

UNIVERSITY OF LONDON  
W.C.1

-8 OCT 1958

INSTITUTE OF ADVANCED  
LEGAL STUDIES

In the Privy Council

No. 21 of 1952.

ON APPEAL FROM THE SUPREME COURT OF CANADA.

BETWEEN :

THE ATTORNEY-GENERAL FOR SASKATCHEWAN ... APPELLANT

AND

CANADIAN PACIFIC RAILWAY COMPANY ... .. RESPONDENT

AND

THE ATTORNEY-GENERAL FOR MANITOBA, THE  
ATTORNEY-GENERAL FOR ALBERTA, and THE  
ATTORNEY-GENERAL OF CANADA ... .. INTERVENERS.

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RECORD OF PROCEEDINGS

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# In the Supreme Court of Canada

ON APPEAL FROM THE COURT OF APPEAL  
FOR SASKATCHEWAN

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BETWEEN

CANADIAN PACIFIC RAILWAY COMPANY,  
Appellant,

AND

THE ATTORNEY-GENERAL FOR SASKATCHEWAN,  
Respondent.

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## APPEAL CASE

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HAMILTON & KNOWLES,  
Solicitors for Canadian Pacific Railway Company.

EWART, SCOTT, KELLEY AND HOWARD,  
Ottawa Agents for Canadian Pacific Railway Company.

J. L. SALTERIO, ESQ.,  
Solicitor for The Attorney-General for Saskatchewan.

McILRAITH & McILRAITH,  
Ottawa Agents for The Attorney-General for Saskatchewan.

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# In the Court of Appeal for Saskatchewan

Record  
Court of Appeal

IN THE MATTER OF THE CONSTITUTIONAL QUESTIONS  
ACT, BEING CHAPTER 72 OF THE REVISED STAT-  
UTES OF SASKATCHEWAN, 1940,

And

IN THE MATTER OF A REFERENCE PURSUANT THERETO  
BY THE LIEUTENANT-GOVERNOR IN COUNCIL TO  
THE COURT OF APPEAL FOR THE HEARING AND  
10 CONSIDERATION OF CERTAIN QUESTIONS ARISING  
WITH RESPECT TO CLAUSE 16 OF THE CONTRACT  
SET FORTH IN THE SCHEDULE TO CHAPTER 1  
OF THE STATUTES OF CANADA, 1881, AND THE  
VILLAGE ACT, 1946, THE RURAL MUNICIPALITIES  
ACT, 1946, THE LOCAL IMPROVEMENT DISTRICTS  
ACT, 1946, THE CITY ACT, 1947, AND THE TOWN  
ACT, 1947, ALL AS AMENDED.

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## RECORD OF PROCEEDINGS

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### PART I

20

#### No. 1 Order of Reference

No. 1  
Order of  
Reference  
Nov. 16, 1948

Approved and Ordered

O.C. 1914 A/48

Lieutenant-Governor.

Regina, Tuesday, November 16, 1948.

Whereas the Province of Saskatchewan was established in 1905  
by Statutes of Canada, 4-5, Edw. VII, c. 42. Section 3, of the Sask-  
atchewan Act provides:

“3. The provisions of *The British North America Acts, 1867 to*  
*1886*, shall apply to the Province of Saskatchewan in the same way  
30 and to the like extent as they apply to the provinces heretofore com-

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Court of Appeal

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Nov. 16, 1948

Continued

prised in the Dominion as if the said Province of Saskatchewan had been one of the provinces originally united, except in so far as varied by this Act and except such provisions as are in terms made or by reasonable intendment may be held to be specially applicable to or only to affect one or more and not the whole of the said provinces."

And whereas The British North America Act, 1867, section 92, provides:

"92. In each province the Legislature may exclusively make laws in relation to matters coming within the classes of subjects next hereinafter enumerated, that is to say:

"(2) Direct taxation within the province in order to the raising of a revenue for provincial purposes.

"(8) Municipal institutions in the province."

And whereas section 24 of the Saskatchewan Act provides:

"24. The powers hereby granted to the said province shall be exercised subject to the provisions of section 16 of the contract set forth in the schedule to Chapter 1 of the Statutes of 1881 being an Act respecting the Canadian Pacific Railway Company."

And whereas clause 16 of the said contract provides:

20 "16. The Canadian Pacific Railway, and all stations and station grounds, workshops, buildings, yards and other property, rolling stock and appurtenances required and used for the construction and working thereof, and the capital stock of the Company, shall be forever free from taxation by the Dominion or by any province hereafter to be established, or by any Municipal Corporation therein; and the lands of the Company, in the North-West Territories, until they are either sold or occupied, shall also be free from such taxation for twenty years after the grant thereof from the Crown."

And whereas Clause 1 of the said contract provides in part:

30 "1. For the better interpretation of this contract, it is hereby declared that the portion of railway hereinafter called the Eastern section, shall comprise that part of the Canadian Pacific Railway to be constructed, extending from the Western terminus of the Canada Central Railway, near the East end of Lake Nipissing, known as Callander Station, to a point of junction with that portion of the said Canadian Pacific Railway now in course of construction extending from Lake Superior to Selkirk on the East side of Red River; which latter portion is hereinafter called the Lake Superior section. That the portion of said railway, now partially in course of construction,  
40 extending from Selkirk to Kamloops, is hereinafter called the Central section; and the portion of said railway now in course of construction, extending from Kamloops to Port Moody, is hereinafter called the

Western section. And that the words 'The Canadian Pacific Railway,' are intended to mean the entire railway, as described in the Act 37th Victoria, chap. 14. The individual parties hereto, are hereinafter described as the Company; and the Government of Canada is hereinafter called the Government."

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And whereas sections 1 to 4 of 37 Vict., Chapter 14, Statutes of Canada, provide:

"1. A railway to be called the 'Canadian Pacific Railway' shall be made from some point near to and south of Lake Nipissing to  
10 some point in British Columbia on the Pacific Ocean, both the said points to be determined and the course and line of the said railway to be approved of by the Governor in Council.

"2. The whole line of the said railway, for the purpose of its construction, shall be divided into four sections: the first section to begin at a point near to and south of Lake Nipissing, and to extend towards the upper or western end of Lake Superior, to a point where it shall intersect the second section hereinafter mentioned; the second section to begin at some point on Lake Superior to be determined by the  
20 Governor in Council, and connecting with the first section, and to extend to Red River, in the Province of Manitoba; the third section to extend from Red River, in the Province of Manitoba, to some point between Fort Edmonton and the foot of the Rocky Mountains, to be determined by the Governor in Council; the fourth section to extend from the western terminus of the third section to some point in British Columbia on the Pacific Ocean.

"3. Branches of the said railway shall also be constructed as follows; that is to say:

"First—A branch from the point indicated as the proposed eastern terminus of the said railway to some point on the Georgian Bay, both  
30 the said points to be determined by the Governor in Council.

"Secondly—A branch from the main line near Fort Garry, in the Province of Manitoba, to some point near Pembina on the southern boundary thereof.

"4. The branch railways above mentioned shall, for all intents and purposes, be considered as forming part of the Canadian Pacific Railway, and as so many distinct sections of the said railway, and shall be subject to all the provisions hereinafter made with respect to the said Canadian Pacific Railway, except in so far as it may be otherwise provided for by this Act."

40 And whereas Canadian Pacific Railway Company was constituted pursuant to 44 Vict., c. 1, Statutes of Canada, assented to on 15th February, 1881, by Letters Patent granted by His Excellency the Governor-General under the Great Seal of Canada under date 16th

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Continued

February, 1881. The said contract was ratified by and appended as schedule to this Act, and the wording of the contract was incorporated in the Letters Patent.

And whereas Section 4 of Schedule "A" to the said contract, which is also appended to the said Act and incorporated in the Letters Patent, provides in part that:

"All the franchises and powers necessary or useful to the Company to enable them to carry out, perform, enforce, use, and avail themselves of, every condition, stipulation, obligation, duty, right, remedy, 10 privilege, and advantage agreed upon, contained or described in the said contract, are hereby conferred upon the Company."

And whereas the said contract was executed on 21st of October, 1880, between Her Majesty, and George Stephen and others. This contract provided for the incorporation of Canadian Pacific Railway Company and the construction of a main line of railway from Callander Station near Lake Nipissing in the Province of Ontario, the western terminus of the existing railway system of Canada, to Port Moody located on the seaboard of British Columbia. The contract provided for the construction of branch lines by clause 14 as follows:

20 "14. The Company shall have the right from time to time, to lay out, construct, equip, maintain, and work branch lines of railway from any point or points along their main line of railway, to any point or points within the territory of the Dominion. Provided always, that before commencing any branch they shall first deposit a map and plan of such branch in the Department of Railways. And the Government shall grant to the Company the lands required for the road bed of such branches, and for the stations, station grounds, buildings, workshops, yards and other appurtenances requisite for the efficient construction and working of such branches, in so far as such 30 lands are vested in the Government."

And whereas the area through which the Canadian Pacific Railway was to be constructed between the Western boundary of Manitoba, as then constituted, and the eastern boundary of British Columbia was part of the North-West Territory. This area was administered by the Dominion Government.

And whereas by certain statutes of the Province of Saskatchewan, namely, The Village Act, 1946, 10 Geo. VI, Cap. 31, as amended; The Rural Municipality Act, 1946, 10 Geo. VI, Cap. 32 as amended; The Local Improvement Districts Act, 1946, 10 Geo. VI, Cap. 33, 40 as amended; The City Act, 1947, 11 Geo. VI, Cap. 43 as amended, and the Town Act, 1947, 11 Geo. VI, Cap. 44, as amended, it is provided:

(a) That the railway roadway and other land within the province owned by railway companies shall be assessed and taxed, and

(b) That railway companies, whether their property is liable to assessment and taxation or not, shall be liable to assessment and taxation in respect of the business carried on as a railway within the Province at a rate per square foot of the floor space of each building or part thereof used for business purposes.

Record  
Court of Appeal

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Continued

And whereas disputes have arisen between various municipalities and Canadian Pacific Railway Company with respect to such legislation;

Therefore, the Executive Council, on the recommendation of the  
10 Attorney-General, pursuant to the provisions of The Constitutional Questions Act, being Chapter 72 of the Revised Statutes of Saskatchewan, 1940, is pleased to refer, and doth hereby refer, to the Court of Appeal for Saskatchewan, the following questions for hearing and consideration:

1. Does clause 16 of the contract set forth in the Schedule to Chapter 1 of the Statutes of Canada, 44 Victoria (1881), being an Act representing the Canadian Pacific Railway, exempt and free from taxation the stations and station grounds, work shops, buildings, yards, and other property, used for the working of the branch  
20 lines of the Canadian Pacific Railway Company situated in Saskatchewan?

2. Does clause 16 of the contract aforesaid exempt and free the Canadian Pacific Railway Company from taxation in Saskatchewan in respect of the business carried on as a railway

- (a) based on the area of the land or the floor space of buildings used for the purposes of such business,  
(b) based on the rental value of the land and buildings used for the purposes of such business,  
30 (c) based on the assessed value of the land and buildings used for the purposes of such business, but not made a charge upon such land or buildings?

3. Are the provisions of the said The Village Act, 1946, The Rural Municipalities Act, 1946, The Local Improvement Districts Act, 1946, The City Act, 1947, and the Town Act, 1947, all as amended, relating to the assessment and taxation of the real estate of railway companies, operative in respect of branch lines of Canadian Pacific Railway Company in the Province of Saskatchewan constructed pursuant to clause 14 of the said contract?

4. Are the provisions of the said The Village Act, 1946, The Rural  
40 Municipalities Act, 1946, The Local Improvement Districts Act, 1946, The City Act, 1947, and the Town Act, 1947, all as amended, relating to the assessment and taxation of railway companies in respect of the business carried on as a railway, operative with respect to Cana-

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Court of Appeal

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Continued

Canadian Pacific Railway Company in respect of the stations, workshops, and other buildings, used for the working of

- (a) the main line of its railway in Saskatchewan, and
- (b) its branch lines in Saskatchewan.

Certified true copy.

J. M. TELFORD  
Clerk Executive Council.

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**No. 2**

No. 2  
Order of Court  
setting reference  
down for hearing  
Nov. 16, 1948

10

**Order of Court of Appeal for Saskatchewan setting reference  
down for hearing**

**ORDER**

Upon the application of counsel on behalf of the Government of the Province of Saskatchewan and on behalf of the Canadian Pacific Railway, Mr. E. C. Leslie, K.C., and Mr. S. R. Meldrum, K.C., appearing on behalf of the Government, and Mr. H. A. V. Green, K.C., and Mr. R. G. Hamilton, K.C., appearing on behalf of the Canadian Pacific Railway Company, and upon reference to the Order of the Lieutenant-Governor in Council of Saskatchewan dated at Regina on Tuesday, the 16th day of November, A.D. 1948, whereby  
20 the Lieutenant-Governor in Council referred to the Court of Appeal for Saskatchewan for hearing and consideration pursuant to the provisions of The Constitutional Questions Act the following questions:

1. Does clause 16 of the contract set forth in the Schedule to Chapter 1 of the Statutes of Canada, 44 Victoria (1881), being an Act respecting the Canadian Pacific Railway, exempt and free from taxation the stations and station grounds, work shops, buildings, yards, and other property, used for the working of the branch lines of the Canadian Pacific Railway Company situated in Saskatchewan?
2. Does clause 16 of the contract aforesaid exempt and free the  
30 Canadian Pacific Railway Company from taxation in Saskatchewan in respect of the business carried on as a railway
  - (a) based on the area of the land or the floor space of buildings used for the purposes of such business,
  - (b) based on the rental value of the land and buildings used for the purposes of such business,
  - (c) based on the assessed value of the land and buildings used for the purposes of such business,
 but not made a charge upon such land or buildings?

3. Are the provisions of the said The Village Act, 1946, The Rural Municipalities Act, 1946, The Local Improvement Districts Act, 1946, The City Act, 1947, and the Town Act, 1947, all as amended, relating to the assessment and taxation of the real estate of railway companies, operative in respect of branch lines of Canadian Pacific Railway Company in the Province of Saskatchewan constructed pursuant to clause 14 of the said contract?

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4. Are the provisions of the said The Village Act, 1946, The Rural Municipalities Act, 1946, The Local Improvement Districts Act, 1946, The City Act, 1947, and the Town Act, 1947, all as amended, relating to the assessment and taxation of railway companies in respect of the business carried on as a railway, operative with respect to Canadian Pacific Railway Company in respect of the stations, workshops, and other buildings, used for the working of

(a) the main line of its railway in Saskatchewan, and

(b) its branch lines in Saskatchewan.

It is hereby ordered that the matter so referred as aforesaid be heard by the Court at 10 a.m. on Thursday, the 16th day of December, A.D. 1948.

20

L.S.

A. C. ELLISON

Registrar.

### No. 3

#### Certificate of the Chief Justice of Saskatchewan, Mr. Justice H. Y. MacDonald and Mr. Justice A. T. Procter to His Honor The Lieutenant-Governor In Council

No. 3  
Certificate of the  
Chief Justice  
of Saskatchewan,  
Mr. Justice  
H. Y. MacDonald  
and Mr. Justice  
A. T. Procter to  
His Honor the  
Lieut.-Governor  
in Council  
Jan. 29, 1949

We hereby certify to the Lieutenant-Governor in Council that, in the opinion of the undersigned, the answers to the questions submitted in the reference to the Court of Appeal of Saskatchewan under Order-in-Council dated November 16th, 1948, should be as follows:

30

Question No. 1	Answer, No.
Question No. 2 (a)	Answer, No.
Question No. 2 (b)	Answer, Not answered.
Question No. 2 (c)	Answer, Not answered.
Question No. 3	Answer, Yes.
Question No. 4 (a)	Answer, Yes.
Question No. 4 (b)	Answer, Yes.

The reasons therefor are appended hereto,

W. M. MARTIN  
H. Y. MACDONALD  
A. T. PROCTER

40 (Seal)

### Reasons for the Opinion of The Honorable The Chief Justice

This is a reference under the Constitutional Questions Act, Chapter 72, R.S.S. 1940, by the Lieutenant-Governor in Council. By Order-in-Council dated November 16th, 1948, provision was made for a reference to this Court of certain questions involving the extent of the exemption granted the Canadian Pacific Railway under Clause 16 of the contract, made by the Government of Canada with certain persons acting on behalf of the Company which was incorporated by Letters Patent as the Canadian Pacific Railway. The extent of the exemption granted has become important by reason of certain amendments recently inserted in the various municipal acts of the Province, under which municipalities are given power to impose taxation upon the property and business of the railway company. The Contract appears as a Schedule to Chapter 1 of the Statutes of Canada (1881), 44 Victoria, and was executed on the 21st day of October, 1880. Letters Patent granted the Company also appear in the Statute as Schedule A to the contract.

The City Act, Chapter 43 of the Statutes of 1947, was amended by Chapter 33 of the Statutes of 1948, and similar amendments were placed in 1948 in the Town Act, Chapter 44 of the Statutes of 1947, the Village Act, Chapter 31 of the Statutes of 1946, the Rural Municipalities Act, Chapter 32 of the Statutes of 1946 and in the Local Improvement Districts Act, Chapter 33 of the Statutes of 1946. The amendments to each of the Acts defined "Railway Company" as including "every railway company owning or operating a railway in Saskatchewan, whether the head office is situated in Saskatchewan or elsewhere, and which transacts business in Saskatchewan." "Railway roadway" and "railway superstructure" are also defined. As the amendments are similar in all Acts, reference will be made to the City Act only. By Section 18 of Chapter 33 of 1948, it is provided that Section 442 of the City Act, which deals with assessment of lands and buildings, is amended by inserting the following paragraph:

"2a. The railway roadway owned by a railway company, or occupied by it if the roadway is owned by some other person and is exempt from taxation, shall be assessed at an amount not exceeding \$6,000 per mile. All other land owned or occupied by a railway company shall be assessed at its fair value but the superstructure thereon shall not be assessed."

Section 19 provides that Section 443 of the City Act which deals with the assessment of business is amended by inserting the following paragraph:

"(5a) A railway company, whether its property is liable to

assessment and taxation or not, shall be liable to assessment and taxation under this section in respect of the business carried on as a railway and the provisions of this section, except subsection (2), shall apply.”

The exception of the application of subsection 2 of Section 443 requires no comment. There are also provisions requiring every railway company to transmit to the assessor, at a specified time in each year, a certified statement containing information as to the miles of roadway the lands and buildings owned or occupied by the  
10 railway company in the city.

The questions submitted to the Court in the reference are as follows:

“1. Does Clause 16 of the Contract set forth in the Schedule to Chapter 1 of the Statutes of Canada, 44 Victoria (1881), being an Act respecting the Canadian Pacific Railway, exempt and free from taxation the stations and station grounds, work shops, buildings, yards, and other property, used for the working of the branch lines of the Canadian Pacific Railway Company situated in Saskatchewan?

“2. Does Clause 16 of the contract aforesaid exempt and free the  
20 Canadian Pacific Railway Company from taxation in Saskatchewan in respect of the business carried on as a railway

- (a) based on the area of the land or the floor space of buildings used for the purposes of such business,
- (b) based on the rental value of the land and buildings used for the purposes of such business,
- (c) based on the assessed value of the land and buildings used for the purposes of such business,

but not made a charge upon such land or buildings?

“3. Are the provisions of the said The Village Act, 1946, The  
30 Rural Municipalities Act, 1946, The Local Improvement Districts Act, 1946, The City Act, 1947, and the Town Act, 1947, all as amended, relating to the assessment and taxation of the real estate of railway companies, operative in respect of branch lines of Canadian Pacific Railway Company in the Province of Saskatchewan constructed pursuant to Clause 14 of the said Contract?

“4. Are the provisions of the said The Village Act, 1946, The Rural  
40 Municipalities Act, 1946, The Local Improvement Districts Act, 1946, The City Act, 1947, and The Town Act, 1947, all as amended, relating to the assessment and taxation of railway companies in respect of the business carried on as a railway, operative with respect to Canadian Pacific Railway Company in respect of the stations, workshops, and other buildings, used for the working of

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- (a) the main line of its railway in Saskatchewan, and  
(b) its branch lines in Saskatchewan?"

Clause 16 of the Contract is as follows:

"16. The Canadian Pacific Railway, and all stations and station grounds, work shops, buildings, yards and other property, rolling stock and appurtenances required and used for the construction and working thereof, and the capital stock of the Company, shall be forever free from taxation by the Dominion, or by any Province hereafter to be established, or by any Municipal Corporation therein; 10 and the lands of the Company, in the North-West Territories, until they are either sold or occupied, shall also be free from such taxation for 20 years after the grant thereof from the Crown."

By Section 146 of the British North-America Act, provision was made for the admission of Rupert's Land and the North-West Territory or either of them into the union of provinces, on such terms and conditions in each case, as expressed in an address from the Houses of Parliament of Canada, and as the Queen thought fit to approve. In Section 24 of the Saskatchewan Act 4 and 5, Edward VII, Chapter 42, it was enacted that the powers granted the new 20 province should be exercised subject to the provisions of Clause 16 of the Contract as follows:

"The powers hereby granted to the said Province shall be exercised subject to the provisions of Section 16 of the Contract, set forth in the Schedule to Chapter 1 of the Statutes of 1881 being an Act respecting the Canadian Pacific Railway Company."

The exemption from taxation therefore granted the Canadian Pacific Railway by Clause 16 of the Contract became a part of the Constitution of the Province of Saskatchewan and the powers of the province under Section 92 of the British North-America Act, with 30 respect to direct taxation within the Province "in order to the raising of a revenue for provincial purposes," are curtailed by the exemption from taxation to which the Canadian Pacific Railway is entitled under the terms of the Contract.

In Clause 14 of the Contract, the Company was given power to construct branch lines from any point or points along the main line of the railway. That clause is as follows:

"The Company shall have the right, from time to time, to lay out, construct, equip, maintain and work branch lines of railway from any point or points along their main line of railway, to any point or 40 points within the territory of the Dominion. Provided always, that before commencing any branch they shall first deposit a map and plan of such branch in the Department of Railways. And the Government shall grant to the Company the lands required for the road bed

of such branches, and for the stations, station grounds, buildings, workshops, yards and other appurtenances requisite for the efficient construction and working of such branches, in so far as such lands are vested in the Government."

The contention of Counsel for the Attorney-General is that the exemption granted by Clause 16 of the Contract is limited to the main line of the railway and all stations, station grounds, workshops, buildings, yards and other property, rolling stock and appurtenances required and used for the construction and working thereof and does  
 10 not extend to the branch lines in Saskatchewan. He also contends that the exemption is limited to taxation on the real and personal property of the Canadian Pacific Railway Company enumerated in Clause 16 and does not apply to business tax or income tax imposed upon the Company in respect of the business carried on by it, or the income derived therefrom, nor to any tax which is a personal tax upon the Company, as distinguished from a property tax. Counsel for the Company, on the other hand, contends that by virtue of Clause 16 of the Contract the Canadian Pacific Railway Company is free from municipal taxation on its real and personal property and  
 20 business carried on both on its main line and its branch lines, constructed from any point on its main line under the provisions of Clause 14 of the Contract. It was admitted, however, that the exemption granted, does not extend to branch lines which have not been constructed under the powers conferred by Clause 14.

Section 146 of the British North-America Act, in addition to providing for the admission of Rupert's Land and the North-West Territory into the union of provinces, enacted that "it shall be lawful for the Queen by and with the advice of Her Majesty's Most Honourable Privy Council on addresses from the Houses of Parliament of  
 30 Canada and from the Houses of the respective Legislatures of the colonies or Provinces of Newfoundland, Prince Edward Island and British Columbia to admit those colonies or provinces or any of them into the union."

It was further provided that the provisions of any Order-in-Council in that behalf should have effect as if enacted by the Parliament of the United Kingdom of Great Britain and Ireland. By Order-in-Council of Her Majesty, dated the 16th day of May, 1871, British Columbia was admitted into and became part of the Dominion of Canada on the terms and conditions set forth in addresses of the  
 40 Parliament of Canada and the Legislative Council of British Columbia. One of the conditions was that the Government of Canada would secure the commencement, within two years of the date of the union, of the construction of a railway connecting the seaboard of British Columbia with the railway system of Canada and securing the completion of such railway within ten years from the date of the union.

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Prompt action was taken by the Government of Canada and by Parliament to carry out the agreement with the Province of British Columbia. In 1872, by Chapter 71 of 35 Victoria, provision was made for the construction of a railway to be called the "Canadian Pacific Railway" such railway to extend from some point on or near Lake Nipissing to some point on the Pacific Ocean. The preamble recites the agreement with British Columbia and the resolution of the House of Commons that the railway should be constructed by private enterprise and that the public aid to be given should consist

10 of "liberal grants of land and such subsidy in money as the Parliament of Canada should thereafter determine." By Section 2 of the Act it was provided that the railway should be made and worked by private enterprise and not by the Dominion Government. In Sections 3 and 4, provision was made for a land grant not exceeding fifty million acres and for a cash subsidy not exceeding thirty million dollars to the Company "constructing and working" the railway. In Section 10, it was provided that if two or more companies were incorporated by the Parliament of Canada, each having power to construct a railway over the whole or some part of the line between

20 Lake Nipissing and the Pacific Ocean approved by the Government, and if such companies had together a subscribed capital of ten million dollars, the directors of the several companies might, within one month after the passing of the Act, unite and form one company. By Section 16, it was provided that the Government could agree with the Company undertaking the construction and working of a railway for the construction and working of a branch line from some point on the railway to some point on Lake Superior in British territory, and also for the construction and working of a branch line from some point on the railway in the Province of Manitoba to some point

30 between that province and the United States of America. It was further provided that these two branch lines should form part of the Canadian Pacific Railway.

The enactment of Chapter 71 of the Statutes of 1872 was followed by the incorporation of the two companies. By Chapter 72 of the Statutes of 1872, the Inter-Oceanic Railway Company of Canada was incorporated with power to construct, maintain and work a continuous double or single track railway from a point at or near Lake Nipissing in the Province of Ontario to the waters of the Pacific Ocean in the Province of British Columbia. By Chapter 73 of the

40 Statutes of 1872, another company called the Canadian Pacific Railway Company was incorporated with powers similar to those given the Inter-Oceanic Railway Company of Canada. It is of interest to observe that in both Statutes an exemption from taxation was provided, not only on the buildings, right of way, rolling stock and all the property thereof, but also on the earnings of the Company. Such exemption to apply in any Province "hereafter to be constituted from the territory of the Dominion."

Then followed the Statute of 1874, 37 Victoria, Chapter 1, an Act to provide for the construction of the Canadian Pacific Railway. In the preamble, the agreement with British Columbia is referred to and also the resolution of the House of Commons that the railway should be constructed and worked by private enterprise assisted by such liberal grants of land and such subsidy or other aid as the Parliament of Canada should thereafter determine. It is also stated that efforts made to carry out the provisions of the Act of 1872 had failed. The Act provides for construction either by private enterprise or as a  
10 public work of the Dominion. Section 1 provides that a railway to be called the Canadian Pacific Railway shall be made from some point near and south of Lake Nipissing to some point in British Columbia on the Pacific Ocean, both of the said points to be determined and the course and line of the railway to be approved by the Governor in Council. By Section 2, it was enacted that the whole of the said railway, for the purpose of its construction, should be divided into four sections; the first section to begin at a point near and to the south of Lake Nipissing and to extend towards the upper or western end of Lake Superior; the second section to begin at some  
20 point on Lake Superior to be determined by the Governor in Council and connecting with the first section and to extend to the Red River in the Province of Manitoba; the third section to extend from the Red River to some point between Fort Edmonton and the foot of the Rocky Mountains to be determined by the Governor in Council; the fourth section to extend from the western terminus of the third section to some point in British Columbia on the Pacific Ocean. Section 3 made provision for two branch lines, one from the eastern terminus to some point on Georgian Bay and the other from the main line near Fort Garry in the Province of Manitoba to some point near  
30 Pembina on the southern boundary thereof; and section 4 provided that these two branch lines should be considered as forming a part of the Canadian Pacific Railway and should be subject to all the provisions with respect to the said railway except so far as otherwise provided by the Act. The branch lines are not in the Province of Saskatchewan and the one from the eastern terminus to some point on Georgian Bay was not built because of the diversion of the Eastern section of the main line.

Between 1874 and 1881, the Government commenced construction of the Lake Superior Section between Port Arthur and Winnipeg and  
40 also of the Western Section between Kamloops and Port Moody. The branch line referred to in the Act of 1874 from near Fort Garry in the Province of Manitoba to the southern boundary of the Province was completed and one hundred miles of the main line west of Winnipeg was constructed. On October 21st, 1880, a contract was made by the Government with George Stephen and others for the completion of the main line and for the handing over by the Government to the

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contractors of the sections constructed or under construction by the Government. This Contract along with Letters Patent issued to the Company was ratified by Parliament in 1881 by 44 Victoria, Chapter 1, an Act respecting the Canadian Pacific Railway. In the preamble, the agreement with the Province of British Columbia is referred to and also the resolution of the House of Commons to the effect that the railway should be constructed and worked by private enterprise, aided by grants of money and lands. It was also stated in the preamble that certain sections of the railway had been constructed by  
10 the Government and others were in the course of construction but that "the greater portion of the main line thereof has not yet been commenced or placed under contract and it is necessary for the development of the North-West Territory and for the preservation of the good faith of the Government in the performance of its obligations that immediate steps should be taken to complete and operate the whole of the said railway." It is then stated that a contract has been made for the construction of "the said portion" of the main line and for the permanent working of the whole line. Under the provisions of Section 1 of the Act, the Contract appended with the  
20 schedule "the Letters Patent" was approved and ratified and the Government was authorized to perform and carry out the conditions thereof. Under Section 2, the Government was authorized to incorporate the persons named in the Contract with the corporate name of the Canadian Pacific Railway Company and to issue to them a charter conferring upon them the privileges and powers contained in the schedule to the Contract. By Section 4, the Government was authorized to permit the admission, free of duty, of steel rails et cetera to be used in the "original construction" of the Canadian Pacific Railway as defined in the Act, 37 Victoria, Chapter 14. By  
30 Section 5, the Government was authorized, pending the completion of the Eastern and Central Sections, to transfer to the Company possession and right to work the several portions which were already constructed and as the same should thereafter be completed; and on completion of the Eastern and Central Sections to convey to the Company with stations and water service those portions agreed to be constructed by the Government.

Clause 1 of the Contract provides that "for the better interpretation of this Contract, it is hereby declared" (1) That the portion of the railway hereinafter called the Eastern Section shall comprise that  
40 portion of the Canadian Pacific Railway to be constructed extending from near Lake Nipissing to a point of junction with that portion of the railway now in course of construction from Lake Superior to Selkirk. (2) The portion from Lake Superior to Selkirk is hereinafter called the Lake Superior Section. (3) The portion of the railway now partially constructed from Selkirk to Kamloops is hereinafter called the Central Section. (4) The portion of the railway now in course of

construction, extending from Kamloops to Port Moody, is hereinafter called the Western Section. The last four lines of Clause 1 are as follows:

“And, that the words ‘The Canadian Pacific Railway’ are intended to mean the entire railway as described in the Act, 37 Victoria, Chapter 14. The individual parties hereto are hereinafter described as the Company; and the Government of Canada is hereinafter called the Government.”

Clause 2 of the Contract provides for a deposit by the Company  
10 of one million dollars in cash as security for the construction of the railway contracted for, and in Clauses 3 and 4 the Company agrees to construct the Eastern and Central Sections at a certain uniform gauge and to complete the construction and equipment of these sections on or before May 1st, 1891. In Clause 5, it is provided that the Company will pay the Government the cost, according to the Contract, of one hundred miles constructed on the Central Section West of Winnipeg. In Clause 6, the Government agreed to complete  
20 the Lake Superior and Western Sections, and, in Clause 7, agreed on the completion of these Sections to convey them to the Company and the Canadian Pacific Railway is then declared to be the absolute property of the Company and it is provided that “the Company shall thereafter forever efficiently maintain, work and run the Canadian Pacific Railway.”

In Clause 9 of the Contract, the Government agreed to grant the Company a subsidy in money of twenty-five million dollars and a grant of land of twenty-five million acres and it was provided that for these subsidies “the construction of the Canadian Pacific Railway shall be completed and the same shall be equipped, maintained and operated.”

30 Under the provisions of Clause 10, the Government agreed to grant to the Company the lands required for the road bed of the railway, for its stations, station grounds, work shops, dock and other appurtenances required for the convenient and effectual construction and operation of the railway in so far as such land “shall be vested in the Government.” It was also agreed that steel rails and other material used in the “original construction” of the railway, would be admitted free of duty. In Clause 11 of the Contract, it was provided that the grant of land should be in alternate sections of 640 acres each, extending back twenty-four miles on each side of the railway from  
40 Winnipeg to Jasper House, the Company to receive the sections with uneven numbers; there was also a further provision that if any of the sections consisted of lands in a material degree “not fairly fit for settlement” the deficiency thereby caused should be made up from other portions in the tract known as the fertile belt lying between parallels 49 and 57 of north latitude or elsewhere at the option of the

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Company by the grant therein "of similar alternate sections extending back 24 miles deep on each side of any branch line or lines of railway to be located by the Company." Under the provisions of Clause 13 of the Contract, the Company was granted the right subject to the approval of the Governor in Council to locate the line of railway contracted for as they should see fit but preserving the terminal points namely from the east side of Lake Nipissing to the point of junction with the Lake Superior Section and from Selkirk to the junction with the Western Section at Kamloops "by way of the Yellow Head Pass."

10 Clause 14 provides for the construction of branch lines by the Company and for the granting to the Company by the Government of land required for the road bed of such branches and for stations, station grounds et cetera, and has been already quoted, and Clause 16 providing for the exemption from taxation has been set forth in full.

The answers to questions 1 and 3 submitted in the reference must depend upon whether or not the words, "Canadian Pacific Railway" in Clause 16 of the Contract include the branch lines in Saskatchewan, constructed under the provisions of Clause 14 of the Contract. As before pointed out, in Clause 1 of the Contract it is stated that the  
20 words "Canadian Pacific Railway" are intended to mean "the entire railway as described in the Act, 37 Victoria, Chapter 14." That statute provided for a railway from some point near Lake Nipissing to some point in British Columbia and for the division of the "whole line" into four sections. Provision was also made for two branch lines, before referred to. As Clause 1 of the Contract is declared to be "for the better interpretation of this Contract" it seems clear that, wherever the words "Canadian Pacific Railway" occur in the contract, they must be construed to mean the main line consisting of the four sections together with the two branch lines described in 37 Victoria,  
30 Chapter 14, unless the language used in any clause plainly indicates some other construction.

Counsel for the railway called attention to the word "hereinafter" which is used following each of the four sections of the main line, described in Clause 1 of the Contract, and pointed out that the word is not used in the statement providing that the words "Canadian Pacific Railway" are intended to mean the entire railway described in 37 Victoria, Chapter 14. Because of the omission of the word "hereinafter" he contended that the definition of the words is intended to be limited to Clause 1 of the Contract. As has been  
40 stated, however, the opening words of Clause 1 are "for the better interpretation of this contract it is hereby declared that" and thus the use of the word "hereinafter" following the descriptions of the four sections of the main line was unnecessary. Without it the descriptions would apply throughout the Contract. Moreover, the definition of "Canadian Pacific Railway" is clearly connected with

the words "it is hereby declared" in the first sentence of the Clause; this appears from the words "and that" at the beginning of the sentence defining the words "Canadian Pacific Railway."

Counsel, however, argued that the words "Canadian Pacific Railway" in certain clauses of the Contract are used with a meaning different from the definition in Clause 1. He contended that in Clause 7, the words are used as meaning both more and less than the main line of the railway. That clause provides for the transfer to the Company of the portions of the railway constructed or to be  
 10 constructed by the Government on the completion by the Company of the Eastern and Central Sections. On the transfer being made it is provided that the Canadian Pacific Railway shall become and be thereafter the absolute property of the Company. There can be no doubt that the clause deals with the entire railway, the subject of the contract. As to Clause 8, Counsel stated that the words mean less than the main line of the railway. This Clause provides that the Company upon the reception from the Government of the respective portions of the Canadian Pacific Railway—meaning the portions being constructed by the Government—shall equip the same  
 20 and thereafter maintain and efficiently operate the same. There can be no doubt that in Clause 8 the words "Canadian Pacific Railway" have the meaning given to them in Clause 1. As to Clause 9 of the Contract, Counsel contended that the words meant only the portions of the main line to be built by the Company. This clause provided for the subsidies of land and money "for which subsidies the construction of the Canadian Pacific Railway shall be completed and the same shall be equipped, maintained and operated." Having in mind the provisions of the Contract as to the construction of the various sections of the railway, it is clear that the Company was to  
 30 receive the subsidies for the construction of the Eastern and Central Sections and for the equipment and operation of the whole; and when the Company and the Government fulfilled their respective obligations, the Canadian Pacific Railway as defined in the Contract would be "completed."

Reference was made to Clause 15, which provided that for twenty years from the date of the Contract no line of railway should be authorized by the Dominion Parliament to be constructed south of the Canadian Pacific Railway from any point at or near the railway except such line as should run southwest or to the westward of  
 40 southwest nor within fifteen miles of latitude 49. In 1882, by 45 Victoria, Chapter 53, Parliament altered the line from Selkirk to Kamloops by providing that it might join the Western Section at Kamloops by some pass other than the Yellow Head Pass, provided that the pass was not more than one hundred miles from the boundary between Canada and the United States of America. As a result, the main line was constructed approximately two hundred miles

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south of the line described in 37 Victoria, Chapter 14. I do not think it necessary to consider the meaning of Clause 15, either before or after the enactment of 45 Victoria, Chapter 53, which permitted the change in the route; except for the change in the route Chapter 1 of 44 Victoria with the Contract and Schedule annexed, was left intact.

Finally, it was argued that in Clause 22 of the Contract the words "Canadian Pacific Railway" mean the main line and the branches. Under this clause, the Railway Act of 1879, "so far as the provisions of the same are applicable to the undertaking referred to in this 10 Contract," is made applicable to the Canadian Pacific Railway. It seems clear that the Railway Act of 1879 is declared to apply to "the undertaking referred to in this Contract" and that undertaking is the Canadian Pacific Railway as defined in the Contract.

Branch lines are referred to in only two clauses of the Contract, namely, Clauses 14 and 11. The reference in Clause 11 is to the right of the Company to locate part of the land grant "on each side of any branch line or lines of railway to be located by the Company" in substitution for sections found "not fairly fit for settlement" along the main line. Nothing appears in the clause which indicates that 20 the branch lines are included in the words "Canadian Pacific Railway." In Clause 15 of the Letters Patent it is stated that the main line and the two branch lines described in 37 Victoria, Chapter 14, "together with such other branch lines as shall be hereinafter constructed by the Company," shall constitute a line of railway "hereinafter" called the "Canadian Pacific Railway." This provision, however, is limited to the clauses of the Letters Patent which follow and cannot affect the definition in Clause 1 of the Contract.

In Clause 10 of the Contract, already referred to, provision is made for the Government granting the Company the lands required 30 for the road bed of the railway, stations et cetera. Notwithstanding this provision, in Clause 14 it is provided that the Government shall grant to the Company the lands required for the road bed of the branch lines and for the stations et cetera. This provision in Clause 14 is a clear indication that the branches to be constructed under Clause 14 were not considered a part of the railway, the construction of which was provided for in the Contract. Moreover, the Contract contains no obligation on the part of the Company to construct any branch lines; all that is provided is that the Company may construct branch lines from any point or points along the main line, but before 40 commencing a map and plan must be deposited with the Department of Railways; it was for the Company to decide, as the years passed, when any branch line was to be constructed.

Counsel for the Company argued that the Contract, as a whole, contemplates a complete railway consisting of the main line and branches and that in construing Clause 16, the words "Canadian

Pacific Railway" must include both the main line and branches. I cannot agree. A careful perusal of the Statute, 44 Victoria, Chapter 1, the Contract annexed and the Schedule to the Contract has convinced me that no absurdity or ambiguity results from an application of the definition of "Canadian Pacific Railway" contained in Clause 1 to all the Clauses of the Contract. The Contract concerned the construction of the main line consisting of four sections and the obligations of the Government and the Company are clearly set out and relate to the main line only. The Contract was entered into by  
 10 the Government in order to discharge its obligations to the Province of British Columbia and also for the purpose of settling and developing the great areas of the Northwest. This is clear from the preamble to 44 Victoria, Chapter 1. The agreement with the Province of British Columbia was, however, the impelling motive. The bargain made was for the completion of the main line in order to connect British Columbia with Eastern Canada and in return for its covenant to construct certain portions and, finally, to maintain and operate the whole line certain concessions were made to the Company by the  
 20 Company, when completed, of the Lake Superior and Western Sections, land for the right of way and stations, the admission free of duty of steel rails and other materials to be used in the "original construction" of the railway and an exemption from taxation provided by Clause 16 of the Contract.

As the Contract, appended to 44 Victoria, Chapter 1, was approved and ratified by Parliament the exemption contained in Clause 16 is statutory and must be strictly construed. The burden of establishing exemption is upon the person seeking it. *Ruthenian Catholic Mission v. Mundare School District*, 1924, S.C.R. 620,  
 30 *Idington J.* at p. 625, *Newcombe J.* at p. 629. *Episcopal Corporation of Saskatoon v. City of Saskatoon*, 1936, 2 W.W.R. 91. *Toronto General Trust Corporation v. City of Ottawa*, 1935, S.C.R. 531, *Lamont J.*, pp. 536 and 537. *Maxwell Interpretation of Statutes*, ninth edition, p. 298. In *Montreal v. College of Ste. Marie*, 89 L.J.P.C. 243, *Duff J.*, sitting as a member of the Board and speaking for the Privy Council, said:

"Their Lordships are not disposed to differ from the view pressed upon them that an agreement in order to receive effect under the statute must be very clearly made out; such an agreement if effective  
 40 establishes a privilege in respect of taxation and the principle is not only well settled but rests upon obvious considerations, that those who advance a claim to special treatment in such matters must show that the privilege invoked has unquestionably been created."

The exemption provided by Clause 16 must therefore be strictly construed and there are no words in the clause nor elsewhere in the

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Contract or Statute which indicate that exemption was intended for branch lines constructed under the provisions of Clause 14. The exemption extends to the real and personal property of the Canadian Pacific Railway as defined in Clause 1, and must therefore be confined to the main line and the properties both real and personal required and used for the construction and working "thereof." The words "Canadian Pacific Railway" in the first line of Clause 16 mean the railway line and right of way as they are followed by an enumeration of the real property and personal property; moreover, the words  
10 cannot mean the "Company" for when it is referred to in Clause 16 the word "Company" is used in accordance with the statement contained in Clause 1 of the Contract, namely, that the individual parties to the Contract "are hereinafter described as the Company."

Had it been intended to extend the exemption to the branch lines, provided for under Clause 14, such exemption could have been inserted in Clause 14 or it could have been set forth in Clause 16 and thus make it clear that the exemption provided was intended for the branch lines as well as the main line. There is, however, no such provision and very clear language would be required to extend the  
20 exemption beyond the railway contracted for.

Under Clause 16, the capital stock of the Company was exempted from taxation. It was pointed out during the argument that there are authoritative decisions in the Courts of the United States to the effect that an exemption of capital stock covers the property in which the capital is invested. Here, however, the real and personal property of the Canadian Pacific Railway are enumerated and I cannot conclude that the exemption was intended to cover anything except the capital stock. All the individuals who executed the Contract with the Government for the construction of the railway were, by  
30 the Letters Patent, constituted the first directors of the Company and each director was required to hold at least 250 shares of stock of the Company. It seems reasonable to infer that the exemption of the stock from taxation by the Dominion was a consideration for the directors and also intended as an inducement to the public to subscribe for shares in the projected railway. At the time there was in force in the Province of Ontario, Chapter 180 of the Statutes of 1877 entitled the Assessment Act which provided for the taxation of real and personal property. In that Statute, "personal estate" is defined as including "shares in incorporated companies." By section  
40 18 of the Act "the stock held by any person in any railroad company" is exempt. There can be no doubt that this exemption was for the purpose of encouraging railroad construction and also to induce persons to invest money in companies engaged in such enterprise. Purchasers of capital stock in the Canadian Pacific Railway who resided in Ontario would be exempt from both Dominion and Provincial taxation. Personal property was also assessable in Manitoba under

Chapter 64 of the Consolidated Statutes of 1880, in Nova Scotia under Chapter 21 of the Revised Statutes of 1873, and in British Columbia under the Assessment Act, Chapter 152 of 1876. It is quite true that the Dominion Parliament could not prevent these provinces from taxing the stock of the Canadian Pacific Railway under the powers conferred upon them by Section 92 of the British North America Act, but the exemption would prevent the Parliament of Canada from taxing the stock held by persons resident in these provinces.

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10 Reference was made by counsel for the railway to the judgment of Scott J. In re Canadian Pacific Railway and Town of MacLeod 5 Terr. L. R. 192. This was an appeal by the railway company from the Court of Revision of the Town of MacLeod. The railway was assessed for its road bed and buildings in the town. The company contended that the property assessed was exempt from taxation under Clause 16 of the Contract embodied in 44 Victoria Chapter 1. The road bed and buildings assessed were the property of the Crows Nest Pass Railway. In giving judgment, Scott J. said at p. 193:

20 “In my opinion, the exempting clause referred to is not applicable to the Crow’s Nest Pass Railway. I think the reasonable interpretation of the agreement referred to is that the clause is applicable only to the main line of the C.P.R. and to such branches thereof as respondent company was authorized by clause 14 of the agreement to construct from points on the main line, and that it does not extend, nor was it intended to extend to the other distinct lines of railway which the company might subsequently be authorized to construct. The Crow’s Nest Pass Railway is not a branch from the main line of the C.P.R., but a distinct line of railway.”

30 The opinion of Scott J. that the exemption provided by Clause 16 extended to branch lines constructed under Clause 14 of the Contract is entitled to the greatest respect. The opinion is, however, *obiter* as the only question before the Court was whether the Crow’s Nest Pass Railway was entitled to exemption and it was held that it was not because it was not a branch constructed under the provisions of Clause 14.

Reference was also made to the statement of Sedgewick J. In re Canadian Pacific Branch Lines 36 S.C.R. 42. In discussing the Contract ratified by Parliament in 44 Victoria, Chapter 1, that Learned Judge said at p. 69:

40 “It had exempted the Company’s property so far as it was within the North-West Territories and was used for railway purposes, forever.”

With deference, this statement is too wide; the lands of the Company were not exempted “forever” but “for twenty years after

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the grant thereof from the Crown." Moreover, I am not prepared to agree that Sedgewick J. in using the words "the Company's property" intended to include the branch lines, as when he used the expression he was enumerating in a general way the subsidies and concessions granted the Company under the provisions of the Contract. It seems to me a fair inference that he had in mind the railway contracted for. Whatever his meaning, however, the statement is *obiter*, as the matter before the Supreme Court was a reference concerning an application to the Board of Railway Commissioners for approval of deviations from plans of a proposed branch line and the question of the extent of the exemption was not in issue.

Counsel submitted that the meaning of the words "Canadian Pacific Railway" must be ascertained from the context, the contract as a whole, the prolonged efforts of the Government to secure the construction of the railway, the history and reasons for the Contract and the conduct of the parties. There has been produced for perusal by the Court an appendix of legislation and documents which includes resolutions of Parliament and of the Legislature of Saskatchewan, extracts from speeches made in Parliament and certain correspondence which passed between the Government and the parties to the Contract. The language in Clause 1, however, as well as in Clause 16 and throughout the Contract, is clear and unambiguous and extraneous evidence is not admissible to vary or contradict the plain provisions. Great Western Railway and Midland Railway v. Bristol Corporation 87 L.J. Ch. 414, Lord Atkinson at pp. 418 and 420; Lord Shaw at p. 424 and Lord Wrenbury at pp. 428 and 430. Northeastern Railway v. Hastings 69 L.J. Ch. 516, Lord Halsbury at p. 518. Maxwell on Interpretation of Statutes, ninth edition, pp. 1 and 2.

I should add, however, that while I consider much of the material contained in the Appendix of legislation and documents irrelevant, I have perused it and I can find nothing which in any way affects the definition of "Canadian Pacific Railway" contained in Clause 1 of the Contract nor can I find anything which raises any doubt as to what the parties had in mind when they agreed to the exemption provided for in Clause 16. Nowhere in the material contained in the Appendix is there a suggestion as to exemption from taxation for branch lines which might in the future be constructed. In a confidential memorandum of 1880, found among the papers of Sir John A. MacDonald and addressed to Duncan McIntyre, whose name appears among the parties to the Contract of 1881, the project for the railway is described, the sections being built by the Government are referred to along with proposed cash and land subsidies, but there is no mention of exemption from taxation. In a letter written on behalf of "self and associates," Duncan McIntyre offered some criticisms of the proposal contained in the confidential memorandum of Sir John A. MacDonald. Included in the criticisms is the state-

ment, "among the points not referred to in the memorandum we may mention that of taxation from which we think the proposed line should be free." "Proposed line" referred to was clearly that described in the confidential memorandum, namely, the main line from Lake Nipissing to Port Moody in British Columbia.

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Counsel for the railway referred to the course pursued by the taxing authorities of the Province of Saskatchewan, in regard to the imposition of taxes on the railway; the only measure of taxation is the Railway Taxation Act, Chapter 52, R.S.S., 1940, which was first  
10 enacted by Chapter 32 of the Statutes of 1908. This Act imposed a tax on the gross earnings of every railway owning or operating a line or lines of railway wholly or partly within Saskatchewan and prohibited the taxation of railways by municipalities. Counsel argued that the provisions of this Statute might fairly be said to have been a recognition that all the property and the use and occupation thereof by the Company were free from taxation. After the passing of the Railway Taxation Act, the payment of an agreed sum was made annually to the Province by the Canadian Pacific Railway from 1909 to 1942, inclusive, without prejudice to the Company's claim to be  
20 free from all taxes, including the tax on earnings and to the claim of the Government of the Province that it had the right to impose the tax. Because of the failure of the authorities to impose taxation on the main line and the branch lines, Counsel contended that Clause 16 should be read in the light of the "existing course of procedure." In support of this contention reference was made to the words of Duff J. in *Canadian National Railways v. Ottawa*, 1925, S.C.R. 494. At p. 497 of the report that Learned Judge stated:

"The language being fairly susceptible of this construction it seems reasonable to read it in the light of the existing course of  
30 procedure."

In that case an agreement was made in 1907 between the City of Ottawa and the Canada Atlantic Railway, the predecessors in title of the Canadian National Railways, under the terms of which it was provided "that for and during the period of fifteen years next ensuing from and including the year 1909, the total assessed value of the said hotel and the land used in connection therewith and all buildings . . . and appurtenances . . . is hereby fixed and agreed upon at the sum of \$500,000 and no more." The system of the City in regard to assessment was to prepare not later than September in each year an  
40 assessment roll to form the basis for the following year if the council for that year so decided. This was the system authorized by the Ontario Assessment Act, Chapter 95, R.S.O. 1914. Accordingly, an assessment roll was prepared in the fall of 1909 which formed the basis of assessment for 1910, which therefore was the first year when the Railway Company was taxed on the fixed sum of \$500,000. The

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contention of the City was that the fifteen year period expired in 1923 and that of the Railway Company that it included the year 1924. It was held by the Supreme Court affirming the judgment of the Court of Appeal for the Province of Ontario (56 O.L.R. 153) that the agreement for the fixed assessment value must be construed having regard to the system followed by the City according to which the taxation on the fixed assessment would first be levied in 1910, and that the fifteen year period included the year 1924. The facts in the case present an entirely different situation from those under  
10 review; the words "Canadian Pacific Railway" are distinctly defined and it cannot be said that they are "fairly susceptible" of any other meaning. The argument here is that because the Company has not been called upon to pay certain taxes it should be exempt.

Reference was also made to Chapman v. Bluck (1838) 4 Bing. N.C. 187 also reported in 132 E.R. 760. In that case the Plaintiff by letter offered to take a farm from the Defendant upon lease for 21 years, a valuation to be made of the crops, a lease to be prepared at Plaintiff's expense and the whole to be subject to a certificate of Plaintiff's solvency to be given by one M. The Defendant received  
20 the certificate of solvency and by letter accepted the Plaintiff as tenant on the terms proposed. The valuation was deferred from time to time by the Plaintiff on payment of the rent reserved was let into possession. It was held that the letters of the Plaintiff and Defendant (at all events as explained by the circumstances and some admissions made by the Plaintiff after distress) constituted an actual demise on which the Defendant was authorized to distrain for rent in arrears and not a mere agreement for lease.

Tindal C. J. said at p. 762:

"Looking only at the two first letters between the parties, on  
30 which the tenancy depends, I think this falls within the class of cases in which it has been held that an instrument may operate as a demise, notwithstanding a stipulation for the future execution of a lease. But we may look at the acts of the parties also; for there is no better way of seeing what they intended than seeing what they did, under the instrument in dispute."

Park J. at p. 763:

"The intention of the parties must be collected from the language of the instrument, and may be elucidated by the conduct they have pursued."

40 The decision in Chapman v. Bluck, *supra*, is an illustration of a case in which the intention of the parties as disclosed in letters was doubtful and was made clear by subsequent conduct. The decision was referred to by Middleton J.A. in delivering judgment in the Ontario Court of Appeal in *In re Canadian National Railways and City of Ottawa, supra*. He stated at p. 158 as follows:

“I think that in this case the doctrine of contemporaneous exposition may well be applied. . . . Here the parties upon the execution of the agreement acted upon it at once, upon the theory that the assessment contemplated was the assessment upon which taxes would be imposed in the next year, and, they having thus interpreted the agreement at the commencement of the 15 years, it is but right that the same interpretation should be maintained throughout. . . . The actions of the parties under this agreement afford, I think, a safe dictionary to aid in its interpretation. An example of a similar  
 10 application of this doctrine is found in *Chapman v. Bluck* (1838), 4 Bing. N.C. 187, where there was an agreement for the letting of land and it was uncertain from the documents whether they constituted an actual present demise or referred to a future demise. The conduct of the parties under this arrangement was held to be admissible to show its construction.”

As pointed out by Middleton J.A. the conduct of the parties in *Chapman v. Bluck*, *supra*, was resorted to because of the uncertainty in the documents and he applied the decision in his judgment in *Canadian National Railways and City of Ottawa*, *supra*, being of  
 20 the opinion that the agreement between the parties was uncertain as to the fifteen year period of fixed assessment. Where, however, a contract is certain and unambiguous the negotiations of parties leading to it or their subsequent conduct cannot be admitted to vary or contradict its terms.

In *Northeastern Railway v. Hastings* 69 L.J. Ch. 516, Lord Halsbury reported at p. 518 as follows:

“The chief argument used to give an unnatural construction to the words is that the parties have so acted during a period of forty years, and that the only reasonable inference to be derived from their  
 30 conduct is that they have understood and acted on their bargain in a sense different from that which the words themselves convey. I am of opinion that if this could be truly asserted it is nothing to the purpose. The words of a written instrument must be construed according to their natural meaning, and it appears to me that no amount of acting by the parties can alter or qualify words which are plain and unambiguous. So far as I am aware, no principle has ever been more universally or rigorously insisted upon than that written instruments, if they are plain and unambiguous, must be construed according to the plain and unambiguous language of the instrument  
 40 itself.”

*Vide* also *Income Tax Commissioners v. Pemsel* 1891, A.C. 534 at p. 543. 61 L.J.Q.B. 265 at p. 269. Craies on Statute Law, fourth edition, pp. 184 and 185.

The amendments to the various Municipal Acts also provide for

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the imposition of a business tax on railway companies. The provision contained in the City Act has already been quoted.

It has already been stated that Clause 16 of the Contract limits exemption from taxation to the real and personal property of the main line of the Canadian Pacific Railway in Saskatchewan. The property exempted is that used for the construction and working of the railway. No exemption is provided in respect of business or income. The words "other property," where they occur in Clause 16, follow the words "stations, station grounds, work shops, buildings, yards" and  
10 are *ejusdem generis* and must therefore be construed as meaning other real property. Even if business is a form of property, as argued, it cannot be included in the word "property" as used in Clause 16. "Business" is defined in Section 2 of the City Act as including any trade, profession, calling, occupation or employment; it is some form of activity and, while it may involve the use of both real and personal property, it is something separate and distinct from them.

Under Section 479 of the City Act, municipal and school taxes of the City are to be levied upon (1) lands (2) businesses and (3) special  
20 franchises. By Section 443, it is provided that in assessing business the assessor shall fix a rate per square foot of the floor space and may fix a different rate for each class or portion thereof. It is also provided that the rate shall not exceed eight dollars per square foot except in the case of banks, loan companies and other financial institutions, in which case the rate shall not exceed fifteen dollars per square foot. Question 2, submitted in the reference, consists of three parts, (a), (b) and (c). Question 2(a) is whether the Canadian Pacific Railway Company is exempt from taxation in respect of its  
30 business carried on in Saskatchewan "based upon the area of land or floor space of buildings used for the purpose of such business." This question should be answered as it concerns the method of assessment provided for in the Municipal Acts. Questions 2(b) and 2(c), however, are *academias* as they describe methods of assessing business, which possibly may at some future period be enacted in the form of legislation but have not yet become matters of controversy. These questions, in my opinion, should not be answered. Attorney-General for Alberta v. Attorney-General for Canada (1939) A.C. 117, Lord Maugham at p. 122. Attorney-General for Ontario v. Attorney-General for Canada (1896) A.C. 348. Attorney-General for Canada  
40 v. Attorney-General for Ontario, Quebec and Nova Scotia (1898) A.C. 700, Lord Herschell at pp. 711 and 712.

Counsel for the Railway contended that "Canadian Pacific Railway" in Clause 16 included the undertaking for which the physical railway is used and that therefore the Railway is exempt from business tax. The definition contained in Clause 1 of the Contract,

however, limits the words "Canadian Pacific Railway" to "the entire railway as described in the Act, 37 Victoria, Chapter 14," and it is clear from the provisions of that Act that it is the "whole line" of the railway divided into four sections which is intended by the definition. If it was the intention in drafting Clause 16 of the Contract to provide exemption from taxation for business and earnings some definite provision should have been made as was provided with respect to earnings in Chapter 72 of 1872, the Act to incorporate the Inter-Oceanic Railway Company of Canada, and also in Chapter 1073 of 1872, an Act to incorporate the Canadian Pacific Railway.

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Counsel also argued that a business tax is a tax on property. This Court has, however, held that a business tax levied under the provisions of the City Act is not a tax on property but a personal tax. *City of Moose Jaw v. British American Oil Co. Ltd.*, 1937, 2 W.W.R. 309. This decision has been followed in *In re North Saskatchewan Flying Training School Ltd.*, 1943, 3 W.W.R. 609, and in *Regina Industries Ltd.*, and *City of Regina*, 1944, 3 W.W.R. 741. The same opinion has been expressed by Courts in the Province of Ontario. In *re Hydro-Electric Power Commission v. City of Hamilton*, 47 O.L.R. 155, Meredith C.J.O. stated at p. 160:

"The business assessment is imposed by Section 10 and is a personal tax and not a tax on real or personal property."

The section referred to in the statement was Section 10, sub-section 1, paragraph (k) of the Ontario Assessment Act, Chapter 195, R.S.S. 1914, which is as follows:

"Every person carrying on the business of . . . shall be assessed for a sum called 'Business Assessment' to be computed by reference to the assessed value of the land so occupied or used by him for a sum equal to 25 percent of the value of the land."

30 Again in *Kitchener v. Allen Theatres* (1922) 22 O.W.N. 231, Meredith C.J.O. stated, in speaking of business tax, "It is not a tax on the property but a personal tax." In *re Hertzman v. Hertzman* (1931) 40 O.W.N. 561, Orde J.A. said: "The tax upon land and business taxes are fundamentally different. The tax upon land is a tax *in rem*. Business tax is a tax *in personam*."

Our attention was called to a statement of Kellock J. In *re Regina Industries Ltd.*, and *City of Regina*, 1947, S.C.R. 345. At p. 355 that Learned Judge, in referring to the provisions of the City Act with respect to the assessment of business, is reported as follows:

40 "While by section 463(1) it is the 'owner' or the 'occupant' of every parcel of land who is to be assessed, it is the 'person who is engaged in business' and the 'owner of a special franchise' who are to be assessed with respect to the two last mentioned species of property."

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In this statement "business" is referred to as a "species of property," and indeed in sections of the City Act, dealing with assessment, both "business" and "special franchise" are included in the word "property." While "business" may correctly be defined as a "species of property" it is some form of activity, is intangible and cannot be included among the real and personal property enumerated in Clause 16.

Reference was also made to *City of Halifax v. Fairbanks Estate*, 1928 A.C. 117, and it was argued that in that case the Privy Council 10 treated a business tax as a tax on real property. The facts in that case were: The Fairbanks Estate owned property in the City of Halifax which it leased to the Crown, represented by the Minister of Railways and Canals for Canada. By Section 394 of the City Charter where the occupier is the Crown or any person, corporation or association exempt from taxation, the owner is to be deemed the occupier for business or residential purposes, as the case may be, and is assessable for business or household tax according to the purpose for which the premises are occupied. The questions for determination in the case were whether the estate was legally liable for business tax and 20 whether Section 394 of the City Charter was *intra vires* the Legislature of the Province of Nova Scotia. In speaking for the Privy Council, Lord Cave stated that the "substantial question" was whether the tax imposed on the estate by the City of Halifax was void as not being "direct taxation within the meaning of Section 92, Head 2 of the British North America Act." At p. 126, he said:

"It may be true to say of a particular tax on property such as that imposed by Section 394 of the Halifax Charter that the taxpayer would probably seek to pass it on to others; but it may none the less be a tax on property and remain within the category of direct taxes."

30 Under the Halifax City Charter a business tax was payable by every person occupying real property for the purpose of any trade, profession or calling for the purposes of gain, the tax being levied on 50 percent of the assessed value of the property; and, as before stated, where property was let to the Crown or other person exempt from taxation the owner was by the Charter to be deemed the occupier and liable for business tax if the property was used for business purposes. Lord Cave, in the statement quoted, speaks of the business tax as a "tax on property." The "substantial question," however, was whether the business tax imposed on the owner was a direct tax 40 within Section 92 of the British North America Act and this was the only matter decided. The judicial mind was not directed to the question whether the tax was a tax *in rem* or *in personam*.

In *Pigeon v. Recorders Court and City of Montreal*, 17 S.C.R. 495, Strong J. referred to a business tax calculated on a percentage of the annual value of the premises in which business was carried on

as "a general tax in respect of the property upon which any trade or occupation is carried on."

I am not prepared to agree that the statement that the business tax is a tax "in respect of the property" means that it is a tax on the property. None of the cases cited, in my opinion, deal directly with the question of whether a business tax such as that provided for in the City Act is a tax *in rem* or a tax *in personam*, and while the exemption of the real and personal property under the terms of Clause 16 may be rendered somewhat illusory if the use of the property for  
10 business purposes is taxable, I can reach no other conclusion than that the main line and branch lines of the Canadian Pacific Railway are taxable in respect of the business carried on. No other conclusion seems to me to be possible if the Court is to follow its decision in *City of Moose Jaw v. British American Oil Company, supra*.

The questions submitted, in my opinion, should be answered as follows:

	Question No. 1	Answer, No.
	Question No. 2 (a)	Answer, No.
	Question No. 2 (b)	Answer, Not answered.
20	Question No. 2 (c)	Answer, Not answered.
	Question No. 3	Answer, Yes.
	Question No. 4 (a)	Answer, Yes.
	Question No. 4 (b)	Answer, Yes.

Dated at Regina this 29th day of January, 1949.

W. M. MARTIN  
C.J.S.

## No. 5

### Reasons for the Opinion of the Honorable Mr. Justice Gordon

On one of the important points of this reference, I have the mis-  
30 fortune to differ from My Lord the Chief Justice, and my colleagues. I need hardly say that in view of their judgments, which I have had the advantage of reading, I have grave doubts of my own opinion. Perhaps my view is warped by the fact that I was born in the North-West Territories and have lived nearly the allotted span within its borders. However, I can express my views on the first question submitted, very shortly. This, I do with every deference and respect.

In approaching the question, I adopt the view expressed by Nesbitt J. in *In re Branch Lines*, Ref. 36 S.C.R. 42 at pp. 89 and 90, where he states as follows:

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“The general rule which is applicable to the construction of all other documents is equally applicable to statutes and the interpreter should so far put himself in the position of those whose words he is interpreting as to be able to see what those words related to. He may call to his aid all those external or historical facts which are necessary for this purpose and which led to the enactment and for those he may consult contemporary or other authentic works and writings. This, however, does not justify a departure from the plain reasonable meaning of the language of the Act. The best and surest  
10 mode of expounding an instrument is by construing its language with reference to the time when and circumstances under which it was made, and next to such method of exposition is the rule that if an Act be fairly susceptible of the construction put upon it by usage the courts will not disturb that construction.”

As I understand the argument of learned Counsel for the Province, Clause 14 of the Contract, confirmed by Chapter 1 of the Statutes of Canada (1881) (hereinafter referred to as the Act of 1881) was just something thrown in for good measure. It amounted to little or nothing. The Company was not obligated to do anything thereunder  
20 and the Dominion was giving very little in connection with it. His contention was that the Dominion Government was merely seeking the easiest method of fulfilling its obligations given to the Province of British Columbia upon its entering confederation.

It is my view that such a contention is contradicted by every fact of that period. Besides the obligation of the Dominion to British Columbia, it owed one to Canada to develop these great territories. The Company, too, had an obligation to its shareholders, and if it was to accomplish its great purpose it would be necessary to pay dividends. The motives actuating two parties to a contract may be very different,  
30 accordingly all the facts must be considered.

Now, what are the facts which were, at that time, well known to all the parties involved in this great enterprise?

The eastern section of the proposed line from Lake Nipissing to Port Arthur was a distance of approximately six hundred and fifty miles. It passed through wholly unproductive territory aptly described as “a land of rocks and Christmas trees.” It would always have to compete with water transportation on the Great Lakes, while they were open. The distance from Port Arthur to Selkirk is another four hundred and ten miles. It, too, runs through the same un-  
40 productive territory. From Selkirk to Fort Edmonton, at that time almost wholly uninhabited, was a distance of about one thousand miles and this would be the really productive part of the railway as it would cross an area of about half a million square miles of fine arable land. From Fort Edmonton to Port Moody would be about seven hundred miles crossing two of the greatest mountain ranges in

North America. Throughout its entire length, from Fort Edmonton to Port Moody, there would be little or nothing in the way of local traffic. The entire white population of British Columbia at the time it entered Confederation in 1870 was less than ten thousand, and they lived around Vancouver and on Vancouver Island. Their commerce with the eastern part of Canada was negligible. In this great expanse, the only population was about Selkirk.

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In fact, the Company was agreeing to build two sections of the proposed railway aggregating about one thousand three hundred and fifty miles and to operate the whole, a distance of nearly three thousand miles with only a thousand miles of productive territory.

Sir Sandford Fleming, the First Chief Engineer of Surveys for the Dominion Government, who had spent many months on the proposed route of the railway, had stated in his report to the Government that the line could not be made to pay operating charges until the North-West Territories had a population of two million people.

If such a railway was to look for dividends from the commerce of such a small population of British Columbia, and the development of the area contributory to the main line with such an unproductive area in British Columbia and in the eastern sections, then Edward Blake would have been right when he declared that the Canadian Pacific Railway would never pay for its axle grease.

The third paragraph in the preamble in the Act of 1881 recites the facts, as I think, in their relative importance, namely:

“It is necessary for the development of the North-West Territories and for the preservation of the good faith of the Government in the performance of its obligations, that immediate steps should be taken to complete and operate the whole of the said railway.”

It will be noticed that the development of the North-West Territories is set out first. Surely the purposes expressed in the Statute are binding as to legislative intent.

Learned Counsel for the Province states in his factum: “Apart from Clause 14 there is no mention of branch lines in the contract.” This is clearly incorrect. In Clause 11, the Company is given the option of selecting some of the land granted in an area extending twenty-four miles on each side of the branch line or lines of the railway to be located by the Company. In actual fact some millions of acres were so located. Clause 15 also protects the Company from competition in the southern part of the Territories from other lines with the exceptions therein stated.

In my view it was self-evident that if the North-West Territories were to be opened up and if the Company was to pay dividends, branch lines would have to be constructed.

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But, Counsel for the Province contends that if this had been in the contemplation of the parties, the location of at least some of the branch lines would have been set forth in the agreement. My answer to such a contention is that when the contract was signed the location of the main line was not and could not be fixed, and it would have been utterly impossible to guess where branch lines would be required.

The main line of the Company, in this Province, is only four hundred and twenty miles. The branches built under the provisions of Clause 14 of the Contract aggregate sixteen hundred miles.

10 It is interesting to note that by 1901 the population of that part of the North-West Territories now contained in Saskatchewan had risen from practically nothing to 91,279. By 1911, it was 492,432, and by 1921, it was 757,510. By that time the railway mileage of the Company in the Province was about forty-three hundred miles and that of the Canadian National Railways over forty-four hundred miles. In the early years of this Province the land of equal quality was valued in direct relation to its proximity to a railway station.

For years the tide of immigration far outstripped the railway facilities necessary to provide transportation for the settler's supplies  
20 and products. For years thousands of settlers were travelling from forty to sixty miles with their products and for their supplies; this not by automobile, or truck, or even heavy draft horses, but by light broncos. In fact, the need of railway facilities was so great that between 1908 and 1915, Provincial Government records show that the five Provinces from Ontario to British Columbia guaranteed the bonds of railway companies other than the Canadian Pacific Railway to the extent of \$130,000,000. Of this sum, the share of the Province of Saskatchewan was \$21,226,000.

Under the provisions of Sub-sections 39 and 40 of Section 68 of  
30 Chapter 8 of the Revised Ordinances of the North-West Territories of 1888, Municipalities were empowered to pass by-laws not only exempting railways from taxation but granting them bonuses as well. These provisions were not repealed until 1909, when by Sub-section 39 of Section 59 of Chapter 89 of the Revised Statutes of that year, Municipalities were prohibited from exempting railways from taxation and the power of granting bonuses was repealed. This was no doubt done because the Province was undertaking the burden. Mr. Calder, the Minister of Railways for Saskatchewan, was most certainly correct when he wrote to William Whyte, Second Vice-President of the  
40 C.P.R., in June, 1909, as follows:

"The popular feeling throughout Saskatchewan is that we need railways rather than taxation from railways."

In view of all these facts and the public statements of the Dominion Ministers of the Crown as to settlement of the North-West Terri-

tories, how can it be said that the right to build branches from the main line was not of the very essence of the Contract?

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If the so-called definition of the words "The Canadian Pacific Railway" as contained in Clause 1 of the Contract could be applied in every other clause where the term is used there would be great weight to the argument of the Counsel for the Province. In my view, this cannot be done. With deference, I adopt the statement of Nesbitt J. in *In re Branch Lines, C.P.R.*, *supra*, at p. 85, where he states:

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10 "I read the first clause as a conveyancing description applicable to the contractors. . . ."

The various sections of the railway as described in the Act of 1874 were given new names and were identified by these new names in the Contract. These sections of the railway had to be defined as clearly as possible because the Dominion was agreeing to construct two of them and to transfer them to the Company. The Company was agreeing to construct the other two sections of the line. Both the branch lines, mentioned in the Contract, were to be built by the Government. The Pembina branch was so complete, but the other  
20 branch was rendered unnecessary by compelling the Company to build the Eastern Section so much farther south, as will be seen by comparing the locations on the two maps in the appendix. Further, Clause 1 does not say that the words "The Canadian Pacific Railway" shall "hereafter" be given that meaning.

Clause 16, in so far as it is necessary to quote it, reads as follows:

"16. The Canadian Pacific Railway, and all stations and station grounds, workshops, buildings, yards and other property, rolling stock and appurtenances required and used . . . for the working thereof, and the capital stock of the Company, shall be forever free from tax-  
30 ation by the Dominion or by any province hereafter to be established.  
. . . ."

It must be borne in mind that at the time the Contract was signed, the Company did not own a foot of railway. It did not own a single station or railway car. Everything that was to be exempt was to be acquired in the future.

Counsel for the Province admits that the rolling stock of the Company, whether used on the main line or on the branches, is exempt from taxation. I agree with him. If the rolling stock is exempt, why not the workshops where the rolling stock is repaired? If a car  
40 becomes damaged on a branch line it will be repaired at the nearest workshop on the branch line. Even if the words "The Canadian Pacific Railway Company" were given the meaning contended for by Counsel for the Province, there is no suggestion that stations,

station grounds, workshops, etc., had to be located on the main line. If this had been the intention, the words "located thereon" would have been used in the clause.

How can it be said that stations and station grounds on the branch lines are not used for the working of the main line? It must be perfectly obvious that about ninety-five percent of all shipments of freight to and from a branch line have their origin or destination on the main line. Of the thousands of tons of agricultural machinery shipped into this province every year, all is shipped from Eastern  
10 Canada or the United States. Almost one hundred percent of the grain shipped on a branch line goes to Fort William, Ontario, or Van-  
couver, B.C., or to a mill on the main line.

It is not without significance that the wording of Clause 16 closely parallels that of Clause 14.

There can be no doubt that Mr. Walter Scott, who later became the first Premier of this province, when speaking as a Member of the House of Commons, elected from a district in the southern part of the North-West Territories, correctly stated the view held in the Dominion by those interested in the matter when he said, in 1903,  
20 that until about that time the exemption of the whole railway from taxation in the Territories was taken without question. This was also the view of Mr. F. W. G. Haultain, while he was Premier of the North-West Territories. In the draft bill which he submitted to Sir Wilfrid Laurier, then Prime Minister of Canada, he provided for the payment of \$100,000 a year as compensation for the loss of the right to tax the property of the Company.

In my view the branch lines built under Clause 14 of the Contract, ratified and confirmed by the Act of 1881, are exempt from taxation under Clause 16.

30 I find it very difficult to come to a conclusion as to what was meant when exemption was granted the "capital stock of the Company." It is difficult for me to believe that this was an exemption of the shares held by subscribers. Exemption could only be of value to the Company when first selling those shares. Exemption from local taxation was only given in the North-West Territories and it is obvious that not a single share would be sold there. It was well known that shares would be sold in Britain, Continental Europe and the United States. So far as taxation by the Dominion is concerned, it never had and has not since tried to tax such property.  
40 It may well have been that the contractors representing the Company thought they were obtaining exemption of the capital assets of the Company. However, in view of my conclusion on the other grounds, it is unnecessary to decide this point.

It now remains to consider the question as to whether the Province

can authorize the imposition of a business tax. This is even of greater importance to the Company than the previous question, because if such a tax can be imposed then the exemption of the main line from a property tax amounts to little or nothing.

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The various municipal bodies are all authorized to raise revenues by assessments on: (a) lands, (b) businesses, (c) special franchises. Business has been defined by Rowlatt J. in *Inland Revenue Commissioners v. Marine Steam Turbine Co.*, 1920, 1 K.B. 193 at 204 as follows:

- 10 “The word ‘business,’ however, is also used in another and very different sense, as meaning an active occupation or profession continuously carried on. . . .”

In my view it is in this sense that the word is used in the various Acts authorizing taxation of a business.

It is very strongly contended by Counsel for the Company that such a tax is, in the final analysis, a tax on property and, as such, falls within the exemption granted the Company under Section 16, *supra*. With every respect, I am of the opinion that we should follow the decision of this Court in *Moose Jaw v. B.A. Oil Co.*, 1937, 202 W.W.R. 309. It is quite true that there are very different facts in this case, but this Court there held that a business tax was not a tax on property. It is true that the case of *Halifax v. Fairbanks Estate*, 1928, A.C. 117, was not cited to us on the argument of the *Moose Jaw v. B.A. Oil Co.* case, but I do not think that it is entirely conclusive on the point and this Court should follow its own decision and leave it to a higher Court to rectify our mistake if one has been made.

On the argument, Counsel for the Province stated that he was not challenging before us the validity of Section 24 of the Saskatchewan 30 Act, being Chapter 42 of the Dominion Statutes of 1905, but wished to reserve his right to do so in a higher Court. With every respect, I feel that the Dominion should have been represented before us if it was intended, at any time, in these proceedings to challenge the validity of this section. When Counsel for the Province and the Company first appeared before us asking for a special date for the hearing, it was made clear that notice should be given to all parties interested in the proceedings and no evidence was filed before us that the Attorney-General for Canada was so notified.

Accordingly, I certify to the Lieutenant-Governor in Council 40 that my opinion is: The stations, station grounds, workshops, yards and other property on the branch lines of the Canadian Pacific Railway Company, built under the power conferred by Clause 14 of the said Contract with the Dominion Government, are exempt from taxation under the provisions of Clause 16 of the said Contract.

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As to the remaining questions, save as above, I certify that I am in agreement with the conclusions reached by the majority of the Court.

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Dated at Regina this 28th day of January, 1949.

P. H. GORDON  
J.A.

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**Reasons for the Opinion of the Honorable Mr. Justice MacDonald**

This is a reference, under The Constitutional Questions Act, 10 Chapter 72 of the Revised Statutes of Saskatchewan, 1940, by the Lieutenant-Governor in Council for hearing and determination of certain questions.

The Order of Reference is set out in the judgment of my brother Procter and need not be repeated. For the proper consideration of these questions, it is necessary to refer back to the considerations that led to the execution by the Crown, in the right of Canada, of the contract for the construction of the Canadian Pacific Railway.

British Columbia was admitted into the union of the Dominion of Canada, under Section 146 of the British North America Act, 20 1867; Clause 11 of the terms of union agreed on by the Parliament of Canada and the Legislature of British Columbia is as follows:

“The Government of the Dominion undertake to secure the commencement simultaneously, within two years of the date of the Union, of the construction of a railway from the Pacific towards the Rocky Mountains, from such point as may be selected, east of the Rocky Mountains, towards the Pacific, to connect the seaboard of British Columbia with the railway system of Canada; and further to secure the completion of such railway within ten years from the date of the Union.”

30 For the purpose of implementing said undertaking, the Parliament of Canada enacted Chapter 14 of the Statutes of Canada, 37th Victoria, Sections 1 to 4 of which are recited in the order of reference.

When certain sections of the said railway had been constructed, or were under construction, the Government of Canada decided to have the railway completed by private enterprise. Negotiations were entered upon, and after various proposals and counter-proposals, the Government entered into the contract set forth as a schedule to Chapter 1 of the Statutes of Canada, 1881. Clause 1 of the contract is recited in the order of reference.

Accordingly, "Canadian Pacific Railway" is defined to mean the entire railway as described in the Act, 37th Victoria, Chap. 14. Reference back to the description of the railway set out in the Act, 37th Victoria, Chap. 14, shows that only two branch lines are included, neither of which is in the Province of Saskatchewan.

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I am of opinion that "The Canadian Pacific Railway" as used in said Clause 16 does not include any of the branches in the Province of Saskatchewan.

To my mind there is a clear distinction between the railway which 10 the Company was under an *obligation* to construct, and the branch lines which the Company was given the *privilege* of building. In re Branch Lines, Canadian Pacific Railway, 36 S.C.R. 42, per Sedgewick J. at p. 65, per Nesbitt J. at p. 99 and also at p. 100.

It seems clear to me that the branch lines which the Company was privileged to build are not within the definition of "Canadian Pacific Railway" as used in Clause 16 of the contract.

By Chapter 53 of 45 Victoria, it is enacted that the Company may, subject to the approval of the Governor in Council, lay out and maintain their main line of railway from Selkirk to the junction with the 20 western section at Kamloops by way of some pass other than the Yellow-Head Pass by which, under the Contract, the line was to go—provided that the pass be not less than one hundred miles from the boundary between Canada and the United States.

Moreover, the branch line to some point on the Georgian Bay mentioned in Chap. 14 of 37th Victoria was never built. According to Girouard J., this was in consequence of the deviation of the main line. In re Branch lines, Canadian Pacific Railway Co., *supra*, at p. 78.

From these facts, learned counsel for the railway company argues 30 that the line of railway actually constructed was essentially different from the railway described in Chap. 14 of 37 Victoria, and that therefore the definition in Clause 1 of the Contract cannot apply.

In my opinion, this argument goes too far. If the railway constructed were essentially different from that described in Chap. 14 of 37 Victoria, then the Contract would not apply at all, and so there would be no exemption from taxation.

But, it seems clear that the argument is fallacious. It is common ground that the railway was built under the Contract and it is under the Contract that the railway company claims exemption from tax- 40 ation. In my view, the proper interpretation is that the definition in Clause 1 of the Contract stands subject to the modification necessitated by the Act of 1882, Chap. 53 of 45 Victoria.

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If, as I hold, the exemption in Clause 16 of the Contract does not apply to branch lines, then there is nothing in the Act of 1882 to extend the exemption to branch lines.

The question whether all exemption from taxation in Clause 16 of the Contract applies to branch lines (other than the two mentioned in the Act of 1874) has never been passed on by any Court, but counsel for the railway company refer to certain *dicta* which they argue show the exemption does apply to branch lines. They quote from the judgment of Sedgewick J. in *Re Branch Lines, Canadian Pacific*  
10 *Railway Company, supra*, at p. 69, where he says:

“It [Parliament] had exempted the company’s property, so far as it was within the North-West Territories, and was used for railway purposes, from taxation forever.”

In that case, the question was whether the limitation of ten years for the completion of the main line of the railway also applied to branch lines, so the above quoted remark of Sedgewick J. was *obiter*.

Sedgewick J. was merely enumerating in a general way the subsidies and concessions that Parliament granted to the railway company. That he did not apply his mind to the question involved here  
20 is clear from the fact that his statement, as quoted, is inaccurate. Besides the branch lines authorized by Clause 14 of the Contract, Clause 15 of the Company’s Charter, contemplates that it may be authorized to construct other branch lines. Counsel admits that such other branch lines are not exempt from taxation, so the observation of Sedgewick J. is too comprehensive. With it should be compared the remarks of Girouard J. in the same case at pp. 74 and 75, where he says:

“The Government undertook to finish and deliver to the company  
30 the two sections commenced, and the company promised to build the eastern section from Callander Station to the Lake Superior section, and also the central section from Selkirk to Kamloops, on or before the first day of May, 1891, the company receiving a cash subsidy of 25 millions of dollars and a land subsidy of 25 millions of acres, valued at that time at about \$1.50 per acre. This statute is composed of three parts. 1st, “An Act respecting the Canadian Pacific Railway”; 2nd, the said contract; and 3rd, the charter or Act of incorporation. I presume the three documents must be read together, but if there is any discrepancy between them the contract must give way. I believe there is none, at least as to the point before us.

40 “As it may easily be understood from the past experience most extensive and, in fact, unprecedented powers were demanded and obtained. To do so the whole policy of the country, as expressed in the Railway Act of 1879, had to be set aside and a new and exceptional one adopted. More liberal subsidies and concessions had to be

granted. The two Government sections, which were estimated to cost about \$28,000,000, but did actually cost a little over \$31,000,000, were to be delivered free of charge. The lands required for the road bed, for stations, station grounds, workshops, dock ground and water frontage at the termini on navigable waters, buildings, yards, if vested in the Government, were granted to the company. It was also agreed that all this property and the railway, its rolling stock and the capital stock of the company were to be forever free from taxation by the Dominion or the Territories, or any province or any municipal corporation to be established therein, and that the land grants were also to be free from taxation for 20 years from the date of the Crown patent, unless sooner sold or occupied. The selection of these lands was entirely left with the company instead of the Government. The importation of the rails and all railway and telegraph material to be used in the original construction was declared to be free from customs duty. The company might at any time, whether within ten years or after, operate lines of steamers over seas, lakes and rivers, which it might reach or connect with, although in doing so it might damage or even destroy similar lines already existing. Finally, to come to the matter which is the subject of this reference, unlimited powers to build branch lines were given to the railway company by merely depositing the plan of location, without the sanction of the Governor in Council."

Reference may also usefully be had to the remarks of Nesbitt J. at p. 93.

Counsel also refers to the remarks of Scott J. In re Canadian Pacific Railway Co. and Town of MacLeod (1901) 5 Terr. L.R. 192 at 193, where he says:

"In my opinion, the exemption clause referred to is not applicable to the Crow's Nest Pass Railway. I think the reasonable interpretation of the agreement referred to is that the clause is applicable only to the main line of the C.P.R. and to such branches thereof as the respondent company was authorized by Clause 14 of the agreement to construct from points on the main line, and that it does not extend, nor was it intended to extend, to the other distinct lines of railway which the company might subsequently be authorized to construct. The Crow's Nest Pass Railway is not a branch from the main line of the C.P.R., but a distinct line of railway."

Again, these remarks, so far as they refer to branch lines authorized under Clause 14 of the Contract, are *obiter*; there was no suggestion that the Crow's Nest Pass Railway was authorized by Clause 14 of the Contract; moreover the definition of "Canadian Pacific Railway" in Clause 1 of the Contract was not referred to.

As part of the record there were filed copies of a number of documents showing the efforts made by the Government of Canada

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to have railway built to open up the North-West Territories for settlement. These documents are admitted by Counsel for the Attorney-General to be genuine, but he objects that they are irrelevant to the questions before the Court. There are also extracts from letters and speeches made by politicians, from which Counsel for the railway company argue that they always took the view that the branch lines were exempt from taxation. These too are objected to as irrelevant. I do not consider that it would serve any useful purpose for one to analyze these documents, letters or speeches,  
10 because in my opinion the objection to their relevancy is well taken.

Clause 16 of the Contract, granting exemption from taxation, reading the words "Canadian Pacific Railway" as defined in Clause 1 and modified by the Act of 1882 is, to my mind, clear and unambiguous.

"If the words of the statute are in themselves precise and unambiguous no more is necessary than to expound these words in their natural and ordinary sense, the words themselves in such case declaring the intention of the Legislature." Maxwell on Interpretation of Statutes, 9th ed., pp. 1 and 2. Commissioners for Special Purposes  
20 of Income Tax v. Pemsel (1891) A.C. 534 at 545.

In G.W.R. and M.R. v. Bristol Corporation, 87 L.J. Ch. Div. 414, Lord Atkinson says at p. 418:

"In opening the appeal in this case counsel for the appellants cited the well-known passage from the judgment of Lord Blackburn in the case of River Weir Commissioners v. Adamson (1877) (47 L.J.Q.B. 193, 202; 2 App. Cas. 743, 763) to the effect that the authorities establish in construing all instruments in writing including statutes, the object of Courts of law is 'to see what is the intention expressed by the words used.' But from the imperfection of lan-  
30 guage, it is impossible to know what the intention is without enquiring further, and seeing what the circumstances were with reference to which the words were used, and what was the object, appearing from these circumstances which the person using them had in view; for the meaning of words varies according to the circumstances with respect to which they were used; and he, as I understand him, relied upon it to support his contention that intrinsic evidence of the circumstances surrounding the making of the agreement between the appellants and the respondents, dated May 22, 1910, was admissible to show that the word 'traffic' used in the opening paragraph of Clause 6 of the  
40 agreement, and also in sub-clause (a) of that clause, did not cover or include the traffic designated in argument in the case, as lessees' traffic. The judgment of Lord Blackburn in that case is no authority whatever for the proposition that these circumstances are to be regarded or evidence received in respect of them where the language of the written instrument to be construed is precise and unambiguous."

In *River Weir Commissioners v. Adamson*, the words were ambiguous. Nor is evidence that the rural municipalities did not tax the branch line admissible as relevant here.

In *North Eastern Railway v. Hastings*, 69 L.J. Ch. 516, The Lord Chancellor (Earl of Halsbury) says at p. 518:

“In this case I think the whole question turns upon a very few words to be found in the instrument under constructions. A variety of circumstances have been insisted upon to alter the construction which the words themselves naturally bear, but I am unable to see  
10 that either in the language used or on the construction of the whole instrument there is any room for doubt. The chief argument used to give an unnatural construction to the words is that the parties have so acted during a period of forty years, and that the only reasonable inference to be derived from their conduct is that they have understood and acted on their bargain in a sense different from that which the words themselves convey. I am of the opinion that if this could be truly asserted it is nothing to the purpose. The words of a written instrument must be construed according to their natural  
20 meaning, and it appears to me that no amount of acting by the parties can alter or qualify words which are plain and unambiguous. So far as I am aware, no principle has ever been more universally or rigorously insisted upon than that written instruments, if they are plain and unambiguous, must be construed according to the plain and unambiguous language of the instrument itself.”

Learned Counsel for the Railway Company argue that the exemption of the capital stock of the company means the exemption of all the property of the company and for this contention relies on the decision in *Wright v. Georgia R. & Banking Co.* 216 U.S. 420.

A decision of that Court is entitled to every respect, but I cannot  
30 find that the views therein expressed have any application under the facts in this case. There the Supreme Court of the United States were construing the charter of the company and came to the conclusion that “capital stock” meant “capital.” No case has been found in either English or Canadian reports in which it was held, nor until now in which it was even contended, that the “capital stock” of a company means all its property.

In *re C.P.R. & Town of MacLeod*, *supra*, the question was not raised; nor was it raised in *Canadian Northern Pacific Railway v. New Westminster Corporation*, 86 L.J.P.C. 178, in which “Capital  
40 stock” was exempted.

In my view, what “capital stock” means is defined in the Charter of the Company, Clause 2 of which states that the capital stock of the Company shall be twenty-five million dollars, divided into shares of one hundred dollars each.

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The Company was getting twenty-five million dollars from the Government, but that is not the twenty-five million dollars mentioned in the Charter; that sum it was hoped the Company would raise by sale of shares of its capital stock. Moreover, the Government grant also included twenty-five million acres of land, right of way and the sections of the railway built by the Government. All these grants when made, according to the Contract, would be the property of the Company but not part of its capital stock.

The Act respecting the Canadian Pacific Railway, Chapter 1 of 10 44 Victoria, and the two schedules thereto, namely the Contract and the Charter of the Company, must be read together. In re Branch Lines, C.P.R., *supra*.

At the date of the Contract, Ch. 180 of the Revised Statutes of Ontario, 1877, was in force. Under that Act "Personal Estate" and "Personal Property" included shares in incorporated companies. Personal property was liable to taxation but the stock held by any person in any railway company was exempt.

Personal property was also assessable in Manitoba, under Ch. 64 of The Consolidated Statutes, 1880; in Nova Scotia under Ch. 21 20 of the Revised Statutes, 1873, and in British Columbia under Ch. 152, The Assessment Act, 1876.

It appears to me that the exemption of "capital stock" was granted in view of these statutes. True, the exemption granted could not override the power of these provinces under S.S. 2 of Section 92 of the B.N.A. Act, but it would prevent the Government of Canada from taxing the stock, and at that time the North-West Territories were under the Government of the Dominion, and so would prevent taxation there. So, when the Province of Saskatchewan was formed, care was taken to make its power to impose direct taxation subject to 30 Clause 16 of the Contract.

Moreover, at the date of the Contract, there was considerable controversy as to whether the provinces could at all tax companies incorporated by the Parliament of Canada: *Vide* Citizens Insurance Company v. Parsons, 7 S.C.R. 96, and Bank of Toronto v. Lambe, 12 S.C.R. 575.

Question 2 is divided into three parts. As to (b) and (c), there is no existing legislation providing for taxation on either basis; so the questions are purely academic. I do not think the Court should be asked to pass an opinion unless and until legislation has been passed 40 imposing taxation on these bases, or either of them.

That leaves for consideration Question 2(a).

This Court held in *The City of Moose Jaw v. British American Oil Co. Ltd.* (1937) 2 W.W.R. 309, that a business tax was not a tax on property but was a personal tax. In so doing it follows a number of

decisions in the Court of Ontario, which are cited in the judgment.

It is, however, submitted by Counsel that in the City of Halifax v. Fairbank's Estate (1928) A.C. 117, the Privy Council treated business tax as a real property tax, and that the decision in The City of Moose Jaw v. The British American Oil Co. Ltd. is wrong.

In the Fairbanks case the facts were that the estate owned premises which it let to the Crown, represented by the Minister of Railways, for use as a ticket office of the Canadian Northern Railway, the lessee agreeing to pay the business tax.

10 The City Charter imposed a tax called a "business tax" to be paid by every occupier of real property for the purposes of any trade, profession or other calling carried on for the purposes of gain; the tax was assessable according to the capital value of the premises. Section 394 of the Charter provided that any property let to the Crown, or to any person, corporation or association exempt from taxation, was to be deemed to be in the occupation of the owner, for business or residential purposes as the case might be, and be assessed for business or household tax accordingly. The City assessed the estate for business tax.

20 Three and only three arguments were urged by the estate why the tax was invalid:

"(1) that an occupation by the Crown cannot be held to be for the purposes of gain, and accordingly the premises in question were not assessable to the business tax;

"(2) that the tax in dispute was a tax on property belonging to Canada, and so void under S. 125 of the British North America Act;

"(3) that the tax was an indirect tax and so not falling within the authority of S. 92, Head 2 of the British North America Act."

30 As to (1) Viscount Cave, L.C., who delivered the judgment of their Lordships, held that a business was undoubtedly carried on though on behalf of the Crown; as to (2) it was held that "a tax on the owner of property let to the Crown in the right of the Dominion cannot be held to be a tax on the property of Canada"; as to (3), which is called "the real and substantial question to be decided," it was held that the tax was direct taxation within the meaning of the Statute.

It is true that his Lordship says:

40 "It may be true to say of a particular tax on property, such as that imposed on owners by 394 of the Halifax Charter, that the taxpayer would very probably seek to pass it on to others; but it may none the less be a tax on property and remain within the category of direct taxes."

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But the tax there in question, though called a "business tax," was, in reality, not a business tax at all: the estate did not carry on business on the premises—the Crown did. Only by a statutory fiction could the tax be called a business tax, and it was not necessary to differentiate between a tax on business and a tax on property as either would be valid. The tax was an additional tax on the owners of property, when such property was used for business by a person not subject to taxation.

But, under the legislation in question here, the taxation is in 10 respect of the business carried on.

In *Commissioners of Inland Revenue v. Marine Steam Turbine Co.* (1920) 1 K.B. 193, Rowlatt J., after referring to different senses, not relevant here, in which the word "business" is used, says as follows, at p. 203:

"The word business, however, is also used in another sense, as meaning an active occupation or profession continuously carried on."

And, in "Words and Phrases Judicially Defined" by Roland Burrows, K.C., vol. 1, p. 361, appears the following:

"(This expression appears in S. 6 (IV) of the Indian Income Tax 20 Act, 1922, as ahead of income, profits and gains chargeable to income tax. S. 2 defines business as follows: 'business' includes any trade, commerce or manufacture, or any adventure or concern in the nature of trade, commerce or manufacture.) The words used are no doubt wide, but underlying each of them is the fundamental idea of the continuous exercise of an activity.—*Income Tax Com. (Bengal) v. Shaw, Wallace & Co.* (1932) I.L.R. 59 Cal. 1343 P.C. per cur. at p. 1351."

The report, itself, is not available here.

In each of the Municipal Acts referred to, the expression "busi- 30 ness" includes any trade, profession, calling, occupation or employment, and in my opinion, these words connote activity, and not property. The exemption in Clause 16 of the Contract is of physical things. *Canadian Northern Pacific Railway v. New Westminster Corporation*, 86 L.J.P.C. 178. The activity is the activity of the company.

In the *King v. School District No. 1, Parish of Madawaska, Edmundston*, 49 D.L.R. 371, Hazen C.J., delivering the judgment of the Court, says at p. 374:

"It is laid down very clearly in the textbooks and in cases that 40 have been decided on the question that, as taxation is the rule and exemption the exception, the intention to make an exemption ought to be expressed in clear and unambiguous terms, and it cannot be

taken to have been intended when the language of the Statute is doubtful or uncertain. . . .

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“On this ground it was held that an exemption of property from taxation will not preclude business or privilege tax so being imposed on the favoured class.”

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The decision was affirmed by the Supreme Court of Canada: 60 S.C.R. 351.

10 So, I cannot see that the decision in the Fairbanks case decided under a differently worded statute and different facts shows that the case of the City of Moose Jaw v. The British North American Oil Co. Ltd., was wrongly decided. I feel bound by the decision in the latter case.

Even if business be regarded as property, it is intangible property, and not included in the exemption granted by Clause 16 to physical things.

To sum up, I therefore answer the questions submitted, as follows:

	Question No. 1	Answer, No.
	Question No. 2 (a)	Answer, No.
	Question No. 2 (b)	Answer, Not answered.
20	Question No. 2 (c)	Answer, Not answered.
	Question No. 3	Answer, Yes.
	Question No. 4 (a)	Answer, Yes.
	Question No. 4 (b)	Answer, Yes.

Dated at Regina this 28th day of January, 1949.

H. Y. MACDONALD  
J.A.

## No. 7

### Reasons for the Opinion of The Honorable Mr. Justice Procter

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30 By Order-in-Council dated the 16th of November, 1948, the Province of Saskatchewan, under the Constitutional Questions Act, being Cap. 72 of the Revised Statutes of Saskatchewan, 1940 has submitted to the Court certain questions for hearing and consideration.

The only parties appearing on the reference are the Province of Saskatchewan, the Canadian Pacific Railway Company, and The Association of Rural Municipalities of Saskatchewan.

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The Order-in-Council is as follows:

“Regina, Tuesday, November 16, 1948.

“Whereas the Province of Saskatchewan was established in 1903 by Statutes of Canada, 4-5, Edw. VII, C. 42. Section 3 of the Saskatchewan Act provides:

“ ‘3. The provisions of *The British North America Acts, 1867 to 1886* shall apply to the Province of Saskatchewan in the same way and to the like extent as they apply to the provinces heretofore comprised in the Dominion as if the said Province of Saskatchewan had  
10 been one of the provinces originally united, except in so far as varied by this Act and except such provisions as are in terms made or by reasonable intendment may be held to be specially applicable to or only to affect one or more and not the whole of the said provinces.’

“And whereas The British North America Act, 1867, Section 92, provides:

“ ‘92. In each province the Legislature may exclusively make laws in relation to matters coming within the classes of subjects next hereinafter enumerated, that is to say:

“ ‘(2) Direct taxation within the province in order to the raising  
20 of a revenue for provincial purposes.

“ ‘(8) Municipal institutions in the province.’

‘And whereas section 24 of the Saskatchewan Act provides:

“ ‘24. The powers hereby granted to the said province shall be exercised subject to the provisions of section 16 of the contract set forth in the schedule to Chapter 1 of the Statutes of 1881 being an Act respecting the Canadian Pacific Railway Company.’

“And whereas Clause 16 of the said contract provides:

“ ‘16. The Canadian Pacific Railway, and all stations and station  
30 grounds, workshops, buildings, yards and other property, rolling stock and appurtenances required and used for the construction and working thereof, and the capital stock of the Company, shall be forever free from taxation by the Dominion or by any Province hereafter to be established, or by any Municipal Corporation therein; and the lands of the Company, in the North-West Territories, until they are either sold or occupied, shall also be free from such taxation for twenty years after the grant thereof from the Crown.’

“And whereas Clause 1 of the said contract provides in part:

“ ‘1. For the better interpretation of this contract, it is hereby declared that the portion of railway hereinafter called the Eastern  
40 Section, shall comprise that part of the Canadian Pacific Railway to be constructed, extending from the Western terminus of the Canada

Central Railway, near the East end of Lake Nipissing, known as Callander Station, to a point of junction with that portion of the said Canadian Pacific Railway now in course of construction extending from Lake Superior to Selkirk on the East side of Red River; which latter portion is hereinafter called the Lake Superior Section. That the portion of said railway, now partially in course of construction, extending from Selkirk to Kamloops, is hereinafter called the Central Section; and the portion of said railway now in course of construction, extending from Kamloops to Port Moody, is hereinafter called the  
 10 Western Section. And that the words "the Canadian Pacific Railway" are intended to mean the entire railway, as described in the Act 37th Victoria, chap. 14. The individual parties hereto are hereinafter described as the Company; and the Government of Canada is hereinafter called the Government.'

"And whereas Sections 1 to 4 of 37 Vict., Chapter 14, Statutes of Canada, provide:

" '1. A railway to be called the "Canadian Pacific Railway" shall be made from some point near to and south of Lake Nipissing to some point in British Columbia on the Pacific Ocean, both the said  
 20 points to be determined and the course and line of the said railway to be approved of by the Governor in Council.

" '2. The whole line of the said railway, for the purpose of its construction, shall be divided into four sections: the first section to begin at a point near to and south of Lake Nipissing, and to extend towards the upper or western end of Lake Superior, to a point where it shall intersect the second section hereinafter mentioned; the second section to begin at some point on Lake Superior to be determined by the Governor in Council, and connecting with the first section, and to extend to Red River, in the Province of Manitoba; the third section  
 30 to extend from Red River, in the Province of Manitoba, to some point between Fort Edmonton and the foot of the Rocky Mountains, to be determined by the Governor in Council; the fourth section to extend from the western terminus of the third section to some point in British Columbia on the Pacific Ocean.

" '3. Branches of the said railway shall also be constructed as follows, that is to say: First, a branch from the point indicated as the proposed eastern terminus of the said railway to some point on the Georgian Bay, both the said points to be determined by the Governor in Council. Secondly, a branch from the main line near Fort Garry,  
 40 in the Province of Manitoba, to some point near Pembina on the southern boundary thereof.

" '4. The branch railways above mentioned shall, for all intents and purposes, be considered as forming part of the Canadian Pacific Railway, and as so many distinct sections of the said railway, and shall

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be subject to all the provisions hereinafter made with respect to the said Canadian Pacific Railway, except in so far as it may be otherwise provided for by this act.'

"And whereas Canadian Pacific Railway Company was constituted pursuant to 44 Vict. C. 1, Statutes of Canada, assented to on 15th February, 1881, by Letters Patent granted by His Excellency the Governor-General under the Great Seal of Canada under date 16th February, 1881. The said contract was ratified by and appended as a schedule to this Act and the wording of the contract was  
10 incorporated in the Letters Patent.

"And whereas Section 4 of Schedule 'A' to the said contract, which is also appended to the said Act and incorporated in the Letters Patent, provides in part that:

" 'All the franchises and powers necessary or useful to the Company to enable them to carry out, perform, enforce, use and avail themselves of, every condition, stipulation, obligation, duty, right, remedy, privilege, and advantage agreed upon, contained or described in the said contract, are hereby conferred upon the Company.

"And whereas the said contract was executed on 21st of October, 20 1880, between Her Majesty and George Stephen and others. This contract provided for the incorporation of Canadian Pacific Railway Company and the construction of a main line of railway from Callander Station near Lake Nipissing in the Province of Ontario, the western terminus of the existing railway system of Canada, to Port Moody located on the seaboard of British Columbia. The contract provided for the construction of branch lines by clause 14 as follows:

" '14. The Company shall have the right from time to time to lay out, construct, equip, maintain, and work branch lines of railway from any point or points along their main line of railway to any point  
30 or points within the territory of the Dominion. Provided always, that before commencing any branch they shall first deposit a map and plan of such branch in the Department of Railways. And the Government shall grant to the Company the lands required for the road bed of such branches, and for the stations, station grounds, buildings, workshops, yards and other appurtenances requisite for the efficient construction and working of such branches, in so far as such lands are vested in the Government.'

"And whereas the area through which the Canadian Pacific Railway was to be constructed between the western boundary of  
40 Manitoba, as then constituted, and the eastern boundary of British Columbia was part of the North-West Territory. This area was administered by the Dominion Government.

"And whereas by certain statutes of the Province of Saskatchewan, namely: The Village Act, 1946, 10 Geo. VI, Cap. 31, as amended;

The Rural Municipality Act, 1946, 10 Geo. VI, Cap. 32, as amended; The Local Improvement Districts Act, 1946, 10 Geo. VI, Cap. 33, as amended; The City Act, 1947, 11 Geo. VI, Cap. 43, as amended, and the Town Act, 1947, 11 Geo. VI, Cap. 44, as amended, it is provided:

“(a) That the railway roadway and other land within the province owned by railway companies shall be assessed and taxed, and

“(b) that railway companies, whether their property is liable to assessment and taxation or not, shall be liable to assessment and taxation in respect of the business carried on as a railway within the  
10 province at a rate per square foot of the floor space of each building or part thereof used for business purposes.

“And whereas disputes have arisen between various municipalities and Canadian Pacific Railway Company with respect to such legislation,

“Therefore, the Executive Council, on the recommendation of the Attorney-General, pursuant to the provisions of The Constitutional Questions Act, being Chapter 72 of the Revised Statutes of Saskatchewan, 1940, is pleased to refer, and doth hereby refer, to the Court of Appeal for Saskatchewan, the following questions for hearing and  
20 consideration:

“1. Does clause 16 of the contract set forth in the Schedule to Chapter 1 of the Statutes of Canada, 44 Victoria (1881), being an Act respecting the Canadian Pacific Railway, exempt and free from taxation the stations and station grounds, workshops, buildings, yards, and other property, used for the working of the branch lines of the Canadian Pacific Railway Company situated in Saskatchewan?

