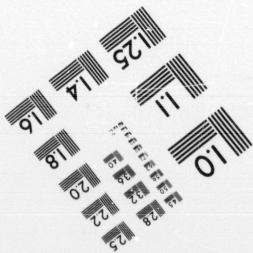
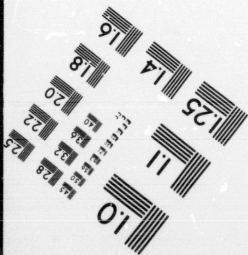
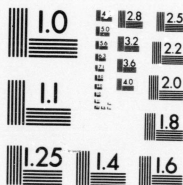


IMAGE EVALUATION  
TEST TARGET (MT-3)



4.5 2.8  
3.6 3.2 2.5  
2.0 1.8

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10



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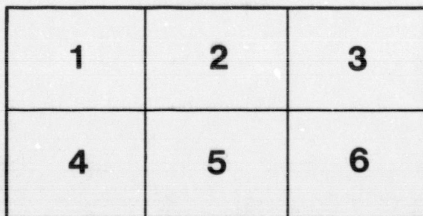
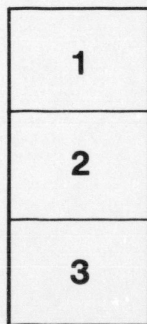
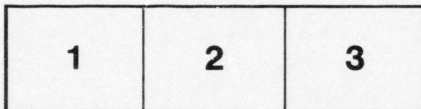
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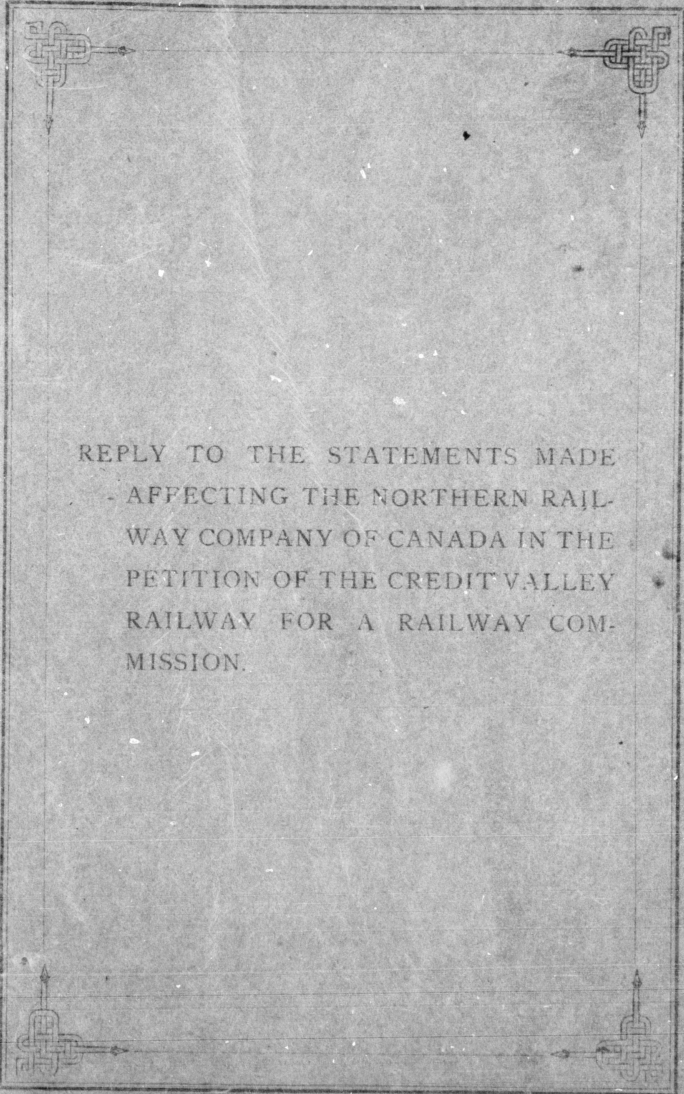
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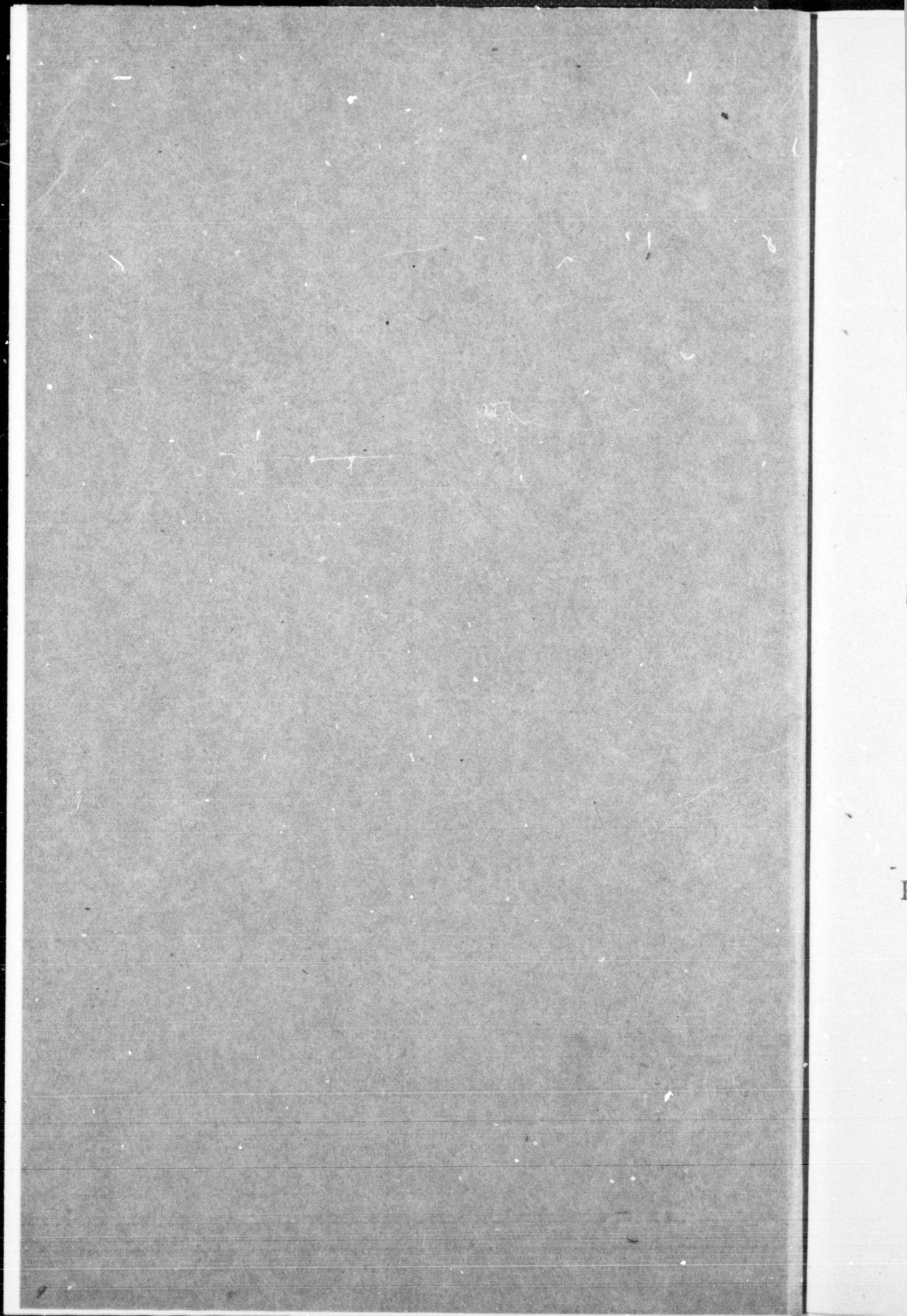
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REPLY TO THE STATEMENTS MADE  
- AFFECTING THE NORTHERN RAIL-  
WAY COMPANY OF CANADA IN THE  
PETITION OF THE CREDIT VALLEY  
RAILWAY FOR A RAILWAY COM-  
MISSION.



