

In the Privy Council.

44876

No. 87 of 1930.

ON APPEAL FROM THE SUPREME COURT OF CANADA.

BETWEEN
THE CANADIAN PACIFIC RAILWAY COM-
PANY (Defendant) Appellant,
AND
HIS MAJESTY THE KING, on the information
of the Attorney-General of Canada (Plaintiff) Respondent.

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PART I.
PLEADINGS

No. 1.

In the Exchequer Court of Canada

RECORD
—
In the
Exchequer Court
of Canada
—
No. 1
Amended
Information
Filed
Sept. 15, 1926

BETWEEN:

**HIS MAJESTY THE KING, on the information of the
Attorney General of Canada.**

Plaintiff.

—and—

10

THE CANADIAN PACIFIC RAILWAY COMPANY.

Defendant.

Filed on the Fifteenth day of September, 1926.

Amended pursuant to order of November 11th, 1926.

Amended pursuant to order of January 15th, 1929.

To This Honourable Court:

The information of the Honourable Esioff L. Patenaude, His Majesty's Attorney General of Canada on behalf of His Majesty, sheweth as follows:

(1) That certain lands situate in the provinces of New Brunswick and Nova Scotia and being those comprising the right of way, yards and station grounds of the Intercolonial Railway at and between the following points, namely:

30 Coldbrook in the Province of New Brunswick and Sussex in the said Province, a distance of 40·7 miles; Sussex in the said Province and Moncton in the said Province, a distance of 45·57 miles; Moncton in the said Province and Truro in the Province of Nova Scotia, a distance of 124 miles; Truro in the said Province of Nova Scotia and Elmsdale in the said Province, a distance of 31·9 miles; Elmsdale in the said Province and Windsor Junction in the said Province, a distance of 20 miles; Windsor Junction in the said Province of Halifax in the said Province, a distance of 15 miles; Truro in the said Province and New Glasgow in the said Province, a distance of 42·78 miles; New Glasgow in the said Province and Avondale in the said Province, a distance of 22·1 miles, Avondale in the said Province and



2

RECORD

In the
Exchequer Court
of Canada

No. 1
Amended
Information
Filed
Sept. 15, 1926
(Contd.)

Heatherton in the said Province, a distance of 31·4 miles; Heatherton in the said Province and Cape Porcupine in the said Province, a distance of 20·54 miles; Cape Porcupine in the said Province and Pirate Harbour in the said Province, a distance of 5 miles; Stellar-ton in the said Province and Pictou in the said Province, a distance of 10·15 miles Point Tupper in the said Province and George River in the said Province, a distance of 74·53 miles; Leitches Creek in the said Province and Sydney in the said Province, a distance of 10 miles. the first day of January, 1890, and long before, and still ought to be, in the hands and possession of the plaintiff.

10

(2) On, or before, or since, the first day of January, 1890, the defendant, in or upon the possession of the plaintiff of and in the premises, wrongfully and in violation of the plaintiff's rights, entered and intruded and constructed thereon, a line of poles and wires which the said defendant has ever since operated as part of a telegraph system.

(3) The Acting Attorney General, on behalf of His Majesty the King, claims as follows:—

- (a) Possession of the said lands and premises;
- (b) \$713,408 for the issues and profits of the said lands and premises from the said first day of January, A.D. 1890, till pos- 20
session shall be given; or in the alternative damages for tres-
pass to the said lands in the sum of \$100,000;
- (b) (1) In the alternative a declaration as to the rights, if any, of
the defendant in said lands in respect of the said line of poles
and wires.
- (c) The costs of this action, and,
- (d) Such other relief as to this Court seems just.

Dated at Ottawa in the Province of Ontario this day of
A.D. 1926.

(Sgd.) Es. L. PATENAUDE, 30
Attorney General of Canada.

W. STUART EDWARDS,
Solicitor for the Attorney General of Canada,
Ottawa.

NOTE.—This information is filed by the Honourable Esioff L. Patenaude, His Majesty's Attorney General, on behalf of His Majesty.

No. 2.

In the Exchequer Court of Canada

RECORD
—
In the
Exchequer Court
of Canada
—
No. 2
Amended
Answer
filed
Oct. 29, 1926

BETWEEN:

**HIS MAJESTY THE KING, on the information
of the Attorney General of Canada,**

Plaintiff,

—and—

THE CANADIAN PACIFIC RAILWAY COMPANY,
Defendant.

10 **AMENDED ANSWER OF THE CANADIAN PACIFIC
RAILWAY COMPANY**

FILED the 29th day of October, A.D. 1926.

Amended this 30th day of January, 1929, pursuant to order made at
the trial on the 26th day of January, 1929.

A. W. DUCLOS,
Deputy Registrar.

1. This Defendant denies the allegations contained in the informa-
tion of the Honourable the Attorney General of Canada, excepting in so
far as the same are hereinafter specifically admitted.

20 2. This Defendant says that the entry of this Defendant upon the
lands and premises in question herein was by leave of and under an irre-
vocable license of occupation granted to this Defendant by the Plaintiff.

3. In the alternative this Defendant says that if such license of oc-
cupation was revocable it has not been revoked.

4. Further, in the alternative, this Defendant says that before en-
tering the lands and premises in question herein this Defendant was in
possession of certain valuable and independent rights of way upon which
the lines of poles and wires of its telegraph system were constructed out-
side the said lands and premises, and that with the full knowledge, ap-
80 proval and consent of the Plaintiff and relying upon such knowledge,
approval and consent this Defendant abandoned the said valuable inde-
pendent rights of way and re-constructed the said lines of poles and wires
upon portions of the lands and premises in question herein, and that the
Plaintiff, having stood by and permitted this Defendant so to change its
position, is now estopped from disputing the right of this Defendant to
construct and maintain the said lines of poles and wires.

5. Further, this Defendant says that the action of the Plaintiff in
respect of the matters aforesaid is barred by the provisions of the Sta-

RECORD

In the

*Exchequer Court
of Canada*

No. 2

Amended
Answer
filed

Oct. 29, 1926
(Contd.)

tutes of Limitation in force in the Provinces of New Brunswick and Nova Scotia.

6. Further, this Defendant says that at no time was there any express or implied promise on the part of this Defendant to pay any sum in respect of the use of the lands and premises in question herein, and that no loss, damage or injury has at any time been caused to or suffered by the Plaintiff by reason or on account of such use of the said lands and premises, and that no sum whatever is payable or owing by this Defendant to the Plaintiff by way of damages or otherwise howsoever in respect of such use; and, in the alternative, that the sum of \$713,408.00 claimed for the issues and profits of the said lands and premises is grossly excessive and unjustifiable and that the rights and privileges for which the said sum is claimed are of no greater value than a nominal sum, as evidenced among other things by the fact that it is a common practice among railway and telegraph companies, including the lines now comprised in the systems of the Canadian National Railways and Telegraphs and the Canadian Pacific Railway Company, to grant similar rights and privileges either without compensation or for a nominal consideration.

7. Further, this Defendant says that, in any event, the claim of the Plaintiff for the sum of \$713,408.00, or any other sum by way of damages or otherwise, is barred by the provisions of the Statutes of Limitation in that behalf.

8. This Defendant says that it is entitled to maintain its telegraph lines where they now are unconditionally or alternatively on terms of permitting the Plaintiff to enjoy reasonable privileges with regard thereto consistent with the full enjoyment by the Defendant of the lines for its purposes, but without any obligation on the Defendant to pay any consideration in cash or by way of annual rental.

9. The Plaintiff and Defendant agreed upon the facilities to be granted to the Plaintiff with respect to the Defendant's telegraph lines so long as they remain on the Plaintiff's right-of-way and the Defendant is and always has been ready and willing to permit the Plaintiff to enjoy such privileges.

10. Alternatively by a grant or grants now lost the Plaintiff granted to the Defendant the right to erect and maintain its telegraph lines where they now are.

11. The Defendant, on the faith of its right to erect and maintain the telegraph lines where they now are, and to the knowledge of the Plaintiff, gave up valuable privileges to maintain the lines elsewhere and expended large sums of money in constructing the lines in their present location.

12. The Plaintiff by its laches, delay and acquiescence is estopped from maintaining this action.

13. At the time the Defendant constructed its telegraph lines on the right of way between New Glasgow and Sydney and between Westville and Pictou it was understood that they would agree to terms similar to those applicable to the Western Union Telegraph Company in respect of its lines on those portions of the said right of way, and subsequently a form of agreement was submitted to the Defendant embodying the desired terms in respect of the line between New Glasgow and Sydney and the said document was executed by the Defendant and returned to the Plaintiff. The Defendant proceeded to construct its lines on those portions of the right of way in the belief that agreements embodying the desired terms would be executed by the Plaintiff, but the same were not executed and the document signed by the Defendant has been lost while in the Plaintiff's possession. The Defendant has always been and still is ready and willing to carry out the terms agreed upon.

14. After the loss of the document last referred to, negotiations took place between the Defendant and F. P. Gutelius the General Manager of the Intercolonial Railway to fix terms that would be applicable to all the Defendant's telegraph lines on the right of way of the Intercolonial Railway, and in the end terms were agreed on, whereby the Plaintiff was given facilities on the Defendant's telegraph lines on said right of way and elsewhere on its telegraph system. A formal document embodying such terms was executed by the Defendant and was transmitted to the said F. P. Gutelius who marked it "o.k." over his signature in the margin, to indicate his approval thereof. The Defendant is and always has been ready and willing to carry out said terms.

This Defendant, therefore, submits that this action should be dismissed with costs.

W. L. SCOTT,
Solicitor for said Defendant,
Canadian Pacific Railway Company.

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of Canada
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No. 2
Amended
Answer
filed
Oct. 29, 1926
(Contd.)

RECORD
 —
In the
Exchequer Court
of Canada

—
 No. 3
 Proceedings
 at Trial.
 Jan. 15, 1929
 Discussion

PART II.

EVIDENCE

No. 3.

In the Exchequer Court of Canada

HIS MAJESTY THE KING, on the information of the
 Attorney General of Canada.

—vs.—

THE CANADIAN PACIFIC RAILWAY COMPANY.

Trial before the HONOURABLE MR. JUSTICE AUDETTE, at Ottawa, commencing January 15th, 1929. 10

A. W. DUCLOS, K.C.,
 Deputy Registrar.

G. H. PLAYLE, sworn as Reporter.

COUNSEL:

W. P. JONES, K.C., and
 HON. I. C. RAND, K.C., For the Plaintiff.

W. N. TILLEY, K.C.,
 W. L. SCOTT, K.C.,
 E. P. FLINTOFT, K.C., For the Defendant.

D. I. McNEILL, 20

MR. JONES: Before opening the case I ask leave to make a slight amendment in the Information in reference to the relief asked for.

HIS LORDSHIP: This is an information for intrusion?

MR. JONES: Yes, my lord.

(Proposed amendment to be added to clause (b), paragraph 3, read.)

HIS LORDSHIP: Did you give notice to the other side?

MR. JONES: I just handed it to them today.

“Or in the alternative, damages for trespass to said lands in the sum of \$100,000.”

Then the additional words, forming another clause, (b-1): 30

“in the alternative, a declaration as to the rights, if any, of the defendant, in said lands, in respect of the said line of poles and wires.”

HIS LORDSHIP: Are you objecting, Mr. Tilley?

MR. TILLEY: I have just received this since I came into the Court-room. As to the first amendment I do not think I should raise any question about it.

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HIS LORDSHIP: I should think that it flows from the Information, as it impresses me now.

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(Contd.)

MR. TILLEY: Yes, I think it is proper my friend should have that amendment, I raise no objection to that.

10 The second is rather a peculiar claim. Your Lordship is asked by it to define rights without knowing what particular kind of controversy may arise with regard to such rights.

HIS LORDSHIP: It clashes with the scope of the Information, this is an Information of intrusion.

MR. TILLEY: I am only suggesting that we will probably have to discuss it later. I do not want to embarrass my friend, if he thinks it desirable to have it added, but at some later stage it will have to be discussed, and I do not see that we will have all interested parties here.

HIS LORDSHIP: I do not think it is very logical. The spirit of the information is intrusion, get off this property. It is not like between subject and subject.

20 MR. TILLEY: I can quite understand my friend being in doubt about his right to put us off, but whether he can go on and ask what our rights are there if we stay—But I do not object to my friend having it on the record for what it is worth. Your Lordship will hear discussion later whether a declaration should be made and that sort of thing?

HIS LORDSHIP: Yes.

MR. TILLEY: I do not quite know what my friend has in mind, I have not thought of it enough.

HIS LORDSHIP: At this stage can it hurt anyone to spread that on the record?

30 MR. TILLEY: I would not like it to be assumed that I would be ready for all sorts of questions that might arise as to our rights. If your Lordship were asked simply to make a declaration whether or not we are entitled to keep our poles there, that is one thing.

HIS LORDSHIP: I do not see that you can have any rights, in the position the plaintiff takes. That is the view that strikes me now. You may have a license to keep the poles there, that raises another question.

MR. TILLEY: Yes, and as to whether your Lordship should be asked to tackle the difficulty of deciding what all the ramifications of those rights might be, at this stage, that is a different matter.

40 HIS LORDSHIP: I want to make one bite of the cherry, I do not want to have another action that might arise with respect to the same subject matter.

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MR. TILLEY: No, I do not want that either, but the present controversy is, are the poles there lawfully or unlawfully? For my friend to say, if they are there lawfully will the Court please define all the incidental rights of the parties, is rather a sweeping invitation.

MR. JONES: What my friend Mr. Rand and I had in mind about that is, as a result of the defence my friend pleads, first that they had a license which is irrevocable, (paragraph 2), and then, if such license was revocable it has not been revoked (paragraph 3), as your Lordship says, to save further litigation your Lordship might, because it depends upon the evidence I take it, assuming you thought there was a revocable 10 license, we would like to have decided, if they have a license, which kind it is.

HIS LORDSHIP: You will get that by the Pleadings. But it is illogical that you should amend in that way in a case of intrusion. You want me to decide what right they have to be there. It is not logical.

MR. JONES: Perhaps not, but we desire to avoid further litigation.

MR. TILLEY: If my friend's point is just as he states it now I submit that does raise rather an important question. My friend is saying, Now assuming that the defendant establishes a right to be there, we ask the Court to tell us how we can ultimately get rid of them. 20

MR. JONES: No, I do not mean that.

MR. TILLEY: That is exactly what it means, because he says if it is a revocable license we ask the Court to determine it is revocable.

HIS LORDSHIP: He says "In the alternative a declaration as to the rights, if any, of the defendant, in said lands, in respect of the said line of poles and wires."

MR. TILLEY: I assume my friend's prayer as disclosed in that clause would be merely as to our right as it exists. But my friend is going further.

HIS LORDSHIP: I suppose directly or indirectly I will have to find, 30 in the end, as to whether you have a right to be there or not.

MR. TILLEY: Yes, we are here to contest that, but now my friend seems to be faced with this difficulty, he says it may be that the Court will determine that the defendant is entitled to be there, and that they have taken no effective steps to oust them. Now we want the Court to tell us what we ought to do.

MR. JONES: No, I do not mean that.

MR. TILLEY: Then it is beyond me what my friend is asking.

HIS LORDSHIP: It might happen that there would be a license without consideration, revocable at will. 40

MR. JONES: Yes, that might happen, and we would like to know on what ground the decision rests.

HIS LORDSHIP: You will get your judgment just the same without having this amendment.

MR. JONES: Well if your Lordship thinks that—of course that is the reason I raised the question.

HIS LORDSHIP: I hesitate because probably this case may not end with me. You had better thresh out every point.

I suppose it would be wiser to allow the amendment, reserving to the defendants all the rights they may have, as the case determines. But it is not a scientific pleading, it is most illogical in an Information for intrusion to ask the rights that the defendants have, when you ask me to oust them.

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MR. TILLEY: It is only the discovery of the documentary evidence since the Information was laid that induces my friends to change it, I suppose.

HIS LORDSHIP: We may as well try all the issues that will be raised. I reserve your rights. If there is an adjournment required you will have it.

OPENING STATEMENT BY MR. JONES:

MR. JONES: My lord, the Crown owns a railway in New Brunswick and Nova Scotia, generally called the Intercolonial Railway. It runs, part of it, between Saint John, New Brunswick, and Halifax, Nova Scotia, with a branch, or a line branching off from Truro, Nova Scotia, to Sydney, Cape Breton.

HIS LORDSHIP: Has that part from Truro to Sydney anything to do with this case?

MR. JONES: Yes, my lord.

HIS LORDSHIP: Does the C.P.R. run on this?

MR. JONES: They have a telegraph line.

HIS LORDSHIP: Then I take it that the C.P.R. have a right to use under contract the I. C. R. tracks between Saint John and Halifax. Is that right?

MR. JONES: No, there is no track, just a telegraph line. There is no question except the telegraph. The other was in existence once but it does not come into this case.

HIS LORDSHIP: Did the C. P.R. put up these telegraph poles after they had the right to run on the I. C. R. from Saint John to Halifax?

MR. TILLEY: I do not know the date of the running rights, but there is no question as to that. Both sides agree to that.

HIS LORDSHIP: I want to find the *raison d'être* why these poles were put there.

MR. TILLEY: This is a commercial telegraph system.

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MR. JONES: I will explain. The main cable line is at Canso, near Sydney, and this telegraph line that is complained of connects with that main cable.

HIS LORDSHIP: The telegraph line complained of runs from what place to what place?

MR. JONES: From Saint John to Halifax, or near Halifax, I am speaking generally; it runs from Coldbrook, which is close to Saint John, to Moncton, passes through Moncton and through Truro to a point called Fairview Junction near Halifax; then from Truro it runs easterly to Sydney. There are about 500 miles, including a branch which runs from Stellarton to Pictou, some 13 miles. It is marked in the Information 10.15, that should be changed, the distance it seems is 13.74.

I have a blueprint which I presume would be useful.

EXHIBIT No. 1: Blueprint showing telegraph system in question.

There will be a memorandum introduced, without objection I think, we thought it might be useful to your Lordship, it gives the history of these different roads that entered originally to make up this 500 miles.

HIS LORDSHIP: What is the date at which these trespassers came upon the land?

MR. JONES: We have that here. There may have been some isolated acts of trespass before January, 1890. We have a table here— 20

EXHIBIT No. 2: Historical narrative, of the different railways that make up the right-of-way in question.

HIS LORDSHIP: You have seen this, Mr. Tilley?

MR. TILLEY: Yes, and I have no objection to it. I think your Lordship will find it desirable, to see what railways were operating at certain times in different sections of this country before it became the one system, the Intercolonial.

HIS LORDSHIP: Has that anything to do with it?

MR. TILLEY: Some of the correspondence will go back to a fairly early date. It will explain certain features, it is a short statement, I think it would be convenient to have. 30

MR. JONES: The next statement,—I have graduated from my opening into offering evidence, but if your Lordship pleases—

HIS LORDSHIP: Yes, that is quite right.

MR. JONES: In answer to your Lordship's question as to when this iniquitous trespass occurred, there is a statement here, made up by the C. P. R., which is substantially correct. There are some poles still off the line at different points, they are not altogether on our railway right-of-way all through this distance. 40

HIS LORDSHIP: Am I right in assuming that there are about 150 poles per mile?

MR. FLINTOFT: About 35 to 40 poles to the mile, sir.

MR. JONES: There are some 15,000 poles.

HIS LORDSHIP: I have had some cases where there were 150 to the mile.

MR. FLINTOFT: In some parts that are rocky and rough there are more, but standard construction is 35 to 40 poles to the mile.

MR. JONES: This statement is substantially correct, showing when
10 the defendant placed its telegraph line upon the various sections of the plaintiff's land.

EXHIBIT No. 3: Statement prepared by C. P. R. showing dates of erection of pole lines.

As I pointed out to your Lordship there are some little gaps—

MR. TILLEY: My friend does not profess, by putting in this statement, to say that our line is continuously on their right-of-way at all points. He says at some point we are off for certain poles.

HIS LORDSHIP: Yes, gaps.

MR. FLINTOFT: It is just odd poles.

MR. TILLEY: Some poles are not on the right-of-way, they are off
20 the right-of-way.

HIS LORDSHIP: It is governed by the topography of the ground?

MR. JONES: Yes, but we consider ourselves free to give evidence as to that.

HIS LORDSHIP: Oh well, I will have nothing to do with these poles that are outside of your ground.

MR. JONES: Then this statement also fails to show the line from Stellerton to Pictou.

MR. TILLEY: We will add that.

MR. JONES: Then there may be some little question about mileage,
30 a mile or two.

HIS LORDSHIP: The judgment, if given in your favour, would be applicable wherever they have poles on your land, I will not be tied to a mile or so.

Did you at any time invite the defendant to remove those poles before this action was taken, or is the first demand by this action?

MR. JONES: No, my lord, that is not the first demand.

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HIS LORDSHIP: I would like to have that.

MR. TILLEY: That will come out in the evidence. There is correspondence to go in.

MR. JONES: Yes, my lord, there is a mass of correspondence.

HIS LORDSHIP: I want the point when you asked them to remove, and by what authority, otherwise I fall back upon this action. I am assuming just for the present that it might be by license, you let them put them on, they are not trespassers, no one has the right to put them out except you the owner, but they are not trespassers, and your license is revocable from day to day. And from the date you revoked they have to get out. That is one view, but of course I do not know the case yet. I have had such a case recently, where it was a revocable license. The one from whom the license is got, if he has that right, revokes it, then you have got to move.

MR. JONES: Well that is one of the contentions of the defence, that it is a revocable license and has not been revoked.

MR. TILLEY: I do not quite say that we claim a revocable license. If it is revocable—

HIS LORDSHIP: If it is revocable the damages would only run from the time it was revoked, not go back to 1890. 20

MR. JONES: But of course my friends claim both ways, that it is irrevocable, and that if it is revocable it has not been revoked. We say there was not any license by proper authority to bind the Crown.

HIS LORDSHIP: But it was there.

MR. JONES: The line was there, yes.

HIS LORDSHIP: And you allowed it to stay there?

MR. JONES: The Crown did not. It was there until a certain period when they notified them—

HIS LORDSHIP: The question of estoppel does not come in?

MR. JONES: Estoppel is being set up, I do not think it applies, however that will arise later. We have some documents showing that they were duly notified at various times, ordered to remove their lines, and at other times notified that they would have to pay a reasonable compensation if they kept their lines there. The negotiations have extended over a considerable period to try and get a settlement. In fact they have extended I think from 1914 to the present time, and they could not seem to reach a settlement. Then this information was issued some years ago, I think 1926, since that time the matter has not been unduly hurried, and still there is no settlement. We claim that they are illegally there and that we have a right to damages from the time they became tres- 40

passers on the property. The time they entered and encroached on the property, which is the time mentioned in that memorandum.

HIS LORDSHIP: This is an Information of Intrusion, it is very indirect in this case. I suppose the question will turn out to be, What is the value of having the right to put poles there? It does not really mean in the full acceptance of the word a case of intrusion, but the profit made through these poles being there. You do not mean for them to disclose what profits they have made from their telegraph lines?

MR. JONES: No, my lord.

10 HIS LORDSHIP: What you mean is, what would be the value to them of having a right to put poles there and carry on their telegraph business?

MR. JONES: That is exactly what our Information means, as to the measure of damages, What would be a fair value.

HIS LORDSHIP: You say here "the issues and profits of the said lands and premises."

MR. JONES: And we have added "or in the alternative damages for trespass." Your Lordship has expressed exactly our idea as to the measure of damages, that is, what the privilege is fairly worth to them.

20 HIS LORDSHIP: I just called your attention to that so that we should not go into a lot of evidence to prove the other.

MR. JONES: No, my lord, we did not propose to offer that.

HIS LORDSHIP: Are you going into the question of damages now, or are you restricting this controversy to the question of right?

MR. JONES: We want to go into the question of damages at this hearing.

HIS LORDSHIP: It is a big proposition.

MR. JONES: Our idea was that it was simply a matter of showing what is being done in other similar circumstances. We have some instan-
30 ces of that, and what is being paid.

Your Lordship spoke about notice to the defendants to get off—

HIS LORDSHIP: You realize what I am driving at; supposing I find that there was a license without consideration and revocable at will, as long as they are not disturbed in enjoying that they have nothing to pay; they would begin to be liable—at any rate I will assume—only from the time they are told to walk out.

MR. JONES: Yes, my lord, but our view of the Pleadings is that the burden is on the Defence to prove leave and license.

HIS LORDSHIP: You prove that they are in occupation.

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MR. JONES: And when they prove their plea of leave and license, if they can, then the burden shifts to us to prove that we revoked it, if it was revocable. But of course I would not like to lose any rights. That is what we plan to do, we show that they are there on the property of the Crown, and when they came there, and prove damages, and rest.

HIS LORDSHIP: Do you not think you might admit that you have the telegraph poles there?

MR. TILLEY: I differ entirely from my friend. I am going to wait until my friend has closed his case before I put in any case at all. I am not prepared now to decide on the method of procedure. If my friend 10 thinks he proves his case by showing that our pole line is there, has been there for some years, and rests there—

HIS LORDSHIP: Why cannot you admit that?

MR. TILLEY: I do not know why I should. I want my friend to prove his case.

HIS LORDSHIP: You deny everything?

MR. TILLEY: Oh no.

HIS LORDSHIP: Yes, you do, by your plea; "This defendant denies the allegations contained in the Information." 20

MR. TILLEY: My friend has shown that certain poles are along the right-of-way—

HIS LORDSHIP: No, he has not proved that. That is what I want you to admit. Would you admit that you have poles as shown?

MR. TILLEY: I do not want at this stage to make any admissions except such as are in my Pleadings.

HIS LORDSHIP: You have no admissions in your Pleadings that I have read.

MR. JONES: We have offered the statement from the defendant company as to the poles on the Crown's property. That is in and it is 30 produced by the defendants. We accept that.

MR. TILLEY: I have never seen it, you produce it here.

HIS LORDSHIP: If the defendants do not admit anything you better be on your enquiry.

MR. JONES: I understood that statement was admitted to properly set out the facts.

HIS LORDSHIP: So did I, but you will have to prove it.

MR. RAND: May I point out that there is really no denial of any allegation. A general denial is inadmissible under the rules of this Court. 40

HIS LORDSHIP: We will not discuss that, you conduct your case the way you like, and Mr. Tilley will do the same. I will not discuss what you should do or should not do, you have the conduct of the case.

MR. RAND: But may I point out that the statement that has been put in by consent as Exhibit No. 2, is an admission of the defendant as to when these poles were put on the right-of-way?

HIS LORDSHIP: You have that admission on the record and I take it.

MR. TILLEY: I do not understand that to be so at all.

10 MR. RAND: This is a statement produced by the defendant.

MR. TILLEY: It is not produced by us. Is that the way you expect to prove your case?

MR. RAND: I did not know there was any question about it as to the dates.

HIS LORDSHIP: Now, Mr. Rand, there have been some documents exchanged between solicitors, that does not prove them before the Court if everyone stands on his rights.

MR. JONES: I think it sufficiently appears on the record already as far as my statement at the opening of the case—

20 HIS LORDSHIP: But your statement is not evidence.

MR. JONES: No, but in addition to that, as I have already said they were notified repeatedly not to continue on the property.

HIS LORDSHIP: I thought this case could be simplified, but if you do not want to I will hear all these things.

MR. TILLEY: It may simplify as we go on, but just at the moment I cannot go any further than we have gone already.

HIS LORDSHIP: But you have not gone any way.

30 MR. TILLEY: We have done this, we have agreed with my friend, and it should be stated to the Court now, that either side may put in the correspondence as far as it is relevant, that has been disclosed by either side, although it may be copies and that sort of thing, and that it will be taken as agreed that the correspondence was sent and received at the time it bears date at or about that time. That is as far as we have gone, outside of what is on the record, as I understand. I do not want any misunderstanding about that.

Then since the understanding was reached about the correspondence we have discovered some further correspondence, which I have shown to my friends, and I am assuming that stands in the same category.

40 HIS LORDSHIP: That is, when you put correspondence in you need not prove the signature?

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MR. TILLEY: No, nor that it was actually sent or actually received.

Then in addition to that I am instructed now that there is some correspondence in the Archives, which would be really in the Government's possession, from the Government files. I would like to have it understood that whatever we take from the Archives, either one of us, will be in the same category.

HIS LORDSHIP: With respect to evidence in the Archives I should think you could follow the Evidence Act, and any certificate from them would establish their validity.

MR. TILLEY: Well I do not want to be driven to that, because we have that understanding in regard to the other correspondence. 10

HIS LORDSHIP: Are we going back to 1890?

MR. TILLEY: No, I think your Lordship will not find it necessary except possibly in regard to some correspondence, but it goes back for some years.

Do I understand that is our arrangement?

MR. JONES: Yes, it is quite true as Mr. Tilley says that we are not under obligation to prove the sending or receipt of letters, but subject to all proper exceptions, that is if it is relevant.

HIS LORDSHIP: Yes, the letter must be relevant. 20

MR. TILLEY: And that applies to what either side has disclosed and to what is in the Archives?

MR. JONES: In reference to what is in the Archives, we have not seen that at all.

MR. TILLEY: I would have thought you had it all. I will give you copies.

MR. JONES: If you will let us have them. We would not like to agree with reference to it.

MR. TILLEY: I think we ought to have an understanding. If it is from the Archives and from the Government that ought to be an end of it. 30

MR. JONES: At the moment I would not like to say positively.

HIS LORDSHIP: Is it voluminous?

MR. TILLEY: No.

HIS LORDSHIP: You might let the matter stand, and this afternoon Mr. Jones should be in a position to state what stand he takes.

MR. JONES: There may be some memoranda made by some irresponsible person and put on a file there.

HIS LORDSHIP: That would not be correspondence.

MR. TILLEY: Anything that seems to be from a proper source.

RECORD

DANIEL ADDISON MACNEILL, sworn. Examined by MR. JONES:

*In the
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Q.—Where do you reside, Mr. MacNeill? A.—Moncton, New Brunswick.

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Q.—What is your occupation? A.—Supervisor of Plant for the Canadian National Telegraphs.

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HIS LORDSHIP: Since when? A.—June 1st, 1917.

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10 Q.—And before that were you connected with the railway? A.—Not that railway, the Grand Trunk.

MR. JONES: How many years were you connected with the Grand Trunk? A.—About four years.

Q.—From your knowledge of the railway property—and I suppose you have been over the line that is in question here, have you? A.—Yes, sir.

Q.—I want to ask you as to the location of some poles, that are understood to be on what we call the Intercolonial right-of-way, owned by the Canadian Pacific Railway Company. Have you made an examination of those? A.—Yes.

20 HIS LORDSHIP: Have you shown this witness Exhibit No. 1?

MR. JONES: I am going to. I was going to go over our Information in detail, the steps are in the Information. Then I will take up the plan.

Q.—Now will you speak about the right-of-way of the Crown between Coldbrook and Sussex? Have the defendant company any poles on that section? A.—Yes, sir.

Q.—Do you know how many poles, have you had that made up? A.—We have an account that is made up by our section force.

Q.—Under your direction? A.—Yes, sir.

30 Q.—Will you tell us whether they have poles on that, and if so how many? A.—Between Coldbrook and Moncton approximately 3,009.

Q.—That is on the right-of-way of the Government Railway? A.—Yes, sir.

Q.—Then how many, if any, are outside of the right-of-way, as part of the telegraph line of the defendant company? A.—90 projecting.

Q.—90 poles projecting over but placed outside? A.—They are outside of the fence, but the cross-arm is hanging over on Government property.

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Q.—90 poles placed outside the fence, that is the fence of the right-of-way? A.—Yes, sir.

Q.—And they all project? A.—Those 90, yes.

Q.—Are there any others outside of the right-of-way? A.—Yes, we show 249 entirely off the right-of-way.

Q.—What is your next division or section? A.—Springhill Sub-division.

Q.—Between what points does that extend? A.—Mileage 123.8 to Truro.

HIS LORDSHIP: He is not taking your description in the informa- 10
tion. Does that mean between Moncton and Truro?

MR. JONES: Moncton and Truro, my lord.

Q.—What is the number of poles there? A.—On the right-of-way, 4,374.

Q.—And off the right-of-way? A.—599, and then there is project-
ing, 705.

HIS LORDSHIP: Those 705 are separate from the 599? A.—Yes,
sir.

HIS LORDSHIP: I should have thought it was not necessary to go
into that detail, you should both know. 20

MR. TILLEY: I am suggesting to Mr. Jones that it is not necessary
to give those details.

MR. JONES: I am quite willing, but with the attitude my friend
took in regard to admissions I wanted to go very carefully.

MR. TILLEY: The witness can state in a few words that there is a
telegraph line there and it is largely on their right-of-way, almost en-
tirely.

MR. JONES: I thought that might be objectionable. It will not
take long, my lord.

HIS LORDSHIP: Well, we are down to Truro now. From Truro 30
where do you go?

MR. JONES: Truro to Elmsdale, then to Windsor Junction and
Fairview.

Q.—Your division is clear to Fairview, that is near Halifax, practi-
cally Halifax? A.—Yes, sir.

Q.—Have you the number there? A.—2774 on the railway, 220 off
the railway.

Q.—Any projecting? A.—None projecting there.

Q.—Then from Truro what is your next division going east? A.—
Mulgrave Subdivision.

Q.—How many poles? A.—119.

HIS LORDSHIP: I saw by the plan that they do not go to Mulgrave. A.—No, but mile 119.

Q.—That means it does not follow the railway for quite a part, because the railway goes to Mulgrave and crosses from Mulgrave to Point Tupper. A.—It leaves the railway at mile 119 on the Mulgrave Subdivision.

10 MR. JONES: How far—? A.—About 2½ miles from Mulgrave.

Q.—How far is it from Mulgrave to the place where the line stops? A.—Approximately 2½ miles.

HIS LORDSHIP: Practically Truro to the Strait? A.—Yes.

MR. JONES: And that is how many miles? A.—That is the pole line?

Q.—Yes. A.—119 miles.

HIS LORDSHIP: How many poles in that section? A.—On the railway, 4498.

Q.—How many off? A.—42.

20 Q.—How many overhanging or projecting? A.—18.

Q.—Then how do you cross the Strait? A.—By cable.

Q.—Who owns the cable? A.—The C. P. R. have their own cable there.

Q.—Then we jump to Point Tupper. A.—Port Hastings, and follow the Inverness Railway from Port Hastings to Hawkesbury Head.

Q.—Iona?

MR. JONES: It is marked Inverness Junction on your Lordship's plan.

30 HIS LORDSHIP: Opposite Mulgrave you have Point Tupper, and just a little to your left is Hastings.

MR. JONES: Yes, practically the same.

HIS LORDSHIP: That is only up to where? From Hastings to where?

WITNESS: From Hastings to Hawkesbury Head.

MR. RAND: That is not on the railway. It regains the railway at Inverness Junction and goes from there to Sydney.

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HIS LORDSHIP: Hastings and Inverness Junction, is not that the same practically?

WITNESS: No, Hastings is four miles from Inverness Junction on the Inverness Railway.

MR. RAND: I think the actual point on the Government railway where this telegraph line regains it is Inverness Junction.

MR. FLINTOFT: That is what the map indicates.

HIS LORDSHIP: Then it is not Hastings you start from?

WITNESS: No, at a point west of Hastings.

Q.—Which is Inverness Junction? A.—Inverness Junction. 10

MR. JONES: And you run where? A.—To Sydney.

Q.—How many there? A.—3002 on the railway, 4 projecting, 4 off the right-of-way.

Q.—And the rest of it, is it on the railway as operated now? A.—No, there is a section there that is abandoned, there is 235 there not shown.

Q.—Abandoned by the railway people? A.—Yes.

HIS LORDSHIP: But you are reckoning it outside of that? A.—Yes.

MR. JONES: The poles are there on the old right-of-way, is that 20 it? A.—Yes.

Q.—How many? A.—235.

HIS LORDSHIP: Do you quarrell about that?

MR. JONES: They are on the Government land, the Government still owns it.

HIS LORDSHIP: Then he should add those.

MR. JONES: I think so.

HIS LORDSHIP: What is the number of those discarded poles? A.—235.

MR. TILLEY: He is not saying discarded poles, but the poles were 30 there at the time this was used as a railway. They discarded it as railway property, but the poles remain on the old right-of-way.

HIS LORDSHIP: The paintiff owns the land and you are on his land.

MR. TILLEY: Well it is not discarded poles.

HIS LORDSHIP: No, it is the discarded right of way, which still remains in the hands of the Crown, and upon which your old poles are.

MR. TILLEY: Old poles?

HIS LORDSHIP: Well, your poles are.

MR. TILLEY: Yes.

HIS LORDSHIP: Was it discarded long ago?

MR. TILLEY: They are good poles.

WITNESS: I think it was 1914, around there.

MR. JONES: Do you know whether or not the defendant company is carrying on a telegraph business in respect of that telegraph line? A.—Yes, in certain sections they have offices.

10 Q.—That is the defendant company, the Canadian Pacific? A.—Yes.

Q.—That would apply, would it, to the whole line that you have mentioned between Coldbrook and the other points? A.—Yes.

Q.—And where does the cable station reach Nova Scotia? A.—Canso.

HIS LORDSHIP: What cable do you mean?

MR. JONES: The Atlantic cable.

Q.—Is that connected with this Canadian Pacific line that you refer to? A.—Yes.

20 Q.—And their cable business then goes over it? A.—Yes.

Q. This line of telegraph, speaking generally in reference to the poles that are within the right-of-way fences, where are they placed with reference to the fence or the track? A.—You mean on the right-of-way?

Q.—Yes. A.—I think they average about from 3 to 10 or 15 feet.

HIS LORDSHIP: Is your right-of-way 100 feet there? A.—Supposed to be 100 feet, except sections where it is more, like stations.

Q.—And some less? A.—No, not less than 100, it is supposed to be 100 feet all along.

30 Q.—Are they all on one side? A.—Yes, they leave Coldbrook on the righthand side and continue through that way, only at certain sections they cross over where there is a creek perhaps, or handy to the river.

Q.—And where are the Government poles? A.—The Government Railway have no pole line. The Western Union have, it is on the opposite side, and they have one too on the same side.

MR. TILLEY: The same side as which? A.—As the C. P. R. between Moncton and Oxford Junction.

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HIS LORDSHIP: Did the C. N. R. have poles all through? A.—No, not in that section.

Q.—Are they using the C. P. R.? A.—No, Western Union.

Q.—Has the Western Union its poles on the right-of-way of the railway? A.—Yes, according to agreement.

MR. JONES: As I understand you the defendant company maintains its pole line substantially on the railway through the whole distance? A.—On the right hand side going east, yes.

Q.—From Coldbrook to Fairview near Halifax and from Truro to Sydney? A.—Yes. 10

Q.—Except in certain places where it crosses over for a short distance and follows the lefthand side? A.—Yes.

Q.—Then the Western Union have a line from Saint John to Moncton on the lefthand side of the track going east? A.—Yes, sir.

Q.—Then from Moncton east I think you intimated there were three lines? A.—Yes, three lines.

Q.—The defendant company has one line on the right running to Truro, and there are two lines on the left hand side of the track? A.—No, one on the left and two on the right.

Q.—One additional one on the right? A.—Yes. 20

Q.—Running how far? A.—Moncton to Oxford.

Q.—How far is that, roughly speaking? A.—About 75 miles I think.

Q.—From Moncton? A.—From Moncton.

Q.—And who owns that, whose line is it? A.—It is known to me as the Western Union pole line.

Q.—Well during that distance they have a line on either side of the track? A.—Yes, sir.

Q.—Is that or is it not the only place where there are three lines? A.—Yes, that is the only place.

Q.—And I think you started to tell us just where the defendant company's line is located with reference to the railway line and the fence? A.—Well about 3 to 15 feet, it averages, from the line fence. 30

Q.—The cross-arms are about how long, are they all alike? A.—No, they vary in length, 6 pins is usually known as 6 feet, and 8 as eight, bored for pins to carry the wires.

Q.—Then some of the arms are 6 feet long and some 8 feet long? A.—Yes.

Q.—How many wires,—have you a list of the wires that are carried on each division? A.—Yes.

Q.—I would like to have those. A.—From Coldbrook to Sussex there are 11 wires. That applies to Moncton too, that is Moncton to Sussex 11, Moncton to Truro 11, and Truro to Windsor Junction 13, Windsor Junction to Halifax 15, Truro to New Glasgow 8, New Glasgow to Avondale 8, Point Tupper to Sydney 4, Avondale to Heatherington 8. Then they have a loop from Stellarton to Pictou, 2 wires.

MR. FLINTOFT: That is part of the line from New Glasgow east, that is on the main line New Glasgow east? A.—Yes.

Q.—And you have 8 from New Glasgow to Avondale, and what is it 10 from Avondale? A.—Avondale to Heatherington 8.

Q.—And from Heatherington to the Strait? A.—4, shown here as 4.

Q.—That is on your statement? A.—Yes, sir.

Q.—From the Strait or Inverness it was called on your map? A.—
Yes.

Q.—From Inverness? A.—Inverness to Sydney 4, and from Stellarton to Pictou there is a loop, two wires.

MR. JONES: You are speaking now of the wires on the defendant company's poles? A.—Yes.

Q.—Do you personally know, were you there, when any of the poles 20 of the defendant company were placed upon the right-of-way? A.—Only in the section between Moncton and Truro.

Q.—You were there then? A.—Yes, in 1917.

Q.—What did you say, Moncton to Truro? A.—Sussex to Moncton.

Q.—And you say that was in 1917? A.—Yes, sir.

Q.—Sussex to Moncton is how far? A.—That would be 45.56 miles.

Q.—Who did that? A.—The C. P. R.

Q.—They put those poles on while you were connected with the Road so that you knew about it? A.—Yes.

HIS LORDSHIP: That was after the 1st of June, 1917? A.—Yes.

30 MR. JONES: That was after you went there? A.—Yes.

Q.—Did they put all of their line on in that section? A.—Yes.

Q.—Did not leave any off? A.—No.

Q.—And that is the line, or part of the line, to which you referred when you spoke about the number of poles and so on? A.—Yes.

Q.—When you first went there what did you find as to their poles that were on the Government property? A.—They were on at the points as mentioned, from Coldbrook to Sussex, and Moncton to Truro, and Truro to Fairview, and Truro to Sydney.

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—
*In the
Exchequer Court
of Canada*

—
No. 3

Plaintiff's
Evidence.

—
Daniel
Addison
MacNeill
Examination-
in-chief

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Q.—Substantially as they are now, with the exception of the Sussex-Moncton section? A.—Yes.

Q.—The defendant company had its poles then when you went there in 1917 on all the other sections of the road substantially as they are today? A.—Yes, sir.

Q.—And substantially according to the figures you have given as to the number of poles? A.—Yes.

Q.—Have you seen this table which has been introduced in evidence as Exhibit No. 3, have you had occasion to examine that? A.—No.

HIS LORDSHIP: Have you seen a document like that, with the 10 statements therein set forth? A.—Yes.

Q.—Did you analyze it? A.—Yes.

Q.—Do you agree with it? A.—Pretty much, they vary a little with ours.

MR. JONES: In what respect does it vary? A.—As to the number of poles on and off the right-of-way, our checks do not just correspond.

HIS LORDSHIP: Materially? A.—Yes.

MR. JONES: Do they differ in large measure or small items? A.—Very small.

Q.—According to that Exhibit it appears that the line of the defendant was built on the I. C. R. at certain dates, and there are no memoranda on it with reference to any poles off the right-of-way. Do you say that in some of those sections the mileage may be correct but there are some poles still off the right-of-way? A.—Yes, sir.

Q.—How many poles are still off the right-of-way? Those you have given us in the statement made? A.—Yes.

Q.—In other respects would you or would you not agree, as far as your knowledge extends, with this statement, that the lines were built as stated herein as far as you know? A.—Yes.

HIS LORDSHIP: Well he knows only from 1917.

30

MR. JONES: That is all.

Q.—You differ then only with respect to the question as to whether or not the different sections are entirely covered? A.—That is all.

MR. JONES: That is to say they are covered, but there are a few poles off the right-of-way, whereas this statement represents that they are all on, that is the only difference. The way this statement reads it is substantially on. The statement simply says Rebuilt and moved on the I. C. R. in certain years, it does not give the number of poles but it gives the mileage. There is no objection, except that I want to show that the

witness agrees, only he finds that all the poles are not on in that mileage, some here and there are off.

Q.—Amounting on the whole to—? A.—1116 poles.

Q.—In the whole system that are not on? A.—Not on.

Q.—When was your examination made by which you got those figures? A.—1920, around 1920.

Q.—Have they since that time to your knowledge, or since 1917, placed any addition poles on the right-of-way? A.—In sections that they rebuilt they increased the number per mile in various places.

10 HIS LORDSHIP: Would they have renewed the poles and put them at different places than they were before? A.—They renew the poles and add additional ones. The average would be 35 around 1920, in some sections there are 44.

MR. JONES: Does that or does it not involve digging new holes all through? A.—Yes.

MR. TILLEY: That is rather leading, and I do not think it is accurate.

WITNESS: Well where it was necessary to reconstruct.

MR. TILLEY: Where they needed a hole it was dug.

20 MR. JONES: They would necessarily have to dig new holes if they put more poles to the mile? A.—Yes.

Q.—Then do I understand you to mean that they moved some of the poles that were off the right-of-way in 1920 when you made up your statement, on to the right-of-way since that time? A.—In various places they have.

Q.—Do you know how many? A.—No, I have not got it.

Q.—And in addition to that I understood you to say that at these places where they had their line in 1920 they have repaired it and renewed it and sometimes added more poles? A.—Yes.

30 Q.—Then do you know, have you any statement as to the number of poles they had on the line when this action commenced, which was 1926? (My copy has not the date.)

HIS LORDSHIP: The information was filed on the 15th September.

MR. JONES: You have not the list? A.—I have not the list.

Q.—So that you do not know, except that some of the poles which in 1920 you said were outside have been put in? A.—Yes.

HIS LORDSHIP: Have you the total of the poles? A.—I have an approximate total here.

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Q.—Just by way of recapitulation? A.—From the figures we compiled, 15,313 on the right-of-way, projecting 815, total off the right-of-way 1,116.

MR. JONES: I am not sure, and it may possibly be material, whether from your figures we can distinguish between the number of poles east of New Glasgow and west of New Glasgow. A.—No, this is the total.

HIS LORDSHIP: What is your object in that?

MR. JONES: There may be something arise in the case as to that.

Q.—Can you divide that or average it? A.—You want the total number of poles on the right-of-way from—? 10

Q.—From New Glasgow east? A.—I cannot give that.

Q.—Would the line from New Glasgow east average up with the other parts of the road as to the number of poles, or would it be less or more? A.—It would average about 35 to the mile.

Q.—Then we can get that. What is the mileage from New Glasgow to Sydney? A.—New Glasgow to mile 119, where they leave the right-of-way to go across the Strait is 76.23.

Q.—And how much is it from there to Sydney? A.—To Sydney would be 100.35.

Q.—What do you make the total? A.—176.58. That would be In- 20
verness Junction to Sydney.

MR. FLINTOFT: That is the proper point to speak of? A.—Yes.

MR. JONES: Did you make this blueprint showing the number of wires on the poles in the different sections, is that what it shows? A.—Yes.

EXHIBIT No. 4: Blueprint showing number of wires on poles in different sections.

MR. JONES: That just summarizes what he has said.

30

CROSS-EXAMINED BY MR. TILLEY:—

Q.—Mr. MacNeill, I understand you are connected with the Telegraph Company. Which Telegraph Company? A.—Canadian National Telegraph Company.

Q.—You are not connected with the Intercolonial Railway as a railway? A.—Yes, my duties are on that railroad.

Q.—But it is in connection with the Telegraph Company? A.—Yes, sir.

Q.—Does it operate there? A.—The Canadian National Telegraph?

Q.—Yes. A.—Yes, in the general offices of the railway.

Q.—That is the Intercolonial Railway? A.—Yes.

Q.—Has it a telegraph system? A.—Yes.

Q.—Where is it located? A.—From Moncton north on the Intercolonial Railroad.

Q.—But not on the territory you have been referring to in your evidence? A.—Just for their railway service, they have wires on the Western Union poles.

10 Q.—So that the poles you have referred to as belonging to the Western Union carry wires for railway service? A.—For railway service.

Q.—And you have to do with those wires, have you? A.—Yes, I have supervision over them.

Q.—Where do they extend from and to? A.—They start at Saint John and go through to Halifax, and Sydney and Pictou, all points on the railroad.

Q.—On the poles that are on the north side, or the left hand side going east? A.—Yes, north and south, we have wires on each side.

20 Q.—Some places on each side? A.—Yes, on the Western Union pole lines.

Q.—Wherever the Western Union has a pole line you have wires on it? A.—For our service, yes.

Q.—And you knew nothing about the conditions prior to 1917? A.—No, only what I picked up locally.

Q.—You mean by hearsay, information? A.—Information.

Q.—But you were not there yourself in that district? A.—Just what do you mean?

Q.—You were not in that district? A.—Before that, no, previous to 1917 I was not there.

30 HIS LORDSHIP: But your territory now is over all these places that you have mentioned? A.—Yes.

MR. TILLEY: Well merely as to the railway service? A.—The railway service wires, yes. You are speaking of our wires on the Western Union poles?

Q.—Yes, you have no commercial service in that district? A.—No.

HIS LORDSHIP: This is the Canadian National Telegraph?

MR. TILLEY: The Canadian National Telegraph.

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Q.—And as to the area in question here, all you have to do with is certain wires on Western Union poles that are used for the railway work?
 A.—And our own line north.

Q.—But that is as far as we are concerned with here? A.—Yes.

Q.—Your own line north is a different matter. A.—Yes.

Q.—But as to this territory you have certain wires for the use of the railway on Western Union poles? A.—Yes.

Q.—You carry on no commercial business? A.—No, not to my knowledge.

Q.—That is you do not in this district transmit messages for the public? A.—No.

Q.—Then you have also said that prior to 1917 you were not personally acquainted with the situation.

HIS LORDSHIP: Well should that be taken literally? I suppose you have acquainted yourself with the records of your Company, whether before your time or not? A.—Well only from what correspondence I would get.

Q.—You have not got any records in your office of what took place in the past? A.—No.

MR. TILLEY: The lines you are referring to were built along the right-of-way prior to 1917 except in the section from Sussex to Moncton? A.—Yes, sir.

Q.—And that was put on the right-of-way in 1917? A.—Yes.

Q.—Prior to putting that section on the right-of-way it was built on land immediately adjacent to the right-of-way? A.—Yes.

Q.—So that there was at that point existing a telegraph line in operation, and it was moved from outside the right-of-way to inside the right-of-way? A.—Yes.

Q.—By some arrangement that you are not familiar with? A.—No.

Q.—That is the fact? A.—I assumed that when they were on the other sections they must have the necessary authority, I didn't know anything about it.

HIS LORDSHIP: Do you know of your personal knowledge that at one time they were outside the right-of-way? A.—Yes.

MR. TILLEY: Oh yes, you saw them move them in? A.—Yes.

MR. FLINTOFF: That one section.

HIS LORDSHIP: Only from 1917.

MR. TILLEY: Yes. That is to say at that time the line in that section was being placed in the same position as the lines in the other section? A.—Yes.

HIS LORDSHIP: Am I to understand that before 1917 from Sussex to Moncton there was a line but outside the right-of-way?

MR. TILLEY: Yes, just off the right-of-way.

WITNESS: Paralleling, yes.

Q.—And you found that prior to that other portions of this line had been off the right-of-way and had been moved on? A.—Yes.

10 Q.—And you assumed that whatever authority was given for that would apply to the Sussex to Moncton section? A.—Yes.

Q.—And you let it go at that? A.—Yes.

Q.—And you saw the work being done from day to day? A.—Yes.

Q.—And I think facilitated the work as much as you could? A.—Well I was not directly connected with it.

Q.—But you gave such assistance as you reasonably could? A.—Anything we could do I suppose.

Q.—Now since 1917 anything that has been done has been in the way of such alterations and repairs as are necessary with any telegraph
20 line? A.—Yes, sir.

Q.—When you say they have in some places put a few more poles it simply means—? A.—Maintenance.

Q.— - - owing to the location or the difficulties of the area it was thought better to give better support to the wires? A.—Yes.

Q.—And it has been done reasonably and prudently? A.—To my knowledge.

Q.—If there is the right to have a line there what they have done has been reasonable? A.—Maintaining it.

Q.—I do not know whether I quite understood your evidence, but
30 I gathered from what you said that where the line for a space departs from the right-of-way it would be because of a local condition? A.—Yes, well through stations where it was necessary for them to go outside the right-of-way.

HIS LORDSHIP: Was it necessary? A.—Yes, we have had to have them move their line on account of siding extensions.

MR. TILLEY: Well, let us leave that for the moment, I just want a general picture, because we are not concerned with one or two poles. The general situation was that as they put the line on the right-of-way when it was placed there, if they departed from the right-of-way in the ordin-
40 ary case it would be because of a physical difficulty? A.—Yes.

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Q.—Or something that made it prudent to get off the right-of-way?
 A.—Yes, to my knowledge.

Q.—Because of the contour of the land or something of that kind?
 A.—Yes.

HIS LORDSHIP: And also, he says, on account of interference with the stations.

MR. TILLEY: Well, I am coming to that. I do not think the witness quite meant that.

HIS LORDSHIP: He said it.

MR. TILLEY: Now in addition to that have you from time to time 10 asked them to change the location of some of their poles? A.—Only in the case where it was necessary to raise the wires over buildings or over sidings.

Q.—That is just as you, if you had your line of telegraph poles there, would alter them because you wanted to put some building at a certain place or alter the arrangement of things? A.—Yes.

Q.—In the same way you would go to the C. P. R. and say, We would like you to put higher poles, or change the location of poles. A.—Yes, we have had to do that.

HIS LORDSHIP: You did do that? A.—Yes, and they would do it. 20

Q.—They would comply? A.—Yes, we would take it up with the superintendent at Saint John, Mr. Fraser, and he would act.

MR. TILLEY: And in that way, whatever it may be worth, you have been acting in harmony in regard to these matters? A.—Yes, we have always agreed on them.

Q.—And there has never been any condition where the defendant company would say, Now that pole is there and it has got to stay in that particular spot? A.—No, they have never done that.

Q.—It has been maintaining a line along your right-of-way, and maintaining it just as a railway company itself would maintain if it were 30 operating a railway there? A.—Along the same lines as we would maintain it ourselves.

Q.—When you say that you think from information you have received,—because I do not understand that you are professing to give these figures from your own personal observation. A.—No.

Q.—You have caused inquiry to be made, and this is the result, that is what you mean, is it? A.—Yes.

Q.—I am not complaining of that, we cannot ask you to go out and count the poles yourself. But when you suggest that certain poles have

been taken off the right-of-way and put on the right-of-way is it again anything more than the reasonable maintenance of the line? A.—Well it would—

Q.—Have you anything particular in mind where that was done?
A.—No.

Q.—I mean since 1920? A.—No, only noticing probably where the pole line diverted from the railway that they might straighten it out at a later time when they were rebuilding or doing some maintenance.

Q.—It was reasonable maintenance work? A.—Yes.

10 Q.—You are not putting it forward as anything that is material to what we have to do with here? A.—No.

Q.—It is the sort of incidental thing that happens in maintaining a line.

HIS LORDSHIP: No question about the projecting I suppose?

MR. TILLEY: Oh, Mr. MacNeill, I suppose what we are to understand from the projecting poles is that certain poles were put outside—?
A.—Outside the fence, and the cross-arm hangs over.

Q.—You are only stating that as a physical fact? A.—The pole outside the railway property, but the cross-arm overhangs on the Govern-
20 ment property.

Q.—Well you are giving that as a statement of fact, I do not suppose anything turns on that in particular. After all the question is the line of poles.

MR. RAND: No, it just shows what the condition is.

MR. TILLEY: I suppose that is because of the contour of the land or the way in which the curves occur.

HIS LORDSHIP: If the Crown is entitled to the relief asked they would have an Order, so you might as well clear that up.

MR. TILLEY: Well you mean that at certain points where in pru-
30 dent construction of the line the pole itself is planted outside, the cross-arm may extend over? A.—Yes.

MR. TILLEY: The action is not brought to saw off some of these cross-arms.

Q.—What do you take to be the right-of-way in your computation, the fence? A.—The fence. They are supposed to my knowledge to have 100 feet.

Q.—Well what is this, measured 50 feet from the centre line of the railway to the fence? A.—To the fence.

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Q.—Well supposing it is 40 feet from the centre line. I see from some of the correspondence it was claimed at one time that the right-of-way went beyond the fence. You took the fence to be the boundary?
 A.—To be the boundary, yes.

RE-EXAMINED BY MR. JONES:

Q.—This Canadian National Telegraph that you speak about, as using two wires on the poles of the Western Union—? A.—Using two wires?

Q.—I mean having a wire. A.—East of Moncton we have some wires 10 of our own on the right hand side of the line and on the left.

Q.—How long have you referred to that as the Canadian National Telegraphs?

MR. TILLEY: I object to my friend asking how long he has referred to it, in point of time. What the witness said was that they regarded them as the Western Union poles, but certain wires are used for railway service.

MR. JONES: That is what I want to clear up, what they call them. A.—Railway service wire utilized for despatching.

Q.—I quite understand that there is no commercial business done 20 over them? A.—No.

Q.—When you went there in 1917 were they there then? A.—Yes. We have added several wires since.

Q.—And at that time it was the Government railway? A.—Yes, the Canadian Government Telegraphs.

Q.—Have you anything to do with any other line of telegraph except your own wires? A.—We have the branch lines that I have charge of, but I have nothing to do with any other work carried on by the Western Union, only supervise as to the cost.

Q.—Have you anything to do with this C. P. R. line at all officially? 30
 A.—No.

Q.—It is not part of your duty to look after it? A.—No, sir.

MR. TILLEY: That is new matter.

MR. JONES: It may be new.

Q.—Then there would be no authority in you to say anything to them—

MR. TILLEY: I object.

HIS LORDSHIP: I will give you leave. He should have asked that in chief.

MR. TILLEY: It is not only new, but novel, in the way my friend is putting it, it is very leading.

MR. JONES: Well had you or had you not any authority to give them any directions or interfere at all with them in any way, anything to say to them about it? A.—The authority I would get would be from the Division Engineer or the Superintendent of the division concerned.

HIS LORDSHIP: Who is your superior officer? A.—Mr. Kenward.

Q.—What is his official title? A.—General Plant Superintendent.

10 MR. JONES: Where are his headquarters? A.—Toronto.

Q.—Now I will ask you whether in the ordinary course of your duties you would have anything to do with the C. P. R. line? A.—No.

MR. TILLEY: May I ask a question or two on that?

HIS LORDSHIP: Yes.

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RE-CROSS-EXAMINED BY MR. TILLEY:—

Q.—As I gather, one of the points of having the telegraph line on the railway is to enable it to be watched from the railway? A.—That is the C. P. R. pole line?

20 Q.—Yes. A.—Yes, sir.

Q.—To enable it to be watched from the railway? A.—Yes.

Q.—For breaks or difficulties? A.—Yes, they can have supervision from the rear end of the train.

Q.—And see it in an easy way. Instead of having the poles just off the line where you might have obstructions between the line and the railway, it is put inside and then it can be watched from the railway? A.—From the rear of the train or wherever they ride.

HIS LORDSHIP: From the railway train?

30 MR. TILLEY: From the railway train, yes. And that is a convenience? A.—Yes.

Q.—And from time to time if anything was found to be wrong you would notify them, or your staff? A.—The C. P. R.?

Q.—Yes, let them know about it. A.—Of course I would not particularly specialize in watching the C. P. R. line, I would have my eye on our own.

Q.—And on theirs too? A.—If there was anything wrong I might tell the local fellow.

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Q.—If there was anything wrong you would never let it remain wrong if you knew of it? A.—If I knew there was anything wrong.

Q.—So that whether there was any legal duty upon your part or not, as a matter of fact you did keep them advised about the condition of their line? A.—Several times I have.

Q.—And then you say you knew nothing about it, but I think you said to me that this line that you saw being put in was just being brought into harmony with the rest? A.—To conform with the other line that was on the railway.

Q.—And having regard to the way the thing was conducted it seemed 10 to be something that was authorized—

MR. JONES: Oh—

MR. RAND: The fact is there—

MR. TILLEY: Is it proper that two counsel should both by some means suggest to the witness to be on his guard when I ask a question like that?

MR. JONES: I must beg my friend's pardon, I had no intention of suggesting that it was not proper.

MR. TILLEY: Now, Mr. MacNeill, to be perfectly frank, as far as you are concerned, never mind what it leads to, as far as you are concerned in the conduct of your work, that line was brought in to conform with the rest of the— 20

HIS LORDSHIP: What do you mean by "that line"?

MR. TILLEY: The part from Sussex to Moncton was brought in to be in harmony with the rest, and as you understood, by some authority? A.—I assumed, yes.

(At 4.20 p.m. January 15th, adjourned to 10.30 a.m. January 16th, 1929.)

Wednesday, January 16th, 1929, 10.30 a.m.

HIS LORDSHIP: I was thinking of your Amendment of yesterday. It may be it would cover, but I jotted down here a few points.

First there would be a declaration that the lands upon which the poles of the defendant are erected are and have been the property of the Crown before the action of the defendant complained of in this action, that you own the land. You own the land today, and you held it before the C. P. R. came. What is the date of incorporation of the C. P. R.?

MR FLINTOFT: 1881.

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HIS LORDSHIP: Then what would flow from that? That the defendants do pay the sum of blank dollars as a consideration for the right to maintain its poles on the said premises. That is what you are driving at I suppose. And failing the payment of such sum for such purpose the defendants shall be obliged to remove their poles, and failing to remove them within a certain period that you would have the right to remove them at the expense of the defendants. Is not that the whole case? I just offer that for your consideration.

10 MR. JONES: It is well worth considering. I could not just follow it completely, so as to say definitely.

HIS LORDSHIP: I have jotted it down on a slip, you can read it. It is just a suggestion I am making. It seemed to me almost preposterous that big concerns like this should be at arm's length on a question of this kind, it should be adjusted somehow.

MR. TILLEY: I think it right to say that I believe an adjustment was made at one time, and if my information is correct it was accepted by the head of the Intercolonial at the time, and I do not know why it was not carried through. At one time we were in the stage of offering a sort of mutual accommodation, now it seems to be money or get off.

20 HIS LORDSHIP: There might be some negotiations carried on by the people who had not the right to bind the parties.

MR. TILLEY: We are apparently at arm's length again, but it only shows how close we were, that we signed, and the other side I understand initialed, a contract. I would have thought that would offer a basis for putting the thing right.

HIS LORDSHIP: I do not think the pound of flesh should be exacted, the Crown should get something and the C. P. R. should pay something.

MR. TILLEY: Your Lordship has not heard the case yet.

30 HIS LORDSHIP: The brutal fact to me is this, you have your poles on the Crown's property, you cannot do that without their allowing you to do so.

MR. TILLEY: We shall show that they did allow us to do it. I hope your Lordship will not pronounce judgment before we have explained what our defence is.

HIS LORDSHIP: No, but it astonishes me that two big concerns like these do not come to some adjustment. If they stand on their rights for intrusion the usual judgment will go.

40 MR. TILLEY: No, the right judgment. I do not know what the usual judgment is.

HIS LORDSHIP: I know what the usual judgment is in an action for intrusion.

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MR. TILLEY: What, that the plaintiff is right? Let us hear the case.

HIS LORDSHIP: All right, let us go on.

MR. TILLEY: But I do say that at a certain stage the parties were that close together. Certain arrangements seemed to be satisfactory, offering certain accommodations.

HIS LORDSHIP: There should be some quid pro quo.

MR. TILLEY: Your Lordship is really anticipating without hearing the evidence. There is a lot of evidence to be given.

HIS LORDSHIP: I am taking the position that it should have been adjusted. 10

MR. TILLEY: It was adjusted at the time it was done, your Lordship has not heard the evidence at all. We are circling all around the evidence.

HIS LORDSHIP: I am just approaching it, not from a legal standpoint, but as reasonable men.

MR. JONES: My information is, my lord, that there was some arrangement suggested by some officials, but—

MR. TILLEY: By the General Manager of the Intercolonial Railway, approved by him and put into writing.

MR. JONES: But the only authority that had power to do it refused 20 to do it, that is the Crown.

MR. TILLEY: That is the first we have heard of that.

MR. JONES: Well someone refused that was superior to the General Manager.

MR. TILLEY: Other people who came in later.

MR. JONES: I may say as far as the plaintiff is concerned that the plaintiff is now and always was ready to make a reasonable settlement or adjustment of the whole matter. We have not been able to do it apparently.

HIS LORDSHIP: I will hear the case. 30

COLIN ISBESTER, sworn. Examined by MR. JONES:

Q.—Where do you reside, Mr. Isbester? A.—Ottawa.

Q.—What is your occupation? A.—Assistant Right-of-Way Agent, Department of Railways and Canals.

Q.—Of the Dominion of Canada? A.—Yes.

Q.—How long have you been in that position? A.—I have been 21 years altogether with the Department.

Q.—How long in your present position? A.—Ten years.

Q.—During that period have you a knowledge of the Intercolonial Railway? A.—Yes.

Q.—Do you know by whom it was being operated during that period? A.—Yes, by the Dominion Government.

Q.—And by what name was it known or called? A.—The Intercolonial Railway.

10 Q.—I refer to Exhibit No. 1. On this plan there is a red line. You might look at it and state if you know what it represents. A.—A portion of the Intercolonial Railway.

Q.—This red line marked on plan Exhibit No. 1 represents a portion of the Intercolonial Railway? A.—Yes.

Q.—Where is the other portion if there is such? A.—Running north.

Q.—From where? A.—From Truro and Moncton.

Q.—Well Truro is shown on here. A.—Truro is shown.

Q.—Moncton is shown? A.—It runs north from Moncton right up to Quebec.

20 Q.—That also was known as the Intercolonial Railway, was it? A.—Yes.

Q.—And operated by the Dominion Government? A.—Operated by the Dominion Government.

Q.—Do you know by what names the constituent parts of the Intercolonial Railway were known? A.—That is the old charter names?

Q.—Yes. A.—No, I could not say offhand.

Q.—Is there or is there not any other railway line of any kind between these different points marked on the red line? A.—No there is not.

Q.—That is the only railway there is? A.—That is the only railway.

30

MR. JONES: I offer an extract from a book entitled General Report of the Minister of Public Works of Canada for the year ending 30th June, 1873, printed by the King's Printer. The extract is on page 45.

(Shown to Mr. Tilley).

MR. TILLEY: I do not know for what purpose my friend seeks to put it in.

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HIS LORDSHIP: At that time was there not a Commission administering the I. C. R.?

MR. RAND: No, my lord, it was a General Manager under the Department of Public Works. In 1872 there was a consolidation of the New Brunswick and Nova Scotia Railways under the name of the Intercolonial, that is when the name was first given. There was a consolidated management, where prior to that time there was individual management in the two Provinces.

HIS LORDSHIP: You will not admit that the right-of-way belongs to the Crown?

MR. TILLEY: That is not what my friend is proving. 10

MR. JONES: That is already admitted, my learned friend admitted that the poles were on the Crown property. We assume that is sufficient for that purpose.

MR. TILLEY: In a certain discussion with His Lordship—

HIS LORDSHIP: That is not evidence.

MR. TILLEY: I do not know why my friend cannot prove these things instead of reaching for points that way.

MR. JONES: It is such a plain proposition.

MR. TILLEY: My friend is not putting this in now for proof of ownership. 20

HIS LORDSHIP: What is the idea?

MR. TILLEY: I do not know what the idea is, and I submit my friend cannot prove a fact by putting in a blue book.

HIS LORDSHIP: A blue book printed by the King's Printer, under the Evidence Act may be put in, but in every case you require the best evidence.

MR. TILLEY: And it must be relevant.

MR. JONES: This is printed by the King's Printer, and it is relevant because it has reference to the Intercolonial Railway.

(Extract read.) 30

MR. TILLEY: If anything turns on the Order-in-Council we can have it. I would not object to the Order-in-Council if it is material to the issue.

MR. RAND: Matters that have passed years ago can only be proved by reference to ancient documents of this sort. Here is a public document—

HIS LORDSHIP: But it is the result of legislation, surely you do not want me to accept the passing of an Act of Parliament because some-

one tells me there is an Act and someone tells me there is an Order-in-Council.

As for the Act of the European Railway, I know of it, I had to deal with it, but do not say that I have to be satisfied with the statement that there is an Order-in-Council passed.

MR. RAND: This is the report of the Minister of Public Works to show that the Intercolonial Railway between Saint John and Halifax was in operation in 1873.

HIS LORDSHIP: What has that to do with this case?

10 MR. RAND: It seems to me to be relevant in this way, it shows the possession by the Government of this right-of-way in 1873.

HIS LORDSHIP: We are not dealing with 1873, the defendant was not in existence then.

MR. RAND: Precisely. And this shows that the Government was in possession of this land prior to the existence of the defendant, therefore when the defendant came on it it came on against the possession of the plaintiff.

HIS LORDSHIP: Surely that is not your title.

20 MR. RAND: It surely is not going to be suggested that we have got to bring every title of the Intercolonial Railway to this Court. Possession raises the presumption of title until it is rebutted.

HIS LORDSHIP: Mr. Tilley, it will not hurt you to admit that the Crown owns that right-of-way.

MR. TILLEY: I did not know what my friend was attempting to put in this particular evidence for. If the question is whether prior to 1881 or 1885, or whatever date is material for our present purpose, the Intercolonial Railway was in operation, I admit that.

MR. JONES: That admission I suppose goes as an admission.

MR. TILLEY: But it is just as I stated.

30 HIS LORDSHIP: Was in operation before 1881?

MR. TILLEY: Before any date my friend likes to mention that is material.

MR. JONES: Well before 1875.

MR. TILLEY: No, do not take me back that way. Before 1885, will that do?

MR. JONES: Yes.

MR. TILLEY: Before 1885 the Intercolonial was in operation.

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MR. JONES: I may say in reference to that matter of the title, as I understand the practice of the Court, which I suppose conforms largely to the ordinary practice under the Judicature Act, the title is not denied. A general denial is not sufficient under our practice to raise that question.

HIS LORDSHIP: Neither in this Court.

MR. JONES: For that reason, supposing I bring an action of trespass on lands, the usual plea by the defendant is, The land is not the plaintiff's.

HIS LORDSHIP: Why should we go into this argument now?

MR. JONES: That is the reason why we did not expect to be confronted with the necessity of proving our title, because it is not denied under the Pleadings. We will probably have to get certain Orders-in-Council now, but the reason we did not do it is because I did not dream that the title of the Crown would be denied. If it is denied now, to be perfectly safe we would have to—

HIS LORDSHIP: Is there not some legislation, some Act of Parliament?

MR. JONES: The British North America Act, of which this Court should take judicial notice, vests the title to the Intercolonial.

HIS LORDSHIP: When did it become the Canadian National? 20

MR. RAND: It has never become the Canadian National Railways, today it is as much Crown property as ever it was. The Canadian National Railways is just the management, purely a managerial position.

HIS LORDSHIP: That is a right given by a statute.

MR. RAND: An Order-in-Council.

HIS LORDSHIP: The statute provides for it too.

MR. FLINTOFT: Provides for doing it by Order-in-Council.

HIS LORDSHIP: Gives power to do so, to hand it over to a company.

MR. FLINTOFT: 1919 was the Canadian National Railways Act, it 30 was done in 1923 effectively by Order-in-Council.

HIS LORDSHIP: That is under the power given by that statute?

MR. FLINTOFT: Yes, sir.

MR. JONES: So that, my lord, that is the reason I am arguing or suggesting now that it is not raised in the case.

HIS LORDSHIP: It is for you to take your stand one way or the other. When your case is closed I will have to find what I have before me to decide.

MR. JONES: I explained that to show why I thought it would not be raised. When it is raised we have to consider as to meeting it, whether we rely on the Pleadings ordeal with the matter as if the issue had been raised.

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HIS LORDSHIP: There is a judgment of the Supreme Court, but that judgment was reversed, I do not remember the exact language, but the meaning was that this is a National property of which every subject takes notice, that was said in respect of the C. N. R., the Privy Council reversed that judgment, but not necessarily reversing that dictum. Have
10 I a right to take judicial notice that this railway is the railway of the state?

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MR. JONES: If the question of title is properly raised I would say yes. But it is not raised in the Pleadings. However, if my learned friend objects I shall probably take the precaution,— but I thought that self-evident proposition would be admitted.

MR. TILLEY: If my friend will just state what he wants me to admit I will see if I can admit it.

HIS LORDSHIP: I do not think it will hurt your position.

MR. TILLEY: But I want to know what I am doing as I go along.
20 If my friend will just state what he wants.

HIS LORDSHIP: Really I do not see the reason why we should fight windmills. Will the defendant admit that the Government Railway right-of-way, upon which some of their poles have been erected, belongs to the Crown?

MR. TILLEY: Belonged to the Crown before 1885.

HIS LORDSHIP: Before and after.

MR. JONES: Yes, afterward continuously up to the present time.

MR. TILLEY: I will admit that it did before 1885, if that will help my friend.

30 HIS LORDSHIP: But you have done that. Would you not say the same thing as between 1885 and now?

MR. TILLEY: We say we have certain rights there now.

HIS LORDSHIP: Would you admit that, subject to—

MR. TILLEY: To our rights whatever they may be, that the property is still in the Crown.

HIS LORDSHIP: That is all you need. That will dispense with your proving that white is white.

MR. JONES: To save the necessity of going to the proof of that.

MR. TILLEY: Yes, I admit we both have rights there.

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MR. JONES: I do not admit that, but I think that admission is sufficient for our purpose; subject to the rights of the defendant whatever they may be.

MR. JONES: I offer, my lord, one of the letters found in the Archives—

HIS LORDSHIP: Do not forget that you have got that admission, there is no use going to letters now to prove that you own the right-of-way.

MR. JONES: No, my lord, this has reference to the question as to how many poles were on the line in a certain early period, affecting the question of when the main body of the poles were put on. They were put on evidently after this period.

This is a letter dated September 28th, 1889, from John F. Richardson to C. R. Hosmer.

HIS LORDSHIP: Who is Mr. Richardson?

MR. JONES: It does not say who he is but it is one of the letters between officials of the defendant company. It is one produced—

MR. TILLEY: No it is not produced from any place except your own custody.

MR. JONES: You might look at it. There were some documents 20 referred to by my friend yesterday as having been discovered recently in the Archives.

HIS LORDSHIP: If they are not pertinent you need not file them.

MR. RAND: This is not one of them, this is from the custody of the defendants, produced as an original in their possession. We have a copy of it.

MR. TILLEY: It is headed "C. P. R. Telegraph Company Construction Department." I have no objection to my friend putting it in.

EXHIBIT No. 5: Letter September 28th, 1889. John F. Richardson to C. R. Hosmer. 30

MR. JONES: The part that is material is on the second page. (Ex tract read.)

HIS LORDSHIP: But we had it yesterday from a witness that he saw the poles being erected from Sussex.

MR. JONES: This relates to the poles outside of the right-of-way. This is the original telegraph line.

MR. RAND: It just shows when this line was erected.

MR. TILLEY: I do not know what it shows except what the letter says. I would have thought it was very desirable, at as early a stage

as we could, to get at the documentary evidence in regard to these pole lines. I am asking that it should be done in that way, in order to have my friend put in the correspondence, which gives a lot of information. We get the sequence of things, it is no use taking one letter that we know nothing about.

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HIS LORDSHIP: Yesterday we had a witness who said he saw the erection between Saint John and Moncton in 1917.

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MR. TILLEY: I suggest that both sides get to work putting in in an orderly way the documents in sequence, then we can fix it up with verbal testimony as far as may be necessary. But these documents are real things about which there can be no dispute.

I am not asking that it be done so that my friend is put in a position of having put in a document and cannot argue what the effect is or say it should have no effect. Let us find out what was done, then let us argue what the effect is of what was done.

HIS LORDSHIP: I do not see the purpose of this letter.

MR. TILLEY: Standing by itself there is no purpose, but with the rest I think there will be a purpose.

MR. JONES: There are two other letters following which will explain it. The effect will be to show that while they have their line built they had only a few poles at that time on the Government right-of-way, and the reason for that is to show that the poles were substantially all put on after that date.

MR. TILLEY: When your Lordship comes to the facts of the case you will find this is not the first action with regard to the poles on the right-of-way, that there was a prior action, and after certain negotiations it was dropped. All these things have been matter of controversy from time to time.

I think your Lordship would be helped if we put in all the correspondence now in an orderly fashion, without prejudicing either side because a particular letter is put in in the bundle. Then let us argue later on what the whole thing means.

HIS LORDSHIP: Let us see what took place.

MR. TILLEY: Let us see what took place, and let us draw our conclusions from it afterward.

MR. JONES: I am quite willing to do that, with the understanding, as my friend says, that they will not be put in necessarily as a part of our case.

HIS LORDSHIP: What does that matter?

MR. TILLEY: What difference does it make so long as we are both free to argue afterward what the legal effect is.

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MR. JONES: For example, I will be free to argue that a certain official of the plaintiff railway who wrote a letter could not bind the railway?

HIS LORDSHIP: Yes, put the fact before me that such an official did this, and you say he could not bind the Crown.

MR. TILLEY: And I say he could, and we argue it.

MR. JONES: I am quite willing, I agree with that view. But I felt I did not want to put in a letter from some official of the I. C. R. as part of my case, that might be an admission that he had a right to speak. But if this correspondence is put in—

10

HIS LORDSHIP: Reserving all your rights.

MR. JONES: Reserving all my rights—

MR. TILLEY: To argue whatever we like afterward as to its effect.

HIS LORDSHIP: That you will not be bound by any of these letters?

MR. JONES: Unless the officials had authority to do that. Reserving the right to the Crown for instance to contend that a certain official had no authority.

HIS LORDSHIP: You say, even if this official wrote this letter we are not bound by it.

20

MR. JONES: Simply to show what actually did take place, this is all.

MR. TILLEY: That is what we suggested yesterday.

MR. JONES: And the only reason I hesitated was I did not want to put forward an official of the I. C. R. because it might preclude me—

HIS LORDSHIP: Put in all the correspondence, each party reserving his rights.

MR. TILLEY: Yes. Say an officer of the Intercolonial wrote a letter, merely because the letter is put in it does not mean he is putting it in as an admission.

HIS LORDSHIP: Reserving all your rights on both sides.

30

MR. TILLEY: I have stated that privately and openly as strongly as I can.

MR. JONES: It covers all the correspondence that is relevant in other respects. That is saving all just exceptions. All correspondence that passed between the parties that would be relevant in other respects, but not necessarily correspondence passing between officials of the same railroad?

MR. TILLEY: We will have to meet conditions as we come to them. If we come to any point where we say, That letter should not go in at all. His Lordship will rule, or he will receive it subject to objection.

HIS LORDSHIP: If the letter is a link in the chain—

MR. TILLEY: It will be pretty hard to rule it out.

MR. JONES: But if it is between officials of the same road and is objected to, then His Lordship can rule.

HIS LORDSHIP: As long as it throws some light on the negotiations.

10 MR. TILLEY: I do not know what my friend has in mind.

HIS LORDSHIP: This letter is an illustration, it is not between the parties.

MR. TILLEY: Now my friend wants to guard against other letters of the same kind going in. I do not know what my friend is after.

HIS LORDSHIP: Let us not fight the devil before we meet him.

MR. TILLEY: Your Lordship sees I am being asked to make broad admissions about what is going to bind my friend and what is not. I really want to get the facts before your Lordship.

20 HIS LORDSHIP: I am very anxious to get all the facts, and then I can deal with them.

MR. JONES: We had some witnesses in reference to damages.

MR. TILLEY: Should we not take the damages afterward?

MR. JONES: That could be deferred perhaps it would be better afterward.

HIS LORDSHIP: What do you mean by afterward?

MR. JONES: After we put the documents in.

HIS LORDSHIP: Oh you mean in the case?

30 MR. TILLEY: If you get His Lordship to understand what has happened, then we can talk about damages afterward. I am afraid the case is going to be very long unless we get at it.

HIS LORDSHIP: If you have all your witnesses here and you intend to do it you might as well do it and save costs.

MR. JONES: I think they are not in a particular hurry to get away, so I think we better go on with the documents, with that understanding.

I understand my friends have a copy of the documents.

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MR. TILLEY: We will have a copy to hand in just as soon as we know what letters you are putting in.

MR. JONES: That the Court could use instead of the originals.

HIS LORDSHIP: I would like to know how it came that you put your poles there.

MR. TILLEY: Yes. It was not done in the dark.

MR. JONES: If you desire to have any in that I do not mention I have them in consecutive order.

MR. JONES: The first document that I have here is the Montreal 10 agreement.

MR. TILLEY: That had better go in.

Let me explain what we have arranged:

That we will have copies of these letters that he is putting in available for your Lordship. I suggest that we hand them to your Lordship as my friend reads them, then we will get them together in chronological order and then mark the whole thing as one exhibit.

HIS LORDSHIP: That will make it difficult if at any time we want to refer to any letter. If they are marked consecutively it will be better.

MR. JONES: The first document offered under that arrangement 20 is an agreement between the Montreal Telegraph Company and Her Majesty, Queen Victoria, dated 22nd September, 1870. (Reads exhibit).

EXHIBIT No. 6: Montreal Telegraph Co. agreement, September 22nd, 1870.

MR. JONES: There is a letter dated 25th May, 1887. Have you anything earlier than that?

MR. FLINTOFT: That seems to be the first letter.

MR. JONES: It is a letter from Charles Drinkwater, Secretary of the Canadian Pacific Railway, addressed to Collingwood Schreiber Canadian Government Railways, Ottawa. (Reads letter). 30

EXHIBIT No. 7: Letter May 25th, 1887, C. Drinkwater to Collingwood Schreiber.

MR. JONES: The Montreal agreement, your Lordship will find there was some discussion with the Deputy Ministers from time to time—

MR. TILLEY: Your Lordship will find that question on that point were referred to the Justice Department, and there are rulings.

HIS LORDSHIP: Is it your contention that one of those branches would be from Truro to Canso?

MR. TILLEY: It was ruled that it was not.

MR. JONES: It was ruled that the agreement just applied to the Intercolonial Railway as constructed or planned at the time. Those opinions will be produced here. Truro to Canso was built.

MR. RAND: The line from Truro to New Glasgow was in existence and in operation at the time of Confederation. It was a Nova Scotia Government railway. New Glasgow east was constructed afterward.

10 MR. JONES: Letter 26th May, 1887, written by Mr. Schreiber to A. P. Bradley, Secretary, Department of Railways and Canals. (Reads).

EXHIBIT No. 8: Letter May 26th, 1887, Schreiber to Bradley.

MR. TILLEY: Mr. Schreiber is there noted to be the Chief Engineer and General Manager of the Government Railways.

MR. JONES: Letter dated 6th July, 1887, Bradley to Drinkwater, Secretary of Canadian Pacific Railway Company. (Reads).

EXHIBIT No. 9: Letter 6th July, 1887, Bradley to Drinkwater.

HIS LORDSHIP: When was that built?

20 MR. RAND: The Cape Breton Railway was open for operation in 1890.

MR. JONES: The next is a letter dated 18th July, 1887, from C. R. Hosmer who was then what?

MR. TILLEY: Manager of Telegraphs of the C. P. R.

HIS LORDSHIP: Is that a different entity from the defendant?

MR. JONES: Not now.

MR. TILLEY: They were never a separate entity. He was the Manager of the Telegraph Department of the Canadian Pacific Railway.

HIS LORDSHIP: It is between two C. P. R. men.

30 MR. JONES: This letter is being put in without objection, it does not mean that every letter between officials can be put in.

HIS LORDSHIP: I understand that you are putting in all the correspondence, with a view of showing the facts, and reserving all your rights respectively. That is the position.

MR. JONES: That is the position. I do not know that there are any I will have any objection to, but neither side is precluded in reference to any particular letter I think.

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HIS LORDSHIP: You can say, I am not bound by this, this officer could not bind the Crown, or, he took a wrong interpretation. It is all open to you, any objection you see fit.

(Exhibit read).

EXHIBIT No. 10: Letter of July 18th, 1887, Hosmer to Drinkwater.

MR. JONES: The next letter is dated July 19th, 1887, from Drinkwater to Bradley, Secretary Department of Railways and Canals. (Reads Letter).

EXHIBIT No. 11: Letter July 19th, 1887, Drinkwater to Bradley.

MR. JONES: The next letter, I am not offering it at the moment, is 10 between two officials of the defendant company, if my friend wants it—

MR. TILLEY: Oh yes, you better get the chronology.

MR. JONES: We would have to object to that.

HIS LORDSHIP: Subject to your objection for the time. The whole of that correspondence is subject to objection, and reserving all the rights that the parties may set up.

MR. JONES: And I presume it will not be necessary to take the objection to each letter.

HIS LORDSHIP: All subject to your objection.

MR. JONES: It is a letter of May 4th, 1888, Hosmer to W. C. VanHorne, Vice-President. (Reads).

HIS LORDSHIP: At that time the C. P. R. had no telegraph line in that direction?

MR. JONES: No, not on that road, that was before any part of it had been constructed.

EXHIBIT No. 12: Letter May 4th, 1888, Hosmer to VanHorne. The next is dated May 8th, 1888, Hosmer to Schreiber. (Reads).

EXHIBIT No. 13: Letter May 8th, 1888, Hosmer to Schreiber. (This and succeeding exhibits read as filed).

EXHIBIT No. 14: Letter May 9th, 1888, Schreiber to Hosmer. 30

EXHIBIT No. 15: Letter May 15th, 1888, Drinkwater to Bradley.

HIS LORDSHIP: What does he mean by the Telegraph Company?

MR. JONES: The Montreal Telegraph Company.

MR. TILLEY: Clearly.

MR. JONES: Do you want the letter in of May 28th, Hosmer to Fleming?

MR. TILLEY: I think it had better go in.

MR. JONES: That goes in subject to our objection, the same objection, officials of the same company. (Reads).

EXHIBIT No. 16: Letter of May 28th, 1888, Hosmer to Sanford Fleming.

HIS LORDSHIP: What was he at that time?

MR. SCOTT: He never was an official of the Canadian Pacific.

HIS LORDSHIP: He was appointed Chief Engineer after the death of some Chief Engineer, to close up some claims.

10 MR. SCOTT: That is of the Government, not the C. P. R.

MR. RAND: He was acting for the defendant in this correspondence.

MR. JONES: At this time he was not a Government official I understand.

HIS LORDSHIP: I have had several cases in which he was concerned on behalf of the Crown.

MR. JONES: The next is a letter that is submitted subject to my objection, between Mr. Hosmer and Mr. VanHorne, two officials of the same company. (Reads).

20 EXHIBIT No. 17: Letter June 2nd, 1888, Hosmer to VanHorne.

EXHIBIT No. 18: Letter June 7th, 1888, Sanford Fleming to Hosmer.

EXHIBIT No. 19: Letter June 14th, 1888, Sanford Fleming to Hosmer.

EXHIBIT No. 20: Telegram, June 16th, 1888, Sanford Fleming to Hosmer.

EXHIBIT No. 21: Telegram, June 17th, 1888, VanHorne to Hosmer.

EXHIBIT No. 22: Letter June 18th, 1888, Hosmer to Schreiber.

30 EXHIBIT No. 23: Letter, July 9th, 1888, Sedgwick, Deputy Minister of Justice, to A. P. Bradley, Secretary Department Railways and Canals.

HIS LORDSHIP: We have not got that application?

MR. TILLEY: Your Lordship will appreciate that we are giving your Lordship all the correspondence we can find, but we have not yet been able to get it all. We have not found that.

MR. JONES: The next letter is dated July 9th, 1888. (Reads).

EXHIBIT No. 24: Letter, July 9th, 1888, Fleming to Hosmer.

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EXHIBIT No. 25: Letter, July 11th, 1888, Hosmer to Hon. J. H. Pope.

HIS LORDSHIP: He was Minister of Railways at the time?

MR. TILLEY: Yes. And I suppose "Sir George" would be Sir George Stephen, who was then President of the C. P. R.

MR. JONES: The next letter is August 15th, 1888. (Reads).

EXHIBIT No. 26: Letter August 15th, 1888, Drinkwater to Bradley.

EXHIBIT No. 27: Letter August 16th, 1888, George M. Clark to Hon. J. H. Pope.

MR. JONES: The next is August 22nd, it is also from Mr. Clark to 10 Mr. Drinkwater, they are officials of the defendant company.

MR. TILLEY: I think I would put it in to show the sequence of things. (Exhibit read).

EXHIBIT No. 28: Letter, August 22nd, 1888, Clark to Drinkwater.

EXHIBIT No. 29: Letter August 30th, 1888, Clark to Bradley.

EXHIBIT No. 30: Letter, August 30th, 1888, Clark to Hon. J. H. Pope.

HIS LORDSHIP: What is the date of your short line, Montreal to Saint John?

MR. FLINTOFT: We started operating to Saint John about 1887 or 20 1888.

MR. TILLEY: Your Lordship will find a reference to that in one of these letters, saying the short line is just about ready to be operated. So it was about this date.

(Letter of May 15th, 1888, Exhibit No. 15).

EXHIBIT No. 31: Letter August 30th, 1888, Clark to Pope (Marked "Private".)

HIS LORDSHIP: Did not the Montreal Company have an exclusive right? How did the Western come in?

MR. TILLEY: Your Lordship will remember one letter said the 30 Montreal had let the Western build.

HIS LORDSHIP: But did they or did they not have an agreement by the Montreal?

MR. TILLEY: No, they built.

HIS LORDSHIP: They were just in there as a sort of squatter?

MR. TILLEY: Well they were a foreign squatter.

HIS LORDSHIP: There is no title between the two?

MR. TILLEY: There are agreements, the agreements will come in. They had not an agreement before they built but they ultimately got one.

EXHIBIT No. 32: Letter August 30th, 1888, Clark to Sir John A. Macdonald. (Marked "Private").

EXHIBIT No. 33: Letter June 21st, 1889, Schreiber to Hosmer.

MR. TILLEY: Neither side have been able to find the letter to which that is a reply.

HIS LORDSHIP: Do you construe that only with respect to work that would involve the construction of the line? He does not touch the right itself?

MR. JONES: Except that it implies that the request was to build outside the fence.

MR. TILLEY: There is no complication about that, it is an application for assistance in the construction.

HIS LORDSHIP: That deals only with the construction, not the right?

MR. TILLEY: I do not think so.

MR. JONES: It explains the different communications afterward in regard to these rights.

MR. TILLEY: I think it is desirable to put it in.

HIS LORDSHIP: At that time he was the Chief Engineer but not the Manager?

MR. FLINTOFT: Yes, he was General Manager up to 1892.

HIS LORDSHIP: He says Mr. Pottinger was Superintendent, not General Manager.

MR. RAND: In 1892 Mr. Pottinger became General Manager.

EXHIBIT No. 34: Letter, July 29th, 1889, C. R. Hosmer to J. F. Richardson.

MR. JONES: He was a local man at Saint John.

HIS LORDSHIP: This letter seems to be a point, the word "now" seems to imply that they had come to terms, had come to some decision, and that they were now dealing with the construction.

MR. JONES: But they are constructing altogether outside the right-of-way now.

MR. TILLEY: Your Lordship is quite right, it shows that in order to get on they decided they better build outside the right-of-way. There was all this complication.

MR. JONES: This relates altogether to their line outside.

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HIS LORDSHIP: You are agreed that it means building outside the railway fence?

MR. TILLEY: Right, and they were helping us in constructing at that point.

HIS LORDSHIP: Yes, transportation of poles.

MR. TILLEY: There seemed to be difficulty and delay about getting consent. And your Lordship will remember that we afterward commenced to move from outside to inside.

EXHIBIT No. 35: Letter August 13th, 1889, Richardson to Hosmer.

EXHIBIT No. 36: Letter, September 10th, 1889, Hosmer to 10 Richardson.

MR. TILLEY: We have not found the letter of the 8th.

EXHIBIT No. 37: Letter, September 17th, 1889, Hosmer to Richardson.

(Court adjourned at 1 p. m. until 2.30 p.m.)

AFTERNOON SESSION—January 16th, 1929.

MR. JONES presented and read the following Exhibits:

EXHIBIT No. 38: Letter, September 18th, 1889, Hosmer to Bradley. 20

EXHIBIT No. 39: Letter, September 24th, 1889, Bradley to Drinkwater.

EXHIBIT No. 39-A: Memorandum accompanying above letter.

EXHIBIT No. 40: Letter, October 7th, 1889, Hosmer to Richardson.

EXHIBIT No. 41: Letter, October 13th, 1889, Richardson to Hosmer.

EXHIBIT No. 42: Letter, October 14th, 1889, Hosmer to Richardson.

MR. TILLEY: That refers to a letter of the 11th, perhaps that had better go in.

EXHIBIT No. 43: Letter, October 11th, 1889, Richardson to Hosmer.

MR. TILLEY: Mr. Clinch referred to there was a Western Union 30 representative.

EXHIBIT No. 44: Letter, October 14th, 1889, Hosmer to VanHorne.

EXHIBIT No. 45: Letter, October 24th, 1889, Hosmer to Richardson.

EXHIBIT No. 46: Letter, November 6th, 1889, Richardson to Hosmer.

EXHIBIT No. 47: Letter, November 7th, 1889, DeBoo, Intercolonial Railway Track Office, Moncton, to Richardson.

EXHIBIT No. 48: Letter, November 8th, 1889, Richardson to Hosmer.

EXHIBIT No. 49: Letter, November 11th, 1889, Hosmer to Richardson.

EXHIBIT No. 50: Letter, November 15th, 1889, Bradley to Sedgwick, Deputy Minister of Justice.

10 EXHIBIT No. 51: Letter, 12th December, 1889, Sedgwick to Bradley.

EXHIBIT No. 52: Letter, January 7th, 1890, Bradley to Schreiber.

HIS LORDSHIP: I do not know that I understand the letter of the Deputy Minister. He says, Instruct to remove the poles. Does he mean that there should be instruction to that effect given on behalf of the Government so as to protect themselves as between the Montreal Telegraph and the C. P. R., and no more?

MR. TILLEY: Protect the Government.

HIS LORDSHIP: But Bradley seems to go further than that letter goes when he writes to Schreiber.

20 MR. TILLEY: That is the way it strikes me.

EXHIBIT No. 53: Letter, January 7th, 1890, Bradley to Drinkwater.

EXHIBIT No. 54: Letter, January 8th, 1890, Schreiber to Pottinger.

EXHIBIT No. 55: Letter, January 13th, (evidently 1890, but date is not on it) Drinkwater to Bradley.

EXHIBIT No. 56: Letter, January 15th, 1890, Hosmer to Richardson.

EXHIBIT No. 57: Letter, January 31st, 1890, Hosmer to Richardson.

30 HIS LORDSHIP: What do you understand by the position now? I understand from this correspondence of Hosmer and the rest, so far they received orders to remove, but by Exhibit 46 Richardson advises Hosmer that they have moved 92 poles.

MR. RAND: They removed some of them apparently, but not all.

MR. TILLEY: I do not know what that means, it might mean one thing or the other.

HIS LORDSHIP: They would not have re-set 92 poles for pleasure.

MR. JONES: These poles perhaps were further outside the fence than the farmers were ready to have them, and they were set closer to the fence.

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EXHIBIT No. 58: Letter, February 4th, 1890, Archibald to Pottinger.

EXHIBIT No. 59: Letter, February 10th, 1890, Hosmer to A. B. Gray.

EXHIBIT No. 60: Letter, February 17th, 1890, Archibald to Pottinger.

HIS LORDSHIP: All this time do you understand that the C. P. R. were supposed to put those poles outside the fence and occasionally they would put some inside, and this order is with reference to the exceptional poles that have been put inside.

MR. JONES: I gather that it refers to both outside and inside. At 10 that time the railway complained because the company had some poles too close to the fence, but that the right-of-way of the railway extends outside the fence.

HIS LORDSHIP: That is the fence was not the true limit. But you must be taking for granted that the C. P. R. were putting those poles outside of the railway fence, and through some circumstance they were putting a few inside, and these orders from headquarters were to remove only those that were inside. Or did the C. P. R. at that time undertake to place their poles inside the railway right-of-way?

MR. TILLEY: No, I think the telegraph line at that time was being 20 constructed, speaking generally, outside the railway property. As I gather, and I think Mr. Jones is in agreement with me on it, the correspondence mainly concerns poles that were put outside the fence but that the railway company said, Even when you are outside the fence you are so close to the centre line of the railway that you are really on our right-of-way, therefore you must get them back farther from the fence. And the question may have related to some that were inside. So that probably they were poles of both classes. But we are in agreement that down to this point of time we were professing to build a line outside the railway. Speaking generally that is so, and this is an order to take whatever 30 poles are on the right-of-way, be they inside the fence or outside—

HIS LORDSHIP: You were not at that time attempting to build on the I. C. R.?

MR. TILLEY: No, that is right, we were going to a good deal of expense in connection with that.

EXHIBIT No. 61: Letter, February 17th, 1890, Bradley to Sedgwick.

EXHIBIT No. 62: Letter, March 1st, 1890, Richardson to Hosmer.

EXHIBIT No. 63: Letter, March 3rd, 1890, Schreiber to Pottinger.

MR. FLINTOFT: I may say I saw the original of that at Moncton, and I have a notation "Statement sent 29/5/90." 40

EXHIBIT No. 64: Letter, March 4th, 1890, Archibald to Pottinger.

EXHIBIT No. 65: Letter, May 14th, 1890, Schreiber to Pottinger.

EXHIBIT No. 66: Letter, March 1st, 1890, Richardson to Hosmer.

EXHIBIT No. 67: Letter, March 28th, 1890, Charles Tupper to Hosmer.

EXHIBIT No. 68: Letter, June 18th, 1890, Bradley to Sedgwick.

MR. TILLEY: We have not found that statement. The information no doubt would be based on the enclosure, and we will come to the information in a short time. They brought an action.

EXHIBIT No. 69: Letter, July 8th, 1890, Archibald to Pottinger.

10 EXHIBIT No. 70: Letter, September 5th, 1890, Hosmer to Dwight.
(Mr. Dwight was an officer of the Great North Western Telegraph Co.)

MR. FLINTOFT: They were operating the Montreal Telegraph Company.

HIS LORDSHIP: The Great North Western was separate from the Western Union?

MR. TILLEY: It was owned by the Western Union but it was a separate company.

20 MR. RAND: There is a statement to that effect in one of the letters, but is that established?

MR. FLINTOFT: We can give evidence of that.

EXHIBIT No. 71: An Information in this Court, filed September 10th, 1890.

HIS LORDSHIP: "2700 poles," that would correspond with the statement we have not got?

MR. TILLEY: It must be.

HIS LORDSHIP: Was that ever brought to judgment?

30 MR. JONES: No, my lord. There is some further correspondence relating to it, it was apparently allowed to die. Some representations were made to certain parties.

HIS LORDSHIP: Asserting your rights, and then it was not pressed to judgment.

MR. TILLEY: Oh more than that. By arrangement it was all withdrawn.

MR. JONES: We will come to it and see just what happened.

EXHIBIT No. 72: Letter, September 16th, 1890, Dwight to Hosmer.

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HIS LORDSHIP: Does that confirm the advice of the Deputy Minister? I take him to mean, We have got to take a position, place ourselves in a position that the Great North Western can never find fault.

MR. TILLEY: Yes, that is the point. The reason we did not get the consent in the first place was, there may be opposition.

HIS LORDSHIP: And the Crown is trying to take away from them any right of complaint. I saw that in the Deputy Minister's letter, but it does not seem to have been grasped by Mr. Bradley.

MR. TILLEY: Not quite. But your Lordship will see more of that as we go on. 10

EXHIBIT No. 73: Letter, September 19th, 1890, Hosmer to Dwight.

EXHIBIT No. 74: Letter, September 22nd, 1890, VanHorne to Sir John A. Macdonald.

MR. TILLEY: Sir John was then Prime Minister and Minister of Railways.

EXHIBIT No. 74-A: An endorsement on above letter.

MR. SCOTT: It is in Sir John's handwriting on the original.

EXHIBIT No. 75: Letter, September 24th, 1890, from Sir John A. Macdonald to Sir John Thompson.

EXHIBIT No. 76: Letter, September 29th, 1890, Hosmer to Dwight. 20

EXHIBIT No. 77: Letter, October 9th, 1890, Sir John A. Macdonald to VanHorne.

EXHIBIT No. 78: Letter, March 13th, 1891, Townshend to Sir Charles Tupper.

EXHIBIT No. 79: Letter, March 16th, 1891, Sir Charles Tupper to VanHorne.

EXHIBIT No. 80: Letter, March 19th, 1891, Hosmer to VanHorne.

EXHIBIT No. 81: Letter, March 24th, 1891, Hosmer to Sir Charles Tupper.

EXHIBIT No. 82: Letter, July 31st, 1891, Schreiber to Pottinger. 30

EXHIBIT No. 83: Letter, August 5th, 1891, Pottinger to Snider.

EXHIBIT No. 84: Letter, August 14th, 1891, Bradley to Deputy Minister of Justice, (Sedgwick).

EXHIBIT No. 85: Letter, August 17th, 1891, Sedgwick to O'Connor.

EXHIBIT No. 86: Letter, August 25th, 1891, O'Connor to Sedgwick.

EXHIBIT No. 87: Letter, August 28th, 1891, A Power for the Deputy Minister of Justice to Secretary Department Railways and Canals.

EXHIBIT No. 88: Letter, September 7th, 1891, Bradley to Deputy Minister of Justice.

EXHIBIT No. 89: Letter, September 21st, 1891, Bradley to Sedgwick.

HIS LORDSHIP: It is understood that the Western Union had a franchise over a part?

MR. TILLEY: There are other franchises to be put in, other documents we will have to deal with later. Their rights were not exclusive, no monopoly.

10 HIS LORDSHIP: Yes, over part of it, we have that.

MR. TILLEY: There is a letter of September 11th, 1891, that is referred to in that letter of September 21st, that I think ought to go in.

MR. SCOTT: We have a precis, taken from the Department of Railways and Canals, of the receipt of that letter. We have not the original.

EXHIBIT 90: Precis of letter, dated September 11th, 1891, from Minister of Justice to Department of Railways and Canals, re Queen v. C. P. R.

MR. JONES: It is from the Minister of Justice, and it is taken from the journals of the Department of Railways and Canals, so presumably
20 it went to them.

EXHIBIT No. 91: Letter, November 27th, 1891, G. M. Clark to Robert Sedgwick.

EXHIBIT No. 92: Letter, December 10th, 1891, Hosmer to Dwight.

EXHIBIT No. 93: Telegram, December 12th, 1891, Dwight to Clinch, Superintendent at Saint John, with telegram of same date from D. M. Sutherland to Dwight.

EXHIBIT No. 94: Letter, December 12th, 1891, Dwight to Hosmer.

HIS LORDSHIP: All the time confined to the poles already erected.

EXHIBIT No. 95: Letter, December 16th, 1891, Clark to Sedgwick.

30 (At 4.30 p.m. January 16th, adjourned to 10.30 a.m. January 17th, 1929).

Thursday, January 17th, 1929, 10.30 A.M.

MR. JONES: I have here the original of Exhibit No. 75, it was understood yesterday that it would be handed in and attached to that exhibit.

HIS LORDSHIP: This has nothing to do with the case, it is only historical.

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When did you put all your poles on the right-of-way? Perhaps I am anticipating. Have you not got today all your poles on the right-of-way?

MR. TILLEY: Substantially.

HIS LORDSHIP: With some exceptions due to topography. When did you put them on?

MR. TILLEY: At various dates.

HIS LORDSHIP: From Sussex to Moncton, for instance, was only in 1917.

MR. TILLEY: That was just that particular case.

HIS LORDSHIP: And the others were done—?

10

MR. TILLEY: Earlier, following these negotiations.

HIS LORDSHIP: It is all linked together. These that were there at the beginning were never removed?

MR. TILLEY: That is right.

MR. JONES: Will that be attached to the former exhibit?

HIS LORDSHIP: Is there any object?

MR. TILLEY: I think it is important to show that that memo is quite a separate memo, and we cannot tell from any date when it was made.

HIS LORDSHIP: "This is an unimportant matter." I take it Sir 20 John, who was a very practical man, meant, What does it matter if they put a few poles on our right-of-way? It is a trivial matter.

MR. TILLEY: I would like to develop that later.

HIS LORDSHIP: The Crown can only speak by Order-in-Council.

MR. TILLEY: No, my lord the Crown can speak in various ways. We will have to argue that.

HIS LORDSHIP: You will reverse the old jurisprudence of the prerogatives of the Crown.

MR. TILLEY: No, my lord, reverse nothing.

(MR. JONES, continues the presentation and reading of the follow- 30 ing exhibits):—

EXHIBIT No. 96: Letter, dated December 21st, 1891, Hosmer to Dwight.

EXHIBIT No. 97: Letter, July 4th, 1892, Kent to Hosmer. (Mr. Kent was Superintendent of the defendant Company's line at Saint John.)

EXHIBIT No. 98: Letter, July 14th, 1892, T. Trudeau, Acting Secretary, Dept. Railways and Canals, to Sedgwick.

EXHIBIT No. 99: Letter, August 11th, 1892, Pottinger to Snider.
(See Exhibit 99-A filed later).

EXHIBIT No. 100: Letter, August 27th, 1892, Trudeau to Sedgwick.

EXHIBIT No. 101: Letter, August 31st, 1892, Clark to Sedgwick.

HIS LORDSHIP: When it refers to "this action" that is the action on the Information, copy of which has been filed, and the one referred to by Sir John Macdonald?

MR. JONES: Yes, my lord.

HIS LORDSHIP: There is no new action.

10 MR. JONES: In that Exhibit No. 100 Mr. Rand reminds me that Hammond River is on the line between Sussex and Saint John, the main line.

EXHIBIT No. 102: Letter, September 22nd, 1892, P.W.S. (Snider) to James Kent. (Both C. P. R. men).

EXHIBIT No. 103: Letter, November 16th, 1892, Trudeau to Deputy Minister of Justice.

EXHIBIT No. 104: Letter, November 19th, 1892, Trudeau to Sedgwick.

20 EXHIBIT No. 105: Letter, November 26th, 1892, Borden & Co. to Deputy Minister of Justice.

EXHIBIT No. 106: Letter, November 29th, 1892, Hosmer to Borden & Co.

EXHIBIT No. 107: Letter, December 14th, 1892, Borden & Co. to Deputy Minister of Justice.

EXHIBIT No. 108: Letter, December 14th, 1892, G. M. Clark to Borden & Co.

HIS LORDSHIP: Are they assignees, were they not lessees?

MR. RAND: It does not appear yet.

HIS LORDSHIP: I think it was a lease for 97 years.

30 MR. TILLEY: I am assuming that those will be put in.

MR. RAND: We have not got them.

HIS LORDSHIP: I think about 1881.

MR. TILLEY: Yes, quite right. We will straighten that out, but we have not got the document yet.

HIS LORDSHIP: Assignee would raise a question that would not be raised with a lessee. Could they assign the right in perpetuity? Would not that right be, if I may use the word, personal? Of course they could lease, and the lessee could exercise the same rights as the lessor.

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MR. TILLEY: My own recollection is it was a lease. We will have to straighten that out.

EXHIBIT No. 109: Letter, December 17th, 1892, Borden & Co., to Deputy Minister of Justice.

EXHIBIT No. 110: Letter, December 20th, 1892, Clark to Sedgwick.

EXHIBIT No. 111: Letter, December 23rd, 1892, J. H. Balderson, Secretary Department of Railways, to Deputy Minister of Justice.

EXHIBIT No. 112: Letter, December 27th, 1892, Sedgwick to Borden & Co. 10

EXHIBIT No. 113: Letter, January 10th, 1893, Sedgwick to Borden & Co.

EXHIBIT No. 114: Letter, January 14th, 1893, Borden & Co., to Deputy Minister of Justice.

HIS LORDSHIP: They were holding that action as a sword of Damocles over your head?

MR. TILLEY: No, this was a new action for poles between Stellar-ton and New Glasgow.

HIS LORDSHIP: You think it meant another action?

MR. TILLEY: Yes, my lord, we both agree on that. 20

MR. JONES: I think it did in reference to that particular line.

EXHIBIT No. 115: Memorandum of January 20th, 1893, from the Department of Justice (not signed) to the Secretary, Department of Railways and Canals.

HIS LORDSHIP: That exclusive right of the Montreal Telegraph Company is still extant? Has it ever been released?

MR. RAND: Not up to the time of this suit, that we know of.

EXHIBIT No. 116: Letter, March 9th, 1893, Hosmer to Schreiber.

MR. TILLEY: Your Lordship will appreciate that this is a new extension. 30

HIS LORDSHIP: These are additional lines after the main line.

MR. TILLEY: Yes, but it is the first time this particular line was built. This particular line was never built off the right-of-way and then moved in, this was originally built on the right-of-way, following this arrangement now made.

HIS LORDSHIP: You say subsequent to that the C. P. R. did out their poles on the right-of-way?

MR. TILLEY: Yes. But this is not a piece of the line that was originally built off the right-of-way and then moved in. When it was built it was built on the right-of-way.

HIS LORDSHIP: And not covered by the first Information?

MR. TILLEY: Not covered by the first Information, therefore we took it up separately at this stage to get their consent.

HIS LORDSHIP: You might add to the general information that the rights of the Montreal Telegraph Company did not operate on this part.

MR. TILLEY: It was not in force on this part.

10 MR. JONES: We have opinions from the Justice Department stating where in its judgment it was then in force, and as I recollect it did not in their view apply to this.

HIS LORDSHIP: It depends what contract the Montreal Telegraph Company had at that time.

MR. JONES: The Montreal agreement of 1870, that is the only agreement. That is in. Later on we have other agreements.

EXHIBIT No. 117: Letter, March 10th, 1893, Schreiber to Hosmer.

EXHIBIT No. 118: Letter, March 13th, 1893, Hosmer to Schreiber.

20 HIS LORDSHIP: You told me yesterday that the Western Union had been absorbed by—?

MR. RAND: It was suggested that the Western Union controlled the Great North Western.

MR. TILLEY: The Western Union is now the Canadian National.

MR. RAND: It is only a certain portion of the Western Union lines in the Maritime Provinces that has been taken over lately.

MR. TILLEY: We will have to get the documents, but your Lordship will appreciate the difficulty both sides have had in getting hold of these old documents. There are a lot we cannot find.

30 HIS LORDSHIP: When Mr. Schreiber writes there of the Western Union what does he mean? The Western Union came and operated on this part that was reserved by the Montreal agreement.

MR. RAND: The agreements put in will show that in 1889 an agreement was made between the Crown and the Western Union governing the pole line east of New Glasgow to Sydney.

HIS LORDSHIP: That was territory which was distinct from that on which the Montreal Telegraph had rights?

MR. RAND: Yes, distinct from the Montreal agreement.

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MR. TILLEY: Yes, this is a different piece of line under different conditions, that we are coming to now. The Western Union had rights there, but not exclusive.

EXHIBIT No. 119: Letter, March 20th, 1893, Hosmer to Dickenson, Superintendent Commercial Cable Co., Canso.

EXHIBIT No. 120: Letter, March 27th, 1893, Hosmer to George G. Ward of the Commercial Cable Co., New York.

EXHIBIT No. 121: Letter, March 27th, 1893, Hosmer to Dickenson.

EXHIBIT No. 122: Letter, April 5th, 1893, Hosmer to Ward.

EXHIBIT No. 123: Letter, May 4th, 1893, E. L. Newcombe, Deputy 10
 Minister of Justice to Secretary, Department Railways and
 Canals.

EXHIBIT No. 124: May 8th, 1893, Hosmer to Schreiber.

MR. TILLEY: I am producing to Mr. Jones another letter that has just been found and received by us today. It shows the difficulties we are under.

EXHIBIT No. 125: Letter, May 27th, 1893, Balderson to Drink-
 water.

MR. TILLEY: The Government cannot produce the agreement, no one has succeeded in finding it. 20

MR. JONES: I doubt if it was ever signed.

MR. TILLEY: We will come to the letter in which we transmitted it back to the Government duly signed.

MR. JONES: Whether it was executed on the part of the Crown does not appear.

MR. TILLEY: We executed it and sent it back to the Crown and built our line. We have not a copy of it.

MR. RAND: I think the correspondence will show that they wrote the Crown asking for a copy and nothing was done.

HIS LORDSHIP: We have got so far, that they had no objection 30
 provided they got that release. But there is no Order-in-Council.

MR. JONES: This letter refers to that particular section between New Glasgow and Sydney.

MR. TILLEY: I do not know that I can agree to that. My friends ought to be able to produce the document. But many of these documents, while drawn with regard to a certain section, contain clauses of mutual accommodation elsewhere.

HIS LORDSHIP: Well we have not got it.

MR. TILLEY: But your Lordship appreciates that the Crown are asking us to take the poles off that right-of-way, when we signed a document and returned it to the Crown in accordance with the Crown's request, and built the line.

HIS LORDSHIP: But that document only had reference to this: these Crown officers would say, Well, we have no objection provided you give us indemnity that there will be no claim against us from the Western Union.

10 MR. TILLEY: No, my lord, they say, We have a contract now with the Western Union, if you will enter into a similar contract with us you can build.

HIS LORDSHIP: But Mr. Newcombe is asking for a bond of indemnity.

MR. TILLEY: But Mr. Newcombe is on the other part of the line where the Montreal Company is supposed to have rights, and he is saying, If you guarantee us against the claims of the Montreal. He is not writing in regard to New Glasgow east.

MR. JONES: That is as I understand it.

20 HIS LORDSHIP: I link that No. 123 with No. 111. Am I right or wrong?

MR. RAND: May I suggest that in the correspondence there is an evident confusion of the original trespasses which were the subject matter of the first Information, and the complaint with regard to New Glasgow and Stellarton.

MR. TILLEY: I do not think there is confusion at all. 111 has nothing to do with New Glasgow east.

HIS LORDSHIP: It is more general, "Intercolonial Railway," but I suppose that has to be read with the others.

30 MR. RAND: The letter of December 14th from Mr. Clark to Borden & Co., refers to the permission that has been given some time before by the Great North Western Company for the trespasses which were on the main line, but did not include Stellarton and New Glasgow. Mr. Clark is speaking generally of those original trespasses, but Stellarton-New Glasgow was something new that arose later.

It will appear that the opinion of Mr. Newcombe was that the exclusive Montreal agreement stopped at New Glasgow on the main line, therefore east of New Glasgow the Government was not precluded from entering into some sort of arrangement with a company other than the Western Union.

40 MR. TILLEY: I think that is quite right. And then Mr. Newcombe is saying, as to this portion where the Montreal may claim exclusive rights have you got any bond or formal document from them?

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HIS LORDSHIP: You think this letter covers the whole thing?

MR. TILLEY: The whole thing that was covered by the Montreal agreement.

MR. RAND: Oh yes, as regards the Montreal agreement up to New Glasgow, and then this proposed agreement east of New Glasgow is a different matter.

HIS LORDSHIP: Mr. Newcombe's letter only covers anything with respects to the rights of the Montreal Telegraph Company?

MR. RAND: I should think so.

MR. TILLEY: Yes, because that company was the only company 10 that had exclusive rights anywhere.

MR. JONES: And they did not apply to this particular section.

HIS LORDSHIP: Then why are they asking for a similar release from the Western Union?

MR. TILLEY: Not a release, a similar agreement, under which you will build, as you got from the Western Union when they built. We say, All right, send on your document.

HIS LORDSHIP: Have you got that document with the Western Union?

MR. JONES: Yes, my lord, it is not in yet.

20

MR. TILLEY: That one with the Western Union seems to be the basis of the agreement. When my friends come and ask your Lordship to declare our rights from New Glasgow east your Lordship's answer would be, Find your agreement and you will have your rights.

MR. RAND: Perhaps the converse might be said, Produce your document. The mere fact that the C. P. R. signed a document does not settle it.

EXHIBIT No. 126: Letter, June 26th, 1893, Kent to Richardson.

EXHIBIT No. 127: Letter, July 12th, 1893, Hosmer to Drinkwater.

MR. JONES: We have not been able to find the contract, and we 30 have exhausted every effort on both sides I understand.

MR. SCOTT: I made every effort in the Department and could not find it.

HIS LORDSHIP: You might have kept a copy.

MR. TILLEY: If we did we cannot find it.

EXHIBIT No. 128: Letter, July 21st, 1893, Kent to Richardson.

HIS LORDSHIP: There must have been some trouble about this, it was transmitted for signature on the 22nd of May, and we are down to the 21st of July and someone recognizes that it has not been signed.

MR. JONES: I suppose it would not be right to suggest now what happened.

EXHIBIT No. 129: Letter, July 25th, 1893, Drinkwater to Balderson, Secretary, Department of Railways and Canals.

EXHIBIT No. 130: Letter, August 11th, 1893, Balderson to Newcombe.

10 EXHIBIT No. 131: Letter, August 27th, 1893, Richardson to Kent.

EXHIBIT No. 132: Letter, August 31st, 1893, Kent to Richardson.

EXHIBIT No. 133: Letter, September 9th, 1893, Richardson to Kent.

EXHIBIT No. 134: Letter, September 19th, 1893, Kent to Richardson.

HIS LORDSHIP: The company must have inserted some clause in that contract that was objectionable to the Government.

MR. TILLEY: No, we signed it as the solicitors prepared it.

HIS LORDSHIP: You might have made some alteration.

20 MR. TILLEY: There is no suggestion that we did. There would be some correspondence or memorandum about it.

Your Lordship will see later on the terms of the Western Union agreement, and I think you will see then that possibly certain privileges were conferred on the Government if they wanted to exercise them, but not wanting to exercise them they did not bother, they had our contract, and if they wanted to exercise them they could. You will see the Western Union contract when we come to it, it provides for certain services and privileges. Probably it was not necessary for the Government to sign it. And all we wanted to do was to build the lines, and we signed the document they asked and built the line.

30 MR. RAND: I do not want your Lordship to understand that we acquiesce in the suggestion of Mr. Tilley that there was ever a contract. It requires two parties to a contract, and the only presumption that can arise here, as we view it, is that it was never signed by the Minister. Obviously it would require an Order-in-Council.

HIS LORDSHIP: Yes, that is my view, to give it true legal effect an Order-in-Council would have to be passed authorizing some one to sign this contract.

MR. TILLEY: It would be difficult to run a railway if they had to have an Order-in-Council for every bargain they made.

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HIS LORDSHIP: That is the law.

MR. TILLEY: We will have to argue that later.

MR. JONES: At this stage I offer a memorandum that was omitted. This was attached I think to Exhibit 99.

EXHIBIT No. 99-A: Memo from P. W. S. (Snider) to Kent of 16th August, 1892.

MR. TILLEY: Apparently this is a memo that was attached to the letter after it was received.

EXHIBIT No. 135: Letter, September 30th, 1895, Snider to Kent.

EXHIBIT No. 136: Letter, November 15th, 1895, Snider to J. J. 10 Wallace, General Freight Agent, Intercolonial Railway.

EXHIBIT No. 137: Letter, November 15th, 1895 Snider to Pottinger.

MR. TILLEY: Heatherton is a point east of New Glasgow.

EXHIBIT No. 138: Letter, November 4th, 1896, O'Connor & Hogg to E. L. Newcombe, Deputy Minister of Justice.

EXHIBIT No. 139: Letter, August 28th, 1897, Pottinger to Snider.

EXHIBIT No. 140: Letter, September 1st, 1897, Snider to Pottinger.

EXHIBIT No. 141: Letter, September 14th, 1897, Pottinger to Snider.

EXHIBIT No. 142: Telegram, September 19th, 1898, Pottinger to Snider. 20

MR. JONES: That is between Truro and Halifax.

EXHIBIT No. 143: Letter, October 1st, 1898, Pottinger to Snider.

EXHIBIT No. 144: Letter, December 9th, 1899, Pottinger to Kent.

EXHIBIT No. 145: Letter, December 11th, 1899, Kent to Pottinger.

EXHIBIT No. 146: Letter, December 13th, 1899, Pottinger to Kent.

EXHIBIT No. 147: Letter, November 3rd, 1900, Snider to Jarvis.

EXHIBIT No. 148: Letter, December 25th, 1900, Snider to Kent.

MR. JONES: This seems to relate to a right to be got for the whole system.

MR. TILLEY: It is a letter written by a person who does not know 30 the situation, and nothing was done on it. His information was clearly inaccurate.

EXHIBIT No. 149: Letter, February 21st, 1901, Drinkwater to Kent.

EXHIBIT No. 150: Letter, February 19th, 1902, Snider to Kent.

HIS LORDSHIP: Who was Russell?

MR. RAND: He was one of the officials of the I. C. R. at Moncton, I do not know his exact title.

MR. JONES: It will show from the statement we have had prepared of the officers, and the time during which they held office.

EXHIBIT No. 151: Letter, November 7th, 1903, Trackmaster to Charles Rutherford.

EXHIBIT No. 152: Memorandum, November 16th, 1903, Godsoe "Mgr." to Snider.

EXHIBIT No. 153: Letter, June 8th, 1904, Pottinger to Snider.

10 EXHIBIT No. 154: Letter, June 14th, 1904, Charles Robson to Snider.

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AFTERNOON SESSION, Thursday, January 17th, 1929.

(MR. RAND continued the presentation and reading of the Exhibits):

EXHIBIT No. 155: Letter, October 18th, 1904, Jarvis to Snider.

20 HIS LORDSHIP: "at the end of the loading track," would that be still on the Government property?

MR. RAND: The loading platform I assume would be for the loading of freight into freight cars.

EXHIBIT No. 156: Letter, February 11th, 1905, Kent to Snider.

EXHIBIT No. 157: Letter, March 8th, 1906, L. K. Jones to E. L. Newcombe.

HIS LORDSHIP: When you speak of those branches does it apply to the branches that were existing at the time they made the contract, between Riviere du Loup and Halifax?

MR. Rand: Those that were in existence or under construction.

30 HIS LORDSHIP: Has the C. P. R. any poles between Chatham and Fredericton?

MR. TILLEY: No, my lord, nothing that I know of.

EXHIBIT No. 158: Letter, June 21st, 1906, Jones to Newcombe.

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EXHIBIT No. 159: Letter, August 4th, 1906, from the Acting Deputy Minister of Justice, it must be to the Department of Railways, it is in reply to Exhibit 158.

EXHIBIT No. 160: Letter, August 29th, 1906, Y. C. Campbell to Manager C. P. R. Telegraph Co., North Sydney.

MR. RAND: Y. C. Campbell was Superintendent of the Truro and Sydney Division of the railway.

EXHIBIT No. 161: Letter, August 31st, 1906, Jones to Newcombe.

MR. RAND: The suggestion is that a telephone line is a telegraph within the meaning of the agreement.

EXHIBIT No. 162: Telegram, September 7th, 1906, H. Mersereau 10 to Snider.

EXHIBIT No. 163: Telegram, October, 1906, Pottinger to W. B. MacKenzie.

EXHIBIT No. 164: Memorandum, December 14th, 1906, Snider to Robson.

EXHIBIT No. 165: Telegram, December 13th, 1906, Pottinger to Snider.

EXHIBIT No. 166: Memorandum, December 14th, 1906, Snider to Robson.

EXHIBIT No. 167: Letter, December 18th, 1906, Archibald (Road 20 Master of I.C.R.) to Snider.

EXHIBIT No. 168: Letter, May 29th, 1907, Newcombe to Department of Railways.

EXHIBIT No. 169: Letter, May 29th, 1907, Maher (C. P. R. Telegraph lineman) to Snider.

EXHIBIT No. 170: Letter, June 6th, 1907, Newcombe to Secretary, Dept. of Railways and Canals.

EXHIBIT No. 171: Letter, June 22nd, 1907, Jones to Pottinger.

EXHIBIT No. 172: Letter, July 12th 1907, Jarvis to Snider.

EXHIBIT No. 173: Letter, November 1st, 1910, Mahon (Superintendent) to Kent.

EXHIBIT No. 174: Letter, January 6th, 1911, Mahon to Kent.

EXHIBIT No. 175: Letter, January 18th, 1911, Mahon to Kent.

EXHIBIT No. 176: Letter, February 2nd, 1911, Kent to Mahon.

EXHIBIT No. 177: Letter, February 9th, 1911, Mahon to Brady.

MR. RAND: Westville is about three miles up the line from Stelarton.

EXHIBIT No. 178: Letter, February 20th, 1911, Brady to Mahon.

EXHIBIT No. 179: Letter, February 16th, 1911, Pottinger to Brady.

EXHIBIT No. 180: Letter, March 3rd, 1911, Pottinger to Brady.

EXHIBIT No. 181: Memorandum attached to previous exhibit.

MR. RAND: I think that is in Mr. Pottinger's handwriting.

EXHIBIT No. 182: Letter, March 3rd, 1911, Pottinger to E. M. Macdonald.

EXHIBIT No. 183: Letter, March 5th, 1911, E. M. Macdonald to Pottinger.

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10 HIS LORDSHIP: Did the I. C. R. have their own telegraph poles and wires for the purpose of their operation?

MR. RAND: I think they had wires on the Western Union poles.

MR. TILLEY: There were facilities given, they did not build a line of their own, they acquired facilities of some kind, and this was their means of getting them.

EXHIBIT No. 184: Letter, March 7th, 1911, E. M. M. to Pottinger.

MR. RAND: There is a memo in Mr. Pottinger's handwriting on the letter, "We agreed to this in Board."

EXHIBIT No. 185: Minute of meeting of the Managing Board,

20 EXHIBIT No. 186: Letter, March 7th, 1911, Mahon to D. A. Story, General Freight Agent, I. C. R. March 10th, 1911.

EXHIBIT No. 187: Letter, March 8th, 1911, Story to Mahon.

EXHIBIT No. 188: Letter, March 13th, 1911, Brady to Mahon.

MR. RAND: The Board at that time was Messrs. Campbell, Pottinger, Tiffin, Brady and Caron.

EXHIBIT No. 189: Letter, March 14th, 1911, Pottinger to E. M. Macdonald.

30 MR. RAND: There is a memorandum on this letter in Mr. Pottinger's writing "Mr. Colclough, we will get out these papers for Mr. Caron. D. P."

EXHIBIT No. 190: Letter, March 16th, 1911, Pottinger to Brady.

EXHIBIT No. 191: Letter, March 18th, 1911, D. McNicoll to E. M. Macdonald.

MR. TILLEY: We have not been able to find that letter of 16th March.

EXHIBIT No. 192: Letter, March 20th, 1911, McNicoll to Pottinger.

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- EXHIBIT No. 193: Memorandum in Mr. Pottinger's handwriting, undated, of having seen Mr. Brady 4/4/11.
- EXHIBIT No. 194: Letter, April 7th, 1911, Pottinger to McNicoll.
- MR. RAND: Westville is three miles from Stellarton. Evidently they connected the main line from Truro to New Glasgow with the Westville to Pictou line, and in order to do that they had to carry the line over.
- EXHIBIT No. 195: Letter, April 7th, 1911, Pottinger to T.C. Burpee.
- HIS LORDSHIP: Who was the President of that Board?
- MR. RAND: A. W. Campbell was Chairman, and Mr. Pottinger Assistant Chairman. 10
- EXHIBIT No. 196: Letter, April 12th, 1911, Pottinger to E. M. Macdonald.
- EXHIBIT No. 197: Letter, May 23rd, 1911, Sutherland to Mahon.
- MR. RAND: Heatherton is between New Glasgow and Mulgrave.
- EXHIBIT No. 198: Letter, October 28th, 1913, Bryson to Mersereau.
- EXHIBIT No. 199: Letter, October 31st, 1913, Mersereau to Godsoe.
- EXHIBIT No. 200: Letter, April 25th, 1914 W. J. Camp, Asssistant Manager, to Godsoe, Superintendent. 20
- EXHIBIT No. 201: Letter, November 2nd, 1914, Brady to Godsoe.
- MR. RAND: Orangedale is in Cape Breton.
- EXHIBIT No. 202: Letter, November 6th, 1914, D. W. Mersereau to H. Mersereau.
- EXHIBIT No. 203: Letter, November 17th, 1914, Mersereau to Godsoe.
- EXHIBIT No. 204: Letter, November 17th, 1914, Godsoe to Brady.
- EXHIBIT No. 205: Letter, December 4th, 1914, Hayes to Gutelius.
- EXHIBIT No. 206: Letter, December 21st, 1914, Brady to Gutelius.
- MR. TILLEY: This correspondence now leads up to the claim that was ultimately made. 30
- EXHIBIT No. 207: Letter, January 2nd, 1915, Gutelius to Kent.
- EXHIBIT No. 208 : Letter, January 7th, 1915, Kent to Godsoe.
- EXHIBIT No. 209: Letter, January 21st, 1915, Godsoe to Kent.
- EXHIBIT No. 210: Letter, January 23rd, 1915, Kent to Gutelius.
- EXHIBIT No. 211: Letter, February 2nd, 1915, Gutelius to Brady.

EXHIBIT No. 212: Letter, February 2nd, 1915, Gutelius to Kent.

HIS LORDSHIP: At that time there was no Commission?

MR. RAND: No, my lord, Mr. Gutelius was the General Manager.

EXHIBIT No. 213: Letter, April 12th, 1915, Gutelius to Manager of Telegraphs, C. P. R., Montreal.

EXHIBIT No. 214: Draft agreement sent by Mr. Gutelius.

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10

Friday, January 18th, 1929, 10.30 A.M.

(MR. RAND continues the presentation and reading of Exhibits):

EXHIBIT No. 215: Letter, May 4th, 1915, Gutelius to Manager C. P. R. Telegraphs.

EXHIBIT No. 216: Letter, May 11th, 1915, McMillan (Manager Telegraphs) to Gutelius.

HIS LORDSHIP: All these letters have no bearing except to show that you were not treated in a hostile way. Is there any other object?

MR. TILLEY: These letters my friend is putting in now have nothing to do with the matter we are concerned with, except merely showing that we were facilitating—

HIS LORDSHIP: That they were not hostile. I do not know whether you call that facilitating. They were fixing rates.

MR. TILLEY: For the purpose of maintaining and repairing and constructing and so on. It shows they knew what we were doing and were in touch with the work.

MR. RAND: I understood at the commencement that this whole series of communications was to be put in to show the history of the matter.

HIS LORDSHIP: And the deductions to be taken from the history.

MR. TILLEY: I do not know that it becomes necessary to put in the whole correspondence.

MR. RAND: I might point out at this time that facilitating the work of the line does not by any means imply that the line is on the railway property.

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HIS LORDSHIP: I suppose you are going to argue that they are doing all this in a special atmosphere which is conciliatory instead of hostile?

MR. RAND: May I point out that this particular agreement arose as the result of a protest by Mr. Hayes at the low rates being charged.

HIS LORDSHIP: Yes, they say, we will not let you travel on our road for nothing.

MR. RAND: Yes, therefore we want you to pay more.

HIS LORDSHIP: No, want you to pay. No more passes.

MR. RAND: And higher charges for boarding cars.

MR. TILLEY: We had always paid, and they wanted more money. 10

HIS LORDSHIP: They wanted money, when you were travelling on passes.

MR. TILLEY: It was more than passes, they were hauling our material and taking our men, and they wanted increased remuneration. I do not see that it has much to do with what we are concerned with.

MR. RAND: Well I think a letter or two will show.

EXHIBIT No. 217: Letter, May 13th, 1915, Manson (Assistant to Vice-President C. P. R.) to McMillan.

EXHIBIT No. 218: Letter, June 15th, 1915, Gutelius to McMillan.

EXHIBIT No. 219: Letter, June 22nd, 1915, McMillan to Gutelius. 20

EXHIBIT No. 220: Letter, September 29th, 1915, Gutelius to McMillan.

EXHIBIT No. 221: Letter, December 3rd, 1915, Gutelius to McMillan.

EXHIBIT No. 222: Letter, January 15th, 1916, Gutelius to McMillan.

EXHIBIT No. 223: Letter, February 4th, 1916, McMillan to Gutelius.

EXHIBIT No. 224: Memo of March 6th, 1916, for F. P. Gutelius, signed by J. McMillan, re Exchange privileges. 30

EXHIBIT No. 225: Letter, March 15th, 1916, McMillan to Gutelius.

MR. RAND: That "gap of 46 miles" your Lordship will remember is the section between Sussex and Moncton.

EXHIBIT No. 226: Memo of June 9th, 1916, for Mr. Gutelius, apparently prepared by—

MR. TILLEY: I should say it is by Mr. McNeillie. He was Superintendent for the Intercolonial at Moncton at that time.

MR. RAND: We will find out exactly what his position was.

MR. FLINTOFT: I am informed that he was General Superintendent. His initials are J. K.

HIS LORDSHIP: When did the running rights end?

MR. RAND: May I say, my lord, that there was never any other arrangement than this, that the cars of the C. P. R. trains that ran from Montreal to Saint John were carried through from Saint John to Halifax, but the operation was entirely a Government Railway operation, it was a Government Railway locomotive and train crew.

10 That was abrogated somewhere about 1900.

MR. TILLEY: It does not come into this at all, there is no connection. Nothing to do with this case.

HIS LORDSHIP: Nothing to do with your short line right-of-way?

MR. TILLEY: When we got the short line to Saint John we carried our telegraph system on from there.

HIS LORDSHIP: I had in mind that this originated because you had the right to travel on the I.C.R. with your own trains.

MR. TILLEY: No, there is no connection at all.

20 HIS LORDSHIP: It had no connection with the operation of any of your trains?

MR. TILLEY: No connection with the operation of any of our trains on the Intercolonial.

MR. RAND: No, it had no connection whatever.

HIS LORDSHIP: It mentions the use of stations, I suppose that does not arise in this case.

MR. RAND: No, my lord.

HIS LORDSHIP: You are asking now that they remove their poles or pay you a certain amount for allowing them there. But you do not mix the right to use the stations to operate the line?

30 MR. RAND: No, I do not think that enters into it.

EXHIBIT No. 227: Letter, October 18th, 1916, Hayes to Gutelius.

EXHIBIT No. 228: Letter, October 31st, 1916, Gutelius to McMillan.

HIS LORDSHIP: This is the first time that you are called trespassers.

MR. TILLEY: Yes, and your Lordship will see that the letters that preceded it form the basis on which that statement is made, and the basis is that we were there by consent.

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MR. JONES: Well that is for argument.

EXHIBIT No. 229: Letter, November 3rd, 1916, from Assistant Manager Camp to Fraser, C. P. R. Superintendent at Saint John.

EXHIBIT No. 230: Letter, November 15th, 1916, Fraser to Camp.

HIS LORDSHIP: He is referring to what was done in the past?

MR. RAND: Yes, my lord.

HIS LORDSHIP: Does that mean that they gradually came inside the fence?

MR. RAND: During those years.

EXHIBIT No. 231: Telegram, December 27th, 1916, Camp to Fraser. 10

MR. FLINTOFT: We do not seem to have that original sketch.

EXHIBIT No. 232: Letter, November 16th, 1916, F. Cochrane, Minister of Railways, to Gutelius.

HIS LORDSHIP: That letter of the 14th you have not got.

MR. RAND: No, my lord.

EXHIBIT No. 233: Letter, December 28th, 1916, McMillan to Fraser marked "Private."

HIS LORDSHIP: Is that right, that Mr. Gutelius took charge May 1st, 1913? 20

MR. RAND: Yes, until 1917.

HIS LORDSHIP: I do not understand that, because Mr. Gutelius did write to Mr. McMillan on the 31st of October, 1916.

MR. RAND: But he says this work was carried on in 1914, which was a year after Mr. Gutelius came, and he says in that time there was no protest.

EXHIBIT No. 234: Letter, December 6th, 1916, Fraser to Camp.

HIS LORDSHIP: Is that of that date?

MR. RAND: I assume so.

HIS LORDSHIP: Have these poles been put on the right-of-way since? 30

MR. RAND: The Sussex to Moncton have, they were rebuilt in 1917.

EXHIBIT No. 235: Letter, January 1st, 1917, Fraser to McMillan.

HIS LORDSHIP: Of course that is all hearsay.

MR. RAND: Yes, and your Lordship will remember that the right to object to the introduction of this correspondence was preserved. That is not only hearsay, but at that time Mr. Pottinger was not in the Government service.

EXHIBIT No. 236: Telegram, January 11th, 1917, McMillan to Gutelius.

EXHIBIT No. 237: Telegram in reply, same date, Gutelius to McMillan.

10 EXHIBIT No. 238: Letter, February 2nd, 1917, McMillan to Gutelius.

EXHIBIT No. 239: Draft, May 17th, 1917.

MR. RAND: It does not appear who prepared that.

MR. TILLEY: I do not think it went from one party to another.

MR. RAND: This memo is produced from the custody of the defendant.

MR. TILLEY: I think it is just the memo on which the letter was written.

MR. RAND: This copy put in contains some additional words. We will get the original.