“2. Does Clause 16 of the contract aforesaid exempt and free the Canadian Pacific Railway Company from taxation in Saskatchewan in respect of the business carried on as a railway

30 “(a) based on the area of the land of the floor space of buildings used for the purposes of such business,

“(b) based on the rental value of the land and buildings used for the purposes of such business,

“(c) based on the assessed value of the land and buildings used for the purposes of such business,

but not made a charge upon such land or buildings?

“3. Are the provisions of the said The Village Act, 1946, The Rural Municipalities Act, 1946, The Local Improvement Districts Act, 1946, The City Act, 1947, and The Town Act, 1947, all as  
40 amended, relating to the assessment and taxation of the real estate of railway companies operative in respect of branch lines of Canadian Pacific Railway Company in the Province of Saskatchewan constructed pursuant to clause 14 of the said contract?

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“4. Are the provisions of the said The Village Act, 1946, The Rural Municipalities Act, 1946, The Local Improvement Districts Act, 1946, The City Act, 1947, and The Town Act, 1947, all as amended, relating to the assessment and taxation of railway companies in respect of the business carried on as a railway, operative with respect to Canadian Pacific Railway Company in respect of the stations, workshops, and other buildings, used for the working of

“(a) the main line of its railway in Saskatchewan, and

“(b) its branch lines in Saskatchewan?”

10

“J. M. TELFORD,  
“Clerk of the Executive Council.”

It has been agreed by Counsel for all parties that certain documents copied in an appendix and fyled at the opening of the hearing shall be considered as part of the case subject to objection as to their relevancy and that the said documents are authentic.

It is further agreed that two maps appearing at the end of the appendix and showing the location of various lines of railway of the Canadian Pacific Railway Co., Ltd., in the Province of Saskatchewan are approximately correct and, should any errors later appear therein, 20 they may be corrected. It is further admitted by all parties that, other than for a certain pipe line, not material to the case, no taxes have been paid by the Canadian Pacific Railway Co., Ltd., on any of their railway lines either to the Government of the North-West Territories, out of which territory the Province of Saskatchewan was formed, nor to any municipalities in the Province of Saskatchewan, that no taxes have been paid by the Canadian Pacific Railway Company on its main line or branches from the main line, that taxes were paid in the Province of Manitoba on the Manitoba & N.W.Ry. and in the Province of Alberta on the Calgary and Edmonton Railway, and 30 that a report as to the mileage of certain portions of the Canadian Pacific Railway constructed by the Dominion Government under the Statute of Canada 1874, 37 Victoria, Cap. 14, is authentic.

At the opening of the case, Counsel for the Canadian Pacific Railway Company conceded that certain of its branch lines shown in red on the second of the maps hereinbefore referred to and printed in the appendix were built under other statutory authority than that of the Statute of Canada 1881, 44 Victoria, Cap. 1, and were taxable and the liability for taxation of these lines of railway is not disputed.

In order to answer the questions submitted, it must first be determined whether the exemption from taxation in Clause 16 of the 40 original Contract made between certain associates, who were later granted letters patent of incorporation for the Canadian Pacific Railway Company, Limited, and the Dominion Government, which con-

tract is set out in the schedule to the Act, 44 Victoria, Statutes of Canada 1881, App. 1, exempt not only the main line of the Canadian Pacific Railway Company and the two branches, one from the eastern terminus to a point on Georgian Bay and the other from a point on the main line near Fort Garry to Pembina, which lines of Railway are more particularly described in Section 1 of Chapter 14 of the Statutes of Canada 1874, 37 Victoria, or whether the exemption also frees from taxation all branches from the main line later built by the Canadian Pacific Railway Company under the authority of Clause 14 of the  
 10 Contract, and secondly does the exemption Clause 16 of the Contract free the Canadian Pacific Railway Company in whole or in part from business and all other taxation on its business operations, or is the exemption limited to exemption from taxation on its real and personal property only?

A determination of these matters must be arrived at before the questions can be answered, and it will be advisable, therefore, to review shortly the negotiations which had taken place in respect to confederation of the older provinces from which the Dominion of Canada came into being, since the contract arose as a result of the  
 20 confederation.

Prior to Confederation, settlement of what is now the Dominion of Canada had been largely confined to that part thereof east of the Great Lakes and to the western seaboard, and these portions had been organised into provinces constituting independent political entities under the Crown. Each province was independent of the others and each was not only extremely jealous of its own rights but jealous of rights of the others. Each pursued policies calculated to advance mainly its own interests. The eastern and western settlements were separated by a vast unorganized territory in which little or no settle-  
 30 ment had taken place, and in this area the real government was that of a company commonly known as the Hudson Bay Co., a fur trading company organised and operating under a charter of His Majesty King Charles the Second and chiefly concerned with the development of the fur trade in the territory, part of which was later to be organised into the Provinces of Manitoba, Saskatchewan and Alberta.

Political and economic considerations in the separate provinces and in the Empire necessitated a confederation of all the provinces into one Dominion, but British Columbia was loath to enter into that confederation unless it was to be linked with the rest of Canada by a  
 40 railway from the Atlantic to the Pacific Coast, and this was arranged for by the new Dominion taking over the area under the control of the Hudson Bay Company and undertaking to construct a railway across what was then known as the North-West Territories so as to link the western provinces with the eastern ones. After prolonged negotiations, confederation of the provinces was brought about and the

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Government of Canada was obligated by the terms of the admission of British Columbia into confederation to build the railroad connecting the British Columbia coast with the Atlantic seaboard. Negotiations with the Imperial authorities resulted in surrender of the Hudson Bay Company's charter and the taking over of the North-West Territories by the new Dominion of Canada, and thus the way was opened for the building of the railway through the North-West Territories.

It is unnecessary to trace here the history of the many offers and 10 counter offers from various syndicates with whom negotiations took place for the building of the contemplated railway or to refer to the different Acts incorporating companies for the construction of a Canadian Pacific Railway which were duly enacted since these charters lapsed or were cancelled without the railway being built thereunder.

In 1874, in order to carry out its undertaking to British Columbia, the Government of Canada itself undertook by Chapter 14 of the Statutes of Canada 1874, 37 Victoria, to complete the building of a transcontinental railway, the work to be done by private contractors. 20 In the Act is found a recital of the undertaking given to British Columbia at the time of its admission to the union and a reference to the desire of the Government to have the work done by private enterprise.

The line of railway to be constructed is therein set out as follows:

"1. A railway to be called the 'Canadian Pacific Railway' shall be made from some point near to and south of Lake Nipissing to some point in British Columbia on the Pacific Ocean, both the said points to be determined and the course and line of the said railway to be approved of by the Governor in Council.

30 "2. The whole line of the said railway, for the purpose of its construction, shall be divided into four sections: the first section to begin at a point near to and south of Lake Nipissing, and to extend towards the upper or western end of Lake Superior, to a point where it shall intersect the second section hereinafter mentioned; the second section to begin at some point on Lake Superior to be determined by the Governor in Council, and connecting with the first section, and to extend to Red River, in the Province of Manitoba; the third section to extend from Red River, in the Province of Manitoba, to some point between Fort Edmonton and the foot of the Rocky Mountains, 40 to be determined by the Governor in Council; the fourth section to extend from the western terminus of the third section to some point in British Columbia on the Pacific Ocean.

"3. Branches of the said railway shall also be constructed as follows, that is to say:

“First—A branch from the point indicated as the proposed eastern terminus of the said railway to some point on the Georgian Bay, both the said points to be determined by the Governor in Council.

“Secondly—A branch from the main line near Fort Garry, in the Province of Manitoba, to some point near Pembina on the southern boundary thereof.

10 “4. The branch railways above mentioned shall, for all intents and purposes, be considered as forming part of the Canadian Pacific Railway, and as so many distinct sections of the said railway, and shall be subject to all the provisions hereinafter made with respect to the said Canadian Pacific Railway, except in so far as it may be otherwise provided for by this Act.”

Various other provisions for payment of private contractors doing the work for land grants, etc., contained in the Act are not material to the questions before us.

20 The Government of Canada having commenced construction of the railway continued however to negotiate with private interests for the completion of its construction and for its operation by a private company and on the 21st day of October, 1880, the Government entered into a contract with George Stephens and his associates which provided for the taking over of that part of the railroad already constructed by the Government, the completion of the unconstructed portion on terms therein set out, land grants, certain exemptions from taxation and for the granting of a charter to the private company to be formed by Stephens and his associates; which company was, after incorporation, to take over, construct and operate the railway as provided in the said contract. The contract was later validated and confirmed by the Statute of Canada 1881, 44 Victoria, Cap. 1, and a charter of incorporation was duly granted to Stephens and his associates creating the Canadian Pacific Railway Company, now one of the parties in this application.

30 It is by reason of the wording of this contract and the statute validating it that this application arises and certain terms and provisions thereof must now be construed.

The contract is a schedule to the Act, Statutes of Canada 1881, 44 Victoria, Cap. 1. The Act is a public one not a private one and I quote the recitals and section one thereof:

40 “Whereas by the terms and conditions of the admission of British Columbia into Union with the Dominion of Canada, the Government of the Dominion has assumed the obligation of causing a Railway to be constructed, connecting the seaboard of British Columbia with the Railway system of Canada;

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“And, whereas the Parliament of Canada has repeatedly declared a preference for the construction and operation of such Railway by means of an incorporated Company aided by grants of money and land, rather than by the Government, and certain statutes have been passed to enable that course to be followed, but the enactments therein contained have not been effectual for that purpose;

“And, whereas certain sections of the said Railway have been constructed by the Government, and others are in course of construction, but the greater portion of the main line thereof has not  
10 yet been commenced or placed under contract, and it is necessary for the development of the North-West Territory and for the preservation of the good faith of the Government in the performance of its obligations, that immediate steps should be taken to complete and operate the whole of the said Railway;

“And whereas, in conformity with the expressed desire of Parliament, a contract has been entered into for the construction of the said portion of the main line of the said Railway, and for the permanent working of the whole line thereof, which contract with the schedule annexed has been laid before Parliament for its approval and  
20 a copy thereof is appended hereto, and it is expedient to approve and ratify the said contract, and to make provision for the carrying out of the same;

“Therefore Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

“1. The said contract, a copy of which with schedule annexed, is appended hereto, is hereby approved and ratified, and the Government is hereby authorized to perform and carry out the conditions thereof, according to their purport.”

Clause 1 of the contract is as follows:

30 “SCHEDULE

“This Contract and Agreement made between Her Majesty The Queen, acting in respect of the Dominion of Canada, and herein represented and acting by the Honourable Sir Charles Tupper, K.C.M.G., Minister of Railways and Canals, and George Stephen and Duncan McIntyre, of Montreal, in Canada, John S. Kennedy of New York, in the State of New York, Richard B. Angus and James J. Hill, of St. Paul, in the State of Minnesota, Morton, Rose & Co., London, England, and John Reinach & Co., of Paris, France,

40 “Witnesses:

“That the parties hereto have contracted and agreed with each other as follows, namely:

“1. For the better interpretation of this contract, it is hereby declared that the portion of railway hereinafter called the Eastern Section, shall comprise that part of the Canadian Pacific Railway to be constructed, extending from the western terminus of the Canada Central Railway, near the east end of Lake Nipissing, known as Callander Station, to a point of junction with that portion of the said Canadian Pacific Railway now in course of construction extending from Lake Superior to Selkirk on the east side of Red River; which latter portion is hereinafter called the Lake Superior Section. That  
 10 the portion of said railway, now partially in course of construction, extending from Selkirk to Kamloops, is hereinafter called the Central Section; and the portion of said railway now in course of construction, extending from Kamloops to Port Moody, is hereinafter called the Western Section. And that the words ‘the Canadian Pacific Railway,’ are intended to mean the entire railway, as described in the Act 37th Victoria, chap. 14. The individual parties hereto are hereinafter described as the Company; and the Government of Canada is hereinafter called the Government.”

It is to be noted that by Clause 1 of the Contract, in the words of  
 20 the parties themselves, “For the better interpretation of the contract” it is declared the words “the Canadian Pacific Railway” are intended to mean “the entire railway as described in the Act 37th Victoria, chap. 14.”

What was the “entire railway” so described in 37th Victoria Chap. 14? I quote the description of the railway as found in the Act:

“1. A railway to be called the ‘Canadian Pacific Railway’ shall be made from some point near to and south of Lake Nipissing to some point in British Columbia on the Pacific Ocean, both the said points, to be determined and the course and line of the said railway to be  
 30 approved of by the Governor in Council.

“2. The whole line of the said railway, for the purpose of its construction, shall be divided into four sections: the first section to begin at a point near to and south of Lake Nipissing, and to extend towards the upper or western end of Lake Superior, to a point where it shall intersect the second section hereinafter mentioned; the second section to begin at some point on Lake Superior to be determined by the Governor in Council, and connecting with the first section, and to extend to Red River, in the Province of Manitoba; the third section to extend from Red River, in the Province of Manitoba, to some  
 40 point between Fort Edmonton and the foot of the Rocky Mountains, to be determined by the Governor in Council; the fourth section to extend from the western terminus of the third section to some point in British Columbia on the Pacific Ocean.

“3. Branches of the said railway shall also be constructed as follows, that is to say:

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“First—A branch from the point indicated as the proposed eastern terminus of the said railway to some point on the Georgian Bay, both the said points to be determined by the Governor in Council.

“Secondly—A branch from the main line near Fort Garry, in the Province of Manitoba, to some point near Pembina on the southern boundary thereof.

“4. The branch railways above mentioned shall, for all intents and purposes, be considered as forming part of the Canadian Pacific Railway, and as so many distinct sections of the said railway, and shall be subject to all the provisions hereinafter made with respect to the said Canadian Pacific Railway, except in so far as it may be otherwise provided for by this Act.”

There is no ambiguity in the description, the words both in the Act, 37 Victoria, Chap. 14, and in Clause 1 of the Contract are clear, concise and unambiguous. The description of the railway is clearly set out and its general location is fixed therein. It should be noted that the Act, 37 Victoria, Chap. 14, is a public Act containing recitals indicating the purpose of its enactment. These recitals set out that the railway to be constructed thereunder was being constructed in pursuance of the agreement under which British Columbia had entered confederation. The recitals refer to the resolution passed in the year 1871, that the railway should be constructed and worked by private enterprise, but there is nothing in the Act, 37 Victoria, Chap. 14, indicating that the purpose was to provide for the colonisation and development of the North-West Territories unless the provision for the reservation of the land grant lands and the two branch lines specifically mentioned therein can be considered as a provision therefore. I conclude, therefore, the chief object of the Act of 1874 was the fulfilment of the Dominion's obligation to British Columbia, and the reference to the 1874 Act, in the 1881 Act, is for the purpose of identifying the railway described in the 1874 Act.

The exemption from taxation granted in the Contract to the Canadian Pacific Railway Company is found in Clause 16 of the Contract and reads as follows:

“16. The Canadian Pacific Railway, and all stations and station grounds, work shops, buildings, yards and other property, rolling stock and appurtenances required and used for the construction and working thereof, and the capital stock of the Company, shall be forever free from taxation by the Dominion, or by any Province hereafter to be established, or by any Municipal Corporation therein; and the lands of the Company, in the North-West Territories, until they are either sold or occupied, shall also be free from such taxation for 20 years after the grant thereof from the Crown.”

It will be noted that Clause 16, the exemption clause, commences

with the words "The Canadian Pacific Railway" which have already been defined by the parties as having a special and limited meaning for the purposes of the Contract and, therefore, they relate only to "The Canadian Pacific Railway" as described in the Act, 37 Victoria, 1874, Cap. 14. That railway is the main line and the two branches therein set out. I would, therefore, hold that only the main line and the two branches therein described are covered by the exemption.

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It is argued on behalf of the Canadian Pacific Railway Company that the railway, as contracted for, was never built because of the  
10 amendment permitting the change in location made by 45 Victoria, Statutes of Canada, 1882, Cap. 53, which allowed the Company to locate the main line through the Rocky Mountains by some other pass than the Yellow Head Pass, but I see no force in this argument. It is evident that both parties to the Contract contemplated that wide variations in the proposed location might be necessary and the 1882 Act does not attempt, in any way, to amend or change the clause of the Contract granting the exemption from taxation conferred on the Company. If this was not the line of railway contemplated, there is no exemption from taxation, as the railroad built is  
20 not under the Contract.

It is further submitted on behalf of the Company that the interpretation to be given to the words "The Canadian Pacific Railway" in the 1881 Act as meaning "the entire railway" as described in the Act, 37 Victoria, Cap. 14, is limited to Clause 1 of the Contract and that a different construction should be placed on the definition of the words in Clause 16, since the Act of 1881 contemplated development of the North-West Territories, as well as fulfilment of the Dominion's obligation.

Elderslie Steamship v. Borthwick, 1905 Appeal Cases, p. 93, is  
30 cited as authority for confining the description of the railway to Clause 1 of the Contract. In the Elderslie case there was a conflict between two clauses of the Contract, which resulted in an ambiguity and which rendered it necessary, as Lord Halsbury L.C. said, that "The parts of this contract must be read so as to give effect to the whole of it, if it can." But no ambiguity arises in construing the Contract before us, if the exemption from taxation is limited to the railway as defined in Clause 1 of the Contract, which refers the description of the railway to that contained in the 1874 Act and it is remembered that the essential reason for its enactment was the fulfilment of the Dominion's  
40 obligation to British Columbia. See North Eastern Railway v. Hastings 69, L.J.Ch., p. 516. At p. 518, Lord Halsbury:

"The words of a written instrument must be construed according to their natural meaning and it appears to me that no amount of acting by the parties can alter or qualify words which are plain and unambiguous. So far as I am aware no principle has ever been more

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universally or vigorously insisted upon than that written instruments if they are plain and unambiguous must be construed according to the plain and unambiguous language of the instrument itself."

See also *Commissioners of Income Tax v. Pemsel*, 1891, Appeal Cases, p. 531. At p. 543, where Lord Halsbury quotes with approval the language of Tindal C.J. in the *Sussex Peerage* case:

"The only rule for construction of Acts of Parliament is that they should be construed according to the intent of the Parliament which passed the Act. If the words of the Statute are in themselves precise  
10 and unambiguous then no more can be necessary than to expound those words in their natural and ordinary meaning. The words themselves alone do in such cases, best declare the intention of the law giver."

And again at p. 549:

"It must be assumed that it (the legislature) has intended what it has said, and I think any other view of the mode in which one must approach the interpretation of a statute would give authority for an interpretation of the language of an Act of Parliament which would be attended with the most serious consequences."

20 It has long been a rule of construction of documents that if there is ambiguity in the language of a document to be construed the Court may look at the surrounding circumstances to determine the meaning the person using the words intended to express, but where there is no ambiguity this rule cannot be invoked to alter what has been plainly set forth in the document to be construed. See *Great Western & Midlands Railway v. Bristol Corporation*, 87 L.J. Chan. Div., p. 414. At. p. 430, where Lord Wrenbury states:

"If the language used be ambiguous, the reader is entitled to be assisted in his task by the guidance afforded by a knowledge of the  
30 object which appears from the circumstances to be that which the parties had in view. *But if it is not ambiguous he has to ascertain the intention from the words and from nothing but the words.*"

I find nothing ambiguous in this Contract or the statute validating it, viewed in the light of the then conditions.

It is urged, in support of the contention that the Contract is ambiguous, that Sedgewick J., in construing Clause 14 of this Contract, in re C.P.R. Branch Lines, 26 S.C.R., p. 42, at p. 69 expressed the view that Parliament "had exempted the Company's property so far as it was within the North-West Territories and was used for  
40 railway purposes from taxation forever." And, that Scott J., in re Canadian Pacific Railway Co. and Town of MacLeod, 5 Territories Reports, p. 192, used the words, "I think the reasonable interpretation of the agreement is that the clause is applicable only to the main line of the C.P.R. and to such branches thereof as respondent company

was authorised by Clause 14 of the agreement to construct from points on the main line.”

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In neither of these cases was the mind of the learned judge directed to a consideration of the exemption granted by Clause 16 of the Contract and both statements are clearly *obiter dicta*. It is admitted before us by the Counsel for the Canadian Pacific Railway Company that the branches of the Company constructed under other authority than the 1881 Act, in what was then the North-West Territories and is now part of the Province of Saskatchewan, are taxable. Admittedly, therefore, the statement of Sedgewick J. cannot be taken at its face value. It would seem rather from the preceding words of his judgment that he meant only the part of the railway referred to in Clause 1 of the Contract rather than the branch lines referred to in Clause 14. The question before Sedgewick J. was one of the time for construction of and location of branch lines, not one of their freedom or otherwise from taxation under Clause 16. It is also to be noted that in the Branch Lines case Nesbitt J. at p. 94, in referring to Clause 16 of the Contract, states the exemption as “Section 16 exempts forever from taxation the capital stock of the Company and the lands of the Company for twenty years from the Crown grant,” a limitation of the exemption which is equally inappropriate to that of Sedgewick J. It was much too narrow, having regard to its terms. Nesbitt J. does make it clear in his judgment, however, that the branch lines referred to in Clause 14 are in a different category to that part of the Canadian Pacific Railway referred to in Clauses 1 and 16 at p. 99 of the report, where he says:

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“There were other branches to be located from time to time by the Company as provided by the contract. When the draughtsman says in Clause 15 of the Act, Schedule A . . . *the said main line of railway and the said branch lines of railway shall be commenced and completed as provided by the contract* . . . I take it he is referring to the various sections and described branches for the completion of which an obligation existed both on the part of the Government and the Company under the Contract and, when he refers to *other branches to be located* from time to time, he refers to the branches under Clause 14 which the Company have the privilege of building but as to which no contractual obligation existed both on the part of the Government and the Company under the Contract; and when he refers to *other branches to be located from time to time he refers to the branches under Clause 14 which the Company have the privilege of building but as to which no contractual or other obligation existed*.”

This is in accordance with the construction of the Contract I have before put forth. The Canadian Pacific Railway Company, having contracted for, and being under obligation to build and operate, the main line of railway and the two branches referred to in

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Clause 1, received amongst other considerations therefor the exemption from taxation provided for in Clause 16. The branch lines referred to in Clause 14 had no time limit set for their construction and they were, therefore, left to be built at such times and in such places as the Company might decide would provide a profitable return from their operation after the development of the North-West Territories justified their construction. The judgment in the Branch Lines case, *supra*, seems rather to be authority for giving to the construction of the contract the ordinary meaning of the words as used in Clauses 1  
10 and 16.

In *Canadian Pacific Railway v. Town of MacLeod*, 5 T.L.R. p. 192, Scott J. says:

"It was contended on behalf of the respondent company that the property assessed is exempt from taxation under Clause 16 of the agreement embodied in the Act respecting the Canadian Pacific Railway, 44 Vic. 1881, Cap. 1, *but respondent company's counsel did not argue the question nor did he state the grounds for the contention.*"

Scott J. does not refer to the Act, 37 Victoria, 1874, Cap. 14, which defined the meaning of the words "the Canadian Pacific  
20 Railway" in the latter Act, but directed his attention only to the difference between the Crow's Nest Pass Railway, a separate railway, not a branch from the main line of the Canadian Pacific Railway and not built under the authority of 44 Victoria, 1881, Cap. 1. Therefore, it was not necessary for him to consider the extent of the exemption in Clause 16 which could not apply in the Crow's Nest Pass case. For this reason, the question of the exemption under Clause 16 was not even argued before him. His reference to Clause 16 was *obiter dicta* and was made rather for the purpose of distinguishing between the different positions of the Crow's Nest Pass Railway and other  
30 Canadian Pacific Railway lines.

It was pressed in argument before us that the course of conduct of the parties in respect to the Contract has been such as to lead us to hold that the parties themselves have construed Clause 16 of the Contract as having granted exemption from taxation on all branch lines from the main line. It may be agreed that the course of conduct of parties to a contract will, in a proper case, afford great aid in its correct interpretation. The principle of "Contemporaneous Exposition" gathered from the course of conduct of the parties may be said to be somewhat similar to the principle of estoppel by conduct.  
40 Such cases as *Attorney-General v. Drummond*, 1842, 1 Dr. & War., p. 353, *Watcham v. East Africa Protectorate*, 1919, App. Cases 533, and many other cases cited in the factum of Counsel for the Company are of undoubted authority. But, before that doctrine becomes applicable, it must be clearly established first that there has been a course of conduct by which all the parties to the Contract have them-

selves so construed it, so that it becomes possible for the Court to say that the parties have so bound themselves by their own interpretation that it becomes inequitable for the Court to place any other interpretation than the one the interested parties have themselves placed upon it, and also to be able to say in what such conduct consists.

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No attempt has been made to show that the railway company would not have undertaken the building of the branch lines from the main line had they considered them not exempt from taxation. 10 Indeed it appears that on many of the branch lines referred to in the Branch Lines case, *supra*, extra inducements by way of grants and bonuses were given without the question of exemption from taxation being considered. It may be said that the best evidence of the Company's interpretation of the Contract has been their payment of taxes under protest, but a unilateral interpretation cannot bind the other party. I have read the documents printed in the Appendix, but I can find nothing in which the Dominion Government has admitted or construed the meaning of Clause 16 as being that now 20 contended for by the Company. Neither the Province of Saskatchewan nor the Council of the North-West Territories were parties to this Contract. The resolutions and letters from members of the Council of the North-West Territories or the Legislative Assembly have no effect as binding future Governments of Saskatchewan until they have become law by force of formal enactment in the Assembly. Even officials of the Government charged with administration of the affairs of a department cannot, by their interpretation of a contract, either bind the Government or free the Government from liability. Governments are astute to find new sources of revenue and, while doubtless many citizens would welcome some limitation to this phase 30 of their activities, it is not yet possible to hold that because some field of taxation has not hitherto been entered upon for that reason alone it may be considered as having been construed as exempt from the taxing powers of the Government concerned.

Then, it is said on behalf of the Company that since Clause 16 provides that "The Capital Stock of the Company shall be forever exempt from taxation by the Dominion or by any Province hereafter to be established or by any municipal corporation" the exemption of the Capital Stock exempts the property of the Company in which the capital was invested. For this view of the matter, a statement 40 in 61 Corpus Juris, p. 450, and the cases there cited are given as authority.

I quote from the statement as follows:

"Where an exemption is granted to the Capital Stock of a railroad company it is generally held to include the actual property in which

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the capital is invested in so far as the same is necessary and appropriate to the operation of the road.”

Wright v. Georgia Railroad & Banking Co., 30 Sup. Ct. Rep., p. 242, is cited as authority for the statement in Corpus Juris. This is an authority from the jurisprudence of the United States and I have been unable to find any case in our Courts where the principle enunciated has been followed, nor did Counsel cite any case which goes to the length of the statement quoted. Wright v. Georgia Railroad seems to have been decided on the distinction made therein  
 10 between capital of a company and shares in the hands of shareholders. Capital Stock in the particular charter in question was construed to mean the capital of the Company as distinct from the shares into which it was divided. The statement in Corpus Juris goes much further than Wright v. Georgia is authority for, and each charter must be considered in the light of its own powers therein granted. Here the capital of the Company did not consist of only the twenty-five million dollars of share capital, but consisted also of the value of the land subsidy of twenty-five million acres, the money subsidy of twenty-five million dollars, the value of the railroad already con-  
 20 structed by the Government and the monetary value of the many other properties and concessions granted to the Company under the Contract. It is manifestly impossible to separate the value of the Capital Stock from the value of the share capital as was done in the Georgia case. Indeed, a perusal of Clause 16 is sufficient to dispose of the argument advanced, since all that would have been necessary to grant the widest possible exemption to the Company under the theory set out in Corpus Juris would have been the exemption of the Capital Stock therein, whereas the draughtsman was careful to  
 30 enumerate first that “The Canadian Pacific Railway and all stations and station grounds, work shops and buildings, yards and other property, rolling stock and appurtenances, required and used for the construction and working thereof” were exempted, and then follows the exemption of the Capital Stock. The wide list of exempted property enumerated was wholly unnecessary if it was contemplated that the exemption of the Capital Stock had the effect contended for.

It is further to be noted that in Canadian Northern Pacific Railway v. New Westminster Corporation, 86 L.J., 1917, P.C. 178a, similar exemption of Capital Stock of a railway company was sought to be construed and that same exemption clause was again construed  
 40 by their Lordships of the Privy Council in Canadian Northern Pacific Railway v. City of Armstrong, 1919, 3 W.W.R., p. 352, and no suggestion appears to have been advanced in either argument that the exemption of Capital Stock of the Company had any such wide effect as now contended for.

On the other hand, it appears that at the time of the Contract in

question it was customary to tax shares of incorporated companies as personal property in the various provinces. See Cap. 180, Revised Statutes of Ontario, 1877; Cap. 21, Revised Statutes of Nova Scotia, 1873; Cap. 129, Statutes of British Columbia, 1877; but stock in railway companies in Ontario at least were exempted from taxation as personal property. In 1880, the rights of the Dominion and of the Provinces in their respective fields of taxation had no clear lines of demarcation and the exemption of Capital Stock from taxation may well have been for the purpose of ensuring that personal property taxation would not be imposed on the Capital Stock of the Company by the Dominion.

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I come now to a consideration of the question of whether an exemption is granted to the Company under Clause 16 of the Contract from business. The wording of Clause 16 provides:

“The Canadian Pacific Railway and all stations and station grounds, work shops, buildings, yards and other property, rolling stock and appurtenances required and used for the construction and working thereof, and the capital stock of the Company, shall be forever free from taxation by the Dominion, or by any province hereafter to be established, or by any Municipal Corporation therein.”

The Municipal Acts in question are similar in effect, in respect to the schemes of taxation provided for. I quote from the City Act, Cap. 43, Statutes of Saskatchewan 1947, 11 George VI, as amended by Chapter 33, Statutes of Saskatchewan 1948, 12 George VI. By sec. 441:

“As soon as may be in each year but not later than the 31st day of May, the Assessor shall assess:

“1. in respect of every parcel of land in the City: A. the registered owner;

“2. every person who is engaged in mercantile, professional or any other business in the City . . .;

“3. the owner of a special franchise; . . . and shall prepare an assessment roll in which he shall enter the names and addresses of the persons mentioned in paragraphs 1, 2 and 3.”

“443. Business shall be assessed in the following manner:

“1. the assessor shall fix a rate per square foot of the floor space, irrespective of partitions, elevators, stairways, or other obstructions, of each building or part thereof used for business purposes, and shall as far as he deems practicable classify the various businesses and portions thereof;

“2. he may fix a different rate for each class or portion thereof . . .

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“(2) Where it is found by the assessor that a business is being carried on, either wholly or partially, outside of any building, he shall fix a rate per square foot of the yard space used for such business. . . .

“(5a) A railway company, whether its property is liable to assessment and taxation or not, shall be liable to assessment and taxation under this section in respect of the business carried on as a railway. . . .

“479. Subject to the other provisions of this Act, the municipal and school taxes of the city shall be levied upon (1) lands; (2) businesses; and (3) special franchises.

“480. The following property shall be exempt from taxation . . .

“(2) property specially exempted by law.”

Then follow provisions for levying taxes and the collection thereof.

I have already discussed the meaning to be given to the words “The Canadian Pacific Railway” and the effect of the exemption of the Capital Stock of the Company.

Does the exemption from taxation extend to the business carried on on that part of the property which is exempt from taxation? Applying the *ejusdem generis* rule “other property,” in Clause 16, would apply only to property of a like nature to that referred to therein. But it is argued a business tax is a tax on real property and that the business of the Company is property within the meaning of that word as used in Clause 16. *City of Halifax v. Fairbanks Est. 1928, A.C., p. 117*, is cited as authority for the statement that a business tax is a tax on property and it is said that the definition of a business tax as being a tax on property is approved in the decision of *Regina Industries Ltd. v. City of Regina, 1944, 3 W.W.R., p. 741*. I do not read these cases as supporting such a definition of a business tax. In the *City of Halifax v. Fairbanks* case the question to be decided was not whether a business tax was a property tax, but whether the tax imposed was a direct tax or an indirect one. Lord Cave L.C. held the tax to be a direct tax. There the City of Halifax enacted that if the tenant occupant of property was exempt from taxation the business tax, which he would normally pay, should be passed on to his landlord and it thus became in effect a property tax by virtue of the lease-hold interest. In the *Regina Industries* case, the Supreme Court held that the business carried on was exempt from taxation because the business was really that of the Dominion Government, which was exempt from taxation, and *Regina Industries*, who were sought to be taxed, were simply agents of the Dominion Government and, therefore, were not carrying on business at all.

How can it be said that a business tax is a property tax when it is quite possible that it may be imposed on one who is a trespasser, in respect of the property on which he carries on his business. Thus the City Act, by subsec. 2 of sec. 412, provides for payment of a business tax by one who carries on his business on a vacant lot. He may have no property or lease-hold interest whatsoever in the lot in which he carries on business. A similar provision is found in each of the other Municipal Acts. Could it be said that in such a case the business tax is a property tax? True the tax is based on an assess-  
 10 ment value arrived at by measuring the property used and placing an arbitrary value on the square footage so obtained, but this is simply a yard stick to arrive at value for assessment purposes, not because of any property interest of the occupant.

Admittedly, it may be difficult to determine how much of the business of the Company is to be related to any particular municipality and any assessment in respect thereof must be of an arbitrary character, but, equally, in any other business tax the valuation arrived at for assessment purposes is similarly arbitrarily determined. Two  
 20 professional men occupying office on the same floor space, but having vastly different incomes from their business, may be required to pay the same business tax. I see no reason why two municipalities collecting a business tax on a business should not be in a similar position.

In *Moose Jaw City v. British American Oil Co.*, 1937, 2 W.W.R. p. 309, at p. 315 Gordon J. who delivered the unanimous judgment of this Court confirming the judgment of MacDonald J., now a member of this Court, in a full review of the cases dealing with the essential differences between business and property taxes, quoted with approval the words of Meredith C.J. in *Hydro Electric v.*  
 30 *Hamilton City*, 47 O.L.R., p. 155, at p. 161:

“The business assessment as I have said is a personal tax and by no process of reasoning can it be called a tax on property.”

I cannot find any reason to differ from the opinion therein expressed. I am the more confirmed in my view, in that income taxes, at least, were well known at the time of the enactment of Cap. 1, Statutes of Canada 1881, 44 Victoria. See Cap. 152, Statutes of British Columbia, 1876, (Assessment Act) sec. 8. If the intention had been to exempt the Company from all taxes chargeable in respect of not only real and personal property but business and income also,  
 40 these latter taxes would have been mentioned, but we must take the Act as we find it.

The Dominion Government is not a party to this application and Counsel for the Province quite properly reserved his right to argue the constitutional question as to the right of the Dominion in creating

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a new province to limit its taxation powers under Section 92 (2) of the British North America Act, 1867, in view of the many decisions of Superior Courts in which this question has been referred to and this phase of the matter is not dealt with.

I should also refer to questions 2b and 2c. It is not suggested that legislation has been enacted which would impose any liability for taxation under a situation contemplated by these questions, and until such legislation is enacted the Court should not be asked to speculate as to the terms in which any such enactment might be  
10 worded or to assist in the framing of such legislation. As the matter stands, these two questions are purely hypothetical and I would therefore reserve any answer to them until such time as the matter comes before us in more concrete form.

I would therefore answer the questions submitted as follows:

“1. Does Clause 16 of the Contract set forth in the schedule to Chapter 1 of the Statutes of Canada, 44 Victoria (1881), being an Act respecting the Canadian Pacific Railway, exempt and free from taxation the stations and station grounds, work shops, buildings, yards, and other property, used for the working of the branch lines of  
20 the Canadian Pacific Railway Company situated in Saskatchewan?”

Answer: No.

“2. Does Clause 16 of the Contract aforesaid exempt and free the Canadian Pacific Railway Company from taxation in Saskatchewan in respect of the business carried on as a railway

“(a) based on the area of the land or the floor space of buildings used for the purposes of such business,

“(b) based on the rental value of the land and buildings used for the purposes of such business,

30 “(c) based on the assessed value of the land and buildings used for the purposes of such business,

but not made a charge upon such land or buildings.”

Answer: (a) No.  
(b) No answer.  
(c) No answer.

“3. Are the provisions of the said The Village Act, 1946, The Rural Municipalities Act, 1946, The Local Improvement Districts Act, 1946, The City Act, 1947, and the Town Act, 1947, all as amended, relating to the assessment and taxation of the real estate of railway companies operative in respect of branch lines of Canadian  
40 Pacific Railway Company in the Province of Saskatchewan constructed pursuant to Clause 14 of the said Contract?”



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Question No. 1	Answer, No.
Question No. 2(a)	Answer, No.
Question No. 2(b)	Not answered.
Question No. 2(c)	Not answered.
Question No. 3	Answer, Yes.
Question No. 4(a)	Answer, Yes.
Question No. 4(b)	Answer, Yes.

And take notice that at the next Sittings of the Supreme Court of Canada, the said Court will be moved to reverse the decision of the 10 Court of Appeal for Saskatchewan and to answer Questions No. 1 and No. 2(a) in the affirmative and Questions No. 3, No. 4(a) and No. 4(b) in the negative.

Dated at the City of Regina, in the Province of Saskatchewan, this 15th day of February, 1949.

HAMILTON & KNOWLES,  
 Solicitors for Canadian Pacific Railway Company.

To J. L. Salterio,  
 Solicitor for the Attorney-General  
 for Saskatchewan.

20 To S. J. Safian,  
 Solicitor for the Association of Rural  
 Municipalities for Saskatchewan.

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 tional Documents.  
 Feb. 25, 1949.

## No. 9

### Order of The Court of Appeal Allowing Filing of Additional Documents

Before The Honorable The Chief Justice, The Hon. Mr. Justice P. H. Gordon, The Hon. Mr. Justice H. Y. MacDonald, The Hon. Mr. Justice A. T. Procter,  
 (Friday the 25th day of February, 1949).

30 On the application of Canadian Pacific Railway Company, upon reading the Notice of Motion herein, dated the 25th day of February, 1949, and the Affidavit of Reginald Gordon Hamilton filed; Mr. R. S. Meldrum, K.C., and Mr. E. C. Leslie, K.C., appearing for the Attorney-General of Saskatchewan; Mr. S. J. Safian for the Association of Rural Municipalities for Saskatchewan, and Mr. R. G. Hamilton, K.C., for the applicant.

It is hereby ordered that the Canadian Pacific Railway Company be at liberty to file with the Registrar of this Honorable Court copies of the documents hereinafter set forth and to include such documents in the case on appeal to the Supreme Court of Canada without formal proof of the execution of the said documents, but the same to be subject on such appeal to all proper objections upon the grounds of relevancy. P.C. 953, dated 25th June, 1881; P.C. 1084, dated 14th July, 1881; P.C. 1165, dated 6th August, 1881; P.C. 1227, dated 25th August, 1881; P.C. 1246, dated 7th September, 1881; P.C. 1465, 10 dated 29th October, 1881; P.C. 1641, dated 14th December, 1881; P.C. 150, dated 19th February, 1875, (with memorandum of Minister and map attached) P.C. 486, dated 1 June 1877; P.C. 612, dated 13th July, 1878, P.C. 1396, dated 4th October, 1879; P.C. 1458, dated 19th November, 1881; P.C. 1730, dated 22nd December, 1879, and plan attached; P.C. 76, dated 22nd January, 1880, (with report to Minister dated 15th January, 1880 attached); Blue Print of 1874 and 1881 lines; Letter Collingwood Schreiber, Engineer-in-Chief, C.P.R. to F. Braun, Secretary Railways and Canals, dated 13th July, 1881; Letter from C. Drinkwater, Secretary, C.P.R., to F. Braun, dated 22nd 20 September, 1881; Letter Collingwood Schreiber to F. Braun, dated 28th September, 1881; Letter Collingwood Schreiber to F. Braun, dated 28th October, 1881; Letter from C. Drinkwater to F. Braun, dated 25th November, 1881; Letter from Collingwood Schreiber to F. Braun, dated 5th December, 1881.

A. C. ELLISON,  
Registrar.

(Seal)

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tional Documents.  
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### No. 10

#### Order Approving the Security for Costs of the Appeal to The Supreme Court of Canada

30

Before the Honorable Chief Justice Martin in Chambers.  
(24th day of March, 1949.)

Upon the application of the Canadian Pacific Railway Company and upon hearing read the Notice of Motion and the Affidavit of Reginald Gordon Hamilton filed herein, and upon hearing what was alleged by Counsel for the Canadian Pacific Railway Company, as well as for the Attorney-General for Saskatchewan and the Association of Rural Municipalities for Saskatchewan, it is ordered that the sum of five hundred dollars (\$500.00) paid into Court, which said sum was 40 duly paid in as security that the said Canadian Pacific Railway Company will effectually prosecute its appeal to the Supreme Court of

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reme Court of  
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24th March, 1949.

Canada from the judgment of this Court dated the 29th day of January, 1949, and will pay such costs and damages as may be awarded against it by the said Supreme Court of Canada, be and the same is hereby allowed as good and sufficient security.

(Seal)

A. C. ELLISON

The Court of Appeal for Saskatchewan.

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Agreement as to  
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Documents.  
11th Oct., 1949.

**In The Supreme Court of Canada  
On Appeal from The Court of Appeal for Saskatchewan**

BETWEEN

10

CANADIAN PACIFIC RAILWAY COMPANY

Appellant,

and

THE ATTORNEY-GENERAL FOR SASKATCHEWAN

Respondent.

**No. 11**

**Agreement as to Filing Additional Documents**

The parties hereto have agreed that the Appellant shall be at liberty to file with the Registrar of this Honorable Court certified copies of the documents hereinafter set forth and to include such 20 documents in the case on appeal to this Honorable Court without formal proof of the execution of the said documents, but the same to be subject on the hearing of the said appeal to all proper objections on the grounds of relevancy:

- Dominion Order-in-Council P.C. 1940, dated September 30, 1882.
- Dominion Order-in-Council P.C. 2247, dated November 24, 1882.
- Dominion Order-in-Council P.C. 1474, dated June 26, 1883.
- Dominion Order-in-Council P.C. 1680, dated July 24, 1883.
- Dominion Order-in-Council P.C. 1835, dated August 25, 1883.
- Dominion Order-in-Council P.C. 1953, dated September 21, 1883.
- 30 Dominion Order-in-Council P.C. 2271, dated November 9, 1883.
- Dominion Order-in-Council P.C. 2466, dated December 6, 1883.
- Dominion Order-in-Council P.C. 1363, dated June 21, 1884.
- Dominion Order-in-Council P.C. 1535, dated July 25, 1884.
- Dominion Order-in-Council P.C. 1663, dated September 13, 1884.
- Dominion Order-in-Council P.C. 1835, dated September 21, 1884.
- Dominion Order-in-Council P.C. 2068, dated November 2, 1884.
- Dominion Order-in-Council P.C. 61, dated January 16, 1885.
- Dominion Order-in-Council P.C. 623, dated March 23, 1885.
- Dominion Order-in-Council P.C. 337, dated March 16, 1885.
- Dominion Order-in-Council P.C. 56, dated January 16, 1885.
- Dominion Order-in-Council P.C. 392, dated March 2, 1885.
- Dominion Order-in-Council P.C. 1834, dated September 21, 1884.

And it is further agreed that the Appellant may substitute for the blueprint of 1874 and 1881 lines prepared by the Appellant for the purposes of this reference and filed pursuant to the Order of the Court of Appeal for Saskatchewan dated the 25th day of February, 1949, a new blueprint prepared by the Appellant for the purposes of this reference purporting to show the 1874 line and the 1881 line as constructed pursuant to the Orders-in-Council set out in the said Order and the above mentioned Orders-in-Council, but the respondent reserves the right to object to the accuracy of the said blueprints prepared by the C.P.R. and such blueprints shall be subject on the hearing of the said appeal to all proper objections on the grounds of relevancy.

10

Dated at Regina, Saskatchewan, this 11th day of October, A.D. 1949.

HAMILTON AND KNOWLES,  
Solicitors for Appellant.

JOE L. SALTERIO,  
Solicitor for Attorney-General for Saskatchewan.

**Record**  
**Supreme**  
**Court of Canada**

**No. 11**  
**Agreements as to**  
**filing additional**  
**Documents.**  
**11th Oct., 1949.**

**Continued**

**No. 12**

**Agreement as to Contents of the Case**

20

**No. 12**  
**Agreement as to**  
**contents of case.**  
**October 11th, 1949.**

We, the undersigned, Solicitors for the Appellant and Respondent herein; do hereby agree that the following shall constitute the printed case on the appeal herein to the Supreme Court of Canada:

1. The Order of Reference, dated November 16, 1948.
2. The Order of the Court of Appeal for Saskatchewan, dated November 16, 1948.
3. Certificate of the Chief Justice of Saskatchewan, Mr. Justice H. Y. MacDonald, and Mr. Justice A. T. Procter to His Honor the Lieutenant-Governor in Council.
- 30 4. Reasons for the opinion of the Honorable the Chief Justice.
5. Reasons for the opinion of the Honorable Mr. Justice Gordon.
6. Reasons for the opinion of the Honorable Mr. Justice MacDonald.
7. Reasons for the opinion of the Honorable Mr. Justice Procter.
8. Order of the Court of Appeal allowing filing of additional documents, dated February 25, 1949.

Record  
Supreme  
Court of Canada

No. 12  
Agreement as to  
contents of case.  
October 11th, 1949.

Continued

9. Notice of Appeal to Supreme Court of Canada.
10. Order approving security for costs.
11. Solicitor's Certificate.
12. R $\acute{e}$ gistrar's Certificate as to Case.
13. The documents and legislation contained in the Appendix of Documents filed in the Court of Appeal.
14. Extract from report of Sanford Fleming to Minister of Railways and Canals, dated 8th April, 1880.
- 14(a) Letters Patent, incorporating Canadian Pacific Railway Company.
15. The documents referred to in the Order of the Court of Appeal, dated February 25, 1949.
16. Agreement between the parties relating to the filing of additional documents in the Supreme Court of Canada.
17. The documents set out in the agreement referred to in item 16 hereof.
18. Extracts from the following Statutes set out in Respondent's Factum in the Court of Appeal:
  - (a) An Act Respecting Municipalities, Chapter 64, Consolidated Statutes of Manitoba, 1880.
  - (b) The Assessment Act, R.S.O. 1877, Chapter 180.
  - (c) The County Assessment Act, R.S.N.S. 1873, 4th Series, Chapter 21.
  - (d) An Act Respecting Municipalities, Chapter 129, Laws of British Columbia Consolidated 1877.
  - (e) Assessment Act 1876, Chapter 152, Laws of British Columbia Consolidated 1877.
19. This Agreement, except the Index attached hereto.

And it is further agreed that the documents referred to in items 13, 14, 14(a), 15, 17 and 18 shall be printed in the order in which they are set out in the draft Index attached hereto.

Dated at Regina, Saskatchewan, this 11th day of October, A.D. 1949.

HAMILTON & KNOWLES,  
Solicitors for Appellant.  
JOE L. SALTERIO,  
Solicitor for Attorney-General for Saskatchewan.

**In the Supreme Court of Canada  
On Appeal from the Court of Appeal for Saskatchewan**

**Record  
Supreme  
Court of Canada**

BETWEEN  
CANADIAN PACIFIC RAILWAY COMPANY  
Appellant,  
and  
THE ATTORNEY-GENERAL FOR SASKATCHEWAN  
Respondent.

**No. 13  
Solicitor's Cer-  
tificate. Novem-  
ber 15th, 1949.**

**No. 13**

10

**Certificate of Solicitor**

I, Reginald G. Hamilton, hereby certify that I have personally compared the annexed print of the case in appeal to the Supreme Court with the originals and that the same is a true and correct reproduction of such originals.

Dated at Regina, this 15th day of November, 1949.

R. G. HAMILTON,  
Solicitor for the Appellant.

---

Record  
Supreme  
Court of Canada

**In the Supreme Court of Canada  
On Appeal from the Court of Appeal for Saskatchewan**

No. 14  
Certificate of  
Registrar. No-  
vember 15, 1949.

BETWEEN  
CANADIAN PACIFIC RAILWAY COMPANY  
Appellant,  
and  
THE ATTORNEY-GENERAL FOR SASKATCHEWAN  
Respondent.

**No. 14**

10 **Certificate of Registrar**

I, the undersigned, Registrar of the Court of Appeal for Saskatchewan, do hereby certify that the annexed case on pages 1 to 344, inclusive, is the case stated by the parties pursuant to Section 68 of the Supreme Court Act and the Rules of the Supreme Court of Canada in the appeal herein to the Supreme Court of Canada.

And I do further certify that Canadian Pacific Railway Company, the Appellant herein, has given proper security to the satisfaction of a judge of the Court of Appeal for Saskatchewan, as required by Section 70 of the Supreme Court Act, being the sum of five hundred 20 dollars (\$500.00) of lawful money of Canada deposited with me as Registrar of the said Court of Appeal, a copy of the Order of the Honorable the Chief Justice approving the said security being found at pages 69 and 70 respectively of the said case.

And I do further certify that the said case contains the reasons for the opinions of all the members of the Court of Appeal for Saskatchewan who were present at the hearing in the said Court of Appeal.

In testimony whereof I have hereunto subscribed my hand and affixed the seal of the said Court of Appeal for Saskatchewan this 15th day of November, 1949.

30

A. C. ELLISON,  
Registrar.

(Seal)  
Court of Appeal for Saskatchewan.

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## PART II—DOCUMENTS

Record

Court of Appeal

## No. 1

Company's Document

## Statutes of the Province of Canada, 1858

## Chapter 122

Exhibit No. 1

Preamble

An Act to incorporate the North-West Transportation Navigation and Railway Company. (Assented to 16th August, 1858.)

Portions of an Act to incorporate the North-West Transportation Navigation and Railway Company. (16th August, 1858.)

Whereas William H. Boulton, Thomas Clarkson, Allan Macdonell, John McMurrich, George Monro, Thomas Hutchinson, Esquires, and 10 others, of the City of Toronto, have presented a Petition to the Legislature of this Province, praying that an act might be passed to authorize them to establish communications within the Northern and Western limits of Canada: Therefore Her Majesty by and with the advice and consent of the Legislative Council and Assembly of Canada enacts as follows:

Company incorporated

1. William Henry Boulton, Thomas Clarkson, Allan Macdonell, John McMurrich, George Monro, John Hutchinson, Esquires, and others, together with such person or persons as shall, under the provisions of this Act, become shareholders of the Company, hereinafter 20 mentioned, shall be and are hereby ordained, constituted and declared to be a body corporate in fact and in name, by the name of the "North Western Transportation Navigation and Railway Company." . . .

Corporate name

Powers of Company to make Roads, Railways, Tramways, Canals

2. It shall be lawful for the Governor in Council, upon the report of the Commissioner of Crown Lands, to authorize the said Company to enter upon any incorporated lands of the Crown, and to make and establish facilities for the purposes of transportation, traffic and trade; and for such purposes, to build roads, tramways, railways or canals between navigable waters, and to improve or run navigable 30 places on the Shores of Lake Superior, to any point in the interior, or between any navigable waters within the limits of Canada.

To run navigable water courses or channels of water communication from one or more points on the shore of Lake Superior to the interior

## No. 2

Company's Document

## Statutes of the Province of Canada 1859, 22 Victoria

## Chapter 97

Exhibit No. 2

An Act to Amend the Act incorporating the "North-West Transportation, Navigation and Railway Company, and to change the name of the said Company to the "North-West Transit Company." (Assented to 4th May, 1859.)

Portions of an Act to Amend the Act incorporating the "North-West-Transportation, Navigation and Railway Company. (4th May, 1859)

Preamble

22 V., c. 122

40 Whereas by an Act of the Parliament of this Province passed in the twenty-second year of Her Majesty's Reign, Chapter one hundred

Record  
Court of Appeal

Exhibit No. 2

Portions of an Act  
to amend the Act  
incorporating the  
"North-West  
Transportation,  
Navigation and  
Railway Company."  
(4th May, 1859.)  
(Continued)

and twenty-two, the North-West Transportation, Navigation and Railway Company was incorporated, for the purposes in the said Act expressed; And whereas a Company has been, or is about to be, formed in England, called or to be called "The North-West Transit Company, Limited," for the purpose of giving greater and more complete effect to the objects authorized by the said Act, and of extending the proposed operation into British Columbia and to the Pacific Ocean, and with a view to associate the shareholders of the said corporate body with the shareholders in the said Limited Company, so as to form but  
10 the one undertaking; And whereas it is desirable to accomplish the said object: Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

1. The Company formed under the recited Act may unite with any corporate body or with any Company formed or to be formed in England for the purposes aforesaid.

Company may  
unite with  
English Company

7. The corporate name of the said Company now called the North-West Transportation, Navigation and Railway Company, shall here-  
20 after be the "North-West Transit Company," but such change of name shall not operate any change in the rights, obligations, powers, or privileges of the said Company.

Name of the  
present Company  
changed

**No. 3**  
Company's Document

**Obtained from Public Archives, Dominion of Canada**  
**Further Papers Relative to the Exploration of**  
**British North America**

Exhibit No. 3

Extract from copy  
of letter from  
Captain Palliser  
to the Under Secre-  
tary of State for  
the Colonies.  
(May 20th, 1859.)

Extract from Copy of Letter from Captain Palliser to the Under Secretary of State for the Colonies.

Fort Edmonton, Saskatchewan,  
May 20th, 1859.

(Received September 5, 1859.)

30

My Lord,

I am in receipt of your Letter to me dated July 3rd, 1858, and in compliance with your directions I transmit my opinions on the four points therein contained for the information of Secretary Sir E. B. Lytton.

Query 2nd. "What should be the dimensions and the boundary "line of such Colony, and whether it would be advisable to include

“the Saskatchewan District in it so as to establish one great border  
 “line from the new Colony of British Columbia up to the Red River  
 “Settlement, under a sway and jurisdiction distinct from the Hud-  
 “son’s Bay Company’s authority?”

Record  
Court of Appeal  
Exhibit No. 3

In answer to this question I can only state, that I cannot see any  
 object in limiting a new Colony to such narrow bounds as the mere  
 district of Red River, and feel decidedly in favour of annexing not only  
 the Saskatchewan, but also the Swan River District in one Colony,  
 and so establish one great border line from the new Colony of British  
 10 Columbia up to the Red River Settlement.

Extract from copy  
 of letter from  
 Captain Palliser  
 to the Under Secre-  
 tary of State for  
 the Colonies  
 (May 20th, 1859).  
 (Continued)

The occupation of the territory will only be a work of time; in  
 proportion to the increase of population at Red River, settlers will  
 advance into the Swan River and Saskatchewan Districts.

In reference to the concluding portion of the second query in your  
 Lordship’s letter, viz., whether such colony should be under a sway  
 and jurisdiction distinct from the Hudson Bay Company’s authority.  
 I have no hesitation in expressing my conviction that it is impossible  
 for the Hudson’s Bay Company to provide a government to meet the  
 exigencies of a growing colony. Indians they can govern well through  
 20 the medium of the trading shop; but the interests of a commercial  
 community, which at all events must be adverse to their own, would  
 not be likely to prosper under their rule.

In answer to the fourth query contained in your Lordship’s letter,  
 viz., “Whether judging from the explorations you have already made,  
 “the country presents such facilities for the construction of a railway  
 “as would at some period, though possibly a remote one, encourage  
 “Her Majesty’s Government in the belief that such an undertaking  
 “between the Atlantic and Pacific Oceans could ever be accomplished?”  
 I have no hesitation in stating that no obstacles exist to the con-  
 30 struction of a railway from Red River to the eastern base of the  
 Rocky Mountains, and probably the best route would be found in the  
 neighbourhood of the south branch of the Saskatchewan.

An amount of capital very small in proportion to the territory  
 to be crossed would be sufficient to accomplish the undertaking so far,  
 but the continuation of the railway across the Rocky Mountains  
 would doubtless require a considerable outlay.

I have, &c.

(Signed) JOHN PALLISER,

Commanding Exploring Expedition.

40 The Under Secretary of State for Colonies.

**Record**  
**Court of Appeal**

**Exhibit No. 4**

Extract from narrative of the Canadian Red River Exploring Expedition of 1857 and of the Assiniboine and Saskatchewan Exploring Expedition of 1858, by H. Y. Hind.

**No. 4**  
Company's Document

**Narrative of the Canadian Red River Exploring Expedition of 1857 and of the Assiniboine and Saskatchewan Exploring Expedition of 1858, by H. Y. Hind.** (Vol. 1, P. 269)

10 "It is a physical reality of the highest importance to the interests of British North America that this continuous belt can be settled and cultivated from a few miles west of the Lake of the Woods to the passes of the Rocky Mountains, and any line of communication whether by wagon road or by railroad passing through it will eventually enjoy the great advantage of being fed by an agricultural population from one extremity to the other."

**No. 5**  
Company's Document

**Exhibit No. 5**

Extract from Journals of the Legislative Assembly of Province of Canada (9th April 1861).

**Journals of the Legislative Assembly of the Province of Canada 9th April 1861** (P. 77.)

Mr. Turcotte, from the Standing Committee on Standing Orders presented to the House the First Report of the said Committee, which was read, as followeth:

20 The Petition of the North-West Transit Company prays for amendments to their Act of incorporation, but your Committee are informed that the said Act of incorporation has become void in consequence of the failure of the Company to commence their works within two years from the date of the Act (16th August, 1858); such being the case, your Committee are of opinion that this Petition cannot be entertained.

**No. 6**  
Company's Document

**Obtained from Provincial Library, Manitoba**

**Exhibit No. 6**

Extract from a memorandum on the subject of a railway through British North America submitted to the Government of the Province of Canada in 1863 by Sandford Fleming.

30 Observations and practical suggestions on the subject of a railway through British North America.

Extracts from a Memorandum on the subject of a railway through British North America, submitted to the Government of the Province of Canada in 1863 by Sandford Fleming.

The idea of constructing upwards of 2000 miles of railway in the manner which has characterized the establishment of similar undertakings heretofore through a country almost uninhabited except by scattered bands of wandering Indians may well be viewed as a com-

mercial absurdity. . . . It appears conclusive . . . that the immediate construction of a railway from Canada to the Pacific is in a financial sense impracticable so that it would not at present pay, and, however important it may be considered as a great national work, its successful operation as a commercial undertaking cannot take place until the country is better prepared for it.

It must not, however, be implied that the idea of establishing a continuous line of railway from ocean to ocean should, even at the present time, be set aside. It may be laid down as a maxim that  
 10 wherever traffic can exist sufficiently extensive in any section of country to render the application of steam power profitable, through that section, a railway will sooner or later be constructed. The country between Canada and the Pacific is, according to reliable authority, in every respect capable of supporting a large industrial population, assuming that only that portion of British America West of the Lake of the Woods and South of the main or North Saskatchewan River is capable of being populated to no greater density than Russia. . . .

Before attempting to show how we may best profit by the ex-  
 20 perience obtained from the Canadian road system in any effort to colonize the interior of British North America, I will first allude to another point . . . which I think is of some moment. (Mr. Fleming then discussed the manner of construction of a railway roadbed.)

From the foregoing observations, it must be obvious that the progress of new territories, as well as their future and permanent social and commercial wants, would be much influenced by a pre-arrangement of the various lines of internal communication; and it must be equally clear that to attain the highest degree of easy inter-  
 30 course between every section at the least outlay of capital and labor, every road of whatever class should be considered as a portion of the whole system.

The system of construction proposed to be advocated is that of a gradually progressive character, similar to that already hinted at; and inasmuch as it would evidently be a misnomer to designate the various lines of roads in their rudimentary stages by the names they may ultimately be intended to bear, it is thought that the following terms for the three classes of lines will be convenient and sufficiently appropriate.

1st. Territorial Roads—These trunk lines intended to serve  
 40 large districts, and which may in course of time be converted, stage by stage, into railways, as the settlement of the country advances and its traffic becomes developed. "Territorial Roads" to be invari-

Record

Court of Appeal

Exhibit No. 6

Extract from a memorandum on the subject of a railway through British North America submitted to the Government of the Province of Canada in 1863 by Sandford Fleming. (Continued)

Record  
Court of Appeal

Exhibit No. 6

Extract from a memorandum on the subject of a railway through British North America submitted to the Government of the Province of Canada in 1863 by Sandford Fleming. (Continued)

ably located with easy curves and on the most available ground for railway service.

(Mr. Fleming then speaks of roads of secondary importance—colonization roads and concession roads.)

Assuming that the tract of country to be colonized is such as to justify us in the belief that in due time a railway may be constructed through it, the first step would be to lay out a territorial road between the more important points in the general direction of traffic previously determined. . . .

10 The first step required is the location of what has been designated a "Territorial Road" between all the more important or governing points on the line of route. Commencing at the Western Terminus, these points would probably be, the mouth of the Fraser River, or the best Harbor on the Pacific coast, north of the 49th parallel—the best pass which has been or may be discovered across the Rocky Mountains contiguous to a line which would run along the general direction of the "Fertile Belt" ("There is a broad strip of fertile country, rich in water, wood and pasturage, drained by the North Saskatchewan and some of its affluents; and being a continuation of  
20 the fertile prairies of Red River, the eastern water-shed of the Assiniboine and Red Deer River, with the outlying patches called Touchwood Hills, File Hill, etc. It is a physical reality of the highest importance to the interests of British North America, that this continuous belt can be settled and cultivated from a few miles west of the Lake of the Woods, to the passes of the Rocky Mountains, and any line of communication, whether by waggon-road or railroad, passing through it, will eventually enjoy the great advantage of being fed by an agricultural population from one extremity to the other.

30 So soon as any section of the road can be finally located, together with its branches, the introduction of settlers might commence. . . .

I can scarcely hope that the plan of gradual development herein advocated will satisfy the precipitate or the impatient,—those in fact who would urge the immediate construction of the railway, regardless or ignorant of the cost and the burdens it might in consequence entail upon the country. . . . Even if it should take a quarter of a century it would be equal to an average construction of 100 miles of railway a year, as well as the annual introduction of 100,000 emigrants. . . .

40 As the character of the work is so colossal and the condition of

the country such as to debar the idea of undertaking the construction of a railway through it in the usual way and as an ordinary commercial enterprise, I am emboldened to think that such a system as I have endeavoured to sketch might form the basis of a scheme possessing many recommendations.

Record  
Court of Appeal  
Exhibit No. 6  
(Continued)

**No. 7**  
Company's Document  
**Imperial Statutes 1867, 30-31 Victoria**  
Chapter 3

10            **THE BRITISH NORTH AMERICA ACT, 1867**

Exhibit No. 7

An Act for the Union of Canada, Nova Scotia and New Brunswick and the Government thereof and for purposes connected therewith.

Portions of the  
British North  
America Act, 1867.  
(March 29, 1867)

(March 29th, 1867)

Subjects of  
exclusive provin-  
cial legislation

“92. In each Province the Legislature may exclusively make Laws in relation to Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say,—

10. Local Works and Undertakings other than such as are of the following Classes:

20    (a) Lines of Steam or other Ships, Railways, Canals, Telegraphs, and other Works and Undertakings connecting the Province with any other or others of the Provinces, or extending beyond the Limits of the Province:”

Exemption of  
Public Lands, etc.

125. No Lands or Property belonging to Canada or any Province shall be liable to Taxation.

Power to admit  
Newfoundland, etc.,  
into the Union

146. It shall be lawful for the Queen, by and with the Advice of Her Majesty's Most Honourable Privy Council, on Addresses from the Houses of the Parliament of Canada, and from the Houses of the respective Legislatures of the Colonies or Provinces of Newfoundland,  
30 Prince Edward Island, and British Columbia, to admit those Colonies or Provinces, or any of them, into the Union, and on Address from the Houses of the Parliament of Canada to admit Rupert's Land and the Northwestern Territory, or either of them, into the Union, on such Terms and Conditions in each Case as are in the Addresses expressed and as the Queen thinks fit to approve, subject to the Provisions of this Act; and the Provisions of any Order in Council in that Behalf shall have effect as if they had been enacted by the Parliament of the United Kingdom of Great Britain and Ireland.

Record  
Court of Appeal

Exhibit No. 8

Portions of an  
Act respecting  
Railways  
(22nd May, 1868)

**No. 8**  
Company's Document  
**Statutes of Canada 1868, 31 Victoria**  
Chapter 68

An Act Respecting Railways  
(Assented to 22nd May, 1868.)

2. The provisions of this Act from section five to section twenty-two, both inclusive, being Part First of this Act, shall apply to The Intercolonial Railway to be constructed under the authority of the  
10 Act of the Parliament of Canada, passed during the present Session, and intituled: An Act respecting the construction of the Intercolonial Railway, so far as they are applicable to the undertaking and in so far as they are not inconsistent with or contrary to the provisions of the said Act respecting it.

Application of  
the several parts  
of this Act

2. (2) The said sections shall also apply to every Railway *hereafter to be constructed* under the authority of any Act passed by the Parliament of Canada, and shall, so far as they are applicable to the undertaking, and unless they are expressly varied or excepted by the Special Act, be incorporated with the Special Act, from part thereof,  
20 and be construed therewith as forming one Act.

. . . . .  
5. (1) The expression "The Special Act," used in this Act, shall be construed to mean any Act authorizing the construction of a Railway, with which this Act is incorporated:

Interpretation of  
words "The Special  
Act"

. . . . .  
5. (16) The expression "the Railway" shall mean the Railway and works by the Special Act authorized to be constructed.

"The Railway"

. . . . .  
7. The Company shall have power and authority:

Powers

. . . . .  
(9) To make branch Railways, if required and provided by the Special Act, and to manage the same, and for that purpose to exercise all the powers, privileges and authorities necessary therefor, in as full  
30 and ample a manner as for the Railway.

Branch Railways

**No. 9**  
Company's Document

**Imperial Statutes 1868, 31-32 Victoria**  
Chapter 105.

Record  
Court of Appeal

Exhibit No. 9

An Act for enabling Her Majesty to accept a Surrender upon Terms of the Lands, Privileges, and Rights of "The Governor and Company of Adventurers of England trading into Hudson's Bay," and for admitting the same into the Dominion of Canada.  
(July 31, 1868.)

Portions of the  
Rupert's Land  
Act, 1868.  
(July 31, 1868)

10 Whereas by certain letters patent granted by his late Majesty King Charles the Second in the twenty-second year of his reign certain persons therein named were incorporated by the name of "The Governor and Company of Adventurers of England trading into Hudson's Bay" and certain lands and territories, rights of government and other rights, privileges, liberties, franchises, powers and authorities were thereby granted or purported to be granted to the said governor and company in His Majesty's Dominions in North America:

20 And whereas by The British North America Act, 1867, it was (amongst other things) enacted that it should be lawful for Her Majesty by and with the advice of Her Majesty's Most Honourable Privy Council on address from the Houses of the Parliament of Canada to admit Rupert's Land and the North-Western Territory or either of them into the Union on such terms and conditions as are in the address expressed and as Her Majesty thinks fit to approve subject to the provisions of the said Act;

30 And whereas for the purpose of carrying into effect the provisions of the said British North America Act, 1867, and of admitting Rupert's Land into the said Dominion as aforesaid upon such terms as Her Majesty thinks fit to approve, it is expedient that the said lands, territories, rights, privileges, liberties, franchises, powers and authorities so far as the same have been lawfully granted to the said company should be surrendered to Her Majesty, her heirs and successors upon such terms and conditions as may be agreed upon by and between Her Majesty and the said governor and company as hereinafter mentioned:

40 Be it therefore enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled and by the authority of the same as follows:

1. This Act may be cited as "Rupert's Land Act, 1868."
2. For the purposes of this Act the term "Rupert's Land" shall

Record  
Court of Appeal

Exhibit No. 9

Portions of the  
Rupert's Land  
Act, 1868.  
(Continued)

include the whole of the lands and territories held or claimed to be held by the said governor and company.

3. It shall be competent for the said governor and company to surrender to Her Majesty and for Her Majesty by any instrument under her sign manual and signet to accept a surrender of all or any of the lands, territories, rights, privileges, liberties, franchises, powers, and authorities whatsoever granted or purported to be granted by the said letters patent to the said governor and company within Rupert's Land upon such terms and conditions as shall be agreed upon 10 by and between Her Majesty and the said governor and company:

Provided however that such surrender shall not be accepted by Her Majesty until the terms and conditions upon which Rupert's Land shall be admitted into the said Dominion of Canada shall have been approved of by Her Majesty and embodied in an address to Her Majesty from both the Houses of the Parliament of Canada in pursuance of the one hundred and forty-sixth section of The British North America Act, 1867; and that the said surrender and acceptance thereof shall be null and void unless within a month from the date of such acceptance Her Majesty does by Order in Council under the 20 provisions of the said last recited Act admit Rupert's Land into the said Dominion;

Provided further that no charge shall be imposed by such terms upon the consolidated fund of the United Kingdom.

. . . . .

5. It shall be competent to Her Majesty by any such Order or Orders in Council as aforesaid on address from the Houses of the Parliament of Canada to declare that Rupert's Land shall from a date to be therein mentioned be admitted into and become part of the Dominion of Canada; and thereupon it shall be lawful for the Parliament of Canada from the date aforesaid to make, ordain and 30 establish within the land and territory so admitted as aforesaid all such laws, institutions and Ordinances and to constitute such courts and officers as may be necessary for the peace, order and good government of Her Majesty's subjects and others therein:

Provided that until otherwise enacted by the said Parliament of Canada all the powers, authorities and jurisdiction of the several courts of justice now established in Rupert's Land and of the several officers thereof and of all magistrates and justices now acting within the said limits shall continue in full force and effect therein.

\_\_\_\_\_

**No. 10**

Company's Document

Record  
Court of Appeal**Extract from Report of U.S. Senate on Pacific Railroads February 19, 1869, as Quoted by H. A. Innis in a History of the Canadian Pacific Railway.**Exhibit No. 10

"The opening by us first of a North Pacific Railroad seals the destiny of British Possessions west of the 91st Meridian. Annexation will be but a question of time."

Extract from report of U.S. Senate on Pacific Railroads, (February 19, 1869).

**No. 11**

Company's Document

10

**Canada Gazette 1869-70, September 18th, 1869, Volume III. (P. 164)**Exhibit No. 11

Notice of Application to Parliament for a Charter for Canada Pacific Railway Company.

Notice of Application to Parliament for a charter for Canada Pacific Railway Company (18th September, 1869).

**THE CANADA PACIFIC RAILWAY**

Public notice is hereby given, that an application will be made to the Parliament of the Dominion of Canada, at the next session thereof, for a Charter to construct a Railway from Fort Garry, on the Red River, in the North West Territory, Westward, to the confines of British Columbia, and Eastward to such point of connection with  
20 existing Railways in the Province of Ontario, as may be found most desirable with power to construct a Branch of the said railway, from Fort Garry, to such point on the Frontier of the United States, at or near to Pembina, as may be deemed most advisable. The said Charter will be asked for in the name of "The Canada Pacific Railway Company."

September, 1869.

**No. 12**

Company's Document

**Canada Gazette 1869-70, September 25th, 1869, Volume III. (P. 172)**Exhibit No. 12

30 Notice of Application to Parliament for a Charter for The Dominion Pacific Railway.

Notice of Application to Parliament for a Charter for The Dominion Pacific Railway (25th September, 1869).

Notice is hereby given that application will be made at the next Session of the Parliament of Canada, for a charter for "The Dominion Pacific Railway," to be constructed from a point, on or near Lake Superior via Red River, to a point, on the Eastern Boundary of British Columbia; with power to improve the navigation, leading to and from Rainy Lake and Lake of the Woods.

Toronto, 1st September, 1869.

**Record**  
**Court of Appeal**

**Exhibit No. 13**

Notice of Application to Parliament for a charter for the Canadian Pacific Railway and Navigation Company (Jan. 8, 1870).

**No. 13**  
Company's Document

**Canada Gazette 1869-70, January 8th, 1870, Volume III. (P. 476)**

Notice of Application to Parliament for a Charter for The Canadian Pacific Railway and Navigation Company.

Notice is hereby given that application will be made to the Parliament of the Dominion of Canada, at the next session thereof, for an Act of Incorporation for a Company for the construction of a Railway from the City of Ottawa, in the Province of Ontario, to Fort Garry, 10 in the Selkirk Settlement, on the Red River, in the Territory lately under the control of the Hudson Bay Company, and from thence to the confines of British Columbia.

Also for the construction of a Branch of the said Railway from Fort Garry aforesaid, to the most convenient point on the frontier of the United States, with power to build, launch, equip and navigate steamers and other vessels upon the River Saskatchewan and its Branches and Tributaries, and upon Rivers and Lakes in the Districts to be traversed by the said Railways. Also that the monetary credit of the Dominion may be extended in aid of such Company by 20 the granting of Mortgages on the Wild Lands of the Crown adjoining such Railways, in certain due proportions as the works proceed. Also that Free Grants of the Wild Lands of the Crown may be made to approved immigrant and native settlers, on their performing certain settlement duties to be agreed upon, the said Free Grants to be in regular alternate sections along the line of the said Railways with the Mortgaged Lands aforesaid, and the said sections of the Free Grant Lands to differ, so far as affected by such Act, only in size or quantity from the sections of the aforesaid Mortgaged Lands.

The said Act of Incorporation will be asked for in the name of 30 "The Canadian Pacific Railway and Navigation Company."

**No. 14**  
Company's Document

**Correspondence of Sir John A. Macdonald by Sir Joseph Pope.**  
(P. 124-5)

**Exhibit No. 14**

Letter from John A. Macdonald to C. J. Brydges. (January 28, 1870.)

Letter from John A. Macdonald to C. J. Brydges.

Ottawa, January 28, 1870.

My Dear Brydges,—

It is quite evident to me not only from this conversation, but from advices from Washington, that the United States Government are

resolved to do all they can short of war to get possession of the western territory, and we must take immediate and vigorous steps to counteract them. One of the first things to be done is to show unmistakably our resolve to build the Pacific Railway. . . . It must be taken up by a body of capitalists and not constructed by the Government directly. Canada can promise most liberal grants of land in alternate blocks and may perhaps (but of this I cannot speak with any confidence) induce Parliament to add a small pecuniary subsidy. No time should be lost in this and I should think that we had made a great stride if we got you to take it up vigorously. . . . The thing must not be allowed to sleep, and I want you to address yourself to it at once and work out a plan. Cartier and I will talk it over after conference with you and push it through.

Yours faithfully,

JOHN A. MACDONALD.

Record  
Court of Appeal  
Exhibit No. 14

Letter from  
John A. Macdonald  
to C. J. Brydges.  
(January 28, 1870.)  
(Continued)

**No. 15**

Company's Document

**Journals of the House of Commons 1870, Volume III (P. 82)**

Exhibit No. 15

20 Petition for an Act of Incorporation of the Canadian Pacific Railway  
and Navigation Company.

Petition for an Act  
of incorporation  
of the Canadian  
Pacific Railway  
and Navigation  
Company  
(March 17th, 1870).

March 17th, 1870.

Pursuant to the Order of the Day, the following Petitions were read:

Of Charles P. Treadwell and others, of the City of Ottawa, praying for an Act of Incorporation, under the name of the "Canadian Pacific Railway and Navigation Company," with power to construct a Railway from Ottawa, through the Red River Territory and Rupert's Land, to the Pacific Ocean at Bute Inlet; also, for the interposition of the House in their behalf, to assist them in obtaining a grant of wild lands in aid of their undertaking.

Record  
Court of Appeal  
Exhibit No. 16

No. 16  
Company's Document

Order of Her Majesty in Council admitting Rupert's Land and the North-Western Territory into the Union.

At the Court at Windsor, the 23rd day of June, 1870.

Present:  
The Queen's Most Excellent Majesty.  
Lord President.  
Lord Privy Seal.  
Lord Chamberlain.  
Mr. Gladstone.

10

Portions of Order of Her Majesty in Council admitting Rupert's Land and the North-Western Territory into the Union (23rd day of June, 1870).

Whereas by The British North America Act, 1867, it was (amongst other things) enacted that it should be lawful for the Queen by and with the advice of Her Majesty's Most Honourable Privy Council on address from the Houses of the Parliament of Canada to admit Rupert's Land and the North-Western Territory or either of them into the Union on such terms and conditions in each case as should be in the addresses expressed and as the Queen should think fit to approve subject to the provisions of the said Act. And it was further enacted  
20 that the provisions of any Order in Council in that behalf should have effect as if they had been enacted by the Parliament of the United Kingdom of Great Britain and Ireland;

And whereas by an address from the Houses of the Parliament of Canada of which address a copy is contained in the schedule to this order annexed marked A Her Majesty was prayed by and with the advice of Her Most Honourable Privy Council to unite Rupert's Land and the North-Western Territory with the Dominion of Canada and to grant to the Parliament of Canada authority to legislate for their future welfare and good government upon the terms and condi-  
30 tions therein stated;

And whereas . . . .

And whereas . . . .

And whereas a draft surrender has been submitted to the Governor General of Canada containing stipulations to the following effect, viz.:

And whereas . . . .

And whereas . . . .

And whereas such surrender has been duly accepted by Her Majesty by an instrument under her Sign Manual and Signet, bearing date at Windsor the twenty-second day of June, one thousand eight  
40 hundred and seventy:

It is hereby ordered and declared by Her Majesty by and with the advice of the Privy Council in pursuance and exercise of the powers vested in Her Majesty by the said Acts of Parliament that from and after the fifteenth day of July, one thousand eight hundred and seventy, the said North-Western Territory shall be admitted into and become part of the Dominion of Canada upon the terms and conditions set forth in the first hereinbefore recited address and that the Parliament of Canada shall from the day aforesaid have full power and authority to legislate for the future welfare and good government of the said territory. And it is further ordered that without prejudice to any obligations arising from the aforesaid approved report Rupert's Land shall from and after the said date be admitted into and become part of the Dominion of Canada upon the following terms and conditions, being the terms and conditions still remaining to be performed of those embodied in the said second address of the Parliament of Canada and approved of by Her Majesty as aforesaid:

1. Canada is to pay to the company 300,000 £. when Rupert's Land is transferred to the Dominion of Canada;
- 20 5. The company may for fifty years after the surrender claim in any township or district within the fertile belt in which land is set out for settlement grants of land not exceeding one-twentieth part of the land so set out. The blocks so granted to be determined by lot and the company to pay a rateable share of the survey expenses not exceeding eight cents Canadian an acre. The company may defer the exercise of their right of claiming the proportion of each township for not more than ten years after it is set out; but their claim must be limited to an allotment from the lands remaining unsold at the time they declare their intention to make it;
- 30 6. For the purpose of the last article the Fertile Belt is to be bounded as follows: On the south by the United States boundary; on the west by the Rocky Mountains; on the north by the northern branch of the Saskatchewan; on the east by Lake Winnipeg, the Lake of the Woods and the waters connecting them;
11. The company is to be at liberty to carry on its trade without hindrance in its corporate capacity and no exceptional tax is to be placed on the company's land, trade or servants nor any import duties on goods introduced by them previous to the surrender;
14. Any claims of Indians to compensation for lands required for purposes of settlement shall be disposed of by the Canadian government in communication with the Imperial government; and the company shall be relieved of all responsibility in respect of them;

Record  
Court of Appeal  
Exhibit No. 16

Portions of Order of Her Majesty in Council admitting Rupert's Land and the North-Western Territory into the Union (23rd day of June, 1870).  
(Continued)

Record  
Court of Appeal  
Exhibit No. 16

Portions of Order  
of Her Majesty in  
Council admitting  
Rupert's Land and  
the North-Western  
Territory into  
the Union (23rd  
day of June, 1870).  
(Continued)

15. The Governor in Council is authorized and empowered to arrange any details that may be necessary to carry out the above terms and conditions.

And the Right Honourable Earl Granville, one of Her Majesty's principal secretaries of state, is to give the necessary directions herein accordingly.

#### SCHEDULE (A)

Address to her Majesty the Queen from the Senate and House of Commons of the Dominion of Canada.

10 To the Queen's Most Excellent Majesty.

Most Gracious Sovereign:

We, your Majesty's most dutiful and loyal subjects, the Senate and Commons of the Dominion of Canada in Parliament assembled, humbly approach your Majesty for the purpose of representing:

That it would promote the prosperity of the Canadian people and conduce to the advantage of the whole Empire if the Dominion of Canada constituted under the provisions of The British North America Act, 1867, were extended westward to the shores of the Pacific Ocean.

20 That the colonization of the fertile lands of the Saskatchewan, the Assiniboine and the Red River districts; the development of the mineral wealth which abounds in the region of the North-West; and the extension of commercial intercourse through the British possessions in America from the Atlantic to the Pacific are alike dependent on the establishment of a stable government for the maintenance of law and order in the North-Western Territories.

30 That the welfare of a sparse and widely scattered population of British subjects of European origin already inhabiting these remote and unorganized territories would be materially enhanced by the formation therein of political institutions bearing analogy as far as circumstances will admit, to those which exist in the several provinces of this Dominion.

That the 146th section of The British North America Act, 1867, provides for the admission of Rupert's Land and the North-Western Territory or either of them into union with Canada upon the terms and conditions to be expressed in addresses from the Houses of Parliament of this Dominion to your Majesty and which shall be approved of by your Majesty in Council.

40 That we do therefore most humbly pray that your Majesty will be graciously pleased by and with the advice of your most honourable Privy Council to unite Rupert's Land and the North-Western

Territory with this Dominion and to grant to the Parliament of Canada authority to legislate for their future welfare and good government; and we most humbly beg to express to your Majesty that we are willing to assume the duties and obligations of government and legislation as regards these territories.

That in the event of your Majesty's Government agreeing to transfer to Canada the jurisdiction and control over the said region the Government and Parliament of Canada will be ready to provide that the legal rights of any corporation, company or individual within  
 10 the same shall be respected and placed under the protection of courts of competent jurisdiction.

And furthermore that upon the transference of the territories in question to the Canadian government the claims of the Indian tribes to compensation for lands required for purposes of settlement will be considered and settled in conformity with the equitable principles which have uniformly governed the British Crown in its dealing with the aborigines.

All which we humbly pray your Majesty to take into your Majesty's most gracious and favourable consideration.

20 The Senate, Tuesday, December 17th, 1867.

(Signed) JOSPEH CAUCHON, Speaker.

House of Commons, Monday, December 16th, 1867.

(Signed) JAMES COCKBURN, Speaker.

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**No. 17**

Company's Document

**Journals of the House of Commons 1871, Volume IV** (P. 266)

Resolution Passed by the House of Commons on the 11th day of April, 1871.

30 Resolved, That the Railway referred to in the Address to Her Majesty concerning the Union of British Columbia with Canada, adopted by this House on Saturday, the 1st April instant, should be constructed and worked by private enterprize, and not by the Dominion Government; and that the public aid to be given to secure that undertaking, should consist of such liberal grants of land, and such subsidy in money, or other aid, not increasing the present rate of taxation, as the Parliament of Canada shall hereafter determine.

Record  
Court of Appeal

Exhibit No. 16

Portions of Order of Her Majesty in Council admitting Rupert's Land and the North-Western Territory into the Union (23rd day of June, 1870).  
(Continued)

Exhibit No. 17

Resolution passed by the House of Commons on the 11th day of April, 1871.

Record  
Court of Appeal

**No. 18**  
Company's Document

Exhibit No. 18

**Order-in-Council respecting the Province of British Columbia**

Portions of Order-in-Council respecting the Province of British Columbia (16th day of May, 1871).

At the Court at Windsor, the 16th day of May, 1871.

Present:

The Queen's Most Excellent Majesty,  
His Royal Highness Prince Arthur,  
Lord Privy Seal, Lord Chamberlain,  
Earl Cowper, Mr. Secretary Cardwell,  
Earl of Kimberley, Mr. Ayrton.

10

Whereas by the "British North America Act, 1867," provision <sup>Preamble</sup> was made for the Union of the Provinces of Canada, Nova Scotia, and New Brunswick into the Dominion of Canada, and it was (amongst other things) enacted that it should be lawful for the Queen, by and with the advice of Her Majesty's Most Honourable Privy Council, on Addresses from the Houses of the Parliament of Canada, and of the Legislature of the Colony of British Columbia, to admit that Colony into the said Union on such terms and conditions as should be in the Addresses expressed, and as the Queen should think  
20 fit to approve, subject to the provisions of the said Act; and it was further enacted that the provisions of any Order-in-Council in that behalf should have effect as if they had been enacted by the Parliament of the United Kingdom of Great Britain and Ireland:

And whereas by Addresses from the Houses of the Parliament of Canada and from the Legislative Council of British Columbia respectively, of which Addresses copies are contained in the Schedule to this Order annexed, Her Majesty was prayed, by and with the advice of Her most Honourable Privy Council, under section 146 of the herein-  
30 before recited Act, to admit British Columbia into the Dominion of Canada, on the terms and conditions set forth in the said Addresses:

And whereas Her Majesty has thought fit to approve of the said terms and conditions, it is hereby ordered and declared by Her Majesty, by and with the advice of Her Privy Council, in pursuance and exercise of the powers vested in Her Majesty by the said Act of Parliament, that from and after the twentieth day of July, 1871, the said Colony of British Columbia shall be admitted into and become part of the Dominion of Canada, upon the terms and conditions set forth in the hereinbefore recited Addresses. . . .

. . . . .

## SCHEDULE

(Address in part of the Senate of Canada.)

To the Queen's Most Excellent Majesty.

Most Gracious Sovereign,

We, Your Majesty's most dutiful and loyal subjects, the Senate of Canada in Parliament assembled, humbly approach Your Majesty for the purpose of representing:—

That by a despatch from the Governor of British Columbia, dated 23rd January, 1871, with other papers laid before this House, by  
10 message from His Excellency the Governor-General, of the 27th February last, this House learns that the Legislative Council of that colony, in council assembled, adopted, in January last, an Address representing to Your Majesty that British Columbia was prepared to enter into Union with the Dominion of Canada, upon the terms and conditions mentioned in the said Address, which is as follows:

To the Queen's Most Excellent Majesty.

Most Gracious Sovereign,

We, Your Majesty's most dutiful and loyal subjects, the Members of the Legislative Council of British Columbia, in council assembled,  
20 humbly approach Your Majesty for the purpose of representing:

That, during the last session of the late Legislative Council, the subject of the admission of the Colony of British Columbia into the Union or Dominion of Canada was taken into consideration, and a resolution on the subject was agreed to, embodying the terms upon which it was proposed that this colony should enter the Union;

That after the close of the session, Delegates were sent by the Government of this Colony to Canada to confer with the Government of the Dominion with respect to the admission of British Columbia into the Union upon the terms proposed;

30 That after considerable discussion by the Delegates with the Members of the Government of the Dominion of Canada, the terms and conditions hereinafter specified were adopted by a Committee of the Privy Council of Canada and were by them reported to the Governor General for his approval;

That such terms were communicated to the Government of this Colony by the Governor General of Canada, in a despatch dated July 7th, 1870, and are as follows:

10. The provisions of the British North America Act, 1867, shall (except those parts thereof which are in terms made, or by reasonable

Record  
Court of Appeal

Exhibit No. 18

Portions of Order-in-Council respecting the Province of British Columbia (16th day of May, 1871).  
(Continued)

Record  
Court of Appeal  
Exhibit No. 18

Portions of Order-  
in-Council respect-  
ing the Province of  
British Columbia  
(16th day of  
May, 1871).  
(Continued)

intendment may be held to be specially applicable to and only affect one and not the whole of the Provinces now comprising the Dominion, and except so far as the same may be varied by this Minute) be applicable to British Columbia in the same way and to the like extent as they apply to the other Provinces of the Dominion, and as if the Colony of British Columbia had been one of the Provinces originally united by the said Act.

11. The Government of the Dominion undertake to secure the commencement simultaneously, within two years from the date of  
10 the Union, of the construction of a railway from the Pacific towards the Rocky Mountains, from such point as may be selected, east of the Rocky Mountains, towards the Pacific, to connect the seaboard of British Columbia with the railway system of Canada; and further, to secure the completion of such railway within ten years from the date of the Union.

And the Government of British Columbia agree to convey to the Dominion Government, in trust, to be appropriated in such manner as the Dominion Government may deem advisable in furtherance of the construction of the said railway, a similar extent of public lands  
20 along the line of railway throughout its entire length in British Columbia (not to exceed however, twenty (20) miles on each side of said line,) as may be appropriated for the same purpose by the Dominion Government from the public lands of the North-West territories and the Province of Manitoba: Provided that the quantity of land which may be held under pre-emption right or by Crown grant within the limits of the tract of land in British Columbia to be so conveyed to the Dominion Government shall be made good to the Dominion from contiguous public lands; and provided further, that  
30 until the commencement, within two years, as aforesaid, from the date of the Union, of the construction of the said railway, the Government of British Columbia shall not sell or alienate any further portions of the public lands of British Columbia in any other way than under right of pre-emption requiring actual residence of the pre-emptor on the land claimed by him. In consideration of the land to be so conveyed in aid of the construction of the said railway, the Dominion Government agree to pay to British Columbia from the date of the Union, the sum of 100,000 dollars per annum, in half-yearly payments in advance.

The Union shall take effect according to the foregoing terms and  
40 conditions on such day as Her Majesty by and with the advice of Her Most Honourable Privy Council may appoint (on addresses from the Legislature of the Colony of British Columbia and of the Houses of Parliament of Canada in the terms of the 146th section of the British North America Act, 1867,) and British Columbia may in its

address specify the electoral districts for which the first election of Members to serve in the House of Commons shall take place.

Record  
Court of Appeal

That such terms have proved generally acceptable to the people of this Colony.

Exhibit No. 18

That this Council is, therefore, willing to enter into Union with the Dominion of Canada upon such terms, and humbly submit that, under the circumstances, it is expedient that the admission of this Colony into such Union, as aforesaid, should be effected at as early a date as may be found practicable under the provisions of the 146th section of the British North America Act, 1867.

Portions of Order-in-Council respecting the Province of British Columbia (16th day of May, 1871).  
(Continued)

We, therefore, humbly pray that Your Majesty will be graciously pleased, by and with the advice of Your Majesty's Most Honourable Privy Council, under the provisions of the 146th section of British North America Act, 1867, to admit British Columbia into the Union or Dominion of Canada, on the basis of the terms and conditions offered to this Colony by the Government of the Dominion of Canada, hereinbefore set forth; . . .

Address in part of the Commons of Canada.

To the Queen's Most Excellent Majesty.

20 Most Gracious Sovereign,

We, Your Majesty's most dutiful and loyal subjects, the Commons of Canada in Parliament assembled, humbly approach your Majesty for the purpose of representing:

(The balance of the Address is identical in form with the Address of the Senate and is omitted for that reason.)

JAMES COCKBURN, Speaker.

House of Commons,  
Saturday, 1st April, 1871.

Address in part of the Legislative Council of British Columbia.

30 To the Queen's Most Excellent Majesty.

Most Gracious Sovereign,

We, your Majesty's most dutiful and loyal subjects, the Members of the Legislative Council of British Columbia in Council assembled, humbly approach your Majesty for the purpose of representing:

(. . . The Address is set forth at length in the Address of the Senate.)

(Signed) PHILIP J. HANKIN,  
Speaker.

Record  
Court of Appeal

Exhibit No. 19

Portions of the  
British North  
America Act, 1871.  
(29th June, 1871.)

No. 19  
Company's Document

Imperial Statutes 1871, 34-35 Victoria  
Chapter 28

THE BRITISH NORTH AMERICA ACT, 1871.

An Act respecting the establishment of Provinces in the  
Dominion of Canada.

(29th June, 1871)

Whereas doubts have been entertained respecting the powers of  
10 the Parliament of Canada to establish Provinces in Territories ad-  
mitted, or which may hereafter be admitted, into the Dominion of  
Canada, and to provide for the representation of such Provinces in  
the said Parliament, and it is expedient to remove such doubts, and  
to vest such powers in the said Parliament:

Be it enacted by the Queen's Most Excellent Majesty, by and with  
the advice and consent of the Lords Spiritual and Temporal, and  
Commons, in this present Parliament assembled, and by the authority  
of the same, as follows:—

1. This Act may be cited for all purposes as The British North Short Title  
20 America Act, 1871.

2. The Parliament of Canada may from time to time establish Parliament of Can-  
ada may establish  
new Provinces and  
provide for the  
constitution, etc.,  
thereof.  
new Provinces in any territories forming for the time being part of  
the Dominion of Canada, but not included in any Province thereof,  
and may, at the time of such establishment, make provision for the  
constitution and administration of any such Province, and for the  
passing of laws for the peace, order, and good government of such  
Province, and for its representation in the said Parliament.

3. The Parliament of Canada may from time to time, with the Alteration of limits  
of Provinces.  
30 consent of the Legislature of any Province of the said Dominion,  
increase, diminish, or otherwise alter the limits of such Province,  
upon such terms and conditions as may be agreed to by the said  
Legislature, and may, with the like consent, make provision respecting  
the effect and operation of any such increase or diminution or alter-  
ation of territory in relation to any Province affected thereby.

. . . . .



**No. 20**  
Company's Document

**Statutes of Canada 1872, 35 Victoria**  
Chapter 71

An Act respecting the Canadian Pacific Railway.

(Assented to 14th June, 1872.)

Record  
Court of Appeal

Exhibit No. 20

Portions of an Act  
respecting the  
Canadian Pacific  
Railway (14th  
June, 1872).

Preamble

Whereas by the terms and conditions of the admission of British Columbia into union with the Dominion of Canada, set forth and embodied in an address to Her Majesty, adopted by the Legislative Council of that Colony, in January, 1871, under the provisions of the one hundred and forty-sixth section of "The British North America Act, 1867," and laid before both the Houses of the Parliament of Canada by His Excellency the Governor General, during the now last session thereof, and recited and concurred in by the Senate and House of Commons of Canada during the said session, and embodied in addresses of the said Houses to Her Majesty under the said section of the British North America Act, and approved by Her Majesty and embodied in the Order-in-Council admitting British Columbia into the union under the said Act, as part of the Dominion of Canada, 20 from the twentieth day of July 1871,—it is among other things provided, that the Government of the Dominion undertake to secure the commencement simultaneously, within two years from the date of the union, of the construction of a railway from the Pacific towards the Rocky Mountains, and from such point as may be selected, east of the Rocky Mountains towards the Pacific, to connect the seaboard of British Columbia with the railway system of Canada; and further, to secure the completion of such Railway within ten years from the date of the union;—The Government of British Columbia agreeing to convey to the Dominion Government, in trust, to be appropriated in 30 such manner as the Dominion Government may deem advisable in furtherance of the construction of the said railway, a similar extent of public lands along the line of railway throughout its entire length in British Columbia, not to exceed, however, twenty miles on each side of the said line, as may be appropriated for the same purpose by the Dominion Government from the public lands in the North West Territories and the Province of Manitoba, subject to certain conditions for making good to the Dominion Government from contiguous lands, any lands within the said limits which may be held under pre-emption right or Crown grant, and for restraining the sale or alienation 40 by the Government of British Columbia, during the said two years, of lands within the said limits;—And whereas, the House of Commons of Canada resolved during the said now last session, that the said railway should be constructed and worked by private enterprise and not by the Dominion Government; and that the public aid to be given

Recital: Agreement  
with British  
Columbia as to  
Pacific Railway.

Resolution of  
House of Commons

Record  
Court of Appeal

Exhibit No. 20

Portions of an Act  
respecting the Can-  
adian Pacific Rail-  
way (14th June,  
1872).  
(Continued)

to secure that undertaking, should consist of such liberal grants of land, and such subsidy in money, or other aid, not increasing the present rate of taxation, as the Parliament of Canada should thereafter determine; and it is expedient to make provision for carrying out the said agreement and resolution: Therefore Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts, as follows:—

1. A railway, to be called "The Canadian Pacific Railway," shall be made in conformity with the agreement referred to in the preamble  
10 to this Act, and such railway shall extend from some point on or near Lake Nipissing and on the south shore thereof, to some point on the shore of the Pacific Ocean, both the said points to be determined by the Governor in Council, and the course and line of the said railway between the said points to be subject to the approval of the Governor in Council.

Canadian Pacific  
Railway. Name,  
course and line.

2. The whole line of the said railway shall be made and worked by private enterprise, and not by the Dominion Government, and by one company having a subscribed capital of at least ten million dollars, and approved of and agreed with by the Governor in Council in the manner  
20 hereinafter mentioned, and shall be bona fide commenced within two years from the twentieth day of July, one thousand eight hundred and seventy-one, and completed within ten years from the said day; and subject to the said provision as to commencement and completion, the company shall further be bound to commence and complete at such time or times as the Government may prescribe, any portion or portions of the railway lying between points on the line thereof to be defined in the Order or Orders in Council to be made from time to time in that behalf: Provided always that ten per cent. of the capital  
30 of the company shall be paid up and deposited, in money or Government securities, in the hands of the Receiver General of Canada, before any agreement is concluded between the Government and the Company, and shall remain in his hands until otherwise ordered by Parliament; but if after the payment into the hands of the Receiver General by any company of the said deposit, such contract should not be finally executed, the Governor in Council shall order the said deposit to be returned.

How to be made  
and worked.

Capital of  
Company.

Time limited  
for construction.

Proviso: deposit  
of ten per cent  
of capital

3. The land grant to be made to the company constructing and working the said railway, to secure the construction of the same, and in consideration thereof, shall not exceed in the whole fifty million  
40 acres; . . . .

Land grant

4. The subsidy or aid in money to be granted to the said company shall be such sum not exceeding thirty millions of dollars in the whole, as may be agreed upon between the Government and the Company, such subsidy to be granted from time to time by instalments as any portion of the railway is proceeded with, in proportion to the length,

Subsidy in money  
to company.

Amount limited

difficulty of construction, and cost of such portion:—And the Governor in Council is hereby authorized to raise by loan in the manner by law provided such sum not exceeding thirty million dollars as may be required to pay the said subsidy.

Loan authorized

Government may agree with a company incorporated for the construction of the railway

9. If there be any company incorporated by the Parliament of Canada with power to construct and work a railway from Lake Nipissing to the Pacific Ocean, on a line approved by the Governor in Council under this Act,—then, if such company have the amount of subscribed capital hereinbefore mentioned, and be in the opinion of the Governor in Council able to construct and work such railway in the manner and within the time hereinbefore prescribed, and there be no provision in their Act of incorporation preventing an agreement being made with and carried out by such company under this Act and in conformity with all the provisions thereof,—the Governor in Council may make such agreement with the company, and such agreement shall be held to be part and parcel of its Act of incorporation, as if embodied therein, and any part of such Act inconsistent with such agreement shall be null and void.

If more than one are so incorporated

10. If there be two or more companies incorporated by the Parliament of Canada, each having power to construct and work a railway over the whole or some part of the line between Lake Nipissing and the Pacific Ocean approved by the Government, but such companies having together power to construct and work railways over the whole of such line, and having together a subscribed capital of at least ten million dollars,—then the directors of the several companies may at any time within one month after the passing of this Act, agree together that such companies shall be united and form one company, on such terms and conditions as they may think proper, not inconsistent with this Act.

Companies may unite, and in what manner

Agreement for construction of branches

16. The Government of Canada may further agree with the company with whom they shall have agreed for the construction and working of the said railway, for the construction and working of a branch line of railway, from some point on the railway first hereinbefore mentioned, to some point on Lake Superior in British territory, and for the construction and working of another branch line of railway from some point on the railway first mentioned, in the Province of Manitoba, to some point on the line between that Province and the United States of America,—the said points to be determined by the Governor in Council: and such branch lines of railway shall, when so agreed for, be held to form part of the railway first hereinbefore mentioned, and portions of “The Canadian Pacific Railway:” and in consideration of the construction and working of such branches a land grant in aid thereof may be made to the company to such extent

To form part of the railway

Land grant in such case

Record  
Court of Appeal  
Exhibit No. 20

as shall be agreed upon by the Government and the company:  
Provided that such land grant shall not exceed twenty thousand acres  
per mile of the branch line in Manitoba,—nor twenty-five thousand  
acres per mile of the branch line to Lake Superior.

Portions of an Act  
respecting the  
Canadian Pacific  
Railway (14th  
June, 1872).  
(Continued)

**No. 21**  
Company's Document

**Statutes of Canada 1872, 35 Victoria**  
Chapter 72

Exhibit No. 21

Portions of an Act  
to incorporate the  
Inter-Oceanic  
Railway Company  
of Canada.  
(14th June, 1872.)

10 An Act to Incorporate the Inter-Oceanic Railway  
Company of Canada.  
(Assented to 14th June, 1872.)

Whereas, by the terms and conditions of the union of British Preamble  
Columbia with Canada, the Government of Canada agreed to secure  
the commencement simultaneously within two years from the date of  
the union, of the construction of a railway from the Pacific Ocean  
towards the Rocky Mountains, and from such point as might be  
selected east of the Rocky Mountains towards the Pacific Ocean, to  
connect with the railway system of Canada; and further to secure the  
completion of the said railway within ten years from the date of the  
20 union;

And whereas the Parliament of Canada, passed a resolution  
declaring that the said railway should be constructed and worked by  
private enterprise, and not by the Government of Canada; and that  
public aid should be given to secure the completion of such railway,  
to consist of liberal grants of lands, and subsidies in money, or other  
aid, as the Parliament of Canada might determine;

And whereas it is highly expedient that a great national Inter-  
oceanic Railway, aided and subsidized by Parliament, should be  
managed, controlled and worked in the interest of the Dominion, and  
30 as far as possible, by persons who are residents of Canada and subjects  
of Her Majesty;

And whereas the persons hereinafter mentioned, residents of  
Canada, and subjects of Her Majesty, are desirous of associating  
themselves together as a company for the purpose of constructing the  
said railway; and, by their petition, have prayed to be incorporated  
and invested with such powers as may enable them effectually to  
carry out the undertaking; and it is expedient to grant their prayer:

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

. . . . .

Railway Act to apply.

Lines of railway and works of the company

Branches to St. Mary's River, &c.

Bridges

Owning vessels

Line to be approved by Governor in Council

Materials from public lands, and extra width of lands

Proviso

As to taxation on property of company

2. "The Railway Act, 1868," so far as the provisions contained therein are applicable to the undertaking authorized by this Act, and in so far as they are not inconsistent with or contrary to the provisions of this Act, are hereby incorporated with this Act.

3. The said company, and their agents and servants, may lay out, construct, equip, maintain and work a continuous double or single track iron or steel railway, of such width or gauge as may be directed by any Act of the present session, and also a telegraph line throughout the entire length of the said railway, with the proper appurtenances, 10 from a point at or near Lake Nipissing, in the Province of Ontario, to the waters of the Pacific Ocean, in the Province of British Columbia; with power to extend the said railway to Victoria or Nanaimo, or some other point in Vancouver Island, and along or across the said island to Barclay Sound, or to such other point on the coast of said island as may be found expedient; and to construct branch lines from the main line, to the River St. Mary, at some point between Lake Huron and Lake Superior, and from the main line to some point on Neepigon Bay or Thunder Bay, and from or near Winnipeg River to the Lake of the Woods, and from Fort Garry or Winnipeg to Pembina, or to 20 any other point on the south boundary line of the Province of Manitoba, and from any point on the main line in British Columbia to any point on the boundary line of that Province, so as to connect with the railway system of the United States of America; and to construct a railway bridge across the said River St. Mary, and across Johnson's Straits. The said company shall also have power and authority to build, own and operate steam and other vessels in all Canadian Lakes, rivers and waters lying between Lake Nipissing and the Pacific Ocean and on the waters of the Pacific Ocean, and to build wharves and harbors thereon, and shall be entitled to charge fares and freight for 30 passengers and goods carried on board such vessels.

4. The course and line of the said railway, and the terminus thereof shall be fixed and determined by the Company, subject to the approval of the Governor in Council.

5. It shall be lawful for the Company to take from any public lands adjacent to or near the line of the said railway, all stone, timber, gravel and other materials which may be necessary or useful for the construction of the railway; and also to lay out, and appropriate to the use of the Company, a greater extent of lands, for stations, depots, workshops, buildings, side-tracks, wharves, harbours and roadway, 40 and for establishing screens against snow, than the breadth and quantity mentioned in "The Railway Act, 1868," but such land shall only be taken by the Company, under grant of the Governor in Council as hereinafter provided.

6. The buildings, right of way, permanent way, rolling stock and

Record

Court of Appeal

Exhibit No. 21

Portions of an Act to incorporate the Inter-Oceanic Railway Company of Canada. (14th June, 1872.) (Continued)

Record  
Court of Appeal  
Exhibit No. 21

Portions of an Act to incorporate the Inter-Oceanic Railway Company of Canada. (14th June, 1872.) (Continued)

earnings of the Company, and all property thereof, except the land granted or to be granted by any government in aid of the said railway, shall be exempt from taxation in any Province hereafter to be constituted from the territory of the Dominion for fifty years after the completion of the said railway, under any law, ordinance or by-law of any provincial, local or municipal authority, to any other or greater extent than if the same were the property of the Dominion,—the said railway being in fact a public work constructed mainly at the expense of the Dominion for the benefit of all the Provinces thereof.

10 45. The Company may take from wild lands of the Dominion adjacent to, or near the line of the said railway, all stone, timber, gravel and other materials necessary or useful for the construction of their railway; and may lay out, and appropriate to their use, a greater extent of land, whether public or private, for stations, depots, workshops, buildings, side tracks, wharves, harbours and roadway, than that mentioned in "The Railway Act, 1868,"—such greater extent taken in any case being allowed by the Governor in Council, and shown on the maps or plans deposited with the Minister of Public works.

