agreement was entered into between the Queen, represented by the Minister of Public Works for Canada, and the Company, in which it is provided that the arrears of the one-third earnings accrued prior to 1st November, 1873, in which the Company were indebted to the Government "under an agreement entered into by them with the Government of Canada, dated 22nd September, 1871, granting the said branch to the said Company for twenty-one years, from 1st January, 1872," should be discharged and extinguished, and that on the other hand the Company should "execute and deliver a release of all claims and demands whatsoever against Her Majesty or the Dominion of Canada up to 1st July, 1875." The agreement further provided for change of gauge of the Windsor Branch Railway by the Government, and of the Windsor and Annapolis Railway by the Company, and its concluding article is to the effect that:— 4440

"It is hereby distinctly understood and agreed by and between the parties hereto



"that nothing herein shall in any wise (except as to discharging the indebtedness and claims herein above named) alter, vary or interfere with the terms of the agreement under which the said Company hold the said Branch line, but that all monies accrued due, as being one-third of the gross earnings of said Branch, from the first day of January last, shall be paid by the Company to the credit of the Receiver-General of Canada on or before the thirty-first day of July next, and thereafter those accruing shall be paid monthly, as provided in the said agreement under which the Company hold and work the Branch line aforesaid, which (as aforesaid) is hereby declared in all respects in full force and effect."

The Company have continued faithfully and regularly to make the stipulated monthly payments to the Receiver General, and to perform all the other obligations incumbent on them under the agreement by which they work and manage the Windsor Branch Railway and exercise running powers over the Trunk line into Halifax.

From the foregoing statement of facts, every one of which can of course be substantiated by evidence, it appears:

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I. That the Windsor and Annapolis Railway Company were entitled by their charter to a "traffic arrangement, including running powers," over the line of railway between Halifax and Windsor, which right was of such paramount importance that it is no exaggeration to say that it formed an indispensable condition to the construction of the line of railway from Windsor to Annapolis, without which the Company would not have undertaken such construction

II. That the said charter, being incorporated in an Act of Parliament of Nova Scotia, previous to Confederation, gave parliamentary authority and instruction to the Provincial Government to make the arrangements with the Company.

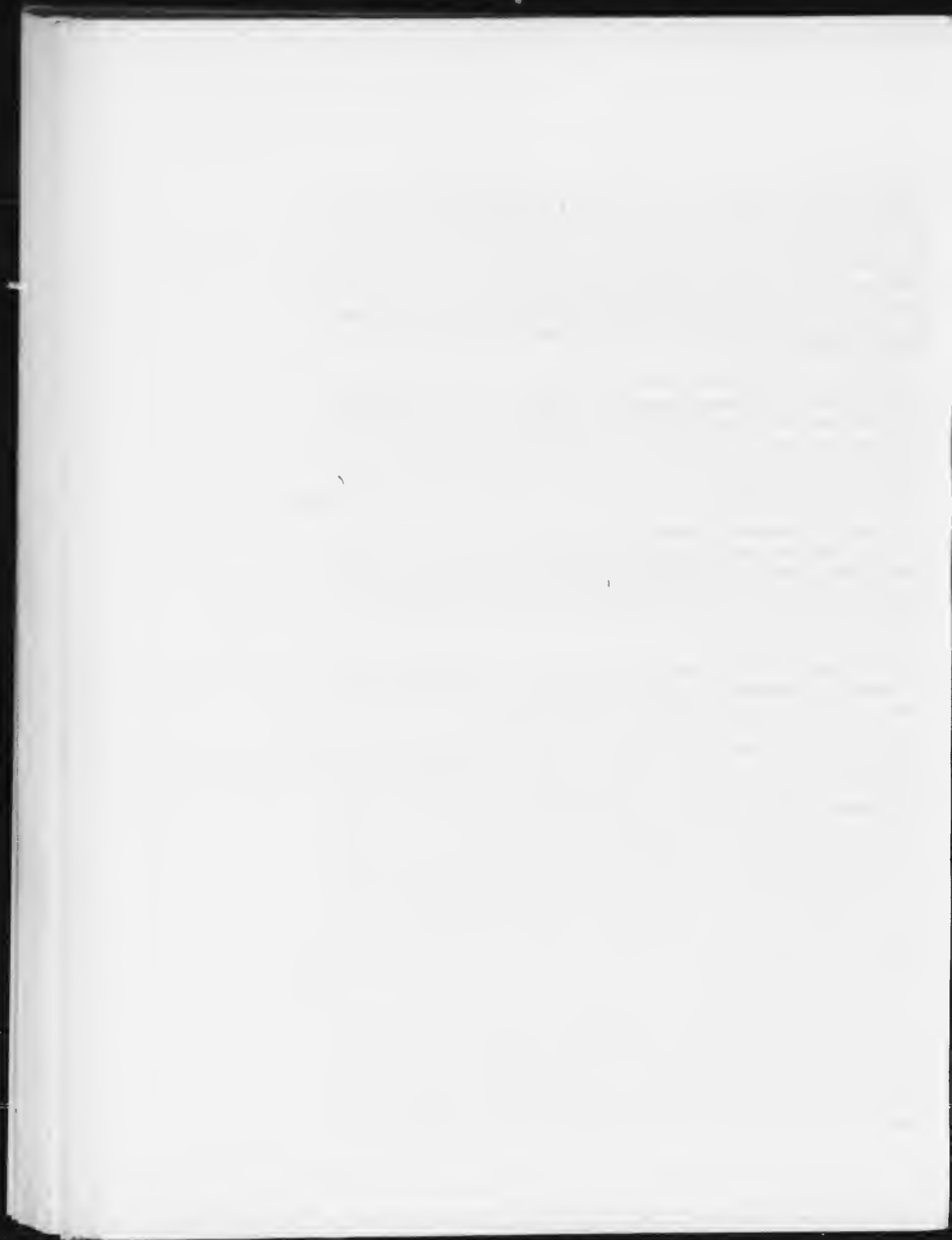
III. That the Dominion Government, as the successors of the Nova Scotia Government in the premises, recognized the obligation to make such arrangement, which they finally did by making and entering into the agreement of 22nd September, 1871, which agreement is therefore a perfectly proper and binding one.

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IV. No right to terminate the agreement on account of non-payment of one-third of gross earnings being provided for, it could not be terminated on that ground. The Order in Council of 22nd October, 1873, which sought to cancel it, stated that the Company "had failed to operate the railway known as the Windsor Branch," but the Company are prepared to prove that this is entirely an error, and that they never failed to operate the line. Therefore the said Order in Council, having been passed under essential error, is invalid and illegal.

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V. Assuming, however, that the cancellation of the agreement was valid at the time, any action then competent to the Government was waived, inasmuch as no notification was served upon the Company of the Order in Council referred to, nor were they at any time called upon by the Government to cease operating the branch, nor was intimation given to them that at any future time they would be called upon to cease operating it. And further, one-third of the gross earnings which the Company had to pay under the provisions of the agreement were regularly paid to, and duly accepted



by, the Government, and all the other conditions continued to be fulfilled by both parties thereto.

VI The Company based a claim to be entitled to compensation for having to 4490 change the gauge of their own line of railway upon the existence and operativeness of the lease and right of running over the Trunk line, which claim was eventually admitted by the Government, and an agreement consequent thereon was entered into between the Government and the Company on 22nd June, 1875, which agreement refers in unmistakeable terms to the agreement of 22nd September, 1871, as an operative and binding deed, and in every respect confirmed.

The Windsor and Annapolis Railway Company, therefore, are advised and maintain that it was, and is, only within the power of the Government to grant to the Western Counties Railway Company such rights as they themselves retained in the Windsor Branch Railway, and that the Western Counties Railway Company, in receiving the 4500 said line of railway, viz, from Windsor to Windsor Junction, can only receive it subject to the existing lease; and, further, that they (the Windsor and Annapolis Railway Company) are entitled to continue to exercise the running powers over the Trunk line between Windsor Junction and Halifax, under the Government, paying to the Government therefor one-third of the gross earnings of the traffic arising between these two points.

All of which is respectfully submitted.

Office of

The Windsor and Annapolis Railway Co.,
Kentville, N. S., 15th June, 1877.