20 HIS LORDSHIP: Well that is a draft that floats in the air, the previous letter states what will be required.

MR. TILLEY: Your Lordship will find from our evidence that it will be disclosed that that was a memorandum that Mr. McMillan and Mr. Gutelius had before them, and that the O.K. was put on by Mr. Gutelius.

HIS LORDSHIP: So that your construction would be that whatever Mr. McMillan said in Exhibit No. 238 will be different from that memo, where that differs from the memo, that memo should prevail?

30 MR. TILLEY: I am not suggesting anything for the moment except what the "O.K." means. The letter put forward different proposals, and the Intercolonial could take their choice. The terms were put alternatively.

HIS LORDSHIP: There are several terms offered.

MR. TILLEY: Alternatively, he could not accept them all, he had his choice. Then after that they had a conference, and this memo was before them, and then some of these things were O.K.'d by Mr. Gutelius. There will be evidence about that.

EXHIBIT No. 240: Telegram, March 27th, 1917, Fraser to McMillan.

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EXHIBIT No. 241: Letter, March 19th, 1917, A. C. Barker (an official of the C. G. R.) to Gutelius.

EXHIBIT No. 242: Letter, March 30th, 1917, Gutelius to McMillan.

EXHIBIT No. 243: Letter, May 11th, 1917, Gutelius to McMillan.

EXHIBIT No. 244: Letter, May 14th, 1917, McMillan to Gutelius.

EXHIBIT No. 245: Draft of agreement 10/5/17, unsigned.

HIS LORDSHIP: This is another landmark. There is a challenge of trespass, and a suggestion to try to arrive at some settlement, then this is boiled down to a draft, which is negotiation. That was never signed?

MR. RAND: Not by the Crown. It never became effective. 10

MR. TILLEY: My instructions are that your copy is signed.

MR. RAND: If we have it I will produce it.

HIS LORDSHIP: Who would have signed it?

MR. TILLEY: I have not seen it. That is just information, it may be inaccurate.

EXHIBIT No. 246: Letter, June 11th, 1917, Hayes (General Manager) to Hon. F. Cochrane, Minister of Railways.

EXHIBIT No. 247: Letter, June 19th, 1917, Assistant General Manager, I.C.R., to Hayes.

EXHIBIT No. 248: Letter, July 17th, 1917, McMillan to Hayes. 20

EXHIBIT No. 249: Letter, July 23rd, 1917, H. F. Alward to Barker.

MR. RAND: Mr. Alward was the Solicitor of the Government Railways at Moncton at that time.

EXHIBIT No. 250: Letter, July 28th, 1917, Barker to Alward.

MR. TILLEY: That letter refers to the Saint John to Shediac line being constructed by the New Brunswick Electric Telegraph Co. How did the Western Union acquire that?

MR. JONES: We cannot find out. They evidently acquired it, the Great North Western never acquired it.

MR. TILLEY: I think it ought to be noted that so far the plaintiff is 30 not able to ascertain how that telegraph line became transferred to the Western Union.

MR. JONES: No, we cannot find that out.

MR. TILLEY: And I suppose the same thing applies to the American Telegraph line, referred to at the end of the letter?

MR. JONES: I cannot say just now, I presume it would.

EXHIBIT No. 251: Memorandum of August 3rd, 1917, Alward to Hayes.

MR. RAND: He speaks of the new agreement, I think he refers to one that was entered into between the King and the Western Union Telegraph Co., and the Great North Western, which will be put in evidence. In 1917 that Montreal Telegraph Co. agreement was superseded by a new agreement.

HIS LORDSHIP: The Montreal Telegraph Company a party thereto?

10 MR. RAND: Through its successors in interest. My information is that as a corporate entity it still exists.

HIS LORDSHIP: Then the Great North Western would have an exclusive right?

MR. RAND: Any exclusive rights were continued.

HIS LORDSHIP: Does that mean the agreement of 1870 with the Montreal Telegraph Co.?

MR. RAND: Yes, that is the Montreal agreement. This new agreement, made January 24th, 1917, is not in evidence yet.

20 HIS LORDSHIP: Does that take the place of the agreement of 1870?

MR. RAND: It supersedes that. This purports to cover the rights given to the Montreal Telegraph Company, to embody them in this agreement. Those old agreements are published in the appendix to this agreement.

HIS LORDSHIP: Was the Montreal Telegraph Company a party to this?

MR. RAND: Not directly, my lord.

30 HIS LORDSHIP: You could not take away the rights the Montreal Telegraph Company had and give them to another company without the Montreal Telegraph Company being a party.

MR. RAND: But prior to this the Montreal Company had in some way, by assignment or lease, conveyed certain rights under that agreement to the Great North Western or the Western Union.

HIS LORDSHIP: And what took place between the Crown and them was just confirmation of that?

40 MR. TILLEY: I think we must understand that situation. I understand that my friend is not trying to clear up the precise situation in regard to franchises at the moment, but he proposes to come to that and deal with it separately, so that it will be more clearly understood, I think that is the better course. It is difficult to state the effect of these documents, we will have to consider them.

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HIS LORDSHIP: You have not studied them, and you are not agreed as to that?

MR. TILLEY: Yes, we have studied them. Mr. Rand is indicating now in a broad way how it stood.

HIS LORDSHIP: The Crown cannot now give these rights, in 1917, that they have given in 1870 to different parties. There must be a link somewhere.

MR. TILLEY: Yes, my learned friend will disclose the link.

MR. RAND: I think it will be shown that there is a connection between the Montreal Telegraph Company and the Great North Western 10 and the Western Union. It refers to these agreements.

HIS LORDSHIP: Well, you will at some time clarify the whole matter?

MR. RAND: Yes. And that new agreement of 1917 is what Mr. Alward refers to in this paragraph.

HIS LORDSHIP: Then with respect to this exclusive right, instead of looking to the Montreal Telegraph Company we look to these new companies. Is that what it means?

MR. RAND: Well this agreement of 1917 will be sufficient for our purpose when we refer to what it embodies. 20

The agreement of October 6th, 1889, is also embodied in that document.

EXHIBIT No. 252: Letter of August 3rd, 1917, Hayes to McMillan.

HIS LORDSHIP: Can the Crown give you a good title to it?

MR. TILLEY: The question is, Can the Crown turn us off? That is this action.

HIS LORDSHIP: But I am asking you, Can they give you a good title on this exclusive part.

MR. TILLEY: On the part of the Crown they can. The other companies are not parties. We have their letters. This is not an action by 30 the companies.

HIS LORDSHIP: The Crown may do it off its own bat, or may do it at the request of the Montreal Telegraph. They may say, You gave us an exclusive right, get these trespassers away.

MR. TILLEY: But that is not the position.

EXHIBIT No. 253: Letter, August 11th, 1917, R. G. Gage, to C. B. Brown.

MR. RAND: Mr. Gage was an official of the Government Railways at Moncton, I think his duties had to do with the Telegraph Department.

Mr. Brown was apparently Assistant General Manager of the Government Railways at that time.

EXHIBIT No. 254: Letter, August 16th, 1917, Hayes to Brown.

EXHIBIT No. 255: Letter, August 27th, 1917, Brown to Hayes.

EXHIBIT No. 256: Letter, September 29th, 1917, Hayes to McMillan.

EXHIBIT No. 257: Draft agreement 29/5/17.

HIS LORDSHIP: Was it ever signed?

MR. RAND: It was not executed.

EXHIBIT No. 258: Letter, October 2nd, 1917, McMillan to Fraser.

10 HIS LORDSHIP: The C. P. R. has no telegraph on Prince Edward Island, has it?

MR. TILLEY: No, my lord.

EXHIBIT No. 259: Telegram, October 5th, 1917, Fraser to McMillan.

EXHIBIT No. 260: Sketch referred to in Exhibit 259. (To be produced).

EXHIBIT No. 261: Letter, October 5th, 1917, Fraser to McMillan.

HIS LORDSHIP: That has reference to this draft agreement?

MR. TILLEY: Yes, my lord.

MR. RAND: Yes.

20 EXHIBIT No. 262: Letter, November 3rd, 1917, Hayes to Hon. J. D. Reid, Minister of Railways.

HIS LORDSHIP: What agreement has that reference to?

MR. TILLEY: Exhibit No. 245.

EXHIBIT No. 263: Memo, prepared by Mr. McMillan, dated November 9th, 1917.

EXHIBIT No. 264: Letter, November 12th, 1917, L. S. Brown to Hayes.

EXHIBIT No. 265: Letter, February 1st, 1918, Hayes to McMillan.

EXHIBIT No. 266: Letter, February 13th, 1918, McMillan to Hayes.

30 EXHIBIT No. 267: Letter, February 16th, 1918, Hayes to McMillan.

EXHIBIT No. 268: Letter, February 26th, 1918, Hayes to McMillan.

EXHIBIT No. 269: Letter, February 28th, 1918, McMillan to Hayes.

EXHIBIT No. 270: Letter, April 16th, 1918, Hayes to L. S. Brown.

MR. RAND: I might say that is an error, from Painsec to Point Duchene they are not on the right-of-way.

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EXHIBIT No. 271: Letter, April 25th, 1918, McMillan to Hayes.

(Court adjourned at 1 p.m. until 2 p.m.)

AFTERNOON SESSION Friday, January 18th, 1929.

(Presentation and reading of Exhibits resumed by MR. RAND).

EXHIBIT No. 272: Letter, April 30th, 1918, Hayes to McMillan.

EXHIBIT No. 273: Letter, May 15th, 1918, Fraser to McMillan.

EXHIBIT No. 274: Letter, May 16th, 1918, McMillan to Hayes.

EXHIBIT No. 275: Letter, May 20th, 1918, Hayes to McMillan. 10

EXHIBIT No. 276: Letter, June 25th, 1918, Hayes to S. L. Shannon.

MR. RAND: I think Mr. Shannon was head of the Accounting Department in Moncton at that time.

EXHIBIT No. 277: Letter, July 13th, 1918, (?) to H. E. Suckling, Treasurer, C.P.R.

EXHIBIT No. 278: Letter, July 13th, 1918, Hayes to McMillan.

EXHIBIT No. 279: Letter, July 18th, 1918, Fraser to McMillan.

EXHIBIT No. 280: Letter, July 24th, 1918, McMillan to Hayes.

EXHIBIT No. 281: Letter, July 31st, 1918, McMillan to Sir George Bury. 20

HIS LORDSHIP: Is that any use?

MR. JONES: We would like to have it in.

MR. TILLEY: I think we should draw a limit some place. I do not see these letters from here on add anything. There is nothing in this letter except recounting what has happened to another officer of the C. P. R.

HIS LORDSHIP: You have been using similar letters exchanged between officers of the company.

MR. TILLEY: I am not objecting on that ground, I am only objecting that the issue is now defined, I do not think further correspondence 30 helps it.

HIS LORDSHIP: It is hard for me to say now, You shall not put this in.

Try and size it up. Do you intend to put any more of these letters in?

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MR. JONES: We had decided on doing that, because they are in the same category. It is difficult to change our minds so quickly, because we would have to consider the letters again.

HIS LORDSHIP: Can you not put in a kind of admission at this stage that there were a number of letters exchanged subsequently, to the same effect as those we have already had?

MR. JONES: I am not sure whether that would be sufficient. Perhaps we might put this in, and we will look over some of the following ones.

10 EXHIBIT No. 282: Letter, June 24th, 1919, Brady to Shannon.

EXHIBIT No. 283: Letter, June 24th, 1919, Brady to McMillan.

EXHIBIT No. 284: Letter, July 18th, 1919, McMillan to Brady.

MR. TILLEY: We can just specify the period of time, and I will admit that accounts were rendered at 25 cents per pole.

MR. RAND: Quarterly accounts for the periods ending June 30th, 1919, and September 30th, 1919, were rendered on October 30th, 1919, to the C. P. R. Telegraphs.

HIS LORDSHIP: But accounts were rendered before that.

MR. TILLEY: It began as from January 1st, 1917.

20 HIS LORDSHIP: It will be up to the time of the institution of this action?

MR. TILLEY: Here is a statement showing the bills you did render.

MR. RAND: I offer statement of the accounts rendered, to include charges up to December, 1922.

EXHIBIT No. 285: Summary of accounts rendered.

MR. RAND: I do not want to imply that they have not been sent after that. I do not know in fact.

30 MR. TILLEY: The statement does not show it, but it is agreed that these accounts were all on that same basis of 25 cents per pole per annum.

HIS LORDSHIP: Perhaps you will admit also that from time to time there has been pressure to pay these accounts, that the claim was not abandoned.

MR. TILLEY: That is not quite the point. Your Lordship will find that they stopped rendering the accounts, they took another attitude, and my friend is looking for the letter.

MR. RAND: We can admit that there were interchanges of correspondence up to the time the notice was sent by the Minister.

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MR. TILLEY: Appropriate correspondence, but the correspondence added nothing to the situation.

MR. RAND: What I suggested to Mr. Tilley is that we agree that from the date of the last letter that was put in to March 20th, 1924, there were various communications passing between the parties, but they added nothing to the previous negotiations.

MR. TILLEY: One side saying, You ought to pay, send us a cheque—

HIS LORDSHIP: They pressed for payment and you refused to pay. 10

MR. RAND: Not only that, there was an endeavour to reach an agreement, as there had been previously.

HIS LORDSHIP: Since the rendering of the last account negotiations were carried on up to 1924, is that what you mean?

MR. JONES: Except that there are letters to go in showing a demand for them to get off the premises.

MR. TILLEY: Neither side gave up its contention.

MR. RAND: Showing that they had not lapsed into inaction.

MR. TILLEY: In the interval correspondence was being carried on, neither side receding from its position. 20

HIS LORDSHIP: Negotiating?

MR. TILLEY: Negotiating, if you please. The C. P. R. took the position that the lines were built there under circumstances that did not involve payment, and the railway company saying, You ought to pay, and continuing and not abandoning that contention.

HIS LORDSHIP: Without either side waving its view.

MR. TILLEY: Yes, and then in 1924 another stand was taken.

MR. RAND: Letter of March 20th, 1924—

EXHIBIT No. 286: Letter, March 20th, 1924, Assistant Deputy Minister of Justice to Mr. Beatty, President of the C. P. R. 30

EXHIBIT No. 287: Letter, April 25th, 1924, E. P. Flintoft to W. Stuart Edwards, Assistant Deputy Minister of Justice, marked "Personal."

MR. TILLEY: Mr. Graham being Minister of Railways at the time, and Major Bell the Deputy.

EXHIBIT No. 288: Letter, January 29th, 1926, Edwards to Flintoft.

MR. JONES: As I understand, this concludes the correspondence, except that I would not suppose either side would be absolutely shut out if something has been overlooked inadvertently.

HIS LORDSHIP: Yes.

MR. JONES: And it was thought best that the Telegraph agreement, the new agreement of 1917, should be deferred.

We had thought that the question of damages might be deferred.

HIS LORDSHIP: I thought we might decide the questions of law and the rights of the parties, and then, supposing the decision is in your favour, you might agree as to terms.

MR. TILLEY: I think if the rights are determined the parties will be able to agree.

10 MR. JONES: Then we may take it for granted that the evidence as to damages shall be deferred?

HIS LORDSHIP: Yes, I think that is proper. That will dispense with bringing your witnesses back, we will not touch the question of damages at this stage.

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(At 3 p.m. Friday, January 18th, Court adjourned until 10.30 a.m. Tuesday, January 22nd, 1929.)

OTTAWA, Tuesday, January 22nd, 1929, 10.30 A.M.

20 MR. JONES: The next document, my lord, is:

EXHIBIT No. 289: Agreement of 17th August, 1881, between Montreal Telegraph Company and the Great North Western Telegraph Company of Canada and the Western Union Telegraph Company.

HIS LORDSHIP: This contract means that the Great North Western takes the place of the Montreal Telegraph Company in payment of the rent. But where does the Western Union come in, besides being guarantor? Had the Western Union any line in the territory in question?

MR. JONES: Yes, my lord, it had a line.

30 HIS LORDSHIP: Before it went into this contract?

MR. JONES: In part of the territory.

HIS LORDSHIP: How does it come in here? You have shown by the reading of the evidence that some lines belonged to the Montreal Telegraph and that they are now replaced by the Great North Western, and you spoke also of some lines that were in the hands of the Western Union.

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MR. JONES: I am not sure that it is material.

HIS LORDSHIP: It seems to be stressed, but I cannot understand the reason.

MR. FLINTOFT: The Western Union have a line from Saint John east to Moncton, and from Moncton through Truro to Halifax.

HIS LORDSHIP: Has not the Great North Western a line too? Or is it the only line?

MR. FLINTOFT: As I understand from Mr. MacNeill's evidence, the Canadian National Telegraphs, which through the Great North Western are the successors of the Montreal Company, do not operate south, 10 or east as you may call it, of Moncton and that the lines from Saint John to Moncton through Truro to Halifax and Truro to Sydney, are operated by the Western Union. The line from Saint John to Moncton—I presume my friend will explain it, but as I am instructed it was acquired through the New Brunswick Electric Telegraph Company. The Western Union acquired that company. And they acquired the lines of the American Telegraph Company, which originally operated in Nova Scotia from Halifax to Truro and east as far as New Glasgow.

HIS LORDSHIP: I suppose they had to get to the cable.

MR. FLINTOFT: Yes, they have a cable connection as well. 20

MR. JONES: The agreement that will be read presently, made in 1917, indicates by a schedule, as my learned friend has said, that the Western Union operates below Moncton.

HIS LORDSHIP: But the one that has the paramount and exclusive right is the Montreal, now replaced by the Great North Western. Where does the Western Union come in that?

MR. RAND: The Western Union was the only company that was east of New Glasgow. There was an agreement of 1889. The Montreal line was held not to have an exclusive right east of New Glasgow.

HIS LORDSHIP: But there was no such privilege attached to the 30 portion from Truro?

MR. RAND: No.

MR. JONES: We will say, lest we admit something by keeping quiet, that under this operating agreement our contention will be that the Great North Western had simply a power to operate, but did not acquire all the rights of the Montreal Telegraph Company, which still exists; that is the right to permit others to go on its line, nor to waive any objection. This was not an assignment.

HIS LORDSHIP: It is the Montreal Telegraph that had the privilege, but then the Great North Western stepped into their shoes.

MR. JONES: In the way of operation, but does not acquire any right to the property of the Montreal Telegraph Company or its privileges.

HIS LORDSHIP: I would not say that. I would say it has the same right as the Montreal Telegraph Company has in the operation of that line.

MR. JONES: But not with respect to the title, or in respect of any other matter.

HIS LORDSHIP: Not the fee, if you like.

MR. JONES: No, not the fee.

10 HIS LORDSHIP: Of course that is a matter of argument.

MR. FLINTOFT: In paragraph 7 there is reference to a list of contracts that the Great North Western have received notice of. Have you that list?

MR. JONES: The attached list is not here, but it may be got, I understand it is in Toronto.

HIS LORDSHIP: If Mr. Flintoft wishes to see it it should be brought. The document is not complete without it.

MR. JONES: I think we will be able to get it.

20 HIS LORDSHIP: Those companies never created any trouble with the C. P. R. over operating—

MR. FLINTOFT: No, my lord.

HIS LORDSHIP: I mean as far as proceedings in Court.

MR. RAND: Your Lordship will remember that there was a suggestion in one of the letters of what was called a nigger in the woodpile somewhere.

MR. JONES: There were proceedings taken in a case west of Saint John, between the Western Union and the C. P. R., but not in this territory.

30 MR. RAND: Between Saint John and Vanceboro. The proceedings were in 1889.

MR. FLINTOFT: That difficulty was subsequently adjusted, it has nothing to do with this. We are on the right-of-way west of Saint John now.

MR. JONES: There is an agreement which I will read, dated 24th January, 1917, between the Western Union and the Great North Western and His Majesty King George V. There are some other earlier agreements attached to this which were superseded by this, all printed in this pamphlet. I thought it might be convenient to put in the whole pamphlet as one exhibit, with the explanation that we have already put in the Montreal agreement of 1870.

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MR. FLINTOFT: I think possibly for convenience of reference it would be better to separate them.

MR. RAND: This agreement of 1917 does not entirely supersede these others. There are other agreements which deal with lines that were taken over by the Western Union, and this agreement provides that if it should cease at any time those other agreements should revive.

HIS LORDSHIP: Does that affect the Montreal Telegraph Company agreement?

MR. RAND: Yes, my lord, that is one of them.

HIS LORDSHIP: Affecting the three companies? 10

MR. RAND: Yes, they are all part and parcel of this agreement.

MR. FLINTOFT: May I suggest, as a matter of history, would it not be better to read the earlier agreements?

HIS LORDSHIP: Is that going to be of importance in this case?

MR. FLINTOFT: We have some of them already.

HIS LORDSHIP: Since we have the chain of transactions I see no objection. I see no objection to you reading this now and putting the others in afterward.

MR. JONES: They come consecutively in the book, and they are attached as exhibits to the main agreement of 1917. 20

HIS LORDSHIP: Then you had better pursue the course you started, read the 1917 agreement and the others as part of it.

(Exhibit read and filed).

EXHIBIT No. 290: (Pamphlet) Agreement of January 24th, 1917, between Western Union Telegraph Co., G.N.W. Telegraph Co., and His Majesty King George V., with other agreements as appendix.

HIS LORDSHIP: What were the reasons for this agreement being entered into in 1917?

MR. RAND: They made a uniform agreement covering all the lines 30 in New Brunswick and Nova Scotia, from Saint John to Sydney, with respect to the relations between the Railway and the Telegraphs. They consolidated these several agreements that were under slightly varying terms, they made the arrangement uniform between the Government Railways and these that were originally separate. For instance there was a provision in relation to the despatch of trains, that they could use certain wires, the different agreements had slightly different clauses affecting that and other matters.

HIS LORDSHIP: The Great North Western has not now a telegraph line on its own right-of-way?

MR. RAND: The Great North Western runs north of Moncton.

HIS LORDSHIP: But I mean the Government Railway has not a telegraph line on its own property, has it?

MR. RAND: This agreement provides for certain wires owned by the Government, in that way they established themselves in the position of having their own line of telegraph for railway purposes.

HIS LORDSHIP: But the Montreal Telegraph is not a party.

MR. RAND: But the Great North Western is, and it recites the Great North Western operating the lines of the Montreal Company.

10 HIS LORDSHIP: I do not know how the Great North Western could affect the rights of the Montreal Telegraph.

MR. RAND: As an operating company it made a contract with respect to operation, that is the extent of this agreement.

HIS LORDSHIP: I do not know how far the Great North Western could bind the Montreal Telegraph in such an agreement as this. You say that as a result of this the Government Railways will have a line of telegraph on their own right-of-way for certain parts?

MR. RAND: Yes, this agreement provides that they purchase certain wires from the Telegraph Company.

20 HIS LORDSHIP: But that only applies to part of the line?

MR. RAND: I think it is uniform, it provides for certain mileage of wire service which is bought, I think it is six wires to the mile of main line of Government Railways, that is the maximum. That mileage may be distributed as the Government may determine, that is they might have three wires between certain points and only one between other points. It provides in effect a uniform accommodation to the railway, certain wire services, it may be one wire over the whole line or two over half, or two over a certain part, and one over another part. There is a maximum mileage given under this agreement, and any other service is to be given
30 on the terms which the agreement provides.

HIS LORDSHIP: At the time of this agreement they had their poles—

MR. RAND: Except from Moncton to Sussex.

HIS LORDSHIP: They were put in in 1917. Practically they were there, but you are not mentioning them.

MR. RAND: Other companies are mentioned.
(Reading of 1917 agreement concluded.)

MR. RAND: There is an Order-in-Council authorizing this, I suppose we can take that for granted.

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The next part of this agreement sets forth the territories occupied by the two companies, the Western Union and the Great North Western. Perhaps I may briefly indicate what they are.
 (Schedule "A").

The Western Union Telegraph lines start at Saint John, to Moncton, south to Halifax, and east from Truro to Sydney, all the territory between Moncton, Saint John and Halifax, and from Truro to New Glasgow and Stellarton to Pictou, and Oxford Junction to Brown's Point, and New Glasgow to Sydney.

The Great North Western Telegraph Company's lines go from Ste. 10 Rosalie to Moncton.

Schedule "B" shows the wires owned by the railway on the pole lines of the Telegraph Companies along the railroad.

Schedule "C" shows the wires and telegraph instruments now owned by the Western Union and Great North Western Telegraph Companies, and used by the railway in its services. It simply designates the wires that are to be sold to the Railway under the terms of this agreement.

Schedule "D" gives the agreements which form the basis of this uniform agreement and which are superseded by this agreement, as stipulated by the terms which have been read. 20

The first agreement is that between the Western Union Telegraph Company and the Northern and Western Railway Company—which is not material.

(Not read).

The second agreement is that between Her Majesty the Queen and the New Brunswick Electric Telegraph Company, dated May 1st, 1859, between Saint John and Shediac.

(Agreement read).

MR. FLINTOFT: That does not purport to be exclusive.

HIS LORDSHIP: I think the only exclusive agreement is the Mon- 30 treal agreement, isn't it? Was there some with respect to the Western Union?

MR. RAND: The agreement of 1870 would necessarily contemplate this agreement, and subject to this agreement it would be exclusive as regards the section between Saint John and Moncton, because it covers this line.

MR. FLINTOFT: That is subject to discussion.

MR. RAND: The next agreement is the contract between Her Majesty the Queen and the American Telegraph Company, dated April 8th, 1862, on the railways owned by the Province in Nova Scotia. (Agreement 40 read).

Next is the agreement between Her Majesty the Queen and the Western Union Telegraph Company. It refers to the charter of the Nova Scotia Telegraph Company.

MR. FLINTOFT: The American Telegraph Company apparently was a United States corporation.

MR. RAND: Probably, I gather that from the name only.

HIS LORDSHIP: Probably it was absorbed later by the Western Union.

MR. RAND: Yes, this agreement implies that. This is the only
10 agreement that refers to the Halifax and Truro line, so the inference is that at that time, 1917, the line from Halifax to Truro was being operated by the Western Union under the American Telegraph Company agreement. And other lines, as will appear, completed the entire route between Halifax and Sydney. (Agreement of 16th October, 1889, read).

This was the agreement along the lines of which the proposed agreement with the C. P. R. for the right-of-way east of New Glasgow was drawn up. You remember the correspondence indicated that the draft would be along the lines of this agreement.

MR. FLINTOFT: We are hardly able to say that positively.

MR. RAND: At that time this was the only agreement between the
20 Dominion and the Western Union, all the other agreements with the Western Union were with the Provincial Governments. This is 1889 and that draft was made in 1893.

HIS LORDSHIP: There was not that impediment, there were no exclusive rights on that part.

MR. RAND: No. All I suggest is that this was the agreement referred to in the correspondence relating to the draft.

I have the Order-in-Council, but if it is understood that we do not put in any Orders-in-Council—

MR. FLINTOFT: I think if one is put in they should all be put in.
30

MR. RAND: Yes, therefore we will not put any in.

HIS LORDSHIP: These contracts on behalf of the Crown are no good if there is no Order-in-Council.

MR. FLINTOFT: I would like to see them, have an opportunity of examining them all.

HIS LORDSHIP: But these contracts are not attacked, I suppose?

MR. FLINTOFT: Oh no.

HIS LORDSHIP: There may be thousands of questions arise. Suppose the contract goes beyond the Order-in-Council. But I do not

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see that I should be called upon to decide these matters, I cannot see how it is relevant, except it is history of the lines in that part of the country. But that does not help me to decide the only question to be decided here.

MR. FLINTOFT: They do show the situation at the time the C.P. R. Telegraph line came there, and what, if any, obligations the Crown had undertaken at that time to other companies.

HIS LORDSHIP: It seems to be the object of both sides to spread it on the record. I accede to it.

MR. RAND: Our view is that they have no relevancy to the question in this action.

10

HIS LORDSHIP: But you are putting it in?

MR. RAND: No.

MR. FLINTOFT: No, it is by agreement.

MR. RAND: It was by agreement that they were to be put in in chronological order, it was the object of both parties to spread on the record the full history of the telegraph lines in that part of the country. I acceded to it because it was your desire, not because I saw any relevancy. That was proposed by Mr. Tilley and acquiesced in by us. It gives the historical setting, that is about all.

Then the supplementary agreement between Her Majesty the Queen and the Western Union, dated January 12th, 1891, supplementary to that which I have just finished reading. It extended the terms of the 1889 agreement to the Oxford branch, that is all it amounts to.

Next is the agreement of 1870, which has already been read.

MR. FLINTOFT: Would it not be convenient to put on the original exhibit number? (Exhibit No. 6).

I think the other agreements attached apply north of Moncton only.

(Court adjourned at 1 p.m. until 2.30 p.m.)

30

AFTERNOON SESSION, Tuesday, Jan. 22nd, 1929.

MR. RAND: These contracts shown in the schedule to Exhibit No. 290, between Her Majesty the Queen and the Great North Western Telegraph Company, do not relate to the line east of Moncton, and for that reason are not being read.

HIS LORDSHIP: If it has no bearing perhaps you better strike it out. Strike it out with your pen. Then what you have stricken out is not to be part of the record.

MR. RAND: Then there was the question of the details of mileage, which I gave in a general way, pages 25 to 36 inclusive, they are not needed and are not intended to be included, but the general statement made as to the points between which the lines run is to be considered in evidence.

HIS LORDSHIP: Anything that is not stricken out will be part of the record.

MR. RAND: The next document is:

10 EXHIBIT No. 291: Agreement of June 22nd, 1880, between Western Union Telegraph Co., and Halifax and Cape Breton Coal & Railway Co.

(Exhibit read).

HIS LORDSHIP: What was the territory of the Halifax & Cape Breton Coal & Railway Company?

MR. RAND: It ran from New Glasgow east. At the time of this agreement the railway apparently was already constructed to Antigonish. It was the eastern extension afterward, that is how it is referred to in all these other documents, the eastern extension from Halifax to Mulgrave.

MR. RAND: There is an Order-in-Council:

20 EXHIBIT No. 292: Order-in-Council of April 20th, 1909, P.C. 825. (Exhibit read).

MR. RAND: The life of that Board was from 1909 to 1913, then in 1913 Mr. Gutelius was appointed Manager.

EXHIBIT No. 293: Order-in-Council, May 5th, 1913, P.C. 1031. (Exhibit read).

HIS LORDSHIP: What would you say the management was from 1885 to 1909?

MR. RAND: There was a General Manager and a staff. We have the Order-in-Council of 1872 organizing the staff generally, but it does 30 not appoint the General Manager.

HIS LORDSHIP: Will this question come up, Mr. Tilley? It may turn out to be important to know the authority and power of anybody who had these conversations or wrote the letters, so that it would be of importance to fill that gap.

MR. TILLEY: It would be nice to have all the gaps filled up, because when we come to the argument your Lordship may want to follow something of that kind through.

MR. RAND: This Order-in-Council creates the offices to be filled, but I would not say the filling of the offices requires an Order-in-Council.

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MR. JONES: I am instructed that there was no Order-in-Council appointing Mr. Schreiber. He was Chief Engineer from 1885.

HIS LORDSHIP: That is what I had in mind.

MR. RAND: We have had a search made for the Order-in-Council appointing the first General Manager. The only inference I can draw is that he was appointed by the Minister without an Order-in-Council.

HIS LORDSHIP: It might be shown that under the Railway Act the Minister had power and got some of his officials to act. In those days they were not as exacting.

MR. TILLEY: That is what we say. 10

MR. RAND: The next document is—

EXHIBIT No. 294: Order-in-Council, October 12th, 1872.
 (Exhibit read).

HIS LORDSHIP: Was there not a Commission at the beginning?

MR. RAND: There was a Commission to construct the original Intercolonial Railway, then it became a public work and automatically came under the Public Works Department. Then there was a separation, by which the railways and canals went into the newly created department.

HIS LORDSHIP: Does that agree with the understanding of every- 20 one, that at that period it was the Department that was administering, and the Department appointed these officers?

MR. RAND: Well these officers are appointed by the Order-in-Council, this is an Order-in-Council creating the offices and appointing the men.

MR. TILLEY: Not necessarily.

MR. RAND: This appointed the first official staff of the Intercolonial Railway.

MR. TILLEY: Your Lordship will find a statute on that which we will have to refer to. 30

MR. RAND: The Public Works Act at that time.

MR. TILLEY: Later on it came under the Railways.

MR. JONES: In 1879 I think. Originally there was no Railway Department as such.

MR. RAND: The line from Riviere du Loup to Moncton was not opened until 1876. Mr. Carvell was appointed General Superintendent of all the railway that was in operation at that time.

Mr. Tilley brings to my attention that there was an Order-in-Council appointing Mr. Hayes to succeed Mr. Gutelius and to complete it I will put this in.

EXHIBIT No. 295: Order-in-Council, 5th June, 1917, P.C. 1529.

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DAVID POTTINGER, sworn. Examined by MR. JONES:—

Q.—Where do you reside at present, Mr. Pottinger? A.—Montreal.

Q.—Were you at one time connected with the Intercolonial Railway? A.—I had charge of it for a number of years.

10 Q.—Do you recollect when you first became connected with it? A.—I was first connected with one of the component parts. I was appointed to the Nova Scotia Railway on the 1st of July, 1863.

Q.—Where was that located, between what points did it run? A.—That ran at that time between Halifax and Windsor, 45 miles, and between Halifax and Truro, 61 miles.

Q.—By whom was that then operated? A.—By the Nova Scotia Government under a Commission. The Commission had been dissolved some years before, and when I went on it the head of it was called the Chief Commissioner of Railways for Nova Scotia.

20 Q.—Do you recollect by whom that railway was constructed? A.—It was constructed by contractors for the Nova Scotia Government, it was built by the Government of Nova Scotia.

Q.—And by whom was it operated, by the Government too? A.—By the Government also.

Q.—About when did this Commission cease to operate? A.—I am not sure, but when I went on it there was nothing but the Chief Commissioner left. He was appointed by the Government and was the political head. There was a Superintendent who operated the railway.

30 Q.—How long did you continue in that position? Was that the time you were in charge of a certain part? A.—No, I was a young fellow about 19 years old, and went on at \$20 a month.

Q.—When did you first take charge of any part of what is now the Intercolonial? A.—I was General Storekeeper and Purchasing Agent for the whole Intercolonial. You do not mean that?

Q.—During what period? A.—But I was appointed in charge of the whole Intercolonial in February, 1878.

Q.—By what title were you known then?

HIS LORDSHIP: How was he appointed?

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MR. JONES: Do you know whether you were appointed by Order-in-Council, or how? A.—I never saw any Order-in-Council, but I believe I was appointed by Order-in-Council.

MR. JONES: I do not think there was any Order-in-Council, we have not been able to find any.

Q.—By what title were you known then? A.—I was called Chief Superintendent.

Q.—Was it then under the Department of Railways or under the Department of Public Works? A.—I am not quite certain as to that. The Minister was Sir Charles Tupper. 10

Q.—When you were first appointed? A.—At that time.

Q.—How long did you continue in that position? A.—There was a change of title in 1892, I think it was to General Manager.

Q.—And you became General Manager in 1892. Of course at that time it was under the Department of Railways, was it? A.—Yes.

Q.—And who was the Minister, do you recollect? A.—I think it was John H. Pope, but I am not sure.

Q.—How long did you remain there as General Manager? A.—I cannot remember the date, until Mr. Graham appointed a Commission to operate the Intercolonial. 20

HIS LORDSHIP: Until 1909, the time they appointed the Commission? A.—I have no doubt that was the date.

MR. JONES: And you were a member of that Commission, were you not? A.—I was.

Q.—How long did you continue a member of that Commission? A.—Until it was abolished.

Q.—And then did you retire from the road? A.—On the first of August, 1913, I retired.

Q.—In 1892 when you became General Manager, what parts of the Intercolonial were under your control? A.—The whole of it, as well as 30 the Prince Edward Island Railway. The only difference between my being Chief Superintendent and General Manager was that the railway on Prince Edward Island was added to me.

Q.—Were all the parts built that are existing today, say east of Moncton, substantially as they are? A.—I forget whether the Cape Breton Railway was built then or not.

Q.—About that time, 1891, I think. A.—There was nothing added after that I think.

Q.—In the early days, or take it about 1880, what was the condition with reference to telegraph lines? A.—In the very early days there

was an agreement in Nova Scotia with the Anglo-American Telegraph Company, under which the Telegraph was operated on the Nova Scotia Railway.

Q.—That was just on the Nova Scotia Railway? A.—Yes. About 1860 the New Brunswick Government made a contract, an agreement, with the New Brunswick Telegraph Company for twenty years, for the European & North American Railway, that is the railway running from Saint John to the waters of the Gulf at Point du Chene and Shediac.

10 Q.—That European & North American Railway was constructed by the New Brunswick Government, wasn't it? A.—By the New Brunswick Government.

Q.—Prior to Confederation? A.—And operated by them.

Q.—You spoke about an agreement, what did the Telegraph Company actually build, if anything? I am speaking of the one from Saint John to Shediac. Did they build a telegraph line? A.—They built a telegraph line, they were given the right to build it, but no exclusive right.

Q.—And they actually built a line, did they? A.—Yes, and they gave the European & North American Railway the right to use a telegraph 20 wire on that line.

Q.—In the operation of its trains I suppose? A.—Yes, not commercially. And the Company had a right to have a telegraph office in I think three of the principal stations in New Brunswick.

Q.—Was that telegraph line built all the way from Saint John to Shediac? A.—To Point du Chene beyond Shediac.

Q.—How far beyond Shediac? A.—About two miles.

Q.—Do you recollect on what side of the track that was? A.—No, I do not.

30 Q.—Have you any knowledge of that telegraph line being acquired by any other company? I am speaking of between Saint John and Pointe du Chene. A.—Well it seems to have been acquired by the Western Union Telegraph Company, but I never saw any documents about it. But they have operated that line ever since.

Q.—About how early do you remember the Western Union in connection with its operation? A.—I was transferred from Halifax to Moncton in 1874, I think, as Purchasing Agent, and at that time and ever since they have operated the line, the Western Union.

MR. TILLEY: That is, at the date you were transferred from Halifax to Moncton? A.—Yes. I was sent there as General Purchasing Agent, as Storekeeper, I think it was in 1874.

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MR. JONES: Then you have spoken about another telegraph line on the Nova Scotia Railway. When you were transferred do you recollect any other lines that were on the Intercolonial at that time? A.—The Western Union line was there. It had acquired the Anglo-American line.

Q.—And that extended between what points? A.—Well it was the only telegraph line in Nova Scotia.

Q.—Did it extend from Moncton to Truro as well as Truro to Halifax? A.—Oh yes.

Q.—And extended from Truro east as far as what? New Glasgow 10 at that time? A.—New Glasgow and Pictou Landing.

Q.—And the road from New Glasgow to Pictou Landing was a branch, wasn't it, of the Intercolonial?

MR. TILLEY: That is rather leading.

WITNESS: It was built by the Provincial Government, the line from Truro to Pictou was extended in 1865, before Confederation, and it was built by the Nova Scotia Government from Truro to Pictou, passing through New Glasgow.

MR. TILLEY: The line from Truro to Pictou was built in 1865? A.—Yes, I am almost certain it was 1865, it was before Confederation at 20 all events.

MR. JONES: This Government Railway, was not that built to Pictou Landing from Truro? A.—Yes, it did not cross the harbour.

Q.—Then the railway from Stellarton to Pictou, do you recollect when that was built? A.—I cannot say, it was partially built and partially bought, bought part of the way from a coal company. That was much later.

Q.—Do you remember the Canadian Pacific Railway Company building a telegraph line any place near or on the Intercolonial? A.—They built a telegraph line from Saint John towards Nova Scotia, not on 30 the railway.

Q.—Was it generally speaking near the railway? A.—It was partially on the public road I think, and the railway being a shorter route they followed very often the railway outside of the railway fence.

Q.—How far east of Saint John did that continue, to what point? A.—I do not know where they went, but I assume that they eventually wanted to get down to the Strait of Canso, to the cable.

Q.—Do you know whether or not it was built all the way from Saint John to Moncton? A.—Of course it passed through Moncton, because I have seen the wires and poles outside of the fence at Moncton. 40

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Q.—Then did you know of it being built beyond Moncton east down to Truro say, and to New Glasgow? A.—I do not know, I cannot say that I ever saw it.

Q.—Do you recollect at any time any requests being made to you with reference to putting poles on the right-of-way of the Government Railway? A.—There was once a request of that kind made to me.

Q.—By whom, do you remember? A.—By Mr. Snider, who was Superintendent of the Canadian Pacific Telegraph Company.

Q.—At Saint John? A.—His headquarters were Saint John, yes.

10 Q.—You remember about what year that was in? A.—I am afraid I do not.

Q.—Was it verbal or in writing? A.—It was verbal.

Q.—What was it? A.—Well he came to me one day and he said, I am rebuilding our line, and part of it runs through bush, and the trees have given me a great deal of trouble, and I would like to move a few of the poles which are outside of the railway fence inside the fence to get past this clump of trees. And I gave him my verbal permission.

Q.—Do you recollect anywhere near about the time that was? A.—I am afraid I could not say what time it was.

20 HIS LORDSHIP: Do you remember about what space that would cover, or how many poles? A.—No, but it was a definite request for a small concession as I understood, I imagine it would be about five, but not exceeding ten miles.

MR. JONES: Do you recollect what section of the railway it referred to? A.—I do not know whether he mentioned any section or not, but I was under the impression that it was between Moncton and Saint John. I had seen their line there in a tree-covered area just outside of the railway fence, and I supposed it was that.

30 Q.—Do you know whether or not he did put some poles in on the right-of-way? A.—I never thought about the matter again, and I never inquired whether he moved the poles or not.

Q.—Was that the only request made to you in reference to the matter of putting poles on? A.—That is the only one I remember, I do not think there was any other ever made.

Q.—Going back to the request made by Mr. Snider, you were then in Moncton I suppose, your headquarters? A.—Yes.

Q.—Did this conversation take place in Moncton do you know? A.—It did, in my office there.

Q.—Do you remember what position you held at the time? A.—No, I really don't, I cannot remember that.

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HIS LORDSHIP: You said you were transferred from Halifax to Moncton in 1874? A.—Yes.

Q.—What was your official position in 1874, do you remember? A.—General Storekeeper. I purchased the supplies for the railway and took charge of them.

Q.—Do you remember when you were promoted to Manager? A.—I was given charge of the Intercolonial in 1878. The only difference was a change of title afterward, in 1892 I think it was.

Q.—Was that interview with Mr. Snider after 1878 or before? A.—Oh yes it was after 1878, I had nothing to do with the railway property 10 only as Purchasing Agent previous to 1878.

MR. TILLEY: There was no C. P. R. until 1881 any place.

MR. JONES: Do you know whether it was in the period between 1878 and 1892 when you were Manager? A.—Well it was 1892 when my title was changed to General Manager.

Q.—Do you know whether this interview with Mr. Snider was before or after that? A.—I do not remember that.

Q.—Did you ever at any time give permission to anyone connected with the Canadian Pacific to place their line as a line upon the right-of-way? A.—I did not. I never was asked by anyone for that permission. 20

Q.—Or to rebuild their line upon the right-of-way? A.—No, excepting in that instance of Mr. Snider.

Q.—Do you remember at any time when a Mr. Mersereau, David W. Mersereau, was working for the Canadian Pacific? A.—The name is familiar, but I cannot recall meeting him in any way.

Q.—You do not recall having any conversation at all with him? A.—I do not remember any.

Q.—Do you recollect any person asking you to see that certain section men on the railway did not interfere with the building of a telegraph line by the Canadian Pacific? A.—I have no recollection of that. 30

Q.—I think you have already said you were not approached by Mr. Snider in connection with transferring their whole line to the right-of-way. A.—I was not.

Q.—It is stated here in a letter from Mr. Fraser to Mr. McMillan, (Exhibit 235), Mr. Fraser says that you were approached by the late Mr. Snider, at least you told Mr. Fraser you were approached by the late Mr. Snider in connection with transferring the line to the right-of-way. What happened was what you have related, is that what I understand? A.—Yes.

Q.—Do you know Mr. A. C. Fraser? A.—Yes, I do.

Q.—He was connected with the Canadian Pacific, was he not? A.—Yes, he was their Superintendent.

Q.—At Saint John? A.—At Saint John.

MR. TILLEY: Of Telegraphs, do you mean? A.—Superintendent of the Atlantic Division of their Telegraphs.

MR. JONES: This letter is dated 1st January, 1917. On that occasion you told Mr. Fraser, he says, that you had informed Mr. Snider that you saw no objectionable features, and permission was granted verbally. You have already said you only had one interview with Mr. Snider. Do you recollect telling him that you saw no objectionable features? A.—Telling Mr. Fraser?

Q.—Telling Mr. Fraser that you had told Mr. Snider that? I may say we have a letter on the record that was written by Mr. Fraser to Mr. McMillan. You would know him as Manager of Telegraphs at Montreal. A.—Yes.

Q.—This letter is dated January 1st, 1917, and came in response to a request by Mr. McMillan that Mr. Fraser go and see you.

(Letter shown to witness).

A.—Mr. Fraser evidently is mistaken in what he says here about my statement. It is a misunderstanding of some kind, because he states it in general terms here. The permission I gave was a specific one for a very small affair, to help out Mr. Snider in his difficulties in operating his line, and there was no general movement spoken of at all at any time.

He goes on to say that I was in Ottawa a few days later and advised the Minister of Railways. Well I never reported to the Minister, I reported to Mr. Schreiber. I mean any general business. He was the one I made all reports to. I made no report of this concession given to Mr. Snider, I did not think it was worth while mentioning, and I dismissed it from my mind after the interview was over with Mr. Snider. As for speaking to the Minister about it, I never had the slightest communication with any Minister in regard to it at all. He is mistaken in regard to that.

Q.—I think you have said that you never even reported it to Mr. Schreiber? A.—I never reported it to Mr. Schreiber, but I may have said to Mr. Fraser that it was possible that I may have spoken to Mr. Schreiber about it when I saw him.

Q.—But you never made any report whatever about anything to the Minister, you say? A.—Never. I never saw the Minister about anything unless he sent for me and wanted to speak to me.

Q.—You will notice that Mr. Fraser says you told him that you advised the Minister of Railways and Canals that you had granted the Canadian Pacific Telegraph the right to do their rebuilding on the Intercolonial right-of-way. A.—Well he is entirely mistaken in regard to that.

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Q.—Then he goes on to say that you said that the Minister stated it was quite right, and that he could see no reason why the permission should not be granted. A.—Well he is certainly mistaken in what I said.

Q.—Then the following part, with reference to the line between New Glasgow and Sydney, did you state that to Mr. Fraser? A.—All I could say about the line from New Glasgow to Sydney was that what is called the Cape Breton Railway, that is from Point Tupper to North Sydney and Sydney, I had nothing to do with them at all until they were finally completed and handed over for operation. The building of them was conducted under Mr. Schreiber by engineers who reported to him direct. I saw the line of telegraph poles and wires on the Cape Breton Railway when I took charge, but I knew nothing more than that, I was never asked anything about it. 10

Q.—Do you know when you did take charge of that particular portion of the railway? A.—When it was opened for traffic, I do not remember the date.

Q.—And you say when it was opened you saw the Canadian Pacific Railway wires? A.—I saw lines of wires, which they said were Canadian Pacific Railway wires.

Q.—But prior to the placing of those wires on that section of the road I understand you had nothing to do with that section? A.—No. 20

Q.—So it was not part of your duty to have regard to it? A.—I never heard anything about it at all.

Q.—Then you see Mr. Fraser says that you were not quite clear as to why this line was permitted on the right-of-way. Did you state what your general understanding was as Mr. Fraser states it in the letter, or otherwise? A.—You mean with regard to that second last paragraph?

Q.—Yes, where it says that the telegraph people had the necessary permission, and that there was a quid pro quo, the nature of which you were unable to recollect. A.—I do not see how I ever could have said anything of the kind, as I do not know now anything about it, never heard about it at all. 30

Q.—Then the last paragraph, Mr. Fraser says you told him you had no recollection of the Mersereau incident, but that had the section men interfered with the telegraph gang you would certainly have taken action, as the work was being prosecuted with your own and the Minister's consent. What do you say about that? A.—I could not have said anything of that kind certainly, except in regard to the Snider affair. He is certainly mistaken there.

Q.—Do you recollect, as long as you were there—you were there I think you have said until 1913 altogether—do you recollect seeing the Canadian Pacific Railway telegraph poles on the right-of-way in any sec- 40

tion? A.—Well I cannot remember having seen them, I paid no attention to them you know. There were several lines of poles, but I could not say that I saw them there.

Q.—You have no recollection of seeing them and knowing them as C. P. R. poles? A.—I do not think that I have that recollection at all.

—————
CROSS-EXAMINED BY MR. TILLEY:

Q.—Mr. Pottinger, did the Montreal Telegraph Company ever build any line east of Saint John or south of Moncton? A.—I am not certain
10 about that, but my recollection—

Q.—I do not care about north of Moncton, south or east of Moncton.
A.—My recollection is that they went to the Gulf shore, so as to communicate with Prince Edward Island.

Q.—There might have been a line that they built to communicate with Prince Edward Island? A.—I think so, yes.

Q.—But they did not build along the Intercolonial, did they? A.—I am not sure about that, but probably they did.

Q.—Well do you know? A.—No, I do not.

Q.—You do not know whether they did or not? A.—I do not know
20 for certain.

Q.—The companies that built along the Intercolonial, so far as you remember, are, first, the line built by the Nova Scotia Government, and the line built by the New Brunswick Government, is that right? A.—Yes, those were in New Brunswick and in Nova Scotia.

Q.—Then you have told us about those two. When were other lines built, and who built them?

MR. RAND: Are you referring to lines of railway or of telegraph?

MR. TILLEY: Lines of telegraph. A.—The Great North Western may have built or maintained east, but I do not remember when it would
30 be.

HIS LORDSHIP: The witness says he does not know. You say the Great North Western may, but we want to know if you recollect. If you do not, say you do not recollect. A.—I certainly do not recollect. But we had the use of telegraph line between Moncton and Truro, whether those wires were the Great North Western or the Western Union I do not know.

MR. TILLEY: It was one or the other?

MR. RAND: Or both.

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MR. TILLEY: It was one or the other, or both? A.—One or the other or both.

Q.—There is no doubt about that. When did you first have the use of those lines, do you remember? A.—At the date the Intercolonial was opened between Truro and Moncton for traffic there were telegraph lines there then.

Q.—And you do not know which company built them? A.—No.

Q.—Then is it your statement now that you do not remember the C. P. R. building along the right-of-way except at one point? A.—I have heard that it built, but I do not know anything about it otherwise. 10

Q.—Well you had heard that they had done it at the time they did it? A.—No.

Q.—When did you first hear about it? A.—I received a letter from Mr. Schreiber saying that the Great North Western Telegraph Company had protested to the Department that the C. P. R. was building lines on the right-of-way, and in that way nullifying their exclusive contract.

Q.—Do you know the date of that letter? A.—No, I don't.

Q.—Have you seen it lately? A.—No.

MR. TILLEY: Have you got it, Mr. Rand?

MR. RAND: Unless it is in, we have put in everything we have. 20

MR. TILLEY: At any rate you received some such letter from Mr. Schreiber at the time he was Deputy Minister of Railways? A.—Well I don't know, he had two titles at different times, he was Chief Engineer of Railways.

Q.—Until when? A.—I do not remember. And later on he was made Deputy Minister. But in which capacity he wrote, or at what time, I do not know.

Q.—When he was Chief Engineer were his duties those of a Manager, or was he merely an engineer? A.—As far as the Intercolonial Railway was concerned he had the duties of Manager. 30

Q.—Although his title was Chief Engineer? A.—Yes.

Q.—And you cannot say just when he wrote the letter, you cannot say whether it was in the '90's or after 1900? A.—I cannot place it at all.

Q.—Is that the only letter you remember on that subject? A.—That letter instructed us I think to order the Canadian Pacific Telegraph Company to remove their poles from the railway. That is the only thing I remember about it.

Q.—And was there any lawsuit about it? A.—I don't know.

Q.—You never heard of any action being brought? A.—No, there may have been in Ottawa here among the Departments.

Q.—But you had nothing to do with it if there was such a thing? A.—No.

Q.—Where would such a letter as that be, in the office at Moncton, is that where you got it? A.—At Moncton.

Q.—In the railway office I suppose? A.—Yes.

Q.—Was it in the same letter that he instructed you to order them off? A.—Well that was the only letter, the ordering off I refer to.

10 Q.—I suppose when you got that letter you made an investigation to see to what extent they were on the Intercolonial Railway, did you? A.—I do not know about that. The order was repeated, he wrote the company or someone.

Q.—When you say the order was repeated you mean you passed it on? A.—For removing the poles.

Q.—Do you know what happened after that, were they removed? A.—I think not.

20 Q.—That was because of something that happened at Ottawa I suppose, the instructions were changed? A.—There were no further instructions about the thing at all.

HIS LORDSHIP: So that at some time, the date you cannot fix definitely, you got instructions to order them off, you passed on the information to the Canadian Pacific that they must take the poles off, and then after that they were not taken off and you got no further instructions to order them off? A.—That is my recollection. In passing the order on I do not know that we wrote to the Canadian Pacific Railway, I may have instructed the Chief Engineer to have the poles removed.

Q.—You gave the necessary instructions to carry it into effect? A.—Yes.

30 HIS LORDSHIP: Do you remember to what poles this letter of Mr. Schreiber had reference? Would it be generally to the line, or would it be to that leave which you had given to Mr. Snider? A.—I do not think Mr. Snider's affair was ever mentioned.

Q.—You do not think it had reference to that? A.—I think the letter, if it is found, will not have specified any particular place, but that the poles were on some portions of the Intercolonial and they were to be moved off; that is my recollection.

40 MR. TILLEY: That is it was a general order to take them off, but not specific as to any particular poles. And by that time there were many other poles on the line than the poles Snider transferred there under your authority? A.—Well I don't know as to that, but I understood that it was other poles altogether.

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Q.—And would include the poles that you said Mr. Snider might put there, it would include those? A.—Oh yes, of course. I had no authority to give Mr. Snider permission, you see, but I wanted to accommodate him and his line in a small way, as it did not interfere with us much.

Q.—You cannot fix the dates of these things at all, can you? A.—I cannot at this distance.

Q.—You do not know whether it was in 1904 or 1890. Now let me read to you a letter, and see if this is the one you refer to, letter of 8th January, 1890, Exhibit No. 54:

“I enclose you herewith a copy of a letter received from the Secretary of the Department with reference to the question of the erection at certain points on the line of the Intercolonial Railway between St. John and Halifax of the telegraph poles of the Canadian Pacific Railway, and stating that ‘an opinion has been obtained from the Department of Justice showing that in view of the provisions of the existing agreement with the Montreal Telegraph Company these poles should not be permitted to remain. The encroaching company have accordingly been notified to remove them at once, and you will be good enough to report to me in the event of this notification not receiving attention.”

20

Is that the letter? A.—That is the letter.

Q.—So we have identified the letter. Now do you say that was after your talk with Mr. Snider? Do you fix your conversation with Mr. Snider as being before or after that letter from Mr. Schreiber? Because that letter takes us away back to 1890. A.—Well I really cannot say about that. I do not know the date of Mr. Snider's application.

Q.—It was just verbal, and you cannot recall the date?

HIS LORDSHIP: You have not got it anywhere when the C.P.R. began to build their telegraph line between Saint John and Moncton?

MR. JONES: 1889. It is on the chart that is in.

30

MR. TILLEY: That is outside.

HIS LORDSHIP: It was outside, but then it is at that time that this line was built that Snider was asking about.

MR. TILLEY: I am just wanting to know whether you can remember, or whether it is too indefinite for you to remember, whether Mr. Snider saw you before or after the date that letter was written. A.—I am afraid I cannot say.

HIS LORDSHIP: Can you say this, do you remember whether Mr. Snider went to you to have that leave at the time the C. P. R. were building their line for the first time between Saint John and Moncton?

40

MR. TILLEY: The line was built.

WITNESS: It could not have been when they were building it for the first time.

MR. TILLEY: What you say is that you understood Snider found difficulty where the line actually ran through country covered by trees, and wanted to change the line. So it must have been after it was built.

MR. RAND: I think he used the word "rebuild."

MR. TILLEY: Was he rebuilding it at the time? A.—Well he wanted to get rid of these woods. The line had already been built, as I understand.

10 Q.—I am just trying to get your recollection of these things, I am not trying to fix the particular date, because we can fix it otherwise.

What was Snider's position at that time? I think you said he was then Superintendent of Telegraphs at Saint John? A.—At Saint John. I do not know specially about his title, but he had charge of it at Saint John.

Q.—Do you remember whether or not you were asked to make a report on the situation and inform Mr. Schreiber how many poles were along the right-of-way? A.—No, I do not, but it is quite probable there was such a letter.

Q.—But you do not call it to memory? A.—No.

20 Q.—Do you call to mind whether you did in fact ascertain what poles were along the right-of-way at that time? A.—No, I do not.

Q.—In fact I gather from what you have said in your examination in chief that you had no knowledge of any poles of the C. P. R. along the right-of-way, except what you told Snider he could put on. Is that right? A.—That is what I said.

30 Q.—Now, Mr. Pottinger, I cannot understand how that can accord with an official communication to you about these poles. I would have thought that there would have been due inquiry, and that you would have known at that time what poles were on the right-of-way. Is it not likely that you did know, but you have now forgotten? A.—That may be. The letter asking to report whether the poles were moved or not would be sent by me to the Chief Engineer, who would I suppose look after it and probably report to me. But I have no recollection of that.

HIS LORDSHIP: He would not do that work himself, he would direct that to be done by some official.

WITNESS: It would be under the charge of the Chief Engineer, who looked after the right-of-way and the property.

HIS LORDSHIP: Was it you who made this note on that letter to which we have just referred?

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MR. TILLEY: If he saw the original he would probably be able to tell. I am a little curious as to how he can say he did not know the C. P. R. poles were on the right-of-way.

HIS LORDSHIP: How could he distinguish them from the other poles?

MR. TILLEY: There is correspondence which I will refer to in the argument. I am not saying he has not forgotten, but to say he did not know is another matter.

HIS LORDSHIP: Do you know who that note was made by? (Letter shown to witness). A.—I generally initialled the notes I made, 10 but there is no initial to this.

MR. TILLEY: Well it would probably be by you or by your authority? A.—It would be done by me I have no doubt. Those men's names here, DeBoo and Lockhart, were roadmasters. I have forgotten about that.

MR. TILLEY: You have forgotten the details of it.

MR. RAND: I think that memo is by Mr. Archbald. We would have to have the original.

MR. TILLEY: For my purpose I do not care who made it, all I want to know is, Does the witness remember? A.—This says "Mr. Archbald 20 see this carried out." I would not write to DeBoo and Lockhart.

Q.—Mr. Archbald probably put the note on for the section men?
 A.—Yes, he might.

Q.—I am not suggesting that you would go out and look at these poles yourself, but what I want to know is, here is a letter written on the subject, and a lawsuit was subsequently started about it, and a report was sent in which had to be sent in before they could say how many poles were along the right-of-way. Now you have forgotten all that if you ever knew it? A.—I must say I have.

HIS LORDSHIP: I am not convinced that he had much to do with 30 it.

MR. TILLEY: I should like to argue that at the end.

HIS LORDSHIP: But I want to be fair to the witness. He is an old man.

MR. TILLEY: But I would rather your Lordship would not form conclusions until we come to the argument.

HIS LORDSHIP: But I say it is quite possible that a good deal of these matters would be adjusted at Ottawa.

MR. TILLEY: That is our case, this thing was adjusted at Ottawa.

Q.—Many of these things in respect of which you would get instructions would be ultimately adjusted at Ottawa, wouldn't they? A.—I have no doubt.

Q.—But that is not the point I am on. I cannot understand how you as General Manager would be in a position to say that you did not know that C. P. R. poles were on the right-of-way when these letters were written to you and when Mr. Archbald from time to time reported to you, the poles have not been taken off. Do you remember that? A.—I have no doubt I got those letters.

10 Q.—Well then you must have known there were C. P. R. poles along the right-of-way? A.—The Intercolonial Railway had all the telegraph facilities that it required in one or two wires to do its business. We were not in commercial telegraph business, and I did not pay much attention to the difficulties between the telegraph companies.

Q.—You did not pay much attention to the difficulties between the telegraph companies? A.—That was my position in regard to the matter.

Q.—And you knew there were difficulties, or you heard of some difficulties as between the companies? A.—Certainly.

20 Q.—The company on whose poles your lines were strung for the railway complaining that the C. P. R. were building along the right-of-way? A.—Well I don't know, the wires may have been the Western Union wires.

Q.—Well one company that was there making some complaint that the C. P. R. was putting wires along on the right-of-way? A.—That is correct.

Q.—How soon did you know that state of affairs existed? A.—Well I do not know, I cannot say now what date.

30 Q.—It is likely that you knew of these wires being put there at the time they were put there, because that is when the dispute would occur? A.—Well not very long afterward probably. When the objection was brought up.

Q.—Do you remember an application for leave to put wires on the right-of-way between Stellarton and New Glasgow, that particular piece? Do you remember anything about that, or any dispute about the wires there? A.—Stellarton and New Glasgow is part of the Pictou branch.

Q.—But that would be under your jurisdiction? A.—Yes.

Q.—Do you remember anything coming up about poles at that point? A.—I do not.

40 Q.—That is not present to your recollection. The wires at the point Mr. Snider approached you about, the wires he had in mind, were then outside the fence, and he wanted to put them inside. That is right? A.—That is right.

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Q.—That shows that the line, speaking generally, was built outside the fence before it was transferred inside the fence? A.—Yes.

Q.—Now you remember that an application was made to build inside the fence from New Glasgow going east to Sydney? Do you remember that was asked for? A.—No, I do not remember that.

Q.—You cannot recall any incident—? A.—You see the line of railway from New Glasgow to the Strait of Canso was built by a company.

Q.—That is the railway? A.—The railway.

Q.—But I am speaking now of the Canadian Pacific telegraph line 10 along that piece of railway. A.—That piece of railway was built and operated by a company called the Halifax and Cape Breton Railway Company.

Q.—Down to what date? A.—I cannot remember the dates at present, but the Nova Scotia Government purchased it from that company and operated it with a superintendent appointed by them for a time. Afterward the Dominion Government bought it from the Nova Scotia Government. Now whether these lines that you are talking about were put on it in the time of the Nova Scotia Government or not I do not know. 20

Q.—Well in March, 1893, it was part of the Intercolonial Railway, wasn't it? A.—I don't know when we took it over.

Q.—Well we have a letter here from Mr. Hosmer to Mr. Schreiber with regard to the line between New Glasgow and Sydney, written in March, 1893. Of course Mr. Schreiber would have nothing to do with it until it came under the Dominion system? A.—No.

Q.—So that if he had to do with it at that time as Deputy Minister you would have it under your control as General Manager? A.—The railway, yes.

Q.—Then can you not recall that in 1892, when you got the title of 30 General Manager, your line certainly extended down east of New Glasgow towards Sydney? A.—Yes.

Q.—In 1892 at any rate that line was under your jurisdiction. Now we have here considerable correspondence about building a telegraph line for the C. P. R. along that right-of-way. Did you ever hear about it? A.—I have no recollection of it now at all. As I told you, the line in Cape Breton, I had nothing to do with that.

Q.—You had nothing to do with the building of the railway? A.—Nothing to do with the building of it.

Q.—But it came under your jurisdiction? A.—After it was built.

Q.—I am speaking now not about telegraph lines built as part of the railway system, I am speaking now of the C. P. R. telegraph line built along the railway after the railway was constructed and in operation. You do not remember anything about the building of the C. P. R. telegraph line from New Glasgow towards Sydney, do you? A.—Well as I have said before, the telegraph line was built—

Q.—No, I do not mean the railway telegraph line. A.— —was built on the Cape Breton Railway before it was turned over for operation.

10 Q.—You are speaking of the line that was built in connection with the railway, but I am speaking of the C. P. R. line of telegraphs. Do you remember anything at all about the building of that line, the C. P. R. line of telegraphs, on the railway, east of New Glasgow? A.—I do not.

Q.—Then of course you do not know that an agreement was actually drawn up about that? A.—I do not.

Q.—Do you remember anything about the building of a C. P. R. line of telegraphs between Westville and Pictou? A.—I do not remember anything about it.

Q.—You cannot recall anything about the C. P. R. line of telegraphs between Westville and Pictou. That is right? A.—Yes.

20 Q.—The reason for that I suppose is that many of these matters were dealt with at Ottawa, and you paid no attention to it unless there was some dispute came up about it?

HIS LORDSHIP: He had nothing to do with it, he was operating his railway and he had his telegraph service.

MR. TILLEY: You had the railway and a telegraph line, and you let the other people build and assumed it was authorized from Ottawa?

MR. JONES: He has not quite said that.

Q.—(Question read to witness). A.—I could not say that. I do not remember anything about the transaction.

30 MR. TILLEY: How many people had seen you about this? Mr. Fraser saw you? A.—Yes.

Q.—Did Mr. Hayes ever go to see you? A.—I do not think so, he may. That is Mr. Hayes who was the Manager?

Q.—Subsequently General Manager after you, Mr. Gutelius first and then Mr. Hayes. A.—I do not remember that.

(Court adjourned at 4.30 p.m. Tuesday, January 22nd, to Wednesday, January 23rd, 1929, at 10.30 a.m.)

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Wednesday, January 23rd, 1929, 10.30 A.M.

MR. TILLEY: Before going on with the examination of Mr. Pottinger I have had handed to me this morning by Counsel for the Crown the original proposed agreement of 1917.

Your Lordship will remember that there were negotiations between Mr. Gutelius and Mr. McMillan, settling certain terms, and they were embodied in a document sent to the Crown, and I thought we had the one that was sent to the Crown in Exhibit No. 245.

HIS LORDSHIP: It was a draft agreement.

MR. TILLEY: It may be referred to as a draft agreement, it was 10 not finally delivered to us.

HIS LORDSHIP: Of 10th May, 1917?

MR. TILLEY: Yes. That followed negotiations with Mr. Gutelius, there was a memorandum with Mr. Gutelius' initials, that was put in. There was a question whether "O.K." appeared on it. The one before that is Exhibit No. 239. If your Lordship will have those two before you I will explain what I want to say about them.

HIS LORDSHIP: Was the letter that you exhibited to Mr. Pottinger last night No. 235?

MR. TILLEY: This happened in Mr. Gutelius' time, this has nothing 20 to do with Mr. Pottinger. I want to clear it up before I go back to Mr. Pottinger.

Your Lordship will remember that document, Exhibit No. 239—

HIS LORDSHIP: I have a note "Produced from custody of defendant."

MR. TILLEY: Yes. That was a copy, and that was to be checked with the original. I have got the original of that document Exhibit 239, and if your Lordship will permit I would like to attach this or substitute it, because it has the O.K.'s written on it in pencil.

HIS LORDSHIP: There seem to be two documents that have mark- 30 ings on them.

MR. TILLEY: I was going to suggest that the one I have handed to your Lordship could be marked 239-A.

MR. JONES: We have not seen that yet.
(Document handed to Mr. Jones.)

HIS LORDSHIP: Of course we do not know who put the O.K.'s on.

MR. TILLEY: I will have evidence of that.

MR. JONES: Would it not be more consistent to prove who wrote the O.K.'s first?

HIS LORDSHIP: Your objection is taken too late, you should have objected when the other was put in, because you admitted that all these documents should go in. There is not one-quarter of these documents that would be in if you had not both consented.

MR. JONES: That was done with the understanding that we wanted to show, without binding either party—

HIS LORDSHIP: If you take a legal objection to it it is quite different. You should have taken objection to the one that is already in.

MR. TILLEY: May I remind my friend that when this paper, Exhibit 239, was put in, which is a copy, the question arose that there were certain O.K. marks, and we both agreed we would get the original and put it in.

MR. JONES: Without admitting who made the O.K.'s for the present.

MR. TILLEY: For the present I am not asking my friend to admit anything.

HIS LORDSHIP: Without proving who made them?

MR. TILLEY: I have said I am going to prove that.

HIS LORDSHIP: The new document will be called 239-A. That will be what purports to be the original of 239.

EXHIBIT No. 239-A: Document purporting to be original of Exhibit No. 239.

MR. TILLEY: I have another memorandum about which there will be evidence in the same way, relating to the same agreement. I would like to have it attached and made No. 239-B. I have given a copy to my friend. It also has some markings, about which there will be evidence. I will read it.

(Mr. Tilley reads document dated Montreal, April 14th, 1917, Memorandum re concessions).

Those three all relate to the same matter.

HIS LORDSHIP: That would look as if it were a memo prepared in the C. P. R. offices.

MR. TILLEY: It is a memo prepared by the C. P. R., what they would like to have. There will be evidence later that those initials at the side are Mr. Gutelius' initials, put on by him.

EXHIBIT No. 239-B: Memorandum, associated with Exhibit No. 239.

Now, one other document was put in, and I asked at the time to be allowed to have the original, Exhibit No. 245. Your Lordship will see

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that that was the agreement that was reached, put in more formal shape. There will be evidence later on about it.

HIS LORDSHIP: Draft of agreement. I do not want you to put on the record that it is an agreement.

MR. TILLEY: Draft of agreement. It will not change the document, it is not misleading your Lordship.

HIS LORDSHIP: No, not me.

MR. TILLEY: The document that my friends have handed me this morning, the original draft, is not quite the same as the one your Lordship has before you. It comes from the Government, and I want to put it in.

I will read this, that you may see the difference.

(Mr. Tilley commences reading the document he presents).

HIS LORDSHIP: There is something wrong.

MR. TILLEY: Your Lordship will remember that when Exhibit 257 was produced it was not dated, it had a blank for the length of time it was to run, and I said we would get the original. I have been all this time getting it. I am saying there are differences. May I go on and read it?

HIS LORDSHIP: I want to be enlightened. I have here with re- 20 spect to No. 257 what Mr. Rand has said, draft agreement 29/5/17.

MR. TILLEY: No. 257 is a later document that was got up in the time when Mr. Hayes was in control, it was sent to us as Mr. Hayes' proposal. I am on Mr. Gutelius' proposal, and it is the document that I have already referred to, No. 245.

HIS LORDSHIP: I have here taken down what has been told to me, that No. 257 was a draft agreement and that it bore the figures 29/5/17. I turn up now what has been filed, and I do not see those figures on it, notwithstanding that they were stated to me.

MR. TILLEY: I did not read it to your Lordship. It can be cor- 30 rected.

MR. JONES: Yes, I think it should be. In reading it we read from our copy.

HIS LORDSHIP: You should not give me a copy that does not conform to what you read.

MR. TILLEY: I think we had better have the original and find what it has on it.

MR. JONES: We will endeavour to get the original.

MR. TILLEY: If your Lordship will follow No. 245, this has just a few changes, showing that the draft was changed in the negotiations. The negotiations extended over some time. My copy has the date filled in.

“Between His Majesty King George V.—”
(Reading continued).

HIS LORDSHIP: There is a word missing.

MR. TILLEY: If your Lordship will not change that, you will find other changes, this is one draft, that is another.

10 To this document is attached the corporate seal of the Canadian Pacific Railway Company, and it is signed by the Vice-President and the Assistant Secretary, and it is marked “O.K. F. P. Gutelius.” That document is produced by my friend.

EXHIBIT No. 245-A: Draft of proposed agreement, 29/5/17.

MR. RAND: That is word for word like Exhibit 257.

HIS LORDSHIP: How is it that in 245 I was given the date as the 10th of May, and the date is in blank?

20 MR. TILLEY: I think your Lordship will find that it was mailed to some person on the 10th of May, or we thought it was. Your Lordship will find I pointed out that it bore no date, when it was put in, and I said I would be glad to get the original.

HIS LORDSHIP: I suppose, Mr. Rand, you are quite satisfied that it is not 257?

MR. RAND: It is identical with 257 as we have it.

MR. TILLEY: I am not suggesting that my friend may not have put the mark 257 on the wrong document. The document that is properly 257 is here, the original can be produced and compared, it is a different document.

30 MR. RAND: We have put in evidence documents that have been prepared by the defendants, and we assumed that they were copies of the documents to which we referred. There may be a mistake. The copies that are before your Lordship are those that have been prepared by the defendants, not by us.

HIS LORDSHIP: There are a number of mistakes in those documents, there is no doubt of that.

MR. JONES: I think it is just a matter of putting all these in under the agreement we had that we could refer to them afterward. It seems to be a matter of argument as to which one this is like, or whether it is different from either of the others.

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HIS LORDSHIP: All that arises from the fact that I have on my minutes that it was told me that it was on the 10th of May, and I put it down, and I look at the document and there is no date on it.

MR. JONES: I think that is an error, the 10/5/17 on 245. It seems to be on the copy I have in my file, how it was put there I cannot say.

HIS LORDSHIP: You should not give me a copy that is different from what you read.

MR. JONES: I am not sure yet that the one that was put in is the correct copy.

MR. RAND: May I say that if it is intended on this copy that has 10 been put in as 245-A to base an argument that there is an existing agreement in accordance with its terms, and that a contract was thereby established with the Crown, we would object; first, on the ground that it has not been pleaded—

HIS LORDSHIP: I do not understand that. It is open to anyone to plead whatever he likes.

MR. RAND: Exactly, but they have not pleaded it.

HIS LORDSHIP: I will not attach much importance to that. I want to get all the facts. But you have got your argument. Even if that is signed and the other side did not sign, it is open, there is no mutuality. 20

But I think Mr. Tilley has another argument, he wants to establish that there were negotiations all the time that kept it so that he could not be charged or penalized for the past, that he had negotiations which kept him there. Then there would be the other question, whether he has a right to be there.

MR. TILLEY: Yes, there are questions of past and future. It has relation to both points.

HIS LORDSHIP: But more especially with respect to the past.

MR. TILLEY: Yes.

HIS LORDSHIP: That shows there were negotiations all the time. 30

MR. RAND: And it is on that ground of course that it is put in evidence.

MR. TILLEY: No, it is put in evidence for whatever it is worth.

MR. RAND: Relevant to the pleadings, that is all.

MR. TILLEY: Relevant to any issue. If my friend is going to be technical I may have to amend my Pleadings.

HIS LORDSHIP: You remember the old days of Special Pleadings in England, which ruined families and people, that has gone by. Now we have only one idea in hearing cases, to get to the pith and marrow and

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do justice between the parties, and if amendment is necessary it will be allowed.

MR. RAND: Precisely, but may I suggest that if it were attempted to set up that this became a concluded agreement though not signed on behalf of the Crown, we would have had to make other investigations, would have had to consult Mr. Gutelius and Mr. Hayes—

HIS LORDSHIP: It was not the intention of anyone to make a contract.

MR. RAND: Well that is all my suggestion is.

10 MR. TILLEY: So that my friend will be under no misapprehension I propose—

HIS LORDSHIP: To use it for all purposes?

MR. TILLEY: Yes, and your Lordship will remember that my friend asked to be allowed to make an amendment at the beginning, and your Lordship said you would reserve whatever amendments we wanted to make. I considered that I had the right to propose amendments if I wanted to, your Lordship even said if it were necessary to adjourn the case you would do so.

20 HIS LORDSHIP: But understand me well. When I said that, it was with respect to the amendment that the Crown was making, if the amendment the Crown was making was putting you to some difficulty I would give you all the latitude possible to amend, but only incidental to the amendment that the Crown was making. You did not make any application to amend.

MR. TILLEY: I understood your Lordship reserved to me that right.

HIS LORDSHIP: Only with respect to what would flow from the amendment of the Crown.

30 MR. TILLEY: There is a lot flows from their amendment, because it is a common law action for damages now.

HIS LORDSHIP: I have not the amendment by the Crown verbatim in my mind, but it goes as far as to say to find the rights of the defendants.

MR. TILLEY: Then I think I am entitled to put forward what I believe the rights to be.

HIS LORDSHIP: We will not be troubled by that Mr. Tilley, if any amendment is necessary. We will try the case and get the pith and marrow of it, and any fact that may throw some light on it I will allow, and any view, whether right or wrong, I will hear.

RECORD

CROSS-EXAMINATION OF DAVID POTTINGER by MR. TILLEY,
resumed:*In the
Exchequer Court
of Canada*

No. 3

Plaintiff's
Evidence.David Pottinger
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Q.—Mr. Pottinger, I was asking you yesterday about some matters that occurred, and ascertaining what your recollection was with regard to them. I want to follow on the same line today.

HIS LORDSHIP: I remember Mr. Fraser called on him with respect to that, and he did not remember about Mr. Hayes.

MR. TILLEY: Now let us take a few matters up in their order. Do you remember, I did draw your attention to the letter written by Mr. Schreiber to you of 8th January, 1890, when Mr. Schreiber said that the 10 poles had to be removed. Do you remember that latter? A.—I remember it.

Q.—And you remember there was a memo on it, and you could not say whether it was in your handwriting, because you said you usually initialled your memos, and I find the original letter, now produced, has the initials on it.

HIS LORDSHIP: Did you put your hand on the original?

MR. TILLEY: My friends did, it comes from their possession.

HIS LORDSHIP: Will you put it in?

MR. TILLEY: We can attach the original to the copy filed. (Ex-20 hibit No. 254, and shown to witness).

WITNESS: Yes, that is my initials, that is all right.

Q.—You did not remember whether you had signed this particular letter or not, but you said your practice was to put your initials on when you put a memo on a letter? A.—Yes.

Q.—How old are you, Mr. Pottinger? A.—I had my 85th Birthday on the 7th of October last.

Q.—Now you say you gave some order,—I think what you said yesterday was that although the order was given the poles were not in fact removed. That was your recollection? A.—Yes. 30

Q.—And you assumed, I suppose, that it had been dealt with at Ottawa? A.—Well I don't know that I ever thought of its being dealt with at Ottawa or anywhere. It was not dealt with by us.

Q.—It was not dealt with by you. And as far as you are concerned the demand to have them removed, by the Government or by the Department at Ottawa or by Mr. Schreiber, ceased? A.—Yes, I had nothing further to do with it.

Q.—The demand was made, but something happened, and the demand was not carried out?

HIS LORDSHIP: He did not say that.

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Q.—What was the result of what took place following your direction that you find on the original? Were the poles removed? You said No. A.—They were not removed as far as I know.

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Q.—And do you know why? A. I do not know any particular reason.

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HIS LORDSHIP: They were not removed.

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MR. TILLEY: I would like to ask the question again.

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HIS LORDSHIP: Do not make him say things he has not said.

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10 MR. TILLEY: I have not made him say anything, I object to your Lordship saying that.

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HIS LORDSHIP: Your question implies that.

(Contd.)

MR. TILLEY: I am cross-examining the witness.

HIS LORDSHIP: The witness is an old man.

MR. TILLEY: Well your Lordship is interrupting him in his answers, is my submission.

Q.—Will you say all you want to say about it, Mr. Pottinger?

HIS LORDSHIP: That is the best way.

20 MR. TILLEY: You gave an order, and it was not carried out—
A.—As far as I know.

Q.—As far as you know. And the demand that came to you from Ottawa to follow it up and see that they were removed, that demand ceased? A.—Well that is of course a pretty broad statement. I do not know that it was ever withdrawn.

Q.—I am not asking you about withdrawn— A.—There was no withdrawing.

30 Q.—Probably no withdrawing, but at any rate you assumed that something had happened that stopped that action, didn't you? A.—Well I assumed that negotiations were going on in Ottawa between the higher powers.

Q.—You assumed that there were negotiations, and that the result of the negotiations was that the poles were not to be removed? A.—Well, I don't know that, but the poles were not removed ever as far as I know.

Q.—Not only were the poles not removed, but other poles were put on the right-of-way after that? A.—Well I do not remember that.

Q.—Now, Mr. Pottinger, I am told that over 200 miles of poles were put on the right-of-way while you were in charge. I am suggesting to you that that could not happen without your knowledge. You must have known about it at the time must you not?

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MR. JONES: Now, my lord, I object to the question, for this reason; I think that nothing has appeared in evidence to show that my friend's suggestion is correct.

HIS LORDSHIP: I think the question is permissible, I cannot see any reason why it should be objected to.

MR. RAND: Except that the evidence that is in shows that that statement is not so.

HIS LORDSHIP: I am not objecting to the evidence, we are getting evidence.

MR. RAND: We have evidence of what happened. 10

HIS LORDSHIP: Surely he has a right on cross-examination to try and destroy anything you have brought in. I cannot see any *raison d'être* of your objection.

MR. RAND: It is a statement that does not accord with the statement prepared—

HIS LORDSHIP: It is not a statement, it is a question.

MR. RAND: He says he is advised.

HIS LORDSHIP: He is asking. I cannot see any objection.

MR. TILLEY: My instructions are that during your time while you were in charge, over 200 miles of telegraph line, C.P.R. telegraph line, 20 were put along the Intercolonial right-of-way. I am not asking you to verify that that exact amount was done, but you must have known—or did you know that poles were being put on the right-of-way, some poles? A.—I have said previously to someone here that I felt no great interest in the question of telegraph lines, and therefore I paid little attention to the moving of poles on the line. They may have been moved, I have no recollection.

Q.—Your reason for not paying attention, much attention, to the matter, was what? Why did you not pay attention to it if it was going on? A.—Well we had all the telegraph facilities we required under 30 agreements, and the railway was not interested in commercial telegraph business, we did no business of that kind.

Q.—Still, if people were putting telegraph poles along your right-of-way I should think you would take an interest in that.

HIS LORDSHIP: I do not know that he grasped your question. He says there were none removed. You were asking whether some additional ones were placed.

MR. TILLEY: His Lordship is in doubt whether you just grasp the question. You understood the question? I was directing your attention now not to the poles you were told by Mr. Schreiber to remove, but to

poles that were put on after that letter of Mr. Schreiber's. A.—I understand that is your question, yes.

Q.—Now you say you took little interest in whether poles would be put on the right-of-way, because the Intercolonial was not in commercial telegraph business, and it had telegraph facilities for the railway, and you were not concerned with whether some poles were put on the right-of-way or not? A.—That is my answer, yes, it is the best that I can say.

10 Q.—How often would you go over the line while you were in con-
trol? A.—Oh, very frequently.

Q.—Would you see the men working there? A.—I do not remember having seen them working.

Q.—Well they could not have worked there without your seeing them, could they? A.—I may have seen them but I have no recollection.

Q.—And you knew that there was a C.P.R. telegraph line just off the right-of-way? A.—Yes, I have seen that.

Q.—And you saw later on that telegraph line was not off the right-of-way any longer, but was on the right-of-way? A.—Well I do not remember noticing those things.

20 Q.—Well is it not clear that you did at the time, but your memory does not serve you now? You must have known it at the time. A.—I may have known, but I have no recollection.

Q.—You cannot call it to memory?

HIS LORDSHIP: He says, We had all the telegraph facilities by agreement, and we were not in for commercial purposes.

Did he have any of those facilities on the C. P. R. poles?

30 MR. TILLEY: When you say you had telegraph facilities for the Intercolonial Railway work, do you mean facilities from some other company? A.—From the Western Union and the Great Northern Western, we had two wires, first one wire and then two.

Q.—The second wire, strung along their poles under agreement? A.—Yes.

Q.—I suppose those are the agreements that are in. Can you say which company it was? A.—Well the agreement with the Montreal Company, dated 1870.

HIS LORDSHIP: What I was getting at is whether or not he had any facilities from the C.P.R.

MR. TILLEY: Not at that time.

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Q.—Were you saying that you had facilities from the C. P. R.? A.—No, the railway had none of those, we had complimentary franks on an annual exchange basis between the C.P.R. and the railway.

Q.—But as to telegraphs, had you telegraph facilities? A.—We had no telegraph facilities with them.

Q.—I think there were some letters about stringing some wires, or putting some cross-arms on certain poles, do you remember that? A.—No, I do not.

Q.—But speaking generally you were not using the C.P.R. poles for your telegraph business? A.—Oh no. 10

Q.—If there were any exceptions to that you do not carry them in mind? A.—I do not think there were any, I do not remember anything of that sort.

Q.—Now, Mr. Pottinger, we have correspondence here showing that in 1893 an agreement was drawn up by the Government for the building of a telegraph line by the C.P.R. east of New Glasgow. Do you remember anything about that at all?

MR. JONES: Will your Lordship pardon me, is it quite fair to say, an agreement drawn up by the Government? I do not think that is the evidence. 20

HIS LORDSHIP: No. You may say they were negotiations, or a draft of an agreement, but not agreement.

MR. TILLEY: I say we have correspondence showing that an agreement was drawn up.

HIS LORDSHIP: A document is not an agreement unless both parties agree to it. It is a misnomer.

MR. JONES: And the words "drawn up by the Government," there is no evidence that anything was drawn up by the Government.

MR. TILLEY: May I read exhibit 125? I do not know why there should be these interruptions about the use of a word? 30

HIS LORDSHIP: Mr. Jones is right, there was no agreement, we are here because there was no agreement. But there were drafts of agreement which were part of negotiations going on at the time.

MR. TILLEY: I would have thought I could have asked the question without having to amplify it so much. But I will put it this way:

Q.—Back in 1893 we have it in evidence that a certain document was prepared and transmitted to the C.P.R. which had relation to a proposal to build a telegraph line along the Intercolonial east of New Glasgow. All I want to ask you is, Do you remember anything about it? A.—I do not, no.

Q.—You do not remember anything at all about that? A.—I do not.

Q.—Is it possible, do you think, that an agreement of that kind would be drafted, or a proposed agreement I better say, without it coming before you as the chief of the railway? A.—I have explained already that I had nothing whatever to do with the construction of the railway in the Island of Cape Breton.

Q.—Well eliminate that, I am talking about New Glasgow, east, and about a period long after the railway was built. I am talking about 1893. I am asking you whether, in the way the business of the Intercolonial was carried on at that time, it is likely that an agreement of that kind, or a proposed agreement of that kind, would be drafted at Ottawa in the Railway Department and sent to the C.P.R. for execution without the matter being taken up with you as the head of the railway? A.—I have no recollection of that at all.

Q.—Would it be likely to take place without being communicated to you? A.—It might be.

Q.—Would it be likely to be done in that way, or was it the usual practice? What I want to get is your practice. Was it the usual practice to submit such matters to you? A.—Well when the Department wished to submit them they submitted them.

Q.—And when they did not they did not? A.—I do not remember this at all.

Q.—Is it right to say then that you were not interested in such matters, for the reasons you have given, and you were aware that such matters were being discussed, you say between the powers, I would say between the C.P.R. and the Department of Railways at Ottawa. You knew they were being discussed from time to time? A.—I had understood that between the Department of Justice the Department of Railways in Ottawa and the C.P.R. the placing of poles on railway property had been discussed and was being discussed.

Q.—And satisfactorily arranged? A.—I do not know anything about the arrangement.

Q.—I am not asking you the terms of the arrangement, but these things were being discussed, at times there were controversies, but in the end they adjusted things in some way? That is the way you understood it, wasn't it? A.—Well they discussed them there without reference to me. In my time there was no discussion at Moncton, or question at Moncton, of the thing, after the order came to remove the poles.

Q.—After the order came to remove the poles. But you did know that those matters were the subject of discussion at Ottawa after that with the Department of Railways and in the Department of Justice? A.—I have understood that, yes.

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Q.—And of course you understood too, from the way matters worked out and the poles not being removed, that some satisfactory arrangement had been made? A.—Well I do not know that I could go as far as saying that, for I do not know anything about it, and did not know anything about it at the time.

Q.—But the discussion came to some end that did not involve the removal of poles, put it that way. A.—Well I know the poles were not removed, that is all I know.

Q.—And you got no further instructions to see that they were removed? A.—I have no recollection of any other instructions. 10

Q.—Now, Mr. Pottinger, you suggested that according to your recollection the stretch that Mr. Snider spoke about to you might be somewhere between 5 miles and 10 miles, not over 10? A.—That is what I said.

Q.—You also suggested in your evidence that as you recollect matters there was a difficulty there about some trees or woods? A.—That is what Mr. Snider said.

Q.—Was there any place at that point where that difficulty would extend for ten miles in a stretch? A.—I really do not know, I could not answer that. 20

Q.—It seems a long stretch to have a continuous interruption of trees. But you have no recollection about that? A.—No.

Q.—Well you went over the railway a good deal, I would have thought that if there had been any such stretch you would remember and know where it was. But you cannot call it to mind? A.—No.

Q.—And you do not know between what towns this stretch was? A.—I do not.

Q.—It might have been east of New Glasgow or west of New Glasgow? A.—No, I believe it was in New Brunswick, I have said between Saint John and Moncton. 30

Q.—But you cannot locate it more definitely than that? A.—No.

Q.—Did you ever in your day find that certain poles were along your right-of-way and you wanted the C.P.R. to move them because they were inconvenient to you where they were placed? Do you remember that? A.—No, I do not.

MR. TILLEY: Have you the original of that?

MR. JONES: We received that I think from your files, sent by Mr. Flintoft to us on the 15th of October.

MR. TILLEY: I am showing you the original of a letter of 8th June, 1904. I think you will recognize your signature. A.—Yes, to Mr. Snider.

Q.—That is your signature isn't it? A.—Yes, undoubtedly.

Q.—(Letter read to witness). Do you remember that letter? A.—
Yes, there is no doubt that letter is correct.

Q.—But do you remember it? A.—I did not remember it before.

Q.—Do you remember it now? A.—I do.

Q.—Now there were poles put there by the C.P.R. along the right-of-
way? A.—Well perhaps I might say a word in regard to that. The rail-
way was making an extension near Halifax from Windsor Junction, the
junction of the line running to Windsor, to Dartmouth, opposite Halifax
10 on the other side of the Harbour and the engineer mentioned there was
in charge of that extension, and I presume the movement of those poles
was in connection with that. That letter does not prove that there were
many poles on the Intercolonial line.

Q.—No, I am not suggesting that. A.—I will tell you why. Sup-
posing the line was brought on to Halifax, it necessarily had to cross the
main line of the Intercolonial to get to Halifax. Those poles were prob-
ably through the Windsor Junction ground belonging to the railway. I
do not know whether I have made it clear. It does not mean that there
were hundreds of poles, it may be only two or three, and it does not mean
20 that a large number of poles were on the railway property at that place.

Q.—No, the letter of itself would not show that, and you have no re-
collection about it I suppose? A.—I have no recollection about it.

Q.—But what I am pointing out is, you say to move them to some
other part of the railway property, so that apparently they were on the
railway property, and they had to be moved to some other place on the
railway property? A.—Yes, well we did not want to inconvenience the
people in connection with it.

Q.—But when you asked Mr. Snider,—I do not suppose you have
any recollection of making that particular request that is in this letter of
30 the 8th of June? A.—No, I have not.

Q.—But have you not a recollection that at times you did make re-
quests for alterations in the location of poles at places along the line, I
am not saying many, but as you required a change you would ask them
to make the change? A.—I may have, but I have no recollection of it.

Q.—Do you remember in 1911 that there was discussion about the
C.P.R. putting this telegraph line into Pictou? A.—No, I do not remem-
ber that.

Q.—You would not be able to say whether you had anything to do
with that or not? A.—I do not remember at all.

40 Q.—There is a letter of 14th March, 1911, written by you to Mr. E.
M. Macdonald who was then Member of Parliament at Ottawa, and in it
you say:

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"The question of the extension of the C.P.R. Telegraph Company's line along the Pictou town branch from Westville to Pictou was brought up and considered at the meeting of the Managing Board held in Moncton on the 10th instant, and it was decided to permit this extension to be made along the railway right-of-way under an agreement to be executed by the C.P.R. somewhat similar to the agreement we have with the Western Union Telegraph Company, and that the matter will be taken up immediately."

Do you remember that letter? A.—Is that my letter?

Q.—Yes, sir. A.—I do not remember it, but no doubt it is all right. 10

Q.—(Exhibit 189). Do you remember that? A.—Well now that you tell me that is my letter I remember it. I did not remember it before.

Q.—Well when you say that you remember it now all you mean I suppose is that if it is your letter of course it must have taken place? A.—That is the idea.

Q.—You do not carry it in mind even now? A.—No.

Q.—The letter does not bring it back to your mind? A.—It does not.

Q.—But I suppose a great many things have happened in a busy life like yours which you do not recall at the present time. But looking at that letter, I think that has got your handwriting on it. (Letter shown to witness) A.—Yes, it is all right. 20

Q.—No doubt it happened, but it is just one of those things that escaped your memory. Now that arrangement was made and was carried out as to that section from Westville to Pictou, and the correspondence was in your name, but you are not able even after reading the letter to recall it to your memory? A.—That is correct, yes.

Q.—And there are other letters, I need not go through them, because they would be the same. Then on the exhibit is a notation which you wrote. Who was Mr. Colclough? A.—He was my Secretary. 30

Q.—And you put on in your writing "Mr. Colclough." We will get out these papers for Mr. Caron. D.P." Mr. Caron being your solicitor? A.—Yes, Mr. Caron was a member of the Board.

Q.—Now it is quite useless, if your memory cannot recall the incident at all, I suppose it would be quite useless to ask you what terms were put in that document that Mr. Colclough drew up? A.—I have no idea at all.

HIS LORDSHIP: Was there ever a document?

MR. TILLEY: Yes.

HIS LORDSHIP: Well, we have a draft.

MR. TILLEY: I will not say a document. But whether it was or not, you cannot say whether or not there was a document, or if there was a document what the terms were? A.—No, I cannot.

Q.—I want to put it broadly to you, I do not want to bother you with the details. Nor can you say—or if you can you will correct me—nor can you say how you could accommodate the Western Union agreement so as to apply it to the C.P.R., because the Western Union had telegraph operators right in your stations, hadn't they, in some of them? A. No.

10 Q.—Well they handled commercial business through your stations?
A.—Well in some cases. The Western Union had no agreement in that neighbourhood you see, they were operating there under the Anglo-American Telegraph agreement with the Nova Scotia Government, made about 1859. That agreement was not an exclusive one.

Q.—No, it was not exclusive. But when you say in this letter, as you do, that you would grant this right under an agreement to be executed by the C.P.R. somewhat similar to the agreement we have with the Western Union—? A.—Well there must have been an agreement with the Western Union at that time, but I do not remember anything about it
20 now, or the contents of it.

HIS LORDSHIP: That has reference to what he said, that they had telegraphic facilities through other companies.

MR. TILLEY: Yes. Is that in your handwriting? (Showing witness Exhibit No. 193)? A.—It is.

Q.—“Saw Mr. Brady 4/4/11.” That would mean that you saw him I suppose? A.—Yes.

Q.—Who is Mr. Brady? A.—He was General Superintendent.

Q.—The 4/4/11 would mean 4th April, 1911. “He said C.P.R. telegraph superintendent told him the business was so small they could not
30 pay anything.” Do you remember that some request was made to pay?
A.—No, I do not.

Q.—“Also that there was little room as there were the Western Union Telegraph Company, also telephone and electric light wires now there.”
A.—It does not say any place?

Q.—It does not say any place, but the other correspondence fixes the place, I think it was between Westville and Pictou. But I was wondering whether you could remember, now that you read that, anything about it. Of course I know you are not questioning that it happened, but the point is, can you remember it, or does your mind fail to recall it? A.—I
40 cannot recall anything.

Q.—Then I see by Exhibit No. 185 that there was a meeting of the Board. That is when you had the Commission, and there is this minute:

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“Request from the Canadian Pacific Railway Telegraph Company for permission to string their wires from Westville to Pictou on our right-of-way. Question as to whether we can permit this on account of our contract with the Montreal Telegraph Company. The Department of Justice advise that there is nothing to prevent us from granting this request.

“The Board decided to grant the request, the Telegraph Company to give us the use of the line and to put the same into our stations at Westville and Pictou.”

Does that recall anything to you? A.—It must have occurred, but I do not remember it at all. 10

Q.—If you were speaking from memory you would have said that you never gave any authority to build between Pictou and Westville, wouldn't you? A.—Perhaps I would, yes. I certainly did not remember it.

Q.—And that would have been your answer? A.—That was the Board's authority, you see.

Q.—But you were a member of the Board? A.—Oh yes.

Q.—Do you remember whether the line was put into Westville? A.—I do not. 20

Q.—(Showing exhibit 181 to witness). That is also in your handwriting? A.—Yes, that is my memorandum.

Q.—It is a memo of March 3rd, 1911. Do you know who Mr. Brown, New Glasgow, would be? A.—I think he was our superintendent there, but I forget now.

Q.—“Mr. Brown, New Glasgow, says by telephone that C.P.R. telegraph line runs along our railway from Truro to New Glasgow, and to Mulgrave and Sydney. But not along Oxford line or Pictou Town branch.”

That does not recall anything to your mind in the way of negotiations? A.—No, it does not. 30

Q.—Now, Mr. Pottinger, the interview with Mr. Fraser seems to have been about the year 1917, and I presume your recollection would be clearer about these things then than it is now? A.—It was in December, 1916.

Q.—How do you fix the date? A.—Because we remained at our summer cottage that year at Shediac Cape until about January 10th, we spent Christmas there.

Q.—That particular year? A.—That particular year.

Q.—You are quite right, it was the end of December, and this letter was written on January 1st, that would be New Year's Day. What he says here is:

“I have seen Mr. Pottinger in connection with permission granted for any rebuilding to be made on the railroad property. He was approached by the late Mr. Snider in connection with the transferring of line to the right-of-way. Mr. Pottinger saw no objectionable features, and permission was granted verbally.”

10 Now that is true, though you say it did not cover more than ten miles?
A.—Yes.

Q.—That statement is true? A.—That is to say I think Mr. Fraser misunderstood me, I did not give any general permission to move the telegraph line, it was a special case as I understood it to relieve a difficulty under which the C.P.R. was situated in regard to the line in the woods.

Q.—Yes. Apparently Mr. Fraser inferred that you were referring to a general authority, but you say any statement you made had reference to a special and particular thing? A.—That is my statement in regard to that.

20 Q.—That is your recollection in regard to that. Now go on to the next:

“He was in Ottawa a few days later and advised the Minister of Railways and Canals that he had granted the Canadian Pacific Telegraph the right to do their rebuilding on the Intercolonial right-of-way.”

Now, Mr. Pottinger, if we substituted the Deputy Minister for the Minister of Railways it might be quite true that you told Mr. Fraser you were in Ottawa after you saw Mr. Snider, and saw the Deputy Minister?

30 A.—I have no recollection of making any report, verbally or otherwise, to anyone in connection with the request of Mr. Snider for the removal of the small number of poles I have spoken of on the line. But I may have spoken to Mr. Schreiber about it. That is my recollection.

Q.—You say you did not make a formal report, either written or oral, but that in a talk with Mr. Schreiber you may have told him about it? A.—Yes, and I never spoke to any Minister about it.

Q.—You said that? A.—I had no communication as a rule with the Minister at all.

40 Q.—I quite follow. That is why I said, substitute the Deputy Minister for the Minister, and the statement would be in a sense true, but not, you say, quite accurate, because if you did say anything to Mr. Schreiber it was not in the nature of a formal report, written or oral, but a casual conversation? A.—Yes, but it did not cover any territory except that small bit of territory that I have spoken of.

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No. 3
Plaintiff's
Evidence
—
David Pottinger
Cross-
Examination
Jan. 23, 1929.
(Contd.)

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Q.—I was not on the question of territory, I am only asking whether you did report whatever conversation you had with Mr. Snider to the Deputy Minister, and you say you may have done so, but it would be in a conversation and not in the nature of a formal report? A.—I say that, yes, but not to move a sweeping telegraph line.

Q.—I am not carrying what you say a bit farther than you put it. You say that was a special matter, and a special consent, and if it was given it was probably mentioned orally to the Deputy Minister, and if you did mention it to him you would describe the thing you had done, which was a limited thing, that is for some miles. I think that is fair? A.—I think that is a fair statement. 10

Q.—I am taking that as being your statement about it. And the Minister, or the Deputy Minister we will say, in that conversation likely said it was quite right? A.—Well I don't think he expressed any opinion at all, I never had any discussion with him.

Q.—Well Mr. Fraser says the Minister, and I am substituting the Deputy Minister, stated that it was quite right and that he could see no reason why the permission should not be granted. That is likely right, isn't it? A.—Well I could not go as far as that, I have no recollection of that sort of thing, of telling that to Mr. Fraser. 20

Q.—You may have told him that? A.—Well I think it is doubtful.

Q.—You are inclined to doubt it? A.—He misunderstood me. He was anxious no doubt, to get the best idea he would out of it.

Q.—Well I would think he was there really to get at the fact. It would be no use for him— A.—No I am not—

Q.—Let me put it so that we will understand the situation. It would be obviously quite useless for Mr. Fraser to write a letter to Mr. McMillan carrying your conversation further than he understood you to go, because it would be at once reported to someone else, and there would be contradiction. A.—He certainly would have no intention of it I suppose, but that was a misunderstanding of my idea. 30

Q.—Of course Mr. Snider is dead. A.—Unfortunately, yes.

Q.—So that we cannot have his statement. Now let me ask you this; Mr. Fraser goes on:

“With reference to the line between New Glasgow and Sydney, Mr. Pottinger is not quite clear as to why this line was permitted on the right-of-way. His recollection is that there was some kind of an agreement whereby the Telegraph Company, if called upon, were to perform a certain service gratis.”

Now is not that a correct statement of what you told Mr. Fraser, or is your recollection different from that as to the conversation? A.—That is fairly correct, I think.

Q.—As a matter of fact at the present time you cannot recall anything about the New Glasgow to Sydney matter? A.—I cannot.

Q.—So that in 1917 you had some recollection about New Glasgow and Sydney that has escaped you since? A.—Well, that is about it, yes.

Q.—Then he says:

“He has a clear recollection however, that the telegraph people had the necessary permission and that there was a quid pro quo, the nature of which he is unable to recollect.”

I am limiting that of course to New Glasgow to Sydney. That likely is a
10 correct statement of what you said at the time, although you have now forgotten what the arrangement was. That is so? A.—Yes.

Q.—Well in 1917 you would have a recollection of these things, because you had only left there how many years, four years? A.—I left in 1913.

Q.—You had only left four years. A.—But it was an old story in 1913 you see.

Q.—Oh yes. The telegraph wire had been on the New Glasgow line for a good many years at that time, hadn't it? A.—Oh yes.

Q.—You certainly knew that part of the telegraph system was along
20 the Intercolonial for years? A.—Well yes I knew it was on the line, certainly.

Q.—Then it goes on.

“Mr. Pottinger has no recollection of the Mersereau incident, but states that had the section men interfered with the telegraph gang he would certainly have taken action, as the work was being prosecuted with his own and the Minister's consent.”

Now that is likely accurate as to what you told him in 1917, isn't it?
A.—Well if that refers to a general movement of the telegraph line he has misunderstood me. If it refers to the local permission that I gave to
30 Mr. Snider it is probably correct.

Q.—Well you do not recollect telling Mr. Fraser anything about that, do you, about the Mersereau matter? Do you remember him asking you? A.—I do not remember that.

Q.—It looks as though Mr. Fraser was saying to you, Now I have found out from Mersereau that when they were putting this line on the right-of-way some section men interfered with them, and Mr. Pottinger gave instructions that straightened it out. It looks as if he might have been telling you that, but you cannot recollect? A.—I cannot, no.

Q.—Now shortly after that, as one might expect, Mr. Hayes saw you. Do you remember that? A.—No, I do not.

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Q.—Then if Mr. Hayes says in a letter written on the 3rd of August, 1917, that he had a conversation with you, which would be six or seven months later, you would not be able to confirm him or deny, because you have no recollection about it? A.—I really have not the slightest recollection of Mr. Hayes speaking to me about it at all.

Q.—What he says is, "I have personally discussed this matter with Mr. Pottinger— " A.—I have no doubt he saw me, but I have no recollection of it.

Q.—And if you have no recollection of him seeing you of course you have no recollection of what you told him? A.—Certainly not. 10

Q.—Then we will have to leave his letter. Do you remember a Mr. Richardson who was connected with the C.P.R. building operations of telegraph lines? A.—I am afraid I do not.

Q.—I am instructed that Mr. Richardson saw you before he went down and commenced the building of the New Glasgow east part. Do you remember that? A.—I do not.

Q.—Can you say that he did or did not, or just that you do not remember? A.—I do not remember, that is all I say.

Q.—You do not even remember Mr. Richardson? A.—I do not.

Q.—You do not recall the man, and you do not recall any interview? 20
A.—I do not.

RE-EXAMINED BY MR. JONES:

Q.—Mr. Pottinger, speaking of this Board, do you recollect who the members of it were? A.—The Deputy Minister of Railways was the Chairman of the Board.

Q.—And what was your position? A.—I was called Assistant Chairman.

Q.—Then Mr. Tiffin, what was his position? A.—He had charge of the traffic.

Q.—And Mr. Brady? A.—Mr. Brady was General Superintendent 30 of the Railway and had charge of the stations and trains.

Q.—And Mr. Caron was the General Solicitor? A.—Mr. Caron was a lawyer from Quebec, who was a member of the Board for general purposes of all kinds.

Q.—After the appointment of the Board would your duties with respect to the line generally be the same? A.—No, my duties were specifically looking after the accounts of the railway.

Q.—So that after this Board was appointed—in 1909 was it, or thereabouts? A.—It must have been that time about, I have no recollection of the date.

Q.—Your duties would be specifically as you say, looking after the accounts of the railway? A.—Yes.

Q.—So that you would not have any general supervision over the line at all at that time? A.—No.

Q.—So that any rebuilds that were made after 1909 would not be subject to your particular supervision whatever? A.—They would necessarily come under Mr. Brady.

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10 ABRAHAM DOUGLAS WETMORE, sworn. Examined by MR. JONES:

Q.—What is your age, Mr. Wetmore? A.—I am in my 70th year.

Q.—Where do you reside? A.—At present I am living in Saint John.

Q.—I understand you are retired from the service? A.—Yes, I retired the first of December.

Q.—Were you an official of the Western Union Company in Nova Scotia in connection with the lines on the Intercolonial at any time? A.—Yes, sir, I have been.

20 Q.—During what period? A.—I think in 1886 I was foreman, before that I had been a lineman with the company, and then I think about 1890 or 1891 I was appointed general foreman, and in 1910 District Plant Superintendent for the 6th District. The 6th District took in the Maritime Provinces.

Q.—Covering—? A.—The southern part of New Brunswick from the boundary of Maine, and including Newfoundland, Nova Scotia and Prince Edward Island.

Q.—How long did you remain in that position? A.—The last position, from 1910 until last December.

Q.—When you were retired from the service? A.—Yes, sir.

30 Q.—You say you were a lineman first? A.—Yes.

Q.—When did you begin to be a lineman? A.—In November, 1879.

Q.—That was your first employment? A.—Yes, sir.

Q.—Can you tell us at that time what lines of telegraph were upon the various sections of the I.C.R.? A.—From Vanceboro to Saint John, Western Union lines—

Q.—Well I mean just on the I.C.R.? A.—That would be from Saint John right through to Halifax, and from Truro to Pictou Landing and New Glasgow.

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Q.—Now take it in sections. Saint John to Moncton for instance, what line was there in 1879? A.—There was only the Western Union line on the railway right-of-way.

Q.—And that was there in 1879? A.—Yes, sir.

Q.—Then from Moncton to Truro? A.—From Moncton to Truro there was two lines of poles, one belonging to the Montreal Telegraph Company and the other to the Western Union. That is my recollection.

Q.—Two lines over that whole distance from Moncton to Truro? A.—Yes, sir.

Q.—Then from Truro to Halifax? A.—From Truro to Halifax there was the same. 10

Q.—Both these companies had a line? A.—Yes, sir, one on each side.

Q.—On opposite sides of the track? A.—On opposite sides of the track.

Q.—Then how was it between Truro and Pictou Landing did you say? A.—Yes, sir, Pictou Landing. There was only one line of poles along the road at that time.

Q.—What is the route of that, through what places does it run? A.—From Truro along the Intercolonial Railway to New Glasgow, and a branch line from New Glasgow to Pictou Landing. 20

HIS LORDSHIP: What did you say was there?

MR. JONES: You say the Western Union alone was there in 1879? A.—Yes, sir.

Q.—Was there any line between Westville and Pictou at that time? A.—No, not on the railway.

MR. TILLEY: The railway was not there at that time, was it? A.—No, sir. It was as far as Westville, but not between Westville and Pictou.

MR. JONES: Was there any railway at that time east of New Glasgow? A.—No, sir, not in 1879, it was opened in 1880 I think, or 1881.

Q.—Your recollection is that the railway east of New Glasgow was opened in 1880 or 1881? A.—Yes. 30

Q.—Running how far? A.—To Mulgrave.

Q.—How long did the Montreal Telegraph Company maintain a line from Moncton to Halifax, do you know? A.—I am not just sure as to the date. It was transferred to the Western Union I think about 1889, or perhaps 1888.

Q.—Do you know the agreement at all? A.—No, sir.

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Q.—But as far as you know the Western Union took charge of it?
A.—They took it over at that time.

Q.—And had a service between Moncton and Halifax? A.—Yes, they furnished the same service to the railway that the Montreal company was to furnish.

Q.—But they still kept up the two lines of poles and wires? A.—For some few years afterward, yes, sir.

Q.—What I meant was, Did the Western Union after they took it over, still keep up the two lines of wires, the Montreal and their own?
10 Did they still keep up those two lines? A.—For a few years after that, yes, sir.

Q.—Then what happened? A.—Then the Montreal line was taken down from Oxford Junction to Halifax, and the wire transferred to the Western Union poles for that distance. Then from Moncton to Oxford Junction it was rebuilt.

Q.—How far is it from Oxford Junction to Halifax? A.—About 114 miles I think.

Q.—And then you went on to say something further. A.—The piece from Moncton, or Painsec Junction I should say, to Oxford Junction was
20 rebuilt and maintained, and is up to the present time, the Montreal Company's line.

Q.—How far east, covering that distance Painsec Junction to where? A.—Oxford Junction?

Q.—Yes. A.—About 70 miles I think.

Q.—You say on that section the Western Union rebuilt the old Montreal Telegraph line? A.—Yes, sir.

Q.—About when was that? A.—It was rebuilt the last time—

Q.—But I mean the first time. A.—Right after it was taken over you mean?

30 Q.—Yes, soon after it was taken over. A.—Possibly in 1893 or '94, along there.

Q.—Then how about the distance between Moncton and Painsec Junction? A.—I am not altogether clear on that, but I think that was the Montreal line too. But I think the Western Union took it over before the other part perhaps.

Q.—How far is that? A.—That is seven miles, sir.

Q.—Then you have spoken about the whole line now, haven't you, between Moncton and Halifax? A.—Yes, and New Glasgow.

Q.—What line was it east from Truro to New Glasgow? A.—The Western Union line.

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Q.—The Montreal Company, I think you said, did not have any there? A.—They did not go east of Truro.

Q.—That was always the Western Union, wasn't it? A.—Yes, sir.

Q.—Was there any other line except that of the Western Union built between Saint John and Moncton that you know of? A.—Only the C.P. R., when their line went through there.

HIS LORDSHIP: I did not understand that.

MR. JONES: I asked whether during his period there was any line of telegraph besides that of the Western Union built between Saint John and Moncton. He said, Nothing except that of the C.P.R. 10

Q.—Did you have any definite knowledge as to the location of that? A.—Well I think the first line that was constructed was built outside of the right-of-way generally speaking.

Q.—Now at this early time, coming back to the year 1879 or thereabouts, do you recollect how many wires were carried on the Montreal Telegraph Company line between Moncton and Halifax?

MR. TILLEY: I thought he said he did not know it was the Montreal line.

MR. JONES: I will ask Mr. Wetmore, you have said that the Montreal Telegraph Company had a line between Moncton and Halifax. How 20 did you know that was their line? A.—I have seen it, and it always went by the name of the Montreal Telegraph Company at that time. Afterward it became the Great North Western.

Q.—Was it operated in the name of the Montreal Telegraph? A.—In 1879 it was.

HIS LORDSHIP: Was there a way to identify the poles from those of the other company? A.—Yes, sir.

Q.—What was it? A.—On the opposite side of the track.

Q.—But there was nothing on the poles themselves? A.—No, sir.

MR. JONES: But as I understand you know as a fact it was oper- 30 ated in the name of the Montreal Telegraph Company?

MR. TILLEY: Between? A.—Between Moncton and Halifax.

MR. JONES: And do you remember on what side of the track it was? A.—It took the right hand side of the track going east from Moncton.

Q.—Do you remember how many wires it carried? A.—It carried one wire from Painsec Junction to Halifax, and I think two between Moncton and Painsec Junction. I think one went around by Richibucto.

Q.—Which is only seven miles. A.—Seven miles.

Q.—But all the way from Painsec Junction to Halifax it carried one wire only? A.—One wire.

Q.—Do you know whether the Montreal Telegraph Company did work for the railway on that line? A.—Yes, sir, that wire was used as a railway wire.

Q.—Did they do commercial business as well? A.—Not to my knowledge.

MR. TILLEY: He is referring to the Montreal? A.—The Montreal, sir.

10 MR. JONES: Was there any railway work done by the Western Union in that same section during the same period? A.—Yes, sir, there was.

Q.—And was there any wire carried by the Western Union for Government work? A.—Yes, there was two, one exclusive wire, and I think a second preferential wire.

Q.—So that during that whole period until the Western Union physically took over the Montreal Telegraph Company's wires in that section there was a wire on the Western line, and a wire on the Montreal Telegraph line, that were devoted to Government business? A.—Yes, sir.

20 Q.—Then after the Western Union took over the Montreal Telegraph Company line, how many wires were devoted to Government railway business then by the Western Union, if you know? A.—I think it was three between Moncton and Halifax, and two between Saint John and Moncton.

Q.—Do you recollect about when that happened, that the Western Union took over the line of the Montreal Telegraph Company? A.—I think it was about 1888 or '89, I am not just sure. Possibly it was a little earlier.

30 Q.—There was a time then, Mr. Wetmore, that it came within your jurisdiction to look after the repairs for it, I suppose. Is that the reason you know? A.—Yes, sir.

Q.—As foreman for the Western Union there was a certain time when you took charge of them? A.—That is I took charge of the physical part, the outside part.

Q.—Of the Montreal Telegraph Company. Therefore you know, as a matter of fact, that it was taken charge of by the Western Union? A.—Yes.

40 Q.—Now do you know whether or not there was any charge made by the Western Union for doing the Government Railway work? A.—I do not know of any, sir.

Q.—Do you know whether or not there was any? A.—I do not know of any.

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Q.—You do not know whether or not there was any?

HIS LORDSHIP: I thought there was a contract with respect to that. If there is a contract you cannot ask him to speak for that.

MR. JONES: Except what happened physically, whether they did actually charge and get paid. But he says he does not know. I was instructed that he did.

Q.—Well, coming to the period,—I have already asked you if you knew of any written agreement, you say No? A.—Covering what section, sir?

Q.—Between the Western Union and the Montreal Telegraph Co., 10 with reference to taking over. Was there any contract between the Western Union and the King that you know about in that section? A.—Which section do you speak of?

Q.—I am speaking of Saint John and Halifax now. A.—Only the old agreement that was between the New Brunswick Telegraph Company and the European and North American Railway, and then the agreement between the Nova Scotia Electric Telegraph Company and the Nova Scotia Government Railway.

Q.—As far as you know the lines were operated under those agreements, were they? A.—Under those agreements. 20

MR. TILLEY: I do not think that is the right way to put it. If he knows, I am quite content.

HIS LORDSHIP: You see this witness did not have anything to do with the administration, he was looking after the physical plant. It is dangerous to ask him those questions.

MR. JONES: But later on he was superintendent, and had charge of the whole work of the Western Union in that section.

Q.—Am I right? A.—All the plant work, sir, not the accounting.

Q.—I was just going to ask, during the period when you were in charge as superintendent of the plant work, was it your duty to make re- 30 ports to your company as to the commercial business? A.—No sir, not commercial business.

Q.—Was it your duty to make reports to your company with reference to the work that had been done by the Western Union for the railway? A.—When the railway were to be billed for it, yes, sir, that is since 1917. Before 1917 there was no account.

Q.—If there were any bills would it have been your duty to report with reference to the work? A.—Yes, sir.

Q.—Do you or do you not know as a matter of fact whether there were any bills or charges made by the Western Union for that service

that was given to the Canadian Government Railways? A.—Not before 1917—no 1910, excuse me, not before 1910, that is when the reorganization took place.

Q.—How about after 1910, do you know? A.—There was bills rendered after 1917 for any work, on account of them buying the railway wires out. They bought the railway wires from the Western Union.

Q.—That is 1917? A.—Yes, sir.

Q.—What was the situation between 1910 and 1917? A.—I don't know of any bills that was rendered against the railway at that time.

10 Q.—In your work for the Western Union on the line say between Truro and New Glasgow, in determining what was required to be done, to what agreement did you have reference? A.—The agreement between the Nova Scotia Electric Telegraph Company and the Nova Scotia Government Railway.

MR. RAND: That is 1862.

MR. JONES: Then in respect to the work you were doing between Moncton and Halifax, to what agreement would you refer? A.—It would be the New Brunswick Electric Telegraph Company agreement, between Moncton and the boundary of Nova Scotia, and the Nova Scotia Electric
20 Telegraph Company's agreement with the railway between Halifax and Truro.

Q.—And between Truro and the boundary of Nova Scotia? A.—Between Truro and the boundary of Nova Scotia we were working I think under the Montreal Telegraph Company agreement.

Q.—And between Saint John and Moncton? A.—Between Saint John and Moncton it would be the old agreement with the New Brunswick Electric Telegraph Company.

Q.—I just want to clear that up, Mr. Wetmore. I understood you to say earlier that you were acting under the Montreal Telegraph Company
30 agreement between Painsec Junction and Truro? A.—Yes, sir.

Q.—Was that correct? A.—That is after the Western Union took over the Montreal Company's line I presume.

Q.—Well you of course were an employee of the Western Union? A.—Yes.

Q.—And you were only interested in that from the time the Western Union took over the line of the Montreal Telegraph Co.? A.—Yes, sir.

Q.—So that your knowledge as to what agreement applied—? A.—I haven't any.

40 Q.— — prior to that would not be accurate? A.—No, sir.

(At 1 p.m. Court adjourned to 2.30 p.m.)

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AFTERNOON SESSION, January 23rd, 1929.

A. D. WETMORE, cross-examined by MR. TILLEY:

Q.—Mr. Wetmore, you spoke of various agreements as governing things that were done by the Western Union. I would like to get the matter a little more precise. I would like to know how you would become acquainted with the matters that we have been discussing.

Take first the line from Saint John to Moncton, what is the earliest knowledge you have of a line there?

HIS LORDSHIP: Would you mind if I make a suggestion? Would you take one line at a time and exhaust it? 10

MR. TILLEY: I think that is an admirable suggestion, my lord.

Q. Let us take Saint John to Moncton, I suppose that makes one piece of line that you can deal with separately, doesn't it? A.—Yes, sir.

Q.—Tell us what you know about that in its origin as far as you are concerned.

HIS LORDSHIP: Let us try and get the year when first he dealt with it.

WITNESS: The first year I went to work with the company was the first I knew of it, that would be 1879.

MR. TILLEY: As a lineman? A.—Yes. 20

Q.—What line was there at that time? A.—There was only the Western Union line there at that time.

Q.—The Western Union line was there. And how long did it remain in that condition? A.—Well it is in that condition up to the present time.

Q.—Well there is a C.P.R. line. A.—I mean the Western Union line remains.

Q.—And has throughout all the years? A.—Yes, sir.

Q.—Operated by the Western Union? A.—Operated by the Western Union since 1879 anyway.

Q.—Do you know under what agreement—or would that come under your knowledge? A.—Well in later years I learned that it was under the agreement with the New Brunswick Electric Telegraph Company. 30

Q.—How did you learn that? A.—By seeing a copy of the agreement.

Q.—Will you tell me how you connect the agreement with the line? What happened that convinced you that the line was being operated under the New Brunswick agreement as distinct from a line built by the Wes-

tern Union say without any special agreement? How would you know that? A.—That they were working, the Western Union was working under the charter of the New Brunswick Electric Telegraph Company?

Q.—What do you mean by working under the charter? A.—They took over the rights of the New Brunswick Electric Telegraph Co.

Q.—Do you know when they took it over? A.—It was previous to 1879.

Q.—And you were never concerned with the documents I suppose? A.—Not at that time.

10 Q.—But you found the Western Union operating, and they took over the New Brunswick Telegraph line. How do you know that it was not the Great North Western that took it over? A.—I do not know, except that the agreement was between the Western Union and the New Brunswick Electric Telegraph Co.

Q.—But you never saw it? A.—Oh, I saw it.

Q.—Saw what? A.—The agreement.

Q.—Between—? A.—The New Brunswick and the Western Union.

Q.—How do you know it was not the Great North Western that took over the New Brunswick Telegraph Company? A.—It was not in existence at that time I don't think.

Q.—At any rate you are satisfied that it was the Western Union that took it over? A.—Known as that.

Q.—I suppose it is sometimes difficult to put your finger on how you first learned that? A.—That is quite true.

Q.—Then there was no line of the Montreal Telegraph Company on that stretch, and there never has been? A.—Not to my knowledge.

Q.—So that the Montreal Telegraph Co., as far as your knowledge extends, never had any rights that they exercised—I will not say whether they had any rights—but they never exercised any rights in the way of putting up or operating a pole line? A.—Between Moncton and Saint John, not to my knowledge.

Q.—And you would say they did not, that is your evidence? A.—Yes.

Q.—Now let us still keep to that section, let us follow what happened with regard to the C.P.R. in that section. When you came there of course there was no C.P.R.? A.—No, sir.

Q.—When did you first know of the C.P.R. putting up a line in that district? We will find out where it was afterward. A.—I cannot say whether it was 1886 or '87.

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Q.—That is near enough for our purpose. Where was it first built, on or off the right-of-way? A.—Oh I think it was off the right-of-way, sir, as far as I know.

Q.—When you say as far as you know— A.—I mean there may have been a few poles inside.

Q.—You are able to say that speaking generally, without pinning yourself to the detail of every pole, that it was outside the fence, but alongside the fence? A.—Yes.

Q.—I think in some portions along the Intercolonial you have a highway running along beside the railway, is that right? A.—Yes. 10

Q.—Therefore sometimes a pole might be on the highway or on private property, but it was along beside the fence on the outside. And then you say there may have been places where for local reasons they may have got on the right-of-way? A.—Yes.

Q.—But that was the general situation. Now how long did that general situation continue? A.—I could not say, sir, I do not know.

Q.—I am not going to criticise you if you are indefinite about it, we will accept it just as you give it, if you will give your observation. Or were you sufficiently familiar to be able to speak? A.—I would fancy about 16 to 18 years, something like that. 20

Q.—That it was in that condition? A.—Yes, sir.

Q.—That would bring it to about 1902? A.—Somewhere about that.

Q.—Then what happened? A.—Well I cannot really say what happened, the probabilities are they came in from outside the railway limits inside the fence at different places along the road. I could not say, I did not take particular notice, it was not our—

Q.—Section? A.—Well we were on the opposite side of the track.

Q.—Well, down to that period, let me put it this way; do you remember the fact of their moving the poles in? A.—Oh, I noticed it as I went along, yes, sir. 30

Q.—And was the work carried on in sections as they would renew the line, I suppose? A.—I presume that is the way.

Q.—Well that is what the periods mean to you? A.—Yes, sir.

Q.—And in the end the whole line—substantially again, there may have been exceptions—the whole line got on the right-of-way of the Intercolonial between Saint John and Moncton? A.—Yes, sir.

Q.—Could you fix the time when substantially the whole line was on the right-of-way? A.—No, sir, I could not even make a guess.

Q.—It is a long time ago.

HIS LORDSHIP: Did he say it was a long time ago? It would be after 1902. A.—I would judge it would be after 1902.

MR. TILLEY: Just the exact time— A.—I could not say.

Q.—In the year 1902 what was your position? I think by that time you were— ? A.—General foreman.

Q.—General superintendent? A.—Foreman.

Q.—1902? You were foreman in 1886? A.—1890 General Foreman.

Q.—General Superintendent in 1890. A.—I never was General Superintendent.

10 Q.—General Foreman? A.—Yes, sir.

Q.—So you were General Foreman from 1902 to 1910, and I suppose that would be over this section? A.—Yes, sir, it would include that section.

Q.—Saint John to Moncton. Now did you notice the way the work was being carried on at times? A.—I don't know that I took any particular note of it.

Q.—But it was quite obvious what was being done? A.—Oh yes, I could see the work as I went along on my trips perhaps once a month, or once in two months.

20 Q.—But it was quite obvious what was being done, I mean there was nothing that was not open and plain to all? A.—Yes, sir.

Q.—And did you ever hear of any complaint made by any person, I mean your Telegraph Company or the Intercolonial, to that work being done? A.—I do not recall that I did, sir, I may have.

Q.—Well you are giving your best recollection. A.—Yes, I have heard it talked over you know among the employees. I could not specify any complaint.

30 Q.—And I suppose that in carrying on an operation of that kind there would be need for hand cars along the railway, and train service, and hauling poles, and delivering them in the railway sidings? A.—Yes, sir.

Q.—And all that went on? A.—As far as I know.

Q.—This service in that respect being supplied by the railway company? A.—I do not know, I am sure.

Q.—Well it is the only company there, isn't it? A.—You mean the C.P.R.?

Q.—They were not C.P.R. trains or hand cars? A.—I could not say, I do not know.

Q.—You of course are accustomed to the supervision and repair and rebuilding of telegraph lines? A.—Yes, sir.

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Q.—And I suppose that it is a matter for your judgment when a section ought to be rebuilt as distinguished from kept in repair by individual poles being substituted? A.—Maintenance, yes, sir.

Q.—And I assume, from what we have heard and what the correspondence indicates, that these sections would be moved in from time to time as rebuilding was necessary in the opinion of some person? A.—I presume so.

Q.—That is the way it appeared to you? A.—Yes, sir.

Q.—And if it had been your work instead of the other company's work that is the way you would have done it? A.—Yes, as it depreciated. 10

Q.—As it depreciated to a position where it ought to be renewed they rebuilt it, and of course when it would be rebuilt the question would be whether it would be rebuilt on the old location or on a new? That would have to be determined then? A.—Yes.

Q.—And that is the way it was done, and we are not pinning you to any statement that all the poles that were there were put on at any time, but generally that is the way it was done? A.—I think so.

Q.—Now what is the next convenient section to discuss, starting from Moncton. Moncton to where? A.—Moncton to Oxford Junction would be a division point. 20

Q.—Well I would like you to deal with it in sections that we will have a uniform statement about so that you can just tell the whole story about that section. A.—Then that would be from Moncton to Painsec Junction.

Q.—Then let us take Moncton to Painsec Junction. Now give us the origin in your own way, you know now what we want. A.—The original line, I cannot tell you when it was built, but when I went there there was two lines between Moncton and Painsec Junction, the Western Union on the north side and the Montreal Telegraph Company line on the south side. 30

Q.—Now before you go on, the Montreal line was just a one-wire line? A.—Two wires as far as Painsec Junction.

Q.—And did they start at Moncton or did they come into Moncton from the north? A.—They started at Moncton.

Q.—And they ran to Painsec Junction? A.—Yes, sir.

Q.—And they were used by the railway? A.—No, one was used by the railway, the other was a commercial wire, went around to Richibucto and Pointe du Chene.

HIS LORDSHIP: I understand you are only dealing with the Montreal line? 40

MR. TILLEY: Yes, we are keeping to the Montreal.

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Q.—Two wires, and one was commercial and the other used for the railway? A.—Yes, sir.

Q.—We will not say exclusively, but that is the main function they performed? A.—Yes, sir.

Q.—The Montreal Company, did it carry on business in its own name? A.—Not that I know of, east of Moncton.

Q.—When you say it had a wire there to be used commercially what do you mean? A.—That was a commercial wire, ran around to Richibucto, took the highway from Pointe du Chene.

10 Q.—I do not know that I quite follow you. A.—It went out on the railroad from Moncton to Shediac or Pointe du Chene, and then took the highway from there around the coast. It was not used for commercial purposes I think—well it may have been used at Pointe du Chene and possibly Shediac, but that would be the only place.

Q.—But not on the Intercolonial? A.—Not on the Intercolonial.

Q.—So that we can say that the Montreal Company was carrying on no commercial business— A.—As far as I know.

Q.—On the Intercolonial? A.—They had the one wire, the Montreal Company, and that was used exclusively I think for railway purposes.

20 Q.—Then how long did that continue? A.—Well I think that is up to 1917, sir.

Q.—Well the wire was there, but at a certain stage the Montreal company was taken over? A.—Oh yes, taken over.

Q.—By the Western Union? A.—By the Western Union, and the line was rebuilt as required there.

Q.—What did the Western Union do, keep up the two lines on that pole line? A.—Yes, sir.

30 Q.—What did it use the wires for? A.—One was usually used for railway purposes and the other was on the Western Union poles from Moncton to Pointe du Chene on an agreement with the Montreal Telegraph Co. after the Western Union took it over. I do not know just what the terms of the agreement were, but they had pole rights.

Q.—The Western Union got pole rights from the Montreal Company? A.—They took over their pole line.

Q.—About 1886? A.—I have forgotten just when—no it was not in 1886, I think it was in 1892 or '93 perhaps.

Q.—But you have never seen the agreement? A.—No, sir.

Q.—And you do not know its terms? A.—No, sir.

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Q.—Then at the moment they took it over the Montreal—keeping just between Moncton and Painsec—the Montreal had two wires? A.—The Montreal Company had two wires.

Q.—One was used for railway service and the other was connected with some commercial business they were carrying on off the railway? A.—Yes, sir.

Q.—It was some loop or something? A.—Yes, sir.

Q.—Now the Western Union took over that pole line, and you do not know whether they bought it—? A.—I do not know what the consideration was. 10

Q.—You do not know whether they bought or leased or just operated it? A.—No.

Q.—But there was some arrangement? A.—There was some arrangement.

Q.—Because it came under your jurisdiction I suppose then? A.—Yes, the work did, but the accounting was all handled at the head office in Saint John.

Q.—I am speaking more of the superintendence of the pole line. Prior to that transfer the superintendence of that line had been under the Montreal Company, had it? A.—Yes, sir, before it was taken over. 20

Q.—Therefore at a certain stage your company got control of it, and it came under your jurisdiction, as to its physical condition at any rate? A.—Yes, sir.

Q.—How long did that continue? A.—That is still in continuation as far as I know, the wire is still operated by the railway. Of course they bought it out in 1917—no it is not the same, because the railway have bought out the wire since that.

Q.—But that is covered by the 1917 agreement? A.—Yes, sir.

Q.—At any rate it continued down to 1917? A.—Yes, sir.

Q.—Now as to that section what other company was there? The 30 Western Union also had a line, I gather from what you say, had other wires? A.—Yes, sir, they had other wires.

Q.—Between Moncton and Painsec? A.—Yes, sir.

Q.—On the other side? A.—On the opposite side of the track.

Q.—And do you know under what agreement they had those wires? Was that under the New Brunswick? A.—Yes, between Moncton and Painsec was under the agreement between the European and North American and the New Brunswick Telegraph Co.

Q.—The same agreement you referred to before? A.—Yes, sir.

Q.—And whatever you have said about the situation between Saint John and Moncton applies to Painsec as far as that line of poles is concerned? A.—As far as the Montreal line, yes, sir.

Q.—As far as the Western Union line I mean. A.—The Montreal.

Q.—No, I thought we had dealt with the Montreal line between Moncton and Painsec. You described that, and then you said in addition to the Montreal line between Moncton and Painsec, I thought you said there was a line of the Western Union. A.—Yes, sir, I did.

Q.—That was similar, as far as you were conversant with it, in its right to be there and its operation to the line between—? A.—Saint John and Moncton.

Q.—And that continued until when? A.—That continued until—

Q.—1917? A.—1917, yes, sir.

Q.—Now can you say when the C.P.R. line came on there? Was the C.P.R. line in that district first built off the right-of-way, outside the fence, and then brought in, or was it originally built on the right-of-way? A.—I think it was originally built off the right-of-way.

Q.—And then brought in in the same way as the portion between Saint John and Moncton? A.—I rather think so, yes.

Q.—Can you fix the date? A.—No.

Q.—The same statements you have made apply to it as to the other? A.—Yes, sir. I could not state the date.

Q.—And the operation carried on in the same way? A.—Yes, sir.

HIS LORDSHIP: What about from 1917? Get his opinion about from 1917 on.

MR. TILLEY: From 1917 on what happened in that area? A.—In regard to the Montreal line?

Q.—Moncton to Painsec. A.—There has been no change in it except that the wire has been sold out to the Government, I presume it was sold out to the Government at that time, at any rate they took it over.

Q.—Whatever the agreement says. A.—Yes, they took over the wire.

Q.—Did you continue to work for the Western Union on that line? A.—Yes, sir, I worked for the Western Union right up to December last.

Q.—When you stopped work you had the information? A.—Yes, sir.

Q.—Now what is the next section? A.—The next change perhaps would be at Oxford Junction.

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Q.—That would be from Painsec to Oxford Junction. What distance is that? A.—It would be about 70 miles. That is the first point where there is a change.

Q.—Now what about that section? A.—That is the same as the Moncton-Painsec section exactly, just the same, except that there is one or two wires less on account of those wires going out to Pointe du Chene.

Q.—But as to the pole lines that are there and their ownership and history, the evidence you have given down to Painsec would apply beyond Painsec? A.—Would apply to Oxford Junction.

MR. RAND: Except as to the agreement. The New Brunswick 10
 agreement did not extend beyond Painsec.

MR. TILLEY: Then how did they operate there? If the New Brunswick agreement did not extend beyond Painsec how did the Western Union operate there? A.—I do not know, sir.

Q.—You know they did operate? A.—Yes, they had a line there in 1872 I think.

Q.—But what the authority for it was you do not know? A.—No, sir.

Q.—Then the next point would be Oxford Junction to where? A.— 20
 To Truro.

Q.—And what difference is there between that section and the section we have just dealt with? A.—The Montreal line was taken down from Oxford Junction to Truro, and the wire was transferred to the Western Union poles.

Q.—The single wire? A.—Yes, sir.

Q.—And the poles used for some other purpose? A.—Well I guess they were—

Q.—Gone into the discard? A.—Yes, sir.

Q.—Is that the only thing? A.— That is the only change, yes, sir.

Q.—And that happened at the time the Western Union took over— 30
 A.—Well it was not taken down for some years after it was taken over, I cannot say exactly the date, but I think it was 1889 or so they took it over, and probably 1896 it was transferred. About that I am not sure.

Q.—Then as to the C.P.R., the same remarks you have already made apply right through I suppose to Truro? A.—About the same, yes, sir.

Q.—And you cannot tell under what authority the Western Union operated there. Now go on beyond Truro, Truro to Halifax. A.—Truro to Halifax, yes, sir, the same applies there exactly. The Montreal line was taken down and the wire transferred to the Western Union poles between those points.

Q.—You say the Western Union there was operating—? A.—Under the agreement with the Nova Scotia Government and the Nova Scotia Electric Telegraph Company.

Q.—Will you tell me how you would get to know that? A.—Well the papers came into my hands in 1910, I looked it up when I was appointed Plant Superintendent, copies of them came into my hands.

Q.—How is it you are not able to say under what authority they operated between Painsec and Oxford Junction? A.—I could not say.

Q.—You just cannot fill in that gap? A.—I never saw the papers
10 that I can remember.

Q.—Then the C.P.R. was off the line first and moved in just as you have described? A.—Yes, sir, as far as I can recall.

Q.—And all the evidence you have given with regard to their method of handling the thing, and the assistance by way of cars— A.—I do not know whose cars they had.

Q.—But I mean the same evidence applies? A.—Yes, sir.

Q.—That is what you said before, that you could not speak of who owned the cars. But the work was carried on the same way? A.—Yes, the work was carried on the same way.

Q.—And brought in when it needed rebuilding? A.—Yes, sir, as far
20 as I know.

Q.—And I think they continued down to near Halifax but not quite into Halifax? A.—I think that is correct, about Fairview or Bedford.

MR. JONES: It would be Truro to Fairview.

MR. TILLEY: Yes, all we are concerned with here. Now Truro to New Glasgow, what do you know about that? A.—Well the agreement they are working under there was the old Nova Scotia Electric Telegraph Company agreement.

HIS LORDSHIP: That is the Western Union was? A.—Yes.

Q.—As far as the Western Union was concerned it would be the same
30 as from Truro to Halifax? A.—The same exactly, yes, sir.

Q.—And is there anything to note about that section? What about the C.P.R.? A.—The C.P.R. built along there, I could not tell you the exact year, I think it was outside the limits there the same as the other.

Q.—First, and then moved in? A.—Yes.

Q.—I think we have the date of that fixed a little more accurately than some of the other parts. Then from New Glasgow east what company was operating? A.—The first agreement I think was in 1879 or 1880, and it was with the Halifax and Cape Breton Railway Company from

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New Glasgow to Mulgrave, and the Western Union built their line from New Glasgow to Mulgrave in 1880.