Materials from wild lands of the Crown

20

**No. 22**  
Company's Document

**Statutes of Canada, 1872, 35 Victoria**  
Chapter 73

Exhibit No. 22

Portions of an Act to incorporate the Canada Pacific Railway Company (14th June, 1872.)

An Act to Incorporate the Canada Pacific Railway Company.  
(Assented to 14th June, 1872.)

30 Whereas the construction of a line of railway through British Territory, across the continent of North America, which, in conjunction with existing railways, would afford uninterrupted railway communication between the Atlantic and Pacific seaports of the Dominion of Canada, is a work of vast importance, not only to the political and commercial interests of Canada, as tending to the closer union of its several Provinces, but also to the British Empire at large, as affording rapid and direct communication through British Territory with her Australian and Asiatic possessions, and opening up for colonization an almost unlimited extent of fertile country; and whereas the persons hereinafter named, have formed themselves into an association for the purpose of constructing the said line of railway, and have prayed, by petition, to be incorporated as a Company, and to be invested with the powers necessary for the purpose, and it is expedient

Preamble

to grant the prayer of their petition: Therefore Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

Sec. 2 }  
 " 3 } The wording of these sections is exactly the same as the  
 " 4 } wording of the corresponding sections in An Act to Incorporate the Inter-Oceanic Railway Company of Canada  
 " 5 } being Cap. 72, 35 Victoria, which are printed ante. P. 100.  
 " 6 }  
 "45 }

Record  
Court of Appeal

Exhibit No. 23

Portions of an Act respecting the Canadian Pacific Railway (14th June, 1872). (Continued)

10

**No. 23**  
 Company's Document  
**Sessional Papers House of Commons 1873, Vol. 6**

Sessional Paper No. 13. (P. 15)

Royal Charter granted to The Canadian Pacific Railway Company.  
 Canada

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

To all to whom these presents shall come,—GREETING.

Whereas, by an Act of the Parliament of Canada, passed in the thirty-fifth year of Our Reign, intituled, "An Act respecting the Canadian Pacific Railway," it is provided, upon considerations therein declared, that a Railway, to be called "The Canadian Pacific Railway," should be made, in conformity with the agreement referred to in the preamble to the said Act, and to extend from some point on or near Lake Nipissing, and on the south shore thereof, to some point on the shore of the Pacific Ocean; both the said points to be determined by the Governor in Council, and the course and line of the said railway between the said points to be subject to the approval of the Governor in Council.

Exhibit No. 23

Portions of Royal charter granted to the Canadian Pacific Railway Company, (5th February, 1873).

30 And, whereas, the Government has failed to induce the two Companies incorporated by Parliament during its last Session for the purpose of constructing the railway, to form one Company, and does not deem it advisable to agree with either of the said two Companies for the construction of the Railway, and is of opinion that it will be more advantageous for the Dominion, and will better ensure the attainment of the purposes of the Act, first above mentioned, that a company shall be incorporated by charter as in such Act provided.

Record  
Court of Appeal  
Exhibit No. 23

Portions of Royal charter granted to the Canadian Pacific Railway Company, (5th February, 1873).  
(Continued)

Now Therefore Know Ye, that we, or our especial grace, certain knowledge and mere motion, and in pursuance of the power vested in us by the Act hereinbefore in part recited, DO, ORDAIN, GRANT AND DECLARE that the said Sir Hugh Allan; Honorable Adams George Archibald; Honorable Joseph Octave Beaubien; Jean Baptiste Beaudry, Esquire; Egerton Ryerson Burpee, Esquire; Frederic William Cumberland, Esquire; Sandford Fleming, Esquire; Robert Newton Hall, Esquire; Honorable John Sebastian Helmcken; Andrew McDermot, Esquire; Donald McInnes, Esquire; Walter Shanly, Esquire and John Walker, Esquire; together with all such persons as shall become associated with them in the undertaking, for the purposes herein mentioned, shall be and are hereby constituted a body corporate and politic by the name, style and title of "The Canadian Pacific Railway Company."

5th February, 1873.

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**No. 24**  
Company's Document

**Statutes of Canada 1874, 37 Victoria**  
Chapter 14

Exhibit No. 24

Portions of an Act to provide for the construction of the Canadian Pacific Railway (26th May, 1874).

20

An Act to provide for the construction of the  
Canadian Pacific Railway  
(Assented to 26th May, 1874.)

Preamble

Whereas by the terms and conditions of the admission of British Columbia into Union with the Dominion of Canada, set forth and embodied in an address to Her Majesty adopted by the Legislative Council of that Colony in January, One thousand eight hundred and seventy-one, under the provisions of the one hundred and forty-sixth section of "The British North America Act, 1867," and laid before both the Houses of Parliament of Canada during the Session of One thousand eight hundred and seventy-one, and concurred in by the Senate and House of Commons of Canada, and embodied in addresses of the said Houses to Her Majesty under the said section of "The British North America Act, 1867," and approved by Her Majesty and embodied in the Order of Her Majesty in Council of the sixteenth day of May, One thousand eight hundred and seventy-one, admitting British Columbia into the Union under the said Act as part of the Dominion of Canada, from the twentieth day of July, One thousand eight hundred and seventy-one, it is among other things provided:

Recital of part of Order of H.M. in Council admitting British Columbia into the Dominion

40

That the Government of the Dominion shall construct a railway from the Pacific towards the Rocky Mountains, and from such point

Agreement

as may be selected for the purpose east of the Rocky Mountains towards the Pacific, to connect the seaboard of British Columbia with the Railway System of Canada: and further that the Government of the Dominion shall secure the commencement of such railway within two years and its completion within ten years from the date of the Union;—the Government of British Columbia agreeing to convey to the Dominion Government, in trust, to be appropriated in such manner as the Dominion Government may deem advisable in furtherance of the construction of the said railway, a similar extent of public

10 lands along the line of railway, throughout its entire length in British Columbia, (not to exceed, however, twenty miles on each side of the said line) as may be appropriated for the same purpose by the Dominion Government from the public lands in the North-West Territories and the Province of Manitoba, subject to certain conditions for making good to the Dominion Government from contiguous lands the quantity of land which may be held under pre-emption right or by Crown grant within the said limits, and for restraining the sale or alienation by the Government of British Columbia during the said two years of lands within the said limits.

Record  
Court of Appeal

Exhibit No. 24

Portions of an Act to provide for the construction of the Canadian Pacific Railway (26th May, 1874).  
(Continued)

Resolutions of House of Commons and Act 35 V, c. 71

20 And whereas the House of Commons of Canada resolved in the Session of the year One thousand eight hundred and seventy-one, that the said railway should be constructed and worked by private enterprise and not by the Dominion Government, and that the public aid to be given to secure its accomplishment should consist of such liberal grants of land and such subsidy in money or other aid, not increasing the then existing rate of taxation, as the Parliament of Canada should thereafter determine; And whereas the Statute thirty-fifth Victoria, chapter seventy-one, was enacted in order to carry out the said Agreement and resolution; but the enactments therein

30 contained have not been effectual for that purpose.

Tariff act of present session, c. 6.

And whereas by the legislation of this present Session, in order to provide means of meeting the obligations of the Dominion, the rate of taxation has been raised much beyond that existing at the date of the said resolution: And whereas it is proper to make provision for the construction of the said work as rapidly as the same can be accomplished without further raising the rate of taxation: Therefore Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

Railway to be made from near L. Nipissing to the Pacific

40 1. A railway to be called the "Canadian Pacific Railway" shall be made from some point near to and south of Lake Nipissing to some point in British Columbia on the Pacific Ocean, both the said points to be determined and the course and line of the said railway to be approved of by the Governor in Council.

Division into four sections

2. The whole line of the said railway, for the purpose of its construction, shall be divided into four sections;—the first section to

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Court of Appeal

Exhibit No. 24

Portions of an Act  
to provide for the  
construction of the  
Canadian Pacific  
Railway (26th  
May, 1874).  
(Continued)

begin at a point near to and south of Lake Nipissing, and to extend towards the upper or western end of Lake Superior, to a point where it shall intersect the second section hereinafter mentioned; the second section to begin at some point on Lake Superior, to be determined by the Governor in Council, and connecting with the first section, and to extend to Red River, in the Province of Manitoba; the third section to extend from Red River, in the Province of Manitoba, to some point between Fort Edmonton and the foot of the Rocky Mountains, to be determined by the Governor in Council; the fourth section to extend from the western terminus of the third section to some point in British Columbia on the Pacific Ocean.

First section  
Second section  
Third Section  
Fourth section

3. Branches of the said railway shall also be constructed as follows, that is to say:—

Branches

First—A branch from the point indicated as the proposed eastern terminus of the said railway to some point on the Georgian Bay, both the said points to be determined by the Governor in Council.

From eastern terminus to Georgian Bay

Secondly—A branch from the main line near Fort Garry, in the Province of Manitoba, to some point near Pembina on the southern boundary thereof.

From Fort Garry to Pembina

20 4. The branch railways above mentioned shall, for all intents and purposes, be considered as forming part of the Canadian Pacific Railway, and as so many distinct sections of the said railway, and shall be subject to all the provisions hereinafter made with respect to the said Canadian Pacific Railway, except in so far as it may be otherwise provided for by this Act.

How this Act shall apply to branches

7. The said Canadian Pacific Railway and the branches or sections hereinbefore mentioned, and the stations, bridges and other works connected therewith, and all engines, freight and passenger cars and rolling stock shall be constructed under the general superintendence of the Department of Public Works.

To be under superintendence of Department of Public Works

8. The Governor in Council may divide the several sections of the said railway into sub-sections, and may contract with any person, co-partnership or company incorporated or to be hereafter incorporated (hereinafter referred to as the "Contractors," which expression shall be understood to include a single "Contractor" for any such work) for the construction of any section or sub-section of the said railway, including all works connected therewith, and all rolling stock required to work the same, and for the working of the same as hereinafter provided, on such terms and conditions as by the Governor in Council may be deemed just and reasonable, subject to the following provisions:—

Sub-sections may be made and given out by contract

What the contracts shall include

Conditions to be observed

Total sum per mile, payable in money limited, and how to be paid

Guarantee may be given for interest only, on a further sum for 25 years: and on what conditions

Tenders to state lowest sum for guarantee

Subsidy in land

Location of land, and conditions of subsidy: sales of land, &c., by government

Right of way through public lands

Cost of surveys

(3) That the total sum to be paid to the contractors shall be stipulated in the contract, and shall be ten thousand dollars for each mile of the section or sub-section contracted for, and that such sum shall be paid to the contractors as the work progresses by monthly payments in proportion to the value of the work then actually performed, (according to the estimates of the engineers designated for the purpose by the Minister of Public Works,) as compared with the value of the whole work contracted for, including rolling stock and all things to be done or furnished by the contractors; and except money arising from the sale of lands, as hereinafter provided, no further sum of money shall be payable to the contractors as principal, but interest at the rate of four per cent. per annum for twenty-five years from the completion of the work, on a sum (to be stated in the contract) for each mile of the section or sub-section contracted for shall be payable to the contractors, and guarantees for the payment thereof shall be given from time to time to the contractors in like manner and proportion, and on like conditions, as payments are to be made on the principal sum above mentioned; and the tenders for the work shall be required to state the lowest sum per mile on which such interest and guarantees will be required;

(4) That a quantity of land, not exceeding twenty thousand acres for each mile of the section or sub-section contracted for, shall be appropriated in alternate sections of twenty square miles each along the line of the said railway or at a convenient distance therefrom, each section having a frontage of not less than three miles nor more than six miles on the line of the said railway, and that two-thirds of the quantity of land so appropriated shall be sold by the Government at such prices as may be from time to time agreed upon between the Governor in Council and the contractors, and the proceeds thereof accounted for and paid half-yearly to the contractors free from any charge of administration or management—the remaining third to be conveyed to the contractors. . . .

. . . . .

(6) That the Governor in Council may further grant to the contractors the right of way through government lands, as also any such lands required for stations or work-shops, and generally all such lands as may be necessarily required for the purpose of constructing or working the said railway.

(7) That the cost of surveys and of locating the line of the several sections and sub-sections of the said railway shall be part of the subsidy or consideration allowed to the contractors or not, as may be determined by the Governor in Council and agreed upon in the contract entered into with the contractors.

(8) Each section or sub-section of the said railway, as it is in

Record  
Court of Appeal

Exhibit No. 24

Portions of an Act to provide for the construction of the Canadian Pacific Railway (26th May, 1874). (Continued)

Record  
Court of Appeal  
Exhibit No. 24

Portions of an Act to provide for the construction of the Canadian Pacific Railway (26th May, 1874). (Continued)

whole or in part completed, shall be the property of the contractors for the same, and shall be worked by and for the advantage and benefit of such contractors under such regulations as may, from time to time, be made by the Governor in Council, as regards the rates chargeable for passengers and freight, the number and description of trains to be run, and the accommodation to be afforded for freight and passengers.

Railway, &c., to be property of contractors and worked by them.

Conditions.

(9) All and every the provisions of the "Railway Act, 1868," in so far as the provisions therein contained are applicable to the said  
10 Canadian Pacific Railway, or any section or sub-section thereof, and are not inconsistent with or repugnant to the provisions of this Act, shall be considered as forming part of this Act, and are hereby incorporated therewith.

Railway Act, 1868, to apply

(14) It shall be lawful for the contractors to take from any public lands adjacent to or near the line of the said railway, all stone, timber, gravel and other materials which may be necessary or useful for the construction of the railway; and also to lay out and appropriate to the use of the contractor a greater extent of lands, whether public or private, for stations, depots, workshops, buildings, sidetracks,  
20 wharves, harbors, and roadway, and for establishing screens against snow, then the breadth and quantity mentioned in "The Railway Act, 1868," such greater extent taken, in any case, being allowed by the government, and shown on the maps or plans deposited with the Minister of Public Works.

Power to take materials

And to take extra land for stations, &c.

12. In case it shall be found by the Governor in Council more advantageous to construct the said railway or any portion thereof, as a public work of the Dominion of Canada, the construction thereof shall be let out by contracts offered to public competition, and the  
30 Governor in Council may establish from time to time the mode and regulations under which the contract shall be given, and the railway or such portion thereof shall be constructed and worked after it shall have been completed, including the rates to be charged for freight and passengers; such regulations not being contrary to any of the provisions of the Acts regulating the Department of Public Works or to any other Act or law in force in the Dominion.

Any portion may be made by Government as a public work if found more advantageous.

Provision in such case.

13. The branch railways shall be constructed as follows, that is to say: That section of the first branch extending from the eastern terminus of the first section of the said railway to some point on the Georgian Bay to be fixed as aforesaid, shall be constructed by  
40 contractors as a private enterprise on the same terms and conditions as provided with respect to the main line of the said railway, or any section thereof,—or as a public work of the Dominion under such

How branch line to Georgian Bay may be made by contractors.

Or as a public work.

contract or contracts as may be agreed upon and sanctioned by the Governor in Council.

Record  
Court of Appeal

Bonuses or subsidies in aid of Railways from eastern terminus to existing or proposed Railways.

Exhibit No. 24

Portions of an Act to provide for the construction of the Canadian Pacific Railway (26th May, 1874).  
(Continued)

Conditions.

14. The Governor in Council may also grant such bonus or bonuses, subsidy or subsidies to any company or companies already incorporated or to be hereafter incorporated, not exceeding twelve thousand dollars per mile, as will secure the construction of the branch lines extending from the eastern terminus of the said Canadian Pacific Railway to connect with existing or proposed lines of railway; the granting of such bonuses or subsidies to be subject to such

10 conditions for securing the running powers and other rights over and with respect to the whole or any portion of the said branch railway, to the owners or lessees of the main line of the said railway or of any section thereof, or to the owners or lessees of any other railway connecting with the said branch railway, as the Governor in Council may determine; but every Order in Council granting such subsidy shall be laid before the House of Commons for its ratification or rejection, and shall only be operative after its ratification by resolution of the House.

Ratification by House of Commons required.

Arrangements for leasing or working any portion made by Government.

15. The Governor in Council may, at any time after the construction of the said branch railway, make with the company or companies owning any portion of the said branch railway, such arrangement for leasing to such company or companies any portion of the said branch railway which may belong to the government, on such terms and conditions as may be agreed upon,—such lease not to exceed a term of ten years; and may also make such other arrangements as may be deemed advantageous for working the said railway in connection with that portion of the said branch railway belonging to such company or companies: Provided no such contract for leasing the said branch railway, and no such agreement for working the said

20 railway in connection with any other railway shall be binding until it shall have been laid before the House of Commons for one month without being disapproved unless sooner approved by a resolution of the House.

Proviso: for approval of House of Commons.

30

Branch from Fort Garry to Pembina, how to be made.

16. The branch of the said railway, from Fort Garry to Pembina, in the Province of Manitoba, shall be built either as a private enterprise, on the terms and conditions on which the main line may be constructed, or as a public work of the Dominion, under such contract or contracts as may be agreed upon and sanctioned by the Governor in Council.

Act of 1872, c. 71, repealed

40 23. The Act intituled "An Act respecting the Canadian Pacific Railway," passed in the session of 1872, by the Parliament of Canada, is hereby repealed.

No. 25  
Company's Document

Sessional Papers, House of Commons, 1875, Vol. 8, No. 7

Exhibit No. 25

Sessional Paper No. 19 (P. 41)

Lord Carnarvon terms for the completion of the Canadian Pacific Railway to British Columbia following arbitration between Canada & B. C. (Nov. 17th, 1874).

Carnarvon Terms extracted from Letter from The Earl of Carnarvon to the Earl of Dufferin, Governor General of Canada, dated November 17, 1874.

1. That the Railway from Esquimalt to Nanaimo shall be commenced as soon as possible and completed with all practicable des-  
10 patch.

2. That the surveys on the mainland shall be pushed on with the utmost vigor. On this point after considering the representations of your ministers, I feel that I have no alternative but to rely as I do most fully and readily upon their assurances that no legitimate effort or expense will be spared, first to determine the best route for the line and secondly, to proceed with the details of the Engineering work. It would be distasteful to me, if indeed it were not impossible to pre-  
20 me to doubt that your Government will loyally do its best in every way to accelerate the completion of a duty left freely to its sense of honor and justice.

3. That the wagon road and telegraph line shall be immediately constructed. There seems to be some difference of opinion as to the special value to the Province of the undertaking to complete these two works but after considering what has been said, I am of opinion that they should both be proceeded with at once as is indeed suggested by your ministers.

4. That \$2,000,000 a year and not \$1,500,000 shall be the mini-  
30 mum expenditure on Railway works within the Province from the date at which the surveys are sufficiently completed to enable that amount to be expended on construction. In naming this amount I understand that, it being at the interest and the wish of the Dominion Government to urge on with all speed the completion of the works now to be undertaken, the annual expenditure will be as much in excess of the minimum of \$2,000,000 as in any year may be found practicable.

5. Lastly, that on or before the 31st December, 1890, the railway shall be completed and open for traffic from the Pacific seaboard to a  
40 point at the Western end of Lake Superior, at which it will fall into connection with the existing lines of Railway, through a portion of the United States, and also with the navigation on Canadian waters. To proceed at present with the remainder of the Railway extending

by the country Northward of Lake Superior to the existing Canadian lines ought not in my opinion to be required and the time for undertaking that work must be determined by the development of settlement and the changing circumstances of the country. The day is however, I hope, not very distant when a continuous line of railway through Canadian territory will be practicable and I therefore look upon this portion of the scheme as postponed rather than abandoned.

Record  
Court of Appeal  
Exhibit No. 25

Lord Carnarvon terms for the completion of the Canadian Pacific Railway to British Columbia following arbitration between Canada & B. C. (Nov. 17th, 1874.) (Continued)

**No. 26**

Company's Document

10 **Obtained from Assistant Clerk of His Majesty's Privy Council for Canada**

Exhibit No. 26

Certified to be a true copy of a Minute of a Meeting of the Committee of the Privy Council, approved by His Excellency the Governor-General on the 19th February, 1875.

Dominion Order-in-Council No. 150 (19th Feb., 1875).

P.C. 150

The Committee of the Privy Council have had under consideration the Report, hereunto annexed, from the Hon. the Minister of Public Works, having reference to the determination of the Eastern Terminus of the Canadian Pacific Railroad, and the construction of the Branch thereof from such Eastern Terminus to the Georgian Bay, and they respectfully submit their concurrence in the said Report and advise that the same be approved and acted on.

A. M. HILL

Asst. Clerk of the Privy Council.

Department of Public Works

Ottawa, 17th February, 1875.

The undersigned has the honor to recommend:

1. That in accordance with the authority conferred by the Canadian Pacific Railway Act 1874 (37th Vic., Ch. 14) the Easterly point from whence the Canadian Pacific Railway shall be made shall be determined as that laid down on the map of the Huron and Ottawa Territory hereunto annexed, being a point near to and South of Lake Nipissing, that is to say, as near as may be in the centre of Four Townships Lettered A, B, C, and D, shewn on the said Map, and lying to the East of the Northerly continuation of the Bobcaygeon Road and to the North of a Line passing through Lake Burnt and that such point be accordingly approved.

2. That in further pursuance of the said Act, a Branch of the Railway be constructed from the point hereinbefore indicated as the

Record  
 Court of Appeal  
 Exhibit No. 26

Dominion Order-  
 in-Council No. 150  
 (19th Feb., 1875).  
 (Continued)

proposed Eastern terminus of the said Railway to a point on the Georgian Bay, being on the Harbour at the mouth of the River French, being about eighty-five miles in length, the points and approximate route and course being shewn on the Map hereunto annexed, and he recommends that both the said points be determined by Your Excellency in Council.

3. That the grades of the said Branch Railway, and the materials and manner of and in which the several works forming part thereof shall be constructed and the mode of working the railway, including  
 10 the description and the capacity of the Locomotive engines and other rolling stock, be determined, (subject to such further conditions as the Governor in Council may make for securing performance of the Contract) as follows:

(**Note**—The general conditions which follow are technical specifications for roadbed, rails, bridges, stations, shops, etc., and are omitted.)

4. That the Branch be constructed according to the preceding general conditions and specifications and also according to the following conditions, which are to form part of the contract, viz.:

20 *a.* That the total sum to be paid to the contractors shall be stipulated in the contract, and shall be ten thousand dollars for each mile of the Branch railway, and that such sum be paid to the contractors as the work progresses by monthly payments in proportion to the value of the work then actually performed (according to the estimates of the Engineers designated for the purpose by the Minister of Public Works) as compared with the value of the whole work contracted for, including rolling stock and all things to be done or furnished by the contractors; and except money arising from the sale of lands, as hereinafter provided, no further sum of money shall be payable to the  
 30 contractors as principal, but interest at the rate of four percent per annum for twenty-five years from the completion of the work, on the sum to be stated in the tender and contract for each mile of the Branch railway shall be payable to the contractors, and guarantees for the payment thereof shall be given from time to time to the contractors in like manner and proportion, and on like conditions, as payments are to be made on the principal sum above mentioned and the tenders for the work shall be required to state the lowest sum per mile on which such interest and guarantees will be required.

*b.* That a quantity of land, not exceeding twenty thousand acres,  
 40 for each mile of the Branch, shall be appropriated in alternate sections of twenty square miles each along the line of the said railway or at a convenient distance therefrom, each section having a frontage of not less than three miles nor more than six miles on the line of the said railway, and that two-thirds of the quantity of land so appropriated

be sold by the Government at such prices as may be from time to time agreed upon between the Governor in Council and the contractors, and the proceeds thereof accounted therefor and paid half-yearly to the contractors free from any charge of administration or management—the remaining third to be conveyed to the contractors. The said lands to be of fair average quality, and not to include any land already granted or occupied under any patent, license of occupation or pre-emption right; and when a sufficient quantity cannot be found in the immediate vicinity of the railway, then the same quantity, or as much

10 as may be required to complete such quantity, shall be appropriated at such other places as may be determined by the Governor in Council; and inasmuch as the Dominion Government may not become the proprietors of land on the line of this Branch the land may be given to contractors in some portion of the territory owned by the Dominion.

Record  
Court of Appeal

Exhibit No. 26

Dominion Order-  
in-Council No. 150  
(19th Feb., 1875).  
(Continued)

*c.* That the said blocks of land to be appropriated as aforesaid, shall be designated by the Governor in Council as soon as the line of railway or any section or subsection thereof is finally located: Pro-  
20 vided that all such payments of the proceeds of lands sold, and conveyances of lands to be granted shall be so made and granted from time to time as the work of construction is proceeded with, in like manner and proportion, and on like conditions as the money and guarantees above mentioned, and subject to any conditions of the contract as respects the construction or the working of the railway after completion.

*d.* That the cost of surveys and of locating the line of the Branch railway shall be part of the subsidy or consideration allowed to the contractors.

*e.* The Branch shall be the property of the contractors for the  
30 same, and shall be worked by and for the advantage and benefit of such contractors under such regulations as may, from time to time, be made by the Governor in Council, as regards the rates chargeable for passengers and freight, the number and description of trains to be run, and the accommodation to be afforded for freight and passengers.

*f.* That the works on the said Branch be commenced on the first day of June next, and thence continuously proceeded with and be fully completed and equipped for working on or before the 1st day of January in the year of our Lord one thousand eight hundred and seventy-seven.

40 5. That the Governor in Council shall have the power at any time to suspend the progress of the work until the then next Session of Parliament.

That there be reserved to the Government the right to purchase under the authority of Parliament the said Branch Railway on pay-

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**Exhibit No. 26**

Dominion Order-  
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(Continued)

ment of a sum equal to the actual cost of the same, and ten percent in addition thereto, the subsidies in lands on money granted or paid by government for the construction of the said Branch being first returned or deducted from the amount to be paid, the lands sold being valued at the full amount the contractors may have received from the sale of such lands as may have been sold.

That prior to the opening of the said Branch line of Railway a Traffic arrangement and agreement to grant running powers on terms to be approved by the Governor in Council shall be made between  
10 the said Contractor and The Canada Central Railway Company, The Montreal Northern Colonization Railway Company, The Kingston and Pembroke Company over the entire line. The Northern Colonization Railway Company, and the Kingston and Pembroke Railway Company and such other Companies as may have the termini of their systems on or towards Lake Huron being secured running powers for their trains over the Canada Central Railway, from the point of intersection of their respective lines with the portion of the said line subsidized, or from within five miles of the said subsidized portion by  
20 an order of the Governor in Council granting a subsidy to said Company dated the fourth day of November (1874) now last past. All such Companies shall have these running powers continued from the point of intersection of the subsidized line westward over this line on equitable terms, provided that the same may be mutually agreed upon by the Contractor and the Companies above named or to be hereafter designated as aforesaid; and in the event of a disagreement the conditions shall be settled by arbitration, one arbitrator to be selected by the contractor, one by each Company and one by the Governor in Council, and the decision of such arbitrators or of any two of them to be final.

30 Signed A. MACKENZIE,  
Minister of Public Works.

**No. 27**

Company's Document

**Statutes of Canada 1875, 38 Victoria**

Chapter 73

**Exhibit No. 27**

Portions of an Act  
to incorporate a  
company to  
construct, own and  
operate a railway  
from Red River, in  
the Province of  
Manitoba, to a  
point in British  
Columbia, on the  
Pacific Ocean  
(8th April, 1875).

An Act to incorporate a Company to construct, own and operate a Railway from Red River, in the Province of Manitoba, to a point in British Columbia, on the Pacific Ocean.

(Assented to 8th April, 1875.)

40 Whereas the construction of a line of railway through British Territory, from Red River, in the Province of Manitoba, to a point in British Columbia, on the Pacific Ocean, would be a work of great  
Prearr.

importance to the interests of the Dominion; and whereas the persons hereinafter named have formed themselves into an association for the purpose of constructing the said line of railway, and have prayed by petition to be incorporated as a company, and to be invested with the powers necessary for the purpose, and it is expedient to grant the prayer of their petition: Therefore Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada enacts as follows:

Record  
Court of Appeal  
Exhibit No. 27

Portions of an Act to incorporate a company to construct, own and operate a Railway from Red River, in the Province of Manitoba, to a point in British Columbia, on the Pacific Ocean (8th April, 1875). (Continued)

Railway Act to apply

2. "The Railway Act, 1868," so far as the provisions contained  
10 therein are applicable to the undertaking authorized by this Act, and in so far as they are not inconsistent with or contrary to the provisions of this Act, are hereby incorporated with this Act.

Line of railway and works of the company

3. The said Company and their agents and servants may lay out, construct, equip, maintain and work a continuous double or single track iron or steel railway, with a gauge of four feet eight inches and a half, and also a telegraph line throughout the entire length of the said railway, with the proper appurtenances, from Red River in the Province of Manitoba to some point in British Columbia, on the Pacific Ocean, either upon the mainland or upon Vancouver Island,  
20 and the said Company shall also have power and authority to build,

Steamers and other vessels

own and operate steam and other vessels on all waters lying between Red River and the Pacific Ocean, and on the waters of the Pacific Ocean, and to build wharves and harbours thereon, in connection with such line of railway.

Line to be approved by Governor in Council

4. The course and line of the said railway and the termini thereof shall be fixed and determined by the Company subject to the approval of the Governor in Council.

Company may receive grants from Government, &c., on conditions to be agreed upon

7. It shall be lawful for the Company to accept and receive from the Government of Canada, or from the Government of any Province,  
30 or from any municipality in Canada, a subsidy or aid in money or bonds, or securities, payable in such manner, at such times, on such conditions, and at such places in Canada or elsewhere as may be agreed upon between the Company and the Government of Canada, or the Government of any Province, or any municipality in Canada, or as may be prescribed and directed by any Act of Parliament authorizing the Government to grant a subsidy, or as may be provided in any agreement between the Company and the Government which may be lawfully made respecting the said subsidy; and the provisions of "The Canadian Pacific Railway Act, 1874," shall apply to this Act

37 V., c. 14, to apply to the railway for certain purposes

40 and to the railway thereby authorized to be constructed in so far as shall be necessary to enable the Company to make any such agreement with the Government of Canada as shall be authorized by such Act, and to carry out and perform all the terms and conditions of such

**Record**  
**Court of Appeal**  
**Exhibit No. 27**

Portions of an Act to incorporate a company to construct, own and operate a Railway from Red River, in the Province of Manitoba, to a point in British Columbia, on the Pacific Ocean (8th April, 1875).  
 (Continued)

agreement, and all the provisions, terms and conditions contained in the said Act, in so far as they apply to the said railway, either in its construction or working. And the said Company and the Board of Directors thereof for the time being, whether provisional or elected, are hereby authorized to make and execute such agreement, depositing to the credit of the Receiver General such sum of money or securities as may be required under the said Act, and in the event of being unable to agree with the Government of Canada in respect of such construction and working, such Directors shall have the right to receive from the Receiver General of Canada the said deposit therein provided for.

42. The Company shall not have power to acquire any land, or to commence the construction of the railway hereby authorized until after such day as shall be fixed by Proclamation of the Governor in Council.

Company not to commence construction until allowed by proclamation

**No. 28**  
 Company's Document

**Obtained from Assistant Clerk of His Majesty's Privy Council for Canada**

**Exhibit No. 28**

Dominion Order-in-Council No. 486. (1st June, 1877.)

20 Copy of a Report of a Committee of the Honourable the Privy Council, approved by His Excellency the Governor-General in Council, on the 1st June, 1877.

P.C. 486

On a Memorandum dated 21st May, 1877, from the Honorable the Minister of Public Works, recommending that the line of the Canadian Pacific Railway as laid down in a Map prepared by Mr. Sandford Fleming, Chief Engineer, of the said Railway, a copy of which accompanies said Memorandum, shall be determined, as required by Section 1 of the Canadian Pacific Railway Act of 1874, and which line may be briefly described as follows:

Commencing at Fort William on the Kaministiquia River, following a North-Westerly direction to the North of Lac-des-Milles-lacs, and crossing the Winnipeg River at Keewatin; thence to a point on the Red River named Selkirk, as shown on the map; thence in a direct line to a point near Swan River named Northcote; thence South-Westerly to Livingston; thence in a nearly due west direction, to the crossing of the South branch of the Saskatchewan; thence in a North-Westerly direction to the neighborhood of Fort Edmonton; thence by the McLeod and Athabaska Rivers to Jasper House and Henry House; and thence to Tete Jaune Cache.

That in the event of Bute Inlet being selected as the Western terminus of the said Railway the line will follow the valley of the Fraser River from Tete Jaune Cache to the neighborhood of Fort George; thence from the crossing of the Stewart River at the junction with the Chilaccot River, ascend the valley of the Chilaccot River to a point near its source; thence in a direct line to the Nazco River, and ascending the valley of the Nazco River to the Chiscoh River towards Tatla Lake and Tatlayaca Lake, and the East branch of the Homattico River; and descend the valley of the Homattico to the waters of the Pacific at Bute Inlet.

That in the event of the Dean Channel route being adopted, the above line will be followed from Tete Jaune Cache to near where it strikes the Nazco River; whence it will follow generally the line of the Blackwater River to Thracla Lake; thence descend the valley of the Salmon River to the waters of the Pacific at Dean Channel.

The Minister further recommends that the sections referred to in the second clause of the Canadian Pacific Railway Act of 1874, shall be defined as follows: The first section to begin at a point near the South of Lake Nipissing and to extend to the neighborhood of Fort William at the upper or Western end of Lake Superior; the second section to commence in the neighborhood of Fort William, and to extend to the crossing of the Red River at Selkirk, in the Province of Manitoba, a distance of about 412 miles; the third section to extend from the said crossing of the Red River at the Western end of the second section, to the boundary line of British Columbia West of Jasper House; the fourth section to extend from the last named point to the Pacific Ocean—the point to be named in a subsequent Order in Council after the completion of the surveys now in progress.

The Committee concur in the foregoing recommendations and submit the same for Your Excellency's approval.

Certified,

(Signed) W. A. HIMSWORTH,

C.P.C.

Department of Public Works,

Ottawa, May 21st, 1877.

#### MEMORANDUM

The Undersigned recommends that the line of the Canadian Pacific Railway as laid down on a Map prepared by Mr. Sandford Fleming, Chief Engineer of the said Railway, a copy of which accompanies this memorandum, shall be determined, as required by Section 1 of the Canadian Pacific Railway Act of 1874, and which line may be briefly described as follows:

Record

Court of Appeal

Exhibit No. 28

Dominion Order-  
in-Council No. 486.  
(1st June, 1877.)  
(Continued)

Record

Court of Appeal

Exhibit No. 28

Dominion Order-  
in-Council No. 486  
(1st June., 1877).  
(Continued)

Commencing at Fort William on the Kaministiquia River, following a north-westerly direction to the north of Lac-des-milles Lacs, crossing the Winnipeg River at Keewatin; thence to a point on the Red River named Selkirk, as shown on the Map; thence in a direct line to a point near Swan River named Northcote; thence south-westerly to Livingston; thence in a nearly due west direction, to the crossing of the south branch of the Saskatchewan; then in a north-westerly direction to the neighbourhood of Fort Edmonton; thence, by the McLeod and Athabaska Rivers to Jasper House and Henry 10 House; and thence to Tete Jaune Cache.

That in the event of Bute Inlet being selected as the Western terminus of the said Railway, the line will follow the valley of the Fraser River from Tete Jaune Cache to the neighbourhood of Fort George; thence from the crossing of the Stewart River at the junction with the Chilacot River, ascend the valley of the Chilacot River to a point near its source; thence in a direct line to the Nazco River, and ascending the valley of the Nazco River to the Chiscot River towards Tatla Lake and Tatlayaca Lake, and the east branch of the Homattico River, and descend the valley of the Homattico to the waters of the 20 Pacific at Bute Inlet.

That in the event of the Dean Channel route being adopted, the above line will be followed from Tete Jaune Cache to near where it strikes the Nazco River; whence it will follow generally the line of the Blackwater River to Thracla Lake; thence descend the valley of the Salmon River to the waters of the Pacific at Dean Channel.

The undersigned further recommends that the sections referred to in the second clause of the Canadian Pacific Railway Act of 1874, shall be defined as follows:—the first section to begin at a point near the south of Lake Nipissing, and to extend to the neighbourhood of 30 Fort William at the upper, or western end of Lake Superior; the second section to commence in the neighbourhood of Fort William, and to extend to the crossing of the Red River at Selkirk, in the Province of Manitoba, a distance of about 412 miles; the third section to extend from the said crossing of the Red River, at the western end of the second section, to the boundary line of British Columbia, west of Jasper House; the fourth section to extend from the last named point to the Pacific Ocean—the point to be named in a subsequent Order-in-Council, after the completion of the surveys now in progress.

Respectfully submitted,

40

A. MacKENZIE,  
Minister of Public Works.



MAP  
OF THE COUNTRY TO BE TRAVERSED BY THE  
**CANADIAN PACIFIC RAILWAY**  
TO ACCOMPANY PROGRESS REPORT ON THE EXPLORATORY SURVEYS  
1876.

Sandford Fleming, Engineer-in-Chief

*Map referred to in Report  
to Council of May 21 of 1877  
and in Order of Council  
of May 1877  
Alexander  
Secretary of Public Works*

**EXPLANATIONS:**

Line of location of the proposed railway	1/4 in.
Line of location of proposed	1/8 in.
Line of location of proposed	1/16 in.
Line of location of proposed	1/32 in.
Line of location of proposed	1/64 in.
Line of location of proposed	1/128 in.
Line of location of proposed	1/256 in.
Line of location of proposed	1/512 in.
Line of location of proposed	1/1024 in.
Line of location of proposed	1/2048 in.
Line of location of proposed	1/4096 in.
Line of location of proposed	1/8192 in.
Line of location of proposed	1/16384 in.
Line of location of proposed	1/32768 in.
Line of location of proposed	1/65536 in.
Line of location of proposed	1/131072 in.
Line of location of proposed	1/262144 in.
Line of location of proposed	1/524288 in.
Line of location of proposed	1/1048576 in.
Line of location of proposed	1/2097152 in.
Line of location of proposed	1/4194304 in.
Line of location of proposed	1/8388608 in.
Line of location of proposed	1/16777216 in.
Line of location of proposed	1/33554432 in.
Line of location of proposed	1/67108864 in.
Line of location of proposed	1/134217728 in.
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Line of location of proposed	1/536870912 in.
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Line of location of proposed	1/584600654810312475799823367709574659584 in.
Line of location of proposed	1/11692013096206249515996467344191151191168 in.
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Line of location of proposed	1/4676805238482499806398586937676444676672 in.
Line of location of proposed	1/9353610476964999612797173875352889353344 in.
Line of location of proposed	1/1870722095392999925594354770670577666688 in.
Line of location of proposed	1/3741444190785999851188709541341155333376 in.
Line of location of proposed	1/7482888381571999702377419082682310666752 in.
Line of location of proposed	1/14965776763439994044758377165646213333504 in.
Line of location of proposed	1/29931553526879988089516754331292426667008 in.
Line of location of proposed	1/59863107053759976179033508662584933334016 in.
Line of location of proposed	1/11972621410751995235806701732569866668032 in.
Line of location of proposed	1/23945242821503990471613403465139733361664 in.
Line of location of proposed	1/47890485643007980943226806930279466723296 in.
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Line of location of proposed	1/245199286492199843549332108161502297774208 in.
Line of location of proposed	1/490398572984399687098664216323004595548416 in.
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Line of location of proposed	1/822752278505103764443997688822854133335312 in.
Line of location of proposed	1/164550457701020748888799537765708666666624 in.
Line of location of proposed	1/32910091540204149777759907553141733333248 in.
Line of location of proposed	1/6582018308040829955551981510628366666496 in.
Line of location of proposed	1/1316403661608165991110303022125673333992 in.
Line of location of proposed	1/263280732321632198222060604425344666984 in.
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Line of location of proposed	1/421249171546211517155296966805514747152 in.
Line of location of proposed	

Record  
Court of Appeal

**No. 29**  
Company's Document

**Obtained from Assistant Clerk of his Majesty's Privy Council  
for Canada**

Exhibit No. 29

Dominion Order-  
in-Council No. 612,  
(13th July, 1878).

Certified to be a true copy of a Minute of a Meeting of the Committee of the Privy Council, approved by His Excellency the Governor-General of the 13th July, 1878.

P.C. 612

On a Memorandum dated 11th July, 1878, from the Hon. the  
10 Minister of Public Works reporting that on the 1st June 1877, an Order in Council was passed, in accordance with the provisions of the Canadian Pacific Railway Act of 1874, defining the route of the railway between Fort William on the Kaministiquia River, and Jasper House, and Tete Jaune Cache.

That the same Order in Council also defined the route from the last named point to the Pacific Ocean in the event of the Bute Inlet or Dean Inlet, routes being ultimately adopted, these being the routes through British Columbia one of which at the time it seemed probable would be adopted.

20 That later information has shown that it would be in the public interest that the route of the railway, from the neighborhood of the Tete Jaune Cache, should be towards Burrard Inlet.

The Minister therefore recommends that the route of the railroad shall be defined generally as passing from the neighbourhood of the Tete Jaune Cache, by the Albreda River, to the North Thompson River, and descending the Valley of the said North Thompson River towards Kamloops Lake to the Fraser Valley at Lytton, and thence descending the Valley of the Fraser, by Gale and New Westminster, to Port Moody, or such other point, on or near Burrard Inlet, as may  
30 be found most convenient for the purpose of Harbour accommodation.

The Committee submit the above recommendation for Your Excellency's approval.

A. M. HILL  
Asst. Clerk of the Privy Council.

**No. 30**  
Company's Document

**Journals of the House of Commons, 1879** (P. 418)

Record  
Court of Appeal

Exhibit No. 30

Resolutions Introduced by Hon. Sir Charles Tupper in House of Commons on May 10th, 1879, and Passed by the House, on the 12th and 13th of May 1879.

Resolutions introduced by Hon. Sir Charles Tupper in House of Commons on May 10th, 1879, and passed by the House on the 12th and 13th of May, 1879.

10 “1. Resolved, That engagements have been entered into with British Columbia as a condition of union with Canada, that a line of railway to connect the Atlantic with the Pacific shall be constructed with all practicable speed.

“2. Resolved, That the Pacific Railway would form a great imperial highway across the continent of America entirely on British soil, and would provide a new and important route from England to Australia, to India and to all the dependencies of Great Britain in the Pacific; as also to China and Japan.

“3. Resolved, That reports from the Mother Country set forth an unprecedented state of enforced idleness of the working classes, and the possibility of a scheme of relief on a large scale being found indispensable to alleviate destitution.

20 “4. Resolved, That the construction of the Pacific Railway would afford immediate employment to great numbers of workmen, and would open up vast tracts of fertile land for occupation, and thus would form a ready outlet for the over-populated districts of Great Britain and other European countries.

“5. Resolved, That it is obvious that it would be of general advantage to find an outlet for the redundant population of the Mother Country within the Empire, and thus build up flourishing colonies on British soil, instead of directing a stream of immigration from England to foreign countries.

30 “6. Resolved, That in view of the importance of keeping good faith with British Columbia, and completing the consolidation of the Confederation of the Provinces in British North America, and for the purpose of extending relief to the unemployed working classes of Great Britain, and affording them permanent homes on British soil; and in view of the national character of the undertaking, the Government of Canada is authorized and directed to use its best efforts to secure the co-operation of the Imperial Government in this great undertaking, and obtain further aid by guarantee or otherwise, in the construction of this great national work.

40 “7. Resolved, That it is further expedient to provide

“(a) That one hundred million acres of land, and all the minerals

Record  
Court of Appeal

Exhibit No. 30

Resolutions introduced by Hon. Sir Charles Tupper in House of Commons on May 10th, 1879, and passed by the House on the 12th and 13th of May, 1879.

(Continued)

they contain, be appropriated for the purpose of constructing the Canadian Pacific Railway.

“(b) That the land be vested in Commissioners to be specially appointed, and that the Imperial Government be represented on the Commission.

“(c) That all the ungranted land within twenty miles of the line of the Canadian Pacific Railway belonging to the Dominion be vested in such Commission; and that when the lands along the line of the Canadian Pacific Railway are not of fair average quality for settlement, a corresponding quantity of lands of fair average quality shall be appropriated in other parts of the country, to the extent in all of 100,000,000 of acres.

“(d) That the said Commissioners be authorised to sell, from time to time, any portions of such lands at a price to be fixed by the Governor-in-Council, on their recommendation, at a rate of not less than \$2 per acre; and that they be required to invest the proceeds of such sales in Canadian Government securities, to be held exclusively for the purpose of defraying the cost of the construction of the Canadian Pacific Railway.

20 “8. Resolved, That the withdrawal for sale and settlement of the lands for twenty miles on each side of the located line of the Pacific Railway, has, in part, had the effect of throwing settlements south and west of Lake Manitoba.

“9. Resolved, That in the existing state of things, it is desirable to combine the promotion of colonisation with railway construction on the C.P.R. west of Red River.

30 “10. Resolved, That the Government be authorised and directed to locate a portion of the Canadian Pacific Railway from the Red River, westerly, running to the south of Lake Manitoba, with branch to Winnipeg; and if they deem it advisable to enter into a contract for expending a sum not exceeding \$1,000,000 in constructing the said railway without previously submitting the contracts to Parliament.

“11. Resolved, That it is expedient to make further explorations in the Peace and Pine River Districts and other sections of the country not yet examined, in order to ascertain the feasibility of a line through the largest extent of fertile territory, before beginning the work of construction in British Columbia.

40 “12. Resolved, That in the opinion of this House the selection of the Burrard Inlet terminus was premature.

“13. Resolved, That it is necessary to keep good faith with

British Columbia, and commence the construction of the Railway in that Province as early as is practicable.

“14. Resolved, That the Government be authorised and directed to make such further explorations as they may deem necessary for the said purpose, and so soon as they have finally selected and located the line, to enter into contracts for constructing a portion of the same, not exceeding 125 miles, without the further sanction of Parliament, so that the work of construction may, at latest, be commenced during the present season, and, thereafter, be vigorously prosecuted.”

10

MR. TUPPER.

Record  
Court of Appeal

Exhibit No. 30

Resolutions introduced by Hon. Sir Charles Tupper in House of Commons on May 10th, 1879, and passed by the House on the 12th and 13th of May, 1879.  
(Continued)

**No. 31**

Company's Document

**Statutes of Canada 1879, 42 Victoria**

Chapter 14

Exhibit No. 31

An Act further to amend “The Canadian Pacific Railway Act, 1874.”  
(Assented to 15th May, 1879.)

Portions of an Act further to amend “The Canadian Pacific Railway Act, 1874” (15th May, 1879).

Preamble

Whereas it is expedient to provide for the connection of the main line of the Canadian Pacific Railway with the City of Winnipeg and the Pembina branch of the said railway: Therefore Her  
20 Majesty by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

Branch line to  
Winnipeg authorized37 V., c. 14. to  
apply.

1. A branch of the Canadian Pacific Railway shall be constructed from some point west of the Red River on that part of the main line running south of Lake Manitoba, to the City of Winnipeg, there to connect with the branch line from Fort Garry to Pembina; and all the provisions of “The Canadian Pacific Railway Act, 1874,” with respect to branches of the said railway, not inconsistent with this Act, shall apply to the branch to be constructed under this Act.

Expenditure of  
\$1,000,000  
authorized

2. A sum not exceeding one million of dollars, may be expended  
30 on that part of the main line west of the Red River, and the branch hereby authorized, without the previous submission of the contract under which such expenditure is made to Parliament, if the Governor in Council deem such expenditure expedient.

How to be paid  
and accounted for

3. The sums of money, of which the expenditure is hereby authorized shall be paid out of the sum appropriated for the purpose in the present Session, and accounted for under the provisions of the twenty-second section of the Act hereby amended.

Record  
Court of Appeal

No. 32  
Company's Document

Statutes of Canada 1879, 42 Victoria  
Chapter 9

Exhibit No. 32

Portions of an Act to amend and consolidate "The Railway Act 1868" and the Acts amending it (15th May, 1879).

An Act to Amend and Consolidate "The Railway Act 1868" and the Acts amending it.

(Assented to 15th May, 1879.)

7. The Company shall have power and authority,—

9. To make branch railways, if required and provided by the Special Act, and to manage the same, and for that purpose to exercise all the powers, privileges and authorities necessary therefor, in as full and ample a manner as for the railway.

102. Subject to the provisions hereinafter made, the Act passed in the thirty-first year of Her Majesty's reign, and known as "The Railway Act, 1868"; the act passed in the thirty-fourth year of Her Majesty's reign, and intituled "An Act to enable certain Railway Companies to provide the necessary accommodation for the increasing traffic over their Railways, and to amend The Railway Act, 1868"; the Act passed in the thirty-sixth year of Her Majesty's reign, and intituled "An Act to amend the General Acts respecting Railways"; the Act passed in the year last mentioned, and intituled "An Act to amend the Act thirty-fourth Victoria, chapter forty-three, intituled 'An Act to enable certain Railway Companies to provide the necessary accommodation for the increasing traffic over their Railways, and to amend The Railway Act, 1868' "; the Act passed in the thirty-eighth year of Her Majesty's reign, and intituled "An Act further to amend the general Acts respecting Railways"; the Act passed in the year last mentioned, and intituled "An Act to extend and amend the law requiring Railway Companies to furnish returns of their capital, traffic and working expenditure"; the Act passed in the thirty-ninth year of Her Majesty's reign, and intituled "An Act to amend 'The Railway Statistics Act' "; the Act passed in the year last mentioned, and intituled "An Act to make provision for the crossing of navigable waters by Railway or other road Companies incorporated under Provincial Acts"; the Act passed in the same year, and intituled "An Act to amend the Railway Act, 1868"; the Act passed in the fortieth year of Her Majesty's reign, and intituled "An Act to amend 'The Railway Act, 1868' "; and the Act passed in the forty-first year of Her Majesty's reign, and intituled "An Act to extend to the Province of Prince Edward Island 'The Railway Act, 1868,' and certain Acts amending the same," are hereby

Repeal of former Acts  
31 V., c. 68, (1868)  
34 V., c. 43, (1871)  
36 V., c. 80, (1873)  
36 V., c. 81, (1873)  
38 V., c. 24, (1875)  
38 V., c. 25, (1875)  
39 V., c. 14, (1876)  
39 V., c. 15, (1876)  
39 V., c. 32, (1876)  
40 V., c. 45, (1877)  
41 V., c. 3, (1878)

Proviso as to the effect of such repeal

How this Act shall be construed and have effect

repealed and this Act is substituted for them: Provided always, that all Acts or enactments repealed by any of the said Acts shall remain repealed, and that all things lawfully done and all rights acquired under the Acts hereby repealed, or any of them, shall remain valid and may be enforced, and all proceedings and things lawfully commenced under them or any of them may be continued and completed, under the corresponding provisions of this Act, which shall not be construed as a new law but as a consolidation and continuation of the said repealed Acts, subject to the amendments and new provisions hereby made and incorporated with them; and anything heretofore done in pursuance or in contravention of any provision in any of the said repealed Acts which is repeated without material alteration in this Act, may be alleged or referred to as having been done in pursuance or in contravention of the repealed Act in which such provision was made or of this Act; and every such provision shall be construed as having and as having had the same effect and from the same time as under such repealed Act; and any reference in any former Act or document to any such repealed Act or to any provision in any of the said repealed Acts shall hereafter be construed as a reference to this Act or to the corresponding provision in this Act.

Record  
Court of Appeal

Exhibit No. 32

Portions of an Act to amend and consolidate "The Railway Act 1868" and the Acts amending it (15th May, 1879).  
(Continued)

**No. 33**  
Company's Document

**Obtained from Assistant Clerk of His Majesty's Privy Council for Canada.**

Exhibit No. 33

Certified copy of Order-in-Council No. 976.

Dominion order-in-council No. 976.  
(23th of June, 1879.)

WH/1

P.C. 976

Privy Council  
(Crest)

30 Canada

The Committee have had under consideration the Report of the Hon. the Minister of the Interior dated 25th June, 1879, having reference to the Resolutions adopted by the House of Commons during the recent Session of Parliament providing for the appropriation of 100 Million acres of Dominion Lands, for the purpose of constructing the Canadian Pacific Railway,—and beg leave to submit that they approve of the general principles of the said Report and recommend their adoption.

RecordCourt of AppealExhibit No. 33

Dominion order-in-council No. 978.  
(28th of June, 1879.)  
(Continued)

They further recommend that the details be subject to any arrangement that may be made by the Deputation about to proceed to England consisting of Sir John A. Macdonald, Sir Leonard Tilley, and Sir Charles Tupper, with Her Majesty's Government or with English capitalists for the raising the Capital to proceed with the construction of the Canada Pacific Railway, or with both.

And they further recommend that such Representation be authorized to modify the details as they may find it necessary in their negotiations in England.

10

(Signed) A. M. HILL,  
Asst. Clerk of the Privy Council.

**No. 34**

## Company's Document

**Obtained in the Public Archives of the Dominion of Canada,  
Macdonald Papers, Volume 127. (P. 94)**

Printed Memorandum re The Canadian Pacific Railway.

In providing for the political union in one confederacy, of the various separate provinces of British North America, certain engagements were entered into, involving a large outlay of public money.

20 One condition of union was the construction of the Intercolonial Railway from Halifax on the Atlantic, through the maritime provinces to Quebec. This work has been satisfactorily accomplished and for three years has been in complete operation.

Another condition of union was the construction of a great line of communication across the continent of North America, to connect the province of British Columbia on the Pacific coast with the several provinces bordering on the Atlantic. This great work is known by the name of the Canadian Pacific Railway.

30 The policy of Union threw upon the scanty population and the Government of the united provinces other most onerous obligations, among which may be named the acquisition of the North West, provision for the various Indian tribes scattered throughout that vast territory and the maintenance of a regiment of mounted police.

The line of the Pacific Railway practically extends from Ottawa, the seat of the general Government of the Dominion of Canada to a distance in round figures of 3,000 miles. The Canadian Government has, however, reduced the distance about 200 miles by securing,

under a subsidy, the completion of a railway from Ottawa to Lake Nipissing.

Nipissing is known as the eastern terminus of the Pacific Railway proper.

The whole line may conveniently be divided into the following sections, viz.:

- |    |   |              |
|----|---|--------------|
| 10 | 1. From the eastern terminus at Nipissing to a point of connection with that portion of the railway now under construction westerly from Lake Superior about..... | 700 miles    |
|    | 2. From Lake Superior to Red River about.....   | 410 “        |
|    | 3. From Red River to the Eastern Boundary of British Columbia about.....  | 1,100 “      |
|    | 4. Through British Columbia to the Pacific Coast (distance according to route).....   | 500 to 600 “ |

Making the whole distance from Nipissing, the eastern terminus, to a western terminus on the Pacific coast, at Burrard Inlet, Waddington Harbour, or Port Simpson, from 2,700 to 2,800 miles, according to the route selected.

- 20 The river and lake navigation of Canada extends from the Atlantic to Lake Superior, and it is considered advisable to construct the Railway first between Lake Superior and the Pacific, postponing construction between Nipissing and the western side of Lake Superior until a later period.

The whole section from Lake Superior to Red River is under construction, and the rails are laid for half the distance.

- 30 The main line touches Red River at Selkirk, from which point a branch line (the Pembina Branch 85 miles) is now in operation to the International Boundary where it connects with the Railways of the United States.

Tenders have been received for the construction of one hundred miles west of Red River, and before the expiration of the present month (August, 1879) there will have been placed under contract and in part constructed as follows:

The Pembina Branch.....	85 miles
Fort William to Red River.....	410 “
West of the Red River.....	100 “
Total.....	595 “

- 40 It is proposed in 1880 to place under contract a further extension westward from Red River of two sections, each about 100 miles in

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Exhibit No. 34

Printed memorandum re the Canadian Pacific Railway.  
(20th August, 1879.)  
(Continued)

Record  
Court of Appeal

Exhibit No. 34

Printed memo-  
randum re the  
Canadian Pacific  
Railway.  
(20th August,  
1879.)  
(Continued)

length, and to have the track laid over the whole distance in 1882. Under existing contracts, the line between Lake Superior and Red River is to be ready for traffic in 1882; and by that date the Railway will be in operation from Fort William westerly, with a total mileage of 795 miles, and taking the navigation of Lakes Manitoba and Winnipegosis into account facilities will thus be provided for introducing emigrants over a wide extent of country—viz., from the International Boundary line northerly to Cumberland House, a breadth north and south of 350 miles.

- 10 Before 1882 it is proposed to place under contract a further distance of 100 miles (the fourth 100 miles section west of Winnipeg), this portion to be ready for use in 1884, when a total length of 895 miles of the Railway would be in operation and would reach the fine fertile region in the Touchwood Hills district.

From this point, and from this date (1884), an average length of less than 100 miles of track laid a year, would reach the Eastern boundary of British Columbia in the year 1892.

- 20 This scheme would involve an annual outlay, between the boundary of British Columbia and Lake Superior, of less than £500,000 sterling without taking into account the expenditure, which has already been provided for during the present fiscal year for the section east of Red River.

It is proposed to begin the construction of the Railway at the Pacific terminus, and proceed gradually eastward to the eastern boundary of British Columbia, where construction from the east and west would meet about the same year viz., 1892.

- 30 The whole expenditure in British Columbia is estimated at about £6,000,000, but as it is proposed to spread construction over 12 years, the heaviest outlay may advantageously be delayed until the last years of that period. At first the expenditure on this section may be limited to a sum not exceeding £200,000 sterling per annum.

The rate of progress proposed between Red River and the Pacific coast will probably be sufficiently rapid for the demands of settlement; but if any necessity required, a more rapid construction could be entered upon east and west of the Rocky Mountains after the year 1884.

- 40 A telegraph has been established along the route of the Railway from Lake Superior to Red River, and thence westward to Edmonton, a distance of 1,200 miles. It is proposed that immediately after the Railway route is finally adopted to the western terminus in British Columbia, the telegraph line shall be completed from the Atlantic Telegraph System centering at Ottawa, to the Pacific coast.

There has been expended up to the beginning of the present year (1879) the sum of £770,000 sterling, in exploring the country and in engineering operations connected with the location of the Railway. Up to the same period the sum of £1,535,000 sterling has also been expended in the construction of the Railway, chiefly east of Red River. It is estimated that this section, completed and equipped with rolling stock and all necessary services, will cost £3,600,000 sterling, of which one half may be considered as already provided for.

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Court of Appeal

Exhibit No. 34

Printed memo-  
randum re the Can-  
adian Pacific Rail-  
way. (20th August,  
1879).  
(Continued)

10 The cost of the whole Pacific Railway from the Eastern Terminus to the Pacific Coast is estimated at £20,000,000 sterling. Of this sum £2,750,000 may be considered as already provided, and will be expended by the first of July next. It is proposed for the present to reserve £5,250,000 for the section between Nipissing and the line running westerly from Lake Superior. Deducting these two sums there will remain £12,000,000 to be raised within the next twelve years.

It is proposed to raise the capital required, on Government Securities, to be known as "Canadian Government Land and Railway  
20 Bonds."

These Bonds to bear 4 per cent interest, and to be a charge on the revenue of the Dominion, and further to be specially secured on 100,000,000 acres of the best unappropriated lands of Canada, and on the Pacific Railway itself, and its net revenue.

The total issue of Canadian Government Land and Railway Bonds to be limited to £17,500,000 sterling, of which it is estimated, as already stated, that the total amount required during the next 12 years will be £12,000,000 sterling.

30 The Parliament of Canada has appropriated one hundred million acres of land, and all the minerals they contain, for the purpose of constructing the Railway. Parliament has further resolved that the land shall not be sold at a less rate than eight shillings sterling per acre, thus the land alone, at its minimum price, furnishes a security equal to more than double the amount of Bonds to be issued. It may be mentioned that land, similarly situated along the Pacific Railways in the United States, by no means superior (if equal) in quality, is sold at very much higher rates.

Commissioners to be appointed by the Imperial and Canadian Governments for the sale and management of the lands and the  
40 investment of the proceeds for the redemption of the Bonds.

In submitting the above scheme for the consideration of Her Majesty's Ministers, the undersigned Delegates from the Government

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Exhibit No. 34

Printed Memo-  
randum re the Can-  
adian Pacific Rail-  
way. (20th August,  
1879.)  
(Continued)

of Canada would respectfully submit that the Canadian Pacific Railway is a work in which the Imperial Government is largely interested.

1. It is rendered necessary by the confederation of the scattered provinces of British North America under one Government, in accordance with Imperial policy.
2. It will form a great national highway across the continent of America entirely on British soil and will provide a new and important route from England to Australia, to India, and to all the  
10 dependencies of Great Britain in the Pacific Ocean.
3. It will give immediate relief to the enforced idleness of the working classes in the United Kingdom.
4. It will open up vast tracts of fertile land for occupation, and afford permanent employment and homes for English farmers, workmen and labourers and will ultimately render Great Britain independent of foreign countries for food supplies.
5. By increasing the population of Canada, it will extend the demand for English goods, as is shown by the fact that Canadians consume of the manufacturers of Great Britain an amount more than  
20 four times greater per capita than do the people of the United States.
6. It will afford not only to Canada, but to England, the shortest and most direct route to China and Japan, and develop the trade of both with those countries.
7. It will enable the Imperial Government effectually to aid in the defence of British Columbia, its harbours and coal depots, to transport troops and stores through British territory to the Pacific, and to supply the naval squadrons there with men, provisions and munitions of war.
8. It will, by rendering the centre of the British possessions  
30 accessible, afford the best means of dealing speedily and effectually when necessary, with the Indians inhabiting that region, and of preventing complications which threaten to arise between Great Britain and the United States from any hostile incursions of those wild tribes across the international boundary.
9. The establishment of the telegraph along the line of the Pacific Railway will render it immediately practicable by means of a submarine cable from the Western terminus to Asia, to establish by a new and direct route independent of European nations, telegraphic communication between Great Britain and her most important  
40 colonies.

These objects are obviously of the first importance, and it cannot

be a matter of indifference to the Imperial Government that the redundant population of the mother country should be provided with an opportunity of securing homes within the British territory in Canada, instead of increasing the wealth and adding to the strength of a foreign and possibly hostile country.

The Government of Canada is engaged in a work which will provide the means of attaining all these objects. The Pacific Railway will open a way for millions who will find profitable and permanent employment, who will uphold British institutions in North America  
 10 under a system of government in happy contrast with that of the neighbouring Republic, and who will assist in building up the Dominion of Canada, and render it at no distant day a source of strength to the British Empire.

At various times since the union of British Columbia with the other provinces, the Government of the Dominion has attempted to carry out the engagements then entered into, and considerable progress has been made. The present Government feels bound, as far as experience has shown it to be practicable to carry out the policy originally agreed upon, and stamped by the authority of the Imperial  
 20 Government.

Under the circumstances above briefly set forth, the Canadian delegates venture to hope that the Imperial Government will recognise the justice of extending aid to the work.

They are strengthened in this expectation by the consideration that Lord Carnarvon, when a member of the Cabinet and Colonial Minister, by his award between Canada and British Columbia, altered the original policy of the Canadian Government, and imposed more onerous obligations on the Dominion. Although the terms of the union of British Columbia with Canada provided for the construction  
 30 of the railway within ten years, time was not made of the essence of the contract, and the parliament of Canada adopted resolutions declaring that the work should be constructed by private enterprise only, assisted by subsidies of land and money and that such subsidies should not increase the taxation of the people of Canada. These resolutions were accepted at the time by the British Columbian delegates who settled the terms of union and were not repudiated or objected to by the government or legislature of that province. Dis-  
 40 satisfaction subsequently arose there from the delays which took place in the commencement of the actual work of construction, although they were principally caused by the difficulties of surveying and locating the route of the railway through so vast and unexplored a country. A remonstrance was consequently made to the Imperial Government by British Columbia, and the result was that Lord Carnarvon, to whom the matter was referred by the then Govern-

Record  
Court of Appeal

Exhibit No. 34

Printed Memo-  
 randum re the Can-  
 adian Pacific Rail-  
 way. (20th August,  
 1879.)  
 (Continued)

Record  
Court of Appeal

Exhibit No. 34

Printed memo-  
randum re the Can-  
adian Pacific Rail-  
way. (20th August,  
1879).  
(Continued)

ments of Canada and British Columbia, awarded that Canada should expend within the limits of the province two million dollars annually, and complete the railway eastwards to Lake Superior by the year 1890. Although it is practically impossible to fulfill this award specifically, the Canadian Government feels itself bound to carry it out as nearly as possible, and to satisfy the expectations raised in British Columbia by its terms, and considers that it has strong claims under these circumstances for aid on the Imperial Government.

The delegates suggest that important assistance may be rendered  
10 by an Imperial guarantee, which, without involving any charge whatever on the Imperial Treasury will enable Canada largely to reduce the cost of the railway, by obtaining the money necessary for its completion on more favourable terms.

The delegates feel that they are justified in assuming that a guarantee will impose no charge on the Imperial Treasury, from the fact that Canada has never failed to meet her financial obligations.

The first loan to the Province of Canada, guaranteed by the Imperial Government in 1842, of £1,500,000 sterling, has been long since paid off, and the subsequent guaranteed loans for the construc-  
20 tion of the Intercolonial Railway and the purchase of the north-west territories from the Hudson Bay Company are now being rapidly reduced by the sinking funds provided for the purpose and their annual accumulations.

Those guarantees were granted by Her Majesty's Government on the credit of Canada alone, but this loan will be specially secured. Not only will the credit of Canada be pledged for, and all its revenues charged with, the redemption of the bonds, but, as has already been stated, the tracts of land to be assigned and the railway itself with its earnings will stand as additional securities, and these securities, the  
30 delegates are sure, will be found eventually sufficient of themselves to redeem the debt without the necessity of having recourse either to the Canadian Government or the Imperial Treasury.

London, 20th August, 1879.

JOHN A. MACDONALD  
S. L. TILLEY  
CHARLES TUPPER

**No. 35**  
Company's Document

**Obtained from Assistant Clerk of His Majesty's Privy Council  
for Canada**

Record  
Court of Appeal

Exhibit No. 35

Certified to be a true copy of a Minute of a Meeting of the Committee of the Privy Council, approved by His Excellency the Governor-General on the 4th October, 1879.

Dominion Order-in-Council No. 1396,  
(4th October, 1879).

P.C. 1396

Privy Council, Canada

- 10 On the recommendation of the Hon. the Minister of Railways and Canals the Committee advise that the Order in Council of the 15th July 1878 defining the line of Route of the Canada Pacific Railway through British Columbia to a point on or near Burrard Inlet be confirmed.

A. M. HILL  
Asst. Clerk of the Privy Council.

**No. 36**  
Company's Document

**Obtained from Assistant Clerk of His Majesty's Privy Council  
for Canada**

Exhibit No. 36

20 Certified to be a true copy of a Minute of a Meeting of the Committee of the Privy Council, approved by His Excellency the Governor-General on the 22nd December, 1879.

Dominion Order-in-Council No. 1730,  
(22nd Dec. 1879).

P.C. 1730

Privy Council, Canada

- 30 On a Memorandum dated 16th December, 1879, from the Honourable the Minister of Railways & Canals, upon the Report of the Engineer in Chief of the Canadian Pacific Railway shewing that the Agent employed by the Government for the settlement of the right of way for the Canadian Pacific Railway in Manitoba, has secured the greater portion of such right of way from a point near the Penitentiary marked "B" on the annexed Plan, up to the Western boundary of the Province of Manitoba, and that it has now become desirable to adopt the location of the line for that distance.

The Minister recommends that authority be given for the establishment of the location of the Railway on the line shown on the said Plan and described as follows, viz.:

Record  
Court of Appeal

Exhibit No. 36

Dominion Order-in-Council No. 1730,  
(22nd Dec., 1879).  
(Continued)

From point "B" on the fourth base line near the Penitentiary to "C" on section 27, Township 13, Range 11 east; thence westerly keeping about one and a half miles distant from the Northern limit of the Township numbered 13 to section 27, Range IV west; thence south westerly to Section 6, Township 13, Range V, west; thence westerly keeping about half a mile north of the fourth base line to the western boundary of the Province of Manitoba.

The Committee submit the foregoing recommendation for Your Excellency's approval.

A. M. HILL  
Asst. Clerk of the Privy Council.

### CANADIAN PACIFIC RAILWAY

Office of the Engineer-in-Chief

Ottawa, 15th December, 1879.

The Hon. Sir Charles Tupper, K.C.M.G.,  
Minister of Railways & Canals.

Sir:

On the 3rd October I submitted a plan of the adopted line of Railway from the Town site of Winnipeg North-Westerly, and suggested that an Order in Council be passed establishing it as far as the point B on the Fourth base line, near the Penitentiary.

The right of way agent having reported that he has secured the greater portion of the right of way from the point B to the Western boundary of the Province of Manitoba, it now becomes desirable to formally adopt the location for that distance.

I therefore recommend that an Order in Council be passed establishing the location of the Railway on the line shewn on the attached map, viz.: From point B on the Fourth base line near the Penitentiary to C on Sec. 27, Township 13, Range II east; thence westerly keeping about one and half miles distant from the northern limit of the Township numbered 13 to Section 27 Range IV west; thence south westerly to Section 6, Township 13, Range V, west; thence westerly keeping about half a mile north of the Fourth base line to the Western boundary of the Province of Manitoba.

I have the honour to be

Sir,

Your obedient servant

(Sgd.) SANDFORD FLEMING  
Engineer in Chief.

**No. 37**  
Company's Document

**Obtained from Assistant Clerk of His Majesty's Privy Council  
for Canada**

Record  
Court of Appeal

Exhibit No. 37

Certified to be a true copy of a Minute of a Meeting of the Committee of the Privy Council, approved by His Excellency the Governor-General on the 22nd January, 1880.

Dominion Order-in-Council No. 76,  
22nd Jan., 1880.

Privy Council, Canada                      P.C. 76

On a memorandum dated 15 January, 1880, from the Hon. the  
10 Minister of Railways and Canals, stating that, upon the annexed  
Report of the Engineer-in-Chief of the Canadian Pacific Railway  
relative to the location of the line west of the Riding Mountain, he  
recommends the adoption of the route marked No. 1 on the accom-  
panying map, on the ground that while the work may prove to be  
somewhat heavier than would be the case were the route marked No.  
3 followed, the line will have the advantage of passing through a good  
country for settlement, with the least increase of distance over that of  
the line originally located across the Narrows of Lake Manitoba.

The Committee submit the foregoing recommendation for Your  
20 Excellency's approval.

(Sgd.) A. M. HILL,

Asst. Clerk of the Privy Council.

(Seal)  
Clerk of the Privy Council,  
Canada.

CONFIDENTIAL

CANADIAN PACIFIC RAILWAY

Office of the Engineer-in-Chief,

Ottawa, January 15th, 1880.

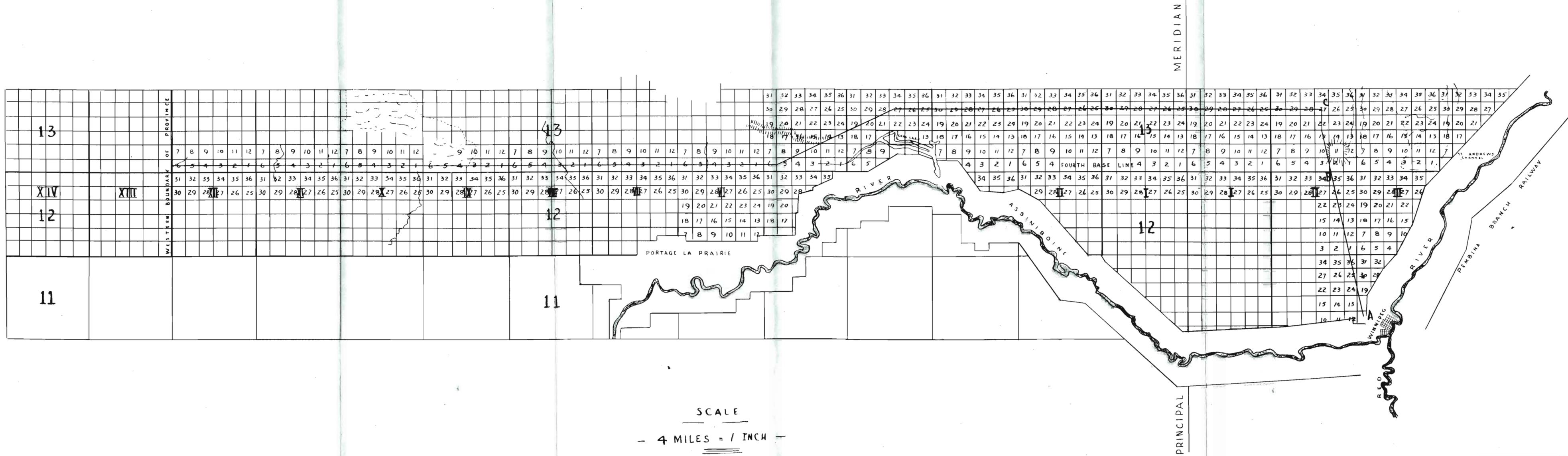
The Honorable  
30 Sir Charles Tupper, K.C.M.G.,  
Minister of Railways and Canals.

Sir,

I have the honor to report on the surveys which have been made last summer, immediately to the west of the Province of Manitoba, with the view of locating the railway west of the Riding Mountains and commencing construction on the "second one hundred mile section."

The Government having determined to change the location of that portion of the line from Selkirk, via the Narrows of Lake Mani-  
40 toba to Livingstone, and establish a line which would, generally,

PORTION OF PROVINCE PLAN  
OF  
MANITOBA  
SHOWING  
CANADIAN PACIFIC COLONIZATION RAILWAY



Record  
 Court of Appeal  
 Exhibit No. 37

Dominion Order-in-  
 Council No. 76,  
 22nd Jan., 1880  
 (Continued)

follow the course of settlement, due westerly through the Province of Manitoba, it became my duty to have an instrumental survey made through the district. The survey was placed in the hands of Mr. Marcus Smith, to whom I furnished the instructions appended.

Acting on these instructions, two lines have been surveyed, both commencing near the western boundary of the Province of Manitoba. One extends westerly, the other north-westerly. Both surveys are, however, incomplete, the winter having closed in and stopped further operations. The continuous measurements on the western line are 10 limited to 110 miles, terminating at a point about four miles beyond Fort Ellice; those on the north-western line, at Bird Tail Creek, at a crossing a little south of the sixth base line and 105 miles from the common place of beginning.

The country has been explored and some examinations have been made beyond Fort Ellice and Bird Tail Creek, but the two chains of instrumental measurements terminate at the points above mentioned. The distance unsurveyed from these points to a common point of intersection on the located line (some 60 miles west of Livingstone) may be estimated at about 150 miles.

20 Surveys were made in 1877 which shewed "that the bridging of the valleys of Bird Tail Creek, Shell River and the Assiniboine, would be so enormously heavy as to render construction" on the line then defined inexpedient. During the past summer, another line (the western line) was projected to enter the valley of the Assiniboine below the mouth of Bird Tail Creek, thence up the Assiniboine to its junction with the Qu'Appelle.

A third line (the north-western line) was surveyed during last summer, commencing at a common starting point and following the western line about 8 miles west of the western boundary of Manitoba, 30 it then diverges to the north-west in a straight course to the Little Saskatchewan, where the northern trail crosses (Tanners' Crossing), and thence in a nearly north-westerly direction to Bird Tail Creek. From Bird Tail Creek the line is projected in a northerly course towards Duck Mountain with the view of getting a practicable crossing of Shell River. From Shell River the line is projected in a north-westerly direction, but the survey has not been extended further.

For detailed descriptions of these two lines—the western and the north-western—I beg to refer to the report of Mr. Smith, of date 30th 40 December last. The surveys, as far as they have been extended, have been made with care and judgment, in proof of which, points have been found on the deep and exceptionally wide valleys which traverse the country, where the crossings, although still somewhat formidable, do not appear so objectionable as those previously reported.

On the Western Line the principal gradients are as follows:

CHARACTER OF GRADIENTS				Record Court of Appeal
	Rate per mile	Length	Total rise or fall	Exhibit No. 37
	Feet	Miles	Feet	Dominion Order-in- Council No. 76, 22nd Jan., 1880 (Continued)
Ascending Westerly—				
From the 1st to 7th mile.....	47½ to 53	5.3	259	
“ “ 21st to 38th mile.....	32 to 53	10.4	496	
“ “ 45th to 50th mile.....	35 to 53	4.3	191	
10 Descending Westerly—				
From the 40th to 44½th mile.....	47½ to 53	4.5	229	
“ “ 91st to 96th mile.....	53	5.2	274	

As the survey terminates at the bottom of the Assiniboine Valley, above Fort Ellice, the prairie level on the northern side must be regained, involving an ascent of about 300 feet.

The principal gradients on the North-Western line are:

CHARACTER OF GRADIENTS			
	Feet per mile	Length	Total rise or fall
		Miles	Feet
20 Ascending Westerly—			
From the 1st to 7th mile.....	47½ to 53	5.3	259
“ “ 18th to 33rd mile.....	37 to 53	10.3	560
“ “ 38th to 44th mile.....	32 to 53	6.3	263
“ “ 98th to 103rd mile.....	47½ to 53	4.2	216
Descending Westerly—			
From the 33rd to 38th mile.....	32 to 34	3.8	133
“ “ 92nd to 98th mile.....	42 to 45	5.9	277

On the remaining 150 miles, other deep valleys have to be crossed, 30 the principal being Shell River and the Assiniboine.

The Western line passes over ground, to the east of the Little Saskatchewan, 1,794 feet above sea level. The North-Western Line attains an altitude east of the same river of 1,800 feet, and on the slope of the Riding Mountain, to the east of Bird Tail Creek, of 2,050 feet. To give some relative idea of these elevations, I may mention that the section now under contract through Manitoba will average less than 850 feet above the same datum.

The work on both lines is heavy for a railway through a prairie country, due in some measure to the endeavour to keep the several 40 long and ascending and descending gradients under 53 feet per mile.

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Court of Appeal

Exhibit No. 37

Dominion Order-in-  
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22nd Jan., 1880  
(Continued)

This has the effect of raising the average earth excavation, according to Mr. Smith's estimate, to about 16,000 cubic yards per mile.

The surveys to the extent they have been made have been successful in establishing that workable lines can be had in the directions described. The engineering features presented by the surveys of the Western, as well as the Northwestern line, as the tables of gradients indicate, are not so favorable as could be desired, but I am aware that the Government attaches great importance to carrying the railway through this section of desirable country for settlement; that the  
10 settlers themselves have strong claims on the Government for a means of communication, and that it is the speedy occupation of the land and the cultivation of the soil by prosperous settlers, that will lead to the successful working of the railway and the general advancement of the country.

Mr. Smith has projected another line "diverging from a point near the 8th mile (from the boundary of Manitoba), and taking a south-west course, which strikes the Valley of the Assiniboine at a little above the Grand Rapids. This would be about 33 miles in length, across a plain of rich land, on which there are a number of  
20 settlements, and construction would be very easy."

I have carefully examined all the data at command, and I think that a modification of the latter line points to a scheme worthy the consideration of the Government. If the Railway be carried to a point in the Valley of the Assiniboine, near the mouth of the Little Saskatchewan, where the land remains unsurveyed and ungranted, there might here be established the site of a city which would shortly become important. This extension would be from 50 to 60 miles west of the boundary of Manitoba, and about 150 miles west of Red River. It would avoid the very elevated ground, east of the Little  
30 Saskatchewan passed over by the other lines, and which involves ascending and descending gradients of great length; it would have no heavy adverse gradients from the west, and taken with the sections now under contract, it would form a trunk line, extremely favorable for cheap transportation, all the way from Lake Superior to a point commanding a fine agricultural country, and from which desirable colonization lines might, in the near future, diverge (1) to the north-west (2) to the west and (3) to the south-west, and thus the projected city would become an important railway and business centre.

The line stretching from this projected point of junction to the  
40 north-west would pass up the Valley of the Little Saskatchewan and across to Bird Tail Creek, probably intersecting the North-west line, as recently surveyed, near the crossing of that stream, and thence on its projected course to a point on the located line west of Livingstone. One of the other lines from the point of junction would tap the coal deposits which are known to exist north of the International Bound-

ary, and the entire absence of heavy adverse gradients on the trunk line to the east would admit of coal being delivered in the Province of Manitoba at very low rates. The line diverging to the South-west would serve the country along the Valley of the Souris and, if extended beyond the International Boundary line, would run directly to the Yellowstone Valley, and would render it practicable in the future to tap that region and draw its traffic into Canadian channels.

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Dominion Order-in-Council No. 76,  
22nd Jan., 1880  
(Continued)

The extension from the end of Contract 48 (John Ryan's contract) to the point referred to near the mouth of the Little Saskatchewan, might at once be put under contract in the same manner that Contract 48 itself was let. As soon as possible thereafter, the line up the Little Saskatchewan and to the north-west may be placed under contract. I would advise that the latter line be located as a cheap surface line, that deep excavations high embankments and heavy work, with the view of securing low gradients, be avoided. That the great aim be to have the rails laid through the district with any reasonable gradients and curves that can be worked by light trains—of course, taking care that the best alignment and gradients which the peculiar features of the country will admit of be secured, without unnecessarily increasing the expense. I would aim at having as useful a line as can be had and as cheap as it is possible to make it.

The length of this line would be somewhat increased by taking the course suggested. This would be a disadvantage more than compensated, it is considered, by the greater breadth of fine country rendered available for successful settlement. The line, besides answering colonization purposes, would connect, west of Livingstone, with the line located to Yellowhead Pass, and would afford facilities for construction and settlement in the direction of Edmonton and as far as the prairie region extends.

I respectfully submit this suggestion for consideration. Besides aiming at securing, without delay, a through communication sufficient for all present purposes and affording facilities to settlers to occupy desirable land, the project has in view other objects, the importance of which I feel assured the Government will recognize.

The adoption of the line to the point I have indicated in the valley of the Assiniboine, near the mouth of the Little Saskatchewan, would provide 160 miles of an excellent trunk line leading from Winnipeg and Selkirk to the coal deposits, would to that extent make provision for the supply of fuel, where no timber now exists, and thus anticipate a want already sorely felt in many quarters. The laying out of a town or city at the point mentioned, and the location of stations at regular intervals on other ungranted lands along the line, would secure to the Government, all the benefit arising from the enhanced price which would be given to the land, to assist in meeting the cost of the railway.

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Dominion Order-in-  
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(Continued)

I herewith submit two plans, one showing in blue the ungranted blocks of land, one mile square, suitable for stations, through the Province of Manitoba, and as far as the proposed town site at the mouth of the Little Saskatchewan. The other plan shows the several lines referred to; the approximate lengths as compared with the old located line, by the Narrows of Lake Manitoba between common points, Selkirk and Nut Hill—the latter about 60 miles west of Livingstone—may thus be stated:

Selkirk to Nut Hill.

10	By No. 1.	The North-Western Line.....	350	miles.
	“	2. The Western Line.....	365	“
	“	3. The Southern Line.....	370	“
	“	The Narrows of Lake Manitoba.....	330	“

I have the honor to be, Sir,  
Your obedient servant,

SANDFORD FLEMING,  
Engineer-in-Chief.

CANADIAN PACIFIC RAILWAY

Office of the Engineer-in-Chief

20

Ottawa, June 14th, 1879.

Memorandum of Instructions for Mr. Marcus Smith.

The Hon. the Minister has authorized the undersigned to instruct Mr. Smith to proceed to the prairie region and conduct certain explorations and surveys.

These explorations and surveys are confined to the district between the Red River and the south branch of the River Saskatchewan.

The object of the examination is to find the most eligible line for the railway, having in view its passing conveniently near the greatest extent of land suitable for settlement, between Selkirk and the  
30 crossing of the Saskatchewan, about latitude 52° 20'.

Mr. Wm. Murdoch has been furnished with instructions bearing date May 23rd last, a copy of which is attached. These instructions cover the survey operations between Red River and the western boundary of Manitoba. It was intended to direct Mr. Murdoch, on the completion of all the work necessary within the Province of Manitoba, to extend the surveys westerly towards the Saskatchewan.

It is, however, advisable to lose no time in gaining the information desired. Accordingly, Mr. Smith is instructed to proceed at once to the district referred to. He will personally explore the country west

of the Province of Manitoba, to determine where an instrumental survey should be made. He will be supplied with assistants in order that the exploration may be followed up by an instrumental survey.

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Mr. Smith has already made some explorations in this district; he will the more easily determine the best points for crossing the several rivers. Possibly he could at once start the survey party, say at the Little Saskatchewan, east of Fort Ellice, thence to work westerly in a direction which the exploration to be made, will establish.

Dominion Order-in-Council No. 76,  
22nd Jan., 1880  
(Continued)

In the event of this instrumental survey being commenced at the  
10 Little Saskatchewan, Mr. Smith will send information to Mr. Murdoch of the fact, with instructions to extend his surveys to that point, and there form a connection with the levels and measurements.

The crossing of the south branch of the main Saskatchewan by the located line may be taken as the extreme westerly objective point. Mr. Smith will use his best efforts to find the best line that can be had, following the general direction of the Touchwood Hills and passing the elevated ground to be met, either to the north or south.

Although the crossing of the South Saskatchewan may be taken as  
20 the westerly objective point, Mr. Smith, while in that quarter, will sufficiently examine the country to ascertain if any advantage would be gained by making the connection with the present located line nearer the elbow of the North Saskatchewan.

The undersigned is aware that there are several very wide and deep valleys in the country to be traversed, west of the Riding Mountains, but he feels assured that Mr. Smith will be able to find satisfactory crossings, if such exist; and at all events he will be able to furnish a plan and profile, from actual survey of the best line which can be had, between the crossing of the south branch of the main Saskatchewan and the proposed point on the Little Saskatchewan  
30 referred to.

Lest no line, in every respect satisfactory, be found south and west of the Riding Mountains, it is important to have a survey made to the east, Mr. Smith will accordingly instruct Mr. Murdoch, after completing the service upon which he is now engaged, and closing his work on the Little Saskatchewan, to survey a line around the south-westerly end of Lake Manitoba, passing Dauphin Lake to the east, or to the west, as may seem best, and connecting with the located line at the most convenient point between the narrows of Lake Manitoba and Northcote.

40 These several surveys completed, and plans and profiles prepared, we shall have definite information, which will admit of a comparison, of three main routes between Selkirk and a common point on or near the south branch of the main Saskatchewan.

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Dominion Order-in-  
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 22nd Jan., 1880  
 (Continued)

Mr. Smith will find in Mr. Murdoch's instructions and the accompanying letters full particulars with regard to the system of procuring supplies, making payments and keeping accounts. He will observe that the Purveyor's Branch is abolished, and that the engineer conducting the survey is himself now held responsible for the expenditure. Mr. Smith will be required to accommodate himself to the change.

The Hon. the Minister has selected the following assistants to accompany Mr. Smith.

10

W. D. Barclay,  
 E. McNicol,  
 L. Desbrisay,  
 M. Harris.

Mr. Smith will forward progress reports as frequently as possible.

(Sgd.) SANDFORD FLEMING,  
 Engineer-in-Chief.

#### CANADIAN PACIFIC RAILWAY

Office of the Engineer-in-Chief

Ottawa, December 30th, 1879.

20 Report on Surveying Operations West of the Province of Manitoba, for the Year 1879, by Mr. Marcus Smith.

In anticipation of a fuller report on the Surveys and Explorations made under my charge during the season of 1879, I beg to submit a few remarks on the two lines that have been surveyed; commencing at a common point on the western boundary of the Province of Manitoba, near the fourth base line, and extending westward and north-westward a distance of 100 miles respectively.

In 1877 a survey was made of the crossings of the Valleys of the Little Saskatchewan, Bird's Tail Creek, Shell River and the Assini-  
 30 boine, on a line following the southern trail to Shell Lake; thence direct to the junction of Shell and Assiniboine Rivers. This line was pointed out, by a deputation of the oldest settlers in the country, as following the centre of the fertile or permanent wheat-growing belt, consisting of a deep rich loam with clay subsoil, extending northward to its extremity beyond the Riding and Duck Mountains and southward to the Assiniboine; the depth of soil, however, decreasing in that direction and the subsoil gradually varying from clay to gravel, boulders and sand. The examination of the country made last summer has generally confirmed this statement, and the centre of the belt most suitable  
 40 for the cultivation of wheat and other cereals is shown approximately on the map herewith by the broad dotted line of brown colour.

The surveys, made in 1877, a little south of this line shewed that the bridging of the Valleys of Bird's Tail Creek, Shell River and the Assiniboine would be so enormously heavy as to render construction on that line impracticable, or at least inexpedient.

A line was therefore projected and surveyed during the past summer, shewn on the map herewith by a blue line, A B C D, which enters the Valley of the Assiniboine below the mouth of Bird's Tail Creek, crossing the latter on a flat, and avoiding Shell River altogether. The line is continued up the Valley of the Assiniboine to its junction with that of the Qu'Appelle, about four miles north-west of Fort Ellice; its total length from the Province boundary being 110 miles.

#### Description of the Line

The altitude at the commencement on the western boundary of the Province of Manitoba—taken from Mr. Murdoch's survey of the line through that Province—is 992 feet above the level of the sea. Immediately west of this, the line rises up the slope or escarpment to the first terrace, with a gradient of 53 feet per mile, for nearly seven miles.

20 This slope has been furrowed and broken, by the drainage of the country, into a series of sand hills, which are partially covered with clumps of scrub oak, poplar and brush. It stretches from Riding Mountain south-westwards to the International boundary line, and is intersected, at intervals, by the Valleys of the White Mud, Assiniboine and other streams. The earth works on this section will be rather heavy, averaging 33,000 cubic yards per mile.

The altitude at the seventh mile is 1,268 feet. Thence to the 21st mile the country is nearly level, the altitude at that point being 1,252 feet. The surface, however, is indented with numerous small ponds and hollows. It is generally prairie, and the soil is good.

30 From the 21st mile, it rises gradually westward up to the 40th mile, where the altitude is 1,761 feet. The surface is rather lumpy, and partially covered with clumps and belts of poplar and scrub. The soil is good.

40 From the last point, the line begins to cross the Valley of the Little Saskatchewan obliquely, descending to the river, with a gradient of 53 feet per mile, for  $4\frac{1}{2}$  miles, where the altitude is 1,531 feet. The ascent to the table land on the west side of the valley, at the 49th mile, is made in  $4\frac{3}{4}$  miles, with gradients varying from 36 to 53 feet 40 per mile.

The earthwork in crossing the valley will be moderate, averaging a little over 16,000 cubic yards per mile, for nine miles, and the river

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(Continued)

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Exhibit No. 37

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(Continued)

can be bridged with one span of 120 feet at a height of 15 feet above the surface of the water.

Recently, a town plot (Rapid City) has been laid out in this valley, about  $1\frac{1}{2}$  miles north of the line where a saw and a grist mill have been erected. There are also a few farm homesteads, recently taken up, on each side of the valley near the line.

The altitude at the west side of the valley near the 49th mile is 1,696 feet. Thence the course of the line is straight, up to the 91st mile on the left bank of the valley of the Assiniboine, where the altitude is 1,509 feet. The inclination is very gradual, but the surface of the country is rather lumpy, slightly undulating, indented with numerous ponds and narrow coulees. It is chiefly prairie, interspersed with clumps of poplar and brush. The soil is good till approaching the valley of the Assiniboine, the slopes of which, and a belt of the country adjoining, are composed of boulders and gravel, covered with a thin coating of vegetable soil.

From the 91st to the 96th mile the line descends obliquely the slope of the valley, with a gradient of 53 feet per mile, reaching the bottom of the valley near the mouth of Bird's-Tail Creek, where the altitude is 1,236 feet. The earth works in descending from the table land to the bottom of the valley of the Assiniboine will be heavy, averaging 39,000 cubic yards per mile for five miles.

Bird's Tail Creek can be bridged with one span of 100 feet, 12 feet above the surface water.

From the 96th mile the line follows the Valley of the Assiniboine up to the mouth of Qu'Appelle, at the 110th mile, with easy gradients, and the works would be light.

The bottom of the valley is about  $1\frac{1}{2}$  mile wide, the soil is good, being prairie, interspersed with groves of poplar and clumps of willow and brush. The south slope of the valley is densely wooded, and the north side is chiefly prairie with some clumps of poplar. On both slopes of the valley and the country adjoining, the soil is shallow, overlying a stratum of boulders, gravel and sand.

On a general average the works on this line will be moderate, the heaviest item being the earthwork, which is due to the rough country on the first 7 miles, and the heavy cuttings in descending to the Valley of the Assiniboine.

#### The North-Western Line

This line commences at the same point as the last described, and follows the same course up to the 8th mile, where it diverges to the north-west, making a straight course to a point in the Valley of the Little Saskatchewan, where the northern trail crosses the valley.

This is known as Tanner's Crossing, and a bridge has recently been erected over the river.

Record  
Court of Appeal

The line reaches the top of the eastern slope of the valley between the 33rd and 34th mile, where the altitude is 1,768 feet above sea level.

Exhibit No. 37

The character of the country and the soil up to this point is very similar to that on the other line.

Dominion Order-in-Council No. 76,  
22nd Jan., 1880  
(Continued)

The surveyed line crosses the Valley of the Little Saskatchewan obliquely on a course nearly due west, descending the eastern slope to the river with a gradient of 32 feet per mile for  $4\frac{1}{2}$  miles, and ascending the western slope at the rate of 42 feet per mile for  $5\frac{1}{2}$  miles. The excavations, however, are heavy, and in the location of the line for construction it would be expedient to make a deviation, by which the gradients on the eastern slope would be 42 feet, and on the western slope 53 feet per mile. This would shorten the line fully one mile, and reduce the quantity of earth excavations considerably. This, however, would still be rather heavy, and with our present information it has not been considered safe to estimate it at less than 29,000 cubic yards per mile for 9 miles. This, however, may possibly be reduced by a careful location survey.

20 The altitude at the 42nd mile, on the top of the western slope of the valley, is 1,876 feet; thence the course of the located line would be direct to the 89th mile, on the top of the eastern slope of the Valley of Bird's Tail Creek, but the surveyed line varies one to three miles north of the direct line.

From the 42nd mile the ascent is gradual, with slightly variable gradients up to the 85th mile, where the altitude on the surveyed line is 2,007 feet, but on the located line it will be about 1,980 feet. The summit altitude of the other line (at the 40th mile) is 1,761 feet, the more northerly line being farther up the slope of Riding Mountain, which falls gradually and imperceptibly to the eye southwards to the Valley of the Assiniboine.

The surface of the country between the 42nd and 89th mile is slightly undulating and indented with numerous small ponds, but the soil is of the richest quality. It has been covered with forests, which have been destroyed by fire. A few miles to the north of the line, belts of poplar have sprung up, being evidently a second growth, as a little farther to the north, on the margins of lakes and streams, and on the north-east slope of Riding and Duck Mountains, the primeval forests of spruce and tamarac still exists.

40 Throughout the whole space between the Little Saskatchewan and Bird's Tail Creek there are numerous settlements on both sides of the line, and those are rapidly increasing. The crops of wheat, barley, oats, and other agricultural products which we saw were

Record  
Court of Appeal

Exhibit No. 37

Dominion Order-in-  
Council No. 76,  
22nd Jan., 1880  
(Continued)

extraordinarily heavy, but they were fully a month later than on the Qu'Appelle, where the substratum is gravel and sand.\*

The line descends the eastern slope of the Valley of Bird's Tail Creek with a gradient of 42 feet per mile for 6 miles, on which the earth works will be moderate.

There will, however, be rather heavy trestle works in crossing two or three coulees formed by lateral streams.

Ascending the western slope of the valley, the gradient on the surveyed line is 53 feet per mile, but in location for construction, the line would ascend up the slope of the valley more obliquely and the gradient would be reduced.

The slopes of the Valley of Bird's Tail Creek, where the line crosses, splay out at an angle of inclination very much less than at a point a few miles lower down, where the trail crosses.

The soil is exceedingly rich and the crops of natural grass, pea vine and vetches are astonishing, reaching at places 4 feet in height, and as much as 6 tons of hay have been made from one acre of ground.

Both of these are good colonization lines, but the more northern line covers a greater breadth of fertile land which appears to be preferred by settlers, and is within easy reach of wood for fuel and for building purposes. Besides the saw mills at Rapid City, others are being erected farther up the river, north of both lines and nearer to the timber limits at the sources of the river.

The bill of works and estimates herewith shew that the cost of construction would be about the same on each line.

Both lines could be extended westward to any point on the original line between the Assiniboine and the Saskatchewan at an average cost something less than on the sections above described.

Considered as a line for through traffic, the north-western line for the first 100 miles has the advantage of maximum gradients for traffic, eastwards of 42 feet per mile against 53 feet on the southern line. There will, however, be a gradient rising eastward from the Assiniboine on the northern line, which will be avoided on the other, but this is not expected to be heavy, probably it will be under 30 feet to the mile.

The northern line will also have the advantage for through traffic in being 10 to 15 miles shorter than the other if carried to the north of the Touchwood Hills. This, however, would be neutralized to some extent, if the line were carried as direct as practicable from the

40 \*This was partly due to lateness in sowing on account of the wet spring. The average difference is about two weeks.

mouth of the Qu'Appelle to the elbow of the North Saskatchewan, Caerlaverock or any point further south. But I do not think it would be expedient to carry the line south of the Touchwood Hills, though the cost of construction would be moderate, more than one half the distance between the mouth of the Qu'Appelle and Battleford would be over a very poor and almost desert country of sand, gravel and boulders strongly impregnated with alkali.

Record  
Court of Appeal  
Exhibit No. 37

Dominion Order-in-Council No. 76,  
22nd Jan., 1880  
(Continued)

The continuation of the line north-westward from the mouth of Qu'Appelle would, for the first 20 miles be over poor sandy soil, after 10 which it would improve, and from the White Sand River to the telegraph line is a rolling park-like country with numerous lakelets and groves of poplar. The soil is generally very good.

The projected extension of the northern line is shown on the plan by the dotted line G.I.J.; it is probable, however, that the gradients on this line in crossing the valley of Shell River would be steep and the work heavy. Both of those defects can be avoided by carrying the line on the course F.H.J.

This would take us 10 to 15 miles north of the broad brown dotted line shewing the approximate centre of the fertile belt and close to the 20 foot of Duck Mountain, on which the land is poor, but it would have the advantage of being so much nearer the forests of spruce and tamarac in which saw mills are being built.

The great drawback to settlement hitherto has been the difficulty of getting lumber for building purposes.

Should this northern line be adopted, I have projected a line diverging from a point near the 8th mile and taking a south-west course which strikes the Valley of the Assiniboine at a point a little above the Grand Rapids. This would be about 33 miles in length, across a plain of rich land on which there are a number of settlements, 30 and construction would be very easy. It is on a direct course to the coal fields of the Souris.

This would be the commencement of the trunk line for a system of colonization railways to the south-west, and if constructed at once it would, at a small cost, greatly facilitate settlements in the Valley of the Assiniboine and the adjoining country between the Grand Rapids and Fort Ellice, the river between these points being navigable for barges and small steamers; and when found expedient the extension of the line up the valley could be made at very small cost, the bottom flat of the valley being very favourable for railway construction. 40

Yours most truly,  
MARCUS SMITH.

Sandford Fleming, Esq., Engineer-in-Chief.

## CANADIAN PACIFIC RAILWAY

## Bill of Works for 100 Miles West of Manitoba—Western Line

Record  
Court of Appeal

Exhibit No. 37

Dominion Order-in-  
Council No. 76,  
22nd Jan., 1880  
(Continued)

Description of Work	Approximate Quantities	Rates		Amount	
		\$	cts	\$	cts.
Clearing, very light, mostly brush.....Acres	150	16 00	per acre.	2,400	00
Close cutting....."	5½	30 00	"	165	00
Grubbing....."	5	60 00	"	300	00
10 Fencing, 100 miles.....L. feet	1,056,000	05	L. foot	52,800	00
Earth excavation, in- cluding borrowing surface drains and foundations, etc.....C. yds.	1,550,000	25	C. yard	387,500	00
Under drains.....L. feet	1,000	35	L. foot	350	00
Crib-work in abutments of bridges, including stone filling.....C. yds.	920	4 00	per C. yard	3,680	00
20 Bridge Superstructure, Howe Truss.....1 span	120			5,000	00
Bridge Superstructure, Howe Truss.....1 span	100			4,000	00
Piles driven.....L. feet	1,760	40	per L. foot	704	00
Square timber in trestle bridges and culverts..C. feet	188,500	35	per C. foot	65,975	00
Spruce plank.....F.B.M.	13,500	25 00	M	337	50
Oak plank.....F.B.M.	1,800	50 00	M	90	00
Wrought iron.....Lbs.	72,500	10	per lb.	7,250	00
Cast iron.....Lbs.	20,500	08	per lb.	1,640	00
30 Spikes, iron.....Lbs.	1,125	08	per lb.	90	00
Public road crossing.....No.	50	150 00	each	7,500	00
Private road crossings.....No.	200	15 00	each	3,000	00
Track laying.....Miles	104	250 00	per mile	26,000	00
Ties, 104 miles, 2,400 per mile.....	250,000	30	each	75,000	00
Carriage of rails from beginning of contract, average 50 miles.....Tons	10,400	80	p. ton p. m.	8,320	00
40 Ballast 104 miles, 2,000 cubic yards per mile..C. yds.	208,000	30	per C. yard	62,400	00
Points and crossing.....Sets	30	50 00	per set	1,500	00
Station buildings.....No.	12	2500 00	each	30,000	00
				\$746,001	50

## CANADIAN PACIFIC RAILWAY

Bill of Works 100 Miles West of the Province of Manitoba—  
Northwestern LineRecord  
Court of Appeal

Exhibit No. 37

Dominion Order-in-  
Council No. 76,  
22nd Jan., 1880  
(Continued)

Description of work	Approximate Quantities	Rates		Amount	
		\$	cts.	\$	cts.
Clearing, very light, mostly brush.....	Acres 190	16 00	per acre	3,040	00
Close cutting.....	Acres 10	30 00	"	300	00
10 Grubbing.....	Acres 9	60 00	"	540	00
Fencing, 100 miles.....	Lin. ft. 1,056,000	05	per lin. ft.	52,800	00
Earth excavation, includ- ing borrowing, surface drains, foundations, etc.....	Cu. ft. 1,600,000	25	per cu. yd.	400,000	00
Under drains.....	Lin. ft. 1,000	35	per lin. ft.	350	00
Crib work on abutments of bridges, including stone filling.....	Cu. yds. 920	4 00	per cu. yd.	3,680	00
20 Bridge superstructures, Howe Truss.....	1 span 100			4,000	00
Bridge superstructures, Howe truss.....	1 span 80			2,600	00
Piles driven.....	Lin. ft. 1,780	40	per lin. ft.	712	00
Square timber in trestle bridges and culverts, etc.....	Cu. feet 170,000	35	per cu. ft.	59,500	00
Spruce plank.....	F.b.m. 16,000	25 00	M.	400	00
Oak plank.....	F.b.m. 2,000	50 00	M.	100	00
30 Wrought iron.....	Lbs. 70,000	10	per lb.	7,000	00
Cast iron.....	Lbs. 21,500	08	per lb.	1,720	00
Spikes.....	Lbs. 1,300	08	per lb.	104	00
Public road crossings.....	No. 50	150 00	each	7,500	00
Private road crossings.....	No. 200	15 00	each	3,000	00
Ties, 104 miles, 2,400 per mile.....	250,000	30	each	75,000	00
Carriage of rails from be- ginning of contract, av- erage 50 miles.....	Tons 10,400	80	p. ton p.m.	8,320	00
40 Track-laying.....	Miles 104	250 00	per mile	26,000	00
Ballast, 104 miles, 2,000 cu. yd., per mile.....	208,000	30	per cu. yd.	62,400	00
Points and crossing.....	Sets 30	50 00	each	1,500	00
Station buildings.....	No. 12	2500 00	each	30,000	00
				\$750,566	00

Record  
Court of Appeal

**No. 38**  
Company's Document

**Sessional Papers House of Commons 1880, Sessional Paper 123**  
(P. 29.)

**Exhibit No. 38**

Extract from  
report by Sandford  
Fleming to Hon.  
Sir Charles Tupper,  
8th April, 1881.

Extract from report by Sandford Fleming to Hon. Sir Charles Tupper.

“The grading, bridging, track-laying and ballasting in British Columbia, from near Yale to Savona's Ferry, a distance of about 127 miles, were placed under contract towards the close of 1879.

“The length of line now under contract consists of the following 10 sections:

“Fort William to Selkirk, (main line).....	410 miles
Selkirk to Emerson, (Pembina branch).....	85 “
West of Red River (main line and Winnipeg branch) .....	100 “
In British Columbia, (main line).....	127 “
	722 “
Total under construction.....	722 “

“Tenders are now invited for a second 100 miles section west of Red River. This will make a total length of 822 miles under construction, consisting of main line 720 miles, Pembina and Winnipeg branches 102 miles.

“The rails are laid 136 miles west of Fort William, and 90 miles east of Selkirk. Traffic trains are regularly run from Emerson to Cross Lake, 161 miles.”

**No. 39**  
Company's Document

**Journals of the House of Commons 1880** (P. 368)

**Exhibit No. 39**

Resolution passed  
by House of Com-  
mons, re Appropria-  
tion of lands in  
Manitoba and  
North-West Terri-  
tories for purposes  
of constructing  
Canadian Pacific  
Railway.  
5th May, 1880.