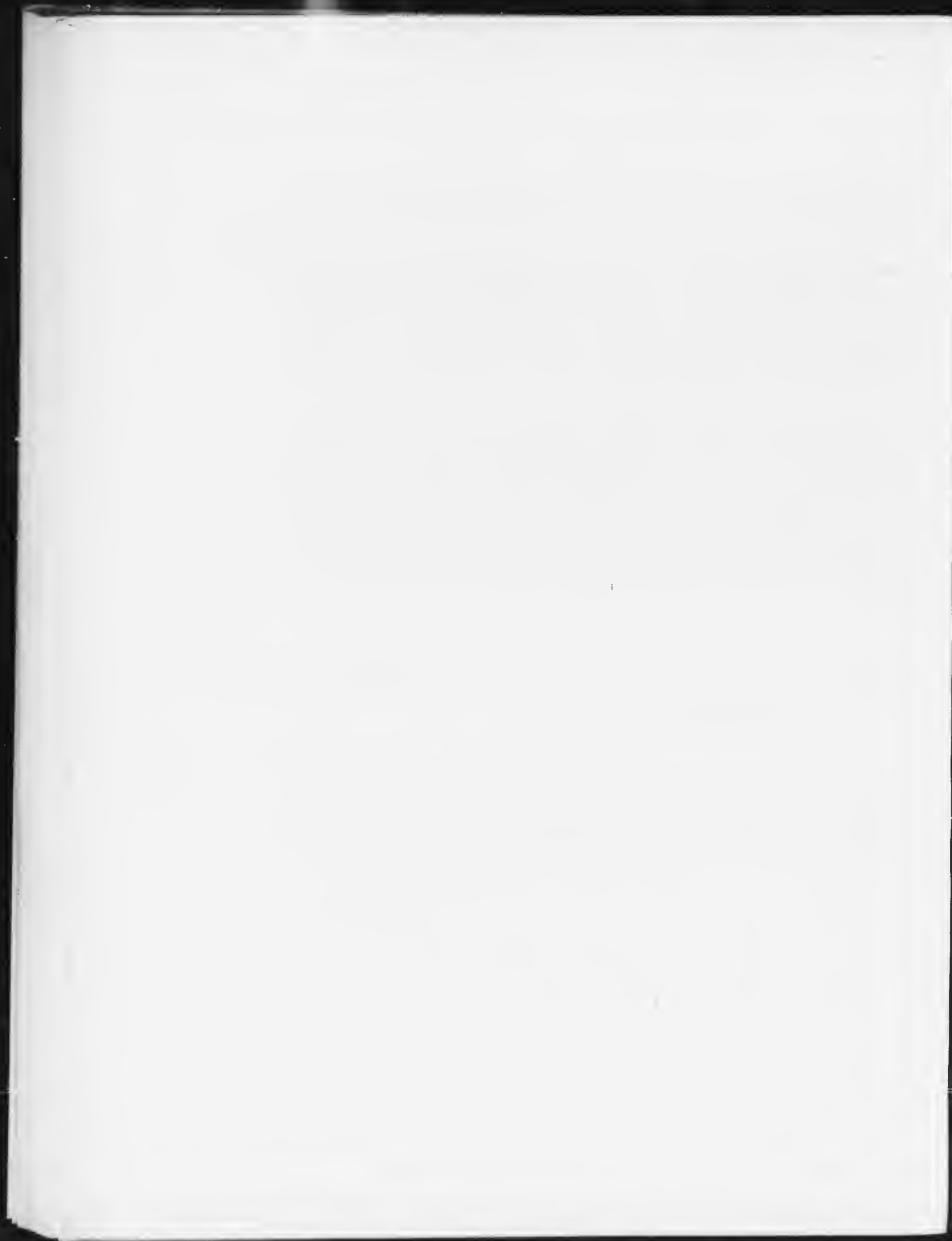
E. A. DEPASS,

Commissioner. 4510

THIS is the Exhibit marked 6, referred to in the examination of the Honorable Alexander Mackenzie, taken before me, under agreement and order in this cause, at the City of Toronto, in the County of York, this fourth day of January, A. D., 1879.

JAMES J. FOY,

Commissioner.



HALIFAX, SS.

IN THE SUPREME COURT,

IN EQUITY, 1879.

Cause—

4520

THE WINDSOR AND ANNAPOLIS RAILWAY COMPANY, *Plaintiffs.*

vs.

THE WESTERN COUNTIES RAILWAY COMPANY, *Defendants.*

Plaintiffs Evidence in Rebuttal.

Interrogatories administered to Thomas Reynolds, a witness for Plaintiffs, under Commission issued to Robert G. Haliburton, Commissioner :

First,—Have you been examined herein before ?

Second,—Did you, during the latter part of the month of October, 1873, receive any instructions from the Plaintiffs Company in reference to the Order in Council of 22nd October, 1873 ? If so, state from whom they were received.

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Third,—In what manner were said instructions conveyed to you ? If by letter, or telegraph, or cable message, produce the same, and annex them to your answer. Where were you at the time of the receipt thereof ?

Fourth,—Were the telegraphic messages received by you the ones you now produce ?

Fifth,—Do you know at what office the said messages were received ? If so, state it.

Sixth,—Did the Directors of the Plaintiff Company, whilst you continued to act for them, to your knowledge, acquiesce in any manner in the passing of the Order in Council of 22nd October, 1873 ?

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Seventh,—Did you, on their behalf, acquiesce therein ?

Eighth,—Did they or you admit the right or power of the Government to pass that Order ?

Ninth,—Did you, as instructed, protest against the said Order ; if not, why not ?

Tenth,—Had you any interviews on behalf of Plaintiffs with the Honorable Alexander Mackenzie in reference to the Windsor Branch matter ? If so, state fully at what dates and the purport thereof.

Eleventh,—Did you ever see or hear of the agreement set out in Defendants' answer at line 114 *et seq* ?

THE UNIVERSITY OF CHICAGO

CHICAGO, ILL.

1881

THE UNIVERSITY OF CHICAGO

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Twelfth,—Were you, on behalf of Plaintiffs, a party to any negotiations with 4550 Frank Killam regarding the Windsor Branch?

To the Defendants
or their Attorney.

H. McD HENRY,
Plaintiffs Attorney.

Answers to the foregoing Interrogatories.

1. To the first interrogatory, the deponent saith:—"My name is Thomas Reynolds, I am Vice-President and managing director of the St. Lawrence and Ottawa Railway Company. I was examined herein before on the 15th day of August last at Riviere du Loup as a witness on behalf of Plaintiffs."
2. To the second interrogatory, the deponent saith:—"Yes. I received in- 4560 structions in three messages in October, A. D., 1873, from the plaintiff company."
3. To the third interrogatory, the deponent saith:—"My instructions were conveyed to me from the plaintiff company by four cablegrams from London, G. B., which are now produced and marked respectively 'A,' 'B,' 'C,' & 'D.' I was in Ottawa when I received them. *Exhibit 'A'* was received on the day of its date, the 24th of October, 1873, and was signed by Mr. Campbell who was then and now is the Seeretary in London of the Plaintiff Company. *Exhibit 'B'* was also received on the day of its date from the Plaintiff Company with no signature. *Exhibit 'C,'* dated the 31st of the same month, was received by me from the Plaintiff Company on that day and is unsigned. *Exhibit 'D'* is a cable telegram from the Plaintiff Company, dated 4570 the 1st day of December of the same year, and was received on the day of the date thereof and signed by the Seeretary of the Company."
4. To the fourth interrogatory, the deponent saith:—"Yes they were."
5. To the fifth interrogatory, the deponent saith:—"I believe them to have been received from the Ottawa office of the Montreal Company as appears from the forms of the telegrams produced by me."
6. To the sixth interrogatory, the deponent saith:—"Not to my knowledge,"
7. To the seventh interrogatory, the deponent saith:—"No, I do not."
8. To the eighth interrogatory, the deponent saith:—"We, neither of us, admitted the right." 4580
9. To the ninth interrogatory, the deponent saith:—"As instructed by the Plaintiff Company I put in a petition to the Governor-General on the 10th December, 1873, by transmitting the same in a letter of same date to the Hon. Alexander Mackenzie the then Minister of Public Works, a copy of which petition is now in evidence in this suit."

THE UNIVERSITY OF CHICAGO
DEPARTMENT OF CHEMISTRY
1157 S. E. 5th Ave.
CHICAGO, ILL. 60607

RECEIVED JANUARY 15, 1964

TO THE EDITOR OF THE JOURNAL OF THE AMERICAN CHEMICAL SOCIETY
FROM THE DEPARTMENT OF CHEMISTRY, UNIVERSITY OF CHICAGO
We have the honor to acknowledge the receipt of your letter of January 10, 1964, regarding the manuscript submitted to the JACS on December 15, 1963. The manuscript has been assigned to the Editor and will be published in the next issue of the JACS.

Very truly yours,
J. H. Goldstein
Editor, JACS

10. To the tenth interrogatory, the deponent saith :—" On the 29th November, 1873, I had an interview with the Hon. Alexander Mackenzie, then Minister of Public Works, who had just returned from his re-election, when I strongly protested verbally against the passing of the Order in Council referred to, and stated to him that the Windsor and Annapolis Company would oppose the transfer of the Windsor Branch to the Western Counties Company in every possible way. Before parting Mr. Mackenzie promised that he would give me instructions, that no further action should be taken in the matter without giving due notice. On the 29th December, 1873, I had another interview with Mr. Mackenzie and again discussed with him the whole matter complained of by the Plaintiff Company. Mr. Mackenzie appeared to admit at that interview that the cancellation of the lease of the Windsor Branch by the Order in Council aforesaid was without any justification whatever in law, and promised to look thoroughly into the whole question and to take no further action without notifying me. For personal reasons I could not continue to act for the Plaintiff Company at that time. I had no further interview on that point until March, 1874, when on the 10th or 11th of that month I waited on him accompanied by Mr. DePass, whom I introduced as my successor in reference to the Plaintiff Company's affairs at Ottawa." 4600

11. To the 11th interrogatory, the deponent saith :—" I was entirely ignorant of such an arrangement until I saw it referred to in defendants answer."

12. To the twelfth interrogatory, the deponent saith :—" I was not a party to any negotiations with Mr. Killam regarding the Windsor Branch. In the autumn of 1873 I had several conversations and some correspondence with him in reference to the Plaintiff Company's affairs, but they were of a general character."

(Sgd.)

T. REYNOLDS.

Signed, &c., at Ottawa, March 22nd, 1879.

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R. S. HALIBURTON,
Commissioner.

Exhibits annexed to Reynold's Answers.

(A)

OTTAWA, Oct. 24th, 1873.

To THOMAS REYNOLDS,
Ottawa, Canada.

DePass telegraphs have forcibly cancelled, and arrears tacitly abandoned. This is utterly illegal so long as we operate the line. See official protest entered accordingly, and wire best advance.

4620

CAMPBELL.

(B)

OTTAWA, 29th Oct., 1873.

To REYNOLDS,
Ottawa, Canada.

Company's charter authorizes Council to make existing agreement, and Company protests against illegal cancellation, and repudiates any arrangement based thereon. Notify Government and Yarmouth.

(No Sig.)

(C)

OTTAWA, Oct. 31st, 1873.

4630

To REYNOLDS,
Ottawa, Canada.

Under any circumstances protest in behalf of Company.

(D)

OTTAWA, 1st Dec., 1873.

To THOMAS REYNOLDS,
Ottawa, Canada.

Petition Government against cancellation, and for investigation of all differences.

CAMPBELL.

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THE HISTORY OF THE

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HALIFAX SS.

IN THE SUPREME COURT,

IN EQUITY, 1879.

*Cause—*THE WINDSOR AND ANNAPOLIS RAILWAY COMPANY, *Plaintiffs.**vs.*THE WESTERN COUNTIES RAILWAY COMPANY, *Defendants.*

TUESDAY, February 25th, 1879, 2 P. M.