# R E P L Y

TO THE

STATEMENTS. MADE AFFECTING THE NORTHERN  
RAILWAY COMPANY OF CANADA

IN THE

PETITION OF THE CREDIT VALLEY  
RAILWAY FOR A RAILWAY  
COMMISSION.





REPLY TO THE STATEMENTS MADE AFFECTING THE NORTHERN RAILWAY COMPANY OF CANADA IN THE PETITION OF THE CREDIT VALLEY RAILWAY FOR A RAILWAY COMMISSION.

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*In the Petition of the Credit Valley Railway Company for the appointment of a Railway Commission it is stated as follows :*

“The Northern Railway Company have appropriated a very large tract of land along the shore of the Bay, lying between Brock street and Bathurst street, embracing an area of about forty acres. They have enclosed the same with a fence and so covered the same with buildings, tracks and sidings, as practically to prevent new lines of railway from approaching the said Esplanade from the west. In addition they have appropriated for their main track a strip of land one hundred feet wide from Bathurst street to the western boundary of the City, and although, from the growth of the City, the establishment of factories, and the location of public institutions, the said strip of land furnishes the only way of approach for railway lines from the west to the said City, they claim the absolute ownership of the said strip not occupied by the mere track of the Grand Trunk Railway, and either forbid new companies from encroaching on the same or dictate such terms of use, as cannot possibly

be complied with. The Northern Railway Company acquired whatever rights they possess in the said lands upon the express understanding that they should pay the said City the value thereof—such value to be settled by arbitration—but although the value thereof was so settled the said Company have refused to abide by the Award, and they not only wholly repudiate the same, but they repudiate any liability to pay the said City anything for the said land. The Northern Railway Company have therefore never paid anything for the said lands, and have not in fact yet acquired a legal title thereto, the fee being still in the Crown."