Resolution Passed by House of Commons on the 5th of May, 1880, re Appropriation of Lands in Manitoba and North West Territories for Purpose of Constructing Canadian Pacific Railway.

Resolved, That it is expedient to substitute for the seventh of 30 the series of Resolutions relating to the Canadian Pacific Railway, adopted by this House on the 12th and 13th May last, the following Resolution:

(a) That one hundred millions of acres of land in Manitoba and the North-West Territories be appropriated for the purpose of constructing the Canadian Pacific Railway.

(b) That such lands shall be from time to time selected and reserved by Order of the Governor in Council as Railway lands, and shall be of fair average quality for settlement.

(c) That such land shall be sold at prices to be fixed from time to time by the Governor in Council, but in no case at a rate of less than one dollar per acre.

(d) That the proceeds of such sales, after deducting the cost of survey and management shall be devoted exclusively to the purpose of defraying the cost of the construction of the Canadian Pacific 10 Railway.

Record  
Court of Appeal

Exhibit No. 39

Resolution passed by House of Commons, re Appropriation of lands in Manitoba and North-West Territories for purpose of constructing Canadian Pacific Railway. 5th May, 1880. (Continued)

### No. 40

Company's Document

**Obtained in the Public Archives of the Dominion of Canada**  
**Macdonald Papers, Volume 127** (Pp. 1-3)

Exhibit No. 40

Copy of Confidential Project for construction of Canadian Pacific Railway transmitted by Sir John A. Macdonald to Duncan McIntyre.

Copy of confidential project for construction of Canadian Pacific Railway transmitted by Sir John A. Macdonald to Duncan McIntyre. Undated.

CANADIAN PACIFIC CONTRACT AND INCORPORATION  
1858-80

20 Confidential Project for Construction of Canadian Pacific Railway.

1. Company to obtain Dominion Act of Incorporation next Session and to give satisfactory guarantees of ability to construct the Railway.

2. The Railway to be built and running in ten years, to extend from Nipissing to Port Moody or thereabouts on Burrard Inlet.

3. The Railways now being constructed from Thunder Bay to Red River and from Kamloops to Burrard Inlet to be finished by Government without stations, tanks, fencing or equipment and to be conveyed in fee simple by Government to Company.

30 4. The Company as a railway company to run, work and maintain the Road permanently.

\$6,500,000

5. A subsidy of ~~\$10,000 a mile~~ to be given from Nipissing to junction with Thunder Bay line—~~i.e. \$6,500,000.~~

6. Subsidy from Red River to Kamloops (1350 miles) ~~\$10,000 a mile~~ <sup>of</sup> \$13,500,000.

Cash \$20,000,000.

Record  
Court of Appeal  
Exhibit No. 40

Copy of confidential project for construction of Canadian Pacific Railway transmitted by Sir John A. Macdonald to Duncan McIntyre. Undated. (Continued)

7. The existing contracts on 200 miles from Red River westward to be taken off the hands of the Government.

8. The land grant to be in all <del>20,000 acres</del> } a mile from Red River to Kamloops } <del>From Nipissing to Thunder Bay Junction</del> }	} 27,000,000 } 6,500,000 <hr/> } 23,500,000 } 35,000,000
--	---

9. The land to be in alternate blocks along line of railway west of Winnipeg, 24 miles deep on each side. The quantity required, to make up 33,500,000 to be given elsewhere in N. West Territories as agreed on and to be fairly fit for agricultural or grazing purposes.

10. General reference to be made as to details to contract C.P.R. of 1873.

**No. 41**

Company's Document

**Obtained in the Public Archives of the Dominion of Canada  
Macdonald Papers, Volume 127 (Pp. 34-38)**

Exhibit No. 41

Memorandum, addressed to the Right Honourable Sir John A. Macdonald, K.C.B. &c., signed Duncan McIntyre for self and associates. Undated.

(Memorandum, undated, addressed to the Right Honourable Sir John A. Macdonald, K.C.B. &c. &c. &c., signed Duncan McIntyre for self and associates.)

To the Right Honorable Sir John A. Macdonald,  
K.C.B. &c. &c. &c.

Private

Sir,

Referring to the Confidential Memo, respecting the construction of the Canada Pacific R.R. handed us on Saturday last, the greatest difficulty in the undertaking is the obligation to run those portions of the Railway which traverse sections unlikely to afford traffic, and if to this is added the necessity of completing those, which the Government propose to convey to the Company, this difficulty will be much enhanced, We feel therefore that Article 3, should be so modified that the "Lake Superior Section and the line between Kamloops and Port Moody would be handed over complete, except as to the rolling stock.

The construction and running of the Nipissing Section, will undoubtedly form a serious burden on the Company, that portion has hitherto been considered as being difficult of construction, the lowest estimate having been \$22,000,000. Recent reports lead to a conclusion different as to the degree of difficulty, but do not alter previous opinions as to the nature of the land and the climate. We fear therefore we must assume that the region is practically unfit for settlement, that no traffic can be expected from it, and that it will be costly in construction. Under these circumstances we cannot see that it is

reasonable to place the aid intended for this section at a lower rate than the remainder, but rather the reverse, and a material modification of the project, in this respect would be necessary. Probably the one which would be most satisfactory to us would be to withhold the land grant altogether from this section, giving instead an additional subsidy of \$10,000 per mile; being at the rate of 50c per acre for the land, supposing the mileage quantity to be the same as for the rest of the line, as we think it certainly should be. Or instead of the additional 10,000 acres per mile, the Government might grant an  
 10 additional subsidy at the rate of 50c per acre. And if further and authentic reports are received confirming recent accounts as to the facilities for construction, the aid to this section might be otherwise modified to meet the facts when finally established. As to the existing contracts mentioned in pargh 7 we would suggest that they should be cancelled by the Government. If the task of settling with the contractors is left to the Company, it will probably prove both difficult and expensive. We observe that the Pembina Branch is not especially mentioned, but we assume that it is intended to be included as a portion of the property to be conveyed to the Company. Among  
 20 the points not referred to in the memorandum we may mention that of \*taxation from which we think the proposed line should be free. The cost of survey of the lands should not we think, be imposed on the Company, and in order to have the lands readily available the blocks should be granted in a larger proportion than alternate blocks, say two in three, instead of one in two. The Company should have the ordinary power of making branch railways, but without the usual restriction as to length, and some decisive limit should be placed upon the construction of other lines that could in any way interfere with traffic.

30 We venture to think that such modifications as we suggest would not impose any unreasonable burden upon the Government while they would greatly facilitate the making of a contract with a substantial company, which could be carried out to the satisfaction of the Government and the Country. Such provisions would give the project a more pronounced business character, in which prudent capitalists would probably be willing to engage, and we feel that it would be an injustice both to ourselves and to the Government if we entered upon a project of different description. With these modifications, and an assurance from the Government that the Company  
 40 would not be hampered by conditions on minor matters provided it carried out the great objects of constructing and running the Railway we would take up the question carefully and be prepared with a speedy answer.

I have the honour to remain your obt servant  
 DUNCAN McINTYRE  
 for Self and Associates.

Record  
 Court of Appeal

Exhibit No. 41

Memorandum,  
 addressed to the  
 Right Honourable  
 Sir John A. Mac-  
 donald, K.C.B.,  
 &c., signed Duncan  
 McIntyre for self  
 and associates.  
 Undated.  
 (Continued)

There are a  
 number of side  
 pencil notes.  
 Across from \* is  
 the following:  
 "Taxation of line  
 to be exempted."

Record  
Court of Appeal

**No. 42**  
Company's Document

Obtained in the Public Archives of the Dominion of Canada  
Macdonald Papers, Volume 127 (P. 136)

Exhibit No. 42

Letter, Duncan  
McIntyre to Sir  
John A. Macdonald  
(5th July, 1880).

Letter, Duncan McIntyre to Sir John A. MacDonald.

Confidential

Montreal 5th July, 1880.

The Right Honourable  
Sir John A. MacDonald, K.C.B. &c.  
Ottawa,

10

Sir,

Again referring to the Confidential Memorandum handed us on the 19th ulto, we venture to express our regret that your Government has not determined to modify it in the particulars referred to in our letter of the 21st ulto.

As the writer purposes leaving for England on Saturday next, we fear it is now too late to take any effectual steps in the matter, as we proposed to do upon the desired changes being made in your suggestion. We understand also that you and certain of your colleagues  
20 are likely to be absent from Ottawa for some time, and as many changes might occur before negotiations could be resumed, we fear it would be scarcely prudent to leave so important a matter in any degree open, during the interval.

We therefore desire to express our acknowledgments to you and to your Government for the opportunity you have afforded us of discussing the suggested project and our desire that the subject may be considered as being closed for the present.

But upon your return, and that of the writer from England, we should be prepared to resume the consideration of such a project for  
30 the desired purpose, as circumstances may then justify.

We remain

Your obt. servants,

DUNCAN McINTYRE  
for Self and Associates.

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**No. 43**  
Company's Document

**Obtained from Public Archives of the Dominion of Canada**  
**Macdonald Papers, Volume 127** (Pp. 139-140)

Record  
Court of Appeal

Exhibit No. 43

Letter, Duncan McIntyre to Sir John A. MacDonald.

Letter, Duncan  
McIntyre to Sir  
John A. Macdonald  
(12th August, 1880).

London, 12th August, 1880

The Right Honourable  
Sir John A. MacDonald, K.C.B.

Dear Sir,

10 We should be disposed to reopen the negotiations for building and running the Pacific Railway, subject to the following modifications of the alternatives suggested in our letter of 21st June last instead of suggestions then made in reference to the land and money grant, we will accept.

25 Twenty-five Million dollars cash

25 Twenty-five million acres land for the 2000 miles

- 1st. The Section between the terminus of the Canada Central R.R. and the junction with the Thunder Bay Branch which we will call the Nipissing Section, we would prefer that a cash subsidy be granted  
20 that Section of \$20,000.00, Twenty thousand per mile upon a fixed mileage of 650 miles without any land grant. We should expect to be allowed to locate the line as we would think proper, not increasing the aggregate subsidy beyond \$13,000,000. Thirteen million dollars.
- 2nd. The Section between Winnipeg and the Mountains 900 Nine hundred miles at the rate of \$6000, Six thousand dollars per mile in cash and with an land grant of about 15,000 acres per mile.
- 3rd. The Section between the Mountains and Kamloops 450 miles at the rate of \$14,666 Fourteen thousand six hundred sixty six dollars  
30 thousand five hundred acres per mile.

And we wish it understood that we desire a similar arrangement with regard to the location of the line on the Prairie and Mountain Sections to that provided for in the Nipissing Section.

I have the honour to remain  
Your obedient servant

DUNCAN McINTYRE  
for Self and Associates.

Record  
Court of Appeal

No. 44  
Company's Document

Obtained in the Public Archives of the Dominion of Canada  
Macdonald Papers, Volume 127 (P. 219)

Exhibit No. 44

Copy of Canadian  
Pacific Railway  
Heads of Arrange-  
ment, September  
14th, 1880.

Copy of Canadian Pacific Railway Heads of Arrangement.

THE CANADIAN PACIFIC RAILWAY

HEADS OF ARRANGEMENT

The Government of Canada having expressed a desire to transfer to an Incorporated Company the completion in manner hereinafter mentioned of the Canadian Pacific Railway, from Lake Nipissing to a point on the Pacific Ocean at or near Port Moody, with power and obligation to work the same. Mr. D. McIntyre and his friends are prepared to subscribe, of the Capital of such Company, \$3,334,000 (£666,800 Sterling); ~~La Societe Generale de Paris~~ Messrs Kohn Reinach & Co & their of Paris for themselves and their ~~group~~ friends (group) and their friends, (\$833,000 (£166,600 Sterling)); and Messrs, Morton, Rose & Co. and their friends, \$833,000 (£166,600 Sterling), making a total minimum Subscription of \$5,000,000 or £1,000,000 Sterling, on condition that the Charter to be granted to the Company is approved of and agreed to by the Government on the one hand and the Associates on the other, to their mutual satisfaction, on or before the 15th November 1880, or (~~such~~ on a later date ~~as may be~~) agreed upon. The following being the bases of the arrangements to be provided for by the Charter, the details being worked out hereafter in Canada:

1. The Associates to apply to the Canadian Parliament at its next Session for an Act of Incorporation, and the Government to procure the passage of such Act, which shall be on as favorable terms as have been granted by the Dominion Parliament to any Railway Company, and to embrace all the necessary clauses to carry out this arrangement, and the subsequent details.

2. The Company on this passage of the Act to deposit \$1,000,000, in cash or approved securities, with the Government as a security for the construction of the Railway, which is to be completed and equipped within ten years from the 1st May next, the Government paying

FWB

to the Company interest at 4 per cent. per annum half-yearly for cash deposited until default or repayment of the deposit.

Record  
Court of Appeal

Exhibit No. 44

3. The gauge to be 4 feet 8½ inches, and in order to establish an approximate standard as to the class of Railway to be built, general reference is to be had to the Union Pacific Railroad of the United States when first constructed.

Copy of Canadian  
Pacific Railway  
Heads of Arrange-  
ment, September  
14th, 1880.  
(Continued)

4. The work of construction to be commenced at a point on the Canada Central Railroad at or near Lake Nipissing not later than July 1st, 1881, and to be proceeded with as may be hereafter agreed  
10 on as matter of detail.

5. The Railway to be efficiently worked after construction by the Company.

57486

6. The Government, in consideration of the above, to grant a subsidy in money of \$25,000,000 and a total grant in aid, of 25,000,000 acres of land. The money subsidy and 18,750,000 acres, part of the grant in aid, to be paid and made as the work proceeds in proportion to the expenditure, and to be applied to the several sections of the Railway as hereafter to be arranged, the Company having the option of receiving in lieu of cash terminable bonds of the Government bearing  
20 such rate of interest for such period and nominal amount as may be arranged and which may be equivalent according to actuarial calculation to the corresponding cash payment, the Government allowing 4 per cent. interest on monies deposited with them.

7. The Government to complete the sections of the Railway under the present contracts from Thunder Bay to Red River, and from Kamloops to Yale, and from Yale to Port Moody or thereabouts within 10 years from the 1st May next, and the Government to transfer to the Company (subject to a lien in favor of the Government until completion of the Railway) such sections of the Railway when  
30 completed, in proper running order, so that the entire system from Lake Nipissing to Port Moody, or thereabouts, shall belong to the Company. The questions, whether or not the Government shall transfer the Pembina branch to the Company, and whether or not the Government shall provide stations and water service upon the said sections being reserved for arrangement in Canada.

8. The Government to provide, free of cost to the Company, the lands required for the construction of the Road so far as such lands may now be vested in the Government, and provision also to be made for the admission, free of duty, all of ~~materials~~ [\*steel-rails, fishplates,  
40 spikes, bolts, nuts and iron or steel for bridges] to be used in the con-

FWB

\*The portions in  
brackets appear

Record  
Court of Appeal

Exhibit No. 44

Copy of Canadian  
Pacific Railway  
Heads of Arrange-  
ment, September  
14th, 1880.  
(Continued)

struction of the Road. [\*together with all Wire and Telegraphic Apparatus required]— in ink on the original

9. The Company to pay to the Government the cost of constructing the 100 miles of Railway, according to the existing contract, from Red River westward, as if the same were being built for the Company; the contract for the further extension westward, of 100 miles additional, entered into between the Government and Messrs. Bowie & McNaghten to be either cancelled or assumed by the Company as hereafter to be arranged.

10 10. The grant in aid of land to be in alternate blocks of land not taken up 24 miles deep on each side of the Railway from Winnipeg to Jasper House. Should any of the land included in such blocks be not fairly fit for settlement, or should such blocks not amount to 25,000,000 of acres in all, the deficiency shall be made up from other portions of the fertile belt, to be agreed on between the Government and the Company.

11. As to 6,250,000 acres, the remainder of the grant in aid of land, the same shall consist of every fourth section or lot, and the same or the net proceeds if sold by the Government at the request of  
20 the Company, to be made over or paid to the Company when the Company shall have maintained and worked the Railway for 10 years from the date of completion of construction. The Government paying to the Company half-yearly, interest at four per cent, per annum on the net proceeds of land in hand. These lands to be from  
time to time released as other securities satisfactory to the Govern- FWB  
ment are substituted.

London, 14th September, 1880

30	for the Government of Canada John A. Macdonald Charles Tupper J. H. Pope D. L. Macpherson	Duncan McIntyre Morton Rose for Kohn Reinach
----	---	--

Witness to all the above signatures the interlineations initialed by me having first been made.

Fred W. Brody  
8 Great Winchester Street  
London SW

**No. 45**  
Company's Document

Record  
Court of Appeal

**Obtained in The Department of Transport.**

Exhibit No. 45

Copy of executed Contract between the Crown in the right  
of the Dominion of Canada and George Stephen et al.,  
relating to the Canadian Pacific Railway.

Copy of executed  
contract, between  
the Crown in the  
right of the  
Dominion of Can-  
ada and George  
Stephen et al.,  
relating to the  
Canadian Pacific  
Railway,  
(October 21st,  
1880.)

Confidential.

THIS CONTRACT AND AGREEMENT MADE BETWEEN  
HER MAJESTY THE QUEEN, acting in respect of the  
10 Dominion of Canada, and herein represented and acting by the  
Honorable Sir Charles Tupper K C M G Minister of Railways  
and Canals and George Stephen and Duncan McIntyre, of  
Montreal, in Canada; John S. Kennedy of New York, in the  
State of New York; ~~Baron Crenfell of London, England;~~ Richard  
B. Angus ~~and~~ James J. Hill of, St. Paul, in the State of Minne-  
sota. Morton Rose & Company of London, England, and Cohen,  
Reinach and Company of Paris, France

No. 6411

"F.B."

"J.S.D."

Witnesses: That the parties hereto have contracted and agreed  
with each other as follows, namely:

20 1. For the better interpretation of this contract, it is hereby  
declared that the portion of Railway hereinafter called the Eastern  
section, shall comprise that part of the Canadian Pacific Railway to  
be constructed, extending from the Western terminus of the Canada  
Central Railway, near the East end of Lake Nipissing, known as  
Callander Station, to a point of junction with that portion of the  
said Canadian Pacific Railway now in course of construction extend-  
ing from Lake Superior to Selkirk on the East side of Red River;  
which latter portion is hereinafter called the Lake Superior section.  
That the portion of said Railway, now partially in course of construc-  
30 tion, extending from Selkirk to Kamloops, is hereinafter called the  
Central section; and the portion of said Railway now in course of  
construction, extending from Kamloops to Port Moody, is herein-  
after called the Western section. And that the words "the Canadian  
Pacific Railway," are intended to mean the entire Railway, as des-  
cribed in the Act 37th Victoria, cap. 14. The individual parties  
hereto, are hereinafter described as the Company; and the Govern-  
ment of Canada is hereinafter called the Government.

"F.B."

2. The contractors immediately after the organization of the  
said Company, shall deposit with the Government \$1,000,000 in cash  
40 or approved securities, as a security for the construction of the  
Railway hereby contracted for. The Government shall pay to the

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 Exhibit No. 46

Copy of executed  
 contract between  
 the Crown in the  
 right of the  
 Dominion of Can-  
 ada and George  
 Stephen et al.,  
 relating to the  
 Canadian Pacific  
 Railway.  
 (October 21st,  
 1880.)  
 (Continued)

Company interest on the cash deposited at the rate of four per cent. per annum, half-yearly, and shall pay over to the Company the interest received upon securities deposited, the whole until default in the performance of the conditions hereof, or until the repayment of the deposit, and shall return the deposit to the Company on the completion of the railway, according to the terms thereof, with any interest accrued thereon.

"F.B."  
 "C."

3. The Company shall lay out, construct and equip the said Eastern section, and the said Central section, of a uniform gauge of 4 feet 8½ inches, and in order to establish an approximate standard whereby the quality and the character of the Railway and of the materials used in the construction thereof and of the equipment thereof may be regulated, the Union Pacific Railway of the United States as the same was when first constructed, is hereby selected and fixed as such standard. And if the Government and the Company should be unable to agree as to whether or not any work done or materials furnished under this contract are in fair conformity with such standard, or as to any other question of fact, excluding questions of law, the subject of disagreement shall be from time to time referred to the determination of three referees, one of whom shall be chosen by the Government, one by the Company, and one by the two referees so chosen, and such referees shall decide as to the party by whom the expense of such reference shall be defrayed. And if such two referees should be unable to agree upon a third referee, he shall be appointed at the instance of either party hereto, after notice to the other, by the Chief Justice of the Supreme Court of Canada. And the decision of such referees, or of the majority of them, shall be final.

4. The work of construction shall be commenced at the eastern extremity of the Eastern section not later than the first day of July next, and the work upon the Central section shall be commenced by the Company at such point towards the eastern end thereof on the portion of the line now under construction as shall be found convenient and as shall be approved by the Government, at a date not later than the 1st May next. And the work upon the Eastern and Central sections, shall be vigorously and continuously carried on at such rate of annual progress on each section as shall enable the Company to complete and equip the same and each of them, in running order, on or before the first day of May, 1891, by which date the Company hereby agree to complete and equip the said sections in conformity with this contract, unless prevented by the act of God, the Queen's enemies, intestine disturbances, epidemics, floods, or other causes beyond the control of the Company. And in case of the interruption or obstruction of the work of construction from any of the said causes, the time fixed for the completion of the railway shall be extended for a corresponding period.

"F.B."  
 "C."

5. The Company shall pay to the Government the cost, according to the contract of the portion of railway, 100 miles in length, extending from the city of Winnipeg westward up to the time at which the work was taken out of the hands of the contractor and the expenses since incurred by the Government in the work of construction, but shall have the right to assume the said work at any time and complete the same, paying the cost of construction as aforesaid so far as the same shall then have been incurred by the Government.

6. Unless prevented by the act of God, the Queen's enemies, intestine disturbances, epidemics, floods or other causes beyond the control of the Government, the Government shall cause to be completed the said Lake Superior section, by the dates fixed by the existing contracts for the construction thereof; and shall also cause to be completed the portion of the said Western section now under contract, namely, from Kamloops to Yale, within the period fixed by the contracts therefor, namely, by the thirtieth day of June, 1885; and shall also cause to be completed, on or before the first day of May, 1891, the remaining portion of the said Western section, lying between Yale and Port Moody, which shall be constructed of equally good  
20 quality in every respect with the standard hereby created for the portion hereby contracted for. And the said Lake Superior section, and the portions of the said Western section now under contract, shall be completed as nearly as practicable according to the specifications and conditions of the contracts therefor except in so far as the same have been modified by the Government prior to this contract.

7. The Railway constructed under the terms hereof shall be the property of the Company; and pending the completion of the Eastern and Central sections, the Government shall transfer to the Company  
30 the possession and right to work and run the several portions of the Canadian Pacific Railway already constructed or as the same shall be completed. And upon the completion of the Eastern and Central sections, the Government shall convey to the Company, with a suitable number of station buildings and with water service (but without equipment), those portions of the Canadian Pacific Railway constructed or to be constructed by the Government which shall then be completed; and upon completion of the remainder of the portion of railway to be constructed by the Government, that portion shall also be conveyed to the Company, and the Canadian Pacific Railway  
40 shall become, and be thereafter the absolute property of the Company. And the Company shall thereafter and forever efficiently maintain, work and run the Canadian Pacific Railway.

8. Upon the reception from the Government of the possession of each of the respective portions of the Canadian Pacific Railway, the Company shall equip the same in conformity with the standard

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Exhibit No. 45

Copy of executed contract, between the Crown in the right of the Dominion of Canada and George Stephen et al., relating to the Canadian Pacific Railway.  
(October 21st, 1880.)  
(Continued)

Record  
Court of Appeal

Exhibit No. 45

Copy of executed  
contract between  
the Crown in the  
right of the Dominion  
of Canada and  
George Stephen et  
al., relating to the  
Canadian Pacific  
Railway.  
(October 21st,  
1880.)  
(Continued)

herein established for the equipment of the sections hereby contracted for, and shall thereafter maintain and efficiently operate the same.

9. In consideration of the premises, the Government agree to grant to the Company a subsidy in money of \$25,000,000, and in land of 25,000,000 acres, for which subsidies the construction of the Canadian Pacific Railway shall be completed and the same shall be equipped, maintained and operated, the said subsidies respectively to be paid and granted as the work of construction shall proceed, in  
10 manner and upon the conditions following, that is to say:

a. The said subsidy in money is hereby divided and appropriated as follows, namely:

#### CENTRAL SECTION

Assumed at 1,350 miles—	
1st.—900 miles, at \$10,000 per mile.....	\$ 9,000,000
2nd.—450 " " 13,333 " " .....	6,000,000
	<hr/> \$15,000,000

#### EASTERN SECTION

Assumed at 650 miles, subsidy equal to	
20 \$15,384.61 per mile.....	10,000,000
	<hr/> \$25,000,000

And the said subsidy in land is hereby divided and appropriated as follows, subject to the reserve hereafter provided for.

#### CENTRAL SECTION

1st.—900 miles at 12,500 acres per mile .....	11,250,000
2nd.—450 " " 16,666.66 " " " .....	7,500,000
	<hr/> 18,750,000

#### EASTERN SECTION

Assumed at 650 miles, subsidy equal to	
30 9,615.35 acres per mile .....	6,250,000
	<hr/> 25,000,000

b. Upon the construction of any portion of the railway hereby contracted for, not less than 20 miles in length and the completion thereof so as to admit of the running of regular trains thereon, together with such equipment thereof as shall be required for the traffic thereon, the Government shall pay and grant to the Company the money, and land subsidies applicable thereto, according to the division and appropriation thereof made, as hereinbefore provided; the Company having the option of receiving in lieu of cash, terminable  
40 bonds of the Government, bearing such rate of interest for such period and nominal amount as may be arranged, and which may be equiv-

alent according to actuarial calculation to the corresponding cash payment, the Government allowing four per cent. interest on monies deposited with them.

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c. If at any time the Company shall cause to be delivered on or near the line of the said railway, at a place satisfactory to the Government, steel rails and fastenings to be used in the construction of the railway, but in advance of the requirements for such construction, the Government, on the requisition of the Company, shall, upon such terms and conditions as shall be determined by the Government,  
10 advance thereon three-fourths of the value thereof at the place of delivery. And a proportion of the amount so advanced shall be deducted according to such terms and conditions from the subsidy to be thereafter paid, upon the settlement for each section of 20 miles of railway, which proportion shall correspond with the proportion of such rails and fastenings which have been used in the construction of such sections.

Copy of executed contract, between the Crown in the right of the Dominion of Canada and George Stephen et al., relating to the Canadian Pacific Railway. (October 21st, 1880.) (Continued)

d. Until the first day of January, 1882, the Company shall have the option, instead of issuing land grant bonds as hereinafter provided, of substituting the payment by the Government of the interest  
20 (or part of the interest) on bonds of the Company, mortgaging the railway and the lands to be granted by the Government, running over such term of years as may be approved by the Governor in Council in lieu of the cash subsidy hereby agreed to be granted to the Company or any part thereof; such payments of interest to be equivalent according to actuarial calculation to the corresponding cash payment, the Government allowing four per cent. interest on monies deposited with them; and the coupons representing the interest on such bonds shall be guaranteed by the Government to the extent  
30 of such equivalent. And the proceeds of the sale of such bonds to the extent of not more than \$25,000,000 shall be deposited with the Government, and the balance of such proceeds shall be placed elsewhere by the Company, to the satisfaction, and under the exclusive control of the Government; failing which last condition the bonds in excess of those sold shall remain in the hands of the Government. And from time to time as the work proceeds, the Government shall pay over to the Company: firstly, out of the amount so to be placed by the Company,—and, after the expenditure of that amount, out of the amount deposited with the Government,—sums of money bearing  
40 the same proportion to the mileage cash subsidy hereby agreed upon, which the net proceeds of such sale (if the whole of such bonds are sold upon the issue thereof) or, if such bonds be not all then sold, the net proceeds of the issue, calculated at the rate at which the sale of part of them shall have been made shall bear to the sum of \$25,000,000. But if only a portion of the bond issue be sold, the amount earned by the Company according to the proportion aforesaid, shall be paid to the Company, partly out of the bonds in the hands of the

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Copy of executed  
 contract, between  
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 right of the Domin-  
 ion of Canada and  
 George Stephen et  
 al., relating to the  
 Canadian Pacific  
 Railway.  
 (October 21st,  
 1880.)  
 (Continued)

Government, and partly out of the cash deposited with the Govern-  
 ment, in similar proportions to the amount of such bonds sold and  
 remaining unsold respectively; and the Company shall receive the  
 bonds so paid as cash at the rate at which the said partial sale thereof  
 shall have been made. And the Government will receive and hold  
 such sum of money towards the creation of a sinking fund for the  
 redemption of such bonds; and upon such terms and conditions; as  
 shall be agreed upon between the Government and the Company.

10 *e.* If the Company avail themselves of the option granted by  
 clause *d*, the sum of \$2,000 per mile for the first eight hundred miles  
 of the central section shall be deducted pro rata from the amount  
 payable to the Company in respect of the said eight hundred miles,  
 and shall be appropriated to increase the mileage cash subsidy  
 appropriated to the remainder of the said central section.

20 10. In further consideration of the premises the Government  
 shall also grant to the Company the lands required for the road bed  
 of the railway, and for its stations, station grounds, workshops, dock  
 ground and water frontage at the termini on navigable waters,  
 buildings, yards, and other appurtenances required for the convenient  
 and effectual construction and working of the railway, in so far as  
 such land shall be vested in the Government. And the Government  
 shall also permit the admission free of duty, of all steel rails, fish  
 plates and other fastenings, spikes, bolts and nuts, wire, timber and  
 all material for bridges, to be used in the original construction of the  
 railway, and of a telegraph line in connection therewith, and all  
 telegraphic apparatus required for the first equipment of such tele-  
 graph line. And will convey to the Company, at cost price, with  
 interest, all rails and fastenings bought in or since the year 1879, and  
 30 other materials for construction in the possession of or purchased by  
 the Government at a valuation; such rails, fastenings and materials  
 not being required by it for the construction of the said Lake Superior  
 and western sections.

40 11. The grant of land hereby agreed to be made to the Company,  
 shall be so made in alternate sections of 640 acres each, extending  
 back 24 miles deep, on each side of the railway, from Winnipeg to  
 Jasper House, in so far as such lands shall be vested in the Govern-  
 ment, the Company receiving the sections bearing uneven numbers.  
 But should any of such sections consist in a material degree of land  
 not fairly fit for settlement, the Company shall not be obliged to  
 receive them as part of such grant, and the deficiency thereby caused  
 and any further deficiency which may arise from the insufficient  
 quantity of land along the said portion of railway, to complete the  
 said 25,000,000 acres, or from the prevalence of lakes and water  
 stretches in the sections granted (which lakes and water stretches  
 shall not be computed in the acreage of such sections); shall be made

up from other portions to be selected by the Company in the tract known as the fertile belt, that is to say the land lying between parallels 49 and 57 degrees of north latitude or elsewhere at the option of the Company by the grant therein of similar alternate sections extending back 24 miles deep on each side of any branch line or lines of railway to be located by the Company, and to be shown on a map or plan thereof deposited with the Minister of Railways; or of any common frontline or lines agreed upon between the Government and the Company, the conditions hereinbefore stated as to lands not  
 10 fairly fit for settlement to be applicable to such additional grants. And the Company may with the consent of the Government, select in the North-West Territories any tract or tracts of land not taken up as a means of supplying or partially supplying such deficiency. But such grants shall be made only from lands remaining vested in the Government.

12. The Government shall extinguish the Indian title affecting the lands herein appropriated, and to be hereafter granted in aid of the railway.

13. The Company shall have the right subject to the approval of  
 20 the Governor in Council to lay out and locate the line of the railway hereby contracted for, as they may see fit, preserving the following terminal points, namely: from Callander station to the point of junction with the Lake Superior section; and from Selkirk to the junction with the western section at Kamloops by way of the Yellow Head Pass.

14. The Company shall have the right, from time to time, to lay out, construct, equip, maintain and work branch lines of railway from any point or points along their main line of railway, to any point or points within the territory of the Dominion. Provided always that  
 30 before commencing any branch they shall first deposit a map and plan of such branch in the Department of Railways. And the Government shall grant to the Company the lands required for the road bed of such branches, and for the stations, station grounds, buildings, workshops, yards and other appurtenances requisite for the efficient construction and working of such branches in so far as such lands are vested in the Government.

15. For 20 years from the date hereof, no line of railway shall be authorized by the Dominion Parliament to be constructed South of the Canadian Pacific Railway, from any point at or near the Canadian  
 40 Pacific Railway except such line as shall run South West, or to the Westward of South West: nor to within fifteen miles of Latitude 49. And in the establishment of any new Province in the North West Territories, provision shall be made for continuing such prohibition after such establishment until the expiration of the said period.

Record  
Court of Appeal

Exhibit No. 45

Copy of executed contract between the Crown in the right of the Dominion of Canada and George Stephen et al., relating to the Canadian Pacific Railway. (October 21st, 1880.) (Continued)

Record  
Court of Appeal  
Exhibit No. 45

Copy of executed contract, between the Crown in the right of the Dominion of Canada and George Stephen et al., relating to the Canadian Pacific Railway. (October 21st, 1880.) (Continued)

16. The Canadian Pacific Railway, and all stations and station grounds, work shops, buildings, yards and other property, rolling stock and appurtenances required and used for the construction and working thereof, and the capital stock of the Company shall be forever free from taxation by the Dominion, or by any Province hereafter to be established or by any Municipal Corporation therein, and the lands of the Company, in the North-West Territories, until they are either sold or occupied, shall also be free from such taxation for 25 years after the grant thereof from the Crown.

"F.B."

10 17. The Company shall be authorized by their Act of incorporation to issue bonds, secured upon the land granted and to be granted to the Company, containing provisions for the use of such bonds in the acquisition of lands, and such other conditions as the Company shall see fit, such issue to be for \$25,000,000. And should the Company make such issue of land grant bonds, then they shall deposit them in the hands of the Government; and the Government shall retain and hold one-fifth of such bonds as security for the due performance of the present contract in respect of the maintenance and continuous working of the railway by the Company, as therein  
20 agreed, for ten years after the completion thereof, and the remaining \$20,000,000 of such bonds shall be dealt with as hereinafter provided. And as to the said one-fifth of the said bonds, so long as no default shall occur in the maintenance and working of the said Canadian Pacific Railway, the Government shall not present or demand payment of the coupons of such bonds, nor require payment of any interest thereon. And if any of such bonds so to be retained by the Government shall be paid off in the manner to be provided for the extinction of the whole issue thereof, the Government shall hold the amount received in payment thereof as security for the same purposes  
30 as the bonds so paid off, paying interest thereon at four per cent. per annum so long as default is not made by the Company in the performance of the conditions hereof. And at the end of the said period of ten years from the completion of the said railway, if no default shall then have occurred in such maintenance and working thereof, the said bonds, or if any of them shall then have been paid off, the remainder of said bonds and the money received for those paid off, with accrued interest shall be delivered back by the Government to the Company with all the coupons attached to such bonds. But if such default should occur, the Government may thereafter require  
40 payment of interest on the bonds so held, and shall not be obliged to continue to pay interest on the money representing bonds paid off; and while the Government shall retain the right to hold the said portion of the said land grant bonds, other securities satisfactory to the Government may be substituted for them by the Company by agreement with the Government.

"C"  
"F.B."

18. If the Company shall find it necessary or expedient to sell

the remaining \$20,000,000 of the land grant bonds or a larger portion thereof than in the proportion of one dollar for each acre of land then earned by the Company, they shall be allowed to do so, but the proceeds thereof, over and above the amount to which the Company shall be entitled as herein provided, shall be deposited with the Government. And the Government shall pay interest upon such deposit half-yearly, at the rate of four per cent. per annum, and shall pay over the amount of such deposit to the Company from time to time as the work proceeds, in the same proportions, and at the same

10 times and upon the same conditions as the land grant—that is to say: the Company shall be entitled to receive from the Government out of the proceeds of the said land grant bonds, the same number of dollars as the number of acres of the land subsidy which shall then have been earned by them, less one fifth thereof [\*that is to say if the said bonds are sold at par, but if they are sold at less than par, then

at a corresponding deduce th the company shall a deduction shall be made therefrom corresponding to the discount at which such bonds are sold.] And such land grant shall be conveyed to them by the Government, subject to the charge created as security for the

20 said land grant bonds, and shall remain subject to such charge till relieved thereof in such manner as shall be provided for at the time of the issue of such bonds.

"F.B."

\*The portions in brackets appear in ink on the original

19. The company shall pay any expenses which shall be incurred by the Government in carrying out the provisions of the two last preceding clauses of this contract.

20. If the Company should not issue, such land grant bonds then the Government shall retain from out of each grant to be made from time to time, every fifth section of the lands hereby agreed to be granted, such lands to be so retained as security for the purposes, and

30 for the length of time, mentioned in ~~the last preceding section.~~ [\*18th Section of this Contract. Section 18 hereof.] And such lands may be sold in such manner and at such prices as shall be agreed upon between the Government and the Company, and in that case the price thereof shall be paid to, and held by the Government for the same period, and for the same purposes as the land itself, the Government paying four per cent. per annum interest thereon. And other securities satisfactory to the Government may be substituted for such lands or money by agreement with the Government.

"F.B."

21. The Company to be incorporated, with sufficient powers to

40 enable them to carry out the foregoing contract, and this contract shall only be binding in the event of an Act of incorporation being granted to the Company in the form hereby appended as Schedule A.

22. The Railway Act of 1879, in so far as the provisions of the same are applicable to the undertaking referred to in this contract, and in so far as they are not inconsistent herewith or inconsistent with or

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Exhibit No. 45

Copy of executed contract, between the Crown in the right of the Dominion of Canada and George Stephen et al., relating to the Canadian Pacific Railway. (October 21st, 1880.) (Continued)

**Record**  
**Court of Appeal**

**Exhibit No. 45**

Copy of executed contract, between the Crown in the right of the Dominion of Canada and George Stephen et al., relating to the Canadian Pacific Railway, (October 21st, 1880.)  
(Continued)

10

contrary to the provisions of the Act of incorporation to be granted to the Company, shall apply to the Canadian Pacific Railway.

In witness whereof the parties hereto have enacted these presents at the City of Ottawa, this twenty first day of October, 1880.

(Signed) CHARLES TUPPER  
" GEO. STEPHEN  
" DUNCAN McINTYRE  
" JOHN S. KENNEDY  
" R. B. ANGUS  
" MORTON ROSE & CO.  
" per P. Du P. Grenfell  
" COHEN REINACH & CO.  
" per P. Du P. Grenfell  
" JAMES J. HILL  
" per his Atty. Geo. Stephen

Signed in presence of (signed) F. BRAUN, Secy., and Seal of the Department hereto affixed by Sir Charles Tupper in presence of (signed) F. BRAUN, Secy.

Signed by Morton Rose & Co., per P. Du Pre Grenfell, in presence  
20 of (signed) J. S. DENNIS.

Also signed by Cohen, Reinach & Company, per P. Du Pre Grenfell, in presence of (signed) J. S. DENNIS.

Also signed by James J. Hill by his attorney Geo. Stephen in presence of (signed) B. P. COOKE.

**No. 46**

Company's Document

**Obtained in Public Archives of the Dominion of Canada**  
**Macdonald Papers, Volume 127 (Pp. 312-316)**

**Exhibit No. 46**

Letter from John O'Connor, Secretary of State, Canada, to Sir John A. Macdonald.  
(Dec. 3, 1880.)

30

Letter from John O'Connor, Secretary of State, Canada,  
to Sir John A. MacDonald.

I have been looking carefully into the questions, which, as suggested, may possibly arise in the matter of the Pacific Railway Contract and the proposed Act to give it effect; and I now note down for you a brief statement of the conclusions I have arrived at, upon what appear to me the points for consideration.

1. Specific performance will not be decreed against a railway, for not proceeding with the construction of the railway. This is well established: and the reason is obvious. Such is the general proposition. But in the case of the C.P.R. it applies double force for a reason peculiar to it.

A Court of Equity will decree performance beyond the capacity of the defendant. The capacity of the Company to perform work must be measured by its capital; and they may not be decreed, in any case, to perform work beyond what they can effect by that.

10 The capital stock of this Company will be only \$25,000,000, a fraction of the estimated cost of the construction; besides they are to pay up only \$5,000,000.

2. A Court of competent jurisdiction will grant a *Mandamus* against this Company if they fail to proceed with the work of construction because the words of the proposed Act are *imperative* that they shall do so—i.e., proceed with the work of construction. The authorities, English and American, establish this, I think, clearly.

3. The authorities seem to establish the principle also, that if a party to a building contract (the contractor) fails to proceed with the  
20 work as agreed upon, the other party treat the contract as rescinded, at his option, and if he give proper notice that he will so treat the breach of contract.

4. What seems to me the best remedy in the hands of the government is this: If the Company neglect to proceed with the work on Georgian Bay and Western Sections or either of them, but do proceed with the work on the Prairie Section for the purpose of obtaining the portion of the subsidy allowed to that section, whether their intention should be, to postpone the work on them or either of them, until the Prairie section is completed, or to abandon them or one of them  
30 together, the Government may in such case, relying on the breach of contract, decline to hand over the subsidy allotted for the construction of that section or any part of it. And in this the Government would be justified by the law. For although the railway is, as to construction divided into three sections, yet it is an entirety. The railway is one project, one undertaking, one work and the contract is one, whole, and entire.

Although the railway is divided into three Sections for convenience of stipulation and for the public convenience of pushing one section in advance of the others in the outset, yet the contract is not  
40 several, but one, an entirety, like the railway. This being the case, breach of the contract in respect of any one section is a breach of the

Record  
Court of Appeal

Exhibit No. 46

Letter from John  
O'Connor, Secretary of State, Canada, to Sir John A. Macdonald.  
(Dec. 3, 1880.)  
(Continued)

Record  
Court of Appeal  
Exhibit No. 46

Letter from John  
O'Connor, Secretary  
of State, Canada,  
to Sir John A.  
Macdonald.  
(Dec. 3, 1880.)  
(Continued)

whole, and therefore the portion of the subsidy allotted to a section with which they are proceeding may be withheld for breach of the contract in relation to another section.

I have read the authorities and am now engaged in collecting and noting them, so that you may peruse them easily at your leisure.

Yours truly,

JOHN O'CONNOR.

The Rt. Hon.  
Sir John A. MacDonal,  
10 K.C.B.

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**No. 47**  
Company's Document

**Obtained in the Public Archives of the Dominion of Canada**  
**Macdonald Papers, Volume 127** (Pp. 317-318)

Exhibit No. 47

Letter J. J. Abbott  
to Sir John A.  
MacDonald (4th  
December, 1880).

Letter, J. J. Abbott to Sir John A. MacDonald.

Montreal, 4th December, 1880

Dear Sir John,

I have not received the resolutions, and therefore have not been able to complete a draft of bill. But it has struck me forcibly in  
20 attempting the draft the simplest plan would be to confirm the contract; take the necessary powers as described in the resolutions; and then, by a single clause, take power to the Governor to issue Letters Patent of Incorporation and make the contract and charter an appendix to the Bill. This would make a short bill. It would not be open to the objection that it was against the forms of the House; and it would be in accordance with your plan of 1872.

Yours sincerely,

J. J. ABBOTT.

P.S.—I am very sorry to hear of your indisposition; though I  
30 hope it is over as Langevin says you are to be at Council today. J.J.A.

The Right Honble  
Sir John A. Macdonald  
&c. &c. &c.  
Ottawa

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**No. 48**  
Company's Document

**Obtained in the Public Archives of the Dominion of Canada**  
**Macdonald Papers, Volume 127** (P. 388)

Letter, A. Dingman to Sir John A. MacDonald.

A. Dingman,  
Proprietor of  
The Semi-Weekly Western Dispatch, Strathroy, Ont.

Dec. 15th, 1880

10 Dear Sir John

You will doubtless like to hear what the opinion of the people is regarding the Pacific Railway bargain and I take the liberty to state briefly what I can gather here. The Conservatives without exception approve of the bargain on the whole and think well of it. The exemption from taxation for all time to come they think a little hard, but no harder than would have been the case had the government built the road. Many of the Grits acknowledge it much better than Mackenzie's offer and express satisfaction with the prospect of getting the road built on definite terms. I am generally on good terms with  
20 the Grits and I go round and good naturedly ask them the state of the Reform mind on the bargain with the syndicate for the building of the Pacific Railway, whether it is perturbed or quiet on the subject. Some find fault of course, but generally they seem to be fairly satisfied, one man this morning expressed himself pleased and wanted the road built and was glad that definite arrangements had been made to build it even if it was not quite up to his notion.

Ross told me he would support you in your bargain if it was at all satisfactory and he would not be particular as to the land terms for there was plenty. He would not like to agree to any guarantees  
30 of interest or dividends. I think he will have to support your bargain. He was satisfied with Mackenzie's offer and yours is better so I think according to his promise he will have to support your bargain. I write this in haste just as the mail is closing. This is private and is intended for your information and satisfaction. The inclosed are my editorial notes of today. I had not space to say much . . . to write.

Yours faithfully,

A. DINGMAN.

Record  
Court of Appeal

Exhibit No. 48

Letter A. Dingman  
to Sir John A.  
MacDonald  
(December 15th,  
1880).

No. 49  
Company's DocumentStatutes of Canada 1881, 44 Victoria  
Chapter 1

## Exhibit No. 49

An Act respecting  
the Canadian  
Pacific Railway  
(15th February,  
1881).

An Act respecting the Canadian Pacific Railway.

(Assented to 15th February, 1881.)

Whereas by the terms and conditions of the admission of British Columbia into Union with the Dominion of Canada, the Government of the Dominion has assumed the obligation of causing a Railway to be constructed, connecting the seaboard of British Columbia with the Railway system of Canada;

Preamble

And whereas the Parliament of Canada has repeatedly declared a preference for the construction and operation of such Railway by means of an incorporated Company aided by grants of money and land, rather than by the Government, and certain Statutes have been passed to enable that course to be followed, but the enactments therein contained have not been effectual for that purpose;

Preference of Parliament for construction by a company.

And whereas certain sections of the said Railway have been constructed by the Government, and others are in course of construction, but the greater portion of the main line thereof has not yet been commenced or placed under contract, and it is necessary for the development of the North West Territory and for the preservation of the good faith of the Government in the performance of its obligations, that immediate steps should be taken to complete and operate the whole of the said Railway;

Greater part still unconstructed

And whereas, in conformity with the expressed desire of Parliament, a contract has been entered into for the construction of the said portion of the main line of the said Railway, and for the permanent working of the whole line thereof, which contract with the schedule annexed has been laid before Parliament for its approval and a copy thereof is appended hereto, and it is expedient to approve and ratify the said contract, and to make provision for the carrying out of the same:

Contract entered into

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

1. The said contract, a copy of which with schedule annexed, is appended hereto, is hereby approved and ratified, and the Government is hereby authorized to perform and carry out the conditions thereof, according to their purport.
2. For the purpose of incorporating the persons mentioned in the

Contract approved

Charter may be granted.

Publication and  
effect of charter

said contract, and those who shall be associated with them in the undertaking, and of granting to them the powers necessary to enable them to carry out the said contract according to the terms thereof, the Governor may grant to them in conformity with the said contract, under the corporate name of the Canadian Pacific Railway Company, a charter conferring upon them the franchises, privileges and powers embodied in the schedule to the said contract and to this Act appended, and such charter, being published in the Canada Gazette, with any Order or Orders in Council relating to it, shall have force and  
10 effect as if it were an Act of the Parliament of Canada, and shall be held to be an Act of incorporation within the meaning of the said contract.

Certain grants of  
money and land  
may be made to the  
company chartered

3. Upon the organization of the said Company, and the deposit by them with the Government, of one million dollars in cash or securities approved by the Government, for the purpose in the said contract provided, and in consideration of the completion and perpetual and efficient operation of the railway by the said Company, as stipulated in the said contract, the Government may grant to the Company a subsidy of twenty-five million dollars in money, and  
20 twenty-five million acres of land, to be paid and conveyed to the Company in the manner and proportions, and upon the terms and conditions agreed upon in the said contract, and may also grant to the Company the land for right of way, stations and other purposes, and such other privileges as are provided for in the said contract. And in lieu of the payment of the said money subsidy direct to the Company, the Government may convert the same, and any interest accruing thereon, into a fund for the payment to the extent of such fund, of interest on the bonds of the Company, and may pay such interest accordingly; the whole in manner and form as provided for in the  
30 said contract.

Conversion of  
money grant  
authorized

Certain materials  
may be admitted  
free of duty

4. The Government may also permit the admission free of duty, of all steel rails, fish plates and other fastenings, spikes, bolts and nuts, wire, timber and all material for bridges to be used in the original construction of the said Canadian Pacific Railway, as defined by the Act thirty-seventh Victoria, chapter fourteen, and of a telegraph line in connection therewith, and all telegraphic apparatus required for the first equipment of such telegraph line, the whole as provided by the tenth section of the said contract.

Company to have  
possession of com-  
pleted portions of  
the railway

5. Pending the completion of the eastern and central sections  
40 of the said railway as described in the said contract, the Government may also transfer to the said Company the possession and right to work and run the several portions of the Canadian Pacific Railway as described in the said Act thirty-seventh Victoria, chapter fourteen, which are already constructed, and as the same shall be hereafter completed; and upon the completion of the said eastern and central

**Record**  
**Court of Appeal**  
**Exhibit No. 49**

An Act respecting  
the Canadian Pacific  
Railway (15th  
February, 1881).  
(Continued)

Conveyance thereof  
to company when  
the contract is per-  
formed

sections the Government may convey to the Company, with a suitable number of station buildings, and with water service (but without equipment), those portions of the Canadian Pacific Railway constructed, or agreed by the said contract to be constructed by the Government, which shall then be completed; and upon completion of the remainder of the portion of the said railway to be constructed by the Government, that portion also may be conveyed by the Government to the Company, and the Canadian Pacific Railway defined as aforesaid shall become and be thereafter the absolute  
10 property of the Company; the whole, however, upon the terms and conditions, and subject to the restrictions and limitations contained in the said contract.

6. The Government shall also take security for the continuous operation of the said railway during the ten years next subsequent to the completion thereof in the manner provided by the said contract.

Security may be  
taken for operation  
of the railway

**SCHEDULE**

THIS CONTRACT AND AGREEMENT MADE BETWEEN  
20 HER MAJESTY THE QUEEN, acting in respect of the Dominion of Canada, and herein represented and acting by the Honorable SIR CHARLES TUPPER, K.C.M.G., Minister of Railways and Canals, and George Stephen and Duncan McIntyre, of Montreal, in Canada, John S. Kennedy of New York, in the State of New York, Richard B. Angus and James J. Hill, of St. Paul, in the State of Minnesota, Morton, Rose & Co., London, England, and Kohn, Reinach & Co., of Paris, France,

Witnesses:

That the parties hereto have contracted and agreed with each other as follows, namely:

30 1. For the better interpretation of this contract, it is hereby declared that the portion of railway hereinafter called the Eastern section, shall comprise that part of the Canadian Pacific Railway to be constructed, extending from the Western terminus of the Canada Central Railway, near the East end of Lake Nipissing, known as Callander Station, to a point of junction with that portion of the said Canadian Pacific Railway now in course of construction extending from Lake Superior to Selkirk on the East side of Red River; which latter portion is hereinafter called the Lake Superior section. That  
40 the portion of said railway, now partially in course of construction, extending from Selkirk to Kamloops, is hereinafter called the Central section; and the portion of said railway now in course of construction, extending from Kamloops to Port Moody, is hereinafter called the Western section. And that the words "the Canadian Pacific Railway," are intended to mean the entire railway, as described in the

Interpretation  
clause

Eastern section

Lake Superior  
section

Central section

C.P. Railway

Company	Act 37th Victoria, chap. 14. The individual parties hereto, are hereinafter described as the Company; and the Government of Canada is hereinafter called the Government.	Record Court of Appeal
Government		Exhibit No. 49
Security to be given by the company	2. The contractors immediately after the organization of the said Company, shall deposit with the Government \$1,000,000 in cash or approved securities, as a security for the construction of the railway hereby contracted for. The Government shall pay to the Company interest on the cash deposited at the rate of four per cent, per annum, half-yearly, and shall pay over to the Company the interest received upon securities deposited,—the whole until default in the performance of the conditions hereof, or until the repayment of the deposit; and shall return the deposit to the Company on the completion of the railway, according to the terms hereof, with any interest accrued thereon.	An Act respecting the Canadian Pacific Railway (15th February, 1881). (Continued)
Conditions thereof	10	
Eastern and central sections to be constructed by company described	3. The Company shall lay out, construct and equip the said Eastern section, and the said Central section, of a uniform gauge of 4 feet 8½ inches; and in order to establish an approximate standard whereby the quality and the character of the railway and of the materials used in the construction thereof, and of the equipment thereof may be regulated, the Union Pacific Railway of the United States as the same was when first constructed, is hereby selected and fixed as such standard. And if the Government and the Company should be unable to agree as to whether or not any work done or materials furnished under this contract are in fair conformity with such standard, or as to any other question of fact, excluding questions of law, the subject of disagreement shall be, from time to time, referred to the determination of three referees, one of whom shall be chosen by the Government, one by the Company, and one by the two referees so chosen, and such referees shall decide as to the party by whom the expense of such reference shall be defrayed. And if such two referees should be unable to agree upon a third referee, he shall be appointed at the instance of either party hereto, after notice to the other, by the Chief Justice of the Supreme Court of Canada. And the decision of such referees, or of the majority of them, shall be final.	
Standard of railway and provision in case of disagreement as to conformity to it	20 30	
Commencement and regular progress of the work	4. The work of construction shall be commenced at the eastern extremity of the Eastern section not later than the first day of July next, and the work upon the Central section shall be commenced by the Company at such point towards the eastern end thereof on the portion of the line now under construction as shall be found convenient and as shall be approved by the Government, at a date not later than the 1st May next. And the work upon the Eastern and Central sections, shall be vigorously and continuously carried on at such rate of annual progress on each section as shall enable the Company to complete and equip the same and each of them, in running order, on or before the first day of May, 1891, by which date the Company hereby agree to complete and equip the said sections in conformity	
Period for completion	40	

Record  
Court of Appeal  
Exhibit No. 49

An Act respecting  
the Canadian  
Pacific Railway  
(15th February,  
1881).  
(Continued)

with this contract, unless prevented by the act of God, the Queen's enemies, intestine disturbances, epidemics, floods, or other causes beyond the control of the Company. And in case of the interruption or obstruction of the work of construction from any of the said causes, the time fixed for the completion of the railway shall be extended for a corresponding period.

5. The Company shall pay to the Government the cost, according to the contract, of the portion of railway, 100 miles in length, extending from the city of Winnipeg westward, up to the time at which the  
10 work was taken out of the hands of the contractor and the expenses since incurred by the Government in the work of construction, but shall have the right to assume the said work at any time and complete the same, paying the cost of construction as aforesaid, so far as the same shall then have been incurred by the Government.

As to portion of  
central section  
made by Govern-  
ment

6. Unless prevented by the act of God, the Queen's enemies, intestine disturbances, epidemics, floods or other causes beyond the control of the Government, the Government shall cause to be completed the said Lake Superior section, by the dates fixed by the existing contracts for the construction thereof; and shall also cause  
20 to be completed the portion of the said Western section now under contract, namely, from Kamloops to Yale, within the period fixed by the contracts therefor, namely, by the thirtieth day of June, 1885; and shall also cause to be completed, on or before the first day of May, 1891, the remaining portion of the said Western section, lying between Yale and Port Moody, which shall be constructed of equally good quality in every respect with the standard hereby created for the portion hereby contracted for. And the said Lake Superior section,  
30 and the portions of the said Western section now under contract, shall be completed as nearly as practicable according to the specifications and conditions of the contracts therefor, except in so far as the same have been modified by the Government prior to this contract.

Government to  
construct portions  
now under con-  
tract within periods  
fixed by contract

7. The railway constructed under the terms hereof shall be the property of the Company: and pending the completion of the Eastern and Central sections, the Government shall transfer to the Company the possession and right to work and run the several portions of the Canadian Pacific Railway already constructed or as the same shall be completed. And upon the completion of the Eastern and Central sections, the Government shall convey to the Company, with a suitable number of station buildings and with water service (but  
40 without equipment), those portions of the Canadian Pacific Railway constructed or to be constructed by the Government which shall then be completed; and upon completion of the remainder of the portion of railway to be constructed by the Government, that portion shall also be conveyed to the Company; and the Canadian Pacific Railway shall become and be thereafter the absolute property

Completed Railway  
to be property of  
company

Transfer of portions  
constructed by  
Government

Company to operate the railway forever

of the Company. And the Company shall thereafter and forever efficiently maintain, work and run the Canadian Pacific Railway.

Record  
Court of Appeal

Company to equip portions transferred to them

8. Upon the reception from the Government of the possession of each of the respective portions of the Canadian Pacific Railway, the Company shall equip the same in conformity with the standard herein established for the equipment of the sections hereby contracted for, and shall thereafter maintain and efficiently operate the same.

Exhibit No. 49

An Act respecting the Canadian Pacific Railway (15th February, 1881).  
(Continued)

Subsidy in money and land

9. In consideration of the premises, the Government agree to grant to the Company a subsidy in money of \$25,000,000, and in land of 25,000,000 acres, for which subsidies the construction of the Canadian Pacific Railway shall be completed and the same shall be equipped, maintained and operated,—the said subsidies respectively to be paid and granted as the work of construction shall proceed, in manner and upon the conditions following, that is to say:

Apportionment of money

a. The said subsidy in money is hereby divided and appropriated as follows, namely:

#### CENTRAL SECTION

Assumed at 1,350 miles—		
20 1st.—900 miles, at \$10,000 per mile.....	\$9,000,000	
2nd.—450 “ “ 13,333 “ “ .....	6,000,000	
		\$15,000,000

#### EASTERN SECTION

Assumed at 650 miles, subsidy equal to	
\$15,384.61 per mile.....	10,000,000
	\$25,000,000

And of land

And the said subsidy in land is hereby divided and appropriated as follows, subject to the reserve hereinafter provided for:

#### CENTRAL SECTION

30 1st.—900 miles, at 12,500 acres per mile.....	11,250,000
2nd.—450 “ “ 16,666.66 “ “ “ .....	7,500,000
	18,750,000

#### EASTERN SECTION

Assumed at 650 miles, subsidy equal to 9,615.35 acres	
per mile.....	6,250,000
	25,000,000

When to be paid or granted

b. Upon the construction of any portion of the railway hereby contracted for, not less than 20 miles in length, and the completion

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Court of Appeal

Exhibit No. 49

An Act respecting  
the Canadian Paci-  
fic Railway (15th  
February, 1881).  
(Continued)

thereof so as to admit of the running of regular trains thereon, together with such equipment thereof as shall be required for the traffic thereon, the Government shall pay and grant to the Company the money and land subsidies applicable thereto, according to the division and appropriation thereof made as hereinbefore provided; the Company having the option of receiving in lieu of cash, terminable bonds of the Government, bearing such rate of interest, for such period and nominal amount as may be arranged, and which may be equivalent according to actuarial calculation to the corresponding  
10 cash payment,—the Government allowing four per cent. interest on moneys deposited with them.

Option of company  
to take terminable  
bonds

*c.* If at any time the Company shall cause to be delivered on or near the line of the said railway, at a place satisfactory to the Government, steel rails and fastenings to be used in the construction of the railway, but in advance of the requirements for such construction, the Government, on the requisition of the Company, shall, upon such terms and conditions as shall be determined by the Government, advance thereon three-fourths of the value thereof at the place of delivery. And a proportion of the amount so advanced  
20 shall be deducted, according to such terms and conditions, from the subsidy to be thereafter paid, upon the settlement for each section of 20 miles of railway,—which proportion shall correspond with the proportion of such rails and fastenings which have been used in the construction of such sections.

Provision as to  
materials for  
construction deliv-  
ered by company  
in advance

*d.* Until the first day of January, 1882, the Company shall have the option, instead of issuing land grant bonds as hereinafter provided, of substituting the payment by the Government of the interest (or part of the interest) on bonds of the Company mortgaging the railway and the lands to be granted by the Government, running  
30 over such term of years as may be approved by the Governor in Council, in lieu of the cash subsidy hereby agreed to be granted the Company or any part thereof—such payments of interest to be equivalent according to actuarial calculation to the corresponding cash payment, the Government allowing four per cent. interest on moneys deposited with them; and the coupons representing the interest on such bonds shall be guaranteed by the Government to the extent of such equivalent. And the proceeds of the sale of such bonds to the extent of not more than \$25,000,000, shall be deposited with the Government, and the balance of such proceeds shall be  
40 placed elsewhere by the Company, to the satisfaction and under the exclusive control of the Government; failing which last condition the bonds in excess of those sold shall remain in the hands of the Government. And from time to time as the work proceeds, the Government shall pay over to the Company: firstly, out of the amount so to be placed by the Company,—and, after the expenditure of that amount, out of the amount deposited with the Government,—

Option of the  
company during a  
certain time to  
substitute payment  
of interest on cer-  
tain bonds instead  
of issuing land  
grant bonds

Deposit of proceeds  
of sale of such  
bonds

Payments to com-  
pany out of such  
deposits

Payment by  
delivery of bonds

sums of money bearing the same proportion to the mileage cash subsidy hereby agreed upon, which the net proceeds of such sale (if the whole of such bonds are sold upon the issue thereof, or, if such bonds be not all then sold, the net proceeds of the issue, calculated at the rate at which the sale of part of them shall have been made,) shall bear to the sum of \$25,000,000. But if only a portion of the bond issue be sold, the amount earned by the Company according to the proportion aforesaid, shall be paid to the Company, partly out of the bonds in the hands of the Government, and partly out of

10 the cash deposited with the Government, in similar proportions to the amount of such bonds sold and remaining unsold respectively; and the Company shall receive the bonds so paid, as cash, at the rate at which the said partial sale thereof shall have been made. And the Government will receive and hold such sum of money towards the creation of a sinking fund for the redemption of such bonds, and upon such terms and conditions, as shall be agreed upon between the Government and the Company.

Sinking fund

Alteration in  
apportionment of  
money grant in  
such case

20 *e.* If the Company avail themselves of the option granted by clause *d*, the sum of \$2,000 per mile for the first eight hundred miles of the Central section shall be deducted pro rata from the amount payable to the Company in respect of the said eight hundred miles, and shall be appropriated to increase the mileage cash subsidy appropriated to the remainder of the said Central section.

Grant of land  
required for railway  
purposes

10. In further consideration of the premises, the Government shall also grant to the Company the lands required for the road bed of the railway, and for its stations, station grounds, workshops, dock ground and water frontage at the termini on navigable waters, buildings, yards and other appurtenances required for the convenient and effectual construction and working of the railway, in so far as such

30 land shall be vested in the Government. And the Government shall also permit the admission free of duty, of all steel rails, fish plates and other fastenings, spikes, bolts and nuts, wires, timber and all material for bridges, to be used in the original construction of the railway, and of a telegraph line in connection therewith, and all telegraphic apparatus required for the first equipment of such telegraph line; and will convey to the Company, at cost price, with interest, all rails and fastenings, bought in or since the year 1879, and other materials for construction in the possession of or purchased by the Government, at a valuation,—such rails, fastenings and materials not being required

40 by it for the construction of the said Lake Superior and Western sections.

Admission of cer-  
tain materials free  
of dutySale of certain  
materials to com-  
pany by Govern-  
mentProvision respect-  
ing land grant

11. The grant of land hereby agreed to be made to the Company, shall be so made in alternate sections of 640 acres each, extending back 24 miles deep, on each side of the railway, from Winnipeg to Jasper House, in so far as such lands shall be vested in the Govern-

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Court of Appeal

Exhibit No. 49

An Act respecting  
the Canadian Paci-  
fic Railway (15th  
February, 1881).  
(Continued)

ment,—the Company receiving the sections bearing uneven numbers. But should any of such sections consist in a material degree of land not fairly fit for settlement, the Company shall not be obliged to receive them as part of such grant; and the deficiency thereby caused and any further deficiency which may arise from the insufficient quantity of land along the said portion of railway, to complete the said 25,000,000 acres, or from the prevalence of lakes and water stretches in the sections granted (which lakes and water stretches shall not be computed in the acreage of such sections), shall be made  
10 up from other portions in the tract known as the fertile belt, that is to say, the land lying between parallels 49 and 57 degrees of north latitude, or elsewhere at the option of the Company, by the grant therein of similar alternate sections extending back 24 miles deep on each side of any branch line or lines of railway to be located by the Company, and to be shown on a map or plan thereof deposited with the Minister of Railways; or of any common front line or lines agreed upon between the Government and the Company,—the conditions hereinbefore stated as to lands not fairly fit for settlement to be  
20 applicable to such additional grants. And the Company may with the consent of the Government, select in the North-West Territories any tract or tracts of land not taken up as a means of supplying or partially supplying such deficiency. But such grants shall be made only from lands remaining vested in the Government.

Case of deficiency  
of land on line  
of railway  
provided for

Selection by Com-  
pany in such case,  
with consent of  
Government

12. The Government shall extinguish the Indian title affecting the lands herein appropriated, and to be hereafter granted in aid of the railway.

As to Indian title

13. The Company shall have the right, subject to the approval of the Governor in Council, to lay out and locate the line of the railway hereby contracted for, as they may see fit, preserving the follow-  
30 ing terminal points, namely: from Callander station to the point of junction with the Lake Superior section; and from Selkirk to the junction with the Western Section at Kamloops by way of the Yellow Head Pass.

Location of railway  
between certain  
terminal points

14. The Company shall have the right, from time to time, to lay out, construct, equip, maintain and work branch lines of railway from any point or points along their main line of railway, to any point or points within the territory of the Dominion. Provided always, that before commencing any branch they shall first deposit a map and plan of such branch in the Department of Railways. And the  
40 Government shall grant to the Company the lands required for the road bed of such branches, and for the stations, station grounds, buildings, workshops, yards and other appurtenances requisite for the efficient construction and working of such branches, in so far as such lands are vested in the Government.

Power to construct  
branches

Lands necessary  
for the same

15. For twenty years from the date hereof, no line of railway

Restriction as to

competing lines for a limited period

shall be authorized by the Dominion Parliament to be constructed South of the Canadian Pacific Railway, from any point at or near the Canadian Pacific Railway, except such line as shall run South West or to the Westward of South West; nor to within fifteen miles of Latitude 49. And in the establishment of any new Province in the North-West Territories, provision shall be made for continuing such prohibition after such establishment until the expiration of the said period.

Record  
Court of Appeal

Exhibit No. 49

An Act respecting the Canadian Pacific Railway (15th February, 1881). (Continued)

Exemption from taxation in N.W. territories

16. The Canadian Pacific Railway, and all stations and station grounds, work shops, buildings, yards and other property, rolling stock and appurtenances required and used for the construction and working thereof, and the capital stock of the Company, shall be forever free from taxation by the Dominion, or by any Province hereafter to be established, or by any Municipal Corporation therein; and the lands of the Company, in the North-West Territories, until they are either sold or occupied, shall also be free from such taxation for 20 years after the grant thereof from the Crown.

Land grant bonds

Their nature, and conditions of issue by the company

17. The Company shall be authorized by their Act of incorporation to issue bonds, secured upon the land granted and to be granted to the Company, containing provisions for the use of such bonds in the acquisition of lands, and such other conditions as the Company shall see fit,—such issue to be for \$25,000,000. And should the Company make such issue of land grant bonds, then they shall deposit them in the hands of the Government; and the Government shall retain and hold one-fifth of such bonds as security for the due performance of the present contract in respect of the maintenance and continuous working of the railway by the Company, as herein agreed, for ten years after the completion thereof, and the remaining \$20,000,000 of such bonds shall be dealt with as hereinafter provided. And as to the said one-fifth of the said bonds, so long as no default shall occur in the maintenance and working of the said Canadian Pacific Railway, the Government shall not present or demand payment of the coupons of such bonds, nor require payment of any interest thereon. And if any of such bonds, so to be retained by the Government, shall be paid off in the manner to be provided for the extinction of the whole issue thereof, the Government shall hold the amount received in payment thereof as security for the same purposes as the bonds so paid off, paying interest thereon at four per cent. per annum so long as default is not made by the Company in the performance of the conditions hereof. And at the end of the said period of ten years from the completion of the said railway, if no default shall then have occurred in such maintenance and working thereof, the said bonds, or if any of them shall then have been paid off, the remainder of said bonds and the money received for those paid off, with accrued interest, shall be delivered back by the Government to the Company with all

Deposit with Government; for what purposes and on what conditions

If the company make no default in operating railway

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the coupons attached to such bonds. But if such default should occur, the Government may thereafter require payment of interest on the bonds so held, and shall not be obliged to continue to pay interest on the money representing bonds paid off; and while the Government shall retain the right to hold the said portion of the said land grant bonds, other securities satisfactory to the Government may be substituted for them by the Company, by agreement with the Government.

In case of such  
default

18. If the Company shall find it necessary or expedient to sell  
10 the remaining \$20,000,000 of the land grant bonds or a larger portion  
thereof than in the proportion of one dollar for each acre of land then  
earned by the Company, they shall be allowed to do so, but the  
proceeds thereof, over and above the amount to which the Company  
shall be entitled as herein provided, shall be deposited with the  
Government. And the Government shall pay interest upon such  
deposit half-yearly, at the rate of four per cent. per annum, and shall  
pay over the amount of such deposit to the Company from time to  
time as the work proceeds, in the same proportions, and at the same  
times and upon the same conditions as the land grant—that is to  
20 say: the Company shall be entitled to receive from the Government  
out of the proceeds of the said land grant bonds, the same number of  
dollars as the number of acres of the land subsidy which shall then  
have been earned by them, less one fifth thereof, that is to say, if the  
bonds are sold at par, but if they are sold at less than par, then a  
deduction shall be made therefrom corresponding to the discount at  
which such bonds are sold. And such land grant shall be conveyed  
to them by the Government, subject to the charge created as security  
for the said land grant bonds, and shall remain subject to such charge  
till relieved thereof in such manner as shall be provided for at the  
30 time of the issue of such bonds.

Provision if such  
bond are sold  
faster than lands  
are earned by the  
company, and  
deposit on interest  
with Government,  
and payments by  
Government to  
company

Lands to be granted  
subject to such  
bonds

19. The Company shall pay any expenses which shall be incurred  
by the Government in carrying out the provisions of the last two  
preceding clauses of this contract.

Company to pay  
certain expenses

20. If the Company should not issue such land grant bonds, then  
the Government shall retain from out of each grant to be made from  
time to time, every fifth section of the lands hereby agreed to be  
granted, such lands to be so retained as security for the purposes,  
and for the length of time, mentioned in section eighteen hereof.  
And such lands may be sold in such manner and at such prices as  
40 shall be agreed upon between the Government and the Company;  
and in that case the price thereof shall be paid to, and held by the  
Government for the same period, and for the same purposes as the  
land itself, the Government paying four per cent. per annum interest  
thereon. And other securities satisfactory to the Government may

If land bonds are  
not issued, one-fifth  
of land to be re-  
tained as security

How to be disposed  
of

Substitution of  
other securities

be substituted for such lands or money by agreement with the Government.

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Company to be  
incorporated as by  
schedule A

21. The Company to be incorporated, with sufficient powers to enable them to carry out the foregoing contract, and this contract shall only be binding in the event of an Act of incorporation being granted to the Company in the form hereto appended as Schedule A.

Railway Act to  
apply

22. The Railway Act of 1879, in so far as the provisions of the same are applicable to the undertaking referred to in this contract, and in so far as they are not inconsistent herewith or inconsistent with 10 or contrary to the provisions of the Act of incorporation to be granted to the Company, shall apply to the Canadian Pacific Railway.

Exceptions

In witness whereof the parties hereto have executed these presents at the City of Ottawa, this twenty-first day of October, 1880.

(Signed) CHARLES TUPPER,  
" Minister of Railways and Canals.  
" GEO. STEPHEN,  
" DUNCAN McINTYRE,  
" J. S. KENNEDY,  
" R. B. ANGUS,  
20 " J. J. HILL,  
" Per pro. Geo. Stephen.  
" MORTON, ROSE & CO.  
" KOHN, REINACH & CO.,  
By P. Du P. Grenfell.

Signed in presence of F. Braun, and Seal of the Department hereto affixed by Sir Charles Tupper, in presence of

(Signed) F. BRAUN.

30 SCHEDULE A, REFERRED TO IN THE FOREGOING CONTRACT

INCORPORATION

Certain persons  
incorporated

1. George Stephen, of Montreal, in Canada, Esquire; Duncan McIntyre, of Montreal, aforesaid, Merchant; John S. Kennedy, of New York, in the State of New York, Banker; the firm of Morton, Rose and Company, of London, in England, Merchants; the firm of Kohn, Reinach and Company, of Paris, in France, Bankers; Richard B. Angus, and James J. Hill, both of St. Paul, in the State of Minnesota, Esquires; with all such other persons and corporations as shall become shareholders in the Company hereby incorporated, shall be 40 and they are hereby constituted a body corporate and politic, by the name of the "Canadian Pacific Railway Company."

Corporate name

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2. The capital stock of the Company shall be twenty-five million dollars, divided into shares of one hundred dollars each,—which shares shall be transferable in such manner and upon such conditions as shall be provided by the by-laws of the Company; and such shares or any part thereof, may be granted and issued as paid-up shares for value bona fide received by the Company, either in money at par or at such price and upon such conditions as the Board of Directors may fix, or as part of the consideration of any contract made by the Company.

Capital stock and  
shares

Paid up shares

10 3. As soon as five million dollars of the stock of the Company have been subscribed, and thirty per centum thereof paid up, and upon the deposit with the Minister of Finance of the Dominion of one million dollars in money or in securities approved by the Governor in Council, for the purpose and upon the conditions in the foregoing contract provided, the said contract shall become and be transferred to the Company, without the execution of any deed or instrument in that behalf; and the Company shall, thereupon, become and be vested with all the rights of the contractors named in the said contract, and shall be subject to, and liable for, all their duties and  
20 obligations, to the same extent and in the same manner as if the said contract had been executed by the said Company instead of by the said contractors; and thereupon the said contractors, as individuals, shall cease to have any right or interest in the said contract, and shall not be subject to any liability or responsibility under the terms thereof otherwise than as members of the corporation hereby created. And upon the performance of the said conditions respecting the subscription of stock, the partial payment thereof, and the deposit of one million dollars to the satisfaction of the Governor in Council, the publication by the Secretary of State in the Canada Gazette, of  
30 a notice that the transfer of the contract to the Company has been effected and completed shall be conclusive proof of the fact. And the Company shall cause to be paid up, on or before the first day of May next, a further instalment of twenty per centum upon the said first subscription of five million dollars, of which call thirty days notice by circular mailed to each shareholder shall be sufficient. And the Company shall call in, and cause to be paid up, on or before the 31st day of December, 1882, the remainder of the said first subscription of five million dollars.

Substitution of  
company as  
contractors; and  
when

Effect of such  
substitution

Notice in Canada  
Gazette

Further instalment  
to be paid up

And rest of  
\$5,000,000

40 4. All the franchises and powers necessary or useful to the Company to enable them to carry out, perform, enforce, use, and avail themselves of, every condition, stipulation, obligation, duty, right, remedy, privilege, and advantage agreed upon, contained or described in the said contract, are hereby conferred upon the Company. And the enactment of the special provisions hereinafter contained shall not be held to impair or derogate from the generality of the franchises and powers so hereby conferred upon them.

Necessary fran-  
chises and powers  
granted

Proviso

## DIRECTORS

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fic Railway (15th  
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(Continued)First directors of  
the company

5. The said George Stephen, Duncan McIntyre, John S. Kennedy, Richard B. Angus, James J. Hill, Henry Stafford Northcote, of London, aforesaid, Esquires, Pascoe du P. Grenfell, of London, aforesaid, Merchant, Charles Day Rose, of London, aforesaid, Merchant, and Baron J. de Reinach, of Paris, aforesaid, Banker, are hereby constituted the first directors of the Company, with power to add to their number, but so that the directors shall not in all exceed fifteen in number; and the majority of the directors, of whom

Number limited

Majority to be  
British subjects

10 the President shall be one, shall be British subjects. And the Board of Directors so constituted shall have all the powers hereby conferred upon the directors of the Company, and they shall hold office until the first annual meeting of the shareholders of the Company.

Powers and term of  
officeQualification of  
directors

6. Each of the directors of the Company, hereby appointed, or hereafter appointed or elected, shall hold at least two hundred and fifty shares of the stock of the Company. But the number of directors to be hereafter elected by the shareholders shall be such, not exceeding fifteen, as shall be fixed by by-law, and subject to the

Alteration of  
number by by-law

20 of, the last preceding section; the number thereof may be hereafter altered from time to time in like manner. The votes for their election shall be by ballot.

Ballot

Quorum

7. A majority of the directors shall form a quorum of the board; and until otherwise provided by by-law, directors may vote and act by proxy,—such proxy to be held by a director only; but no director shall hold more than two proxies, and no meeting of directors shall be competent to transact business unless at least three directors are present thereat in person, the remaining number of directors required to form a quorum being represented by proxies.

Proviso

Three must be  
present

30 8. The Board of Directors may appoint, from out of their number, an Executive Committee, composed of at least three directors, for the transaction of the ordinary business of the Company, with such powers and duties as shall be fixed by the by-laws; and the President shall be ex officio a member of such committee.

Executive  
committee

President to be one

Chief place of  
business

9. The chief place of business of the Company shall be at the City of Montreal, but the Company may, from time to time, by by-law, appoint and fix other places within or beyond the limits of Canada at which the business of the Company may be transacted, and at which the directors or shareholders may meet, when called as

Other places

Places for service  
of process, &c.

40 shall be determined by the by-laws. And the Company shall appoint and fix by by-law, at least one place in each Province or Territory through which the railway shall pass, where service of process may be made upon the Company, in respect of any cause of action arising within such Province or Territory, and may afterwards, from time to

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time, change such place by by-law. And a copy of any by-law fixing or changing any such place, duly authenticated as herein provided, shall be deposited by the Company in the office, at the seat of Government of the Province or Territory to which such by-law shall apply, of the clerk or prothonotary of the highest, or one of the highest, courts of civil jurisdiction of such Province or Territory. And if any cause of action shall arise against the Company within any Province or Territory, and any writ or process be issued against the Company thereon out of any court in such Province or Territory, 10 service of such process may be validly made upon the Company at the place within such Province or Territory so appointed and fixed; but if the Company fail to appoint and fix such place, or to deposit, process may be validly served upon the Company, at any of the stations of the said railway within such Province or Territory.

How to be notified

Service of process  
thereat

And if company  
fail to appoint  
places

## SHAREHOLDERS

10. The first annual meeting of the shareholders of the Company, for the appointment of directors, shall be held on the second Wednesday in May, one thousand eight hundred and eighty-two, at the principal office of the Company, in Montreal; and the annual general 20 meeting of shareholders, for the election of directors and the transaction of business generally, shall be held on the same day in each year thereafter at the same place unless otherwise provided by the by-laws. And notice of each of such meetings shall be given by the publication thereof in the Canada Gazette for four weeks, and by such further means as shall, from time to time, be directed by the by-laws.

First and other  
annual meetings

Notice

11. Special general meetings of the shareholders may be convened in such manner as shall be provided by the by-laws: and except as hereinafter provided, notice of such meetings shall be given in the 30 same manner as notices of annual general meetings, the purpose for which such meeting is called being mentioned in the notices thereof; and, except as hereinafter provided, all such meetings shall be held at the chief place of business of the Company.

Special general  
meetings: notice

Place

12. If at any time before the first annual meeting of the shareholders of the Company, it should become expedient that a meeting of the directors of the Company, or a special general meeting of the shareholders of the Company, should be held, before such meeting can conveniently be called, and notice thereof given in the manner provided by this Act, or by the by-laws, or before by-laws in that 40 behalf have been passed, and at a place other than at the chief place of business of the Company in Montreal before the enactment of a by-law authorizing the holding of such meeting elsewhere; it shall be lawful for the President or for any three of the directors of the Company to call special meetings either of directors or of share-

Provision if a meet-  
ing be necessary  
before notice as  
aforesaid can be  
given

holders, or of both, to be held at the City of London in England, at times and places respectively, to be stated in the notices to be given of such meetings respectively. And notices of such meetings may be validly given by a circular mailed to the ordinary address of each director or shareholder as the case may be, in time to enable him to attend such meeting, stating in general terms the purpose of the intended meeting. And in the case of a meeting of shareholders, the proceedings of such meeting shall be held to be valid and sufficient and to be binding on the Company in all respects, if every shareholder of the Company be present thereat in person or by proxy, notwithstanding that notice of such meeting shall not have been given in the manner required by this Act.

Notices in such case

Meetings always valid if all shareholders or their proxies are present

Limitation as to votes and proxies

And as to calls

13. No shareholder holding shares upon which any call is overdue and unpaid shall vote at any meeting of shareholders. And unless otherwise provided by the by-laws, the person holding the proxy of a shareholder shall be himself a shareholder.

14. No call upon unpaid shares shall be made for more than twenty per centum upon the amount thereof.

## RAILWAY AND TELEGRAPH LINE

Line and gauge of railway

And of certain branches thereof

Commencement and completion

Other branches

Name of railway

Company may construct lines of telegraph or telephone, and work them and collect tolls

20 15. The Company may lay out, construct, acquire, equip, maintain and work a continuous line of railway, of the gauge of four feet eight and one-half inches; which railway shall extend from the terminus of the Canada Central Railway near Lake Nipissing, known as Callander Station, to Port Moody in the Province of British Columbia; and also, a branch line of railway from some point on the main line of railway to Fort William on Thunder Bay; and also the existing branch line of railway from Selkirk, in the Province of Manitoba, to Pembina in the said Province; and also other branches to be located by the Company from time to time as provided by the said contract,—the said branches to be of the gauge aforesaid; and the said main line of railway, and the said branch lines of railway, shall be commenced and completed as provided by the said contract; and together with such other branch lines as shall be hereafter constructed by the said Company, and any extension of the said main line of railway that shall hereafter be constructed or acquired by the Company, shall constitute the line of railway hereinafter called THE CANADIAN PACIFIC RAILWAY.

16. The Company may construct, maintain and work a continuous telegraph line and telephone lines throughout and along the whole line of the Canadian Pacific Railway, or any part thereof, and may also construct or acquire by purchase, lease or otherwise, any other line or lines of telegraph connecting with the line so to be constructed along the line of the said railway, and may undertake the transmission of messages for the public by any such line or lines of telegraph or

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telephone, and collect tolls for so doing; or may lease such line or lines of telegraph or telephone, or any portion thereof; and, if they think proper to undertake the transmission of messages for hire, they shall be subject to the provisions of the fourteenth, fifteenth and sixteenth sections of chapter sixty-seven of the Consolidated Statutes of Canada. And they may use any improvement that may hereafter be invented (subject to the rights of patentees) for telegraphing or telephoning, and any other means of communication that may be deemed expedient by the Company at any time hereafter.

Subject to Con.  
Stat. Can., c. 67,  
ss. 14, 15, 16

As to future  
inventions

## 10 POWERS

17. "The Consolidated Railway Act, 1879," in so far as the provisions of the same are applicable to the undertaking authorized by this charter, and in so far as they are not inconsistent with or contrary to the provisions hereof, and save and except as hereinafter provided, is hereby incorporated herewith.

Application of  
42 v., c. 9

18. As respects the said railway, the seventh section of "The Consolidated Railway Act, 1879," relating to POWERS, and the eighth section thereof relating to PLANS AND SURVEYS, shall be subject to the following provisions:

Exceptions as to  
such application

20 *a.* The Company shall have the right to take, use and hold the beach and land below high water mark, in any stream, lake, navigable water, gulf or sea, in so far as the same shall be vested in the Crown and shall not be required by the Crown, to such extent as shall be required by the Company for its railway and other works, and as shall be exhibited by a map or plan thereof deposited in the office of the Minister of Railways. But the provisions of this sub-section shall not apply to any beach or land lying East of Lake Nipissing except with the approval of the Governor in Council.

As to lands of the  
Crown required

30 *b.* It shall be sufficient that the map or plan and book of reference for any portion of the line of the railway not being within any district or county for which there is a Clerk of the Peace, be deposited in the office of the Minister of Railways of Canada; and any omission, misstatement or erroneous description of any lands therein may be corrected by the Company, with the consent of the Minister and certified by him; and the Company may then make the railway in accordance with such certified correction.

Plans and book of  
reference

40 *c.* The eleventh sub-section of the said eighth section of the Railway Act shall not apply to any portion of the railway passing over ungranted lands of the Crown, or lands not within any surveyed township in any Province; and in such places, deviations not exceeding five miles from the line shown on the map or plan as aforesaid, deposited by the Company, shall be allowed, without any formal correction or certificate; and any further deviation that may be found

Deviations from  
line on plan

expedient may be authorized by order of the Governor in Council, and the Company may then make their railway in accordance with such authorized deviation.

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Deposit of plan of main line, &c.

*d.* The map or plan and book of reference of any part of the main line of the Canadian Pacific Railway made and deposited in accordance with this section, after approval by the Governor in Council, and of any branch of such railway hereafter to be located by the said Company in respect of which the approval of the Governor in Council shall not be necessary, shall avail as if made and deposited as required by the said "Consolidated Railway Act, 1879," for all the purposes of the said Act and of this Act; and any copy of, or extract therefrom, certified by the said Minister or his deputy, shall be received as evidence in any court of law in Canada.

And of branches

Copies thereof

Registration thereof

*e.* It shall be sufficient that a map or profile of any part of the completed railway, which shall not lie within any county or district having a registry office, be filed in the office of the Minister of Railways.

Company may take materials from public lands; and a greater extent for stations, &c. than allowed by 42 V., c. 9

19. It shall be lawful for the Company to take from any public lands, adjacent to or near the line of the said railway, all stone, timber, gravel and other materials which may be necessary or useful for the construction of the railway; and also to lay out and appropriate to the use of the Company, a greater extent of lands, whether public or private, for stations, depots, workshops, buildings, side-tracks, wharves, harbours and roadway, and for establishing screens against snow, than the breadth and quantity mentioned in "The Consolidated Railway Act, 1879,"—such greater extent taken, in any case being allowed by the Government, and shown on the maps or plans deposited with the Minister of Railways.

Proviso

Limit of reduction of tolls by Parliament under 42 V., c. 9, s. 17, extended

20. The limit to the reduction of tolls by the Parliament of Canada provided for by the eleventh sub-section of the 17th section of "The Consolidated Railway Act, 1879," respecting TOLLS, is hereby extended, so that such reduction may be to such an extent that such tolls when reduced shall not produce less than ten per cent. per annum profit on the capital actually expended in the construction of the railway, instead of not less than fifteen per cent per annum profit, as provided by the said sub-section; and so also that such reduction shall not be made unless the net income of the Company, ascertained as described in said sub-section, shall have exceeded ten per cent. per annum instead of fifteen per cent. per annum as provided by the said sub-section. And the exercise by the Governor in Council of the power of reducing the tolls of the Company as provided by the tenth sub-section of said section seventeen is hereby limited to the same extent with relation to the profit of the Company, and to its net revenue, as that to which the power of Parliament to reduce tolls is limited by said sub-section eleven as hereby amended.

Reduction by Governor in Council extended in like manner

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21. The first and second sub-sections of section 22, of "The Consolidated Railway Act, 1879," shall not apply to the Canadian Pacific Railway Company; and it is hereby enacted that the transfer of shares in the undertaking shall be made only upon the books of the Company in person or by attorney, and shall not be valid unless so made; and the form and mode of transfer shall be such as shall be, from time to time, regulated by the by-laws of the Company. And the funds of the Company shall not be used in any advance upon the security of any of the shares or stock of the Company.

Restriction as  
to transfers of  
stock

Advances on, by  
company forbidden

10 22. The third and fourth sub-sections of said section 22 of "The Consolidated Railway Act, 1879," shall be subject to the following provisions, namely,—that if before the completion of the railway and works under the said contract, any transfer should purport to be made of any stock or share in the Company, or any transmission of any share should be effected under the provisions of said sub-section four, to a person not already a shareholder in the Company, and if in the opinion of the board it should not be expedient that the person (not being already a shareholder) to whom such transfer or transmission shall be made or effected should be accepted as a shareholder,  
20 the directors may by resolution veto such transfer or transmission; and thereafter, and until after the completion of the said railway and works under the said contract, such person shall not be, or be recognized as a shareholder in the Company; and the original shareholder, or his estate, as the case may be, shall remain subject to all the obligations of a shareholder in the Company, with all the rights conferred upon a shareholder under this Act. But any firm holding paid-up shares in the Company may transfer the whole or any of such shares to any partner in such firm having already an interest as such partner  
30 of such veto being exercised, a note shall be taken of the transfer or transmission so vetoed in order that it may be recorded in the books of the Company after the completion of the railway and works as aforesaid; but until such completion, the transfer or transmission so vetoed shall not confer any rights, nor have any effect of any nature or kind whatever as respects the Company.

Transfer or  
transmission to  
non-shareholders  
subject to veto  
of directors until  
completion of  
contract

Proviso: as to  
transfer by a firm  
to a partner

Note of transfer  
to be made and  
for what purpose

23. Sub-section sixteen of section nineteen, relating to PRESIDENT AND DIRECTORS, THEIR ELECTION AND DUTIES; sub-section two of section twenty-four, relating to BY-LAWS, NOTICES, &c., sub-sections five and six of section twenty-eight,  
40 relating to GENERAL PROVISIONS, and section ninety-seven, relating to RAILWAY FUND, of "The Consolidated Railway Act, 1879," shall not, nor shall any of them apply to the Canadian Pacific Railway or to the Company hereby incorporated.

Certain other pro-  
visions of 42 V., c. 9,  
not to apply

24. The said Company shall afford all reasonable facilities to the Ontario and Pacific Junction Railway Company, when their railway

Company to  
afford reasonable  
facilities to and  
receive the like

from certain other railway companies

shall be completed to a point of junction with the Canadian Pacific Railway, and to the Canada Central Railway Company, for the receiving, forwarding and delivering of traffic upon and from the railways of the said Companies, respectively, and for the return of carriages, trucks and other vehicles; and no one of the said Companies shall give or continue any preference or advantage to, or in favour of either of the others, or of any particular description of traffic, in any respect whatsoever; nor shall any one of the said Companies subject any other thereof, or any particular description of traffic, to any

10 prejudice or disadvantage in any respect whatsoever; and any one of the said Companies which shall have any terminus or station near any terminus or station of either of the others, shall afford all reasonable facilities for receiving and forwarding all the traffic arriving by either of the others, without any unreasonable delay, and without any preference or advantage, or prejudice or disadvantage, and so that no obstruction may be offered in the using of such railway as a continuous line of communication, and so that all reasonable accommodation may, at all times, by the means aforesaid, be mutually afforded by and to the said several railway companies; and the said

20 Canadian Pacific Railway Company shall receive and carry all freight and passenger traffic shipped to or from any point on the railway of either of the said above named railway companies passing over the Canadian Pacific Railway or any part thereof, at the same mileage rate and subject to the same charges for similar services, without granting or allowing any preference or advantage to the traffic coming from or going upon one of such railways over such traffic coming from or going upon the other of them, reserving, however, to the said Canadian Pacific Railway Company the right of making special rates for purchasers of land, or for immigrants or intending immigrants, which

30 special rates shall not govern or affect the rates of passenger traffic as between the said Company and the said two above named Companies or either of them. And any agreement made between any two of the said companies contrary to the foregoing provisions, shall be unlawful, null and void.

As to rates of carriage of traffic in such cases

Reservation as to purchasers of land, and emigrants

Contrary agreements void

Company may purchase or acquire by lease or otherwise certain other Railways or amalgamate with them

25. The Company, under the authority of a special general meeting of the shareholders thereof, and as an extension of the railway hereby authorized to be constructed, may purchase or acquire by lease or otherwise, and hold and operate, the Canada Central Railway, or may amalgamate therewith, and may purchase or acquire by lease

40 or otherwise and hold and operate a line or lines of railway from the City of Ottawa to any point at navigable water on the Atlantic seaboard or to any intermediate point, or may acquire running powers over any railway now constructed between Ottawa and any such point or intermediate point: And the Company may purchase or acquire any such railway, subject to such existing mortgages, charges or liens thereon as shall be agreed upon, and shall possess with

And borrow to a limited amount on bonds in consequence

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regard to any lines of railway so purchased, or acquired, and becoming the property of the Company, the same powers as to the issue of bonds thereon, or on any of them, to an amount not exceeding twenty thousand dollars per mile, and as to the security for such bonds, as are conferred upon the Company by the twenty-eighth section hereof, in respect of bonds to be issued upon the Canadian Pacific Railway. But such issue of bonds shall not affect the right of any holder of mortgages or other charges already existing upon any line of railway so purchased or acquired; and the amount of bonds hereby authorized  
10 to be issued upon such line of railway shall be diminished by the amount of such existing mortgages or charges thereon.

Not to affect  
prior mortgages

26. The Company shall have power and authority to erect and maintain docks, dockyards, wharves, slips and piers at any point on or in connection with the said Canadian Pacific Railway, and at all the termini thereof on navigable water, for the convenience and accommodation of vessels and elevators; and also to acquire and work elevators, and to acquire, own, hold, charter, work and run steam and other vessels for cargo and passengers upon any navigable water, which the Canadian Pacific Railway may reach or connect  
20 with.

Company may have  
docks, &c., and run  
vessels on any navi-  
gable water their  
railway touches

#### BY-LAWS

27. The by-laws of the Company may provide for the remuneration of the president and directors of the Company, and of any executive committee of such directors; and for the transfer of stock and shares; the registration and inscription of stock, shares, and bonds and the transfer of registered bonds; and the payment of dividends and interest at any place or places within or beyond the limits of Canada; and for all other matters required by the said contract or by this Act to be regulated by by-laws: but the by-laws  
30 of the Company made as provided by law shall in no case have any force or effect after the next general meeting of shareholders which shall be held after the passage of such by-laws, unless they are approved by such meeting.

By-laws may pro-  
vide for certain  
purposes

Must be confirmed  
at next general  
meeting

#### BONDS

28. The Company, under the authority of a special general meeting of the shareholders called for the purpose, may issue mortgage bonds to the extent of ten thousand dollars per mile of the Canadian Pacific Railway for the purposes of the undertaking authorized by the present Act; which issue shall constitute a first mortgage and  
40 privilege upon the said railway, constructed or acquired, and to be thereafter constructed or acquired, and upon its property, real and personal, acquired and to be thereafter acquired, including rolling stock and plant, and upon its tolls and revenues (after deduction from such tolls and revenues of working expenses), and upon the franchises

Amount of bonds  
limited

Mortgages for  
securing the same  
on all the property  
of the company

Proviso: in case  
land grant bonds  
have been issued  
under section 30

Evidence of mort-  
gage and what  
conditions the  
bonds may contain

Remedies of holders  
in default of  
payment

Right of voting  
may, in such case,  
be transferred to  
bondholders

Cancellation of  
shares deprived of  
voting power

Enforcing  
conditions

Further provisions  
under mortgage  
deed

of the Company; the whole as shall be declared and described as so mortgaged in any deed of mortgage as hereinafter provided. Provided always, however, that if the Company shall have issued, or shall intend to issue land grant bonds under the provisions of the thirtieth section hereof, the lands granted and to be granted by the Government to the Company may be excluded from the operation of such mortgage and privilege: and provided also that such mortgage and privilege shall not attach upon any property which the Company are hereby, or by the said contract, authorized to acquire or receive

10 from the Government of Canada until the same shall have been conveyed by the Government to the Company, but shall attach upon such property, if so declared in such deed, as soon as the same shall be conveyed to the Company. And such mortgage and privilege may be evidenced by a deed or deeds of mortgage executed by the Company, with the authority of its shareholders expressed by a resolution passed at such special general meeting; and any such deed may contain such description of the property mortgaged by such deed, and such conditions respecting the payment of the bonds secured thereby and of the interest thereon, and the remedies which

20 shall be enjoyed by the holders of such bonds or by any trustee or trustees for them in default of such payment, and the enforcement of such remedies, and may provide for such forfeitures and penalties, in default of such payment, as may be approved by such meeting; and may also contain, with the approval aforesaid, authority to the trustee or trustees, upon such default, as one of such remedies, to take possession of the railway and property mortgaged, and to hold and run the same for the benefit of the bondholders thereof for a time to be limited by such deed, or to sell the said railway and property, after such delay, and upon such terms and conditions as may be stated in

30 such deed: and with like approval any such deed may contain provisions to the effect that upon such default and upon such other conditions as shall be described in such deed, the right of voting possessed by the shareholders of the Company, and by the holders of preferred stock therein, or by either of them, shall cease and determine, and shall thereafter appertain to the bondholders, or to them and to the holders of the whole or of any part of the preferred stock of the Company, as shall be declared by such deed: and such deed may also provide for the conditional or absolute cancellation after such sale of any or all of the shares so deprived of voting power, or of any or all

40 of the preferred stock of the Company, or both; and may also, either directly by its terms, or indirectly by reference to the by-laws of the Company, provide for the mode of enforcing and exercising the powers and authority to be conferred and defined by such deed, under the provisions hereof. And such deed, and the provisions thereof made under the authority hereof, and such other provisions thereof as shall purport (with like approval) to grant such further and other powers and privileges to such trustee or trustees and to such bondholders, as

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are not contrary to law or to the provisions of this Act, shall be valid and binding. But if any change in the ownership or possession of the said railway and property shall, at any time, take place under the provisions hereof, or of any such deed, or in any other manner, the said railway and property shall continue to be held and operated under the provisions hereof, and of "The Consolidated Railway Act, 1879," as hereby modified. And if the Company does not avail itself of the power of issuing bonds secured upon the land grant alone as hereinafter provided, the issue of bonds hereby authorized may be  
10 increased to any amount not exceeding twenty thousand dollars per mile of the said Canadian Pacific Railway.

Provision in case of change of ownership, &c., of Railway, in such case

Increase of borrowing power if no land grant bonds are issued

29. If any bond issue be made by the Company under the last preceding section before the said railway is completed according to the said contract, a proportion of the proceeds of such bonds or a proportion of such bonds if they be not sold, corresponding to the proportion of the work contracted for then remaining incomplete, shall be received by the Government, and shall be held, dealt with and, from time to time, paid over by the Government to the Company upon the same conditions, in the same manner and according to the  
20 same proportions as the proceeds of the bonds, the issue of which is contemplated by sub-section *d* of Clause 9 of the said contract, and by the thirty-first section hereof.

Provision if such bonds are issued before completion of railway

30. The Company may also issue mortgage bonds to the extent of twenty-five million dollars upon the lands granted in aid of the said railway and of the undertaking authorized by this Act; such issue to be made only upon similar authority to that required by this Act for the issue of bonds upon the railway; and when so made such bonds shall constitute a first mortgage upon such lands, and shall attach upon them when they shall be granted, if they are not actually  
30 granted at the time of the issue of such bonds. And such mortgage may be evidenced by a deed or deeds of mortgage to be executed under like authority to the deed securing the issue of bonds on the railway; and such deed or deeds under like authority may contain similar conditions and may confer upon the trustee or trustees named thereunder and upon the holders of the bonds secured thereby, remedies, authority, power and privileges and may provide for forfeitures and penalties, similar to those which may be inserted and provided for under the provisions of this Act in any deed securing the issue of bonds on the railway, together with such other provisions and condi-  
40 tions not inconsistent with law or with this Act as shall be so authorized. And such bonds may be styled Land Grant Bonds, and they and the proceeds thereof shall be dealt with in the manner provided in the said contract.

Provisions as to issue of land grant mortgage bonds

Evidence of mortgage and conditions

Name of and how dealt with

31. The Company may, in the place and stead of the said land grant bonds, issue bonds under the twenty-eighth section hereof to

Issue of bonds in place of land grant bonds under agree-

ment with Govern-  
ment

To include fran-  
chise as well as  
property of  
company

Section 28 to apply

Facilities for issue  
of mortgage bonds  
as to seal and  
signatures

"Working ex-  
penses defined"

Currency on which  
bonds may be issued

Price and con-  
ditions of sale

such amount as they shall agree with the Government to issue, with the interest guaranteed by the Government as provided for in the said contract; such bonds to constitute a mortgage upon the property of the Company and its franchises acquired and to be thereafter acquired—including the main line of the Canadian Pacific Railway, and the branches thereof hereinbefore described, with the plant and rolling stock thereof acquired and to be thereafter acquired, but exclusive of such other branches thereof and of such personal property as shall be excluded by the deed of mortgage to be executed as security for such issue. And the provisions of the said twenty-eighth section shall apply to such issue of bonds, and to the security which may be given for the payment thereof, and they and the proceeds thereof shall be dealt with as hereby and by the said contract provided.

32. It shall not be necessary to affix the seal of the Company to any mortgage bond issued under the authority of this Act; and every such bond issued without such seal shall have the same force and effect, and be held, treated and dealt with by all courts of law and of equity as if it were sealed with the seal of the company. And if it is provided by the mortgage deed executed to secure the issue of any bonds, that any of the signatures to such bonds or to the coupons thereto appended may be engraved, stamped or lithographed thereon, such engraved, stamped or lithographed signatures shall be valid and binding on the Company.

33. The phrase "working expenses" shall mean and include all expenses of maintenance of the railway, and of the stations, buildings, works and conveniences belonging thereto, and of the rolling and other stock and moveable plant used in the working thereof, and also all such tolls, rents or annual sums as may be paid in respect of the hire of engines, carriages or wagons let to the Company; also, all rent, charges, or interest on the purchase money of lands belonging to the Company, purchased but not paid for, or not fully paid for; and also all expenses of and incidental to working the railway and the traffic thereon, including stores and consumable articles; also rates, taxes, insurance and compensation for accidents or losses; also all salaries and wages of persons employed in and about the working of the railway and traffic, and all office and management expenses, including directors' fees, agency, legal and other like expenses.

34. The bonds authorized by this Act to be issued upon the railway or upon the lands to be granted to the Company, or both, may be so issued in whole or in part in the denomination of dollars, pounds sterling, or francs, or in any or all of them, and the coupons may be for payment in denominations similar to those of the bond to which they are attached. And the whole or any of such bonds, may be pledged, negotiated or sold upon such conditions and at such price as the Board of Directors shall, from time to time, determine. And

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provision may be made by the by-laws of the Company, that after the issue of any bond, the same may be surrendered to the Company by the holder thereof, and the Company may, in exchange therefor, issue to such holder inscribed stock of the Company,—which inscribed stock may be registered or inscribed at the chief place of business of the Company or elsewhere, in such manner, with such rights, liens, privileges and preferences, at such place, and upon such conditions, as shall be provided by the by-laws of the Company.

May be exchanged  
for inscribed  
stock, &c.

35. It shall not be necessary, in order to preserve the priority,  
10 lien, charge, mortgage or privilege, purporting to appertain to or be  
created by any bond issued or mortgage deed executed under the  
provisions of this Act, that such bond or deed should be enregistered  
in any manner, or in any place whatever. But every such mortgage  
deed shall be deposited in the office of the Secretary of State,—of  
which deposit notice shall be given in the Canada Gazette. And in  
like manner any agreement entered into by the Company, under  
section thirty-six of this Act, shall also be deposited in the said office.  
And a copy of any such mortgage deed, or agreement, certified to be  
20 as prima facie evidence of the original in all courts of justice, without  
proof of the signatures or seal upon such original.

Bonds need not  
be registered

Mortgage deed  
how deposited

And agreements  
under s. 36

Certified copies

36. If, at any time, any agreement be made by the Company with  
any persons intending to become bondholders of the Company, or be  
contained in any mortgage deed executed under the authority of this  
Act, restricting the issue of bonds by the Company, under the powers  
conferred by this Act, or defining or limiting the mode of exercising  
such powers, the Company, after the deposit thereof with the Secre-  
tary of State as hereinbefore provided, shall not act upon such  
powers otherwise than as defined, restricted and limited by such  
30 agreement. And no bond thereafter issued by the Company, and  
no order, resolution or proceeding thereafter made, passed or had  
by the Company, or by the Board of Directors, contrary to the  
terms of such agreement, shall be valid or effectual.

Agreement with  
bondholders, &c.  
for restricting  
issues

Effect thereof

37. The Company may, from time to time, issue guaranteed or  
preferred stock, at such price, to such amount, not exceeding ten  
thousand dollars per mile, and upon such conditions as to the prefer-  
ences and privileges appertaining thereto, or to different issues or  
classes thereof, and otherwise, as shall be authorized by the majority  
in value of the shareholders present in person or represented by  
40 proxy at any annual meeting or at any special general meeting  
thereof called for the purpose,—notice of the intention to propose  
such issue at such meeting being given in the notice calling such  
meeting. But the guarantee or preference accorded to such stock  
shall not interfere with the lien, mortgage and privilege attaching to  
bonds issued under the authority of this Act. And the holders of

Company may  
issue guaranteed  
or preferred stock  
to a limited  
amount

Not to affect  
privileges of bond-  
holders

Voting

such preferred stock shall have such power of voting at meetings of shareholders, as shall be conferred upon them by the by-laws of the Company.