PRESENT—J. N. Ritchie, Byron Weston. Counsel for Plaintiffs; J. S. D. Thompson, A. G., N. H. Mcagher, Counsel for Defendants.

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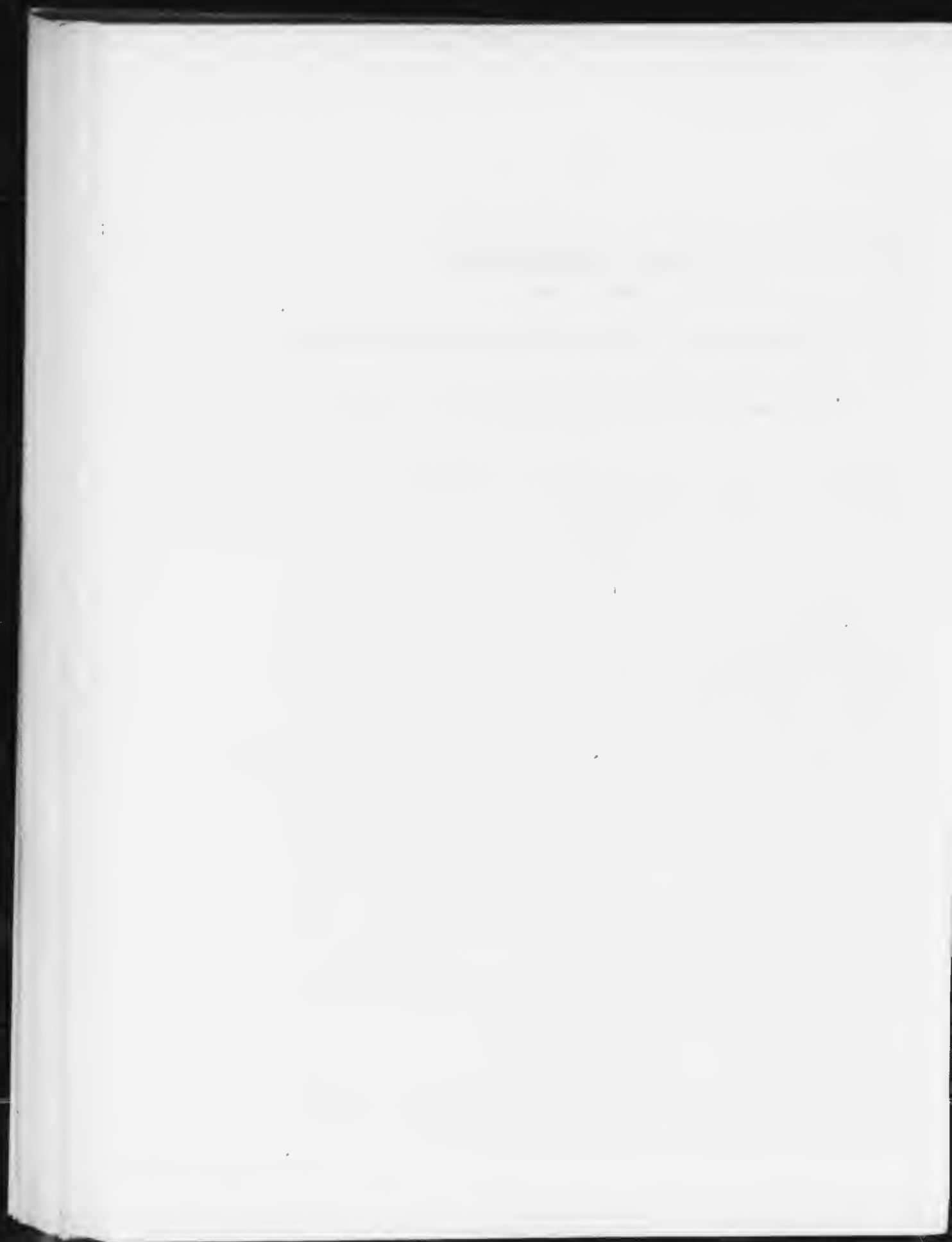
REBUTTAL.

Elias A. DePass, a witness for Plaintiffs, sworn:

Examined by Ritchie—I live, at present, in New York. I was, at one time, the Agent or Commissioner of the Windsor and Annapolis Railway Company. Early in November, 1873, I received my first communication from the Company on the subject of my being Commissioner. That was the first communication I ever had from the Company. I received that communication from the Company by letter at Kentville. I afterwards received a power of Attorney from the Company. I produce that power. (It is put in, marked by me R, No. 1—*W. T.*) That is the only power of Attorney I ever received from the Company in connection with the Windsor Branch. I went home to England in November, 1873, immediately after I received the communication from the Company firstly spoken of. Sometime in January, 1874, on my return here, I first commenced to act as Commissioner of the Company in this country. I was in Ottawa in October, 1873. I was endeavoring to get an Order in Council to increase the tariff on the Windsor and Annapolis Railway. Mr. Innes asked me to go and see what I could do in that matter. I was not then a Commissioner or Agent of the Windsor and Annapolis Railway. I had no authority whatever then from the Company to arrange or manage any matters connected with the Windsor Branch. I stated so to Mr. Killam. (I stated so to Mr. Langevin at that time in the presence of Mr. Killam.—*Objected to by Mr. Thompson as not rebuttal.*) I was in Ottawa under a week at that time, as far as I remember. I was away a day and returned for a day. At that time I certainly did not have Mr. James McDonald retained as Counsel on behalf of the Company. He never attended any meeting with me as my Counsel at Ottawa. I have no recollection of Exhibit A.—(Already in evidence. In pencil—*W. T.*) I do not know whose writing it is in. It was not prepared by my directions. I never submitted that paper to Mr. Killam, or any of the Directors of the Western Counties Road. I have not any recollection of having ever authorized any person to do so. At that time I never asked the Directors of the Western Counties Railway to execute any agreement. I never asked them to execute the pencil paper, Exhibit A. Mr. Langevin

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was the Minister Public Works in October, 1873. Langevin never told me that the agreement between the Government and the Windsor and Annapolis Railway Company would be terminated. I never had any conversation with Mr. Langevin prior to the Minutes of Council cancelling the lease. I never acquiesced in the action of the Government in cancelling the lease. I had no power to acquiesce. The Windsor and Annapolis Railway Company never acquiesced, to my knowledge, to the cancelling of the lease. They always energetically opposed it. I had conversation with Mr. Mackenzie, the then Minister of Public Works, in 1874. It must have been early in 1874 that I first met and spoke with him. Mr. Reynolds introduced me to him at Ottawa. I understood that Mr. Reynolds was acting as Agent of the Plaintiffs' Company. I had several consultations with Killam in 1874 in relation to the Windsor and Annapolis Railway. There was a memorandum of agreement drawn up. It was a joint production. The result of our conversations. I produce it. It is in the handwriting of Mr. Killam. It is signed Mr. Killam and myself. That is Killam's signature to it. (It is put in marked R, No. 2. *Its admission being objected to by Mr. Thompson.—W. T.*) I afterwards visited Yarmouth in connection with that agreement. I went then at Killam's instance. He had frequently invited me to go to Yarmouth and discuss matters, and see the progress they were making. I did not, at that time, press the Yarmouth Company to execute the agreement. There was, at that time, a difficulty in the way of its execution. The difficulty was that there was not any provision in the wording of the Order in Council for the free running powers on the Trunk line. I told Killam at that time that it was quite clear that we could not complete that agreement until we were sure that we would not be obliged to pay the Government for the running powers in addition to paying the rent to them. While in Yarmouth at that time I did not admit that the lease had been properly cancelled by the Government. Most decidedly not. That agreement was not carried out, because they never got the free running powers from the Government that we asked for; and afterwards they entered into negotiations with Shanley and Plunkett, and dropped those with us. I negotiated the agreement of 1875 regarding the change of gauge. The intimation that the Government were about to change the gauge on the Intercolonial Railway led to that agreement. In the first place, I intimated to the Government, that it would interfere with the existing agreement between the Plaintiffs Company and the Government, and that they should lay down a third rail to enable us to get into Halifax. The terms were afterwards arranged between Mr. Brydges and myself. I claimed that as we had a lease with the Government, that they had no power to change the gauge unless they put down a third rail so that our trains could run over it. The agreement was sent to me by Brydges. I mean to say that the terms were discussed by Mr. Brydges and myself and finally settled with Mr. Mackenzie. I had nothing to do with the drawing up of that agreement for the change of gauge. It was drawn up by the Government. That agreement carried out the terms on which we had settled. The letters now produced from Mr. Brydges to me refer to the change of gauge. (They are put in marked by me: R, No. 3, dated May 22, 1875; R, No. 4, June 12, 1875; R, No. 5, June, 28, 1875; R, No. 6, July 25, 1875; R, No. 7, Sept. 9, 1875; R, No. 8, Oct. 4, 1875.—W. T.) After that agreement was made I had a conversation with Mr. Killam, at Ottawa, in the library of the House of Commons (I think), about negotiations between the two Companies. Killam gave me to understand, that the *hitch* about the running powers would be got over with the Government, and suggested that we should again open negotiations. I went to the library and made a memorandum at that time. The