Q.—And there was just the one pole line? A.—Just the one pole line.

Q.—Until the C.P.R. built theirs? A.—Yes.

Q.—I think we have some evidence when the C.P.R. line was built at that point, somewhat more definitely. Then on the Island of Cape Breton. A.—If I remember right, there was a general agreement made then to cover the right-of-way from Oxford Junction to Sydney via the short line, about 1890. 10

Q.—That is by the Western Union? A.—By the Western Union, I think it took in from New Glasgow-Mulgrave section at that time, it covered the Oxford and New Glasgow section by the short line,—to Stellar-ton I suppose would be more correct, and then the agreement was also extended to cover the Cape Breton Railway. I am speaking from memory, I may be wrong.

Q.—I know, but that is your recollection? A.—That is my recollection.

Q.—We have got to take you as we find you. A.—I think the same agreement covered the three sections. 20

Q.—Well the agreements will speak for themselves on that, but it is under that agreement. Do you know anything about the C.P.R. in that district, I suppose the same as New Glasgow east? A.—The same. I do not know anything about the C.P.R. right-of-way east of New Glasgow, I could not say.

HIS LORDSHIP: Would the C.P.R. have built outside also on Cape Breton Island, and then come inside? A.—No, sir.

MR. TILLEY: No, always inside there.

WITNESS: Always inside, that is my recollection.

Q.—From New Glasgow east the C. P. R. telegraph line was constructed along the right-of-way? A.—As far as I can recall. 30

Q.—I think that is common knowledge now. And that work would be carried on, as far as outward appearance is concerned, in the same way, but whose cars they were— A.—I cannot tell you.

Q.—There is only one other section I want to ask you about, that is Westville to Pictou. What about it? Did you operate there? A.—The Western Union line was built between Pictou and Westville in 1887, I am pretty sure.

Q.—Yes. A.—And I do not know what agreement covered that, but I think it was included in the new agreement that was entered into in 1890 covering the road from Oxford Junction to Sydney. I think that was included. 40

Q.—That is your best recollection? A.—That is my recollection, yes.

Q.—And the C.P.R. built there inside when they first built I think? A.—I think they did.

Q.—Your line was along the right-of-way? A.—Yes, sir.

Q.—The Western Union then, during the whole time it has been operating these lines, have been carrying on a commercial business? A.—Oh yes, sir.

10 Q.—And offices in the stations? A.—Offices in the stations, yes, sir, that is I think they were operated as Commission offices or something of that nature.

Q.—That is there was remuneration given for the traffic picked up, or something of that kind. At any rate they did operate and the C.P.R. did not? A.—To my knowledge.

HIS LORDSHIP: Did not operate commercially.

MR. TILLEY: It operated commercially, but did not get business in the stations, that is what you mean? A.—Yes.

Q.—Of course it operated commercially, but they had their own offices? A.—As far as I know they had independent offices.

20 Q.—Apart from the right-of-way of the railway? A.—In many places they did.

HIS LORDSHIP: Did the C.P.R. have their offices on the land of the railway?

MR. TILLEY: The C.P.R. telegraph offices were not on the right-of-way of the Intercolonial. A.—I did not know of any.

Q.—Just the line? A.—They may have had a test office.

Q.—But I mean for their commercial business. A.—No, sir, I did not know of any.

Q.—They got their messages in their town offices? A.—Yes.

30 Q.—And they had their connection to those offices, but the wires ran along the railway from one town to another, that is the way it was worked, was it not? A.—That is the way, sir, there was no commercial offices in the stations as far as I know.

Q.—And there never have been any, of the C.P.R. in your days? A.—Not in that section.

HIS LORDSHIP: Does that apply to all these lines?

MR. TILLEY: That applies to all the lines you have been speaking about? A.—Yes, sir.

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Q.—The service that the C.P.R. got out of it is their through line runs along the right-of-way? A.—The right-of-way, yes, sir.

Q.—And then they have their line running to their own offices to connect with that. That is right, isn't it? A.—Yes, sir.

Q.—And then they do their business in their own offices? A.—Yes.

Q.—Now what you have said about no objection being made, to your knowledge, to the building of the C.P.R. pole line and putting up the wires applies to all its wires from Saint John down to Halifax, Sydney and Pictou? A.—No, there was an objection when they began to build, —oh from Saint John, yes. From the time they started from Saint John. 10 I don't know, there may have been objections made, perhaps I better explain. Under the old organization—

HIS LORDSHIP: Let me get the section you are going to refer to.

MR. TILLEY: You are referring to the whole line, are you? A.—To the whole line.

Q.—You were going to explain some sort of qualification to the general statement you made that you knew of no objection made to the building of these lines and putting up the wires. A.—What I was going to explain was that previous to 1910 there was one superintendent in charge of the district— 20

Q.—For the C.P.R.? A.—For the Western Union. He had charge of everything, that is the plant, commercial and traffic, and everything went through his hands, and the section linemen reported to him. I was away from headquarters pretty much all the time on the road, and there may have been reports come in from section linemen direct to the Superintendent. Since 1910 there has been a three-party organization—

Q.—Three-party being—? A.—Traffic, plant and commercial, with a superintendent in charge of each department. And of course I did not have access to all the reports that went in to the superintendent before 1910, because everything went through his hands, and there may 30 have been reports gone in. But as far as I know personally I made no personal objection of any kind.

Q.—Well what you say is the answer I have given, that there were no objections as far as your personal knowledge goes, but you want it understood that there would be a chance for some person to say something without it coming to you? A.—That is the idea exactly.

Q.—Then we have got that quite plain. A.—Because the section linemen have orders to report everything to the Superintendent.

HIS LORDSHIP: Then there was something more; since 1910 if there had been objection he would know of it.

MR. TILLEY: Since 1910 it would come before you? A.—Since 1910 it would come before me.

Q.—And there is nothing since 1910? A.—No, sir.

Q.—Now you were going to say something about some other place. I want you to have an opportunity— A.—I misunderstood your question.

Q.—There was some place outside of this district where there was a complaint, was there? A.—Yes, sir.

Q.—Vanceboro to Saint John.

HIS LORDSHIP: That is not within the ambit of this action.

MR. TILLEY: Within the area we are concerned with here there
10 was no complaint as far as you know? A.—I do not know of any personally.

Q.—But there was that complaint. About what time, as to the part that we are not concerned with, Vanceboro? A.—That was when they first came in there to build there was an objection raised, and it was tried I think in the Courts.

Q.—Oh that went to the Court, did it? A.—Yes, sir.

Q.—That would be before the line was built, I suppose, from Saint John to Halifax? A.—Yes, sir.

Q.—I mean the C.P.R. telegraph line? A.—Yes, sir.

20 Q.—So that in addition to what we have here the fact is you say that there was an action brought with regard to another area in advance of this building from Saint John to Halifax? A.—Yes, sir.

Q.—Then I suppose you knew of Sir Sanford Fleming's activities in connection with the telegraph lines and the all-red route, or were you familiar with that? A.—No, sir.

RE-EXAMINED BY MR. JONES:

Q.—Mr. Wetmore, in this action with reference to the route from Vanceboro to Saint John, had that to do with the Government railways
30 at all? A.—No, sir.

Q.—That was simply between the Western Union and the C.P.R.? A.—And the C.P.R., yes, sir.

Q.—And when you speak of any complaints, do I understand you to mean any complaint by your company or its officials? The Western Union Company? A.—I do not know, I cannot recall any complaint.

Q.—But I mean when you speak of not knowing of any complaints, do you mean complaints by your company as to the Canadian Pacific? A.—Yes, sir, that is what I mean.

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Q.—You would not undertake to say whether or not complaints might have been made by someone else? A.—That is it.

Q.—In that section between Saint John and Moncton did the Western Union ever have more than the one line of poles? A.—Yes, sir, at one time they had two lines of poles, there was two lines of poles between Hampton and Saint John in 1879 when I went to work for the Company. That is the year we took the one line down and transferred all the wires to the one line.

Q.—That is on the one side of the railway? A.—No, on opposite sides. 10

Q.—When you went there, between Hampton and Saint John there were two lines of poles? A.—Yes.

Q.—Hampton being how far from Saint John? A.—About 22 miles.

Q.—When was it you took down one line of poles? A.—In the winter of 1879-80.

Q.—In the winter of 1879-80 the Western Union took down one line of poles and placed all the wires on one line of poles? A.—Yes, sir.

RE-CROSS-EXAMINED BY MR. TILLEY:

Q.—You mentioned the Great North Western Telegraph Company. 20
 When did it commence activities in that district? A.—I could not say, I do not know.

Q.—What lines did it use, over what lines did it operate? A.—It took over the Montreal Company's line, that is the only line I know of in the Lower Provinces.

Q.—I thought you said the Montreal line was taken over by the Western Union. A.—Well it was operated by the Western Union.

Q.—Then tell us how the Great North Western comes into it. A.—Well I cannot remember whether the line was transferred to the Western Union before the Great North Western was organized or after. 30

Q.—But about the time? A.—Somewhere about that time.

Q.—What time was that about? A.—1888 or '89 I think.

Q.—What lines were turned over to it? A.—The only line I know of was the line from Moncton to Halifax.

Q.—That is the Montreal Telegraph Company line? A.—Yes.

Q.—So is this a fair way to put it, that while you say the Western Union took over the Montreal line in due course of time, either before

or after it organized the Great North Western, some other arrangement was made and the Great North Western commenced to operate. That is it turned the Montreal Telegraph line over to the Great North Western? A.—Well it may have been before or after, I cannot say.

Q.—Did it turn over the Montreal Company's line? A.—If the Great North Western was organized at that time I presume it did. I cannot tell you.

Q.—Then what lines did the Great North Western handle? A.—Their lines all ended at Moncton with the exception of this one.

10 Q.—I am told that you either misunderstood me or that your recollection does not agree with the agreements, that the operating agreement between the Montreal Telegraph and the Great North Western was in 1881? A.—It may have been, I cannot say when it was organized.

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RE-EXAMINATION BY MR. JONES (Resumed):

Q.—Well, in that connection, did the Great North Western Telegraph Company ever have any offices east of Moncton? A.—I think they had an office one time at Sackville.

Q.—Do you remember how early that was? A.—It would be in the 20 eighties I think.

Q.—I did not quite understand what you meant by saying that the Great North Western took over any part of this railway.

HIS LORDSHIP: It was more in connection with the operation.

MR. JONES: Did the Great North Western ever operate any of these telegraph lines east of Moncton? A.—I cannot recall, I do not know, sir, I cannot tell you the date of the transfer from the Montreal to the Great North Western.

Q.—But assuming there was an operating agreement, which we have in evidence, do you know whether the Great North Western ever did actually operate any of those telegraph lines? A.—I could not say.

Q.—I think you have already said that the Western Union was operating them, all those lines? A.—The Great North Western as far as I know did not operate any wires east of Moncton after the Western Union took over the Montreal Company's wires, or the Great North Western Company's wire.

Q.—Well did the Great North Western operate any line east of Moncton at any time to your knowledge? A.—I think they had one wire at Sackville in connection with the Prince Edward Island business.

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Q.—That is from Moncton to Sackville? A.—From Moncton to Sackville.

Q.—How many miles is that? A.—That would be 38 miles.

Q.—Are you sure of that? A.—No, sir, I am not sure, I could not tell you whether it is a Western Union wire, I know they used to work it through Montreal direct, but I cannot tell you who owned the wire.

Q.—Would that be part of the Montreal Telegraph Company wire? A.—I imagine it would be.

Q.—That is your impression? A.—That is my impression, I cannot say positively. 10

CHARLES PATRICK BUCKLEY, sworn. Examined by MR. JONES:

Q.—Where do you reside? A.—Ottawa.

Q.—What is your occupation? A.—I am a clerk in the law branch of the Department of Railways and Canals.

Q.—How long have you been employed in that Department? A.—In the Department about 25 years the middle of this year.

Q.—In the same position? A.—I am in the same office for 21 years.

Q.—And prior to that? A.—I was working as a page for Mr. Emerson. 20

Q.—But for 21 years you have been a clerk—? A.—In the Law Branch of the Railways and Canals Department.

Q.—Have you had shown you a letter which is in evidence here as Exhibit 129, from Mr. Drinkwater to Mr. Balderson, which I will read:

“I beg to enclose agreement in duplicate, executed by this Company, providing for the construction of a telegraph line on the Intercolonial Railway between New Glasgow and Sydney. Will you please return one copy to me when executed by the Minister of Railways.”

A.—I have seen the press book copy of that letter. 30

Q.—Have you made any search in the files of the Railway Department for those documents that are referred to in this letter? A.—I have, yes.

Q.—Have you made any search elsewhere than in the files of the Department? A.—In the books of our own office. The documents are recorded when executed, or prior to that.

Q.—Then I understand from you that you keep a record of all agreements that are made by the Department of Railways and Canals? A.—We keep a record of the executed documents in our office now. In the early days, when they were executed they were entered in the books, with certain omissions. When they were finally executed those omissions were filled in.

Q.—I understand the old custom was in this time, in 1893, that a record was made showing what documents had been executed? A.—What documents had been executed, yes and in addition documents which were not executed but which had been drafted and presumably sent out.

HIS LORDSHIP: Documents that were not executed—? A.—The record would not be complete in the first place, but they would be given a number.

Q.—I do not understand. You would keep them in your books not only when they were entirely executed, but only partially, and when they were finally executed you would make an entry in your book? A.—We would complete the record. We do not do that now.

Q.—You would make the entry in your book before they were executed by both parties? A.—Before they were executed, in most cases by either party.

MR. TILLEY: I do not understand that it was a copy you put in the book. A.—No, just an entry. I can illustrate that.

MR. JONES: I think perhaps I can make it clear, my lord.

HIS LORDSHIP: Does he mean he kept an enrolment book in which he took note of what had been done?

WITNESS: I have the book here.

MR. JONES: What do you call that book? A.—This is the record of contracts, this is classified according to the nature of the document. They are put in in order as received. This for instance (showing entry in book) is a document that has not been executed.

HIS LORDSHIP: When you say you enter the agreement in your book you mean you made an entry in your book when a draft was sent out? A.—No, we give it a number. It is for the purpose of giving it a number in our records. We start the entry but we do not complete it, there are certain details which would be filled in to complete the entry when it was executed.

HIS LORDSHIP: It is what is called a plumatiff.

MR. JONES: You might state to the Court what entry you have in reference to this draft agreement.

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HIS LORDSHIP: Is there a date? A.—There is no date. It is apparently made in 1893 because there is a ditto mark under the year only. Then there is the number of the document, 11552, Canadian Pacific Railway Company telegraph line, New Glasgow to Sydney, eastern extension I.C.R. and Cape Breton Railway; and then it was to be reported in volume 4 of Leases, but no page is given because the entry was not completed.

HIS LORDSHIP: Because the document was not completed? A.—The document, I beg pardon.

MR. JONES: Is there a column in that book in which it was customary to state the fact that the agreement had been executed? A.—Only 10 by inference—

HIS LORDSHIP: Answer the question. A.—No there is not that directly.

MR. JONES: What was the custom with reference to making a further entry when the document was executed?

HIS LORDSHIP: You take that by inference? A.—Yes, sir. When the document was completed the actual date of the document was filled in—

Q.—You say when the document was completed. You mean when a document was completed, because this document was not completed? A. 20—Exactly. When a document was completed the date is completed, the date it receives, and in addition the page number in which that document had been copied at length in our records was inserted. And in addition to keeping the original document we also copied the document at length in a record book in our office.

MR. JONES: When it is finally executed? A.—By all the parties.

HIS LORDSHIP: Does that practice still obtain? A.—It does not.

Q.—When was it discontinued? A.—As far as I can learn by experience, about 1900. I am not sure of that.

HIS LORDSHIP: They had the enrolment book up to 1900? A.— 30 That is right.

MR. JONES: Now with reference to this particular document, is there any entry in this book as to the fact that it was executed by both parties? A.—There is none.

Q.—Perhaps I should have understood whether at that period it was customary also to enroll the completed agreements. A.—To copy them at length in a registry book when the document was completed. That custom prevails at the present time. The custom of enrolling them before they are executed was discontinued after about 1900.

Q.—Then have you got the document enrolled? A.—It is enrolled 40 just in part.

Q.—Have you a copy of the document? A.—No, no copy.

Q.—Were you asked to make a search with reference to an Order-in-Council respecting this document? A.—I was.

Q.—Did you make a search? A.—I made a search.

Q.—A search over what period? A.—I searched over a period of about two years after the last record we could find with reference to this matter, that is up to about March of 1895.

Q.—Did you find any record of any Order-in-Council? A.—There was no record of any Order-in-Council that I could find.

10 Q.—I presume those books are available to the defendants? A.—To anybody, yes.

MR. TILLEY: We are not suggesting that the books are not available.

HIS LORDSHIP: There is no suggestion that any of those documents were actually completed, signed by both parties.

MR. JONES: Were you asked to make a search with reference to any other Order-in-Council, showing the appointment of any officials of the Government Railway? A.—I was asked to make the search, and I made the search with Mr. Ross who is in charge of that branch, and as he
20 is here perhaps it would be well to let him speak. We could find no Order-in-Council with respect to the appointment of Mr. Schreiber as General Manager. He was Chief Engineer before that time. We found one with respect to Mr. Pottinger.

EXHIBIT No. 296: Copy of Order-in-Council approved 30th November, 1892.

Q.—Could you find any other Order-in-Council relating to Mr. Schreiber? A.—We could not find any.

Q.—Did you also make a search for any Order-in-Council defining Mr. Pottinger's duties, further than laid down in this Order-in-Council?
30 A.—Yes.

Q.—Did you find anything relating to Mr. Pottinger? A.—Not expressly. You mean outlining the duties of the General Manager.

Q.—Yes. A.—No, we could not find anything.

Q.—Up to what time? A.—That is right down to date practically, from the beginning, from 1867.

Q.—Well you found the Order-in-Council appointing the Board? A.—The Managing Board, that is the first time we found any reference to the duties of the General Manager.

HIS LORDSHIP: That is rather secondary evidence. The Orders-in-Council are not kept in this office, they are kept in the Privy Council.

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MR. JONES: Where was the search made? A.—In the Record Room in the Department of Railways and Canals.

HIS LORDSHIP: That is not where you would find the original Orders-in-Council. It is not the best evidence.

MR. TILLEY: I think there is another witness.

WITNESS: He is from the same Department.

MR. JONES: You made no search in the office of the Privy Council? A.—No.

Q.—Are those records open, the Privy Council? A.—I think they are open, they are public documents. I don't know. 10

Q.—Did you find any Order-in-Council, in your search in your Department, defining the duties of the General Manager of the Intercolonial Railway prior to 1909? A.—No, I did not.

Q.—Can you speak as to the practice that prevails as to the registration of Orders-in-Council affecting railways, in your Department? A.—Registering them in our Department. We would have certified copies, they would be sent to us by the Clerk of the Privy Council, all Orders-in-Council having any reference to our Departmental activities.

Q.—So you would expect any Order-in-Council relating to railways to be certified to you? A.—To be certified to us, and in addition we would all Public Works Orders-in-Council prior to the division of the Department in 1879. 20

CROSS-EXAMINED BY MR. TILLEY:

Q.—Mr. Buckley, you referred to searches for contracts and Orders-in-Council, but I do not know whether you limited your searches to such documents, or whether you have been searching for all documents that might be connected with this particular matter. A.—With this particular item, I have been looking for any paper that had any reference to it.

Q.—Your search has been general, and in a sense specific? A.— Exactly. 30

Q.—You have been trying to get all you could, and you made a special effort to get certain things? A.—I made a special effort to run this contract down, get any correspondence.

Q.—There must be a file lost? A.—There is a file of papers lost.

Q.—And both sides have been making an effort to locate them? A.—Exactly.

Q.—And in the course of searches any clue that would come up would be followed out and exhausted as far as you could? A.—As far as we could, yes.

Q.—In that way you have got on the track of papers that at first were not available? A.—I discovered I suppose half a dozen documents in reference to this particular matter from the time it was sent out for execution, or the draft sent to the railway, to Mr. Drinkwater, until the date it was returned, and then the records stopped, there seemed to be nothing following that, stopped abruptly.

10 Q.—What happened to the file you cannot tell?

HIS LORDSHIP: Can you tell us the date of the file? A.—Of the lost file? The papers were sent to the then General Manager at Moncton—

Q.—No, I want to know the date of the lost file, if you can say what period it covered.

MR. TILLEY: I think His Lordship does not want the date it was lost, but the date the file covered. Can you fix the time the file started and finished? A.—I think I will have to leave that to Mr. Ross.

HIS LORDSHIP: The book does not tell? A.—This book has no
20 connection with that, that is a different record.

HIS LORDSHIP: Do you make a file, not for a period of time, but with respect to a matter? A.—A matter.

Q.—You do not know the subject matter of this file that is lost, or the name? A.—I think I had better leave that to Mr. Ross, but it is one on the telegraph line, has to do with one of the telegraph lines on the Intercolonial Railway. Just what particular line,—as a matter of fact there were three files that were mislaid.

Q.—Three files? A.—Three files, three different sections, I think they covered pretty well the whole line. But I will have to leave that to
30 Mr. Ross.

MR. TILLEY: Well if we find anything Mr. Ross cannot tell us that you might tell us we will have you back to explain.

HIS LORDSHIP: You do not keep a record of a file when it leaves the office? A.—A record of the papers in the file?

Q.—No, if a file is asked for by a Minister or Deputy Minister does the Record Clerk make a record of it? A.—Yes, it is charged to the party who gets it.

Q.—Is there a charge for these three files? A.—These three files were sent to Mr. Pottinger by a letter in 1907, we have a copy of that letter. They were lost at Moncton, how we do not know.

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MR. TILLEY: Well Mr. Ross will tell us about that. A.—Well he does not know how they were lost.

MR. TILLEY: No it is pretty hard to tell how things are lost, they are lost.

HIS LORDSHIP: In 1907? A.—In 1907.

Q.—Have you a copy of that letter? A.—I haven't it with me.

MR. TILLEY: Now just let us understand this system better. In 1893,— we are not concerned with other periods, you may improve your system or make it worse from time to time, but in 1893 did you file letters on certain files, or did you file each one separately and endorse it? 10
A.—In those days each letter was filed individually and given a number, I understand, as it came in.

Q.—Then sometimes I suppose these papers would be brought out and kept together if needed? A.—In this particular case these papers were all assembled and made into a flat file under a special subject.

Q.—And you cannot tell us what the subject head was? A.—Well there were three different divisions of the telegraph lines of the I.C.R.

Q.—And possibly covered the whole section from Saint John to Halifax and Sydney? A.—Well, from Montreal.

Q.—It may have been connected with other parts of the telegraph 20 system as well? A.—Yes.

Q.—At any rate you have made the best search you can, and from time to time you have been adding to the accumulation of papers we have got, but it is obvious that there are papers still lost? A.—There are papers of which copies have not been found, yes.

HIS LORDSHIP: You have not followed that up by trying to have searches made at Moncton? A.—Oh yes,—I have not personally, but—

MR. TILLEY: There is no fault to be found with the efforts that have been made. But the efforts have demonstrated the impossibility—

WITNESS: I understand they were burned, but we have no defi- 30 nite knowledge that these were in that file.

Q.—There was no record kept of the papers that were prepared for the fire? A.—No, except that we knew what we lost.

Q.—Now taking this book, I would like to know is this a book of the Law Department of the Railways and Canals Branch? A.—Of the Railways and Canals Branch.

HIS LORDSHIP: What do you call that? A.—It is a register of contracts, leases, and other documents.

Q.—Is there anything on the back? A.—General index by order of works, properties, etc.

HIS LORDSHIP: Well it is a mere index.

MR. TILLEY: The particular page you have open is headed Inter-colonial Railway Contracts, continued? A.—Yes.

Q.—And then that section of the book would be devoted to that subject matter? A.—To contracts on the I.C.R.

Q.—Now as I follow you the documents are put in this index, at least some reference is put in the index as soon as they are prepared? A.—As soon as they are prepared.

Q.—Or is it as soon as they are transmitted to be signed? A.—Well
10 I am not so sure of that. It is when they are prepared, about that time.

HIS LORDSHIP: Is it not as soon as they begin to exist? A.—Well they do not begin to exist until they are executed I suppose.

Q.—If you have a draft of a document— A.—Exactly.

MR. TILLEY: I suppose a document is not referred to in this book at all until it is in final shape, that is satisfactory to the Department as a document? A.—Up to that time. It may be subject to change afterward, but it is usually in final form.

Q.—But you would not think of going to the trouble of entering it here until you had something that you expected to become a contract?
20 A.—Exactly.

Q.—Whether it would ultimately become a contract may be a different matter? A.—Subject to the necessary authority of council being obtained.

Q.—Documents that you anticipate are going to be carried through are put in here?

HIS LORDSHIP: How can he say?

MR. TILLEY: I would have thought he could say that.

HIS LORDSHIP: How does he know? He has made an entry there of a document that has not been executed.

30 MR. TILLEY: I have put it as fairly as it can be put.

HIS LORDSHIP: You did put it fairly to him, I am not finding fault. But I do not see how he can answer.

WITNESS: I have no authority to answer.

MR. TILLEY: I do not think you ought to become afraid of answering questions that you think can be answered. I would have thought that the answer is self-evident, that no document would be referred to here until it got to such a stage that they expected it would become a contract.

HIS LORDSHIP: You have an entry that contradicts that.

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MR. TILLEY: No, my lord, I have not. They expected that this would become a contract.

HIS LORDSHIP: But he went further—

MR. TILLEY: No, my lord, he did not, he was very clear and precise, he insisted that my question be put properly before he answered, and that answer was that documents are entered here only when you anticipate that they may become contracts, when they are in a form that they would likely go through. But he said they might not go through.

Q.—That is right, isn't it? A.—They might not go through.

Q.—But you do not go to the trouble of putting a number on a 10 document and listing it here unless it was getting towards a stage where it would likely become a contract? A.—Well I cannot answer for that, because—

Q.—Oh very well. A.——that is not the practice now.

Q.—But the thing is so self-evident I thought it did not need any discussion. A.—As a matter of fact I have found cases where it was a preliminary draft that was sent out and given a number in that same way.

Q.—A document might be sent to some person for the expression of his views whether it would be satisfactory, and the parties might change 20 it? A.—Exactly. None of the details of any document are set out in that.

Q.—Now let us look at the book. A.—Of course the form of the document would not set out.

Q.—I am passing over certain pages, but speaking generally the documents are all documents that became ame completed? A.—Generally speaking.

Q.—That is to say the document is entered on a line, and then it is carried across. I am not saying that is so all the way through, we find one or two very noticeable gaps in that. For instance, on the very page 30 we are looking at there would seem to be nine or ten— A.—Those documents were executed.

Q.—How do you make that out? A.—(Witness indicates).

Q.—It is ditto for the volume? A.—But the date is in. They are all on that same page.

Q.—No, I think you are wrong. You could not copy four or five documents on one page. A.—Some are just in the nature of schedules. You have to compare both these columns.

Q.—Then is it only where there is no date and no page? Are not some documents when first prepared dated? A.—Not by our Department.

Q.—Well you do not know whether that was so in 1893 or not? A.—I do not.

Q.—If they were dated when first sent out I suppose the date would be here? A.—No—I do not know.

Q.—I turn over a few pages and I come to a place where there seem to be a lot of them, page 179. Can you account for those? A.—No. You mean not being—

Q.—Not being extended, and yet the date is there. A.—Those no doubt are contracts, are completed.

10 Q.—No doubt those are completed. Well there is no page here. A.—No page in these.

Q.—Yet they became contracts? A.—No doubt they did, but I would like to verify that.

Q.—If you find there is any reason for changing, I want to be perfectly fair, I just want to understand the book. Let us turn to another page. A.—These are leases.

Q.—Would there be any difference? A.—Well the dates would not be entered until they are completed.

HIS LORDSHIP: Do you keep this book yourself? A.—No, there
20 is none of my work in this. This is prior to 1901.

MR. TILLEY: Page 177. There is a page has about 40 Intercolonial Railway contracts entered up, dates all there, and in the margin showing where they are recorded. There are only two of them that have pages opposite them in the right hand column. A.—I can answer that. If you look at the numbers. When we come to a certain date in numbers—

Q.—You mean a certain number? A.—Yes, the documents were typewritten and placed numerically in volumes. There was no necessity to have this column.

30 Q.—You did not record them in books, copy them in books, because there were carbon copies? A.—They were recorded numerically.

Q.—In carbon copies? A.—No, the number of the documents themselves. That is the answer to those two.

Q.—To page 179? A.—Yes. I do not know exactly when the numbers began, but from that time all documents are recorded in order of number.

Q.—I would gather it is about 1900. A.—About that time, yes, sir.

Q.—Then you have explained the page that caught my eye. Subject to that, speaking generally, all these documents that are listed here became contracts by the record? A.—Well that is not for me to answer.

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Q.—It is for you to answer. A.—Oh you mean all that were completed.

Q.—No, I say all that are listed, with few exceptions? A.—With few exceptions, yes.

Q.—And very seldom is anything entered here unless it became a contract? A.—With few exceptions that is correct.

Q.—I think we could say very few exceptions. A.—Very few exceptions.

Q.—So that I would have thought that it is quite clear that documents were not put in here until they had reached the stage where it was 10 practically a certainty that they would be completed? A.—Well it was at the stage when they were sent out to the contractor for execution.

Q.—That is the stage at which they are sent out to the other party to the contract for execution? A.—To the other party, whoever it might be.

Q.—Now in addition to that it is not a fact, is it, that everyone of these contracts was authorized by an Order-in-Council? A.—That is correct,—oh I did not quite get that. All the contracts that were completed, or that were sent out?

Q.—All the contracts that were sent out. A.—That were sent out, 20 not always.

Q.—But usually? A.—I cannot even say that. Occasionally. It depended on the particular circumstances of the case. Oh I cannot speak generally, because very often there was an Order-in-Council before the contract was prepared, other times there was not. I suppose the idea being to settle the terms before they went to Council in order that no amending Order-in-Council would be necessary.

Q.—Are you prepared to say that everyone of the contracts listed here under the heading "Intercolonial Railway" that appear by this book to have been completed, everyone of them was authorized by Order-in-Council? A.—I cannot say that, because I have not searched everyone, 30 but every case where I had occasion to check it up there was an Order-in-Council.

Q.—But the Minister could have signed contracts without an Order-in-Council? A.—That is not my understanding under the Act.

Q.—Which Act? A.—Under the Departmental Act. I suppose it depends on the nature of the contract.

Q.—Let me know what section you mean. A.—Well I cannot speak of the section.

Q.—All I was asking was,—I am not going to cross-examine you about the law, but I suggested that the Minister could sign without the

need of an Order-in-Council, and you said you thought not, because of some Act. I want to know what Act and what section. A.—In my experience of the Department I do not think the Minister signs anything without the authority of Council.

Q.—I am not asking what he did, I am asking you about authority. If you say he could not do it I want to know what section you refer to, so that we can discuss it. Do you know? A.—I would have to check it up.

Q.—I know of nothing myself. A.—In the Department of Railways and Canals Act there are limitations in the existing Act—

10 Q.—But the Act that was in force in 1893. A.—That would be the 1886 Act, I am not familiar with it.

Q.—So that you do not know now what the condition was under the statute. And I would not want to be cross-examining you about that, I would not want to cross-examine any person about what the law is. But you have not gone back to know what in 1893 was the practice of the Department in that regard? A.—As far as our experience has shown the practice was to go to Council for every contract.

Q.—For every contract that is listed here? A.—Every contract that is listed here.

20 Q.—Even though small contracts? A.—Where the Minister signed it, any contract I checked up or followed back there was authority of Council. I cannot speak for all those in the book because I have not had occasion to check them all up.

Q.—But you say you have checked up enough to make you think that was the practice? A.—That that was the practice.

Q.—Whether it was a necessary practice is another matter. Then you say that there were three files of papers relating to the Government Railway in relation to telegraphs that have been lost, at least three? A.—Three.

30 Q.—And they were papers of about this date, 1893? A.—They included some of the papers about this date.

Q.—And likely about matters we are concerned with here, because of the inability to find some of the papers? A.—I cannot say that directly.

Q.—But that would appear to be so, because we cannot find those papers. Would not that be your inference? A.—Well I cannot draw any inference.

Q.—But from your knowledge? A.—They were with reference to this particular contract, some of them. We have traced them to that particular part of the file,—to one of the files that was lost.

40 Q.—If you were to look for opportunities to loose them, one would be the fire that occurred? A.—Exactly. I do not know of the fire, I have not any information direct.

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Q.—But there was a fire. Were those files sent to Moncton? A.—They were sent for their information, I believe they asked for them, I am not sure of that.

Q.—Have you the letter? A.—I thought it was here, I had a copy of it. It is in 1907.

MR. RAND: Exhibit 171.

MR. TILLEY: Will you read that and tell me whether that is the letter you refer to? A.—That is the letter as far as I can remember. There were three parcels of papers.

Q.—Three parcels of papers sent down to Moncton at that time? A. 10
 —Of old records in the files.

Q.—You have no list of the documents that were in it? A.—I cannot say, I will have to leave Mr. Ross to answer that. We could probably get a list of them, we have a record of the papers received, in a journal.

Q.—Papers received where? A.—In the Department.

Q.—Well these would not be received. A.—And outgoing. And they kept press book copies of course of the letters written. It may be that when those papers were assembled a journal entry was made of the papers included in the parcel. Of course there would be very little detail. 20

Q.—Have you any knowledge now as to whether there was such a list? A.—I have no knowledge, I leave that to Mr. Ross.

Q.—The files referred to in that letter have disappeared? A.—Have disappeared.

Q.—And other papers may have disappeared, you cannot say? A.—I cannot say. There are other files that have been mislaid, I suppose they went the same way.

Q.—When an agreement is drafted is it drafted by the Law Department, or was it in 1893? A.—Not always.

Q.—But whether it was drafted by the Law Department or not it 30
 would get into this book in the way you indicated? A.—It would get into this book.

RE-EXAMINED BY MR. JONES:

Q.—You mean the Law Department of the Railways and Canals Branch? A.—Yes.

Q.—When you say the documents referred to in this letter were lost, what documents would that mean, the documents in connection with the Canada Eastern Railway matter, or generally other documents? A.—They were papers generally. Mr. Ross I am afraid will have to answer that question, because he knows of what the files were composed.

HENRY LeBRETON ROSS, sworn. Examined by MR. JONES:

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Q.—Where do you reside? A.—Ottawa.

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Q.—What is your occupation? A.—Archivist of the Department of Railways and Canals.

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Q.—How long have you occupied that position? A.—Since 1920 I think.

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Q.—Prior to that were you in the Department? A.—Yes, for nearly fifty years.

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Q.—Prior to that? A.—No, altogether.

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10 HIS LORDSHIP: When did you enter the Department, do you remember? A.—1879.

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MR. JONES: What was your position at first? A.—When I first entered the Department, just junior temporary clerk, and then permanent, and then promoted from time to time through the different ranks of clerkship.

Q.—So that you became Archivist in 1920? A.—Yes, that was on a reorganization of the Civil Service at that time.

Q.—You have been present in Court, have you, during the evidence given by Mr. Buckley? A.—Yes, sir.

20 Q.—Some documents have been referred to, of which Mr. Buckley has spoken. You are acquainted with what documents I mean, are you? A.—Yes.

Q.—Have you made any search for those documents? A.—Those that were sent to Moncton?

Q.—Well yes, if you like. I am referring now to a draft agreement that was made in 1893. A.—Yes.

Q.—And record of which appears in that index book that Mr. Buckley has produced? A.—Yes.

30 Q.—Have you any knowledge as to what became of that draft agreement? A.—Well according to the practice of the Department it would be with the file until it was executed, and then it would be filed in the Law Clerk's office.

Q.—Have you looked in the Law Clerk's office for it? A.—I have not personally, but I asked Mr. Buckley about it.

Q.—Yes, he has already spoken of that. Is it on file in your office? A.—No.

Q.—Have you made any search in reference to Orders-in-Council in connection with it? A.—Yes, I have. I was asked to search if there was

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an Order authorizing that agreement, and to my surprise I could not find any Order at all.

Q.—Over what period did your search extend? A.—Well that was in 1893 wasn't it? I looked for several years, back to 1890, and a year or two afterward, to see if there was any order, perhaps confirming it afterward, but we have no record of it at all.

Q.—What is the practice in reference to Orders-in-Council passed relating to the Intercolonial Railway? Do you get certified copies? A.—Yes, we get a certified copy from the Privy Council, and they are entered in the Record Room. They are put on the file to which they refer, and they are entered up and given a number and indexed in different ways, according to subject and date. 10

Q.—I suppose you have not made a search in the office of the Clerk of the Privy Council? A.—No.

Q.—Have you found anything that would indicate what documents were sent to Mr. Pottinger in the letter of June 22nd, 1907, Exhibit No. 171, by Mr. L. K. Jones? You have heard the letter read here. A.—Yes. There were three files sent in that, covering different sections of the line. I think the first was the one to which this agreement refers, and the other two referred to further sections of the line, I think one from New Glas- 20
gow eastward, and I do not quite remember what the third was about.

Q.—What data have you that would enable you to state that? A.—We have what we call journals where we make an entry of every letter on any particular case.

Q.—And the contents of it? A.—A synopsis of the contents.

Q.—Have you got that journal here relating to those? A.—No, I have not got it here.

Q.—Would it be possible to bring it? A.—Formerly they were in the shape of a book. In this case it covered all the correspondence with the Intercolonial, which is pretty voluminous. In later years we have all the 30
correspondence indexed on a card by itself.

Q.—Do you mean the book would be too bulky to transport here? A.—Well it would depend how many years.

Q.—It would relate to this particular letter, would it, what the enclosures were in this letter? That is what we want to find out. The enclosures in this letter of June 22nd, 1907. A.—Well it could be picked out from the journal at that time. It is pretty voluminous, it would take a little while to go over it, but I think it could be picked out.

Q.—Could you readily ascertain the date? A.—It covers quite a number of years, everything up to 1907. 40

Q.—I may be all wrong, but I thought your records might show what papers were enclosed.

HIS LORDSHIP: You have three files, you say you think the first file had reference to that contract? A.—Yes.

Q.—Can you by the information you have in your Department get a list which would give the subject matter of every document that went into that file? A.—Yes, sir, I think so.

HIS LORDSHIP: Then why don't you get it?

MR. TILLEY: I think the witness is not quite accurate about that, I am not sure that he has his mind on the same thing as your Lordship.

10 Q.—I understand that the journal you refer to would show the subject matter of the letters. A.—Yes.

Q.—But it would not be a list of the particular letters. Would it be a list giving them by date, or just the subject matter? A.—It would give the date of the letter and a reference number which is given to each letter.

HIS LORDSHIP: But it would not give the letter in full? A.—No.

Q.—Just the subject matter? A.—Yes. The outgoing letters we have copies of in our press books.

HIS LORDSHIP: Well if you think it is important. But I cannot see it.

20 MR. TILLEY: Mr. Rand suggests that what would have to be done, from what Mr. Ross now says, would be to go over the books and find out all the letters that were identified by a particular number, because they would build up a file having a certain number, and then letters that would go into the file would all get the same number.

WITNESS: Yes.

Q.—So for you to identify what was or ought to be in that file you would go back and find all the papers that bear that number in your books? A.—Yes.

HIS LORDSHIP: And you cannot do that? A.—Oh yes it could be done.

30 MR. JONES: I thought I would just offer what we have done. He has done everything he can to get the information.

(Court adjourned at 4.30 p.m. Wednesday, January 23rd, until 10.30 Thursday, January 24th, 1929).

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MR. TILLEY: My lord, in view of what was said yesterday I have drafted the amendments that I think ought to be made to my answer. This will follow the paragraphs already in the answer.

MR. JONES: I have a copy just now, my lord.
(Proposed amendments read).

What I would suggest is that the defendant at least should furnish particulars as to the agreement alleged in paragraph 9.

HIS LORDSHIP: I suppose you have reference to that document that was signed by the C.P.R. 10

MR. TILLEY: Yes, that is the sort of thing. As far as we could give particulars they are as disclosed in the documents.

As I understand, there are three branches to that, and just so that your Lordship will have them in mind may I indicate them?

First in point of time there was a draft,—I do not want to get into any discussion about words—of an agreement to follow the lines of the Western Union, that was submitted to us and was signed by us and returned. That is the agreement of 1893. That was in respect of the line from New Glasgow east to Sydney. That document stands as it is, we shall argue its effect but I am directing my friend's attention to that as one document that prescribes some facilities for the Government. What they were, we have not the document, all we know is it was proposed that it should follow the Western Union. 20

Second there was, in respect of the line that ran from Westville to Pictou, a further provision that they should follow the line of the Western Union arrangement. Then there was a statement in the correspondence that they were told to go ahead and the agreement could be developed later. I assume there may be certain rights to the Government flow out of that, but that is the second one.

Third is the document of 1917 between Gutelius and McMillan, without saying how far it was complete or incomplete, I just refer to it as a document. 30

Those are three features I have in mind.

HIS LORDSHIP: Are you satisfied with that?

MR. JONES: Yes, my lord, that is all we wanted to ascertain.

In the 11th paragraph I presume the privileges—

MR. TILLEY: It is all as disclosed.

MR. JONES: We have no further objection.

HIS LORDSHIP: The amendment allowed the plaintiff at the opening of the case provided that the defendant would also have a right to answer this amendment. I understand that the draft of this amendment is now submitted, and after hearing what was said by both parties there will be an order allowing the defendant to amend accordingly.

Please see that the amendment is made upon the record.

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MR. JONES: With reference to Exhibit 289, in paragraph 7 there is a reference made to certain documents and agreements, a list of which is attached. My friends asked us to procure the list. The list is here, I suggest that it be attached to this exhibit as 289-A.

HIS LORDSHIP: You are satisfied that that is the list?

MR. JONES: It is the list produced to me and purports to be signed by the parties.

HIS LORDSHIP: As long as you are agreed that is what it is.

EXHIBIT 289-A: List of railway contracts, attached to Montreal Telegraph Co. agreement.

MR. TILLEY: We have straightened it out in regard to exhibit 257 so that the exhibit filed is the right exhibit, is agreed on between us as being the right exhibit and appropriate for that number.

As to No. 245, there are two exhibits, 245 and 245-A, but the right exhibit we both agree is 245-A, and if your Lordship pleases we will just have the one exhibit and call it No. 245.

No. 245 is only a draft that the Government never received, and they have pointed it out to me and I have undertaken to withdraw it.

MR. JONES: In view of what my friend says about No. 245 being a draft that the Government never received, I think we had better let them both remain in as they are.

MR. TILLEY: No. 245 was a draft from our file that was never submitted to the Government, but was just a draft prepared in course of preparing the document.

245-A is the draft as it went to the Government, or as was signed by the Government.

MR. JONES: Well not signed by the Government.

MR. TILLEY: Well signed by us and sent to the Government and signed by Gutelius, or it is really marked "approved" by Gutelius.

Well Mr. Jones prefers that No. 245 should remain on the record. But we both agree it is better that the Court should be informed now,

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it is common ground, that 245 as first filed was a draft taken from the defendant's files and shows merely a document in course of preparation, and that the document that was ultimately drawn up, signed by the Canadian Pacific, and actually transmitted to Mr. Gutelius was Exhibit 245-A, which is signed by the Canadian Pacific Railway and bears Mr. Gutelius' signature.

HIS LORDSHIP: There were two drafts, and that is the final draft?

MR. TILLEY: The final draft is 245-A, yes, my lord.

MR. JONES: There are Orders-in-Council referring to the different agreements that have been submitted. The first has reference to the 10 Montreal agreement.

EXHIBIT No. 297: Copy of Order-in-Council approved, August 9th, 1870.

(Exhibit read).

HIS LORDSHIP: It is not ear-marked, is that 289-A?

MR. JONES: No, my lord, exhibit No. 6.

HIS LORDSHIP: You are both agreed that it has reference to that exhibit?

MR. TILLEY: I think there is no doubt about it.

MR. JONES: Then the Order-in-Council which is referred to in the 20 Order just introduced, that of May 13th, 1870.

EXHIBIT No. 298: Copy of Order-in-Council 13th May, 1870.
 (Exhibit read).

EXHIBIT No. 299: Copy of Order-in-Council, 28th September, 1889.

(Exhibit read).

EXHIBIT No. 300: Order-in-Council of 10th January, 1890.
 (Exhibit read).

EXAMINATION OF H. L. ROSS by MR. JONES (Resumed): 30

Q.—Mr. Ross, I understand you were to make some further search in your own office for documents. Did you do so? A.—Yes, sir.

Q.—What was the result? A.—Mr. Rand and Mr. Flintoft asked a synopsis of certain correspondence in 1893. I produce that now, taken from our books. That is the missing documents.

HIS LORDSHIP: Taken from what you called yesterday your journal? A.—Yes, my journal.

MR. JONES: Have you got any copies of this correspondence? A.—No, that is the missing correspondence.

HIS LORDSHIP: Am I to understand that what you are now exhibiting is a list of those documents which you think are dealing with the present case and which would be part of those three files that were sent down to Moncton? A.—Yes, sir.

MR. JONES: As far as you know in your Department are these documents missing? A.—Yes, sir.

10 Have you any copies of them? A.—No, sir, except the outgoing letters, we have copies of them in the press books.

Q.—There are two outgoing letters in this list? A.—Yes, sir.

Q.—Have you copies of those, press book copies? A.—Yes, I have copies here.

HIS LORDSHIP: Will you tell me in a general way what you mean by your journal? Would it be better termed a day book in which you enter what comes in and what goes out? A.—Yes, sir, exactly.

EXHIBIT No. 301: Extracts from journals of the Department of Railways and Canals.

20 HIS LORDSHIP: What was the position of Mr. Schreiber on the 18th of March, 1893? A.—He was Chief Engineer of the railways, he was located in Ottawa, and he would write letters as Chief Engineer.

Q.—Why would that not be one you would have a copy of in your letter book? A.—You may get that from Mr. Schreiber's letter book.

Q.—The "20" is the date of entry? A.—Yes.

MR. JONES: The second one, to Mr. Pottinger, we have. I thought we might go over each one:

"C. R. Hosmer, Manager of Telegraph Department of C. P. R. Co. asks"

30 Your journal shows that item. Does that mean that the letter from Mr. Schreiber,—who was then you say the Chief Engineer of Government Railways? A.—Yes.

MR. JONES: I think it sufficiently appears what that is about without getting the letter.

HIS LORDSHIP: What do you mean by the word "from" there? A.—It is an incoming letter from Mr. Schreiber to the Department, probably addressed to the Secretary of the Department.

MR. TILLEY: Am I right, that that shows it was a letter from Mr.

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Schreiber, and in the margin all you have is a notation as to what Mr. Schreiber's letter was about? A.—Yes, sir.

Q.—Mr. Schreiber was telling the Department that Mr. Hosmer wanted something done? A.—Yes, sir.

MR. JONES: I think the synopsis sufficiently describes it for our purpose.

“C. R. Hosmer, Manager of Telegraph Department of C. P. R. Co. asks if the Government will allow the construction of telegraph lines along the I. C. Ry. between New Glasgow, N.S., and Sydney, C.B., and that a contract be prepared.” 10

The next item you have, April 6th, to D. Pottinger, have you a copy of that letter? A.—(Copy produced).

EXHIBIT No. 302: Copy of letter, April 6th, 1893, John H. Balderson, Secretary, to the General Manager of Government Railways, Moncton. (Letter read).

Q.—The next item on your schedule, May 24th, that would still be in 1893 I presume? A.—Yes, sir.

Q.—May 2, the date of the letter, and “4” the date of the entry, from D. Pottinger, does that mean a letter received in your Department from Mr. Pottinger? A.—Yes. 20

Q.—You have not found that letter? A.—No, sir.

Q.—And the remarks in the margin “In reply to No. 44741,” that is the preceding letter that has been introduced? A.—Yes.

Q.—“—gives his views in reference to agreement between C. P. R. Co. and Her Majesty for a telegraph line between New Glasgow and Sydney along the eastern extension and the Cape Breton railways. Returns agreement.”

That is according to the practice a synopsis of the contents of Mr. Pottinger's letter? A.—Yes.

Q.—Then the next item, May 27, to C. Drinkwater, by whom does it appear that letter was written? A.—(Witness produces copy of letter). 30

MR. JONES: That is already in as Exhibit No. 125.

The next item, July 25/26, 68153, from C. Drinkwater, have you been able to find that letter? A.—No, sir.

Q.—In the margin, according to your journal, are the words:

“Agreement in duplicate for construction of telegraph line between New Glasgow and Sydney. A copy to be returned when executed.”

MR. FLINTOFT: We have that, it is in.

MR. JONES: The next item? A.—September 6/7, from Drinkwater, 73812.

Q.—I understand you have not been able to find in your Department that letter? A.—No.

Q.—Does the entry show it was a letter received in the Department from Mr. Drinkwater? A.—Yes.

Q.—And you have there on the margin of your entry the following:

10 “Has any action been taken towards the execution of agreement relating to the telegraph line between New Glasgow and Sydney, sent in No. 68153.”

That is the previous letter? A.—Yes.

MR. JONES: That has been introduced here as Exhibit No. 129.

Q.—The next, September 9/12, 1896, from D. Pottinger, 76511, I understand you have not been able to find that? A.—No.

Q.—Your entry is:

20 “Sends a letter from W. J. Lockart to P. S. Archibald, also one from sectionman Ivan Slack stating that the linemen of C.P.R. Co’s. telegraph are moving the telegraph line on the I. C. R. property inside of the fences on the Folleigh Section. Asks for instructions.”

HIS LORDSHIP: Where would that be, would that be Halifax and Truro?

MR. RAND: No, my lord, between Truro and Moncton, a short distance from Truro.

MR. JONES: Were you able to discover any further documents? A.—No, sir,—well there is a telegram here that probably should have gone in the synopsis. I think you already have that.

Q.—You have found in your search a telegram from the books in Mr. Schreiber’s office have you? A.—Yes, sir.

30 EXHIBIT No. 303: Telegram, August 10th, 1893, Schreiber to Pottinger.

(Exhibit read).

Q.—Was that the full extent of your investigations, or have you something further?

HIS LORDSHIP: The full extent of the result of his investigations. A.—I have some papers. (Produced).

HIS LORDSHIP: Are these originals? A.—They are original letters from Mr. Hosmer to Mr. Schreiber. They are in evidence.

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EXHIBIT No. 304: Telegram, August 9th, '93, Pottinger to Schreiber.
 (Exhibit read).

MR. TILLEY: You produce the letter from Hosmer to Schreiber of March 13th, 1893, Exhibit No. 118, that is you produce the original letter which we did not have before? A.—Yes.

Q.—I notice the departmental report is in red ink. "R.C. 17th March, 1893, C.S." Now will you interpret the letters "R.C."? A.—That means Report to Council.

Q.—So that Mr. C. Schreiber has made a note on the 17th March, 1893, which would indicate that this letter was reported to Council? A.—No, those were instructions to have report to Council prepared.

Q.—That would mean that someone in the Department was to prepare a report to be submitted to Council? A.—Yes, sir.

Q.—Do you find the report? A.—No, sir.

MR. JONES: Have you anything else? A.—I have a charging card here which shows that file was sent to Mr. Pottinger on the 22nd of June.

HIS LORDSHIP: That file or those files? A.—This particular file covering these letters.

MR. JONES: Covering these three letters that you have just produced? A.—No, those in that synopsis.

Q.—Covering the documents mentioned in the synopsis? A.—Yes.

MR. TILLEY: In Exhibit No. 301.

MR. JONES: Then you have found a memorandum which relates to the documents mentioned in the synopsis, Exhibit No. 301? A.—Yes, sir.

Q.—What does that state? A.—That that particular file in which those references are was sent to Mr. Pottinger on the 22nd June, 1907.

Q.—Anything further with reference to them? A.—No, sir.

MR. TILLEY: That would be exhibit No. 171 that transmitted those 30 files.

MR. JONES: Anything further, Mr. Ross? A.—No, sir.

CROSS-EXAMINED BY MR. TILLEY:

Q.—As I understand your evidence, Mr. Ross, this card shows the final disposition of that file as far as your Departmental records go? A. Yes, sir.

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Q.—If they had not been lost you would expect them to be returned to your Department by Mr. Pottinger when he was through with them? A.—Yes, sir.

Q.—And if they had been returned you would have had some notation on your records to show the return of them? A.—Yes, sir, it would be checked off in this space.

Q.—I notice in the right hand column you have a blank opposite that particular item, which reads: "Reference F, To whom charged, Pottinger; Date 22-6-07." That means,—what does "F" mean? A.—The whole file.

Q.—"F" indicates that the whole file was sent to Mr. Pottinger? A.—Yes.

Q.—On that date, and then opposite to that is a blank where there would be another date had the file ever come back? A.—Yes, sir.

Q.—Now interpreting that card correctly it means that Mr. Pottinger or his office did not return them? A.—Yes, sir.

Q.—Do you find records of any inquiry for them? A.—Yes, there were letters written once or twice after that asking for them, but we never got any reply. That is from my recollection of it, I did not look that up lately.

Q.—I suppose it is part of your job to see that these things are kept in order? A.—Yes.

Q.—And your recollection I suppose would be accurate in that regard? A.—Oh yes, sir.

Q.—And if you find your recollection is wrong probably you will correct it, and we will make the correction here, because it is not worth while bringing you back if it turns out to be right.

Now I gather that these documents shown in Exhibit No. 301 are but a few of the documents that were sent down to Mr. Pottinger at that time? A.—Yes, sir.

Q.—These have been selected by you because on looking at your journal entry you interpret the entry as showing that they relate to the matters we are concerned with here? A.—Yes, sir.

Q.—But if you had another matter to deal with you would have to go through the records again to see whether you had any papers referring to that other subject matter? A.—Yes.

HIS LORDSHIP: That would not convey the idea that the file in question only contained these—

MR. TILLEY: That is the point. These are just some of the documents, but you think all that are relevant to us in our inquiry? A.—Yes.

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HIS LORDSHIP: Could you have reconstructed the whole file?

MR. TILLEY: You could give a list of all the documents that were in the file? A.—Yes, I think I could.

HIS LORDSHIP: That would be quite a piece of work. Just by the number of the file I suppose? A.—The reference in each file. At that time they were not in what we call flat files, each letter was filed by itself.

MR. TILLEY: Take for instance the first of these documents, how do you know that it was in that particular file? A.—The number is on the back of the card. This is the individual reference, before we had the flat files, and when it was made into a flat file we put the reference num- 10
bers there to check them up.

HIS LORDSHIP: That card is not filed?

MR. TILLEY: Probably he would make a copy.

HIS LORDSHIP: The question is, Can we find them or not, and if not that is the end.

MR. TILLEY: That is what it comes down to, but just to be sure we understand what there is to be said about it,—

Q.—On the back of this card you have the numbers of the individual communications that were in the file? A.—Yes, sir.

Q.—Therefore you would go back and find these numbers, as you 20
have in Exhibit 301 to some extent? A.—Yes, sir.

Q.—I gathered from what you said yesterday that you have the opinion that the contracts of 1893, or the documents that were to become contracts if certain things had been done, were in that file? A.—Yes, sir.

Q.—Do I understand that you assume that because Mr. Drinkwater's letter returning the documents for execution was in the file? A.—Yes, sir.

Q.—You assume that where Mr. Drinkwater's letter is referred to here it would have attached to it the documents he returned? A.—Yes, 30
sir.

Q.—From Montreal? A.—Yes, sir, that is the practice of the Department.

Q.—So that the number here, which seems to refer to Mr. Drinkwater's letter only, would represent his letter plus the enclosures? A.—Yes, sir.

Q.—Therefore his letter with the enclosures, his letter of May 27th, 1893,— A.—That is a letter to Mr. Drinkwater.

Q.—It is the next one of July 25th? A.—Yes, sir.

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Q.—Mr. Drinkwater's letter of July 25th, 1893, with the documents that are mentioned, that is the agreement in duplicate for the construction of telegraph line between New Glasgow and Sydney, that letter with the documents was in the file that went to Mr. Pottinger and is now missing? A.—Yes, sir.

Q.—That is the way you interpret that? A.—Yes, that is the way I interpret that.

Q.—In 1890, Sir John A. Macdonald was both Prime Minister and Minister of Railways and Canals? A.—Yes, sir, was acting Minister, he was President of the Council and Acting Minister of Railways and Canals.

Q.—And the letter written by him which has been put in here as an exhibit was not on your file? A.—No, sir.

Q.—The Department of Railways file? A.—No, sir, I never saw that letter.

Q.—((Letter of October 9th, 1890, Exhibit No. 77). Now I suppose that sort of thing, that is a letter written by an Acting Minister not getting on your files, was apt to happen where some other Minister was acting as Minister of your Department? A.—Well it might happen where we had a regular Minister too, a Cabinet Minister has a private file.

Q.—Well it would be more apt to happen if the Minister was not in your Department possibly? A.—Yes.

Q.—And it would be apt to happen at any time because he might put it in his own file? Yes, sir.

Q.—At any rate where he was writing from another Department or another office it would be rather usual for it to happen, wouldn't it? A.—Yes, sir.

Q.—It would remain in his office. And I believe his file or some papers in it went to the Archives? A.—Yes, sir.

Q.—At any rate it was not with you? A.—No, sir.

Q.—At that time your practice was to make letter press copies? A.—Of outgoing letters, yes, sir.

Q.—And you would be able to get Mr. Schreiber's letter-book showing his outgoing letters? A.—Yes, sir.

Q.—And possibly be able to produce the one of March 18th, 1893? A.—Yes, sir, I think I could get that.

Q.—But as I gather, no amount of search has produced Mr. Pottinger's letter of May 2nd, 1893, in which he makes his comments on the agreement, or proposed agreement? A.—No, sir.

Q.—That cannot be found, either the original or a copy, or anything in regard to it.

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No. 3

Plaintiff's
Evidence.

Henry LeBreton
Ross

Cross-
examination
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HIS LORDSHIP: That might have been in the file.

MR. TILLEY: It would be in the file, but one would think there would be a copy of that in Mr. Pottinger's office at Moncton, outside of this file that was sent down with the original in it.

HIS LORDSHIP: When did that fire occur?

MR. TILLEY: I am putting this to you, Mr. Ross; it appears that not only the original letter as it was in this file has been lost, but the copy which would exist down at Moncton would also be lost? A.—I don't know anything about that.

Q.—Well as far as you have been able to discover, or have you been 10 following that up? A.—No.

Q.—You have just been attending to the records here in Ottawa. A.—I thought the lawyers had looked down there.

Q.—Yes. We cannot find it. Do you know whether these were burnt? I would be inclined to think that if you wrote down about the file and did not get an answer it was because some person lost the file rather than it was burnt. It would be so easy to give an answer if it was burnt. A.—Well I don't know anything about that.

Q.—You do not know the date of the fire? A.—No.

Q.—Now you spoke yesterday, or Mr. Buckley did, about signing 20 contracts, he said you would know more about the practice than he. Is there any governing Order-in-Council about signing contracts by Ministers? I think you mentioned that there was one. A.—Oh that was an Order-in-Council about letting contracts under \$5,000.

Q.—Is this it? (Showing copy to witness). A.—Yes.

Q.—That is Order-in-Council of 23rd March, 1880.

EXHIBIT No. 305: Order-in-Council of 23rd March, 1880.
(Exhibit read).

Q.—That relates to accepting tenders? Yes, sir.

Q.—Where money is involved? A.—Yes, sir, I do not think that 30 would cover this case.

HIS LORDSHIP: It has not any bearing.

MR. TILLEY: No, my lord, I just want to show that the situation is clear.

Q.—That is the only Order-in-Council that controls the signing of contracts that you are aware of? A.—Well there have been a number of orders from time to time.

Q.—With regard to special matters? A.—Special matters.

Q.—But speaking generally? A.—Speaking generally, I think the Act of the Department governs.

Q.—Which Act? A.—Department of Railways Act, I think it is in the Revised Statutes of 1927.

Q.—Well the field is clear except so far as there is a Statute? A.—Yes.

Q.—And except so far as covered by this Order-in-Council? A.—Yes, sir.

Q.—Now what I cannot quite understand is Mr. Buckley's statement that there were Orders-in-Council for all these contracts that are referred to in the book—

(Journal referred to yesterday not in Court)
—you know the book? A.—Yes, sir.

Q.—Mr. Buckley had it here yesterday. That was a book containing contracts relating to the Intercolonial? A.—Yes, sir.

HIS LORDSHIP: Exclusively?

MR. TILLEY: No, amongst others, a certain section devoted to the Intercolonial. I do not know whether his evidence related to all the contracts, but I think he was limiting it to contracts referring to the Intercolonial.

Q.—But no matter how he put it, is it a fact that there were Orders-in-Council for all those contracts? I am not asking you to say you checked them up. A.—I do not know, sir, I did not look that up myself.

Q.—Well you would hardly expect to find that they were all authorized by Order-in-Council, would you? Because there would be a great many contracts that need not have an Order-in-Council to back them up? A.—I think every contract is supposed to have an Order-in-Council, I think the only exceptions are these under \$5,000.

Q.—If they are contracts for the payment out of money, but if they do not involve any payment that would not be so? A.—I suppose not.

Q.—At any rate you have not made any check and you do not know? A.—No, sir.

RE-EXAMINED BY MR. JONES:

Q.—You spoke about having made inquiry from Mr. Pottinger with reference to this letter and these documents. Have you any record of any inquiry made? A.—Yes, I can look that up it would be in our press book.

Q.—But speaking from memory you recall— A.—Yes.

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MR. TILLEY: I think it would be well if you would let us have copies of them. And Mr. Schreiber's letter to Mr. Pottinger. A.—Yes, sir.

MR. JONES: That is the case, my lord.

DEFENCE.

MR. TILLEY: My lord, I submit the Crown has not made out a case, but I think I shall call such evidence as is available.

HIS LORDSHIP: In a case where there is no jury I throw the re- 10
 sponsibility on Counsel.

MR. TILLEY: This is particularly a case where we should have all the facts.

HIS LORDSHIP: I think so. If you have any other documents—

MR. TILLEY: If I have I will show them to my friend and we will make the record as complete as we can.

JOHN FRANKLIN RICHARDSON, sworn. Examined by MR. TILLEY.

Q.—What is your occupation, Mr. Richardson? A.—Justice of the Peace and Postmaster.

Q.—Where? A.—Lanigan, Saskatchewan. 20

Q. Were you superintendent in charge of the construction of the Canadian Pacific telegraph line from Saint John to Halifax? A.—I was.

Q.—What years? A.—In 1889.

Q.—When with reference to 1889 was the work commenced? A.—In the early spring, I cannot give the exact date.

Q.—And when was the work completed? A.—Early in the following year, some time in January.

Q.—That is to say it was a line, as we have it now, that speaking generally was not on the right-of-way? A.—It was not on the right-of-way.

Q.—Where with reference to the right-of-way was it, speaking gen- 30
 erally? A.—It was on the outside of the fence, on the farmers' property or private property.

Q.—Did you arrange with these farmers as you went along, to get your line established there? A.—I did.

Q.—And it was built, and completed in 1890? A.—Early in 1890, yes.

Q.—And when the work was done was the line built with the concurrence of those on whose property it was put, or were there outstanding disputes and quarrels? A.—Well there were very few disputes, there were two or three outstanding, they were nearly all completed. They were settled afterward.

Q.—So that, either at the time of completion or in due course following, these matters were adjusted to the satisfaction of the parties on whose property the poles were put? A.—Yes, sir.

Q.—Then in carrying on that work I suppose you did operate some-
10 what from the railway, that is to say the poles would be distributed along the railway, and then put over the fence? A.—Yes, sir.

Q.—That was the convenient way in which to do it, and you paid for the services rendered? A.—Yes, sir.

Q.—And everything proceeded— A.—They were distributed by trains.

Q.—Then were there any portions that were on railway property in the original construction? A.—Not to my knowledge, excepting a few cases, I think only one case that I know of.

Q.—Was that a long stretch or a short stretch? A.—I cannot remem-
20 ber the number of poles, it would probably be less than half a mile.

Q.—Just a small detour on to the right-of-way? A.—Yes, sir.

Q.—The correspondence would seem to suggest that there was a question as to the exact boundary of the railway property. Were you concerned with any question as to that? A.—Yes, I consulted Mr. Archibald on that point.

Q.—Who was Mr. Archibald? A.—He was the chief Engineer, or the Engineer in charge at Moncton of the Intercolonial Railway.

Q.—He would be the person that Mr. Pottinger referred to yesterday? A.—Yes. I consulted him so as not to have any friction, I wanted
30 to meet the letter of the law as far as I knew.

Q.—Was the railway right-of-way fenced on each side? A.—Yes, except in some cases, where there was a ballast pit for instance, although there was no fence marking the right-of-way, yet I found out what the extent of the right-of-way was, and built outside of it as far as I knew.

Q.—At any rate you carried the thing along in that way, and did you have occasion to take anything else up with Mr. Archibald, I mean that is material here? I suppose you did see him from time to time about matters, but is there anything material? A.—No, nothing except the right-of-way as far as the engineer was concerned.

Q.—Just to ascertain where the right-of-way was? A.—Yes, that is it.

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Q.—So that you would get outside of it, is that what you mean? A.
 —Yes, sir.

Q.—Did you take up anything with Mr. Pottinger at that time? A.
 —Well I was instructed to go and see Mr. Pottinger, which I did, and he
 brought in Mr. Archibald as the proper person.

Q.—As the proper person for you to deal with? A.—Yes.

Q.—Then did you have anything to do with the line from New Glas-
 gow to Sydney? A.—I built that line also.

Q.—I should have asked you, before passing to that line, What about
 the line from Truro to New Glasgow? A.—I also built that outside of the 10
 right-of-way.

Q.—That is to be put in the same category as from Saint John to
 Halifax? A.—Yes.

Q.—And when you say you completed in 1889 or 1890, did you in-
 clude in that part the Truro to New Glasgow work? A.—Yes, that was
 completed before I reached Halifax.

HIS LORDSHIP: Completed in 1890? A.—In 1889.

MR. TILLEY: That part was done in 1889? A.—Yes.

Q.—And the Halifax end was finished in 1890? A.—In January,
 1890. 20

Q.—We may speak of it as a line constructed in 1889, because it
 was finished in January, 1890. That is the fact? A.—Yes.

Q.—Then the work there you say was carried on in the same way.
 Now from New Glasgow to Sydney what had you to do with the line
 there? A.—I built that line.

HIS LORDSHIP: When did you build that? A.—1893.

MR. TILLEY: And where was it built as to the location of the line?
 A.—On the right-of-way.

Q.—And where with regard to the right-of-way? A.—That was left
 entirely to me by the engineer. 30

Q.—Mr. Archibald? A.—Mr. Archibald. I went to see him about it,
 and he said to build it the same as I would build the C.P.R. lines.

Q.—When you say build the same as the C.P.R. lines, do you mean
 on the right-of-way? A.—On the Intercolonial right-of-way.

Q.—That is build in the same way as if you were building a telegraph
 line on the Canadian Pacific Railway line? A.—Yes.

Q.—Did you see any person besides Mr. Archibald? A.—I had oc-
 casion to see the General Freight Agent in regard to the movement of
 material and cars.

Q.—Making the necessary arrangements? A.—Yes, rates and arrangements.

Q.—But I had more in mind with regard to Mr. Pottinger. Did you see him? A.—I saw him, he turned me over to the Department that handled that work.

Q.—Then before you commenced the work on the New Glasgow-Sydney portion of the line as distinct from doing the work on the Saint John-Halifax, I would like to know did you make a visit to Mr. Pottinger? A.—Yes, on instructions from Mr. Hosmer I went to see Mr. Pottinger first.

Q.—And what took place then? A.—And consulted him about the construction of the line, and he brought in Mr. Archibald and also Mr. Wallace the Freight Agent, and we discussed the whole question.

Q.—When you say “We discussed the whole question” you are not telling us any particular thing you discussed. If you can give it to us a little more particularly.

MR. JONES: Say what was said. Who was Mr. Wallace? A.—He was General Freight Agent I think he was called.

MR. TILLEY: Were the three of them together with you? A.—Yes.

Q.—Is Mr. Archibald alive? A.—I do not know.

Q.—Or Mr. Wallace? A.—I do not know.

MR. RAND: I think he is.

MR. TILLEY: I am not professing to prove that he is or is not by this witness.

Q.—Now what did you tell them you wanted to see them about?

HIS LORDSHIP: What took place? A.—It is impossible to remember the exact conversation, but what I wanted to know was if they had any special instructions in regard to the construction of this line on their right-of-way, so that I could meet their wishes. That is the only thing I was after.

MR. TILLEY: Q.—And what was their reply? A.—Mr. Archibald said, Well we won't restrict you to any particular distance on the right-of-way, you build it the same as you would build one of your own lines.

Q.—You mean any particular distance from what? A.—From the track.

Q.—Build it as you would on your own right-of-way, is that it? A.—That is it. I mean you could not confine it to any special distance because of the changes in the contour of the land.

Q.—I suppose we all know more or less, but speaking generally what sort of country is it from New Glasgow to Sydney? A.—It is rolling,

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some hills and gullies, therefore it required the exercise of some discretion.

Q.—As to where you put it I suppose you mean? A.—Yes, sir.

Q.—Now is there anything else that is material that you recall, that you talked about on that occasion? A.—Not that I remember.

Q.—Why was Mr. Wallace there? A.—He was the freight man, to arrange the rates, and about what it would be for a trainload of poles, and individual cars, and moving of boarding cars, and so on.

Q.—That is the boarding cars for your gangs of men? A.—For the gangs of men, yes. 10

Q.—Were those subjects discussed when the others were present, or were they discussed between you and him? A.—I went with Mr. Wallace to his own office.

Q.—To take up these things? A.—And took that up, yes.

Q.—Were there any special portions of the line that you discussed at that time as to how you would proceed? A.—Well I spoke to Mr. Archibald about permission to put an arm or cross-arm on any bridges or trestles that was necessary to carry the wires across, instead of making a long span, and I got permission to do so.

Q.—To put the wires along the bridges where there would be a long span between poles if you did not work it that way? A.—Yes. 20

Q.—And how was that done at those spots in fact afterward? Did you put it along the bridges? A.—Oh yes.

Q.—Can you indicate to what extent that was done? A.—I cannot remember, I think there were only three or four such places.

Q.—Of great length? A.—No, I think one or two spans.

HIS LORDSHIP: There would be Grand Narrows. A.—No, we have a cable there.

MR. TILLEY: That was different treatment? A.—Yes.

Q.—Now were the bridges along that railway at that time wooden bridges or steel? A.—Wooden bridges. 30

Q.—So that you put cross-arms on those in the same way? A.—Yes.

Q.—When did that work commence and when did it end? A.—I cannot give the exact dates now.

HIS LORDSHIP: He says it was finished in 1893.

MR. TILLEY: Can you tell me how long it took you to do the work? A.—Nearly the whole summer.

Q.—And it would be a distance of how far? A.—I cannot remember now, the timetable would give it.

Q.—What sized gang would you have there working? A.—We had two gangs of men between 20 and 25 men each.

Q.—When you say two gangs, would they be working alternately, or working in different parts? A.—Working in different parts.

Q.—Working from the two ends to come to the middle, or working along? A.—Where it was convenient to distribute the poles and get the material there.

Q.—And was the work done in the daylight or in the dark? A.—In the daylight.

10 Q.—And the poles, how were they distributed? A.—They were distributed from the cars on the train. The poles are loaded on flat cars and distributed from the train.

Q.—And drawn out by an engine I suppose along the railway, and then the poles rolled off as you needed them? A.—Rolled off as we needed them, yes.

Q.—And would that be an Intercolonial train movement or C.P.R.? A.—Intercolonial train movement.

Q.—And of course on terms? A.—On terms, yes.

Q.—About payment? A.—Yes.

20 Q.—Then would you be supplied with any other Intercolonial equipment? A.—None.

Q.—What about hand cars? A.—They were our own.

Q.—Did you have any Intercolonial men in the operation of your cars, or did you run them yourselves? A.—Not on that section. We did on the Halifax-Saint John section.

Q.—But on that section you operated the hand cars by your own gangs? A.—Yes.

Q.—Then that work proceeded and was completed in that year? A.—Yes, sir.

30 Q.—And when were the wires strung? A.—At the same time.

Q.—And how was the wire furnished, how did you get it there? A.—The wire was shipped to different stations along, and we picked it up with our hand cars and carried it along.

Q.—You say you would take it from the station, put it on your handcars, and then how would you get it from your handcars on to the poles? A.—It is run out by the men from a reel.

Q.—From a reel on the,— A.—On the handcar.

Q.—That is, you would feed it out from the handcar to the poles? A.—Yes.

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Q.—And then men would be putting it on as you ran the handcar along? A.—Yes.

HIS LORDSHIP: Were you obstructing the traffic?

MR. TILLEY: Well you would take care not to obstruct it too seriously?

HIS LORDSHIP: There were very few trains I suppose.

MR. TILLEY: But you had to get it out of the way? A.—Yes, they would pick it up and set it on one side when a train came.

Q.—Then did you have any complaint or objection raised about your doing that work? A.—No, sir, that was all arranged before I started the work, there was no misunderstanding about it, and no complaints of any kind. 10

Q.—Did you carry it out as you had arranged to carry it out with Mr. Pottinger and Mr. Archibald and Mr. Wallace? A.—Yes, sir, I certainly did.

Q.—Then did you have anything to do from Westville to Pictou? A.—Nothing whatever.

Q.—Did that end your work? A.—That ended my work.

Q.—Were you connected with the transfer of any lines back on to the right-of-way? A.—None whatever. 20

Q.—Other persons will have to speak of that? A.—Yes.

Q.—You were in charge of the original construction? A.—Yes, sir.

Q.—Of both lines, one of them off the right-of-way and the other on? A.—Yes, sir.

Q.—I do not know that there is anything else you can speak about? A.—No.

CROSS-EXAMINED BY MR. JONES:

Q.—Mr. Richardson, in the building of the telegraph line from Saint John to Halifax how did you proceed? For instance in getting your poles and wire? By the use of the railway? A.—By the use of the railway, they gave us their facilities for doing it. 30

Q.—And you say that on that occasion between Saint John and Halifax you had some I.C.R. men to assist in your work on the railway? A.—One Intercolonial Railway man to handle the handcars,—to be responsible, not particularly to handle them.

Q.—Then you hauled your wire and other material in the same way that you have described in relation to the New Glasgow end, didn't you?
A.—When we could.

Q.—Yes, when you could. You used the railway facilities for the construction of that line outside the right-of-way in the same way practically as you did for the construction of the New Glasgow end on the right-of-way? A.—Yes, sir.

Q.—So that there was not any difference in that respect between the building of the two lines? A.—No.

10 Q.—It was a matter I suppose of convenience in the construction of the line to have it along there, either near the railway or on the railway, for that reason, wasn't it? A.—A matter of convenience—

Q.—A matter of convenience to have your telegraph line on the right-of-way or near the right-of-way for the reason that you could have the railway facilities? A.—Of course it is much less expensive building on the right-of-way than it is over the fence.

Q.—But at the same time it is an advantage to have the railway facilities in the building of the line? A.—Well we always have them.

20 Q.—Whether it is on the right-of-way, or near the right-of-way? A.—Yes.

Q.—But it is much more advantageous, or do you say so to have it actually on the right-of-way? A.—I say it would be less expensive building on the right-of-way than it would be over the fence.

Q.—And less expensive in maintaining, wouldn't it? A.—Yes, sir.

Q.—In other words, it would be a distinct advantage to the telegraph company to build and maintain its line upon the right-of-way rather than outside the right-of-way? A.—That is self-evident.

Q.—Yes, that is self-evident.

30 HIS LORDSHIP: And it is still an advantage to build outside close to the railway, so that you can inspect your line, riding on the train? A.—Yes, sir.

HIS LORDSHIP: And of course that advantage exists when it is built on the right-of-way also?

MR. TILLEY: I think possibly a little more, because there is no intervening object.

Q.—I presume when you are off the railway you sometimes have to go a little way from the right-of-way, and get an obstructed view. Would that be right, Mr. Richardson? A.—That is right.

MR. JONES: Can you tell anywhere near what time it was in 1893 that you first began the construction of the New Glasgow to Sydney line?

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A.—I have no record of the dates exactly, but it was early in the spring, as soon as we could start work, as soon as the frost was out of the ground.

Q.—And that would be, in your judgment, about what time, as you recollect? A.—I presume,—it must be on record.

Q.—Perhaps we will get it, but I just wanted your judgment whether it would be March, April, May? A.—Well when I don't know the date why try it?

Q.—You would not be able to state with any degree of definiteness as to the date? A.—I could not. 10

Q.—Have not any idea? I just want your best recollection. A.—I have told you it was in the early spring, as soon as the frost was out of the ground, as soon as we could start work, but what date it was I have not any idea.

Q.—Now you finished the line to Halifax when? A.—Early in 1890.

Q.—Then what did you do between 1890 and 1893? A.—I was in my old position as Inspector at Montreal, Inspector of Telegraphs.

Q.—Between 1890 when you finished the line to Halifax, and 1893, did you build any other lines? A.—Not to amount to anything. 20

Q.—Nothing on the Intercolonial anyway? A.—No, nothing except our own work on the C.P.R.

Q.—You are the gentleman who wrote the letter, Exhibit No. 35, to Mr. Hosmer, I suppose. Do you remember writing this:

“The right-of-way Saint John to Moncton over 300 properties, and between seven and ten miles highway is clear excepting ten or twelve farmers, all except three are on the Moncton end, holding out for cash. As there is no injunction could we not put our poles on the railway side of the fence on the quiet through some of these back-woods places without any serious consequences? In many places 30 they would not be noticed.”

You wrote that, did you? A.—I presume so.

Q.—Now are you quite sure that the building of the line between New Glasgow and Sydney—

HIS LORDSHIP: That letter might have reference to what he said, he said excepting in one case, less than half a mile, we built outside the railway.

MR. JONES: Yes, it may.

Q.—Are you quite sure you did not adopt the same principle in some cases between New Glasgow and Sydney? A.—Well it was not necessary we were on the right-of-way.

Q.—But I say you are quite sure you did not do that on the quiet? A.—There was nothing on the quiet.

Q.—I am speaking of the New Glasgow end. A.—There was nothing done on the quiet.

Q.—Nothing done on the quiet there, whatever may have been done on the first end. But you did not do anything on the quiet on the New Glasgow end? A.—Neither did I on the other end.

Q.—Oh you merely suggested it? A.—I suggested it.

Q.—I think you said you were very anxious to observe the law in every respect?

HIS LORDSHIP: Well that half mile in question, you did that on the quiet didn't you? A.—No.

Q.—You got leave? A.—I did not get leave, I just went ahead with the work and did it, that is all.

MR. JONES: Now, Mr. Richardson, in the report signed by you made to Mr. Hosmer (Exhibit 66) dated March 1890, you say:

“The number of poles we have erected upon I. C. R. property east of Saint John is to the best of my knowledge as follows,”

and then you have a list, Inside the Fence, Outside the Fence but in Railway limits, and Total. Between Saint John and Moncton, Inside the Fence 12, Outside 214. Moncton to Truro, 6 inside, 4 outside the fence. Truro to Halifax 29 inside. Truro to New Glasgow 7 inside. That is 54 poles inside and 218 outside the fence but within railway limits.

What I want to ask you about that is, after the first of March, 1890, when you made this report, while you were on the work did you place any more poles inside the fence? A.—The line was completed long before that, I did not touch the line at all.

Q.—Then when you made this report,, March 1st, 1890, the line was completed between those points? A.—Yes, sir.

Q.—And was this a correct statement of the number of poles that were then inside the fence on railway property and outside the fence on railway property? A.—As near as I could count them.

Q.—And you counted them yourself? A.—I did.

Q.—Did you after the line was completed remain in that territory for any length of time? A.—No, sir, I went home as soon as possible.

Q.—Would there be any occasion for any shifting of poles immediately after that? A.—Well not to my knowledge.

Q.—You would not suppose it would be necessary to shift any? A.—No.

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Q.—And as far as your judgment was concerned you would suppose that that line and those poles as you left them would remain there in that position for some years?

MR. TILLEY: How would he know that?

MR. JONES: I say from a railway standpoint, from a practical railway standpoint would it be necessary to move any of them? A.—It would not be necessary, but there might be other arrangements made.

Q.—Yes, but as far as the physical part of the line is concerned it would not be necessary, would it, to move it from the position in which you left it? A.—Well I would not say it would be necessary, it might be 10 desirable if they could get the permission.

Q.—That is I do not mean to move it all on the right-of-way, that is not what I mean, but was there anything in the work that you would suppose would make it necessary to move more poles on the right-of-way at various places after you had once finished the work? A.—Well that would be a matter of convenience, or to remove some difficulties which I know nothing about.

HIS LORDSHIP: As far as you are concerned the installation you made was not a temporary one, but one which was to be permanent? A.—Yes, sir. 20

MR. JONES: Yes, that is about as far as it would go.

Q.—On the railway line between New Glasgow and Sydney, did you instal the wires of your line into any stations? A.—I did not.

Q.—Did you have separate telegraph offices at some places? A.—We did.

Q.—Were they on the right-of-way or off the right-of-way? A.—They were off the right-of-way.

RE-EXAMINED BY MR. TILLEY:

Q.—When you say they were off the right-of-way, I suppose the offi- 30 ces would not necessarily be close to the right-of-way? A.—No, sir.

Q.—They would be in towns? A.—In town.

Q.—And did that involve a line to the office and a line back to the main line? A.—Yes, it did.

Q.—So that wherever you established an office you had to run a line to the office from the right-of-way? A.—From the right-of-way, on the highway.

Q.—And then you spoke of having a man for the handcar, in charge, not to do the work but for some other reason. Just what was the reason for having an Intercolonial man when you did have one? A.—To take the responsibility of the handcar being on the track, where there were so many trains, an experienced man who understood the trains, the running of the trains on the road. He had his timetable and had complete charge of the handcar.

Q.—That is his instructions would have to be observed as to when the handcar was to be taken off the track and when it could be on? A.—
10 Yes, sir.

Q.—And he would be a person with local knowledge of trains and their running conditions? A.—Yes, sir.

Q.—Was there any difference in that regard between Saint John to Halifax and New Glasgow east? Was there more traffice on one than the other? A.—There is very little traffic east of New Glasgow, and all these heavy passenger trains on the main line, besides the freight.

Q.—Down to Halifax? A.—Yes.

Q.—So that there was less traffic and less need for a specialist, so to speak, in handling the car? A.—Yes, sir.

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HIS LORDSHIP: Mr. Tilley, the question of the amendment comes back to my mind. It does not appear to me that, notwithstanding the rights you assert there,—you say the result is, We have a right to be there?

MR. TILLEY: Yes, my lord.

HIS LORDSHIP: You offer no quid pro quo?

MR. TILLEY: Oh yes.

HIS LORDSHIP: Have you got it in that amendment? (Referring to defendants' amendment.) You do not offer the terms you offered in
30 your drafts.

MR. TILLEY: Yes, that is one of our terms. I am saying we are quite ready, and always have been, and we agreed to give—

HIS LORDSHIP: You do not offer a quid pro quo?

MR. TILLEY: I thought I did.

HIS LORDSHIP: At any rate you have considered it, that is all. But I do not see it there. You say to the Crown, We will take that situation into consideration, we have got our line there, in consideration of that we will give you this and that. They are not there. That is all brought back to me by the last witness.

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MR. TILLEY: "—or alternatively on terms of permitting the plaintiff to enjoy reasonable privileges with regard thereto consistent with the full enjoyment by the defendant of the lines for its purposes, but without any obligation on the defendant to pay any consideration in cash—"

HIS LORDSHIP: That is absolutely selfish, without being altruistic. That is, you want all your rights, but you do not give any service or consideration to the other side.

MR. TILLEY: I could not say, We will give you the privilege of ordering us to take down our wires. I say, We will give you the privileges consistent with our continuing to enjoy the right to operate. 10

HIS LORDSHIP: But that does not mean what was in the draft of agreement.

MR. TILLEY: That is exactly what was referred to. My friend asked for particulars of what I was alleging, and I said that draft agreement was one that disclosed them.

HIS LORDSHIP: Why didn't you say so?

MR. TILLEY: Well I will say so more particularly to your Lordship. I will put a paragraph that will cover that.

HIS LORDSHIP: If we had some reference which would tie you to one of your drafts, then we would understand the situation. Then there 20 would be a quid pro quo.

MR. TILLEY: I thought Mr. Jones understood me. But I appreciate the point, and I will attend to it. I am obliged to your Lordship for drawing it to my attention.

ALEXANDER JAMES GRANT, sworn. Examined by MR. TILLEY:

Q.—Mr. Grant, you are at present I think employed by the C.P.R.?
A.—Yes, sir.

Q.—In what capacity? A.—Inspector of Telegraphs.

Q.—Where? A.—Ottawa. 30

Q.—What was your business before your employment by the C.P.R.?
A.—I was employed by the Western Union Telegraph.

Q.—When? A.—About ten years prior to 1899.

Q.—In what capacity? A.—As lineman.

Q.—Between 1889 and 1899 roughly? A.—Yes, sir, about.

Q.—And when you were in that occupation was it part of your duty to be in the neighbourhood of this telegraph line of the C.P.R.? A.—Yes.

Q.—What part? A.—Between New Glasgow and Mulgrave, in 1893.

Q.—At that time did you see the C.P.R. work going on? A.—Yes, sir.

Q.—To what extent was it apparent that they were putting the poles along the right-of-way? A.—I seen them digging the holes, setting up the poles, and stringing the wire.

Q.—And that ran along how long? A.—Well until the line was completed.

Q.—Did you bring that fact to the attention of any of your superior officers, that they were putting the pole line there? A.—No.

10 Q.—Did you get any instructions about it, as to whether you were to interfere with it or stop it? A.—No..

Q.—Who would be the next man? Do you know Mr. Gray? A.—Mr. Gray the Roadmaster?

Q.—Yes, who was he? A.—He was the Roadmaster of the Intercolonial Railway, New Glasgow to Mulgrave.

Q.—I wanted to include railway men as well as telegraph men. Did you bring it to Mr. Gray's attention? A.—Yes.

Q.—As being a railway officer? A.—Yes.

Q.—Or person in charge of the railway at that point? A.—Yes.

20 Q.—And what did you say to him, and what reply did you get? A.—I referred back to the time we had stringing the wire when the poles were built off the right-of-way.

Q.—Where? A.—Between Truro and Moncton, and I simply said to him that they were having a much easier time than we had in building the line and stringing the wires.

Q.—When you say "we had" you mean for the Western Union? A.—No, for the C.P.R.'s first line.

30 Q.—The first line of the C.P.R., when you were building that you were building it off the right-of-way? A.—Building it off the right-of-way.

Q.—And you said to Mr. Gray they were having an easier job down east of New Glasgow than "we had" at the other point, is that what you mean? A.—Yes, that is what I mean.

MR. JONES: He says he was working on the C.P.R.?

MR. TILLEY: You were working on the C.P.R. line? A.—Previous to that.

Q.—So that you were pointing out to Mr. Gray that they were having an easier time. And what reply did you get? A.—He said he had instruc-

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tions from headquarters to allow them to build the line on the right-of-way.

Q.—How soon was that with reference to the time they commenced the work? A.—Oh I don't know, they would be some miles east of Antigonish at that time.

Q.—How far is that? A.—Antigonish is forty miles from New Glasgow.

Q.—And how far from Antigonish? A.—Oh probably ten miles.

Q.—Probably 50 miles east of New Glasgow? A.—Probably.

Q.—And is that the whole conversation you had with him? A.— 10
 That is all I remember, in connection with the building of the line and the stringing of the wire.

HIS LORDSHIP: What were you doing there for the Western Union? A.—I was foreman of a small gang repairing the Western Union line on the opposite side of the track.

Q.—And did you ever hear of any complaint or objection to what the C.P.R. were doing on the railway right-of-way? A.—None whatever.

JOHN McMILLAN, sworn. Examined by MR. TILLEY:

Q.—Mr. McMillan, what position do you occupy? A.—General 20
 Manager of Telegraphs, Canadian Pacific Railway.

Q.—The Canadian Pacific Telegraphs have been under your charge since 1915 I think? A.—March 12th, 1915.

Q.—And prior to that were you with the Telegraph system? A.—As-
 sistant Manager of Telegraphs, Western Lines, stationed at Winnipeg.

Q.—So that during the time we are concerned with here, but prior to 1915, you were out west? A.—On Western lines.

Q.—So that your connection with the Eastern lines commenced in 1915? A.—Correct.

Q.—Now the telegraphs of the Canadian Pacific Railway are owned 30
 by just the one company, the Canadian Pacific Railway Company, it is all one company? A.—Called the Canadian Pacific Railway Com-
 pany's Telegraphs.

Q.—It is not a separate corporation? A.—It is not.

HIS LORDSHIP: It is one of the assets of the C.P.R.? A.—Yes.

MR. TILLEY: Now I do not know that it is necessary, but you have been searching documents that might be pertinent to this case, as others? A.—I have.

Q.—And are your files all complete, or do you find them incomplete? A.—The files are complete except that it was reported to me that some files had been lost years ago.

Q.—And we have been getting documents as we could for the purposes of this case? A.—Yes.

Q.—And exhausting the Government's files, and the Archives and 10 all other available sources? A.—Yes.

Q.—Now there are references here to, for instance, Sir William Van Horne. Of course he is dead some years ago. A.—Sir William Van Horne died in 1915.

Q.—And Mr. Drinkwater? A.—He died in 1908.

Q.—And Mr. Clark, who was the Counsel or General Solicitor? A.—He died in 1904.

Q.—And then Mr. Hosmer was the Manager of the system at one time, he is dead? A.—He died in 1927.

Q.—But prior to that he had been in what condition? A.—He suf- 20 fered a stroke in 1925, he had a serious operation in 1919, and leading up to that operation he was in rather delicate health.

Q.—I think he ceased to be Manager of the Telegraph system—? A.—In 1899.

Q.—Sir William Van Horne of course was President of the company? A.—President of the Company.

Q.—And Mr. Drinkwater was Secretary? A.—Secretary.

Q.—And Mr. Clark? A.—Was their Chief Solicitor.

HIS LORDSHIP: Is it chief or general?

MR. TILLEY: I think it was chief at that time.

30 Q.—Now there is a reference to Sir Sandford Fleming. What particular interest did he take in telegraph service? A.—Sir Sanford Fleming in 1879 made a proposal that a deep sea cable should be supplied, should connect Canada with Great Britain, and Canada with Australia.

Q.—That got the name of—? A.—The All-Red route, the All-British route.

Q.—He was interested in bringing that about? A.—He made the proposal—

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Q.—Well, I do not want the details, I just want what might be public knowledge more or less in regard to it. A.—It was finally put in service as he proposed.

Q.—When? A.—In the Pacific in 1902, the Atlantic cable was not designed as he had expected, but in 1917 an Atlantic cable was provided.

Q.—Then the Canadian Pacific Railway runs east to Saint John? A.—Yes, sir.

Q.—And that is its terminus at that point as a railway? A.—Yes, sir.

Q.—Part of it goes through the State of Maine? A.—Yes.

Q.—Before it reaches Saint John? A.—Yes. 10

Q.—I am not sure whether that is leased or owned as you come into Saint John. A.—It is leased by the Canadian Pacific.

Q.—The railway is leased coming into Saint John. Now does the Telegraph of the C.P.R. run along the right-of-way going east to Saint John? A.—It does.

Q.—And what about where it touches the State of Maine? A.—It is on the right-of-way.

Q.—Is there a wire that goes around the State of Maine? A.—There is, it goes through Woodstock, Edmundston, Riviere du Loup, Quebec, and to Montreal. 20

Q.—The point of that being what? A.—That is all Canadian, the All-Red route.

Q.—That is to say you ran one wire around in that way that would not be in the United States at any part? A.—Would not go through the State of Maine.

(At 1 p.m. Court adjourned to 2.30 p.m.)

AFTERNOON SESSION, January 24th, 1929.

Examination of JOHN McMILLAN by MR. TILLEY (Continued). 30

Q.—Mr. McMillan, you had certain negotiations, I gather from the exhibits, with Mr. Gutelius? A.—Yes, sir.

Q.—In 1917. Or when did they commence? A.—1915.

Q.—After you came on as General Manager of the lines? A.—Yes.

Q.—Will you tell His Lordship what happened in those negotiations? Exhibit 245-A was the document that was prepared. I am going to put aside Exhibit 245 because it is understood that that did not come to your personal attention, it was just from the files in the course of preparing this other agreement? A.—Yes, sir.

Q.—But the document that did come to your attention is 245-A? A.—Yes.

Q.—Was that executed by the Canadian Pacific Railway after your conference with Mr. Gutelius? A.—Yes, sir.

10 Q.—Will you just tell the Court about these conferences? We have also Exhibit 239. Then I will put before you also certain memoranda, and you will explain those. Tell His Lordship what brought about the discussion and what the result was. A.—In the months of April and May, 1915, we discussed with Mr. Gutelius—

Q.—When you say “we,” do you mean yourself? A.—Mr. Gutelius and myself discussed freight values, passenger values for the movement of our employees, and later the question of the Canadian Pacific Telegraph line along the Intercolonial Railway. We exchanged letters, we had quite a number of conferences, and at one time Mr. Gutelius suggested that the
20 Canadian Pacific should pay a rental of 50 cents per pole per annum. In reply it was made clear—or I explained to Mr. Gutelius that that sort of rate did not apply, and we sought a solution of the problem in an agreement whereby we would exchange certain services, or render certain services to the Intercolonial in exchange for an arrangement whereby we would maintain our telegraph line on the right-of-way. At the last conference before the agreement I drafted a certain letter. May I read this letter?

Q.—If that is the letter. A.—Yes, that is the letter.

Q.—What is the number? A.—I will deal with 239-A first. In the
30 conferences Mr. Gutelius suggested that we draft certain headings of the arrangement for which we would have the right-of-way privilege. 239-A reads—

Q.—Well, who prepared that? A.—This was prepared by Mr. Gutelius. This is the first article of the mutual arrangement:

“1st. That all business between the Canadian Government Railways officers and Canadian Pacific Railway officers will be handled by the C. P. R. Telegraphs free of charge.

2nd. That the C. P. R. provide a wire from our Ste. Rosalie Station to the switchboard in our Montreal Terminal agent’s office.” That is their Ste. Rosalie Station, the I.C.R.

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"3rd. That in the event of the railway requiring more pole line wire space than has been provided in the agreement with the Great North Western and Western Union, that space for two wires on C. P.R. poles located on our right-of-way will be provided;—"

HIS LORDSHIP: Well he is practically reading the letter.

MR. TILLEY: Yes. You are going to refer to these clauses?

HIS LORDSHIP: I suppose he is going to compare it with the other.

MR. TILLEY: Well he is not far from the end.

WITNESS: "—the Railway is to supply the wires and fixtures and bear the cost of construction; the C.P.R. maintain the wires on 10 their poles at joint expense.

4th. The transportation for linemen to be handled in the regular way as between the Canadian Pacific and Canadian Government Railways.

5th. That special train service will be on the basis of \$5.00 per hour, minimum charge of \$50.00 per day.

6th. That the movement of repair cars will be handled at the rate of 6c per car per mile, minimum of \$6.00 each time a car is moved."

Q.—Do you say that was as a document prepared by Mr. Gutelius, 20 or by you? A.—By Mr. Gutelius.

Q.—And it was brought to a conference? A.—To a conference at Montreal.

Q.—And did you discuss it? A.—Yes, sir.

Q.—And what was done? I see certain O.K's on that document, who put them on? A.—Mr. Gutelius, and you will find the change where we were to maintain the wires free of charge.

HIS LORDSHIP: Did Mr. Gutelius put the O.K. on the document in your presence? A.—Yes, and altered one or two words, and cut out 30 some.

MR. TILLEY: You were saying that by the document you, the C.P. R., were to maintain the wires? A.—That was my suggestion in conference, and then he wrote at the top "At joint expense."

Q.—Indicating what? A.—That if we had ten wires and they had two, that as 2 is to 10—

Q.—That is there was a modification, and you were not to maintain their wires, but it was to be proportionate? A.—Proportionate.

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Q.—At any rate you had that conference, and later on did you have another? A.—We had a conference over this, these were to be considered, and I was to draft a second agreement, and we were to have a second meeting.

Q.—We will call it a second memo. A.—Second memo.

Q.—And have a further meeting. Did you do that? A.—We had it.

Q.—Is that document, exhibit No. 245? A.—239-B.

Q.—Is the one you prepared? A.—Is the one I prepared, and there is my signature.

10 Q.—Then I see in the margin, opposite clause 1, certain initials. What are they? A.—The first initial is C.P.R., the second clause is initialled C.P.R. In the third clause, "The Railway is to supply" was changed to read "The C.G.S. is to supply."

Q.—That would be "Canadian Government System" would it? A.—Yes. In clause 5 it reads:

"That special train service will be on the basis of \$5.00 per hour, minimum rate of \$50.00 per day."

Q.—That has initials to it? A.—It is initialled and rubbed out. The one above that is the one that is correct. That is clause 4 reads:

20 "That transportation for linemen will be handled in the regular exchange as between the Canadian Pacific and the C.G.R." in typewriting, and he wrote on the margin "mutual."

Q.—That means what, the word "mutual"? A.—That it is a free exchange as between the two companies.

Q.—Then following that opposite the 5th there is, "C.G.S.", that is Canadian Government System? A.—Yes.

Q.—And opposite the 6th are the same initials? A.—Yes.

Q.—And opposite the following paragraph? A.—Yes.

30 Q.—These letters C.P.R. and C.G.S., where they appear, and the word "mutual," are in whose handwriting? A.—Mr. Gutelius.

Q.—And when were they put on, with reference to the interview? At the interview? A.—They were put on at the interview in the Windsor Hotel; he usually had a room there.

Q.—Well they were put on at the interview? A.—At the Windsor Hotel.

Q.—And then I would take it from the reading of the document, the "C.G.S." seems to be opposite clauses where the Canadian Government System was to do something, and C.P.R. where the Canadian Paci-

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fic was to do something, and the word "mutual" where both companies were to do something? A.—Yes.

Q.—At that time to what extent,—I am not saying whether it was valid or invalid—but to what extent did you and Mr. Gutelius reach an understanding as to what each company was to do? A.—We reached an understanding on the basis of the former conferences. The Canadian Pacific was to perform services—

Q.—Well I am not asking you to summarize it all again, but having regard to the conferences you had, were you in agreement or substantial agreement at that time as to what you thought was ready to be done? 10
 A.—We were in complete agreement.

Q.—Then was a document to be prepared? A.—I was to submit the document to be drafted in regular agreement, and it was to be sent to him.

Q.—Is that the document, 245-A, that you caused to be drafted? A.— (Witness examines document). That is the document.

Q.—And I see it is signed by the Canadian Pacific Railway by its corporate seal, and by Mr. Bosworth. A.—G. M. Bosworth and H. C. Oswald.

Q.—Mr. Bosworth, Vice-President? A.—Yes.

Q.—And Mr. Oswald, Assistant Secretary. And then in the margin 20 is "O.K.", and is that Mr. Gutelius' signature? A.—That is Mr. Gutelius' signature.

Q.—Did that agreement carry out what you had arranged with Mr. Gutelius?

HIS LORDSHIP: When did Mr. Gutelius put that O.K. on?

MR. TILLEY: I will come to that.

Q.—Was the document drawn up by you intended to show, and is it showing what you and he had agreed to in your conferences? A.—Yes, sir, correctly, in accordance with our agreement.

Q.—When it left your possession did it have Mr. Gutelius' name on 30 it, or was it put on afterward? A.—It did not have Mr. Gutelius' name on it.

HIS LORDSHIP: It did not have the signature either I suppose.

MR. TILLEY: It had I assume the execution by the C.P.R.? A.—This document had, yes.

Q.—By the C.P.R., and then it was sent to Mr. Gutelius? A.—Sent to Mr. Gutelius.

Q.—And then the correspondence indicates that Mr. Gutelius approved it, marked it O.K., and sent it to the Minister at Ottawa? A.—Correct.

Q.—That is what the correspondence shows. Now did that document ever come back to your possession? A.—It did not.

Q.—When did you first see it again, in Court here? A.—In Court.

Q.—While this case has been going on? A.—Exactly.

Q.—And I believe Mr. Gutelius was retiring at about that time, or shortly after? A.—About the end of June I think, some time in June.

Q.—June, 1917, and this was prepared in May.

Then on the margin of the document I see you have put “J. McMillan, Manager Telegraphs.” Is that your signature? A.—Yes, sir.

10 Q.—Showing what? A.—In all documents relating to my Department I have to initial the side of the document.

Q.—And then it is also initialled by “E.W.B.”? A.—E. W. Beatty.

Q.—That would be the present President of the road, then Counsel wasn't he, General Counsel? A.—General Counsel.

Q.—And that I suppose is following the practice of the C.P.R. with regard to such documents? A.—Yes, sir.

Q.—And then I see each page is also initialled by Mr. Gutelius. A.—Yes, sir.

20 Q.—On this original document there are a lot of pencil notations. I suppose they were not on the document when it left your possession? A.—No.

Q.—They have been put on since in the Government offices some place. Then who became Manager? A.—C. A. Hayes.

HIS LORDSHIP: Who became Manager in place of Mr. Gutelius?

MR. TILLEY: Of the Intercolonial in place of Mr. Gutelius. Mr. Hayes? A.—Yes.

Q.—Then I think the correspondence shows that he put forward another agreement? A.—Yes, sir.

30 Q.—And then the matter went along in correspondence as indicated? A.—Yes, sir.

HIS LORDSHIP: I did not catch what you said, you said Mr. Hayes followed— ?

MR. TILLEY: And he prepared another document.

Q.—That is all shown by the exhibits? A.—Yes.

Q.—And the exhibits show the subsequent history, as you followed them? A.—Yes, sir.

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Cross-
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Jan. 24, 1929.**HIS LORDSHIP:** Is that No. 257?**MR. TILLEY:** No. 257 was Mr. Hayes' document.**Q.—**And then subsequently a demand was made for 25 cents a pole, and accounts were rendered for a period of time? **A.—**First for 50 cents a pole.**Q.—**Well I do not know that there is any account for 50 cents a pole, there was a suggestion of 50 cents a pole in the agreement. **A.—**In the agreement.**Q.—**And later on the demand was reduced to 25 cents a pole? **A.—**Yes, sir. 10**Q.—**And that is shown by the correspondence. Does anything turn on any discussion between you and Mr. Hayes, or is it all shown in the correspondence? **A.—**It is all shown.

CROSS-EXAMINED BY MR. JONES:**Q.—**From the records in your office are you able to state just when these C.P.R. lines were constructed upon the right-of-way of the Inter-colonial Railway? **A.—**Yes, sir.**Q.—**There was a table submitted here as Exhibit No. 3. I want to ask you whether that statement is substantially correct as to the rebuilding of these several sections? **A.—**Except the fourth line from the bottom; under "Rebuilt and moved on I.C.R." the years as shown are 1906-07. It should read 1905-06-07. 20**MR. TILLEY:** You say the fourth line from the bottom, that might not be plain on a printed copy of the exhibit, I think you had better give the item. **A.—**"Truro to Fairview Junction," it should be 1905-1906-1907.**MR. JONES:** Then in other respects I understand that this table correctly shows when the lines in the several places were constructed on the right-of-way of the Canadian Government Railways. **A.—**Yes, sir. 30**Q.—**And the mileage, did you check that? **A.—**I did, but I have not the figures here. The mileage I think is 232, the mileage moved on at that time was 232 miles I think.**Q.—**At what time do you refer to? **A.—**Up to the end of 1914 there was 232 or 262, I am not just sure.**Q.—**You do not know whether the mileage stated here is absolutely correct or not? **A.—**No.**HIS LORDSHIP:** The mileage of the first item is 257.

MR. TILLEY: We will check the mileage, I will agree with my friend on mileages, we will check them and make it right.

MR. JONES: The first item is Saint John to New Glasgow. That would be I presume by way of Truro, would it? A.—That is the mileage from Saint John to Truro, that is 257 miles, yes, that would be correct.

Q.—Saint John to Truro, and through Truro to New Glasgow isn't it? A.—Yes.

Q.—And then the item from Truro to Fairview Junction, near Halifax, is another item in the table, of which the mileage is given as 59. It may be correct or not. But those two items represent the whole railway except that part between New Glasgow and Sydney, do they not? A.—Yes.

MR. TILLEY: And between Westville—

MR. JONES: Well Westville and Pictou is not on here at all.

Q.—Do you know whether this was prepared in your office? A.—It was prepared I think in Saint John.

Q.—In the C.P.R. office? A.—Yes.

Q.—I notice here, in Exhibit No. 230, where the rebuilds are referred to, I want to ask you in respect to the road between Truro and Fairview Junction, do you remember which part of your line was built in 1905? A.—We have that record here, but I do not know from memory.

Q.—Well we have that? A.—Yes.

MR. TILLEY: We will have a witness who will be able to speak about that.

MR. JONES: And the evidence will be given I suppose in respect to those sections which were built between Truro and Fairview Junction in those three different years? A.—Yes, sir.

RE-EXAMINED BY MR. TILLEY:

30 Q.—Mr. McMillan, you spoke of this Exhibit No. 3. That I understand shows when the line between different points was moved on to the right-of-way, generally? A.—Yes, sir.

Q.—You are not saying that at other dates pieces or sections were not moved on, but that is the general rebuilding of the line? A.—The general rebuild.

Q.—How long does a pole line usually last before it is rebuilt? A.—15 if you get an indifferent pole, 20 to 25 years.

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Cross-

Examination
(Contd.)

Re-examination.
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Q.—Somewhere between 15 and 25 years, depending on the character of the pole, and I suppose the soil? A.—The soil has a great deal to do with it.

Q.—But these are the rebuilds of the line? A.—Yes.

Q.—Either the original construction or rebuilding? A.—Yes, sir.

DAVID WELLINGTON MERSEREAU, sworn.
Examined by MR. TILLEY:

Q.—Mr. Mersereau, you had something to do with both the original construction and the rebuilding of the line? A.—Yes. 10

Q.—I believe you are or were a Member of the New Brunswick Government? A.—Unfortunately.

Q.—Or fortunately. But years ago you were with the C.P.R.? A.—Yes, sir.

Q.—In what capacity? A.—I went with them in 1889 as a lineman, climber, worked 1889 and 1890, and left the service for four years. Then I went with them in 1894 permanently.

Q.—Then were you on the original construction going east from Saint John? A.—Yes, sir.

Q.—When was that? A.—In the fall of 1889, and the winter of 1890, 20 I helped string the wires between Saint John and Truro.

Q.—And that line was built off the right-of-way as we have heard? A.—Outside the fence.

Q.—And how close to the fence? A.—The great majority of the way it would be right close to the fence, but spots would vary. But the large percentage was close to the fence.

Q.—Then did you look after the repairs on that line at all? A.—Yes, sir, I did from 1894 until I left the service.

Q.—Then were you on the construction from Truro to Halifax? A. I was not on the construction, no, sir. 30

Q.—Of that part. Then speaking of that line, from the time you took it over and commenced to look after the repairs, you would look after the repairs on the whole line I suppose? A.—From 1894 to 1904 I just had charge of the Saint John section.

Q.—That would be Saint John to—? A.—From Fredericton Junction to Sussex.

Q.—Down to 1904? A.—Yes, sir.

Q.—From 1904 on? A.—From 1904 to 1910 I had charge from Vanceboro east.

HIS LORDSHIP: Had charge of—? A.—Of the repairs and construction from Vanceboro east. In 1910 I was Superintendent of Construction from Megantic, which included the I.C.R.

MR. TILLEY: Now you spoke about the line between Saint John and Halifax—

HIS LORDSHIP: Saint John and Truro.

MR. TILLEY: Well I am putting it broadly. We have found when that line was built, and speaking generally where was it built? To what extent, if at all, was any construction put on the right-of-way of the Intercolonial by you when you were constructing the part of the line that you had to do with?

HIS LORDSHIP: Originally?

MR. TILLEY: Originally. A.—From 1894 to 1904—.

Q.—No, prior to 1894, when it was built? A.—I thought it was all outside the right-of-way.

Q.—There may have been—? A.—There might have been some in.

Q.—Now from 1904 on will you tell us what happened? A.—From 1894 to 1904, as my recollection has it, we done very very little moving. There might have been an odd pole put over, but very little, because it was a new line, and we didn't do any work on it. In 1904 we started to put over, started to rebuild the line and move it over on to the right-of-way. That was the year we put over between Saint John and Moncton, I think in the vicinity of 6 or 7 miles.

HIS LORDSHIP: I thought that was done in 1917.

MR. TILLEY: This is just 6 or 7 miles, this is not a general rebuilding that I am dealing with now. Certain portions got over? A.—Certain portions.

Q.—And you think the portions would amount to 6 or 7 miles? A.—But not all in one stretch.

Q.—No, in pieces. Can you particularize it any more than that, or is that about as well as you carry it in mind? A.—For that year.

Q.—1904, then, you commenced putting it over in some sections, some small pieces, relatively small. Who was in charge of that? A.—Well I was in charge, there was a Superintendent over me.

Who? A.—P. W. Snider, deceased.

Q.—Had you anything to do with going to the Intercolonial or any person about that work? A.—No, not at that time.

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Q.—Whatever was done was done by Mr. Snider? A.—Yes.

Q.—Then what happened next, or have you anything more to say about 1904? A.—Nothing more than the Superintendent told me—

MR. JONES: Do not say what was said.

MR. TILLEY: We are concerned with what was done. A.—I just put it over the fence.

Q.—Do you know whether Mr. Snider had made a visit to any place before you put it over? A.—He went to Moncton.

Q.—I cannot ask you what he said to you about the visit to Moncton. Then in 1905 what happened? A.—We started to build on the Halifax 10 end, started to rebuild on the Halifax end.

Q.—Before I go to 1905 I should have asked you, when you were rebuilding in parts on the right-of-way in 1904, was there any complaint made, or objection, or stoppage of the work? A.—One section foreman stopped the crew on one occasion.

Q.—Do you remember his name? A.—No, I don't, in fact I didn't know at the time.

Q.—Was the work actually stopped? A.—The foreman stopped when he was ordered.

Q.—Then what happened? A.—He telegraphed me. 20

Q.—Who did? A.—The foreman. I went up.

Q.—Where? A.—To where the work was stopped. It was around Sussex, handy to Sussex. I went to Moncton then.

Q.—Who did you see at Moncton? A.—I saw Mr. Pottinger.

Q.—What happened there? A.—I stated my case to him.

Q.—Well what did you state to him? A.—I told him we were stopped moving the poles over on the I.C.R., that Mr. Snider had informed me I could do, by a section foreman; and he listened until I was done, and he told me I could go back to my work, he would see that the man was informed to let the C.P.R. alone. 30

Q.—That is practically the whole conversation? A.—The whole conversation.

Q.—Then did you leave him and go back? A.—I left him and went back.

Q.—And what happened about the work? A.—I notified the foreman to proceed.

Q.—At any rate in due course the work started again? A.—And went right along.

Q.—Was there any other interference or stoppage or protest of any kind? A.—Never in my time.

Q.—Are you speaking now as to any part of the building of the line on the right-of-way? A.—Any part of the Intercolonial system.

Q.—How long did that stoppage last? A.—Oh I think probably about a couple of days.

Q.—Just while you went to Moncton and back. Now I think you did tell me that the movement of poles in that year was not just at one place, it was at different places? A.—Yes, different places, not all in one section.
10

Q.—But I think you said you could not remember the number of sections? A.—No, I would not remember, we was putting the worst places over.

Q.—What would be included in the description “worst places,” what kind of places? A.—It would be where trees interfered with seeing the line, and with the condition of the line, which needed repair the worst.

Q.—Then was it solely because of trees, or was it partly trees and partly other things? A.—It was partly that the line needed to be rebuilt, it was in bad condition.

20 Q.—Partly that in certain sections the line needed rebuilding? A.—Yes.

Q.—And it was before you rebuilt any of it that Mr. Snider went to Moncton. Did he go to see Mr. Pottinger?

MR. JONES: I do not know that that would be admissible, what he went for.

MR. TILLEY: I will put it this way: When you saw Mr. Pottinger yourself did you in the course of the conversation refer to what Mr. Snider had instructed you to do?

30 MR. JONES: Now, my lord, the witness has already said what took place, what conversation was had between him and Mr. Pottinger.

MR. TILLEY: I want to be sure of that.

Q.—You did tell Mr. Pottinger about that? A.—Yes.

Q.—What Mr. Snider had told you to do? A.—I told Mr. Pottinger that Mr. Snider told me I could put them over on the right-of-way.

Q.—And did he express any surprise or doubt, or question it? A.—No. He told me as I stated that he would see that the section foreman was instructed to let the C.P.R. alone.

Q.—Now in 1905 what did you do? A.—We went down around Bedford at the Halifax end, rebuilding. I have not got the figures, I

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thing it was somewhere around about 12 miles we shifted that year. It is a very rocky rough country.

Q.—Twelve miles towards Halifax? A.—Yes, each side around there.

Q.—From Truro towards Halifax? A.—No, down on the Halifax end.

Q.—About 16 miles? A.—No, I think about 12, as near as I can recollect.

Q.—And that was put over as you have said, there was no objection, no complaint? A.—No.

10

Q.—Then will you follow that along? A.—In 1906 we continued down there, I think just about the same amount, around by Wellington, 12 miles to my recollection. Continued in 1907 from Truro to where we left off.

Q.—In the preceding year? A.—Yes, I think somewhere about 30 miles.

Q.—Did that complete the rebuilding? A.—That completed the work between Truro and Fairview, where we took the main road.

Q.—Now when was the line between Saint John and Moncton rebuilt on the right-of-way? A.—I think in 1910—no in 1910 we built east of 20 Moncton I think.

Q.—I think the statement shows 1911. A.—Yes. Well 1910 we built some on the I.C.R., but it was not between Saint John and Moncton.

Q.—In each year you were building some, and each year you put in the Intercolonial? A.—Every year.

Q.—Does 1904 mark the time when you commenced rebuilding the line after what you might call the first construction? A.—Well, if I was stating it as I think would be correctly using the word "rebuilding," I would say 1905, although we put over some in 1904, because that was done under the head of general repairs.

30

Q.—What you did in 1904 was some change in the line that was part of repairs? A.—Yes, it was done under the heading General Repairs. But in 1905 we started what we call rebuilding.

Q.—When you talk about repairs I gather you mean you used the same poles? A.—Yes.

Q.—And changed their location? A.—And straightened them up and re-set them.

Q.—When you rebuild do you use the same poles? A.—We used the same poles in 1904, but not after that.

Q.—That would mark the distinction between repairs and rebuilding as you describe. Now, while you commenced that rebuilding in 1904 as part of the repairs in that year, had there been anything of that kind done before, do you know? A.—Any rebuilding?

Q.—Yes. A.—No, sir.

Q.—That would mark the rebuilding, and the first year of the rebuilding it was of the kind you have indicated.

MR. JONES: Well he has not said that, he said 1904 was not rebuilding.

10 MR. TILLEY: We have got exactly what he means, it was a repair job in which there was the replacement or alteration in location.

MR. JONES: That is satisfactory.

HIS LORDSHIP: He said something of very little moment, an odd pole.

MR. TILLEY: No, seven miles, six or seven miles in 1904.

Q.—Prior to that it would be odd poles? A.—Yes.

Q.—But that was the first case where a decent stretch was changed.

20 HIS LORDSHIP: Before you go on, I thought one of the first witnesses told us he had built a line inside of the right-of-way from Sussex to Moncton in 1917?

MR. TILLEY: Yes.

HIS LORDSHIP: Are you not saying he started before that?

WITNESS: This rebuilding in 1904 was not between Sussex and Moncton, it was between Sussex and Saint John.

MR. TILLEY: Then in 1912 you did some more rebuilding along that line? A.—Yes, sir.

Q.—But it was not until 1917 that the section from Sussex—but probably that was after your day? A.—I was not in the service then.

30 Q.—But you are not saying that you rebuilt it on the right-of-way all the way to Moncton? A.—No, just to Sussex.

Q.—Did you at any time rebuild any part of it that was not rebuilt on the Intercolonial, or did you rebuild any parts on the old location outside of the railway right-of-way? A.—No, sir, in all the line that I rebuilt I used the I.C.R. right-of-way except the places where I could not get on it.

Q.—Well excepting places where probably it was not convenient by location?

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MR. RAND: What would those places be? A.—There is several places, there is one at Sackville that I could not get on on account of two lines of Western Union poles.

MR. RAND: My objection was because the question was unfairly leading.

MR. TILLEY: How?

MR. RAND: You partly suggested the character of the construction.

MR. TILLEY: I do not know anything about it.

Q.—You say you did no rebuilding except on the right-of-way, with 10 certain exceptions. Now what kind of exceptions? A.—That was one.

Q.—What was the reason there? A.—I recollect at Sackville we could not get on the right-of-way because the Western Union had two lines, one on each side of the railway, and had their line so far out that we had no room.

Q.—What distance was that? A.—I do not recollect, I do not think very far, probably a quarter of a mile.

HIS LORDSHIP: Sackville is between Saint John and Sussex?

MR. JONES: Not in that territory. It is east of Moncton.

MR. TILLEY: Well you are speaking about the territory general- 20 ly? A.—I am speaking generally between Saint John and Halifax.

Q.—If you did not rebuild on the right-of-way in other localities it was because of some reason?

HIS LORDSHIP: It was because it was impossible.

MR. TILLEY: Impossible or difficult, not practical. But the general reconstruction was along the Intercolonial? A.—Absolutely.

Q.—From 1904 on? A.—Until I left the service.

Q.—And you say that except on the one occasion in 1904 no protest from any person that you heard of? A.—No, never.

Q.—When you were rebuilding in that way and putting it on the 30 right-of-way of the Intercolonial, what assistance did you get from the Intercolonial and others? A.—Well we got, the only assistance we needed in the way of men was a handcar man. We made application to the track-master in the usual way, and he supplied him.

Q.—The purpose of that being as referred to this morning? A.—To take the responsibility off us for running the handcar. And the usual railway services, distribution of poles, wire, and boarding cars was arranged through the I.C.R., and the bills paid monthly.

Q.—How were the poles distributed? A.—We had a special train I think on probably a couple of occasions.

Q.—That is a special Intercolonial train? A.—A special engine, yes, but mostly off the way freight.

Q.—Sometimes special trains? A.—Yes.

Q.—But Intercolonial trains? A.—Intercolonial always.

Q.—Then if it was a way freight would it be stopped between stations? A.—It would pick up our car of poles at a station and go slowly while our men took them off.

10 Q.—When you say “pick up our car” you mean your Intercolonial car? A.—Well C.P.R. car.

Q.—When you say you heard of no objection does that mean objection from Intercolonial people only, or from Intercolonial, Western Union and anybody? A.—No one ever objected, no company or no individual.

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CROSS-EXAMINED BY MR. JONES:

Q.—Mr. Mersereau, in the original construction of the line that you have spoken about you had the same facilities from the I.C.R., didn't you, about the service and handling your wire and materials? A.—Yes.

20

EARL EDWIN TRACEY, sworn. Examined by MR. TILLEY:

Q.—What is your occupation? A.—Chief lineman for the New Brunswick Electric Power Commission.

Q.—In 1904 what were you doing? A.—In 1904 I was employed by the C.P.R. as a foreman.

Q.—On telegraph construction? A.—Yes, sir.

Q.—You heard the evidence of the last witness? A.—Yes, sir.

Q.—Were you the foreman of the gang that was working at the time some objection was taken? A.—Yes, sir.

30 Q.—The objection was taken by whom? A.—The section foreman.

Q.—His name do you remember? A.—I cannot remember his name, I don't know that I ever knew it.

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Q.—When he objected what did he object to? A.—He objected to me bringing the poles from off the right-of-way on to the right-of-way.

Q.—And did you stop? A.—I stopped.

Q.—How long were you stopped? A.—I would think probably a day and a half or two days.

Q.—Did you report the incident? A.—I did.

Q.—To whom? A.—Mr. Mersereau.

Q.—And then in due course did you hear from Mr. Mersereau? A.—Yes, in a day, or the second day probably, Mr. Mersereau came up.

Q.—What happened? A.—Told me it was all O.K. to go ahead. 10

Q.—And you went ahead? A.—I proceeded with the work.

Q.—Did you ever hear of any other objection at any other time? A.—Not at all.

Q.—How long did you continue putting C.P.R. poles along the right-of-way, did you do it other years? A.—Yes, I worked with the C.P.R. until 1917.

Q.—Did you ever hear of any objection? A.—None whatever.

Q.—At that kind of work do you mean? A.—At that kind of work.

Q.—And from 1904 on was there work of that kind going on? A.—Yes, sir. 20

Q.—Each year? A.—Yes, sir.

Q.—Or almost each year, or how? A.—Well I was not on the I.C.R. every year, but I was in the employ of the C.P.R., building lines on the C.P.R., but I built a lot of lines at different periods on the I.C.R.

Q.—And while you were working there you heard no other complaint? A.—No other complaint.

ALISTAIR CULTON FRASER, sworn. Examined by MR. TILLEY:

Q.—What is your occupation? A.—Superintendent of Telegraphs.

Q.—Where? A.—Saint John, New Brunswick. 30

Q.—For whom? A.—The Canadian Pacific.

Q.—How long have you been in that position? A.—Since 1916.

Q.—A letter has been filed, Exhibit 235. It refers to a conversation you had with Mr. Pottinger on December 28th, 1916. A.—Yes, sir.

Q.—Do you remember that conversation? A.—Quite clearly.

Q.—You say in that letter that you have seen Mr. Pottinger in connection with the permission granted for any rebuilding to be made on the railroad property:

10 “He was approached by the late Mr. Snider in connection with the transferring of line to the right-of-way. Mr. Pottinger saw no objectionable features and permission was granted verbally. He was in Ottawa a few days later and advised the Minister of Railways and Canals that he had granted the Canadian Pacific Telegraph the right to do their rebuilding on the Intercolonial right-of-way. The Minister stated that it was quite right, and that he could see no reason why the permission should not be granted.

20 “With reference to the line between New Glasgow and Sydney, Mr. Pottinger is not quite clear as to why this line was permitted on the right-of-way. His recollection is that there was some kind of an agreement whereby the Telegraph Company, if called upon, were to perform a certain service gratis. He has a clear recollection however that the Telegraph people had the necessary permission, and that there was a quid pro quo, the nature of which he is unable to recollect.

“Mr. Pottinger has no recollection of the Mersereau incident, but states that had the sectionmen interfered with the telegraph gang he would have certainly have taken action, as the work was being prosecuted with his own and the Minister’s consent.”

Now, Mr. Fraser, what do you say as to the accuracy of the report you make in that letter of what Mr. Pottinger told you? A.—I would say that is correct.

HIS LORDSHIP: That was your understanding of it? A.—Yes, sir.

30 MR. TILLEY: How did you proceed? How soon after the conversation did you make any note with regard to it? A.—After the conversation I went back to the hotel and I made notes right then.

Q.—You made notes right there at the hotel? A.—At Shediac.

Q.—You went right back to the hotel and made some memorandum or note? A.—I made some notes of the conversation.

Q.—For what purpose? A.—Well in order that it might remain clear in my mind. I wrote my letter on my return to Saint John.

Q.—How soon after that did you return to Saint John? A.—The next day.

Q.—So to cover the matter in the interval you made the notes? A.—I made the notes a short time after the interview.

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HIS LORDSHIP: Have you got that note? No, I have not, my lord.

MR. TILLEY: Did you dictate the letter? A.—No, I wrote the letter on New Year's Day, the office was closed, that would be the day following my return.

Q.—So you wrote it on New Year's Day, and what did you have from which to write it? A.—Just these notes.

Q.—And what do you say as to the accuracy with which you reported what you had been told? A.—Absolutely correct.

Q.—And then what did you do with the notes after you had penned 10 the letter? A.—Well the notes meant nothing to me after I had transcribed them.

Q.—And what did you do with them? A.—Well the chances are I threw them in the wastepaper basket.

Q.—At any rate they do not exist now? A.—No.

Q.—Have you seen them since? A.—Never.

Q.—But the letter was written and it was transmitted on the 1st of January? A.—First of January, yes, sir.

Q.—I mean it was actually written on the day it bears date, you were not writing the letter and just dating it back to pretend you were work- 20 ing hard for the company on New Year's Day? A.—I have done other things, but not this particular incident.

Q.—You say here he had no recollection of the Mersereau incident. Did you ask him about the Mersereau incident? A.—Yes, I did, sir.

Q.—What was the Mersereau incident that you asked him about? A.—About moving some poles on the right-of-way. It was a short strip, I do not know how many poles, something Mr. Mersereau himself had told me, and I asked Mr. Pottinger with reference to this incident.

Q.—What was the incident though? A.—Moving these poles on the right-of-way. 30

Q.—What feature of the moving of the poles did you mention to Mr. Pottinger? A.—The fact that he had been stopped by the section foreman I think, or sectionmen, and I related what had happened, that the foreman had reported to Mr. Mersereau and he had gone to see Mr. Pottinger about it, and he told me he had no recollection, but had the matter come up he would undoubtedly have taken the action that Mr. Mersereau stated he took.

CROSS-EXAMINED BY MR. JONES:

Q.—Mr. Fraser, what is your age now? A.—Fifty-eight.

Q.—This interview with Mr. Pottinger was when, did you say, the last day of what year? A.—I imagine it was in 1916, on the 30th of December.

Q.—Oh we will not have to imagine that, because we can tell. You wrote the letter on the 1st of January, 1917. A.—Yes, sir.

Q.—Where did you find Mr. Pottinger? A.—He was out at his summer home, I think they called it Tormentine, a few miles from Shediac.

10 Q.—He remained there that winter apparently. Are you quite sure it was Cape Tormentine? A.—I would not say that is the name of the place, it was a few miles from Shediac, and it was at his summer home.

Q.—Did you have an appointment with Mr. Pottinger? A.—I ascertained that he had not gone to Montreal, I mean he generally goes there earlier in the year. This year he remained.

HIS LORDSHIP: That is not an answer to the question.

MR. JONES: The question was, Did you have an appointment with him before you went? A.—No, I did not have an appointment.

20 Q.—You went out, and about what time in the day was it? A.—It was just getting dusk, I know it was dark before I got out there. I drove out.

Q.—Did you tell him the reason you wanted the information? A.—Yes, sir.

Q.—How long did the interview last? A.—Oh possibly half an hour.

Q.—Do you think it lasted half an hour? A.—I would think it did, yes.

Q.—Any other person present? A.—His step-son John was more or less in the room I imagine, a young fellow, about possibly 6 or 8 years.

30 Q.—When did you say you entered the employ of the C.P.R.? A.—Do you mean when I went to Saint John?

Q.—No, when you went in their employment? A.—I have not been asked that question. 1892.

Q.—In what capacity then? A.—As telegrapher.

Q.—And then—? A.—Well I had been with them before, but had left. My service has been continuous since 1892.

Q.—And when did you become Superintendent? A.—At Saint John?

Q.—Yes. A.—June, 1916.

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Q.—Prior to that time what position did you occupy? A.—I was Superintendent in Montreal for about 12 or 14 months, 14 months I think.

Q.—And prior to that a telegrapher and despatcher? A.—No, I was Inspector of Telegraphs in the station at Moose Jaw.

Q.—Of course you might have misunderstood what Mr. Pottinger said? A.—I would not think so.

Q.—But would it be possible? A.—Not in view of the notes I had, I would not think it possible.

Q.—Had you known him before? A.—Not personally, no sir. 10

Q.—Did he tell you that he had spoken to the Minister about this matter? A.—Yes, sir.

RE-EXAMINED BY MR. TILLEY:

Q.—When you say you were there half an hour were you talking about this matter all the time? A.—Practically all the time. I told him at one time I had lived in Moncton and knew him when I was a young kid, and he seemed quite pleased to get that information.

MR. TILLEY: That is the case, my lord.

20

MR. JONES: We have nothing to offer in rebuttal.

Case argued. Judgment reserved.

PART III.

EXHIBITS

PART OF SCHEDULE D No. 299

PART OF EXHIBIT 290—

AGREEMENT, made and entered into this first day of May in the year of Our Lord One Thousand Eight Hundred and Fifty-nine, Between Her Majesty the Queen, represented herein by the Commissioners of Railways appointed under Act of Assembly, 19 Victoria, Chapter 15, of the first part, and the New Brunswick Electric Telegraph Company of
10 the second part.

WITNESSETH:

That the said Electric Telegraph Company hereby agrees to erect and maintain upon and along the European and North American Railway now in course of construction from the City of Saint John to Shediac, a good and substantial line of telegraph posts with wires, insulators, batteries and instruments, sufficient and necessary to constitute a good and reliable line of magnetic telegraph, the same to be erected by the said Telegraph Company at their own cost and charges and without injuring or causing any damage to the said line of railway, or in any way interfering with or obstructing the traffic on the same.
20

The said Telegraph Company shall so erect and construct the said lines of magnetic telegraph as aforesaid, and have the same fully completed and in working order on or before the first day of November, A. D. 1863.

That the said Telegraph Company, their successors or assigns, shall keep and continue the said line of magnetic telegraph in operation and in a good state of repair for the term of twenty years from the said first day of November, A.D. 1863.

That the said Telegraph Company, their successors or assigns, shall
30 and will during the said term of twenty years establish and maintain in operation at their own expense, telegraph offices at the City of Saint John, at Ossekeag, at Sussex, Salisbury, Moncton and Shediac.

The said Telegraph Company, their successors or assigns, shall establish offices at any other points or places along the said line of railway which may be required by Her Majesty under an order to be signed by the Chairman of the said Commissioners as aforesaid. The expenses of maintaining and working any such offices so ordered being borne and paid by Her Majesty.

The said Telegraph Company, their successors or assigns, shall
40 and will at all times during the said term of twenty years carefully and promptly transmit free of charge (when the lines shall be in operation)

RECORD

In the
Exchequer Court
of Canada

No. 299

PART OF

EXHIBIT 290

Agreement
between Her
Majesty Queen
Victoria and
New Brunswick
Electric Tele-
graph Company
May 1, 1859.

RECORD
 —
In the
Exchequer Court
of Canada
 —
 No. 299
 PART OF
 EXHIBIT 290
 Agreement
 between Her
 Majesty Queen
 Victoria and
 New Brunswick
 Electric Tele-
 graph Company
 May 1, 1859.
 (Contd.)

over any and all their lines of telegraph along the said Railway, its branches and extensions, and from place to place along the said Railway at their various offices, all messages or any matter or business in any way relating to the European and North American Railway, its extensions or branches, and the management, construction, working and traffic of the same or any part thereof which the said Railway Commissioners, their agents, servants or employees may from time to time offer for transmission, and that such messages shall have priority over all other messages.

Her Majesty the Queen by her said Commissioners shall have full power and authority, license and liberty at any time during the said term 10 of twenty years, for Railway purposes, to string a wire along the whole or any part of the telegraph posts of the said Telegraph Company along the said Railway, its branches or extensions to be used for the purposes of the said Railway, the same to be done at the expense of Her Majesty and to be so placed as not to interfere with the wires of the said Company. Her Majesty in working the said wires by her said Commissioners to have the privilege of using on such wires free of charge all or any of the patent rights belonging to the said Company.

Her Majesty the Queen hereby agrees that the said Company, their successors or assigns, shall have the right and privilege of erecting and 20 maintaining as aforesaid upon the said European and North American Railway from Shediac to Saint John, its branches and extensions, a line or lines of magnetic telegraph posts with all apparatus thereto belonging, and to maintain the same thereon for the said term of twenty years.

Her Majesty by her said Commissioners shall during the said term transport from time to time over the said Railway free of charge all materials and machinery used in the construction, operation and repair of the said telegraph lines and all employees of the said Telegraph Company actually engaged in the work of construction, managing, maintenance and repairs of the same and shall afford to the said Company and 30 their employees every facility towards making such repairs and shall also furnish to the said Company free of rent, an operator's office in each of the Station Houses, erected or to be erected at the principal points along the said Railway.

It is hereby mutually agreed that if Her Majesty perform all things herein on her part to be performed, and the said party of the Second Part shall neglect or refuse to work said lines of telegraph, it shall be lawful for Her Majesty by her said Commissioners to enter into possession of the said lines and offices and to operate the same for the said Railway business without any liability to pay rent therefor. 40

And it is hereby lastly agreed that at and after the expiration of the said term of twenty years in the foregoing agreement named the said Telegraph Company shall not be compelled to remove their lines of magnetic telegraph so erected from the said line or lines of Railway, but

cf p 275

may retain the same along the said Railway for the purposes of the said Company. It being hereby clearly understood that all other rights and privileges hereby granted to the said Company, including the use of Station Houses and the carriage and conveyance of their men and materials on the said Railway, shall at the end of the said term of twenty years cease and determine.

IN WITNESS WHEREOF Her Majesty, by her Commissioners, Richard C. Scovil and George Thomas, Esquires, has executed these presents and the said Company hath also hereto affixed their seal the day
10 and year first aforesaid.

(sgd.) R. C. SCOVIL,
(sgd.) G. THOMAS.

No. 299

SCHEDULE D.—PART OF EXHIBIT 290

THIS AGREEMENT, entered into this eighth day of April in the year of Our Lord One Thousand Eight Hundred and Sixty-two, Between The Hon. Jonathan McCully, of Halifax, in the Province of Nova Scotia, Chief Commissioner of Railways for said Province, one of the Members
20 of the Executive Council of said Province and authorized as well to represent said Province, in this behalf, as the said Railway Department, of the One Part; and the American Telegraph Company, Lessees of the Lines of Telegraph in said Province, of the other part;

WITNESSETH:

That for and in consideration of the agreements, covenants and undertakings of the said Railway Department and of the said Province hereinafter set forth to be performed and kept: First: The said American Telegraph Company hereby agrees to pass over their lines free of
30 charge all messages from or to railway officials within said province relating to the business of said railway department, and give such of said messages priority of transmission over other messages when requested as the exigencies of the public and Government Services may require. 2. And the said American Telegraph Company will open along the railways now, or that hereafter may be in operation such telegraph offices as the said Railway Department may name, on receiving one month's notice in writing, and will connect their telegraph lines built or to be built with such offices and maintain the same in good working order. 3. And the said American Telegraph Company when required by special
40 notice in writing will keep open their telegraph offices at Windsor and Truro, and such other terminal stations to which the railways shall hereafter be extended at other than the usual hours of business which at present extend from nine of the clock in the morning till eight of the clock in the evening, and will supply such battery power, fuel and light as may be required at such terminal stations. 4. And the said American Telegraph Company at any time hereafter will allow the said Railway De-

RECORD
—
In the
Exchequer Court
of Canada
—

No. 299
PART OF
EXHIBIT 290
Agreement
between Her
Majesty Queen
Victoria and
New Brunswick
Electric Tele-
graph Company
May 1, 1859.

(Contd.)

No. 299
PART OF
EXHIBIT 290
Agreement
between Com-
missioner of
Railways for
Province of
Nova Scotia and
American Tele-
graph Company
April 8, 1862.

RECORD
—
In the
Exchequer Court
of Canada
—

No. 299

PART OF
EXHIBIT 290
Agreement
between Com-
missioner of
Railways for
Province of
Nova Scotia and
American Tele-
graph Company
April 8. 1862.
(Contd.)

partment to place upon the Company's posts a separate wire and to connect the same with the instruments of the Department in their Railway stations, and such wires shall be attached, insulated and maintained as the said American Telegraph Company may direct at the expense of the said Railway Department.

In consideration whereof the Government of Nova Scotia and the Railway Department hereby agree to instruct their own operators, subject nevertheless to the decision of the Company as to their competency, before being admitted to work on the telegraph lines, and to furnish officers so instructed at all Railway stations where the said Railway De- 10
partment shall require connection to be made with the Company's wires, and to furnish all necessary registers and other instruments required for telegraphic operating, and all materials and furniture and to defray all necessary expenses in connecting and working such offices as the said Railway Department may from time to time desire to have opened as hereinbefore provided, and shall transport free of charge over the Rail-
ways which exist, or may hereafter be constructed by the Department, all persons on service of the Company, and all materials for the use of telegraph lines and offices and will slacken speed, or if need be, stop a train, so as safely to drop such persons and materials at such point or 20
points along the Railway track as the Company may designate.

And the said Department further agrees that the Company shall have the control of the operators and offices opened under this agreement so far as the telegraph business is concerned, and shall cause them to receive and transmit all extraneous business which may be offered, collect and pay to the Company the charges thereon and keep such books as the Company shall supply as necessary for that purpose, and all operators who shall be found guilty of neglect of duty or breach of trust shall be immediately superseded.