The real facts of the case are as follows :

The Northern Railway Company, under the name of The Ontario, Simcoe and Huron Railroad Union Company, were incorporated in 1849 by Statute 12th Victoria, ch. 196, and were thereby empowered to take and acquire property, whether belonging to the Crown or otherwise, necessary for the Company's use.

In pursuance of this power, on the 27th October, 1851, the then President of the Company, by letter, notified the Ordnance Department that these lands were required by the Company, and they thereupon took possession thereof; and on the 15th November of the same year the Lieutenant General Commanding in Canada made a minute that he had no military objection to the taking of the land; and on the 9th January, 1852, the Secretary of the Board of Ordnance in London addressed a letter to the Secretary for the Colonies, recognizing the right of the Company to take the lands, and providing for their transfer, and saying that there was no doubt that, under their charter, the Company could not be considered to have acted illegally in entering the reserve without previous consent, and that the Department could only insist upon compensation in the manner prescribed by the Company's Act, the amount of such compen-

sation, when ascertained, to be paid into the "*military chest to the public credit*"; and thereupon an order of the Board of Ordnance was sent to the Company, transmitting a copy of the above letter, and approving of the proceedings of the Ordnance Department in Montreal, under which the Company had taken possession.

By an Act of the late Province of Canada (19 Vic., ch. 45), the Ordnance lands were transferred to and vested in Her Majesty for the benefit of the Province, subject, however, to all sales or agreements entered into, and specifically, and in words, reserving the rights of the Company in regard to these lands.

In 1859 the Railway, in consequence of the financial embarrassments of the Company, became unsafe for travel, and was so reported to be by the Government Engineer, and, in consequence, an Act was passed (22 Vic., ch. 89,) whereby the Company, its property and franchises, were vested in the Crown, for certain purposes therein set out; and by Section 2 of this Act the Governor in Council was authorized, upon certain terms, to transfer the same back to the Company, or to the bondholders, or both; and on the 12th May, 1859, an Order in Council was passed, transferring back to the Company its property and franchises, upon certain conditions as to providing money and otherwise for putting the road in proper condition.

This Order in Council was confirmed in the following year by Statute 23 Vic., ch. 105, and the Company claim that under it they have and hold a statutory title to this property. The Company, as will be seen, have been in continuous possession since 1851 up to the present time.

After the Company had taken possession, the Provincial Government granted a license of occupation to the City of the

water frontage in Toronto between Peter Street and the Queen's Wharf, in consideration of their constructing, within a certain time, an esplanade between these two points. This license, however, expressly reserves the claims of the Ordnance Department, the military authorities, and those of the Company. As the Company were then in possession under their charter powers, it is quite clear that the Crown could in no way and did not intend to affect the rights of the Company. It is, however, not necessary to consider this, as the City expressly and deliberately abandoned any intention of attempting to build an Esplanade between Brock street and the Queen's Wharf, on the grounds, as will be seen by the reports of the City Council, that the cost of so doing would be too great, and up to this time the City of Toronto have not expended one single dollar upon the property, while the Company have expended, in filling in and otherwise, between \$300,000 and \$400,000, besides paying to the City annually in the shape of taxes several thousands of dollars. Even therefore supposing that the Company did not possess a statutory title, there is no possible basis upon which the City can set up any claim to be paid for these lands, as allowing that the license of occupation included them which, however, the Company deny, the City have never complied with the license of occupation, and if the Company have still to pay for them the money would have to be paid to the Imperial "military chest to the public credit," or to the Crown. It may be added that by the Esplanade Act of 1853, Sec. 10, it is declared that it shall not apply to or affect any lands or property vested in the principal offices of Her Majesty's Ordnance. It is probably unnecessary after what has already been stated to take notice of the reference in the Credit Valley petition to the award in favour of the City. This supposed arbitration was from the first formally by notice in writing repudiated by the Northern Railway Company, and they paid no attention whatever to it, and the City of Toronto have obtained and have in their possession the opinions of Counsel that the Award is void and utterly worthless.

The statement also in the petition that the N. R. Company forbid new companies from encroaching on their lands or dictate such terms of user as cannot possibly be complied with, is entirely incorrect. On the contrary the Company have shown every disposition to afford the Credit Valley Railway every reasonable facility for entering the City, as is well known to the chief officers of the latter Company.

G. D'ARCY BOULTON,

*Solicitor for the Northern Railway Company of Canada.*

TORONTO, 26th March, 1879.