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EXECUTION OF AGREEMENTS

Contracts, bills, &c., by its agents to bind the company

38. Every contract, agreement, engagement, scrip certificate or bargain made, and every bill of exchange drawn, accepted or endorsed, and every promissory note and cheque made, drawn or endorsed on behalf of the Company, by any agent, officer or servant of the Company, in general accordance with his powers as such under the by-laws of the Company, shall be binding upon the Company; and in  
10 no case shall it be necessary to have the seal of the Company affixed to any such bill, note, cheque, contract, agreement, engagement, bargain or scrip certificate, or to prove that the same was made, drawn, accepted or endorsed, as the case may be, in pursuance of any by-law or special vote or order; nor shall the party so acting as agent, officer or servant of the Company be subjected individually to any liability whatsoever, to any third party therefor: Provided  
20 always, that nothing in this Act shall be construed to authorize the Company to issue any note payable to the bearer thereof, or any promissory note intended to be circulated as money, or as the note of a bank, or to engage in the business of banking or insurance.

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(Continued)

Proof thereof

Non-liability of such agents

Proviso: as to notes

GENERAL PROVISIONS

Reports to Government

39. The Company shall, from time to time, furnish such reports of the progress of the work, with such details and plans of the work, as the Government may require.

Publication of notices

40. As respects places not within any Province, any notice required by "The Consolidated Railway Act, 1879," to be given in the "Official Gazette" of a Province, may be given in the Canada Gazette.

Form of deeds, &c., to the company

30 41. Deeds and conveyances of lands to the Company for the purposes of this Act, (not being letters patent from the Crown) may, in so far as circumstances will admit, be in the form following, that is to say:

Form

"Know all men by these presents, that I, A.B., in consideration of  
paid to me by the Canadian Pacific Railway Company, the receipt whereof is hereby acknowledged, grant, bargain, sell and convey unto the said The Canadian Pacific Railway Company, their successors and assigns, all that tract or parcel of land (describe the land) to have and to hold the said land and premises  
40 unto the said Company, their successors and assigns for ever.



This Contract and Agreement made between Her Majesty the Queen, acting in respect of the Dominion of Canada, and herein represented and acting by the Honorable Sir Charles Tupper, K.C. M.G., Minister of Railways and Canals, and George Stephen and Duncan McIntyre, of Montreal, in Canada, John S. Kennedy of New York, in the State of New York, Richard B. Angus and James J. Hill, of St. Paul, in the State of Minnesota, Morton, Rose & Co., of London, England, and Kohn, Reinach & Co., of Paris, France,

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Witnesses: That the parties hereto have contracted and agreed  
10 with each other as follows, namely:—

1. For the better interpretation of this contract, it is hereby declared that the portion of Railway hereinafter called the Eastern section, shall comprise that part of the Canadian Pacific Railway to be constructed, extending from the Western terminus of the Canada Central Railway, near the East end of Lake Nipissing, known as Callander Station, to a point of junction with that portion of the said Canadian Pacific Railway now in course of construction extending from Lake Superior to Selkirk on the East side of Red River; which latter portion is hereinafter called the Lake Superior section. That  
20 the portion of said Railway, now partially in course of construction, extending from Selkirk to Kamloops, is hereinafter called the Central section; and the portion of said Railway now in course of construction, extending from Kamloops to Port Moody, is hereinafter called the Western section. And that the words "the Canadian Pacific Railway," are intended to mean the entire Railway, as described in the Act 37th Victoria, cap. 14. The individual parties hereto, are hereinafter described as the Company; and the Government of Canada is hereinafter called the Government.

2. The contractors immediately after the organization of the said  
30 Company, shall deposit with the Government \$1,000,000 in cash or approved securities, as a security for the construction of the Railway hereby contracted for. The Government shall pay to the Company interest on the cash deposited at the rate of four per cent. per annum, half-yearly, and shall pay over to the Company the interest received upon securities deposited, the whole until default in the performance of the conditions hereof, or until the repayment of the deposit, and shall return the deposit to the Company on the completion of the railway, according to the terms hereof, with any interest accrued thereon.

40 3. The Company shall lay out, construct and equip the said Eastern section, and the said Central section, of a uniform gauge of 4 feet 8½ inches; and in order to establish an approximate standard whereby the quality and the character of the Railway and of the materials used in the construction thereof, and of the equipment thereof may be regulated, the Union Pacific Railway of the United

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States as the same was when first constructed, is hereby selected and fixed as such standard. And if the Government and the Company should be unable to agree as to whether or not any work done or materials furnished under this contract are in fair conformity with such standard, or as to any other question of fact, excluding questions of law, the subject of disagreement shall be from time to time referred to the determination of three referees, one of whom shall be chosen by the Government, one by the Company, and one by the two referees so chosen, and such referees shall decide as to the party by whom the expense of such reference shall be defrayed. And if such two referees should be unable to agree upon a third referee, he shall be appointed at the instance of either party hereto, after notice to the other, by the Chief Justice of the Supreme Court of Canada. And the decision of such referees, or of the majority of them, shall be final.

4. The work of construction shall be commenced at the eastern extremity of the Eastern section not later than the first day of July next, and the work upon the Central section shall be commenced by the Company at such point towards the eastern end thereof on the portion of the line now under construction as shall be found convenient and as shall be approved by the Government, at a date not later than the 1st May next. And the work upon the Eastern and Central sections, shall be vigorously and continuously carried on at such rate of annual progress on each section as shall enable the Company to complete and equip the same and each of them, in running order, on or before the first day of May, 1891, by which date the Company hereby agree to complete and equip the said sections in conformity with this contract, unless prevented by the act of God, the Queen's enemies, intestine disturbances, epidemics, floods, or other causes beyond the control of the Company. And in case of the interruption or obstruction of the work of construction from any of the said causes, the time fixed for the completion of the railway shall be extended for a corresponding period.

5. The Company shall pay to the Government the cost, according to the contract, of the portion of railway, 100 miles in length, extending from the city of Winnipeg westward, up to the time at which the work was taken out of the hands of the contractor and the expenses since incurred by the Government in the work of construction, but shall have the right to assume the said work at any time and complete the same, paying the cost of construction as aforesaid so far as the same shall then have been incurred by the Government.

6. Unless prevented by the act of God, the Queen's enemies, intestine disturbances, epidemics, floods or other causes beyond the control of the Government, the Government shall cause to be completed the said Lake Superior section, by the dates fixed by the

existing contracts for the construction thereof; and shall also cause to be completed the portion of the said Western section now under contract, namely, from Kamloops to Yale, within the period fixed by the contracts therefor, namely, by the thirtieth day of June, 1885; and shall also cause to be completed, on or before the first day of May, 1891, the remaining portion of the said Western section, lying between Yale and Port Moody, which shall be constructed of equally good quality in every respect with the standard hereby created for the portion hereby contracted for. And the said Lake Superior  
 10 section, and the portions of the said Western section now under contract, shall completely be completed as nearly as practicable according to the specifications and conditions of the contracts therefor, except in so far as the same have been modified by the Government prior to this contract.

7. The Railway constructed under the terms hereof shall be the property of the Company: and pending the completion of the Eastern and Central sections, the Government shall transfer to the Company the possession and right to work and run the several portions of the Canadian Pacific Railway already constructed or as the same shall  
 20 be completed. And upon the completion of the Eastern and Central sections, the Government shall convey to the Company, with a suitable number of station buildings and with water service (but without equipment), those portions of the Canadian Pacific Railway constructed or to be constructed by the Government which shall then be completed; and upon completion of the remainder of the portion of railway to be constructed by the Government, that portion shall also be conveyed to the Company, and the Canadian Pacific Railway shall become and be thereafter the absolute property of the Company. And the Company shall thereafter and forever efficiently maintain,  
 30 work and run the Canadian Pacific Railway.

8. Upon the reception from the Government of the possession of each of the respective portions of the Canadian Pacific Railway, the Company shall equip the same in conformity with the standard herein established for the equipment of the sections hereby contracted for, and shall thereafter maintain and efficiently operate the same.

9. In consideration of the premises, the Government agree to grant to the Company a subsidy in money of \$25,000,000, and in land of 25,000,000 acres, for which subsidies the construction of the Canadian Pacific Railway shall be completed and the same shall be  
 40 equipped, maintained and operated, the said subsidies respectively to be paid and granted as the work of construction shall proceed, in manner and upon the conditions following, that is to say:

*a.* The said subsidy in money is hereby divided and appropriated as follows, namely:—

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*Central Section*

Assumed at 1,350 miles—	
1st.—900 miles, at \$10,000 per mile.....	\$9,000,000
2nd.—450 “ “ 13,333 “ “ .....	6,000,000
	<u>\$15,000,000</u>

*Eastern Section*

Assumed at 650 miles, subsidy equal to \$15,384.61 per mile	10,000,000
	<u>\$25,000,000</u>

And the said subsidy in land is hereby divided and appropriated 10 as follows, subject to the reserve hereinafter provided for:—

*Central Section*

1st.—900 miles, at 12,500 acres per mile .....	11,250,000
2nd.—450 “ “ 16,666.66 “ “ “ .....	7,500,000
	<u>18,750,000</u>

*Eastern Section*

Assumed at 650 miles, subsidy equal to 9,615.35 acres per mile.....	6,250,000
	<u>25,000,000</u>

*b.* Upon the construction of any portion of the railway hereby 20 contracted for, not less than 20 miles in length, and the completion thereof so as to admit of the running of regular trains thereon, together with such equipment thereof as shall be required for the traffic thereon, the Government shall pay and grant to the Company the money and land subsidies applicable thereto, according to the divisions and appropriation thereof made as hereinbefore provided; the Company having the option of receiving in lieu of cash, terminable bonds of the Government, bearing such rate of interest, for such period and nominal amount as may be arranged, and which may be equivalent according to actuarial calculation to the corresponding cash payment, 30 the Government allowing four per cent, interest on moneys deposited with them.

*c.* If at any time the Company shall cause to be delivered on or near the line of the said railway, at a place satisfactory to the Government, steel rails and fastenings to be used in the construction of the railway, but in advance of the requirements for such construction, the Government, on the requisition of the Company, shall, upon such terms and conditions as shall be determined by the Government, advance thereon three-fourths of the value thereof at the place of delivery. And a proportion of the amount so advanced shall be 40 deducted according to such terms and conditions from the subsidy to be thereafter paid, upon the settlement for each section of 20 miles of railway, which proportion shall correspond with the proportion of such rails and fastenings which have been used in the construction of such sections.

*d.* Until the first day of January, 1882, the Company shall have the option, instead of issuing land grant bonds as hereinafter provided, of substituting the payment by the Government of the interest (or part of the interest) on bonds of the Company mortgaging the railway and the lands to be granted by the Government, running over such term of years as may be approved by the Governor in Council, in lieu of the cash subsidy hereby agreed to be granted to the Company or any part thereof; such payments of interest to be equivalent according to actuarial calculation to the corresponding cash payment, the  
 10 Government allowing four per cent. interest on moneys deposited with them; and the coupons representing the interest on such bonds shall be guaranteed by the Government to the extent of such equivalent. And the proceeds of the sale of such bonds to the extent of not more than \$25,000,000, shall be deposited with the Government, and the balance of such proceeds shall be placed elsewhere by the Company, to the satisfaction and under the exclusive control of the Government; failing which last condition the bonds in excess of those sold shall remain in the hands of the Government. And from time to time as the work proceeds, the Government shall pay over to the  
 20 Company: firstly, out of the amount so to be placed by the Company, —and, after the expenditure of that amount, or of the amount deposited with the Government,—sums of money bearing the same proportion to the mileage cash subsidy hereby agreed upon, which the net proceeds of such sale (if the whole of such bonds are sold upon the issue thereof) or, if such bonds be not all then sold, the net proceeds of the issue, calculated at the rate at which the sale of part of them shall have been made, shall bear to the sum of \$25,000,000. But if only a portion of the bond issue be sold, the amount earned by the Company according to the proportion aforesaid, shall be paid to  
 30 the Company, partly out of the bonds in the hands of the Government, and partly out of the cash deposited with the Government, in similar proportions to the amount of such bonds sold and remaining unsold respectively; and the Company shall receive the bonds so paid as cash at the rate at which the said partial sale thereof shall have been made. And the Government will receive and hold such sum of money towards the creation of a sinking fund for the redemption of such bonds, and upon such terms and conditions, as shall be agreed upon between the Government and the Company.

*e.* If the Company avail themselves of the option granted by  
 40 clause *d*, the sum of \$2,000 per mile for the first eight hundred miles of the Central section shall be deducted *pro rata* from the amount payable to the Company in respect of the said eight hundred miles, and shall be appropriated to increase the mileage cash subsidy appropriated to the remainder of the said Central section.

10. In further consideration of the premises, the Government shall also grant to the Company the lands required for the road bed

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of the railway, and for its stations, station grounds, workshops, dock ground and water frontage at the termini on navigable waters, buildings, yards, and other appurtenances required for the convenient and effectual construction and working of the railway, in so far as such land shall be vested in the Government. And the Government shall also permit the admission free of duty, of all steel rails, fish plates and other fastenings, spikes, bolts and nuts, wire, timber and all material for bridges, to be used in the original construction of the railway, and of a telegraph line in connection therewith, and all telegraphic  
10 apparatus required for the first equipment of such telegraph line; and will convey to the Company, at cost price, with interest, all rails and fastenings bought in or since the year 1879, and other materials for construction in the possession of or purchased by the Government, at a valuation; such rails, fastenings and materials not being required by it for the construction of the said Lake Superior and Western sections.

11. The grant of land hereby agreed to be made to the Company, shall be so made in alternate sections of 640 acres each, extending back 24 miles deep, in each side of the railway, from Winnipeg to  
20 Jasper House, in so far as such lands shall be vested in the Government, the Company receiving the sections bearing uneven numbers. But should any of such sections consist in a material degree of land not fairly fit for settlement, the Company shall not be obliged to receive them as part of such grant, and the deficiency thereby caused and any further deficiency which may arise from the insufficient quantity of land along the said portion of railway, to complete the said 25,000,000 acres, or from the prevalence of lakes and water stretches in the sections granted (which lakes and water stretches shall not be computed in the acreage of such sections), shall be made  
30 up from other portions in the tract known as the fertile belt, that is to say, the land lying between parallels 49 and 57 degrees of north latitude, or elsewhere at the option of the Company, by the grant therein of similar alternate sections extending back 24 miles deep on each side of any branch line or lines of railway to be located by the Company, and to be shown on a map or plan thereof deposited with the Minister of Railways; or of any common front line or lines agreed upon between the Government and the Company, the conditions hereinbefore stated as to lands not fairly fit for settlement to be  
40 applicable to such additional grants. And the Company may with the consent of the Government, select in the North-West Territories any tract or tracts of land not taken up as a means of supplying or partially supplying such deficiency. But such grants shall be made only from lands remaining vested in the Government.

12. The Government shall extinguish the Indian title affecting the lands herein appropriated, and to be hereafter granted in aid of the railway.

13. The Company shall have the right, subject to the approval of the Governor in Council, to lay out and locate the line of the railway hereby contracted for, as they may see fit, preserving the following terminal points, namely: from Callander station to the point of junction with the Lake Superior section; and from Selkirk to the junction with the western section at Kamloops by way of the Yellow Head Pass.

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14. The Company shall have the right, from time to time, to lay out, construct, equip, maintain and work branch lines of railway from any point or points along their main line of railway, to any point or points within the territory of the Dominion. Provided always, that before commencing any branch they shall first deposit a map and plan of such branch in the Department of Railways. And the Government shall grant to the Company the lands required for the road bed of such branches, and for the stations, station grounds, buildings, workshops, yards and other appurtenances requisite for the efficient construction and working of such branches, in so far as such lands are vested in the Government.

15. For 20 years from the date hereof, no line of railway shall be authorised by the Dominion Parliament to be constructed South of the Canadian Pacific Railway, from any point at or near the Canadian Pacific Railway except such line as shall run South West, or to the Westward of South West: nor to within fifteen miles of Latitude 49. And in the establishment of any new Province in the North West Territories, provision shall be made for continuing such prohibition after such establishment until the expiration of the said period.

16. The Canadian Pacific Railway, and all stations and station grounds, work shops, buildings, yards and other property, rolling stock and appurtenances required and used for the construction and working thereof, and the capital stock of the Company, shall be forever free from taxation by the Dominion, or by any Province hereafter to be established, or by any Municipal Corporation therein; and the lands of the Company, in the North-West Territories, until they are either sold or occupied, shall also be free from such taxation for 20 years after the grant thereof from the Crown.

17. The Company shall be authorized by their Act of incorporation to issue bonds, secured upon the land granted and to be granted to the Company, containing provisions for the use of such bonds in the acquisition of lands, and such other conditions as the Company shall see fit, such issue to be for \$25,000,000. And should the Company make such issue of land grant bonds, then they shall deposit them in the hands of the Government; and the Government shall retain and hold one-fifth of such bonds as security for the due performance of the present contract in respect of the maintenance

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and continuous working of the railway by the Company, as herein agreed, for ten years after the completion thereof, and the remaining \$20,000,000 of such bonds shall be dealt with as hereinafter provided. And as the said one-fifth of the said bonds, so long as no default shall occur in the maintenance and working of the said Canadian Pacific Railway, the Government shall not present or demand payment of the coupons of such bonds, nor require payment of any interest thereon. And if any of such bonds so to be retained by the Government shall be paid off in the manner to be provided for the  
 10 extinction of the whole issue thereof, the Government shall hold the amount received in payment thereof as security for the same purposes as the bonds so paid off, paying interest thereon at four per cent, per annum so long as default is not made by the Company in the performance of the conditions hereof. And at the end of the said period of ten years from the completion of the said railway, if no default shall then have occurred in such maintenance and working thereof, the said bonds, or if any of them shall then have been paid off, the remainder of said bonds and the money received for those paid off, with accrued interest, shall be delivered back by the Government to  
 20 the Company with all the coupons attached to such bonds. But if such default should occur, the Government may thereafter require payment of interest on the bonds so held, and shall not be obliged to continue to pay interest on the money representing bonds paid off; and while the Government shall retain the right to hold the said portion of the said land grant bonds, other securities satisfactory to the Government may be substituted for them by the Company by agreement with the Government.

18. If the Company shall find it necessary or expedient to sell the remaining \$20,000,000 of the land grant bonds or a larger portion  
 30 thereof than in the proportion of one dollar for each acre of land then earned by the Company, they shall be allowed to do so, but the proceeds thereof, over and above the amount to which the Company shall be entitled as herein provided, shall be deposited with the Government. And the Government shall pay interest upon such deposit half-yearly, at the rate of four per cent. per annum and shall pay over the amount of such deposit to the Company from time to time as the work proceeds, in the same proportions, and at the same times and upon the same conditions as the land grant—that is to say:  
 40 the Company shall be entitled to receive from the Government out of the proceeds of the said land grant bonds, the same number of dollars as the number of acres of the land subsidy which shall then have been earned by them, less one fifth thereof, that is to say, if the bonds are sold at par, but if they are sold at less than par, then a deduction shall be made therefrom corresponding to the discount at which such bonds are sold. And such land grant shall be conveyed to them by the Government, subject to the charge created as security

for the said land grant bonds, and shall remain subject to such charge till relieved thereof in such manner as shall be provided for at the time of the issue of such bonds.

19. The company shall pay any expenses which shall be incurred by the Government in carrying out the provisions of the two last preceding clauses of the contract.

20. If the Company should not issue such land grant bonds, then the Government shall retain from out of each grant to be made from time to time, every fifth section of the lands hereby agreed to be granted, such lands to be so retained as security for the purposes, and for the length of time, mentioned in section eighteen hereof. And such lands may be sold in such manner and at such prices as shall be agreed upon between the Government and the Company, and in that case the price thereof shall be paid to, and held by the Government for the same period, and for the same purposes as the land itself, the Government paying four per cent. per annum interest thereon. And other securities satisfactory to the Government may be substituted for such lands or money by agreement with the Government.

21. The company to be incorporated, with sufficient powers to enable them to carry out the foregoing contract, and this contract shall only be binding in the event of an Act of incorporation being granted to the Company in the form hereto appended as Schedule A.

22. The Railway Act of 1879, in so far as the provisions of the same are applicable to the undertaking referred to in this contract, and in so far as they are not inconsistent herewith or inconsistent with or contrary to the provisions of the Act of incorporation to be granted to the Company, shall apply to the Canadian Pacific Railway.

In witness whereof the parties hereto have executed these presents at the City of Ottawa, this twenty-first day of October, 1880

30 (Signed) CHARLES TUPPER,  
Minister of Railways and Canals.  
" GEO. STEPHEN,  
" DUNCAN McINTYRE,  
" J. S. KENNEDY,  
" R. B. ANGUS,  
" J. J. HILL,  
Per pro. Geo. Stephen.  
" MORTON, ROSE & COMPANY  
" KOHN, REINACH & Co.,  
40 By P. DuP. Grenfell.

Signed in presence of F. Braun, and Seal of the Department hereto affixed by Sir Charles Tupper, in presence of (Signed) F. Braun.

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And whereas the Schedule A to the said contract, is set out in an Act of Parliament of Canada, passed on the fifteenth day of February, in the year of Our Lord one thousand eight hundred and eighty-one, and in the forty-fourth year of our reign, intituled: "An Act respecting the Canadian Pacific Railway;" and whereas by the said Act after reciting as follows, viz.:

10 "Whereas by the terms and conditions of the admission of British Columbia into Union with the Dominion of Canada, the Government of the Dominion has assumed the obligation of causing a Railway to be constructed, connecting the seaboard of British Columbia with the Railway system of Canada;

"And whereas the Parliament of Canada has repeatedly declared a preference for the construction and operation of such Railway by means of an incorporated Company aided by grants of money and land, rather than by the Government, and certain Statutes have been passed to enable that course to be followed, but the enactments therein contained have not been effectual for that purpose;

20 "And whereas certain sections of the said Railway have be constructed by the Government and others are in course of construction, but the greater portion of the main line thereof has not yet been commenced or placed under contract, and it is necessary for the development of the North West Territory, and for the preservation of the good faith of the Government in the performance of its obligations, that immediate steps should be taken to complete and operate the whole of the said Railway;

30 "And whereas, in conformity with the expressed desire of Parliament, a contract has been entered into for the construction of the said portion of the main line of the said Railway, and for the permanent working of the whole line thereof, which contract with the schedule annexed has been laid before Parliament for its approval, and a copy thereof is appended hereto, and it is expedient to approve and ratify the said contract, and to make provision for the carrying out of the same;" the said contract and agreement with the said Schedule A thereto was approved and ratified, and We were authorized to perform and carry out the conditions thereof according to their purport; and for the purpose of incorporating the persons mentioned in the said contract, and those who shall be associated with them in the undertaking and of granting to them the powers necessary to enable them to carry out the said contract according to the terms  
40 thereof, it was enacted that our Governor-General of Canada might grant to them, in conformity with the said contract under the corporate name of the Canadian Pacific Railway Company, a charter conferring upon them the franchises, privileges and powers embodied in the said schedule to the said contract; and that such charter being published in the *Canada Gazette* with any Order or Orders in Council

relating to it should have force and effect as if it were an Act of our Parliament of Canada, and should be and be held to be an Act of incorporation within the meaning of the said contract;

And whereas the said persons have prayed for a charter for the purpose aforesaid;

1. Now know ye, that, by and with the advice of our Privy Council for Canada, and under the authority of the hereinbefore in part recited Act, and of any other power and authority whatsoever in Us vested in this behalf, We Do, by these our Letters Patent, grant,  
10 order, declare and provide that the said George Stephen, Duncan McIntyre, John S. Kennedy, Richard B. Angus, James J. Hill, the firm of Morton, Rose and Company, and the firm of Kohn, Reinach and Company; with all such other persons and corporations as shall become shareholders in the Company hereby incorporated, shall be and they are hereby constituted a body corporate and politic, by the name of the "Canadian Pacific Railway Company."

2. The capital stock of the Company shall be twenty-five million dollars, divided into shares of one hundred dollars each, which shares shall be transferable in such manner and upon such conditions as  
20 shall be provided by the by-laws of the Company; and such shares, or any part thereof, may be granted and issued as paid-up shares for value *bona fide* received by the Company, either in money at par or at such price and upon such conditions as the board of directors may fix, or as part of the consideration of any contract made by the Company.

3. As soon as five million dollars of the stock of the Company have been subscribed, and thirty per centum thereof paid up, and upon the deposit with our Minister of Finance of Canada of one million dollars in money or in securities approved by our Governor-  
30 General in Council, for the purpose and upon the conditions in the said contract provided, the said contract shall become and be transferred to the Company, without the execution of any deed or instrument in that behalf; and the Company shall, thereupon, become and be vested with all the rights of the contractors named in the said contract, and shall be subject to, and liable for, all their duties and obligations to the same extent and in the same manner as if the said contract had been executed by the said Company instead of by the said contractors; and thereupon the said contractors, as individuals, shall cease to have any right or interest in the said contract, and shall  
40 not be subject to any liability or responsibility under the terms thereof otherwise than as members of the corporation hereby created. And upon the performance of the said conditions respecting the subscription of stock, the partial payment thereof, and the deposit of one million dollars to the satisfaction of our Governor-General in Council, the publication by our Secretary of State of Canada in the

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*Canada Gazette*, of a notice that the transfer of the contract to the Company has been effected and completed shall be conclusive proof of the fact. And the Company shall cause to be paid up, on or before the first day of May next, a further instalment of twenty per centum upon the said first subscription of five million dollars, of which call thirty days notice by circular mailed to each shareholder shall be sufficient. And the Company shall call in, and cause to be paid up, on or before the 31st day of December, 1882, the remainder of the said first subscription of five million dollars.

- 10 4. All the franchises and powers necessary or useful to the Company to enable them to carry out, perform, enforce, use, and avail themselves of, every condition, stipulation, obligation, duty, right, remedy, privilege, and advantage agreed upon, contained or described in the said contract, are hereby conferred upon the Company. And the enactment of the special provisions hereinafter contained shall not be held to impair or derogate from the generality of the franchises and powers so hereby conferred upon them.

#### DIRECTORS

5. The said George Stephen, Duncan McIntyre, John S. Kennedy,  
20 Richard B. Angus, James J. Hill, Henry Stafford Northcote, of London, aforesaid, Esquires, Pascoe du P. Grenfell, of London, aforesaid, Merchant, Charles Day Rose, of London, aforesaid, Merchant, and Baron J. de Reinach, of Paris, aforesaid, Banker, are hereby constituted the first directors of the Company, with power to add to their number, but so that the directors shall not in all exceed fifteen in number; and the majority of the directors, of whom the President shall be one, shall be British subjects. And the Board of Directors so constituted shall have all the powers hereby conferred upon the directors of the Company, and they shall hold office until  
30 the first annual meeting of the shareholders of the Company.

6. Each of the directors of the Company, hereby appointed, or hereafter appointed or elected, shall hold at least two hundred and fifty shares of the stock of the Company. But the number of directors to be hereafter elected by the shareholders shall be such, not exceeding fifteen, as shall be fixed by by-law, and subject to the same conditions as the directors appointed by, or under the authority of, the last preceding section; the number thereof may be hereafter altered from time to time in like manner. The votes for their election shall be by ballot.

- 40 7. A majority of the directors shall form a quorum of the board; and until otherwise provided by by-law, directors may vote and act by proxy, such proxy to be held by a director only; but no director shall hold more than two proxies, and no meeting of directors shall be competent to transact business unless at least three directors are

present thereat in person, the remaining number of directors required to form a quorum being represented by proxies.

8. The board of directors may appoint from out of their number an Executive Committee, composed of at least three directors, for the transaction of the ordinary business of the Company, with such powers and duties as shall be fixed by the by-laws; and the President shall be *ex officio* a member of such committee.

9. The chief place of business of the Company shall be at the City of Montreal, but the Company may from time to time, by  
 10 by-law, appoint and fix other places within or beyond the limits of Canada at which the business of the Company may be transacted, and at which the directors or shareholders may meet, when called as shall be determined by the by-laws. And the Company shall appoint and fix by by-law, at least one place in each Province or Territory through which the Railway shall pass, where service of process may be made upon the Company, in respect of any cause of action arising within such Province or Territory, and may afterwards, from time to time, change such place by by-law. And a copy of any by-law  
 20 fixing or changing any such place, duly authenticated as herein provided, shall be deposited by the Company in the office, at the seat of Government of the Province or Territory to which such by-law shall apply, of the Clerk or Prothonotary of the highest, or one of the highest, courts of civil jurisdiction of such Province or Territory. And if any cause of action shall arise against the Company within any Province or Territory, and any writ or process be issued against the Company thereon out of any court in such Province or Territory, service of such process may be validly made upon the Company at the place within such Province or Territory so appointed and fixed; but if the Company fail to appoint and fix such place, or to deposit,  
 30 as hereinbefore provided, the by-law made in that behalf, any such process may be validly served upon the Company, at any of the stations of the said Railway within such Province or Territory.

#### SHAREHOLDERS

10. The first annual meeting of the shareholders of the Company, for the appointment of directors, shall be held on the second Wednesday in May, 1882, at the principal office of the Company, in Montreal; and the annual general meeting of shareholders, for the election of directors and the transaction of business generally, shall be held on the same day in each year thereafter at the same place unless other-  
 40 wise provided by the by-laws. And notice of each of such meetings shall be given by the publication thereof in the *Canada Gazette* for four weeks, and by such further means as shall from time to time be directed by the by-laws.

11. Special general meetings of the shareholders may be convened

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in such manner as shall be provided by the by-laws. And except as hereinafter provided, notice of such meetings shall be given in the same manner as notices of annual general meetings, the purpose for which such meeting is called being mentioned in the notices thereof; and, except as hereinafter provided, all such meetings shall be held at the chief place of business of the Company.

12. If at any time before the first annual meeting of the shareholders of the Company, it should become expedient that a meeting of the directors of the Company, or a special general meeting of the  
10 shareholders of the Company, should be held, before such meeting can conveniently be called, and notice thereof given in the manner provided by this Act, or by the by-laws, or before by-laws in that behalf have been passed, and at a place other than at the chief place of business of the Company in Montreal before the enactment of a by-law authorising the holding of such meeting elsewhere; it shall be lawful for the President or for any three of the directors of the Company to call special meetings either of directors or of shareholders, or of both, to be held at the city of London in England, at times and  
20 places respectively, to be stated in the notices to be given of such meetings respectively. And notices of such meetings may be validly given by a circular mailed to the ordinary address of each director or shareholder as the case may be, in time to enable him to attend such meeting, stating in general terms the purpose of the intended meeting. And in the case of a meeting of shareholders, the proceedings of such meeting shall be held to be valid and sufficient, and to be binding on the Company in all respects, if every shareholder of the Company be present thereat in person or by proxy, notwithstanding that notice of such meeting shall not have been given in the manner required by this Act.

30 13. No shareholder holding shares upon which any call is overdue and unpaid shall vote at any meeting of shareholders. And unless otherwise provided by the by-laws, the person holding the proxy of a shareholder shall be himself a shareholder.

14. No call upon unpaid shares shall be made for more than twenty per centum upon the amount thereof.

#### RAILWAY AND TELEGRAPH LINE

15. The Company may lay out, construct, acquire, equip, maintain and work a continuous line of railway, of the gauge of four feet eight and one-half inches; which railway shall extend from the  
40 terminus of the Canada Central Railway near Lake Nipissing, known as Callander Station, to Port Moody in the Province of British Columbia; and also, a branch line of railway from some point on the main line of railway to Fort William on Thunder Bay; and also the existing

branch line of railway from Selkirk in the Province of Manitoba to Pembina in the said Province; and also other branches to be located by the Company from time to time as provided by the said contract; the said branches to be of the gauge aforesaid; and the said main line of railway and the said branch lines of railway, shall be commenced and completed as provided by the said contract; and together with such other branch lines as shall be hereafter constructed by the said Company, and any extension of the said main line of railway that shall hereafter be constructed or acquired by the Company, shall,  
 10 constitute the line of railway hereinafter called The Canadian Pacific Railway.

16. The Company may construct, maintain and work a continuous telegraph line and telephone lines throughout and along the whole line of the Canadian Pacific Railway, or any part thereof, and may also construct or acquire by purchase, lease or otherwise, any other line or lines of telegraph connecting with the line so to be constructed along the line of the said railway, and may undertake the transmission of messages for the public by any such line or lines of telegraph or telephone, and collect tolls for so doing; or may lease such line or lines  
 20 of telegraph or telephone, or any portion thereof; and, if they think proper to undertake the transmission of messages for hire, they shall be subject to the provisions of the fourteenth, fifteenth and sixteenth sections of chapter sixty-seven of the Consolidated Statutes of Canada. And they may use any improvement that may hereafter be invented (subject to the rights of patentees) for telegraphing or telephoning, and any other means of communication that may be deemed expedient by the Company at any time hereafter.

#### POWERS

17. "*The Consolidated Railway Act, 1879*," in so far as the provisions of the same are applicable to the undertaking authorized by  
 30 this charter, and in so far as they are not inconsistent with or contrary to the provisions hereof and save and except as hereinafter provided, is hereby incorporated herewith.

18. As respects the said railway, the seventh section of "*The Consolidated Railway Act, 1879*," relating to Powers and the eighth section thereof relating to Plans and Surveys shall be subject to the following provisions:—

a. The Company shall have the right to take, use and hold the beach and land below high water mark, in any stream, lake, navigable  
 40 water, gulf or sea, in so far as the same shall be vested in Us and shall not be required by Us, to such extent as shall be required by the Company for its railway and other works, and as shall be exhibited by a map or plan thereof deposited in the office of the Minister of Railways. But the provisions of this sub-section shall not apply to any beach or

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land lying East of Lake Nipissing except with the approval of our Governor-General in Council.

*b.* It shall be sufficient that the map or plan and book of reference for any portion of the line of the railway not being within any district or county for which there is a Clerk of the Peace, be deposited in the office of our Minister of Railways and Canals of Canada; and any omission, mis-statement or erroneous description of any lands therein may be corrected by the Company, with the consent of the Minister and certified by him; and the Company may then make the railway  
10 in accordance with such certified correction.

*c.* The eleventh sub-section of the said eighth section of the Railway Act shall not apply to any portion of the railway passing over ungranted lands of Us, or lands not within any surveyed township in any Province; and in such places, deviations not exceeding five miles from the line shown on the map or plan as aforesaid, deposited by the Company, shall be allowed, without any formal correction or certificate; and any further deviation that may be found expedient may be authorized by order of our Governor-General in Council, and the Company may then make their railway in accordance with such  
20 authorized deviation.

*d.* The map or plan and book of reference of any part of the main line of the Canadian Pacific Railway made and deposited in accordance with this section, after approval by our Governor-General in Council, and of any branch of such railway hereafter to be located by the said Company in respect of which the approval of our Governor-General in Council shall not be necessary, shall avail as if made and deposited as required by the said "*Consolidated Railway Act, 1879,*" for all the purposes of the said Act, and of this Act; and any copy of, or extract therefrom, certified by our said Minister or his deputy, shall  
30 be received as evidence in any court of law in Canada.

*e.* It shall be sufficient that a map or profile of any part of the completed railway, which shall not lie within any county or district having a registry office, be filed in the office of our Minister of Railways and Canals of Canada.

19. It shall be lawful for the Company to take from any public lands adjacent to or near the line of the said railway, all stone, timber, gravel and other materials which may be necessary or useful for the construction of the railway; and also to lay out and appropriate to the use of the Company, a greater extent of lands, whether public or  
40 private, for stations, depots, workshops, buildings, side-tracks, wharves, harbors and roadway, and for establishing screens against snow, that the breadth and quantity mentioned in "*The Consolidated Railway Act, 1879,*" such greater extent taken, in any case, being allowed by our Governor-General in Council, and shown on the

maps or plans deposited with our Minister of Railways and Canals of Canada.

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20. The limit to the reduction of tolls by our Parliament of Canada provided for by the eleventh sub-section of the 17th section of "*The Consolidated Railway Act, 1879*," respecting TOLLS, is hereby extended, so that such reduction may be to such an extent that such tolls when reduced shall not produce less than ten per cent. per annum profit on the capital actually expended in the construction of the Railway, as such capital may be defined by an Act of our Parliament of Canada  
10 to be passed during the present session thereof, instead of not less than fifteen per cent. per annum profit, as provided by the said sub-section; and so also that such reduction shall not be made unless the net income of the Company, ascertained as described in said sub-section, shall have exceeded ten per cent. per annum instead of fifteen per cent. per annum as provided by the said sub-section. And the exercise by our Governor-General in Council of the power of reducing the tolls of the Company as provided by the tenth sub-section of said section seventeen is hereby limited to the same extent with relation to the profit of the Company, and to its net revenue, as that to which  
20 the power of Parliament to reduce tolls is limited by said sub-section eleven as hereby amended.

21. The first and second sub-sections of section 22, of "*The Consolidated Railway Act, 1879*," shall not apply to the Canadian Pacific Railway Company; the transfer of shares in the undertaking shall be made only upon the books of the Company in person or by attorney, and shall not be valid unless so made; and the form and mode of transfer shall be such as shall be from time to time regulated by the by-laws of the Company. And the funds of the Company shall not be used in any advance upon the security of any of the shares or stock of the  
30 Company.

22. The third and fourth sub-sections of said section 22 of "*The Consolidated Railway Act, 1879*," shall be subject to the following provisions, namely, that if before the completion of the Railway and works under the said contract, any transfer should purport to be made of any stock or share in the Company, or any transmission of any share should be effected under the provisions of said sub-section four, to a person not already a shareholder in the Company, and if in the opinion of the Board it should not be expedient that the person (not being already a shareholder) to whom such transfer or transmission  
40 shall be made or effected should be accepted as a shareholder, the Directors may by resolution veto such transfer or transmission; and thereafter, and until after the completion of the said Railway and works under the said contract, such person shall not be, or be recognized as a shareholder in the Company; and the original shareholder, or his estate, as the case may be, shall remain subject to all the

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obligations of a shareholder in the Company, with all the rights conferred upon a shareholder under this Charter. But any firm holding paid-up shares in the Company may transfer the whole or any of such shares to any partner in such firm having already an interest as such partner in such shares, without being subject to such veto. And in the event of such veto being exercised, a note shall be taken of the transfer or transmission so vetoed in order that it may be recorded in the books of the Company after the completion of the Railway and works as aforesaid; but until such completion, the transfer or trans-  
10 mission so vetoed shall not confer any rights, nor have any effect of any nature or kind whatever as respects the Company.

23. Sub-section sixteen of section nineteen, relating to President and Directors, their election and duties; sub-section two of section twenty-four, relating to By-laws, Notices, &c., sub-sections five and six of section twenty-eight, relating to General provisions, and section ninety-seven, relating to Railway Fund, of "*The Consolidated Railway Act, 1879*," shall not, nor shall any of them apply to the Canadian Pacific Railway or to the Company hereby incorporated.

24. The said Company shall afford all reasonable facilities to the  
20 Ontario Pacific Junction Railway Company, when their railway shall be completed to a point of junction with the Canadian Pacific Railway; and to the Canada Central Railway Company, for the receiving, forwarding and delivering of traffic upon and from the railways of the said Companies, respectively, and for the return of carriages, trucks and other vehicles; and no one of the said Companies shall give or continue any preference or advantage to, or in favor of either of the others, or of any particular description of traffic, in any respect whatsoever; nor shall any one of the said Companies subject any other thereof, or any particular description of traffic, to any prejudice or disadvantage  
30 in any respect whatsoever; and any one of the said Companies which shall have any terminus or station near any terminus or station of either of the others, shall afford all reasonable facilities for receiving and forwarding all the traffic arriving by either of the others, without any unreasonable delay, and without any preference or advantage, or prejudice or disadvantage, and so that no obstruction may be offered in the using of such railway as a continuous line of communication, and so that all reasonable accommodation may at all times, by the means aforesaid, be mutually afforded by and to the said several railway companies; and the said Canadian Pacific Railway Company  
40 shall receive and carry all freight and passenger traffic shipped to or from any point on the railway of either of the said above named railway companies passing over the Canadian Pacific Railway or any part thereof, at the same mileage rate and subject to the same charges for similar services, without granting or allowing any preference or advantage to the traffic coming from or going upon one of such railways over such traffic coming from or going upon the other of them,

reserving, however, to the said Canadian Pacific Railway Company the right of making special rates for purchasers of land, or for emigrants or intending emigrants; which special rates shall not govern or affect the rates of passenger traffic as between the said Company and the said two above named Companies or either of them. And any agreement made between any two of the said companies contrary to the foregoing provisions, shall be unlawful, null and void.

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Exhibit No. 50

Letters Patent  
Incorporating  
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(Continued)

25. The Company, under the authority of a special general meeting of the shareholders thereof, and as an extension of the railway hereby authorized to be constructed, may purchase or acquire by lease or otherwise, and hold and operate, the Canada Central Railway, or may amalgamate therewith, and may purchase or acquire by lease or otherwise and hold and operate a line or lines of railway from the city of Ottawa to any point at navigable water on the Atlantic seaboard or to any intermediate point, or may acquire running powers over any railway now constructed between Ottawa and any such point or intermediate point. And the Company may purchase or acquire any such railway subject to such existing mortgages, charges or liens thereon as shall be agreed upon, and shall possess with regard to any lines of railway so purchased, or acquired, and becoming the property of the Company, the same powers as to the issue of bonds thereon, or on any of them, to an amount not exceeding twenty thousand dollars per mile, and as to the security for such bonds, as are conferred upon the Company by the twenty-eighth section hereof, in respect of bonds to be issued upon the Canadian Pacific Railway. But such issue of bonds shall not affect the right of any holder of mortgages or other charges already existing upon any line of railway so purchased or acquired; and the amount of bonds hereby authorized to be issued upon such line of railway shall be diminished by the amount of such existing mortgages or charges thereon.

26. The Company shall have power and authority to erect and maintain docks, dockyards, wharves, slips and piers at any point on or in connection with the said Canadian Pacific Railway, and at all the termini thereof on navigable water, for the convenience and accommodation of vessels and elevators; and also to acquire, and work elevators, and to acquire, own, hold, charter, work, and run, steam and other vessels for cargo and passengers upon any navigable water, which the Canadian Pacific Railway may reach or connect with.

#### BY-LAWS

27. The by-laws of the Company may provide for the remuneration of the president and directors of the Company, and of any executive committee of such directors; and for the transfer of stock and shares; the registration and inscription of stock, shares, and bonds, and the transfer of registered bonds; and the payment of dividends and interest at any place or places within or beyond the limits of

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Canada; and for all other matters required by the said contract or by this Act to be regulated by by-laws: but the by-laws of the Company made as provided by law shall in no case have any force or effect after the next general meeting of shareholders, which shall be held after the passage of such by-laws, unless they are approved by such meeting.

#### BONDS

28. The Company, under the authority of a special general meeting of the shareholders called for the purpose, may issue mortgage  
 10 bonds to the extent of ten thousand dollars per mile of the Canadian Pacific Railway for the purposes of the undertaking authorized by the present Charter; which issue shall constitute a first mortgage and privilege upon the said railway, constructed or acquired, and to be thereafter constructed, or acquired, and upon its property, real and personal, acquired and to be thereafter acquired including rolling stock, and plant, and upon its tolls and revenues (after deduction from such tolls and revenues of working expenses), and upon the franchises of the Company; the whole as shall be declared and described as so mortgaged in any deed of mortgage as hereinafter provided. Provided always, however, that if the Company shall have  
 20 issued, or shall intend to issue land grant bonds under the provisions of the thirtieth section hereof, the lands granted and to be granted by Us to the Company may be excluded from the operation of such mortgage and privilege: and provided also that such mortgage and privilege shall not attach upon any property which the Company are hereby, or by the said contract, authorized to acquire or receive from Us until the same shall have been conveyed by Us to the Company, attach upon such property, if so declared in such deed, but shall as soon as the same shall be conveyed to the Company. And such  
 30 mortgage and privilege may be evidenced by a deed or deeds of mortgage executed by the Company, with the authority of its shareholders expressed by a resolution passed at such special general meeting; and any such deed may contain such description of the property mortgaged by such deed, and such conditions respecting the payment of the bonds secured thereby and of the interest thereon, and the remedies which shall be enjoyed by the holders of such bonds or by any trustee or trustees for them in default of such payment, and the enforcement of such remedies, and may provide for such forfeitures and penalties, in default of such payment, as may be approved by  
 40 such meeting; and may also contain, with the approval aforesaid, authority to the trustee or trustees, upon such default, as one of such remedies, to take possession of the railway and property mortgaged, and to hold and run the same for the benefit of the bondholders thereof for a time to be limited by such deed, or to sell the said railway and property, after such delay, and upon such terms and conditions as may be stated in such deed; and with like approval any such deed

may contain provisions to the effect that upon such default and upon such other conditions as shall be described in such deed, the right of voting possessed by the shareholders of the Company, and by the holders of preferred stock therein, or by either of them, shall cease and determine, and shall thereafter appertain to the bondholders, or to them and to the holders of the whole or of any part of the preferred stock of the Company, as shall be declared by such deed; and such deed may also provide for the conditional or absolute cancellation after such sale of any or all of the shares so deprived of voting power, or of any or all of the preferred stock of the company, or both; and may also, either directly by its terms, or indirectly by reference to the by-laws of the Company, provide for the mode of enforcing and exercising the powers and authority to be conferred and defined by such deed, under the provisions hereof. And such deed, and the provisions thereof made under the authority hereof, and such other provisions thereof as shall purport (with like approval) to grant such further and other powers and privileges to such trustee or trustees and to such bondholders, as are not contrary to law or to the provisions of this Charter, shall be valid and binding. But if any change in the ownership or possession of the said Railway and property shall at any time take place under the provisions hereof, or of any such deed, or in any other manner, the said Railway and property shall continue to be held and operated under the provisions hereof, and of "*The Consolidated Railway Act, 1879*," as hereby modified. And if the Company does not avail itself of the power of issuing bonds secured upon the land grant alone as hereinafter provided, the issue of bonds hereby authorized may be increased to any amount not exceeding twenty thousand dollars per mile of the said Canadian Pacific Railway.

29. If any bond issue be made by the Company under the last preceding section before the said railway is completed according to the said Contract, a proportion of the proceeds of such bonds, or a proportion of such bonds if they be not sold, corresponding to the proportion of the work contracted for then remaining incomplete, shall be received by Us, and shall be held, dealt with and, from time to time, paid over by Us to the Company upon the same conditions, in the same manner and according to the same proportions as the proceeds of the bonds, the issue of which is contemplated by sub-section *d.* of Clause 9 of the said Contract, and by the thirty-first section hereof.

30. The Company may also issue mortgage bonds to the extent of twenty-five million dollars on the lands granted in aid of the said railway and of the undertaking authorized by this Charter; such issue to be made only upon similar authority to that required by this Charter for the issue of bonds upon the railway; and when so made such bonds shall constitute a first mortgage upon such lands, and shall

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attach upon them when they shall be granted, if they are not actually granted at the time of the issue of such bonds. And such mortgage may be evidenced by a deed or deeds of mortgage to be executed under like authority to the deed securing the issue of bonds on the railway; and such deed or deeds under like authority may contain similar conditions and may confer upon the trustee or trustees named thereunder and upon the holders of the bonds secured thereby, remedies, authority, power and privileges and may provide for forfeitures and penalties, similar to those which may be inserted and  
10 provided for under the provisions of this Charter in any deed securing the issue of bonds on the railway, together with such other provisions and conditions not inconsistent with law or with this Charter as shall be so authorized. And such bonds may be styled Land Grant Bonds, and they and the proceeds thereof shall be dealt with in the manner provided in the said Contract.

31. The Company may in the place and stead of the said land grant bonds, issue bonds under the twenty-eighth section hereof, to such amount as they shall agree with Us to issue, with the interest guaranteed by Us as provided for in the said contract; such bonds to  
20 constitute a mortgage upon the property of the Company and its franchises acquired and to be thereafter acquired—including the main line of the Canadian Pacific Railway, and the branches thereof hereinbefore described, with the plant and rolling stock thereof acquired and to be thereafter acquired, but exclusive of such other branches thereof and of such personal property as shall be excluded by the deed of mortgage to be executed as security for such issue. And the provisions of the said twenty-eighth section shall apply to such issue of bonds, and to the security which may be given for the payment thereof, and they and the proceeds thereof shall be dealt  
30 with as hereby and by the said contract provided.

32. It shall not be necessary to affix the seal of the Company to any mortgage bond issued under the authority of this Act; and every such bond issued without such seal shall have the same force and effect, and be held, treated and dealt with by all courts of law and of equity as if it were sealed with the seal of the company. And if it is provided by the mortgage deed executed to secure the issue of any bonds, that any of the signatures to such bonds or to the coupons thereto appended may be engraved, stamped or lithographed thereon, such engraved, stamped or lithographed signatures shall be valid and  
40 binding on the Company.

33. The phrase "working expenses" shall mean and include all expenses of maintenance of the railway, and of the stations, buildings, works and conveniences belonging thereto, and of the rolling and other stock and moveable plant used in the working thereof, and also all such tolls, rents or annual sums as may be paid in respect of the hire

of engines, carriages or waggons let to the Company; also, all rent, charges, or interest on the purchase money of lands belonging to the Company, purchased but not paid for, or not fully paid for; and also all expenses of and incidental to working the railway and the traffic thereon, including stores and consumable articles; also rates, taxes, insurance and compensation for accidents or losses; also all salaries and wages of persons employed in and about the working of the railway and traffic, and all office and management expenses, including directors' fees, agency, legal and other like expenses.

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10 34. The bonds authorized by this Charter to be issued upon the railway or upon the lands to be granted to the Company, or both, may be so issued in whole or in part of the denomination of dollars, pounds sterling, or francs, or in any or all of them, and the coupons may be for payment in denominations similar to those of the bond to which they are attached. And the whole or any of such bonds, may be pledged, negotiated or sold upon such conditions and at such price as the Board of Directors shall from time to time determine. And provision may be made by the by-laws of the Company, that after  
20 the issue of any bond, the same may be surrendered to the Company by the holder thereof, and the Company may, in exchange therefor, issue to such holder inscribed stock of the Company, which inscribed stock may be registered or inscribed at the chief place of business of the Company or elsewhere, in such manner, with such rights, liens, privileges and preferences, at such place, and upon such conditions, as shall be provided by the by-laws of the Company.

30 35. It shall not be necessary, in order to preserve the priority, lien, charge, mortgage or privilege, purporting to appertain to or be created by any bond issued or mortgage deed executed under the provisions of this Charter, that such bond or deed should be registered in any manner, or in any place whatever. But every such mortgage deed shall be deposited in the office of our Secretary of State of Canada, of which deposit notice shall be given in the *Canada Gazette*. And in like manner any agreement entered into by the Company, under section thirty-six of this Charter, shall also be deposited in the said office. And a copy of any such mortgage deed or agreement, certified to be a true copy by our said Secretary of State or his Under-Secretary or Deputy, shall be received as *prima facie* evidence of the original in all courts of justice, without proof of the signatures or seal upon such original.

40 36. If, at any time, any agreement be made by the Company with any persons intending to become bondholders of the Company, or be contained in any mortgage deed executed under the authority of this Charter, restricting the issue of bonds by the Company, under the powers conferred by this Charter, or defining or limiting the mode of exercising such powers, the Company, after the deposit thereof with

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our said Secretary of State as hereinbefore provided, shall not act upon such powers otherwise than as defined, restricted and limited by such agreement. And no bond thereafter issued by the Company, and no order, resolution, or proceeding thereafter made, passed or had by the Company, or by the Board of Directors, contrary to the terms of such agreement, shall be valid or effectual.

37. The Company may, from time to time, issue guaranteed or preferred stock, at such price, to such amount, not exceeding ten thousand dollars per mile, and upon such conditions as to the prefer-  
10 ences and privileges appertaining thereto, or to different issues or classes thereof, and otherwise, as shall be authorized by the majority in value of the shareholders present in person or represented by proxy at any annual meeting or at any special general meeting thereof called for the purpose,—notice of the intention to propose such issue at such meeting being given in the notice calling such meeting. But the guarantee or preference accorded to such stock shall not interfere with the lien, mortgage and privilege attaching to bonds issued under the authority of this Act. And the holders of such preferred stock shall have such power of voting at meetings of shareholders, as shall  
20 be conferred upon them by the by-laws of the Company.

#### EXECUTION OF AGREEMENTS

38. Every contract, agreement, engagement, scrip certificate or bargain made, and every bill of exchange drawn, accepted or endorsed, and every promissory note and cheque made, drawn or endorsed on behalf of the Company, by any agent, officer or servant of the Company, in general accordance with his powers as such under the by-laws of the Company, shall be binding upon the Company; and in no case shall it be necessary to have the seal of the Company affixed to any such bill, note, cheque, contract, agreement, engagement,  
30 bargain, or scrip certificate, or to prove that the same was made, drawn, accepted or endorsed, as the case may be, in pursuance of any by-law or special vote or order; nor shall the party so acting as agent, officer or servant of the Company be subjected individually to any liability, whatsoever, to any third party therefor; Provided always, that nothing in this Charter shall be construed to authorize the Company to issue any note payable to the bearer thereof, or any promissory note intended to be circulated as money, or as the note of a bank, or to engage in the business of banking or insurance.

#### GENERAL PROVISIONS

40 39. The Company shall, from time to time, furnish such reports of the progress of the work, with such details and plans of the work, as our Governor-General in Council may require.

40. As respects places not within any Province, any notice required

by "*The Consolidated Railway Act, 1879*," to be given in the "Official Gazette" of a Province, may be given in the *Canada Gazette*.

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41. Deeds and conveyances of lands to the Company for the purposes of this Charter, (not being letters patent from Us) may, in so far as circumstances will admit, be in the form following, that is to say:—

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"Know all men by these presents, that I, A. B., in consideration of paid to me by the Canadian Pacific Railway Company, the receipt whereof is hereby acknowledged, grant, bargain, sell and convey unto the said The Canadian Pacific Railway Company, their successors and assigns, all that tract or parcel of land (*describe the land*) to have and to hold the said land and premises unto the said Company, their successors and assigns for ever.

"Witness my hand and seal, this                      day of                      one thousand eight hundered and

"Signed, sealed and delivered) in presence of	}	A.B.	[L.S.]
"C.D.			
"E.F."			

20 or in any other form to the like effect. And every deed made in accordance herewith shall be held and construed to impose upon the vendor executing the same the obligation of guaranteeing the Company and its assigns against all dower and claim for dower and against all hypothecs and mortgages and against all liens and charges whatsoever and also that he has a good, valid and transferable title thereto.

In testimony whereof we have caused these our letters to be made patent and the great seal of Canada to be hereunto affixed.

Witness: Our Right Trusty and Well Beloved Councillor, Sir John Douglas Sutherland Campbell, (commonly called the Marquis of Lorne), Knight of Our Most Ancient and Most Noble Order of the Thistle, Knight Grand Cross of Our Most Distinguished Order of Saint Michael and Saint George, Governor General of Canada, and Vice-Admiral of the same, at Our Government House, in our city of Ottawa, this sixteenth day of February in the year of our Lord one thousand eight hundred and eighty-one and in the forty-fourth year of our reign.

By Command, John O'Connor, Secretary of State.

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**No. 51**  
Company's Document

**Statutes of Canada 1881, 44 Victoria**  
Chapter 14

Exhibit No. 51

Portions of an Act to provide for the extension of the boundaries of the Province of Manitoba (21st March, 1881).

An Act to provide for the extension of the boundaries of the Province of Manitoba.  
(Assented to 21st March, 1881.)

Whereas, by an Act of the Legislature of the Province of Manitoba, passed during the session thereof held in the present year of Her Majesty's reign, and intituled "An Act to provide for the extension of the boundaries of the Province of Manitoba," the Legislature of that Province hath consented to the increase of the same by the alteration of its limits, as hereinafter enacted, upon the terms and conditions hereinafter expressed: Therefore Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

Preamble  
Act of Manitoba

2. The terms and conditions upon which such increase is made are as follows:

Terms and conditions of increase

(b) The said increased limit and the territory thereby added to the Province of Manitoba shall be subject to all such provisions as may have been or shall hereafter be enacted, respecting the Canadian Pacific Railway and the lands to be granted in aid thereof.

And to all provisions respecting C.P. Railway

**No. 52**  
Company's Document

**The Canada Gazette, 9th April, 1881**

Exhibit No. 52

Notice of Transfer of Contract to the Canadian Pacific Railway Company (9th April, 1881).

NOTICE

THE CANADIAN PACIFIC RAILWAY COMPANY

Notice is hereby given that the transfer of the contract executed by and between Her Majesty The Queen and George Stephen and others on the 21st day of October last for the construction and operation of the Canadian Pacific Railway to the Canadian Pacific Railway Company has been duly effected and completed according to the true intent and meaning of the Act of Parliament of Canada passed during the last session thereof intituled "An Act respecting the Canadian Pacific Railway" and of the Letters Patent Incorporating the said Company issued under the provisions of the said Act.

Dated 9th April, 1881.

JOHN O'CONNOR,  
Secretary of State.

**No. 53**  
Company's Document

Record  
Court of Appeal

**Obtained from Assistant Clerk of His Majesty's Privy Council  
for Canada**

Exhibit No. 53

Copy of a Report of a Committee of the Honorable the Privy Council,  
approved by His Excellency the Governor-General in Council,  
on the 25th June, 1881.

Dominion Order-in  
Council No. 953,  
25 June, 1881.

P.C. 953

Privy Council, Canada

10 On a memorandum dated 22nd June, 1881, from the Honorable the Minister of Railways and Canals, representing that the provisions of the 13th section of the agreement made with the Canadian Pacific Railway Company, dated 16th February, 1881, conferred upon the Company the right, subject to the approval of the Governor in Council, to lay out and locate the railway as they might see fit, preserving certain objective points, named, two of which were Selkirk and the Yellow Head Pass, the intermediate distance being undefined.

20 That, by a letter dated the 16th instant, application has now been made by the Company for sanction to the adoption of a line of location shown on plans submitted and hereto annexed, between Portage la Prairie and the "Rapids of the Assiniboine," a distance of about seventy-four miles.

That the report of the Chief Engineer of the Pacific Railway showing that from an engineering point of view no reason exists why the line should not be constructed as proposed, he, the Minister, recommends that the approval of His Excellency the Governor General in Council be given to the location of the line as described and shown on the annexed plans.

30 The Committee advise that the location of the line as described and shown on the annexed plans be approved as recommended.

Certified. J. O. COTE, C.P.C.

Certified to be a true copy

"A. M. HILL"

A. M. Hill

Ass't. Clerk of the Privy Council.

(Seal)

Record  
Court of Appeal

Exhibit No. 54

Letter, Collingwood  
Schreiber to F.  
Braun, 13 July,  
1881.

**No. 54**

Company's Document

**Obtained from Sessional Papers Dominion of Canada, 1882, Vol. 15  
Sessional Paper No. 48**

Letter, Collingwood Schreiber to F. Braun.

CANADIAN PACIFIC RAILWAY  
Office of the Engineer-in-Chief

Ottawa, 13th July, 1881.

10 Sir, I have to suggest that the Canadian Pacific Railway Company  
be requested to furnish the Department with a profile of the line from  
Portage la Prairie westerly to the point of location, already approved  
by the Governor-General in Council, about thirteen miles west of the  
crossing of the Assiniboine River; and further, that in future when  
the Company are submitting plans of location for approval, it be  
made a requirement that a profile accompany them, as otherwise it  
is impossible to form an intelligent opinion upon the location through  
a country with which one is not familiar.

20 It appears to me also that it is desirable, before the line of location  
is approved by the Government beyond a distance of say 250 miles  
west of Winnipeg, that the Company should submit a plan and profile  
showing the approach to and passage through the pass in the Rocky  
Mountains which they proposed to adopt; otherwise, if the location is  
approved in small sections, it may possibly reach a point from which  
an approach to and passage over the mountains could not be made.

I have the honor to be, Sir, your obedient servant,

COLLINGWOOD SCHREIBER,  
Engineer-in-Chief.

F. Braun, Esq., Secretary, Railways and Canals.

**No. 55**

Company's Document

**Obtained from Assistant Clerk of His Majesty's Privy Council  
for Canada**

30

Exhibit No. 55

Dominion Order-in-  
Council No. 1084,  
14th, July, 1881.

Certified to be a true copy of a Minute of a Meeting of the Committee  
of the Privy Council, approved by His Excellency the Governor-  
General on the 14th July, 1881.

WH/1

P.C. 1084

On a memorandum, dated 12th July, 1881, from the Honourable  
the Acting Minister of Railways and Canals, representing that by a

letter dated the 5th instant, the Canadian Pacific Railway Company have made application for assent to the proposed location of their line from the Assiniboine River westwards to the west line of Section 7, in Township 10, Range 20, as shown on plans submitted and hereto annexed, the distance being about 12½ miles.

That the report of the Chief Engineer of the Canadian Pacific Railway upon this application shows that no Engineering objection exists to the location of the line as desired by the Company, the alignment being direct and the grades light.

- 10 The Minister accordingly recommends that in pursuance of the 13th Section of the Contract made with this Company, dated the 21st day of October, 1880, and confirmed on the 16th of February, 1881, the approval of His Excellency the Governor General in Council be given to the adoption of the location now applied for as shown on the plans submitted.

The Committee submit the foregoing recommendation for Your Excellency's approval.

A. M. HILL  
Asst. Clerk of the Privy Council.

20

**No. 56**  
Company's Document

**Obtained from Assistant Clerk of His Majesty's Privy Council  
for Canada**

Copy of a Report of a Committee of the Honorable the Privy Council, approved by the Honorable the Deputy of His Excellency the Governor-General in Council, on the 6th August, 1881.

P.C. 1165

- 30 On a memorandum, dated 2nd August, 1881, from the Honorable the Minister of Railways and Canals, representing that the line of the Canadian Pacific Railway between Winnipeg and Portage la Prairie, as constructed by the Government, extends from the City of Winnipeg in a northerly direction to near Stonewall, thence westwards to Ossawa, thence southwards to Portage la Prairie, a distance of about seventy miles.

- 40 That the Canadian Pacific Railway Company have, by a letter dated the 2nd of June, last, applied for assent to a proposed re-location of this portion of the line, submitting a plan showing the location as desired, according to which plan the line commences at a point on the present line about one mile west of Winnipeg and takes a generally westerly course, running nearly parallel with the Assiniboine

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Exhibit No. 55

Dominion Order-in-Council No. 1084,  
14th July, 1881.  
(Continued)

Exhibit No. 56

Dominion Order-in-Council No. 1165,  
6th August, 1881.

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**Court of Appeal**

**Exhibit No. 56**

Dominion Order-in-Council No. 1165,  
6th August, 1881.  
(Continued)

River and at a distance from it of from three to four miles, it then gradually approaches the river and is close to it for the greater portion of the remaining distance to Portage la Prairie, the total length being about fifty-three miles and a half, a considerable saving in distance being gained in comparison of the present line.

That by the 13th section of the contract made with the Company, dated the 21st day of October, 1880, confirmed by Act of Parliament on the 15th of February, 1881, they have the right, subject to the approval of the Governor General in Council, to lay out and construct  
10 the line as they may see fit, between certain terminal points, of which Selkirk, Yellow Head Pass and Kamloops are named, the intermediate distance being undefined.

The Minister, while deferring for future consideration the question of the adoption of the entire re-location asked for advises that the approval of His Excellency the Governor General, as required by the contract, be given to the re-location of the portion of the line between Portage la Prairie and a certain point in Range 4, Township 13, Sections 13 or 14, shown on the plan submitted by the Company and attached to the Minister's memorandum, the report of the Chief  
20 Engineer showing no objections to exist to such location, the alignment being direct and the grades light.

The Committee recommend that the above proposed re-location be approved accordingly.

Certified. J. O. COTE, C.P.C.  
Hon. Minister of Railways and Canals.

(Seal)

Certified to be a true copy.  
"A. M. HILL"  
A. M. Hill  
Ass't. Clerk of the Privy Council.

30

**No. 57**  
Company's Document

**Obtained from Assistant Clerk of His Majesty's Privy Council  
for Canada**

**Exhibit No. 57**

Dominion Order-in-Council No. 1227,  
25th August, 1881.

Copy of a Report of a Committee of the Honorable the Privy Council, approved by the Honorable the Deputy of His Excellency the Governor-General in Council, on the 25th August, 1881.

P.C. 1227

On a memorandum dated 18th August, 1881, from the Honorable the Acting Minister of Railways and Canals, stating that, whereas  
40 by an Order in Council passed on the 6th instant, authority was given, in accordance with the provisions of the contract held by the Canadian

Pacific Railway Company, for the location of a portion of that line extending eastwards from Portage la Prairie to a point in Range 4, Township 13, Sections 13 or 14, he recommends that the approval of His Excellency the Governor General in Council be now given to a further direct extension of the line from the point named in Range 4, Township 13, Section 13 or 14, to a point of junction with the existing line of railway.

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**Exhibit No. 57**

Dominion Order-in-Council No. 1227,  
25th August, 1881.  
(Continued)

The Committee submit the foregoing recommendation for approval.

10 Certified. J. O. COTE, C.P.C.  
Hon. Minister of Railways and Canals.

Certified to be a true copy.

"A. M. HILL"

A. M. Hill

(Seal)

Ass't. Clerk of the Privy Council.

**No. 58**

Company's Document

**Obtained from Assistant Clerk of His Majesty's Privy Council  
for Canada**

**Exhibit No. 58**

20 Copy of a Report of a Committee of the Honorable the Privy Council, approved by the Deputy of His Excellency the Governor-General in Council, on the 7th September, 1881.

Dominion Order-in-Council No. 1246,  
7th Sept., 1881.

P.C. 1246

30 On a memorandum dated 3rd September, 1881, from the Honorable the Acting Minister of Railways and Canals, recommending, upon an application received from the Canadian Pacific Railway Company dated 27th ultimo, and in conformity with the 13th section of their contract, that the approval of His Excellency the Governor General in Council be given to the proposed further location of the line from the point approved under the Order in Council of the 14th July last namely, the west line of Section 7, Township 10, Range 20 west extending to the west line of Section 31, Township 12, Range 29 west, as shown on a map submitted with the said application, a distance of about sixty-five miles such point being about 217 miles from Winnipeg.

The Committee submit the above recommendation for approval.

Certified. J. O. COTE, C.P.C.

Certified to be a true copy.

"A. M. HILL"

A. M. Hill

40

(Seal)

Ass't. Clerk of the Privy Council

Record  
Court of Appeal

**No. 59**

Company's Document

Obtained from Sessional Papers Dominion of Canada, 1882, Vol. 15  
Sessional Paper No. 48

Exhibit No. 59

Letter, C. Drinkwater to F. Braun.  
22 Sept., 1881.

Letter, C. Drinkwater to F. Braun.

THE CANADIAN PACIFIC RAILWAY COMPANY  
Office of The Secretary,

Montreal, 22nd September, 1881.

Sir, I have the honor to submit a further plan of the location of a  
10 portion of the main line of the Canadian Pacific Railway, extending  
from the west line of Section 31, Township 12, Range 29, west, to the  
west line of Section 27, Township 16, Range 5, west of the second  
principal meridian, the distance being about 56½ miles; and I am  
instructed by the Directors to request that the same may be sub-  
mitted for the approval of the Governor General in Council, as re-  
quired by the Company's charter.

I beg to draw attention to the fact that the plan herewith sent  
shows no addition to the foregoing, a portion of the location (45½  
miles) which has been already sanctioned and is embraced in the  
20 Order in Council dated 7th instant.

There has been no change in the location then sanctioned, but as  
the plan previously submitted was not in the usual form, I beg to  
request that this may be considered as substituted for it.

I have the honor to be, Sir, your obedient servant,

C. DRINKWATER, Secretary.

F. Braun, Esq., Secretary Railways.

**No. 60**

Company's Document

Obtained from Sessional Papers Dominion of Canada, 1882, Vol. 15  
Sessional Paper No. 48

Exhibit No. 60

30

Letter, Collingwood  
Schreiber to F.  
Braun. 28th Sept.,  
1881.

Letter, Collingwood Schreiber to F. Braun.

CANADIAN PACIFIC RAILWAY  
Office of the Engineer-in-Chief,

Ottawa, 28th September, 1881.

Sir, The plan accompanying letter No. 27,073 from Mr. Drink-  
water, commences two ranges west of the end of the plan last sent in,  
leaving Ranges 21 and 22, across which no plan has been deposited.

No profiles have accompanied the plans, as suggested in my letter of July 13th, 1881.

The present plan reaches  $58\frac{3}{4}$  miles west of the portion approved by Order in Council and extends 276 miles west of Winnipeg. This exceeds the distance beyond which, I did not think it desirable to approve the location, before plans and profiles were deposited, shewing the approaches to, and passage of, the Rocky Mountains.

I am, Sir, your obedient servant,  
**COLLINGWOOD SCHREIBER**  
 10 F. Braun, Esq., Secretary, Railways and Canals.

Record  
Court of Appeal

Exhibit No. 60

Letter, Collingwood  
 Schreiber to F.  
 Braun, 28th Sept.,  
 1881.  
 (Continued)

**No. 61**

Company's Document

**Obtained from Sessional Papers Dominion of Canada, 1882, Vol. 15**  
 Sessional Paper No. 48

Letter, Collingwood Schreiber to F. Braun.

**CANADIAN PACIFIC RAILWAY**  
 Office of the Engineer-in-Chief,

Ottawa, 28th October, 1881.

Exhibit No. 61

Letter, Collingwood  
 Schreiber to F.  
 Braun, 28th Octo-  
 ber, 1881.

Sir, The communication from Mr. Drinkwater, Secretary, to the  
 20 Canadian Pacific Railway Company, of date the 28th ult., under  
 cover No. 27,093, making application to have location of the main  
 line of the Canadian Pacific Railway, extending from the west line  
 of Section 31, Township 12, Range 29, west to the west line of Section  
 27, Township 16, Range 5, west of the second principal meridian, a  
 distance of about  $56\frac{1}{2}$  miles, approved having been referred to me.

I have the honor to report, the line of location now submitted for  
 approval, commences at the westerly end of the section of location  
 already approved by Order in Council, dated the 7th ult., and extends  
 to a point, distant westward from Winnipeg some 250 miles.

30 From the information I have obtained of the nature of the country  
 through which the additional portion of the line passes, I can see no  
 objection to the adoption of this location.

I would here, however, beg to call attention to my letter of the  
 13th July last, and suggest that its requirements should in future be  
 complied with, viz: That profiles should accompany the plans in  
 future to enable me to form a more intelligent opinion as to the merits  
 of the location before any further extension is approved. Also, that  
 the Company should submit a plan and profile showing approach to,  
 and passage of, the Rocky Mountains which they propose to adopt,

Record  
Court of Appeal

Exhibit No. 61

Letter, Collingwood  
Schreiber to F.  
Braun, 28th Octo-  
ber, 1881.  
(Continued)

otherwise the location may possibly reach a point beyond which an approach to, and passage of, the Mountains could not be made.

I have the honor to be, Sir, your obedient servant,

COLLINGWOOD SCHREIBER.

F. Braun, Esq., Secretary, Railways and Canals.

**No. 62**

Company's Document

**Obtained from Assistant Clerk of His Majesty's Privy Council  
for Canada**

Exhibit No. 62

Dominion Order-in-  
Council No. 1465.  
29th October, 1881.

10 Copy of a Report of a Committee of the Honorable the Privy Council, approved by His Excellency the Governor-General in Council, on 29th October, 1881.

Privy Council, Canada P.C. 1465

On a memorandum dated 28th October, 1881, from the Minister of Railways and Canals, representing that by a letter dated the 28th of September, 1881, the Canadian Pacific Railway Company have made application to have the location of the main line of that Railway, extending from the west line of Section 31, Township 12, Range 29 west, to the west line of Section 27, Township 16, Range 5 west of 20 the second principal meridian, a distance of about 56½ miles, approved.

That by a report dated 28th October, 1881, the Chief Engineer states that the line of location now submitted commences at the westerly end of the section of location already approved by an Order in Council dated the 7th September, 1881, and extends to a point distant westwards from Winnipeg some 250 miles.

That the Engineer states that he sees no objection to the adoption of the location proposed.

30 The Minister accordingly recommends that the necessary approval of His Excellency the Governor General in Council be given to the location desired and above described, in conformity with the provisions of the Company's Act of Incorporation.

The Committee submit the foregoing recommendation for Your Excellency's approval.

Certified. J. O. COTE, C.P.C.  
Hon. Minister of Railways and Canals.

Certified to be a true copy.

"A. M. HILL"

A. M. Hill

Ass't. Clerk of the Privy Council.

40 (Seal)

**No. 63**  
Company's Document

Record  
Court of Appeal

**Obtained from Assistant Clerk of His Majesty's Privy Council  
for Canada.**

Exhibit No. 63

Certified to be a true copy of a Minute of a Meeting of the Committee of the Privy Council, approved by His Excellency the Governor-General on the 19th November, 1881.

Dominion Order-in-Council No. 1458.  
19th November, 1881.

Privy Council, Canada      P.C. 1458

On a Report dated 27th October, 1881, from the Minister of Railways and Canals, representing that by two Orders in Council of the 6th and 25th of August last, authority was given for the location of the Canadian Pacific Railway from Portage la Prairie eastwards to a point of junction with the existing line of Railway. That the application of the Company dated the 2nd of June which resulted in the two Orders mentioned had been for approval of a line of location shown on a plan then submitted, by which the main line of the railway from Winnipeg west to Portage la Prairie was re-located bringing it nearer the River Assiniboine.

That by a letter dated the 27th instant the Company have applied for approval of the line westwards from Winnipeg shown on the plan submitted on the 2nd of June, the course of such line extending to a point of junction with the line authorized by the Orders in Council above cited, about twelve (12) miles east of Portage la Prairie, the Company in such letter offering to continue to operate the present line to Stonewall as a branch of the Railway.

That under date the 27th instant the Chief Engineer has reported that as the City of Winnipeg is likely to be a great centre of trade, and it being also designed to establish the general workshops of the railway at that point and assuming that the City is intended to be on the main line of the railway, it would be greatly to the advantage of the traffic both through and local to have the location as direct as possible.

That the line now proposed not only passes over a comparatively dry Country with old settlements all the way but is also about 15 miles shorter than the existing line.

The Chief Engineer advises, therefore, that the location, approval of which is now sought, between Winnipeg and the point shown on the plan and described as South of Meadow Lea be adopted as part of the main line—it being provided that the Company continue to operate the line between Winnipeg and Stonewall as a branch.

The Minister concurs in the view of the Chief Engineer and recommends that the necessary approval be granted.

Record  
Court of Appeal  
Exhibit No. 63

Dominion Order-in-Council No. 1458.  
19th November, 1881.  
(Continued)

The Committee submit the above recommendation for Your Excellency's approval, the Minister of Justice having reported that in his opinion there is no legal objection to the approval of the Governor in Council being given to the location of the line as recommended by the Minister of Railways and Canals. The Committee recommend, however, upon the report of the Minister of Justice that it be made a condition of the approval that the Company enter into an agreement with the Crown binding themselves to operate the line between Winnipeg and Stonewall as a branch, the draft of such  
10 agreement to be approved of by the Governor in Council before execution. The Committee further recommend upon the same report that as claims may be made against the Government by those persons who may have purchased land along the line of Railway as at first located by reason of the change in the line, it be made a condition of the approval that all such claims be dealt with by the Company and settled upon equitable principles, and be referred to the Government for decision in case the Company and the parties fail to agree with respect to the settlement, and that the draft of the agreement embodying this condition be also approved of by the Governor in  
20 Council before execution.

"A. M. HILL"

Asst. Clerk of the Privy Council.

Certified to be a true copy.

(Sgd.) A. M. HILL

A. M. Hill

Ass't. Clerk of the Privy Council.

(Seal)

**No. 64**

Company's Document

**Obtained from Sessional Papers Dominion of Canada, 1882, Vol. 15**  
Sessional Paper No. 48

Exhibit No. 64

30

Letter, C. Drinkwater to F. Braun.  
25th November, 1881.

Letter, C. Drinkwater to F. Braun.

THE CANADIAN PACIFIC RAILWAY COMPANY  
Office of the Secretary,

Montreal, 25th November, 1881.

Sir, I have the honor to submit a further plan of the location of a portion of the main line of the Canadian Pacific Railway, extending from a point in Section 30, Township 16, Range 4, west of the second principal meridian, to the crossing of Moose Jaw Creek; and I am instructed by the Directors to request that the same may be sub-  
40 mitted for the approval of the Governor-General in Council, as required by the Company's charter.

It will be observed that this plan includes a small portion of the line sanctioned by Order in Council dated October 29th, viz: From station 6,900 in Section 29, Township 16, Range 4, west of the second principal meridian, to Weed Creek, a slight alteration having been made in the location between the two points named.

I have the honor to be, Sir, your obedient servant,

C. DRINKWATER, Secretary.

F. Braun, Esq., Secretary, Railways and Canals.

Record  
Court of Appeal

Exhibit No. 64

Letter, C. Drinkwater to F. Braun, 25th November, 1881.  
(Continued)

**No. 65**

10 Company's Document

**Obtained from Sessional Papers Dominion of Canada, 1882, Vol. 15**

Sessional Paper No. 48

Letter, Collingwood Schreiber to F. Braun.

CANADIAN PACIFIC RAILWAY  
Office of the Engineer-in-Chief

Ottawa, 5th December, 1881.

Sir, The letter of the Secretary of the Canadian Pacific Railway Company, Mr. Drinkwater, of the 25th ult., under cover No. 27,477, submitting for approval a plan of location for the main line of the  
20 Canadian Pacific Railway, extending from a point in Section 27, Township 16, range 5, west of the second principal meridian, to the crossing of Moose Jaw Creek, having been referred to me; I have the honor to report that, from information obtained subsequent to the date of my letter, dated the 28th October last, in which I considered that the location should not be approved further west, than a distance of say, 250 miles from Winnipeg, until the Company submitted a plan and profile of their approach to and passage through the Rocky Mountains, I see no reason why the location, as now submitted, to  
30 Moose Jaw Creek, should not be approved, as from this point there is apparently no difficulty in approaching any of the passes through the mountains.

I have the honor to be, Sir, your obedient servant,

COLLINGWOOD SCHREIBER,  
Engineer-in-Chief.

F. Braun, Esq., Secretary, Railways and Canals.

Exhibit No. 65

Letter, Collingwood Schreiber to F. Braun, 5th December, 1881.

Record  
Court of Appeal

Exhibit No. 66

Dominion Order-in-Council No. 1641.  
14 December, 1881.

**No. 66**  
Company's Document

**Obtained from Assistant Clerk of His Majesty's Privy Council  
for Canada**

Copy of a Report of a Committee of the Honorable the Privy Council, approved by His Excellency the Administrator of the Government in Council, on the 14th December, 1881.

Privy Council, Canada      P.C. 1641

On a report dated 7th December, 1881, from the Acting Minister  
10 of Railways and Canals, submitting an application from the Canadian Pacific Railway Company under date the 25th November, 1881, for approval, under the terms of their charter, of a further plan of location of a portion of the main line of that railway extending from a point in Section 27, Township 16, Range 5 west of the second principal meridian, (up to which point the location was approved by an Order in Council, dated the 29th of October, 1881) to a point known as Moose Jaw Creek, a distance of 140 miles.

A report of the Chief Engineer, dated the 5th December, showing that the location of the line now submitted may be approved up to  
20 the terminal point named, the Minister recommends that approval be given, as required, to such location.

The Committee submit the above recommendation for Your Excellency's approval.

Certified.

J. O. COTE, C.P.C.

Hon. Minister of Railways & Canals.

Certified to be a true copy.

"A. M. HILL"

A. M. Hill

30 (Seal)

Ass't. Clerk of the Privy Council.

**No. 67**  
Company's Document

**Statutes of Canada 1882, 45 Victoria**  
Chapter 53

Exhibit No. 67

An Act to authorize the Construction, on certain conditions, of the Canadian Pacific Railway through some pass other than the Yellow-Head Pass (17th May, 1882).

An Act to authorize the Construction, on certain conditions, of the Canadian Pacific Railway through some pass other than the Yellow-Head Pass.

(Assented to 17th May, 1882.)

Whereas by clause thirteenth of the contract with Her Majesty  
40 the Queen now held by the Canadian Pacific Railway Company, (which contract is contained in the Schedule to the Act passed in the

Preamble

44 V., c. 1, cited:  
as to the Pass  
through the Rocky  
Mountains

forty-fourth year of Her Majesty's reign chapter one, intituled "An Act respecting the Canadian Pacific Railway") it is provided that the said Company shall have the right, subject to the approval of the Governor in Council, to lay out and locate the line of the railway thereby contracted for as they may see fit, preserving the following terminal points namely, from Callander Station to the point of junction with the Lake Superior section and from Selkirk to the junction with the western section at Kamloops by way of the Yellow-Head Pass; and whereas it may be found to be in the public interest that  
10 the junction with the western section at Kamloops should be made by way of some pass other than the Yellow-Head Pass: Therefore Her Majesty by and with the advice and consent of the Senate and House of Commons of Canada enacts as follows:

Change of Pass  
may be authorized  
by Governor-in-  
Council

Proviso

1. The Canadian Pacific Railway Company may, subject to the approval of the Governor in Council, lay out and locate their main line of railway from Selkirk to the junction with the western section at Kamloops by way of some pass other than the Yellow-Head Pass, provided that the pass be not less than one hundred miles from the boundary between Canada and the United States of America.

Record  
Court of Appeal  
Exhibit No. 67

An Act to authorize the Construction, on certain conditions, of the Canadian Pacific Railway through some pass other than the Yellow-Head Pass (17th May, 1882). (Continued)

20

**No. 68**  
Company's Document

**Obtained from Assistant Clerk of His Majesty's Privy Council  
for Canada**

Record  
Supreme Court  
of Canada

Exhibit No. 68

Certified to be a true copy of a Minute of a Meeting of the Committee of the Privy Council, approved by His Excellency the Governor-General on the 30th September, 1882.

Dominion Order-in-Council No. 1940. 30 Sept., 1882.

Privy Council, Canada P.C. 1940

30 On a memorandum, dated 28th September, 1882, from the Acting Minister of Railways and Canals, reporting from the Canadian Pacific Railway Company, under date 15th September, instant, have submitted for approval by the Governor in Council, plans of location extending from Moose Jaw Creek to the crossing of the South Saskatchewan, a distance of 262 miles.

40 The Minister states that the Report, dated 27th September, instant, of the Engineer in charge at Ottawa, in the absence of the Chief Engineer, shows that the location of the line so far as a point known as Swift Current Creek, a distance of 113½ miles from Moose Jaw Creek, is such as may be approved of; but that the information afforded by the Company in relation to the distance further west is not sufficiently definite.

Record  
Supreme Court  
of Canada

Exhibit No. 68

Dominion Order-in-  
Council No. 1940.  
30 Sept., 1882.  
(Continued)

The Minister accordingly, upon such Report, recommends that approval of the Governor in Council be given to the location of the line between Moose Jaw Creek and Swift Current Creek, as shown on the plans submitted by the Company.

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

A. M. HILL  
Asst. Clerk of the Privy Council.

10

**No. 69**  
Company's Document

**Obtained from Assistant Clerk of His Majesty's Privy Council  
for Canada**

Exhibit No. 69

Dominion Order-in-  
Council No. 2247.  
24 Nov., 1882.

Certified to be a true copy of a Minute of a Meeting of the Committee of the Privy Council, approved by His Excellency the Governor-General on the 24th November, 1882.

Privy Council, Canada P.C. 2247

On a memorandum dated 21st November, 1882, from the Minister of Railways and Canals, submitting an application made under dates 6th and 7th November instant, from the Canadian Pacific Railway  
20 Company, for the approval of the location of that portion of their line extending from Swift Current Creek to the South Saskatchewan River, a distance of about 148 miles.

The Minister states that the Chief Engineer reported 20th November instant:

30 "That the section of country in question is favorable; that the  
"grades and curvature of the located line are well within the limits  
"prescribed by the Canadian Pacific Railway Act, and that if a line  
"within the conditions of this Act can be located through the Kicking  
"Horse Pass, the location of the section now submitted, though not  
"so direct as might have been desired, may be considered sufficiently  
"so to warrant approval being given."

The Minister recommends the approval of the location submitted.

The Committee submit the above recommendation for Your Excellency's approval.

A. M. HILL  
Asst. Clerk of the Privy Council.

**No. 70**  
Company's Document

**Obtained from Assistant Clerk of His Majesty's Privy Council  
for Canada**

**Record**  
**Supreme Court  
of Canada**

**Exhibit No. 70**

Certified to be a true copy of a Minute of a Meeting of the Committee of the Privy Council, approved by His Excellency the Governor-General on the 26th June, 1883.

Dominion Order-in-Council No. 1474.  
26th June, 1883.

P.C. 1474

Privy Council, Canada

10 On a memorandum dated 21st June, 1883, from the Acting Minister of Railways and Canals, stating that under date the 20th June instant the Canadian Pacific Railway Company have submitted for approval a plan and profile showing the location of that portion of their main line extending from the crossing of the River Saskatchewan at Medicine Hat to the western limit of Range 22 in Township 22 West of the 4th Initial Meridan, being a distance of 123 miles.

The Minister further states that under date the 21st June instant, the Government Chief Engineer has reported that the country is favourable, the grades and curves shown on the plans submitted  
20 herewith being well within the conditions imposed by the Canadian Pacific Railway Act, and that in the event of the Kicking Horse Pass being approved of by the Government the location shown on these plans may be considered satisfactory.

The Minister recommends that the location of the section now submitted be approved of accordingly.

The Committee submit the same for Your Excellency's approval.

A. M. HILL  
Asst. Clerk of the Privy Council.

**No. 71**  
Company's Document

**Obtained from Assistant Clerk of His Majesty's Privy Council  
for Canada**

**Exhibit No. 71**

30 Certified to be a true copy of a Minute of a Meeting of the Committee of the Privy Council, approved by His Excellency the Governor-General on the 24th July, 1883.

Dominion Order-in-Council No. 1680.  
24 July, 1885.

Privy Council, Canada      P.C. 1680

On a memorandum dated 20th July, 1883, from the Acting Minister of Railways and Canals representing that under date the

**Record**  
**Supreme Court**  
**of Canada**

**Exhibit No. 71**

Dominion Order-in-  
Council No. 1680.  
24 July, 1885.  
(Continued)

19th instant the Canadian Pacific Railway Company have submitted a plan and profile showing the location which they propose to adopt for their main line from Crowfoot Creek to Calgary, a distance of 69 miles, of which, however, a portion 13 miles in length west from the Crowfoot crossing has already been approved under the Order in Council of the 26th ultimo, leaving 56 miles to be now dealt with.

The Minister further represents that under date the 20th instant the Government Chief Engineer has reported that as far as this said Section of 56 miles and its suitability for a line of railway are con-  
10 cerned, the Country is favorable, the grades and curves shown on the plan and profile submitted being well within the conditions imposed by the Canadian Pacific Railway Act.

The Minister accordingly recommends that approval be given to the location now submitted.

The Committee advise that the location submitted be approved as recommended.

A. M. HILL  
Asst. Clerk of the Privy Council.

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**No. 72**

20

Company's Document

**Obtained from Assistant Clerk of His Majesty's Privy Council  
for Canada**

**Exhibit No. 72**

Dominion Order-in-  
Council No. 1835.  
25th August, 1883.

Certified to be a true copy of a Minute of a Meeting of the Committee of the Privy Council, approved by His Excellency the Governor-General on the 25th August, 1883.

Privy Council, Canada      P.C. 1835

On a memorandum dated August 23rd, 1883, from the Acting Minister of Railways & Canals representing that under date the 21st inst. the Canadian Pacific Railway Company have submitted for  
30 approval a plan and profile showing the proposed location of their main line for a further distance of about 55 miles, extending from the point at Calgary up to which approval has already been given to Padmore.

That under date the 22nd inst., the Chief Engineer has reported that the country is favourable, the grades and curves shown on the plan and profile furnished being well within the conditions imposed by the Canadian Pacific Railway Act.

The Minister accordingly recommends that approval be given to the location in question.

Record  
Supreme Court  
of Canada

The Committee submit the above recommendation for your Excellency's approval.

Exhibit No. 72

A. M. HILL  
Asst. Clerk of the Privy Council.

Dominion Order-in-Council No. 1835.  
25th August, 1883.  
(Continued)

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**No. 73**  
Company's Document

**Obtained from Assistant Clerk of His Majesty's Privy Council  
for Canada**

10

Exhibit No. 73

Certified to be a true copy of a Minute of a Meeting of the Committee of the Privy Council, approved by His Excellency the Governor-General on the 21st September, 1883.

Dominion Order-in-Council No. 1953.  
21st September,  
1883.

Privy Council, Canada      P.C. 1953

On a memorandum dated 18th September, 1883, from the Acting Minister of Railways and Canals stating that the Canadian Pacific Railway Company on the 10th inst., submitted for approval a plan and profile showing the proposed location of that part of their main line extending along the Valley of the Bow River, from Padmore to 20 Forty Mile Creek, a distance of 28 miles.

The Minister represents that the Chief Engineer of Railways in a communication dated the 16th instant, states that the country to be traversed by this portion of the line is favourable, and that the grades and curves indicated on the plan and profile, are well within the conditions imposed by the Canadian Pacific Railway Act.

The Minister accordingly recommends that the location as above be approved.

The Committee submit the above recommendation for your Excellency's approval.

30

A. M. HILL  
Asst. Clerk of the Privy Council.

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Record  
Supreme Court  
of Canada

Exhibit No. 74

Dominion Order-in-  
Council No. 2271.  
9th November,  
1883.

**No. 74**  
Company's Document

**Obtained from Assistant Clerk of His Majesty's Privy Council  
for Canada**

Certified to be a true copy of a Minute of the Committee of the Privy Council, approved by His Excellency the Governor-General on the 9th November, 1883.

Privy Council, Canada      P.C. 2271

On a memorandum from the Acting Minister of Railways and  
10 Canals, dated 9th November, 1883, submitting the application dated  
6th November instant, of the Canadian Pacific Railway Company,  
with plan and profile, showing the proposed location of that portion  
of their main line extending from a point on the Bow River known as  
"Forty Mile Creek" for a distance westwards of about 35 miles, or  
from the 924th mile to the 959th mile west of Winnipeg.

The Minister represents that under date the 7th instant the  
Chief Engineer has reported that on the section referred to the  
country is favorable and that the conditions as shown on the present  
plan and profile are within those imposed by the Canadian Pacific  
20 Railway Act.

The Minister recommends that the proposed location be approved  
accordingly.

The Committee submit the above recommendation for Your  
Excellency's approval.

A. M. HILL  
Asst. Clerk of the Privy Council.

**No. 75**  
Company's Document

**Obtained from Assistant Clerk of His Majesty's Privy Council  
for Canada**

Exhibit No. 75

Dominion Order-in-  
Council No. 2466.  
6th December,  
1883.

30 Certified to be a true copy of a Minute of a Meeting of the Committee  
of the Privy Council, approved by His Excellency the Governor-  
General on the 6th December, 1883.

Privy Council, Canada      P.C. 2466

On a memorandum dated 4th December, 1883, from the Acting  
Minister of Railways and Canals submitting a plan and profile  
showing the location of the main line of the Canadian Pacific Railway  
extending from a point on the South branch of the Bow River to the  
Summit of the Rocky Mountains, a distance of about five miles.

The Minister represents that the Chief Railway Engineer of his Department reports, under date the 3rd instant, that the maximum grade on this piece of road is 1.40 feet per 100 feet, and the minimum curve 7° that the Country is favourable for a railway, and the conditions as shown on plan and profile within those imposed by the Canadian Pacific Railway Act.

Record  
Supreme Court  
of Canada

Exhibit No. 75

Dominion Order-in-Council No. 2466,  
6th December,  
1883.  
(Continued)

The Minister recommends that the location of the Section of Railway referred to, be approved.

The Committee submit the same for Your Excellency's approval.

10

A. M. HILL  
Asst. Clerk of the Privy Council.

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**No. 76**  
Company's Document

**Obtained from Assistant Clerk of His Majesty's Privy Council  
for Canada**

Exhibit No. 76

Certified to be a true copy of a Minute of a Meeting of the Committee of the Privy Council, approved by His Excellency the Governor-General on the 21st June, 1884.

Dominion Order-in-Council No. 1363,  
21st June, 1884.

P.C. 1363

20 Privy Council, Canada

On a memorandum dated 18th June, 1884, from the Acting Minister of Railways and Canals submitting plans and profiles of the Canadian Pacific Railway Company for their permanent line extending from the summit of the Rocky Mountains to a point thirty-five (35) miles west thereof.

The Minister represents that the Chief Engineer of Government Railways under date the 13th instant has reported stating that the minimum curve is 80° and the maximum grade 116 feet per mile: that these are necessitated by the general features of the country and  
30 that he does not consider that a better location than that now submitted can be obtained through the "Kicking Horse Pass," he accordingly advises its adoption.

The Minister therefore recommends that approval be given to the plans and profiles of the location in question as submitted.

The Committee submit the above recommendation for Your Excellency's approval.

A. M. HILL  
Asst. Clerk of the Privy Council.

Record  
Supreme Court  
of Canada

Exhibit No. 77

Dominion Order-in-  
 Council No. 1535,  
 25th July, 1884.

**No. 77**  
 Company's Document

**Obtained from Assistant Clerk of His Majesty's Privy Council  
 for Canada**

Certified to be a true copy of a Minute of a Meeting of the Committee of the Privy Council, approved by His Excellency the Governor-General on the 25th July, 1884.

P.C. 1535

Privy Council, Canada

- 10 On a memorandum dated 18th July, 1884, from the Acting Minister of Railways & Canals representing that under date the 7th July instant, the Canadian Pacific Rly. Company have submitted for approval a plan and profile showing the proposed location of a further portion of their Main line extending from a point on the Kicking Horse River known as Beaver Foot summit about 35 miles west of the summit of the Rocky Mountains, up to which it had been approved by an Order in Council dated 21st June last to a point near the junction of the Columbia River or from the 995th mile to the 1005th mile west of Winnipeg, and that the Chief Engineer under  
 20 date 11th inst. reported that the maximum grade is 116 feet per mile and the minimum curve 10° and that he believes these to be necessitated by the general features of the Country.

The Minister on the advice of the Chief Engineer recommends that approval be given to the location as submitted.

The Committee advise that the same be approved accordingly.

A. M. HILL  
 Asst. Clerk of the Privy Council.

**No. 78**  
 Company's Document

**30 Obtained from Assistant Clerk of His Majesty's Privy Council  
 for Canada**

Exhibit No. 78

Dominion Order-in-  
 Council No. 1663,  
 13th September,  
 1884.

Certified to be a true copy of a Minute of a Meeting of the Committee of the Privy Council, approved by His Excellency the Governor-General on the 13th September, 1884.

P.C. 1663

Privy Council, Canada

On a memorandum dated 14th August, 1884, from the Acting Minister of Railways and Canals representing that under date the

8th August 1884, the Canadian Pacific Railway Company have submitted for approval a plan and profile showing the proposed location of that portion of their main line extending from a point on the Kicking Horse River near its junction with the Columbia River, in British Columbia, to a point two miles east of the Wait-a-bit-Creek, or from the 1005th mile West from Winnipeg, up to which point approval has been given by an Order in Council of the 25th July, 1884, to the 1020th mile West from Winnipeg, and that the Chief Engineer has reported thereon under date the 14th August 1884 to the effect that the maximum grade does not exceed 1 per 100 feet and the minimum curve is 5° and the alignment being good.

The Minister upon the said report of the Chief Engineer recommends that the plan and profile as submitted be approved accordingly.

The Committee submit the same for Your Excellency's approval.

A. M. HILL  
Asst. Clerk of the Privy Council.

Record  
Supreme Court  
of Canada

Exhibit No. 78

Dominion Order-in-Council No. 1663.  
13th September,  
1884.  
(Continued)

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**No. 79**

Company's Document

**20 Obtained from Assistant Clerk of His Majesty's Privy Council for Canada**

Certified to be a true copy of a Minute of a Meeting of the Committee of the Privy Council, approved by His Excellency the Governor-General on the 21st September, 1884

Privy Council, Canada P.C. 1834

Exhibit No. 79

Dominion Order-in-Council No. 1834.  
21st September,  
1884.

On a memorandum dated 19th September, 1884, from the Acting Minister of Railways & Canals representing that under date the 12th instant the Canadian Pacific Railway Company has submitted for approval the location of that part of their main line, commencing at a point near Savona's Ferry, B.C., where it connects with the Eastern end of Contract No. 63, and extending easterly a distance of about 42 miles along the south shore of Lake Kamloops.

The Minister further represents that the Chief Engineer of Government Railways under date 17th September, 1884, has reported to the effect that the maximum grade on the proposed line does not exceed 1 per 100 feet, and that the minimum curve is 10 degrees—that the curves of that radius are comprised within a distance of six miles along the shore of the Lake, where the rocks rise occasionally perpendicularly from the water's edge—and he advises that the proposed location be adopted.

Record  
Supreme Court  
of Canada

Exhibit No. 79

Dominion Order-in-  
Council No. 1834.  
21st September,  
1884.  
(Continued)

The Minister on the said report of the Chief Engineer recommends that the location of the Canadian Pacific Railway, as described above be approved.

The Committee advise that the same be approved accordingly.

A. M. HILL  
Asst. Clerk of the Privy Council.

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**No. 80**  
Company's Document

**Obtained from Assistant Clerk of His Majesty's Privy Council  
for Canada**

Exhibit No. 80

10

Dominion Order-in-  
Council No. 1835.  
21st September,  
1884.

Certified to be a true copy of a Minute of a Meeting of the Committee of the Privy Council, approved by His Excellency the Governor-General on the 21st September, 1884.

P.C. 1835

Privy Council, Canada

On a memorandum dated 19th September, 1884, from the Acting Minister of Railways and Canals representing that under date the 12th instant the Canadian Pacific Railway Company have submitted for approval plans and profiles showing the proposed location of that portion of their main line extending from a point up to which approval has been given by an Order in Council dated the 13th instant namely the 1020th mile west from Winnipeg up to the 1038th mile west from Winnipeg.

The Minister further represents that the Chief Engineer of Government Railways under date 18th September, 1884 has reported to the effect that the minimum grade is 90 feet to the mile and that the maximum curve is 10 degrees and he believes that the general features of the country require these gradients and curves and he advises that the location proposed be adopted.

30 The Minister on the said report of the Chief Engineer recommends that this location as shown in the said plans and profiles be approved.

The Committee advise that the plans and profiles as submitted be approved accordingly.

A. M. HILL  
Asst. Clerk of the Privy Council.

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**No. 81**

Company's Document

**Obtained from Assistant Clerk of His Majesty's Privy Council  
for Canada**Record  
Supreme Court  
of CanadaExhibit No. 81

Certified to be a true copy of a Minute of a Meeting of the Committee  
of the Privy Council, approved by His Excellency the Governor-  
General on the 2nd November, 1884.  
Privy Council, Canada P.C. 2068

Dominion Order-in-  
Council No. 2068.  
2nd November,  
1884.

On a memorandum dated October 29th, 1884, from the Acting  
10 Minister of Railways and Canals, representing that under date the  
25th instant the Canadian Pacific Railway Company have submitted  
a plan and profile of the main line of their road from the beginning of  
the 1038th mile west from Winnipeg or the 79th mile west from the  
summit of the Rocky Mountains to the summit of the Rogers pass in  
the Selkirk Range to a point which is in the 1054th mile west from  
Winnipeg or the 95th mile west from the summit of the Rocky  
Mountains.

The Minister further represents that the Chief Engineer has  
reported under date the 28th inst: to the effect that the minimum  
20 curve on this distance, as shown in the said plan and profile is of ten  
(10) degrees, and the maximum grade 116 feet per mile. These curves  
and grades are he considers necessitated by the general features of the  
country.

The Minister on the advice of the Chief Engineer recommends that  
the location as submitted be approved.

The Committee advise that the location be approved accordingly.

A. M. HILL  
Asst. Clerk of the Privy Council.

**No. 82**

Company's Document

**Obtained from Assistant Clerk of His Majesty's Privy Council  
for Canada**Exhibit No. 82

Certified to be a true copy of a Minute of a Meeting of the Committee  
of the Privy Council, approved by His Excellency the Governor-  
General on the 16th January, 1885.  
Privy Council, Canada P.C. 56

Dominion Order-in-  
Council No. 56.  
16th January, 1885.

On a memorandum dated 12th January 1885, from the Acting  
Minister of Railways & Canals representing that under date the 6th  
of November last the Canadian Pacific Railway Company submitted  
40 for approval a plan and profile of their line from Schickamouse

**Record**  
**Supreme Court**  
**of Canada**

**Exhibit No. 82**

Dominion Order-in-  
Council No. 56,  
16th January, 1885.  
(Continued)

Narrows to a point west of the Little Schuswap Lake, a distance of fifty (50) miles and that under date the 13th of that month the Engineer in Chief reported showing the maximum gradient to be 1.25 per 100 feet or 66 feet per mile, the maximum curve being 10° these curves, he considered should be reduced, and the plans were returned to the Company accordingly.

The Minister further represents that under date the 7th instant the Company have submitted an amended plan and profile of this section as to which the Chief Engineer reports under date the 10th instant that the maximum curve has now been reduced to 8° and he advises that the location be approved, the Minister therefore recommends that approval be given.

The Committee submit the annexed plan and profile of the Canadian Pacific Railway Company for Your Excellency's approval accordingly.

A. M. HILL  
Asst. Clerk of the Privy Council.

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**No. 83**  
Company's Document

**20**    **Obtained from Assistant Clerk of His Majesty's Privy Council  
for Canada**

**Exhibit No. 83**

Dominion Order-in-  
Council No. 61,  
16th January, 1885.

Certified to be a true copy of a Minute of a Meeting of the Committee of the Privy Council, approved by His Excellency the Governor-General on the 16th January, 1885.  
Privy Council, Canada                      P.C. 61

On a memorandum dated 14th January, 1885, from the Acting Minister of Railways and Canals submitting for approval plans and profiles of the Canadian Pacific Railway, showing the portion of their main line extending from the 95th to the 119th mile west of the summit of the Rocky Mountains, or from the 1057th to the 1081st mile West of Winnipeg.

The Minister represents that the Chief Engineer has reported under date 12th January inst. that the maximum grade is 116 feet per mile and the minimum or sharpest curve 10°, these he believes to be necessitated by the general features of the ground, and advises the approval of the location, the Minister therefore recommends that approval be given thereto.

The Committee submit the plans and profiles of the Canadian Pacific Railway Company for your Excellency's approval.

**40**

A. M. HILL  
Asst. Clerk of the Privy Council.

**No. 84**

Company's Document

**Obtained from Assistant Clerk of His Majesty's Privy Council  
for Canada****Record  
Supreme Court  
of Canada****Exhibit No. 84**

Certified to be a true copy of a Minute of a Meeting of the Committee of the Privy Council, approved by His Excellency the Governor-General on the 2nd March, 1885.

Dominion Order-in-Council No. 392.  
2nd March, 1885.

Privy Council, Canada P.C. 392

On a memorandum dated 24th February 1885, from the Acting  
10 Minister of Railways and Canals, submitting for approval the plans and profiles showing the location of the main line of the Canadian Pacific Railway for the portion extending from the 42½ to the 62½ mile east of Savona's Ferry.

The Minister recommends on the report of the Government Chief Engineer to the effect that the grades and curves are well within the limits fixed by the Act, the maximum grade being 1 per 100 feet or 52<sup>80</sup>/<sub>100</sub> feet per mile and the minimum curve 8 degrees and that the plans and profiles as submitted under date 12th February inst., be approved.

The Committee advise that the plans and profiles as submitted be  
20 approved accordingly.

A. M. HILL  
Asst. Clerk of the Privy Council.

**No. 85**

Company's Document

**Obtained from Assistant Clerk of His Majesty's Privy Council  
for Canada****Exhibit No. 85**

Certified to be a true copy of a Minute of a Meeting of the Committee of the Privy Council, approved by His Excellency the Governor-General on the 16th March, 1885.

Dominion Order-in-Council No. 337.  
16th March, 1885

30 Privy Council, Canada P.C. 337

On a memorandum dated 18th February 1885, from the Acting Minister of Railways and Canals submitting plans and profiles of the Canadian Pacific Railway showing the proposed location of this main line extending from the Sicamous Narrows to the 2nd crossing of the Columbia River a distance of about 44 miles and upon which the Chief Engineer has reported that the grades and curves are well within the conditions imposed by the Canadian Pacific Railway Act and are such as the physical features of the Country appear to require,

Record  
Supreme Court  
of Canada

Exhibit No. 85

Dominion Order-in-  
Council No. 337.  
16th March, 1885.  
(Continued)

the maximum grade is, he states, 1.25 per 100 feet or 66 feet per mile, the minimum or sharpest curve being 10 degrees.

The Minister on such report recommends that the said plans and profiles be approved.