And the said Railway Department also agrees to furnish the offices 30
now occupied by the Company in the Station Houses at Windsor and Truro rent free, and such offices shall not be withdrawn or interfered with by the Railway Department unless by consent of the Company; and in case of the Railway being further extended by the Government suitable offices shall be provided for the Company at any other terminal stations; and when the offices at such terminal stations are kept open between the hours of eleven o'clock in the evening and seven o'clock in the morning the Department shall pay to the Company the sum of Fifty Cents per hour for such office for such service. And it is further agreed that the Company shall have the right as conferred by the Charter of the 40
Nova Scotia Electric Telegraph Company of erecting and maintaining Telegraph Lines along the side of the Railways, provided such lines do not interfere with or damage such Railways.

This Agreement to be amended by the parties hereto conjointly as contingencies not herein provided for may arise, but it shall not be terminated unless by mutual consent.

SIGNED, SEALED AND DELIVERED

in the presence of:
To Signature of McCully

(Sgd.) THOMAS FOOT.

(Sgd.) J. McCULLY,

Chief Commissioner Railways and Member
of Executive Council for N.S.

10

(Sgd.) E. S. SANDFORD,

[Seal] President American Telegraph Company.

Attest:

(Sgd.) C. LIVINGSTON,

Secretary American Telegraph Company.

No. 308

EXHIBIT 298—

COPY of a Report of a Committee of the Honorable the PRIVY COUNCIL, approved by His Excellency the Governor General in Council on the 13th May, 1870.

20

The Committee have had under consideration the Report dated 16 April, 1870, from the Commissioners for the construction of the Inter-colonial Railway, submitting a proposition received from the Montreal Telegraph Company for the erection of a Telegraph line over the said Railway, and recommending the acceptance of the same with certain modifications submitted in their Report—

The Committee have also had before them the Memorandum dated 30 April, 1870, from the Hon. the Minister of Public Works, to whom the proposal of the Company and the report of the Commissioners was referred, and for the reasons given by the Minister in his said Memorandum they respectfully advise that the Commissioners be authorized to enter into an agreement with the Montreal Telegraph Company for the construction of a line of Telegraph on the terms and conditions suggested in the said Memorandum.

30

Certified,

“WM. H. LEE”

Clk. P. C.

RECORD
In the
Exchequer Court
of Canada

No. 299
PART OF
EXHIBIT 290
Agreement
between Com-
missioner of
Railways for
Province of
Nova Scotia
April 8, 1862.
(Contd.)

No. 308
EXHIBIT 298
Order-in-Council
May 13, 1870.

RECORD

In the
Exchequer Court
of Canada

To the Honourable
The Minister of Public Works,
&c., &c., &c.,

No. 307

EXHIBIT 297—

No. 307
EXHIBIT 297
Order-in-Council
August 9, 1870.

COPY of a Report of a Committee of the Honorable the PRIVY COUNCIL, approved by His Excellency the Governor General in Council on the 9th August, 1870.

No. 9

EXHIBIT 6
Agreement
between
Montreal Tele-
graph Company
and Her
Majesty
Sept. 22, 1870.

On a Memorandum dated 3rd. July 1870, from the Hon. the Minister of Public Works, submitting for Your Excellency's approval the draft of agreement with the Montreal Telegraph Company for the construction of a Telegraphic Line along the Intercolonial Railway which he caused to be prepared under the authority of an Order in Council of the 13th May 1870. 10

The Committee recommend that the draft of agreement be approved.

Certified
"Wm. H. Lee"
Clk. P.C.

To the Honorable
The Minister of Public Works
&c., &c., &c.,

20

No. 9

EXHIBIT 6—

Also part of
Schedule D to
Exhibit 290.

ARTICLES OF AGREEMENT, made, entered into, and concluded on the twenty-second day of September, in the year of Our Lord, one thousand eight hundred and seventy.

BY and BETWEEN the MONTREAL TELEGRAPH COMPANY (hereinafter throughout called the company) and represented herein by Andrew Allan, esquire, Chairman of the said Company, residing in the City of Montreal, Province of Quebec, of the first part, And 30

HER MAJESTY QUEEN VICTORIA, (hereinafter throughout called "Her Majesty" and represented herein by the Honourable Hector Louis Langevin, Acting in his capacity of Minister of Public Works of the Dominion of Canada, under and by virtue of an Act of the Parliament of Canada (Thirty first, Victoria, chapter Twelve) of the second part.

WITNESS that "The Company" for and in consideration of the payments hereinafter stipulated to be made to them by Her Majesty do hereby covenant, promise and agree to and with Her Majesty in the manner and terms following that is to say:

10 1st.—The Company shall and will at their own cost and expense, erect, construct, establish and maintain in the best and most complete manner, upon and along the whole line or route of the Intercolonial Railway, between Riviere du Loup and Halifax (including all its branches) a good and sufficient line of Telegraph for the proper and prompt transmission of telegraphic communications thereby and will furnish the same with all the poles wires and necessary instruments apparatus and other appliances, and from time to time, maintain the same in good working order, and by its officers and servants, work the same at all times at the sole cost and expense of the Company and will complete the same within three months after the opening of the Intercolonial Railway.

2.—The Company shall and will, upon being notified by the Minister of Public Works that it has been determined by the Governor in Council that a necessity exists for a second line of Telegraph, erect, construct, establish and maintain at the sole expense of the Company such second line of Telegraph for the exclusive use of the said Intercolonial Railway, and its working.

20 3.—The Company shall and will, from time to time and at all times, transmit by and over its wires without charge therefor all such messages as may be connected with the business of the working of the said Railway, and such messages shall always have the precedence of those of other parties except of the Government of Canada.

30 4.—Her Majesty shall have the option and be at liberty at any time to purchase the said line of Telegraph with its appurtenances, at a fair valuation, the amount whereof shall be ascertained by the board of arbitration appointed under thirty first Victoria, Chapter twelve, and upon such purchase the said Board of Arbitration, shall give due and proper consideration in such valuation to any branch or side lines of telephone (other than branches of the Intercolonial Railway line) which may have been made by the Company to connect with the line of telegraph on the Intercolonial Railway.

40 5.—The Company shall and will, pending the construction of the permanent line of telegraph contemplated by its agreement, either immediately erect and put up a temporary line of telegraph over the route of the said Railway (including its branches) or run in short lines of telegraph and establish the necessary offices to connect the several offices of the Engineers of the said Railway with the existing main line of the Company during the time occupied in the construction of the said Railway and work and maintain the same according to the terms of this agreement.

6.—The Government of Canada shall have precedence in all messages along the said line of Telegraph.

AND "Her Majesty" doth hereby covenant, promise and agree to and with the company in the manner and terms following that is to say:

RECORD

In the
Exchequer Court
of Canada

No. 9

EXHIBIT 6

Agreement
between Mon-
treal Telegraph
Company and
Her Majesty
Sept. 22, 1870.

(Contd.)

RECORD
In the
Exchequer Court
of Canada
No. 9
EXHIBIT 6
Agreement
between Mon-
treal Telegraph
Company and
Her Majesty
Sept. 22, 1870.
(Contd.)

1st.—The Company in consideration of the premises shall have the exclusive right to construct and work a telegraph along the said Intercolonial Railway until such time as the option of purchase is exercised by Her Majesty.

2.—Her Majesty shall and will cause to be paid to the Company for and in consideration of the construction and outfit of the said line of Telegraph, the sum of thirty dollars for each and every mile thereof, and in the same proportion for any fraction of a mile, such sum being for construction inclusive therein of a second line of wire if required, without any remuneration for such second wire.

10

3.—The Company shall have the right to the free use of both lines of wires for the ordinary purposes of their business provided such use shall not at any time interfere in any way with any existing engagements with other telegraph companies in the provinces of Nova Scotia and New Brunswick as to the use of the same or any portion thereof or any branches thereof.

Wherever in this Indenture occur the words "Her Majesty" or "the Company" respectively, they shall be taken to mean respectively "Her Gracious Majesty Queen Victoria" and the said "The Montreal Telegraph Company" and they shall also be taken to comprehend the successors and assigns of Her Majesty and the successors and assigns of the said "The Montreal Telegraph Company."

20

IN WITNESS WHEREOF the Honourable Hector Louis Langevin, Minister of Public Works hath signed and sealed these Presents and the Secretary of the Department of Public Works hath countersigned the same and the seal of the Montreal Telegraph Company has been hereunto set and affixed by Andrew Allen, Esquire, Chairman of the said Company who hath signed these Presents on the day and year first above written.

SIGNED, AND SEALED BY THE
MINISTER OF PUBLIC WORKS
and countersigned by the Secretary
of said Public Works, in the pre-
sence of

(Sgd.) Hector L. Langevin, 30
M.P.W.
" F. Brown, Secy.
(SEAL)

(sgd) H. A. Fissiault.
" J. F. N. Bonneville

The Corporate Seal of the Montreal Telegraph Company was set and affixed, by Andrew Allan, Esquire, Chairman of the said Company to these presents, signed in the presence of:

Sgd. . Andrew Allan,
Chairman.
" James Dakers,
Secy.
(SEAL)

Sgd. Chs. Bourne, Trea.
M. Telegraph Co.
" W. Y. Graham, Cashier
M. Telegraph Co.

Extract from Minutes of Meeting of Montreal Telegraph Co. held 27th Sept., 1870.

An Agreement for the erection of a line of Telegraph along the Intercolonial Railway was submitted and approved of, and it was resolved that in the absence of the President, Mr. Andrew Allan, the Chairman be, and he is hereby authorized to execute such agreement on behalf of the Company and to affix the Common Seal thereto.

Certified to be a true copy.

Signed: James Dakers.
Secretary.

10

No. 304

EXHIBIT 294—

Copy of a Report of a Committee of the Honorable the PRIVY COUNCIL, approved by His Majesty the Governor General in Council on the 12th October, 1872.

RECORD
—
In the
Exchequer Court
of Canada
—
No. 9
EXHIBIT 6
Agreement
between Mon-
treal Telegraph
Company and
Her Majesty
Sept. 22, 1870.
(Contd.)
No. 304
EXHIBIT 294
Order-in-Council
Oct. 12, 1872.

On the recommendation of the Hon. the Minister of Public Works, dated 10th Oct. 1872, the Committee advise that the following appointment be made provisionally.—

20 Lewis Carvell, Esq., now General Superintendent of the European and North American Govt. Railway, to be General Supt. of that part of the Intercolonial Railway comprising the Govt. Nova Scotia Railway Lines, the European & North American Railway, and that portion of the Intercolonial between Truro and Painsec Junction at a Salary at the rate of \$4,000 per annum.

George Taylor, Esq., Now Supertt. of the Govt. Railways in Nova Scotia, to be Gen. Freight Agent of the Intercolonial Railway as above mentioned, at a Salary at the rate of \$2,400 per annum,—

30 Thomas Foot, Esq. of Halifax, to be Accountant of said Railway, at a Salary at the rate of \$1600 per annum.—

Joseph J. Wallace, Esq. of St. John, to be Auditor of said Railway at a Salary at the rate of \$1500 per annum.—

H. W. McCann, Esq. of Ontario, to be Paymaster of said Railway at a Salary at the rate of \$1600 p. annm.—

Mr. William Sadler of Miramichi, to be Store-keeper of said Railway, at a salary at the rate of \$1200 per annum.—

Alexander McNab, Esq. C.E. to be Engineer of said Railway, at a Salary at the rate of \$2,000 per annum.—

RECORD

*In the
Exchequer Court
of Canada*

No. 304
EXHIBIT 294
Order-in-Council
Oct. 12, 1872.
(Contd.)

H. W. Whitney, Esq., of Shediac to be Mechanical Supertt, at a Salary at the rate of \$1800 per annum.—

A. S. Busby, Esq., of Halifax, to be Division Supertt. at Truro at a Salary at the rate of \$1600 per annum.

Mr. Gavin Rainnie of St. John, to be Track Master of the Western Division, at a Salary at the rate of \$1200 per annum.

Mr. John S. Trites, of Amherst, to be Track Master of the Central Division at a Salary at the rate of \$1200. per annum.

Mr. William Falconer, of Truro, to be Track Master of the Eastern Division, at a Salary at the rate of \$1200 per annum. 10

Also that the following persons be appointed Station Masters at the places mentioned, viz:—

Mr. James Coleman of St. John, at St. John, at a Salary at the rate of \$1500 per annum.—

Mr. Jonathan Parsons, of Halifax, at Halifax, at a Salary at the rate of \$1500 per annum.—

Mr. James Pitfield of Moncton, at Moncton at a Salary at the rate of \$800 per annum.—

Mr. Thomas V. Cook, of Pictou, at Pictou Landing at a Salary at the rate of \$800 per annum.— 20

Mr. R. McDonald of Pictou, at Truro at a Salary at the rate of \$800 per annum.—

Mr. John B. Forster of Richibucto at Pointe-du-Chene at a Salary at the rate of \$900 per annum.—

Moreover that all the officers so named be required to give their whole and undivided time and attention to the business of the Railway, and engage under no circumstances whatever, in any other business or occupation of any kind or description.

Certified,
W. A. Himsworth. 30
O.P.C.

To the Honorable
The Minister of Public Works
&c., &c., &c.

EXHIBIT 290-A—

No. 300

January 23rd 1873

RECORD
—
*In the
Exchequer Court
of Canada*
—

No. 2618
Sub. 964
Ref. 4605
Gentlemen,

No. 300
EXHIBIT 290-A
Certificates
showing ac-
counts for
building lines
Jan. 23, 1873.

I have the honor to transmit herewith a note from Sir Hugh Allan, President of the Montreal Telegraph Company forwarding an account of 10 the amount due to said Company, \$6480.00 for constructing a line of telegraph on the Intercolonial Route as per contract.

I have the honor to be
Gentlemen
Your obedient servant
F. Braun
Secretary

The Commissioners
of the Intercolonial Railway
Ottawa

20 Enclose No. 4605

Under the Authority of Section 17 of the Department of Railways and Canals Act. I certify the foregoing to be a true copy of the original in my Custody as Secretary of said Department.

Ottawa 12th January 1929

(sgd.) J. W. Pugsley
Secretary.

October 17th 1873

No. 3308
Sub. 964
Ref. 5545
30 Sir,

I have to transfer the enclose account of the Montreal Telegraph Company, amounting to \$10,350.00 for construction of telegraph line from Riviere du Loup to Halifax to which account the Minister requests early attention.

I have the honor to be
Sir,
Your obedient servant
F. Braun
Secretary

RECORD
 —
In the
Exchequer Court
of Canada
 —
 No. 300
 EXHIBIT 290-A
 Certificates
 showing ac-
 counts for
 building lines
 Jan. 23, 1873.
 (Contd.)

Ralph Jones, Esq.,
Secretary
Intercolonial Railway Commissioners
Ottawa

Enclose No. 5545

Under the Authority of Section 17 of the Department of Railways and Canals Act. I certify the foregoing to be a true copy of the original in my Custody as Secretary of said Department.

Ottawa 12th January 1929 10
 (sgd) J. W. Pugsley
 Secretary.

EXTRACT FROM JOURNALS, DEPT. OF RAILWAYS & CANALS.

Ref. No. 4605, dated 8th January 1873.
 From Sir Hugh Allan, President, Montreal Telegraph Company.

Encloses the account of the Company for building a line of telegraph on portion of the Intercolonial Railway in terms of the contract with the Department, and begs payment of the amount, \$6480.

Ref. No. 5545, dated 17th October 1873. 20
 From Montreal Telegraph Company

Account for \$10350, for erecting a telegraph line from Riviere du Loup to Halifax, as per agreement N). 3287.

Under the Authority of Section 17 of the Department of Railways and Canals Act. I certify the foregoing to be a true copy of the original in my Custody as Secretary of said Department.

Ottawa 12th January 1929 30
 (sgd.) J. W. Pugsley
 Secretary.

APPENDIX D.
INTERCOLONIAL RAILWAY

Tabular Statement showing the Total Expenditure for the construction of the Intercolonial Railway at the
30th November 1874.

	Total at 30th June, 1873		Total at 30th June, 1874		Total at 30th Nov., 1874		Grand Total
	\$	cts.	\$	cts.	\$	cts.	cts.
Buildings -----	372,837.04		493,395.02		536,297.03		
Engineering and Surveys -----	1,074,397.14		1,207,458.94		1,233,380.35		
Legal Expenses, Land Survey and Valuation -----	60,421.21		62,979.34		63,945.90		
Management -----	96,249.54		116,734.64		122,779.89		
Printing, Advertising and Stationery -----	24,473.12		26,231.66		26,490.49		
Right of Way -----	199,724.39		234,577.12		240,458.42		
Rolling Stock -----	785,278.51		1,112,183.48		1,233,771.92		
Works and Permanent Way -----	11,868,549.13		14,641,259.00		15,975,341.62		
Cordwood -----	8,654.00		8,654.00				
Telegraph Line -----	6,480.00		16,830.00		16,830.00		
Temporary Running Arrangements -----	2,666.96		4,361.70				
Receiver-General—Special Deposit -----	300.00		300.00		300.00		
James Worthington (open account) -----					67.74		
Intercolonial Railway, Traffic Department -----					8,895.57		
Montreal Office -----					677.82		
Bank of Montreal, Contingent Account -----					191.41		
Paymaster's Balances -----	20,042.85		2,770.86		21,288.19		
	<u>14,520,073.89</u>		<u>17,937,735.76</u>		<u>19,480,716.35</u>		
							19,480,716.35
Less.—Amount at Credit of Contractors per Balance Sheet -----							21,092.00
							<u>19,459,624.35</u>

The authority of Section 17 of the Department of Railways and Canals Act. I certify the foregoing to be a true copy of the original in my Custody as Secretary of said Department.

Ottawa 12th January, 1929.

J. W. Pugsley

Secretary.

Intercolonial Railway Office,
Ottawa, 30th November, 1874.

(Signed.) THOS. C. DUPLESSIS,
Accountant.

RECORD
In the
Exchequer Court
of Canada
No. 300
EXHIBIT 290-A
Appendix "D"
showing amount
paid for tele-
graph line.

RECORD
 —
In the
Exchequer Court 7527
of Canada

—
 No. 315
 EXHIBIT 305
 Order-in-Council
 March 23, 1880.

EXHIBIT No. 305—

No. 315

COPY OF A REPORT OF A COMMITTEE OF THE HONORABLE THE PRIVY COUNCIL APPROVED BY HIS EXCELLENCY THE GOVERNOR GENERAL IN COUNCIL ON THE 23rd MARCH, 1880.

On a joint memorandum, dated 20th March, 1880, from the Honourable the Minister of Public Works and the Minister of Railways and 10
 Canals, recommending that hereafter all Public Works involving an expenditure of over \$5,000 shall be let by public tender and contract, unless owing to urgency or other cause, it be deemed advisable to take different action, and that in all such cases authority be obtained by an Order in Council.

That with all tenders submitted, a money guarantee, or approved accepted cheque shall be given, to be open to forfeiture in the event of the tenderer failing to make the necessary five per cent deposit, hereinafter referred to, within eight days after receiving notice of the acceptance of the tender, or of his declining to enter into contract when requested, 20
 the amount of such guarantee to be fixed at a sum not less than \$1,000, nor more than \$5,000.

That upon acceptance of a tender, and notification by the Department concerned, the intending contractor shall, within eight days, deposit with the Government a sum of money equal to five per cent of the amount of his contract.

That in all cases where tenders have been called for, the lowest received shall be accepted, unless good and sufficient reasons appear for passing over such tender.

The Committee submit the above recommendations for your Excellency's approval. 30

Certified,

J. O. COTE

Clerk, P.C.

To the Honourable

The Minister of Railways and Canals.

EXHIBIT 291—

No. 301

10072

AGREEMENT

BETWEEN THE WESTERN UNION TELEGRAPH CO.

and

THE HALIFAX AND CAPE BRETON COAL & RY. CO.,

RECORD
—
In the
Exchequer Court
of Canada
—

No. 301
EXHIBIT 291
Agreement be-
tween Western
Union Telegraph
Company and
the Halifax
and Cape Breton
Coal and Ry. Co.
June 22, 1880.

Date June 22nd. 1880
Description Telegraph line from New Glasgow
10 to the Straits of Canso, N.S.
Entered under
No. 10072
Aug 20 1918
H. A. C.

Copy of 8342

This Agreement made and entered into this 22nd. day of June 1880,
by and between the Western Union Telegraph Company party of the first
part and the Halifax and Cape Breton Coal and Railway Company, par-
ty of the second part, hereinafter represented designated as the Tele-
20 graph Company and the Railway Company.

WITNESSETH, whereas the Railway Company now owns and oper-
ates a line of Railway from New Glasgow to Antigonish, N. S. which
it proposed to extend to the Straits of Canso and whereas the Telegraph
Company now owns and operates a line of telegraph along the country
road from New Glasgow to the Straits of Canso which it proposes to
transfer to the Railway Company's right of way. Now therefore for the
purpose of providing adequate telegraph facilities for the Railway Com-
pany and of maintaining and operating the line of telegraph above re-
ferred to in the interests of both parties with the greatest efficiency and
30 economy, the parties hereto in consideration of the covenants and agree-
ments herein contained have mutually agreed as follows—

First—The Telegraph Company agrees to furnish all poles, wires, insu-
lators and other material, and to erect at its own expense a good and sub-
stantial telegraph line of as many wires as it may deem necessary along
said railway from New Glasgow to the Straits of Canso, and also to fur-
nish all the material and labor for the maintenance, operation, repairs
and renewal of said line and wires, the Telegraph Company will also fur-
nish the necessary main batteries and other local batteries for the suc-
cessful operation of said line.

RECORD

*In the
Exchequer Court
of Canada*

No. 301

EXHIBIT 291
Agreement be-
tween Western
Union Telegraph
Company and
the Halifax
and Cape Breton
Coal and Ry. Co.
June 22, 1880.
(Contd.)

The Railway Company agrees to require its own trackmen, to examine and look after the condition of said line and report the same to the Telegraph Company and in case of breaks or interruptions, to make such temporary repairs and replacements as will put the line in working order, the Telegraph Company furnishing all tools and material necessary to make such repairs.

Second.—The Railway Company so far as it may legally, hereby grants and agrees to assure to the Telegraph Company the exclusive right of way on and along the line and lands of the Railway Company and upon any branches or extensions thereof, for the construction and use of lines 10 of poles and wires for the purpose of communication, with the right to put up from time to time such additional or lines of poles and wires as the Telegraph Company may deem necessary and the Railway Company further agrees to clear and keep clear said rights of way, of all trees, undergrowth and other obstructions to the construction and maintenance of the line and wires provided for herein, and the Railway will not transport new material for the construction or operation of a line of poles and wires or wires in competition with the line of the Telegraph Company party hereto, except at and for the Railway Company's regular local rates, nor will it furnish for any competing line any facilities or assistance 20 that it may lawfully withhold, nor stop its trains, nor distribute material there for other than regular trains. Any legal proceedings in defence of the exclusive right of way herein granted to the Telegraph Company shall on written request by the Telegraph Company may be undertaken by the Railway Company and the expense thereof shall be paid by the Telegraph Company.

Third.—Either party to this agreement may establish and maintain telegraph stations at such points along the said railway as it may deem necessary and for all such offices as the Railway Company may establish, the Telegraph Company agrees to furnish free of charge, instruments and 30 local batteries, and blank forms and stationery for commercial business.

The Railway Company agrees to provide at its own expense a competent operator, office room, light and fuel, and to maintain an office at the terminus of the Railway at Canso.

At all Telegraph stations of the Railway Company, its employees acting as agents of the Telegraph Company shall receive, transmit and deliver such commercial or paid messages as may be offered at the tariff rates of the Telegraph Company and shall render to the Telegraph Company monthly statements of such business and full accounts of all receipts therefrom and shall pay such receipts to the Telegraph Company 40 in such manner and at such times as it may direct, and shall not without the consent of the Telegraph Company transmit over the said line any free messages except those herein provided for and concerning all such business whether paid or free shall conform to all rules and regulations of the Telegraph Company applicable thereto.

Fourth.—If the Telegraph Company elects to establish an office at a station of the Railway Company where there is a resident Agent, the Railway Company shall furnish office room, light and fuel free of charge in such station, and if at such station one person can attend to the Telegraph business of both Companies the Telegraph Company shall do the business of the Railway without charge. Whenever the Telegraph business of both Companies at any such station becomes so large that more than one operator is needed to attend to them the Railway Company shall employ and pay its own operator.

10 Fifth.—All messages of the officers and agents of the Railway Company pertaining to its railway business and the family and social messages of the officers of the Railway Company shall be transmitted free of charge between all telegraph stations on the line of said Railway.

And the Telegraph Company further agrees to issue to such officers of the Railway Company as may be designated by the president or Financial Superintendent thereof annual franks authorizing the free transmission over any of the lines of the Telegraph Company of messages relating strictly to the Railway or Corporate business of the Railway Company to or from points off the line of said Railway beyond the limits above
 20 named to an amount not exceeding three hundred dollars \$300.00 per annum calculated at the regular Commercial day rates of the Telegraph Company between the points at which such messages may originate and the points where they may be destined. And the Railway Company agrees to pay to the Telegraph Company one half of its aforesaid rates on all such messages in excess of said amount, settlements to be made yearly. It is understood and agreed that the free telegraphic service herein provided for is for the transmission of messages concerning the operation and business of the Railway Company and shall not be extended to as
 30 messages ordering freight, sleeping car berths or other accommodations for customers of the Railway Company the tolls in which messages should be properly chargeable to such customers.

Sixth.—The Railway Company agrees to transport free of charge over its Railway upon application of the Superintendent or other officer of The Telegraph Company all persons in the employ of the Telegraph Company when travelling on the business of said Company, and also to transport and distribute free of charge along the line of its railway all poles and other material for the construction, maintenance, operation, repairs or removal of the line and wires provided for herein, and of such
 40 additional wires or lines of poles and wires as may be erected under this agreement, and all materials for the maintenance and operation of the offices along said Railways. And the Railway Company further agrees to transport without charge the poles and other material of the Telegraph Company to be used on its line beyond or off the said Railway to an amount not exceeding three hundred dollars \$300.00 per annum at the regular rates of the Railway Company and the Telegraph Company

RECORD

—
*In the
 Exchequer Court
 of Canada*

—
 No. 301

EXHIBIT 291
 Agreement between Western
 Union Telegraph
 Company and
 the Halifax
 and Cape Breton
 Coal and Ry. Co.
 June 22, 1880.

(Contd.)

RECORD

—
In the
Exchequer Court
of Canada
 —

No. 301

EXHIBIT 291

Agreement be-
 tween Western
 Union Telegraph
 Company and
 the Halifax
 and Cape Breton
 Coal and Ry. Co.
 June 22, 1880.

(Contd.)

agrees to pay the Railway Company one half of its aforesaid rates on all such transportation of materials in excess of said amounts, settlements to be made yearly.

Seventh.—Whenever the business of the Railway Company requires the exclusive use of a wire on any part of its Railway the Telegraph Company will allow the Railway Company to erect at its own expense, or the Telegraph company will erect at the expense of the Railway Company an additional wire on the poles of the Telegraph company which wire shall be used exclusively for the legitimate business of the Railway company.

In case of the interruption of either wire after a wire shall have been put up for the Railway Company the business of both parties here- 10
 to shall as far as practicable be used on the working wire.

Eighth.—The Railway Company shall have the right to the free use of any telegraph patent rights or new discoveries or inventions that the Telegraph Company now has and uses in its general telegraph business or which it may hereafter acquire or use as aforesaid, as far as they may be necessary to properly carry on the business of telegraphing on the line of said railroad as provided for herein.

Ninth.—It is a condition of this contract that the Railway Company shall not be responsible for any injury to persons in the employ of the Tele- 20
 graph Company carried free over said railway under this agreement nor shall the Railway Company be held liable to any person doing business with the Telegraph Company for any neglect or failure in the transmission or delivery of messages or on account of any other public telegraph business.

And the Telegraph Company shall not be responsible for any error or failure in the transmission or delivery of messages sent free for the Railway Company under this agreement.

Tenth.—It is mutually understood and agreed that the Telegraph line and wires covered by this Contract shall form part of the system of the Tele- 30
 graph Company and as such in the Department of Commercial or public business shall be controlled and regulated by it, the Telegraph Company fixing and determining all tariffs for the transmission of messages and all connections with other lines.

Eleventh.—The provisions of this agreement shall supersede all previous agreements between the parties hereto or the predecessors, and shall extend to the Pictou Branch and to all roads now or that may hereafter be owned or controlled by the Railway Company and to all branches or ex-
 tensions thereof which the Telegraph Company may elect to occupy with
 its lines, and shall continue in force for the term of twenty five years 40
 from the first 1st day of June 1880, and thereafter until one year's writ-
 ten notice shall have been given by one of the parties hereto of its in-
 tention to terminate the same, and in case of any disagreement concern-
 ing the true intent and meaning of any of the said provisions, the sub-
 ject of such difference shall be referred to three arbitrators, one to be

chosen by each party hereto, and the third by the two others chosen, and the decision of such arbitrators or of a majority thereof shall be final and conclusive.

In witness whereof the parties to these presents have caused the signatures of their respective Presidents to be hereunto subscribed and their corporate seals to be attached the day and year first above written.

The Western Union Telegraph Company,
sg. of Norvin Greene,
President.

(L.S.)
10 Sg. of A. R. Breneer
Secretary

EXHIBIT 289—

No. 297

AGREEMENT.

between

THE MONTREAL TELEGRAPH COMPANY

— and —

THE GREAT NORTH WESTERN TELEGRAPH CO'Y. OF CANADA

— and —

20

THE WESTERN UNION TELEGRAPH COMPANY.

RECORD
In the
Exchequer Court
of Canada

No. 301
EXHIBIT 291
Agreement between Western Union Telegraph Company and the Halifax and Cape Breton Coal and Ry. Co. June 22, 1880.

(Contd.)

No. 297
EXHIBIT 289
Agreement between the Montreal Telegraph Company and The Great North Western Telegraph Co. of Canada and Western Union Telegraph Co. August 17, 1881.

30

These Articles of Agreement, made this seventeenth day of August, A.D. 1881, by and between the MONTREAL TELEGRAPH COMPANY, hereinafter called the Company, a body corporate and politic, duly incorporated under the law of the Dominion of Canada having its chief place of business at the City of Montreal, represented for the purposes hereof by the President and Secretary thereof; And the GREAT NORTH WESTERN TELEGRAPH COMPANY, hereinafter called the Contractors, a body politic and corporate, duly incorporated by Statute of the Dominion of Canada, represented for the purposes hereof by the President and Secretary thereof; and the WESTERN UNION TELEGRAPH COMPANY, a body corporate, duly incorporated under the Laws of the

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 Agreement be-
 tween the Mon-
 treal Telegraph
 Company and
 The Great North
 Western Tele-
 graph Co. of
 Canada and
 Western Union
 Telegraph Co.
 August 17, 1881.
 (Contd.)

State of New York, hereinafter called the Guarantors, parties of the third part, herein represented and acting by the President and Secretary thereof, duly authorized by the said Company according to the Constitution and By-Laws thereof, and according to the Laws of the said State of New York, Witness

Whereas, the Company owns and operates lines of telegraph in the Dominion of Canada, and in the United States, and the Contractors own and operate a line of telegraph in the Province of Manitoba and the Guarantors hold and operate the line of telegraph within the said Dominion of Canada, heretofore known as the line of the Dominion Telegraph Company. 10

And whereas, for the purpose of terminating unnecessary expenditure, and of combining the advantages of the said several systems of telegraph, the said Contractors are willing, and have agreed, to undertake the working of the line of the Company, at a fixed rate of remuneration, upon the terms and conditions hereinafter provided, which offer the Company has accepted, and has approved the terms and conditions thereof, as contained in the present articles of agreement, by a resolution of the shareholders of the said Company, at a special general meeting thereof, duly called and held at Montreal on the 17th day of August, 20 1881, for the purpose of considering a proposal for the working of the lines of the Company, for an annual guaranteed dividend of Eight per cent upon the capital stock of the Company of two millions of dollars and upon other conditions, a copy of which resolution is hereunto annexed.

Now, therefore, these presents, witness that the parties hereto have covenanted and agreed as follows:—

1. The Contractors undertake, for a period of ninety-seven years from and after the first day of July, 1881, to work, manage and operate the system of Telegraph, owned and heretofore operated by the Com- 30 pany by means of its own employees, and operators, and conduct the business thereof in all respects as efficiently as the Company has hitherto operated the same, collecting in the name of the Company such rates and charges for messages as the said Company shall establish from time to time, with all other the earnings of the said Telegraph system and lines, and all and every part thereof in such manner as to perform to the fullest extent all the obligations of the said Company towards the public.

2. From and after the said last mentioned day the Contractors will, during the continuance of this agreement, maintain the said Tele- 40 graph lines in as good condition and with equal efficiency for business, as the same now are, And to assist in the management and maintenance of the said line of telegraphs, it is hereby agreed that the Company shall deliver over to the Contractors, forthwith, all such materials and stock in hand as shall be in its possession for the purpose of its ordinary current business; in which, however, shall not be included any stock of

wire or other material which it has acquired for the purpose of building new lines, and which now remains in store and has not been issued for current use which latter class of material the Contractors shall take over and pay for to the Company in cash at the cost price thereof. And it is hereby agreed that the Contractors shall assume and pay all expenditures on new lines incurred subsequently to July 1st, 1881.

3. The said Contractors shall have the right to use and occupy during the continuance of the present agreement, all the offices, stations, buildings and property of the Company, save and except the Board Room of the Company at Montreal, with the adjacent Secretary's room, and except also a sufficient portion of the vaults of the Company for the purpose of preserving and keeping in safe custody the books and muniments of the Company, all of which, with free access thereto, are hereby reserved for the use of the Company, and the Contractors may sublet such parts of the building of the Company as are not required to carry on the business of the Company. But the Company may sell or otherwise dispose of for its own benefit, the buildings in Montreal and Ottawa not now used or required for the use of the Company in its business.

4. It is hereby further covenanted and agreed by the parties hereto that upon the requisition of the Contractors, the Company shall from time to time change their tariff of fees and rates in such manner as shall be stated in such requisition, provided always that the Company shall not be required or bound to make such alteration in the said rates as shall make the transmission of a message of ten words over the present extent of the lines of the Company in Canada or any part thereof, cost more than twenty-five cents, but subject to be adequately increased generally or locally in the event of any charge or tax being at any time imposed by any Parliamentary or local enactment or authority beyond the amount now payable by the Company or in the event of the Contractors being legally compelled to substitute or provide other means than those now in use by poles for carrying their wires through cities and towns.

5. The Contractors hereby bind and oblige themselves to pay to the Company, quarterly, during the continuance of this agreement, the sum of forty-one thousand two hundred and fifty dollars on the first days of October, January, April and July in each year from out of the proceeds of the operation and use of the said Company's lines and property which proceeds, the Contractors hereby warrant shall amount to the said sum of forty-one thousand two hundred and fifty dollars per quarter, or one hundred and sixty-five thousand dollars per annum.

6. The said Contractors also bind and oblige themselves to pay all costs and expenses of operation of every description including Municipal taxes, and assessments on property owned by the Company and occupied by the Contractors, and shall keep the property of the Company free and

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 EXHIBIT 289
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 (Contd.)

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Agreement be-
 tween the Mon-
 treal Telegraph
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 Western Tele-
 graph Co. of
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 Western Union
 Telegraph Co.
 August 17, 1881.
 (Contd.)

clear from all liens and incumbrances arising from taxes and assessments, or from any act of the said Contractors during the continuance of the present agreement.

7. The Contractors hereby further agree and bind themselves at all times during the continuance hereof, faithfully to execute and perform all the contracts, covenants and agreements of the said Company, agreed to be executed and performed by the Company, in the several contracts and agreements between the said Company and all Railway Companies and other parties, that are now in force and effect, and to save and hold harmless and indemnified the said Company from all such covenants, 10
 contracts and agreements. And the Contractors hereby acknowledge to have received communication of such contracts and agreements, a list of which, signed by the parties hereto is hereto annexed.

8. It is further covenanted and agreed by and between the parties hereto, that if at any time, the Contractors should fail to make any one of the quarterly payments herein before stipulated, and the default to pay the same should continue for thirty days after the same shall have become due, and notice in writing of such default shall have been given to the Guarantors by serving the same on one of their principal officers in the City of New York at the expiration of the said period of thirty 20
 days, and if the said Guarantors shall not pay the sum so in default within thirty days after the service of such notice in writing, the Company shall have the option in its own discretion to resume possession of its lines and property, without any legal proceedings being necessary for that purpose, further than a notice, in writing, to the Contractors and Guarantors, of the intention so to resume possession thereof. And by so resuming possession of the said line, (If the Company should make its option so to do), it shall not impair or obstruct its remedies for the recovery of any arrears of the said payments due at the time of such re- 30
 sumption, against the said Contractors or against the sureties for such payment hereinafter provided for. And upon resuming possession as aforesaid, upon such default, the present agreement, in so far as it shall entitle the Contractors to work and operate the said line of telegraph, or to receive any remuneration rate or charge for any message over the said line, or any revenue of any kind or description in respect of the property of the said Company, shall ipso facto, cease and be determined, re-
 maining in force, however, in respect of any stipulations therein con-
 tained for the protection of the Company from taxes or assessments and from other liens or indebtedness, and in respect of the maintenance of the line of the Company in good order and condition as hereinbefore 40
 agreed.

9. And from and after such resumption, the Company shall hold and enjoy, use and operate the said line of telegraph, and the property referred to in the present agreement, in the same manner, and to the same extent as if this agreement had not been executed. And in such case, the Contractors shall forfeit and surrender to the Company, for its

use and benefit, all additions and improvements they may have made to or upon the lines and property of the Company herein referred to, and all telegraph lines, with their appurtenances, which the Contractors may have constructed during the continuance hereof. And the Contractors will also pay to the Company all sums which may be due to it under the provisions hereof to be computed down to the time of such resumption of possession.

10 10. The Contractors hereby further expressly covenant and agree that upon the termination of the period herein limited, or upon the
 10 earlier termination of this agreement for any cause, they will deliver the line of telegraph and property herein described or referred to, to the Company, in as good a condition for business as that in which they were when received from the Company by the Contractors under the terms hereof, together with all improvements and additions which the said second party shall have made upon or to the said line of telegraph and property during the continuance hereof, and also together with all supplies for the ordinary current maintenance of the said telegraph line, which shall then be in the possession of the Contractors, for the purpose of repairing, maintaining and operating the lines so to be returned to
 20 the Company.

11. It is hereby further understood and agreed that all contracts heretofore made by the Company for future deliveries of supplies and material are hereby assigned to and accepted by the Contractors, who hereby undertake and agree to carry out the conditions of such contracts to the entire exoneration and discharge of the Company.

12. In consideration of the premises, it is hereby further agreed by and between the parties hereto, that the Contractors shall retain as their remuneration for the working and operation of the said telegraph lines and for the performance by them of all the obligations and duties
 30 hereby imposed upon them, the balance of the earnings and income of the said telegraph line and property which shall remain in their hands after the payment to the Company of the said sum of one hundred and sixty-five thousand dollars per annum. The said Contractors hereby agreeing to accept such balance as such remuneration, to whatever sum the same may amount. And they hereby assume all risk of there not being any such balance, hereby undertaking and agreeing to make no claim or demand upon the Company for remuneration upon any ground, or for any cause whatsoever, the true intent and meaning of these pre-
 40 sents being that the Company shall, during the continuance of this agree- ment, continue to receive the quarterly sum of forty-one thousand two hundred and fifty dollars at the dates hereinbefore mentioned, whether the earnings and revenue of the said lines and property shall amount to that sum, or more, or less.

And the said Guarantors, the Western Union Telegraph Company, parties hereto of the third part in order to perfect and extend the connection of Telegraph Companies, and to promote a union with the Tele-

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 —
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of Canada
 —
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 Agreement be-
 tween the Mon-
 treal Telegraph
 Company and
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 Western Tele-
 graph Co. of
 Canada and
 Western Union
 Telegraph Co.
 August 17, 1881.
 (Contd.)

RECORD
—
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No. 297
EXHIBIT 289
Agreement be-
tween the Mon-
treal Telegraph
Company and
The Great North
Western Tele-
graph Co. of
Canada and
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Telegraph Co.
August 17, 1881.
(Contd.)

graph systems of other states and countries, do hereby declare that they have taken communication of the foregoing articles of agreement, and at the request of the Contractors, and for and in consideration of the sum of one dollar to them in hand paid by the Contractors, the receipt of which is hereby acknowledged, they, the said Guarantors, do hereby bind and oblige themselves, as the sureties of the said Contractors, jointly and severally with them, for the payment of all the sums of money and the performance of all the obligations and duties, which the said Contractors have in and by the said articles of agreement bound and obliged themselves to pay and perform respectively.

10

The said Guarantors hereby undertaking to make such payments and to perform such obligations and duties respectively, upon receiving notice as aforesaid from the Company of the default of the Contractors so to do, and without any obligations on the part of the Company to attempt to enforce the making of such payment in default or the performance of such obligation or duty in default by the Contractors, before seeking its recourse against the said Guarantors, the latter hereby expressly waiving any right or claim which they might have, to the discussion by the Company, of the Contractors, before proceeding against the said sureties.

20

IN WITNESS WHEREOF, the parties hereto have executed these presents, at the places and dates set opposite their names respectively, in triplicate.

Signed, and Executed by the Montreal Telegraph Company, and the Great North Western Telegraph Company of Canada, at Montreal, this Seventeenth day of August, A.D. one thousand eight hundred and eighty-one.

HUGH ALLAN, President,
Montreal Telegraph Co.

JAMES DAKERS, Secretary,
Montreal Telegraph Co.

30

ERASTUS WIMAN, President,
Great North Western
Telegraph Co.

ED. P. LEACOCK, Secretary,
Great North Western
Telegraph Co.

Signed and executed by the Western Union Telegraph Company in the City of New York, August 20, 1881.

The Western Union Telegraph Company, by Norvin Green,

President, 40

A. R. Brewer, Secretary.

EXHIBIT 289-A—

No. 298

MONTREAL TELEGRAPH COMPANY

List of Railway Contracts

Grand Trunk Railway of Canada
 Great Western “ “ “
 Canada Southern Railway
 Credit Valley “
 10 Canada Central “
 Brockville and Ottawa “
 Cobourg & Peterboro & Marmora Railway
 Buffalo & Lake Huron Railway Co.
 Northern & Hamilton & North Western Railway
 Port Dover & Lake Huron & Stratford & Huron Ry.
 Welland Railway
 Toronto & Nipissing Railway
 Lake Simcoe Junction Railway
 North Simcoe Railway
 20 Midland Railway
 London & Pt. Stanley Railway
 Whitby & Port Perry & Lindsay Ry.
 Victoria Railway
 Kingston & Pembroke Railway
 St. Lawrence & Ottawa “
 Grand Junction Railway
 Prince Edward County Railway
 Intercolonial Railway
 Quebec Central Railway
 30 South Eastern Counties Railway
 St. Francis & Megantic Railway
 Levis & Kennebec Railway
 Quebec & Lake St. John Railway
 Delaware & Hudson Canal Co.
 Ogdensburg & Lake Champlain Railway
 Lake Champlain & St. Lawrence Junction Ry.
 Oswego Railway
 (Seal)

(Signed)

James Dakers, Secy.

(Signed)

Erastus Wiman.

Pres., G.N.W. Tel. Co. of Canada.

Seal.

(Signed)

Norvin Green, President,
Western Union Telegh. Co.

(Signed)

A. R. Brewer,
Secy.

RECORD
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 In the
 Exchequer Court
 of Canada
 —

No. 298
 EXHIBIT 289-A
 List of Railway
 Contracts at-
 tached to
 Exhibit 289
 August 17, 1881.

RECORD

No. 10

—
In the
Exchequer Court
of Canada

EXHIBIT 7—

Private

25th May 1887.

My dear Sir:

No. 10
EXHIBIT 7
Letter, C. Drink-
water to Colling-
wood Schreiber
May 25, 1887.

I am requested to suggest that no contract be made with the Western Union Telegraph Company, for that portion of railway to be built this summer, between the Straits of Canso and Sydney. We may like to have the opportunity of making arrangements with you in respect to this.

Yours truly,

10

(Sgd.) C. Drinkwater,
Secretary.

No. 11
EXHIBIT 8
Letter, Colling-
wood Schreiber
to A. P. Bradley
May 26, 1887.

Collingwood Schreiber, Esq.,
Canadian Govt. Railways,
Ottawa.

No. 11

EXHIBIT 8—

CAPE BRETON RAILWAY

Office of the Chief Engineer and General Manager
of Government Railways.

20

Ottawa, May 26th, 1887.

Sir,

I am requested by the Canadian Pacific Railway Company to suggest that no contract be made with the Western Union Telegraph Company for that portion of the line of Railway between the Straits of Canso and Sydney as they wish to build there.

I have the honor to be Sir,

Your obedient servant,

(sgd) Collingwood Schreiber,

Chief Engr. & Gen. Manager Govt. Rys. 30

A. P. Bradley Esq.,
Sec. Rys. & Canals

No. 12

RECORD

EXHIBIT 9—

Department of Railways and Canals, Canada.

No: 28510

Subj: 900

Ref: 43417.

—
In the
Exchequer Court
of Canada

No. 12

EXHIBIT 9

Letter, A. P.
Bradley to C.
Drinkwater,
July 6, 1887.

No. 13

EXHIBIT 10

Letter, Chas. R.
Hosmer to C.
Drinkwater,
July 18, 1887.

Ottawa, 6th July, 1887

16671

Cape Breton Railway

10

Sir.

The Chief Engineer and General Manager, Govern-
ment Railways "in operation"; at your suggestion, having
written to this Department, stating that you wished to
build that portion of the Line of Telegraph on the Cape
Breton Railway, between the Straits of Canso and Sydney,
and asking that no contract be made with the Western
Union Telegraph Company. I am to inform you that no
applications have as yet been received for the building of
the Telegraph Line, referred to.

C.D.

C. R. Hosmer, Esq.
What about this? You
have the previous
correspondence.

20

I have the honor to be,

Sir,

Your Obedient Servant,
SGD. A. P. Bradley,
Secretary.

C. Drinkwater, Esqre.,
Secy: C.P.Ry. Coy.,
Montreal.

~~Previous letters referred to
Mr. Hosmer.~~

~~"To note"~~

30

No. 13

EXHIBIT 10—

THE CANADIAN PACIFIC RAILWAY COMPANY.

Manager's Office.

Telegraph Department.

4 Hospital St.

MONTREAL, July 18 87

Bradley
19787

16671

Geo. ask him for
enclosure.

40 C. Drinkwater Esq.
Secretary.

Dear Sir:—

Referring to the enclosed letter from Mr. Bradley Secretary of the
Department of Railways I would say that I have seen the Vice President
who advises that you should reply to Mr. Bradley and say that our Com-
pany is desirous of securing the privilege of constructing a telegraph

RECORD

*In the
Exchequer Court
of Canada*

No. 13

EXHIBIT 10

Letter, Chas. R.

Hosmer to C.

Drinkwater,

July 18, 1887.

(Contd.)

No. 14

EXHIBIT 11

Letter, C. Drink-

water to A. P.

Bradley

July 19, 1887.

line along the proposed railway between the Straits of Canso and Sydney and are willing to make as favorable agreement with the Government as can be offered by any other Company, and that as soon as sufficient progress has been made with the construction of the railway to necessitate the construction of the telegraph line, if they will communicate again with us, we will submit to them a proposal.

You might also call the attention of the Department to the fact that inasmuch as Sydney and its vicinity are the chief landing places of the Atlantic Cables, it is very important that a purely Canadian Company such as ours should enjoy the advantages that are offered by the Government Railway in order to reach that point. 10

Yours truly,

Sgd. Chas. R. Hosmer.

No. 14

EXHIBIT 11—

THE CANADIAN PACIFIC RAILWAY COMPANY.

Montreal, 19th July 1887.

A. P. Bradley, Esq.

Secretary

Dept. of Railways & Canals

Ottawa.

20

Sir,

With reference to your letter of the 6th instant, respecting the proposed line of telegraph on the Cape Breton Railway between the Straits of Canso and Sydney. I am instructed to say that this Company is desirous of securing the privilege of constructing this telegraph line, and will be ready to make as favorable an agreement with the Government with respect to it, as can be offered by any other Company.

I beg therefore to state that as soon as sufficient progress has been made with the construction of the Railway to necessitate the building of the telegraph line this Company will be prepared to submit a proposal for its construction, on intimation from the Government that they are ready to consider it. 30

I also beg to suggest that as the chief landing places of the Atlantic cables are at Sydney, and in its vicinity, it would appear desirable that the construction of this telegraph line should be vested in a Canadian Company, and not placed in foreign hands.

I have the honour to be,

Sir,

Your obedient servant,

(Sgd) C. DRINKWATER

Secretary.

40

No. 15

EXHIBIT 12—

May 4th, 1888.

W. C. Van Horne, Esq.,
Vice-President.

RECORD

*In the
Exchequer Court
of Canada*

No. 15

EXHIBIT 12

Letter, Chas. R.
Hosmer to W.
C. Van Horne
May 4, 1888.

Dear Sir:—

I met Mr. Schreiber at Ottawa yesterday and made application to him for permission to construct a line of telegraph along the Intercolonial Ry. between St. John & Halifax via Moncton & Truro.

10 Mr. Schreiber thought that the Railway's exclusive contract with the Montreal Telegraph Co. would prevent our occupying this right of way. I called his attention to the fact that the Montreal Telegraph Co. does not now, nor never has, exercised the exclusive privileges mentioned, east of Moncton. The country east of that point having always been conceded to the Western Union as its exclusive territory.

The Montreal Telegraph Co. own a single wire line from Moncton to Halifax on one side of the Railway, while on the other the Western Union have a line of poles carrying some six or eight wires. I understand from Mr. Schreiber that there is nothing in agreement that allows
20 the Montreal Telegraph Company to assign their privileges to another Corporation.

I should, therefore, think that the Montreal Telegraph Co. in conceding to the Western Union Co. the right to construct this line, could not very well object to the Government (the other party to the agreement) exercising a similar right in granting what we ask for.

Mr. Schreiber could only say that if our Company would place before him, in writing, an application for the use of the right of way that he would refer it to the Law officers of the Government and see whether our petition could be granted, and that he would assist us as far as possible.
30

From my knowledge of the telegraph situation in the Maritime Provinces I feel confident that it would only be necessary for the Government to make a stand on our behalf in order to secure the right of way we require.

Telegraph communication with Halifax is essential not only for Railway purposes, but also in order that we may establish a direct cable connection between our vast telegraph system and Great Britain, independent of our American connections.

I might add that the highest Courts in the United States have de-
40 cided against Railway Corporations granting exclusive rights, maintaining that it was against public policy for them to do so, and that a duly in-

RECORD
 —
In the
Exchequer Court
of Canada

No. 15
 EXHIBIT 12
 Letter, Chas. R.
 Hosmer to W.
 C. Van Horne
 May 4, 1888.
 (Contd.)

No. 16
 EXHIBIT 13
 Letter, Chas. R.
 Hosmer to
 Collingwood
 Schreiber
 May 8, 1888.

No. 17
 EXHIBIT 14
 Letter, Colling-
 wood Schreiber
 to Chas R. Hos-
 mer
 May 9, 1888.

corporated Telegraph Co. had the same rights along the railroad as they had on the public road.

Yours truly,
 (Sgd.) Chas. R. Hosmer.

I enclose a map of the Western Union Lines.

No. 16

EXHIBIT 13—

May 8th, 1888.

10

Collingwood Schreiber, Esq.,
 Chief Mngr. and Genl. Manager Govt. Rys.,
 Ottawa.

Dear Sir,—

I understand that no arrangements have yet been made for the construction of a telegraph line between the Straits of Canso and North Sydney along the Railway that is now under construction, and I hope before completing any arrangements that the Government will give us an opportunity of tendering for this line as we will likely require to build a telegraph line through this section of the country in order to reach the Atlantic Cables landing at Sydney and Louisburg.

20

Yours truly,
 (Sgd.) Chas. R. Hosmer.
 Manager Eghs.

No. 17

EXHIBIT 14—

CANADIAN GOVERNMENT RAILWAYS

Office of the Chief Engineer and General Manager.

Ottawa, 9th May, 188-8

(last figure missing)

30

Chas. R. Hosmer, Esq.,
 C.P.R. Telegraphs,
 Montreal.

Dear Sir:—

I have your letter of yesterday date and in reply I desire to say that I do not imagine an exclusive right would be given to any Company to erect a line of telegraph along the line of the Cape Breton Ry.

We are quite prepared to negotiate an arrangement by which your Company would be permitted to build and operate a line along this Railway.

Yours truly,
 (Sgd) Collingwood Schreiber

40

Chief Engineer and General Manager.

EXHIBIT 15—

No. 18

May 15th 1888

Sir,

This Company desires to obtain permission from the Government, to construct an extension of its telegraph line along the Intercolonial Railway from St. John to Halifax via Moncton.

10 It has been stated that the agreement between the Montreal Telegraph Company and the Government will not admit of this permission being granted, the Telegraph Company claiming exclusive rights under that agreement. I would remind you, however, that the Montreal Telegraph Coy. has not maintained such exclusive rights, as the Western Union Telegraph Coy. have been permitted to construct a line of Telegraph between Moncton and Halifax, on the right of way of the Intercolonial Railway.

20 I am not aware under what arrangement this privilege has been granted to the Western Union Coy., but respectfully ask that this Company be allowed to construct and maintain a line between the points first named, subject to such conditions as the Government may see fit to impose.

In view of the approaching completion of the "Short Line" direct Telegraphic communication with Halifax by means of its own wires, and independent Cable connections there, ~~are of great importance to this Company, and I therefore respectfully ask your early and favourable consideration of this application.~~

I am, Sir,

Your obedient servant,

A. P. Bradley, Esq.,
Secretary,(Sgd) C. Drinkwater,
Secretary.30 Department of Railways & Canals,
Ottawa, Ont.

EXHIBIT 16—

No. 19

May 28th, 1888.

Dear Mr. Fleming,

40 We have made application to the Government for permission to construct a line of telegraph along the I. C. Ry. between St. John and Halifax. I saw Mr. Schreiber some weeks ago; he found that an existing contract which gave the old Montreal Telegraph Co. exclusive rights along the Railway might prevent the Government granting our request. I pointed out that the Montreal Telegraph Co. does not now, nor never has, exercised these rights between the points mentioned, but have allowed the Western Union Co. to enjoy them, it would therefore seem strange if they should be permitted to—— the exclusive privilege and

RECORD

In the
Exchequer Court
of CanadaNo. 18
EXHIBIT 15
Letter, C. Drink-
water to A. P.
Bradley.
May 15, 1888.No. 19
EXHIBIT 16
Letter, Chas. R.
Hosmer to San-
ford Fleming
May 28, 1888.

RECORD

*In the
Exchequer Court
of Canada*

No. 19

EXHIBIT 16

Letter, Chas. R.
Hosmer to San-
ford Fleming
May 28, 1888.

(Contd.)

No. 20

EXHIBIT 17

Letter, Chas. R.
Hosmer to W.
C. Van Horne
June 2, 1888.

that the Govt. should not be free to claim a similar right. We simply ask to be allowed to build along the Railway and don't expect the Railway Co. to maintain our line or its Agents to accept business for our Co. I, therefore, think that if the Government made a stand and said that on the grounds of public policy they intended granting us the right of way we ask for that the Western Union Co. would not contest the matter. I don't think they would care to have the fact stirred up that they are today enjoying such advantages they are over a Government Railroad. Should the Government ask them to submit a claim for damages they would not show that it was of any real loss to them. You are of course aware of what vital importance it is to the Pacific Cable scheme that our Co. should secure a connection with Halifax & Canso in order to connect our system over Canadian soil with the Atlantic cables. At the present moment a foreign corporation controls the entire business of the cables landing on Canadian soil, our connection with the MacKay-Bennet Co. being secured via New York. Should any complications arise between either the Imperial or Canadian Govts. and the United States it would be a serious matter to have this state of affairs in existence. Will you please use your personal influence with the Govt. in our behalf and very much oblige.

Yours very truly,

(Sgd) Chas. R. Hosmer.

Sanford Fleming, Esq.,
Ottawa.

No. 20

EXHIBIT 17—

2nd June, 1888.

W. C. Van Horne, Esq.,
Vice-President, Can. Pac. R'y Co.,
Montreal, Q.

Dear Sir:—

Re Inter-Colonial R'y.

The Secretary has made regular application to the Minister of Railways for permission to build a line of telegraph along the Inter-Colonial R'y between St. John and Halifax. I have also seen Mr. Schreiber upon the subject. The difficulty in the way of granting us the privilege seems to be an exclusive contract between the Montreal Telegraph Company and the Government. Though the Montreal Telegraph Company has had this contract for years they have never operated any lines between these two points, not even when they were in active existence, having allowed the Western Union Telegraph Co. to construct a line along the railway and monopolize the telegraph business of the Maritime Provinces.

The Western Union Co. having been allowed to break this exclusive privilege, should justify the Government in granting a similar right to our Company. The Montreal Telegraph Company is not today operating a single mile of telegraph throughout Canada and could not suffer from any action the Government might take in this matter, in fact, not even the Western Union Co. would be a loser by it. We do not ask to do business at the railway stations, nor do we ask any special privileges from the railway with reference to the maintenance of lines etc. We simply desire to build a line where it can be most conveniently constructed and most speedily repaired.

10

If the Government would simply make a stand on our behalf, I would be very much surprised if the Western Union would contest it. It surely should be a matter of some concern to the Government that the entire telegraph business of the Maritime Provinces and all the lines leading to the cables landing on Canadian soil are in the hands of a foreign corporation, whose policy is directed from New York and whose principal telegraph circuits converge to that City.

A connection with Nova Scotia is essential in order to connect our vast telegraph system with the Atlantic cables, and thus consummate the Imperial idea of placing Vancouver, Ottawa, Halifax and Bermuda in instant communication with the mother country. Securing this important object, in which both the Imperial and Dominion Governments have so vital an interest, would of itself, I should think, warrant the Minister of Railways acceding to our request.

20

If we are to reach the cable landings this year, there is not a moment's time to be lost and I would respectfully urge that a decision one way or the other, should be obtained at as early a date as possible.

Yours respectfully,

(Sgd) Chas R. Hosmer.

30

EXHIBIT 18—

No. 21

Ottawa, 7th June, 1888.

Dear Mr. Hosmer,

I have spent some time today enquiring about the telegraph matter. I have seen Mr. Sedgwick Deputy Minister of Justice and explained all to him.

He is now writing to Halifax to ascertain the exact nature of the claim of the Western Union with the view of getting over them.

In the other block I find Schreiber is the only man who knows much about it and I have written him (now in Cape Breton) explaining what we must have in connection with the line between Australia and England—and the sooner it be granted the better.

40

RECORD

—
In the
Exchequer Court
of Canada

—
No. 20

EXHIBIT 17
Letter, Chas. R.
Hosmer to W.
C. Van Horne
June 2, 1888.

(Contd.)

No. 21

EXHIBIT 18
Letter, Sanford
Fleming to Chas.
R. Hosmer
June 7, 1888.

RECORD
 —
In the
Exchequer Court
of Canada

—
 No. 21
 EXHIBIT 18
 Letter, Sanford
 Fleming to Chas.
 R. Hosmer
 June 7, 1888.

(Contd.)
 No. 22
 EXHIBIT 19
 Letter, Sanford
 Fleming to Chas.
 R. Hosmer
 June 14, 1888.

Let me know if you could connect your wire with Fredericton when Owen Jones arrives. Lady Tillie the Governor's wife, is his wife's sister and it would be very nice if you could bring them together after a long absence.

I fancy this is impracticable as the Western Union come into New Brunswick.

Yours truly,
 (Sgd) Sanford Fleming.

EXHIBIT 19—

No. 22

10

PRIVATE

OTTAWA 14 June 1888.

My dear Mr. Hosmer:—

I have some valuable information today since I telegraphed you. Soon after I saw you in Montreal I called on Mr. Sedgwick, the Deputy Minister of Justice & explained to him our grand scheme to get a line from England to Australia through Canada without being in any way dependant on a foreign Company. I wanted him to get exact information about the alleged monopoly of the Western Union Coy & showed him that if it existed the public exigencies would require it to be broken. 20

He promised to find out all about it. The Solicitor of the Western Union Coy in Halifax was a particular friend of his, and he would at once write.

I have the reply before me I would send it but I want to use it when Schreiber's away.

The long & short of it is the Company's own solicitor has come to the conclusion that they cannot claim a monopoly and he has so advised them.

Mr. Sedgwick adds "You may take it for granted that he is correct as to any monopoly in Telegraphs existing in Nova Scotia." 30

I will see Schreiber' & say to him we want the right to use the right of way of the Intercolonial Railway for erecting a telegraph to Halifax & Canso.

Yours truly,
 (Sgd) Sanford Fleming.

My book of "franks" is nearly done please send me another. S.F.

No. 23

EXHIBIT 20—

Telegram.

35 WA AJ 101 D. H. FRANK

2.43

Ottawa, Ont.

C. R. Hosmer,

Montl.

16 June 1888.

RECORD

*In the
Exchequer Court
of Canada*

No. 23

EXHIBIT 20
Telegram, San-
ford Fleming to
C. R. Hosmer,
June 16, 1888.

No. 24

EXHIBIT 21
Telegram, W. C.
Van Horne to C.
R. Hosmer
June 17, 1888.

No. 25

EXHIBIT 22
Letter, Chas. R.
Hosmer to
Collingwood
Schreiber
June 18, 1888.

10 There are four different contracts giving rights to the Western
Union viz. First April 8, 1862. With Nova Scotia Gov't perpetual, second
9th Sept. 1869 G.T.R. Point Levis to Riv. du Loup third 22nd Sept. 1870
Canadian Government Riv du Loup to Halifax fourth 22nd June 1880
Cape Breton Railway Co. New Glasgow to Canso. These rights are on
the right of way only. I cannot find they are exclusive. Would you like
copies of these contracts—Schreiber disposed to recommend granting
permission to use right of way subject to any rights the Western Union
may have acquired. This would enable you to construct telegraph &
fight it out in the courts afterward if necessary. It seems to me if there
be doubt in any case the telegraph could be erected along the railway
20 fences so as to be theoretically outside the right of way. In some cases
you might have to arrange with the farmer but this would be an alterna-
tive solution of the whole difficulty which would be indisputable
Schreiber thoroughly agrees with this idea.

(Sgd) Sanford Fleming.

No. 24

EXHIBIT 21—

Telegram

C M. D.H.
3.40 a.

17/6-1888.

30

C. R. Hosmer.

Get permission & we will fight them inside the fences.

W. C. VANHORNE.

No. 25

EXHIBIT 22—

June 18th, 1888

Collingwood Schreiber, Esq.,
Genl. Mgr. Govt. Ry's.,
Ottawa, Ont.

Dear Sir,

40 In reply to your favor of the 9th ulto with reference to telegraph
lines on the Cape Breton Ry., between the Straits of Canso and Sydney,
I would say that I have neglected replying to the same waiting the deci-

RECORD

In the
Exchequer Court
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No. 25

EXHIBIT 22
Letter, Chas R.
Hosmer to
Collingwood
Schreiber
June 18, 1888.

(Contd.)

No. 26

EXHIBIT 23
Letter, Robt.
Sedgewick to A.
P. Bradley
July 9, 1888.

sion of the Government with reference to our building along the Inter-colonial Railway.

I hope you will keep the matter open until this is settled, as we will altogether likely want to extend our lines to Sydney.

Yours truly,

(Sgd.) Chas R. Hosmer,
Manager Tghs.

No. 26

EXHIBIT 23—

A. P. Bradley, Esq.,
Secretary,
Dept. of Railways & Canals.

July 9th, 1888.

10

Sir,
I have the honour to acknowledge the receipt of your communication of the 23rd ultimo, respecting an applicant made by the Canadian Pacific Railway Company for leave to erect a line of Telegraph on the Intercolonial Railway between St. John and Halifax, and enclosing the following agreements:

1. Between the New Brunswick Electric Telegraph Company and the Province of New Brunswick, dated 1st May, 1859.
2. Between the American Telegraph Company and the Province of Nova Scotia, dated 8th April, 1862.
3. An agreement with the Montreal Telegraph Company and the Dominion Government, dated 22nd September, 1870, and
4. An agreement between the Western Union Telegraph Company and the Halifax and Cape Breton Coal and Railway Company, dated 22nd June 1880.

And submitting four questions in respect of which the opinion of this Department is asked.

30

I have now by direction to state what would appear to be the correct views in respect of the several questions:

1. The Government by its agreement with the Montreal Telegraph Co., dated 22nd Sept. 1870, has contracted itself out of power to grant the application of the Canadian Pacific Railway without first exercising its option of purchase under that agreement.
2. Should the concession be made in spite of this contract, the Montreal Telegraph Company, or its assigns, would be entitled to damages from the government. None of the other Companies whose names you have mentioned would be entitled to damages, the Montreal Telegraph

RECORD

*In the
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EXHIBIT 23
Letter, Robt.
Sedgewick to A.
P. Bradley
July 9, 1888.
(Contd.)

Company line having exclusive rights between St. John and Halifax on the Intercolonial Railway. In addition to that Company's right to damages from the government by virtue of the contract it would also be entitled to obtain an injunction against the Canadian Pacific Ry. Company, or any other Company or individual that would attempt to interfere in any way with the rights which it became entitled to upon the execution of the agreement referred. This opinion, however, is given subject to this proviso that the Montreal Telegraph Company or its assigns, have not in any way been guilty of a breach of the agreement justifying the government in treating it at an end.

10 3. If the Montreal Telegraph Company (or its assigns) could be got to give its consent to the application of the Canadian Pacific Railway Company then there would be no legal objection to granting it. The advisability of granting it is a matter of policy and not of law. All legal objections being out of the way and should it be deemed proper in the public interest that the application should be favourably considered, I would suggest that the government should intimate to the Company that its option of purchase would be exercised in the event of consent not being given, but the manner in which you may get rid of the paramount
20 claims of the Western Telegraph Company is also a matter of policy and not of law.

4. You wish to be informed how far the Dominion government is affected by Statute or agreement with respect to the telegraphs on sections of its railway in Nova Scotia other than those covered by the application of the Canadian Pacific Railway. I understand that you refer to what is known as the Western Extension Railway between New Glasgow and the Strait of Canso.

30 By the agreement entered into between the Western Union Telegraph Company and the Halifax & Cape Breton Railway Company, dated 22nd June '80, the Railway Company granted to the Telegraph Company the exclusive right of way for telegraph purposes along their line of railway and its branches, such exclusive right to be enjoyed for twenty-five years from the 1st June, 1880.

40 Under the provisions of Chapter 21 of the Acts of 1883 (N.S.) that railway became vested in the government of Nova Scotia, and by Sec. 3 of the Act mentioned it was provided that the said railway and property and all rights, powers and privileges, advantages and authority possessed by the Company should be transferred to and vested in the government of Nova Scotia and that no then existing or former claim, debt or judgment, lien encumbrance, easement or obligation of any kind or description should prevail against the said railways or property.

By Chapter 1 of the Acts of 1884 (N.S.) The Nova Scotia government transferred the road to the government of Canada that government accepting it pursuant to the provisions of Ch. of the Statutes of 1884 (Canada) and taking such property and rights in the road as the government of Nova Scotia then possessed.

RECORD

*In the
Exchequer Court
of Canada*

No. 26

EXHIBIT 23

Letter, Robt.
Sedgewick to A.
P. Bradley

July 9, 1888.

(Contd.)

No. 27

EXHIBIT 24

Letter, Sanford
Fleming to Chas.
R. Hosmer

July 9, 1888.

It would appear by these facts that the Dominion Government has the following status:

(a) The government are not directly bound by the contract between the two companies above referred to and no action could under any circumstances be brought by the Western Union Telegraph Company against it based upon the contract.

(b) It is exceedingly doubtful whether the provisions of Sec. 3 of the Acts of 1883 are sufficiently wide to destroy the vested rights of the Telegraph Company under the agreement.

This section would be most strictly construed as against the government inasmuch as it purports to destroy private and vested rights, and a Court would be astute in seeking for an interpretation which would maintain the Company in the enjoyment of its rights.

I return the papers other than the agreement with the Montreal Telegraph Company which I sent to you some time ago.

I am, Sir,

Your obedient servant,
(Sgd.) ROBT. SEDGEWICK,
D. M. J.

No. 27

20

EXHIBIT 24—

Ottawa, 9th July 1888.

Dear Mr. Hosmer:

I find Mr. Sedgewick (I think that is the name) Deputy, Department Minister has a desire to take his holidays in the west. He has a pass to Port Arthur. Try if you can get it extended to British Columbia and include his wife in it and telegraph me if you succeed. As I have learned he goes off on Wednesday evening.

He read his report. It is a long document. He goes fully into the matter and practically recommends that the Govt. should exercise the right of buying out the Western Union between St. John and Halifax if they decline to allow the C.P.R. to share the right of way with them. The plan is to get either their consent or refusal. If the latter then the Govt. can be influenced under the report referred to to exercise the right of taking possession. If they consent you must manage in the deal to get the right to go to Canso as well as Halifax. From New Glasgow to Canso the matter is on a different footing and more difficult to reach.

In the event of the Govt. taking possession they would probably put both companies and all companies on the same footing between St. John and Halifax or other sections of the Intercolonial. I expect to hear from Jones San today.

Yours truly,
Sgd. Sanford Fleming.

EXHIBIT 25—

No. 28

July 11 1888.

Private.
The Hon. J. H. Pope,
Cookshire.

RECORD
—
In the
Exchequer Court
of Canada
—

No. 28

EXHIBIT 25
Letter, Chas. R.
Hosmer to The
Hon. J. H. Pope
July 11, 1888.

Dear Sir:

I have just seen Sir George to whom I have explained the position with reference to telegraph privileges on the Intercolonial Ry. between St. John N.B. and Halifax N.S. and he has advised my writing to you and I do so at his request;

I saw Mr. Sedgwick, Deputy Minister of Justice, here last night, and he advises that we should make application to the Western Union Telegraph Co. for permission and in case of their refusal that you should then intimate to them that the Government would exercise the option they have and take over the Western Union lines on the Intercolonial Railway, between St. John NB. and Halifax. All this, however, would result in a great deal of delay, and as there is not a moment to be lost, if we are to construct our line this year, we hope that the Government will adhere to their first ideas, i.e. to grant us the privilege to build on the Intercolonial Ry. subject to the existing rights of other companies. If the Government would grant us this privilege, we would undertake to fight it out with the Western Union Co. as we feel satisfied that they cannot maintain their exclusive privileges.

Sir George hopes that you will take the matter up as soon as possible as it is very important to our telegraph interests that we should reach Halifax this fall.

Yours truly,
Chas. R. Hosmer

No. 29
EXHIBIT 26
Letter, C. Drinkwater to A. P. Bradley
August 15, 1888.

30 EXHIBIT 26—

No. 29

Aug 15th 1888

Dear Bradley:

Can you send me copies of the contracts between the Government and the Western Union and Montreal Telegraph Companies? I want to look them over in connection with our application for permission to erect our wires along the Intercolonial from St. John to Halifax.

I will apply for them officially if you like, but as the copies will not be used in any way except for our private information this may not be necessary. They have probably been published in some blue book but not having complete sets of these I am unable to find them.

Yours very truly,
(Sgd) C. Drinkwater.

A. P. Bradley, Esq.,
Secy., Dept. of Railways,
Ottawa.

RECORD

—
In the
Exchequer Court
of Canada

—
 No. 30
 EXHIBIT 27
 Letter, Geo. M.
 Clark to the
 Hon. J. H. Pope
 August 16, 1888.

No. 31
 EXHIBIT 28
 Letter, Geo. M.
 Clark to Chas.
 Drinkwater
 August 22, 1888.

No. 32
 EXHIBIT 29
 Letter, Geo. M.
 Clark to A. P.
 Bradley
 August 30, 1888.

No. 30

16th August 1888

EXHIBIT 27—

Dear Mr. Pope.

You mentioned the other evening that the Department of Justice gave you the opinion that the existing agreement with the Telegraph Company about the erection of poles &c. over the line between St. John and Halifax would prevent your allowing the C.P.R. to put up a telegraph line there.

If you have no objection I should be glad if you would instruct Mr. Bradley to send to our Secretary Mr. Drinkwater, a copy of that agreement 10 and of the opinion also, if it is in writing.

Yours faithfully,

Geo. M. Clark

Hon. J. H. Pope,
 Cookshire, Que.

No. 31

EXHIBIT 28—

Encls.

22nd August 1888.

Dear Mr. Drinkwater—

On the 16th instant I wrote Mr. Pope asking him to instruct the Secretary of his Department to forward to you the agreement between the railway and the Telegraph Company in regard to the line between St. John and Halifax, and he now writes me that he has done this. 20

When he was last in Montreal I learnt from him that he had got an opinion from the Department of Justice to the effect that this agreement would prevent the Government giving us the rights which we were asking for, and in my letter I also asked him to forward a copy of this opinion if there was no objection. In his reply to my letter he does not say anything about this opinion, but perhaps it has been forwarded to you. 30

Please let me see whatever you have got from Mr. Bradley about this affair.

Yours very truly,

Geo. M. Clark

Chas. Drinkwater, Esq.,
 Secretary C.P.R. Co.
 Montreal.

No. 32

30th August 1888

EXHIBIT 29—

Sir,

I have the honor to ask that the Canadian Pacific Railway Company be permitted to erect poles and construct a telegraph line along the Intercolonial Railway from Moncton to Halifax, subject to such conditions as may be considered necessary and proper. 40

I am informed that the intention of our Company to ask for this privilege has been intimated verbally to the Minister of Railways and Canals, and that a doubt has arisen whether an agreement heretofore made between the Honourable the Minister of Public Works and the Montreal Telegraph Company under date of 22nd September 1870 is a hindrance to the Government granting the permission I ask for.

Without at present raising the question whether such exclusive rights as are mentioned in that agreement could be legally assured to the Montreal Telegraph Company I wish to point out that any such exclusive rights are not transferable by the terms of the agreement, and also that that Company is not working a line over the portion of the railway to which I refer, but that a foreign corporation (The Western Union Telegraph Company) is doing so.

If it is considered that there may be legal difficulties in the way of granting the permission for which I am applying, I should be glad if I could be informed of them.

I am, Sir,
Your obedient servant,
Geo. M. Clark,
Solr.

20 A. P. Bradley, Esqr.,
Secretary,
Dept. of Railways & Canals,
Ottawa.

RECORD
—
In the
Exchequer Court
of Canada
—
No. 32
EXHIBIT 29
Letter, Geo. M.
Clark to A. P.
Bradley
August 30, 1888.
(Contd.)
No. 33
EXHIBIT 30
Letter, Geo. M.
Clark to the
Hon. J. H. Pope
August 30, 1888.

No. 33

EXHIBIT 30—

30th August /88

Sir,

I have the honor to inform you that the Canadian Pacific Railway Company has, under clause 16 of its charter, arranged to construct and acquire a line of telegraph connecting St. John, in New Brunswick, with its line of railway, and to ask that the Government will permit the Company to erect poles and construct a telegraph line along the Dominion railway from St. John to Moncton, under such conditions as may be considered proper and necessary.

I am informed that there is no agreement between the Government and any other Company in regard to this portion of the railway which can raise any doubt about the Government being in a position to grant this permission.

I am, Sir,
Your obedient servant,
Geo. M. Clark,
Solr.

40 The Hon. J. H. Pope
Minister of Railways & Canals
Ottawa.

RECORD

No. 34

—
In the
Exchequer Court
of Canada
 —

EXHIBIT 31—

Private

Montreal, 30th August 1888.

Dear Mr. Pope,

No. 34
 EXHIBIT 31
 Letter, Geo. M.
 Clark to the
 Hon. J. H. Pope
 August 30, 1888.

I am sending you some official letters asking for the permission of the Government to erect a telegraph line along the Intercolonial from St. John to Halifax.

When I last spoke to you on this subject you thought there had been an opinion that some existing agreement made it doubtful whether you could give us this right. There appears to be no agreement giving exclusive rights to anyone for the portion between St. John and Moncton, as that was not a branch of the Intercolonial at the time the agreement of 22nd September 1870 was made with the Montreal Telegraph Company, so I have made a separate application as to that portion of the line. 10

There was an agreement made 1st May 1859 between The New Brunswick Commissioner of Railways and the New Brunswick Electric Telegraph Company, about the line between St. John and Shediac on the European and North American Railway, but that did not profess to give any exclusive rights.

I make another application for the remainder, i.e. between Moncton and Halifax. This is covered by that agreement of 22nd September 1870, but the Montreal Telegraph Company is not working it and never has been: The exclusive rights professed to be given to that Company are not transferable by its terms and the line is really worked entirely by the Western Union, an American Company with its head office in the States—a head office to which they can order all the original messages to be sent—altho' this portion of the line is one over which most confidential Government messages must be frequently sent concerning fishing vessels, seizures, &c, &c, and is one above all others that ought not to be under the control of a foreign corporation. 30

As far as I can see on a superficial view of the matter, there is no legal or other ground on which the Western Union can hold the exclusive right to erect or work a telegraph line over this bit of road; but I confess I do not know very well either the grounds taken by the other side or the facts on which their views are founded.

If any legal opinion has been given sustaining the contention of this American Corporation that all other companies must be excluded, I should be obliged if I could learn the reasoning of it so as to see if I could not point out something in favour of a different view.

The effect of grants of similar exclusive rights to the Western Union has been discussed by the American Courts in several cases and in every instance, I believe, the grant has been declared invalid and of 40

no avail. At all events, if there is no objection I should be glad to know what is said against the right of the Government to give the permission asked for.

Yours very sincerely,
Geo. M. Clark.

The Hon. J. H. Pope,
Minister of Railways & Canals,
Ottawa.

RECORD
—
*In the
Exchequer Court
of Canada*

No. 34
EXHIBIT 31
Letter, Geo. M.
Clark to the
Hon. J. H. Pope
August 30, 1888.
(Contd.)

No. 35
EXHIBIT 32
Letter, Geo. M.
Clark to Sir
John A. Mac-
donald
August 30, 1888.

No. 36
EXHIBIT 33
Letter, Colling-
wood Schreiber
to Chas. R.
Hosmer
June 21, 1889.

No. 35

10 EXHIBIT 32—

Montreal, 30th Augt. 1888.

Private

Dear Sir John,

Accompanying this I send, addressed to Mr. Pope, three letters, two official and one unofficial, on the subject of allowing the C.P.R. to extend its telegraph line over the Intercolonial between St. John and Halifax.

I shall be glad if you will read them before putting them in his hands. In fact I send them to you so that you may decide whether he is well enough to be bothered with such subjects; and if not, then that you may
20 return them to me or refer them to some one else as you think proper.

It does seem desirable that an arrangement by which an American corporation can have all your original messages sent to a head office in the States should be ended as soon as it can be legally done, especially when the line is that which must be first employed for communications about matters happening on the fishing grounds off the Maritime provinces.

Yours faithfully

Geo. M. Clark

Rt. Hon. Sir John A. MacDonald, G.C.B.
Ottawa

30

No. 36

EXHIBIT 33—

Ottawa 21st June 1889.

Dear Sir:

In reply to your letter of yesterday's date respecting the construction of your line of telegraph between St. John and Halifax and Truro and New Glasgow outside and near to the I. C. R. fence I desire to say we will grant you all reasonable facilities both as regards the distributing of poles and other materials, the movement of your boarding and supply cars and the running of hand cars. I have instructed Mr. Pottinger, Chief Supt. of the I. C. R. with whom you will make all arrange-

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RECORD
—
In the
Exchequer Court
of Canada
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No. 36
EXHIBIT 33
Letter, Colling-
wood Schreiber
to Chas. R.
Hosmer
June 21, 1889.
(Contd.)

ments, and it would be well that you should arrange with him, before engaging in the work, as to the charges to be made for these several services.

Yours truly,
Sgd. Collingwood Schreiber

Chas R. Hosmer, Esq.,
Montreal.

No. 37

EXHIBIT 34—

July 29th 1889. 10

J. F. Richardson, Esq.,
St. John N.B.

Dear Sir:

No. 37
EXHIBIT 34
Letter, Chas. R.
Hosmer to J. F.
Richardson
July 29, 1889.

As matters have now shaped themselves I imagine you will have to take charge of the construction and put somebody else at the right of way. I think that Watson, about whom I wrote you the other day, might be of service between New Glasgow and Truro, and if you also think so I will send him down. You might spare a couple of days and see him started, and he might secure the right of way between these two points. It is very important that this ground should be covered as quickly as possible, so that when we get Ahearn and Soper's men we will have the road clear for them to go to work. If we use their gang I presume we will have to get boarding cars. I wonder if we can get these from the I.C.R. Co. or if we will have to send them from here. Perhaps Mr. Cram will help us out.

Telegraph me on receipt of this about Watson.

Yours truly,
Sgd. Chas. R. Hosmer
Manager Telegraphs.

No. 38
EXHIBIT 35
Letter, J. F.
Richardson to C.
R. Hosmer
August 13, 1889.

No. 38

EXHIBIT 35—

30

CANADIAN PACIFIC RAILWAY CO'S TELEGRAPH
Construction Department.

St. John, N.B. Aug. 13, 1889.

C. R. Hosmer,
Manager,
Montreal.

Dear Sir:—

The two thousand dollars can be transferred to my account, as I have received it all except \$400.00 which Mr. Williams will give me a cheque for, so soon as he is able to be seen. This is the critical week; but the Dr. says he is doing well. Work going on as fast as possible. The delay is

caused by both the I.C.R. and N.B.R. being short of flat cars. I have poles enough on the ground to start second gang today and third gang on Thursday. The three cars material (insulators, pins and arms) have arrived.

RECORD
—
In the
Exchequer Court
of Canada
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No. 38
EXHIBIT 35
Letter, J. F.
Richardson to C.
R. Hosmer
August 13, 1889.

No. 39
EXHIBIT 36
Letter, Chas. R.
Hosmer to J. F.
Richardson.
Sept. 10, 1889.

No. 40
EXHIBIT 37
Letter, Chas. R.
Hosmer to J. F.
Richardson
Sept. 17, 1889.

The right of way St. John to Moncton over 300 properties and between 7 and 10 miles highway is clear excepting 10 or 12 farmers all except three are on the Moncton end, holding out for cash. As there is no injunction could we not put our poles on the railway side of the fence on the quiet through some of these backwoods places, without any serious
10 consequences? In many places they would not be noticed—Will arrange to string 3rd wire to Vanceboro as soon as other work well started.

Yours respectfully,
(Sgd) J. F. Richardson.

No. 39

Sept. 10th, 1889.

EXHIBIT 36—

J. F. Richardson, Esq.,
St. John, N. B.

Dear Sir,

20 I am very glad to get yours of the 8th inst. giving particulars of the work, and hope that by the time this reaches you you will be over the worst sections, and have the work well under way, so that the three gangs between Moncton and St. John will average at least a mile and a half each per day.

I remember McDonald in the Dominion. I think his name was Hugh, and if it is the man, I think he will bear stirring up. Keep on friendly terms with Wetmore and the W. U. Co., as I am delighted to see they have not, so far, thrown any obstructions in our way, as I was afraid they might.

30 I will try and get down to see you early in October. You had better send me a list of the tools received from Ahearn & Soper, so that we may pay them for them. The wire should be here by the first of October at the latest.

Yours truly,
(Sgd) Chas. R. Hosmer,
Manager Telegraphs.

No. 40

Sept. 17th 1889

EXHIBIT 37—

J. F. Richardson, Esq.,
St. John NB.

40 Dear Sir:

Yours of the 15th inst. with reference to parties kicking about right of way between Bloomfield and Norton. I think you did well to use the

RECORD
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In the
Exchequer Court
of Canada
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 No. 40
 EXHIBIT 37
 Letter, Chas. R.
 Hosmer to J. F.
 Richarson
 Sept. 17, 1889.
 (Contd.)

highway. Take particular care that that portion of the line that cannot be seen from the Railroad is more than ordinarily well protected.

Taking it all in all, I think that you are getting along marvellously well with the right of way question, and presume that this is largely owing to the fact of your having established friendly relations with the Western Union and railway people.

Yours truly,
 Sgd. Chas. R. Hosmer
 Manager of Telegraphs.

No. 41 10

Sept. 18th 1889.

No. 41
 EXHIBIT 38
 Letter, Chas. R.
 Hosmer to A. P.
 Bradley
 Sept. 18, 1889.

EXHIBIT 38—
 A. P. Bradley, Esq.,
 Secy. Dept. of Railways & Canals.
 Ottawa.

Dear Sir:

It is altogether likely that the Canadian Pacific Ry. Co. will want to extend their telegraph system to Sydney Cape Breton, early next year, and we sincerely hope that the Government will not give to the Western Union Telegraph Co. exclusive telegraph privileges along the Cape Bre- 20 ton Railroad. You are I presume aware that owing to the exclusive contracts on the Intercolonial Railway our Company has been delayed in the construction of its lines, and we are now obliged to build them outside of the Railway right of way, purchasing from the farmers the right to erect our poles, which is not only a very great additional expense, but causes very great delay.

I have the honor dear Sir, to remain,

Yours very truly,
 Sgd. Chas. R. Hosmer,
 Manager Telegraphs. 30

No. 42

EXHIBIT 39—
 No. 35601
 Subj. 900
 Ref. 53128.

DEPARTMENT OF RAILWAYS AND CANALS
 CANADA

OTTAWA, Sept. 24th 1889

Sir,

Under date the 18th instant Mr. Charles R. Hosmer the Manager of the Telegraph Department of the Canadian Pacific Railway has address-

ed a letter to this office expressing the hope that exclusive telegraph privileges along the Cape Breton Railroad will not be conceded by the Government to the Western Union Telegraph Company.

In reply I am directed to say that ~~this being a Government Road, built in the public interest and from public funds it would, it is considered, be contrary to both expediency and propriety that such exclusive privileges should be granted to any telegraph company and it is therefore not intended that the Western Union Company should have a monopoly in the matter.~~

I am Sir,

Your obedient servant.

(Sgd) A. P. Bradley
Secretary.

C. Drinkwater Esq:
Secy. Canadian Pacific Ry. Co.

C. R. Hosmer, Esq.
To note and return.
C. D. 26/9/89.

RECORD
—
In the
Exchequer Court
of Canada

No. 42
EXHIBIT 39
Letter, A. P.
Bradley to C.
Drinkwater
Sept. 24, 1889.

(Contd.)

No. 43
EXHIBIT 39-A
Memorandum
attached to
Exhibit 39

No. 43.

EXHIBIT 39a—

21664

7720

C. Drinkwater Esq.,
Secretary.

Noted. This places the matter in the position we wanted.

27/9/89.

C. R. Hosmer,
Mgr. Tghs. C.

RECORD

—
In the
Exchequer Court
of Canada
 —

No. 8

EXHIBIT 5
 Letter, Jno. F.
 Richardson to C.
 R. Hosmer
 Sept. 28, 1889.

EXHIBIT 5—

No. 8

From files of Telegraph Department.

C.P.R. TELEGRAPH CO.
 Construction Department

St. John N.B. Sept. 28 1889.

C. R. Hosmer, Esq.,
 Manager,
 Montreal.

Dear Sir:

10

Replying to your telegrams and letter of the 27th inst. Before starting May stringing wire at Vanceboro, we took into consideration all the points you mention; and if I do not make it plain to you by letter, think I could if you were here that under the circumstances it was the only course to take. Had long poles not met with an accident in transit, they would have arrived before May was ready for them. While waiting he started building to Quispamsis 12 miles (where Mullin commenced) was stopped by W.U. as you know; but went ahead, leaving a gap of one mile. When arrangement was made with W.U. in reference to location of poles May was present and understood just what was required there, 20 as well as through portion of city. Mr. Clinch was satisfied, when I told him May would do the work. When May reached Quispamsis he moved back to St. John (nearest available point to gap) an hour's run and three dollars expense. By this time the Supt. of Streets in City had called at the office several times about unsafe condition of streets where holes were blasted and warning us of possible damages. Mr. Snider explained cause of delay and referred him to me. I told him that we kept holes covered and expected poles every day. He has watched for arrival of poles; but is very friendly and I hope to give him no reason to be otherwise.

The I. C. R. are still very short of flat cars on account of hauling 30 steel for Ship Railway and their own road. During one week shippers of poles were obliged to load gondolas to keep us supplied. Had the five gangs been setting poles this past week it would have been close work keeping gangs supplied to advantage. As it is supply is well in advance of the work.

Now on account of May being perfectly familiar with the running of trains on the N. B. Ry. and the requirements in the city, he can certainly work to better advantage and make faster time than Dolbec. If you intend Dolbec to continue on with us the combined delay to the two gangs in getting to work East of Moncton will be less as we have planned 40 it.

I was at Vanceboro Friday night. Was surprised to see Dolbec there. He said he came to see line. His men were 10 miles west of Mattawamkeag then. May was at Magaguadavie; having strung 75 miles in 7 days with two regular climbers away sick. He will reach Vanceboro

Monday night and be in St. John on Tuesday. Unless you still think that he should go east at once, will have him erect city poles which will take three days and then move him to Sackville where he will have an opportunity to show what he can do.

Poles are all up between St. John and Moncton. Johnstone will finish city work at Moncton about Wednesday. Allan moved Campbell to Spring Hill today (Saturday) and will move Mullin to Humphrys on Monday. MacDonald is holding his own. He is now 20 miles from Truro,

- 10 The I.C.R. Ry. being so low in supplying cars to shippers and to reload city poles, was whole cause of this difficulty. I know now how much the Ry. can be depended upon, and trust that I shall please you better on the remainder of the work.

Yours respectfully,

Jno. F. Richardson.

No. 309

EXHIBIT 299—

No. 53261
28 Sept. 1889

- 20 Certified copy of a Report of a Committee of the Hon. the Privy Council, approved by His Excellency the Governor General in Council on the 28th Sept. 1889.
35493

- 30 On a memo: dated 9th September 1889, from the Minister of Railways and Canals submitting herewith a draft of agreement proposed to be made between the Government and the Western Union Telegraph Company for the establishment, maintenance and operation of a line of Telegraph along the Eastern Extension Railway between New Glasgow and Port Mulgrave, and along the Cape Breton Railway between Point Tupper and Leaches Creek, Leaches Creek and North Sydney and Leaches Creek and Sydney.

The Minister recommends that it be approved, and that he be authorized to sign the same on behalf of the Government.

The Committee submits the same for your Excellency's approval.

(SGD) John J. McGee
Clerk of the Privy Council.

To the Honourable
The Minister of Railways and Canals.

RECORD
—
*In the
Exchequer Court
of Canada*

—
No. 8
EXHIBIT 5
Letter, Jno. F.
Richardson to C.
R. Hosmer
Sept. 28, 1889.
(Contd.)
No. 309
EXHIBIT 299
Order-in-
Council
Sept. 28, 1889.

RECORD

No. 44

In the
Exchequer Court
of Canada

EXHIBIT 40—

Oct. 7th 1889.

J. F. Richardson, Esq.
St. John N.B.

No. 44

Dear Sir:

EXHIBIT 40

Letter, Chas. R.
Hosmer to J. F.
Richardson
Oct. 7, 1889.

Replying to yours of the 5th inst. I think that you got out of your difficulty with the authorities with reference to the dynamite business very satisfactorily. It seems strange however that the I. C. R. people did not give you a hint so as to enable you to put matters right as they must have known that if you violated any law or rules of the Company it was done unwittingly. I note what you say about the use of the I. C. R. right of way. I do not think it would be wise to stir this matter up as we are I think getting along very smoothly and with very much less friction than I anticipated, and I therefore would not like to do anything that would awaken the hostility of either the Railway Company or the Western Union Telegraph Company.

No. 47

EXHIBIT 43

Letter, Jno. F.
Richardson to C.
R. Hosmer
Oct. 11, 1889.

Yours truly,

Sgd. Chas. R. Hosmer
Manager Telegraphs.

20

No. 47

EXHIBIT 43—

C.P.R. TELEGRAPHS
Construction Department

St. John Oct. 11 1889.

C. R. Hosmer, Esq.,
Manager,
Montreal.

Dear Sir:

Replying to your letter of the 9th inst. I agree with your estimate that poles will be erected Nov. 9th St. John to New Glasgow. If wire arrives by 1st November (as I wrote you before) we shall have wire working to New Glasgow before the end of that month; and Halifax open before Christmas. This of course barring serious delays. It is next to impossible to get cars to load poles, and if we do not follow them as well as boarding cars and cars of material, they are liable to be set off on a siding before reaching destination. The right of way is most irregular. Although outside of barb wire fence they now claim we are on their property in many places and have notified me to move poles at once. I shall call upon Mr. Pottinger first of next week to find out where we are on their property and try to arrange removal when wire gangs are on spot instead of sending gang back now. Mr. Pottinger says he can only

act upon instructions received from Mr. Schreiber in this matter. If some influence could be brought to bear at Ottawa so that Mr. Pottinger would be instructed to deal leniently with us so long as we built outside their fence it would help us wonderfully. Otherwise we shall experience serious difficulties and heavy expense. The Ry. people here could not be more stirred up than they are at present. I do not think the W. U. will trouble the Ry. or us; Mr. Clinch voluntarily told me they would not interfere with us east of St. John so long as we kept clear of their wires. I am very anxious for you to come over the line that you may
10 see not only what we have had but will have to contend with.

Yours respectfully,

Jno. F. Richardson

No. 45

EXHIBIT 41—

CANADIAN PACIFIC RAILWAY CO'S TELEGRAPH.

Construction Department.

Saint John, N.B. Oct. 13th, 1889.

C. R. Hosmer, Esq.,
Manager, Montreal.

20 Dear Sir:—

The Intercolonial are now furnishing cars more promptly. I was much alarmed last week as May's gang which arrived at Sackville Tuesday evening (the 8th) was delayed one day on that account. They distributed poles in the rain on the 10th. on Friday the 11th, without any warning the I.C.R. section foreman notified them not to build within 55 feet from centre of track. This brings line in some places 6 to 10 feet from railway fence, along which Mr. Snider had secured right of way. Farmers would not allow men to build so far from fence. I reached there Friday night and upon promise of settlement, men were allowed to
30 resume work Saturday morning. We shall have to pay for right of way where fence is not on Railway limits. I notified Mr. Snider who will go there on Monday. He says he has no more time to spend on right of way. Shall I bring Watson back? He is now working between Truro and Halifax.

Yours respectfully,

(Sgd.) J. F. Richardson.

RECORD
—
*In the
Exchequer Court
of Canada*

—
No. 47
EXHIBIT 43
Letter Jno. F.
Richardson to C.
R. Hosmer
Oct. 11, 1889.
(Contd.)

—
No. 45
EXHIBIT 41
Letter, J. F.
Richardson to C.
R. Hosmer
Oct. 13, 1889.

RECORD

No. 46

—
In the
Exchequer Court
of Canada
 —

EXHIBIT 42—

Oct. 14th 1889

J. F. Richardson, Esq.,
 St. John N.B.

No. 46

Dear Sir:

EXHIBIT 42

Letter, Chas. R.
 Hosmer to J. F.
 Richardson
 Oct. 14, 1889.

Replying to yours of the 11th inst. I might say privately that I have brought the matter to Mr. Van Horne's attention and have asked him to use his influence at Ottawa to try and get the Government not to disturb any poles that are now erected. In the meantime do not move any 10 of the poles and be careful not to let Mr. Pottinger or any of the local officials know that we are appealing to Ottawa as it might irritate them and result in other obstacles being thrown in our way.

No. 48

EXHIBIT 44

Letter, Chas. R.
 Hosmer to W.
 C. Van Horne
 Oct. 14, 1889.

Yours truly,

Sgd. Chas. R. Hosmer
 Manager Telegraphs.

No. 48

EXHIBIT 44—

Oct. 14th 1889.

W. C. Van Horne, Esq.
 President.

20

Dear Sir:

We are making very fair progress with the construction of our line outside of the Railway fences on the I.C.R. but are experiencing some difficulty on account of the I.C.R. in a number of places claiming to own the right of way outside of the fence. In erecting our poles we of course assume that the Railway fence marks the limit of the Railway property and place our poles immediately outside of it. In going over the route the Railway people find that we have a number of poles here and there outside the fence which they now ask us to move, and which would not only 30 cause us considerable expense, but also throw our telegraph poles out of line. As neither the Western Union nor the G. N. R. Telegraph Companies have objected to this, I should think the Railway Co. should not do so. Even if these Telegraph Companies objected the Railway Co. would be justified in assuming that their contract with them only covered the right of way between the fence and could not be interpreted to also include such real estate as they might own either outside the fence or elsewhere.

Will you please take this matter up with the authorities at Ottawa and have them issue instructions to the I. C. R. officials at Moncton to 40 deal as liberally with our company as possible?

Sgd. Chas. R. Hosmer,
 Manager Telegraphs.

RECORD

—
*In the**Exchequer Court
of Canada*—
No. 299PART OF
EXHIBIT 290Agreement
between The
Western Union
Telegraph
Company and
Her Majesty
Queen Victoria

Oct. 16, 1889.

PART OF SCHEDULE D

No. 299

THIS AGREEMENT, made and entered into, in duplicate, this 16th day of October, in the year of Our Lord one thousand eight hundred and eighty-nine, by and between The Western Union Telegraph Company (hereinafter throughout called the "Company") of the first part, and Her Majesty Queen Victoria, represented herein by the Minister of Railways and Canals (hereinafter throughout called the "Railway") of the second part.

10

WITNESSETH:

That the parties hereto of the first and second parts, in consideration of the covenants and agreements herein contained, have mutually agreed as follows:

1. The Company shall have the right to establish and maintain one line of Telegraph poles with wires thereon along the Eastern Extension Railway, between New Glasgow and Mulgrave and along the Cape Breton Railway between Point Tupper and Leaches Creek, Leaches Creek and North Sydney and Leaches Creek and Sydney.

20 2. The Company agrees to furnish all poles, wire, insulators and other material and to construct at its own expense a good and substantial line of as many wires as it may deem necessary along said Railway from Point Tupper to Leaches Creek, and from Leaches Creek to North Sydney, and Sydney, and also to keep and maintain in good order and repair all its poles and wires along the said Cape Breton Railway and Eastern Extension Railway. The Company will also furnish the necessary main batteries and local batteries for the successful operation of said lines.

30 3. The Company shall set apart one of its wires along each of said Railways and branches and extensions thereof for the preferential use of the Railway in the transmission of messages on Railway business. And the Company shall set apart an additional wire for the preferential use of the Railway along all portions of the Railway, its extensions and branches, whenever the Railway business shall, in the opinion of the Minister, require two wires.

4. At all times two wires shall be connected with each Railway Telegraph Office, so that should the wire set apart for Railway use fail from any cause there may be another one at hand convenient for use in its stead.

40 5. The wire or wires set apart for the preferential use of the Railway shall be good and well insulated and shall be kept in first-class working order by the Company, unavoidable interruptions excepted, which shall be removed as speedily as practicable.

RECORD
—
In the
Exchequer Court
of Canada
—
No. 299
PART OF
EXHIBIT 290
Agreement
between The
Western Union
Telegraph
Company and
Her Majesty
Queen Victoria
Oct. 16, 1889.
(Contd.)

6. On the wire or wires set apart for the preferential use of the Railway, all messages on the business of the Government Railways shall be sent free by Railway Telegraph Operators between all telegraph offices on said Railways, and when the said wire or wires are interrupted from any cause, said messages shall be filed with the Company and be sent over some other wire or wires of the Company by said Company's operators, free of charge; and the said messages shall have preference on such substituted wire or wires. The wire or wires set apart for the preferential use of the Railway may be used for the Company's commercial business when not in use for Railway business. 10

7. The Company shall keep at its own expense all parts of its line of poles and all the wires thereon in a thorough state of repair and efficiency, including the wire or wires set apart for the preferential use of the Railway.

8. The Company shall furnish and maintain at its own expense in its own offices the main batteries, on the wire or wires set apart for the preferential use of the Railway.

9. The Company shall furnish free of charge to the Railway, materials for the local batteries in the Railway Telegraph Offices.

10. The Company shall furnish free of charge to the Railway the 20 telegraph instruments necessary in the Railway telegraph offices to work the line or lines set apart for the preferential Railway use. The instruments so supplied shall be of the most modern and improved description and such as are used by the Company itself. This shall include the right to the free use by the Railway, of any telegraphic patent rights or new discoveries or inventions owned or controlled by the Company and used in its general telegraph business, or which it may hereafter own, control or use during the term of this contract, so far as the same may be necessary to properly carry on the business of Railway telegraphing on the line of said Railway as provided for herein. 30

11. The Railway shall transmit free all messages on the business of the Government Railways on the wires set apart for said business between all telegraph stations on the line of the Railways covered by this agreement, as hereinbefore provided.

12. The Company shall issue to such Officers and Agents of the Government Railways as may be designated by the Chief Engineer and General Manager of Government Railways, annual franks authorizing the free transmission of messages relating strictly to the business of the Government Railways over all the lines of the Company in the United States and over all the lines of the Company in Canada outside of the 40 Province of Nova Scotia to an amount not exceeding one thousand dollars per annum of Canadian money. The amount shall be ascertained by calculating the tolls on such messages at the regular current commercial day rates of the Company between the points at which said messages

originate and the points to which they may be destined on the line of the Company, and the Railway agrees to pay to the Company one-half of its aforesaid rates on all such messages in excess of such amount; settlements shall be made yearly. It is understood and agreed that the free telegraphic service herein provided for applies only to the transmission of messages concerning the operation and business of the Government Railways, and shall not be extended to any messages for transmission by ocean cable, nor to messages ordering sleeping-car, parlor car or steamer berths, merchandise or accommodations for customers of the Railways, the tolls on which messages should properly be chargeable to such customers.

10 13. The Railway Telegraph Operators shall receive, transmit and deliver any public or commercial business given or offered to them, charging the established traffic rates or tolls of the Company and acting under the Company's rules and regulations, subject to clauses 3, 4, 5 and 6 of this agreement, and shall account to the Company for such business and for the money collected, and shall pay over such money to the Company; but the Railway shall not be held responsible for any money so collected or which should have been collected.

20 14. While the Railway will not be responsible for the acts of the Railway operators in regard to the Company's business, it will require them to observe and carry out its rules and regulations, subject to the other clauses of this agreement, and on application of the Company and on proof of an offence, discipline them, inflicting such punishment as the Railway authorities deem just.

15. The Railway shall supply and pay the operators at office established by the Railway.

30 16. Either party to this agreement shall have the right to establish telegraph offices at any point on the line of Railway, and the Company shall, when called upon to do so by the Minister, connect at its own expense such Railway telegraph offices with the wire or wires of the Company, set apart for Railway business, provided the wire or wires of the Company pass along the Railway at that point.

17. The Railway shall transport free of charge over the Eastern Extension, and Cape Breton Railways and branches and extensions thereof and over the ferry across the Strait of Canso upon application of the Superintendent or other officer of the Company, all persons in the employ of the Company when traveling on the business of the Company.

40 18. The Railway when fully constructed shall transport free of charge over the Eastern Extension, and Cape Breton Railways and branches and extensions thereof, as well as across the Strait of Canso (whenever a car ferry may hereafter be established across said Strait) telegraph poles for the construction, repair and reconstruction of the Company's telegraph lines in Cape Breton and of the Company's telegraph lines

RECORD
 —
In the
Exchequer Court
of Canada
 —
 No. 299
 PART OF
 EXHIBIT 290
 Agreement
 between The
 Western Union
 Telegraph
 Company and
 Her Majesty
 Queen Victoria
 Oct. 16, 1889.
 (Contd.)

RECORD
 —
In the
Exchequer Court
of Canada
 —

No. 299
 PART OF
 EXHIBIT 290
 Agreement
 between The
 Western Union
 Telegraph
 Company and
 Her Majesty
 Queen Victoria
 Oct. 16, 1889.
 (Contd.)

along the Eastern Extension Railway and branches and extensions thereof, and until the establishment of such car ferry the Railway will allow its ferry steamer to tow scows or vessels loaded with such poles by and for the Company across the Strait, the handling, loading and unloading to be done by the Company.

19. The Railway shall transport free of charge over said Eastern Extension and Cape Breton Railways and branches and extensions thereof telegraph wire arms, insulators, materials and supplies and telegraph instruments for the construction, repair, reconstruction and operation of the telegraph lines of the Company along said Railways and branches 10 and extensions thereof and adjacent thereto.

20. The Railway is not to be liable for any loss or damage arising from any injury to the persons in the employ of or to the property belonging to the Company while being carried free over the Railways, under this agreement, no matter whether caused by negligence of the Railway or any of its employees or otherwise, or from any neglect or failure in the transmission, receiving or delivering of messages by the telegraph operators of the Railway for any person doing business with the Company or on account of any other public telegraph business, and the Company shall not be responsible for any loss or damage of any kind arising 20 from or on account of any error, delay, default or failure in the transmission or delivery of messages sent free for the Railway or Government Railway officers and agents under this agreement.

21. The Company shall furnish free of charge blank forms, stationery and books required in connection with the public or commercial telegraph business which may be done for the Company by the Railway operators.

22. The Railway shall have the right at any time during the subsistence of this agreement to erect, equip and maintain at its own expense one wire for the use of the Railway business exclusively upon the 30 Company's poles along all or any portions of the Railway already mentioned, its extensions and branches where the Company may have lines of telegraph, said wire to be placed and maintained in such position on the poles as may be mutually agreed upon.

23. It is mutually understood and agreed that the telegraph lines, poles, wires and fixtures covered by this contract shall form part of the Company's general telegraph system and shall be controlled and regulated by the Company, which shall fix and determine all tariffs for transmission of messages and all connections with other lines and interests, subject to laws relating thereto at any time in force. 40

24. The provisions of this agreement shall extend to the said Eastern Extension and Cape Breton Railways, and to all branches and extensions thereof, now or hereafter constructed, owned or controlled by the Railway, and the provisions of this agreement shall be and continue

in force for and during the term of twenty (20) years from the first (1st) day of July, 1889, and shall continue after the close of said term until the expiration of one year after written notice shall have been given after the close of said term by either party to the other of an intention to terminate the same.

RECORD
In the
Exchequer Court
of Canada

of p 2

No. 299
PART OF
EXHIBIT 290
Agreement
between The
Western Union
Telegraph

me
right
to
Contract

Company and
Her Majesty
Queen Victoria
Oct. 16, 1889.
(Contd.)

25. When this agreement expires, either by lapse of time or pursuant to notice terminating this contract as in the preceding clause stated, the Company shall not be required to remove its poles and wires erected under this agreement from the Railway property, but all other rights
10 herein granted shall thereupon cease and determine.

26. In case of any disagreement concerning the true intent and meaning of any of the provisions of this agreement, the subject of such difference shall be referred to three arbitrators, one to be chosen by each party hereto and the third by the two others so chosen, and the decision of such arbitrators or of a majority of them shall be final and conclusive.

27. The provisions of this agreement shall be binding upon the successors and heirs and assigns of the parties hereto respectively.

In Witness Whereof, the Vice-President and the Secretary of the Company have signed these presents and caused its corporate seal to be
20 affixed hereto, and the Minister of Railways and Canals hath set his hand and caused these presents to be sealed and countersigned by the Secretary of the Department of Railways and Canals.

THE WESTERN UNION TELEGRAPH COMPANY

Signed by the Vice-President and by the Secretary of the Company, the common seal of the Company having been affixed in presence of:

By JOHN VAN HORNE,
Vice-President.

G. W. E. ATKINS.
(Signed)

A. R. BREWER,
Secretary.

30 Signed by the Minister and signed and sealed by the Secretary of the Department of Railways and Canals in the presence of:

JOHN A. McDONALD,
Acting Minister of Railways and
Canals.

H. A. FISSIAULT.

A. P. BRADLEY,
Secretary.

[SEAL]

RECORD

No. 49

In the
Exchequer Court
of Canada

EXHIBIT 45—

October 24th 89.

J. F. Richardson, Esq.,
St. John N.B.

No. 49
EXHIBIT 45
Letter, Chas. R.
Hosmer to J. F.
Richardson
Oct. 24, 1889.

Dear Sir:

I enclose you two telegraph passes for Mr. Pottinger and Mr. Taylor, which you can deliver to them.

Do not move any of the poles you mention without wiring me — I have not yet brought the matter before the Ottawa authorities, and do not want to do so until they absolutely interfere with your work, and refuse to allow you to string the wire.

No. 50
EXHIBIT 46
Letter, Jno. F.
Richardson to C.
R. Hosmer
Nov. 6, 1889.

In my letter to Mr. Schreiber I stated that we intended placing our poles immediately outside the fences. If there is any possibility of trouble you had better only start one wire gang out so that if they were stopped for a few days it would not cause us very great expense.

Yours truly,
Chas. R. Hosmer

No. 50

EXHIBIT 46—

20

CANADIAN PACIFIC RAILWAY CO'S TELEGRAPH.

Saint John, N.B. Nov. 6th, 1889.

C. R. Hosmer, Esq.,
Manager,
Montreal.

Dear Sir:—

Enclosed I send you reports from foreman W. Ending Nov. 2nd. Monday and Tuesday it rained heavily all along line. Some of the gangs are a little mixed on their reports as I went over whole work Monday and Tuesday. Am sorry now that I did not let two gangs commerce at the wire first of last week, as the Ry. laid us out badly in face of their promises to supply cars to load poles. Mullin reset 92 poles. The I. C. R. forced us out from 6 to 8 feet beyond their fence, claiming that as their line. After poles were up farmers made terrible row, also claiming land outside present I. C. R. fence. They gave permission and were still willing that poles be set next to fence but would not have them 6 or 8 feet from fence upon any consideration. Have had poles set close to fence pending settlement of difficulties between I.C.R. and farmers.

Yours respectfully,
(Sgd.) Jno. F. Richardson.

EXHIBIT 47—

No. 51
MEMORANDUM

Nov. 7th, 1889.

Track Office,
Intercolonial Railway,
Moncton, N. B.

10 Mr. Richardson,
Supt. C. P. Telegraphs,
St. John.

Dear Sir:—

You will remove all telegraph poles that may be on I. C. Railway limits between St. John and Painsec before you put your wire on them unless you receive instructions otherwise.

You will please not fail to have this done.

Yours truly,

(Sgd.) I. DeBoo.

RECORD

—
In the
Exchequer Court
of Canada
—

No. 51
EXHIBIT 47
Memorandum,
I. DeBoo to Mr.
Richardson
Nov. 7, 1889.

No. 52
EXHIBIT 48
Letter, J. F.
Richardson to C.
R. Hosmer
Nov. 8, 1889.

EXHIBIT 48—

No. 52

20

CANADIAN PACIFIC RAILWAY CO'S TELEGRAPH.

Construction Department.

Saint John, Nov. 8th, 1889.

C. R. Hosmer, Esq.,
Manager,
Montreal.

Dear Sir:—

30 Enclosed I send you a letter received this morning from I. DeBoo, I.C.R. Trackmaster. This is similar to the one I wrote you about, and may be only to make a show of resistance. Have had no reply to my letter asking what poles they wished moved. According to your instructions I shall continue stringing wire until I am compelled to stop.

Respectfully yours,

(Sgd.) J. F. Richardson.

RECORD

—
In the
Exchequer Court
of Canada

No. 53
EXHIBIT 49
Letter, Chas. R.
Hosmer to J. F.
Richardson
Nov. 11, 1889.

No. 54
EXHIBIT 50
Letter, A. P.
Bradley to R.
Sedgewick
Nov. 15, 1889.

EXHIBIT 49—

No. 53

Nov. 11th 1889.

J. F. Richardson, Esq.,
St. John N.B.

Dear Sir:

I telegraphed you today with reference to the wire stringing and the moving of poles along the I. C. R. I have not seen Mr. Schreiber and do not think it advisable to do so, until you are absolutely stuck. In my arrangements with him I stated that we intended placing our poles immediately outside of the fences and in his reply he acquiesced, as you will see by the copy of his letter herewith attached. 10

I think it would be well for you to take the position that our arrangements for this right of way were made with the Government at Ottawa and that until you get contrary instructions from there through me you are not to move the poles.

Yours truly,
Sgd. Chas. R. Hosmer
Manager Telegraphs.

EXHIBIT 50—

No. 54

20

DEPARTMENT OF RAILWAYS AND CANALS, CANADA
36127

Subj. 964
Ref. 53756

Ottawa, Nov. 15, 1889

Sir:

On the 23rd of June, 1888, a letter was addressed to you from this office with reference to an application made by the Canadian Pacific Railway Company for permission to construct a line of telegraph along the line of the Intercolonial Railway from St. John to Halifax. This letter described the several existing agreements in respect to telegraph construction and requested your opinion as to the power of the Minister to grant the application of the company. 30

On the 9th of July, 1888, you wrote fully, advising to the effect that exclusive rights were possessed by the Montreal Telegraph Company between the points named, and that they would not only be entitled to damages from the government in the event of encroachment on those rights, but would also be entitled to obtain an injunction against the Canadian Pacific Railway Company or other party interfering therewith.

In view of this opinion the Canadian Pacific Railway Company were informed by a letter dated the 4th of September, 1888 that the existing agreements in respect to telegraph construction and maintenance barred the Department from granting their application. 40

The company however appeared to have undertaken the construction of a line of telegraph between the points named, an independent work.

In such construction, it has occurred that at certain places they have erected their poles on the lands belonging to the Intercolonial Railway, though warned off, and by a letter dated the 9th instant the civil engineer of the Government Railways has called attention to the fact furnishing reports from section foremen along the line on the subject, and has asked to be advised as to the action which should be taken to prevent claims on the part of the Montreal Telegraph Company.

I am to ask that you will be pleased to advise accordingly. Papers enclosed.

I have the honour to be your obedient servant, Sir.
(sgd.) A. P. Bradley,
Secretary.

R. Sedgewick Esq.,
Deputy of the Min. of Justice.

No. 55

EXHIBIT 51—
D. J. 1153-89.

Ottawa,
12th Dec. 89.

Sir,

I have the honour to acknowledge receipt of your letter of the 13th instant, calling attention to the fact that the Canadian Pacific Railway Company have erected telegraph poles along the line of the Intercolonial Railway, between St. John and Halifax, and requesting to be advised as to the duty of the Government, reference being had to the agreement of the 22nd Septr., 1870, between the Montreal Telegraph Company and the Government giving to that Company the exclusive right of operating a line of telegraph over the Intercolonial Railway.

I have now by direction to state as follows:

The Agreement mentioned contains a covenant on the part of the Crown that the Montreal Telegraph Company shall have the exclusive right to construct and operate a telegraph line along the Intercolonial Railway. It cannot, I think, be successfully argued that under this covenant the Intercolonial Railway is obliged to protect the Montreal Telegraph Company against all telegraph companies that may, at any point, trespass on the line of the Intercolonial Railway by erecting poles thereon; the covenant, in my opinion, only relating to acts done or permitted to be done by the Government itself. At the same time, upon general principle, and irrespective of any agreement, proceedings should be taken to compel the Canadian Pacific Railway Company to remove their poles from Government property.

RECORD
—
In the
Exchequer Court
of Canada
—
No. 54
EXHIBIT 50
Letter, A. P.
Bradley to R.
Sedgewick
Nov. 15, 1889.
(Contd.)
No. 55
EXHIBIT 51
Letter, R.
Sedgewick to A.
P. Bradley
Dec. 12, 1889.

RECORD
—
In the
Exchequer Court
of Canada
—

No. 55
EXHIBIT 51
Letter, R.
Sedgewick to A.
P. Bradley
Dec. 12, 1889
(Contd.)

No. 56
EXHIBIT 52
Letter, A. P.
Bradley to C.
Schreiber
Jan. 7, 1890.

No. 57
EXHIBIT 53
Letter, A. P.
Bradley to C.
Drinkwater
Jan. 7, 1890.

I must add that if the poles be suffered to remain, their being so would support evidence in support of a claim by the Montreal Telegraph Company or its assigns that the poles had been placed there by the permission of the Government.

This evidence would be of greater or less strength according to the time during which the poles had been suffered to remain.

Papers returned.

I have the honour to be, Sir,
Your obedient servant,

R. Sedgewick 10
D. M. J.

A. P. Bradley, Esq.,
Secretary,
D. Rlys & Cnls, Ottawa.

No. 56

EXHIBIT 52—

January 7, 1890

Referring to the matter reported to you on the 9th November, the erection at certain points on the Intercolonial Railway between St. John and Halifax of the telegraph poles of the Canadian Pacific Ry. I am instructed to inform you that an opinion has been obtained from the Department of Justice shewing that in view of the provisions of the existing agreement with the Montreal Telegraph Company these poles should not be permitted to remain.

The encroaching Company have accordingly been notified to remove them at once, and you will be pleased to report to the Department in the event of this notification not receiving attention.

I am, Sir,

Your Obet. Sert.

(sgd) A. P. Bradley, 30
Secty.

C. Schreiber, Esq.,
Chf. Eng. Govt. Rys.

No. 57

EXHIBIT 53—

36508
964 - 961a
54353

January 7 1890

Sir,

By direction I have to call your attention to the fact that at certain points along the Intercolonial Railway between St. John and Halifax telegraph posts have been erected by your Company on the Government property.

In view of the terms of the agreement at present existing between the Government and the Montreal Telegraph Company the concession of such a privilege as this would imply, were the posts in question allowed to remain, cannot be granted to your Company and I am accordingly to request that they be at once removed.

RECORD
In the
Exchequer Court
of Canada

I am Sir,
Your obedient servant,

A. P. Bradley
Secretary.

No. 57
EXHIBIT 53
Letter, A. P.
Bradley to C.
Drinkwater
Jan. 7, 1890.
(Contd.)

10 Ch: Drinkwater E
Sec'y Can: Pac: Ry. Co.

No. 58

EXHIBIT 54—

CANADIAN GOVERNMENT RAILWAYS

Office of the Chief Engineer
and General Manager.

OTTAWA, 8 Jany. 1890.

D. Pottinger, Esq.,
I.C.R.,
Moncton, N.B.

No. 58
EXHIBIT 54
Letter, Colling-
wood Schreiber
to D. Pottinger
Jan. 8, 1890

20 My Dear Sir,—

I enclose you herewith a copy of a letter received from the Secretary of the Department with reference to the question of the erection at certain points on the line of the Intercolonial Railway between St. John and Halifax of the telegraph poles of the Canadian Pacific Railway, and stating that an opinion has been obtained from the Department of Justice, shewing that in view of the provisions of the existing agreement with the Montreal Telegraph Company, these poles should not be permitted to remain. The encroaching Company have accordingly been notified to remove them at once, and you will be good enough to report to me, in the event of this notification not receiving attention.

Yours truly,

(sgd) Collingwood Schreiber,
Chief Engr. and Gen. Man.

(Red ink Notes)
Mr. Archibald

See this carried out
wrote De Boo & Lockhart 11-1-90
& enc. copy of this letter
13-1-90

RECORD

No. 310

EXHIBIT 300—

In the
Exchequer Court /PL.
of Canada

Copy No. 54597.

51.

No. 310
EXHIBIT 300
Order-in-
Council
Jan. 10, 1890.

Certified copy of a Report of a Committee of the Honorable the Privy Council, approved by His Excellency the GOVERNOR GENERAL IN COUNCIL, on the 10th January, 1890.

On a Memorandum dated 8th January 1890, from the Minister of Railways & Canals, representing that under authority of an Order in Council dated the 28th of September last an agreement dated the 16th of October, has been entered into with the Western Union Telegraph Company for the construction, maintenance and operation of a line of telegraph along the Eastern Extension Railway, between New Glasgow and Mulgrave and along the Cape Breton Railway.

The Minister further represents that the Company have applied for a similar agreement to cover the Oxford and New Glasgow Railway now being built by the Government between Oxford Station on the Intercolonial and New Glasgow, and that in view of a certain clause in an agreement made with the Montreal Telegraph Company on the 22nd of September 1870 giving extension power of telegraph construction over the Intercolonial Railway it has been thought well to obtain the opinion of the Minister of Justice as to the power of the Government to make an agreement in respect of the Oxford and New Glasgow
To the Honorable

The Minister of Railways and Canals.
line with another Company.

The Minister further represents that under date the 11th, of March 1889, the Minister of Justice has advised that so far as existing agreement or Statutes are concerned the Government is free to make any arrangement it sees fit in relation to the line referred to.

The Minister on the advice of the Chief Engineer of Government Railways to the effect that the case be met by extending the agreement already made with the Western Union Telegraph Company for the Cape Breton and Eastern Extension Roads so as to cover also the Oxford and New Glasgow Railway, recommends that authority be given accordingly.

The Committee advise that the requisite authority be granted.

(s'd) John J. McGee.

Clerk, Privy Council.

No. 59

EXHIBIT 55—

January 13th. 1890

A. P. Bradley, Esq.,
Secretary, Department of Railways,
Ottawa.

RECORD
—
*In the
Exchequer Court
of Canada*

Sir:

I have the honour to acknowledge the receipt of your letter of 7th instant notifying me that the Government is not in a position to con-
10 cede to this Company the rights to erect Telegraph poles as has been done at certain points along the Intercolonial Railway between St. John and Halifax and requesting that the poles so erected shall be at once removed and to say that your letter will be submitted to the Board of Directors at its next meeting.

No. 59
EXHIBIT 55
Letter, C.
Drinkwater to
A. P. Bradley
Jan. 13, 1890.
No. 60
EXHIBIT 56
Letter, Chas. R.
Hosmer to J.
F. Richardson.
Jan. 15, 1890.

I have the honor to be,

Sir,

Your obedient servant,

C. Drinkwater
Secretary.

No. 61
EXHIBIT 57
Letter, Chas. R.
Hosmer to J. F.
Richardson.
Jan. 31, 1890.

20 EXHIBIT 56—

No. 60

Jan. 15th, 1890.

J. F. Richardson, Esq.,
St. John, N.B.

Dear Sir:—

Please make me up a report indicating as near as possible how many poles we have on the I. C. R. right of way, and between what points, so that in case I am obliged to confer with the authorities of the road, I will know our exact position.

30

Yours truly,

(Sgd.) Chas. R. Hosmer
Mgr. Tghs.

No. 61

EXHIBIT 57—

Jan. 31st, 90.

J. F. Richardson Esq.,
St. John N.B.

Dear Sir,

Please make me up a statement of what money you had to pay out
40 east of St. John for right of way—From present figures I figure out that your line is likely to cost \$70,000 instead of \$55,000 as estimated.

RECORD
 —
In the
Exchequer Court
of Canada
 —

No. 61
 EXHIBIT 57
 Letter, Chas. R.
 Hosmer to J. F.
 Richardson
 Jan. 31, 1890.
 (Contd.)

No. 62
 EXHIBIT 58
 Letter, P. S.
 Archibald to D.
 Pottinger
 Feb. 4, 1890.

No. 63
 EXHIBIT 59
 Letter, Chas. R.
 Hosmer to A. B.
 Gray
 Feb. 10, 1890.

Germain has completed his work between Chalk River and Sudbury; and, although he has to restore the crossarms, and pull up a great deal of slack wire, yet his entire expenses made an average cost for stringing wire, less than \$5.00 per mile.

Yours truly,
 (Sgd) Chas. R. Hosmer,
 Mgr. Tghs.

No. 62

EXHIBIT 58—

INTERCOLONIAL RAILWAY OF CANADA
 OFFICE OF THE CHIEF ENGINEER.

10

Moncton, N.B. Feby. 4th, 1890.

D. Pottinger, Esq.,
 Chief Sup't,
 Moncton.

Dear Sir,—

Referring to your remarks on the face of Mr. Schreiber's letter of the 8th ultimo, stating that the C. P. Telegraph Coy have been notified to remove their poles off Railway property, I beg to report to date that no action has been taken on their part to do this work.

20

Yours truly,
 (sgd) P. S. Archibald

Enclos.

No. 63

EXHIBIT 59—

Feb. 10th. 90

A. B. Gray Esq.
 New Glasgow, N.S.

Dear Sir,

I beg to acknowledge receipt of yours of the 31st. ult. with reference to the poles which are erected on private property belonging to the Estate of the late John Gray.

I have referred the same to our Superintendent of Construction, under whose charge the work has been done. I might however add that, along the entire length of our line, the property owners have, with scarcely an exception, cheerfully granted our Company free right of way, as they have recognized that it was a great public advantage to have a competitive telegraph company. I trust that you will not be an exception.

Yours very truly,
 (Sgd) Chas. R. Hosmer
 Manager Telegraphs.

EXHIBIT 60—

No. 64

INTERCOLONIAL RAILWAY OF CANADA
Office of the Chief Engineer.

Moncton, N.B. Feby 17th, 1890.

D. Pottinger Esq.
Chief Sup't
Moncton, N.B.

Dear Sir,—

10 Referring to my letter of the 4th instant in regard to the C. P. R. Telegraph Coy encroaching on the Railway property, I have to say that no action has been taken to date to remove their poles from the Railway property.

Yours truly,

(sgd) P. S. Archibald

RECORD

—
*In the
Exchequer Court
of Canada*

No. 64

EXHIBIT 60

Letter, P. S.

Archibald to D.

Pottinger

Feb. 17, 1890.

No. 65

EXHIBIT 61

Letter, A. P.

Bradley to R.

Sedgewick

Feb. 17, 1890.

No. ~~64~~ 65

EXHIBIT 61—

DEPARTMENT OF RAILWAYS AND CANALS, CANADA
Ottawa, Feb. 17, 1890

20 36900
Subj. 961 a 964
Ref. 55002

Sir:

I have the honor by direction to inform you that in pursuance of the advice given by your letter of the 12th of December last with regard to the erection of telegraph poles by the Canadian Pacific Railway Company on portions of the Intercolonial Railway between St. John and Halifax, that company was notified to remove such poles, the Departmental letter being acknowledged on the 13th ultimo.

30 The Chief Engineer of Government Railways now reports that nothing has been done towards their removal.

I am to inquire whether this department should take any further steps in the matter to avoid future claims under the circumstances already communicated to you.

I have the honour to be sir

Your obedient servant,

(sgd) A. P. Bradley,
Secretary.

R. Sedgewick Esq.,
Deputy of the Min. of Justice.

RECORD

No. 66

In the
Exchequer Court
of Canada

EXHIBIT 62—

CANADIAN PACIFIC RAILWAY CO'S TELEGRAPH
CONSTRUCTION DEPARTMENT

Saint John - N.B. Mch. 1, 1890.

No. 66

Chas. R. Hosmer, Esq.,
Manager,
Montreal.

EXHIBIT 62
Letter, Jno. F.
Richardson to
Chas. R.
Hosmer
March 1, 1890.

Dear Sir:—

The right of way east of Saint John, so far, has cost \$1207.53 as follows:—

	Salary	\$300.
Personal Expenses		587.53
Paid property owners		320.
		<hr/>
		\$1207.53

No. 70
EXHIBIT 66
Letter, Jno. F.
Richardson to
Chas. R.
Hosmer
March 1, 1890.

Mr. Snider has one man to settle with at Moncton, and three to be renewed unless the I.C.R. move their fence near Sackville. I know of four that Watson did not settle with in Nova Scotia; I am in communication with them now. All appear favorable except one. 20

Yours respectfully,

(Sgd) Jno. F. Richardson.

No. 70

EXHIBIT 66—

C.P.R. CO'S. TELEGRAPH
Construction Department.

Saint John N.B. March 1 1890.

Chas. R. Hosmer, Esq.,
Manager,
Montreal.

30

Dear Sir:

The number of poles we have erected upon I.C.R. property east of St. John is, to the best of my knowledge, as follows:

	Inside fence	Outside fence but in Ry. limits	Total
Between St. John & Moncton	12	214	226
“ Moncton & Truro	6	4	10
“ Truro & Halifax	29		29
“ “ “ New Glasgow	7		7
	<hr/>	<hr/>	<hr/>
Totals	54	218	272

40

Yours respectfully,
Jno. F. Richardson

No. 67

RECORD

EXHIBIT 63—

CANADIAN GOVERNMENT RAILWAYS
Office of the Chief Engineer & Gen. Manager
Ottawa, 3rd March, 1890.

In the
Exchequer Court
of Canada

No. 67

EXHIBIT 63
Letter, Colling-
wood Schreiber
to D. Pottinger
March 3, 1890.

No. 68

EXHIBIT 64
Letter, P. S.
Archibald to D.
Pottinger
March 4, 1890

No. 71

EXHIBIT 67
Letter, Sir
Charles Tupper
to C. R. Hosmer
March 28, 1890.

D. Pottinger, Esq.
Moncton, N.B.

My dear Sir,—

10 Be good enough to send me as soon as possible a statement of all of the acts of trespass committed by the Canadian Pacific Railway (Telegraph) Co. in placing their telegraph poles on Intercolonial Railway property, with a view to taking the necessary legal proceedings.

This statement should give the particulars at each point giving the distance in each case.

Yours truly,

(sgd) Collingwood Schreiber,
Chf. Eng. and Gen. Manager

Statement sent
29-5-90

No. 68

20 EXHIBIT 64—

INTERCOLONIAL RAILWAY OF CANADA
OFFICE OF THE CHIEF ENGINEER

Moncton, N.B. March 4th, 1890.

D. Pottinger, Esq.
Chief Supt.
Moncton.

Dear Sir,—

30 I have to report that no action has been taken to date by the C. P. R. Telegraph Company to shift their poles off the railway property.

Yours truly,

(sgd) P. S. Archibald

No. 71

EXHIBIT 67—

Ottawa, 28th March 1890.

Dear Mr. Hosmer:

I duly received your letter explaining why you are unable to extend your line to Parrsboro, Nova Scotia. I have given it to Sir John Macdonald and have drawn his attention to the importance of your proposal that the Government should use the power they possess to take over the

RECORD
 In the
 Exchequer Court
 of Canada

Western Union Telegraph Company line in the Province. Sir John fully recognizes the importance of your statement and I think it would be well for Mr. Van Horne or you to see him at your convenience on the matter.

Yours faithfully,
 Sgd. Charles Tupper.

No. 71
 EXHIBIT 67
 Letter, Sir
 Charles Tupper
 to C. R. Hosmer
 March 28, 1890
 (Contd.)

C. R. Hosmer, Esq.,
 Manager, C.P.R. Telegraphs,
 Montreal.

No. 69

EXHIBIT 65—

10

INTERCOLONIAL RAILWAY

May 14, 1890.

No. 69
 EXHIBIT 65
 Letter, C.
 Schreiber to D.
 Pottinger
 May 14, 1890.

D. Pottinger,
 Moncton.

Re my letter of March third asking for a statement of all acts of trespass committed by the Canadian Pacific Railway Telegraph Company placing telegraph poles on I. C. R. property, be good enough to let me have statement as soon as possible.

(sgd) C. Schreiber

No. 72
 EXHIBIT 68
 Letter, A. P.
 Bradley to R.
 Sedgewick
 June 18, 1890.

No. 72

EXHIBIT 68—

20

DEPARTMENT OF RAILWAYS AND CANALS, CANADA

Ottawa, June 18, 1890.

8045
 Subj. 964
 Ref. 56481

Sir:

In compliance with the request contained in your letter of the 22nd Feb. last with regard to trespass by the Canadian Pacific Railway Company committed by placing certain telegraph poles on Intercolonial Railway property, I have now the honour to forward a statement showing the several acts of trespass in question, such statement showing the location of the poles, their number and other details. 30

Be pleased to instruct your agents to take the proceedings to compel removal, to which your letter refers.

I have the honour to be Sir,
 Your obedient servant,
 (sgd) A. P. Bradley,
 Secretary.

R. Sedgewick Esq.,
 Deputy to the Min. of Justice.

40

EXHIBIT 69—

No. 73

INTERCOLONIAL RAILWAY OF CANADA

Office of the Chief Engineer

Moncton, N.B. July 8th, 1890.

Dear Sir,—

To the first instant, the C. P. R. Telegraph Coy have taken no action to remove the telegraph poles which are trespassing on the railway property.

10

Yours truly,

(sgd) P. S. Archibald.

D. Pottinger, Esq.,
Chief Sup't.
Moncton.

RECORD

—
In the
Exchequer Court
of Canada
—

No. 73

EXHIBIT 69

Letter, P. S.
Archibald to
D. Pottinger
July 8, 1890.

No. 74

EXHIBIT 70

Letter, C. R.
Hosmer to H. P.
Dwight
Sept. 5, 1890.

No. 74

EXHIBIT 70—

Sept. 5th, 1890.

Dear Mr. Dwight,

We have inside the fence along the Intercolonial Railroad between
20 St. John and Halifax and New Glasgow, a few poles which it was absolutely
necessary to put there, and the Government are urging us to remove
them, threatening us with legal action etc.—I understand that the pro-
ceedings they are taking are being instigated by your Company, and I
thought it but right to call your personal attention to the matter. The
few poles we have on the Railroad cannot possibly be of any damage to
your Company or the Western Union, and if we are forced to move
them we must consider that it is done simply to annoy us. You know
that your Company have several hundred miles of poles on Railroads
owned by this Company (with which you have absolutely no contract
30 rights) and that we have never sought to annoy you or obstruct you in
their maintenance in any way. In fact, we have gone out of our way to
instruct our men to render your repairers every possible assistance. I
think, under those circumstances, you can well afford to treat us in a
similarly liberal manner. I write you personally rather than officially,
as I can understand that there may be reasons why you would not want
a precedent established in a matter of this kind.

Yours very truly,

H. P. Dwight, Esq.,
Toronto—

Chas. R. Hosmer

RECORD

—
In the
Exchequer Court
of Canada
 —

No. 75

EXHIBIT 71
 Information in
 The Queen v.
 C.P.R. filed
 Sept. 10, 1890.

No. 75

EXHIBIT 71—

3298

IN THE EXCHEQUER COURT OF CANADA.
 THE QUEEN ON THE INFORMATION OF THE ATTORNEY GEN-
 ERAL FOR THE DOMINION OF CANADA.

Plaintiff

vs

THE CANADIAN PACIFIC RAILWAY COMPANY

Defendant. 10

Filed the 10th day of September 1890.

To the Exchequer Court of Canada,

The information of Her Majesty's Attorney General for the Dom-
 inion of Canada on behalf of Her Majesty sheweth as follows:

1. That the title to all the land forming and comprising the road-
 bed and right of way of the Intercolonial Railway of Canada, has been,
 and is now vested in, and in the possession of Her Majesty the Queen re-
 presented by the Dominion of Canada.

2. The defendants have wrongfully and without right or authority
 from Her Majesty, entered upon the said lands of Her Majesty and have 20
 sunk holes and have placed and erected therein a large number to wit:
 ✓ 2700 telegraph poles, to the detriment, damage and inconvenience of Her
 Majesty's rights and interest on the said land and right of way.

3. The defendants well knowing they had no right or title to the
 said land, have wrongfully permitted to remain and have maintained
 thereon a large number, to wit: 2700 telegraph poles which were placed
 and erected on the said land to the detriment, damage and inconvenience
 of Her Majesty and to Her said land and right of way.

4. The defendants have been frequently requested to remove the
 said telegraph poles from the said lands of Her Majesty but they have 30
 refused and still refuse to do so.

CLAIM.

Her Majesty's Attorney General on behalf of Her Majesty claims as
 follows:—

1. Judgment against the defendants (a) to compel them to forth-
 with remove the said telegraph poles from off the said lands of Her Ma-
 jesty and (b) for an injunction restraining the defendants from continu-

ing the maintenance of the said telegraph poles on the lands of Her Majesty, and (c) for the issue of such process as may be necessary on the premises.

2. Judgment for costs of this suit.

(sgd) John S. D. Thompson,
Attorney General of Canada.

No. 76

EXHIBIT 72—

THE GREAT NORTH WESTERN TELEGRAPH CO., OF CANADA

TORONTO, 16th September, 1890.

10 PERSONAL.

Dear Hosmer:—

Yours of the 5th inst. is received, and would have been answered sooner but for my absence from home. It is the first intimation I have had as to any trouble of the kind respecting your poles along the line of the Intercolonial Railway. We have made no complaint whatever as to the location of your poles, and you may consider yourself welcome, so far as we are concerned, to any such accommodation of the kind as you may need anywhere along the route. I think we have both reached a period in our experience when we may consider it scarcely worth while to take any action simply for the purpose of annoying each other.

If there is anything you wish me to do respecting the matter to prevent any further annoyance please let me know. I will write to Superintendent Clinch, St. John, in regard to the matter, and see what he knows about it.

Yours truly,

(sgd) H. P. Dwight

No. 77

EXHIBIT 73—

September 19th, 1890.

30 PERSONAL

Dear Mr. Dwight,

I am much obliged for yours of the 16th. inst., with reference to the Intercolonial Railway. We have to-day received a notice of suit. The Queen vs C.P.R., returnable on October 13th, and I hope that before that time we will be able, in some way or other, to stave this off, so that it will not be necessary to go into Court about the matter, as it will not only be expensive, but create a nasty feeling which I would be very sorry to see engendered.

RECORD
—
In the
Exchequer Court
of Canada

No. 75
EXHIBIT 71
Information in
The Queen v.
C.P.R. filed
Sept. 10, 1890.
(Contd.)