paper now shewn me is the memorandum drawn up by Killam at that time. It is in Killam's writing. (Paper put in, marked R, No. 9.—W. T.) The word "*responsibilities*," on the seventh line, was interlined by me. The first time that I ever knew the purport of the Minute of Council, cancelling the lease, was in 1873, when Killam sent me a copy of it to England. I never heard of a Minute or Order in Council of 22nd April, 1875, providing "That until further orders the existing arrangements with the Windsor and Annapolis Railway Company should be continued." The reason why the agreement made in the library was not carried out was, because the Western Counties Railway fell into the hands of Shanley and Plunkett. I did not get authority from the Western Counties Railway for Mr. Killam, to make an agreement with the Windsor and Annapolis Company for the Windsor Branch. I did not propose the resolution passed at Yarmouth by the Western Counties Railway.—(Exhibit B.—W. T.) It was the result of our conversation. I think Killam proposed it. I never telegraphed Killam affecting any other lease except the one made under the memorandum of 1874. I do not recollect telegraphing Killam to get the Minister of Public Works "to maintain the permanent way of the Windsor Branch until January, 1875." That was not the reason why the agreement was not signed: "Because the Government would not maintain the permanent way." I do not recollect pressing Mr. Killam to sign the memorandum F (in evidence.—W. T.) I was present at one of the interviews with the Minister of Public Works in 1875, when they were discussing the change of gauge. There was no agreement then made, "That the Plaintiffs Company were to continue to work the Windsor Branch until the Government were ready to hand it over to the Western Counties Railway." I have no recollection of the conversation detailed by Mr. Killam in his evidence (on page 8, lines 8 to 15), viz., that "The Minister also stated "to DePass, that he wished it distinctly understood that that arrangement was to be merely temporary, and that as soon as the Western Counties Railway were prepared to take the Branch, he should hand it over to them under the terms of the Act," having ever occurred. If such conversation did occur, I certainly did not express myself satisfied with that arrangement. Before the Defendants Company took possession of the road in September, 1877, I co-operated with the Minister of Marine for the purpose of entering into some agreement with the Western Counties Railway which would have obviated the difficulties. The Minister of Marine invited me by letter to confer with Mr. Killam and Mr. Doane in the Marine and Fisheries office at Halifax. That was in July, 1876. I always contended that the cancellation of the lease by the Government was illegal, and that they could not transfer the road to the Western Counties Railway except subject to our existing rights, and I frequently told Killam so. As soon as I saw that the memorandum was not going to be carried out, I gave Killam distinctly to understand that we would not surrender our rights. That was previous to 1st August, 1877.

Cross-Examined by Thompson.—Previous to November, 1873, I was not officially engaged in the Company's business. My Father and some of his friends were largely interested, and I was asked to come out here and look at the affairs of the Company. That was the cause of my first coming to Nova Scotia. It was in May, 1873, that I first came. From May to November I was not employed by the Company. I interested myself in some of their affairs voluntarily, and without remuneration. Not at the instigation of directors of the Company. Generally I was not acting under the



directions of any one. I was acting under Mr. Innes' directions when I went to Ottawa to get the increase in the Tariff. In going to Ottawa I had not any written authority from Mr. Innes, or any one. I had not any intimation from the Company, prior to receiving the appointment of Commissioner, that I would be so appointed. I did not confer with Mr. Langevin at all on the subject of the tariff. I had one interview with Mr. Langevin after I had been informed that the minutes in Council had been passed, and that the Pltffs. Company were to be ejected. That was the cause of my calling on him. Mr. Killam and Mr. Bingay were in Ottawa at that time. I had two or three interviews with the Directors of the Western Counties Railway at Ottawa. I distinctly recollect one, and at that one I think Mr. James McDonald was not present. I believe that he was present at least once at a meeting between us. I have no distinct recollection of what took place definitely at that meeting. I cannot remember having seen that Pencil Draft Lease (A) at Ottawa. I have no recollection of any terms having been proposed for a Lease. I had frequent conversations at that time with Mr. Killam on the subject of the Railway. The subject of Lease from the Western Counties Railway to our Company was frequently talked of at those conversations. To the best of my recollection I did not intimate to any one at Ottawa at that time that I was or expected to be a Commissioner of the Company. Mr. McDonald was not advising me or my Company at that time. I believe he was present at some of the conversations, but in what capacity I cannot say, nor whom he represented. At Yarmouth I told them that I was prepared to execute that agreement as soon as the difficulty previously spoken of was removed. My official connection with the Company ceased in January, 1878. My power of Attorney remained in my possession until nearly the end of 1878. My power of Attorney was not in the province after the early part of the year 1878, until nearly the close of the year. It was with me. I made it a "*Sine qua non*" that the memorandum of 1875 should be approved of by the Minister of Public Works. I never knew that it was not approved of. The weekly payment of Tolls by our Company in the fall of 1873 was undertaken at my request.

My statement that I did not telegraph to Mr. Killam, relative to any other agreement than that of 1874, is not founded on recollection, but because there was no other lease on the "tapis" between us. I would not like to swear positively that I never telegraphed to Mr. Killam about any other agreement. I certainly did not telegraph to him about any other lease to the Windsor and Annapolis Company. The negotiations in July, 1877, with the Minister of Marine and Messrs. Killam and Doane, resulted in no written agreement; but the object of such negotiations was to procure a lease of the Branch from the Defendants Company. *Those negotiations were without prejudice to our existing lease.* I mean by that, that Mr. Smith was aware that we contended that our lease was still outstanding. The reason that an agreement was not then come to was because the terms of the Western Counties Company were too high, and they refused to submit the same to arbitration; and Mr. Killam stated that it was useless to negotiate, as I had no authority to do so, I had no direct knowledge that the agreement of May, 1874, was submitted to the Minister of Public Works for his approval; and I never enquired in 1874 what the result was. In July, 1877, my authority was not revoked. I had two or three interviews with the Minister of Marine. Killam and Doane were only present together at one of those. I think Killam was present at more than one. At those interviews I contended that if they

The first part of the paper discusses the importance of the study of the history of the United States. It is argued that a knowledge of the past is essential for a full understanding of the present. The author then goes on to discuss the various factors which have shaped the development of the United States, including the influence of the British, the Spanish, and the French. He also discusses the role of the American people in the creation of the nation. The paper concludes by stating that the study of the history of the United States is a task of great importance, and that it is one which should be undertaken by all who are interested in the future of the country.

would come to reasonable terms I would soon get the authority. I think it was on Good Friday, 1875, that Mr. Mackenzie settled the terms of the agreement of 1875.

Re-examined by Mr. Ritchie:—

Q. At the meetings at Ottawa between you and the Directors of the Western Counties Railway, were any other matters discussed except the subject of a lease to the Windsor and Annapolis Railway?

A. The question of the feasibility of amalgamating the Companies was more discussed than the question of the feasibility of a lease.—(*Re-examination objected to* 4830 *by Mr. Thompson—W. T.*)

(Signed)

E. A. DEPASS.

Sworn, &c., &c.,

W. T., M. S. Ct.

(R, No. 1.)

Know all Men by these Presents, That the Windsor and Annapolis Railway Company, limited, whose registered office is at No. 24 Great Winchester Street, London, (hereinafter called "the Company,") do hereby nominate, constitute, and appoint Elias Abraham DePass, now temporarily residing at Kentville, in the Province of Nova Scotia, the Agent and Attorney of the Company, for the special purpose of 4840 negotiating, arranging and settling with the Government of the Dominion of Canada, the Western Counties Railway Company, or any other bodies, corporations or persons the terms of an agreement or agreements having for its object the lease by the Company of the Windsor Branch of the Nova Scotia Railway, upon such terms and conditions as the said Agent and Attorney shall deem expedient: Provided, that no such agreement or lease shall take effect unless and until approved or confirmed by a resolution of the Board of Directors of the Company. And for any of the purposes aforesaid, to sign and use the name of the Company. And whatsoever the said Agent and Attorney shall lawfully do by virtue of these presents, the Company agree to ratify and confirm. In witness whereof, the said Company have hereunto caused 4850 their common seal to be affixed the sixteenth day of June one thousand eight hundred and seventy-four.

The Common Seal of the Company was affixed this 16th day of June, 1874, in the presence of

[L. S.]

(Sgd.)

A. D. DEPASS,

Director.

(Sgd.)

WM. ROSS CAMPBELL,

Secretary.

I, WILLIAM WEBB VENN, Junior, of the City of London, Notary Public, by Royal authority, duly admitted and sworn, do hereby certify and attest, unto all whom it 4860 may concern, that on this day, the sixteenth of June, one thousand eight hundred and seventy-four, I attended at the office of the Windsor and Annapolis Railway Company, Limited, situate in this city, and did then and there see the Common Seal



of said Company affixed at foot of the foregoing Power of Attorney in the presence of Abraham Daniel DePass, Director, and William Ross Campbell, Secretary of said Company, who have both affixed their signatures opposite to the said Common Seal. And I do further attest that full faith and credit may and ought to be given in Courts of Judicature and thereout to the said Common Seal and signatures, the same having been duly affixed and signed on the said Power of Attorney in accordance with the requirements of the law relating to such companies. In testimony whereof, I 4870 have hereunto set my hand and affixed my seal of office to serve and avail where needful.

Quod Attestor. (Sgd.) W. W. VENN, JR.,
Notary Public.

LONDON, *datum ut supra.*

(R, No. 2.)

MEMO of proposed agreement between the Western Counties Railway Company and the Windsor and Annapolis Railway Company for leasing the Windsor Branch, with their right of running powers to Halifax:

1. Western Counties Railway Company shall lease to the Windsor and Annapolis 4880
his Railway Company the Windsor Branch for ninety-nine years.
2. The running powers granted to the Western Counties Railway Company by the Act of Parliament, 1874, shall be enjoyed by the Windsor and Annapolis Railway Company while this lease remains in force, and the Windsor and Annapolis Railway Company shall assume all obligations connected therewith.
3. Windsor and Annapolis Company shall maintain, at their own expense, the Windsor Branch and its appurtenances in good and efficient order.
4. Windsor and Annapolis Railway Company shall pay to the Western Counties Railway Company seven per cent. of their gross receipts between Windsor and Halifax during the first four years, and ten per cent. afterwards. Payments to be quarterly. 4890
5. The Western Counties Railway Company shall have the right at any time to enter and inspect, to see that the road is efficiently maintained, &c.
6. Lease may be forfeited for non-payment of rent, or failure to comply with other conditions.
7. Settlement of disputes to be left to arbitration.
8. This agreement shall take effect on first July, 1874.

(Sgd.) F. WILLAM,
On behalf W. C. R. Co.

(Sgd.) E. A. DEPASS
On behalf W. & A. R. Co. 4900

OTTAWA, May, 1874.



(R. No. 3.)