The Committee submit the same for Your Excellency's approval accordingly.

A. M. HILL  
Asst. Clerk of the Privy Council.

10

**No. 86**  
Company's Document

**Obtained from Assistant Clerk of His Majesty's Privy Council  
for Canada**

Exhibit No. 86

Dominion Order-in-  
Council No. 623.  
23rd March, 1885.

Certified to be a true copy of a Minute of a Meeting of the Committee of the Privy Council, approved by His Excellency the Governor-General on the 23rd March, 1885.

P.C. 623

Privy Council, Canada

On a memorandum dated 19th March 1885, from the Acting Minister of Railways & Canals submitting for approval a plan and profile of the Canadian Pacific Railway showing the proposed location of their main line for a distance of eighteen miles extending from the 119th to the 137th mile West from the summit of the Rocky Mountains, or from the 1081st to the 1099th mile West from Winnipeg.

The Minister represents that the Government Chief Engineer has reported, stating that the maximum grade is 1 per 100 feet or 52.80 feet per mile, that the sharpest curve is of ten (10) degrees and that he believes this gradient and curvature to be necessitated by the general features of the ground, he advises that this location be approved, it having been generally understood that such curves would have to be used in passing over the Selkirk range.

The Minister, therefore, recommends that approval be given accordingly.

The Committee submit the plan and profile of the Canadian Pacific Railway dated 11th March 1885, for Your Excellency's approval.

A. M. HILL  
Asst. Clerk of the Privy Council.

**No. 87**  
Company's Document

Record  
Court of Appeal

**Prepared by the Company for the purposes of this Reference.**

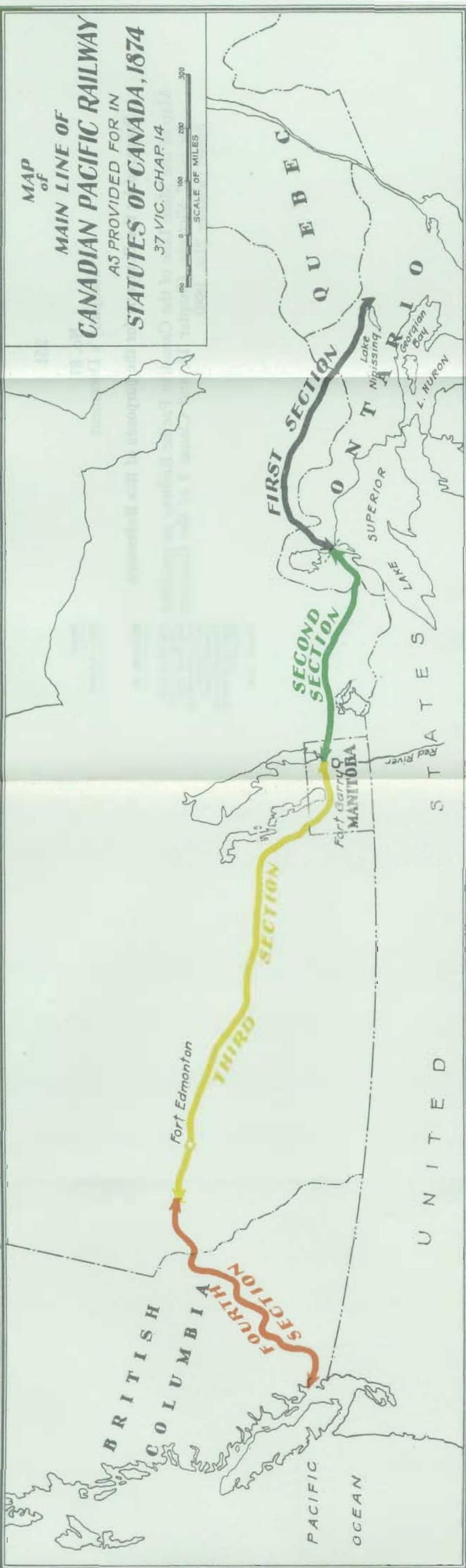
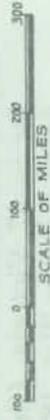
Exhibit No. 87

Map of the Main Line of the Canadian Pacific Railway as provided for in 37 Victoria, Chapter 14, and Clause 1 of the Contract dated October 21st, 1880.

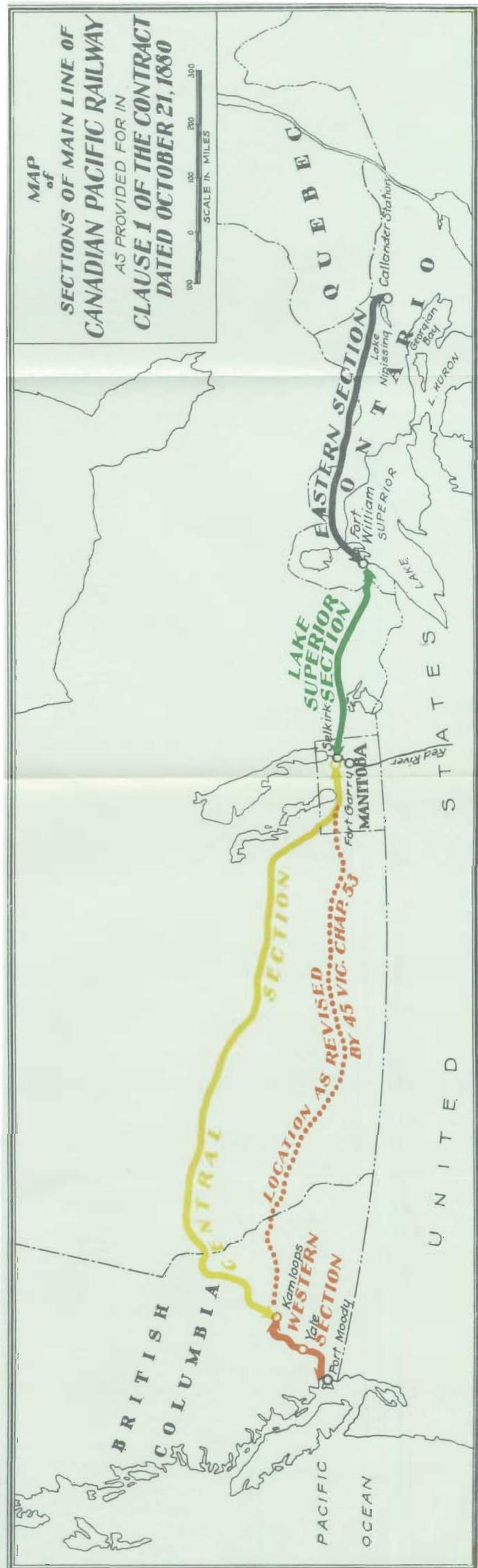
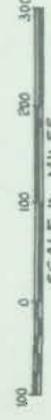
Map of the Main Line of the Canadian Pacific Railway as provided for in 37 Victoria, Chapter 14, and Clause 1 of the Contract dated October 21st, 1880.

8th Oct., 1948.

MAP of  
**MAIN LINE OF  
 CANADIAN PACIFIC RAILWAY**  
 AS PROVIDED FOR IN  
**STATUTES OF CANADA, 1874**  
 37 VIC. CHAR. 14



MAP of  
**SECTIONS OF MAIN LINE OF  
 CANADIAN PACIFIC RAILWAY**  
 AS PROVIDED FOR IN  
**CLAUSE 1 OF THE CONTRACT  
 DATED OCTOBER 21, 1880**



**Record**  
**Supreme**  
**Court of Canada**

**No. 88**  
Company's Document

**Exhibit No. 88**

**Prepared by the Company for the purposes of this Reference.**

Map shewing route  
of the Canadian  
Pacific Railway as  
provided for in 1874  
Act and Route as  
provided for under  
the 1881 Act and  
Relevant Orders in  
Council.

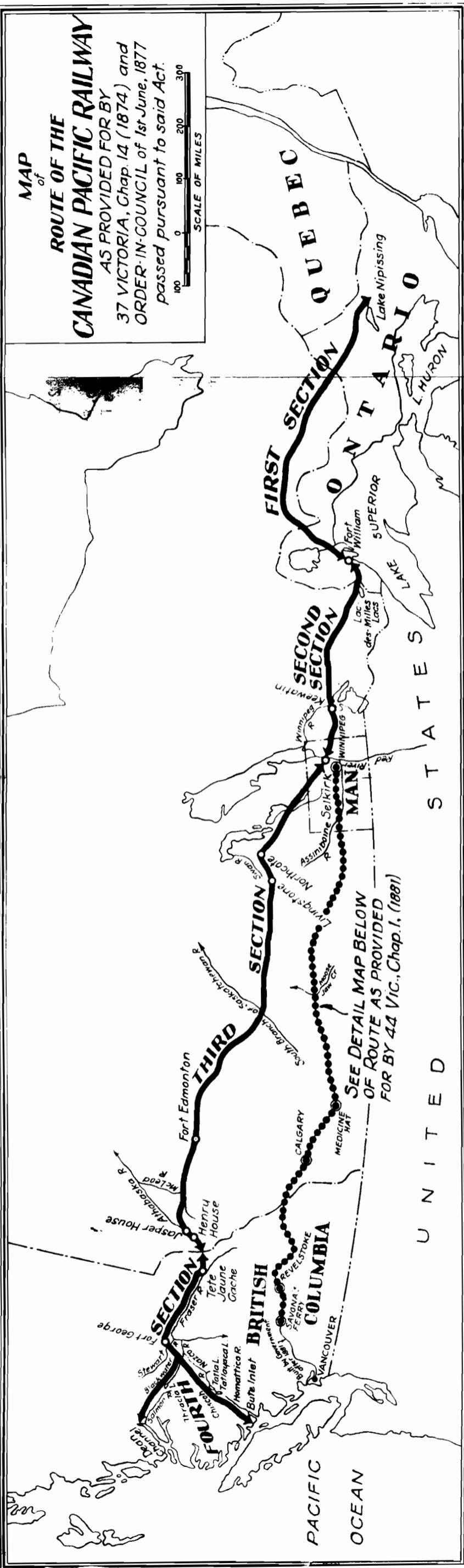
Map shewing Route of the Canadian Pacific Railway as provided  
for in 1874 Act and Route as provided for under the 1881 Act  
and Relevant Orders in Council.

July, 1949.

MAP of

**ROUTE OF THE CANADIAN PACIFIC RAILWAY**

AS PROVIDED FOR BY 37 VICTORIA, Chap. 14 (1874) and ORDER-IN-COUNCIL of 1st June, 1877 passed pursuant to said Act.

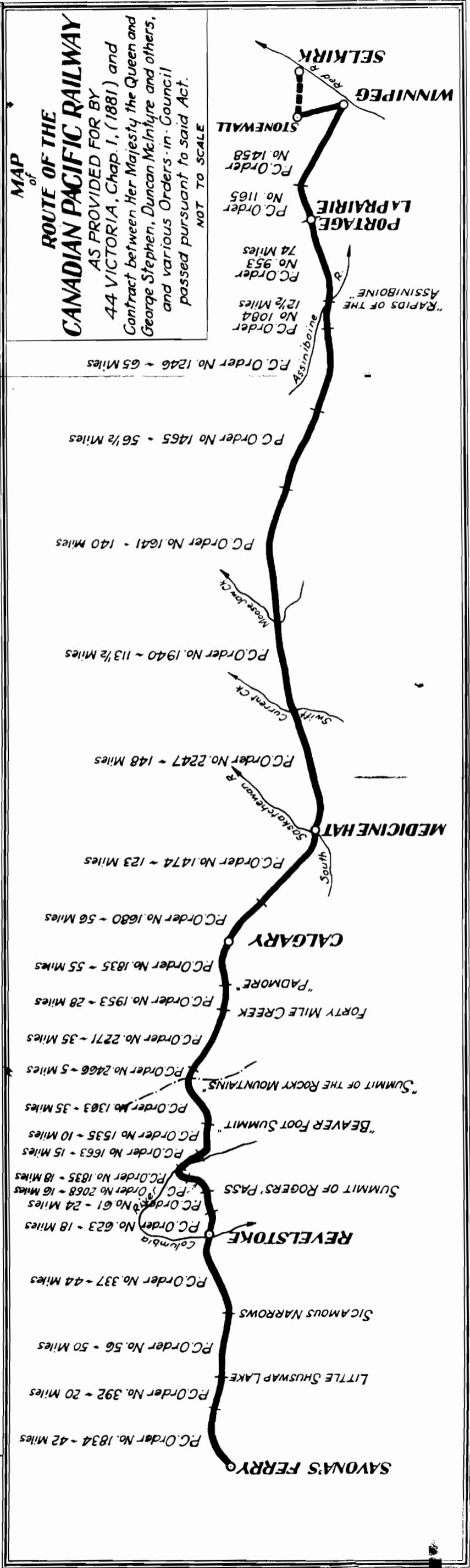


MAP of

**ROUTE OF THE CANADIAN PACIFIC RAILWAY**

AS PROVIDED FOR BY 44 VICTORIA, Chap. I, (1881) and Contract between Her Majesty the Queen and George Stephen, Duncan McIntyre and others, and various Orders-in-Council passed pursuant to said Act.

NOT TO SCALE



No. 89  
Company's Document

Record  
Court of Appeal

Statutes of Canada 1888, 51 Victoria  
Chapter 32

Exhibit No. 89

An Act respecting a certain agreement between the Government of  
Canada and the Canadian Pacific Railway Company.

Portions of  
An Act respecting a  
certain agreement  
between the  
Government of  
Canada and the  
Canadian Pacific  
Railway Company  
(22nd May, 1888).

(Assented to 22nd May, 1888.)

. . . . .

Article 15 of  
Agreement of 1880  
repealed

2. Article fifteen of the agreement between Her Majesty and the  
corporators of the Canadian Pacific Railway Company set forth in  
10 the schedule to the Act forty-fourth Victoria, chapter one, is hereby  
repealed and shall henceforth cease to have force or effect.

No. 90  
Company's Document

Ordinance of The North West Territories, 1892

No. 7 of 1892.

Exhibit No. 90

An Ordinance Respecting the Assessment of Railways.

(Assented to 31st December, 1892.)

Portions of  
An Ordinance  
respecting the  
Assessment of  
Railways, No. 7 of  
1892.  
31st Dec., 1892.

The Lieutenant-Governor, by and with the advice and consent  
of the Legislative Assembly of the Territories, enacts as follows:

20 1. Every railway company, whose railway is not exempt from  
taxation, shall annually transmit on or before the first day of Feb-  
ruary to the clerk of every municipality and to the secretary or  
other officer of every public school district through which the com-  
pany's railway may run a statement to be signed by some authorized  
official of the company showing:

(1) The quantity of land occupied by the roadway and liable to  
be assessed and taxed, and the actual value thereof according to the  
average value of land in the municipality or school district.

**Record**  
**Court of Appeal**  
**Exhibit No. 90**

Portions of  
 An Ordinance  
 respecting the  
 Assessment of Rail-  
 ways, No. 7 of 1892.  
 31st Dec., 1892.  
 (Continued)

(2) The land liable to assessment and taxation in actual use and occupation by the company in connection with the running and operation of said railway other than the roadway and the value of such land according to the average value as aforesaid.

2. The clerk of such municipality or the secretary or other officer of the school district shall communicate such statement to the assessor, who shall deliver at or transmit by post to the nearest station or office of the company a notice addressed to the company stating the total amount at which he has assessed the above men-  
 10 tioned land of the company, showing the amount for each description of land and its valuation respectively; and the property so occupied by the railway roadway and in actual use and occupation in connection with the operation and working of the railway as aforesaid shall not be assessed at any greater value than the average value of land in the municipality or school district in which the lands aforesaid are situated as given in the last revised assessment roll; and, excepting Section Houses Dining Stations, Hotels, Elevators, Station Houses and Freight Sheds, the superstructure on the said above mentioned land shall not be liable to be and shall not be assessed or taxed by any  
 20 municipality, school district or corporation whatever in the Territories having power to assess or levy a tax on any property.

3. The next preceding Section shall not apply to assessment in any school district or municipality in the Territories for the payment of any debenture indebtedness existing at the time of the passing of this Ordinance.

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**No. 91**  
 Company's Document

**Ordinance of the North West Territories, 1895**

No. 27 of 1895.

**Exhibit No. 91**

An Ordinance to  
 Amend Ordinance  
 No. 7 of 1892, In-  
 titled "An  
 Ordinance Respec-  
 ting the Assessment  
 of Railways," No.  
 27 of 1895.  
 30th Sept., 1895.

30 An Ordinance to Amend Ordinance No. 7 of 1892, Intituled "An Ordinance Respecting the Assessment of Railways."

(Assented to 30th September, 1895.)

The Lieutenant-Governor by and with the advice and consent of the Legislative Assembly of the Territories, enacts as follows:

Subections 1 and 2  
 of Section 2 re-  
 pealed and new

subsections substituted

1. Sub-sections 1 and 2 of Section 2 of Ordinance No. 7 of 1892 are hereby repealed and the following substituted in lieu thereof:

Record  
Court of Appeal

“(1) The quantity of land other than the roadway owned or occupied by the company which is liable to assessment with the actual value thereof, according to the average value of adjacent land including the buildings thereon.

Exhibit No. 91

An Ordinance to Amend Ordinance No. 7 of 1892, Intituled "An Ordinance Respecting the Assessment of Railways," No. 27 of 1895. 30th Sept., 1895. (Continued)

“(2) The quantity of land occupied by the roadway and the value thereof, including the superstructure.”

Statement to be communicated to Assessor

2. The clerk of such municipality or the secretary of the school district, as the case may be, shall communicate such statement to the assessor of the municipality or school district, as the case may be, who shall assess the same as other lands within the municipality or school district, and who shall deliver at or transmit by post to the nearest station or office of the company a notice addressed to such company stating the amount at which the land of such company, including the roadway and superstructure, has been assessed.

Assessment to be made and Company notified

Assessment at certain value in absence of statement

3. Whether such statement in Section 1 of this Act is placed in the hands of the assessor for any such municipality or school district or not the assessor for every municipality or school district, as the case may be, shall assess the lands of such railway company including the roadway thereof and the superstructure of such roadway and give such notice as is required by Section 2.

Maximum value at which assessment shall be made

4. Such lands shall not be assessed at a greater value than adjacent lands, and the roadway and superstructure thereon shall not be assessed at a greater value than \$1000.00 per mile.

Payment and collection of taxes

5. Such taxes shall be payable to the municipality or school district, as the case may be, making such assessment and shall be collectable in the same manner as other taxes.

30

**No. 92**

Company's Document

**Ordinances of the North West Territories, 1898  
Consolidated Ordinances, 1898**

Number 71

Exhibit No. 92

C.O. 1898, c. 71  
15th March, 1899

An Ordinance respecting Assessment of Railways.

An Ordinance respecting Assessment of Railways, No. 71, 1898.

The Lieutenant Governor by and with the advice and consent of the Legislative Assembly of the Territories enacts as follows:

Record  
Court of Appeal

Exhibit No. 92

An Ordinance  
respecting Assess-  
ment of Railways,  
No. 71, 1898,  
(Continued)

1. Every railway company whose railway is not exempt from taxation shall annually transmit on or before the first day of February to the secretary treasurer of every municipality and to the secretary or other officer of every public school district through which the company's railway may run a statement to be signed by some authorized official of the company showing:

Annual statement  
of railway company  
to municipality and  
school district

1. The quantity of land other than the roadway owned or occupied by the Company which is liable to assessment;

2. The quantity of the land occupied by the roadway.

10 2. The secretary treasurer of such municipality or the secretary of the school district as the case may be shall communicate such statement to the assessor of the municipality or school district as the case may be who shall assess the lands described therein as other lands within the municipality or school district and who shall deliver at or transmit by post to the nearest station or office of the company a notice addressed to such company stating the amounts at which the land of such company and the roadway and superstructure have been assessed.

Lands to be  
assessed

20 3. Whether such statement in section 1 of this Ordinance is placed in the hands of the assessor of any such municipality or school district or not the assessor of every municipality or school district as the case may be shall assess the lands of such railway company and the roadway thereof and the superstructure of such roadway and give such notice as is required by section 2 hereof:

Roadway and  
superstructure  
assessment

Provided that the roadway and superstructure thereon shall not be assessed at a greater value than \$1,000 per mile.

4. Such taxes shall be payable to the municipality or school district as the case may be making such assessment and shall be collectable in the same manner as other taxes.

Collection of taxes

30 5. Railway companies shall not be liable for assessment in any school district or municipality in the Territories for the payment of any debenture indebtedness existing on the thirty-first day of December, 1892.

Exemption

**No. 93**  
Company's Document

Record  
Court of Appeal

**Journals of the Legislative Assembly of The North West Territories 1903.** (Appendix P. 3.)

Exhibit No. 93

Address of the Legislative Assembly of the North West Territories to the Governor-General in Council.

Address of the  
Legislative  
Assembly of the  
North West  
Territories to the  
Governor-General  
in Council, May 2,  
1900.

To His Excellency the Right Honourable Sir Gilbert John Elliot Murray-Kynynmond, Earl of Minto and Viscount Melgund of Melgund, County of Forfar, in the Peerage of the United Kingdom,  
10 Baron Minto of Minto, County of Roxburgh, in the Peerage of Great Britain, Baronet of Nova Scotia, Knight Grand Cross of the Most Distinguished Order of St. Michael and St. George, etc., etc., Governor-General of Canada.

May it please Your Excellency—

We, Her Majesty's dutiful and loyal subjects, the Legislative Assembly of the North-West Territories of Canada, in Session assembled, humbly approach Your Excellency for the purpose of representing—

20 That by The British North America Act 1867 it was (amongst other things) enacted that it should be lawful for the Queen, by and with the advice of Her Majesty's Most Honourable Privy Council, on Address from the Houses of the Parliament of Canada, to admit Rupert's Land and the North-Western Territory, or either of them, into the Union on such terms and conditions in each case as should be in the Addresses expressed and as the Queen should think fit to approve subject to the provisions of the said Act;

That by an Address from the Houses of the Parliament of Canada Her Majesty was prayed to unite Rupert's Land and the North-Western Territory with the Dominion of Canada;

30 That in order to further the petition of the Parliament of Canada, Her Majesty, under the authority of The Rupert's Land Act 1868, accepted a Surrender from the Governor and Company of Adventurers of England trading into Hudson's Bay of all the lands, territories, rights, privileges, liberties, franchises, powers and authorities whatsoever granted or purported to be granted by certain Letters Patent therein recited to the said company in Rupert's Land;

40 That in the said Address it was represented to Her Majesty, as a reason for the extension of the Dominion of Canada westward, that the welfare of the population of these Territories would be materially enhanced by the formation therein of political institutions bearing analogy, as far as circumstances will admit, to those which existed in the several Provinces then forming the Dominion;

Record  
 Court of Appeal  
 Exhibit No. 93

Address of the  
 Legislative  
 Assembly of the  
 North West Terri-  
 tories to the  
 Governor-General  
 in Council, May 2,  
 1900.  
 (Continued)

That the Houses of Parliament of Canada by their said Address expressed to Her Majesty their willingness to assume the duties and obligations of government and legislation as regards these Territories;

That in pursuance and exercise of the powers vested in the Queen by the aforesaid Acts, Her Majesty, by and with the advice of Her Most Honourable Privy Council, ordered and declared that from and after the fifteenth day of July, 1870, Rupert's Land and the North-Western Territory should be admitted into and become part of the Dominion of Canada, and granted power and authority to the  
 10 Parliament of Canada to legislate for the future welfare and good government of these Territories;

That by the British North America Act 1871 the Parliament of Canada was further given power from time to time to make provision for the administration, peace, order and good government of any Territory not for the time being included in any Province;

That under the several authorities so given the Parliament of Canada has created political institutions in these Territories bearing a close analogy to those which exist in the several Provinces of the Dominion;

20 That by the Confederation compact the Provinces which formed the Dominion on the fifteenth day of July, 1870, were furnished with the means of carrying on local self government upon certain well defined bases;

That the Territories being an integral part of the Dominion, and having had imposed upon them the duties and obligations incidental to the political institutions which have been given to them, and which said duties and obligations the Parliament of Canada has declared its willingness to assume, are entitled to such Federal assistance for their maintenance as will bear due proportion and  
 30 analogy to that given to other portions of the Dominion for similar purposes;

That repeated representations have been made in various ways to the Government of Canada with a view to obtaining just and equitable financial assistance towards providing for the proper and effective administration of local affairs in the Territories and for the public necessities of their rapidly increasing population;

That such representations have been met by intermittent and insufficient additions to the annual grant, the provision so made by the Parliament of Canada never bearing any adequate proportion to  
 40 the financial obligations imposed by the enlargement and development of the political institutions created by itself;

That it is desirable that a basis should be established upon which

the claims of the Territories to suitable financial recognition may be settled and agreed upon;

That we do therefore most humbly pray that Your Excellency will be graciously pleased to cause the fullest inquiry to be made into the position of the Territories, financial and otherwise, and to cause such action to be taken as will provide for their present and immediate welfare and good government, as well as the due fulfilment of the duties and obligations of government and legislation, assumed, with respect to these Territories, by the Parliament of Canada;

- 10 And furthermore that, by The British North America Act 1871, it was (amongst other things) enacted that the Parliament of Canada may from time to time establish new Provinces in any Territories forming for the time being part of the Dominion of Canada but not included in any Province thereof, and may, at the time of such establishment, make provision for the constitution and administration of . . . such Province, we do therefore most humbly pray that Your Excellency will be also graciously pleased to order inquiries to be made and accounts taken with a view to the settlement of the terms and conditions upon which the Territories or any part thereof shall
- 20 be established as a Province, and that, before any such Province is established, opportunity should be given to the people of the Territories, through their accredited representatives, of considering and discussing such terms and conditions.

All which we humbly pray Your Excellency to take into Your Excellency's most gracious and favourable consideration.

WILLIAM EAKIN,  
Speaker of the Legislative Assembly  
Legislative Assembly Chambers, of the North-West Territories.  
Regina, N.W.T., May 2, 1900.

30

**No. 94**

Company's Document

**Obtained in the Public Archives of the Dominion of Canada**  
**Laurier Papers, North West Autonomy** (Pp. 1-8)

Copy of Bill submitted to Sir Wilfred Laurier, Prime Minister of Canada, by Frederick Haultain, President of the Council of The North West Territories.

**Exhibit No. 94**

Copy of Bill submitted to Sir Wilfred Laurier, Prime Minister of Canada, by Frederick Haultain, President of the Council of the North West Territories. (1901.)

**B I L L**

1901.

An Act to establish and provide for the Government of  
the Province of . . . .

- 40 His Majesty by and with the advice and consent of the Senate and House of Commons of Canada enacts as follows:

RecordCourt of AppealExhibit No. 93

Address of the  
Legislative  
Assembly of the  
North West Terri-  
tories to the  
Governor-General  
in Council, May 2,  
1900.  
(Continued)

**Record**  
**Court of Appeal**  
**Exhibit No. 94**

Copy of Bill submitted to Sir Wilfred Laurier, Prime Minister of Canada, by Frederick Haultain, President of the Council of the North West Territories (1901).  
 (Continued)

1. On from and after the first day of January 1903 all that portion of the Territory known as Rupert's Land and the North-Western Territory admitted into the Union or Dominion of Canada by Her Majesty Queen Victoria by and with the advice and consent of Her Majesty's Most Honourable Privy Council by order bearing date the twenty-third day of June 1870 under the authority of the 146th section of the British North America Act 1867 described as the Provisional Districts of Assiniboia, Saskatchewan, Alberta and Athabaska, as the said Districts are defined by Orders of His Excellency the Governor General of the Dominion of Canada made in Council on the eighth day of May 1882 and the second day of October 1895 respectively, shall be formed into and be a Province, which shall be one of the Provinces of the Dominion of Canada and which shall be called the Province of . . . .
2. On from and after the said first day of January 1903 the provisions of the British North America Act, 1867, except those parts thereof which are in terms made or by reasonable intendment may be held to be specially applicable to or to affect only one or more but not the whole of the Provinces under that Act composing the Dominion, and except so far as the same may be varied by this Act shall be applicable to the Province of . . . . in the same way and to the same extent as they apply to the several Provinces of Canada and as if the Province of . . . had been one of the Provinces originally united by the said Act.
3. The said Province shall be represented in the Senate of Canada by four Members until it shall have according to decennial census a population of two hundred and fifty thousand souls and from thenceforth it shall be represented therein by five Members and thereafter for each additional increase in population of fifty thousand souls according to decennial souls there shall be an increase of one Member in its representation until it is represented by twenty Members.
4. The said Province shall be represented in the first instance in the House of Commons of Canada by ten Members and for that purpose shall be divided by Act of Parliament or by Proclamation of the Governor General into ten electoral districts each of which shall be represented by one Member; provided that on the completion of each decennial census hereafter the representation of the said Province shall be readjusted according to the provisions of the fifty-first Section of the British North America Act, 1867.
5. The Executive Council of the Province shall be composed of such persons and under such designations as the Lieutenant Governor shall from time to time think fit.
6. All powers authorities and functions which under any law or custom which were before the coming into force of this Act vested

North-West Territories to be erected into the Province of . . .

Certain provisions of B.N.A. Act 1867 to apply

Representation in the Senate

Representation in the House of Commons

Executive Council

All powers under Acts to be exercised by Lieutenant Governor with ad-

vice of Executive  
Council or alone

in or exercisable by the Lieutenant Governor of the North-West Territories with the advice, or with the advice and consent, of the Executive Council thereof or in conjunction with that Council or with any Member or Members thereof or by the said Lieutenant Governor individually shall as far as the same are capable of being exercised after the coming into force of this Act be vested in and shall or may be exercised by the Lieutenant Governor of the Province of . . . with the advice or with the advice and consent of or in conjunction with the Executive Council or any Member or Members thereof or by the  
10 Lieutenant Governor individually as the case requires, subject nevertheless to be abolished or altered by the Legislature of the Province.

Seat of Government

7. Unless and until the Executive Government of the Province otherwise directs the seat of Government of the same shall be at . . . .

Legislative  
Assembly

8. There shall be a Legislature for the Province consisting of the Lieutenant Governor and of one House styled the Legislative Assembly of . . . .

Constitution of  
Legislature

9. The constitution of the Legislature of the North-West Territories as it exists on the . . . day of . . . shall subject to the Provisions of this Act continue to be the constitution of the Legislature of the  
20 Province of . . . . until altered under the authority of this Act and the Legislative Assembly of the said Territories existing on the said first day of January 1903 shall unless sooner dissolved continue as the Legislative Assembly of the Province of . . . till the completion of the period for which it was elected.

Legislation respect-  
ing irrigation

10. In and for the Province the said Legislature may exclusively make laws in relation to irrigation and subject to any rights acquired under any Act of the Parliament of Canada before the first day of January 1903 the property in and the right to the use of all the water at any time in any river, stream, watercourse, lake, creek, ravine,  
30 Canon, lagoon, swamp, marsh, or other body of water shall on, from and after the said date belong to and be vested in the Province unless and until and except only so far as some right of some person therein or to the use thereof inconsistent with the right of the Crown and which is not a public right or a right common to the public is established.

Continuation of  
powers, conferred  
by N.W.T. Act.

11. In addition to all other powers the Legislative Assembly of the Province shall have the powers conferred on the Legislative Assembly of the North-West Territories by the nineteenth Section of Chapter Twenty-two of the Acts of the Parliament of Canada  
40 passed in the fifty-fourth and fifty-fifth year of the reign of Her Majesty Queen Victoria.

Selection of judges

12. The judges of the courts of the Province shall be selected from the Bar of the Province or from the Bar of some other Province in

Record

Court of Appeal

Exhibit No. 94

Copy of Bill submitted to Sir Wilfred Laurier, Prime Minister of Canada, by Frederick Haultain, President of the Council of the North West Territories (1901).  
(Continued)

Record  
Court of Appeal

Exhibit No. 94

Copy of Bill submitted to Sir Wilfred Laurier, Prime Minister of Canada, by Frederick Haultain, President of the Council of the North West Territories (1901).  
(Continued)

which the laws relative to property and Civil rights and the procedure of the Courts are the same as in the Province of . . . .

13. Except as otherwise provided by this Act all laws in force in the North-West Territories on the first day of January 1903 and all courts of Civil and criminal jurisdiction and all legal commissions, powers and authorities existing therein on the said date shall continue as if this Act had not been passed; subject nevertheless (except with respect to such as are enacted by or exist under Acts of the Parliament of Great Britain or of the Parliament of the United Kingdom of Great Britain and Ireland) to be repealed abolished, or altered by the Parliament of Canada or by the Legislature of the Province according to the authority of Parliament or of the Legislature under this Act.

Continuance of existing laws, courts

14. All public officers and functionaries judicial administrative and ministerial holding office in the North-West Territories on the first day January 1903 shall continue to hold such office in the Province of . . . with the same duties and powers as before until otherwise ordered by the Governor General of Canada or the Lieutenant Governor of the Province according to the authority of the Governor General or the Lieutenant Governor under this Act.

Public officers to retain office

15. Until altered by the Lieutenant Governor in Council the Seal of the North-West Territories shall be the Great Seal of the Province of . . . .

Great Seal

16. The penitentiary situate in the Province of Manitoba shall until the Parliament of Canada otherwise provides be the Penitentiary for the Province of . . . .

Penitentiary

17. Nothing in this Act shall in any way prejudice or affect the rights or properties of the Hudson's Bay Company as contained in the conditions under which that Company surrendered Rupert's Land and the North-West Territory to Her Majesty Queen Victoria and all rights, privileges and properties conferred on Canada by the said conditions in so far as they relate to matters within the Legislative authority of the Province shall belong to and be vested in the Province.

Hudson's Bay Company not affected

18. All lands belonging to the Crown situate in the Province of . . . other than lands reserved by Statute or Order-in-Council for the use of Indians or for and earned by any person or corporation and lands entered for homestead or pre-emption but not granted and all sums due and payable on the first day of January 1903 for such lands shall belong to the Province.

Lands and minerals to belong to Province

(reserved for further consideration)

19. All mines mineral timber and royalties belonging to the Crown situate being or arising in the Province of . . . and all sums due and payable on the first day of January 1903, for such mines minerals timber or royalties shall belong to the Province.

Minerals &c. to belong to Province

(same)

Property of N.W.T.  
to belong to  
Province

20. The Province shall receive and retain all the Public property of the North West Territories not otherwise disposed of in this Act.

Record  
Court of Appeal

Other Provincial  
public property

21. All buildings in the North West Territories belonging to Canada used or intended for Court Houses Jails and Land Titles Offices and for residence and offices of the Lieutenant Governor and Government of the North West Territories together with all appurtenances connected therewith and all monies the proceeds from the sale or leasing of school lands in the North West Territories and all monies forming the Assurance Fund under the provisions of The Territories Real Property Act and the Land Titles Act, 1894, shall be the property of the Province of . . . .

Exhibit No. 94

Copy of Bill submitted to Sir Wilfred Laurier, Prime Minister of Canada, by Frederick Haultain, President of the Council of the North West Territories (1901).  
(Continued)

Subsidy

22. The following amounts shall be allowed and paid by Canada by half yearly payments in advance as an annual subsidy to the Province, that is to say:

(A) For the support of the Government and Legislature fifty thousand dollars.

(B) On an estimated population of two hundred and fifty thousand at eighty cents per head, two hundred thousand dollars, subject to be increased as hereinafter mentioned, that is to say: a census of the Province shall be taken in every fifth year reckoning from the general decennial census of One Thousand Nine Hundred and One; and an approximate estimate of the population shall be made at equal intervals of time between such quinquennial census and each decennial census; and whenever the population by any such census or estimate exceeds two hundred and fifty thousand which shall be the minimum on which the said allowance shall be calculated the amount of the said allowance shall be increased in accordance therewith until the population reaches one million three hundred and ninety-six thousand and ninety-one, after which there shall be no further increase.

(reserved)

Interest on debt  
allowance

30 23. The Province shall be entitled to be paid and to receive from the Government of Canada by half yearly payments in advance interest at the rate of five per cent per annum on the excess over the sum of . . . of a sum to be ascertained by multiplying the population of the Province by 32.46 and for the purpose of this Section the population of the Province shall until after the next decennial census be deemed to be two hundred and fifty thousand. Provided that immediately after the census of . . . there shall be a readjustment under this Section on the basis of the population as ascertained by such census.

(reserved)

Allowance for  
exempted lands

40 24. The Province shall be entitled to be paid and to receive from the Government of Canada by half yearly payments in advance compensation at the rate of five cents per acre per annum for each acre of land in the Province exempted from taxation by the Parliament of Canada so long as such exemption exists.

(reserved)

RecordCourt of AppealExhibit No. 94

Copy of Bill submitted to Sir Wilfred Laurier, Prime Minister of Canada, by Frederick Haultain, President of the Council of the North West Territories. (1901). (Continued)

25. Inasmuch as the Parliament of Canada has exempted from taxation by the Province or any Municipal Corporation therein forever, the Canadian Pacific Railway and all Stations and Station grounds, workshops, buildings, yards, and other property, rolling stock and appurtenances required and used for the construction and working thereof and the capital stock of the Canadian Pacific Railway Company, the Province shall be entitled to be paid and to receive from the Government of Canada by half yearly payments in advance as compensation for the deprivation of the right of such taxation the

10 sum of One Hundred Thousand Dollars per annum.

Allowance for C.P.R. exemption

(struck out)

26. The Province shall be entitled to receive by half yearly payments in advance from the Government of Canada interest at five per cent per annum on the sum of one dollar per acre on each acre of land in the Province granted or agreed to be granted by the Dominion otherwise than for homesteads or pre-emptions under the provisions of the Dominion Lands Act or in settlement of half-breed claims.

Allowance for lands granted other than for homesteads

**No. 95**

## Company's Document

**Journals of the Legislative Assembly of the North West****Territories 1903**

(Appendix P. 28.)

Exhibit No. 95

20

Extract from a Letter from F. W. G. Haultain, President of the Executive Council of the North West Territories to Sir Wilfred Laurier, G.C.M.G., President of the Council, Ottawa, Ontario, December 7, 1901.

Extract from a Letter from F. W. G. Haultain, President of the Executive Council of the North West Territories to Sir Wilfrid Laurier, G.C.M.G., President of the Council, Ottawa, Ontario.

I have also to direct your attention to, and to press for the removal by ancillary legislation of, the exemption from taxation granted to the Canadian Pacific Railway Company under clause 16 of the schedule to Chapter 1 of the Dominion Statutes of 1881. The exemption as is well known is two-fold. First, that in the words—  
 30 “The Canadian Pacific Railway, and all stations and station grounds, workshops, buildings, yards and other property, rolling stock and appurtenances required and used for the construction and working thereof, and the capital stock of the company, shall be forever free from taxation by the Dominion, or by any Province to be hereafter established, or by any municipal corporation therein;” and, Second, in that part of the clause which reads—“and the lands of the company in the North-West Territories, until they are either sold or occupied, shall also be free from such taxation for twenty years after the grant thereof from the Crown.” The effect of these exemptions is to  
 40 prohibit any Province which may be established—or any municipal corporation therein—from requiring the Canadian Pacific Railway

Company to assist in the "administration" of the country or the maintenance of "peace, order and good government" within its bounds with respect to a part of its property forever and with respect to another part for a limited period of time.

Record  
Court of Appeal

Exhibit No. 95

(Continued)

**No. 96**

Company's Document

**Debates of the House of Commons, 1903, Vol. 6.**  
(P. 13929) (P. 13930)

Exhibit No. 96

10 Statements made in the House of Commons of Canada by Walter Scott, subsequently first Premier of Saskatchewan.

Statements made in the House of Commons of Canada by Walter Scott, subsequently first Premier of Saskatchewan. Oct. 13, 1903.

"Until six months ago, when this judgment of the Manitoba Supreme Court was given, nobody had ever thought to question the right of the Canadian Pacific Railway to exemption from taxation in the territories as respects its right of way and railway property from the time the road was built and forever."

20 "The feature that concerns this autonomy question is this that upon the creation of a Province, Parliament would become liable under the contract to secure and safeguard the Company in the exemptions granted in the contract. The language of the contract means plainly that the Dominion Government or Parliament will not tax for twenty years the lands, and forever will not tax the other property of the Company nor permit such taxation to be levied in any Province whenever such is created."

**No. 97**

Company's Document

**Statutes of Canada 1905, 4-5 Edward VII**  
Chapter 42

Exhibit No. 97

30 An Act to establish and provide for the Government of the Province of Saskatchewan.  
(Assented to July 20, 1905.)

Portions of the Saskatchewan Act, 1905

Preamble

Whereas in and by The British North America Act, 1871, being chapter 28 of the Acts of the Parliament of the United Kingdom passed in the session thereof held in the thirty-fourth and thirty-fifth years of the reign of Her late Majesty Queen Victoria, it is enacted that the Parliament of Canada may from time to time establish new provinces in any territories forming for the time being part of the Dominion of Canada but not included in any province thereof and

Record  
Court of Appeal  
Exhibit No. 97

Portions of the  
Saskatchewan Act,  
1905  
(Continued)

may at the time of such establishment make provision for the constitution and administration of any such province and for the passing of laws for the peace, order and good government of such province and for its representation in the said Parliament of Canada;

And whereas it is expedient to establish as a province the territory hereinafter described and to make provision for the government thereof and the representation thereof in the Parliament of Canada:

Therefore His Majesty by and with the advice and consent of the Senate and House of Commons of Canada enacts as follows:

10 3. The provisions of The British North America Acts, 1867 to 1886 shall apply to the Province of Saskatchewan in the same way and to the like extent as they apply to the provinces heretofore comprised in the Dominion as if the said Province of Saskatchewan had been one of the provinces originally united, except in so far as varied by this Act and except such provisions as are in terms made or by reasonable intendment may be held to be specially applicable to or only to affect one or more and not the whole of the said provinces.

B.N.A. Acts, 1867 to 1886, to apply

24. The powers hereby granted to the said province shall be exercised subject to the provisions of section 16 of the contract set forth in the schedule to chapter 1 of the Statutes of 1881 being an Act respecting the Canadian Pacific Railway Company.

Provisions as to C.P.R. Co.

**No. 98**  
Company's Document

**Statutes of Saskatchewan 1908, 8 Edw. VII**  
Chapter 32

Exhibit No. 98

Portions of an Act  
respecting the  
Taxation of the  
Earnings of Rail-  
way Companies  
(June 12, 1908)

An Act respecting the Taxation of the Earnings of Railway Companies.

(Assented to June 12, 1908.)

2. In this Act unless the context otherwise requires the expression "railway company" or "company" means every railway company owning or operating a railway in the province whether the head office is situate in Saskatchewan or elsewhere and which transacts business in Saskatchewan and includes every company operating a railway in Saskatchewan whether as an original enterprise or undertaking or under a lease, contract or agreement or otherwise howsoever.

"Railway company" "Company"

(2) The date of the commencement of the operation of any railway or of any line or branch thereof or of any portion of such railway line

Date of commencement of operation of railway

or branch shall for the purposes of this Act be deemed to be such date as is fixed by the Lieutenant-Governor in Council.

Record  
Court of Appeal

Amount of tax to be determined by the Lieutenant-Governor in Council

3. Every railway company at present owning or operating or which may hereafter own or operate any line or lines of railway situated or partly situated within Saskatchewan shall during the year one thousand nine hundred and eight and annually thereafter pay to the Crown in this province such part or portion of its gross earnings derived from the said line or lines of railway or such portions thereof as are within Saskatchewan as may be determined by the Lieutenant-Governor in Council not to exceed the following:

Exhibit No. 98

Portions of an Act respecting the Taxation of the Earnings of Railway Companies (June 12, 1908) (Continued)

- (a) In respect of that part of the railway or branch of railway in operation for seven years or more three per cent. of the gross earnings derived from the operation of the same;
- (b) In respect of that part of the railway or branch of railway in operation for five years or more and less than seven years one and one-half per cent. of such gross earnings:

Provided that no tax shall be payable hereunder on the gross earnings of any railway or branch thereof until such railway or branch has been in operation for five years.

When tax Payable 20

4. The tax imposed by this Act shall be payable to the provincial treasurer on the first day of August, 1908, and in each year thereafter on the first day of May and shall be calculated on the gross earnings of the company for the calendar year ending on the thirty-first day of December last preceding the date of payment herein provided for.

. . . . .

Recovery of taxes by distress

9. In case of default of any taxes imposed by this Act the same may be levied and collected with costs of distress upon the goods and chattels of the railway company liable therefor under a warrant signed by the provincial treasurer directed to the sheriff of any judicial district in which the company in arrear may have goods and chattels; and in such case the sheriff shall realise the said taxes or so much thereof as may be in arrear and all costs by sale of such goods or so much thereof as may be necessary to satisfy the said warrant and costs or the said taxes or penalty and double tax provided by this Act or both may at the option of the provincial treasurer be sued for and recovered with costs in any court of competent jurisdiction in an action to be brought in the name of the provincial treasurer and the action or suit shall be tried by a judge without a jury.

Or by suit

. . . . .

Railway companies to be exempt from all other taxes

15. In the case of every railway company coming within and paying taxes under the provisions of this Act and the railway or

**Record**  
**Court of Appeal**  
**Exhibit No. 98**

Portions of an Act  
respecting the  
Taxation of the  
Earnings of Rail-  
way Companies  
(June 12, 1908)  
(Continued)

railways or branch thereof now owned, leased or operated or which may hereafter be owned, leased or operated by any such company and the land comprised in the right of way, station grounds, yards and terminals of the railway and all buildings, structures and personal property used for the purposes of the operation of the railway and the income or earnings therefrom shall be free and exempt from all assessments and taxation within Saskatchewan by whomsoever imposed or which but for the provisions of this Act might be made or imposed except such as are made or imposed under the provisions of  
10 this Act.

16. Nothing herein contained shall take away from any incorporated city or town any right or power which any incorporated city or town may have of assessing and levying on the real property of any railway company fronting or abutting on any street or place taxes for local improvements done in, under or upon any such street or place according to the frontage of such real property so fronting or abutting on such street or place or relieve any railway or telegraph company owning or operating a telegraph line or lines in the province from the payment of taxes imposed in that behalf under the provisions of  
20 The Corporations Taxation Act.

Cities may collect  
frontage taxes for  
local improvements

Telegraph lines to  
be taxable

**No. 99**  
Company's Document  
**Statutes of Saskatchewan R.S.S. 1909**  
Chapter 97

**Exhibit No. 99**

An Act respecting  
the Assessment of  
Railways, R.S.S.  
1909.

An Act respecting the Assessment of Railways

1. Every railway company whose railway is not exempt from taxation shall annually transmit on or before the first day of February to the secretary treasurer of every municipality and to the secretary or other officer of every public school district through which  
30 the company's railway may run a statement to be signed by some authorised official of the company showing:

Annual Statement  
of railway company  
to municipality and  
school district

1. The quantity of land other than the roadway owned or occupied by the company which is liable to assessment;

2. The quantity of the land occupied by the roadway. C.O. 1898, c. 71, s. 1.

Lands to be  
assessed

2. The secretary treasurer of such municipality or the secretary of the school district, as the case may be, shall communicate such statement to the assessor of the municipality or school district, as the

case may be, who shall assess the lands described therein as other lands within the municipality or school district and who shall deliver at or transmit by post to the nearest station or office of the company a notice addressed to such company stating the amounts at which the land of such company and the roadway and superstructure have been assessed. C.O. 1898, c. 71, s. 2.

Record

Court of Appeal

Exhibit No. 99

An Act respecting  
The Assessment of  
Railways, R.S.S.  
1909.  
(Continued)

Roadway and  
superstructure  
assessment

3. Whether such statement in section 1 of this Act is placed in the hands of the assessor of any such municipality or school district or not, the assessor of every municipality or school district, as the  
10 case may be, shall assess the lands of such railway company and the roadway thereof and the superstructure of such roadway and give such notice as is required by section 2 hereof:

Provided that the roadway and superstructure thereon shall not be assessed at a greater value than \$1,000 per mile. C.O. 1898, c. 71, s. 3.

Collection of taxes

4. Such taxes shall be payable to the municipality or school district, as the case may be, making such assessment and shall be collectible in the same manner as other taxes. C.O. 1898, c. 71, s. 4.

Exemption

5. Railway companies shall not be liable for assessment in any  
20 school district or municipality in Saskatchewan for the payment of any debenture indebtedness existing on the thirty-first day of December, 1892. C.O. 1898, c. 71, s. 5.

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**No. 100**

Company's Document

**Obtained in the Office of the Vice-President of the Canadian  
Pacific Railway Company at Winnipeg, Manitoba.**

Exhibit No. 100

Letter, J. A. Calder, Provincial Treasurer of Saskatchewan, to  
William Whyte, 2nd Vice-President, C.P.R., Winnipeg, Manitoba.

Executive Council, Saskatchewan

Letter J. A. Calder,  
Provincial Treas-  
urer of Saskatch-  
ewan, to William  
Whyte, 2nd Vice-  
President, C.P.R.,  
Winnipeg, Mani-  
toba (June 25th,  
1909).

30

Regina, June 25th, 1909.

Dear Sir,

As your are aware the Government of Saskatchewan for some time past has been anxious that your Company should come to some final decision as to what it proposes to do in reference to the taxes which we claim to be due from the Company under the provision of "The Railway Taxation Act" passed by our Legislature last year. I am sure you will agree with me when I state that it would be useless on my part to enter upon any discussion of the contention put forward by your solicitors to the effect that the Act referred to is not operative

Record  
Court of Appeal  
Exhibit No. 100

Letter J. A. Calder  
 Provincial Treas-  
 urer of Saskatch-  
 ewan, to William  
 Whyte, 2nd Vice-  
 President, C.P.R.,  
 Winnipeg, Mani-  
 toba, (June 25th,  
 1909).  
 (Continued)

in so far as the earnings from your main line and branches leading therefrom are concerned. As you are aware our advice is to the contrary. If therefore the question in dispute is to be finally determined it can only be done by having resort to the Courts.

In view of the fact that you have repeatedly informed Mr. Scott as well as myself that your Company is anxious to contribute its fair share to the revenues of our province for the purpose of assisting in maintaining schools and providing necessary road and other improvements it seems to me there should be no real difficulty in the way of  
 10 arriving at a settlement of this question that would be satisfactory not only to the people of our province but to the Company as well. The popular feeling throughout Saskatchewan today is that we need railways rather than taxation from Railways. But while this is true we hold that all railway lines which have been in operation a number of years and which are on a firmly established paying basis should contribute their fair share towards the cost of maintaining our various public services and institutions.

Although from many points of view it would be desirable to obtain from the Courts a final decision respecting the liability of the C.P.R.  
 20 Company for taxation under the provisions of "The Railway Taxation Act" yet I would point out that the real intent and purpose of the Act is to provide a means or basis whereby the Government may be enabled to impose on railway companies from time to time what it deems to be a reasonable, fair and just tax. That this is the intention is shown by the fact that under certain circumstances the Lieutenant Governor in Council is empowered to fix the amount of the gross earnings on which the tax is to be paid. Besides the rate of taxation itself is not fixed by the statute but is left to be determined from time to time by order-in-council the only proviso being that it shall not  
 30 exceed 3 per cent.

Since I last discussed this question with you I have carefully inquired into the question of taxation of railways by the other provinces and have ascertained as definitely as I could from the materials at hand the revenues received from this source by each of them. This information I finally placed before Council and I am now authorized to submit for the consideration of your Company the following tentative proposition as a basis for the payment of taxes.

I may add that I quite appreciate the view taken by your chief solicitor Mr. Creelman as well as by Mr. Aikins that the Company  
 40 is not prepared to admit in any sense its liability for taxation on certain of its lines. Whether or not it will be found necessary to submit this question to the Courts will depend entirely upon the decision of the Company respecting the proposition made herein. If

the Company so desires it is open to it to pay the taxes referred to under protest or it may regard any payment made not as taxes but merely as a contribution towards the revenues of the province. The province on the other hand is bound by its legislation which however is of such a character as to enable the Government by order-in-council to fix what should be generally regarded as a fair tax on your lines or contribution from your Company according as you wish to view it.

It will be understood of course that the following proposed basis of taxation is made without prejudice and that it is not to be considered as binding on either party until it is mutually approved.

At one or two of the Conferences we have had it was suggested by Mr. Aikins that the Government might feel disposed to enter into an agreement with the Company setting forth the amounts of money to be paid annually for a period of years by it in lieu of the taxation fixed by the Act referred to. In view of the fact that there is no legislative authority for such agreement the proposition cannot be entertained. The Government however is prepared to go so far as to enter upon an understanding that the taxes to be levied by Order-in-Council under the provisions of the Act shall not up to the year 1913 exceed the amounts herein referred to.

While there may be no legislative authority for any such undertaking the Company I believe may rest assured that it would be carried out by any Government in office in Saskatchewan.

#### *Proposed Basis of Taxation*

1. The Company's lines within Saskatchewan which have been in operation at least five years may, until we have satisfactory evidence as to their date of operation and exact mileage, be assumed to be as follows:

30	(a) Main Line.....	416 miles
	(b) Soo " .....	161 "
	(c) Antler to Arcola.....	47 "
	(d) Harrowby to Yorkton.....	55 "
	(e) Gainsboro to Estevan.....	75 "
		—
	Total.....	754 "

2. When the Company furnishes us with a statement of the gross earnings from the lines mentioned in paragraph 1 for the years 1907 and 1908 we are prepared by Order-in-Council to fix the rate of taxation on such gross earnings at such an amount as will produce \$50,000 taxes for each of these years.

40 3. If as has been intimated the Company is not in a position to furnish the statement referred to in paragraph 2 we will under the provisions of the Statute by Order-in-Council fix such gross earnings

Record  
Court of Appeal  
Exhibit No. 100

Letter J. A. Calder,  
Provincial Treasurer of Saskatchewan, to William Whyte, 2nd Vice-President, C.P.R., Winnipeg, Manitoba (June 25th, 1909).  
(Continued)

Record  
Court of Appeal

Exhibit No. 100

Letter J. A. Calder,  
Provincial Treasurer of Saskatchewan, to William Whyte, 2nd Vice-President, C.P.R., Winnipeg, Manitoba (June 25th, 1909).  
(Continued)

at such an amount as will produce for each of the said two years at a rate of not more than 2 per cent a tax of \$50,000.

4. In case either of the propositions contained in the next two preceding paragraphs is satisfactory we will from year to year for a period of five years or in other words till the year 1913 fix the rate of taxation or the gross earnings or both as the case may be so as to produce annually a tax on the lines referred to in paragraph 1 hereof amounting to \$50,000.

5. As regards all lines which have not been in operation five years 10 we will fix the rate of taxation or the gross earnings or both as the case may be so as to produce during the 6th and 7th years of their operation a tax equal to \$15.00 per mile.

6. In the case of new lines which are in operation seven years we will fix the rate of taxation or the gross earnings or both as the case may be so as to produce during the 8th, 9th and 10th years of their operation a tax equal to \$30.00 per mile.

7. In view of the fact that in the year 1907 the Government postponed the passing of "The Railway Taxation Act" for one year owing to the illness and absence of Mr. Scott who had been carrying 20 on negotiations with the railway companies concerned respecting the method or system of taxation to be adopted and in view of the further fact that such postponement was agreed to on the understanding with your solicitor that when the Act was passed an agreement would be reached respecting the amount of taxes to be paid by your Company for the year 1906 we would suggest that the sum to be so agreed upon for the year 1906 be fixed at \$30,000.

In deciding upon the above as a suggested basis for the payment of taxes on C.P.R. lines we have had to take into consideration the fact that for upwards of twenty years your Company in our province 30 has enjoyed practically a total exemption from any burden of this class. In the pioneer days of our province when taxes were most needed to assist the first settlers not only were your lines of railway free from taxation but your immense land grant as well. And even today your land holdings which in Saskatchewan may be estimated at some four or five million acres are not bearing any part of their share of the cost of local government. At an average rate of 3 cents per acre for school purposes and 4 cents per acre for municipal purposes this extensive area should be contributing to the purposes of local government a tax of at least \$350,000 annually. Apart therefore 40 altogether from the purely legal aspect of this question I think you will agree with me that the proposition made above is an exceedingly reasonable one and one that your Company should accept not only in its own interests but in the interests of our province as a whole.

I shall be glad if you will let me have your final decision respecting this matter at as early a date as possible.

Yours truly,  
J. A. CALDER,  
Provincial Treasurer,

William Whyte, Esq.,  
2nd Vice-President, C.P.R.  
Winnipeg, Man.

Record  
Court of Appeal

Exhibit No. 100

Letter J. A. Calder, Provincial Treasurer of Saskatchewan, to William Whyte, 2nd Vice-President, C.P.R., Winnipeg, Manitoba (June 25th, 1909). (Continued)

10

**No. 101**  
Company's Document  
**Statutes of Saskatchewan, 1910-1911, 1 Geo. V.**  
Chapter 2

An Act Respecting the Revised Statutes of Saskatchewan 1909.  
(Assented to January 26, 1911).

Exhibit No. 101

Portions of an Act respecting the revised Statutes of Saskatchewan 1909 (January 26, 1911).

Short Title

1. This Act may be cited as "The Revised Statutes of Saskatchewan 1909 Act."

R.S.S. 1909 confirmed

3. The printed roll, attested under the signature of the Lieutenant Governor and countersigned by the provincial secretary and deposited in the office of the clerk of the Legislative Assembly pursuant to the provisions of Chapter 37 of the Acts of 1908 intituled "An Act to provide for the Consolidation of the Statutes of Saskatchewan" and amendments thereto shall be deemed to be the original roll of and to be The Revised Statutes of Saskatchewan 1909.

(2) Notwithstanding anything contained in the said chapter 37 and the amendments thereto the said Revised Statutes of Saskatchewan 1909 are hereby confirmed to all intents and purposes as though the same were expressly embodied and enacted by this Act to come into force and have effect as law by the designation of The Revised Statutes of Saskatchewan 1909 as provided by subsection (3) hereof.

30 (3) The Lieutenant Governor in Council may by proclamation published in The Saskatchewan Gazette declare the day on, from and after which the said Revised Statutes shall come into force and the said Revised Statutes shall on, from and after such day so declared become and be in force.

Ordinances and Acts in schedule II repealed

4. The several Ordinances and parts of Ordinances and the several Acts and parts of Acts enumerated in schedule II of the said Revised Statutes of Saskatchewan are so far as they relate to Saskatchewan hereby declared to be and to have been on, from and after the last

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mentioned date repealed to the extent mentioned in the said schedule II save only as hereinafter is provided.

Exhibit No. 101

Portions of an Act  
respecting the  
Revised Statutes of  
Saskatchewan 1909  
(January 28, 1911).  
(Continued)

## SCHEDULE II

Showing the Ordinances and Parts of Ordinances of the North West Territories and the Acts and Parts of Acts repealed upon the coming into force of the Revised Statutes of Saskatchewan 1909.

Cap.	List of Acts or Ordinances	Extent of Repeal
	C.O. 1898	
71	An Ordinance Respecting the Assessment of	The Whole
10	Railways	

### No. 102

#### Company's Documents

#### Journals of the Legislative Assembly of Saskatchewan, 1910-1911

(P. 62)

Resolution Passed by the Legislative Assembly of Saskatchewan.

Moved by Mr. Haultain, seconded by Mr. Elliott.

That in the opinion of this House the special burden imposed upon the province by the exemption granted to the Canadian Pacific Railway should be removed and borne by the Dominion at large.

20 It was moved in amendment by Mr. Bell, seconded by Mr. Scott (Arm River),

That all the words after "that" to the end of the question be struck out and the following substituted therefor:

30 "in the opinion of this House the provisions in the Canadian Pacific Railway contract granting to the Company exemption from taxation on its lands for an uncertain period of years and on its railway property forever were and are flagrantly unjust to Canada as a whole and unjust and unfair to Western Canada in particular; and should not have been enacted by the Parliament of Canada; and these provisions should be speedily abrogated and forever abolished."

And a debate arising,

And the Question being put on the amendment,

So it passed in the affirmative.

And the main Question as amended being proposed,

It passed in the affirmative.

Exhibit No. 102

Resolution passed  
by the Legislative  
Assembly of  
Saskatchewan,  
Feb. 6th, 1911.

**No. 103**  
Company's Document

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Court of Appeal

**Journals of the Legislative Assembly of Saskatchewan, 1912**  
(P. 63)

Exhibit No. 103

Resolution Passed by the Legislative Assembly of Saskatchewan.

Resolution passed  
by the Legislative  
Assembly of  
Saskatchewan on  
February 22nd,  
1912.

Resolved, That in the opinion of this House it is the duty of the Parliament of Canada to place the Province of Saskatchewan on the same basis of equality as the other provinces of Canada with regard to the taxation of railways and that for this purpose early action should be taken by the Federal Government to provide for the removal of the unjust and unfair exemption from taxation which was granted to the Canadian Pacific Railway Company by its charter and which ever since has imposed upon our people a special burden.

The resolution passed.

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**No. 104**  
Company's Document

**Journals of the Legislative Assembly of Saskatchewan, 1913**  
(P. 106)

Exhibit No. 104

Resolution Passed by the Legislative Assembly of Saskatchewan.

Resolution passed  
by the Legislative  
Assembly of  
Saskatchewan on  
December 4th,  
1913.

Moved by Mr. Lyle, seconded by Mr. Atkinson,

20 That, in the opinion of this House, it is the duty of the Parliament of Canada to place the Province of Saskatchewan on the same basis of equality as the other provinces of Canada with regard to the taxation of railways, and that for this purpose early action should be taken by the Federal Government to provide for the removal of the unjust and unfair exemption from taxation which was granted to the Canadian Pacific Railway Company by its charter and which ever since has imposed upon our people a special burden.

And a debate arising,

And the debate continuing,

30 And the Question being proposed,

It was resolved in the affirmative.

**Obtained from the Clerk of His Majesty's Privy Council For Canada.**

Copy of a Minute of a Meeting of the Committee of the Privy Council approved by His Excellency the Governor General on the 14th day of March, 1918.

P.C. 631

At the Government House at Ottawa  
 Thursday, the 14th day of March, 1918

10

Present:

His Excellency the Governor-General in Council

His Excellency the Governor-General in Council, on the recommendation of the Right Honourable the Prime Minister, is pleased, under the authority of the War Measures Act, 1914, to order and it is hereby ordered as follows:

1. The Canadian Pacific Railway Company, hereinafter called "The Company," shall pay to the Government of Canada, the following special taxes:

- 20
- 1st, One half of its net earnings from railway operation in excess of seven per cent. on its Common Stock (after paying fixed charges, appropriation for pension fund, and dividends on Preferred Stock).
  - 2nd, Income tax on the Company's special income, (inclusive of all the Company's income, except earnings from railway operations) under the provisions of The Income War Tax Act, 1917, or any amendment thereof, hereafter enacted.

Provided, that the total amount to be paid each year by the Company shall not be less than

- 30
- (1) The Company's net earnings in such year from railway operations, and from special income as defined above, in excess of 10% on its common stock (after paying fixed charges, appropriation for pension fund and dividends on preferred stock) up to \$7,000,000, or
  - (2) The amount by which its net earnings from railway operations exceed the net earnings from railway operations for the fiscal year ended December 31st, 1917, due to the increase in freight and passenger rates granted by the Order of the Board of Railway Commissioners, dated 26th December, 1917.

2. The Governor-General in Council may make such regulations to provide for the full and effective carrying out of the provisions of these orders and for the collection, periodically, of the taxes herein imposed as to the Governor-General in Council may seem fit.

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Exhibit No. 106

3. Payment in full of special taxes under this order shall in respect of earnings from and after January 1st, 1918, relieve the Company of liability under the Business Profits War Tax Act, 1916, and any other Dominion Act of like nature hereafter enacted, and, (save as herein-before provided) under the Income War Tax Act, 1917.

Dominion Order-in-Council P.C. 631.  
14th March, 1918.  
(Continued)

10 4. This order shall be deemed to have come into force and effect on the first day of January, 1918, and to continue in force and effect during the present war, and until further ordered.

(Sgd.) RODOLPHE BOUDREAU,  
Clerk of the Privy Council.

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**No. 106**

Company's Document

**Obtained from the Clerk of His Majesty's Privy Council for Canada.**

Exhibit No. 106

20 Copy of a Minute of a Meeting of the Committee of the Privy Council approved by His Excellency the Governor-General on the 17th day of October, 1918.

Dominion Order-in-Council P.C. 2543.  
17th October, 1918.

P.C. 2543

At the Government House at Ottawa  
Thursday, the 17th day of October, 1918

Present:

His Excellency the Governor-General in Council.

30 His Excellency the Governor-General in Council, on the recommendation of the Right Honourable the Acting Prime Minister and pursuant to the Order in Council of 14th March, 1918, imposing special taxation upon the Canadian Pacific Railway Company, and by virtue of the powers contained in the War Measures Act, 1914, and amendments thereto, is pleased to make the following regulations respecting such special taxation, and the same are hereby made and enacted accordingly:

REGULATIONS:

1. The Company shall for the purpose of calculating the amount of said taxes continue to compute its earnings both from railway oper-

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Court of Appeal  
Exhibit No. 106

Dominion Order-in-Council P.C. 2543,  
 17th October, 1918.  
 (Continued)

ation and from special income in accordance with the same methods and principles as it has employed during the twelve months period preceding the First day of January, 1918.

2. No expenditure properly chargeable to capital shall be charged to operating expenses.

3. No extraordinary or abnormal provision, reserve, expenditure or loss of any kind not properly attributable to the business of a given year shall be deducted from the profits or charged to operating expenses of such year.

10 4. If the Company makes any distribution of property (other than as cash dividends) among its shareholders or diverts to any person, company or corporation any profit accruing to it, the special taxes payable under the said Order in Council of 14th March, 1914, shall not be diminished thereby.

5. The Company shall give to any duly authorized representative of the Minister of Finance, access to any and all books, records, accounts or memoranda.

6. The Company shall furnish the Minister of Finance quarterly, true accounts of its earnings and business in such form and containing 20 such information as the Minister may from time to time prescribe.

7. The Minister of Finance shall, in the first instance, determine whether any payment, charge, expenditure, provision or reservation is made in accordance with these regulations, but if the Company be dissatisfied with his decision or if a question shall arise as to the amount of taxes properly payable under these regulations, the matter in dispute shall be heard and determined by a Board of Referees of not more than three members to be appointed for the purpose by the Governor in Council, either party may appeal from the decision of the Board of Referees to the Exchequer Court of Canada and the 30 decision of the latter shall be final and conclusive.

8. The provisions of the Income War Tax Act 1917, relating to procedure on appeals shall apply *mutatis mutandis* to the appeals to the Board of Referees and the Exchequer Court respectively.

(Sgd.) RODOLPHE BOUDREAU,  
 Clerk of the Privy Council.

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**No. 107**  
Company's Document

Record  
Court of Appeal

**Obtained from the Clerk of His Majesty's Privy Council for Canada**

Exhibit No. 107

Certified copy of a Report of the Committee of the Privy Council approved by His Excellency the Governor-General on the 30th October, 1918.

Dominion Order-in-Council P.C. 2657,  
30th October, 1918.

P.C. 2657

Privy Council, Canada

The Committee of the Privy Council have had before them a  
10 report, dated 28th October, 1918, from the Minister of Finance, sub-  
mitting that the Canadian Pacific Railway Company represents in  
effect that by an Agreement dated 21st October, 1880, between Her  
late Majesty Queen Victoria, of the one part, and George Stephen  
and others, of the other part, it was, amongst other things, agreed  
by Clause 16 thereof, as follows:

“The Canadian Pacific Railway, and all stations and station  
grounds, workshops, buildings, yards and other property, rolling  
stock and appurtenances required and used for the construction and  
working thereof, and the capital stock of the Company, shall be for-  
20 ever free from taxation by the Dominion, or by any province hereafter  
to be established, or by any municipal corporation therein; and the  
lands of the Company in the North-West Territories, until they are  
either sold or occupied, shall also be free from such taxation for  
twenty years after the grant thereof from the Crown.”

That the Agreement was approved and ratified by Act of Parlia-  
ment (Stat. of Canada, 44 Vict., Chap. 1); that provision was more-  
over made by the said Agreement and the Schedule thereto for the  
incorporation of the Canadian Pacific Railway Company, and for  
the vesting in the Company of the rights and privileges acquired under  
30 the said Agreement; and that accordingly the Company became in-  
corporated, and the said rights and privileges became vested in the  
Company;

That by Order in Council of the 14th March, 1918, (P.C. 631),  
under the authority of the War Measures Act, 1914, it was ordered  
that the Canadian Pacific Railway Company should pay to the  
Government of Canada certain Special Taxes therein mentioned, that  
thereupon the Canadian Pacific Railway Company contends that the  
War Measures Act, 1914, does not on its true construction warrant  
the imposition of the said Special Taxes and that the imposition  
40 upon the Company of the said taxes by the said Order in Council  
provided for would be in contravention of the terms of the said Clause  
16 of the said Agreement; that the Company nevertheless expresses  
its willingness or desire to pay the said taxes notwithstanding the

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**Court of Appeal**  
**Exhibit No. 107**

Dominion Order-in-Council P.C. 2657,  
 30th October, 1918.  
 (Continued)

aforesaid contention; that the Company apprehends, however, and is advised that payment of the said taxes without recognition of the attitude of the Company as herein stated may seriously prejudice its position in respect of other or future legislation; and the Company therefore requests that previous to the payment by the Company of any taxes under the said Order in Council, an Order in Council be passed evidencing the understanding of the Company and of Your Excellency's Government in respect of payment by the Company and receipt by the Government of the said taxes.

- 10 The Minister, while contending that the Canadian Pacific Railway Company is liable for the payment of the said taxes, and that the imposition thereof does not conflict with the aforesaid Agreement of 21st October, 1880, submits that the fact that the Company entertains the views hereinbefore stated may very reasonably be recognized, and that all payments to be made by the Company under the provisions of the said Order in Council may be accepted and appropriated by Your Excellency's Government without prejudice to the views or contentions hereinbefore set out on behalf of the Company or on behalf of Your Excellency's Government, and that this Minute, if  
 20 approved by Your Excellency, may be regarded as evidence of the intention of Your Excellency's Government that no admission or implication shall arise by reason of such payment in any wise affecting any position which the Government of Canada or the Canadian Pacific Railway Company may hereafter be advised to take as regards the true construction, effect or application of the said Clause 16 of the said Agreement, or of any other of the matters hereinbefore recited; provided, however, that nothing herein contained shall be regarded as evidence for the Company if a claim should be made on the part of the Company to recover any of the said Taxes which the  
 30 Company may pay.

The Committee concur in the foregoing and submit the same for approval.

(Sgd.) RODOLPHE BOUDREAU,  
 Clerk of the Privy Council.

**Exhibit No. 108**

Recollections of  
 Sixty Years—Sir  
 Charles Tupper,  
 1914.

**No. 108**  
 Company's Document  
**Recollections of Sixty Years**

By Right Honorable Sir Charles Tupper, Bart.

(P. 137 *et seq.*)

40 "In the first parliamentary session of 1880, after Onderdonk had got his contract well under way, the Hon. Edward Blake introduced a resolution in favour of stopping all work west of the Rockies. In a

vigorous denunciation of the railway policy, he declared that the country was threatened with ruin for the sake of twelve thousand white people out in British Columbia. His resolution was defeated, although every member of the Opposition, including the Hon. Alexander Mackenzie and the Hon. (now Sir) Wilfred Laurier, gave it their support.

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Court of Appeal

Exhibit No. 108

Recollections of  
Sixty Years—Sir  
Charles Tupper,  
1914.  
(Continued)

“When the House rose, Sir John A. Macdonald, who was also Minister of the Interior, observed in Council that he had made up his mind that a system of local railways was needed in the North-  
10 West in order to attract immigration. We proposed to bonus them with land grants. He spoke of his intention of going to England that summer for the purpose of enlisting capital in the project. ‘I want you all to meet me here this day week with any suggestions or advice you can offer,’ was his injunction to his colleagues.

“ ‘Sir John,’ I replied, ‘I think the time has come when we must take the advance step. I want to submit a proposition for building a through line from Nipissing in Ontario to the Pacific Coast.’

“ ‘I’m afraid, Tupper, that’s a rather large order. However, I shall be pleased to consider anything you have to submit,’ was his  
20 genial comment.

“On the appointed day I presented my report to Council. It gave estimates and every other detail. My proposition, in brief, recommended that a contract be entered into with a responsible company for the completion of a transcontinental railway on these terms:

“The Government to complete and hand over to the company the line between Port Arthur and Winnipeg and the line from Kamloops to Port Moody, and a branch already completed from Emerson to Winnipeg; also a cash bonus of twenty-five million dollars and  
30 fifty million acres of land.

“The extent of the railway then built and under construction by the Government was about seven hundred miles. My estimate of the cost of the mileage to be handed over was thirty-two million dollars, and I recommended that the time limit for the completion of the road by the company be ten years. I gave reasons for my belief that the undertaking could be carried to a successful conclusion, and that strong men could be induced to take hold of the enterprise.

“ ‘I heartily agree with you,’ declared Sir John in the whole souled, generous spirit that always characterised him, after I had concluded  
40 my remarks in favour of a through line, to be built, owned, and operated by a chartered company. Our colleagues concurred, and the report was unanimously adopted.

“Shortly afterwards Sir John, the Hon. John Henry Pope, and

Record  
Court of Appeal

Exhibit No. 108

Recollections of  
Sixty Years—Sir  
Charles Tupper,  
1915.  
(Continued)

I went to England with the object of inducing financiers to interest themselves in organising a company to build the railway.

“British financiers did not display any frenzied haste to engage in railway building across the continent. Sir John, soon after landing in England, authorised me to sound Sir Henry Tyler, president of the Grand Trunk Railway Company, in the hope that his board might be induced to consider favourably our proposition. I did so. ‘If you omit the clause providing for a line around the north shore of Lake Superior to Eastern Canada, I shall be pleased to lay the matter  
10 before my board of directors. Otherwise they would throw it into the wastepaper basket,’ was Sir Henry’s ultimatum.

“ ‘We must have a through line,’ I assured him in parting.

“Sir John, Pope, and myself then looked elsewhere for capital.

“We entered into an agreement with a number of capitalists who later became known as the ‘C.P.R. Syndicate,’ to build the trans-continental railway on the precise basis of my report and recommendations to the Government. The agreement was signed in October.”

Exhibit No. 109

20

A History of the  
Canadian Pacific  
Railway—H. A.  
Innis, Ph.D., 1923.

No. 109  
Company's Document

**A History of the Canadian Pacific Railway**

By H. A. Innis, Ph.D., Lecturer in the Department of Political  
Economy, University of Toronto (P. 19.)

Of more importance, a bill was introduced in the House of Representatives in 1866, to provide for admission of “the states of Nova Scotia, New Brunswick, Canada East and Canada West, and for the organization of the territories of Selkirk, Saskatchewan and Columbia.” The purchase of Alaska in 1867, and the Northern Pacific project gave further cause for anxiety.

30

II

(P. 75)

From National to Economic Union (1870-1880)

The disparity between political union and the economic development necessary for fulfilment of the essential terms was immediately

reflected in the controversial character of the debates, leading to acceptance of the terms by the Canadian Parliament, which insisted upon safeguards against excessive taxation. The policy of the Government, as embodied in the Act providing for execution of the terms, was carefully planned to avoid additional expense to Canada, and it proposed to meet the expenses of construction of the road from land grants. Additional evidence of disparity was found in the energetic and successful efforts of the Government to secure an imperially guaranteed loan, and in the appearance of a clause permitting  
 10 the possibility of private enterprise sharing in the coveted traffic of the western states, and consequently ensuring the attractiveness and success of the policy. The policy in the face of a task which involved the construction of a railroad through barriers, the magnitude of which was only beginning to be known, to unite the sparsely settled districts of British Columbia and Red River to Canada, necessitated dependence upon American traffic and American interests.

The importance of dependence on the traffic of the western states was evident in the disastrous termination of the two more concrete proposals encouraged by the Government's policy. In the acts of  
 20 incorporation of both companies stress was placed on connexions with the railways of the United States designed to secure a share of the traffic of the western states. The existence of two companies, the Interoceanic with head-quarters at Toronto and the Canada Pacific with head-quarters at Montreal, bore witness to competition between geographically strategic localities for this traffic. Hon. D. L. MacPherson, head of the Interoceanic Company, and others connected with the Grand Trunk were interested in promoting a steamship line from Portland to Europe. Sir Hugh Allan, head of the Canada Pacific Company, alarmed at the prospects of diversion of traffic from  
 30 his steamship line, energetically prosecuted the construction of railways westward to strengthen control of traffic. This activity in turn aroused the hostility of the Grand Trunk. Finally the strength of American influence, inevitable because of the importance of American traffic, and the consequent stubbornness of the struggle between the companies to secure the charter, led to the tragic breakdown of the whole policy. In the events incidental to competition between Sir Hugh Allan and Montreal, and the Grand Trunk and Toronto, to secure the charter, the latter appealed to national sentiment in a demand for the exclusion of American interests. As a result of com-  
 40 pliance with the demand, there developed the Pacific Scandal, the failure of Sir Hugh Allan's programme and the downfall of the Government. The dependence of private enterprise on American traffic was significant indeed of Canadian inability to meet the terms of the contract.

As a result of increasing knowledge and appreciation of the character and magnitude of the task, and of the inability of Canada,

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Court of Appeal

Exhibit No. 109

A History of the  
 Canadian Pacific  
 Railway—H.A.  
 Innis, Ph.D., 1923.  
 (Continued)

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Court of Appeal

Exhibit No. 109

A History of the  
Canadian Pacific  
Railway—H. A.  
Innis, Ph.D., 1923.  
(Continued)

reflected in the persistent refusal to bear an increase in taxation, and in the events of the Pacific Scandal, to perform the task, a change of the policy of construction was necessary. The policy enunciated by Alexander MacKenzie, the new premier of Canada, in 1874, proposing the utilization of the enormous stretches of water communication between the Rocky Mountains and the eastern terminus, and embodied in the Act of the same year, providing for the gradual construction of the road and for settlement of the country, was a result.

- 10 This change implied modification of the terms of Union with British Columbia and evoked vigorous protests from the people of the province who were unusually petulant as a result of the legacy of impatience inherited from the period of the gold discoveries and the consequent hectic development. Appeal was made to the Imperial authorities and the Earl of Carnarvon was agreed upon as an arbitrator. The arbitration award expressed in the Carnarvon terms was favourable to Canada and generally a recognition of the impossibility of fulfilling the terms of Union, and a justification of the new policy.
- 20 Operations were begun on portions of the route strategically located for settlement of the country. An attempt was made to continue and improve the Dawson route, from Lake Superior to Red River for the use of settlers. Surveys were prosecuted particularly in British Columbia to secure early location of the line preparatory to construction of sections of permanent railroad and of telegraph line. To improve the communication between Red River and Canada, provision was made for extension of the Canada Central Railway to Georgian Bay, for construction of a railroad from Lake Superior to Red River, and from Red River to the United States
- 30 boundary. With completion of the latter section transportation of materials to western Canada was facilitated and sections were built west of Red River. Construction was prosecuted under difficulties serious and to some extent recognized as inherent in the later policy. The executive capacity of the then recently organized Federal Government was sorely taxed with the immensity of the task. Since it was obliged to rely on technical skill inadequately developed for a task of that character, mistakes were inevitable.

Embarrassment to the Government which these mistakes occasioned, aggravated by the persistent efforts of an energetic opposition, 40 led to a search for a plan of construction possessing fewer disconcerting features. Though achieved under various difficulties, progress of the work of geographically strategic portions of the route, particularly the completion of the road from the United States boundary to Winnipeg, brought the search of the Government for such a plan nearer success. The economic development of western Canada

which made possible the construction of the branch was stimulated with its completion. Increased trade between Manitoba and the United States was a stimulus to increasing demands, incidental to the national and economic growth of Canada, for a more rapid and satisfactory prosecution of construction. The rapidity desired could alone be accomplished by private enterprise and central control. Consequently, the Government energetically sought a group of capitalists to undertake the task, and as a result of the progress which had been made in construction of the project, and of the economic development, and the recognized possibilities of the areas involved, success was eventually attained. In June, 1880, it was announced by Sir John A. MacDonald that the necessary co-operation of capitalists had been secured. Conclusive evidence was at hand of the ability of Canada to support a transcontinental railroad and to overcome the barriers which had long held back its development. The economic development of the country became adjusted to the national development, which had made essential the contract of union with British Columbia, and had occasioned the innumerable difficulties of the period. The growing strength of the abutments was sufficient to permit the completion of the bridge. The contract for the construction of the road was signed on October 21, 1880.

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Innis, Ph.D. 1923.  
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**No. 110**

Company's Document

**Economic Principles of Transportation**

By W. T. Jackman, M.A., Professor of Transportation,  
University of Toronto (P. 20)

Exhibit No. 110

Economic  
Principles of  
Transportation—  
W. T. Jackman,  
1926.

Canadian Pacific Railway—Soon after the Maritime Provinces were brought into Confederation arrangements were made for the admission of British Columbia; and in 1871, when it entered Confederation, one of the conditions was that a transcontinental railway should be built to connect that western province with those in the East. Such a line was necessary, or at least desirable, in order to open up the great western prairies to colonization as well as to bind the East and West together in one complete economic and political union.

As early as 1849 such a transcontinental railway had been advocated, but a parliamentary committee in 1851 reported against it.

## No. 111

## Company's Document

## A History of Transportation in Canada

By G. P. de T. Glazebrook, Associate Professor of History,  
University of Toronto. (Pp. 235 et seq.)

## 3. The Railway Planned

Long before the day of Watkin, books, pamphlets, memoranda, letters, and speeches had been written or spoken on the need of a railway from Canada to the Pacific. Probably the most voluble  
10 of the advocates of such a railway was Sir John Smyth, who described himself as "Baronet and Royal Engineer, Canadian Poet, LL.D., and Moral Philosopher, etc., etc., etc." In the 'thirties Smyth was sketching various railway lines in Canada, and in the 'forties had progressed to one from Halifax to the Pacific by way of Chicago. Steamers on the Atlantic and Pacific were to connect the railway; and in a burst of generosity he added steamers and railways in Europe and the east, to complete the circle of the globe.<sup>25</sup> Four years later his namesake wrote pamphlets that were more imperial and somewhat more specific. His railway was to run across the prairies  
20 north of the boundary to the valley of the Columbia.<sup>26</sup> Other writers with imperial considerations in mind carried on the campaign: for example, Wilson and Richards in *Britain Redeemed and Canada Preserved* (1850), and Synge, in *Great Britain one Empire* (1852). In 1854 Sir Richard Broun produced a prospectus for an "Imperial British American Main Trunk Railway, Ocean Ferry and Freehold Land Company," and invited the Hudson's Bay Company to cooperate in this with the Heirs of the Hereditary Viceroy of New Scotland and the Baronets of Scotland and Nova Scotia. The company, however, "declined to entertain" the project in spite of the illustrious  
30 associates. In 1851 Joseph Howe, fresh from his conversations in England about the Intercolonial, told a public meeting in Halifax that "many in this room will live to hear the whistle of the steam-engine in the passes of the Rocky Mountains and to make the journey from Halifax to the Pacific in five or six days."

In the meanwhile there had been some activity in Canada. A group of men of whom Allan Macdonell was the leading spirit had a bill introduced into the Canadian assembly in 1851 to incorporate the Lake Superior and Pacific Railroad Company. The standing committee on railroads and telegraph lines reported unfavourably on

<sup>25</sup>Sir John Smyth, "Railroad communication. A west proposed line of steam communication from London, in England, to China and the East Indies, etc., etc." (Toronto, 1845.)

<sup>26</sup>"A letter from Major Robert Carmichael-Smyth to his friend, the author of "The Clock-maker"; The employment of the people and capital of Great Britain in her own colonies." . . . (London, 1849.)

grounds of feasibility, though approving of the principle. Again in 1853 and 1855 similar bills were introduced, but all were turned down. Macdonell claimed that the opposition came from the Hudson's Bay Company,<sup>27</sup> but efforts to persuade that company to build the railway itself did not meet with success. Three years later John Young, A. N. Morin, A. T. Galt, and J. A. Poor petitioned for a charter, but failed to get it. At last in 1858 a group which included Macdonell secured a charter for the North West Transportation Navigation and Railway Company. The new company proposed to build  
 10 from Lake Superior to Rainy Lake, where steamers would be used to Lake of the Woods, and thence by rail to the Red River. Lake Winnipeg and the Saskatchewan were to be navigated by steamers. The company proposed by this means to revive the Canadian fur trade and to supersede the Pembina outlet; capital, however, was not available and no work was undertaken.

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The Dawson route from Thunder Bay to Fort Garry, with 131 miles of waggon road between the portages, was used by immigrants in the early seventies, but it was at best a stop-gap, and the demand became more insistent for a railway to Manitoba and the North  
 20 West Territories, as the area east of the Rockies was now to be known.

The "Albion," he (the editor of the Globe) said, was probably subsidized by Jay Cooke, and no doubt the Americans wanted to absorb the Canadian west, but Canada would have its own railway. Here the "Globe" was touching an important point, for there can be little doubt that the building of the Northern Pacific was regarded as a real danger to Canadian power in the west, and was stimulating parliament and people to undertake a herculean task.

The railway to the Pacific was to be built: the Dominion was committed to it by a solemn agreement with British Columbia. The  
 30 circumstances were peculiar. In the first place the population of the whole country was small for such a great undertaking—some three and a half million, of whom only 23,000 lived west of Lake Superior. Secondly, no surveys had been made of the route through the mountains of British Columbia. The Yellowhead Pass was thought to be feasible for a railway, but no way had yet been found through the Selkirks. Captain Palliser had even advised against a line to the north of Lake Superior, but in the meanwhile this had been reported as practicable.

<sup>27</sup>Allan Macdonell. "The North-West transportation, navigation and railway company. It's objects." (Toronto, 1858.)

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Who was to build the railway? From the start it was intended that it should be built and operated by a private company rather than by the government. The act which was passed to implement the agreement with British Columbia (35 Vict., c. 71) stated this explicitly and provided that aid was to be granted in land and subsidies, to a maximum of fifty million acres and thirty million dollars. The gauge was set at four feet, eight and one-half inches. No company was named in the Act, the government having power to make arrangements with any one company or group within the terms of the  
 10 act.

While surveys under government direction were being pushed forward, the cabinet awaited a group of capitalists. For the past three years inquiries had been made by individuals or groups as to the probable terms of the contract.

With the Grand Trunk eliminated from the race, there remained two favourites who were to run neck and neck for some months. The origin of these two companies requires some explanation. In the summer of 1871 Alfred Waddington, who was in Ottawa attempting to get a charter himself, met G. W. McMullen of Chicago, who  
 20 became interested and arranged a meeting in Ottawa on July 14 of a number of Canadians and Americans: McMullen himself, C. M. Smith of Chicago, Mr. Hurlbut of New York, W. Kersteman of Toronto and his son-in-law Wood, James Beaty of Toronto, and Waddington. There were also represented by their signatures: General George W. Cass, W. B. Ogden, M. K. Jesup, T. A. Scott, Winslow, Lanier & Company, S. J. Tilden, and the Honourable G. Jackson. All the latter, except Jackson, were Americans. Three of them were directors of the Northern Pacific, and were deeply interested in the Canadian project as a possible competitor. It is probable that they  
 30 sought to hinder rather than help, by working from the inside. The government, however, regarded the proposals made by the group as premature.

Subsequently Sir Francis Hincks suggested to Sir Hugh Allan that he should open negotiations with the group of Americans. "In this," commented Macdonald, "Hincks made a mistake and acted without authority, but Allan did not not know that." By the beginning of October the new combination was ready to discuss terms with the government, but Macdonald would go no further than to receive a memorandum. In December an agreement was  
 40 drawn up in New York, and in February Allan submitted their proposal to the government. It provided for a railway from a point near Lake Nipissing to the coast, with branches to Pembina and Sault Ste. Marie, the whole to be completed within twelve years.

For this they asked a subsidy of \$15,000 and 20,000 acres a mile, to be increased to 25,000 acres in the Lake Superior section. The associates whom he mentions are: Andrew Allan, J. J. C. Abbot of Montreal, Donald Smith of Manitoba, Henry Nathan of British Columbia, A. B. Foster of Ottawa, Thomas McGreevy of Quebec, Donald McInnes of Hamilton, and the Americans—Jay Cooke, T. A. Scott, W. B. Ogden, J. G. Smith, C. M. Smith, and G. W. McMullen. The Company was, in fact, to be made up of the directors of the Northern Pacific, allied with a number of Canadians. Allan affected  
 10 to believe that such a connection would be of advantage to Canada, apart altogether from its value as a source of capital:

“From Fort Garry westward to the Pacific it was intended the Road should proceed on the route afterwards determined by the surveys and it was regarded as a possibility that the Northern Pacific when it got as far west as the Missouri River might be deflected (sic. deflected) so as to join the Canadian Pacific, get the advantage of our easier pass through the mountains, and run on its track to some point west of the mountains where they would again separate; thd Northern Pacific passing south to New Westminster, and the  
 20 Canadian Pacific seeking the shore of the Pacific Ocean at such point as determined by the surveys.

“I favored this scheme, because it not only gave us such a Pacific Railroad as we might desire, but also the advantage of a direct connection with the States of Northern Michigan, Wisconsin, Minnesota and Dakotah, the traffic and produce of which would naturally find its way to and from the seaboard through Canada, as being much the shortest, and consequently the cheapest route, even for the traffic of New York and Boston.”<sup>32</sup>

The latter part of this argument was not altogether unsound, as  
 30 the Northern Pacific wished to secure access to Boston via Montreal: on the other hand, some of the Canadians whom Allan approached had not his confidence about the western end. One such was C. J. Brydges, whose refusal to become connected with Allan's company has already been noticed. Brydges' decision was important, because it meant that the Grand Trunk would not be friendly—and in fact proved to be hostile—to the whole plan of a Canadian railway to the Pacific. Another man who was critical of the project was Senator D. L. Macpherson of Toronto, who had been a partner in the Gzowski firm. Allan approached him in February, asking him to be one of  
 40 the Canadian directors. Macpherson, however, objected to the proposed organization, and “remonstrated against giving our rivals the control and ownership of our Trans-continental Railway.” He told Allan that the Northern Pacific would work it for their own purposes. He therefore proceeded to organize a rival company, the

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<sup>32</sup>Report of the Canadian Pacific Railway Royal Commission (1882), evidence of Sir Hugh Allan.

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Interoceanic. Although, of course, only one company could build the railway, in the meanwhile parliament was neutral and passed charters for both the Interoceanic Railway Company (35 Vict., c. 72) and the Canada Pacific Railway Company (35 Vict., c. 73). They are almost identical, both calling for the construction of a railway from a point at or near Lake Nipissing to a point on the Pacific coast, with branches to the River St. Mary, Thunder Bay and Pembina. The former, naming Macpherson, William McMaster, E. W. Cumberland and some fifty other men, emphasized in the preamble that such  
10 an enterprise should as far as possible be controlled by British subjects. The other act was, of course, silent on this point. It named Allan, Abbott, Donald Smith, Donald McInnes and others. The two acts received the royal assent. In June both companies were officially organized. Allan was drawn toward the project of a western railway through a desire to feed his steamship line, for which purpose he had already promoted the North Shore Railway on rumours of a Grand Trunk line of steamers from Portland to Europe. The two companies, also, represented the rival commercial interests of Toronto and Montreal. To placate both, the eastern terminus of the Pacific  
20 Railway had been placed at Lake Nipissing, a neutral point.

The government was in an awkward position. The Interoceanic directors made much of Allan's American connections, and while Allan secured a new agreement at the end of March, his company was still tainted with American capital. Nor could an exclusive charter be given to either an Ontario or a Quebec group. An election was coming on (in August), and the "friends" of the party would be friends no longer if they were ignored. Allan had already shown his political power by organizing a campaign against Sir George Cartier that drove that unhappy statesman to capitulate to Allan's request  
30 for a charter. Macpherson made it quite clear that Ontario would not support the government if the charter were granted to Quebec. Macdonald, therefore, took the only course possible under the circumstances—an attempt to secure an amalgamation of the two "rings," as they had come to be called. Here again there was a stumbling block. The rings argued about the number of directors each should have, and—worse still—Allan insisted on being president. This Macpherson would not hear of, arguing that the president would be in virtual control and should be elected by the directors. More-  
40 over it would still leave the danger that the railway would be handed over to the Americans. "His alliance of last winter with Jay Cooke and the directors of the Northern Pacific Ry. is well known, and it is also known that he agreed with them to hand over to them our great Railway and its vast land subsidy. . . . That scheme . . . had to be abandoned and the British flag was ostentatiously hoisted by Sir Hugh and Co. This was done too late, however, to satisfy ordinary mortals that the newly professed loyalty to Canada was sincere. . . .

Allan gradually drew away from his former American associates, explaining to them that Canadian opinion would not tolerate anyone connected with the Northern Pacific being concerned in the Canadian line. Macpherson, however, remained adamant, and early in October the secretary of the Interoceanic Company "declined peremptorily to enter into the scheme of amalgamation." Conference after conference had failed, and finally the idea of an amalgamation had to be abandoned.

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The government then approached the question from still another  
10 angle. A new charter was drawn up (February 5, 1873) the preamble of which refers to the failure to amalgamate the two companies, holds it inadvisable to agree with either, and therefore incorporates and charters a new company. In reality the change was not radical, for the new company included men from both of the old ones. The subscribers mentioned were: Hugh Allan, A. G. Archibald (Halifax), J. O. Beaubien (Montmagny), J. E. Beaudry (Montreal), E. R. Burpee (St. John), F. W. Cumberland (Toronto), Sandford Fleming (Ottawa), R. H. Hall (Sherbrooke), J. S. Helmcken (Victoria), Andrew McDermot (Winnipeg), Donald McInnes (Hamilton),  
20 Walter Shanly, and John Walker (London, Ont.). The Company was named the Canadian Pacific Railway Company, was to have a capital of ten million dollars; and the line had to be begun within two, and—unless an extension were granted by parliament—to be finished within ten years. A railway was to be built from a point on or near Lake Nipissing to some point on the Pacific, with branches to Lake Superior and the American border. The course of the line was to be approved by the government; construction and equipment to be determined by the government and company together. The Union Pacific was to be taken as the general standard. The company was  
30 to receive thirty million dollars and a land grant of fifty million acres, with additional land grants for branches.

It was, however, one thing to grant a charter and another to ensure that the company this created could raise sufficient capital. After the connection had been severed with the American capitalists, Macdonald also refused the offer of an English group who came late into the game.

The general election of 1872 resulted in a gain for the Liberal opposition, helped by the passions raised by the Riel Rebellion, dissatisfaction with the Washington Treaty, and alarm over the govern-  
40 ment's railway policy. Shortly after the opening of the session a Liberal member, L. C. Hungtington, made general charges of a corrupt relation between the government and the Allan "ring."

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The Resolution was defeated on a party division, but the charge was too grave to be ignored; and Macdonald shortly afterwards moved for the appointment of a select committee of five, including two prominent Liberals—Blake and Dorion. Since parliamentary committees were not then empowered to take evidence under oath, a bill was passed to remedy this: it was, however, disallowed as *ultra vires*. Macdonald then renewed a suggestion which he had made earlier, that a royal commission should be issued, and offered to the committee to change their status in that way. The Liberals, who had  
 10 been anxious to keep the enquiry within parliament, resisted the commission. L. H. Holton urged Blake not to accept. He argued that the government had from the first meant to thwart the inquiry, and would be able to do so by adjourning the commission or ruling out evidence. Both Dorion and Blake did refuse: the latter saying bluntly that ministers should not establish a commission to try themselves. The others refused to act without them. Cartwright ventured the suggestion that Allan might be summoned to the bar of the house, but it was not acted on. After this jockeying for position, a royal commission was issued on August 14 to three judges,  
 20 C. D. Day, Antoine Polette, and J. R. Gowan.

In the meanwhile parliament and public were startled by a series of revelations in the Montreal Herald. Three of the letters published—between Allan and G. W. McMullen—were presumably contributed by the latter, who had long been indignant over the way in which he and his associates had been thrown over.

. . . . .

The royal commission sat during September and the early part of October, and parliament reassembled on October 23. Attacked for alleged corruption, the government resigned on November 5. The guilt or innocence of Macdonald's government must remain a matter  
 30 of opinion. There is no doubt that ministers had requested and accepted large sums of money (totalling \$350,000) from Sir Hugh Allan, and that Allan was the head of a "ring" which hoped to get a charter from that government. On the other hand it was argued that subscriptions to election funds were common practice. In his evidence before the commission Macdonald admitted that Allan had a personal interest in the result of the election in that his steamship line and other railway interests called for a Pacific railway, which a new government might drop. But, Macdonald stated, Allan knew that his company could not be left out; and he knew that a purely  
 40 Quebec group would not get a charter. An understanding had been reached between Allan and Cartier at the end of July 1872 that if the attempt at amalgamation failed, Allan's company should get the charter. This unfortunate step, which Macdonald attributed to the "failing health and waning mental faculties" of Cartier was immedi-

ately repudiated. To be exact, the company which received the charter was an entirely new one, formed after the election. It is not surprising, however, that the opposition were struck by the fact that Allan was still president.

The effects of the "Pacific scandal" on the progress of the Pacific railway project were disastrous. In the first place, the news of the early revelations reached England while the representatives of the new company were engaged in searching for capital. The delegation consisted of Sir Hugh Allan, the president, John Walker, Vice-  
10 president, with Abbot and A. G. Archibald. The lack of success of earlier Canadian railways had made English investors wary of further schemes; the financial crisis of 1873 made railway securities less attractive; and the opposition of the powerful Grand Trunk group closed the doors of the English banking houses to the Canadian delegation. While, no doubt, the Grand Trunk was in any case none too friendly toward a Pacific railway in other hands, its stern opposition was accentuated or perhaps caused by Allan's personal interests, which he had tacked on to the mission. Macdonald, who was growing less and less confident in Allan ("the worst negotiator I ever saw  
20 in my life"), had foreseen some such trouble. "I fear," he wrote to Rose in telling him of the delegation, "that he will be attempting to fasten his North Shore Railway and the Northern Colonisation scheme upon the Pacific, and if he does he will of necessity arouse the opposition of all those interested in the Grand Trunk Railway." In April Allan cabled Macdonald asking him to hold up a bill proposed by the Grand Trunk (the Grand Trunk Arrangements Act) as a means of putting pressure on that company. On their side, the Grand Trunk officials offered to call off their dogs if the Allan lines were dropped. In Ottawa the government put what pressure it could on the Grand  
30 Trunk, but by that time the latter's efforts had been only too successful and all the ordinary channels were closed.

The only bite the delegation had in England was from McEwen, Grant and Company, a firm of financiers which had recently proposed to raise a large new issue of stock for the Grand Trunk. Alexander McEwen, who seems to have had a dashing financial career, drew up a memorandum—after discussions with the Canadian Pacific delegation in the middle of June—the purport of which was that he was ready to form a syndicate to purchase immediately \$25,000,000 of bonds of the Canadian Pacific at 82½ per cent of par value, to be followed by a  
40 purchase of a like amount at the same or higher price, at the end of three years. As security the syndicate was to hold the government subsidy and land grant. To his proposal the delegation and the directors of the Canadian Pacific agreed; but the government were not satisfied either with the details or the security offered, and refused to sanction the agreement. In the meantime, too, McEwen had found that his side of the bargain could not be maintained, partly, no

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doubt, owing to the lack of confidence which had arisen out of the revelations in Ottawa.

The decade of the 'sixties had held many important changes for the provinces of British North America. Confederation had been proposed and carried through, and with it a commitment to a railway connecting the maritime with the central provinces. In the area to the west of Ontario two colonies which the Hudson's Bay Company had planted were fast growing beyond the stage of the fur trade, and the problem of their future, long of interest to Canada, became a  
10 matter of urgent importance. Both were added to the Dominion as the 'sixties changed to the 'seventies, but it was a constitutional union which could only be given life by the establishment of adequate communications. The plan of a railway to the Pacific, called logical by its advocates and ruinous by its opponents, for a time fell foul of party politics; but as the rings, the syndicates, the companies, and the charters melted away, a new chapter began in the history of the Pacific railway.

. . . . .

The Liberal Government which came into office late in 1873—the first since confederation—was headed by Alexander Mackenzie, who,  
20 as well as being premier, assumed the added burden of minister of public works, which department then was responsible for railways. During the previous discussions in parliament of the Pacific Railway the Liberals had pictured it as an impossible task for the Dominion to undertake in a short time; had urged that no additional burden be put on the taxpayer; and had encouraged its construction by private enterprise. On taking office they were obliged to pick up the Pacific railway question in the unfortunate state in which it had been left on the fall of the Macdonald government. The new policy was announced in 1874: a subsidy of \$10,000 and 20,000 acres of land per  
30 mile. In reality, however, there was little hope of enticing private capital into the railway. The beginning of a period of depression made money tight; American capitalists would be unpopular for obvious reasons; and the British money-market had already refused a more tempting bait. In 1876 tenders were solicited in England and the United States for the construction and operation of all or part of the line, but only one offer was made, and that unsatisfactory. The opposition of the Grand Trunk and the suspicion of English investors continued to operate as they had five years earlier. In May, 1878 Fleming wrote of a "memo. of information for the parties proposing  
40 to tender for the whole Pacific Railway," but it is not clear as to who these were, and in any case nothing came of it. Whatever was done had to be done with the aid of the public exchequer, and \$2,500,000 of a loan recently guaranteed by the British Government was earmarked for this purpose.

True to their former views, the Liberals were not prepared to plunge into the construction immediately of a railway from central Canada to the Pacific. Indeed, in the previous four or five years, Conservatives as well as Liberals, experts and amateurs, had advocated communication to the Pacific first being established by making use of waterways and American railways. It was a reversion to this plan that the government now proposed. The most easterly link was to be made up of an existing railway, the Canada Central, from Ottawa to Pembroke, and a subsidized extension to Lake Nipissing. 10 The line around Lake Superior was to be left for the time being, and a railway begun from Fort William to Selkirk, north of Winnipeg. A line was then to be built south to the American Border, so as to connect with the American railway. Other sections were to be built as finances allowed.

The difference between the Conservative and Liberal policies in regard to a Pacific Railway was essentially in the speed at which they were prepared to go ahead: the Conservative government had accepted a time limit for the whole line through Canadian territory; the Liberals were ready to accept such a line as the ultimate goal, but 20 believed that it would have to wait. Their objection to rapid construction was partly on the ground that it entailed great immediate expenditure, and partly that haste would swell the total cost. While later generations may think of the government construction in the 'seventies as slow, to Mackenzie it seemed that the "enormous expenditure is caused by our break-neck pace. . . ." In the meanwhile they proposed to provide temporary means of communication. The lines they undertook at once were portage railways between waterways or links with American lines. Neither the Conservative nor the Liberal party welcomed public ownership on principle, but both were 30 obliged to have recourse to it in default of an alternative; and the Liberals chose public ownership for the Intercolonial, but perhaps again from necessity. The surveys were conducted by the same person and on the same principle throughout three administrations.

Defensible as it might be in the light of the conditions and knowledge of the day, the Liberal policy of cautious advance was bound to meet one obstacle in the agreement with British Columbia. Even before the Conservative party went out of power there had been demands from British Columbia to know why construction had not been started, which Macdonald answered by saying that the survey 40 was underway as a necessary preliminary. Even apart from accumulated irritation the Liberal party was suspect because of its determined opposition to the time limit when the terms of union were being debated. Such suspicion in British Columbia was given added strength by the known anxiety of Mackenzie to reach a compromise, and by the influence of Edward Blake which was thrown more toward financial safety than concession. The people of the province felt that

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the promise of a railway was the chief inducement to enter the confederation; that no real efforts had been made to implement the promise; and that the Dominion government was hostile, and attempting to evade the commitment. The Liberal government, on the other hand, faced by a period of depression, was more than ever concerned with the financial burdens which rapid construction would entail. They clung to Macdonald's argument that "ten years" was not to be taken literally—indeed it could no longer be even promised—and sought to make the best compromise they could.

- 10 A dreary period of negotiations followed. Their success was further imperilled by divisions within each party to the dispute. In British Columbia the old rivalry between island and mainland had become focused on the western terminus of the railway. By the original agreement the Dominion was bound to build only as far as the seaboard. Before the preliminary surveys had advanced far enough to justify the selection of a terminus, Macdonald had rashly fastened on Esquimalt, near Victoria. This choice complicated the issue in two ways: it led to a demand for a railway between Esquimalt and Nanaimo, to which point on the island it was expected that bridges  
20 would cross from the mainland: and it so heightened the feeling between island and mainland that any change by the provincial government in the terms of union with Canada was rendered more difficult. In the Canadian parliament there was a division of feeling in the Liberal ranks between those who followed Mackenzie in his desire for an acceptable compromise and those who followed Blake in his fear of financial commitments.