No. 76
EXHIBIT 72
Letter, H. P.
Dwight to C. R.
Hosmer
Sept. 16, 1890.

No. 77
EXHIBIT 73
Letter, Chas. R.
Hosmer to H.
P. Dwight
Sept. 19, 1890.

RECORD
—
*In the
Exchequer Court
of Canada*
—

Clinch, perhaps, could tell you something about it, or our friend Ross may be at the bottom of it. Kindly probe the matter, and find out just where the nigger is. Bethune might ascertain this from the Hon. Mr. Thompson, Minister of Justice, or Mr. Sedgwick, his Deputy.

Yours very truly,

(Sgd.) Chas. R. Hosmer
Manager Telegraphs.

No. 77
EXHIBIT 73
Letter, Chas. R.
Hosmer to H.
P. Dwight
Sept. 19, 1890.
(Contd.)

H. P. Dwight, Esq.,
Gen. Mgr., Great North Western Tel. Co.,
Toronto—

10

No. 78
EXHIBIT 74
Letter, W. C.
Van Horne to
Sir John A.
Macdonald
Sept. 22, 1890.

No. 78

EXHIBIT 74—

CANADIAN PACIFIC RAILWAY COMPANY.

September 22, 1890.

Ansd,
Correspondence returned. Oct. 8, 1890.

No. 79
EXHIBIT 74-A
Endorsement by
Sir John A.
Macdonald on
back of letter
Exhibit 74.
Sept. 22, 1890.

Dear Sir John:—

I know you are very busy and I feel it a sin to ask a minute of your time, but I will be particularly obliged if you will read the enclosed correspondence and have the papers returned to me.

20

I may remark that the telegraph line in question affords the only cable connection that Canada has that is not controlled by Mr. Jay Gould's Western Union and Mr. Erastus Wiman's Great North Western which is owned by the Western Union.

Yours faithfully,
W. C. Van Horne.

Rt. Hon. Sir John A. Macdonald,
Ottawa.

No. 79

EXHIBIT 74a—

September 22, 1890.

30

W. C. Van Horne
Dispute with Govt. re
Telegraph poles along
line I. C. R. between St. John & Halifax.
Endorsement on back of letter Sep. 22, 1890.
W. C. Van Horne to Sir John A.

EXHIBIT 75—

No. 80
EARNSCLIFFE
Ottawa.

RECORD
In the
Exchequer Court
of Canada

24 Sept. 1890

Dear Thompson

Please stay proceedings—It wont do to have any further difference with the C.P.R. just now. This is an unimportant matter.

Yours &c.,

J. A. McD.

No. 80
EXHIBIT 75
Letter, Sir John
A. Macdonald to
Sir John
Thompson
Sept. 24, 1890.

R

10

This refers to the suit in the Exch. Ct.
The Queen
vs
C.P.R.

Please send me a precis of the case.

J.S.D.T.

No. 81
EXHIBIT 76
Letter, Chas. R.
Hosmer to H.
P. Dwight
Sept. 29, 1890.

Memorandum attached. (unsigned)
Telegraph Suit vs C.P.R.

Let it go on.

20

EXHIBIT 76—

No. 81

September 29th, 1890.

PERSONAL

Dear Mr. Dwight,

Many thanks for your letter and copies of telegrams. The action contemplated by the Government has, I understand, been abandoned, and was perhaps taken under misapprehension of the true facts of the matter. I wish to assure you that I thoroughly appreciate the kindly spirit in which you acted in the matter, and I can only say that I will be only too glad to reciprocate should an opportunity offer.

Yours very truly,

(Sgd.) Chas. R. Hosmer

H. P. Dwight, Esq.,
Toronto.

No. 82
EXHIBIT 77
Letter, Sir John
A. Macdonald to
W. C. Van
Horne
Oct. 9, 1890.

30

No. 82

EXHIBIT 77—

October 9th, 1890.

Dear Van Horne:—

I have yours of the 22nd ult. and return you the papers therein enclosed, as you desire. The Government have not the slightest objection, so far as they are concerned, to the C.P.R. planting telegraph poles along the line of the I.C.R. The trouble is that long ago, by an absurd agreement, the Montreal Telegraph Company was given the exclusive right to

RECORD
 —
In the
Exchequer Court
of Canada
 —
 No. 82
 EXHIBIT 77
 Letter, Sir John
 A. Macdonald to
 W. C. Van
 Horne
 Oct. 9, 1890.
 (Contd.)
 No. 299
 PART OF
 EXHIBIT 290
 Supplemental
 Agreement be-
 tween Western
 Union Tele-
 graph Com-
 pany and Her
 Majesty
 Jan. 12, 1891.

plant poles and wires along the line of the I.C.R. Such being the case, the Government Officials gave notice to your people not to plant poles but the warning was utterly disregarded. The proceedings were taken lest the Government might be held responsible by the Montreal Telegraph Co. for breach of agreement and consequent damage. Dwight's letter to Hosmer is satisfactory enough, but it is not, I take it, binding on the Company, especially if under the control of Wiman. However, if the C.P.R. will stand between the Government and all harm in the event of proceedings being taken, we will not interfere with your telegraph poles.

W. C. Van Horne, Esq.,
 Montreal.

Yours faithfully,
 John A. Macdonald.

10

No. 299

PART OF EXHIBIT 290—

THIS SUPPLEMENTAL AGREEMENT, made and entered into in duplicate this twelfth (12th) day of January, in the year of Our Lord one thousand and eight hundred and ninety-one (1891).

20

Between THE WESTERN UNION TELEGRAPH COMPANY of the first, and HER MAJESTY QUEEN VICTORIA, represented herein by the Minister of Railways and Canals, of the second part.

WITNESSETH:

That, Whereas, the parties hereto, under date the 16th October, 1889, entered into an agreement for the construction, maintenance and operation of telegraph lines along the Eastern Extension Railway and Cape Breton Railway, according to the terms and conditions therein set forth; and

Whereas, the Minister of Railways and Canals has constructed and operates the Oxford and New Glasgow Railway between Oxford Junction and Brown's Point, along which Railway and the branch to Pugwash it is proposed that a telegraph line shall be constructed, maintained and operated under the provisions of said agreement hereinbefore mentioned.

30

Now, Therefore, in consideration of the premises the parties hereto have mutually agreed:

That from and after the ninth day of April, 1890, said agreement of October 16th, 1889, shall be and is hereby applied and extended to said Oxford and New Glasgow Railway between Oxford Junction and Brown's Point and to the branch to Pugwash, as fully and effectually as if said railway and branch had been specifically mentioned in and cov-

40

ered by said agreement at the time it was entered into between the parties hereto; it being the intention of the parties hereto that one and the same contract (to wit, said Agreement of October 16th, 1889) shall cover the entire railway, and the Telegraph lines thereon, from Oxford Junction to Brown's Point and the branch to Pugwash, and New Glasgow to North Sydney and Sydney, as fully and effectually as if the said entire railway and branch had been described in and covered by said agreement at the time it was made.

10 In Witness Whereof, the Vice-President and the Secretary of the Company have signed these presents and caused the corporate seal to be affixed hereto and the Minister of Railways and Canals hath set his hand and caused these presents to be sealed and countersigned by the Secretary of the Department of Railways and Canals.

THE WESTERN UNION TELEGRAPH CO.

By

Signed by the Vice-President and by the Secretary of the Company, the common seal of the Company having been affixed in presence of:

(Signed) JOHN VAN HORNE,
Vice-President.

(Signed) A. R. BREWER,
Secretary.

(Signed) G. W. E. ATKINS.

20 Signed by the Minister and signed and sealed by the Secretary of the Department of Railways and Canals in presence of:

(Signed) JOHN A. McDONALD,
Minister of Railways and Canals.

(Signed) A. P. BRADLEY,
Secretary.

(Signed) H. A. FISSIAULT.

No. 83

EXHIBIT 78—

Halifax Banking Company.

Parrsboro, March 13, 1891.

My dear Sir Charles Tupper—

30 If you want to confer upon this town a great favor you will kindly use your influence to get the C. P. Ry. to build a telegraph line to Parrsboro. Parrsboro is beyond question the best paying office the Western Union have in Nova Scotia so I am assured by their operator here. The very large shipping interest here makes a very large business of itself.

Yours faithfully,

(SGD) A. Townshend.
Agt.

RECORD
—
In the
Exchequer Court
of Canada
No. 299
PART OF
EXHIBIT 290
Supplemental
Agreement be-
tween Western
Union Tele-
graph Com-
pany and Her
Majesty
Jan. 12, 1891.
(Contd.)
No. 83
EXHIBIT 78
Letter, A.
Townshend to
Sir Charles
Tupper
March 13, 1891.

RECORD
 —
In the
Exchequer Court
of Canada
 —

No. 83
 EXHIBIT 78
 Letter, A.
 Townshend to
 Sir Charles
 Tupper
 March 13, 1891.
 (Contd.)

No. 84
 EXHIBIT 79
 Letter, Sir
 Charles Tupper
 to W. C. Van
 Horne
 March 16, 1891.

No. 85
 EXHIBIT 80
 Letter, Chas. R.
 Hosmer to W.
 C. Van Horne
 March 19, 1891.

P.S. I understand they have erected part of their line as far as Spring Hill but did not complete the service, it is only 27 miles more.

Hosmer.
 Sir C. Tupper.

EXHIBIT 79—
 Encl.

No. 84
 40579

Ottawa, March 16th, 1891.

My dear Mr. Van Horne—

I enclose herewith a letter from the Agent of the Halifax Banking 10 Company at Parrsboro, suggesting the extension of your telegraph system to Parrsboro.

I have promised Dr. Townshend that I would ask you to give this matter your careful consideration.

I remain,

Yours faithfully,

(SGD) Charles Tupper.

W. C. Van Horne, Esq.,
 President, C. P. R. Telegraph Co.,
 Montreal.

C. R. Hosmer, Esq.,
 What do you think of this?
 W.C.V.
 18-3-91.

20

EXHIBIT 80—

W. C. Van Horne, Esq.,
 President.

No. 85

March 19th, 1891.

Dear Sir:—

Re attached memo.

30

When our line was extended from St. John, N.B. to Halifax we contemplated taking in Springhill and Parrsboro, and I have had some correspondence with Mr. Cowans, the Manager of the Springhill Mines, with a view of constructing our line along their Railroad between Springhill Jct. and Parrsboro, a distance of 32 miles.

They were evidently anxious to have our telegraph system go into that country, but found that the Railway Company's contract with the Western Union Telegraph Company was of an exclusive nature, and that they were therefore unable to assist us in any way, so we abandoned the extension. We could, I suppose, build our line outside of the Railroad

right of way, the same as we have done between St. John and Halifax, if the business at Parrsboro would warrant our doing this.

If we could get the co-operation of the Railroad, or a promise of their commercial business, there would be no question about it, but if they work in with the Western Union, as they are evidently obliged to do, under their contract, it would hardly pay us to go there.

Yours truly,

(Sgd.) Chas. R. Hosmer,
Manager Telegraphs.

10 Crossover

C. R. H. Please reply direct to Sir Charles. It will give you a chance to rub in W. U. again.

W. C. V. H.

No. 86

EXHIBIT 81—

March 24th, 1891.

Sir Charles Tupper,
Bart,
Ottawa.

20 Dear Sir:—

Mr. Van Horne has referred to me yours of the 16th inst., enclosing a letter from Mr. Townshend of Parrsboro, N.S., urging that the Canadian Pacific Railway Company extend its telegraph line to that town, and has requested me to reply to you.

I would say that when we laid out our plan for telegraph extensions to the Maritime Provinces, we intended to include Parrsboro', expecting that we would be able to arrange with Mr. Cowans, the General Manager of the Springhill Mines, to build our telegraph line along his Railroad, but we found that, although Mr. Cowans was anxious to have the benefit of a connection with our system, yet the Railroad, when it came into his possession, was tied up with the Western Union Telegraph Company in such a manner as to prevent his giving us the right of way over it, and diverting to our Company the business that he controlled. We were therefore, on this account, obliged to give up the extension of our system into that district.

It seems an outrage that the Western Union Telegraph Co. should, to the exclusion of a purely Canadian enterprise such as ours, have an absolute monopoly of most of the Railroads in the Maritime Provinces. Had it not been for the C.P.R. being so anxious to reach the Atlantic coast, in order to secure a direct cable connection, which, in a measure, warranted their constructing their telegraph line, as they were obliged to do, outside of the Intercolonial Railway's right of way at a greatly increased

RECORD

—
In the

Exchequer Court
of Canada

—
No. 85

EXHIBIT 80

Letter, Chas. R.

Hosmer to W.

C. Van Horne

March 19, 1891.

(Contd.)

No. 86

EXHIBIT 81

Letter, Chas. R.

Hosmer to Sir

Chas. Tupper

March 24, 1891.

RECORD

—
In the
Exchequer Court
of Canada
 —

No. 86

EXHIBIT 81

Letter, Chas. R.
 Hosmer to Sir
 Chas. Tupper
 March 24, 1891.
 (Contd.)

No. 87

EXHIBIT 82

Letter, Colling-
 wood Schreiber
 to D. Pottinger
 July 31, 1891.

expense and inconvenience, the entire Maritime Provinces today would have been absolutely dependent upon the Western Union Company for a telegraph outlet.

It seems a strange anomaly that a Government road such as the Intercolonial, should be in the hands of a foreign corporation, which I might also call a hostile one. I should think the Government would seriously consider the question of exercising the option they possess in their contracts, of taking over, and owning and operating themselves, the telegraph privileges through this very important section of the country.

You have probably noticed that the news furnished to the papers in 10 the Maritime Provinces is more American than Canadian or English, in its coloring, and this, I think, is largely due to the fact that the Telegraph has been entirely, until our advent in the field, in the hands of the Western Union Telegraph Company of New York. Each agent of the Intercolonial Railway is practically a servant of that Company, and has to look to New York for his instructions. If the telegraph line along the Intercolonial were in the hands of the Government, or a Canadian Company such branches as Dr. Townshend asks for, could be readily arranged. I fear, under the existing circumstances, that it would hardly pay our Company to fight their way along the Parrsboro' branch in order to connect 20 Parrsboro' with our main system.

Yours very truly,

(Sgd.) Chas. R. Hosmer

Manager Telegraphs,

Correspondence returned.

No. 87

EXHIBIT 82—

CANADIAN GOVERNMENT RAILWAYS

Office of the Chief Engineer & Gen. Manager

Ottawa, 31 July, 1891.

30

Dear Sir,—

I am in receipt of your letter of the 27th instant concerning the request of Mr. Snider of the Canadian Pacific Telegraph Co. to be allowed to straighten that Company's line by planting a few poles on the I. C. R. property. In reply I may refer you to my letter of the 8th January, 1890, covering a copy of one from the Department on this subject, upon which you have not yet reported. It is clear that we cannot permit this to be done.

Yours truly,

(sgd) Collingwood Schreiber.

40

D. Pottinger Esq.

No. 88

EXHIBIT 83—

5th August, 1891.

B. 56880
P. W. Snider, Esq.,
Superintendent, C.P.R. Telegraph,
Saint John.

Dear Sir,—

I have received a reply from Mr. Schreiber with reference to the
10 straightening of your line by putting a few poles on the I.C.R. property
in several places as you spoke to me about, but, as I expected, he has re-
plied that we cannot allow you to do that, as it would interfere with the
Montreal agreement.

Yours truly,
(sgd) D. Pottinger.

RECORD
—
In the
Exchequer Court
of Canada

No. 88
EXHIBIT 83
Letter, D. Pot-
tinger to P. W.
Snider
August 5, 1891.

No. 89
EXHIBIT 84
Letter, A. P.
Bradley to the
Dy. Minister of
Justice
August 14, 1891.

No. 89

EXHIBIT 84—

3298

DEPARTMENT OF RAILWAYS AND CANALS, CANADA

20 40964
Subj. 984
Ref. 61270
Sir:

Ottawa, 14th Augt. 1891.
Intercolonial Railway

Referring to my letter of the 18th June, 1890, forwarding therewith
a statement showing the several acts of trespass committed by the Cana-
dian Pacific Railway Company, in placing certain telegraph poles, on In-
tercolonial Railway property. I am now directed to forward you here-
with the accompanying further copies of correspondence, re: this matter
and am to ask you to be good enough to inform this Department how the
30 matter is progressing.

I have the honour to be

Sir,

Your obedient servant,

(sgd) A. P. Bradley,
Secretary.

The Dy. Minister of Justice,
Department of Justice,
Ottawa.

Encl. Copies of Correspondence viz: No. 61270, 40235, 32297, 34771.
40 Letter from P. S. Archibald, Moncton, N.B. 29 May 1890. No. 35178,
40023, 34542.

RECORD
 —
In the
Exchequer Court
of Canada

No. 90
 EXHIBIT 85
 Letter, R.
 Sedgewick to
 D. O'Connor
 August 17, 1891.

No. 91
 EXHIBIT 86
 Letter, O'Con-
 nor, Hogg &
 Balderson to
 R. Sedgewick
 August 25, 1891.

EXHIBIT 85—
 D—3298

No. 90

August 17th, 91.

C.P.Ry.—trespass on I.C.R. with
 telegraph poles

Sir,

I have the honour to enclose copies of correspondence in this matter sent to me by the Department of Railways and Canals. The Department has also asked how the matter at present stands. Would you kindly advise me as to this.

Your obedient

(Sgd) R. Sedgewick,
 D.M.J.

D. O'Connor, Esq.
 Ottawa.
 Enc.

No. 91

EXHIBIT 86—

3298 20
 Ottawa Aug. 25, 1891.

Sir:

Queen v. C.P.R. Co.

Trespass with Telegraph poles.

Referring to your favor (D3298) of the 17th instant we beg to say that after receiving instructions in this matter we prepared an information and had it served on the company. Shortly after the service, we were requested by the then Minister of Rys. & Canals (Sir Jno Macdonald) to stay proceedings and send him the fyle of papers in the case. This we did and nothing further was done since.

Yours truly,

(sgd) O'Connor, Hogg & Balderson.

R. Sedgewick, Esq. Q.C.,
 Dpy Minister of Justice,
 Ottawa.

EXHIBIT 87—
D. 3298

No. 92

Ottawa,
August 28 91.

RECORD
—
In the
Exchequer Court
of Canada
—

Sir, Queen v. C.P. Ry. Coy.
Trespass with telegraph poles.

No. 92
EXHIBIT 87
Letter, A.
Power, for D.
M.J. to The
Secretary, De-
partment of
Railways and
Canals
August 28, 1891.

I have the honour to inform you that I am in receipt of a letter from Messrs. O'Connor & Hogg stating that after the information in this case was served, they were requested by the late Premier, who was then Minister of Railways and Canals to stay proceedings and to return the papers to him. This was done and no further action has been taken.

Your obedient

(sgd) A. Power
for D. M. J.

The Secretary,
Department of Railways and Canals.

No. 93
EXHIBIT 88
Letter, A. P.
Bradley to The
Dy. Minister of
Justice
Sept. 7, 1891.

EXHIBIT 88—

No. 93

3298

20 DEPARTMENT OF RAILWAYS AND CANALS, CANADA
41119

Subj. 961a & 964
Ref. 61495

Ottawa 7th Sept. 1891.

Queen vs C. P. Railway Company
Trespass with Telegraph Poles.

Sir:

30 With reference to previous correspondence in this matter, and in acknowledging your letter of the 28th ulto: having regard thereto: I am directed to ask you, to be good enough to inform this department, what would be the consequences if this case is not proceeded with.

I have the honour to be

Sir,

Your obedt Servant,

(sgd) A. P. Bradley
Secretary

The Dy. Minister of Justice,
Department of Justice,
Ottawa.

RECORD
—
*In the
Exchequer Court
of Canada*
—

No. 95
EXHIBIT 90
Precis of memo-
randum from
Minister of
Justice to Dept.
of Railways &
Canals re Queen
v. C.P.R.
Sept. 11, 1891. -

No. 94
EXHIBIT 89
Letter, A. P.
Bradley to Robt.
Sedgewick
Sept. 21, 1891.

No. 95

EXHIBIT 90—

Extract from "Journals", Dept. of Railways & Canals
Sept. 11th, 1891.

From: Minister of Justice.
(Queen)
Regina vs. C. P. Ry. Co'y.

In reply to letter of Sept. 7th, 1891, understands that arrangement was about to be made according to which the Western Union Tel. Co. would not object to allow the C. P. Ry. Co'y. to use I. C. Ry. for tele-
graph purposes. If it is not made the suit should not be discontinued. The Western Union Co'y has now the exclusive right to operate a line on I. C. Ry. between St. John & Halifax. 10

Under the authority of Section 17 of the Department of Railways and Canals Act. I certify the foregoing to be a true copy of the original in my Custody as Secretary of said Department.

January 12th, 1929. 20
Ottawa -----
J. W. Pugsley
Secretary.

No. 94

EXHIBIT 89—

3298

DEPARTMENT OF RAILWAYS AND CANALS

41228
Subj. 964 & 961a
Ref. 61678

Ottawa, Sept. 21st, 1891. 30

Sir,—

I am directed to inform you, in reply to your letter of the 11th instant, that the Chief Engineer of Government Railways is of opinion that the Western Union Telegraph Co. has no monopoly on the I. C. R'way, between St. John and Halifax, but that the Montreal Telegraph possesses the exclusive right. The Chief Engineer has not heard of any arrangement between the C. P. Telegraph and other telegraph Companies in the matter.

I have the honor to be
Sir,
Your obedient servant,
(sgd) A. P. Bradley,
Secretary. 40

Robt. Sedgewick, Esq.,
Depy Minister of Justice,
Ottawa.

No. 96

EXHIBIT 91—

CANADIAN PACIFIC RAILWAY COMPANY

Office of the Solicitor

Montreal, 27th November, 1891.

Dear Sedgewick:—

C. P. R. TELEGRAPH POLES ON I. C. R.

You will remember our conversation on this subject, when you asked me to send you a copy of the letter from Dwight the General Manager of the G.N.W. Telegraph Co. to Hosmer the Manager of the C.P.R. Telegraph lines. I send this herewith, but please do not put it on any official file as you will see it is marked personal. In view of Mr. Dwight's proposition to do anything more that Hosmer wished in order to prevent further annoyance I have asked Hosmer to write him requesting merely that his letter of 16th September 1890 should be made an official communication between them. If this is done it will of course be a license by that Company that our poles should stand where they are now, which will be all that is required.

Yours sincerely,

(sgd) Geo. M. Clark.

20

Robert Sedgewick, Esqre.,
Deputy Minister of Justice,
Ottawa.

No. 97

EXHIBIT 92—

Dec. 10th, 1891.

H. P. Dwight, Esq.,
V. P. & Gen. Mgr., G.N.W. Tel. Co.,
Toronto.

30 Dear Mr. Dwight,

Judge Clark, our Counsel, hoped to have seen you when he was last in Toronto, but was unable to do so. He wanted to tell you that the Government is again bothering us for something definite on the subject of the few poles that we have on the Intercolonial. He wanted to ask you if you would kindly repeat to me officially what you said in your personal letter of Nov. 16th, 1890. You said you would be willing to do anything more that might be necessary to prevent any further annoyance, etc. The Government keep bothering us about it, and such a letter as this from you would, I feel satisfied, induce them to drop the question.

40 I need not tell you that I would be very glad to reciprocate at any time.

Yours very truly,

(Sgd.) Chas. R. Hosmer.

303

RECORD

—
In the
Exchequer Court
of Canada
—

No. 96

EXHIBIT 91
Letter, Geo. M.
Clark to Robert
Sedgewick
Nov. 27, 1891.

No. 97

EXHIBIT 92
Letter, Chas. R.
Hosmer to H. P.
Dwight
Dec. 10, 1891.

RECORD

No. 98

In the
Exchequer Court
of Canada

EXHIBIT 93—

Toronto, Dec. 12-1891.

R. T. Clinch,

Supt. St. John N.B.

No. 98
EXHIBIT 93
Wire, H. P.
Dwight to R. T.
Clinch and reply
of even date
Dec. 12, 1891.

Hosmer Manager C.P.R. Telegraphs says somebody stirring up trouble again with the Government about some of their poles being inside right of way on Intercolonial Railway. Do you know anything about it?

H. P. Dwight
Gen. Mgr.

10

No. 99
EXHIBIT 94
Letter, H. P.
Dwight to Chas.
R. Hosmer
Dec. 12, 1891.

Reply.

December 12 1891.

H. P. D.

Mr. Clinch is from home but will be here Monday and will then answer your message. I do not believe he knows anything about the matter.

D. M. Sutherland
Supt. St. John N.B.

No. 99

EXHIBIT 94—

20

THE GREAT NORTH WESTERN TELEGRAPH CO
OF CANADA

TORONTO, Ont. December 12th 1891.

Chas. R. Hosmer, Esq.,
Manager C.P.R. Telegraphs,
Montreal, Que.

Dear Sir:—

We have made no complaint whatever as to the location of your poles on the line of the Intercolonial Railway, and you may consider yourself welcome, so far as we are concerned, to any such accommodation of the kind as you may have along the route.

I think both Companies have reached a period when we may consider it scarcely worth while to take any action for the purpose of annoying each other. You can make any use you require of this letter, and if there is anything further you wish me to do respecting the matter to prevent further annoyance, please let me know.

Yours truly,

(sgd) H. P. Dwight

V.P. & General Manager.

EXHIBIT 95—

No. 100

CANADIAN PACIFIC RAILWAY COMPANY

Office of the Solicitor

Montreal, 16th December, 1891.

Dear Sedgewick:—

I promised you a short time ago to let you see a letter which Dwight of the Great North Western Telegraph Co. had written some time ago to Hosmer, our Manager of Telegraphs, to the effect that his Company had
 10 no objection to our poles on the Intercolonial, but this was a private and personal letter from Dwight and you will remember that Sir John Macdonald thought it would not be binding on the Company. So I lately asked Hosmer to write to Dwight and ask for an official consent and license on the part of their Company to our poles remaining where they are and if desired that we might erect others.

In answer Mr. Dwight sends him the letter which I enclose dated 12th instant and which you will see embodies a license such as I desired to have from him as Vice President and General Manager of the Com-
 20 paney so that there is now no reason why the suit should not be formally discontinued. You may keep this letter if you wish as I got it especially to satisfy your requirements and have made a copy of it for my file.

Yours sincerely,

(sgd) Geo. M. Clark.

R. Sedgewick Esqre.,
 Deputy Minister of Justice,
 Ottawa.

No. 101

EXHIBIT 96—

Dec. 21st, 1891

30 Personal

Dear Mr. Dwight,

You must excuse my not acknowledging receipt of your letter of the 12th before this. The delay in doing so was owing to my absence, and also Judge Clark's.

The letter covers what we want, and I am personally extremely obliged to you for it, and hope that some day you will give me an opportunity to reciprocate.

Wish you a Merry Christmas, and many happy returns of the New
 40 Year, I am,

Yours sincerely,

(Sgd.) Chas. R. Hosmer.

RECORD

In the
 Exchequer Court
 of Canada

No. 100

EXHIBIT 95
 Letter, Geo. M.
 Clark to R.
 Sedgewick
 Dec. 16, 1891.

No. 101

EXHIBIT 96
 Letter, Chas. R.
 Hosmer to H. P.
 Dwight
 Dec. 21, 1891.

RECORD
—
In the
Exchequer Court
of Canada
—

No. 102
EXHIBIT 97
Letter, Jas. Kent
to C. R. Hosmer
July 4, 1892.

No. 103
EXHIBIT 98
Letter, T. Tru-
deau to Robert
Sedgewick
July 14, 1892.

EXHIBIT 97—

C. R. Hosmer, Esq.,
Mgr. Telegraphs,
Montreal.

Dear Sir:—

Will you please get permission from the Government to allow us to put up about one mile of poles on the Intercolonial Railway's right of way between Stellarton and New Glasgow. 10

Our present route is along the highway and liable to frequent interruptions.

Yours truly,
(Sgd) Jas. Kent,
Supt.

No. 103

EXHIBIT 98—

DEPARTMENT OF RAILWAYS AND CANALS, OTTAWA.
Ottawa, July 14, 1892.

43148
Subj. 964
Ref. 64785

20

Sir

It has been reported by the Moncton office of the Intercolonial Railway through the Chief Engineer of Government Railways, that the Canadian Pacific Telegraph Company wish to obtain permission to build at once a line of telegraph between Stellarton and New Glasgow on the Pictou Branch of the Intercolonial Railway, and although in your letters of the 11th March 1889 and 23rd June 1890 an opinion was given that the exclusive right to build a telegraph line on the Intercolonial Rail- 30 way, and its branches under the agreement of the 22nd September 1870 given to the Montreal Telegraph Company is to be confined to that Railway and its branches then under construction (1870) a doubt exists whether or not that agreement under the 1st Clause on 3rd Page gives them such exclusive right over a branch of the Intercolonial Railway commenced and completed since this document was executed.

I am by direction to ask you to please advise the Department in this matter at an early date, if possible, I enclose you the papers.

I am Sir

Your obedient servant, 40
(sgd) T. Trudeau,
Acting Secretary.

Robert Sedgewick, Esq.,
Deputy Minister of
Justice.

RECORD

*In the
Exchequer Court
of Canada*

No. 104
EXHIBIT 99
Letter, D. Pottinger to P. W. Snider
Aug. 11, 1892.

No. 105
EXHIBIT 99-A
Memorandum,
P.W.S. to J. Kent
Aug. 16, 1892.

No. 106
EXHIBIT 100
Letter, T. Trudeau to Rob't. Sedgewick
Aug. 27, 1892.

No. 104

11th August 1892

EXHIBIT 99—

P. W. Snider, Esq.,
Manager,
C. P. R. Telegraph Department,
Saint John.

Dear Sir,—

As you requested me sometime ago, I wrote to Mr. Schreiber with regard to your Company erecting a telegraph line between Stellarton and New Glasgow on the Pictou Branch of the Intercolonial Railway on the Railway Land, and Mr. Schreiber informs me that the matter was submitted to the Department of Justice and the Minister of Justice has given it as his opinion that permission cannot be granted to your company to build this line, as the Government is bound in respect to the matter by agreements with other telegraph Co's.

Yours truly,
(sgd) D. Pottinger.

No. 105

20 EXHIBIT 99a—

J. Kent Esq.

The line is there all the same, and we have a good job but I would not like to swear whose property we are on.

P. W. S.

(Turned up)

C. R. H.

To note

J. K.

16 Aug. /92.

No. 106

30 EXHIBIT 100—

3950

DEPARTMENT OF RAILWAYS AND CANALS
CANADA

43406

Subj. 964 & 961a
Ref. 65202

Ottawa, Aug. 27, 1892.

Sir,—

I am directed to transmit to you, for the advice and counsel of the Hon. Minister of Justice, the accompanying correspondence in reference to an alleged trespass by the Canadian Pacific Railway Company by plac-

RECORD
 —
In the
Exchequer Court
of Canada
 —

No. 106
 EXHIBIT 100
 Letter, T. Trudeau to Rob't. Sedgewick
 Aug. 27, 1892.
 (Contd.)

No. 107
 EXHIBIT 101
 Letter, Geo. M. Clark to R. Sedgewick
 Aug. 31, 1892.

ing telegraph poles upon the bridge over Hammond River and upon the right of way of the Intercolonial Railway.

I am, Sir,

Your obdt Servant,

(sgd) T. Trudeau,
 Acting Secretary.

Rob't Sedgewick, Esq.,
 Depy. Minister of Justice,
 Ottawa.

Enclose
 Files Nos.
 65202
 64885
 64785
 61678
 61495

10

No. 107

EXHIBIT 101—

3298

CANADIAN PACIFIC RAILWAY COMPANY

20

Office of the Solicitor

Montreal, 31st August 1892.

Dear Sedgewick

Queen v. C.P.R.

C. P. R. Telegraph Poles on Intercolonial Ry.

Mr. Drinkwater has handed to me a letter from Messrs. O'Connor, Hogg & Balderson, dated 27th inst. informing him that they had received instructions from the Department of Railways & Canals to proceed with this action.

I think that it is evident that in giving those instructions the Department acted under a misapprehension of the matter, for some time ago I forwarded to you a formal and official consent, signed by Mr. Dwight, the General Manager of the Great North Western Telegraph Co., that our company might retain the telegraph poles, which are the subject matter of this action, within the right-of-way of the Intercolonial Railway. This consent was obtained, and, as I understood, given for the purpose of ending this litigation after an understanding had been arrived at with you that if it could be got it would be sufficient to satisfy the requirements, inasmuch as the action was instituted only in order to save the Government against any claim by the Great North Western Telegraph Co.

It occurs to me, therefore, that perhaps this formal consent was either not communicated to, or has been overlooked by the Department of Railways. Will you kindly inform Mess. O'Connor, Hogg & Co. of the true state of the case?

Yours sincerely,

(sgd) Geo. M. Clark.

R. Sedgewick, Esq., Q.C.,
Ottawa.

RECORD
—
*In the
Exchequer Court
of Canada*

—
No. 107
EXHIBIT 101
Letter, Geo. M.
Clark to R.
Sedgewick
Aug. 31, 1892.
(Contd.)

No. 108
EXHIBIT 102
Memorandum,
P.W.S. to Jas.
Kent
Sept. 22, 1892.

No. 109
EXHIBIT 103
Letter, T. Tru-
deau to Deputy
Minister of
Justice
Nov. 16, 1892.

10 EXHIBIT 102—

No. 108

PERSONAL

MEMORANDUM

From
Tel. Department C.P.R. Co.
St. John Sept. 22 1892.

To Jas. Kent. Esq.
Montreal.

I hear the G.N.W. recently sent a man over the I. C. Ry. to make particular note of the number of poles we have on railway property with a view of bringing the matter up again to make us remove them. Have you heard anything about it? They are evidently getting ready for another kick. We have moved about 200 poles this summer in different places to straighten out line and I have ordered the men to keep on with the work, unless they are stopped. If they leave us alone long enough we will have a moderately good line east soon.

P.W.S.

EXHIBIT 103—

No. 109

43863
964 & 961a
65849

16th Nov. 1892.

30 Sir,

In acknowledging your letter No. 976 of the 28th ulto. with reference to the erection of telegraph poles by the Canadian Pacific Railway Company upon the line of the Intercolonial Railway between Stellarton and New Glasgow.

I am in reply to inform you that as suggested in your letter above alluded to, that the Montreal Telegraph Company has the exclusive right over this portion of the road, "covered by contract with the Government of 1870", the Canadian Pacific Railway Company; will therefore have

RECORD
 —
In the
Exchequer Court
of Canada
 —

No. 109
 EXHIBIT 103
 Letter, T. Trudeau to Deputy Minister of Justice
 Nov. 16, 1892.
 (Contd.)

No. 110
 EXHIBIT 104
 Letter, T. Trudeau to Robt. Sedgewick
 Nov. 19, 1892.

to remove the poles between Stellarton and New Glasgow and I am to ask you to take the steps required to that effect.

I have the honour to be,
 Sir,
 Your obd't servant,
 (SGD) T. Trudeau
 Acting Secretary.

The Deputy Minister of Justice,
 Department of Justice,
 Ottawa.

10

EXHIBIT 104—

No. 110

3950

Enclose
 copy of
 agreement
 No. 3287
 of Files
 Nos. 65202
 64885
 64785
 61678
 61495

43896
 9649961a
 66020
 Sir,

Ottawa, Nov. 19th, 1892

In compliance with the request in your letter of the 17th instant, I have the honour to transmit to you the enclosed copy of the agreement with the Montreal Telegraph Company for the erection and maintenance of a line of telegraph upon the whole route of the Intercolonial Railway between Riviere du Loup and Halifax (including all its branches) together with correspondence relating thereto.

I am, Sir,

Your obed't servant,
 (SGD) T. Trudeau
 Acting Secretary.

30

Robt. Sedgewick, Esq.,
 Deputy Minister of Justice,
 Ottawa.

EXHIBIT 105—
No. 111

Borden, Ritchie, Parker & Chisholm
Barristers, &c.

3950

Hessdeins Building 119 Hollis St.
Halifax, N.S. November 26th, 1892.
Reg. vs. C.P.R. Tel. Co.

Sir,

10 We have the honour to acknowledge the receipt of your communication of the 23rd instant enclosing various files of the Department of Railways and Canals and instructing us to take the necessary steps to compel the defendant company to remove the poles erected between Stellarton and New Glasgow.

We have the honour to be

Sir,

Your obedient servants,

(sgd) Borden, Ritchie, Parker & Chisholm

20 The Deputy Minister of Justice,
Ottawa.

RECORD
—
*In the
Exchequer Court
of Canada*

No. 111
EXHIBIT 105
Letter, Borden,
Ritchie, Parker
& Chisholm to
The Deputy
Minister of
Justice
Nov. 26, 1892.

No. 112
EXHIBIT 106
Letter, C. R.
Hosmer to
Messrs. Borden,
Ritchie, Parker
and Chisholm
Nov. 29, 1892.

EXHIBIT 106—
No. 112

CANADIAN PACIFIC RAILWAY COMPANY
TELEGRAPH DEPARTMENT

3950

4 Hospital Street
Manager's Office

Montreal, Nov. 29th, 1892.

30 Messrs. Borden, Ritchie, Parker & Chisholm,
Barristers, &c.,
Halifax, N.S.

Dear Sirs,—

I beg to acknowledge receipt of yours of the 26th and have handed the same to Mr. G. M. Clark, our Counsel, with the request that he see the Government about the matter. We have had the question of the right of way on the I.C.R. up with them before.

Yours truly,

(sgd) C. R. Hosmer,
Manager Telegraphs.

RECORD
 —
In the
Exchequer Court
of Canada
 —
 No. 306
 EXHIBIT 296
 Order-in-Council
 Nov. 30, 1892.

No. 306
 3027

EXHIBIT 296—
 Certified Extract of a Report of a Committee of the
 Honourable the Privy Council, approved by
 His Excellency the Governor General in
 Council, on the 30th November 1892.

Railways and Canals,

That, on account of age, Mr. T. Trudeau, C.E., at present Deputy Head, Chief Engineer of Canals and Secretary of the Railway Committee 10 of the Privy Council, be, from the 30th November, 1892, placed on the retired list; and further that an addition of two years be added to his actual term of service, thus making his service for superannuation purposes as 35 years; he having previous to his entry into the service held amongst other positions that of Chief Engineer of the North Shore Railway and being possessed of peculiar professional qualifications and attainments which were utilized for the benefit of the Government.

Mr. Trudeau to receive an annual allowance of \$3756.66, calculated as under:—the Board finding that he is eligible within the meaning of the Civil Service Superannuation Act and that his retirement would be in the 20 public interest.

The Honourable

The Minister of Railways and Canals.

Age 66 years
 Service 33 years
 Added service 2 years
 Total services for Superannuation purposes 35 years
 Average salary past 3 years \$5366.66
 Present salary \$6000. per annum
 Annual allowance \$3756.66

30

And further that Mr. Collingwood Schreiber be appointed Deputy Head, Government Engineer of General Railways and Chief Engineer of Canals, receiving his present salary of \$6000. per annum, to take effect from the 30th of November, 1892.

And also that Mr. D. Pottinger be appointed General Manager of Government Railways, vice Mr. Schreiber, at a salary of \$6000 per annum, to take effect from the 30th November, 1892.

RECORD
In the
Exchequer Court
of Canada

No. 306

EXHIBIT 296
Order-in-Council
Nov. 30, 1892.

(Contd.)

No. 113

EXHIBIT 107
Letter, Messrs.
Borden, Ritchie,
Parker & Chisholm to The
Deputy Minister
of Justice,
Dec. 14, 1892.

JH.
J. Pope.

(sgd) John J. McGee
Clerk of the Privy Council.
Under the Authority of Section 17 of
the Department of Railways and
Canals Act. I certify the foregoing
to be a true copy of the original in my
Custody as Secretary of said Depart-
ment.

10

January 23rd 1929

Ottawa-----
J. W. Pugsley

Secretary.

No. 113

20 EXHIBIT 107—

3950

BORDEN, RITCHIE, PARKER & CHISHOLM

Barristers, &c.

Hessdiens Building, 119 Hollis St.,
Halifax, N.S. Dec. 14th, 1892.

Reg. vs. C. P. Ry. Telegraph Co.

Sir,

30 Referring to your communication of the 23rd ultimo in regard to the above matter, we beg to state that we wrote the Telegraph Company requesting them to name a solicitor who would accept service of process on their behalf and we enclose copy of their reply. Since then we have had no communication from the Company, and we shall be glad to know whether we shall now carry out your original instructions without any further correspondence with the defendants.

We have the honor to be,

Sir,

Your obedient servant,

(sgd) Borden, Ritchie, Parker & Chisholm

The Deputy Minister of Justice,
Ottawa.

RECORD

No. 114

In the
Exchequer Court
of Canada

EXHIBIT 108—

THE CANADIAN PACIFIC RAILWAY COMPANY

Office of the Solicitor.

No. 114

Montreal 14th December 1892.

EXHIBIT 108

Dear Sirs:

Letter, Geo. M.
Clark to Messrs.
Borden, Ritchie,
Parker & Chis-
holm
Dec. 14, 1892.

Your letter to Mr. Hosmer, dated the 26th ult. has been referred to me, and I write to say that an arrangement was come to between our Company and the Great North Western Telegraph Co. (the assignee of the Montreal Telegraph Co.) some time ago, which made it unnecessary for the Government to ask us to remove poles or to interfere in any way with our erection of them. This arrangement was communicated to the Department of Justice at a time when our company was being threatened with proceedings in respect of poles erected on the main line of the Intercolonial Railway and as a result of such communication proceedings were not commenced.

The arrangement above mentioned, however, seems not to have been communicated by the Department of Justice to the Department of Railways; and I assume that it is in the absence of that information that the Department of Railways has now, through the Department of Justice, caused you to be instructed in the matter.

I shall be in Ottawa in a few days, and will see that the officials of the Railway Department are fully informed about the arrangement between the two companies, after which I feel very confident that you will be requested to take no further action.

Yours very truly,

(sgd) Geo. M. Clark.

Messrs. Borden, Ritchie, Parker & Chisholm,
Halifax, N.S.

EXHIBIT 109—

No. 115

3950

BORDEN, RITCHIE, PARKER & CHISHOLM

Barristers &c.

Hesslein's Building

119 Hollis St.

Halifax, N.S. Dec. 17th, 1892.

Reg. vs. C. P. Ry. Telegraph Co.

RECORD

*In the
Exchequer Court
of Canada*

No. 115

EXHIBIT 109

Letter, Borden,
Ritchie, Parker
and Chisholm to

The Deputy

Minister of

Justice

Dec. 17, 1892.

No. 116

EXHIBIT 110

Letter, Geo. M.

Clark to Robert

Sedgewick

Dec. 20, 1892.

10 Sir,

We have the honor to enclose herewith a copy of a letter received from the solicitor of the defendant Company.

We have the honor to be,

Sir,

Your obedient servants,

(sgd) Borden, Ritchie, Parker & Chisholm

The Deputy Minister
of Justice,
Ottawa.

20

No. 116

EXHIBIT 110—

3950

CANADIAN PACIFIC RAILWAY COMPANY

Office of the Solicitor

Montreal, 20th December, 1892.

Dear Sedgewick,—

I saw Mr. Schreiber on Monday and explained to him the position of the telegraph Company question and showed him a copy of the official consent given by the Vice-President and Manager of the Great North
30 Western Telegraph Company whereupon he said his Department would countermand the instructions for the new suit.

I have today written him officially sending him a copy of this letter, the original of which is in your hands, having been sent you with my letter of the 16th December, 1891, of which I have also sent a copy to Mr. Schreiber.

Yours sincerely,

(sgd) Geo. M. Clark.

Robert Sedgewick, Esqre., Q.C.,
Deputy Minister of Justice,
Ottawa.

RECORD

—
In the
Exchequer Court
of Canada
 —

No. 117

EXHIBIT 111

Letter, Jno. H.
 Balderson to
 The Deputy
 Minister of
 Justice
 Dec. 23, 1892.

No. 118

EXHIBIT 112

Letter, Robt.
 Sedgewick to
 Messrs. Borden,
 Ritchie & Co.
 Dec. 27, 1892.

No. 117

EXHIBIT 111—

44107
 964 & 9613
 66360

Dec. 23 1892

Sir:

A communication having been received from the Solicitor of the Canadian Pacific Railway to the effect that the Great North Western Telegraph Company has consented to the erection of poles and operation 10 of a telegraph line by the Canadian Pacific Telegraph Company upon the right of way of the Intercolonial Railway, I am to request that you will be good enough to stay the proceedings which are in progress to compel the Canadian Pacific Telegraph Co. to remove their poles.

I am, Sir,

Your obedient servant,

Jno. H. Balderson,

Secretary.

The Deputy of the
 Minister of Justice,
 Ottawa.

20

No. 118

EXHIBIT 112—

3950

DEPARTMENT OF JUSTICE, CANADA

Ottawa, 27 December, 1892.

Sirs,

Reg. vs. C. P. Ry. Telegraph Co.

Referring to previous correspondence in this case, I am informed that the Great North West Telegraph Co. has consented to the erection of 30 Poles and operation of a telegraph line by the C. P. Ry. Telegraph Co. upon the right of way of the I. C. Ry. and I have therefore to request that no further proceedings be taken against the C. P. Ry. Telegraph Co.

Please return any official files in your possession and also your bill of costs in triplicate.

Yr. obdt. servant,

(sgd) Robt. Sedgewick

Messrs Borden Ritchie & Co.,
 Barristers &c.,
 Halifax.

EXHIBIT 113—
D-3950

No. 119

10 January /93.

Rex vs C. P. Ry. Telegraph Co.

Sirs

Referring to previous correspondence in this case, I have the honour to state that negotiations are at present in progress with a view to a settlement of the case.

10 In the meantime please return me the papers, etc, which were enclosed to you in my letter of instructions, and also send me your account for services rendered to date.

Your obedient servant,

(sgd) R. Sedgewick,
D.M.J.

Messrs.

Borden, Ritchie & Co.
Barristers, etc.
Halifax.

RECORD

*In the
Exchequer Court
of Canada*

No. 119

EXHIBIT 113

Letter, R.
Sedgewick to
Messrs. Borden,
Ritchie & Co.
Jan. 10, 1893.

No. 120

EXHIBIT 114

Letter, Borden,
Ritchie, Parker
& Chisholm to
the Deputy
Minister of
Justice
Jan. 14, 1893.

No. 120

20 EXHIBIT 114—

3950

BORDEN, RITCHIE, PARKER & CHISHOLM
Barrister &c.,

Hessleins Building, 119 Hollis St.,

Halifax, N.S. Jan'y 14th 1893.

Queen vs. C. P. Ry. Tel. Co.

No. 3950

Sir,

Referring to your communication of the 10th instant, we have the honor to enclose herewith as requested by you our account herein in tri-
30 plicate and the various files of the Railway Department forwarded with your letter of instructions.

We have the honor to be

Sir,

Your obedient servants,

(sgd) Borden, Ritchie, Parker & Chisholm

The Deputy Minister of Justice,
Ottawa.

RECORD

In the
Exchequer Court
of Canada

No. 121
EXHIBIT 115
Memorandum,
The Deputy
Minister of Jus-
tice to Secretary
Dept. Rys. &
Canals
Jan. 20, 1893.

No. 122
EXHIBIT 116
Letter, Chas. R.
Hosmer to Col-
lingwood
Schreiber
March 9, 1893.

No. 121

EXHIBIT 115—

DEPARTMENT OF JUSTICE, CANADA

3950

Ottawa, 20th January 1893.

Sir:

Re C. P. Ry. Telegraph line.

Referring to your letter of the 23rd December last (no. 44107) re-
questing that the proceedings instituted to compel the C. P. Ry. Telegraph
Co. to remove their poles from the line of the Intercolonial Ry. Should
be stayed and stating that you were informed by the solicitor for the C. P. 10
Ry. Co. that the Great North West Telegraph Co. had consented to the
erection of a telegraph line & operation thereof on the right of way of
way of the I. C. Ry. I have the honor to request that you will inform me
if any Release from the Great North West Telegraph Co to Her Majesty
with respect to any claim which may arise or be preferred by that com-
pany by reason of the agreement entered into with the Montreal Tele-
graph Co. dated 22nd Dec. 1870 to erect & maintain a telegraph line on
the line of the Intercolonial Ry. has been received or any bond of indem-
nity taken to secure the Crown against any such claim & the costs of any 20
proceedings wh may be taken against the Crown by reason of such
agreement or permission, & to suggest that it wd be advisable to obtain
such release or indemnity.

Our agents costs in the proceedings which were taken under the in-
structions contained in yr letter of the 10 Nov. 92 Reg. 65849 amount to
\$8.00. These shd I think be paid by the C.P. Ry. Tel. Co. I think you shd
write them on the subject & request the payment of this a/c. I return
fyles enc.

The Sec't

Dept of Rys & Canals.

No. 122

EXHIBIT 116—

30

March 9th, 1893.

Collingwood Schreiber, Esq.

Dep. Minister, Dept. of Railways & Canals.

Ottawa.

Dear Sir:

The Canadian Pacific contemplate the construction of a telegraph
line between New Glasgow N.S. and Sydney C.B., and desire to know if
the Government are free to allow the line to be built along the Intercolo-
nial Railway right of way between these two points. I understand that 40
when the contract for the existing lines was entered into between the
Government and the Western Union Telegraph Company the Govern-
ment reserved the right of allowing another line to be built, having in
view the fact that our system would be extended between these points.

Yours truly,

Sgd. Chas. R. Hosmer,
Manager of Telegraphs

EXHIBIT 117—
 No. 123
 CANADIAN GOVERNMENT RAILWAYS
 Ottawa

10th March 1893.

C. R. Hosmer, Esq.,
 Manager Telegraphs, C.P Ry.
 4 Hospital St. Montreal P.Q.

Dear Sir:

10 I have yours of the 9th inst. in which you state that the C. P. contemplate the construction of a telegraph line between New Glasgow and Sydney, and asking if the line can be built along the Intercolonial Railway right of way between these two points.

There will be no difficulty about this, but it will be necessary for you to enter into a written agreement similar to the Western Union Telegraph Company.

Yours truly,

Collingwood Schreiber
 Chief Engineer.

RECORD
 —
*In the
 Exchequer Court
 of Canada*

—
 No. 123
 EXHIBIT 117
 Letter, Collingwood Schreiber to C. R. Hosmer
 March 10, 1893.

—
 No. 124
 EXHIBIT 118
 Letter, C. R. Hosmer to Collingwood Schreiber
 March 13, 1893.

20 EXHIBIT 118—

No. 124

March 13th 1893.

Collingwood Schreiber, Esq.,
 Deputy Minister Dept. of Railways & Canals,
 Ottawa.

Dear Sir:

Many thanks for yours of the 10th inst. I would be obliged if you would have prepared the necessary contract, or send me a copy of the one you have with the Western Union Co. and I will have our Counsel
 30 draw up a similar one.

Yours truly,

Sgd. C. R. Hosmer
 Manager Telegraphs.

RECORD

No. 125

EXHIBIT 119—

March 20th 1893.

In the
Exchequer Court
of Canada

S. S. Dickenson Esq.,
Supt. Commercial Cable Company,
Canso N.S.

No. 125

EXHIBIT 119

Letter, C. R.

Hosmer to S. S.

Dickenson

March 20, 1893.

No. 126

EXHIBIT 120

Letter, C. R.

Hosmer to

George G. Ward

March 27, 1893.

Dear Dickenson:

I might say to you privately that we intend constructing a telegraph line from New Glasgow N.S. to Sydney C.B. this summer, and that we expect to get permission from the Intercolonial Railway to build along the line of their road between these two points. Had we not secured this privilege we would have asked permission of your Company to string our wires on your poles as far as Heatherton, but now we think we had better use the Railway the whole distance, as it would be quite a saving to us in repairs. Would you consider it advisable to remove your present wires from the highway and place them on our poles between New Glasgow and Heatherton? If so we would wish to know in good time, so that we might put on a cross arm to accommodate them. Our present idea is to simply put on a sideblock and string one wire.

Yours very truly,

20

C. R. Hosmer

No. 126

EXHIBIT 120—

March 27th 1893

George G. Ward, Esq.
V.P. & Gen. Mgr. Commercial Cable Co.
1 Broadway, New York.

My dear Sir:

I have secured an appropriation for the construction of a telegraph line to Sydney C.B. and expect to obtain from the Intercolonial Railway Company the right to construct the same along their right of way between New Glasgow and Sydney. My first impression was that perhaps it would be as well for us to obtain permission from you to use your poles as far as Heatherton, but I think now it would be better for us to construct the new line over the entire distance on the railroad. I think also it would be a good idea for us to string an extra wire from New Glasgow to Heatherton and run it into that office, where it could be used as an alternate route in case of interruption to your highway line.

Please let me have your views on the matter.

Yours very truly,

40

C. R. Hosmer
Mgr. Telegraphs.

No. 127

EXHIBIT 121—

March 27th, 1893

S. S. Dickenson, Esq.,
Supt. Commercial Cable Company.
Canso. N.S.

RECORD.

*In the
Exchequer Court
of Canada*

No. 127

EXHIBIT 121

Letter, C. R.
Hosmer to S. S.
Dickenson
March 27, 1893.

No. 128

EXHIBIT 122

Letter, C. R.
Hosmer to
George G. Ward
April 5, 1893.

My dear Dickenson:

Thanks for yours of the 24th inst. I am writing Mr. Ward about the matter today. I think perhaps it would be well for us to build a new
10 line, and for you to leave yours as it is. We might string an extra wire from New Glasgow to Heatherton, Mulgrave and Fort Hastings, which could always be used by the Cable Company in case of interruption to their own circuit.

I note what you say about the difficulty in laying and maintaining a cable in the Straits of Canso. I presume you remember the time that I was down there in the old Dominion days when the Western Union secured an injunction restraining us from laying a cable. I am sending Richardson down to look the ground over and report.

With kind regards,

20

Yours very truly,

C. R. Hosmer

No. 128

EXHIBIT 122—

April 5th 1893.

George G. Ward, Esq.,
V.P. & Gen. Mgr. Commercial Cable Company,
1 Broadway, New York.

My dear Sir:

Replying to yours of the 30th ult. re proposed telegraph line between New Glasgow and Sydney. As you have little or no trouble on your
30 line between Heatherton and New Glasgow I think it would be better for us to construct our line absolutely independent of your Company. We propose only stringing one wire but thought we might possibly string a second one to Heatherton or as far as the Straits of Canso. I imagine we will be able to arrange with the Government to allow us to have test offices at all their railway stations.

Yours very truly,

C. R. Hosmer.
Mgr. Telegraphs.

RECORD

In the
Exchequer Court
of Canada

No. 312

EXHIBIT 302
Letter, Jno. H.
Balderson to the
General Man-
ager Govt.
Railways
April 6, 1893

No. 129

EXHIBIT 123
Letter, E. L.
Newcombe to
the Secretary,
Dept. Railways
& Canals
May 4, 1893.

No. 312

EXHIBIT 302—

7527

961a & 964

67247

April 6th, 1893.

Encls: Draft.

Sir,—

I am directed to transmit to you the enclosed draft of an agreement between the Canadian Pacific Railway and Her Majesty, in which it is proposed to allow the said Company to construct a Telegraph line between New Glasgow and Sydney along the Eastern Extension and Cape Breton Railways, and to request that you will be good enough to examine the same with a view to suggesting any modifications or corrections which you may consider necessary. 10

I am, Sir,

Your obedient servant,

(sgd) Jno. H. Balderson
Secretary.

The General Manager of
Government Railways,
Moncton, N.B.

20

No. 129

EXHIBIT 123—

D. 3950

Encls.

Ottawa,
4th May /93.

Sir,

The Queen vs. C.P. Ry. Telegraph Co.

Referring to your letter of the 23rd December last (Reference 44107) requesting that the proceedings instituted to compel the C. P. Ry. Telegraph Co to remove their poles from the line of the Intercolonial Ry. should be stayed and stating that you were informed by the Solicitor of the Canadian Pacific Ry. Co. that the Great North West Telegraph Co. had consented to the erection of a telegraph line and the operation thereof upon the right of way of the Intercolonial Railway. I have the honour to request that you will kindly inform me if any Release from the Great North West Telegraph Co. to Her Majesty with respect to any claim which may arise or be preferred by that Company by reason of the agreement entered into with the Montreal Telegraph Company, dated 22nd Dec.— to erect and maintain a telegraph line on the line of the Intercolonial

Ry. has been received, or any bond indemnity taken from the C. P. Ry. Telegraph Co. to secure the Crown against any damages, or claim for damages, or costs, which may be preferred against the Crown by reason of such agreement, and to suggest that it would be highly advisable to obtain such release or bond of indemnity.

The costs of our agents in the proceedings which were taken on the instructions contained in your letter of the 10th Nov. 1892, (Ref. 65) amount to \$8.00. I enclose their account in duplicate. These costs should I think be paid by the C. P. Ry. Telegraph Co. and I would suggest your
10 writing them on the subject and requesting payment thereof. I also return fyles Nos. 64785, 65202, 65849, 84885, 61678 and 61495 of your Dept. and agreement between the Montreal Telegraph Co. and Her Majesty.

I am, Sir,

Yr. obdt. Servant,

(sgd) E. L. Newcombe
D.M.J.

The Secretary,
Dept. Railways and Canals.

RECORD
—
In the
Exchequer Court
of Canada
—

No. 129
EXHIBIT 123
Letter, E. L.
Newcombe to
the Secretary,
Dept. Railways
& Canals
May 4, 1893.
(Contd.)

No. 130
EXHIBIT 124
Letter, Chas. R.
Hosmer to
Collingwood
Schreiber
May 8, 1893.

No. 130

20 EXHIBIT 124—

May 8th 1893.

Collingwood Schreiber, Esq.,
Chief Engineer Government Rys.
Ottawa.

Dear Sir:

Referring to your letter of March 10th I would state that our arrangements are about complete for the construction of our telegraph line between New Glasgow and Sydney, C.B. and I would be very much obliged if you would kindly hurry the contract you referred to as being
30 necessary for us to make with the Government in order to be placed in the same position as the Western Union on that section of the Government's Railway.

Yours truly,

Sgd. Chas. R. Hosmer
Manager Telegraphs

RECORD

No. 131

In the
Exchequer Court
of Canada

EXHIBIT 125—

May 27th 1893.

No. 131
EXHIBIT 125
Letter, Jno. H.
Balderson to C.
Drinkwater
May 27, 1893.

No. 44959
Sub. 961a-964
Ref. 67573
C. S.

Sir,

I am directed to forward you, for execution by the Canadian Pacific Railway Company, the accompanying drafts of an agreement between the C.P.R. Co. and Her Majesty Queen Victoria, represented by the Minister of Railways and Canals, in re the telegraph line between New Glasgow and Sydney, along the Eastern Extension and Cape Breton Railways. 10

Be pleased to return the same to this department as soon as they have been duly signed and sealed on behalf of the Company.

I am, Sir,

Your obedient servant

Jno. H. Balderson
Secretary 20

C. Drinkwater, Esq.
Secretary, C.P.R. Co.
Montreal.

Enc.

Under the Authority of Section 17
of the Department of Railways and
Canals Act. I certify the foregoing
to be a true copy of the original in
my Custody as Secretary of said De-
partment. 30

Ottawa January 17th 1929.—

J. W. Pugsley
Secretary.

No. 132

EXHIBIT 126—

J. F. Richardson, Esq.,
Inspector, C.P.R. Telgh.
New Glasgow, N.S.

June 26 1893

RECORD

*In the
Exchequer Court
of Canada*

No. 132

EXHIBIT 126
Letter, Jas. Kent
to J. F. Richard-
son
June 26, 1893

No. 133

EXHIBIT 127
Letter, C. R.
Hosmer to C.
Drinkwater
July 12, 1893.

Dear Sir:

Replying to yours of the 23rd instant with reference to building on the highway from West Bay Road to Hastings, Mr. Hosmer and I are of the opinion that you had better stick to the Railroad and build around West Bay Road to Point Tupper.

I am very glad to hear that the digging is favourable and that you are making very fair time.

Yours truly,

Jas. Kent
Supt.

No. 133

EXHIBIT 127—

20 C. Drinkwater, Esq.,
Secretary.

July 12th 1893.

Dear Sir:

I enclose for execution by the Company, agreement in duplicate between the Canadian Pacific Railway Company and the Government, which gives us the right of constructing a line of telegraph on the Inter-colonial Railway between New Glasgow N.S. and Sydney Cape Breton. In our negotiations with the Government they promised to allow us the same privileges as were granted to the Western Union Telegraph Company whose lines now occupy the other side of the track, and the enclosed agreement is, I understand similar to the one made between that Company and the Government.

Yours truly,

C. R. Hosmer
Mgr. Telegraphs.

RECORD

No. 134

In the
Exchequer Court
of Canada

EXHIBIT 128—

21st July 1893.

No. 134

J. F. Richardson, Esq.,
Inspector C.P.R. Telegrs.
New Glasgow N.S.

EXHIBIT 128

Dear Sir:

Letter, Jas. Kent
to J. F. Richard-
son

July 21, 1893.

Referring to your letter of 8th inst. re definite instructions as to of-
fices at Mulgrave, Hawkesbury and Port Tupper—We will open offices
at these points including Hastings. You are to build along the railroad 10
from West Bay Road to Point Tupper. Our agreement with the Govern-
ment is not yet signed but it has been received at the Head Office and
we expect to get it in the course of a few days when you will be posted.
I myself do not know whether the wire will be put in the stations or not
but I think in all probability it will be.

No. 135

EXHIBIT 129

Letter, C.

Drinkwater to
John H. Balder-
son

July 25, 1893.

I expect to leave here on Sunday or Monday night next and will be
with you in a few days.

Yours truly,

Jas. Kent.

Supt. 20

No. 135

EXHIBIT 129—

25th July 1893.

John H. Balderson Esq.
Secretary, Dept. of Railways & Canals
Ottawa

Sir,

I beg to enclose agreement in duplicate, executed by this Company
providing for the construction of a telegraph line on the Intercolonial
Railway between New Glasgow and Sydney. Will you please return one 30
copy to me when executed by the Minister of Railways.

I have the honor to be,

Sir

Your obedient Servant

(Sgd) C. Drinkwater
Secretary.

No. 314

EXHIBIT 304—

THE WESTERN UNION TELEGRAPH COMPANY.

August 9th 1893.

Dated Moncton
To C. Schreiber
Ottawa, Ont.

The men in charge of construction of C.P.R. telegraph line in Cape Breton ask to be allowed to put wire into Mulgrave station is this to be done.

D. Pottinger

No. 313

EXHIBIT 303—

Ottawa, August 10th, 1893.

D. Pottinger,
Moncton.

Message received—Council has not yet been asked to authorize the Minister to sign agreement permitting Canadian Pacific Telegraph Co. to place their line between New Glasgow and Mulgrave.

20

C. Schreiber.

No. 136

EXHIBIT 130—

45230
961 a 964
67592

August 11th, 1893
Queen vs C.P. Ry. Telegraph Co.

Sir:

In reply to your letter of the 4th of May last (D 3950) by which you ask whether any release has been obtained from the Great North West Telegraph Co. to the Crown with respect to any claim by that Company which may arise by reason of the agreement with the Montreal Telegraph Company for the erection and maintenance of a telegraph line on the Intercolonial Railway, or whether any bond of indemnity has been taken from the C.P.R. Telegraph Company to secure the Crown against claim for damages which may be preferred against it by reason of such agreement, I have the honour by direction to say that the Department has no release or bond from either of the Companies named in respect of this matter.

RECORD

—
*In the
Exchequer Court
of Canada*

—
No. 314
EXHIBIT 304
Telegram, D.
Pottinger to C.
Schreiber
August 9, 1893.

No. 313
EXHIBIT 303
Telegram, C.
Schreiber to D.
Pottinger
August 10, 1893.

No. 136
EXHIBIT 130
Letter, Jno.
Balderson to E.
L. Newcombe
Aug. 11, 1893.

RECORD
—
In the
Exchequer Court
of Canada
—

No. 136
EXHIBIT 130
Letter, Jno.
Balderson to E.
L. Newcombe
Aug. 11, 1893.
(Contd.)

No. 137
EXHIBIT 131
Letter, J. F.
Richardson to
Jas. Kent
August 27, 1893.

With reference to the account of \$8. sent in with your letter being the account of Messrs. Borden Ritchie et al, representing their costs in the above case, I have to ask that you will be pleased to tax the same and return it to this office for payment.

I have the honour to be, Sir,

Your obedient servant,

Jno. Balderson,
Secretary.

E. L. Newcombe, Esq.,
Deputy Minister of Justice.

10

No. 137

EXHIBIT 131—

CANADIAN PACIFIC RY. CO'S. TELEGRAPH
Construction Department

Mulgrave, N.S Aug. 27 1893.

Jas. Kent Esq.
Supt. Montreal.

Dear Sir:

Referring to the arrangement that I make with Mr. McMillan at Hastings, with which you were dissatisfied, I have had an interview with him and the whole arrangement is now cancelled. We of course, cannot put our wire into their house, but he has granted us the right of way for landing cable and building line to main road. Please advise me by return mail whether you want an office in Hastings or not; and if you do shall I make any such arrangement and what is limit of expense you will allow. There is no use talking commission there this winter. Offices should be decided upon immediately including our right to enter Railway stations as it is very unsatisfactory building line without knowing where offices are to be located.

Yours truly,

30

Sgd. J. F. Richardson

No. 138

EXHIBIT 132—

31st August 1893.

J. F. Richardson, Esq.,
Inspector C.P.R. Tel.
Mulgrave N.S.

RECORD
—
In the
Exchequer Court
of Canada
—

No. 138
EXHIBIT 132
Letter, Jas.
Kent to J. F.
Richardson
August 31, 1893.

Dear Sir:

Your letter of the 27th inst received. I am very glad to learn that the arrangement with McMillan has been cancelled at least as far as the 10 repairer is concerned. I do not think we shall open any offices between Point Tupper and Mulgrave as it would only be a useless expense to do so this year. Mr. Hosmer has just informed me that the contract has been executed by the Canadian Pacific Ry. Co. and is now in the hands of the Government for signature. We hope to receive it in the course of a few days.

Yours truly,
Jas. Kent

Supt.

No. 139
EXHIBIT 133
Letter, J. F.
Richardson to
Jas. Kent
Sept. 9, 1893.

No. 139

20 EXHIBIT 133—

CANADIAN PACIFIC RY. CO'S TELEGRAPH
Construction Department

Mulgrave, N.S. Sept. 9 1893.

Jas. Kent, Esq.
Supt. Montreal.

Dear Sir:

At last May has finished setting poles between Point Tupper and Hastings. I was with him all day and we finished at 7 p.m. Never had so much trouble in any city as I had in Hastings and Hawkesbury. At 40 Hastings I was served with Notarial protest and even today after I had talked the majority over three men tried to stop us from putting up poles in front of their property and one of them wanted to fight. Thursday May finished loading poles and Friday distributed from Mines Road to Iona (this side of Bridge at G. Narrows) Dolbec goes to Sydney tonight to commence loading poles on Tuesday. Monday he will string wire from the Junction to Sydney. Monday May will string wire Hastings to Point Tupper. As soon as Dolbec loads and distributes 9 cars poles both gangs will have straight work and we may expect a good showing from both.

Yours truly,

Sgd. J. F. Richardson

RECORD
—
In the
Exchequer Court
of Canada
—
No. 140
EXHIBIT 134
Letter, Jas.
Kent to J. F.
Richardson
Sept. 19, 1893
No. 141
EXHIBIT 135
Letter, P. W.
Snider to Jas.
Kent
Sept. 30, 1895.

No. 140

EXHIBIT 134—

19th Sept. 1893.

J. F. Richardson, Esq.,
Inspector C.P.R. Tel.
Mulgrave N.S.

Dear Sir:

The prospects at the present time are that we will only open offices at Sydney and North Sydney. You can make whatever arrangements are necessary for the renting of offices keeping on the economical side. 10
The Government has not yet signed their agreement and of course until this is done we cannot enter the stations.

Yours truly,

Jas Kent.

Supt.

No. 141

EXHIBIT 135—

St. John, N.B., Sep. 30/95.

Jas. Kent, Esq.,
Supt. Montreal.

20

Dear Sir:—

Referring to my telegram from Moncton re freight rates for distribution of line material. The Intercolonial Railway will make the following rates, car load lots being underrated in all cases.

St. John to Moncton	11c per 100 lbs.
“ Amherst	12c “ “
“ Truro	15c “ “
“ New Glasgow	16c “ “
“ Antigonish	17c “ “
Halifax to Antigonish	16c “ “

30

The minimum weight per car being 20,000 lbs. this would make an average rate per car of about \$28. as per my telegram.

The rate for moving boarding cars is 5c per mile per car with a minimum charge of \$1.00 per car.

Yours truly,

(Sgd) P. W. Snider.

No. 142

EXHIBIT 136—

St. John, N.B., Nov. 15/95.

J. J. Wallace Esq.,

Genl. Frt. Agt., Intercolonial Railway, Moncton, N.B.

Dear Sir:—

Referring to our conversation in your office some weeks ago, we expect to start in a couple of gangs in boarding cars stringing wire between St. John and Heatherton, in about a week or ten days time.

10 Will you kindly instruct your agents re the billing of these cars, and also our supplies which may go forward from time to time as the work progresses, in accordance with the rates given me when I visited you in Moncton.

As there will be considerable freights to be paid, and charger for moving our boarding cars, I should be very glad if you could arrange it, that your Agents could return the bills to your Treasurer, in such manner as would suit him best. This plan would avoid considerable trouble in our having to pay for each move or shipment at the time, which might not always be convenient. I think some such arrangement as this was
20 in force in our previous construction work, and I should be obliged if it can be managed this time.

I may say that we will not distribute supplies between stations, except by hand car, so that our shipments will all be unloaded at stations.

Will you kindly advise me soon as possible in reference to the method of settling freights as suggested, and much oblige.

Yours very truly,

(Sgd) P. W. Snider.

G. Mgr.

No. 143

30 EXHIBIT 137—

St. John, N.B., Nov. 15/95.

D. Pottinger, Esq.,

Genl. Mgr. Intercolonial Railway, Moncton, N.B.

Dear Sir:—

We propose starting two gangs of men in boarding cars to string wire between St. John and Moncton, and working east as far as Heather- ton, in about a week or ten days time. As these gangs will require to use hand cars, will you kindly furnish us with two good reliable section hands to take charge of the running of the hand cars, one man for each gang, to continue with us until we reach Heatherton, and advise me the rate of wages we will be expected to pay them.

RECORD

—
In the
Exchequer Court
of Canada

No. 142

EXHIBIT 136

Letter, P. W.

Snider to J. J.

Wallace

Nov. 15, 1895.

No. 143

EXHIBIT 137

Letter, P. W.

Snider to D.

Pottinger

Nov. 15, 1895.

RECORD
—
*In the
Exchequer Court
of Canada*
—

No. 143
EXHIBIT 137
Letter, P. W.
Snider to D.
Pottinger
Nov. 15, 1895.
(Contd.)

No. 311
EXHIBIT 301
Extracts from
the Journals of
the Department
of Railways and
Canals

I presume the men would be ready to report for work upon my advising you by wire a day or two before we are ready to start work. Will you kindly advise me.

Yours very truly,

(Sgd.) P. W. Snider.
G. Mgr.

No. 311

EXHIBIT 301—

Extracts from the Journals of the Department of
Railways and Canals.

10

1893

Mar. 18/20 From C. Schreiber 67247

C. R. Hosmer, Manager of Telegraph Dept. of C.P.R. Co., asks if the Government will allow the construction of telegraph lines along the I. C. Ry between New Glasgow, N.S. and Sydney, C. B., and that a contract be prepared.

X Apl. 6 To D. Pottinger 44741

Enclosing draft of proposed agreement with C. P. Ry. Co. to construct a telegraph line between New Glasgow and Sydney along the Eastern Extension and Cape Breton Railways.

p 322

X May 2/4 From D. Pottinger 67573

In reply to No. 44741, gives his views in reference to agreement between C. P. Ry. and Her Majesty for a telegraph line between New Glasgow and Sydney, along the Eastern Extension and the Cape Breton Railways. Returns agreement.

X May 27 To C. Drinkwater 44959

Enclosing for execution, agreement re telegraph line between New Glasgow and Sydney along Eastern Extension and Cape Breton Railways.

	July 25/26 From do	68153	Agreement in duplicate for construction of telegraph line between New Glasgow and Sydney. A copy to be returned when executed.	RECORD — <i>In the Exchequer Court of Canada</i> —
	(Exhibit 125)			
	1895 Sep. 6/7 From do	73812	Has any action been taken towards the execution of agreement relating to the telegraph line between New Glasgow and Sydney, sent in No. 68153.	No. 311 EXHIBIT 301 Extracts from the Journals of the Department of Railways and Canals
	(Exhibit 129)			(Contd.)
10	1896 Sep. 9/12 From D. Pottinger	76511	Sends a letter from W. J. Lockart to P. S. Archibald, also one from Section man Ivan Slack stating that the linemen of C. P. Ry. Co's telegraph are moving the telegraph line on the I. C. Ry. property inside of the fences on the Folleigh Section. Asks for instructions.	No. 144 EXHIBIT 138 Letter, O'Connor & Hogg, to E. L. Newcombe Nov. 4, 1896.
	Between Truro & Moncton			

20

No. 144

EXHIBIT 138—

O'Connor & Hogg,
Barristers, Solicitors,
Notaries Public &c.

Ottawa, Canada, Nov. 4, 1896.

Sir:—

Queen v. Canadian Pacific Ry. Co.

We beg herewith to hand you our bill of costs in this case. The action was commenced to recover damages against the company for trespassing upon the land of the Intercolonial Railway, by sinking holes in which to place telegraph posts. An information was prepared and served upon the company, and a great many interviews and discussions took place between the solicitor for the company and the government and ourselves. The action was stayed by the government, as we understood it, upon some settlement that was arrived at, and since September, 1892, nothing further was done in the case.

Please have this bill certified for payment and oblige.

Yours truly,

E. L. Newcombe, Esq. Q.C.,
Deputy Minister of Justice,
Ottawa.

(sgd) O'Connor & Hogg

40

ENCL.

(Note: Bill of costs for \$106.44 attached to file but not copied)
NOT COPIED 18/11/96—1r. Balderson—D.M.J. enclosing cheque for
above \$106.44

RECORD

No. 145

In the
Exchequer Court
of Canada

EXHIBIT 139—

INTERCOLONIAL RAILWAY OF CANADA
Moncton N.B.

28th August 1897.

No. 145
EXHIBIT 139
Letter, D. Pottinger to P. W. Snider
Aug. 28, 1897.

P. W. Snider, Esq.,
C.P.R. Co's Telegraph,
St. John. N.B.

Dear Sir:

With reference to your request which I submitted to the Department that the C.P.R. Telegraph wires be put into the station at Mulgrave. This has been considered by the Department and Mr. Schreiber writes me that it is not considered desirable to have the work of either of the Telegraph Companies done in the station so therefore your request cannot be complied with.

No. 146
EXHIBIT 140
Letter, P. W. Snider to D. Pottinger
Sept. 1, 1897.

I may say if it would meet your case, we could lease you a small piece of land somewhere adjoining the station on which you could erect a little building for a telegraph office in much the same way in which the Western Union Telegraph Company now have an office there.

Yours truly,
Sgd. D. Pottinger.

20

No. 146

EXHIBIT 140—

St. John, N.B., Sept. 1/97.

D. Pottinger, Esq.,
General Manager, Intercolonial Ry.,
Moncton, N.B.

Dear Sir:—

I have your favor of Aug. 28th. ult., re the placing of our wire in Mulgrave Station. I am sorry the Department does not think it advisable to allow us to do business there.

I note your suggestion about leasing us ground for an office, but as the business done is very small, we do not feel justified in incurring the expense of maintaining an independent office at that point. Pending an opportunity of securing a suitable agent there, we have closed the office for business, but as it is somewhat important to have testing facilities, I thought perhaps you would have no objection to having our wire put in the station there for testing purposes only until such time as we may be able to arrange a satisfactory outside location.

Will you kindly advise me re this, and much oblige.

Yours truly,
(Sgd.) P. W. Snider.

40

No. 147

EXHIBIT 141—

INTERCOLONIAL RAILWAY OF CANADA
Moncton N.B.

14th Sept. 1897.

P. W. Snider, Esq.,
Manager, C.P.R. Co's Telegraph,
St. John, N.B.

Dear Sir:

10 I have received your letter dated September 1st and have given instructions for your Company to be allowed to place their telegraph wire into the station at Mulgrave for testing purposes only until such time as you may be able to arrange a satisfactory outside location.

Yours truly,
D. Pottinger

No. 148

EXHIBIT 142—

TELEGRAM.

67 AU 27 DH
20

St. John, 646p, Sept. 19, 1898.
Moncton, N.B. 19

P. W. Snider

Trackmaster reports your people are shifting some of the telegraph poles from the outside to the inside of railway fence between Shubena-cadie and Stewiacke. What about this.

(SGD) D. Pottinger.

No. 149

EXHIBIT 143—

D. 39,439

1st October 1898.

30 P. W. Snider, Esq.,
C. P. R. Telegraph Company,
St. John, N.B.

Dear Sir,—

Our Chief Engineer reports that your men are shifting some of their telegraph poles in on the railway land at the East end of Athol Yard, How is this please. I cannot find that any permission was given for this to be done.

Yours truly,
D. Pottinger.

RECORD

—
In the
Exchequer Court
of Canada

No. 147

EXHIBIT 141
Letter, D. Pottinger to P. W. Snider
Sept. 14, 1897.

No. 148

EXHIBIT 142
Telegram, D. Pottinger to P. W. Snider
Sept. 19, 1898.

No. 149

EXHIBIT 143
Letter, D. Pottinger to P. W. Snider
Oct. 1, 1898.

RECORD

No. 150

*In the
Exchequer Court
of Canada*

EXHIBIT 144—

INTERCOLONIAL RAILWAY OF CANADA.
Office of the General Manager.

No. 150

Moncton, N.B. 9th December, 1899.

EXHIBIT 144

Letter, D.
Pottinger to
James Kent
Dec. 9, 1899.

James Kent, Esq.,
Manager, C.P.R. Co.'s Teegraphs,
Montreal.

Dear Sir:—

No. 151

EXHIBIT 145

Letter, Jas.
Kent to D.
Pottinger
Dec. 11, 1899.

It would be a convenience for the Intercolonial Railway if you would allow us to place four pin cross arms on about 17 of your telegraph poles at Sydney to enable us to run four wires to an electric semaphore which it is intended to put up at that place at the West end of the yard.

Will you please consider the matter and if possible give the necessary permission.

Yours truly,

(SGD) D. Pottinger.

No. 151

EXHIBIT 145—

December 11th, 1899. 20

D. Pottinger, Esq.,
General Manager, Intercolonial Railway,
Moncton, N.B.

Dear Sir:—

I have much pleasure in granting your Company permission to place a four-pin cross arm on about 17 of our telegraph poles at Sydney to enable you to run four wires to an electric semaphore which it is intended to put up at that place at the West end of the yard, as per your request of the 9th instant.

Of course it is understood that the work will be done under the supervision of our Superintendent of Construction, and that the wires will be taken down as soon as we find it necessary to order their removal.

Yours truly,

(Sgd.) Jas. Kent.
Manager Telegraphs.

No. 152

EXHIBIT 146—

INTERCOLONIAL RAILWAY OF CANADA.

Moncton, N.B. 13th December, 1899.

Jas. Kent, Esq.,
 Manager Telegraph C.P.R. Co.,
 Montreal.

Dear Sir:—

I have your letter dated December 11th for which I am much obliged,
 10 and the conditions mentioned in it are agreed to.

Yours truly,
 (SGD) D. Pottinger.

No. 153

EXHIBIT 147—

St. John, N.B., Nov. 3/1900.

Geo. M. Jarvis, Esq.,
 Sup't, I.C.R., Truro, N.S.

Dear Sir:—

I have yours of Oct. 31st., in reference to one of our poles at Am-
 20 herst, that you wish to have shifted, and have instructed our lineman to
 have it attended to at once.

Yours truly,
 (SGD) P. W. Snider.

No. 154

EXHIBIT 148—

CANADIAN PACIFIC RAILWAY CO'S TELEGRAPH
 Telegraph Department

St. John, Dec. 25, 1900.

30 Jas. Kent, Esq.,
 Montreal.

(Private)

Dear Mr. Kent:—

Possibly you may already be aware of this but I have heard inci-
 dentally and privately that the W.U. have had no contract on the I.C.R.
 for the past two years and are working for one now, although I believe
 its not signed yet. What the value of it is I can't say but the matter is
 worth looking into and if possible heading off any exclusive features.
 It might be a good time to try and get some sort of a contract ourselves at
 least one that would give us the use of their right of way even if we could
 40 get nothing else.

Yours truly,
 (Sgd) P. W. Snider

RECORD

In the
 Exchequer Court
 of Canada

No. 152

EXHIBIT 146
 Letter, D. Pot-
 tinger to
 Jas. Kent
 Dec. 13, 1899.

No. 153

EXHIBIT 147
 Letter, P. W.
 Snider to
 Geo. M. Jarvis
 Nov. 3, 1900.

No. 154

EXHIBIT 148
 Letter, P. W.
 Snider to
 Jas. Kent
 Dec. 25, 1900.

RECORD

No. 155

In the
Exchequer Court
of Canada

EXHIBIT 149—

21st Feby. 1901

James Kent Esq.
Manager Telegraphs
Montreal.

No. 155

EXHIBIT 149

Letter, C. Drink-
water to James
Kent
Feb. 21, 1901.

Dear Sir,

Referring to your letter of the 15th ultimo. I return duly executed by this Company, lease from Her Majesty the Queen, of site on the Intercolonial Railway at New Glasgow for a tool house. This lease requires 10 the execution of the Minister of Railways and Canals, and the Secretary of that Department.

No. 156

EXHIBIT 150

Letter, P. W.
Snider to Jas.
Kent
Feb. 19, 1902.

Will you please have it so executed and one copy returned to me for Company's records?

Yours truly

C. Drinkwater.

No. 156

EXHIBIT 150—

St. John, N.B. Feby. 19 /02.

Jas. Kent, Esq.,
Manager Telegraphs,
Montreal.

20

Dear Sir,—

Referring to yours of the 8th and our subsequent conversation, in reference to I.C.R. Right of way lease between Riviere Du Loup and Levis. I have since seen Mr. Russell who made a note of the changes requested, and has sent the document forward to the Department to have it altered accordingly.

I had some further talk with Mr Russell in reference to our position on other sections of the road, as a result of which, I think that this would 30 be a good time to take up the question of a similar right of way agreement covering the road east of St. John.

They are about making a new contract with the Western Union, although Mr. Russell told me he would not recommend anything that would give them exclusive right of way privileges.

I think if you were to take up the matter with the Department, representing that we are operating a line east of St. John for some years, located just outside the railway right of way, and that in several instances owing to the courtesy and good feeling of the Management, we have been allowed to set poles on the right of way and that it is desirable

that a definite understanding should be come to by which we would be at liberty to use the right of way in order to facilitate our repair work, and re-building of the line from time to time as becomes necessary and also offering any reasonable quid pro quo for such privileges, as might be suggested by the Railway, I feel quite satisfied we could get a satisfactory arrangement.

Mr. Russell certainly is favourable to such an arrangement, and he privately suggested some such way as the above, of bringing up the question.

10 He also told me he would be very glad to come and see you first time he was in Montreal, and no doubt after seeing him yourself, you will have a clearer idea of how he feels toward us.

Mr. Russell assured me the Minister was in no way prejudiced but on the contrary, thought he would treat the matter in a friendly spirit.

Yours truly,
P. W. Snider.

No. 157

EXHIBIT 151—

Nov. 7, 1903,

20 Chas. Rutherford, Esq.,
c/o C. P. R. Tel. Co.,
Halifax, N. B.

Dear Sir:—

I understand you are in charge of the work of changing the C. P. R. Poles on our line at Shubenacadie. Mr. T. C. Burpee, Eng. Maintenance informs me that he is not aware that any permission was granted your company to put poles inside our limits and instructs me to see that no more poles are put on our limits until I am further instructed. If you are not the responsible party kindly give me his address.

Yours truly,
Trackmaster.

30

No. 158

EXHIBIT 152—

CANADIAN PACIFIC RAILWAY COMPANY.
Memorandum.

Halifax, N. S. Station
Nov. 16, 1903.

To P. W. Snider, Esq.,
Supt.
St John, N. B.

Dear Sir:—

40 The attached letter received by Robson, it is evidently from Track-
master Archibald.

Yours truly,
W. M. Godsoe,
Mgr.

RECORD
—
*In the
Exchequer Court
of Canada*

No. 156
EXHIBIT 150
Letter, P. W.
Snider to Jas.
Kent
Feb. 19, 1902
(Contd.)

No. 157
EXHIBIT 151
Letter, Track-
master to Chas.
Rutherford
Nov. 7, 1903.

No. 158
EXHIBIT 152
Memorandum,
W. M. Godsoe
to P. W. Snider
Nov. 16, 1903.

RECORD

No. 159

EXHIBIT 153—

In the
Exchequer Court
of Canada

INTERCOLONIAL RAILWAY OF CANADA.
Office of the General Manager.

No. 159
EXHIBIT 153
Letter, D. Pottinger to P. W. Snider
June 8, 1904.

In your reply refer to No. D 62544
P. W. Snider, Esq.,
Manager, C. P. R. Co.'s Telegraphs,
St. John, N. B.

Moncton, N. B., 8th June, 1904.

10

No. 160
EXHIBIT 154
Letter, Chas. Robson to P. W. Snider
June 14, 1904.

Dear Sir:—

We are putting in a second track between Bedford and Windsor Junction, and I have a letter from our Chief Engineer, Mr. MacKenzie, stating that some of your telegraph poles are in the way and asking to have them removed.

Will you please have some one sent who will see Mr. J. S. O'Dwyer, the Resident Engineer in charge of the work, and he will explain and point out what poles are in the way, and I will be obliged if you will take steps to have them removed without delay to some other part of the railway property.

20

Yours truly,

(SGD.) D. Pottinger.

No. 160

EXHIBIT 154—

CANADIAN PACIFIC RAILWAY COMPANY'S TELEGRAPH.

From Hfx. June 14th/04

To P. W. Snider, Supt.

Dear Sir.

I was over double track with Mr. O. Dwyer this afternoon, there are yet 9 poles to move off it; but cannot be done at present as the dumps are not built yet and in any case nothing but a temporary job can be done for sometime as otherwise our poles would be in danger of sliding into the lake. Have seen Reid McManus the contractor, and he says our poles are not in his way at present, and Mr. O. Dwyer is satisfied with what I intend doing. The I. C. R. at Windsor Junction are building a new freight siding and turning freight shed around, there will have to be a rebuild there of 7 or 8 poles. Cannot say at present what length but think 35s will do. What work I have done there has been temporary. The south western co are building an overhead bridge over main road at

30

3 mile house, we will need a 50 ft pole there if we continue to go over head, however this will keep until Dave comes over. The Telephone Co. are in same position as ourselves but have not decided yet whether to go over or cable underneath. When Dave is over had he better see Telephone Co. about getting a 50 from them or have you some in Truro and would it pay to bring it here. I have to spend considerable time on double track on account of blasting, the western union keep man there all the time.

10

Yours,
(Sgd) Chas Robson.

No. 161

EXHIBIT 155—

INTERCOLONIAL RAILWAY OF CANADA.
Halifax and St. John District.
Superintendent's Office.

In your reply
refer to No.
J 39,737.

Truro, N. S. October 18, 1904.

20 P. Snider, Esq.,
C. P. R. Office,
St. John, N. B.

Dear Sir:—

There is a telegraph pole in the station yard at Elmsdale very much in the way of teams going to the loading platform. Will you be good enough to have it moved and put at the end of the loading track?

Yours truly,
(SGD) G. M. Jarvis.

No. 162

30 EXHIBIT 156—

CANADIAN PACIFIC RAILWAY COMPANY
Telegraph Department
4 Hospital St.

Dear Sir,

MONTREAL, February 11, 1905.

Special maintenance authorities on Atlantic Division have been numbered and approved as follows;

T.21—Rebuilding 30 miles and general repairs Vanceboro and Megantic, \$2500.00, chargeable to the Railway.

T.22—General repairs St. John and Vanceboro, labor \$500.00 and material \$328.50, chargeable to the Railway.

T.23—General repairs Sussex and Amherst, labor \$300.00 and material \$245.00, chargeable to Commercial.

RECORD
—
*In the
Exchequer Court
of Canada*

—
No. 160
EXHIBIT 154
Letter, Chas.
Robson to
P. W. Snider
June 14, 1904.
(Contd.)

No. 161
EXHIBIT 155
Letter, G. M.
Jarvis to P.
Snider
Oct. 18, 1904.

No. 162
EXHIBIT 156
Letter, Jas.
Kent to P. W.
Snider
Feb. 11, 1905.

RECORD
 —
In the
Exchequer Court
of Canada

No. 162
 EXHIBIT 156
 Letter, Jas.
 Kent to P. W.
 Snider
 Feb. 11, 1905.
 (Contd.)

No. 163
 EXHIBIT 157
 Letter, L. K.
 Jones to E. L.
 Newcombe
 March 8, 1906.

T.24—General repairs Amherst and Truro, labor \$330.00 and material \$213.00, chargeable to Commercial.

T.25—General repairs Truro and Mulgrave, labor \$650.00 and material \$435.00, chargeable to Commercial.

T.26—Rebuilding 10 miles between Bedford and Wellington and strengthening balance of line, labor \$1550.00, material \$992.00 chargeable to Commercial.

Please note that special maintenance authorities T—23, 24, 25 and 26 will be charged telegraph earnings on your Division.

Yours truly, 10

(Sgd) Jas Kent,
 Manager Telegraphs.

P. W. Snider, Esq.,
 Superintendent,
 St. John, N. B.
 E.B.M.

No. 163

EXHIBIT 157—

Encl. File 5295
 copy of agreement 3287
 copy of L.S. 31601

251 20
 Ottawa, 8 March, 1906.

Sir:

On the 5th day of September 1885, an agreement was entered into between The Western Union Telegraph Company and The Northern & Western Railway Company, relative to the construction of telegraph lines and the services of the Telegraph Company along the line of the Railway Company between Chatham and Fredericton, N. B. and all extensions and branches thereof as and when completed. This agreement was to be in force for a period of 99 years. 30

The line of railway in question afterwards became the Canada Eastern Railway, and was purchased by the Crown and taken over in October 1904, in pursuance of the authority given by the Act of 1904 Chapter 4, which Act provided that “upon such purchase being effected, the said railway and its branch lines shall become and form part of the Government Railways system and be operated as such”.

On the 22nd day of September 1870, an agreement was entered into by the Government with the Montreal Telegraph Company for telegraph operation. This agreement was applicable to the railway between Riviere du Loup and Halifax, including all branches. It was to be valid un-

til a provided for option of purchase is exercised by the Crown. It gave the Company "the exclusive right to construct and work a telegraph along the said Intercolonial Railway until such time as the option of purchase is exercised by Her Majesty".

RECORD
—
*In the
Exchequer Court
of Canada*

The question now arises whether the agreement between the Western Union Telegraph Company and The Northern and Western Railway Company is or is not superseded by the agreement entered into by the Crown with the Montreal Telegraph Company.

No. 163
EXHIBIT 157
Letter, L. K.
Jones to E. L.
Newcombe
March 8, 1906.
(Contd.)

10 I may observe that on the 23rd of June, 1888, your opinion was incidentally asked upon a somewhat similar position, an agreement having been made between the Western Union Telegraph Company and the Halifax and Cape Breton Coal and Railway Company covering the line of railway from New Glasgow to Antigonish and the proposed extension to the Strait of Canso, also the Pictou Branch and your predecessor advised, on the 9th of July following that "the Government are not directly bound by the contract between the two companies above named, and that no action could, under any circumstances, be brought by the Western Union Telegraph Company against it based upon the contract."

20 I enclose the papers, which include a copy of the aforesaid agreement of the 5th of September 1885, between the Telegraph and Railway Companies, and I also enclose a copy of the agreement between the Government and the Montreal Telegraph Company of the 22nd of September 1870, together with a copy of the letter written to your Department on the 23rd of June 1888, above referred to.

I have to ask that you will be pleased to favour the Department with your advice in the matter at as early a date as your convenience will admit of.

I have the honour to be,

Sir,

30

Your obedient servant,

E. L. Newcombe, Esq. K. C.,
Deputy Minister of Justice,
Ottawa.

(sgd) L. K. Jones,

Secy.

RECORD

*In the
Exchequer Court
of Canada*

No. 164

EXHIBIT 158
Letter, L. K.
Jones to E. L.
Newcombe
June 21, 1906.

No. 164

EXHIBIT 158—
649
Encl. Files 5702-5732

Ottawa, 21 June, 1906.

Sir,

I have the honour, by direction, to submit for your opinion and advice the matter following:—

Under date the 22nd of September, 1870, an agreement was entered into with the Montreal Telegraph Company, (now the Great Northwestern Telegraph Company) for the construction, maintenance, and operation of a system of telegraph along the whole line of the Intercolonial Railway between Riviere du Loup and Halifax (including all its branches), the Company to have the exclusive right to construct and work such telegraph lines along the Railway, until such time as the option of purchase is exercised by Her Majesty. 10

On the 26th ultimo, two orders in Council were passed, one authorizing the grant of a lease to the New Brunswick Telephone Company of permission to build and maintain a telephone line from Newcastle to Bathurst, N. B., on the Intercolonial Railway right of way, and the other authorizing the Central Telephone Company, Limited, to construct and maintain a similar telephone line from Bathurst to Newcastle, also on the Intercolonial right of way. 20

The Great North Western Telegraph Company now claim that this concession is a violation of the agreement above referred to.

I enclose herewith the file in the matter, in which you will find a copy of the agreement which constitutes the ground for their complaint, and am to request that you will be pleased to advise as to the legal position of the Department in the matter.

I have the honour to be,

Sir,

Your obedient servant,

(sgd) L. K. Jones,
Secretary.

E. L. Newcombe, Esq. K. C.,
Deputy Minister of Justice,
Ottawa.

30

No. 165

EXHIBIT 159—

649

4th August, 1906.

Sir:

RECORD

—
In the
Exchequer Court
of Canada
 —

No. 165
 EXHIBIT 159
 Letter, A.
 Power to De-
 partment Rail-
 ways & Canals
 Aug. 4, 1906.

Referring to your letter of the 21st June last with respect to the claim of the Great North Western Telegraph Company that the concessions authorized to the New Brunswick Telephone Company and the Central Telephone Company respectively by two Orders-in-Council of 26th May last to construct and maintain telephone lines on portions of the Intercolonial Railway constitute a violation of the agreement of the Govern-
 10 ment with the Montreal Telegraph Company, of which the Great North Western is the successor, of September 22nd, 1870, I have the honour to state as follows:—

The agreement referred to provides for the construction and main-
 tenance by the Montreal Company of a good and sufficient line of tele-
 graph for the proper and prompt transmission of telegraphic communi-
 cations thereby upon and along the whole line of route of the Inter-
 colonial Railway between Riviere du Loup and Halifax, including all its
 20 branches, and by it Her late Majesty agrees, amongst other things, that the Company, in consideration of the premises (i.e. the undertakings of the Company in the said and other respects) shall have the exclusive right to construct and work a telegraph along the said Intercolonial Rail-
 way until such time as the option of purchase is exercised by her Majesty.

It is upon this provision that the Great North Western Company bases its claim, and you ask for advice as to the legal position of the department.

I concur in the view expressed by the law clerk in his memo en-
 dorsed upon file No. 5708-5732 that the Company has an exclusive right
 only as regards telegraph lines, which term, as used in the agreement,
 30 does not in my opinion include telephone lines. The arts of telegraphy and telephony are quite distinct, although they have features in common, and I should think the point taken by Mr. Hansard to be clearly correct. It is unnecessary for present purposes to consider the other point referred to by him.

Papers returned herewith.

I have the honour to be,

Sir,

Your obedient servant,

(sgd) A. Power,
 Acting Deputy Minister of Justice.

RECORD

No. 166

EXHIBIT 160—

In the
Exchequer Court
of Canada

INTERCOLONIAL RAILWAY OF CANADA.

Sydney, Truro and Oxford District.

New Glasgow, N. S.,
29th August, 1906.

No. 166

EXHIBIT 160

No. Y40398

Letter, Y. C.

The Manager,

Campbell to

C. P. R. Telegraph Company,

Manager, C.P.R.

North Sydney, C. B.

Telegraph Co.

Dear Sir:—

10

Aug. 29, 1906.

There is a telegraph pole too near the track leading to A. C. Thompson Company's Foundry at the station at North Sydney; it is only 7 inches clear of the cab of the engine. Will you please see that this pole is removed a safe distance from the track.

No. 167

EXHIBIT 161

Letter, L. K.

Jones to E. L.

Newcombe

Aug. 31, 1906

Yours truly,

(SGD) Y. C. Campbell,
Superintendent.

No. 167

EXHIBIT 161—

Ottawa, August 31, 1906.

649

20

Sir,

I have the honour to acknowledge the receipt of your communication of the 4th instant, (F. 649, 1906), advising the Department in respect of its legal position in connection with the question that has arisen in regard of the agreement, dated the 22nd of September, 1870, with The Montreal Telegraph Company (now The Great North-Western Telegraph Company) for the construction, etc. of a system of telegraph along the Intercolonial Railway, etc.

In reply, I am directed to draw your attention to an old English case bearing on the point, which is cited in 6 Q. B. D. 244, and which case, it is thought, may, possibly, have been overlooked.

I have the honour to be,

Sir,

Your obedient servant,

(sgd) L. K. Jones,
Secretary.

E. L. Newcombe, Esq. K. C.,
Deputy Minister of Justice,
Ottawa.

EXHIBIT 162— **No. 168**

2449

CANADIAN PACIFIC RAILWAY COMPANY'S TELEGRAPH

North Sydney, N. S., Sept. 7, 1906.

P. W. Snider,
St. John.
Moved pole for I. C. R. here today.

(Sgd) H. Mersereau.

RECORD
—
*In the
Exchequer Court
of Canada*
—

No. 168
EXHIBIT 162
Telegram, H
Mersereau to
P. W. Snider
Sept. 7, 1906.

10 EXHIBIT 163— **No. 169**

INTERCOLONIAL RAILWAY TELEGRAPH.

From Ottawa, Oct. 1906.
To W. B. MacKenzie,

Filed
At Moncton, N. B.

Mr. Snider of the C. P. R. Telegraph wishes to remove some trees that are in the way of telegraph line on the land expropriated from Church at Bedford please allow him to shorten or remove such trees as are actually in the way leaving all others in case we have need of them as a wind break.

(SGD) D. Pottinger.

20 Mr. Snider—will please carry out and not remove or cut down any-
thing more than is actually necessary.

14/12/1906.

W. B. MacKenzie.

No. 169
EXHIBIT 163
Telegram, D.
Pottinger to W.
B. MacKenzie
Oct. 1906.

Memorandum,
W. B. Mac-
Kenzie to P. W.
Snider
Oct. 14, 1906.

No. 170
EXHIBIT 164
Memorandum,
P.W.S. to Chas.
Robson
Dec. 13, 1906.

EXHIBIT 164— **No. 170**

Dec. 13/06.

Chas. Robson,
Halifax.

If you can make place safe for winter without cutting trees it will be best to do so and let men get away. It is not advisable to run risk of getting into tangle with private owners until we are absolutely sure of our ground.

P. W. S.

RECORD

No. 171

EXHIBIT 165—

*In the
Exchequer Court
of Canada*

CANADIAN PACIFIC RAILWAY COMPANY'S TELEGRAPH.

No. 171

a181q-X 67 DH DH & DH
Ottawa, Ont., Dec. 13, 1906.

EXHIBIT 165

H. A. Snider,
St. John, N. B.

Telegram, D.

Pottinger to

H. A. Snider

Dec. 13, 1906.

No. 172

EXHIBIT 166

Memorandum,

P.W.S. to C.

Robson

Dec. 14, 1906.

We have expropriated a strip thirty three feet in width from Mr. Church along the whole length of his property adjoining the railway. It may not be desirable from a railway point of view to cut down all the 10 trees on this land but I have told Mr. MacKenzie chief engineer to allow you to cut what are necessary to be removed or shortened for your purpose.

D. Pottinger.
Telephoned.

No. 172

EXHIBIT 166—

Dec.14/06.

C. Robson,
Halifax.

20

Mr. Pottinger advises me they have expropriated thirty three feet on Church property but that it may not be desirable from railway point of view to cut down all the trees but he has given instructions to allow us to cut what are necessary to be removed or shortened -- You may act accordingly under direction of Trackmaster but if it can be done in spring just as well think better let it wait.

P.W.S.

No. 173

EXHIBIT 167—

INTERCOLONIAL RAILWAY OF CANADA
OFFICE OF THE ROADMASTER

In reply
refer to No.
A. 10. 303

A-P

Truro, N.S., December 18th, 1906.

10 Mr. Snider,
Manager, C.P.R. Telegraph,
Halifax, N.S.

Dear Sir:—

In reference to cutting for removal of some trees near Bedford, on account of moving your telegraph poles:—

I attach a copy of a telegram, from Mr. Pottinger and a note thereon by Mr. W. B. MacKenzie, Chief Engineer, concerning the matter. Please do not cut or remove anything more from the trees than is actually necessary.

20

Yours truly,
(sgd) C. W. Archibald,
Roadmaster.

RECORD

—
*In the
Exchequer Court
of Canada*
—

No. 173

EXHIBIT 167

Letter, C. W.

Archibald to

Mr. Snider

Dec. 18, 1906.

No. 174

EXHIBIT 168

Letter, E. L.

Newcombe to

the Dep. Minis-

ter of Railways

& Canals

May 29, 1907.

No. 174

EXHIBIT 168—

649

29th May, 1907.

Sir:

Referring to your letters of the 31st August, and the 14th September, 1906-5708-5732- and to previous correspondence, I beg to state that it is apparant that the case to which you refer in the letter of 31st August, 1906, viz: Attorney General vs. Edison Telephone Company, 6 Q.B.D. 244, was overlooked when the letter of this department of 4th August, 1906, was written. In view of the holding in that case that Edison's telephone was a telegraph within the meaning of the Telephone Acts of 1863 and 1869, although the telephone was not invented or contemplated in 1869, and in view of recent American authorities to the same effect, I think it must be admitted that the granting of the privilege of building and maintaining telephone lines along any part of the Intercolonial Railway or its branches is a violation of the agreement of the 22nd September, 1870, with the Montreal Telegraph Company, now merged in or operated by the Great Northwestern Telegraph Company, which provides that the company shall have the exclusive right to construct and work a telegraph line along the Intercolonial Railway until such time as the option to purchase shall be exercised by the Crown, if such part of the railway or its branches is covered by the agreement.

40

RECORD

*In the
Exchequer Court
of Canada*

No. 174

EXHIBIT 168

Letter, E. L.
Newcombe to
the Dep. Minis-
ter of Railways
& Canals
May 29, 1907.
(Contd.)

No 175

EXHIBIT 169

Letter, M.
Maher to P. W.
Snider
May 29, 1907.

I am of opinion, however, that Mr. Hansard's view upon the other point noted by him in his memorandum of 18th June, 1906, endorsed upon file No. 6 of the papers in the case, is correct, that is to say, that the agreement with the company extends only to the line of the Intercolonial between Halifax and Riviere du Loup and such of its branches as were in existence or under construction when the agreement was made.

The Company under the agreement could not I think be required to construct and operate lines of telegraph along any part of the main railway or upon any branch, not included in that description, nor can they claim a monopoly in respect of any such part or branch. It will be observed that the construction which they were to execute was to be completed within three months after the opening of the Intercolonial Railway. 10

Papers returned herewith.

I have the honour to be,

Sir,

Your obedient servant,

Signed E. L. Newcombe
Deputy Minister of Justice.

No. 175

20

EXHIBIT 169—

CANADIAN PACIFIC RAILWAY CO'S TELEGRAPH.
Telegraph Department.

Moncton, May 29, 1907.

P. W. Snider, Esq.
Supt. C.P.R. Tel.,
St. John, N.B.

Dear Sir:

Three poles on land owned by Arthur Dixon just west of Sackville Station he wants them removed or some arrangement made about them. 30
The property formerly was owned by a Mrs. Bumler.

We cannot move in to the Railway fence except we run under the W. U. wires as their poles are on the farm side of the fence at this point with about 28 foot poles and two cross-arms.

The C.P.R. poles are now about 20 feet from the fence.

Yours truly,

(Sgd) M. Maher.

EXHIBIT 170—

No. 176

RECORD

251,
6th June, 1907.

*In the
Exchequer Court
of Canada*

No. 176

EXHIBIT 170

Letter, E. L.
Newcombe to
the Secretary,
Dept. Railways
& Canals.
June 6, 1907.

Sir:

Referring to your letter of the 8th March 1906, in which you ask for an opinion as to whether the agreement of the Government with the Montreal Telegraph Company of 22nd September 1870, with regard to the construction and operation of telegraph lines on the Intercolonial Railway supersedes the agreement between the Western Union Telegraph Company and the Northern and Western Railway Company, afterwards the Canada Eastern Railway Company, whose line is now a branch of the Intercolonial, I have the honour to state that this point, so far as my opinion goes, is disposed of by the statement of opinion in my letter of the 29th ultimo D.J. 649-06, 758-07; D.R. & C. 5708-5732 - that the agreement with the Montreal Telegraph Company extends only to the line of the Intercolonial between Halifax and Riviere du Loup, and such of its branches as were in existence or under construction when the agreement was made, for it appears that the Canada Eastern did not become a branch of the Intercolonial until 1904.

In another connection you refer to a letter of my predecessor, dated 9th July 1888, dealing with legal questions arising in connection with an application of the Canadian Pacific Railway Company to construct a line of telegraph on the Intercolonial between St. John and Halifax, but I presume you do not now require an opinion as to the liability of the Government on the agreement between the Western Union Telegraph and the Northern and Western Railway Company.

I observe that Mr. Sedgewick in the letter referred to says, amongst other things, the Government by its agreement with the Montreal Telegraph Company has contracted itself out of the power to grant the application of the Canadian Pacific Railway Company then under consideration without first exercising its option of purchase under that agreement. I do not know whether this statement involves anything inconsistent with my opinion above referred to. If it does, it would perhaps be better that I should have an opportunity of reconsidering my opinion in the light of Mr. Sedgewick's expressed views.

I have the honour to be,

Sir,

Your obedient servant,
sgd. E. L. Newcombe

40

The Secretary,
Department of Railways & Canals,
Ottawa, O.

RECORD

No. 177

—
In the
Exchequer Court
of Canada

EXHIBIT 171—

June 22, 1907.

Encl. all papers.

No. 177

Sir:

EXHIBIT 171
 Letter, L. K.
 Jones to D.
 Pottinger
 June 22, 1907.

Referring to your communication of the 28th of February, 1906, asking for information as to whether or not the agreement, dated the 5th of September, 1885, for telegraph operation between the Western Union Telegraph Company and the Northern and Western Railway Company, afterwards the Canada Eastern Railway Company, whose line 10 was purchased by the Crown and taken over in October, 1904, is superseded by the agreement entered into on the 22nd of September, 1870, by the Government with the Montreal Telegraph Company with regard to the construction and operation of telegraph lines on the Intercolonial Railway, I have to say that the matter has been referred to the Department of Justice, and that they have replied, under date the 6th instant, a copy of which reply I enclose herewith, for your information.

You will observe that amongst other things, they state that the point, so far as their opinion goes, is disposed of by the statement of opinion contained in the letter addressed by them to the Department on 20 the 29th ultimo, namely, that the agreement with the Montreal Telegraph Company extends only to the line of the Intercolonial between Halifax and Riviere du Loup, and such of its branches as were in existence, or under construction, when the agreement was made, for, they state, it appears that the Canada Eastern Railway did not become a branch of the Intercolonial until 1904.

I also enclose, for your information, the papers in the case.

Be pleased to return these documents to the Department, when you are through with them.

I am, Sir,

30

Your obedient servant,

(sgd) L. K. Jones,
 Secretary.

D. Pottinger, Esq., I.S.O.,
 General Manager,
 Government Railways,
 Moncton, N.B.

No. 178

EXHIBIT 172—

INTERCOLONIAL RAILWAY OF CANADA.
Halifax and St. John District.

Truro, N.S., July 12, 1907.

No. J.58003.

P. W. Snider, Esq.,
Supt. C.P.R. Tel Co.,
St. John, N.B.

10 Dear Sir:—

There is one of your telegraph poles in the middle of the station yard at East Mines which interferes with teams coming in and going out of the station yard. Will you be kind enough to have this removed as quickly as possible?

Yours truly,
(SGD) G. M. Jarvis,
Supt.

No. 302
P.C. 825

20 EXHIBIT 292—

CERTIFIED COPY OF A REPORT OF THE COMMITTEE OF THE
PRIVY COUNCIL, APPROVED BY HIS EXCELLENCY THE
GOVERNOR GENERAL ON THE 20th APRIL, 1909.

On a memorandum, dated 16th April, 1909, from the Minister of Railways and Canals, representing that he has, for some time past, had under most careful consideration, the various complicated questions involved in the operation of the Government Railways, both from the financial and administrative points of view, as the result, has concluded that a change in the present method of management is desirable.

30 The Minister directs attention to the following facts:—

The Intercolonial Railway was built as a Government road, in pursuance of the requirements of the British North America Act of 1867, Sec. 145; and without amendment of this Act, must retain that characteristic.

It was opened for traffic on the 1st day of July, 1876, between Halifax and Riviere du Loup; its length, including the Pictou and Windsor branches, and the line from St. John to Point du Chene (Shediac) being 745 miles.

40 By various extensions, purchases, and leasing arrangements its length, in the year 1907-08, reached a total of 1,448.62 miles—the cost of operation being \$9,157,435.53. Its traffic comprised 4,134,046 tons of freight and 2,789,371 passengers.

RECORD

—
In the
Exchequer Court
of Canada
—

No. 178

EXHIBIT 172

Letter, G. M.
Jarvis to P. W.
Snider

July 12, 1907.

No. 302

EXHIBIT 292

Order-in-Council

April 20, 1909.

RECORD
 —
In the
Exchequer Court
of Canada
 —

No. 302
 EXHIBIT 292
 Order-in-Council
 April 20, 1909.
 (Contd.)

The Prince Edward Island Railway was taken over by the Government on the 29th of December, 1873, under the express provisions of the Imperial Order in Council of the 26th of June, 1873, admitting Prince Edward Island into the Dominion.

At the time of the original opening of the Intercolonial Railway for traffic, and the taking over of the Island Railway, an organization was adopted, which, with some modifications, has remained in force up to the present day, notwithstanding the changed conditions, and the expansion of the road and its operations. The official placed in immediate charge is a General Manager, who is also in charge of the Prince Edward Island Railway, under the title of "General Manager, Government Railways". 10

By Section 49 of the Government Railways Act, R.S.C., 1906, Chapter 36, it is provided as follows:

The Governor in Council may, from time to time, make such regulations as he deems necessary,—

(a) for the management, proper use and protection of all or any of the Government railways, including station houses, yards and other property in connection therewith;

(b) for the ascertaining and collection of the tolls, dues and revenues thereon; 20

(c) to be observed by the conductors, engine drivers and other officers and servants of the Minister, and by all companies and persons using such railways;

(d) relating to the construction of the carriages and other vehicles to be used in the trains on such railways.

The Minister considers it expedient and recommends that, in pursuance of the above statutory provision, the following be fixed as the organization to be in force on and after the 1st of April, 1909, for the Government Railways—the Intercolonial Railway and the Prince Edward Island Railway—as at present constituted, and as the same may hereafter be extended or modified; such organization to be in supercession of the existing organization:— 30

1. The position of General Manager of Government Railways to be abolished.

2. A Board, to be constituted under the name "The Government Railways Managing Board".

3. The said Board to consist of four persons, namely:—

Mr. M. J. Butler, Deputy Minister and Chief Engineer of the Department of Railways and Canals, who shall be Chairman of the Board. 40

Mr. David Pottinger, I.S.O.

Mr. E. Tiffin, the present Traffic Manager, he retaining that position.

Mr. F. P. Brady, of Montreal.

4. The said Board to supervise and direct all departments of the railways owned or operated by the Government of Canada.

5. The duties and powers of the said Board to be as hereunder defined, namely:—

They shall have the powers usually vested in the executives of railway corporations.

10 They shall prepare, subject to the Government Railways Act, and the Provident Fund Act, and, with the approval thereto of the Governor in Council first obtained, carry out, Rules and Regulations, as follows:

(a) For the organization of the staff and officials of the railways.

(b) For the conditions of employment in the railway service.

(c) For the purchasing of supplies and the sale of materials.

(d) For the ascertaining and collection of the railway tolls, dues and revenues.

20 (e) Those to be observed by the conductors, engine drivers and other officers and servants, and by all Companies and persons using such railways.

(f) Those relating to the rolling stock to be used in the trains on such railways.

6. They shall meet for the transaction of business at least once a month, and shall keep regular minutes of each meeting.

30 7. They shall report to the Honorable the Minister of Railways and Canals, monthly, and shall also make a special and comprehensive report at the end of each fiscal year, on the expenditures and receipts of the Government roads; and on all occurrences, and transactions of importance, and shall, further, furnish such reports as may be, from time to time, required of them by the Department of Railways and Canals.

The Minister further recommends that the salaries payable to the several members of the said Board above-named be fixed as follows: To Mr. Butler—no salary as a member of the Board; and to Mr. Pottinger, Mr. Tiffin and Mr. Brady \$6,000 a year each;

RECORD

—
*In the
Exchequer Court
of Canada*

—
No. 302
EXHIBIT 292
Order-in-Council
April 20, 1909.
(Contd.)

RECORD

—
*In the
 Exchequer Court
 of Canada*

No. 302

EXHIBIT 292

Order-in-Council

April 20, 1909.

(Contd.)

No. 179

EXHIBIT 173

Letter, F. J.

Mahon to Jas.

Kent

Nov. 1, 1910.

The Minister also recommends that, with the exception of Mr. Butler, whose Departmental duties render such provisions inapplicable, the appointees be required to devote the whole of their time to the official duties attached to their positions.

The Committee submit the same for approval.

(Sgd) F. K. Bennetts,
 Assistant Clerk of the Privy Council.

The Honourable
 The Minister of Railways and Canals

EXHIBIT 173—

6131

No. 179

St. John, N.B., November 1, 1910.

10

Jas. Kent, Esq.,
 Manager Telegraphs,
 Montreal, P.Q.

Dear Sir:—

Pictou, N.S.

Replying to your file 65102 of October 12th re the advisability of opening a telegraph office at Pictou, N.S. 20

I visited this town a few days ago, and although I could not get the actual figures of the Western Union Telegraph Company at that place, I, however, learned that they handle an average of twenty telegrams daily each way, which would be on a par with our New Glasgow office, whose average receipts is \$200.00 per month.

Owing to the Western Union having a greater number of offices in the provinces than ourselves, we could not hope to get more than half the above amount business. Out of this we would have to pay rent, light, fuel, taxes, operator and messenger's salaries, besides extending our Westville loop ten miles, which would mean ten miles of pole line and 30 twenty miles of wire, with five hundred feet of submarine cable, to pass under a swing bridge at Brown's Point.

Permission would have to be obtained from the Intercolonial Railway to use their right of way (in some places there are telegraph or telephone lines on both sides of the railway) or buy a right of way of our own.

In view of the above, I do not consider that the amount of business to be obtained would pay the expenses.

Yours truly,
 F. J. Mahon,
 Superintendent.

EXHIBIT 174—

No. 180

St. John, N.B., January 6, 1911.

Mr. James Kent,
 Manager Telegraphs,
 Montreal, P.Q.

RECORD

In the
Exchequer Court
of Canada

No. 180

EXHIBIT 174

Letter, F. J.

Mahon to

James Kent

Jan. 6, 1911.

Dear Sir:—

Extension of telegraph line to Pictou, N.S.

Replying to your 65102 of the 5th instant re above, and Mr. Mc-
 10 Donald's letter attached, I would say that if permission from the Govern-
 ment can be obtained, allowing us a free right of way along the line of
 the I.C.R. from Westville to Pictou, it would very materially alter the
 conditions as to the advisability of our extending the line.

We have a piece of cable at Grand Narrows to spare which would do
 nicely for the section required at Brown's Point. I could obtain the
 space for an office in the town of Pictou from our Ticket Agent at a mod-
 erate rental, and there is a young man there whom I could engage as
 Agent for about \$20.00 per month.

Regarding connection with the Wireless Company at Pictou; If I am
 20 not mistaken, the station is some six or seven miles distant from the town
 of Pictou, and if communication could not be had by telephone, it
 would be necessary to extend our loop to that point, on which I do not
 think the amount of business would justify the expenditure.

If you consider it advisable under the above circumstances to ex-
 tend our line as far as the town of Pictou, I could send my Superintend-
 ent of Construction over the proposed route and submit an estimate of
 the actual cost of construction; that is, exclusive of any right of way pri-
 vileges. Please advise.

Yours truly,
 F. J. Mahon,
 Superintendent.

30

RECORD EXHIBIT 175—

No. 181

*In the
Exchequer Court
of Canada*Mr. James Kent,
Manager Telegraphs,
Montreal, Que.

St. John, N.B., January 18, 1911.

No. 181

EXHIBIT 175

Letter, F. J.

Mahon to

James Kent

Jan. 18, 1911.

No. 182

EXHIBIT 176

Letter, Jas.

Kent to F. J.

Mahon

Feb. 2, 1911.

Dear Sir:—

Extension of telegraph line to Pictou, N.S.

Mr. F. P. Brady, the General Superintendent of the Intercolonial Railway, has been absent from Moncton for some time, and according to message received this morning he is expected to be away for some days 10 yet.

As Mr. E. M. McDonald states in his letter attached that he would be able to obtain permission from the Government for the right of way privileges of the line of the I.C.R. from Westville to Pictou, I would suggest that he be requested to do so.

Yours truly,

F. J. Mahon,
Superintendent.

EXHIBIT 176—

No. 182

20

Montreal, Feb. 2/11.

Extension of Telegraph Line to Pictou, N.S.

F. J. Mahon:

Referring to your 6131 of the 18th instant re above.

You might try and see Mr. Brady now and let me know if he is agreeable to allow us the desired permission.

(SGD) Jas. Kent.

EXHIBIT 177—

No. 183

St. John, N.B., February 9, 1911.
6131Mr. F. P. Brady,
Gen. Supt. I.C.R.,
Moncton, N.B.RECORD
—
*In the
Exchequer Court
of Canada*—
No. 183
EXHIBIT 177
Letter, F. J.
Mahon to
F. P. Brady
Feb. 9, 1911.

Dear Sir:—

Mr. E. M. McDonald, M.P. for Pictou, N.S., wrote Vice-President
10 McNicoll requesting that our telegraph line be extended from Westville,
N.S., to Pictou.

This request was referred by Mr. McNicoll to Mr. Jas. Kent, Manager of Telegraphs, for report. Acting on Mr. Kent's instructions, I went over the proposed route and made careful inquiries into the amount of telegraph business done in the town of Pictou, and found that unless this company could obtain free right of way privileges from the Intercolonial Railway to extend our line from Westville to Pictou, the project would not be feasible.

Mr. Kent requested me to take the matter up with you to see if the
20 desired permission could be obtained. I would have called on you personally in the matter, but was informed by our Moncton office that you were absent.

I would be grateful for an early reply, if there would be any objection to our placing our line of poles along the right of way of the Intercolonial from Westville to Pictou.

Mr. Kent does not think the Montreal Telegraph agreement covers line east of Truro.

Yours truly,
F. J. Mahon,
Superintendent.

RECORD

No. 185

—
In the
Exchequer Court
of Canada
 —

EXHIBIT 179—

INTERCOLONIAL RAILWAY OF CANADA.
 PRINCE EDWARD ISLAND RAILWAY.

No. 185
 EXHIBIT 179
 Letter, D. Pottinger to F. P. Brady
 Feb. 16, 1911.

GOVERNMENT RAILWAYS MANAGING BOARD:

A. W. Campbell, C.E., Chairman, Ottawa.
 D. Pottinger, I.S.O., Assistant Chairman.
 E. Tiffin, Member and General Traffic Manager.
 F. P. Brady, Member and General Superintendent.
 J. B. T. Caron, Member and General Solicitor.

10

In your reply refer to
 No. B2/11457

Moncton, N.B., February 16th, 1911.

F. P. Brady, Esq.,
 General Superintendent,
 Moncton, N.B.

Dear Sir,—

With reference to your remarks on the letter of Mr. Mahon, addressed to you and dated February 9th, in regard to the Canadian Pacific Railway Co.'s telegraph line being built on the right of way of the railway from Westville to Pictou. Mr. Kent is in error when he thinks that the Montreal Telegraph Company's agreement does not cover the line East of Truro. The agreement is an exclusive one, and for the Intercolonial Railway and all its branches and extensions, and our Law Officers have decided on several occasions that it covers all the line to Sydney and also the Oxford line. We could not, therefore, without getting into trouble, by causing a violation of this agreement, authorize the Canadian Pacific Railway Company to build their line along the railway from Westville to Pictou. At the crossing of Pictou harbor, at the bridge, while we could not give any permission to carry their wires over on our bridge, it might be that we could wink at this being done as an accomodation to the C.P.R., but we could not give any permission for it or give orders, and it would be better to say nothing in writing. 20 30

Yours truly,

(Sgd) D. Pottinger.

No. 184

EXHIBIT 178—

INTERCOLONIAL RAILWAY OF CANADA.
PRINCE EDWARD ISLAND RAILWAY.

GOVERNMENT RAILWAYS MANAGING BOARD:

10 A. W. Campbell, C. E., Chairman, Ottawa.
D. Pottinger, I.S.O., Assistant Chairman.
E. Tiffin, Member and General Traffic Manager.
F. P. Brady, Member and General Superintendent.
J. B. T. Caron, Member and General Solicitor.

Moncton, N.B., 20th February, 1911.

F. J. Mahon, Esq.,
Sup't. C. P. Ry. Co's Telegraph,
St. John, N.B.

Dear Sir:—

20 Replying to yours of the 9th instant relative to running your wires from Westville to Pictou on this railway's land, Mr. Kent is in error when he thinks that the Montreal Telegraph Company's agreement does not cover the line east of Truro. I find that the agreement is an exclusive one and for the Intercolonial Railway and all the branches and extensions, and our Law Officers have decided on several occasions that it covers all the line to Sydney and also the Oxford Line. You will easily understand that it is quite impossible for us to violate the agreement.

Yours truly,

(SGD) F. P. Brady,
Gen'l Superintendent.

RECORD

—
In the
Exchequer Court
of Canada
—

No. 184

EXHIBIT 178

Letter, F. P.
Brady to F. J.
Mahon
Feb. 20, 1911.

RECORD

No. 186

In the
Exchequer Court
of Canada

EXHIBIT 180—

INTERCOLONIAL RAILWAY OF CANADA.
PRINCE EDWARD ISLAND RAILWAY.

No. 186

GOVERNMENT RAILWAYS MANAGING BOARD:

EXHIBIT 180
Letter, D. Pottinger to F. P. Brady
March 3, 1911.

A. W. Campbell, C.E., Chairman, Ottawa.
D. Pottinger, I.S.O., Assistant Chairman.
E. Tiffin, Member and General Traffic Manager.
F. P. Brady, Member and General Superintendent.
J. B. T. Caron, Member and General Solicitor.

In your reply refer to
No. B2/11457

Moncton, N.B., March 3rd, 1911.

F. P. Brady, Esq.,
Member of Government Railways Managing Board
and General Superintendent,

Moncton, N.B.
F. J. Mahon
13/3/11

Dear Sir,—

Referring to my letter dated February 16th, in regard to the application of the Canadian Pacific Railway Company's Telegraph Superintendent to build a line from Westville to Pictou on the railway right of way. I have looked up the old papers giving the legal opinions in regard to this matter, and I find that the contract entered into with the Montreal Telegraph Company in 1870 provides permission "that the Company shall and will at their own cost and expense erect, construct, establish and maintain in the best and most complete manner upon and along the whole line or route of the Intercolonial Railway between Riviere du Loup and Halifax, including all its branches, a good and sufficient line of telegraph, and equip it with apparatus and maintain it in good working order." It also provides "That the company in consideration of the premises shall have the exclusive right to construct and work a telegraph along the said Intercolonial Railway until such time as the option of purchase is exercised by Her Majesty." 30

This agreement has been under consideration on several occasions by the Legal Officers of the Railway Department and by the Department of Justice and opinions have been given on these various occasions. At first the opinion was held that the contract covered not only the railway and the branches which existed at the time the agreement was entered into in 1870, but that it covered any branches which have been constructed since or which might be constructed in the future, and this, I suppose, is the view that will be taken by the Telegraph Company of their rights. The latest opinion, however, which has been given by 40

the Deputy Minister of Justice, Mr. Newcombe, modifies this somewhat. On the 29th of May, 1907, he says:—"I am of opinion, however, that Mr. Hansard's view upon the other point noted by him in his memorandum of the 18th of June, 1906, endorsed upon file No. 6 of the papers in the case, is correct, that is to say, that the agreement with the company extends only to the line of the Intercolonial between Halifax and Riviere du Loup and such of its branches as were in existence or under construction when the agreement was made".

RECORD
—
*In the
Exchequer Court
of Canada*

No. 186
EXHIBIT 180
Letter, D. Pottinger to F. P. Brady
March 3, 1911.
(Contd.)

10 "The company under the agreement could not, I think, be required to construct and operate lines of telegraph along any part of the main railway or upon any branch, not included in that description, nor can they claim a monopoly in respect of any such part or branch".

No. 187
EXHIBIT 181
Memorandum attached to Exhibit 180
March 3, 1911.

20 The agreement with the Montreal Telegraph Company was executed on the 22nd day of September 1870. The line from Truro to Pictou Landing was built and in operation at that time, but the line from Stellarton to Pictou, which we call the Pictou Town Branch, was not built until the '80's, a great many years after the agreement was executed. It, therefore, seems probable that there can be no legal objection to the construction of the C.P.R. Telegraph line along the railway between Westville and Pictou Town.

I think the best way will be to bring it before the Board, and if the Board agrees to the construction of the line and to the terms on which it may be constructed, then the Department can be asked to have an agreement prepared, and that will bring up and settle the legal side of the question as far as the railway is concerned.

Yours truly,

(Sgd) D. Pottinger.

No. 187

EXHIBIT 181—

30 Mr. Brown New Glasgow says by telephone that C.P.R. tel. line runs along our ry. from Truro to New Glasgow and to Mulgrave and Sydney.

But not along Oxford Line or Pictou Town Branch.

3/3/11.

RECORD

No. 188

EXHIBIT 182—

In the
Exchequer Court
of Canada

INTERCOLONIAL RAILWAY OF CANADA.
PRINCE EDWARD ISLAND RAILWAY.

In your reply refer to
No. B2/11457

No. 188
EXHIBIT 182

Moncton, N.B., March 3rd, 1911.

Letter, D. Pottinger to E. M. Macdonald,
M.P.

E. M. Macdonald, Esq., M.P.,
Ottawa, Ont.

March 3, 1911. Dear Mr. Macdonald:—

10

I have your letter with reference to the question of the C.P.R. telegraph line into Pictou along the Pictou Town Branch, and I will take the matter up and see what can be done.

I think probably that this can be arranged although there is some difficulty in the way.

In 1870 an agreement was made with the Montreal Telegraph Company giving exclusive right to that company to build and operate telegraphs along the line of the Intercolonial Railway between Riviere du Loup and Halifax including all its branches, and this agreement contains a clause "that the company in consideration of the premises shall 20
"have the exclusive right to construct and work a telegraph line along the
"said Intercolonial Railway until such time as the option of purchase
"is exercised by Her Majesty".

This agreement has been before the Law Officers of the Department and the Department of Justice on several occasions in connection with other applications for permission to build telegraph lines and telephone lines. At one time the view was held by the lawyers that this agreement covered any extensions which might in future, after the date of the agreement, be made. More recently this opinion has been modified, and I think that the opinion entertained at present is that the exclusive 30
rights of the Montreal Telegraph Company are only with reference to the line from Riviere du Loup to Halifax and the branches which existed at the time the agreement was executed.

I will have the matter brought up with the Board and with the Department and if the legal objection does not exist, I can see no other reason why the C.P.R. Telegraph should not be built along our line from Westville to Pictou.

Yours very truly,
(Sgd) D. Pottinger.

EXHIBIT 183—

No. 189

(HOUSE OF COMMONS)
(CANADA)B2/11457
Board
Mch. 5th/11Ansd.
14/3/11

RECORD

*In the
Exchequer Court
of Canada*

No. 189

EXHIBIT 183
Letter, E. M.
Macdonald, to
D. Pottinger
March 5, 1911.No. 190
EXHIBIT 184
Letter, E. M.
Macdonald to
D. Pottinger
March 7, 1911.

10 Dear Mr. Pottinger,

I have your favor of the 3rd and note its contents and am glad to note that you think there is a chance of it being arranged that the C. P.R. should have a chance to use the right of way to build a telegraph line to Pictou. I shall see the Justice Dept. about it so as to facilitate matters and shall appreciate anything you can do to bring it about.

Yours faithfully,

(sgd) E. M. Macdonald.

No. 190

EXHIBIT 184—

20

D. Pottinger, Esq.,
General Manager, I.C.R.,
Moncton, N.B.

Ottawa, March 7, 1911.

Dear Mr. Pottinger:—

With further reference to yours of the 3rd., in regard to the matter of the C.P.R. Telegraph Line, I have seen Mr. Newcombe and his opinion is that there is no reason why the permission should not be granted, and I have asked Mr. Campbell to send all the papers in connection with the case over to the Department of Justice, so as to have a formal report made upon it, so as to enable me to act.

I understand he is going down tomorrow and trust the matter may be mentioned at the Board. I would also hope that something could be done in the way of settling the Grant case.

Yours faithfully,

(sgd) E. M. Macdonald.

Memo on original letter in Mr. Pottinger's handwriting we agreed to this in Board.

RECORD

*In the
Exchequer Court
of Canada*

No. 192
EXHIBIT 186
Letter, F. J.
Mahon to D. A.
Story
March 7, 1911.

No. 193
EXHIBIT 187
Letter, D. A.
Story to F. J.
Mahon
March 8, 1911.

EXHIBIT 186—

Mr. D. A. Story,
Gen. Frt. Agent I.C.R.
Moncton, N.B.

Dear Sir:

Our boarding car outfit will soon start working during the season 1911. Will you kindly issue instructions as was done last year protecting the usual rate for lifting these cars, viz: five cents per mile, minimum charge one dollar per car. The outfit will work between St. John and Sussex, Springhill and Truro, and Marshy Hope and Heatherton.

Yours truly,
F. J. Mahon,
Superintendent.

No. 192

St. John, N.B., March 7, 1911.
6359

No. 193

EXHIBIT 187—

INTERCOLONIAL RAILWAY OF CANADA.

Moncton, N.B., March 8th, 1911.

F. J. Mahon, Esq.,
Supt. Canadian Pacific Ry. Co's Telegraph,
St. John, N.B.

20

Dear Sir:—

I have your letter of the 7th instant, 6359, regarding the movement of your boarding-car outfit for the season 1911, and am having the instructions issued protecting the same rate as was in effect last year.

Yours truly,

(sgd) D. A. Story,
G. F. A.
Per:

No. 191

March 10th, 1911.

RECORD

—
*In the**Exchequer Court
of Canada*—
No. 191EXHIBIT 185
Extract from
Minutes of
Meeting of the
Managing Board
March 10, 1911.

No. 194

EXHIBIT 188
Letter, F. P.
Brady to F. J.
Mahon
March 13, 1911.

EXHIBIT 185—

THIRTY-SECOND MEETING of the Board was resumed in the General Offices, Moncton, N.B. at 10.00 o'clock.
Extract from Minutes of above Meeting.

10

Minute 1185 "Request from the Canadian Pacific Railway Telegraph Company for permission to string their wires from Westville to Pictou on our right-of-way Question as to whether we can permit this on account of our contract with the Montreal Telegraph Company. The Department of Justice advise that there is nothing to prevent us from granting this request.

The Board decided to grant the request; the Telegraph Company to give us the use of the line and to put the same into our stations at Westville and Pictou."

No. 194

EXHIBIT 188—

INTERCOLONIAL RAILWAY OF CANADA
Prince Edward Island Railway.

20 GOVERNMENT RAILWAYS MANAGING BOARD.

A. W. Campbell, C.E., Chairman, Ottawa.
D. Pottinger, I.S.O., Asst. Chairman.
E. Tiffin, Member and General Traffic Manager.
F. P. Brady, Member and General Superintendent.
J. B. T. Caron, Member and General Solicitor.

Moncton, N.B., 13th March, 1911.

F. J. Mahon, Esq.,
Sup't C.P.Ry. Co.'s Telegraph,
St. John, N.B.

30 Dear Sir:—

Referring to your communication of February 9th and my reply of February 20th. I have gone into this matter quite extensively since writing you and I find that it is possible we may be able to give you permission to run your line from Westville to Pictou over our right of way at a nominal rental, provided we can come to some arrangement with reference to this railway being permitted to use your wires, and you putting the wires into our offices at Westville and Pictou.

I would be glad to talk this matter over with you at any time you could come to Moncton to see me.

40

Yours truly,

(sgd) F. P. Brady,
General Superintendent.

RECORD

No. 195

EXHIBIT 189—

In the
Exchequer Court
of Canada

INTERCOLONIAL RAILWAY OF CANADA
Prince Edward Island Railway.

No. 195

EXHIBIT 189

VG Moncton, N.B., 14th March, 1911.

Letter, D. Pottinger to E. M. Macdonald,
M.P.

E. M. MacDonald, Esq., M.P.,
House of Commons,
Ottawa, Ont.

March 14, 1911.

Dear Mr. MacDonald,

I have your letter dated March 5th. The question of the extension ¹⁰ of the C.P.R. Telegraph Company's line along the Pictou town branch from Westville to Pictou, was brought up and considered at the meeting of the Managing Board held in Moncton on the 10th instant, and it was decided to permit this extension to be made along the Railway right of way under an agreement to be executed by the C.P.R. somewhat similar to the agreement we have with the Western Union Telegraph Company, and that matter will be taken up immediately.

Yours very truly,

(Sgd) D. Pottinger.

Memo on letter in Mr. Pottinger's Handwriting: Mr. Colclough 20
We will get out these papers for Mr. Caron.

D.P.

EXHIBIT 190—

No. 196

INTERCOLONIAL RAILWAY OF CANADA
Prince Edward Island Railway.

See A 330

GOVERNMENT RAILWAYS MANAGING BOARD:

10 A. W. Campbell, C.E. Chairman, Ottawa
D. Pottinger, I.S.O. Assistant Chairman
E. Tiffin, Member and General Traffic Manager
F. P. Brady, Member and General Superintendent
J. B. T. Caron, Member and General Solicitor.

In Your Reply
Refer to
No. B2/11457

RECORD
—
In the
Exchequer Court
of Canada
—
No. 196
EXHIBIT 190
Letter, D. Pottinger to F. P. Brady
March 16, 1911.

Moncton, N.B. March 16th, 1911.

F. P. Brady, Esq.,
Member of Government Railways Managing Board
and General Superintendent,
Moncton, N.B.

Dear Sir,:

20 With reference to the attached papers is regard to the question of the extension of the Canadian Pacific Railway Telegraph Company's line along the Pictou Town Branch from Westville to Pictou.

After looking over the agreement we have with the Western Union Telegraph Company, I think that it would be difficult to arrange a suitable agreement with the Canadian Pacific Telegraph that would give us compensation for the pole line in telegraphing, especially as there would be only three stations that the telegraph could be connected with at present, namely:— Westville, Pictou and Brown's Point.

30 The Telegraph Company would probably not desire their wires to be connected with those stations because it would give our agents, who are the telegraph operators of the Western Union Company, a knowledge of the business passing over the C.P.R. wires.

I have come to the conclusion, therefore, that it would be better to charge them a certain rent for the privilege. We have the rate of \$1.00 per pole established for electric power lines at both ends of the Intercolonial, at Levis and at Sydney, and, perhaps, you could arrange a similar rent for the telegraph poles.

Yours truly,
(sgd) D. Pottinger.

Encl.

RECORD
 —
In the
Exchequer Court
of Canada

No. 197

EXHIBIT 191—

109352

CANADIAN PACIFIC RAILWAY COMPANY
 Office of the Vice-President.

K. Montreal, March 18th 1911.

No. 197
 EXHIBIT 191
 Letter, D. Mc-
 Nicoll to E. M.
 Macdonald,
 M.P.
 March 18, 1911.

Dear Mr. Macdonald:—

I have your letter of 16th March and will at once open communication with Mr. Pottinger with regard to the right of way for telegraph line, Truro to Pictou. 10

Just as soon as I can get the necessary authority from Mr. Pottinger, instructions will be issued to build the line.