RAILWAY DEPARTMENT,

HAMILTON, May 22nd, 1875.

E. A. DEPASS, Esq., Kentville.

MY DEAR SIR,—

I am in receipt of your letter of the 13th, inst.

The arrangement which I am instructed to carry out, and which I have no power whatever to alter, is, that every claim of every kind whatever, made by your Company against the Government up to the 1st July, 1875, including duties and everything else, is to be absolutely cleared off and discharged, and that all claims against your Company by the Government up to the 1st January last, are to be settled and discharged. This is not to apply to current accounts for the third earnings of the Windsor Branch. The object of making it the 1st of January, therefore, is to protect the Government for the current amounts which are due by the Company for the third earnings of the Windsor Branch. All the arrears are prior to the 1st of January, and putting it in the way I have stated leaves the current accounts untouched, which you have paid monthly. 4910

The Minister of Justice is drawing a contract which I hope to send you in a few days for execution by your Company, in which this question will be distinctly set forth as I have stated it.

Yours very truly,

4920

(Sgd.) C. J. BRYDGES.

(R. No. 4.)

RAILWAY DEPARTMENT,

MONTREAL, June 12, 1875.

E. A. DEPASS, Esq., Kentville.

MY DEAR SIR,—

I now enclose you the agreement which the Department of Justice have drawn up to be executed by your Company. Upon your executing this document and returning it to me, I will at once have a duplicate in exactly the same terms executed on behalf of Her Majesty by the Minister of Public Works. 4930

It will be necessary that this document be executed properly by your Company before the exchange of engines and trucks, mentioned in the agreement, can be carried out.

You will, therefore, be good enough to lose no time in having it executed by your Company and returning it to me.

This agreement, of course, is made on the assumption that the arrangement you have made with the Government to give security for the return of the nine broad

gauge engines until you have released them from their present indebtedness will be carried out in the manner already discussed between us.

4940

Yours very truly,

(Sgd.) C. J. BRYDGES.

(R. No. 5.)

RAILWAY DEPARTMENT,

HAMILTON, June 28, 1875.

E. A. DEPASS, Esq., Kentville, N. S.

MY DEAR SIR,—

I have your letter of the 22nd, enclosing a copy of agreement signed and executed by you as Commissioner of the Windsor and Annapolis Railway. I, of course, accept this as being a properly authorized execution on your part, but, as a matter of form, wanted to place it right in the records of the office of the Minister of Justice. I must have a certified copy of the authority on which you are authorized to execute documents of this sort binding the Company you represent.

I am glad to hear, from your message received this morning, that the change of gauge has been effected, and that your traffic is now going on as usual.

Yours faithfully,

(Sgd.) C. J. BRYDGES.

(R. No. 6.)

INTRACOLONIAL RAILWAY,

General Superintendent's Office,

4960

MONCTON, N. B., 25th July, 1875.

E. A. DEPASS, Esq.,

Windsor and Annapolis Railway,
Kentville, N. S.

MY DEAR SIR,—

I am in receipt of your letter of the 8th inst. As soon as I am in possession of the proper authority for you to execute the agreement with the Canadian Government, I will have the duplicate copy executed by the Minister of Public Works, but at present I am advised by the Minister of Justice that your signature alone for the authority of your Company would not be legally binding upon your Company.

4970

Yours faithfully,

(Sgd.) C. J. BRYDGES.

P. S.—Are your arrangements so far completed that you can now deliver us your old engines? I understood you to say all would be settled about 1st July.

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 the results are not in general in
 accordance with the theory.

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 accordance with the theory.

(R, No. 7.)

RAILWAY DEPARTMENT,

MONTREAL, 9th Sept., 1875.

E. A. DePASS, Esq.,
Kentville, N. S.

MY DEAR SIR,—

4980

I have to call your attention to the fact that I have not yet received from you the executed agreement in accordance with the promise you made to me.

I should like to know, also, when we may expect to receive the engines.

Yours truly,

(Sgd.) C. J. BRYDGES.

(R, No. 8.)

RAILWAY DEPARTMENT,

MONTREAL, 4th Oct., 1875.

E. A. DePASS, Esq.,
Windsor and Annapolis Railway,
Kentville, N. S.

4990

MY DEAR SIR,—

I now enclose a duplicate of the agreement executed by the Minister of Public Works and the Secretary of the Department.

I shall be obliged by your acknowledging the receipt.

Yours faithfully,

(Sgd.) C. J. BRYDGES.

(R, No. 9.)

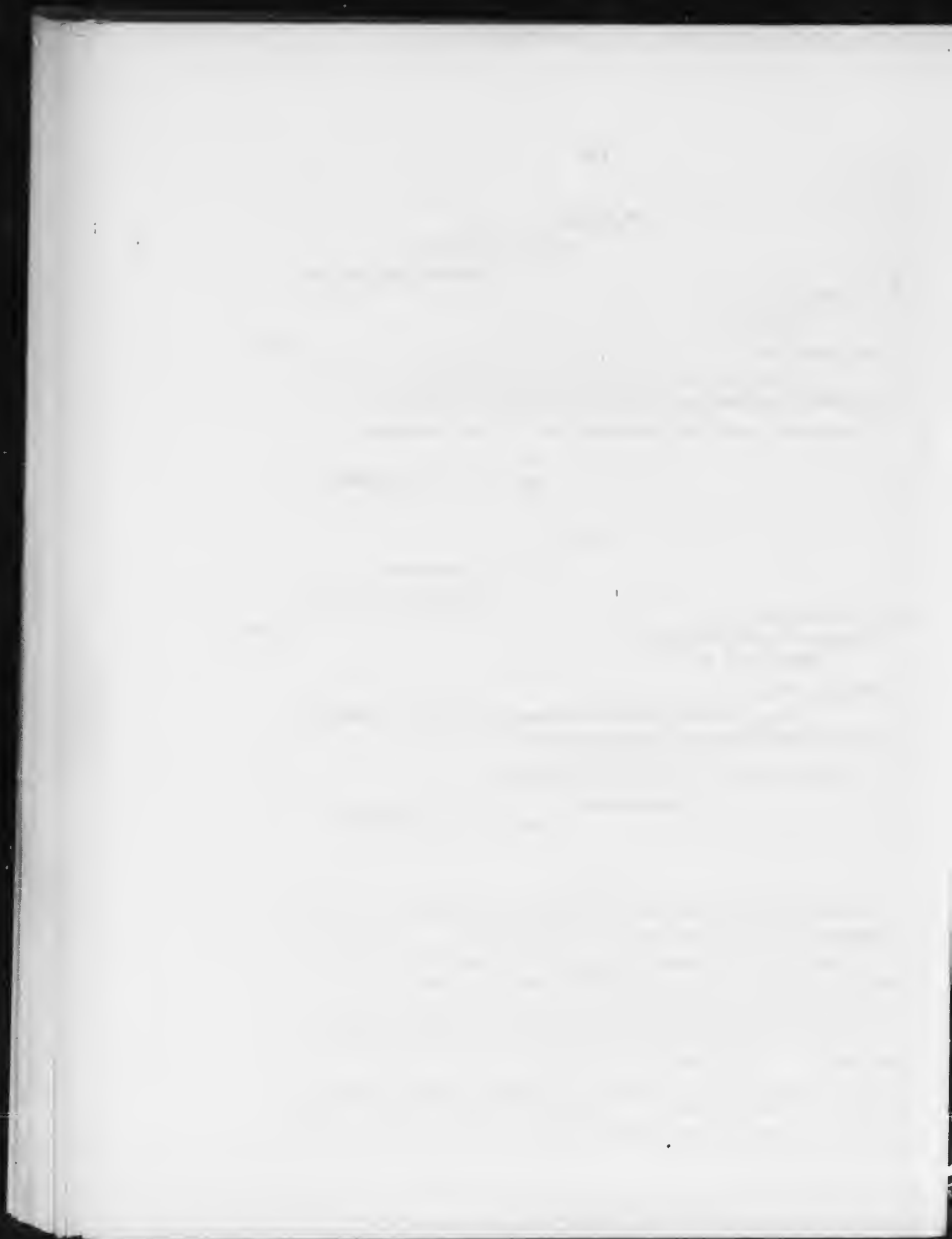
MEMORANDUM for basis of agreement between the Western Counties Railway Company and the Windsor and Annapolis Railway Company:

5000

The Western Counties Railway Company shall lease the Windsor Branch to the Windsor and Annapolis Railway Company for a term of 99 years.

The running powers granted to the Western Counties Railway Company by the Act, chap. 16, 1874, shall be assigned to the Windsor and Annapolis Railway Company, together with all privileges and responsibilities connected therewith.

In consideration hereof the Windsor and Annapolis Railway Company shall maintain the Windsor Branch and its appurtenances in efficient workable condition at their own expense, and shall, furthermore, carry any passengers holding Govern-



ment tickets between Halifax and Windsor Junction free of charge; and the Windsor and Annapolis Company shall pay the Western Counties Railway Company seven (7) per cent. of the gross earnings of the line between Windsor and Halifax during the first four years, and ten (10) per cent. afterwards. Payable quarterly. 5010

The Western Counties Railway Company shall have the right of entering at all times upon the Windsor Branch and inspecting it, for the purpose of ascertaining that it is efficiently maintained. The Western Counties Railway Company shall also have the right to inspect all accounts and books, of the Windsor and Annapolis Railway Company relating to the Windsor Branch.

This lease may be forfeited for non-compliance with its conditions.

Settlements of disputes to be left to arbitration. One arbitrator to be appointed by each Company and one by the Lieut.-Governor in Council. 5020

The terms of this lease to be approved by the Governor-General in Council, and to go into effect on

The running powers hereby assigned to be those mentioned in the proposal, a copy of which is hereto annexed, and referred to in Schedule B, of the Act, chap. 16, 1874, before mentioned.

HALIFAX SS.

IN THE SUPREME COURT.

IN EQUITY.