- . . . . .
- For more than two years after coming into office the Conservative government continued the policy of governmental construction, but probably more from necessity than choice, Sir Charles Tupper, who  
30 became minister of public works in 1878 and minister of railways on the establishment of a separate department in the following year, seems to have consistently believed in private ownership. "I have, at some risk of separating myself from a portion of our press and party persistently denounced the policy of constructing the C.P.R. as a Gov't work, and maintained that the terms of the Resolution moved by Sir G. Cartier relieved Canada from any such obligation." This letter was written in 1876 while his party was in opposition, and presumably he nursed the same sentiments in the years 1878 to 1880. It is probable that the new government investigated the possibilities  
40 of a private company early in its period of office, but recognized the obstacles to this course. In 1879 the government proposed to institute a commission, including representatives of the imperial government, who should hold a very large amount of land for sale, the proceeds to pay for the construction of the railway. A mission was sent to England, but the British government was not willing to take any

part. So bleak was the prospect that in April 1880 D.L. Macpherson advocated stopping the work in British Columbia.

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(Continued)

Shortly after this active negotiations began with at least two groups of capitalists. One was a partly Canadian group of which D. J. McIntyre and George Stephen were the spokesmen. The tradition is that J. H. Pope suggested to Macdonald that he should get in touch with Stephen and his associates in the St. Paul, Minneapolis and Manitoba Railway. In June McIntyre received a confidential memorandum from the government to which he suggested some  
10 modifications. The government, however, stuck to their terms, and McIntyre declared that negotiations were for the time being closed. The chief point of difference was that the government offered a subsidy of \$20,000,000 while the capitalists they were dealing with asked for \$26,500,000. Meanwhile an English group, headed by the Earl of Dunsmore and Puleston, Brown and Company were also seeking a contract. They proposed to build the portions of the line not yet under contract and to own and operate the whole for a subsidy of \$9,500 and 16,000 acres per mile. The government, however, refused to come to any decision and it resolved to send a delegation of Macdon-  
20 ald, Tupper, and J. H. Pope to England, to receive any tenders and discuss terms. Sailing on July 10, they interviewed Sir Henry Tyler, president of the Grand Trunk, on arrival and proposed that his company should undertake the completion of the Pacific Railway. Tyler, however, would not consider the proposal if it included a line from Fort William to Lake Nipissing, while the Canadians were determined to have a through rail route. He clung to the old Grand Trunk argument for a line (their line) south of Lake Superior.

While the delegates were in London both the other groups of capitalists reopened negotiations. (Macdonald referred vaguely in  
30 the house of commons to other groups, but refused to disclose their identity.) The English group, who announced themselves associated with the French firm, the Societe Generale, now offered to replace the subsidy with a bond issue of \$65,000,000, each \$100 bond to carry the right to 160 acres of farming land, the Dominion government to guarantee interest at four per cent for twelve years. Apparently, however, the offer was not acceptable as nothing more was heard of it. In August McIntyre produced new terms by which he and his associates agreed to build the railway for \$25,000,000 cash and twenty-five million acres of land for the 2,000 miles. A confidential letter from  
40 Stephen to Macdonald, written just after the failure of the negotiations in Ottawa and just before Macdonald sailed for England, emphasized his attitude.

“There are two ways by which you can get the road built and operated: one by getting up a financial organization such as Allan contemplated and such as Jay Cooke & Co. got up for the construction

Record  
 Court of Appeal  
 Exhibit No. 111

A History of Trans-  
 portation in Canada  
 —Glazebrook, 1938.  
 (Continued)

of the Northern Pacific Railway—with what result I need not remind you. A scheme of this nature involves the issue of a large number of Bonds . . . the outcome of a plan of this character is that the real responsibility is transferred from the Company to the people who may be induced to buy the Bonds, while the Company or the projectors pocket a big profit at the start out of the proceeds. This, in the rough, is I fear the method any English financial organization is likely to follow. . . . The other plan, and the one I should have followed . . . would have been to limit the borrowing of money from the public to  
 10 the smallest possible point . . . to have looked for a return of our own capital and a legitimate profit entirely to the growth of the country and the development of the property. . . .”<sup>17</sup>

The government accepted the terms offered by McIntyre in London, and before the end of September the draft of the agreement was on paper. The contract was signed on October 21, and on December 10 brought down to parliament for ratification. The quality of the railway was to be that of the Union Pacific as first constructed. The gauge was set at 4 feet 8½ inches. Those sections already built were to be handed over to the Company, while others under contract  
 20—that is, from Kamloops to Port Moody and from Lake Superior to Selkirk—were to be completed by the government. The remainder was to be built by the company, and the whole was to be finished by 1891. Subsidies were to be on the terms suggested in the previous summer: \$25,000,000 and 25,000,000 acres of land, both payable in instalments on the completion of each twenty miles of line; but the subsidies were unevenly distributed according to the difficulty of construction. The land granted was to be in alternate sections of 640 acres each, 24 miles deep on either side of the railway between  
 30 Winnipeg and Jasper House. Land not fit for settlement was to be replaced elsewhere. Additional privileges were accorded to the company. Land for the road bed, shops, stations and so on was to be granted. Materials for original construction might be imported free of duty. The railway with its grounds and buildings, “rolling stock and appurtenances” used for construction and operation, and the capital of the company were to be forever free from any taxation. The land grants were not to be taxed for twenty years, unless sold or occupied in the meantime. For twenty years no railway should be authorized south of the Canadian Pacific, except a line running south-  
 40 west, but such a line might not continue to within fifteen miles of the border. Finally, the company was empowered to issue \$25,000,000 in bonds secured upon the land granted. These bonds were to be held by the government, which might sell all but one-fifth and hand the proceeds to the company. By an attached schedule the Canadian Pacific Railway Company was incorporated with a capital stock of \$25,000,000.

<sup>17</sup>Canadian Archive's Macdonald Paper. “Stephen,” Stephen to Macdonald, July 9, 1880.

No. 112  
Company's Document  
**Building the Canadian West**

By James B. Hedges, Professor of American History,  
Brown University

(P. 1 et seq.)

Record  
Court of Appeal

Exhibit No. 112

Building the Canadian West—  
James B. Hedges,  
1939.

. . . . .  
“When the railway first came to the Canadian prairie it had already played a vital and indispensable part in the development of the prairie and plains portion of the United States.

. . . . .  
10 A series of significant maps recently published shows that in western Canada, too, the onward rush of the pioneer and the railway went hand in hand.

. . . . .  
As the pioneer railway of western Canada and as the one possessed of the largest land subsidy, the Canadian Pacific undoubtedly played the major role among the companies which helped to people the prairie provinces. The importance of its work has long been understood. It has sometimes been referred to as ‘The Great Colonizer,’ in recognition of its long-sustained efforts in the cause of western land settlement.

. . . . .  
20 Except for the Selkirk settlement, established in the valley of the Red River in 1812, the fur trader had held undisputed sway in this region. As late as 1870 all but a handful of its scanty population were half-breeds. Settlement throughout the Northwest was confined to the shadows of the trading posts. In the fifties, however, both the British and the Canadian Governments had taken steps indicating an increasing interest in the future of the prairie country. In 1857 a select committee of the House of Commons, after taking exhaustive, if contradictory, testimony as to the possibilities of the country, recommended its cession to Canada. In the years 1857-60  
30 Captain John Palliser, under the auspices of the colonial office, made extensive explorations of the region between Lake Superior and the mountains. Captain Palliser classified the territory between the Laurentian Shield and the Rockies into two large areas, the ‘fertile belt’ and the semi-arid country. The ‘fertile belt’ embraced the valleys of the Red and the Assiniboine, together with the park-like regions in the valley of the North Saskatchewan. This belt, he thought, offered distinct natural advantages for agricultural settlement. ‘The lakes and rivers provided an abundance of fish, which

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Court of Appeal

Exhibit No. 112

Building the Canadian West—  
James B. Hedges.  
1939.  
(Continued)

would provide part of the food for the colonists while he was establishing himself. There was a good supply of rich pasture and natural hay sufficient to provide for cattle throughout the year. Sufficient areas had been cleared by fires that the settler might begin to cultivate his land immediately. There was ample timber for the construction of buildings, and wood and coal for fuel.' The semi-arid region, the treeless or 'true prairie,' situated in the upper valleys of the Souris and the South Saskatchewan, Captain Palliser considered unfit for settlement.

10     Meanwhile, in 1857 and 1858 the government of the province of Canada sent out exploring expeditions, of which S. J. Dawson and Professor H. Y. Hind were the most important members. Generally speaking, their findings corroborated those of Captain Palliser. Hind and Palliser agreed that the semi-arid belt was unsuited to settlement. Both agreed as to 'the fertility of the Park Belt and the adjacent wooded sections, and as to the fitness of that area for settlement: they both saw the necessity for improved transportation: neither looked for rapid settlement.' Even in those restricted portions of the West which Professor Hind regarded as suited to settlement, he  
20 greatly underestimated the area of good arable land. His estimate was 11,000,000 acres, with an equal area adapted to grazing. In those areas alone, according to the 1926 census, the improved land amounted to 22,000,000 acres, with 37,000,000 acres occupied.

But there were other essential requirements which had to be met before the Northwest of Canada could come into its own. Only when good land at low cost was no longer to be had in the United States could Canada hope for a substantial diversion of that great human stream which for decades had poured into the western and northwestern states. When that time came, other factors being  
30 favorable, this historic movement of people would push across the international boundary into the Canadian prairie.

Of paramount importance to the settlement of the Northwest was adequate transportation.

To those gifted with foresight, it would have been evident in 1880 that many things must happen before the successful settlement of the Canadian West could be achieved. To all, however, it was apparent that one indispensable condition must be met before substantial results could be expected. This was a railway by which the staples of the prairie could find their way to market. That railway was soon  
40 to come, and it quickly became a foremost agency for the promotion of settlement."

**No. 113**  
Company's Document

Record  
Court of Appeal

**Statutes of Saskatchewan, 1942, 6 George VI**  
Chapter 2

Exhibit No. 113

An Act to authorize the Government of Saskatchewan to enter into  
a Certain Agreement with the Government of Canada.  
(Assented to March 27, 1942.)

Portions of  
The Taxation  
Agreement Act,  
1942.

His Majesty, by and with the advice and consent of the Legislative  
Assembly of Saskatchewan, enacts as follows:

Short title

10     1. This Act may be cited as The Taxation Agreement Act, 1942.

Agreement  
authorized

2. The Government of Saskatchewan is hereby authorized to enter into an agreement, as set forth in the schedule hereto, with the Government of Canada and, upon the execution thereof by a representative of the Government of Canada on behalf of that Government, and by the Provincial Treasurer or Acting Provincial Treasurer on behalf of the Government of Saskatchewan the Government of Saskatchewan may implement and carry out the terms, conditions and provisions thereof.

Suspension of  
taxing enactments

3. The following enactments, namely:
- 20     The Corporations Taxation Act, chapter 51 of the Revised Statutes of Saskatchewan, 1940, as amended by chapter 9 of the statutes of 1941;
- The Income Tax Act, chapter 54 of the Revised Statutes of Saskatchewan, 1940, as amended by chapter 10 of the statutes of 1941;
- The Railway Taxation Act, chapter 52 of the Revised Statutes of Saskatchewan, 1940, except sections 14, 15 and 16;
- Sections 31 to 37 of The Fuel Petroleum Products Act, chapter 56 of the Revised Statutes of Saskatchewan, 1940;
- 30     Section 434 of The Saskatchewan Insurance Act, chapter 121 of the Revised Statutes of Saskatchewan, 1940;

are hereby suspended in operation, save that the said enactments shall continue to apply to taxes payable thereunder in the year 1941 or any previous year and remaining unpaid and to persons, partnerships and corporations liable for such taxes; provided that the exemption contained in section 14 of The Railway Taxation Act shall continue to apply notwithstanding the suspension of the preceding sections of the said Act. This section shall come into force

upon the execution of the said agreement and shall thereupon be deemed to have been in force on and from the first day of January, 1942.

4. The Lieutenant Governor may by one or more proclamations issued either before or after the termination of the said agreement declare that section 3 of this Act shall cease to have effect, with respect to any or all of the enactments referred to in that section, on a date or dates to be named in the proclamation or proclamations, and on, from and after the date or dates so named the enactment or 10 enactments affected shall have full force and effect. No proclamation issued before the termination of the said agreement shall take effect until the termination thereof.

Revocation of  
 suspension

5. If the Lieutenant Governor in Council deems that any bylaw of a city, town, village or rural municipality now in force or hereafter passed is at variance with the said agreement, the Lieutenant Governor in Council may by order declare the bylaw to be null and void, and in such event the bylaw shall be null, void and of no effect as of and from the date of the order.

Power respecting  
 municipal by-laws

6. The Lieutenant Governor in Council may make regulations 20 to meet or remove any difficulty arising out of the transition period before, at or after the termination of the said agreement.

Regulations

#### SCHEDULE

Memorandum of Agreement made this            day of            1942.

Between:

The Government of the Dominion of Canada (hereinafter called "The Dominion"), represented herein by the Honourable James Lorimer Ilsley, Minister of Finance, of the First Part

and

30 The Government of the Province of Saskatchewan (hereinafter called "The Province"), represented herein by the Honourable William John Patterson, Provincial Treasurer, of the Second Part.

Whereas the Dominion and the Province have been levying taxes upon incomes and upon corporations, and

Now therefore this agreement witnesseth:

1. In this agreement or any appendix thereto, unless the context otherwise requires, the expression,—

- (a) "corporation tax" means a tax or fee the imposing of which singles out for taxation or for discriminatory rates or burdens of taxation, either formally or in effect, corporations or any class or classes thereof or any individual corporations except . . . . .
- (v) a business or occupancy tax based on floor space or on the rental or assessed value of property, or on gross receipts from all or part of the business or other similar basis imposed by a municipality, or in territory not included in any municipality by any authority (including the Province) having jurisdiction in such territory.

Record  
Court of Appeal  
Exhibit No. 113  
 Portions of  
 The Taxation  
 Agreement Act,  
 1942.  
 (Continued)

10 Provided that all the taxes imposed by the enactments enumerated in Appendix A not being income taxes shall be deemed to be corporation taxes, and all the taxes imposed by the enactments enumerated in Appendix B shall be deemed not to be corporation taxes or income taxes.

- (b) "income tax" means any tax imposed upon the net income of a corporation or upon the net income or gross income of an individual or partnership and shall include a poll or head tax based on income;

20 (2) Subject as provided in the next succeeding sub-section the Province will not until the termination of this agreement:

- (a) impose or enact any statute providing for the imposition of income or corporation taxes, or
- (b) amend, revive or re-enact any of the enactments enumerated in Appendix A in such manner as will impose an income or corporation tax during the term of this agreement,

APPENDIX "A"

Legal Citation	Title of Enactment
Chapter 51, R.S.S. 1940	The Corporations Taxation Act.
30 Chapter 9, 1941	
Chapter 54, R.S.S. 1940	The Income Tax Act.
Chapter 10, 1941	
Chapter 52, R.S.S. 1940	The Railway Taxation Act except sections 14, 15 and 16.
Sections 31 to 37,	The Fuel Petroleum Products Act.
Chapter 56, R.S.S. 1940	
Section 434, Chapter 121, R.S.S. 1940	The Saskatchewan Insurance Act.

## APPENDIX "B"

**Record**  
**Court of Appeal**

**Exhibit No. 113**

Portions of  
The Taxation  
Agreement Act,  
1942.  
(Continued)

Legal Citation	Title of Enactment	Nature of Tax, License Fee or Permit
Chapter 126, R.S.S. 1940 Chapter 22, 1941	The City Act	Miscellaneous licenses, land tax, local improvement taxes, business taxes, rental tax, poll tax, amusement tax and on special franchises.
10 Chapter 127, R.S.S. 1940 Chapter 23, 1941	The Town Act	Miscellaneous licenses, land tax, local improvement taxes, business taxes, rental tax, poll tax, amusement tax and on special franchises.
Chapter 128, R.S.S. 1940 Chapter 24, 1941	The Village Act	Miscellaneous licenses, land taxes, business tax, and tax on special franchises.
20 Chapter 129, R.S.S. 1940 Chapter 25, 1941	The Rural Municipality Act	Miscellaneous licenses, land taxes, business taxes and tax on special franchises, also hospital tax on all residents. Wild lands tax.
Chapter 130, R.S.S. 1940 Chapter 26, 1941	The Local Improvement Districts Act	Land taxes, business taxes, hospital tax and certain licensing provisions.

**No. 114**

Company's Document

**Statutes of Saskatchewan 1946, 10 George VI**

Chapter 31

30

**Exhibit No. 114**

Portions of The  
Village Act, 1946.

(As amended by 12 George VI (1948), Chapter 35)  
(Assented to April 4th, 1946.)

1. This Act may be cited as the Village Act, 1946.

274. The amount of the debenture debt of a village at any time outstanding shall not exceed ten per cent. of the total amount of the assessment in respect of real property in the village as shown by the last revised assessment roll. R.S.S. 1940, c. 128, s. 273.

Limit of debenture  
debt

Preparation of assessment roll

281. (1) As soon as may be in each year but not later than the thirty-first day of May the assessor shall assess:

Record  
Court of Appeal

1, in respect to every parcel of land in the village:

Exhibit No. 114

(a) the registered owner;

Portions of The Village Act, 1946. (Continued)

2, every person who is engaged in mercantile, professional or any other business in the village save that of a farmer, stock raiser or person otherwise engaged in agricultural pursuits or person engaged in fur farming; and

3, the owner of a special franchise;

10 and shall prepare an assessment roll in which he shall enter the names and addresses of the persons mentioned in paragraphs 1, 2, 3 and 4.

Assessment of land and buildings, etc.

282. Subject to the other provisions of this section:

1, the dominant and controlling factor in the assessment of land and buildings shall be equity;

2, land shall be assessed at its fair value;

2a, the railway roadway owned by a railway company, or occupied by it if the roadway is owned by some other person and is exempt from taxation, shall be assessed at an amount not exceeding \$3,000 per mile. All other land owned or occupied by a railway company 20 shall be assessed at its fair value but the superstructure thereon shall not be assessed.

Businesses

283. (1) Business shall be assessed in the following manner:

1, the assessor shall fix a rate per square foot of the floor space (irrespective of partitions, elevators, stairways or other obstructions) of each building or part thereof used for business purposes, and shall as far as he deems practicable classify the various businesses;

2, he may fix a different rate for each class, and in so doing may place a wholesale business in a class distinct from a retail business of otherwise the same class and may classify each building or part thereof 30 according to the kind of a business carried on therein and may fix a different rate for different kinds of business carried on under the same roof, and for storehouses and warehouses or other like appurtenant buildings from that fixed for the principal building, and may fix a different rate for different flats of buildings;

3, the rate shall not exceed \$8 per square foot, except in the case of banks, loan companies or other financial institutions, in which case the rate shall not exceed \$15 per square foot.

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Court of Appeal  
Exhibit No. 114

Portions of The  
Village Act, 1946.  
(Continued)

(2) Where it is found by the assessor that a business is being carried on, either wholly or partially, outside of any building, he shall fix a rate per square foot of the yard space used for such business, and shall as far as he deems practicable classify the various businesses, and he may fix a different rate for each, but such rate shall not exceed \$4 per square foot.

Yards used for  
business

(4a) A railway company, whether its property is liable to assessment and taxation or not, shall be liable to assessment and taxation under this section in respect of the business carried on as a railway and the provisions of this section, except subsection (2), shall apply.

(5) Notwithstanding the provisions of paragraph 5 of section 282, the owner of a special franchise shall be assessed for the land, including buildings and improvements, which he uses or occupies, at the fair value. The plant and apparatus, including machinery and fixtures, erected or placed upon, in, over, under or affixed to land or to any highway, lane or public place or water, shall be assessed at the fair value.

Special franchises

(6) The owner of a special franchise shall also be assessed in respect of the right, authority or permission on the basis of ten per cent. of the value of the franchise.

Same

(7) The owner of a special franchise shall not be assessed in respect of business. R.S.S. 1940, c. 128, s. 282 (5) to (9), (11) and (12).

Same

286. (1) Every person whose property is assessable shall give to the assessor all information necessary to enable him to make up the roll; but no statement made by such person shall bind the assessor or shall excuse him from making inquiry as to its correctness.

Information for  
assessor

315. (1) Subject to the provisions hereinafter contained, the municipal and school taxes shall be levied upon lands, businesses and special franchises.

Property, etc.,  
subject to  
taxation

316. The following property shall be exempt from taxation:

Exemptions

- 1, the interest of the Crown in any property, including property held by any person in trust for the Crown;
- 2, property specially exempted by law;
- 3, all lands held by or in trust for the use of any tribe of Indians;
- 4, every place of public worship and the land used in connection therewith, not exceeding one acre, of which a religious organization is the owner, except such part as may have any other building thereon;

5, the land in use as a public cemetery not exceeding twenty-five acres;

6, the buildings and grounds, not exceeding four acres, of and attached to or otherwise bona fide used in connection with and for the purposes of every school or office of a school district or school unit, so long as such buildings and grounds are actually used and occupied by the school district or school unit but not if otherwise occupied or occupied as a dwelling;

7, the buildings and grounds, not exceeding four acres, of and  
10 attached to or otherwise bona fide used in connection with and for the purposes of every hospital which receives public aid under and by virtue of any Act, so long as such buildings and grounds are actually used and occupied by such hospital but not if otherwise occupied or occupied as a dwelling;

8, all land belonging to the village;

9, every public library established under The Public Libraries Act;

10, the buildings with grounds attached, owned and occupied by a branch of the Canadian Legion of the British Empire Service  
20 League;

11, every community hall owned and operated by an association incorporated under any Co-operative Associations Act and the land owned by the association and used in connection therewith;

12, every monument erected as a war memorial and the land used in connection therewith to the extent of one acre;

13, the buildings and grounds of agricultural societies organized under The Agricultural Societies Act;

14, the buildings owned by a rural municipality and used for municipal purposes, and the land used in connection therewith not  
30 exceeding one-half acre in extent.

Provided that where a portion of any such building is occupied as a residence or for any purpose other than a municipal purpose, such portion shall be assessed to the owner. R.S.S. 1940, c. 128, s. 281 (1); 1943, c. 24, s. 5 (1); 1944 (2nd Sess.) c. 34, s. 4; amended.

Record  
Court of Appeal

Exhibit No. 114

Portions of The  
Village Act, 1946.  
(Continued)

Levy of rate

323. (1) Upon the completion of the estimate the secretary treasurer shall lay before the council the revised assessment roll of the village for the year, and the council shall by resolution authorize the secretary treasurer to levy upon all lands, businesses and special franchises entered in the roll and not exempt from taxation such  
40 taxes at a uniform rate as are deemed sufficient to meet the estimate

**Record**  
**Court of Appeal**

**Exhibit No. 114**

Portions of The  
Village Act, 1946.  
(Continued)

of expenditures, and in fixing the rate the council shall make due allowance for the non-payment of taxes.

329. (1) On or before the fifteenth day of September in each year, the secretary treasurer shall enter in the assessment roll for the year in the several columns provided for the purpose, a statement of all taxes levied against each person as computed at the rate herein-before provided for, and the statement when completed shall show:

- 1, the sum total of the rates levied against each person for municipal purposes;
- 10 2, the sum total of the rates levied against each person for school purposes;
- 3, the total taxes due for the current year by each person;
- 4, the arrears of municipal taxes due by each person;
- 5, the arrears of school taxes due by each person;
- 6, the sum total of all taxes due by each person.

(2) A person whose business tax would be less than \$10 for any business shall be taxed \$10 for that business, and if the total property tax of any person under this section is less than \$2, the property tax to be entered in the roll as payable by such person shall be \$2. R.S.S. 20 1940, c. 128, s. 325.

**No. 115**  
**Company's Document**

**Statutes of Saskatchewan 1946, 10 George VI**  
**Chapter 32**

(As amended by 12 George VI (1948), Chapter 36)  
(Assented to April 4th, 1946.)

1. This Act may be cited as The Rural Municipality Act, 1946.

277. The amount of the debenture debt of a municipality at any time outstanding shall not be a greater sum than thirteen cents per acre for each acre of land assessed in the municipality as shown by the last revised assessment roll thereof. R.S.S. 1940, c. 129, s. 276.

285. (1) As soon as may be in each year but not later than the thirty-first day of May the assessor shall assess:

**Exhibit No. 115**

Portions of The  
Rural Municipality  
Act, 1946.

Tax roll

Minimum tax

Limit of  
debenture debt

Preparation of  
assessment roll

1, in respect to every parcel of land in the municipality :

- (a) the registered owner; or
- (b) the owner under bona fide agreement for sale; or
- (c) in the case of property exempt from taxation :
  - (i) the owner under bona fide agreement for sale; or
  - (ii) the occupant under lease, license or permit except an occupant occupying the land in an official capacity;

2, every person who is engaged in mercantile, professional or any other business in the municipality save that of a farmer, stock-raiser or person engaged in agricultural pursuits or fur farming; and

3, the owner of a building situated on land belonging to another person or not attached to the land on which it is placed; and shall prepare an assessment roll in which he shall enter the names and addresses of the persons mentioned in paragraphs 1, 2 and 3.

. . . . .

Assessment of land and buildings

286. Subject to the other provisions of this section :

1, the dominant and controlling factor in the assessment of land and buildings shall be equity;

2, land shall be assessed at its fair value, exclusive of any increase in such value caused by the erection of buildings thereon;

20 3a, the railway roadway owned by a railway company, or occupied by it if the roadway is owned by some other person and is exempt from taxation, shall be assessed at an amount not exceeding \$800 per mile. All other land owned or occupied by a railway company shall be assessed at its fair value but the superstructure thereon shall not be assessed.

. . . . .

Businesses

287. (1) Business shall be assessed in the following manner :

1, the assessor shall fix a rate per square foot of the floor space (irrespective of partitions, elevators, stairways, or other obstructions) of each building or part thereof used for the business purposes, and shall as far as he deems practicable classify the various businesses;

2, he may fix a different rate for each class, and in so doing may place a wholesale business in a class distinct from a retail business of otherwise the same class and may classify each building or part thereof according to the kind of business carried on therein and may fix a different rate for different kinds of business carried on under the same roof, and for storehouses and warehouses or other like appurtenant buildings from that fixed for the principal buildings, and may fix a different rate of different flats of buildings;

Record  
Court of Appeal

Exhibit No. 116

Portions of The Rural Municipality Act, 1946. (Continued)

**Record**  
**Court of Appeal**  
**Exhibit No. 115**

Portions of The  
Rural Municipality  
Act, 1946.  
(Continued)

(2) Whenever it is found by the assessor that a business is being carried on, either wholly or partially, outside of any building, he shall fix a rate per square foot of the yard space used for such business, and shall as far as he deems practicable classify the various businesses, and he may fix a different rate for each, but such rate shall not exceed \$4 per square foot.

(4) A railway company, whether its property is liable to assessment and taxation or not, shall be liable to assessment and taxation under this section in respect of the business carried on as a railway and the provisions of this section, except subsection (2), shall apply.

290. (1) Every person whose property is assessable shall give to the assessor all information necessary to enable him to make up the roll; but no statement made by any such person shall bind the assessor or shall excuse him from making inquiry as to its correctness.

Information  
for assessor

332. (1) Subject to the provisions hereinafter contained, the municipal taxes shall be levied upon land, buildings and business.

Property, etc.,  
subject to  
taxation

333. (1) In every municipality the property exempt from taxation shall be:

Exemptions

- 1, the interest of the Crown in any property, including property held by any person in trust for the Crown;
- 2, property specially exempted by law;
- 3, all lands held by or in trust for the use of any tribe of Indians;
- 4, the buildings and grounds of every school or office owned by a school district or school unit, except any part used as a dwelling;
- 5, every place of public worship and the land used in connection therewith, not exceeding three acres, of which a religious organization is the owner, except such part as may have any other building thereon;
- 6, every hospital which receives public aid under and by virtue of any Act and the land used in connection therewith not exceeding five acres;
- 7, the land in use as a public cemetery not exceeding twenty-five acres;
- 8, any land belonging to the municipality;
- 9, any land owned by a city, town or village and used for municipal purposes:

provided that where a building or any portion of a building situated on such land is occupied by any person as a residence or for any purpose other than a municipal purpose, such building or portion shall be subject to taxation except where the building is situated on land strictly agricultural in its nature or use and the building or portion is occupied in connection with the agricultural operation of the land;

Record  
Court of Appeal  
Exhibit No. 115  
Portions of The  
Rural Municipality  
Act, 1946.  
(Continued)

10, the buildings and grounds of agricultural societies organized under any Agricultural Societies Act;

10 11, every community hall owned and operated by an association incorporated under any Co-operative Associations Act and the land owned by the association and used in connection therewith;

12, the buildings on land strictly agricultural in its nature or use;

13, the buildings with grounds attached, owned and occupied by a branch of the Canadian Legion of the British Empire Service League;

14, every monument erected as a war memorial and the land used in connection therewith, not exceeding one acre;

15, land under the control of the Land Utilization Board, land 20 held under lease by His Majesty the King in the right of Saskatchewan as represented by the Minister of Agriculture and land which has been reserved for land utilization purposes by written agreement between the owner thereof and the Land Utilization Board, notice of which agreement has been sent by registered mail to the secretary treasurer by the said board;

16, airports and landing fields and the land used in connection therewith.

. . . . .

Levy of rate

338. Upon the completion of the estimates the secretary shall lay before the council the revised assessment roll for the year, certified as provided by section 328, and the council shall by resolution authorize the treasurer to levy upon all the lands and other property entered in the roll such taxes at a uniform rate on the dollar as are deemed sufficient to meet the estimate, and in fixing the rate the council shall make due allowance for the non-payment of taxes. R.S.S. 1940, c. 129, s. 333.

. . . . .

Entries in  
assessment roll

344. (1) On order before the first day of September in each year the treasurer shall enter in the assessment roll for the year in the several columns provided for the purpose a statement of all taxes levied against each lot or parcel of land assessed as shown by the 40 roll, and such statement when completed shall show:

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Portions of The  
Rural Municipality  
Act, 1946.  
(Continued)

1, the rate on the dollar levied by the municipality to meet the estimated expenditure of the municipality as hereinbefore provided;

2, the rate on the dollar to be levied by the treasurer for school purposes;

3, the rate fixed by The Public Revenues Act;

4, the sum total of the rate levied against each lot or parcel of land;

5, the total taxes due for the current year on each lot or parcel of land;

10 6, the arrears of taxes levied under any authority due on each lot or parcel of land;

7, the sum total of all taxes due on each lot or parcel of land.

(2) A person whose business tax would be less than \$5 for any business shall be taxed \$5 for that business, and if the property tax of any person for municipal purposes is less than \$2, the property tax to be entered in the roll as payable by such person for such purposes shall be \$2.

. . . . .

**No. 116**  
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**Statutes of Saskatchewan 1946, 10 George VI**  
Chapter 33

20

Exhibit No. 116

Portions of The  
Local Improvement  
Districts Act, 1946.

(As amended by 12 George VI (1948) Chapter 37)  
(Assented to April 4th, 1946.)

1. This Act may be cited as the Local Improvement Districts Act, 1946.

. . . . .

16. (1) Subject to the following subsections, in each district the rate of assessment shall be three and one-eighth cents per acre.

Rates of  
assessment

17. As soon as possible after the beginning of each year or after the organization of a district an assessment roll shall be prepared for each district upon which shall be entered as accurately as may be the following information:

Assessment roll

(a) each lot of parcel of land owned or occupied within the district and the number of acres it contains;

(b) the name and post office address of the person assessed as owner or occupant of each lot or parcel;

.

(c) the amount of assessment;

(d) the amount of previous assessments which have not been paid. R.S.S. 1940, c. 130, s. 8.

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Exhibit No. 116

Portions of The  
Local Improvement  
Districts Act, 1946.  
(Continued)

Assessment

19. (1) As soon as may be in each year but not later than the first day of July, the minister shall assess either the registered owner or the owner under bona fide agreement of sale or, in the case of property exempt from taxation, either the owner under bona fide agreement of sale or the occupant under lease, license or permit of every parcel of land in the district, and every person who is engaged in mercantile, professional or any other business in the district save that of a farmer, stock raiser or person otherwise engaged in agricultural pursuits, or person engaged in fur farming, and shall prepare an assessment roll in which shall be set out as accurately as may be:

1. The name of the owner or occupant of each lot or parcel of land in the district and the post office address, if known, of every such owner and occupant;

2. A brief description of each such lot or parcel of land, the number of acres which it contains and the assessed value thereof;

3. The name of every person who is assessable for business within the district.

Assessment of  
lands and buildings

20. (1) The dominant and controlling factor in the assessment of land and buildings shall be equity, provided that no parcel of land shall be assessed for less than \$10.

(1a) The railway roadway owned by a railway company, or occupied by it if the roadway is owned by some other person and is exempt from taxation, shall be assessed at an amount not exceeding \$800 per mile. All other land owned or occupied by a railway company shall be assessed at its fair value but the superstructure thereon shall not be assessed.

30 (2) Subject to the other provisions of this section, land shall be assessed at its fair value exclusive of any increase in such value caused by the erection of buildings thereon.

(3) Buildings:

(a) upon land in a hamlet or elsewhere in a district, where the area of the land used or occupied or used and occupied in connection with the buildings does not exceed twenty acres and the agricultural operation of such land and any other land used or occupied or used and occupied in connection with such buildings does not constitute the occupant's chief source of income:

40 (b) which, though situated upon land agricultural in its nature or

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Portions of The  
Local Improvement  
Districts Act, 1946.  
(Continued)

use, are not used or occupied in connection with the agricultural operation of the land; shall be assessed at sixty per cent. of their fair value:

Provided that the minister may, in estimating the fair value of any building, take into consideration its inappropriateness of location or any other circumstances which, in his opinion, reduce its value.

. . . . .

22. (1) Business shall be assessed in the following manner: Business

1. The minister shall fix a rate per square foot of the floor space (irrespective of partitions, elevators, stairways, or other obstructions) of each building or part thereof used for business purposes, and shall as far as he deems practicable classify the various businesses;

2. He may fix a different rate for each class, and in so doing may place a wholesale business in a class distinct from a retail business of otherwise the same class and may classify each building or part thereof according to the kind of business carried on therein and may fix a different rate for different kinds of business carried on under the same roof, and for storehouses and warehouses or other like appurtenant buildings from that fixed for the principal business, and may fix a different rate for different flats of buildings;

20 3. The rate shall not exceed \$8 per square foot, except in the case of banks, loan companies or other financial institutions, in which case the rate shall not exceed \$15 per square foot.

. . . . .

(2) Whenever it is found by the minister that a business is being carried on, either wholly or partially, outside of any building, he shall fix a rate per square foot of the yard space used for such business, and shall as far as he deems practicable classify the various businesses, and he may fix a different rate for each, but such rate shall not exceed \$4 per square foot.

30 (5) A railway company, whether its property is liable to assessment and taxation or not, shall be liable to assessment and taxation under this section in respect of the business carried on as a railway and the provisions of this section, except subsection (2), shall apply.

. . . . .

36. In every district the property exempt from taxation shall be: Exemptions

- 1, the interest of the Crown in any property, including property held by any person in trust for the Crown;
- 2, property specially exempted by law;

3, all lands held by or in trust for the use of any tribe of Indians;

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4, the buildings and grounds of every school owned by a school district or school unit, except any part used as a dwelling;

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5, every place of public worship and the land used in connection therewith, not exceeding three acres, of which a religious organization is the owner, except such part as may have any other building thereon;

Portions of The  
Local Improvement  
Districts Act, 1946.  
(Continued)

6, every hospital which receives public aid under and by virtue of any Act and the land used in connection therewith not exceeding five acres;

10 7, the land in use as a public cemetery not exceeding twenty-five acres;

8, any land owned by a city, town or village and used for municipal purposes:

provided that where a building or any portion of a building situated on such land is occupied by any person as a residence or for any purpose other than a municipal purpose, such building or portion shall be subject to taxation except where the building is situated on land strictly agricultural in its nature or use and the building or portion is occupied in connection with the agricultural operation of  
20 the land;

9, the buildings and grounds of agricultural societies organized under The Agricultural Societies Act;

10, the buildings on land strictly agricultural in its nature or use;

11, the buildings, with grounds attached, owned and occupied by a branch of the Canadian Legion of the British Empire Service League;

12, every community hall owned and operated by an association incorporated under The Co-operative Associations Act and the land owned by the association and used in connection therewith;

30 13, every monument erected as a war memorial and the land used in connection therewith, not exceeding one acre;

14, land under the control of the Land Utilization Board, land held under lease by His Majesty the King in the right of Saskatchewan as represented by the Minister of Agriculture, and land which has been reserved for land utilization purposes by written agreement between the owner thereof and the Land Utilization Board, notice of which agreement has been sent by registered mail to the minister by the said board, R.S.S. 1940, c. 130, s. 30; 1941, c. 26, s. 9; 1944 (2nd Sess.) c. 36, s. 2; 1945, c. 41, s. 4; amended.

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Portions of The  
Local Improvement  
Districts Act, 1946.  
(Continued)

39. (1) As soon as practicable in each year the minister shall estimate the amount required to be expended in each district during the current year and shall cause to be levied a tax at such rate on the dollar of the assessed value of the taxable property within the district as shall be required to meet such estimated expenditure.

Estimate of  
expenditure for  
current year

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Company's Document

Statutes of Saskatchewan 1947, 11 George VI  
Chapter 44

Exhibit No. 117

Portions of The  
Town Act, 1947.

10 (As amended by 12 George VI (1948) Chapter 34)  
(Assented to April 1, 1947.)

1. This Act may be cited as The Town Act, 1947.

220. For greater certainty but not so as to limit the general powers conferred by section 219, the council may make bylaws for all or any of the following purposes:

Powers in  
particular

1, raising its revenues by assessment on (a) lands, (b) businesses and (c) special franchises;

Raising revenue

351. The amount of the debenture debt of the town at any time outstanding shall not exceed fifteen per cent. of the total amount of the assessment in respect of land, businesses and special franchises, exclusive of: . . .

Limitation of  
amount

353. The bylaw creating a debt shall state by recital or otherwise:

Contents of bylaw

(a) the amount of the debt intended to be created and in some brief and general terms the object for which it is to be created;

(d) the amount of rateable property in the town according to the last revised assessment roll;

410. (1) As soon as may be in each year but not later than the thirty-first day of May the assessor shall assess:

Preparation of  
assessment roll

1, in respect to every parcel of land in the town:

30 (a) the registered owner;

2, every person who is engaged in mercantile, professional or any other business in the town; save that of a farmer, stock raiser or person otherwise engaged in agricultural pursuits or person engaged in fur farming; and

3, the owner of a special franchise; . . .

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Exhibit No. 117

Portions of The  
Town Act, 1947.  
(Continued)

and shall prepare an assessment roll in which he shall enter the names and addresses of the persons mentioned in paragraphs 1, 2, 3, and 4.

Assessment of land  
and buildings, etc.

411. Subject to the other provisions of this section:

10 1, the dominant and controlling factor in the assessment of land and buildings shall be equity;

2, land shall be assessed at its fair value;

2a, the railway roadway owned by a railway company, or occupied by it if the roadway is owned by some other person and is exempt from taxation, shall be assessed at an amount not exceeding \$5,000 per mile. All other land owned or occupied by a railway company shall be assessed at its fair value but the superstructure thereon shall not be assessed.

Businesses

412. (1) Business shall be assessed in the following manner:

20 1, the assessor shall fix a rate per square foot of the floor space, irrespective of partitions, elevators, stairways, or other obstructions, of each building or part thereof used for business purposes, and shall as far as he deems practicable classify the various businesses and portions thereof;

2, he may fix a different rate for each class or portion thereof, and in so doing may place a wholesale business in a class distinct from a retail business of otherwise the same class, and may classify each building or part thereof, according to the kind of business carried on therein and may fix a different rate for different kinds of business  
30 carried on under the same roof, and for storehouses and warehouses or other like appurtenant buildings from that fixed for the principal building, and may fix a different rate for different flats of buildings;

3, the rate shall not exceed \$8 per square foot, except in the case of banks, loan companies or other financial institutions, in which case such rate shall not exceed \$15 per square foot.

Yards used for  
businesses

(2) Where it is found by the assessor that a business is being carried on, either wholly or partially, outside of any building, he shall fix a rate per square foot of the yard space used for such business, and shall as far as he deems practicable classify the various businesses,

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Portions of The  
 Town Act, 1947.  
 (Continued)

and he may fix a different rate for each, but such rate shall not exceed \$4 per square foot.

(5a) A railway company, whether its property is liable to assessment and taxation or not, shall be liable to assessment and taxation under this section in respect of the business carried on as a railway and the provisions of this section, except subsection (2), shall apply.

(6) Notwithstanding the provisions of paragraph 11 of section 2 or paragraph 4 of section 411, the owner of a special franchise shall be assessed for the land, including buildings and improvements, 10 which he uses or occupies, at the fair value. The plant and apparatus, including machinery and fixtures, erected or placed upon, in, over, under or affixed to land or to any highway, lane or public place or water, shall be assessed at the fair value. Special franchises

(7) The owner of a special franchise shall also be assessed in respect of the right, authority or permission on the basis of ten per cent. of the value of the franchise under agreement. Same

(8) The owner of a special franchise shall not be assessed in respect of business. R.S.S. 1940, c. 127, s. 453 (5) to (9) and (11) to (13); 1942, c. 28, s. 15; 1945, c. 38, s. 23; amended. Same

20 415. (1) Every person whose property is assessable shall give to the assessor all information necessary to enable him to make up the roll, but no statement made by any person shall bind the assessor or shall excuse him from making inquiry as to its correctness. Information for assessor

447. Subject to the other provisions of this Act, the municipal and school taxes of the town shall be levied upon (1) lands; (2) businesses; and (3) special franchises Subjects of taxation

448. The following property shall be exempt from taxation: Exemptions

1, the interest of the Crown in any property, including property held by any person in trust for the Crown;

30 2, property specially exempted by law;

3, every place of public worship and the land used in connection therewith, not exceeding one acre, of which a religious organization is the owner, except such part as may have any other building thereon; provided that if any portion of a place of public worship is used as a dwelling or is leased and used for purposes other than public worship such portion and the land used in connection therewith shall be subject to taxation;

4, every cemetery and burial ground;

5, the office owned and occupied by a school district or school unit and the buildings and grounds, not exceeding four acres, owned and occupied by it for the purposes of a school, except any part of such buildings used as a dwelling and the land used in connection therewith;

6, the buildings and grounds, not exceeding four acres, of and attached to or otherwise bona fide used in connection with and for the purposes of every hospital which receives public aid under and 10 by virtue of any Act, so long as such buildings and grounds are actually used and occupied by such hospital but not if otherwise occupied or occupied as a dwelling;

7, the building and grounds, not exceeding four acres, of and attached to or otherwise bona fide used in connection with and for the purposes of the association known as "The Young Men's Christian Association" and the association known as "The Young Women's Christian Association," so long as such buildings and grounds are actually used and occupied by such institution but not if otherwise occupied;

20 8, all property belonging to the town;

9, every highway, lane or other public way, and every public square or park whether situated inside or outside the town;

10, the property of every public library established under The Public Libraries Act, and of every other public institution, literary or scientific, to the extent of the actual occupation of such property for the purposes of the institution.

11, the buildings with grounds attached owned and occupied by a branch of The Canadian Legion of the British Empire Service League or the Army and Navy Veterans in Canada;

30 12, every monument erected as a war memorial and the land used in connection therewith to the extent of one acre;

13, the property of any children's aid society, incorporated under The Child Welfare Act, 1946, or any former Act, or approved by the Lieutenant Governor in Council for the purpose of such Act, if used exclusively for the purposes of and in connection with the society;

14, the grounds and buildings of every agricultural society established under The Agricultural Societies Act;

40 15, the buildings owned by a rural municipality and used for municipal purposes, and the land used in connection therewith not exceeding one-half acre in extent; provided that where a portion of any such building is occupied as a residence or for any purpose other

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Portions of The  
Town Act, 1947.  
(Continued)

than a municipal purpose, such portion shall be subject to taxation. R.S.S. 1940, c. 127, s. 450; 1943, c. 23, s. 13; 1944, c. 31, s. 11; 1945, c. 38, s. 22; 1946, c. 30, s. 31; amended.

454. (1) The council may by bylaw require that each householder in the town shall pay a tax not exceeding ten per cent. of the annual rental value of the premises occupied by such householder and may in the same bylaw prescribe the mode or manner of assessment, the procedure on appeal to the council in respect of such assessment, the time within which the assessment shall be made, the time or times of payment of the tax either by monthly instalments or otherwise and the minimum amount of any instalment. Rental tax

(2) For the purposes of this section "householder" means the tenant of a dwelling house or part thereof and includes a tenant occupying a room or rooms for residential purposes in any apartment or business block.

(3) The tax shall be collectable by action or distraint, and during the period of default in payment the treasurer may disconnect or discontinue the water, gas or electricity service to the premises occupied by any person in default. R.S.S. 1940, c. 127, s. 456.

20 455. (1) Subject to subsections (2), (3), (4) and (5), the council may by bylaw require that every person of the age of twenty-one years and upwards who has been a resident of the town for at least three months during the then current year prior to the first day of October shall pay a service tax of \$5. A bylaw heretofore or hereafter passed under this subsection shall remain in force and have effect until repealed. Service tax

(2) The council may by bylaw provide that any person or class or classes of persons shall be exempt from payment of the tax.

(3) The wife of a person who pays a service tax shall not be liable for the tax.

(4) Members of His Majesty's naval, military or air forces on full pay or on actual service or of the Royal Canadian Mounted Police force shall not be liable for the tax.

(5) No person who or whose husband or wife is assessed upon the last revised assessment roll or pays a licence fee in respect of business or is assessed for a tax under section 454 shall be liable to pay a service tax under this section.

(6) The service tax may be collected at any time after the first day of April. R.S.S. 1940, c. 127, s. 489; 1941, c. 23, s. 11; 1942, c. 40 28, s. 17; 1943, c. 23, s. 15; 1944, c. 31, s. 13; 1945, c. 38, s. 24.

Levy	462. The council shall in each year levy on the whole rateable property within the municipality a sum sufficient to pay all debts of the town, whether of principal or interest, falling due within the year. R.S.S. 1940, c. 127, s. 493.	<u>Record</u> <u>Court of Appeal</u> <u>Exhibit No. 117</u>
Tax roll	470. (1) On or before the first day of October in each year the assessor or treasurer shall prepare a tax roll and the treasurer shall proceed to collect the taxes specified therein.	Portions of The Town Act, 1947. (Continued)
Contents	(2) The tax roll may be a continuation of the assessment roll and shall in that way or independently contain:	
	10 (a) the name of every person assessed; (b) his residence; (c) the nature and description of the property in respect of which he is assessed; (d) the total amount for which he is assessed; and there shall be calculated and set down therein opposite to or under appropriate headings the sums for which such person is chargeable by way of taxes on account of any rate that may be imposed under this or any other Act and arrears and the total thereof.	
Alternative form	20 (3) Notwithstanding anything contained in subsection (2), the council may by bylaw provide that, in addition to the information mentioned in clauses (a), (b), (c) and (d) of that subsection, it shall be sufficient for the assessor to set down opposite the assessed value of the property of each taxable person, in a column provided for that purpose, the amount with which such person is chargeable for all sums ordered to be levied by the council, in which case it shall not be necessary to state the particular sums mentioned in the said subsection.	
Minimum tax	30 (4) Any person whose business tax would be less than \$10 for any business shall be taxed \$10 for that business; and the council may by bylaw require that any person whose taxes other than business taxes would be less than \$3 shall be taxed \$3.	
Appendix to roll	(5) Appended to every roll made up under subsection (3) there shall also be a table setting forth:	
	(a) the total amount of taxes to be collected under and by virtue of the roll; and	
	(b) the name and amount of each rate levied by the municipality which is required by law, or by the bylaw imposing it, to be kept distinct and accounted for separately, and specifying the aggregate proceeds of each rate. R.S.S. 1940, c. 127, s. 502 amended.	

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**No. 118**  
Company's Document

**Statutes of Saskatchewan 1947, 11 George VI**  
Chapter 43

Exhibit No. 118

Portions of The  
City Act, 1947.

(As amended by 12 George VI (1948) Chapter 33)  
(Assented to April 1, 1947.)

1. This Act may be cited as the City Act, 1947.

231. (1) For greater certainty but not so as to limit the general powers conferred by section 230, the council may make bylaws for all or any of the following purposes:

Powers in particular

1, raising its revenues by assessment on (a) lands, (b) businesses and (c) special franchises;

Raising revenue

364. The amount of the debenture debt of the city at any time outstanding shall not exceed twenty per cent. of the total amount of the assessment in respect of land, businesses and special franchises, exclusive of:

Limitation of amount

366. (1) The bylaw creating a debt shall state by recital or otherwise:

Contents of bylaw

(a) the amount of the debt intended to be created and in some brief and general terms the object for which it is to be created;

(d) the amount of rateable property in the city according to the last revised assessment roll;

441. (1) As soon as may be in each year but not later than the thirty-first day of May the assessor shall assess:

Preparation of assessment roll

1, in respect to every parcel of land in the city:

(a) the registered owner;

2, every person who is engaged in mercantile, professional or any other business in the city; save that of a farmer, stock raiser or person otherwise engaged in agricultural pursuits or person engaged in fur farming; and

3, the owner of a special franchise; . . . .

and shall prepare an assessment roll in which he shall enter the names and addresses of the persons mentioned in paragraphs 1, 2, 3, and 4.

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Assessment of land and buildings, etc.

442. Subject to the other provisions of this section:

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1, the dominant and controlling factor in the assessment of land and buildings shall be equity;

Portions of The City Act, 1947. (Continued)

2, land shall be assessed at its fair value;

2a, the railway roadway owned by a railway company, or occupied by it if the roadway is owned by some other person and is exempt from taxation, shall be assessed at an amount not exceeding \$6,000 per mile. All other land owned or occupied by a railway company shall be assessed at its fair value but the superstructure thereon shall not be assessed.

Businesses

443. (1) Business shall be assessed in the following manner:

1, the assessor shall fix a rate per square foot of the floor space, irrespective of partitions, elevators, stairways, or other obstructions, of each building or part thereof used for business purposes, and shall as far as he deems practicable classify the various businesses and portions thereof;

2, he may fix a different rate for each class or portion thereof, and in so doing may place a wholesale business in a class distinct from a retail business of otherwise the same class, and may classify each building or part thereof according to the kind of business carried on therein and may fix a different rate for different kinds of business carried on under the same roof, and for storehouses and warehouses or other like appurtenant buildings from that fixed for the principal building, and may fix a different rate for different flats of buildings;

3, the rate shall not exceed \$8 per square foot, except in the case of banks, loan companies or other financial institutions, in which case such rate shall not exceed \$15 per square foot.

Yards used for businesses

30 (2) Where it is found by the assessor that a business is being carried on, either wholly or partially, outside of any building, he shall fix a rate per square foot of the yard space used for such business, and shall as far as he deems practicable classify the various businesses, and he may fix a different rate for each, but such rate shall not exceed \$4 per square foot.

(5a) A railway company, whether its property is liable to assessment and taxation or not, shall be liable to assessment and taxation under this section in respect of the business carried on as a railway and the provisions of this section, except subsection (2), shall apply.

Special franchises

40 (6) Notwithstanding the provisions of paragraph 11 of section 2

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Portions of The  
City Act, 1947.  
(Continued)

or paragraph 4 of section 442, the owner of a special franchise shall be assessed for the land, including buildings and improvements, which he uses or occupies, at the fair value. The plant and apparatus, including machinery and fixtures, erected or placed upon, in, over, under or affixed to land or to any highway, lane or public place or water, shall be assessed at the fair value.

(7) The owner of a special franchise shall also be assessed in respect of the right, authority or permission on the basis of ten per cent. of the value of the franchise under agreement. Same

10 (8) The owner of a special franchise shall not be assessed in respect of business. R.S.S. 1940, c. 126, s. 463 (7) to (11), (13), (14); 1941, c. 22, s. 14; 1942, c. 27, s. 9; 1945, c. 37, s. 23; amended. Same

446. (1) Every person whose property is assessable shall give to the assessor all information necessary to enable him to make up the roll, but no statement made by any person shall bind the assessor or shall excuse him from making inquiry as to its correctness. Information for assessor

479. Subject to the other provisions of this Act, the municipal and school taxes of the city shall be levied upon (1) lands; (2) businesses; and (3) special franchises: Subjects of taxation

20 480. The following property shall be exempt from taxation: Exemptions

1, the interest of the Crown in any property, including property held by any person in trust for the Crown;

2, property specially exempted by law;

3, every place of public worship and the land used in connection therewith, not exceeding one acre, of which a religious organization is the owner, except such part as may have any other building thereon; provided that if any portion of a place of public worship is used as a dwelling or is leased and used for purposes other than public worship such portion and the land used in connection therewith shall be  
30 subject to taxation;

4, every cemetery and burial ground;

5, the office owned and occupied by a school district or school unit and the buildings and grounds, not exceeding four acres, owned and occupied by it for the purposes of a school, except any part of such buildings used as a dwelling and the land used in connection therewith;

6, the buildings and grounds, not exceeding four acres, of and attached to or otherwise bona fide used in connection with and for the purpose of every hospital which receives public aid under and by

virtue of any Act, so long as such buildings and grounds are actually used and occupied by such hospital but not if otherwise occupied or occupied as a dwelling; provided that the council may by bylaw exempt from taxation additional grounds so attached and used not exceeding four acres in extent;

7, the buildings and grounds, not exceeding four acres, of and attached to or otherwise bona fide used in connection with and for the purpose of the association known as "The Young Men's Christian Association," the association known as "The Young Women's Christian Association," any association or organization doing work for young women similar to the work done by the Young Women's Christian Association, and any law school established and maintained by the Benchers of the Law Society of Saskatchewan, so long as such buildings and grounds are actually used and occupied by such institution but not if otherwise occupied;

8, all property belonging to the city;

9, every highway, lane or other public way, and every public square or park whether situated inside or outside the city;

10, the property of every public library established under The Public Libraries Act, and of every other public institution, literary or scientific, to the extent of the actual occupation of such property for the purposes of the institution;

11, the buildings with grounds attached owned and occupied by a branch of The Canadian Legion of the British Empire Service League, The British Imperial Comrades Association or the Army and Navy Veterans in Canada;

12, every monument erected as a war memorial and the land used in connection therewith;

13, the property of any children's aid society, incorporated under The Child Welfare Act, 1946, or any former Act, or approved by the Lieutenant Governor in Council for the purposes of such Act, if used exclusively for the purposes of and in connection with the society;

14, the grounds and buildings of every agricultural society established under The Agricultural Societies Act;

15, the buildings owned by a rural municipality and used for municipal purposes, and the land used in connection therewith not exceeding one-half acre in extent; provided that where a portion of any such building is occupied as a residence or for any purpose other than a municipal purpose, such portion shall be subject to taxation. R.S.S. 1940, c. 126, s. 461; 1943, c. 22, s. 12; 1944, c. 30, s. 12; 1945, c. 37, s. 22; 1946, c. 29, s. 39; amended.

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Portions of The  
City Act, 1947.  
(Continued)

486. (1) The council may by bylaw require that each householder Rental tax  
in the city shall pay a tax not exceeding ten per cent. of the annual  
rental value of the premises occupied by such householder and may  
in the same bylaw prescribe the mode or manner of assessment, the  
procedure on appeal to the council in respect of such assessment,  
the time within which the assessment shall be made, the time or  
times of payment of the tax either by monthly instalments or other-  
wise and the minimum amount of any instalment.

(2) For the purpose of this section "householder" means the  
10 tenant of a dwelling house or part thereof and includes a tenant  
occupying a room or rooms for residential purposes in any apartment  
or business block.

(3) The tax shall be collectable by action or distraint, and during  
the period of default in payment the treasurer may disconnect or  
discontinue the water, gas or electricity service to the premises  
occupied by any person in default. R.S.S. 1940, c. 126, s. 466.

487. (1) Subject to subsections (2), (3), (4) and (5), the council Service tax  
may by bylaw require that every person of the age of twenty-one  
years and upwards who has been a resident of the city for at least  
20 three months during the then current year prior to the first day of  
October shall pay a service tax of \$5. A bylaw heretofore or here-  
after passed under this subsection shall remain in force and have  
effect until repealed.

(2) The council may by bylaw provide that any person or class  
or classes of persons shall be exempt from payment of the tax.

(3) The wife of a person who pays a service tax shall not be  
liable for the tax.

(4) Members of His Majesty's naval, military or air forces on  
full pay or on actual service or of the Royal Canadian Mounted  
30 Police force shall not be liable for the tax.

(5) No person who or whose husband or wife is assessed upon  
the last revised assessment roll or pays a license fee in respect of  
business or is assessed for a tax under section 486 shall be liable to  
pay a service tax under this section.

(6) The service tax may be collected at any time after the first  
day of April. R.S.S. 1940, c. 126, s. 499; 1943, c. 22, s. 16; 1944,  
c. 30, s. 15; 1945, c. 37, s. 24.

495. The council shall in each year levy on the whole rateable Levy  
property within the municipality a sum sufficient to pay all debts

of the city, whether of principal or interest, falling due within the year. R.S.S. 1940, c. 126, s. 502.

Record  
Court of Appeal

Exhibit No. 118

Portions of The  
City Act, 1947.  
(Continued)

Tax roll

504. (1) On or before the first day of October in each year the assessor shall prepare a tax roll and the treasurer shall proceed to collect the taxes specified therein.

Contents

(2) The tax roll may be a continuation of the assessment roll and shall in that way or independently contain:

- (a) the name of every person assessed;
- (b) his residence;

10 (c) the nature and description of the property in respect of which he is assessed;

(d) the total amount for which he is assessed; and there shall be calculated and set down therein opposite to or under appropriate headings the sums for which such person is chargeable by way of taxes on account of any rate that may be imposed under this or any other Act and arrears and the total thereof.

Alternative form

20 (3) Notwithstanding anything contained in subsection (2), the council may by bylaw provide that, in addition to the information mentioned in clauses (a), (b), (c) and (d) of that subsection, it shall be sufficient for the assessor to set down opposite the assessed value of the property of each taxable person, in a column provided for that purpose, the amount with which such person is chargeable for all sums ordered to be levied by the council, in which case it shall not be necessary to state the particular sums mentioned in the said subsection.

Minimum tax

(4) Any person whose business tax would be less than \$10 for any business shall be taxed \$10 for that business; and the council may by bylaw require that any person whose taxes other than business taxes would be less than \$3 shall be taxed \$3.

Appendix to roll

30 (5) Appended to every roll made up under subsection (3) there shall also be a table setting forth:

(a) the total amount of taxes to be collected under and by virtue of the roll; and

(b) the name and amount of each rate levied by the municipality which is required by law, or by the bylaw imposing it, to be kept distinct and accounted for separately, and specifying the aggregate proceeds of each rate. R.S.S. 1940, c. 126, s. 512 amended.

. . . . .  
\_\_\_\_\_

Record  
Court of Appeal

**No. 119**  
Company's Document

**Statutes of Saskatchewan 1947 11 George VI**  
**Chapter 23**

Exhibit No. 119

Portions of The  
Taxation Agree-  
ment Act, 1947.

An Act to authorize the Government of Saskatchewan to enter into a  
Certain Agreement with the Government of Canada.  
(Assented to April 1, 1947.)

His Majesty, by and with the advice and consent of the Legis-  
lative Assembly of Saskatchewan, enacts as follows:

10 1. This Act may be cited as The Taxation Agreement Act, 1947. Short title

2. (1) The Government of Saskatchewan is hereby authorized to Agreement  
authorized  
enter into an agreement, as set forth in the Schedule hereto, with the  
Government of Canada and, upon the execution thereof by a repre-  
sentative of the Government of Canada on behalf of that Government,  
and by the Provincial Treasurer or Acting Provincial Treasurer on  
behalf of the Government of Saskatchewan, the Government of  
Saskatchewan may implement and carry out the terms, conditions  
and provisions thereof.

. . . . .

“3. (1) The following enactments, namely”:

20 The Corporations Taxation Act, chapter 51 of The Revised  
Statutes of Saskatchewan, 1940, as amended by chapter 9 of the  
statutes of 1941 and chapter 22 of the statutes of 1944 (Second  
Session);

The Income Tax Act, chapter 54 of The Revised Statutes of Sas-  
katchewan, 1940, as amended by chapter 10 of the statutes of 1941  
and chapter 24 of the statutes of 1944 (Second Session);

The Railway Taxation Act, chapter 52 of The Revised Statutes  
of Saskatchewan, 1940, as amended by chapter 23 of the statutes of  
1944 (Second Session);

30 Are hereby suspended in operation, save that the said enactments  
shall continue to apply to taxes payable thereunder in the year 1941  
or any previous year and remaining unpaid and to persons, partner-  
ships and corporations liable for such taxes. This section shall be  
deemed to have been in force on and from the first day of January,  
1947.

. . . . .

SCHEDULE

Record  
Court of Appeal  
Exhibit No. 119

Memorandum of Agreement made this                    day of                    1947,

Between:

The Government of Canada (hereinafter called "Canada"),  
represented herein by The Honourable Douglas Charles Abbott,  
Minister of Finance, of the First Part;

And

10            The Government of Saskatchewan (hereinafter called "Sas-  
                 katchewan"), represented herein by The Honourable Clarence  
                 Melvin Fines, Provincial Treasurer, of the Second Part.

Whereas in view of the prospective termination of the wartime  
taxation agreement between the Parties hereto and the consequent  
prospect of a return to the prewar dual system of direct taxation, it is  
desirable to enter into an agreement designed

(a) to establish a more equitable system of taxation throughout  
Canada by reducing duplication of direct taxation and of machinery  
for the collection of direct taxes;

20 (b) to give a greater measure of stability to the revenues of Sas-  
                 katchewan in order to enable it more adequately to carry out its  
                 responsibilities;

(c) to enable Canada, with the co-operation of provincial govern-  
ments, to carry out fiscal and other national policies intended to  
maintain high levels of employment and production; and

Whereas for these purposes Canada has agreed to pay to Sas-  
katchewan the amounts hereinafter provided for and Saskatchewan  
has agreed to suspend the levying and collection of certain taxes here-  
inafter mentioned except corporation income tax as hereinafter  
provided; and

30 Whereas for the further attainment of these purposes Saskatch-  
                 ewan has agreed that it will not levy a corporation income tax for  
                 the raising of revenue for provincial purposes except as hereinafter  
                 permitted and that in the event that it enacts legislation for such  
                 purpose it will provide for the administration by officers and em-  
                 ployees of Canada, on behalf of Saskatchewan, of the said legislation  
                 and Canada has agreed to make provision for such administration;

. . . . .

Now therefore this agreement witnesseth that Canada and Sas-  
katchewan agree as follows:

. . . . .

Portions of The  
Taxation Agree-  
ment Act, 1947.  
(Continued)

Record  
Court of Appeal  
Exhibit No. 119

Portions of The  
Taxation Agree-  
ment Act, 1947.  
(Continued)

6. (1) Subject as hereinafter provided,

(a) Saskatchewan will not impose or permit any municipality to impose

(i) income taxes or corporation income taxes on income of the period commencing on January 1, 1947, and ending on December 31, 1951, or

(ii) corporation taxes on corporations payable during, or in respect of any act, matter or thing done, occurring, arising or any operations or activities carried on during, the said period;

10 (c) without restricting the generality of sub-paragraphs (a) and  
(b) of this paragraph, Saskatchewan will take such action as is  
necessary to ensure that neither Saskatchewan nor any municipality  
will assess, levy or collect any of the taxes therein mentioned, respec-  
tively, in or in respect of the periods therein mentioned, respectively,  
and in particular, will repeal, suspend or nullify or cause to be or to  
remain repealed, suspended or nullified, during the said periods  
respectively, the enactments enumerated in Appendix "A" imposing  
the taxes mentioned in the said sub-paragraphs, respectively, and  
20 tion of the said taxes, respectively, and will not, during the said respec-  
tive periods amend, revise, re-enact or bring into operation any  
of the said enactments or enact any new enactments in the place  
thereof; and

16. (1) In this agreement or any appendix thereto, unless the context otherwise requires,

(b) "corporation tax" means, subject to paragraph four of this clause, a tax or fee other than a tax on net income or gross revenue, the imposing of which singles out for taxation or for discriminatory rates or burdens of taxation corporations, or any class or classes  
30 thereof, or any individual corporation, either formally or in effect, by imposing a tax or fee on or in respect of any act, matter or thing or any activities or operations mainly done by, or affecting, or carried on by corporations, or otherwise, except

(v) a business or occupancy tax based on floor space or on the rental or assessed value of property, imposed by a municipality, or in territory not included in any municipality by any authority (including Saskatchewan) having jurisdiction in such territory; or

(4) All the taxes imposed by the enactments enumerated in

Appendix "A" not being income taxes or corporation income taxes or succession duties shall be deemed for the purpose of this agreement to be corporation taxes, and all the taxes imposed by the enactments enumerated in Appendix "B" shall be deemed for such purpose not to be corporation taxes, corporation income taxes, income taxes or succession duties.

Record  
Court of Appeal

Exhibit No. 119

Portions of The  
Taxation Agree-  
ment Act, 1947.  
(Continued)

APPENDIX "A"

Legal Citation	Title of Enactment
Chapter 51, R.S.S. 1940	The Corporations Taxation Act.
10 Chapter 9, 1941	
Chapter 22, 1944 (2nd Sess.)	
Chapter 54, R.S.S. 1940	The Income Tax Act.
Chapter 10, 1941	
Chapter 24, 1944 (2nd Sess.)	
Chapter 52, R.S.S. 1940	The Railway Taxation Act.
Chapter 23, 1944 (2nd Sess.)	

APPENDIX "B"

Legal Citation	Title of Enactment	Nature of Tax, License Fee or Permit
Chapter 126, R.S.S. 1940	The City Act	Miscellaneous licenses, land tax, local im- provement taxes, business taxes, rent- al tax, poll tax, amusement tax and on special franchises.
Chapter 22, 1941		
Chapter 27, 1942		
Chapter 22, 1943		
Chapter 30, 1944		
30 Chapter 32, 1944 (2nd Sess.)		
Chapter 37, 1945		
Chapter 29, 1946		
Chapter 127, R.S.S. 1940	The Town Act	Miscellaneous licenses, land tax, local im- provement taxes, business taxes, rental tax, poll tax, amuse- ment tax and on spe- cial franchises.
Chapter 23, 1941		
Chapter 28, 1942		
Chapter 23, 1943		
Chapter 31, 1944		
40 Chapter 33, 1944 (2nd Sess.)		
Chapter 30, 1946		
Chapter 38, 1945		

Record  
Court of Appeal

Exhibit No. 119

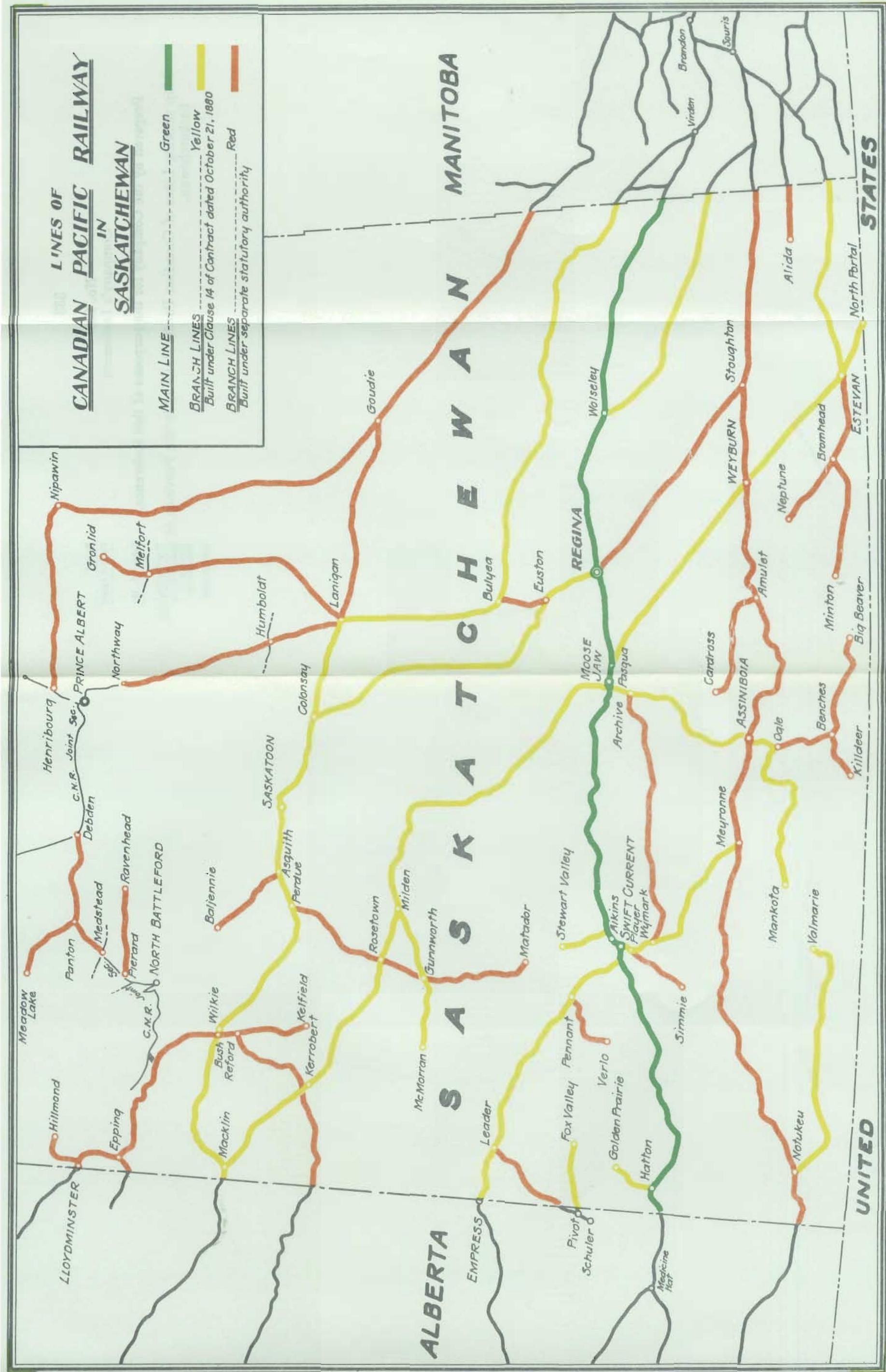
Portions of The  
Taxation Agree-  
ment Act, 1947.  
(Continued)

## APPENDIX "B"

	Legal Citation	Title of Enactment	Nature of Tax, License Fee or Permit
	Chapter 31, 1946	The Village Act, 1946	Miscellaneous licenses, land taxes, business tax, and tax on spe- cial franchises.
10	Chapter 32, 1946	The Rural Municipality Act, 1946	Miscellaneous licenses, land taxes, business taxes and tax on spe- cial franchises, also hospital tax on all residents. Wild lands tax.
	Chapter 33, 1946	The Local Improvement Districts Act, 1946	Land taxes, business taxes, hospital tax and certain licensing provisions.

**LINES OF  
CANADIAN PACIFIC RAILWAY  
IN  
SASKATCHEWAN**

**MAIN LINE** — Green  
**BRANCH LINES** — Yellow  
*Built under Clause 14 of Contract dated October 21, 1880*  
**BRANCH LINES** — Red  
*Built under separate statutory authority*



**ALBERTA**

**MANITOBA**

**SASKATCHEWAN**

**UNITED STATES**

**No. 120**  
Company's Document

Record  
Court of Appeal

**Prepared by the Company for the purposes of this Reference.**

Exhibit No. 120

Map shewing Lines of Canadian Pacific Railway in the Province of  
Saskatchewan.

Map shewing Lines  
of Canadian Pacific  
Railway in the  
Province of  
Saskatchewan.  
October, 1948.

Obtained from the Records of the Canadian Pacific Railway Company  
Winnipeg, Manitoba.

## Exhibit No. 121

Branch lines in the Province of Saskatchewan built from the main line of the Canadian Pacific Railway under clause 14 of the Contract, dated 21st of October, 1880.  
(Oct. 1948.)

Branch lines in the Province of Saskatchewan built from the main line of the Canadian Pacific Railway under clause 14 of the Contract, dated 21st of October, 1880.

	Branch	Location	Built	Miles
	Souris.....	Manitoba Boundary to Estevan.....	1889-1892	78.56
10	Souris.....	Estevan to Pasqua.....	1892-1893	137.62
	Souris.....	Estevan to North Portal.....	1892-1893	23.12
	Pheasant Hills.....	Provincial Boundary to Wilkie.....	1902-1909	408.53
	Wolsley-Reston.....	Reston to Wolseley.....	1905-1908	99.91
	Moose Jaw North			
	West .....	Moose Jaw to Macklin .....	1905-1912	267.7
	Regina-Saskatoon.....	Regina to Colonsay.....	1911	132.8
	Moose Jaw South			
	Westerly.....	Moose Jaw to Expanse.....	1911-1912	34.3
	Swift Current South			
20	Easterly.....	Swift Current to Vanguard.....	1912	44.73
	Swift Current North			
	Westerly.....	Swift Current to Empress.....	1911-1912	34.8
	Moose Jaw South			
	Westerly.....	Expanse to Assiniboia.....	1914-1917	29.4
	Bassano Easterly.....	Milden to McMorrان.....	1919-1923	61.8
	Moose Jaw South			
	Westerly.....	Notukeu to Valmarie.....	1919-1925	96.7
	Pashley North			
	Easterly.....	Pivot to Fox Valley.....	1924-1925	27.0
30	Moose Jaw South			
	Westerly.....	Assiniboia to Ogle.....	1925-1927	11.8
	Moose Jaw South			
	Westerly.....	Ogle to Mankota.....	1927-1929	65.0
	Aikins Northerly.....	Aikins to Stewart Valley.....	1928-1929	20.7
	Hatton North			
	Easterly.....	Hatton to Golden Prairie.....	1928-1929	17.7
	Swift Current South			
	Easterly.....	Vanguard to Meyronne.....	1930-1931	30.8
		Total.....		1602.97

No. 122  
Attorney-General's Document

Record  
Court of Appeal

Revised Statutes of Nova Scotia, Fourth Series, 1873  
Chapter 21

Exhibit No. 122

OF COUNTY ASSESSMENTS

Portions of  
County Assessment  
Act, Nova Scotia,  
1873.

What real and  
personal estate  
liable to taxation

10 "14. For all purposes for which local and direct taxes are and shall be levied by authority of law, unless otherwise specially provided for by law, all land and all such personal property as is hereinafter defined, whether owned by individuals, co-partners or corporations, shall be liable to taxation, subject to the exceptions hereinafter specified; and the occupant of any crown land shall be liable to taxation for the land so occupied, but such land shall not be chargeable for the same."

Definition of terms

"15. The words 'personal estate' and 'personal property,' when they occur in this Chapter, shall be understood to include all such goods, chattels and other property as are enumerated in Schedule A, hereto annexed, and no other; and the term 'property' shall include both real and personal property."

Poll tax,  
proportions and  
upon whom

20 "17. One-fourth and no more of all local and direct taxes shall be levied and assessed by an equal rate as a poll tax on all male persons living within the district of the age of twenty-one years and not being paupers; and the other three-fourths shall be levied and assessed upon the whole taxable real and personal property of the locality, to be taxed in proportion to the assessed value thereof and not upon any one or more kinds of species of property in particular; provided such poll tax shall not exceed the sum of thirty cents on any individual; but the Sessions in any county may order the whole amount to be levied and assessed solely upon real and personal estate."

Proviso

SCHEDULE A

30 "All personal chattels of every kind and description at their actual cash value, except as qualified beneath.

"The average stock of goods on hand of every merchant, trader or dealer, manufacturer, tradesman or mechanic; such average stock to be considered the mean between the highest and the lowest amount of goods on hand at any time during the year, and to be estimated at cost price.

"One-half the value of ships afloat, whether in the Province or elsewhere."

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No. 123  
Attorney-General's DocumentLaws of British Columbia, Consolidated 1877  
Chapter 152

Exhibit No. 123

Portions of  
The Assessment  
Act 1876, Laws of  
British Columbia,  
consolidated 1877.

## The Assessment Act, 1876

“4. The terms ‘land,’ ‘real property,’ and ‘real estate,’ respectively, include all buildings or other things erected upon or affixed to the land, and all machinery or other things so fixed to any building as to form in law part of the realty, and all trees or underwood growing upon the land, and all mines (other than gold mines), minerals (other than gold), quarries, and fossils in and under the same, except mines belonging to Her Majesty.”

Meaning of words  
“Lands” &c.

“5. The terms ‘personal estate’ and ‘personal property’ include all income, goods, chattels, shares in incorporated companies the property of which, as represented by such shares, is not otherwise taxed by this Act, money, notes, Government or Municipal bonds or securities, accounts, and debts at their actual value, and all other property, except land and real estate, and real property as above defined, and except property herein expressly exempted.”

Of “personal  
property,” &c.

20 “6. The term ‘property’ includes both real and personal property as above defined.”

Of “property”

*Property Liable to Taxation*

“8. All land and personal property and income in the Province of British Columbia shall be liable to taxation, subject to the following exemptions, that is to say:

What property  
liable to taxation*Exemptions*

30 “(1) All property now or hereafter to be vested in or held in trust for Her Majesty, or now or hereafter to be held as Dominion railway lands, and all lands to be conveyed to the Dominion Government under the 11th section of the Terms of Union, or otherwise, or held by Her Majesty, or vested in any public body or body corporate, officer, or person, in trust for Her Majesty or for the public uses of the Province; and also all property vested in or held by Her Majesty, or any other person or body corporate, in trust or for the use of any tribe or body of Indians, and either unoccupied or occupied by some person in an official capacity:

All property  
belonging to Her  
MajestyIndian land  
unoccupied or  
occupied officially

40 “(2) When any property, mentioned in the preceding clause number one, is occupied by any person otherwise than in an official capacity, the occupant shall be assessed in respect thereof, but the property itself shall not be liable:

But if occupied  
not officially

Places of  
worship &c.

“(3) Every place of worship, and land used in connection therewith, church-yard, or burying ground:

Record

Court of Appeal

Public school  
houses, gaols,  
hospitals &c.

“(4) Every public school-house, court-house, gaol, house of correction, lock-up house, and public hospital, with the land attached thereto, and the personal property belonging to each of them.

Exhibit No. 123

Portions of  
The Assessment  
Act 1876, Laws of  
British Columbia,  
consolidated 1877.  
(Continued)

Public roads &c.

“(5) Every public roadway or public square:

Municipal property

“(6) The property belonging to any municipality, whether occupied for the purposes thereof or unoccupied, but not when occupied by any person as tenant or lessee, or otherwise than as a servant or  
10 officer of the corporation for the purposes thereof:

Industrial farms &c.

“(7) Every industrial farm and lunatic asylum, and every house belonging to a company for the reformation of offenders, and the real and personal property belonging to or connected with the same:

Scientific  
institutions

“(8) The property of every public library, mechanics' institute, and other public, literary, or scientific institution, and of every agricultural or horticultural society, if actually occupied by such society:

Personal property  
of Governors

“(9) The personal property of the Governor-General of the Dominion of Canada, and of the Lieutenant-Governor of the Province:

Property of fire  
companies

20 “(10) The property of fire companies:

Imperial military  
or naval pay,  
salaries, pensions  
&c.

“(11) The houses and premises whilst occupied by any of the officers, non-commissioned officers, and privates of Her Majesty's regular army and navy in actual service, and the full or half-pay of any one in any or either of such services; any pension, salary, gratuity, or stipend derived by any person from Her Majesty's Imperial Treasury, and the personal property of any person in such naval or military service on full pay, or otherwise in actual service:

Property of officers  
on full pay

Pensions

“(12) All pensions payable out of the public moneys of Her Majesty's Imperial Treasury or out of the public moneys of the  
30 Dominion of Canada or any Province thereof:

Income under  
\$1500

“(13) The income of every person when under fifteen hundred dollars:

Income derived  
from real or  
personal estate

“(14) The income of every person derived from real or personal property assessed under this Act:

Property owned out  
of province

“(15) All property, real or personal, which is situate out of this Province:

Real and personal  
property equal to  
debts due

“(16) So much of the real and personal property of any person as is equal to the just debts owed by him on account of such property:

Personalty under  
\$300

“(17) The net personal property of any person, provided the same  
40 be under three hundred dollars:

Record  
Court of Appeal  
Exhibit No. 133

Portions of  
The Assessment  
Act 1876, Laws of  
British Columbia,  
consolidated 1877.  
(Continued)

“(18) The stipend or salary of any minister of religion, and the parsonage or dwelling-house occupied by him, with the lands attached thereto: Ministers' salaries

“(19) Household effects of whatever kind, books, and wearing apparel: Household effects, books, &c.

“(20) Moneys bona fide invested in gold mines.” Money invested in gold mines

#### *Description of Taxes*

“9. There shall be assessed, levied and collected from every person and paid to Her Majesty, her heirs and successors, the sums following that is to say:

“(1) One-third of one per cent. on the assessed value of real estate: Tax on real estate

“(2) One-fifth of one per cent, on the assessed value of personal estate: Tax on personal estate

“(3) One-half of one per cent. on the income of every person of \$1,500 and over.” Tax on income

“14. Land shall be assessed in the district in which the same lies, and this shall include the land of incorporated companies, as well as other property: and when any business is carried on by a person in a district in which he does not reside, or in two or more districts, the personal property belonging to such person shall be assessed in the district in which such property is situated, and against the person in possession or charge thereof, as well as against the owner.” Land to be assessed in district  
Personal property

“22. Real and personal property shall be estimated at their actual cash value, as they would be appraised in payment of a just debt from a solvent debtor.” How property estimated

#### *Manner of Assessing Personal Property*

“26. Every person shall be assessed in respect of his personal estate, save as herein mentioned.” Assessment of personalty

“27. The personal property of an incorporated company shall be assessed against the company.” Personalty of incorporated company

“56. In case any person neglects to pay his taxes, or any part thereof, for thirty days after such demands as aforesaid, the Collector may, by himself or by his agent levy the same with costs by distress of the goods and chattels of the person who ought to pay the same, or of any goods and chattels in his possession, wherever the same may be found, within the Province, or of any goods or chattels found on the premises, the property of or in the possession of any other occupant of the premises; and the costs chargeable shall be those payable as between landlord and tenant. When payment be not made collector to levy tax by distress and sale

Registration of tax charge

“78. If any tax remains unpaid for the space of one month after the return of the roll by the Collector to the said Assessor, interest shall attach thereon, after the rate of eighteen per centum per annum; and in the case of taxes chargeable against land, the said Assessor shall annually forward to the officer in charge of the Treasury a list of all such arrears, with a description of the parcels, sections, or lots, and the amounts due; and such tax, interest, and the cost of registration, may, on the application of the officer in charge of the Treasury, be registered as a charge against the said land in respect of which such tax is payable, and the Registrar-General of Titles is hereby authorized and required to register the same accordingly; and the said Registrar-General shall, from time to time, publish in the Government gazette, lists of the amounts of the said taxes, interest and costs, and of the lands against which the same are charged.”

Record  
Court of Appeal

Exhibit No. 123

Portions of The Assessment Act 1876, Laws of British Columbia, consolidated 1877. (Continued)

No. 124

Attorney-General's Document

Revised Statutes of Ontario, 1877

Chapter 180

The Assessment Act

Exhibit No. 124

Portions of The Assessment Act, R.S.O. 1877, Cap. 180.

Interpretation Clause

20 “2. In this Act

“Land,” “real property,” “real estate”

“(7) ‘Land,’ ‘Real Property,’ and ‘Real Estate,’ respectively, shall include all buildings or other things erected upon or affixed to the land, and all machinery or other things so fixed to any building as to form in law part of the realty, and all trees or underwood growing upon the land, and all mines, minerals, quarries and fossils in and under the same, except mines belonging to Her Majesty, 32 V, c. 36, s. 3.

Personal estate  
Personal property

“(8) ‘Personal Estate’ and ‘Personal Property’ shall include all goods, chattels, shares in incorporated companies, interest on mortgages, dividends from bank stock, money, notes, accounts and debts at their actual value, income and all other property, except land and real estate, and real property as above defined, and except property herein expressly exempted. 32 V, c. 36, s. 4.

Property

“(9) ‘Property’ shall include both real and personal property as above defined. 32 V, c. 36, s. 5.”

All taxes to be levied equally upon the rateable property when no other provision made

“5. All municipal, local or direct taxes or rates, shall, where no other express provision has been made in this respect, be levied equally upon the whole rateable property, real and personal, of the

**Record**  
**Court of Appeal**  
**Exhibit No. 124**

Portions of  
 The Assessment  
 Act, R.S.O. 1877,  
 Cap. 180.  
 (Continued)

Municipality or other locality, according to the assessed value of such property, and not upon any one or more kinds of property in particular, or in different proportions. 32 V, c. 36, s. 8."

"6. All land and personal property in this Province shall be liable to taxation, subject to the following exemptions, that is to say: What property liable to taxation

*Exemptions*

"(15) The income of a farmer derived from his farm, and the income of merchants, mechanics, or other persons derived from capital liable to assessment. 32 V, c. 36, s. 9 (14); 33 V, c. 27, s. 2. Income of farmers, etc.

10 "(18) The stock held by any person in any Railroad Company, the shares in Building Societies, and so much of the personal property of any person as is invested in any Company incorporated for the purpose of lending money on the security of real estate: but the interest and dividends derived from shares in such Building Societies, or from investments in such companies as aforesaid, shall be liable to be assessed. 32 V, c. 36, s. 9 (17); 33 V, c. 27, s. 3. Railroad and building society stock

"(21) The net personal property of any person; provided the same is under one hundred dollars in value. 32 V, c. 36, s. 9 (20). Personalty under \$100

20 "(22) The annual income of any person: provided the same does not exceed four hundred dollars. 32 V, c. 36, s. 9 (21). Income under \$400

"(24) Rental or other income derived from real estate, except interest on mortgages. 32 V, c. 36, s. 9 (23). Rental of real estate, etc.

"(25) Household effects of whatever kind, books and wearing apparel. 32 V, c. 36, s. 9 (24)." Household effects, books, &c.

30 "13. Land shall be assessed in the Municipality in which the same lies, and, in the case of Cities and Towns, in the Ward in which the property lies; and this shall include the land of incorporated Companies, as well as other property; and when any business is carried on by a person in a Municipality in which he does not reside, or in two or more Municipalities, the personal property belonging to such person shall be assessed in the Municipality in which such personal property is situated, and against the person in possession or charge thereof, as well as against the owner. 32 V, c. 36, s. 22." Land to be assessed in the municipality or ward  
Personal property

"23. Except in the case of mineral lands hereinafter provided for, real and personal property shall be estimated at their actual cash How property estimated

value, as they would be appraised in payment of a just debt from a solvent debtor. 32 V, c. 36, s. 30.”

Record  
Court of Appeal  
Exhibit No. 124

How person deriving income from any trade or profession to be assessed

“28. Subject to the provisions of the seventh section, no person deriving an income exceeding four hundred dollars per annum from any trade, calling, office, profession or other source whatsoever, not declared exempt by this Act, shall be assessed for a less sum as the amount of his net personal property than the amount of such income during the year then last past, in excess of the said sum of four hundred dollars, but no deduction shall be made from the gross amount of such income, by reason of any indebtedness, save such as is equal to the annual interest thereof; and such last year’s income, in excess of the said sum of four hundred dollars, shall be held to be his net personal property, unless he has other personal property liable to assessment, in which case such excess and other personal property shall be added together and constitute his personal property liable to assessment. 32 V, c. 36, s. 35.”

Portions of The Assessment Act, R.S.O. 1877, Cap. 180. (Continued)

Personal property of corporate companies not to be assessed.

“29. The personal property of an incorporated Company shall not be assessed against the Company, but each shareholder shall be assessed for the value of the stock or shares held by him as part of his personal property, unless such stock is exempted by this Act.

Gas companies, &c.

“2. In Companies investing their means in gas works, waterworks, plank and gravel roads, manufactories, hotels, railways and tram roads, harbours or other works requiring the investment of the whole or principal part of the stock in real estate already assessed for the purpose of carrying on such business, the shareholders shall only be assessed on the income derived from such investment. 32 V, c. 36, s. 56.”

When payment is not made, collectors to levy the tax by distress and sale

“93. In case any person neglects to pay his taxes for fourteen days after such demand as aforesaid, the Collector may, by himself or by his agent, levy the same with costs, by distress of the goods and chattels of the person who ought to pay the same, or of any goods or chattels in his possession, wherever the same may be found within the County in which the local Municipality lies, or of any goods or chattels found on the premises, the property of, or in the possession of, any other occupant of the premises; and the costs chargeable shall be those payable to bailiffs under “The Divisions Courts Act.” 32 V, c. 36, s. 95.”

Revised Statutes, c. 47

Taxes to be a lien on the land

“105. The taxes accrued on any land shall be a special lien on such land, having preference over any claim, lien, privilege or incumbrance of any party except the Crown, and shall not require registration to preserve it. 32 V, c. 36, s. 107.”

No. 125  
Attorney-General's DocumentThe Laws of British Columbia, Consolidated 1877  
Chapter 129

Exhibit No. 125

Portions of an  
Act respecting  
Municipalities,  
B.C., 1877.

## An Act Respecting Municipalities

"51. The Assessor in every municipality shall prepare an assessment roll, in which, after diligent enquiry, he shall set down—

Assessment roll

"(1) The names of all taxable persons resident in the municipality:

"(2) The names of all persons resident out of the municipality, but taxable therein:

"(3) A full description of all taxable property within the municipality, showing the extent and value or amount thereof."

"52. The assessment roll of every municipality shall be annually revised and corrected by the Council thereof.

Revision of assessment roll

"(6) The Council may in each and every year after the final revision of the roll, pass a by-law for levying a rate on all the real and personal property on the said roll, to provide for all the necessary expenses of said municipality, and also such sum or sums of moneys as may be found expedient."

20 "53. Rates and taxes may be settled, imposed, and levied upon real estate and improvement thereon within a municipality by the Council thereof, not exceeding in any one year one per cent, and one-third of one per cent. on the assessed value thereof. (No. 5 of 1873, sec. 44.)"

Limitation of tax on real estate

"75. In case any person neglects to pay his taxes for fourteen days after such demand made as aforesaid, the Collector shall, by himself or his agent, levy the same with costs, by distress of the goods and chattels of the person who ought to pay the same, or of any goods or chattels in his possession wherever the same may be found within the Province. (No. 5 of 1873, sec. 28.)"

If payment be not made, collector to levy tax by distress

"87. The taxes accrued or to accrue on any land, shall be a special lien on such land, having preference over any claim, lien, privilege, or incumbrances of any party except the Crown, and shall not require registration to preserve it. (No. 5 of 1873, sec. 40.)"

Taxes to be a special lien on land

The Consolidated Statutes of Manitoba, 1880  
Chapter 64

An Act Respecting Municipalities

Council to assess  
to pay debts

“XX. The council shall assess and levy on the whole real and personal property within its jurisdiction, except as hereinafter provided, a sufficient sum in each year to pay all valid debts of the corporation, whether of principal or interest, falling due within the year,  
10 but no such council shall levy in any one year more than an aggregate of one cent in the dollar on the assessed value. 43 V, c. 1, s. 20.”

By-laws for  
levying rates

“XXV. (i) The council shall, in each and every year after the final revision of the roll, pass a by-law for levying a rate on all the real and personal property on the said roll to provide for all the necessary expenses of said municipality, and also such sum or sums of money as may be found expedient, including such sums as may be required for school purposes in the respective school districts, on property of school districts within the municipality, by the trustees thereof, when  
20 the said trustees shall, on or before the first day of September in each and every year, provide the clerk of the municipality with an estimate of the sum required, accompanied with a list of the names of the persons liable to be assessed for the support of such school;”

Assessment—how  
payable

“XXXIII. All assessments imposed under this Act shall be due and payable, not only by the owner of the property upon which they are imposed, but also by the possessor or occupant of the said property, and by tenant or lessee of such property; but the payment of such assessment by any such person shall discharge the property. 43 V, c. 1, s. 30.”

Collector may levy  
for non-payment  
of tax

“XXXIX. In case any person neglects to pay his taxes for thirty  
30 days after such demand as aforesaid, the collector may, by himself or by his agent, levy the same with costs by distress and sale of the goods and chattels of the person who ought to pay the same, or of any goods or chattels in his possession, wherever the same may be found within the municipality or not; and the costs chargeable shall be those the council may by by-law allow for the same. 43 V, c. 1, s. 34.”

Record  
Court of Appeal

**No. 127**  
Company's Document

**Revised Statutes of Ontario, 1937**  
Chapter 272

Exhibit No. 127

Portions of the  
Assessment Act,  
Ontario, 1937.

The Assessment Act, R.S.O. 1927

. . . . .  
"8. (1) Irrespective of any assessment of land under this Act, every person occupying or using land for the purpose of any business mentioned or described in this section shall be assessed for a sum to be called 'business assessment' to be computed by reference to 10 the assessed value of the land so occupied or used by him, as follows:"

\_\_\_\_\_

## Formal Judgment.

THE SUPREME COURT OF CANADA.

ON APPEAL FROM THE COURT OF APPEAL FOR SASKATCHEWAN.

Monday, the 20th day of November, A.D. 1950.

In the  
Supreme  
Court of  
Canada.Formal  
Judgment,  
20th  
November  
1950.

Present :

10 The Right Honourable, The CHIEF JUSTICE OF CANADA,  
The Honourable Mr. Justice KERWIN,  
The Honourable Mr. Justice TASCHEREAU,  
The Honourable Mr. Justice KELLOCK,  
The Honourable Mr. Justice ESTEY,  
The Honourable Mr. Justice LOCKE,  
The Honourable Mr. Justice CARTWRIGHT.

Between :

CANADIAN PACIFIC RAILWAY COMPANY ... .. *Appellant*  
and  
THE ATTORNEY-GENERAL FOR SASKATCHEWAN ... .. *Respondent.*

20 The appeal of the above named Appellant from the judgment of the Court of Appeal for Saskatchewan pronounced in the above cause on the 29th day of January, A.D. 1949, answering certain questions referred to the said Court pursuant to the provisions of "The Constitutional Questions Act" (being Chapter 72 of the Revised Statutes of Saskatchewan 1940) by Order-in-Council No. 1914 A/48 approved the 16th day of November, A.D. 1948, having come on to be heard before this Court on the 8th, 9th, 10th, 13th and 14th days of March, A.D. 1950, in the presence of Counsel as well for the Appellant as for the Respondent, where upon and upon hearing what was alleged by Counsel aforesaid, this Court was pleased to direct that the said appeal should stand over for judgment, and the same coming on this day for judgment.

30 THIS COURT DID ORDER AND ADJUDGE that the said appeal should be and the same was allowed in part, and that the said judgment of the Court of Appeal for Saskatchewan should be and the same was varied by providing that the answers to the questions should be as follows :

Question No. 1.—No, except such properties, if any, real or personal, enumerated in Clause 16, situate upon the branch lines in Saskatchewan as are entitled to the benefit of the exemption from taxation as being required

In the  
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*continued.*

and used for the construction and working of the railway described in sections 1, 2 and 3 of the Act 37 Vict. cap. 14.

Question No. 2.—Yes, as to the business carried on as a railway upon or in connection with the railway as described in sections 1, 2 and 3 of the Act 37 Vict. cap. 14, and upon such other properties, if any, real or personal, of the Company situate upon its branch lines in Saskatchewan as are entitled to the benefit of exemption from taxation under clause 16 as being required and used for the construction and working of that portion of the line referred to in the said sections of the statute.

Question No. 3.—Yes, except in respect of such real estate, if any, 10 situate upon branch lines constructed pursuant to clause 14 of the contract as is entitled to the benefit of the exemption from taxation under clause 16 as being required and used for the construction and working of the railway as described in sections 1, 2 and 3 of the Act 37 Vict. cap. 14.

Question No. 4.—(a) No.

(b) Yes, subject to the limitation stated in the answer to Question 2.

AND THIS COURT DID ORDER AND ADJUDGE that the Respondent should and do pay to the Appellant one-half of its costs of this Appeal.

PAUL LEDUC,  
*Registrar.*

20

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### Reasons for Judgment.

Reasons for  
Judgment.  
(a) The  
Chief  
Justice  
(concurrent  
in by  
Taschereau  
J.)

THE CHIEF JUSTICE (concurrent in by TASCHEREAU, J.):

The Province of Saskatchewan was established in 1905 by Statutes of Canada, 4-5, Edw. VII, c. 42.

By force of that Statute (Section 3), the provisions of the British North America Acts, 1867 to 1886, apply to that Province "in the same way and to the like extent as they apply to the provinces heretofore comprised in the Dominion as if the said Province of Saskatchewan had been one of the provinces originally united," except insofar as varied by that Statute or except such provisions as are in terms made or by reasonable intendment may be held to be specially applicable to or only to affect one or more and not the whole of the said provinces. 30

Section 24 of the Saskatchewan Act provides that the powers granted to the said Province shall be exercised subject to the provisions of Section 16 of the contract set forth in the Schedule to Chapter 1 of the Statutes of 1881, being an Act Respecting the Canadian Pacific Railway Company.

Clause 16 of that contract provides :

10 “ 16. The Canadian Pacific Railway, and all stations and station  
 “ grounds, workshops, buildings, yards and other property, rolling  
 “ stock and appurtenances required and used for the construction  
 “ and working thereof, and the capital stock of the Company, shall  
 “ be forever free from taxation by the Dominion or by any province  
 “ hereafter to be established, or by any Municipal Corporation  
 “ therein; and the lands of the Company, in the North-West  
 “ Territories, until they are either sold or occupied, shall also be free  
 “ from such taxation for twenty years after the grant thereof from the  
 “ Crown.”

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 (a) The  
 Chief  
 Justice :  
 (concurrent  
 in by  
 Taschereau  
 J.)—  
*continued.*

Clause 1 of the contract provides :

20 “ 1. For the better interpretation of this contract, it is hereby  
 “ declared that the portion of railway hereinafter called the Eastern  
 “ section, shall comprise that part of the Canadian Pacific Railway  
 “ to be constructed, extending from the Western terminus of the  
 “ Canada Central Railway, near the East end of Lake Nipissing,  
 “ known as Callander Station, to a point of junction with that  
 “ portion of the said Canadian Pacific Railway now in course of  
 “ construction extending from Lake Superior to Selkirk on the East  
 “ side of Red River; which latter portion is hereinafter called the  
 “ Lake Superior section. That the portion of said railway, now  
 “ partially in course of construction, extending from Selkirk to  
 “ Kamloops, is hereinafter called the Central section; and the  
 “ portion of said railway now in course of construction, extending  
 “ from Kamloops to Port Moody, is hereinafter called the Western  
 “ section. And that the words ‘The Canadian Pacific Railway,’ are  
 “ intended to mean the entire railway, as described in the Act  
 “ 37th Victoria, chap. 14. The individual parties hereto, are  
 “ hereinafter described as the Company, and the Government of  
 “ Canada is hereinafter called the Government.”

30

The description referred to in the Act 37 Vict. c. 14, is contained in Sections 1 to 4 of that Statute and reads as follows :

40 “ 1. A railway to be called the ‘Canadian Pacific Railway’  
 “ shall be made from some point near to and south of Lake Nipissing  
 “ to some point in British Columbia on the Pacific Ocean, both the  
 “ said points to be determined and the course and line of the said  
 “ railway to be approved of by the Governor in Council.  
 “ 2. The whole line of the said railway, for the purpose of  
 “ its construction, shall be divided into four sections: the first  
 “ section to begin at a point near to and south of Lake Nipissing,  
 “ and to extend towards the upper or western end of Lake Superior,  
 “ to a point where it shall intersect the second section hereinafter  
 “ mentioned; the second section to begin at some point on Lake  
 “ Superior to be determined by the Governor in Council, and

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Justice  
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*continued.*

“connecting with the first section, and to extend to Red River, in  
“the Province of Manitoba; the third section to extend from Red  
“River, in the Province of Manitoba, to some point between Fort  
“Edmonton and the foot of the Rocky Mountains, to be determined  
“by the Governor in Council; the fourth section to extend from the  
“western terminus of the third section to some point in British  
“Columbia on the Pacific Ocean.

“3. Branches of the said railway shall also be constructed  
“as follows; that is to say:

“First—a branch from the point indicated as the proposed 10  
“eastern terminus of the said railway to some point on the  
“Georgian Bay, both the said points to be determined by the  
“Governor in Council.

“Secondly—A branch from the main line near Fort Garry,  
“in the Province of Manitoba, to some point near Pembina  
“on the southern boundary thereof.

“4. The branch railways above mentioned shall, for all intents  
“and purposes, be considered as forming part of the Canadian  
“Pacific Railway, and as so many distinct sections of the said  
“railway, and shall be subject to all the provisions hereinafter 20  
“made with respect to the said Canadian Pacific Railway, except  
“in so far as it may be otherwise provided for by this Act.”

The Canadian Pacific Railway Company was constituted pursuant to  
Statutes of Canada, 44 Vict., c. 1, assented to on the 15th of February,  
1881, by Letters Patent granted by His Excellency the Governor-General  
under the Great Seal of Canada, under date 16th February, 1881.

The contract which the Court is called upon to construe was executed  
between the Crown, in the right of the Dominion of Canada, and George  
Stephen and others relating to the Canadian Pacific Railway and was dated  
October 21, 1880. It was appended as a Schedule to the Statute 44 Vict., 30  
c. 1, and it was ratified by that Statute; the wording of the contract  
being incorporated in the Letters Patent.

Section 4 of the Schedule to the said contract provides that

“All the franchises and powers necessary or useful to the  
“Company to enable them to carry out, perform, enforce, use, and  
“avail themselves, of, every condition, stipulation, obligation,  
“duty, right, remedy, privilege, and advantage agreed upon,  
“contained or described in the said contract, are hereby conferred  
“upon the Company.”

The contract provided for the incorporation of Canadian Pacific 40  
Railway Company and the construction by it of a main line of railway from  
Callander Station, near Lake Nipissing, in the Province of Ontario, the  
western terminus of the existing railway system of Canada, to Port Moody  
located on the seaboard of British Columbia.

The contract provided for the construction of branch lines by Clause 14  
as follows:—

10 “ 14. The Company shall have the right from time to time, to lay out, construct, equip, maintain, and work branch lines of railway from any point or points along their main line of railway, to any point or points within the territory of the Dominion. Provided always, that before commencing any branch they shall first deposit a map and plan of such branch in the Department of Railways. And the Government shall grant to the Company the lands required for the road bed of such branches, and for the stations, station grounds, buildings, workshops, yards and other appurtenances requisite for the efficient construction and working of such branches, in so far as such lands are vested in the Government.”

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Reasons for Judgment. (a) The Chief Justice (concurred in by Taschereau J.)—  
*continued.*

The area through which the Canadian Pacific Railway was to be constructed between the western boundary of Manitoba, as then constituted, and the eastern boundary of British Columbia was then part of the North-West Territories and was administered by the Dominion Government.

The Province of Saskatchewan, having been established as aforesaid in 1905, certain municipal statutes were subsequently passed in the years 1946 and 1947, which provided :

20 “ (a) That the railway roadway and other land within the province owned by railway companies shall be assessed and taxed, and  
“ (b) That railway companies, whether their property is liable to assessment and taxation or not, shall be liable to assessment and taxation in respect of the business carried on as a railway within the Province at a rate per square foot of the floor space of each building or part thereof used for business purposes.”

30 Disputes having arisen between various municipalities and the Canadian Pacific Railway with respect to the latter legislation, the Executive Council of the Province of Saskatchewan, on the recommendation of the Attorney-General and pursuant to the provisions of the Constitutional Questions Act, being c. 72 of the Revised Statutes of Saskatchewan, 1940, was pleased to refer to the Court of Appeal for Saskatchewan the following questions for hearing and consideration :

40 “ 1. Does Clause 16 of the contract set forth in the Schedule to Chapter 1 of the Statutes of Canada, 44 Victoria (1881), being an Act respecting the Canadian Pacific Railway, exempt and free from taxation the stations and station grounds, workshops, buildings, yards, and other property used for the working of the branch lines of the Canadian Pacific Railway Company situated in Saskatchewan ?

“ 2. Does Clause 16 of the contract aforesaid exempt and free the Canadian Pacific Railway Company from taxation in Saskatchewan in respect of the business carried on as a railway  
“ (a) based on the area of the land or the floor space of buildings  
“ used for the purposes of such business,

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*continued.*

“ (b) based on the rental value of the land and buildings used for  
“ the purposes of such business,

“ (c) based on the assessed value of the land and buildings used  
“ for the purposes of such business, but not made a charge  
“ upon such land or buildings ?

“ 3. Are the provisions of the said The Village Act, 1946, The  
“ Rural Municipalities Act, 1946, The Local Improvement Districts  
“ Act 1946, The City Act, 1947, and The Town Act, 1947, all as  
“ amended, relating to the assessment and taxation of the real  
“ estate of railway companies, operative in respect of branch lines 10  
“ of Canadian Pacific Railway Company in the Province of  
“ Saskatchewan constructed pursuant to Clause 14 of the said  
“ contract ?