No. 198
 EXHIBIT 192
 Letter, D. Mc-
 Nicoll to D.
 Pottinger
 March 20, 1911.

I hope to be in Ottawa next week and if you will let me know what day it will be suitable to you, I will take a run up.

Sorry to hear you have been under the weather.

Your very truly,

(Sgd) D. McNicoll.

E. M. Macdonald, Esq., M.P.,
 House of Commons,
 Ottawa. 20

No. 198

EXHIBIT 192—

109352

B2/11457
 CANADIAN PACIFIC RAILWAY COMPANY.
 Office of the Vice President.

March 20th, 1911.

Ansd 7/4/11.

W. M. Burpee,
 D. P.

Dear Mr. Pottinger:—

I understand that Mr. E. M. Macdonald, M.P., has been in communication with you with regard to giving us right of way for building telegraph line from Truro to Pictou Junction and that you have decided to grant us this permit on an agreement to be executed by us. 30

Will you kindly confirm this and let me have draft of agreement so that I may arrange for the building of the line.

Yours very truly,

(sgd) D. McNicoll.

D. Pottinger, Esq.,
 Assistant Chairman, I.C.R.,
 Moncton, N.B. 40

No. 199

EXHIBIT 193—

B2/11457

Saw Mr. Brady 4/4/11. He said C.P.R. Tel. Supt. told him the business was so small they could not pay anything.

Also that there was little room, as there were the W.U. Tel. Co. also telephone and electric light wires now there.

RECORD

*In the
Exchequer Court
of Canada*

No. 199
EXHIBIT 193
Memorandum
in Mr. Pottinger's handwriting
Undated

No. 200

EXHIBIT 194—

B2/11457

10

Moncton, N.B., 7th April, 1911.

D. McNicoll, Esq.,
Vice President,
Canadian Pacific Railway Company,
Montreal.

No. 200
EXHIBIT 194
Letter, D. Pottinger to D. McNicoll
April 7, 1911.

Dear Mr. McNicoll,—

I duly received your letter dated March 20th, with reference to building a telegraph line from Truro to Pictou Junction. What was asked by your telegraph officials was for right of way to build a line from
20 Westville Station to Pictou, a distance of 10.59 miles.

As I told you verbally when in Montreal it will be all right for you to go on and build this line, and we will arrange about the agreement at a later period. ||

Instructions have been given to our Track Department to permit the building of the line. There is a long trestle bridge over a portion of Pictou Harbour and there the wires will have to be attached to the bridge. The position of the poles of the telegraph line on the land and the position of the wires on the bridge can be arranged between the telegraph officials and our Roadmaster. There is a telegraph line of the Western
30 Union Telegraph Company along that part of the Railway and your line of course will be placed so as not to interfere with the Western Union line.

Yours very truly,

(D. Pottinger.)

RECORD
—
In the
Exchequer Court
of Canada
—

No. 201

EXHIBIT 195

Letter, D. P.

to T. C. Burpee
April 7, 1911.

No. 202

EXHIBIT 196

Letter, D. P. to

E. M. Mac-
Donald

April 12, 1911.

No. 201

Moncton, N.B., 7th April, 1911.

EXHIBIT 195—

T. C. Burpee, Esq.,
Engineer of Maintenance,
Moncton, N.B.

Dear Sir,—

Permission has been given to the Canadian Pacific Railway's Telegraph Department to build a line of telegraph poles and wires along the right of way of the Intercolonial between Westville Station and Pictou 10 Station on the Pictou town Branch, and to carry their wires across the bridge at Pictou Harbour.

Please arrange with the telegraph officials of that Company to have the line placed in a convenient position, where it will not interfere with the operation of the Railway, or with the rights of the Western Union Telegraph Company, and this should be arranged both on the land and on the bridge.

Yours truly,
D. P.

No. 202

20

EXHIBIT 196—

B2/11457.
April 12th, 1911.

E. M. MacDonald, Esq. M.P.,
Pictou, N. S.

Dear Mr. MacDonald,—

I have received your letter dated Ottawa April 8th. In reply I may say that when in Montreal a short time ago, I told Mr. McNicoll, Vice President of the Canadian Pacific Railway, verbally that it would be allright for his Company to go on and build the telegraph line from 30 Westville Station to Pictou, along the right of way of the Intercolonial and to carry their wires across the bridge at Pictou Harbour, and I confirmed this by letter on the 7th instant.

Instructions have also been given to our people to arrange with the Officials of the Canadian Pacific Railway's Telegraph Department to have the line placed in a convenient position where it will not interfere with the operation of the Railway, or with the rights of the Western Union Telegraph Company, both on land and on the bridge.

Yours very truly,
D. P.

EXHIBIT 197—

No. 203

MEMORANDUM.

New Glasgow, May 23rd 1911.

F. J. Mahon, Esq.,
Tel. Supt. C.P.R.,
St. John N.B.

Dear Sir:

10 On May 9th Mr. Bryson in the employ of the C.P.R. asked to have a
car (94952) distributed between New Glasgow and Heatherton the
charge for same being \$5.00. As he did not leave the money he asked me
to pay the charges and he would get your company to pay me. He has
not done so. Will you please remit to me and oblige?

Yours truly,

R. Sutherland.

This was a car of cross arms.

Turned up to F. J. Mahon—

20 Please advise audit office Monc-
ton clear these charges on Agt. New
Glasgow and charge our account,
advising him.

D. W. M.

May 25th-11. St. John.

EXHIBIT 293—

No. 303

P. C. 1031.

PRIVY COUNCIL Certified copy of a Report of the Committee of the
Canada. Privy Council, approved by His Excellency the
Administrator on the 5th May, 1913.

30 On a memorandum dated 1st May, 1913, from the Minister of Rail-
ways and Canals, representing that as the result of close and careful con-
sideration of the existing system under which the operation of the Gov-
ernment Railways is immediately controlled, he is strongly impressed
with the desirability of a change in the present system.

40 The Minister further represents that by an Order-in-Council of the
20th of April, 1909, based on the statutory authority of the Government
Railways Act, R.S.C., 1906, Chapter 36, Section 49, which empowered
the Governor in Council, from time to time, to make regulations, inter
alia, for the management, proper use and protection of the Govern-
ment Railways, the then existing position of General Manager of Govern-
ment Railways was abolished and a Board was constituted, under the

RECORD

In the
Exchequer Court
of Canada

No. 203

EXHIBIT 197
Memorandum,
R. Sutherland to
F. J. Mahon
May 23, 1911.

No. 303

EXHIBIT 293
Order-in-Council
May 5, 1913.

RECORD
—
In the
Exchequer Court
of Canada

No. 303
EXHIBIT 293
Order-in-Council
May 5, 1913.
(Contd.)

name of the Government Railways Managing Board, to supervise and direct all departments of the Railways owned or operated by the Government of Canada. This arrangement came into effect on the 1st of April, 1909, and has been continued up to the present time.

The Minister, considering it expedient, recommends that, in pursuance of the above cited statutory authority, the following be fixed as the organization to be in force on and after May 1st, 1913, for the Government Railways—the Intercolonial Railway and the Prince Edward Island Railway—as at present constituted and as the same may hereafter be extended or modified; together with their respective branches; such organization to be in super cession of the existing organization:—

1. The Government Railways Managing Board to be abolished;
2. The position of General Manager of Government Railways to be substituted therefor;
3. Frederick Passmore Gutelius, of Montreal, in the Province of Quebec, to be appointed to the management of the said Government Railways, under the title of “General Manager of Government Railways”;
4. The said General Manager to supervise and direct all departments of the said Government Railways;
- 5: The duties and powers of the said General Manager to be as here- 20
under defined, namely:—

He shall have the powers usually vested in the executive of Railway Corporations;

He shall prepare or modify, subject to the Government Railways Act and the Provident Fund Act, and with the approval thereto of the Governor in Council first obtained, carry out, rules and regulations, as follows:—

- (a) For the organization of the staff and officials of the said Railways;
- (b) For the conditions of employment of the Railway Service; 30
- (c) For the purchasing of supplies and the sale of materials;
- (d) For the ascertaining and collection of the Railway tolls, dues and revenues;
- (e) Those to be observed by the conductors, engine drivers and other officers and servants, and by all Companies and persons using such Railways;
- (f) Those relating to the rolling stock to be used in the trains on such Railways:

6. He shall make to the Minister of Railways and Canals a special and comprehensive report at the end of each fiscal year on the expenditures and receipts of the Railways under his control, and on all occurrences and transactions of importance; and shall further furnish such reports as may from time to time be required of him by the Minister.

The Minister further recommends that the said Frederick Passmore Gutelius shall hold office for a definite period of two years, and, thereafter during the pleasure of the Minister of Railways and Canals, at a salary of Twenty Thousand Dollars (\$20,000) per annum.

10 The Committee concur in the foregoing and submit the same for approval.

(Sgd) Rodolphe Boudreau,
Clerk of the Privy Council.

The Honourable

The Minister of Railways and Canals.

Under the authority of Sec. 17 of the Department of Railways and Canals Act I certify the foregoing to be a true copy of the original in my
20 custody as Sec'y of the said Department.

Ottawa, Jan. 16, /29.

J. W. Pugsley,
Secretary.

No. 204

EXHIBIT 198—

CANADIAN PACIFIC RAILWAY COMPANY'S TELEGRAPH.
New Glasgow, Oct. 28, 1913.

D. W. Mersereau, Esq.,

30 Dear Sir.

The I.C.R. is stringing 2 No. 9 iron wires on the C.P.R. line just east of Fraser's motor works on 8 poles to extend their simephore. I told them that I could give no permission but they went on with the work. They are also using our arm, the botom arm has three spare pins. Please let me know if they got any permission from you for when the gang were here I got the Trenton wire put on a bracket so as to have no short wires on the arm with the three lines. I would sooner not have them there and all other simephore wires is on the western union line but maby if we say anything they will kick about the loop going in to Pic-
40 tou on there line.

Yours truly,

(Sgd) W. Bryson.

RECORD
—
*In the
Exchequer Court
of Canada*
—

No. 303
EXHIBIT 293
Order-in-Council
May 5, 1913.
(Contd.)

No. 204
EXHIBIT 198
Letter, W. Bryson to D. W. Mersereau
Oct. 28, 1913.

RECORD

—
In the
Exchequer Court
of Canada
 —

No. 205
 EXHIBIT 199
 Letter, D. W.
 Mersereau to
 W. M. Godsoe
 Oct. 31, 1913.

No. 206
 EXHIBIT 200
 Letter, W. J.
 Camp to W. M.
 Godsoe
 April 25, 1914.

No. 205

EXHIBIT 199—

CANADIAN PACIFIC RAILWAY CO'S TELEGRAPH
 Office of the Superintendent.

St. John, Oct. 31st /13.

W. M. Godsoe, Esq.,
 Supt.

Note attached from our lineman at New Glasgow. Do you know anything about this. Strongly object to I.C.R. or any other men putting wires on our lines without permission, especially when they are evidently using our spare pins. Please take this matter up with the proper officials. 10

Yours truly,

(Sgd) D. W. Mersereau,
 Supt. Con.

No. 206

EXHIBIT 200—

CANADIAN PACIFIC RAILWAY CO'S TELEGRAPH
 Office of the Assistant Manager.

SUBJECT—Automatic Signals.

Rockingham—Fairview.
 Montreal, Que., April 25th, 1914. 20

W. M. Godsoe, Esq.,
 Superintendent,
 St. John, N.B.

Dear Sir:—

Mr. Kent has given permission to the I.C.R. for the placing of a cross arm on our pole line, between Rockingham and Fairview, approximately 7,500 feet, for the purpose of carrying their signal wires.

The intention is that as soon as the track changes are complete and the Western Union Line restored the wire will be transferred to the 30 Western Union Poles. This may be a year from now.

Yours truly,

(SGD) W. J. Camp,
 Assistant Manager.

EXHIBIT 201—

No. 207

B2/42640.
 Moncton, N.B., Nov. 2nd, 1914.
 on line P. Q.

W. M. Godsoe, Esq.,
 Sup't C.P.R. Telegraphs,
 St. John, N.B.

Dear Sir:—

10 I am advised that poles belonging to your company through the railway yard at Orangedale are in the wrong location. I refer more particularly to four poles that are interfering with the use of our loading platform and business track at that point. I enclose a pencil sketch showing the poles referred to and I have to ask you to have them removed so that our customers will not be incommoded. Kindly return sketch to me with your reply.

Yours truly,
 (SGD) F. P. Brady,
 General Superintendent.

20

EXHIBIT 202—

No. 208

St. John, N.B., Nov. 6th, 1914.

H. Mersereau, Esq.,

Dear Sir:

Enclosed find correspondence re poles to be moved at Orangedale. Please go there and ascertain if correct and have poles moved sending me bills for same and advising when done with return of correspondence.

Yours truly,
 D. W. Mersereau,
 Supt. Con.

30

EXHIBIT 203—

No. 209

St. John, November 17th, 1914.

W. M. Godsoe, Esq.,
 Supt. Telegraphs.

Dear Sir:

Re attached. Have had poles at Orangedale moved as per Mr. Brady's request.

Yours truly,
 D. W. Mersereau,
 Supt. Con.

40

RECORD

—
In the
Exchequer Court
of Canada
 —

No. 207

EXHIBIT 201
 Letter, F. P.
 Brady to W. M.
 Godsoe
 Nov. 2, 1914.

No. 208

EXHIBIT 202
 Letter, D. W.
 Mersereau to
 H. Mersereau
 Nov. 6, 1914.

No. 209

EXHIBIT 203
 Letter, D. W.
 Mersereau to
 W. M. Godsoe
 Nov. 17, 1914.

RECORD
 —
In the
Exchequer Court
of Canada
 —
 No. 210
 EXHIBIT 204
 Letter, W. M.
 Godsoe to F. P.
 Brady
 Nov. 17, 1914.
 No. 211
 EXHIBIT 205
 Letter, C. A.
 Hayes to F. P.
 Gutelius
 Dec. 4, 1914.

No. 210

EXHIBIT 204—

St. John, N.B., November 17, 1914.
 9173

Mr. F. P. Brady,
 Gen. Superintendent, Government Rys.
 Moncton, N.B.

Dear Sir:—

Referring to your B2/42640 of the 2nd instant in reference to moving our telegraph poles in the railway yard at Orangedale. 10

We have had the poles moved in accord with your pencil sketch, which I return herewith.

Yours truly,
 W. M. Godsoe,
 Superintendent.

No. 211

EXHIBIT 205—

CANADIAN GOVERNMENT RAILWAYS
 Intercolonial Railway.

Prince Edward Island Railway.
 Moncton, N.B., 4th December, 1914. 20

F. P. Gutelius, Esq.,
 General Manager,
 Moncton, N.B.

Dear Sir,—

In recently checking through some of our old freight tariffs I found we had an item providing on C. P. R. Telegraph Service boarding cars on the line between St. John and Sydney for a rate of 5c. per mile for each car with minimum for each move of \$1. per car. This rate has evidently been in effect for a good many years, we can locate the same as far back as 1902 but we have nothing in our traffic files to indicate whether a contract arrangement or not. 30

This season I find we moved 5 of these cars from St. John to Amherst and return with stops at seven intermediate points and our total compensation for the handling of the 5 cars was \$107.

I understand there was also a gang of linemen with the cars eight to twelve being reported as in the party and no fares were collected. Some of the conductors who handled the cars found the men to have been furnished with passes.

Do you know anything of this arrangement and is it one which you care to have continued? 40

Yours truly,
 (sgd) C. A. Hayes,
 G. T. M.

EXHIBIT 206—

No. 212

CANADIAN GOVERNMENT RAILWAYS
Intercolonial Railway.

Prince Edward Island Railway.

Moncton, N.B., Dec. 21st, 1914.

F. P. Gutelius, Esq.,
General Manager,
Moncton, N.B.

10 Dear Sir,—

Referring to yours of the 15th inst. attached and enclosed letter from Mr. Hayes. When I came to the Railway I found this arrangement in existence and Mr. Pottinger informed me it was an arrangement made between the Intercolonial authorities and the C.P.R. some years previous. I have never seen any document covering the arrangement but it has been allowed to continue. The Superintendent of the C.P.R. Telegraphs at St. John is furnished with a book of employees passes from my office which he issues to employees in his Department on C.P.R. Telegraph business. This was part of the arrangement which Mr. Pottinger
20 said was made.

Yours truly,

(sgd) F. P. Brady,
Gen'l Superintendent.

EXHIBIT 207—

No. 213

January 2nd, 1915.

James Kent, Esq.,
Manager of Telegraphs, C.P.R.,
Montreal, P.Q.

30 My dear Mr. Kent,—

The question of billing your Company for services rendered in the distribution of material for telegraph repairs and renewals and the issuance of transportation, has come up and I have been looking through our files to find out what agreement or arrangement, if any, had been entered into between the Government and your Company in this respect.

I would be obliged to you if you would let me have a copy of such correspondence or agreement as you may have in this connection.

Yours very truly,

F. P. Gutelius.

RECORD

—
In the
Exchequer Court
of Canada—
No. 212
EXHIBIT 206
Letter, F. P.
Brady to F. P.
Gutelius
Dec. 21, 1914.—
No. 213
EXHIBIT 207
Letter, F. P.
Gutelius to
James Kent
Jan. 2, 1915.

RECORD
—
*In the
Exchequer Court
of Canada*
—

No. 214
EXHIBIT 208
Letter, Jas.
Kent to W. M.
Godsoe
Jan. 7, 1915.

No. 215
EXHIBIT 209
Letter, W. M.
Godsoe to Jas.
Kent
Jan. 21, 1915.

No. 214

EXHIBIT 208—

CANADIAN PACIFIC RAILWAY COMPANY.

Telegraph Department,

4 Hospital Street,

Montreal, 7th January, 1915.

9325

Manager's Office.

2973.

W. M. Godsoe, Esq.,
Superintendent,
St. John, N.B.

10

Dear Sir:—

Have you any correspondence there between Mr. Pottinger and the late Mr. Snider with reference to this matter? If so, I would like to obtain it.

Yours truly,

(Sgd) Jas. Kent,
Manager Telegraphs.

Enclos:

No. 215

EXHIBIT 209—

CANADIAN PACIFIC RAILWAY CO'S TELEGRAPH

Office of the Superintendent.

St. John, N.B., Jan. 21st, 1915.

In your reply please refer to 9325.

2973

Mr. Jas. Kent,
Manager Telegraphs,
Montreal, P.Q.

Dear Sir:

Referring to your 2973 of the 7th. inst., and attached correspondence.

30

Since I have been Superintendent, January, 1912, we have paid the I.C.R., regular freight charges on all material, and charges for distribution of material for repairs and renewals have been paid as per the I.C.R., rates, viz, \$3.00 per hour, minimum of \$15.00. As to the issuance of transportation, I cannot find anything on record in this office, but I have always understood that the latter arrangement was made when the C.P.R. first entered I.C.R., territory with its telegraph lines. I have made a diligent search, but do not seem to have any back correspondence on file here in connection with Mr. Gutelius' request.

Yours truly,

(Sgd) W. M. Godsoe,
Superintendent.

Enc.

No. 216

EXHIBIT 210—

January 23rd, 1915.

F. P. Gutelius, Esq.,
Gen. Mgr. Canadian Govt. Railways,
Moncton, N.B.

RECORD

In the
Exchequer Court
of Canada

No. 216

EXHIBIT 210

Letter, J.

Kent to F. P.

Gutelius

Jan. 23, 1915.

No. 217

EXHIBIT 211

Letter, F. P.

Gutelius to F. P.

Brady

Feb. 2, 1915.

Dear Sir:

Referring to your favor of the 2nd. inst.

I can find no record of any agreement between the Intercolonial Railway and the C.P.R. We have been paying the Intercolonial Railway the regular rate for the distribution of material for telegraph repairs and renewals. We also issue telegraph pass to your Executive Officers and others. I may add that this arrangement has been in force for the past 25 years, and was evidently made between the late Messrs. Pottinger and Snider, who were formerly our Superintendents at St. John in the former days, and this has been in effect ever since.

Yours truly,

J. Kent,
Manager Telegraphs.

20

EXHIBIT 211—

No. 217

February 2nd, 1915.

F. P. Brady, Esq.,
General Superintendent.

Dear Sir,—

Your letter December 21st.

You may discontinue supplying Superintendent C.P.R. Telegraphs, St. John with books of employees passes. The arrangement which provided for this is cancelled.

30

Yours truly,

F. P. Gutelius.

RECORD
—
In the
Exchequer Court
of Canada

No. 218

EXHIBIT 212

Letter, F. P.

Gutelius to
James Kent
Feb. 2, 1915.

No. 219

EXHIBIT 213

F. P. Gutelius
to Manager of
Telegraphs,
C.P.R.
April 12, 1915.

No. 218

Moncton, N.B., February 2nd, 1915.

EXHIBIT 212—

James Kent, Esq.,
Manager of Telegraphs, C.P.R.,
Montreal, P.Q.

Dear Sir:—

I have your letter January 25th and note that there is no record of any agreement between your Department and the Government in connection with the transportation of men and material, etc., over these 10 Railways.

It seems advisable, therefore, that an understanding be arrived at between us at once so that each of us will feel that we are getting reasonable compensation for the service which we render the other and as you must of necessity use our Railway for this purpose you might submit what you consider would be a reasonable and proper arrangement.

Yours truly,

(Sgd) F. P. Gutelius.

No. 219

EXHIBIT 213—

F. P. Gutelius,
General Manager.

Manager of Telegraphs,
Canadian Pacific Railway,
Montreal, Que.

2973
Office of
General Manager of Government Railways.
Moncton, N.B., April 12th, 1915.

20

Dear Sir:—

We have had some correspondence with Mr. Kent with reference to handling your cars, material and men for repairs to your telegraph 30 lines along the Intercolonial Railway from which we find that there was no agreement or understanding between the Railways. In consequence, I had the attached agreement prepared which I send to you as our proposal as to how this business will be handled in the future.

Yours truly,

(Sgd) F. P. Gutelius.

Enc.

To go with Letter to J. Manson, May 4th.

EXHIBIT 214—

No. 220

RECORD

DEPARTMENTAL No.

In the
Exchequer Court
of Canada

RAILWAY No.

CANADIAN GOVERNMENT RAILWAYS
AGREEMENT

No. 220

EXHIBIT 214

Duplicate
Original

Draft agree-
ment between
C.P.R. and His
Majesty the
King

Between

10

THE CANADIAN PACIFIC RAILWAY COMPANY

And

HIS MAJESTY THE KING

Date -----

Public Work Concerned ----- Intercolonial Railway.

Description ----- Transport of boarding cars & em-
ployees for the telegraph busi-
ness of the company between
Saint John, N.B. & Sydney, N.S.

Rate
20 &

Six cents per mile for boarding cars
Two cents per mile for each em-
ployee.

Departmental Reference file No. -----

Railway Legal Dept. Reference File No. L-1401.

F. K.
L. C.

THIS AGREEMENT made this _____ day of _____ in the
year of Our Lord one thousand nine hundred and fifteen.

BETWEEN—The Canadian Pacific Railway Company, herein-
after called "The Company"

30

Of the First Part;

—AND—

His Majesty the King represented herein by the
Minister of Railways and Canals, of Canada,
hereinafter called "The Minister"

Of the Second Part;

WHEREAS the Company requires from time to time, the transport
from point to point, between the City of Saint John, New Brunswick
and the City of Halifax and the Town of Sydney, Nova Scotia, on the
line of railway of the Minister, of boarding cars for the purpose of the

RECORD
 —
In the
Exchequer Court
of Canada
 —
 No. 220
 EXHIBIT 214
 Draft agree-
 ment between
 C.P.R. and His
 Majesty the
 King
 (Contd.)

telegraph business of the Company, and also for the transport from point to point of employees of the Company engaged in the work of construction and maintenance of the Company's telegraph line.

AND WHEREAS the Minister has agreed to transport for the Company boarding cars and employees as aforesaid, at charges and rates and subject to conditions hereinafter set out.

NOW THEREFORE THE AGREEMENT WITNESSETH that the parties hereto, each covenant, promise and agree, with the other as follows:—

1. That the words "His Majesty" when used herein, shall mean the reigning Sovereign and the Successors and Assigns of the Sovereign; the words "The Minister" shall mean the Minister of Railways and Canals for the time being, or such person acting in that capacity; the words "General Manager" shall mean the General Manager of Government Railways or such other person or persons as for the time being appointed to such management; the words "The Company" shall mean the party of the second part, and the Successors and Assigns of that party; the words "Boarding Cars" shall mean cars of the Canadian Pacific Railway Company for boarding accommodation of employees of the Company while on work of construction and maintenance of telegraph lines, and carrying only boarding supplies and small tools of the employees; the word "Employees" shall mean employees of the Canadian Pacific Railway Company engaged on the work of construction and maintenance of telegraph lines.

2. THAT the Minister will, upon request from time to time, transport on the freight trains of the Minister, for the Company from point to point in any direction on the line of railway of the Minister, between the City of Saint John in the Province of New Brunswick, and the City of Halifax, and the Town of Sydney in the Province of Nova Scotia:—

- (a) Boarding cars;
- (b) Employees.

3. THAT the Company shall pay the Minister for the transportation of boarding cars, from point to point in any direction on the line of railway of the Minister between the City of Saint John and the City of Halifax and the Town of Sydney aforesaid, a sum determined at the rate of six cents per mile, with a minimum of six dollars (\$6.00) per car for each time a car is moved, and shall pay the Minister for the transport of employees travelling in boarding cars, a sum determined at the rate of two cents per mile for each employee.

4. THAT the Minister will not be responsible for the safety of employees while being transported by the Minister under the provisions of this agreement, and the Company hereby covenants, promises and

agrees to indemnify and save harmless the Minister of, from and against all claims and demands, costs, damages, expenses, suits, actions or other proceedings at any time made or that may arise or happen, be made, brought or prosecuted by reason of or on account of any accident or injury to the employees or any of them, whether such accident or injury is due to the negligence of the employees of the Minister or otherwise.

5. THAT payments shall be made by the Company to the Minister for services performed under this agreement monthly, upon accounts being rendered to the Company by the proper official of the railway of the Minister to that end.

6. THAT the request of any official of the Company for transport of boarding cars and employees under this agreement given to the proper official of the General Manager, shall for the purposes of this agreement, be deemed the request of the Company to the Minister.

7. THAT this Agreement shall remain in force and effect as between the parties hereto for and during the pleasure of the Minister, and may be determined at any time upon three months written notice to the Company, given by the General Manager to that end.

20 IN WITNESS WHEREOF the Company has executed these presents and these Presents have been signed on behalf of His Majesty by the Minister and by the Secretary of the Department of Railways and Canals, and the seal of the said Department has been hereto affixed, the day and year first above written.

Signed, Sealed and Delivered
by the Company in the
presence of—

President.
Secretary.

30 Signed, Sealed and Delivered
by His Majesty in manner
aforesaid in pres-
ence of—

Minister of Railways & Canals.
Secretary.

RECORD
—
In the
Exchequer Court
of Canada
—

No. 220
EXHIBIT 214
Draft agreement
between C.P.R.
and His Majesty
the King
(Contd.)

RECORD

No. 221

*In the
Exchequer Court
of Canada*

EXHIBIT 215—

May 4th, 1915.

Manager of Telegraphs,
Canadian Pacific Railway,
Montreal, P. Q.

No. 221

EXHIBIT 215

Letter, F. P.

Gutelius to

Manager of

Telegraphs

May 4, 1915

No. 222

EXHIBIT 216

Letter, J. Mc-

Millan to F. P.

Gutelius

May 11, 1915

Dear Sir:—

On April 12th I wrote you enclosing a draft agreement proposed to be entered into between your Company and the Intercolonial Railway relative to transportation of boarding cars and employees for the tele- 10
graph business of your Company between St. John in New Brunswick and Sydney in Nova Scotia.

I do not appear to have received any reply. Kindly let me have same at your earliest convenience.

Yours truly,
F. P. Gutelius.

No. 222

EXHIBIT 216—

CANADIAN PACIFIC RAILWAY COMPANY.
Telegraph Department.
4 Hospital Street.

F. P. Gutelius, Esq.,

Montreal, May 11, 1915. 20

General Manager,

Canadian Government Railways,

Moncton, N. B.

Dear Sir:

I beg to acknowledge receipt of your favor of May 4th, file No. 8514, relative to transportation of boarding cars and employees between St. John, N. B. and Sydney, N. S.

In this connection I would advise you that a reply will be sent you in the course of a few days. 30

Yours truly,

(sgd) J. McMillan,
Manager Telegraphs.

EXHIBIT 217—
 No. 223
 CANADIAN PACIFIC RAILWAY COMPANY

2973

Office of the Vice-President.
 Feby. 8.

131529
 Montreal, May 13th., 1915.
 (WJC 1460)

10 J. McMillan, Esq.,
 Manager of Telegraphs,
 Montreal, Que.

RECORD
 —
In the
Exchequer Court
of Canada

—
 No. 223
 EXHIBIT 217
 Letter, J. Man-
 son to J. Mc-
 Millan
 May 13, 1915

Dear Sir:—

Referring to your letter of the 4th. inst., and returning draft of proposed agreement between His Majesty the King and the C. P. R., regarding the handling of telegraph cars, material and men over the Intercolonial Railway.

20 There surely is a number of other matters that must be in force with the Intercolonial Railway with respect to our telegraph service, without any written arrangement, and I suggested to Mr. Kent that any agreement drawn now should clear up everything.

The quantity of free transportation that we give to the Intercolonial Railway, in all branches of the service, is far in excess of the transportation given this Company by them, and I pointed this out to Mr. Gutelius some months ago, when asking him to try and curtail his requests.

If you are talking the matter over with him you might state this in such a way as might induce him to allow passes issued to your telegraph officials and men to remain in their possession.

Yours truly,

30

Memo of Exchanges &c.
 RN

(Sgd) J. Manson,
 Assistant to the Vice President.

RECORD

In the
Exchequer Court
of Canada

No. 224

EXHIBIT 218
Letter, F. P.
Gutelius to J.
McMillan
June 15, 1915

No. 225

EXHIBIT 219
Letter, J. Mc-
Millan to F. P.
Gutelius
June 22, 1915

No. 224

EXHIBIT 218—

CANADIAN GOVERNMENT RAILWAYS
INTERCOLONIAL RAILWAY

Prince Edward Island Railway

F. P. Gutelius,
General Manager.

S

In your reply refer to No. 8514.
Moncton, N.B., June 15th, 1915.
2973

10

J. McMillan, Esq.,
Manager Telegraphs,
Canadian Pacific Railway,
4 Hospital St., Montreal.

Dear Sir:

Your 2973.

I would appreciate it if you would let me have a reply to my letters of April 12th and May 4th relative to transportation of boarding cars and employees between St. John, N.B., and Sydney, N.S.

20

Yours truly,

(Sgd) F. P. Gutelius, w.

No. 225

EXHIBIT 219—

2973.

June 22/15.

F. P. Gutelius, Esq.,
General Manager,
Can. Gov. Railways,
Moncton, N.B.

Dear Sir:—

30

Referring to your 8514 of the 15th. instant, with regard to transportation of Boarding Cars and employees between St. John, N.B., and Sydney, N.S.

The file regarding this contract has unfortunately been lost, but we are getting together the figures and I will reply to you as soon as possible.

Yours truly,

J. McMillan,
Manager Telegraphs.

No. 226

EXHIBIT 220—

CANADIAN GOVERNMENT RAILWAYS
INTERCOLONIAL RAILWAY.

Prince Edward Island Railway.

F. P. Gutelius,
General Manager. WJD.In your reply refer to No. 8514.
Moncton, N.B., Sept. 29th, 1915.
297310 J. McMillan, Esq.,
Manager Telegraphs,
Canadian Pacific Railway,
4 Hospital St., Montreal, P. Q.

Dear Sir,

Referring to your 2973 of June 22nd.

Would you kindly advise if you have been able to get together the figures mentioned in your letter of above date.

Yours truly,

(Sgd) F. P. Gutelius, R.

WJC.

RECORD

—
*In the
Exchequer Court
of Canada*—
No. 226EXHIBIT 220
Letter, F. P.
Gutelius to J.
McMillan
Sept. 29, 1915—
No. 227EXHIBIT 221
Letter, F. P.
Gutelius to J.
McMillan
Dec. 3, 1915

No. 227

20 EXHIBIT 221—

CANADIAN GOVERNMENT RAILWAYS.

In your reply refer to No. 8514.

F. P. Gutelius,
General Manager.

Moncton, N.B., Dec. 3, 1915.

30 J. McMillan,
Manager Telegraphs,
Canadian Pacific Railway,
4 Hospital Street,
Montreal, P. Q.

Dear Sir,

Referring to your 2973 of June 22nd.

Would you kindly advise if you have been able to get together the figures mentioned in your letter of above date.

Yours truly,

(Sgd) F. P. Gutelius, R.

RECORD

No. 228

In the
Exchequer Court
of Canada

EXHIBIT 222—

CANADIAN GOVERNMENT RAILWAYS.

F. P. Gutelius,
General Manager.

In your reply refer to No. 8514.

No. 228
EXHIBIT 222

D. H. Williams,
Gen'l Manager's Asst.
M/B.

Moncton, N.B., Jan. 15th, 1916.

Letter, F. P.
Gutelius to J.
McMillan
Jan. 15, 1916

J. McMillan, Esq.,
Manager Telegraphs,
Canadian Pacific Railway,
4 Hospital St., Montreal, P. Q.

10

No. 229
EXHIBIT 223

Letter, J. Mc-
Millan to F. P.
Gutelius
Feb. 4, 1916

Dear Sir:

Referring to your 2973 of June 22nd and my letter of September 29th.

Have you yet been able to get the figures mentioned in your letter of the above date?

Yours truly,

(Sgd) F. P. Gutelius, w.

No. 229

20

EXHIBIT 223—
2973

Feb. 4/16.

F. P. Gutelius, Esq.,
General Manager,
Can. Govt. Railways,
Moncton, N. B.

Dear Sir:—

Referring to your letter of January 15th., file 8514.

It is unfortunate that the original file was lost. The exchange of 30 privileges will again be compiled as quickly as possible, and I would be glad to either see you in Montreal, should you visit the City, or go to Moncton to discuss the matter with you, in order that an early settlement may be reached.

Yours truly,

J. McMillan,
Manager Telegraph.

EXHIBIT 224—

No. 230

No. 2978
Montreal, March 6/16.

Memo for F. P. Gutelius, Esq:

RECORD
—
*In the
Exchequer Court
of Canada*—
No. 230
EXHIBIT 224
Memorandum, J.
McMillan to F.
P. Gutelius
March 6, 1916**EXCHANGE PRIVILEGES BETWEEN I.C.R. OR C.G.R. AND C.P.R.**

After careful checking I find that the Canadian Pacific have along the line of the Canadian Government Railway in New Brunswick and Nova Scotia, pole line on the Government Railway for a distance of 499 (437) miles, leaving a gap of 46 miles where the line is built outside of the right of way, close to the fence, where when having all this rebuilt, we would like to transfer to the side of the right of way. From what I understand from the members of the staff now in Montreal, there was some agreement or understanding between the former Manager of Telegraph and some of your officials that this line would be permitted along your right of way, rent free. Regarding this, I would be glad if you would let me have further information, as it is hardly likely that the line would have been permitted to be placed on your right of way without some mutual understanding.

20 MILEAGE TRAVELED BY THE C. P. R. LINEMEN

The Canadian Pacific Linemen have travelled in the year 1915, approximately 65,000 miles. For this work, we have been granted for many years free transportation exchange as between the two Companies. If, however, this is not correct, might I suggest that a nominal charge of say, one cent per mile, to be a fair proposition.

FRANKING PRIVILEGES

Franks have been issued to I. C. R. Officials covering message privileges over the Canadian Pacific Railway lines, and while I imagine they are well equipped, there are conditions throughout the year by which quite a number of telegrams are handled by this Company free of charge. During the months of July and August last, the tolls on the messages so carried would have amounted to \$139.50. Computed at this rate for the year, the telegraph tolls would have amounted to \$837.00.

EXCHANGE OF POLE PRIVILEGES

From Fairview to Rickingham, the I. C. R. have on Canadian Pacific Railway poles an 8 pin crossarm for 61 poles, and between Truro and Rickingham, two wires on 30 poles. I do not know of any C. P. R. wires on I. C. R. poles, but the question of the attachments on C. P. R. poles could be mutually adjusted.

RECORD MOVEMENT OF BOARDING CARS FOR CONSTRUCTION WORK.

*In the
Exchequer Court
of Canada*

No. 230
EXHIBIT 224
Memorandum, J.
McMillan to F.
P. Gutelius
March 6, 1916
(Contd.)

The rate suggested by the C. G. R. of 6 cents per car per mile, is satisfactory to this Company, except that we would suggest that a revision of the minimum rate of \$6.00 per car for each time a car is moved, and that this be made minimum of \$3.00 per car for each time a car is moved. The Canadian Government Railway has also suggested a rate of 2 cents per mile for each employee employed on construction work. Might I suggest that this also be modified, if not considered in the regular transportation as exchanged between the two Companies.

RATE FOR LIGHT ENGINE AND TRAIN CREW FOR EMERGENT 10
SERVICE

In the event of sleet storm or other serious damage to this Company's telegraph line, might I suggest \$1.00 per mile as a fair working arrangement, that is \$1.00 for a straight run to a given point and return, or \$5.00 per hour, as an hourly rate for the use of the engine and train crew if the same require to leave from place to place in restoring interrupted telegraph facilities.

JOINT USE OF STATIONS

Where the Canadian Government Railways and the C. P. R. contract for the joint use of terminal or other important stations, this Company 20 to receive its full share of the telegraph business, in proportion to the part of the expense borne by our Railway Company at all such joint stations.

The different items of exchange privileges to be open to further discussion.

J. McMillan,
Manager Telegraph.

EXHIBIT 225—

No. 231

CANADIAN PACIFIC RAILWAY COMPANY

March 15th, 1916.

F. P. Gutelius, Esq.,
 General Manager,
 Can. Govt. Railways,
 Moncton, N.B.

RECORD
 —
In the
Exchequer Court
of Canada
 —

No. 231
 EXHIBIT 225
 Letter, J. Mc-
 Millan to F. P.
 Gutelius
 March 15, 1916

Dear Sir,—

10 Referring to our conversation in the Windsor Hotel regarding exchange privileges between the Canadian Government Railway and this Company. I have arranged to group the different items on which there is room for consideration or discussion, and would like you to feel that this is merely to open the negotiations, which I feel sure we can easily clear up the satisfaction of both companies.

C. P. R. POLES ON C. G. R. RIGHT OF WAY

I find that the C. P. R. have telegraph lines along the right-of-way of the Canadian Government Railway in New Brunswick and Nova Scotia, a total distance of 499 miles, leaving a gap of 46 miles where our poles
 20 are now placed outside the right-of-way, and in event of rebuilding we would like to place them on the right-of-way, so that the line will be uniform throughout. As far as I can learn, there was some mutual understanding when placing the poles on the right-of-way, although I have not been able to locate any written permission for the location of the line, however, I feel that there must have been some permission or the line would not have been allowed to be placed on the Government Railway right-of-way.

MILEAGE TRAVELLED BY C. P. R. LINEMEN

The C. P. R. Linemen travelled in the year 1915 on the Canadian
 30 Government Railways in New Brunswick and Nova Scotia, approximately, 65,000 miles. For these employees we have been granted for many years free transportation, which I have been given to understand was considered in the general exchange of transportation as between the Canadian Government Railway and the Canadian Pacific, and I would like to see them included in the general exchange as between the two companies.

FRANKING PRIVILEGES

Canadian Pacific Telegraph Franks have been issued to Canadian Government Railway officials covering message privileges over the Canadian Pacific Line; and while you have telegraph facilities of your own,

RECORD

*In the
Exchequer Court
of Canada*

No. 231

EXHIBIT 225

Letter, J. Mc-
Millan to F. P.
Gutelius

March 15, 1916
(Contd.)

I presume that there are many times when franks on the Canadian Pacific are a convenience, and we are glad to afford you an opportunity of using our lines. It would be hard to state the exact value of the franking privilege. Computed at the regular tolls, in July and August last the tolls on messages so carried over our lines, would amount to \$139.50, and should you use the same amount of business each month, it would have amounted to \$837.00 for the year. This may be far wide on the mark, but the check was only taken for the two months.

EXCHANGE OF POLE PRIVILEGES

From Fairview to Rockingham the C. G. R. have on Canadian Pacific Railway poles an 8 pin cross arm for 61 poles, and between Truro and Rockingham two wires on 30 poles. I do not know of any C. P. R. wires on I. C. R. poles, but the exchange of pole attachments is a very trifling matter, and can easily be mutually adjusted. 10

MOVEMENT OF BOARDING CARS FOR CONSTRUCTION WORK

The rate suggested by the C. G. R. of 6 cents per car per mile is satisfactory to this company, except that I would suggest that a revision of the minimum rate of \$6.00 per car for each time a car is moved, be reduced to \$3.00 per car, for each time the cars are moved. The C. G. R. has also suggested a rate of 2 cents per mile for each employee employed on construction work. Might I suggest that this be modified, these employees to be considered in the regular exchange of transportation as between the two Companies. 20

RATE FOR LIGHT ENGINE AND TRAIN CREW FOR EMERGENT SERVICE

In the event of sleet storms or other serious damage to this Company's telegraph lines, might I suggest that \$1.00 per mile is a fair arrangement for a light engine and caboose, that is \$1.00 per mile for a straight run to a given point and return, or \$3.00 per hour, as an hourly rate for the use of the engine and caboose and train crew, if same required to work between given points in restoring telegraph facilities. 30

JOINT USE OF STATIONS

Where the C. G. R. and the C. P. R. contract for the joint use of terminal or other important stations, this Company to receive its share of the telegraph business handled through such central stations in proportion to the part of the expenses borne by the C. P. R. at all such joint stations. For example, if the Canadian Pacific pay 25, 40 or 50 per cent of the expenses at St. John Station, we would like the telegraph business accepted from the Public at such station, to be divided in a like proportion, we to furnish a wire for quick transmission to our central offices from any joint station. 40

The grouping of the interests and my views merely preliminary, so that when you have considered them, we may then get together with a view to a regular agreement that will be satisfactory to both Companies.

Yours truly,

(Sgd) J. McMillan,
Manager Telegraphs.

RECORD
—
In the
Exchequer Court
of Canada
—

No. 231
EXHIBIT 225
Letter, J. Mc-
Millan to F. P.
Gutelius
March 15, 1916
(Contd.)

No. 232
EXHIBIT 226
Memorandum,
prepared for F.
P. Gutelius
June 9, 1916

No. 232

EXHIBIT 226—

CANADIAN GOVERNMENT RAILWAYS

Moncton, N.B., June 9th, 1916.

C.P.R. TELEGRAPH AGREEMENT

MEMO for Mr. Gutelius,—

I have the following comments to make on proposition from the Manager of the Canadian Pacific Railway Telegraph Company and will refer to the paragraphs as they are numbered in red pencil on the letter attached:—

1. C.P.R. POLES ON C.G.R. RIGHT OF WAY

It is conceded that the Canadian Pacific Telegraph Company have the use along this railway of about five hundred miles, where their pole line is located on our right of way. It is not clear to me why they should not pay a rental for this privilege the same as any other Telegraph Company enjoying a similar privilege would be required to do. What the mutual understanding was I am unable to find out. Evidently it was some verbal arrangement which would not necessarily hold good at the present time when we are endeavouring to place all such matters on a business footing.

We have information that a charge is made of about \$20.00 per mile per annum by other railways except where lines running through valuable City property the rental is based on a certain percentage of the City valuation. This does not seem to me to be an unreasonable figure, and I suggest the C.P.R. Telegraph Co. be asked to pay on this basis, viz., \$20.00 per mile or about 50c. per pole per annum. The charge would amount to about \$10,000.00 per annum. The C.P.R. charge the G.N.W. for the pole line along the right of way between St. Martin Junction and Quebec, the rental being a nominal one of about \$200.00 per annum.

2. MILEAGE TRAVELLED BY C.P.R. LINEMEN

There may be no objection to transportation for C.P.R. Linemen being handled on the free interchange basis, particularly if we exact the pole line right of way rental, but if this is not accomplished, I think full tariff rate should be charged for all such transportation.

RECORD

*In the
Exchequer Court
of Canada*

No. 232

EXHIBIT 226

Memorandum,
prepared for F.
P. Gutelius
June 9, 1916
(Contd.)

3. FRANKING PRIVILEGES

The franking privilege does not appear to be a serious matter, and is something of a more or less personal nature. I should say it would be optional with the C.P.R. under any circumstances whether they agreed to extend this privilege or not.

4. EXCHANGE OF POLE PRIVILEGES

This is a temporary arrangement during the construction of the Halifax Ocean Terminals, and as Mr. McMillan states is a trifling matter.

5. MOVEMENT OF BOARDING CARS FOR CONSTRUCTION WORK

You have dealt with the transportation of boarding cars in your letter of May 5th, and there is no argument in favor of reducing the minimum from six to three dollars. So far as the transportation of employees is concerned I suggest it be dealt with in the same manner as the transportation of Linemen. 10

6. RATE FOR LIGHT ENGINE AND TRAINCREW FOR EMERGENT SERVICE

When special train service is provided for the reasons mentioned I suggest that the rate be \$5.00 per hour with a minimum charge of \$50.00 for each ten hours service.

7. JOINT USE OF STATIONS

20

Evidently they have in mind the desirability of placing an office in our station at St. John, but I do not think we should agree to any proposition in connection with this service until the terms of the proposed agreement are settled.

Your papers returned herewith.
Enclos.

No. 233

EXHIBIT 227—

CANADIAN GOVERNMENT RAILWAYS

Moncton, N.B., Oct. 18th, 1916.

Mr. Gutelius,
Moncton.

C.P.R. TELEGRAPH AGREEMENT

Returning the attached received with yours October 17th, 1916.

I have noted Mr. McNeillie's comments:—

10 1. C.P.R. POLES ON C.G.R. RIGHT OF WAY

I concur in his view that a reasonable rental should be charged for the privilege the Telegraph Company enjoys of locating its poles on our right of way. We are not in need of the facilities of this Telegraph Company and through the location of their poles on our right of way they are obtaining access to a territory for profit and should pay for the privilege.

2 and 3. MILEAGE TRAVELLED BY C.P.R. LINEMEN AND FRANKING PRIVILEGES

Mr. McMillan advises C.P.R. linemen, in year 1915, travelled on the
20 Canadian Government Railways in New Brunswick and Nova Scotia, approximately 65,000 miles, at 2c. per mile, equal to \$1,300.00. For this transportation it seems to me they should pay cash and we should be willing at the same time to pay for all messages sent over C.P.R. Telegraph lines. We have very little occasion to use the C.P.R. Telegraph lines.

4. EXCHANGE OF POLE PRIVILEGES

I have no information.

5. MOVEMENT OF BOARDING CARS FOR CONSTRUCTION WORK

I think the agreement as originally drafted should stand, that is, the
30 Telegraph Company to pay at the rate of 6c. per mile, with a minimum of \$6.00 per car for each time a car is moved, unless possibly there may be three or more cars to move at one time, under such circumstances we might make a reasonable concession in the minimum charge per car.

The employees travelling in these boarding cars should also be charged at the rate of 2c. per mile.

I would assume we are perfectly willing there should be reciprocity between the two railways in the matter of exchange of transportation, but it would hardly seem reasonable, as Mr. McMillan suggests, that we should be expected to extend this reciprocity to cover the employees
40 of their Telegraph Company, as we do not have occasion to call on them for transportation for a similar class of employees.

RECORD

—
In the
Exchequer Court
of Canada

No. 233

EXHIBIT 227

Letter, C. A.

Hayes to Mr.

Gutelius

October 18, 1916

RECORD
—
In the
Exchequer Court
of Canada

No. 233
EXHIBIT 227
Letter, C. A.
Hayes to Mr.
Gutelius
October 18, 1916
(Contd.)

No. 234
EXHIBIT 228
Letter, F. P.
Gutelius to J.
McMillan
Oct 31, 1916

6. RATE ON LIGHT ENGINE AND TRAINCREW FOR EMERGENT SERVICE

I agree with General Superintendent McNeillie's suggestion.
7. JOINT USE OF STATIONS

The Telegraph Company in the proportion of business they may secure.

Yours truly,

C. A. Hayes,
G. T. M.

EXHIBIT 228—

F. P. Gutelius
General Manager.

At Montreal.

J. McMillan, Esq.,
Manager of Telegraphs, C.P.R.,
Montreal, P.Q.

No. 234

10

CANADA

Office of
General Manager of
Government Railways.

Moncton, N.B., October 31, 1916.

20

Dear Sir:

With reference to your letter of last March in regard to proposed agreement between the Government and the C.P.R. telegraphs.

I find upon investigation that the Canadian Pacific Railway Telegraphs are trespassers with their poles on the right of way of the Canadian Government Railways to the extent of 452 miles. We feel therefore that effective at once you should pay a reasonable rental for this pole privilege by the execution of an agreement, which among other things should cover the transportation of your linemen and workmen, the movement of construction trains and the joint use of such stations as St. John.

My thought is that you should pay 50c. per pole per annum, 2c. per mile transportation for linemen and other workmen, and 6c. per mile with a minimum of \$6.00 for the movement of boarding cars for construction gangs. Special trains \$5.00 per hour, minimum charge \$5.00. The joint use of St. John station for telegraph purposes to be contingent upon the rendering of a satisfactory agreement in connection with the items above mentioned.

Yours truly,

(Sgd) F. P. Gutelius.

EXHIBIT 229—

No. 235

Montreal, 3rd November, 1916.

A. C. Fraser, Esq.,
Superintendent,
St. John, N.B.

Dear Sir:

POLE LINE ON THE I.C.R. RIGHT OF WAY

10 Have you any records in your office showing date on which various sections of our line between Halifax and St. John, and between New Glasgow and Truro were transferred from outside of the fence and placed on the right of way of the Intercolonial Railway. If so, send me at once a list of the same giving locations and dates. If you have not this information, can you arrange to meet Mersereau and quietly ascertain from him what he knows about this matter. If you do call on Mersereau, handle this very gingerly. In any case, let me have a reply at once.

Yours truly,

W. J. Camp,
Assistant Manager.

20 P.S If any permission given please give reference.

No. 236

EXHIBIT 230—

CANADIAN PACIFIC RAILWAY COMPANY

St. John, N.B., Nov. 15/16.

W. J. Camp, Esq.,
Asst. Manager, *C.P.R.*
Montreal.

Dear Sir:

30 I have seen Mersereau in reference to the right of way east of St. John.

There was no written authority given for locating the line on the Government right of way, but we received verbal information from Mr. D. Pottinger that there would be nothing said and to go ahead.

According to Mersereau the G.N.W. made a strong protest when the C.P. started to rebuild east of Moncton and at one time work was stopped by the Government sectionmen. Mersereau claims to have had recourse to Mr. Pottinger who advised him that the difficulty would be straightened out. This was apparently done as there was no further interference.

RECORD

*In the
Exchequer Court
of Canada*

No. 235

EXHIBIT 229

Letter, W. J.
Camp to A. C.
Fraser
Nov. 3, 1916

No. 236

EXHIBIT 230
Letter, A. C.
Fraser to W. J.
Camp
Nov. 15, 1916

RECORD

*In the
Exchequer Court
of Canada*

No. 236

EXHIBIT 230

Letter, A. C.

Fraser to W. J.
Camp

Nov. 15, 1916

(Contd.)

No. 238

EXHIBIT 232

Letter, F.

Cochrane to F.

P. Gutelius

Nov. 16, 1916

Chief Operator Barnes, who was Mr. Snyder's Chief Clerk at one time has a recollection of being told by the late Mr Snyder that he was going on the Government right of way; there was no written authority, but he had received the necessary verbal authority to make the change when rebuilding.

I attach a couple of letters which we located here, showing that in some instances minor changes had already been made previous to 1902 without any written authority. Rebuilds as follows: Truro to Enfield 1907; five miles between New Glasgow-Heatherton 1907; New Glasgow-Ferrona Junction 1909; Aulac-Spring Hill 1910; Moncton-Painsec Junction 1910; Marshy Hope-Heatherton 1911; St. John-Sussex 1911; Spring Hill-Truro 1911; Truro-Marshy Hope and Westville 1912; Truro-Halifax (2 miles) 1914; Amherst-Moncton 1914; Pt. Tupper-Sydney, 1916.

Yours truly,

(Sgd) A. C. Fraser,
Superintendent.

Exact mileage.

No. 238

EXHIBIT 232—

OFFICE OF THE MINISTER OF RAILWAYS AND CANALS

20

Ottawa, Nov. 16th, 1916.

Dear Mr. Gutelius,—

I have yours of November 14th enclosing copy of your letter to the Manager of C.P.R. Telegraphs in reference to their poles, wires, etc., on our right of way and the joint use of the station for telegraph purposes at St. John.

I trust you will not permit this matter to drop, and, if they do not give you an answer within a reasonable time, I wish you to follow it further and keep me advised.

Yours very truly,

30

(Sgd) F. Cochrane.

F. P. Gutelius, Esq.,
Gen. Mgr. C.G.Rys.,
Moncton, N.B.

EXHIBIT 234—

No. 240

RECORD

CANADIAN PACIFIC RAILWAY COMPANY

St. John, N.B., Dec. 6/16.

In the
Exchequer Court
of Canada

W. J. Camp, Esq.,
Asst. Mgr. Telgh.,
Montreal.

No. 240
EXHIBIT 234
Letter, A. C.
Fraser to W. J.
Camp
Dec. 6, 1916

The following shows poles not on C. G. R. Sydney-Truro; Halifax-Moncton and Sussex-St. John:

10	Halifax-Truro—	37	-----	3	“
	Mge 1-2-3	38	-----	2	“
	4	39	-----	1	“
	6	41	-----	4	“
	7	42	-----	7	“
	8	43	-----	3	“
	9	44	-----	1	“
	10	45	-----	4	“
	11	46	-----	2	“
	13	47	-----	2	“
20	14	48	-----	6	“
	15	50	-----	8	“
	16	51	-----	1	“
	17	52	-----	2	“
	19	54	-----	2	“
	21	55	-----	7	“
	22	56	-----	1	“
	24	57	-----	2	“
	25	58	-----	3	“
	28	59	-----	1	“
30	30	60	-----	1	“
	31	62	-----	4	“
	32				
	33	Total	-----	119	“
	Truro-Moncton—	71	-----	25	“
	Mge 1	72	-----	30	“
	2	73	-----	7	“
	6	75	-----	21	“
	7	76	-----	1	“
	9	77	-----	4	“
40	11	78	-----	4	“
	12	79	-----	24	“
	14	80	-----	3	“
	15	81	-----	2	“
	17	82	-----	6	“
	18	83	-----	14	“

RECORD
 —
In the
Exchequer Court
of Canada
 —
 No. 240
 EXHIBIT 234
 Letter, A. C.
 Fraser to W. J.
 Camp
 Dec. 6, 1916
 (Contd.)

20	-----	1	“
21	-----	3	“
22	-----	4	“
23	-----	2	“
25	-----	2	“
26	-----	3	“
27	-----	2	“
28	-----	3	“
29	-----	3	“
30	-----	8	“
32	-----	1	“
35	-----	5	“
36	-----	3	“
37	-----	24	“
38	-----	5	“
43	-----	1	“
47	-----	3	“
48	-----	3	“
49	-----	16	“
50	-----	8	“
51	-----	1	“
52	-----	7	“
53	-----	16	“
54	-----	26	“
55	-----	12	“
56	-----	3	“
57	-----	6	“
60	-----	37	“
61	-----	17	“
62	-----	10	“
63	-----	6	“
64	-----	11	“
66	-----	23	“
67	-----	13	“
68	-----	2	“
69	-----	33	“
70	-----	25	“

84	-----	11	“
85	-----	4	“
86	-----	4	“
87	-----	22	“
88	-----	13	“
90	-----	12	“
91	-----	22	“
93	-----	3	“
94	-----	11	“
95	-----	9	“
96	-----	4	“
97	-----	15	“
98	-----	21	“
99	-----	26	“
100	-----	10	“
101	-----	21	“
102	-----	7	“
103	-----	7	“
104	-----	6	“
105	-----	23	“
106	-----	3	“
108	-----	2	“
109	-----	20	“
110)	-----	40	“
111)			
112	-----	7	“
113	-----	17	“
117	-----	5	“
120	-----	4	“
122	-----	23	“
123	-----	7	“
	-----	57*	“

Total ----- 975 “

*poles not on CGR this mge Moncton
 Stn. Part highway part railway

Truro-Mulgrave—

Mge	4	-----	1	poles.
	5	-----	1	“
	6	-----	1	“
	7)			
	8)	-----	27	“
	9)			
	10)			
	11)			

69	-----	2	“
70	-----	2	“
73	-----	1	“
75	-----	1	“
80	-----	2	“
81	-----	1	“
89	-----	2	“
91	-----	2	“
98	-----	2	“

	12) ----- 3	"			RECORD
	13)		99 ----- 1	"	-----
	14)		101 ----- 1	"	In the
	15)		104 ----- 4	"	Exchequer Court
	16)		105 ----- 2	"	of Canada
	17) ----- 1	"	106 ----- 10	"	-----
	18)		112 ----- 1	"	No. 240
	19)		113 ----- 1	"	EXHIBIT 234
10	20)		121)		Letter, A. C.
	21)		122) ----- 64	"	Fraser to W. J.
					Camp
			Total ----- 171	"	Dec. 6, 1916
	27)		Point Tupper-Sydney—		(Contd.)
	28) ----- 1	"	Mge 20 ----- 1	poles.	
	29)		23 ----- 4	"	
	30)		29 ----- 2	"	
	31)		49 ----- 4	"	
	32) ----- 2	"	51 ----- 1	"	
20	33)				
	34)				
	35)				
	38) ----- 2	"			
	39)				
	40) ----- 6	"	St. John-Sussex—		
	41)		West Brookville Stn.	4 poles	
	42)		East of "	4 "	
30	43) ----- 14	"	Rothsay Stn.	6 "	
	44)		East of Quispamsis	19 "	
	45) ----- 1	"	Weest of Model Farm	6	
	53 ----- 1	"			
	55 ----- 1	"	Total ----- 39		
	56 ----- 2	"	On CGR right-of-way with all poles		
	62 ----- 2	"	except above mentioned points and		
	63 ----- 2	"	between St. John and Coldbrook, be-		
	66 ----- 3	"	tween latter on highway.		
40	68 ----- 1	"	Sussex-Moncton on highway.		
			Yours truly,		
			(Sgd.) A. C. Fraser.		
			Supt.		

RECORD

No. 237

EXHIBIT 231—

In the
Exchequer Court
of Canada

CANADIAN PACIFIC RAILWAY COMPANY'S TELEGRAPH

192 RA H DH Co.

Montreal, Dec. 27th /16.

No. 237

A. C. Fraser,
St. John, N.B

EXHIBIT 231

Telegram, W.

J. C. to A. C.

Fraser

Dec. 27, 1916

Send by next train a pencil sketch showing in diagramatic form form line on I.C.R. and off I.C.R. right of way St. John-Halifax and Sydney. Might use two colors.

W. J. C.

5.15 p.m. 10

No. 239

EXHIBIT 233

Letter, J. Mc-

Millan to A. C.

Fraser

Dec. 28, 1916

No. 239

EXHIBIT 233—

CANADIAN PACIFIC RAILWAY COMPANY

Montreal, December 28/16.

PRIVATE

A. C. Fraser, Esq.,
Superintendent,
Toronto,

Dear Sir:—

I am advised that Mr. Gutelius took charge of the C.G.R. May 1st, 20 1913. He was in full charge of the I.C.R. a year before we undertook the rebuilding of the line between Amherst and Moncton, a distance of 43 miles, and also 2 miles near Halifax, Have we any record that Mr. Gutelius caused any protest to be made to the rebuilding of the work in 1914? If any protest was made, we seem to have no record of it here. What I would like you to do is to look up your letter of November 15th. sent to me in reference to your meeting with Mersereau and your refer- 30
ence to Mr. D. Pottinger. Take a copy of this letter and go and see Mr. Pottinger personally,—you know his address—and ascertain from him just what action was taken when the protest was made by section men to Mersereau to the rebuilding of the line on the right-of-way, and what was the nature of the permission given Snyder and Mersereau when the line from time to time was moved in from the outside of the fence to the inside of the fence along the I.C.R. what is his recollection of the per-
mission granted to us when our line was extended from New Glasgow to Sydney, over which section our line was built and always maintained on the right-of-way. You will, of course, not advise Pottinger anything about the stand that Gutelius takes about now wishing to charge us a rental.

Deal with this quickly and let me have a full report accompanied by the sketch Mr. Camp wires for, showing the total mileage on the Government right-of-way. Give us a section that is still outside of the Government right-of-way.

Try and see Mr. Pottinger this week.

Yours truly,
 (Sgd) J. McMillan,
 Manager Telegraphs.

Dict. J. M.

RECORD
 —
In the
Exchequer Court
of Canada
 —

No. 239
 EXHIBIT 233
 Letter, J. Mc-
 Millan to A. C.
 Fraser
 Dec. 28, 1916
 (Contd.)

No. 241
 EXHIBIT 235
 Letter, A. C.
 Fraser to J.
 McMillan
 Jan. 1, 1917

No. 241

10 EXHIBIT 235—

CANADIAN PACIFIC RAILWAY COMPANY

St. John, N.B., Jan. 1/17.

J. McMillan, Esq.,
 Manager Telegraph,
 Montreal, Que.

Dear Sir:

Your letter Dec. 28. There is nothing on file here to indicate that the C.G.R. objected to the rebuild in 1914 on their right of way.

20 I have seen Mr. Pottinger in connection with permission granted for any rebuilding to be made on the railroad property. He was approached by the late Mr. Snyder in connection with the transferring of line to the right of way. Mr. Pottinger saw no objectionable features and permission was granted verbally. He was in Ottawa a few days later and advised the Minister of Railways and Canals that he had granted the Canadian Pacific Telegraph the right to do their rebuilding on the Intercolonial right of way. The Minister stated that it was quite right and that he could see no reason why the permission should not be granted.

30 With reference to the line between New Glasgow and Sydney, Mr. Pottinger is not quite clear as to why this line was permitted on the right of way. His recollection is that there was some kind of an agreement whereby the telegraph company, if called upon, were to perform a certain service gratis. He has a clear recollection, however, that the telegraph people had the necessary permission and that there was a quid pro quo, the nature of which he is unable to recollect.

Mr. Pottinger has no recollection of the Mersereau incident, but states that had the sectionmen interfered with the telegraph gang he would certainly have taken action, as the work was being prosecuted with his own and the Minister's consent.

Yours truly,
 Sgd. A. C. Fraser,
 Superintendant.

40

RECORD
—
In the
Exchequer Court
of Canada
—

No. 242

EXHIBIT 236—

F. P. Gutelius,
Ottawa.

Montreal, Que., 11 Jan'y, 1917.

No. 242
EXHIBIT 236
Telegram, J.
McMillan to F.
P. Gutelius
Jan. 11, 1917

Would it be convenient for me to see you regarding the line and exchange of privileges if I go to Ottawa tomorrow morning.

J. McMillan.

No. 243
EXHIBIT 237
Telegram, F. P.
Gutelius to J.
McMillan
Jan. 11, 1917

No. 243

EXHIBIT 237—

J. McMillan,
Manager Telegraphs C.P.R.,
Montreal.

Ottawa, Jan. 11th, 1917.

10

Your wire. I will see you Montreal Saturday.

F. P. Gutelius.

20

No. 299
PART OF
EXHIBIT 290
Agreement
between The
Western Union
Telegraph
Company, the
Great North
Western Tele-
graph Company
and His Majesty
King George
Jan. 24, 1917

No. 299

PART OF EXHIBIT 290—

THIS AGREEMENT, made and entered into in triplicate this 24th day of January, in the year of our Lord One Thousand Nine Hundred and Seventeen, by and between THE WESTERN UNION TELEGRAPH COMPANY, a corporation of the State of New York, and THE GREAT NORTH WESTERN TELEGRAPH COMPANY, a corporation of the Dominion of Canada, parties of the first part, hereinafter sometimes designated for convenience as the Telegraph Company; and HIS MAJESTY, KING GEORGE, represented herein by the Minister of Railways and Canals of the Dominion of Canada, party of the second part, hereinafter designated for convenience as the RAILWAY. 30

WITNESSETH:

THAT, WHEREAS, the Telegraph Company owns or controls lines of poles and wires along the Intercolonial Railway between the points shown in a schedule hereto attached and made a part hereof, marked Schedule "A", each Telegraph Company's lines being shown seperately therein; and said schedule also shows the portions of the rights of way, lands and bridges of the railroads intended to be covered by this agreement; and the Railway owns certain wires on the Telegraph Company's poles along said railroads between the points shown in a schedule hereto 40

attached and made a part hereof, marked Schedule "B". All of said telegraph lines and wires, whether owned by the Telegraph Company or the Railway, have heretofore been and are now operated under the provisions of the hereinafter mentioned agreements as from time to time modified, and

WHEREAS, it is proposed that a new and uniform agreement shall be entered into between the parties hereto superseding said agreements hereinafter mentioned, and making provision for and covering telegraph facilities on the Intercolonial Railway and branches which the Telegraph Company now occupies under said agreements with pole lines and wires, or underground or other telegraph lines or wires as hereinafter provided;

NOW, THEREFORE, for and in consideration of the mutual covenants of the parties hereinafter contained it is agreed between them as follows:

FIRST. The Telegraph Company agrees to sell to the Railway, and the latter agrees to purchase, the wires and telegraph instruments now owned by the Telegraph Company, and used by the Railway in its service for its railroad business on the Telegraph Company's poles along the said railroads, said wires and instruments being hereinafter more particularly described in a schedule hereunto attached marked Schedule "C," at and for a price equivalent to their present value, to be agreed upon after inspection and appraisal of such value by two persons, one to be appointed by the Telegraph Company and the other by the Railway, and in the event of the failure of such appraisers to agree, a third shall be named by the two others chosen, and the decision of such appraisers or a majority thereof shall be final and conclusive; and when the parties shall have agreed upon said valuation, each Telegraph Company shall execute or cause to be executed such conveyance of its said wires and instruments respectively to the Railway as may be necessary to vest the title thereto in it upon the payment by it to the Telegraph Companies respectively of the price so agreed upon, provided, however, in determining the amount of compensation payable by the Railway to the Telegraph Company for any such wires and telegraph instruments purchased hereunder the Railway shall be credited with all cash payments heretofore made by His Majesty to the Telegraph Company, or any of the companies constituting the same respecting any such wire or wires so purchased, and such credit shall be deducted from the present value of the wire or wires and telegraph instruments, the purchase of which is hereinbefore provided for.

The pole space occupied by said wires shall be charged against allowance of pole space hereinafter provided for railroad wires.

SECOND. The Railway, so far as it legally may, hereby grants and agrees to assure to the Telegraph Company the exclusive right of way on, along, over, across and under the rights of way, lands and bridges of such railroads in Canada east of the St. Lawrence River as the Telegraph

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Company has the exclusive right of way under any of the agreements set out in Section Tenth hereof, and referred to as superseded by the provisions of this agreement, and non-exclusive right of way, on, along, over, across and under the rights of way, lands and bridges of such other railroads in Canada east of the St. Lawrence River as the Telegraph Company now has the right of way under any of the agreements set out in Section Tenth hereof, and referred to as superseded by the provisions of this agreement, which the Telegraph Company may elect to occupy with its lines, for the construction, maintenance, operation and use of lines of poles and wires, cables and underground or other lines for commercial or public telegraphic and telephonic uses or business, with the right to put up or construct such additional lines of poles and wires and underground or other lines and to license the use of the poles and underground or other lines covered by this agreement for such telegraph and telephone wires of other parties or to arrange for the construction, maintenance and use of joint pole lines and underground or other lines with such other parties as the Telegraph Company may deem expedient and which may not in any way interfere with, impede or hinder the operation of the railroads; provided, however, that not more than one line of poles or underground or other telegraph and telephone line shall be erected on the same right of way without the written consent of the Railway; except where the Telegraph Company now has more than one such line it may maintain and use such lines as it may now have, and except in towns or cities or other congested sections where an additional line of underground conduits and wires may be constructed; and provided, further, that nothing in this instrument shall prohibit the occupation of joint depots or station houses for telegraph purposes by the parties using them jointly with the Railway, or by others claiming under such parties, or the installation, erection and maintenance in any or all depots upon the lines of said railroads, of public telephones and the erection on depot grounds of poles and wires necessary to reach such depots for the connection of telephone wires therewith by any company desiring to install telephones in such depots for public use. The Railway agrees as far as may be lawful, that it will not permit any party or corporation to erect, maintain, operate or use (except in so far as such permission has been granted to other parties on the railroads covered by this agreement, for a term, any portion of which covers any portion of the term of this agreement) and will not itself erect, maintain, operate or use any high-tension power or electric or other line along, upon or under the rights of way, lands, bridges or structures of said railroads, unless determined by the Railway to be required for the use or operation of said railroads, in such manner and position as to interfere in any way with the construction, maintenance or operation of the telegraph or telephone lines or wires now or hereafter erected along said railroads or any of them covered by this agreement. In the event of the construction upon the premises covered hereby of such high-tension power or electric or other lines for the use or

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operation of said railroads as aforesaid, the Railway will adopt the most effective system or use or cause to be used the best known and most effective methods to protect the telegraph or telephone lines or wires from physical hazard and inductive interference.

It is understood and agreed that whenever any pole lines are hereafter constructed or reconstructed by the Telegraph Company on said lands, rights of way or bridges, they shall be located in such reasonable position thereon as the Railway may direct, such location not to be considered as such a change as that hereinafter provided for.

- 10 The Telegraph Company agrees to change from time to time the location of any of its poles and wires from one place to another in such reasonable locations on the lands, rights of way or bridges as the proper officers of the Railway may designate in order to meet its requirements in the use of said lands, rights of way or bridges for railroad purposes, the Railway hereby agreeing to pay the entire cost of the labor to dig the holes or trenches, and to set or reset the poles and anchors or braces and guys, and to transfer the pole line and wires and fixtures and underground lines, and if necessary to construct temporary new lines pending the replacement of the old ones, in making such changes. When such
- 20 work is done by the Telegraph Company, its bills for the cost of labor shall be promptly paid by the Railway.

The Railway further agrees to use its best efforts and to take such steps as it properly may without expenditure or cost on the part of the Railway or legal obligation so to do, to procure for the Telegraph Company the right to place and maintain, under the terms of this agreement, its wires and fixtures on, along, over and under any railroad bridge or bridges and approaches thereto which may be partly owned, controlled or used by the Railway and located on the said railroads.

- 30 All attachments of telegraph or telephone wires, cables or fixtures to bridges, trestles or other structures of said railroads, shall be in accordance with a form of construction approved by the Chief Engineer of the Railway, and shall be made under the supervision and direction of an authorized representative of the Engineering Department.

At all points where the wires of either of the parties hereto shall cross the track or tracks of said railroads, the lowest of such wires at the point of crossing shall be at least twenty-five feet above the top of the rails, or such height as may be required by law.

- 40 The Telegraph Company shall have the right to operate its wires on the pole lines covered by this agreement by either or both telegraph or telephone instruments, and at its own expense to transpose and equip its wires for telephonic operation and to composite, simplex or phantom its wires and use the circuits derived therefrom telephonically or telegraphically as it may deem proper, and to lease such circuits to its licensees or patrons for telegraph or telephone service or both. It is

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understood and agreed that nothing in this agreement shall prohibit the Railway to construct, maintain and operate on or over its right-of-way of railways covered by this agreement, pole lines for telegraph, telephone business or other Railway requirements.

THIRD. The Telegraph Company agrees to maintain in good order and repair and to reconstruct when necessary from time to time at its own expense, its pole lines along the railroads covered by this agreement, and to set apart for the use of the Railway sufficient space on said pole lines for not exceeding an average of six (6) wires and necessary fixtures per mile of main track of the said railroads covered by this agreement when found necessary by the Railway; such space to be used for railroad wires only, which includes telegraph, telephone and signal wires; it being understood that the combined main track mileage of said railroads occupied by the Telegraph Company's lines shall be the basis for estimating the allowance of the six (6) wire-space herein provided, each mile of double and multiple track being counted as only one mile of main track, but the distribution of such space upon and along the lines of the respective railroads covered by this agreement shall be such as the Railway may deem proper, and any allotment of space not used on one road may be diverted to another where space for more than six (6) wires is required, but in no event is the entire wire space to exceed an average of six (6) wires for the entire mileage counted as aforesaid of said railroads occupied by the Telegraph Company's lines, unless the excess thereof is paid for by the Railway; nor shall any of said space be sub-let to or used by any party other than the Railway and for its own railroad business exclusively; and the Telegraph Company further agrees to set apart for the use of the Railway the space on its cross-arms now occupied by the wires in the exclusive use of the Railway, including those sold to it under the terms of this agreement, which space is to be a part of that hereinbefore in this paragraph granted; provided, however, that when the Telegraph Company requires said cross-arm space for its own use or is compelled to renew said cross-arms, it will then furnish an arm or arms for the Railway's wires, and transfer its wires thereto, at the Railway's expense for material and labor.

On portions of said railroads occupied by the Telegraph Company, where the Telegraph Company elects to place its wires underground, or in aerial cables, or where its wires are in submarine cables, the Telegraph Company shall respectively accord to the Railway space in its underground ducts free of charge in lieu of space on poles, and on the same basis of six (6) wires per mile of main track; and at the option of the Railway shall allow it the use of conductors for its telegraph and telephone wires in the Telegraph Company's aerial and underground cables, including those entering stations, of the type used by it upon payment by the Railway of a rental of Five Dollars (\$5.00) per annum per quarter mile or fraction thereof per conductor in such cables, other than in submarine cables for which a rate will be determined by the

Telegraph Company for each specific case. The aggregate number of feet reduced to a mileage basis of aerial and underground cable conductors furnished under this provision shall be the basis for fixing the annual rental payment.

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Whenever the Railway desires to erect an additional wire or wires within the average aforesaid upon poles unable to give the clearance required by law over the railroads or highways or over the lands and bridges of the Railway, the Railway may demand of the Telegraph Company that the poles upon which such wire or wires are to be erected
10 shall be placed in condition to give legal clearance, and the Telegraph Company shall thereupon, with all reasonable diligence, put said poles in such condition that the plans of the Railway may not be retarded, and the Railway shall reimburse the Telegraph Company the entire cost of the material, labor and other expense required to put the poles in condition for legal clearance.

Whenever the Railway desires to erect an additional wire or wires within the average aforesaid upon poles determined by the Telegraph Company to be unable to safely bear such wires (for reasons other than legal clearance as aforesaid), the Telegraph Company shall, at its
20 expense, when requested by the Railway, promptly repair or reconstruct the poles so that they shall be in proper condition to carry such wires.

The Telegraph Company shall furnish, construct and maintain in good order and repair, and reconstruct when necessary, the telegraph, telephone and signal wires of both parties hereto and the necessary fixtures therefor on said pole lines and in cables, aerial or underground, in accordance with the Telegraph Company's Standard Specifications; it being understood that said wires and fixtures of the Railway shall be placed and maintained on said poles and in the said cables, in such manner and position as the Telegraph Company may designate, but such
30 position shall be uniform for continuous wires on the same pole lines or in the said cables, so far as it may be practicable to make it so.

In the matter of furnishing, constructing and reconstructing when necessary wires for the Railway, it is understood that this shall only be done when ordered or consented to by the Railway, and that no Railway wires will be placed in aerial or underground cables of the Telegraph Company except by consent of the Railway.

The Railway agrees to pay to the Telegraph Company the actual cost of furnishing, constructing, maintaining, repairing and reconstructing the Railway's telegraph, telephone and signal wires and fixtures on
40 the said poles or in the said cables (excepting in cables of the Telegraph Company where provision is made for the option on the part of the Railway of use of such cables at rental charges) plus 10 per cent. for supervision, upon rendition of bills therefor by the Telegraph Company from time to time.

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It is understood that the Telegraph Company will not furnish the Railway cable conductors in the Telegraph Company's cables except at a rental as hereinbefore provided, but will if desired by the Railway furnish and maintain separate cables for railroad wires at cost plus ten (10) per cent.

The Telegraph Company will employ and pay the necessary force of foremen and linemen and will furnish all tools, handcars and other implements and material for ordinary repairs to its pole lines and its telegraph and telephone wires and the wires licensed by it and the wires of the Railway, on its poles and in its cables and the Railway's cables along the railroads covered by this agreement; and will require its line- 10
 men to make ordinary repairs to the Railway's wires on said poles and in the cables at pro rata cost of their wages and expenses and of tools, speeders, motor cars, handcars and other implements and material and of transportation charges therefor, except the cost of poles and pole work and duct work, and cables of the Telegraph Company under rental to the Railway, according to the mileage of wire of each party on said poles or in said ducts in the repair section involved, counting wires licensed by the Telegraph Company thereon or therein as its own, in case the Telegraph Company maintains such wires, but not including such 20
 wires as part of the Telegraph Company's wires in case such wires are maintained by the Telegraph Company's licensees as hereinafter provided.

The Telegraph Company shall on or before the twentieth (20th) day of each month render a statement to the Railway of the cost of the wages and expenses, including transportation of said foremen and line-
 men, and of tools, speeders, motor cars, handcars and other implements and material and transportation charges therefor as aforesaid, during the month preceding, dividing such cost between the Railway and Tele- 30
 graph Company as hereinbefore provided, and according to the miles of wire of each party, on the first day of the month in which such labor was performed; and the Railway agrees to promptly reimburse the Tele-
 graph Company for the Railway's proportion of such cost.

In emergency cases where the Railway determines haste is imper-
 ative in order to restore service, the Railway, at its own election, may make necessary repairs, and the Telegraph Company shall reimburse the Railway for the reasonable expense thereof chargeable to repairs to pole lines, and a portion of the reasonable expense thereof chargeable to the repair of wires, ascertained by dividing such expense pro rata be- 40
 tween the parties according to the mileage of wire owned by each in the repair section involved.

The Telegraph Company may operate handcars, speeders and motor cars over the tracks of said railroads subject to the rules and regulations of the Railway, but without charge for the use of the tracks or other-
 wise, and the Telegraph Company shall indemnify and save harmless

the Railway from all claims or demands from all loss, cost and damage at any time arising to the Telegraph Company, or its officers, agents or employees through the operation of handcars, speeders and motor cars over the tracks of the said railroads whether through accident or otherwise, and whether due to the negligence of the Railway employees or otherwise.

Each party shall furnish and maintain its own equipment of instruments for the operation of its wires, except that the Telegraph Company will furnish space in existing switchboards for railroad wires, each party
10 to furnish switchboards for its own wires when the boards now in use are no longer satisfactory to either party, or are insufficient to accommodate the wires of both parties, it being understood that such equipment and boards of the Railway shall conform to the Telegraph Company's standards.

The Telegraph Company will furnish the use of its local batteries, and will furnish battery material to maintain them, for the operation of the Railway's telegraph instruments at places where the Telegraph Company maintains local batteries for operating its own instruments; and the Railway agrees to pay to the Telegraph Company for such use
20 of its local batteries upon rendition of its bills, such proportion of the cost thereof, including their maintenance, as the number of the Railway's instruments operated with current therefrom bears to the total number of instruments of both parties so operated therefrom. The Railway shall furnish without charge space in its stations for such local batteries. At places where the Telegraph Company maintains no local batteries for operating its own instruments, the Railway shall furnish and maintain its own local batteries.

The Railway shall have the right to use the main batteries or generators of the Telegraph Company for the Railway's wires and for additional wires wherever the Telegraph Company maintains such batteries
30 or generators for its own wires, and the Telegraph Company shall have the right to use the battery caves of the Railway or space in depots and station buildings for necessary main batteries upon payment by each party to the other of reasonable charges, to be agreed upon by the parties for such uses.

The Railway shall furnish without charge reasonable space and facilities wherever available on the lands or in the buildings of the railroads for the storage of poles and other materials of the Telegraph Company for use on the lines along said railroads, the Railway to determine the location and extent thereof, it being understood, however,
40 the Railway shall not be liable to the Telegraph Company for loss or damage to the said poles through fire or otherwise.

The Railway agrees to permit the Telegraph Company's licensees to enter upon the rights of way of said railroads for the purpose of placing, maintaining, repairing and removing their wires and fixtures on or

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from the Telegraph Company's pole lines along said railroads, this permission not to include use of cars by licensees on the tracks of the Railway. The Telegraph Company shall indemnify and save harmless the Railway from all claims and demands, for all loss, cost and damage at any time arising to the Telegraph Company, its licensees or the officers, agents or employees while upon the right of way of the railroad, whether from accident or otherwise, and whether due to the negligence of the Railway employees or otherwise.

In making changes or improvements in or additions to the various railroads and tracks covered by the terms of this agreement, and to the embankments, cuts, tunnels, rights of way, bridges, trestles, buildings and other structures thereof, or appurtenant thereto, the Railway shall instruct its employees to give the Telegraph Company timely notice of any changes required in the location of the telegraph lines, and shall instruct its employees and contractors to protect the telegraph lines from interruptions by derricks, blasting and otherwise; and in cases where such work is done by contractors, the Railway, when required by the Telegraph Company, shall, if practicable, require such contractors to give proper and suitable bond indemnifying the Telegraph Company against damages arising from the prosecution of the work done by such contractors. All temporary changes of location of telegraph lines during such work shall be made by the Telegraph Company as promptly as possible after receiving notice from the Railway, but all labor costs therefor shall be paid by the Railway, as provided in the Second Section hereof. 10 30

3A. The provisions of this agreement shall not apply to the National Transcontinental Railway.

FOURTH. The Telegraph Company agrees to perform such telegraphic service between points on its lines in the United States and Canada, either on or off the lines of the railroads covered by this agreement, as the Railway may desire, for messages pertaining to its railroad business, to be authorized by franks permitting all classes of messages and telegraphic letters in public use on the lines of the Telegraph Company, to be issued to such officers and agents of the Railway as may be designated by its General Manager; and the Railway agrees to perform promptly such transportation and distribution service over its railroads covered by this agreement and on its car ferry or in its scows or other vessels across the Strait of Canso as the Telegraph Company may require for its employees, supplies and material, whether for work or use along said railroads, or beyond or off the lines of said railroads, and to furnish special trains, engines, crews and equipment for distribution service, and outfit, boarding and tool cars for work on the lines along said railroads, whenever required by the Telegraph Company; so far as may be legally done by each party respectively. 40

The transportation of the Telegraph Company's employees shall be provided by the issuance of mileage books to be issued from time to time by the Railway on request of the Superintendent or other authorized officer of the Telegraph Company as desired by it.

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Such service performed by either party for the other shall be charged for at its or their regular current telegraph rates, or through or local transportation rates, as the case may be, for the class of service rendered. Services performed by either party for the other for which there are no regular or published rates, and not otherwise provided for in this
10 agreement, shall be charged for at actual cost, as determined by the officers of the party rendering the service, plus not exceeding twenty-five per cent. (25%) of such cost.

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The Railway agrees to give to the Telegraph Company all such telegraphic business of the Railway between points on the Telegraph Company's lines or connections, including cables, as the Railway does not itself handle over its wires, provided the Telegraph Company makes no greater charge therefor than like service can be obtained elsewhere, charges and other conditions being equal, and the Telegraph Company agrees to give to the Railway all the railway transportation business of
20 the Telegraph Company between stations or points on the railroads of the Railway, provided the Railway makes no greater charge therefor than like service can be obtained elsewhere.

At the close of each contract year bills shall be rendered by each party to the other for all services performed by either party for the other, as provided for in this section during such year. And such bills shall be paid within the period of two months from the end of each contract year.

FIFTH. Either party to this agreement may establish and maintain telegraph or telephone offices at such places on said railroads as it
30 may deem necessary, and the Railway shall furnish office room, including space for local batteries, light and heat at its own expense at all such offices as would otherwise be kept open in its stations on the railroads covered hereby.

In case the Railway desires wires entering its stations to be carried in underground ducts, it shall furnish, put down and maintain the necessary ducts, and the Telegraph Company shall furnish, put in and maintain the necessary cables and appurtenances for the telegraph and telephone wires of both parties entering such stations.

If the Telegraph Company elects to furnish its own telegraph or
40 telephone operator and to establish an office at a station of the Railway or at a station of any other railroad or railway company or companies within which the Railway has the right to allow the Telegraph Company to establish an office, the Railway shall furnish, if it determines it has available space therefor, office room, light and heat in such

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station free of charge, and if at such station one person can attend to the telegraph business of both parties hereto, the agent of the Telegraph Company, acting for and as the agent of the Railway, shall do without charge such telegraph business desired by the Railway as may not conflict with his duties to the Telegraph Company.

At stations of the Railway where it maintains either a telegraph or telephone operator, and where the number of sent paid and collect public messages originating thereat, whether sent by telegraph or telephone from any such station are less than three thousand (3,000) a year, excluding Railway messages, the operators and other employees 10 of the Railway, acting as agents of the Telegraph Company, shall receive, transmit and deliver, exclusively for the Telegraph Company, party hereto, such commercial or public messages as may be offered, and shall charge the tariff rates of the Telegraph Company thereon, and shall render to the Telegraph Company monthly statements of such business and full accounts of all receipts therefrom, and shall pay all of such receipts to the Telegraph Company in such manner and at such times as it may direct. The Railway shall not be held liable for receipts from commercial or public telegraph business not paid over to the Telegraph Company by said railroad employees, but the Railway shall require its 30 employees to exercise reasonable diligence and due care in handling and accounting for such business and the receipts therefrom.

Said operators and employees shall not, without the consent of the Telegraph Company, transmit over the wires of either party hereto any free messages except those on the Railway's business, and concerning all business of the Telegraph Company, whether paid or free, and whether sent by telegraph or telephone, shall conform to all rules, regulations and orders of the Telegraph Company applicable thereto; provided, however, that such employees shall not be required to deliver commercial or public messages when it will interfere with their railroad duties, but all reasonable attention shall be given by such employees to the prompt 20 delivery of such messages; and the Telegraph Company, when in its opinion it is necessary, shall employ messengers, whose wages shall be divided between the parties hereto according to the division of the gross telegraph receipts at such offices hereinafter provided for.

No employee of the Railway shall, while in such service, be employed, and no wire of the Railway shall be used, in the transaction of commercial or public telegraph or telephone business by or for any party other than the Telegraph Company, party hereto; and the Telegraph Company shall have, so far as may be permitted by law, the ex- 40 clusive right to the occupancy of the Railway's depots and station buildings for commercial or public telegraph business as against any other party, except such depots or station buildings as on the date of this agreement may be occupied by any other party and except such depots

or station buildings as may be acquired by the Railway subsequent to this agreement, in which rights had been granted to other parties prior to such acquisition.

All employees of the Railway, so far as they may in fact act in reference to the telegraph business of the Telegraph Company whether pursuant to the terms of this agreement or otherwise, shall at all times be deemed to be employed at the risk and on the responsibility of the Telegraph Company alone, and the provisions of this instrument prescribing what the employees of the Railway shall do in or about the
 10 Telegraph Company's business are not intended to impose upon the Railway any responsibility or liability for their acts or omissions or otherwise in reference to such business.

The Telegraph Company agrees to pay to the Railway, or directly to its operators if it so elects as soon as practicable after the close of each month ten (10) per centum of the gross cash receipts (excluding tolls on the Railway's messages) received by the operators of the Railway, acting for the Telegraph Company as hereinbefore provided, from commercial or public messages at the offices in the Railway's stations, except that tolls on ocean cable messages and tolls or charges of other
 20 companies and tolls on the Railway's messages shall not be included in the division of such gross receipts, but shall be retained in full by the Telegraph Company.

In case of default on the part of any operator in payment of receipts to the Telegraph Company, the Telegraph Company shall not be required to pay the Railway said ten (10) per cent. thereon, unless the same shall be collected by law or from some Guarantee Company or Surety.

Whenever the number of paid and collect messages sent from any railroad station office exceeds three thousand (3,000) in any one year, as aforesaid, the Telegraph Company shall, within thirty days after receipt of written notice thereof, thereafter at its option either provide
 30 an operator at such office so long as the number of such messages sent therefrom reach that volume, or make other provision elsewhere for handling its business; but if the Telegraph Company elects to provide an operator at such station said operator, acting as the agent of the Railway, shall attend to the telegraph business of the Railway, without charge so long as one operator can attend to the telegraph business of both parties hereto. Whenever the telegraph business of both parties at any such office becomes so large that more than one operator is needed to attend to it, then the Railway shall employ and pay its own operator.

40 SIXTH. On extensions or branches (over which the Telegraph Company has the right of way under any of the agreements set out in Section Tenth hereof and referred to as superseded by this agreement) of the Railway's railroads which the Telegraph Company may hereafter elect to occupy with its pole lines and wire or wires where one wire will suffice for the business of both parties, the first wire erected by

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the Telegraph Company shall be used jointly by the parties hereto in the transmission of railroad and commercial telegraph business, it being agreed that the messages of the Railway directing movement of trains or of other urgent character shall have precedence in the transmission over said joint wire. Such line shall be supplied and erected, and reconstructed when necessary by the Telegraph Company, and the Telegraph Company shall furnish all wire, instruments, batteries and other supplies and materials necessary for the maintenance and operation thereof, it being understood, however, that the cost of ordinary repairs and main and local battery service for such joint wire shall be paid one-half 10 by each party hereto.

Whenever, in the opinion of the Telegraph Company, any of its wires or circuits used jointly will no longer accommodate the business of both parties, the Railway shall, within sixty days written notice, discontinue using said wire or circuit and the Telegraph Company shall furnish, erect and maintain in accordance with the Telegraph Company's Standard Specifications at the Railway's expense a wire or wires for the Railway's railroad business and the space occupied by such railroad wire or wires shall form a part of the pole space which the Telegraph Company has hereinbefore agreed to furnish. The Railway agrees 20 to pay to the Telegraph Company the actual cost of furnishing, erecting and maintaining such wire or wires, plus 10 per cent. for supervision, upon completion thereof and rendition of bills therefor by the Telegraph Company from time to time.

Whenever, in the opinion of the Railway, any wire or circuit owned by it on which commercial business of the Telegraph Company is handled can no longer carry said business without interfering with railroad business, then the Telegraph Company shall, within sixty days after written notice, discontinue using said railroad wire or circuit for commercial business and provide at its expense a wire for such business, or 30 make other arrangements for handling it.

Whenever the use of the wire of either party hereto is interrupted, the business of both parties shall temporarily and so far as practicable be done over any available working wire of the other party, and railroad messages directing the movement of trains or of other urgent character shall have precedence.

Whenever the Telegraph Company elects to occupy with a pole line and wire or wires the right of way along any future extension or branch (over which the Telegraph Company has the right of way under any of the agreements set out in Section Tenth hereof and referred to as 40 superseded by this agreement) of the Railway, or along any line of railway hereafter acquired, leased or controlled and operated by the Railway, which under the terms of this agreement the Telegraph Company

is entitled to occupy, such lines of poles and wire or wires shall form a part of the general system covered by this agreement and shall be governed by all provisions hereof applicable to existing lines.

SEVENTH. For the purpose of connecting town or city offices of the Railway located beyond or off its right of way in towns or cities reached by its railroads with the telegraph and telephone wires along said railroads used for the Railway's business, and for connecting the Railway's telegraph and telephone wires with the main offices of the Telegraph Company, when requested by the Railway, the Telegraph Company agrees to furnish the Railway the use of conductors in the Telegraph Company's underground conduits or submarine or aerial cables or space for wires on its pole lines wherever the Telegraph Company has established or may hereafter establish for its own business underground conduits or submarine or aerial cables or lines of poles beyond or off the railroad right of way in towns or cities reached by the railroads of the Railway at not exceeding the rental of five dollars (\$5.00) per annum per quarter mile or fraction thereof per conductor in such cables (other than in submarine cables for which a rate will be determined by the Telegraph Company for each specific case), or free pole space for six (6) wires where the Telegraph Company has pole lines and pole space thereon for additional wires at its regular attachment rates where it has space available therefor, to the city or town offices of the Railway.

EIGHTH. It is a condition of this contract that the Railway is not to be responsible for, and the Telegraph Company hereby covenants and agrees to save the Railway harmless and indemnify it against any loss or damages of any kind arising from any injury to persons in the employ of or property belonging to the Telegraph Company while being carried over said railroads under this agreement; and from any neglect or failure in the transmission or delivery of messages for any person doing business with the Telegraph Company, and on account of any other public telegraph business; and the Telegraph Company shall not be responsible for, and the Railway agrees to indemnify and save harmless the Telegraph Company against any loss or damages of any kind arising from or on account of any error, failure, delay or default in the transmission or delivery of any and all messages sent by or for the Railway under this agreement.

NINTH. In the event that the Railway has now or shall at any time during the term of this agreement acquire trackage rights over the line of railroad of any other railroad or railway company, and the Telegraph Company has a line or lines of poles along the railroad over which such trackage rights are acquired by the Railway, and the Railway should desire the use of a wire or wires along such line of railway for exclusive railroad business, then and in that event the Telegraph Company shall and will, if it can do so under its contract covering such other

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railroad, furnish to the Railway, upon sixty (60) days' written notice, such a wire or wires of a character desired by the Railway, but not exceeding six between any two points, and the Telegraph Company shall charge and the Railway shall pay for the use of such wire or wires a rental per mile of wire at the Telegraph Company's standard rate charged others for such wires.

The Telegraph Company shall accord to other railway companies now or hereafter having trackage rights over the whole or any portion of the lines of the Railway equally as favorable rights for telegraph facilities along such portions of the lines of the Railway over which such other companies may have trackage rights, as are herein in this Section Ninth granted to the Railway along the lines of railway of other companies. 10

TENTH. The provisions of this agreement shall supersede and absolutely annul (except in so far as evidence of the railroads of the Railway over which the Telegraph Company shall have the right of way or otherwise under this agreement) the following agreements, to wit:

1. Agreement between Northern & Western Railway Company and Western Union Telegraph Company, dated September 5, 1885.

2. Agreement between Commissioner of Railways for the Province of New Brunswick and New Brunswick Electric Telegraph Company, dated May 1, 1859. 20

3. Agreement between Commissioner of Railways for the Province of Nova Scotia and American Telegraph Company, dated April 8, 1862.

4. Agreement between Her Majesty Queen Victoria and Western Union Telegraph Company, dated October 16, 1889.

5. Supplemental agreement between Her Majesty Queen Victoria and the Western Union Telegraph Company, dated January 12, 1891.

6. Agreement between The Montreal Telegraph Co. and Her Majesty Queen Victoria, dated September 22, 1870. 30

7. Agreement between Her Majesty the Queen and The Great North Western Telegraph Company, dated May 1, 1900.

8. Agreement between His Majesty the King and The Great North western Telegraph Company, dated November 5, 1906.

9. Agreement between His Majesty the King and the Great North-western Telegraph Company, dated October 8, 1909.

The copies of the foregoing agreements set out in this clause and numbered one to nine, inclusive, are hereto annexed as Schedule "D" and are to be read in connection with the agreement for the purposes of this clause.

And this agreement shall also supersede, during the continuance of its operation, all other agreements, contracts and arrangements between the parties hereto, or their predecessors in the ownership or control of their properties respectively, excepting, however, any agreement or agreements relating to the Prince Edward Island Railway or service therefor; it being understood and agreed that nothing herein contained shall be construed as applying or extending the provisions of this agreement to the Prince Edward Island Railway or to the cable line connecting therewith or to any service for said railway.

- 10 The supersession or cancellation of any agreement as herein provided, however, shall not interfere with or cancel the conveyance of any property made by any of said contracts.

- Settlement shall be made between the parties hereto under and in accordance with the provisions of the aforesaid agreements, for all work done, including labor and material and service or facilities furnished by either party to the other up to the date hereinafter fixed for this agreement to take effect; and all books, vouchers and records of either party shall be open to the other for inspection and audit of the other party, and each party will afford the other every facility for such inspection
20 and audit from time to time upon request so to do, for the purpose of such settlement up to the date when this agreement takes effect.

- ELEVENTH. The provisions of this agreement shall be and continue in force for and during a term of twenty-one (21) years from the the first day of January, 1917, and shall continue after the close of said term until the expiration of one year after written notice shall have been given, at any time after the close of said term, by either party to the other of an intention to terminate the agreement. When this agreement expires the Telegraph Company shall not be required to remove its poles and wires from the Railway's property, but all other rights herein
30 granted shall thereupon cease and determine, and in case the term of any contract or agreement hereby superseded as hereinbefore provided, shall not have then expired, the operation of such contract or agreement may then be resumed at the option of either party in case no new agreement is then made between the parties hereto or their successors or assigns.

- In case of any disagreement concerning the true intent and meaning of any of the provisions of this agreement, or in case of any disagreement concerning matters not specifically covered herein, upon the request of either party hereto, the subject of such difference shall be referred to three arbitrators, one arbitrator to be named by the party
40 applying for the settlement of the matter of disagreement, and the other arbitrator by the other party within thirty days after written notice from the party applying, and the third arbitrator to be named by the two so named.

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In the case of the party notified by the first party failing to name the second arbitrator within the thirty days after such notice, or in case the two arbitrators named fail to agree on the third arbitrator, then and in any such case upon the application of either party so to do the Judge of the Exchequer Court of Canada shall name such second or third arbitrator as the case may be.

The decision of such arbitrators or a majority of them shall be final and conclusive upon the parties hereto with respect to the point submitted to such arbitrators for decision. The parties hereto shall be at liberty to agree in any case upon one person. The arbitrators shall direct at 10 what time, place and in what manner the hearing of the question to be submitted shall be had, if the parties fail to agree. The demand for arbitrators shall be in writing, stating the question or questions which it is desired to submit.

TWELFTH. All the provisions of this agreement shall extend to and bind the successors and assigns of the parties hereto respectively; and the provisions of this agreement shall be deemed to apply to the Western Union Telegraph Company in its territory and to The Great North Western Telegraph Company in its territory, according as the lines of railroad and telegraph and the telegraph offices and the operations 20 thereof fall within the territory of the Western Union Telegraph Company or of The Great North Western Telegraph Company, respectively; and each of said Telegraph Companies is contracting herein for itself alone with respect to its own territory; provided, however, that the covenants as to telegraphic service, the allowance of pole space and other benefits to the Railway which are jointly assumed by said Telegraph Companies, shall be performed by them as the Railway may designate, and that the transportation service and other benefits to the Telegraph Companies jointly, herein provided for, shall be divided between said Telegraph Companies in such proportion as they may agree upon and 30 the Railway shall not be obliged to inquire into such division.

That His Majesty may, at any time, during the continuance of this agreement, on notice in writing from the Minister of Railways and Canals for the Dominion of Canada to the Telegraph Company, take possession of and thereafter own, control and operate the telegraph or telephone lines of the Telegraph Company covered by the agreements numbered 6, 7, 8 and 9 in Section Tenth and erected on the railroads of the Railway, and upon His Majesty taking possession this agreement and said agreements numbered 6, 7, 8 and 9 shall be wholly void and at an end; provided, however, in such event that the Telegraph Company 40 shall be entitled to be paid a reasonable compensation for such telegraph or telephone lines (not exceeding, however, the actual cost of such line or lines and of permanent additions or improvements thereon) to be determined by two persons, one to be appointed by the Telegraph Company and the other by the Railway and in the event of failure of such appraisers to agree a third shall be named by the two others chosen,

and the decision of such appraisers, or the majority thereof, shall be final and conclusive, and the Telegraph Company shall not after payment or tender of the amount of such award be entitled to any further or other compensation by reason of such taking possession of the said telegraph or telephone lines or for any damage or loss of any nature arising therefrom or incidental thereto.

10 The Telegraph Company hereby reserves to itself the pole lines and the wires and fixtures thereon now or hereafter owned, leased, erected, maintained or operated by the Telegraph Company on said railroads covered by contracts numbered 1, 2, 3, 4 and 5 in Section Tenth and used in connection with or for carrying on international or other cable traffic between the cable system or systems owned, leased, controlled or operated by it and its lines in its general telegraph system throughout the United States and Canada; but the Telegraph Company shall not be required in any case to remove its poles, wires and fixtures reserved by it for its cable traffic as aforesaid from the Railway's right of way or lands or premises, but may continue the same thereon subject to such reasonable payment for the use of the right of way as may be mutually agreed upon by the parties hereto.

20 In case either party shall fail to appoint an appraiser for the valuation of said property as aforesaid within thirty days after written notice from the other to do so, or in case the two appraisers named fail to agree upon a third, then and in any such case, upon the application of either party so to do, the Judge of the Exchequer Court of Canada shall name such second or third appraiser, as the case may be.

30 IN WITNESS WHEREOF the said Telegraph Companies have caused these presents to be signed by their respective Presidents or Vice-Presidents and their seals to be hereto affixed and attested by their respective Secretaries, and the Minister so representing His Majesty herein as aforesaid and the Secretary of the Department of Railways and Canals have hereunto set their hands and the seal of the said Department has been hereto affixed the day and year first above written.

THE WESTERN UNION TELEGRAPH COMPANY

Signed by the Vice-President and the Secretary of The Western Union Telegraph Company, the common seal of the said Company having been affixed in the presence of
W. H. Baker,
Secretary.

By G. W. E. Atkins,
Vice-President.

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THE GREAT NORTH WESTERN TELEGRAPH COMPANY

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SCHEDULE "A"

Signed by the Vice-President and
the Secretary of the Great North
Western Telegraph Company, the
common seal of the said Company
having been affixed in the presence
of

A. C. McConnell,
Secretary.

By Adam Brown,
Vice-President.

F. Cochrane. 10

MINISTER OF RAILWAYS AND CANALS

Signed by the Minister and signed
and sealed by the Department of
Railways and Canals in the presence
of

G. A. Bell,
Witness.

J. W. Pugsley,
Secretary.

INTERCOLONIAL RAILWAY

SCHEDULE "A"

Showing lines of poles and wires owned or controlled by the Western 20
Union Telegraph Company and The Great North Western Telegraph
Company along the Intercolonial Railway System, each Telegraph Com-
pany's lines being shown separately; and also showing the portions of the
rights of way, lands and bridges of the railroads intended to be covered
by the agreement.

THE WESTERN UNION TELEGRAPH COMPANY'S LINES

INTERCOLONIAL RAILWAY

From	To	Miles Poles	No. Wires	Miles Wires	Miles of Railroads and Bridges	30
St. John, N. B.	Moncton, N. B.	88.5	16	1416	88.5	
Moncton, N. B.	Painsec Jct. (North)	7	10	70	7	
Moncton, N. B.	Painsec Jct. (South)	7	9	63		
Painsec Jct., N. B.	Sackville, N. B. (North)	31	10	310	31	
Painsec Jct., N. B.	Sackville, N. B. (South)	31	8	248		
Painsec Jct., N. B.	Point du Chene, N. B.	11	1	11	11	40

	From	To	Miles Poles	No. Wires	Miles Wires	Miles of Railroads and Bridges	RECORD In the Exchequer Court of Canada No. 299 PART OF EXHIBIT 290 Agreement between The Western Union Telegraph Company, the Great North Western Tele- graph Company and His Majesty King George Jan. 24, 1917 (Contd.) SCHEDULE "A"
	Sackville, N. B.	Bdry. Nova Scotia (North)	6.5	10	65	6.5	
	Sackville, N. B.	Bdry. Nova Scotia (South)	6.5	8	52		
10	Bdry. of Nova Scotia	Oxford Jct., N. S. (North)	32.5	10	325	32.5	
	Bdry. of Nova Scotia	Oxford Jct., N. S. (South)	32.5	8	260		
	Oxford Jct., N. S.	Truro, N. S.	47	10	470	47	
	Truro, N. S.	Stellarton, N. S.	41	10	410	41	
	Stellarton, N. S.	Browns Point, N. S.	12.5	9	112.5	12.5	
	Browns Point, N. S.	Pictou, N. S.	1.5	10	15	1.5	
	Stellarton, N. S.	New Glasgow, N. S.	2	21	42	2	
	New Glasgow, N. S.	Trenton, N. S.	1.5	5	7.5	1.5	
	Truro, N. S.	Windsor Jct., N. S.	48	10	480	48	
20	Windsor Jct., N. S.	Richmond, N. S.	13	13	169	13	
	Tufts Cove, N. S.	Dartmouth, N. S.	2	1	2	2	
	Trenton, N. S.	Pictou Landing, N. S.	6.5	3	19.5	6.5	
OXFORD & NEW GLASGOW RAILWAY							
	Oxford Jct., N. S.	Browns Pt., N. S.	67.5	9	607.5	67.5	
	Pugwash Jct., N. S.	Pugwash, N. S.	5	4	20	5	
EASTERN EXTENSION RAILWAY							
	New Glasgow, N. S.	Antigonish, N. S.	41	9	369	41	
	Antigonish, N. S.	Lake, N. S.	34	13	442	34	
30	Lake, N. S.	Mulgrave, N. S.	3	11	33	3	
	Mulgrave, N. S.	Pirate Harbour, N. S.	1	4	4	1	
CAPE BRETON RAILWAY							
	Pt. Tupper, N. S.	Inverness Jct., N. S.	1	4	4	1	
	Inverness Jct.	Cemetery Crossing	77.5	9	697.5	77.5	
	Cemetery Crossing	North Sydney, N. S.	8.2	2	16.4	8.2	
	North Sydney, N. S.	Sydney River	12	10	120	12	
	Sydney River	Town Limits	1.5	9	13.5	1.5	
	Town Limits	Sydney, N. S.	2	11	22	2	
40	CANADA EASTERN RAILWAY						
	Gibson, N. B.	Chatham, N. B.	113	1	113	113	

The remaining portions of Schedule A consist of

- (a) Details of Western Union cables on lines of railway in which are carried wires assigned for Intercolonial use;
- (b) Great North Western Telegraph Company's lines between St. Rosalie Junction and Point du Chene;
- (c) Great North Western Telegraph Company's cables.

The portions of this Schedule omitted from the record are not material.

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SCHEDULE B—showing the wires owned by the railway on the poles of the respective telegraph companies;

This Schedule is not material and is omitted from the record.

SCHEDULE C—showing the wires and telegraph instruments now owned by the Western Union Telegraph Company and the Great North Western Telegraph Company and used by the Railway in its service for its railroad business on the poles of the Telegraph Company along the railroads covered by the agreement and which the Telegraph Company agrees to sell to the Railway and the latter agrees to purchase, and the price equivalent to their present value as agreed upon after inspection and appraisal of such value by two persons, one appointed by the Telegraph Company and the other by the Railway; 10

This Schedule is not material and is omitted from the record.

SCHEDULE D—is made up of copies of the nine following agreements:—

- (1) Agreement between the Western Union Telegraph Co. and the Northern and Western Railway Co., dated Sept. 5th, 1885, covering construction and maintenance of telegraph line between Chatham and Fredericton. 20

This agreement is not material and is not included in the record.

- (2) Agreement between Her Majesty the Queen and The New Brunswick Electric Telegraph Co., dated May 1, 1859.

This agreement is printed at page 219.

- (3) Contract between Her Majesty the Queen and American Telegraph Company, dated April 8, 1862.

This agreement is printed at page 221.

- (4) Agreement between The Western Union Telegraph Company and Her Majesty the Queen, dated October 16, 1889.

This agreement is printed at page 271. 30

- (5) Supplemental agreement between Her Majesty the Queen and the Western Union Telegraph Co., dated Jan. 12, 1891.

This agreement is printed at page 294.

- (6) Agreement between The Montreal Telegraph Company and Her Majesty Queen Victoria, dated September 22, 1870.

This is already in the record as Exhibit No. 6 and is printed at page 224.

(7) Contract between Her Majesty the Queen and The Great North Western Telegraph Company of Canada, dated May 1, 1900, covering the construction, repair and maintenance of certain telegraph lines and wires between Montreal and Moncton;

This is not material and is not included in the record.

(8) Agreement between His Majesty the King and The Great North Western Telegraph Company, dated November 5, 1906, provides for a wire between Moncton and Ottawa;

This is not material and is not included in the record.

10 (9) Agreement between His Majesty the King and The Great North Western Telegraph Company, dated October 8, 1909, for the repeating of railway messages at Quebec.

This is not material and is not included in the record.

No. 244

EXHIBIT 238—

February 2/17.

F. P. Gutelius, Esq.,
General Manager,
20 Can. Govt. Railways,
Moncton, N.B.

Dear Sir:

On March 6th, 1916, I wrote you regarding the Canadian Pacific Telegraph line, which is built along the C.G.R. right of way, between St. John and Sydney and from Truro to Halifax, except that portion between Sussex and Moncton, where the line is built outside of the right of way.

30 In your letter of October 31st. you refer to my letter of March 6th., and state that we have our line on your right of way without proper authority. After a good deal of investigation, and as per our conversation, I find that the line was placed on the right of way with the sanction of the former General Manager, and that there was a clear understanding between the General Manager, and the Minister of Railways, that we should be permitted to have our lines on your right of way, so that as matters now stand, we could not be considered as trespassing.

With a view however, of arriving at an arrangement agreeable to both your Company and the Canadian Pacific, I would be prepared to make any one of the following propositions, as a fair return for right of way privileges:—

40 1st. To allow telegraph service on Government Railway business between your headquarters at Moncton, and any part of our system, or our connecting lines, to the value of \$500.00 per annum, computed at our regular rates.

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No. 244
EXHIBIT 238
Letter, Manager
Telegraph to F.
P. Gutelius
Feb. 2, 1917

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No. 244
EXHIBIT 238
Letter, Manager
Telegraph to F.
P. Gutelius
Feb. 2, 1917
(Contd.)

No. 245
EXHIBIT 239a
Draft form of
agreement,
March 17, 1917

2nd. To allow the C.G.R. to place two wires on our poles between St. John and Truro, one wire between Truro and Sydney and three wires between Truro and Halifax, the C.G.R. to supply the wires and fixtures, and cost of construction, we to maintain the above wires on our poles, free of charge.

3rd. That we supply you with a wire from St. Rosalie Jct. to Montreal, via Farnham, this wire to be set aside for your exclusive use.

Any of the foregoing propositions to be considered as a full exchange for any right of way privileges that we may require on the C.G.R. 10

In the matter of exchange of transportation:—This to be considered in the general transportation exchange, as our Telegraph is the property of the Canadian Pacific Railway, and is not a separate company.

Yours truly,
J. McMillan,
Manager Telegraph.

No. 245

EXHIBIT 239a—
DRAFT.

March 17th, 1917.

1st—That all business between the Canadian Government Railways officers and Canadian Pacific Railway officers will be handled by the C.P.R. Telegraphs free of charge. OK 20

2nd—That the C.P.R. provide a wire from our Ste Rosalie Station to the switchboard in our Montreal Terminal Agent's office. OK

3rd—That in the event of the Railway requiring more pole line wire space than has been provided in the agreement with the Great North Western and Western Union, that space for two wires on C.P.R. poles located on our right of way will be provided; the Railway is to supply the wires and fixtures and bear the cost of construction; the C.P.R. ~~—free of charge~~ maintains the wires on their poles at joint expense. OK 30

4th—The transportation for linemen to be handled in the regular way as between the Canadian Pacific and Canadian Government Railways. OK

5th—That special train service will be on the basis of \$5.00 per hour, minimum charge of \$50.00 per day. OK

6th—That the movement of repair cars will be handled at the rate of 6 cents per car per mile—minimum of \$6.00 each time a car is moved.

OK

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EXHIBIT 239a
Draft form of
agreement
March 17, 1917
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No. 248
EXHIBIT 241
Letter, A. C.
Barker to F. P.
Gutelius
March 19, 1917

The Railway, as far as it legally may, grants and agrees to assure non-exclusive to the Telegraph Company / the / right of way for its pole lines and wires where located at the date of this agreement, with the right to put up or lines of poles and construct such additional / wires as the Telegraph Company may deem expedient upon the right of way of the Intercolonial Railway ~~except between Riviere du Loup and Moncton and between Fredericton and Chatham and which may not in any way interfere with, impede or hinder the operation of the Railway.~~

No. 248

EXHIBIT 241—

CANADIAN GOVERNMENT RAILWAYS.

Moncton, N.B.
March 19th, 1917.

F. P. Gutelius, Esq:

20 Referring to the attached correspondence relative to proposed telegraph agreement between the Railways and the Canadian Pacific Railway.

I am in accord with the provisions outlined in the draft letter. Permission for the erection of one line of poles on our right-of-way may be given over all portions of the Intercolonial Railway except between Riviere du Loup and Moncton, where the Great North Western now have exclusive right and between Fredericton and Chatham where the Western Union also have exclusive right.

30 The pole line of the C.P.R. located on the right-of-way of the Railways between Moncton and Halifax is located in territory in which the Western Union Company claim absolute right of way under agreement of 1870. For that reason I do not think it advisable to enter into an agreement with the C.P.R. without the consent of the Western Union.

(Sgd) A. C. Barker.

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No. 247

EXHIBIT 240—

CANADIAN PACIFIC RAILWAY COMPANY'S TELEGRAPH

Moncton, N.B., 27 Mar. 17.

EXHIBIT 240 J. McMillan,
Telegram, A. C. Montl.
Fraser to J. Mc-
Millan
March 27, 1917

J. McMillan,
Montl.

Mr. Gutelius in Montreal today suggested here you see him. Mr. Williams sick.

A. C. Fraser

10

No. 249

1118a.

EXHIBIT 242
Letter, F. P.
Gutelius to J.
McMillan
March 30, 1917

No. 249

EXHIBIT 242—

March 30, 1917.

No. 246

EXHIBIT 239b
Memo prepared
by J. McMillan
re Exhibit 239a
April 14, 1917

J. McMillan, Esq.,
Manager of Telegraphs,
Canadian Pacific Railway Co.,
Montreal, Que.

Dear Sir,

Referring to your letter of 2nd February regarding proposed telegraph agreement between C.P.R. and these Railways.

20

You might send me a draft agreement along the lines of your letter.

Yours truly,

F. P. Gutelius.

No. 246

EXHIBIT 239b—

File 4220.
Montreal, April 14-17.

MEMORANDUM.

- ✓ Re draft of agreement between the Canadian Pacific and the C.G.R. regarding the concessions that this Company is to make as an offset to the privilege of having our line east of St. John built on the right of way of the C.G.R. The concessions I am agreeable to make are as follows:
- ✓ C.P.R. 1st. The telegraph business between C.G.R. officers and Canadian Pacific officers will be handled on the C.P.R. free of charge to the Government Railway.
- C.P.R. 2nd. That the C.P.R. will provide a wire from St. Rosalie Jct. station to the switchboard in the Canadian Government terminal Agent's office at Montreal.

3rd. In the event of the railway requiring more pole line wire space than has been provided in the agreement with the G.N.W. and Western Union, that space for two wires on the C.P.R. poles located on the Government right of way will be provided. The Railway is to supply the wires and fixtures and bear the cost of construction, the C.P.R. to maintain the wires, the Govt. paying a joint proportion of the maintenance expense.

v

4th. That transportation for linemen will be handled in the regular exchange as between the Canadian Pacific and the C.G.R.

Mutual

5th. That special train service will be on the basis of \$5.00 per hour minimum rate of \$50.00 per day.

C.G.R. Mutual

6th. That the movement of telegraph repair cars will be handled at the rate of 6 cents per car per mile, minimum of \$6.00 each time that a car is moved.

C.G.R.

The railway as far as it legally may grants and agrees to assure to the Telegraph Company the use of the Government right of way for its pole line and wires between St. John and Sydney and Truro and Halifax, with the right to put up or construct such additional wires as the Telegraph Company may deem expedient upon the right of way of the C.G.R.

C.G.R.

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EXHIBIT 239b
Memo prepared
by J. McMillan
re Exhibit 239a
April 14, 1917
(Contd.)

No. 252

EXHIBIT 245
Draft agreement
between His
Majesty the
King and C.P.R.
Company
May 10, 1917

In addition to being on the right of way between St. John and Sydney and Truro and Halifax, we would like to include the privilege of going along the right of way of the C.G.R. between Painsec Junction and Point du Chene, should we decide to build in that section.

J. McMillan.

No. 252

EXHIBIT 245—

10-5-17.

30 THIS AGREEMENT made this day of
One thousand nine hundred and seventeen, between HIS MAJESTY KING GEORGE THE FIFTH, herein represented and acting by the Honorable the Minister of Railways and Canals of the Dominion of Canada, and hereinafter referred to as "His Majesty" of the First Part, and THE CANADIAN PACIFIC RAILWAY COMPANY, hereinafter referred to as "the Railway Company" of the Second Part;

40 WHEREAS the Railway Company has applied to His Majesty for the grant of the right to erect and maintain poles and wires and telegraph apparatus on and along the railway right of way and other lands of the Canadian Government Railway System east of the City of St. John in the Province of New Brunswick, including the lines from St. John to Sydney, Truro to Halifax and from Painsec Junction to Point du Chene, which right His Majesty has agreed to grant on the terms and conditions hereinafter set out;

RECORD
 —
In the
Exchequer Court
of Canada
 —

No. 252
 EXHIBIT 245
 Draft agreement
 between His
 Majesty the
 King and C.P.R.
 Company
 May 10, 1917
 (contd.)

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the premises and of the mutual covenants and agreements of the parties hereto hereinafter contained, the parties hereto for themselves and their respective successors and assigns do hereby mutually covenant and agree as follows:—

1. His Majesty hereby agrees to grant and does hereby grant unto the Railway Company the right to erect and maintain upon the right of way and other lands used and occupied by His Majesty for the purposes of the said lines of the Canadian Government Railway System, such poles, wires and apparatus as the Railway Company's Manager of Telegraphs for the time being or his duly authorized representative may from time to time deem necessary in connection with the proper operation of the Railway Company's Telegraph Department. 10

2. The Railway Company shall at all times and at its own expense, save as hereinafter provided, erect and maintain the said poles and wires.

3. The Railway Company shall transmit free of charge to His Majesty over its Telegraph System, all telegraphic communications which the officials of the Canadian Government Railway System may require to be transmitted to the Officials of the Railway Company. 20

4. The Railway Company shall when so required by His Majesty, furnish accommodation on said poles for one or two telegraph wires and erect and thereafter maintain such wires, provided that His Majesty shall at his own expense furnish said wires and all apparatus used in connection therewith, and pay to the Railway Company all costs which it shall incur in erecting the same, and provided further that His Majesty shall from time to time repay to the Railway Company all expenses which it shall incur in maintaining said wire or wires, such expenses to be borne by His Majesty in the proportion which said wire or wires shall bear to the total number of wires on said poles. 30

5. The Railway Company shall at its own expense, furnish for the use of His Majesty, a telegraph wire connecting the station at St. Rosalie Junction with the switchboard in the Canadian Government Railway System's Terminal Agent's office in the City of Montreal.

6. The title in all poles, wires and other property of the Railway Company placed on or affixed to the said right of way or other land of the Canadian Government Railway System shall remain in the Railway Company, which shall have the right to remove the same on the termination of this agreement.

7. His Majesty agrees that he will, upon requisition of the Railway Company, furnish free transportation over the lines of the Canadian Government Railway System to employees of the Railway Company engaged in the work of erecting, maintaining or renewing said poles, wires and apparatus. 40

8. His Majesty further agrees that the rate of charges on the Canadian Government Railway System for the transportation of the Railway Company's telegraph repair cars and employees shall not exceed six cents (.06) cents per car mile, provided that if the total sum payable in respect of any movement at the said rate per mile shall be less than six dollars (\$6.00), the said sum shall be the minimum payable in respect of such movement. In the event of the Railway Company requiring a special train for the transportation of its said cars or employees, His Majesty hereby agrees to furnish the same for the sum of Five Dollars
 10 (\$5.00) per hour, provided that the minimum charge for the use of such special train during any working day of hours shall be Fifty Dollars (\$50.00).

9. This Agreement shall remain in force for the term of years from the date hereof and upon the expiration of the said term for a further like period, provided that either party may terminate this agreement at the expiration of the said term or any renewal or extension thereof by giving previous notice in writing of his or its invention so to do.

IN WITNESS WHEREOF His Majesty has caused these presents
 20 to be signed by the Honorable the Minister of Railways and Canals of the Dominion of Canada and countersigned by the Secretary of the same department, and the Railway Company has hereunto caused its Corporate Seal to be affixed under the hands of its duly qualified officials.

No. 250

EXHIBIT 243—

May 11, 1917.

Mr. J. McMillan,
 Manager of Telegraphs,
 Canadian Pacific Railway Co.,
 30 Montreal, Quebec.

Dear Sir:

You were to send me a draft of an agreement along the lines as set out in your letter of 2nd February and about which I wrote you on 30th March.

I would be glad if you would let me have it as early as possible.

Yours truly,

F. P. Gutelius,

RECORD
 —
*In the
 Exchequer Court
 of Canada*
 —

No. 252
 EXHIBIT 245
 Draft agreement
 between His
 Majesty the
 King and C.P.R.
 Company
 May 10, 1917
 (Contd.)

No. 250
 EXHIBIT 243
 Letter, F. P.
 Gutelius to J.
 McMillan
 May 11, 1917.

RECORD
 —
In the
Exchequer Court
of Canada
 —
 No. 251
 EXHIBIT 244
 Letter, J. Mc-
 Millan to F. P.
 Gutelius
 May 14, 1917.

No. 251

EXHIBIT 244—

Montreal, May 14/17.

F. P. Gutelius, Esq.,
 Gen. Mgr., C.G. Railways,
 Moncton, N.B.

Dear Sir:—

Referring to your letter of the 11th. instant. file 8514-1.
 This agreement will be mailed to you in a day or two.

Yours truly, 10

(Sgd) J. McMillan,
 Manager of Telegraph.

No. 253
 EXHIBIT 245a
 Draft agreement
 between His
 Majesty the
 King and the
 C.P.R. Com-
 pany
 May 29, 1917

No. 253

7257

EXHIBIT 245A—

29/5/17.

THIS AGREEMENT made this first day of
 May One thousand nine hundred and seventeen, between HIS MA-
 JESTY KING GEORGE THE FIFTH, herein represented and acting by 20
 the Honorable the Minister of Railways and Canals of the Dominion of
 Canada, and hereinafter referred to as "His Majesty" of the First Part,
 and THE CANADIAN PACIFIC RAILWAY COMPANY, hereinafter
 referred to as "the Railway Company" of the Second Part:

E. W. P.
 J. McMillan
 Manager Telegraphs
 F. P. G.

WHEREAS the Railway Company has hitherto maintained certain
 lines of telegraph wires on and along the right of way and other lands of
 the Canadian Government Railway System East of the City of St. John,
 in the Province of New Brunswick, including lines from St. John to Syd-
 ney, Truro to Halifax, and Painsec Junction to Point du Chene.

AND WHEREAS the parties hereto desire that the terms and condi-
 tion upon which the said telegraph lines shall be maintained be more 30
 clearly defined for the future.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in
 consideration of the premises and of the mutual covenants and agree-
 ments of the parties hereto hereinafter contained, the parties hereto for
 themselves and their respective successors and assigns do hereby mu-
 tually covenant and agree as follows:—

1. His Majesty hereby agrees to grant and does hereby grant unto the Railway Company the right to keep and maintain upon the right of way and other lands used and occupied by His Majesty for the purposes of the Canadian Government Railway System, such poles, wires and apparatus as the Railway Company's Manager of Telegraphs for the time being or his duly authorized representative may from time to time deem necessary in connection with the proper operation of the Railway Company's Telegraph Department.
2. The Railway Company shall at all times and at its own expense, save as hereinafter provided, erect and maintain the said poles and wires.
3. The Railway Company shall transmit free of charge to His Majesty over its Telegraph System, all telegraphic communications which the officials of the Canadian Government Railway System may require to be transmitted to the officials of the Railway Company.
4. In the event of the pole line wire space which His Majesty has the right to use under agreements with the Great North Western Telegraph Company and the Western Union Telegraph Company not being sufficient for the requirements of His Majesty, the Railway Company will permit His Majesty to string, at his own expense, one or two wires on the poles of the Railway Company on any portions of the right of way and lands referred to in the first recital hereto, and the Railway Company will maintain such wires. The cost of maintaining the wires on said pole line shall be divided between His Majesty and the Railway Company in the proportion which the number of wires of each bears to the total number of wires on such poles.
5. The Railway Company shall, at its own expense, furnish for the use of His Majesty, a telegraph wire connecting the station at St. Rosalie Junction with the switchboard in the Canadian Government Railway System's Terminal Agent's office in the City of Montreal.
6. The title in all poles, wires and other property of the Railway Company placed on or affixed to the said right of way or other land of the Canadian Government Railway System shall remain in the Railway Company, which shall have the right to remove the same on the termination of this agreement.
7. His Majesty agrees that he will, upon requisition of the Railway Company, furnish free transportation over the lines of the Canadian Government Railway System to employees of the Railway Company engaged in the work of erecting, maintaining or renewing said poles, wires and apparatus.
8. His Majesty further agrees that the rate of charges on the Canadian Government Railway System for the transportation of the Railway Company's telegraph repair cars and employees therein shall not exceed six cents (.06) per car mile, provided that if the total sum payable in respect of any movement at the said rate per mile shall be less than six

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 EXHIBIT 245a
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 pany
 May 29, 1917
 (Contd.)

F. P. G.

dollars (\$6.00), the said sum of six dollars (\$6.00) shall be the minimum payable in respect of such movement. In the event of the Railway Company requiring a special train for the transportation of its said cars or employees, His Majesty hereby agrees to furnish the same for the sum of five dollars (\$5.00) per hour, provided that the minimum charge for the use of such special train during any working day of twenty-four

F. P. G. (24) hours shall be Fifty Dollars (\$50.00).

RECORD

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EXHIBIT 245a
Draft agreement

between His
Majesty the
King and the
C.P.R. Com-
pany
May 29, 1917
(Contd.)

9. It is hereby agreed and declared that nothing in the agreement contained shall be taken as implying that the Railway Company has not heretofore proper authority to erect and maintain the said lines of tele- 10
graph wires on the portions of the lands of the Canadian Government
Railway Sytem herein referred to, and, further, that His Majesty makes
and will make no claim for any compensation in respect of the rights
heretofore enjoyed by the Railway Company in connection with the said
lines of wires.

10. This agreement shall remain in effect for a term of twenty years
from the date hereof, and the Railway Company upon giving six months
notice in writing prior to the expiration of the said term, shall have the
right to have this agreement renewed for a further like period, and like- 20
wise from time to time at the expiration of such further period of twenty
years and each such period thereafter the Railway Company shall have the
like right of renewal upon giving the like notice of its desire to take ad-
vantage thereof.

IN WITNESS WHEREOF His Majesty has caused these presents to
be signed by the Honorable the Minister of Railways and Canals of the
Dominion of Canada and countersigned by the Secretary of the same
Department, and the Railway Company has hereunto caused its Corpor-
ate Seal to be affixed under the hands of his duly qualified officials.

CANADIAN PACIFIC RAILWAY COMPANY.

o.k.
F. P. Gutelius.
(SEAL)

(sgd) G. M. Bosworth. 30
Vice-President.
(sgd) H. C. Oswald,
Assistant Secretary.

EXHIBIT 295—

No. 305

P.C. 1529.

W.

RECORD

—
In the
Exchequer Court
of Canada
 —

No. 305
 EXHIBIT 295
 Order-in-Council
 June 5, 1917

CERTIFIED COPY of a Report of the Committee of the Privy Council, approved by His Excellency the Governor General on the 5th June, 1917.

The Committee of the Privy Council have had before them a report, dated 2nd June, 1917, from the Minister of Railways and Canals, representing that Mr. F. P. Gutelius, General Manager, Canadian Government
 10 Railways, resigned as of June 1st, 1917, and that his resignation was accepted by P. C. No. 1437, dated May 25, 1917;

Further, that it appears desirable to divide the Canadian Government Railways into two divisions—Eastern Lines and Western Lines—Eastern Line to comprise all those East of the River St. Lawrence, Western Lines to comprise all those west of the River St. Lawrence, and to have a General Manager for each division.

The Minister, therefore, recommends that Mr. C. A. Hayes, at present General Traffic Manager of the Canadian Government Railways, be appointed General Manager of Eastern Lines, with headquarters at
 20 Moncton; and Mr. F. P. Brady, at present General Superintendent of the Transcontinental Division, be appointed General Manager of Western Lines, with headquarters at Winnipeg; each General Manager to have over his division all the powers that are at present vested by Order in Council dated January 22nd, 1914, (P.C. 184), in the General Manager of Government Railways, under the Government Railways Organization, except that in respect of traffic matters, Mr. Hayes shall have jurisdiction over both divisions.

The Minister further recommends that the Departmental Solicitor be ex-officio, a Solicitor of the Canadian Government Railways, he, under
 30 the direction of the Minister, to act in collaboration with the General Solicitor in all matters of litigation.

The Minister also recommends that the said appointments take effect as of the first day of June, 1917.

The Committee concur in the foregoing recommendations and submit the same for approval.

Sgd. Rodolphe Boudreau,
 Clerk of the Privy Council.

The Honourable

The Minister of Railways and Canals.

RECORD

No. 254

In the
Exchequer Court
of Canada

EXHIBIT 246—

11th June, 1917.
File 8514.

C.P.R. TELEGRAPH AGREEMENT

Hon. F. Cochrane,
Minister of Railways & Canals,
Ottawa, Ont.

No. 254
EXHIBIT 246
Letter, C. A.
Hayes to Hon.
F. Cochrane
June 11, 1917

Dear Sir,—

Yours 6th June.

It will be necessary for me to have a little time to enquire into this 10
matter.

No. 255
EXHIBIT 247
Letter, C. B.
Brown to C. A.
Hayes
June 19, 1917

My general understanding of the situation is that the Telegraph Co. had been enjoying for a long period all of the privileges granted them by the proposed agreement but without their being any agreement in existence outlining the privileges granted or defining the obligations of either party and Mr. Gutelius had simply endeavoured to get a written undertaking to more clearly define the status of both parties.

You ask "Why should they have these privileges for nothing". I will consider that suggestion although it is my impression the poles of the Telegraph Co. are quite generally placed just outside our right of way 20 line although there are some spots where they encroach on the railway property.

Yours truly,

C. A. Hayes,
General Manager.

t.

No. 255

EXHIBIT 247—

CANADIAN GOVERNMENT RAILWAYS

Moncton, N.B., June 19th, 1917.

C. A. Hayes, Esq.,
General Manager,
Moncton, N.B.

30

Dear Sir,—

With reference to your recent peronal request I would advise that the Canadian Pacific Railway have telegraph poles on the Intercolonial Right-of-Way as follows:—

St. John to Halifax, except	
Sussex to Moncton and Rockingham to	
Fairview..	228.1 miles
Truro to Sydney..	224.1 "
	452.2 "
Or a total of	

Between Rockingham and Fairview the C.P.R. line is close to the existing Railway fence, but on the outside of same, and is claimed by the C.P.R. to be on the public road. The present Railway fence, however, is not on our property line according to the original expropriation plans; in fact, most the highway is on our property according to these plans.

Throughout the 452 miles the C.P.R. line is very close to our fence and occasionally passes outside our boundary over other property due to sharp breaks in our boundary line or improved alignment of telegraph line.

10 The Fredericton & Grand Lake Railway, a subsidiary of the C.P.R. has two wires across our bridge between Fredericton and Gibson.

Yours truly,

(sgd) C. B. Brown,
Asst. General Manager.

No. 256

EXHIBIT 248—
C. A. Hayes, Esq.,
General Manager,
Canadian Government Rys.,
Moncton, N.B.

July 17/17.

20 Dear Sir:—

Referring to telephone message this morning.

I would be glad if you will kindly see letter that I wrote to Mr. F. P. Gutelius, on February 2nd, 1917, dealing with the question of right-of-way authority. Further, my understanding is that the line between New Glasgow and Sydney was built originally on the C.G.R. right-of-way, with a view to supplying Sydney with a better telegraph service. The other telegraph line was originally built in a large measure outside the fence of the Government right-of-way.

30 The following extract, however, from a letter I have received from Mr. A. C. Fraser, our Superintendent at St. John, dated January 1st, 1917, stated:—

40 “I have seen Mr. Pottinger in connection with the permission granted for any rebuilding to be made on the Railway property. He was approached by the late Mr. Snyder in connection with the transferring of the telegraph line to the right-of-way. Mr. Pottinger saw no objectionable features and permission was granted verbally. He was in Ottawa a few days later and advised the Minister of Railways and Canals that he had granted the Canadian Pacific Telegraph the right to do their re-building on the I.C.R. right-of-way. The minister stated that it was quite right, and that he could see no reason why permission should not be granted.

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*In the
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No. 255
EXHIBIT 247
Letter, C. B.
Brown to C. A.
Hayes
June 19, 1917
(Contd.)
No. 256

EXHIBIT 248
Letter, J. Mc-
Millan to C. A.
Hayes
July 17, 1917

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 No. 256
 EXHIBIT 248
 Letter, J. Mc-
 Millan to C. A.
 Hayes
 July 17, 1917
 (Contd.)

“With reference to the line between New Glasgow and Sydney, Mr. Pottinger has a clear recollection that the Telegraph people had the necessary permission.

“Mr. Pottinger has no recollection of the Mersereau incident, but states that had the section linemen interfered with the telegraph gang, he would certainly have taken action, as the work was being prosecuted with his own and the Minister’s consent.”

From the above it seems clear that the relations between the former Management of the I.C.R. and this Company’s officers were of a cordial nature and mutually helpful. However, with a view to meeting the 10 wishes of Mr. Gutelius, it was suggested that we now enter into a formal agreement. The contents of the proposed agreement we considered several times with Mr. Gutelius and they were finally initialled by him.

It is rather difficult at this date to produce written documents, as I do not think it was ever thought that it would be necessary to do so.

Yours truly,

J. McMillan,
 Manager of Telegraph.

No. 257

EXHIBIT 249—

Moncton, N.B., July 23rd, 1917.

A. C. Barker, Esq.,

Kindly advise me under what old agreement the telegraph line was constructed on our right of way from St. John to Shediac, Painsec Jct to Halifax and Truro to Sydney?

I wish to be sure as to this agreement in order to determine what rights, if any, the C.P.R. may have and what action we should take by reason of inquiry made by the General Manager.

A-CG

(sgd) H. F. Alward.

No. 258

EXHIBIT 250—

Moncton, N.B., July 28, 1917.

Mr. H. F. Alward,—

Your letter of the 23rd instant file L204.

The Telegraph line St. John to Shediac was constructed by the New Brunswick Electric Telegraph Company under agreement dated May 1st, 1859.

The Telegraph line New Glasgow to Sydney was constructed by the Western Union Telegraph Company, under agreement dated October 16, 1889.

The line, Painsec Jct. to Halifax as far as I can determine, was constructed by the Montreal Telegraph Company under agreement dated September 22, 1870.

There is some doubt about this, however, as the American Telegraph Company was operating in Nova Scotia previous to that date and had a working arrangement with the Railways owned by the Province of Nova Scotia, as agreement dated April 8, 1862, will show.

In order to determine the conditions upon which the Telegraph line located upon the right-of-way of the Railways in the Province of Nova Scotia was constructed, I think it will be necessary to obtain information as to the authority the American Telegraph Co. had for the construction of their lines.

Yours truly,

(sgd) A. C. Barker.

RECORD

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In the
Exchequer Court
of Canada

—
No. 257
EXHIBIT 249
Letter, H. F.
Alward to A. C.
Barker
July 23, 1917

—
No. 258
EXHIBIT 250
Letter, A. C.
Barker to H. F.
Alward
July 28, 1917

RECORD

No. 259

In the
Exchequer Court
of Canada

EXHIBIT 251—

CANADIAN GOVERNMENT RAILWAYS

Moncton, N.B., August 3rd, 1917

No. 259

EXHIBIT 251

Mr Hayes,—

Letter, H. F.

Alward to C. A.

Hayes

Aug. 3, 1917

Your file No. 8514. Yours of the 2nd ultimo asking to be advised of the location of poles of the C.P.R. Telegraph Company on the railway right of way from St. John to Shediac, Painsec Junction to Halifax and Truro to Sydney, constitute any violation of the terms of new agreement between Western Union Telegraph Company and the Great Northwest- 10
ern Telegraph Company of the one part and the C.P.R. of the other part with respect to the exclusive privilege to occupy our right of way through this section.

The new agreement gives to the Western Union Telegraph Company and the Great North Western Telegraph Company exclusive right only over the railway right of way where these companies or either of them had exclusive rights under the old agreement.

I referred to Mr. Barker the question as to under what agreement this telegraph line was constructed as per copy of my letter of the 23rd ult. to him herewith. Mr. Barker replied as per copy of his memo of the 28th 20
ult. herewith, expressing doubt as to the construction of this line but setting out insofar as he can determine the telegraph line from New Glasgow to Sydney was constructed by the Western Union Telegraph Co., under the agreement of October 6th, 1889.