Cause—

THE WINDSOR AND ANNAPOLIS RAILWAY COMPANY, *Plaintiffs*. 5030

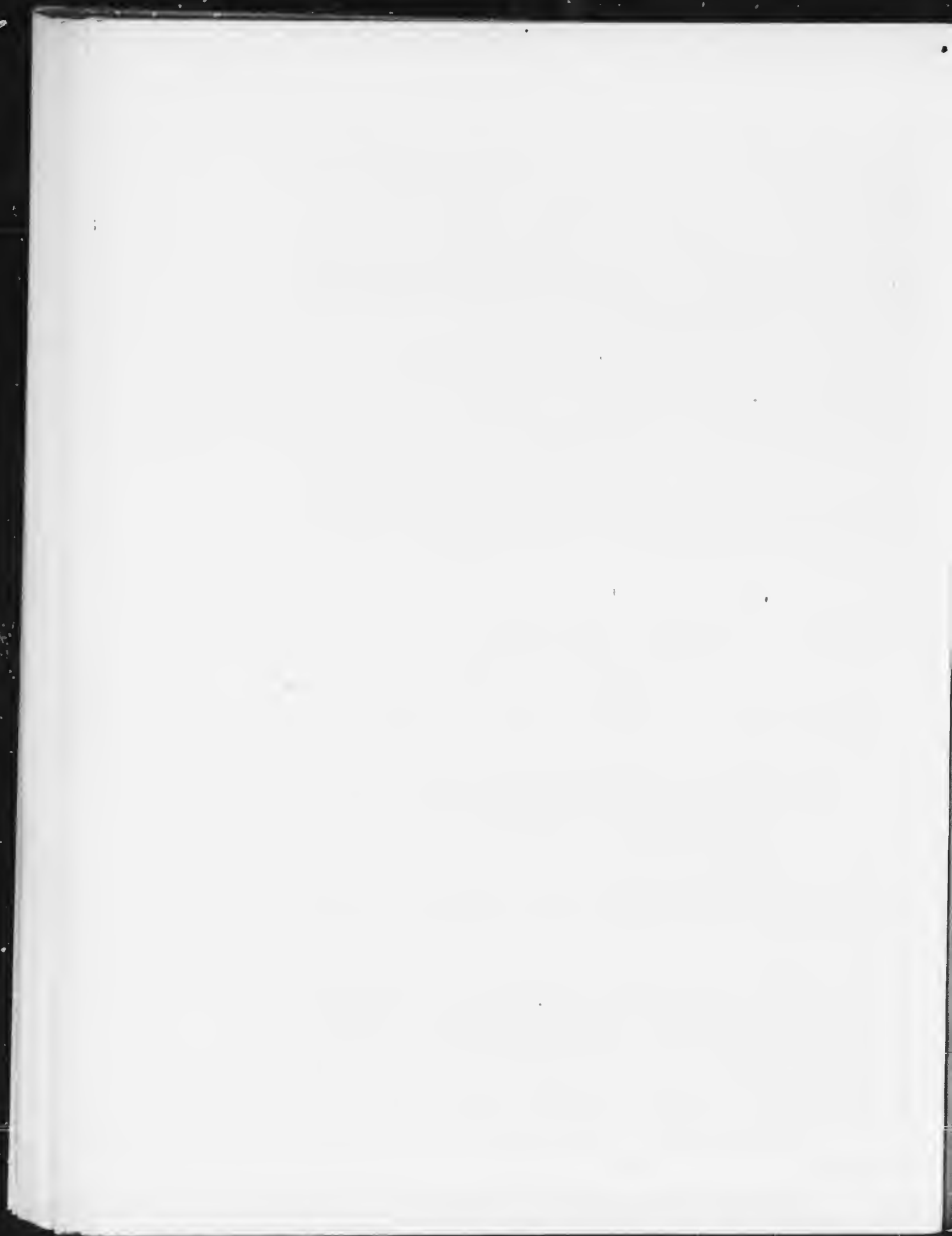
vs.

THE WESTERN COUNTIES RAILWAY COMPANY, AND THE
ATTORNEY GENERAL OF CANADA, *Defendants*.

Judgment of Hon. J. W. Ritchie, E. J.

WHEN this cause was argued on the demurrer the statements in the Plaintiffs' writ were assumed to be true, and judgment having been then given for the Plaintiffs, it is for the Defendants to shew that the facts, as they now appear in evidence, lead to a different conclusion.

The Defendants' counsel contend that the evidence shews such an acquiescence on the part of the Plaintiffs in the action of the Government in the cancellation of 5040 the agreement of 22nd September, 1871, that they are now estopped from raising any objection to it. After carefully considering the evidence, I can see nothing to lead to such an inference; what is relied on in support of this contention is, that after the first indication of an intention on the part of the Government to transfer the Windsor Branch in Oct., 1873, negotiation took place between parties connected with the two companies for an amicable arrangement of the difficulty which had arisen. Mr.



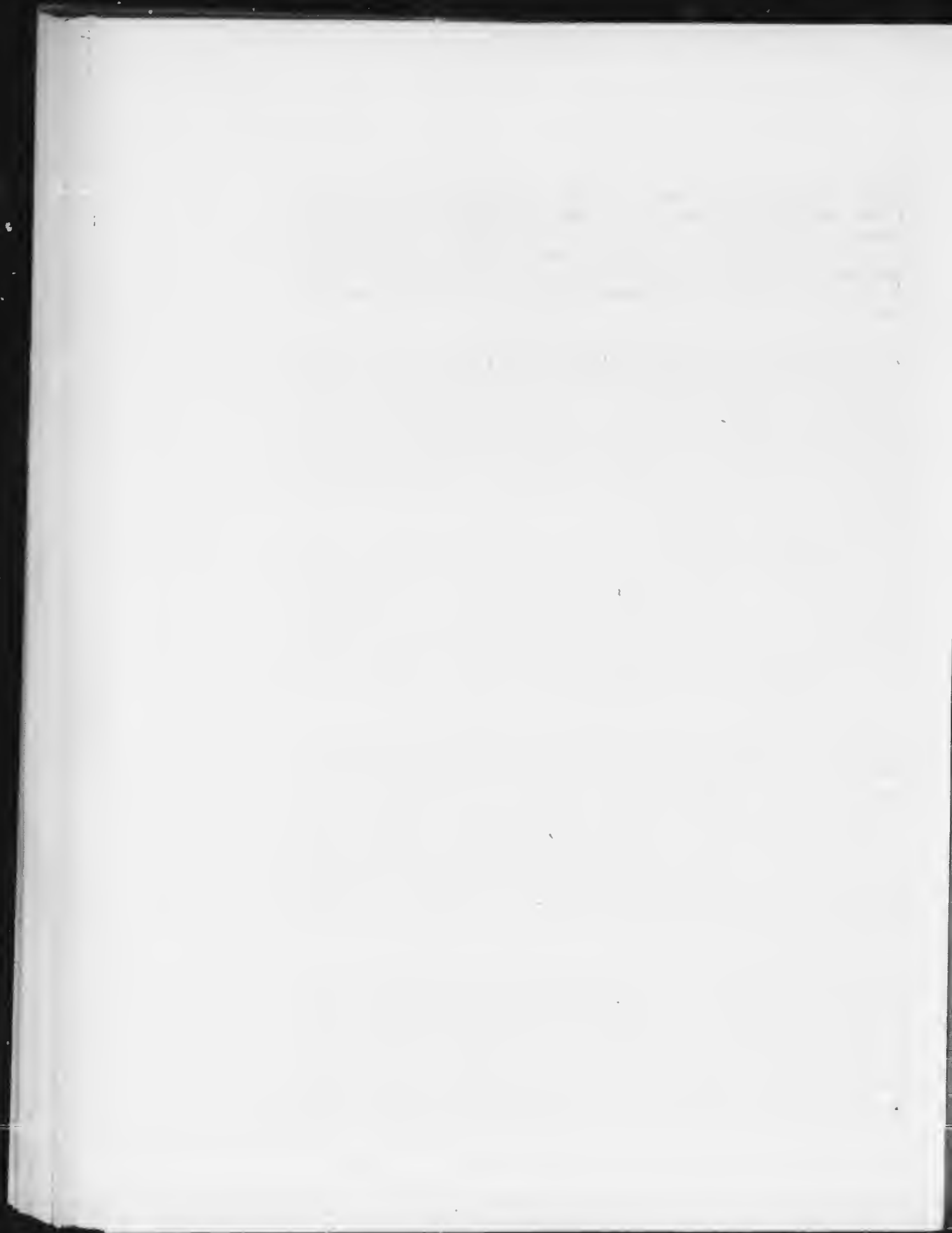
Killam, Mr. Doane and Mr. Bingay, testify as to what took place between them and DePass and Mr. Killam speaks of conferences he had with the Directors of the Plaintiff Company in London. In none of these interviews is it alleged that the Plaintiffs, or Mr. DePass in their behalf, assuming that he had authority to do so, 5050 abandoned their legal right under their agreement with the Government otherwise than by their endeavor to effect an amicable arrangement with the Defendant Company.

Mr. Reynolds, who, at the time of the passing of the Order in Council of 22nd October, 1873, was acting for the Plaintiff Company, and the only person then authorized to act for them, stated to the Minister of Public Works that the Company would oppose the transfer of the Windsor Branch to the Defendant Company in every possible way, and he alleges that he never, in any manner, acquiesced in the action of the Government, nor admitted the right of the Government to make the order, and that, under instructions from the Company, he, through Mr. McKenzie, presented a 5060 petition to the Governor-General on the subject on the 10th December following; indeed, all the authority Mr. Reynolds had, with respect to the transfer of the line, was to oppose and protest against it.

In June, 1874, Mr. DePass was appointed the agent of the company to negotiate with the Government or the Defendant Company, with no authority to settle anything definitely, as whatever he did was to be subject to the approval of the Board of Directors, and he states positively that he never did acquiesce in the cancellation of the agreement of September, 1871, that he had no power to do so, and that the Plaintiff Company never to his knowledge acquiesced, but on the contrary always opposed it, and Mr. Killam does not pretend that in his interviews with the Directors of the 5070 Company they recognized the cancellation of the agreement.