“ 4. Are the provisions of the said The Village Act, 1946, The  
“ Rural Municipalities Act, 1946, The Local Improvement Districts  
“ Act, 1946, The City Act, 1947, and the Town Act 1947, all as  
“ amended, relating to the assessment and taxation of railway  
“ companies in respect of the business carried on as a railway,  
“ operative with respect to Canadian Pacific Railway Company in  
“ respect of the stations, workshops, and other buildings, used for 20  
“ the working of

“ (a) the main line of its railway in Saskatchewan, and  
“ (b) its branch lines in Saskatchewan ? ”

The Court of Appeal of Saskatchewan by a majority answered “ No ”  
to Questions Nos. 1 and 2 (a) ; “ Yes ” to Questions Nos. 3, 4 (a) and 4 (b) ;  
but declined to answer Questions Nos. 2 (b) and 2 (c). Mr. Justice Gordon  
dissented as to the answer given by the majority of the Court to  
Questions Nos. 1 and 3.

From that judgment the Canadian Pacific Railway Company appeals  
to this Court and we heard Counsel for the Company and for the Attorney- 30  
General for Saskatchewan.

It is apparent that the answers to be given to the several questions  
submitted to the Court depend upon the construction to be put on the  
contract between the Crown and George Stephen and others already  
referred to, and more particularly, on Sections 1, 14, 16 and 22 thereof.

Sections 1, 14 and 16 form part of the Order of Reference and have  
been above reproduced.

Section 22 reads as follows :—

“ 22. The Railway Act of 1879, in so far as the provisions of  
“ the same are applicable to the undertaking referred to in this 40  
“ contract, and in so far as they are not inconsistent herewith or  
“ inconsistent with or contrary to the provisions of the Act of  
“ incorporation to be granted to the Company, shall apply to the  
“ Canadian Pacific Railway.”

By Questions 1 and 3 the Court of Appeal was asked, in effect, whether  
the freedom from taxation in Clause 16 applies to branch lines constructed  
under the authority of Clause 14 of the contract.

By Questions 2 and 4 the Court of Appeal was asked, in effect, whether the freedom from taxation in Clause 16 applies to business taxes provided for in certain Statutes of the Province of Saskatchewan.

It will be observed that Question No. 1 is so worded as to apply to all branch lines of the Appellant in Saskatchewan. In the Court of Appeal, however, only branch lines constructed under the authority of the contract were in issue and the Appellant stated in this Court that it did not contend that the freedom from taxation in Clause 16 of the contract extends to branch lines other than those constructed under the authority of Clause 14.

10 The same observation should not be made of Question No. 3, since it is in terms limited to branch lines constructed pursuant to Clause 14.

The Company submitted that the true answer to be given to Question No. 1 should be in the affirmative ; but that even if the Court of Appeal was to be upheld in its view, then Question No. 1 should not be answered unreservedly in the negative, but that there should be added to the word " No " the following words :

20 " . . . . Provided, however, that Clause 16 does exempt and free  
 " from taxation such stations and station grounds, workshops,  
 " buildings, yards and other property required and used for the  
 " construction and working of the Canadian Pacific Railway (meaning  
 " ' the entire railway as described in the Act 37 Vict. c. 14,' that is  
 " to say : the four main line sections, the Georgian Bay branch, the  
 " Pembina branch and the Winnipeg Branch)."

The Company further submitted that Question No. 3 should be answered in the negative ; but that, at all events, if the Court of Appeal should be upheld in its view, Question No. 3 should not be answered unreservedly in the affirmative, but that there should be added to the word " Yes " the following words :

30 " . . . . Provided, however, that such provisions are not operative  
 " in respect of stations and station grounds, workshops, buildings  
 " yards and other property located on such branch lines and required  
 " and used for the construction and working of the Canadian Pacific  
 " Railway (meaning ' the entire railway as described in the Act 37  
 " Vict. c. 14,' that is to say : the four main line sections, the  
 " Georgian Bay branch, the Pembina branch and the Winnipeg  
 " branch)"

As to Question No. 2, the Company submitted that it should be answered in the affirmative and that Question No. 4 should be answered in the negative.

40 At bar, Counsel for the Respondent stated that the Province would be agreeable to a qualified answer being given to Question No. 1, so that it would read as follows :

" No. Provided, however, that the fact that such property  
 " is used for the working of the branch lines would not, of itself,  
 " defeat any exemption to which such property might be entitled  
 " by reason of its being required and used for the working of the  
 " main line of the Canadian Pacific Railway in Saskatchewan."

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 Judgment.

(a) The  
 Chief  
 Justice  
 (concurred  
 in by  
 Taschereau  
 J.)—

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(a) The  
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in by  
Taschereau  
J.)—  
*continued.*

Of the Statute of Canada of 1881 (44 Vict., c. 1), which is entitled "An Act Respecting the Canadian Pacific Railway," very little need be said.

The preamble states that the Parliament of Canada has expressed a preference for the construction and operation of the railway by means of an incorporated company aided by grants of money and land and that certain statutes have been passed to enable that course to be followed, but the enactments therein contained have not been effectual for that purpose.

It further states that a contract has been entered into for the construction of the railway; that the contract has been laid before Parliament and that it is expedient to approve and ratify it, as well as to make provision for the carrying out of the same. 10

A copy of the contract is annexed to the Statute. It is declared approved and ratified and the Government is authorized to perform and carry out the conditions thereof; and that, for the purpose of incorporating the persons mentioned in the contract and those who shall be associated with them in the undertaking, the Governor may grant to them, in conformity with the contract, under the corporate name of the Canadian Pacific Railway Company, a charter conferring upon them the franchises, privileges and powers embodied in the schedule, and that such charter, being published in the Canada Gazette, shall have force and effect as if it were an Act of Parliament, and shall be held to be an Act of incorporation within the meaning of the contract. 20

The Statute provides that the Government may make to the Company certain grants of money and land upon the terms and conditions agreed upon in the contract; that the Government may permit the admission free of duty of certain materials to be used in the original construction of the railway and convey to the Company the possession of and right to work and run the several portions of the railway, as the same shall be hereafter completed; and the Government shall also take security for the continuous operation of the railway during the ten years next subsequent to the completion thereof in the manner provided by the contract. 30

It is apparent, therefore, that the Statute, in effect, was passed with the object of approving and ratifying the contract without adding anything to it and that it is to the contract, and not to the Statute, that we must look for the purpose of answering the questions submitted to the Court.

The difference is important for a term of a contract is quite another thing from an exemption section in a taxing Act. *Canadian Pacific Railway v. Burnett*, 1889 (5 Man. L.R., p. 395).

Here, the Appellant does not claim a special treatment as was the case decided by the Judicial Committee in *Montreal v. College Sainte-Marie* (1921) A.C. 288 at 290-1. The exemptions claimed by the Appellant are the result of a *quid pro quo*, the company receiving these exemptions as a consideration for the fact that they undertook the construction and the working of the railway throughout Canada. In that respect, the Statute added nothing to the consideration given by the Government; the provisions relating thereto are entirely contained in the contract. 40

Now, Clause 1 of the contract is stated to be inserted "for the better interpretation of this contract." It may be said, however, that the definition there given of "the Canadian Pacific Railway" far from helping in that interpretation is rather confusing. It states that the words "the Canadian Pacific Railway" are intended to mean the entire railway, as described in the Act 37 Vict. c. 14, and it adds that the individual parties to the contract "are hereinafter described as the Company." As a matter of fact, the entire railway, as described in that Act of 1874, consisted of seven sections, four of which were described in Section 2, two of which were described in Sections 3 and 4, and the seventh of which was described in an Amending Act of 1879, this Amending Act expressly providing that all the provisions of the 1874 Act, with respect to branches of the railway, were to apply to this added branch. The seventh section of the 1874 railway, known as the Winnipeg Branch, is not expressly mentioned in the contract. It had, however, at that time been constructed, or was in the course of construction, probably as part of the main line, and it was conveyed to the Company pursuant to Clause 7 of the contract.

But, by Clause 1 of the contract of 1880, only four sections are provided for. The section corresponding with the first section of the 1874 railway is called the Eastern Section. The section corresponding with the second section of the 1874 railway is called the Lake Superior Section. The section extending from Selkirk to Kamloops is called the Central Section, which corresponds with the third section and part of the fourth section of the 1874 railway; and the section extending from Kamloops to Port Moody is called the Western Section and corresponds with part of the fourth section of the 1874 railway.

The fifth section of the 1874 railway, known as the Georgian Bay branch, is not provided for in the contract of 1880 and was never built.

The sixth section of the 1874 railway, known as the Pembina branch, is not expressly mentioned in the contract of 1880. It had then been completed and was later conveyed to the Company pursuant to Clause 7 of the contract.

The seventh section of the 1874 railway, known as the Winnipeg branch, is not provided for by the contract of 1880 and, as such, was not built.

By the contract, the Government was to cause to be completed the Lake Superior section and the Western section. The Company was to construct the Eastern section and the Central section. Upon completion of those two last sections by the Company, the Government was to convey to the Company those parts of the railway which the Government undertook to construct.

Thus, the railway contemplated by the 1880 contract is not accurately described in Clause 1 thereof in the Act 37 Vict., c. 14 (1874); and one may not rely upon that so-called description for the purpose of construing the contract of 1880, for the railway provided for by the 1880 contract was a different railway from the entire railway described in the 1874 Act.

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It is common ground that one of the principal concepts underlying the 1880 contract was for the purpose of constructing a railway to open up the North-West Territories. For this purpose, the railway was to consist of a main line and of an indeterminate number of branches, as shown by the authority given to the contractors by Clause 14. By that clause, the Company was given the right, from time to time, to lay out, construct, equip, maintain and work branch lines of railways from any point or points along their main line to any point or points within the territory of the Dominion. The only proviso was that before commencing any branch the railway had first to deposit a map and plan of such branch in the Department of Railways. Further, the Government undertook to grant to the Company the lands required for the road bed of such branches and for the stations, station grounds, buildings, workshops, yards and other appurtenances requisite for the efficient construction and working of such branches, insofar as such lands were vested in the Government. 10

Moreover, for twenty years from the date of the contract, no line of railway was to be authorized by the Dominion Parliament to be constructed South of the Canadian Pacific Railway from any point at or near the railway, except such line as shall run South West or to the Westward of South West; nor to within fifteen miles of Latitude 49. And in the establishment of any new province in the North-West Territories, provision shall be made for continuing such prohibition after such establishment until the expiration of the said period of twenty years (Clause 15 of the 1880 contract). 20

It is quite clear, therefore, that describing the railway contemplated by the contract as being described in the Act 37 Vict., c. 14 (1874) was quite inappropriate. If it had any meaning at all, it must have been for the purpose of identifying the Canadian Pacific Railway for the construction of which the Act of 1874 provided. It must be given a meaning and I cannot find any other. 30

Now, Question No. 1 is put in respect of stations and station grounds, workshops, buildings, yards and other property used for the working of the branch lines . . . situated in Saskatchewan.

If we turn to the railway described in Sections 1 to 4 of the Statute 37 Vict., cap. 14, it is to be noted that the branches are there specifically described as "a branch from the point indicated as the proposed eastern terminus of the said railway to some point on the Georgian Bay" and "a branch from the main line near Fort Garry, in the Province of Manitoba, to some point near Pembina on the southern boundary thereof"; and Section 4 states that "the branch railways above mentioned shall be considered as forming part of the Canadian Pacific Railway, and as so many distinct sections of the said railway, and shall be subject to all the provisions hereinafter made with respect to the said Canadian Pacific Railway." 40

It would seem to me, therefore, that the branch lines to which the benefit of the exemption applies, under Clause 16 of the contract, were meant to be only those which are described in Paragraphs 3 and 4 of the

Act 37 Vict., cap. 14, and not to apply to the branch lines referred to in Clause 14 of the contract, which were not included in the description contained in Sections 3 and 4 of the Act 37 Vict.

This conclusion, however, should be qualified, as suggested by the Appellant, by saying that Clause 16 does exempt and free from taxation such stations and station grounds, workshops, buildings, yards and other property required and used for the construction and working of the entire railway as described in the Act 37 Vict., cap. 14.

This qualification, moreover, agrees with the statement made by  
 10 counsel for the Respondent to the effect "that the fact that such property  
 "is used for the working of the branch lines would not, of itself, defeat  
 "any exemption to which such property might be entitled by reason of its  
 "being required and used for the working of the main line of the Canadian  
 "Pacific Railway in Saskatchewan."

By force of Section 4 of Schedule "A," annexed to the contract, and referred to in Section 21 thereof (already reproduced at the beginning of these reasons), all the advantages agreed upon, contained or described in the contract of 1881 were "conferred upon the company," but, of course,  
 20 this cannot be read as having extended the tax exemption. What the  
 company thereby acquired was the exemption described in Section 16 of the contract and nothing more.

This is further emphasized by the wording of the "Act Respecting the Canadian Pacific Railway" (S.C. 44 Vict. cap. 1). By that Statute, the contract was approved and ratified and it was therein provided that for the purpose of incorporating the persons mentioned in the contract and those who shall be associated with them in the undertaking, the Governor may grant to them *in conformity with the contract*, under the corporate name of the Canadian Pacific Railway Company, a charter conferring upon them the *franchises, privileges and powers embodied in the schedule*. This made  
 30 clear the intention of Parliament that the tax exemption contained in Clause 16 was conferred upon the company exactly as described in the said clause. The object was only to specify that the exemption was to apply to the corporate entity or person, but only in respect of the property described in Clause 16 (*Provincial Treasurer of Alberta v. Kerr* 1933, A.C. 710, at 718; Lindley, J., in *Hartley v. Hudson* 1879, 4 C.P.D., p. 367).

As for the business tax, that is only a form of municipal taxation and as, under Clause 16 of the contract and Section 4 of the Schedule, the company is "forever free from taxation by the Dominion or by any province  
 40 "hereafter to be established, or by any municipal corporation therein,"  
 I am of opinion that, as to the business carried on as a railway (both main line and branches, as described in Section 1 to 4 of the Act, 37 Vict. cap. 14), Clause 16 of the contract exempts and frees the Canadian Pacific Railway Company from taxation in Saskatchewan in respect of its business,

In 1905, when the Province of Saskatchewan was constituted, Section, 24 of the Saskatchewan Act provided that the powers of the province should be exercised subject to Clause 16 of the contract. The Respondent is, therefore, bound by that clause, and, in my humble opinion, the answer to each of the questions submitted should be as follows :

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1. Question No. 1.—No, provided, however, that the fact that such property is used for the working of the branch lines would not, of itself, defeat any exemption to which such property might be entitled by reason of its being required and used for the working of the main line of the Canadian Pacific Railway in Saskatchewan ;
2. Questions Nos. 2 (a), (b) and (c).—Yes. As to the business carried on as a railway (both main line and branches, as described in Sections 1 to 4 of the Act 37 Vict. cap. 14), Clause 16 of the contract exempts and frees the Canadian Pacific Railway Company from taxation in Saskatchewan in respect of its business ; 10
3. Question No. 3.—Yes, provided, however, that such provisions are not operative in respect of stations and station grounds, workshops, buildings, yards and other property located on such branch lines and required and used for the construction and working of the Canadian Pacific Railway, as described in the Act 37 Vict. cap. 14 ;
4. Question No. 4 (a).—No ;  
Question No. 4 (b).—Yes, subject to the limitations already stated in the answers to Questions Nos. 1, 2 (a), (b), (c) and to Question No. 3. 20

For the above reasons, the appeal should be allowed, in accordance with the above answers, with one-half of its costs of this appeal to the Appellant.

(b) Kellock (b) KELLOCK J.  
J.—

This is an appeal from the judgment of the Court of Appeal for Saskatchewan answering certain questions referred to that Court by the Lieutenant Governor in Council.

Stated generally, the questions involve the extent of exemption from taxation provided for by paragraph 16 of the contract of October 21, 1880, and approved by 44 Vic. cap. 1, Canada (1881).

Appellant first contends that the exemption extends to branch lines which the Appellant was authorized by paragraph 14 of the contract from "time to time" to construct and work. These paragraphs are as follows : 30

" 14. The Company shall have the right, from time to time, to  
" lay out, construct, equip, maintain and work branch lines of  
" railway from any point or points along their main line of railway,  
" to any point or points within the territory of the Dominion.  
" Provided always, that before commencing any branch they shall  
" first deposit a map and plan of such branch in the Department  
" of Railways. And the Government shall grant to the Company 40  
" the lands required for the road bed of such branches, and for the  
" stations, station grounds, buildings, workshops, yards and other  
" appurtenances requisite for the efficient construction and working  
" of such branches, in so far as such lands are vested in the  
" Government."

“ 16. The Canadian Pacific Railway, and all stations and  
 “ station grounds, work shops, buildings, yards and other property,  
 “ rolling stock and appurtenances required and used for the  
 “ construction and working thereof, and the capital stock of the  
 “ company, shall be forever free from taxation by the Dominion, or  
 “ by any Province hereafter to be established, or by any Municipal  
 “ Corporation therein; and the lands of the Company, in the  
 “ North-West Territories, until they are either sold or occupied,  
 “ shall also be free from such taxation for 20 years after the grant  
 “ thereof from the Crown.”

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10

Appellant says that “ the Canadian Pacific Railway ” in paragraph 16 includes the branch lines contemplated by paragraph 14, while the contention of the Respondent is that, by reason of the definition of “ the Canadian Pacific Railway ” in paragraph 1 of the contract, the Appellant’s contention is excluded. Paragraph 1 together with the introductory words with which the contract commences are as follows :

“ That the parties hereto have contracted and agreed with  
 “ each other as follows, namely :

20

“ 1. For the better interpretation of this contract, it is  
 “ hereby declared that the portion of railway hereinafter called  
 “ the Eastern section, shall comprise that part of the Canadian  
 “ Pacific Railway to be constructed, extending from the Western  
 “ terminus of the Canada Central Railway, near the East end  
 “ of Lake Nipissing, known as Callander Station, to a point of  
 “ junction with that portion of the said Canadian Pacific  
 “ Railway now in the course of construction extending from  
 “ Lake Superior to Selkirk on the East side of Red River ;  
 “ which latter portion is hereinafter called the Lake Superior  
 “ section. That the portion of said railway, now partially in  
 “ course of construction, extending from Selkirk to Kamloops,  
 “ is hereinafter called the Central section ; and the portion of  
 “ said railway now in course of construction, extending from  
 “ Kamloops to Port Moody, is hereinafter called the Western  
 “ section. And that the words ‘ the Canadian Pacific Railway ’  
 “ are intended to mean the entire railway, as described in the  
 “ Act 37th Victoria, chap. 14. The individual parties hereto,  
 “ are hereinafter described as the Company ; and the  
 “ Government of Canada is hereinafter called the Government.”

30

“ The entire railway, as described in the Act 37th Victoria, chap. 14 ”  
 40 is to be found in the first four sections of that statute. Section 1 reads :

“ A railway, to be called the ‘ Canadian Pacific Railway,’ shall  
 “ be made from some point near to and south of Lake Nipissing to  
 “ some point in British Columbia on the Pacific Ocean, both said  
 “ points to be determined and the course and line of the said railway  
 “ to be approved of by the Governor in Council.”

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By Section 2 it is provided that the whole line of the said railway shall be divided into four sections, and the sections are delimited therein. Sections 3 and 4 are as follows :

“ 3. Branches of the said railway shall also be constructed as follows, that is to say :

“ First :—A branch from the point indicated as the proposed eastern terminus of the said railway to some point on the Georgian Bay, both the said points to be determined by the Governor in Council.

“ Secondly :—A branch from the main line near Fort Garry, in the Province of Manitoba, to some point near Pembina on the southern boundary thereof.”

“ 4. The branch railway above mentioned shall, for all intents and purposes, be considered as forming part of the Canadian Pacific Railway, and as so many distinct sections of the said railway, and shall be subject to all the provisions hereinafter made with respect to the said Canadian Pacific Railway, except in so far as it may be otherwise provided for by this Act.”

Mr. Carson, for the Appellant, contends that the definition of “ the Canadian Pacific Railway ” in paragraph 1 of the contract applies only for the purposes of that paragraph and not throughout the contract. 20

*Prima facie*, that contention is unsound. The opening words, “ For the better interpretation of this contract it is hereby declared,” apply not only to what follows in the first sentence, but to the third sentence. As far as is relevant to the point with which we are here concerned, the paragraph reads :

“ For the better interpretation of this contract, it is hereby declared that . . . . And that the words ‘ the Canadian Pacific Railway ’ are intended to mean the entire railway, as described in the Act 37th Victoria, chap. 14.” 30

Unless, therefore, there are compelling reasons in any particular context to the contrary, the definition is to be applied throughout the contract.

Mr. Carson bases his contention upon what he contends to be a fact, namely, that the Georgian Bay branch had, at the date of the contract, been abandoned to the knowledge of both parties, and that the 1874 railway, with or without the amendment of 1879, was not therefore, in contemplation as the subject matter of the contract, but something less than that.

In the first place, however, the alleged abandonment of the *branch* has not been shown as a matter of fact at all. All that appears upon the material to which Mr. Carson refers, namely, the report of the Royal Commission of 8th April, 1882, and the Order in Council of July 25, 1879, is abandonment of a *contract* for the construction of a part of that branch. The report deals with “ Contract No. 37 ” dated 2nd August, 1878, by which certain named contractors undertook to complete certain work in connection with some fifty miles of the Georgian Bay branch. The report states that “ before much progress had been made under this contract, the Government adopted a 40

“ policy of discontinuing the construction of the Georgian Bay branch, and the following Order in Council was passed.” On referring to the above Order in Council, however, all it provides for is that it was “ not the intention of the Government to proceed further with the work under this “ contract ” and that instructions should be given to stop the work. By a subsequent Order in Council of 14th August, 1879, the contract was “ taken out of their ” (the contractors’) “ hands and annulled.” Counsel also refers to certain evidence given by the late Sir Charles Tupper before the Commission, but this evidence is similarly restricted to the “ reason for  
 10 “ abandoning the Georgian Bay branch which was under contract with “ Heney, Charlebois and Co.” It does not go beyond the Orders in Council.

It is noteworthy that in the report itself, reference is made to an earlier contract with a Mr. Foster, “ No. 12,” concerning the Georgian Bay branch having been annulled by an Order in Council of February 28, 1876, as the route named in that contract had presented more engineering difficulties than were anticipated, and a new survey had to be made for the route in question in Contract No. 37. What happened in connection with these two contracts illustrates a situation by no means unique at that time, when  
 20 Canadian Pacific. This did not mean the abandonment of the intention to construct the “ railway ” or even the particular parts which formed the subject matter of the contracts. The very contract here in question, in paragraph 5, indicates that the Government had had the same experience with contractors for the 100 miles of railway extending west of the City of Winnipeg, and had had to take that work out of the hands of the contractor.

The most striking thing, however, in negation of the Appellant’s contention is that, after the Orders in Council of 1879, the “ Canadian Pacific Railway ” was defined both in the contract here in question and in the statute confirming it by express reference to the 1874 statute. This  
 30 shows clearly in my opinion that the 1874 railway in its entirety, including the Georgian Bay branch, was in the contemplation of the contracting parties, unaffected by the fact that in the preceding year the Government had had to take the contract for the fifty mile stretch out of the hands of the then contractors. As a matter of fact, in 1883 the company itself commenced construction of a branch line from Sudbury to Sault Ste. Marie and completed it in 1886 prior to the completion date fixed by paragraphs 4 and 6 of the contract of 1880 here in question. This appears in the case filed in the *Branch Lines* case reported in 36 S.C.R. 42. This “ Algoma ” branch is referred to in 48-49 Vic. cap. 57. At page 45 of 36 S.C.R. it is stated that  
 40 by 1884 this branch line had been constructed “ as far as Algoma on the Georgian Bay.” It may be—there is no evidence one way or the other—that the Georgian Bay branch contemplated by Section 3 of the 1874 Act was abandoned after the date of the contract, in favour of this Algoma branch. However that may be, the Appellant has failed, in my opinion, to establish the factual basis it seeks to establish for its contention. I think, therefore, that the definition in paragraph 1 should be employed, as that paragraph says, for the better interpretation of this “ contract ” and not simply for the purposes of paragraph 1.

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That the words “the Canadian Pacific Railway” were deliberately intended to “mean” the “entire” railway as described in the Act 37 Victoria, cap. 14, is, I think, further emphasized by the fact that prior to the contract here in question, the statute of 1879, 42 Victoria, cap. 14, had been passed. Section 1 reads as follows :

“A branch of the Canadian Pacific Railway shall be constructed from some point west of the Red River, on that part of the main line running south of Lake Manitoba, to the City of Winnipeg, so as to connect with the branch line from Fort Garry to Pembina; and all the provisions of ‘the Canadian Pacific Railway Act, 1874’ 10 with respect to branches of the said railway not inconsistent with this Act shall apply to the branch to be constructed under this Act.”

We were informed on the argument that this 1879 branch had, at the time of the contract, become a part of the main line. By this it must be meant that, at the time of the Act of 1879, the main line as projected was to pass north of the City of Winnipeg and that, by the date of the contract, this plan had been changed in favour of one which would, by placing the City of Winnipeg on the main line, do away with the necessity for construction of this branch. Under the provisions of Section 1 of the Act of 1874, the main line had not been more definitely located by the statute than from “some point near to and south of Lake Nippissing to some point in British Columbia on the Pacific Ocean,” both of these points and the course of the line itself to be approved by the Governor in Council. Section 2 did not more closely fix the location of the main line in Manitoba than “the second section to begin at some point on Lake Superior, to be determined by the Governor in Council and connecting with the first section, and to extend to the Red River in the Province of Manitoba; the third section to extend from Red River in the Province of Manitoba to some point between Fort Edmonton and the foot of the Rocky Mountains, to be determined by the Governor in Council.” 30

Accordingly, it was competent for the Governor in Council, as well after the Act of 1879 as before, to determine the course of the main line so as to pass through the City of Winnipeg, and it had evidently become unnecessary, in settling the contract of 1880, to refer to the amendment of 1879 because of the change in the projected route of the main line. The choice of language in paragraph 1, that “the words ‘the Canadian Pacific Railway’ are intended to mean the entire railway as described in the Act 37 Victoria, chap. 14,” accordingly meant what they said, namely, the main line as described in that statute as it might be located by the Governor in Council, together with the two branches therein mentioned, and nothing else. The Georgian Bay branch was thus deliberately included and there could have been no intention to abandon it at that time. 40

Far from finding anything in other parts of the contract which casts doubt on the view just expressed, the contract is consistent throughout when the definition in the first paragraph is employed as that paragraph instructs, namely, for the better interpretation “of this contract.”

Under paragraph 3, the company was to construct and equip the Eastern and Central sections, and by paragraph 4 these sections were to be completed, equipped and in running order by the 1st of May, 1891, subject to certain events therein provided for. By paragraph 6, the Government assumed the obligation of completing the Lake Superior and Western sections, the latest date set for completion being also the 1st of May, 1891.

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Paragraph 7 is as follows :

10           “The railway constructed under the terms hereof shall be the  
          “ property of the Company : and pending the completion of the  
          “ Eastern and Central sections, the Government shall transfer to the  
          “ Company the possession and right to work and run the several  
          “ portions of the Canadian Pacific Railway already constructed or  
          “ as the same shall be completed, and upon the completion of the  
          “ Eastern and Central sections, the Government shall convey to  
          “ the Company, with a suitable number of station buildings and with  
          “ water service (but without equipment), those portions of the  
          “ Canadian Pacific Railway constructed or to be constructed by the  
          “ Government which shall then be completed ; and upon completion  
20           “ of the remainder of the portion of railway to be constructed by  
          “ the Government, that portion shall also be conveyed to the  
          “ Company ; and the Canadian Pacific Railway shall become and  
          “ be thereafter the absolute property of the Company. And the  
          “ Company shall thereafter and forever efficiently maintain, work and  
          “ run the Canadian Pacific Railway.”

          The language with which this paragraph begins, “ The railway  
          “ constructed under the terms hereof shall be the property of the  
          “ Company ”

30           should, I think, be interpreted in the light of the words in the last two  
          sentences of the paragraph and the confirming statute itself. With respect  
          to possession and right to operate, the paragraph provides that, pending  
          completion of the Eastern and Central sections, the Government should  
          transfer to the company the possession and right to operate

          “ the several portions of the Canadian Pacific Railway already  
          “ constructed or as the same shall be completed.”

          This language would entitle the company, immediately upon the  
          execution of the contract, to delivery of possession of all portions of “ the  
          “ Canadian Pacific Railway ” already constructed at the date of the contract,  
          and to possession of the remainder as it became progressively finished.

40           In the third paragraph of the preamble of the statute, it is stated that  
          certain sections of the “ said ” railway had already been constructed by the  
          Government, while others were in course of construction, the greater  
          portion of the “ main line thereof,” however, not having yet been commenced  
          or placed under contract, and it was necessary in the interests of good faith  
          to “ complete and operate *the whole* of the said railway.”

          The fourth paragraph of the preamble states that a contract had been  
          entered into for the construction of “ the said portion of the main line of the

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said railway ” (that is, that portion of the main line of the 1874 railway not then commenced or placed under contract) and for

“ the permanent working of *the whole line thereof.*”

There can be little doubt that the “ whole of the said railway ” was the 1874 railway as defined by the Act 37 Victoria, cap. 14, in view of the clear statements to that effect in Sections 4, 5 and 6.

I think “ the whole of the said railway ” and “ the whole line thereof ” mean the same thing. No one suggests, least of all the Appellant, that the contract did not entitle the Appellant to a conveyance of the Pembina branch, which was not, of course, part of the “ main line.”

10

In my opinion, these considerations throw light upon the construction of the second sentence of paragraph 7. This provides that, upon completion of the Eastern and Central sections, the Government should convey to the company

“ those portions of the Canadian Pacific Railway constructed or to be constructed by the Government which shall then be completed.”

The corresponding language in Section 5 of the statute is

“ those portions of the Canadian Pacific Railway constructed, or agreed by the said contract to be constructed by the Government, which shall then be completed.”

20

This language would entitle the company to a conveyance of the portions of railway already in existence at the date of the contract and (reading the language as set out in the section) the Lake Superior and Western sections only. However, the paragraph goes on to provide that

“ upon completion of *the remainder* of the portion of railway to be constructed by the Government, that portion shall also be conveyed to the Company.”

It is noteworthy that after the word “ Government ” there is no such wording as “ under the contract ” or “ as provided by the contract,” and in my opinion this fact is significant. I think that “ the remainder ” includes all of the 1874 railway including its branches, and that construction is borne out by the reference to the preamble already made and to the concluding parts of paragraph 7 of the contract. It is “ the Canadian Pacific Railway defined as aforesaid ” which is “ thereafter ” to be the absolute property of the company. It is, therefore, the entire railway of 1874 and “ thereafter ” must mean upon the completion of that railway.

30

The reiteration in Sections 5 and 6 of the statute of the definition employed in paragraph 1 of the contract, and the use of “ the Canadian Pacific Railway ” three times in paragraph 7 renders it imperative, in my opinion, to read these words as inclusive of the 1874 railway in its entirety and exclusive of anything else including branches which might or might not be built in pursuance of the power conferred by paragraph 14 of the contract.

40

Under paragraph 17, the Government was entitled to retain certain bonds, if issued by the company, as security “ for the due performance of the present contract in respect of the maintenance and continuous working of the railway by the company as herein agreed for ten years after the

“ completion thereof.” It was also provided that if there was no default in the maintenance and working of “ the said Canadian Pacific Railway,” the Government would not ask for interest on these bonds. It would, of course, be absurd to say that “ the railway ” or “ the said Canadian Pacific Railway ” in paragraph 17 included paragraph 14 branches, for the reason that the period of “ ten years after the completion thereof ” would never begin to run. The railway which was to become the property of the company after completion and thereafter to be maintained and worked by it as provided by paragraph 7 was clearly the 1874 railway to the exclusion of the paragraph 14 branches, and the security to be given under paragraph 17 was to be given, if the bonds were issued, for the period ending upon the expiration of ten years after the completion of that railway.

By paragraph 9, provision is made for the granting of subsidies of land and money, for which subsidies “ the construction of the Canadian Pacific Railway shall be *completed* and the same shall be equipped, maintained and “ operated.” This paragraph, like paragraph 7, would appear to proceed on the assumption that, if the company carried out its part of the work of construction, i.e. the Eastern and Central sections, this would “ complete ” the construction of the whole, as the Government was to construct the remainder so that the company would be enabled to carry out its obligation to equip, maintain and operate the whole.

Paragraph 10 provides for the grant by the Government to the company of the lands required for the road bed of “ the railway ” and for its stations, station grounds, workshops, dock ground and water frontage at the termini on navigable waters, buildings, yards and other appurtenances required for the effectual construction and working of “ the railway ” insofar as such land shall be vested in the Government. It is plain, in my opinion, that “ the railway ” as used twice above does not include the branch lines authorized by paragraph 14, if for no other reason than that in the last mentioned paragraph there is a specific provision that the Government should grant to the company the land required for the road bed of branches constructed thereunder and for the stations, station grounds, buildings, workshops, yards and other appurtenances requisite for the efficient construction and working of such branches. This, in my opinion, is the plainest indication that “ the railway ” in paragraph 10 means the railway as defined in paragraph 1, and that the branches comprised within paragraph 14 are not part of that railway, that is, “ the Canadian Pacific Railway.”

Paragraph 15 is as follows :

“ For twenty years from the date hereof, no line of railway shall be authorized by the Dominion Parliament to be constructed South of the Canadian Pacific Railway, from any point at or near the Canadian Pacific Railway, except such line as shall run South West or to the Westward of South West ; nor to within fifteen miles of Latitude 49. And in the establishment of any new Province in the North-West Territories, provision shall be made for continuing such prohibition after such establishment until the expiration of the said period.”

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I think this paragraph is to be read consistently with the definition in paragraph 1. It means, in my opinion, that Parliament may not authorize another line except such as shall (a) have as its southerly terminus a point nearer to the international border than fifteen miles ; (b) run in the specified direction ; and (c) have as its northerly terminus any point " at or near " the main line or either branch line.

By paragraph 22 it is provided that the Railway Act of 1879, insofar as applicable to the undertaking referred to in the contract and insofar as not inconsistent with the contract itself or the Act of incorporation to be granted to the company, shall apply to " the Canadian Pacific Railway." 10 I see no difficulty again in applying the definition in paragraph 1 to this paragraph. " The Canadian Pacific Railway " and " the company " are expressly and separately referred to in the paragraph. In my opinion, it is perfectly clear and the definition clearly applies.

It is significant that when one comes to Schedule " A " to the contract, the first use of the words " the Canadian Pacific Railway " is in paragraph 15 which contains a description of what is intended thereby and what is intended when those words are " hereinafter " used in the schedule. In this description and definition the branches authorized by paragraph 14 of the contract are specifically taken in by the use of the words " other 20 " branches to be located by the company from time to time as provided " by the said contract."

Again in paragraph 18 (d) of the schedule there is an express distinction drawn between the " main line " and " any branch of such railway hereafter " to be located by the said company in respect of which the approval of the " Governor in Council shall not be necessary " (i.e. branches to be located as authorized by paragraph 14 of the contract by simply filing a plan).

The view to which I have come, negating the Appellant's contention on the first branch of this case, is, I think confirmed by the provisions of the confirming statute, 44 Victoria, cap. 1. I have already referred to 30 certain parts of the preamble.

Section 3 provides for a subsidy in favour of the company in consideration of the " completion and efficient operation " of the " railway " as stipulated in the contract. So far as construction was concerned, the company was limited to the Eastern and Central sections but as to operation it was interested in the whole. As in the case of paragraphs 7 and 9 of the contract, this section appears to proceed on the assumption that " completion " of the entire railway would be effected if the company built the Eastern and Central sections, as the Government would see to the rest.

Section 4 provides for the admission duty free of materials to be used 40 in the original construction of " the Canadian Pacific Railway " and of a telegraph line in connection " therewith " and for all telegraphic apparatus required for the first equipment of " such telegraph line " as provided by paragraph 10 of the contract. In my opinion, the telegraph line envisaged by this section in connection with " the Canadian Pacific Railway " was the same telegraph line as is described in Section 5 of the Act of 1874,

namely, a line of electric telegraph along the "whole extent respectively" of the "said railway and branches," i.e. the Pembina and Georgian Bay branches. I have already dealt with the remainder of the statute.

There is therefore not only nothing in the statute which could by any possibility be taken to include in the words "the Canadian Pacific Railway" paragraph 14 branches, but on the contrary the clearest exclusion of such branches by the deliberate use of the definition employed in paragraph 1 of the contract in Sections 4 and 5 and in Section 6 by reference. I would therefore affirm the judgment below on this point.

10 The further question in this appeal may be shortly stated as to whether the exemption provided for by paragraph 16 of the contract extends to "business" taxes as provided for by the Saskatchewan statutes set out in the case. The argument proceeded on the basis that it was sufficient for the purposes of this question to consider the provisions of the Cities Act, cap. 43 of the statutes of 1947.

The statute provides by Section 441 that the assessor shall each year assess (1) the owner or occupant "in respect to every parcel of land" in the city, with certain exceptions, and (2) every person "who is engaged in . . . business." "Business" which is defined by paragraph 4 of Section 2 as  
 20 including any trade, profession, calling, occupation or employment, is to be assessed as provided by Section 443. Under that section the assessor shall fix a rate per square foot of the floor space of each building or part thereof used for business purposes, and a different rate may be fixed for different classes of business. It must not, however, exceed the statutory limits which appear to run from \$4.00 to \$15.00 per square foot. It is provided by sub-section (5a) of this section that a railway company, whether its property is liable to assessment and taxation or not, shall be liable to assessment and taxation under this section "in respect of the business carried on as a railway" and the provisions of the section otherwise are made to apply  
 30 except that in the case of a railway it is only buildings occupied which may be taken into consideration; (sub-section (2)).

It is provided by Section 479 that, subject to other provisions of the statute, the municipal and school taxes shall be levied upon lands, businesses and special franchises. The last mentioned is dealt with in sub-sections (7) and (8) of Section 443 by which the owner of a special franchise is assessed for 10 per cent. of the value of the franchise and is not assessable in respect of business. By Section 485 the owner of a building is liable, in addition to taxes levied in respect of the land and buildings, to business tax levied in respect of business carried on therein. By Section 495 the council is required  
 40 to levy annually on the whole rateable property within the municipality. Section 504 deals with the tax roll and by sub-section (2) it is provided that this roll shall contain "(a) the name of every person assessed," "(c) the nature and description of the property in respect of which he is assessed," "(d) the total amount for which he is assessed."

It is plain in my view that the "business" assessment provided for by these taxing provisions is the assessment (and taxation) of a person in respect of land or building occupied by him for the purpose of a business, and that,

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apart from any question of a statutory lien or charge, such taxation does not differ from that of a person in respect of ownership of land and building. In each case, the liability imposed is with respect to, in the one case, the value of land owned, and in the other, with respect to the value fixed by the statute of land occupied. In nature, therefore, there is no essential difference. In the case of the land tax, the tax is not simply imposed upon and payable out of the land, nor in the case of the business tax is it simply imposed upon and payable out of assets apart from the land employed in carrying on the business. In each case the tax is imposed upon a person in respect of land owned or occupied.

10

With respect to the meaning of "taxation of property" as distinguished from "taxation of persons in respect of property," Rand, J., said, in *Municipal District of Sugar City v. Bennett and White*, recently decided, that

"to 'tax property' is to subject it, as a legal object, to some sort of inhering obligation vaguely to be regarded as the equivalent of a lien is, I think, a misconception . . . Except as it may be evidential of an employed means of collection, the conception of the assessment, *per se*, as of property or of a person in relation to property, carries no practical significance of difference."

In *Provincial Treasurer v. Kerr* (1933) A.C. 710, Lord Thankerton said 20 at page 718 :

"Generally speaking, taxation is imposed on persons, the nature and amount of the liability being determined either by individual units, as in the case of a poll tax, or in respect of the taxpayers' interests in property, or in respect of transactions or actings of the taxpayers. It is at least unusual to find a tax imposed on property and not on persons . . ."

In the present instance, the tax here in question is imposed on persons in respect of their interest in property, not as a matter of title but as a matter of use.

30

In *City of Halifax vs. Fairbanks* (1928) A.C. 117, the Respondent owned premises which it let to the Crown for use as a ticket office, the lessee agreeing to pay the "business tax." The city assessed the Respondent for business tax under provincial legislation which imposed a "business tax" to be paid by every occupier of real property [for the purposes of any trade. The statute also provided that any property let to a person exempt from taxation was to be deemed, for business purposes, to be in the occupation of the owner and to be assessed for business tax according to the purposes for which it was occupied. The city was authorized under the legislation to levy the business tax, a household tax 40 and a real property tax. The business tax was assessed on 50 per cent. of the capital value of the property occupied for purposes of the business. The household tax was payable by every occupier of real property for residential purposes, and was assessed on 10 per cent. of the capital value of such property. The real property tax was a tax on the owners of all real property and was assessed on the capital value. The actual question

for decision in the case was as to whether or not the business tax was or was not a direct tax within the meaning of Section 92 of the British North America Act. While that was the actual question for decision, their Lordships had to consider the nature of the tax. After pointing out that the framers of the British North America Act had drafted that statute on the basis of a well-known distinction at that time between direct and indirect taxes, Viscount Cave, L.C., said at page 124 :

- 10 “ Thus, taxes *on property* or income were everywhere treated  
 “ as direct taxes ; . . . . When, therefore, the Act of Union allocated  
 “ the power of direct taxation for Provincial purposes to the Province,  
 “ it must surely have intended that the taxation, for those purposes,  
 “ *of property* and income should belong exclusively to the Provincial  
 “ legislatures . . . . ”

Their Lordships decided that the tax in question was a tax on property and a direct tax.

- 20 Under the provisions of paragraph 16 of the contract here in question, the stations, station grounds, workshops and buildings required for the working of the railway were to be “ forever free from taxation.” It would be an extraordinary result if the proper interpretation of this exemption were to be said to be that while taxes imposed upon the owner in respect of his ownership of these things fall within the exemption, nevertheless taxes imposed upon the owner in respect of his use of the same items do not. I do not think the intention of the contracting parties to be derived from the language which they have employed involves any such result and I think application of the business tax here in question to the “ Canadian Pacific Railway ” as I have already interpreted those words is precluded by the terms of paragraph 16, made binding upon the province by Section 25 of 4-5 Edward VII, cap. 42, Canada.

- 30 I do not think it useful to refer to dicta in earlier cases in this court. In none of them was there involved the question here under consideration. We were also referred to decisions with respect to “ business tax ” in the provincial courts, for instance, *Re Hydro Electric Commission and the City of Hamilton* 47 O.L.R., 155. By virtue of George V, cap. 20, sec. 39, which enacted Section 45 (a) of the Assessment Act, certain property of the Commission (assuming the statute applied to the particular Commission there in question) was to be exempt from assessment and taxation and it was argued that inasmuch as the business tax imposed by the Act must be paid out of the property, the Commission was exempt from business tax. The Ontario Assessment Act provided for assessment and taxation of land  
 40 and also for business assessment and taxation. In the course of his judgment, the Chief Justice said at page 160 :

“ The business assessment is imposed by Section 10 and is a  
 “ personal tax, and not a tax on real or personal property. The  
 “ assessment on land is used only for the purpose of determining  
 “ the amount of business assessment, which is a percentage on the  
 “ assessed value of the land occupied or used for the purpose of the  
 “ business.”

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The business tax under the statute did not constitute a lien on the land as was the case with the real property tax, and in that sense it was not a tax "on" land. Both, however, constituted taxes on persons with respect to their ownership or occupation of land and under the contract in question on this appeal both are within the intendment of the language employed in paragraph 16. As stated by Beck J. as he then was in *Hedley Shaw vs. Medicine Hat* (1918) 1 W.W.R. 754 at 756 :

"The 'business assessment' . . . is in effect an assessment  
"of 'the buildings or land or both' in or on which the business is  
"carried on."

10

In *re Ford*, 63 O.L.R., 410, Middleton, J.A., at 411 said with reference to business assessment under the Ontario statute :

". . . in lieu of the assessment of personal property, there was  
"substituted a business assessment *fundamentally based upon the value*  
"of the land actually occupied in connection with the business which  
"forms the subject matter of the assessment."

It is nothing less than the assessment of a person with respect to land occupied by him. The assessment and the tax which follows are in essence the same, whether the assessment is the full capital value of the land as in the case of "land tax" or a percentage of that value as in the case of business and household assessment in the City of Halifax and business assessment under the Ontario statute, or whether the assessment is a value of the land fixed by statute as in the case of the Saskatchewan legislation. 20

The decision in *Moose Jaw v. B.A. Oil Co.* (1937) 2 W.W.R., 309, is largely based on the passage quoted from the judgment in *Hydro Electric v. Hamilton* ubi cit., and for the reasons already given I do not think it can apply here.

I adopt the answers given by my brother Locke, and would allow the Appellant one-half of its costs in this Court. 30

(c) Estey J. (c) ESTEY, J. :

This is an appeal from the answers given by the Court of Appeal for Saskatchewan to four questions submitted to it under the Constitution Questions Act of that Province (R.S.S. 1940, c. 72).

Questions one and three ask : Does clause 16 of the contract dated October 24, 1880, for the construction of the Canadian Pacific Railway, exempt and free from taxation the branch lines constructed pursuant to Clause 14 of the said contract, and the stations, the station grounds, workshops, buildings, yards and other property used for the working of those branch lines ? Questions two and four ask : Does clause 16 of the said contract exempt and free the Canadian Pacific Railway from taxation in respect to the business carried on by the Railway in Saskatchewan ? 40

Clause 16 of the contract reads :

"16. The Canadian Pacific Railway, and all stations and station  
"grounds, workshops, buildings, yards and other property, rolling  
"stock and appurtenances required and used for the construction and

“ working thereof, and the capital stock of the Company, shall be  
 “ forever free from taxation by the Dominion or by any Province  
 “ hereafter to be established, or by any Municipal Corporation  
 “ therein; and the lands of the Company, in the North-West  
 “ Territories, until they are either sold or occupied, shall also be free  
 “ from such taxation for twenty years after the grant thereof from  
 “ the Crown.”

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The Statute (1905 S. of C., 4-5, Edw. VII, c. 42) creating the Province of Saskatchewan provided in Sec. 24 thereof :

10           “ 24. The powers hereby granted to the said province shall be  
 “ exercised subject to the provisions of Section 16 of the contract set  
 “ forth in the schedule to Chapter 1 of the Statutes of 1881 being an  
 “ Act respecting the Canadian Pacific Railway Company.”

These questions arise by virtue of amendments made by the Legislature of that Province to its municipal acts in 1948. These are : the City Act (R.S.S. 1947, c. 43), the Town Act (R.S.S. 1947, c. 44), the Village Act (R.S.S. 1946, c. 31), the Rural Municipality Act (R.S.S. 1946, c. 32) and the Local Improvement Districts Act (R.S.S. 1946, c. 33). The issues have been presented on the basis that these 1948 amendments are all to the same effect and, therefore, reference will be made only to the provisions of the City Act.

20           The aforementioned contract of October 24, 1880, was made a schedule to and approved and ratified by a Statute of the Dominion of Canada (1881 S. of C., 44 Vict., c. 1). The terms of incorporation were made a schedule to this contract and later the Canadian Pacific Railway was incorporated by letters patent dated February 16, 1881, in terms identical with those made a schedule to the contract.

30           The preamble to the foregoing Statute (1881 S. of C. 1) approving the construction contract recited, *inter alia*, the obligation of the Dominion to construct a railway connecting the seaboard of British Columbia with the railway system of Canada, the efforts made to obtain the construction of that railway, and that certain portions thereof had already been constructed by the Dominion Government. It also pointed out the necessity for the development of the Northwest Territories.

40           The contract divided the main line into four sections : Eastern, Lake Superior, Central and Western. It provided that the Company would construct the Eastern and Central sections and that the Government would transfer the completed Lake Superior and Western sections to the Company, which would equip, maintain and efficiently operate the entire railway.

Clause 1 of the contract sets out certain definitions. The answers to questions one and three depend largely upon the construction of the words “ and that the words ‘ the Canadian Pacific Railway ’ are intended “ to mean the entire railway as described in the Act 37, Vict., cap. 14 ” as they appear in that clause.

“ 1. For the better interpretation of this contract, it is hereby  
 “ declared that the portion of Railway hereinafter called the Eastern

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“ section, shall comprise that part of the Canadian Pacific Railway  
“ to be constructed, extending from the Western terminus of the  
“ Canada Central Railway, near the East end of Lake Nipissing,  
“ known as Callander Station, to a point of junction with that  
“ portion of the said Canadian Pacific Railway now in course of  
“ construction extending from Lake Superior to Selkirk on the  
“ East side of Red River ; which latter portion is hereinafter called the  
“ Lake Superior section. That the portion of said Railway, now  
“ partially in course of construction, extending from Selkirk to  
“ Kamloops, is hereinafter called the Central section ; and the 10  
“ portion of said Railway now in course of construction, extending  
“ from Kamloops to Port Moody, is hereinafter called the Western  
“ section. And that the words ‘ the Canadian Pacific Railway,’  
“ are intended to mean the entire Railway, as described in the Act  
“ 37th Victoria, cap. 14. The individual parties hereto, are  
“ hereinafter described as the Company ; and the Government of  
“ Canada is hereinafter called the Government.”

The Appellant contends that the definition of “ Canadian Pacific  
Railway ” in Clause 1 is for the purpose of that clause only and that  
in Clause 16 the words “ Canadian Pacific Railway ” include the main 20  
line and the branch lines constructed under Clause 14 of the contract, and  
the property specified in Clause 16. The Respondent contends, to the  
contrary, that the definition set forth in Clause 1 of “ Canadian Pacific  
Railway ” applies generally throughout the contract and in particular to  
Clause 16 and, therefore, the exemption is restricted, so far as the Province  
of Saskatchewan is concerned, to the main line and the property specified  
in that clause.

The opening words of Clause 1, “ for the better interpretation of the  
contract,” discloses that the purpose and intent of Clause 1 is to provide  
such definitions as may assist in the interpretation of the contract. The 30  
four sections, Eastern, Superior, Central and Western, of the mainline are  
first defined. Then follows the sentence “ and that the words ‘ the Canadian  
“ ‘ Pacific Railway ’ are intended to mean the entire railway as described  
“ in the Act 37th Vict., cap. 14.” This sentence indicates that “ the  
“ Canadian Pacific Railway ” did not mean merely the four sections defined  
and constituting the main line, but in addition thereto the three branch  
lines defined in the Act of 1874 and the amendment thereof in 1879 described  
as the Georgian Bay, Pembina and Winnipeg branch lines. Then follows  
the definitions of the words “ Company ” and “ Government.” Counsel  
for the Appellant emphasized that the word “ hereinafter ” does not appear 40  
in relation to “ the Canadian Pacific Railway ” while it does appear with  
regard to every other term defined in that paragraph. Under other  
circumstances such might be significant, but in this particular case the  
phrase is used twice prior to this definition in Clause 1 and, while this  
definition is not essential to clarify the meaning of the phrase as used in  
that clause, it was a circumstance sufficient to justify the draftsman’s  
omission of the word “ hereinafter ” in this instance. The conclusion seems

unavoidable that the parties intended that the definitions in Clause 1 should obtain generally throughout the contract and that the phrase " the Canadian " Pacific Railway " as in that clause defined includes the main line and the three branches, Georgian Bay, Pembina and Winnipeg (hereinafter referred to as the " specified branches "). Moreover, this conclusion finds support when the contract is read as a whole.

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In the Act of 1874, only the main line and the three specified branches were provided for. There was no provision for the construction of branch lines such as that contained in Clause 14 of the 1880 contract. Clause 14  
10 reads as follows :

“ 14. The Company shall have the right from time to time to  
“ lay out, construct, equip, maintain, and work branch lines of  
“ railway from any point or points along their main line of railway to  
“ any point or points within the territory of the Dominion. Provided  
“ always that before commencing any branch they shall first deposit  
“ a map and plan of such branch in the Department of Railways.  
“ And the Government shall grant to the Company the lands required  
“ for the road bed of such branches, and for the stations, station  
“ grounds, buildings, workshops, yards and other appurtenances  
20 “ requisite for the efficient construction and working of such branches,  
“ in so far as such lands are vested in the Government.”

Under the contract of 1880 the railway envisaged may be divided into three parts : the four sections constituting the main line, the three specified branches, the construction of both of these being obligatory under the contract, and as to the third, or the branch lines under Clause 14, the contract created no obligation but granted to the Company the privilege of constructing these from time to time as it might decide.

The Winnipeg branch provided for in the 1879 amendment was never completed and the part thereof constructed by the Government was  
30 transferred to the Company and included in the main line when its route in the Winnipeg area was changed. The Pembina branch was completed by the Government and turned over to the Company, but the Georgian Bay branch was never constructed. I do not think, however, that any conclusion can be drawn from the fact that these changes were made. The Statutes and Orders-in-Council passed between 1874 and 1880 clearly disclose that the actual location of the main line was changed from time to time. When this contract was executed in 1880 it seems clear that the parties had in mind the Dominion Government's obligation with the Province of British  
40 Columbia to construct a railway and the development of the prairies ; but the route of the railway had been only tentatively arrived at. In fact, under clause 13 of the contract, the Company had the right, subject to the approval of the Governor-in-Council, to determine the exact location of the line within the two sections it was building and the Government itself made changes in the sections which it constructed. All this but emphasizes the fact that no conclusion can be drawn from the fact that changes were made

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with regard to the specified branch lines adverse to the Respondent's contention in respect to the meaning of "the Canadian Pacific Railway" where it appears in Clause 1.

It is significant that branch lines, apart from those included in the reference to the Act of 1874, are referred to only in Clauses 11 and 14. In the former the reference is not of any assistance in determining the answers to the questions here submitted, as it merely indicates the locations which the Company may select in substitution for those sections of land contained in the twenty-five million acres which "consist, in a material degree, of land "not fairly fit for settlement."

10

While the Government granted to the Company land for the stations, station grounds, etc., on both the main and branch lines, provisions therefor were made in separate clauses: that for the former in Clause 10, and the latter in Clause 14. Clause 14 imposes no obligation upon the Company to construct these branch lines. It merely gives to the Company the privilege of constructing them as and when it may decide to do so. The consideration of land and money and the transfer of the Lake Superior and the Winnipeg sections when constructed had, under the terms of the contract, no relation to the branch lines referred to in Clause 14 and imposed no obligation on the Company to construct them.

20

In Clause 7, when the parties intended to refer to the railway and the specified branches, they spoke of "the Canadian Pacific Railway," but when referring to those parts to be constructed and transferred to the Company the terms "several portions of" or "those portions of" preceded the words "the Canadian Pacific railway." Then again in Clause 8 the parties provided that when the Government transferred "the respective portions "of the Canadian Pacific Railway" the Company should equip, maintain and operate same. In these clauses when the parties used the phrase "the "Canadian Pacific Railway" they intended it as defined in Clause 1.

The parties, in Clause 9, are providing for the payment and transfer to the Company of the subsidies as the construction on the part of the Company progressed. It is clear that the consideration of money and land in this contract has no reference to the actual work of constructing the branch lines provided for in Clause 14 and these branch lines are not included in this clause under the words "the Canadian Pacific Railway." The context makes it clear that the parties in the phrase "the Canadian Pacific Railway" are referring to that portion to be constructed by the Company. A general definition in a contract such as that which appears in Clause 1 is always subject to the implication that it applies only where the context does not otherwise indicate.

30

40

There may be some ambiguity with respect to this phrase "the "Canadian Pacific Railway" in Clause 15. It may well be that the parties here intended the phrase to mean the main lines. If that be the construction, it is again on the basis that the context leads to that conclusion, but here again it cannot be suggested that the branch lines under Clause 14 are included in the phrase "the Canadian Pacific Railway" as used in this clause.

Clause 17 authorized the issue by the Company of land grant bonds and when issued one-fifth shall be deposited with the Government

“ as security for the due performance of the present contract in  
 “ respect of the maintenance and continuous working of the railway  
 “ by the Company, as herein agreed, for ten years after the completion  
 “ thereof . . . . And as to the said one-fifth of the said bonds,  
 “ so long as no default shall occur in the maintenance and working  
 “ of the said Canadian Pacific Railway . . . ”

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10 It is as defined in Clause 1 that the phrase “ the Canadian Pacific  
 “ Railway ” is here used. It includes the “ maintenance and continuous  
 “ working ” thereof but not of the branch lines as constructed under Clause 14.

20 Clause 22 makes applicable the Railway Act of 1879 to “ the undertaking  
 “ referred to in this contract,” and then goes on to provide that the said  
 Act shall apply to “ the Canadian Pacific Railway ” except where the  
 provisions of this contract, or the Act of Incorporation, show a contrary  
 intention. The parties, in this clause, have in mind both “ the undertaking  
 “ referred to in this contract ” and the provisions of Section 17 of the letters  
 patent incorporating the Canadian Pacific Railway. The use of the phrase  
 in this last clause no doubt refers to the railway as it may be eventually  
 constructed, but it is abundantly clear that in this clause “ the undertaking  
 “ referred to in this contract ” is, in the contemplation of the parties, quite  
 a different entity from “ the Canadian Pacific Railway ” as it may ultimately  
 be constructed.

Section 15 of the Terms of Incorporation provides :

30 “ and the said main line of railway, and the said branch lines of  
 “ railway, shall be commenced and completed as provided by the  
 “ said contract ; and together with such other branch lines as shall  
 “ be hereafter constructed by the said Company, and any extension  
 “ of said main line of railway that shall hereafter be constructed or  
 “ required by the Company, shall constitute the line of railway  
 “ hereinafter called ‘ The Canadian Pacific Railway ’ ”

The Terms of Incorporation were made a schedule to the contract and, therefore, these documents must be read together. The language adopted in the foregoing Section 15 further indicates that the parties contemplated the branch lines constructed under Clause 14 a separate and distinct entity from the main line and specified branch lines and where they were intended to be included they were expressly mentioned.

40 In Clause 1 the words “ Company ” and “ Government ” are defined and as such used throughout the contract. These words and the terms “ Eastern,” “ Lake Superior,” “ Central ” and “ Western ” sections are all used throughout the contract as defined in Clause 1. The terms of the clause do not suggest any exception with respect to the definition of “ the Canadian Pacific Railway ” apart from the omission of the word “ hereinafter ” already discussed and which is not of sufficient significance to offset the purpose and intent of the clause as expressed in the opening words thereof.

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Moreover, the paragraphs above mentioned and discussed support the view that the parties intended throughout that the words “the Canadian Pacific Railway” should be construed, unless the context otherwise indicates, as defined in Clause 1.

The first words in Clause 16 are “The Canadian Pacific Railway.” This phrase does not refer to the Company as incorporated by letters patent in the following February. In Clause 1 it is provided: “The individual parties hereto are hereinafter described as the Company” and throughout the contract this word is used as so defined, except where, as in Clause 17, the context indicates a different meaning. Moreover, in Clause 16 the items specified are restricted to those “required and used for the construction and making thereof.” The word “thereof” refers back to “the Canadian Pacific Railway” and as such refers to the physical property. This conclusion is supported by the manner in which these words are used throughout the contract. In Clause 17 reference is made to “the maintenance and working of said Canadian Pacific Railway.” In Clause 7: “The Canadian Pacific Railway shall become and be thereafter the absolute property of the Company.” In Clause 9: “The construction of the Canadian Pacific Railway.” It is the physical property of the lines in respect to which the parties had obligated themselves to construct under the contract that is included in the meaning of this phrase generally throughout the contract. This construction is in accord with the meaning as defined in Clause 1 and there is nothing in the context of Clause 16 to indicate any other or different meaning. It was contended that the word “all” in the phrase “all stations and station grounds” in Clause 16 indicates that stations etc., both of the main and branch lines constructed under Clause 14 were to be exempt. This contention overlooks that it is “all stations . . . required and used for the construction and working thereof.” This latter word “thereof” refers back to “the Canadian Pacific Railway” in the first line. In these circumstances the submission that in Clause 16 the phrase “the Canadian Pacific Railway” should include not only the main line and the specified branches but also the branch lines to be at some future time constructed by the Company under the privilege granted in Clause 14 is to attribute an intention to the parties which, having regard to the other provisions, they would have expressed in either language which is clear and definite or such as, by necessary implication, would include these branch lines constructed under Clause 14.

Appellant then submits that the similarity of the language in Clauses 14 and 16, as well as the fact that Clause 16 follows so immediately thereafter, discloses an intention on the part of the contracting parties to exempt the branch lines constructed under Clause 14. The respective clauses of the contract should be read together, in this sense, that any conflict should, so far as construction of the language may permit, be avoided. Here, however, the language of Clause 16 presents no ambiguity, once the meaning of “the Canadian Pacific Railway” is determined, and so construed it is not in conflict with any provision in Clause 14.

Moreover, in regard to the construction of the branch lines under Clause 14, the Government made no contribution, either of money or of lands, corresponding to the twenty-five million dollars and the twenty-five million acres of land as specified in the contract. The branch lines under Clause 14 were a matter separate and apart from the main line and the specified branches and when Clause 16 is read and construed in the light of this general intention and the specific clauses already mentioned it is clear that branch lines were not intended to be included under the exemption therein provided for. It is true, as the Appellant contends, that the Government intended to encourage the construction of branch lines, but only to the extent provided for in Clause 14.

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I am, therefore, in agreement with the learned Judges in the Court of Appeal that the exemption in Clause 16 does not apply to the branch lines constructed under Clause 14. I would, however, vary the answers to questions one and three as stated by my brother Locke.

Then referring to questions two and four, these ask if the Canadian Pacific Railway, by virtue of the above-quoted Clause 16, is exempt from the business tax authorized by the amendments to the aforementioned municipal Acts.

20 Business is defined "to include any trade, profession, calling, occupation or employment," City Act, sec. 2. (4) Sec. 443 (1) of that Act provides that the business tax shall be computed at

"a rate per square foot of the floor space . . . used for business purposes, and shall as far as he deems practicable classify the various businesses and portions thereof."

Then Sec. 443 (5a) deals specifically with the railway and provides as follows :

30 "(5a). A railway company, whether its property is liable to assessment and taxation or not, shall be liable to assessment and taxation under this section in respect of the business carried on as a railway and the provisions of this section, except sub-section (2), shall apply."

This is a familiar type of tax, in its nature and character distinct from other taxes. It is not imposed upon particular items of property, real or personal, and is not dependent upon ownership or interest in either the premises or the chattels thereon. It is not a tax upon occupation. A person may occupy the premises and be in possession of the chattels thereon, but neither would provide a basis for the assessment of this business tax. The essential without which such a tax cannot be imposed is that a business is conducted upon the premises.

40 Sir George Jessel, M.R., defined business :

"Anything which occupies the time and attention and labour of a man for the purpose of profit is business. It is a word of extensive use and indefinite significance." *Smith v. Anderson*, 15 C.D. 247.

Rowlatt, J., in *Commissioners of Inland Revenue v. Marine Steam Turbine Co.*, 1920—1 K.B. at 203, after pointing out that the word

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“business” may have a very wide meaning and that “in whatever sense it be understood is undoubtedly an elastic word capable of wide extension,” stated :

“The word ‘business,’ however, is also used . . . as meaning  
“an active occupation or profession continuously carried on, and it  
“is in this sense that the word is used in the Act with which we are  
“here concerned.”

The business of the Company is its activity or undertaking. In the main that of the Appellant is the provision and selling of services and facilities for transportation of passengers and goods. The time and ability of its officers, agents and servants are directed to the provision and selling of these services and facilities and it is that activity or undertaking that constitutes the business of the Company. The business tax here provided for is imposed upon that activity or undertaking. 10

This being the nature and character of the tax, the question arises : Is it within the ambit of the exemption in Clause 16 ? The phrase “the Canadian Pacific Railway” in that clause, as already defined, includes the main and specified branch lines. These, together with the other property “used for the construction and working thereof,” constitute that which “shall be forever free from taxation.” In this clause the word “thereof” refers to the phrase “the Canadian Pacific Railway” in the first line of the clause and, therefore, to the physical property of the main and specified branch lines and the phrase “used for the construction and working thereof” determines the quantum of the property included under the exemption. 20

It is the taxation of the physical property specified in Clause 16 that is exempted by the provisions of that clause. That all or any part of this as well as other property would be used in the course of its business does not extend the scope of the exemption. The business of the company is distinct from the physical property and its separate significance is in no way destroyed by the use of the specified or any other property in the course thereof. 30

In 1880 taxes were generally spoken of as property or personal taxes. The former included taxation of real and personal property and the latter income and poll taxes. Our attention was drawn to the fact, in the course of the hearing, that at that time both British Columbia and Ontario imposed income taxes. It may be assumed that the business tax as here assessed was not in the contemplation of the parties. They would be cognizant of all of the foregoing taxes and of the efforts of even that day to find new sources of revenue. It was in 1875 that the Legislature of Quebec enacted what was construed as, in effect, a stamp tax upon policies of insurance. *The Attorney-General for Quebec v. The Queen Insurance Company*, 3 App. Cas. 1090 ; 1 Cameron 222. 40

In these circumstances, if the parties had intended that more than a tax upon the physical property should be exempted, they would have adopted language expressive of that intention. On the contrary the parties, in the language they have chosen, have expressed their intention

in terms not sufficiently wide and comprehensive to include a business tax such as provided for in the municipal legislation here under review. It is unnecessary here to discuss whether a business tax is a property or a personal tax, as in either event the language in Clause 16 does not include it in the scope of the exemption therein provided for.

*In Canadian Northern Pacific Railway Company v. Corporation of New Westminster*, 1917 A.C. 602, the Privy Council, in construing the word "railway" as it appears in the British Columbia Railway Act 1911, c. 44, sec. 2, differentiated between the physical property and the whole undertaking of the Company. In the course of the Judgment it was stated :

"The things so brought by definition into the term 'railway' are all physical things, as the railway itself is. The definition does not bring into 'railway' the whole 'undertaking' of the company. . . . It is used in the clause as denoting a physical thing, of which something else can form part and which can be 'operated.'"

A similar distinction between the physical property and the business of the Company is apparent in the language of Clause 16.

The fact that the tax is computed on the floor space does not necessarily affect the character of the tax. In *Smith v. Council of the Rural Municipality of Vermillion Hills*, (1916) 2 App. Cas. 569, 2 Cameron 97, the fact that a tax was imposed of so many cents per acre did not make it a land tax or affect its true nature and character as a tax upon the occupant. Moreover, in *City of Montreal v. The Attorney-General for Canada*, 1923 A.C. 136, 2 Cameron 312, the fact that the tax was computed upon the basis of 1 per cent. on the capitalized value of the property did not destroy the nature and character of the tax as one imposed upon the occupant. While, therefore the computation of a tax may well be taken into consideration in determining its true nature and character, it is not conclusive. The problem in *City of Halifax v. Fairbanks Estate*, 1928 A.C. 117, 2 Cameron 477, was quite different from that at bar. It does, however, illustrate the basis for and the nature and character of the business tax. There the owner was made liable by statute for a business tax, though he was not in possession of the premises and did not conduct the business. In my opinion, the Legislature of Saskatchewan imposed a tax here upon the business which is not included in the terms of the exemption provided for in Clause 16.

While question No. 2 suggests three bases for the exemption of the business tax and the Legislature adopts but the first, there is no difference in principle involved and I think the answer should be the same with respect to all the three divisions.

Questions 1 and 3 should be answered as stated by my brother Locke. Question 2 should be answered "No" and Question 4 "Yes."

I would dismiss the appeal with costs.

d) LOCKE, J. (concurring in by KERWIN and CARTWRIGHT, JJ.): (d) Locke J.

The answer to be made to the first question depends upon the meaning to be assigned to the words "Canadian Pacific Railway" in Clause 16 on the

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contract entered into between the Crown and George Stephen and his associates dated October 21st, 1880, the terms of which were approved and ratified by cap. 1, Statutes of Canada, 1881. That clause reads :—

“ 16. The Canadian Pacific Railway, and all stations and  
“ station grounds, work shops, buildings, yards and other property,  
“ rolling stock and appurtenances required and used for the  
“ construction and working thereof, and the capital stock of the  
“ Company shall be forever free from taxation by the Dominion, or  
“ by any Province hereafter to be established or by any Municipal  
“ Corporation therein, and the lands of the Company, in the North- 10  
“ West Territories, until they are either sold or occupied, shall also  
“ be free from such taxation for 20 years after the grant thereof from  
“ the Crown.”

By Clause 14 of the contract it was provided that the Company should have the right to build branch lines of railway from any point along the main line to any point within the territory of the Dominion and it is contended on its behalf that branch lines built under this authority in what is now the Province of Saskatchewan are included in the expression “Canadian Pacific Railway” and as such entitled to the exemption provided by Clause 16. The contention of the Attorney-General is that the 20 exemption is restricted to the railway described in an Act to Provide for the Construction of the Canadian Pacific Railway, cap. 14, Statutes of Canada, 1874.

Clause 1 of the contract reads :—

“ 1. For the better interpretation of this contract, it is hereby  
“ declared that the portion of Railway hereinafter called the Eastern  
“ section, shall comprise that part of the Canadian Pacific Railway  
“ to be constructed, extending from the Western terminus of the  
“ Canada Central Railway, near the East end of Lake Nipissing,  
“ known as Callander Station, to a point of junction with that 30  
“ portion of the said Canadian Pacific Railway now in course of  
“ construction extending from Lake Superior to Selkirk on the East  
“ side of Red River ; which latter portion is hereinafter called the  
“ Lake Superior section. That the portion of said Railway, now  
“ partially in course of construction, extending from Selkirk to  
“ Kamloops, is hereinafter called the Central section ; and the  
“ portion of the said Railway now in course of construction,  
“ extending from Kamloops to Port Moody, is hereinafter called the  
“ Western section. And that the words ‘ the Canadian Pacific  
“ ‘ Railway,’ are intended to mean the entire Railway, as described 40  
“ in the Act 37th Victoria, cap. 14. The individual parties hereto,  
“ are hereinafter described as the Company ; and the Government of  
“ Canada is hereinafter called the Government.”

By the Terms of Union under which the Colony of British Columbia entered Confederation the Government of Canada undertook to secure the commencement within two years from the date of Union of the construction

of a railway from the Pacific towards the Rocky Mountains, and from such point as might be selected east of those mountains towards the Pacific to connect the seaboard of British Columbia with the railway system of Canada. The statute of 1874, after reciting this term of the arrangement in the preamble, enacted that a railway to be called the "Canadian Pacific Railway" should be made from a point near to and south of Lake Nipissing to some point in British Columbia on the Pacific Ocean, both of such points to be determined and the course and line of the railway to be approved of by the Governor in Council. The terms in which the proposed railway were described and the references made to the branch railways are of importance.

They read :—

20 " 2. The whole line of the said railway, for the purpose of its construction, shall be divided into four sections : the first section to begin at a point near to and south of Lake Nipissing, and to extend towards the upper or western end of Lake Superior, to a point where it shall intersect the second section hereinafter mentioned ; the second section to begin at some point on Lake Superior, to be determined by the Governor in Council, and connecting with the first section, and to extend to Red River, in the Province of Manitoba ; the third section to extend from Red River, in the Province of Manitoba, to some point between Fort Edmonton and the foot of the Rocky Mountains, to be determined by the Governor in Council ; the fourth section to extend from the western terminus of the third section to some point in British Columbia on the Pacific Ocean.

" 3. Branches of the said railway shall also be constructed as follows, that is to say :—

30 " First—A branch from the point indicated as the proposed eastern terminus of the said railway to some point on the Georgian Bay, both the said points to be determined by the Governor in Council.

" Secondly—A branch from the main line near Fort Garry, in the Province of Manitoba, to some point near Pembina on the southern boundary thereof.

40 " 4. The branch railways above mentioned shall, for all intents and purposes, be considered as forming part of the Canadian Pacific Railway, and as so many distinct sections of the said railway, and shall be subject to all the provisions hereinafter made with respect to the said Canadian Pacific Railway, except in so far as it may be otherwise provided for by this Act."

In the interval between the passing of this Act and the date of the contract various efforts were made by the Government of Canada to arrange for the construction of the proposed railway by private interests and all had proved abortive. The Government had meanwhile proceeded with the work of construction on what was referred to in the statute of 1874 as the second section, some work had been done in British Columbia, the

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branch from Emerson to Fort Garry (referred to in the proceedings as the Pembina Branch) had been built and a start had been made on the line from Winnipeg West. In addition, surveys had been made and various decisions made regarding the route of the line for the Western section. By cap. 14 of the Statutes of 1879 the Canadian Pacific Railway Act of 1874 was amended by providing that a branch of the railway should be constructed from some point west of the Red River on that part of the main line running south of Lake Manitoba to the City of Winnipeg, there to connect with the Pembina Branch, and providing that all the provisions of the Act of 1874 with respect to branches of the railway should apply to the branch to be constructed. It was contemplated at this time that the main line of the road would cross the Red River at East Selkirk, proceeding from there in a general westerly and north-westerly direction to Fort Edmonton and thence down through the Yellow Head Pass to Kamloops and thence to the Pacific Coast. The line from Selkirk westerly, however, was not proceeded with, it being decided that instead of proceeding through Stonewall and the country immediately south of Lake Manitoba and thence west the main line should follow the line of settlement further to the south, crossing the Red River at Winnipeg and proceeding westerly a short distance to the north of the Assiniboine River through Portage la Prairie and thence west. The Act of 1874 required the approval of the Governor in Council to the exact site of the proposed line throughout its course and in advance of the date of the contract it had been decided that the Pacific Terminus of the railway should be a point on Burrard Inlet. The decision, however, to alter the course of the line by proceeding through the Kicking Horse Pass instead of the Yellow Head Pass had not been made until after the contract was made. The construction which preceded the contract was of part of the railway and branches described generally in the statute and the lines so partially completed were ultimately conveyed to the Company.

For the Appellant it is urged that the third sentence of Clause 1 above quoted is not intended to define the expression "Canadian Pacific Railway" in any part of the contract other than that clause. I find difficulty in appreciating the force of this argument. Clause 1 is designed to define certain terms and sentences 1 and 2 define the Eastern, Lake Superior, Central and Western sections, all of which are thereafter referred to by these designations in the succeeding paragraphs. The first sentence refers to "that part of the Canadian Pacific Railway to be constructed," and again to a point of junction with "that portion of the said Canadian Pacific Railway now in course of construction," and the meaning of the expression there can only be the railway the construction of which is thereafter provided for in the contract. In the second sentence it refers to "the portion of "said railway" referring back to the Canadian Pacific Railway to be constructed mentioned in the preceding sentence. There appears then to have been no necessity for defining the words "the Canadian Pacific Railway" in the construction of the first two sentences and the preliminary words of the third sentence indicate to me that it is intended to be read in

conjunction with the opening words of the first sentence. The matter would be more clear if, instead of the second sentence ending after the words "Western section," it had continued to the last words of the third sentence, the period after the word "section" being replaced with a comma. I think, however, the first three sentences are to be interpreted as if they read:—

10 "For the better interpretation of this contract it is hereby  
 "declared that (the various sections of the railway should be as  
 "defined) and that the words 'the Canadian Pacific Railway' are  
 "intended to mean the entire railway as described in the Act 37 Vict.,  
 "cap. 14."

Unless this is the true construction, I cannot understand why the third sentence was included in the clause. While the argument of the Appellant is that the remainder of the contract indicates that this was not intended, I have come to a different conclusion.

20 Clause 3 contains the first of the obligations assumed by Stephen et al (described for the purposes of the contract in the last sentence of Clause 1 as the company) as to the construction of the road and by that clause they agreed to construct and equip the Eastern section and the Central section, using the designations applied to these respective parts of the line in Clause 1 and by Clause 4 the times at which this work should be commenced and completed are stated.

30 Clause 7 declares that the railway constructed under the terms of the agreement shall be the property of the Company and that pending the completion of the Eastern and Central sections the Government "shall transfer to the Company the possession and right to work and run the several portions of the Canadian Pacific Railway already constructed or as the same shall be completed," and in the succeeding sentence the railway, portions of which had been constructed or were to be constructed by the Government and conveyed to the Company, is referred to as the "Canadian Pacific Railway." Here the expression clearly refers to the portions of the "entire railway" referred to in the third sentence of Clause 1 which had been or was to be constructed under the terms of the contract. The last sentence of this clause:—

"And the Company shall thereafter and forever efficiently  
 "maintain, work and run the Canadian Pacific Railway."

40 is said to indicate that the meaning of "Canadian Pacific Railway" cannot be restricted in the manner defined in Clause 1, since it cannot have been in contemplation that the obligation to maintain, work and run the road should be restricted to the main line and the branches referred to in the Statute of 1874. I do not think that this follows. The advisers of the Government who passed upon the form of the contract may well have considered that when the Company built branch lines under the powers given by Clause 14 the obligation to supply facilities for traffic imposed by Section 25 (2) of the Consolidated Railway Act, 1879, and the powers vested in the Railway Committee by that statute would suffice to protect the public interest.

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By Clause 8 the Company was required to equip, maintain and efficiently operate the respective portions of the "Canadian Pacific Railway" which were to be conveyed to it by the Crown. By its very terms it is manifest that the expression here refers only to the portions of the road constructed or which were to be constructed by the Crown, as required by the contract.

Clause 9 contains the obligation of the Crown to grant a subsidy of money and land "for which subsidies the construction of the Canadian Pacific Railway shall be completed." Here the reference is to the road to be constructed in accordance with the contract. 10

Clause 10 contains the obligation of the Crown to grant to the Company the lands required for the right-of-way, stations station grounds, workshops, dock ground and water frontage at the termini on navigable waters, buildings, yards, and other appurtenances required for the convenient and effectual construction and working of the railway, in so far as such land shall be vested in the Government. The clause further obligated the Crown to admit free of duty certain rails and other material "to be used in the "original construction of the railway and of a telegraph line in connection "therewith." The expression "Canadian Pacific Railway" does not appear in this clause. However, the railway referred to is that to be constructed 20 under the obligations imposed by the contract partly by the Crown and partly by the Company and not the branch lines which the Company might thereafter undertake, as to which provision for a grant of the right-of-way and other lands required is made by Clause 14.

Clause 15 provides that within twenty years from the date of the contract no line of railway shall be authorized by the Dominion Parliament to be constructed south of the "Canadian Pacific Railway" from any point at or near the Canadian Pacific Railway, except such line as shall run south-west or to the westward of south-west, nor to within fifteen miles of Latitude 49. The expression here cannot mean the line of railway to be 30 constructed under the terms of the contract plus such branch lines as might thereafter be constructed under the powers contained in Clause 14, in my opinion. It was obviously in the contemplation of both parties to the contract that branch lines would be constructed to open up the country to the south of the main line, some of which would extend to the international boundary and connect with railways operating in the United States and such a branch line was built in the course of time from Moose Jaw to North Portal at the boundary. The Canadian terminus of this road being on the international boundary, if the expression "Canadian Pacific Railway" included the branch lines, any point "south of the Canadian Pacific 40 Railway" would be in the United States. Such a construction would render the clause meaningless.

It is by Clause 16 that the exemption is provided. It is of importance to note that it is not merely the stations, station grounds, workshops, buildings, yards and other property, rolling stock and appurtenances situate upon the road to be constructed which are exempted but these "required and used in the construction and working thereof:" thus round houses or

machine shops required in the operation of the line to be constructed under the terms of the contract might well be situate on a branch line constructed under the powers granted by Clause 14. I can perceive nothing in Clause 16 itself to indicate that the definition contained in the third sentence of Clause 1 is not to apply to the expression "Canadian Pacific Railway."

10 Clause 17 provides for the deposit of certain of the land grant bonds with the Government which the Company was authorized to issue as security for the "due performance of the present contract in respect of the maintenance and continuous working of the railway by the Company, as herein agreed, for ten years after the completion thereof." By the third sentence it was provided as to the bonds so deposited that "so long as no "default shall occur in the maintenance and working of the said Canadian "Pacific Railway" the Government shall not demand payment of the coupons on the bonds. The words here can have no other meaning than the railway to be constructed under the contract. If, as contended, it meant the line to be constructed under the contract, plus such lines as the Company might at any time in the future choose to construct under the powers contained in Clause 14, the date of the expiration of the ten year period would never be ascertainable.

20 Great stress is laid by the Appellant upon the language of Section 22 providing that the Railway Act of 1879, in so far as its provisions are applicable to the undertaking referred to in the contract and are not inconsistent with the terms of the agreement or contrary to the provisions of the Act of Incorporation to be granted to the Company, shall apply to the "Canadian Pacific Railway." The expression here it is said, obviously refers to the entire undertaking including branch lines to be thereafter constructed, since it is inconceivable that the statute would be made applicable to a part of the future railway system. I think, however, that this section is to be interpreted as providing that the Railway Act of 1879, with named exceptions, should apply to the operation of the Railway as defined in Clause 1. The matter is similarly expressed in Sections 2 and 4 of the Consolidated Railway Act of 1879 referred to in clause 22 which may well have been in this respect patterned upon it. Section 2 provided that Sections 5 to 35 "shall apply to the Intercolonial Railway" and Section 4 says that Sections 34 to 98 "shall apply to the Intercolonial Railway in "so far as they are not varied by or inconsistent with the special Act "respecting it, to all railways constructed by the Government of Canada "and to all railways which have been in or since the said year (1868) or "which may be hereafter constructed under the authority of, or made subject 30 "to, any special Act passed by the Parliament of Canada and to all 40 "companies incorporated for their construction and working." The reference to the Intercolonial Railway is to the physical property and to the railways constructed under special Act by corporations both to the physical property and the companies operating them, and while this latter reference was omitted in Clause 22 I think the meaning to be no less certain. If the Act was made applicable to the Railway those operating it would be bound to conform to its terms.

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It is, however, further contended on behalf of the Appellant that the definition in Clause 1 cannot apply since the railway to be constructed under the terms of the contract was not that contemplated in the Act of 1874. That statute which defined the proposed route of the railway in general terms as being from a point to the south of Lake Nipissing to extend to the upper and western end of Lake Superior, thence to the Red River, thence to some point between Fort Edmonton and the foot of the Rocky Mountains, and from there to some point in British Columbia on the Pacific Ocean, also provided for the construction of a branch from the point indicated as the proposed Eastern terminus of the railway to some point on Georgian Bay and a branch from the main line near Fort Garry to some point near Pembina on the Southern boundary. This description of the proposed line was of necessity vague since the most desirable route had not then been determined and was accordingly left to be approved by the Governor in Council. When the contract was entered into in 1880 the definition of the proposed Western line contained in Section 1 was more specific, though the final route had not then been decided. The line from Fort Garry to Pembina had been built, and while I think it is not entirely clear whether the extension from Fort Garry to Selkirk, authorized by the amendment of 1879, was then completed, the report of Sandford Fleming to Sir Charles Tupper of April 8th, 1881, shows the entire line from Selkirk to Emerson as under contract. The definition in the third sentence of Clause 1 would thus include the Pembina Branch from Emerson to Fort Garry if the description in the statute of 1874 is taken, and the extension north to Selkirk if what was intended was the Act of 1874, as amended by the Act of 1879. The so-called Georgian Bay Branch, however, it is said, had been abandoned prior to the date of the contract and it is said that this indicates clearly that the description in Clause 1 of the contract did not apply. On the assumption that we are entitled to examine the available evidence, I have read the documents filed in support of the contention that the intention to construct the Georgian Bay line had been abandoned prior to the time of the contract and I am not satisfied that this is so. A contract had been let for the line but, with the exception of a comparatively insignificant amount of work done under it, it was not proceeded with and the Crown terminated this contract. That the project itself was abandoned was not, in my opinion, proven.

It is further said for the Appellant that, if, as contended on its behalf, it is not clear that the phrase "Canadian Pacific Railway" in Clause 16 applies not only to the line to be built under the terms of the contract but also to the branch lines constructed under the powers contained in Clause 14, then extrinsic evidence is admissible to explain the meaning of the term. A large number of documents were by consent filed, reserving to the Attorney-General his right to object to their admissibility. Assuming, but without deciding, that any of the documents filed are admissible as an aid to construction, I have examined all of them and do not find that doing so assists the contention of the Appellant. It must be said on this aspect of the matter that perhaps the strongest argument to be made in favour of

the Appellant's contention is that to one familiar with Western Canada it seems highly improbable that those undertaking to construct this vast railway work the success of which would undoubtedly depend upon the development of the country from a few miles east of the Red River to the foothills of the Rockies, which would of necessity require the construction of numerous branch lines, would have been satisfied with a tax exemption restricted to the main line only and the Pembina and Georgian Bay branches. It would be apparent to anyone familiar with the country to be traversed that very little freight traffic could be expected to originate in the territory

10 lying between Lake Superior and the eastern limit of the Prairies in Manitoba and between the foothills of the Rockies and the Pacific Coast for many years to come. These are matters of common knowledge and, as one would expect, the question of tax exemption was brought up during the early attempts to obtain the construction of the road which Canada had obligated itself to construct under the Terms of Union with British Columbia. Thus in 1872 two companies, the Inter-Oceanic Railway Company of Canada and Canada Pacific Railway Company were incorporated, the private Acts constituting them each containing a provision that the buildings, right-of-way, permanent way, rolling stock and earnings of the company

20 and all its properties, except the lands granted, should be exempt from taxation in any province thereafter to be constituted from the territory of the Dominion for fifty years after the completion of the railway under any law, ordinance, or by-law of any provincial, local or municipal authority. Neither of these companies proceeded with the matter and in a memorandum transmitted by Sir John A. Macdonald to Duncan MacIntyre which, we are told, was prepared in the summer of 1880, what was called a confidential project for the construction of the Canadian Pacific Railway was submitted which proposed a subsidy of varying amounts per mile of construction from Nipissing to Thunder Bay and from Red River to Kamloops, \$20,000,000

30 in cash and a land grant. MacIntyre on behalf of himself and his associates who included George Stephen and others who finally became parties to the contract, in an undated reply addressed to Sir John, said in part :—

“ Among the points not referred to in the memorandum we  
 “ may mention that of taxation from which we think the proposed  
 “ line should be free.”

Later, in a document dated September 14th, 1880, produced from the possession of the railway company and called “ Heads of Arrangement ” details of a plan for the construction of the Canadian Pacific Railway are set out. While these provided for a subsidy in money of \$25,000,000,

40 a land grant of 25 million acres, the admission free of customs duties of certain materials to be used in the construction of the road, no mention is made of any tax exemption. In my opinion, if any inference is to be drawn from these documents, it is that the matter of exempting the undertaking from taxes to be imposed by the Dominion and by any province to be thereafter constituted out of the North-West Territories, was considered and deliberately limited to that part of the line the construction of which

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Cartwright  
JJ.)—  
*continued.*

was provided for by the contract and those portions built or to be built by the Crown and conveyed to the Company. It seems to me to be impossible to draw any other inference than that the limitation of the exemption to the line as defined in Clause 1 was the real agreement of the parties. In a matter of this moment, I cannot believe that the legal advisers of Stephen et al who passed upon the contract could have approved it in its present form if the real agreement was that now contended for by the Appellant.

We are also referred to what is an undoubted fact that in the period between 1880 and 1908 the respective governments of the North-West Territories and of the Province of Saskatchewan apparently considered that the exemption was of both the main line and the branch lines constructed under Clause 14 and made no attempt to impose or authorize the imposition of taxation and that the late Sir Frederick Haultain and the late Mr. Walter Scott were of that opinion. However, neither the Legislative Assembly of the North-West Territories or the Legislature of Saskatchewan or that Province authorized the contract, nor were they or their respective Governments parties to it and their conduct cannot be relied upon as an aid to construction. 10

The first question cannot, in my opinion, be answered by a simple affirmative or negative. Clause 16 exempts the stations, station grounds, workshops, buildings, yards and other property, rolling stock and appurtenances required and used for the construction and working of the Canadian Pacific Railway. Question 1 asks if the same properties “ used for “ the working of the branch lines of the Canadian Pacific Railway situated in “ Saskatchewan ” are exempt. There may well be properties of the description mentioned which are “ required and used for the working ” of the main line which are also used in part for the working of the branch lines constructed under Clause 14. This would undoubtedly be so in respect to the rolling stock and may refer to a large number of other properties and works situate upon branch lines of this description. No statement as to this appears in the reference which would enable us to determine what properties are in fact exempt. Having come to the conclusion that the exemption in the Province of Saskatchewan is restricted to the main line and the named branches the answer to be made should be qualified accordingly. 30

The second question submitted is as to whether Clause 16 of the contract exempts the Canadian Pacific Railway Company from taxation in Saskatchewan in respect of the business carried on as a railway, based on either the area of the land or the floor space of buildings used, the rental value of the land and buildings used or their assessed value and which is not made a charge upon such land or buildings. By Section 24 of the Saskatchewan Act (4-5 Edw. VII, cap. 42) which constituted the Province it is provided :— 40

“ The powers hereby granted to the said Province shall be  
“ exercised subject to the provisions of Section 16 of the contract  
“ set forth in the schedule to Chap. 1 of the Statutes of 1881, being  
“ an Act respecting the Canadian Pacific Railway Company.”

The language of Section 1 of the Act of 1881 is that the contract :—  
 “is hereby approved and ratified and the Government is hereby  
 “authorized to perform and carry out the conditions thereof  
 “according to their purport.”

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The question is thus not the construction of a provision in a statute but in a contract to which the Province was not a party. The exemption granted by Clause 16 is as to the named properties “required and used for the construction and working” of the railway. The benefit of that exemption was vested in the Canadian Pacific Railway Company by  
 10 Section 4 of the letters patent of incorporation and remains in it so long as the company continues to be the owner or operator of the property and uses it for the defined purpose. The position adopted on behalf of the Province of Saskatchewan put bluntly is this :—that while neither the physical property defined by Clause 1 nor the Canadian Pacific Railway Company in respect of its ownership of that property is liable to taxation, so-called business taxes may be levied upon the Company in respect of its business of operating it. While the language of Clause 16 is that the property shall be “forever free from taxation” by any province thereafter to be  
 20 established, it is said that to tax the Company in respect to the *use* of the property (itself a term of the exemption), is not to tax the property and that that alone is prohibited. The question, as submitted, states that the business tax levied by any of the three methods mentioned will not be made a charge upon the land or buildings. I cannot understand what possible difference this can make. Municipal taxes may be and at times are declared to be a lien upon the property in respect to which they are levied, but this is merely a provision to secure their collection: in determining the nature of this tax, the fact that there is no charge upon the land or buildings in respect of it appears to me irrelevant.

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By the City Act 1947 the imposition of a business tax was authorized  
 30 and by amendments made by cap. 33 of the Statutes of 1948 this was made to apply to every railway company owning or operating a railway in Saskatchewan (Sec. 20 (a)). Section 443 which authorized the imposition of the tax was also amended in that year by the addition of subsection 5 (a) which reads :—

“A railway company, whether its property is liable to assess-  
 “ment and taxation or not, shall be liable to assessment and taxation  
 “under this section in respect of the business carried on as a railway  
 “and the provisions of this section, except subsection (2) shall  
 “apply.”

40 The case has been argued on the footing that the provisions of this statute, in so far as they affect the taxation of the business of a railway, do not differ in substance from like provisions in the Village Act, 1946, the Rural Municipalities Act, 1946, the Local Improvement District Act, 1946, and the Town Act 1947, all as amended, which are referred to in the fourth question and Questions 2 and 4, may thus be dealt with together.

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*continued.*

The City Act, by Section 2 (4), defines the term “ business ” as including any trade, profession, calling, occupation or employment. Part VII of the Statute under the heading “ Assessment and Taxation ” provides by Section 441 that not later than a named date the assessor shall assess : “ in respect to every parcel of land in the City,” *inter alia*, the registered owner or the owner under a *bona fide* agreement for sale. Sub-section 2 of Section 441 requires the assessor to assess every person engaged in mercantile, professional or any other business in the City, with certain named exceptions. By Section 442 the right-of-way of a railway owned by a railway company or occupied by it if owned by others and exempt from taxation is to be 10 assessed at an amount not exceeding \$6,000 per mile.

Section 444 provides that no person who is assessed in respect of a business shall be liable to pay a license fee to the City in respect of the same business. Section 443 which declares the basis of the assessment for business tax commences :—

“ Business shall be assessed in the following manner :— ”

The assessor is directed to fix a rate per square foot of the floor space of each building used for business purposes and if the business is carried on wholly or in part outside of any building a rate per square foot of the yard space used. Sub-section 4 directs the entry on the assessment 20 roll of each of the persons who as partners, joint tenants, tenants in common or by any other kind of joint interest are “ the owners or occupants of real “ property liable to taxation hereunder.” Section 479 directs that the municipal and school taxes of the City shall be levied upon (1) lands, (2) businesses, and (3) special franchises. Section 485 provides that the owner of a building who is liable to assessment in respect of business carried on therein shall in addition to his liability for taxes levied in respect of the land and building be liable for the business tax in respect of such business. By Section 504, the first of a number of sections which appear under the heading “ Taxes,” the assessor is directed to prepare a tax roll on or before 30 the 1st day of October in each year which shall contain the name of every person assessed and—

“ (2) (c) the nature and description of the property in respect of  
“ which he is assessed.”

While Section 479 refers to the tax levies as being upon lands and businesses, this must be read together with other sections of the statute which in terms make it clear that as regards the owner of land the tax is assessed against and levied upon him and not upon the land. As to the business tax, while the opening words of Section 443 read that “ business ” is to be assessed, it is the individual carrying on the business upon whom the assessment is 40 made and the tax levied and the true nature of the tax is shown to be a tax in respect of the occupation of property for the purpose of carrying on the business.

Clause 16 of the contract does not grant an absolute exemption of the stations, station grounds, buildings and other property referred to but only such as are used for the construction and working of the railway and, in

my opinion, if buildings which fell within the description ceased to be used by the owner or operator of the property for such purposes the exemption would be lost. Since, therefore, it is the buildings, station grounds, yards and other property when used for these purposes which are declared to be forever free from taxation by the Dominion or by any province thereafter to be established, I think it cannot be said that a tax upon the owner in respect of the use of the property for the purpose of working the railway is not squarely within the exemption. To construe the clause otherwise is to say that the properties mentioned are exempt from all taxation *when* used for the defined purpose, but *if* they are so used that the owner may be taxed in respect of that use. I am unable to so construe the clause.

The third question relates to the liability to assessment and taxation of the Canadian Pacific Railway Company in respect of its real estate situate upon its branch lines constructed under the powers contained in Clause 14. While the first question as to the branch lines of the railway speaks of these lines generally, we were informed upon the argument that the Company did not contend that properties exempted by Clause 16 situate upon branch lines constructed under powers other than those contained in Clause 14 were exempt. I think this admission was not intended to extend to properties of the kind referred to situate upon such lands if they were used either for the construction or operation of the main line. The answer to the first question, as thus restricted, answers the third.

I would answer the questions submitted as follows:—

1. No, except such properties, if any, real or personal, enumerated in Clause 16, situate upon the branch lines of Saskatchewan as are entitled to the benefit of the exemption from taxation as being required and used for the construction and working of the railway described in Sections 1, 2 and 3 of the Act 37 Vict., cap. 14.
  2. Yes, as to the business carried on as a railway upon or in connection with the railway as described in Sections 1, 2 and 3 of the Act 37 Vict., cap. 14, and upon such other properties, if any, real or personal, of the Company situate upon its branch lines in Saskatchewan as are entitled to the benefit of exemption from taxation under Clause 16 as being required and used for the construction and working of that portion of the line referred to in the said sections of the statute.
  3. Yes, except in respect of such real estate, if any, situate upon branch lines constructed pursuant to Clause 14 of the contract as is entitled to benefit of the exemption from taxation under Clause 16 as being required and used for the construction and working of the railway as described in Sections 1, 2 and 3 of the Act 37 Vict., cap. 14.
  4. (a) No.  
(b) Yes, subject to the limitation stated in the answer to Question 2.
- I would allow the Appellant one-half of its costs of this appeal.

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In the Privy  
Council.

Order in  
Council  
granting  
special  
leave to  
Appeal,  
18th July,  
1952.

**Order in Council granting special leave to Appeal.**

AT THE COURT AT BUCKINGHAM PALACE.

The 18th day of July, 1952.

Present

THE QUEEN'S MOST EXCELLENT MAJESTY.

LORD PRESIDENT.

MR. PEAKE.

MR. MACMILLAN.

MR. LENNOX-BOYD.

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 15th day of July, 1952, in the words following, viz. :—

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“ 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 Attorney General for Saskatchewan in the matter of an Appeal from the Supreme Court of Canada between the Petitioner Appellant and The Canadian Pacific Railway Company Respondent setting forth (amongst other matters) : that the Petitioner desires special leave to appeal from a Judgment of the Supreme Court of Canada dated the 20th November, 1950, allowing in part an Appeal from a Judgment of the Court of Appeal for Saskatchewan dated the 29th January, 1949, whereby the said Court of Appeal unanimously so far as regards the points at issue in this Appeal answered in favour of the Petitioner certain questions referred to the said Court by the Lieutenant Governor of Saskatchewan pursuant to the Constitutional Questions Act being chapter 72 of the revised Statutes of Saskatchewan 1940 : that the reference raised the question of the validity of certain portions of the legislation of Saskatchewan providing for local taxation having regard to the immunity of certain portions of the property of the Respondent Company from taxation conferred by the provisions of the Statute of Canada 44 Victoria c. 1 (Schedule and Clause 16) and to the limitations purported to be placed upon the legislative power of the province of Saskatchewan by the Act creating and establishing the province : that Section 24 of the Saskatchewan Act 1905 provides :—

‘ The powers hereby granted to the said province shall be exercised subject to the provisions of Section 16 of the contract set forth in the schedule to Chapter 1 of the Statutes of 1881 being an Act respecting the Canadian Pacific Railway Company.’ : that Clause 16 of the contract in the schedule to the said Act of 1881 provides as follows :—

20

30

10 ' The Canadian Pacific Railway, and all stations and station grounds, workshops, buildings, yards and other property, rolling stock and appurtenances required and used for the construction and working thereof, and the capital stock of the Company, shall be forever free from taxation by the Dominion or by any province hereafter to be established, or by any Municipal Corporation therein ; and the lands of the Company in the North-West Territories, until they are either sold or occupied, shall also be free from such taxation for twenty years after the grant thereof from the Crown.' ; that by certain Statutes of the Province of Saskatchewan as amended it was provided :—(A) That with the exception of property specially exempt by law the railway road and other land within the Province owned by Railway Companies should be assessed and taxed and (B) That Railway Companies whether their property is liable to assessment and taxation or not should be liable to assessment and taxation in respect of the business carried on as a railway within the Province at a rate per square foot of the floor space of each building or part thereof used for business purposes : that the questions for decision in this reference arose out of a dispute between the Respondent Company and the Petitioner and between the Respondent Company and divers municipalities in Saskatchewan with respect to the proposed application in part of such legislation to the Respondent Company despite such exemption : that the main questions for determination are (1) whether the exemption covers the form of local taxation known as ' business taxes ' and (2) as to the validity of the limitation on the powers of the Province imposed by Section 24 of the Saskatchewan Act, 1905 : that the Attorney General for Manitoba is desirous of intervening in the Appeal : And humbly praying Your Majesty in Council to grant the Petitioner special leave to appeal from the Judgment of the Supreme Court dated the 20th November, 1950, and to order that leave to intervene in the Appeal be granted to the Attorney General for Manitoba and for further and other relief :

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30

In the Privy Council.

Order in Council granting special leave to Appeal, 18th July, 1952—  
*continued.*

40 " THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof and in opposition thereto (except as regards the Petitioner's prayer that leave be given to the Attorney General for Manitoba to intervene in the Appeal to which prayer Counsel for the Respondent has consented) Their Lordships do this day agree humbly to report to Your Majesty as their opinion (1) that leave ought to be granted to the Petitioner to enter and prosecute his Appeal against the Judgment of the Supreme Court of Canada dated the 20th day of November, 1950, but that the Appeal ought to be limited to the following questions (a) whether the exemption granted in Clause 16 of the contract between the Dominion of Canada and the Respondent Company covers the form of local taxation known as ' business taxes ' and (b) as to the validity of the limitation on the powers of the Province contained in Section 24 of the Saskatchewan

In the Privy  
Council.

Order in  
Council  
granting  
special  
leave to  
Appeal,  
18th July,  
1952—  
*continued.*

Act, 1905, and (2) that leave ought to be granted to the Attorney General for Manitoba to intervene in the Appeal to lodge a Printed Case and to be heard by Counsel :

“ AND THEIR LORDSHIPS do further report to Your Majesty that the authenticated copy under seal of the Record produced by the Petitioner upon the hearing of the Petition ought to be accepted (subject to any objection that may be taken thereto by the Respondent) as the Record proper to be laid before Your Majesty on the hearing of the Appeal.”

HER MAJESTY having taken the said Report into consideration was 10  
pleased by and with the advice of Her 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 or Officer administering 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 themselves accordingly.

F. J. FERNAU.

Order in Council Granting Leave to the Attorney-General of Canada to intervene in the Appeal.

In the Privy Council.

AT THE COURT AT BUCKINGHAM PALACE.

L.S. The 25th day of November, 1952.

Order in Council granting leave to the Attorney-General of Canada to intervene in the Appeal, 25th November, 1952.

Present

THE QUEEN'S MOST EXCELLENT MAJESTY.

LORD PRIVY SEAL.  
EARL OF CROMER.

MR. CHANCELLOR OF THE  
EXCHEQUER.  
MR. HOPKINSON.

10 WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 12th day of November, 1952, in the words following, viz. :—

20 “ 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 Attorney-General of Canada in the matter of an Appeal from the Supreme Court of Canada between the Attorney-General for Saskatchewan Appellant and Canadian Pacific Railway Company Respondent and the Attorney-General for Manitoba Intervener (Privy Council Appeal No. 21 of 1952) setting forth : that the above Appeal is pending before Your Majesty in Council : that it is the desire of the Petitioner to intervene in the Appeal : that each of the above-named Parties has consented to such leave to intervene being allowed : And humbly praying Your Majesty in Council to order that leave to intervene be granted to the Petitioner :

30 “ THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and the Solicitors for the Appellant the Respondent and the Intervener having signified their consent to the prayer thereof Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioner to intervene in the Appeal to lodge a Printed Case and to be heard by Counsel.”

HER MAJESTY having taken the said Report into consideration was pleased by and with the advice of Her 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 or Officer administering 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 themselves accordingly.

In the Privy Council. **Order in Council Granting Leave to the Attorney-General for Alberta to intervene in the Appeal.**

Order in Council granting leave to the Attorney-General for Alberta to intervene in the Appeal, 25th November, 1952.

L.S.

AT THE COURT AT BUCKINGHAM PALACE.

The 25th day of November, 1952.

Present

THE QUEEN'S MOST EXCELLENT MAJESTY

LORD PRIVY SEAL.  
EARL OF CROMER.

MR. CHANCELLOR OF THE  
EXCHEQUER.  
MR. HOPKINSON.

WHEREAS there was this day read at the Board a Report from the 10  
Judicial Committee of the Privy Council dated the 12th day of November,  
1952, 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 Attorney-  
General for Alberta in the matter of an Appeal from the Supreme Court  
of Canada between the Attorney-General for Saskatchewan Appellant  
and the Canadian Pacific Railway Company Respondent and the  
Attorney-General for Manitoba Intervener (Privy Council Appeal  
No. 21 of 1952) setting forth that the above Appeal is pending before 20  
Your Majesty in Council : that the Petitioner is desirous of intervening  
in the Appeal : that each of the above-named Parties has consented  
to such leave to intervene being granted ; And humbly praying Your  
Majesty in Council to order that leave to intervene in the Appeal be  
granted to the Petitioner :

“ THE LORDS OF THE COMMITTEE in obedience to His late Majesty's  
said Order in Council have taken the humble Petition into consideration  
and the Solicitors for the Appellant the Respondent and the Intervener  
having signified in writing their consent to the prayer thereof Their  
Lordships do this day agree humbly to report to Your Majesty as their 30  
opinion that leave ought to be granted to the Petitioner to intervene  
in the Appeal to lodge a Printed Case and to be heard by Counsel.”

HER MAJESTY having taken the said Report into consideration was  
pleased by and with the advice of Her 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 or Officer administering 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 themselves accordingly.

F. J. FERNAU. 40

# In the Privy Council.

No. 21 of 1952.

ON APPEAL FROM THE SUPREME COURT OF  
CANADA.

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BETWEEN :

THE ATTORNEY-GENERAL FOR  
SASKATCHEWAN ... APPELLANT

AND

CANADIAN PACIFIC RAILWAY  
COMPANY ... .. RESPONDENT

AND

THE ATTORNEY-GENERAL FOR  
MANITOBA, THE ATTORNEY-  
GENERAL FOR ALBERTA and  
THE ATTORNEY-GENERAL OF  
CANADA ... .. INTERVENERS.

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## RECORD OF PROCEEDINGS

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LAWRENCE JONES & CO.,

Winchester House,  
Old Broad Street,

London, E.C.2,

*For the Appellants and the Attorneys-General  
of Manitoba and Alberta.*

BLAKE & REDDEN,

17 Victoria Street, S.W.1,

*For Canadian Pacific Railway Company.*

CHARLES RUSSELL & CO.,

37 Norfolk Street, W.C.2,

*For the Attorney-General of Canada.*