The agreement of October 6th, 1889, provides in Clause One as follows:—

“The Company shall have the right to establish and maintain one line of telegraph poles with wires thereon along the Eastern extension Railway between New Glasgow and Mulgrave and along the Cape Breton Railway between Point Tupper and Leitches Creek, Leitches Creek and 30
North Sydney and Leitches Creek and Sydney.”

The agreement also provides in Clause 24 that the provisions shall extend to the eastern extension and Cape Breton Railway and to all branches and extensions thereof.

There is nothing, however, in the agreement which would appear to give exclusive pole rights to the Company.

Further, Mr. Barker sets out that the pole line from Painsec to Halifax so far as he can determine was constructed by the Montreal Telegraph Company under agreement dated September 22nd., 1870, but it is in respect to this line that he expresses doubt as to whether or not this pole 40
line was constructed by the Montreal Telegraph Company or the American Telegraph Company.

Under the agreement of the 22nd of September, 1870, the Montreal Telegraph Company constructed a line between Riviere du Loup and Halifax, including all branches with exclusive right to construct and operate the line of railway until such time as an option of purchase on the part of the Crown had been exercised.

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As set out in Clause 1 of the said agreement which reads as follows:—
“The Company in the consideration of the premises shall have the exclusive right to construct and keep telegraphs along the said Intercolonial Railway until such time as the option of purchase is exercised by
10 Her Majesty.”

No. 259
EXHIBIT 251
Letter, H. F.
Alward to C. A.
Hayes
Aug. 3, 1917
(Contd.)

There is some question as to whether or not this agreement is sufficiently broad to bar the right upon the part of the railway to grant another company the right to erect poles on the right of way of the railway.

I am inclined to think that the purport of the agreement as a whole might be maintained by the telegraph company to so provide. I would not, however, unless the company raises the question, or you wish to have the C.P.R. poles removed from all the right of way, take any particular action with respect to these C.P.R. poles. I would not advise the grant-
20 ing to the C.P.R. pole line rights in view of the provisions of the new agreement as based upon what may have been the intention of the old agreement in this respect.

(sgd) H. F. Alward.

RECORD
—
In the
Exchequer Court
of Canada

No. 260
EXHIBIT 252
Letter, C. A.
Hayes to J.
McMillan
Aug. 3, 1917

EXHIBIT 252—

No. 260

CANADIAN GOVERNMENT RAILWAYS
Eastern Lines.

C. A. Hayes, --
General Manager.

C. B. Brown
Asst. Gen'l Manager,
Chief Engineer.

R. W. Simpson,
Asst. to the Gen'l Manager.

In your reply refer to
No. 8514.

CT

10

Moncton, N.B., 3rd Aug., 1917.
4220

J. McMillan, Esq.,
Manager of Telegraphs, C.P.R.,
Montreal, Que.

Dear Sir:—

Yours July 17th 4220 and referring also to the interview which we had in Montreal on the same date.

I have personally discussed this matter with Mr. Pottinger who advises me that the lack of objectionable features to permission being granted for the location of the poles of your telegraph company on the railway property was advice conveyed more with regard to the possible objection from the standpoint of such location of poles possibly interfering with or violating agreements with other companies and had nothing whatever to do with terms. 20

The foregoing may take your company out of the class of trespassers on the railway property but I cannot see it at all relieves you of paying reasonable compensation for the privilege you enjoy.

As the draft agreement that has been prepared does not seem to provide for these railways a sufficient consideration for the privileges you enjoy we shall be obliged to review and submit a revised proposition for your consideration. 30

Yours truly,

(Sgd) C. A. Hayes,
General Manager.

EXHIBIT 253—

No. 261

Moncton, N.B., August 11th, 1917.

C. B. Brown, Esq.,

C.P.R. Telegraph Company appear to be rebuilding their line between Sussex and Moncton and have now located the new line on the Railway right of way almost the full distance from Sussex to Anagance.

10 I am giving you this information as it would appear, unless special permission has been granted to the C.P.R., that the above is an infringement of the intent of the new telegraph agreement, and also contrary to the information given to Mr. Hayes some little time ago.

(sgd) R. G. Gage.

EXHIBIT 254—

No. 262

At Pictou, 16th August, 1917.

C.P.R. Telegraph Line.

Mr. C. B. Brown, Moncton.

I wish to thank you for yours August 13th 8-5-3 enclosing letter from Mr. Gage.

20 I do not understand it is considered that the Western Union have the exclusive privilege on the line between St. John and Halifax.

Yours truly,

C. A. Hayes,
General Manager.

EXHIBIT 255—

No. 263

Moncton, N.B., August 27th, 1917.

C. A. Hayes, Esq.,
General Manager,
Moncton, N.B.

30 Dear Sir,—

RE: C.P.R. Telegraph Line.

With reference to yours of the 16th instant.

My understanding is that the Western Union have not exclusive rights between St. John and Moncton. I also understand that the C.P.R. have no rights at all unless you have given them some lately.

Yours truly,

(sgd) C. B. Brown,
Asst. Gen. Manager.

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In the
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No. 261

EXHIBIT 253

Letter, R. G.

Gage to C. B.

Brown

Aug. 11, 1917

No. 262

EXHIBIT 254

Letter, C. A.

Hayes to C. B.

Brown

Aug. 16, 1917

No. 263

EXHIBIT 255

Letter, C. B.

Brown to C. A.

Hayes

Aug. 27, 1917

RECORD

No. 264

In the
Exchequer Court
of Canada

EXHIBIT 256—

CANADIAN GOVERNMENT RAILWAYS.
Eastern Lines.

No. 264
EXHIBIT 256
Letter, C. A.
Hayes to J. Mc-
Millan
Sept. 29, 1917

C. A. Hayes,
General Manager.

C. B. Brown,
Asst. Gen' l Manager.

R. W. Simpson,
Asst. to the Gen'l Manager.

In your reply refer to
No. 8514-1

CT

Moncton, N.B., 29th Sept. 1917.
4220

10

C.P.R. Telegraph Agreement.

J. McMillan, Esq.,
Manager Telegraphs, C.P.R.,
Montreal, Que.

Dear Sir:—

With further reference to yours July 17th, 4220.

I am now enclosing three copies of a draft agreement embodying terms submitted for your acceptance, subject to the approval of the Minister and Governor in Council.

20

Kindly acknowledge and I trust we may have your prompt action upon the enclosed.

Yours truly,

(Sgd) C. A. Hayes,
General Manager.

No. 265

RECORD

EXHIBIT 257—

*In the
Exchequer Court
of Canada*

DEPARTMENTAL NO.
RAILWAY LEGAL DEPT. NO.
DEPARTMENT OF RAILWAYS AND CANALS
CANADIAN GOVERNMENT RAILWAYS
AGREEMENT

No. 265
EXHIBIT 257
Draft agreement
between His
Majesty the
King and the
C.P.R. Com-
pany
Aug. 28, 1917

10 between
HIS MAJESTY KING GEORGE
—and—
CANADIAN PACIFIC RAILWAY COMPANY

Date -----
Public Work concerned—Canadian Government Rys. (Eastern Lines).
Description ----- Right and privilege to erect and main-
tain single line of Telegraph poles
with wires thereon on right of way
between the City of St. John, City of
Halifax, and Truro and Sydney and
Painsec Junction and Point du
Chene.
20 Consideration ----- Fifty cents per pole per year.
Term ----- During pleasure.
Departmental Reference File No.
Railway Legal Dept. Reference File No. L-204.

Aug. 28/17. MEMORANDA

THIS AGREEMENT, made and entered into in triplicate this
day of _____ in the
year one thousand nine hundred and seventeen, by and between,—

HIS MAJESTY KING GEORGE,—

30 Represented herein by the Minister
of Railways and Canals of the Dom-
inion of Canada, hereinafter called
“The Railway,”
Party of the first part.

—and—

THE CANADIAN PACIFIC RAILWAY COMPANY,
a corporation of the Dominion of
Canada hereinafter called “the Tele-
graph Company,”
Party of the second part.

RECORD

*In the
Exchequer Court
of Canada*

No. 265

EXHIBIT 257

Draft agreement
between His
Majesty the
King and the
C.P.R. Com-
pany
Aug. 28, 1917

(Contd.)

WHEREAS, the Telegraph Company is, at the pleasure of the Railway, maintaining a single line of Telegraph Poles with wires thereon, on and along the right of way and other lands and bridges thereon of the railway between the City of Saint John, the City of Halifax, and between the Towns of Truro and Sydney and between the Villages of Painsec Junction and Point du Chene.

AND WHEREAS, the Railway has demanded that the Telegraph Company enter into an agreement for the right and privilege to maintain the said single line of telegraph poles with wires thereon, on and along the right-of-way and other lands of the Railway between the several points aforesaid in accordance with the terms and conditions as in this agreement hereinafter set out and contained; and the Telegraph Company has agreed to and with the Railway accordingly;— 10

NOW THEREFORE, for and in consideration of the mutual covenants of the parties hereto, hereinafter contained, it is agreed between the parties aforesaid, as follows;—

First.—That in this agreement the following words shall, unless the context requires a different meaning, have the following meanings respectively, that is to say;—

The words “His Majesty” or other words relative thereto, shall mean and include the Reigning Sovereign, and the Successors and assigns of the Sovereign; 20

The words “the Railway,” or other words relative thereto, shall mean and include the Party of the First part and the Successors and Assigns of the said Party of the First Part;

The words “the Canadian Pacific Railway Company,” or other words relative thereto, shall mean and include the Party of the Second Part, and the Successors and Assigns of the said Party of the Second Part; such assigns being duly consented to under the terms of this agreement; 30

The words “the Telegraph Company,” or other words relative thereto, shall mean and include the party of the Second Part and the Successors and assigns of the said Party of the Second Part; such assigns being duly consented to under the terms of this agreement;

The words “the Minister” shall mean the Minister of Railways and Canals for Canada for the time being, and shall include the lawful Deputy of such Minister;

The words “General Manager” shall mean the person or persons, for the time being, appointed to the position of General Manager of the Eastern Lines of the Canadian Government Railways;

SECOND.—THAT THE RAILWAY so far as it legally may, hereby grants and demises unto the Telegraph Company, the right and privilege to keep and maintain upon the right of way and other lands and bridges thereon of the Railway, between the several points in this agreement, hereinbefore set out and mentioned, a single line of telegraph poles with wires thereon, as heretofore erected by the Telegraph Company, upon and over the said right of way and other lands and bridges thereon of the Railway between the points aforesaid, subject to the terms and conditions hereinafter set out and contained.

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No. 265
EXHIBIT 257
Draft Agreement between
His Majesty
the King
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Company
Aug. 28, 1917.
(Contd.)

10 TO HAVE AND TO HOLD unto the Telegraph Company the said right and privilege for and during the pleasure of the railway;

Yielding and paying therefor by the Telegraph Company to the Railway, the yearly or annual rental determined at the rate of Fifty Cents (.50) per pole erected on and along the said right of way and other lands of the Railway for each year during the term of this agreement such yearly or annual rental to be paid quarterly on the
day of in each
and every year, the first quarterly payment becoming due and payable on the day of A. D. 1917.

20 The aggregate yearly or annual rental to be determined and adjusted by the number of poles that are on and along the said right of way and over lands of the Railway, at the end of each year; The Telegraph Company further agrees that the above rate of Fifty Cents (.50) per pole (for full number of poles each year within a period hereinafter specified) of the Company on and along that section of the right of way herein limited in the first paragraph for each year during a period commencing the first day of January, 1907, down to date of this agreement shall accrue and be due to the Railway as an annual rental therefor throughout the said period and the total sum of such annual rentals for said
30 full period thereof shall be payable in one sum to the party of the first part at or before the execution of these presents.

Third.—That the said single line of Telegraph Poles and wires thereon if not already located and placed in all respects and particulars as to location of poles and wires and wire crossings over the tracks and bridges or other structures of the Railway and clearance of wires, to the satisfaction and approval of the General Manager or his duly authorized officer or agent in that respect shall upon demand of the General Manager or his said officer or agent, be re-located and replaced in whole or in part and from point to point on and along the said right of way
40 and other lands and bridges thereon, of the Railway, by the Telegraph Company, at its sole cost and expense, to the satisfaction and approval of the General Manager or his said officer or agent; and that the said pole-line and wires thereon and wires crossing over the tracks and

RECORD
 —
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No. 265
 EXHIBIT 257
 Draft Agree-
 ment between
 His Majesty
 the King
 and the C.P.R.
 Company
 Aug. 28, 1917.
 (Contd.)

bridges or other structures of the Railway shall at all times during the term of this agreement be maintained by the Telegraph Company at its sole cost and expense to the satisfaction and approval of the General Manager or his said officer or agent.

Fourth.—That the Telegraph Company shall not, at any time during the term of this agreement, re-locate the Telegraph poles or any of them or locate or place other telegraph poles or re-locate wire crossings or any of them; or locate or place other wire crossings over the tracks and buildings or other structures of the Railway except upon the written authority and subject to the approval of the General Manager or his said officer or agent; and then in all cases at the sole cost and expense of the Telegraph Company; 10

AND THE TELEGRAPH COMPANY AGREES at its sole cost and expense, to change from time to time the location of any of its poles and wires from one place to another in such reasonable locations on right of way and other lands and bridges thereon as the General Manager or his officer or agent may demand, in order to meet the requirements of the Railway in the use of the said right-of-way or other lands and bridges thereon for railway purposes.

Fifth.—That the Telegraph Company may operate hand-cars and speeders over the Railway tracks of the Railway, subject to the rules and regulations of the Railway but without charge for the use of the tracks or otherwise; and the Telegraph Company shall indemnify and save harmless the railway from all claims or demands from all loss, cost and damage at any time arising to the Telegraph Company or its officers, agents or employees, or to any person or property whatsoever, through the operation of hand-cars and speeders over the railway tracks of the Railway whether through accident or otherwise and whether due to the negligence of the employees of the Railway or otherwise. 20

Sixth.—That the Railway will furnish, without charge, reasonable space and facilities wherever available, on the lands or in the buildings of the Railway, for the storage of poles and other materials of the Telegraph Company for use on the telegraph line covered by this agreement; the Railway to determine the location and extent thereof; it being understood, however, that the Railway shall not be liable to the Telegraph Company for loss or damage of or to the said poles and other materials, whether through fire or otherwise. 30

Seventh.—That it is agreed that in making changes or improvements in, or additions to the Railway tracks, right-of-way buildings or other property of the Railway, within the territory covered by this agreement, the Railway shall instruct its employees to give the Telegraph Company timely notice of any changes required in the location of the Telegraph Poles, wires or wire-crossings or any of them; and the Telegraph Company shall make such changes, as promptly as possible after receiving 40

such notice from the Railway's employees; and the Railway shall instruct its employees to use due care in the prosecution of any work to protect the Telegraph wires from interruptions by derricks and otherwise; all temporary changes of location of telegraph poles or wires, wire-crossings or any of them, required to be made by the Telegraph Company, as in this Clause provided, shall be made by the Telegraph Company at its sole cost and expense.

10 Eighth.—THAT IT IS AGREED that such service as may be performed by either party for the other shall be charged for at its or their regular current telegraph rates or through or local transportation rates or fares, as the case may be, for the class of service rendered;

Services performed by either party for the other for which there are no regular or published rates, shall be charged for at actual cost as determined by the officers of the party rendering the service, plus not exceeding twenty-five per cent (25%) of such cost; all such services rendered by either party to the other shall be paid by the Party for whom rendered to the other party, monthly or within thirty days after the accounts or such services have been duly rendered.

20 Ninth.—THAT IT IS UNDERSTOOD AND AGREED, by and between the parties hereto, that the Railway shall have the right, at any time or times during the term of this agreement, upon demand therefor, and the Telegraph Company shall grant the same, to wire space upon the Telegraph Poles of the Telegraph Company on and along the right-of-way and other lands of the Railway, covered by this agreement, free of charge to the Railway for one or more Telegraph or Telephone wires for the Railway business of the Railway, upon the Railway from time to time demanding such wire space, the work of, erection and maintenance, both or either of any such wires may be performed by the Railway or may be performed by the Telegraph Company, if the Railway so elects;
30 but in any case, at the expense of the Railway.

Tenth.—That the Telegraph Company shall at all times indemnify and save harmless the Railway, from all claims or demands and from all loss, cost and damage at any time arising to person or property in or upon the right-of-way or other lands and bridges thereon, of the Railway, or to any property of the Railway in any manner occasioned by or attributable to these presents or any act, matter or thing on the part of the Telegraph Company, its officers, agents or employees, arising thereunder whether due to the negligence of the Telegraph Company, its officers, agents or employees, or otherwise; and the Telegraph Company
40 shall, at all times, indemnify and save harmless the Railway from all claims or demands and from all loss, cost or damage to the Telegraph Company at any time arising by reason of any damage to or destruction of any Telegraph pole or wire, or whether due to the negligence of the officers agents or employees of the Railway or otherwise.

RECORD
—
In the
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—
No. 265
EXHIBIT 257
Draft Agree-
ment between
His Majesty
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Company
Aug. 28, 1917.
(Contd.)

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*In the
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No. 265
EXHIBIT 257
Draft Agree-
ment between
His Majesty
the King
and the C.P.R.
Company
Aug. 28, 1917.
(Contd.)

Eleventh.—That the Telegraph Company will pay or cause to be paid all rates, taxes or assessments of whatever description that may at any time during the existence of these presents, be lawfully imposed or become due and payable upon or in respect of the right and privilege hereby granted and demised or in the exercise of such right and privilege; and the Telegraph Company shall, in all respects abide by and comply with all lawful rules, regulations or by-laws of any Municipality or other governing body in any manner affecting the said right and privilege or the exercise of the same.

Twelfth.—That the Telegraph Company will pay all rental herein reserved and all other payments in this agreement provided for at the time and times herein set out without any abatement or deduction whatever. 10

Thirteenth.—That no assignment, transfer or sub-lease of these presents shall be valid or effectual unless or until the same be submitted to the Minister and his consent thereto and approval to terms thereof obtained in writing thereon, nor until a duplicate original of such assignment, transfer or sub-lease is filed in the Department of Railways and Canals at Ottawa.

Fourteenth.—That the Railway may at any time terminate this agreement by giving to the Telegraph Company notice in writing of intention to terminate same at least six months before the date therein set for termination, signed by the Minister or the Secretary for the time being, of the Department of Railways and Canals; and either delivered to the Telegraph Company or any officer thereof or mailed addressed to the place of business of the Telegraph Company or to the place of business of any officer of the Telegraph Company at any of His Majesty's Post Offices; and thereupon after the expiration of the said period of six months from the date of delivery or mailing of such notice these presents shall be void and the Telegraph Company shall thereupon, forthwith remove its Telegraph poles and wires from off the right of way and other lands of the Railway; and shall also to the satisfaction of the General Manager or his said officer or agent, repair all and every damage or injury occasioned to the right of way, lands and premises of the Railway by reason of such removal, or in the performance thereof; and the Telegraph Company shall not, by reason of any action taken or things performed or required under this clause, be entitled to any compensation whatever. 30

IN WITNESS WHEREOF, the Canadian Pacific Railway Company has caused these presents to be signed by its President and the Seal of the said Company to be hereto affixed and attested by the Secretary of the said Company and the Minister so representing His Majesty as aforesaid and the Secretary of the Department of Railways and Canals have 40

hereunto set their hands and the seal of the said Department has been hereto affixed, the day and year first above written.

Signed, Sealed and delivered by the Canadian Pacific Railway Company in manner aforesaid in the presence of

Signed, Sealed and delivered by His Majesty, in manner aforesaid in the presence of

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—
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No. 265
EXHIBIT 257
Draft Agree-
ment between
His Majesty
the King
and the C.P.R.
Company
Aug. 28, 1917.
(Contd.)

No 266
EXHIBIT 258
Letter,
J. McMillan to
A. C. Fraser
Oct. 2, 1917.

10 EXHIBIT 258—

No. 266

CANADIAN PACIFIC RAILWAY COMPANY

Inter-Department
Correspondence

File 4220.

Montreal, October 2/17.

PERSONAL.

A. C. Fraser, Esq.,
Superintendent,
St. John, N.B.

20 Dear Sir:—

Look over the attached agreement, and prepare a little sketch showing just what parts of the right of way we occupy, giving the total mileage. As I understand it, we have no line between Painsec Junction and Point du Chene.

Want you to consider this confidential. Look over it carefully and hurry it back.

Yours truly,

(Sgd) J. McMillan,
Manager of Telegraph.

30 Enclos:—

RECORD

No. 267

In the
Exchequer Court
of Canada

EXHIBIT 259—

October 5/17.

J. McMillan,
Montreal.

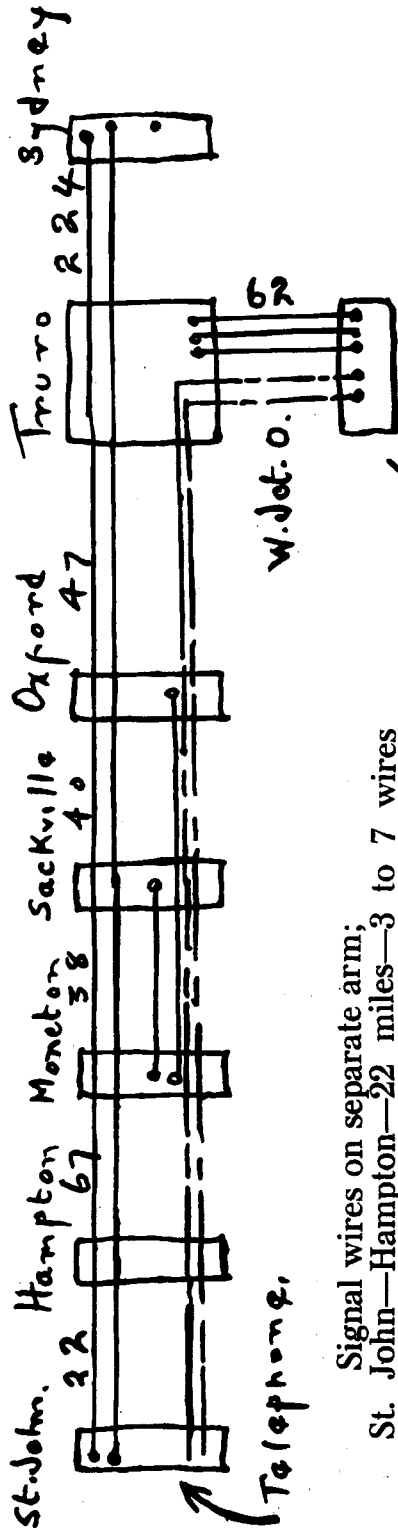
No. 267
EXHIBIT 259
Telegram,
A. C. F. to
J. McMillan
Oct. 5, 1917.

Mailing you tonight diagrams showing pole line on the C.G.R. There are approximately 17755 poles on the right of way between St. John and Sydney. Regarding the Western Union contract. The C.G.R. have nothing to do with the renewal of poles, the Western Union have to renew the poles, but everything besides the poles is paid for pro rata. For instance on a six pin cross arm if the Government have one wire and the arm has to be renewed, the Government is charged one-sixth of the re-¹⁰newal charge. The Western Union pay freight on the poles, but the charge is a reasonable one.

A. C. F.

No. 268

EXHIBIT 260—



Signal wires on separate arm;

St. John—Hampton—22 miles—3 to 7 wires

Halifax—Windsor Jct.—1 do

Branches C.P. not on;

Painsec Jct.—Pt. Duchene—12 M.

Sackville—Tormentine—35.4

New Glasgow—Pictou Ldg.—8.4

Georges River—Leitches Ck.—17

Oxford Jct.—Pictou—69.4

RECORD

In the
Exchequer Court
of Canada

No. 268
EXHIBIT 260
Diagram
referred to in
Exhibit 259

RECORD

No. 269

In the
Exchequer Court
of Canada

EXHIBIT 261—

CANADIAN PACIFIC RAILWAY COMPANY.

No. 269
EXHIBIT 261
Letter,
A. C. Fraser to
Mr. McMillan
Oct. 5, 1917.

Inter-Department
Correspondence

St. John, Oct. 5/17.
4220

Mr. McMillan—

I think this is a stiff proposition. It is retroactive and there will be due them when agreement signed, \$88,775.00. This sum will carry us 10 to Dec. 31, 1916. All they offer us does not amount to a row of beans.

No. 270
EXHIBIT 262
Letter,
Hayes to
Hon. J. D. Reid
Nov 3, 1917.

Par. 8, I take it, means we will have to pay linemen's transportation. As they hand all their revenue messages to the W. U. the "services performed" does not interest us. In addition to being paid rental they also wish to take advantage of our line, putting no limit on the number of wires they may erect. Assuming that the agreement is signed as presented, it amounts to this: A Canadian corporation is paying fifty cents per pole per mile for a privilege that is extended to a foreign corporation gratis; this is not all, they enter the Railway Company's offices and in addition the Railroad Company is tied down to handing over to them all 20 their revenue messages. I am not in very good form for carefully going over an agreement but these glaring inconsistencies are most striking and appeal strongly to me.

(Sgd) A. C. Fraser.

No. 270

EXHIBIT 262—

3rd November, 1917.

C.P.R Telegraph Agreement.

Hon. J. D. Reid,
Minister of Railways & Canals,
Ottawa, Ont.

30

Dear Sir;—

Referring to message from Mr. Roe dated November 2nd.

The agreement referred to as having been initialled by Mr. Gutelius was initialled and sent by him to Mr. Cochrane the day he left the service of the railway.

Please refer to Mr. Cochrane's letter to me 6th June returning the agreement with advice that Mr. Gutelius had not discussed the matter with him and that he would be glad if I would let him have complete information concerning the whole matter.

Mr. Cochrane was not satisfied with the terms of the agreement, it making no provision for the C.P.R. paying any rental for the poles placed on our right of way, nor for the payment of any back rental for the years the C.P.R. had enjoyed this privilege, nor did it grant to the Inter-colonial rights to which it should be entitled from such an occupancy of its property.

10 I discussed the matter later on one or two occasions with Mr. Cochrane and based upon his advice prepared and have submitted to the C.P.R. Telegraph Co. a revised draft of agreement providing for the payment to the railway of an annual rental 50 cents per pole and at the same rate for a back period of ten years, as also claiming certain rights with reference to the use of the poles of the C.P.R. Telegraph Co. in the event we should wish to exercise the same.

This agreement was submitted to Mr. McMillan, Manager C. P. R. Telegraph Co. Montreal 29th September, acknowledged by his office October 9th with advice Mr. McMillan was then in the West and would take up with me on his return next month, or November.

Other than this acknowledgment from Mr. McMillan's office I have not heard from the Telegraph Co.

20 If the foregoing does not give you sufficient general information regarding the situation it is quite possible you can obtain any further information you may desire by speaking to Mr. Cochrane.

Yours truly,

Hayes,
General Manager.

No. 271

EXHIBIT 263—

CANADIAN PACIFIC RAILWAY COMPANY

Montreal, November 9/17.

30 Memo.

AGREEMENT between the C.G.R. & C.P.R. for Telegraph right of way between St. John-Halifax-Truro-Sydney.

The agreement as submitted is unfair, unreasonable and unjust in so far as the Manager of the Government Railways has demanded that we pay an exorbitant rate for the privilege of maintaining our telegraph line on the Government Right of Way. 2nd. The proposed agreement not only affects the rental that we are to pay for the year 1917, but in addition to this all back rentals from the year 1907, are to be computed and rental paid for privileges of right of way.

40 The original line between St. John and Halifax, Truro and New Glasgow was built outside of the fence line of the Government right of way during the rebuilding of the line between the points mentioned. A

RECORD
—
*In the
Exchequer Court
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—
No. 270
EXHIBIT 262
Letter,
Hayes to
Hon. J. D. Reid
Nov. 3, 1917.
(Contd.)

—
No. 271
EXHIBIT 263
Memorandum
prepared by
J. McMillan
re agreement
Nov. 9, 1917.

RECORD
 —
In the
Exchequer Court
of Canada

No. 271
 EXHIBIT 263
 Memorandum
 prepared by
 J. McMillan
 re agreement
 Nov. 9, 1917.
 (Contd.)

mutual understanding was arrived at and permission to place the pole line on the Government Right of Way was granted without any thought of rental being charged or expectation of return, I understand the original line between New Glasgow and Sydney was built on the right of way with the permission of the Government Railway's representative, and our right to maintain the line has not been questioned.

In addition to the excessive rate of rental, there is no term beyond a period of six months that we could be sure of maintaining our line without being ordered off the right of way. It is impossible to consider the rebuilding of lines under such a short term, as lines once constructed should be good for 15 years, and we should not be subject to an order to vacate the right of way after incurring very heavy line construction expense. Further, the agreement states that the lines must be maintained to the satisfaction of the Manager of the Government Railway or his representative. A clause of this kind would leave us subject to constant interference by the Manager of the Railway or his representative. We might be under this clause put to enormous expense, and under the conditions of the agreement we would be constantly liable to make changes in the line from time to time that might mean expense and interference with the working of the telegraph line. 10 20

Further, there is a demand by the Railway Company that our line may be used by the Government to carry wires belonging to the Railway, and that the Railway may, if they so desire, place such wires along our pole lines. There is also the claim that the Government will not be responsible for any damage or any interference,—in other words our line will be exposed to any carelessness on the part of the Railway without there being any means to protect this Company's interests.

In paragraph 8, it is stated that transportation will be charged for at local rates. This I protest as there is an exchange of transportation privileges between the Government Railway and the C.P.R., and the Telegraph line is the property of the C.P.R., and transportation required for our linemen, inspectors, superintendents or others supervising or connected with its telegraph line, should be included in the regular C.P.R.—Government exchange of transportation privileges. 30

As against the unfair, expensive and exacting conditions of the copy of the agreement submitted by the Manager of the Canadian Government Railways, I might point out that the Western Union, a corporation with headquarters in New York, enjoy exceptional advantages over the right of way of the Canadian Government Railways. They are allowed free right of way for their pole line or lines, and in some places the Western Union have two pole lines on the Government right of way. As stated, they have free right of way for their poles. The Government own their own wires over these lines, and pay a proportion of the maintenance expense. They pay a proportion of the rebuilding expense in pro- 40

portion to the number of wires that they have on the pole line. The arrangement means considerable expense to the Government, and means the cheapest possible right of way, for a corporation that is controlled in the United States.

Further, every Agent on the Government Railway performs service for this corporation. They are given office space, and the Agents of the Government Railway are constant factors in earning a return for this corporation, and a good deal of their time is spent in such work. It is true that they charge the Western Union for the transportation of employees; they might very well do so considering that they have a free right of way and an earning power made possible through the free office space and time of the Government employees in handling the telegraph business, the returns of which go entirely to the Western Union Company.

I understand that practically the same arrangement applies to the G.N.W. Telegraph Company. They have a free right of way for their pole line along the C.G.R., the Government owning part of the wire and being responsible for part of the expense and upkeep. This Company also has free office space and the time of the Government agents in handling the business that means quite an earning power to the G.N.W. Company.

As against the favorable conditions granted to the Western Union and the G.N.W., this Company is asked to pay, 1st, an exorbitant rate of rental for a line that was built on the right of way with the full consent of Mr. Pottinger, who was then General Manager of the Government Railways, and without there being any mention whatever of rental being charged; and against the statement that is made that the Western Union and G.N.W. pay for transportation for their employees, I submit that as this telegraph line is the property of the C.P.R., any transportation for employees of this company employed in connection with our lines over the Government Railway should be included in the ordinary transportation exchange.

The G.N.W. have a line on the C.P.R. right of way between Montreal and Quebec. The C.P.R. charge the G.N.W. \$1.00 for rental per mile for this pole line on our right of way, the rental being a nominal one. I submit that our line having been built on the right of way with the full permission of the Government officials we should not now be penalized by reason of the line being so placed. The rental charged should be a nominal rental, and we should be accorded free transportation

40

(Sgd) J. McMillan,
Manager of Telegraph.

RECORD
—
In the
Exchequer Court
of Canada

No. 271
EXHIBIT 263
Memorandum
prepared by
J. McMillan
re agreement
Nov. 9, 1917.
(Contd.)

RECORD

No. 272

—
In the
Exchequer Court
of Canada

EXHIBIT 264—

CANADIAN GOVERNMENT RAILWAYS
EASTERN LINES
OFFICE OF THE GENERAL SUPERINTENDENT
November 12, 1917.

No. 272
EXHIBIT 264
Letter,
L. S. Brown to
Mr. Hayes
Nov. 12, 1917.

Mr. Hayes,—

During the past summer the Canadian Pacific Telegraph Company have reconstructed their telegraph pole line between Moncton and St. John, and in nearly all cases their poles are now located on Railway 10 property, where formerly they were off the right of way.

No. 273
EXHIBIT 265
Letter,
C. A. Hayes to
J. McMillan
Feb. 1, 1918.

This matter should be kept in mind in the preparation of the proposed C.P.R. Telegraph agreement.

Yours truly,
(Sgd) L. S. Brown.

No. 273

EXHIBIT 265—

CANADIAN GOVERNMENT RAILWAYS
Eastern Lines

C. A. Hayes,
General Manager.

In your reply refer to 20
No. 8514-1

C. B. Brown,
Asst. Gen'l Manager,
Chief Engineer.

R. W. Simpson, CT
Asst. to the Gen'l Manager.

Moncton, N.B., 1st Feb'y, 1918.
at Montreal

J. McMillan, Esq.,
Manager of Telegraph, C.P.R.
Montreal, Que.

4220

30

Dear Sir:—

I endeavored to make an appointment with you this last month both on my way to and from Ottawa but unfortunately both times found you was out of the City.

I would be pleased to be making some progress with the completion of the agreement and if you should have occasion to be in St. John in the near future you possibly might be willing to let me know and I would endeavor to meet you there or possibly you might be able to come to Moncton.

Yours truly,
(Sgd) C. A. Hayes,
General Manager

40

No. 274

EXHIBIT 266—

13th February, 1918.

4220.
C. A. Hayes, Esq.,
General Manager,
Canadian Government Rways.,
Moncton, N.B.

Dear Sir:—

10 Referring to yours of the 1st instant, file 8514-1.

I was under the impression that you were having your staff prepare a new agreement, and shall be glad if you will kindly advise me whether this is your intention. I would pleased to go to Moncton to confer with you regarding this agreement.

Yours truly,

J. McMillan,
Manager of Telegraph.

RECORD

—
In the
Exchequer Court
of Canada

—
No. 274
EXHIBIT 266
Letter,
J. McMillan to
C. A. Hayes
Feb. 13, 1918.

No. 275
EXHIBIT 267
Letter,
C. A. Hayes to
J. McMillan
Feb. 16, 1918.

No. 275

EXHIBIT 267—

February 16, 1918.

20 J. McMillan, Esq.,
Manager of Telegraphs,
Canadian Pacific Railway,
Montreal, Que.

Dear Sir,

Yours 13th February, 4220.

If you are to be this way and will let me know in advance of your coming so as to make certain that I will be here, will be prepared to further discuss the terms of the proposed telegraph agreement with you,
30 or will undertake to do so next time I am in Montreal.

Yours truly,

C. A. Hayes,
General Manager.

RECORD

No. 276

In the
Exchequer Court
of Canada

EXHIBIT 268—

CANADIAN GOVERNMENT RAILWAYS.
Eastern Lines.

In your reply refer to
No. 8514-1.

No. 276

EXHIBIT 268

Letter,
C. A. Hayes to
J. McMillan
Feb. 26, 1918.

C. A. Hayes,
General Manager.

C. B. Brown,
Asst. Gen'l Manager,
Chief Engineer.

CT

R. W. Simpson,
Asst. to the Gen'l Manager.

10

Moncton, N.B., 26th February, 1918.

No. 277

EXHIBIT 269

Letter,
J. McMillan to
C. A. Hayes
Feb. 28, 1918.

J. McMillan, Esq.,
Manager of Telegraphs—C.P.Ry.
Montreal, Que.

at Montreal

Dear Sir:—

With further reference yours 13th February 1420.

On passing through Montreal February 26th I endeavored to arrange an appointment with you but your office advised you was out of town and would likely be so for a week.

Sorry to have missed you again.

Yours truly,
(Sgd) C. A. Hayes,
General Manager.

No. 277

EXHIBIT 269—

February 28, 1918.
4220.

C. A. Hayes, Esq.,
General Manager,
Can. Govt. Rlwys.,
Moncton, N.B.

30

Dear Sir,—

Referring to your favor dated Montreal the 26th inst.

Mr. McMillan is at present in Vancouver, B.C. and will be absent for about a week or ten days. I understand it is his intention to visit Moncton shortly after his return to the city.

Yours truly,
J. McMillan,
Manager of Telegraphs. 40

No. 278

EXHIBIT 270—

At Montreal, 16th April, 1918.

Mr. L. S. Brown — Moncton.

I have been endeavoring to get an agreement with the C.P.R. Telegraph Co. for the pole privileges which they enjoy in connection with their telegraph line on our right of way from St. John to Halifax, Truro-Sydney, Painsec Jc.,-Pt. du Chene.

10 We have proposed to charge them an annual rental 25c per pole; as yet I have not succeeded in obtaining their concurrence and to bring the matter to a head I think it will be necessary we present to them a bill for rental on this basis and I would therefore like you to arrange to have an early count made of the C.P.R. Telegraph Cos. poles; very likely Superintendents interested can arrange to have this done through the Roadmasters, the record had better be kept in such a way that we will have as accurate a count as possible of the number of poles in each five or ten mile section and the account so matched as to give the number in each Roadmaster's district.

20

Yours truly,
C. A. Hayes,
General Manager.

No. 279

EXHIBIT 271—
4220.

April 25th. 1918.

C. A. Hayes, Esq.,
General Manager,
Can. Govt. Rys.,
Moncton, N.B.

30 Dear Sir:—

Referring to the conferences that we have had regarding the C.P.R. Telegraph Line on the C.G.R. property from St. John to Sydney and from Truro to Halifax.

40 To state the matter briefly, the original line was built on the Government right-of-way from New Glasgow to Sydney; the original line west of New Glasgow was built on property outside of the Government right-of-way. At the time of rebuilding, the line was moved from outside the right-of-way fence to a position on the right-of-way by the consent, and with the permission of the former General Manager of the Government Railways. It is clear that it could not have been otherwise, and so far as I can see, the present arrangement might be continued indefinitely without loss to the Government Railway.

RECORD

—
In the
Exchequer Court
of Canada

—
No. 278
EXHIBIT 270
Letter,
C. A. Hayes to
L. S. Brown
April 16, 1918.

—
No. 279
EXHIBIT 271
Letter,
J. McMillan to
C. A. Hayes
April 25, 1918.

RECORD

—
In the
Exchequer Court
of Canada

No. 279

EXHIBIT 271

Letter,

J. McMillan to

C. A. Hayes

April 25, 1918.

(Contd.)

Comparing the conditions as between the Western Union Company and the C.P.R., allow me to say, the Western Union Company have a free right-of-way for their pole line along all the Government Railway property, not only have they a free right-of-way, but since the Canadian Government purchased their own wires from the Western Union, the Government Railway contributes to the maintenance of the Western Union Line. I know it can be said that you are only paying maintenance charges in proportion to the number of Government Railway wires on Western Union poles. I also know that if the Western Union did not have your wires on their poles, they could not release a single lineman. 10 In the rebuilding, I understand, that you pay or rebate part of the freight charges, you pay your proportion of the crossarms and other pole fixture expenses. Further, every agent on the Canadian Government Railway is at the present time an exclusive agent or gathering factor for the Western Union Company, and in the aggregate this means considerable revenue. The Canadian Government Railways are bound by contract to turn over to the Western Union all paid business originating on the Canadian Government Railway system, the only return which the Canadian Government receives from the Western Union being the fares paid by the Western Union Maintenance Lineman. Against this agreement, 20 the Canadian Pacific Railway Company's telegraph line is on the right-of-way by the permission of the former Administration. The first proposition submitted by you was to charge this Company 50 cents per pole, per annum, rental. Our line carries from 35 to 40 poles per mile, the mileage is very nearly 500 miles—40 poles per mile for 500 miles would mean a yearly rental of \$10,000.00. The last proposition is that we pay 25 cents per pole per annum, or approximately \$5,000.00 per annum. From the foregoing it is quite evident that the Minister of Railways and your predecessor did not intend that any rental should be paid for the telegraph line of this Company along the Government right-of-way. We 30 would be quite willing to arrange that the Canadian Government Railway should have the privilege of placing some wires on our poles between St. John and Sydney, the cost of placing these wires on the poles to be borne by the Government Railway Company, and the maintenance of these wires to be taken care of by the Telegraph Company without charge to the Government Railways.

There is not much telegraph revenue in the Maritime provinces and the upkeep expense is heavy. We have, however, served the public well, and provided a service and competition that has been appreciated.

I presume if you are agreeable an agreement might be drawn up 40 that would confirm the intentions of the former General Manager and Minister of Railways, namely, that we should have the privilege of maintaining our line on your right-of-way without charge, or the present arrangement to continue without an agreement.

Yours truly,
 J. McMillan,
 Manager of Telegraph.

EXHIBIT 272—

No. 280

CANADIAN GOVERNMENT RAILWAYS.
Eastern Lines.C. A. Hayes,
General Manager.C. B. Brown,
Asst. Gen'l Manager,
Chief Engineer.10 R. W. Simpson, CT
Asst. to the Gen'l Manager.

Moncton, N.B., 30th April, 1918.

J. McMillan, Esq.,
Manager — C.P.R. Telegraphs,
Montreal, Que.

Dear Sir:—

Yours April 25th 4220 simply seems to be going in a circle, i.e we have arrived at the point from which we started so far as your position in this matter is concerned and I would like to know definitely if your
20 company refuse to consider the payment of pole rental on the terms last discussed, namely at the rate of 25c per pole per annum.

As you seem to be of the impression that the Minister of Railways and my predecessor did not intend any rental should be paid would advise that in this impression you are mistaken, at least so far as the Minister is concerned; I advised you personally under date July 17th 1917, at our interview at Montreal, that the then Minister of Railways, Mr. Cochrane, had declined to approve the agreement which had been O.Kd by the former General Manager, and it was by his direction that the same was set aside and an agreement later presented on the basis that you
30 should pay a rental 50c per pole, since modified to 25c.

This I trust will make it clear to you that regardless of the intentions of the former General Manager the same has not met with the approval of the Department at Ottawa.

We are arranging for a count of the telegraph poles of your company now located on the railway right of way and bills will be rendered on the basis of a rental 25c per pole per annum, and I hope you will be willing to continue the negotiations looking to the completion of an agreement that will satisfactorily advise the rights and privileges of both
40 interests.

Yours truly,

(Sgd) C. A. Hayes,
General Manager.

RECORD

—
In the
Exchequer Court
of Canada—
No. 280
EXHIBIT 272
Letter,
C. A. Hayes to
J. McMillan
April 30, 1918.

RECORD

No. 281

—
In the
Exchequer Court
of Canada

EXHIBIT 273—

CANADIAN PACIFIC RAILWAY COMPANY.

—
No. 281
EXHIBIT 273
Letter,
A. C. Fraser to
J. McMillan
May 15, 1918.

Inter-Department
Correspondence.

File

St. John, N.B., May 15/18.

J. McMillan, Esq.,
Manager of Telegraphs,
Montreal, Que.

Dear Sir:—

10

Hon. Henry Pope was Minister of Railways from 1885 to 1889 and during latter year succeeded by Sir John A. MacDonald. Mr. D. Pottinger at that time was General Superintendent of the C.G.R., performing the functions of a general manager.

Line built New Glasgow to Heatherton 1889 and from latter point to Sydney in 1891. Truro-Halifax built 1889, rebuilt 1906-1907. Line west of Truro built 1888-1889. Rebuilt Truro-Moncton 1911-1914; St. John-Sussex 1911 and Sussex-Moncton 1917.

All lines west of New Glasgow and south of Truro built off right-of-way, but on re-build went on.

20

A number of years ago in discussing the building of our lines in the Maritime Provinces with an Eastern man in British Columbia, inquired why our lines not on right-of-way west as well as east of New Glasgow. He told me C.P.R. had been pressing for permission from the start but there seemed to be some hitch with the Western Union or G.N.W and while the matter was pending work prosecuted. On account of the tremendous expense the Company was being put to in connection with clearing right-of-way and little expectation of a reasonable return for their money, when the lines reached New Glasgow it was about decided not to go further east. Pressure was brought to bear on the Govern- 30
ment by the business community and at New Glasgow the necessary authority was received to finish on the Government right-of-way.

The late General Manager, Mr. D. Pottinger, had a very vague idea of the reason for the permission being granted, beyond the fact that instructions received from Ottawa to permit completion of our lines on right-of-way. It is quite apparent there were no strings attached to the permission for a right-of-way east of New Glasgow and was looked upon in the light of a bonus.

You have the particulars of the re-build, in which the General Manager, after consultation with the Minister of Railways, saw no reason 40
why we should be discriminated against and permission was readily granted to go on the right-of-way.

I believe that the payment of any monies for rental or right of way east of New Glasgow should be strenuously resisted for all time and that our lines west of New Glasgow and south of Truro should be exempt from any tax until such time as a rebuild is necessary.

There would have been no particular hardship in rebuilding outside the right-of-way west of New Glasgow and south of Truro as the initial expense of slashing a right-of-way was the big item, and remaining off the Government property would not have cost us one additional dollar per mile and had there been any concessions demanded for the right, the lines would have remained off their property. We asked for permission, however, received it and there was no discussion regarding any monetary consideration and common decency demands that we be permitted to remain where we are until a rebuild is necessary when some arrangement might be entered into or we could go back to where original line built.

Yours truly,
A. C. Fraser,
Superintendent.

RECORD
—
*In the
Exchequer Court
of Canada*

No. 281
EXHIBIT 273
Letter,
A. C. Fraser to
J. McMillan
May 15, 1918.
(Contd.)

No. 282
EXHIBIT 274
Letter,
J. McMillan to
C. A. Hayes
May 16, 1918.

No. 282

EXHIBIT 274—

May 16th, 1918.

C. A. Hayes, Esq.,
General Manager,
Can. Govt. Rys.,
Moncton, N.B.

Dear Sir:—

Replying to your letter of April 30th.

It would appear that you have misunderstood my letter of April 25th. The second paragraph of my letter of April 25th. states "At the time of rebuilding, the line was moved from outside the right-of-way fence to a position on the right-of-way, by the consent and with the permission of the former General Manager of the Government Railways. It is clear it could not have been otherwise." My letter referred to Mr. Pottinger, who was in charge when the line was built on the Government right-of-way, and not to Mr. Gutelius.

Please refer to my letter of July 7th, 1917, wherein I have given you the report of our Superintendent of Telegraph, Mr. A. C. Fraser, St. John, N.B., as follows:—

"I have seen Mr. Pottinger in connection with the permission granted for any rebuilding on the Railway property. He was approached by the late Mr. Snyder in connection with the transfer of the telegraph line to the right-of-way. Mr. Pottinger saw

RECORD

*In the
Exchequer Court
of Canada*

No. 282

EXHIBIT 274

Letter,
J. McMillan to
C. A. Hayes
May 16, 1918.
(Contd.)

"no objectionable features and permission was granted verbally. He
"was in Ottawa a few days later, and advised the Minister of Rail-
"ways and Canals that he had granted the Canadian Pacific Tele-
"graph the right to do their rebuilding on the I.C.R. right-of-way.
"The Minister stated that it was quite right, and that he could see no
"reason why permission should not be granted."

"With reference to the line between New Glasgow and Sydney,
"Mr. Pottinger has a clear recollection that the Telegraph people
"had the necessary permission."

"Mr. Pottinger has no recollection of the Mersereau incident, 10
"but states that had the section linemen interfered with the telegraph
"gang, he would certainly have taken action, as the work was being
"prosecuted with his own and the Minister's consent."

You will note from the above that the telegraph line was built with
Mr. Pottinger's and the Minister's consent, and it is quite clear that the
intention was that we should have free right-of-way privilege.

Yours truly,

(Sgd) J. McMillan,
Manager of Telegraph.

EXHIBIT 275—

No. 283

CANADIAN GOVERNMENT RAILWAYS.
Eastern Lines.

RECORD
—
In the
Exchequer Court
of Canada
—

In your reply refer to
No. 8514-1

No. 283
EXHIBIT 275
Letter,
C. A. Hayes to
J. McMillan
May 20, 1918.

C. A. Hayes,
General Manager.

C. B. Brown,
Asst. Gen'l Manager.
Chief Engineer.

10 R. W. Simpson,
Asst. to the Gen'l Manager.
HM

Moncton, N.B., May 20, 1918.

J. McMillan, Esq.,
Manager of Telegraphs,
Canadian Pacific Railway Co.,
Montreal, Que.

Dear Sir:—

Yours of 16th May. It appears to me you are still not getting out of the circle.

20 Re the stress you lay upon the matter of the consent or permission of the former General Manager of the Government Railways, Mr. Pottinger. In this connection I possibly cannot do better than attach copy of my letter to you of 3rd August, from which you will note I advised you I had personally discussed this matter with Mr. Pottinger, who advised me that the lack of objectionable features to permission being granted for the location of the poles on the railway property was advice conveyed more with regard to the possible objection from the standpoint of such location of poles possibly interfering with or violating agreements with other companies and had nothing whatever to do with terms.

30

Yours truly,

(Sgd) C. A. Hayes,
General Manager.

RECORD

No. 284

EXHIBIT 276—

In the
Exchequer Court
of Canada

CANADIAN GOVERNMENT RAILWAYS
EASTERN LINES

No. 284

Moncton, N.B., 25th June, 1918.

EXHIBIT 276

C.P.R. Telegraph Lines

Letter,

C. A. Hayes to

Mr. S. L. Shannon, Moncton.

S. L. Shannon

June 25, 1918

Have been endeavouring for a long period to reach an understanding with the Canadian Pacific Telegraph Co. as to rental they should pay for the privilege they enjoy of having many of their telegraph poles on our line from St. John to Halifax, Sydney, etc. 10

Sometime ago I advised the Manager of the Telegraph Co. Mr. J. McMillan, that we required an annual rental 25c per pole but having made no headway by correspondence and personal negotiation in arriving at a suitable agreement to cover the privilege they enjoy I advised the Manager under date 30th April that we were arranging for a count of the poles of his Company that were located on the right of way and that bills would be rendered at the rate 25c per pole per annum, and by instructions of the Minister this rental should be dated back to the 1st January, 1917. 20

I am now enclosing statement giving a record of a count we have had made of the poles on the various sub-divisions and I would like you to prepare one bill for the year 1917, based on this count and at the rate 25c per pole and two other bills, one for the quarter ending March 31st, the other for the quarter ending June 30th 1918, and having prepared the same send to me and I will forward to Mr. McMillan with advice we expect remittance.

I would also like you to make an arrangement to make out similar bill for each quarterly period hereafter.

In preparing the bills I think you had better show the details of the Roadmasters division and mileages, and the number of poles in each section or mileage to enable the C.P.R. to check the correctness of the bill. 30

In order not to create an outstanding on your books you need not for the present enter these bills against the company but keeping suitable record.

Yours truly,

C. A. Hayes,
General Manager.

EXHIBIT 277—

No. 285

CANADIAN GOVERNMENT RAILWAYS.

Moncton, N.B., July 13, 1918.

H. E. Suckling, Esq.,
Treasurer, Canadian Pacific Railway,
Montreal, P.Q.

Dear Sir:—

I am enclosing you herewith three bills against the Canadian Pacific Telegraph Company, covering pole privileges on the Canadian Government Railways right of way, between St. John, Halifax and Sydney, for the year ending December 31st, 1917; three months ending March 31st, 1918, and three months ending June 30th, 1918, and will be glad if you will have these placed in line for payment, and have cheque sent me as soon as possible.

Yours truly,

Shannon.

ENCL.

RECORD
—
*In the
Exchequer Court
of Canada*
—

No. 285
EXHIBIT 277
Letter, Shannon
to H. E. Suckling
July 13, 1918

No. 286
EXHIBIT 278
Letter,
C. A. Hayes
to J. McMillan
July 13, 1918

20 EXHIBIT 278—

No. 286

July 13, 1918.

J. McMillan, Esq.,
Superintendent of Telegraph,
Canadian Pacific Railway Co.,
Montreal, P.Q.

Dear Sir:—

With further reference to yours of 25th April, file 4220, which was acknowledged by me under date 30th April, with advice that we were arranging for a count of the telegraph poles of your company now located on the railway right of way, and that bills would be rendered on the basis of a rental 25c. per pole per annum.

I now enclose copies of bills that have been rendered by our Comptroller & Treasurer, Mr. Shannon, to Treasurer Suckling, under date 13th instant, as follows:

For the year ending December 31st, 1917 ..	\$4,376.00
For the quarter ending March 31st, 1918 ..	\$1,094.00
For the quarter ending June 30th, 1918	1,094.00

Am also enclosing detailed statement showing count of the poles made by our people on the various subdivisions.

RECORD

*In the
Exchequer Court
of Canada*

No. 286

EXHIBIT 278

Letter,

C. A. Hayes
to J. McMillan
July 31, 1918
(Contd.)

No. 287

EXHIBIT 279

Letter,

A. C. Fraser
to J. McMillan
July 18, 1918

No. 288

EXHIBIT 280

Letter,

J. McMillan to
C. A. Hayes
July 24, 1918

I regret we have been unable to reach an understanding as to conditions of an agreement to cover this pole privilege enjoyed by your Company. This situation, however, is due to no fault of the representative of these railways, and as we feel we are justly entitled to pay for the privilege you enjoy, these bills have been rendered, and we must ask that you arrange for the proper authority to be given the Treasurer, Mr. Suckling, to honor.

Kindly acknowledge receipt.

Yours truly,

C. A. Hayes,
General Manager.

10

No. 287

EXHIBIT 279—

CANADIAN PACIFIC RAILWAY COMPANY

St. John, N.B., July 18/18.

J. McMillan, Esq.,
Manager of Telegraph,
Montreal, Q.

Dear Sir:—

According to our records the check is below the actual number of 20 poles, and under the circumstances, as far as this phase of the case is concerned, presume you will accept the count as being correct.

Yours truly,

(sgd) A. C. Fraser,
Superintendent.

No. 288

EXHIBIT 280—

C. A. Hayes, Esq.,
General Manager, Can. Govt. Rys.,
Moncton, N.B.

July 24/18.

30

Dear Sir:—

Referring to the matter of the Canadian Pacific Telegraph line on Government right-of-way.

As per telephone conversation, your letter of July 13th, received, also copy of bill made out against the Canadian Pacific covering pole rental of 25 cents per pole for the year 1917 and for the first quarter of 1918.

As The Canadian Pacific Line was built on the Canadian Government right-of-way with the consent of the Minister of Railways & Canals, I presume you would have no objection to my taking it up with the Minister of Railways & Canals, as I am of the opinion that the rental you have named is contrary to the original arrangement, which was to the effect that we should have the privilege of maintaining our line on the Canadian Government right-of-way from St. John to Sydney and from Truro to Halifax without the payment of rental.

Yours truly,

J. McMillan,
Manager of Telegraph.

10

No. 289

EXHIBIT 281—

File 4220.

Montreal, July 31st, 1918.

Sir George Bury,
Vice-President,
Montreal.

Dear Sir,—

20 Referring to the attached papers.

Under date of October 31st, 1916, Mr. F. P. Gutelius, General Manager of the Canadian Government Railways at Moncton, wrote as follows:—

“I find upon investigation that the Canadian Pacific Railway Telegraphs are trespassers with their poles on the right of way of the Canadian Government Railways to the extent of 452 miles.”

Under date of August 3rd, 1917, Mr. C. A. Hayes, General Manager of the Canadian Government Railways writes:—

30 “That he had discussed with Mr. Pottinger the conditions under which our line was built on the Government right of way, and then advised that as a result of his discussion with Mr. Pottinger, that we could not be classed as trespassers, but he could not see why we should be relieved from all compensation for the privilege of having our line on the right of way.”

The records show that Mr. Pottinger was in charge of the C.G.R. for some time before the Canadian Pacific Telegraph line was built east of St. John. The first lines of the Canadian Pacific were built from St. John to New Glasgow and from Truro to Halifax outside of the Canadian Government right of way. The lines in this section were built in 1888-1889. The line East of New Glasgow was built on the C.G.R. right of way from New Glasgow to Sydney in 1891.

RECORD
—
*In the
Exchequer Court
of Canada*

No. 288
EXHIBIT 280

Letter,
J. McMillan to
C. A. Hayes
July 24, 1918
(Contd.)

No. 289
EXHIBIT 281
Letter,
J. McMillan to
Sir George Bury
July 31, 1918

RECORD
—
*In the
Exchequer Court
of Canada*
—

No. 289
EXHIBIT 281
Letter,
J. McMillan to
Sir George Bury
July 31, 1918
(Contd.)

No. 290
EXHIBIT 282
Letter,
F. P. Brady to
S. L. Shannon
June 24, 1919

The original line East of New Glasgow was built on the C.G.R. right of way through an arrangement between Mr. Charles R. Hosmer and Mr. D. Pottinger, and it is quite clear that there was no mention made of a rental payment for the privilege the line being on the right of way. The line from New Glasgow to St. John and from Truro to Halifax originally built outside of the right of way property, was transferred inside the right of way fence during the rebuilding of the lines. The rebuilding of the lines west of New Glasgow covered a period from 1906 to 1917, and until the question was raised by Mr. Gutelius, there was no mention made of rental to be paid on account of the line being on the Government right of way. If you will kindly refer to the correspondence, you will note that Mr. Pottinger advised that the line was built on the right of way with his full knowledge and consent, and that the building of the line on right of way had the approval of the Minister of Railways and Canals. Under the circumstances we should be permitted to maintain our lines on the Canadian Government right of way without charge. I am convinced that it was never intended by the former Ministers of Railways and the former General Manager, Mr. Pottinger, that we should pay rental. Had there been any suggestion of the rental, we would have continued to maintain our lines outside of the Government property west of 20 New Glasgow.

Yours truly,

J. McMillan,
Manager of Telegraphs.

No. 290

EXHIBIT 282—

CANADIAN NATIONAL RAILWAYS

Montreal, Que., June 24th, 1919.

Mr. S. L. Shannon—Moncton.

Referring to your communication of December 26th, file 98444, 30 relative to pole privilege Canadian Pacific Railway Telegraph Company is enjoying on our line between St. John, Halifax and Sydney.

You will continue rendering accounts against the C.P. Telegraphs as instructed by Mr. Hayes except that these bills should pass through our accounts commencing with the first one you render, and you may say to Mr. Lloyd that it has been finally decided by these railways that our charge for this privilege is to be twenty-five (25) cents per pole per annum and insist upon the accounts being paid.

(Sgd) F. P. Brady.

EXHIBIT 283—

No. 291

CANADIAN NATIONAL RAILWAYS

Eastern Lines.

H

F. P. Brady,
General Manager.
W. A. Kingsland,
Asst. Gen'l. Manager.

In your reply
refer to 312.22.

Montreal, Que., June 24th, 1919.

10 J. McMillan, Esq,
Manager of Telegraphs,
Canadian Pacific Railway Company,
Montreal, P.Q.

RECORD
—
In the
Exchequer Court
of Canada
—

No. 291
EXHIBIT 283
Letter,
F. P. Brady to
J. McMillan
June 24, 1919

Dear Sir:—

Referring to your communication of July 29th, 1918, addressed to Mr C. A. Hayes, General Manager, at Moncton, relative to the rental of our property occupied by your telegraph poles between St. John, Halifax and Sydney.

I enclose you herewith copy of a letter I have today written Mr. Shannon, Comptroller, at Moncton, and I have to advise you that I am instructed by our President to bill your Company and insist upon the accounts being paid in accordance with my letter to Mr. Shannon. No evidence can be found in the Department of Railways and Canals that any person on behalf of the Government ever agreed with any person on behalf of your Telegraphs that this privilege would be free, in fact there is every amount of evidence existing that the matter was taken up with your officials many times since you say such an agreement was made.

Yours truly,

(sgd) F. P. Brady.

Enclos.

RECORD

No. 292

In the
Exchequer Court
of Canada

EXHIBIT 284—

4220.3

July 18-19.

No. 292
EXHIBIT 284
Letter,
J. McMillan to
F. P. Brady
July 18, 1919

F. P. Brady, Esq.,
General Manager, East. Lines,
Canadian National R'ways,
Montreal.

Dear Sir:—

Referring to your letter of June 24th., re telegraph poles on what was 10
known as the Intercolonial Railway.

In the last paragraph of your letter you state—

“No evidence can be found in the Department of Railways &
“Canals that any person on behalf of the Government ever agreed
“with any person on behalf of your Telegraphs, that this privilege
“would be free.”

If you will kindly refer to the correspondence, you will find that our
Superintendent, Mr. A. C. Fraser, at St. John, interviewed Mr. Pottinger,
the General Manager of the Intercolonial Railway, who preceded
Mr. Gutelius. Not only did he interview Mr. Pottinger, but he interview- 20
ed Mr. Mersereau, who was our Superintendent of Construction during
the period of the building of the original line, and during the rebuilding.
You will find in the correspondence that the following extract from Mr.
Fraser's report appears:

“I have seen Mr. Pottinger in connection with the permission
“granted for any rebuilding on the railway property. He was ap-
“proached by the date Mr. Snyder (who was then Superintendent of
“C.P.R. Telegraphs at St. John) in connection with the transferring
“of the Telegraph line to the right-of-way. Mr. Pottinger saw no ob-
“jectionable features and permission was granted verbally. He was 30
“in Ottawa a few days later, and advised the Minister of Railways
“and Canals that he had granted the C.P.R. Telegraph the right to
“do their rebuilding on the Intercolonial right-of-way. The Minister
“stated that it was quite right, and that he could see no reason why
“permission should not be granted.”

He further reports Mr. Pottinger as saying:

“With reference to the line between New Glasgow and Sydney,
“Mr. Pottinger has a clear recollection that the Telegraph people has
“the necessary permission. Mr. Pottinger has no recollection of the
“Mersereau incident, but states that had the section lineman inter- 40
“fered with the telegraph gang, he would certainly taken action, as
“the work was being prosecuted with his own and the Minister's
“consent.”

The Mersereau incident was a statement made that the section men would prevent the telegraph gang from rebuilding the line and placing the poles on the right-of-way. Mr. Hayes, I understand has also seen Mr. Pottinger.

RECORD
—
*In the
Exchequer Court
of Canada*

10 While there is evidently no written record, Mr. Pottinger and Mr. Mersereau are still available, and the Company had their permission to re-build the line on the Government right-of-way without there being any intention to impose a rental. Further, in the correspondence you will find that the original line from New Glasgow to Sydney, was built on the Government right-of-way, and was built with the proper permission and consent of the Government.

No. 292
EXHIBIT 284
Letter,
J. McMillan to
F. P. Brady
July 18, 1919
(Contd.)

The fact that no question was ever brought up about the telegraph line along the Government right-of-way until Mr. Gutelius took up the question, makes it clear that this Company would not for a moment be allowed to trespass on the Government right-of-way, nor would they have thought of doing so. Verbal permission was granted by the proper authorities, and I do not think that we should now be called upon to pay rental.

No. 293
EXHIBIT 285
Memorandum
of bills received
from C.G.R.
covering pole
privileges
December, 1922

Your truly,

J. McMillan,
Manager of Telegraph.

20

No. 293

EXHIBIT 285—

Bills Received from the Canadian Government
Railways covering Pole Privileges.

Period	Bill No.	C.P. Reference	Amount.
Jan. 1st, 1917 to June 30th, 1919 ...	334389	12/10	\$10,940.00
July, Aug. & Sept. 1919	340132	17/2	1,094.00
Oct., Nov. & Dec. 1919	349330		1,094.00
30 Jan., Feb. & March, 1920	353619		1,094.00
Apl, May & June, 1920	366559	225/10	1,094.00
July, Aug. & Sept., 1920	378863	225/13	1,094.00
Oct., Nov. & Dec., 1920	378861	225/11	1,094.00
Jan., Feb. & March, 1921	378862	225/12	1,094.00
Apl, May & June, 1921)	Bills		1,094.00
July, Aug. & Sept., 1921)	not		1,094.00
Oct., Nov. & Dec., 1921)	received		1,094.00
Jan. to Dec., Ic., 1922	412351	224/34	4,376.00
			<hr/> \$26,256.00

RECORD

No. 294

EXHIBIT 286—

In the
Exchequer Court
of Canada

DEPARTMENT OF JUSTICE OF CANADA.

Ottawa, March 20, 1924.

No. 294

A. 2249

EXHIBIT 286

King vs. Canadian Pacific Railway Co'y.

Letter,
W. S. Edwards
to E. W. Beatty
March 20, 1924

Sir:

I have been instructed by the Department of Railways and Canals to take up with you the question of certain lines of telegraph wires and poles belonging to you which are situate on the lands of the Canadian 10 Government Railway, and which lines extend from the City of St. John to the City of Halifax; from Truro to Sydney, and from Painsec Junction to Point du Chene. I am instructed to inform you that all offers of settlement, or otherwise, heretofore made to the Canadian Pacific Railway Company or to the Canadian Pacific Telegraph Company by the Government, or anyone on its behalf are withdrawn and to say that the wires and poles must be removed from off the Government Railways' lands, and that otherwise the said poles and wires will be removed. No time has been fixed within which you must effect this removal, but unless you agree to act at once in the matter, a date will be fixed by the De- 20 partment of Railways and Canals.

I have the honour to be,

Sir,

Your obedient servant,

W. Stuart Edwards,
Asst. D.M.J.

E. W. Beatty, Esq.,
President, Canadian Pacific Ry. Co.,
Montreal, P. Q.

EXHIBIT 287—

No. 295

RECORD

Personal.

L-36960.

25th April, 1924.

*In the
Exchequer Court
of Canada*

W. Stuart Edwards, Esq.,
Assistant Deputy Minister of Justice,
Ottawa, Ont.

No. 295

EXHIBIT 287

Letter,
E. P. Flintoft to
W. Stuart
Edwards
April 25, 1924

Dear Mr. Edwards:

10 C.P.R. Pole Line located on C.N.R.
Right of Way in Maritime Provinces

No. 296

EXHIBIT 288

Letter,
W. Stuart
Edwards to
E. P. Flintoft
Jan. 29, 1926

Mr. McMillan, our General Manager of Telegraphs, and I discussed this matter with Mr. Graham and Major Bell in Ottawa yesterday, when it was arranged that Mr. McMillan will take it up further with Mr. Robb here and if they are unable to reach a satisfactory understanding we may refer to Major Bell again.

Major Bell said that he would inform you of this understanding, and, no doubt, you will hear from him.

Yours very truly,
E. P. Flintoft,
Assistant General Solicitor.

20 EPF/LER

No. 296

EXHIBIT 288—

Ottawa, 29th January, 1926.

Dear Sir;

A-2249.
The King vs. Canadian Pacific Ry. Co.

30 Referring to previous correspondence with regard to the demand of the Department of Railways and Canals that the lines of telegraph wires and poles operated by your Company on the lands of the Canadian Government Railways be removed therefrom, or satisfactory arrangements made with the department for the rental thereof, I understand that certain negotiations have taken place between officials of your Company and of the Government, but that it has not been found possible to reach an agreement, and I am instructed therefore to inform you that it is the intention of the department to at once proceed with the action outlined in my letter to Mr. Beatty of the 20th March, 1924.

40 E. P. Flintoft, Esq.,
Assistant General Solicitor,
Canadian Pacific Railway Company,
Montreal, Q.

Yours very truly,
(Sgd) W. Stuart Edwards,
D. M. J.

RECORD

No. 5

EXHIBIT 2—

In the
Exchequer Court
of Canada

No. 5

EXHIBIT 2

Historical

Narrative of

Construction of

Railways

forming parts

of Intercolonial

Construction of Railways forming constituent parts of the Intercolonial Railway system between Saint John and Halifax and between Truro and Sydney, on which the C.P.R. Telegraphs later erected a pole line.

Saint John to Moncton, and Shediac.

The Railway in this location was built by a company known as European and North American Railway Company. By Acts passed by the New Brunswick Legislature in March 1851, this company was incorporated within the Province and given powers to construct a railway within 10
New Brunswick; these acts were repealed in 1852, and an Act was passed by the New Brunswick Legislature in October 1852 giving a subsidy to the European and North American Railway Company for a line from the Maine Boundary to the Nova Scotia Boundary, or to Shediac.

A Contract was made by the Province of New Brunswick with an English firm, Jackson, Peto and Brassey to build this line. The work was begun at Saint John, September 14th, 1853; work was begun at Shediac about the same time. The contractors did not complete the contract and the Province took it over and completed the line from Shediac to Moncton in 1857, and from Moncton to Saint John August 1st, 1860. 20

In the Province of Nova Scotia the Provincial Government under the then Provincial Railway Act began to build out to Halifax in April 1854, and completed the line to Truro December 15th, 1858, with a connecting line from Windsor Junction to Windsor, completed June 1859.

By Act of the Nova Scotia Legislature of 1863, the Nova Scotia Government was empowered to construct a line of Railway from Truro to New Glasgow and Pictou Landing (across Pictou Harbour from Pictou;) this line was completed May, 1867, it was taken over by the Dominion on Confederation, effective July 1st, 1867, as a part of the Intercolonial Railway, provided for in the British North America Act of March 1867, 30 and was thereafter designated as the Intercolonial Pictou Landing Branch.

Under the said powers given to the B.N.A. Act and the Dominion Intercolonial Railway Act of December 1867, the construction of the line of railway between Painsec Junction, near Moncton, in New Brunswick, and Truro, N.S., was begun. This part of the Intercolonial between Painsec Junction and the Nova Scotia boundary was built by an English firm, Clark and Punchard, with whom a contract had first been made by the New Brunswick Government and taken over by the Dominion Government. The line was completed to Dorchester, December 1868 and to the Nova Scotia boundary November 1872. The line from Truro to the Nova Scotia Boundary was built by the Dominion Government Commissioners and completed in that year. The first train went through from Halifax to St. John December 11th, 1873. 40

The Railway from New Glasgow to the Strait of Canso.

By Nova Scotia Act of 1872 authority was given to the Nova Scotia Government to subsidize a private Company to build this line of Railway; the company was incorporated under Provincial Statutes of 1874 under the name of Halifax and Cape Breton Railway and Coal Company, to build the line; the work was begun in 1877 and the line completed to Antigonish September 1879, and to Mulgrave on the Strait of Canso December 1880.

10 By contract between the Nova Scotia Government and Halifax and C. B. Railway and Coal Company the Government was empowered to take over the line, which was done on October 1st, 1883, and the line was then transferred by the Nova Scotia Government to the Dominion Government as part of the I.C.R. under Statute of Canada, Chap. 4, 47 Vic.

Cape Breton Railway, Strait of Canso to Sydney.

20 This was built by the Dominion Government under Statutes of 1886 and completed in 1890, with a Branch to North Sydney. In 1914 the line was diverted to pass directly through Sydney Mines and North Sydney and thence to Sydney, and a portion of the former right of way from Lake Bras d'Or to the head of Sydney Harbor was then and has since been disused.

The C.P.R. Telegraph pole line as constructed along the original right of way still remains in this disused portion.

Oxford to Pictou and New Glasgow, which includes the Railway right of way from Westville to Pictou on which the C.P.R. Telegraphs now have a portion of their pole line.

By Statute of 1882 Chap. 14 a Subsidy was given any company building this line. The Private Companies which undertook to do so failed to complete the work and the Dominion Government took it over and completed it in 1890.

RECORD

*In the
Exchequer Court
of Canada*

No. 5

EXHIBIT 2
Historical
Narrative of
Construction of
Railways
forming parts
of Intercolonial
(Contd.)

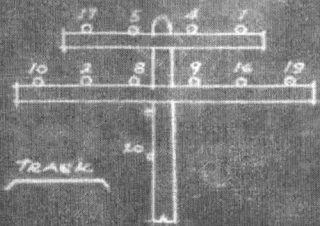
RECORD
In the
Exchequer Court
of Canada

No. 6
EXHIBIT 3
Statement of
C.P.R. Co. as to
dates of erection,
etc. of pole lines

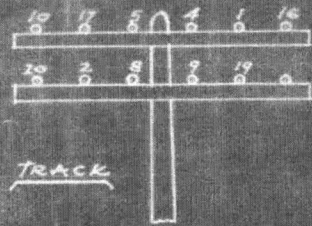
EXHIBIT 3—

No. 6

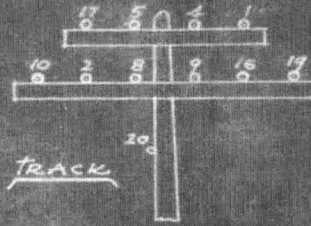
LOCATION	Original Line built Off I.C.R.	Rebuilt & moved on I.C.R.	Original line built on I.C.R.	Rebuilt on I.C.R.	Years on I.C.R. up to 1927.	MILEAGE
St. John to New Glasgow	1888-1889					257
Coldbrook to Sussex		1911			16	41
Sussex to Moncton		1917			10	46
Moncton to Painsec Jct.		1910			17	7
Painsec Jct. to Aulac		1914			13	35
Aulac to Springhill Jct.		1910			17	23
Springhill Jct. to Truro		1911			16	59
Truro to New Glasgow		1912			15	43
Truro to Fairview Jct.	1889-1890	1906-1907		1920-22-23	20	59
New Glasgow to Cape Porcupine			1893	1911/12/19/20	33	74
Inverness Jct. to George River			1893	1916/17/18/19	33	74
Leitches Creek to Sydney			1893	1920	33	10
NOTE: ON I.C.R. RIGHT OF WAY NEW GLASGOW TO SYDNEY 158 MILES. Railway mileage 181. Difference 23 miles.						728
ACCOUNTED FOR BY FOLLOWING SECTIONS OFF I.C.R. Right-of-Way:						257
Cape Porcupine to Mulgrave ----- 5.5 miles						471
Point Tupper to Inverness Jct. ----- 1.23 miles						
George River to Leitches Creek ----- 16.32 miles						
TOTAL ----- 23.05 miles						



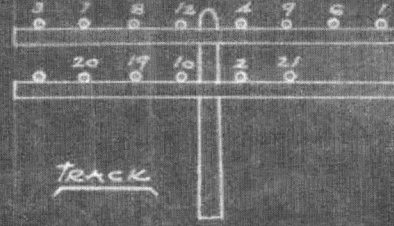
Coldbrook to Sussex
10.7 Miles
40 poles per mile
Built on Rwy. Right
of Way 1911.



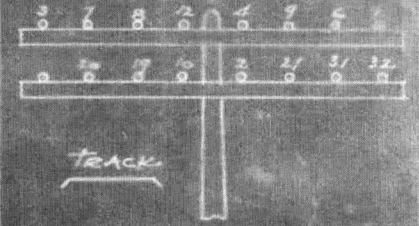
Sussex to Moncton
15.56 Miles
40 poles per mile
Rebuilt on Rwy. Right of
Way 1917.



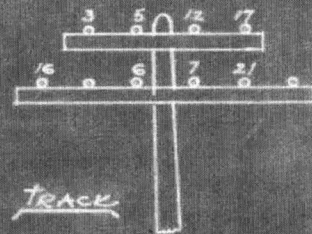
Moncton to Truro
12.4 Miles
40 poles per mile
Built on Rwy. Right of Way
1910-11-14.
80 poles per mile for 8
miles between Sackville
and Amherst.



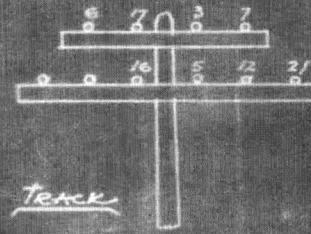
Truro to Windsor Jct.
48.20 Miles
44 poles per Mile
Rebuilt 1906-07-20



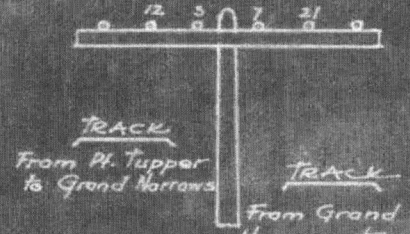
Windsor Jct. to Fairview
10.93 Miles
44 poles per mile
Rebuilt 1906-07.



Truro to New Glasgow
42.78 Miles
40 poles per Mile
Rebuilt 1912.



New Glasgow to Avondale
22.10 Miles
40 poles per mile
Rebuilt 1911.



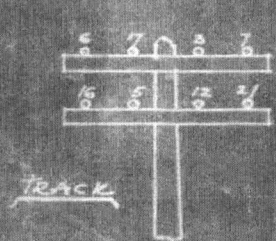
From Pt. Tupper
to Grand Narrows

From Grand
Narrows to
Sydney

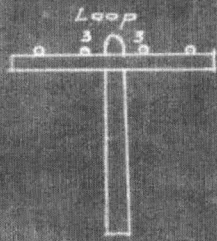
Heatherston to Cape Porcupine
20.54 Miles. Point Tupper to
George River 74.53 Miles,
takes Highway to Laitche's
Creek - Laitche's Creek to
Sydney 10 Miles.
Built 1894. Rebuilt 1916-19-20
35 poles per Mile.

C.P.R. Pole Lines
Railway Right of Way
Atlantic Region

No. of Wires	Gauge
1	9 iron
2	8 "
3	9 "
4	6 "
5	6 "
6	8 "
7	9 copper
8	9 "
9	9 "
10	9 "
12	9 "
16	9 "
17	8 "
19	9 "
20	9 "
21	9 "
31	9 "
32	9 "



Avondale to Heatherston
31.10 Miles
40 poles per Mile
Rebuilt 1911.



Stellarton to Pictou
13.77 Miles
35 poles per mile

Loop Cape Porcupine
to Pirate Harbour taken
down in 1920.

CANADIAN NATIONAL TELEGRAPHS
MONCTON, N.B.

SUBJECT:- C.P.R. POLE LINE ON RIGHT
OF WAY OF CAN. GOVT. RWYS
ATLANTIC REGION.

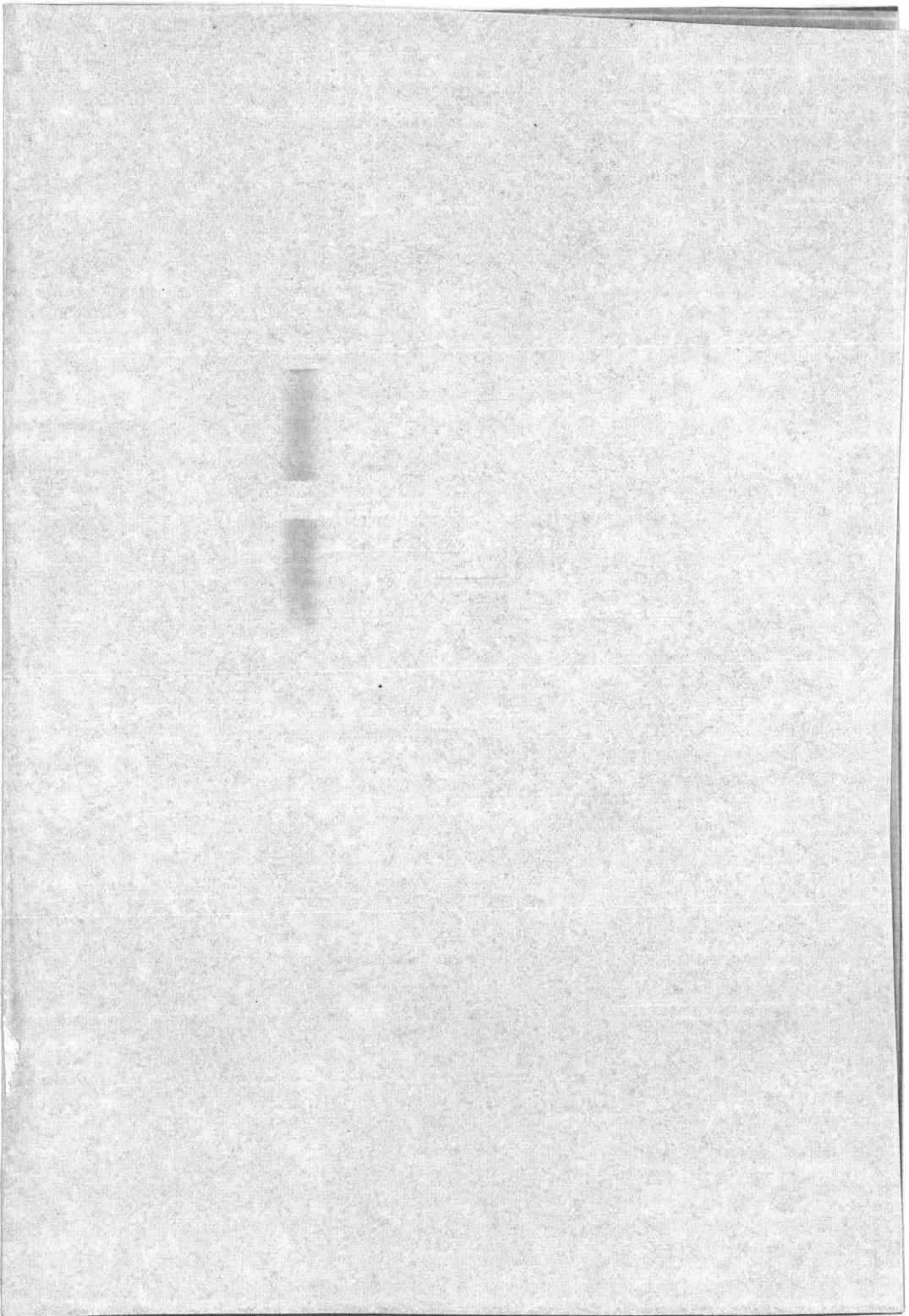
Moncton, N.B.
Jan. 2 1929. D.A. MacNeill

EXHIBIT 4—

No. 7

RECORD
—
*In the
Exchequer Court
of Canada*

—
No. 7
EXHIBIT 4
Blue Print
Showing
Number of
Wires on
Poles in
different
Sections



RECORD

—

In the

*Exchequer Court
of Canada*

—

No. 4

EXHIBIT 1

Map showing
C.P.R. Com-
pany's Telegraph
Lines on C.G.R.
in New Bruns-
wick and Nova
Scotia.

No. 4

PART IV.
JUDGMENTS

No. 316

In the Exchequer Court of Canada

Thursday, the 21st day of March, A.D. 1929.

PRESENT:

The Honourable Mr. Justice Audette.

BETWEEN:

10 HIS MAJESTY THE KING, on the Information of the
Attorney-General of Canada, Plaintiff;
and
THE CANADIAN PACIFIC RAILWAY COMPANY,
Defendant.

THIS ACTION coming on for trial at the City of Ottawa on the 15th, 16th, 17th, 18th, 22nd, 23rd, 24th, 25th and 26th days of January, A.D. 1929 before this Court in the presence of counsel for the Plaintiff and Defendant; UPON HEARING READ the pleadings herein, and UPON HEARING the evidence adduced at the trial and what was alleged by
20 counsel aforesaid, THIS COURT WAS PLEASED TO DIRECT that this action should stand over for judgment and the same coming on this day for judgment.

THIS COURT DOTH ORDER, ADJUDGE AND DECLARE that the lands and premises in the Information of the Attorney-General of Canada described, being the right of way of the Intercolonial Railway between St. John in the Province of New Brunswick and Halifax in the Province of Nova Scotia; between Truro and Sydney in the Province of Nova Scotia; and between Stellarton and Pictou in the Province of Nova Scotia, are owned by and at all times material to the matters in question
30 herein have been and are now in the possession of the Plaintiff.

AND THIS COURT DOTH FURTHER ORDER, ADJUDGE AND DECLARE that the property of the Defendant now on the said lands and premises consisting of a line of telegraph poles erected thereon and carrying wires for telegraph purposes is and has, from the respective dates when the several portions thereof were originally placed thereon, been on the said lands and premises with the leave and license of the Plaintiff, but not an irrevocable license.

AND THIS COURT DOTH FURTHER ORDER that either party to this action have leave to apply, upon notice, for further directions.

40 AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the question of costs between the parties be reserved.

By the Court,
(Sgd) Chas. Morse,
Registrar.

RECORD
—
In the
Exchequer Court
of Canada
—
No. 316
Formal
Judgment
March 21, 1929

RECORD

No. 317

In the
Exchequer Court
of Canada

In the Exchequer Court of Canada

No. 317

Reasons for
Judgment of
Trial Judge
March 21, 1929

Between:—

HIS MAJESTY THE KING, on the Information of the Attorney-
General of Canada,

Plaintiff;

No. 7527 and

THE CANADIAN PACIFIC RAILWAY COMPANY,

Defendant.

Coram
AUDETTE J.

10

Judgment rendered 21st March, 1929.

This is an information of intrusion exhibited by the Attorney-General of Canada, whereby it appears, *inter alia*, that the plaintiff seeks to remove a line of telegraph poles and wire erected by the defendant upon the right of way of the Canadian National Railway System — the plaintiff's property — under the circumstances hereinafter mentioned.

Besides claiming the possession of land upon which these poles are erected, the Crown further asks

“(b) \$713,408 for the issues and profits of the said lands and 20 premises from the 1st January, 1890, till possession shall be given.”

The conclusion of an action of intrusion. And by way of amendment, at trial:

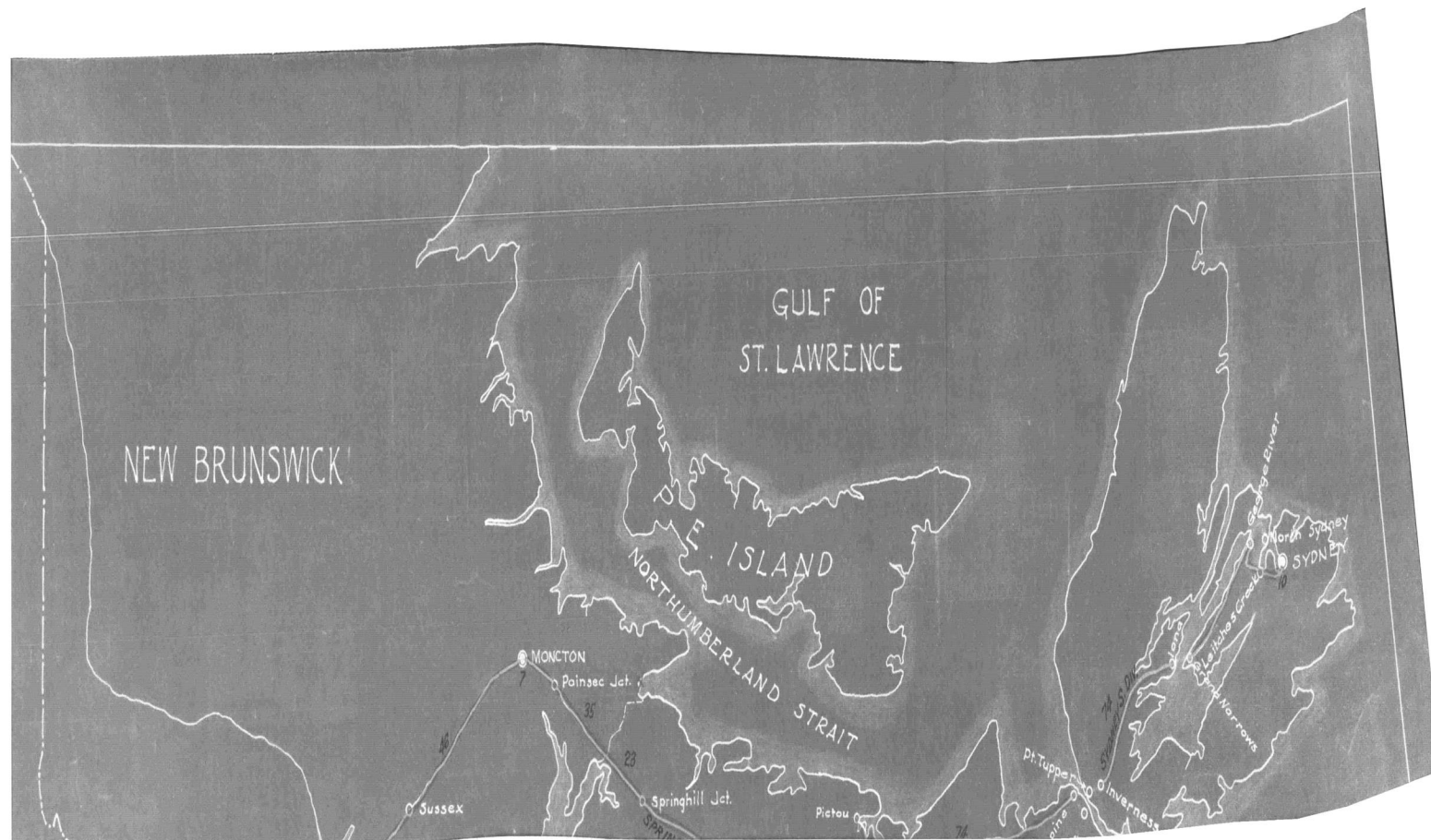
“or in the alternative damages for trespass to said lands in the sum of \$100,000.”

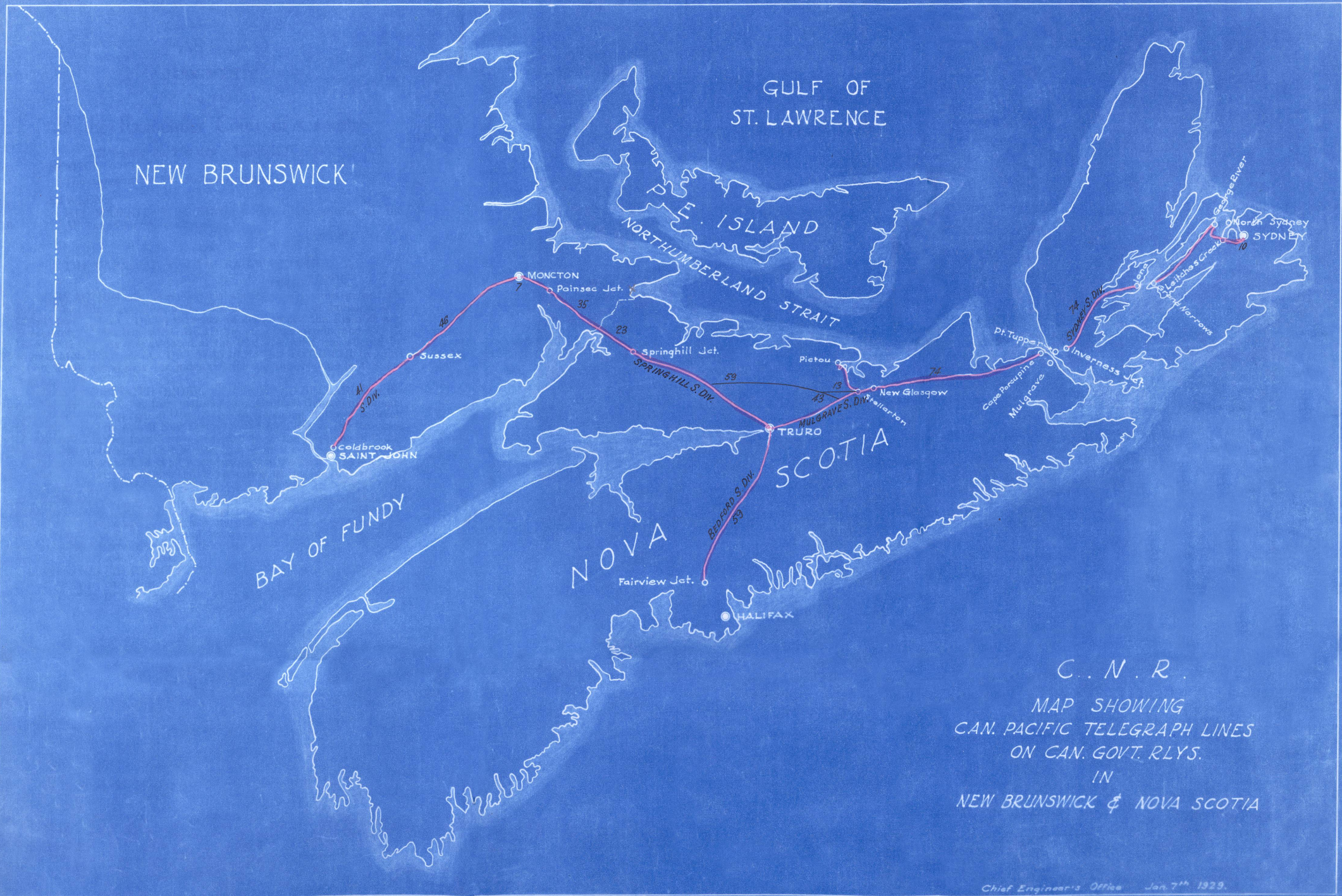
The conclusion of a common law action for damages.

“(b1) In the alternative a declaration as to the right, if any, of the defendant in said lands, in respect of the said line of poles and wires.”

30

This amendment, it will be seen, is in the nature of a material departure from what is usually understood would be covered in an information of intrusion; but it has the great advantage of placing before the





C. N. R.
 MAP SHOWING
 CAN. PACIFIC TELEGRAPH LINES
 ON CAN. GOVT. RLYS.
 IN
 NEW BRUNSWICK & NOVA SCOTIA

Chief Engineer's Office Jan. 7th 1929.

Court the whole controversy between the parties, in respect of this telegraph line built by the defendant on the right of way of the Government railway over an area of, in round figures, 500 miles.

RECORD
—
In the
Exchequer Court
of Canada
—
No. 317
Reasons for
Judgment of
Trial Judge
March 21, 1929
(Contd.)

10 The defendant company, by their amended statement in defence, avers, among other material things, that their entry upon the plaintiff's lands, was by leave of the proper officers of the Government railway, while the Crown, with that knowledge, stood by and acquiesced in this state of things for a great number of years, whereby an irrevocable license of occupation was impliedly granted. That terms upon which the defendants were allowed on the right of way had been settled and that they are still ready and willing to carry on the same, as agreed upon.

It is thought unnecessary to develop into greater details the grounds set out in the defence, which are fully spread on the record.

This controversy, complex in its legal aspects, extends, in the history of the facts controlling it, with all its ramifications, as far back as 1887, when negotiations originally started, the building by the defendant commencing in 1889.

20 At that time, in respect of the territory where the railway was then in operation, there were in existence agreements with telegraph lines, between the Crown and The Western Union Telegraph Company, the Great North Western Telegraph Company, and The Montreal Telegraph Company. See exhibits 6 and 290.

In this respect, it is thought unnecessary to say more than the agreement (exhibit No. 6) with Montreal Telegraph Company gave them exclusive right over the territory covered by the agreement, — a matter upon which the Law Officers of the Crown have given considered opinion. An exclusive right was also given the Western Union Company from New Glasgow to Canso, but that agreement of 1880, it is contended by defendant, has been superseded by a later agreement (16th October 30 1889, exhibit No. 290) without that exclusive right.

The history of this case involves so many facts and such a mass of evidence both oral and documentary, that it is thought inadvisable to recite them all in detail. Sufficient is it to mention only those that have a specific controlling effect. And with regard to the above mentioned agreement with these three companies, and the exclusive right over certain area, reference will be hereafter made in the final adjudication.

40 The right of way of a railway, it may be said *en passant*, has always been regarded as the proper place to build a telegraph line; the line is thereby unobstructed and can be easily inspected from a train. And in both the Government Railway Act and the General Railways Act provisions are made to meet such eventuality. See secs. 45 and 46, ch. 38, R.S.C. 1886, The Government Railways Act; the Railway Act, 51 Vic. ch. 29, secs. 265 and 266.

RECORD
 In the
 Exchequer Court
 of Canada

No. 317
 Reasons for
 Judgment of
 Trial Judge
 March 21, 1929
 (Contd.)

The first negotiations between the parties started in 1887 when the C.P.R. asked that no exclusive right be given any company to erect a line between Canso and Sydney (exhibits 8, 9, A, 14, 15, 39-29) when Mr. Schreiber, the Chief Engineer and General Manager of the Canadian Government Railways at the time, advised that

“We are quite prepared to negotiate an arrangement by which your company would be permitted to build and operate a line along this Railway; and under such conditions (exhibit No. 15) as the Government may see fit to impose.”

Must it not be deemed that his power was properly exercised in allowing the defendant to proceed with building in the meantime? *Omnia praesumuntur rite et solemniter esse acta.*

At that time the defendants were approaching the completion of their “Short Line”, there was the Cable at Canso and the agitation in the public for an All Red Route, i.e a domestic telegraph company on exclusive Canadian soil.

According to witness Richardson, who was in charge of the C.P.R. Telegraph lines at the time, the defendant company began building their line, between St. John and Halifax, outside the right of way in 1889 and completed the work in 1890. This witness adds that it was all built outside the right of way, excepting in a few cases. He thinks only in one case, probably less than half a mile, just a small detour. He consulted Mr. Archibald, with this question of boundary, who granted him leave. Here the I.C.R. supplied an experienced man, familiar with the running of trains, to control and handle the hand-cars used in building the line. 20

This part between St. John and Halifax was built outside the right of way, after the C.P.R. had tried to get leave to build inside, and had been met with the exclusive right of the Montreal Telegraph, set up by the Justice Department, but no objection was set up as far as the Government was concerned. Finally as the company could not wait any longer, they built outside. Witness Grant, an employee of the Western Union, further testified that when the C.P.R. were building on the right of way between New Glasgow and Mulgrave, he called it to the attention of Gray, the Roadmaster, who told him that he had instructions from headquarters to allow them to build on the right of way. 30

Richardson also built the line between Truro and New Glasgow, outside the right of way, in 1889; before reaching Halifax.

In 1893 he built the line between New Glasgow to Sydney on the right of way. Before commencing work on that area, under instructions of Mr. Hosmer, he first went to see Mr. Pottinger, the officer in charge of the whole I.C.R. as Chief Superintendent (p. 116) and consulted him about the construction of the line. Mr. Pottinger brought in the engineer of the Railway, Mr. Archibald, and Mr. Wallace, the freight 40

agent, and they all discussed the whole question. What the witness wanted to know was if they had any special instruction in regard to the construction of this line on their right of way, so that he could meet their wishes. Finally Mr. Pottinger turned him over to the Department that handled that work and the engineer, Mr. Archibald, who told witness to build it the same as he would build the C.P.R. line, placing no restriction upon the manner he would build. (pp. 243, 244).

The work was done openly. The poles were distributed from the cars and paid for.

10 This witness had nothing to do with the building from Westville to Pictou.

Now with respect to this section between New Glasgow and Sydney, it appears, from exhibits Nos 116, 117, 118, 302, 125, 127 and 129, that permission or leave to build was given by Mr. Schreiber, subject to agreement similar to the one with the Western Union Telegraph; that the Crown drew up such an agreement, submitted it to the General Manager of the Government Railways and transmitted it to the defendant for execution, and that, after being duly executed by the C.P.R., was returned to the Crown with request to also execute the same and return
20 one copy.

This document was lost while in the possession of the Crown. In view of all this, it cannot be said that the C.P.R. was a trespasser on that section anyhow. The defendant is bound by that document and through its counsel at trial it declared its readiness to do everything they thereby agreed to; they built from New Glasgow to Sydney upon the terms asked for by the Crown.

With respect to the line from Westville to Pictou, the Board which had, at the time, the full control and management of the Government Railways, by a resolution of the 10th March, 1911, as shown by exhibit
30 No. 185, granted the request of the C.P.R. for permission to string their wires on that area on the right of way, and to give the Crown the use of the line and to put the same into their stations at Westville and Pictou, See exhibits 188, 189, 193 and 195.

In a letter from Mr. Pottinger to Mr. McNicoll, Vice President C.P.R., exhibit No. 194, Mr. Pottinger says:—

“As I told you verbally when in Montreal, it will be all right for you to go and build that line and we will arrange at a later period.”

There is further what was called the Mersereau incident in 1904.
40 The latter, at that date, was in charge of the building, maintenance and repair between St. John and Moncton, and arrived at a given place, for better convenience, some poles were placed on the right of way and objected to by the section man. The matter was referred to the Manager,

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Mr. Pottinger, who allowed them to maintain and place their poles on the right of way, on a distance between 5 to 10 miles on that division.

From that date the work of repairing and maintenance was converted into rebuilding. It is perhaps well to say here that it was mentioned at trial the life of those telegraph poles was between 15, 20 and 25 years, according to the nature of the soil. This rebuilding, by the defendant, resulted in transferring all their poles on the right of way. According to witness McNeil, the poles were brought on the right of way to conform with the other lines, concluding that the C.P.R. should be in the same and in no better position.

10

At one time an action of intrusion was taken before this Court, against the C.P.R., and instruction was also given to issue a similar action in Halifax; but the whole matter was stopped by Sir John A. Macdonald, then Premier of Canada and Minister of Railways and Canals at the time, who then defined the Crown's policy in respect of this matter.

As will appear by exhibit 75, on the 24th September, 1890, Sir John A. Macdonald wrote to Sir John Thompson, the Minister of Justice, as follows:—

“Please stay proceedings. It won't do to have any further difficulties with the C.P.R. just now. This is an unimportant matter.”

And the suit in the Exchequer Court was abandoned and the costs paid by the Crown.

Furthermore, on the 9th October, 1890, Sir John A. Macdonald, wrote to W. C. Van Horne, the President of the C.P.R. as follows:—

“Dear Van Horn:—

I have yours of the 22nd ult. and return you the papers therein enclosed, as you desire. The Government have not the slightest objection, so far as they are concerned, to the C.P.R. planting telegraph poles along the line of the I.C.R. The trouble is that long ago, by an absurd agreement, the Montreal Telegraph Company was given the exclusive right to plant poles and wires along the line of the I.C.R. Such being the case, the Government Officials gave notice to your people not to plant poles but the warning was utterly disregarded. The proceedings were taken lest the Government might be held responsible by the Montreal Telegraph Co. for breach of agreement and consequent damage. Dwight's letter to Hosmer is satisfactory enough, but it is not, I take it, binding on the Company, especially if under the control of Wiman. However, if the C.P.R. will stand between the Government and all harm in the event of proceedings being taken, we will not interfere with your telegraph poles.

W. C. Van Horne, Esq.,
 Montreal.

Yours faithfully,
 John A. Macdonald.

See in this respect secs. 5, 6 ch. 38 R.S.C. 1886, defining the Minister's power, without Order in Council.

Then later on, in 1915, when the poles were all on the right of way, Mr. McMillan, the General Manager of the C.P.R. Telegraph, and Mr. Gutelius, then in charge of the Government Railways, as manager, met and discussed the whole matter seeking the solution of the problem in an agreement whereby the C.P.R. could give certain services or render certain services to the I.C.Ry in exchange for an arrangement whereby they could maintain their telegraph lines on the right of way.

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10 A draft of such agreement was prepared by Mr. Gutelius, exhibit No. 239a. It was brought to a mutual conference at Montreal; changes were made and finally resulted in the agreement filed as Exhibit 245a—which was again duly executed by the C.P.R. and transmitted to the Crown. It was marked O.K. by Mr. Gutelius under his own signature, and every page was initialed by him—the draft had also been marked O.K. and corrected by Mr. Gutelius.

This document, Mr. McMillan testified, never came back into his possession and the document turns up at trial as coming from the hands of the Crown.

20 Then Mr. Hayes, who succeeded Mr. Gutelius, proposed a new agreement. That was followed in 1924 with a letter of the Department of Justice advising that proceedings would be taken, but not assigning any special delay within which to remove the poles.

Hence the present action.

Having so set forth out of the mass of the evidence such of the important facts that were thought necessary, I shall now approach the consideration of the controversy on its merits.

30 It would seem that the poles were placed on the right of way with the consent and co-operation of the high officers of the railway and the Prime Minister and Minister of Railways at the time, and conjectured that these agreements that were placed in the hands of the Crown, after being duly signed by the C.P.R. would be executed. As a matter of fact they were not executed by the Crown, but on the other hand, the Crown retained the documents in its possession after they were marked with the approval of its responsible officers, and the right of the defendant to regard them as satisfactory to the Crown thus becomes apparent. Surely the equitable right of the defendant to remain upon the property under the terms of the proposed agreement cannot be disputed.

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The land upon which the poles are erected belongs to and is vested in the Crown. There is here no question of parting with land or entering into a lease for which the authority of Parliament or an Order in Council would be required. The Crown is not divested of its fee. The defendant is found in occupation only of such portions of the surface of the lands as was necessary to erect their poles upon, with the consent, permission and authority of the railway officials. The permission is given by the Prime Minister and the Minister of Railways, and by the officer, who under the Order in Council appointing him (exhibit No. 293) is given.

“the duties and powers of General Manager, such powers as are usually vested in the executive of a railway Corporation.”
Executive is

“*l'ensemble des personnes qui exercent l'autorité politique.*”
The poles are erected openly with here and there a confirmation of the leave or permission to do so.

The operation of the railway is confided onto this manager, and a telegraph system or telegraph systems would seem to be a necessary part for the operation of a railway. He could not give perpetual rights which would amount to alienation of property, but could it be said he could not grant a license of occupation? Indeed, a revocable license is nothing but a personal privilege to do certain acts upon the land of another, but creates no estate therein, and is revocable at will and may rest in parol. See also *Plimmer et al v. Mayor, etc., Wellington* (1). A license could be implied as resulting from both the negotiations and the conduct of the minister and the managers of the I.C.R. And while this license was being enjoyed by the defendant, the plaintiff, so to speak, stood by with full knowledge.

The leave given by the manager and others, was an act of interim nature, subject to arrangement. How can we find fault with such a sane act of administration? A foreign telegraph company was already on the right of way. Why any discrimination against a Canadian, a domestic company, which has a system of telegraphs extending from the Pacific to the Atlantic and a cable at Canso? Should not state messages, which might be conflicting with American interest, be in preference placed in the hands of a Canadian Company, than in that of a foreign company? Should not this be doubly true if some trouble were arising with respect to the fisheries rights, in the Maritime Provinces, as between the Canadian and American Governments?

This is not a case where it is sought to protect the Crown's prerogatives, and it would seem that no claim of right could be made good against the defendant, under the circumstances. The case should not be approached in a narrow view of the prerogative rights, but it should be dealt

(1) (1884) L.R. 9, A.C. 699.

with broadly as the issues demand. It is of utmost importance in the administration of justice that even the appearance or what might appear unjust and unfair should be avoided, if possible.

Under the circumstances of this case, were the Civil Law resorted to—although it is not the law under which the issues are to be determined here—there would be assumed a contract *sui generis*, whereby it would be presumed proper authorization was given. There would be presumed in favour of the occupant a sort of right to a certain superfixies, Tremblay v. Guay ⁽¹⁾ Beaudry Lacantinerie & al ⁽²⁾; Fuzier-Herman Rep. vo. Superficie. The common Law closely approaches in spirit the above doctrine of the Civil Law where it restrains the actual owner of land, who has stood by and allowed another under mistake of title to improve it, from ejecting the latter from the land without compensation for his improvements. The equity inherent in that doctrine is of much the same spirit as that arising upon the facts of the case before me. Furthermore, it is a rule of the Common Law that a license enables the person to do a thing which without such license would be a trespass. And while a license without consideration is revocable, if granted for a valuable consideration it is irrevocable. Taylor v. Caldwell ⁽³⁾. In Hurst v. Picture Theatres ⁽⁴⁾ it was held that a man may become a licensee without a formal grant in writing. Kay, J., in McManus v. Cooke ⁽⁵⁾ cites many authorities which support the equitable right of the defendant in the case before me. It is useful to quote his remarks at p. 695.

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“In the well known case of Dann v Spurrier ⁽⁶⁾ the doctrine is thus stated: ‘This Court will not permit a man knowingly, though but passively, to encourage another to lay out money under an erroneous opinion of title; and the circumstances of looking on is in many cases as strong as using terms of encouragement; a lessor knowing and permitting those acts, which the lessee would not have done, and the other must conceive he would not have done, but upon an expectation that the lessor would not throw an objection in the way of his enjoyment.’

In Powell v. Thomas ⁽⁷⁾ this doctrine was applied to a case in which the plaintiff had made a railway over the defendant’s land without objection from the defendant, the only dispute being on the question of price, and the Court of Equity restrained the defendant from prosecuting an action of ejectment. So, in the case of Duke of Devonshire v. Eglin ⁽⁸⁾, the defendant allowed the plaintiff to make a watercourse under his land to convey water to a town. The watercourse was made at the plaintiff’s expense, and this easement was enjoyed for about nine years, and although there was no grant the defendant was decreed to execute a proper deed, and a perpetual injunction was granted to restrain his interference with the water-

(1) (1929) S.C. 34.
(2) Biens. 372.
(3) 3 B. & S. 826.
(4) (1915) 1 K.B.1.

(5) (1887) 35 Ch.D.681.
(6) 7 Ves. 231.
(7) 6 Hare.300.
(8) 14 Beav. 530.

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course. *Hewlins v. Shippman* ⁽¹⁾, *Wood v. Leadbitter* ⁽²⁾, and other authorities at Common Law, were cited, and it was argued that the right claimed could only be granted by deed, and that therefore the license was revocable; but this common law doctrine was not allowed to prevail in equity.”

There has been a license or permission given in fact and upon apparent authority, and why should it not be binding? This seems inherently justified by the acts of the managers of the railway and the Minister of the Crown. The defendant's rights are only questioned after years of its overt acts of occupation and enjoyment. In other words, the conduct of the parties carries against the granting of the remedy asked by the information of intrusion. Upon no fair consideration, under the circumstances of the case, could an order of ejection be made against the defendant company who were not trespassers. 10

The plaintiff has acquiesced, by its conduct, during a long period of time, to the occupation of this land. *McGreevy v. The Queen* ⁽³⁾; *The Queen v. McCurdy* ⁽⁴⁾; *The Queen v. Yule* ⁽⁵⁾. This acquiescence has led the defendant to believe that the occupation was assented to; it would otherwise work out an injustice. *Rochdale Canal Co. v. King* ⁽⁶⁾.

See also exhibit No. 51 in respect of the construction by the Justice Department upon the facts that if the poles are suffered upon the right of way it would support evidence that poles had been placed there by permission of the plaintiff. 20

Upon the facts of the case, it is clear that the plaintiff has no right to treat the defendant as a trespasser. The defendant from the beginning was upon the property of the plaintiff as a licensee with the consent and acquiescence of the plaintiff, and has ever since been continuously in that capacity upon the property. See also *Peterson v. The Queen* ⁽⁷⁾; *Davenport v. The Queen* ⁽⁸⁾; *Attorney-General v. Ettersbank* ⁽⁹⁾.

Now, there is a difference between estoppel by deed, and estoppel in pais or equitable estoppel, arising from acts and conduct. And while it may be readily conceded that the Crown is not bound by estoppel by deed, by recital in his patent (*Robertson, On Civil Procedure*) yet it is held in the case of *Attorney-General v. Collom* ⁽¹⁰⁾, that the Crown is bound by estoppel in pais. See also *Queen Victoria Niagara Falls Park Comm'rs v. International Railway Co.* ⁽¹¹⁾, *City of Montreal v. Harbour of Montreal* ⁽¹²⁾; *Attorney-General v. Holt et al* ⁽¹³⁾. Under the circumstances of the case, as above mentioned, it must be found the defendant had a right to believe they were along the right of way by leave and permission open or implied. 30

(1) 5 B. & C.221.

(2) 13 M. & W.838.

(3) (1889) 1 Ex. C.R.322.

(4) (1891) 2 Ex. C.R.311 at 320.

(5) (1899) 30 S.C.R.24 at 34,35.

(6) 16 Bea.R.636 (c).

(7) (1889) 2 Ex.C.R.67.

(8) L.R. 3 A.C.115.

(9) L.R. 6 P.C.A.354.

(10) (1916) L.R.2 K.B.193, at 204.

(11) 63 Ont.L.R.49, 66, 67.

(12) (1926) A.C.299 at 313.

(13) (1915) A.C.599.

Estoppels in pais are called equitable estoppels, because they arise upon facts which render their application in the protection of rights equitable and just. Words and Phrases, vol. 2, pp. 340 et seq. Estoppel is the shield of justice interposed for the protection of those who have acted improvidently. It is the special grace of the Court, authorized and permitted to preserve equities that would otherwise be sacrificed. *Idem* 345.

The trial was proceeded with only upon the question of law, or, at any rate, leaving the question of damages to be dealt with after the rights of the parties had been determined, and hope was then expressed by counsel that once the rights determined the terms and conditions could be agreed upon by the parties.

In the result, the prime and controlling issue to be determined by these proceedings is what right, if any, has the defendant on the right of way? Answering the same I find that the defendants are and have been on the right of way from the beginning by the license of the plaintiff—but not an irrevocable license, which would be tantamount to an alienation of the property of the Crown.

I do not think that I should be called upon in my judgment to determine more than that; but if I can assist the parties to a full and complete settlement of their difficulties I shall be glad to have them, or either of them, apply, upon notice, for further directions.

There will be judgment accordingly. The question of costs is reserved.

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RECORD

No. 318

*In the
Exchequer Court
of Canada*

In the Exchequer Court of Canada

No. 318
Notice of
Appeal
May 31, 1929

BETWEEN:

HIS MAJESTY THE KING, on the Information of the
Attorney-General of Canada.
Plaintiff,

and

THE CANADIAN PACIFIC RAILWAY COMPANY,
Defendant.

10

TAKE NOTICE that the defendant intends to appeal and does hereby appeal to the Supreme Court of Canada from the judgment of the Trial Judge, the Honourable Mr. Justice Audette, delivered herein on the Twenty-first day of March, 1929, except in so far as the judgment declares that the defendant's line of telegraph poles is and has been on the lands with the leave and license of the plaintiff, upon the grounds:

1. That the learned Trial Judge was in error in holding that the license referred to was not irrevocable.
2. That on the facts as disclosed in the evidence and as found by the learned Trial Judge the action should have been dismissed with 20 costs.

DATED this 31st day of May, A.D. 1929.

EWART, SCOTT, KELLEY & KELLEY.

Solicitors for Defendant.

TO: W. S. Edwards, Esq., K.C.,
Deputy Minister of Justice, Ottawa,
Solicitor for Plaintiff.

No. 319

In the Supreme Court of Canada

RECORD
 In the
 Exchequer Court
 of Canada

BETWEEN:

THE CANADIAN PACIFIC RAILWAY COMPANY,
 Appellant
 (Defendant).

and

HIS MAJESTY THE KING, represented by the Attorney-
 General of Canada,

Respondent,
 (Plaintiff).

No. 319
 Notice of the
 Intention of the
 Respondent to
 contend that the
 decision of the
 Court below
 should be
 varied
 May 31, 1929

10

TAKE NOTICE that the Respondent intends, upon the hearing of the appeal taken by the Appellant by Notice dated 31st day of May, A.D. 1929, to contend that so much of the judgment of the trial judge as orders, adjudges and declares that the property of the defendant now on the lands and premises mentioned in said judgment consisting of a line of telegraph poles erected thereon and carrying wires for telegraph purposes is and has been, from the respective dates when the several portions thereof were originally placed thereon, upon the said lands and premises with the leave and license of the plaintiff, should be rescinded and that instead thereof it should be ordered, adjudged and declared by the said judgment that the said property of the defendant is now and has been, from the respective dates when the several portions thereof were originally placed thereon, on the said lands and premises of the plaintiff without the leave or license of the plaintiff and against the will of the plaintiff and that the defendant is now and has been from the said respective dates when the said portions were so originally placed on the said lands and premises, a trespasser on said lands and premises, or, in the alternative, that if the defendant had the said leave and license, the same was ~~revoked~~ by the plaintiff before the commencement of this action.

30

DATED AT OTTAWA this 31st day of May, A.D. 1929.

(Sgd) W. S. Stuart Edwards
 Solicitor for the Attorney-General
 of Canada.

TO: The Registrar of the Supreme
 Court of Canada.

TO: The Registrar of the Exchequer
 Court of Canada.

TO: W. L. Scott, K.C.
 Appellant's Solicitor.

RECORD

*In the
Exchequer Court
of Canada*

No. 320
Consent as to
Contents of
Case
July 23, 1929

No. 320

In the Supreme Court of Canada

BETWEEN:

THE CANADIAN PACIFIC RAILWAY COMPANY,

(Defendant) Appellant,

and

**HIS MAJESTY THE KING, on the information
of the Attorney General of Canada,**

(Plaintiff) Respondent. 10

CONSENT AS TO THE CONTENTS OF CASE

The parties agree that the Case on appeal to the Supreme Court of Canada shall consist of the following documents:

PART I — PLEADINGS 20

1. Amended Information
2. Amended Answer

PART II — EVIDENCE

3. Evidence at trial

PART III — EXHIBITS

4. Exhibits filed at the trial excepting any, the printing of which 30
are dispensed with by consent of the parties.

PART IV — JUDGMENTS, ETC.

5. Reasons for Judgment of the Trial Judge
6. Formal Judgment of the Exchequer Court
7. Notice of appeal
8. Notice of the intention of the respondent to contend that the de-
cision of the Court below should be varied
9. Consent as to contents of case.
10. Certificate of Registrar as to contents of case.

DATED at Ottawa, this Twenty-third day of JULY, A.D. 1929. 40

EWART, SCOTT, KELLEY & KELLEY,
Solicitors for Appellant
F. P. Varcoe,
for Solicitor for Respondent.

No. 321
CERTIFICATE AS TO CASE

RECORD
—
*In the
Exchequer Court
of Canada*

I, the undersigned ARNOLD W. DUCLOS, Deputy Registrar of the Exchequer Court of Canada, do hereby certify that the foregoing documents from page 1 to page 498 inclusive is the case stated by the parties hereto pursuant to Section 73 of the Supreme Court Act and the Rules of the Supreme Court of Canada between His Majesty the King, on the information of the Attorney General of Canada, (Plaintiff) Respondent,
10 and The Canadian Pacific Railway Company, (Defendant) Appellant.

No. 321
Certificate of
Registrar as to
Contents of Case

IN TESTIMONY WHEREOF I have hereunto subscribed my hand and affixed the seal of the Exchequer Court of Canada this day of November, A.D. 1929.

ARNOLD W. DUCLOS,
Deputy Registrar of the
Exchequer Court of Canada.

In the Supreme Court of Canada.

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA

BETWEEN:

THE CANADIAN PACIFIC RAILWAY COMPANY,
(Defendant), Appellant,

—and—

**HIS MAJESTY THE KING, on the information of the
Attorney General of Canada,**
(Plaintiff), Respondent.

Appellant's Factum

EWART, SCOTT, KELLEY & KELLEY,
Solicitors for (Defendant) Appellant.

W. STUART EDWARDS, K.C.,
Solicitor for (Plaintiff) Respondent.

In the Supreme Court of Canada.

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA

BETWEEN:

THE CANADIAN PACIFIC RAILWAY COMPANY,
(Defendant), Appellant,

—and—

**HIS MAJESTY THE KING, on the information of the
Attorney General of Canada,**
(Plaintiff), Respondent.

10

Appellant's Factum

on its Appeal and on the Respondent's Cross-appeal.

PART I.

THE FACTS

This is an appeal from the judgment of Mr. Justice Audette of the Exchequer Court dated 21st March, 1929, declaring that the appellant's telegraph line located on the Intercolonial right of way East of Saint John is there by leave and license of the respondent but not an irrevocable license. The appellant appeals against the finding that the license is not irrevocable and asks that the action be dismissed with costs. The respondent cross appeals against the finding as to leave and license.

The appellant's railway and telegraph systems were connected with Saint John in 1888. The appellant desiring to connect its telegraph lines with the cable station at Canso, as well as with Halifax and other points in the Maritime Provinces, then applied for permission to build the line along the Intercolonial right of way. The I. C. R. owned no telegraph line in that district—the telegraph lines along the right of way being

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Ex. 290 p.219

Ex. 290 p.221

p.146 l.15

Ex. 291 p.233

Ex. 290 p.271

Ex. 6 p.224

p.134 l.36

Ex. 289 p.237

pp.244 to 248

pp.264-265

pp.249 to 261

owned by or under the control of the Western Union, an American Company operating mainly in the United States and controlled by Mr. Jay Gould. The Western Union obtained this monopoly in telegraph service in the following way. It took over the rights granted by two contracts along railways in New Brunswick and Nova Scotia which afterwards became part of the I. C. R. System. These two agreements made in 1859 and 1862 did not grant exclusive privileges. The New Brunswick Railway ran from Saint John to Shediac via Moncton and Painsec and the Nova Scotia Railway ran from Halifax to New Glasgow via Truro. The I. C. R. subsequently connected these two railways by a line from Painsec to Truro and the Western Union without any contract so far as is known erected its telegraph lines along this connecting link. It also had, prior to 1889, a telegraph line on the right of way from New Glasgow to Canso under an agreement made in 1880 under which the rights were exclusive. This agreement was, however, superseded by a new agreement of 1889 made direct with the Western Union covering additional territory and extending from New Glasgow to Sydney. The rights granted by the 1889 agreement were not exclusive.

One other contract must be referred to. In 1870 the Montreal Telegraph Company agreed to build a line of telegraph "upon and along the whole line or route of the Intercolonial Railway between Riviere du Loup and Halifax (including all its branches)". The Crown was to pay \$30,000. for the line constructed and was entitled to purchase the line at any time. Until the line was purchased the rights of the Montreal Company were to be exclusive. That company erected a pole line from Moncton to Halifax and placed thereon two wires from Moncton to Painsec and one wire from Painsec to Halifax. That Company did no commercial business in that territory and in 1881 it leased its lines for 97 years to the Great North West Telegraph Co. of which Mr. Erastus Wiman was President and which was owned by the Western Union. The Western Union and the G. N. W. Telegraph Co. which it owned, thus came into complete control of all telegraph lines connected with British cables and used for railway and commercial purposes in the Maritime Provinces east of Saint John.

The appellant's first step was to ask an assurance that exclusive telegraph privileges would not be granted to any other company on the railroad then under construction on Cape Breton Island and this was given. It then applied for liberty to build on the right of way between Saint John and Halifax, where the Western Union had no exclusive rights and the Montreal Company had, according to the contention of the C. P. R., lost

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any exclusive rights that had been granted to it. The Deputy
 Minister of Justice advised, however, that the exclusive rights
 still subsisted and that the Crown would be liable in damages
 if permission was given the C. P. R. to put its line on the right
 of way. This discussion of legal rights brought about delay
 and the C. P. R. being anxious to make an early connection
 with Halifax, did not wait for a definite answer, but commenced
 construction of its line from Saint John to Halifax via Moncton
 and Truro and from Truro to New Glasgow and completed it
 10 in January 1890. This line was built immediately outside the
 I. C. R. fence. Some poles were in certain localities placed
 inside the fence and others, though outside the fence, were within
 the true boundaries of the right of way and complaints were
 made in correspondence between the respondent and the C. P. R.

Ex. 23. p.254

Ex. 3 p.482
 p.182 l.21
 to p.184 l.22

pp.269-270
 pp.276 to 289

The respondent, to protect its position under the Montreal
 agreement of 1870, took proceedings in the Exchequer Court to
 compel the removal of all poles on the right of way. Mr. Hosmer,
 General Manager of C. P. R. telegraphs, believing that this action
 was prompted by the G. N. W. Telegraph Co., wrote Mr. Dwight,
 20 Vice-President and General Manager of that Company as fol-
 lows:

p.290

Sept. 5th, 1890.

“Dear Mr. Dwight,

Ex. 70 p.289

We have inside the fence along the Intercolonial Rail-
 road between St. John and Halifax and New Glasgow, a few
 poles which it was absolutely necessary to put there, and
 the Government are urging us to remove them, threatening
 us with legal action etc. I understand that the proceed-
 ings they are taking are being instigated by your Company,
 30 and I thought it but right to call your personal attention
 to the matter. The few poles we have on the Railroad
 cannot possibly be of any damage to your Company or the
 Western Union, and if we are forced to move them we
 must consider that it is done simply to annoy us. You
 know that your Company have several hundred miles of
 poles on Railroads owned by this Company (with which
 you have absolutely no contract rights) and that we have
 never sought to annoy you or obstruct you in their main-
 tenance in any way. In fact, we have gone out of our way
 40 to instruct our men to render your repairers every possible
 assistance. I think, under those circumstances, you can
 well afford to treat us in a similarly liberal manner. I write
 you personally rather than officially, as I can understand

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that there may be reasons why you would not want a precedent established in a matter of this kind.

Yours very truly,

H. P. Dwight, Esq.,
 Toronto."

Chas. R. Hosmer.

Mr. Dwight replied on 16th September 1890 in a letter marked "personal" as follows:

"The Great North Western Telegraph Co. of Canada.

Toronto, 16th September, 1890.

Personal.

10

Dear Hosmer:—

Ex. 72 p.291

Yours of the 5th inst. is received, and would have been answered sooner but for my absence from home. It is the first intimation I have had as to any trouble of the kind respecting your poles along the line of the Intercolonial Railway. We have made no complaint whatever as to the location of your poles, and you may consider yourself welcome, so far as we are concerned, to any such accommodation of the kind as you may need anywhere along the route. I think we have both reached a period in our experience²⁰ when we may consider it scarcely worth while to take any action simply for the purpose of annoying each other.

If there is anything you wish me to do respecting the matter to prevent any further annoyance please let me know. I will write to Superintendent Clinch, St. John, in regard to the matter, and see what he knows about it.

Yours truly,

(sgd) H. P. Dwight."

Mr. Van Horne, President of the C. P. R., sent this letter with other correspondence to Sir John A. Macdonald, Prime³⁰ Minister and Acting Minister of Railways and Canals, accompanied by the following letter:

Canadian Pacific Railway Company.

September 22, 1890.

Dear Sir John:—

Ex. 74 p.292

I know you are very busy and I feel it a sin to ask a minute of your time, but I will be particularly obliged if you will read the enclosed correspondence and have the papers returned to me.

I may remark that the telegraph line in question affords the only cable connection that Canada has that is not controlled by Mr. Jay Gould's Western Union and Mr. Erastus Wiman's Great North Western which is owned by the Western Union.

Yours faithfully,
W. C. Van Horne.

Rt. Hon. Sir John A. Macdonald,
Ottawa."

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10 Sir John A. Macdonald thereupon directed that proceed-
ings be stayed and wrote Mr. Van Horne as follows:

p.293 l.10

October 9th, 1890.

"Dear Van Horne:—

I have yours of the 22nd ult. and return you the papers therein enclosed, as you desire. The Government have not the slightest objection, so far as they are concerned, to the C. P. R. planting telegraph poles along the line of the I. C. R. The trouble is that long ago, by an absurd agreement, the Montreal Telegraph Company was given the exclusive right to plant poles and wires along the line of the I. C. R. Such being the case, the Government Officials gave notice to your people not to plant poles but the warning was utterly disregarded. The proceedings were taken lest the Government might be held responsible by the Montreal Telegraph Co. for breach of agreement and consequent damage. Dwight's letter to Hosmer is satisfactory enough, but it is not, I take it, binding on the Company, especially if under the control of Wiman. However, if the C. P. R. will stand between the Government and all harm in the event of proceedings being taken, we will not interfere with your telegraph poles.

Ex. 77 p.293

20

30

Yours faithfully,

W. C. Van Horne, Esq.,
Montreal."

John A. Macdonald.

p.304 l.30

p.315 l.25

40 Mr. Dwight afterwards confirmed this consent in a formal letter not marked "personal" and signed by him as "Vice President and General Manager" and this letter was transmitted to the Deputy Minister of Justice. Later, further proceedings having been threatened because of other poles placed on the right of way, Mr. Dwight's letter was brought to the attention of the Deputy Minister of Railways and Canals and thereupon the proposed proceedings were abandoned. There was corres-

pp.316-317 pondence between the Department of Justice and Department of Railways about obtaining a release from the G. N. W. Telegraph Co. or a bond from the C. P. R. but no request was made to the C. P. R. for either.

p.208 l.12 The matter being thus settled, poles were placed on the right of way from time to time as lines were straightened or rebuilt, until the whole line from Saint John to Halifax and the line from Truro to New Glasgow were transferred to the right of way. This was done openly and without any objection except that on one occasion in 1904 a section foreman stopped the work 10 for a day until Mr. Pottinger, the General Manager, gave him orders to let the work proceed. Mr. Pottinger gave evidence at the trial. He was then 85 years old and his recollection was faulty. He at first suggested that he knew nothing about this transfer except as to a short portion that Mr. Snider (since deceased) desired to transfer because of interference by trees, but his evidence as a whole shows that, at the time the work was being done, he was aware of all that was done. This is confirmed by an interview Mr. A. C. Fraser had with him in 1916, when matters were fresher in his mind. 20

pp.98 to 101
 Ex. 235 p.405
 p.318 l.40 In 1893 the appellant desired to extend its lines from New Glasgow to Sydney. As this was within the territory covered by the Western Union agreement of 1889 and not the Montreal agreement of 1870, the appellant on March 9th, 1893, applied to Mr. Schreiber for leave to build on the right of way. The Western Union rights under the 1889 agreement not being exclusive, no objection could be raised by that Company and Mr. Schreiber answered the application as follows:

Canadian Government Railways

Ottawa

30

10th March 1893.

"C. R. Hosmer, Esq.,

Manager, Telegraphs, C.P. Ry.,
 4 Hospital St., Montreal, P.Q.

Dear Sir:

Ex. 117 p.319

I have yours of the 9th instant in which you state that the C. P. contemplate the construction of a telegraph line between New Glasgow and Sydney, and asking if the line can be built along the Intercolonial Railway right of way between these two points. 40

There will be no difficulty about this but it will be

necessary for you to enter into a written agreement similar to the Western Union Telegraph Company.

Yours truly,
Collingwood Schreiber,
Chief Engineer."

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To this Mr. Hosmer replied on March 13th, 1893.

March 13th 1893.

"Collingwood Schreiber, Esq.,
Deputy Minister Dept. of Railways & Canals,
Ottawa.

10

Dear Sir:

Many thanks for yours of the 10th inst. I would be obliged if you would have prepared the necessary contract, or send me a copy of the one you have with the Western Union Co. and I will have our Counsel draw up a similar one.

Yours truly,
Sgd. C. R. Hosmer,
Manager Telegraphs."

Ex. 118 p.319

20 A contract was accordingly prepared by the Department of Railways, was submitted for approval to Mr. Pottinger and was then forwarded to the appellant for execution and was duly executed and returned to the Department. Later, it was sent with other papers to Mr. Pottinger and was lost, probably through a fire at Moncton. The appellant, after conferring with officials of the I. C. R. as to how the line should be built, proceeded with its erection and completed the work receiving throughout the heartiest co-operation from the I. C. R. The appellant was of course at all times willing and was indeed
30 bound, to provide facilities similar to those stipulated for in the Western Union agreement, or as set out in the lost agreement.

p.322 l.10

p.324 l.10

p.326 l.30

pp.184 to 188

In 1910, the appellant was requested by Mr. E. M. Macdonald, Member of Parliament for Pictou County, to build into Pictou. This necessitated the building of a short line from Westville to Pictou and application was made to be allowed to locate it on the right of way. The Intercolonial was at that time managed by a Board, under Order-in-Council of 20th April 1909. There was considerable correspondence. At first it was proposed that the C. P. R. should be given the privilege, on agreeing to provide the I. C. R. with certain facilities, but later, it was sug-

p.357 l.10

pp.353 to 356

p.369 l.20

p.371 l.2 gested that it would be difficult to arrange a suitable agreement and that a rental of \$1.00 per pole should be charged. But the C. P. R. refused to build on terms of paying any rental, as the possible traffic would not justify it. In the end, Mr. Pottinger wrote Mr. McNicoll, confirming verbal instructions he had given, to go ahead and build the line and that "we will arrange about a suitable agreement later." The line was built but an agreement as to this portion of the line has never been submitted or discussed.

p.378 l.25 In 1913, after the Managing Board had been superseded by 10 Mr. Gutelius as General Manager, discussion arose about charges made by the I. C. R. against the C. P. R. for services in moving boarding cars along the line, transporting workmen etc. etc. Claims and cross claims were made and, in the course of these discussions, Mr. McMillan, the appellant's Superintendent of Telegraphs, who had recently arrived from the west and was unfamiliar with the situation, suggested that any agreement should include provision regarding the location of the poles and thus, for the first time, the question as to the appellant's right to maintain its pole line along the right of way was brought up. 20

p.393 l.18 Much of the correspondence and papers now available could not then be found and there was confusion as to the origin of the appellant's rights.

p.434 l.20 In the circumstances, an agreement was negotiated whereby certain facilities were to be accorded by the C. P. R. to the I. C. R. The agreement was duly signed for the C. P. R. and after having been initialled by Mr. Gutelius, was forwarded by him to the Department of Railways for completion. Shortly afterwards, Mr. Gutelius was succeeded by Mr. Hayes as General Manager, whereupon the agreement was repudiated and a demand was 30 made for a rental of 50 cents, later reduced to 25 cents, per pole per annum. Mr. McMillan's evidence, taken with the documents, gives a full account of these negotiations and shows that he and Mr. Gutelius came to a definite understanding, as set out in an agreement signed by the C. P. R. The appellant has always been ready and willing to carry out this agreement.

pp.199 to 204

In the end, the respondent brought this action, claiming possession, with issues and profits aggregating \$718,408. By amendment made at the trial, the respondent asked, in the alternative, a declaration as to the rights of the appellant in the lands. 40

The action was tried by Mr. Justice Audette, who found that there was leave and license, but that it was not irrevocable.

PART II.

THE JUDGMENT

The appellant submits that the judgment is right in declaring that the appellant's telegraph line on the Intercolonial right of way was erected and has been maintained thereon by leave and license, but is wrong in declaring that the leave and license is not irrevocable. The appellant further submits that, on the facts as found, the action should have been dismissed with costs, the case not being one in which a declaratory judgment should
 10 have been granted.

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PART III.

THE ARGUMENT

The finding as to leave and license is amply supported by the evidence. As to the line between Saint John and Halifax and between Truro and New Glasgow, some portions were erected on the right of way as early as 1889 and have remained there ever since. Objection was taken and proceedings were instituted, fearing a claim for damages by the Montreal Telegraph Co. But when this danger disappeared, through Mr. Dwight's
 20 letter, Sir John A. Macdonald, Premier and Acting Minister of Railways, expressed entire satisfaction that the poles should remain where they were. The letters of Mr. Dwight and Sir John A. Macdonald dealt with more than the existing situation. They gave permission to erect poles anywhere along the line. Acting on these letters, the Appellant substantially altered its position. It abandoned its location outside the right of way from Saint John to Halifax and from Truro to New Glasgow and, in 1904 to 1907 inclusive and in 1910 and following years, as it
 30 became necessary or desirable to renew or straighten the line, it transferred the whole of its telegraph line between those points to the right of way. This was done with full knowledge and consent of the respondent and of the officials of the I. C. R.

As to the line from New Glasgow to Sydney, built in 1893, a formal contract was prepared by the Department of Railways and was submitted to and executed by the C. P. R. and was returned to the Department. It is clear that the C. P. R. assumed real obligations as to this line, which the respondent was entitled to enforce and which the C. P. R. was at all times willing to carry out. In the absence of that document, the obligations

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of the C. P. R. may be regarded as similar to those of the Western Union, under the agreement of 1889, which contained the following express provision:

p.275 l.7

“25. When this agreement expires either by lapse of time or pursuant to notice terminating this contract as in the preceding clause stated, the Company shall not be required to remove its poles and wires erected under this agreement from the railway property, but all other rights herein granted shall thereupon cease and determine.”

This clause makes clear, what would otherwise be assumed, that the license to erect structures of such permanency as telegraph poles and wires would be intended to be perpetual. ¹⁰

As to the line from Westville to Pictou, built in 1910, the request to build it came from Pictou, and the appellant definitely refused to pay anything for the privilege, as the traffic would not warrant it. Nevertheless, the work was allowed to proceed. It is reasonable to assume that, had a rental been demanded for poles erected on other portions of the right of way, the same result would have followed. As to all sections of the line, the Company incurred large expense in building along the railway ²⁰ and into commercial centres and undertook substantial risks and obligations that it might never have assumed, has it not been permitted to build on the right of way.