Up to June, 1875, when the new agreement was entered into with the Government, it is obvious from the evidence that the Plaintiff Company were seeking to be reinvested in their rights either through the action of the Government or by an arrangement with the Defendant Company, and if that object were attained it would be unimportant to them through which of them; both Mr. Langevin and Mr. MacKenzie, while Ministers of Public Works, advised them to arrange the difficulty if possible with the Defendant Company, and this advice it appears to me it was judicious for them to follow, and it would be followed in my opinion without it affecting their legal rights in case of failure; the attempt did fail, and in June, 1875, the new agreement 5080 was entered into, in which among other things the validity of the previous agreement was recognized by the Government.

There was an objection taken by Mr. Lash on behalf of the Attorney-General of Canada, now a party to the suit, which was much relied on by him, and as it had not been urged before, should be referred to. He contended that the agreement of September, 1871, was not binding on the Dominion Government, was in fact invalid and the Plaintiff Company acquired no rights under it. It is somewhat remarkable that such an objection should emanate from the Government, as that agreement is admitted to have been made in good faith, to have been executed on behalf of Her Majesty and approved and ratified by the Governor-General in Council, under no misapprehension. 5090 and acted upon by both parties, and its validity never called in question till now.



The ground of this objection is that the railroad from Halifax to Windsor was a public provincial work, and as such passed to the Dominion Government under the terms of the British North America Act, not as ordinary Government property, but subject to a trust which it was bound strictly to fulfil, which required that it should be worked for the public benefit in accordance with the terms of the Act under which it was built, and subject to the engagements which had been entered into by the Provincial Government and Legislature; and the contention of the learned Counsel is that the terms of the agreement do not carry out the trust, inasmuch as by the provisions of the Provincial Act of 1867, which incorporated the Plaintiff Company and confirmed the contract which had been entered into between the Provincial Government and the promoters of the Company, it was mutually agreed, that prior to the opening of the road, a traffic arrangement should be made *for the mutual use and employment of their respective lines of railway between Halifax and Windsor, and Windsor and Annapolis, including running powers for the joint operation thereof on equitable terms*; which stipulation, it was contended, had not been carried out in the agreement because there was no provision in it for a traffic arrangement over both the lines, or for the mutual use of the respective lines. 5100

When the agreement of 1865 was entered into, it was with a view of encouraging the construction of the railroad from Windsor to Annapolis. The Government might or might not insist on having running powers over the Plaintiffs road, but this not having been required was no reason why the Plaintiff should be deprived of running powers over the Halifax and Windsor line. The original agreement was a pledge that if they would build the road certain privileges should be conceded to them and the pledge so given by the Local Legislature was recognized and carried out by the Dominion Government in this agreement to the satisfaction of all parties, and it appears to me, it embraced all the essential provisions of the original contract. The carriage of Her Majesty's troops and mails had been provided for, an arrangement was made for traffic over the Government road, and the Company engaged to pay one-third of their gross earnings over it, while the interests of the public were subserved by the stipulation that the Company should run every day except Sunday, not less than two trains over it, and that tolls should not be increased without the sanction of the Government. I think, therefore, that this objection cannot be sustained. But while such an objection ought not, for these reasons, to avail the Government as regards the agreement of 1871, the ground on which it was attempted to be sustained applies with great force to the action of the Dominion Legislature in passing the Act of 1874, and to the Order in Council referred to in it, for, as the Dominion Government took the railroad from the Provincial Government, under the British North America Act, clothed with a trust which the former was bound to carry out, the Dominion Legislature was restrained from acting in violation of it. Mr. Lush argued that the power of the Dominion Legislature is supreme in the matter, let the contract, so to speak, between the Dominion and the Province under which the transfer took place was by the Act of the Imperial Parliament, to which both the Dominion and Local Legislatures are subordinate, and if a limited right only was conferred by that Act on the Dominion Government, the Dominion Legislature cannot enlarge it. 5120 5130

All the other arguments relied on were the same as those adduced at the hearing



of the Demurrer, and were referred to rather than repeated, and as they are dealt with in the judgments already given, which have since been reported, to which I still adhere, it is unnecessary for me to do more than refer to those reports as showing the grounds of my judgment on the points there taken. 5140

While Mr. MacKenzie, in his evidence, recognizes the fact that the agreement of 1871 was ratified by that of 1875, he asserts that it was done through inadvertence on his part, but the Plaintiffs had no reason to assume that this was the case, and the latter agreement gave no more to them than they had been all along contending for, and to effect the validity of the agreement the mistake must have been shewn to have been mutual. It now appears from the evidence that what was assumed to be true on the argument of the demurrer, that there was no foundation for the statement in the Minute of Council of 22nd October, 1873, that the Plaintiffs had failed to operate the Windsor Branch, and which was made the ground of divesting them of it, was in fact so. The Minister of Public Works, who made the report to the Government to that effect, must have been misinformed, and this, we may reasonably conclude, has led to all the difficulty which has arisen. 5150

After having giving the fullest consideration to the whole case, I am of opinion that the Plaintiffs are entitled to the judgment of the Court in their favor with costs.

Petition for Appeal to the Supreme Court of Nova Scotia.
HALIFAX, SS.

IN THE SUPREME COURT,

IN EQUITY, 1880.

Cause—

THE WINDSOR AND ANNAPOLIS RAILWAY COMPANY, *Plaintiffs*. 5160

vs.

THE WESTERN COUNTIES RAILWAY COMPANY AND THE
ATTORNEY GENERAL OF CANADA, *Defendants*.

TO THE HONORABLE J. W. RITCHIE,

Judge in Equity for the Province of Nova Scotia,—

The Petition of the above named defendants Humbly Sheweth :

First. That this action was commenced by Bill in Equity, issued on the tenth day of October A. D., 1877, and that the above named defendant Company demurred thereto on or about the second day of November, A. D., 1877, and to which 5170 demurrer the plaintiff duly joined. That afterwards the said demurrer was argued before your Lordship, and judgment given thereon overruling said demurrer. That an appeal from said judgment was taken by the said defendant Company to the Supreme Court for the Province of Nova Scotia, and, after argument thereof, the said appeal was by a rule dated the twenty-ninth day of August, A. D. 1878, dismissed with costs. That the said defendants appealed from the said last named decision to the Supreme

Court of Canada, which last named Court, after argument thereof, dismissed the said appeal on the sole ground that the said judgment so given by the Supreme Court for the Province of Nova Scotia was not a final one, and therefore the Supreme Court of Canada had no jurisdiction to hear or entertain said appeal. That afterwards the defendant the Attorney-General of Canada was made a party defendant herein, who duly answered the plaintiffs' amended Bill. That evidence having been taken herein on behalf both of plaintiffs and defendants, the said cause was heard before your Lordship on or about the twenty-first day of January now last past, and on the first day of March, instant, judgment was given herein by your Lordship in favor of the plaintiffs upon the whole case 5180

Your petitioners, for the purposes of this appeal, crave leave to refer to the Bill and answers herein, to the evidence and exhibits, to the judgment given herein on the said first day of March, instant, and the other judgments therein referred to, and to make the same part hereof for the purposes of this appeal. 5190

Your petitioners are desirous of appealing, and hereby signify their intention of appealing from the said judgment of your Lordship, delivered on the said first day of March, instant, and they pray that they may be allowed an appeal herein to the Supreme Court for the Province of Nova Scotia from said judgment. . ,

The following are the grounds of appeal from said judgment, and the reasons, amongst others, why said judgment should be reversed, and judgment given in favor of said defendants, with costs :

First. Because said judgment is contrary to the Statutes referred to in the said answers, and to the allegations and statements appearing in said answers and the facts in proof. 5200

Second. Because the learned Judge in Equity erred in treating the Statute passed by the Legislature of Canada on the 26th day of May, A. D., 1874, to wit: Chapter 16 of the Statutes of Canada of said year, as a private Act, and construing it strictly.

Third. Because the Statute was passed in the public interests, and with a view to secure the construction of a railway from Yarmouth to Annapolis, and in furtherance of the public policy of the Government of Canada for the time being, and should have received a liberal construction.

Fourth. Because it is admitted that said Statute, to wit, Chapter 16 of the Acts of 1874, is a public Act; that every Act which alienates or affects the public property or the public revenue (in which the whole public are interested) must be construed as a public Act. That consequently the canons of construction which are applicable to private Acts have no application to said Act; but even if they have, the Act in question, if not by express words by necessary implication, extinguishes the rights of the plaintiffs in the Windsor Branch, and the said Act should have received a liberal and not a strict construction. 5210

Fifth. Because the said judgment should have been in favor of the defendants and not of the plaintiffs, for the reasons alleged and grounds set forth in the answers pleaded herein and the points raised and referred to therein.

Sixth. Because it clearly appears by the said Act that it was the intention of said Legislature of Canada to transfer said railway to the defendants absolutely.

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Seventh. Because the effect of the Statute of the Dominion of Canada, 37 Victoria, Chapter 16, and the action of the Government of Canada thereon, and the delivery by the said Government and the acceptance by the defendant Company of the possession of the said Windsor Branch Railway, was to vest in the said defendant Company the exclusive right to the possession of said Branch, and the exclusive right to operate the same, and to collect, receive and appropriate to their own use all the tolls and earnings thereof, notwithstanding the agreements of the 22nd day of September, A. D. 1871, and the 20th day of June, 1875, and the said Judge erred in deciding to the contrary.

Eighth. Because the practical effect of the said statute was to extinguish the rights of the plaintiffs (if any) in the said Windsor Branch, and to vest the exclusive right to the possession and to the perception of the profits thereof in the defendant company.

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Ninth. Because by the British North America Act, 1867, the Windsor Branch Railway (as part of the public property) became vested in and under the jurisdiction of the Dominion of Canada, and the Dominion Parliament had absolute control thereof.