It is clear that Sir John A. Macdonald considered it to be, as in fact it was, in the public interest that a telegraph line should be built by a Canadian company along the Intercolonial right of way, making cable connections at Canso and Halifax. The I. C. R. had no telegraph system of its own and the presence of such a line gave it an opportunity to secure services, either of a permanent or a temporary character, as might be required. It ³⁰ also enabled the C. P. R. telegraphs to reach the commercial centres of the Maritime Provinces east of Saint John, thereby promoting business beneficial to the public and to the Intercolonial Railway. Sir Sandford Fleming and others had been agitating for years for the “all-red route” or the “all British route,” as it was called, and such a route was finally put in service. The telegraph lines of the appellant were properly placed to carry out this scheme, because while one of its telegraph lines into Saint John followed the “short line” through Maine, another ran to the north, keeping entirely within Canada. ⁴⁰

Dominion legislation in force at the time recognized the importance of telegraph lines along railway rights of way. The Government Railways Act R. S. C. 1886 cap. 38 contained two sections enabling the Governor in Council, in case of need, to

obtain telegraph facilities. Section 46 authorized the Governor in Council, at any time, to cause a line of electric telegraph to be constructed along the line of the railway, for the use of the Government of Canada, and for that purpose to enter upon and occupy such lands as are necessary for the purpose. Section 47 required companies to place any electric telegraph and the apparatus and operators which they had, at the exclusive use of the Government of Canada, when required so to do by the Governor in Council, or any person authorized by him. Similar provisions are now in Sections 59 and 60 of the Government Railways Act (R. S. C. 1927, Chapter 173). And in 1888, sections were added to the general Railway Act of the Dominion as Sections 265 and 266, the former authorizing the Governor in Council to take, subject to compensation, the exclusive use of the telegraph lines of any railway company and the latter authorizing the Governor in Council to build a line on the right of way of any railway company without provision for compensation. It is not unreasonable to assume that they were added, because the Government discovered when the C. P. R. wanted to build, that the telegraph services in Eastern Canada were controlled by an American Company, which might claim to have exclusive rights along a right of way belonging to the Crown. These provisions are now contained in Sections 377 and 378 of the Railway Act, R.S.C. 1927, cap. 170.

The appellant submits that its telegraph line, throughout its entire length, was built on the right of way, in circumstances that prevent the respondent from terminating the privileges at will. No question has arisen as to the location of particular poles. The appellant has at all times rearranged its poles and wires so as to meet the wishes of I. C. R. officials. In this respect, there has been at all times perfect harmony. The present proceedings are taken to compel the payment of rental as a condition of permitting the poles to remain along the right of way. The appellant submits that this attempt must fail.

It is a principle of law that, unless the contrary is shown, a contract is presumed to be perpetual.

Llanely v. L. & N. Ry. Co. L.R. 7 H. L. 550.

Crediton Gas Co. v. Crediton Urban Council, (1928) Ch. 174.

Southern Nigeria v. Holt (1915) A.C. 599.

Pwllback Colliery Co. v. Woodman, (1915) A.C. 634.

The erection of a telegraph line along a right of way is not a temporary matter and there is nothing in the circumstances

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surrounding the construction of the appellant's line to limit the time it shall remain. As to the lines between New Glasgow and Sydney and between Westville and Pictou, permanency was expressly provided for, because Clause 25 of the Western Union contract, above quoted, applies. A license, coupled with an interest, is not revocable and an equitable interest gives permanency as well as a legal interest. The Crown, being the plaintiff and the licensor, the defendant is entitled to rely on any equitable defence—

Winter v. Brockwell (1807) 8 East. 308. 10

Liggins v. Inge (1831) 7 Bing. 682.

Wood v. Leadbitter (1845) 13 M. & W. 838.

Plimmer v. Mayor of Wellington, 9 A.C. 699.

Hurst v. Picture Theatres Ltd. (1915) 1 K.B. 1.

A.G. of Southern Nigeria v. Holt (1915) A.C. 599.

The Minister of Railways and Canals is given very broad powers under the Railways and Canals Act, R.S.C. 1927, Cap. 171, Sec. 7 and under the Government Railways Act, R.S.C. 1927, Cap. 173, Sec. 5. His powers, so far as material, were the same under R.S.C. 1886, Cap. 37, Sec. 6 and R.S.C. 1886, Cap. 38, Sec. 5. By Sec. 7 of Chapter 171 it is provided that "The Minister shall have the management, charge and direction of all Government railways and canals and of all works and property appertaining or incident to such railways and canals." The Board of Management, from 1909 to 1913 and the General Manager at other times, had all "the powers usually vested in the executive of Railway Corporations." When the Crown undertakes to operate a railway, it must be deemed to carry on such operation subject to all incidental obligations.

p.355 l.9
 p.374 l.21

The respondent and the officers of the I. C. R. have stood by and approved the expenditure of large sums of money by the appellant, in the construction of these lines and was aware that the plaintiff, in transferring from outside to inside the right of way, was abandoning valuable rights of way outside the railway lines, that it had acquired from farmers and others along the route. The appellant submits that the Crown is estopped from now asking that its telegraph lines be removed.

Rochdale Canal Co. v. King, 16 Beaven, 630.

Ramsden v. Dyson, L.R. 1, H.L. 129.

Attorney General v. Collom (1916) 2 K.B. 193. 40

Montreal City v. Montreal Harbour Commissioners (1926)
 A.C. 299.

Queen Victoria Niagara Falls Park Commissioners v. International Railway Co. 63 O.L.R. 49.

The appellant submits that the case is one in which a lost grant ought, if necessary, to be presumed. This is particularly a case where the presumption ought to be made, as it is admitted that relevant papers have been mislaid or lost.

Ellis v. Mayor of Bridgnorth (1863) 15 C.B.N.S. 52.

Mayor of Penryn v. Best (1878) 3 Ex. D.292 at 299 and 309.

Bass v. Gregory (1890) 25 Q.B.D. 481 at 484.

10 Phillips v. Halliday (1891) A.C. 228 at 231 and 238.

Clippens Oil Co. v. Edinburgh (1904) A.C. 64 at 69 and 71.

Hulbert v. Dale (1909) 2 Ch. 570.

General Estates Co. v. Beaver (1914) 3 K.B. 918 at 925.

Pwllback Colliery v. Woodman (1915) A.C. 634 at 646.

Tweedie v. The King (1915) 52 S.C.R. 197 at 219.

Abell v. County of York (1920) 61 S.C.R. 345.

Even if the license was revocable, the appellant submits it was never in fact revoked. The respondent's action should, therefore, have been dismissed with costs, the case not being one
20 in which the Court ought, at the instance of the respondent, to make a declaration as to the appellant's rights. The action was originally brought to exclude the appellant and to recover \$719,408. issues and profits. By amendment at the trial, an alternative claim for \$100,000. damages was set up. In respect of all these claims the respondent failed and the action should, it is submitted, have been dismissed with costs.

The appellant relies on the judgment of the Honourable Mr. Justice Audette and the cases cited by him and submits that
30 the appeal should be allowed, the cross-appeal dismissed and the action dismissed, all with costs.

W. N. TILLEY,

W. L. SCOTT,

E. P. FLINTOFT,

Of Counsel for the Appellant.

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Part I.

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Statement of Facts.

This is an appeal and cross appeal from the judgment of the Honourable Mr. Justice Audette.

The action was commenced by Information of Intrusion dated September 15th, 1926, by which it was sought by the Respondent to compel the Appellant to remove a line of telegraph poles and wires, erected by
10 the Appellant upon lands of the Respondent, being the right of way of a section of the Canadian Government Railways in the Provinces of New Brunswick and Nova Scotia, and for damages.

The case was tried in January, 1929.

The Appellant claimed an irrevocable license of occupation simply, and also by estoppel and, in the alternative, a revocable license that had not been revoked.

By an amendment to the Information made in the course of the trial the Respondent asked for a declaration of the rights, if any, of the Appellant in the railway right of way in respect of the said telegraph pole line.

20 The Appellant at the trial amended its defence by setting up laches, a right of way of lost grant and allegations in the nature of contract.

The pleadings as amended are set out on pages 1 to 5 of the Case.

The learned Judge held that the poles and wires of the Appellant were on the right of way by the license of the Respondent but that such license was not irrevocable, and inferentially that the license had not been revoked before the commencement of the action. The question of damages was deferred. The judgment is set out on page 485 and the reasons for judgment on pages 486 to 495.

30 The Appellant contends that the Judge was in error in holding that the license was not irrevocable (p. 496) and the Respondent cross appeals from that part of the judgment in which it was held that there was a license, and that such license had not been revoked (p. 497).

The portion of the railway right of way in question extends from Saint John to Moncton in New Brunswick, a distance of some 90 miles, from Moncton to Halifax in the Province of Nova Scotia 190 miles, from Truro to New Glasgow in Nova Scotia, 43 miles, from New Glasgow to Sydney, Nova Scotia, 163 miles and from Westville (marked "Stellarton" on the plan) a point near New Glasgow to Pictou, a distance of 10 miles. The telegraph line is marked in red on the blue print. (Ex. No. 4, p. 484.)

40 The telegraph line between Saint John and Halifax and Truro and New Glasgow (which it will be convenient to call the "main telegraph line"), was originally constructed in 1888, 1889 and 1890; that from New Glasgow to Sydney (which it will be convenient to call the "branch telegraph line") in 1893; and that from Westville to Pictou in 1911. The branch telegraph line and that from Westville to Pictou were originally

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constructed upon the railway right of way. The main telegraph line was originally built outside of the railway right of way, with the exception of a small number of odd poles, but as to practically the entire length, was in close proximity to the right of way boundary. (Ex. No. 247, pages 438, 439.)

The ordinary life of a telegraph line is from 15 to 20 years and between the years 1905 and 1917 a general rebuilding of the main telegraph line was carried out. In the course of the work this part of the line (with the exception of about 3 miles between Coldbrook and Saint John and 6 miles between Fairview Junction and Halifax and some other isolated sections 10 comprising, in all, some 765 poles), (Ex. 234, pages 401-403), was transferred from its original location outside of the railway right of way to the lands of the Respondent; with the result that at the commencement of this action substantially the whole of the main telegraph line between Saint John and Halifax, Truro and Sydney and Westville and Pictou, comprising 17,504 poles, had been placed on the railway right of way. (Ex. 259, p. 454; 285, p. 477, and 279, p. 472.)

The considerations which affect the branch telegraph line and the line between Westville and Pictou and the circumstances in connection therewith, in so far as they differ from those relating to the main telegraph line, 20 will be dealt with separately in the argument.

The Main Telegraph Line.

In 1888, before the Appellant had a telegraph system east of Saint John, it applied to the Respondent for permission to build its telegraph line upon the Respondent's railway right of way between Saint John and Halifax. (Ex. 15, p. 249, lines 1-30; Ex. 29, page 258, lines 37-43; p. 259, lines 1-24; Ex. 30, p. 259, lines 28-45.)

The Department of Justice at Ottawa advised that permission could not be given by the Respondent without a breach of an agreement which had been made by the Crown with the Montreal Telegraph Company in 30 1870, whereby the last named company had exclusive rights in respect to telegraph lines in that territory. (Ex. 51, p. 279, lines 20-45; p. 280, lines 1-11.)

The Respondent refused the application. (Ex. 53, p. 280, lines 37-43; p. 281, lines 1-11; Ex. 54, p. 281, lines 15-40; Ex. 55, p. 283, lines 1-20; Ex. 61, p. 285, lines 18-40.)

The Appellant thereupon built its main telegraph line outside the railway right of way. It was completed early in 1890.

During the construction in several instances where it seemed convenient in order to avoid difficulties outside of the railway right of way, 40 the Appellant placed a few poles inside of the railway fences on the right of way. Objection was taken to this by some of the railway employees and, finally, an Information of Intrusion was issued for the purpose of compelling the Appellant to remove the few poles so placed. (Ex. 71, p. 290, lines 1-40; p. 291, lines 1-6.)

The action was not proceeded with.

Considerable correspondence took place with reference to these "few poles" and this will be dealt with in the argument.

About a year afterwards another action was brought by Information of Intrusion in respect to a small number of additional poles which had been placed upon the right of way in re-alignment near New Glasgow. (Ex. 86, p. 300, lines 20-40.)

The second action was dropped for the reasons set out in the argument.

Nothing further was done in the matter for some 14 years, and in 1904 the Appellant, in repairing its system and for the purpose of avoiding a strip of woods, placed a few more poles upon the right of way. Objection was taken by a section man on the railway but Mr. Pottinger, who was
10 then general manager of Government Railways, permitted the poles to be so placed (p. 97, lines 13-18). On the trial he testified that he gave no permission at any time to rebuild the line, as a line, upon the right of way or any portion of it. The only question which ever arose during the time of his management was with respect to the "few poles" which had been so placed (p. 99, lines 19-23). He said that so long as he was actively connected with the railway which was up to 1913, he had no knowledge that the Appellant's telegraph line was being built or had been built upon the right of way (p. 98, lines 18-22). He does not remember seeing the poles on the right of way (p. 101, lines 4, 5).

20 In the years 1905, 1906 and 1907 the Appellant moved 59 miles of its line of telegraph poles between Truro and Halifax from the outside to the inside of the right of way. (Ex. 3, p. 482.) It had then become necessary to rebuild. No communication was had between the Appellant and Respondent in reference to this rebuilding. Mr. Pottinger says that this was done without his knowledge. The Appellant relies upon an alleged permission arising out of correspondence in and about the year 1890 which is referred to in the argument.

There was no further encroachment until 1910 when the Appellant, in rebuilding portions of its line between Moncton and Truro, moved upon
30 the right of way for a distance of 30 miles. In 1911 the Appellant rebuilt 100 miles on the right of way, in 1912, 43 miles, in 1914, 35 miles and in 1917, 46 miles. (Ex. 3, p. 482.) The evidence does not disclose that any permission was asked respecting these encroachments nor does it appear that any official of the railway company had knowledge of them.

It was apparently not until 1915, when Mr. Gutelius was general manager of Government Railways, that the officials of those railways discovered that the Appellant had part of its line rebuilt upon the right of way. From that time up to a short time before this action was commenced negotiations were carried on between Mr. McMillan, general manager
40 of the Appellant's telegraph system, and Mr. Gutelius and Mr. Hayes of the Government Railways.

No agreement was completed. Mr. Gutelius recommended a draft agreement (Ex. 245A, pages 431-433) to the Government, but the Minister did not approve. The Appellant was so informed promptly and the Appellant never claimed until the trial, if even then, that there was an agreement made. Mr. Hayes, who succeeded Mr. Gutelius as general manager, prepared a new draft agreement (Ex. 257, pages 447-453) but it was not acceptable to the Appellant.

Finally the Deputy Minister of Justice notified the Appellant to move

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all its telegraph poles and wires from the Respondent's property, and, the Appellant not having agreed to do so, this action was brought. (Ex. 286, p. 478. See also Ex. 287, p. 479, and Ex. 288, p. 479.)

No compensation of any kind or description has at any time been paid or given by the Appellant or received by the Respondent in respect of the uses so made of the right of way by the Appellant.

Part II.

Errors Appealed From.

1. By way of cross appeal it is submitted on behalf of the Respondent :

(1) That the learned Judge was in error in holding that the Appellant was on the right of way under a license.

(2) That the learned Judge was in error in not finding that the Appellant was a trespasser.

(3) That the learned Judge was in error in not holding that, if there was a license to the Appellant, such license had been revoked by the Respondent before the commencement of this action.

2. In answer to the appeal of the Appellant it is submitted on behalf of the Respondent that the learned Judge was correct in holding that if there was a license such license is not irrevocable.

Part III.

20

Argument.

The first portion of the argument applies to the right of way which we refer to as the " main telegraph line " between Saint John and Halifax and between Truro and New Glasgow.

The Main Telegraph Line.

1. The Judge was in error in holding that the Appellant was on the land under a license.

He bases this finding upon certain facts which he details in his reasons for judgment.

He says (page 491, lines 26-28) :—

30

" Having so set forth out of the mass of the evidence such of the important facts that were thought necessary I shall now approach the consideration of the controversy on its merits."

The facts which the Judge so sets forth are as follows :—

(A) He finds that the agreement with the Montreal Telegraph Company gave that Company exclusive rights with respect to telegraph poles and lines over the right of way between Saint John and Halifax and between Truro and New Glasgow, or that portion we refer to as the " main telegraph line " (p. 487, lines 23-27).

He then says that the Appellant asked that no exclusive right be given to the Western Union to erect a telegraph line *between Canso and Sydney* and that Mr. Schreiber, who was then chief engineer of Government railways, advised that the railway were quite prepared to negotiate an arrangement (p. 488, lines 1-9).

This line between *Canso and Sydney*, being east of New Glasgow does not enter into the question with which we are now dealing. It was not a part of the "main telegraph line" and was not under the Montreal agreement.

10 (B) The learned Judge states that between Saint John and Halifax the pole line of the defendant was built outside the right of way, after the defendant had tried to get leave to build inside and had been met by the exclusive right of the Montreal Telegraph Company, which was set up by the Justice Department and that no objection was made as far as the Government was concerned (page 488, lines 27-32).

The only action taken by the Government was to refuse the application. That the Government did refuse it is admitted. Such refusal constitutes the reason why the line was first built outside the right of way. The Judge, no doubt, bases the statement that no objection was made so far as the Government was concerned, upon a letter, written after the line was built outside the right of way by Sir John Macdonald, then Premier and Minister of Railways, which letter will be referred to later in the argument.

(c) At page 488 :—

30 " This witness (Richardson) adds that it was all built outside " the right of way excepting in a few cases. Thinks only in one case " probably less than half a mile, just a small detour. He consulted " Mr. Archibald on this question of boundary, who granted him leave. " Here the I. C. R. supplied an experienced man, familiar with the " running of trains, to control and handle the hand cars used in building " the line " (p. 488, lines 19-26).

There were 54 poles inside the railway fences and 218 poles outside the fences but within the right of way. (Ex. 66, p. 286, lines 25-43.)

(D) The Judge then refers to the New Glasgow section (page 488, lines 39-44 ; p. 489, lines 1-26).

In basing his judgment upon the foregoing it is submitted, with all due respect, that the learned Judge has failed to distinguish between that part of the line over which the Respondent refused to permit the Appellant to construct its telegraph line, that is to say, the " main telegraph line " 40 and that part, east of New Glasgow, to which the Montreal agreement did not apply. In other words, he is basing his decision in respect to the " main telegraph line " upon facts which do not apply to the " main telegraph line."

If the Judge had been making a decision with reference to the New Glasgow branch only, the references he makes to the evidence would be applicable, but they have no effect in the consideration of the questions affecting the " main telegraph line."

(E) He then refers to the branch between Westville and Pictou (p. 489, lines 27-38.) There are questions relating to this branch also which do not

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apply to the "main telegraph line" and, therefore, should have no effect whatever upon the decision in respect to the "main telegraph line." The Montreal agreement did not apply to the Westville branch nor to the New Glasgow branch.

(F) The Judge then immediately passes from a consideration of these particular branches of the road, without having said anything which pertained to the "main telegraph line" (except that it was built outside the right of way in 1890), to what he calls the Mersereau incident in 1904 (page 489, lines 39-43, page 490, lines 1, 2). Of this the witness Mersereau gave an account (p. 208, lines 12-40).

In the general repair of the line, as distinguished from rebuilding (p. 210, lines 26-33), it was considered desirable in order to escape, chiefly, the inconvenience of detours around woods, to transfer sections to the extent of 7 or 8 miles to the right of way (p. 209, lines 7-20). Before this was done, Snyder, the superintendent of the Appellant at Saint John, had gone to Moncton—the inference being—to see Pottinger, then general manager of the Government Railways. In carrying out the work, Mersereau met opposition from section forces of the Government Railways. He thereupon went to Moncton and saw Pottinger who evidently told him that the interference would be stopped (page 209, lines 33-40). Snyder knew that no permission would be given by the Department of Railways. (Ex. 83, p. 299, lines 1-15; Ex. 99, p. 307, lines 1-18.) The work was subsequently proceeded with by Mersereau, without hindrance. This undoubtedly was the removal mentioned by Pottinger as having been permitted by him to enable the Appellant to avoid the difficulties caused by the presence of a few miles of woodland (p. 97, lines 13-23).

Mersereau was not rebuilding the line in 1904. The line had not then been rebuilt in any particular. He was repairing the line. Mr. Pottinger distinctly points out (p. 98, lines 18-22) that no permission was ever given by him for any building of the line upon the right of way, that is to say, the "main telegraph line." He explains that he always had clearly in his mind the provisions of the Montreal agreement and knew that the Government could not grant permission to build the line upon the right of way without a breach of the agreement. (See pages 98 to 105 of Mr. Pottinger's evidence.)

This is borne out by Mr. Pottinger's letter to Mr. Brady, dated February 16th, 1911, in connection with an application with respect to the branch between Westville and Pictou. (Ex. 179, page 360.)

Mr. Pottinger further said that he had no knowledge during his term of office which extended up to 1913, of any building of the line, as a line, anywhere upon the right of way, except in the New Glasgow and Westville sections.

After mentioning the Mersereau incident, which as stated, had nothing whatever to do with the rebuilding, and after stating that from that time repairing and maintenance was converted into rebuilding, the learned Judge does not point out any incident that took place until he refers to what Mr. Gutelius did in 1915. He does not mention any circumstance that would indicate a knowledge on the part of any official of the Respondent's railway system of any rebuilding of the Appellant's main line before

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the time of the Gutelius incident in 1915, and there is no evidence indicating any such knowledge.

(g) He then refers to what happened in 1890. He mentions the action of intrusion that was instituted, a note from Sir John Macdonald to Sir John Thompson and a letter from Sir John Macdonald to Mr. VanHorne which he cites as indicating "the Crown's policy in respect to this matter" (page 490, lines 11-45).

It is submitted that the learned Judge entirely misapprehends the effect of the action of intrusion so instituted and the correspondence in 10 connection therewith.

The information of intrusion and correspondence related only to a "few poles" that had been placed on the right of way in the original construction for the purpose of avoiding some local difficulty and not to a general permission to construct the line, as a line, on the right of way. It was not in the contemplation of any of the parties that the Appellant desired to rebuild at that time. No rebuilding would be necessary for 15 years at least.

Correspondence and negotiations between the Appellant and the Respondent, and the Appellant and the Great Northwestern Telegraph 20 Company, as well as departmental, dealing with these trespasses both preceded and followed the institution of proceedings. On the part of the Appellant it was sought to obtain permission for the odd poles to remain where they were then placed. Any acquiescence or consent, therefore, either by the Respondent or the Telegraph Company could not be deemed to go beyond the existing intrusions. The Information was allowed to lapse and the poles in question were not disturbed. The following correspondence sets forth the facts. (Ex. No. 42, p. 270, lines 1-15; Ex. 43, p. 268, lines 25-43; p. 269, lines 1-12; Ex. 44, p. 270, lines 20-44; Ex. 45, p. 276, lines 1-20; Ex. 46, p. 276, lines 20-40; Ex. 47, p. 277, lines 1-16; 30 Ex. 54, p. 281, lines 10-40; Ex. 55, p. 283, lines 1-20; Ex. 56, p. 283, lines 20-34; Ex. 70, p. 289, lines 18-40; Ex. 72, p. 291, lines 8-28; Ex. 73, pp. 291, 292; Ex. 74, p. 292, lines 14-40; Ex. 76, p. 293, lines 20-32; Ex. 77, pp. 293, 294.)

The chief counsel of the Appellant wrote the Deputy Minister of Justice :—

"If this is done it will of course be a license by that Company "that *our poles should stand where they are now, which will be all that is required.*" (Ex. 91, p. 303, lines 16-18.)

(See also Ex. 92, p. 303, lines 30-40; Ex. 94, p. 304, lines 20-40; Ex. 40 95, p. 305, lines 1-25.)

And in a further letter :—

"That our company might *retain the telegraph poles, which are the subject matter of this action*, within the right-of-way of the Inter-colonial Railway." (Ex. 101, p. 308, lines 33-35.)

The waiver on the part of the Great Northwestern Telegraph Company assuming it could bind the Montreal Company is simply the waiver of objection. There was no right in the Montreal Company to issue licenses to others to come upon or occupy the lands of the Respondent.

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But in any event these letters and the Informations were in reference solely to the *isolated encroachments that were then the subject of protest*. The contention that any such leave, or acquiescence was intended to float down the next three decades as a continuing license to the Appellant to avail itself of the use of Crown property, without specific arrangement for compensation, is too fanciful for the rough facts of such transactions. What the actors were dealing with was a past transaction, not a future possibility. There was no suggestion then of transplanting the existing line. What was in mind was the composition of a present embarrassment. If there had been any such permission there would have been no occasion ¹⁰ to seek it again of Mr. Pottinger, as it is claimed was done. (See also Ex. 225, p. 393, lines 17-27.)

This letter was written in 1916, and it is intimated that in rebuilding the Sussex-Moncton sector the Appellant would like to have permission to transfer to the right of way.

It is admitted that there was a distinct refusal by the Respondent to permit the Appellant to construct its line of telegraph poles on the main line. This was the situation on the 21st of June, 1889, when Mr. Schreiber, the chief engineer of Government Railways, wrote to Mr. Hosmer, the general manager of the Appellant's telegraph system:—

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“ Respecting the construction of your line of telegraph between Saint John and Halifax and Truro and New Glasgow outside and near to the I. C. R. fence I desire to say we will grant you all reasonable facilities both as regards a distributing of poles and other materials, the movement of your boarding and supply cars and the running of hand cars.” (Ex. 33, p. 261, lines 33-40 ; p. 262, lines 1-9.)

In the building of a telegraph line outside of and near to the railway right of way it was necessary to transport the materials over the railway in the same way as if the line were built on the right of way.

This was followed by a letter from Mr. Richardson, the superintendent ³⁰ of the Appellant's construction department to Mr. Hosmer, August 13, 1889, in which Mr. Richardson said:—

“ As there is no injunction could we not put our poles on the railway side of the fence on the quiet, through some of these back-woods places, without any serious consequences? In many places they would not be noticed.” (Ex. 35, p. 263, lines 7-11.)

At this time the work of building the line outside of the right of way was proceeding and this is the first suggestion as to the placing of a “ few poles ” upon the right of way. Mr. Hosmer wrote to Mr. Bradley, the secretary of the Department of Railways and Canals at Ottawa on ⁴⁰ September 18, 1889:—

“ You are, I presume, aware that owing to the exclusive contracts on the Intercolonial railway our company has been delayed in the construction of its lines, and we are now obliged to build them outside of the railway right of way.” (Ex. 38, p. 264, lines 11-30.)

The next reference to the “ few poles ” on the right of way is in the letter from Mr. Hosmer to Mr. Richardson dated October 14th, 1889, in which he wrote:—

“I might say privately that I brought the matter to Mr. Van-Horne’s attention and have asked him to use his influence at Ottawa to try and get the Government not to disturb any poles that are now erected.” (Ex. 42, p. 270, lines 7-13.)

The object was to have the Government officials withdraw the objection as to the poles “that are now erected” in the “backwoods places” which Mr. Richardson had placed with the object of facilitating his work, and those are the only poles which were in the contemplation of any of the parties during the whole of the correspondence, including that of Sir
10 John Macdonald. There was no necessity for any person to consider anything more at that time. The pole line had just been completed outside the right of way and its life ordinarily would be 15 to 20 years. Mr. Hosmer wished to avoid the expense of moving the “few poles.”

On the 24th of October, 1889, Mr. Hosmer wrote to Mr. Richardson :—

“In my letter to Mr. Schreiber I stated that we intended placing “our poles immediately outside the fences.” (Ex. 45, p. 276, lines 13-15.)

On January 7th, 1890, Mr. Bradley notified Mr. Drinkwater, secretary of the Appellant company, that the poles which had been placed on the right of way must be removed. (Ex. 53, p. 280, lines 36-43 ; p. 281, lines 1-11.)

20 On the 15th January, 1890, Mr. Hosmer asked Mr. Richardson to make a report showing the number of poles the Appellant had on the Government right of way (Ex. 56, p. 283, lines 20-30) and on the 1st of March, 1890, Mr. Richardson made his report to Mr. Hosmer (Ex. 66, p. 286, lines 28-43) showing that there were 54 poles on the main line inside the railway fences and 218 poles on the right of way outside the fences.

Mr. Richardson, on the trial, said that when this report was made the line was completed between Saint John and Halifax and between Truro and New Glasgow. That is to say, the “main telegraph line” was completed. He testified that it was a correct statement of the number of poles that were
30 on the railway property as near as he could count them, and that he counted them himself (page 191, lines 30-33).

Then there is a letter from Mr. Hosmer to Mr. Dwight, 5th September, 1890 (Ex. 70, page 289, lines 17-40). Mr. Dwight was president of the Great North Western Telegraph Company which, under agreement with the Montreal Telegraph Company, was operating the telegraph system of the latter (Ex. 289, pp. 237-242). Mr. Hosmer, it will be noted, refers to the poles “inside the fence” along the Intercolonial railroad (p. 289, line 19). He must mean the 54 poles which Mr. Richardson’s report states were inside the railway fence. Mr. Hosmer continued (p. 289, lines 20-22) :—

40 “A few poles which it was absolutely necessary to put there, “and the Government are urging us to remove them, threatening “us with legal action, etc.”

The whole controversy was over these “few poles” which Mr. Richardson places at 54 in number and which were inside the railway fence. This is what Sir John Macdonald referred to as “an unimportant matter.” (Ex. 75, p. 293, lines 1-10.) It was an unimportant matter, but the Appellant now seeks to spell out of it a general permission to build the whole line upon the right of way fifteen to twenty-five years afterwards.

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(Contd.)

RECORD.

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In Mr. Hosmer's letter to Mr. Dwight he referred to a "few poles which it was absolutely necessary to put there" and it is from that standpoint that we must construe Mr. Dwight's reply. Mr. Dwight said:—

"We have made no complaint whatever as to the location of your poles and you may consider yourself welcome so far as we are concerned, to any such accommodation of the kind as you may need anywhere along the route." (Ex. 72, p. 291, lines 16-19.)

"Accommodation of the kind" means the placing of poles which it was absolutely necessary to put on the right of way. This is the only construction that can be taken of Mr. Dwight's so called permission, even if he had power to give permission on behalf of the Montreal Telegraph Company, which we deny. That company was in existence. He did not pretend to speak for it. He did not even pretend to speak for the operating company. He simply wrote a personal letter.

Sir John Macdonald, then Premier and Minister of Railways, had the matter referred to him by Mr. VanHorne and he wrote to Sir John Thompson, the Minister of Justice, under date of September 24th:—

"Please stay proceedings—it won't do to have any further differences with the C. P. R. just now. This is an unimportant matter." (Ex. 75, p. 293, lines 1-10.)

and there is a memo by Sir John Thompson:—

"Please send me a precis of the case."

and a memorandum attached:—

"Telegraph suit vs. C. P. R. let it go on" (p. 293, lines 10-20).

Then came the letter to which the learned trial Judge attaches great importance. It is from Sir John Macdonald to Mr. VanHorne, dated October 9th, 1890. (Ex. 77, p. 293, lines 37-44; p. 294, lines 1-14.)

The Judge fails, we submit with all due respect, to appreciate the situation that existed at the time. The telegraph line was built and would not have to be rebuilt for 15 to 20 years. There was no question of anything except the "few poles." That is all that Sir John Macdonald was dealing with. He had a file of papers, presumably Richardson's report as to the number of poles. He saw that it was "an unimportant matter." It was not worth while bothering about with the C. P. R. He was not attempting to confer upon the C. P. R. for all time to come a license, without any consideration whatever, to build its whole line upon the right of way. The Appellant was not asking for that. The Appellant was only asking that the suit be discontinued and that the "few poles" that were there be allowed to remain. Mr. Justice Audette says that this states the policy of the Government. With all due respect we say that he is wrong in this implication. It does not state the policy of the Government. It simply states that there was a lawsuit pending against the Canadian Pacific Railway in respect to a "few poles," 54 in number, that were placed inside the fences upon the right of way where it was absolutely necessary to place them in view, presumably, of natural obstacles, and since Mr. Dwight was not objecting to those poles remaining there, the Minister did not object, provided the Appellant would give security indemnifying the Government against any

claims. The Minister, however, doubted Mr. Dwight's authority. It afterwards appears that no such security or indemnity was given. (Ex. 130, p. 327, lines 26-40.)

The construction which was placed upon the action of Sir John Macdonald by the Appellant company's officials and by the officials of the Government Railways is indicated by a letter from Mr. Schreiber to Mr. Pottinger dated 31st July, 1891 :—

10 “ I am in receipt of your letter of the 27th instant concerning the
 “ request of Mr. Snyder of the Canadian Pacific Telegraph Co. to be
 “ allowed to straighten that company's line by planting a few poles
 “ on the I. C. R. property. In reply I may refer you to my letter of
 “ 8th January, 1890, covering a copy of one from the Department on
 “ this subject, upon which you have not yet reported. It is clear we
 “ cannot permit this to be done.” (Ex. 82, p. 298, lines 30-40.)

And by a letter from Mr. Pottinger to Mr. Snyder on August 5, 1891, to the same effect and stating that :—

“ We cannot allow you to do that as it would interfere with the
 “ Montreal agreement.” (Ex. 83, p. 299, lines 12-13.)

Mr. Hosmer again refers to the “ few poles ” in his letter to Mr. Dwight
 20 of the 10th of December, 1891. (Ex. 92, p. 303, line 34.)

Nearly a year afterwards, July 4, 1892, there was a further indication of the view taken of the situation by the Appellant. It is a letter from James Kent, superintendent of the Appellant's telegraphs, to Mr. Hosmer :—

“ Will you please get permission from the Government to allow
 “ us to put up about one mile of poles on the Intercolonial Railway's
 “ right of way between Stellarton and New Glasgow. Our present
 “ route is along the highway and liable to frequent interruptions.”
 (Ex. 97, p. 306, lines 1-14.)

In a letter from Mr. Pottinger to Mr. Snyder dated 11th August, 1892,
 30 this request was refused. (Ex. 99, p. 307, lines 1-20.)

The Appellant, nevertheless, put these poles on the right of way. Mr. Snyder wrote to Mr. Kent under date of August 12, 1892 :—

“ The line is there all the same, and we have a good job but I
 “ would not like to swear whose property we are on.” (Ex. 99A, p. 307,
 lines 20-30.)

This is the attitude assumed by the Appellant throughout.

The Appellant was requested to remove these poles and on its failure to do so a second Information was issued by the Respondent. (See Ex. 103, pp. 309, 310; Ex. 105, p. 311, lines 1-20; Ex. 106, p. 311, lines 20-40;
 40 Ex. 107, p. 313, lines 20-40; Ex. 108, p. 314; Ex. 111, p. 316, lines 1-20;
 Ex. 112, p. 316, lines 20-40; Ex. 113, p. 317, lines 1-20; Ex. 115, p. 318,
 lines 1-30; Ex. 123, p. 322, lines 20-40; Ex. 130, pp. 327, 328.)

In 1900 the officials of the Appellant company were aware that the Appellant had no authority to place the telegraph line as a line upon the Respondent's right of way. Mr. Snyder, the superintendent at Saint John, wrote to James Kent, the general manager of the Appellant's telegraph system, on the 25th of December, 1900 :—

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 of Canada.*

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—
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“ It might be a good time to try and get some sort of a contract
 “ ourselves at least one that would give us the use of their right of
 “ way even if we could get nothing else.” (Ex. 148, p. 337, lines
 37-40.)

And again on February 19th, 1902 :—

“ I think that this would be a good time to take up the question
 “ of a similar right of way agreement covering the road east of St. John.”
 (Ex. 150, p. 338, lines 29-32.)

That this was also the view held by the officials of the Government
 railways is shown by the letter from Mr. Brady, chief superintendent, to 10
 Mr. Mahon, superintendent of the Appellant's telegraph system, dated
 20th February, 1911 :—

“ I find that the agreement is an exclusive one and for the Inter-
 “ colonial railway and all the branches and extensions and our law
 “ officers have decided on several occasions that it covers all the line
 “ to Sydney and also the Oxford line. You will easily understand
 “ that it is quite impossible for us to violate the agreement.” (Ex.
 178, p. 361, lines 19-24.)

The Judge says :—

“ It would seem that the poles were placed on the right of way 20
 “ with the consent and co-operation of the high officers of the railway
 “ and the Prime Minister and the Minister of Railways at the time”
 (p. 491, lines 28-30).

“ At the time ” would naturally refer to the time of the rebuilding.
 There was no consent or co-operation of any Prime Minister or Minister
 of Railways at that time or of any officials. The rebuilding, which was
 the first attempt to place the telegraph line, as a line, upon the right of
 way, began in 1905. There was no application to the Prime Minister or
 Minister of Railways at that time or to any officials of the Government
 railways. The rebuilding was commenced fifteen years after Sir John 30
 Macdonald's letter.

It is further submitted that Sir John Macdonald, by an informal letter
 written in 1890, cannot be assumed to have intended to lay down a policy
 for the Crown, which could be taken advantage of for the first time fifteen
 years afterwards.

(h) The only other circumstance to which the Judge refers is what
 took place between the Appellant and Mr. Gutelius in 1915.

At that time, Mr. Gutelius discovered that the Appellant had built
 nearly all of its line upon the right of way and negotiations were carried
 on as to the terms upon which the telegraph line might be allowed to 40
 remain. There was no recognition by Mr. Gutelius of the right of the
 Appellant to maintain its line upon the right of way. The contrary is
 indicated by the documents. Instead of ordering the Appellant off the
 line at once, Mr. Gutelius endeavoured to make terms.

The Judge seems to attach importance to a draft agreement which
 he states was made between Mr. Gutelius and Mr. McMillan of the Appellant
 company. (Ex. 245A, pp. 434-436.)

He says this draft was retained by the Crown, never came back into the possession of Mr. McMillan and turned up on the trial as coming from the hands of the Crown, and apparently he holds that the Appellant had a right to remain upon the property under the terms of the proposed agreement (p. 491, lines 10-20).

The evidence is that Mr. Gutelius, even though he might have had power under the order in council by which he was appointed to make an agreement for a telegraph service, which we deny, never pretended to exercise that power. The draft agreement was to be subject to the approval
10 of the Governor in Council and executed by the Minister before becoming effective. It was not approved of by the Governor in Council nor by the Minister.

The Appellant is presumed to have had knowledge of the provision, then in force, contained in the Act Respecting Railways, being Chapter 37 of The Revised Statutes 1886, section 23, as follows:—

“ No deed, contract, document or writing relating to any matter
“ under the control or direction of the Minister shall be binding upon
“ Her Majesty, unless it is signed by the Minister, or unless it is signed
“ by the deputy of the Minister, and countersigned by the secretary
20 “ of the department, or unless it is signed by some person specially
“ authorised by the Minister, in writing, for that purpose ; Provided
“ always, that such authority from the Minister, to any person pro-
“ fessing to act for him, shall not be called in question except by the
“ Minister, or by some person acting for him or for Her Majesty.”

If the Appellant had not had notice of this disapproval and had acted under the belief that the draft agreement had been approved because it had been retained, there might be some point in the Judge's reasoning. But the Appellant had notice that the draft agreement was not approved. This notice was given promptly by Mr. Hayes to the Appellant company.
30 The draft agreement was dated the first of May, 1917, and on the 17th of July of the same year the Appellant was informed that the Minister did not approve. (Ex. 272, p. 465, lines 25-30.)

There is no evidence of any contradiction of this statement of Mr. Hayes, and McMillan, who gave evidence at the trial, does not question it.

The Appellant could not, therefore, be taken to have relied upon the Gutelius draft agreement, so called. It is clearly shown that the Appellant did not rely upon it by the letter from Mr. McMillan to Mr. Hayes of July 17, 1917, where he discussed the history of the line without mentioning that he and Mr. Gutelius had made an agreement. (Ex. 248, pp. 439-440.)
40 There was a letter from Mr. Hayes to Mr. McMillan, 3rd August, 1917, suggesting a new agreement. (Ex. 252, p. 444.) Even then Mr. McMillan raised no question about having the matter settled with Mr. Gutelius. On September 29th, 1917, Mr. Hayes forwarded to Mr. McMillan the proposed new agreement. (Ex. 256, p. 446 and Ex. 257, pp. 447-453.) It was to be “subject to the approval” of the Minister and Governor in Council. Mr. McMillan did not suggest that he had an agreement with Mr. Gutelius, but he forwarded the draft of the Hayes agreement to Mr. Fraser, his agent at Saint John, and asked for information. Mr. Fraser made his report. (Ex. 261, p. 456, lines 1-25.) (See also letters from Mr. McMillan to Mr.

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Hayes, Ex. 271, p. 464, lines 40-44 ; Ex. 266, p. 461, lines 1-18 ; Ex. 280, pp. 472, 473.)

In view of this correspondence it is clear that the trial Judge was in error when he finds that there was reliance placed by the Appellant upon the Gutelius draft agreement, or that any importance should be attached to it.

But the Judge states :—

“ The permission is given by the Prime Minister and the Minister of Railways, and by the officer, who under the order in council appointing him (Exhibit No. 293) is given the duties and powers of 10
 “ General Manager, such powers as are usually vested in the executive
 “ of a railway Corporation ” (p. 492, lines 6-12).

It seems plain that the Judge has based his decision that there was a license upon the Macdonald letter and the Gutelius draft agreement. It has been pointed out that these matters do not justify that finding. The letter has been shown to be applicable only to a few poles and not to a building of the line, as a line, and the alleged agreement of Mr. Gutelius is shown not to have been regarded by either of the parties as a completed agreement.

It follows, therefore, that there was nothing upon which the decision 20 could be based.

(i) He further states :—

“ A license could be implied as resulting from both the negotiations
 “ and the conduct of the Minister and the managers of the I. C. R.
 “ And while this license was being enjoyed by the Defendant, the
 “ Plaintiff, so to speak, stood by with full knowledge ” (p. 492, lines 23-27).

The only negotiations were carried on with Mr. McMillan by Mr. Gutelius and Mr. Hayes. There is nothing in these negotiations which recognised a right in the Appellant to occupy the property. No implica- 30
 tion could arise simply because, having discovered the Appellant on the right of way, the railway officials, instead of bringing action at once to put the Appellant off, undertook to work the matter out in some mutually satisfactory manner. No reasonable terms were agreed upon and, therefore, after notice to remove the encroachments, and after a reasonable time in which to so remove them had elapsed, this action was brought.

The so called Gutelius draft agreement is hereinafter discussed in its relation to the whole telegraph line.

2. The Judge says that the Crown “ stood by with full knowledge.” There is no evidence that the Crown or even any manager or official of 40
 the railway, with respect to the “ main telegraph line,” had the slightest knowledge that the company had built its line upon the right of way. Mr. Pottinger did not know of it up to the time he left the railway in 1913. Mr. Hayes, in his first letter to the Minister of Railways after his appointment in 1917, said that his impression was that the Canadian Pacific Railway pole line was quite generally placed outside the right of way. (Ex. 246, p. 438, lines 19-22.)

Mr. Pottinger and the Board of Management having charge of the

railway from 1890 up to 1913 proceeded upon the supposition that there was no right, in view of the Montreal agreement, to grant permission to build on the "main line."

The Judge must, therefore, mean that the Crown stood by after the negotiations began with Mr. Gutelius. There would be no point in this unless it is based upon the retention of the Gutelius draft agreement by the Government. We have shown that the Gutelius draft agreement was not effective because it was drafted subject to the approval of the Governor in Council and execution by the Minister of Railways, and Mr. McMillan
10 had notice that the Minister did not approve. Therefore, there was no standing by, and there is nothing upon which to base the judgment.

3. The Judge intimates (page 493, lines 10-16) that the Appellant entered upon the land "under mistake of title to improve it." There is nothing in the evidence from which such an inference can be drawn. The evidence is all the other way.

The inference from the fact, alleged by the Appellant but denied by the Respondent, that permission was given to build the branches from New Glasgow to Sydney and from Westville to Pictou, is opposed to that drawn by the Judge. The fact that the Appellant did make application
20 in respect to these particular sections of the road and did not make a second application in respect to the "main telegraph line," clearly indicates that the Appellant knew that an application in respect to the "main line" would not be granted.

The reason for the refusal of the Government was that such an arrangement would interfere, or it was thought that it would interfere, with the agreement with the Montreal Telegraph Company. The Appellant knew when it began to rebuild its line in 1905 that the same difficulty would occur. That is the reason that the Appellant made no application in 1905. The Appellant entered on the main line, in 1905, taking its own chances
30 as a trespasser.

That the whole matter of using a railway right of way for telegraph lines and the questions of exclusive privileges in other telegraph companies, were at the time—1888-1890—thoroughly appreciated by the field forces, as well as by headquarters, of the Appellant, is obvious from what took place on the building of the Appellant's line between Montreal and Saint John, in the course of which, as appears from the judgment in the case of *Canadian Pacific Railway Co. vs. The Western Union Telegraph Co.* (17 *S. C. R.* 151) an injunction was issued against the Appellant on grounds similar to those laid down on behalf of the Respondent by the Deputy
40 Minister of Justice. (Ex. 23, p. 254, lines 32-40.)

Notwithstanding such a situation, however, odd poles had been placed within the right of way as hereinbefore mentioned. The letter (Ex. 35, p. 263, lines 6-11) from the foreman of construction of the Appellant—

"As there is no injunction could we not put our poles on the
"railway side of the fence on the quiet through some of these back-
"woods places, without any serious consequences? In many places
"they would not be noticed"

is both informative and significant.

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There was prompt objection and action on the part of the Respondent however. (See Ex. 41, p. 269, lines 20-40; Ex. 50, pp. 278, 279; Ex. 51, pp. 279, 280; Ex. No. 53, pp. 280, 281; see also Ex. 58, p. 284, lines 10-22; Ex. 60, p. 285, lines 1-15; Ex. 61, p. 285, lines 20-40; Ex. 63, p. 287, lines 1-20; Ex. 64, p. 287, lines 20-30; Ex. 65, p. 288, lines 10-20; Ex. 68, p. 288, lines 20-40; Ex. 69, p. 289, lines 1-10; Ex. 75, p. 293, lines 1-20; Ex. 84, p. 299, lines 20-30; Ex. 86, p. 300, lines 20-40.)

Rebuilding.

It is claimed that permission to rebuild on the right of way was given to Superintendent Snyder by Pottinger. Evidence was offered by the 10 Appellant through the witness Fraser that Pottinger in 1917 informed him that he had done so (p. 215, lines 1-10). Mr. Pottinger denied both that he had ever given such a permission and that he had so informed the witness. Was he likely to have done either? He was the chief superintendent and general manager of the Government Railways during the period 1888-1909. He had received instructions in 1889 that no poles could be allowed on the right of way and that he must insist upon the removal of the few that had been so placed, and to allow no others to be put on. (Ex. 54, p. 281, lines 20-30; Ex. 82, p. 298, lines 30-40.) The following letters show his attitude then. (Ex. 83, p. 299, lines 1-15; Ex. 99, p. 307, lines 1-20.) 20

Later in correspondence the legal relation was again set forth and the same understanding evinced by him. (Ex. 171, p. 352; Ex. 182, p. 364.)

A striking evidence of that understanding, so deeply impressed on his mind by the ruling of the Department of Justice, is contained in his letters of the 16th of February, and the 3rd of March, 1911, when he was assistant chairman of the managing board. (Ex. 179, p. 360, and Ex. 180, pp. 362, 363.) It was most unlikely therefore, that Pottinger, who during all of these years was so clear upon the impossibility of giving any such permission, would have assumed the responsibility claimed. The last few sentences of Ex. 179 (p. 360, lines 26-33) may possibly indicate what his 30 willingness was and what Snyder was content to act on. That there were no written communications (see Ex. 225, p. 393, lines 17-27 and Ex. 230, p. 399, lines 23-40; p. 400, lines 1-15). His own evidence, as to any general permission, however, is quite emphatic in contradiction (p. 98, lines 18-22; p. 99, lines 19-23; 39-43; p. 100, lines 32-40).

It is evident that the witness must either have misapprehended Pottinger's remarks or his own question to which they were replies. It must be borne in mind that at that time, 1917, the officials of the Appellant were a bit at sea over the matter. The following show the failure to discriminate between the main and branch telegraph lines, the original 40 construction, odd poles, re-alignment and rebuilding on the various sectors of the line that now appear in proper distinction, as well as the absence of any record of the understanding or arrangement as to the different sections. (Ex. 224, p. 391, lines 1-20; Ex. 225, p. 393, lines 17-27; Ex. 233, p. 404, lines 20-40.)

In fact Pottinger's recollection of the branch telegraph line—"a *quid pro quo*"—was evidently the only bit of ground which the Appellant then had to stand on for that sector. Their files at that time apparently disclosed

nothing. It would have been very easy, therefore, for misunderstandings to arise. In 1917 Pottinger had been out of the service of the Railways for four years and when he retired in 1913 there was still a length of over eighty miles of the line off the right of way. Between 1909 and 1913 he was assistant chairman of the managing board and was not then taking an active part in the operating department. Up to 1909 only sixty miles of line had been so rebuilt, namely, between Truro and Fairview Junction (Ex. 3, page 482) and as his headquarters were at Moncton there is no difficulty in understanding—particularly in view of the fact that other pole
 10 lines, of the Western Union and the Montreal Telegraph Company were on the right of way—his ignorance of the presence of the line on the railway land. When the interview with Fraser took place, therefore, he was not—as he insists in his evidence (p. 100, lines 40-42; p. 101, lines 1-5)—aware that the line as an entirety had been put on the right of way, and beyond any doubt what he was referring to was the length of seven or eight miles mentioned by Mersereau. Pottinger's previous correspondence and action before any controversy arose indicate his understanding and fixed attitude. He had been too long a servant of the respondent not to be fully sensible of the limits of his authority. And the necessity of having to rely
 20 upon such a permission, evidenced only by such a circumstance, marks the extremity to which the Appellant is driven. As to the matter of fact, therefore, no such license or permission was ever given.

It is submitted that no authority has been shown for even a revocable license to the Appellant. Pottinger had no such authority. The revocation of such a license, although at will, is suspended during such time as may be reasonably necessary to enable the licensee to remove his property. This, in the case of the line in question, would be a substantial length of time. Could then the general manager of Government Railways bind the Respondent to such a time in respect of such works. It is submitted not.
 30 His duties consist of the immediate supervision and carrying on of the railways. He was there, not to dispose of any part of or interest in those works, but to preserve and operate them for the sole benefit of the Respondent. The extent of that authority was, or should have been known to the Appellant, and there was no reliance, therefore, upon an apparent authority—assuming the Crown to be bound in such a case.

Nor for the same reason would the Minister have such authority. His jurisdiction under the Act is to administer Crown railways for the Crown, as railways and not for the purpose of conferring benefits on other persons. Even, therefore, if it were established that a Minister of Railways or deputy
 40 minister either gave such a permission or ratified the permission of the general manager, which is denied, the Respondent would not be bound thereby.

It is, therefore, submitted that in respect of the whole main telegraph line on the right of way the standing of the Appellant was that of a trespasser merely.

4. *If there was a license it was not irrevocable.* But assuming that Pottinger, even with the ratification of the Minister of Railways, had orally, as claimed, intimated to Snyder that he might rebuild on the right of way, what is the legal standing of the Appellant thereafter? The permission as

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claimed was oral (Ex. 230, p. 399, lines 28-40 ; p. 400, lines 1-18) and would clearly be what is well recognised as a parol license which, so long as it is effective, constitutes a justification for what would otherwise be a trespass. But that license is revocable at any time subject only to the obligation of permitting to the licensee a reasonable opportunity to remove any property which may be the subject of the license. The mere fact that a license contemplates the expenditure of money in the establishment of works the subject of the license does not create a stronger or different interest, nor does it give to the license the attribute of irrevocability. If that were so such a thing as a revocable license would virtually disappear from the law. 10 Every expenditure under a license would create a permanent interest in land and the Statute of Frauds would, as regards easements, be seriously set aside. A licensee acts with his eyes open. He knows, or is presumed to know, what the law respecting licenses is and not to hold him to that law would be to create an entirely new method of creating interests in realty.

Ross vs. Hunter, 7 S. C. R. 289 at 312.

Crosdale vs. Lanigan, 129, N. Y. 604.

Minneapolis Milling Co. vs. Minn. & St. Louis Ry. 51 Minn. 304,
53 N. W. R. 639. 20

In the last case the tracks of the Defendant had long been established on the land of the Plaintiff. It was held that they were there under a revocable license and that the expenditure represented by the cost of the construction was no answer. Mitchell J. :—

“ A licensee is conclusively presumed as a matter of law to know
“ that a license is revocable at the pleasure of the licensor and if he
“ expends money in connection with his entry upon the land of the latter
“ he does so at his peril. Any other doctrine would render most licenses
“ irrevocable and make them operate as conveyances of an interest in
“ land. All that the Defendant can complain of in such a case is that 30
“ the Plaintiff had seen fit to revoke a license which perhaps the
“ Defendant thought would never be revoked.”

“ The principle upon which some courts of equity sometimes apply
“ the doctrine of equitable estoppel to cases of entry made under a
“ license is that the conduct of the licensor has been such that it would
“ be a fraud on the licensee to permit the licensor to deny that there
“ was a contract for an interest in land and hence they treat the case
“ as one of a parol contract partly performed which the court will
“ enforce.”

The court held that there was no actual contract and no fraud, deception 40 or misrepresentation, inasmuch as each party knew as much about the circumstances as the other.

In *Minn. Western Railway v. Minn. & St. Louis Ry.*, 59 N. W. R. 983, the facts are similar to those in the previous case, namely that the railway tracks had been built under a parol license and had been used upwards of twenty years. Mitchell J. :—

“ The law is jealous of a claim to an easement and the party
“ asserting such a right must assert its claim clearly. It cannot be
“ established by intendment or presumption.”

“ The Defendant could not acquire title by prescription because
“ the user was not adverse.”

Great Falls Water Works vs. Great Northern Ry. Co., 54 *Pac. R.* 963
(*Mont.*).

On a parol license the plaintiff laid water mains across the lands of
a town site company and used them for more than six years. Part of the
land was then conveyed to the Defendant with notice of the existence of
the pipes. The Defendant attempted to remove them and the Plaintiff
applied for an injunction which was refused. The Court followed the
10 doctrine of the Minnesota cases cited herein.

Nowlin Lumber Co. vs. Wilson, 78 *N. W. R.* 338 (*Mich.*).

Here a logging railway was placed on land under an express license in
writing. The land was subsequently conveyed and the grantee moved to
interfere with the line. The Plaintiff applied for an injunction to restrain
which was refused.

Hodginson vs. Farington, 150 *Mass.* 24.

“ The embarrassment in which the Defendants find themselves
“ principally results from their own acts and those of their predecessors
“ in failing to observe the well known rules of law as to the creation
20 “ of easements in the real estate of others, and in seeking to establish
“ rights without any proper title.”

In *Babcock vs. Hutter*, 32 *How. Prac.* 439.

Seldon J., after holding that a license even after the construction of a
dam by the licensee is revocable, says :—

“ If such a license is irrevocable then the parol license by reason
“ of expenditure loses its character as a personal privilege and becomes
“ a grant in fee of the right claimed.”

National Stockyards vs. Wiggins Ferry Co., 112 *Illinois* 394.

Here railway tracks were built under a license. The owner of the land
30 contemplated a benefit resulting from the operation. Held, a revocable
license.

“ No compensation on the one hand was asked for the right of
“ way or any guarantee asked on the other side as to the length of
“ time this right of way should be endured. If the Appellant saw
“ proper as it did to enter upon other lands and spend money in con-
“ structing its tracks, upon a mere parol license, which as a matter of
“ law it is conclusively presumed to have known was revocable at the
“ pleasure of the Appellee, it was its own folly.”

The effect of irrevocability is to create a permanent interest, and in
40 the nature of an easement. Whether or not equity should grant an
injunction which has the practical effect of creating such an interest depends
in the first instance on the circumstances under which the license was given.
If there is a contract, of clear terms, on the basis of which the execution of
the license may be regarded as part performance, there is some support
furnished for the doctrine of irrevocability. If, on the contrary, there is
no contract which might be made the subject matter of a decree of specific
performance it is not clear how effect can be given to a mere license, the
legal incidents of which have been so clearly enunciated and laid down.

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In some cases it is said that the result would be harsh to the licensee who has acted on the strength of the license, but the answer is that he knowingly and in full appreciation of his legal standing was willing to take the risk of an uncertain and determinable privilege. Moreover, the ground of hardship alone is not strong enough to support such a rule, more particularly in view of the policy of the Statute of Frauds and the important results which follow from the application of the doctrine of estoppel. It would be an unwarranted extension of the latter made in the face of the positive rules of the common law respecting licenses. To nullify such rules on the ground that licensees either have failed to appreciate them or have merely neglected to give themselves proper contractual protection against them, is the assertion of an equitable jurisdiction which would be charged with the most serious consequences. 10

Moreover, where such a license is given and there is no binding and express agreement to grant an easement, the inference should be that the parties in fact contemplated nothing more than a presently continuing permission. It may be that the licensee would have been unable to obtain a more permanent right if it had been requested. To imply such an unilateral promise however, and then to enforce it on the basis of part performance, is an extension of that questionable doctrine, and the creation of a novelty in the law of contracts for which there is no justification. If the Statute of Frauds is a wise enactment the true equity and policy lie in following, not in wrecking it; nor in distorting the law of contracts by first conceiving a contract to exist where the element of true consideration is admittedly absent, and then specifically enforcing what can be at most a gratuitous oral promise, and at law unenforceable, under the theory of part performance. 20

So in the case of those poles which were first placed on the right of way in the course of re-alignment of the main telegraph line. From time to time the Appellant both with and without previous intimation to the local officers of the Government Railways transferred individual poles to the right of way for the improvement of the line and convenience in maintenance. The following correspondence bears upon this part of the work. (Ex. 82, p. 298, lines 30-40; Ex. 83, p. 299, lines 1-15; Ex. 100, pp. 307, 308; Ex. 142, p. 335, lines 20-25; Ex. 143, p. 335, lines 30-40; Ex. 151, p. 339, lines 20-30; Ex. 303, p. 327, lines 15-20.) The express parol permission of Pottinger—assuming that he had authority to and did give it—could be no more than a revocable license. 30

Similarly the acquiescence, not merely of Pottinger but even of the Respondent in the odd poles originally placed on the right of way during construction fall into this category. In neither case would the permission or acquiescence purport even to grant irrevocability. 40

The creation of an irrevocable license, therefore, in respect of the use of the lands in question would constitute an alienation; but neither the general manager of Government Railways, nor the Minister of Railways had authority to alienate Crown lands. The right of way of the Intercolonial Railway—the nucleus of the Canadian Government Railways—is to be devoted to railway purposes really by virtue of section 145 of the British North America Act. Every presumption against power to alienate

it to any other use should be made. Both the general manager and the Minister had duties of administration of Crown works—not of their disposal. Section 45 of Chapter 38 of the Revised Statutes of Canada 1886 provides that “All Government railways are, and shall be, public works of Canada” and the sale or leasing of public works was governed by the following:—

“Notwithstanding anything in this Act, or in any other Act contained, any public work not required for public purposes may be sold or leased, under the authority of the Governor in Council; and the proceeds of such sale or lease shall be accounted for as public moneys: Provided that such public work shall be so sold or leased by tender or at auction after public advertisement, unless it is otherwise authorised by the Governor in Council.” (R. S. 1906, c. 39, s. 39; 1895, c. 36, s. 1.)

The purpose of that enactment is clear. The Government is charged with the enquiry as to whether the lands are not further required for their statutory purpose and that determination is the condition precedent to their alienation. Admittedly there was no Order-in-Council.

The Appellant was quite aware of the necessity of governmental action by Order-in-Council to create such a privilege.

In 1889 a license was asked and refused under the correspondence previously dealt with.

In 1911 a similar permission was formally asked in writing of the managing board for the line from Westville to Pictou, and because of the fact that the Montreal agreement did not restrict the powers of the Respondent between those points the board purported to give that permission, subject to an agreement subsequently to be entered into between the Respondent and the Appellant. (Ex. 194, p. 371, lines 10-32.)

Why was there not a similar request for the transfer of the main telegraph line upon its rebuilding? The question was raised between the departmental officers of the Appellant. (Ex. Nos. 148, p. 337, lines 28-40; Ex. 150, pp. 338, 339.) But there was no communication to the Respondent. Why? Because obviously the effective reason, which caused the rejection in 1889, namely, the Montreal agreement, was still operative.

So far, therefore, as any such license for the odd poles originally placed on the right of way, the re-alignment or the rebuilding, under the circumstances of the action of the Appellant, is claimed to be irrevocable and perpetual and based upon (a) permission of Mr. Pottinger; (b) permission of the Minister of Railways; (c) permission of Great Northwestern Telegraph Company; (d) permission implied from the acquiescence in the odd encroachments through failure to prosecute the Informations; the answer is, first that no permission of any kind was ever given in fact or by implication, or if to any extent given, was never intended to be irrevocable and that there was no contractual element present which could form the basis, in effect, of specific performance withholding a revocation; and secondly, that none of the parties mentioned had authority to give such a license for the reasons already mentioned.

Estoppel.

It is contended that the position of the Appellant in respect of the rebuilding is protected by estoppel. It is not clear in what the estoppel

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consists. The essential element of estoppel is a misrepresentation of fact in reliance on which the party to whom it is made changes his position, and thereafter the party making the misrepresentation will not be permitted to assert its falsity. What foundation for such a contention could there be here? The Appellant knew that the right of way belonged to the Respondent; it knew the necessary procedure for obtaining the right to a perpetual use of part of it; it knew that its application for that privilege had been denied for reasons stated and that those reasons still remained operative. In the full light of this knowledge it proceeded to step over the fences of the Respondent; and being in fact over, through the absence 10 of physical or legal prevention by the Respondent it asserts that thereby perpetual legal rights became established. There was simply a quiet determination to usurp a privilege by physical assumption and to take the chance by some means or other thereafter of preventing interference with accomplished fact. (Ex. 99A, p. 307, lines 20-30; Ex. 102, p. 309, lines 10-23.)

The last removal in 1917, consisting of a section, forty-six miles in length, between Moncton and Sussex, New Brunswick, was done without the slightest intimation to the Respondent, in the face of the demand of the then general manager of Government Railways for compensation or— 20 impliedly—the removal of the poles generally, and of the negotiations that were then taking place between the parties, for a settlement of the controversy. (Ex. 228, p. 398; Ex. 236, p. 406; Ex. 237, p. 406; Ex. 252, p. 444; Ex. 253, p. 445; Ex. 254, p. 445; Ex. 255, p. 445 and Ex. 264, p. 460.) That act is a perfect exemplification of the attitude of the Appellant towards the right of way. It was shown as early as 1889, in the original construction in "out of way places" (Ex. 35, p. 263, lines 7-11), and thirty years later it moves literally under the eyes of the Respondent.

It is argued that the officials of the Government Railways knew of the rebuilding and that it was being done under a certain belief. What 30 belief? In the existence of an Order-in-Council authorising it; or of a contract providing for it? Or of a right of any kind purchased or bargained for on business terms? No such belief was held. The contention cannot be put higher than that the local officers of the Appellant acted under a belief that an oral permission had been given by Pottinger for the placement of the line on the right of way. This is, in other words, that they believed they had a license to do as they did. It was not a belief that the Appellant owned the land, or had bargained for and obtained a contractual privilege, or that an Order-in-Council authorising a grant or other privilege had issued. The belief of permission by Pottinger, even 40 if held, was not based upon fact and in any case it could not be the basis of greater rights than an express permission by Pottinger and the consequences flowing from that have already been dealt with.

But the officers at headquarters of the Appellant were under no misapprehension as to the right. They knew that it would not be given in any form because of the Montreal agreement. They had been told so. The Appellant had been called upon to remove odd poles. The retention of others had been protested. What officer of the Appellant in 1917 believed that it had a right to rebuild on the right of way between Moncton

and Sussex? The Appellant was at that time seeking permission for the other sectors and was in the course of exchange drafts of agreement— which it should be mentioned did not specifically apply to this section— but that fact did not deter the Appellant from bodily transferring the line from its own placement to the right of way of the Respondent. There can be little doubt that the entire rebuilding was the result of an intimation to foremen in charge to shift from outside to inside and to let the future care for itself. The forces of the Appellant would not otherwise have trespassed upon the lands of the Respondent. It was again the application
10 of the principle of the *fait accompli*.

The officers knew also that Pottinger could not give what had been refused and that if he attempted or purported to do so it would be an act of misconduct; and that knowledge would nullify any belief on the part of minor or local officers with respect to the rights or privileges which the Appellant might have in rebuilding on the right of way.

And then, who representing the Respondent knew or had reason to believe that the Appellant was acting under a misapprehension? Not Pottinger. He purported to give specific permission to place a minor re-alignment on the right of way, but the rest was unknown to him, and
20 he had personally advised the Appellant that because of the Montreal agreement such permission could not be given. At the most and in disbelief of his positive evidence it can only be said that he intimated that he would shut his eyes to the conscious trespass of the Appellant. This would seem to be what Mersereau advised Fraser. Mr. Fraser wrote Mr. Camp :—

“ There was no written authority given for locating the line on “ the Government right of way, but we received verbal information “ from Mr. D. Pottinger that there would be nothing said and to go ahead.” (Ex. 230, p. 399, lines 31-33.)

30 No authority has yet been produced to give an act done under such circumstances the incidents of a legal acquisition.

It is also urged that valuable rights were given up when the line was transferred. There is no evidence of what rights, if any, the Appellant held in lands on which the original line was built. There is no evidence that any rights were given up. So far as appears, if there were any, they exist to-day in as full strength as when granted. Mr. Fraser wrote Mr. McMillan, May 15, 1918 :—

40 “ We asked for permission, however, received it and there was no “ discussion regarding any monetary consideration and common “ decency demands that we be permitted to remain where we are until “ a rebuild is necessary when some arrangement might be entered into “ or we could go back to where original line built.” (Ex. 273, p. 467, lines 10-16.)

And if they were given up no one on behalf of the Respondent is claimed even to have known it. If the Appellant risking the uncertainties of a revocable license on the right of way saw fit to surrender rights in the nature of easements, that would be its own affair; but it is not suggested that to the knowledge of the Respondent action under the license

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would involve also such a surrender. The Appellant at all times had powers of expropriation and we cannot speculate upon what it considered the best course to pursue. Moreover, an express bargain with the only person who is claimed to have given the oral permission to allow the removal involving the surrender of existing perpetual rights could not bind the Respondent. Pottinger had no authority to make such a bargain; the Appellant knew both that his jurisdiction did not extend to it, and that the particular field had been closed by the Department of Railways; and any purported action on such a basis would be a fraud on the Respondent.

10

The foregoing has dealt with the question generally from the point of view of an irrevocable license and the submission has been that the creation of an interest of that sort in whatever manner—express permission, estoppel, laches—is equivalent to an alienation of land and requires certain formalities as a condition of its validity.

The learned Judge properly states the law to be that there must be a mistake as to the title or right of the encroaching party in order that any license can be implied. The Appellant made no mistake. It knew very well that no license could be given except by order in council and that none had been given. It knew that a license had been refused. How 20 can it then be said that the Appellant entered believing it had a right?

It is not only required that the encroaching party should have a mistaken belief as to its right but that the owner of the land upon which the encroachment is made had knowledge of such belief and permitted the encroaching party to go on under such mistaken belief. There is not a particle of evidence to indicate either that the Appellant had such a mistaken belief or that the Respondent had a knowledge that the Appellant entered under such belief.

5. The learned Judge properly finds that the poles are erected on land which is vested in the Crown and that a lease would require the 30 authority of Parliament or an order in council and that the Crown has not been divested of its fee (p. 492, lines 1-4).

6. There is no question in this case as to the credibility of witnesses except in one particular, where the recollection of Mr. Pottinger differed from that of Mr. Richardson. The Judge, during the trial, stated that he had no hesitation in accepting Mr. Pottinger's evidence.

7. In support of its contention that there was an irrevocable license the Appellant cites the following cases.

Plimmer v. Mayor of Wellington, 9 A. C. 699.

This case is a direct authority in support of our position. Plimmer 40 had in 1848 built a wharf on the Government lands, with the permission of the Government, and in 1855 a jetty. In 1856, at the request and for the benefit of the Government, he incurred large expenditure for the extension of his jetty and for the erection of a warehouse, and in subsequent years the Government used, paid for, and, with the consent of Plimmer, improved the said land and works.

Sir Arthur Hobhouse, at page 710, said:—

“Plimmer's original works were erected with the permission of
 “the Government and their Lordships think that he must be taken

“to have occupied the ground under a revocable license to use it for special purposes, viz. : those of a wharfinger.”

For eight years, therefore, Plimmer held under a revocable license, although he had made expenditures on the land with the permission of the Government. There was a contract made in 1856 and it was by reason of this contract that the license became irrevocable. As to the contract the Court said (page 709):—

“At all events what we know is that there was mutual concession. Plimmer allowed the Government to take away the shore end of his jetty; and the Government allowed him to make a temporary gangway, and, when the works were completed to have the support of their new quay for his jetty in its altered state. It is easy to imagine how both parties were calculated to benefit by the transaction; but we need not speculate on their motives. Their Lordships rest on the statements in the case, and from those statements they cannot draw any inference, except that the transaction was one of mutual agreement between the parties for their mutual benefit and not one of paramount right on the one side, and appeals to mercy and to honour on the other.”

If nothing had happened in 1856, Plimmer would still have held under a revocable license. Just as in our case even if permission had been granted by a competent authority, to the present Appellant, to construct its telegraph line, which we deny, the Appellant is holding under a revocable license even though it expended money upon the Respondent's land. There was no contract. There was no benefit to the Respondent, and there was nothing from which an agreement could be implied.

The Appellant cites the case as authority for the proposition that a Defendant may avail himself of all the equities against the Crown that could be invoked against a private litigant and, in answer to that argument, we submit that the principle can only be invoked when the encroaching party has a mistaken belief in his legal right; that the landowner had knowledge that the encroaching party built under such belief and, further, that knowledge of the improvements being made must in all cases be brought home to the party having power to grant an irrevocable license. In the Plimmer case this knowledge was brought home to the Government because it was admitted in the stated case. In our case the knowledge is not shown to have been brought home to the Crown. Nor is there any evidence that the Appellant had any mistaken belief about the matter.

The Attorney-General to the Prince of Wales v. Collom (1916) 2 K. B. 40 193.

This was not an action by the Crown and it was shown that the agent of the Prince of Wales, in charge of the property, in whom was a knowledge of the improvements, had power to grant the lease. The knowledge was brought home to the person who had power to carry out the agreement implied from the occupation of the land. It also appears that the Defendant, when she made the improvements, did so in the belief that she was making them on her own property.

City of Montreal v. Harbour Commissioners of Montreal (1926) A. C. 299.

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There is nothing in this case to show that the acquiescence consisted in any act or knowledge of any official, but that it was to be implied from legislation enacted by the Province itself. At page 313 the judgment states :—

“And in 1911 the Provincial Legislature passed the Quebec Statute of that year, which referred to and impliedly sanctioned the operations of the harbour commissioners.”

Attorney General of Southern Nigeria v. John Holt & Co. et al (1915) A.C. 599.

In this case there was direct evidence that the improvements upon the land during a period of some sixty years, were being made with the knowledge of and largely for the benefit of the Government. It was established that there was a custom to do the very thing that the Defendants were doing as required by the Government surveyor. The surveyor had knowledge of the work as it went on and approved of it. It was a reclamation of land, a public improvement for the benefit not only of the Defendants but of the public. There is nothing in this case inconsistent with the principle that there must be a user and expenditure made by the Defendant under a mistaken belief that the Defendant had a right thereto and the knowledge that the Defendant is acting under that belief must be brought home to the owner of the land or the person who has a right to grant an irrevocable license. And the trial Court found as a fact that there was a contract (p. 602) :—

“This permission, he thought, was probably by license to the riparian owners, in consideration of their reclaiming land from the lagoon at their own expense, to make use of the land so reclaimed for the purposes of their business.”

In none of these cases was it ever in the minds of the acting parties that they were proceeding under the privilege of a license merely. In each there was a belief in the existence of the legal right or interest which was afterwards asserted in the litigation. 30

Estoppel on the foregoing grounds, therefore, could not carry the matter beyond express permission; and that has already been dealt with.

Furthermore, in this case, as already stated, we have an express statutory condition precedent to an alienation of interest in Crown land, namely, the issue of an Order-in-Council; a statutory notice to all persons of the essential requirement of such an act. There was no similar impediment present in any of the foregoing cases.

In our case the evidence showed that the Appellant entered upon the land knowing that it could not obtain permission from the Governor in Council. It had no mistaken belief about the matter. It knew the law, and it must have known that rights in perpetuity could only be given in Crown land by order in council. It went on as a trespasser and took the chance of being extruded by the Government. It performed no services for the Crown, and the work was of no benefit to the Crown. It also knew that these concessions were only granted upon certain conditions.

The Branch Telegraph Line.

8. In 1893 the Appellant commenced the construction of the branch telegraph line (from New Glasgow to Sydney) and as in the case of the main

telegraph line applied for leave to use the right of way. The application was to the Deputy Minister of Railways (Ex. 116, p. 318, lines 30-45) and correspondence relating thereto is in Exhibit 117, p. 319, lines 1-20; Ex. 118, p. 319, lines 20-32; Ex. 124, p. 323, lines 20-36; Ex. 125, p. 324; Ex. 127, p. 325, lines 20-36; and Ex. 129, p. 326, lines 25-35.

This can be summed up briefly as follows:—

The Deputy Minister of Railways and Canals was willing to grant to the Appellant a privilege similar to that given to the Western Union Telegraph Company, under agreement dated the 16th day of October, 10 1889 (Ex. 290, pp. 271-275), as amended by agreement dated the 12th day of January, 1891 (Ex. 290, pp. 294-295). As respects this portion of the railway there was no such restriction by reason of the Montreal agreement as in the case of the line St. John—Halifax—New Glasgow. The Department of Justice had given its opinion that that contract did not restrict the freedom of action of the Respondent east of New Glasgow and in this respect it was, therefore, open to the Respondent to make such contract as it might think advisable for that portion of the line. An agreement embodying terms similar to those of the contract with the Western Union Telegraph Company of 1889 mentioned, was submitted to the 20 Appellant. Apparently, it was completed by the Appellant and returned to the Department at Ottawa. Subsequently, it appeared that similar privileges could not be so given in respect of services to be rendered at stations by employees of the Respondent. (Ex. 131, p. 328, lines 26-30; Ex. 134, p. 330, lines 11-12.)

The consequence was that the proposed contract was impossible from the standpoint of the Respondent. The Minister, therefore, withheld a recommendation to Council and no Order-in-Council was ever issued. (Ex. 303, page 327, lines 16-20.)

In the meantime the poles were erected and the wires stretched on 30 the right of way of the Respondent. When the formal document was not forthcoming, enquiries were made by the Appellant. (Ex. 301, page 333, lines 5-10.) There the matter lay until the demand made in 1915 by Gutelius as general manager of the Government Railways, for the removal of the poles or for compensation for the entire privileges enjoyed over the railway east of Saint John. The records of the work were apparently not well kept for it was not until after the commencement of this action that the foregoing facts appeared.

The contract as it would be a simple disposal of an interest in Crown lands would require an Order-in-Council, which was never passed. The 40 Appellant claims that the Minister, without an Order-in-Council possessed authority to bargain for telegraph service and did so. It is not shown that the Minister knew of this work or in any way approved of it.

The Appellant relies upon the power of the Minister in the management of the railway but any general power in the Minister respecting telegraph lines is excluded by The Government Railways Act R. S. 1886, c. 38, s. 46, which enacts as follows:—

“ The Governor in Council may, at any time, cause a line or lines
“ of electric telegraph to be constructed along the line of the railway,

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“ for the use of the Government of Canada, and for that purpose may enter upon and occupy such lands as are necessary for the purpose.”

Thus it is clear that what the parties had in mind was a formal contract as the only binding arrangement. There was no preliminary agreement to be put in more formal expression, but intended to be obligatory from the outset. And until that formal contract was executed there was no legal right or obligation created. (See also sec. 15 of agreement—p. 273, lines 26-27.)

It is claimed that section 25 of the agreement dated October 16, 1889, with the Western Union (Ex. 290, p. 275, lines 6-10), provides that poles erected thereunder may be perpetually kept on the right of way, after the remaining terms of the contract have been ended. The language is as follows :—

“ When this agreement expires, either by lapse of time or pursuant to notice terminating this contract as in the preceding clause stated, the company shall not be required to remove its poles and wires erected under this agreement from the Railway property but all other rights herein granted shall thereupon cease and determine.”

This, it is submitted, means merely that the existing poles may be so left,—not that a privilege of perpetual maintenance of a pole line is given. But if the latter is the true construction then it indicates the essential necessity of an Order-in-Council, for there is clearly a dealing with Crown property, within the meaning of the Public Works Act, already mentioned.

The true situation, therefore, is that the Appellant was willing with a full knowledge of the facts to take the chance that the arrangement would be confirmed in the regular way and proceeded on what at the most was a preliminary license to establish its line. The formal agreement signed by the minister under authority of an Order-in-Council was the technical condition of a binding obligation. Would the Appellant wait for that or anticipate the expected action of the Respondent? It chose the latter and should not now be heard to urge that the full consequences of the risk it was willing to take be not visited upon it. The Appellant recognised its want of right to enter the station buildings of the Respondent prior to the execution of the contract by the Respondent (Ex. 134, page 330, lines 11, 12), and there is no difference in respect of the right of way.

Westville—Pictou Telegraph Line.

9. This line was constructed under the following circumstances :—

In 1911 administration of the Canadian Government Railways was under what was known as the managing board, organised in 1909 by Order-in-Council dated the 20th day of April, 1909, No. P.C. 825. (Ex. 292, pages 353-356.)

A request for permission to construct the line on the right of way was made to the board (Ex. 177, p. 359), and was followed up by the following correspondence (Ex. 178, p. 361; Ex. 184, p. 365, lines 20-40; Ex. 189, p. 368; Ex. 190, p. 369; Ex. 191, p. 370, lines 1-20; Ex. 192, p. 370, lines 20-40; Ex. 193, p. 371, lines 1-5).

Ex. No. 194 : p. 371, lines 21-23 :—

“ As I told you verbally when in Montreal it will be all right for you to go on and build this line, and we will arrange about the agreement at a later period.”

A minute of the Board (Ex. 185, page 367, lines 13-15), is as follows :—

“ The Board decided to grant the request the Telegraph Company to give us the use of the line and to put the same into our stations at Westville and Pictou.”

On the strength of the foregoing the work was proceeded with.

10 The answer to the claim of the Appellant is that the request is for a revocable license and that is all that is implied by the minute and the letter from Pottinger to McNichol. (Ex. 194, page 371, lines 10-34.) If that is not so and a perpetual right was intended to be created then an Order-in-Council was necessary. The board, although conceivably having wider jurisdiction than the previous general manager, did not have power to dispose of Crown property for the reasons already stated.

10. As to the whole of the lines, namely, the main, branch and Westville-Pictou telegraph lines, it is suggested by the Appellant rather than seriously urged, that the controversy was settled by the draft contract hereinbefore referred to signed by the Appellant and “ O.K.’d ” by the then general manager of the Government Railways, in the month of May, 1917. (Ex. 245A, pages 434-436.)

It is not specifically alleged that this was or is a contract with the Crown, and it was mentioned for the first time during the course of the trial. At that time objection was taken by counsel for the Respondent (p. 114, lines 10-15; p. 115, lines 3-9), and the remarks of the Court on that occasion were considered to have settled the matter. In the argument no claim was made of a completed contract but an amendment to the defence merely recited the facts mentioned. The Court, therefore, was really never called upon to deal with a claim on this basis seriously. The reason is obvious; the parties never treated the agreement as anything more than negotiation. See Exhibits already referred to in this connection, which clearly show how completely the Appellant disregarded the Gutelius draft agreement.

30 If there had been any express allegation of a contract—which there is not even to this moment—the parties who negotiated it could have been called to confirm their actual conduct and understanding by reference to their oral discussions which without doubt were conducted on the express or tacit assumption that neither negotiator, McMillan nor Gutelius, could finally bind their respective principals. It was because there was no such issue that that evidence was not touched upon and as the pleadings stand now there is not, it is submitted, an allegation of a contract binding upon the Respondent.

Revocation.

11. The first demand on the Appellant to remove from the lands was made by Mr. Gutelius in his letter to Mr. McMillan, October 31st, 1916. (Ex. 228, page 398, lines 10-40.)

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This is a clear indication that the telegraph lines cannot be permitted to remain unless the Appellant is willing to enter into a business relation. It is, therefore, a conditional notice to withdraw to this effect. We are willing that you remain on terms to be settled provided you pay for the privilege. If you are not willing to do this you must withdraw. This notice was confirmed by the Minister. (Ex. 232, page 400, lines 20-30.) Subsequently there were demands for payments of compensation. (Ex. 277, p. 471, lines 1-20 ; Ex. 278, p. 471, lines 20-40 ; Ex. 282, p. 474, lines 30-40 ; Ex. 285, p. 477, lines 25-40.)

Finally, on March 20, 1924, and again on January 29, 1926, express 10 notices were sent. (Ex. 286, p. 478 and Ex. 288, p. 479). In each of these there is a distinct intimation to the Appellant, that, agreement being impossible, the line must be removed. There was, therefore, the withdrawal of any existing permission, and the Appellant not having promised to remove the poles, this action was commenced on September 15, 1926.

There is no particular form or method of revoking a license. All that is necessary is to intimate to the licensee that the permission is terminated. There can be no doubt as to the sufficiency of the notices sent to carry that intimation to the Appellant.

The only question, therefore, is whether or not, between the giving 20 of the notices and the commencement of these proceedings a reasonable time had elapsed to enable the Appellant to remove its property. It is submitted that the test of a reasonable time is solely the work involved in removing the property which is the subject of the license. The physical steps necessary will be the determining factors of such a question. In no other way can the character of the property be considered, such as, for instance, the exhaustion of the property by its full enjoyment, which in the case under consideration, would be until the poles had reached the condition for replacement. In other words, there is no right to the full benefit of the actual expenditure made.

12. On the plea of a lost grant, it is submitted that this could apply 30 only to the branch telegraph line. But there is clear evidence that the user was not adverse. And assuming the privilege capable of constituting an easement, no dominant tenement has been shown. This element is an essential part of an easement and until established, no right under any statute of prescription can be declared.

The Respondent, therefore, submits that the decision should be varied and the judgment should be that the Appellant is and has always been a trespasser ; that there was no license either revocable or irrevocable ; that there should be an order for possession granted to the Respondent, and 40 that the Respondent is entitled to damages to be assessed, and costs of suit.

W. P. JONES,

I. C. RAND,

Counsel for Respondent.

No. 324.

In the Supreme Court of Canada.

The 11th day of June, A.D. 1930.

Present :

The Right Honourable Francis Alexander Anglin, P.C., C.J.C.

The Right Honourable Mr. Justice Duff, P.C.

The Honourable Mr. Justice Newcombe, C.M.G.

The Honourable Mr. Justice Rinfret.

The Honourable Mr. Justice Lamont.

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Formal
Judgment,
June 11, 1930.

10

Between :

The Canadian Pacific Railway Company ... (Defendant) Appellant,
andHis Majesty the King, on the information of the
Attorney-General of Canada ... (Plaintiff) Respondent.

Whereas the appeal and cross-appeal herein relate to the line of poles and wires of the Appellant on the railway right-of-way and lands of the Respondent, firstly, from Saint John to Moncton (90 miles), from Moncton to Halifax by way of Truro (190 miles), and from Truro to New Glasgow (43 miles); and, secondly, from New Glasgow to Sydney (163 miles); and, thirdly, from Westville near New Glasgow to Pictou (10 miles).

And whereas the judgment of the Exchequer Court of Canada on the trial of the issues between the parties was as follows :—

“ That the property of the Defendant now on the said lands and premises consisting of a line of telegraph poles erected thereon and carrying wires for telegraph purposes is and has, from the respective dates when the several portions thereof were originally placed thereon, been on the said lands and premises with the leave and license of the Plaintiff, but not an irrevocable license.”

And whereas the Appellant has appealed against the said judgment, contending upon the said appeal :—

(1) That the judgment is right in declaring that the Appellant's telegraph line on the Intercolonial right-of-way was erected and has been maintained thereon by leave and license, but wrong in declaring that the leave and license is not irrevocable ;

(2) that on the facts as found the action should have been dismissed with costs, the case not being one in which a declaratory judgment should have been granted ;

and whereas the Respondent has cross-appealed against the finding of the said Exchequer Court, contending upon the said cross-appeal :—

(1) That the learned Judge was in error in holding that the Appellant was on the right-of-way under a license ;

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(2) that the learned Judge was in error in not finding that the Appellant was a trespasser;

(3) that the learned Judge was in error in not holding that, if there was a license to the Appellant, such license had been revoked by the Respondent before the commencement of this action.

And the appeal of the above-named Appellant from the judgment of The Exchequer Court of Canada pronounced in the above cause on the twenty-first day of March in the year of Our Lord one thousand nine hundred and twenty-nine, and the cross-appeal of the Respondent from the said judgment having come on to be heard before this Court on the twenty-eighth 10 day of February, and on the third and fourth days of March in the year of Our Lord one thousand nine hundred and thirty, in the presence of counsel as well for the Appellant as the Respondent, whereupon and upon hearing what was alleged by counsel aforesaid, this Court was pleased to direct that the said appeal and the said cross-appeal should stand over for judgment, and the same coming on this day for judgment,

This Court did order and adjudge that as to (1) the line from Saint John to Moncton, from Moncton to Halifax via Truro, and from Truro to New Glasgow and as to (2) the line from New Glasgow to Sydney the said appeal should be and the same was dismissed, and the said cross-appeal should be 20 and the same was allowed.

And this Court did further order and adjudge that as to the line from Westville to Pictou the said appeal should be and the same was allowed, and the said cross-appeal should be and the same was dismissed.

And this Court did further order and adjudge that the said Appellant should and do pay to the said Respondent the costs incurred by the said Respondent as well in the Exchequer Court of Canada as in this Court, excepting the costs incurred with respect to the said line of poles and wires between Westville and Pictou.

And this Court did further order and adjudge that the said Appellant 30 should and do have its costs incurred as well in the Exchequer Court of Canada as in this Court with respect to the said line of poles and wires between Westville and Pictou, such costs to be set off against the costs of the Respondent.

And this Court did further order and adjudge that the case be remitted to the learned trial Judge, in order that he may proceed with the trial thereof.

(Sgd.) E. R. CAMERON,
 Registrar.

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Reasons for
Judgment.
(A) Anglin C.J.C.

(A) ANGLIN C.J.C. : I have had the advantage of reading the elaborate and carefully prepared judgment of my brother Newcombe. I entirely agree with the views expressed by him as to the "main line" and the "branch line." As to the Westville branch, however, while I accept his conclusion that the Appellants were, at the highest, holders of a revocable license to erect and maintain their telegraph lines on the right-of-way of the railway company (*Kerrison v. Smith* (1897), 2 Q.B. 445), I cannot accept
10 his further conclusion that failure to give notice of such revocation is necessarily fatal to this branch of the Plaintiff's action. On the contrary, it seems to me that inasmuch as the Defendants asserted that their license in respect to this particular part of their line was irrevocable and contested the claim of the Crown to exclude them on the merits (*Coleman v. Foster* (1856), 1 H. & N. 37) the bringing of the action itself should be regarded as sufficient notice, subject only to the question of costs and to a reasonable time being allowed the Defendants to remove their poles and wires from the right-of-way. (*Cornish v. Stubbs* (1870), L.R. 5 Common Pleas, 334 ; *Aldin v. Latimer Clark, Muirhead & Co.* (1894), 2 Ch.D., 437, at p. 448.)

20 It seems to me entirely reasonable that this view should prevail since under a judgment dismissing the Plaintiff's action as to the Westville Branch on the ground of want of notice, the result would be the giving of formal notice and the bringing of another action for the same relief which, according to the judgment of Newcombe J., must necessarily succeed. The better course seems to me to be to allow to the Defendants their costs of defence so far as the intrusion upon the Westville branch line is concerned, to be set off against the other costs, just as my brother Newcombe has done, and in addition, to direct the trial judge to fix a reasonable time within which the poles and lines of the Defendant should be removed from the right-of-
30 way of the Westville branch.

(B) NEWCOMBE J. (concurrent in by Duff, Rinfret and Lamont JJ.) : (B) Newcombe J. (concurrent in by Duff, Rinfret and Lamont JJ.)
The Attorney-General proceeded by information of intrusion, filed in the Exchequer Court of Canada, on 15th September, 1926, claiming to recover possession of lands acquired for railway purposes of the Crown in the provinces of Nova Scotia and New Brunswick ; the intrusion alleged consisting in the wrongful planting and maintenance upon the roadway of the Intercolonial Railway by the Defendant of its lines of telegraph from Saint John to Moncton (90 miles) ; from Moncton to Halifax by way of Truro (190 miles) ; from Truro to New Glasgow (43 miles) ; from New Glasgow
40 to Sydney (163 miles) ; and from Westville, near New Glasgow to Pictou (10 miles) ; in all a mileage of 496 or thereabouts.

The Attorney-General by his pleading, as amended by leave at the trial, claimed possession, issues and profits, and, in the alternative, a declaration as to the Defendant's rights, if any. The Defendant pleaded a comprehensive denial, and estoppel by laches and acquiescence, also leave and licence ; and the latter constitutes the chief defence upon which the Defendant relied at the hearing. There was considerable oral testimony and

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many exhibits, extending to nearly five hundred printed pages in the case. There is no dispute as to the Crown's title to the lands claimed, nor as to the Defendant's occupation of these lands for the purposes of its telegraph lines. The case was tried in January, 1929, by Audette J., and his findings and conclusion are expressed thus:—

“The trial was proceeded with only upon the question of law, or, at any rate, leaving the question of damages to be dealt with after the rights of the parties had been determined, and hope was then expressed by counsel that once the rights determined the terms and conditions could be agreed upon by the parties. 10

“In the result, the prime and controlling issue to be determined by these proceedings is what right, if any, has the Defendant on the right of way? Answering the same I find that the Defendants are and have been on the right of way from the beginning by the license of the Plaintiff—but not an irrevocable license, which would be tantamount to an alienation of the property of the Crown.

“I do not think that I should be called upon in my judgment to determine more than that; but if I can assist the parties to a full and complete settlement of their difficulties I shall be glad to have them, or either of them, apply, upon notice, for further directions. 20

“There will be judgment accordingly. The question of costs is reserved.”

The Defendant appealed upon the grounds:—

“1. That the learned Trial Judge was in error in holding that the license referred to was not irrevocable.

“2. That on the facts as disclosed in the evidence and as found by the learned Trial Judge the action should have been dismissed with costs.”

The Attorney-General cross-appealed against the finding which maintained an existing revocable licence, and he submitted that the Defendant 30 was a trespasser, or, in the alternative, that its licence, if any, had been revoked.

The telegraph lines in question naturally divide themselves into three sections or parcels and they must necessarily be considered separately; namely, the lines between St. John and Halifax, with a branch from Truro to New Glasgow, which were constructed in 1888, 1889 and 1890, and which, for convenience, will be hereinafter described as the “Main Telegraph Line”; the line from New Glasgow to Sydney, known in the case as the “Branch Telegraph Line,” constructed in 1893, and the short line running from Westville to Pictou, built in 1911, which I shall call the “Westville 40 Telegraph Line.”

The facts with regard to these present differences should be realized, and, in the view which I take, the learned Trial Judge must have arrived at different results, if he had properly appreciated and applied the evidence in relation to each of these lines, respectively.

There are, as I have said, three separate cases, depending upon different considerations of fact, and I shall consider them separately in the order which I have mentioned.

The Main Telegraph Line.

The correspondence shows that, when, in 1887 or 1888, the Defendant was contemplating to undertake the construction of its telegraph system east of St. John, it applied to the Government for permission to construct an extension of its telegraph line along the Intercolonial Railway from St. John to Halifax via Moncton. Upon considering this request, it was found that the granting of it would create conflict with exclusive rights already conceded by the Government to the Montreal Telegraph Company, a corporation which, along with the Great Northwestern Telegraph Company, was controlled by the Western Union Telegraph Company, then the principal operator of telegraphs in the Maritime Provinces. The application was refused, and the Defendant, in consequence, built its line outside of the Plaintiff's railway; having, as it claims, secured a right of way from the proprietors abutting upon the railway; but this location was, for obvious reasons, less advantageous and more expensive for construction and maintenance than that which would have been afforded by use of the Government roadway itself, and, in places where outside construction was difficult, the Defendant, notwithstanding the absence of any permission, took the liberty of planting its poles on the roadway acquired and used by the Government, and even within the railway fences. These acts of trespass were discovered and led to complaints. Mr. Schreiber, the Chief Engineer of Government Railways, had written to Mr. Hosmer, the Defendant's Superintendent of Telegraphs at Montreal, on 21st June, 1889, stating that in construction of the Defendant's line of telegraph between Saint John, Halifax and New Glasgow, via Truro, "outside and near to the Intercolonial Railway fence," the Government would grant all reasonable facilities, as regards the distributing of poles and other materials, the movement of the Defendant's boarding and supply cars, and the running of hand-cars; and Mr. Richardson, who was in charge of the construction for the Defendant, had written to Mr. Hosmer on 13th August, 1889:—

"As there is no injunction could we not put our poles on the roadway side of the fence on the quiet through some of these back-woods places, without any serious consequences? In many places they would not be noticed."

A subsequent example of the zeal displayed on behalf of the Defendant in the establishment of its telegraph lines upon the railway reserve is to be found in the correspondence of 1892, when, on 4th July, Mr. Kent, the Defendant's Superintendent of Telegraphs, wrote to Mr. Hosmer, requesting him to get permission from the Government "to put up about one line of poles on the Intercolonial Railway's right of way between Stellarton and New Glasgow. Our present route is along the highway and liable to frequent interruptions." And Mr. Pottinger wrote Mr. Snyder on 11th August, refusing this permission. But these poles had already been installed upon the railway; and, on 12th August, Mr. Snyder wrote Mr. Kent, saying:—

"The line is there all the same and we have a good job but I would not like to swear whose property we are on."

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(B) Newcombe J.
(concurring in by
Duff, Rinfret and
Lamont JJ.

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Similarly, on 22nd September, 1892, Mr. Snyder telegraphed to Mr. Kent :—

“ . . . We have moved about 200 poles this summer in different places to straighten out line and I have ordered the men to keep on with the work unless they are stopped. If they leave us alone long enough we will have a moderately good line east soon.”

Mr. Hosmer had written to Mr. Bradley, the Secretary of the Department of Railways, on 18th September, 1889 :—

“ You are I presume aware that owing to the exclusive contracts on the Intercolonial Railway our Company has been delayed in the 10 construction of its lines, and we are now obliged to build them outside of the Railway right of way.”

Nevertheless, by 14th October, 1889, some of the Defendant's poles had been set upon the roadway, and, on that date, Mr. Hosmer wrote to Mr. Richardson :—

“ I might say privately that I have brought the matter to Mr. Van Horne's attention and have asked him to use his influence at Ottawa to try and get the Government not to disturb any poles that are now erected.”

On 7th January, 1890, Mr. Bradley wrote to Mr. Drinkwater, the 20 Defendant company's secretary :—

“ By direction I have to call your attention to the fact that at certain points along the Intercolonial Railway between St. John and Halifax telegraph posts have been erected by your Company on the Government property.

“ In view of the terms of the agreement at present existing between the Government and the Montreal Telegraph Company the concession of such a privilege as this would imply, were the posts in question allowed to remain, cannot be granted to your Company and I am accordingly to request that they be at once removed.” 30

There was further correspondence; Mr. Hosmer called for a report from Mr. Richardson and was informed, by letter of 1st March, 1890 :—

“ The number of poles we have erected upon I. C. R. property east of St. John is, to the best of my knowledge, as follows :—

	Inside fence.	Outside fence but in Railway limits.	Total.	
“ Between St. John and Moncton ...	12	214	226	
“ Between Moncton and Truro ...	6	4	10	
“ Between Truro and Halifax ...	29	—	29	40
“ Between Truro and New Glasgow	7	—	7	
	—	—	—	
	54	218	272 ”	

Time passed, but nothing was done, although the Department was insisting upon the removal of these poles; proceedings were threatened to enforce their removal, and Mr. Hosmer, on 5th September, 1890, wrote

Mr. Dwight, the General Manager of the Great Northwestern Telegraph Company at Toronto, explaining the situation, and saying:—

10 “ We have inside the fence along the Intercolonial Railroad
 “ between St. John and Halifax and New Glasgow, a few poles which
 “ it was absolutely necessary to put there, and the Government are
 “ urging us to remove them, threatening us with legal action, etc.—
 “ I understand that the proceedings they are taking are being insti-
 “ gated by your Company, and I thought it but right to call your
 “ personal attention to the matter. The few poles we have on the
 20 “ Railroad cannot possibly be of any damage to your Company or the
 “ Western Union, and if we are forced to move them we must consider
 “ that it is done simply to annoy us. You know that your Company
 “ have several hundred miles of poles on Railroads owned by this
 “ Company (with which you have absolutely no contract rights) and
 “ that we have never sought to annoy you or obstruct you in their
 “ maintenance in any way. In fact, we have gone out of our way to
 “ instruct our men to render your repairers every possible assistance.
 “ I think, under those circumstances, you can well afford to treat us
 “ in a similarly liberal manner. I write you personally rather than
 20 “ officially, as I can understand that there may be reasons why you
 “ would not want a precedent established in a matter of this kind.”

Five days later the Attorney-General filed an Information in the Exchequer Court for the removal of the Defendant's poles, which had thus found their way to “ the roadbed and right of way of the Intercolonial Railway.” Mr. Dwight replied to Mr. Hosmer, on 16th September, that his company had made no complaint whatever,

30 “ and you may consider yourself welcome, so far as we are concerned,
 “ to any such accommodation of the kind as you may need anywhere
 “ along the route. I think we have both reached a period in our
 30 “ experience when we may consider it scarcely worth while to take
 “ any action simply for the purpose of annoying each other.
 “ If there is anything you wish me to do respecting the matter
 “ to prevent any further annoyance please let me know. I will write
 “ to Superintendent Clinch, St. John, in regard to the matter, and see
 “ what he knows about it.”

Then Mr. Van Horne, the President of the Defendant company, sent a copy of the correspondence to Sir John A. Macdonald, the Prime Minister, and, on 24th September, Sir John sent a note to the Minister of Justice, saying:—

40 “ Please stay proceedings. It won't do to have any further
 “ difference with the C.P.R. just now. This is an unimportant matter.”

The Minister of Justice called for a precis of the case from his Department, and returned it with the following endorsement:—

“ *Telegraph Suit vs. C.P.R.* Let it go on.”

Finally, on 9th October, Sir John A. Macdonald replied to Mr. Van Horne:—

“ I have yours of the 22nd ult. and return you the papers therein
 “ enclosed, as you desire. The Government have not the slightest

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“objection, so far as they are concerned, to the C.P.R. planting telegraph poles along the line of the I.C.R. The trouble is that long ago, by an absurd agreement, the Montreal Telegraph Company was given the exclusive right to plant poles and wires along the line of the I.C.R. Such being the case, the Government officials gave notice to your people not to plant poles but the warning was utterly disregarded. The proceedings were taken lest the Government might be held responsible by the Montreal Telegraph Co. for breach of agreement and consequent damage. Dwight’s letter to Hosmer is satisfactory enough, but it is not, I take it, binding on the Company, especially if under the control of Wiman. However, if the C.P.R. will stand between the Government and all harm in the event of proceedings being taken, we will not interfere with your telegraph poles.”

I have referred, more fully perhaps than is necessary, to the facts leading up to the Prime Minister’s letter, because that letter is now put forward by the Defendant most prominently as its justification for the removal, several years later, of substantially the whole of its main telegraph line from its original place to the roadway of the Intercolonial Railway, within the fences, the location now in controversy; and thus the conditional promise, given by the Prime Minister in 1890, not to interfere with what is described in Mr. Hosmer’s application as “a few poles which it was absolutely necessary to put there,” is invoked, even though the condition was never expressly fulfilled, to justify the transplanting of the whole of the main line, for a distance of more than three hundred miles. I have no difficulty in reaching the conclusion, and I think it is obvious, that this contention utterly fails.

Then it is said upon evidence of a witness, named Mersereau, who, in 1904, was working for the Defendant on its telegraph line between Saint John and Moncton, making repairs under the direction of Mr. Snyder, the Defendant’s Superintendent of Telegraphs at Saint John, that he, Mersereau, found it convenient to move some of the poles, which were under repair, across the fence to the railway, and that he had been stopped by one of the Government’s section foremen. He says he went to Moncton and spoke to Mr. Pottinger, who was then the General Manager of the Intercolonial Railway. This is the conversation, as stated by Mr. Mersereau:—

“Q. Well what did you state to him?—A. I told him we were stopped moving the poles over on the I.C.R. that Mr. Snider had informed me I could do, by a section foreman; and he listened until I was done, and he told me I could go back to my work, he would see that the man was informed to let the C.P.R. alone.”

“Q. That is practically the whole conversation?—A. The whole conversation.”

Mr. Pottinger’s testimony concerning this incident is as follows:—

“Q. Do you recollect at any time any requests being made to you with reference to putting poles on the right-of-way of the Government Railway?—A. There was once a request of that kind made to me.

“Q. By whom, do you remember?—A. By Mr. Snider, who was Superintendent of the Canadian Pacific Telegraph Company.”

- “ Q. At Saint John?—A. His headquarters were Saint John, yes.
- “ Q. You remember about what year that was in?—A. I am afraid I do not.
- “ Q. Was it verbal or in writing?—A. It was verbal.
- “ Q. What was it?—A. Well, he came to me one day and he said, “ I am rebuilding our line, and part of it runs through bush, and the “ trees have given me a great deal of trouble, and I would like to move “ a few of the poles which are outside of the railway fence inside the “ fence to get past this clump of trees. And I gave him my verbal “ permission.
- 10 “ Q. Do you recollect anywhere near about the time that was? “ —A. I am afraid I could not say what time it was.
- “ HIS LORDSHIP: Do you remember about what space that would “ cover, or how many poles?—A. No, but it was a definite request “ for a small concession as I understood, I imagine it would be about “ five, but not exceeding ten miles.
- “ MR. JONES: Do you recollect what section of the railway it “ referred to?—A. I do not know whether he mentioned any section “ or not, but I was under the impression that it was between Moncton “ and Saint John. I had seen their line there in a tree-covered area “ just outside of the railway fence, and I supposed it was that.
- 20 “ Q. Do you know whether or not he did put some poles in on the “ right-of-way?—A. I never thought about the matter again, and I “ never inquired whether he moved the poles or not.
- “ Q. Was that the only request made to you in reference to the “ matter of putting poles on?—A. That is the only one I remember, “ I do not think there was any other ever made.
- “ Q. Did you ever at any time give permission to anyone con- “ nected with the Canadian Pacific to place their line as a line upon “ the right-of-way?—A. I did not. I never was asked by anyone “ for that permission.
- 30 “ Q. Or to rebuild their line upon the right-of-way?—A. No, “ excepting in that instance of Mr. Snider.
- “ Q. Do you remember at any time when a Mr. Mersereau, David “ Mersereau, was working for the Canadian Pacific?—A. The name is “ familiar, but, I cannot recall meeting him in any way.
- “ Q. You do not recall having any conversation at all with him? “ —A. I do not remember any.
- “ Q. Do you recollect any person asking you to see that certain “ section men on the railway did not interfere with the building of a “ telegraph line by the Canadian Pacific?—A. I have no recollection “ of that.
- 40 “ Q. I think you have already said you were not approached by “ Mr. Snider in connection with transferring their whole line to the “ right-of-way?—A. I was not.”

Also a letter from J. McMillan, who had become the Defendant's Manager of Telegraphs at Montreal, dated 28th December, 1916, to A. C. Fraser, the Defendant's Superintendent of Telegraphs at Saint John, and Mr. Fraser's reply of 1st January, 1917, have been admitted into the record.

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Mr. Pottinger had retired from the railway service in 1913, and it was at the end of 1916, when he was living at his summer home at Cape Tormentine, that Mr. Fraser went to see him, at Mr. McMillan's request, and at the trial, Mr. Fraser, refreshing his memory by his letter, says :—

“ I have seen Mr. Pottinger in connection with permission granted for any rebuilding to be made on the railroad property. He was approached by the late Mr. Snyder in connection with the transferring of line to the right of way. Mr. Pottinger saw no objectionable features and permission was granted verbally. He was in Ottawa a few days later and advised the Minister of Railways and Canals that he had granted the Canadian Pacific Telegraph the right to do their rebuilding on the Intercolonial right of way. The Minister stated that it was quite right and that he could see no reason why the permission should not be granted. 10

“ With reference to the line between New Glasgow and Sydney, Mr. Pottinger is not quite clear as to why this line was permitted on the right of way. His recollection is that there was some kind of an agreement whereby the telegraph company, if called upon, were to perform a certain service gratis. He has a clear recollection, however, that the telegraph people had the necessary permission and that there was a quid pro quo, the nature of which he is unable to recollect. 20

“ Mr. Pottinger has no recollection of the Mersereau incident, but states that had the section men interfered with the telegraph gang he would certainly have taken action, as the work was being prosecuted with his own and the Minister's consent.”

Mr. Pottinger at page 99 is emphatic in his denial. Mr. Fraser's letter is shown to Mr. Pottinger and he testifies :—

“ A. Mr. Fraser evidently is mistaken in what he says here about my statement. It is a misunderstanding of some kind, because he states it in general terms here. The permission I gave was a specific one for a very small affair, to help out Mr. Snider in his difficulties in operating his line, and there was no general movement spoken of at all at any time. 30

“ He goes on to say that I was in Ottawa a few days later and advised the Minister of Railways. Well I never reported to the Minister, I reported to Mr. Schreiber. I mean any general business. He was the one I made all reports to. I made no report of this concession given to Mr. Snider. I did not think it was worth while mentioning, and I dismissed it from my mind after the interview was over with Mr. Snider. As for speaking to the Minister about it, I never had the slightest communication with any Minister in regard to it at all. He is mistaken in regard to that. 40

“ Q. I think you have said that you never even reported it to Mr. Schreiber?—A. I never reported it to Mr. Schreiber, but I may have said to Mr. Fraser that it was possible that I may have spoken to Mr. Schreiber about it when I saw him.

“ Q. But you never made any report whatever about anything to the Minister, you say?—A. Never. I never saw the Minister about anything unless he sent for me and wanted to speak to me.

“ Q. You will notice that Mr. Fraser says you told him that you advised the Minister of Railways and Canals that you had granted the Canadian Pacific Telegraph the right to do their rebuilding on the Intercolonial right-of-way?—A. Well he is entirely mistaken in regard to that.

10 “ Q. Then he goes on to say that you said that the Minister stated it was quite right, and that he could see no reason why the permission should not be granted?—A. Well he is certainly mistaken in what I said.”

Mr. Pottinger was a most trustworthy, careful and capable officer and a successful administrator, as shown by his lifelong employment and promotion to the top in the service of the Government railways; and the suggestion that he, advised as he was, and well knowing that the Montreal Telegraph Company had exclusive privileges upon the main line, would permit, still less authorize, the use of the Intercolonial Railway, as the base of a competing line, thereby also reversing the policy to which the Govern-
20 ment had deliberately committed itself and which he was directed to enforce, is too improbable for me to entertain. I have no hesitation to accept Mr. Pottinger's testimony as he gave it, and I do not see anything to the contrary in the findings of the learned Trial Judge.

One easily perceives, upon reading the evidence, that the Defendant coveted the right to place its telegraph fixtures upon the lands which the Government had acquired, appropriated and fenced for the Intercolonial Railway, because it was convenient and easy of inspection and access; also that, whether or not, in the absence of the Montreal Telegraph Company's agreement, the Government might have been willing to concede
30 the liberty sought, upon terms to be stipulated, certain it is that the Government consistently throughout refused any concession, for the ostensible reason that it was precluded by the agreement, although in view of the considerations to which the Prime Minister alluded, it was not unwilling to tolerate occasional transgressions, upon terms of indemnity, where, by reason of the difficulties of the ground, it might otherwise, in what the Prime Minister not unnaturally characterized as an “ unimportant matter,” have been subject to an imputation of unneighbourly conduct. Some ingenuity was manifested for the purpose of showing that there were local, or even national, advantages to be served which might have influenced
40 the Government to adopt a more generous attitude, but for the reality of any such motive, there is not the least evidence.

In the years 1905, 1906 and 1907, it had become necessary to rebuild, and the Defendant moved 59 miles of its telegraph line, between Truro and Halifax, from the outside to the inside of the railway fences. There was no communication with the Government respecting this rebuilding. Mr. Pottinger says it was done without his knowledge. In 1910, the Defendant, in rebuilding portions of its line between Moncton and Truro, transferred its line to the Government roadway for a distance of 23 miles; in 1911, it similarly rebuilt 59 miles, and in 1912, 43 miles. This is shown by the

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Defendant's Exhibit No. 3, at page 482 of the case. No permission for any of these encroachments is disclosed, and it was apparently not until 1915, when Mr. Gutelius was General Manager of Government Railways, that it was discovered that the Defendant had substantially rebuilt its main line upon the Government roadway.

After 5th May, 1913, when Mr. Gutelius became General Manager, in substitution for the Managing Board, of which Mr. Pottinger had been a principal member, discussion arose as to the terms of transport upon the Intercolonial Railway of the Defendant's boarding cars, men and material, and it was then that Mr. Gutelius appears to have ascertained the fact, 10 which had not previously been realized on the part of the Government management, that the Defendant had transferred its line of telegraph generally to the Government roadway. This was one of the matters which Mr. Gutelius considered with Mr. McMillan, the Manager of the Defendant's telegraphs at Montreal, on or before 6th March, 1916, when Mr. McMillan passed to Mr. Gutelius a memorandum signed by the former, in which he said :—

“ After careful checking I find that the Canadian Pacific have
“ along the line of the Canadian Government Railway in New Bruns-
“ wick and Nova Scotia, pole line in the Government Railway for a 20
“ distance of 499 (437) miles, leaving a gap of 46 miles where the line
“ is built outside of the right of way, close to the fence, where when
“ having all this rebuilt, we would like to transfer to the side of the
“ right of way. From what I understand from the members of the
“ staff now in Montreal, there was some agreement or understanding
“ between the former Manager of Telegraph and some of your officials
“ that this line would be permitted along your right of way, rent free.
“ Regarding this, I would be glad if you would let me have further
“ information, as it is hardly likely that the line would have been
“ permitted to be placed on your right of way without some mutual 30
“ understanding.”

After enquiry Mr. Gutelius wrote to Mr. McMillan, on 31st October, 1916 :—

“ I find upon investigation that the Canadian Pacific Railway
“ Telegraphs are trespassers with their poles on the right of way of the
“ Canadian Government Railways to the extent of 452 miles.”

And he sent a copy of his letter to the Minister of Railways, who answered :—

“ I have yours of November 14th enclosing copy of your letter
“ to the Manager of C.P.R. Telegraphs in reference to their poles,
“ wires, etc., on our right of way and the joint use of the station for 40
“ telegraph purposes at St. John.

“ I trust you will not permit this matter to drop, and, if they
“ do not give you an answer within a reasonable time, I wish you to
“ follow it further and keep me advised.”

Some interesting correspondence followed, but it is unnecessary to quote it here ; it was in this connection that Mr. Fraser made the enquiry of Mr. Pottinger, to which I have already alluded. There were negotiations for settlement, and Mr. McMillan submitted to Mr. Gutelius a draft proposal,

and, finally, a formal agreement was prepared under date of 29th May, 1917, between the King, represented by the Minister of Railways and Canals of Canada, of the one part, and the Canadian Pacific Railway, of the other part. This draft was initialled by Mr. Gutelius and by Mr. Beatty, the Defendant's General Counsel, and executed on behalf of the Defendant company. Mr. Gutelius resigned his office a day or two afterwards, on 1st June, 1917, and, by Order-in-Council of 5th idem, his resignation was accepted and Mr. Hayes, the General Traffic Manager of the Intercolonial Railway, was promoted to the office which Mr. Gutelius had quitted. The
 10 Minister was not satisfied with the initialled agreement, which had evidently been sent forward for his consideration, and he wrote Mr. Hayes upon the subject, to which Mr. Hayes on 11th June sent the following significant reply :—

“ Yours 6th June.

“ It will be necessary for me to have a little time to enquire into
 “ this matter.

“ My general understanding of the situation is that the Telegraph
 “ Co. had been enjoying for a long period all of the privileges granted
 “ them by the proposed agreement but without there being any agree-
 20 “ ment in existence outlining the privileges granted or defining the
 “ obligations of either party and Mr. Gutelius had simply endeavoured
 “ to get a written undertaking to more clearly define the status of both
 “ parties.

“ You ask ‘ Why should they have these privileges for nothing.’
 “ I will consider that suggestion although it is my impression the poles
 “ of the Telegraph Co. are quite generally placed just outside our right
 “ of way line although there are some spots where they encroach on
 “ the railway property.”

On 17th July, 1917, Mr. Hayes informed Mr. McMillan personally at
 30 Montreal, that the Minister had declined to approve the agreement. The
 correspondence was prolonged.

On 3rd August, 1917, Mr. Hayes wrote Mr. McMillan :—

“ As the draft agreement that has been prepared does not seem
 “ to provide for these railways a sufficient consideration for the privi-
 “ leges you enjoy we shall be obliged to review and submit a revised
 “ proposition for your consideration.”

And, on 29th September, he wrote again, enclosing a revised draft ; but
 this, although considered, was not accepted, and, on 20th March, 1924,
 the Assistant Deputy Minister of Justice notified the President of the
 40 Defendant company that :—

“ The wires and poles must be removed from off the Government
 “ Railways' lands.”

This intimation was repeated by Mr. Edwards' letter to Mr. Flintoft of
 29th January, 1926, although the action was not instituted until 29th
 October of that year.

As to the main line, therefore, the defence of leave and licence fails,
 and I see nothing to give rise to any equity in favour of the Defendant.
 There was no mistake of title, no misleading conduct on the part of the

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Government, nothing in the way of invitation or encouragement, nor even of acquiescence or tolerance, except, in the time of Mr. Gutelius, during the period of negotiations for settlement.

If there be evidence of any of these things, I have failed to appreciate it. The Defendant's occupation began in trespass, and I see no reason to doubt that it so continued and remains.

The Branch Telegraph Line.

When the Defendant began to construct its line from New Glasgow to Sydney, it applied for leave to use the Government roadway. On 9th March, 1893, Mr. Hosmer wrote to Mr. Schreiber, the Deputy Minister of 10
Railways :—

“ The Canadian Pacific contemplate the construction of a tele-
graph line between New Glasgow, N.S. and Sydney, C.B., and desire
“ to know if the Government are free to allow the line to be built along
“ the Intercolonial Railway right of way between these two points. I
“ understand that when the contract for the existing lines was entered
“ into between the Government and the Western Union Telegraph
“ Company the Government reserved the right of allowing another line
“ to be built, having in view the fact that our system would be extended
“ between these points.” 20

And on the following day, Mr. Schreiber replied :—

“ I have yours of the 9th inst. in which you state that the C.P.
“ contemplate the construction of a telegraph line between New
“ Glasgow and Sydney, and asking if the line can be built along the
“ Intercolonial Railway right of way between these two points.

“ There will be no difficulty about this, but it will be necessary
“ for you to enter into a written agreement similar to the Western
“ Union Telegraph Company.”

On 20th March, 1893, Mr. Hosmer wrote the Superintendent of the Com- 30
mercial Cable Company at Canso :—

“ I might say to you privately that we intend constructing a tele-
graph line from New Glasgow, N.S. to Sydney, C.B. this summer and
“ that we expect to get permission from the Intercolonial Railway to
“ build along the line of their road between these two points.”

Copy of the Government's agreement with the Western Union Tele-
graph Company, dated 16th October, 1889, is in evidence, also an amending
agreement of 12th January, 1891. Apparently a draft contract with the
Defendant company was prepared, by or under instructions of the Depart-
ment of Railways, submitted for Mr. Pottinger's consideration, and, on
27th May, 1893, despatched to the Defendant by the Department, with a 40
request :—

“ Be pleased to return the same to this Department as soon as
“ they have been duly signed and sealed on behalf of the company.”

By letter of 25th July, 1893, the Defendant wrote to the Department :—

“ I beg to enclose agreement in duplicate, executed by this Com-
pany providing for the construction of a telegraph line on the Inter-

“ colonial Railway between New Glasgow and Sydney. Will you please return one copy to me when executed by the Minister of Railways.”

On 27th August, Mr. Richardson, in charge of the construction, wrote to Mr. Kent, then the Defendant's Superintendent at Montreal :—

“ Offices should be decided upon immediately including our right to enter Railway stations as it is very unsatisfactory building line without knowing where offices are to be located.”

And, again, he wrote on 19th September :—

10 “ The Government has not yet signed their agreement and of course until this is done we cannot enter the stations.”

Meantime the following telegrams had passed between Mr. Pottinger at Moncton and Mr. Schreiber at Ottawa :—

“ August 9th, 1893.

“ Dated Moncton

“ To C. Schreiber

“ Ottawa, Ont.

20 “ The men in charge of construction of C.P.R. telegraph line in Cape Breton ask to be allowed to put wire into Mulgrave station is this to be done.

“ D. POTTINGER.”

“ Ottawa, August 10th, 1893.

“ D. Pottinger,

“ Moncton.

“ Message received—Council has not yet been asked to authorize the Minister to sign agreement permitting Canadian Pacific Telegraph Co. to place their line between New Glasgow and Mulgrave.

“ C. SCHREIBER.”

30 In fact, no recommendation was, at any time, submitted to Council, and the agreement was not authorized or executed on behalf of the Government. The draft which the Defendant had executed and returned was sent by the Department to Mr. Pottinger at Moncton for consideration, where it was lost with the file relating to it, probably destroyed in a fire, and now the evidence of its contents is sought to be derived from the Western Union agreement, by reason of Mr. Schreiber's letter of 10th March, already quoted, in which he says :—

“ . . . it will be necessary for you to enter into a written agreement similar to the Western Union Telegraph Company.”

40 Now the Western Union Telegraph Company's agreement extends to five printed pages and contains twenty-seven clauses, not counting the amending document, and it is not reasonable to suppose that either Mr. Schreiber or the company meant to adopt all these stipulations and details, or that an agreement with the Defendant would become definite until the terms to be applied were defined and assented to by both parties. On behalf of the Government, the party to the Western Union agreement was Her Majesty

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the Queen, represented by the Minister, and it must have been assumed that the agreement in contemplation with the Defendant company would require the sanction of the Government. This was, in fact, never obtained; moreover, the Western Union agreement was, by express limitation, to continue in force for twenty years, and afterwards "until the expiration of one year after written notice shall have been given after the close of said term by either party to the other of an intention to terminate the same," a period which I take to have been terminated by the notices and facts in proof.

The Defendant relies upon Clause 25 of the Western Union agreement, 10 which, it contends, must presumptively have been incorporated in the lost draft. This clause provides:—

"25. When this agreement expires, either by lapse of time or pursuant to notice terminating this contract as in the preceding clause stated, the Company shall not be required to remove its poles and wires erected under this agreement from the Railway property, but all other rights herein granted shall thereupon cease and determine."

And the Defendant urges that it must, therefore, be deemed to have a perpetual franchise; but I do not so interpret the meaning. Assuming 20 that, upon expiry of the agreement, the Government could not compel the company to remove its poles and wires, nevertheless the company can no longer maintain or operate them, or successfully resist their removal by the Government, whose proprietary rights remain unaffected. The purpose of the clause was, if I do not misunderstand it, that, as the parties had contracted substantially for the life of the poles, it should be optional with the company to remove or abandon the salvage.

Therefore, there is, in my opinion, no agreement proved; or, even if otherwise, the agreement, such as it may have been, has ceased to operate in any particular, unless to negative the Defendant's liability to remove 30 its poles and wires; and the Defendant was, at the beginning of this action, in no better position than that of licensee whose leave was terminated or exhausted. Evidently the advantages which the Defendant enjoyed by use of the roadway, and the prospect that somehow it would not be disturbed, led it to disregard the consequences of the risk which, failing an authorized concession, it seems to have been willing to assume.

The Westville Telegraph Line.

There was some preliminary correspondence, and, on 10th March, 1911, at a meeting of the Government Railways Managing Board held at Moncton, the following Minute was recorded:—

Minute 1185: "Request from the Canadian Pacific Railway Telegraph Company for permission to string their wires from Westville to Pictou on our right-of-way. Question as to whether we can permit this on account of our contract with the Montreal Telegraph Company. The Department of Justice advise that there is nothing to prevent us from granting this request.

40

“The Board decided to grant the request: the Telegraph Company to give us the use of the line and to put the same into our stations at Westville and Pictou.”

On 20th March, 1911, Mr. McNicoll, Vice-President of the Defendant company, wrote Mr. Pottinger:—

10 “I understand that Mr. E. M. Macdonald, M.P., has been in communication with you with regard to giving us right of way for building telegraph line from Truro to Pictou Junction and that you have decided to grant us this permit on an agreement to be executed by us.
“Will you kindly confirm this and let me have draft of agreement so that I may arrange for the building of the line.”

And, on 7th April, Mr. Pottinger replied:—

“I duly received your letter dated March 20th, with reference to building a telegraph line from Truro to Pictou Junction. What was asked by your telegraph officials was for right of way to build a line from Westville Station to Pictou, a distance of 10·59 miles.

20 “As I told you verbally when in Montreal it will be all right for you to go on and build this line, and we will arrange about the agreement at a later period.

“Instructions have been given to our Track Department to permit the building of the line. There is a long trestle bridge over a portion of Pictou Harbour and there the wires will have to be attached to the bridge. The position of the poles of the telegraph line on the land and the position of the wires on the bridge can be arranged between the telegraph officials and our Roadmaster. There is a telegraph line of the Western Union Telegraph Company along that part of the Railway and your line of course will be placed so as not to interfere with the Western Union Line.”

30 These are the circumstances in which the Defendant constructed and maintains and operates the Westville line. The Plaintiff's answer is that the request was for a revocable licence, and that nothing more is implied by the Minute of the Managing Board and the letter from Mr. Pottinger to Mr. McNicoll. There is, however, no dispute that the Defendant used the Government railway from Westville to Pictou by consent, the parties having mutually in view the negotiation of a contract, with adequate sanctions, to regulate their rights and obligations.

40 “As I told you verbally when in Montreal it will be all right for you to go on and build this line, and we will arrange about the agreement at a later period,”

writes Mr. Pottinger to Mr. McNicoll; and the Defendant, with nothing more definite, built its line in 1911, and has ever since maintained and used it, apparently without any notice or warning of intention on the part of the Government to withdraw the licence so granted. It is true that this line of telegraph, or most of it, is included in the Information under the words:—

“ . . . between the following points, namely . . . Stellarton

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“ in the said province, and Pictou, in the said province, a distance of
“ 10·15 miles.”

But I am not sure that this did not happen by inadvertence, because there seems to have been no preliminary discussion or disclosure of any points of difference, and the Westville to Pictou line is not mentioned or included in the demand for removal evidenced by the letters from the Department of Justice of 20th March, 1924, and 29th January, 1926. I do not think, therefore, that the Government had a cause of action to enforce the removal of this line when the Information was filed, although I agree with the learned Trial Judge that the licence is revocable. The Defendant saw fit to proceed with its construction, leaving everything about the agreement at loose ends ; nevertheless, it presumably anticipated that there would be no difficulty in negotiating the terms, and it seems unjustifiable, in these circumstances, to attempt abruptly to terminate the permission without demand or notice. Consequently I think the action must fail in this particular ; although, if the parties be unable to conclude an agreement, I do not doubt that the licence may be reasonably revoked. I refer to the following authorities : *The King vs. The Inhabitants of Hordon-on-the-Hill*, 1816, 4 M. & S., 362, 365 ; *Coleman vs. Foster*, 1856, 1 H. & N. 37, 39, 40 ; *Cornish vs. Stubbs*, 1870, L.R. 5 C.P., 334, 337-340 ; *Mellor vs. Watkins*, 1874, L.R., 9 Q.B., 400, 404-406 ; *Aldin vs. Latimer, Clark, Muirhead & Co.*, 1894, 2 Ch.D., 437, 448 ; *Kerrison vs. Smith*, 1897, 2 Q.B. 445 ; *Lowe vs. Adams*, 1901, 2 Ch.D., 598, 600, 601.

What remains to be said applies generally to the three lines or groups of lines which have been separately considered.

The lands in question were acquired by the Government under legislative authority for the construction, maintenance and operation of Dominion railways, and are devoted to that purpose—a large part of the mileage at least belonging strictly to the railway which Canada was required to construct under the terms of Confederation, as provided by section 145 of the British North America Act, 1867 ; and the Defendant’s case assumes that the telegraph rights, which the Defendant claims in perpetuity with respect to these railway lands, can be acquired for the Defendant’s accommodation by the mere laches, acquiescence or tolerance of the executive officers and employees, charged under the Minister with the administration or working of the railway, and, moreover, that it is unnecessary to comply with statutory provisions. It is provided by section 7 of the Railways and Canals Act, 1927, chapter 171, that :—

“ The Minister shall have the management, charge and direction
“ of all Government railways and canals, and of all works and property
“ appertaining or incident to such railways and canals . . . and of
“ the officers and persons employed in that service.”

And, by section 15,

“ No deed, contract, document or writing relating to any matter
“ under the control or direction of the Minister shall be binding upon
“ His Majesty, unless it is signed by the Minister, or unless it is signed
“ by the Deputy Minister, and countersigned by the Secretary of the
“ Department, or unless it is signed by some person specially authorised

“ by the Minister, in writing for that purpose ; Provided that such
 “ authority from the Minister, to any person professing to act for him,
 “ shall not be called in question except by the Minister, or by some
 “ person acting for him or for His Majesty.”

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With respect to the telegraph lines from New Glasgow to Sydney and from Westville to Pictou, and also as to the main line, so far as concerns the settlement recommended by Mr. Gutelius, it was contemplated that whatever concessions might be authorized should be contracted for by the Crown, represented by the Minister, and the Defendant knew, or is presumed to
 10 have known, the statutory requirements, and yet there was no pretence of compliance. When, in 1898, section 23 of the R.S.C. 1886, chapter 37, which corresponds with the above quoted section 15, was considered by this Court in *Queen vs. Henderson*, 28 S.C.R. 425, there was a difference of opinion as to its application, and their lordships, by a majority of three to two, held that the section did not apply in the particular circumstances of that case. Taschereau J., who pronounced the judgment of the majority, saying, at page 432 :—

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“ The word ‘ contract ’ therein, means a written contract. Here
 “ the lumber claimed for was delivered under verbal orders from the
 20 “ Crown officers, and the statute does not apply to goods actually sold,
 “ delivered and accepted by the officers of the Crown, for the Crown.”

But I find nothing in the learned Judge’s reasons which would recognize, as a contract, terms which, if accepted, were intended to be expressly and formally stipulated with His Majesty in writing, and which were never signed or sealed by anybody for the Crown ; never authorized by the Governor-in-Council, and which, as the case shows, the Minister was unwilling to recommend for approval. Therefore, I think that, apart from the other considerations which I have mentioned, the contracts which the Defendant alleges are ineffective for non-compliance with the statute.

30 Moreover, as to the Defendant’s claim that it has acquired in perpetuity, and in the manner for which it contends, the right to use the Government railways for its telegraph lines, effect must be given to the principles expressed in *Ayr Harbour Trustees v. Oswald*, 8 A.C. 623. Lord Blackburn says at page 634 :—

“ I think that where the legislature confer powers on anybody to
 “ take lands compulsorily for a particular purpose, it is on the ground
 “ that the using of that land for that purpose will be for the public
 “ good. Whether that body be one which is seeking to make a profit
 “ for shareholders, or, as in the present case, a body of trustees acting
 40 “ solely for the public good, I think in either case the powers conferred
 “ on the body empowered to take the land compulsorily are intrusted
 “ to them, and their successors, to be used for the furtherance of that
 “ object which the legislature has thought sufficiently for the public
 “ good to justify it in intrusting them with such powers ; and, conse-
 “ quently, that a contract purporting to bind them and their successors
 “ not to use those powers is void. This is, I think, the principle on
 “ which this House acted in *Staffordshire Canal v. Birmingham Canal*
 “ (L.R. 1 H.L. 254), and on which the late Master of the Rolls acted

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“ in *Mulliner v. Midland Railway Co.* (11 Ch.D. 611). In both those
“ cases there were shareholders, but, said the Master of the Rolls, at
“ p. 619, ‘ Now for what purpose is the land to be used ? It is to be
“ ‘ used for the purposes of the Act, that is, for the general purposes
“ ‘ of a railway. It is a public thoroughfare, subject to special rights
“ ‘ on the part of the railway company working and using. But it
“ ‘ is in fact a property devoted to public purposes as well as to private
“ ‘ purposes ; and the public have rights, no doubt, over the property
“ ‘ of the railway company. It is property which is allowed to be
“ ‘ acquired by the railway company solely for this purpose, and it is 10
“ ‘ devoted to this purpose ’.”

And Lord Watson, at page 639, referring to specific provisions of the Ayr Harbour Act, and the purposes for which the land in question was to be used, says :—

“ The Lord Advocate ingeniously argued that these enactments
“ are permissive, and not imperative, and consequently that the
“ powers which they confer might be waived by the trustees ; but the
“ fallacy of such reasoning is transparent. Section 10 is permissive
“ in this sense only, that the powers which it confers are discretionary,
“ and are not to be put in force unless the trustees are of opinion that 20
“ they ought to be exercised in the interest of those members of the
“ public who use the harbour. But it is the plain import of the clause
“ that the harbour trustees for the time being shall be vested with,
“ and shall avail themselves of, these discretionary powers, whenever
“ and as often as they may be of opinion that the public interest will
“ be promoted by their exercise.”

It is laid down in Selwyn’s *Nisi Prius*, 13th Ed., 1086, that :—

“ A licence from A. to B. to enjoy an easement over the land of A.,
“ e.g., to enjoy the use of a drain (*Cocker v. Cowper*, 1 C.M. & R. 418)
“ or a pew (*Adams v. Andrews*, 15 Q.B. 284) or to come upon his land 30
“ for any other purpose (see *Roffey v. Henderson*, 17 Q.B. 574) is counter-
“ mandable at any time, although it has been acted upon, or a valuable
“ consideration paid for it, which has not been returned (*Wood v.*
“ *Leadbitter*, 13 M. & W. 838). Although a parol licence may be an
“ excuse for a trespass, until such licence is countermanded ; yet a
“ right and title to have a passage for water over another’s land, being
“ a freehold interest (or rather being an incorporeal hereditament),
“ requires a deed to create it (*Hewlins v. Shippam*, 5 B. & C. 221).”

The situation which exists seems to have been brought about deliberately by the Defendant company, realizing, as it must have done, the facts of 40 the case and the risks to be encountered by the planting of its telegraph lines upon the Government railway, and the desirability of securing permanent concessions, if possible, or if they could or would be granted by the executive authorities ; and there was no foundation upon which to apply the doctrine of estoppel. Insofar as any contract competent to the parties could answer the purpose, the Defendant neglected entirely the most elementary requirements as to the ascertainment of the terms, and the statutory essentials of form and sanction.

The following observations of Patterson J., pronouncing the judgment of the Court of Queen's Bench in *Blanchard v. Bridges*, 1835, 4 Ad. & El. 176, 194, 195, are apt for this occasion.

10 " It is far more just and convenient that the party, who seeks to
 " add to the enjoyment of his own land by any thing in the nature of
 " an easement upon his neighbour's land, should first secure the right
 " to it by some unambiguous and well understood grant of it from the
 " owner of that land, who thereby knows the nature and extent of his
 " grant, and has a power to withhold it, or to grant it on such terms
 " as he may think fit to impose, than that such right should be acquired
 " gradually as it were, and almost without the cognisance of the grantor,
 " in so uncertain a manner as to create infinite and puzzling questions
 " of fact to be decided, as we daily see, by litigation.

20 " If a party, who has neglected to secure to himself rights so
 " important by previous express licence or covenant, relies for his
 " title to them upon any thing short of an acquiescence for twenty
 " years, we think the onus lies upon him of producing such evidence
 " as leads clearly and conclusively to the inference of a licence or
 " covenant. It is difficult, perhaps impossible, to define the necessary
 " amount of such evidence; but we are of opinion that the amount
 " in the present case is clearly insufficient."

I would, therefore, as to the main line and the branch line, dismiss the appeal and allow the cross-appeal with costs, and remit the case to the learned Trial Judge, so that he may proceed with the trial; but, as to the Westville line, the appeal should be allowed with costs, to be set off. The Plaintiff also should have the costs heretofore incurred in the Exchequer Court, except with respect to the Westville line, as to which the Defendant should have its costs, also to be set off.

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—
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RECORD.

No. 326.

*In the
Privy Council.***Order in Council granting special leave to appeal to His Majesty in Council.**

At the Court at Buckingham Palace.

No. 326.
Order in Council
granting special
leave to appeal
to His Majesty
in Council,
July 28, 1930.

(L.S.)

The 28th day of July, 1930.

Present :

The King's Most Excellent Majesty.

Lord President.

Viscount D'Abernon.

Lord Chamberlain.

Mr. Craigie Aitchison.

Whereas there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 22nd day of July 1930 in the words following, viz. :—

“ Whereas by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of the Canadian Pacific Railway Company in the matter of an Appeal from the Supreme Court of Canada between the Petitioners Appellants and Your Majesty on the information of the Attorney General of Canada Respondent setting forth : (amongst other matters) that the Petitioners desire to obtain special leave to appeal from a Judgment of the Supreme Court delivered on the 11th June 1930 dismissing the Petitioners' Appeal and allowing the Respondent's Cross-Appeal from a Judgment of the Exchequer Court of Canada delivered on the 21st March 1929 : that the Action was commenced by the Respondent on the 5th September 1926 to compel the removal by the Petitioners of a line of telegraph poles and wires about 500 miles in length which with the exception of a small part had been in operation since between 1888 and 1893 and was situated upon the 100 foot right of way of that part of the Canadian Government Railway System known as the Intercolonial Railway : that the Respondent also claimed \$718,408 for issues and profits or in the alternative damages : that the Petitioners' telegraph lines are described in the Petition : that the Petitioners in defence alleged leave and licence that such licence was irrevocable or had not been revoked acquiescence a lost grant and estoppel : that the Exchequer Court dealt only with the question of law leaving the question of damages to be subsequently determined and holding that the Petitioners' telegraph lines were and had been from the beginning on the Respondent's right of way by the Respondent's licence and with the full knowledge of the Canadian Government Railway officials but that such licence was revocable : that the Petitioners appealed to the Supreme Court on the ground that the licence was irrevocable and that the Action ought to have been dismissed : that the Respondent cross-appealed contending that the

10 “ Petitioners’ telegraph lines had been placed on the right of way
 “ without leave or licence and that the Petitioners were trespassers or
 “ in the alternative that the licence if any had been revoked : that by
 “ the Judgment of the Supreme Court delivered by Newcombe J. and
 “ concurred in by Anglin C.J., Duff, Rinfret and Lamont JJ. it was
 “ held that the conduct of the Respondent’s officials did not bind the
 “ Respondent and that except in regard to the Pictou branch the
 “ Petitioners were bound to remove their lines and to make payment
 “ for past occupation or pay damages : And humbly praying Your
 “ Majesty in Council to order that the Petitioners shall have special
 “ leave to appeal from the Judgment of the Supreme Court dated the
 “ 11th June 1930 or for such further or other Order as to Your Majesty
 “ in Council may appear fit and proper :

20 “ The Lords of the Committee in obedience to His late Majesty’s
 “ said Order in Council have taken the humble Petition into con-
 “ sideration and having heard Counsel in support thereof and on behalf
 “ of Your Majesty Their Lordships do this day agree humbly to report
 “ to Your Majesty as their opinion that leave ought to be granted to
 “ the Petitioners to enter and prosecute their Appeal against the
 “ Judgment of the Supreme Court of Canada dated the 11th day of
 “ June 1930 upon depositing in the Registry of the Privy Council the
 “ sum of £400 as security for costs.

“ And Their Lordships do further report to Your Majesty that
 “ the proper officer of the said Supreme Court ought to be directed to
 “ transmit to the Registrar of the Privy Council without delay an
 “ authenticated copy under seal of the Record proper to be laid before
 “ Your Majesty on the hearing of the Appeal upon payment by the
 “ Petitioners of the usual fees for the same.”

30 His Majesty having taken the said Report into consideration was
 pleased by and with the advice of His Privy Council to approve thereof and
 to order as it is hereby ordered that the same be punctually observed obeyed
 and carried into execution.

Whereof the Governor-General Lieutenant-Governor or Officer adminis-
 tering the Government of the Dominion of Canada for the time being and
 all other persons whom it may concern are to take notice and govern them-
 selves accordingly.

M. P. A. HANKEY.

RECORD.

*In the
Privy Council.*

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leave to appeal
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In the Privy Council.

No. 87 of 1930.

On Appeal from the Supreme Court of Canada.

BETWEEN

THE CANADIAN PACIFIC RAIL-
WAY COMPANY - (*Defendant*) *Appellant*,

AND

HIS MAJESTY THE KING, on the
information of the Attorney-
General of Canada - (*Plaintiff*) *Respondent*.

RECORD OF PROCEEDINGS.

BLAKE & REDDEN,
17, Victoria Street, S.W.1,
for Appellant.

CHARLES RUSSELL & CO.,
37, Norfolk Street,
Strand, W.C.2,
for Respondent.