Tenth. Because section 92 of the British North America Act, 1867, sub-section 10, clause (a), has not the operation attributed to it, and in fact, only applies to private railways, and not to the public property of the Dominion. That the power conferred upon the Parliament of Canada by the British North America Act, section 91, sub-section 1, is not controlled or affected by the British North America Act, section 92, sub-section 13. That "property and civil rights" there spoken of, mean property and civil rights in property, over which the Provincial Legislatures have jurisdiction, and not property and civil rights in property expressly made subject to the sovereign jurisdiction of the Parliament of Canada.

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Eleventh. Because by virtue of the said British North America Act, the Parliament of Canada had full legislative authority to deal with said Branch Railway as fully as the Legislature of Nova Scotia could, prior to Confederation, have done.

Twelfth. Because if the Parliament of Canada had jurisdiction over said Railway—as defendants contend was and is the fact—its power was supreme and sovereign; and that in the exercise of its supreme and sovereign power, it could and did vest, or cause to be vested, the possession of the said Branch Railway in the defendant company, and it could and did extinguish the then existing rights (if any) of the said plaintiffs in the said Branch.

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Thirteenth. Because by the British North America Act, 1867, the said Windsor Branch Railway was made part of the public property of Canada, absolutely, and without any trust or limitation whatever, in favor of plaintiff Company or any other person or body corporate being reserved therein.

Fourteenth. Because neither the Minister of Public Works nor the Government of Canada had power to make the lease or agreement to and with the plaintiff Company, dated the twenty-second day of September, A. D. 1871, and the same was and is *ultra vires*, inoperative and void.

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Fifteenth. Because the said lease or agreement of September 22nd, A. D., 1871, was and is in excess of, and altogether different from the powers and privileges contemplated and provided for in the charter of the Plaintiff Company, and in the agreement referred to in said charter, and the same was not a traffic arrangement for the mutual use and employment of their respective lines with running powers, or for the joint operation thereof on equitable terms.

Sixteenth. Because said agreement was and is *ultra vires* of the Parliamentary power conferred by the Act of the Legislature of Nova Scotia, passed on the seventh day of May, A. D., 1867. That that act was only intended to give to the Executive the power to enter into an agreement with the plaintiffs for the mutual use and employment (including running powers) or for joint operation of their respective lines of Railway. That it did not authorize the Executive to enter into an agreement giving the plaintiff the exclusive use of the Windsor Branch and the right to collect all the tolls thereon. That such an agreement could only be valid if authorized by Parliament, being an alienation of the revenues of the Crown, and an imposition of a charge upon the subject. 5270

Seventeenth.—Because in Canada the Crown has no right to alienate the public property without the consent of Parliament. 5280

Eighteenth.—Because neither the Minister of Public Works nor the Government of Canada had any power to make the agreement of 20th June, 1875, or any agreement in anywise affecting the Defendant Companies' title or rights in and to said railway, because such part of said agreement as professed to revive or declare the said agreement of twenty-second September, A. D., 1871, in force or effect was and is null and void, and the said Minister of Public Works had no power or authority to agree to or make the same; and the said agreement, so far as it professes to revive or declare said other agreement in force or effect, was and is contrary to the Act of Parliament in said Bill referred to, as having been passed on the twenty-sixth day of May, A. D., 1874.

Nineteenth.—Because under and by virtue of the Act passed on the twenty-sixth day of May, A. D., 1874, (which Act was not and is not *ultra vires*) the said Windsor Branch became, and was, and from thence hitherto has been absolutely vested in the Defendant Company, free from any incumbrances, claim, right, title, or lien whatever on the part of the Plaintiffs, or under and by virtue of said Act it became so at the time when the Defendant Company were put in possession of said road. 5290

Twentieth.—Because the agreement bearing date the twenty-second day of November, A. D., 1866, did not, nor did, nor has the alleged legislation thereon given to or created in favor of the Plaintiffs, any lien or incumbrance upon or right or title to the said Windsor Branch; and there is nothing in the said agreement or legislation which interfered with, or restricted, or did, or could interfere with or restrict the Parliament of Canada from passing said Act, transferring the said Windsor Branch to the Defendant Company, free from the operation of said agreement as to running powers or otherwise. That the only claim which the Plaintiffs possess, if any, is a claim for the breach of contract against the Government of Nova Scotia, or, as its successors, the 5300



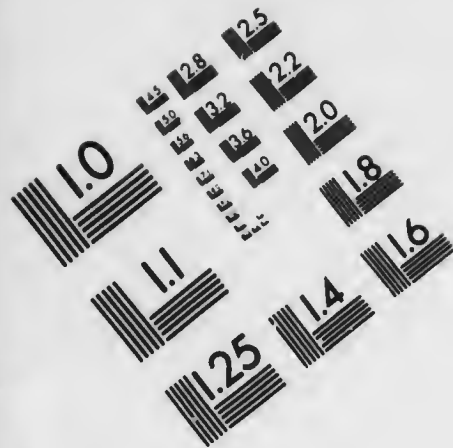
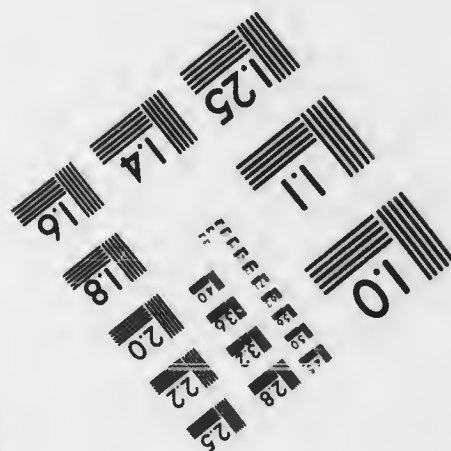
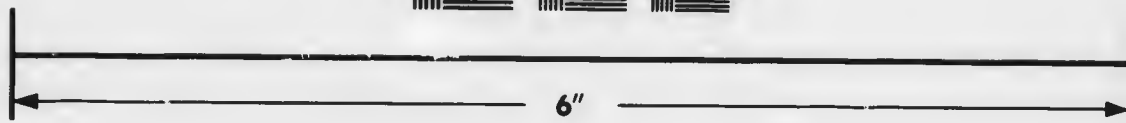
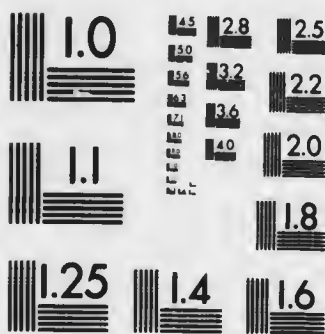


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Government of Canada, but which claim does not, and cannot, affect or limit the operation of said Act, passed on the twenty-fourth day of May, A. D., 1874, nor create an incumbrance upon Defendant Company's title to said Windsor Branch; and such claim or right, if any, could only be enforced by means of a petition of right and not by a Bill in Equity.

Twenty-first,—Because the evidence shows there was such an acquiescence on the 5310 part of the plaintiff Company and their agents as to preclude them from, and they should be estopped from, denying the title of the defendant Company, and by the power of attorney from plaintiffs to DePass, the proposals or agreements set out in the answer, the negotiations for a lease of the Windsor Branch from the defendants, and the concurrence of plaintiffs' agents in the proceedings of the meeting at Yarmouth, and by the other facts and circumstances in proof, it was established that plaintiffs had recognized the validity and binding force and effect of the Order in Council cancelling their lease, and had also recognized the defendants as the owners, under and by virtue of said Chapter 16 and otherwise, of the said Branch and the parties entitled to receive, have 5320 and take the revenues and tolls thereof, and more especially as it was shown that bond-holders and other parties had subsequently acquired interests and rights through said defendant Company in and to said Branch.

Dated at Halifax, March 10th, 1880.

The Western Counties Railway,
By N. H. MEAGHER,
Their Attorney.
JAMES McDONALD,
Attorney-General of Canada.

N. H. MEAGHER,
Attorney of Petitioners, the Western Counties Railway.
ROBT. SEDGEWICK,
Attorney of Attorney-General.

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Certificate of Counsel.

HALIFAX, SS.

IN THE SUPREME COURT,

IN EQUITY, 1880.

Cause—

THE WINDSOR AND ANNAPOLIS RAILWAY COMPANY, *Plaintiffs.*

vs.

THE WESTERN COUNTIES RAILWAY COMPANY AND THE 5340
ATTORNEY-GENERAL OF CANADA, *Defendants.*

I hereby certify that I am Counsel in this cause for the above named defendants, and that in my judgment there is reasonable cause of appeal in the above cause from the judgment therein referred to as having been delivered on the first day of March, instant.

Dated at Halifax, March 10th, 1880.

(Signed)

JNO. S. D. THOMPSON.

Order for Appeal.

HALIFAX, SS.

IN THE SUPREME COURT,

IN EQUITY, 1880.

5350

Cause—

THE WINDSOR AND ANNAPOLIS RAILWAY COMPANY, *Plaintiffs.*

vs.

THE WESTERN COUNTIES RAILWAY COMPANY AND THE
ATTORNEY - GENERAL OF CANADA, *Defendants.*

ON motion of Defendants Counsel :

I do order that the Defendants shall deposit with the Prothonotary at Halifax, the sum of One Hundred and Sixty Dollars, as security to respond such costs as the Supreme Court may appoint, in case the judgment given herein by the Equity Court on the first day of March, A. D., 1880, shall not be reversed upon the appeal about to 5360 be taken therefrom to said Supreme Court.

Dated March, 10th, A. D., 1880.

(Signed)

J. W. RITCHIE

HALIFAX, SS.

IN THE SUPREME COURT,

IN EQUITY, 1880.

Cause—

THE WINDSOR AND ANNAPOLIS RAILWAY COMPANY, *Plaintiffs.*

vs.

THE WESTERN COUNTIES RAILWAY COMPANY AND THE - 5370
ATTORNEY - GENERAL OF CANADA, *Defendants.*

I HEREBY certify that I have this day received from Defendants' Attorney, the sum of One Hundred and Sixty Dollars, being the sum named in the within order, the same having been deposited for the purpose expressed in said order.

DATED HALIFAX, March 10th, 1880.

(Signed)

M. I. WILKINS,
Prothonotary.

